

Special City Council Meeting
October 5, 2015

1. Agenda

Documents: [AGENDA3 2015-10-05.PDF](#)

2. Agenda And Packet

Documents: [2015-10-5 AGENDA AND PACKET.PDF](#)

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

DAVID BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK(A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

AGENDA
SPECIAL CITY COUNCIL MEETING
OCTOBER 5, 2015

The Portland City Council will hold a Special City Council Meeting at 7:30 p.m. in City Council Chambers, City Hall. The Honorable Michael F. Brennan, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNUAL MEETING:

(Tab 1) Annual Meeting of the Corporator of Portland Development Corporation – Sponsored by Mayor Michael F. Brennan

The City Council is the Corporator of the Portland Development Corporation (PDC).

Pursuant to the bylaws of the Portland Development Corporation , the Portland City Council, as Corporator of the Portland Development Corporation, shall hold its annual meeting in the month of September each year or at a special meeting.

At the September 17, 2015, meeting of the Portland Development Corporation Board of Directors, the Board set the date for the Annual Meeting of the Corporator as October 5, 2015.

This year's Annual Meeting Agenda includes:

1. Order accepting PDC FYE 2015 Activity and Financial Reports;
2. Transaction of other business as may be deemed necessary.

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 2) September 21, 2015 Regular City Council Meeting Minutes

PROCLAMATIONS:

Proc 7-15/16 (Tab 3) Proclamation Honoring Detective Maryann Bailey as Officer of the Month for July, 2015 – Sponsored by Mayor Michael F. Brennan.

APPOINTMENTS:

Order 70-15/16 (Tab 4) Order Appointing Warden and Ward Clerk Pro Tempore on November 3, 2015 – Sponsored by Katherine L. Jones, City Clerk.

District 1-1 Ward Clerk and District 3-1 Warden are unable to work the November 3, 2015, election.

The following Ward Clerk and Warden need to be appointed Pro Tempore for this election:

District 1-1 Aurelia Scott as Ward Clerk (She was previously the Ward Clerk)

District 3-1 Cynthia Pebenito as Warden (She worked as an Election Clerk for several years.)

Five affirmative votes are required for passage after public comment.

CONSENT ITEMS:

Order 71-15/16 (Tab 5) Order Setting Time for Opening of Polls for Election on November 3, 2015 – Sponsored by Katherine L. Jones, City Clerk.

Pursuant to 21-A M.R.S. §626, the hours of poll opening must be set by the municipal officers. This is done for every election. The polls open at 7:00 A.M. and close at 8:00 P.M.

Five affirmative votes are required for passage of the Consent Calendar.

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

Resolve 3-15/16 (Tab 6) Resolution Consenting, Subject to Conditions, to the Transfer of Control of the Time Warner Cable Northeast LLC from Time Warner Cable Inc. to Charter Communications, Inc. – Sponsored by Danielle West-Chuhta, Corporation Counsel.

This resolution consents to the transfer of the cable franchise agreement from Time Warner Cable to Charter Communications, Inc. In 1986 the City and Time Warner Cable entered into a franchise agreement which granted Time Warner certain nonexclusive rights to construct and maintain a cable telecommunication system for private and public use in the city. In 2015, Time Warner entered into an agreement to merge with Charter Communications, Inc.

According to Federal Law, the franchising authority has a certain amount of time to approve that transfer; however, the Franchise Agreement between the City and Time Warner requires that the City Council approve any transfer of the franchise agreement with the City. This Resolution, if approved, would consent to the transfer subject to certain conditions.

Five affirmative votes are required for passage after public comment.

UNFINISHED BUSINESS:

**Order 68-15/16
(Tab 7)**

Order Approving Purchase and Sale Agreements, Development Consulting Agreement, Remediation Grant Agreement and Housing Trust Fund Grant Re: 65 Munjoy Street – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair, and the Portland Development Corporation, Drew Swenson, Treasurer.

In November 2014 the Housing and Community Development Committee (HCDC) approved the issuance of a RFP for the sale and re-development of 65 Munjoy Street.

The RFP was issued on November 19, 2014 and generated one response, a proposal by Adam's Apple LLC to construct an 8-unit residential condominium development. In February 2015 the HCDC authorized staff to negotiate terms of the transaction with the developer.

A complicating factor in making this affordable housing project financially feasible is that the property is contaminated. It is estimated that remediation will cost about \$240,000. A source to cover the cost to remediate the site was found to be available through the Greater Portland Council of Governments (GPCOG) Brownfields Cleanup Grant Fund. GPCOG advised the City and Adam's Apple that they would not qualify for GPCOG's Brownfields grants if the City sold the property directly to Adam's Apple. GPCOG also advised the City, that as a non-profit, the Portland Development Corporation (PDC) would be eligible for these grant funds as long as it owns the site during environmental remediation. The PDC applied for and was successful, being awarded \$200,000 in Brownfields grant funds for the remediation of 65 Munjoy Street.

The Agreements provided with this memo would effectuate the PDC taking ownership of this vacant, contaminated City-owned property to facilitate site remediation utilizing the federal Brownfields cleanup funds available through GPCOG. This would be at no direct cost to the PDC and the PDC would ultimately sell the property to Adam's Apple, LLC to support construction of the 8-unit affordable condominium housing project.

At the PDC's August 20th meeting, the Board voted unanimously to recommend to the City Council that it approve these actions through purchase and sale agreements between the City and PDC and between Adam's Apple, LLC and the PDC; the Development Consulting Agreement between the PDC and Adam's Apple, LLC; and the Brownfields subgrant agreement between the PDC and GPCOG, provided that Adam's Apple, LLC is responsible for the administration of the grant agreement and all costs associated with the grant agreement.

In addition, in a separate vote, the PDC consented to Corporation Counsel's legal representation of the PDC with the understanding that Corporation Counsel would also be representing the City.

The proposal brought forth by Adam's Apple, LLC envisions an 8-unit residential condominium development comprised of two (2) 3-bedroom units, two (2) two-bedroom units and four (4) 1-bedroom units in a single, three-story walk-up building. The project will include six on-site covered parking spaces in a concealed parking area under the building.

The proposal indicates a sales price of \$225,000- \$235,000 for the one-bedroom units, \$274,000 for the two bedroom units and \$298,000 for the three-bedroom units. The units will be affordable to households earning between 100% and 120% of the area median income (Family of Two = \$61,875-\$74,250 & Family of Four = \$77,313-\$92,760).

The project will include deed restrictions that will guarantee future sales to income-qualified owner-occupants for no less than 90 years. The restrictions will also prohibit short-term rentals, such as airbnb.

In addition, the developer has agreed to a marketing campaign that will target first-time homebuyers.

To address a project financing gap, the developer requested financial assistance from the City's Housing Trust Fund in the amount of \$175,000.

At meetings held on July 8 and July 22, 2015, the HCDC voted 4-0 to recommend to the City Council the terms of the transactions outlined in this memo.

This item must be read on two separate days. It was given a first reading on September 21, 2015. Five affirmative votes are required for passage after public comment.

**Order 69-15/16
(Tab 8)**

Amendment to Portland City Code Chapter 6, (Buildings and Building Regulations) Re: Registration and Renewal Fee Discounts – Sponsored by the Public Safety, Health & Human Services Committee, Councilor Edward J. Suslovic, Chair.

As part of the overall recommendations to improve rental housing safety, the Fire/Code Task Force suggested a \$25 per-unit annual landlord registration fee to strengthen the City's existing landlord registration ordinance, ensure that the City has accurate and complete data on rental housing stock including landlord contact information, and support the new Housing Safety Office. The Task Force used the City's conservative estimate that there are 17,000 rental housing units in Portland, excluding the approximately 1,000 Portland Housing Authority (PHA)-owned units. During the Fiscal Year 2016 budget process, the budget team opted to increase the per-unit fee to \$35 and assume a 30% noncompliance rate, for total estimated revenue of \$416,500.

The Task Force did not consider any discounts or exemptions beyond the PHA-owned units; at the City Council's request, staff researched possible options and an ad-hoc stakeholder group (with the landlords who participated in the Task Force as well as others; please see the list below) met on Friday, August 7 to discuss these options.

During the landlord stakeholder meeting on August 7, one of the key points made was that the landlord registration process can and should be used to incentivize safer buildings, though they agreed that some safety measures can be hard to verify, including an enforced smoke-free policy. They argued, however, that offering a nominal discount for a smoke-free policy could be an effective means to educate landlords about the issue. Ultimately, they came to consensus on the following discounts:

- \$10 for a fully-sprinkled building (verification: testing/maintenance report and/or maintenance contract);
- \$7.50 for a centrally-monitored fire alarm (verification: Fire Department logs and/or alarm contract);
- \$5 for a Housing and Urban Development Housing Quality Standard inspection (verification: inspection report within last year);
- \$10 for a Housing and Urban Development Uniform Physical Condition Standard inspection (verification: inspection report within last year);
- \$2.50 for a smoke-free policy (verification: copy of lease and spot checks) and
- The fee should not drop below \$15

The Public Safety, Health & Human Services Committee met on September 8, 2015, and voted 3-1 to forward this item to the City Council with a recommendation for passage.

This item must be read on two separate days. It was given a first reading on September 21, 2015. Five affirmative votes are required for passage.

ORDERS:

Order 72-15/16 (Tab 9)

Order Authorizing Wage Increase for Corporation Counsel and the City Clerk – Sponsored by Mayor Michael F. Brennan.

This order authorizes a 3% wage increase for Corporation Counsel and City Clerk, retroactive to July 1, 2015.

The City Council and the Nomination Committee reviewed and recommended this wage increase as part of the performance review process for Corporation Counsel and the City Clerk. The FY16 city budget included the necessary funds to implement this increase.

Five affirmative votes are required for passage after public comment.

Order 73-15/16 (Tab 10)

Order Accepting Pedestrian Easement for Public Sidewalk at 89 Anderson Street - Sponsored by Jon Jennings, City Manager.

On May 26, 2015, the Planning Board approved a site plan and a subdivision plat for a mixed-use development at 89 Anderson Street, the East Bayside Lofts. The site plan includes areas at the corner of Fox and Anderson Streets and along Fox Street which technically fall on private property, but are designed to be part of the public sidewalk. These sidewalk areas are necessary to allow pedestrian access around curb ramps and to meet ADA specifications. As such, a public pedestrian easement was required as a condition of site plan and subdivision approval.

Five affirmative votes are required for passage after public comment.

Order 74-15/16 (Tab 11)

Order Approving Alternate Liquidity Facility with Respect to Pension Bonds – Sponsored by Jon P. Jennings, City Manager.

The current stand-by bond purchase agreement expires on November 1st. The City must sign a new contract prior to expiration of the existing agreement to provide continuity of services. The agreement is required to ensure that there is a party available to purchase the City's pension obligation bonds in the event they are tendered by the existing holders and cannot be remarketed. This structure has been in place since the pension bonds were originally issued in 2001. The last replacement agreement was put in place in 2012.

The Finance Department has thoroughly researched available providers and rates and has determined a budget savings can be achieved during the renewal process.

Signing this agreement achieves a savings of approximately \$319,000 annually vs renewal with the existing provider. This savings is achieved without an interruption in the key service provided by the agreement.

Five affirmative votes are required for passage after public comment.

**Order 75-15/16
(Tab 12)**

Amendment to Portland City Code Sec 28-51 Traffic Schedule Re: Portland Street - Sponsored by the Transportation, Sustainability, and Energy Committee, Councilor David A. Marshall, Chair.

The Department of Public Services, supported by the Department of Planning and Urban Development and the Portland School Department want to make the temporary one-way change of Portland Street from Alder Street to Preble Street permanent. The request for temporary change was presented to the Transportation, Sustainability and Energy Committee at their June 17, 2015 session and was unanimously approved, followed by an approval by the City Council at their July 20, 2015 meeting.

The test has proven successful, and the School Department along with the Fire Department fully supports making the one-way change permanent. Although the 90-day period has not yet expired, Public Services desires finalization of this change in the Traffic Schedule to allow Operations staff to place permanent pavement markings on Portland Street in October, prior to colder weather, which would make placement impossible before winter.

This item must be read on two separate days. The Council will be asked to waive the second reading and enact this order as in emergency. Emergency enactment requires seven affirmative votes for passage after public comment.

**Order 76-15/16
(Tab 13)**

Order Designating City Parks and Public Grounds Subject to the No Smoking Requirements of Section 17-96 of the Portland City Code - Sponsored by the Public Safety, Health & Human Services Committee, Councilor Edward J. Suslovic, Chair.

Current City Code Section 17-96 contains a list of city-owned or maintained parks, squares, and grounds that is incomplete. It is proposed to clarify the exact locations by including additional parks, squares, and grounds that have been created since the last time this list was updated, as well as adding all temporary parks requiring a permit.

On September 8, 2015, the Public Safety Health and Human Services Committee met and voted 4-0 to forward this item to the City Council with a recommendation for passage.

Staff is requesting that this item be postponed to the October 19th City Council meeting to coincide with consideration of companion Order 80-15/16 listed below under Amendments.

**Order 77-15/16
(Tab 14)**

Order Adopting India Street Sustainable Neighborhood Plan and Amending the Comprehensive Plan – Sponsored by the Planning Board, Beth Boepple, Acting Chair.

This order approves the adoption of the India Street Sustainable Neighborhood Plan and accompanying implementation tools – the India Street Form-based Code Zone and the India Street Historic District – along with associated map and ordinance text amendments in order to provide policy guidance for the India Street neighborhood.

On January 20, 2015, the Planning Board voted unanimously (5-0) to recommend the proposed India Street Sustainable Neighborhood Plan to the City Council to be adopted into the Comprehensive Plan.

On September 15, 2015, the Planning Board voted unanimously (7-0) to recommend the proposed India Street Form-based Code zone and related text and map amendments be approved by the City Council with an additional recommendation for a Council Order requiring a review of the India Street Form-based Code in at least three years and no later than five years from implementation.

On September 15, 2015, upon the unanimous recommendation of the Historic Preservation Board, the Planning Board voted 5-2 (Soley and Dundon opposed) to recommend that the City Council designate the proposed India Street Historic District and amend the site plan and historic preservation ordinances to clarify the relationship between historic preservation and Form-based Code regulations in the India Street Historic District. These include 1) an added provision under the historic preservation ordinance standards for new construction (Sec. 14-651) which addresses allowable building heights in the India Street Historic District; and 2) an amendment to Sec. 14-526 (18) of the site plan ordinance which applies to the review of new construction within 100 feet of a historic district boundary or landmark. The amendment would clarify that this provision applies only to new construction within 100 feet of individual landmarks in the India Street Historic District.

This order and Orders 78-15/16 and 79-15/16 which follow are companion orders to Order 83-15/16 listed under Amendments. Staff is requesting that this order be postponed to coincide with consideration of Order 83-15/16.

**Order 78-15/16
(Tab 15)**

Order Designating the Abraham S. Levey Building at 77-88 Middle Street as a Landmark – Sponsored by the Planning Board, Beth Boepple, Acting Chair.

Staff is requesting that this order be postponed to coincide with consideration of Order --15/16.

**Order 79-15/16
(Tab 16)**

Order Designating India Street as a Historic District and Amending the Map of Historic Districts – Sponsored by the Planning Board, Beth Beopple, Acting Chair.

Staff is requesting that this order be postponed to coincide with consideration of Order 83-15/16.

AMENDMENT

**Order 80-15/16
(Tab 17)**

Amendment to Portland City Code Chapter Chapter 17 (Offenses, Miscellaneous Provisions) Article V (Regulation of Tobacco) – Sponsored by the Public Safety, Health and Human Services Committee, Councilor Edward J. Suslovic Chair.

On September 8, 2015, the Public Safety Health and Human Services Committee met and voted 4-0 to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 76-15/16 listed above under Orders.

This item must be read on two separate days. This is its first reading.

**Order 81-15/16
(Tab 18)**

Amendment to Downtown Height Overlay Map – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

The Department of Planning and Urban Development has prepared a set of four amendments to Article 14 for the City Council’s consideration. Collectively, along with the previously adopted R-6 and B-2 zoning changes, these amendments constitute what we are referring to as the “Encourage and Ensure” package of amendments.

The package is designed to “encourage” additional housing development through thoughtful zoning changes to modernize our ordinance and allow for additional housing development. Changes proposed to Division 30 are designed to “ensure” that a reasonable percentage of the housing developed in Portland is affordable to those making close to the area median income.

The ordinance amendments before you are as follows:

1. Changes to the Downtown Height Overlay Map to increase allowed heights in some areas from 45’ to 65’;
2. Changes to the Accessory Dwelling Unit (ADU) language for the IR-1 and IR-2 island residential zones to allow ADU’s on more parcels, provided certain conditions are met;

3. Changes to the Accessory Dwelling Unit language for the R-5 zoning district to allow more use of existing building space for ADU's; and
4. Changes to Division 30 that:
 - a. Clarify terminology related to affordable housing;
 - b. Expand density bonuses for developments providing affordable housing; and
 - c. Require that new developments of 10 units or more restrict at least 10% of the units to be affordable to those making 100-120% of the area median income or below (currently about \$77,500-96,875 for a family of four) or contribute a fee-in-lieu of \$100,000 per unit to the Housing Trust. These developments would also be eligible for a 25% density bonus, and consideration for an Affordable Housing Tax Increment Finance District.

This package of amendments, in addition to the previous R-6 and B-2 changes, will allow production of additional housing in Portland by reducing the per-unit cost of housing, while at the same time making sure that some portion of that additional housing remain affordable to the workers Portland needs to attract, such as entry level professionals and career blue collar workers. For context, a unit affordable to a median income family of four would rent for about \$1,900 a month, or have a mortgage of about \$350,000. These numbers seem attainable now without much market intervention. However, the need for deed-restricted units at this level stems from the fact that the gap between what is affordable to such a family and what the market produces is likely to continue to grow.

This item must be read on two separate days. This is its first reading.

**Order 82-15/16
(Tab 19)**

Amendment to Portland City Code Chapter 14. Land Use, Article III. Zoning Re: Inclusionary Zoning – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

This is a companion order to Order 81-15/16 above.

This item must be read on two separate days. This is its first reading.

**Order 83-15/16
(Tab 20)**

Amendment to Portland City Code Chapter 14. Land Use, Article III. Zoning, Article V. Site Plan and Article IX. Historic Preservation Re: India Street Historic District and Form-Based Code Zone – Sponsored by the Planning Board, Beth Beopple, Acting Chair.

This item must be read on two separate days. This is its first reading.

**Order 84-15/16
(Tab 21)**

Amendment to Zoning Map Re: 1945 Congress Street – Sponsored by the Planning Board, Beth Boepple, Chair.

On September 8, 2015, the Planning Board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend a map amendment to change the zoning for the property at 1945 Congress Street from Residential R-2 to Office Park (O-P), with a 40-foot buffer of R-2 retained at the easterly side of the site. The amendment would make Office Park a permitted use on the site, and thus allow Northland Enterprises, LLC, the applicant, to redevelop the property with medical and general office buildings under the development standards and design criteria of the Office Park zone.

This item must be read on two separate days. This is its first reading.

**Order 85-15/16
(Tab 22)**

**Amendment to Portland City Code Chapter 13 (General Assistance)
Re: Eligibility – Sponsored by Jon Jennings, City Manager.**

Staff requests that the City's General Assistance ordinance be amended in order to address the changes required by Public Law 324 passed during the last legislative session and effective 10/15/2015.

PL 324 expands GA eligibility to individuals who are "lawfully present" in the United States or who are "pursuing a lawful process to apply for immigration relief." The City should amend its ordinance to address PL 324 in order to ensure compliance with state law/rules and maximize reimbursement from the State.

This item must be read on two separate days. This is its first reading.

LICENSE RENEWALS:

MICHAEL F. BRENNAN (MAYOR)
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**Order 73-15/16
(Tab 10)**

Order Accepting Pedestrian Easement for Public Sidewalk at 89 Anderson Street - Sponsored by Jon Jennings, City Manager.

On May 26, 2015, the Planning Board approved a site plan and a subdivision plat for a mixed-use development at 89 Anderson Street, the East Bayside Lofts. The site plan includes areas at the corner of Fox and Anderson Streets and along Fox Street which technically fall on private property, but are designed to be part of the public sidewalk. These sidewalk areas are necessary to allow pedestrian access around curb ramps and to meet ADA specifications. As such, a public pedestrian easement was required as a condition of site plan and subdivision approval.

Five affirmative votes are required for passage after public comment.

**Order 74-15/16
(Tab 11)**

Order Approving Alternate Liquidity Facility with Respect to Pension Bonds – Sponsored by Jon P. Jennings, City Manager.

The current stand-by bond purchase agreement expires on November 1st. The City must sign a new contract prior to expiration of the existing agreement to provide continuity of services. The agreement is required to ensure that there is a party available to purchase the City's pension obligation bonds in the event they are tendered by the existing holders and cannot be remarketed. This structure has been in place since the pension bonds were originally issued in 2001. The last replacement agreement was put in place in 2012.

The Finance Department has thoroughly researched available providers and rates and has determined a budget savings can be achieved during the renewal process.

Signing this agreement achieves a savings of approximately \$319,000 annually vs renewal with the existing provider. This savings is achieved without an interruption in the key service provided by the agreement.

Five affirmative votes are required for passage after public comment.

**Order 75-15/16
(Tab 12)**

Amendment to Portland City Code Sec 28-51 Traffic Schedule Re: Portland Street - Sponsored by the Transportation, Sustainability, and Energy Committee, Councilor David A. Marshall, Chair.

The Department of Public Services, supported by the Department of Planning and Urban Development and the Portland School Department want to make the temporary one-way change of Portland Street from Alder Street to Preble Street permanent. The request for temporary change was presented to the Transportation, Sustainability and Energy Committee at their June 17, 2015 session and was unanimously approved, followed by an approval by the City Council at their July 20, 2015 meeting.

The test has proven successful, and the School Department along with the Fire Department fully supports making the one-way change permanent. Although the 90-day period has not yet expired, Public Services desires finalization of this change in the Traffic Schedule to allow Operations staff to place permanent pavement markings on Portland Street in October, prior to colder weather, which would make placement impossible before winter.

This item must be read on two separate days. The Council will be asked to waive the second reading and enact this order as in emergency. Emergency enactment requires seven affirmative votes for passage after public comment.

**Order 76-15/16
(Tab 13)**

Order Designating City Parks and Public Grounds Subject to the No Smoking Requirements of Section 17-96 of the Portland City Code - Sponsored by the Public Safety, Health & Human Services Committee, Councilor Edward J. Suslovic, Chair.

Current City Code Section 17-96 contains a list of city-owned or maintained parks, squares, and grounds that is incomplete. It is proposed to clarify the exact locations by including additional parks, squares, and grounds that have been created since the last time this list was updated, as well as adding all temporary parks requiring a permit.

On September 8, 2015, the Public Safety Health and Human Services Committee met and voted 4-0 to forward this item to the City Council with a recommendation for passage.

Staff is requesting that this item be postponed to the October 19th City Council meeting to coincide with consideration of companion Order 80-15/16 listed below under Amendments.

**Order 77-15/16
(Tab 14)**

Order Adopting India Street Sustainable Neighborhood Plan and Amending the Comprehensive Plan – Sponsored by the Planning Board, Beth Boepple, Acting Chair.

This order approves the adoption of the India Street Sustainable Neighborhood Plan and accompanying implementation tools – the India Street Form-based Code Zone and the India Street Historic District – along with associated map and ordinance text amendments in order to provide policy guidance for the India Street neighborhood.

On January 20, 2015, the Planning Board voted unanimously (5-0) to recommend the proposed India Street Sustainable Neighborhood Plan to the City Council to be adopted into the Comprehensive Plan.

On September 15, 2015, the Planning Board voted unanimously (7-0) to recommend the proposed India Street Form-based Code zone and related text and map amendments be approved by the City Council with an additional recommendation for a Council Order requiring a review of the India Street Form-based Code in at least three years and no later than five years from implementation.

On September 15, 2015, upon the unanimous recommendation of the Historic Preservation Board, the Planning Board voted 5-2 (Soley and Dundon opposed) to recommend that the City Council designate the proposed India Street Historic District and amend the site plan and historic preservation ordinances to clarify the relationship between historic preservation and Form-based Code regulations in the India Street Historic District. These include 1) an added provision under the historic preservation ordinance standards for new construction (Sec. 14-651) which addresses allowable building heights in the India Street Historic District; and 2) an amendment to Sec. 14-526 (18) of the site plan ordinance which applies to the review of new construction within 100 feet of a historic district boundary or landmark. The amendment would clarify that this provision applies only to new construction within 100 feet of individual landmarks in the India Street Historic District.

This order and Orders 78-15/16 and 79-15/16 which follow are companion orders to Order 83-15/16 listed under Amendments. Staff is requesting that this order be postponed to coincide with consideration of Order 83-15/16.

**Order 78-15/16
(Tab 15)**

Order Designating the Abraham S. Levey Building at 77-88 Middle Street as a Landmark – Sponsored by the Planning Board, Beth Boepple, Acting Chair.

Staff is requesting that this order be postponed to coincide with consideration of Order --15/16.

**Order 79-15/16
(Tab 16)**

Order Designating India Street as a Historic District and Amending the Map of Historic Districts – Sponsored by the Planning Board, Beth Beopple, Acting Chair.

Staff is requesting that this order be postponed to coincide with consideration of Order 83-15/16.

AMENDMENT

**Order 80-15/16
(Tab 17)**

Amendment to Portland City Code Chapter Chapter 17 (Offenses, Miscellaneous Provisions) Article V (Regulation of Tobacco) – Sponsored by the Public Safety, Health and Human Services Committee, Councilor Edward J. Suslovic Chair.

On September 8, 2015, the Public Safety Health and Human Services Committee met and voted 4-0 to forward this item to the City Council with a recommendation for passage.

This is a companion order to Order 76-15/16 listed above under Orders.

This item must be read on two separate days. This is its first reading.

**Order 81-15/16
(Tab 18)**

Amendment to Downtown Height Overlay Map – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

The Department of Planning and Urban Development has prepared a set of four amendments to Article 14 for the City Council’s consideration. Collectively, along with the previously adopted R-6 and B-2 zoning changes, these amendments constitute what we are referring to as the “Encourage and Ensure” package of amendments.

The package is designed to “encourage” additional housing development through thoughtful zoning changes to modernize our ordinance and allow for additional housing development. Changes proposed to Division 30 are designed to “ensure” that a reasonable percentage of the housing developed in Portland is affordable to those making close to the area median income.

The ordinance amendments before you are as follows:

1. Changes to the Downtown Height Overlay Map to increase allowed heights in some areas from 45’ to 65’;
2. Changes to the Accessory Dwelling Unit (ADU) language for the IR-1 and IR-2 island residential zones to allow ADU’s on more parcels, provided certain conditions are met;

3. Changes to the Accessory Dwelling Unit language for the R-5 zoning district to allow more use of existing building space for ADU's; and
4. Changes to Division 30 that:
 - a. Clarify terminology related to affordable housing;
 - b. Expand density bonuses for developments providing affordable housing; and
 - c. Require that new developments of 10 units or more restrict at least 10% of the units to be affordable to those making 100-120% of the area median income or below (currently about \$77,500-96,875 for a family of four) or contribute a fee-in-lieu of \$100,000 per unit to the Housing Trust. These developments would also be eligible for a 25% density bonus, and consideration for an Affordable Housing Tax Increment Finance District.

This package of amendments, in addition to the previous R-6 and B-2 changes, will allow production of additional housing in Portland by reducing the per-unit cost of housing, while at the same time making sure that some portion of that additional housing remain affordable to the workers Portland needs to attract, such as entry level professionals and career blue collar workers. For context, a unit affordable to a median income family of four would rent for about \$1,900 a month, or have a mortgage of about \$350,000. These numbers seem attainable now without much market intervention. However, the need for deed-restricted units at this level stems from the fact that the gap between what is affordable to such a family and what the market produces is likely to continue to grow.

This item must be read on two separate days. This is its first reading.

**Order 82-15/16
(Tab 19)**

Amendment to Portland City Code Chapter 14. Land Use, Article III. Zoning Re: Inclusionary Zoning – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

This is a companion order to Order 81-15/16 above.

This item must be read on two separate days. This is its first reading.

**Order 83-15/16
(Tab 20)**

Amendment to Portland City Code Chapter 14. Land Use, Article III. Zoning, Article V. Site Plan and Article IX. Historic Preservation Re: India Street Historic District and Form-Based Code Zone – Sponsored by the Planning Board, Beth Beopple, Acting Chair.

This item must be read on two separate days. This is its first reading.

**Order 84-15/16
(Tab 21)**

Amendment to Zoning Map Re: 1945 Congress Street – Sponsored by the Planning Board, Beth Beopple, Chair.

On September 8, 2015, the Planning Board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend a map amendment to change the zoning for the property at 1945 Congress Street from Residential R-2 to Office Park (O-P), with a 40-foot buffer of R-2 retained at the easterly side of the site. The amendment would make Office Park a permitted use on the site, and thus allow Northland Enterprises, LLC, the applicant, to redevelop the property with medical and general office buildings under the development standards and design criteria of the Office Park zone.

This item must be read on two separate days. This is its first reading.

**Order 85-15/16
(Tab 22)**

**Amendment to Portland City Code Chapter 13 (General Assistance)
Re: Eligibility – Sponsored by Jon Jennings, City Manager.**

Staff requests that the City's General Assistance ordinance be amended in order to address the changes required by Public Law 324 passed during the last legislative session and effective 10/15/2015.

PL 324 expands GA eligibility to individuals who are "lawfully present" in the United States or who are "pursuing a lawful process to apply for immigration relief." The City should amend its ordinance to address PL 324 in order to ensure compliance with state law/rules and maximize reimbursement from the State.

This item must be read on two separate days. This is its first reading.

LICENSE RENEWALS:

Tab 1 10-5-15

Portland, Maine



Yes. Life's good here.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

To: Mayor and Members of the City Council

From: Gregory A. Mitchell, Economic Development Director

cc: Barry Sheff, President/Portland Development Corporation Board of Directors

Date: September 22, 2015

Sponsor: Mayor Michael F. Brennan

Subject: Annual Meeting of Corporator of Portland Development Corporation (PDC)

1. Council meeting at which action is requested: October 5, 2015
2. Can action be taken at a later date? No.

If no, why not? At the September 17, 2015 meeting of the Portland Development Corporation Board of Directors, the Board set the date for the Annual Meeting of the Corporator as October 5, 2015.

I. SUMMARY OF ISSUE

Pursuant to the bylaws of the Portland Development Corporation (PDC), the Portland City Council, as Corporator of the Portland Development Corporation, shall hold its annual meeting in the month of September each year or at a special meeting.

This year's Annual Meeting Agenda includes:

1. Order accepting PDC FYE 2015 Activity and Financial Reports;
2. Transaction of other business as may be deemed necessary.

II. REASON FOR SUBMISSION

At the PDC Board of Directors Annual Meeting held on September 17, 2015, the PDC Board set the date of the Annual Meeting of the Corporator as October 5, 2015.

III. INTENDED RESULT

The intended result of the Annual Meeting of the Corporator would be for it to receive the Annual Activity and Financial Report of the PDC for FYE2015.

VI. COUNCIL GOAL ADDRESSED

Promote economic development in the City in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.

V. FINANCIAL IMPACT

See enclosed FYE2015 reports.

VI. STAFF ANALYSIS AND RECOMMENDATION

Staff recommends the Corporator hold its Annual Meeting on October 5, 2015 and accept the PDC's FYE 2015 Annual Activity and Financial Report.

Attachments:

- PDC Board FYE 2015 Activity Report and Financial Report (Preliminary and Subject to Audit)



Portland Development Corporation

Board of Directors

Fiscal Year End 2015 Annual Report

The Economic Development Department provides the primary staff support to the Portland Development Corporation (PDC) with legal assistance from Corporation Counsel. The Economic Development Department is responsible for marketing and administration of the PDC's Commercial Loan and Grant Programs and marketing City-owned real estate to attract private sector investment.

The PDC Board of Directors met nine times over the course of the fiscal year, not including its Annual Awards Reception held on November 20, 2014 – detailed further below. It is noted that the PDC invested over \$850,000 in FY15 to 25 businesses and economic development projects, which leveraged over \$3.7 Million in private sector funds associated with creating 53 jobs and retaining 55 jobs.

FY14 and FY15 Loan and Grant Activity Totals:

	FY14	FY15
No. of Loans Made	7	8
Total Amt. of Funds Lent	\$814,289	\$607,033
Total Private Investment Leveraged	\$48,505,172	\$3,467,095
Jobs Created	65	40
Jobs Retained	13	55
No. Dev. Action Grants	3	1
Total Amt. of Grants	\$75,000	\$10,650
No. Business Assistance Grants for Job Creation	5	8
Total Amt. of Grants	52,200	\$140,000
Jobs Created	6	13
No. Portland Econ. Dev. Plan Implementation Grants	3	8
Total Amt. of Grants	\$43,309	\$98,820
PDC Total Investment	\$984,798	\$856,503

PDC Fiscal Year 2015 Loan and Grant Detailed Activity

FY15 Loans Closed

FY15 was a year in which the PDC loan portfolio grew with eight loans closed for a total of \$607,033. The PDC's loans invested in eight Portland businesses, thereby retaining 55 jobs and associated with 40 new jobs. In addition, these loans leveraged over \$3.4 Million in private commercial investment. Types of businesses provided loan assistance included education/daycare, restaurants, seafood supplier for the restaurant industry, bakery, window film treatments installation, spa, and a brownfield loan for environmental remediation.

During the past six years, FY10 through FY15, the PDC has extended 41 loans for a total of over \$3 Million, while leveraging \$59.3 Million in private investment and creating and retaining over 432 jobs.

PDC Loan Portfolio

For the first time in PDC history, its outstanding loan portfolio exceeds the \$2 Million mark. At the end of FY15, the PDC has 32 loans outstanding. This loan portfolio includes \$2.5 Million in PDC loan funds which leverages \$61.7 Million in private investment in Portland, for a private to public fund leverage of \$24 of private funds to each dollar of public funds. These loans also retained 171 jobs and created 228 jobs, and include a diverse mix of PDC investments in businesses noted above, as well as food manufacturers, biofuel, fitness, retail, and service.

As a result of a successful grant application, beginning in 2012 funds from the U.S. Treasury's State Small Business Credit Initiative (SSBCI) became available to the City as a lending source. Through FY2015, the PDC has utilized \$730,000 in SSBCI funds for loans to Portland businesses. When the SSBCI Program expires in early 2017, all of those funds, once paid off by the borrowers, will become the City's, expanding the PDC loan pool by what will likely be over \$1 million.

PDC Lending History

Since its inception, the PDC has made 144 loans to diverse businesses including manufacturing (e.g., breweries and biosciences), restaurants, retail, and service, among others. The following table provides an overall view of the activities:

Total Amounts of Funds Lent:	\$8,843,035
Leveraged Amount of Private Financing:	\$104,959,701
Jobs Retained:	1,240
Jobs Created:	752
14 Loans Defaulted*	\$477,534

*Default amount of \$477,534 is 5.4% of total amount of funds lent.

Portland Economic Development Plan Implementation Program (PEDPIP) Grant Fund

The PEDPIP Grant Fund was created during FY12 to provide grant funds to invest in economic development projects and programs that carry out Portland's Economic Development Vision and Plan ("Plan"). Grants must be matched by an equal or greater dollar amount from funding sources other than the PDC.

The PEDPIP grants fund planning studies and other "soft" costs associated with economic development projects and programs that advance the initiatives spelled out in the Plan. PEDPIP does not invest in "hard" costs for public infrastructure or private development projects. Its focus is on expenditures for economic development projects and programs.

The PEDPIP program was capitalized by PDC funds in the amount of \$250,000 in FY12. The maximum grant amount was originally \$75,000. During FY2015, the PDC Board recommended to the City Council, and the City Council approved, amending the maximum grant amount to \$15,000, and establishing a yearly cap at the beginning of each fiscal year at 10% of available/uncommitted, unrestricted funds beginning with FY16.

Since its inception through FY15, the PDC Board approved grants in the total amount of \$329,713, as follows:

Portland Community Chamber for Growing Portland Initiative
Creative Portland for the following projects:

- Branding Portland
- LiveWork Website Update
- Creative Economy Metrics
- Artspace Survey
- Creative Map and Guide
- Creative Space (inventory, web-based clearing house, resource guides)
- UNESCO Creative Cities Application
- Work in Place Summit

Portland Performing Arts Festival

Portland Community Chamber for Scorecard Updates (2014; 2015)

City of Portland staff to participate in the Maine International Trade Center

Mission to Iceland and UK

Portland Community Chamber for Startup and Create Week (2014; 2015)

World Affairs Council for its Celebrate Immigration Initiative

City of Portland/Portland Community Chamber – Industry Sector Research

Conducted by the Maine Center for Business and Economic Research

City of Portland – Greater Portland Economic Development Corporation

(GPEDC) - Maine International Trade Center/Invest in Maine Program

Cultivating Communities/Local Food Cluster Acceleration Project
Cooperative Development Institute – Institutional Food Service and Procurement

Business Assistance Grant Program for Job Creation

The Business Assistance Program for Job Creation offers grants to new and expanding Portland businesses for projects that result in the creation of permanent net new jobs for low/moderate income Portland residents. A private match is required in an amount that is at least equal to the grant requested. The maximum grant amount request per recipient is \$20,000. For every \$10,000 of grant funds, one full-time permanent job must be created.

This program was originally capitalized with \$100,000 from Community Development Block Grant (CDBG) funds and launched in May 2012. It was re-capitalized by the CDBG program in FY14 and FY16 with an additional \$100,000 each of those years.

During FY15, eight grants were approved for a total amount of \$140,000. Grants approved since the Program's inception through FY15 total \$192,200 to thirteen recipients, resulting in the creation of 19 full-time jobs within one year of receiving the grant award, with more to come.

PDC Annual Awards Program

At the 19th Annual Awards Reception on November 20, 2014, the PDC provided awards for Small Business of the Year, Business of the Year, and an Economic Achievement Award – as follows:

- The ***Small Business of the Year*** award was given to **Rising Tide Brewing Company**

Rising Tide Brewing Company is a family-owned craft brewery that was founded in 2010 with a tiny one-barrel brewing system in a small garage off Riverside Street. In 2012, the company relocated to Portland's East Bayside neighborhood where they completed a dramatic expansion with the installation of a custom-built fifteen barrel brewhouse. Since then, Rising Tide more than tripled its production capacity with the addition of five locally fabricated fermenters and grown to a staff of 15, with expectations of 18 employees by the end of 2015. Yet again, the company is in the midst of yet another major expansion, with new packaging machinery, more new fermentation tanks and a much larger tasting room to be built this Fall.

Owned by Portland natives Nathan and Heather Sanborn, Rising Tide specializes in artisanal, hand-crafted ales brewed in small batches. Nathan is the brewer, fascinated by the science and art of beer-making. Prior to launching the company, he spent more than a dozen years teaching himself about brewing, experimenting

with creative recipes on his home-brewing system, and serving up his beer for feedback from friends and family.

Rising Tide's beers are available in bottles and on draft in their tasting room at 103 Fox Street and at select locations in Maine, Massachusetts, New Hampshire, and Vermont. The tasting room has become a community hub, attracting locals as well as tourists. The brewery regularly partners with other local artisans, including cheese, soap, chocolate, and jam makers, as well as several local non-profits such as the Maine Island Trail Association and the Good Shepherd Food Bank.

- The *Business of the Year* award was given to *Apothecary By Design*.

Apothecary by Design was established in 2008. ABD was a pioneer to locate in the Intermed building in November 2008. This pharmacy includes five distinct components – retail, compounding (the use of pure, active ingredients to create an individualized medication for a patient), and specialty pharmacies, as well as nutraceuticals/supplements, and a coffee shop. In 2012, ABD needed additional space to accommodate its growth, and, therefore, expanded into 141 Preble Street – moving its specialty pharmacy unit, sterile compounding, and administration to the new space. This move created an additional six jobs at the time.

ABD is dedicated to individualized patient care with cutting-edge pharmacology. “Our pharmacy care approach goes well beyond simply filling prescriptions and handing them to customers,” said Tom Madden, R.Ph., ABD principal and 25-year veteran of the pharmacy industry. “We are committed to delivering not only expert pharmacy services, but also one-on-one nutritional guidance, nutraceutical, and supplement advice, and wellness programs that can improve the patient’s overall health and quality of life.” ABD provides intensive case management services to patients suffering from complex medical conditions such as HIV/AIDS, Hepatitis C, MS, and Infertility. Since opening in November 2008, it has served more than 45,000 patients, growing from 12 employees to more than 75.

- The *Economic Development Achievement* award was given to *J. B. Brown & Sons*

J.B. Brown & Sons was founded in 1828 by the legendary entrepreneur John Bundy Brown. This 19th century entrepreneur had interests in manufacturing, food retailing, hotels, substantial land holdings and properties in all sectors of the Portland real estate market, eventually developing much of Congress Street, the Waterfront, and the West End. During the past 30 years, J.B. Brown has gradually converted its original holdings to different uses to support the changing dynamic of Portland.

Today, J.B. Brown & Sons remains one of the largest property owners in Portland, as it has for the past 125 years. Its properties in Portland include a mix

of office, industrial, and hospitality, along with developable land. The Company's most recent Portland investment includes the 131-room Courtyard by Marriott with 14 penthouse condominiums and 7,000 square foot Tiqa restaurant at 321 Commercial Street — all together a \$22.5 Million investment.

Mr. Brown's successors form an unbroken chain that has developed and managed commercial and industrial properties according to his principles for 174 years. J.B. Brown began as a family-owned company and remains privately held, with a large percentage of its ownership retained by descendants of its founder, now reaching the 6th generation. The company today is characterized by its stable ownership, its conservative long-term outlook, and its commitment to quality urban development principles.

Summary

The PDC looks forward to continuing to assist with attracting investment in Portland area businesses. With grant programs, its loan portfolio growing, and loan funds available to invest, the PDC would like to thank the City Council for its continued support.

PDC Board of Directors: Mayor Michael Brennan
Barry Sheff, President
Drew Swenson, Treasurer
Jere Shaw, Secretary
Tim Agnew
Shelley Carvel
Neil Kiely
Jess Knox
Dennis Martin
Mark Rees, City Manager/Sheila Hill-Christian, Acting
City Manager
Heather Sanborn

PDC Staff: Greg Mitchell, Economic Development Director
Nelle Hanig, Business Programs Manager
Lori Paulette, Senior Executive Assistant
Michael Goldman, Associate Corporation Counsel

PORTLAND DEVELOPMENT CORPORATION

Balance Sheet

June 30, 2015

(Preliminary and Subject to Audit)

ASSETS

Assets

Cash		1,756,022
Loans receivable	2,166,819	
Allowance for uncollectable loans	(325,022)	1,841,797

Total Assets		\$ 3,597,819
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LIABILITIES

Liabilities

Accounts payable		36,627
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Total Liabilities		\$ 36,627
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Fund Equity

Reserved:		
for Loans Rec.		1,841,797

Reserved:		
for Economic Development Fund	270	103,261
for Unrestricted UDAG	271	702,330
for Restricted CIP	272	128,030
for Unrestricted CIP	274	84,478
for FAME	277	143,918
for EPA Revolving Loan Fund	278	309,595
for FAME SSBCI	279	247,783

Total Fund Equity		\$ 3,561,192
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Total Liabilities and Fund Equity		\$ 3,597,819
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Downtown Portland Corporation
Statement of Revenues, Expenditures,
and Changes in Fund Balance
For the Year Ended
June 30, 2015

(Preliminary and Subject to Audit)

Revenues/Financing Sources	
Interest payments on loans	89,073
Interest Income	5,734
Application Fees	5,070
Total Revenues	99,877
Expenditures	
Admin. expense - FAME	9,660
Contributions	75,077
Consulting	4,055
Transfers out	24,377
Bad Debt Expense	47,853
Remaining Nova Star	33,128
Total Expenditures	194,150
Excess (deficiency) of revenues over expenditures	(94,273)
Fund Balance, June 30, 2014, restated	3,655,465
Fund Balance, June 30, 2015	3,561,192

**Portland Development Corporation
Operating Fund**

Budget vs Actual
For Year Ended
June 30, 2015
(Preliminary and Subject to Audit)

	FY15				FY14		
	Budget	Actual	%		Budget	Actual	%
Portland Development Corporation	-----	-----	---		-----	-----	---
Revenues:							
Transfers in from Ec. Dev. Fund	28,522	24,377			28,522	24,899	
					-----	-----	
Total Revenues	28,522	24,377			28,522	24,899	
Expenditures							
Admin Services	575	301	52%		575	237	41%
Contractual Services	20,147	17,592	87%		19,897	18,498	93%
Postage/Supplies	300	52	17%		300	37	12%
Travel, Training	3,900	3,494	90%		3,000	2,547	85%
Advertising	2,000	1,479	74%		2,000	1,831	92%
Printing & Binding	650	643	99%		650	473	73%
Office Supplies	850	816	96%		850	385	45%
Auto Expense	100	0	0%		100	0	0%
Minor Equipment	0	0	0%		1,150	890	77%
Total Expenditures	28,522	24,377	85%		28,522	24,899	87%

ROLL CALL: Mayor Brennan called the meeting to order at 7:00 P.M. (Councilor Hinck arrived during the consent items).

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Costa and seconded by Councilor Suslovic to approve the minutes of September 9, 2015 Special City Council Meeting.
Passage 8-0.

PROCLAMATIONS:

Proc 6-15/16 Proclamation Honoring Officer Sean Hurley and Officer Matthew Rider – Sponsored by Mayor Michael F. Brennan.

APPOINTMENTS:

Order 63-15/16 Order Appointing Brendan O'Connell Tax Collector – Sponsored by Danielle West-Chuhta, Corporation Counsel.

Motion was made by Councilor Suslovic and seconded by Councilor Donoghue for passage. Passage 8-0.

CONSENT ITEMS:

Order 64-15/16 Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and 5826(6) Re: Felicia Bruning – Sponsored by Jon P. Jennings, City Manager.

Order 65-15/16 Order Authorizing Waterfront Concert Festivals Presented by Waterfront Concerts, LLC on the Maine State Pier and Approving Contracts and Permits Therefor– Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Mavodones and seconded by Councilor Marshall for passage of the Consent Items. Passage 9-0.

LICENSES:

Order 66-15/16 Order Granting Municipal Officers' Approval of One Exchange, LLC d/b/a Alchemy. Application for a Class A Lounge License with Entertainment (unamplified only) with Dance at 1 Exchange Street – Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Duson and seconded by Councilor Costa for passage. Passage 9-0.

Order 67-15/16 Order Granting Municipal Officers' Approval of Pearl Tap House LLC d/b/a Pearl Tap House. Application to Expand Class A Lounge License with Entertainment with Dance at 442-446 Fore Street – Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Duson and seconded by Councilor Costa for passage. Passage 9-0 .

BUDGET ITEMS:

UNFINISHED BUSINESS:

Order 172-14/15 Order Approving Two-Party Agreement between the City of Portland and the Maine Department of Transportation Re: Improvements to Forest Avenue – Sponsored by Jon P. Jennings, City Manager. This item was given first reading on March 2, postponed on June 15th.

Motion was made by Councilor Donoghue and seconded by Councilor Brenerman to postpone Order 172 to the October 19, 2015 City Council meeting. Passage 9-0.

Order 233B-14/15 Order Approving Annual Adjustments to the Community Development Block Grant (CDBG) Allocation Process – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

Councilor Marshall recused himself; he indicated that his wife works for one of the organizations that received money.

Motion was made by Councilor Donoghue and seconded by Councilor Brenerman to postpone Order 233 B to the October 19, 2015 City Council meeting. Passage 8-0 (Councilor Marshall recused himself.)

Order 37-15/16 Order Designating 17 Carleton Street Affordable Housing Development District and Tax Increment Financing District and Adopting the Municipal Development Program for the District – Reconsideration

Motion was made by Councilor Hinck and seconded by Councilor Brenerman to postpone Order 37 to the October 5, 2015 City Council meeting. Motion failed 4-5 (Duson, Brennan, Donoghue, Marshall, Suslovic).

Motion was made by Councilor Suslovic and seconded by Councilor Donoghue for passage. Passage 7-2 (Hinck, Costa).

IN COUNCIL REGULAR MEETING SEPTEMBER 21, 2015 VOL. 131 PAGE 27

Order 38-15/16 Order Approving and Authorizing the City Manager to Enter into the the 17 Carleton Street Credit Enhancement Agreement with Avesta Carleton LP

No action was taken as Order 37 passed.

Order 62-15/16 Order Accepting and Appropriating \$600,000 of Finance Authority of Maine Grant Funding to Expand the City's Regional Economic Development Revolving Loan Program (REDRLP) – Sponsored by Jon P. Jennings, City Manager. This item was given first reading on September 9, 2015.

Motion was made by Councilor Costa and seconded by Councilor Suslovic for passage. Passage 9-0.

ORDERS:

Order 68-15/16 Order Approving Purchase and Sale Agreements, Development Consulting Agreement, Remediation Grant Agreement and Housing Trust Fund Grant Re: 65 Munjoy Street – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair, and the Portland Development Corporation, Barry Sheff, President.

This is its first reading.

AMENDMENTS:

Order 69-15/16 Amendment to Portland City Code Chapter 6, (Buildings and Building Regulations) Re: Registration and Renewal Fee Discounts – Sponsored by the Public Safety, Health & Human Services Committee, Councilor Edward J. Suslovic, Chair.

This is its first reading.

Motion was made by Councilor Donoghue and seconded by Councilor Costa to adjourn. Passage 9-0, 8:55 P.M.

LICENSE RENEWALS:

A TRUE COPY.

Katherine L. Jones, City Clerk

ORDER NO. _____

**ORDER APPROVING ALTERNATE LIQUIDITY FACILITY WITH RESPECT TO
PENSION BONDS**

WHEREAS, in 2001, the City refinanced its unpooled, unfunded pension liability under the Maine State Retirement System with the proceeds of the City's \$111,800,000 Pension Obligation Bond's dated July 19, 2001 (the "Pension Bonds");

WHEREAS, upon the terms and conditions of the Pension Bonds require that the City maintain a Liquidity Facility with respect to the Pension Bonds to enable their ongoing pricing and remarketing;

WHEREAS, the current Liquidity Facility was implemented as of November 1, 2012 and is scheduled to expire on or about November 1, 2015;

WHEREAS, in order to maintain the ongoing pricing and remarketing of the Pension Bonds, it is necessary to establish a new Liquidity Facility for the Pension Bonds;

**NOW, THEREFORE, BE IT HEREBY ORDERED BY THE CITY COUNCIL OF
THE CITY OF PORTLAND, MAINE AS FOLLOWS:**

THAT the Director of Finance be and hereby is authorized to enter into, execute and deliver, in the name of and on behalf of the City, an agreement with Sumitomo Mitsui Banking Corp, New York Branch, for an Alternate Liquidity Facility for the Pension Bonds in the form of a Standby Letter of Credit and Reimbursement Agreement, which shall contain such other terms and conditions including but not limited to a consent to jurisdiction provision, indemnity and a waiver of governmental immunity provision as the Director of Finance shall approve, such approval to be conclusively evidenced by her execution thereof.

THAT the Director of Finance be and hereby is further authorized to take all such other action, to do all acts and things and to execute and deliver such other documents, certificates, agreements, or other instruments as may be necessary or desirable to implement the Alternate Liquidity Facility and to effect the transactions contemplated hereby, including but not limited to an amended or replacement Tender Agent Agreement and an amended or replacement Remarketing Agreement.

THAT the Director of Finance be and hereby is further authorized to take and perform all such other action, acts and things and to execute and deliver such other documents, certificates, agreements, or other instruments as may be provided on the part of the City of Portland, to take, perform or execute and deliver under the Certificate of Determination and related Terms of Issuance dated July 19, 2001 entered into by the City with respect to the Pension Bonds, including but not limited to implementing amendments thereto or implementing in the future such other Alternate Liquidity Facility or Facilities as the Director of Finance determines in his discretion to be necessary or desirable.

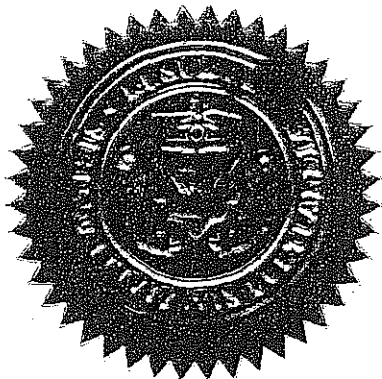
*Dec 7 - 15/16
Tab 3 10-5-15*

PROCLAMATION
HONORING
DETECTIVE MARYANN BAILEY

- WHEREAS:** **Detective Bailey** joined the Portland Police department in 1983 and has served more than 20 years as a member of the Criminal Investigation Division; and
- WHEREAS:** **Detective Bailey** conducted extensive preliminary investigations of a violent gross sexual assault that ultimately led to the suspect's arrest and official charge of gross sexual assault; and
- WHEREAS:** **Detective Bailey** worked quickly and efficiently to build a case identifying and locating the suspect of five bank robberies and two car jackings spanning three municipalities in the Greater Portland area that resulted in a timely arrest; and
- WHEREAS:** **Detective Bailey** is commended for her exemplary performance and clear commitment to a higher standard of public service and public safety.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Michael F. Brennan, Mayor of the City of Portland, Maine, and the members of the Portland City Council do hereby proclaim honor and recognition to Detective Maryann Bailey as Officer of the Month for July 2015.

Signed and sealed this 5th day of October 2015



A handwritten signature in cursive script, reading "Michael F. Brennan", written over a horizontal line.

Michael F. Brennan, Mayor
City of Portland, Maine

*Order 70-15/16
Tab 4 10-5-16*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

**ORDER APPOINTING WARDEN AND WARD CLERK PRO TEMPORE
ON NOVEMBER 3, 2015**

ORDERED, that Aurelia Scott is hereby appointed as Ward Clerk Pro Tempore in Precinct 1-1 and Cynthia Pebenito is hereby appointed as Warden Pro Tempore in Precinct 3-1 for the November 3, 2015 Election.

Portland, Maine



Yes. Life's good here.

OFFICE OF THE CITY CLERK
1000 Commercial Street, Suite 200
Portland, ME 04101-3000
Tel: 207.877.1000
Fax: 207.877.1001
www.portlandmaine.org

MEMORANDUM

To: Mayor Brennan, Members of Portland City Council

FROM: Katherine Jones, City Clerk

DATE: September 22, 2015

RE: Warden and Ward Clerk

District 1-1 Ward Clerk cannot work the November 3, 2015 election.

District 3-1 Warden cannot work the November 3, 2015 election.

The following Ward Clerk and Warden need to be appointed Pro Tempore for this election.

District 1-1 Aurelia Scott as Ward Clerk (she was previously the Ward Clerk).

District 3-1 Cynthia Pebenito as Warden (she has worked as an Election Clerk for several years).

*Order 71-15/16
Tab 5 10-5-15*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

**ORDER SETTING TIME FOR OPENING
OF POLLS FOR ELECTION ON NOVEMBER 3, 2015**

ORDERED, that pursuant to 21-A M.R.S. Sec. 626, the polls shall open at 7:00 a.m. and close at 8:00 p.m. on Tuesday, November 3, 2015.



Office of the City Clerk
Katherine L. Jones, CMC

MEMORANDUM

TO: Mayor Brennan and Members of the
Portland City Council

FROM: Katherine L. Jones, City Clerk

DATE: September 22, 2015

RE: Setting the time for opening the polls on November 3, 2015

Pursuant to 21-A M.R.S.A. §626, the hour of poll opening must be set by the municipal officers. This is done for every election; the polls open at 7:00 A.M. and close at 8:00 P.M.

Notices are then posted in each district and at City Hall.

*Resolve 3 -15/16
Tab 6 10-5-15*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**RESOLUTION CONSENTING, SUBJECT TO CONDITIONS,
TO THE TRANSFER OF CONTROL OF TIME WARNER CABLE
NORTHEAST LLC FROM TIME WARNER CABLE INC.
TO CHARTER COMMUNICATIONS, INC.**

WHEREAS, on or about May 15, 1986, the City of Portland ("City") and Time Warner Cable Northeast LLC (f/k/a Public Cable Company) ("Franchisee") entered into a certain Franchise Agreement effective as of May 15, 1986, as amended and extended ("Franchise Agreement"), which granted to Franchisee the nonexclusive, revocable right, privilege, and obligation to construct, operate, and maintain and reconstruct in, on, over, under and across the streets of the City, a cable television system, including all wires, conduits, fixtures and appurtenances, for the purpose of reception, transmission, collection, amplification, origination, distribution or redistribution of video, audio or other signals and for the development of cable and broadband telecommunication services for private and public use in and to the City and its residents; and

WHEREAS, Franchisee and the City entered into a Settlement Agreement as of December 17, 2014 ("Settlement Agreement"), pursuant to which, among other things, the City released certain claims against Franchisee, and Franchisee agreed to revise how it calculates franchise fees paid to the City (the Franchise Agreement and Settlement Agreement being collectively referred to hereafter as the "Franchise Documents"); and

WHEREAS, Section 6 of the Franchise Agreement provides, among other things, that the Franchise Agreement cannot be sold, transferred, leased, assigned or disposed of in whole or in part by any means without the prior consent of the City expressed by a City Council ("Council") resolution; and

WHEREAS, Section 6 of the Franchise Agreement further provides, among other things, that every change, transfer, or acquisition of control of the Franchisee shall make the Franchise Agreement subject to cancellation unless and until the City shall have consented thereto, which consent shall not be unreasonably withheld; and

WHEREAS, on May 23, 2015, Charter Communications, Inc. ("Charter Communications"), along with its subsidiary CCH I, LLC ("New Charter"), entered into merger agreements ("Merger Agreements") with Time Warner Cable Inc. ("Time Warner Cable"), the parent company of Franchisee, Advance/Newhouse Partnership ("A/N"), the parent company of Bright House Networks, LLC ("BHN"), and Liberty Broadband Corporation ("Liberty");

WHEREAS, by the Merger Agreements, Time Warner Cable will merge into a subsidiary of New Charter, Charter Communications will merge with a subsidiary of New Charter, and New Charter will assume the name Charter Communications, Inc. ("Charter"), and the ultimate control of Franchisee will transfer from Time Warner Cable to Charter; and

WHEREAS, by letter to the City Manager dated July 1, 2015, and received by the City Manager on July 2, 2015, Charter requested the City's consent to the transfer of control of the Franchisee that would occur as a result of the consummation of the Merger Agreements ("Transfer") and enclosed an Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise ("Application"); and

WHEREAS, 47 U.S.C. § 537 and 47 C.F.R. § 76.502 provide that a request for consent to assignment or transfer of a cable franchise will be deemed granted if the franchising authority does not render a final decision within 120 days of the filing of a complete application for consent, unless the requesting party and the franchising authority agree to an extension of time; and

WHEREAS, the City has reviewed the Application and other relevant materials and has determined that consent to the Transfer would serve the public convenience, safety and general welfare, but only if supported by certain conditions set forth herein to protect the rights of the City and to serve the public convenience, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Portland, Maine, hereby:

SECTION 1. consents to the Transfer, subject to the following conditions:

- (a) The Transfer shall be consummated by November 23, 2016, on the terms and conditions set forth in this Resolution and, to the extent not inconsistent with this Resolution, the Application. If the Transfer has not closed by November 23, 2016, this consent shall be voidable, *nunc pro tunc*, at the option of the City.
- (b) After consummation of the Transfer, and except for the claims released by the City in the Settlement Agreement, Charter shall ensure that Franchisee continues to assume and be responsible for all past, current, and future obligations and liabilities of the Franchisee under the Franchise Documents and applicable provisions of the City Municipal Code, including those obligations and liabilities both known and unknown, and whether arising before or after the date of this Resolution or the date of consummation of the Transfer.
- (c) After consummation of the Transfer, Charter shall comply, or cause Franchisee to comply, fully with the terms and conditions of the Franchise Documents and all applicable provisions of the City Municipal Code.
- (d) After consummation of the Transfer, neither the Franchisee's system nor the rights and privileges granted by the Franchise Agreement shall be assigned or transferred, in whole or in part, to Charter or to any Charter subsidiary or affiliate other than the Franchisee without filing a written application to the City and obtaining the Council's prior written consent to such assignment or transfer.
- (e) Within two weeks of the date of adoption of this Resolution, but in no event later than October 29, 2015, Charter shall file with the City the Acceptance of this Resolution in the form attached hereto as Exhibit A, executed by Charter and certified and sworn to as the legally binding act of Charter.
- (f) Within two weeks of the date of adoption of this Resolution, but in no event later than October 29, 2015, the Franchisee shall file with the City the Acceptance of this Resolution in

the form attached hereto as Exhibit B, executed by Franchisee and certified and sworn to as the legally binding act of Franchisee.

BE IT FURTHER RESOLVED, that:

SECTION 2. If any of the conditions specified in Sections 1 (a), (e) or (f) hereof are not satisfied, then the City's consent to the Transfer is denied as of October 29, 2015, with no further action from the Council.

SECTION 3. If Charter does not execute and file with the City the Acceptance of this Resolution in the form attached hereto as Exhibit A, or Franchisee does not execute and file with the City the Acceptance of this Resolution in the form attached hereto as Exhibit B, on or before the date specified in Section 1(e) and (f) hereof, then the Application shall be denied as of the date of this Resolution with no further action from the Council.

SECTION 4. Any material misrepresentation in the Application shall constitute a material violation of the Franchise Agreement and shall be subject to all of the remedies available to the City under the Franchise Agreement and applicable law.

SECTION 5. Upon the filing of the executed Acceptances set forth in Section 1(e) and (f), any violation of this Resolution thereafter by Charter or the Franchisee, including without limitation any violation of Section 1(b), 1(c), or 1(d) of this Resolution, shall constitute a violation of the Franchise Agreement and shall be subject to all of the remedies available to the City under the Franchise Agreement and applicable law.

SECTION 6. This Resolution shall not be construed to grant or imply the Council's consent to any other transfer or transaction that may require the City's consent under the Franchise Agreement or applicable federal, state or City law. The City reserves all of its rights with regard to any such future transactions.

SECTION 7. The Council's consent to the Transfer shall not constitute a waiver or release of any of the City's rights under the Franchise Documents or applicable federal, state or City law, or, except for the claims released by the City in the Settlement Agreement, of any claims the

City may have against the Franchisee or its successors, whether known or unknown, and regardless of whether such rights or claims arose before or after the date of this Resolution or the date of consummation of the Transfer.

SECTION 8. This Resolution is a final decision on the Application within the meaning of 47 U.S.C. § 537, and for these purposes the Application is deemed acted upon on the date that this Resolution is adopted by the Council.

WHEREUPON, Mayor Michael Brennan declared this resolution adopted, affixed his signature and the date and ordered that it be recorded.

Michael F. Brennan, Mayor

Date: _____

ATTEST:

**APPROVED AS TO FORM AND
LEGALITY THIS ____ DAY OF
_____, 2015**

EXHIBIT A

**ACCEPTANCE OF THE FRANCHISE TRANSFER
RESOLUTION BY CHARTER COMMUNICATIONS, INC.**

Charter Communications, Inc., a Delaware corporation ("Charter"), hereby (1) agrees that after consummation of the Transfer it will cause Time Warner Cable Northeast LLC to abide by the terms and conditions of the Franchise Agreement by and between the City of Portland, Maine, and Time Warner Cable Northeast LLC, dated as of May 15, 1986, as amended and extended ("Franchise Agreement"); and (2) agrees that it will abide by and accept the terms and conditions in Resolution No. _____, a Resolution of the City Council of the City of Portland, Maine, Consenting, Subject to Conditions, to the Transfer of Control of Time Warner Cable Northeast LLC from Time Warner Cable Inc. to Charter Communications, Inc., adopted _____, 2015.

Charter warrants and represents that this Acceptance of the Franchise Transfer Resolution is executed by a person lawfully authorized to act on its behalf and that this Acceptance of the Franchise Transfer Resolution is a legally binding obligation of Charter.

CHARTER COMMUNICATIONS, INC.
A DELAWARE CORPORATION

BY: _____

NAME: _____

TITLE: _____

DATE: _____

STATE OF DELAWARE :

COUNTY OF _____

I HEREBY CERTIFY that on this _____ day of _____ 2015, before me, the subscriber, a Notary Public of the State of Delaware in and for _____, aforesaid, personally appeared _____ of Charter Communications, Inc., and acknowledged the foregoing Acceptance of the Franchise Transfer Resolution, to be the act and deed of Charter Communications, Inc.
As WITNESS my hand and Notary Seal.

Notary Public
State of Delaware

My Commission Expires _____

[Seal]

EXHIBIT B

**ACCEPTANCE OF THE FRANCHISE TRANSFER RESOLUTION BY TIME
WARNER CABLE NORTHEAST LLC**

Time Warner Cable Northeast LLC, a _____ limited liability corporation ("Franchisee") and the current holder of the cable television franchise by and between the City of Portland, Maine, and Time Warner Cable Northeast LLC, dated as of May 15, 1986, as amended and extended ("Franchise Agreement"), hereby accepts and agrees to abide by the terms and conditions of Resolution No. _____, a Resolution of the City Council of the City of Portland, Maine, Consenting, Subject to Conditions, to the Transfer of Control of Time Warner Cable Northeast LLC from Time Warner Cable Inc. to Charter Communications, Inc, adopted _____, 2015.

Franchisee warrants and represents that this Acceptance of the Franchise Transfer Resolution is executed by a person lawfully authorized to act on its behalf and that this Acceptance of the Franchise Transfer Resolution is a legally binding obligation of Franchisee.

TIME WARNER CABLE NORTHEAST LLC
A _____ LIMITED LIABILITY
CORPORATION

BY: _____

NAME: _____

TITLE: _____

DATE: _____

STATE OF _____ :

COUNTY OF _____ :

I HEREBY CERTIFY that on this _____ day of _____ 2015, before me, the subscriber, a Notary Public of the State of _____, in and for _____, aforesaid, personally appeared _____ of Time Warner Cable Northeast LLC, and acknowledged the foregoing Acceptance of the Franchise Transfer Resolution, in _____, _____, to be the act and deed of Time Warner Cable Northeast LLC.

As WITNESS my hand and Notary Seal.

Notary Public
State of _____
My Commission Expires _____

[Seal]

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Jennifer Thompson, Associate Corporation Counsel

DATE: 9/25/2015

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Resolution Consenting, Subject to Conditions, to the Transfer of Control of Time Warner Cable Northeast LLC from Time Warner Cable Inc. to Charter Communications, Inc.

SPONSOR: City Manager Jon P. Jennings

(If sponsored by a Council committee, list the date the committee met and the results of vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ Final Action X

Can action be taken at a later date: Yes X No (If no why not?)

PRESENTATION: (List the presenter(s), type and length of presentation)

I. SUMMARY OF ISSUE (Agenda Description)

This resolution consents to the transfer of the cable franchise agreement from Time Warner Cable to Charter Communications, Inc. In 1986 the City and Time Warner Cable entered into a franchise agreement which granted Time Warner certain nonexclusive rights to construct and maintain a cable telecommunication system for private and public use in the city. In 2015, Time Warner entered into an agreement to merge with Charter Communications, Inc.

According to Federal Law, the franchising authority has a certain amount of time to approve that transfer; however, the Franchise Agreement between the City and Time Warner requires that the City Council approve any transfer of the franchise agreement with the City. This Resolution, if approved, would consent to the transfer subject to certain conditions.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

Approve transfer.

III. INTENDED RESULT

Same as above.

IV. COUNCIL GOAL ADDRESSED

n/a

V. FINANCIAL IMPACT

n/a

VI. STAFF ANALYSIS

Approved as to form and detail by Corporation Counsel and outside Legal Counsel.

VII. RECOMMENDATION

Passage is recommended.

VIII. LIST ATTACHMENTS

Resolution

Prepared by: Nancy English

Date: 9/25/2015

Bean/agendamemo/rev7/20/15

Order 68-15/16
Tab 13 9-8-15
Tab 7 10-5-15

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING PURCHASE AND SALE AGREEMENTS,
DEVELOPMENT CONSULTING AGREEMENT,
REMEDATION GRANT AGREEMENT AND HOUSING TRUST FUND GRANT
RE: 65 MUNJOY STREET**

ORDERED, that Purchase and Sale Agreement between the City of Portland and Portland Development Corporation (PDC) for 65 Munjoy Street is hereby approved in substantially the form attached hereto as Exhibit A; and

BE IT FURTHER ORDERED, that Development Consulting Agreement between the PDC and Adam's Apple, LLC is hereby approved in substantially the form attached hereto as Exhibit B; and

BE IT FURTHER ORDERED, that the PDC is authorized to accept \$200,000.00 from Greater Portland Council of Governments (GPCOG) from its Brownfields Cleanup Revolving Loan Funds, and the related Brownfields Program Subgrant Agreement between the PDC and GPCOG is hereby approved in substantially the form attached hereto as Exhibit C; and

BE IT FURTHER ORDERED, that \$175,000 in funds from the Housing Trust Fund are hereby allocated and appropriated in order to fund the development of affordable housing units at 65 Munjoy Street; and

BE IT FURTHER ORDERED, that the Housing Trust Fund Agreement between the City of Portland and Adam's Apple, LLC is hereby approved in substantially the form attached hereto as Exhibit D; and

BE IT FURTHER ORDERED, that the Purchase and Sale Agreement between Portland Development Corporation and Adam's Apple, LLC for 65 Munjoy Street is hereby approved in substantially the form attached hereto as Exhibit E; and

BE IT FURTHER ORDERED, that the First-Time Homebuyer Set-Aside and Marketing Plan 65 Munjoy Street Memorandum of Understanding between the City of Portland and Adam's Apple, LLC (MOU) is hereby approved in substantially the form attached hereto as Exhibit F; and

BE IT FURTHER ORDERED, that the Declaration of Covenants, Conditions, and Restrictions between the City of Portland and Adam's Apple, LLC for 65 Munjoy Street is

hereby approved in substantially the form attached hereto as Exhibit G;

BE IT FURTHER ORDERED, that the City Manager is hereby authorized to execute the Purchase and Sale Agreement between the City of Portland and PDC, the MOU, the Housing Trust Fund Agreement, the Declaration of Covenants, Conditions, and Restrictions, and whatever other documents are necessary to effect the intent and purpose of those agreements upon review by the Office of Corporation Counsel; and

BE IT FURTHER ORDERED, that the Chair or Assistant Secretary of the PDC are authorized to execute the Purchase and Sales Agreement between the City of Portland and the PDC, the Purchase and Sales Agreement between PDC and Adam's Apple, LLC, the Brownfields Grant Agreement between Greater Portland Council of Governments and PDC, and the Development Services Agreement between PDC and Adam's Apple, LLC and whatever other documents are necessary to effect the intent and purpose of those agreements upon review by the Office of Corporation Counsel; and

BE IT FURTHER ORDERED, that the Office of Corporation Counsel is hereby authorized to represent the City of Portland and the Portland Development Corporation in the transactions approved by this order.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Planning and Urban Development Department
Economic Development Department

DATE: September 9, 2015

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Order Approving the Purchase and Sale Agreements, Development Consulting Agreement and Remediation Grant Agreement and Housing Trust Fund Grant re: 65 Munjoy Street

SPONSOR: Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair

Barry Sheff, President of the Portland Development Corporation

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading September 21st Final Action October 5th

Can action be taken at a later date: Yes X No (If no why not?)

The developer needs to move forward with the property remediation as soon as possible.

PRESENTATION: Jeff Levine, Planning & Urban Development Department Director
Greg Mitchell, Economic Development Director, Barry Sheff, PDC Board President and Mary Davis, HCD Division Director (5 minutes)

I. SUMMARY OF ISSUE (Agenda Description)

In November 2014 the Housing and Community Development Committee (HCDC) approved the issuance of a RFP for the sale and re-development of 65 Munjoy Street. The RFP was issued on November 19, 2014 and generated one response, a proposal by Adam's Apple LLC to construct an 8-unit residential condominium development. In February 2015 the HCDC authorized staff to negotiate terms of the transaction with the developer.

A complicating factor in making this affordable housing project financially feasible is that the property is contaminated. It is estimated that remediation will cost about \$240,000. A source to cover the cost to remediate the site was found to be available through the Greater Portland Council of Governments (GPCOG) Brownfields Cleanup Grant Fund. GPCOG advised the City and Adam's Apple that they would not qualify for GPCOG's Brownfields grants if the City sold the property directly to Adam's Apple. GPCOG also advised the City, that as a non-profit, the Portland Development Corporation (PDC) would be eligible for these grant funds as long as it

owns the site during environmental remediation. The PDC applied for and was successful, being awarded \$200,000 in Brownfields grant funds for the remediation of 65 Munjoy Street.

The Agreements provided with this memo would effectuate the PDC taking ownership of this vacant, contaminated City-owned property to facilitate site remediation utilizing the federal Brownfields cleanup funds available through GPCOG. This would be at no direct cost to the PDC and the PDC would ultimately sell the property to Adam's Apple, LLC to support construction of the 8-unit affordable condominium housing project.

At the PDC's August 20th meeting, the Board voted unanimously to recommend to the City Council that it approve these actions through purchase and sale agreements between the City and PDC and between Adam's Apple, LLC and the PDC; the Development Consulting Agreement between the PDC and Adam's Apple, LLC; and the Brownfields subgrant agreement between the PDC and GPCOG, provided that Adam's Apple, LLC is responsible for the administration of the grant agreement and all costs associated with the grant agreement. In addition, in a separate vote, the PDC consented to Corporation Counsel's legal representation of the PDC with the understanding that Corporation Counsel would also be representing the City.

The proposal brought forth by Adam's Apple, LLC envisions an 8-unit residential condominium development comprised of two (2) 3-bedroom units, two (2) two-bedroom units and four (4) 1-bedroom units in a single, three-story walk up building. The project will include six on-site covered parking spaces in a concealed parking area under the building.

The proposal indicates a sales price of \$225,000- \$235,000 for the one-bedroom units, \$274,000 for the two bedroom units and \$298,000 for the three-bedroom units. The units will be affordable to households earning between 100% and 120% of the area median income (Family of Two = \$61,875-\$74,250 & Family of Four = \$77,313-\$92,760). The project will include deed restrictions that will guarantee future sales to income-qualified owner-occupants for no less than 90 years. The restrictions will also prohibit short-term rentals, such as Air BnB. In addition, the developer has agreed to a marketing campaign that will target first-time homebuyers.

To address a project financing gap, the developer requested financial assistance from the City's Housing Trust Fund in the amount of \$175,000.

At meetings held on July 8 and July 22, 2015, the HCDC voted 4-0 to recommend to the City Council the terms of the transaction outlined in this memo.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

This is being submitted to the City Council to authorize:

(A). the transfer of the property to the PDC for the period of remediation and subsequent sale by the PDC to the Adam's Apple LLC; Terms of the sale and transfer as set forth in the P&S Agreements between the City, PDC and Adam's Apple LLC which are attached;

(B). the PDC to enter into a Grant Agreement between the PDC (subgrantee) and GPCOG, including the appropriation of GPCOG Brownfields Grant funds with conditions; the Grant Agreement is attached;

(C). the PDC to enter into a Development Consulting Agreement with Adam's Apple, LLC to manage the grant and the remediation of the site; the Development Consulting Agreement is attached;

(D). the appropriation of \$175,000 in Housing Trust Funds with terms and conditions as set for in a Housing Trust Fund Agreement and Declaration of Covenants, Restrictions and Conditions which are attached.

III. INTENDED RESULT

The intended result is for the site to be redeveloped as a result of environmental remediation and the construction of an 8-unit affordable condominium housing project. This project is consistent with the City's original vision for affordable housing in the neighborhood and on the former Adam's School property.

IV. COUNCIL GOAL ADDRESSED

Promote Housing Availability – Provide increased availability in all segments of the housing market while ensuring that there is a suitable balance of housing opportunities among those sectors.

V. FINANCIAL IMPACT

There is no financial impact to the PDC in taking ownership of the property, nor in the site being remediated with \$200,000 from the GPCOG Brownfields Grant. The financial impact to the City would include a request of \$175,000 from the City's Housing Trust Fund, \$40,000 of which would assist with the remediation and \$135,000 would assist with project construction. Once the site is transferred to the PDC and then remediated, the PDC will sell the property to Adam's Apple, LLC based on the terms that the City negotiated with the developer. These terms are contained in the P&S Agreement between the PDC and Adam's Apple, LLC.

In addition, the redevelopment of this site will generate new real estate tax revenue to the City, as the property will be redeveloped into 8 condominium units which will be offered for sale once construction is complete. The developer has estimated \$30,000 in new annual property tax revenue. A comparison review of the Adam's School Condominiums which are located adjacent to this site indicates that this estimate would be consistent.

VI. STAFF ANALYSIS

Per the P&S Agreement between the City and the PDC, the City (Seller) agrees to defend, indemnify and hold harmless the PDC (Buyer), its officers, agents and employees from and against any and all claims, demands, liability, loss, cost or expense. Indemnification provisions are also included in the Development Consulting Agreement, pursuant to which Adam's Apple will oversee the remediation work and the administration of the GPCOG grant.

This economic development project is solely about housing. To date, staff is not aware of the PDC being involved in housing projects without there being some commercial component (e.g.,

retail, industrial or office uses). While involvement in this project would broaden the PDC's focus, facilitating new housing development is economic development and, therefore, staff feels it is consistent with the PDC's by-laws.

The design proposal submitted by Adam's Apple LLC is essentially comparable to the Munjoy Street Affordable Housing Feasibility Study prepared by the Bluestone Planning Group. The Bluestone study identified two triple-decker styled flats with flat roofs as the most viable design option with 8 residential units and two surface on-site parking spaces.

The developer has proposed a sales and marketing plan that provides a preference to first time homebuyers and outlines reasonable efforts to market the project to first time homebuyers under parameters established in a Memorandum of Understanding (MOU) between the City and Adam's Apple LLC. Under the terms of the MOU, Adam's Apple LLC has pledged to actively pursue a 70 day marketing campaign whereby no fewer than 6 of the units will be set aside for buyers that qualify as first time homebuyers. The Housing and Community Development Office will be an active participant in this marketing campaign.

VII. RECOMMENDATION

(1) Recommendation of action to be taken by the City Council as Incorporator of the PDC

The PDC reviewed these documents at its August 20, 2015 meeting and recommends to the City Council, as the incorporator of the PDC, that it transfer 65 Munjoy Street to the PDC for the purpose of accessing a GPCOG Brownfields grant to assist with the remediation of the environmental contamination on the property, after which the PDC will sell the property to Adam's Apple, LLC. The PDC recommendations are being brought forward simultaneously with the recommendations of the Housing and Community Development Committee and presented to the City Council for approval.

- That Barry Sheff, as President of the Portland Development Corporation or Greg Mitchell as the Portland Development Corporation Assistant Secretary be authorized and directed, on behalf of the Portland Development Corporation, to execute such documents as may be necessary or appropriate, including but not limited to a Purchase and Sale Agreement between City and PDC, a Purchase and Sale Agreement between PDC and Adam's Apple, LLC, a Grant Agreement between PDC (subgrantee) and GPCOG, including appropriation of GPCOG Brownfields Grant funds with conditions, and a Development Consulting Agreement between PDC and Adam's Apple, LLC. In addition that Barry Sheff or Greg Mitchell be authorized and empowered, at their discretion, to make such technical revisions to any such document determined to be necessary to facilitate this transaction, so long as such revisions are not inconsistent with the terms outlined in this memo.
- The City Council is also being asked to consent to Corporation Council's representation of both the PDC and the City on this project.

(2) Recommendation of action to be taken by the City Council

- Final sale of the property at 65 Munjoy Street to Adam's Apple, LLC with the understanding that (a) a marketing campaign as outlined in a Memorandum of Understanding between the City of Portland and Adam's Apple LLC will be implemented;
- Appropriation of \$175,000 in Housing Trust Funds - \$40,000 towards remediation costs and \$135,000 towards the cost of construction of 8 affordable homeownership units. A Housing Trust Fund (HTF) Grant Agreement and Declaration of Covenants will be recorded. The HTF Grant Agreement will outline the use of the Housing Trust Fund money. The Declaration of Covenants will secure the ongoing affordability restrictions on the property which will require (a) that the units be affordable to households earning between 100% and 120% of the area median income (adjusted for family size); (b) require future sales to income-qualified owner-occupants for no less than 90 years; and (c) short-term rentals, such as AirBnB, will be prohibited.
- That the City Manager be authorized and directed, on behalf of the City of Portland, to execute such documents as may be necessary or appropriate, including but not limited to a Purchase and Sale Agreement between City and PDC, a Housing Trust Fund Grant Agreement, a Declaration of Covenants, Restrictions and Conditions and a Memorandum of Understanding. In addition that the City Manager be authorized and empowered, at his discretion, to make such technical revisions to any such document determined to be necessary to facilitate this transaction, so long as such revisions are not inconsistent with the terms outlined in this memo.
- The City Council is also being asked to consent to Corporation Council's representation of both the PDC and the City on this project.

VIII. LIST ATTACHMENTS

Purchase and Sale Agreement between City and PDC;
Purchase and Sale Agreement between PDC and Adam's Apple, LLC;
Grant Agreement between PDC (subgrantee) and GPCOG, including appropriation of GPCOG Brownfields Grant funds with conditions;
Development Consulting Agreement between PDC and Adam's Apple, LLC
Housing Trust Fund Grant Agreement
Declaration of Covenants, Restrictions and Conditions
Memorandum of Understanding

Prepared by: Nelle Hanig, Economic Development Department
Mary P. Davis, Director, Housing & Community Development Division

Date: September 9, 2015

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made this _____ day of _____, 2015 by and between the CITY OF PORTLAND, a body politic and corporate located in Cumberland County, Maine, (hereinafter referred to as "SELLER"), and the PORTLAND DEVELOPMENT CORPORATION, a Maine nonprofit corporation ("BUYER" or "PDC"), both with a mailing address of 389 Congress Street, Portland, Maine.

W I T N E S S E T H:

WHEREAS, the SELLER is the owner of certain land known as the Adams School Parking Lot located at 65 Munjoy Street in Portland, Maine, as more specifically described in Exhibit A, attached hereto and incorporated herein (the "Premises"), and as generally depicted in the plan attached as Exhibit B and incorporated herein; and

WHEREAS, the SELLER desires to sell the Premises and published a November 19, 2014 "Request for Proposals For the Sale and Reuse of Property Located at 65 Munjoy Street, RFP #4115," as amended by Addendum #1, dated December 18, 2014, copies of which are attached hereto and collectively marked Exhibit C and incorporated herein (the Request for Proposals and Addendum #1 are collectively referred to herein as the "RFP"); and

WHEREAS, Adam's Apple, LLC, a Maine limited liability company ("Adam's Apple") submitted a proposal in response to the RFP (the "Proposal"), a copy of which is attached hereto as Exhibit D and incorporated herein; and

WHEREAS, after reviewing all proposals submitted in response to the RFP, the SELLER selected Adam's Apple as the successful bidder; and

WHEREAS, Adam's Apple desires to purchase the Premises and construct affordable housing on it in accordance with the terms of the Proposal and the RFP (the "Proposed Development"), and the SELLER desires that Adam's Apple do so; and

WHEREAS, the Premises is impacted by certain environmental contaminants as described in a July 1, 2014 Phase I Environmental Site Assessment and an August 8, 2014 Phase II Environmental Site Assessment, both by Credere Associates, LLC, copies of which are attached hereto and collectively marked Exhibit E and incorporated herein by reference (collectively, the "ESAs"); and

WHEREAS, prior to constructing the Proposed Development, certain environmental remediation work must be completed as described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the “VRAP Work Plan”), copies of which are attached hereto and collectively marked Exhibit F and incorporated herein by reference; and

WHEREAS, in order to finance the VRAP Work Plan, Adams Apple consulted with the Greater Portland Council of Governments (“GPCOG”) regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, GPCOG advised Adams Apple and SELLER that they would not qualify for GPCOG’s Brownfields Remediation grants because SELLER may be a potentially responsible party for the environmental contaminants and Adams Apple is not a public or nonprofit entity, but that BUYER, as a nonprofit corporation, would qualify for a grant if it were the owner of the Premises; and

WHEREAS, BUYER, with the assistance of Adams Apple, applied for and has been awarded a brownfields cleanup grant from the Greater Portland Council of Governments (“GPCOG”) in order to finance the VRAP Work Plan as set forth in the June __, 2015 _____, a copy of which is attached hereto and marked Exhibit G and incorporated herein by reference; and

WHEREAS, BUYER and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the “Grant Agreement”), a copy of which is attached hereto and marked Exhibit H and incorporated herein by reference; and

WHEREAS, SELLER, BUYER, and Adams Apple have agreed that in order to complete the VRAP Work Plan prior to the conveyance of the Property to Adams Apple, SELLER would first convey the Premises to BUYER, provided that BUYER shall then convey the Premises to Adams Apple after completion of the VRAP Work Plan; and

WHEREAS, Adam’s Apple and BUYER have entered into a Development Consulting Agreement of near or even date herewith (the “Development Consulting Agreement”) pursuant

to which Adam's Apple shall act as BUYER's agent to oversee the VRAP Work Plan during BUYER's ownership of the Premises and be responsible for the administration of the Grant Agreement and all costs associated with the Grant Agreement at no cost to BUYER; and

WHEREAS, SELLER desires to convey the Premises to BUYER provided that BUYER conveys the Premises to Adams Apple in accordance with the terms and conditions of this Agreement and those of a separate Purchase and Sale Agreement between BUYER and Adams Apple of near or even date herewith.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **RECITALS INCORPORATED BY REFERENCE**. The recitals set forth above are hereby incorporated herein by reference and made a part of this Agreement. The restatement in this document of any term of any of its attachments shall not be deemed to waive any term not so restated. If any disagreement is found between the RFP or the Proposal and this document, then this document shall govern; and the RFP shall govern over the Proposal, to the extent they disagree; provided, however, that this document and all of its attachments shall be construed to be supplemental to one another to the extent possible.
2. **SALE**. SELLER agrees to sell the Premises to BUYER, and BUYER agrees to buy the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
3. **CONSIDERATION**. The consideration for the Premises shall be One Dollar (\$1.00) (the "Purchase Price").
4. **TITLE**. SELLER shall convey the Premises to BUYER at the closing in fee simple with good and marketable or insurable title by quitclaim deed without covenant acceptable to BUYER. If SELLER is unable to convey title to the Premises in accordance with the provisions of this paragraph, then SELLER shall have a reasonable time period, not to exceed 30 days from the time SELLER receives written notice of the defect, unless otherwise agreed to by both parties, during which it shall make a good faith effort to remedy the title, after which time, if such defect is not corrected so that there is marketable and insurable title, BUYER may within 2 days thereafter, at BUYER's option, terminate this Agreement, and neither party shall have any further obligation hereunder.
5. **POSSESSION**. Full possession of the Property will be delivered to Buyer at the transfer of title, free and clear of all tenancies or occupancies by any person or entity.

6. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire or otherwise, until transfer of title hereunder, is assumed by the SELLER. The Premises is to be delivered in substantially the same condition as of the date of this Agreement unless otherwise stated.
7. **PROPERTY SOLD "AS IS, WHERE IS."** BUYER acknowledges that BUYER has had an opportunity to inspect the Premises, and to hire professionals to do so, and that Premises will be sold "as is, where is" and "with all faults." SELLER, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Acceptance by BUYER of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the SELLER of every agreement and obligation contained herein.
8. **INDEMNIFICATION.** Subject to and limited by the defenses, immunities and limitations of liability available to the SELLER under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq., SELLER hereby agrees to defend, indemnify and hold harmless the BUYER, its officers, agents, and employees from and against any and all claims, demands, liability, loss, cost or expense (including but not limited to attorneys' fees and other costs of litigation) that may be incurred by the BUYER arising out of or in any way related to its ownership, use, or maintenance of the Premises, or the ownership, use, or maintenance of the Premises by the BUYER'S predecessors in title or any other third party.
9. **CLOSING.** Time is of the essence in the performance of this Agreement. The closing shall be held at City Hall, within sixty (60) days after the date first set forth above.
10. **OBLIGATION OF SELLER TO REPURCHASE PROPERTY.** In the event that the Maine DEP does not issue a Certificate of Completion of Remedial Actions ("COC") for the Premises on or before that date that is 12 months after the date of execution of the Purchase and Sale Agreement for the Premises between BUYER and Adam's Apple of near or even date herewith, the SELLER shall repurchase the Premises from the BUYER at the Purchase Price, unless Adam's Apple exercises its right to require the PDC to convey the Premises pursuant to paragraph 9 of the Purchase and Sale Agreement between BUYER and Adam's Apple and paragraph 8 of the Development Consulting Agreement. The provisions of this paragraph shall be included in SELLER's deed to BUYER.
11. **COVENANTS, RESTRICTIONS, AND OPTION TO REPURCHASE IN BUYER'S DEED TO ADAMS APPLE.** Within 30 days after the Maine DEP issues a COC, BUYER shall convey the Premises to Adam's Apple in accordance with the terms of the Purchase and Sale Agreement between BUYER and Adams Apple of near or even date herewith. This paragraph shall survive the closing of this

Agreement. BUYER's deed to Adams Apple shall contain a declaration of covenants and restrictions that shall include, without limitation, the following provisions, which shall survive closing of that Agreement and run with the land:

- a. Grantee shall construct eight (8) new affordable ownership housing units on the Premises in substantially the form and for the affordable housing uses set forth in the Proposal and in the RFP, with Grantee's compliance with this provision to be satisfied by: (1) Grantee recording a subdivision plan for the Premises approved by the Planning Board of the City of Portland showing 8 housing units, and (2) with regard to a unit proposed to be conveyed, the City of Portland having issued a certificate of occupancy for that particular unit. At the request of Grantee, the City of Portland shall duly execute, from time to time, a verification of subdivision approval and issuance of certificates of occupancy in recordable form.
- b. The parties agree that the units shall be subject to an "Affordability Declaration" which shall be established by the due execution and recording of the following documents in substantially the same form as those attached hereto and incorporated herein by reference: (i) Declaration of Covenants, Conditions and Restrictions, Exhibit J, (ii) Affordability Agreement, Exhibit K, and (iii) Declaration of Condominium, Affordability of Units provision, Exhibit L.
- c. If Grantee has not started and diligently pursued construction of eight (8) new affordable ownership housing units as provided above by July 31, 2017, Grantor or the City of Portland shall have the right, but not the obligation, to repurchase the Premises at the Purchase Price, provided, however, that Grantor or the City of Portland must notify Grantee of its intent to repurchase the Premises in writing by August 15, 2017, and if the Grantor or the City of Portland fails to so notify Grantee, this provision, and the rights thereunder are waived. At the request of Grantee, Grantor and the City of Portland shall promptly duly execute, from time to time, verification of the exercise or non-exercise of this right in recordable form.
- d. Environmental Indemnification. Grantee covenants and agrees to indemnify, defend, and hold Grantor and the City of Portland harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Grantor or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises,

including without limitation the environmental matters identified in the RFP, the ESAs, and the VRAP Work Plan. This duty to indemnify, defend, and hold harmless shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees until such date as Grantee, its successors, assigns or transferees obtain a Certificate of Completion of Remedial Actions ("COC") from the Maine DEP for the Project as described in a Development Consulting Agreement between Seller and Buyer of even or near even date herewith; upon that date, the Environmental Indemnification described in this paragraph (d) shall no longer run with the land to subsequent successors, assigns or transferees of Grantee.

- e. Payment In Lieu Of Property Taxes. Grantee agrees in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City of Portland in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Grantee shall possess and be vested with all rights and privileges as to abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine. This covenant shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees.

- 12. ENTIRE AGREEMENT. This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by Seller and Buyer.
- 13. HEADINGS AND CAPTIONS. The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.
- 14. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
- 15. TIME. The SELLER and BUYER each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.
- 16. GOVERNING LAW. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be

invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

17. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE SELLER: City of Portland
ATTN: CITY MANAGER
389 Congress Street
Portland, ME 04101

With a copy to: The Office of the Corporation Counsel at the same address.

FOR BUYER: Portland Development Corporation
Attention: Greg Mitchell
389 Congress Street
Portland, Maine 04101

With a copy to: The Office of the Corporation Counsel at the same address

18. **SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a faxed, pdf or other reproduced or electronic document shall be considered the equivalent of an original signature.
19. **BROKERS.** Seller and Buyer each represents and warrants that neither has dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless Seller from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, Seller agrees to indemnify and hold harmless Buyer from any claims made by any broker should Seller's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

CITY OF PORTLAND

WITNESS

Jon P. Jennings
Its City Manager

WITNESS

PORTLAND DEVELOPMENT CORPORATION

By: _____
Printed Name:
Its:

Approved as to Form:

Corporation Counsel's Office

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT for the purchase and sale of real estate made this _____ day of _____, 2015 by and between the PORTLAND DEVELOPMENT CORPORATION, a Maine nonprofit corporation ("SELLER" or "PDC"), and ADAM'S APPLE, LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address of 17 Chestnut Street, 3rd Floor, Portland, Maine 04101 ("BUYER").

WITNESSETH:

WHEREAS, pursuant to the terms of a Purchase and Sale Agreement between SELLER and the City of Portland (the "City") of near or even date herewith, the City intends to convey to SELLER certain land known as the Adams School Parking Lot located at 65 Munjoy Street in Portland, Maine, as more specifically described in Exhibit A, attached hereto and incorporated herein (the "Premises"), and as generally depicted in the plan attached as Exhibit B and incorporated herein; and

WHEREAS, the City published a November 19, 2014 "Request for Proposals For the Sale and Reuse of Property Located at 65 Munjoy Street, RFP #4115," as amended by Addendum #1, dated December 18, 2014, copies of which are attached hereto and collectively marked Exhibit C and incorporated herein (the Request for Proposals and Addendum #1 are collectively referred to herein as the "RFP"); and

WHEREAS, BUYER submitted a proposal in response to the RFP (the "Proposal"), a copy of which is attached hereto as Exhibit D and incorporated herein; and

WHEREAS, after reviewing all proposals submitted in response to the RFP, the City selected BUYER as the successful bidder; and

WHEREAS, BUYER desires to purchase the Premises and construct affordable housing on it in accordance with the terms of the Proposal and the RFP (the "Proposed Development"), and the City desires that BUYER do so; and

WHEREAS, the Premises is impacted by certain environmental contaminants as described in a July 1, 2014 Phase I Environmental Site Assessment and an August 8, 2014 Phase II Environmental Site Assessment, both by Credere Associates, LLC, copies of which are

attached hereto and collectively marked Exhibit E and incorporated herein by reference (collectively, the “ESAs”); and

WHEREAS, prior to constructing the Proposed Development, certain environmental remediation work must be completed as described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the “VRAP Work Plan”), copies of which are attached hereto and collectively marked Exhibit F and incorporated herein by reference; and

WHEREAS, in order to finance the VRAP Work Plan, BUYER consulted with the Greater Portland Council of Governments (“GPCOG”) regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, GPCOG advised BUYER and the City that they would not qualify for GPCOG’s Brownfields Remediation grants because the City may be a potentially responsible party for the environmental contaminants and Adam’s Apple is not a public or nonprofit entity, but that SELLER, as a nonprofit corporation, would qualify for a grant if it were the owner of the Premises; and

WHEREAS, SELLER, with the assistance of BUYER, applied for and has been awarded a Brownfields Remediation Program grant from GPCOG in order to finance the VRAP Work Plan as set forth in GPCOG’s June 15, 2015 letter to SELLER, a copy of which is attached hereto and marked Exhibit G and incorporated herein by reference; and

WHEREAS, BUYER and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the “Grant Agreement”), a copy of which is attached hereto and marked Exhibit H and incorporated herein by reference; and

WHEREAS, SELLER, BUYER, and the City have agreed that in order to complete the VRAP Work Plan prior to the conveyance of the Property to BUYER, the City would first convey the Premises to SELLER, provided that SELLER would then convey the Premises to BUYER after completion of the VRAP Work Plan; and

WHEREAS, SELLER and BUYER have entered into a Development Consulting Agreement of near or even date herewith pursuant to which BUYER shall act as SELLER's agent to oversee the VRAP Work Plan during SELLER's ownership of the Premises and be responsible for the administration of the Grant Agreement and all costs associated with the Grant Agreement at no cost to SELLER; and

WHEREAS, the SELLER desires to convey the Premises to BUYER in accordance with the terms and conditions of this Agreement, provided that the CITY conveys the Premises to SELLER pursuant to a Purchase And Sale Agreement between the City and SELLER of near or even date herewith (the "City-PDC Agreement"), a copy of which is attached hereto as Exhibit I and incorporated herein by reference).

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **RECITALS INCORPORATED BY REFERENCE.** The recitals set forth above are hereby incorporated herein by reference and made a part of this Agreement. The restatement in this document of any term of any of its attachments shall not be deemed to waive any term not so restated. If any disagreement is found between the RFP or the Proposal and this document, then this document shall govern; and the RFP shall govern over the Proposal, to the extent they disagree; provided, however, that this document and all of its attachments shall be construed to be supplemental to one another to the extent possible.
2. **SALE.** SELLER agrees to sell the Premises to BUYER, and BUYER agrees to buy the Premises in accordance with the terms and conditions set forth in this Agreement. This Agreement is for the sale of land only.
3. **CONSIDERATION.** The consideration for the Premises shall be One Dollar (\$1.00) (the "Purchase Price").
4. **TITLE.** SELLER shall convey the Premises to BUYER at the closing in fee simple with good and marketable or insurable title by quitclaim deed without covenant acceptable to BUYER. If SELLER is unable to convey title to the Premises in accordance with the provisions of this paragraph, then SELLER shall have a reasonable time period, not to exceed 30 days from the time SELLER receives written notice of the defect, unless otherwise agreed to by both parties, during which it shall make a good faith effort to remedy the title, after which time, if such defect is not corrected so that there is marketable and insurable title, BUYER may within 2 days

thereafter, at BUYER's option, terminate this Agreement, and neither party shall have any further obligation hereunder.

5. **POSSESSION.** Full possession of the Property will be delivered to Buyer at the transfer of title, free and clear of all tenancies or occupancies by any person or entity.
6. **RISK OF LOSS.** The risk of loss or damage to the Premises by fire or otherwise, until transfer of title hereunder, is assumed by the SELLER. Except to the extent that the Premises may be altered by the work performed under the VRAP Work Plan, the Premises is to be delivered in substantially the same condition as of the date of this Agreement.
7. BUYER acknowledges that BUYER has had an opportunity to inspect the Premises, and to hire professionals to do so, and that the Premises will be sold "as is, where is" and "with all faults." SELLER, and its agents, make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises. Furthermore, SELLER and its agents make no representations or warranties regarding the number, quantity, quality, or count of any items of personal property. Acceptance by BUYER of the Deed at closing and payment of the purchase price shall be deemed to be full performance and discharge by the SELLER of every agreement and obligation contained herein.
8. **COVENANTS, RESTRICTIONS, AND OPTION TO REPURCHASE IN SELLER'S DEED TO BUYER.** SELLER's deed to BUYER shall contain a declaration of covenants and restrictions that shall include, without limitation, provisions in substantially the form set forth below, which shall survive the closing of this Agreement and run with the land:
 - a. Grantee shall construct eight (8) new affordable ownership housing units on the Premises in substantially the form and for the affordable housing uses set forth in the Proposal and in the RFP, with Grantee's compliance with this provision to be satisfied by: (1) Grantee recording a subdivision plan for the Premises approved by the Planning Board of the City of Portland showing 8 housing units, and (2) with regard to a unit proposed to be conveyed, the City of Portland having issued a certificate of occupancy for that particular unit. At the request of Grantee, the City of Portland shall duly execute, from time to time, a verification of subdivision approval and issuance of certificates of occupancy in recordable form.
 - b. The parties agree that the units shall be subject to an "Affordability Declaration" which shall be established by the due execution and recording of the following documents in substantially the same form as those attached hereto and incorporated herein by reference: (i) Declaration

of Covenants, Conditions and Restrictions, Exhibit J, (ii) Affordability Agreement, Exhibit K, and (iii) Declaration of Condominium, Affordability of Units provision, Exhibit L.

- c. If Grantee has not started and diligently pursued construction of eight (8) new affordable ownership housing units as provided above by July 31, 2017, Grantor or the City of Portland shall have the right, but not the obligation, to repurchase the Premises at the Purchase Price, provided, however, that Grantor or the City of Portland must notify Grantee of its intent to repurchase the Premises in writing by August 15, 2017, and if the Grantor or the City of Portland fails to so notify Grantee, this provision, and the rights thereunder are waived. At the request of Grantee, Grantor and the City of Portland shall promptly duly execute, from time to time, verification of the exercise or non-exercise of this right in recordable form.
- d. Environmental Indemnification. Grantee covenants and agrees to indemnify, defend, and hold Grantor and the City of Portland harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against Grantor or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises, including without limitation the environmental matters identified in the RFP, the ESAs, and the VRAP Work Plan. This duty to indemnify, defend, and hold harmless shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees until such date as Grantee, its successors, assigns or transferees obtain a Certificate of Completion of Remedial Actions ("COC") from the Maine DEP for the Project as described in a Development Consulting Agreement between Seller and Buyer of even or near even date herewith; upon that date, the Environmental Indemnification described in this paragraph (d) shall no longer run with the land to subsequent successors, assigns or transferees of Grantee.
- e. Payment In Lieu Of Property Taxes. Grantee agrees in the event that the Premises or any portion thereof shall be exempt from real and personal property taxes, by transfer, conversion, or otherwise, then the then-owner of the exempt portion shall make annual payments to the City of Portland in lieu of taxes in the amount equal to the amount of property taxes that would have been assessed on the exempt portion of the real and personal property situated on the Premises had such property remained taxable. Grantee shall possess and be vested with all rights and privileges as to

abatement and appeal of valuations, rates, and the like as are accorded owners of real and personal property in Maine. This covenant shall run with the land herein conveyed and be binding upon Grantee's successors, assigns, and transferees.

9. **CLOSING.** Time is of the essence in the performance of this agreement. The closing shall be held at the office of BUYER's counsel, within thirty (30) days after the Maine DEP issues a Certificate of Completion of Remedial Actions ("COC") for the Premises. Buyer acknowledges that pursuant to the City-PDC Agreement, the City has an obligation to repurchase the Premises from SELLER in the event that the COC is not issued on or before that date which is twelve (12) months after the date of execution of this Purchase and Sale Agreement unless Adam's Apple exercises its right to require the PDC to convey the Premises to Adam's Apple pursuant to this paragraph 9 of the Purchase and Sale Agreement between PDC and Adam's Apple and paragraph 8 of the Development Consulting Agreement. In the event that the City does so, this Agreement shall terminate and neither party shall have any liability to the other or any further obligation under this Agreement. Similarly, Seller acknowledges that pursuant to Paragraph 8 of the Development Consulting Agreement between Seller and Buyer of even or near even date herewith, in the event of a termination of that Agreement for reasons as specified therein, Developer/BUYER, at its option, has a right to require PDC/SELLER to convey the Property to BUYER, in accordance with the terms of this Agreement, in the same condition it is in as of the date of termination or a better condition if BUYER opts to proceed with the Development, provided, however, that PDC/SELLER shall have no obligation to improve or otherwise alter the condition of the Property prior to such conveyance.
10. **REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.** Any real estate taxes and utilities for the Property shall be prorated as of the closing. The Maine real estate transfer tax shall be paid for by Buyer in accordance with 36 M.R.S.A. § 4641-A. SELLER is exempt from paying the transfer tax pursuant to 36 M.R.S.A. § 4641-C. The recording fee for the deed of conveyance and any expenses relating to BUYER's financing or closing shall be paid for by BUYER.
11. **TIME.** The SELLER and BUYER each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.
12. **DEFAULT AND REMEDIES.** In the event that BUYER defaults hereunder for a reason other than the default of the SELLER, SELLER may pursue all legal or equitable remedies available to it. In the event SELLER defaults under this Agreement, and if BUYER is not then in default hereunder, BUYER shall have the right to pursue specific performance as its sole remedy.
13. **ENTIRE AGREEMENT.** This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Property hereunder. This Agreement cannot be amended except by written instrument executed by Seller and Buyer.

14. Notwithstanding anything to the contrary in this Agreement or any of its attachments, it is the intent of both parties that the BUYER shall develop the Premises in substantially the form and for the affordable housing uses set forth in the RFP and the Proposal. Accordingly, the parties covenant and agree that, prior to closing, they will execute such additional documents as are not inconsistent herewith, including but not limited to Exhibits H, I and J, and as may be reasonably necessary to effectuate such intent.
15. **HEADINGS AND CAPTIONS.** The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.
16. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
17. **GOVERNING LAW.** This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.
18. **NOTICE.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

FOR THE SELLER: Portland Development Corporation
Attention: Greg Mitchell
389 Congress Street
Portland, Maine 04101

With a copy to: The Office of the Corporation Counsel at the
same address.

FOR BUYER: Adam's Apple, LLC
17 Chestnut Street, 3rd Floor
Portland, Maine 04101

With a copy to: Barbara Vestal, Esq.
Chester & Vestal, P.A.
107 Congress Street
Portland, Maine 04101

19. **SIGNATURES; MULTIPLE COUNTERPARTS.** This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a faxed, pdf or other reproduced or electronic document shall be considered the equivalent of an original signature.

20. **BROKERS.** Seller and Buyer each represents and warrants that neither has dealt with a real estate broker in connection with this transaction. Buyer agrees to indemnify and hold harmless Seller from any claims made by any broker should Buyer's representation in this paragraph be false. Subject to the limitations of liability set forth in the Maine Tort Claims Act, Seller agrees to indemnify and hold harmless Buyer from any claims made by any broker should Seller's representation in this paragraph be false. The foregoing indemnities shall include all legal fees and costs incurred in defense against any such claim, and shall survive closing.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first written above.

WITNESS

PORTLAND DEVELOPMENT CORPORATION

By: _____
Printed Name:
Its:

ADAM'S APPLE, LLC

WITNESS

By: _____
Printed Name:
Its:

Approved as to Form:

Corporation Counsel's Office

**GPCOG BROWNFIELDS PROGRAM
SUBGRANT AGREEMENT**

THIS AGREEMENT is made and entered into on this ____ day of _____, 2015 by and between the Portland Development Corporation (hereinafter referred to as "Subgrantee"), and the Greater Portland Council of Governments (GPCOG) a recipient of a Brownfields Cleanup Revolving Loan Fund (BCRLF) capitalization grant from the U.S. Environmental Protection Agency (hereinafter referred to as the "Grantor") under Agreement Number BF96175401.

WITNESSETH:

WHEREAS, GPCOG is authorized under Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 104(k)(3)(B)(ii) and the terms and conditions of (EPA Grant Number BF96175401) to make subgrants to eligible entities and non-profit organizations from these funds ("Grant Funds"); and

WHEREAS, the Subgrantee is (an eligible entity under CERCLA 104(k)(1) or a non-profit organization as defined in 31 USC 6101, Note) owns by way of fee simple title certain real property located 65 Munjoy Street in Portland, Maine, (the "Property"), which property is more particularly described in Exhibit 1, attached hereto; and

WHEREAS, the Grantor has agreed to grant to Subgrantee certain of the Grant Funds which will be used by the Subgrantee for a portion of the remediation of the Property (the "Remediation Work"); which is more particularly described in Exhibit 2, and attached hereto; and

WHEREAS, the Property is not listed, or proposed for listing on the National Priorities List of the U. S. Environmental Protection Agency ("EPA"); and

WHEREAS, the Subgrantee is not a generator or transporter of any contamination located at the Property; and

WHEREAS, the Subgrantee is not and has never been subject to any penalties resulting from environmental non-compliance at or on the Property nor is the Subgrantee, or, to the best of its knowledge, its Project contractors or subcontractors currently suspended, debarred, or otherwise declared ineligible for participation in this federal program or from the receipt of these funds; and

WHEREAS, a claim has not been asserted against the Subgrantee for liability under CERCLA §107 at the Property.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, it is mutually agreed by and between the parties as follows:

1. Grantor agrees to grant to Subgrantee the sum of not more than \$200,000 to be used by the Subgrantee for the Remediation Work (the "Project Grant Funds") subject to the terms and conditions herein. The Subgrantee is accountable to the Grantor for using EPA funds only for eligible and allowable costs under CERCLA 104(k) and the terms and conditions of Agreement Number BF96175401.

2. Subgrantee agrees to provide a cost share of \$40,000 consisting of eligible and allowable costs under CERCLA 104(k) and the terms and conditions of Agreement Number BF96175401. Subgrantee may meet this requirement by contributing cash, materials or labor to the cleanup project.
3. Subgrantee shall carry out the Remediation Work in accordance with CERCLA 104 (k) and applicable terms and conditions of Grant Number BF96175401. These requirements include those prohibitions on the use of Project Grant Funds found at CERCLA 104(k)(4)(B) for administrative costs, and response costs for which the Subgrantee is potentially liable at the Property under CERCLA 107.
4. The Subgrantee will comply with (Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations 40 CFR Part 30 or Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, 40 CFR Part 31) and all other applicable provisions of federal, state or local law.
5. The Subgrantee will provide the Grantor with all reports and other documents required for subgrantees or subawardees by 40 CFR Part 30 or 40 CFR Part 31, as applicable.
6. The Subgrantee will adhere to OMB Cost Principles found at (2 CFR Part 230 for Non-profits or 2 CFR Part 225 for State, Local or Tribal Governments or 2 CFR Part 220 for Educational Institutions).
7. Subgrantee shall carry out the Remediation Work in accordance with the Davis-Bacon Act of 1931 (CERCLA 104(g)(1), 40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). CERCLA compliance with Davis Bacon requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with Grant Funds. The Subgrantee must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the remediation construction contract. In addition, the Subgrantee must maintain records verifying compliance with the Davis Bacon Act. Subgrantee will work with Grantor to ensure Grantor's Davis-Bacon requirements are met.
8. The Subgrantee shall provide the Grantor with a copy of the Phase I and Phase II Environmental Assessment of the Property performed according to the American Society for Testing and Materials (ASTM) standards (collectively, the "Assessment"). The Subgrantee shall be responsible for the payment of all costs and expenses related to the Assessment. The Subgrantee agrees that the Project Grant Funds shall not be used for the payment of any cost or expense related to the Assessment. The Assessment shall include, but is not limited to site background, the threat posed to by the contaminant to public health, welfare and the environment and all past enforcement activities conducted by any governmental agency, and the site testing results.
9. The Grantor shall designate an environmental project manager who shall review and approve of the proposed cleanup and coordinate the work to be performed using Project Grant Funds. The Grantor's environmental project manager will review the Subgrantee's remedial planning, design, and engineering documents and review the cleanup activities as they are on-going to

ensure that the cleanup is being completed in accordance with all local, State, and Federal requirements and is protective of human health and the environment.

10. The Subgrantee shall prepare a Community Relations Plan ("CRP") with the assistance and cooperation of the Grantor. The CRP shall include, where applicable, the following:
 - a. Copies of interviews or meetings conducted with residents and community leaders, local officials, and public interest groups.
 - b. Copies of news releases and other information that explains the proposed project, such releases and information to be disseminated throughout the area surrounding the affected area.
 - c. Procedures for the establishment of a local information repository at or near the Property that includes public information supplied by both the Subgrantee and the Grantor related to the proposed Remediation Work. The Subgrantee shall supply the Grantor with any additional information that would assist the Grantor in documenting the Remediation Work.
11. After the Subgrantee has prepared the CRP, the Subgrantee shall draft an analysis of brownfields cleanup alternatives that will include information about the Property and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the cleanup proposed. The Subgrantee shall submit copies of the draft analysis of brownfields cleanup alternatives to the Grantor for approval. The Subgrantee agrees to accept advice and suggestions from the Grantor and to incorporate those suggestions or requests for revisions as appropriate.
12. After the Grantor has approved the draft analysis of brownfields cleanup alternatives, the Subgrantee shall make the document available for review and public comment for a period of not less than thirty (30) days from the date of publication of the public notice.
13. After the public comment period, the Subgrantee shall incorporate all appropriate comments, in the reasonable discretion of Subgrantee, into a final analysis of brownfields cleanup alternatives document and prepare a written response to the public comments, if appropriate.
14. After the analysis of brownfields cleanup alternative has been finalized, the Subgrantee shall prepare a scope of work containing detailed design and construction plans and specifications for the Remediation Work including a budget and work schedule; a health and safety plan (OSHA 1910-120 - 126) and a quality assurance project plan which sets forth the manner and method of collecting samples to assure the complete removal of all hazardous substances that are located at the Property and are to be removed as a part of the Remediation Work (collectively, such documents are referred to as the "Project Documents") and submit same to Grantor for approval.
15. Prior to the initiation of the Remediation Work, including any cleanup activities, the Subgrantee must provide to the Grantor copies of all of the state required remedial planning documents and the state's approval of those documents, if required, as well as evidence of enrollment in the Maine's Voluntary Remediation Action Program.

16. The Subgrantee understands and agrees that all of the Project Grant Funds provided by Grantor to Subgrantee shall be used by the Subgrantee towards the cleanup and remediation of the Property identified in Exhibit 1. Subgrantee shall supply the Grantor with design and construction plan and specifications for the redevelopment of the Property and evidence of project feasibility in the form of a detailed project budget reflecting all project sources. All sources of project financing shall be supported by letters of interest and term sheets from an accredited lending institution.

Subgrantee shall complete a competitive bidding process for the Project Grant Funds in accordance with Federal procurement requirements under Brownfield regulations.

17. The Subgrantee further understands and agrees that any and all work performed on the Property for which the Project Grant Funds are used and the receipt of any Project Grant Funds under this Agreement is conditioned upon the Subgrantee's full compliance with the terms and provisions of the Project Documents and this Agreement.
18. The Project Grant Funds shall be payable to the Subgrantee as reimbursement for eligible and allowable expenses incurred by the Subgrantee based upon (for Part 31 subgrantees actual disbursements for costs incurred for Remediation Work for Part 30 subgrantees based on progress in accordance with the approved cleanup project budget (the "Budget"), attached hereto and made a part hereof as Exhibit 2 or actual disbursements for costs incurred or Remediation Work at the discretion of the Grantor). No reimbursement shall be made to the Subgrantee without the written approval of the Grantor. The Grantor shall not advance nor be obligated to advance any Project Grant Funds to the Subgrantee prior to the receipt of properly executed lien waivers. Reimbursement of Project Grant funds to the Subgrantee will take place after the receipt of invoices for costs incurred for Remediation work, and review of all information, documents and back up information to support the reimbursement request.
19. Subgrantee agrees must keep all expenditures from the Project Grant Funds within the approved Budget. Subgrantee shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the Grantor.
20. The Grantor may withhold up to five (5%) percent of each payment requested as a retainage until the Subgrantee has completed the Remediation Work.
21. The awarding of this Grant shall be subject to:
- a. Opinion of the Subgrantee's Counsel that the Subgrantee, if a corporation, is in good standing and that all documents executed by the Subgrantee are valid and enforceable in accordance with their respective terms.
 - b. Written authorization in the form of a resolution, or order of the City Council, as corporator of Subgrantee, authorizing the Subgrantee to accept the Project Grant Funds and authorizing Subgrantee's representative to execute this Grant Agreement on behalf of the Subgrantee.
 - c. Evidence by the Subgrantee that no outstanding taxes, fees, charges, mortgages, liens, encumbrances or other assessments have been filed or are recorded against the Property.

- d. Evidence of general liability insurance coverage with limits of liability of \$1,000,000. All insurance coverage required by this section shall remain in full force and effect during the term of this Agreement.
- e. Identification of the contractor and subcontractor selected by the Subgrantee for the Remediation Work, when determined.
- f. The Grantor's receipt of cleanup project cost breakdown based upon estimates and prices supplied by the Subgrantee.

The Grantor reserves the right to waive any or all requirements of this section.

- 22. Subgrantee shall commence work on the Remediation Work within 180 days from the date of execution of this Agreement and shall complete and perform all of the Remediation Work within 220 days in accordance with the approved Schedule of Work attached hereto and made a part hereof as Exhibit 3.

In the event the Subgrantee experiences project delays which are beyond the control of the Subgrantee that result in the project timeline exceeding either the 180 or 220 day limits above, Grantor shall provide reasonable extensions to the deadlines in this section, to the extent that such extensions comport with Grantor's obligations under the BCRLF.

- 23. All Remediation Work performed pursuant to this Agreement and with Project Grant Funds shall be performed in a good and workmanlike manner.
- 24. All material changes or modification to the Remediation Work or the Project Documents shall be approved in writing by the Grantor prior to such change or modification becoming effective. All additional costs incurred, as the result of any change orders shall be the responsibility of the Subgrantee. In the event that unforeseen conditions are discovered during the implementation of the Remediation Work, the Subgrantee reserves the right to revise the cleanup action and the Project Documents.
- 25. Subgrantee, at its sole cost and expense, and from sources other than Grant Funds, shall be responsible for obtaining all permits, licenses, approvals, certifications and inspections required by federal, state or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this Agreement.
- 26. The Subgrantee shall:
 - a. Notify the Grantor when the Remediation Work is complete. The notice shall contain certification or documentation that the Remediation Work is complete and has been performed in accordance with the terms of this Agreement. This notice shall summarize the actions taken, the resources committed and the problems encountered in completion of the project, if any, and shall be submitted to the Grantor for review and approval before it is finalized.
 - b. Perform all of its obligations and agreements under this Agreement, and any other agreements or instruments to which the Subgrantee is a party and which relate to the Project Grant Funds and the Remediation Work.

27. Subject to and limited by the protections, immunities and defenses of the Maine Tort Claims Act, 14 M.R.S. § 8101 et seq., the Subgrantee agrees to protect, indemnify, defend and hold harmless, the Grantor, its officers, administrators, agents, servants, employees and all other persons or legal entities to whom the Grantor may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all reasonable fees, expenses and charges of attorneys and other professionals, court costs, and other reasonable fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the Subgrantee as provided herein and caused in whole or in part by any act, error, or omission of the Subgrantee, its agents, servants, employees or assigns.
28. The Subgrantee shall erect a sign on the Property stating that the Remediation Work is being financed in part by BCRLF Grant Funds and the Grantor and providing the appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the Property site shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising.
29. If the Subgrantee sells or transfers the Property to another non-related or affiliated business, entity or corporation prior to completion of the Remediation Work, then, in that event, the Subgrantee shall immediately repay the entire amount of Project Grant Funds advanced to Subgrantee to the Grantor. Any change in use of the property from the original agreement needs to be approved by the Grantor.
30. Any forbearance by the Grantor with respect to any of the terms and conditions of this Agreement shall in no way constitute a waiver of any of Grantor's rights or privileges granted hereunder.
31. In the event of a default of any of the terms or conditions of this Agreement then, in that event, the entire amount of Project Grant Funds disbursed to Subgrantee shall become immediately due and payable without the necessity of demand from Grantor. The Subgrantee shall be deemed to be in default under this Agreement upon the occurrence of any or more of the following events (each and "Event of Default"):
- a. The Subgrantee assigns this Agreement or any Project Grant Funds advanced hereunder or any interest herein to a third party or if the Property or any interest is conveyed, assigned or otherwise transferred without the prior written consent of the Grantor.
 - b. Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false in any material respect.
 - c. The Subgrantee defaults in the performance of any term, covenant or condition to be performed hereunder and such default is not remedied within sixty (60) days, unless a longer period of time is reasonably required to cure the default, from and after receipt of written notice by certified mail, return receipt requested, from the Grantor to the Subgrantee, specifying said default, of, if such default cannot be remedied within that period and remedial effort is not commenced within that period and diligently and continuously pursued, the Grantor shall have the right to proceed by appropriate judicial proceedings to enforce performance or observation of the applicable provisions

- of this Agreement and/or terminate this Agreement and recover damages from the Subgrantee to the extent allowed by law.
- d. Any proceeding involving the Subgrantee or the Property, commenced under any bankruptcy or reorganization arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state, but if such proceedings are instituted, no Event of Default shall be deemed to have occurred hereunder unless the Grantor either approves, consents to, or acquiesces in such proceedings, or such proceedings are not dismissed within ninety (90) days.
 - e. An order, judgment or decree is entered, without the application, approval or consent of the Grantor, by any court of competent jurisdiction approving the appointment of a receiver, trustee or liquidator of the Subgrantee of all or a substantial part of its assets, and such order, judgment or decree shall continue in effect for a period of ninety (90) days.

Upon the occurrence of any one or more of the Events of Default enumerated above, all amounts of Project Grant Funds disbursed to Subgrantee by Grantor pursuant to this Agreement shall become due and payable, without presentment, demand, protest or notice of any kind to the Grantor, all of which are hereby expressly waived by the Subgrantee.

- 32. The Subgrantee agrees to maintain financial and programmatic records pertaining to all matters relative to this Agreement in accordance with 40 CFR Part 30 or Part 31, as applicable and generally accepted accounting principles and procedures and to retain all of its records and supporting documentation applicable to this Agreement for a period of 3 years following the completion and close out of Agreement Number BF96175401 except as follows:
 - a. Records that are subject to audit findings shall be retained three (3) years after such findings have been resolved.
 - b. All available records and supporting documents shall be made available, upon request, for inspection or audit by the Grantor or its representatives or representatives of EPA, EPA's Office of Inspector General, the Comptroller General, or other authorized representatives of the Federal Government.
- 33. The Subgrantee agrees to permit the Grantor or its designated representative to inspect and/or audit its records and books relative to this Agreement at any time during normal business hours and under reasonable circumstances, upon reasonable notice and to copy therefrom any information that the Grantor desires relevant to this Agreement. The Grantor shall provide written notice to the Subgrantee prior to the execution of this provision. The Subgrantee agrees to deliver the records or have the records delivered to the Grantor or its designated representative at an address designated by such party. If the Grantor or its representative finds that the records delivered by the Subgrantee are incomplete, the Subgrantee agrees to pay the Grantor or its representative's costs to travel to the Subgrantee's office or other location where the books or records are located to audit or retrieve the complete records.
- 34. The Subgrantee will comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, the Subgrantee will undertake good faith efforts in compliance with 40 CFR Part 33 to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE)

35. The Subgrantee shall not assign or attempt to assign directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of the Grantor. The Subgrantee shall not assign all or any portion of the Property made the subject of this Agreement without the prior written consent of the Grantor. Notwithstanding anything to the contrary herein, Grantor acknowledges that pursuant to a certain Development Consulting Agreement between Adam's Apple, LLC and Subgrantee, Adam's Apple, LLC will be administering this Agreement and shall be responsible for all of PDC's obligations, duties, and expenses under this Agreement, and Grantor hereby consents to the same.

36. This Agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries.

37. All amendments to this Agreement shall be in writing and signed by both parties hereto.

38. It is expressly understood that a failure or delay on the part of the Subgrantee in the performance, in whole or in part, or any of the terms of this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or Event of Default under this Agreement; however, the Subgrantee shall use its best effort to insure that the Project is completed in a reasonable time without unnecessary delay.

39. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

40. No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, and so custom of practice of the parties at variance with the terms hereof shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.

41. All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, on the day mailed to the parties as follows:

TO THE GRANTOR:

Neal Allen, Executive Director
Greater Portland Council of Governments
970 Baxter Boulevard, Suite 201
Portland, Maine 04103

TO THE SUBGRANTEE:

Greg Mitchell, Director of Economic Development
Portland Development Corporation

Portland City Hall
389 Congress Street, Room 308
Portland, ME 01401

or to such other address as a party may subsequently specify in writing to the other party.

42. If any provision or item of this Agreement is held invalid, such invalidity shall not affect other provisions or items of this Agreement that can be given effect without the invalid provisions or items, and to this end, the provisions of this Agreement are hereby declared severable.
43. Except for any exhibits, attachments, plats or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this Agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.

IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed in the name and on behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, hereunto duly authorized) as of the day and year first written above.

WITNESS:

SUBGRANTEE:

PORTLAND DEVELOPMENT CORPORATION

Printed Name: _____
Its: _____

WITNESS:

GRANTOR:

GREATER PORTLAND COUNCIL OF
GOVERNMENTS

Printed Name: _____
Its: _____

Exhibit 1

Evidence that the Portland Development Corporation owns by way of **fee simple title** certain real property located at 65 Munjoy Street, Portland, Maine (Map 3, Block M, Lot 5).

Exhibit 2

Draft scope of remediation work

Exhibit 3

Draft schedule for remediation work

Other documents to be provided at closing

- \$500 application fee
- A **zoning determination** by the City of Portland that the project, as designed, appears to meet all of the standards of the R6 Residential zone, subject to Planning Board approval.
- Demonstration of project feasibility as described in Section 12 above.

DEVELOPMENT CONSULTING AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 2015, by and between Portland Development Corporation, a Maine nonprofit corporation with a place of business and mailing address of 389 Congress Street, Portland, Maine 04101 ("PDC"), and Adam's Apple, LLC, a Maine limited liability company with a place of business in Portland, Maine and mailing address of 17 Chestnut Street, 3rd Floor, Portland, Maine 04101 (the "Developer"), (collectively, the "Parties).

WITNESSETH:

WHEREAS, PDC, provides a continuum of financial assistance to business and industry throughout the city of Portland and works to institute economic development programs in Portland to ensure compliance with the city's goals, objectives, and requirements; and

WHEREAS, PDC wishes to acquire an approximately .15 acre property in the vicinity of 65 Munjoy Street in Portland (the "Property") and contract for the remediation of onsite soils known to contain environmental contaminants and thus classified as "special waste" under the Maine DEP's Maine Solid Waste Management Rules: Chapter 400 (the "Project"); and

WHEREAS, the Project is described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the "VRAP Work Plan"), copies of which are attached hereto and collectively marked Exhibit A and incorporated herein by reference; and

WHEREAS, the Maine Department of Environmental Protection ("DEP") has issued to the City of Portland a December 8, 2014 No Action Assurance Letter (the "NAAL") in response to the VRAP Work Plan; and

WHEREAS, in order to finance the VRAP Work Plan, PDC consulted with the Greater Portland Council of Governments ("GPCOG") regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, PDC, with the assistance of Developer, applied for and has been awarded a Brownfields Remediation Program grant from GPCOG in order to finance the VRAP Work Plan as set forth in GPCOG's June 15, 2015 letter to PDC, a copy of which is attached hereto and marked Exhibit B and incorporated herein by reference; and

WHEREAS, PDC and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the "Grant Agreement"), a copy of which is attached hereto and marked Exhibit C and incorporated herein by reference; and

WHEREAS, PDC wishes to contract with Developer to act as its agent to oversee aspects of the Project on behalf of PDC as further described herein; and

WHEREAS, PDC wishes to complete the Project for the purpose of preparing the Property for eventual transfer to Developer for the purpose of developing a three-story residential development

consisting of at least (eight) 8 units of affordable ownership housing as further described in the Developer's January 13, 2015 development proposal to the City of Portland (the "Development"); and

WHEREAS, the Project, upon completion of construction, is expected to achieve multiple housing and economic development goals of the City of Portland;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Appointment. PDC hereby appoints the Developer as its agent to render specific services in overseeing the Project as described herein, with Developer's duties to be subject to and limited by the terms of this Agreement.

2. Services. The Developer shall perform certain services relating to the acquisition, permitting, and remediation of the Property as set forth in this Agreement and Developer shall consult with PDC as necessary to see the Project through to final completion. Developer shall use commercially reasonable efforts in the performance of its duties under this Agreement. Developer has performed or shall perform, on behalf of and at no cost to PDC, the following duties:

a. Perform Environmental Due Diligence

Update previous environmental assessments prior to PDC's acquisition of the Property; and

b. Develop Projects Plans, Budgets and Timelines

Develop a complete Project budget including balanced sources and uses, subject to approval of PDC as specified in 1. below. Develop an overall Project plan in accordance with the NAAL to be performed by others, and prepare a comprehensive Project timeline; and

c. Secure Project Funding

Secure grants, loans, and/or private equity for PDC in an amount sufficient to fully capitalize the expenses of the Project; and

d. Procure and Oversee Professional Services

Negotiate and secure professional services at competitive market cost as required by the Project including but not limited to such professional services as: (1) environmental study, planning, monitoring, and reporting, (2) insurance services, (3) site assessment services, and (4) site design and engineering services.

e. Secure Required Regulatory Approvals

Secure for PDC approval any additional environmental plans (ABCA, CRP, SSQAPP) and permits as required by all applicable state, local and Federal standards from such entities as the Environmental Protection Agency, Maine Department of Environmental Protection and the City of Portland.

f. Procure and Oversee Remediation Services

Secure through a competitive process, a remediation contractor to perform the remediation of the site in conformance with the VRAP Work Plan and the NAAL. Negotiate a contract on

behalf of PDC in a form satisfactory to the City of Portland's Corporation Counsel, and once executed, administer and oversee said remediation services on behalf of PDC; and

g. Community Outreach

Facilitate open and effective communications with neighborhood groups, local organizations, abutters and other parties affected by or interested in the remediation of the Property on behalf of PDC and in its capacity as Developer; and

h. Changes

Submit suggestions or requests for reasonable changes which might improve the feasibility, efficiency, or efficacy of the Project, with any changes to executed contracts to be made only by written change order signed by Developer, PDC and any other party to the contract being modified; and

i. Insurance And Indemnification

- i. Prior to the execution of this Agreement, the Developer shall, at its own expense, carry Professional Liability Insurance for errors, omissions and negligence, in the amount of One Million Dollars (\$1,000,000.00) per claim. The Developer will also procure and maintain Automobile Insurance, General Liability Insurance, and Pollution liability coverage in amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, death and property damage, naming the PDC and City of Portland as an additional insured thereon, and also Workers' Compensation Insurance coverage. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the PDC and City of Portland, its officers or employees. For all coverages, the Developer shall furnish the PDC and thereafter maintain certificates evidencing all such coverages in a form satisfactory to the PDC, which certificates shall guarantee thirty (30) days' notice to the PDC of termination of insurance from insurance company or agent. Developer shall also be responsible for the cost of any insurance coverage that PDC is required to obtain pursuant to the GPCOG Grant Agreement.
- ii. To the fullest extent permitted by law, Developer shall defend, indemnify and hold harmless the PDC and the City of Portland, their officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of or resulting from the performance of this Agreement, provided that any such claims, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including the loss of use therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Developer, anyone directly or indirectly employed by it, or anyone for whose act it may be liable. This provision shall survive termination of this Agreement.
- iii. Environmental Indemnification. To the fullest extent permitted by law, Developer shall defend, indemnify, and hold PDC and the City of Portland harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement

payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against PDC or the City and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Property, including without limitation the environmental matters identified in the July 1, 2014 Phase I Environmental Site Assessment and August 8, 2014 Phase II Environmental Site Assessment, both by Credere Associates, LLC, and the VRAP Work Plan. This provision shall survive termination of this Agreement.

j. Submit Applications for Financing

Prepare and submit on behalf of PDC financing applications including but not limited to the Greater Portland Council of Government's (GPCOG) Brownfield Cleanup Revolving Loan Fund (RLF) program; and

k. Record Keeping

Assemble and retain all contracts, agreements, approvals, accounting ledgers, reports and other records and data as may be necessary to carry out the Developer's functions hereunder and provide the same to PDC; and

l. Budgeting

Prepare and revise from time to time the development budget showing all sources and uses of funds implementing the Project (the "Development Budget"). PDC shall have the right to approve the Development Budget. The Development Budget shall include a reasonable project "Development Fee" payable to the Developer in connection with the Project as further described in Section 7 below. The Development Budget shall not include any direct expense to PDC and all Project expenses, including any Development Fee, will be fully capitalized by sources from entities other than PDC.

m. Accounting

Management of project accounting including intake of project sources and payment of project expenses, budgeting as described in Section 2(l) above, the preparation and submission of monthly requisitions, and preparation and presentation of final project accounting.

n. GPCOG Grant Administration

Without limiting any of the Developer's services described above, Developer shall be responsible for the administration of the Grant Agreement and all costs associated with the Grant Agreement.

3. Term. The term of this Agreement shall begin on the date hereof and shall terminate on the date that the Maine DEP issues a certificate of completion for the Project. Provided, however, that

if the DEP does not issue a certificate of completion on or before that date which is twelve (12) months after the date of execution of the Purchase and Sale Agreement between PDC and Developer, this Agreement shall automatically terminate unless extended by mutual agreement of the parties.

4. Duties of PDC. PDC shall cooperate with Developer, to the extent necessary, to enable Developer to perform the services described in section 2, and hereby authorizes its staff to take such action as is necessary to carry out these duties.

PDC acknowledges that failure to fulfill its obligations set forth above could adversely affect the viability of the Project and the Development. PDC agrees to use reasonable commercial efforts to fulfill all its said obligations. Developer acknowledges and agrees, however, that Developer is responsible for performing all of its obligations under this Agreement with minimal involvement by PDC or its staff.

Provided the other party is not in default of the terms and conditions of this Agreement, both PDC and Developer agree that neither of them shall hire any consultants who are to be paid from the Development Fee or otherwise commit to or cause any expenditure of Development Fee unless the other party consents thereto.

5. Limitations on Authority. In performing its duties under Section 2 above, Developer shall have the discretion and authority to determine the means and methods of undertaking the Project activities and expenditures necessary to bring the Project to final and successful completion of the VRAP Work Plan. Notwithstanding anything to the contrary in this Agreement, Developer covenants and agrees that all of its services provided hereunder shall be consistent with the terms and conditions of GPCOG's Brownfields Cleanup grant program, and all federal, state, and local laws, regulations, rules, and ordinances.

6. Books and Records. Developer, with the cooperation of PDC staff, shall keep reasonably detailed and accurate financial records substantiating all costs expended by PDC and Developer in connection with the Project. To the extent Developer incurs Project-related expenditures for which it expects to be reimbursed, Developer shall keep reasonably detailed and accurate records of such expenditures and shall furnish the same to PDC upon request and in any event contemporaneously with any reimbursement request for such expenses.

7. Development Fee. For the development services to be performed by the Developer under this Agreement, PDC shall pay the Developer Fee presented in the Project budget which shall not exceed 10% of project costs and shall be due and payable only to the extent that there are GPCOG Brownfield Cleanup grant funds available to pay such Developer Fee after all other Project expenses are paid and that the Developer Fee is allowable under the grant.

Provided the other party is not in default of the terms and conditions of this Agreement, both PDC and the Developer agree not to voluntarily or knowingly take actions that may result in a reduction of the Development Fee. Notwithstanding anything to the contrary in this Agreement, both parties also recognize such reductions may be unavoidable due to circumstances beyond their control. The parties agree to consult in connection with events or circumstances that may result in a reduction

of the Development Fee, but PDC shall not be obligated to accept reductions in other budget items that will otherwise have an adverse effect on PDC or the viability of the Project.

8. Default; Remedies.

- a. Default by Developer. If the Developer shall be in significant and material default in the performance of any of its covenants or obligations under this Agreement and such default shall continue unremedied for a period of thirty (30) days after its receipt of written notice thereof from PDC to the Developer, then PDC may terminate this Agreement for cause by written notice to the Developer.

Notwithstanding any termination of this Agreement by PDC for cause, Developer shall nonetheless be entitled to be paid an equitable amount of Developer's Fee as described in Section 7 which is commensurate with the reasonable value of the Developer's services through the date of Developer's receipt of PDC's notice of default, provided that such amount is available and allowable under the GPCOG Brownfields Cleanup grant, less any actual money damages incurred by PDC that directly arise from Developer's default, excluding consequential damages. Developer shall also be entitled to be reimbursed for any legitimate Project expenses, as evidenced by written invoices, actually paid by Developer prior to the date of Developer's receipt of PDC's notice of default, provided that funds for such expenses are available and allowable under the GPCOG Brownfields Cleanup grant.

- b. Default by PDC. If PDC shall be in significant and material default in the performance of any of its covenants or obligations under this Agreement and such default shall continue unremedied for a period of thirty (30) days after its receipt of written notice thereof from Developer to PDC, then Developer may terminate this Agreement for cause by written notice to PDC, but such termination shall not terminate PDC's obligation to pay any earned Developer's Fee to Developer, provided that such amount is available and allowable under the GPCOG Brownfields Cleanup grant.

In the event Developer terminates this Agreement pursuant to Section 8 b. due to default by PDC or in the event PDC terminates this Agreement for a reason other than that specified in Section 8 a. above, Developer shall be entitled to collect all of its legitimate Project expenses, as evidenced by written invoices, actually paid by Developer prior to the date of termination, plus an equitable amount of Developer's Fee as described in Section 7 which is commensurate with the reasonable value of the Developer's services through the date of termination, provided that such amounts are available and allowable under the GPCOG Brownfields Cleanup grant and shall, at Developer's option, also have the right to require PDC to convey the Property to Developer, in accordance with the terms of the Purchase and Sale Agreement between the parties, in the same condition it is in as of the date of termination or a better condition if Developer opts to proceed with the Development, provided, however, that PDC/SELLER shall have no obligation to improve or otherwise alter the condition of the Property prior to such conveyance.

9. Notwithstanding anything to the contrary in this Agreement, in the event that GPCOG does not disburse the GPCOG Brownfields Cleanup grant funds, this Agreement shall be null and void and neither party shall have any obligation or liability to the other hereunder

10. Burden and Benefit; Entire Agreement. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. Neither party may assign this Agreement without the consent of the other party. This Agreement contains the entire agreement between the parties hereto with respect to the matters set forth herein and is intended to be an integration of all prior agreements, conditions or undertakings between the parties hereto with respect to such matters. Except as expressly set forth in this Agreement, there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties hereto with respect to the matters set forth herein.

11. Third-Party Beneficiary. Nothing in this Agreement shall be construed to make any of the parties hereto liable for any of the debts or other obligations of any other party hereto, and the parties hereto specifically acknowledge, agree and declare that no person is intended to be a third-party beneficiary of this Agreement.

12. General. This Agreement shall be construed and enforced in accordance with the laws of Maine, without regard to principles of conflicts of laws. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the parties hereto. No purported or alleged waiver of any of the provisions of this Agreement shall be binding and effective unless in writing and signed by the party against whom it is sought to be enforced. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which together shall constitute one and the same Agreement. All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section. All personal pronouns used in this Agreement, whether used in the masculine, feminine and neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

WITNESS:

Portland Development Corporation

By: _____
Barry Sheff, its President

Adams Apple, LLC

By: _____
Ethan Boxer-Macomber, its Member

**CITY OF PORTLAND
HOUSING TRUST FUND
AGREEMENT WITH
ADAM'S APPLE, LLC**

This Agreement is made as of the ____ day of August, 2015, by and between the **CITY OF PORTLAND**, a body politic and corporate, with a place of business at 389 Congress Street, Portland, Maine (hereinafter "**CITY**") and **ADAMS APPLE LLC**, a Maine limited liability corporation with a place of business at 17 Chestnut Street, 3rd Floor, Portland, Maine, (hereinafter "**DEVELOPER**").

RECITALS

WHEREAS, the CITY published a November 19, 2014 "Request for Proposals For the Sale and Reuse of Property Located at 65 Munjoy Street (the "Premises"), RFP #4115," as amended by Addendum #1, dated December 18, 2014, copies of which are attached hereto and collectively marked Exhibit A and incorporated herein (the Request for Proposals and Addendum #1 are collectively referred to herein as the "RFP"); and

WHEREAS, DEVELOPER submitted a proposal in response to the RFP (the "Proposal"), a copy of which is attached hereto as Exhibit B and incorporated herein; and

WHEREAS, after reviewing all proposals submitted in response to the RFP, the CITY selected DEVELOPER as the successful bidder; and

WHEREAS, DEVELOPER desires to purchase the Premises and construct affordable housing on it in accordance with the terms of the Proposal and the RFP (the "Proposed Development"), and the City desires that DEVELOPER do so; and

WHEREAS, pursuant to the terms of Purchase and Sale Agreements between the CITY and the Portland Development Corporation (hereinafter "PDC") and between the PDC and DEVELOPER of near or even date herewith, copies of which are attached hereto as Exhibits C and D, respectively, and incorporated herein, the CITY is causing the Premises to be conveyed to Developer for the construction of the Proposed Development; and

WHEREAS, the Premises is impacted by certain environmental contaminants as described

in a July 1, 2014 Phase I Environmental Site Assessment and an August 8, 2014 Phase II Environmental Site Assessment, both by Credere Associates, LLC, copies of which are attached hereto and collectively marked Exhibit E and incorporated herein by reference (collectively, the “ESAs”); and

WHEREAS, prior to constructing the Proposed Development, certain environmental remediation work must be completed as described in a certain September 17, 2014 Voluntary Response Action Program Work Plan and September 17, 2014 Soil Management Plan prepared by Credere Associates, LLC (collectively, the “VRAP Work Plan”), copies of which are attached hereto and collectively marked Exhibit F and incorporated herein by reference; and

WHEREAS, in order to finance the VRAP Work Plan, PDC consulted with the Greater Portland Council of Governments (“GPCOG”) regarding the availability of brownfields cleanup grants that might be available to cover the cost of the VRAP Work Plan; and

WHEREAS, GPCOG advised DEVELOPER and the City that they would not qualify for GPCOG’s Brownfields Remediation grants because the City may be a potentially responsible party for the environmental contaminants and Adam’s Apple is not a public or nonprofit entity, but that PDC, as a nonprofit corporation, would qualify for a grant if it were the owner of the Premises; and

WHEREAS, PDC, with the assistance of DEVELOPER, applied for and has been awarded a Brownfields Remediation Program grant from GPCOG in order to finance the VRAP Work Plan as set forth in GPCOG’s June 15, 2015 letter to PDC, a copy of which is attached hereto and marked Exhibit G and incorporated herein by reference; and

WHEREAS, PDC and GPCOG have entered into a GPCOG Brownfields Program Subgrant Agreement of near or even date herewith (the “Brownfields Grant Agreement”), a copy of which is attached hereto and marked Exhibit H and incorporated herein by reference; and

WHEREAS, PDC, DEVELOPER, and the CITY have agreed that in order to complete the VRAP Work Plan prior to the conveyance of the Property to DEVELOPER, the CITY would first convey the Premises to PDC, provided that PDC would then convey the Premises to

DEVELOPER after completion of the VRAP Work Plan; and

WHEREAS, PDC and DEVELOPER have entered into a Development Consulting Agreement of near or even date herewith, a copy of which is attached hereto as Exhibit I and incorporated herein, pursuant to which DEVELOPER shall act as PDC's agent to oversee the VRAP Work Plan during PDC's ownership of the Premises and be responsible for the administration of the Brownfields Grant Agreement and all costs associated with that agreement at no cost to PDC; and

WHEREAS, in order to help finance the VRAP Work Plan and construct the Proposed Development, the DEVELOPER has requested \$175,000.00 in funds from the City's Housing Trust Fund - \$40,000.00 of which will assist in financing the environmental remediation costs for the Premises, and \$135,000.00 of which will assist in financing the costs of construction of the Proposed Development; and

WHEREAS, in order to assist in promoting the availability of affordable housing in Portland, the CITY agrees to provide DEVELOPER with \$175,000.00 in funds from the City's Housing Trust Fund in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. Recitals Incorporated by reference. The recitals set forth above are hereby incorporated herein by reference and made a part of this Agreement. The restatement in this document of any term of any of its attachments shall not be deemed to waive any term not so restated. If any disagreement is found between this agreement and its attachments, then this document shall govern; provided, however, that this document and all of its attachments shall be construed to be supplemental to one another to the extent possible.
2. Grant. The CITY agrees, on the terms and conditions contained in this Agreement, to make a Grant to the DEVELOPER in the principal amount of One Hundred Seventy-Five Thousand Dollars (\$175,000.00) in City of Portland Housing Trust Funds (the "HTF Grant").

3. Use of Proceeds; Disbursements. The DEVELOPER shall use the proceeds of the HTF Grant for the costs associated with the VRAP Work Plan and the construction of the Proposed Development and the CITY shall disburse the proceeds as follows.
 - a. The CITY shall disburse \$40,000.00 to DEVELOPER during the course of the DEVELOPER's performance under the Development Consulting Agreement. Such costs must be eligible and allowable costs under the Brownfields Grant Agreement.
 - b. The CITY shall also disburse \$135,000.00 of the HTF Grant proceeds to the DEVELOPER after the PDC conveys the Premises to the DEVELOPER and the DEVELOPER commences construction of the Proposed Development. Such disbursement shall only be for hard costs associated with the construction of the Proposed Development.
 - c. The City shall reimburse DEVELOPER for the above costs within 30 days after receipt of an itemized invoice from Developer in form and substance satisfactory to the CITY.
4. Conditions Precedent; Mortgage. The CITY's commitment to make the HTF Grant and the obligation of the CITY to make any disbursements pursuant thereto, are subject to performance by the DEVELOPER of all of its obligations under this Agreement required though the date of disbursement, and to the CITY having received on or before the Closing Date all of the items set forth in the above Recitals and all of the exhibits and amendments thereto (collectively, the "HTF Grant Documents"), each in form and substance satisfactory to the CITY. The obligation of the CITY to make any disbursement hereunder is subject to the performance by the DEVELOPER of all of its obligations under the HTF Grant Documents. The performance of DEVELOPER after disbursement of the HTF Grant shall be guaranteed by a Note for full repayment of funds disbursed, secured by a Mortgage on the Premises, at 0% interest, with one-eighth (1/8) of the Note to be deemed satisfied upon the sale of each of the 8 housing units in accordance with the terms of said Note, this Agreement, and a Declaration of Covenants, Conditions, and Restrictions between the parties of near or even date herewith. CITY shall execute a partial release of mortgage immediately prior to the sale of each unit. The Note and Mortgage shall be in the form attached hereto as Exhibits J and K.
5. Representations and Warranties of the DEVELOPER. The DEVELOPER represents and warrants to the CITY (which representations and warranties shall survive the closing of this Agreement) as follows:
 - a. The DEVELOPER has all requisite power and authority to conduct its businesses, to own its properties and to execute and deliver, and to perform all of its obligations under this Agreement and the HTF Grant Documents.
 - b. The execution, delivery and performance by the DEVELOPER of this Agreement, and the HTF Grant Documents do not and will not (i) require any consent or approval of any other person which DEVELOPER has not obtained, (ii) violate any provision of any law, rule, regulation (including, without limitation, Regulation of the Board of Governors of the Federal Reserve System), order, writ, judgment,

injunction, decree, determination or award presently in effect having applicability to the DEVELOPER, (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the DEVELOPER is a party or by which its properties may be bound or affected, or (iv) except as may be provided by this Agreement and/or the HTF Grant Documents, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on the Premises.

- c. The DEVELOPER is not to its knowledge in material default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease or instrument by which it is bound.
- d. Except as disclosed to the CITY in writing, there are no actions, suits or proceedings pending or, to the knowledge of the DEVELOPER, threatened against or affecting the DEVELOPER or any properties or assets of the DEVELOPER before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to the DEVELOPER would have a material adverse effect on the financial condition, properties, or operations of the DEVELOPER.
- e. The DEVELOPER has filed all tax returns (Federal, state and local) required to be filed and paid all taxes shown thereon to be due, including interest and penalties, or provided adequate reserves for payment thereof.

6. Affirmative Covenants of the DEVELOPER Other than Reporting Requirements. From the date hereof and thereafter for so long as the DEVELOPER is indebted to the CITY, whether under the HTF Grant Documents or otherwise, the DEVELOPER will, unless the CITY shall otherwise consent in writing:

- a. Payment of Taxes, etc. Pay and discharge all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any Assets or properties belonging to it, prior to the date on which penalties attach thereto, and all lawful claims which, if unpaid, might become a lien or charge upon any of its properties or Assets provided that the DEVELOPER shall not be required to pay any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings and as to which DEVELOPER shall have set aside on its books adequate reserves in accordance with generally accepted accounting principles. Provided, however, that if Developer is still indebted to the CITY at the time that the Declarant Control Period ends after six of the eight units have been sold, Developer shall only be responsible for payment of real estate taxes on the remaining unsold units.
- b. Maintenance of Insurance. Maintain insurance in favor of the DEVELOPER and the CITY, as their interests may appear, with responsible and reputable insurance companies reasonably acceptable to the CITY, to the extent of CITY's interest. All such insurance policies shall name the CITY as loss payee or additional insured and shall provide for at least thirty (30) days' prior notice to the CITY before cancellation or amendment of any such policy. The DEVELOPER shall provide the CITY with such evidence as the CITY may reasonably request from time to time as to the maintenance of all such insurance.

- c. Existence and Assets. Do or cause to be done all things necessary to preserve, renew and keep in full force and effect the existence of DEVELOPER and comply with all laws and regulations applicable to said limited liability company; preserve all of its Assets and property used or useful in the conduct of the company's business and keep the same in good repair, working order and condition, and from time to time, make, or cause to be made, all needful and proper repairs, renewals, replacements, betterments and improvements thereto, so that the business carried on in connection therewith may be properly and advantageously conducted at all times.
 - d. Visitation Rights. At any reasonable time and from time to time, and on reasonable advance notice, permit the CITY or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the DEVELOPER and to discuss the affairs, finances and accounts of the DEVELOPER.
 - e. Keeping of Records and Books of Account. Keep adequate records and books of account, in which complete entries will be made in accordance with generally accepted accounting principles consistently applied, reflecting all financial transactions of the DEVELOPER.
 - f. Unit Owner Income Requirements (Affordability). DEVELOPER shall comply with all provisions of the Declaration of Covenants, Conditions, and Restrictions, between the parties of near or even date herewith and all other HTF Grant Documents, and at any reasonable time and from time to time, and on reasonable advance notice, City or any agents or representatives thereof, may examine and make copies of records verifying compliance with the Affordability Requirements thereof.
 - g. DEVELOPER shall use the moneys granted pursuant to this Agreement only for the purposes set forth above.
 - h. Developer shall obtain certificates of occupancy for all units in the Proposed Development on or before July 31, 2018.
7. Negative Covenants of the DEVELOPER. It is understood by City that Developer will be obtaining construction financing from a commercial lender, and that the commercial lender will require the individual Members of Developer to contribute private equity to the funds to be used for construction. This commercial construction loan and contribution of private equity will constitute loans to Developer. In addition, the HTF Grant will be used for environmental remediation and hard costs of construction as outlined in Paragraph 3, above. CITY and DEVELOPER understand and hereby agree that the loan securing repayment of the HTF Grant in the event of default will be subordinate to the construction financing from the commercial lender and that the private equity loans from the individual members of Developer will be subordinate to the HTF Grant funds, and the parties agree to promptly execute such documents as are necessary to effectuate that subordination. Except for the construction financing from a commercial lender, the private equity loans provided by members of Developer, and the loan associated with the HFT Grant described herein, from the date hereof and thereafter for so long as the DEVELOPER is indebted to the CITY, the DEVELOPER will not, without the prior written consent of the CITY, which shall not be unreasonably withheld:

- a. Liens, Etc. Create, incur, assume or suffer to exist any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance (including the lien or retained security title of a conditional vendor) of any nature, upon or with respect to the Premises, or assign or otherwise convey any right to receive income, except that the foregoing restrictions shall not apply to pledges, liens or other charges or encumbrances:
- i. for taxes, assessments or governmental charges or levies on property or Assets of the DEVELOPER if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings, and as to which it shall have set aside on its books adequate reserves;
 - ii. Liens, charges, and encumbrances described in any Intercreditor Agreement;
 - iii. imposed by law, such as carriers', warehousemen's and mechanics' liens and other similar liens incurred by it in good faith and in the ordinary course of business;
 - iv. arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation;
 - v. deposits to secure the performance of bids, tenders, contracts (other than for the repayment of Indebtedness) or leases, or to secure statutory obligations or surety or appeal bonds, or to secure indemnity, performance or other similar bonds all in the ordinary course of business;
 - vi. purchase money security interests limited to those items of personal property obtained pursuant to purchase money financing;
 - vii. encumbrances pertaining to utilities and other services to be provided to the Premises.
- b. Assumptions, Guaranties, Etc. of Indebtedness of Other Persons. Assume, guarantee, endorse or otherwise become directly or contingently liable (including, without limitation, liable by way of agreement, contingent or otherwise, to purchase or provide funds for payment, to supply funds to or otherwise invest in the debtor or otherwise to assure the creditor against loss) in connection with any obligation or indebtedness of any other Person, except as permitted by this Agreement and except for guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.
- c. Mergers, Etc. Dissolve, liquidate, merge, consolidate with or otherwise acquire all or substantially all of the assets of any other Person or more than ten percent (10%) of the capital stock or ownership interest of any other Person, or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Assets (whether now owned or hereafter acquired) to any Person.
- d. Sales, Etc. of Assets. Sell, assign, lease or otherwise dispose of any of its Assets (other than in the ordinary course of business), unless any such Asset is replaced with a like Asset of equal or greater value.

- e. Sale and Leaseback. Enter into any sale and leaseback arrangement with any lender or investor.
8. Reporting Requirements. From the date hereof and thereafter until the DEVELOPER has sold all units in the Proposed Development, the DEVELOPER will, unless the CITY shall otherwise consent in writing, furnish to the CITY:
- a. as soon as possible and in any event within ten (10) days after the DEVELOPER has received notice from the CITY that it believes there has been an occurrence which will be an Event of Default unless it is cured within the applicable cure period, a statement of the DEVELOPER setting forth details of such possible Event of Default and the action which the DEVELOPER proposes to take to cure with respect thereto;
 - b. as soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of the DEVELOPER until the Proposed Development is completed, a true copy of the financial statements for such year for the DEVELOPER, including therein balance sheets of the DEVELOPER as of the end of such fiscal year and statements of income and retained earnings and a statement of cash flows of the DEVELOPER for such fiscal year, in each case prepared on a reviewed basis by independent certified public accountants of recognized standing acceptable to the CITY.
9. Events of Default. The DEVELOPER shall be in default under this Agreement upon the occurrence of any of the following events ("Events of Default"):
- a. Any representation, covenant or warranty made by the DEVELOPER in this Agreement and/or in any of the Grant Documents or in any written certificate, agreement, instrument or statement contemplated by or made or delivered pursuant to or in connection with this Agreement and/or any of the Grant Documents, shall prove to have been incorrect in any material respect when made; or
 - b. The DEVELOPER shall fail to perform or observe any term, covenant or agreement contained in this Agreement and/or any of the HTF Grant Documents on its part to be performed or observed within ninety (90) days after receiving written notice from CITY; or
 - c. The DEVELOPER shall fail to pay any Indebtedness owing by the DEVELOPER, any interest, commitment fee or premium thereon, when due or, if permitted by the terms of the relevant document, within any applicable grace period as referenced in this section, whether such Indebtedness shall become due by scheduled maturity, by required prepayment, by acceleration, by demand or otherwise; or the DEVELOPER shall fail to perform any term, covenant or agreement on its part to be performed under any agreement or instrument (other than this Agreement or the HTF Grant Documents) evidencing or securing or relating to any Indebtedness owing by the DEVELOPER, when required to be performed, or, if permitted by the terms of the relevant document, within any applicable grace period, if the effect of such failure is to accelerate, or to permit the holder or holders of such Indebtedness to accelerate the maturity of such Indebtedness; or
 - d. This Agreement, or any of the HTF Grant Documents, shall, at any time after their respective execution and delivery and for any reason, cease to be in full force and

effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the DEVELOPER, or the DEVELOPER shall deny that it has any further liability or obligation under this Agreement and/or any of the HTF Grant Documents; or

- e. The DEVELOPER shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay or fail generally to pay its debts as they become due or shall file a voluntary petition in bankruptcy, or if an order for relief shall be entered in any proceeding of the DEVELOPER under the federal bankruptcy code or if DEVELOPER shall file any petition or answer seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or other applicable federal, state or other statute, law or regulation, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the DEVELOPER or of all or any substantial part of its properties, or if action shall be taken for the purpose of effecting any of the foregoing; or
- f. The DEVELOPER shall be adjudicated a bankrupt, or if any proceeding against the DEVELOPER seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or other applicable federal, state or other statute, law or regulation shall be commenced and not stayed or dismissed within ninety (90) days, or if any trustee, custodian, receiver or liquidator of the DEVELOPER or of all or any substantial part of the properties of the DEVELOPER shall be appointed without the consent or acquiescence of the DEVELOPER; or
- g. DEVELOPER fails to comply with the Affordable Housing Covenants as defined in the HTF Grant Documents and such failure is not cured within sixty (60) days' written notice thereof, provided, however, that if such failure cannot be cured within such sixty (60) day period, DEVELOPER shall have an additional reasonable period of time in which to cure the same, provided DEVELOPER commences to cure and diligently prosecutes the cure during the initial sixty (60) day period to the CITY's satisfaction; or
- h. The cancellation, lapse, or termination of any insurance coverage required to be maintained by the DEVELOPER under any of the HTF Grant Documents, and the same is not reinstated within five (5) days of notice from CITY; or
- i. The Premises is conveyed, voluntarily encumbered or otherwise transferred in any way (except as expressly contemplated herein) without the prior written consent of the CITY, which consent shall not be unreasonably withheld; or
- j. The Premises or any material portion thereof is materially injured or destroyed by fire or otherwise or any material portion thereof is taken by eminent domain and the insurance proceeds or condemnation award do not, in CITY's judgment, fully compensate the DEVELOPER therefor; or
- k. A default in any loan documents executed by DEVELOPER for financing the Proposed Development not cured within a period of sixty (60) days after notice of such default.

10. Remedies of CITY. Upon the occurrence of any one or more Events of Default not cured within any applicable grace period and at any time thereafter:

- a. The CITY may, by written notice to the DEVELOPER, declare its obligation to make the HTF Grant and any further disbursements to be terminated, whereupon the same shall forthwith terminate, and the DEVELOPER shall immediately reimburse the CITY for all disbursements already made hereunder.
 - b. The City shall be able to exercise any of its rights under this Agreement or the HTF Grant Documents, maintain an action, and pursue all remedies, in law or in equity against the Developer, including, without limitation, to recover damages incurred by City from such failure, and to require Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and in the HTF Agreement and to immediately cure any failure by the Developer to comply with the covenants set forth herein or in the HTF Grant Documents. In the event of any dispute between the CITY and DEVELOPER under this Agreement or the HTF Grant Documents, in the event the CITY prevails, the CITY shall be entitled to recover from CONTRACTOR its reasonable attorneys fees and costs of litigation.
11. Definitions. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"Assets" means any and all of the DEVELOPER's presently owned or hereafter acquired tangible and intangible property, rights, interests, franchises, licenses, permits, claims and benefits including without limitation all accounts, contract rights, Receivables, chattel paper, general intangibles, patents, trademarks, trade names, copyrights, equipment, machinery, goods, inventory, fixtures, vehicles, leasehold interests, real property, cash and the proceeds, products, accessions, replacements and substitutions therefor, wheresoever located and howsoever evidenced, and any right, title or interest of the DEVELOPER in any of the foregoing types of property owned by any other Person.

"Closing Date" means the date on which this Agreement becomes effective, which date is first written above.

"Disbursements" means each advance of funds by the CITY to the DEVELOPER in accordance with this Agreement as part of the HTF Grant.

"Events of Default" has the meaning assigned to that term in Section 9.

"Indebtedness" (i) all indebtedness or other obligations of any other person for borrowed money or for the deferred purchase price of property or services the payment or collection of which such person has guaranteed (except by reason of endorsement for collection in the ordinary course of business) or in respect of which such person is liable, contingently or otherwise, including, without limitation, liable by way of agreement to purchase, to provide funds for payment, to supply funds to or otherwise to invest in such other person, or otherwise to assure a creditor against loss, (ii) all indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or

services secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance upon or in the Assets and/or property (including, without limitation, accounts and contract rights) owned by such person, whether or not such person has assumed or become liable for the payment of such indebtedness or obligations, and (iii) capitalized lease obligations of such person and (iv) all other liabilities or obligations of such person which would, in accordance with generally accepted accounting principles, be classified as liabilities of a person conducting a business the same as or similar to that of such person.

"Person" means in individual, corporation, partnership, joint venture, trust or unincorporated organization, or a government or any agency or political subdivision thereof.

"HTF Grant Documents" means all of the documents and agreements referenced in this Agreement, all exhibits and amendments thereto, and all other documents that the CITY may require in connection therewith up to the Closing Date.

12. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistent with those applied in the preparation of the financial statements and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles.
13. No Waiver; Cumulative Remedies. No failure or delay on the part of the CITY, or any other holder of the Note in exercising any right, power or remedy under this Agreement and/or any of the HTF Grant Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.
14. Amendments, Etc. No amendment, modification, termination, or waiver of any provision of this Agreement or any of the HTF Grant Documents nor consent to any departure by the DEVELOPER therefrom, shall in any event be effective unless the same shall be in writing and signed by the CITY and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the DEVELOPER in any case shall entitle the DEVELOPER to any other or further notice or demand in similar or other circumstances, except as otherwise provided herein.
15. Addresses for Notices, Etc. All notices, requests, demands and other communications provided for hereunder shall be in writing (including telegraphic communication) and delivered by hand, mailed or telegraphed or delivered to the applicable party at the addresses indicated below:

If to the DEVELOPER: ADAM'S APPLE, LLC
 17 Chestnut Street, 3rd Floor

Portland ME 04101

with a copy to: Barbara Vestal, Esq.
Chester & Vestal, P.A.
107 Congress Street

Portland, ME 04101

If to the CITY: City of Portland
389 Congress Street
Portland, ME 04101
Attn: City Manager

with a copy to: Corporation Counsel
City of Portland
389 Congress Street
Portland, ME 04101

or, as to each party, at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall be effective when actually delivered by hand or shall, when mailed or telegraphed, be effective three (3) days after deposit in the mails or delivery to the telegraph company, respectively, addressed as aforesaid, except that notices or requests to the CITY pursuant to any of the provisions of Article I, shall not be effective until received by the CITY.

16. DEVELOPER shall indemnify and hold CITY and its agents harmless from and against any and all claims, demands, liability, loss cost or expense (including, but not limited to reasonable attorney's fees and other costs of litigation) which may be incurred by CITY arising out of or in any way related to DEVELOPER's breach of any of its obligations under this Agreement or the HTF Grant Documents or any action taken by CITY to enforce or exercise its rights under this Agreement or the HTF Grant Documents as a result of such breach. The obligations under this section shall survive the termination or expiration of this Agreement as necessary to effect its provisions.
17. Protection of Assets. In addition to the disbursements, the CITY may at any time at its option discharge or bond any liens or other encumbrances upon, purchase and maintain required insurance in respect of, and otherwise preserve and protect the value of the Assets, and pay any other sums DEVELOPER is obligated to pay under this Agreement, the Note and/or the Grant Documents. Any amounts expended by the CITY for any such purpose shall be treated in all respects as disbursements and shall be secured by the Grant Documents.
18. Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the DEVELOPER and the CITY and their respective successors and assigns,

except that the DEVELOPER shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of the CITY. The CITY may assign, negotiate or pledge all or any portion of its rights under this Agreement or any of its rights or security with respect to the HTF Grant Documents and in case of such assignment, negotiation or pledge the DEVELOPER shall accord full recognition thereto.

19. Grantee understands that the grant funds to be supplied by the City represents the City's sole commitment to the cost of the Proposed Development. Any and all additional costs associated with the Proposed Development over and above the City's grant funding shall be borne by the Grantee. This Agreement does not form a partnership or joint venture between the parties hereto.
20. Governing Law. This Agreement and the Note shall be governed by, and construed in accordance with, the laws of the State of Maine.
21. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
22. Survival. This Agreement and all covenants, agreements, representations and warranties made herein and the certificates delivered pursuant hereto shall survive the making by the CITY of this HTF Grant and the execution and delivery to the CITY of the HTF Grant Documents.
23. Headings. Article and Section headings in this Agreement are included herein for convenience or reference only and shall not constitute a part of this Agreement for any other purpose.
24. Inconsistent Provisions. To the extent of any inconsistency between the provisions of this Agreement, the Note and/or the HTF Grant Documents, the provisions of this Agreement shall control; provided, however, that nothing herein or in any other part of this Agreement shall be construed to limit the right of DEVELOPER to require PDC, as SELLER, to convey the Premises to DEVELOPER pursuant to Paragraph 8 of the Development Consulting Agreement between PDC and Developer and/or pursuant to Paragraph 9 of the Purchase and Sale Agreement between PDC and Developer in the event of the conditions outlined therein.

Signature page follows

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the parties as of the date first above written.

WITNESS:

CITY OF PORTLAND

By: _____
Jon Jennings
Its City Manager

ADAM'S APPLE, LLC

Witness

By: _____
Printed Name: _____
Its _____

EXHIBIT J

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is entered into by and between the CITY OF PORTLAND, a public body corporate and politic with a mailing address of City Hall, 389 Congress Street, Portland, ME 04101 (City") and Adam's Apple, LLC, a Maine limited liability company with a place of business and mailing address of 17 Chestnut Street, Portland, Maine 04101 ("Developer").

W I T N E S S E T H

WHEREAS, the City is providing a grant to Developer in the amount of \$175,000.00 from its Housing Trust Fund (the "Grant") to assist with the construction of an 8 unit residential condominium project for low to moderate income families on land known as 65 Munjoy Street, Portland, Maine (the "Development"), and the City is causing that land to be conveyed to Developer by the Portland Development Corporation for the sum of one dollar; and

WHEREAS, the Developer acknowledges City's resulting beneficial interest in the Development, and Developer acknowledges that its development and sales of units in the Development are in furtherance of the discharge of a public trust; and

WHEREAS, City has provided the Grant to Developer and has caused the land to be conveyed to Developer in consideration of the Developer's agreement to abide by the provisions of this Declaration,

NOW THEREFORE, the City and Developer agree as follows:

1. During the term of this Declaration, all of the units in the Development, being at least 8 units, shall be available for sale to and ownership by only those households earning no more than 120% of area median income ("Eligible Households") as defined by the U.S. Department of Housing and Urban Development ("HUD") or any successor agency.

2. The covenants and restrictions of the Developer and City set forth herein are intended to be and shall be considered covenants which run with the real estate described in Exhibit A attached hereto and shall during the term of this Declaration bind all subsequent owners of the real estate described in Exhibit A attached hereto, and all owners of units in the Development, except to the extent provided herein.

3. The covenants of the Developer set forth herein shall survive a sale, transfer, or other disposition of the Development by the Developer, foreclosure or transfer of title in lieu of foreclosure, except to the extent provided herein, but shall cease to apply to the Development in the event of involuntary noncompliance caused by fire or other substantial destruction, seizure, requisition or other event that prevents City from enforcing the Developer's covenants contained herein.

4. The term of this Declaration shall commence at the date of the execution of the Declaration and continue for a period of up to ninety (90) years after the first conveyance of any Unit to a Unit Owner unless sooner terminated by City as provided herein. For a period of ninety (90) years after completion of the Condominium (the "Restricted Period"), the Condominium Owners' Association shall not have any power to amend the Affordability Declaration without the consent of the City of Portland. After the passage of twenty (20) years after completion of the Condominium, and once every ten (10) years thereafter or at such other times as may be allowed by the City of Portland, upon the vote of a majority of the Unit owners, the Condominium Owners' Association may petition the City of Portland, as Qualified Holder under 33 M.R.S.A. Section 121(3), to terminate this Declaration of Covenants, Conditions and Restrictions. Upon (a) the approval of such termination by the City of Portland, as evidenced by the recording of a document terminating the Affordability Declaration, or (b) the passage of ninety (90) years after the first conveyance of any Unit to a Unit Owner, the Units shall no longer be subject to any affordability restrictions.

5. Developer and City agree and intend that the covenants contained herein are to be interpreted as "Affordable Housing Covenants" as defined by 33 M.R.S.A. Section 121. Both Developer and the City shall be deemed to be "Qualified Holders" under 33 M.R.S.A. Section 121(3) from the date of execution hereof until the date of the completion of the first sale of each of the units in the Development (hereinafter "Initial Sales Period"); during that Initial Sales Period, Developer shall have primary responsibility for the enforcement and administration of this Agreement and the City shall take no action either to enforce or administer this Agreement unless Developer fails to do so after written notice by the City.

Notwithstanding anything to the contrary above, during the initial sales period, Developer shall obtain written and signed certifications of residents in a form acceptable to City to determine the qualifications of the residents for purchase of a unit. Such certifications shall contain clauses wherein each resident (a) certifies as to the accuracy of statements made relating to the resident's income, (b) agrees that resident income and other eligibility requirements shall be deemed substantial and material obligations of the ownership, (c) agrees to comply all requests for information with respect thereto from Developer or City, and (d) agrees that failure to provide accurate information or refusal to comply with a request for information shall be deemed a violation of a substantial obligation of the ownership. Developer covenants and agrees to take such action as City reasonably deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein.

After the Initial Sales Period, provided Developer has not defaulted in its obligations under this Agreement, Developer shall cease to be a Qualified Holder and the City shall be the sole Qualified Holder with sole right, but not the obligation, to enforce and administer these covenants.

6. Developer hereby covenants and represents to City as follows:

(a) The Development shall consist of one or more buildings and be located on the real estate described in Exhibit A attached hereto.

(b) All of the units in the Development shall be sold to Eligible Households during the Initial Sales Period. After the Initial Sales Period, it shall be City's responsibility to ensure that on subsequent sales, all of the units in the Development are sold to Eligible Households.

7. During the Initial Sales Period, Developer shall maintain and keep current all books, documents, plans and records concerning the Development, including, but not limited to, records related to compliance with the covenants contained in this Declaration. Such books, records, documents and plans shall be kept for a minimum of six (6) years after the expiration of the Initial Sales Period.

8. During the Initial Sales Period, Developer covenants and agrees to take such action as City deems necessary to comply with the covenants herein or to correct or cure any failure of the Developer to comply with the covenants herein. In the event Developer fails to comply with the covenants set forth herein and fails to cure such non-compliance within any applicable cure period, City may maintain an action to require Developer, through injunctive relief or specific performance, to comply with the provisions and covenants set forth herein and to immediately cure any failure to comply with the covenants set forth herein by Developer.

9. In the event the Developer fails to comply with the covenants set forth herein, or fails to comply with the terms of a certain Housing Trust Fund Grant Agreement between the Developer and the City of near or even date herewith (the "HTF Agreement"), a copy of which is attached hereto as Exhibit B and incorporated herein by reference, and fails to cure such non-compliance within any applicable cure period, City shall be able to exercise any of its rights under the HTF Agreement, maintain an action in law or in equity against the Developer to recover damages incurred by City from such failure, and to require Developer (through injunctive relief or specific performance) to comply with the provisions and covenants set forth herein and in the HTF Agreement and to immediately cure any failure to comply with the covenants set forth herein by the Developer. In the event of any litigation between the City and Developer under this Declaration or the HTF Agreement, should the City be the prevailing party, the City shall be entitled to recover from Developer its reasonable attorneys fees and costs of litigation.

10. Developer shall defend, indemnify and hold City and its agents harmless from and against any and all claims, demands, liability, loss, cost or expense (including, but not limited to attorney's fees and other costs of litigation) which may be incurred by the City arising out of or in any way related to the Developer's breach of any of its obligations under this Declaration or any action taken by the City to enforce or exercise its rights under this Declaration as a result of such breach, except for claims arising from the gross negligence or willful acts of the City. The obligations under this section shall survive the termination or expiration of this Declaration as necessary to effectuate its provisions.

11. This Declaration may be amended or modified in whole or in part only by written agreement of Developer and City clearly expressing the intent to modify this Declaration.

12. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of remaining portions thereof.

13. This Declaration shall be binding upon the Developer and its successors and assigns and shall inure to the benefit of and be enforceable by City, its successors, transferees and assigns.

14. Any notice or demand required or provided for in this Declaration shall be in writing and shall be deemed to have been sufficiently given for all purposes when hand-delivered or mailed by certified or registered United States mail, postage prepaid, or sent by overnight United States mail or overnight commercial delivery service to the Developer or the City at their respective addresses set forth herein, or at such other address as either of them may from time to time hereafter designate by notice given to the other as herein provided.

15. This Declaration is created pursuant to and shall be construed in accordance with and governed by the laws of the State of Maine, including 33 M.R.S.A. Section 121, et. seq.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Developer and City this ____ day of _____, 2015.

WITNESS

CITY OF PORTLAND

By: _____
Jon Jennings, City Manager

STATE OF MAINE
CUMBERLAND, ss.

_____, 2015

Personally appeared the above named Jon Jennings, City Manager of the City of Portland as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland.

Before me,

Notary Public/Attorney at Law

Printed name: _____

My Commission Expires: _____

WITNESS

ADAM'S APPLE, LLC, Developer

By: _____
Peter L. Bass, its Member

STATE OF MAINE
CUMBERLAND, ss.

_____, 2015

Personally appeared the above named Peter L. Bass, Member of Adam's Apple, LLC as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said company.

Before me,

Notary Public/Attorney at Law

Printed name: _____

My Commission Expires: _____

MEMORANDUM OF UNDERSTANDING

Marketing Plan - 65 Munjoy Street: To Address First-Time Homebuyer Set-Aside and Household Size Restrictions for 3 Bedroom Units

This Memorandum of understanding is made the _____ day of _____, 2015 by and between Adam's Apple, LLC, a Maine limited liability corporation ("AALLC") and the City of Portland, a Maine body corporate and politic with a place of business in Portland, Maine (the "City"), collectively, (the "Parties").

WITNESSETH:

WHEREAS, the City has agreed to sell and AALLC has agreed to purchase an approximately 6,771 square foot parcel of land located in the vicinity of 65 Munjoy Street in Portland, Maine; and

WHEREAS, AALLC was selected by the City through a competitive RFP (request for proposals) process and based on the development proposal submitted by AALLC on January 13, 2015 calling for an 8-unit residential condominium with all units to be sold at price points affordable to households of moderate incomes in the range of 100-120% of Area Median income (the "Project"); and

WHEREAS, the City, in order to advance its affordability goals for the Project, intends to grant the project a \$175,000 subsidy from the City's Housing Trust Fund (the "HTF"); and

WHEREAS, on June 17, 2015, AALLC was successful in securing a commitment from the Greater Portland Council of Governments in the amount of \$200,000 to partially fund the environmental remediation of contaminated soils known to exist at the subject property; and

WHEREAS, on July 8, 2015 the City's Housing and Community Development Committee voted unanimously to recommend that the City Council approve the project as presented but with an additional requirement that four (4) of units be set aside for first-time homebuyers at initial point of sale only; and

WHEREAS, AALLC supports the spirit and intent of a first-time homebuyer set-aside and has pledged to actively pursue the goal of identifying and placing qualifying first-time homebuyers in at least 4 of the units at the Project to the extent that this can be achieved without adding risk or delay to, or otherwise affecting the financial feasibility of the Project; and

WHEREAS, AALLC supports the spirit and intent of selling 3 bedroom units to households of 3 or greater and has pledged to actively pursue the goal of identifying and placing qualifying 3 plus member households in the two (2) 3-bedroom units at the

Project to the extent that this can be achieved without adding risk or delay to, or otherwise affecting the financial feasibility of the Project; and

WHEREAS, AALLC, finds that a first-time homebuyer set-aside as well as certain restrictions on household size, if legally or contractually binding on the Project, through such mechanism as a condition of purchase and sale, condition of HTF grant agreement, deed restriction, or the like, would extend scheduled Project marketing time and Project carrying costs and therefore impair AALLC's ability to secure construction financing at terms needed to make the Project feasible; and

WHEREAS, the parties wish to memorialize the terms by which the first-time homebuyer set-aside goal and certain household size restrictions will be pursued by AALLC in the course of its execution of the Project without unduly affecting AALLC's ability to secure construction loan financing at terms that preserve the feasibility of the Project;

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. AALLC pledges to work closely with the City to implement the following internal project marketing plan in order to provide would-be first-time homebuyers with ample time and support to learn about the project, demonstrate their eligibility and financial capacity to purchase a unit, and benefit from a preferred position in the reservation process in the form of a first-time homebuyer set-aside.
2. AALLC pledges to work closely with the City to implement the following internal project marketing plan in order to provide 3 plus member household homebuyers with ample time and support to learn about the project, demonstrate their eligibility and financial capacity to purchase a unit, and benefit from a preferred position in the reservation process.

AALLC's internal marketing plan to restrict 3 bedroom units to households of 3 or more and the first-time homebuyer set-aside plan shall be structured as follows:

Phase I – Open Marketing Campaign

Within 21 days of execution of Purchase and Sale, and HTF Agreements between the Parties, AALLC shall craft and implement, with and through its contracted sales agent, a comprehensive marketing campaign to actively market the units at the Project by various means including but not limited to:

- i. List one of each type of unit on the Multiple Listing Service (MLS), referencing assistance available for first-time homebuyers, and directing interested parties to contact AALLC's sales agent, Bay Realty; and

- ii. Run an advertisement for the Project in the Sunday Real Estate section of the Portland Press Herald / Maine Sunday Telegram, referencing assistance available for first-time homebuyers, and encouraging interested parties to contact AALLC's sales agent; and
- iii. Distribute a press release to local media outlets announcing the Project, referencing assistance available for first-time homebuyers, and encouraging interested parties to contact AALLC's sales agent; and
- iv. Pursue first-time homebuyer leads received prior to the execution of contractual agreements between the Parties and add such leads to the Interested Parties List; and
- v. Solicit first-time homebuyer leads from Avesta Housing's Homeownership Center (AHC), local FHA lenders, and the City of Portland's Community Development Division (CDD).

Phase II – First-Time Homebuyer Set-Aside Period and 3 Bedroom Unit Family Size Restrictions.

For a period of **70 days** following the full commencement of the marketing campaign described above, AALLC shall set aside no fewer than **6 of the units** at the Project for buyers that qualify as first-time homebuyer's as defined by MaineHousing (the "First-Time Homebuyer Set-Aside Period"). During the First-Time Homebuyer Set-Aside Period, AALLC shall either directly or through its agents:

- i. Collect and compile a general "Interested Parties List" of all parties that express interest in purchasing a unit at the Project as a result of the marketing efforts outlined above; and
- ii. Communicate with all interested parties to assess whether such parties may potentially qualify as "First-Time Homebuyers" as defined by MaineHousing and/or as "3 or more member households".
- iii. Openly share and regularly review the Interested Parties List with the City of Portland's Community Development Division and Avesta Housing's Homeownership Center each of which will provide support in the effort to prequalify first-time homebuyers and 3 or more member households.
- iv. Surround all potential First-Time Homebuyers with outreach and support from AALLC's sales agent, Avesta Housing's Homeownership Center (AHC), local FHA lenders, and the City of Portland's Community Development Division (CDD). Such support shall include but not be limited to:

- a. Free enrollment in AHC classes for first-time homebuyer and financial literacy training, and
 - b. Mortgage prequalification assistance, and
 - c. Review of all forms of sub-market assistance available to first-time homebuyers such as FHA financing, down-payment assistance programs, and the like.
- v. Prepare as many first-time buyers and 3 or more member households as possible from the Interested Parties List to be financially pre-qualified to move forward and enter into a reservation agreement for a unit within the Project.
- vi. Enter into reservation agreements (if prior to recording of subdivision plat and declaration of condominium) or purchase & sale agreements (if post recording of plat and declaration) with qualifying first-time homebuyers and with 3 or more member households who have demonstrated the financial capacity and desire to purchase a unit in the Project at the full list price.
- vii. Reservation agreements¹ will be converted to purchase and sale agreements upon recording of the subdivision plat and declaration of condominium provided that there will have been no change in their qualifications in terms of First-Time Homebuyer status, household size status or financial capacity to close at the full list price.
- viii. Phase II shall end with respect to first time homebuyers after **6 units** have been reserved or contracted for sale to qualifying first-time homebuyers or 70 calendar days from the start of the phase; whichever comes first. Phase II shall end with respect to 3 or more member households 70 calendar days after the start of the phase, or sooner if both 3-bedroom units are under contract to first time homebuyers who are also 3 or more member households.
- ix. During Phase II, at least **2 units** shall be exempt from the first time homebuyer set-aside and may be reserved or placed under contract with non-first-time homebuyers (the "Exempt Units"). One of the two Exempt Units shall be a one-bedroom unit and the other may be a two- or three-bedroom unit, at the discretion of AALLC. Aside from these bedroom parameters, the Exempt Units may be any two units within the Project.

Phase III– Open Reservation Period

Following the end of Phase II, as defined above, AALLC will continue to work with its community partners as outlined for Phase II in an ongoing effort to attract, support, and qualify first-time homebuyers and 3 or more member households to the project. However, AALLC will be under no further obligation under this or any other agreement to provide first-time homebuyers or 3 or more member households with any special set-asides, and

¹ See Sample Reservation Agreement Attached

following the end of Phase II, all remaining units in the Project, if any, may be marketed and sold to any qualifying buyer regardless of household size and regardless of whether a first time homebuyer. This internal marketing plan applies only to initial unit sales, and has no bearing on resale of any unit by the initial purchaser.

IN WITNESS WHEREOF, the parties have caused the Memorandum to be executed as of the day and year first written above.

ADAM'S APPLE, LLC

Witness

By: _____
Ethan Boxer-Macomber,
Managing Member

Witness

By: _____
Peter Bass,
Managing Member

CITY OF PORTLAND

Witness

By: _____
Jon P. Jennings, City Manager

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Order 69-15/16
Tab 14-9-2/15
Tab 8 10-5-15
DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 6, (BUILDINGS AND BUILDING REGULATIONS),
Re: Registration and Renewal Fee Discounts**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Chapter 6, Section 6-151 of the Portland City Code
is hereby amended as follows:*

Sec. 6-151. Registration required.

(a) For purposes of this Article, a *rental unit* is a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. A Single-Family Home, Condominium, or Apartment that is occupied by the owner or owners, and of which no portion is rented or available for rent, is not a *rental unit*. Any portion of a Single-Family Home, Condominium, or Apartment that is rented to or available to be rented to an individual or individuals who are not the owner or owners is a *rental unit*. *Dwelling units* and *rooming units* as defined in §6-106 are, without limitation, *rental units*.

(b) *Registration of ownership.* The owner or owners of all buildings containing one (1) or more rental units within the city shall register their ownership interest, address, telephone number, and e-mail address, as well as the name, address and telephone number of the person or entity responsible for managing the property with a housing safety official designated by the city manager as provided in section 6-152 by January 1, 2016 or within thirty (30) days of purchase of the property and/or building, whichever occurs later.

(c) *Fee for Registration.* The owner or owners shall pay to a housing safety official designated by the city manager a fee of \$35 per rental unit at the time of registration. Failure to pay this fee by January 1, 2016 shall constitute a violation pursuant to section 6-153.

(d) *Annual Renewal and Fee.* The owner or owners shall renew their registration annually by updating the information provided in their initial registration and by payment to the City through a housing safety official designated by the City Manager of a fee of \$35 per rental unit. Failure to update information or pay the annual renewal fee by January 1 shall constitute a violation pursuant to section 6-153.

(e) *Registration of management companies.* Any individual, firm, corporation or purchaser under a land installment contract pursuant to Title 13 M.R.S.A. § 481 et seq. as may be amended from time to time, managing property subject to the registration requirements of subsection (a) shall register with the building authority its management responsibility by January 1, 2016 or within thirty (30) days of assuming management responsibility. Any filing shall be updated, at least annually, if there are any changes whatsoever with regard to the information supplied. Failure to register management responsibility or update the information supplied regarding such management responsibility shall constitute a violation pursuant to section 6-153.

(f) *Registration and Renewal Fee Discounts.* In recognition that there are certain actions that owners of rental units may take that reduce the safety risk and decrease the financial burden upon the City, the following discounts to the registration fee and renewal fee are available:

- (1) \$10 discount for each rental unit within a fully-sprinkled building as verified by a testing report, maintenance report or a maintenance contract, which shall be provided at the time of registration and upon each renewal;
- (2) \$7.50 discount for each rental unit within a building with a centrally-monitored fire alarm as verified by Fire Department logs or an alarm contract, which shall be provided at the time of registration and upon each renewal;
- (3) \$5.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Housing Quality Standard (HQS) inspection within the preceding year as verified by the HQS inspection report, which shall be provided at the time of registration and upon each renewal;

- (4) \$10.00 for a rental unit that has been subject to and has passed a Housing and Urban Development Uniform Physical Condition Standard (UPCS) inspection within the preceding year as verified by the UPCS inspection report, which shall be provided at the time of registration and upon each renewal;
- (5) \$2.50 for a rental unit that is subject to a signed lease which prohibits smoking by tenants as verified by a copy of the current lease, which shall be provided at the time of registration and upon each renewal. The existence of and enforcement of such provision may also be verified through inspections or upon spot checks of the rental unit.

The total amount of discounts from the annual registration or renewal fee as described above shall not exceed \$20.00, and the minimum annual fee for registration or renewal shall be \$15.00 per unit.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Julie Sullivan

DATE: 9/14/15

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Housing Safety Office: Proposed Landlord Registration Fee Discounts

SPONSOR: Councilor Suslovic, Public Safety, Health & Human Services; met 9/8/15 and voted 3-1.

(If sponsored by a Council committee, list the date the committee met and the results of vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading Sept 21 Final Action Oct 5

Can action be taken at a later date: Yes X No (If no why not?) The landlord registration fees are due Jan. 1, and the new Housing Safety Office needs the discounts finalized in order to conduct thorough outreach to the landlords.

PRESENTATION: (List the presenter(s), type and length of presentation)

I. SUMMARY OF ISSUE (Agenda Description) As part of the overall recommendations to improve rental housing safety, the Fire/Code Task Force suggested a \$25 per-unit annual landlord registration fee to strengthen the City's existing landlord registration ordinance, ensure that the City has accurate and complete data on rental housing stock including landlord contact information, and support the new Housing Safety Office. The Task Force used the City's conservative estimate that there are 17,000 rental housing units in Portland, excluding the approximately 1,000 Portland Housing Authority-owned units. During the Fiscal Year 2016 budget process, the budget team opted to increase the per-unit fee to \$35 and assume a 30% noncompliance rate, for total estimated revenue of \$416,500.

The Task Force did not consider any discounts or exemptions beyond the PHA-owned units; at the City Council's request, I have researched possible options and an ad-hoc stakeholder group (with the landlords who participated in the Task Force as well as others; please see the list below) met on Friday, August 7 to discuss these options.

During the landlord stakeholder meeting on August 7, one of the key points made was that the landlord registration process can and should be used to incentivize safer buildings, though they agreed that some safety measures can be hard to verify, including an enforced smoke-free policy. They argued, however, that offering a nominal discount for a smoke-free policy could be an effective means to educate landlords about the issue. Ultimately, they came to consensus on the following discounts:

- -\$10 for a fully-sprinkled building (verification: testing/maintenance report and/or maintenance contract)
- -\$7.50 for a centrally-monitored fire alarm (verification: Fire Department logs and/or alarm contract)
- -\$5 for a HUD HQS inspection (verification: inspection report within last year)
- -\$10 for a HUD UPCS inspection (verification: inspection report within last year)
- -\$2.50 for a smoke-free policy (verification: copy of lease and spot checks)
- The fee should not drop below \$15

II. REASON FOR SUBMISSION (Summary of Issue/Background) See I.

III. INTENDED RESULT Finalize landlord registration fees for 1/1/16 implementation.

IV. COUNCIL GOAL ADDRESSED Rental housing safety

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS Landlord registration fee memo; options; program research; proposed ordinance language.

Prepared by: Julie Sullivan and Adam Lee

Date: 9/14/15



Executive Department
Julie Sullivan, Acting Chief of Staff

M E M O R A N D U M

TO: Public Safety, Health & Human Services Committee, City Council
FROM: Julie Sullivan
DATE: August 27, 2015
RE: Landlord Registration Fee – Possible Discounts/Exemptions and Revenue Impacts

As part of the overall recommendations to improve rental housing safety, the Fire/Code Task Force suggested a \$25 per-unit annual landlord registration fee to strengthen the City's existing landlord registration ordinance, ensure that the City has accurate and complete data on rental housing stock including landlord contact information, and support the new Housing Safety Office. The Task Force used the City's conservative estimate that there are 17,000 rental housing units in Portland, excluding the approximately 1,000 Portland Housing Authority-owned units. During the Fiscal Year 2016 budget process, the budget team opted to increase the per-unit fee to \$35 and assume a 30% noncompliance rate, for total estimated revenue of \$416,500.

The Task Force did not consider any discounts or exemptions beyond the PHA-owned units; at the City Council's request, I have researched possible options and an ad-hoc stakeholder group (with the landlords who participated in the Task Force as well as others; please see the list below) met on Friday, August 7 to discuss these options.

First, thirty-four municipalities around the country who have landlord registration fee ordinances were reviewed. An extremely wide range of fees are required, with more commonalities among the kinds of discounts or exemptions offered. Many exempt owner-occupied buildings with two or sometimes more units; the Task Force chose not to include this exemption as part of its initial recommendations. Many more offer no discounts or exemptions whatsoever. Most have some discount or exemption for government-owned/operated buildings and/or those inspected as part of federal and/or state funding requirements.

I spoke at length with Bob Conroy of MaineHousing, who is expert on HUD funding requirements around inspections, as well as his colleague Kim Weed, who is in charge of inspections for MaineHousing. Both agreed that discounting or exempting government-owned/operated units or those subject to state/federal inspections is a meaningful choice that still ensures the safety of those units. They did not think that smoke-free policies were reasonable grounds for a discount, nor did I find evidence among any of the 34 municipalities reviewed of such discounts.



Executive Department
Julie Sullivan, Acting Chief of Staff

Finally, the option of a discount for a fully-sprinkled building is far more complicated to enact than one would think, primarily because our ordinance does not clearly distinguish a threshold above which a building is required to be fully sprinkled, nor do we have any records showing how many rental housing units are in buildings which are fully sprinkled. I also did not find evidence among any of the 34 comparison cities of such a discount.

During the landlord stakeholder meeting on August 7, one of the key points made was that the landlord registration process can and should be used to incentivize safer buildings, though they agreed that some safety measures can be hard to verify, including an enforced smoke-free policy. They argued, however, that offering a nominal discount for a smoke-free policy could be an effective means to educate landlords about the issue. Ultimately, they came to consensus on the following discounts:

- -\$10 for a fully-sprinkled building (verification: testing/maintenance report and/or maintenance contract)
- -\$7.50 for a centrally-monitored fire alarm (verification: Fire Department logs and/or alarm contract)
- -\$5 for a HUD HQS inspection (verification: inspection report within last year)
- -\$10 for a HUD UPCS inspection (verification: inspection report within last year)
- -\$2.50 for a smoke-free policy (verification: copy of lease and spot checks)
- The fee should not drop below \$15

On the following spreadsheet, you will see the revenue impact of implementing an exemption and a discount for the approximately 3,500 units that are inspected by state or federal agents. There is about an \$86,000 revenue loss for an exemption, and about a \$16,000 loss for a \$5/unit discount for a HUD HQS inspected properties and a \$10/unit discount for HUD UPCS inspected properties.

Because we have no way to estimate the number of residential rental units with sprinkler systems, fire alarms, or smoke-free policies, I cannot predict with any certainty what the revenue loss would be for such discounts. We could put fields on the registration form and begin to track these with the idea of providing discounts once we understand the ramifications.

It seems prudent to implement the discount for government-inspected units with a minimal revenue loss; I am hopeful we can minimize the non-collection rate through efficient and effective staff outreach and follow-up around the registration process. These units require less City staff time to inspect or follow up (we do receive complaints regarding these properties), and the programs are generally not able to pass on any rent increases to their tenants. It does seem that discounts for sprinkler systems, centrally-monitored fire alarms, and smoke-free policies may make sense, and perhaps could be phased in for year two.



Executive Department
Julie Sullivan, Acting Chief of Staff

Following the stakeholder meeting, the City Manager met with Councilor Suslovic regarding the possible discounts. Councilor Suslovic supported the stakeholder group's recommendations and added that he would like the smoke-free policy discount to require that landlords include smoke-free language in their leases.

Stakeholder Group:

Mark Adelson, Portland Housing Authority

Jim Harmon

Norman Maze, Shalom House

Russ Pierce, Port Properties

Cullen Ryan, Community Housing of Maine

Crandall Toothaker (*Task Force member*)

Dana Totman, Avesta Housing

Brit Vitalius, Southern Maine Landlord Association President (*Task Force member*)

Carleton Winslow (*Task Force member*)

Landlord Registration Fee
Possible Discounts/Exemptions
8/10/2015

Option 1: Exemption for all government owned/operated, and/or inspected units.

All PHA-owned units - approx 1,000 (no impact to initial registration fee revenue estimate because not included)
Approximately 3,500 additional units are inspected by state or federal agents as a condition of their funding

	Rental units	Per unit fee	Collection rate	Revenue estimate	Loss
Initial registration fee revenue estimate	17,000	\$ 35	70%	\$ 416,500	
Revenue with exemption	13,500	\$ 35	70%	\$ 330,750	\$ 85,750

Option 2: Exemption for government owned/operated and discount for government-inspected units.

	Rental units	Per unit fee	Collection rate	Revenue estimate	Loss
Revenue with exemption and discount	13,500	\$ 35	70%	\$ 330,750	
		~2500 at \$30,			
	3,500	~1000 at \$25	70%	\$ 70,000	
				\$ 400,750	\$ 15,750

Option 3: Exemption for government owned/operated and discount for full sprinkler system.

According to the City's Fire Prevention Office, there is no way to estimate the number of buildings that are fully sprinkled. There have been changes over the years to City ordinances affecting sprinkler requirements, so there is no clear threshold above which sprinklers are required, nor does the City track which buildings are fully sprinkled.

All new construction, including single-family homes, requires sprinklers (at least for the past 4-5 years).

Option 4: Exemption for government owned/operated and discount for smoke-free policies.

I could find no evidence of any other municipality around the country providing a discount for smoke-free policies. Arguably, there is also a potentially significant difference between having a policy and enforcing it, which would be difficult for inspectors to assess. I do not recommend a discount for smoke-free policies.

Landlord Registration Fee Program Research

City/Town	Fee	Discount(s)/Exemption(s)
Collinsville, IL	\$25 plus \$25/unit	None
Baltimore, MD	▪ Owner-occupied, 1-2 tenants: \$40/unit ▪ Owner-occupied, 3+ tenants: \$50/unit ▪ Not owner-occupied: \$50/unit ▪ Must be inspected at landlords' cost by state-licensed home inspector	▪ Solely owner-occupied with relative of owner ▪ 7+ units in one building with one owner ▪ Apartment complexes ▪ Group houses ▪ Exempted as required by federal or state law
Bellingham, WA	\$10/unit for 1-20 units in same building, annually \$8/unit for 20+ units in same building, annually	The following rental housing units are required to register but are exempt from paying the registration fee and from inspection: Owner-occupied buildings containing two units; Units owned, operated or managed by a government agency or authority or are specifically exempted from a fee by state or federal law, however, once government ownership, operation or management ceases so does the exemption for fee payment; Rental units that receive funding or subsidies from federal, state or local government, and that are inspected at least once every three years as a condition of that funding; and Accessory dwelling units that are attached to a single family residential unit AND the owner of the property resides in either of those housing units.
Bernardsville, NJ	\$100/unit annually	None
Boston, MA	▪ \$25/unit initial annually, \$15/unit renewals ▪ \$2500 max per building; \$5000 max per complex (2+ buildings)	▪ Rental units owned/operated by the government ▪ Owner-occupied in building with 6 or fewer units
Broward County, FL	\$75 annually	owned by a federal, state, or local housing program or the federal Department of Housing and Urban Development
Burlington, NJ	\$100/property, every two years	None
Burlington, VT	\$50 initially and upon sale/transfer	None

City/Town	Fee	Discount(s)/Exemption(s)
Cedar Rapids, IA	\$50 one-time license fee plus the following annually: ▪ \$30 single-family or duplex ▪ \$25 plus \$8/unit for 3+ unit buildings	Owner-occupied units
Coral Springs, FL	\$56/property	Owner-occupied
DeKalb, IL	\$50/unit, plus \$15.24/unit over 2 units	None
Flint, MI	\$112 annual license; inspection fees as follows: ▪ \$225 single family ▪ \$300 two family ▪ \$90/unit for 3-4 units ▪ \$75/unit for 5-50 units ▪ \$45/unit for 51+ units	None
Freeport, IL	\$19/unit	None
Gary, IN	\$75 initially, \$25 renewal annually	None
Hammond, IN	\$80/unit, annually	None
Hartford, CT	\$25/property at construction, renovation, sale, etc	None
Lambertville, NJ	\$50/property, annually	None
Lawrence, NJ	\$75/unit, annually plus \$75 for certificate of inspection by licensed Lawrence Twp Housing Inspectors	Exempt if owner-occupied or occupied by relative of owner and no rent paid
Metuchen, NJ	\$40 per rental unit per address; \$50 for the first 4 dwelling units \$10 for each additional 4 units or fraction thereof.	None
Middlesex, NJ	\$50/unit annually	None
Millville, NJ	\$150/unit, annually	None
Nashville, TN	\$10 flat fee, annually	None
North Brunswick, NJ	\$30/property, every 3 years	None
Overland Park, KS	▪ Single family, duplex, triplex only ▪ \$10 for first unit, \$2/additional unit, annually	None
Palmyra, NJ	\$110 annually	None
Pittsburgh, PA	\$65/unit, annually	Exemptions for universities, institutional housing, Housing Authority – "because the City has their contact info already"

City/Town	Fee	Discount(s)/Exemption(s)
		Considering additional exemptions.
Scranton, PA	\$150/property plus \$50/unit, annually	Owner-occupied with 4 or fewer units Elderly, multi-dwelling units with 75% or more of occupants over age of 65 Those that operate under IRS Code Section 42
Seattle, WA	▪ \$175/property plus \$2/unit ▪ Renew every 5 years ▪ Required inspection by City or City-certified inspector every 10 years at landlords' expense	Housing units that a government entity or housing authority owns, operates or manages; or units exempted from municipal regulation by federal, state, or local law. Rental housing units that receive funding or subsidies from federal, state, or local government when the rental housing units are inspected by a federal, state, or local governmental entity at least once every five years as a funding or subsidy requirement; and the rental housing unit owner or agent submits information to the Department within 60 days of being notified that an inspection is required that demonstrates the periodic federal, state, or local government inspection is substantially equivalent to the inspection required by this Chapter; and Rental housing units that receive conventional funding from private or government insured lenders when the rental housing unit is inspected by the lender or lender's agent at least once every five years as a requirement of the loan; and the lender or lender's agent submits information to the Department within 60 days of being notified that an inspection is required that demonstrates the periodic lender inspection is substantially equivalent to the inspection required by this Chapter; and Accessory dwelling units and detached accessory dwelling units, provided the owner lives in one of the housing units on the property and an "immediate family"

City/Town	Fee	Discount(s)/Exemption(s)
		member as identified section 22.206.160.C.1.e lives in the other housing unit on the same property.
Skokie, IL	\$25/unit annually	Owner-occupied units
Troy, NY	\$150/property initially and again only when information changes	None
Urbana, IL	▪ \$55/single family home ▪ \$70/duplex ▪ \$65/building 3+ units ▪ Add \$16/unit for 4+ units ▪ Renew annually	• nursing homes • hotels/motels • housing authority units • University Certified Housing
Waterloo, IA	\$25/unit annually	None
West Hollywood, CA	\$120/unit	▪ Landlord- or relative-occupied units ▪ Units subsidized by the government ▪ Institutional facilities ▪ Nonprofit housing ▪ Must apply for exemption annually
Youngstown, OH	\$40 for first unit, then \$25/unit in the same building, annually	Public housing units or other properties subject to annual inspection pursuant to Federal regulations (Section 8) have to register their properties BUT DO NOT have to pay the registration fee. Also, Owner Occupied properties DO NOT have to pay the fee.

*Order 72-15/16
Tab 9 10-5-15*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER AUTHORIZING WAGE INCREASE
FOR CORPORATION COUNSEL AND CITY CLERK**

ORDERED, that a 3% wage increase is hereby approved for Corporation Counsel and the City Clerk retroactive to July 1, 2015.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Gina Tapp, Director of Human Resources

DATE: September 22, 2015

DISTRIBUTION: City Manager, Mayor, Sonia Bean, Danielle West-Chuhta,
Nancy English, Julie Sullivan

SUBJECT: Annual Compensation Adjustment for Corporation Counsel and City Clerk

SPONSOR: Mayor Michael Brennan

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading_____ **October 5, 2015**_____ **Final Action**_____

Can action be taken at a later date: ☒ **Yes** ☐ **No (If no why not?)**

PRESENTATION: (List the presenter(s), type and length of presentation)

Councilor David Brenerman, Chair of Nominating Committee; presentation should take approximately five minutes, plus time for any comments other Councilors or the Mayor may wish to make.

I. SUMMARY OF ISSUE (Agenda Description)

Annual compensation adjustments for Corporation Counsel and City Clerk.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

Annual performance appraisals were conducted by the City Council with Corporation Counsel Danielle West-Chuhta and the City Clerk Katherine Jones on Monday, September 21, 2015.

III. INTENDED RESULT

A recommendation and approval is needed to grant Corporation Counsel and the City Clerk each a 3% compensation adjustment, retroactive to July 1, 2015.

IV. COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

VI. STAFF ANALYSIS

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

Prepared by:

Date:

*Order 73-15/16
Tab 10 10-5-15*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER ACCEPTING PEDESTRIAN EASEMENT
FOR PUBLIC SIDEWALK AT 89 ANDERSON STREET**

ORDERED, that the attached pedestrian easement from Redfern Bayside, LLC for a public sidewalk at 89 Anderson Street is hereby accepted in substantially the form attached hereto.

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Jeff Levine, Director, Planning and Urban Development Department

DATE: September 23, 2015

DISTRIBUTION: Mayor Michael Brennan; Jon Jennings, City Manager; Danielle West-Chuhta, Corporation Counsel; Jennifer Thompson, Associate Corporation Counsel; Sonia Bean; Nancy English

SUBJECT: Pedestrian Easement from Redfern Bayside, LLC
89 Anderson

SPONSOR: Department of Planning and Urban Development

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ **Final Action** October 5, 2015 (one reading item) _____

Can action be taken at a later date: X Yes No (If no why not?)

PRESENTATION: Elizabeth Boepple, Planning Board Vice Chair, and/or Jeff Levine, Director, Planning and Urban Development, 5 minute oral presentation

I. SUMMARY OF ISSUE (Agenda Description)

On May 26, 2015, the Planning Board approved a site plan and a subdivision plat for a mixed-use development at 89 Anderson Street, the East Bayside Lofts. The site plan includes areas at the corner of Fox and Anderson Streets and along Fox Street which technically fall on private property, but are designed to be part of the public sidewalk. These sidewalk areas are necessary to allow pedestrian access around curb ramps and to meet ADA specifications. As such, a public pedestrian easement was required as a condition of site plan and subdivision approval.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

The applicant has provided a public pedestrian easement which grants the city the right use the easement areas for pedestrian, bicycle, and similar non-motorized access. Redfern Bayside LLC will retain responsibility for snow and ice removal.

III. INTENDED RESULT

The easement will allow the public rights to use portions of the sidewalk which encroach on private property.

IV. COUNCIL GOAL ADDRESSED

The easement is a component of a plan which will:

- *Provide increase availability in all segments of the housing market while insuring that there is a suitable balance of housing opportunities; and*
- *Promote economic development in the city in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.*

V. FINANCIAL IMPACT

There is no cost to the city.

VI. STAFF ANALYSIS

Corporation Counsel's office and the Department of Public Services have both reviewed the sidewalk easement and approved the draft as presented here. As noted above, the Planning Board approved the proposed development on May 26, 2015 on the condition of the proposed license.

VIII. ATTACHMENTS

1. Order (to be forwarded under separate cover)
2. Sidewalk easement

Prepared by:

Signature

September 23, 2015
Date

SIDEWALK EASEMENT
TO THE
CITY OF PORTLAND

KNOW ALL PERSONS BY THESE PRESENTS that Redfern Bayside, LLC, a Maine limited liability company with a mailing address of PO Box 8816, Portland, ME 04112 (hereinafter, "GRANTOR), for one dollar and other good and valuable consideration paid by the CITY OF PORTLAND, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 (hereinafter "GRANTEE"), does hereby grant to the said CITY OF PORTLAND the perpetual easement and rights described below on the land described below.

The purpose of said easement is to grant GRANTEE the right, but not the obligation, to construct, maintain, repair and replace a sidewalk in, on, under and over the portions of that certain parcel of land of the Grantor that is identified as the description entitled "Pedestrian Easement" attached hereto as Exhibit A and made a part hereof, and as more particularly described in Exhibit B, attached hereto and made a part hereof (the "Easement Area"), said sidewalk to be used by the public for pedestrian, bicycle and similar non-motorized (other than wheelchair and emergency vehicles and snow removal equipment, which shall be permitted) pedestrian recreational uses, subject, however, to such rules or ordinances that GRANTEE may adopt from time to time in the interests of public safety. Notwithstanding anything to the contrary in this easement, it shall be the responsibility of GRANTOR, and not GRANTEE, to remove snow and ice from said sidewalk within the Easement Area and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice within the Easement Area.

GRANTOR further covenants and agrees for itself, its successors and assigns, that the land that lies in the Easement Area shall, except for the construction, maintenance, repair, or

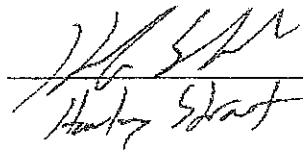
replacement of the sidewalk and any appurtenances by GRANTEE, its successors and assigns, shall, as provided and permitted herein, be maintained as a sidewalk for the uses set forth and described herein and GRANTOR shall not use the Easement Area or permit any use of the Easement Area that would be contrary to such condition.

To have and to hold the said Easement and all rights granted hereunder to the said Grantee and its successors and assigns forever.

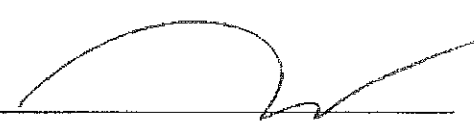
IN WITNESS WHEREOF, GRANTOR has caused this instrument to be executed by Jonathan Culley Manager thereunto duly authorized as of the 3rd day of September 2015.

WITNESS:

Redfern Bayside, LLC, a Maine limited liability company



Jonathan Culley

By: 

Its Manager
Print Name: Jonathan Culley

STATE OF MAINE
COUNTY OF CUMBERLAND, SS.

September 3, 2015

Personally appeared the above named Jonathan Culley, in his capacity as Manager of Redfern Bayside, LLC, who acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of Redfern Bayside, LLC.

Before me,



Name: Eben Adams
~~Notary Public~~ Attorney at law

My Commission Expires: _____

EXHIBIT A

[Nadeau Land Survey "Pedestrian Easement" dated 8/18/15]

Nadeau Land Surveys

Professional Land Surveyors
Certified Floodplain Managers

EXHIBIT A

"Pedestrian Easement" (2141510D2R2)

A certain lot or parcel of land, situated on the southeasterly sideline of Fox Street and northeasterly sideline of Anderson Street, in the City of Portland, County of Cumberland, and State of Maine, being a pedestrian easement as shown on a plan entitled *"Subdivision Plat, East Bayside Lofts, Redfern Bayside, LLC, Portland, Maine"*, dated August 11, 2015 by Acorn Engineering, Inc., Portland, Maine. Said pedestrian easement shall be bounded on the northwest by the apparent southeasterly sideline of Fox Street, on the southwest by the apparent northeasterly sideline of Anderson Street, on the southeast by the northwesterly face of the building as constructed on the Locus Parcel depicted on said plan, and on the northeast by the southwesterly face of the building as constructed on the Locus Parcel depicted on said plan, being more particularly bounded and described as follows:

Beginning on the apparent southeasterly sideline of Fox Street at the northerly corner of the herein described parcel at a #5 steel rebar with survey cap #2124 to be set at the northerly corner of land described in a deed from Perigee, LLC to Redfern Bayside, LLC, dated July 2, 2015 and recorded at the Cumberland County Registry of Deeds (CCRD) in Book 32404, Page 148, and the westerly corner of land described in a deed from Richard S. Harris, Jr. and Peggyann E. Harris to Greenleaf Apartments, LLC, dated December 31, 2007 and recorded in CCRD Book 25722, Page 156, as depicted on a plan entitled, *"Plan Depicting The Results Of A Boundary, Topographic & Existing Conditions Survey Made For Redfern Properties, LLC, Southeasterly Sideline Of Fox Street, Northeasterly Sideline Of Anderson Street, & Northwesterly Sideline Of Everett Street, Portland, Maine"*, dated July 21, 2014, last revised March 30, 2015, by Nadeau Land Surveys, Portland, Maine;

Thence S41°44'46"E along said land of Greenleaf Apartments, LLC, a distance of sixty-eight hundredths (0.68') feet;

Thence the following courses through land of the herein grantor along the face of the proposed building as depicted on said subdivision plan:

S48°25'55"W a distance of one hundred six and eighty-one hundredths (106.81') feet;

N41°34'05"W a distance of twenty-six hundredths (0.26') feet;

S48°25'56"W a distance of forty-five and ten hundredths (45.10') feet;

S03°25'25"W a distance of nine and fifty-two hundredths (9.52') feet;

S41°34'05"W a distance of fifty-one and fifty-two hundredths (51.52') feet;

S48°25'55"W a distance of thirty-three hundredths (0.33') feet to the apparent northeasterly sideline of Anderson Street per Anderson Street Monuments as depicted on said Nadeau Land Surveys plan;

Thence N41°34'05"W along said northeasterly sideline of Anderson Street, a distance of fifty-nine and forty-two hundredths (59.42') feet to a #5 steel rebar with survey cap #2124 or MagNail with survey washer #2124 to be set at the apparent intersection with said southeasterly sideline of Fox Street;

Thence N48°42'11"E along said southeasterly sideline of Fox Street, a distance of one hundred fifty-eight and ninety-seven hundredths (158.97') feet to the point of beginning.

Total area of the herein described parcel equals 196 square feet. The bearings in this description are based on Grid North, MSPC NAD83, 1802 (West Zone).

Meaning and intending to describe a pedestrian easement being a portion of land described in a deed from Perigee, LLC to Redfern Bayside, LLC, dated July 2, 2015 and recorded at the Cumberland County Registry of Deeds in Book 32404, Page 148, which parcel is depicted on a "*Plan Depicting The Results Of A Boundary, Topographic & Existing Conditions Survey Made For Redfern Properties, LLC, Southeasterly Sideline Of Fox Street, Northeasterly Sideline Of Anderson Street, & Northwesterly Sideline Of Everett Street, Portland, Maine*", dated July 21, 2014, last revised March 30, 2015, by Nadeau Land Surveys, Portland, Maine.

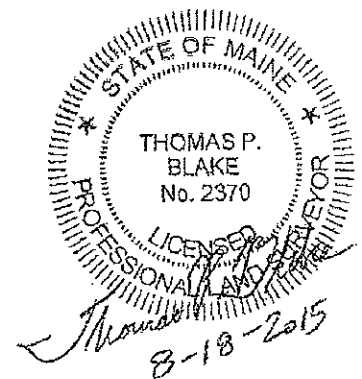
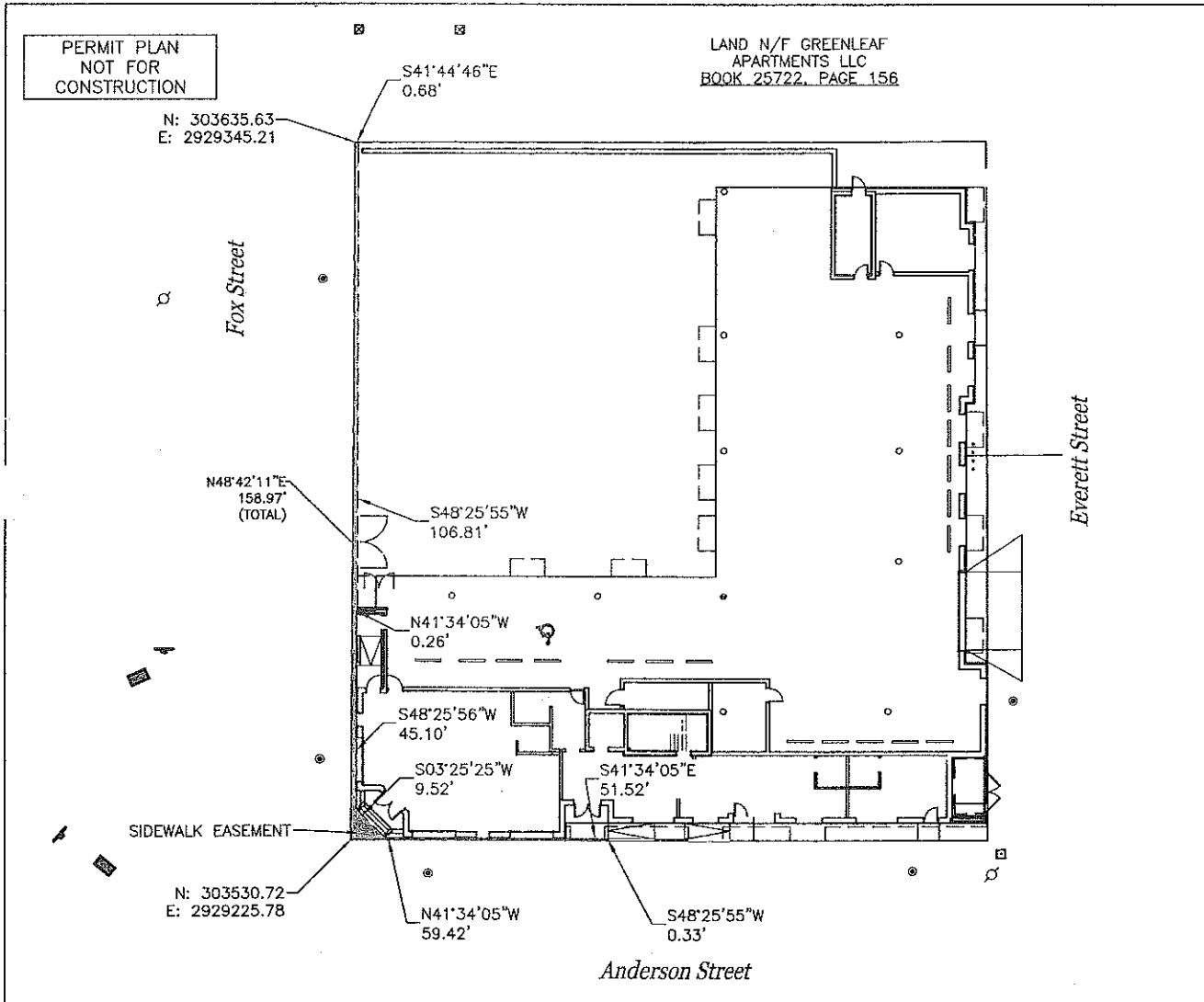
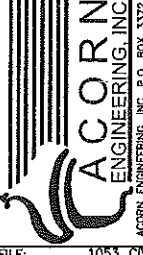


EXHIBIT B

[Ped. Easement Plan, by Acorn Engineering dated 8/25/15]



ISSUED FOR		BY
PED. EASEMENT		DATE
		10/25/15
REVISION		REV
		DATE
EX. B: PED. EASEMENT PLAN	PROJECT NAME	CLIENT
	EAST BAYSIDE LOFTS	RED FERN BAYSIDE, LLC.
		P.O. BOX 8816 PORTLAND, ME 04104
 ACORN ENGINEERING, INC. P.O. BOX 3372 PORTLAND, MAINE 04104 (207) 775-2855		
FILE:	1053, CIVIL	
DATE:	8/25/15	
JN:	1053	
SCALE:	1"=30'	
DESIGN BY:	MAG	
DRAWN BY:	MAG	
CHECKED BY:	WHS	
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM ACORN ENGINEERING, INC. ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO ACORN ENGINEERING, INC.		
DRAWING NO.		
EXB		

*Order 74-15/16
Tab 11 10-5-15*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING ALTERNATE LIQUIDITY FACILITY WITH RESPECT TO
PENSION BONDS**

WHEREAS, in 2001, the City refinanced its unpoolled, unfunded pension liability under the Maine State Retirement System with the proceeds of the City's \$111,800,000 Pension Obligation Bond's dated July 19, 2001 (the "Pension Bonds"); and

WHEREAS, the terms and conditions of the Pension Bonds require that the City maintain a Liquidity Facility with respect to the Pension Bonds to enable their ongoing pricing and remarketing; and

WHEREAS, the current Liquidity Facility was implemented as of November 1, 2012 and is scheduled to expire on or about November 1, 2015; and

WHEREAS, in order to maintain the ongoing pricing and remarketing of the Pension Bonds, it is necessary to establish a new Liquidity Facility for the Pension Bonds;

**NOW, THEREFORE, BE IT HEREBY ORDERED BY THE CITY COUNCIL OF
THE CITY OF PORTLAND, MAINE AS FOLLOWS:**

THAT the Director of Finance be and hereby is authorized to enter into, execute and deliver, in the name of and on behalf of the City, an agreement with Sumitomo Mitsui Banking Corp, New York Branch, for an Alternate Liquidity Facility for the Pension Bonds in the form of a Standby Letter of Credit and Reimbursement Agreement, which shall contain such other terms and conditions including but not limited to a consent to jurisdiction provision, indemnity and a waiver of governmental immunity provision as the Director of Finance shall approve, such approval to be conclusively evidenced by her execution thereof.

THAT the Director of Finance be and hereby is further authorized to take all such other action, to do all acts and things and to execute and deliver such other documents, certificates, agreements, or other instruments as may be necessary or desirable to implement the Alternate Liquidity Facility and to effect the transactions contemplated hereby, including but not limited to an amended or replacement Tender Agent Agreement and an amended or replacement Remarketing Agreement.

THAT the Director of Finance be and hereby is further authorized to take and perform all such other action, acts and things and to execute and deliver such other documents, certificates, agreements, or other instruments as may be provided on the part of the City of Portland, to take, perform or execute and deliver under the Certificate of

Determination and related Terms of Issuance dated July 19, 2001 entered into by the City with respect to the Pension Bonds, including but not limited to implementing amendments thereto or implementing in the future such other Alternate Liquidity Facility or Facilities as the Director of Finance determines in his discretion to be necessary or desirable.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Brendan T O'Connell

DATE: September 2015

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: ORDER APPROVING ALTERNATE LIQUIDITY FACILITY WITH RESPECT TO PENSION BONDS

SPONSOR:
Brendan T O'Connell, Finance Director

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading_____ **Final Action**_____10/5/15_____

Can action be taken at a later date: _____ Yes _____X_____ No (If no why not?)

Approval is recommended so external Bond Counsel can deliver a legal opinion on the validity and enforceability of the documents. This approval must be provided prior to mid-October so a new contract can be in place by November 1.

PRESENTATION: Brendan T O'Connell – 2 minutes

I. SUMMARY OF ISSUE

The current stand-by bond purchase agreement expires on November 1st. The City must sign a new contract prior to expiration of the existing agreement to provide continuity of services. The agreement is required to ensure that there is a party available to purchase the City's pension obligation bonds in the event they are tendered by the existing holders and cannot be remarketed. This structure has been in place since the pension bonds were originally issued in 2001. The last replacement agreement was put in place in 2012. The Finance Department has thoroughly researched available providers and rates and has determined a budget savings can be achieved during the renewal process.

II. REASON FOR SUBMISSION – See SUMMARY OF ISSUE above

III. INTENDED RESULT – Ensure no interruption in service while also achieving budget savings for the next 5 fiscal years.

IV. COUNCIL GOAL ADDRESSED – See FINANCIAL IMPACT below

V. FINANCIAL IMPACT – Signing this agreement achieves a savings of approximately \$319,000 annually vs renewal with the existing provider. This savings is achieved without an interruption in the key service provided by the agreement.

VI. STAFF ANALYSIS – Staff has thoroughly researched this renewal with the assistance of external Bond Counsel (Jim Saffian – Pierce Atwood LLP) and external Bond Adviser (Joe Cuetara – Moors and Cabot LLC). Our analysis has concluded Sumitomo Mitsui Banking Corporation will provide the service best fitting the City of Portland's needs.

VII. RECOMMENDATION – Staff recommends approval based on the analysis performed, the budget savings achieved, and the term of the agreement.

VIII. LIST ATTACHMENTS (None – other than the draft order)

Prepared by: Brendan T O'Connell

Date: September 2015

Bean/agendamemo/rev7/20/15

Order 75-15/16
Feb 12 10-5-15

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE
Sec. 28-51 TRAFFIC SCHEDULE
Re: Portland Street**

ORDERED, that Schedule XXII: One-Way in the City of Portland's Traffic Schedule as amended and on file in the Department of Public Services, Office of the Traffic Engineer, and incorporated by reference into the Traffic Schedule by §28-51, be and hereby is amended by adopting the following:

Portland Street

Add: From a point 0 feet easterly of the intersection of Alder and Oxford Streets and running to a point 0 feet westerly from Preble Street - Schedule XXII: One-Way Street.

BE IT FURTHER ORDERED, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make it effective immediately.

MEMORANDUM

Agenda request

TO: Mayor Michael Brennan & City Councilors

FROM: Jeremiah Bartlett, PE, PTOE, Transportation Systems Engineer

DATE: September 22, 2015

DISTRIBUTION: Jon Jennings, City Manager
Michael Brennan, Mayor
Anita LaChance, Assistant City Manager
Bob Leeman, Acting Director of Public Services
Sonia Bean, Executive Assistant
Danielle West-Chuta, Corporation Counsel
Nancy English, Paralegal
Julie Sullivan, Chief of Staff
John Peverada, Parking Manager
Katherine Earley, PE, Engineering Services Manager
Bruce Hyman, Transportation Program Manager

SUBJECT: Endorse Amendment to Traffic Schedule – Portland St Traffic flow conversion

SPONSORS: Jon Jennings, City Manager
Councilor David Marshall, Chair, Transportation, Sustainability and Energy Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:

1ST Reading: October 5, 2015 Final Action: October 5, 2015 (emergency action requested)

Can this Action be taken at a later date? Yes X **No (if no, why not)** – change in Traffic Schedule needed quickly to allow for installation of permanent pavement markings.

PRESENTATION: None

I. SUMMARY OF ISSUE

The Department of Public Services, supported by the Department of Planning and Urban Development and the Portland School Department wish to make the temporary one-way change of Portland Street from Alder Street to Preble Street permanent. The request for temporary change was presented to the Transportation, Sustainability and Energy Committee at their June 17, 2015 session and was unanimously approved, followed by an approval by the City Council at their July 20, 2015 meeting.

The test has proven successful, and the School Department along with the Fire Department fully supports making the one-way change permanent. Although the 90-day period has not yet expired, Public Services desires finalization of this change in the Traffic Schedule to allow Operations staff to place permanent pavement markings on Portland Street in October, prior to colder weather, which would make placement impossible before winter.

II. REASON FOR SUBMISSION

The intersection of Portland, Oxford and Alder streets has been an awkward configuration, and it required westbound Portland Street traffic to stop and slowly creep into the intersection, looking for westbound Oxford Street traffic. This resulted in drivers often not focused on pedestrian activities or the school facility at Portland and Alder streets. The one-way flow has made the configuration of Portland Street simpler and easier to control for the school pickups and drop offs.

This change has also allowed for the inclusion of angled parking on this section of Portland Street, adding more supply to an area with significant demand. The parking, even though adding to the overall supply along this portion of Portland Street, is often completely utilized during a typical weekday.

III. INTENDED RESULT

The test configuration allowed for the placement of angled parking and a buffered bike lane. The resulting one-way vehicular flow has also made pedestrian crossings of Portland Street at both Alder and Preble Street safer and more predictable.

As per Section 28-26 in the City Code, the Department of Public Services is now returning to the Council within 90 days of installation to request that this change be made permanent.

IV. COUNCIL GOAL ADDRESSED

This proposed change addresses the Council goal of advancing opportunities for bicycle use, and makes walking safer.

V. FINANCIAL IMPACT

Pavement Markings (Permanent): \$500

Staff Time (Equivalent): \$400

Total: \$900

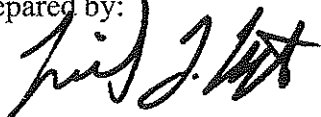
VI. STAFF ANALYSIS & RECOMMENDATION

The Departments of Public Services and Planning & Urban Development, and the School Department have reviewed this change and formally support this action. The Fire Department has also formally endorsed this change.

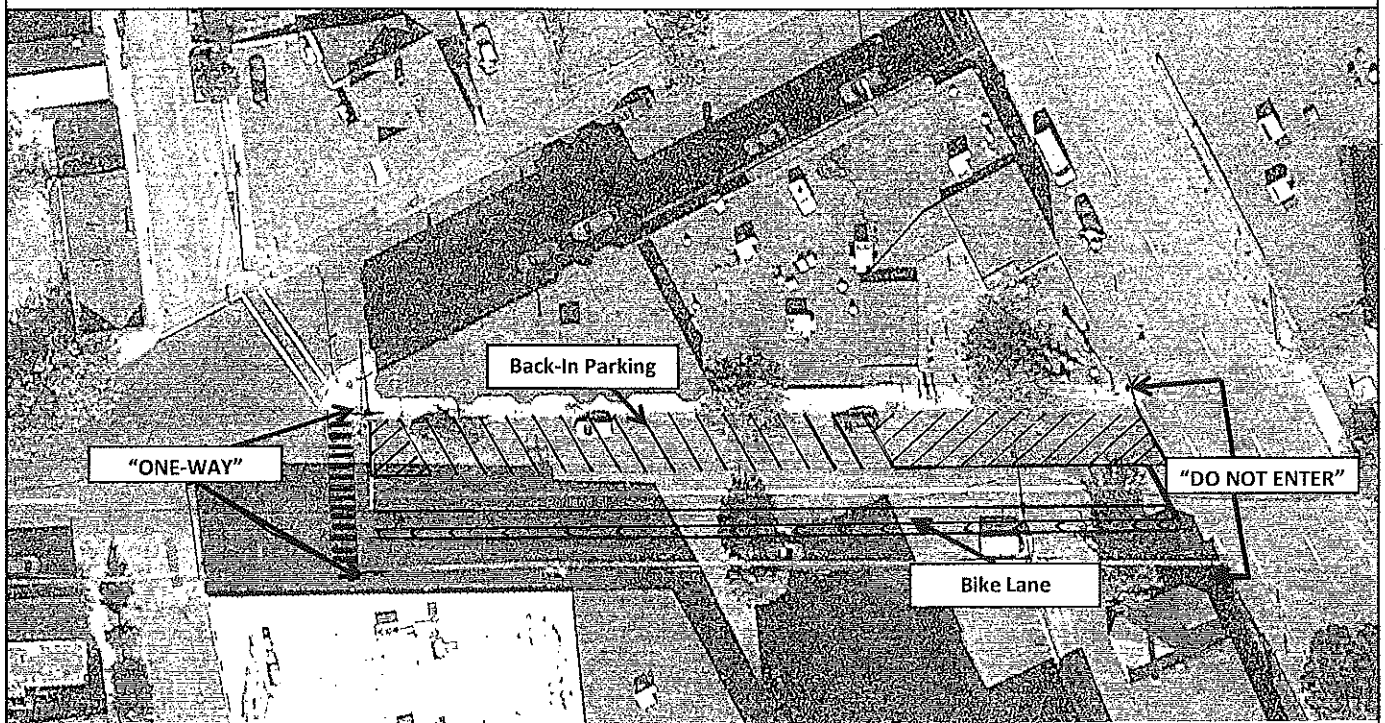
VII. LIST ATTACHMENTS

- Exhibit A: Council Order
- Exhibit B: Graphic

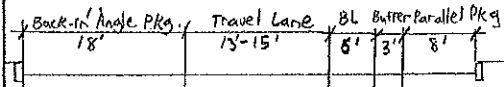
Prepared by:



Portland Street One-Way Eastbound Concept: Alder to Preble



Typical Section Looking East



Scale: 1" = 10'

Draft: DPS/JJB

Date: 6/10/15

Scale: 1" = 30'

Order 76-15/16
Tab 13 10-5-15

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

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DESIGNATING CITY PARKS AND PUBLIC GROUNDS
SUBJECT TO THE NO SMOKING REQUIREMENTS OF
SECTION 17-96 OF THE PORTLAND CITY CODE**

ORDERED, that smoking shall be prohibited in the following
parks and public grounds as described in Section 17-96
of the Portland City Code:

Back Cove Park
Baxter Woods
Bayside Park
Bedford Park
Bell Buoy Park
Belmeade Park
Boothby Square
Capisic Pond Park
Compass Park/Maine State Pier
Congress Square
Deering Oaks Park
Dougherty Field
Eastern Promenade
Fessenden Park
Fort Allen Park
Fort Sumner Park
Ganley Plaza
Harbor View Park
Heseltine Park
Lincoln Park

Lobsterman Park
Longfellow Square
Marginal Way Field
Monument Square
Oatnuts Park
Payson Park
Pleasant Street Park
Post Office Park
Presumpscot Park
Presumpscot River Preserve
Quarry Run Dog Park
Riverton Park
Stroudwater Park
Tommy's Park
University Park
Valley Street Dog Park
Western Promenade

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Toho Soma, Acting Public Health Director

DATE: September 23, 2015

DISTRIBUTION: Jon Jennings, Mayor Michael Brennan, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Redefining parks in Section 17-96

SPONSOR: Public Safety, Health and Human Services Committee, September 8, 2015, 4-0 passage to move to Full Council
(If sponsored by a Council committee, list the date the committee met and the results of vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading October 5, 2015 Final Action October 19, 2015

Can action be taken at a later date: X Yes No (If no why not?)

PRESENTATION: (List the presenter(s), type and length of presentation)

Toho Soma and Bethany Sanborn, brief oral presentation

I. SUMMARY OF ISSUE (Agenda Description)

Redefine smoke-free parks, grounds, and squares

II. REASON FOR SUBMISSION (Summary of Issue/Background)

Current City Code Section 17-96 contains a list of City-owned or maintained parks, squares, and grounds that is incomplete. It is proposed to clarify the exact locations by including additional parks, squares, and grounds that have been created since the last time this list was updated, as well as adding all temporary parks requiring a permit.

III. INTENDED RESULT

All City-owned or maintained parks, squares, grounds, and temporary parks will be smoke-free, thus reducing exposure to second-hand smoke for those who visit these places.

IV. COUNCIL GOAL ADDRESSED

On June 9th, the Public Safety, Health and Human Services Committee of the Portland City Council asked the Public Health Division to draft a change to City Ordinance regarding smoke-free public parks and open spaces.

V. FINANCIAL IMPACT

The Public Health Division can help with the cost of signage and public education via grant funds.

VI. STAFF ANALYSIS

Staff reviewed the current list provided in City Code Section 17-96 and determined the list was incomplete. Additionally, the advent of temporary parks was not addressed in the current ordinance, so this language was included.

VII. RECOMMENDATION

Approve.

VIII. LIST ATTACHMENTS

Amended Chapter 17 language.

Original to Public Safety, Health and Human Services Committee, September 8, 2015.

Prepared by: Toho Soma, Acting Public Health Director, Health and Human Services Department

Date: September 23, 2015

*Order 77-15/16
Tab 14 10-5-15*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER ADOPTING INDIA STREET SUSTAINABLE NEIGHBORHOOD PLAN
AND AMENDING THE CITY'S COMPREHENSIVE PLAN**

ORDERED, that the India Street Sustainable Neighborhood Plan, attached hereto as Attachment A, is hereby adopted; and

BE IT FURTHER ORDERED, that the City's Comprehensive Plan is hereby amended to include the India Street Sustainable Neighborhood Plan.

MEMORANDUM
City Council Agenda Item

TO: Mayor Brennan and City Council
FROM: Jeff Levine, Director, Planning and Urban Development Department
DATE: September 23, 2015

DISTRIBUTION: City Manager Jon Jennings, Mayor Michael Brennan, Assistant City Manager Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, and Julie Sullivan

SUBJECT: **ORDER ADOPTING** the India Street Sustainable Neighborhood Plan into the Comprehensive Plan;
AMENDMENT to Portland City Code Chapter 14 (Land Use) to establish the India Street Form-based Code Zone and relevant text and zoning map amendments;
ORDER AUTHORIZING an evaluation of the India Street Form-based Code zone in at least three and no later than five years;
ORDER DESIGNATING the India Street Historic District and relevant Chapter 14 text amendments;
ORDER DESIGNATING 78-88 Middle Street "Abraham S. Levey Building" as an individual Historic Landmark

SPONSOR: Beth Boepple, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading: October 5, 2015 **Final Action:** October 19, 2015

Can action be taken at a later date: X Yes No (If no why not?)

PRESENTATION: (List the presenter(s), type and length of presentation)

Beth Boepple, Chair of the Planning Board, will summarize the proposed policy documents (10 minutes). Staff will be available to provide information and answer questions as requested.

I. SUMMARY OF ISSUE (Agenda Description)

The Planning Board recommends the adoption of the India Street Sustainable Neighborhood Plan and accompanying implementation tools – the India Street Form-based Code Zone and the India Street Historic District – along with associated map and ordinance text amendments in order to provide policy guidance for the India Street neighborhood.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

The India Street Sustainable Neighborhood Plan is a neighborhood policy document requiring Council adoption into the Comprehensive Plan. The establishment of a new zone, and map and text amendments to the City Code of Ordinances require Council approval. Designation of individual landmarks and historic districts requires Council approval.

III. INTENDED RESULT

The intended result is to adopt the India Street Sustainable Neighborhood Plan as a Master Plan policy document to guide development in the India Street neighborhood as well as to adopt two implementation tools – the India Street Form-based Code zone and the India Street Historic District – intended to meet key goals and objectives of the neighborhood plan. These are:

- The goal of the ISSNP is to provide policy guidance for the future development of the neighborhood which has not existed up until now.
- The two implementation tools – the Form-based Code and the Historic District – are proposed to address a goal of the neighborhood residents and business owners who initiated the neighborhood planning effort

to protect the existing neighborhood built character, scale, and form and to prevent future development that is incompatible with the existing fabric. Both the form-based code and the historic district promote and allow for a pattern of development that provides for greater housing opportunities, enables infill development on small parcels, and has standards in place that make it possible for new construction to be consistent with the historic pattern of development on the peninsula.

IV. COUNCIL GOAL ADDRESSED

The policy documents submitted as part of the India Street neighborhood planning are consistent with and advance several of the City Council Common Goals and Objectives for 2014 including *Promote Housing Availability, Transportation Initiatives, and Economic Development*. The implementation of the India Street Form-based Code strives to meet the goal of *Improve City Services* by bringing efficiency to the development review process within that zone.

V. FINANCIAL IMPACT

There are no known municipal financial impacts associated with this amendment.

VI. STAFF ANALYSIS

The review found the proposed neighborhood plan, proposed new zone, and proposed new historic district are consistent with the Comprehensive Plan. Refer to the Planning Board Report (Attachment 1) for further analysis.

VII. RECOMMENDATION

- 1) On January 20, 2015, the Planning Board voted unanimously (5-0) to recommend the proposed India Street Sustainable Neighborhood Plan to the City Council to be adopted into the Comprehensive Plan.
- 2) On September 15, 2015, the Planning Board voted unanimously (7-0) to recommend the proposed India Street Form-based Code zone and related text and map amendments be approved by the City Council with an additional recommendation for a Council Order requiring a review of the India Street Form-based Code in at least three years and no later than five years from implementation.
- 3) On September 15, 2015, upon the unanimous recommendation of the Historic Preservation Board, the Planning Board voted 5-2 (Soley and Dundon opposed) to recommend that the City Council designate the proposed India Street Historic District and amend the site plan and historic preservation ordinances to clarify the relationship between historic preservation and Form-based Code regulations in the India Street Historic District. These include 1) an added provision under the historic preservation ordinance standards for new construction (Sec. 14-651) which addresses allowable building heights in the India Street Historic District; and 2) an amendment to Sec. 14-526 (18) of the site plan ordinance which applies to the review of new construction within 100 feet of a historic district boundary or landmark. The amendment would clarify that this provision applies only to new construction within 100' of individual landmarks in the India Street Historic District.

VIII. LIST ATTACHMENTS

1. Planning Board Report to City Council
2. India Street Sustainable Neighborhood Plan
3. India Street Form-based Code zone
4. Map amendment related to the India Street Form-based Code zone
5. Chapter 14 text amendments related to the India Street Form-based Code zone
6. India Street Historic District Designation Report
7. Chapter 14 text amendments related to the India Street Historic District
8. India Street Historic Landmark Designation Report
9. Public Comment received during Planning and Historic Preservation Boards review

Prepared by: Caitlin Cameron, Urban Designer

Date: September 23, 2015



CITY COUNCIL REPORT
from
PLANNING BOARD
PORTLAND, MAINE

India Street Sustainable Neighborhood Plan, India Street Form-based Code Zone, and India Street Historic District and Historic Landmark Designation
CITY OF PORTLAND, APPLICANT

Submitted to: Portland City Council First Reading: October 5, 2015 Second Reading: October 19, 2015	Prepared by: Portland Planning Board Date: September 23, 2015
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I. INTRODUCTION

The India Street neighborhood planning process and the policy document, the India Street Sustainable Neighborhood Plan (ISSNP) are the result of a planning process that began in 2013. Neighborhood residents and business owners approached the City with concerns about the scale and height of proposed new development in the neighborhood. Recognizing that a neighborhood planning process had never been conducted for the India Street neighborhood, the Planning Board recommended a comprehensive process. The planning efforts began with a visioning process undertaken through the Sustain Southern Maine regional planning process as a Center of Opportunity. Following that, the India Street Neighborhood Advisory Committee (ISNAC) was established in the Fall of 2013 under the leadership of Co-chairs Councilor Donoghue and Dick Barringer. The ISNAC, along with City staff from Planning, Housing, and Economic Development, spent a year further developing the plan to its final form as recommended to the City Council. The planning process involved five ISNAC working groups: Housing & Equity; Form Based Code; Economic Development; Historic Preservation; and Infrastructure & Landscape. Each of these work groups developed and recommended policies and initiatives to comprise the Plan.

There are two accompanying implementation tools – the India Street Form-based Code and the India Street Historic District – presented for adoption along with the India Street Sustainable Neighborhood Plan. These tools were developed concurrently with the Plan and reflect the goals and development principles of the Plan and involved significant community input and staff collaboration.

Legal notice for the October 19th City Council hearing will be posted in the *Portland Press Herald* on October 5th and October 12th. Notices will be sent to the interested citizen list and posted on the city's web page.

II. PROPOSED POLICY DOCUMENTS

India Street Sustainable Neighborhood Plan (ISSNP) (Attachment 2)

The India Street Neighborhood Advisory Committee, Co-chaired by Councilor Donoghue and Richard Barringer worked with the Planning Division staff to develop the India Street Sustainable Neighborhood Plan. The result is

a recommendation of a plan that includes five goals, six vision statements, thirteen principles, and twelve critical actions particular to the future of the India Street neighborhood. Among the key recommendations of the Plan are a proposed Local Historic District, the adoption of a Form-based Code, and the consideration of an Inclusionary Zoning Ordinance to address affordable housing needs. If adopted, the Plan will become a component of the City of Portland Comprehensive Plan. However, there is the option for the Council to adopt the ISSNP as a neighborhood master plan without adding it to the Comprehensive Plan which is currently undergoing a State recertification process.

Key points of the ISSNP:

- 5 Goals
 1. Vitality
 2. Good Quality Design
 3. Strong Neighborhood Identity that Builds on its Heritage
 4. Diversity
 5. Enhance Mixed-use Nature of the Neighborhood
- 6 Vision Statements
- 13 Development Principles
 1. Strong Neighborhood Identity
 2. Diversity of Residents
 3. Neighborhood Heritage and Historic Preservation
 4. Mixed-Use Neighborhood
 5. Vibrant Local Economy
 6. Retail Corridors
 7. Guided Growth
 8. Form of Development
 9. Compassionate and Supportive Community
 10. Connected Neighborhood
 11. Quality Infrastructure
 12. Ample Recreation and Open Space
 13. Responsive to Climate Change

The major implementation recommendations of the plan are:

- To establish of an India Street Historic District;
- To develop a Form-based Code to replace the existing zoning districts in this neighborhood, and
- To promote affordable housing City-wide.

India Street Form-based Code zone (IS-FBC) (Attachments 3,4,5)

A Form-based Code was first proposed as part of the India Street Sustainable Neighborhood Plan (ISSNP) process. The India Street neighborhood, one of the oldest in the city, has many available development parcels. Consequently, several new developments have recently been built or proposed in this neighborhood. Neighborhood residents called for a neighborhood plan that included consideration of the form of development in the neighborhood, many feeling as though the new development allowed by the current zoning was out of scale with the existing context. While the recently completed ISSNP does include development principles regarding the form of development in this neighborhood, it was determined an overhaul of the underlying zoning was appropriate to achieve the vision of the neighborhood plan document. Much of the existing zoning in this neighborhood was retroactively located and does not reflect the character of the built environment, much of which was developed before the zoning codes existed. The intention of the FBC is to provide zoning code that more adequately and appropriately reflects the built form and scale of the neighborhood. As a mixed-use neighborhood, separation or regulation of uses is not highly desired or appropriate. The FBC is currently

proposed for the India Street neighborhood only and would replace all existing zoning in the neighborhood.

Why Form-based Code?

Form-based Code (FBC) is different from Euclidean zoning in that it shifts the priority away from use and focuses on the form, dimensional, and design components of zoning. Traditional Euclidean zoning will often have dimensional requirements but focuses on land use.

Staff examined examples of FBC developed in Yarmouth and Standish in Maine, as well as Knoxville, Cincinnati, and some California cities. Documents from the SmartCode and the Form-based Code Institute were also consulted.

Key points of the IS-FBC:

The IS-FBC includes:

- Regulating Plan, which includes way three Subdistricts and locates them in the neighborhood
- Purpose Statement and General Guiding Principles
- Definitions + Illustrations
- General Development Standards
- Subdistrict Dimensional Requirements
- Illustrations
- IS-FBC Building Design Standards (City of Portland Design Manual – approved by the Planning Board)

Subdistricts - The zone is organized by three subdistricts created based on existing forms

- Urban Neighborhood (UN) – small-scale buildings more private in character
- Urban Transitional (UT) – large-scale buildings with flexible ground floors
- Urban Active (UA) – moderate-scale buildings with active ground floors

Land Use – Use is not regulated except for short list of prohibited uses

Parking – The zone seeks flexibility on parking requirements to prevent building forms from being driven by providing parking. The key concern in the neighborhood is maintaining established street walls and infilling lots with buildings rather than surface parking.

- Off-street parking is not required for the first three dwelling units
- All properties are eligible for the fee-in-lieu of parking
- Surface parking is limited to the interior of blocks and side yards

Housing and Sustainability Goals – the new zone is set up to require or encourage smaller building forms, high residential density, and stormwater mitigation.

- Mid-block permeability is required for large blocks
- Residential density is not regulated allowing for flexibility and increased housing provision
- High residential density is granted a height bonus
- Permeable sites and green roofs are eligible for a height bonus

India Street Historic District (Attachments 6, 7, 8)

The Historic Preservation Work Group recommended that a historic district be established for the India Street neighborhood, based on research and analysis by historic preservation consultants Turk Larry Tracy, Architects. A historic district directly responds the ISSNP goals of neighborhood identity and historic preservation of existing built character. A historic district is also an effective tool in retaining existing human-scaled built fabric – a key goal of the neighborhood plan.

The proposed district designation applies to an area focused around the principal corridors that serve the India Street neighborhood, namely Congress, India and Middle Streets. The proposed district encompasses 7 landmarks (4 previously designated and 3 additional), 36 contributing historic structures and 13 noncontributing structures, as well as several surface parking lots or undeveloped parcels. Note that the district as proposed in the Historic Preservation Board's final recommendation is substantially smaller than that originally considered and focuses on the major religious, institutional, commercial and residential structures that largely define the character of the India Street neighborhood. Not included in the final proposed district are several interior blocks within the neighborhood which are largely residential.

On September 2, 2015, the Historic Preservation Board voted 7-0 to recommend to the Planning Board and City Council that a defined area within the India Street neighborhood be designated a local historic district as delineated below and as further defined/described in the attached India Street Historic District Designation Report. The Historic Preservation Board's recommendation was based on findings that the proposed district meets the designation criteria in Division 3 (Categories and Criteria for Designation) of the historic preservation ordinance (Article IX of the Land Use Code).

Key points of the India Street Historic District:

- 7 Landmarks (4 existing, 3 proposed)
- 36 contributing historic structures
- 13 non-contributing structures
- 1 additional historic landmark designation outside of the proposed district (the Abraham S. Levey Block)

III. COMPLIANCE WITH COMPREHENSIVE PLAN

The ISSNP, IS-FBC, and India Street Historic District conform to the Comprehensive Plan in the following ways.

From the Downtown Vision Plan

*"Three areas with significant development and redevelopment potential have been identified in areas that are on the perimeter of the Downtown . . . These sites – Bayside, **India Street**, and Gorham's Corner – each display characterizes that are colorful and truly unique. . . . Because market forces have not always produced beneficial results to both public and private interests, the City hopes to provide a design framework that would guide growth."*

*"A Vision of India Street in the Year 2020: Redevelopment would focus on **strengthening the vitality** of the community within and **establishing clearer connections** to the Downtown and Munjoy Hill. **India, Middle, and Congress Streets would reinforce their identities as active retail corridors**, through building infill along the streetlines and through **encouraging small businesses** to relocate to the area. As well, infrastructure improvements and landscaping would make these corridors **pedestrian-oriented spaces**. It is critical to **retain the residential enclaves** east and west of India Street, with special attention to the upper story residential along retail corridors in order to maintain a **certain level of activity**. . . . Because of the large number of vacant lots, **infill of buildings on all streets** is needed to make India Street a more vibrant and continuous community."*

- The ISSNP and the IS-FBC are in agreement with the vision set forth in the *Downtown Vision Plan* for the India Street neighborhood. Goals and Development Principles in the ISSNP directly reflect the vision outlined above. Regulations in the new IS-FBC reflect the concentration of retail and activity on those streets identified here with the requirement of frequent entries, active storefronts. Mixed-uses and active street fronts are encouraged by not regulating or separating uses in the zone

and placing surface parking to the interior of lots. New development is expected to meet the existing patterns of street walls.

From *A Community Vision for Portland*

A City That Values its Natural, Architectural, and Cultural Heritage

"Portland is a historic maritime city, which: Retains a rich historic character for both commercial and residential neighborhoods; Offers a broad spectrum of architecture and distinctive landmarks; and Maintains unifying features, such as brick buildings and sidewalks, and established and traditional neighborhoods with narrow and interconnected streets."

- The IS-FBC and the India Street Historic District guide new development towards context-sensitive designs. The regulations promulgated by the IS-FBC are derived from conditions in the existing built environment and the Historic District protects the existing historic resources.

A City That is a Good Place to Live

*"Portland retains a small town feel with a **built environment that is scaled for people, is pedestrian friendly, and is accessible to the community**. Residents value and seek to enhance the safety of the community, the proximity of commercial uses near residences, and the walkable nature of the city. . . .Portland has an active and vibrant downtown both day and night due to its interwoven mix of residential, commercial, institutional, and cultural land uses."*

- The ISSNP encourages mixed-use development and concentrates activity to specific streets.
- The goal of the IS-FBC is to encourage infill development that is appropriate for an urban context that is walkable. This is accomplished by maintaining smaller scale buildings, mixed uses, and frequent entries and ground floor design that provides activity on the street.
- The Historic District helps retain and maintain the existing built environment which is scaled for people.

From *Portland's Goals and Policies for the Future*

State Goal A: "To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl."

- Like other neighborhood plans developed in Portland, the ISSNP and IS-FBC were created to promote and manage growth in an existing urban setting and using existing infrastructure. The code encourages infill development that is appropriate for the India Street community and Portland as a whole.

The Comprehensive Plan is widely supportive of preservation of Portland's historic resources. **Volume 1, State Goal I, To preserve the State's historic and archeological resources**, endorses preserving and enhancing distinctive areas, sites, structures and objects that have historic, cultural, architectural and archeological significance. It includes an overview of preservation efforts in the city, recommendations for furthering preservation, and reference to the adoption, as part of the 1990 Comprehensive Plan, of the Historic Preservation Ordinance, and the Historic Resources Design Manual, both still being utilized today.

- Among the specific responsibilities of the Historic Preservation Board as listed in Sec. 14-609 of the ordinance are: "to conduct or administer an ongoing survey to identify historically, culturally or architecturally significant areas" and "to ...recommend to the Planning Board adoption of ordinances designating structures and areas...as landmarks and districts."

From *Housing and Population*

A Shortage of Housing: "Increasing Portland's housing stock in developed urban areas of the city is challenging, but necessary for the long-term health of the city."

- The IS-FBC, unlike other zones in the city, does not regulate density which allows flexibility of design and housing types that can accommodate more dwelling units.
- The code uses incentives like height bonuses for high residential density.
- The IS-FBC seeks to remove barriers like parking requirements to allow for more housing types and density to be built.

Current Impacts on Neighborhood Stability and Integrity: *"Building the integrity and quality of Portland's neighborhoods is key to encouraging the type of growth Portland needs both to support it in the future and counter regional sprawl."*

- The IS-FBC seeks to address this goal by regulating new development in a way that builds on the existing character and identity of the India Street neighborhood.

From Transportation Resources

Moving Locally: The Neighborhoods: *"Balancing the realities of the motor age with the imperative of highly livable neighborhoods is at the heart of the transportation issues and policies at the neighborhood level. And it bears directly on the health of the City. If residents who live in the city by choice come to believe their neighborhoods are not safe for walking, are not protected from noisy through-traffic, don't provide easy access to the daily necessities, don't give their children the freedom to move about independently –then the City has lost much of its competitive advantage over the suburbs."*

- The IS-FBC promotes urban development patterns which includes design choices that create safe and walkable streets.

Neighborhood Land Use: *"Some neighborhoods, especially those more recently developed, lack even routine daily services within walking distance. Where such services do exist, the zoning ordinance often considers them to be non-conforming uses."*

- The IS-FBC removes land use regulation (except for a few prohibited uses) to further promote mixed-use development appropriate for an urban neighborhood.

Downtown Parking: Council Goals for Downtown Parking

To manage the supply of on and off street parking spaces to achieve maximum and optimum use.

- The IS-FBC specifies where parking may occur in order to promote active uses at the street and achieve maximum and optimum use of urban property at the street frontage.

To explore the possibility of using assessments on parking to fund bicycle and pedestrian improvements, so facilities serve multiple uses.

- The IS-FBC allows developments to take advantage of the parking fee-in-lieu which provides funding to multi-modal transportation infrastructure.

From Waterfront Resources

Redevelopment of Waterfront East: Character and Impact of Development: *"Development within the eastern waterfront will be compatible with the surrounding areas, neighborhoods, natural environment and maritime uses."*

- The IS-FBC was developed with compatibility to the existing neighborhood and surround areas as a core goal.

Redevelopment of the Waterfront East: Mixed Use: *"Development within the eastern waterfront will create a vital and active mixed use urban area that generates life and use every day of the year and all hours of the day."*

- The ISSNP promotes physical and visual connections to the waterfront.
- The IS-FBC removes land use regulation (except for a few prohibited uses) to further promote mixed-use and active development appropriate for an urban neighborhood.

IV. PUBLIC PROCESS

The India Street Sustainable Neighborhood Plan (ISSNP) and accompanying implementation work plan and tools were developed over the course of several years. The process began through the Sustain Southern Maine initiative and was then continued by Planning, Housing, and Economic Development staff with the assistance of the India Street Neighborhood Advisory Committee (ISNAC). The ISNAC forwarded their recommendations to the City Council and HCDC in September, 2014. After that time, the work products were reviewed by the Planning Board and Historic Preservation Board. Throughout the process public meetings were held on the following dates:

- March 16, 2013 – Open House (Sustain Southern Maine)
- April 30, 2013 – Technical Workshop (Sustain Southern Maine)
- September 17, 2013 – Public Meeting (Sustain Southern Maine)
- December 2013 through September, 2014 – India Street Neighborhood Advisory Committee meetings (ISSNP, IS-FBC, and Historic District)
- July 28, 2014 – Public Forum (ISSNP, IS-FBC, and Historic District)
- October 2, 2014 – Housing and Community Development Committee (ISSNP)
- November 25, 2014 – Planning Board Workshop 1 (ISSNP)
- December 9, 2014 – Planning Board Workshop 2 (ISSNP)
- December 10, 2014 – Historic Preservation Board Workshop 1 (Historic District)
- January 20, 2015 – Planning Board Public Hearing (ISSNP)
- February 4, 2015 – Historic Preservation Board Workshop 2 (Historic District)
- February 24, 2015 – Planning Board Workshop 1 (IS-FBC)
- March 30, 2015 – Planning Board Workshop 2 and Site Walk (IS-FBC)
- April 28, 2015 – Planning Board Workshop 1 (Historic District)
- May 6, 2015 – Historic Preservation Board Workshop 3 (Historic District)
- June 9, 2015 – Planning Board Workshop 3 (IS-FBC)
- June 23, 2015 – Planning Board Workshop 4 (IS-FBC and Historic District)
- July 13, 2015 – Neighborhood Meeting (Historic District)
- July 22, 2015 – Historic Preservation Board Workshop 4 (Historic District)
- August 5, 2015 – Historic Preservation Board Workshop 5 (Historic District)
- September 2, 2015 – Historic Preservation Board Hearing (Historic District)
- September 15, 2015 – Planning Board Public Hearing (IS-FBC and Historic District)

The ISSNP and accompanying implementation tools were developed by staff with the assistance and guidance of the India Street Neighborhood Advisory Committee and five working groups covering the following topics of Historic Preservation, Economy, Equity/Housing, Land Development/Form-based Code, and Landscape and Infrastructure. Planning staff also met with the India Street Neighborhood Association, Greater Portland Landmarks, Portland Society for Architecture, and numerous individuals who requested meetings on the topic.

The feedback received was lively and varied throughout the process. Public comment received during the Planning and Historic Preservation Boards processes is included as [Attachment 9](#). For public comment received prior to Planning Board review process, refer to City Council packet from 10.20.14 starting on page 192. Meeting notes and the Minority Report from the ISNAC process can be found beginning on page 179.

Common topics of public comment included:

Interaction with Existing Policy - There were concerns that the recommendations of the India Street Sustainable Neighborhood Plan not be in conflict with the existing Eastern Waterfront Historic District or components of the

Comprehensive Plan such as the Eastern Waterfront Master Plan and the Transportation Plan. Upon review, staff concluded that the Plan is not in conflict with either the Historic District or adopted components of the Comprehensive Plan.

Scale and Form of Development – The public conversation around all three policy documents included debate about appropriate regulation of scale and form of new development. There were differences of opinion about the correct locations in the neighborhood for taller and longer buildings and some members of the public were concerned about the future development potential of their properties.

Balance of IS-FBC and Historic District – Many people commented on the interaction between the historic district and the new zoning code and the level of uncertainty around each as new policies for the neighborhood. The public comment ranged from favoring historic preservation over the IS-FBC and vice versa as well as the desire to make sure the two policies would not be in conflict or redundant. Staff provided materials to explain the difference between the two tools and how they would interact.

Historic District Boundary – At the Planning Board’s September 15 public hearing for the India Street Historic District, nine individuals or organizational representatives provided public comment regarding designation of an India Street Historic District. Six individuals spoke in support of the designation; three expressed opposition. Note that oral testimony was in addition to letters and e-mails forwarded to the Board in advance of the meeting—see Attachment 9.

V. PLANNING BOARD DELIBERATION AND RECOMMENDATION

India Street Sustainable Neighborhood Plan

During the Planning Board’s deliberations on the Plan, board members weighed the concerns about the overlap of the new India Street Neighborhood Plan with the existing Eastern Waterfront Master Plan – this concern was raised by several property owners in the neighborhood. The board found the two policy documents to not be in conflict and considered both would apply in concert. The board also considered whether the neighborhood boundary was appropriate and found it to be logical considering building and street patterns and general character. Some board members recognized the zoning and development implications of the Plan and expressed the need for careful consideration in crafting of the implementation tools. Generally, the board was supportive of the Plan as a thoroughly researched and workshopped document with significant input from stakeholders. The board also found the Plan as proposed to be compliant with the Comprehensive Plan and not in conflict with any existing policy documents.

On January 20, 2015, the Planning Board voted unanimously (5-0) to recommend the proposed India Street Sustainable Neighborhood Plan to the City Council to be adopted into the Comprehensive Plan.

India Street Form-based Code

The Planning Board deliberated the proposed India Street Form-based Code over the course of four workshops and a public hearing. Board members supported the new code as addressing the goals for mixed-use and appropriately-scale built environment. The board also generally supported the aspects of the IS-FBC which bring efficiency and clarity to the development review and application process. There was concern about the IS-FBC zone resulting in mediocre buildings but the board was confident that amendments could be made to the zone if the need arises. Significant discussion was given to the interaction of the IS-FBC and the new Historic District. Staff included information about how projects would be reviewed and how the two regulatory tools would interact. The Board also discussed the

potential for incompatible uses – a concern raised by some board members and members of the public. The board determined that the existing character and use mix of the neighborhood is already very integrated and did not anticipate future conflicts of use. Overall, the Subdistrict designation and regulations were found to be appropriate and contextual. The board was strongly in favor of requiring an evaluation of the new code in three to five years. The code was praised for being context-specific and balancing predictability and flexibility – two goals expressed by the stakeholders and the ISSNP.

On September 15, 2015, the Planning Board voted unanimously (7-0) to recommend the proposed India Street Form-based Code zone and related text and map amendments be approved by the City Council with an additional recommendation for a Council Order requiring a review of the India Street Form-based Code in at least three years and no later than five years from implementation.

India Street Historic District

During the Planning Board’s deliberations, some Board members expressed reservations about establishing an historic district as provided for in Portland’s historic preservation ordinance. By definition, an historic *district* is a geographically defined area the boundaries of which are drawn around historically and/or architecturally related structures. Inevitably, historic districts also include within their boundaries some noncontributing buildings or open parcels. Those members of the Board expressing reservations about the historic district recommendation preferred an approach that would individually designate historic structures within the neighborhood, but not create a contiguous district. Under this approach, future development on all open parcels within the neighborhood or redevelopment of noncontributing structures would be subject to review under the Form-Based Code only.

Staff explained that at the Planning Board’s request, the Historic Preservation Board had explored alternatives to historic district designation, including the possibility of creating a new “Multiple Property Designation” category within the historic preservation ordinance, but had concluded that designation of an historic district was the appropriate regulatory tool for an area of this nature, which exhibits an identifiable concentration of historic structures that share a common history. Designation of a contiguous historic district designation would not only protect individual historic structures from demolition and encourage sympathetic rehabilitation/alterations/building additions, it would also ensure that the immediate context of these historic structures was reinforced over time through a design review process that ensures compatibility with the major visual characteristics that distinguish the historic properties. Staff noted that the Historic Preservation Board had substantially reduced the size of district in response to feedback from the Planning Board, neighborhood residents and other interested parties. The district as recommended focuses on the principal corridors that serve the India Street neighborhood and includes the major religious, institutional, commercial and residential structures that largely define the character of the neighborhood. Not included in the final proposed district are several interior blocks within the neighborhood which are mostly residential.

India Street Historic District Designation Report and relevant Chapter 14 text amendments are included as Attachment 6 and 7.

On September 15, 2015 the Planning Board voted (5-2, Soley and Dundon opposed) to recommend the proposed India Street Historic District be designated by City Council with two amendments: that 1) the proposed amendment to the historic preservation ordinance’s standards for new construction, which applies to allowable building heights in the India Street Historic District, be revised by staff to apply to existing contributing structures; and 2) the site plan ordinance provision which applies to the review of new construction within 100 feet of a historic district boundary or landmark apply only to landmarks in the India Street Historic District.

Landmark Designation of Abraham S. Levey Block

In conjunction with its recommendation to designate the historic core of the India Street neighborhood as a local historic district, the **Historic Preservation Board also recommends to the City Council that the Abraham Levey Block (1922) at 78-88 Middle Street be designated as an individual landmark under Portland's preservation ordinance.** Note that this matter was not formally before the Planning Board because recommendations for individual building designations are forwarded directly to the City Council, as per Sec. 14-619 of the historic preservation ordinance.

The Levey Block, designed by John Calvin and John Howard Stevens, is located at the corner of Franklin and Middle Streets at a major gateway into the India Street neighborhood. Because the building is now physically separated from the core of historic structures that comprise the proposed historic district, individual designation seemed most appropriate. (The alternative would have been to extend the district boundary to include the commercial building, but this approach would have swept in a number of open, undeveloped parcels.)

A photograph and description of the building from the India Street Historic Resources Inventory is included as Attachment 8.

As a landmark designation, the Planning Board does not vote on this item.

India Street Sustainable Neighborhood Plan

Portland, Maine

Draft recommended by Planning Board, January 2015



Portland Starts Here . . .



Vision for India Street (at Middle Street) Image Credit: Richardson & Associates, Saco, ME

[Insert City Council Order as Passed adopting plan]

Acknowledgments

The **India Street Sustainable Neighborhood Plan** has been a widely collaborative effort over the course of two years. This report was shaped and informed by many participants who deserve recognition for their efforts, including the India Street Neighborhood Association, Sustain Southern Maine, the India Street Neighborhood Advisory Committee and associated Working Groups, and of course, the community businesses, residents, workers, organizations, institutions, and developers. Especially critical to the formulation of this neighborhood plan is Hugh Nazon, president of the India Street Neighborhood Association. Without his ceaseless efforts to bring attention to the neighborhood, this Plan would not exist.

In 2013, Portland became a participating city in the Urban Sustainability Accelerator (USA) technical assistance grant through Portland State University, Oregon, which is funded through the Summit Foundation, Toulon School of Urban Studies and Planning, Institute for Sustainable Solution at Portland State University, and the participating cities. Special thanks to Robert Liberty for his enthusiastic support and valuable resources provided through the course of this program. Especially valuable was the consulting work of Michele Reeves, Civilis Consulting, Portland, Oregon.

The India Street Neighborhood Advisory Committee convened in the fall of 2013 to guide the neighborhood plan development. City Councilor Kevin Donoghue and neighborhood resident and emeritus professor at the Muskie School of Public Service Richard Barringer graciously offered their time as co-chairs to this Council-appointed committee. Nineteen members were appointed to this group with wide-ranging expertise and areas of insight; without their time and efforts this plan would not have reached its successful conclusion. Many active and enthusiastic members of the community volunteered to participate in Working Groups in order to brainstorm, strategize, and craft recommendations for the final plan. Many thanks again to all of these members of the India Street and greater Portland community who gave of their time and expertise to craft this plan.

Additional resources and support were provided by key neighborhood organizations. One central to this process was the Portland Society for Architecture which hosted meetings, provided professional advice and collaboration, and financial resources that were especially crucial in the City's participation in the USA technical assistance grant and the subsequent consulting services of Michele Reeves. The Maine Jewish Museum generously provided for the use of their facilities throughout the course of the planning process. Professor Yuseung Kim of USM's Muskie School of Public Service and the students in his Planning Workshops made significant contributions to our work with the creation of a 3d model of the neighborhood and the study, *Portland Starts Here: India Street Neighborhood Recommendations*, available at <http://www.portlandmaine.gov/1114/India-Street>

It must be noted that many dedicated City staff members orchestrated and ushered along this complex process. Recognition is due to Planning Division Director Alex Jaegerman, Senior Planner Bill Needelman (who has since become the Waterfront Coordinator), Urban Designer Caitlin Cameron, and Historic Preservation Program Manager Deb Andrews who led the effort. Additional support was provided by Mary Davis, Housing and Community Development Division Director, Nelle Hanig, Business Programs Manager, Bruce Hyman, Bicycle and Pedestrian Program Coordinator, and Doug Roncarati, Stormwater Program Coordinator.

India Street Neighborhood Advisory Committee

Richard Barringer, Co-Chair
Councilor Kevin Donoghue, Co-Chair
Hilary Bassett
Beth Boepple
Carol De Tine
Tom Federle
Bethany Field
Arthur Fink
Ani Helmick
Bobbi Keppel
Alan Kuniholm
Ethan Boxer Macomber
Joe Malone
Brandon Mazer
Linda Murnik
Hugh Nazor
Arlin Smith
Timothy Wilson
Kara Wooldrik

City Council

Michael Brennan, Mayor
Kevin Donoghue, District 1
David Marshall, District 2
Edward Suslovic, District 3
Justin Costa, District 4
David Brenerman, District 5
Jill Duson, At Large
Jon Hinck, At Large
Nicholas Mavodones, At Large

Planning Board

Stuart O'Brien, Chair
Elizabeth Boepple, Vice Chair
David Eaton
Sean Dundon
Bill Hall
Carol Morrisette
Jack Soley

Historic Preservation Board

Scott Benson, Chair
Bruce Wood, Vice Chair
Penny Pollard
John Turk
Ted Oldham
Julia Sheridan
Glen Harmon

Working Groups

Land Development/ Form-based code

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Elizabeth Boepple
Carol De Tine
Tom Federle
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Alan Kuniholm
Brandon Mazer
Hugh Nazor
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Historic Preservation

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Ethan Boxer Macomber

Economy

Staff: Nelle Hanig, Alex Jaegerman
Consultant: Michele Reeves, Civilis Consulting
Richard Barringer
Rachelle Curran
Susie Kendeigh
Brandon Mazer
Hugh Nazor
Arlin Smith
Tim Wilson

City of Portland, Maine

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Department of Economic Development

Nelle Hanig, Business Programs Manager

Department of Public Works

Doug Roncarati, Stormwater Program Coordinator

Sustain Southern Maine

Rebecca Schaffner, Program Manager, GPCOG
Carol Morris, President, Morris Communications
Evan Richert, Town Planner, Richert Planning
Todd Richardson, Landscape Architect, Richardson & Associates

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Sustainable Neighborhood Plan INDIA STREET, PORTLAND MAINE



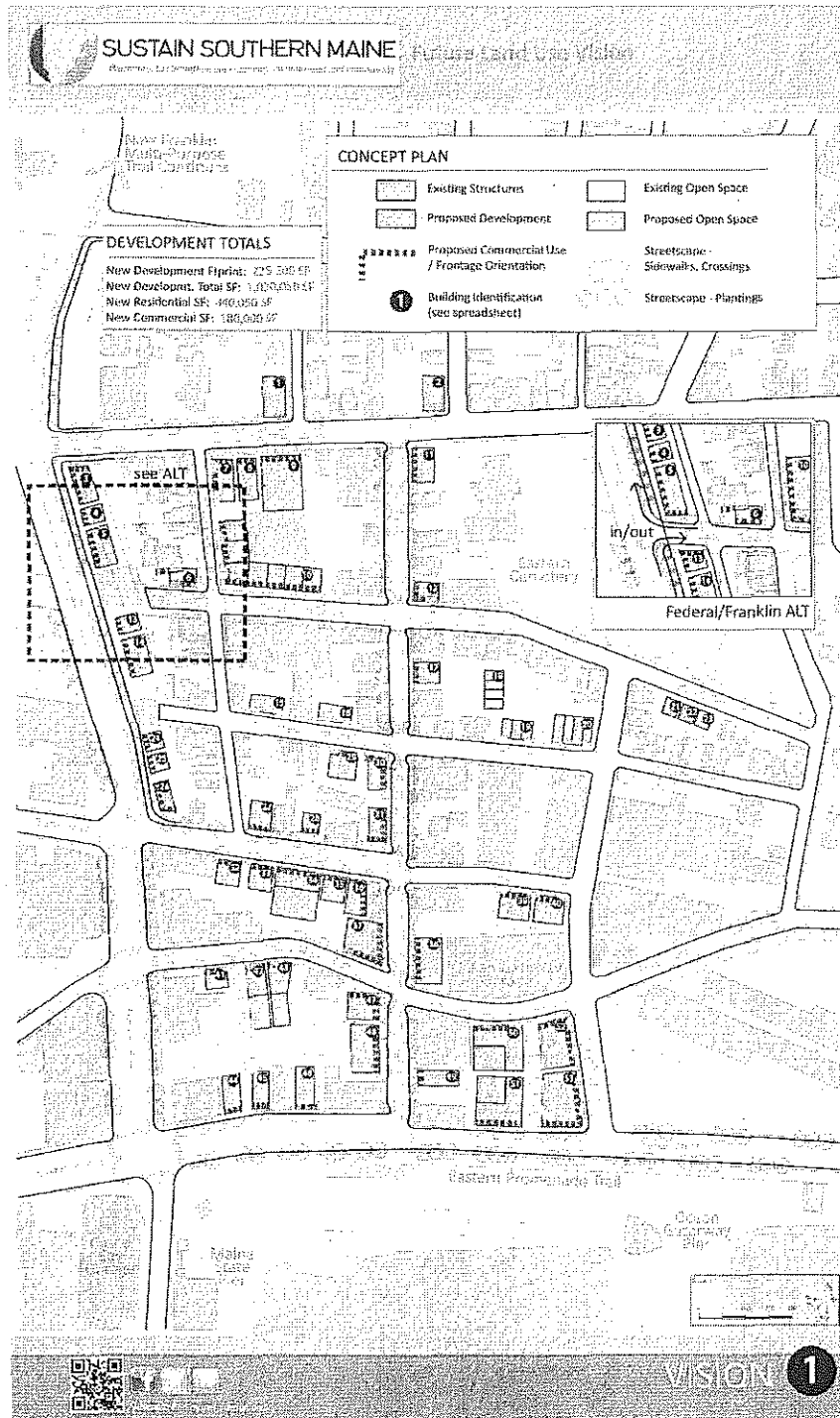
INDIA STREET NEIGHBORHOOD BOUNDARY

Background – The Planning Process

The India Street neighborhood is situated on the burgeoning Portland peninsula, a beautiful waterside location nestled between the Old Port and Munjoy Hill. As explained below, this area was the nucleus of the birth of Portland as a colonial city, and the City has grown up around India Street. In the years following 2010, this area began to experience development as the recession gradually gave way to resurgent growth. Many large projects were proposed pre-recession that did not come to fruition, and several sizable projects – two hotels, a parking garage, and housing, to name a few – were constructed that began to change the face of this neighborhood. Heavily influenced by downtown and the waterfront, India Street emerged as a magnet for new development, and the community responded with a request for focused planning to guide the future of the area, lest the market forces bring about change that many observers and residents feared would be of a scale and character that does not reflect the community's aspirations.

Community leaders approached the City with this concern, that planning has focused all around this neighborhood, along the waterfront, and in the downtown, but not on this neighborhood as a distinct place, to explore its character and establish a vision for its growth and development. An effort to address the specific issue of building heights along India Street was considered by the Planning Board in June of 2012, and led to the recognition that a comprehensive planning initiative was the more appropriate approach to take. The Planning Office was charged with leading this effort, in partnership with the India Street Neighborhood Association. This planning process has proceeded in two phases.

The first phase began in earnest in January, 2013, with the selection of the India Street neighborhood as a *Center of Opportunity* within the Sustain Southern Maine (SSM) regional planning program, a consortium of Cumberland and York County communities that came together with funding from the U.S. Department of Housing & Urban Development to create a sustainable growth plan for the region. India Street was selected as a pilot community that represents opportunities for regional growth to occur in established urban centers as a strategy to combat sprawl and revitalize our city centers. With a small planning grant from SSM through the Greater Portland Council of Governments, we engaged with the India Street community to create a vision for the India Street neighborhood. Highlights of this effort included a Public Open House at the Jewish Heritage Museum in March, 2013, followed by a day-long workshop of three stakeholder small groups in April, 2013, to convert the ideas from the Open House into neighborhood planning concepts. This input was then synthesized by the planning and consulting team into a series of reports and nine graphic products presenting an emergent neighborhood vision, form, transportation, street systems, landscape, and open space. These were presented in two public forums in June, and later in September, 2013.



Emerging Vision: Sustain Southern Maine Conceptual Plan - June, 2013

The fall of 2013 marked the transition from the visioning work aided by SSM, to the planning production phase marked by the collaboration with another technical assistance resource called the Urban Sustainability Accelerator (USA), a new program created to help mid-sized and smaller urban areas implement sustainability projects, to move their proposals from a concept to reality. This program was made possible through support of Portland State University's Toulan School of Urban Studies and Planning, the Institute for Sustainable Solutions, and a grant from the Summit Foundation. The timing of this technical resource coincided with our ongoing efforts to create a plan for India Street. In November, 2013 we established a stakeholder advisory committee, the India Street Neighborhood Advisory Committee (ISNAC) appointed by the City Council, along with other interested citizens to assist the Planning Office to complete the plan. ISNAC established five work groups to flesh out the plan: Housing & Equity; Land Development & Form-Based Code; Economic Development; Historic Preservation; and Infrastructure & Landscape. These Work Groups met continuously from January through July of 2014 to investigate issues and develop policy and implementation recommendations within their assigned areas. The majority of the substance of this plan is credited to the hard work of these citizen teams with their staff support. Each Work Group reported to the ISNAC on a monthly basis on their findings and recommendations.

The technical assistance through the USA program was ongoing during this period and helped inform the Work Groups in their areas of interest. Highlights include the three-day consulting visit from Michele Reeves, of Civilis Consultants, on February 11 – 13, 2014. Ms. Reeves generated a strong recognition of the stage of India Street's development, and the attributes that lend unique value to the economy of the neighborhood as well as its intrinsic character. True to form, on the night of her final presentation we experienced blizzard-like conditions, so many who could not be there in person viewed the video online. Other highlights included a week-long visitation from a University of California, Davis team headed by Professor Stephen Wheeler and three Landscape Architecture graduate students, who studied the neighborhood and issued a report in December, 2013, *Recommendations for a Sustainable Neighborhood Plan* that focused on environmental sustainability measures for India Street. Also during this intensive working period, we had the benefit of our own University of Southern Maine through Professors Yuseung Kim and Richard Barringer, whose Planning Workshop class produced a May, 2014 report, *Portland Starts Here*, which addresses place branding, economic development, and streetscape recommendations.

In summary, this process relied on our own in-house planning expertise, and the hard work of many very dedicated neighborhood stakeholders who volunteered countless hours to the task. We had some outside consulting and technical resources, where available and as needed, to round out and inform the effort. We are very pleased to convey this plan, which is a tangible product with realistic objectives grounded in an engaged community process.

Finally, several concurrent planning efforts will have direct but still undetermined impacts on the India Street neighborhood and this Plan.

Public Planning Processes:

- **The Franklin Street Redesign Phase II** is underway, the objective of which is to narrow the roadway, redesign intersections, and employ Complete Streets policies making the street safe and useable for all modes. The street will ideally take on a more active and urban character but the final results of this process remain to be determined. Considering the feedback received throughout the India Street planning process the neighborhood is most affected by the topics of connectivity and the reposition of the right-of-way. The Transportation Plan of the Comprehensive Plan states, "The City should promote the interconnection of neighborhood streets and pathways, so that there are multiple paths of travel to get to destinations within and between neighborhoods by foot and bicycle, as well as auto." In keeping with the policy for an interconnected street network, the neighborhood would benefit from restoring connections to and in some cases across Franklin Street. At the very least, improved bicycle/pedestrian connections across Franklin Street are necessary and desired; reconnecting vehicular access to Franklin Street from one or both streets (Newbury and Federal) is desired if it can be done safely. If it is determined that no vehicular connection is to be provided at Federal or Newbury streets, remaining public space would be well-suited as a public open space. It is not likely that the neighborhood would be satisfied to have no additional connections to Franklin Street. ISNAC assumes the premise that the neighborhood (and city) would benefit most from increasing the development opportunities within the neighborhood. The neighborhood would also benefit from active, urban uses along Franklin Street. Priority locations for development opportunities include the blocks between Middle and Congress Streets.
- **Lincoln Park** is undergoing a master plan process with future restoration and improvements proposed. The park is a potential open space asset to the India Street neighborhood. Currently, there is a lack of connectivity between the neighborhood and the park and an absence of liveliness and activity. ISNAC supports solutions that balance expansion of Lincoln Park with opportunities for development along the India Street neighborhood edge at Franklin Street. The ISNAC advocates for improved connections between the neighborhood and park, especially pedestrian and bicycle.

Private Development Projects:

- **The Portland Company** complex is undergoing a master plan process with proposed significant redevelopment and adaptive reuse of the historic property. Details about the uses and forms are undetermined at the adoption of this plan. As a large neighboring property, what happens on that site will impact the India Street neighborhood, potentially increasing the resident population, office and amenities, and foot and vehicular traffic past and through India Street.
- **Munjoy South Townhouses** is a low-income housing development adjacent to the India Street neighborhood to the East. Developed post-war as part of a city redevelopment strategy, this complex may be redeveloped in the future. It is not known whether future development on this site will remain affordable housing and what form and density it will take. This development is one of the larger affordable housing developments near the India Street neighborhood; its size, proximity, and affordability impact the development of the neighborhood in terms of growth, services, and transportation needs.

Why a *Sustainable* Neighborhood Plan?

We have proposed this plan as a sustainable neighborhood plan. To understand this approach, it is necessary to review the sustainability principles of Community, Economy, and Environment. Since the City Council adopted the *Sustainable Portland Plan* in 2009, as part of our comprehensive plan, we have endeavored to use the sustainability model in planning and policy making. *Sustainable Portland* offered the final challenge to future policy makers:

"To become a sustainable community, the City of Portland must commit to a continuous process of self-assessment and adaptation. When faced with decisions, our City government, residents, institutions, and businesses should ask a series of questions:

- Is this decision good for the environment, the economy, and the community?
- Is this good for the long-term?

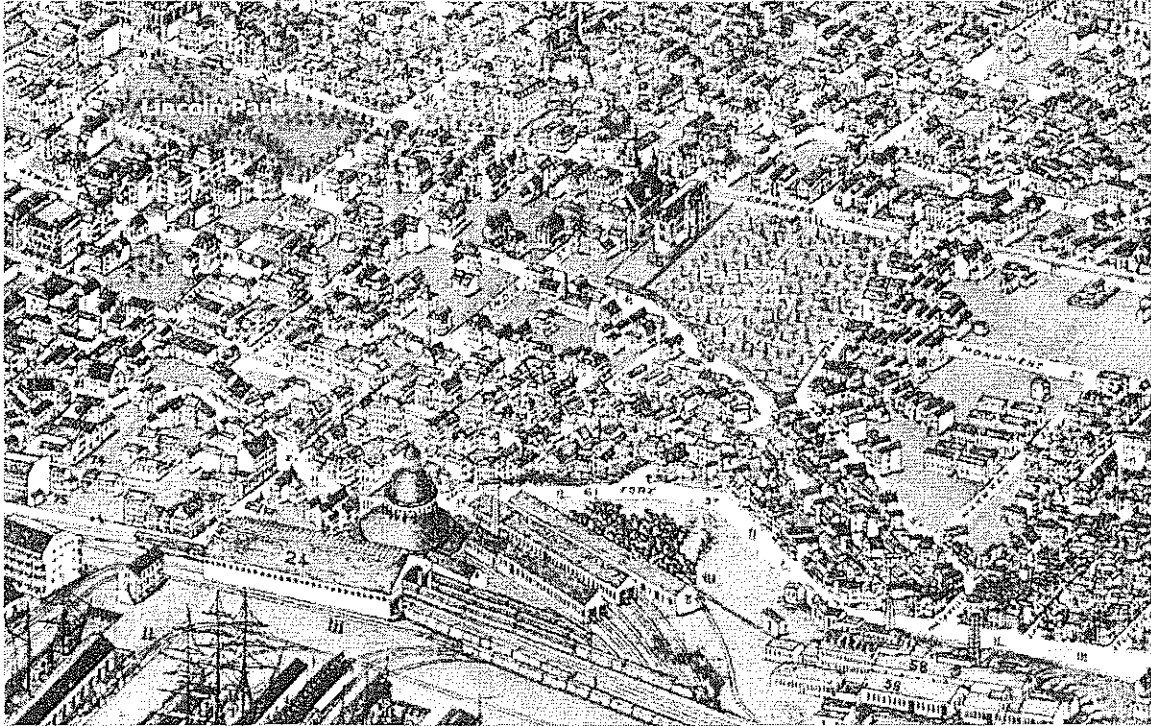
If the answers are "yes," then the decision will move us toward becoming a more sustainable city."

Sustainable Portland – Incorporating Sustainability into Everyday Decision Making City of Portland, 2009, Portland Comprehensive Plan

Sustainability principles are imbedded throughout this planning process and plan. We have incorporated the work by Sustain Southern Maine, which looks to urban neighborhood growth as vital to a sustainable region. We have had the technical assistance from the Urban Sustainability Accelerator, which, as the name suggests, seeks to promote sustainable practices in small cities across America. We have looked deep into the neighborhood itself, to examine what is needed to sustain a vibrant, healthy, prosperous future. We could call this a neighborhood development plan, or a neighborhood master plan, or comprehensive plan. The title could change, but the imperative to plan affirmatively for a healthy community, economy, and environment is paramount as we face the challenges and changes to come. This plan touches upon these three factors and presents a balanced set of recommendations that address each of them appropriately for this stage of development in this India Street neighborhood.

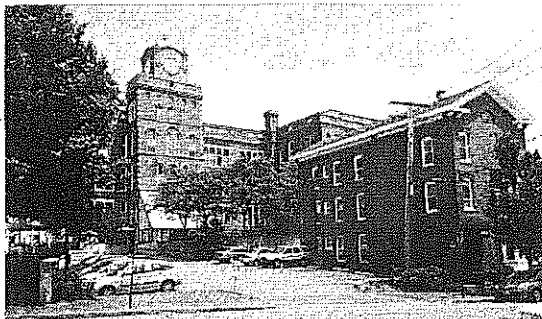
As a City Council-adopted neighborhood plan, the India Street Sustainable Neighborhood Plan becomes an adopted element of the city-wide Comprehensive Plan. A Comprehensive Plan is a long-range plan that provides a policy framework to guide municipal decisions. Portland has conducted numerous long-range planning activities that have produced a variety of components of the Comprehensive Plan, which include functional elements, such as the Transportation Plan, and strategic or geographic area plans, of which this plan is an example.

History – The India Street Neighborhood



India Street Neighborhood in 1871

India Street has the distinction of being the first street in Portland and the center of the city's earliest settlement. Although little remains from this early chapter in the area's history, the story of what followed is compelling and unlike any other neighborhood in the city. The India Street and waterfront area was the main commercial district of Portland prior to the Great Fire of 1866, when the core of the downtown moved to the Old Port. As early as the 1820's, the India Street Neighborhood was home to a large community of African Americans. Later, it became the point of entry and first home to many of the city's newly-arriving immigrant groups, including Irish, Italian, Jewish, and Scandinavian populations. The neighborhood was the hub of intermodal transportation where shipping and ferries, trains, and land transportation converged around the waterfront generating a center of activity. Newcomers found stability working as laborers on the city's waterfront, Grand Trunk Railroad, and nearby Portland Company. As they became established, each group made its mark on the area, building impressive

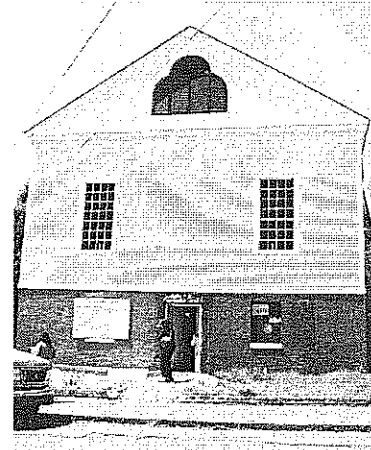


North School (1867)

churches and synagogues and launching a wide range of small businesses and institutions. Public health facilities, including a milk dispensary and medical school, were built on India Street to address the needs of the residents. North School, the largest elementary school in the state when it was built, responded to the transitional nature of the

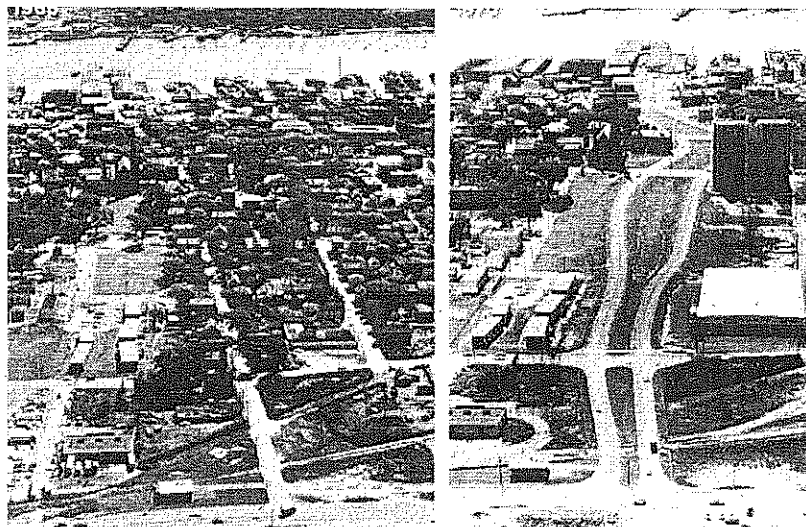
neighborhood by offering occupational training and other innovative programs designed specifically to help the immigrant and first generation children it served.

The historic buildings that remain today tell the story of who lived here and how this neighborhood evolved and functioned. Landmark structures such as North School, the India Street Firehouse, and numerous churches and synagogues are very important to the story. So, too, are the modest wood frame houses owned by the founders of the Abyssinian Meeting House, the triple-deckers that housed immigrant families, and the small commercial structures that were built to serve the needs of a self-contained neighborhood. Just as the neighborhood's remaining historic structures provide tangible evidence of its history, they also establish the strong and appealing visual character of the area.



Abyssinian Meeting House (1828)

Since the mid-20th century, the neighborhood has lost a number of key landmarks, including the Grand Trunk Station and the house where Henry Wadsworth Longfellow was born, at the corner of Fore and Hancock streets. Once-dominant population groups have moved on to other parts of the city, leaving the neighborhood with just a few hundred households. Insensitive alterations to historic structures and the clearing of older buildings for surface parking lots and discordant new construction have diminished the character of the neighborhood. The most dramatic change, of course, was the construction of the Franklin Arterial, which entailed the removal of many homes and commercial structures at the western end of the neighborhood, and severed what had been a seamless transition to the downtown core. The removal of homes and construction of Munjoy South public housing on Mountfort Street created another abrupt boundary to the neighborhood where there previously had been none.



Franklin Arterial (1967) changes the neighborhood, creates disconnected conditions



A mix of different building types on Congress St

Notwithstanding these losses, the neighborhood retains numerous elements of its past that warrant recognition and preservation. This historic building fabric could also inform the scale and character of new development, which would result in a lively mix of new and old within a distinctive, human scale, mixed-use neighborhood.

An older, downtown adjacent neighborhood such as India Street has assets that significantly outweigh its challenges. In addition to the cultural significance of the historic neighborhood, today's market values historic architectural fabric that provides a human-scale foundation for future development. Significant parcels, including those formerly in industrial use, are vacant or underused and inviting for redevelopment. As an existing urban neighborhood, it enjoys a relatively complete infrastructure that is ripe to support revitalization. The historic street grid is walkable and contributes both to quality of life and to market value for the land uses served by it. Multi-modal transportation services, both existing and potential, create choices for those who want to live or work in or to visit the neighborhood. This mixed-use neighborhood with proximity to downtown already has a core mix of residential and commercial uses, including long-standing uses that are well recognized and loved, and may serve as springboards to additional development. The most important characteristic of all, however, is the prevalence and importance of *people*; the neighborhood is the product of the people who have been here, past and present, and this plays a key role in shaping the future of the India Street neighborhood.

India Street Neighborhood Identity Past and Present



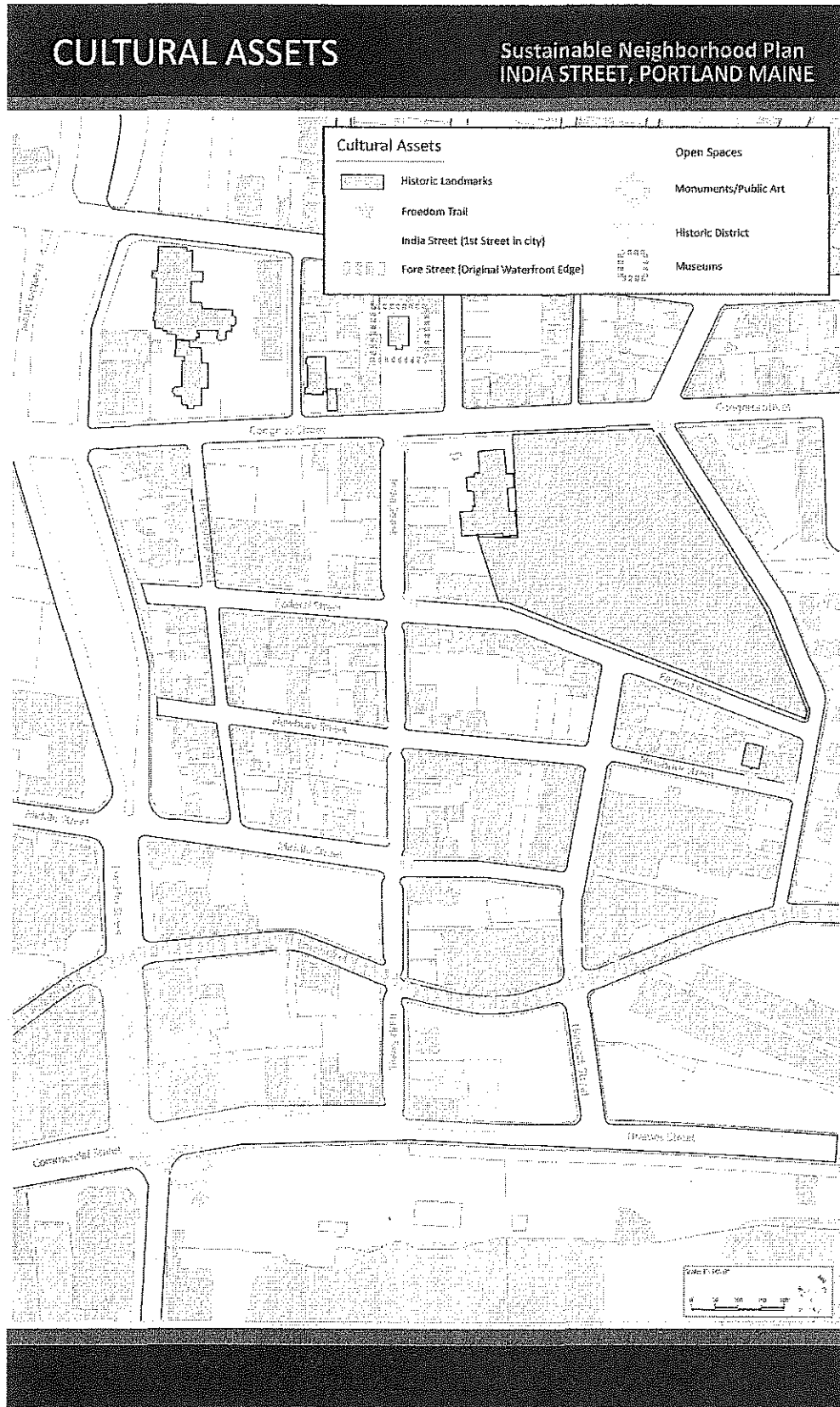
From the results of a Neighborhood Workshop with Michele Reeves, Civilis Consulting, February 2014

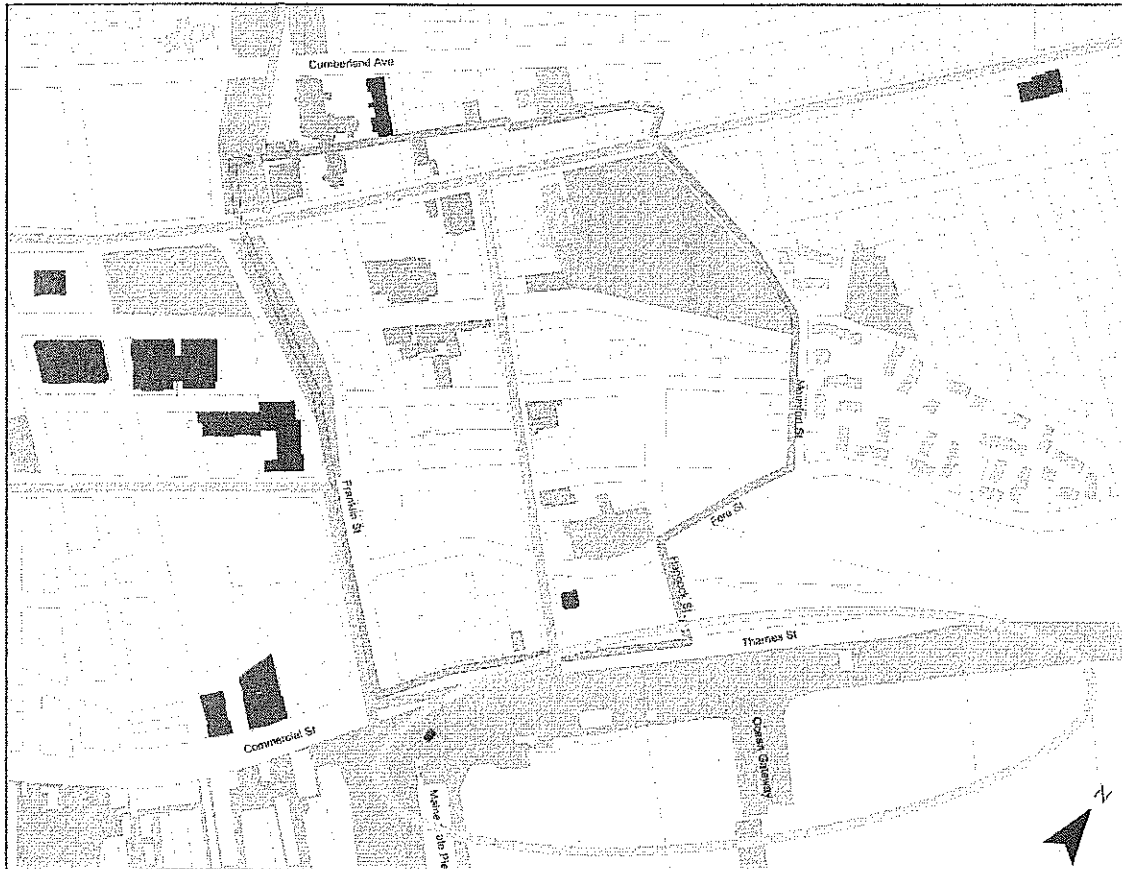
Assets to Build Upon

- **Cultural Heritage** – Portland starts here!
- **Historic** – Landmark buildings and a historic building fabric
- **Adjacent** – Waterfront, Residential neighborhoods, Downtown, Ferry and Cruise terminals
- **Shop Local** – Destination and landmark stores; Small, independent business and entrepreneurial culture; Truly mixed-use
- **Food Destination** – Many restaurants that draw people from all over the city and region
- **Accessible** – Walkable, bus connections, ample parking, good biking streets, ferry terminal
- **Geographic Advantage** – The neighborhood slopes to the waterfront, providing views
- **Development Possibilities** – Many development opportunities of varying scale

Challenges to Face

- **A Lack of Clear Identity** – The neighborhood lacks a clear identity and has never before been the subject of a neighborhood plan
- **The Constraints of Past Land Uses** – Industrial uses, many now defunct, were common in neighborhoods like this, with brownfield and clean-up costs associated with them
- **Scale of Development** – Large development sites have resulted in recent redevelopment that does not comport well with the desires of neighborhood residents and businesses, historic buildings, and neighborhood character in height or scale
- **Disconnected** – The neighborhood edges have been seriously altered and/or sealed off





Physical/Land Assets

- Waterfront (views and physical access)
- Parks and open space
 - Playgrounds – Peppermint Park, Adams Street
 - Public open spaces
 - Trails
 - Recreational facilities – Basketball at Adams Street
- Vacant Land – 21 parcels

Transportation & Mobility

- Bus Routes – 4 bus lines (1, 6, 7, and 8)
- Ocean Gateway Terminal
- Casco Bay Lines Terminal
- Parking Garages

Community, Health, and Resources

- Religious Institutions
- Community groups, Neighborhood Associations
- Advocacy groups and centers
- Clinics and counseling centers
- Community Meeting Spaces
- Hospitals, clinics, and health offices
- Grocery Stores

Local Institutions

- Schools, colleges, and universities
- Fire/Police and other emergency services
- Federal Agencies

Affordable Housing

Assets in the India Street neighborhood and surrounds

Goals and Vision Statements

The India Street Sustainable Neighborhood Plan is framed by five Goals and six Vision Statements . . .

GOALS for the India Street Neighborhood

Vitality

- The vision for the India Street neighborhood includes vibrant streets. Improvements to the street level environment, public realm, and open spaces will encourage and attract activity.
- Vitality for this neighborhood can be achieved, in part, by encouraging and directing residential growth, especially small infill projects.
- Improving the connectivity (of all modes) to and from the neighborhood will elevate the "adjacent" status of the neighborhood by making it a destination.
- A vital neighborhood also considers its future: the neighborhood seeks to reduce its vulnerability to climate change and embrace strategies that consider future quality of life including transportation, energy, and sea level rise.
- Economic prosperity is a crucial part of neighborhood vitality - strategies around economic development are a high priority.

Good Quality Design

- People are attracted to neighborhoods with good quality design. This includes not only the materials and aesthetics of new development but also the street presence and longevity of a project.
- Compatibility, especially in terms of building scale, is essential in a historic and mixed-used neighborhood such as this one.
- In this neighborhood, good quality design also includes good quality rehabilitation of existing and historic buildings.
- Infrastructure improvements shall be included in this goal - the public realm and streetscape are of equal importance to the quality of life as buildings are. Standards for high quality design shall also be held true for infrastructure changes or improvements.

Strong Neighborhood Identity that Builds on its Heritage

- India Street was the first street in Portland and the neighborhood is rich in cultural history. These qualities are at the heart of the neighborhood identity and should be at the forefront of any strategy that deals with neighborhood character, objectives, relationships, or environment.
- Streetscape and building improvements (both existing and historic) as well as new development should contribute to an identity that promotes the neighborhood to prospective residents, tourists, and adjacent neighborhoods as a destination.
- The historic fabric and landmarks tell a story about this neighborhood and are critically important to its identity.

Diversity

- The India Street neighborhood has always hosted a diverse resident population. The neighborhood plan should encourage and maintain that diversity of residents (age, race, ethnicity, gender, family size, income, etc.)
- Quality of life for a diverse population will include considerations such as food access, transportation choices, access to open space, and diversity of residential unit types and ownership models.
- The built environment of the neighborhood is diverse; a dynamic urban neighborhood keeps a diverse mix of building types by including contemporary and historic buildings, and varying building scales.

Enhance Mixed-use Nature of Neighborhood

- The India Street Neighborhood is truly a mixed-use neighborhood with residences, business, offices, hotels, retail, and restaurants. The neighborhood plan should allow this mixed-use nature of the neighborhood to continue and to expand.
- New development and the built environment should continue to support and enhance mixed uses.
- The neighborhood plan should especially support existing businesses and attract new businesses to the neighborhood, but especially those that provide services and amenities to neighborhood residents and workers.



Vision: Cultivating the Future of the India Street Neighborhood

Vision Statement 1: Sustainable Growth and Development - The India Street neighborhood is on the cusp of substantial growth and development that will firmly establish its place in the city and region for decades to come. It is poised for growth, and has chosen to shape that growth to its singular character and heritage. It is fitting that this neighborhood welcomes a share of the growth that is happening in greater Portland, given its adjacency to downtown and the waterfront, its walkability, its access to transit, its in-place infrastructure, and its strong mix of and

immediate proximity to housing, jobs, commerce, and services. Over the course of more than two years, this neighborhood has pulled together property owners, residents, and associated stakeholders and community members who care deeply about *how* this neighborhood will evolve and develop. This plan is the result of their efforts and hard work. It presents the vision, principles, and strategies to welcome the right form and shape of growth and development that will bring this transitioning neighborhood to maturity.



Vision Statement 2: A Neighborhood of Diverse Peoples – India Street is and always has been diverse, and we wish it to remain so. Histories of immigrant communities – landing here and gaining a foothold, and making their way in America – have left a durable imprint that we celebrate. Maintaining diversity means conscious efforts to welcome all kinds of new arrivals: whether they be move-up urbanists who can live anywhere and choose India Street for its location; or new arrivals continuing the traditional role of this neighborhood, welcoming new immigrants who above all need affordable housing and convenient access to jobs and services; young singles and small households who are embarking on adult life and value the social landscape and access to all that Portland has to offer; working families striving to live responsibly by choosing a compact urban neighborhood where one can afford to live and maintain a low carbon footprint; or an aging population wishing for an active life and access to Portland’s amenities, activities, restaurants, and services. Any and all of these are welcome to make India Street home, and become part of our community.

Vision Statement 3: An Authentic Neighborhood True to its Heritage –

Portland’s *first street* was India Street, and it is a point of pride and identity that this neighborhood set the stage for Portland’s growth and development. Vestiges of this history abound, from the religious institutions to the civic and industrial buildings, to the vernacular working class houses on Federal and Newbury and Hampshire streets. These features distinguish the neighborhood from others, adding to the mix of peninsula neighborhoods with a unique community fabric. This heritage creates a sense of responsibility to protect the traces of the past as well as positing a form and pattern for future growth that is recognizable as India Street. We invite development into our neighborhood, as it is essential to its vitality and to fill its voids, particularly in the southern section below Middle Street where there is much vacant land and surface parking. And we will insist that new development add to the indigenous structure of this neighborhood by demonstrating an incremental and varied street, lot, and block pattern. The scale of development may grow but the form must reflect the attributes that typify and reinforce the fabric of this neighborhood.



Vision Statement 4: A Fun, Industrious, Creative, Artisanal, and Prosperous Neighborhood – The sidewalks are full of life and commerce. Within a five minute walk multiple food products are prepared, sold, consumed, and savored. Local businesses are mostly home grown and provide authenticity to the neighborhood - the regional brew house, the bakers, the textile and furniture designers, the grocers, the coffee houses, and restaurants. Amato's, one of Maine's few chain establishments, was founded here on India Street around 1902. We will build on this cluster of commercial activity on the core retail streets and create a continuous "trail of crumbs" for visitors and residents to follow from the Old Port and the waterfront, from Commercial Street to Congress Street. We expect that in this area all of the buildings and businesses will engage with the community both visually and functionally, that there will be a "conversation with the street," and people will enjoy being here and engaging in this dialogue.

Vision Statement 5: A Healthy, Connected, and Active Neighborhood – The India Street Neighborhood provides opportunities for health and well-being ranging from health-related services to recreation amenities. Within a short walk are many recreation and open space assets: historic Lincoln Park; the Eastern Promenade Trail that caters to children, runners, bikers, strollers, bladers, boarders, and those just out for a scenic stroll; and a playground tucked into edge of Munjoy Hill off Mountfort Street. These gems are now somewhat hidden from view and access; but with some thoughtful interventions – including generous and well-designed

sidewalks and passageways, good lighting and streetscape furnishings, public art, and intuitive wayfinding strategies – we will embrace these assets and enlist them more fully into the life of the neighborhood. Street connectivity remains a fundamental challenge especially in connecting to and across Franklin Street for all modes, with a pedestrian and bicycle priority. Pedestrian connections throughout the neighborhood need improvements that will enable visitors and residents alike to feel comfortable navigating the area and accessing surrounding amenities.



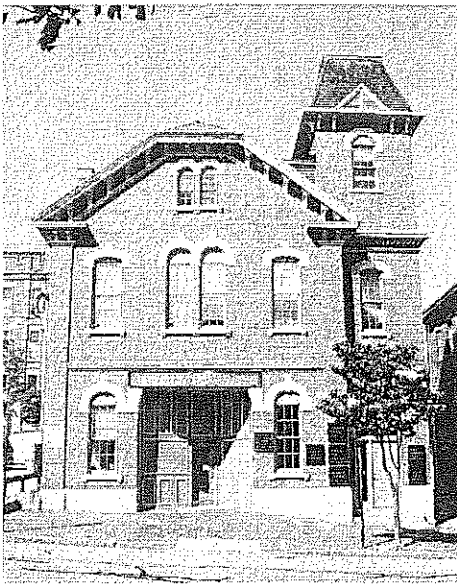
Vision Statement 6: A Neighborhood of Strong Identity – We have learned a lot about ourselves and our place within the larger community during this planning exploration of the India Street Neighborhood. Our heritage, our diversity, our industriousness, our unique physical character, and our location on Portland's marvelous peninsula all constitute the unique and authentic identity, charm, and spirit of this community. These qualities and characteristics contribute to our pride of place, sense of belonging, and conception of an exceptional community. *Portland Starts Here.* We celebrate this and all it implies. We will share this heritage and identity with the larger community, for us to enjoy, and for others to appreciate.

Thirteen Development Principles

1. Strong Neighborhood Identity

Portland starts here in the India Street neighborhood; the spirit of this place will be reflected in its identity and character, distinct from Old Port and the Downtown. The story of India Street is long and compelling; now is the time to tell and celebrate it.

The India Street Neighborhood presents a human-scale, downtown-adjacent neighborhood with commerce, light industry, authenticity, and community. What visitors and others are less aware of is its distinctive history – Portland's first street and first neighborhood, early maritime connections, later industrial development, period architecture, religious and cultural diversity. The key principle here is to bring these unique characteristics and assets into closer connection and a cohesive neighborhood identity that will permeate the built environment as well as associated housing and business – all serving to strengthen and enhance the community.



2. Diversity of Residents

People are at the very heart of all that India Street Neighborhood is about. It is characterized by diversity, past and present, in all meanings of the word – race, ethnicity, age, religion, ability, household size, and socio/economic status. For the future, the India Street neighborhood will continue to be a place known for its authentic diversity; and diversity of residents and activities will be encouraged and maintained.

Two major factors contribute to neighborhood diversity: housing choice and affordability. The recent housing development trend in the neighborhood has been toward large condominium units, often catering to empty-nester couples and part-year residents. Left to themselves, market forces

alone will provide more of this housing type, while a balance of housing types is desired. The City is especially interested in development that will provide homes for families with children, and young, single workforce households. This should include rental units and a mix of efficiencies, one, two, and three-bedroom units. As the neighborhood residential base grows, so too will the *type* of housing remain varied. Affordability will likewise be considered in development and policy decisions.



3. Neighborhood Heritage and Historic Preservation

Unlike many other neighborhoods on the peninsula, the India Street neighborhood grew to become a strikingly diverse and self-contained neighborhood, with its own “main street,” houses of worship, institutional buildings, and workshop industries that provided employment for minority groups that populated the area. While the neighborhood has lost significant elements of its past, much remains to tell its compelling story. The historic buildings that remain not only tell the story about how this neighborhood has evolved and functioned, but also contribute significantly to its unique character, scale, and patterns.

Protecting and enhancing India Street’s historic building stock is essential if the area is to retain its authenticity and build a strong sense of place. Alterations to existing buildings, both historic and non-historic, will be carefully considered so the neighborhood’s character will not diminish over time. Infill construction will be a clear product of its own time, and respect established development patterns that characterize the neighborhood.

Opportunities to tell the neighborhood’s story, through interpretive signage or other means, will be fully explored and implemented. Understanding the history of the neighborhood will foster pride among local residents and businesses, and will enhance the visitor’s experience.

4. Mixed-Use Neighborhood

The India Street neighborhood is today truly a mixed-use neighborhood with residences, businesses, offices, hotels, retail, and restaurants. The neighborhood plan should allow the mixed-use nature of this neighborhood to continue and expand, with the goal of providing a fair and high quality of life for all manner of people.

Fostering a desirable and diverse neighborhood requires a certain level of services and neighborhood amenities. Important and interesting destinations, from places that supply necessities to those that supply entertainment, are within walking and bicycling distances. Real estate developments, policies, and economic development plans that maintain or grow the level of service and amenities for the neighborhood will be encouraged.

5. Vibrant Local Economy

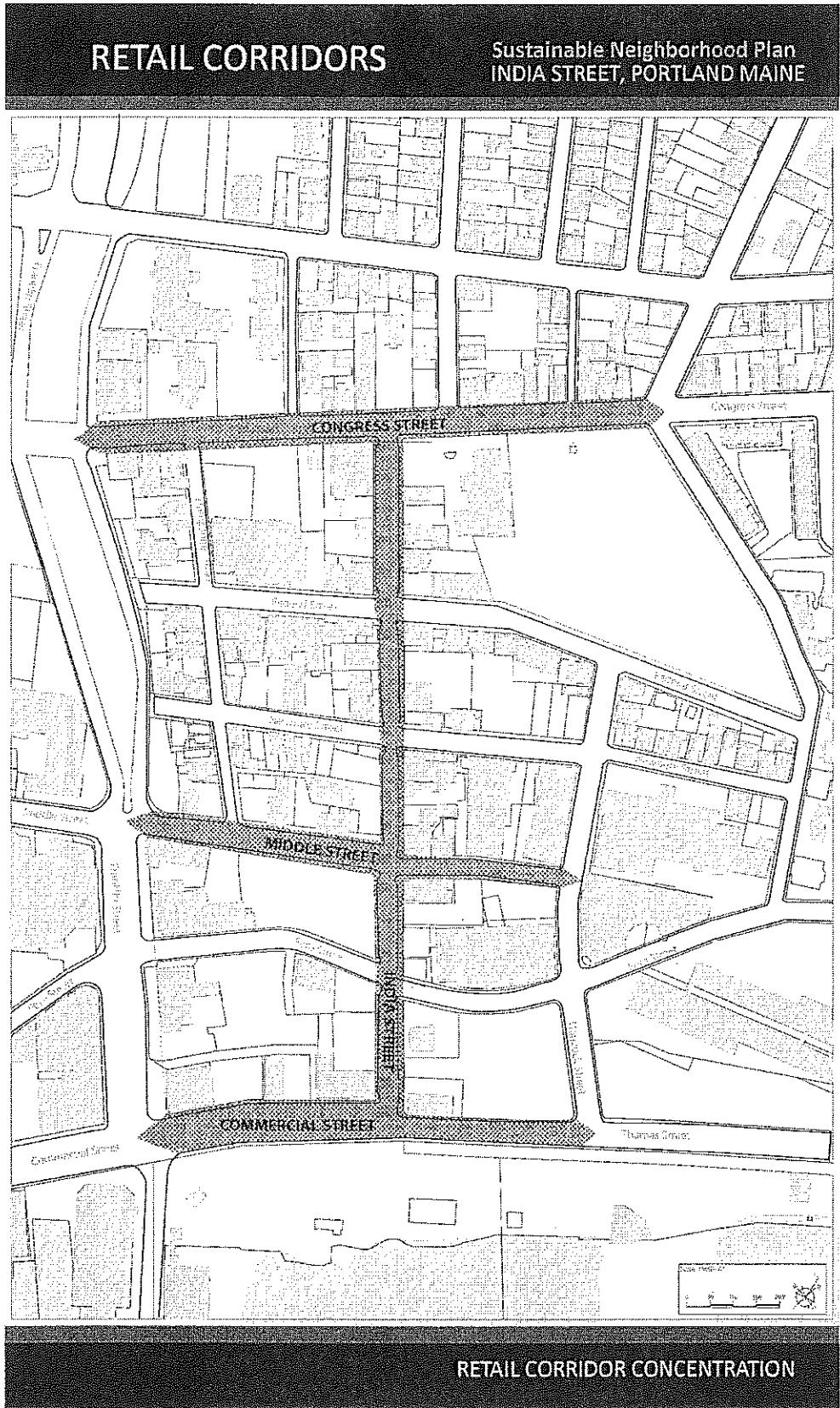
Businesses are important to the success of a mixed-use neighborhood, and the vitality of the India Street Neighborhood economy impacts the city as a whole. The economic goals for the neighborhood are to grow employment opportunities and enhance economic vitality and sustainability.

The India Street neighborhood draws people who recognize and enjoy its unique character and heritage. Those who visit or live in the neighborhood appreciate its authenticity, local artisan retail and eating establishments, and diverse cultural history. Building on these strengths through communication of identity, concentration of commercial uses, protection of the historic and human-scaled built fabric, and stronger relationships within the neighborhood will attract greater numbers of visitors, residents, and businesses to the area and move the neighborhood towards its economic goals.

6. Retail Corridors

The India Street Neighborhood is home to destination food and retail businesses, among Portland's most popular. The beginnings of a retail corridor exist on India Street, the neighborhood's main street, as well as on Congress and Commercial streets, and commercial uses are dispersed across the neighborhood. The neighborhood's vitality will be heightened with more concentrated commercial activity – particularly restaurants and retail – along India and on Congress, Commercial, and Middle streets.

Commercial Street is a popular pedestrian route and entry into Portland for cruise ship and ferry passengers. Enticing people to the India Street Neighborhood will depend, in part, on creating a continuous "chain of crumbs" leading from Commercial up India Street. This will require a phased approach, focusing first on recruiting to India Street new retail shops and restaurants, from Commercial up to Middle streets; and then continuing this effort along India all the way to Congress Street. People attract more people; by concentrating retail to strategic corridors the streets become more active and boost economic vitality. This strategy for the neighborhood retail environment will strengthen existing businesses and attract more visitors, residents, and businesses.



7. Guided Growth

The India Street neighborhood is an ideal place to target sustainable growth due to the availability of development sites and existing urban infrastructure. Sustainable growth is growth that occurs in an already-established urban neighborhood, taking advantage of existing infrastructure and services. In the case of India Street, the vision is also for residential growth that supports the neighborhood. The district will accommodate a reasonable share of regional growth over the next 25 years, based on its size and proximity to downtown; and gain critical mass that will support a diverse, vibrant, and mixed-use urban neighborhood. The neighborhood desires a healthy mix of uses. The type of growth will be primarily residential with a substantial increase in housing units; there is already an ample supply of hotels developed. Growth will also come from increased density of smaller units of development rather than increased height. All of this growth will only add to its activity and vitality, promoting it as a vibrant neighborhood center within Portland.

There are several areas in which this growth will be located. Due to availability and size of land, significant growth will occur on large redevelopment sites toward the waterfront. As an urban avenue, Franklin Street has valuable frontage along which new development will redefine the neighborhood's edge and contribute to its identity as a desirable residential/mixed-use district. Smaller infill developments will be strongly encouraged as a way to expand the capacity for neighborhood growth and test prospective housing unit types.

8. Form of Development

Neighborhood growth will carefully consider of form and scale, with an emphasis on "human scale" development and good quality design. Graduation of form will vary by location so that future new development is appropriate to its surrounding context. Within intact historic streets, form is modulated to approximate surrounding building forms. In larger blocks presently dominated by surface parking, new buildings will be scaled proportionately to allow larger buildings with mass and scale designed to achieve a human scale street presence, protection of street view corridors, and varied and permeable block faces. The intended outcome will be a harmonious composition of new and old buildings that fit well together to create a lively fabric of modern and traditional building forms.

The Importance of Form – The identity of a downtown adjacent neighborhood is dictated in large part by its scale and pedestrian-friendly design. Critical elements include¹:

- Relatively high residential density within a relatively small district, putting many people within walking distance of many activities and, for trips outside of the district, regular and reliable bus service with bus stops;

¹ These are drawn from the India Street Neighborhood workshop discussion, the City's design manual, and reference materials such as Ewing and Bartholomew, *Pedestrian- and Transit-Oriented Design* (2013).

- A fine-grained mix of uses – both horizontal and vertical – that invite a flow of people at different times of the day, seven days a week;
- A street pattern with pedestrian-scaled blocks. Longer blocks and larger buildings will be interrupted and made permeable by mid-block pedestrian ways, alleys, or streets;
- Continuous sidewalks designed with universal access and widths scaled to the pedestrian activity of the street, to allow two couples walking in opposite directions to comfortably pass each other;
- Strong street walls with development placed close to the property line at street frontage
- Street-oriented buildings, with commercial and mixed use buildings with “permeable” facades – front entrances and fenestration that relate to the street;
- Human-scale buildings – neither so tall as to block a pedestrian’s cone of vision at four stories, nor so horizontally large or dominated by a single use as to discourage the casual interaction between pedestrians and a mix of uses along the street.

9. Compassionate and Supportive Community

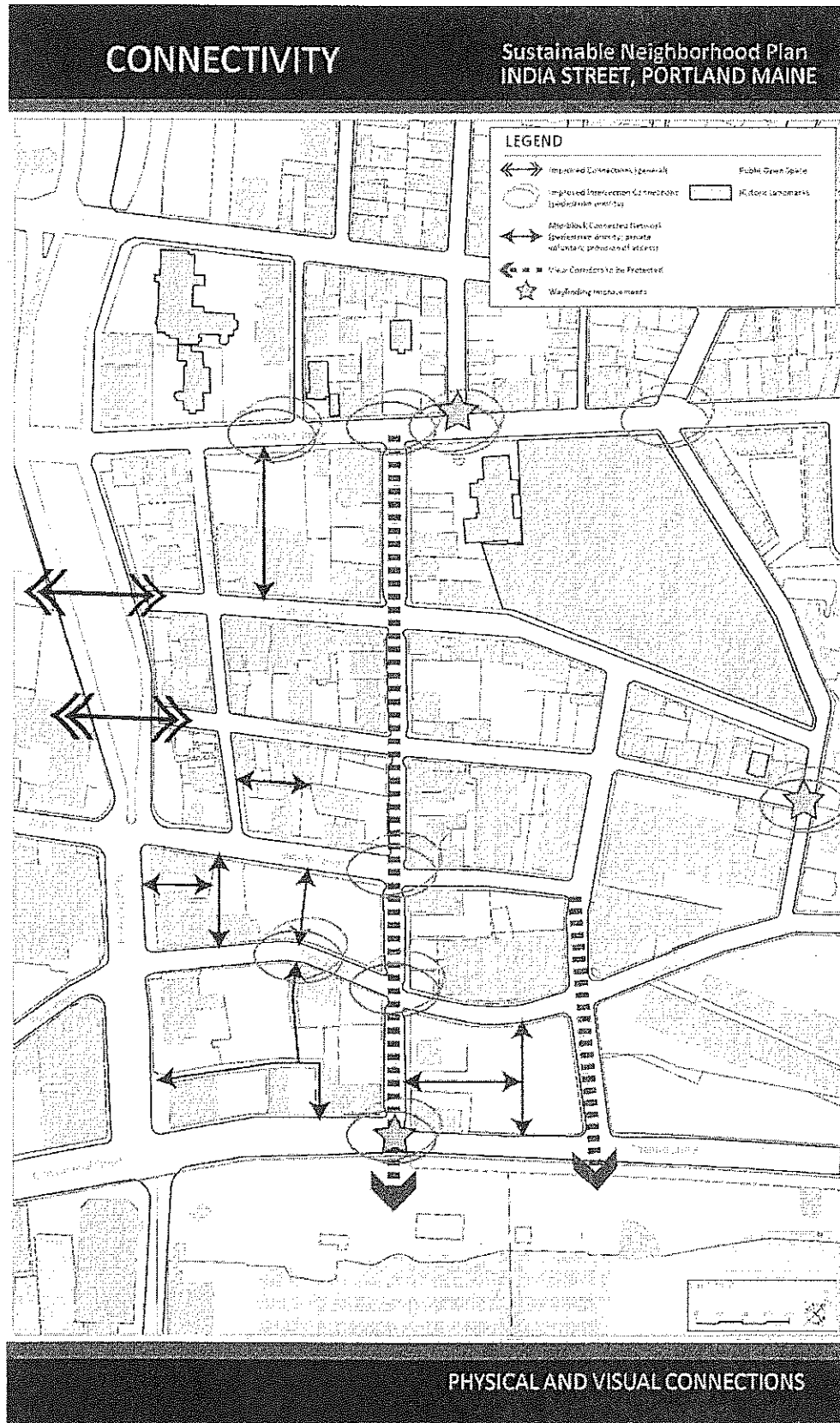
The India Street neighborhood continues a history of welcoming. A walk around the neighborhood reveals a plethora of services and resources ranging from immigrant and elderly services at Catholic Charities, resources for the homeless population at the Cathedral complex and Milestone, low-income housing for the elderly at North School, education opportunities at the Portland Adult Education building, and abundant medical and mental health practices. The compassionate and supportive nature of this neighborhood will be encouraged to prosper; it will continue to be a hospitable landing place for those seeking opportunity in Portland whether it be a new immigrant resident or a fledgling economic enterprise. Efforts to make it accessible with connectivity, transit, and streetscape improvements will go a long way to foster this kind of community.

10. Connected Neighborhood

A downtown-adjacent neighborhood that is disconnected from its downtown is an undervalued and underutilized asset. The *adjacent* nature of this neighborhood is both unique and full of potential. India Street abuts many wondrous assets and resources – residential neighborhoods, the downtown district, and the waterfront. *Connections* to these nearby assets and amenities are fundamental to its economic vitality and greater quality of life. Services and opportunities – from jobs to entertainment to governmental services – will be improved by strengthening the connectedness of the neighborhood. From the point of view of the India Street neighborhood, the redesign of Franklin Street is driven in large part by the desire to re-connect this neighborhood and the Downtown. The Transportation Plan of the Comprehensive Plan states, “The City should promote the interconnection of neighborhood streets and pathways, so that there are multiple paths of travel to get to destinations within and between neighborhoods by foot and bicycle, as well as auto.” Reconnecting dead-end streets and formalizing well-loved but informal connection points will help to knit the India Street neighborhood into the city.

The India Street neighborhood already has the fundamental characteristics of a walkable, bikeable neighborhood and the additional advantage of being a transportation hub. The combination of neighborhood adjacency and increased density reinforce the use of alternative transportation modes, reducing dependency on automobiles and allows for the relaxing of parking requirements. Improvements to the local street system, trail system, and transportation system will give priority to connectivity on multiple scales - connectivity to surrounding neighborhoods, connectivity to neighboring assets such as Lincoln Park and the waterfront, and connectivity within the neighborhood, itself. Emphasis will be on pedestrian, bicycle, and transit modes. The walkability of the neighborhood, proximity to jobs on the Portland peninsula, and the availability of bus service will reduce auto dependency. Increased density will support public transportation with shorter time intervals, which, in turn encourages use and viability of the transit system.

Visual connections, especially to the waterfront, are another important type of connection. Wherever possible, access to the waterfront – visual and physical – will be provided as a public amenity. New development will be conscientious of its relationship to the water; view corridors through public rights of way to the water will not be obstructed. Visibility to and from the neighborhood, across Franklin Street and from the water and Commercial Street, will contribute to the identity and presence of the neighborhood, serving to attract visitors as well as elevate the relationship of the neighborhood with the rest of the city.

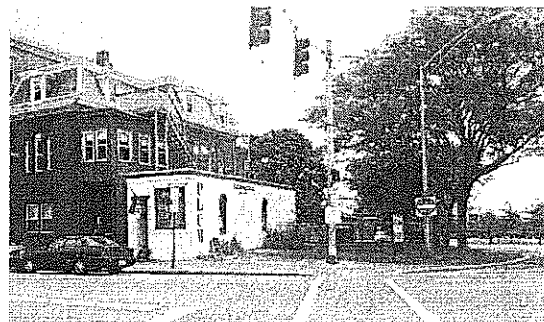


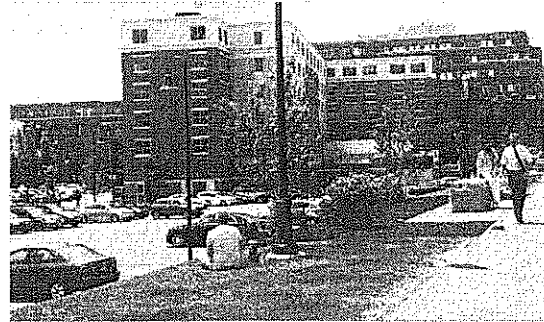
11. Quality Infrastructure

The streetscape and landscape play an important role in supporting the neighborhood identity and affording a comfortable, inviting, and human-scaled environment. For infrastructure, emphasis will be placed on the experience one has travelling to and throughout the neighborhood, with Complete Streets as the adopted City strategy. The street grid and transportation infrastructure will be improved with priority given to pedestrian, bicycle, and transit modes. Strategies to improve the streetscape will include increased street trees and plantings, lighting, public restrooms, green infrastructure implementation, wider sidewalks and improved universal access in public right of ways, street furniture deployment, and a neighborhood-wide analysis to evaluate the potential to underground utilities. Neighborhood identity will be reinforced through streetscape design elements with particular priority on India Street which will include street trees, public art, unique and cohesive street furniture, pavement options that have a storytelling or identity component, and gateway elements signaling entrances to the neighborhood.

Vehicle parking, especially surface parking lots, will be de-emphasized. On-street parking, reduced off-street parking requirements, modest off-street lots, structured parking, and car-sharing services will all be needed to satisfy demand. In the India Street neighborhood, the recent structured parking with excess space (as of 2013) was created to relieve some of the constraint that might otherwise exist and to facilitate development of surrounding parcels. Use of shared parking and utility infrastructure strategies will be encouraged.

Finally, improvements to telecommunication infrastructure is crucial to making the India Street neighborhood and the city an attractive place to locate for residents and businesses who increasingly rely on internet access for quality of life and work.





12. Ample Recreation and Open Space

Open space is a most precious commodity in the small, urban India Street neighborhood. Open space amenities greatly enhance quality of life for residents and workers, make for a more attractive built environment, and create opportunities for community gathering and interaction. Every opportunity to improve or enhance public open spaces will be pursued. This principle addresses a guiding principle of the existing open space and recreation plan for the City of Portland, *Green Spaces, Blue Edges*:

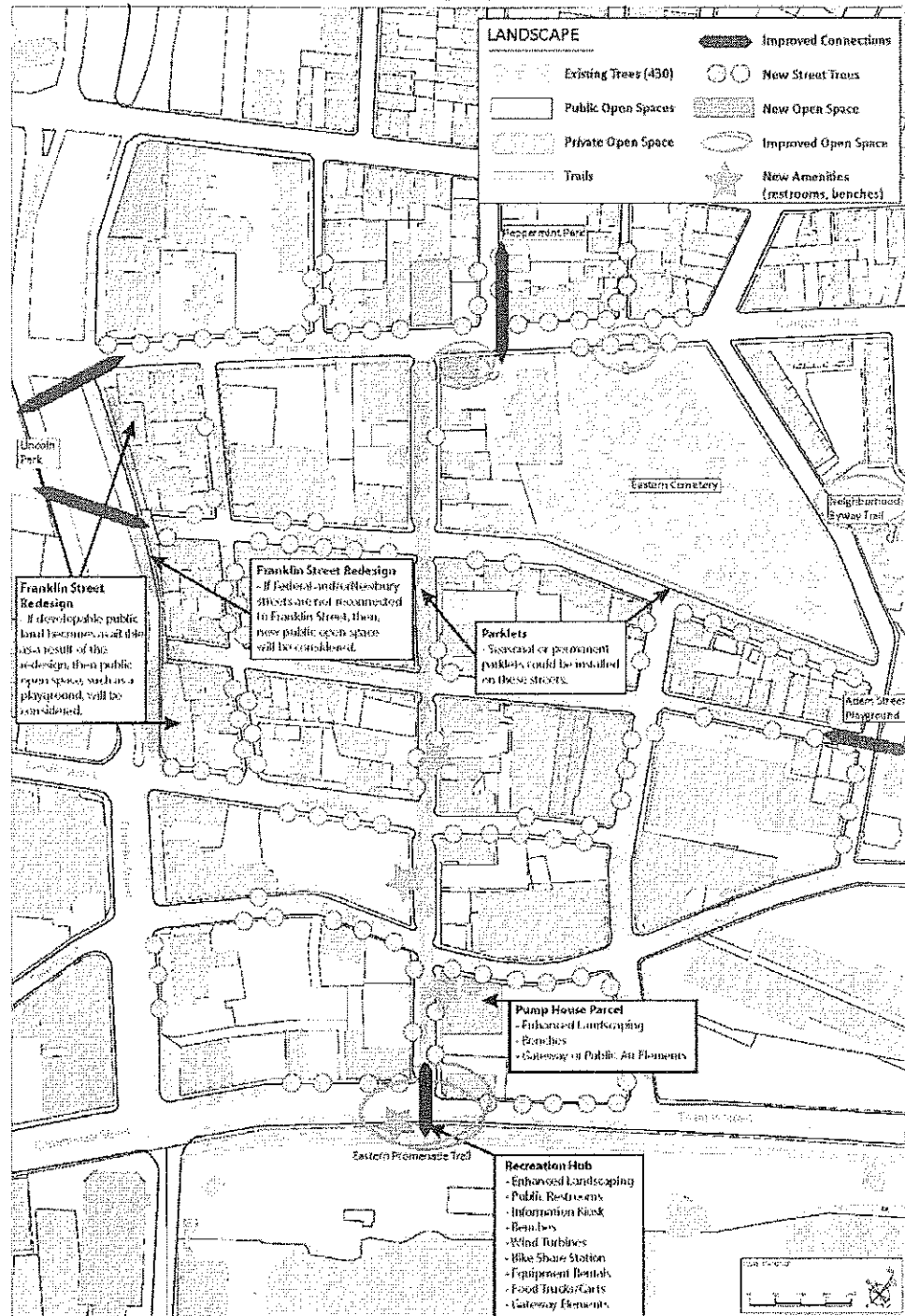
Neighborhoods form the foundation of *Green Spaces, Blue Edges*. The plan exists to serve the health and enjoyment of the neighborhood residents.

- Neighborhoods should have open space focal points
- Recreational opportunities should be available for all ages and genders
- Neighborhood open space should be within walking distance
- Portland residents appreciate their park system

The neighborhood has three avenues to maximize the potential for open spaces of different types and uses: 1) Create new open spaces at the pumping station property, along Franklin Street, and at the foot of India Street, 2) Improve and maintain existing spaces (including private green spaces) within the neighborhood by implementing the Eastern Cemetery Master Plan, for example, and 3) Connect to surrounding open space amenities such as Lincoln Park, playgrounds in Peppermint Park and Adams Street, and the Eastern Promenade Trail.



Sustainable Neighborhood Plan INDIA STREET, PORTLAND MAINE



Proposed Open Space, Recreation, and Landscape Plan

13. Responsive to Climate Change

As a waterfront-adjacent district, climate change is especially compelling to the India Street neighborhood. Adapting to sea-level rise, reducing stormwater runoff, and mitigating heat island effect are especially important to address, as the neighborhood continues to develop and improve. Future plans for this district will consider such features as low-impact design in public and private development, reduction in impervious surfaces and subsequent opportunity to increase greenery and street trees, flexible ground floor designs, and treatment of roof surfaces to reduce heat island effect and solar reflectance. Incremental changes, including modifying structures and facilities on the water's edge to be more resilient to sea-level rise, will be pursued by both public and private interests. The future India Street neighborhood will be a model to demonstrate that planning for climate change is a benefit to residents', visitors', and workers' quality of life and the quality of the built environment.



Implementation Plan

In order to implement the policies laid out in the India Street Sustainable Neighborhood Plan, twelve **Critical Actions** have been drafted to form an Implementation Plan. Critical Actions are inter-related and high priority initiatives, representing the top one or two strategies from each India Street Neighborhood Advisory Committee Working Group. These twelve Critical Actions are intended to guide the City in measures that can be taken to fulfill the Plan principles and meet the "SMART" test articulated by the City Council as part of its 2014 goal-setting process:

Specific
Measurable
Attainable
Realistic
Tangible

It is important to note that the Implementation Plan is meant to guide the City but will not be included in the Comprehensive Plan as policy. These initiatives, taken individually and collectively, will help the City to achieve the policies and objectives of this Plan, but each action will require individual review, consideration, and decision-making in light of the resources available and competing objectives of the City at the time. It is not expected that each item will proceed exactly as prescribed, but that these programs and initiatives, among others that might arise, will be considered in the implementation of this Plan. The creation of these Critical Actions ensures the policy document – the India Street Sustainable Neighborhood Plan – is translated into clear action and will have a beneficial, tangible impact.

DIVISION 15.2 IS-FBC - INDIA STREET FORM-BASED CODE ZONE

SEC. 14- XXX. PURPOSE

The India Street Form-based Code is different than traditional zoning, placing the primary emphasis on a building's physical form and its relationship to the street, and de-emphasizing land use. The intent of the India Street Form-based Code zone is to establish a zoning district that encourages a vibrant, walkable, mixed-use, urban district, preserves and values the existing historic neighborhood fabric, and fosters and supports local businesses and residential areas. The components of a Form-Based Code include the Guiding Principles, REGULATING PLAN, Subdistricts, General Development Standards, Dimensional Requirements, BUILDING DESIGN STANDARDS, Diagrams, and Definitions.

The goal of the India Street Form-based Code is the creation and preservation of an active and human-scale public realm and the reinforcement of existing neighborhood character through good street space design.

- a) GENERAL GUIDING PRINCIPLES: The General Guiding Principles set forth here shall be applicable to all subdistricts within the India Street Form-based Code Zone.
 - 1. The street is a coherent space, with consistent building and streetscape character on both sides of the street. This agreement of buildings and streetscape across the street contributes to a clear public space and district identity.
 - 2. The street wall is visually well defined. Land should be clearly public or private. Buildings contribute to the vital and safe public space while providing a clear boundary to the private, protected realm.
 - 3. Street walls are engaged with the street environment. Buildings are inviting places that interact with and contribute to the street vitality. Inactive edges, vehicle storage, garbage, and mechanical equipment should be kept away from the street. Shared infrastructure to the extent practicable, including, but not limited to service alleys, parking areas, stormwater treatment, public transportation facilities, and driveways, shall be utilized.
 - 4. Buildings are designed for the urban environment. Buildings must be designed for the urban situation within the district which often includes mixed-uses. Buildings are positioned near the street and FACADES are oriented to the street.
 - 5. Respect historic character. If a property is within the India Street Historic District, **Sec. xx** is applicable. New construction, BUILDING ADDITIONS, or ALTERATIONS in the India Street Historic District shall reflect and complement the character defining features and elements of the existing historic development to which it is visually related.

SEC. 14- XX APPLICABILITY

The requirements set forth in this Division shall apply to all new development, primary and accessory structures, including BUILDING ADDITIONS within the India Street Form-based Code Zone as designated on the India Street REGULATING PLAN.

SEC. 14-XX DEFINITIONS

Terms used throughout this Form-based Code Zone may be defined in Section 14-47 or elsewhere in the Zoning Ordinance. Terms not so defined shall be accorded their commonly accepted meanings. In the event of any conflict between the definitions in this Section and those in Section 14-47, or any other sections of the Zoning Ordinance, the Subdivision Rules and Regulations, or any other local land use ordinances, rules or regulations, those of this Form-based Code Zone shall take precedence.

ALTERATION: A change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a structure.

BUILDING ADDITION: Any increase to footprint or volume of an existing structure. See Table 14.1c. Building – Principal & Accessory

BUILDABLE AREA: The area enclosed by the front, side, and rear yard setbacks and limited by lot coverage.

BUILDING, ACCESSORY: Detached structure that is incidental and subordinate in area and extent, and/or use to the principal building(s) on the property. A lot may have more than one accessory building. See Table 14.1c. Building – Principal & Accessory

BUILDING, PRINCIPAL: The main structure(s) on a lot having the predominant area and extent, and/or use. A lot may have more than one principal building. See Table 14.1c. Building – Principal & Accessory

BUILDINGS, ATTACHED: Two or more independent buildings that share at least one common PARTY WALL but have full building separation and independent PRINCIPAL ENTRIES; not free-standing. Attached buildings may or may not have common ownership.

BUILDING DESIGN STANDARD (BDS): The basic design parameters governing building form, including intent, guidelines, and standards for architectural elements such as proportion, articulation, fenestration, entries, roof lines, and materials.

ELEVATION: An exterior wall of a building not along a frontage line. See FAÇADE and Table 14.1e. Frontage & Lot Lines

ENTRANCE, PRINCIPAL: The main point of access for pedestrians into a building. A building may have more than one principal entrance.

EXPRESSION LINE: A line prescribed at a certain level of a building for the major part of the width of a FAÇADE, expressed by a variation in material or by a limited projection such as a molding or balcony.

FAÇADE: Any exterior wall of a structure exposed to public view from a public right-of-way. See ELEVATION and Table 14.1e. Frontage & Lot Lines

FAÇADE, BLANK: Building façade that contains expanses of wall area with no windows, no entrances, no articulation, and no other elements or features, or is otherwise undifferentiated.

GREEN ROOF: A roof of a building that is partially or completely covered with vegetation and designed to meet the Maine Stormwater Best Management Practices Manual standards and recommendations. A green roof installation must serve the purpose of reducing stormwater runoff through retention or slowing and consist of an assembly that at a minimum includes a root repellent system, a drainage system, a filtering layer, a growing medium and plants, and shall be installed on a waterproof membrane. The vegetated area of a green roof may be considered pervious for zoning impervious calculations.

LOT LAYER: A range of depth of a lot within which certain elements are permitted. See Table 14.1d. Lot Layers

MID-BLOCK PERMEABILITY: A continuous, open-air corridor at least 20' in width that connects two streets or public rights-of-way and physically provides a break in the street wall. The corridor must be unobstructed and open to the sky for the majority of its length.

PARTY WALL: Any partition wall common to two adjacent or attached buildings.

REGULATING PLAN: A zoning map or set of maps that shows the boundary of the area and subdistricts subject to regulation by the India Street Form-based Code.

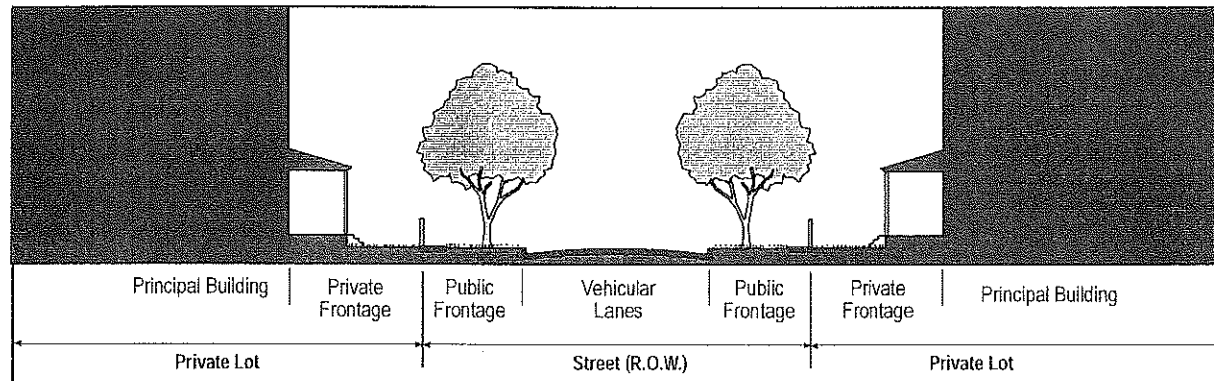
STEPBACK: A building setback of a specified distance measured from the ground floor building face that occurs at a prescribed number of stories or height above the ground.

YARD, SIDE: A yard adjoining a side lot line extending from the front yard to the rear yard, the width of which shall be the shortest horizontal distance between the side lot line and any structure. On corner lots, non-frontage yards shall be considered side yards. See Table 14.1.b. Setback Designations

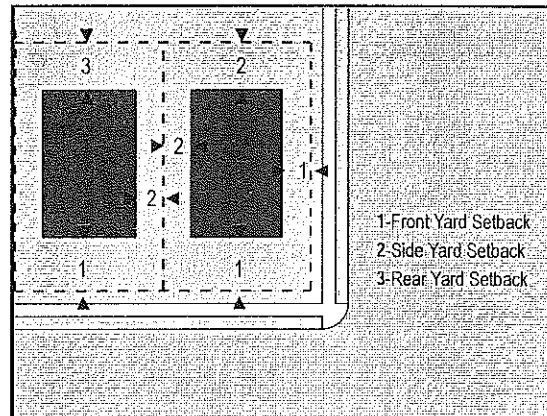
ZERO LOT LINE: The location of a structure on a lot such that one or more of the structure sides rests directly on a lot line. See Table 14.1e. Frontage & Lot Lines

TABLE 14.1 DEFINITIONS ILLUSTRATED

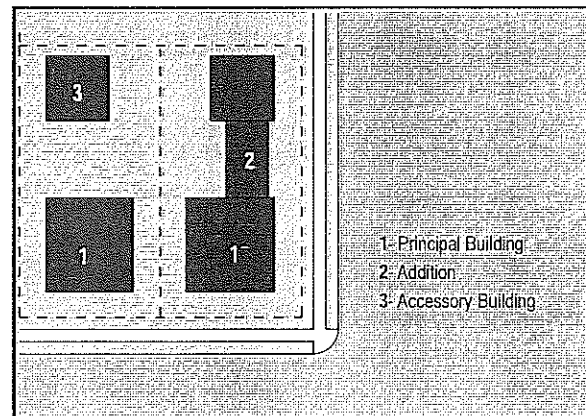
a. STREETS & FRONTAGES



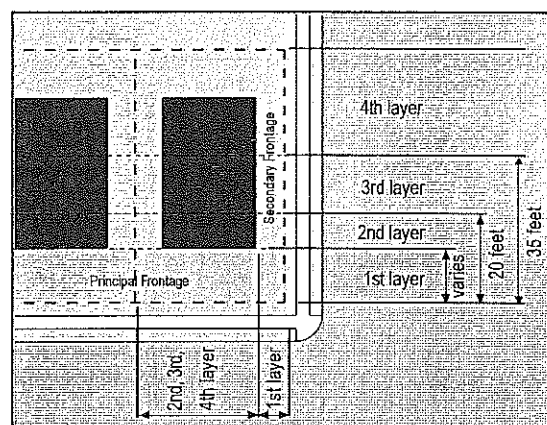
b. SETBACK DESIGNATIONS



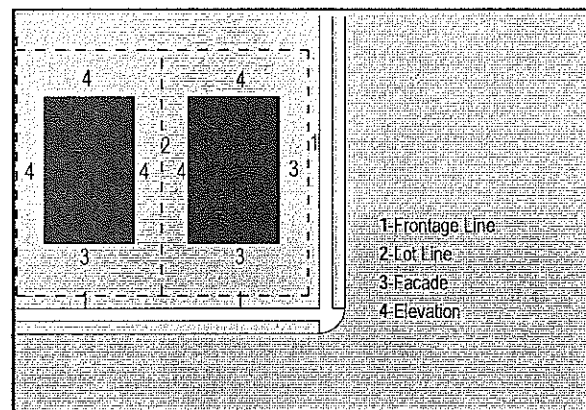
c. BUILDING - PRINCIPAL & ACCESSORY



d. LOT LAYERS



e. FRONTAGE & LOT LINES

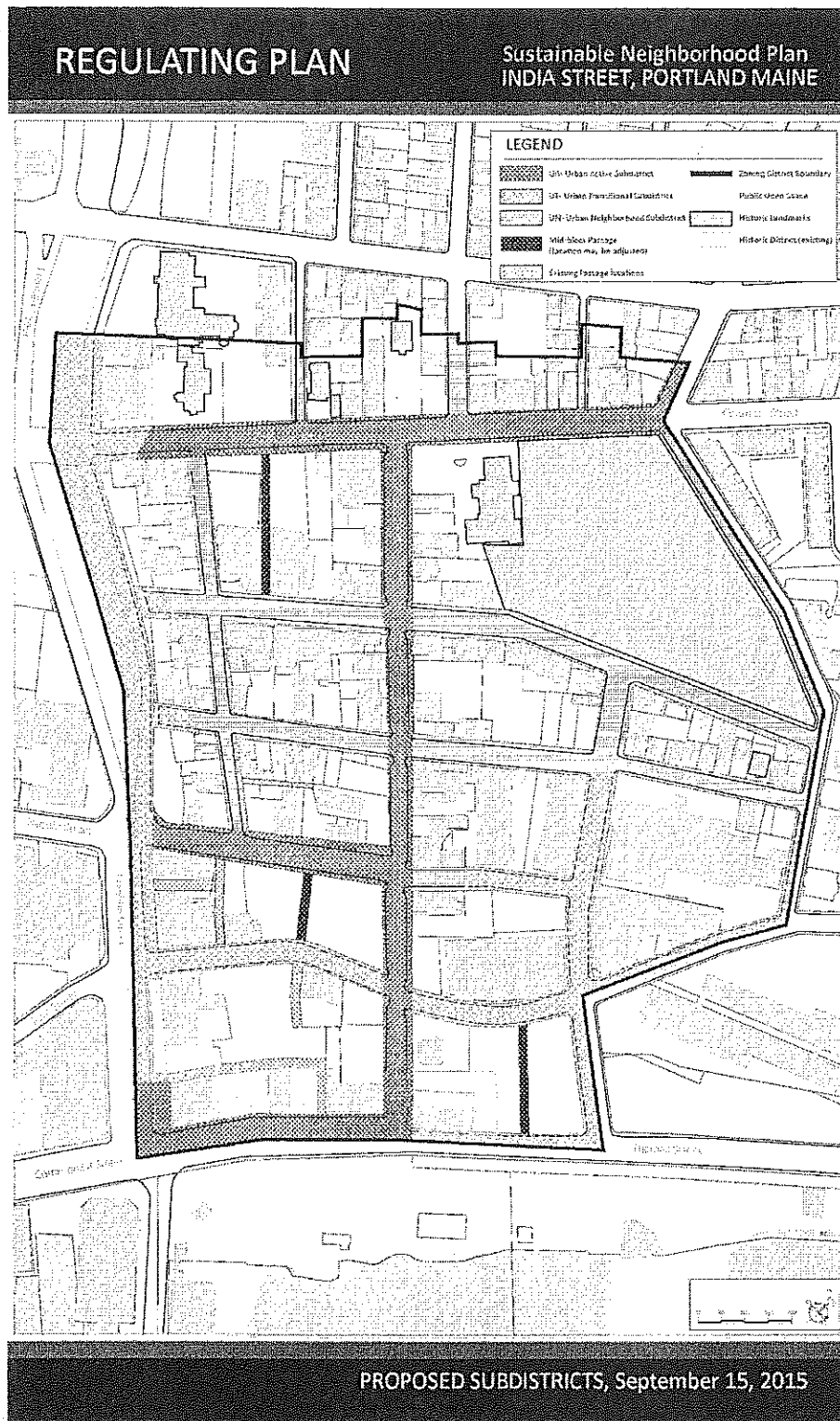


SEC. 14-XX ESTABLISHMENT OF SUBDISTRICTS

The India Street Form-based Code Zone as shown on the REGULATING PLAN is divided into three subdistricts.

- a) Urban Neighborhood (UN) Subdistrict
- b) Urban Transitional (UT) Subdistrict
- c) Urban Active (UA) Subdistrict

SECTION 14-XX REGULATING PLAN



SEC. 14-XX GENERAL DEVELOPMENT STANDARDS

The following standards apply to all subdistricts unless expressly stated otherwise.

- a) PROHIBITED USES – uses not to be established in the India Street Form-based Code Zone include:

Correctional facilities,

Cremation facilities,

Drive-through facilities,

High-impact industrial uses, including industrial uses that are prohibited in the IL zone, specifically Section 14-233(c), (e – y), (aa),

Major/minor auto-service station,

Truck terminals,

Waste related services,

and storage and parking facilities for Class 1 flammable and combustible liquids (having an aggregate total of more than 100 gallons) but excluding storage that is part of a motorized vehicle or pleasure craft facility.

- b) SITING STANDARDS

1. MID-BLOCK PERMEABILITY

- a. Lots with frontage on two streets roughly parallel to Commercial/Thames Street, for each and every 200' in street line length of lot, a full break between structures of at least 20' in width shall be provided roughly perpendicular to Commercial/Thames Street and within the middle third of the applicable street frontage. (see Table 14.2a. Mid-Block Permeability)
- b. Is encouraged in any location that connects existing public or private alleys, passages, or streets.
- c. Any development providing MID-BLOCK PERMEABILITY with public access between two streets is eligible for one (1) additional story of up to 12' in height (see Sec. 14-xx (c) Height Bonuses). Public access shall be defined through a legal agreement such as an easement or license.
- d. Refer to REGULATING PLAN for identified required MID-BLOCK PERMEABILITY locations.

2. Frontage Requirements - Additional Building Length is allowed beyond the maximum building length under the following circumstances and according to the table below:

- a. ATTACHED BUILDINGS: An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed. A PARTY WALL condition is required at least every 30' and for the entire height of each building. (see Table 14.2.d Additional Building Length – ATTACHED BUILDINGS).
- b. Ground Floor Partitions: Additional building length is permitted with the provision of ground floor partitions where the following conditions are met: (see Table 14.2.f Additional Building Length – Ground Floor Partitions)
 1. Partitions must extend from the FAÇADE at least 2/3rds of the building depth.
 2. Partitions must be architecturally expressed on the building exterior.
 3. Each module created by partition must have at least one functional, street-facing entry.

4. Modules created by partition shall be sized to have reasonable function and proportion in relation to overall building length.
- c. Massing Variation: Additional building length is permitted where at least 30% and up to 40% of the total FACADE building length is set back to the 3rd LOT LAYER (at least 20') (see Table 14.2.e Additional Building Length – Massing Variation).
- d. Structured Parking Exception: Additional building length for one FACADE without partition walls is allowed for the use of ground-level structured parking.

Additional Building Length				
Subdistrict	ATTACHED BUILDINGS	Ground Floor Partitions	Massing Variation	Structured Parking Exception
UN	unlimited run	Not allowed	Not allowed	Not allowed
UT	unlimited run	200' max. length; 2 modules	200' max. length	200' max. length
UA	unlimited run	150' max. length; 3 modules	Not allowed	150' max. length

3. Setbacks

- a. Side Yard Setbacks for Small Lots – Lots with street frontage of less than 35' are not required to have side yards.
- b. Where new construction or BUILDING ADDITIONS creates a side yard of less than 5', a maintenance easement is required where a combination of the side yard and easement must be at least 5'. PARTY WALL conditions are exempt from providing a maintenance easement.
- c. Building FACADES within 10' of a corner are exempt from setback requirements in order to allow special corner architectural treatments.
- d. ATTACHED BUILDINGS on Individual Lots - Subdivision developments consisting of horizontally attached buildings on individual lots are not required to have side yards between buildings where a PARTY WALL condition will exist, but shall be required to meet the applicable side yard requirements at the external and internal subdivision lot boundaries between buildings that are not attached to each other.

4. Landscaping and Screening

- a. Surface parking areas shall be screened from view from sidewalks, public-right-of-ways, and public open spaces using landscaping, walls, fencing, or a combination thereof.
- b. Wall/Fence Dimensional Requirements

Wall/Fence Dimensional Requirements		
LOT LAYER	Height	Visual Permeability
1 ST	6' max.	Required above 2' from sidewalk grade
2 ND – 4 TH	8' max.	n/a

5. BUILDING ADDITIONS

- a. BUILDING ADDITIONS which exceed the footprint of the existing building to which it is an addition or which exceeds 50,000 square feet shall be subject to Level III Site Plan review.
- b. A BUILDING ADDITION length may match but not exceed the length of the existing building to which it is an addition. All other Subdistrict Dimensional Requirements shall apply. (See Table 14.2b. Additions)

c. BUILDING ADDITIONS may match existing building in number and height of stories. All other Subdistrict Height Standards shall apply.

c) HEIGHT STANDARDS

1. Height Bonus

a. Applicability:

1. If principal frontage faces a UT street or Congress Street, then the building is eligible for a height bonus.
2. Only one height bonus may be applied per structure.

b. One (1) additional story of up to 12' in height is allowed if one of the following provisions is met:

1. For residential development with residential density equal to or greater than 150 dwelling units per acre (density may be achieved with the bonus floor)
2. For any development providing a GREEN ROOF, where:
 - ☐ at least 50% of the cumulative lot area is pervious and,
 - ☐ at least 50% of the cumulative roof area is a GREEN ROOF. GREEN ROOF area may be applied towards the 50% lot area requirement.

Height Bonuses						
Subdistrict	Maximum pre-bonus Height	Mid-block permeability (publicly accessible)	Residential Density	GREEN ROOF	Maximum Height based on bonuses	Minimum Bonus floor Stepback (from the ground floor building edge facing any public right-of-way)
UN	n/a	n/a	n/a	n/a	n/a	n/a
UT	65' and 6 stories	1 story Up to 12'	1 story Up to 12'	1 story Up to 12'	77' up to 7 stories	15'
UA (Congress Street only)	50' and 4 stories	1 story Up to 12'	1 story Up to 12'	1 story Up to 12'	62' up to 5 stories	15'

d) PARKING STANDARDS

1. Parking shall be provided as per Division 20 Off-Street Parking of Chapter 14 Land Use Code.
2. Structured parking must meet the BDS for *Structured Parking* (see City of Portland Design Manual).
3. In the case of a BUILDING ADDITION, non-conforming existing surface parking may remain. In the case of new construction, surface parking must be brought into conformance with IS-FBC standards.

SEC 14-XX. SUBDISTRICT DIMENSIONAL REQUIREMENTS

UN

Urban Neighborhood (UN) Subdistrict:

INTENT: The intent of this subdistrict is to maintain and promote a small-scale, less active urban fabric. Buildings may be more private in character and have smaller footprints with building types including, but not limited to, single-family, rowhouses, duplexes, triple-deckers, and double-triples. Building frontages may be less transparent and entries may be raised above sidewalk level with frontage types including raised, recessed doorways, porches, and stoops. The streetscape has variable setbacks and landscaping with many buildings within one block and streets and sidewalks tend to be narrow.

SITING STANDARDS

Orientation - Principal Frontage	determined by applicant
Lot Coverage	90% max

FRONTAGE REQUIREMENTS (1st LOT LAYER)

Building Length - Principal facade	30' max.
Building Length - Secondary fac.	50' max.
at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.2c.)	

Additional Building Length	(see also Table 14.2)
ATTACHED BUILDINGS	unlimited run
Ground Floor Partitions	not allowed
Massing Variation	not allowed
Structured Parking Exception	not allowed

SETBACKS

Principal Building	
(a) Front Yard (1st Lot Layer)	5' max.
Setback Applicability	75% of total building length must be built within 1st LOT LAYER
(b) Side Yard*	5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10'
(c) Rear Yard	10' min.
Accessory Building	2nd thru 4th LOT LAYERS
Side Yard	5' min.
Rear Yard	5' min.

BUILDING ENTRIES (SEE ALSO BDS)

Frequency at frontage	at least 35'
Principal Entries	
Orientation	any orientation allowed
Elevated Stoop (> 1 step)	allowed

HEIGHT STANDARDS

Principal Building	
Building Height Min.	25', at least 2 stories
Building Height Max.	45', up to 4 stories
Ground Story Height	n/a
Accessory Building	
Building Height Max.	25'

PARKING STANDARDS

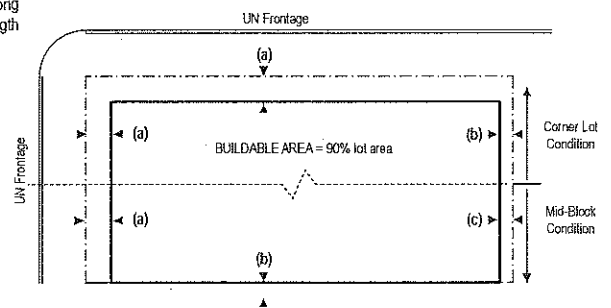
Surface Parking Location	
Side Yard	20' max in width per lot; may not exceed 50% of frontage length
Rear Yard	4th LOT LAYER only
Garage at frontage (attached or detached)	
Garage Door Setback (min)	2nd LOT LAYER
Garage Door Opening (max)	9' up to 40% of facade length
	20' max. limit

Notes and Exceptions

* Zero lot lines are allowed under certain conditions (see Sec 14.xxb)3. Setbacks)

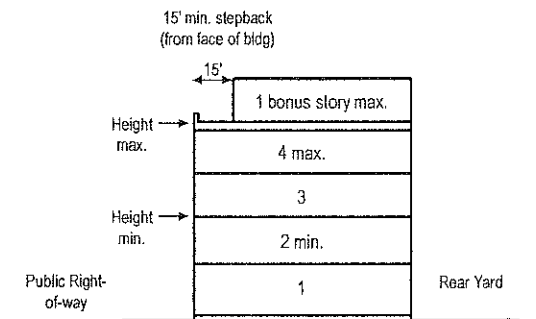
SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



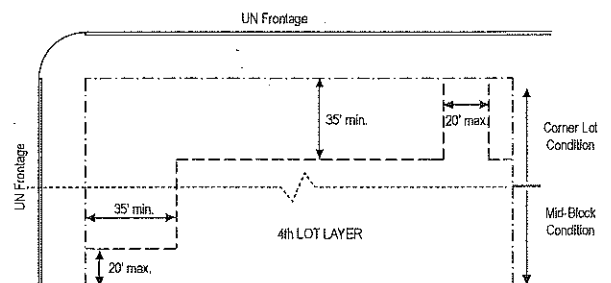
HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
- Number of Stories excludes attics and raised basements.



PARKING STANDARDS

- Surface parking areas may be provided within the shaded area shown.



SEC 14-XX. SUBDISTRICT DIMENSIONAL REQUIREMENTS

UT

Urban Transitional (UT) Subdistrict:

INTENT: The intent of this subdistrict is to encourage higher density, mixed-use building types that accommodate any use. Building frontages are a mix of activity level, have larger footprints, and the most flexibility of height and scale. Building ground floor spaces tend to accommodate flexible and changing uses with frontage types including doorways, forecourts, arcades, and storefronts. The streetscape may be less active than the UA subdistrict with wide sidewalks, street trees, and setbacks and stepbacks providing relief from large building masses.

SITING STANDARDS

Orientation - Principal Frontage	determined by applicant
Lot Coverage	90% max

FRONTAGE REQUIREMENTS (1st LOT LAYER)

Building Length	100' max.
at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.2c.)	
Additional Building Length	(see also Table 14.2)
ATTACHED BUILDINGS	unlimited run
Ground Floor Partitions	200' max., 2 modules
Massing Variation	200' max.
Structured Parking Exception	200' max.

SETBACKS

Principal Building	
(a) Front Yard (1st Lot Layer)	10' max.
Setback Applicability	75% of total building length must be built within 1st LOT LAYER
(b) Side Yard*	10' min. - May be reduced to zero provided that the cumulative side yards are not less than 20'
(c) Rear Yard	10' min.
(d) STEPBACK (adjacent to UN)	10' min. stepback after 45' height
Accessory Building	2nd thru 4th LOT LAYER
Side Yard	5' min.
Rear Yard	5' min.

BUILDING ENTRIES (SEE ALSO BDS)

Frequency at frontage	at least 95'
Principal Entries	
Orientation	any allowed
Elevated Stoop (>1 step)	allowed

HEIGHT STANDARDS

Principal Building	
Building Height Min.	3 stories
Building Height Max.	65', up to 6 stories
Ground Story Height	n/a
Accessory Building	
Building Height Max.	25'

PARKING STANDARDS

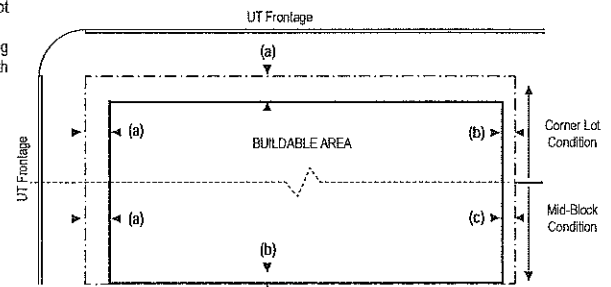
Surface Parking Location	4th LOT LAYER only
Garage at frontage (attached or detached)	
Garage Door Setback (min)	2nd LOT LAYER
Garage Door Opening (max)	9' up to 40% of facade length
	20' max. limit

Notes and Exceptions

* Zero lot lines are allowed under certain conditions (see Sec 14.xxb)3. Setbacks)

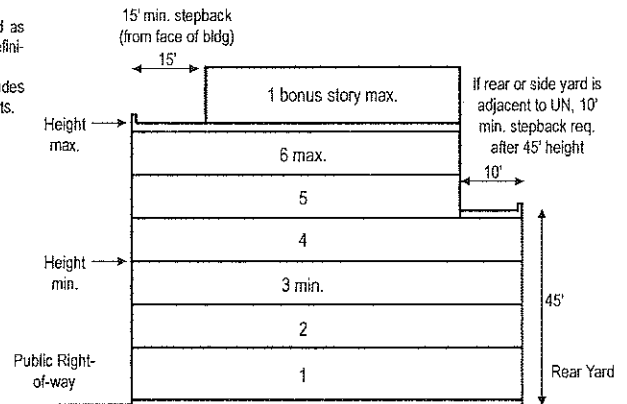
SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Structures shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



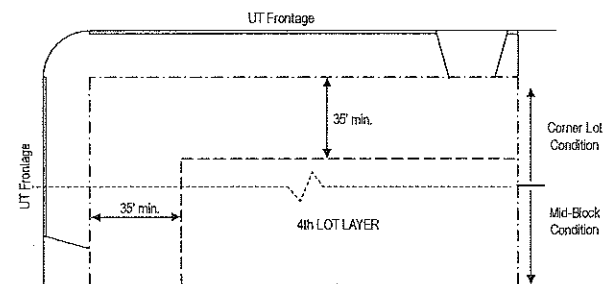
HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
- Number of Stories excludes attics and raised basements.



PARKING STANDARDS

- Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



SEC 14-XX. SUBDISTRICT DIMENSIONAL REQUIREMENTS

UA

Urban Active (UA) Subdistrict:

INTENT: The intent of this subdistrict is to maintain and promote moderate-scale, diverse, mixed-use neighborhood with vibrant streets and active ground floor spaces. Buildings are more active and engage with the street at the ground level. Building frontages are transparent and entries are at sidewalk level with frontage types including storefronts and recessed doorways. The streetscape has steady street planting, and buildings set close to the street providing a consistent street wall.

SITING STANDARDS

Orientation - Principal Frontage	face a UA street
Lot Coverage	90% max

FRONTAGE REQUIREMENTS (1st LOT LAYER)

Building Length	50' max.
at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.2c.)	
Additional Building Length	(see also Table 14.2)
ATTACHED BUILDINGS	unlimited run
Ground Floor Partitions	150' max., 3 modules
Massing Variation	not allowed
Structured Parking Exception	150' max.
Fenestration, ground floor	60-90% (see BDS) facade area

SETBACKS

Principal Building	
(a) Front Yard* (1st Lot Layer)	5'0" max.
Setback Applicability	75% of total building length must be built within 1st LOT LAYER
(b) Side Yard**	5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10'
(c) Rear Yard	10'0" min.
Accessory Building	2nd thru 4th LOT LAYERS
Side Yard	5'0" min.
Rear Yard	5'0" min.

BUILDING ENTRIES (SEE ALSO BDS)

Frequency at frontage	at least 40'
Principal Entries	
Orientation	at least 1 facing UA street or corner
Elevated Stoop (>1 step)	not allowed

HEIGHT STANDARDS

Principal Building	
Building Height Min.	3 stories
Building Height Max.	50', up to 4 stories
Ground Story Height	12'0" min. clear
Accessory Building	
Building Height Max.	25'

PARKING STANDARDS

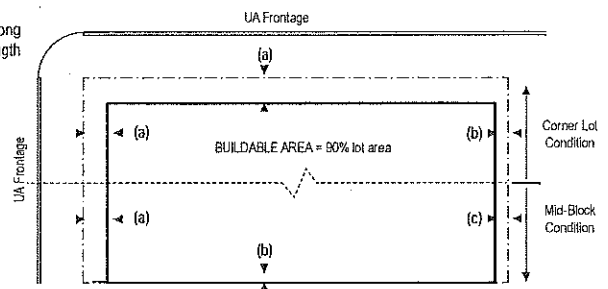
Surface Parking Location	4th LOT LAYER only
Garage at frontage (attached or detached)	
Garage Door Setback	3rd LOT LAYER
Garage Door Opening (max)	n/a
Notes and Exceptions	

* Up to 10'0" max. front yard setback is allowed if ground plane at frontage is a continuation of the accessible public right-of-way

** Zero lot lines are allowed under certain conditions (see Sec 14.xx.b)3. Setbacks)

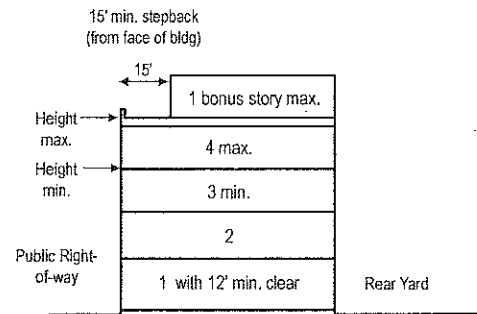
SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



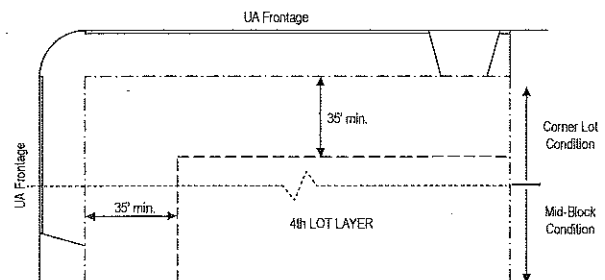
HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
- Number of Stories excludes attics and raised basements.



PARKING STANDARDS

- Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



SEC 14-XX SUBDISTRICT DIMENSIONAL REQUIREMENTS

CORNER

Corner Lot:

For corner lots where two different subdistricts intersect at a street corner, the Dimensional Requirements and Building Design Standards of the "dominant" subdistrict shall apply from the 1st through 3rd Lot Layer (35' deep into the lot measured from the dominant lot line) along its associated street frontage or public ways including required mid-block permeability. Otherwise, Dimensional Requirements shall be according to subdistrict onto which the building FACADE faces.

ORIENTATION

- Corner lots shall be treated as having street frontage on all streets regardless of building orientation
- Principal Building shall designate a Principal Frontage and Secondary Frontage*
- In the case of a corner lot having UA frontage, the Principal Frontage must face a UA street*

SETBACKS

- | | |
|--------------------------------|--------------------------|
| (a) Front Yard (1st Lot Layer) | according to subdistrict |
| (b) Side Yard | according to subdistrict |

Building facades within 10' of a corner are exempt from setback requirements in order to allow special architectural treatments.

UA INTERSECTS UT

Dominant Subdistrict (35' deep)	UA
Orientation - Principal Frontage	UA street
Dominant Building Design Standards (applicable 35' deep)	
Ground Story Height	12' min. clear
Fenestration, ground floor	60-90% (see BDS) facade area
(measured as a percentage of the FACADE that is 2' above sidewalk grade)	

UA INTERSECTS UN

Dominant Subdistrict (35' deep)	UA
Orientation - Principal Frontage	UA street
Building Length - UN FACADES	100' max.
Dominant Building Design Standards (applicable 35' deep)	
Ground Story Height	12' min. clear
Fenestration, ground floor	60-90% (see BDS) facade area
(measured as a percentage of the FACADE that is 2' above sidewalk grade)	

UT INTERSECTS UN

Dominant Subdistrict (35' deep)	UN
Orientation - Principal Frontage	determined by applicant
• Corner lots shall be treated as having street frontage on all streets regardless of building orientation	

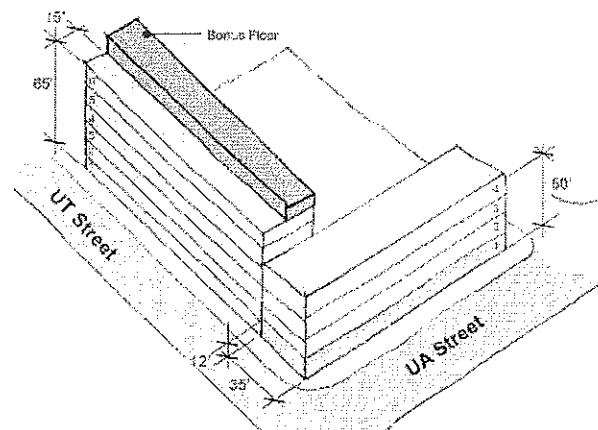
UN INTERSECTS UN

Building Length maximums:	
Principal Frontage	30' max.
Secondary Frontage	50' max.

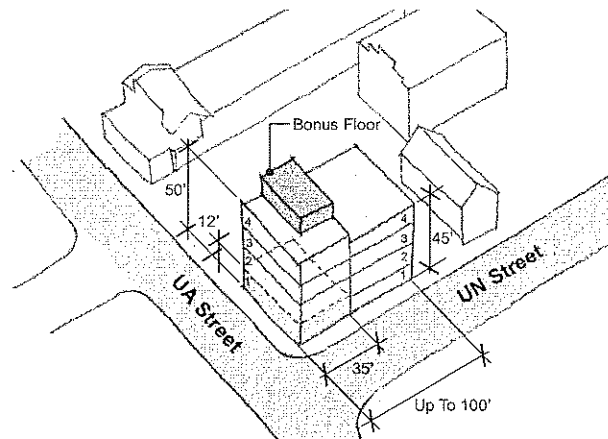
Notes and Exceptions

- * Does not have to correspond to legal building address

UA INTERSECTS UT
(example only)



UA INTERSECTS UN
(example only)



UT INTERSECTS UN
(example only)

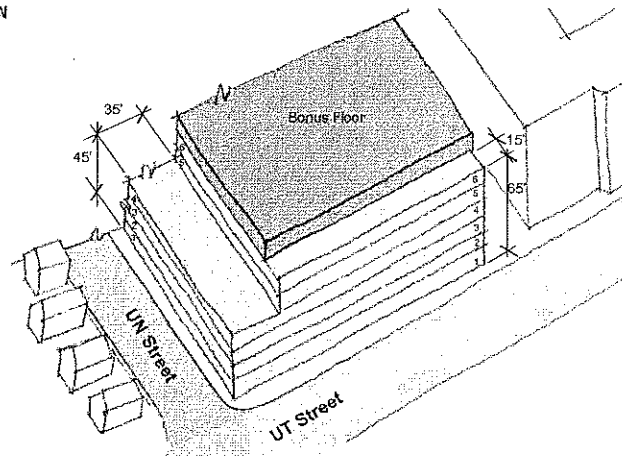
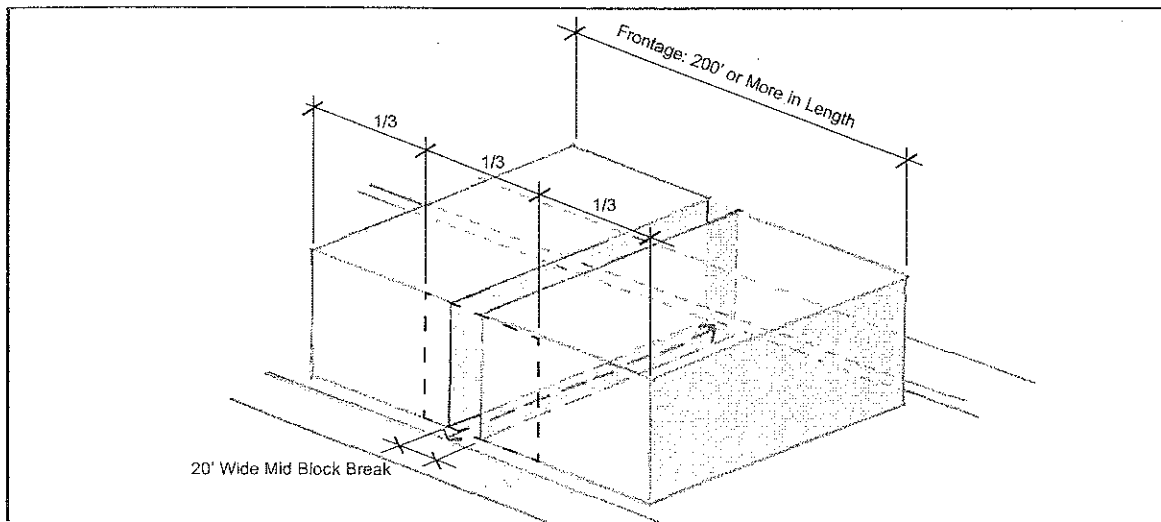
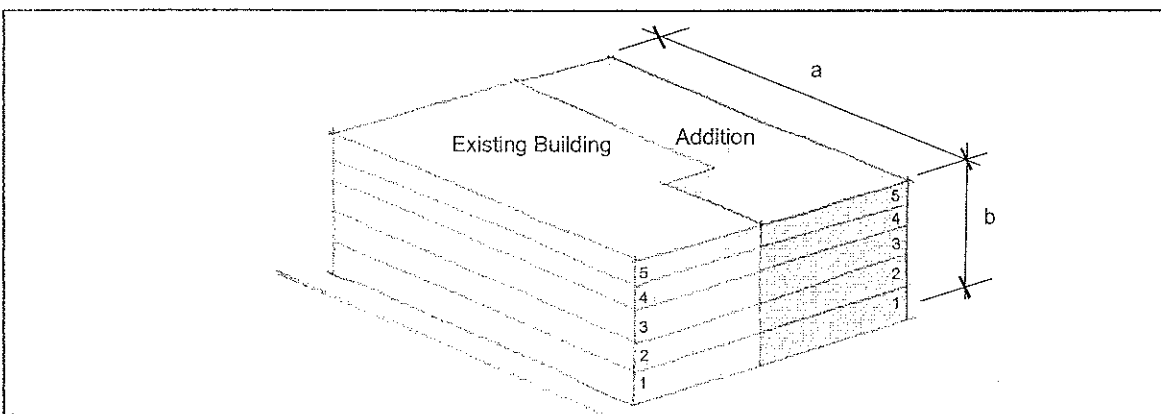


TABLE 14.2 DIMENSIONAL REQUIREMENTS ILLUSTRATED

a. MID-BLOCK PERMEABILITY

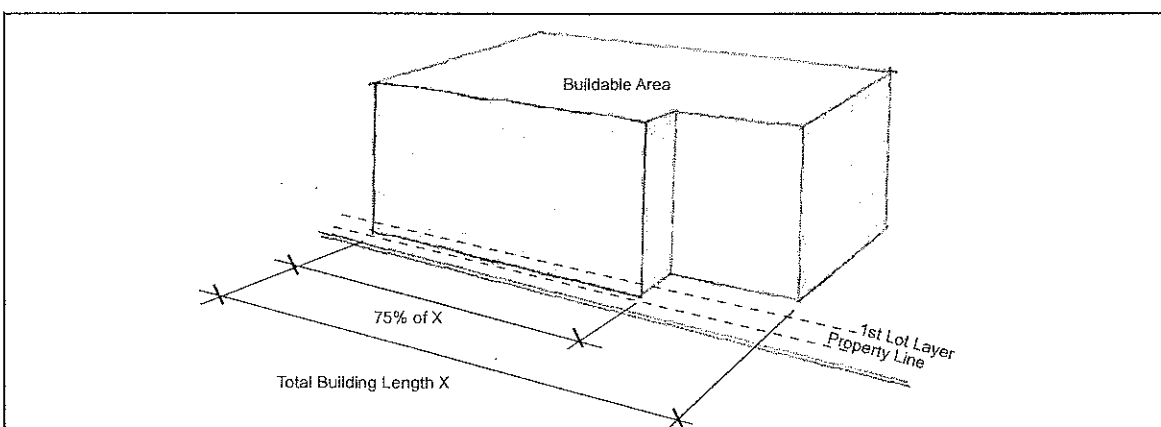


b. ADDITION



- a - Addition length may match but not exceed the length of existing building to which it is an addition. All other Subdistrict Dimensional Requirements apply.
- b - Addition height may match existing building in number and height of stories. All other Subdistrict Height Standards apply.

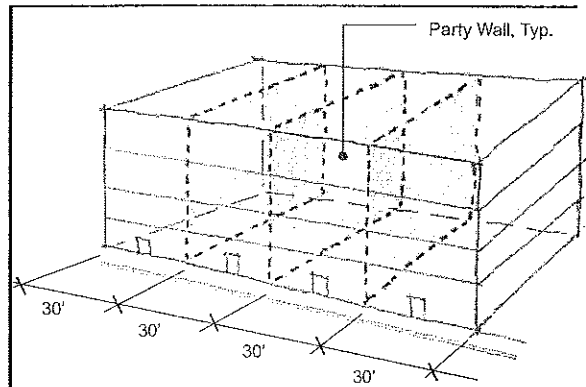
c. BUILDING LENGTH - 1st LOT LAYER



At least 75% of the total building length must be within the 1st LOT LAYER.

TABLE 14.2 DIMENSIONAL REQUIREMENTS ILLUSTRATED

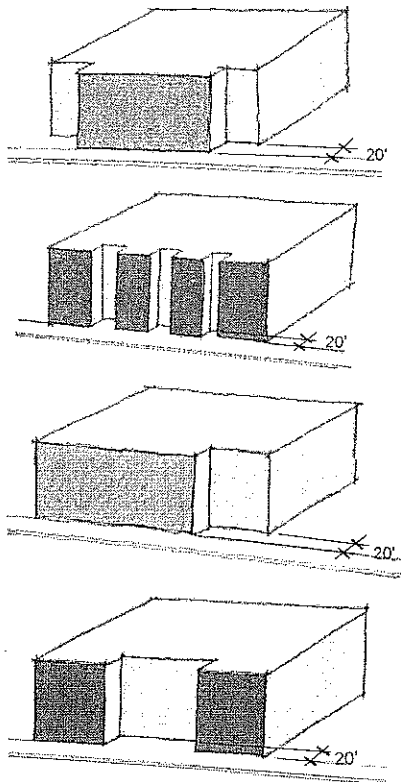
d. ADDITIONAL BUILDING LENGTH - ATTACHED BUILDINGS



An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed.

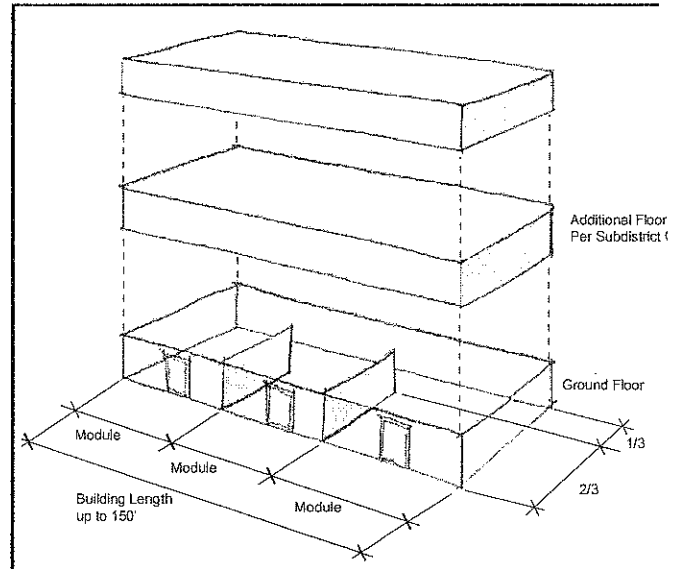
A PARTY WALL condition is required at least every 30' and for the entire height of each building.

e. ADDITIONAL BUILDING LENGTH - MASSING VARIATION (UT)



Additional building length is permitted where at least 30% and up to 40% of the total building length is setback to the 3rd LOT LAYER (20').

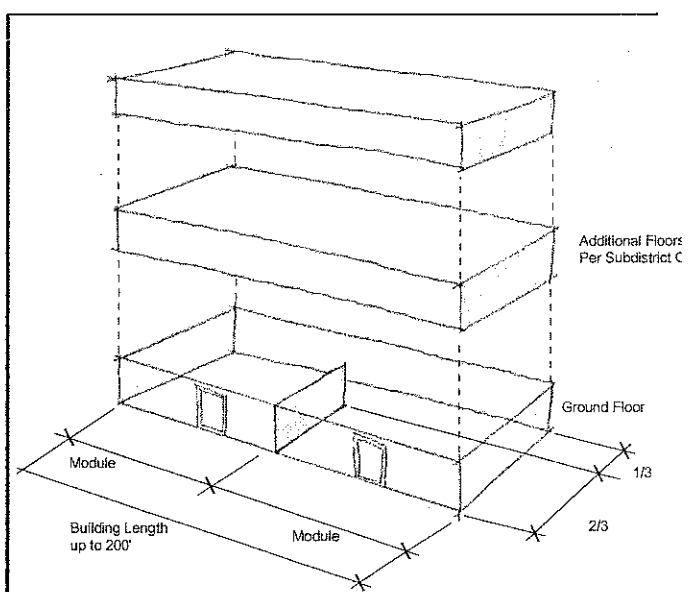
f.1. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UA)



Additional Building Length is permitted up to 150' with the provision of a least two Ground Floor Partitions

See General Development Standards and BDS for additional requirements.

f.2. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UT)

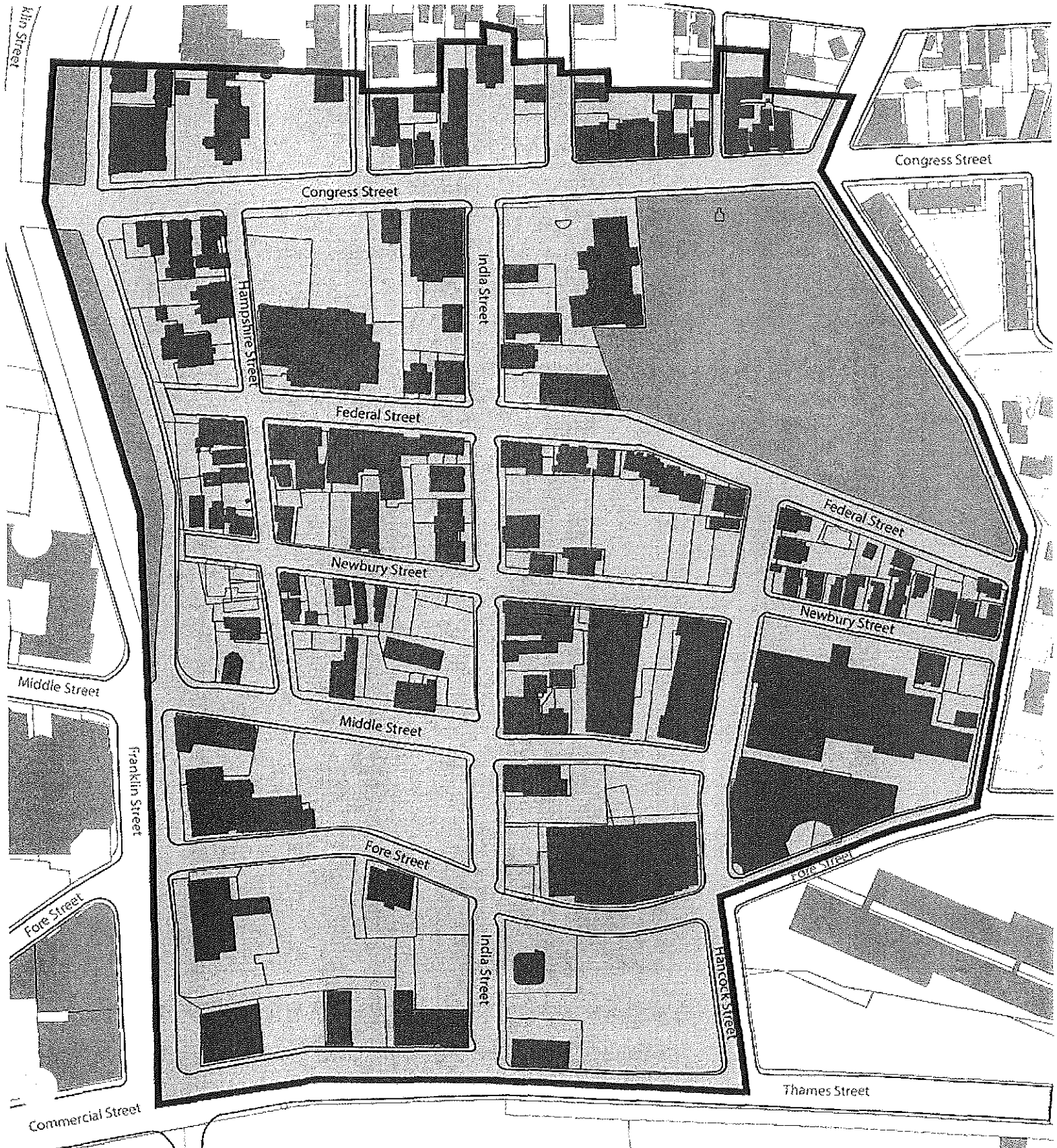


Additional Building Length is permitted up to 200' with the provision of at least one Ground Floor Partition.

See General Development Standards and the BDS for additional requirements.

Proposed Zoning Map Amendment

All existing zones would be replaced by the India Street Form-based Code



Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 14-48. Establishment of zones.

In order to carry out the provisions of this article, the city is hereby divided into the following classes of zones:

- (a) R-1 Residential zone
- (b) R-2 Residential zone
- (c) R-3 Residential zone
- (d) FH Flexible housing zone
- (e) R-4 Residential zone
- (f) R-5 Residential zone
- (g) R-5A Residential zone
- (h) R-6 Residential zone
- (i) R-7 Residential zone
- (j) IR-1 Island residential zone
- (k) IR-2 Island residential zone
- (l) IR-3 Island residential zone
- (m) Island transfer station overlay zone
- (n) R-P Residence-professional zone
- (o) R-OS Recreation and open space zone
- (p) B-1 and B-1b Neighborhood business zones
- (q) B-2 and B-2b Community business zone
- (r) A-B Airport business zone
- (s) B-3, B-3b and B-3c downtown business zones
- (t) I-B Island business zone

- (u) B-4 Commercial corridor zone
- (u-1) B-5 Urban commercial mixed use zone
- (v) O-P Office park zone
- (w) I-L and I-Lb Industrial zones
- (x) I-M, I-Ma and I-Mb Industrial zones
- (y) I-H and I-Hb Industrial zones
- (z) B-6 Eastern Waterfront Mixed Zone
- (aa) Reserved
- (bb) Waterfront central zone
- (cc) Waterfront port development zone
- (dd) Reserved
- (ee) R-P Resource protection zone
- (ff) Helistop overlay zone
- (gg) Shoreland zone
- (hh) Flood plain
- (ii) S-P Stream protection zone-
- (jj) IS-FBC India Street Form-based Code zone.

(Code 1968, § 602.1.B; Ord. No. 499-74, § 1, 8-19-74; Ord. No. 536-74, § 1, 8-19-74; Ord. No. 334-76, § 1, 7-7-76; Ord. No. 15-92, § 2, 6-15-92; Ord. No. 101-93, 9-20-93; Ord. No. 164-97, § 2, 1-6-97; Ord. No. 156-01, §1, 1-17-01; Ord. 184-14/15, 6-1-2015)

*Editor's note--Although not expressly amended by the ordinances enacted subsequent to 1976 which created the several classes of zones, § 14-48 has been expanded to encompass all zoning classifications in the city at the discretion of the editor in consultation with the corporation counsel.

Sec. 14-49. Zoning maps.

state or federal law. "Disturbed area" does not include routine maintenance, but does include re-development and new impervious areas.

- c. The construction of any temporary or permanent parking area, paving of existing unpaved surface parking areas between 1,000 and 7,500 square feet, or creation of other impervious surface areas between 1,000 and 7,500 square feet.
- d. The rehabilitation or reconstruction, but not new construction, of piers, docks, wharves, bridges, retaining walls, and other structures located within the shoreland zone.
- e. A site alteration in which vehicle access is proposed from more than one (1) street;

(e) *Level II Site Plan Review.* Development meeting the criteria listed below will undergo Level II Site Plan Review as follows:

- 1. The construction of any new structures having a total floor area of less than ten thousand (10,000) square feet in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of less than twenty thousand (20,000) square feet. In the IS-FBC zone, the construction of new structures having a total floor area of less than fifty thousand (50,000) square feet;
- 2. The construction of any new temporary or permanent parking area, paving of existing unpaved surface parking areas in excess of 7,500 square feet and serving less than 75 vehicles, or creation of other impervious surface area greater than 7,500 square feet;
- 3. The construction of any building addition(s) having a total floor area of less than ten thousand (10,000) square feet cumulatively within a three-year period in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial Zone, the construction of building addition(s) having a total floor area of less than twenty thousand (20,000) square feet. In the IS-FBC zone, the construction of building addition(s) having a total floor area of less than fifty thousand (50,000) square feet.

(f) *Level III Site Plan Review.* Development meeting the criteria listed below will undergo Level III Site Plan Review as follows:

1. The construction of any new structures having a total floor area of ten thousand (10,000) square feet or more in all zones except the Industrial zones and IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of twenty thousand (20,000) square feet or more. In the IS-FBC zone, the construction of new structures having a total floor area of fifty thousand (50,000) square feet or more;
2. The construction of any new temporary or permanent surface parking area(s) or paving of existing unpaved surface areas for more than seventy-five (75) vehicles except in the case of temporary parking;
3. The construction of any building addition(s), cumulatively having ~~either~~ a total floor area of ten thousand (10,000) square feet or more within any three-year period in all zones except in the Industrial zones and IS-FBC zone. In Industrial zones, for the construction of building addition(s) having a total floor area of twenty thousand (20,000) square feet or more. In the IS-FBC zone, for the construction of building addition(s) either having a total floor area of fifty thousand (50,000) square feet or more or having a total floor area exceeding that of the existing building to which it is an addition.
4. A change in the use of a total floor area of twenty thousand (20,000) square feet or more in any existing building cumulatively within any three-year period in all zones,
5. Multiple-family development except for in the IS-FBC zone;
6. The addition of one or two dwelling units to a building, if the additional dwelling unit or units requires subdivision review under Maine State Statutes and Portland's Subdivision Ordinance;
7. The construction of any new major or minor auto business in the B-2 or B-5 zone, or the construction of any new major or minor auto business with a structure greater than ten thousand (10,000) square

(j) *Waterfront Zone parking requirements; Eastern Waterfront Port Zone; Waterfront Central Zone; Waterfront Port Development Zone; Waterfront Special Use Zone:* Off-street parking is required at fifty (50%) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.

(k) *Residential development on the peninsula and in the R-6 and R-6A Zones, including new construction, alterations that increase the number of units, and changes of use:*

1. Except as provided below, there shall be one (1) space per unit
2. The required parking for multi-unit residential buildings may be partially met through provision of shared-use vehicles, which are vehicles owned and maintained by the owner/manager of the building and available for use on a fee basis to the residents of the building. One shared use vehicle shall be deemed to satisfy eight (8) required car spaces, but in no case shall more than 50% of the parking requirement be satisfied by shared vehicle use.
3. The planning board may establish a parking requirement that is less than the normally required number of spaces upon a finding of unique conditions that result in a lesser parking demand, such as housing for persons who cannot drive, housing that participates in a travel demand management program, availability of transit, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.
4. No parking shall be required for the first three units in the R-6 Residential Zone or the IS-FBC Zone.
5. For alterations of buildings containing three or more dwelling units in the R-6 zone no parking shall be required for the creation of one additional dwelling unit above existing conditions

- (c) The Planning Board may be substituted for the Board of Appeals only where an applicant is otherwise before the Planning Board for site plan approval.

Whenever any exception to the parking requirements under this section has been finally denied on its merits by either the Zoning Board of Appeals or the Planning Board, a second request for an exception seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought before either body within one (1) year of such denial unless, in the opinion of the board before which it was initially brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

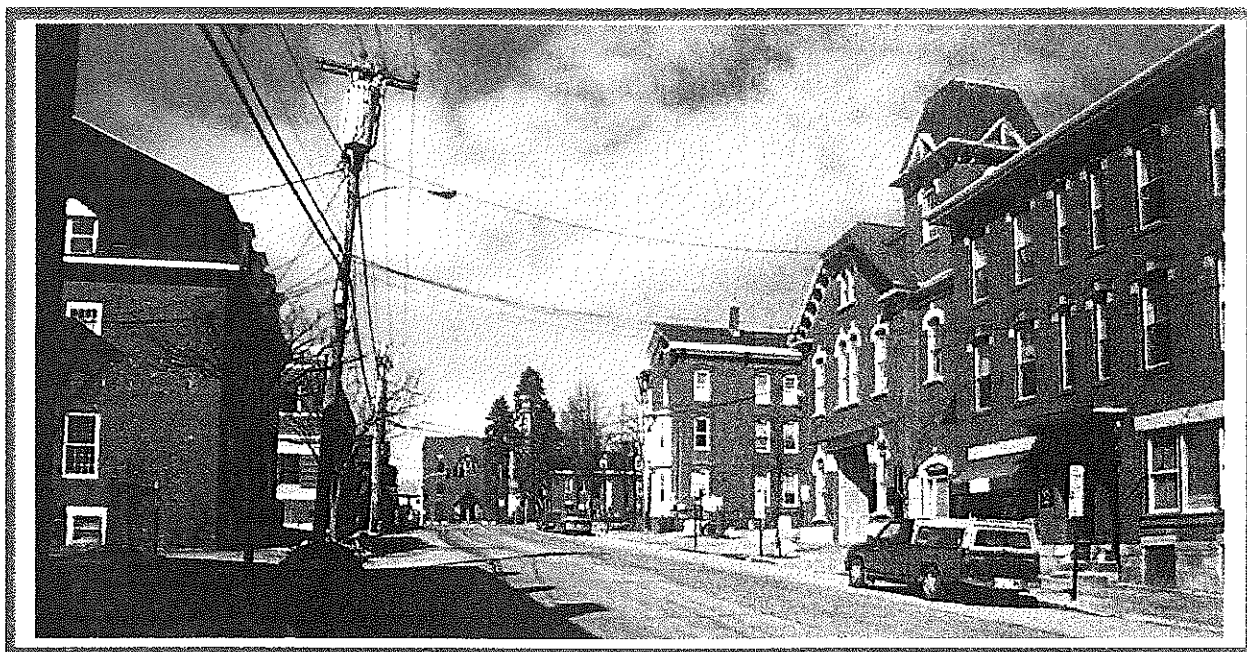
(Code 1968, § 602.14.M; Ord. No. 541-84, 5-7-84; Ord. No. 94-99, 11-15-99)

Sec. 14-345. Peninsula fee-in-lieu of parking.

Any major or minor development subject to site plan review located in a non-residential zone or the IS-FBC zone on the Portland Peninsula shall either provide the required parking or pay a fee according to the provisions of (a) and (b) below.

- (a) Provide the number of off-street parking spaces according to the provisions of section 14-332 (uses requiring off-street parking) and section 14-334 (off-site parking) of this division; or,
- (b) Pay a fee-in-lieu of parking of not less than \$5,000.00 as adjusted annually per (c) below, per space not provided. Fees shall be deposited into the Sustainable Transportation Fund, as established in section 14-346 of this division.
- (c) The value of the fee shall be adjusted annually according to the Engineer's News Record construction index as published on January 1st of the current calendar year. The fee adjustment shall be calculated by taking the index amount published on January 1st, of the current year, divided by the index amount published on January 1, 2010 (8660), multiplied by (the fee amount from (b) above). The base fee, the adjustment index, or the calculation method may be otherwise amended by action of the city council from time to time.
- (d) The fee shall be paid on or before the date upon which

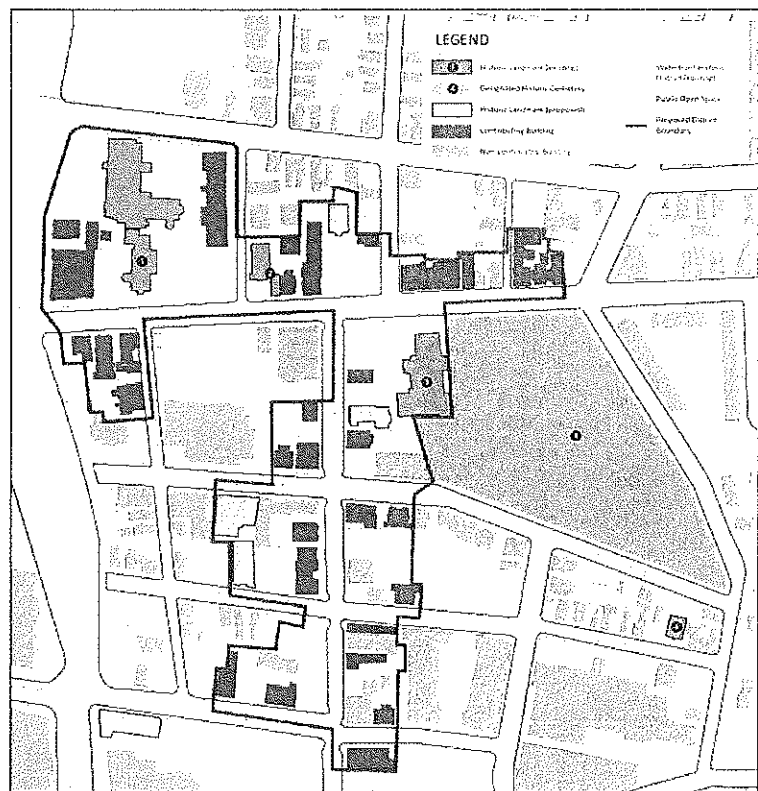
India Street Historic District Designation Report



General Description of the District

The India Street neighborhood as we know it today encompasses a 19-block area, extending west to east from Franklin Arterial to Washington Avenue/Mountfort Street and north to south from Congress Street to Commercial Street. Within this larger neighborhood boundary, the proposed **India Street Historic District** encompasses portions of 10 blocks and is focused on the major corridors (Congress, India and Middle) that define the historic core of the neighborhood and around which many of the neighborhood's most significant institutional, commercial, religious and residential structures are concentrated.

Within or just outside the district boundaries are located five previously-designated landmark structures or sites. These include the Cathedral of the Immaculate Conception, St. Paul's Church and Parish Hall, North School, the Abyssinian Meeting House and Eastern Cemetery. Four additional landmarks are proposed for designation in conjunction with the district designation. These include the former Etz Chaim Synagogue (now Maine Jewish Heritage Museum), the former India Street Fire Station, St. Peter's Catholic Church, the former Shaarey Tphiloh Synagogue, and the Abraham S. Levey Commercial Block. These structures are recommended for landmark status based on their significance in the development of the neighborhood, their architectural significance and/or their position at a key gateway into the neighborhood.



See full-sized map of district attached to this report.

In addition to these individual landmarks, the district includes approximately 36 contributing historic structures and 13 noncontributing structures, as well as several surface parking lots or undeveloped parcels. Within the district are exhibited a wide variety of building types—institutional, religious, commercial, and residential—reflecting the area's history as a largely self-contained neighborhood settled early on by African Americans and later by successive waves of immigrant groups (including

Irish, Italian, Eastern European and Scandinavian) who established their own places of worship, commercial enterprises and services to support the needs of their community.

Although the district includes a few scattered buildings that predate the Great Fire of 1866, most of the existing historic resources were built between 1866 and 1920. Existing historic structures are mostly brick, with the exception of a few wood frame structures. Predominant building styles include Italianate and Second Empire. Also represented in the district are several early 20th century commercial blocks and multi-family triple deckers which are typical of their construction era.

History of the India Street Neighborhood

The history of the India Street neighborhood is as old as the history of Portland itself, as it was the site of the first European settlement on the Portland peninsula. Nothing, however, exists from this first settlement or from other early attempts at settlement. The first settlement was destroyed during conflicts with Native Americans in the 17th century, rebuilt and then destroyed again in the late 18th century by the British. Even the waterfront no longer resembles its early configuration, having been filled in during the mid-nineteenth century to accommodate maritime and railroad development.

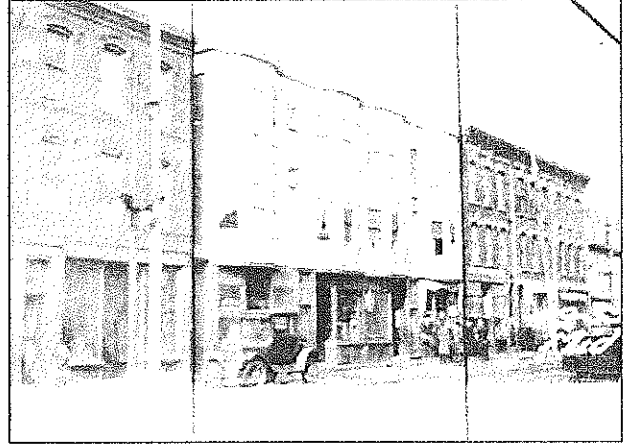
Notwithstanding the loss of structures and sites associated with the neighborhood's earliest periods of development (with the exception of Eastern Cemetery), the remaining building stock provides a compelling story of the neighborhood during the nineteenth and twentieth centuries—illustrating not only the wide range of activities that were supported in this area but also the unique resident mix that populated the neighborhood and gave it its rich, ethnically diverse character.

Life in the India Street neighborhood during the early 19th century revolved largely around waterfront activities. A significant number of the laborers and mariners were free black men who prospered in Portland's maritime economy, settled in the India Street neighborhood, and built their own homes. In 1828 the community built their own church, the Abyssinian Meetinghouse on Newbury Street.

As the African American population prospered and moved out of the neighborhood, they were replaced by Irish immigrants who worked on the waterfront and in the construction of the Atlantic and St. Lawrence Railroad. The Great Fire of 1866 destroyed nearly all the neighborhood once again. Only a few brick dwellings and a small number of resources at the eastern end of Federal and Newbury Streets were spared. Rebuilding was swift, however. Nearly sixty percent of the extant historic resources in the neighborhood were built from 1866 to 1890. Architects from all over the region moved to Portland to help in the rebuilding efforts. Most of the buildings constructed immediately after the fire were built of brick in the predominate styles of the period, Italianate and Second Empire. Almost all the residential buildings built after the fire were multi-family reflecting the increasing need

for housing the City's growing population. The City's increase in population was significantly impacted by European immigration.

Following the Irish were immigrants from Eastern Europe and Italy. At the turn-of-the-20th century 4,000 immigrants a year were passing through the port city. Many settled in the India Street neighborhood, drawn by its close proximity to jobs on the railroad, on the waterfront, or at nearby industrial complexes, like the Portland Company and Thomas Laughlin Company. The cultural and economic impact of each of these immigrant communities on the India Street neighborhood can be found in the variety of the religious buildings that are the area's key landmarks and in the many family businesses established in the neighborhood, some that continue to the present day.



Reflecting the neighborhood's multicultural nature and tradition of living above one's place of business, this 3-family building on Middle Street with store on the ground floor was owned by Hyman Finklestein in 1924. The flanking brick buildings remain.

In the mid twentieth century abutting neighborhoods to the east and west of India Street were targeted for urban renewal. Demolition for the construction of Franklin Arterial and the Munjoy South development shrunk the historic boundaries of the India Street neighborhood. Although there have been physical changes in recent decades, many of the immigrant families and their family businesses continue to have a strong presence in the neighborhood.

For a more detailed history of the neighborhood, please see *A History of Portland's India Street Neighborhood*, researched and written by ttl-architects for the City of Portland. Historical and architectural information about individual structures within the district is provided in an historic resources inventory prepared by ttl-architects.

Significance of the India Street Neighborhood

Historical and Cultural Significance

The India Street neighborhood is significant for its association with the City's nineteenth century free African American population. Two thirds of Portland's African American citizens in the first half of the nineteenth century lived in the India Street neighborhood. The center of their community was the

Abyssinian Church built in 1828. The church, listed on the National Register of Historic Places in 2006, served as the community's religious center, meeting hall, and school. Many of the homes and businesses associated with this community were destroyed in the Great Fire of 1866; however a small group of homes on or near Newbury Street and the church survived the fire. Although the Abyssinian Meeting House is located outside the proposed district boundaries (primarily because of its physical separation from the area of concentration of extant historic structures), it is individually designated as a local landmark and is strongly associated with the history, development and significance of the neighborhood.

The neighborhood is also significant for its strong role in Portland's immigration history. First settled by European immigrants and later joined by a by a strong concentration of free black citizens, these groups were followed by large numbers of Irish, Italian, and Eastern European Jewish immigrants. It was also home to immigrants from Canada, Scotland, Finland, Sweden and Portugal, although in smaller numbers. Its close proximity to the waterfront, the railroad, industrial centers like the Portland Company, and to the commercial center of the city that developed post-Fire along Middle Street provided these newcomers easy access to jobs.

The neighborhood's sites, structures, and areas express the significance of 19th and 20th century immigrants on the cultural history of Portland. Multi-family dwellings, like the neighborhood's many duplexes, triple deckers, and apartment buildings, built following the fire and into the early twentieth century accommodated large multi-generational families, making the area one of the city's densest urban neighborhoods. While many of these immigrant families lived in modest homes within the neighborhood, their influence is present in large landmark religious structures like St. Paul's Church and Rectory, the Abyssinian Meeting House, Shaarey Tphiloh, St. Peter's Catholic Church, and the Cathedral of Immaculate Conception.

While the neighborhood was home to nationally notable persons like Henry Wadsworth Longfellow and General Samuel C. Fessenden and locally notable persons like Ruben Ruby, Abraham W. Niles, and James McGlinchy, it was also the home and workplace of numerous members of the city's various immigrant communities. These immigrants have significantly shaped the culture, history, and development of Portland in a myriad of ways. Some through their public service, like City Councilor Richard Duddy and his son City Councilor Edward Duddy, or through their community engagement, like Dr. Elias Caplan, a WWI medical corps veteran and the city's second Jewish physician, who along with his wife, was active in local and statewide community organizations. Many of the immigrants became well known and prominent businesspeople. Giovanni Amato settled in Portland circa 1902 and created the iconic sandwich known as the Italian in his bakery at the corner of Newbury and India Streets. At their home on Newbury Street, Vincenzo and Maria Realì started the Village Café, which was greatly

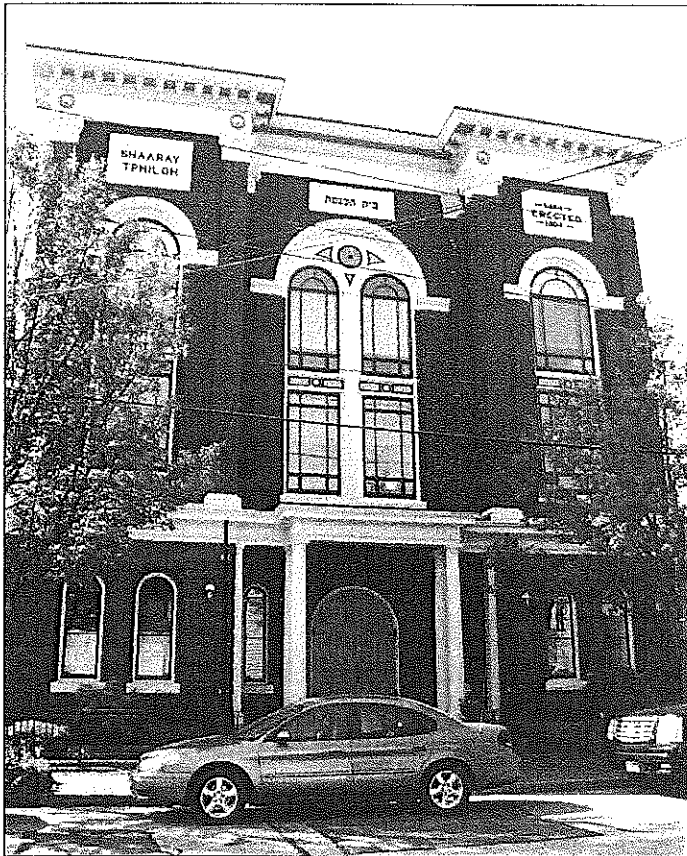
expanded and operated by their son and grandson. Jacob Levinsky first established his military surplus store on Washington Avenue before moving to India and Congress Street in 1920.

Architectural Significance

The proposed district possesses a significant concentration of buildings and structures that are united aesthetically. The neighborhood contains many examples, both high style and vernacular, of the Italianate and Second Empire styles. Both styles were popular when a large portion of the neighborhood was rebuilt following the Great Fire of 1866. Almost sixty percent of the 117 historic resources surveyed in the neighborhood were built from 1866 to 1890. Like the adjacent Old Port area, rebuilt during the same period, the predominance of these styles creates a distinctive architectural identity for the neighborhood.

The remaining resources in the neighborhood reflect a variety of styles prevalent in the nineteenth and twentieth centuries. Other styles present in the neighborhood include Federal (Joseph Barbour House,

c 1846, 123-125 Newbury Street), Greek Revival (Woodbury & Dorcas Poole Hatch House, 1867-1873, 32 Hampshire Street), Gothic (St. Paul's Church and Rectory, 1869, 279 Congress Street), Renaissance Revival (St. Peter's Catholic Church, 1929, 82 Federal Street), and Beaux Arts (Shaarey Tphiloh Synagogue, 1904, 145-147 Newbury Street).



The India Street neighborhood boasts an unusually high number of landmark buildings, many of which are religious structures built by various immigrant groups.

Several examples of four-bay brick double houses are present in the district. This multi-family building type, with paired central entrances, is present in the Greek Revival (25-27 Middle Street), Federal (123-125 Newbury Street), Italianate (45-47 Hancock Street), and Second Empire Styles (98-100 India Street).

Following the Great Fire of 1866 many architects from around the region moved to Portland to work in the city. They worked in conjunction with local

architects and builders to rebuild the city as quickly as possible following the devastating fire. Classically trained in the Beaux Arts method, most of the architects were facile at creating beautiful and well-proportioned buildings in the variety of styles popular in the middle of the nineteenth century.

Levi Newcomb was the architect for the 1867 North School as well as the 1867 First Baptist Church at 353 Congress Street. Construction of the Franklin Street arterial effectively severed the church from the India Street neighborhood it once served. His firm, Levi Newcomb & Son, was located in Boston, but after the Great Fire of 1866 he relocated his firm to Portland. The firm returned to Boston in 1868.

George Browne Pelham was an English born architect who immigrated to Canada before moving to the United States. He, like many other architects of the period didn't stay in Portland long, as he opened an architectural office in New York City in 1875. He designed the James R Lunt-Harriet W Weatherbee Block (1868) at 98-100 India Street and St. Paul's Church and Rectory (1869) at 279 Congress Street.

George M. Harding was a prominent Portland architect who designed the India Street Fire Station in 1867. (He was also responsible for the design of the Rackleff Block at 127-133 Middle Street (1867), the Thompson Block at 117-125 Middle Street (1867), the Woodman Building at 133-141 Middle Street (1867), the Boyd Block at 178 Middle Street (1868), and his own residence at 6 Deering Street.)

The Shaarey Tphiloh Synagogue of 1904 on Newbury Street and the Workingmen's Club Building of 1904 at the southern end of neighborhood on Commercial Street were designed by John James Cunningham. Cunningham had his start in Portland, working in the office of noted Portland architect Francis Fassett from 1892-1896. He left Portland to work in Boston, came back to Portland at the turn of the century and in 1905 established with his father and brother FW Cunningham & Sons, an architecture and construction firm. The firm was also responsible for a number of other Portland landmarks, including the Cumberland County Courthouse, the Federal Courthouse, the Fidelity Building, Mercy Hospital, Union Station, and the Nathan Clifford School.

Integrity of the District's Historic Structures

The historic character and integrity of the larger India Street neighborhood has been somewhat eroded in recent decades by demolition, introduction of large surface parking lots and incompatible development. This has had an especially marked impact on the neighborhood's interior blocks that abut the main thoroughfares. The area identified for historic district designation, however, which encompasses key stretches of the neighborhood's major vehicular corridors (Congress Street, the upper portion of India Street and Middle Street), has experienced less of this erosion and still exhibits a strong sense of the neighborhood's 19th and early 20th century character.

The district includes a relatively high percentage of local landmark structures that are not only historically and architecturally noteworthy, but which have also been well preserved. In addition, there are numerous other historic institutional, commercial, mixed use, and multi-family residential structures that, while not landmarks in and of themselves, nevertheless retain a high level of architectural integrity and lend a strong visual cohesiveness to this portion of larger neighborhood.

It is worth noting here that several blocks within the interior of the neighborhood—outside the boundaries of the proposed historic district—still exhibit a number of historic single-family and multi-family residential structures. Although a number of the buildings, particularly the wood-framed structures, have been altered by replacement windows and/or siding, most retain their original form, massing and scale and, in several cases, key architectural details such as front door surrounds and hoods. Although not architecturally noteworthy, these buildings reflect the nature of the area's population and represent the modest vernacular structures that made up much of the neighborhood's building stock during most of its history. Where small concentrations of these structures remain—on lower Hampshire Street and on Newbury Street, west of the Abyssinian--their similarity of scale and massing provides a measure of architectural cohesiveness and historic character to their respective blocks. Although the decision was ultimately made not to include these blocks within the final proposed district boundary due to the spotty nature of most of these blocks as well as other considerations, the preservation and stewardship of the area's historic vernacular housing stock is strongly encouraged.

Visual Character of the India Street Historic District

Although the district encompasses a wide variety of building types, a number of common visual characteristics serve to unify the district. A preponderance of brick buildings and an architectural vocabulary shared by the Italianate and Second Empire styles popular during the second half of the 19th century provide a level of visual consistency. Also, the substantial, blocky massing of the district's many duplexes provides a strong unifying form to the area's building stock. With few exceptions, the buildings fill their respective lots and sit directly at the sidewalk line. This is



The neighborhood's large number of brick Italianate and Second Empire duplexes, with their simple blocky massing, serves as a unifying visual characteristic of the district

especially true on India Street. Building heights on India and Middle are generally consistent as well; most of the historic structures are 2 ½ to 3 stories tall.

Within the district, the Congress Street corridor exhibits the greatest diversity of scale and form. Relatively massive buildings such as North School are located across the street from long, one-story commercial blocks. The stone façade of St. Paul's Church, the matchboard wood exterior of St. Paul's Rectory and the striking clapboard Italianate double house at the corner of Congress and Hampshire provide a level of architectural contrast and relief to the otherwise brick streetwall. Also, the otherwise consistent building setback (or lack thereof) is broken at several points along the street: at the Cathedral complex, Maine Jewish Heritage Museum and North School. Notwithstanding the more architecturally varied nature of Congress Street, its strong concentration of 19th century and early 20th century structures clearly communicates the area's rich history. (The one notable exception within this historic fabric is the large 1971 shopping plaza on the south side of the street between Hampshire and India (which is not included within the district boundaries).

Classification of Individual Structures within District Boundary

Please see the India Street Historic Resources Survey for an architectural description and history of each structure within the district.

Street	Original Building Name or Use	Date	Classification
Congress Street			
223 Congress	James O'Brien's Shoe Store & Apt. Building	ca. 1903	Contributing
225-227 Congress	Duddy Family Grocery Store & Dwelling	ca. 1870	Contributing
229-231 Congress	Duddy & McPhee Store & Apts.	ca. 1914	Contributing
235 Congress	Daniel Lucy Watch Store & Apt. House	ca. 1881	Noncontributing
239 Congress	E. Thomas Apts & Store	ca. 1875	Noncontributing
241 Congress	Edward Murphy Store & Apts.	1888	Contributing
243-247 Congress	Edward Murphy Block	1923 & 1924	Contributing
248 Congress	North Street School	1867	Landmark
249 Congress	Farris Bros. Dry Goods Store	ca. 1912	Contributing

251 Congress	Bakery, Cleansers & Dyers	ca. 1935	Contributing
267 Congress	Etz Chaim Synagogue	1921	Landmark
272 Congress	MMC Family Practice Center	1999	Noncontributing
273 Congress	John Swett House and Store	1865, 1923	Contributing
277 Congress	James Cunningham House	ca. 1875	Contributing
279 Congress	St. Paul's Church & Rectory	1869	Landmark
281 Congress	James Cunningham Carriage House	ca. 1900	Contributing
284 Congress	Catir Apartments	1928	Noncontributing
289 Congress (172-196 Cumb.)	Cathedral of the Immaculate Conception & Bishops House	1869	Landmark
312 Congress	Bristol Apartment Building	ca. 1910	Contributing
290 Congress	Congress Plaza	1971	Noncontributing
306 Congress	Captain Charles Chase House	1867	Contributing
316 Congress	George S. Swasey House	ca. 1867	Contributing
316a Congress	Dr. Elias Caplan Office Building	ca. 1914	Contributing
317 Congress	Guild Hall, Cathedral of the Imm. Con.	1923	Contributing
Federal Street			
56 Federal	Double triple-decker	1906-07	Contributing
63 Federal	Lewis Garage	1927	Noncontributing
69-71 Federal	John Gulliver Block	1868	Contributing
73-75 Federal	Horatio Quincy Block	1867	Contributing
68-76 Federal	St. Peter's Catholic Church St. Peter's ancillary bldgs.	1929	Landmark Noncontributing

Hampshire Street

60-62 Hampshire	John Barbour & Jane Staples Block	1867	Contributing
68 Hampshire	J. Davis House	ca. 1867	Contributing

India Street

45 India	Cartonio's Store	ca. 1930	Contributing
47 India	Commercial Fruit Building	1968	Noncontributing
50 India	Jenny Mfg. Co. Service Station	ca. 1938	Noncontributing
55 India	Commercial Structure	1968	Noncontributing
61 India	Larrabee House & Stable	1866-67	Contributing
65 India	Bowdoin College Edw. Mason Dispensary	1912	Noncontributing
67 India	Giovanni Amato's Bakery	1922	Contributing
71 India	Amato's	2000	Noncontributing
72-74 India	Peter Tabachnik Grocery Store	ca. 1915	Contributing
76 India	Mary Damery House	1884	Contributing
78 India	Franklin Simonds Block	1883-84	Contributing
85-87 India	Simonds Dye House	1868	Contributing
95 India	Franklin Symonds Block	1880	Contributing
97 India	India Street Fire Station	1867	Landmark
98-100 India	James R. Lunt-Harriet Wetherbee Block	1868	Contributing
105 India	Patrick Feeney House	ca. 1874	Contributing

Locust Street

2-26 Locust	Cathedral School	1927	Contributing
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Middle Street

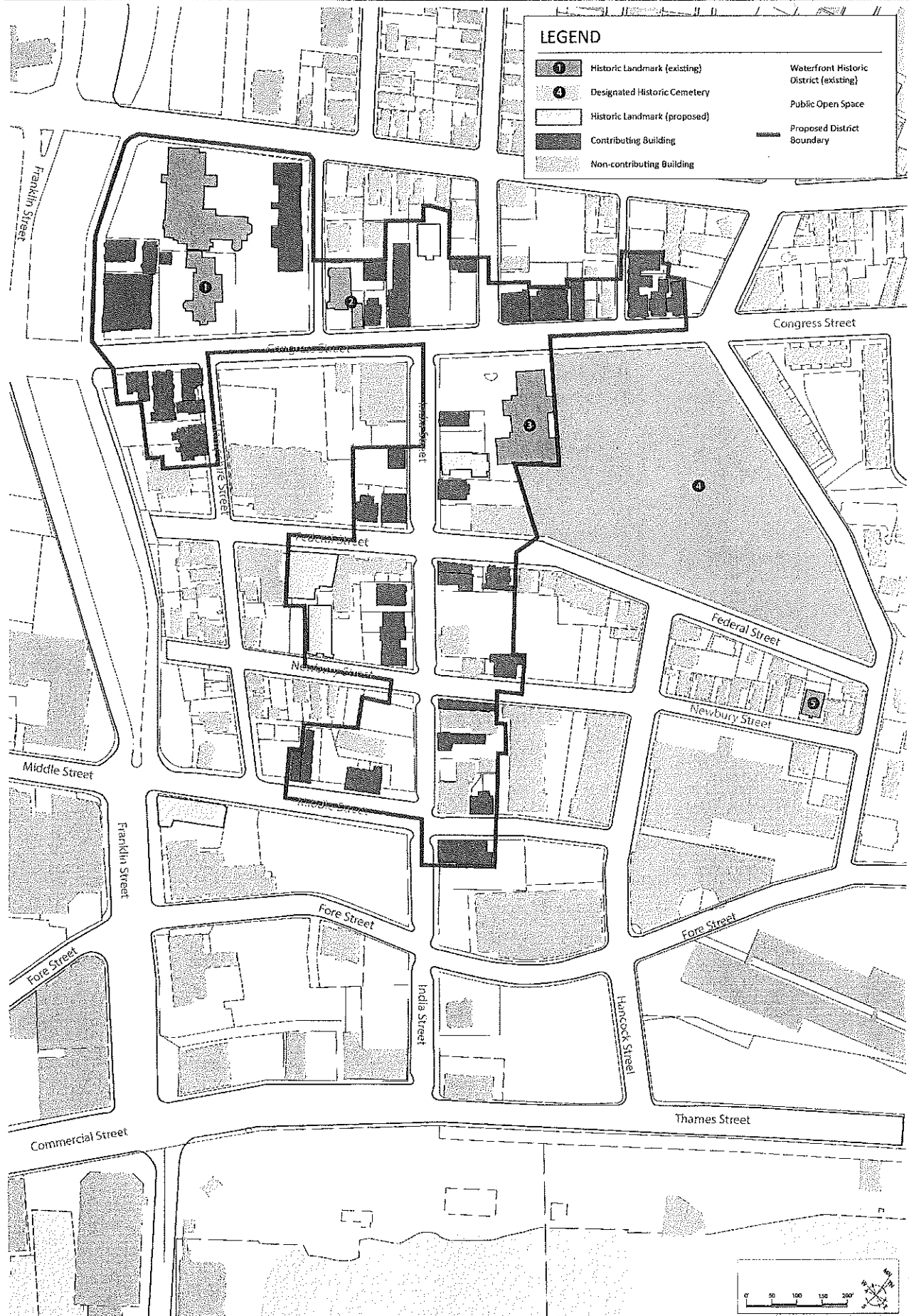
25-27 Middle	George Jewett Block	1856-58	Contributing
39-37 Middle	James McGlinchy Block	1868	Contributing
59 Middle	Abrams Block	1867	Contributing
78-88 Middle	Abraham S. Levey Commercial Block	1922	Landmark (outside distr. boun.)

Newbury

73-75 Newbury	Abyssinian Meeting House	1828	Landmark (outside dist. boun.)
123-125 Newbury	Joseph Barbour House	by 1846	Contributing
129 Newbury	Dominic Reali Realty building	1977	Noncontributing
137-139 Newbury	Abel Chase & Emery Cushing House	ca. 1867	Contributing
145 Newbury	Shaarey Tphiloh Synagogue	1904	Landmark

HISTORIC PRESERVATION

Sustainable Neighborhood Plan INDIA STREET, PORTLAND MAINE



ice from loading or falling onto adjacent properties or public ways.

4. *View corridors:*

- a. The massing, location and height of development shall not substantially obstruct public views corridors identified in the Downtown Vision View Corridor Protection Plan, as provided in the City of Portland Design Manual, Appendix 1.

5. *Historic Resources:*

- a. Developments affecting designated landmarks or within designated historic districts or historic landscape districts: Any proposed development required to obtain a certificate of appropriateness under article IX (historic preservation) of the land use code shall be exempt from the following design standards, as described in the Design Manual:

- (i) Section (b) of the Design Manual (development in B-3 zone), except for (b)(1) e.2. (increasing setback beyond street build-to line), (b)(1)f. (shadow impact on open space), (b)(1)h. (wind impacts), and (b)(1)g. (setbacks from existing structures);

- (ii) Section (c) of the Design Manual (development in B-5 and B-5b zones), except for (c)a. (shared infrastructure) and (c)d. (parking lot location);

- (iii) Section (k) of the Design Manual (small residential lot development in R-6 zone);

- (iv) Section (e) of the Design Manual (University of Southern Maine);

- (v) Section (f) of the Design Manual (development in B-7 zone), except for (f)(1)a. (transportation demand management);

- (vi) Section (g) of the Design Manual

(development in Eastern Waterfront zone).
(vii) Section (1) of the Design Manual (IS-
FBC Building Design Standards)

- b. Development adjacent to designated landmarks, historic districts or historic landscape districts: when any part of a proposed development is within one hundred (100) feet of any designated landmark, historic district, except the India Street historic district, or historic landscape district, such development shall be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development. Character-defining elements of landmarks and historic districts are identified in the historic resources inventory and respective historic district designation reports For the purposes of this provision, "compatible" design shall be defined as design which respects the established building patterns and visual characteristics that exist in a given setting and, at the same time, is a distinct product of its own time. To aid the planning board in its deliberations, historic preservation staff shall provide a written analysis of the proposed development's immediate context, identifying the major character-defining elements and any established building patterns that characterize the context.
- c. Preservation and/or Documentation of Archaeological Resources. Where a state or local archaeological resource is known to exist or is discovered on the site, the developer shall inform the City and State and shall protect and/or document such resources.
 - (i) Protection shall include leaving archaeological resources untouched beneath a new development through adaptation of foundation design or architectural layout.
 - (ii) Where the applicant can demonstrate that

documentary, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures or objects.

- (g) The surface cleaning of structures and objects, if appropriate, shall be undertaken with the gentlest means possible. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be undertaken.
- (h) Every reasonable effort shall be made to protect and preserve significant archeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.
- (i) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural or archeological materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- (j) Wherever possible, new additions or alterations to structures and objects shall be undertaken in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the historic property would be unimpaired.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 12, 5-17-93)

Sec. 14-651. Standards for review of new construction.

In considering an application for a certificate of appropriateness involving new construction, the historic preservation board and the planning board shall apply the following general standards as may be applicable to the context of the proposed construction. The intent and application of the following standards are further described in the historic resources design manual and shall guide the board in its review.

(a) *Scale and form:*

1. *Height.* In addition to the applicable requirements of articles III, IV and V of this chapter, the proposed height shall be visibly compatible with surrounding structures when viewed from any street

or open space and in compliance with any design guidelines.

2. *Width.* The width of a building shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
3. *Proportion of principal facades.* The relationship of the width to the height of the principal elevations shall be visually compatible with structures, public ways and open spaces to which it is visually related.
4. *Roof shapes.* The roof shape of a structure shall be visually compatible with the structures to which it is visually related.
5. *Scale of a structure.* The size and mass of structures in relation to open spaces, windows, door openings, porches and balconies shall be visually compatible with the structures, public ways and places to which they are visually related.
6. *Applicability to Congress Street historic district.* In the Congress Street historic district, for new construction within the B3 zone, the historic preservation board shall not impose conditions more restrictive than the dimensional requirements (Sec 14-220) of the B3 zone.
7. *Applicability to India Street historic district.* For new construction within the India Street Historic District, the historic preservation board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone, except for in the case of a building addition which proposes to change the height of a contributing historic structure.

(b) *Composition of principal facades:*

1. *Proportion of openings.* The relationship of the width to height of windows and doors shall be visually compatible with structures, public ways and places to which the building is visually related.

78-88 Middle Street Abraham S. Levey Commercial Block, 1922
Proposed for Individual Landmark Designation



Architectural Description

The two story commercial block at 78-88 Middle Street is a two story flat roofed brick building that retains its long original nine bay pattern along Middle Street. The building abuts the sidewalk along Middle and Franklin Street. The street level bay pattern is defined by a series of eight wide storefronts set within broad masonry openings. Each corner of the Middle Street facade is truncated, presenting an 8 foot wide section of diagonal facade. The ninth bay at the corner of Middle and Franklin features a broad, recessed wooden storefront that spans the corner. A full glass wooden entry door with transom above provides access to a well known and nationally recognized restaurant. Two pebble clad risers lead to the entry and the corner recessed alcove is supported by two 8" diameter painted steel columns. A single pane wood storefront window with painted wood panel below flanks each side of the entry door. The steel columns support a band of transom window above the recessed alcove. A single pane appears at the truncated facade and one pane appears to either side, above the recessed alcove. One additional wooden storefront/transom combination extends along Franklin Street and Middle Street. The adjacent fifth through eighth bay each contain a broad central wood storefront window and transom with narrower sidelight/transom combination. The third section of each bay contains a recessed, full light wood entry door. All bays are separated by a 16" wide brick pier. The fourth bay at Middle Street is an arched top brick opening that provides access to the offices above. The first three bays at street level have similar storefront treatment. The third bay has an entry door and the first and second bays replace the door with a matching thin storefront. The first second and third bays each have a quarter round canvas canopy. The truncated corner at the first bay has a simple fixed pane window that matches the return at the east facing facade. The final first story feature at the east facing facade is a full light wood exit door with transom. The canopy above wraps the truncated corner and east facing openings. The second story openings relate to the bays below and are comprised of individual one-over-one metal double hung windows in the following patterns: the first bay is a grouping of two double hung windows separated by a 12" wide brick pier; the second bay is three double hung window separated by a 12" wide pier; the third bay matches the second and the fourth bay is a single one-over-one metal double hung. The fifth second floor bay contains only two metal double hungs separated by

wider brick piers. The sixth, seventh and eighth bays have three one-over-one metal double hung windows, separated by a 16" brick pier between windows within each bay. A 4'-8" wide brick pier separates bays. The ninth bay is two metal double hungs and a single metal double hung at the truncated corner. All second story windows are capped with flat jack arch that in turn support a corbelled soldier course frieze band. Three more courses of brick appear above the soldier course frieze band which in turn is capped by a course of painted metal roof termination flashing. The second story windows share a sill band of projecting bricks. The secondary facade along Franklin Street presents two simple horizontally proportioned fixed windows at the first floor level. Three windows appear at the basement level towards the rear and the second story presents groupings of metal double hung windows in the following pattern, left to right: three, two, three, two. A small chimney appears at the rooftop at the southwest corner along Franklin.

Historical Narrative

Built 1922, designed by John Calvin and John Howard Stevens, contractor was Antonio Leo, owner was Abraham S. Levey, a house painter.

In 1924, the first year tenants occupied the new structure, the Reliable Furniture & Clothing store and David Blumenthal, a fruit dealer, were listed at the address.

In 1930, the Great A & P Tea Company occupied one storefront. There was also the New England Supply Co. Dry Goods and Rose Caiazzo's restaurant.

In 1940, shops included Louis Blumenthal's meat market, Anthony Albano's restaurant, Benjamin Levinsky's fruit store, and the State Upholstering Co. Blumenthal's kosher meat market closed in the mid-70's. State Upholstering was at the address still in 1950.

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Public Comment

India Street Sustainable Neighborhood Plan

Planning Board 2015

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December 22, 2014

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Jack Soley, Member
Planning Board
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RE: **India Street Comprehensive Plan**

Dear Board Members:

Thank you for considering the concerns of our client, Simba, Inc., with the proposed India Street Sustainable Neighborhood Plan ("ISP").

The Fore Street Properties Belong in the Eastern Waterfront District, Not the ISP

Simba fully supports the effort of the nearby India Street neighborhood to plan its future. But the narrow appendage south of Fore Street included in the ISP is near the core of Portland's Eastern Waterfront District. The land should remain in that district. Enclosed are copies of petitions signed by the vast majority of property owners located in the area asking that they remain in the Eastern Waterfront District – and not in the ISP.

The principal characteristics of the two block appendage are their existing connection to the waterfront and the historic Old Port, their connection to the substantial adjacent city-owned waterfront parcels, the extensive open, developable land, their history as a commercial and transportation hub and the exciting opportunity they collectively provide to the entire city and the property owners. Precisely these characteristics informed the recent decision to adopt the Master Plan for Redevelopment of the Eastern Waterfront that was fashioned by a highly-skilled, 33-member committee. The preamble to the Eastern Waterfront Master Plan correctly observes that

The challenge is to develop the marine passenger industry and to re-develop the underutilized uplands without negatively impacting the existing and future residential neighbors. The Master Plan envisions new development in the area to be an amenity and an asset to neighborhood residents, the greater City, and the visiting public.

The preamble also explains that it addresses that challenge through an “integrated Master Plan [that] allows the City to support the working waterfront, promote economic development, and enhance and protect our residential neighborhoods.”

The City’s existing master plan correctly identifies the “India Street Impact Area” as an area that “surrounds” the Eastern Waterfront Area and confirms that “the Waterfront Development Master Planning Committee[] worked to mitigate negative impacts to the surrounding areas [including India Street] and to encourage development that compliments and enhances the character of the eastern peninsula.”

The existing Master Plan thus strikes the proper balance in zoning and planning for the land south of Fore Street. It should, as the Eastern Waterfront Master Plan states, “develop into an extension of the surrounding areas while establishing its **own identity as a new urban neighborhood.**”

The draft ISP includes no explanation for why the Eastern Waterfront Plan should be supplanted below Fore Street – or for how the two disparate (but overlapping) plans would interrelate. Instead of a coordinated approach, the ISP simply includes no reference to the existing Eastern Waterfront Plan. Perhaps this could have been predicted. Whereas the Eastern Waterfront Plan assumes a bold citywide perspective, the ISP looks primarily inward – at the understandable desires of residents and property owners of *part* of the area the ISP would govern. The narrower focus is the natural but unfortunate result of the process. Work on the ISP was assigned to the Planning Office “in partnership with the [private] India Street Neighborhood Association.” Neither the Association’s officers nor the committee that drafted the plan include owners or occupants of property below Fore Street. As a result, no explanation has been provided (even though one has been repeatedly requested) for why their land should be included – and their interests have not been taken into account.

Regardless of how or why the owners of property below Fore Street were excluded, one conclusion is inescapable from review of the ISP. As the following table demonstrates, the land below Fore Street does not share the common characteristics of the India Street Neighborhood:

India Street as Described in the Plan	Reality of The Land Below Fore Street
The ISP states that the neighborhood has no existing plan.	The properties below Fore Street are governed by the 141-page Eastern Waterfront Master Plan crafted in 2002 by a distinguished 33-member committee and amended in 2004 and 2006.
The ISP describes an area with "religious institutions, working class houses" and "diverse" residents and an ethnic feel and history.	The history and feel of the area below Fore Street is entirely different. It was initially Clay Cove. Since being filled, the area has been an important commercial center. More than fifty years ago, the city destroyed all housing that had been added. In 1957, the City declared the area a slum, took all residential properties by eminent domain and bulldozed them.
The ISP describes "a neighborhood of strong identity" that is "disconnected" and should be "distinct from the Old Port."	The land below Fore Street does not share that "strong identity," nor is it divorced from the Old Port and the historic waterfront. All street connections at and below Fore Street were preserved when Franklin Arterial was widened. In 1997 the council added much of the land below Fore Street to the existing Old Port/Waterfront historic district. While the area below Fore Street retains Old Port connections, these owners generally are not members of the newly-formed (2010) India Street Neighborhood Association. No property owners below Fore Street were included in the committee that drafted the ISP. None are members of the committees working on new zoning ordinances. The owners below Fore Street are not complaining about their exclusion. They simply and correctly believe they are appropriately assigned to the Eastern Waterfront District. They're happy where they are.
The ISP describes an area with "diversity of residents."	There are <i>no</i> residences below Fore Street.
The ISP depicts a neighborhood that is generally four blocks wide.	Below Fore Street only the two-block appendage that includes the Simba lot are proposed for inclusion. The adjacent Portland Company property and the large city-owned parcels south of Commercial Street all remain in the Eastern Waterfront District – <i>not</i> the ISP. That of course has Simba and its neighbors wondering why they should be subject to regulation under the ISP, while the city's land is not.

With due respect, the India Street Association's relationship with the properties below Fore Street is not neighbors planning their own future. The Association seeks to coopt outsiders already subject to different, detailed planning provisions and assuming a role as their new regulator.¹

The Perils of Excess, Inconsistent Planning

Any municipal zoning ordinance must be "pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body." 30-A M.R.S.A. § 4352(2). As the Bayside experience demonstrates, zoning ordinances and projects are therefore subject to attack as "inconsistent" with the plan. The risk is greatly magnified for property owners included in separate, uncoordinated planning districts.

The Eastern Waterfront Master Plan added 141 pages to Portland's Comprehensive Plan that now exceeds 2,500 pages. The section of the ISP being considered would add extensive new provisions to the plan for Simba's land. The draft ISP includes no explanation for why Fore Street is included, no attempt to coordinate the two planning districts, and, remarkably, no mention the Eastern Waterfront Plan at all.

Although they share some similarities,² the two plans are fundamentally different in scope, outlook and detail. Some of the more general differences are outlined above. The following are a few examples of more detailed inconsistencies:

1. The ISP suggests that the "form [of development including below Fore Street] must reflect the attributes that typify" the development further up the hill. The Eastern Waterfront Plan, on the other hand, calls for the same land to "develop into an extension of the surrounding areas while establishing its **own identity as a new urban neighborhood.**"
2. The existing Eastern Waterfront Plan establishes a "street hierarchy" identifying Fore Street as second in a list of "primary streets." The ISP assigns it a more secondary status.
3. The Eastern Waterfront Plan has detailed height restrictions; the ISP outlines different height restrictions.
4. ISP states that development (including below Fore Street) must not "block a pedestrian's cone of vision at four stories." Our best guess is that the phrase means exterior walls of buildings allowed to be more than four stories should be stepped back so the higher

¹ At a recent Planning Board meeting, the president of the Association mistakenly suggested the neighborhood boundaries were blessed by state and the federal government when the Association was formed and granted tax exempt status in 2010. Neither governmental process included any evaluation of neighborhood boundaries.

² Of course, the similarities are no reason to subject the properties below Fore Street to the ISP. Planning restrictions and requirements already governing the area need not be reiterated.

stories cannot be seen from sidewalks. Page 7 of the detailed "Building Height Study" incorporated into the Eastern Waterfront Plan provides exactly the opposite: "In this area with limited building heights, the high point of a project should not be in the center of a block or stepped back too far from the street edge as to not have a presence at the street level."

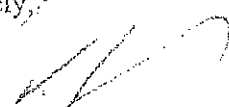
5. At the same page (7), the existing plan states that "large recessed plazas defined by three facades should not breach the street wall" in the Eastern Waterfront District. On the other hand, the ISP seems to require three-walled recesses.
6. The Eastern Waterfront Plan plainly contemplates for Fore Street substantial growth and a "new urban neighborhood" developed with sensitivity to the India Street neighborhood and other "impact areas." The ISP states that "wherever possible access to the waterfront – visual and physical – will be preserved." As some anti-development lawyer is certain eventually to argue, it is "possible" to preserve all existing water views only by rejecting whatever development is proposed.

The Bayside experience argues against including detailed requirements (as compared with more general goals) in a comprehensive plan. Regardless of the merits of more detailed planning, subjecting property owners to two, detailed, inconsistent comprehensive plans would be far worse than the Bayside debacle. It would be a full employment plan for lawyers and a prescription for failure.

The land below Fore Street is part of Portland's historic waterfront. It should remain where it is: in the Eastern Waterfront District. Good planning policy, fairness, the best interests of the entire city, and the reasonable request of the property owners all dictate that result.

Thank you for considering our concerns and views.

Sincerely,



Edward S. MacColl

ESM/ea
Enclosure

PETITION CONCERNING INDIA STREET PLAN

Dear Portland City Councilors,

We are owners of land below Fore Street that has been included in the India Street Neighborhood Plan. Although we appreciate the hard work that apparently has been under way by folks who live further up the hill and others for a few years to develop the plan, we are concerned by the inclusion of our neighborhood in that plan and by the contents of the plan document for the following reasons:

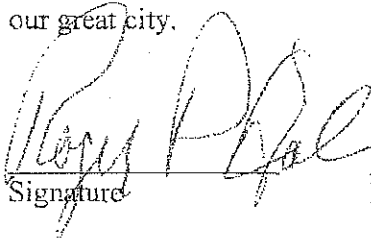
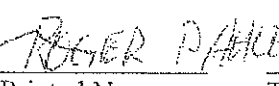
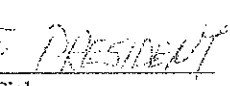
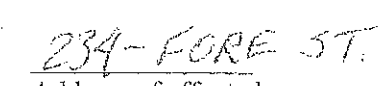
1. The nineteen-person Advisory Committee that drafted the plan includes no owners or occupants of property in our neighborhood below Fore Street;
2. Many of us were not aware of the planning process until it had been ongoing for a year or more; although some of us have taken the time to speak at public meetings, we have had not meaningful response to our concern about our inclusion in the proposed district, and of course none of us were given a vote on any aspect of the plan;
3. The land below Fore Street is quite different from the balance of the proposed district in history, use, potential and character; as the report reflects, the area properly within the India Street Neighborhood was and is a melting pot of residential and mixed uses. For much of the history described in the plan, however, the area below Fore Street was a cove (Clay Cove). Before and after being filled (when Commercial Street was constructed) the area has always been an important commercial center;
4. None of our properties is currently residential;
5. The balance (represented portion) of the proposed district is three or four blocks across, but below Fore Street the district is only two blocks wide; the Portland Company property, immediately to the east, is being treated separately. That seems appropriate,

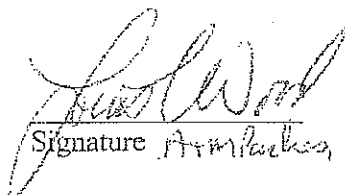
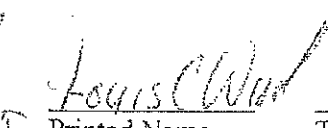
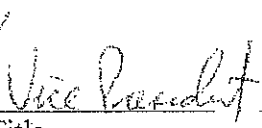
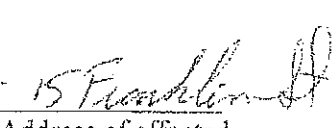
given the history of the Portland Company property as an important commercial and water front parcel, unlike the India Street residential neighborhood. But our properties, too, are and have been commercial properties; and

6. Our properties represent a unique opportunity for the City and for us owners. In investing in these properties, we took into consideration their unique history and characteristics and those opportunities. We fully understand that in planning the future of our properties the interests of folks further up the hill, our neighbors on other sides and the city as a whole should be taken into account. But just as it would be unfair for our area to be developed without consideration for others, we believe it fundamentally wrong for a group that represents only the folks up the hill to make the rules for us.

In light of these considerations, we respectfully ask that the two blocks below Fore Street be excluded from the proposed district and that we be included and our voices heard in any process that will determine the future of our properties.

Thank you for taking the time to consider our views and concerns, and for your service to our great city.

			
Signature	Printed Name	Title	Address of affected property

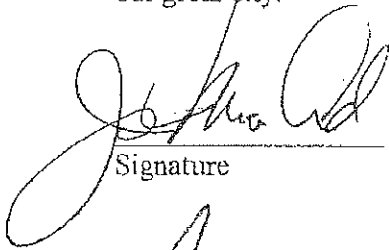
			
Signature	Printed Name	Title	Address of affected property

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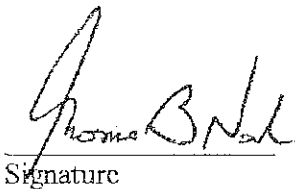
Thank you for taking the time to consider our views and concerns, and for your service to our great city.



Signature

James MacAdam owner/occupant
Printed Name Title

208 Fore Street
Address of affected property



Signature

Auto Europe Holdings
THOMAS B. NOVAK
Printed Name

VP FINANCE & TREASURER
Title

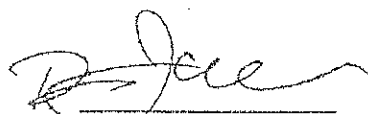
39 COMMERCIAL ST
PORTLAND ME 04101
Address of affected property

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Signature

CASCO PORTLAND PARTNERS LLC		
DENNY JACOBUS, AS MANAGER		
1 COMMERCIAL ST.		
Printed Name	Title	Address of affected property

Signature

Printed Name

Title

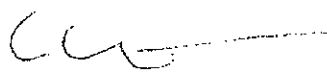
Address of affected property

property, immediately to the east, is being treated separately. That seems appropriate, given the history of the Portland Company property as an important commercial and water front parcel, unlike the India Street residential neighborhood. But our properties, too, are and have been commercial properties; and

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Thank you for taking the time to consider our views and concerns, and for your service to our great city.

	<u>ART BANISTER</u>	<u>PRESIDENT</u>	<u>SALT & THE FARM</u>
Signature	Printed Name	Title	Address of affected property
Signature	Printed Name	Title	Address of affected property

Greater Portland Landmarks
Planning Board Comments on the India Street Master Plan and Process
December 9, 2014

Greater Portland Landmarks actively participated in the India Street Advisory Committee and supports the India Street Master Plan. We strongly support the policy recommendation to create an India Street Historic District. An historic district supports the major goals of the proposed plan and is compatible with other elements of the plan, including promoting diversity, affordable housing, and economic vitality and growth. The American Planning Association has designated both Congress Street, this year, and Commercial Street as great streets in America, both of which are part of historic districts. Historic preservation is a proven strategy for enhancing the economic development and livability of Portland and is named as a goal of the City's comprehensive plan.

Historic district designation also encourages new construction that is compatible with the character of the area and is clearly of its own time. Buildings such as the CIEE building on Fore Street, the addition to the Blake Warehouse on Commercial Street, and the new affordable housing called Elm Terrace at 68 High Street show the range of contemporary buildings, and uses, that have been built in historic districts.

India Street has been and is a diverse neighborhood which reflects the Immigrant Story as part of its diverse history. The India Street area was notable in the early-to-mid-19th century for its free black population, which provided the workforce for nearby maritime and industrial operations. After the Great Fire of 1866 families of European and African American descent were joined in an increasingly dense neighborhood by successive waves of immigrants including Irish, Italian, and at the turn of the 20th century, Eastern European Jews. Each wave of immigrants left their mark on the neighborhood establishing houses of worship, residences and businesses, many of which continue to the present. No other designated historic district in the City features this part of Portland's history.

Historic district designation is a technique to manage change over the long haul. As we see in other historic districts, the consistent attention to the historic built fabric has resulted in vital and dynamic neighborhoods and downtown areas. Concern has been expressed about the cost of rehabilitation. However, construction projects, old and new, can be expensive, especially when they involve quality materials and craftsmanship, no matter the location. Preservation tax incentives for rehabilitation are one way to help alleviate costs as are façade improvement grants.

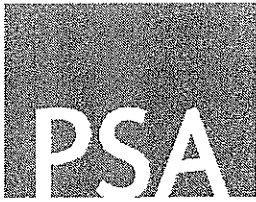
A major reason for the India Street Master Planning process has been the concern of residents that large, out of scale buildings were beginning to dominate the neighborhood. The proposed Form Based Code alone will not alleviate the massive structures that inspired the master planning process in the first place, nor will it address

the quality of materials and design details that make for good new construction. We believe that both the Historic District and Form Based Code should be developed in tandem and work in tandem.

Landmarks looks forward to continuing involvement in the India Street Master Plan implementation, including the proposed Historic District and Form Based Code.

Thank you for your consideration.

Christopher Closs
Preservation Services Advisor
Greater Portland Landmarks
93 High Street
Portland, ME 04101
www.portlandlandmarks.org



INDIA STREET SUSTAINABLE NEIGHBORHOOD PLAN

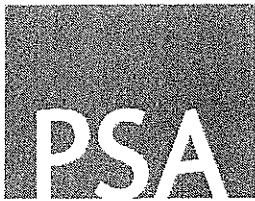
The Portland Society for Architecture appreciates the great effort by the many people who have developed this neighborhood plan. The plan addresses connectivity across Franklin St.; increases housing diversity; reinforces India St. businesses; creates a recreation hub at the foot of India St.; builds a model water and sewer infrastructure. PSA has been pleased to be a part of the planning process and hopes to continue to do so.

HISTORIC DESIGNATION

However, PSA does not support the proposal to designate this neighborhood an Historic District. A designated neighborhood should "demonstrate a high degree of historical, cultural and/or architectural significance". India Street was Portland's first street, but the India Street that was -- is no more. It is even unlikely that the India Street destroyed by the Great Fire bore much resemblance to the first India Street. Aside from a small handful of already landmarked buildings, the map of Cultural Assets is most notable for what exists in memory and not on the ground: Fore Street as the first waterfront and India Street as the first street. This does not mean that this neighborhood is without culture or has not been the scene of important events -- but that its current culture comes from its enormous variety, not its historic texture.

Does this neighborhood offer a collection of buildings that are remarkable, unique, historically significant or that provide a coherent picture of its history or the story of Portland? The Historic District Map reveals that contributing buildings are scattered among vacant parcels, older non-contributing buildings or among ones that are not yet 50 years old. This map does not look like the map of contributing buildings on the West End or Congress St. or any other historic district. In fact, it is likely that a map of any neighborhood in Portland would have many fewer 'holes' and a much greater proportion of contributing buildings than this one does.

The Plan lists a 'lack of clear identity' as the neighborhood's first challenge. What will looking to its past rather than its future do for its identity problem? Historic District designation has profound economic repercussions. While the plan calls for maintaining and reinforcing neighborhood economic diversity, 'gentrification by designation' frequently results when cities do not take very aggressive measures to counter that tendency. Tax credits, limited to income producing buildings, do not offer enough money to overcome the fact that property owners in Historic Districts need to have deeper pockets than owners elsewhere. Likewise, the goal of having businesses that provide services to neighborhood residents and workers is hampered by having every storefront renovation dictated by the history of the building rather than by the future of the business.



The plan seems to endorse increased residential density without increased building height. To the degree that historic districting will control the height of infill buildings, there will not be enough new neighbors to support the extensive retail development that is planned. New buildings matching the bulk of historic buildings will house many fewer people than 100 years ago, because household size is so much smaller now. Unit reduction is already happening in buildings that are being renovated – and while family size drops, the apparent need for greater space grows.

Historic designation will not give the 'authenticity' this plan seeks. It is an attempt to build a new historic 'feel' that is long gone. It will remove an entire neighborhood from the natural evolution of the city --- an evolution that accounts for the India Street neighborhood's vitality and diversity right now.

FORM-BASED CODE

It is not possible to have an informed opinion on form-based code while so little is known about the nature of the code or its provisions. The plan should not include the Plan of Character Districts – until those districts are defined by the provisions of the code.

Thank you.

Portland Society for Architecture

Greater Portland Landmarks Comments on the India Street Master Plan and Process October 15, 2014

Greater Portland Landmarks actively participated in the India Street Advisory Committee and supports the India Street Master Plan draft that has been forwarded to the City Council from the Council's Housing and Community Development committee. We strongly support the policy recommendation to create an India Street Historic District to preserve the historic fabric of the neighborhood that includes buildings that are not only historically significant for their architectural character, but also have merit as representations of larger social, cultural, and historic events in Portland. Consideration of a potential district resulted from a planning board recommendation several years ago, when neighborhood residents raised concern about the scale and impacts of new construction in the neighborhood.

To prepare to consider the possibility of an historic district, the City commissioned extensive research including a study of every property that could be in a potential district. This information helped guide the work of subcommittee to study proposed boundaries of a district. The work included consultation with the Maine Historic Preservation Commission regarding concurrent National Register district designation to provide access to historic preservation tax credits.

We would like to provide accurate information to address several assumptions presented at the final meeting:

One purpose of an historic district in this neighborhood is to preserve the historic fabric of a neighborhood that is the site of the earliest settlement of Portland; was significantly impacted by Portland's ocean, railroad, and land transportation economy; was a focal point for immigration including the earliest African American neighborhood, as well as Jewish, Italian, and other immigrant communities; and contains distinctive civic and religious buildings.

Another purpose of an historic district is to provide a consistent review process for the entire neighborhood. Landmark buildings are important, and there are eight in the area, however the additional historic buildings that contribute to the historic character and significance of the area are important in retaining its scale and architectural character as well as to convey the story of the neighborhood. Consistent improvement and development review standards give assurances to property owners of all types that their investments will be respected and protected.

There are buildings of many ages and styles in the India Street neighborhood that reflect its long history – it is not a homogeneous neighborhood like the Old Port. It includes many more modest structures that are not architect designed, but that do reflect the evolution of our city and represent the pedestrian oriented human scale that characterizes Portland. The neighborhood is not unlike the near West End where more modest buildings comprise the majority of the historic fabric. Consultant Michelle Reeves cited the potential for reinvestment in this neighborhood with a variety of evolving uses. This makes sense to us. The relatively small scale of the buildings is an advantage in many cases.

We have provided information on the attachment about the historic preservation tax credit program. The Maine program has special provision for smaller projects between \$50,000 and \$250,000 and work can include a wide range of projects from upgrading HVAC systems, repairing roofs, walls, floors, chimneys and porches, among other items. The property must be an income producing property.

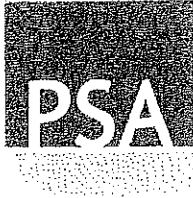
One of the major reasons for the India Street Master Planning process has been the concern of residents that large, out of scale buildings, such as the Bay House complex, were beginning to dominate the architectural character of the neighborhood. As we have seen from the work completed to date, the Form Based Code alone will not alleviate the massive structures that inspired the master planning process in the first place, nor will it address the quality of materials and design details that make for good new construction. Historic Districts and Form Based Codes work well together and each address different aspects of the planning process. We believe that both should be developed in tandem and work in tandem.

With the above in mind, we would like to propose a revision to the process going forward. Part of the reason the ISNAC failed to reach a clear consensus was because the so-called working groups were largely working independently. The same pattern continues as the historic district and the form-based code discussions progress on their parallel paths. A more integrated path could be more effective, where the historic program staff participates in the form-based code development process; where the form based code and Historic District working groups meet together to review both items as they progress towards a final recommendation; where the form based code committee draft goes to the historic preservation board for review prior to the final draft; and where there is a historic preservation board workshop to review the Historic District boundary and form based code guidelines. The goal would be to ensure that there is not conflict between the two areas of the plan and that the review process will be easier because there is consistency and agreement.

Thank you for your consideration.

Hilary Bassett
Executive Director
Greater Portland Landmarks
93 High Street
Portland, ME 04101
www.portlandlandmarks.org

Public Comment
India Street Form-based Code
Planning Board 2015



15 September 2015

To: Stuart O'Brien, Chair, and Members of the Portland Planning Board
RE: India Street Sustainable Neighborhood Plan:
Critical Action 8: Adopt a Form-based Code

Dear Stuart O'Brien, Chair, and Members of the Board:

The Portland Society for Architecture (PSA) participated in the study for the India Street Sustainable Neighborhood Plan including representation on the Public Advisory Panel to introduce Form-based Code to replace the existing zoning code in this neighborhood. Because of its thorough public process, significant community participation, and agreement on social principles outlined in the preface, extensive use of staff time, and our own efforts to contribute substantively, PSA supports the Form-based Code for the India Street Neighborhood as a test site for future expansion of FBC in Portland – with reservations.

As a zoning practice that is intended to provide regulations that will guide development vis-à-vis urban design in this district, it places an emphasis on how the buildings meet the street, contribute to the street wall, and complement historic architecture. This FBC, like others in its genre, is focused on building a contextual urban design that will be conducive to an active street life, safety, and prosperity.

The code is also intended to expedite the development review process by concentrating design review at the staff level in order to reduce approval time and expense. While there has been a great effort to develop design standards as a means of fortifying the judgment of staff and of assisting the developer, we have reservations about the language in the proposal and design standards. Will words like reflect, relate, reasonable, respect, and compatible produce tangible results in architectural projects that can be fairly reviewed by staff?

Height bonuses are included to encourage housing density along some streets, and green roofs will enable a higher level of sustainability. (These are significant areas of overlapping innovative values with social, economic, and architectural commonality.) Yet we have reservations with respect to creative building solutions and innovative contemporary architectural design being permitted in a district where the design standards promote conformity in terms of facades, fenestration, and building entrances. Will design standards aimed at efficient approvals and avoiding undesirable projects sacrifice the potential for the urban landscape to develop artistically and with architectural integrity?

Is there a reasonable appeals process that allows for a fluid process for architecture that may not conform to standard prescription, but creatively and aesthetically meets the needs of clients with interesting business/development ideas?

With these reservations in mind, we propose that the FBC be enacted here as a test or experimental district with a sunset provision that allows it to be withdrawn at the end of five years if, after evaluation of the results and after revisions are tested, the code does not meet the goals of sustaining the neighborhood landscape.

Respectfully,
The Portland Society for Architecture

Portland Society for Architecture
PO Box 440
Portland, Oregon 97208
www.portlandsocietyforarchitecture.org

**Greater Portland Landmarks Statement
for the Planning Board Public Hearing Sept. 15, 2015**

Greater Portland Landmarks has been actively involved in the India Street neighborhood master planning process that also includes a new Form-Based zoning code. We support creation of a form based code in this neighborhood, but we also strongly believe that it is only through historic district designation that it will be possible to truly preserve the neighborhood's authentic character. Within an historic district property owners are assured that the abutting properties will be held to the same standards that they are with regard to design details, quality of materials, and protection from demolition – elements that are not addressed by the form-based zoning.

Historic districts and form based zoning are different, but complementary planning tools. We urge you to treat them as such. We appreciate the clarification provided in the staff report of the interaction of the form based code and historic preservation guidelines regarding review processes, heights and the 100 foot rule. We also urge your support for the amendment proposed by the historic preservation board that addresses the height issues.

Thank you for considering our views.

Hilary Bassett
Executive Director
Greater Portland Landmarks

June 9, 2015

• **Mid-block permeability / passages**

India Street FBC Draft/ Planning Board — Peter Monro, ASLA, 32 May St.

The word “**passages**” has been replaced with “**mid-block permeability**” in the Draft when referring to bonus height qualifiers. (Section 14—XX, b.1) In other locations of the DRAFT, both “passages” and “midblock permeability” remain in the draft. Neither is defined either here or elsewhere in the Ordinances that I can find.

Lacking a definition in discussions of Midtown, this Board agreed to consider private, time-limited pathways through retail establishments as sufficient to achieve “mid-block permeability.” A passage through Bay House has locked gates, openable only by tenants.

These sorts of paths do not offer the kinds of advantages to the public or to city vibrancy that merit bonus height or density of development.

At Bay House, the path breaks what could have been one large building into two. Retail store crossings do not do that. But true public passages do a great deal more than break down building masses. They

- provide unobstructed, round-the-clock access to all
- walkable shortcuts to homes and stores,
- social interaction,
- facades for windows and entries to businesses or housing,
- intimate courtyards, and
- access to utilities.

Please adopt a definition of “passages” or “mid-block permeability” that assures those benefits before granting height bonuses for them. At a minimum, please assure that passages are clear, direct public openings in or between buildings that are open 24/7.

Also, please replace license agreements—which do not convey permanent access or a public interest in the land underlying a passage—with “easements or rights-of-way,” which are permanent and do convey a public interest in passages, as legal bases for granting height bonuses.

Thank you.

The Planning Board asked a question in two different ways at the first workshop on the India Street Plan using Form Based Code. The following response is from the point of view of the neighborhood.

Preamble

One must remember that the India Street Neighborhood planning process was initiated to correct the past handling of this, until recently, unrecognized neighborhood. Specifically, the ISN was zoned as a result of: assigning use zones to pre-existing housing; a “business district” height overlay from the west; the Eastern Waterfront plan from the south; and a height overlay designed to increase density that was resisted farther east and settled in the ISN.

The resulting flurry of development included many massive buildings with long and undistinguished facades. When these could not be built under the patchwork zoning, they were allowed as “contract zones”. When they were permitted because they met the requirements of a particular zone, there was no way to control quality or scale and massing. The Planning Board had virtually no discretionary authority.

More than one consultant said the equivalent of: Recent projects that were permitted should be made up for by the next project being great. The next project turned out to be Seaside Lofts.

The plan, already approved by the PB, is best implemented with FBC

What Problems does using FBC solve?

The first improvement (problem solved) by FBC is the recognition of a unique neighborhood in need of three different development requirements of form and scale. No use zone addresses massing limits (width or depth of a building).

Most basically, present zoning has never been representative of existing use nor compatible with the desires for development in any part of the neighborhood. The new code will be.

Use zoning represents – wrongly – the uses that are desired in the neighborhood. The guidance of the new FBC presents what the city wants to see built in the neighborhood. With so many open parcels, this is what pro-active zoning should always do.

The limited discretionary judgments allowed of staff, the Planning Board and Council, under the present zoning, are insufficient to prevent the approval of buildings lacking in architectural design and appropriate scale. FBC is one way to assure that more enforceable equivalents of (now unmet) design guidelines are taken seriously.

Requirements for setbacks, heights etc. are applied uniformly in subdistricts to maintain and improve the traditional character of those subdistricts. Presently a setback may be dependent upon the zoning of a neighboring lot rather than the one being developed. Intersects between zones are frequent and random.

Cannot the same results be obtained with Euclidian zoning?

It would be possible; of course, to construct Euclidian zones to accomplish much the same thing as the ISN plan calls for. The trouble is that such zones would also be brand new, applicable only in the ISN and even more confusing than the present zoning.

One original (short cut) objective of the ISNA was to have the entire neighborhood zoned B2b. As more study was done and as the needs of the City for increased density were accepted, this was no longer seen as the best solution. While possibly a good start for what we now call the *neighborhood subdistrict*, there would have to be changes such as: setbacks; some increased language to institute meaningful and enforceable design guidelines and the establishment of width limits, among others. That would mean a B2c zone that would probably apply only to the ISN.

Similarly, the B2b in the *active subdistrict* would become the B2d, with changes like the above but allowing extra height to encourage better commercial space and allowing different setbacks, parking facilities etc.

The *transitional subdistrict* would require some kind of B6 modification to address all of the desired characteristics that are so easily defined in a FBC.

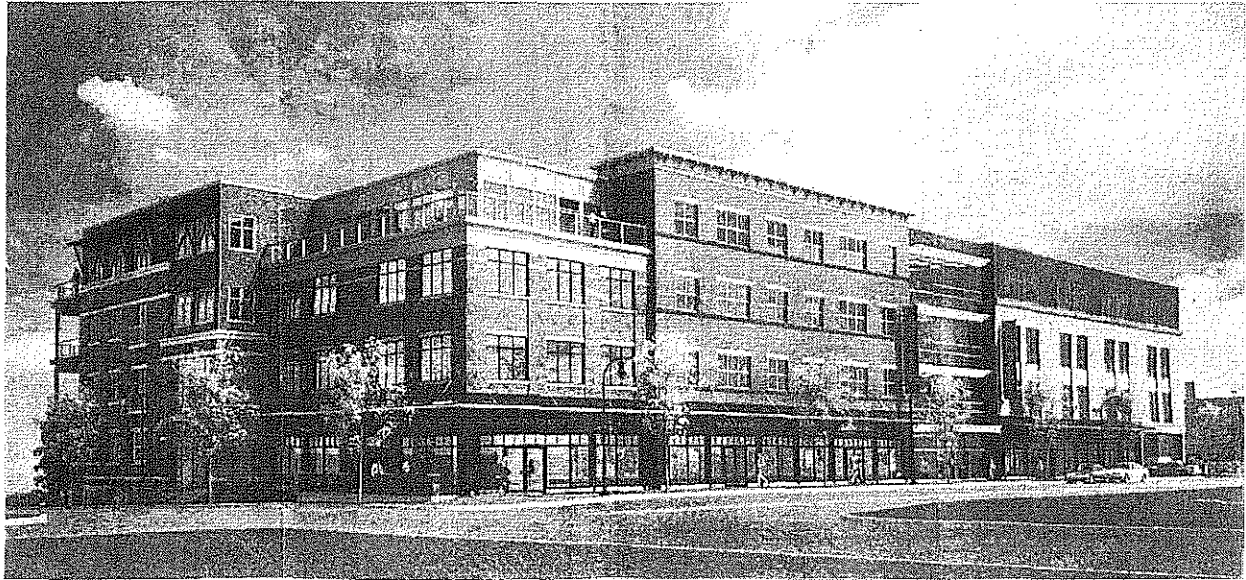
These three subdistricts are each part of one planned neighborhood and should be written so as to reflect that commonality. Each has different elements and needs to benefit the neighborhood as well as City needs. These desires are most directly, honestly and enforceable presented in a FBC intended only for the areas they address.

One more thing

The illustrations in the draft FBC are the simple representation of the maximum envelopes within which buildings may be designed. No structure neither has to go to the maximum dimensions, nor has to have the alternative of party walls, nor to have a need to meet any significantly restrictive requirement. Efforts were made to be inclusive of the expressed desires of all stakeholders willing to participate over a three-year period.

Heights and scale have been extended far beyond what the neighborhood originally desired. Nonetheless, the ability to build truly out of scale buildings in the most sensitive subdistricts has been appropriately limited.

The neighborhood worked with the developer to modify the building pictured below. The massive 300 foot long scale was still overwhelming after the improved façade treatment. While better than other recent projects allowed in the neighborhood, this structure is just too massive and would have changed the character and texture of the India-Middle Street corner. What the new plan and the FBC would allow would be better for the neighborhood. Like others built recently in the ISN, this building was in-house engineered by the developer rather than being architecturally designed.



Middle Street View

April 27, 2012



JORDAN'S REDEVELOPMENT PHASE II

PHASE II





24 February 2015

To: Members of the Portland Planning Board
RE: India Street Sustainable Neighborhood Plan:
Critical Action 8: Adopt a Form-based Code

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Jesse Thompson AIA LEED AP
Jackie Vassallo
Graham Walters AIA
Adam Wallace

Portland Society for Architecture
PO BOX 5321
Portland, Maine 04101
www.portlandarchitects.org

Dear Members of the Board:

The PSA is cognizant of the great effort by staff and others in this production ----- but the PSA is strongly opposed to the current proposal before the Board. We plan to respond in more detail later, but have some initial comments. The specifications of the proposed FBC for the India Street District goes way beyond a simple set of common guidelines to prescribe a very high level of specificity and visual appearance; it represents a virtual 'taking' of the building facades from their owners. Instead of the natural evolution of this urban neighborhood that is represented by diversity, vitality, and authenticity, we will be forcing a 'cookie-cutter' approach upon its property owners and residents that is stuck in time, neither honoring our existing historic structures, nor looking to the future, and above all turning its back to Portland's proud architectural heritage.

The PSA is one-hundred percent behind the idea of creating a pedestrian friendly mixed use urban neighborhood and believes that a simple set of common sense guidelines can do that. This proposal is neither simple nor commonsensical.

Respectfully,
The Portland Society for Architecture

India Street Neighborhood Association 12/12/2014

Responses to questions asked at the 12/9/2014 PB workshop.

India Street Plan: existing vs form based code; How will Form Based Codes be better?

Planning Board Members:

I am certain that Alex and Caitlin will answer your questions from their point of view. I want to be sure that you also have a full understanding of the neighborhood's thinking without having to extend your meeting time by talking at length.

_____Hugh

Existing code reflects no plan

The existing structures in the neighborhood are not, for the most part, the result of present regulations but preceded them. Euclidean districts were essentially assigned to preexisting blocks or buildings based not on any planning but on the "best fit" of a zone, regarding use and height, to what was already in place. This common practice results in many problems for later development.

What buildings have resulted from the Eastern Waterfront Plan and the later height overlay are the primary cause of the desire to devise a better plan to save the remaining neighborhood.

"Contract" zoning

Special arrangements such as contract zoning or language changes have had to be used to allow almost all new construction in the ISN. Existing regulations do not allow for the approval of projects that match market driven demand or that the neighborhood and the city should have. This results in developer-led proposals for contract zones rather than planned development. It also causes needless long and complex project approval processes. A form based code (FBC) could eliminate this considerable problem.

Rebuild and in-fill

Because of Euclidian zoning requirements such as setback, minimum lot size, maximum number of units limitations, parking requirements etc., it is not possible to rebuild pre-existing building forms or to build an otherwise desirable building in an infill project. FBC will fix this most easily.

Width and depth (scale, massing and neighborhood texture)

Existing code has no minimum width nor depth. This has allowed for development that is demonstrably out of scale with the neighborhood. A FBC will encourage the development of economically practical designs that fit the texture of the neighborhood with the visual character of limited scale and massing.

The PB has recently had to voice regret in having to approve a most undesirable development because of a lack of appropriate controls in the existing code.

Height (scale and neighborhood texture)

Existing zoning, having been assigned rather than planned, does not consider the effects of different heights along significant street-scapes. FBC will fix that. Existing code speaks only to maximum height. The residential density goals of the ISN plan will not be met with more one or two story buildings. While future development may seek to achieve the maximum allowed height, FBC will assure a minimum desired height. Please note that there is now no building fronting on India or Middle Street that is over 45 feet high - most are significantly lower.

Architectural and construction quality

Existing regulations do not sufficiently address design or construction quality. Inexpensive cladding and confused coloration or variegation are frequently proposed as a substitute for worthy design. Economics rather than quality is the major determinant of construction mode and implementation.

Traditional building forms

Row houses and other party wall built structures are not uncommon in Portland and there are a number of examples in the ISN. Existing regulation does not allow such development. Structures of appropriate height and width may be more practically built without the appearance or "feel" of excessive massing. The apparent proportionality of each "building" within a structure can preserve the street "feel".

Unit size and parking

The existing requirements work against residential density by allowing fewer and larger units that do not serve the goals of the ISN plan. Small units of one bedroom or studio design could attract residents with smaller budgets who do not regularly use cars and cannot afford the price of large units. Parking requirements could be reduced to reward the construction of greater unit density.

Use vs form (utilization)

Some recent projects have required commercial use of some first floor spaces. The result has been some space being long empty. FBC will require some zones to build first floor forms that could be used to accommodate commercial uses while allowing other uses when the market did not produce a commercial tenant. The greater flexibility serves both the goals of the ISN plan and the immediate needs of the marketplace. While increased residential density is a goal, so is active street traffic and full building utilization. Any unit could be used as a live/work space with no limits of use.

Mid-block permeability

Mid-block permeability is a good idea that is best expressed in more specific ways. Some locations do not lend themselves to this idea while others benefit easily from such a requirement. A FBC has the advantage of specifying the locations at which such requirements are located. There is also the ability to envision the need to limit continuous undesirable wall-massing along any such mid-block passage.

Forced lot combination

The sometimes-applied concept of forced lot combination can be a problem for an owner who has or buys two or more contiguous, non-conforming lots. Forced combination is used in shoreline zones to minimize shoreline density and contamination. Suburban areas that wish to enforce a larger minimum lot size than was used in the past also apply this rule. Lots, in common ownership, are also looked at collectively in Maine subdivision statutes for the purpose of defining a "parcel" or "section" which are concepts applied to certain decisions regarding lot division. That statute includes no forced combining of lots of record. Confusion about this seems to have hampered some development possibilities. In any case, a FBC for the ISN neighborhood has no apparent need for a minimum lot size.

Other considerations

Gentrification

There was a question about gentrification and the limited ability to achieving diversity called for in the ISN plan. It is true that there is some overreach in the language of the plan. As Browning said: "Ah, but a man's reach should exceed his grasp, or what's a heaven for?" The goal is to promote what diversity might be kept or increased. Gentrification is a product of many demographic and financial conditions. No plan, short of buying and developing land in such a way as to avoid any displacement, can do more than try to limit the worst of gentrification. The plan strives toward diversity and sustainability; it will never totally achieve either.

Boundaries

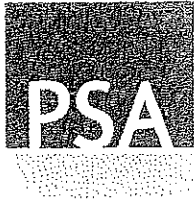
The boundaries of the ISN were fully debated both among the group that started the ISNA and at the first few public meetings. The boundaries were specifically accepted by the City as those for the planning process.

There were some who were not eager to have their land included. Some of those, nonetheless, participated heavily in the process and helped the plan to be inclusive.

Others decided not to participate but continue to speak against having any plan at all. Lawyers have been hired not to represent the desires of land holders by participating in the process but to defeat the plan and/or to exempt certain parcels from the plan. The "we were not involved in the planning" is a familiar tactic. What element of the plan is being opposed is not usually specified. In fact, no element of the plan that might cause concern has yet been presented. Efforts continue to include all interested parties in the planning.

Every one of the consultants involved in the planning has agreed that the major entry points into the neighborhood are critical. These are Middle Street at Franklin, India Street at Congress, Congress Street at Franklin and India Street at Commercial. The North side of Commercial between Franklin and India is already in an Historic District and is an important part of the total fabric of the neighborhood.

Public Comment
India Street Historic District
Historic Preservation Board & Planning Board 2015



15 September 2015

To: Stuart O'Brien, Chair, and Members of the Portland Planning Board
RE: India Street Sustainable Neighborhood Plan:
Critical Action 5: Create a Local Historic District

Dear Stuart O'Brien, Chair, and Members of the Planning Board:

The Portland Society for Architecture (PSA) is in favor of the historic district boundary dated 2 September 2015. Its size now represents the core of contributing buildings, existing historic landmarks, and proposed landmarks along India and Congress Streets.

Because the proposed Historic District and design review criteria are being introduced concurrently with the Form-based Code criteria in this neighborhood, there is a strong perception that coordination and clarification on the jurisdiction of duties to approve construction height and volume on the boundary edge are crucial to their mutual success. While the recent iteration proposed in Section 14-651 Standards for New Construction Scale and Form: *Applicability to India Street Historic District* is such an attempt, it is of concern that the Historic Preservation Board and FBC review processes may have the unintended consequence of supporting conflict at the expense of building owners' capacity to advance projects otherwise in keeping with the sustainable neighborhood planning goals.

Respectfully,
The Portland Society for Architecture

Portland Society for Architecture
505 NW 5th
Portland, Oregon 97209
503.475.4444

**Greater Portland Landmarks Statement
for the Planning Board Public Hearing Sept. 15, 2015**

Greater Portland Landmarks strongly believes that the proposed India Street Historic District is the most effective way to protect the historic buildings, preserve the character of the neighborhood, and bring the benefits of a consistent review process that have proven successful in the Old Port and Congress Street Historic Districts.

The proposed India Street Historic District emerged from a lengthy and inclusive public process. It meets the designation criteria established in city ordinances. It is consistent with the City's comprehensive plan, which supports historic preservation. The intent of the Historic District is not to prevent change, but to thoughtfully manage it over time and over changes in property ownership.

We support the Historic Preservation Board's proposed district boundaries that focus on the area with the highest concentration of historic synagogues and churches, commercial storefronts, schools and civic structures such as the North School, Fire Station, Shaarey Tphiloh Synagogue, Cathedral of the Immaculate Conception, and St. Peter's Church.

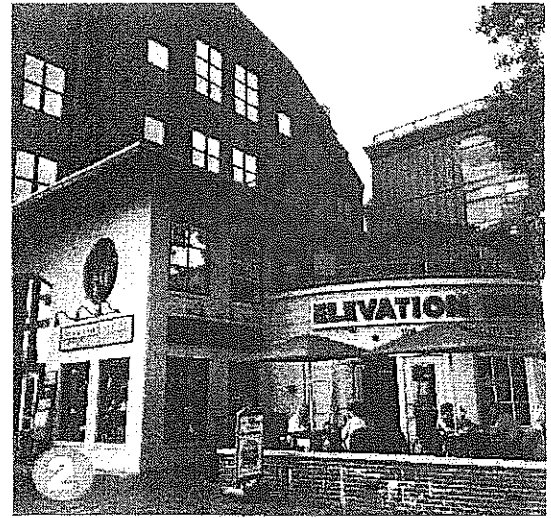
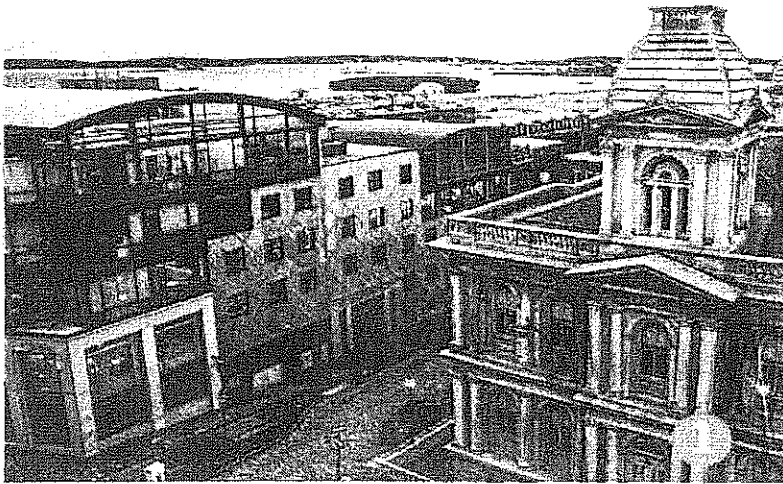
We support the proposed ordinance amendment as drafted in the staff report to integrate the historic district designation with the new form based zoning. This clarifies: 1) that the underlying heights allowed by the Form Based Code may not be limited by the historic preservation board review, except for vertical additions to historic buildings; and 2) that the Historic Preservation review for new construction has the ability to adjust how the maximum and minimum heights are achieved by a proposed project.

An India Street Historic District will celebrate the history of immigrants and working people of Portland's past, while encouraging sensitive new infill construction on vacant lots, flexibility of building use and architectural innovation. I would like to share some illustrations showing the range of new construction projects that have been approved in historic districts.

We urge that you accept the historic preservation board's proposal and recommend its approval by the City Council.

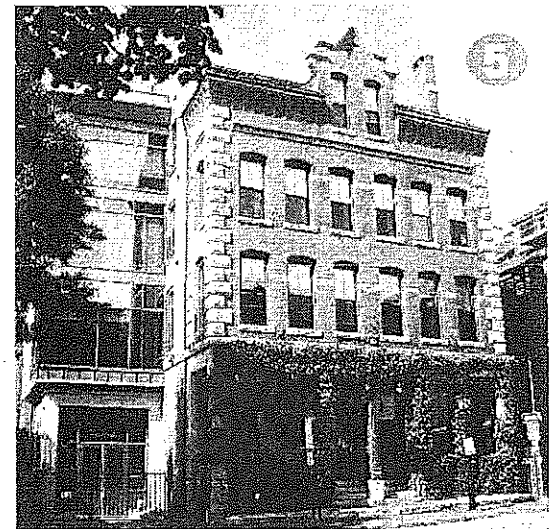
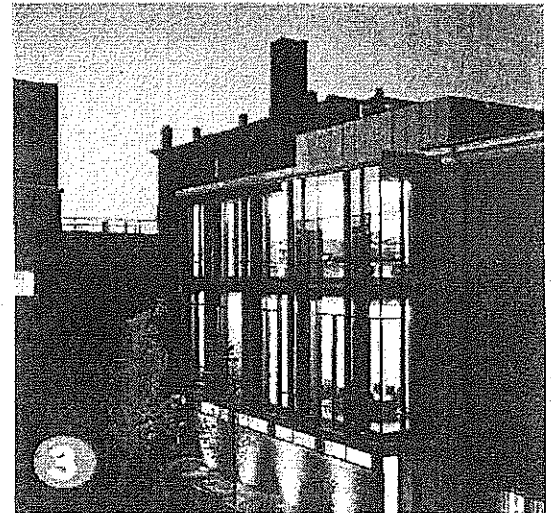
Thank you for considering our views.

Hilary Bassett
Executive Director

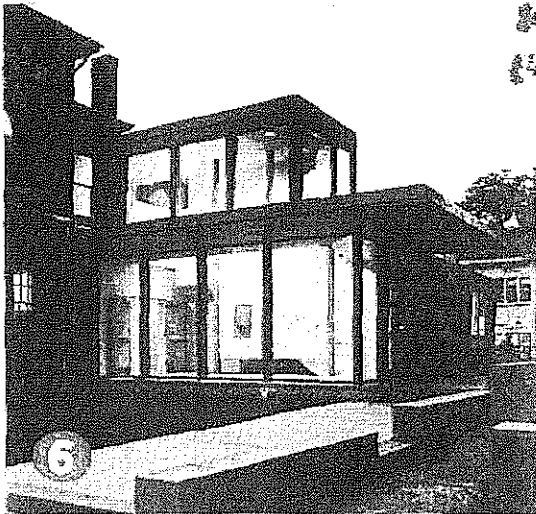


Contemporary architecture approved by the Historic Preservation Board

Greater Portland Landmarks / more info at portlandlandmarks.org



Old Port + Congress Street Historic Districts Portland, Maine



1. CIEE Building, 2007*
300 Fore Street

2. Elevation Burger
205 Commercial Street

3. Brown Research Library
Maine Historical Society

4. Blake Warehouse Addition
93 Commercial Street

5. Chase Leavitt Block Addition
10 Dana Street

6. Waynflete Art Center+
360 Spring Street

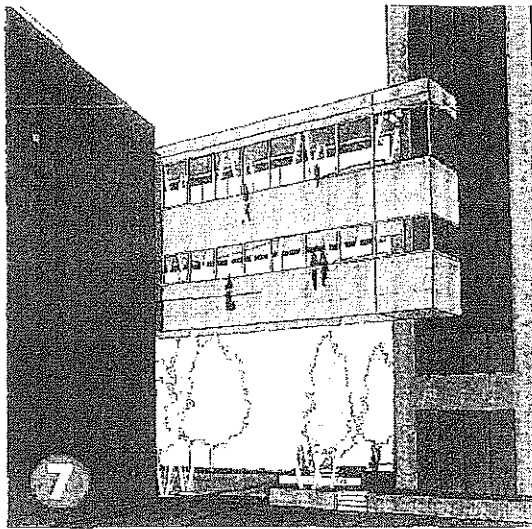
7. MEMIC Building Connector, 2016
75 York Street

8. Elm Terrace, 2013
Danforth & High Street

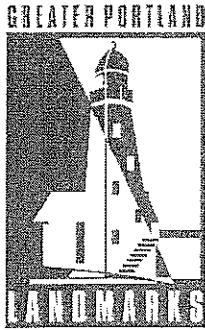
9. Peloton Labs, 2010
795 Congress Street

*Photo by Corey Templeton

+Photo by Brian Vanden Brink



Old Port, Congress Street + West End Historic Districts
Portland, Maine



India Street Historic District: A Planning Tool to Address Neighborhood Goals

Why should the City consider designating an India Street Historic District?

The India Street area was notable in the early-to-mid-19th century for its free black population, which provided the workforce for nearby maritime and industrial operations. After the Great Fire of 1866 families of European and African American descent were joined in an increasingly dense neighborhood by successive waves of immigrants including Irish, Italian, and at the turn of the 20th century, Eastern European Jews. Each wave of immigrants left their mark on the neighborhood establishing houses of worship, residences and businesses, many of which continue to the present. The proposed historic district, which encompasses most of this area, would meet the City ordinance's criteria for designation as an area representative of a broad period of 19th and early 20th century architectural, cultural and social history in Portland.

Is creating an historic district here a new idea?

No. There is a long history of consideration by City staff and Council Committees that the historic resources in the India Street neighborhood warrant recognition and protection. In the face of extensive development pressures in the late 1990s, the City of Portland commissioned Greater Portland Landmarks to prepare a preliminary historic resources inventory of the area, which was completed in 2002. In 2007 the Council's Housing & Community Development Committee voiced support for a potential India Street district. In 2011 the Planning Board endorsed efforts to establish a historic district.

What is an historic district?

An historic district is a geographically definable area that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. The City of Portland's historic preservation ordinance cites specific criteria for designation of a local historic district.

How would creating an historic district help achieve goals of the India Street Neighborhood Plan?

An historic district designation would advance the goals of vitality, good quality design, strong neighborhood identity, diversity and mixed-use. The Plan states: "The historic fabric and landmarks tell a story about this neighborhood and are critically important to its identity."

Are there too many open sites or noncontributing buildings to justify designation of this area as an historic district?

While there have been many losses of individual buildings over the years, there are enough properties remaining to give a sense of the evolution of the neighborhood, and its relationship to the city. The designation standards of the National Register of Historic Places, which guide the City's designation approach, support boundaries that can accommodate non-contributing buildings that comprise up to 50% of the structures of the district.

(over)

What makes this historic district different from others already designated in the City?

The India Street neighborhood tells the Immigrant Story of Portland's 19th century African American and Irish immigrant working class populations and 20th century Italian, Jewish and other immigrant groups. No other designated historic district in the City features this part of Portland's history.

What would be the public benefit of designating an historic district in the India Street Neighborhood?

As older properties are developed and new buildings constructed within the district, the architectural character of the contributing and landmark buildings would be reinforced through renovations of existing buildings and newly built projects that are complementary in scale and massing. The resulting urban district would advance the neighborhoods' goals of vitality, good quality design, strong neighborhood identity, diversity and mixed-use.

If an historic district is designated here, would new building construction be allowed?

New building construction would be encouraged. Projects are reviewed to ensure they do not detract from the existing historic fabric of the district. New approaches to architectural design, that are clearly of our own time, are welcomed. Examples of new buildings or additions using both traditional elements and contemporary designs can be found throughout Portland's existing historic districts.

Could federal and state tax incentives assist developers of historic buildings in the district?

Yes. Developers of income producing commercial or residential projects could use a 20% federal tax credit and 25% state tax credit if they meet standards established to ensure that the character-defining features of these buildings are maintained in the course of the rehabilitation work. An additional 5% is available for rehabilitation projects that include affordable housing.

Would historic designation lead to gentrification of the neighborhood?

Gentrification is defined as, "the buying and renovation of houses and stores in deteriorated urban neighborhoods by upper- or middle-income families or individuals, thus improving property values but often displacing low-income families and small businesses." Gentrification is happening in this neighborhood regardless of historic designation. An historic district could encourage maintaining and redeveloping the existing housing stock thereby helping to maintain the diversity of housing stock that the plan seeks.

Would historic district designation impair the ability of the neighborhood to achieve the neighborhood plan's goals to add housing units and increase density?

There is sufficient land available in the neighborhood either open now or occupied by non-contributing buildings within and in close proximity to the likely boundaries of an historic district to allow for residential development of increased density to meet potential market demand.

Would an India Street Historic District serve to suppress economic vitality in the area?

On the contrary, studies have shown nationwide that reinvestment often follows historic district designations, raising property values and City tax revenues. In a recent study, Greater Portland Landmarks documented the rise in valuation of historic rehabilitation and new construction projects in the Old Port Historic District in 2003 that were subject to review and approval of the Historic Preservation Program. They range from redevelopment of vacant lots to rehabilitation of existing buildings.

Would adopting a form-based code for the India Street Neighborhood instead of creating an historic district preserve the sense of historic character in the area?

No. A form-based code would not protect historic features of the existing historic buildings that contribute to the neighborhood, nor the historic buildings themselves. Nor would there be review of design quality of details of new construction as they relate to the historic context. A form-based code and historic district designation, however, can serve as complementary planning tools.

September 15, 2015

To: Members of Portland's Planning Board
Re: Public Hearing on Proposed Designation of India Street Historic District – Sept. 15
From: Sally Oldham, Portland Resident

I write these comments to urge members of the Planning Board to support the proposal to designate the India Street Historic District. Designating this area a historic district will help preserve the special and unique personality of the India Street neighborhood.

The neighborhood plan developed by residents, business owners and stakeholders identifies this area as significant to Portland's history and architectural quality and urges designation of an historic district to help achieve many of the goals identified in this plan. A task group of the India Street Neighborhood Advisory Committee worked over many months to develop proposed boundaries for this district based on professional research and evaluation in a consultant report commissioned by the City.

The Historic Preservation Board has held a number of workshops, a site visit and responded to much public comment in coming to its thoughtfully considered recommendation for district boundaries. This boundary is tightly drawn to encompass institutional, commercial and religious buildings at the core of the neighborhood.

Designation will not impede new development in the neighborhood or design creativity within the district's boundaries. It will allow the City's Historic Preservation Board to manage change within this limited area so that future generations can recognize the appearance of the core of this neighborhood and help to celebrate the stories of its unique history as the focus of a neighborhood of immigrant settlers and workers.

The impacts of historic district designation in Portland and other cities across the nation demonstrate that this planning tool is one that often supports increases in property values, draws new investment and allows locally-owned businesses to thrive.

The results of preserving historic buildings and areas of Portland has been cited over and over as a key to the City's outstanding success in achieving high recognition as an attractive and livable city.

In closing, I would urge you to consider the overall public interest in designating this limited area as a locally designated historic district in order to maintain the special qualities of this neighborhood as it evolves and responds to new development opportunities into the future.

Deb Andrews - Support for India Street Historic District

From: Ann Swardlick <aswardlick@swardlick.com>
To: <dga@portlandmaine.gov>
Date: 9/15/2015 11:30 AM
Subject: Support for India Street Historic District

Dear Deb,

Please convey my very strong support for Historic District designation in the India Street neighborhood of Portland. Historic district designations have been shown to increase property values and encourage investment in other Portland neighborhoods over the years and India Street will be no exception.

There is so much of the City's history, fabric, architectural richness, and beauty to be preserved here. While we all want to see smart investment in our community, if we allow the current development wave to sweep away our history, what have we gained? We've seen this happen and lived to regret it.

I believe the Historic District designation would raise awareness of this unique neighborhood, enhance an asset that the City should be celebrating and promoting, and encourage neighborhood improvement, while not stifling growth. This is exactly what we need.

Thank you,

Ann

Ann Swardlick
Freelance Copywriter
207-653-4146
aswardlick@swardlick.com
annswardlickwrites.com

From: Linda Murnik <lmurnik@me.com>
To: <dga@portlandmaine.gov>
Date: 9/1/2015 3:48 PM
Subject: India Street Historic Designation

To the Historic Preservation Board Members:

Although I cannot attend the Historic Preservation public meeting on September 2, I write as a former resident and one long involved with the India Street neighborhood. I write to support ISN's designation as an Historic District as one long involved with preservation in Portland as chair of Greater Portland Landmarks public issues committee and as a long past president of the Board. I've also been a good and appreciative customer of Micucci's for decades - no matter where I've lived in Portland.

As the oldest and most diverse neighborhood in the city and past home to successive waves of immigrants and workers of all sorts for over several hundred years in a developing shipping and industrial period, ISN deserves designation.

Portland continues to change rapidly. To protect the historic buildings, significant houses of worship, commercial and residential buildings that remain at its' core - even though not all are in architectural high style - and to help tell the neighborhood's story, ISN deserves designation.

Historic districts work. Not only do they attract visitors and new commerce, but the economic benefits in rehabilitating income-producing properties are very real. They help to sustain a healthy mixed-use neighborhood, and improve property values (as my husband and I discovered when we rehabbed a building on Park St. in the 1980's).

Much to the dismay of many residents, the pressure for large-scale higher rise development in the neighborhood is strong and will continue, but the benefit of added scrutiny and a consistent review process that comes with historic designation is a form of protection for period buildings that should not be underestimated. "Downtown adjacent" neighborhoods are understandably under pressure, but the value of preserving the historic character of a city while sensitively integrating new development of appropriate scale is of enormous long-term value to a city.

I strongly urge the members of the Historic Preservation Board to support designation of the India Street Neighborhood as an Historic District.

Sincerely,
Linda J. Murnik

Deb Andrews - Bill Stauffer comments

From: <bstauffer@eco-story.com>
To: <dga@portlandmaine.gov>
Date: 8/5/2015 3:10 PM
Subject: Bill Stauffer comments

I am sorry that I will be out of town on vacation for tonight's meeting.

I would like to reiterate that as a business owner and property owner within this district that I am in full support of an historic district for the India Street Neighborhood. In the past I was not in favor of historic districts but have changed my mind for the following reasons:

1. I owned several buildings that became part of the West End's historic district a few years after I purchased these properties. What I found was that the historic approval process was quite easy. In fact, most of my approvals for work done were approved at the clerical level.
2. It is clear that historic guidelines increases property values. As I have said before a well maintained historic building allows the owner to offer high end units or market rates. However, a building with vinyl siding and other non period details will always be limited by its "skin" in terms of rental or resale values.
3. Some have said that historic regulations gentrifies or increases rents above market. If this were true, some of our recent buildings like the Bay House would be inexpensive housing –yet this is simply not true. There is no correlation between non period and non-historic buildings offering lower rents.
4. There are numerous examples of modern new construction that fits within the historic guidelines. I ask anyone to compare the look of these buildings to the buildings that were not required to conform to historic guidelines.

Thank you,

Bill Stauffer

Bill Stauffer
PH: (207) 699-5727 x11
FX: (207) 699-2321

Eco-story LED Lighting
151 Newbury Street
Portland, ME 04101
USA
www.eco-story.com

This message is intended only for the personal and confidential use of the designated recipient(s) named above. If you are not the intended recipient of this message you are hereby notified that any review, dissemination, distribution or copying of this message is strictly prohibited. Should you receive this message in error please notify the sender immediately. Thank you.

Att. 5

26 and 28 Hampshire Street
Portland, Maine 04101
May 28, 2015

Portland Maine Historic Preservation Board
389 Congress Street
Fourth Floor
Portland, Maine 04101

Dear Board Members,

After careful consideration, we, the property owners of 26 Hampshire Street and 28 Hampshire Street, wish to express our general opposition to the existing proposal to create an historic district in the India Street neighborhood, and our specific opposition to including our buildings as contributing structures to this proposed district - especially when coupled with current and proposed building codes on our block.

We are opposed to this plan for the following reasons:

1. While we support the cause of preservation, we agree with the Portland Society for Architecture that many of the buildings in the proposed historic district, including ours, are of limited historical value, and that preservation of actual historic structures can be accomplished by designating actual historic structures as official landmarks.
2. Our structures are of an age and construction style that is hardly unique to the city, the state, or New England in general. Moreover, similar structures within the historic district boundaries have been excluded as contributing structures with no explanation.
3. The city has already allowed similar adjacent structures on our block - that bounded by Hampshire, Newbury, Middle, and Franklin Streets - to be demolished. Under the proposed historic district/form-based code plan, construction on these adjacent lots will be allowed to heights of 45 and 65 feet while providing no assurance that we will not be capped at our existing 30-foot heights. This disparity will severely limit the value and livability of our properties, while distracting from any character they may have.
4. We have received no assurance from the Board that inclusion of our properties in the proposed historic district will not result in higher repair costs or negative affect on our properties' resale values. This is important because unlike most of those advocating for this district, we are owners and residents of the neighborhood.

Please remove our properties from this plan.

Sincerely,

Camille de Fazio

Bethy 2 Reed

Portland Maine Historic Preservation Board
389 Congress Street
Fourth Floor
Portland, Maine 04011

Dear Board Members,

After careful consideration, I wish to express my general opposition to the existing proposal to create an historic district or Multiple Resource Designation in the India Street neighborhood, and my specific opposition to including any of my buildings in any preservation plan. My buildings are listed below:

53 Federal Street
48 Hancock Street
49-51 Hancock Street

I am opposed to all of my buildings being included in these plans for the following reasons:

1. While I support the cause of preservation, I agree with the Portland Society for Architecture that many of the buildings in the proposed historic district, including mine, are of limited historical value, and that preservation of actual historic structures can be accomplished by designating these structures as official landmarks.
2. My structures are of an age and construction style that is hardly unique to the city, the state, or New England in general. Moreover, similar structures within the historic district boundaries have been excluded as contributing structures with no explanation.
3. I feel that I am best suited to decide what is best for my property, and do not wish to submit to Historic Preservation Board oversight or bear higher construction and repair costs associated with board mandates.
4. Although 2 of my properties are designated as non-contributing, all of my properties are within 100' of property that is designated as contributing. I am opposed to the entire boundary of the proposed historic district.

Please remove all my property from any historic preservation plans.

Sincerely,

A handwritten signature in cursive script, appearing to read "Liv Chase".

Liv Chase

Deb Andrew,
Portland Maine Historic Preservation Board
389 Congress Street
Fourth Floor
Portland, Maine 04011

Date: 8/4/15

Dear Board Members,

After careful consideration, I wish to express my general opposition to the existing proposal to create an historic district or Multiple Resource Designation in the India Street neighborhood, and my specific opposition to including my building as a contributing structure in any preservation plan.

I am opposed to my building's inclusion in these plans for the following reasons:

1. While I support the cause of preservation, I agree with the Portland Society for Architecture that many of the buildings in the proposed historic district, including mine, are of limited historical value, and that preservation of actual historic structures can be accomplished by designating these structures as official landmarks.

2. My structure is of an age and construction style that is hardly unique to the city, the state, or New England in general. Moreover, similar structures within the historic district boundaries have been excluded as contributing structures with no explanation.

3. I feel that I am best suited to decide what is best for my property, and do not wish to submit to Historic Preservation Board oversight or bear higher construction and repair costs associated with board mandates.

Please remove my property from any historic preservation plans.

Sincerely,

Florence A. Olebe
Owner, 142 Newbury, St. Property

Deb Andrews - Request for withdrawl

From: Brent Adler <brentadler@gmail.com>
To: <DGA@portlandmaine.gov>
Date: 7/22/2015 3:21 PM
Subject: Request for withdrawl
CC: Chris Korzen <chriskorzen@gmail.com>, <livchase@yahoo.com>

Portland Maine Historic Preservation Board
389 Congress Street
Fourth Floor
Portland, Maine 04011

Dear Board Members,

Throughout the efforts of the Portland Historic Preservation board to bundle a historic district with the proposed Form Based Code submission my opposition has not changed. My Partner and I own 3 buildings in the neighborhood. All three are within 100' of a proposed "landmark" designation and 1 has been classified as "contributing". After attending a neighborhood awareness meeting on the implications of the proposed historic district I am further convinced that this designation will greatly impact my ability to make improvements to my investment properties and will create a near impossible feat to demolish and build new. Our investment properties were purchased without such a designation and we wish to have control over how our properties are classified, therefore we request to be removed from any district or classification that will place us in a hardship to make improvements or build new. Our one "contributing" building has no distinguishing characteristics unlike the other 4 buildings on the block that are non contributing. Half of the structures on the Federal Hancock block are non contributing yet the other half are. I hardly classify this as a district but a hand picked unlucky few. Thank you

Brent Adler
49-51 Hancock St
48 Hancock St
52 Federal St

--

Brent Adler
cell 207-518-7038
PO Box 15372
Portland, ME 04112

**Greater Portland Landmarks Statement
for the Historic Preservation Board Public Hearing Sept. 2, 2015**

Greater Portland Landmarks strongly believes that it is essential to designate a historic district at the core of the India Street neighborhood in order to maintain its distinctive identity and authentic historic character. India Street served as an important link to the city from the waterfront and was home to generations of immigrants who left their mark in the buildings they created and inhabited in the neighborhood.

We support the Historic Preservation Board's proposed district boundaries. These boundaries focus on the area with the highest concentration of historic synagogues and churches, commercial storefronts, schools and civic structures such as the North School, Fire Station, Shaarey Tphiloh synagogue, Cathedral of the Immaculate Conception, and St. Peter's Church.

We also support landmark designation for the Abraham Levey Block, a commercial building designed by architects John Calvin Stevens and John Howard Stevens in 1922, that defines an important corner as you enter the neighborhood and relates to the buildings in the district but lies just outside the boundaries.

Landmarks has been actively involved in the India Street neighborhood master planning process that also includes new Form-Based zoning code. While we support creation of a form based code in this neighborhood, we believe it is only through historic district designation that it will be possible to truly preserve the neighborhood's authentic character. Within an historic district property owners are assured that the abutting properties will be held to the same standards that they are with regard to design details, quality of materials, and protection from demolition – elements that are not addressed by the form-based zoning.

We support the proposed ordinance amendment as drafted in the staff report to integrate the historic district designation with the new form based zoning. This clarifies: 1) that the underlying heights allowed by the Form Based Code may not be limited by the historic preservation board review, except for vertical additions to historic buildings; and 2) that the Historic Preservation review for new construction has the ability to adjust how the maximum and minimum heights are achieved by a proposed project;

The intent of the Historic District is not to prevent change, but to thoughtfully manage it over time and over changes in property ownership. **We believe that India Street Historic District supports the goals of the Master Plan and is the most effective way to protect the historic buildings, preserve the character of the neighborhood, and bring the benefits of consistent review process that have been proven in the Old Port and Congress Street historic districts.**

An India Street Historic District will celebrate the history of immigrants and working people of Portland's past, while encouraging sensitive new infill construction on vacant lots, flexibility of building use and architectural innovation. We urge adoption of the district as proposed.

Thank you for considering our views.

Hilary Bassett
Executive Director

From: alice white <alilib@main.nc.us>
To: <dga@portlandmaine.gov>
Date: 8/5/2015 3:32 PM
Subject: I hate what has happened to the neighborhood East of Franklin Arterial and within the confines of Congress and the Bay

I was a resident of Munjoy Hill.

The move was precipitated because the neighborhood within the above boundary 'including India Street' has changed too much, and not in the right direction.

The Morrill building coming down was not good. But the two crappy 'low rent' hotels with contemporary exteriors built in the past six years DO NOT ENHANCE THE NEIGHBORHOOD.

The Western half of the East End, has already lost 60% of it's previous charm.

Older residential buildings look stupid next to cheap contemporary commercial buildings. Why cant anyone see that?

The older brick and stone commercial buildings that are still functioning in the neighborhood are like 'hens teeth'. When a few more go: you can throw the towel in on the West end of the EAST END.

.)

a previous resident of Munjoy Hill, I particularly chose that area as my home because I hate homogeneous neighborhoods, and I dislike inexpensive unattractive new development.

I have done preservation projects all over the Eastern Seaboard from Georgia to Massachusettes from 1973 until 2010.

I wqw involved in the first historic renovations EVER conceived and completed in many medium sized cities in the South and on the East Coast.

I am close to 70 years old, and don't want to live in a neighborhood that looks like a war zone. Old does not mean 'bad' or 'poor'.

There has not been one attractive building added to the East End in ten years.

YOU ARE MAKING A MESS by not requiring preservation of the remaining architectural treasures that you have. Even small commercial buildings count for something.

STOP the wrecking and think in the long term. If you don't start preservation now, you will NEVER have any historic district.

Alice E White
Falmouth, Maine
(HATED MOVING AWAY FROM THE CITY).

From: Adair O'Reilly <daysmill@me.com>
To: "dga@portlandmaine.gov" <dga@portlandmaine.gov>
CC: "frlogan8@gmail.com" <frlogan8@gmail.com>
Date: 9/14/2015 8:25 PM
Subject: India Street Historic Preservation District

Ms. Deb Andrews
Historic Preservation Program Manager
City of Portland, Maine

Dear Deb,

Thank you for taking the time to speak with me today. I am writing in reference to the India Street Historic Preservation District at the request of Father Samuel Logan, Rector of Saint Paul's Church which is located at 279 Congress Street.

As I mentioned during our conversation, we support the inclusion of the Church and Rectory buildings in the Historic Preservation District, however we request that the Parish Hall building be removed from the District's boundary.

Although once a carriage house, the Parish Hall has had extensive modifications to its exterior over the years and does not have any significant architectural merit. In addition, only a small portion of the building is visible from Congress St. since it sets well back at the end of a narrow driveway.

Please feel free to call me at 294-1050 or Father Logan at 828-2012. If you wish, we would be pleased to have you do a site inspection.

Once again, thank you for your time and concern. I look forward to hearing from you.

Sincerely,

Adair Kathleen O'Reilly
Vestryman
Saint Paul's Church

Sent from my iPad

Deb Andrews - The India Street Historic District

From: Joan Leitzer <joanleitzer@gmail.com>
To: <dga@portlandmaine.gov>
Date: 9/15/2015 4:06 PM
Subject: The India Street Historic District

I would like you to know of my support, as a resident of Portland, of making India Street a historic district.

Please bring my letter to the attention of the Planning Board at tonight's meeting.

Joan Leitzer, M.D.

Deb Andrews - Proposed India Street Historic District

From: Kenneth Spirer <kenspirer@gmail.com>
To: <dga@portlandmaine.gov>
Date: 9/15/2015 3:48 PM
Subject: Proposed India Street Historic District
Attachments: India Street District09152015.pdf

I support the position of Greater Portland Landmarks regarding the creation of an India Street Historic District.

Ken Spirer

Deb Andrews - Historic Preservation Board-9/2-India Street Neighborhood

From: Liv Chase <livchase@yahoo.com>
To: Deb Andrews <dga@portlandmaine.gov>, Chris Korzen <chriskorzen@gmail.com...>
Date: 8/30/2015 9:27 AM
Subject: Historic Preservation Board-9/2-India Street Neighborhood

Dear Historic Preservation Board,

I am not able to attend this upcoming meeting on the India Street Neighborhood. I have reviewed the latest proposed boundary for a historic district in the India Street Neighborhood. Although the latest boundary is a smaller area and the properties that I currently own are outside of the district, I am still opposed to the idea of any historic district for the following reasons: 1) The 100' foot rule still impacts my property at 52 Federal St. and any other property within 100' of the historic district. Although the design guidelines are less restrictive within 100' of the district, they are still more restrictive than the guidelines that currently exist. 2) I do not agree that the contributing buildings represented in the proposed boundary are significant (with the exception of a few individual buildings) and creating a historic district will only cause added cost, time, and money for the owners of these properties. 3) At the last meeting I attended, Deb Andrews presented the idea that the Historic District was a benefit to everyone because it "protected" historic buildings from being torn down. I am extremely confident, based on all of the neighbors that I know in the neighborhood, if they purchased brick buildings, they are interested in keeping them that way. Therefore, I do not see how regulating the mortar used on bricks or preventing someone from making a building more energy efficient, is a means of "protecting" current building stock. 4) Lastly, as a comment from a neighbor, Frank Reall, the real threat to the neighborhood is large scale upcoming development and there is no longer a way to change this because it is too late. All of the larger parcels have been sold, permitted for construction under the current code, and they will move forward regardless. The only thing that a historic district will do for our neighborhood is place major restriction on small property owners that don't have the funds to make repairs that are historic in nature.

Based on these comments and observation, I am recommending that the proposed historic district is eliminated and individual properties can hold a "historic designation" if there are specific properties that the city feels need to be protected.

Regards,
Liv Chase

From: Kelly <kellymaine@gmail.com>
To: "dga@portlandmaine.gov" <dga@portlandmaine.gov>
Date: 7/24/2015 4:14 PM
Subject: Request for exclusion

To the Historic Preservation Board, Attention Chair Scott Benson

My name is Kelly Williams and my husband, Walter, and I own the properties located at 316 and 316a Congress Street. We are requesting that our property is excluded in the historic designation in that area. We feel that it will limit the future plans we have for the property. Sincerely, Kelly Williams

Sent from my iPad

Deb Andrews - 125 Newbury Street

From: Lindsay Clarke <clarkelindsay@gmail.com>
To: <dga@portlandmaine.gov>
Date: 9/7/2015 9:36 AM
Subject: 125 Newbury Street

To Whom It May Concern,

I am writing as the owner of 125 Newbury Street, Portland, ME 04101. In the current draft of the proposed India Street Historic District, my property has been included as the only historic building on its block. I am writing to formally request that my building be excluded from the India Street Historic District.

Thank you for your cooperation.

Sincerely,

Lindsay Clarke
125 Newbury Street
Portland, ME 04101

clarkelindsay@gmail.com
207-518-8218

Deb Andrews - India Street Preservation

From: Tony Castro <tonycastro.company@yahoo.com>
To: "dga@portlandmaine.gov" <dga@portlandmaine.gov>, "info@portlandlandmarks...
Date: 8/5/2015 1:58 PM
Subject: India Street Preservation

I regret that I will not be able to attend the meeting tonight but do wish to express my support for the proposed 'India Street Historic District'. Sincerely, Tony Castro

<http://www.tonycastrocompany.com>

372 Intervale Road
New Gloucester, Maine 04260
phone (207) 926-5618

Deb Andrews - I agree

From: Sue Cabot <suecabot4@gmail.com>
To: <dga@portlandmaine.gov>
Date: 8/5/2015 1:52 PM
Subject: I agree

I agree with Greater Portland Landmarksâ€™™ endorsement of the proposed India Street Historic District entwined with a zoning change.

Sincerely,

Sue Cabot
49 Morning St.
Portland 04101
780.0351

*Order 78-15/16
Tab 15 10-5-15*

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DESIGNATING THE
ABRAHAM S. LEVEY BUILDING AT 78-88 MIDDLE STREET
AS A LANDMARK**

ORDERED, that pursuant to the recommendation of the Historic Preservation Board under Article IX of Portland City Code Chapter 14, the Abraham S. Levey Building at 78-88 Middle Street is hereby designated as a Landmark.

Order 79-15/16
Tab 16 105-15

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DESIGNATING INDIA STREET AS A HISTORIC DISTRICT AND
AMENDING THE MAP OF HISTORIC DISTRICTS**

WHEREAS, the City Council is authorized pursuant to Portland City Code Chapter 14, Section 622 to designate a defined area in the City as an historic district; and

WHEREAS, the Portland Historic Preservation Board and Planning Board have both recommended the designation of the India Street Historic District; and

WHEREAS, the designation of the India Street Historic District will fulfill a stated objective of the Comprehensive Plan to protect the City's historic resources through ongoing identification and designation of eligible landmarks and districts as well as the stated goals and objectives of the India Street Sustainable Neighborhood Plan; and

WHEREAS, the designation will formally recognize the unique history of the India Street neighborhood which was home to generations of immigrants on first arriving in the City of Portland; and

WHEREAS, the designation will prevent the demolition of identified historic structures within the India Street district; avoid the incremental loss of character that can occur through inappropriate building alterations and additions over time; and encourage new infill development that is compatible with the neighborhood's historic character; and

WHEREAS, the designation will stabilize and enhance the property values and economic vitality in the India Street neighborhood and increase the attractiveness of the India Street district to visitors to the city; and

WHEREAS, the designation will provide owners of income-producing properties access to federal and state tax incentives available for the rehabilitation of historic properties;

NOW THEREFORE BE IT HEREBY ORDERED that, pursuant to Chapter 14, Section 622, the Portland City Council hereby designates India Street, as shown on the attached map, as the India Street Historic District; and

BE IT FURTHER ORDERED, that the map of Historic Districts with Landmarks and Historic Landscape Districts is hereby amended to include the India Street Historic District as set forth on the attached map.

Order 80-15/16
Feb 17 105-15

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

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 17 (OFFENSES, MISCELLANEOUS PROVISIONS)
ARTICLE V (REGULATION OF TOBACCO)

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Chapter 17, Article V, Sections 17-71, 17-94 and 17-95
of the Portland City Code is hereby amended to read as
follows:*

ARTICLE V. REGULATION OF TOBACCO*

...

DIVISION 6. SMOKING PROHIBITED IN CITY PARKS AND PUBLIC GROUNDS

**Sec. 17-96. Smoking prohibited in all city-owned or maintained
parks and temporary parks requiring a permit.**

(a) Smoking is prohibited in the City's public parks,
squares and grounds.

(b) The Council shall define by order the City-owned or
maintained public parks and grounds to which this requirement
shall apply and such order shall be kept on file in the
Department of Public Services.

(c) Smoking is prohibited in any temporary or "pop-up"
park operated or maintained by a private person or entity, into
which the public is invited and that requires an event permit
under Chapter 18 for the duration of the event so approved.

*Order 81-15/16
Tab 18-545*

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

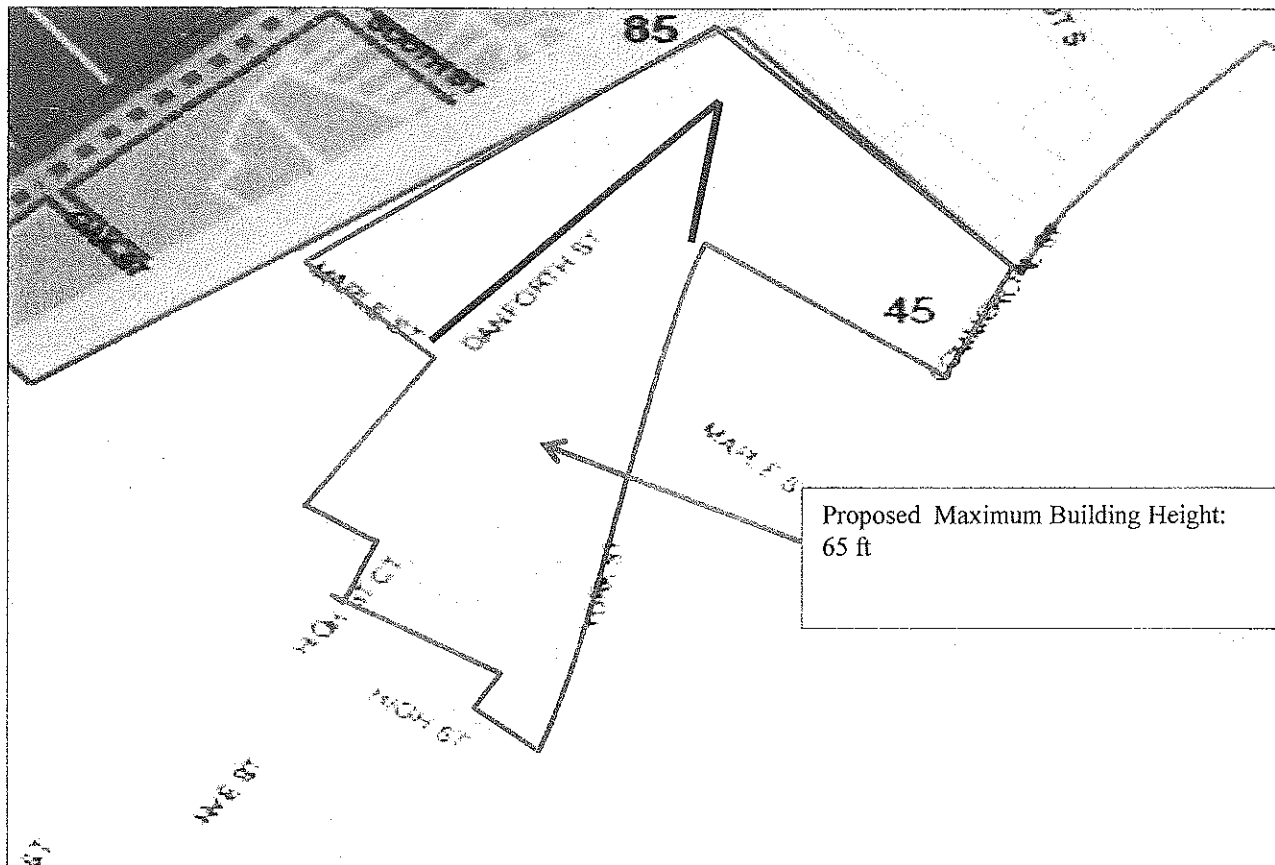
**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO DOWNTOWN HEIGHT OVERLAY MAP
RE: INCLUSIONARY ZONING**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That the Downtown Height Overlay Map of the City of Portland as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into Chapter 14, Land Use, of the Portland City Code, be and hereby is amended by adopting the following Downtown Height Overlay Map amendment and specifically increasing allowed heights in the yellow area of the figure below to sixty-five (65) feet.



MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Jeff Levine, Planning & Urban Development Director; Tyler Norod, Housing Planner

DATE: September 23, 2015

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Consideration of Orders as part of the “Encourage & Ensure” housing incentive package for: 1) An amendment to the Downtown Height Overlay Map to increase allowed heights in some areas from 45’ to 65’; 2) Text amendments to the Accessory Dwelling Unit (ADU) language for the IR-1 and IR-2 island residential zones to allow ADU’s on more parcels, provided certain conditions are met; 3) Text amendment to the R-5 zoning district text to allow more use of existing building space for ADU’s; and 4) Text amendments to Division 30 (Affordable Housing) including an inclusionary zoning requirement.

SPONSOR: Kevin Donoghue, Chair
Housing and Community Development Committee

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading October 5, 2015 Final Action October 19, 2015

Can action be taken at a later date: X Yes _____ No (If no why not?)

PRESENTATION: (List the presenter(s), type and length of presentation)

Jeff Levine, Planning & Urban Development Director; Tyler Norod, Housing Planner

I. SUMMARY OF ISSUE

The Department of Planning and Urban Development has prepared a set of four amendments to Article 14 for the City Council’s consideration. Collectively, along with the previously adopted R-6 and B-2 zoning changes, constitute what we are referring to as the “Encourage and Ensure” package of amendments. That name is because the package is designed to “encourage” additional housing development through thoughtful zoning changes to modernize our ordinance and allow for additional housing development; and further that changes proposed to Division 30 are designed to “ensure” that a reasonable percentage of the housing developed in Portland is affordable to those making close to the area median income.

The ordinance amendments before you are as follows:

1. Changes to the Downtown Height Overlay Map to increase allowed heights in some areas from 45' to 65';
2. Changes to the Accessory Dwelling Unit (ADU) language for the IR-1 and IR-2 island residential zones to allow ADU's on more parcels, provided certain conditions are met;
3. Changes to the Accessory Dwelling Unit language for the R-5 zoning district to allow more use of existing building space for ADU's; and
4. Changes to Division 30 that:
 - a. Clarify terminology related to affordable housing;
 - b. Expand density bonuses for developments providing affordable housing; and
 - c. Require that new developments of 10 units or more restrict at least 10% of the units to be affordable to those making 100-120% of the area median income or below (currently about \$77,500-96,875 for a family of four) or contribute a fee-in-lieu of \$100,000 per unit to the Housing Trust. These developments would also be eligible for a 25% density bonus, and consideration for an Affordable Housing Tax Increment Finance District.

This package of amendments, in addition to the previous R-6 and B-2 changes, will allow production of additional housing in Portland by reducing the per-unit cost of housing, while at the same time making sure that some portion of that additional housing remain affordable to the workers Portland needs to attract, such as entry level professionals and career blue collar workers. For context, a unit affordable to a median income family of four would rent for about \$1,900 a month, or have a mortgage of about \$350,000. These numbers seem attainable now without much market intervention. However, the need for deed-restricted units at this level stems from the fact that the gap between what is affordable to such a family and what the market produces is likely to continue to grow.

II. REASON FOR SUBMISSION

These submissions were developed over the course of several months of meetings between City staff, the public, the Housing and Community Development Committee (HCDC), and the Planning Board in response to the escalating costs of housing in the City. In February of 2015, HCDC convened a Housing Forum in City Hall, where city staff could present city goals and possible tools to address them, and answer questions or concerns raised by the public. Public testimony was also taken at several HCDC meetings on this issue. After reviewing a long list of possible ordinance changes, and refining staff language proposed for inclusionary zoning as well as other changes to Division 30, the submission was refined to the set of ordinance changes before you.

In 2002, the City approved an amendment to its Comprehensive Plan entitled "Housing: Sustaining Portland's Future."

In 2014, the City Council set a goal to "Promote Housing Availability [and p]rovide increased availability in all segments of the housing market while insuring that there is a suitable balance of housing opportunities among those sectors." HCDC put this issue in its workplan for calendar year 2014.

In late 2014 and early 2015, following from this goal and the interests of the Housing and Community Development Committee to address this goal, the City commissioned the Greater Portland Council of Governments to complete a study of the housing market in Portland. That study (Attachment C) was designed to answer the following questions:

1. What is the state of the housing production market in Portland?
2. What kinds of housing are being produced?
3. How does that production compare to City goals and plans with respect to affordability, such as "Housing Portland"?
4. How does that production result in the need for additional housing at different income levels through economic multiplier effects?

The key findings of this study were as follows:

- Our current housing production is not producing enough units for those making below median income
- Our existing housing rental stock appears to generally be reasonably affordable, but in part because the renters may be "sizing down" to a unit they can afford.
- Family sized rentals appear to be less affordable
- Our existing owner-occupied units appear to be primarily affordable to those making above the median income.
- There is a gap between the City's housing policy goals and what is being produced by the market.
- Every unit of high end housing that is produced in the City brings with it the need for housing for those with lower incomes – for example, to provide services for those high end housing residents

On January 15, 2015, HCDC heard the findings from the Housing Study, along with a universe of possible policy responses to these findings. Following that presentation they instructed staff to come back to their meeting on January 28th with some refined recommendations for actions to take in response.

On February 25, 2015, in lieu of their regular meeting, HCDC held a housing forum to present some possible actions and hear from the public. That forum was recorded and is available for viewing from the City web site. The slideshow from that presentation is Attachment D.

On March 11, 2015, the HCDC met to debrief from the forum and hear staff recommendations for policy actions. Staff proposed a laundry list of 17 actions that could be taken, including a proposed inclusionary zoning ordinance. Staff noted that best practices in New England and nationally involved an inclusionary component to permitting housing of a certain scale, and recommended the ordinance be kept fairly simple for implementation reasons. That list of actions was as follows:

1. Revisions to the B-2 zoning district for 500 acres in key commercial corridors/nodes

2. Revisions to the R-6 zoning district for 530 acres of residential land on the Peninsula
3. Rezoning 10 acres of land along the eastern waterfront to B-6 to allow for multifamily housing development
4. Eliminate Parking Requirements for Residential Uses in B3, B5, B6, and B7
5. Eliminate Residential Density Limits in B1 and B2
6. Harmonize off-peninsula residential parking requirements with those of the peninsula
7. Allow the use of the fee in lieu of parking in all off-peninsula (citywide) business zones
8. Update definitions & dimensional standards to promote the viability of lodging houses
9. Amend Downtown Height Overlay Map where to increase 45' heights
10. Allow 1 ADU per owner-occupied single-family homes in all IR zones if leased annually
11. Begin R5 rewrite to reflect current patterns & legalize most nonconforming structures
12. Begin R3 rewrite to reflect current patterns & legalize most nonconforming structures
13. Consider rewriting R7 zone & consider applying it to the zoning map in downtown R6s
14. Limit the removal of dwelling units from the rental market in favor of vacation rentals
15. Limit the conversion of rental housing into condominiums
16. Look at Housing Trust Fund ordinance for revisions to reflect its role in these efforts
17. Changes to Division 30 (Affordable Housing) to provide more useful density bonuses, and to add an inclusionary zoning requirement.

HCDC recommended eight, unimplemented policies in this list be explored in more detail:

1. Rezoning 10 acres of land along the eastern waterfront to B-6 to allow for multifamily housing development
2. Eliminate Parking Requirements for Residential Uses in B3, B5, B6, and B7
3. Eliminate Residential Density Limits in B1 and B2
4. Allow the use of the fee in lieu of parking in all off-peninsula (citywide) business zones
5. Amend Downtown Height Overlay Map where to increase 45' heights
6. Look at Accessory Dwelling Units in Island Residential Zones
7. Look at R5 Zone Accessory Dwelling Unit Requirements & Reuse of Existing Structures
8. Amend Division 30 (Affordable Housing) to (1) Provide Additional Density through Incentives and (2) Add Workforce Housing Requirement (Inclusionary Zoning)

On April 8, 2015, HCDC took up this issue again. The staff memo from that meeting is Attachment E. They refined the list down to seven options to “encourage” further housing and a more specific recommendation for an Inclusionary Zoning Ordinance. They voted 3-1 to forward the Inclusionary Zoning Ordinance to the Planning Board for formal review, and asked that staff prioritize the seven options at their next meeting.

On April 22, 2015, HCDC took up those seven options and recommended the items before you for further study in conjunction with the Inclusionary Zoning Ordinance. The other items may be forwarded at a future dates but the HCDC did not recommend they move forward at this time.

On May 19, 2015 the Planning Board held a workshop to consider this Housing Incentives package. On September 15, 2015, the Planning Board held a hearing to take action on this item. The IR-1 and IR-2 proposed text amendments were tabled at the September 15th hearing as the item did not come before the Planning Board until after the last ferry of the night was scheduled to leave. This tabled portion of the package was then rescheduled for the September 29, 2015 Planning Board in order to allow interested members of the public from the islands be able to provide comments.

III. INTENDED RESULT

The “Encourage & Ensure” housing incentives package is designed to “encourage” additional housing development through thoughtful zoning changes to modernize our ordinance and allow for additional housing development; and further that changes proposed to Division 30 are designed to “ensure” that a reasonable percentage of the housing developed in Portland is affordable to those making the area median income. Some “encourage” policies changes to incentivize more housing development have already been enacted by the Council such as the recent revisions to the R-6 and B-2 zones.

IV. COUNCIL GOAL ADDRESSED

The proposed text amendments have been designed to allow the Downtown Height Overlay Map, the IR-1, IR-2, R5, and Division 30 better accomplish the Council’s goals particularly as they relate to the creation of housing with a focus on housing that is affordable to a diverse range of households. In this, the amendments comport with the city’s Comprehensive Plan.

The Comprehensive Plan, adopted in November 2002, updated in 2005, provides a policy framework for managing growth in the city, and clearly advocates dense commercial and mixed-use development that both serves and suits the neighborhood context. Housing: Sustaining Portland’s Future includes policies to “[m]aintain and enhance the livability of Portland’s neighborhoods as the city grows and evolves through careful land use regulation, design and public participation that respects neighborhood integrity” and “encourage sustainable development patterns and opportunities within the city by promoting efficient land use, conservation of natural resources, and easy access to public transportation, services, and public amenities.” In order to do so, the plan suggests “encourag[ing] increased residential densities and mixed uses” and “promot[ing] through city policies a mix of housing types, retail and service

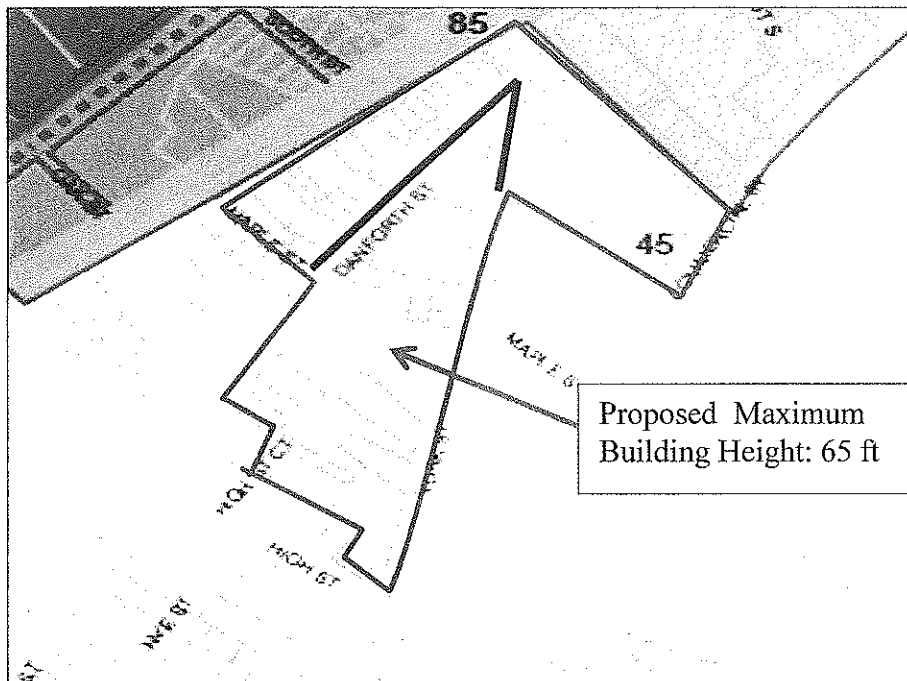
businesses, community services, and open space/recreation opportunities of appropriate size, scale, and type within neighborhoods.”

V. STAFF ANALYSIS

Based on recommendations from the Housing and Community Development Committee and Planning Board the Department of Planning and Urban Development has prepared these four amendments to Article 14 for the Council’s consideration. These revisions, along with the already approved text amendments to the R-6 and B-2 zones, are designed to in part help incentivize the creation of more housing to meet rising demand. Simultaneously, the intent of this package is to ensure the development of “workforce” housing in line with the growth rate for the entire City. The ordinance amendments before you, in Attachment A, are as follows:

1. Changes to the Downtown Height Overlay Map to increase allowed heights in some areas from 45’ to 65’

There is an area of the downtown height overlay that is 45’. As you probably know, that area was recently rezoned to allow for mixed-use development and the height was examined at that time. The HCDC is asking that the height in this area be potentially increased to 65’ to allow for more housing development.



This map amendment would allow a change in height from 45’ to 65’ within the block between Danforth, York and High as shown on the map above. The other areas include existing buildings with significant character that should be preserved or expanded without the wholesale pressure to demolish them that such an increased height might create.

2. Changes to the Accessory Dwelling Unit (ADU) language for the IR-1 and IR-2 island residential zones to allow ADU's on more parcels, provided certain conditions are met

A Peaks Island organization called HomeStart has been seeking changes to the ADU language on Peaks Island to allow for year-round, affordable dwelling units in a context sensitive way. The goal is to allow residents the option of creating units that would not be rented on a seasonal basis but instead be available to workers who live year round on Peaks. That organization suggested a model from Wellfleet, MA, a similar community to Peaks Island. Staff adopted this model to the language before you.

Currently, ADU's are limited to lots of 70,000 and 30,000 square feet or more for IR-1 and IR-2 zones respectively. These changes would allow ADU's on smaller lots as long as certain conditions are met:

- ✓ The unit must be rented year-round
- ✓ The unit must be affordable

Due to time constraints at the previous Planning Board hearing on September 15, 2015, this item was tabled until the following Planning Board hearing on September 29, 2015. The result of this hearing was not available at the time this memo was drafted. The results will be attached to this memo prior to the Council's first reading on October 5, 2015.

3. Changes to the Accessory Dwelling Unit language for the R-5 zoning district to allow more use of existing building space for ADU's

The R-5 zones in Deering Center, Oakdale, and other relatively dense off-Peninsula locations allows more than one unit on a lot but the conditions required mean that, in practice, it is difficult to have more than one unit on many lots. At the same time, there are existing built spaces in the R-5 zone, such as carriage houses, attics, basements and even formerly used buildings. This text amendment would expand the conditions under which ADU's can be added to allow the reuse of existing built space for ADU's provided that the units are affordable to workforce households.

4. Changes to Division 30 (Affordable Housing) including an Inclusionary Zoning Requirement:

This amendment updates the affordable housing section of the ordinance to make three key changes:

- a) Clarify terminology related to affordable housing;

For example, the current ordinance uses the term "affordable" somewhat loosely. These amendments would differentiate between "affordable," meaning 30% or less of a household income is spent on housing; and income levels such as "low income" and "workforce." "Workforce" housing is based on household size and encompasses households earning 100% of Area Mean Income (AMI) or less for rental units and 120% AMI for homeownership. These figures are adjusted annually and can be seen in the chart below:

Median Income	FY 2015 Income Limits	Persons in Family							
		1	2	3	4	5	6	7	8
\$77,100	80% Income Limits	\$ 43,200	\$ 49,400	\$ 55,550	\$ 61,700	\$ 66,650	\$ 71,600	\$ 76,550	\$ 81,450
	Housing Expense at 30% of Income	\$ 1,080	\$ 1,235	\$ 1,389	\$ 1,543	\$ 1,666	\$ 1,790	\$ 1,914	\$ 2,036
	100% Income Limits	\$ 53,970	\$ 61,680	\$ 69,390	\$ 77,100	\$ 83,268	\$ 89,436	\$ 95,604	\$ 101,772
	Housing Expense at 30% of Income	\$ 1,349	\$ 1,542	\$ 1,735	\$ 1,928	\$ 2,082	\$ 2,236	\$ 2,390	\$ 2,544
	120% Income Limits	\$ 64,932	\$ 74,208	\$ 83,484	\$ 92,760	\$ 100,181	\$ 107,602	\$ 115,022	\$ 122,443
	Housing Expense at 30% of Income	\$ 1,623	\$ 1,855	\$ 2,087	\$ 2,319	\$ 2,505	\$ 2,690	\$ 2,876	\$ 3,061

- b) Expand density bonuses for developments providing affordable housing

The current provisions only take effect when housing is affordable at 80% of area median income. This change would allow units at a workforce housing level to qualify for these density bonuses. There was some talk within HCDC of increasing the bonuses as well, but the final recommendation was to leave the density bonus levels as currently existing and rely on other, systematic zoning changes such as the R-6 and B-2 amendments to go farther where appropriate.

- c) Require that new developments of 10 units or more restrict at least 10% of the units to be affordable to those making 100-120% of the area median income or below.

HCDC had a great deal of discussion about issues such as if and when to permit off-site units or fee-in-lieu to count towards that total; whether to require a comparable finishes and sizes for market-rate and required workforce units; whether to require the locations of the required workforce units to be mixed throughout a development; and the cost of cashing out of this requirement. The language before you includes the HCDC's final recommendations on these issues, as well as some additional draft language on terms of affordability. Based on some public comment received since the last HCDC meeting on this subject, we have developed a sliding scale for affordability terms based on the number of workforce units provided in a project. Projects only meeting the minimum requirements would have longer deed restriction terms than projects providing additional units that meet affordability requirements.

Finally, the HCDC recommended that this section have a sunset provision so it can be reexamined after a few years of implementation. They discussed, but did not recommend, limiting this requirement to certain zones or areas of the City.

Inclusionary Zoning

For many of you, the idea behind Inclusionary Zoning is not new. However, it is worth providing a quick summary of the concept here. More information can be found by accessing this report: <http://www.planning.ri.gov/documents/comp/Handbook%20on%20Developing%20Inclusionary%20Zoning.pdf> . Additional material is also available in packages provided for the previous Planning Board and HCDC meetings.

Inclusionary zoning is a set of related tools that essentially require that developments over a certain size provide for units that are affordable for low-, moderate- or even median income households. The justification for such a requirement is that there is a market failure in the form of a gap between the what the market is producing and what the needs of the community are. Further, there is often a nexus identified between the production of higher-end units and the need for housing that is affordable at lower incomes, due to the fact that people who live in high-end units tend to eat at restaurants, get professional services like dry cleaning and housekeeping, and increase the need for public services. The people who will fill those jobs also need housing in the community, or they will have to live far away and use more of their limited income for transportation, further exacerbating their financial issues.

Usually an inclusionary ordinance requires that a certain percentage of units meet these standards, have a term under which these affordability levels must be maintained, and provide options for either providing the units off-site and/or providing a fee-in-lieu option.

Over 500 communities around the country, in more than half the states, have inclusionary zoning requirements. They are most common in markets that are having affordability issues.

The issue of the impact of an inclusionary zoning requirement on housing prices and supply has been extensively studied and discussed. It is a reasonable concern that, if you add a requirement to housing production it may either increase the cost of production or reduce supply, or both. However, the most extensive studies found to date suggest that inclusionary zoning requirements have a minor impact on housing production or pricing. These impacts are in the 2 to 3 percent range. Given the various “encourage” policies the City is pursuing, which are designed to drive down the cost of housing production by making it easier to produce housing in Portland, I believe we are more than compensating for such an impact by driving down costs in other ways by removing regulatory barriers.

The ordinance before you is a flexible form of inclusionary zoning that chooses a relatively high threshold (10 units or more) and does not limit a developer’s option to pay a fee-in-lieu of the units. While it does require that units be comparable in terms of number of bedrooms, it does not require comparable finishes nor that the units be mixed into the development equally. Finally, this draft is written to sunset in six years, to give the City a chance to evaluate how it is operating and whether it is effective. All of these details were discussed at the HCDC and voted on as

policy directions they wanted the Planning Board and City Council to know they supported. The recommendations of the Planning Board are outlined below.

VI. BOARD DELIBERATION AND RECOMMENDATION

The Planning Board held a workshop on May 19, 2015 and a public hearing on September 15, 2015 to consider the “Encourage & Ensure” housing incentives package that is now before the Council. The Board voted unanimously to support the map amendment to the Downtown Height Overlay District as well as the text amendment to the R-5 ADU language. The Board viewed these as reasonable incentives in line with City goals related to housing development. Some concern was raised from two members of the public about the increase in height from 45 feet to 65 feet. The Board argued that these new heights would be appropriate for the neighborhood and given grade changes in the vicinity would be somewhat visually mitigated in relation to the context of the surrounding neighborhood.

Due to schedule overruns of previous agenda items, the housing incentives package was not taken up until 10:15 PM, which unfortunately was too close to the last ferry for Peaks Island residents to participate in the hearing. Due to these time constraints the Board tabled their vote on the island zoning amendments to allow Peaks Island residents to present their comments at the subsequent meeting to be held on September 29, 2015. The results of this hearing were not available prior to the submission of this memo but will be attached prior to the first reading at the Council.

The amendments to Division 30, Affordable Housing, which include an inclusionary zoning requirement and accompanying density bonus was not supported by the Board. Concerns were raised about inclusionary zoning having unintended consequences of potentially slowing down housing production and raising the overall costs of housing in the local market. Chair O'Brien voted in favor of forwarding a recommendation to adopt the amendments to City Council and six Board members voted against the motion.

VII. LIST ATTACHMENTS

Attachment A: Proposed Ordinance Amendments

- A1 – IR-1 ADU Language (clean version followed by markup version)
- A2 – IR-2 ADU Language (clean version followed by markup version)
- A3 – R5 ADU Language (clean version followed by markup version)
- A4 – Division 30 (Affordable Housing) – density bonuses and inclusionary zoning

Attachment B: City Workforce Housing Study – 2015

Attachment C: Slideshow from February Housing Forum

Attachment D: Written Public Comment

Prepared by:

Signature

Date

ATTACHMENT A: PROPOSED ORDINANCE AMENDMENTS

A1: IR-1 ADU LANGUAGE

(a) *Residential:*

1. One additional accessory dwelling unit clearly subordinate to a principal single-family or on Peaks Island a legal multi-family dwelling provided that:
 - a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the largest unit in the principal building and shall have a minimum floor area of four hundred (400) square feet;
 - b. Lot shall be seventy thousand (70,000) square feet in area, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;
 - c. There shall be no open outside stairways or fire escapes above the ground floor;
 - d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
 - e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
 - f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences;
 - g. Accessory units on Peaks Island on lots of less than 70,000 square feet must remain under common ownership with the primary unit on the lot;

- h. Any units created under this section on Peaks Island may not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;
- i. Any units created under this section on Peaks Island on lots of less than 70,000 square feet must be rented as "workforce housing unit for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;
- j. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations.
- k. The accessory unit on Peaks Island must be rented on an annual basis and may not be used for seasonal or weekly rentals.

(a) Residential:

1. One additional accessory dwelling unit within and clearly subordinate to a principal single-family detached or on Peaks Island a legal multi-family dwelling provided that:
 - a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the largest unit in the principal building and shall have a minimum floor area of four hundred (400) square feet;
 - b. Lot shall be seventy thousand (70,000) square feet in area, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;
 - c. There shall be no open outside stairways or fire escapes above the ground floor;
 - d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
 - e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
 - f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; and
 - g. Accessory units on Peaks Island on lots of less than 70,000 square feet must remain under common ownership with the primary unit on the lot;

- h. Any units created under this section on Peaks Island may not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;
- i. Any units created under this section on Peaks Island on lots of less than 70,000 square feet must be rented as "workforce housing unit for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;
- j. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations.
- k. The accessory unit on Peaks Island must be rented on an annual basis and may not be used for seasonal or weekly rentals.

A2: IR-2 ADU LANGUAGE

(a) *Residential:*

1. One additional accessory dwelling unit clearly subordinate to a principal single-family or legal multi-family dwelling provided that:
 - a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the largest unit in the principal building and shall have a minimum floor area of four hundred (400) square feet;
 - b. Lot shall be thirty thousand (30,000) square feet in area, or be an existing lawfully non-conforming lot as of May 1, 2015;
 - c. There shall be no open outside stairways or fire escapes above the ground floor;
 - d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
 - e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
 - f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences;
 - g. Accessory units on lots of less than 30,000 square feet must remain under common ownership with the primary unit on the lot;
 - h. Any units created under this section may not be sold as condominium units or otherwise

separated from the ownership of the pre-existing unit on the site;

- i. Any units created under this section on lots of less than 30,000 square feet must be rented as "workforce housing unit for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;
- j. On lots of less than 30,000 square feet, the property must have City water and sewer. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations.
- k. The accessory unit must be rented on an annual basis and may not be used for seasonal or weekly rentals.

(a) Residential:

1. ~~Accessory~~One additional accessory dwelling unit within—and clearly subordinate to a principal single-family detached or legal multi-family dwelling provided that:
 - a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the largest unit in the principal building and shall have a minimum floor area of four hundred (400) square feet;
 - b. ~~Lot area~~ shall be thirty thousand (30,000) square feet in area, or be an existing lawfully non-conforming lot as of May 1, 2015;
 - c. There shall be no open outside stairways or fire escapes above the ground floor;
 - d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
 - e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
 - f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; and
 - ~~g.~~
 - g. Accessory units on lots of less than 30,000 square feet must remain under common ownership with the primary unit on the lot;

- h. Any units created under this section may not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;
- i. Any units created under this section on lots of less than 30,000 square feet must be rented as "workforce housing unit for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;
- j. On lots of less than 30,000 square feet, the property must have City water and sewer. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations.
- k. The accessory unit must be rented on an annual basis and may not be used for seasonal or weekly rentals.

A3: R-5 ADU LANGUAGE

5. Use of space existing as of September 3, 2008 to accommodate additional dwelling units under the following conditions:
- a. This section shall under no conditions permit more than four dwelling units on a lot and shall not allow more than two additional dwelling units on a lot above what would otherwise be permitted;
 - b. Any units created under this section may not be sold as condominium units or otherwise separated from the ownership of at least one of the pre-existing units on the site;
 - c. Any units created under this section must be "low-income housing unit[s] for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;
 - d. The additional units shall have a minimum floor area of four hundred (400) square feet and may not involve removing more than ten percent of the gross floor area of an existing dwelling unit into a new dwelling unit. Gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level and may include the attic if such space is habitable.
 - e. Modifications to existing structures shall be minimal, and be limited to new doors, windows and other openings;
 - f. Parking shall be provided as required by Division 20 of this article;
 - g. There shall be no open, outside stairways or fire escapes above the ground floor; and
 - f. The project shall be subject to Article V for site plan review and approval and the following additional standards:

- i. Any additions or exterior alterations such as façade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single family appearance of the building; and
- ii. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped properly to screen vehicles from adjacent properties and streets.

5. AlterationUse of a single family dwelling space existing as of September 3, 2008 on a ~~nonconforming lot~~ to accommodate an ~~accessory~~ additional dwelling units under the following conditions:

a. This section shall under no conditions permit more than four dwelling units on a lot and shall not allow more than two additional dwelling units on a lot above what would otherwise be permitted;

b. Any units created under this section may not be sold as condominium units or otherwise separated from the ownership of at least one of the pre-existing units on the site;

a.c. Any units created under this section must be "low-income housing unit ~~within and clearly subordinate the principal structure provided that~~ [s] for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;

b.d. a. ~~The accessory unit~~additional units shall have a minimum floor area of four hundred (400) square feet ~~that represents no and~~ may not involve removing more than ~~thirty (30)~~ten percent of the gross floor area of the ~~principal an~~ existing dwelling unit into a new dwelling unit. Gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level and may include the attic if such space is habitable.

b. ~~The principal dwelling unit shall be located on a lot of no less than four thousand (4,000) square feet and no more than six thousand (6,000) square feet;~~

e. ~~Either the accessory or principal dwelling unit shall be occupied by the owner of the lot, except for bona fide absences of a temporary nature;~~

e.d. Modifications to existing structures shall

be minimal, and be limited to new doors,
windows and other openings;

~~e.f.~~ Parking shall be provided as required by
Division 20 of this article;

~~d.g. e.~~—There shall be no open, outside
stairways or fire escapes above the ground
floor; and

f.—The project shall be subject to Article V for
site plan review and approval and the following
additional standards:

i. Any additions or exterior alterations
such as façade materials, building
form, roof pitch, and exterior doors
shall be designed to be compatible with
the architectural style of the building
and preserve the single family
appearance of the building; and

ii. The scale and surface area of parking,
driveways and paved areas shall be
arranged and landscaped properly to
screen vehicles from adjacent
properties and streets.

**A4: DIVISION 30 (AFFORDABLE HOUSING) – DENSITY BONUSES, DEFINITIONS, & INCLUSIONARY
ZONING**

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DIVISION 30. ~~INCENTIVES FOR AFFORDABLE HOUSING~~

Sec. 14-484. Purpose.

~~The City believes that~~ It is in the public interest to promote an adequate supply of affordable housing for its residents. The purpose of this Division therefore is to offer incentives to developers to include units of affordable housing within development projects, thereby mitigating the impact of market rate housing construction on the limited supply of available land for suitable housing, and helping to meet the housing needs of all economic groups within the City. The City believes that this Division will assist in meeting the City's comprehensive goals for affordable housing, in the prevention of overcrowding and deterioration of the limited supply of affordable housing, and by doing so promote the health, safety and welfare of its citizens.

Sec. 14-485. Definitions.

"Affordable" means that the percentage of income a household is charged in rent and other housing expenses, or must pay in monthly mortgage payments (including insurance and taxes), does not exceed 30% of a household's income, or other amount established in City regulations that does not vary significantly from this amount.

~~"Affordable-Low-income housing unit for rent" means a dwelling unit for which: (1) the rent is affordable to a household earning 80% or less of the U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size~~ Area Median Income (AMI) as defined by the U.S. Department of Housing and Urban Development (HUD); and (2) annual rent increases for that unit are limited in perpetuity by deed restriction or other legally binding agreement to the percentage increase in the U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size.

~~"Affordable-Low-income housing unit for sale" means a dwelling unit for which: (1) the sale price is affordable to a household earning 12080% or less of the U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size~~ HUD AMI; and (2) the resale price is limited by deed restriction or other legally binding agreement for all future

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sales of the unit to an amount that is affordable to a household earning 120% of the U.S. Department of Housing and Urban Development moderate-income figure for Metropolitan Cumberland County Maine for a household of that size, as calculated for the year in which the sale takes place.

"Development fees" means: (1) the following fees, as described in this chapter: site plan review and inspection fees; subdivision review and inspection fees; condominium conversion permit fees; and administrative fees; and (2) construction and permit fees as described in chapter 6. "Development fees" does not include any fees charged for reviews conducted by a party other than the City.

"Dwelling unit" has the same meaning as that term is defined in section 14-47.

"Eligible project" means a development project: (1) to which the City has not committed nor will commit any funding, reduced-interest loans or other subsidies or incentives other than those described in this Division; and (2) that creates new dwelling units, among which is at least one affordable housing unit for rent or sale, through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements. Affordable housing units for sale or rent may not differ in exterior design from other units within an eligible project.

"Workforce housing unit for rent" means a dwelling unit which: (1) Is affordable to a household earning less than 100% of HUD AMI and (2) Annual rent increases for that unit are limited by deed restriction or other legally binding agreement to the percentage increase in the U.S. Department of Housing and Urban Development Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

"Workforce housing unit for sale" means a dwelling unit for which (1) the purchase price is affordable to a household at 120% of HUD AMI and (2) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit, or a lesser term as permitted in regulations, to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Sec. 14-486. Reduction of Fees and Priority Review-

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Notwithstanding any other provision of this chapter or chapter 6 to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the following table:

Percentage of new units that are affordable low-income <u>workforce housing</u> units	Percentage discount of development fees
5% up to but not including 10%	5% reduction
10% up to but not including 15%	10% reduction
15% up to but not including 20%	15% reduction
20% up to but not including 25%	20% reduction
25% or more	25% reduction

~~Sec. 14-487. Priority Review.~~

~~—The Planning Division shall perform its review of an eligible project in as expedited a manner as is practical. The Planning Division may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.~~

The Planning Board shall make its best efforts to hear, review, and approve, conditionally approve or deny within one workshop and one public hearing any plans or applications required for an eligible project that are within the Planning Board's jurisdiction, and shall rely on reviews prepared by the Planning Division to the greatest extent practical and appropriate. At the conclusion of these public meetings, the Planning Board shall promptly issue a decision on all such plans and applications before it for consideration.

Sec. 14-487. Ensuring Workforce Housing.

1. Purpose

Based on the City's Comprehensive Plan and the housing study completed in 2015, the City believes that it is in the

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public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. The purpose of this section is to ensure that large-housing developments over a certain size provide a portion of workforce housing units, and by doing so, promoting the health, safety, and welfare of Portland citizens.

2. Applicability/Conditional Use Requirement/Sunset

This division shall apply to development projects that create ten or more new dwelling units for rent or for sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements. This division shall not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to its effective date.

All Developments of Ten Units or More Conditional Uses

Notwithstanding any language to the contrary in Article 14, all developments of ten units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements of this section 14-487.

This section 14-487 shall be in effect for six years following its passage, at which time the overall effectiveness of this section shall be assessed and either this expiration date shall be deleted or the entire section shall be removed from the City's Code of Ordinances

3. Workforce Housing Minimum

At least ten percent of the units in the project shall meet the definition of workforce housing unit for sale or for rent. The number of units required is rounded down to a whole number if providing units as per 4.b. below, or shall include a fractional value in cases where a project prefers to pay a fee-in-lieu as per 4.c. below.

4. Standards

a. Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, affordable units shall be provided in proportion to the

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development of market rate units unless otherwise permitted through regulations.

b. Workforce units are encouraged to be integrated with the rest of the development, should use a common entrance and should provide no indications from common areas that these units are workforce housing units.

c. Workforce units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be 10 percent of the total number of bedrooms in the development. For the purposes of this section, for every 400 square feet in a market rate unit will count as a bedroom if the actual number of bedrooms in the unit is lower.

d. As an alternative to providing workforce housing units, projects may pay a fee in lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 14-489. The fee for affordable units not provided shall be \$100,000 per unit, adjusted annually in the same way as the fee under Division 29 for Housing Replacement.

e. Workforce housing units for sale, if converted to workforce housing units for rent, shall become subject to the income limits and other requirements of such units.

f. If at least 33 percent of the units in a development are workforce units, the development is eligible for subsidy through an Affordable Housing TIF, subject to City Council approval.

g. The term of affordability for the required 10 percent workforce units provided shall be defined as follows.

<u>Percentage of Workforce Units Provided</u>	<u>Minimum Term of Affordability for Required Workforce Units</u>
<u>10%</u>	<u>Longest term permitted under federal, state and local laws and ordinances</u>
<u>25%</u>	<u>30 years</u>
<u>50%</u>	<u>20 years</u>
<u>100%</u>	<u>10 years</u>

5. Implementing Regulations

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Regulations to further specify the details of this section shall be developed, including, but not limited to:

- Specific methodology for income verification;
- Situations where less than permanent affordability might be considered;
- Guidelines for meeting the requirement that off-site units be "in the same neighborhood".

6. Reporting to City Council

In conjunction with the annual report on the Housing Trust, City staff shall report on developments subject to this section, the number of units produced, the amount of fee-in-lieu collected, and the overall effectiveness of this section in achieving its stated purpose.

Sec. 14-488. Density, Parking and Dimensional Bonuses and Reductions.

Notwithstanding any other provision of this chapter to the contrary:

(a) Density bonuses. The maximum number of units that would otherwise be allowed under this chapter shall be increased for an eligible project in the manner described in the following table:

Percentage of new units that are affordable low-income or workforce units	Percentage increase in maximum number of units allowed
5% up to but not including 10%	5% increase
10% up to but not including 15%	10% increase
15% up to but not including 20%	15% increase
20% up to but not including 25%	20% increase
25% or more	25% increase
Projects Under 14-487	25% increase

(b) Parking requirement reduction. For each affordable low-income or workforce housing unit for rent or sale within an eligible project, no more than one (1) parking space shall be required. The Planning Board may establish a parking requirement

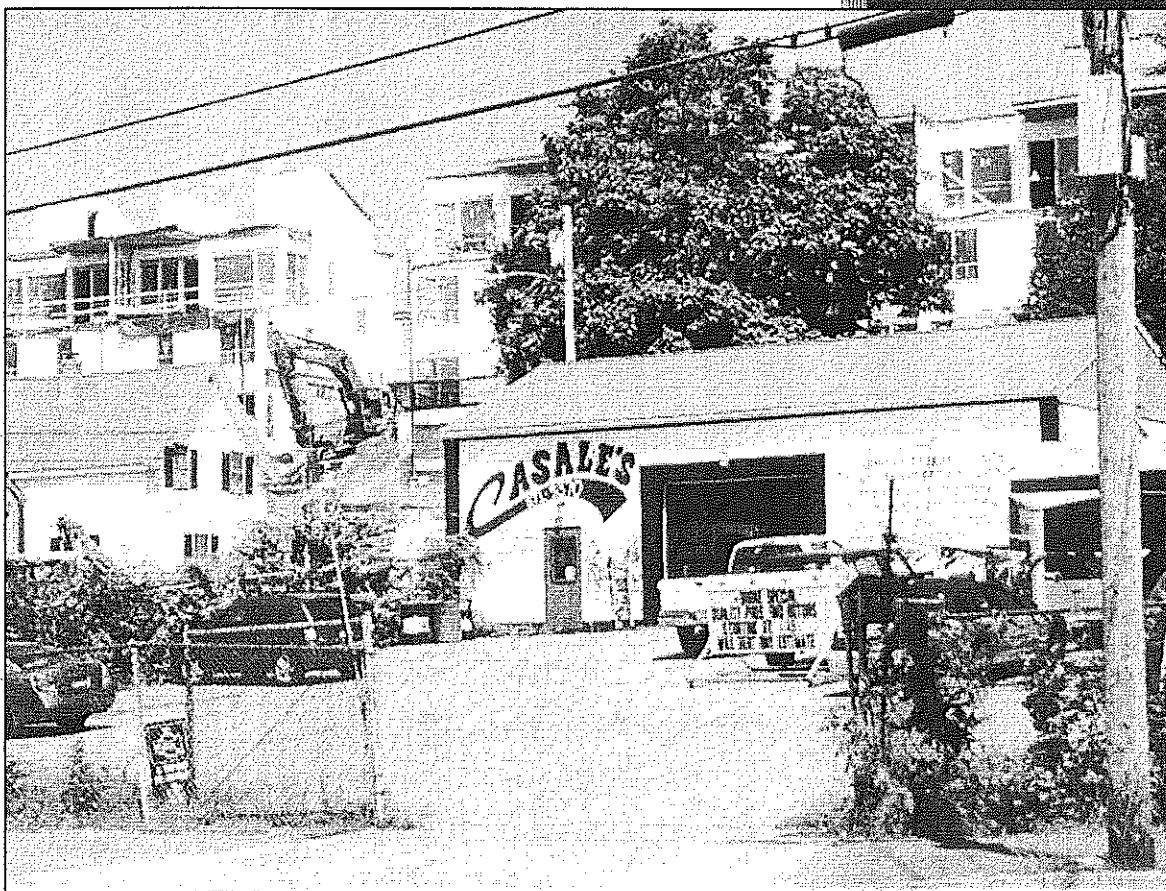
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for affordable housing units for rent or sale within an eligible project that is less than one (1) parking space per affordable housing unit, regardless of the size of the structure.

ATTACHMENT B: CITY WORKFORCE HOUSING STUDY – 2015

Portland

2030 Workforce Housing Demand



Greater Portland Council of Governments

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Portland, Maine 04103

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This report was produced under a fee-for-service contract with the City of Portland. The substance and findings of the work are dedicated to the public. The publisher is solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the City.

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EXECUTIVE SUMMARY

Purpose

In 2002, the City of Portland adopted a Housing Plan with a policy goal to ensure an adequate supply of housing to meet the needs, preferences, and financial capabilities of all Portland households. In order to reach this goal, the City established a target of maintaining Portland's current proportion of subsidized units at 20% of the housing stock. Since the plan's adoption, over 2,000 housing units have been permitted in the city for the construction of apartments, condominiums, and single-family homes. This study examines recent trends in the Portland housing market in order to help policymakers determine what gaps, if any, may exist between what is currently being provided in the market and the city's housing needs.

Methodology

In August of 2014, the City of Portland contacted the Greater Portland Council of Governments to discuss the design of a study to assess progress in meeting the city's housing production goals. Staff conducted a literature review of studies used in other states and presented these approaches to the city for consideration.

- *Massachusetts Approach:* This method, so named for its prevalence amongst cities and towns in the Commonwealth, is based on the goals articulated in a municipality's comprehensive plan. In the future, Portland will capture a certain percentage of the region's population growth. People form households, whose demand can be projected by the current distribution of housing units by tenure and affordability.
- *California Approach:* This technique has been piloted in cities throughout California by the consulting firm of Keyser Marston Associates, Inc. The underlying philosophy is that the construction of market-rate units attracts high income households. Through the purchase of goods and services, these households support low-paid service jobs, which in turn support lesser income households whose needs might best be met by living near where they work.

For purposes of this analysis, "affordable" and "workforce" are used interchangeably to refer to housing units that a household earning 100% of the county's median income can afford, assuming they spend no more than 30% of their income for housing. The term "subsidized," which is also confused with "affordable," generally refers to public investment to make housing affordable to households earning up to 80% of the county's median income.

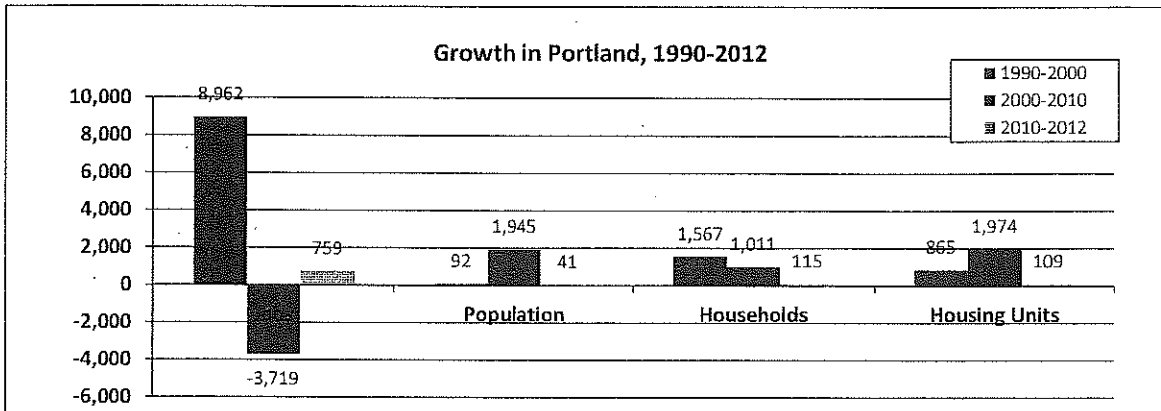
Findings

Sixty-two percent of Portland households earn less than the county's median income, including 38% of homeowners and 81% of renters. Over the last decade, the number of households earning less than median income has increased 10%. While rising incomes have narrowed the affordability of existing homes and apartments, new construction is well beyond the means of the middle class. From 2010 to 2014, 1,130 housing units were permitted and/or built in Portland, including apartments, condominiums and single-family homes. Just 29% were offered at a rent or sales price affordable to a household earning the median income. If robust growth continues, Portland will continue to lose the affordability of its housing stock.

Two approaches were deployed to help policymakers determine what percentage of new construction should be made affordable by policy to increase diversity in the city's housing stock.

- Under the Massachusetts approach, the gap between future demand for workforce housing units and potential supply is 33%.
- Under the California approach, the gap between future demand for workforce housing units and potential supply is 24%.

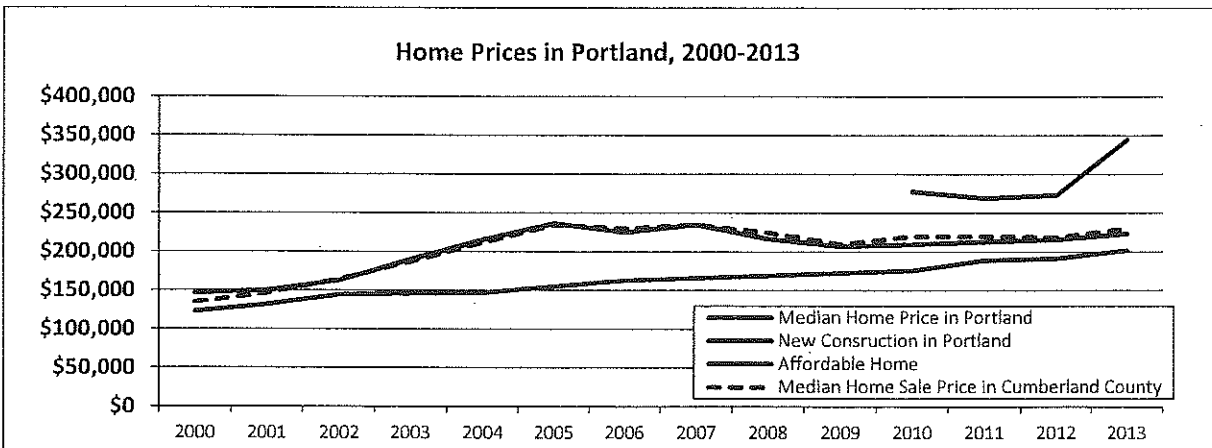
HOUSING MARKET TRENDS



Source: Maine Department of Labor, American Community Survey

The economic recession of 1991 ushered in an era of slow growth throughout the nation. In just twelve months, the unemployment rate in Cumberland County soared from 3.7% to a decade high of 7.4%. The sluggish economy led to a lag in home construction. Driven by the dramatic increase in single people living alone, the formation of new households in Portland outstripped the construction of housing units by almost a 2:1 margin. By the late 1990's, the economy rebounded with the "dot com" revolution. Job growth and rising incomes created a pent-up demand for housing that set the stage for the boom of the 2000's.

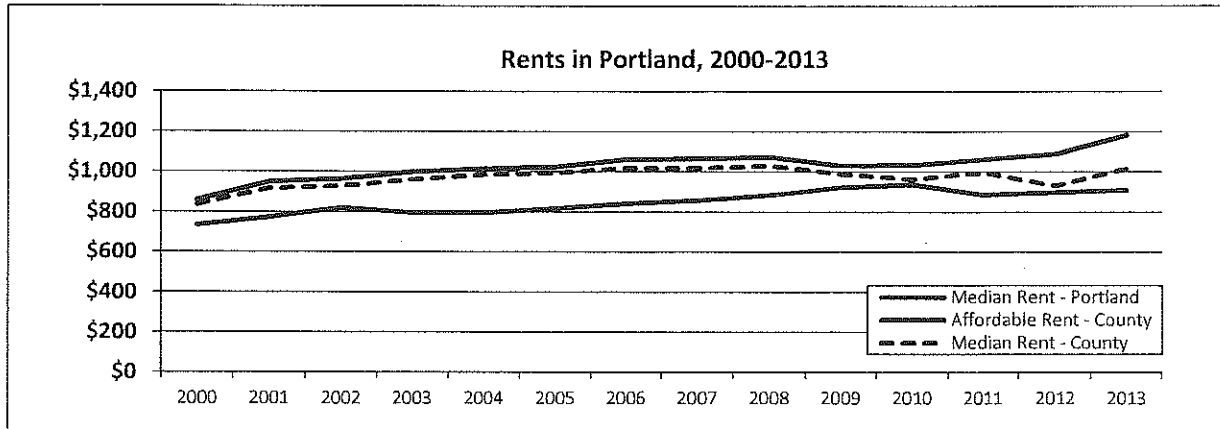
In 2000, the "dot com" bubble burst, triggering another economic downturn. With its relatively small technology sector, Greater Portland weathered the recession better than the rest of New England and the nation. Fueled by the lowest interest rates in 40 years, real estate proved to be a lucrative investment. In Portland, new housing construction outpaced the formation of new households by almost a 2:1 margin. Without real job growth, however, the boom could not be sustained. In 2008, the collapse of the credit market ushered in the greatest economic recession since the Great Depression.



Source: Maine Housing, Portland Assessing Office

Home prices in the region peaked at \$235,000 before dropping 12% in 2009. Since then, rising incomes and low interest rates have improved affordability. In 2013, a household in Cumberland County earning the median income of \$58,500 could afford a home price of \$202,000, while the median home was \$223,500. In 2005, the gap

between the median and affordable home price was \$68,985. By 2013, the gap had narrowed to \$21,500. New construction, however, remains out of reach for all but the wealthiest households. From 2000 to 2014, 282 new condominiums and single-family homes were sold in Portland posting a median price of \$313,000, 55% over the affordable price. For example, in 2013, 85 condominiums at the Bay House in Portland's India Street neighborhood sold for a median of \$366,350, 64% above the median home price and 81% above the affordable home price.



Source: Maine Housing, Portland Assessing Office

Rents in Portland continue to outpace incomes. In 2013, a household earning the median renter income of \$36,438 could afford a rent of \$911. The median rent in Portland, however, is \$1,183, 30% more than what is affordable. Market rents associated with new construction are even higher. West End Place, a new 39-unit apartment complex at the corner of Brackett and Pine streets, is courting rents at \$1,300 to \$2,500, 43% to 170% higher than what is affordable.

MASSACHUSETTS APPROACH

Portland's Housing Plan established as a goal to maintain the city's 25% share of the county's population. In order to create enough affordable housing for the future, this share can be applied to the county's future growth projections. The following is a breakdown of the methodology.

1. Establish a long range population forecast at the county level

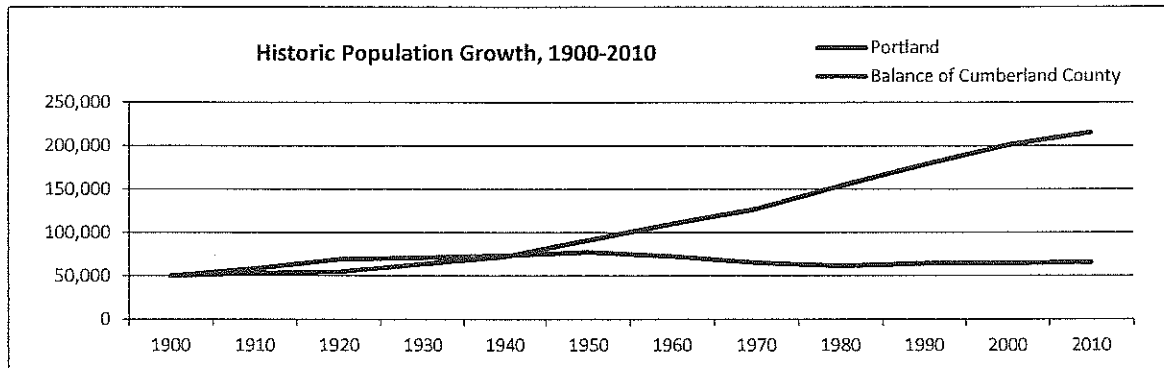
In Maine, there are two sources for population projections at the county level:

State Office of Policy and Management: In 2013, Maine's Economist released the State's 2030 Forecast. These projections assume that fertility of the current population is the primary driver of growth. Future growth is expected to be much slower than the past because Maine has a higher proportion of Baby Boomers, who are past their child-bearing years, along with a high proportion of non-Hispanic Whites, who have the lowest birth rates of any racial or ethnic group. From 2010 to 2030, the State projects that Cumberland County will grow by just 8,427 people, an increase of 1.5% per decade. This data comprises the "Low Growth" forecast.

Center for Business and Economic Research: In 2009, the University of Southern Maine's Muskie School of Public Service prepared a 2035 forecast for the Portland Area Comprehensive Transportation System (PACTS), the Metropolitan Planning Organization for the Portland, Maine Urbanized Area. This forecast, generated through Regional Economic Models, Inc. (REMI), assumes that the economy will drive population growth. From 2010 to 2030, Muskie projects that Cumberland County will grow by 79,924 people, an increase of 14% per decade. This data comprises the "High Growth" forecast.

The "Medium Growth" forecast is the average of the Low and High forecasts. Under this scenario, Cumberland County would grow by 44,176, people, an increase of 8% per decade.

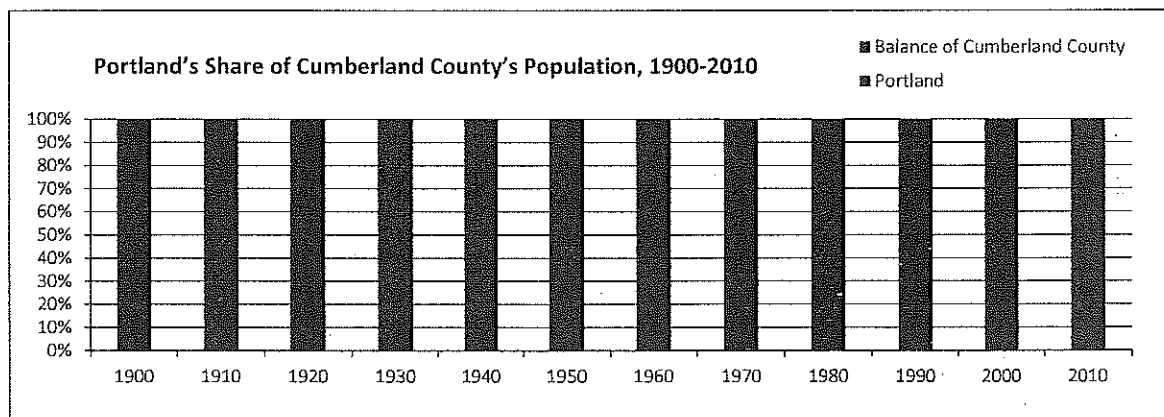
Over the last century, the county's decennial growth rate has ranged from a high of 16% during the 1940's to a low of 5% during the 1960's. Therefore, the Low forecast, at 3% growth, represents a rate lower than in any decade of the last century, while the High forecast, at 14%, is only slightly higher than the pattern of the 1990's. At 8%, the Medium forecast reflects the average growth rate per decade of the past century.



Source: U.S. Census Bureau

2. Assign Portland a 25% share of the county's 2030 population growth

Portland's goal of maintaining a 25% share of the county's population is paramount to its vitality and its influence over state and regional politics. As the largest city in one of the nation's smallest states, Portland exerts an extraordinary influence over Maine's economy out of proportion with its actual size. Indeed, the number of jobs in the city now outstrips population, making Portland the engine of the largest labor market in Northern New England. Over the last century, Portland's share of the county's population has declined from a peak of 56% in 1920 to 24% in 2010. While this share is on a definite downward trajectory, Portland did not yield any ground during the 2000's.



Source: U.S. Census Bureau

Low Growth: To claim a 25% share of the county's population, Portland would need to grow by 6,331 people, or 317 people per year, a growth rate of 4.8% per decade. In order to reach this 25% share, which in 2010 slipped to 24%, Portland would need to claim 75% of the county's future growth. Although this would represent a reversal of the sprawling choices made by residents during the 1970's, 80's and 90's, this trend has already begun in the 2000's. In order to accommodate new residents, Portland would need to build 4,188 housing units, or 210 units

per year over a 20-year period. This modest housing growth is in line with the development patterns of the 2000's, which resulted in the construction of approximately 1,974 units, or 198 units per year.

Medium Growth: To claim a 25% share of the county's population, Portland would need to grow by 15,268 people, or 764 people per year, a growth rate of 11.5% per decade.. This would bring Portland's population to 81,462 people, just past its 1950 peak. In order to reach this 25% share, Portland would need to claim 35% of the county's future growth. In order to accommodate new residents, Portland would need to build 8,636 housing units, or 432 units per year over a 20-year period. This robust growth would be double that witnessed in the 2000's and five times the growth of the 1990's.

High Growth: To claim a 25% share of the county's population, Portland would need to grow by 24,206 people, or 1,211 people per year, a growth rate of 18.3% per decade. In order to reach this 25% share, Portland would need to claim 30% of the county's future growth. In order to accommodate new residents, Portland would need to build 13,084 housing units, or 654 units per year over a 20-year period. In terms of new construction, this represents three times the growth of the 2000's and eight times the growth of the 1990's.

2030 Housing Forecast for Portland								
	2010		Low Growth		Medium Growth		High Growth	
	Total	Change	Total	Change	Total	Change	Total	Change
Population of Cumberland County	281,674	24%	290,101	8,427	325,850	44,176	361,598	79,924
Population of Portland	66,194	100.0%	72,525	6,331	81,462	15,268	90,400	24,206
Population in ownership units	30,317	45.8%	33,217	45.8%	37,310	45.8%	41,403	45.8%
Population in rental units	33,264	50.3%	36,446	50.3%	40,937	50.3%	45,428	50.3%
Population in group quarters	2,613	3.9%	2,863	3.9%	3,216	3.9%	3,569	3.9%
Households	30,725		34,945	4,220	39,252	8,527	43,558	12,833
Population in households	63,581	96.1%	69,662	96.1%	78,247	96.1%	86,831	96.1%
Average household size	2.07		1.99		1.99		1.99	
Ownership	2.31		2.23		2.23		2.23	
Rental	1.89		1.82		1.82		1.82	
Housing Units	31,908		36,096	4,188	40,544	8,636	44,992	13,084
Ownership	13,321	41.7%	15,077	1,756	16,935	3,614	18,792	5,472
Occupied	13,124	98.5%	14,927	99.0%	16,767	99.0%	18,606	99.0%
Vacant	197	1.5%	149	1.0%	168	1.0%	186	1.0%

Source: Prepared by the Greater Portland Council of Governments based on the 2010 Census and County Population Forecasts from the State Office of Policy and Management and the Center for Business and Economic Research

3. Breakout Portland Forecast by Household Income and Tenure

Owners: As of 2011, 38% of Portland's 13,845 homeowners earned less than the county's median income. This is unchanged from the 2000 Census. Approximately 28% of homeowners are considered to be of low to moderate income because they earn 80% or less of the county's median income. This is slightly lower than in 2000. The U.S. Department of Housing and Urban Development classifies households earning less than 80% as follows:

- Less than 30%: *Very low income*
- 30%-50%: *Low income*
- 50%-80%: *Moderate income*

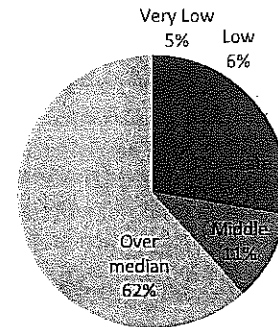
For this analysis, middle income refers to those households earning from 80%-100% of median income. From 2000-2011, the greatest change was in the number of these middle income households, which increased by 52%.

Income of Owners in Portland, 2000-2011

	2000		2011		Net	%
	Households	%	Households	%		
Very Low	605	5%	680	5%	75	12%
Low	1,020	8%	895	6%	-125	-12%
Moderate	2,240	18%	2,265	16%	25	1%
Middle	970	8%	1,470	11%	500	52%
Over Median	7,865	62%	8,535	62%	670	9%
Total	12,605	100%	13,845	100%	1,240	10%
Low to Moderate	3,865	31%	3,840	28%	-25	-1%
Under Median	4,835	38%	5,310	38%	475	10%

Source: Special tabulation by the U.S. Department of Housing and Urban Development based on the 2007-2011 American Community Survey

Income of Portland Homeowners (2011)



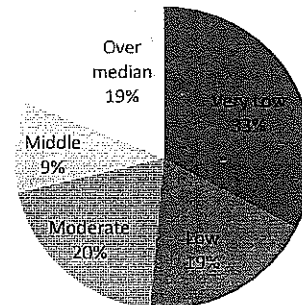
Renters: As of 2011, 81% of Portland's 17,260 renters earned less than the county's median income. Approximately 71% of renters are considered to be of low to moderate income. From 2000-2011, the greatest change was in the number of very low income households, which increased by 30%.

Income of Renters in Portland, 2000-2011

	2000		2011		Net	%
	Households	%	Households	%		
Very Low	4,330	26%	5,630	33%	1,300	30%
Low	2,755	17%	3,260	19%	505	18%
Moderate	4,165	25%	3,415	20%	-750	-18%
Middle	1,415	9%	1,665	10%	250	18%
Over Median	3,700	23%	3,290	19%	-410	-11%
Total	16,365	100%	17,260	100%	895	5%
Low to Moderate	11,250	69%	12,305	71%	1,055	9%
Under Median	12,665	77%	13,970	81%	1,305	10%

Source: Special tabulation by the U.S. Department of Housing and Urban Development based on the 2007-2011 American Community Survey

Income of Portland Renters (2011)



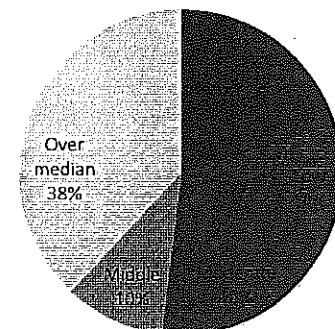
All households. As of 2011, 62% of Portland's 31,105 households earned less than the county's median income. Approximately 52% of all households are considered to be of low to moderate income. From 2000-2011, the greatest change was in the number of very low income households, which increased by 28%.

Income of All Households in Portland, 2000-2011

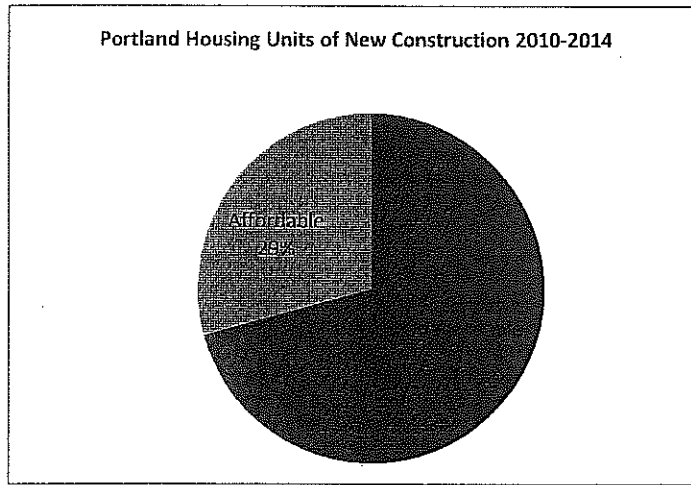
	2000		2011		Net	%
	Households	%	Households	%		
Very Low	4,935	17%	6,310	20%	1,375	28%
Low	3,775	13%	4,155	13%	380	10%
Moderate	6,405	22%	5,680	18%	-725	-11%
Middle	2,385	8%	3,135	10%	750	31%
Over Medium	11,565	40%	11,825	38%	260	2%
Total	29,065	100%	31,105	100%	2,040	7%
Low to Moderate	15,115	52%	16,145	52%	1,030	7%
Under median	17,500	60%	19,280	62%	1,780	10%

Source: Special tabulation by the U.S. Department of Housing and Urban Development based on the 2007-2011 American Community Survey

Income of All Households in Portland (2011)



4. Calculate Gap between Current Production Trends and Future Demand



While the median price of new construction is beyond the reach of the middle class, some proportion of new homes is affordable. From 2010-2014, 384 new condominiums and single-family homes were permitted in Portland. The percentage of units sold or marketed for sale at an affordable price was 7%. During the same period, 746 new rental units were permitted. The percentage of units marketed for rent at an affordable price was 41%. Overall, 29% of new housing units permitted from 2010-2014 were offered to the market at a price affordable to a household earning 100% of median income.

Approximately 62% of Portland households earn less than the county's median income. If recent construction trends hold, the market, without compulsion, will build affordable units to meet 29% of demand. This leaves a gap between supply and demand of 33%.

Supply and Demand for Housing Affordable to Households at 100% of Median Income

Housing Units	Percent of Market	Low Growth	Medium Growth	High Growth
		4,188	8,636	13,084
Projected 2030 Demand	62%	2,597	5,354	8,112
Projected 2030 Supply	29%	1,215	2,504	3,794
Gap	33%	1,382	2,850	4,318

CALIFORNIA APPROACH

This method is based on the underlying theory that the construction of market-rate units attracts high income households. Through the purchase of goods and services, these households support low-paid service jobs, which in turn support lesser income households whose needs might best be met by living near where they work. The following is a breakdown of the methodology.

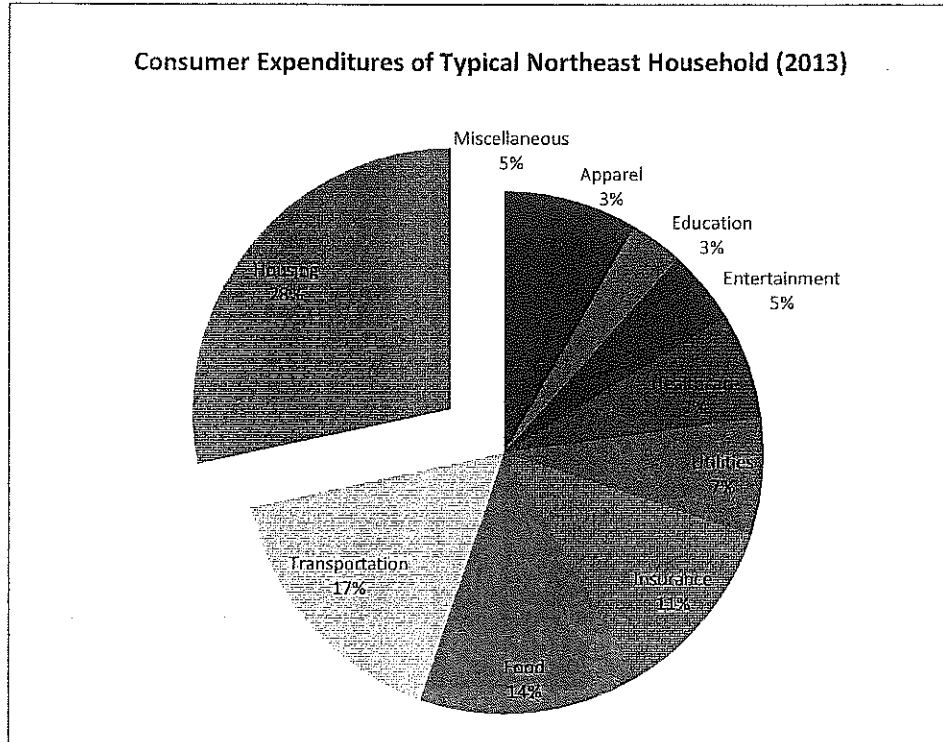
1. Calculate the income of market-rate households

A household must earn approximately \$90,000 to afford the market price of a newly constructed home (\$313,000) or rental unit (\$2,500 per month), presuming it spends no more than 30% of its income for housing. This percentage is consistent with mortgage underwriting practice, traditional credit analysis, and housing policy.

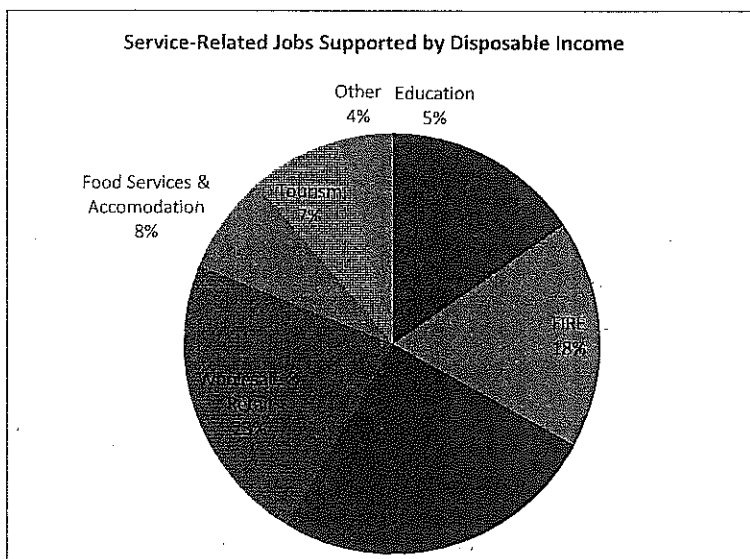
2. Quantify the collective purchasing power of market-rate households

The National Consumer Expenditure Survey was used to calculate the disposable income of market rate households. A typical household in the Northeast spends the largest chunk of its income, 28%, on housing, including mortgage, insurance, and property taxes as well as home maintenance and furnishings. At 17%, the second largest category is transportation, including vehicle payments, registration, maintenance, and fuel. The third largest expenditure, 14%, is food, which includes meals eaten at restaurants as well as produce, meat, dairy, and other products purchased at supermarkets and eaten at home. Other categories include insurance, utilities,

health care, entertainment, education, and apparel. Once taxes and housing costs are eliminated, the market-rate household has \$45,900 in disposable income accounting for 51% of gross household income. One hundred market-rate households would have a collective purchasing power of \$4,590,000.



3. Translate collecting purchasing power to jobs



Estimates were made to correlate household spending by category with service jobs by industry sector. Jobs generated by mortgage and rent payments were excluded from analysis. The goods-producing sector, which includes jobs in agriculture, fisheries, forestry, mining, construction, and manufacturing, was also excluded. Thus, while food purchased at the supermarket may be grown in the field and processed in a factory, only the retail jobs supported by household spending are counted. Food eaten at home, for example, was assigned to the Wholesale and Retail sector, while meals eaten away from home were assigned to the

Accommodation and Food Services sector. Similarly, income paid to utilities was assigned to Transportation and Utilities.

4. Calculate the economic impact of job creation

The disposable income of 100 households purchasing market-rate homes in Portland would generate an economic impact of 121 jobs, \$4.8 million wages, \$13.4 million in GDP, and \$20.9 million in total output, which is broken down on the following chart. Each job has an average income of \$40,020.

Economic Impact of 100 Households Purchasing Market Rate Ownership Units

	Employment	Earnings	GDP	Output
Direct	80	\$3,336,816	\$9,984,358	\$15,617,667
Indirect + Induced	41	\$1,505,576	\$3,382,239	\$5,309,542
Total	121	\$4,842,392	\$13,366,597	\$20,927,209

Outputs were generated from the 2011 version of the *Connect Northern New England Economic Scenario Model* developed by Vital Economy and FairPoint Communications. Outputs were adjusted for inflation to 2014 dollars. The model is designed to provide order of magnitude estimates of economic impact resulting from the gain or loss of jobs, including the following:

- **Direct Employment:** Employment attributed to a particular business, activity or industry.
- **Indirect Employment:** Employment in down-stream industries that supply or provide services to the direct business, activity or industry.
- **Induced Employment:** Employment generated because of expenditures made by individuals employed directly or indirectly by the particular business, activity or industry.
- **Earnings:** Sum of wage and salary disbursements, supplements, and proprietors' income.
- **GDP:** Total market value of all final goods and services produced in the region.
- **Output:** Total economic output of a firm, industry, or economy without deducting intermediate inputs such as goods and services consumed by industries in the production of other final goods and services.

The Economic Scenario Model derives its data from the U.S. Bureau of Economic Analysis (BEA), which produces detailed data on economic activity by region and state. In order to calculate the indirect and induced effects on employment, earnings, output, and GDP, the Model uses BEA RIMS II multipliers, which are based on estimates of local area personal income and on the national input-output accounts.

5. Calculate the number of median households supported by new jobs

Cumberland County's labor force is comprised of 167,365 workers age 16 and over. In the 2010 Census, 117,339 households were recorded in the county. Thus, there are 1.43 households for every job in the region. The disposable income from 100 new market rate households generates 121 jobs in the local economy, which can support 85 workforce households. The number of workforce households is multiplied by 62%, which is the percentage of Portland households earning less than the county's median income. The result, 53%, is the percentage of workforce housing demand generated by these 100 market-rate units. If the market, in keeping with current production patterns, supplies 29 affordable units for every 100 built, there would still be an unmet gap for 24 affordable units.

Median Housing Demand Generated by Market Rate Households

Jobs per Household	1.43
Median income households in Portland	62%
Total jobs generated by 100 market-rate households	121
Households supported by jobs	85
Affordable housing demand generated per job	53%
Potential market supply of affordable units	29%
Gap	24%

AFFORDABILITY OF CURRENT HOUSING STOCK

Rental Units

While recent trends demonstrate that new construction is increasingly unaffordable, there are still thousands of existing housing units in Portland that are affordable due to condition, size, turnover and other factors. Thanks to a special Census tabulation prepared by HUD, the chart below outlines the income of households who were living in these affordable units in 2011. In 2011, the HUD Area Median Family Income (HAMFI) for the Portland area was \$72,300. HUD's basic affordability assumption is that rent should consume no more than 30% of a household's gross income.

There are several important issues left answered by the data. Because respondents to the households are the renters themselves and not the landlords, it is impossible to determine the following: 1) which units are located in a housing project where rents are subsidized; 2) whether the rent reported is the actual rent charged to the tenant or the rent paid by a tenant minus a Section 8 voucher; and 3) what the rent would be if the unit were available to the marketplace. For example, certain housing units might be rented by family members of the landlord, who would charge a higher rent to the general public. Also, many landlords purposefully keep rents low for longtime tenants in order to avoid turnover. Turnover often commands higher rents, particularly if renovations occur during the vacancy.

Of the city's 17,585 rental units, 90%, or 15,800, are offered at rents affordable to households earning up to 80% of the region's median income. At first glance, these numbers seem to indicate that there is no affordable housing problem in the rental market. The reality, however, is that there is a mismatch between income and availability because renters do not seek to maximize their incomes on rent. While many households seek to buy "more house" than they need, renters tend to seek out the best bargain for their preferred location and/or the smallest unit that they can squeeze into. Some renters want to spend as little as possible so that they can save money for a home. Other renters may not compete well for housing in the private market against higher income renters with more stable jobs, incomes, and credit ratings. Another problem is size. Virtually half of the city's affordable rental units are studios, efficiencies, and one-bedroom apartments. Families are hard pressed to find large units at rents they can afford.

Rent Affordable to Very Low Income Households Earning $\leq 30\%$ of Median Income - These are units with a gross rent affordable to households at or below 30% HAMFI. Of the 3,390 rental units offered at this rent level, 92% are occupied by households earning up to 100% HAMFI. Judging by the vacancy rate, competition is stiffest for units with three or more bedrooms.

Rent Affordable to Low Income Households Earning >30 to $\leq 50\%$ of Median Income - These are units with a gross rent affordable to households earning 30% to 50% of HAMFI. Of the 2,490 rental units offered at this level, 86% are occupied by households earning up to 100% HAMFI. Judging by the vacancy rate of 0%, competition is stiffest for units with three or more bedrooms.

Rent Affordable to Moderate Income Households Earning >50 to $\leq 80\%$ of Median Income - These are units with a gross rent affordable to households earning 50% to 80% of HAMFI. Of the 9,145 rental units offered at this price range, 74% are occupied by households earning up to 100% of HAMFI. Vacancy is tightest in this price range.

Rent Affordable to Households Earning $>80\%$ of Median Income - These are units with a gross rent affordable to households with incomes above 80% of HAMFI. Of the 1,790 units offered at this rent level, 47% are occupied by households earning up to 100% of HAMFI. At 12.1%, the vacancy rate is highest amongst 3-bedroom units.

Name of Jurisdiction: Portland, Maine		Source of Data: 2007-2011 CHAS databook			
Rental Units by Affordability		Rental Units by # of bedrooms			
		0-1	2	3+	Total
Units with gross rent affordable to a household earning 30% HAMFI					
Household income 30% or less		1,320	480	425	2,225
Household income 30.1%-50%		365	100	205	670
Household income 50.1%-80%		80	65	60	205
Household income 80.1%-100%		15	0	0	15
Household income over 100%		10	10	95	110
Total occupied units		1,790	655	785	3,225
Vacant for Rent		80	60	25	165
Vacancy Rate		4.3%	8.4%	3.1%	4.9%
Units with gross rent affordable to 50% HAMFI					
Household income 30% or less		470	155	75	700
Household income 30.1%-50%		350	385	150	885
Household income 50.1%-80%		300	305	80	680
Household income 80.1%-100%		165	55	0	225
Household income over 100%		85	170	45	295
Total occupied units		1,370	1,070	350	2,790
Vacant for Rent		90	25	0	115
Vacancy Rate		6.2%	2.3%	0.0%	4.0%
Units with gross rent affordable to 80% HAMFI					
Household income 30% or less		1,270	695	410	2,375
Household income 30.1%-50%		660	600	115	1,375
Household income 50.1%-80%		915	945	310	2,165
Household income 80.1%-100%		530	405	220	1,155
Household income over 100%		720	920	435	2,075
Total occupied units		4,095	3,565	1,490	9,145
Vacant for Rent		170	135	55	360
Vacancy Rate		4.0%	3.6%	3.6%	3.8%
Units with gross rent affordable to household earning over 80% HAMFI					
Household income 30% or less		85	120	25	230
Household income 30.1%-50%		50	45	70	170
Household income 50.1%-80%		75	140	50	265
Household income 80.1%-100%		80	70	35	185
Household income over 100%		190	280	330	800
Total occupied units		480	655	510	1,650
Vacant for Rent		25	50	70	140
Vacancy Rate		5.0%	7.1%	12.1%	7.8%
Total Occupied		7,735	5,945	3,135	16,805
Number vacant for rent		365	270	150	780
Vacancy Rate		4.5%	4.3%	4.6%	4.4%
Units affordable to households earning up to 80% of AMI		7,595	5,510	2,705	15,800
Percent of housing stock that is affordable		94%	89%	82%	90%

Home Ownership Units

In 2011, 66% of existing homes, or 6,895 units, were affordable to households earning 100% of the region's median household income. Thanks to a special tabulation of the American Community Survey, the chart on the next page illustrates the income of households who were living in these affordable units in 2011.

The data should be used with caution. Unlike rents which can rise and fall with the economy, most homeowners lock themselves into a 30-year mortgage with a fixed interest rate. Except for fluctuations in taxes and insurance, they make the same monthly mortgage for the life of the loan. The Census asks homeowners to estimate what they think their home is worth. Some homeowners may consult their tax bill while others find out the selling prices earned by neighbors. Still others simply make a guess. Because this value does not necessarily align with the price the home would sell for if it was listed on the market, it is substantially different from the market data used earlier in this report, which was provided by Maine Housing and the City Assessor based on actual sales of new and existing homes. While it may be unreliable, particularly in light of the boom and bust of the housing market, it is the best source of data for determining who lives in the region's affordable ownership stock, including condominiums, ranches, capes and bungalows. Mobile homes, boats, and recreational vehicles are not included in the data.

Another caution is that the data is not indicative of cost burden. For example, in 2011, there were 555 homes with a value affordable to households earning over 100% of median income that were occupied by households earning 50% or less of median income. This does not mean that the home is unaffordable to them. Certainly a large percentage of homeowners have owned their homes for a very long time: while initially the mortgage payment may have been more than 30% of their income, as wages rise, mortgage payments gradually decline as a percentage of household income. Some low income owners, such as senior citizens, have paid off their mortgage completely, leaving them "house-rich" but "cash-poor."

To determine the maximum home value affordable to households by income, HUD utilized a series of assumptions: a 31% monthly payment standard, a 4.5% down payment, a 5.5% interest rate, a 1.75% upfront insurance premium, a .55% annual insurance premium, and 2% for annual taxes and insurance. Based on these assumptions, HUD's estimated value to income ratio for an affordable home is 3.36, i.e., a household can afford a home costing no more than 3.36 times its income. In 2011, the HUD Area Median Family Income (HAMFI) for the Portland area was \$72,300. A household earning this median income could afford a home price up to \$242,928, which is 22% than Maine Housing's estimate for the same base year. The reason for this discrepancy is a different definition of median income. HAMFI, the reference point for the HUD data, is scaled to a family of four. Maine Housing's estimate, however, encompasses for all households, including single people living alone. Thus, while the HAMFI for the Portland area was \$72,300, Maine Housing's estimate for the same year was \$54,944, and for the American Community Survey, it was \$57,267.

Value Affordable to Low Income Households Earning 50% of Median Income – The value of these homes are less than or equal to the maximum amount that would be affordable to a household earning 50% of median family income, or \$36,150. Under HUD's financing assumptions, such a family could afford a home of no more than \$122,000. There were 540 occupied units with a value in this range: 75% were occupied by households earning 100% or less of median income. There were 100 vacant homes at this value accounting for a vacancy rate of 15.6%. Such a high rate is indicative of foreclosure and/or deferred maintenance.

Value Affordable to Moderate Income Households 80% of Median Income - A household earning 50.1-80% HAMFI, or \$36,151-\$57,840, could afford a home of \$122,000-\$194,000. There were 3,080 occupied units with a value in this range: 54% were occupied by households earning up to 100% HAMFI. While homes in this price range might be small, suffer from deferred maintenance, and/or be located in high traffic areas, the tight vacancy rate of 0.5% indicates they are in high demand.

Value Affordable to Households Earning 100% of Median Income - A household earning 80.1%-100% of median income, or \$57,841-\$72,300, could afford a home of \$194,000-\$243,000. There were 3,125 occupied units with a

value in this range: 39% were occupied by households earning up to 100% HAMFI. These homes might in good condition and in desirable neighborhoods, but lack high value amenities, such as a water view, two-car garage, and/or historic character. Vacancy is lowest among homes with 0-2 bedrooms.

Value Affordable to Households Earning over 100% of Median Income – These homes, worth over \$243,000, exceed affordability for a household earning 100% of HAMFI, or \$72,300. There are 7,005 occupied units with a value in this range: 28% are occupied by households earning up to 100% HAMFI. At 3.9%, the vacancy rate is highest among homes with 0-1 bedrooms, which are probably condominiums.

Name of Jurisdiction: Portland, Maine					Source of Data: 2007-2011 CHAS databook				
Homes by Affordability					With a mortgage		Without a mortgage		
Occupancy by Income					Homes by # of bedrooms		Homes by # of bedrooms		
	0-1	2	3+	Total	0-1	2	3+	Total	Total
Units with a value less than \$122,000 (affordable to a household earning 50% area median family income)									
Household income 30% or less	0	15	4	20	0	10	40	55	75
Household income 30.1%-50%	0	0	35	35	0	20	20	40	75
Household income 50.1%-80%	0	10	55	65	0	25	50	75	140
Household income 80.1%-100%	0	10	90	100	0	0	15	15	115
Household income over 100%	0	0	80	80	0	0	50	50	130
Total occupied units	0	35	264	305	0	55	175	235	540
Vacant for Sale	25	45	25	100					
Vacancy Rate	100.0%	33.3%	5.4%	15.6%					
Units worth \$122,000-\$194,000 (affordable to a household earning 50.1-80% of area median family income)									
Household income 30% or less	0	95	25	120	0	0	55	55	175
Household income 30.1%-50%	0	50	115	165	10	100	50	160	325
Household income 50.1%-80%	20	105	245	370	0	115	190	300	670
Household income 80.1%-100%	0	175	235	405	0	40	65	110	515
Household income over 100%	40	250	810	1,100	0	65	225	290	1,390
Total occupied units	60	675	1,430	2,165	10	320	585	915	3,080
Vacant for Sale	0	15	0	15					
Vacancy Rate	0.0%	1.5%	0.0%	0.5%					
Units worth \$194,000-\$243,000 (affordable to a household earning 80.1-100% of area median family income)									
Household income 30% or less	0	10	105	115	10	10	50	70	185
Household income 30.1%-50%	25	0	75	100	0	0	70	70	170
Household income 50.1%-80%	0	125	320	440	0	4	75	80	520
Household income 80.1%-100%	0	40	135	175	0	65	110	170	345
Household income over 100%	45	250	1,390	1,685	0	35	180	215	1,900
Total occupied units	70	425	2,025	2,520	10	114	485	605	3,125
Vacant for Sale	0	0	35	35					
Vacancy Rate	0.0%	0.0%	1.4%	1.1%					
Units worth over \$243,000 (affordable to a household earning over 100% of area median family income)									
Household income 30% or less	30	70	25	130	30	60	25	115	245
Household income 30.1%-50%	60	20	75	155	0	70	85	155	310
Household income 50.1%-80%	115	295	215	620	15	90	170	280	900
Household income 80.1%-100%	30	125	190	350	0	50	90	140	490
Household income over 100%	125	1,100	2,730	3,960	85	335	680	1,100	5,060
Total occupied units	360	1,610	3,235	5,215	130	605	1,050	1,790	7,005
Vacant for Sale	20	0	35	55					
Vacancy Rate	3.9%	0.0%	0.8%	0.8%					
Total Occupied	490	2,745	6,954	10,200	150	1,094	2,295	3,545	13,745
Number vacant for sale	45	60	95	205					
Vacancy Rate	6.6%	1.5%	1.0%	1.5%					
Units affordable to households up to 100% of AMI	175	1,684	5,024	6,895					
Percent of housing stock that is affordable	33%	60%	71%	66%					

TOOLS TO INCREASE HOUSING AFFORDABILITY

The Great Recession of 2008 ushered in a market correction that has increased the affordability of Portland's existing housing stock. At the same time, however, the recovery, has generated a certain bullishness to create new housing at the high end of the market. Without incentive or control, new construction remains out of reach of the middle class. The following tools may inform the development of policy to balance access to the newest housing boom.

Density Bonus: This tool grants an increase in the number of units allowed by right in order to provide an incentive for the construction of affordable housing. While the incentive can work as a stand alone tool, it is typically incorporated into a contract zone, overlay district, or cluster subdivision. A model ordinance developed by the American Planning Association posits 20% as a reasonable target for affordable housing. The Town of Brunswick, Maine has incorporated a density bonus into their zoning ordinance, complemented by a provision for the reduction of fees, including building permits, stormwater, solid waste, recreation and traffic impacts.

<https://www.planning.org/research/smartgrowth/pdf/section44.pdf>

<http://www.brunswickme.org/wp-content/uploads/2012/04/Web.Version.Zoning.Ordinance.pdf>

Inclusionary Zoning: This tool requires that a certain percentage of units in a new development be set aside as affordable, with or without an increase in density. Inclusionary zoning is widely used by cities throughout the states of California, Massachusetts, New Jersey, Virginia, and Maryland. In Burlington, Vermont, the mandatory set-aside ranges from 15%-25%, depending on the market price of the rest of the units. The Town of Cape Elizabeth, Maine requires that 10% of the units in a subdivision be set aside for moderate income households, or 5% for low income.

http://www.nhc.org/media/documents/IZ_lessons_in_MA.pdf

<http://www.burlingtonvt.gov/CEDO/Inclusionary-Zoning>

http://www.capeelizabeth.com/government/rules_regs/ordinances/zoning/zoning.pdf

Reduction in Parking: This tool reduces the number of parking spaces that must be constructed to support each housing unit. Eliminating the typical suburban requirement of two spaces per unit can not only slash housing construction costs by 25%, but free up land that can be used to increase density. Concentrating homes, jobs, services, and stores increases the likelihood that people will walk, bike or take the bus to get from one place to another. On the Portland peninsula for example, 77% of households own just 0-1 vehicles, compared with 43% in the U.S. as a whole. The City of Portland, Oregon has reduced or eliminated parking requirements for new development based on the proximity of transit services.

<http://www.vtpi.org/park-hou.pdf>

<http://www.portlandonline.com/shared/cfm/image.cfm?id=53320>

Rent control: This tool establishes a ceiling on rent increases permitted in the public and private rental market. Los Angeles, San Francisco, New York City, and Cambridge, Massachusetts have previously adopted rent control policies. While rent control can act as a temporary "breather" from soaring prices, it has the potential to create housing shortages in the long run by discouraging new construction.

<http://www.nycrgb.org/html/resources/faq/rentcontrol.html>

Do Nothing: At first glance, the construction of luxury housing in any downtown would be considered a boon, not a burden. In the long run, however, neighboring property owners will follow suit, running up sales prices and rents unsustained by real growth in wages, incomes, jobs, or property improvements. For workers, the consequence is longer commutes from suburbs and rural areas. Others will establish themselves in less expensive urban markets, such as Biddeford, Lewiston, Gardiner, and Bath. Absent a correction by regulation or the market, these forces

could take shape, first as a collection of individual choices which then swell into an undeniable movement. And they did happen during the 2000's.

CONCLUSION

Portland's vitality depends on the availability of a diverse array of housing options, particularly apartments, which are often the first and only choice for working professionals, immigrants, and families. Over the last five years, a number of trends have solidified:

- 62% of Portland households earn less than the county's median income, including 38% of homeowners and 81% of renters. Over the last decade, the number of households earning less than median income has increased 10%.
- The Great Recession of 2008 was a market correction that increased the affordability of existing housing -- by giving wages a chance to catch up while stalling home sales and rents.
- Current housing production is not meeting the needs of households earning 80%-100% of median income. If recent trends continue, there will be a gap between supply and demand of workforce housing units ranging from 24%-33%.
- While the Portland housing market contains units in a variety of price ranges, the reality is that those with higher incomes, stable jobs, and good credit ratings are in a better position to compete for affordable units that are subsidized and unsubsidized. This creates a glut of affordable units at the low end of the range that may be in rough condition, with deferred maintenance issues.
- The rental market is extremely tight for 3-bedroom units that can accommodate working families.
- Based on the vacancy rate, the inventory of one-bedroom condos targeting households earning over the median income is reaching a point of saturation.

Well into the recovery, the region is on the pathway to another boom marked by a rise in new construction, low vacancy rates, and increasing rents and home prices. But the recovery also represents an opportunity for balance. By increasing the diversity of housing through incentive and regulation, the region can forestall the possibility of another crash due to soaring prices unsustained by real job growth. Trend or choice? It is up to us.

ATTACHMENT C: SLIDESHOW FROM FEBRUARY HOUSING FORUM



City of Portland Public Forum on Housing Production and Affordability

Sponsored by the City Council's
Housing and Community Development Committee
February 25, 2015

Terminology

- “Low Income Housing”: Housing, of any sort, for rent or to own, that is affordable to households at 80% of area median income or below (about \$60,000 for a family of four.)
- “Workforce Housing”: Housing, of any sort, for rent or to own, that is affordable to households at 100% of area median income (about \$75,000 for a family of four)
- “Affordable”: Paying 30% or less of your income on housing costs (rent or mortgage payments, insurance, taxes, etc.)
- “Deed Restricted”: The housing is not just affordable by chance, but by a written requirement that residents meet those restrictions. That restriction may last 20+ years or be in perpetuity.

2002 Housing Plan

- Approved by City Council in 2002 as part of the City's Comprehensive Plan
- Called for five key policies:
 1. *Adequate and diverse supply of housing for all*
 2. *Preserving a quality housing stock*
 3. *Building on neighborhood stability and integrity*
 4. *Housing as a regional issue*
 5. *Sustainable development*
 6. *Freedom of choice*
- Set goal of keeping Portland's population at 25% of County
- Called for Housing Replacement Ordinance
- Set goal of 20% of new units to be affordable at 80% AMI
- Set goal of 200 new affordable home-ownership units, most for families

Housing: Sustaining Portland's Future



Housing Component of the Comprehensive Plan
City of Portland, Maine

Prepared by: Housing Comprehensive Plan Committee
Co-Chairs: Councilor Nicholas Mavodones and
Councilor Nathan Smith

Adopted November 18, 2002

India Street Process

- India Street Sustainable Neighborhood Plan process had a working group on housing and equity
- Initially was recommending a requirement that part of all new larger developments in the neighborhood be affordable
- Decided that the requirement should be City-wide so as to not discourage investment in the district
- Prepared a draft ordinance
- Housing affordability is a goal of the draft plan

2030 Workforce Housing Demand

- GPCOG Study completed January 2015
 - 62% of Portland households earn less than the county's median income (38% of homeowners and 81% of renters) which is a 10% increase over last decade
 - 2010-2014 – 1,130 housing units permitted and/or built; only 29% were affordable to household earning median income.
 - There is a predicted gap in affordable housing production of between 24-33%. In other words, the production rate should roughly double

2030 Workforce Housing Demand

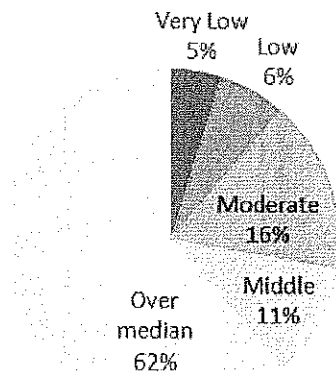
Prepared by Greater Portland Council of Governments January 2015

Less than 30% AMI = *Very low income*

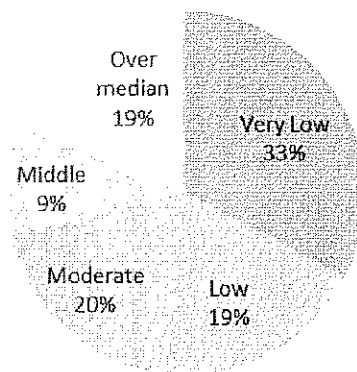
30%-50% AMI = *Low income*

50%-80% AMI = *Moderate income*

Income of Portland Homeowners (2011)



Income of Portland Renters (2011)



2030 Workforce Housing Demand

Why do anything?

- 62% of Portland households earn less than the county's median income(38% of homeowners & 81% of renters). Over the last decade, the number of households earning less than median income has increased 10%.
- The Great Recession of 2008 was a market correction that increased the affordability of existing housing – by giving wages a chance to catch up while stalling home sales and rents.
- Current housing production is not meeting the needs of households earning 80%-100% of median income. If recent trends continue, there will be a gap between supply and demand of workforce housing units ranging from 24%-33%.

2030 Workforce Housing Demand

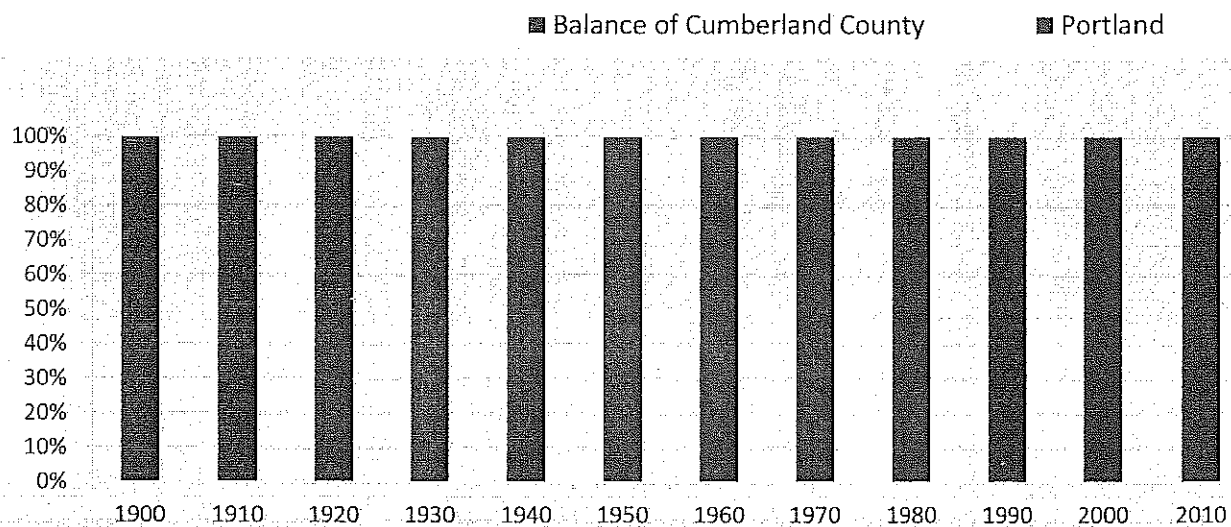
- While the Portland housing market contains units in a variety of price ranges, the reality is that those with higher incomes, stable jobs, and good credit ratings are in a better position to compete for affordable units that are subsidized and unsubsidized. This creates a glut of affordable units at the low end of the range that may be in rough condition, with deferred maintenance issues.
- The rental market is extremely tight for 3-bedroom units that can accommodate working families.
- Based on the vacancy rate, the inventory of one-bedroom condos targeting households earning over the median income is reaching a point of saturation.

MEREDA 2015 ANNUAL REAL ESTATE FORECAST CONFERENCE

- “A higher end rental market expands and spurs investment”
- Rents up 8-12% this year, predicted another 5% next year
- Sales prices in Portland up 19% since 2009
- **Market Rate/mo**
 - ✓ Studio: \$750 - \$800 (Federal Fair Market: \$739)
 - ✓ 1 Bd: \$925 - \$1,000 (Federal Fair Market: \$880)
 - ✓ 2 Bd: \$1,100 – 1,400 (Federal Fair Market: \$1,087)
 - ✓ 3 Bd: \$1,400 – 1,600 (Federal Fair Market: \$1,405)

PORTLAND'S GROWTH

- 500 units of housing permitted in past two years
- Not quite meeting the 20% of county growth goal but doing OK



The housing production rate south of I-295 is higher than that north of I-295.

	Peninsula	Off-Peninsula	Island	Total
Affordable	320	16	0	336
Market Rate	675	108	11	794
Total	995	124	11	1130

Source: Greater Portland Council of Governments

WHAT ARE OUR EXISTING CITY ORDINANCES?

Housing Replacement Ordinance

Section 14-483 City Code of Ordinances

Primary source of capitalization for the Housing Trust Fund.

Currently at \$64,700 per unit removed from the market and not replaced

Density Bonus

Section 14-484 City Code of Ordinances

Allows up to a 25% bonus in density for affordable housing developments.

WHAT ARE OUR EXISTING CITY PROGRAMS?

FINANCIAL SUPPORT:

U.S. Dept. of HUD- CDBG and HOME – affordable at or below 80% AMI

Since 2000 the City has invested \$8.8 million of HUD funding to assist in the creation of over 800 units almost 700 of which are affordable at 50% to 80% of AMI

City's Housing Trust Fund – affordable at or below 120% AMI currently funded through the Housing Replacement Ordinance

Since 2002 the fund has received approximately \$1 million and expended \$455,585 (Avesta's Oak Street Lofts – 37 efficiency units; two pre-development grants to create Housing First units)

Current balance is approximately \$640,000

How would increased density incentives and new requirements work together?

Changes to density of housing development allowed in key zoning districts. B-2 zone (approved by Council,) R-6 zone (before the Planning Board,) other business zones such as the B-6 zone.

Limited density bonus changes for workforce and affordable housing. The existing language amended to include all deed-restricted units at less than 120% of AMI. consider increasing the density bonuses - existing bonuses at (25%)

Inclusionary Zoning focused on 80-120% AMI Production. Increased densities alone will not address the need to increase development of low, moderate and average-income housing by 24-33%. If such a requirement had been in place over the past 10 years, 77 units of workforce housing would have been produced, in addition to \$630,000 for the Housing Trust.

Examples of Inclusionary Zoning in other places

500 municipalities have requirements in more than half the states and DC

Sample Inclusionary Zoning Requirements from other Cities in the US

CITY	Year Enacted (est.)	Requirement	Units Produced	Target Incomes	Notes
Arlington, MA		15% of units			
Belmont, MA		10-15%, no minimum units			
Boulder, CO		20%, no minimum units		60% AMI	
Brookline, MA	1998	15% of 6 or more units and 15% of all bedrooms		80-100% AMI	Cash out up to 15 units
Burlington, VT		25% of 6 or more units			
Cambridge, MA	1998	15% of 10 or more units	450	65% AMI	30% density bonus
Cape Elizabeth, ME		5% (low)-10% (moderate income) of 5 or more units		Below 80% AMI	Also includes Accessory Dwelling Unit language
Carlsbad, CA	1994	15% of 7 units or more	1246	Below 80% AMI	
Emeryville, CA	1990	10-20% of 30 or more units			
Fairfax County, VA	1992	Over 20 Units	2448	"Affordable"	
Lincoln, RI	2006	20% of over 5 units		80% AMI	Given density bonus
Montgomery County, MD	1976	Over 50 Units	13000	"Moderate"	
Newton, MA		15% of units			
Petaluma, CA	1984	15% of 3 units or more	1157		
Pittsburg, CA	2004	6-20% of 5 units or more	11	Below 100% AMI	
Santa Fe, NM	2006	15% of 25 units or more		Up to 120% AMI	City provides up to \$10,000 subsidy per unit
Tallahassee, FL	2004	10% of 50 or more units		70-100% AMI	
Waltham, MA		5% (if given to WHA) or 10%			
Washington, DC	2006	8-10%		50-80% AMI	
Watertown, MA		12.5% of 5 or more units		80% AMI	Rounds up to next full unit

These cities' requirements allow for a cash out or density bonus, which are common incentives used to encourage inclusionary zoning from the developer.

Some of these ordinances allow for a full site provision of affordable units.

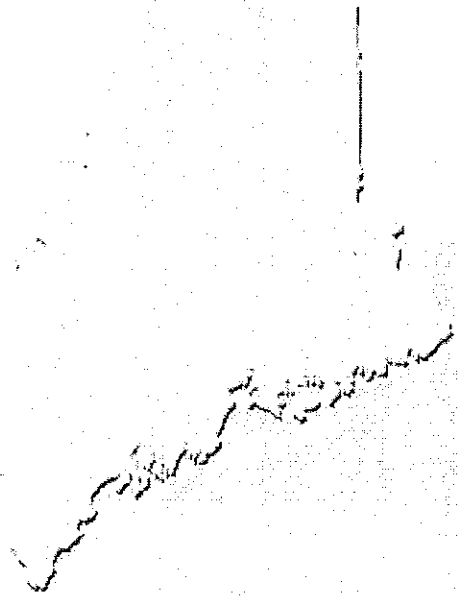
Inclusionary Zoning focused on 80-120% AMI Production.

	OPTION 1	OPTION 2	
# of Units	Required Affordable Unit	In-Lieu Fees	Incremental Unit Fee %
10	1	100%	n/a
11	1 + Incremental Fee	100% + Incremental Fee	10%
12	1 + Incremental Fee	100% + Incremental Fee	20%
13	1 + Incremental Fee	100% + Incremental Fee	30%
14	1 + Incremental Fee	100% + Incremental Fee	40%
15	1 + Incremental Fee	100% + Incremental Fee	50%
16	1 + Incremental Fee	100% + Incremental Fee	60%
17	1 + Incremental Fee	100% + Incremental Fee	70%
18	1 + Incremental Fee	100% + Incremental Fee	80%
19	1 + Incremental Fee	100% + Incremental Fee	90%
20	2	n/a	n/a
21+	2 + Incremental Fee	n/a	10%
30	3	n/a	n/a
31+	3 + Incremental Fee	n/a	10%
40	4	n/a	n/a
41+	4 + Incremental Fee	n/a	10%

Fee in lieu = number of required affordable units not provided multiplied by \$100,000

What are other communities in Maine doing?

- Cape Elizabeth is the only community in Maine with a mandatory inclusionary zoning requirement.
- Many communities have incentive based ordinances similar to those currently existing in Portland.



Effectiveness of Tools

- Density bonuses have some effectiveness in some circumstances. In Massachusetts and New Jersey, state level affordable housing requirements can trump local zoning.
- While economic arguments against inclusionary zoning suggest that it reduces housing production and/or increases market rate housing costs, most studies suggest there is either no such effect or that the effect is very modest

TWO PRONGED APPROACH RECOMMENDED

ENCOURAGE HOUSING DEVELOPMENT
BY REMOVING BARRIERS TO
TRADITIONAL URBAN HOUSING TYPES

ENSURE INCLUSION OF WORKFORCE
HOUSING IN SIGNIFICANT PROJECTS

Under Way or Completed

- *R-6 Changes*
- *B-1 Changes*
- *B-2 Changes*

Additional Tasks

- *Looking at current accessory dwelling units and how we view "abandoned" residential space*
- *Density Bonuses*
- *Examining other zoning districts*
- *Remove regulatory barriers through ordinance streamlining*

Inclusionary Zoning - "10/10/100"

- *Start a requirement at a development of 10 units or more*
- *Require that 10% of units be workforce or affordable housing*
- *The required portion would be affordable at 100% of median income, and possibly eligible for funding if below 80%*
- *Cash-out (to the Housing Trust) and off-site provisions (within the same neighborhood) for many developments*

QUESTIONS? COMMENTS?

ATTACHMENT D: WRITTEN PUBLIC COMMENT

Jennifer Munson - Public Comment on Inclusionary Zoning Provisions

From: Todd Alexander <TAlexander@RenewalHousing.com>
To: Jeff Levine <JLEVINE@portlandmaine.gov>
Date: 5/13/2015 10:32 AM
Subject: Public Comment on Inclusionary Zoning Provisions
CC: Mary Davis <mpd@portlandmaine.gov>, Alex Jaegerman <AQJ@portlandmaine.go...

Hi Jeff:

I am submitting this email in response to the proposed changes to the City's Zoning Ordinance, Division 30 – Affordable Housing that the Planning Board will consider at its May 19th meeting. By way of background, I am a Portland resident and have been working as an affordable housing developer since 2003. My comments are focused specifically on for-sale housing developments involving more than 10 units and the impact of deed restrictions on the marketability of a housing unit.

Long-term deed restrictions have proven to work well on rental projects; units with restrictive covenants benefit current and future renters by ensuring that some portion of a market's housing stock will be available at rents that are affordable to low and moderate income households. However, when applied to a home ownership, a restrictive covenant can generate a number of unintended consequences; it a) reduces the value of the housing unit versus comparable unrestricted units that otherwise might have the same market value, b) generates re-sale risk for the buyer and c) limits the amount of equity an owner may realize in their home.

All of these factors taken collectively can discourage the buyers the policy is intended to serve and, in turn, dissuade developers from pursuing the projects the city is trying to encourage. It appears that staff recognizes this issue and has attempted to deal with it in the definition section under "Workforce Housing Unit for Sale". My concern is that the proposed language may add complexity, uncertainty and risk for buyers and developers. Affordable for-sale housing projects are the most challenging type of housing to bring to market, and it would be unfortunate if a well-intended policy made these projects more difficult. I have two suggestions:

1. Limit the term of the deed restrictions to 10 years from the date the project is placed in service. This provides a homebuyer/homeowner some level of certainty regarding the issues described above. Over time, this change will result in for-sale housing units transitioning out of the city's affordable housing stock, but new affordable units will continue to come on line through new developments – and that ebb and flow can be healthy for both the city's overall housing market and middle income homeowners/buyers of these units. The state recognized this issue when crafting the Affordable Housing TIF program and addressed it by limiting deed restrictions for affordable for-sale units to 10 years.
2. Projects that provide a percentage of affordable units that exceeds a higher threshold – for example, 50% of the project – are exempt from recording any restrictive covenant on the affordable units after initial sale. The definition of an affordable for-sale units is 120% AMI—which for certain housing types in certain locations, may be close to the true market value of the housing unit. For example, the value/sales price of a new 1-bedroom condo in East Bayside might currently meet the city's definition of affordable. If a housing developer proposes a 10-unit project in East Bayside and prices 100% of the units at or below 120% AMI, it seems unreasonable that he/she should be burdened with a deed restriction on one unit the same as a 10-unit high-end condo development on the top of Munjoy Hill. This provision would eliminate a back-door punishment applied to projects that are otherwise delivering the type of housing units that the city is encouraging—and, it will provide an added incentive to provide a higher percentage of affordable units. Perhaps, this provision could be coupled with 'bonus' density boost – *if 50% of the units are affordable, then the project is exempt from any restrictive covenants AND it is eligible for 33% density boost.*

Thank you in advance for considering these suggestions.

Respectfully,
 Todd

Todd M. Alexander
Renewal Housing Associates, LLC | Leon N. Weiner & Associates, Inc.
p. 207 347-3018
c. 207 749-7257

From: Henry Barbaro <hbarbaro1@yahoo.com>
To: <tnn@portlandmaine.gov>
Date: 9/15/2015 5:49 PM
Subject: Changes to the Accessory Dwelling Unit for IR-1 and IR-2

Henry L. Barbaro
23 Woodman Street
Boston, MA 02130

September 15, 2015

Re: Changes to the Accessory Dwelling Unit (ADU) language for IR-1 and IR-2

Dear Members of the Portland Planning Board:

My name is Henry Barbaro and I own a summer cottage on Peaks Island at 114 New Island Ave. My primary concern with the proposed zoning change (cited above) is that it could increase the potential for a house to be wedged into what once was open space between two existing houses, thereby creating a dwelling unit density that is not in character with neighborhood.

I understand the intent of this "inclusionary" zoning change. However, there can be unintended consequences with these changes, which includes new units not being rented for "workforce housing." Indeed, other parts of the proposed rules could prove to be unenforceable (e.g., rented on an annual basis).

Also, the existing language may be unclear (e.g., (a)1.f – the principal dwelling shall be occupied by the owner). Does this allow the principal unit to be occupied seasonally, or is someone expected to live there year-round.

In order to prevent a situation where a new occupant(s) encroaches on other properties, the new rules should include provisions for separate and distinct means of access from the frontage road (of the principal structure). The rules also should address parking, as well as a maximum number of occupants to the accessory dwelling.

It should be clearly stated that the main existing unit is the basis for the ADU, and not that the "new" unit can become the ADU. Otherwise, this could drastically change the character of the existing lot and adversely impact the neighbors' property.

This change to the ADU zoning rules has the potential to adversely affect the quality of life for certain neighbors on Peaks Island. Although inclusionary" zoning has beneficial elements, all-too-often allowing denser housing development, based on the premise of creating "affordable" units, can cause problems for the abutting homeowners.

Thank you for your consideration.

Sincerely,

Henry L. Barbaro
Hbarbaro1@yahoo.com

Tyler Norod - Proposed development at York & High Streets; increase in max building height from 45' to 65'

From: Malinda Lawrence <malindalawrence@gmail.com>
To: <kjdonoghue@portlandmaine.gov>, <damarshall@portlandmaine.gov>, <jduson@...>
Date: 9/20/2015 9:54 AM
Subject: Proposed development at York & High Streets; increase in max building height from 45' to 65'

Dear Councilmembers:

I recently became aware of a proposal to construct a mixed use development at the corner of York and High Streets, and a corresponding proposal to increase the maximum permitted building height from 45' to 65'. I greatly appreciate the City of Portland's diligence in communicating with potentially-impacted property owners about such proposals, and being allowed an opportunity to comment.

I have owned my home on High Street and been a responsible local taxpayer for 10 years, and love and value both my home and the neighborhood.

While I support conscientious, well-planned mixed use development that will contribute to the local community, create more affordable housing, etcetera, I did want to express my opposition to any proposal to increase the current maximum building height limitation from 45' to 65'. I believe that the current 45-foot maximum building height limitation is a sound one that the City government probably arrived at for good reason, after careful consideration. I think that it serves the topography, geography, and neighborhood character well by allowing additional development, new small businesses, additional housing, etcetera but without *negatively* impacting the immediate neighborhood by concentrating too much growth and use in an already fairly concentrated area.

High Street is already a very busy thoroughfare, with a large volume of fast-moving traffic, and associated noise, risks to pedestrians and pets, etc. I urge caution in approving proposals sufficiently large as to exacerbate those effects. It has been my observation that the new parking associated with recent developments in our area do not ever adequately absorb the associated increase in vehicle traffic and need for additional parking.

Most important to me, a 65' high building will substantially diminish the view of the city, harbor and Fore River waterfront that is, in my opinion, the heart and soul of what makes my home so special - whereas a 45' building would not. The purchase price, assessed value, and current market value of my home, which is also my only asset, all are based on/driven substantially by the view it affords. It seems unfair for the City of Portland to suddenly deprive me of the enjoyment of it, and to substantially diminish my property value, in order to arbitrarily increase the existing, reasonable height restriction. Increasing the height restriction will impact many local property owners, including many long-time residents and taxpayers, not just myself. It seems that this change would prioritize the interests of one property-owner developer over those of many local residents. It also seems that a building fitting within the current height restrictions would better balance and serve the interests of ALL of the local property owners collectively. A smaller building also would exacerbate the population, traffic and parking concentration issues in that immediate neighborhood less than would a taller, larger, building.

At any rate, primarily I did not want to leave the City Council with the impression that no one objected to the proposed increase in the maximum building height provision beyond 45-feet, as I very much do

object.

Thank you for your service to the City of Portland and your kind consideration of my comments.

Sincerely,
Malinda Lawrence
48 High Street, No. 2
Portland, Maine 04101
malindalawrence@gmail.com

Order 82-15/16
Tab 19 10.5-15

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE, ARTICLE III. ZONING
Re: Inclusionary Zoning**

**I. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*That Chapter 14, Article III, Sections 14-118, 14-145.3,
14-145.9, 14-332.2 and 14-484 to 14-488 of the Portland City
Code are hereby amended to read as follows:*

Sec. 14-118. Conditional uses.

The following uses shall be permitted only upon the
issuance of a conditional use permit, subject to the provisions
of section 14-474 (conditional uses) and any special provisions,
standards or requirements specified below:

(a) *Residential:*

1. *Reserved.*

| ...

5. ~~Alteration Use of a single-family dwelling space
existing as of September 3, 2008 on a
nonconforming lot to accommodate an accessory
additional dwelling units within and clearly
subordinate the principal structure provided
that under the following conditions:~~

a. ~~This section shall under no conditions
permit more than four dwelling units on a
lots and shall not allow more than two
additional dwelling unitis on a lot about
what would otherwise be permitted; The
accessory unit shall have a minimum floor
area of four hundred (400) square feet that~~

~~represents no more than thirty (30) percent of the gross floor area of the principal dwelling unit. Gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level and may include the attic if such space is habitable.~~

- b. Any units created under this section may not be sold as condominium units or otherwise separated from the ownership of at least one of the pre-existing units on the site. The principal dwelling unit shall be located on a lot of no less than four thousand (4,000) square feet and no more than six thousand (6,000) square feet;
- c. Any units created under this section must be "low-income housing units for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations. Either the accessory or principal dwelling unit shall be occupied by the owner of the lot, except for bona fide absences of a temporary nature;
- d. Parking shall be provided as required by Division 20 of this article. The additional units shall have a minimum floor area of four hundred (400) square feet and may not involve removing more than ten percent of the gross floor area of an existing dwelling unit into a new dwelling unit. Gross floor area shall exclude any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level and may include the attic if such space is habitable.
- e. There shall be no open, outside stairways or fire escapes above the ground floor; and Modifications to existing structures shall be minimal, and be limited to new doors, windows and other openings;

- f. Parking shall be provided as required by Division 20 of this article;
~~The project shall be subject to Article V for site plan review and approval and the following additional standards:~~
- ~~i. Any additions or exterior alterations such as façade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single family appearance of the building; and~~
 - ~~ii. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped properly to screen vehicles from adjacent properties and streets.~~
- g. There shall be no open, outside stairways or fire escapes above the ground floor; and
- h. The project shall be subject to Article V for site plan review and approval and the following additional standards:
- i. Any additions or exterior alterations such as façade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single family appearance of the building; and
 - ii. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped properly to screen vehicles from adjacent properties and streets.

...

Sec. 14-145.3. Conditional uses.

The following uses are permitted only upon the issuance of a conditional use permit, subject to the provisions of section

14-474 (conditional uses) of this article and any special provisions, standards or requirements specified below:

(a) *Residential:*

1. Accessory dwelling unit within and clearly subordinate to a principal single-family detached dwelling or legal multi-family dwelling, provided that:
 - a. The accessory unit shall be no more than thirty-five (35) percent of the gross habitable floor area of the building and shall have a minimum floor area of four hundred (400) square feet;
 - b. Lot area shall be seventy thousand (70,000) square feet in area, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;
 - c. There shall be no open outside stairways or fire escapes above the ground floor;
 - d. Any additions or exterior alterations such as facade materials, building form, roof pitch and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
 - e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
 - f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bonafide temporary absences; and

- g. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations; and
- h. For accessory units created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:
 - i. Shall remain under common ownership with the primary unit on the lot;
 - ii. Shall not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;
 - iii. Shall be rented as workforce housing unit for rent as per Division 30 and be subject to income verification as further outlined in implementing regulations;
 - iv. Shall be rented on an annual basis and may not be used for seasonal or weekly rentals; and
 - v. Shall be built within the principal building or as an attachment in accordance with subsection (d).

...

Sec. 14-145.9. Conditional uses.

The following uses are permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) of this article and any special provisions, standards or requirements specified below:

(a) Residential:

- 1. Accessory dwelling unit within and clearly subordinate to a principal single-family detached dwelling or legal multi-family dwelling provided that:

- a. The accessory unit shall be no more than thirty-five (35) percent of the gross floor area of the principal building and shall have a minimum floor area of four hundred (400) square feet;
- b. Lot area shall be thirty thousand (30,000) square feet in area, or on Peaks Island be an existing lawfully non-conforming lot as of May 1, 2015;
- c. There shall be no open outside stairways or fire escapes above the ground floor;
- d. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single-family appearance of the building. The exterior design of new construction including facade materials, building form, roof pitch and exterior doors shall have a single-family appearance;
- e. A lower level dwelling unit shall have a minimum two-thirds of its floor-to-ceiling height above the average adjoining ground level;
- f. Either the accessory unit or the principal dwelling shall be occupied by the owner of the lot on which the principal building is located, except for bona fide temporary absences; ~~and~~
- g. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with state and local regulations; ~~and-~~
- h. For accessory units created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:
 - i. Shall remain under common ownership with the primary unit on the lot;

- ii. Shall not be sold as condominium units or otherwise separated from the ownership of the pre-existing unit on the site;
- iii. Shall be rented as "workforce housing unit for rent" as per Division 30 and are subject to income verification as further outlined in implementing regulations;
- iv. Shall have city water and sewer;
- v. Shall be rented on an annual basis and may not be used for seasonal or weekly rentals; and
- vi. Shall be built within the principal building or as an attachment in accordance with subsection (d).

...

DIVISION 30. INCENTIVES FOR AFFORDABLE HOUSING

Sec.14-484. Purpose.

~~The city believes that~~ It is in the public interest to promote an adequate supply of affordable housing for ~~its~~ the city's residents. The purpose of this division therefore is to offer incentives to developers to include units of affordable housing within development projects, thereby mitigating the impact of market rate housing construction on the limited supply of available land for suitable housing, and helping to meet the housing needs of all economic groups within the city. The city believes that this division will assist in meeting the city's comprehensive goals for affordable housing, in the prevention of overcrowding and deterioration of the limited supply of affordable housing, and by doing so promote the health, safety and welfare of its citizens.

Sec. 14-485. Definitions.

Affordable means that the percentage of income a household is charged in rent and other housing expenses, or must pay in monthly mortgage payments (including insurance and taxes), does not exceed 30% of a household's income, or other amount established in city regulations that does not vary significantly from this amount.

Affordable-Low-income housing unit for rent means a dwelling unit for which:

- (a) The rent is affordable ~~to a household earning 80% or less of the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland county Maine for a household of that size~~ Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD); and
- (b) Annual rent increases for that unit are limited in perpetuity by deed restriction or other legally binding agreement to the percentage increase in the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland county Maine for a household of that size.

Affordable-Low-income housing unit for sale means a dwelling unit for which:

- (a) The sale price is affordable to a household earning ~~120~~80% or less of the U.S. Department of Hou7sing and Urban Development moderate-income figure for metropolitan Cumberland county Maine for a household ~~of that size~~ HUD AMI; and
- (b) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit to an amount that is affordable to a household earning 120% of the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland county Maine for a household of that size, as calculated for the year in which the sale takes place.

Development fees means:

- (a) The following fees, as described in this chapter: site plan review and inspection fees; subdivision review and inspection fees; and administrative fees; and
- (b) Construction and permit fees as described in chapter 6. "Development fees" does not include any fees charged for reviews conducted by a party other than the city.

Dwelling unit has the same meaning as that term is defined in section 14-47.

Eligible project means a development project:

- (a) That is permissible under the provisions of this chapter in the zone in which it is proposed;
- (b) That will be a multi-family dwelling ,as defined in section 14-47, and will not be located in an R-1 or R-2 zone;
- (c) Reserve; and
- (d) That creates new dwelling units, among which is at least one affordable housing unit for rent or sale, through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements. Affordable housing units for sale or rent may not differ in exterior design from other units within an eligible project.

Workforce housing unit for rent means a dwelling unit which:

- (a) Is affordable to a household earning less than 100% of HUD AMI; and
- (b) Annual rent increases for that unit are limited by deed restriction or other legally binding agreement to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Workforce housing unit for sale means a dwelling unit for which:

- (a) The purchase price is affordable to a household at 120% of HUD AMI; and
- (b) The resale price is limited by deed restriction or other legally binding agreement for all future sales of the unit, or a lesser term as permitted in regulations, to the percentage increase in the HUD Greater Portland Metropolitan Statistical Area median income figures for a household of that size.

Sec. 14-486. Reduction of fees and Priority Review.

Notwithstanding any other provision of this chapter or chapter 6 to the contrary, development fees shall be reduced by the city for an eligible project in the manner described in the following table:

<u>Percentage of new units that are affordable low-income or workforce units</u>	<u>Percentage discount of development fees</u>
5% up to but not including 10%	5% reduction
10% up to but not including 15%	10% reduction
15% up to but not including 20%	15% reduction
20% up to but not including 25%	20% reduction
25% or more	25% reduction

The planning division shall perform its review of an eligible project in as expedited a manner as is practical, without impairing the scope or thoroughness of the review. The planning division may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.

The planning board shall make its best efforts to give priority in scheduling workshops and public hearings related to any plans or applications required for an eligible project that are within the planning board's jurisdiction, without impairing the scope or thoroughness of its review. At the conclusion of these public meetings, the planning board shall promptly issue a

decision on all such plans and applications before it for consideration.

Sec. 14-487. Priority reviewEnsuring Workforce Housing.

~~The planning division shall perform its review of an eligible project in as expedited a manner as is practical, without impairing the scope or thoroughness of the review. The planning division may adopt administrative procedures to prioritize review of eligible projects and facilitate this expedited review.~~

~~— The planning board shall make its best efforts to give priority in scheduling workshops and public hearings related to any plans or applications required for an eligible project that are within the planning board's jurisdiction, without impairing the scope or thoroughness of its review. At the conclusion of these public meetings, the planning board shall promptly issue a decision on all such plans and applications before it for consideration.~~

(a). Purpose. Based on the city's Comprehensive Plan and the housing study completed in 2015, it is in the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. The purpose of this section is to ensure that housing developments over a certain size provide a portion of workforce housing units and, by doing so, promote the health, safety, and welfare of Portland citizens.

(b). Applicability/Conditional Use Requirement/Sunset. This division shall apply to development projects that create ten or more new dwelling units for rent or for sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements. This division shall not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to its effective date.

(c). All Developments of Ten Units or More Conditional Uses. Notwithstanding any language to the contrary in Chapter 14, all developments of ten units or more are conditional uses

subject to Planning Board review on the condition that they comply with the requirements of this section, 14-487.

This section 14-487 shall be in effect for six years following its passage, at which time the overall effectiveness of this section shall be assessed by city planning staff or their agent and either this expiration date shall be deleted or the entire section shall be removed from the Code of Ordinances.

(d) Workforce Housing Minimum. At least ten percent (10%) of the units in the project shall meet the definition of workforce housing unit for sale or for rent. The number of units required is rounded down to a whole number if providing units as per (e)2. below, or shall include a fractional value in cases where a project prefers to pay a fee-in-lieu as per (e)3. below.

(e). Standards.

1. Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, affordable units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.
2. Workforce units are encouraged to be integrated with the rest of the development, should use a common entrance and should provide no indications from common areas that these units are workforce housing units.
3. Workforce units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be 10 percent of the total number of bedrooms in the development. For the purposes of this section, for every 400 square feet in a market rate unit will count as a bedroom if the actual number of bedrooms in the unit is lower.
4. As an alternative to providing workforce housing units, projects may pay a fee in lieu of some or all of the units. In-lieu fees shall be paid into the Housing Trust Fund as defined in Sec. 14-489. The fee for affordable units not provided shall be \$100,000 per unit, adjusted annually in the

same way as the fee under Division 29 for Housing Replacement.

5. Workforce housing units for sale, if converted to workforce housing units for rent, shall become subject to the income limits and other requirements of such units.
6. If at least 33 percent of the units in a development are workforce units, the development is eligible for subsidy through an Affordable Housing TIF, subject to City Council approval.
7. The term of affordability for the required 10 percent workforce units provided shall be defined as follows:

<u>Percentage of Workforce Units Provided</u>	<u>Minimum Term of Affordability for Required Workforce Units</u>
<u>10%</u>	<u>Longest term permitted under federal, state and local laws and ordinances</u>
<u>25%</u>	<u>30 years</u>
<u>50%</u>	<u>20 years</u>
<u>100%</u>	<u>10 years</u>

(f). Implementing Regulations. Regulations to further specify the details of this section shall be developed, including, but not limited to:

1. Specific methodology for income verification;
2. Situations where less than permanent affordability might be considered; and
3. Guidelines for meeting the requirement that off-site units be "in the same neighborhood".

(g). Reporting to City Council. In conjunction with the annual report on the Housing Trust, city planning staff shall annually report on developments subject to this section, the number of units produced, the amount of fee-in-lieu collected, and the overall effectiveness of this section in achieving its stated purpose.

...

Sec. 14-332.2. Categorical exceptions and modifications to off-street parking requirements.

Regardless of which zone a project of use is located, the following exceptions to the off-street parking requirements listed above in section 14-332 are additionally hereby established.

- (a) *Home occupations, Section 14-410:* Any need for parking generated by the conduct of a home occupation allowed under section 14-410 of this article shall be met off the street and other than in a required front yard.
- (b) *Incentives for affordable housing- parking reductions:* For each ~~affordable-low-income or workforce~~ housing unit for rent or sale within an eligible project under the Affordable Housing Ordinance established in ~~14-488(b)-Division 30~~ of this article, no more than one (1) parking space shall be required. The planning board may establish a parking requirement for affordable housing units for rent or sale within an eligible project that is less than one (1) parking space per affordable housing unit, regardless of the size of the structure.

...

Sec. 14-488. Density, parking and dimensional bonuses and reductions.

Notwithstanding any other provision of this chapter to the contrary:

(a) *Density bonuses.* The maximum number of units that would otherwise be allowed under this chapter shall be increased for an eligible project in the manner described in the following table:

Percentage of new units that are affordable-low-income or workforce units	Percentage increase in maximum number of units allowed
5% up to but not including 10%	5% increase
10% up to but not including 15%	10% increase

15% up to but not including 20%	15% increase
20% up to but not including 25%	20% increase
25% or more	25% increase
<u>Projects Under Section 14-</u> 487	<u>25% increase</u>

(b) *Off-street parking.* Off-street parking is required as provided in Division 20 (off-street parking) of this article.

...

Order 83-15/16
Tab 20 10-5-15

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE, ARTICLE III. ZONING, ARTICLE V. SITE PLAN
AND ARTICLE IX. HISTORIC PRESERVATION
Re: India Street Historic District and Form-Based Code Zone**

I. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

*That Chapter 14, Articles III, V and IX, Sections 14-48,
14-275.1-14-275.9, 14-332.1, 14-345, 14-523, 14-526 and 14-651
of the Portland City Code are hereby amended to read as follows:*

Art. I. In General, § 14-1--14-15
Art. II. Planning Board, § 14-16--14-45
Art. III. Zoning, § 14-46--14-490
Div. 1. Generally, § 14-46--14-59

...

Div. 15.1. B-6 Eastern Waterfront Mixed Zone § 14-268--
14-275.274
Div. 15.2 India Street Form-Based Code Zone (IS-FBC) §
14-275.1--14-275.7
Div. 16. Waynflete School Overlay Zone, § 14-276--14-
276.10

...

Sec. 14-48. Establishment of zones.

In order to carry out the provisions of this article, the
city is hereby divided into the following classes of zones:

(a) R-1 Residential zone

...

(ii) S-P Stream protection zone-

(jj) IS-FBC India Street Form-based Code zone.

...

DIVISION 15.2. INDIA STREET FORM-BASED CODE ZONE (IS-FBC)

Sec. 14-275.1 Purpose.

The India Street Form-based Code is different than traditional zoning, placing the primary emphasis on a building's physical form and its relationship to the street, and de-emphasizing land use. The intent of the India Street Form-based Code Zone is to establish a zoning district that encourages a vibrant, walkable, mixed-use urban district, preserves and values the existing historic neighborhood fabric, and fosters and supports local businesses and residential areas. The components of a Form-Based Code include the Guiding Principles, REGULATING PLAN, Subdistricts, General Development Standards, Dimensional Requirements, BUILDING DESIGN STANDARDS, Diagrams, and Definitions.

The goal of the India Street Form-based Code is the creation and preservation of an active and human-scale public realm and the reinforcement of existing neighborhood character through good street space design.

(a) GENERAL GUIDING PRINCIPLES: The General Guiding Principles set forth here shall be applicable to all subdistricts within the India Street Form-based Code Zone.

1. The street is a coherent space, with consistent building and streetscape character on both sides of the street. This agreement of buildings and streetscape across the street contributes to a clear public space and district identity.
2. The street wall is visually well defined. Land should be clearly public or private. Buildings contribute to the vital and safe public space while providing a clear boundary to the private, protected realm.
3. Street walls are engaged with the street environment. Buildings are inviting places that interact with and contribute to the street vitality. Inactive edges, vehicle storage, garbage, and mechanical equipment should be kept

away from the street. Shared infrastructure, to the extent practicable, including, but not limited to, service alleys, parking areas, stormwater treatment, public transportation facilities, and driveways, shall be utilized.

4. Buildings are designed for the urban environment. Buildings must be designed for the urban situation within the subdistrict which often includes mixed-uses. Buildings are positioned near the street and FACADES are oriented to the street.

5. Respect historic character. If a property is within the India Street Historic District, Article IX Historic Preservation is applicable. New construction, BUILDING ADDITIONS, or ALTERATIONS in the India Street Historic District shall reflect and complement the character defining features and elements of the existing historic development to which it is visually related.

Sec. 14-275.2. Applicability.

The requirements set forth in this Division shall apply to all new development, primary and accessory structures, including BUILDING ADDITIONS within the India Street Form-based Code Zone as designated on the India Street REGULATING PLAN

Sec. 14-275.3. Establishment of subdistricts.

The India Street Form-based Code Zone as shown on the REGULATING PLAN is divided into three subdistricts:

- (a) Urban Neighborhood (UN) Subdistrict;
- (b) Urban Transitional (UT) Subdistrict; and
- (c) Urban Active (UA) Subdistrict.

Sec. 14-275.4. Definitions.

Terms used throughout this India Street Form-based Code Zone may be defined in Section 14-47 or elsewhere in Article III, Zoning. Terms not so defined shall be accorded their commonly accepted meanings. In the event of any conflict

between the definitions in this section and those in Section 14-47, or any other sections of Article III, Zoning, the Subdivision Rules and Regulations, or any other local land use ordinances, rules or regulations, those of this India Street Form-based Code Zone shall take precedence.

ALTERATION means a change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a structure.

BUILDING ADDITION means any increase to footprint or volume of an existing structure. See Table 14.275.4c. Building - Principal & Accessory

BUILDABLE AREA means the area enclosed by the front, side, and rear yard setbacks and limited by lot coverage.

BUILDING, ACCESSORY means detached structure that is incidental and subordinate in area and extent, and/or use to the principal building(s) on the property. A lot may have more than one accessory building. See Table 14.275.4c. Building - Principal & Accessory.

BUILDING, PRINCIPAL means the main structure(s) on a lot having the predominant area and extent, and/or use. A lot may have more than one principal building. See Table 14.275.4c. Building - Principal & Accessory.

BUILDINGS, ATTACHED means two or more independent buildings that share at least one common PARTY WALL but have full building separation and independent PRINCIPAL ENTRIES; not free-standing. Attached buildings may or may not have common ownership.

BUILDING DESIGN STANDARD (BDS) means the basic design parameters governing building form, including intent, guidelines, and standards for architectural elements such as proportion, articulation, fenestration, entries, roof lines, and materials.

ELEVATION means an exterior wall of a building not along a frontage line. See FAÇADE and Table 14.275.4e. Frontage & Lot Lines.

ENTRANCE, PRINCIPAL means the main point of access for pedestrians into a building. A building may have more than one principal entrance.

EXPRESSION LINE means a line prescribed at a certain level of a building for the major part of the width of a FAÇADE, expressed by a variation in material or by a limited projection such as a molding or balcony.

FAÇADE means any exterior wall of a structure exposed to public view from a public right-of-way. See ELEVATION and Table 14.275.4e. Frontage & Lot Lines.

FAÇADE, BLANK means a building façade that contains expanses of wall area with no windows, no entrances, no articulation, and no other elements or features, or is otherwise undifferentiated.

GREEN ROOF means a roof of a building that is partially or completely covered with vegetation and designed to meet the Maine Stormwater Best Management Practices Manual standards and recommendations. A green roof installation must serve the purpose of reducing stormwater runoff through retention or slowing and consist of an assembly that at a minimum includes a root repellent system, a drainage system, a filtering layer, a growing medium and plants, and shall be installed on a waterproof membrane. The vegetated area of a green roof may be considered pervious for zoning impervious calculations.

LOT LAYER means a range of depth of a lot within which certain elements are permitted. See Table 14.275.4d. Lot Layers.

MID-BLOCK PERMEABILITY means a continuous, open-air corridor at least 20' in width that connects two streets or public rights-of-way and physically provides a break in the street wall. The corridor must be unobstructed and open to the sky for the majority of its length.

PARTY WALL means any partition wall common to two adjacent or attached buildings.

REGULATING PLAN means a zoning map that shows the boundary of the area and subdistricts subject to regulation by the India Street Form-based Code.

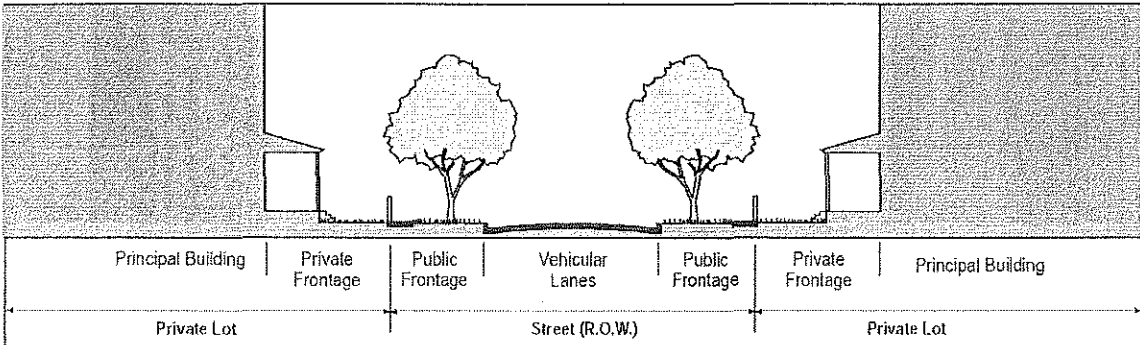
STEPBACK means a building setback of a specified distance measured from the ground floor building face that occurs at a prescribed number of stories or height above the ground.

YARD, SIDE means a yard adjoining a side lot line extending from the front yard to the rear yard, the width of which shall be the shortest horizontal distance between the side lot line and any structure. On corner lots, non-frontage yards shall be considered side yards. See Table 14.275.4b. Setback Designations.

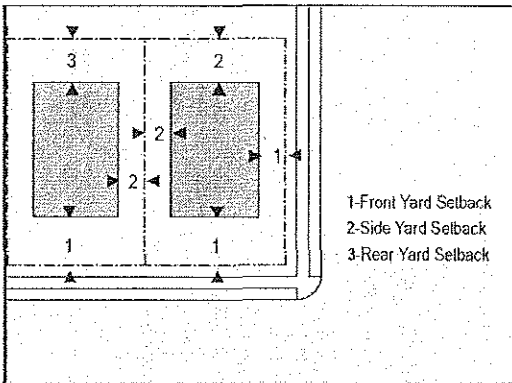
ZERO LOT LINE means the location of a structure on a lot such that one or more of the structure sides rests directly on a lot line. See Table 14.275.4e. Frontage & Lot Lines.

TABLE 14.275.4 DEFINITIONS ILLUSTRATED

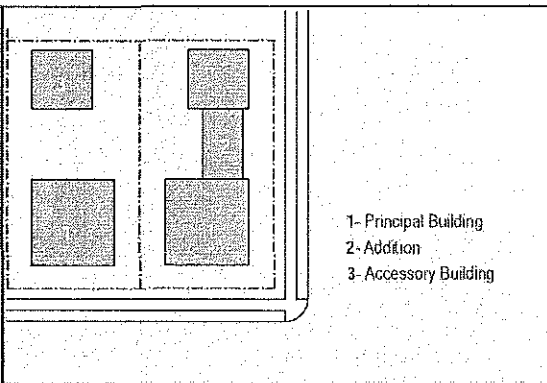
a. STREETS & FRONTAGES



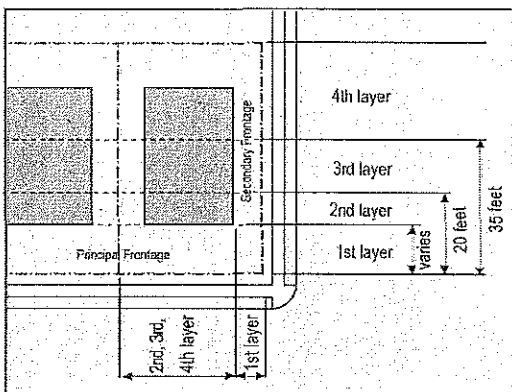
b. SETBACK DESIGNATIONS



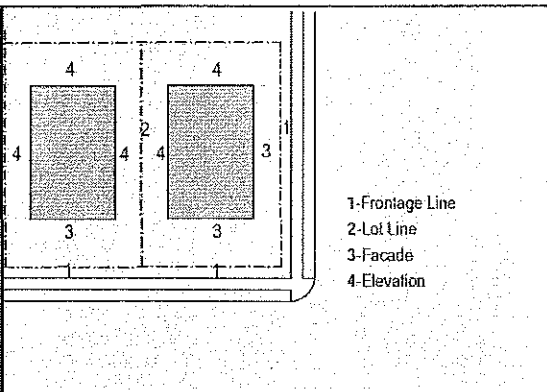
c. BUILDING - PRINCIPAL & ACCESSORY



d. LOT LAYERS



e. FRONTAGE & LOT LINES



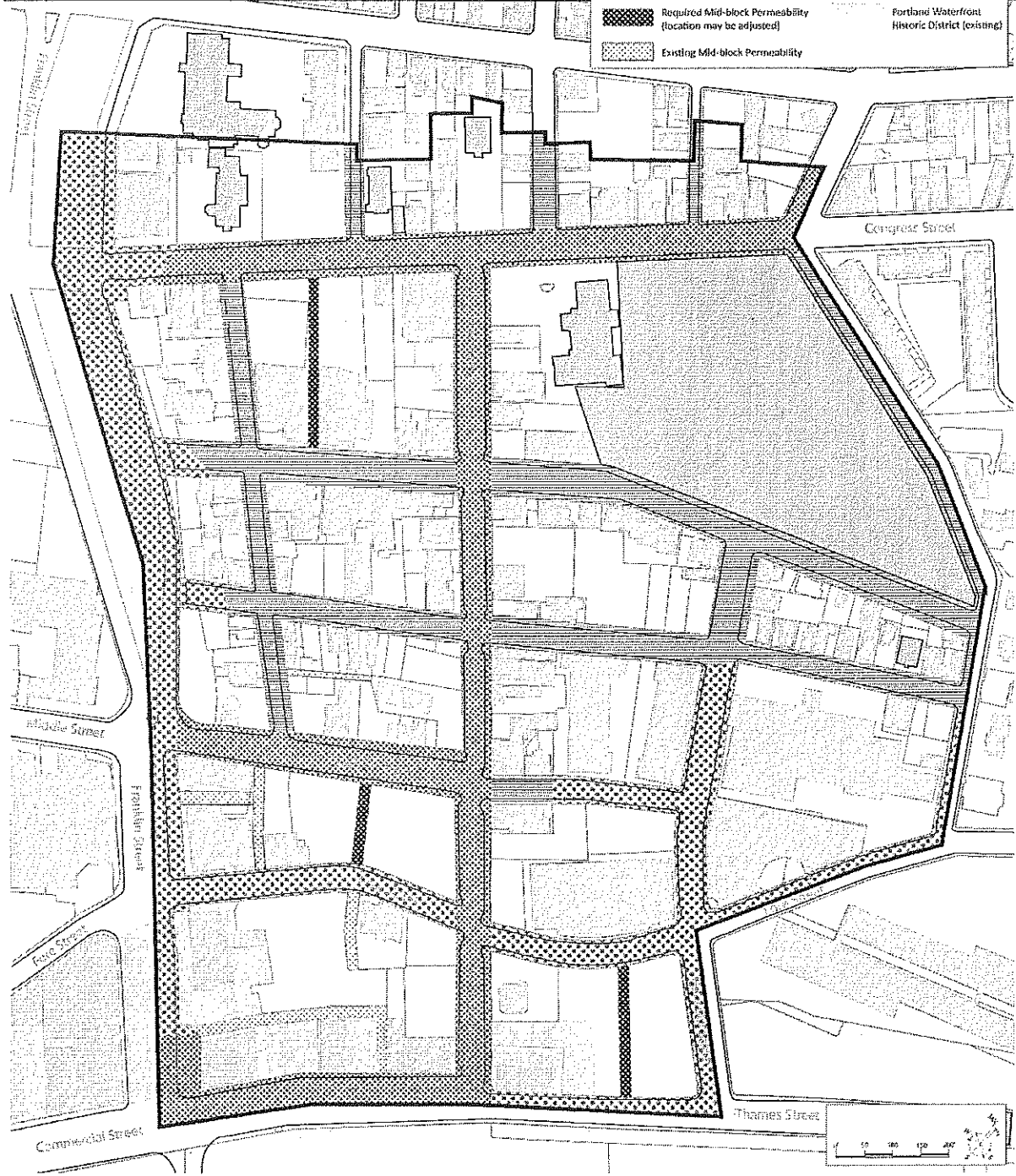
Sec. 14-275.5. Regulating Plan.

The REGULATING PLAN shows the location of the zone boundary and subdistricts subject to regulation by the IS-FBC zone.

REGULATING PLAN

LEGEND

- | | | | |
|--|---|--|---|
| | UA- Urban Active Subdistrict | | Zoning District Boundary |
| | UT- Urban Transitional Subdistrict | | Public Open Space |
| | UN- Urban Neighborhood Subdistrict | | Historic Landmarks |
| | Required Mid-block Permeability
(location may be adjusted) | | Portland Waterfront
Historic District (existing) |
| | Existing Mid-block Permeability | | |



Sec. 14-275.6. General development standards.

The following standards apply to all subdistricts unless expressly stated otherwise.

(a) Prohibited uses - uses not to be established in the India Street Form-based Code Zone include:

1. Correctional facilities;
2. Cremation facilities;
3. Drive-through facilities;
4. High-impact industrial uses, including industrial uses that are prohibited in the IL zone, specifically Section 14-233(c), (e - y), (aa);
5. Major/minor auto-service station;
6. Truck terminals;
7. Waste related services; and
8. Storage and parking facilities for Class 1 flammable and combustible liquids (having an aggregate total of more than 100 gallons) but excluding storage that is part of a motorized vehicle or pleasure craft facility.

(b) Siting standards.

1. MID-BLOCK PERMEABILITY.

- a. Lots with frontage on two streets roughly parallel to Commercial/Thames Street, for each and every 200 feet in street line length of lot, a full break between structures of at least 20 feet in width shall be provided roughly perpendicular to Commercial/Thames Street and within the middle third of the applicable street frontage. (see Table 14.275.7a. Mid-Block Permeability)

b. Is encouraged in any location that connects existing public or private alleys, passages, or streets.

c. Any development providing MID-BLOCK PERMEABILITY with public access between two streets is eligible for one (1) additional story of up to 12' in height (see Sec. 14-275.6(c) Height Standards). Public access shall be defined through a legal agreement such as an easement or license.

d. Refer to REGULATING PLAN for identified required MID-BLOCK PERMEABILITY locations.

2. Frontage requirements - Additional Building Length is allowed beyond the maximum building length under the following circumstances and according to the table below:

a. ATTACHED BUILDINGS: An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed. A PARTY WALL condition is required at least every 30' and for the entire height of each building. (see Table 14.275.7d Additional Building Length - ATTACHED BUILDINGS).

b. Ground Floor Partitions: Additional building length is permitted with the provision of ground floor partitions where the following conditions are met: (see Table 14.275.7f Additional Building Length - Ground Floor Partitions)

1. Partitions must extend from the FAÇADE at least 2/3rds of the building depth.

2. Partitions must be architecturally expressed on the building exterior.

3. Each module created by partition must have at least one functional, street-facing entry.

4. Modules created by partition shall be sized to have reasonable function and proportion in relation to overall building length.

c. Massing Variation: Additional building length is permitted where at least 30% and up to 40% of the total FACADE building length is set back to the 3rd LOT LAYER (at least 20') (see Table 14.275.7e Additional Building Length - Massing Variation).

d. Structured Parking Exception: Additional building length for one FACADE without partition walls is allowed for the use of ground-level structured parking.

<u>Additional Building Length</u>					
<u>Subdistrict</u>	<u>ATTACHED BUILDINGS</u>	<u>Ground Floor Partitions</u>	<u>Massing Variation</u>	<u>Structured Parking Exception</u>	
<u>UN</u>	<u>unlimited run</u>	<u>Not allowed</u>	<u>Not allowed</u>	<u>Not allowed</u>	
<u>UT</u>	<u>unlimited run</u>	<u>200' max. length; 2 modules</u>	<u>200' max. length</u>	<u>200' max. length</u>	
<u>UA</u>	<u>unlimited run</u>	<u>150' max. length; 3 modules</u>	<u>Not allowed</u>	<u>150' max. length</u>	

3. Setbacks.

a. Side Yard Setbacks for Small Lots - Lots with street frontage of less than 35' are not required to have side yards.

b. Where new construction or BUILDING ADDITIONS creates a side yard of less than 5', a maintenance easement is required where a combination of the side yard and easement must be at least 5'. PARTY WALL conditions are exempt from providing a maintenance easement.

c. Building FACADES within 10' of a corner are exempt from setback requirements in order to allow special corner architectural treatments.

d. ATTACHED BUILDINGS on Individual Lots - Subdivision developments consisting of horizontally attached buildings on individual lots are not required to have side yards between buildings where a PARTY WALL condition will exist, but shall be required to meet the applicable side yard requirements at the external and internal subdivision lot boundaries between buildings that are not attached to each other.

4. Landscaping and screening.

a. Surface parking areas shall be screened from view from sidewalks, public-right-of-ways, and public open spaces using landscaping, walls, fencing, or a combination thereof.

b. Wall/Fence Dimensional Requirements

<u>Wall/Fence Dimensional Requirements</u>		
<u>LOT LAYER</u>	<u>Height</u>	<u>Visual Permeability</u>
<u>1ST</u>	<u>6' max.</u>	<u>Required above 2' from sidewalk grade</u>
<u>2ND - 4TH</u>	<u>8' max.</u>	<u>n/a</u>

5. BUILDING ADDITIONS.

a. BUILDING ADDITIONS which exceed the footprint of the existing building to which it is an addition or which exceeds 50,000 square feet shall be subject to Level III Site Plan review.

b. A BUILDING ADDITION length may match but not exceed the length of the existing building to which it is an addition. All other Subdistrict Dimensional Requirements shall apply. (See Table 14.275.7b. Addition)

c. BUILDING ADDITIONS may match existing building in number and height of stories. All other Subdistrict Height Standards shall apply.

(c) Height standards.

1. Height bonus.

a. Applicability:

1. If principal frontage faces a UT street or Congress Street, then the building is eligible for a height bonus.
2. Only one height bonus may be applied per structure.

b. One (1) additional story of up to 12 feet in height is allowed if one of the following provisions is met:

1. For residential development with residential density equal to or greater than 150 dwelling units per acre (density may be achieved with the bonus floor);
2. For any development providing a GREEN ROOF, where:
 - i At least 50% of the cumulative lot area is pervious; and
 - ii At least 50% of the cumulative roof area is a GREEN ROOF. GREEN ROOF area may be applied towards the 50% lot area requirement.

<u>Height Bonuses</u>						
<u>Subdistrict</u>	<u>Max. Pre-bonus Height</u>	<u>MID-BLOCK PERMEABILITY (publicly accessible)</u>	<u>Res. Density</u>	<u>GREEN ROOF</u>	<u>Max. Height w/ Bonus</u>	<u>Min. Bonus Floor Stepback*</u>
<u>UN</u>	n/a	n/a	n/a	n/a	n/a	n/a
<u>UT</u>	<u>65' and 6 stories</u>	<u>1 story Up to 12'</u>	<u>1 story Up to 12'</u>	<u>1 story Up to 12'</u>	<u>77' up to 7 stories</u>	<u>15'</u>
<u>UA (Congress Street only)</u>	<u>50' and 4 stories</u>	<u>1 story Up to 12'</u>	<u>1 story Up to 12'</u>	<u>1 story Up to 12'</u>	<u>62' up to 5 stories</u>	<u>15'</u>

*measured from the ground floor building edge facing any public right-of-way

(d) Parking standards.

1. Parking shall be provided as per Division 20 Off-Street Parking of Chapter 14 Land Use Code.
2. Structured parking must meet the BDS for Structured Parking (see City of Portland Design Manual).
3. In the case of a BUILDING ADDITION, non-conforming existing surface parking may remain. In the case of new construction, surface parking must be brought into conformance with IS-FBC standards.

Sec. 14-275.7. Subdistrict dimensional requirements.

(a) Urban Neighborhood (UN) subdistrict.

Intent: The intent of this subdistrict is to maintain and promote a small-scale, less active urban fabric. Buildings may be more private in character and have smaller footprints with building types including, but not limited to, single-family, rowhouses, duplexes, triple-deckers, and double-triples. Building frontages may be less transparent and entries may be raised above sidewalk level with frontage types including raised, recessed doorways, porches, and stoops. The streetscape has variable setbacks and landscaping with many buildings within one block and streets tend to be narrow.

SITING STANDARDS

Orientation - Principal Frontage	determined by applicant
Lot Coverage	90% max

FRONTAGE REQUIREMENTS (1st LOT LAYER)

Building Length - Principal facade	30' max.
Building Length - Secondary fac.	50' max.
at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.275.7 c.)	
Additional Building Length	(see also Table 14.275.7)
ATTACHED BUILDINGS	unlimited run
Ground Floor Partitions	not allowed
Massing Variation	not allowed
Structured Parking Exception	not allowed

SETBACKS

Principal Building	
(a) Front Yard (1st Lot Layer)	5' max.
Setback Applicability	75% of total building length must be built within 1st LOT LAYER
(b) Side Yard*	5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10'
(c) Rear Yard	10' min.
Accessory Building	
Side Yard	5' min.
Rear Yard	5' min.

BUILDING ENTRIES (SEE ALSO BDS)

Frequency at frontage	at least 35'
Principal Entries	
Orientation	any orientation allowed
Elevated Stoop (> 1 step)	allowed

HEIGHT STANDARDS

Principal Building	
Building Height Min.	25', at least 2 stories
Building Height Max.	45', up to 4 stories
Ground Story Height	n/a
Accessory Building	
Building Height Max.	25'

PARKING STANDARDS

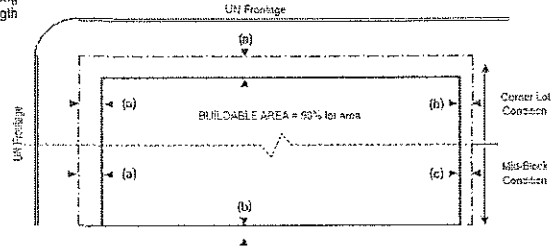
Surface Parking Location	
Side Yard	20' max in width per lot; may not exceed 50% of frontage length
Rear Yard	4th LOT LAYER only
Garage at frontage (attached or detached)	
Garage Door Setback (min)	2nd LOT LAYER
Garage Door Opening (max)	9' up to 40% of facade length
	20' max. limit

Notes and Exceptions

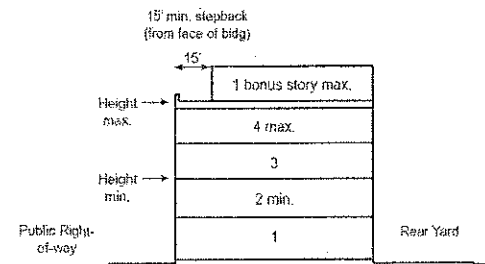
* Zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

SITING STANDARDS

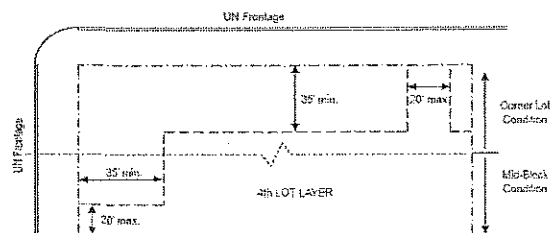
1. The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
2. FACADES shall be built along the frontage lines to the length specified in the table.

**HEIGHT STANDARDS**

1. Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
2. Number of Stories excludes attics and raised basements.

**PARKING STANDARDS**

1. Surface parking areas may be provided within the shaded area shown.

**(b) Urban Transitional (UT) subdistrict.**

Intent: The intent of this subdistrict is to encourage higher density, mixed-use building types that accommodate any use. Building frontages are a mix of activity level, have larger footprints, and the most flexibility of height and scale. Building ground floor spaces tend to accommodate flexible and changing uses with frontage types including doorways, forecourts, arcades, and storefronts. The streetscape may be less active than the UA subdistrict with wide sidewalks, street trees, and setbacks and stepbacks providing relief from large building masses.

SITING STANDARDS

Orientation - Principal Frontage	determined by applicant
Lot Coverage	90% max
FRONTAGE REQUIREMENTS (1st LOT LAYER)	
Building Length	100' max.
at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.275.7 c.)	
Additional Building Length	(see also Table 14.275.7)
ATTACHED BUILDINGS	unlimited run
Ground Floor Partitions	200' max., 2 modules
Massing Variation	200' max.
Structured Parking Exception	200' max.

SETBACKS

Principal Building	
(a) Front Yard (1st Lot Layer)	10' max.
Setback Applicability	75% of total building length must be built within 1st LOT LAYER
(b) Side Yard*	10' min. - May be reduced to zero provided that the cumulative side yards are not less than 20'
(c) Rear Yard	10' min.
(d) STEPBACK (adjacent to UN)	10' min. setback after 45' height
Accessory Building	2nd thru 4th LOT LAYER
Side Yard	5' min.
Rear Yard	5' min.

BUILDING ENTRIES (SEE ALSO BDS)

Frequency at frontage	at least 95'
Principal Entries	
Orientation	any allowed
Elevated Stoop (> 1 step)	allowed

HEIGHT STANDARDS

Principal Building	
Building Height Min.	3 stories
Building Height Max.	65', up to 6 stories
Ground Story Height	n/a
Accessory Building	
Building Height Max.	25'

PARKING STANDARDS

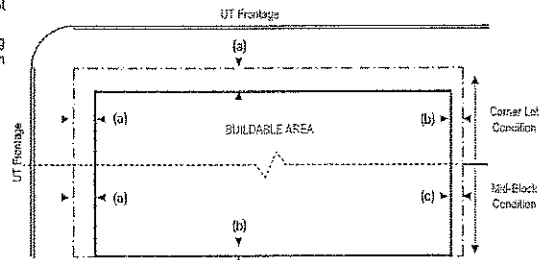
Surface Parking Location	4th LOT LAYER only
Garage at frontage (attached or detached)	
Garage Door Setback (min)	2nd LOT LAYER
Garage Door Opening (max)	9' up to 40% of facade length
	20' max. limit

Notes and Exceptions

* Zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

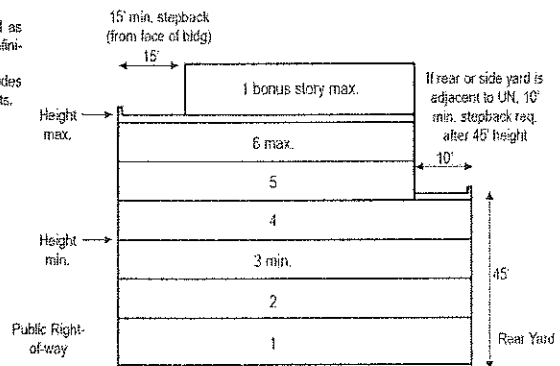
SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Structures shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



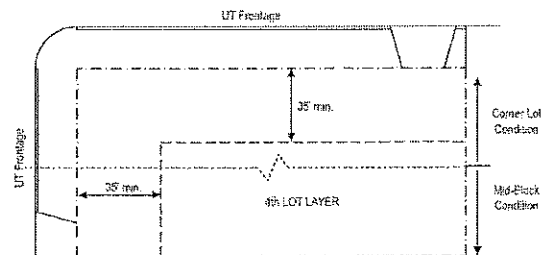
HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14-47 Definitions "Building height of."
- Number of Stories excludes attics and raised basements.



PARKING STANDARDS

- Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



(c) Urban Active (UA) subdistrict.

Intent: The intent of this subdistrict is to maintain and promote a moderate-scale, diverse, mixed-use neighborhood with vibrant streets and active ground floor spaces. Buildings are more active and engage the street at the ground level. Building frontages are transparent and entries are at sidewalk level with frontage types including storefronts and recessed doorways. The streetscape has steady street planting, and buildings set close to the street providing a consistent street wall.

For corner lots where two subdistricts intersect at a street corner, the Dimensional Requirements and Building Design Standards of the "dominant" subdistrict shall apply from the 1st through 3rd LOT LAYER (35 feet deep into the lot measured from the dominant lot line) along its associated street frontage or public ways including required mid-block permeability. Otherwise, Dimensional Requirements shall be according to the subdistrict onto which the building FAÇADE faces.

ORIENTATION

- Corner lots shall be treated as having street frontage on all streets regardless of building orientation
- Principal Building shall designate a Principal Frontage and Secondary Frontage*
- In the case of a corner lot having UA frontage, the Principal Frontage must face a UA street!

SETBACKS

- (a) Front Yard (1st Lot Layer) | according to subdistrict
 (b) Side Yard | according to subdistrict

Building facades within 10' of a corner are exempt from setback requirements in order to allow special architectural treatments.

UA INTERSECTS UT

Dominant Subdistrict (35' deep)	UA
Orientation - Principal Frontage	UA street
Dominant Building Design Standards (applicable 35' deep)	
Ground Story Height	12' min. clear
Fenestration, ground floor	60-90% (see BDS) facade area

(measured as a percentage of the FACADE that is 2' above sidewalk grade)

UA INTERSECTS UN

Dominant Subdistrict (35' deep)	UA
Orientation - Principal Frontage	UA street
Building Length - UN FACADES	100' max.
Dominant Building Design Standards (applicable 35' deep)	
Ground Story Height	12' min. clear
Fenestration, ground floor	60-90% (see BDS) facade area

(measured as a percentage of the FACADE that is 2' above sidewalk grade)

UT INTERSECTS UN

Dominant Subdistrict (35' deep)	UN
Orientation - Principal Frontage	determined by applicant

- Corner lots shall be treated as having street frontage on all streets regardless of building orientation

UN INTERSECTS UN

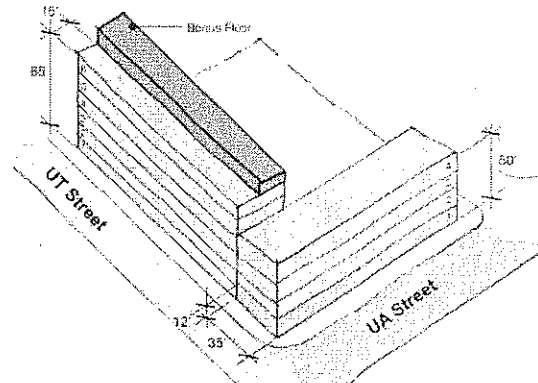
Building Length maximums:	
Principal Frontage	30' max.
Secondary Frontage	50' max.

Notes and Exceptions

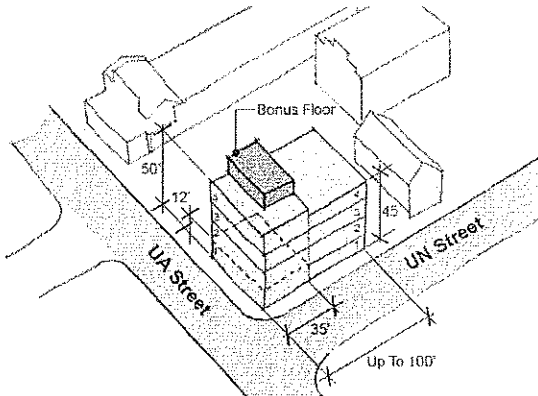
- * Does not have to correspond to legal building address

CORNER

UA INTERSECTS UT
(example only)



UA INTERSECTS UN
(example only)



UT INTERSECTS UN
(example only)

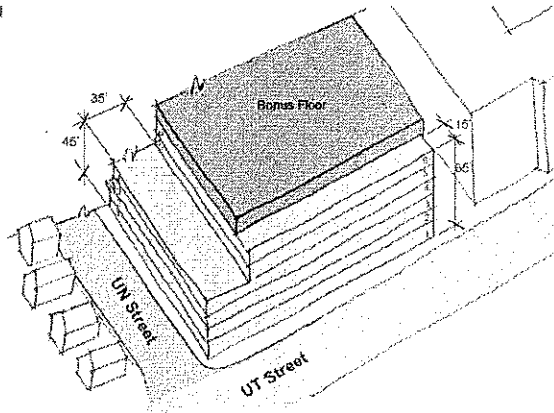
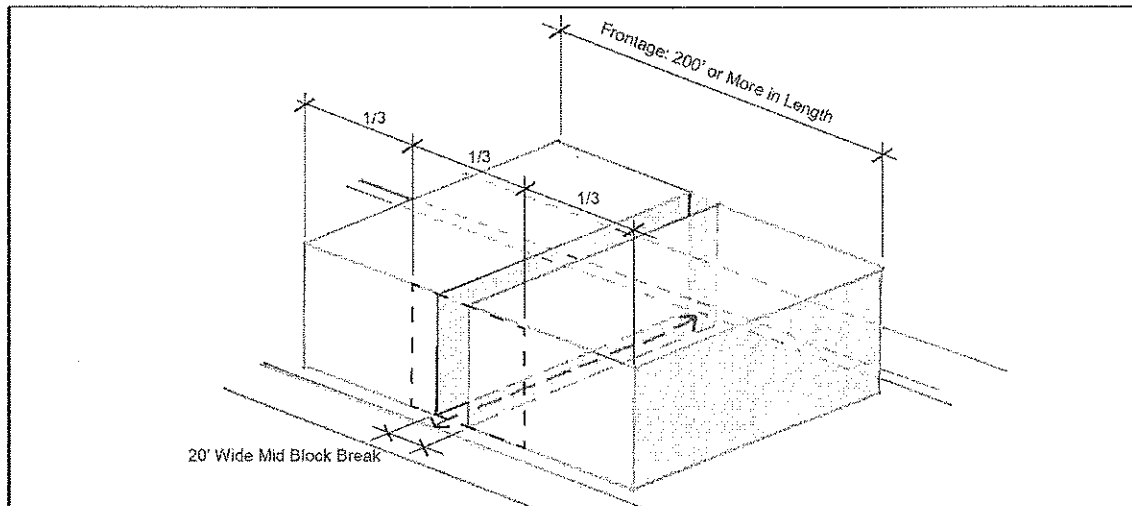
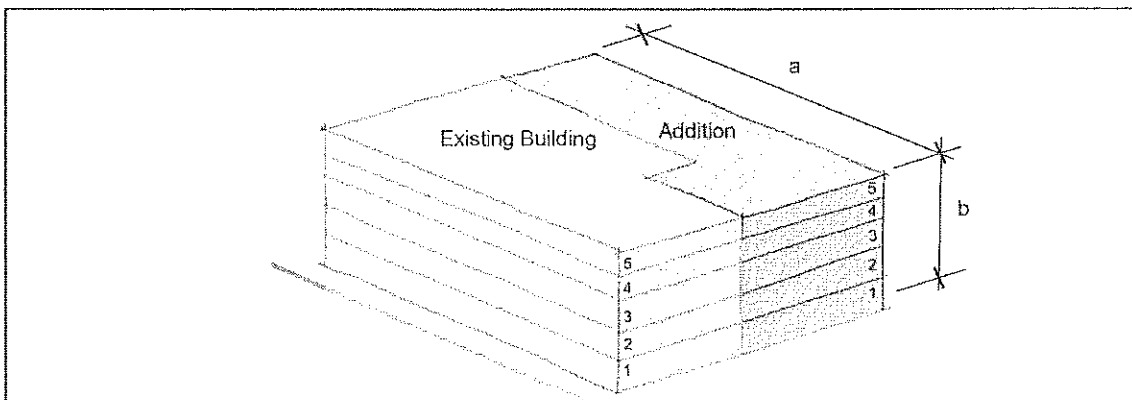


TABLE 14.275.7 DIMENSIONAL REQUIREMENTS ILLUSTRATED

a. MID-BLOCK PERMEABILITY



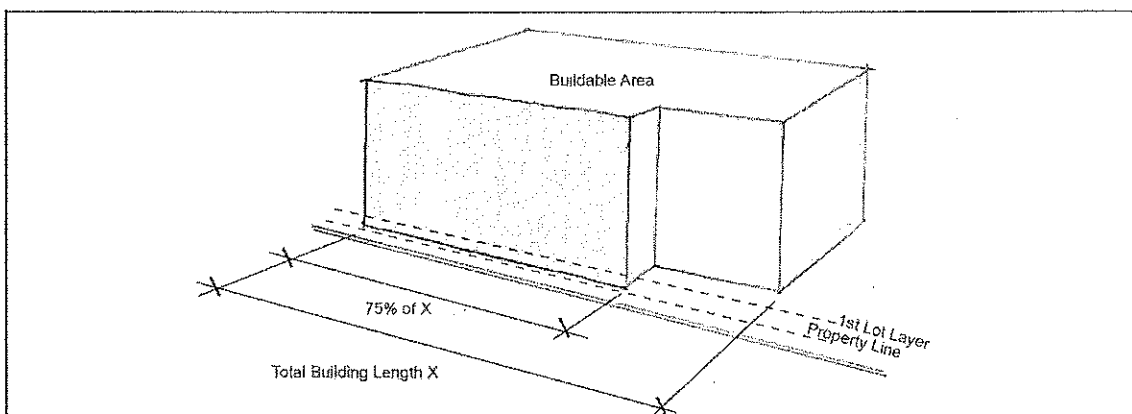
b. ADDITION



a - Addition length may match but not exceed the length of existing building to which it is an addition. All other Subdistrict Dimensional Requirements apply.

b - Addition height may match existing building in number and height of stories. All other Subdistrict Height Standards apply.

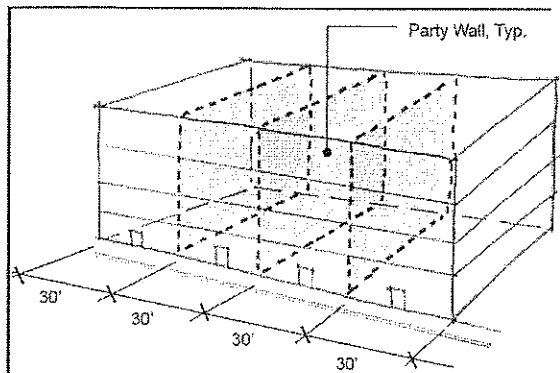
c. BUILDING LENGTH - 1st LOT LAYER



At least 75% of the total building length must be within the 1st LOT LAYER.

TABLE 14.275.7 DIMENSIONAL REQUIREMENTS ILLUSTRATED (CONTINUED)

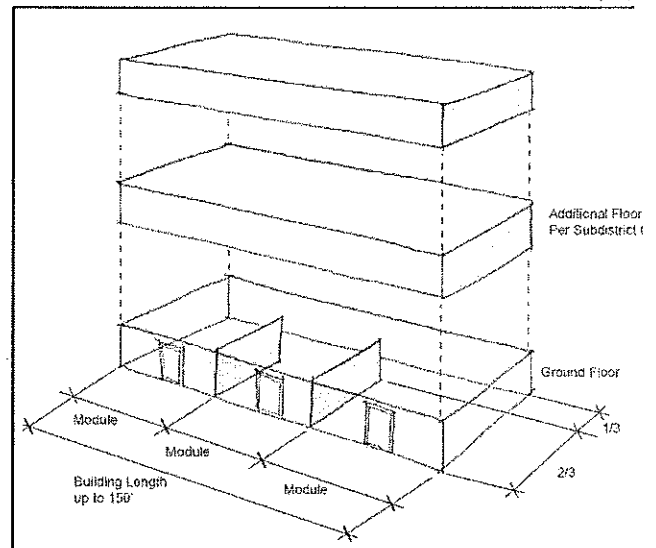
d. ADDITIONAL BUILDING LENGTH - ATTACHED BUILDINGS



An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed.

A PARTY WALL condition is required at least every 30' and for the entire height of each building.

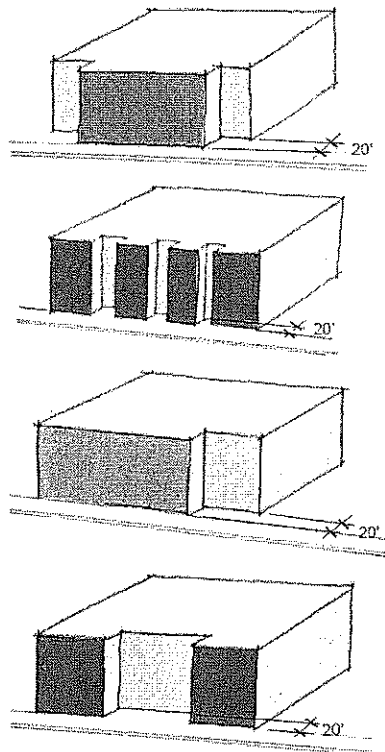
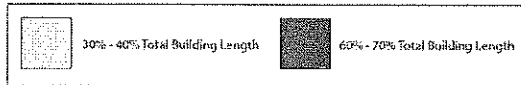
f.1. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UA)



Additional Building Length is permitted up to 150' with the provision of a least two Ground Floor Partitions

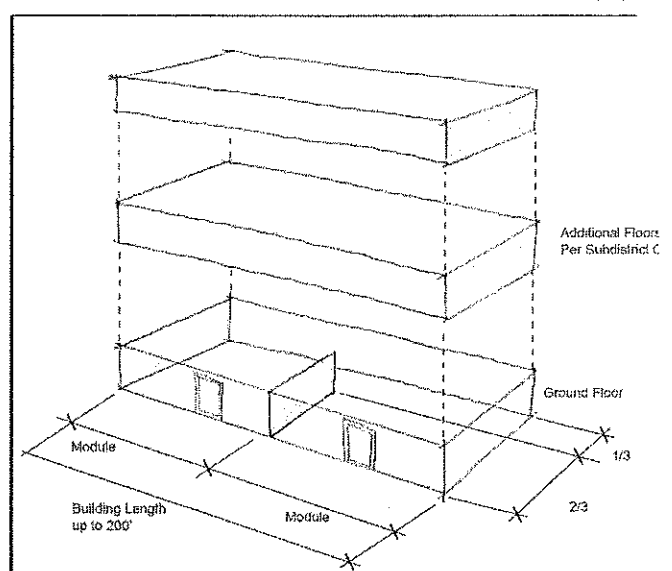
See General Development Standards and BDS for additional requirements.

e. ADDITIONAL BUILDING LENGTH - MASSING VARIATION (UT)



Additional building length is permitted where at least 30% and up to 40% of the total building length is setback to the 3rd LOT LAYER (20').

f.2. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UT)



Additional Building Length is permitted up to 200' with the provision of at least one Ground Floor Partition.

See General Development Standards and the BDS for additional requirements.

...

Sec. 14-332.1. Zone specific off-street parking exceptions and modifications.

The off-street parking requirements established for uses, established above in section 14-332 of this division, are hereby modified for the following zones according to the provisions described below.

- (a) *IR-3, Island Residential Zone, Off-street parking:* Off-street parking shall not be required irrespective of the requirements of division 20 (off-street parking) of this article.

...

- (k) *Residential development on the peninsula and in the R-6 and R-6A Zones, including new construction, alterations that increase the number of units, and changes of use:*

1. Except as provided below, there shall be one (1) space per unit
2. The required parking for multi-unit residential buildings may be partially met through provision of shared-use vehicles, which are vehicles owned and maintained by the owner/manager of the building and available for use on a fee basis to the residents of the building. One shared use vehicle shall be deemed to satisfy eight (8) required car spaces, but in no case shall more than 50% of the parking requirement be satisfied by shared vehicle use.
3. The planning board may establish a parking requirement that is less than the normally required number of spaces upon a finding of unique conditions that result in a lesser parking demand, such as housing for persons who cannot drive, housing that participates in a travel demand management program, availability of transit, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.

4. No parking shall be required for the first three units in the R-6 Residential Zone or the IS-FBC Zone.
5. For alterations of buildings containing three or more dwelling units in the R-6 zone no parking shall be required for the creation of one additional dwelling unit above existing conditions as of June 3, 2015. This exemption may be utilized one time.

...

Sec. 14-345. Peninsula fee-in-lieu of parking.

Any major or minor development subject to site plan review located in a non-residential zone or the IS-FBC zone on the Portland Peninsula shall either provide the required parking or pay a fee according to the provisions of (a) and (b) below.

...

Sec. 14-523. Required Approvals and Applicability.

(a) *Required Approval.* An application for site plan approval shall be reviewed by the Planning Board or Planning Authority as specified below. The Planning Board or Planning Authority shall approve, approve with conditions or deny an application pursuant to the standards, procedures, technical criteria and design criteria contained in this article, as demonstrated by the applicant.

...

(e) *Level II Site Plan Review.* Development meeting the criteria listed below will undergo Level II Site Plan Review as follows:

1. The construction of any new structures having a total floor area of less than ten thousand (10,000) square feet in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of less than twenty thousand (20,000) square feet. In the IS-FBC zone, the construction of new structures having a total floor area of less than fifty

thousand (50,000) square feet;

2. The construction of any new temporary or permanent parking area, paving of existing unpaved surface parking areas in excess of 7,500 square feet and serving less than 75 vehicles, or creation of other impervious surface area greater than 7,500 square feet;
3. The construction of any building addition(s) having a total floor area of less than ten thousand (10,000) square feet cumulatively within a three-year period in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial Zone, the construction of building addition(s) having a total floor area of less than twenty thousand (20,000) square feet. In the IS-FBC zone, the construction of building addition(s) having a total floor area of less than fifty thousand (50,000) square feet.
4. Park improvements consisting of new structures or buildings of less than 10,000 square feet and/or facilities encompassing an area of greater than 7,500 square feet and less than 20,000 square, excluding the rehabilitation or replacement in kind of existing facilities.

...

(f) *Level III Site Plan Review*. Development meeting the criteria listed below will undergo Level III Site Plan Review as follows:

1. The construction of any new structures having a total floor area of ten thousand (10,000) square feet or more in all zones except the Industrial zones and IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of twenty thousand (20,000) square feet or more. In the IS-FBC zone, the construction of new structures having a total floor area of fifty thousand (50,000) square feet or more;
2. The construction of any new temporary or permanent surface parking area(s) or paving of existing unpaved surface areas for more than seventy-five (75) vehicles except in the case of temporary parking;
3. The construction of any building addition(s),

cumulatively having either a total floor area of ten thousand (10,000) square feet or more within any three-year period in all zones except in the Industrial zones and IS-FBC zone. In Industrial zones, for the construction of building addition(s) having a total floor area of twenty thousand (20,000) square feet or more. In the IS-FBC zone, for the construction of building addition(s) either having a total floor area of fifty thousand (50,000) square feet or more or having a total floor area exceeding that of the existing building to which it is an addition.

4. A change in the use of a total floor area of twenty thousand (20,000) square feet or more in any existing building cumulatively within any three-year period in all zones,
5. Multiple-family development except for in the IS-FBC zone;
6. The addition of one or two dwelling units to a building, if the additional dwelling unit or units requires subdivision review under Maine State Statutes and Portland's Subdivision Ordinance;

...

Sec. 14-526. Site plan standards.

Requirements for approval. The Planning Board or Planning Authority shall not approve a site plan application unless the development proposal meets the following criteria:

(a) *Transportation Standards*

...

(d) *Site Design Standards*

1. *Massing, Ventilation and Wind Impact:*

...

5. *Historic Resources:*

- a. Developments affecting designated landmarks or within designated historic districts or historic landscape districts: Any proposed development required to obtain a certificate of appropriateness under article IX (historic preservation) of the land use code

shall be exempt from the following design standards, as described in the Design Manual:

- (i) Section (b) of the Design Manual (development in B-3 zone), except for (b) (1) e.2. (increasing setback beyond street build-to line), (b) (1)f. (shadow impact on open space), (b) (1)h. (wind impacts), and (b) (1)g. (setbacks from existing structures);
- (ii) Section (c) of the Design Manual (development in B-5 and B-5b zones), except for (c)a. (shared infrastructure) and (c)d. (parking lot location);
- (iii) Section (k) of the Design Manual (small residential lot development in R-6 zone);
- (iv) Section (e) of the Design Manual (University of Southern Maine);
- (v) Section (f) of the Design Manual (development in B-7 zone), except for (f) (1)a. (transportation demand management);
- (vi) Section (g) of the Design Manual (development in Eastern Waterfront zone).
- (vii) Section (l) of the Design Manual (IS-FBC Building Design Standards)

- b. Development adjacent to designated landmarks, historic districts or historic landscape districts: when any part of a proposed development is within one hundred (100) feet of any designated landmark, historic district, except the India Street historic district, or historic landscape district, such development shall be

generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development. Character-defining elements of landmarks and historic districts are identified in the historic resources inventory and respective historic district designation reports. For the purposes of this provision, "compatible" design shall be defined as design which respects the established building patterns and visual characteristics that exist in a given setting and, at the same time, is a distinct product of its own time. To aid the planning board in its deliberations, historic preservation staff shall provide a written analysis of the proposed development's immediate context, identifying the major character-defining elements and any established building patterns that characterize the context.

...

Sec. 14-651. Standards for review of new construction.

In considering an application for a certificate of appropriateness involving new construction, the historic preservation board and the planning board shall apply the following general standards as may be applicable to the context of the proposed construction. The intent and application of the following standards are further described in the historic resources design manual and shall guide the board in its review.

(a) *Scale and form:*

1. *Height.* In addition to the applicable requirements of articles III, IV and V of this chapter, the proposed height shall be visibly compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.

...

5. Applicability to India Street historic district.
For new construction within the India Street

Historic District, the historic preservation board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone, except for in the case of a building addition which proposes to change the height of a contributing historic structure.

BE IT FURTHER ORDERED, that an evaluation of the India Street Form-based Code Zone, in at least three and no more than five years following its adoption, is hereby authorized.

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

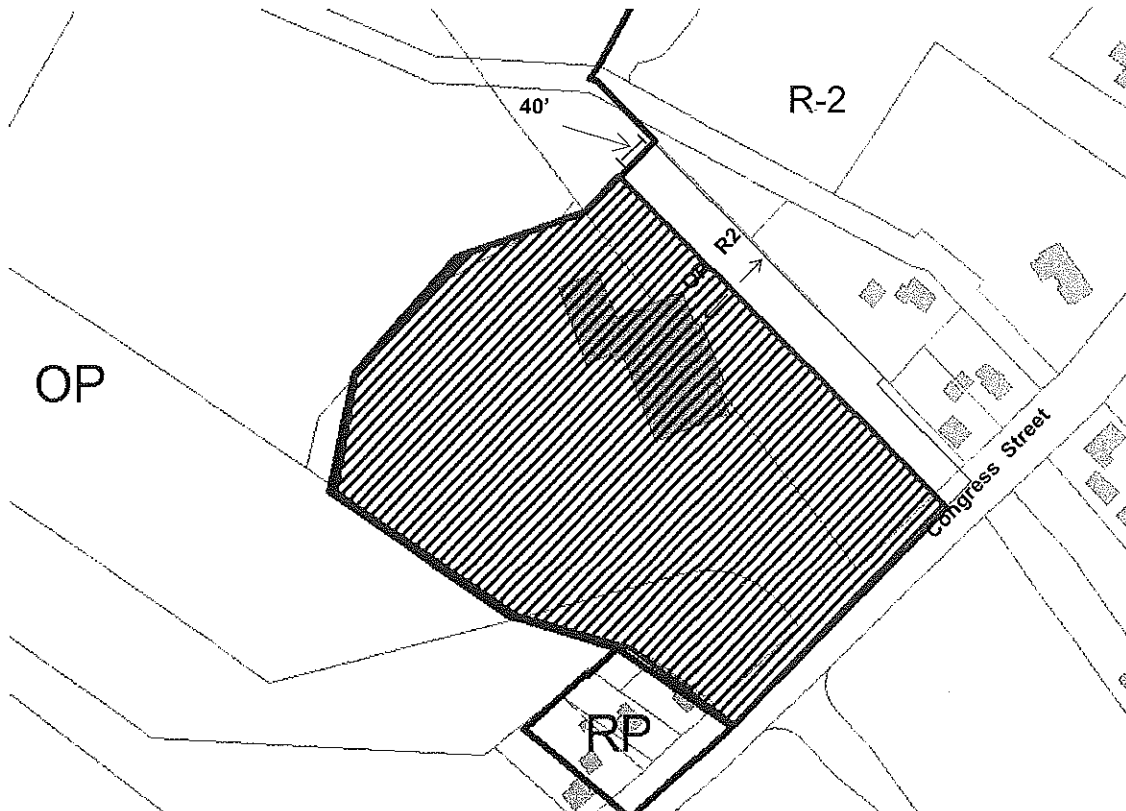
*Order 84-15/16
Tab 21*

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO ZONING MAP
RE: 1945 CONGRESS STREET**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment and specifically rezoning the R-2 Zone at 1945 Congress Street to Office Park (O-P) in the red area of the figure below.



MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Jeff Levine, Director, Planning and Urban Development Department

DATE: September 23, 2015

DISTRIBUTION: Mayor Michael Brennan; Jon Jennings, City Manager; Danielle West-Chuhta, Corporation Counsel; Jennifer Thompson, Associate Corporation Counsel; Sonia Bean; Nancy English

SUBJECT: O-P Zoning Map Amendment Request
1945 Congress Street

SPONSOR: Stuart O'Brien, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading October 5, 2015 **Final Action** October 19, 2015

Can action be taken at a later date: Yes X No (If no why not?) Public notices will appear in the newspaper and be mailed in advance of the public hearing.

PRESENTATION: Elizabeth Boepple, Planning Board Vice Chair, and/or Jeff Levine, Director, Planning and Urban Development, 5 minute oral presentation

I. SUMMARY OF ISSUE (Agenda Description)

On September 8, 2015 the planning board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend a map amendment to change the zoning for the property at 1945 Congress Street from Residential R-2 to Office Park (O-P), with a 40 foot buffer of R-2 retained at the easterly side of the site. The amendment would make office a permitted use on the site, and thus allow Northland Enterprises, LLC, the applicant, to redevelop the property with medical and general office buildings under the development standards and design criteria of the Office Park zone.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

1945 Congress Street lies at the intersection of International Parkway/UNUM Park Drive and Congress Street, at a major gateway to the City of Portland. The site has been developed by the Elks Club since the late 1960s. Northland proposes to redevelop the site with medical and professional office buildings and renovate the Elks Lodge, allowing the Elks to remain on the property. This plan is contingent upon a rezoning of the site to allow office as a permitted use. Thus, Northland has applied for a zoning map amendment to change the zoning on the site to Office Park (O-P). The O-P zone can be found immediately west of the site on the UNUM property.

III. INTENDED RESULT

The proposed map change will allow the redevelopment of 1945 Congress Street for office use.

IV. COUNCIL GOAL ADDRESSED

The proposed map amendment will facilitate the redevelopment of an existing lot for medical and professional office use. In this, it will address the following council goal:

Promote economic development in the city in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.

V. FINANCIAL IMPACT

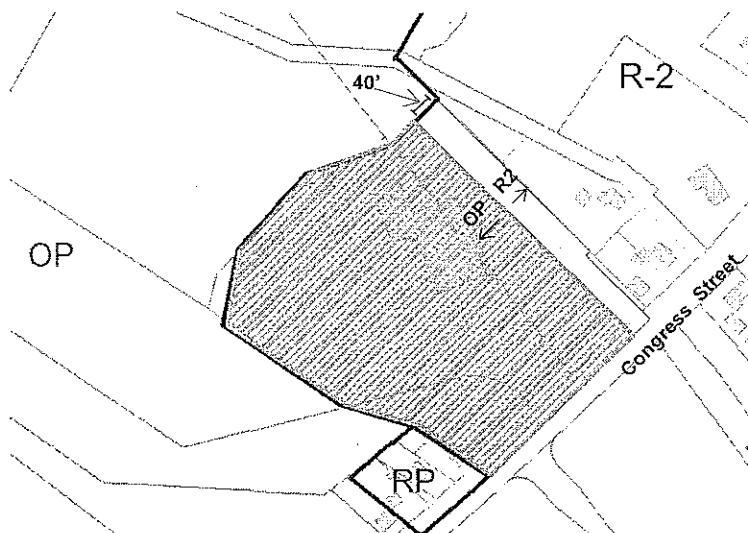
The zone change will allow the development of office uses on the 1945 Congress Street site, which has the potential to generate revenue for the city.

VI. PLANNING BOARD ANALYSIS

The four members of the board who supported the proposed zone change found that the site is more suitable for office than for residential use, given its location across from the Jetport entrance on a heavily-traveled commuter corridor. They held that that the zone change is a logical extension of the existing O-P zone which lies to the north and west. They identified distinguishing factors on the 1945 Congress Street site, including its size, its adjacency with the O-P zone on two sides, and its access from a secondary road with a signalized intersection on Congress Street, which differentiate it from neighboring sites to the east which might be considered for O-P zoning in the future. Lastly, they noted that the O-P zone includes strong provisions related to buffering and open space which, under site plan review, would serve to preserve or even enhance the Congress Street/UNUM Park Drive intersection as a gateway and green entry to the city.

Two members of the board expressed reservations with respect to the proposed zone change and therefore voted against its recommendation. These members questioned the ability of the site to support the "campus-like" setting prescribed by the O-P zoning and, likewise, the suitability of the location for such a use. These members also raised concerns regarding the desire of the Elks to remain on the site under legal non-conforming status. Lastly, these board members expressed reservations with reference to competing policies of the comprehensive plan, particularly those which promote the stability of residential neighborhoods and residential growth.

Ultimately, the majority of the board voted to support a rezoning to O-P for the 1945 Congress Street site. In order to create a buffer for the residential properties to the east, the board recommended rezoning to a line parallel with the eastern property boundary and offset at a distance of 40 feet. This line mirrors one proposed by the applicant in early discussions with the board and allows some R-2 to be preserved on the site.



VII. RECOMMENDATION

On September 8, 2015, the planning board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) that the proposed map amendment to change the zoning for 1945 Congress Street, as shown in the figure at left, is consistent with the comprehensive plan. The board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend adoption of the proposed amendment to the City Council.

VIII. ATTACHMENTS

1. Order
2. Planning Board Report to City Council

Prepared by:

Signature

September 23, 2015

Date



PLANNING BOARD REPORT PORTLAND, MAINE

Map Amendment for 1945 Congress Street
Rezone from R-2 to O-P
Northland Enterprises, LLC, Applicant

Submitted to: Portland City Council
Public Hearing Date: October 19, 2015
Project #: 2014-227

Prepared by: Portland Planning Board
Date: September 23, 2015
CBLs: 216-A-6, 217-A-1

I. INTRODUCTION

On September 8, 2015, the planning board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend to the city council a zoning map amendment, proposed by Northland Enterprises, LLC, for a site at 1945 Congress Street. The property is currently zoned Residential R-2 and is occupied by Elks Lodge #188. The applicant proposes to rezone the lot to Office Park (O-P) in order to allow the development of medical and general office buildings on the site.

The board originally considered the zone change request at a workshop in January, 2015, and subsequently reviewed the proposal at two additional workshops and one public hearing. These meetings included considerable discussion of the suitability of the O-P zone for this location, the type of development the O-P zone might foster on the site, possible alternative zoning designations, consistency with the comprehensive plan, and the potential for the rezoning to act as a precedent for further requests for rezoning to the east. The board heard public comments about encroachment on residential neighborhoods; traffic, environmental, and visual impacts; the need for more comprehensive planning efforts in this area of the city; and the opportunities this rezoning might present for this gateway area of the city. Ultimately, the board voted to recommend the rezoning to the city council.

A legal ad for the October 19 city council hearing will be posted on the city's web page and appear in the *Portland Press Herald* on October 13 and 14, 2015. Notices will also be sent to 70 property owners within 500 feet of the site and to the interested citizen list.

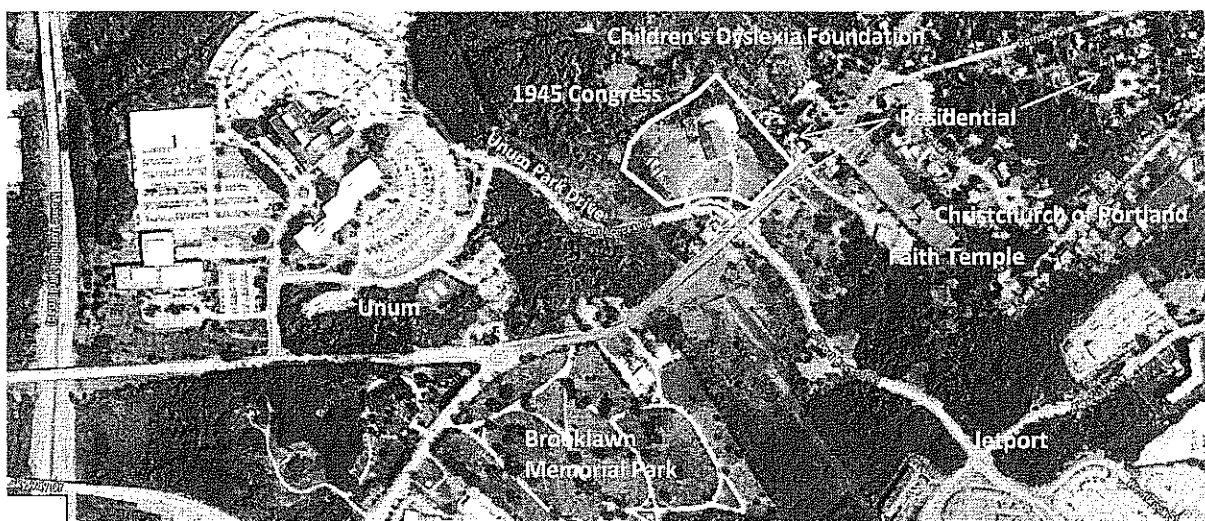


Figure 1: 1945 Congress Street in context.

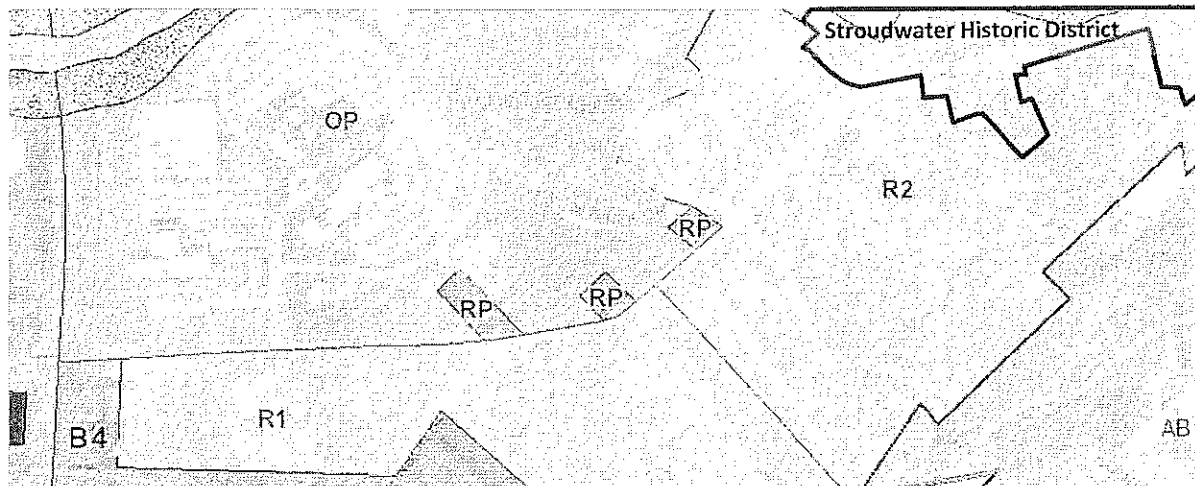


Figure 2: 1945 Congress Street, existing zoning

II. BACKGROUND

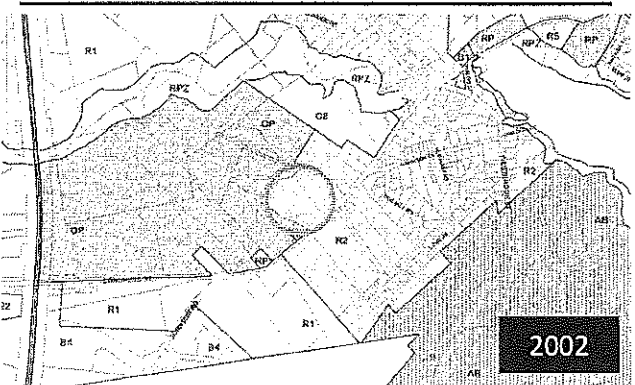
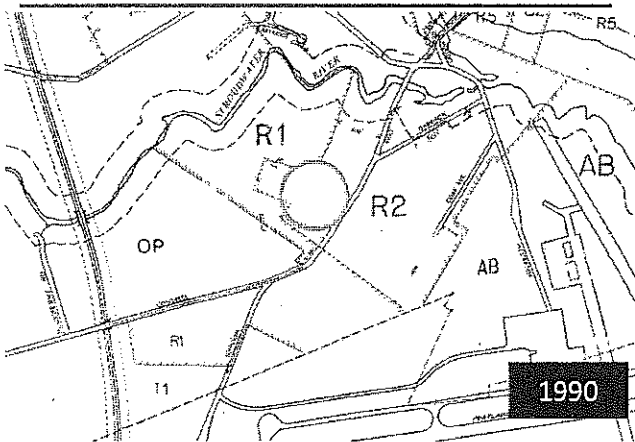
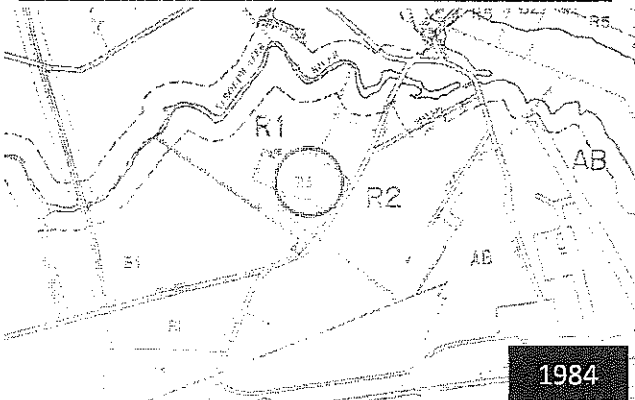
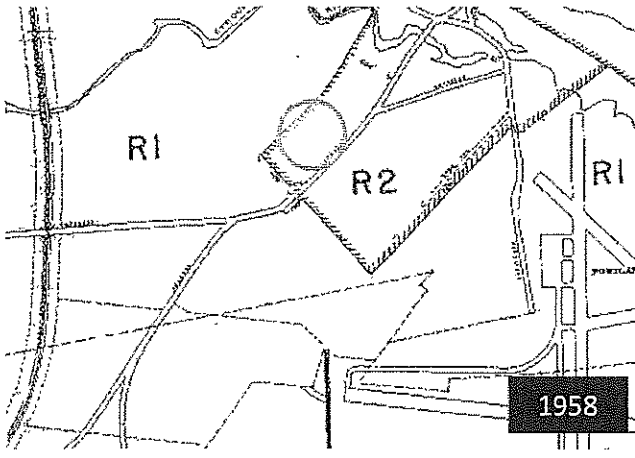
The 1945 Congress Street site is approximately 7 acres in size and has housed Lodge #188 of the Benevolent and Protective Order of Elks and their associated parking since the late 1960s. Although the site has frontage on Congress Street, access is from UNUM Park Drive. Residential uses abut the site both to the northeast and southwest. UNUM lies directly to the west, the Jetport lies due south, and several places of assembly sit across Congress Street to the east.

The site is currently zoned Residential R-2, as is the land to the south and east, which is developed largely with single-family homes (*Figure 2*). The residential neighborhood around Garrison Street, within this R-2 zone, is nationally designated as the Stroudwater Historic District. A Residential R-1 zone can be found to the west south of Congress Street; this zone houses the Brooklawn and Temple Beth El cemeteries. UNUM lies in the nearest Office Park (O-P) zone, to the immediate west and north of the site. Several small Residence-Professional (R-P) zones can also be found to the west on Congress Street. The R-P zone immediately west of 1945 Congress houses several single family homes; the other R-P zones in this area generally provide sites for retail and personal service establishments in repurposed residential buildings.

III. ZONING AND POLICY HISTORY

A brief examination of the zoning and policy record shows that the zoning in the vicinity of the 1945 Congress Street site has been fairly dynamic over time. Early city zoning maps show the property in residential (RA) zoning, reflecting the historic character of the area as farmland. Following a major initiative by the city to revise the zoning ordinance in the late 1950s, the 1945 Congress parcel and its surroundings were zoned to Residential R-2, the zoning designation that exists today. Records indicate that at some point in the mid- to late 1960s, however, the city council actually considered and approved a rezoning of the site to R-6 with the intent of allowing the Elks to develop, apparently under conditional status; the Elks appeared before the Board of Appeals in the late 1960s for an "exception" to the R-6 zoning in order allow the construction of their "club and lodge" and the "formation of a softball field." By the late 1970s, UNUM had also relocated to outer Congress Street, where the zoning map had been altered to depict a B-1 zone (*Figure 3*).

The early 1980s saw an effort by the city to consider the economic development potential of a number of city neighborhoods and commercial centers. The resulting reports suggested that the city aggressively market the "Airport Development Area," and more specifically the end of Cobb Avenue/Westbrook Street, as a major manufacturing or office headquarters site. However, no rezoning of this area was ever completed, and



the zoning remained unchanged through the early 1980s.

In 1988, as part of a review of the city's commercial land use policy, the city's *Neighborhood Commercial Land Use Policies and Land Use Plan* created the Office Park (O-P) zone. The plan read, "[t]he need exists for a zone that would allow larger scale office development on larger lots in what could be considered more suburban locations. The parcels, while suburban in character, might have limited potential for residential development, due in part, for example, by proximity to the Jetport, or to the topography of the site, or its physical boundaries such as a busy arterial [sic]" (22). In a continuation of the economic development work conducted by the city in the early 1980s, the plan identified UNUM and Congress Street/Cobb Avenue (in conjunction with the Airport Business zone) as areas for potential rezoning to O-P. In the wake of this plan, the city modified the zoning map to show O-P at the UNUM site. However, none of the surrounding area was converted to O-P. By the late 1980s, the Elks Lodge had actually been rezoned back to R-2. The area at the end of Cobb Avenue remained in R-2 as well. It should be noted that, through the 1990s, as UNUM grew, the O-P zone north of Congress Street did extend eastward, subsuming much of the R-1 residential zone south of the Stroudwater River and north of the existing R-2 zone.

In the early 1990s, the Portland International Jetport developed plans to relocate the airport access road from Westbrook Street to its current location. As part of the 1994 *Airport Master Plan*, the city generally considered land uses on airport land south of Congress Street in the location of the access road, ultimately suggesting that most of this property be held as open space/buffer, with small portion at the point of highest elevation to be used for "terminal support." While the road portion of the plan was realized, this land use recommendation was not, and the land around the access road remained as a buffer in the R-2 zone. Similarly, Cobb Avenue has never been rezoned.

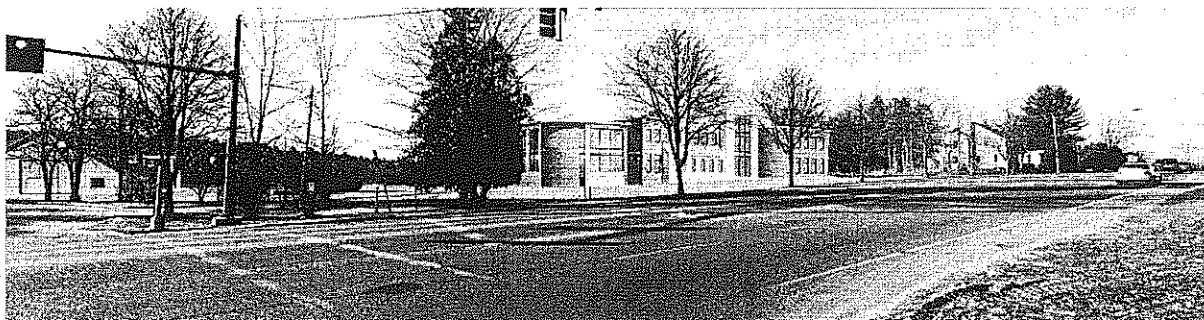
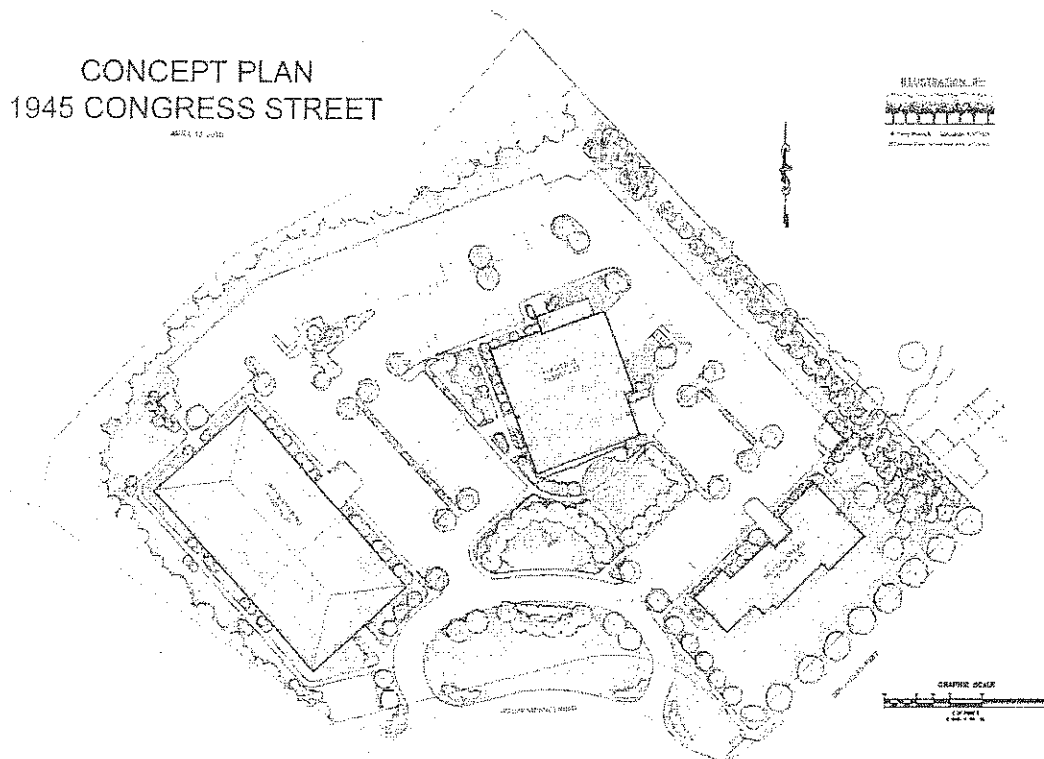
Figure 3: Zoning history, Outer Congress Street, with 1945 Congress highlighted

It

should be noted that the 1945 Congress site has been the subject of planning board and council deliberations as recently as 2012. At that time, Husson University proposed to develop the lot as part of their Southern Maine campus. In order to do so, they required a zoning text amendment to allow colleges, universities, and trade schools as conditional uses in the R-2 zone. Although the city council adopted the text amendment to this effect in April of 2012, Husson ultimately elected to locate elsewhere, and the 1945 Congress site was never redeveloped.

IV. SITE AND CONCEPTUAL PLAN

For reference, the applicant has provided a conceptual plan depicting the proposed development on the 1945 Congress site (*Figure 4 and Plan 1*). The plan shows access much as it exists today, with a landscaped focal area around the Elks statue at the entrance to the site. The Elks Lodge remains in a smaller renovated building at the rear of the property, with two new office buildings enclosing it to the south and west. The plan includes buffer plantings along the eastern property line, and existing landscaping is maintained at the rear and western boundaries of the site. The applicant has provided photos depicting thick evergreen landscaping as a treatment for the eastern property line (*Attachment 7*). The plan includes a significant amount of off-street parking, including bus and motorcycle parking spaces. A bus shelter is also included in the plans.



Figures 4 and 5: Conceptual plan (top); rendering from Congress Street looking east (bottom)

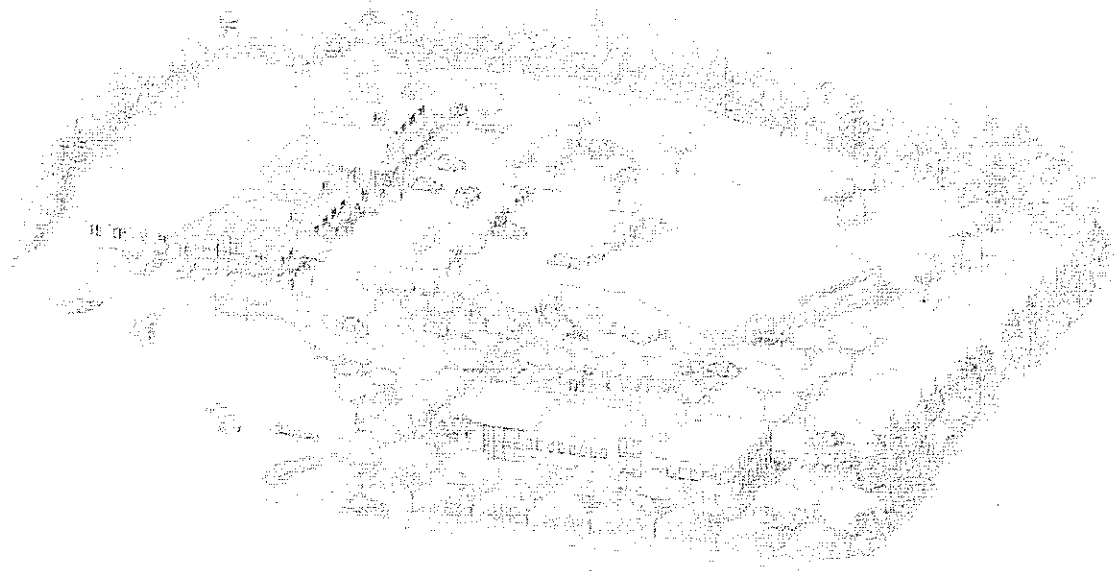


Figure 6: rendering of conceptual plan from Congress Street

In addition to the concept plan, the applicant has provided several renderings showing the site as envisioned under a zone change to the O-P (*Figures 5 and 6 and Plans 2-8*). These begin to depict the scale of the proposed buildings, the setbacks, and some of the buffering shown in the concept plan. The plan, as well as the design of the buildings proposed on the site, would be considered in detail under site plan review.

It should be noted that the applicant has submitted a purchase and sale agreement which demonstrates their intent to sell a 10 foot strip of land on the eastern portion of the site to the abutting landowner in an effort to allow the preservation of a buffer in that location and, further, allow that neighbor's property to become conforming under the R-2 zone. The purchase and sale agreement includes an exhibit depicting the land transfer, which would effectively cut a notch out of the eastern property line of the 1945 Congress Street site (*Attachment 10*).

V. REVIEW OF POTENTIAL ZONING DESIGNATIONS

Current Zoning:	R-2 (Residential)	Proposed Uses:	Elks Lodge; medical office; general office
Proposed Zoning:	O-P (Office Park)	Parcel Area:	304,892 SF (6.99 acres)
Current Uses:	Elks Lodge		

Over the course of this zone change review, the board discussed the possibility of a variety of alternatives to the proposed Office Park (O-P) zoning designation, including the Office Park (O-P) zone with a text amendment to allow places of assembly as conditional uses, the Residence-Professional (R-P) zone, the Neighborhood Business (B-1) zone, the Community Business (B-2) zone, and the Residential R-3 zone as well. All of these alternatives are briefly summarized below. Tables comparing purpose statements, permitted uses, and dimensional requirements of these zones appear in *Attachment A*.

1. Existing Residential R-2

The existing R-2 zone is clearly designed to encourage large lot, single-family residential development. The zone permits a very limited range of uses, including single-family homes, municipal uses, and home occupations, by right. With a conditional use permit under the existing R-2 zoning, the lot could be redeveloped as a university or school (as has been previously considered under a separate zoning amendment application related to Husson University), or as a long-term, extended care or day care facility, among other uses. Residential buildout would be governed by a 10,000 SF minimum lot size and a street frontage requirement of 50 feet. Non-residential buildout would basically be limited by the maximum lot coverage regulation of 20%, with floor area further restricted by maximums which would apply in the case of a college or university (24,000 SF) or place of assembly (5,000 – 9,000 SF for small or medium places of assembly). The applicant's desired use, medical and general office, is not permitted.

2. Office Park (O-P)

The purpose of the O-P zone is to provide locations for office and associated uses in “a park- or campus-like setting which are of the highest quality, are well designed and maintained, and are compatible with their natural surroundings.” Under the proposed zone change to O-P, in addition to office, some more industrial uses, such as printing and publishing establishments and high-technology manufacturing, would be permitted either by right or conditionally. The potential buildout of the lot is more significant, with 60% maximum impervious surface (which, it should be noted, includes building footprints and is meant to preserve some open space on site) and a height limit of 55 feet. The O-P zone requires a master plan subject to development standards specific to the zone. (This master plan requirement predates and is distinct from the recently adopted provisions under the site plan ordinance for master development plans.) Under the O-P zone’s master plan requirement, any office park developed in the zone would be reviewed according to development standards regulating the design, landscaping, sidewalks, screening, preservation of natural features, traffic, lighting, and signs of the development. The master plan review, in addition to site plan (as well as potentially subdivision) review, would provide the planning board a significant opportunity to guide the site’s development.

3. Office Park (O-P) with Text Amendment

At the first workshop on this zone change request, the planning board discussed the fact that an O-P zoning designation for the site would render the Elks Lodge a non-conforming use, as places of assembly are not technically permitted under the existing O-P language. It should be noted that Ann Machado, the city’s Zoning Administrator, has confirmed that the Elks Lodge would become a *legal* non-conforming use (*Attachment B*), and that the applicant has not indicated any concerns with the issue of non-conformity. However, the board did consider the option of a text amendment to make places of assembly a conditional use in the O-P zone. This option was largely dismissed given the desire to preserve O-P zones for the purposes of office uses.

4. Residence-Professional (R-P)

The R-P has also been examined as a potential option for the site, as this zone allows the proposed use and can be found proximate to the 1945 Congress Street site. The R-P zone is written to function as a buffer between residential and more intensive non-residential areas and is often used to bookend business zones. Under a zone change to R-P, a broad array of uses would be permitted, including residential, professional office, and business services. Daycares, schools, places of assembly, and long-term care facilities would be permitted as conditional uses. The buildout of these uses would be controlled by a .45 maximum floor area ratio and a 60% maximum impervious surface limit established by the nearest residential zone. The height limit, at 45 feet, would be less than under the O-P. However, the R-P does not provide for the master plan design control of the O-P zone. It also allows for much smaller lot size, lesser setbacks, and thus more intensive development. As a result, it is generally deemed a less desirable alternative than the O-P designation in this context.

5. Neighborhood and Community Business B-1 and B-2

Similarly, the board also considered the Neighborhood and Community Business B-1 and B-2 zones as options for the site. These zoning designations would allow a much broader range of uses than the R-2 or the O-P and would also allow much greater lot coverage on the site. For these reasons, these zoning designations were largely dismissed.

6. Residential R-3

Over the course of the review, the board also investigated the question of higher density residential rezoning. The R-3 zone, for example, would permit planned residential unit developments (PRUDs) of a townhouse style at a density of one unit/6,500 SF of net land area. At this ratio, 30-40 units could theoretically be permitted on the 1945 Congress Street site. The R-3 would also conditionally allow sheltered care group homes, schools, extended care facilities, hospitals, and day care facilities. The R-3 would not accommodate the applicant’s desire for office uses.

At the board’s request, the applicant submitted a housing feasibility analysis which examined the financial feasibility of residential development under the R-3 zone (*Attachment 9*). This analysis tested a 40-unit

multi-family housing scenario under the provisions for the R-3 zone, as well as higher density scenarios of 80 market rate or mixed income units under a theoretical zone, and generally found all of these scenarios financially untenable. (It is worth noting that the study also tested the financial viability of 8- and 15- lot single-family subdivision scenarios (assuming that the developer would sell the buildable lots under the R-2 provisions) and likewise found that development costs would necessitate sale prices out of line with the current market.) As a result, the concept of a residential rezoning was not pursued.

VI. O-P ZONING AND POTENTIAL IMPACTS

The question of the impacts of the proposed development emerged repeatedly over the course of the zone change review, with neighbors raising concerns about the traffic, environmental, and aesthetic implications of a zoning amendment. Specific impacts of any proposed development would be examined in detail at the site plan stage, but a cursory consideration of the potential repercussions of a zone change to O-P, given the type and intensity of uses which might be developed under the new zoning designation, was conducted early in the zone change review.

As discussed above, the permitted uses and the dimensional requirements of the existing R-2 essentially limit the site largely to single-family residential development. Given this, the R-2 does not bear the risk of exceptionally deleterious traffic, environmental, or other effects. If granted a permit by the planning board, some of the R-2's conditional uses, however, including schools or day care facilities, could come with traffic, light, and noise implications. To some extent, lot coverage and lot size requirements would serve to temper the effects of any development of this kind.

Environmental, noise, and traffic impacts are likely to be greater under a zone change to O-P, in light of the greater buildout allowed and the differing uses permitted. As previously discussed, the O-P does require a master plan which could help mitigate detrimental effects. The O-P development standards, written under *Section 14-230.13*, require that development proposals:

- Demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation, open space, drainage, and vegetation and other natural features;
- Include a landscape program;
- Conform to restrictions on impervious surfaces and the location of pavement;
- Include internal sidewalks which take advantage of the topography and natural features of the site;
- Include buffer areas abutting residential zones uses and screening for parking lots and driveways from public view;
- Include efforts to preserve natural features including, but not limited to, existing vegetation, flood plains, rock outcroppings, surface water bodies, drainage swales and courses, and wetlands;
- Demonstrate that additional traffic generated by the project itself can be reasonably accommodated on existing public streets;
- Coordinate the scale, texture, color, and massing of buildings, with emphasis on the appearance of building facades from public streets, driveways, parking areas, and other nearby buildings; and
- Identify the location and style of lighting and signage and coordinate these with the building and landscaping design.

Given the interest in the traffic implications of the proposed zone change, the board requested trip generation estimates from Tom Errico, the city's consulting traffic engineer, based on the full potential buildout under the existing and proposed zoning designations. These estimates represent a worst case scenario; they assume office development under an O-P zoning designation that maximizes the building envelope within height, impervious surface, and floor area ratio limits. The estimates show that considerably more traffic could theoretically be generated under the O-P zoning than could be generated with a residential redevelopment of the existing site under the existing R-2 zoning.

Mr. Errico writes,

I have conducted a preliminary trip generation analysis for the...development assumptions you have provided and the results are summarized in the following table. The trip generation estimates were computed for the Weekday AM and PM peak hours and were based on the Trip Generation Manual, Institute of Transportation Engineers, 9th Edition.

Zone	Density	Peak Hour Volume Entering and Exiting	
		AM	PM
<i>Existing R-2</i>	<i>14 Residential Units</i>	<i>10 Vehicles</i>	<i>14 Vehicles</i>
<i>Office Park (OP)</i>	<i>192,563 SF Office</i>	<i>302 Vehicles</i>	<i>288 Vehicles</i>

It should be noted that the 'Existing R-2' numbers cited here do not reflect actual trip generation numbers from the site under the current use by the Elks Lodge. The 2012 Husson application associated with the site included some trip generation estimates for the Elks Lodge use, based not on counts but on trip generation ratios from the Institute of Transportation Engineers. At the time, Husson's traffic engineer estimated 55-70 trips to/from the site during the AM and PM peak hours. Review of the Elks website finds lodge hours from 9:30 a.m. to 9 p.m. and regular meetings on Monday nights at 7, suggesting that much of the existing traffic from the site would actually be off-peak. Anecdotally, there is some indication that most trips under the existing condition may occur once a week during daytime hours when a regular event is held at the lodge. For reference, there are approximately 200 parking spaces on site.

In subsequent correspondence, Mr. Errico adds,

I would like to note that based upon the trip generation levels noted in my previous email, a comprehensive traffic impact study would be required to assess impacts to the area roadway system. Please note the following:

- The Congress Street/International Parkway/UNUM Drive intersection will serve as the primary access point for any development. Use of this existing signalized intersection seems appropriate, but any development application would be required to assess the ability of this traffic signal to adequately accommodate the added traffic.*
- The Congress Street/Johnson Road intersection seems to operate at an acceptable level of service, but review of conditions would be required.*

This traffic analysis would occur at the time of site plan review.

In this vein, it should be noted that the city is currently in the process of a design project for outer Congress Street near this area. The plans include pedestrian and transit improvements at Westbrook Street, additional crosswalks near Garrison Street, and enhancements to the inbound merge area east of International Parkway/UNUM Drive. In addition, Mr. Errico writes that the "MaineDOT will be upgrading the traffic signal at the Congress Street/Westbrook Street intersection. This intersection currently experiences congestion problems, but it is unlikely any capacity enhancements will be possible given constraints" (Attachment C).

VII. O-P ZONING AND THE COMPREHENSIVE PLAN

There has also been considerable discussion regarding the comprehensive plan over the course of this zone change review. In making a recommendation to the City Council, the board is asked to determine if the proposed zoning map amendment is "consistent" with the adopted comprehensive plan. In this light, the applicant's submittal includes a lengthy narrative arguing the question of consistency (Attachment 6). This narrative draws heavily from the *Community Commercial Policies and Land Use Plan* of 1987-88 which, among other goals, stated that the city should "[p]romote new office park development of high quality in outlying areas for development seeking a suburban-style setting" and "[a]ccommodate the city's commercial activity within a range of functionally and physically defined commercial centers." The narrative cites comprehensive plan policy around developing commercial centers on transit corridors. Maybe most convincingly, the submittal quotes the plan language creating the O-P zone, which, as stated above, explicitly noted the need for a "zone that would allow larger scale office development on larger lots in what

could be considered more suburban locations. The parcels, while suburban in character, might have limited potential for residential development, due in part, for example, by proximity to the Jetport, or to the topography of the site, or its physical boundaries such as a busy arterial.” The plan identifies Congress Street/Cobb Avenue, south of the site across Congress Street, as a potential O-P zone. The comprehensive plan more broadly identifies this part of the city as a growth area (*Attachment E*).

Responding to concerns regarding encroachment into residential areas, the narrative also argues that Stroudwater has developed differently from other neighborhoods in the city, with significantly less of its land area in residential use, more of its land vacant, and more recent commercial and industrial development. The narrative further argues that, though the 1945 Congress site is currently zoned residential, the likelihood of residential redevelopment is small.

It should also be noted that there is policy in the comprehensive plan that counters some of these arguments. The comprehensive plan includes numerous goals and policies, many originating in the 1991 *Downtown Vision*, meant to concentrate office development in the city’s downtown core and away from suburban locations. With respect to the loss of the R-2 zoning, in *Housing: Sustaining Portland’s Future*, the city establishes a policy of protecting “the stability of Portland’s residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental, and other non-residential uses.” In a similar vein, the city’s *Industry and Commerce Plan* from 1994 includes goals related to “protect[ing]...residential zones.” Neighbors of the proposal have noted these comprehensive plan policies, and have suggested that removing land from the R-2 stock and placing it in a zone where housing is prohibited would serve to eliminate the potential for additional housing, directly contradicting elements of the comprehensive plan.

VIII. O-P ZONING AND THE QUESTION OF PRECEDENT

Over the course of this zoning amendment application review, concerns about precedent and commercial encroachment have repeatedly arisen as well. Neighbors have voiced strong objections to the idea of an O-P rezoning, arguing that a rezoning will have a “domino effect” on parcels to the east, including several other existing places of assembly, including Faith Temple and Christchurch of Portland. These properties, much like the Elks’, sit in the R-2 zone on large lots fronting Congress Street. In some cases, O-P zoning can be found immediately adjacent to these sites, and in at least one case, these sites are currently for sale.

With the aim of informing the discussion on this matter, Corporation Counsel provided a memo which directly addresses the precedential effect of zoning decisions (*Attachment D*). This memo states, first and foremost, that

Because zoning is a legislative act and ultimately an exercise of legislative judgment by the City Council (subject to the “consistency” analysis discussed above), a zoning decision is not binding per se. (Joseph T. Bockrath, Zoning Board’s Grant of New Application for Zone Change, Variance, or Special Exception After Denial of Previous Application Covering Same Property or Part Thereof, 52 A.L.R.3d 494, 2b (“Being the result of a ‘legislative process,’ a zone change is not binding on future determinations . . .”)) In other words, because zoning requires an exercise of discretion and legislative judgment, a legislative body like the Council is entitled to exercise that discretion however it sees fit – provided of course that its decision is consistent with the comprehensive plan, is not arbitrary, nor discriminatory. Therefore, even where the Board/Council denies a proposed zoning amendment with respect to a parcel of property this year, it would not be bound by that decision if the request were renewed next year. Id. at 3a (collecting cases). Having said that, in order to avoid an allegation that it is exercising its legislative discretion in an arbitrary or capricious manner, in such a situation the Board/Council would be well advised to articulate the change in circumstances that justifies a divergent exercise of its discretion with respect to the same parcel of land.

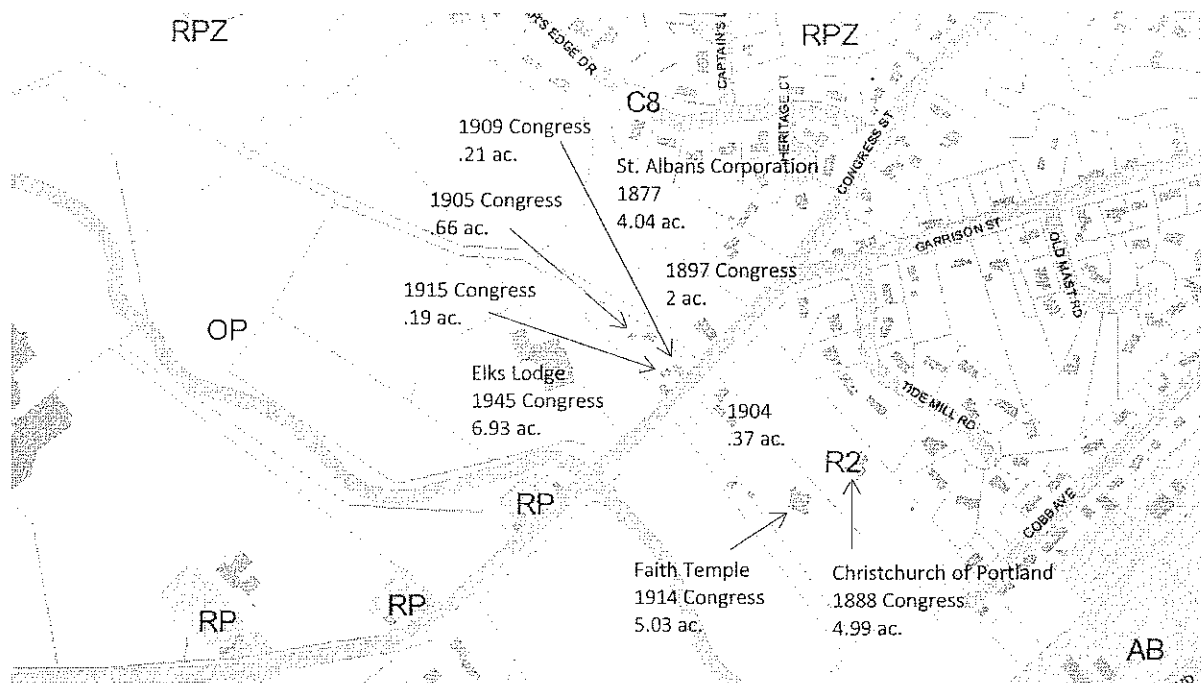


Figure 7: Parcel sizes and context in vicinity of 1945 Congress Street

Ms. Thompson identifies examples from case law which have been used to justify differing zoning decisions with respect to “seemingly similar properties,” such as changes to the property in question, changes to the surrounding neighborhood, changed traffic impacts, or changes in the zoning amendment requested.

In this light, the planning board discussed several distinguishing factors which can be cited to differentiate the Elks’ site from the properties in question to the east (Figure 7). The 1945 Congress parcel, which is almost seven acres in size, is larger than the easterly sites, which generally range from less than an acre to five acres in size. The Elks’ site is contiguous with the O-P zone on two sides, while these other sites share one border with the O-P zone at most. Lastly, the 1945 Congress Street site has access from a secondary road with the benefit of a signalized intersection with Congress Street; all of the easterly sites would rely on access directly from Congress Street.

IX. PUBLIC COMMENT

Over the course of the zone change review, the planning board received a significant number of public comments related to the proposed zone change (PC-1-43). These comments generally fall into several categories. A number express concerns about impacts of the proposed office development. These comments raise questions about potential traffic impacts; pedestrian safety in the area; building design, parking, and siting with respect to the O-P development standards; buffering from adjacent residential properties; and the effects on what many perceive as an important gateway with valuable natural resource and open space attributes. Other comments argue that the proposed zoning map amendment is inconsistent with the comprehensive plan. Most of these build cases on the housing objectives of the plan, raising concerns that land will be taken from the potential housing supply and that the zone change would eliminate the potential for single-family development on the site. The board has received a public comment from a neighbor which went so far as to develop a concept for residential redevelopment on the site (PC-21). Last, a number of comments raise larger questions regarding “piecemeal zoning,” the need for a broader vision for Stroudwater and outer Congress, and the potential for encroachment on existing residential neighborhoods, particularly to the east. The Stroudwater Village Association has requested repeatedly (and most recently in correspondence dated August 31) that the board defer any zoning decision until a more comprehensive neighborhood planning effort can be undertaken (PC-14, PC-23, and PC-31). It should be noted that the city also received a number of letters from Elks Club members requesting that the board approve the plans (PC-13).

X. BOARD DELIBERATION AND RECOMMENDATION

In its deliberations, the planning board clearly acknowledged the importance of this area of outer Congress Street to both the immediate neighborhood and as a gateway to the city more broadly. Board members also recognized the need to carefully consider the transition between a heavily commercial area west of this site and the sensitive residential and natural areas to the north and east. The board agreed that the Planning Division should work within its resources as part of the airport master planning process to address questions of land use in this unique and important part of the city.

The four members of the board who supported the proposed zone change, in contrast, argued that the site is more suitable for office than for residential use, given its location across from the Jetport entrance on a heavily-traveled commuter corridor. They held that that the zone change could be considered a logical extension of the existing O-P zone, which sits to the north and west. With respect to the question of precedent, they identified distinguishing factors on the 1945 Congress Street site, including its size, its adjacency with the O-P zone on two sides, and its access from a secondary road with a signalized intersection on Congress Street, which can be used to differentiate it from neighboring sites. Lastly, they noted that the O-P zone includes strong provisions related to buffering and open space which, under site plan review, could serve to preserve or even enhance the Congress Street/UNUM Park Drive intersection as a gateway and green entry to the city.

There were two members of the board who expressed reservations with respect to the proposed zone change and therefore voted against its recommendation. These members questioned the ability of the site to support the "campus-like" setting prescribed by the O-P zoning and, likewise, the suitability of the site for such a use. These members also raised concerns regarding the desire of the Elks to remain on the site under legal non-conforming status. Lastly, these board members expressed reservations with reference to competing policies of the comprehensive plan, particularly those which promote the stability of residential neighborhoods and residential growth.

Ultimately, the majority of the board voted to support a rezoning to O-P for the 1945 Congress Street site. In order to create a buffer for the residential properties to the east, the board recommended rezoning to a line parallel with the eastern property boundary and offset at a distance of 40 feet. This line mirrors one proposed by the applicant in early discussions with the board and allows some R-2 to be preserved on the site. This approach has been used in limited instances elsewhere in the city, often with a zone line that parallels a street.

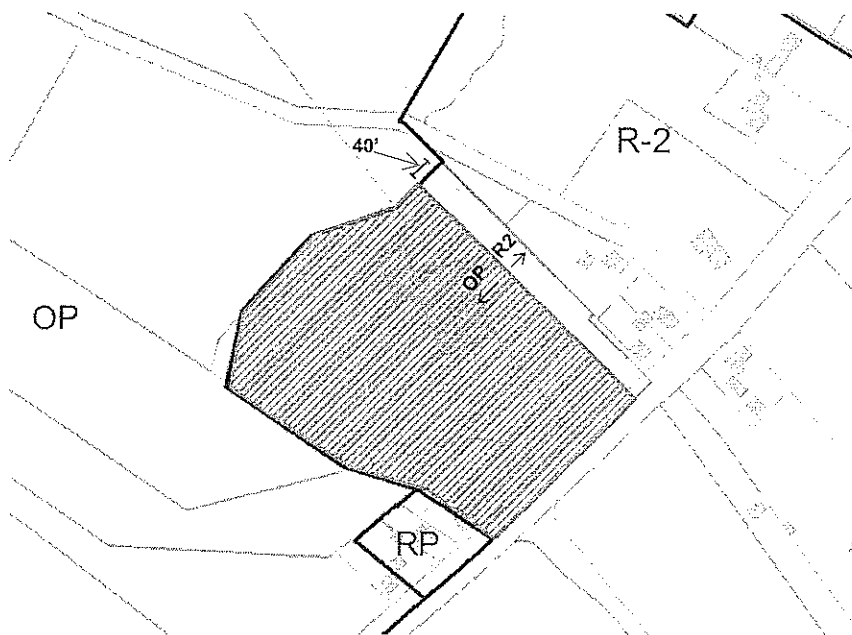


Figure 8: Area of proposed zone change, 1945 Congress Street

The board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) as follows:

Based on the material provided in this report, public testimony, a review of applicable policies, and other information, the planning board finds that the proposed map amendment to change the zoning on the north side of Congress Street at UNUM Park Drive from Residential R-2 to Office Park (O-P), as shown in the map

above, is consistent with the Comprehensive Plan and recommends adoption of the proposed amendment to the city council.

XI. ATTACHMENTS

PLANNING BOARD REPORT ATTACHMENTS

- A. Zoning alternatives tables
- B. Zoning administrator review (email from Ann Machado)
- C. Traffic engineer review (email from Tom Errico)
- D. Corporation counsel memo on zoning amendments (Memo from Jennifer Thompson)
- E. Growth area memo (excerpted from 6/28/15 memo to City Council)

APPLICANT'S SUBMITTALS

- 1. Applicant's cover letter (11/21/14)
- 2. Authorization letter (11/21/14)
- 3. Purchase & sale agreement (Elks Lodge)
- 4. Applicant's cover letter (4/13/15)
- 5. Zoning amendment application
- 6. Comprehensive plan narrative
- 7. Buffering photos
- 8. Neighborhood meeting packet
- 9. Housing redevelopment feasibility analysis
- 10. Purchase & sale agreement (DuBois)

PLANS

- Plan 1. Concept plan
- Plan 2. Propose Elks site from above
- Plan 3. Rendering of both proposed buildings
- Plan 4. Clark Insurance building
- Plan 5. Office building on Congress Street
- Plan 6. Congress Street view from east
- Plan 7. Congress Street view from west
- Plan 8. Rendering from Congress Street

PUBLIC COMMENT

- PC-1. Letter from Bill Linnell, Joyce Gauthier, and Janet Burns, 1/14/15
- PC-2. Letter from David Silk, 1/14/15
- PC-3. Letter from Bill Linnell, Joyce Gauthier, and Janet Burns, 1/16/15
- PC-4. Letter from Lucie Tardif, 1/19/15
- PC-5. Email from Joe and Carolyn Heasley, 1/19/15
- PC-6. Letter from Dan Koloski, SVA President, 1/20/15
- PC-7. Email from John Sommer, 1/20/15
- PC-8. Email from Rob Rosenberg, 1/22/15
- PC-9. Email from David Silk, 1/22/15
- PC-10. Email from Bill Linnell, 1/23/15
- PC-11. Email from Paul Dubois, 1/24/15
- PC-12. Letter from Margaret Doyle, 1/30/15
- PC-13. Letters from Elks Lodge Members, 3/15
- PC-14. Email from SVA, 5/25/15
- PC-15. Email from Angela Wheaton, 5/26/15
- PC-16. Email from Charlton Smith, 5/26/15
- PC-17. Email from Marc Hodroff, 5/26/15
- PC-18. Letter from David Silk, 5/26/15
- PC-19. Email from Elizabeth Hoglund, 5/26/15
- PC-20. Letter from Mary Lou Kimball, 5/27/15
- PC-21. Letter from Mitchell & Associates on behalf of Bill Linnell, 7/13/15

- PC-22. Email from Paul Dubois, 7/22/15
- PC-23. Statement from Stroudwater Village Association, 7/23/15
- PC-24. Email from James Casterella, 7/26/15
- PC-25. Email from William Linnell, 7/28/15
- PC-26. Email from David Silk, 7/28/15
- PC-27. Email from Charlton Smith, 8/20/15
- PC-28. Email from Angela Wheaton, 8/20/15
- PC-29. Email from Eugenia O'Brien, 8/21/15
- PC-30. Email from Betsy Smith, 8/21/15
- PC-31. Email from Karen Hinchliffe, 8/25/15
- PC-32. Email from Patricia Adriance, 8/26/15
- PC-33. Statement from the Stroudwater Village Association, 8/31/15
- PC-34. Email from David Silk, 9/3/15
- PC-35. Email from Bill Linnell, 9/3/15
- PC-36. Email from Elizabeth Hoglund, 9/4/15
- PC-37. Email from Patricia Bernard, 9/4/15
- PC-38. Email from Barbara Turitz, 9/7/15
- PC-39. Email from Edward Resnisky, 9/7/15
- PC-40. Email from Valerie Libby, 9/8/15
- PC-41. Email from Joseph McDonnell, 9/8/15
- PC-42. Email from Bill Lairsey, 9/8/15
- PC-43. Email from Anthony Buxton, 9/8/15

File: 13151

**PINKHAM & GREER
CIVIL ENGINEERS**

28 VANNAH AVE. PORTLAND, ME. 04103
Tel: 207.781.5242 Fax: 207.781.4245

November 21, 2014

Att. 1

Ms. Barbara Barhydt, Planning Department
City of Portland
389 Congress Street, 4th Floor
Portland, ME 04101

RE: ELKS PROPERTY, ZONE CHANGE

Dear Barbara,

I would like to thank you and the City Staff Members that attended our meeting on Wednesday, for their input. Based on that starting point, on behalf of Northland Enterprises, Inc., we would like to continue our development process with a zone change. Attached is a revised zoning map that changes this property to Office Park (OP) from the existing Residential 2 (R2) designation. This will expand the OP District that currently encompasses the UNUM Development.

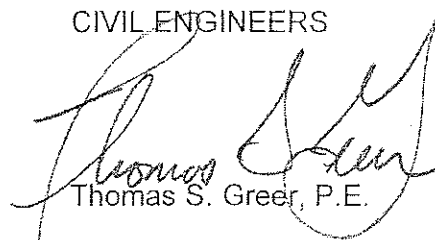
It is our understanding the Elks Club will be left as an existing non-conforming use. They will be allowed to shrink their footprint but not expand it.

Our goal is to get through the zone change and planning board approval process by April. We understand this is a tight time frame, but we do not want to loose track of that goal.

If you have any questions, please feel free to call. Thank you for your assistance.

Sincerely,

PINKHAM & GREER
CIVIL ENGINEERS



Thomas S. Greer, P.E.

cc: (1) David Lloyd, Josh Benthien, Rex Bell, Brad Fries, File

Enclosures

TSG/rjs

Northland Enterprises, LLC
17 South St, 3rd Flr
Portland, ME 04101

(207) 780-0223

November 21, 2014

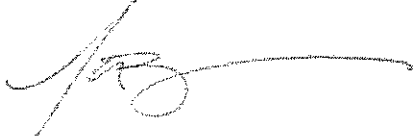
To Whom It May Concern

This letter is to inform you that Thomas S. Greer and his associates of Pinkham & Greer Civil Engineers in Portland are hereby authorized to represent Northland Enterprises, Inc. throughout the approval process of Elks Club in Portland, Maine.

This includes representing us with the City of Portland and Department of Environmental Protection, as well as any other State or local agencies who may become involved in the process.

Should you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Josh Benthien', with a long horizontal flourish extending to the right.

Mr. Josh Benthien

FIRST AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("First Amendment") is dated as of August __, 2014 by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine ("Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, (the "Purchase Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including September 30, 2014 and Buyer and Seller shall have until September 30, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate as set forth more fully in Paragraph 5.1.
2. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this First Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By:

Name: Timothy Smith

Title: Exalted Ruler

BUYER:

Northland Enterprises, LLC

By: _____
Name: _____
Title: _____

Dr. Michael Bedecs

SECOND AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Second Amendment") is dated as of September 22, 2014 by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine ("Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, (the "Purchase Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including November 8, 2014 and Buyer and Seller shall have until November 8, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate as set forth more fully in Paragraph 5.1.
2. Buyer and Seller agree that Seller has obtained Member approval and that the deadline for Seller to obtain Grand Lodge approval has been extended to October 9, 2014.
2. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Second Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Second Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

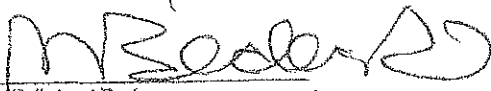
By: 

Name: Timothy Smith
Title: Exalted Ruler

BUYER:

Northland Enterprises, LLC

By: 
Name: Rex Bell 9/22/14
Title: Partner

 9/23/14
Dr. Michael Bedecs

THIRD AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Third Amendment") is dated as of November 7, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, and that certain Second Amendment dated September 22, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

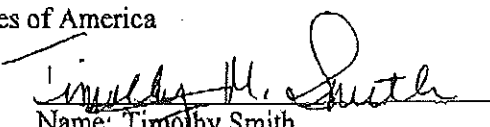
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including November 25, 2014 and Buyer and Seller shall have until November 25, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Third Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By: 

Name: Timothy Smith

Title: Exalted Ruler

BUYER:

Northland Enterprises, LLC

By: 

Name: Joe B. Smith

Title: Owner


Dr. Michael Bedeas

SENANTHL26 Third Amendment to Elk's property P&S dec

FOURTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Fourth Amendment") is dated as of November 24, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedees, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, and that certain Third Amendment dated November 7, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including December 4, 2014 and Buyer and Seller shall have until December 4, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Future extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," may be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and any such extension agreement shall be binding on Buyer and Seller.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Fourth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By: _____

Name: Timothy Smith
Title: Exalted Ruler

BUYER:

Northland Enterprises, LLC

By: _____

Name: Ray Bell
Title: Partner

Michael Bedeas
Dr. Michael Bedeas 

FIFTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Fifth Amendment") is dated as of December 4, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014 and that Fourth Amendment dated November 24, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree to amend the Purchase Agreement as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended as follows:
 - a. the "Additional Contingencies Expiration Date" is hereby extended, up to and including December 19, 2014 with respect to all matters listed in Paragraph 5.1 except for the matters described in Paragraph 5.1(1) and Buyer and Seller shall have until December 19, 2014 to agree upon all matters listed in Paragraph 5.1 (except for the matters described in Paragraph 5.1(1) which shall have a later date and are addressed below) or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
 - b. the "Additional Contingencies Expiration Date" is hereby extended, up to and including December 31, 2014 with respect to all matters described in Paragraph 5.1(1) including all matters relating to the specifications of, and the work to be performed with respect to, the code compliant exterior wall and façade listed in Paragraph 1(b) of the Purchase Agreement as well as the specific configuration of the Seller's Retained Building, including the location of the end of Seller's Retained Building, and including agreement on plans drafted with respect to such work (all of which hereinafter is referred to as the "Building Specification Contingency") and Buyer and Seller shall have until December 31, 2014 to agree upon all matters relating to the Building

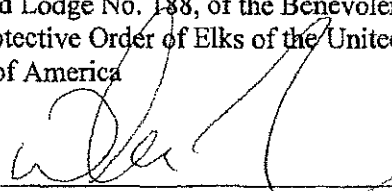
Specification Contingency or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.

2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Fifth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Fifth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

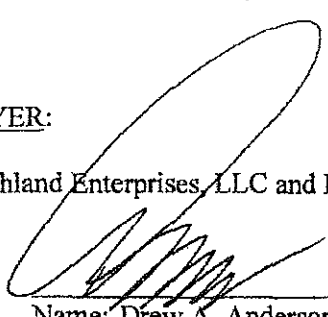
By: 

Name: William H. Leete, Jr., Esq.

Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.

Title: Its Attorney

SIXTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Sixth Amendment to Purchase and Sale Agreement ("Sixth Amendment") is dated as of December 18, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014 and that certain Fifth Amendment dated December 4, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

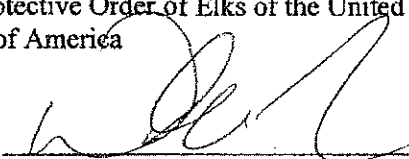
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including January 9, 2015 and Buyer and Seller shall have until January 9, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Sixth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Sixth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

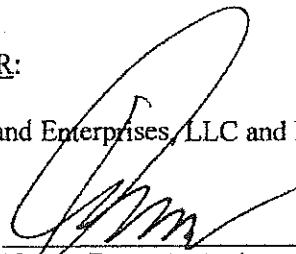
Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By: 

Name: William H. Leete, Jr., Esq.
Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.
Title: Its Attorney

SEVENTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Seventh Amendment to Purchase and Sale Agreement ("Seventh Amendment") is dated as of January 8, 2015, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014, that certain Fifth Amendment dated December 4, 2014, and that certain Sixth Amendment dated December 18, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

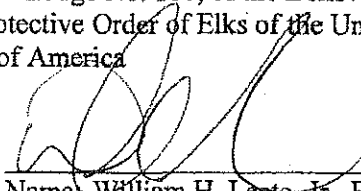
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including January 23, 2015 and Buyer and Seller shall have until January 23, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Seventh Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Seventh Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

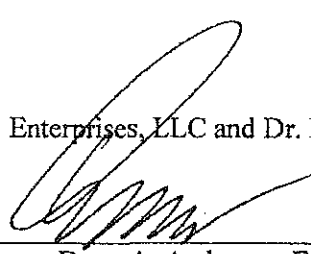
Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By: 

Name: William H. Lecte, Jr., Esq.
Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.
Title: Its Attorney

EIGHTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Eighth Amendment to Purchase and Sale Agreement ("Eighth Amendment") is dated as of January 20, 2015, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014, that certain Fifth Amendment dated December 4, 2014, that certain Sixth Amendment dated December 18, 2014, and that certain Seventh Amendment dated January 8, 2015 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

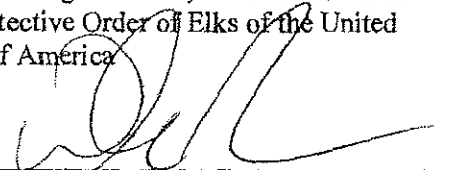
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including January 30, 2015 and Buyer and Seller shall have until January 30, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Eighth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Eighth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

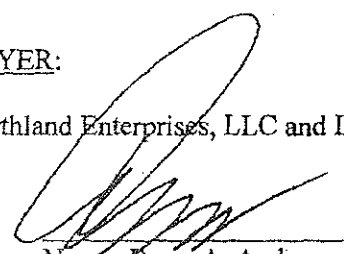
Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By: 

Name: William H. Lecte, Jr., Esq.
Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.
Title: Its Attorney

NINTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Ninth Amendment to Purchase and Sale Agreement ("Ninth Amendment") is dated as of January 30, 2015, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014, that certain Fifth Amendment dated December 4, 2014, that certain Sixth Amendment dated December 18, 2014, that certain Seventh Amendment dated January 8, 2015, and that certain Eighth Amendment dated January 20, 2015 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including April 10, 2015 and Buyer and Seller shall have until April 10, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Ninth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Ninth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By: _____

Name: William H. Leete, Jr., Esq.
Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: _____

Name: Drew A. Anderson, Esq.
Title: Its Attorney

TENTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Tenth Amendment") is dated as of April 1, 2015, by and between Portland Lodge No. 128, of the Beneficent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1948 Congress Street, Portland, Maine and Dr. Michael Heinen, having a place of business at 1375 Congress Street, Portland, Maine and Northstar Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 1, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 23, 2014, Third Amendment dated November 7, 2014, Fourth Amendment dated November 24, 2014, Fifth Amendment dated December 4, 2014, Sixth Amendment dated December 18, 2014, Seventh Amendment dated January 9, 2015, Eighth Amendment dated January 20, 2015, and Ninth Amendment dated January 30, 2015 (hereinafter the "Purchase Agreement") and

WHEREAS, Seller and Buyer acknowledge and agree that there are certain outstanding contingencies with respect to title and the zoning and land use contingency set forth in Section 6 of the Purchase Agreement, and certain of the Seller and Purchaser Additional Contingencies set forth in Section 7.1 of the Purchase Agreement as further described in this Amendment; and

WHEREAS, Seller and Buyer now confirm Buyer's exercise of its right to extend the Zoning Contingency Expiration Date to 90 days as provided in Section 6 of the Purchase Agreement;

WHEREAS, Seller and Buyer have agreed upon certain of the Seller and Purchaser Additional Contingencies as set forth in Sections 3.1, 2.1, 3.1, 4.1, and 5.1 as set forth herein;

WHEREAS, Seller and Buyer wish to extend the time upon which the Seller and Purchaser Additional Contingencies set forth in Sections 3.1, 4.1, and 5.1 and related matters shall be satisfied and hence, the Additional Contingency Expiration Date with respect to those contingencies contemporaneous with the Zoning Contingency Expiration Date;

WHEREAS, pursuant to paragraph 1.1 of the Purchase Agreement, "Seller and Purchaser Additional Contingencies", the parties have agreed upon extending certain of the Additional Contingencies, and wish to memorialize these agreements in this Amendment; and

WHEREAS, Seller and Buyer acknowledge and agree that all contingency provisions and time periods set forth in the Purchase Agreement other than those set forth above or otherwise preserved under this agreement have expired and that neither Seller nor Buyer have any rights to terminate the Purchase Agreement pursuant thereto;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Attached to this Fifth Amendment are certain additional agreements of Buyer and Seller as follows:

- a. Schedule A - Primary Components of Owner Initial Documents;
- b. Schedule B - Work Schedule and Property Use;
- c. Schedule C - Form of Right of First Refusal.

Seller and Buyer hereby acknowledge and agree that Schedules A, B and C need not be separately executed, that Buyer and Seller agree to their terms, and further that the signatures of Seller and Buyer on this Fifth Amendment are intended to be and shall be deemed to be effective as though Seller's and Buyer's signatures each appeared upon Schedules A, B and C, and further that such schedules shall be incorporated into this Fifth Amendment as though fully set forth.

Buyer and Seller further agree that Schedules A, B and C must: the Additional Contingencies set forth in subparagraphs 2, 3, 4 and 5 of Paragraph 5.1 of the Purchase Agreement and represent the agreement of the parties with respect to such Additional Contingencies.

2. Seller and Buyer confirm Buyer's election to extend the Zoning Contingency Expiration Date by either (a) Agreement provided in Section 6 of the Purchase Agreement, which Zoning Contingency Expiration Date is now June 21, 2015.

3. Seller and Buyer acknowledge and agree that the Seller and Purchaser Additional Contingencies set forth in Section 5.1(f) (specifications and work to be performed on Seller's Reasoned Buildings and (5) number of parking spaces to be allocated to Seller) are very likely to be determined only in connection with, and as a part of, Buyer's zoning, permitting and approval process set forth in Section 6 of the Purchase Agreement. Therefore, the parties hereby amend the Purchase Agreement so that the Additional Contingencies Expiration Date with respect to the Section 5.1(f) and (5) matters (the "Remaining 5.1 Matters") shall be the same as the Zoning Contingency Expiration Date, as extended and modified herein in this Amendment.

4. Seller and Buyer further agree that the "Remaining 5.1 Matters" shall be interpreted broadly as follows:

- a. The matters to be agreed upon under Section 5.1(f) shall include all work to be performed with respect to the LJK Building together with all work to be performed relating to the Building and the area surrounding the Building, including, without limitation the form and location of any sewer, water or other utility connections in addition to the matters expressly set forth in 5.1(f) and other matters set forth in the Purchase Agreement.
- b. The matters to be agreed upon under Section 5.1(5) shall include the total number, configuration, size, construction, location, appearance and maintenance of parking spaces, in addition to the matters expressly set forth in 5.1(5) and other matters set forth in the Purchase Agreement.

breach in this paragraph is intended to, nor shall be deemed to, terminate or waive any right either Seller or Buyer have to terminate this Purchase Agreement pursuant to Section 5.1.

5. Buyer agrees to keep Seller apprised of the process of obtaining approvals and shall promptly notify Seller's counsel of any filings with the City of Portland, with any municipal agency or any court filing or appeal.

6. This Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Ninth Amendment shall remain unchanged, except for the expressly stated amendments contained herein. Any capitalized terms not defined in this Amendment shall have the meaning given them in the Purchase Agreement.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Bridge No. 188, of the Boardman
and Protective Order of the United
States of America

By:

Name: Timothy Smith
Title: General Counsel

BUYER:

Acornland Properties, LLC

By:

Name: Michael Basler
Title: General Counsel

Dr. Michael Basler

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Agreement, dated the 11th day of June, 2014 (the "Contract Date"), is between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America ("Seller"), having a place of business at 1945 Congress Street, Portland, Maine, and Dr. Michael Bedecs having a place of business at 1375 Congress Street, Portland, ME and Northland Enterprises, LLC, or its permitted assignee (collectively, "Purchaser"), having a place of business at 17 South Street, 3rd floor, Portland, Maine 04101. The parties agree as follows:

1. Purchase and Sale of Property: Condominium Conversion.

(a) Subject to the terms and conditions set forth herein, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following described property owned by Seller (collectively, the "Property"):

- (i) That certain lot or parcel of real property known as 1945 Congress Street, Portland, Maine, being a portion of the property described in a deed from Elks Home, Portland, Maine, Lodge No. 188 Benevolent and Protective order of Elks to Seller, and recorded in the Cumberland County Registry of Deeds at Book 6157, Page 37, provided that the conveyance shall not include the retained portion of the Seller's building (being approximately 13,000 square feet of the total usable footprint of such building including the storage area) (the "Seller's Retained Building"). The property to be conveyed is generally identified on the Concept Plan attached to and made a part hereof as Exhibit A.
- (ii) A portion of the existing building on the real property shall be removed and demolished by Buyer and a new interior and exterior wall installed, with all of the foregoing in a manner acceptable to the parties as set forth in Section 5.1, and the configuration of the Seller's Retained Building to be as shown on the sketch plan attached to and made a part hereof as Exhibit B. All fixtures and improvements situated on the real property owned by Seller are to be retained by Seller and shall be part of Seller's Retained Building.
- (iii) For sake of clarity, Seller is retaining the Seller's Retained Building, an Elk statue and flag and flagpole as well as an Elks sign (such statue, flagpole and sign to be limited common elements under the condominium documents) to be located near Congress Street entrance at the general location designated on Exhibit C (such location to be subject to requirements that may be set out in any permits and approvals for the property and state and local sign ordinances), together with a pro rata

interest in the parking areas and common areas of the real property, all to be set forth in the condominium documents (more fully described below) to be prepared and recorded immediately following recording of the Deed (defined below). Purchaser agrees to cause a Maine Licensed Professional Surveyor to prepare and provide to Seller a metes and bounds description of the Property (including the property to be conveyed by Seller and the property to be retained) within ninety (90) days after the date the Lodge Approvals are obtained.

(b) Contemporaneously with the delivery and recording of the Deed, Purchaser shall cause to be recorded a Declaration of Condominium whereby the Property is converted to condominium ownership. The Condominium documents shall be prepared at Purchaser's cost and expense, shall be delivered in complete form to Seller on or before thirty (30) days after the Zoning Contingency expiration date and shall be subject to Seller's approval, not to be unreasonably withheld, delayed or conditioned. The Condominium documents shall, among other things, create a separate unit for the Seller's Retained Building ("Seller's Unit"), which shall include as limited common elements at a minimum the required number of parking spaces for Seller's Unit to satisfy all applicable zoning requirements, but at a minimum five (5) parking spaces per 1,000 square feet (Purchaser acknowledges, however, Seller's need for additional parking spaces on certain days and on weekends), and a pro-rata share of the common elements of the condominium, as well as provide a budget including anticipated condominium fees that will be due to the Condominium Association. Purchaser shall, as soon as practicable after the Closing and in consultation with Seller as to the schedule of work, perform the work necessary to reduce the size of the Seller's existing building to the Seller's Retained Building and erect a code-compliant exterior wall in form and substance acceptable to Seller as part of Seller's Unit. Purchaser shall also construct a new facade on all sides of Seller's Unit building and separate the utilities so that Seller's Unit is a separate and distinct Unit. Purchaser's work, the new building configuration and the location of the wall shall be more specifically identified in scope and cost as set forth in this Purchase and Sale Agreement (detail attached as Addendum #1).

Purchaser shall submit plans and specifications to Seller with respect to the foregoing work prior to submission to the City of Portland or its lender, which plans and specifications shall be subject to Seller's approval, not to be unreasonably withheld, delayed or conditioned. Purchaser will construct the improvements to Seller's Unit in accordance with the plans and specifications. Purchaser shall conduct such work in such a manner as to minimize as much as possible any disruption to Seller's use and enjoyment of Seller's Unit, in particular at times when any banquets, weddings, or similar revenue producing events are taking place. Work shall be conducted between the hours of 7:00 AM and 5:00 PM, Monday through Friday. Purchaser shall minimize any weekend or night construction activities, and if work is required during those times, Purchaser will notify Seller and to help minimize the impact to Seller's business, Seller's approval shall

be required prior to the performance of any such work. Without limiting the general nature of the foregoing, no blasting, pile driving or similarly loud work shall be performed on Tuesdays between 10:00 am and 4:30 pm [when barge operates] or on weekends from Friday at 5:00 pm until Monday morning at 7:00 am.

c) Seller shall give Purchaser a right of first refusal to purchase Seller's Unit at Purchaser's option if at any time Seller decides to sell the Seller's Unit. Purchaser shall pay the amount set forth in any written offer made in a purchase and sale agreement Seller receives from a bona fide arms-length third party, minus a credit equal to an amount to be determined (either a dollar amount or a manner for calculating a dollar amount) by the parties in accordance with Section 5.1 of this Agreement ("Purchaser's Improvement Credit"). Without limiting the foregoing, Purchaser's Improvement Credit shall be calculated based upon the costs that Purchaser anticipates it shall pay for work on the common area infrastructure and other common area improvements to the Property, together with the cost of renovations to Seller's Retained Building including erection of new exterior wall and re-skinning of Seller's Retained Building, pro-rated based on the ownership interests allocated to Seller's Unit under the condominium documents. The dollar amount of Purchaser's Improvement Credit shall be reduced by equal 10% increments upon each anniversary of the date Purchaser's renovations to Seller's Retained Building are completed, with the manner of establishing such date to be determined by the parties in accordance with Section 5.1 of this Agreement (such date, the "Completion Date"), such that Purchaser's Improvement Credit shall be reduced to zero upon the tenth anniversary of the Completion Date. Seller and Purchaser agree to enter into a Right of First Refusal Agreement as the Closing in recordable form, containing terms and conditions reasonably satisfactory to the parties.

2. Purchase Price. The agreed purchase price for the Property is One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) (the "Purchase Price"), payable as follows:

(a)(1) Fifty Thousand Dollars (\$50,000) has been paid into escrow prior to the date hereof, and an additional Fifty Thousand Dollars (\$50,000), for a total deposit of One Hundred Thousand Dollars (\$100,000.00) shall be paid within two (2) business days of the later to occur of (i) the Additional Contingencies Expiration Date (as defined in Paragraph 3.1) or (ii) the date the Lodge Approvals (as defined in Section 8(a)) are obtained, which amount shall be held by Malone Commercial Brokers ("Escrow Agent") as earnest money deposit hereunder and shall be applied as part payment of the purchase price (the "Deposit"). Purchaser may terminate this Agreement only based upon the grounds set forth below in paragraphs 5, 5.1 and 8, and only prior to the Zoning Contingency Expiration Date (defined below). Upon a timely, valid termination, the refundable portion of the Deposit shall be promptly returned to Purchaser. Nothing herein shall be deemed to limit Purchaser's right to terminate this Agreement pursuant to paragraph 5.

(a)(2)(i) Sixty (60) days after both the Lodge Approvals and UNUM Release as set forth in Paragraph 8 have been obtained (provided this Agreement has not been terminated in accordance with its terms by either party prior thereto), Five Thousand Dollars (\$5,000.00) of the Deposit shall become non-refundable notwithstanding anything in this Agreement to the contrary.

(ii) The remainder of the Deposit shall become non-refundable upon the Zoning Contingency Expiration Date (as defined below) provided this Agreement has not been terminated in accordance with its terms by either party prior thereto, and except for Seller's default under this Agreement or Seller's inability to convey title in accordance with Paragraph 4 of this Agreement; and

(b) The balance of the Purchase Price of \$1,150,000.00 shall be paid at the time of delivery of the deed in good certified or bank check(s), or by wire transfer.

The Deposit shall be placed in a non-interest-bearing escrow account.

3. Adjustments. Real estate taxes for the then current tax period shall be apportioned as of the day of closing under this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the Purchaser at the time of delivery of the Deed.

4. Conveyance: Title.

(a) Seller shall convey the Property to Purchaser by good and sufficient quitclaim deed with covenant (the "Deed"). Title to the Property shall be good and marketable and shall be free and clear of all liens and encumbrances except (i) zoning restrictions, building laws and land use matters, provided same do not prevent or unreasonably interfere with Purchaser's intended use and development of the Property; (ii) easements and restrictions of record; (iii) current taxes and assessments; (iv) any liens for municipal betterments assessed after the date of the Closing under this Agreement; and (v) any "Defects of Title" (defined below) as accepted or waived by Purchaser pursuant to Section 4(b).

(b) Purchaser shall notify Seller of any and all defects in title which are of record, or which would otherwise make Seller unable to give title to the Property as herein stipulated, including, without limitation as provided in Section 4(a) (any of which is called herein a "Defect of Title") within forty-five (45) days of the later to occur of the receipt of the Lodge Approvals or UNUM Release. With respect to the existence of any Defect of Title that does not exist on the date of this Agreement, but which arises prior to Closing, Purchaser shall notify Seller of any such Defect of Title which arises six (6) or more days prior to closing, at least five (5) days prior to closing, and any other defects

arising thereafter, on or prior to the Closing. If Purchaser notifies Seller of any Defects in Title, then the Seller shall use diligent efforts to remove any such Defects in Title (but shall not be required to expend in excess of \$10,000 to remove any such defect which shall be exclusive of any mortgages or liens which may be discharged by the payment of money only), in which event the time for performance hereof shall be extended for a period of time reasonably sufficient to permit the Seller to perform hereunder, not to exceed sixty (60) days in any event. Seller may also elect to use funds from the Closing under this Agreement to remove any Defects in Title, which shall be sufficient to correct such defects and satisfy its obligations under this paragraph. If such Defects of Title are not corrected or remedied as provided herein within such additional 60-day period, then Purchaser shall elect, either (i) to accept title to the Property subject to the uncured Defects of Title, or (ii) to terminate this Agreement, whereupon, notwithstanding Paragraph 2(a)(2)(ii) the entire Deposit, except for the \$5,000 described in Section 2(a)(2)(i) shall be returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

5. Due Diligence Period, Materials Delivered by Seller, Inspections and Right to Terminate.

(a) Seller shall provide to Purchaser copies of such surveys and plans, and engineering reports (including environmental reports, studies or evaluations) of the Property that Seller may have in its control or possession within seven (7) business days of the Contract Date.

(b) Purchaser and others whom Purchaser may designate may, at Purchaser's option and at its sole risk and expense, retain a person or persons to examine the Property and prepare mechanical, structural, environmental or physical reports of the Property, including without limitation surveying, conducting test borings, wetlands analysis, groundwater sampling, and in general conducting all other tests, analysis and studies of the Property which Purchaser deems prudent in connection with Purchaser's intended use and development of the Property. Purchaser and such designees shall have the right to enter the Property at all reasonable times during normal business hours with at least twenty four (24) hours prior notice to Seller to conduct such tests, studies and investigations. Purchaser shall not interrupt nor unreasonably interfere with Seller's business. Purchaser shall at its own expense restore the Property to its present condition, and agrees to hold Seller harmless and indemnify Seller from any loss or liability resulting from or arising out of the entrance by Purchaser, its agents, members, managers, officers, agents, subcontractors or employees upon the Property for the purposes set forth herein or for any other purpose, including, without limitation, any of their acts or omissions while on or about the Property, and this indemnity provision shall survive the Closing hereunder, or if the Closing does not occur, the termination of this Agreement.

All such inspections shall be done by qualified inspectors chosen and paid for by Purchaser.

(c) At any time on or prior to the date that is 30 days after the Contract Date (the "Due Diligence Period Expiration Date"), Purchaser shall have the right to terminate this Agreement if Purchaser determines, in its sole discretion, that it is not satisfied with (i) the material delivered to Purchaser pursuant to subsection (a) hereof; or (ii) any of the inspections set forth in subsection (b) above, by giving written notice to Seller on or before the end of the Due Diligence Expiration Date. If Purchaser timely gives notice of such dissatisfaction, then the Deposit shall be returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement. If Purchaser fails to give such written notice on or before the end of the Due Diligence Expiration Date, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this Section.

(d) Purchaser agrees that all information made available to Purchaser (all of which is referred to herein as "Confidential Information"), will be kept confidential and will be disclosed only to professional advisors engaged in connection with the proposed transaction. Purchaser agrees that it is Purchaser's responsibility to ensure that such advisors shall agree to and shall keep such information confidential. Any provisions herein to the contrary notwithstanding, the provisions of this Section 5(d) shall survive the Closing of this Agreement or if the Closing does not take place, the termination of this Agreement.

(e) For the purposes of this Section 5, the term "Property" shall be deemed to include Seller's Retained Building.

5.1 Seller and Purchaser Additional Contingencies. Seller and Purchaser agree that to expedite the execution of this Agreement, there are certain matters upon which the parties shall work to reach agreement within sixty (60) days of the Contract Date (the "Additional Contingencies Expiration Date") and if the parties are unable to reach such agreement, then either Purchaser or Seller may terminate this Agreement by notice in writing to the other party on or before the Additional Contingencies Expiration Date.

The matters which are to be agreed upon prior to the Additional Contingencies Expiration Date are:

1. The specifications of, and the work to be performed with respect to, the code compliant exterior wall and façade listed in Section 1(b) of the Agreement as well as the specific configuration of the Seller's Retained Building, including the location of the end of Seller's Retained Building;

2. The primary components of the condominium documents described in Section 1(b) of this Agreement, including, without limitation, the composition of ownership, voting and expenses (including the allocation of and responsibility for expenses with respect to buildings, the parking lot, common areas and limited common elements);
3. Purchaser's work schedule and limits on the same to accommodate Seller's business and event schedule;
4. The Right of First Refusal requested by Purchaser, including without limitation agreement on what a "bona fide arms-length third party" means and a mechanism to resolve any dispute over whether a party is a "bona fide arms-length party"; either a dollar amount or a manner for calculating the dollar amount of Purchaser's Improvement Credit, and the manner in which the Completion Date is to be established; and
5. The number of parking spaces to be allocated to Seller, or to which Seller has right to use, under the condominium documents or otherwise and their location.
6. The future retail uses of the Property.

5. Zoning and Land Use Contingency. Except to the extent expressly provided herein, including, without limitation, with respect to the non-refundable character of some of the Deposit as set forth in Section 2 of this Agreement, Purchaser's obligations under this Agreement are subject and conditioned upon the Purchaser's ability to obtain all required local, state and federal permits and approvals, including without limitation FAA approval if required (including expiration of all applicable appeal periods with no appeal having been made) to construct an additional 55,000 square feet (or more if zoning and permitting allow) of commercial space (including but not limited to office, retail (subject to agreement of the parties in accordance with Section 5.1) and medical office space) on the Property (in one or more newly constructed buildings), such approvals to be satisfactory to Purchaser in its sole discretion, within 180 days after the date the Lodge Approvals have been obtained (the "Zoning Contingency Expiration Date"). Such approvals shall include a change in zoning classification to an office park or "O-P" classification. All costs associated with permitting and approvals to be at Purchaser's sole expense. Seller agrees to cooperate and participate in the approval process by attending meetings or causing its legal counsel or other representatives to attend such meetings as shall be reasonably requested by Purchaser, at Seller's reasonable cost and expense (Seller recognizing that all such permits and approvals are to Seller's benefit as well). Seller shall not be required to incur any costs other than those associated with attending such meetings. Purchaser agrees to provide Seller with copies of its development plans and any concept plans, as they may be amended or revised during the permitting process, for Seller's review and approval, such approval not to be unreasonably withheld, delayed or conditioned. Seller's approval to any such development plans shall be deemed granted if Seller has not responded to a request for approval within twenty (20) business days from the date of Purchaser's submission to

Seller. In the event this permit and approval condition is not satisfied by the Zoning Contingency Expiration Date, and provided Purchaser is using diligent good faith efforts to satisfy same, Purchaser shall have the right to extend that deadline by up to an additional ninety (90) days by written notice of extension to Seller, in which event the Zoning Contingency Expiration Date shall be extended to include such 90 day period. If Purchaser for any reason has not obtained all required local, state and federal permits and approvals, including, without limitation site plan approval, and expiration of all applicable appeal periods with no appeal having been made, by the Zoning Contingency Expiration Date, then Purchaser may terminate this Agreement by written notice to Seller within such period (as it may be extended), whereupon the refundable portion of the Deposit shall be returned to Purchaser and this Agreement shall be of no further force and effect.

7. Purchaser's Financial Capacity. Purchaser shall provide to Seller by on or before fifteen (15) days after the Contract Date with documentation reasonably satisfactory to Seller regarding Purchaser's financial capability to pay the Purchase Price and fund the cost of construction as contemplated in this Agreement. If Seller is not reasonably satisfied with Purchaser's evidence of financial capability, then Seller shall have the right to terminate this Agreement, whereupon the Deposit shall be returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

8. Seller's Authority to Convey; Release of Right of First Refusal.

(a). Seller's obligations under this Agreement are subject and conditioned upon Seller (i) obtaining the consent and approval of the transaction described herein from the members of its Lodge (the "Members' Approval"), and (ii) the Elks Club's Grand Lodge (the "Grand Lodge Approval") (collectively the "Lodge Approvals"). Seller agrees to seek to obtain the Members' Approval within sixty (60) days from the Contract Date and agrees to seek to obtain Grand Lodge Approval within ninety (90) days from Contract Date, provided however that Seller shall have the option by notice to Purchaser to extend each of the Lodge Approval deadlines by up to thirty (30) additional days if it determines such extension to be necessary. If both Lodge Approvals are not obtained within ninety (90) days from the Contract Date (or within such longer period as Seller shall elect as set forth above), Seller and Purchaser shall have the right at any time thereafter to terminate this Agreement, whereupon the Deposit shall be immediately returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

(b). Seller's obligations under this Agreement are also subject to and conditioned upon Seller obtaining from UNUM a release of its Right of First Refusal (the "UNUM

Release") within sixty (60) days from the Contract Date. If such Right of First Refusal is not obtained within such 60 day period, Seller and Purchaser shall have the right at any time thereafter to terminate this Agreement, whereupon the Deposit shall be immediately returned to Purchase and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

(c). Intentionally Omitted.

9. Time for Performance, Delivery of Deed. The transfer of title (the "Closing") shall take place on a date that is thirty (30) days after the Zoning Contingency Expiration Date at ten a.m. at the offices of Murray, Plumb & Murray or at such other place as shall be mutually agreed to by Purchaser and Seller, unless extended as provided herein. TIME IS OF THE ESSENCE.

10. Use of Purchase Money to Clear Title. To enable the Seller to make conveyance as herein provided, the Seller may at the time of delivery of the Deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of the Deed.

11. Possession and Condition of Property. Full possession of the Property (subject to Seller's retained ownership and rights set forth herein, including, without limitation, under any condominium documents) free of all tenants and occupants (except for Seller and its members, employees, affiliates and the like) is to be delivered at Closing.

12. Representations

(a) Seller represents, covenants and warrants to and agrees with Purchaser as follows:

(1) Seller is the current owner of the Property, and except for the approvals and releases that must be obtained as provided herein (including, without limitation, member approval) and to which its obligations hereunder are subject, has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with, or result in breach of any regulation, order, judgment, injunction or decree of any court or governmental authority or any agreement or instrument to which Seller is a party or by which it is bound.

(2) There are no tenancies, occupancies or licenses affecting the Property, except as set forth explicitly in this Agreement.

(3) Intentionally Omitted.

(4) No work has been done on the Property which could give rise to any liens on the Property, except those for which Seller intends to pay in the ordinary course of business and no contracts are outstanding or in effect with respect to the doing of any such work except those for which Seller intends to pay in the ordinary course of business.

(5) To the best of Seller's knowledge there is no notice, suit, order, decree, claim, writ, injunction, or judgment relating to material violations of any laws, ordinances, codes, regulations or other requirements with respect to the Property (or any portion thereof) in, of or by any court or governmental authority having jurisdiction.

(6) To the best of Seller's knowledge there is no condemnation proceeding pending or threatened against any portion of the Property.

(7) During the period of Seller's ownership and to the best of Seller's knowledge prior to its ownership of the Property, there has been no leakage, seepage or other release or discharge of any hazardous waste or matter, toxic substance, pesticide or petroleum product or derivative on the Property. The Property has not been used during Seller's ownership, or to Seller's knowledge during any prior period of ownership, for the storage, collection or depositing, whether intentional or unintentional, of any hazardous waste, toxic substance, pesticide or petroleum product or derivative, except for an underground storage tank or to the extent oil or gas products have been stored for heating, cooking or other use by Seller. There are no underground storage tanks located at the Property that have not been removed or filled and Seller is not aware of any underground storage tanks at the Property placed there by Seller or anyone else that have not been removed or filled. If the existing underground storage tank(s) must be removed for any reason, Purchaser shall remove the tank at its cost and expense, but the cost of such removal shall be included in Purchaser's Improvement Credit.

(b) Purchaser represents, covenants and warrants to and agrees with Seller that Purchaser has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Purchaser of its obligations hereunder (i) have been duly authorized by all requisite organizational action; and (ii) will not conflict with, or result in a breach of, any of the terms, covenants and provisions of the by-laws or articles of

organization of Purchaser or any law or any regulation, order, judgment, term, injunction or decree of any court or governmental authority, or any agreement or instrument to which Purchaser is a party or by which it is bound.

13. Affirmative Covenants of Seller. Seller agrees, pending closing, that:

(a) Unless disputed by Seller, Seller shall pay, when due, all taxes and assessments of every type or nature levied or assessed against the Property of which Seller has actual notice, and unless disputed by Seller, any claim, lien or encumbrance of which Seller has actual notice against the Property that might materially affect Seller's ability to fulfill its obligations hereunder. To the extent Seller disputes such a tax, assessment, claim, lien or encumbrance, Seller agrees to take reasonable steps to contest the same.

(b) Seller (i) shall not commit or suffer waste and (ii) shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property and will not suffer or permit any violation thereof.

14. Broker's Commissions. If this transaction closes, Seller shall be responsible for the payment of a brokerage commission to Malone Commercial Brokers. Seller shall have no obligation to make any payment to the The Boulos Company which Purchaser agrees shall obtain any commission which it may claim solely from Malone Commercial Brokers. If either Seller or Purchaser have employed or engaged any other broker or agent in connection with this transaction or have incurred any other obligation, contingent or otherwise, for a broker's or finder's fee with respect to the matters provided for in this Agreement, the party incurring any such obligation shall be solely responsible therefor. Each party agrees to indemnify and hold the other party harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys and paralegal fees, resulting from a violation of the representations, warranties and covenants set forth in this Section and this agreement to indemnify and hold harmless shall survive the Closing hereunder, or if the Closing does not occur, the termination of this Agreement.

15. Default.

(a) If Purchaser fails to perform its obligations as set forth in this Agreement, then Seller as its sole remedy at law or in equity shall be entitled to retain the Deposit as liquidated damages as a result of such failure to perform and this Agreement shall be deemed terminated. Purchaser acknowledges that Seller's damages because of Purchaser's failure to perform are difficult to ascertain and agree that the amount of the Deposit represents a reasonable estimate of the minimum amount of Seller's damages as a result thereof.

(b) If Seller fails to perform its obligations as set forth in this Agreement, Purchaser shall, in addition to its remedies in equity to which it is otherwise limited (including the right to specific performance), be entitled to receive the Deposit together with reimbursement for expenses incurred by Purchaser in obtaining the reports referred to in Paragraph 5 which shall not exceed \$5,000. Except for such reimbursement for expenses which shall not exceed \$5,000, Purchaser shall not be entitled to any damages of any kind whatsoever.

(c) In the event either Purchaser or Seller is alleged to have failed to perform its obligations hereunder, the party so claiming shall give notice in writing to the allegedly breaching party and the party shall have ten (10) days following the receipt of such notice in which to cure the alleged breach.

16. Purchaser's Conditions. The obligation of Purchaser to close under this Agreement is subject to the following conditions precedent:

(a) The representations and warranties of Seller shall be materially true in all respects, and Seller shall so certify, unless an event has occurred which makes such representation untrue, in which case Seller shall give notice of the same to Purchaser prior to closing.

(b) Seller shall have performed and complied with all the terms and conditions required by this Agreement to be performed and complied with by Seller at or prior to Closing.

17. Notice. Whenever notice is given or required to be given by either of the parties hereto to the other, it shall be deemed to have been given if in writing and mailed by certified or registered mail, return receipt requested, postage prepaid, or hand delivered, addressed to the parties at the address set forth in the first paragraph above or to such other address(es) as either party shall have last designated by like notice in writing. Copies of all notices to Purchaser shall be sent to Murray, Plumb & Murray, 75 Pearl Street, Portland, Maine 04101, Attention: Drew A. Anderson, Esq. Copies of all notices to Seller shall be sent to Exalted Ruler Timothy Smith, Elk's Lodge, Portland Lodge 188, 1945 Congress Street, Portland, Maine 04103, with a copy to counsel, William H. Leete, Jr., Esq., Leete & Lemieux, P.A., P.O. Box 7740, Portland, Maine 04112. All notices shall be effective upon hand delivery, receipt or two (2) business days after date of mailing, whichever first occurs. The respective attorneys for the parties are authorized to give and receive notices with the same effect as if given or received by the parties hereto.

18. Further Assurances. The parties agree that up to and after the date of Closing, they shall do such things and execute, acknowledge and deliver any and all

additional instruments, documents and materials as either party may reasonably request to fully effectuate the purposes of this Agreement.

19. Construction of Agreement. This instrument, executed in duplicate, is to be construed as a Maine contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by both the Seller and Purchaser. If two or more persons are named herein as Purchaser and Seller their obligations hereunder shall be joint and several. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it. This Agreement may not be recorded by Purchaser, and any such recording shall be deemed to automatically terminate this Agreement.

20. Risk of Loss. The risk of loss shall remain on Seller at all times until closing except for loss or damage to the extent either caused by or arising from the act or omission of Purchaser, its members, managers, officers, agents, subcontractors or employees.

21. Miscellaneous

(a) Seller and Purchaser shall each pay their portion of the Maine State Transfer Tax.

(b) Seller hereby certifies that Seller is a resident of the State of Maine. Seller hereby acknowledges Purchaser's requirement to withhold 2½% of the purchase price pursuant to 36 M.R.S.A. §5250-A if Seller is not a resident of the State of Maine, unless Seller presents to Purchaser at closing a Certificate of Exemption or Certificate of Reduction from the State of Maine Bureau of Taxation.

(c) By signing this Contract, Purchaser acknowledges that Purchaser has been notified of the State of Maine's withholding tax requirement pursuant to 36 M.R.S.A. §5250-A.

(d) Seller hereby certifies that Seller is a resident of the United States of America and is not subject to the 10% withholding tax imposed upon "foreign persons" by Section 1445(a) of the Internal Revenue Code of 1954.

(e) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and assigns. Purchaser shall be entitled to assign its right, title and interest herein to any limited liability company, partnership or other entity, whether now existing or hereafter

formed, controlled by, controlling or under common control with Purchaser or its principals. Any assignee shall expressly assume all of Purchaser's duties, obligations and liabilities hereunder. No such assignment shall release the named Purchaser from its obligations hereunder.

(f) It is understood and agreed that all understandings, agreements, warranties or representations, either oral or in writing, including without limitation any letters of intent or prior agreements, heretofore between the parties hereto are merged in and superseded by this Agreement, which document alone fully and completely expresses the parties' agreement with respect to the transactions covered hereby. This Agreement may not be modified in any manner except by a subsequent instrument in writing signed by Seiler and Purchaser.

(g) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall constitute but one and the same instrument.

(h) If the date for performance of any obligation hereunder, or the giving of any notice hereunder, falls on a Saturday, Sunday or a legal holiday in the State of Maine, the period for such performance, or the giving of any notice hereunder, shall be extended to the next business day.

(i) This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Maine.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date set forth below their respective signatures, to be effective as of the Contract Date.

SELLER:

Portland Lodge No. 133, of the Benevolent
and Protective Order of Elks of the United
States of America

Dated: June 11th 2014

By: [Signature]

PURCHASER:

Northland Enterprises, LLC

Dated: June 11th 2014

By: [Signature]

[Signature]
Dr. Michael Beddes

ACKNOWLEDGEMENT

The undersigned acknowledges receipt of the \$100,000.00 Deposit and a copy of this Agreement and agrees to hold, account for and deliver the Deposit in accordance with the terms of this Agreement.

Malone Commercial Brokers

By: _____

OPTIONAL: If Purchaser has sold Agreement Elks property, please

File: 13151

PINKHAM & GREER
CIVIL ENGINEERS

28 VANNAH AVE. PORTLAND, ME. 04103
Tel: 207.781.5242 Fax: 207.781.4245

April 13, 2015

Att. 4

Ms. Helen Donaldson, Planner-Planning & Urban Development
City of Portland
389 Congress Street
Portland, ME 04101

RE: REQUEST FOR ZONE CHANGE, 1945 CONGRESS STREET
NORTHLAND DEVELOPMENT

Dear Helen,

Based on the input from the Planning staff and Board as well as from the public, we have modified the site design of 1945 Congress Street. The current re-development plans proposes the following:

- The Elks Club building will remain on site, and their building will be reduced from 23,204 sq/ ft. to 13,646 sq. ft. The developer will make improvements to the exterior of the building and Elks Club officials have stated they intend to make substantive improvements to the interior of the building.
- The medical building of 15,000 sq. ft. is included as a separate stand-alone building placed along Congress Street.
- The third building on the campus will be a two-story building with a 25,000 sq. ft. footprint and 10,000 sq. ft. on the 2nd floor. This building will be utilized for general office.
- Attached is a revised Zone Map and Text Application.

The two new buildings relate to each other physically. The renovated Elks club is set back from the street and is the less dominate architecture of the campus. The campus is tied together with its master plan and circulation pattern.

Our request to the City has two components:

1. We request the 7.01 acre property be rezoned from Residential (R2) to Office Park (OP); the same zone that abuts 2 sides of the subject property to include the adjacent Unum site.
2. We request that "places of assembly" be added to the OP Zone as a *conditional* use. This is consistent with what we believe the Planning Board has recommended.

As part of the submission, please find attached a letter from our attorney, Mr. John Bannon of Murray Plumb & Murray which addresses why the proposed project and the request for zone change of the subject property to O-P and a zoning text amendment to allow *places of assembly* to be a conditional use is consistent with the intent of the City of Portland Comprehensive Plan.

Ms. Helen Donaldson
April 13, 2015
Page 2 of 2
File: 13151

PINKHAM & GREER
CIVIL ENGINEERS

Attached is a revised Illustrative Site Plan prepared by Tony Muench, RLA Landscape Architect. The entrance to the site and the parking has been revised in an attempt to create more of a campus feeling. In addition, buffering between the subject site and the adjacent residential neighbors has been increased. See attached photographs of the current screen and what a proposed screen would look like. It will create a full screen when mature.

David Lloyd AIA, of Archetype, has done further work on the architectural design which illustrate street views of the 3 buildings.

Considerable thought and has gone into the amount of and the layout of the parking areas. We have taken into consideration the future needs of our building owners and tenants, while attempting to keep the parking to the smallest practical amount. The current site has 205 lined parking spaces and a gravel parking area that can accommodate an additional 45 parking spaces (a total of 250 current parking spaces). The current plan is to increase the total amount of building square footage on the site by 40,442 SF and increase the number of parking spaces to a total of 282 parking spaces. This is an increase of 32 new parking spaces, or less then 1 new parking space per 1,000 SF of new building SF. We believe this is a very reasonable increase. Based on the condominium plan, and resulting 3 distinct condo units, we feel that the city's initial parking & traffic impact study should be revised.

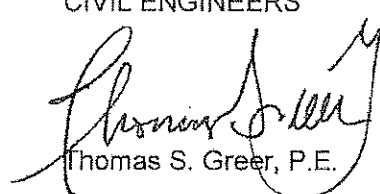
We have also added a bus shelter at the Congress Street stop. This should encourage the use of public transportation.

We believe the current re-development plan for the Elks site addresses buffering concerns of abutter's; has attempted to give the site a more campus like feel and has provided for adequate parking for the owners and tenants while addressing the Planning Board request to reduce parking spaces, from the original proposal of 305 parking spaces. We believe with Attroney Bannon's letter we have addressed the fact that this project is consistent with the City's Comprehensive Plan.

Thank you in advance for your consideration.

Sincerely,

PINKHAM & GREER
CIVIL ENGINEERS



Thomas S. Greer, P.E.

cc: File

Enclosures

TSG/rjs

PROJECT NAME: 1945 Congress Street

PROPOSED DEVELOPMENT ADDRESS:

1945 Congress Street

PROJECT DESCRIPTION:

The project renovates the Elks building and adds a 15,000 sq. ft medical building
and a 35,300 sq. ft. general office building.

CHART/BLOCK/LOT: 216-A-6 / 217-A-1

CONTACT INFORMATION:

Applicant – must be owner, Lessee or Buyer Name: Josh Benthien & Rex Bell Business Name, if applicable: Northland Enterprises, LLC Address: 17 South Street City/State : Portland, ME Zip Code: 04101	Applicant Contact Information Work # 207.780.0223 Home# Cell # Fax# e-mail: josh@northlandus.com rex@northlandus.com
Owner – (if different from Applicant) Name: Portland Lodge #188 BPOE of USA Address: 1945 Congress Street City/State : Portland, ME Zip Code: 04102	Owner Contact Information Work # Home# Cell # Fax# e-mail:
Agent/ Representative Pinkham & Greer, Civil Engineers Name: Thomas S. Greer, P.E. Address: 28 Vannah Avenue City/State : Portland, ME Zip Code: 04103	Agent/Representative Contact information Work # 207.781.5242 Cell # e-mail: tgreer@pinkhamandgreer.com
Billing Information Josh Benthien & Rex Bell Name: Northland Enterprises, LLC Address: 17 South Street City/State : Portland, ME Zip Code: 04101	Billing Information Work # 207.780.0223 Cell # Fax# e-mail: josh@northlandus.com rex@northlandus.com

Engineer Pinkham & Greer Civil Engineers Name: Thomas S. Greer, P.E. Address: 28 Vannah Avenue City/State : Portland, ME Zip Code: 04103	Engineer Contact Information Work # 207.781.5242 Cell # Fax# 207.781.4245 e-mail: tgreer@pinkhamandgreer.com
Surveyor Maine Survey Consultants, Inc Name: Del Maxfield Address: PO Box 485 City/State : Harrison, ME Zip Code: 04040	Surveyor Contact Information Work # 207.583.6159 Cell # Fax# e-mail: dmaxfield@mainesurveyconsultants.com
Architect Archetype Architects Name: David Lloyd Address: 48 Union Wharf City/State : Portland, ME Zip Code: 04101	Architect Contact Information Work # 207.772.6022 Cell # Fax# e-mail: lloyd@archetypepa.com
Attorney Murray, Plumb & Murry Name: Drew Anderson Address: PO Box 9785 City/State : Portland, ME Zip Code: 04104	Attorney Contact Information Work # 207.773.5651 Cell # Fax# e-mail: DAA@mpmlaw.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

We have a Purchase and Sales Agreement.

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property.
(For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use.
(Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Existing Use: Describe the existing use of the subject property:

The existing property is used by the Elks as a place of assembly.

Current Zoning Designation(s): Residential 2

Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

The existing Elks use will continue. We are adding a general office use and
a medical office use.

Site Plan: On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

APPLICATION FEES:

Check all reviews that apply. (Payment may be made by Credit Card, Cash or Check payable to the City of Portland.)

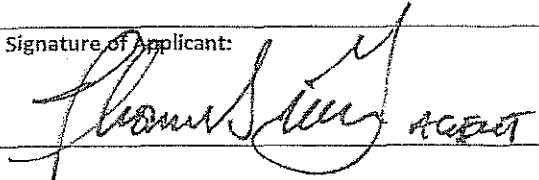
Zoning Map Amendment ☒ \$2,000.00 (from <u>R2</u> zone to <u>OP</u> zone) Zoning Text Amendment ☒ \$2,000.00 (to Section 14-_____) 230.11.1 Combination Zoning Text Amendment and Zoning Map Amendment ☒ \$3,000.00 Conditional or Contract Zone ____ \$3,000.00 (A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)	The City invoices separately for the following: • Notices (\$.75 each) • Legal Ad (% of total Ad) • Planning Review (\$40.00 hour) • Legal Review (\$75.00 hour) • Third party review fees are assessed separately. Any outside reviews or analysis requested from the Applicant as part of the development review, are the responsibility of the Applicant and are separate from any application or invoice fees.
--	--

APPLICATION SUBMISSION:

1. All plans and written application materials must be submitted electronically on a CD or thumb drive with each plan submitted as separate files, with individual file names which can be found on the **Electronic Plan and Document Submittal** page of the City's website at <http://me-portland.civicplus.com/764/Electronic-Plan-and-Document-Submittal>
2. The submission shall include the following materials:
 - a. One (1) paper set of the zoning amendment application, concept plan and written narrative.
 - b. Contract and conditional rezoning applications must include site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations and compatible with the surrounding neighborhood.

APPLICANT SIGNATURE:

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of Applicant: 	Date: 4/13/15
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April 16, 2015

Helen Donaldson, Planner
Department of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: *Application of Northland Enterprises, LLC for Zoning Map Amendment and Zoning Text Amendment for 1945 Congress Street / Consistency with the Comprehensive Plan*

Dear Nell:

This office represents Northland Enterprises, LLC (hereafter "Northland"), which has applied to the Planning Board for review and approval of a zoning map amendment for the Elks Club property located at 1945 Congress Street (hereafter the "Property") as well as a zoning text amendment to LUO § 14-230.11.1 to add "places of assembly" as a conditional use within the O-P Office Park District. I am writing today to explain why amending the official zoning map to change the Property's zoning designation from the R-2 Residential District to the O-P Office Park District, and adding places of assembly as conditional uses in the O-P Office Park District, would be consistent with the City's Comprehensive Plan.

I. ZONING MAP AMENDMENT

A. The Meaning of "Consistency with the Comprehensive Plan."

In *Rommel v. City of Portland*, 2014 ME 114, ¶ 13-14, 102 A.3d 1168, 1172, the Maine Supreme Court recently summarized the City's broad discretion to determine when a proposed rezoning is consistent with the Comprehensive Plan. It is unnecessary that a proposed zoning map amendment comply strictly with every portion of the Plan. Rather, when a court reviews the City's decision to rezone a property, the scope of the court's inquiry is limited to determining whether the City Council could have, from the evidence before it, found that the rezoning was in "basic harmony" with the Comprehensive Plan:

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75 Pearl Street PO Box 9785 Portland, ME 04104-5085 (207) 773-5551
www.mplaw.com

A zoning or rezoning action need not perfectly fulfill the goals of a comprehensive plan; it may be in basic harmony with the plan so long as it “strikes a reasonable balance among the municipality’s various zoning goals” or “overlap[s] considerably” with the plan.

Id. In addition, because the Comprehensive Plan consists of numerous different land use policies, adopted at different times, that sometimes conflict, whether a proposed rezoning is “consistent” with the Comprehensive Plan can only be determined by examining the Plan as a whole. *Id.* “A municipality may conclude that a rezoning action is consistent with a comprehensive plan when it is in harmony with *some* provisions of the plan, even if the action appears *inconsistent* with *other* provisions of the plan.” *Id.* (emphasis added).

B. The Property and Its Context

The Property is an approximately 7-acre parcel that has been the site of Elks Lodge #188 (hereafter the “Lodge”) since the late 1960’s. The Lodge is a “place of assembly” as defined in LUO § 14-47. The zoning districts in the Property’s immediate vicinity are shown in Figure 1 below:

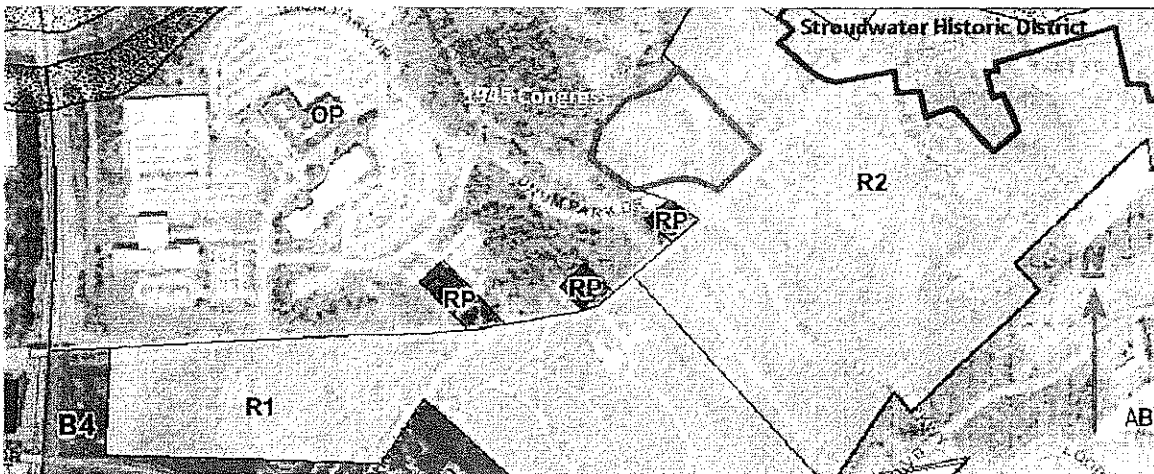


Figure 1
Zoning Districts in the Vicinity of the Property¹

¹ Figure 1 appears as “Figure 2” in the Planning Board Memorandum by Nell Donaldson, Planner, dated January 20, 2014 (hereafter the “Donaldson Memorandum”).

The Property is bounded on the northwest and west by the existing OP District occupied by Unum. Although a small portion of the westerly boundary abuts an area within the R-2 District, that area is consumed by the entrance and exit of Unum Park Drive, which also serves as the sole access to the Property. Likewise, although the Property's southeasterly boundary abuts a portion of the R-2 District, the closest portion of that R-2 District is occupied by the right-of-way of outer Congress Street. Only on the northeast is the Property directly abutted by land within the R-2 District that is substantially devoted to residential purposes.

Some of the actual land uses in the Property's immediate vicinity are shown in Figure 2 below:

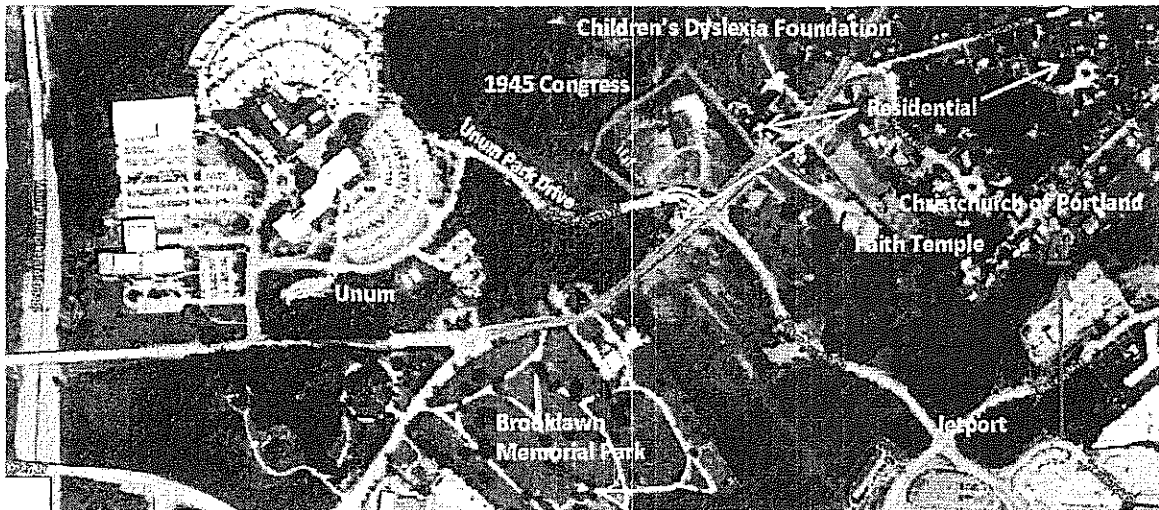


Figure 2
Actual Land Uses in the Vicinity of the Property²

It is apparent from Figure 2 that a majority of the land area in the Property's immediate vicinity is put to non-residential uses. Directly opposite the Property on the southeast is a large tract of R-2 District land which is owned by the Jetport and bisected by Jetport Access Road/International Parkway. Much of the R-1 District to the southwest side of the Jetport land is occupied by Brooklawn Memorial Park. Although a significant amount of residentially-used

² Figure 2 appears as "Figure 1" in the Donaldson Memorandum. Note that, although the lot just south of the entrance/exit from the Unum campus is indicated in Figure 2 above as being a residential *structure*, is – as shown in Figure 1 on the previous page of this letter – *zoned* within a Residence-Professional (RP) District.

R-2 District land can be found to the north and east of the Property, even that area is punctuated by non-residential establishments permitted as a conditional use in the R-2 District: for example, The Children's Dyslexia Foundation, Christ Church of Portland, and Faith Temple.

Northland understands and respects the desires expressed by local residents that the residential portions of the Stroudwater neighborhood be protected as much as is reasonable. However, it is unrealistic to expect that the Property itself can feasibly be devoted to residential uses. The Property is now, and for half a century has been, the site of a large Lodge building and a correspondingly expansive, paved parking lot. Significantly, Northland's proposed redevelopment of the Property would require no significant increase in the number of parking spaces on the Property. As currently laid out, the Property includes 204 marked parking spaces plus a gravel parking area large enough to accommodate 45-50 additional parking spaces. The most recent Project design calls for a total of 256 parking spaces plus 26 handicapped and compact size parking spaces.

The area surrounding the Property has evolved in a manner that is predominantly commercial and institutional rather than residential. Because of, among other things, (a) its location between the Unum campus, Faith Temple, and the rapidly-expanding International Jetport; (b) its placement directly opposite the intersection of Congress Street and the Jetport Access Road/ International Parkway; and (c) the fact that its only access will for the indefinite future be shared by a multitude of Unum employees and customers, the Property can never be developed as a desirable residential neighborhood. The Property's future has been determined, not by the aims of the applicants, but by the course of adjacent development.

C. To Rezone the Property from R-2 to O-P is Consistent With the Comprehensive Plan

To rezone the Property from R-2 to O-P is in basic harmony with the Comprehensive Plan because it would promote the goals of:

1. Strengthening and diversifying the City's economy

"Portland is the largest city in Maine and is the economic and service center for the region. Portland continues to attract people of workforce age due to diverse job opportunities (particularly in business and

technology), quality employment, and a stable economy.”³ (emphasis added)

“Portland’s future will...[c]apitalize on Portland’s economic assets and develop a strong economy based upon traditional industries, a strong retail and office center, and emergent opportunities in industry, business, and coastal commerce.”⁴ (emphasis added)

“[The City should:]

- Accommodate the City’s commercial activity within a range of functionally and physically defined commercial centers.*
- Promote preservation and revitalization of its existing commercial centers and maintain a scale within them that is compatible and integrated with other land use.*
- Encourage the development of new commercial enterprises within the existing neighborhood centers and CBD.... [and]*
- Promote new office park development of high quality in outlying areas for development seeking a suburban-style setting.”⁵ (emphasis added)*

³ II. PORTLAND’S COMMUNITY VISION FOR THE FUTURE / Distinctive Features to Value, Preserve and Build Upon And Future Directions for Portland / A COMMUNITY VISION FOR PORTLAND / DISTINCTIVE FEATURES OF PORTLAND TO VALUE, PRESERVE & BUILD UPON / I. A City That Provides For People

(unnumbered page near beginning of the Comprehensive Plan) [Throughout this analysis citations to the Comprehensive Plan will be made with reference both to the specific section/subsection of the Plan as well as the page number, where available]

⁴ II. PORTLAND’S COMMUNITY VISION FOR THE FUTURE / Distinctive Features to Value, Preserve and Build Upon And Future Directions for Portland / A COMMUNITY VISION FOR PORTLAND / FUTURE DIRECTIONS FOR PORTLAND / I. Build a Vibrant Small City

(unnumbered page near beginning of the Comprehensive Plan)

⁵ VII. COMMUNITY COMMERCIAL POLICES AND LAND USE PLAN - September 1987-1988 / Development Goals

*"[The City should:] [p]rovide for economic growth and development in the City as set forth in the Comprehensive Plan."*⁶ (emphasis added)

"[The City should:]

Strengthen and Diversify the Economic Base

- create a variety of job opportunities for the full spectrum of the labor pool which:
 - o are appropriate to our current and potential skills
 - o provide good pay and benefits - a living wage
 - o are rewarding/satisfying ... [and]
 - o "strengthen and diversify the tax base."

Improve the Quality of Life

- recognize that jobs and prosperity improve the standard of living for residents ...
- reduce tax burden on residential property owners.⁷(emphasis added)

(Comprehensive Plan, page 28)

⁶ STATE GOAL B: To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development;

I. PORTLAND CAPITAL IMPROVEMENT PLAN — 2001-2010

Capital Improvement Goals

(Comprehensive Plan, page 29)

"[Portland should:]

Target Specific Opportunities

- o *capitalize on location/telecommunications/transportation infrastructure, port, airport, highways, etc."*⁸

"A positive trend of late has been the development of offices above retail uses which has helped to enhance the character of commercial development. An office's image is often very important to the business person and more effort toward property maintenance and site planning is evident. Such efforts can send a positive message to residential property owners that commercial and residential uses can coexist."⁹ (emphasis added)

"Coupled with the existing centers, office parks on carefully selected sites can help improve the City's economic base by offering developers a choice of development opportunities."¹⁰(emphasis added)

⁷ STATE GOAL C. To promote an economic climate which increases job opportunities and overall economic well-being;

II. PORTLAND INDUSTRY AND COMMERCE PLAN – 1994

(Comprehensive Plan, page 37)

⁸ STATE GOAL C. To promote an economic climate which increases job opportunities and overall economic well-being;

II. PORTLAND INDUSTRY AND COMMERCE PLAN – 1994

(Comprehensive Plan, page 38)

⁹ *Community Commercial Policies and Land Use Plan* (1988), page 14

¹⁰ *Id.*

2. Acknowledge that Stroudwater has evolved differently from other neighborhoods

B. Off-Peninsula - Outer Ring Neighborhoods — Existing Land Uses

The outer ring neighborhoods grew significantly with residential development, but the percentage of land devoted to residential uses is less than found in the inner neighborhoods. It is important to note that vacant land accounts for a larger share of each neighborhood's total land area. Over 77% of North Deering is developed in residential use followed by Riverton with 71%, Nason's Corner with 63% and Riverside with 44%. Stroudwater has only 17.5% of its land area developed in residential use. ... Vacant land in the outer ring neighborhoods has declined to less than half of its 1978 share. Stroudwater has the largest percentage of vacant land (24%) and Riverton has the least with 2%.

Commercial uses have remained relatively stable in the outer ring neighborhoods, except for Stroudwater where commercial uses grew by 9% in 1989 and 23% in 1999. A new airport access road and a new Maine Turnpike Interchange have spurred new business development within Stroudwater.... The industrial uses in Nason's Corner, North Deering, and Riverton remained constant or declined slightly during the 20-year time frame. *Industrial uses expanded in Riverside and Stroudwater to 21% and 10.4% of the total neighborhood land area, respectively. Tax-exempt property declined as a percentage of the total land area in all of these neighborhoods, except Stroudwater.* ¹¹ (emphasis added)

In sum, the Comprehensive Plan confirms that less than 20% of the Stroudwater neighborhood is devoted to residential uses; that nearly a quarter of the total land mass is vacant; that Stroudwater has experienced a higher rate of commercial development than any other outer-ring-neighborhood, and ranks second only to Riverside in industrial development; and that Stroudwater is the only such neighborhood in which the percentage of the total land mass devoted

¹¹ EXISTING LAND USE / Inventory and Analysis / EXISTING LAND USE AND DEVELOPABLE LAND / ... III. EXISTING LAND USE BY NEIGHBORHOODS

to tax-exempt uses has increased. A rezoning of the Property from R-2 to O-P is, relative to parcels in other outer-ring neighborhoods, particularly appropriate.¹²

3. Facilitate integration of the City's land use patterns with the development of a modern, multi-modal transportation system

Although traffic-management considerations might not initially seem to interact with land use policy, the Comprehensive Plan sees them as being inextricably linked:

Issues of transportation cannot be resolved unless the use of land is organized in a way that allows them to be resolved. It's been said that the best way to solve problems of congestion and pollution caused by autos is to build cities that don't need them. That is no longer realistic. But the Plan recognizes that there must be fundamental change in land use regulations: from a code of land use patterns that leave no choice but the single-occupant auto to a code of patterns that give other modes a fighting chance. The new patterns must phase away from separating the elements that make up a community (like homes, schools, churches, and small businesses) and allow a mixing and proximity of such uses where it seems natural to do so.¹³ (emphasis in original)

In other words, a philosophy of maintaining strict separation between residential and business uses within the City is not only outdated, but undesirable.

The Property is located on one of the most heavily-traveled bus routes within the Greater Portland Transit District.¹⁴ The City has already identified the

¹² Some neighbors have critiqued the proposed rezoning because it would eliminate the *potential* for the Property to be converted from use as a place of assembly to a residential use. It is true that one policy of the Comprehensive Plan is to "establish a standard of 'no net loss of housing' for all proposed development." I. Housing: Sustaining Portland's Future – November 18, 2002 /Goal/ Policies (Comprehensive Plan, page 45). However, that policy does not advocate that land, such as the Property, which has never been put to residential purposes, be converted to housing. There can be no "net loss" of housing that has never existed. As noted elsewhere in this analysis, the Comprehensive Plan recognizes that factors such as proximity to the Jetport and to busy arterial and collector streets renders residential development infeasible on the Property.

¹³ *A Time of Change: Portland Transportation Plan* (1993), page 2

¹⁴ *Id.* at page 27.

Outer Congress Street area, which includes the Property, as the location for a pilot project for “a package of measures for ‘travel demand management,’” including “strong intermodal design at the Jetport.”¹⁵ Stroudwater/Libbytown has been identified as one of the City’s eight “transportation districts.”¹⁶ The Comprehensive Plan advocates that transportation districts serve as centers for the integration of the diverse land uses needed to serve the needs of the residents of those districts:

The City should promote a land use pattern that allows for opportunities for people to work and meet a larger share of their everyday needs within or adjacent to their transportation district.

The City should continue to encourage businesses to locate in established employment centers, including Downtown, that are served by public transportation or that have the critical mass necessary to support alternative modes of transportation.

*The City should allow development along transit corridors and near community commercial centers to evolve at a density sufficient to make public transit, walking, and biking viable options.*¹⁷(emphasis added)

*[The City should] [e]ncourage neighborhood business centers throughout the city to reduce dependence on the car and to make neighborhood life without a car more practical.*¹⁸ (emphasis added)

¹⁵ *Id.* at pages 9-10, 70.

¹⁶ *Id.* at page 23

¹⁷ *Id.* at page 24

¹⁸ — PORTLAND’S GOALS AND POLICIES FOR THE FUTURE

STATE GOAL A: To encourage orderly growth and development in appropriate areas of each community, while protecting the State’s rural character, making efficient use of public services and preventing development sprawl;...

...I. HOUSING: SUSTAINING PORTLAND’S FUTURE — November 18, 2002

...Policies

"[Portland should] [c]reate local multi-modal centers for the City's commuters and mass transit passengers, building on the presence of existing centers of activity, connected with each other and with regional transport centers."¹⁹ (emphasis added)

"The City should continue to develop an interconnected and seamless transportation system encompassing both local and regional transportation centers."²⁰

4. Achieve the City's original goals for creating the O-P Zone in general, and near the Jetport in particular.

The City created the O-P Zone in 1988 because of concern that the existing Residence-Professional (RP) District was being used to develop office complexes that were too large to serve as a transition between residential and business uses:

Historically there has been one zone (R-P) in the City which permits, almost exclusively, professional offices and residential uses. Originally, the R-P Zone developments in the City were small-scale, and met the intent of the zone as a transitional or buffer district. Recently, however, approximately half the developments on the sites zoned to R-P are bigger in size (two acres or more) and scale than what was originally intended for the zone.²¹ (emphasis added)

(Comprehensive Plan, page 22)

¹⁹ -- III. A TIME OF CHANGE: PORTLAND TRANSPORTATION PLAN - July 1993 / Transportation Policies

(Comprehensive Plan, p. 24)

²⁰ II. A TIME OF CHANGE: PORTLAND TRANSPORTATION PLAN - July 1993
...Transportation Policies

(Comprehensive Plan, page 31)

²¹ Neighborhood Commercial Land Use Policies and Land Use Plan (1988), page 22

Thus the Property, which is 7 acres in size, is more than three times larger than the largest site the City had intended to be zoned within the R-P District.²²

Moreover, the Property is the very type of area where the Comprehensive Plan considers the O-P Zone to be most appropriate: one that has limited potential for residential development because of proximity to the Jetport and adjacency to a busy thoroughfare such as outer Congress Street:

The need exists for a zone that would allow larger scale office development on larger lots in what could be considered more suburban locations. The parcels, while suburban in character, might have limited potential for residential development, due in part, for example, by proximity to the Jetport, or to the topography of the site, or its physical boundaries such as a busy arterial. ...²³ (emphasis added)

Indeed, the creators of the O-P District could have had the Property in mind when they wrote:

Land is more plentiful in these outlying locations, which may be a critical factor if a significant amount of parking is required for the development.... These settings provide a suitable location for a company headquarters or complex of office buildings serving several tenants. Access to the office parks is primarily from major arterials, although secondary roads may also provide access....²⁴

To be sure, the City established a quid pro quo for developers who seek to develop land in an O-P Zone:

Developments in the O-P zone are to be characterized by spacious and high quality development. Large lots, relatively low building coverage, low impervious surface area, significant open space and landscaping,²⁵ and

²² Presently, the minimum lot size within the R-P Zone is a mere 6,000 sq. ft. LUO § 14-149(a).

²³ *Neighborhood Commercial Land Use Policies and Land Use Plan* (1988), page 22

²⁴ *Id.*

²⁵ Northland acknowledges the ambitious design standards intended for O-P office complexes and intends to create a suitably high-quality development. However, it is important to recall that the Property is not a vacant lot with significant amounts of vegetation or other natural

*thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland.*²⁶

However, contrary to what some critics of this proposal evidently believe, the O-P Zone was not intended to be reserved only for extraordinarily large or topographically complex parcels such as the UNUM site. Recall that the O-P Zone is intended to be only one step up from the R-P District, in which the City considered the largest suitable lot to be about *two* acres in size. Under the LUO, an Office PUD or Office Subdivision may be built on a parcel with a minimum gross area of only *three* acres. LUO § 14-230.11. Significantly, three of the seven areas that the Plan drafters specifically mentioned as potential candidates for O-P Zoning are in close proximity to the Property: UNUM (directly adjacent to the Property), "Congress Street/Cobb Avenue (in conjunction with AB zone)" (almost directly across Congress Street from the Property), and the "Northwest corner of Congress Street and Frost Street" (about 4,000 linear feet from the nearest corner of the Property, and half that distance from the Stroudwater Historic District).²⁷ Neither were the buildings considered suitable for an O-P District limited to those of a modest size or simple configuration: "*This type of zone can accommodate single or multiple buildings on a site. Large scale or tall buildings are also appropriate.*"²⁸ (emphasis added) Thus, although the O-P District is plainly intended to encourage high-quality office development, it is also intended to accommodate a wide variety of potential design approaches to such development.

II. ZONING TEXT AMENDMENT

Northland will not repeat here the portions of the above discussion that are already pertinent to the proposed zoning text amendment to LUO § 14-230.11.1 to add places of assembly as a conditional use in the O-P Zone. The purpose of that zoning text amendment is to prevent the existing Elks' Lodge from being reduced to the status of a legally nonconforming use if the zoning of the Property is changed from the R-2 Zone to the O-P Zone.

features. Rather, it is occupied by a large building, extensive areas of impervious parking space, and mowed lawns.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

A. The Context of Uses Allowed in the O-P Zone.

Under LUO § 14-230.11, the O-P Zone allows, as expressly-permitted uses, office parks containing professional offices and office complexes, research and development establishments, printing and publishing establishments, day care facilities, and wind energy systems. In addition, LUO § 14-230.11.1 authorizes, as conditional uses, “high technology manufacturing of biotechnology, pharmaceutical, and nanotechnology products;” temporary wind anemometer towers; and free-standing wind energy systems. A place of assembly would be less intensive than most of those uses.

B. The Context of “Places of Assembly” as Conditional Uses.

For several decades, the LUO has allowed “places of assembly” as a conditional use in virtually every residential district, including the R-2 Zone in which the Property is currently included:

R-1 Zone	LUO § 14-68(b)(3)
R-2 Zone	LUO § 14-78(b)(3)
R-3 Zone	LUO § 14-88(b)(3)
R-4 Zone	LUO § 14-103(b)(2)
R-5 Zone	LUO § 14-118(b)(3)
R-6/6A Zone	LUO § 14-137(b)(4)
IR-1 Zone	LUO § 14-145.3(b)(2)
IR-2 Zone	LUO § 14-145.9(b)(2)

Because places of assembly such as the Elks Lodge are deemed compatible with such a wide variety of residential uses, it would be irrational to exclude such an activity from the list of conditional uses allowed in the more commercially-oriented O-P Zone. In the context of the Property in particular, the proposed zoning text amendment would limit places of assembly to the same conditional status they have under the present R-2 Zoning.

C. The Proposed Zoning Text Amendment Adding Places of Assembly as a Conditional Use in the O-P Zone is Consistent with the Comprehensive Plan.

The Comprehensive Plan does not specifically address the subject of “places of assembly.” However, because “places of assembly” are classified in all zoning districts as a species of “institutional” use, it is useful to review how the Comprehensive Plan describes the City’s policies toward institutional uses.

The Comprehensive Plan discusses institutional uses only in connection with their suitability for inclusion in residential zones. The Plan evidently has identified no problems associated with institutional uses in business or commercial zones such as the O-P Zone. Even in the context of residential zones, the Comprehensive Plan says only the following:

- *Institutional uses, where they are to be allowed in residential zones, should be designated conditional uses with review before the Planning Board.*
- *Any new institutional use should be required to have a lot size of sufficient area to accommodate all activities, including parking and to absorb impacts and growth needs of the institution.*
- *Reasonable expansion of existing institutions should be accommodated, but effective use of existing lot area should be required.*
- *For both new development and expansion of existing institutions, the displacement or conversion of existing dwellings should be avoided, and that an institutional development proposal that causes significant residential displacement should be cause for denial of conditional use approval.²⁹*

At the same time, concerns have been raised about institutional expansions, which have converted or demolished housing or purchased residential structures only to neglect them until they are a blight on the neighborhood. Housing is a critical component of the city's infrastructure. Any redevelopment initiatives, commercial or residential, should result in a no "net loss" of housing for the city as a whole.³⁰

²⁹ STATE GOAL D: To encourage and promote affordable, decent housing opportunities for all Maine citizens: ...

V. REGULATION OF INSTITUTIONAL USES IN RESIDENTIAL ZONES
– 1983 (Planning Board Report #46-83)

(Comprehensive Plan, page 48)

³⁰ HOUSING AND POPULATION –Inventory and Analysis

II. PORTLAND HAS AN AGING HOUSING STOCK WORTH PRESERVING

The proposed zoning text amendment to add “places of assembly” as a conditional use in the O-P Zone is in basic harmony with the above principles because it would apply only to the O-P Zone, not to any residential zone. The proposed zoning text amendment allows “places of assembly” in the O-P Zone only as a conditional use, and all Office Park Planned Unit Developments and Subdivisions are further subject to mandatory Planning Board Site Plan Review. LUO § 14-230.11.

The proposed zoning text amendment does not, by itself, increase the likelihood that the building or expansion of institutional uses in O-P Zones would cause unreasonable displacement of existing housing. That issue can be adequately addressed by the Board of Appeals during Conditional Use Review and by the Planning Board under Site Plan review of any particular development proposal. In the context of the proposed Project, however, that issue cannot arise, because the Property has not been in the past, and cannot realistically be in the future, used for residential housing that could be displaced by institutional uses.

CONCLUSION

Although the proposed rezoning of 1945 Congress Street and zoning text amendment may not simultaneously satisfy *every* policy goal expressed in the Comprehensive Plan, they are not legally required to do so. All that the law mandates is that the proposals be in “basic harmony” with the Comprehensive Plan either by striking “a reasonable balance among the municipality’s various zoning goals” or by “overlap[ping] considerably” with the Plan.

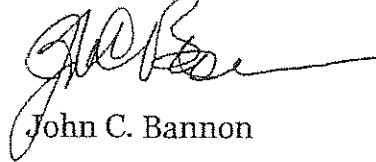
A municipality may conclude that a rezoning action is consistent with a comprehensive plan when it is in harmony with *some* provisions of the plan, even if the action appears *inconsistent* with *other* provisions of the plan.

Remmel v. City of Portland, 2014 ME 114, ¶ 13-14, 102 A.3d 1168, 1172. Under that liberal standard, Northland’s proposals are consistent with the Comprehensive Plan.

April 16, 2015
Page 17

Thank you for your attention to this letter.

Respectfully submitted,



John C. Bannon

JCB/kpm

cc: Rex Bell
Josh Benthian
Alex Jaegerman, Director, Planning Division



1945 CONGRESS St. - Existing Conditions



1945 CONGRESS St. – Existing Conditions



1945 CONGRESS St. – Conceptual Buffer Conditions



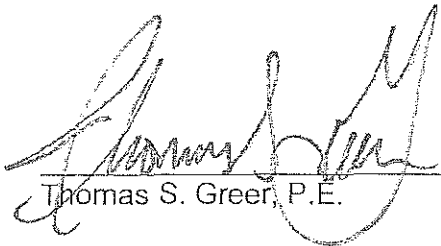
1945 CONGRESS St. – Conceptual Buffer Conditions

Neighborhood Meeting Certification

I, Thomas S. Greer, P.E., Pinkham & Greer, Civil Engineers hereby certify that a neighborhood meeting was held on January 5, 2015 at 1945 Congress Street at 5:00 pm.

I also certify that on December 22, 2014, invitations were mailed to the following:

1. All addresses on the mailing list provided by the Planning Division which includes property owners within 500 feet of the proposed development or within 1000 feet of a proposed industrial subdivision or industrial zone change.
2. Residents on the "interested parties" list.
3. A digital copy of the notice was also provided to the Planning Division (jmy@portlandmaine.gov and ldobson@portlandmaine.gov) and the assigned planner to be forwarded to those on the interested citizen list who receive e-mail notices.


Thomas S. Greer, P.E.

1/7/15
(date)

Attached to this certification are:

1. Copy of the invitation sent
2. Sign-in sheet
3. Meeting minutes

**PINKHAM & GREER
CIVIL ENGINEERS**

28 VANDERBILT AVE. PORTLAND, ME. 04103
Tel: 207.781.5242 Fax: 207.781.4245

**You are Invited to
a
Neighborhood Meeting**

December 22, 2014

Dear Neighbor:

The team at Northland Enterprises, LLC is working with the Elks' to create a new look and use of the site. The Elks' building will be downsized and renovated to give it a fresh look and become more functional for their use.

The additions to the site will include a 15,000 sq. ft. medical building along Congress Street and a 35,000 sq. ft. building along the UNUM side of the site. These changes will allow the site to be brought up to current environmental standards.

This meeting is for a Zone Change for the property. As part of the City's approval process, we will hold two public informational meetings which you are invited to attend. The first meeting will be:

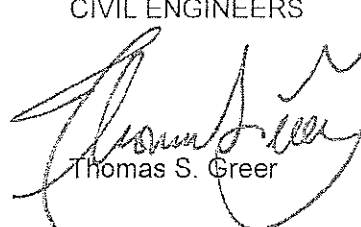
Meeting Location: 1945 Congress Street, the Elks Building
Meeting Date: Monday, January 5, 2015
Meeting Time: 5:00 pm

The City code requires that property owners within 500 feet of the proposed development and residents on the "interested parties list" be invited to participate in the neighborhood meeting. A sign in sheet will be circulated and minutes of the meeting will be taken. Both the sign up sheet and minutes will be submitted to the Planning Board.

If you have any questions, please call Tom Greer @ 207-781-5242.

Sincerely,

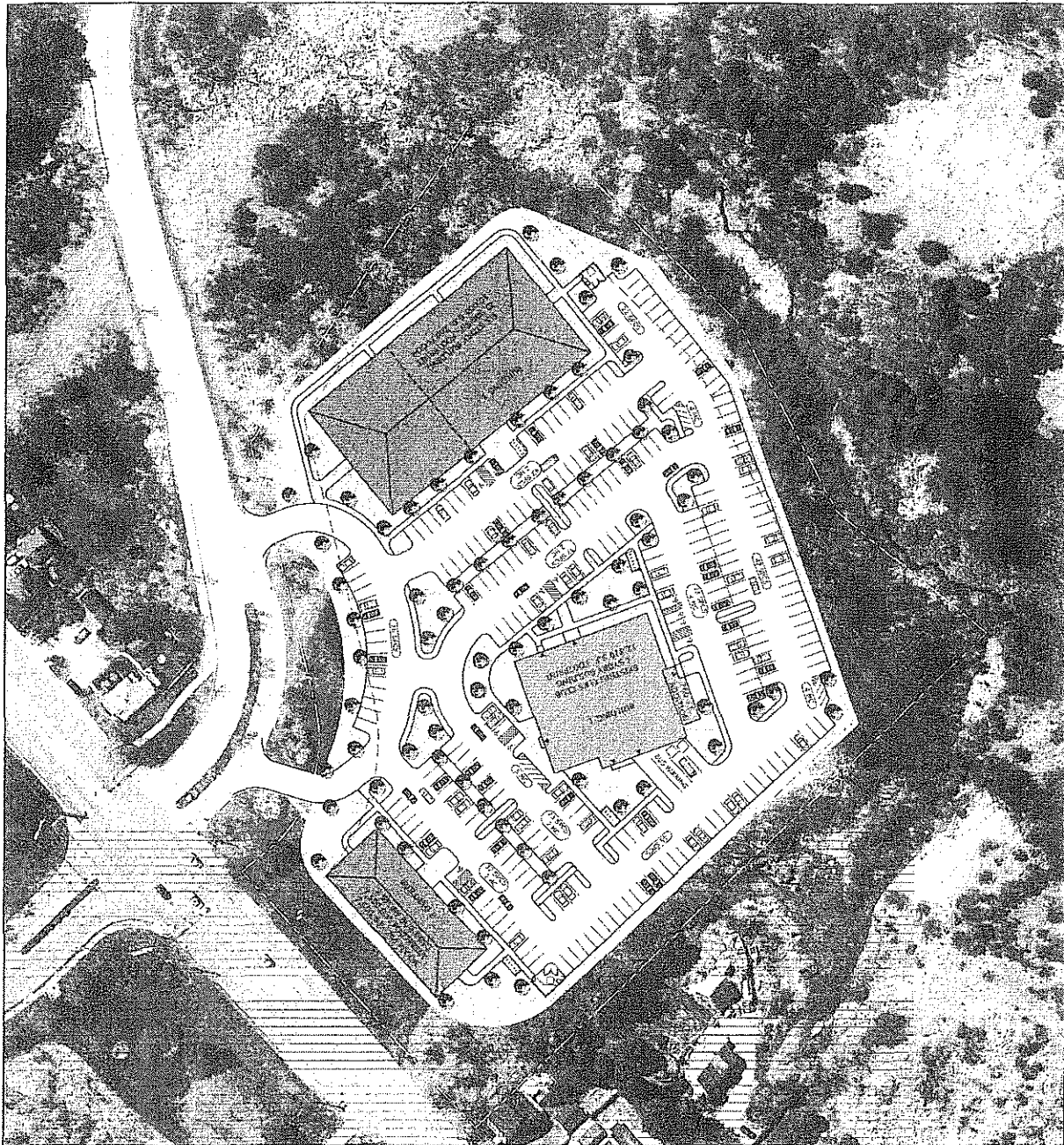
PINKHAM & GREER
CIVIL ENGINEERS



Thomas S. Greer

Applicant: Northland Enterprises, LLC (Josh Benthien & Rex Bell)
17 South Street
Portland, ME 04101

Owner: Portland Lodge #188 BPOE of USA
1945 Congress Street
Portland, ME 04102



NOT FOR CONSTRUCTION

1945 CONGRESS STREET
ELKS LODGE, PORTLAND, MAINE

NORTHLAND ENTERPRISES, LLC
17 SOUTH STREET
PORTLAND, MAINE 04101

[illegible]

NEIGHBORHOOD MEETING ATTENDEE LIST
1945 Congress Street
January 5, 2015

TOM GREEN BIRKHAM & GREEN 23 VANDERBILT AVE PORTLAND, ME.	DAN KOLOSKI (SUA PRESIDENT) 1296 WESTBROOK ST PORTLAND STROUDWATER VILLAGE EAST MEET 700 @ GMAIL.COM
Tim Smith 1945 Congress St Portland, ME.	Anita Baldes 33 Old Mast Rd. Portland, ME 04102
Jim Rex, UUM 1945 Congress St Portland, ME 04102	BILL LINNELL + JOYCE BATHIER 1905 CONGRESS ST PORTLAND, ME 04102 (A)
James Casterella 1967 Congress St Portland, ME 04102	Josh Bathier - Northland 9 Rocky Hill Road CAPE ELIZABETH, ME 04107
BRAD FRIES 17 South St, 3rd Fl Portland, ME 04101	Rex Bell - Northland 40 Wood Road CAPE ELIZABETH, ME 04107
Mary Jo Kimball 49 Vindale St. Scarborough, ME 04074	CATHERINE ALEXANDER UNUM 2211 Congress St Portland, ME 04122
PAT ADRIANCE 16 LONGFELLOW ROAD GORNHAM, ME 04058	JOE Winschel 1945 Congress St Portland, ME
RON ADRIANCE SAME AS ABOVE	MICHAEL ROGERS 66 RIVER'S EDGE DR PORTLAND
Dennis S. Rickett 20 Woodbury St. Portland, ME.	Joan & Sandy Boal 39 Old Mast Rd. Portland, ME.
Carol Burdick 194 DEBOR ST Scarborough ME 04074	ERIC GRIFFIN 42 PENRITH RD PORTLAND ME 04102

(A)

CAPT LINNELL @ YAHOO.COM

Neighborhood Meeting Summary
1945 Congress Street
January 5, 2015

The meeting started at 5:10pm and concluded around 5:45pm. It seemed to be well attended. The Attendance List is attached. Several people showed up during the meeting but did not sign in.

- A presentation by Thomas Greer was made highlighting the location of the project and noting the process for the zone change, the site plan and subdivision approvals. This is the first of two public information meeting to be held for this project.
- The features of the site were noted, including removing a section of the Elk's building, and renovating the remainder of the building. A new 15,000 sq. ft. medical office building will be constructed along Congress Street and a 25,000 to 35,000 sq. ft. building will be constructed on the west side of the existing parking lot.

In response to questions the following responses were made:

- The entrances to the site will remain in the same locations.
- A pylon sign will likely be placed out at the Congress Street entrance and some type of signage will be on the buildings. Way finding signs and parking signs will be throughout the parking fields.
- Bike racks, motorcycle, and scooter parking is provided and sidewalks for pedestrian connections are provided. No trail network is included.
- The parking meets or exceeds the City's requirements. On Tuesday's, Bingo at the Elk's will create the maximum demand. A parking study will be part of the submittals to the City.
- The site will have improved stormwater management. It will include treatment and flow control. A final selection of the treatment system has not been made.
- The site will have new lighting, meeting current standards. It will be computer controlled so it can be limited in the time it is on. It will be shielded and at lower levels than older parking lots. It will be LED lights.

The schedule for the project includes:

- Zone Change in the next 2 months.
- Site Plan and Subdivision Approval by May.

**PINKHAM & GREER
CIVIL ENGINEERS**

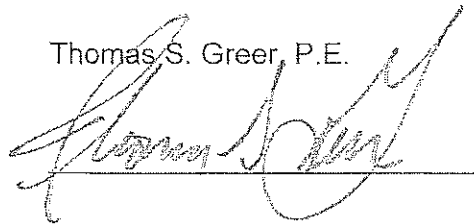
- Start Construction on the Elk's in June.
- Medical Building construction in June.

The general office building will be constructed when a tenant/owner is confirmed.

- The preliminary elevation views of the Elk's building and the general office building were shown. No drawings of the medical office were shown.
- Our neighbor, adjacent Congress Street, Bill Linnell, noted he was opposed to the project and thought a housing project would meet the Comprehensive Plan better. We noted we had sent a brief summary of how this project conforms to the Comprehensive Plan to the staff already. He will get a copy of that.
- There was general discussion about the bus route and if the rerouting of the line would impact this project. We did not think it would have much impact on the project.

The above summary of the meeting is respectfully prepared and submitted by:

Thomas S. Greer, P.E.

A handwritten signature in dark ink, appearing to read 'Thomas Greer', is written over a horizontal line. The signature is stylized and cursive.



July 8, 2015

Via email

Helen Donaldson
City of Portland Planning Division
389 Congress Street
Portland, Maine 04101

RE: Housing redevelopment feasibility for 1945 Congress Street

Nell,

At the May 26th Planning Board workshop, the Board requested that we provide an analysis of the feasibility of single family and low density multifamily housing on the Elks Site. Members of the Stroudwater Village have suggested that such a use would be more consistent with the Comprehensive Plan, but have failed to test the fiscal reality and sustainability of such a redevelopment.

Single Family Home Development Experience:

While one of our principals has significant firsthand experience, Northland as a company has never undertaken a single family subdivision project, so our analysis of that option has been limited to pricing out a subdivision with buildable lots that would be sold for housing construction, rather than incorporating assumptions regarding the costs associated with building and selling single family homes.

Multifamily Development Experience:

Northland has developed and owned over 400 units of multifamily housing projects. Those properties include those financed with Low Income Housing Tax Credits, backed by Section 8 Contracts and "market rate" conventionally financed complexes. It is with this institutional knowledge and understanding of the costs associated with their respective developments and operations that we have developed our analysis regarding multifamily housing feasibility.

Single Family Analysis:

Based on the current R2 Zone and the required minimum lot size, eight lots could be created if the Elks remained on site, and fifteen lots could be created if the Elks were to leave the site. In both scenarios, two lots would require curb cuts on Congress

Street, the others would utilize a shared interior road within the development. In our analyses we used the current purchase price in the eight-lot scenario, and for the fifteen-lot scenario, we used the previous contract price when the Elks had contemplated leaving the site when Husson College was the prospective buyer. We asked an experienced construction estimator to come up with the costs associated with both subdivision scenarios to include all paving, stubbing of utilities and landscape buffering. We applied estimates for soft costs for the two scenarios that averaged under 8% of the total deal size. Finally, we estimated the carrying costs associated with the construction financing and equity raise that would be required to fund the development and projected that it would take twelve months to sell eight lots, and a total of sixteen months to sell out the entire fifteen lots.

In the eight-lot scenario we are assuming the purchase price of the land is equal to our current contract price approved by the Portland Elks and the Grand Lodge. In the Fifteen Lot scenario we have assumed a purchase price of \$2.5 million, which is equal to the price that the Elks have previously agreed to for an outright sale. These purchase price assumptions aside the feasibility of either scenario does not change if the site were sold for \$1.

Based on these assumptions, the following sale prices for buildable lots would need to be achieved for the project to be viable (*Note that we have backed into a break-even sale price, not accounting for profit to the Developer or Equity Investors*).

Eight Lot Scenario:

Total Development Costs:	\$2,891,566
Price per lot:	\$385,000
Less Sales Cost:	-\$184,800
Net Profit:	\$3,634

Fifteen Lot Scenario:

Total Development Costs:	\$4,496,606
Price per lot:	\$319,000
Less Sales Cost:	-\$287,100
Net Profit:	\$1,294

There have been two sales of housing lots within the last year within a one mile radius, neither of which justify the pricing that would be required of either the eight or fifteen lot development scenarios. The comps are:

House Lots w/in 1 mile in 12 last months	Comp #1	Comp # 2
Address	15 Riverview St.	1331 Westbrook St.
Size (acres):	.14 Acre	1.48 Acre
Lot Square Footage:	6,098	64,469
Sale Price:	\$44,000	\$92,625
Price Per SF:	\$7.22	\$1.44
Equivalent price for a 10,000sf lot:	\$72,200	\$14,440
Sale Date:	9/22/14	10/17/14

In our opinion, based on these recent sales, and the price required to break even on selling single family house lots, the redevelopment of the Elks site into single family housing lots would not be feasible under the current market conditions. See attached Appendix A for a more detailed list of currently listed and recently sold land parcels within one mile of the Elks Site.

Multifamily Housing Analysis:

Income Assumptions:

For our multifamily feasibility analysis we used rental rate assumptions based on a Portland wide market study that we commissioned for a downtown project that we are planning to begin later this year. In April 2015 Northland hired the Signal Group of South Portland to determine the current market rate rents for 1 and 2 bedroom units, and compare those to the rents that someone making 100% of the Area Median Income (AMI) could afford. The resulting \$1,460 per-month suggested market rents for 2bdrm units were used in our analysis. For vacancy loss we used 5% annually, which is consistent with larger scattered site off-peninsula apartments.

Expense Assumptions:

Our annual apartment expense assumptions were based on our historical per/unit expenses across our five apartment complexes in Southern Maine. We also utilized the 2013 Institute of Real Estate Management (IREM) income and expense analysis for garden style apartments in our region (attached as Appendix B). The expense ratio in IREM is listed as between 36.5% of Revenue on the low side, and 53.2% on the high side; for this analysis we used 37.1% as a target; a percentage which in our opinion is quite aggressive.

Scenarios:

We tested three "market rate" apartment scenarios. The first scenario is based on the unit count for a multifamily development that would be allowed if the zone is changed to R3, *as it is important to note that under the current R2 Zoning, no multifamily housing would be legally permissible.* The other two scenarios were analyzed after the first scenario proved financially unfeasible, and both of these scenarios would require further zone changes to allow for even more density.

Scenario #1 – 40 market rate units at market rents per the Signal Group study
Scenario #2 – 80 market rate units at market rents per the Signal Group study
Scenario #3 – 80 luxury rental units at rents required to make project feasible.

Summary:

Scenario	#1	#2	#3	Notes
# of units	40	80	80	

Monthly Rent	\$1,460	\$1,460	\$1,920	
P/Unit Cost	250,000	\$198,568	\$205,078	Includes acquisition and all site and soft costs
P/Unit appraised value	\$139,917	\$139,917	\$205,352	Based on 7.25% Cap Rate
Funding Gap (difference between appraised value and total costs of the development)	-\$4,403,310	-\$4,692,037	+\$21,888	

The funding gap resulting in both the 40 and 80 unit market rate complexes is not unusual for this market, but does render both of those scenarios unfeasible. In our experience for a new construction market rate housing to make financial sense, rents need to be greater than \$1,650 per month for a one-bedroom apartment.

This analysis assumes that the Elks leave the site, and are justly compensated for the land, but even if they sold the land for \$1, the result of the analysis for the first two scenarios would be the same; neither scenario would be feasible with funding gaps over \$2million.

Low Income Housing Scenario:

Northland has completed multifamily projects utilizing both the competitive 9% Low Income Housing Tax Credit ('LIHTC') and the 4% Tax Exempt Bond Financing. The 9% LIHTC program is a competitive program utilizing a finite amount of scarce resources from the Maine State Housing Authority ('MSHA'). Every year, developers apply for this credit with specific projects in mind, and MSHA reviews the application and scores the project based on a number of qualitative criteria.

Based on the profile of this project, and the current scoring guidelines, there is little chance that it would qualify for the 9% LIHTC credit, therefore the only possible LIHTC financing that we have analyzed is the 4% Tax Exempt Bond financing which is considered "as of right" and administered without the competitive scoring associated with the 9% credit.

The construction costs of this type of development are slightly lower than a conventional market rate apartment complex, and we have taken that into account, but the soft costs associated with the bond financing are significantly higher than those associated with market rate complexes. The program requires that a minimum of 40% of the units are limited to tenants who make less than 60% of Area median Income ("AMI") and those rents are limited to \$1,041 per month (see Appendix C for detail on Tax Credit income and rent limits). The remainder of the units would be leased without income restriction at the previously noted \$1,460 per month market rate. The assumption for land costs in this scenario is the aforementioned \$2.5million purchase price.

The summary of the 4% LIHTC scenario is as follows:

Total Number of Units	80
60% AMI units (\$1,041)	32
Market rate units (\$1,460)	48
Expense Ratio	39%
Construction Cost Per Unit	\$120,000
Total Development cost per Unit	\$211,224
Total Gross Development cost	\$16,897,959
Conventional Debt and Equity	-\$10,641,655
Tax Credit Equity & Deferred Fee	\$1,888,818
Resulting Funding Gap	-\$4,367,486

As the above gap demonstrates, even utilizing the 4% Low Income Housing Tax Credit in conjunction with bond financing does not solve for the funding gap that exists. The lower rents required under the LIHTC program reduces the resulting appraised value, as the \$10,641,655 valuation (\$133,021 Per Unit) would be developed utilizing using the net income of the property, and the lower rents reduce that annual income.

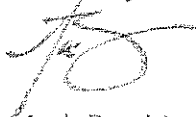
It should be noted that even if the Elks sold the site for \$1. the funding gap would be nearly \$1.8 million in this scenario.

SUMMARY:

Based on our experience in developing multifamily housing, both market rate and affordable, and our understanding of the costs associated with creating lots for single family housing, and the realities of the current rental market and the demand and prices paid for housing lots, neither scenarios are feasible development alternatives for 1945 Congress Street.

Despite the desire of those who want to see this developed for housing, the reality is that without a zone change allowing for a commercial use, this property will not be redeveloped until rents rise significantly (32%) in Portland or the price paid for housing lots quadruple.

Sincerely,



Josh Benthien
Partner
Northland Enterprises

CMA 1 - Line

Prepared By: Conor R Beliveau

Listings as of 07/07/15 at 1:17 pm

Property Type is 'Land' Status is 'Active' Status is 'Sold' Status Contractual Search Date is 07/07/2015 to 07/07/2014 Latitude, Longitude is within 100 m of 1045 Congress St, Portland Maine

Land

Active Properties

MLS #	Address	Town	Acres	\$/Acre	Lot SqFt	\$/Lot SqFt	List Price	DOM
1145603	1877 Congress Street	Portland	4.04		175,982	\$2.16	\$380,000	

# LISTINGS:	1	Medians:			175,982	\$2.16	\$380,000	462
		Minimums:			175,982	\$2.16	\$380,000	462
		Maximums:			175,982	\$2.16	\$380,000	462
		Averages:			175,982	\$2.16	\$380,000	462

Sold Properties

MLS #	Address	Town	Acres	\$\$/Acre	Lot SqFt	\$\$/Lot SqFt	List Price	Sold Price	Sold Date	SP/LP	DOM
1148877	15 Riverview Street	Portland	0.14	\$314,285.71	6,098	\$7.22	\$54,900	\$44,000	09/22/2014	80.15	
1123502	1331 Westbrook Street	Portland	1.48	\$62,584.46	64,469	\$1.44	\$109,000	\$92,625	10/17/2014	84.98	

# LISTINGS:	2	Medians:		\$188,435.09	35,284	\$4.33	\$81,950	\$68,313	82.56	13
		Minimums:		\$62,584.46	6,098	\$1.44	\$54,900	\$44,000	80.15	3
		Maximums:		\$314,285.71	64,469	\$7.22	\$109,000	\$92,625	84.98	23
		Averages:		\$188,435.09	35,284	\$4.33	\$81,950	\$68,313	82.56	13

Quick Statistics (3 Listings Total)

	Min	Max	Average	Median
List Price	\$54,900	\$380,000	\$181,300	\$109,000
Sold Price	\$44,000	\$92,625	\$68,313	\$68,313

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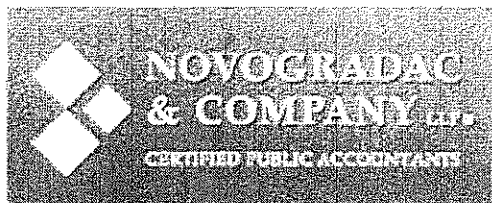
This is a broker price opinion or comparative market analysis and should not be considered an appraisal. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.



	61 BUILDINGS 7,776,370 RENTABLE SQUARE FEET								91 BUILDINGS 20,934,645 RENTABLE SQUARE FEET							
	BLDG.				BLDG.				BLDG.				BLDG.			
	BLDG.	---% OF GPT---	---\$/SQ.FT.---	UNIT	BLDG.	---% OF GPT---	---\$/SQ.FT.---	UNIT	BLDG.	---% OF GPT---	---\$/SQ.FT.---	UNIT	BLDG.	---% OF GPT---	---\$/SQ.FT.---	UNIT
INCOME																
RENTS-APARTMENTS	(64)	97.2%	95.8%	98.4%	16.07	12.22	18.93	13748	(91)	96.6%	94.5%	98.5%	14.96	12.83	17.99	13205
RENTS-GARAGE/PARKING	(16)	.4	.2	.8	.10	.02	.13	72	(20)	.8	.3	1.2	.16	.06	.25	154
RENTS-STORIES/OFFICES	(21)	17.9			2.73			2996	(1)	2.5			.47			327
GROSS POSSIBLE RENTS	(64)	97.5%	96.2%	98.6%	16.07	12.22	19.25	13912	(91)	96.9%	94.8%	98.7%	14.96	12.83	18.29	13205
CONCESSIONS	(26)	.9	.5	1.3	.13	.08	.25	107	(55)	.8	.4	1.3	.13	.04	.32	422
VACANCIES/RENT LOSS	(64)	4.8	3.7	6.4	.66	.45	1.17	633	(89)	5.4	4.1	9.2	.92	.63	1.31	766
TOTAL RENTS COLLECTED	(64)	92.0	88.7	91.9	14.90	11.23	17.92	13131	(91)	89.1	85.4	92.0	13.76	11.50	16.67	12328
OTHER INCOME	(57)	2.7	1.8	3.9	.46	.27	.29	409	(78)	4.0	2.0	5.6	.62	.26	1.01	558
GROSS POSSIBLE INCOME	(64)	100.0%	100.0%	100.0%	16.55	12.31	19.69	14379	(91)	100.0%	100.0%	100.0%	15.59	13.23	19.04	13848
TOTAL COLLECTIONS	(64)	95.0	92.8	96.4	16.17	11.29	18.52	13499	(91)	91.2	89.3	95.7	14.60	11.99	17.50	12928
EXPENSES																
MANAGEMENT FEE	(61)	4.8	4.0	6.1	.71	.55	.96	627	(87)	4.4	3.2	4.9	.64	.52	.78	644
OTHER ADMINISTRATIVE**	(64)	8.1	5.6	11.8	1.27	.99	1.68	1097	(87)	5.1	2.3	7.6	.81	.31	1.24	708
SUBTOTAL ADMINIST.	(64)	13.6%	9.8%	17.0%	2.11	1.58	2.45	1782	(91)	8.2%	6.3%	11.7%	1.41	1.02	1.88	1364
SUPPLIES	(59)	.4	.1	.8	.07	.02	.14	59	(81)	.1	.1	.8	.05	.01	.13	47
HEATING FUEL-CA ONLY*	(20)	1.3	.4	3.1	.13	.05	.35	157	(30)	.4	.2	1.2	.06	.03	.18	75
CA & APTS.*	(30)	3.7	2.4	8.5	.62	.35	1.05	483	(43)	4.6	2.9	7.2	.72	.43	1.00	532
ELECTRICITY-CA ONLY*	(43)	1.5	.9	1.7	.19	.11	.28	165	(24)	1.1	.4	1.6	.17	.06	.25	140
CA & APTS.*	(19)	2.8	1.9	3.8	.44	.29	.54	363	(9)	2.1			.31			296
WATER/SEWER-CA ONLY*	(17)	3.4	1.8	5.0	.67	.27	.97	609	(27)	1.9	.9	3.1	.34	.20	.55	365
CA & APTS.*	(44)	3.3	2.6	5.1	.97	.33	.74	483	(59)	3.9	2.7	5.2	.65	.44	.60	574
GAS-CA ONLY*	(12)	.7	.8	.5	.12	.09	.17	95	(19)	.3	.1	.3	.03	.01	.05	17
CA & APTS.*	(20)	3.9	.6	4.5	.82	.06	.81	488	(9)	5.5			.92			762
BUILDING SERVICES	(58)	1.4	.7	2.0	.19	.13	.35	177	(32)	1.1	.7	3.2	.21	.11	.59	181
OTHER OPERATING	(47)	.3	.2	.8	.04	.02	.13	33	(47)	.9	.3	1.9	.15	.05	.45	140
SUBTOTAL OPERATING	(64)	11.8%	8.4%	15.3%	1.72	1.23	2.61	1498	(91)	10.1%	6.0%	16.9%	1.67	1.05	2.54	1354
SECURITY**	(36)	.2	.0	.5	.03		.09	26	(26)	.2	.1	.3	.03	.01	.07	22
GROUND MAINTENANCE**	(60)	1.6	.9	2.3	.27	.15	.35	235	(87)	1.8	1.1	2.5	.32	.16	.60	266
MAINTENANCE REPAIRS	(64)	2.6	1.6	3.9	.43	.28	.58	330	(91)	2.6	1.2	3.8	.43	.18	.55	264
PAINTING/DECORATING**	(59)	1.2	.7	1.4	.20	.07	.15	109	(86)	1.2	.8	1.6	.21	.13	.29	184
SUBTOTAL MAINTENANCE	(64)	5.8%	3.5%	7.3%	.88	.66	1.29	778	(91)	5.7%	4.1%	6.9%	.87	.64	1.16	362
REAL ESTATE TAXES	(64)	9.6	6.8	13.0	1.41	1.13	1.91	1203	(89)	9.8	7.6	13.3	1.61	1.17	1.77	1385
OTHER TAX/FEE/PERMIT	(33)	.2	.1	1.5	.04	.01	.20	27	(38)	.2	.1	1.1	.03	.01	.15	30
INSURANCE	(64)	2.5	1.7	3.7	.38	.30	.49	320	(87)	2.1	1.4	2.9	.35	.26	.43	286
SUBTOTAL TAX-INSURANCE	(64)	12.7%	9.4%	15.7%	1.81	1.57	2.63	1710	(89)	12.9%	10.0%	15.9%	1.97	1.62	2.57	1702
RECREATION/AMENITIES**	(37)	.5	.4	.7	.08	.06	.13	71	(44)	.2	.1	.3	.03	.01	.05	32
OTHER PAYROLL	(60)	6.1	4.1	7.8	.92	.58	1.22	749	(67)	9.5	3.6	6.1	.72	.60	1.04	649
TOTAL ALL EXPENSES	(64)	31.5%	24.4%	40.9%	7.59	6.51	9.98	6723	(91)	43.8%	36.3%	53.2%	6.96	5.83	8.46	6283
NET OPERATING INCOME	(64)	42.3%	33.3%	51.4%	6.37	4.50	9.59	6271	(91)	49.2%	37.2%	55.3%	7.13	4.68	10.46	6652
PAYROLL RECAP**	(47)	9.4	6.7	11.7	1.30	1.01	1.59	1180	(62)	7.9	5.7	10.5	1.32	.93	1.77	1169

FOOTNOTE: For a description of Utility Expense (*) and Payroll Cost (**) reporting and an explanation of the report layout and method of data analysis, refer to the sections entitled *Guidelines for the Use of this Data and Interpretation of a Page of Data*. For definitions of the income and expense categories, refer to the Appendix. Copyright © 2013, Institute of Real Estate Management

Appendix C



If you would like to engage Novogradac & Company LLP to calculate the rent & income limits for your property, please contact Thomas Stagg at thomas.stagg@novoco.com.

You can view demographic information and a detailed list of affordable housing properties in [compsMART+](#).

Click on the icons below to view historical charts.

Affordable Housing Program	IRS Section 42 Low-Income Housing Tax Credit (LIHTC)
Year (1)(2)	2015 (effective 03/06/15)
State	ME
County	Cumberland County
MSA	Portland, ME HUD Metro FMR Area
Persons / Bedroom	1.5 Person / Bedroom
4-person AMI	\$77,100
National Non-Metropolitan Median Income (2)(4)	\$54,100
HERA Special (5)	Not eligible
Held Harmless (6)	You have indicated that your project was placed in service on or after 03/06/2015 and is therefore eligible to have its income and rent limit held harmless beginning with the 2015 limits.
Placed in Service Date (7)	On or after 03/06/2015.
Rent Floor Election (8) (9)	Effective on or after 03/06/2015.

		20,000%	149,800%
1 Person		32,400	45,360
2 Person		37,020	51,828
3 Person		41,640	58,296
4 Person		46,260	64,764
5 Person		50,880	69,972
6 Person		55,500	75,180
7 Person		60,120	80,388
8 Person		64,740	85,512
9 Person		69,360	90,636
10 Person		73,980	95,844
11 Person		78,600	101,052
12 Person		83,220	106,176

Bedrooms (People)

2 Bedrooms (3.0)



30,000%

1,041

FMR

1,074

Before using the numbers from the Rent & Income Limit Calculator®, we strongly recommend that you check with the applicable state housing agency to verify that the state agrees with the numbers. The numbers round down to the nearest \$1.

This Rent & Income Limit Calculator® does not calculate low-income housing tax credit (LIHTC) limits greater than 50% LIHTC or 60% LIHTC limits, depending on the minimum set-aside elected with the IRS on Form 8609 in accordance with Internal Revenue Code Section 42(i)(3)(A). In other words, if the 20/50 minimum set-aside was elected then 50% LIHTC is the maximum rent calculated and allowed to qualify as a tax credit unit; or if the 40/60 minimum set-aside was elected then 60% LIHTC is the maximum allowed to qualify as a tax credit unit.

Revenue Ruling 85-24 require that the LIHTC rent & income levels start their calculations with the HUD published very low-income (VLI) amounts because the HUD published VLI amounts include certain HUD adjustments, such as high housing cost for high FMR areas to increase income, and state non-metropolitan median income to provide a floor for income limits. The result is that many counties have VLI amounts that are different than 50% of the AMI published by HUD (the 4-person AMGI we have shown above). The Novogradac Rent & Income Calculator® starts by default with the HUD published VLI amounts in accordance with Revenue Ruling 85-24.

(1) The rent and income limits for each year are effective beginning with the effective date shown above. There is a grace period for 45 days to implement the new rent and income limits, which means that the old limits can be relied upon for 45 days after the effective date of the new limits. For example income limits effective 12/04/2012, can be relied on until 1/17/2013. For more information, see Revenue Ruling 94-57.

IRS LHC Newsletter #48 and IRS LHC Newsletter #50 clarify that for projects placed in service during the 45-day grace period, the owner may choose the new or the old income limits. For example, if a project was placed in service on 1/8/2013 and the 2012 income limits are higher than the 2013 income limits, an owner may use the higher income limits from 2012 to income qualify tenants and set rents accordingly because the project was placed in service with the 45-day grace period.

Please note, the Rent & Income Limit Calculator® does not apply a 45-day grace period automatically. The user needs to indicate that the placed in service date and/or gross rent floor date occurred 45 days earlier (in the prior HUD Fiscal Year) if they want to apply the 45-day rule under Revenue Ruling 94-57 that allows owners to rely on the prior year. Therefore, projects that were placed in service during the 45-day grace period, and want to use the prior year, should select that they were placed in service as of the prior year. For example, if a project placed in service on 1/8/2013, and the project wanted to use the 45-day grace period, the user should select that their project was in service prior to 12/4/2012. Similarly, projects that have a gross rent floor effective as of the carryover allocation date (or reservation letter date for bond projects) during the 45-day grace period, and want to use the prior year, should select that the gross rent floor was effective as of the prior year. For example, if a project received a carryover allocation letter on 1/8/2013, and the owner did not elect placed in service date as the gross rent floor, and the project wanted to use the 45-day grace period, the user should select that their gross rent floor was effective prior to 12/4/2012.

(2) For HUD FY 2013 HUD originally issued income limits on December 4, 2012 then issued revised income limits on December 11, 2012. In IRS LHC Newsletter #50, the IRS has stated that the effective date for the revised FY 2013 income limits is December 4, 2012. Based on this guidance, the Rent & Income Limit Calculator® uses December 4, 2013 for the effective date for the revised FY 2013 limits. Please see IRS LHC Newsletter #50 for more detail.

(3) An area may lose its rural area status. There is no clear guidance that a project is held harmless at the national non-metropolitan income limits when an area loses its rural status. The Rent & Income Limit Calculator® assumes that a project that is not indicated as rural in the current year was also not rural in the prior year, and therefore, does not receive hold harmless treatment based on the prior year national non-metro amount.

Please consult your state agency and tax advisor for further clarification.

(4) USDA may change their determination of what projects qualify as rural during the course of a year. Please periodically check with USDA to determine the continued rural eligibility of your project.

The national non-metropolitan median income has been adjusted for household size based on the family size adjustments outlined in the HUD Briefing Materials and as shown in each year's HUD FAQ. The IRS did not specify whether or not to round to the nearest \$50, however, the Rent & Income Limit Calculator® will round to the nearest \$50 in accordance with the methodology referenced in HUD Briefing Materials.

⁽⁶⁾ A project uses HERA Special if income was determined prior to 1/1/2009 and the project is in a HERA Special county. A project's income limits are held harmless at the prior year income limits if income was determined in the prior year or earlier and the income limits have decreased. Please note that the IRS has informally indicated that the definition of "determined" for purposes of the HERA Special and MTSP Hold Harmless income limits means that a project was placed in service. Please see [IRS LHO Newsletter #35](#) for more information about "determined" and projects with buildings that were placed in service before and after HUD income limit effective dates. Therefore, projects placed in service prior to 1/1/2009 are generally eligible for HERA Special. Please see footnote 7 for information about acquisition/rehabilitation projects.

⁽⁸⁾ Internal Revenue Code Section 142(d)(2)(i) indicates that hold harmless applies on a calendar year. The Rent & Income Limit Calculator® assumes that "calendar year" in the hold harmless rule means the HUD Fiscal Year. For example, the 2009 calendar year means the HUD Fiscal Year from 3/18/2009 through 5/13/2010. In other words, the Rent & Income Limit Calculator® assumes that "calendar year" in the hold harmless rule means the highest income level achieved during any HUD Fiscal Year.

The Rent & Income Limit Calculator® assumes that a rural project will receive hold harmless treatment at the national non-metro amount based on the prior year national non-metro amount if the national non-metro median income were to fall from year to year. If a rural project qualifies for HERA Special and the HERA Special is higher than the national non-metro, then the HERA Special amount will be used. Please note that the IRS has not issued guidance that specifically allows hold harmless treatment at the national non-metro amount for rural projects, however, Internal Revenue Code 42(g)(4) by reference to Internal Revenue Code 142(d)(2)(E) implies that hold harmless treatment would apply at the national non-metro amount for rural projects. Please consult your tax advisor for further clarification.

⁽⁷⁾ Please note that for acquisition/rehabilitation projects, the IRS guidance indicates that income and rent limits are determined at the later of the acquisition date or when management begins income-qualifying households in the project. For example, if a project was acquired in 2011, the rehabilitation was placed-in-service in 2012, and management began income-qualifying households in 2011 then the project would be considered placed in service in 2011 for income and rent purposes. If a project was acquired in 2011, the rehabilitation was placed-in-service in 2012, and management began income-qualifying households when the rehabilitation placed-in-service in 2012, then the project would be considered placed in service in 2012 for income and rent purposes. Please see [IRS LHO Newsletter #33](#) for more detail. Please consult your tax advisor for further clarification.

⁽⁸⁾ [Revenue Procedure 94-57](#) gives guidance on the gross rent floor election.

Tax credit projects without bond financing:

"The Internal Revenue Service will treat the gross rent floor in section 42(g)(2)(A) as taking effect on the date an Agency initially allocates a housing credit dollar amount to the building [generally referred to as the 42M letter] under section 42(h)(1). However, the Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that made the allocation to the building no later than the date on which the building is placed in service."

Tax credit projects with bond financing:

"The Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that issued the determination letter to the building no later than the date on which the building is placed in service."

⁽⁹⁾ The Rent & Income Limit Calculator® assumes all buildings in a project have a rent floor effective date under [Revenue Procedure 94-57](#) in the same HUD Fiscal Year. However, if your buildings have rent floor effective dates under [Revenue Procedure 94-57](#) in different HUD Fiscal Years, then you should run the calculator separately for each group of buildings in a particular HUD Fiscal Year.

The Rent & Income Limit Calculator® assumes that different AMGI limits (40%, 35%, 30%, etc.) chosen by the user will also have a rent floor election under [Revenue Procedure 94-57](#) from the same HUD Fiscal Year that applies to the federal level of 50% or 60%.

⁽¹⁰⁾ The Consolidated Appropriations Act of 2014 changed how the 30% income limits is calculated. The 30% limit,

which is now called the extremely low income limit, is determined by taking the greater of the 30% income limit as calculated by HUD or the poverty level as determined by the Department of Health and Human Services, which is then capped at the 50% Very Low Income Limit ("VLI") published by HUD. HUD has only published the data up to 8 people. For household sizes above 8 people please visit the following website:

http://www.huduser.org/portal/https://www.hud.gov/Altores_VLI.html

Terms of Use.

Utility allowances are inputted by the user and are not reviewed or verified by Novogradac & Company LLP. Novogradac & Company LLP provides no assurance of the accuracy of the particular results you may obtain from the Rent & Income Limit Calculator®; which is designed only to be a quick reference tool and is no substitute for professional tax and accounting advice. The Rent & Income Limit Calculator® should not be used for any final financial decisions. IRS guidelines and actual HUD amounts should be used for any final decisions. Novogradac & Company LLP does not guarantee the accuracy of the amounts shown above. As consideration for your use of this tool, free of any requirement to pay any related monetary compensation to Novogradac & Company LLP, you agree to hold Novogradac & Company LLP harmless from any damages and claims related to use of the Rent & Income Limit Calculator®. If you do not agree with the terms of this paragraph, you may not use the Rent & Income Limit Calculator®.

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REAL ESTATE PURCHASE AND SALE AGREEMENT

This AGREEMENT, dated the 27th day of August, 2015 (the "Contract Date"), is between Northland Enterprises, LLC, or its permitted assignee, having a place of business at 17 South Street, 3rd floor, Portland, Maine 04101, and Dr. Michael Bedecs having a place of business at 1375 Congress Street, Portland, Maine 04102 (collectively, "Seller") and Paul Dubois and Kimberly A. Dubois (collectively "Purchaser"), an individual with an address at 1915 Congress Street, Portland, Maine 04102.

WHEREAS, pursuant to that certain Real Estate Purchase and Sale Agreement dated June 11, 2014, as amended (the "Elks P&S"), by and among Seller, Dr. Michael Bedecs ("Bedecs"), and Portland Lodge No. 188 of the Benevolent and Protective Order of Elks of the United States of America (the "Elks"), and subject to terms and conditions thereof, Seller (together with Bedecs), is the potential purchaser of certain land and buildings as further described in the Elks P&S (the "Elks Property"); and

WHEREAS, in order to proceed with the purchase of the Elks Property and Seller's intended development thereof, Seller requires the City of Portland to approve a change in zoning from Residential R-2 to Office Park (O-P) (the "Zoning Change"); and

WHEREAS, Purchaser's existing property abuts the Elks Property ("Purchaser's Abutting Lot"); and

WHEREAS, Purchaser's Abutting Lot is a non-conforming lot; and

WHEREAS, Seller, contingent upon the closing on the Elks Property by Seller, has agreed to convey a 10 foot wide strip of land to Purchaser, pursuant to the terms hereof;

NOW, THEREFORE, the parties agree as follows:

1. **Purchase and Sale of Property.** Subject to the terms and conditions set forth herein, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, a certain strip of land measuring approximately 10 feet by 156 feet long (the "Property") abutting Purchaser's existing property, as further described on the sketch plan attached hereto as Exhibit A. The parties agree that the final description of the Property shall be a metes and bounds description to be prepared by Seller.

2. **Consideration.** Purchaser agrees to make the following agreed consideration for the Property (the "Consideration"):

(a) Purchaser shall pay Seller's actual costs and expenses of the conveyance, including without limitation Seller's engineering, surveying,

Paul Dubois *Kimberly A. Dubois*

and legal fees; provided, however, that the total of such fees shall not exceed \$1,750; and

(b) Purchaser shall make a one-time donation to the Elks of \$1,500.

The foregoing Consideration shall be paid at Closing.

3. **Adjustments.** Real estate taxes for the then current tax period shall be apportioned as of the day of performance of this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the Consideration payable by the Purchaser at the time of delivery of the deed.

4. **Conveyance.** Seller shall convey the Property to Purchaser by good and sufficient quitclaim deed with covenant (the "Deed").

5. **Contingencies.** The Seller's obligation to close hereunder is expressly conditioned on the following:

(a) Seller shall have obtained the Zoning Change;

(b) Seller shall have obtained Site Plan Approval and all other approvals from the City of Portland as Seller may deem necessary and proper for Seller's intended use of the Elks Property;

(c) Seller shall have obtained all building and other permits for the commencement of work on the Elks Property; and

(d) Seller shall have closed on the Elks Property pursuant to the Elks P&S.

6. **Time for Performance; Delivery of Deed.** The transfer of title (the "Closing") shall take place on same date, time, and place as the closing to be held pursuant to the Elks P&S, as such date may be extended, or at such other place as shall be mutually agreed to by Purchaser and Seller. TIME IS OF THE ESSENCE.

7. **Broker's Commissions.** Seller and Purchaser represent to each other that no real estate broker, licensed or otherwise, brought about this transaction. The parties agree to indemnify and hold each other harmless from and against any and all claims, liabilities, damages, costs and expenses (including without limitation, reasonable attorneys and paralegal fees) arising out of or in connection with any claim made against the other party by any person claiming any fee or commission with respect to the sale of

the Property. The provisions of this paragraph shall survive the delivery of the deed hereunder.

8. **Default.**

(a) If Purchaser fails to perform its obligations as set forth in this Agreement, then Seller's sole and exclusive remedy shall be to seek equitable relief for specific performance in lieu of recovering money damages.

(b) If Seller fails to perform its obligations as set forth in this Agreement, Purchaser may pursue any remedy at law or in equity to which it may be entitled, including without limitation specific performance.

9. **Acceptance of Deed.**

The acceptance of the Deed by Purchaser at the Closing shall be deemed to be the full performance and discharge of every agreement, obligation and representation made on the part of Seller, except as expressly set forth herein or in such Deed. No provisions, agreements or representations herein shall survive the Closing except as specifically stated herein. The Property is being sold and will be conveyed "as is" without any representation or warranties as to habitability, merchantability, fitness, condition or otherwise. Neither party is relying upon any statements or representations not embodied in this Agreement.

10. **Risk of Loss.** The risk of loss shall remain on Seller at all times until closing except for loss or damage to the extent caused by Purchaser.

11. **Miscellaneous.**

(a) Seller and Purchaser shall each pay their portion of the Maine State Transfer Tax, if any. The parties anticipate no Maine State Transfer Tax shall be due.

(b) Seller hereby certifies that Seller is a resident of the State of Maine. Seller hereby acknowledges Purchaser's requirement to withhold 2½% of the Consideration pursuant to 36 M.R.S.A. § 5250-A if Seller is not a resident of the State of Maine, unless Seller presents to Purchaser at closing a Certificate of Exemption or Certificate of Reduction from the State of Maine Bureau of Taxation.

(c) By signing this Agreement, Purchaser acknowledges that Purchaser has been notified of the State of Maine's withholding tax requirement pursuant to 36 M.R.S.A. § 5250-A.

(d) Seller hereby certifies that Seller is a resident of the United States of America and is not subject to the 10% withholding tax imposed upon "foreign persons" by Section 1445(a) of the Internal Revenue Code of 1954.

(e) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and permitted assigns.

(f) Purchaser's rights under the Agreement are not assignable without the prior written consent of Seller, which consent shall not be unreasonably withheld. Any purported assignment in violation of this provision shall, at Seller's option, be null and void and shall confer no rights on the purported assignee and may, at Seller's option, be treated as a default by Purchaser hereunder.

(g) It is understood and agreed that all understandings, agreements, warranties or representations, either oral or in writing, including without limitation any letters of intent or prior agreements, heretofore between the parties hereto are merged in and superseded by this Agreement, which document alone fully and completely expresses the parties' agreement with respect to the transactions covered hereby. This Agreement may not be modified in any manner except by a subsequent instrument in writing signed by Seller and Purchaser.

(h) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall constitute but one and the same instrument.

(i) If the date for performance of any obligation hereunder, or the giving of any notice hereunder, falls on a Saturday, Sunday or a legal holiday in the State of Maine, the period for such performance, or the giving of any notice hereunder, shall be extended to the next business day.

(j) This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Maine.

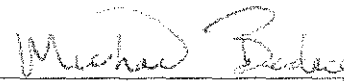
12. **Expiration of Offer.** This Agreement, executed by Seller, constitutes an offer to sell to Purchaser on the terms described herein, which offer shall be deemed automatically withdrawn if not accepted by Purchaser, evidenced by delivery to Seller of a copy of this Agreement executed by Purchaser, on or before Friday, August 28, 2015, at 5PM.

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date set forth below their respective signatures, to be effective as of the Contract Date.

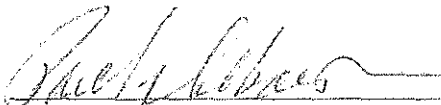
SELLER:

Northland Enterprises, LLC.

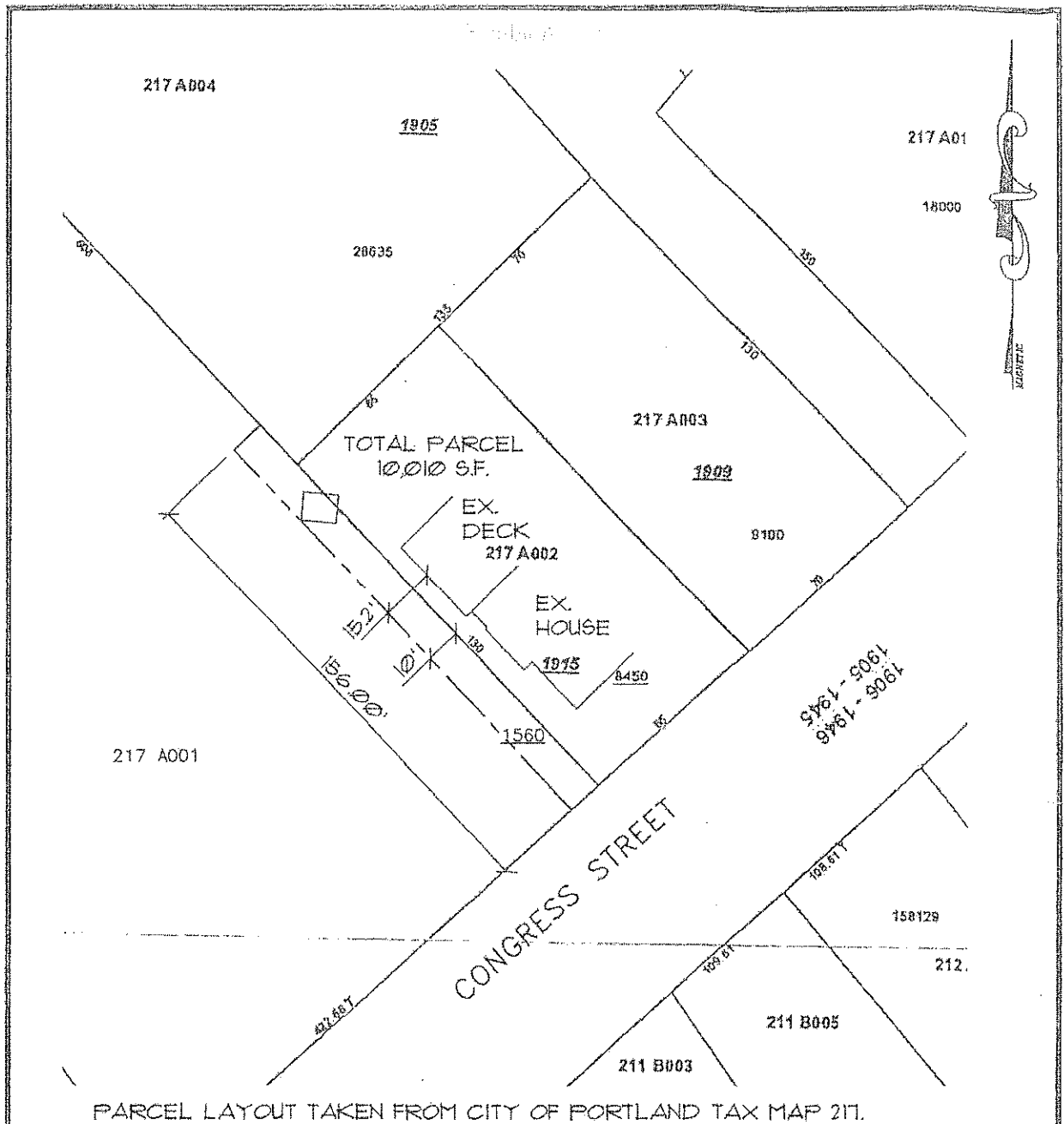
By:  9/27/15
Rex Bell
Its: Manager


Dr. Michael Bedecs

PURCHASER:


Paul Dubois


Kimberly A. Dubois



1915 CONGRESS STREET LAND TRANSFER

PINKHAM & GREER
CIVIL ENGINEERS

28 VANNAH AVE. PORTLAND, ME. 04103

NORTHLAND ENTERPRISES, LLC
 1945 CONGRESS STREET
 ELKS LODGE, PORTLAND, MAINE

SCALE: 1"=40'

DATE: AUGUST 24, 2015

CHK BY: TSG

PROJECT: 13151

CSK-2

PKS (B) KAD

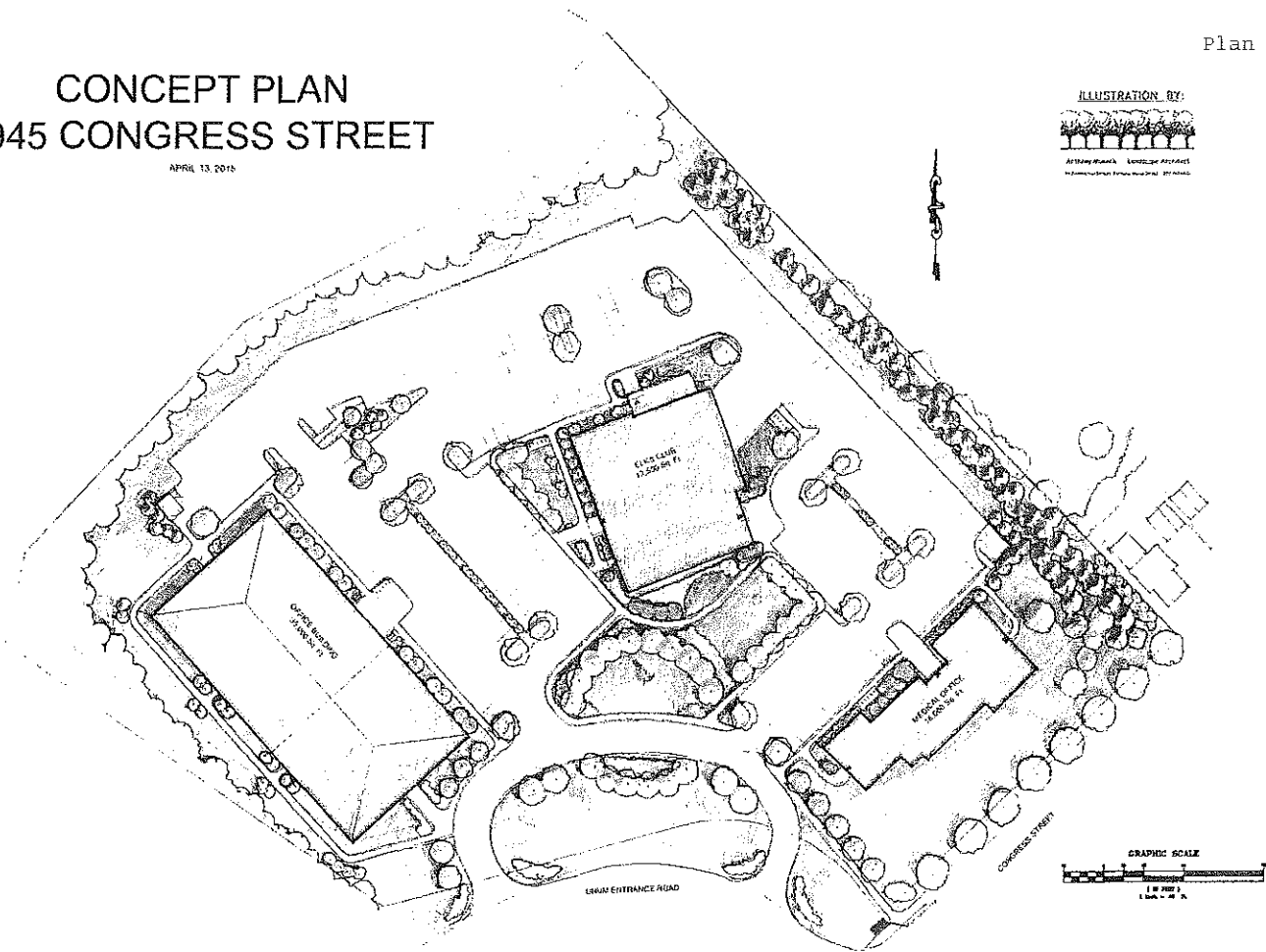
CONCEPT PLAN 1945 CONGRESS STREET

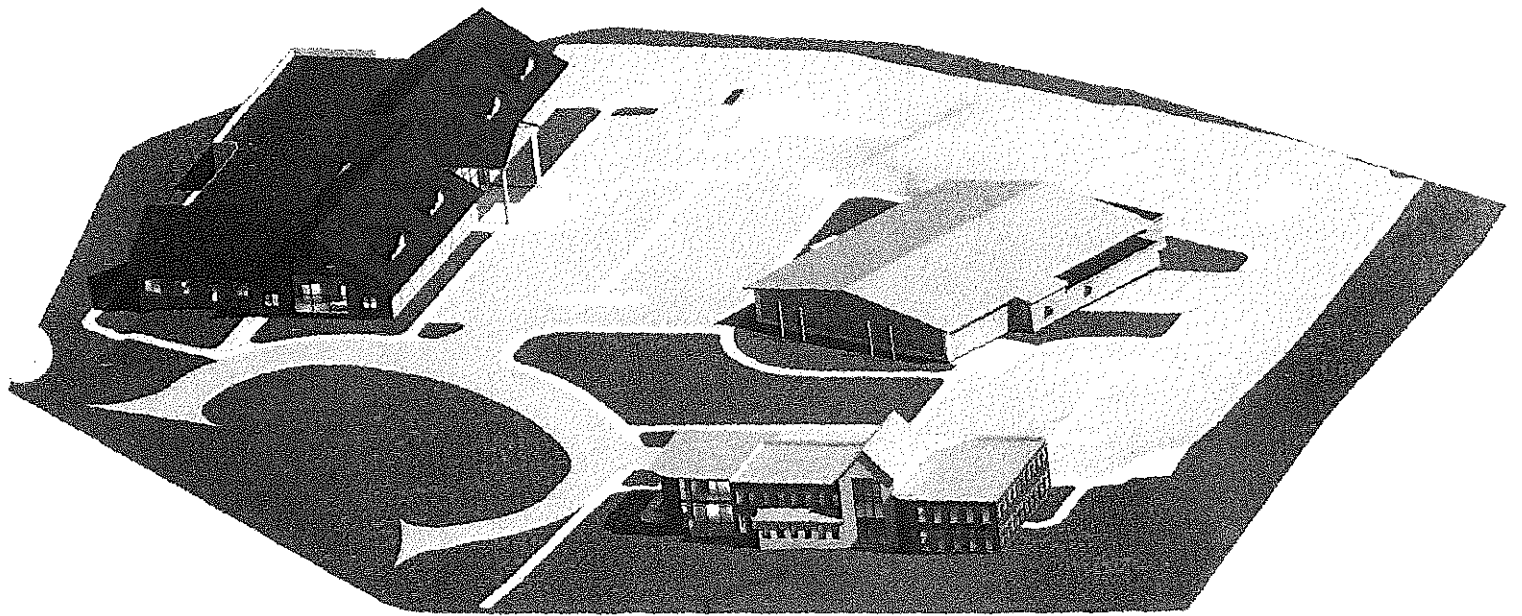
APRIL 13, 2016

Plan 1

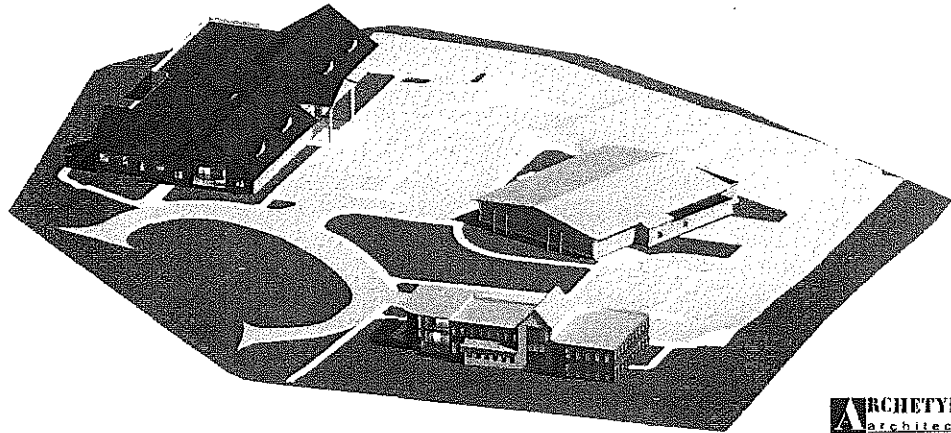
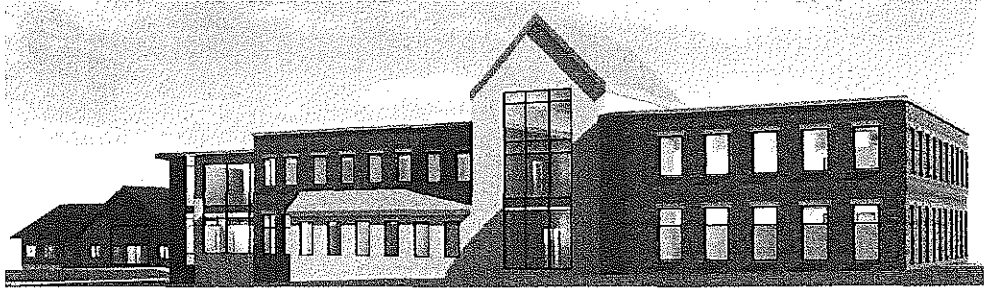
ILLUSTRATION BY:

ARCHITECTURAL LANDSCAPE ARCHITECTS
10000 10th Street, Suite 100, San Diego, CA 92121

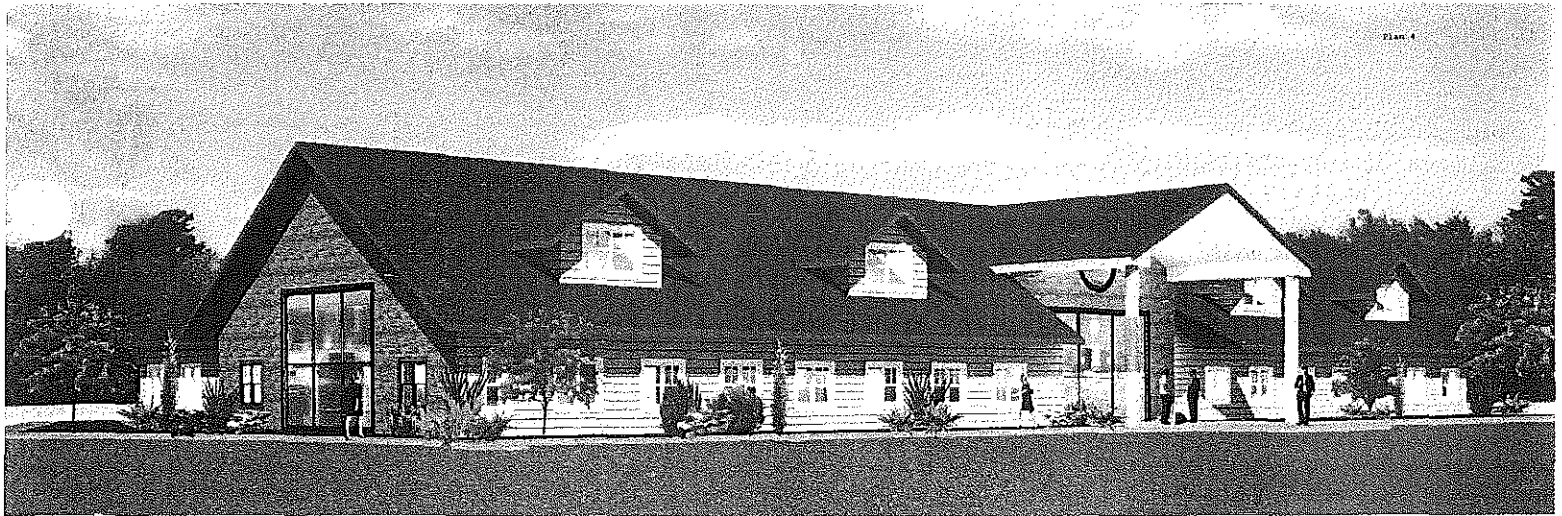


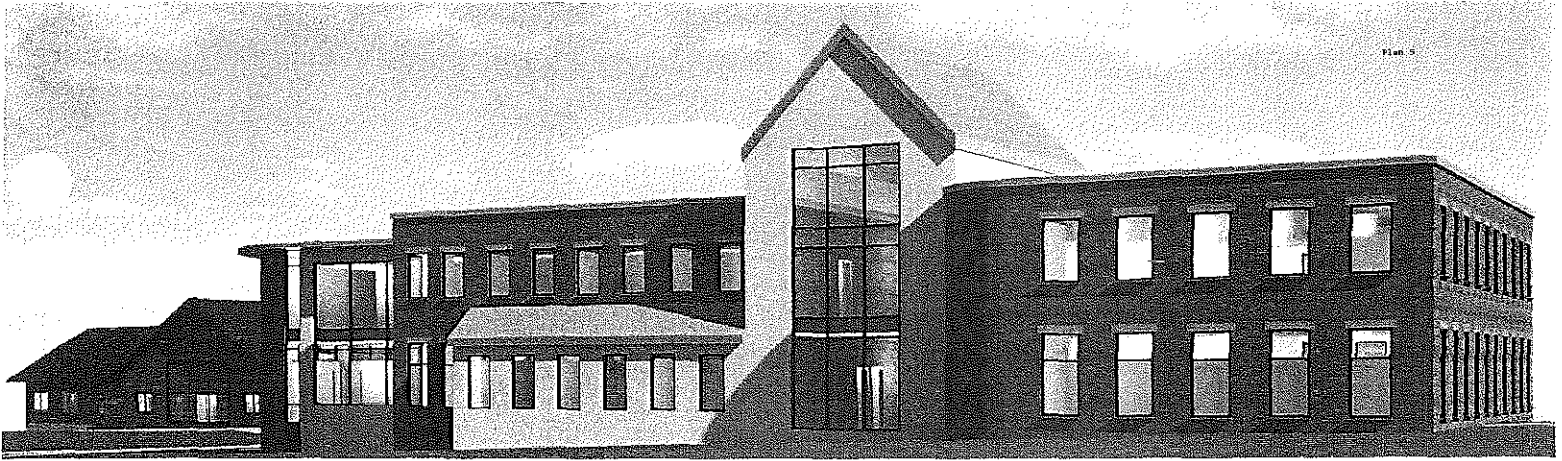


Plan 3

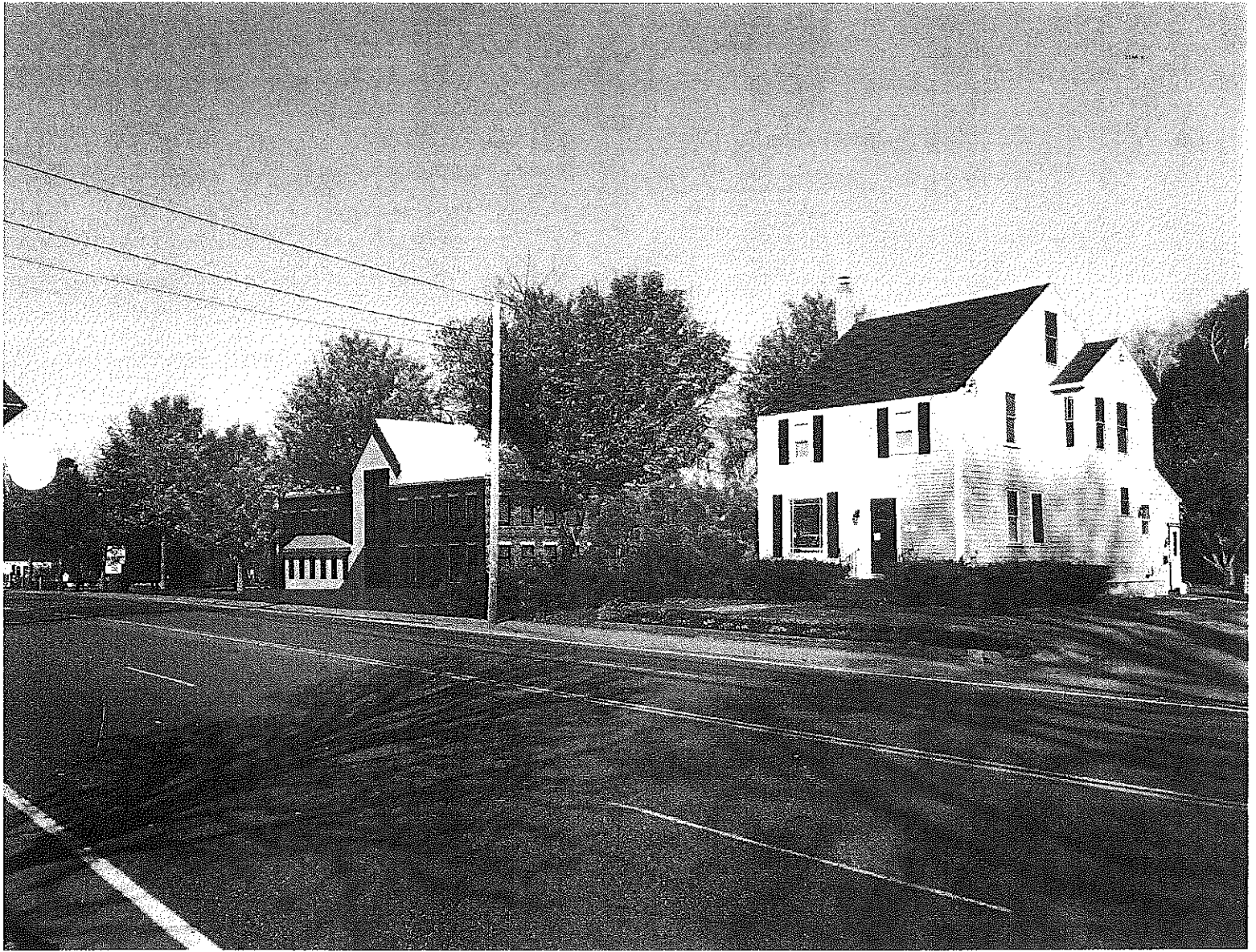


ARCHETYPE
architects

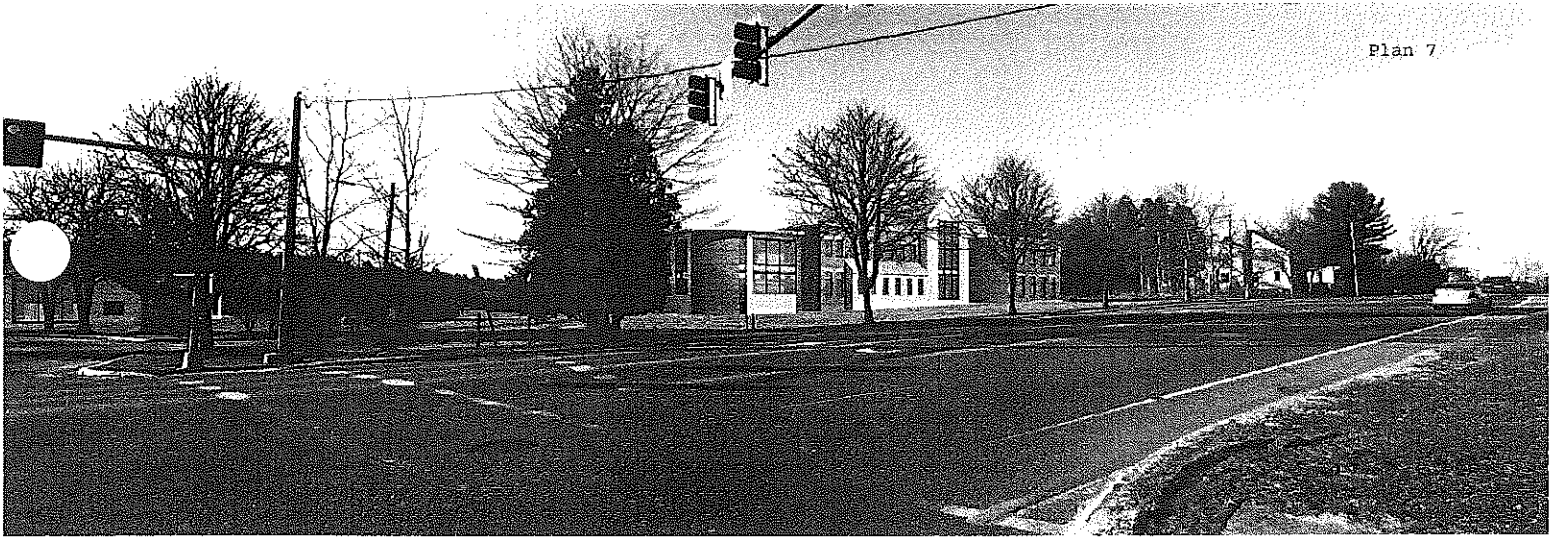




Plan 5



Plan 7



William S. Linnell & Joyce Gauthier, et al,
1905 Congress Street
Portland, ME 04102-1903

January 16, 2015

Mr. Alex Jaegerman
Director,
Planning and Urban Development Department
City of Portland
389 Congress Street
Portland, ME 04101

RE: Elks Club Property Zone Change Application, 1945 Congress Street

Dear Alex:

In addition to the comments we sent along Wednesday, please distribute and post these comments describing our concerns regarding the proposed zoning change.

First: There have been comments suggesting that instead of changing the zoning to OP, that there may be interest in changing the zoning to R-P. We believe that R-P zoning would be equally inappropriate for this project, as the ordinance states that the purpose of the R-P zone is for low-intensity business use.

Section 14-146 of the code reads:

"The purposes of the R-P residence-professional zone are:

- (a) To provide appropriate location for the development and operation of low-intensity business uses, including professional offices on or near major arterials, that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods; or
- (b) To serve as a transition or buffer zone between residential and more intensive nonresidential zones. "

This project, by no stretch of the imagination, can be legitimately called "low-intensity". It actually calls for a high-intensity build out, traffic, and use of the property. Indeed, the submittal calls for 45,310 square feet of building footprint, with 137,201 square feet of office space. Further, nearly every available square inch of remaining land is to be paved, with capacity for some three hundred cars. The city's traffic analysis estimates that during peak hours, traffic volume entering and leaving would be 214 cars *per hour* in the morning, and 204 cars *per hour* in the evening.

In reality, this project simply cannot be deemed low-intensity, and therefore it cannot meet the very definition of the purpose of the R-P zone. To vote in support of a change to R-P would be to declare open season on Portland's zoning laws.

Second: The heavy traffic expected with this project, as mentioned above, would seriously compromise all the efforts, planning, and resources that the city has expended in traffic calming in this very location from Westbrook Street to the Airport. To add this onslaught of traffic to this area of limited additional capacity, would be at cross purposes to all that has been done, and is still planned. In stark contrast, keeping the lot zoned R-2 would have little increase in traffic.

Third: There are three churches in the area which may follow the Elks' lead if these zoning changes are approved. Their membership could either increase or decline, resulting in their desire to sell, and apply for the same zoning changes as the Elks. The Planning Board, and particularly those who live near these churches would be faced with a dramatic change in the character of the neighborhood.

Fourth: As staff has noted in their comments on this project, (see Memorandum dated 1-16, section VII, Comprehensive Plan Analysis) the Comprehensive Plan calls for directing office development to the downtown area.

The Planning staff says, "It should also be noted that there is policy in the comprehensive plan that seeks to focus office development in the downtown core; the "Office Economy" goals from the 1991 Downtown Vision plan include "[s]trengthen[ing] and enhanc[ing] the Downtown as the prominent professional office center of the State and northern New England." In a similar vein, the city's Industry and Commerce Plan from 1994 includes goals related to "preserv[ing], protect[ing], and strengthen[ing] neighborhoods" and "protect[ing]...residential zones."

The proposed plan to increase office development out of the downtown area is in direct contradiction to the Comprehensive Plan. For this reason also, the Planning Board should reject the zone change.

Fifth: I also note that the staff analysis of the Comprehensive Plan mentioned in section VII would benefit from more discussion of the Comprehensive Plan's stated goals to create all kinds of housing. Page 43 of the Comprehensive Plan is devoted to housing goals, yet the staff analysis is practically silent on the issue. I quote at length from page 43 of the comprehensive Plan because it is unequivocally adamant about creating housing:

Page 43 reads, "... Portland has a long history of planning for its housing needs and programs ...

I. HOUSING: SUSTAINING PORTLAND'S FUTURE- November 18, 2002

Overall Goal

Portland, as Maine's largest city, will strive to provide a sufficient supply of quality housing commensurate with a manageable level of growth to sustain the city as a healthy urban center in which to live and work, and its position as a growing regional economic and service center.

The existing housing stock will be enhanced and preserved, **and a wide variety of housing will be designed and created** to support Portland's continued economic development, insure the safety of its citizens, and **maintain its vibrant and stable neighborhoods**.

When seeking solutions to Portland's housing needs and issues, the city will strive for innovation and creativity in the areas of urban design, **expenditure of its financial resources**, and **the use and reuse of land** and buildings to ensure that residential development fits within Portland's unique living environment.

Goal

Ensure that an adequate supply of housing is available to meet the needs, preferences, and financial capabilities of all Portland households, now and in the future." (emphasis added)

It is hard to imagine that the Comprehensive Plan could be any clearer or stronger in calling for more housing. This imperative for more housing should be recognized by planning staff and Planning Board members, and applied in consideration of this proposal. The Elks Club proposal is 180 degrees contrary to the Comprehensive Plan.

Sixth: I would like to straighten out a disconnect in the staff report on the January 5th neighborhood meeting. In the Memorandum to the Planning Board dated January 16, section VIII, "Public Comment," the staff report states that

"Comments at that meeting seemed to include questions about signs, parking requirements, stormwater management and environmental impacts, and lighting. Some neighbors expressed general opposition (Attachment 3)." (emphasis added)

Please contrast that assessment of "general opposition" with the developer's report of the meeting:

"Our neighbor, adjacent Congress Street, Bill Linnell, noted he was opposed to the project and thought a housing project would meet the Comprehensive Plan better. We noted we had sent a brief summary of how this project conforms to the Comprehensive Plan to the staff already. He will get a copy of that."

-I, the undersigned Bill Linnell, was the one who expressed opposition, speaking also for Joyce Gauthier, who was present, and Janet Burns, who was not. My opposition was specific in challenging the plan as "grossly inconsistent with the Comprehensive Plan."

I would like those who read about that neighborhood meeting to know that from day one, I expressed, on behalf of myself, a neighbor across the street, and another abutter, an unambiguous challenge to the

proposal with respect to its inconsistency with the Comprehensive Plan, namely that the proposed zone change is grossly inconsistent with the clear, stated, unmistakable policy goal of creating more housing in the future. I compared the Comprehensive Plan's focus on housing to the new Meghan Trainor song "All About that Bass," saying that "the Comprehensive Plan is **all about housing**." I said further that "When you remove land from R-2 to OP, you are eliminating the possibility for housing. The City's Comprehensive Plan is all about creating new housing—all kinds of housing, including single family. In fact, if you knock down an existing apartment building to be replaced with non-residential uses, the developer has to contribute money for replacement housing. In this instance, the City would be totally eliminating land zoned for housing, and changing it to a zone that does not allow for housing."

In short, the neighborhood meeting included specific, pointed opposition to the proposal as it contradicts the Comprehensive Plan's mandate of creating more housing. I ask that this opposition be recorded in the staff's comments.

Finally: For all the reasons listed above, we continue to respectfully ask the Planning Board to recommend to the City Council that the proposed zoning changes be denied.

Sincerely,

William S. Linnell & Joyce Gauthier 1905 Congress Street

Janet Burns 1904 Congress Street

January 14, 2015

David P. Silk
1187 Westbrook Street
Portland, ME 04102-1928

Ms. Helen Donaldson
Planning and Urban Development Department
City of Portland
389 Congress Street
Portland, ME 04101

RE Elks Club Property Zone Change Application, 1945 Congress Street

Dear Neil:

I live in the Stroudwater neighborhood and I am a member of the Stroudwater Village Association. I write in my own individual capacity to express my view as to why the Planning Board should not recommend to the City Council approval of Northland Enterprises, Inc.'s application to rezone the Elks Club property at 1945 Congress Street from R-2 to OP. Can you please forward this letter to the Board as part of the packet of information the Board is to receive on the applicant's proposal.

As an initial matter, in the applicant's material you were kind enough to send to me, I did not see anywhere the applicant's explanation on how the proposed zone change is consistent with the Comprehensive Plan. Unless and until the applicant attempts to explain how it's parcel specific zone change application is consistent with the Comprehensive Plan, and makes that information timely available to the public prior to any Planning Board meeting, the Board should defer hearing the proposal.

I am not aware of any proposed one parcel only zone change (as opposed to a large area with multiple parcels) that sought to change an existing and to be continued use on the property from legally conforming to legally nonconforming but that is what the applicant seeks here. The applicant represents that with the proposed parcel zone change the Elks Club will continue to be used as a place of

assembly. Application at 4. A place of assembly is a conditional use in the R-2 zone because it is viewed as typically harmonious with residential uses. Places of assembly are not permitted, either by right or as a conditional use, in the OP zone. I cannot think of any zoning justification for a parcel only zone change that has the effect of converting an existing and to be continued use from legally conforming to legally nonconforming. I am not aware of anywhere in the Comprehensive Plan where it is a planning goal of the City through a parcel only zone change to convert a legally conforming use that is to be continued to nonconforming. By definition if the change is approved, the City would be permitting a nonconforming use to continue. But the goal of zoning is to eliminate over time nonconforming uses, not to convert legal uses into to a use prohibited in the proposed zone. It cannot be consistent with the Comprehensive Plan to approve a parcel only zone change that makes an existing lawful use nonconforming.

Continuing on the issue of consistency with the Compressive Plan, the City has a very clear goal of creating more housing, all kinds of housing. As a R-2 zone, permitted uses include single family detached residential housing. The area of the City zoned R-2 is finite and located in the outlying areas (off of outer Auburn Street, outer Washington Ave, outer Allen Ave, outer Westbrook Street and outer Congress Street). Most of these streets are major traffic carrying arterials and have limited additional capacity for traffic.

The purpose of R-2 is to "provide for low-density residential development characterized by single-family home on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity." Looking at the zoning map one can see that much of the R-2 has been built out over the last twenty to thirty years consistent with the standards in the R-2. But some open areas remain including areas along outer Congress Street. I am not aware of any reason why the stated policy of the R-2 zone remains less vibrant today. In contrast to the applicant's proposed multi-story professional office buildings, single family detached residential uses in these areas would cause less of an impact on already overburdened roads.

Conditional uses in the R-2 include places of assembly. In the R-2 over the last 30 years several places of assembly located to the R-2 zone. That can be seen on outer Congress Street (as well as outer Washington Ave., outer Allen Ave. and

outer Westbrook Street). On outer Congress Street there are two places of assembly (churches) located almost across the street from the Elks Club. When these places of assembly located to outer Congress Street they knew of the limited uses in the R-2 zone. Because of the limitation on use, they knew if they ever decide to sell, the market would be quite limited. That limitation on use has served the conditional uses quite well as the uses have been established in a residential zone in a manner consistent with the characteristics of the area. The two churches and the Elks Club are situated with significant open space facing Congress Street with the building to hold the assembly and parking set back quite a distance from Congress Street, all to preserve the open space characteristics of outer Congress Street and to be compatible with the permitted R-2 uses. The proposed zone change will destroy this balance.

A zone change should not be approved simply to accommodate the financial goals of a property owner especially when the owner developed the property aware of the limitations on use. Unlike the Williston West Church, the Elks Club building lacks any unique historical features. It is not a landmark structure and need not be preserved if its location interferes with the development of residential subdivision which means more housing for the City in an area zoned for housing.

Also relative to outer Congress Street, in the last 20 years two significant single family residential subdivisions (Tide Mills and River's Edge) have been built out directly off of Congress Street in very close proximity to the Elks Club as contemplated by the R-2 zone. River's Edge was built as a contract zone (conditional R-3) but is fully consistent with the policy and permitted uses in the R-2. They are both very close to Congress Street and are fully built out as there is a demand for single family detached housing within the City.

The Comprehensive Plan has as a goal of no net loss of housing for all development. That goal is incorporated into the Land Use Code. While there is no existing housing on the Elks Club property, changing the zone from R-2 to OP removes the land from the R-2 capable of being developed for residential housing. Residential uses are prohibited in the OP zone. Rezoning land to eliminate residential uses like removing dwelling units with no replacement of those units is clearly not consistent with the Comprehensive Plan's goal of creating more housing in the City.

While the Board is not acting on any site plan application at this time, the applicant's proposed site plan visual shows that the applicant is proposing two multi-story generic commercial/medical office buildings with lots of parking and nothing close to what meets the OP purposes and standards.

The purpose of the OP is to "provide substantial areas for integrated development of professional offices in a park-or campus-like setting which are of the highest quality, are well maintained and are compatible with their natural surroundings." One is hard pressed to see in the visual any park or campus like setting compatible with the natural surroundings. The 1945 Congress Street lot is not a "substantial area." If Board members are not familiar with an OP zone, they should ride by and through UNUM's campus. That will show that there is little if any parking visible from the street, significant natural features remain between the street and improvements, open space remains and is visible from the public way, trails and sidewalks are available, and the site clearly has a park or campus like feel. Compare UNUM's development to the OP policies and standard and you will see UNUM fits. The applicant's proposal absolutely does not.

In reality, the applicant's proposal is a run of the mill multi-story professional office structure that pretty much consumes most of the site. It is clearly not a campus. It clearly does not create a park like setting. Unlike the UNUM campus, and the places of assembly along outer Congress Street and near the site, one of the two proposed multi-story office buildings fronts immediately on Congress Street. It is not set back from Congress Street with an open space and natural vegetation buffer between the development and the street. It is not compatible with the natural surroundings and with the existing development pattern created by the nearby homes and places of assembly.

The OP standards call for a Master Plan of the office park that shall include a design relationship to the site to show integration of open space and the natural features. That integration "shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches." None of that can be included on the proposed site given the proposed building envelopes and parking. One cannot shoehorn the features of an OP zone into this site and legitimately call what is proposed within the realm of what the OP zone envisions.

On the visual there are no internal sidewalks that take advantage of the "topography and natural features of the site." There is a mass of parking being proposed right next to what will still be a R-2 zone with little preserved of the natural features. Because of the lack of a campus setting and retention of natural features, the proposed multi-story buildings will loom large over the abutting residential dwelling units. I see no buffer and screening of the type called for by the OP standards which shall be of a "dense and continuous nature and shall incorporate trees, shrubs, fencing, berms and related elements." I do not see any preservation of natural features which includes existing vegetation. It appears it will be mostly paved over. To call this site suitable for OP designation based on the proposed plan is not possible.

In sum, it appears to me the only reason for the zone change is to accommodate the applicant and to maximize the financial return to the Elks Club. The proposed zone change permits broader uses, professional offices, which makes the land more valuable. But the standard to judge the merits of a zone change is not whether the owner, a place of assembly that is often a non-profit and not subject to property tax, should be able to maximize the return on its investment when the assembly loses critical mass. Otherwise we might as well not have zoning. Having located in the R-2 zone as a place of assembly the owners were on notice that permitted and conditional uses are quite limited. The zone should not be changed simply to broaden the market and/or increase the return for the owners.

Both Tide Mill and River's Edge are successful residential subdivisions located on outer Congress Street on the same block as 1945 Congress. The purpose of the R-2 zone is to direct the placement of additional residential subdivisions in the area. That has occurred. There remains demand for single family detached residential housing in the City. Such development increases the population of the City which is also a goal of the Comprehensive Plan (helps reverse the urban flight). The land is clearly suitable for residential development as it is similar in kind and location to the land that has been recently developed for residential uses. The land should not be removed from the inventory of land available to serve that need simply to maximize the Elks Club's return.

Throughout the City, many places of assembly are conditional uses in residential zones located on major arterials in zones that do not allow for office complexes or other commercial developments. As noted above see outer Washington Ave.,

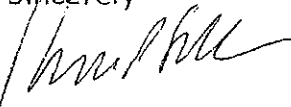
Allen Ave. and Westbrook Street for recent (last 30 years) examples of development of places of assembly in residential zones. Permitting those conditional uses in otherwise residential zones was not an invitation once the assembly's financial health changes to throw away the limitations on uses in the residential zones. When it purchased the 1945 Congress Street property and located to outer Congress Street, presumably the price the Elks Club paid recognized the then limitation on uses. There is nothing unfair or unwise here in affirming the value of the R-2 zone.

The R-2 zone was created consistent with the Comprehensive Plan. As stated in the overall purpose of the Land Use Ordinance, section 14-46: "This article is made with reasonable consideration, among other things, to the character of each zone and its peculiar suitability for particular uses and with a view to conserving and stabilizing the value of property and encouraging the most appropriate use of land throughout the community."

In light of the above, I respectfully request the Board vote not to recommend to the City Council the proposed parcel only zone change for 1945 Congress Street. It is entirely consistent with the Comprehensive Plan for the property to remain R-2 as it will conserve and stabilize the value of property and encourage the use of the property in the manner consistent with the R-2 zone.

Thanks for reading this letter and your service to the City.

Sincerely

A handwritten signature in dark ink, appearing to read "David P. Silk", written over the word "Sincerely".

David P. Silk

William S. Linnell, et al,
1905 Congress Street
Portland, ME 04102-1903

January 14, 2015

Ms. Helen Donaldson,
Planning and Urban Development Department
City of Portland
389 Congress Street
Portland, ME 04101

RE: Elks Club Property Zone Change Application, 1945 Congress Street

Dear Ms. Donaldson:

We are abutters to the proposed development. We believe that, to be consistent with the City's stated goals, zoning ordinances, and the Comprehensive Plan, the Planning Board should not recommend to the Council their approval of Northland Enterprise's proposed zoning change from R-2 to OP. Please share this letter with the Planning Board so that they may read it before the workshop on the 20th.

First: Taking this land out of R-2 forever reduces the opportunity for more single-family housing which is a major city goal. This proposal is in total opposition to the Comprehensive Plan, and the purpose of the R-2 zone which is "To provide for low-density residential development in outlying areas of the city and along traffic corridors with limited additional traffic capacity." (Code of Ordinances Sec. 14-76).

The Comprehensive Plan states that the housing goal is to "Ensure that an adequate supply of housing is available to meet the needs, preferences, and financial capabilities of all Portland households, now and in the future." (page 43. Emphasis added.) To change the zoning would therefore be in direct contradiction to stated policies of providing housing including single family detached residential units, for the future. That goal is to help stop sprawl. Further, there is still an increasing demand for housing in the city; that has not changed, and neither have these policies.

Second: When the Elks bought this land, they knew there were limits to its uses, just as we did when we bought the abutting property. Instead of following the limitations of the zone in which they settled, they are asking the board to change the rules for maximum profit. They could follow the existing rules and develop the land for housing, which we would welcome, just as two fairly recent developments have done nearby, namely, at Rivers' Edge and Tide Mills. That would be consistent with current, established rules and policies. It's nice for developers to increase their profits, but their profits should not dictate public policy, nor circumvent the rules and reasons for zoning.

Third: The developer seems to want to create a brand new zone, where two different, mutually exclusive, zones can exist. The current zone allows for the Elks Club to exist (meeting places). But such meeting places are not allowed in the proposed OP zone. Yet the developer wants to change the zone AND keep the Elks Club there. It seems that this approach is asking too much of the Planning Board. It is certainly a radical notion, which would result in the back-door creation of a bizarre new zone.

Fourth: If approved, the proposal would be zoned OP, but would really just look like they stuck in a couple of office buildings, oversized for the area, and then paved the rest of the lot. A few scattered shrubs and a bike rack by no sense of the imagination meet the OP standards for a "park or campus like setting". This lot is not very big. Adding the needed elements such as open space, preserving natural features, trails, sidewalks, gardens, and setbacks with full buffering is not be possible given the size of the buildings they are trying to cram into this lot. To allow this project to proceed would be to ignore the intent and purpose of the OP zone.

Fifth: Traffic is already heavy on Congress Street. Adding more office buildings instead of single family homes would make traffic much worse, not better. The current zoning properly recognizes that single family homes work better on (repeated from above) "outlying areas of the city and long traffic corridors with limited additional traffic capacity." If there's a better example of an 'outlying traffic corridor with limited additional traffic capacity' than the area around 1945 Congress Street, we'd like to know what it is.

Sixth: No developer should be able to achieve, by Planning Board vote, what the City's ordinances and policies clearly don't allow. To create a bizarre new zone at the expense of the integrity of the zoning process would be a mistake. The developer would enjoy the windfall, and the tax base would admittedly increase from what it is today, but nearby and recent developments attest to the viability of neighborhood housing development on outer Congress Street, without sacrificing the protection of the zoning policies and process. Throwing two multi-story office buildings with an ocean of parking into the neighborhood will only lead to a deterioration of the neighborhood, a neighborhood that has been recently improved by the traffic movement changes and will be enhanced with the proposed cross walk at the end of Garrison Street and a lower speed limit. There is a neighborhood here even if you do not see it when you head out to SOPO to shop. The tax base can be increased without shortchanging the process.

Finally, for the above reasons, we ask that the Planning Board to vote not to recommend the proposed zoning change for 1945 Congress Street to the City Council.

Sincerely,

William S. Linnell & Joyce Gauthier 1905 Congress Street

Janet Burns 1904 Congress Street (diagonally across Congress Street from the site)

From: "Lucie Tardif" <ltardifl@maine.rr.com>
To: <aqj@portlandmaine.gov>
Date: 1/19/2015 6:27 PM
Subject: Zoning change proposal for 1945 Congress Street

Dear Mr. Jaegerman,

I am a resident of the Stroudwater area and have been made aware of the Elks Club's application for a zoning change at their property on Outer Congress Street.

If the Elks succeed in their application, the zoning change proposed would have serious implications to the area and Stroudwater residents' way of life. Lack of a car warrants that I travel mostly by bus to and from work at the Jetport Plaza or downtown. In order to commute to work, I must cross Congress Street near the light just above Stroudwater Crossing in the wake of southbound (toward the Mall) traffic at a very busy time of the morning.

Should the Elks achieve their desired result, that traffic will increase substantially, particularly if they erect two professional office buildings (and keep the current Elks Club building) with space for up to 300 cars. If traffic is increased further, I'll never get across the street! I am in my late 50s, but I know some elderly who take the bus and must make that trek across the street. Since they cannot move very fast, they are taking their very lives into their hands.

This zoning change which would allow for two buildings as well as increased traffic (at high speeds, despite posted limits) would raise the risk level for accidents and loss of life. It would also fly in the face of traffic calming plans for the area. You cannot allow the construction of professional office buildings and expect to calm the increased traffic. Outer Congress Street is already a speedway!

I also find it disturbing that an area with lots of green space and lush growth right now, complementing the historic neighborhood it abuts, would be eliminated by further construction. That area is a welcome break to the eyes after one leaves behind dense residential area and approaches a busy commercial area at the other end (the airport, shopping centers, the Mall, etc.). It is relaxing to travel through that area right now and creates a calming effect on its own. New professional buildings will reduce the beauty of nature that exists there now, exacerbating traffic and increasing the number of drivers and therefore the level of tension already present in drivers anxious to get to work and eager to leave at the end of the day.

I understand the Elks Club's request will also violate the city's Comprehensive Plan. What was the point of the Plan if the City does not intend to enforce it? Portland has already come precariously close to doing that with the Midtown project, and were it not for some savvy and watchful citizens, the City just might have gotten away with pushing it past Portland residents.

Please pay attention to your own policies and consider the detrimental effect the Elks Club's proposal will have on the area. Do not allow them the ability to push this through.

Thank you for your attention.

Sincerely,
Lucie Tardif
13 Brewer Street
Portland

From: Joe Heasly <jheasly1@maine.rr.com>
To: <hcd@portlandmaine.gov>
CC: <stroudwatervillageassociation@gmail.com>, <captlinell@yahoo.com>, Carolyn Heasly <caroalic@maine.rr.com>
Date: 1/19/2015 9:33 PM
Subject: 1945 Congress St (Elks Club) Proposal comment

Hello Ms Donaldson,

My wife and I live at 1832 Congress St, and have recently become aware of the Elks Club's proposal for their parcel at 1945 Congress St. We'd like to offer our thoughts on the project as we understand it, which is to create an 'office condominium' of three buildings (two new, one a smaller incarnation of the current Elks building) if the current R-2 zoning can be changed to OP.

We prefer that the parcel remain residential. There are two nearby 'assembly' uses on outer Congress St; we don't want a precedent set in this instance that would increase the pressure for non-residential uses bordering Stroudwater Village.

We are concerned about how this project will impact the traffic-calming efforts that the city has underway for this stretch of Congress St. Additional offices on the site will certainly generate a small but steady increase in the number of vehicles traveling to and from the site.

We'd like a chance to hear more from the Elks and their partners in this exercise about their plans. It may have gotten lost in the holiday shuffle, but I don't recall getting any notice of the neighborhood meeting that was apparently held recently. I understand that the Stroudwater Village Association has a community meeting coming up in February and that they are willing to host a meeting of the Elks, et al, with the community. Is it possible for the board to defer any decisions until that to happen before the board makes its decision?

We will not be able to attend the Board's workshop tomorrow afternoon, would you please convey our thoughts to the Board?

Finally, would you please add us to the 'interested parties' list for this project?

Thank you,
Joe Heasly
Carolyn Heasly
1832 Congress St

From: Stroudwater Village Association Board of Trustees <stroudwatervillageassociation@gmail.com>
To: <hed@portlandmaine.gov>
CC: Edward Suslovic <edsuslovic@portlandmaine.gov>, Mike Murray <msm@portlandmaine.gov>
Date: 1/20/2015 11:49 AM
Subject: Stroudwater Village Association Letter to Planning Board RE: 1945 Congress Street (Elks Club)

TO: Neil Donaldson, Planner, Planning Division
 FROM: Stroudwater Village Association
 RE: 1945 Congress Street. (Elks Club) rezoning request from
 Northland Enterprises
 DATE: January 20, 2015

*The Stroudwater Village Association requests a tabling of the zoning decision requested by Northland Enterprises for the Elks property at 1945 Congress Street until residents can understand more specifics about the proposed project and the wider implications for the neighborhood. *

Specifically, we would like to invite the developers and city staff to present to area residents in person at the SVA's annual pancake breakfast event, to be held on Saturday, February 14th at 8:30-10:00AM at the Stroudwater Baptist Church. We suggest this event as we believe it will provide a good representative turnout from area residents, though another public meeting would also be possible.

Many neighborhood residents have reported to the SVA that they have only been recently made aware of the project, and those who have been made aware of it are very divided in their reactions.

Some residents have viewed the proposal as a general improvement to the existing site usage, even while expressing concerns about the details, building locations, aesthetics and environmental impact of the proposed development. Those residents expect to work with the developers to assuage their concerns before providing support to such a project.

Other residents, in clear opposition to the overall development, have expressed a preference for residential (as opposed to commercial) development on the site, referencing incompatibility with the residential nature of the neighborhood, increased traffic flows, impact on abutting property owners, that the current proposal does not comply with the City's Comprehensive Plan, as well as concern about setting precedent for other similar sites within our neighborhood.

In any case, it's clear that more information is needed in order for residents to assess the impact of this zoning change and project. As such, we request the decision be tabled until further information about the project can be provided.

-Dan Koloski, SVA President
 On behalf of the Stroudwater Village Association

The Stroudwater Village Association is a Maine Non-Profit corporation. All residents of Stroudwater are members and invited to participate in all of our activities.

Find us on the web at <http://www.livinginportland.org/stroudwater.htm>
 Find us on Facebook at
<https://www.facebook.com/StroudwaterVillageAssociation>

From: John Sommer <john@svindulgence.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>, "edsuslovic@portlandmaine.gov" <edsuslovic@portlandmaine.gov>
Date: 1/20/2015 8:46 AM
Subject: 1945 congress street proposed zoning change

Hello Nell, I live on Garrison Street, nearby to the proposed changes. I am writing to provide some comments regarding the proposed zoning change at 1945 congress street. My concerns follow below:

- This change is in direct opposition to the city's comprehensive plan and zoning rules. Avoiding a piecemeal approach to zoning (what this change represents) is the underlying objective to the comprehensive plan.
 - Would help establish the precedent for creeping changes....I notice there is an abutting parcel up for sale (behind the mason's school)...will the changes be applied to that parcel as well?
 - At present there is a "buffer" between the residential areas of Stroudwater and the commercial areas; that area is the R2 zone on both sides of Congress Street (elks and churches across the street). This zoning change would effectively end that "buffer".
- Thank you for your consideration. John Sommer 51 Garrison Street Portland, ME 04102

From: Rob Rosenberg <robkellyrosenberg@gmail.com>
To: <hcd@portlandmaine.gov>
Date: 1/22/2015 7:59 AM
Subject: RE: Elks Club Property Zone Change Application, 1945 Congress Street

Mr. Alex Jaegerman

Planning and Urban Development Department

City of Portland

389 Congress Street

Portland, ME 04101

Dear Mr. Jaegerman,

We live at 1859 Congress Street, near the Elks Club and abutters to the Masonic Learning Center. We are across from the top of Garrison Street, where the new traffic light and crosswalk will make it easier to cross Congress Street and walk to the dam. The historic district starts with our property, but does us little good if the current zoning laws and the Comprehensive Plan are scuttled.

The zoning change is not what the Comprehensive Plan dictates. The significant traffic impact would undo what we've achieved in restoring the neighborhood which has been spit by Congress Street for too long.

The proposed change would also set a precedent for the Masons, whom we abut, as well as the four or five churches in the area.

Please ask the Planning Board to follow the Comprehensive Plan and recommend that the City Council leave the zoning for 1945 Congress Street as it is, with no changes.

Sincerely,

Rob Rosenberg robkellyrosenberg@gmail.com

1859 Congress St 409-9652

From: David Silk <DSilk@curtisthaxter.com>
To: Helen Donaldson <hcd@portlandmaine.gov>
Date: 1/22/2015 9:38 AM
Subject: RE: 1945 Congress

Hi Nell: Thanks for the update. I understand there will be another workshop. Can you let me know when that will be? In the interim can I get a copy of the recording of Tuesday's workshop. I am happy to pay whatever cost are incurred in making a copy of the recording.

You saw by my letter that I fail to see how this project fits within either the OP or RP zone. I just do not see it. My main issue is that the project should not drive the zoning. The land in the area is zoned R-2. Maybe it should remain residential with options for more dense residential uses such as apartments. If the City does not want the land used for residential development, then maybe the zoning should be changed but it should be done with a vision to what the area should become, one that should insure it is compatible with the area and effort to calm traffic. Area wide rezone could incorporate design standards for commercial uses. Piece meal parcel specific zone changes to accommodate an individual property owner's needs (and a particular buyer's needs) of the moment will only lead to hodgepodge of uses and designs that will not create any continuity in the area that is on the edge of a historic district. I am not sure folks understand the positive image the open space creates to those new to Portland when exiting the JetPort onto Congress Street. If that is to be changed I would think the City wants to see what comes in its place maintains that positive experience. It is a gateway.

David

-----Original Message-----

From: Helen Donaldson [mailto:hcd@portlandmaine.gov]
 Sent: Tuesday, January 20, 2015 9:45 AM
 To: David Silk
 Subject: RE: 1945 Congress

David,

I'm back in the office now and have had a chance to read your letter. I appreciate your thoughts, and I will make sure that the Board is aware of your correspondence at the workshop this afternoon.

The date of a hearing will depend on how the conversation goes at the workshop. I will be sure to let you know when a date is set.

Best,
 Nell

Neil Donaldson
 Planner, City of Portland
 874-8723
 hcd@portlandmaine.gov

>>> David Silk 01/14/15 11:57 AM >>>
 Hi Neil:

I have some concerns on the 1945 Congress Street parcel zone change application and have put them in the attached letter. Can you include the letter in the PB packet for the upcoming workshop scheduled on the 20th. I may not be able to make the workshop because of a work commitment but let me know when the public hearing occurs as I hope I can attend that hearing. I assume the packet for the workshop will be available on line prior to the workshop but if not, could you send it to me when it is publically available. Thanks for your help and have a great day. David

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

From: <captlinnell@yahoo.com>
To: Helen Donaldson<hcd@portlandmaine.gov>
Date: 1/23/2015 9:01 AM
Subject: Food for thought

Neil,

Please include these sentiments in the discussion on the Elks Club Property:

How about this approach: What if the city looked at the Elks parcel from the point of view of the Comprehensive Plan: plan it to be truly compatible with the existing neighborhood, with historic-compatible single-family-looking houses near Congress street, appropriate for this gateway location coming into the city, and address housing needs as outlined in the Comprehensive Plan- a development with apartments, including some handicapped accessible, some suited for large families. Maybe a community building with a basketball court; a soccer field, garden space, and parking in the center. More density for the developer, but traffic would be much less intense. Housing needs are improved.

Bill Linnell

Sent from Windows Mail

>>> Paul Dubois <pdubois1915@yahoo.com> Saturday, January 24, 2015 10:00 PM >>>

Our property is a single family home abutting the Elks club property. After listening to the board, we feel strongly that the board should consider the Elk's application for a zoning change very carefully. We have a wonderful home in a residential area adjacent to Stroudwater Village and cannot begin to tell you how fantastic it is to live on outer Congress. We get to live in Portland but have off street parking. We have immediate access to the Stroudwater Trail, easy kayak access to the Fore River, Casco Bay and Stroudwater River. We have enough room for raised bed gardens and compost all our green waste on site. We have great access to the city bus system and the Jetport (literally walking distance). I can sit in my recliner and occasionally see deer that live in the area. Last year we were visited by a family of wild turkeys on a daily basis. My wife works 3 miles up Congress Street and I get to my job in 12 minutes every morning. The City's Comprehensive Plan directed the Board to facilitate new residential housing opportunities and I can't think of a better neighborhood to build a home. Changing the zoning for over 7 acres of potential housing is inconsistent with that mandate. The Elk's claim that they will never sell or in no possible scenario would they ever allow residential development on the property seems ridiculous especially in light of the fact that they have entered into several contract over that last few years to do just that. The reason they are asking for a zone change is to maximize the sale or development potential for their property. We all know that the financial potential of selling or developing commercial property far out ways that of residential, this is why the City's Comprehensive Plan had to address the matter specifically. If the Elks want to further develop their property then they can do so by providing up to 14 new fantastic housing lots. Their contention that residential homes cannot be near the Elk's property (because they sell alcohol) falls flat on our ears. We have lived here and raised our children here with no negative impacts from the private and locked club. If the Board approves this application then we will never get to know if in fact the Elks will sell and move (opening up a wonderful opportunity for new housing for Portland). Even if they stay, there is a chance that future members will decide to sell several housing lots-the truth is that we don't know, and definitely the Elk's don't know, what a future membership will or won't do. The Elk's bought the property at a significant discount as compared to buying similar property in a commercial zone and they have reaped the benefits of lower valuation resulting in lower property taxes for all these years- they got what they paid for. If the Board approves this zoning change they will increase the value of the Elk's property substantially but only by devaluing the abutters properties-where is the fairness in that.

Having said all that, it seemed clear at the workshop that the board members were intent on going through with a zoning change even if it meant changing the text (once again for this property) of the zoning ordinance. We are extremely concerned about maintaining or creating the maximum buffer possible especially in light of the fact that we have a nonconforming lot with inadequate set backs all along the abutting property line. The Elks have been very poor at maintaining their property and despite our best efforts we have been unable to get them to do so (trees have actually fallen and damaged our house). We heard the developer say that their intent is to maintain the existing tree line as a buffer and implied they would somehow enhance it. Well, our property is not at all protected by a tree line. Our house is 6 ft from the Elk's line which gives us absolutely no room to create our own buffer. We have asked the Elk's to sell us a small piece of land (about .10 acre) to allow us to conform with set backs. They could not come to consensus. Transferring this small amount of land would allow us to maintain our own buffer in the likely event the Elk's fail to follow through over time. The land we're talking about is currently part of a bamboo growth that is very unique and provides a perfect green barrier. The Elks have (at least once in the past) considered destroying this buffer and creating a "park". We feel this would be terrible and could preserve this truly unique ecological treasure if they would only allow this small concession. I believe that this is a fair request and ask that the Board make it a condition of the zoning change approval that the Elks sell us enough land to at least have the recommended setback of 15 feet from our house as a buffer.

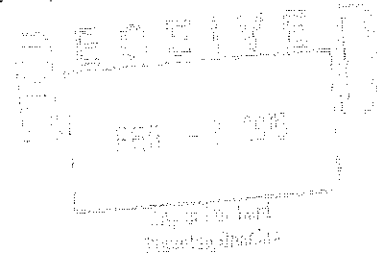
We do thank the Board for your efforts to maximize the tax base but this particular zoning change with the implied text changes discussed is at the least impulsive and at worst in complete violation of the intent of the City's Comprehensive Plan. If you are intent on proceeding then please consider the impact on our property and neighborhood and act to minimize those impacts that are negative. If you approve this zoning change then the Elk's will realize a significant windfall and should be required to share that windfall by minimizing the negative effects on abutters and the neighborhood. Wouldn't it be nice to have an public access to the Stroudwater trails with a few parking spaces or a kayak and canoe access to the Stroudwater River?

Thank you in advance for your diligent consideration.

Paul And Kimberly Dubois
1915 Congress Street
Portland Maine 04102
(207)899-2599

188 Whitney Avenue
Portland, Maine 04102
January 30, 2015

Planning and Urban Development Department
City of Portland
389 Congress Street
Portland, Maine 04101



RE: Elks Club Property Zone Change Application, 1945 Congress Street

To Whom It May Concern:

I frequently travel outer Congress Street along the route of the Elks Club and the Portland Airport. It seems to me that a number of drivers using that route ignore the traffic laws that are in place along that section of the Stroudwater neighborhood.

If a change must be made in the zoning from R-2 to OP, I hope you would decide that a better plan would follow existing zoning already in place in Portland.

The area needs more opportunities for family housing units to help stop sprawl. The city is in desperate need of affordable housing for the middle class workers who work here and would like to be able to live in Portland.

I think the Stroudwater neighborhood and other residents of Portland deserve a safe thoroughfare through that outlying area of the city.

Very truly yours,

Margaret C. Doyle
(Mrs. Leonard F. Doyle)

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

Dear Board Members,

I am a member of the Portland Elk's Lodge #188. As a member, I am aware of the plans we have to make some exciting changes to our building and property.

For those of you who are unaware of what the Elk's Lodge does for the community that embraces them, the following is only an example of the community support that we provide;

Annually;

We give (2) \$1,000 scholarships to Portland area high school seniors to begin their college life.

We participate in a "Hoop Shoot" which is a statewide event for children of all ages. To that end, before they go to the final contest, we serve them breakfast, prepared by our volunteers.

We have a "Drug Awareness" program that we offer to educate our Portland youth.

We raise funds for the Maine Children's Cancer Program

We present dictionaries to several of Portland's 3rd graders.

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We do multiple things for the veteran's of Maine, not the least of which is to support what is known as the annual "Stand Down". The "Stand Down" provides a hot meal, change of clothes, medical and dental exams as well the opportunity for housing, to all of our homeless Veterans in the State.

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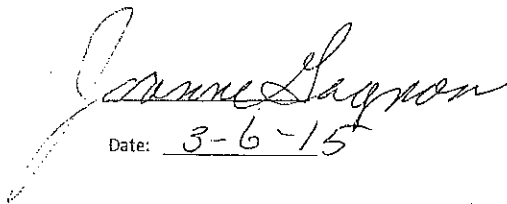
As you see, I could go on for pages but you get the idea. We are very proud of our substantial contribution to our community.

I am aware that this type of venture was attempted a few years ago to no avail. We would hope that you would consider moving somewhat faster this time. We feel this is a win/win for the neighborhood as a whole.

Notification from your Board to our Lodge of an actual date that you are ready to review our request would be so appreciated.

Please give this request your immediate attention and to that end, we thank you in advance

Respectfully,

A handwritten signature in dark ink, appearing to read "James Lagon", is written over a horizontal line. The signature is fluid and cursive.

Date:

3-6-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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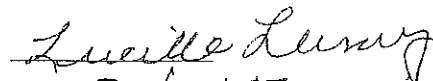
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Date: 3-6-15

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Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Marlene Tharver

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date: June 15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,


Date: March 4, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Earl C. Ricketts Jr.
3-6-2015
Date: 2015

Member # 010812

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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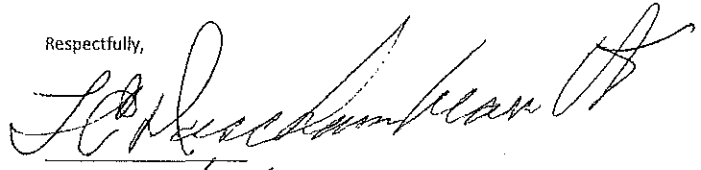
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Date: 3/6/15

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Portland, Maine

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Respectfully,

Date: 3/

Thank you so much!

Kathleen Miller Cripps

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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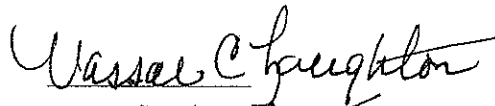
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Respectfully,


Date: 3-6-2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Robert J. Pomeroy

Date:

3-6-15

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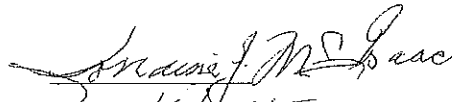
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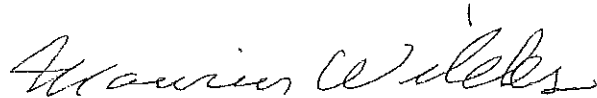
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Date: 5-06-15

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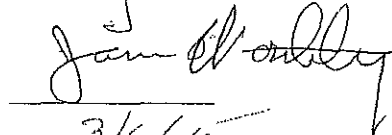
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Date: 3/6/15

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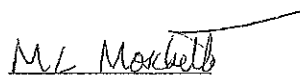
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Date: MAR 6, 2015

To: Planning Board

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Portland, Maine 04101

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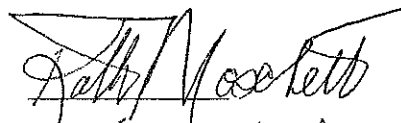
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Date: 6 March 15

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Joseph Wundel, TREASURER

Date:

3/6/15

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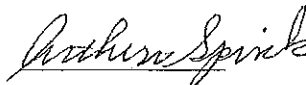
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Geraldine D. Pomerleau

Date: March 6, 2015

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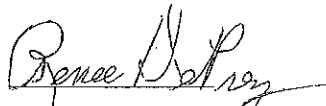
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Date: 3-6-75

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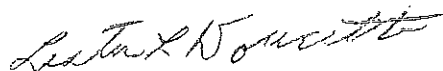
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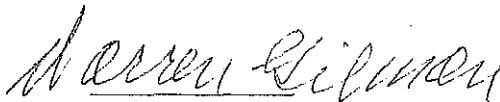
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Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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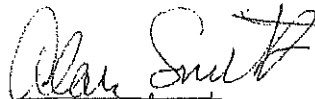
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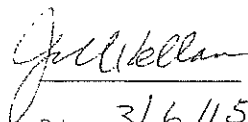
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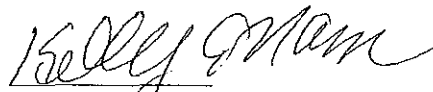
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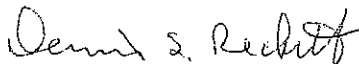
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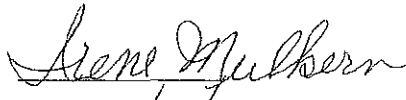
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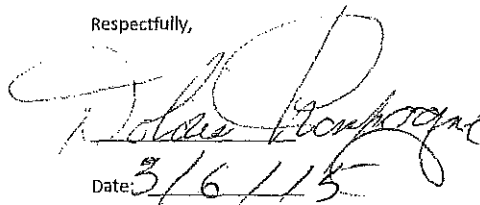
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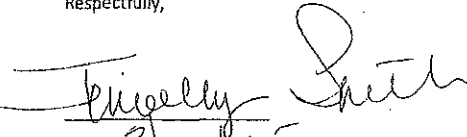
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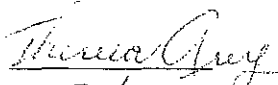
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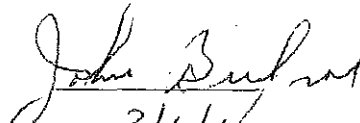
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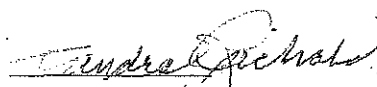
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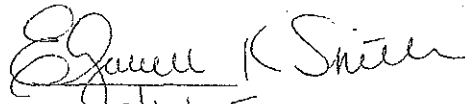
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Please give this request your immediate attention and to that end, we thank you in advance

Respectfully,

Ray E. Latta
Date: 3/1/11

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

Dear Board Members,

I am a member of the Portland Elk's Lodge #188. As a member, I am aware of the plans we have to make some exciting changes to our building and property.

For those of you who are unaware of what the Elk's Lodge does for the community that embraces them, the following is only an example of the community support that we provide;

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Respectfully,

Martha Bouette
Scholarship Chair

Date:

09/07/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date:

3/7/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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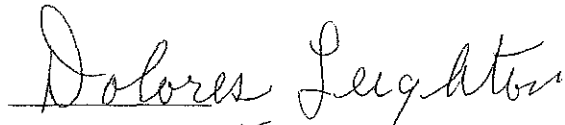
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Date: 3-8-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date: Feb 8

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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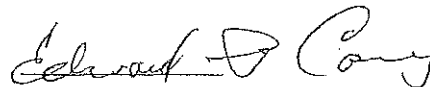
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Date: 3/8/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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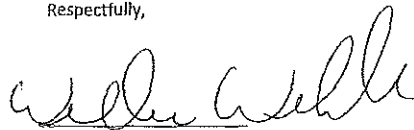
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Date: 3-8-15

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Portland, Maine

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Respectfully,

Karen L. Tacillo

Date: 3/8/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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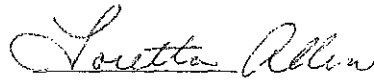
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Date: 3-8-15

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Portland, Maine

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Respectfully,

George Pacillo

Date: 3/8/16

Pacillo

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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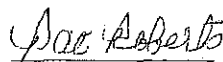
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Date: 3-8-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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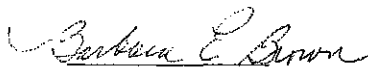
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Respectfully,



Date:

Mar 8, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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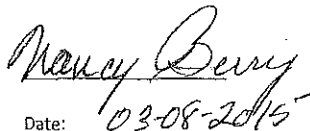
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Date: 03-08-2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Walter J. Young

Date: 3/8/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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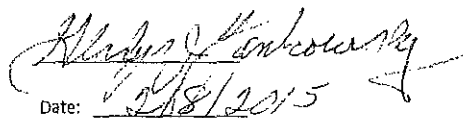
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Respectfully,


Date: 12/8/2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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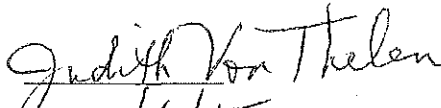
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Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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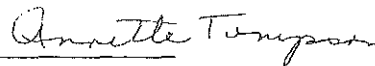
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Respectfully,



Date: 3/9/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Janice Parker
Date: 3-9-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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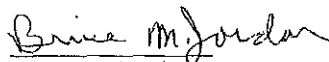
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Date: 3/9/15

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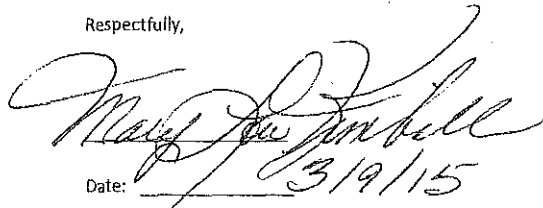
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Date: 3/19/15

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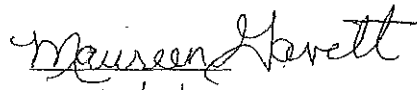
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Date: 3/9/15

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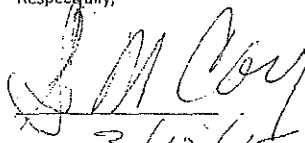
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Respectfully,


Date: 3/12/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

James H. Butler #11571

Date: 3/12/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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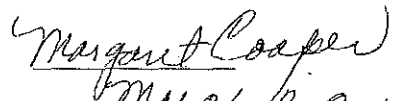
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Date: March 12, 2015

To: Planning Board

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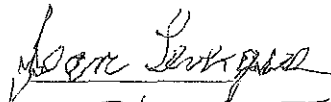
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Date:

3/13/15

Levesgue

To: Planning Board

Portland, Maine

389 Congress Street

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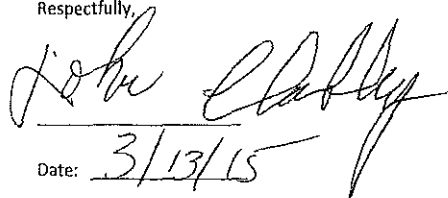
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Date: 3/13/15

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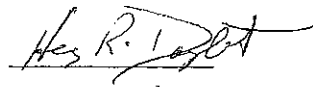
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Date: 3/13/15

Dougherty

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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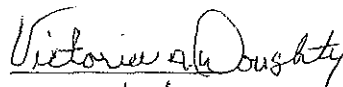
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Date: 3/13/2015

To: Planning Board

Portland, Maine

389 Congress Street

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Date: 3-13-14

To: Planning Board

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389 Congress Street

Portland, Maine 04101

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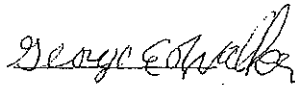
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Date: 3/13/2015

To: Planning Board

Portland, Maine

389 Congress Street

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Sharon Castellucci
Date: 3/13/15

To: Planning Board

Portland, Maine

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Portland, Maine 04101

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Annually;

We give (2) \$1,000 scholarships to Portland area high school seniors to begin their college life.

We participate in a "Hoop Shoot" which is a statewide event for children of all ages. To that end, before they go to the final contest, we serve them breakfast, prepared by our volunteers.

We have a "Drug Awareness" program that we offer to educate our Portland youth.

We raise funds for the Maine Children's Cancer Program

We present dictionaries to several of Portland's 3rd graders.

We raise funds to distribute to several of Portland soup kitchens.

We do multiple things for the veteran's of Maine, not the least of which is to support what is known as the annual "Stand Down". The "Stand Down" provides a hot meal, change of clothes, medical and dental exams as well the opportunity for housing, to all of our homeless Veterans in the State.

We provide breakfast for the now "2nd Annual Summit Project which honors our fallen Vet's.

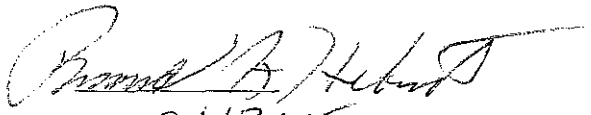
As you see, I could go on for pages but you get the idea. We are very proud of our substantial contribution to our community.

I am aware that this type of venture was attempted a few years ago to no avail. We would hope that you would consider moving somewhat faster this time. We feel this is a win/win for the neighborhood as a whole.

Notification from your Board to our Lodge of an actual date that you are ready to review our request would be so appreciated.

Please give this request your immediate attention and to that end, we thank you in advance

Respectfully,


Date: 3/12/15

From: Stroudwater Village Association Board of Trustees <stroudwatervillageassociation@gmail.com>
To: Helen Donaldson <hcd@portlandmaine.gov>
CC: Edward Suslovic <edsuslovic@portlandmaine.gov>, Paul Bradbury <phb@portlandmaine.gov>, Jeff Levine <jlevine@portlandmaine.gov>, Mike Murray <msm@portlandmaine.gov>
Date: 5/25/2015 5:25 PM
Subject: Statement from the Stroudwater Village Association regarding proposed rezoning of 1945 Congress Street

May 25, 2015

*TO: *Helen Donaldson, Portland Planning Office

*CC: *Ed Suslovic, Jeff Levine, Paul Bradbury, Mike Murray

Statement from the Stroudwater Village Association regarding proposed rezoning of 1945 Congress Street

The SVA has been actively conversing with residents and SVA members regarding the proposed rezoning and redevelopment of the Elks Club property at 1945 Congress Street. Based on the feedback we have received over several meetings, *the SVA recommends the city deny the request for zoning conversion at this time and instead undertake a comprehensive planning process* *for the intersection and contiguous properties as a whole* rather than just this one single property.

Specifically:

- The intersection in question (Congress and International Parkway) represents a gateway intersection to Portland and to the Jetport, and redevelopment of this parcel provides an opportunity to shape many visitors' first impression of our city.
- Many Stroudwater residents desire to see the specific property remained zoned as residential, in anticipation of potential residential development similar to the River's Edge and Tide Mill neighborhoods, which would also be in keeping with the city's Comprehensive Plan.
- Almost all Stroudwater residents are concerned about the precedent a potential zoning conversion establishes for numerous other similar properties within the neighborhood.
- There is concern about the visual effect the specific proposed building along Congress Street would have on traffic/speeding as well as on abutting property owners, especially as we complete the Phase II Outer Congress St. traffic and safety improvements in partnership with the City.
- Residents very much appreciate the openness with which the proposed developers and buyer have shared information and we note and applaud their attempts to incorporate some of our feedback into the proposal. On the other hand, it should be noted that the seller (Elks Club), who will be remaining on site, has shown no interest in engaging with the neighborhood in the past or regarding this latest proposal.

To sum up, residents have meaningful concerns about some aspects of the specific development proposal, but our larger concerns relate to the overall zoning conversion and implications for the intersection and the neighborhood. Given the importance of this intersection to the neighborhood, the Jetport, UNUM and the City,*the SVA recommends the city deny the request for zoning conversion at this time and instead undertake a comprehensive planning process* *for the intersection and contiguous properties as a whole* rather than just this one single property.

- The Stroudwater Village Association Board of Trustees

The Stroudwater Village Association is a Maine Non-Profit corporation. All residents of Stroudwater are members and invited to participate in all of our activities.

Find us on the web at <http://www.livinginportland.org/stroudwater.htm>

Find us on Facebook at

<https://www.facebook.com/StroudwaterVillageAssociation>

From: "Angela J. Wheaton" <angelajwheaton@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
CC: "stroudwatervillageassociation@gmail.com" <stroudwatervillageassociation@gmail.com>
Date: 5/26/2015 10:18 AM
Subject: Deny Stroudwater Zoning Conversion Proposal

Dear Portland Planning Board, As a resident of the Stroudwater neighborhood, I would like to ask that you deny the zoning conversion request re: the Elks Club site.

I greatly appreciate your thoughtful review and consideration of this proposal as well as your inclusion of current residents in the process. I strongly urge you to deny this request in favor of a more comprehensive plan that would take the entire area into consideration.

Thanks for your time and consideration. Sincerely, AJW

Angela J. Wheaton
30 Partridge Rd.
Portland, ME 04102

From: Charlton Smith <charltonsmith@mac.com>
To: <hcd@portlandmaine.gov>
Date: 5/26/2015 10:38 AM
Subject: Elk's Club zoning change question

Dear Ms. Donaldson,

I live at 85 River's Edge Drive off Congress St. between the airport entrance and Westbrook St.

The traffic on Congress St. at commuting times is extremely heavy now and will be overwhelmed by the addition of the number of cars that will result from the commercial development that has been proposed for the Elk's Club property.

Residents of River's Edge Drive already have difficulty getting on to Congress St. and sometimes we must resort to turning right (when we want to turn left) and driving to the intersection where the Elk's Club is located to turn around by using the entrance road to the Elk's Club and then returning to the streetlights opposite the airport entrance road in order to turn left. If more cars are forced to use this method to get to downtown Portland from River's Edge Drive the congestion at the Elk's Club entrance will be even more extreme than the Planning Department perhaps realizes.

There are presently 26 homes at River's Edge Drive many with 2 or more cars coming and going at typical commuting times. It is important that the Planning Department takes into account these cars when determining how much traffic Congress St. can accommodate, especially when some of the traffic from River's Edge Drive will be forced to use the entrance to the Elk's Club property as a means for getting from River's Edge Drive to downtown Portland.

Thank you for your consideration.

Charlton Smith

From: Marc Hodroff <marchodroff@yahoo.com>
To: <hcd@portlandmaine.gov>
CC: "stroudwatervillageassociation@gmail.com" <stroudwatervillageassociation@gmail.com>
Date: 5/26/2015 12:34 PM
Subject: 1945 Congress Street (Elks Club Property)

To whom it may concern:

I will not currently be able to attend the meeting for 5/26/15. I appreciate the opportunity to provide feedback. For the current time I would not be in favor of rezoning the area to an office park from its current residential status.

In review, this would have an impact on the area and adjacent residential areas including the potential impact on the river and environment. Noise and traffic will also have an impact on the current residents.

I think a big impact will be traffic management. Currently as a resident in the Stroudwater area, I know that outer Congress in that area is already too busy and becomes bottle necked in that area across from the Elks Club at commute times. I have seen several accidents in that area and have a concern it is already not able to accommodate the current traffic load.

Sincerely,

Marc Hodroff 48 Partridge Circle Portland

To: Planning Board Members:

RE: Portland Elks Lodge -1945 Congress Street -Rezone Proposal

From: David Silk, 1187 Westbrook St.

Dated: May 26, 2015

Sorry I could not be present at today's workshop to speak to the Portland Elks Lodge ("Lodge") revised rezone application that if approved would allow for the addition of construction of two large medical office buildings on the Lodge's property at 1945 Congress Street currently zoned as R-2 and allow in a Office Park zone places of assembly. I previously expressed my concerns with the proposal which in my mind are not resolved simply by making places of assembly permitted uses in the Office Park zone. That just raises more red flags. In sum, there is no good reason to approve the rezone request. That the Lodge does not want to sell its land to a residential developer is not a valid reason to grant the Lodge's application. Unlike the recently granted Williston West rezone, the Lodge's building is not a historic structure. There is no compelling reason to rezone the Lodge's property because the building is not worth preserving. The Lodge has not suggested as much. Also unlike Williston West, the Lodge has not demonstrated residential development of the parcel is not feasible.

Rezoning should not be about maximizing the economic return to the property owner. The Lodge wants the rezone as it will get paid a lot more money for commercial development than for a residential development. With an aging membership, the payment will go a long way to help the Lodge continue. But that is not the reason the rezone. Otherwise every place of assembly with excess land located as a conditional use in a residential zone will be looking to enrich its treasury through a rezone to permit a commercial use on the property together with a place of assembly. Just in this area there are several other places of assembly with open space fronting on Congress Street that could be rezoned to allow on the front portion of the parcel commercial or retain use. The places of assembly were located at the back end of the properties to preserve the open space and residential characteristics of the area. With the added funds from a rezone, those places of assembly could extend their lives and I expect will be next in line.

The fact that the place of assembly has been permitted as a conditional use in a residential zone should not be used as shoehorn to add to the conditional use prohibited commercial uses once the organization no longer can sustain itself. Places of assembly do have a limited life and as the Board has seen throughout the City, they close. Most recently last month the Methodist church off of Forest Ave was placed on the market because membership declined so that the assembly could not be maintained. It happened with Williston West. It happened with the Chestnut Street church and St. Patrick's Church. It is a common occurrence in Maine. http://www.pressherald.com/2013/07/31/here-is-the-church-where-are-the-people_2013-07-31/ As society changes, it will happen elsewhere in the City. Absent compelling needs to say save a historic structure, the answer when a place of assembly no longer economically can work is not to rezone to allow commercial uses in a residential zone but to allow the conditional use to revert to its residential status so residential development consistent with the underlying zone can occur. If that means the building is demolished so be it.

So I respectfully request that the Board not support the Lodge's rezone application. Instead, the Board should encourage the City to develop a vision for outer Congress Street (between Garrison Street and Johnson Street) and for International Pkwy and determine whether all or some of that area should remain zoned R-2 and if not, what uses should be permitted and what design standards should be adopted to ensure if any housing complex, commercial or retail development is to be permitted, that that development occur in this area is compatible with the existing residential uses and historic nature of SVA. The vision should also include the JetPort as the drive from the JetPort on International Pkwy to Congress Street is a gateway into the City.

Background

The Lodge was built in the late 1960s on a 7 acre parcel located on outer Congress Street in the R-2 zone. The R-2 zone is a residential zone intended primarily for single family homes. As a place of assembly the Lodge is a conditional use in the R-2 zone. Single family homes abut the Club property. Almost next door to the Lodge property is property owned by the Masonic Lodge, also is a conditional use in the R-2 zone. Single family homes also abut the Masonic property. On the opposite side of the street, the land is also zoned R-2

with single family homes and churches (places of assembly) permitted as a conditional use. Commercial uses such as three or four story medical office buildings and retail uses are prohibited in the R-2 zone.

According to the City's Land Use Ordinance (LUO) the purpose of the R-2 zone is to "provide for low-density residential development characterized by single-family homes on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity." That describes outer Congress Street between Garrison Street and Johnson Street quite accurately.

In the last few years, the City has invested money to slow traffic as it moves through outer Congress Street into the City. The City plans to install a cross walk from Garrison Street across Congress Street in order to make pedestrian movements safer. The hope is to eliminate or minimize the canyon like effect Congress Street has on the Stroudwater neighborhood.

Lodge looking to sell

The Lodge has been looking to sell and/or develop its property for some time. At one point the Lodge intended to sell all of its land to Husson College and relocate to Warren Ave. So there is a market short of permitting commercial uses.

Per statements made by Lodge representatives at a recent Planning Board workshop, apparently the Lodge is adamant it will not sell its property for residential development as the Lodge would not realize any return on its building (it would likely be removed) which has been partially exempt from property taxes for many years. Instead, the Lodge wants to maximize its return by getting money for the building and the land believes it can with a zone change to allow for commercial uses. The Lodge's proposal would max out development on the lot. The Lodge would stay on the lot and two new multi-story medical office buildings with a parking lot for over 200 cars would be installed. More traffic on Congress Street would be added at the peak times. The Lodge needs a zone change to make this happen.

The Masonic property just down the street is also for sale. It is not clear if the Lodge gets a zone change, whether the Masons will be next in line. I surmise they would be. Both churches across the street would see the value of their tax

exempt property increase significantly if rezoned to commercial uses. Like the Lodge, they too could become interested in permitting development on that portion of their property along Congress Street to reap the gains from a zone change.

These areas are all in close proximity to International Pkwy, which is also zoned on either side as R-2. Many commercial and retail operations, super gas stations, hotels, coffee and doughnut shops, convenient stores, etc. would jump at the opportunity to have a place of business along outer Congress Street between Garrison and Johnson Streets or along International Pkwy. With piece meal rezoning, the intersection of International Pkwy at Congress Street could resemble say the corner of Auburn Street and Allen Ave. Not my vision for the area but a good possibility with what I call Let's Make a Deal piece meal zoning. The traffic calming measures recently added could be eliminated to handle the resulting increased traffic demands. Congress Street could be widened more.

There are other uses residential in nature that would be much more compatible with the area and serve the Comprehensive Plan. Located on a bus line close, the site would be a great site for senior citizen housing. For the last 20 years, I have served on the board of a not for profit corporation that develops rent restricted senior housing. The location of the Lodge's property along a bus line and a short bus ride to needed services is ideal location for senior housing. Rezoning the property to allow for senior housing would be much more consistent with the Comprehensive Plans number one goal of creating more housing for all of Portland's citizens.

Why the Board should not support the Lodge's rezone application.

The Board should not support the Club's rezone application. On a broad scale, given the City's most prominent zoning goal is to create more housing, all kinds of housing, throughout the City, why the City would ever want to rezone land from residential to commercial or retail so as to eliminate the possibility of residential development is beyond me.

There are those who believe commercial development is needed in order to increase property tax revenue. The City needs more money or tax rates will be even higher. If the Board's view is that any land should be rezoned at any owner's

behest regardless of the underlying zone so as to increase the tax base, then the Board should support the rezone. Just be aware that rezone applications that will soon follow not only for land along outer Congress Street between Garrison and Johnson Street and International Pkwy also perhaps outer Westbrook Street and/or where uses can be changed from say a conditional use (say an existing church) to a commercial or retail use. You will end up with a hodgepodge of commercial and retail development that fits the needs of the particular developer. A four-story medical building for one, a doughnut/coffee shop for another. A super gas/food-stop for another. Greater tax revenue for sure. So much for the existing folks who live in the single family homes as they will eventually find living in their homes intolerable. Those houses can be torn down (loss of housing for the City). In its place the City will have a helter-skelter retail/commercial development right on the edge of Stroudwater that makes for a bright neon gateway into the City.

Personally, I think rezoning simply to boost the economic return to an existing property owner is about the worst reason to justify any rezone of a property. Regardless of how bad the City needs more property tax revenues, zoning in the City is intended to direct and guide suitable development and at the same time provide stability to neighborhoods. Neighborhoods should not be sold down the river simply based on the latest and greatest development plan that needs a contract or rezone to happen. So I suggest the first question to ask is not how the City can find a way for the Lodge to increase its return on property the Lodge bought knowing it was zoned residential. It is not finding a shoe horn to fit the Lodge's particular proposal under the OP or RP zone when clearly the proposed development is totally inconsistent with those zones.

The first question to ask I suggest is whether the underlying area zoned as R-2, not just the specific parcel, but all of the area mentioned above, should be changed in the first instance. Given the City's housing goals and recent efforts to change the LUO to make it easier to create more housing, and given the recent (in the last 15 years) full build out of the River's Edge and Tide Mills residential subdivisions, I have a hard time seeing any legitimate justification to change from a residential zone as it will make less housing. Sure, the Lodge may not make as much money and the Mason's buyer's pool may be smaller, but it is entirely consistent with the Comprehensive Plan to keep the area zoned R-2 or similar residential use. With 7 acres of land, and a minimum lot size of 10,000 square

feet, the property could be developed with a number of homes. Or it could be developed into senior housing.

But others may disagree on what the area should become. Change is constant whether we like it or not. I respect that and that leads to the second question. What do the neighborhood and the City want the area from Johnson Street to Garrison Street inclusive of International Pkwy to become? What type of uses should be permitted? What types of design standards should be developed? What heights and massing should be permitted? What is the vision for the area all now zoned as R-2? We need a vision to guide any rezoning. We should rely on the whims of any particular property owner's self-interest.

Need for a Vision

That vision creating process should include not only the area from Johnson Street to Garrison Street inclusive of International Pkwy but also JetPort Blvd. International Parkway runs from Congress Street almost to the JetPort Blvd and as noted above is zoned R-2 on both sides. It serves as the gateway into the City and is located in the shadows of a historic district. For many visitors to Maine it is the first site they see on exiting the JetPort.

That portion of the JetPort Blvd in Portland is zoned Airport Business (an area intended to provide for the development of airport-related development). Just over the line in South Portland on JetPort Blvd an office building (for DHS) was located, clearly not an airport-related development. With only so much land available to meet future needs, the vision process should include the JetPort and the City of South Portland relative to zoning along all of JetPort Blvd so as to be consistent with any common goals.

The vision needs to account for traffic demands both now and projected in the future as it is the JetPort's goal to serve more and not less. Both the City and South Portland have shared traffic issues which are impacted by the uses permitted.

In sum, the vision creating process would include all of the stakeholders in the area including the owners and residents of the homes to be greatly impacted by any change. A vision creating process can examine existing zoning, possible uses, and design standards that are compatible with the existing uses and the historic

nature of Stroudwater. Sure, a vision creating process takes time but in the last decade the City has found the resources to engage in a vision creating process for such places as India Street, Bayside, East End Waterfront, USM, outer Brighton Ave, etc.

The Lodge's property should not be rezoned until the vision process is completed. That is not an unjust result. The Lodge property is a conditional use in a residential zone and commercial uses are not allowed. Over the years and today it has received a substantial property tax break because it is considered a fraternal society with the land assessed based on other than a commercial use. The Lodge can sell today at a price that recognizes the legal uses applicable today if need be. Sure, it may not maximize its return but rezoning should not be about maximizing the owners return. The Lodge's needs should not trump the needs of the local community to decide whether the R-2 no longer makes sense for the area, and if so what uses permitted and what design standards should be adopted to ensure development occurs in a cohesive pattern respectful of existing uses and limited road capacity.

There is no reason simply to rezone to meet the needs of a particular buyer who has a development plan, a plan that in no uncertain terms can be called consistent with the standards for an Office Park zone (the rezone it wants) or Residence-Professional (a fall back rezone). The Office Park zone is intended to create a campus type setting with lots of open space among other features. The Lodge's development plan is anything but that. The Residence-Professional zone allows for existing residential structures or structures of similar size and scale to be used for professional offices. The Lodge's development plan is also anything but that. The closest business zones, at Westgate, are B-1 and B-2, and those zones would allow for a multitude of commercial and retail uses. The Lodge's development plan fits like a glove into the B-2 zone except for the fact it abuts single family residences.

In sum, I ask that the Board decline to recommend to the City Council the Lodge's rezone application and instead recommend the City initiate a master planning process for the area. That way a vision can be created that will be inclusive of all the stakeholders, resulting in development compatible with the existing residential uses and a great gateway into historic Stroudwater and the City.

From: Elizabeth Hoglund <eahoglund1@gmail.com>
To: <hcd@portlandmaine.gov>
CC: Ed Suslovic <edsuslovic@portlandmaine.gov>, Stroudwater Village Association Board of Trustees <stroudwatervillageassociation@gmail.com>
Date: 5/26/2015 1:56 PM
Subject: Re:1945 Congress Street Zone Change

Please present the contents of this email to the Planning Board

I write to opine on the matter of rezoning 1945 Congress Street. I have reviewed the materials, attending some meetings and draw on my past experiences regarding this parcel and the neighborhood.

I do not accept the point that the zone has to be changed to make the property marketable or that it is valueless unless it can be used as proposed. The property can be used as currently zoned; the impediment to the sale is price and the desires of the sellers. While the Elks have not been able to lure a buyer for residential use, it does not mean that the parcel cannot so be used. Until recently, as I am sure you are aware, the development of such parcels was weak. The market has changed and if the price fit the market it would be desirable. The Stroudwater neighborhood is a very desirable neighborhood and will remain so unless it gets undermined by zone changes allowing commercial, including large medical buildings, development.

In sum, zones should not be changed simply to allow the seller to obtain a better price, especially when the parcel is well suited for the existing zone.

A second concern is the size and location of the proposed development. The essence of Stroudwater is not tall buildings on the edge of the street. Such a structure would visually change the neighborhood. The requirement that buildings are of the same size and nature of neighbors would not be met. The small, lovely residences abutting this parcel do not look like tall office complexes. The visual impact would be to negate the traffic problems by sending a message this is not a residential neighborhood. The city and state have spent many hours and dollars trying to preserve this aspect while moving traffic. More importantly, the remaining residences could then build similar structures to match this proposed building.

The proposed zone change a few years ago to allow for an educational use is different from the current request. The sale of the property to Husson University, a few years ago was acceptable because of the nature and size of the building, its location on the property and the overall use of the property as an educational facility. It was Not a number of medical and other use buildings on the edge of the street. These uses can be built elsewhere in an appropriately zoned area.

Please recognize the serious negative impact this zone change would have on the neighborhood and therefore the city.

I am a resident of 138 Stroudwater Road, and have many years of experience in trying to balance the needs of development with the preservation of the neighborhood. Many projects and proposals have been endorsed because they fit the needs of the land owner and the neighborhood. This one does not.

Thank you for your consideration of these points.

Mary Lou Kimball
49 Vindale Street

Scarborough, ME 04074

207-232-1613

marylou@canfieldsystems.com

May 27, 2015

City Planning Board
City of Portland
389 Congress St.
Portland, ME 04101

Dear Sirs and Madame:

I would like to start my letter today by apologizing for standing at an inappropriate time in your workshop last night. I know and understand protocol and procedure and do respect your need to follow them. I am a member of the Portland Elk's Lodge #188 and would like to add comments that I only seem to have after listening to the Board's discussion.

My reason for standing was the hope to add to your summary a reminder of the comment that Carol, and again I apologize for the familiarity, made with regard to when the R2 zone was put in place. She suggested that if she felt that the City had forced that zoning on The Elk's, that she might be more sympathetic to our quest. I had hoped to get that question into your charge to your staff for the next workshop. I was told by Northland and by the Exalted Ruler that they individually would get the answer and present it to you.

Since I have further comments, I thought that I would take this opportunity to add a bit more information, as your chairman did comment that in this case, more is better. One of the Board members, and I think it was David, said that you need to think about "What we would want for this area if we set the Elk's Lodge aside?". I believe that's smart thinking because if we weren't in the picture, I believe you would see the value in making this Gateway to the City an Op or RP zone. As the chairman said you have the authority to then consider the inclusion of the Portland Elk's Lodge as a non-conforming entity.

A comment I heard repeated last night from the Board that I heard in January, really bothers me and I would like to speak to it at this time. "The Portland Elk's Lodge bought their own problem when they came to this location.". Well, here's the thing; we came to this location in 1968 and I am reasonable confident that we were in that location before any of our neighbors could have "bought their problem". They knew we were there, just like they knew the airport was here. Whenever I hear a comment about "our problem", financial or otherwise, I am disturbed and I'd like to tell you why. Granted we have a need to downsize as membership has dropped off for many fraternal organizations but we all believe that we can continue to aid the people in our community, in a better way with more resources. Our finances should not enter into your decision at all. WE DO CARE about our neighbors, in fact, we invited them to meet with us at the lodge at the outset of this endeavor. We don't view ourselves as a problem but are eager to be a part of the solution.

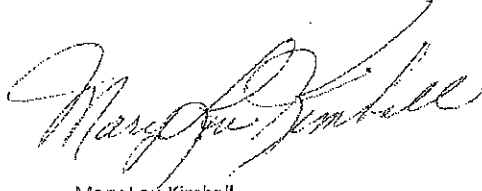
But, as long as we are on the subject of our finances, please allow me to plant another thought in your discussion. Since we arrived at this location in Portland, we have been paying property tax on 7 acres currently in excess of \$25,000 and that is with a non-profit discount. Why do I mention that? Because if this project goes through the discount will only apply to our footprint of approx. 12,000 sq. ft. and the city will realize a greater tax revenue, as I see it.

Last night was the first I heard of the Clark Insurance Co. joining in the development of this project. I was thrilled to hear it for a variety of reasons, not the least of which is traffic and parking. As the gentleman said, the traffic pattern would go virtually unaltered as they are currently just a few hundred feet down the road, now. This is largely, I believe, an office for corporate work and is predominantly housing employees not a "large insurance selling outlet". The parking would be used predominately for their employees. I see us; The Elk's, Dr. Bedec, and the Insurance Company as good neighbors.

I am curious, on a side note, and I will ask the question of others. One neighbor commented that a taller building would encourage speed. I may not be the sharpest knife in the drawer but I am hard pressed to get that. And Dr. Bedec's building is no taller than the neighbor's house. My curiosity is such that I think I would like to see that in a study.

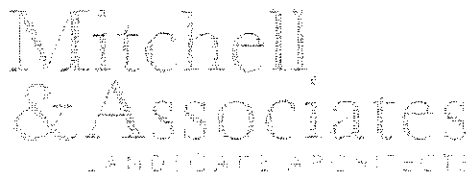
I have taken up enough of your time and will close by saying that, I personally recognize that your task for the City is a daunting one. It's a large old City that has evolved rapidly over the last century. I wish you best of luck in your efforts.

With respect,

A handwritten signature in cursive script, appearing to read "Mary Lou Kimball". The signature is fluid and somewhat stylized, with the first name "Mary" and last name "Kimball" being clearly legible despite the cursive style.

Mary Lou Kimball

Member Portland Elk's Lodge #188



PC21

The Joseph L. Smith
70 Center Street
Portland, Maine 04101
P 207.774.0001
F 207.874.1100
WWW.MITCHELLANDASSOCIATES.COM

July 13, 2015

Ms. Nell Donaldson, Planner
and Planning Board Members
City of Portland
389 Congress Street
Portland, Maine 04101

RE: 1945 Congress Street

Dear Nell and Planning Board Members,

On behalf of the Stroudwater neighbors, Mitchell & Associates has prepared the enclosed concept residential development plan based on an R3 zoning change and using the PRUD provisions of the Land Use Ordinance. The proposed concept is for 32 dwelling units in four (4) unit townhouse style residential housing. Based on our understanding of the site, the calculations for determining density used a conservative number for stormwater management and the 20% deduction for the remaining land area. The net density, using these calculations would allow 33 dwelling units. The layout has been designed to provide adequate buffering along Congress Street and the adjacent residential neighborhood, create usable open space and safe access for residents and emergency vehicles.

This plan has been prepared to demonstrate an alternative development proposal that is more in keeping with the Comprehensive Plan, current zoning, the Stroudwater neighborhood and provide a reasonable expectation of a viable use of the property. Enclosed for your review is a copy of the concept site plan. We would be happy to respond to any questions or comments you may have.

Sincerely,

Mitchell & Associates

A handwritten signature in black ink, appearing to read "Rob Metcalf". The signature is stylized with a large, looped "R" and a cursive "Metcalf".

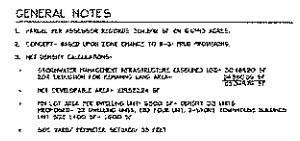
Robert B. Metcalf, Principal

Maine Licensed Landscape Architect

Enclosure

Cc Janet Burns

Bill Linnell



Alternate Housing Development
1945 Congress Street

June 5, 2015
Scale: 1"=40'
Prepared by:

**Michael
E. Lewis, Editor**
JOURNAL OF DOCUMENTATION
vol. 57, no. 1, 2002

From: Paul Dubois <pdubois1915@yahoo.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 7/22/2015 9:28 AM
Subject: 1945 Congress zoning change submittal response from Dubois, 1915 Congress St

Nell, I'm so sorry for the confusion but I've received differing info from the neighbors about the proposal. Once I had a opportunity to read it for myself, I realized that I needed to correct some of the statements that were in the email I submitted yesterday. Is it possible to disregard or delete that response and submit this one instead. Thanks again for your help and sorry for the extra work.

July 28th will be the 4th time I have had to take a day off from work to speak at a workshop about this property development. Despite the fairly significant loss of income and the scrambling I have to do to find someone to replace me at work, we will come to speak because my wife, Kiki and I feel we have to do whatever we can to preserve the home we have made here in Portland. We are very fortunate to have created a great home bordering Stroudwater Village that is both relatively private yet convenient to all the amenities that this great city has to offer. We bought this distressed and non-conforming property (at the height of a real estate boom) because we knew with enough blood sweat and tears that we could build a home that we can afford while still being located in what is arguably the best city in the US. The biggest benefit to living at 1915 Congress is the privacy we enjoy especially at the property line bordering the Elks. For the last 14 years the city has enjoyed accepting about 3 times the taxes they would have received if we had not renovated this property. In that same period, the Elks have enjoyed reduced taxes due to their R2 residential zoning and have neglected their property to the point that they are once again in front of the Board, hat in hand, looking for a bailout claiming they can't afford to keep their property. If this proposal is passed, they get to sell their property for almost twice it's value while the best feature of our property (the privacy we enjoy) will be destroyed. Let's be clear, this proposal is specifically a way for the Elks to maximize the profitability of their real estate. By their own admission they point out that the property is only worth maybe \$1.5 million in a residential zone while a change in zoning may bring the value to 2.5 million. This is at least \$1,000,000 that they have to gain. That is a great incentive for the Elks to influence this Board. The neighboring property owners do not have these resources and we rely primarily on this Board and City Council to provide some balance. We have banded together in our opposition and even are providing some plans that support our position that this zoning change, if approved, 1) will be detrimental to the surrounding properties and is inherently unfair to those families that live in this area 2) is without question too large and intrusive a build out of the property and 3) will forever eliminate the opportunity for this property to be used for what it is best suited - residential development. The Elks have no right to maximize every last cent from the development of their property but all the incentives are there- 1 million of them.

Each time we are asked to return to review additional submittals, I am dismayed to find that they lack any substantive changes reflecting the suggestions from the neighbors. They have 7 acres to work with but still seem to insist on placing a huge and unattractive building as close to the corner of Congress St and the closest residential property-my house. The latest submittal, proposing a 40 ft preservation of the R2 zone, is a step in the right direction but once again we are looking at virtually the same plan. I cannot blame the developer for trying to develop this property to it's fullest potential but the Board should not let this happen. Maintaining the R2 zone for the Elks building while sacrificing the most visible (and most proximal area to the existing residential structure) is really insufficient to minimize the impact on the neighboring properties. Please do not reward the Elks for their neglect and poor judgement while penalizing those of us that have acted prudently and improved our properties for the benefit of our families and the community. Every neighbor (except for one property hoping to be included in the zoning change) is telling you that this proposal is ill advised. Don't be confused, this proposal is all about greed and the proponents have one million reasons to influence your decision. Paul and Kiki Dubois

1915 Congress Street
 Portland Maine 04102
 (207)899-2599

STATEMENT from the Stroudwater Village Association regarding the proposed rezoning of 1945 Congress Street (Elks Club Property). stroudwatervillageassociation@gmail.com

This statement specifically references updates to the rezoning proposal in July, 2015 and should be considered in addition to our prior letters to the Planning Board from January 2015 and May 2015.

The Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken. Such a visioning process should involve all stakeholders, including but not limited to residents, the City of Portland, the Portland Jetport, MDOT, UNUM and other businesses and organizations in the neighborhood such as the Elks Club, the Tate House, area places of assembly and the several businesses on Congress Street near the Fore River. The Planning Board has been reticent to undertake such a process, but the latest zoning map submitted by the applicant (Fig 1) illustrates perfectly why such a visioning process is critical before any decisions are made.

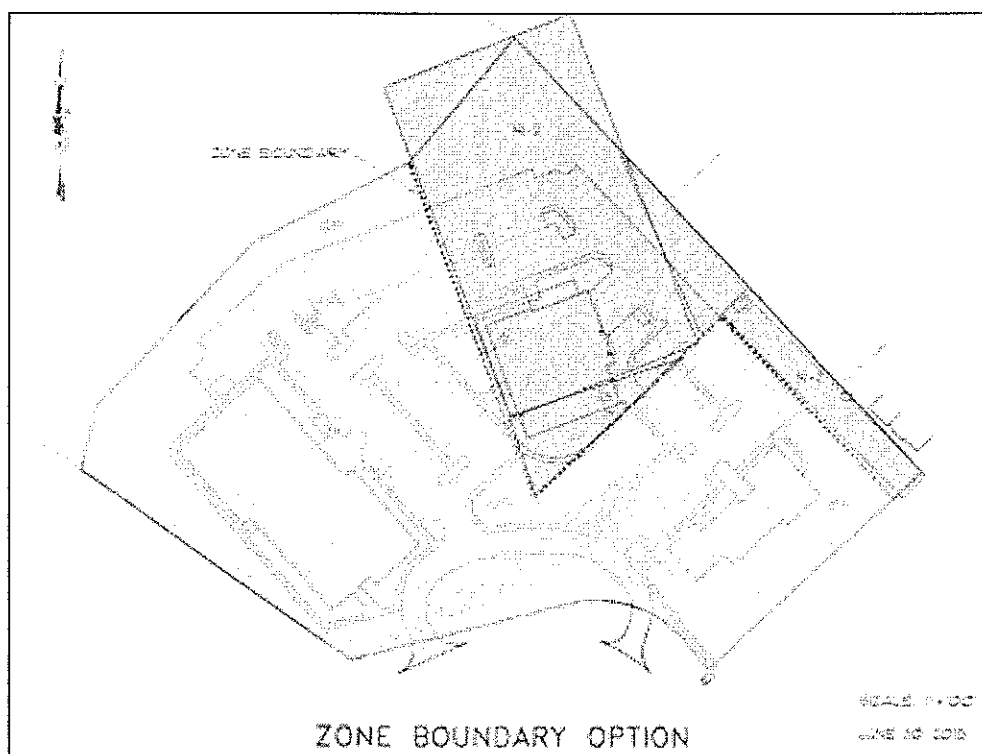


Figure 1. Zone Boundary Option submitted by Applicant, showing the small amount of R-2 zoning remaining (blue) that would allow a tax-exempt, conditional-use seller to stay on the land in comparison with the large amount of land (green) allowed to the seller to “cash out” to a commercial developer.

Put simply, the zoning proposal allows an existing tax-exempt, conditional-use organization to simply draw a box around itself and then carve up and “cash out” the rest of its land at maximum market value for commercial development, regardless of the will of other area stakeholders. Clearly a great deal for

the seller/organization and commercial developers, but a bad deal for the City and for the neighborhood – not to mention probably not the intent of conditional use zoning and tax exemption in the first place.

Far more ominous and concerning to the SVA than just this one parcel is the precedent this would establish for similar would-be sellers in the area. Figure 2 shows the potential “domino effect” of the potential rezoning gift from the city to other would-be sellers. Once the Elks (blue circle) are allowed to do this, why wouldn’t any responsible board member of other similar organizations (churches, Masons, the Tate House), consider “cashing out” their land? We know that Congress Street and Westbrook Street frontage would be very attractive to gas stations, donut and coffee shops, etc. On what leg would the city or neighborhood stand to prevent that kind of future activity when we are allowing it now?

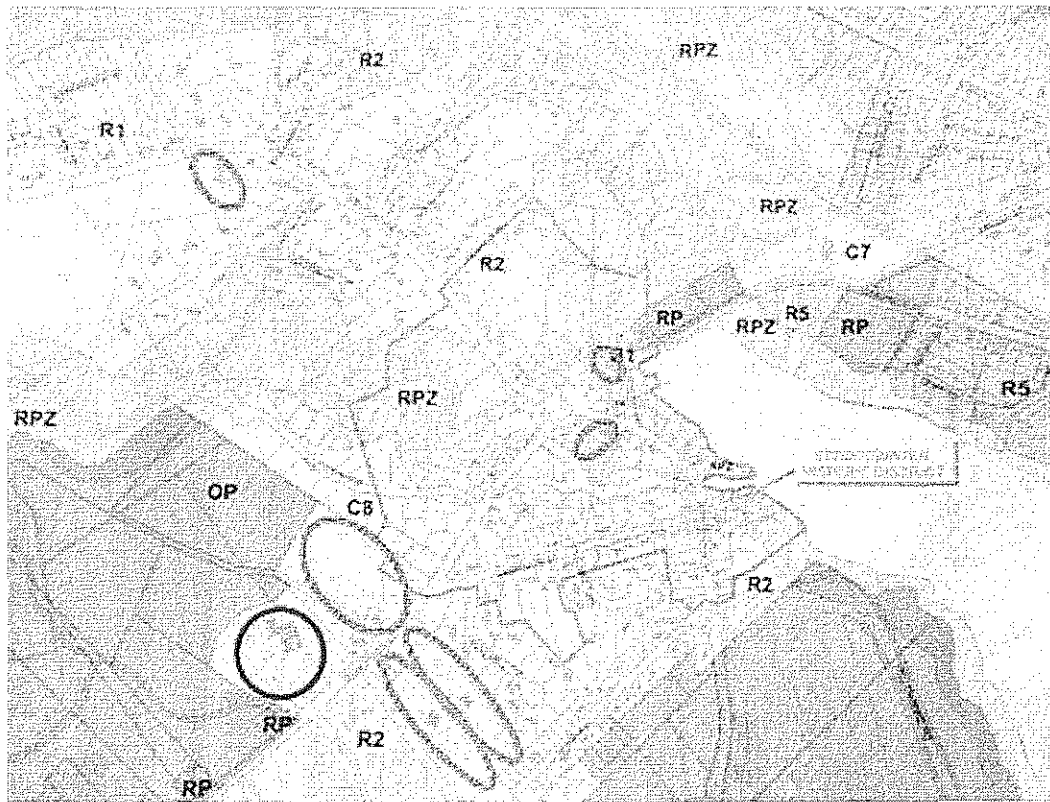


Figure 2. Stroudwater Village neighborhood zoning map highlighting potential sellers in red who are similar to the Elks (in blue). “Similar” in this case means tax-exempt, conditional use organizations sitting on large amounts of land that may be attractive to “cashing out” via piecemeal development.

Stroudwater residents, and the SVA, are not opposed to all change in principle. If the City would like to have a conversation about how to incorporate more mixed-use activity into Stroudwater, by all means, let’s have it. But let’s have it with all stakeholders, and think about the big-picture effects, not just parcel-by-parcel. To restate, **the Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.**

From: "James Casterella Jr." <jcasterella33@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 7/26/2015 8:03 PM
Subject: Tuesday, July 28th, workshop re: 1945 Congress St. proposed zoning amendment

Hi, Nell,

My name is James Casterella and I live at 1967 Congress St., two houses away from the Elks Club. I'm not sure if I can make Tuesday's Workshop so I wanted to email you with my thoughts.

First of all, I completely support Northland Enterprises' zoning map amendment application. I think it's very important that visitors to Maine, flying into Portland Jetport, drive onto Congress Street with a view of an attractive, modern building such as is being proposed by Northland. As it stands right now, those same visitors see somewhat of an eyesore: they see a huge, usually empty parking lot, and a somewhat rundown, tired looking Elks Club. The Elks Club deserves a facelift and also deserves the opportunity to stay at its current location. Additionally, I'm hoping that the Planning Board will consider extending the zoning change to include my house (at 1967 Congress St) as well as my neighbor's house. We are the last two residential houses on Congress Street and the only two residential properties to the left of the UNUM entrance. My neighbor and I would like the opportunity to be zoned similar to the Elks Club so that professional development of our properties becomes a possibility.

If you have any questions please feel free to contact me via email or at 831-7297.

Thank you for your time,
James Casterella

From: <captlinnell@yahoo.com>
To: Helen Donaldson<HCD@portlandmaine.gov>
Date: 7/28/2015 11:19 AM
Subject: Elks Club comments

William S. Linnell
1905 Congress Street
Portland, Maine 04102
207-409-0100
CaptLinnell@yahoo.com

Helen Donaldson
Planning Board

July 28, 2015

Dear Neil:

Please add these comments for the Planning Board concerning the Elks Club project--

This proposal is a farce: The developer is asking the Planning Board to throw its own rules out the window and approve what is essentially a contract zone, while calling it an OP Zone. Let's call it what it is. It is a contract zone proposal. It fits neither Office Park nor Residence Professional zoning specifications. A contract zone is a contract zone is a contract zone. It is a contract zone, and should be voted down as such. The Planning Board should not be complicit in this thinly veiled mockery of its rules.

The mockery continues as the developer's most strenuous argument for a zoning change is for greater profits. Portland's zoning laws do not contain any language that allows desire for greater profits as criteria for zoning decisions.

If profits are to be a major factor in the Planning Board's decision-making, then the ordinances should reflect this factor, and outline guidelines and criteria for weighing profit margins in decision-making for zoning changes. But the zoning laws contain no such provisions.

In short, the developer is asking the Planning Board to approve a contract zone, pretend that it is an Office Park Zone, and justify it for reasons that do not exist in zoning regulations. It is hard to imagine a more farcical mission for the Planning Board to join in on. Clearly, this request has no respect for the Planning Board, its rules, regulations, or process.

A cautionary note: If the Planning Board doesn't respect its own rules, regulations or process, no one else will, either: No doubt other non-profits and developers in Portland would also like to take advantage of this "approve, pretend, and justify" approach to zoning, if it comes to fruition.

I also find no ordinance that allows for zoning classification due to the owner's claim to being "a good citizen" or "doing a lot for the community".

I ask that the Planning Board confirm that this type of argument is irrelevant and inappropriate, lest those in opposition to the Elks Plan be obligated to list our contributions to society also, for Planning Board consideration.

Abutters to the Elks property have produced a preliminary but accurate drawing which shows the feasibility of 32 town house units on this parcel. We suggest that a zoning change to R3, which would easily allow residential development of the property in question, would be far more reasonable, would be consistent with zoning rules, and would have the support of the neighborhood.

Thank you for your consideration

Bill Linnell

William S. Linnell

1905 Congress Street

Sent from Windows Mail

From: David Silk <DSilk@curtisthaxter.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 7/28/2015 9:09 AM
Subject: 1945 Congress Street

Neil: Can you share this email with the Planning Board members as my comments on the latest proposed rezone for 1945 Congress Street. I expect the PB members in their packets will have my comments from the prior two proposed rezone proposals for 1945 Congress Street so I will not repeat in detail my earlier comments which I fully stand behind.

The current zone is a residential zone. There is no compelling reason to rezone the property to allow for commercial uses. I am not aware of any provision in the Land Use Ordinance that allows for the Board to consider as part of a rezoning analysis the need for the property owner to maximize his or her economic return but that is in essence what the applicant is now asking the Board to do.

The applicant has stated several times that it will never consider selling the property for residential use even though the property is zoned for residential use. The message is loud and clear that under the Comprehensive Plan the penultimate goal is the creation of more housing. Removing land from a residential zone to allow a non-profit operating as a conditional use place of assembly in a residential zone to maximize its return makes no sense whatsoever. Unlike Williston-West Church, there is no compelling need to preserve the building at 1945 Congress Street. There are numerous other places of assembly in residential zones that would jump at the chance for a partial rezone of their parcel because to allow for the non-residential use of land would make the land more valuable and help pay bills. But that should not be what rezoning of a conditional use in a residential zone should be about.

The Northland alternative housing analysis is flawed. It does not provide the estimates generated by the unnamed "experienced construction estimator" who arrived at the estimated costs for a eight lot or fifteen lot subdivision scenario. That estimate clearly should see the light of day so it can be subject to critical review and comment. Since this a workshop, the Board should ask the applicant to submit immediately the detailed estimates referenced in the report.

The analysis assumes that the cost of the land is the present contract price of \$2.5M. Per City records on line, the land today is assessed by the City for \$500,000. There is no analysis prepared by Northland of either an eight or fifteen lot subdivision using \$500,000 as the land development cost. Northland uses two land sales within a one mile radius of the subject to determine market rates for vacant lots. The market area is much greater than one mile of the subject and obviously should have included a much broader reach.

Northland's analysis does not include an analysis of what would be permitted under R-3, not as multi-family rental units, but as owner occupied townhouses, which would not be subject to Northland's rent limitation assumptions. It does not use \$500,000 as the land development cost and does not provide the detail of the analysis. Again since this a workshop, the Board should ask the applicant to submit immediately the detailed estimates referenced in the report.

The piecemeal cut up of the parcel makes no sense whatsoever, with zone lines cutting through parking stalls. When an applicant has to reach that far it should send off alarms. As mentioned earlier, the OP is for a campus like setting. What is presented for OP on the plan marked "Zone Change Option" leaves no room in the sea of pavement and buildings for a campus like setting.

Finally, Northland makes no showing that the land and building cannot be used by another non-profit as a place of assembly. A place of assembly (a church) uses space at 58 City Line Drive which is former warehouse right down the street the 1945 Congress. Apparently it has out grown the location and is looking to relocate to Spring Street in Westbrook. Another example is the growing Muslim community that is bursting at the seams at their present place assembly in Bayside. Recently a former Lutheran place of assembly on outer Brighton Street was purchased by a growing a Hispanic congregation and continues as a place of assembly. The applicant has not demonstrated the absence of a market for other non-profit organizations which utilizes places of assembly and who could make use of the site. To be sure, I doubt those nonprofit organizations will pay \$2.5M for the property but zoning should not be about gerrymandering the zoning to maximize economic return for a non-profit that for years has operated as a conditional use in a residential zone and has been and remains exempt in whole or in substantial part from paying property taxes.

Thanks for listening.

David Silk
 1187 Westbrook Street

From: Charlton Smith <charltonsmith@me.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 8/20/2015 8:26 PM
Subject: Re: Planning Board Hearing - Proposed Zone Change at 1945 Congress Street

Dear Ms. Donaldson,

Thank you for your email.

As I have written to your office before I am very concerned that roughly 25 families living at River's Edge will have substantially increased difficulty exiting from River's Edge Drive onto Congress St. We are already forced by the Congress St. traffic to turn right at times in order to go left into Portland and that means that we have to turn around in the Elks Club entrance road and use the lights at Airport Drive to get on the inbound side of Congress St. This not only inconveniences us but it will add substantially to the traffic congestion at the streetlights and intersection in front of the Elks Club.

This is a very serious matter and I hope that the City's engineers have taken it into consideration.

Best regards,

Charlton Smith
85 River's Edge Drive

On Aug 19, 2015, at 8:46 AM, Helen Donaldson wrote:

> Dear Interested Party,
>
> The Planning Board will hold its final hearing on the proposed zone change at 1945 Congress Street on Tuesday, September 8 at 7 p.m. in City Council chambers. (Please note that this item will likely not be first on the agenda. The final agenda will be posted on the city's website (<http://www.portlandmaine.gov/Calendar.aspx?EJD=1582>) closer to the meeting date.) As of now, the applicant has submitted no additional materials for review.
>
> All public comments received by our office will be provided to the board at the hearing. However, if you have additional comments (or questions), please don't hesitate to let me know.
>
> Best,
> Neil
>
>
>
> _____
> Neil Donaldson
> City of Portland Planning Division
> 389 Congress Street
> Portland, Maine 04101
> 874-8723
> hcd@portlandmaine.gov
>
> --

From: "Angela J. Wheaton" <angelajwheaton@yahoo.com>
To: Helen Donaldson <hcd@portlandmaine.gov>
Date: 8/20/2015 3:03 PM
Subject: Fw: Deny Stroudwater Zoning Conversion Proposal

Dear Portland Planning Board, As a resident of the Stroudwater neighborhood, I would like to ask that you deny the zoning conversion request re: the Elks Club site.

I greatly appreciate your thoughtful review and consideration of this proposal as well as your inclusion of current residents in the process. I strongly urge you to deny this request in favor of a more comprehensive plan that would take the entire area into consideration.

Thanks for your time and consideration. Sincerely, AJW

Angela J. Wheaton
30 Partridge Rd.
Portland, ME 04102

From: Eugenia O'Brien <genieme80@gmail.com>
To: <hed@portlandmaine.gov>
CC: Stroudwater Village Association of Trustees <stroudwatervillageassociation@gmail.com>
Date: 8/21/2015 10:25 PM
Subject: 1945 Congress Street: Elks re-Zoning in Stroudwater

August 21, 2015

Dear Planning Board and City Council Members,

I wish to express dismay, even horror, regarding the proposed changes to the current zoning which would impact 1945 Congress Street (Elks site) in Stroudwater.

My concerns come from a long history of attentiveness to this 'Gateway Area' to the city, which was so named by the city and airport representatives as part of the big push for the massive expansion at the Portland International Jetport. 'Forever Green' was the other term tossed around regarding both sides of Congress Street as an entrance into the historic center of Stroudwater, which was to be preserved as 'open vista'. Homes along outer Congress Street past the Elks/UNUM entrance have long ago been turned into businesses while Portland continues its need for residential housing. Instead, we should be reversing this trend back to family homes and directing new business construction to sites already zoned for those purposes.

This concentrated large scale construction will also negatively impact the migratory patterns of the wild life that currently have access to the open field setting and Stroudwater River. A long-time Portland resident, my home is located on this fresh water source and we have a parade of foxes, turkey, fisher cats, coyotes and deer through our yard. The songbirds, water birds and fowl are a separate issue, as Cornell Ornithologists and other scientists work to educate how to preserve habitat that nourishes what we seem hellbent on destroying. The bees and butterflies continue to return to the milkweed and field flowers while animals enjoy scrub cover and wild berries which will be irreparably altered by this degree of construction with its quantity of impervious ground cover and resultant contamination by parking lot run off. The animal sculptures at the jetport become a mockery of what WAS in the neighborhood if we do not protect this part of Portland's very real charm.

Please think long and hard before approving this construction. This does not fit the site of residential homes or neighborhood feel and mars the Forever Green and Gateway Area stance the city espoused previously. It would irreparably harm the entrance to Historic Stroudwater with commercial buildings. The city should not backtrack on its promises to its citizens and honor the words and commitment previously made.

Sincerely,
 Eugenia O'Brien
 1376 Westbrook Street
 Portland, Maine 04102 (207) 773-5610

PS - We can't keep encroaching on animal habitat and be surprised when there are repercussions we have self-created. Leave this space open, green, and the wild habitat that creates that buffer to the fresh water source upon which nature relies. Additionally, we have bears, moose, cows and chickens out here - and we choose to be here and pay high taxes for that reason.

From: Betsy Smith <betsysmith429@gmail.com>
To: <hcd@portlandmaine.gov>
CC: Stroudwater Village Association Board of Trustees <stroudwatervillageassociation@gmail.com>
Date: 8/21/2015 4:39 PM
Subject: 1945 Congress Street

Neil,

My family (we're a family of four with two children) built a home in the Stroudwater Village area just last year. We built here because we loved the feel and nature of the community, with its historic homes, and small and close knit neighborhoods.

We jumped through hoops ensuring we followed all the codes and regulations set forth by the city of Portland. At times we questioned why we were building in Portland because there were so many darn restrictions.

The answer, of course, is that the result of those strict codes and regulations is what makes Portland such a wonderful place to live. Clearly, there have been smart and forward looking people involved in making codes and regulations for Portland, and the result is a city that has beauty with function.

I understand the city wants to rewrite some of the codes and regulations to allow mega commercial development at 1945 Congress St. Seriously? Isn't this the area of town where we had to jump through all the code-and-regulation hoops in order to live within the context of this beautiful village? Why in the world would you change the codes to allow mega commercial development in a village where the codes result in a beautiful livable city? And if you do change the codes, shouldn't it be done in the same smart and forward looking context that the people before you did -- to ensure you keep Portland beautiful, functional, and livable?

We should not rezone this beautiful residential village to allow commercial development until we have a suitable master plan and we know what impact the change of codes will have on this area. It's not smart or strategic or forward looking -- all the things that make Portland the great city it is.

Betsy Smith
63 Stroudwater Road

207-939-7769

From: <kshstrat@maine.rr.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 8/25/2015 3:02 PM
Subject: Re: Elks property

Let me be clear: I do NOT believe this will be wise. I opposed. This Rezoning at this location seems to contradict what we have been working toward and been told at every turn by our city planners fit our area: traffic calming, environmental concern, neighborhood, historic preservation etc etc

From Karen S Hinchliffe 207 671-2353

On Aug 25, 2015, at 2:53 PM, Helen Donaldson <HCD@portlandmaine.gov> wrote:

Ms. Hinchliffe,

I will make sure your comment appears in the planning board report for the hearing on this proposal on Tuesday, 9/8/15.

Best,
Neil

Neil Donaldson
City of Portland Planning Division
389 Congress Street
Portland, Maine 04101
874-8723
hcd@portlandmaine.gov
>>> <kshstrat@maine.rr.com> 8/25/2015 4:33 AM >>>
Rezoning? We haven't understood how this will be better for our community.

Stroudwater resident
Karen
1221 westbrook street

2076712353

From Karen S Hinchliffe 207 671-2353

--

Patricia C. Adriance
16 Longfellow Road, Gorham ME 04038-1845
207-839-4445

August 26, 2015

Neil Donaldson, Planner
Planning Division
City Hall, 4th Floor
389 Congress Street
Portland, ME 04101

Re: Public Hearing – 1945 Congress Street
Application #2014-227 or CBL #216-A-6

Dear Mr. Donaldson,

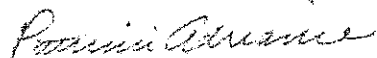
As a member of the Portland Elk's Lodge #188 I want to thank you and members of the Planning Board for your indulgence during this zoning change ordeal that has pitted the local residents and the applicant, Northland Enterprises, and the Elks against each other.

I have attended most of the work shop meetings along with meetings at the Elk's lodge to address many of the concerns raised during the meetings. That being said, I believe that the issues raised have all been met by Northland Enterprises.

It is fair to say we'll never satisfy the Stroudwater Association. No one (even myself) embraces change, but after reviewing all aspects of what has been submitted to the Planning Board, I believe it is economically the best that can be achieved and to keep the Elk's Club in Portland; a club which has been part of the Portland landscape for over 100 years. We're a great organization and have not caused the City or our neighbors with any problems and it will stay that way.

We've been trying for three years to make changes at the Lodge and I'd like to think we've earned your vote to change the zoning from R-2 to OP and move us closer to making the Gateway to Portland a pleasant site.

Yours truly,



Patricia Adriance

STATEMENT from the Stroudwater Village Association regarding the proposed rezoning of 1945 Congress Street (Elks Club Property), September 2015. stroudwatervillageassociation@gmail.com

This statement should be considered in addition to our prior letters to the Planning Board from January 2015, May 2015 and July 2015.

The Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.

At the July 2015 workshop regarding this zoning request, those in attendance heard members of the planning board and City staff say that the City does not have time or resources to initiate a visioning process for the neighborhood at this time. As taxpayers, we understand the problems of limited resources and are disappointed that such a process needs to be delayed. We are willing to wait, however, so that we can focus our collaborative work with the City in implementing the Outer Congress Street Phase II improvements scheduled for this year.

However, just as we are being told to wait, the same planning board and City staff are able and willing to muster the time and interest to make one-off zoning changes like the proposed one. Instead of thinking about the big picture and placing a project in its context, the planning board is green-lighting a project that will redraw the big picture. Whether or not this redrawing is the intended consequence of the individual action is irrelevant. The fact remains that this proposed zoning conversion will pave the way for other zoning conversion proposals in the Stroudwater area. At this point there are essentially no rules of engagement or generally understood expectations in place to deal with the proposals that will follow.

In the prior workshop, the planning board seemed to accept the fact that zoning decisions do not imply legal precedent. That offers small consolation since this is not a legal matter. We are not discussing lawbreaking here – we are discussing what we want an area of the city we love to look like in 2, 5, 10, 20 years – coincidentally at the same time that the City is revising the Comprehensive Plan and we are working with our neighbors at the Jetport on their Sustainability Master Plan. These conversations should be coupled, not siloed -- if stakeholders are invited to have such a big picture discussion, who knows what we will learn – perhaps there's an interest in more retail, or arts and entertainment, or different kinds of residential development such as housing for UNUM and/or Jetport employees.

But if we choose not to have that big picture conversation now, and instead let it be redrawn by itself, the opportunity is lost.

To restate, the Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.

TO: Members of the Planning Board

FROM: David Silk, 1187 Westbrook St

RE: Proposed Rezone of 1945 Congress Street

Property Owner: Portland Lodge #188 BPOE of USA ("Elks Club")

For the following reasons, I urge you to vote not to recommend to the City Council the Elks Club's rezone request. The rezone proposal is not consistent with the existing pattern of development and the comprehensive plan, the OP zone being proposed, and represents unsound planning.

The Elks Club property at 1945 Congress Street is presently zoned R-2. It consists of a 6.9993 acre parcel. The portion of the lot to be rezoned OP is about 4.7 acres. As the Planning Staff's July 28, 2015 memo explains, the property has been zoned residential since 1945. When the Elks Club acquired the property in the late 1960s, the parcel was zoned R-2. At that time the property was rezoned from R-2 to R-6 so as to allow the club to develop the property as a social/fraternal hall under what was then known as an "exception" to the uses permitted in the R-6. Exceptions in the late 1960s are now known as conditional uses. Conditional uses are permitted on the basis in general, the conditional use is compatible with the underlying permitted uses. Places of assembly, like schools, are conditional uses in all of the present residential zones. Without objection from the Elks Club, the property in the late 1980s was rezoned from R-6 back to R-2. Today the club is known as a place of assembly and permitted as a conditional use in the R-2.

The Elks Club wants to rezone because its property is worth a lot more when zoned as a commercial property. Zoned R-2, the land is assessed at \$512,000. With the zone change, Northland will pay a reported \$1.25M for just the land. The Elks Club annually receives a substantial tax break (about 30%) due to its status as a not for profit social fraternal organization. The Elks Club recognizes that the short strip of land along Congress Street, between Westbrook Street and where outer Congress Street merges with Johnson Road, has lots of traffic. The very high volume of traffic means great visibility to any commercial use located on the strip. Any open space along Congress Street, if rezoned, will significantly increase in value. Someone like Northland will pay a lot of money to develop commercial land.

The Elks Club is not alone as a conditional use in the R-2 zone with open space along a busy road. As the map on page 6 of the July 28, 2015 Planning Staff memo shows (copy attached), in the immediate vicinity of the Elks Club and in the R-2 zone, there are three other properties of between 4 and 6 acres with conditional uses located thereon, Faith Temple, Christchurch of Portland and St. Albans Corporation (Masonic Learning Center). Like the Elks Club, they too could seek to divide their existing parcels and rezone to a commercial zone the front portion of

the lot with frontage along Congress Street. The lots zoned commercial may be a bit smaller than the 4.7 acre lot the Elks Club seeks to create, but the difference would not preclude location of a commercial development. Note the Elks Club seeks to erect two multi-story buildings with a total square footage of 40,000 square feet on the to be created 4.7 acre parcel. The other conditional uses could easily seek just to place one building along Congress Street and forgo a second building.

The same occurrence is ripe to happen at other places of assembly conditional uses located in residential zones such as ones situated along Allen Ave, Westbrook Street, Outer Washington Ave and Ocean Ave, just to identify a few locations off peninsula. With high traffic counts and frontage available to be developed, numerous places of assembly could seek to divide their present lot to allow for commercial development on a to be created front lot abutting the street in what otherwise is a residential zone while maintaining the conditional use place of assembly in the rear. No one can begrudge the Elks Club or others from attempting to do so. Self-interest often involves attempting to maximize what one can. Brokers earn more based on higher sale prices and look for ways to make deals happen. But allowing conditional uses in residential zones with ample frontage along an outer arterial to divide and develop the front portion for commercial uses is unsound zoning.

Note there is no shortage of land zoned for commercial development in the City. So the need to rezone to allow for commercial development is not about filling a need. To allow any property owner to divide just a portion of its property and rezone the new parcel simply to make more money is not a legitimate reason to rezone. Otherwise this Board will be flooded with rezone requests.

Zoning is also not about guaranteeing to a property owner the highest price that can be had if some or all of a parcel were to be rezoned.

Rezoning should be about respecting the process and at looking at the neighborhood in which the property is situated and examining whether the rezone will have adverse impacts on surrounding properties, whether it is compatible with existing uses, whether it is consistent with existing patterns of development and consistent with overall goals of the City. Viewed from a process perspective, the Elks Club's proposal is unsound and should not be recommended for approval to the City Council.

A. Piece-meal rezoning is unwise and unsound.

As an initial matter, any rezoning in this area should not be done piece-meal. The Elks Club's property is located in very close proximity to the Stroudwater Historic District ("SHD"). The SHD was added to the National Register of Historic Places in 1973.¹ Attached hereto is a map

¹ *"The significance of Stroudwater Historic District is not limited to the merits of individual buildings. The whole formed by these single elements stands today as a fine example of a*

showing the breath and extent of the SHD. It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district, especially when the rezone is to change an existing residential zone and convert it to commercial uses, should be done with eye to ensuring the rezone will not negatively impact the historical district.

The Elks Club's property is located in close proximity to the City's main entrance to the Jetport and sits across the street from two large parcels owned by the City also zoned R-2. The area is a gateway to the Jetport and an entrance to the UNUM campus. As part of the 1994 Jetport Master plan, the City owned land was identified as land to be held and maintained as open space/buffer in the R-2 zone. See July 23, 2015 Planning Staff report at page 3. While the report does not say as a buffer to what, it is clear the buffer is to protect the existing residential uses and the SHD located nearby from non-residential uses that would adversely impact the existing residential uses and the SHD. If the City owned land located directly across the street from the Elks Club is zoned as R-2 in order to be a buffer for this purpose, it makes absolutely no sense to remove the R-2 designation for the Elks Club's property located just across the street. The distance and proximity of both the City property and the Elks Club's property to existing residential homes and the SHD are no different. Keeping the R-2 designation for the Elks Club's property is therefore consistent with a zoning goal of the City, as stated in the Jetport Master Plan, to keep the R-2 zone as is to serve as a buffer to existing residences and the SHD.

If you look at the map presented on page 6 of the July 23, 2015 Planning Staff report (copy attached), and if you have visited the area, you will observe that the four conditional uses located in the R-2 zone in the area just along Congress Street just outside of the SHD were all developed in a similar manner. This was not achieved by accident. The main building and parking on each lot are located well off of Congress Street. The structures housing the Elks Club, Faith Temple, Christchurch of Portland and the Masonic Learning Center were located in such a way that significant open and green space remained between Congress Street and the area developed. The open space was at least as deep as the lots used for residential uses. The conditional uses and parking associated therewith were all well set back from the street. Why? All of the conditional uses were located so as to not negatively impact the existing abutting residential uses and the character of the area at the doorstep to the SHD. That is the clear pattern of development in the area. It is unsound planning to allow for a rezone that is totally disregards the planning that has occurred in the area as evidenced by the actual development that has occurred and the Jetport Master Plan discussed above. Yet that is what the Elks Club's proposal asks you to do.

nineteenth-century village. The pattern of the village's growth is visible in the sequence of its architecture. Although the commercial enterprises carried on in the village are no longer in existence, their sites are clearly evident. The current residents of Stroudwater take pride in their historic village. Their homes are well maintained; many are restored to their original exterior appearance. The sense of history that envelops Stroudwater is heightened because the buildings have been continuously lived in and cared for." Beard, p 302

The Elks Club proposed rezone which would allow for a multi-story office building located right along Congress Street. Such a result is entirely inconsistent with the development that has occurred along this segment of Congress Street over the last 50 years. It is an unwarranted, disrespectful and unsound and driven by money and not by sound zoning.

These observations have led many to request that before any piece-meal zoning occurs, that the City undertake a planning process to best identify how the area should be zoned. The area is a very important gateway to Portland, not only from the west but for travelers who arrive by air. It is bordered to the east by two large cemeteries, to the west by the SHD and to the North by the UNUM campus that has all of its offices setback at significant distances from Congress Street. There are numerous residential structures in use in the area including ones abutting the Elks Club's property. The planning to date in this area intentionally maintained open space characteristics along Congress Street by preventing structures housing conditional uses from being sited right along Congress Street. The 1995 Jetport Master plan reaffirmed the important role the open space has in creating a buffer for the existing residential uses and the SHP. The OP designation for the UNUM property on Blueberry Hill ensured that the view from outer Congress Street was of a campus set back from the road. There are several cemeteries in the immediate area that provide for and are consistent with the preservation of the R-2 zone. Before this longstanding pattern is changed, there should be a master planning process.

In other areas of the City, the USM neighborhood, India Street and Forest Ave, a thoughtful process has been followed to look at uses, setbacks, lighting, and design standards all to develop a vision to govern the area. This ensures that any non-residential development that occurs is compatible with the existing residential uses. It also ensures that development is not driven solely by the wants of just one property owner seeking to maximize its return regardless of the impact on others. With the Jetport gateway and the SHD at the footstep of the Elks Club's property, and in an area that since at least 1945 has been zoned residential, sound zoning requires process that looks at the whole area, and includes all of the stakeholders.

Those who speak against a master planning process need to offer reasons why it should not be undertaken. The District Councilor for Stroudwater, who is fully supportive of the Elks Club rezone proposal, naturally states no money can be had to pay for a master planning process. So therefore he says consideration of the rezone proposal should not be held up pending a planning process. In other words, it is not a priority and therefore let the market drive the zoning and forget about vision. That approach will only result in unsound zoning. If there is a will, there is a way. If the City can find money to pay to pave the floor of the duck pond in Deering Oaks, it can find the money to fund the development of a "well-thought-out plan" for this important area of the City. With the revenue the Jetport brings in, some of that can be earmarked to study this critical area.

Interesting the same Councilor had this to say recently about the importance of collaboration and vision in processing zoning changes.

*"A good leader must have a well-thought-out plan and take risks to bring people together to realize that vision. Without direction, our priorities are not defined and our path is not clear. A good leader must listen. When residents feel like they have not been heard, and have been ignored, we end up as a city governed by referendum, as was the case with Congress Square and now the Portland Co. development. A good leader must bring people together. Without collaboration, people become frustrated and divided. They concern themselves more with getting their way than they do with making their way toward long-term solutions that work for everybody."*²

Vision and direction are not created by meeting the want of one property owner to make as much money as it can through a rezone, regardless of how benevolent the property owner may be. Vision and direction are created through a collaborative inclusive process that looks at what is best for the whole.

B. Rezoning is not intended to increase the return to property owner.

To the extent any part of your decision is premised on the Elks Club's assertion that its property cannot be put to other uses, there has been no showing that is the case. It has not to my knowledge been put on the market for non-commercial uses. Recent examples show that places of assembly permitted as conditional uses in residential zones can be sold and used for other than commercial purposes. Earlier this year, the former Saint Patrick's Roman Catholic Church located next to Westgate on Congress Street was sold to the non-profit Jewish Community Alliance. The Church had been on the market for several years and eventually a buyer was found. Selling that Church can be no more difficult than selling the Elks Club. The former Saint Patrick's property was zoned R-5. The Church and its broker did not come to the City to seek a zone change to allow for commercial uses in order to maximize its return even though property abutted a business district (Westgate zoned B-2). Instead, working with its broker, it found a buyer who did not need a zone change to make a productive use of the property. The Elks Club has made no showing that it could not find a similar type of buyer for its property. The fact that the Elks Club would make less money is not a valid reason to rezone.

The Elks Club, a non-profit organization partially exempt from paying property taxes, is on record in the proceedings before this Board that it would "never" list the property for sale for residential use and "never" sell its property for any residential use. Having its land valued as residential for the last 50 years and taken advantage of that valuation to pay a lot less in taxes than had the land been valued commercial, it is an interesting pronouncement to make. In any event, it is unsound zoning to rezone a property simply because the owner refuses even to consider selling for the permitted or conditional uses for the zone.

For sure, the Elks Club will point to the Northland submittal dated July 8, 2015 purporting to show that selected residential uses of the property cannot be had. That is beside the point. I am sure Saint Patrick's Roman Catholic Church could have submitted a similar analysis but that did

² Press Herald, August 25, 2015.

not preclude the Church from finding a buyer for the property that could use the property without a zone change.

To the extent any reliance is to be placed on the self-serving Northland analysis, that analysis should be submitted to peer review. It should be part of this Board's due diligence to do so. This Board as a matter of course submits for peer review traffic studies, engineering plans, storm-water plans and the like for properties to be developed under site plan review consistent with permitted uses in the zone. If a property owner is going to present an analysis to show that even if the property was given away, no residential development would be economically feasible, such an analysis needs to be submitted to peer review. There is more at stake with a rezone than with development consistent with permitted uses. The Board needs to do its homework.

Given recent residential developments, planned and proposed in the City, I find it difficult to find Northland's claim credible. But the Board should not take my word, it should submit the question of whether the property could be economically developed for residential uses to peer review along with the rest of Northland's analysis. As an example, I am sure Avesta or Community Housing of Maine could review Northland's LIHTC analysis and offer meaningful insights. Other residential uses can be similar submitted to an experienced entity for peer review.

Do not be confused by Northland's initial use of \$2.5M as the value of the property in its analysis. The assessed value of the land is \$512,000. Also I do not believe it is sound to base a zoning decision on the claim that the property cannot be used for uses permitted in residential zone when the property has been used since 1945 in a manner consistent with the residential zone it is in.

C. The Elks Club has not shown that the property to be rezoned OP can even be developed consistent with the OP standards.

Common sense should suggest to you that the Elks Club's proposed rezone map is unsound. See attached for copy of map. It is driven by the fact that in the OP zone, places of assembly are not permitted uses. The Elks Club's building still to be used as a place of assembly will remain in the R-2 zone as a conditional use with 10 foot setbacks. The remaining portion of the lot is to be carved off and rezoned to OP. So the net result is to allow for a non-permitted use in the OP zone to be located just 10 feet away from the new OP zone line. That is unsound zoning and an abuse of the process.

It is worth reiterating again the purposes of the OP zone as it raises the question whether any use of that portion of the Elks Club's property to be rezoned OP can even be developed in any manner consistent with the purposes of the OP zone. If not, the property should not be rezoned.

The purpose of the OP zone is to "provide *substantial areas* for integrated development of professional offices in a park-or campus-like setting which are of the highest quality, are well

maintained and *are compatible with their natural surroundings.*" The Elks Club's entire parcel is about 7 acres (6.993 per the Assessor's records). It is not clear what is the exact size of that portion of the lot proposed to be rezoned OP, but it appears from the map provided to be about two-thirds of the whole lot, or say 4.7 acres.

One is hard pressed to say that the to be created 4.7 acre lot is a "substantial area" as that term is used in the OP zone. By comparison UNUM's property designated OP is at least 15 times larger than what the Elks Club's proposed OP zone. The applicant's map does not show any integrated development. The applicant's visual does not even attempt to show any park or campus like setting compatible with the natural surroundings. With the area to be occupied by the two new buildings with added pavement for parking it is impossible to see any potential for any park or campus like setting as viewed from the Congress Street corridor. Compare the applicant's proposed view with the view of the UNUM campus from Congress Street.

On the visuals there are no internal sidewalks that take advantage of the "topography and natural features of the site." There is a mass of parking being proposed right next to what will still be a R-2 zone with little preserved of the natural features. I see no room for any buffer and screening of the type called for by the OP standards between the remaining R-2 zone and the proposed OP zone: "dense and continuous nature and shall incorporate trees, shrubs, fencing, berms and related elements." Instead there is pavement. I do not see any preservation of natural features which includes existing vegetation. It appears it will be mostly paved over.

The OP standards call for a "Master Plan" of the office park that shall include a design relationship to the site to show integration of open space and the natural features. It would be prudent before the Board makes any recommendation on the rezone to require the applicant to actually submit a Master Plan evidencing *it is even possible to develop the 4.7 acre to be created parcel in a manner consistent with the OP standards.* The integration required in the Master Plan "shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches." There should be a showing of possible building envelopes and integration making a threshold showing the OP standards can be met. None of the concept plans the applicant presented to you make this threshold showing. That fact should be a red flag to the Board. If it is not practicable to meet the OP standards the property should not be rezoned.

D. The proposed rezone is not consistent with the Comprehensive Plan.

Turning to the Comprehensive Plan, that plan has as a goal no net loss of housing for all development. City reports issued over the last 12 months repeat the same message; there is a huge need for all kinds of housing in the City. For example, the Director of Planning and Urban Development for the City reported at a City Housing and Community Development meeting earlier this year that based on current trends, there is a gap of 24% to 33% in the supply and demand of workforce housing. He noted that there is unmet demand for 3 bedroom housing that

can accommodate working families. Other City officials have noted there is substantial unmet need for senior housing to accommodate for downsizing by existing Portland seniors. Having served for the last 20 years on the board of non-profit developer of senior housing projects in Maine and New Hampshire, I can vouch for that need. The site certainly is capable of sustaining a viable senior housing development. There is an unmet need for all kinds of housing. Peer review will show the property can be developed for residential use.

The goal of not losing any and creating more housing is incorporated into the Land Use Code and is likely the highest goal of the Comprehensive Plan. While there is no existing housing on the Elks Club's property, changing the zone from R-2 to OP removes the land from being used for residential housing. Residential uses are prohibited in the OP zone. Rezoning land to eliminate residential uses like removing dwelling units with no replacement of those units is clearly not consistent with the Comprehensive Plan's goal of creating more housing in the City.

More importantly, the Board must ask what will be the impact of the rezone on the abutting and nearby residential uses and will the rezone lead to the deterioration of those areas and eventual loss of residential uses? If the answer is yes, as I think it is, the rezone should not be approved as it will result in the loss of residential dwellings. These residences have already been burdened with the traffic on Congress Street. Soon commercial developers will be looking to buy the existing residences conditioned on a zone change and they will point to the new 40,000 square feet of office space nearby as the basis for the change in the character of the area. The goal is to protect the integrity of neighborhoods and not allow them to be eroded away. That is why the Jetport Master Plan recognizes the R-2 zone along Congress Street as an important buffer.

E. The Elks Club's proposed rezone should not be recommended to the City Council.

In sum, it appears to me the only reason for the proposed zone change is to maximize the financial return to the Elks Club. The Elks Club's proposal does not seek just to rezone that rear portion of its property contiguous with the existing OP zone which would ensure that any commercial building would be located well off of Congress Street and the green space along Congress Street would be preserved. That more limited zone change would provide less money to the Elks Club but at the same time preserve the pattern of development that has occurred on Congress Street in this area, a pattern intended to act as a buffer to the R-2 zone and the SHD. See attached drawing. Of course proposing a more modest zone change consistent with the character of the neighborhood would not yield as high a return to the Elks Club. Hence that is why a more modest proposal is not before you.

Taking the proposal as the Elks Club has presented, with two buildings and not just one, extending the OP zone so it fronts Congress Street so the applicant can place a large commercial building right along Congress Street, and not just limiting the OP rezone to the rear of the lot, contiguous with the present OP zone to ensure the green space along Congress Street remains, the proposal is unsound. If the Elks Club is bound and determined at all costs to develop that

portion of its property between its existing building and Congress Street, the Board should not recommend the proposed zone change until a master planning process occurs that looks at the section of Congress Street from the edge of the SHD to Johnson Road and includes review of the all of the R-2 designation along this section of Congress Street with all of the stakeholders at the table.

“Without direction, our priorities are not defined and our path is not clear.” In an area where the existing pattern of development is clear, to change that pattern only to maximize the return to for one property owner is unsound zoning. It is not a path this Board should follow and it is not a path this Board should recommend that the City Council follow. If there is to be change in this area, change from the R-2 acting as buffer, it should be the result of a *“well-thought-out plan.”* The Elks Club’s proposal is not a well-thought-out plan.

Thank you for your consideration.

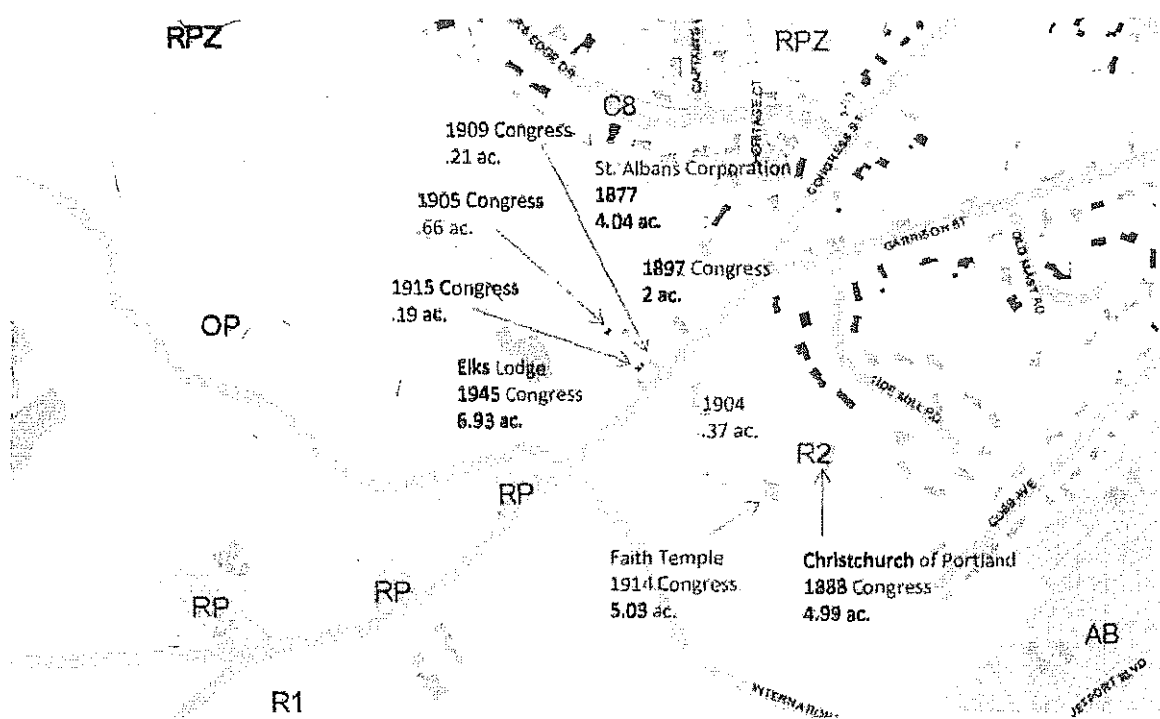
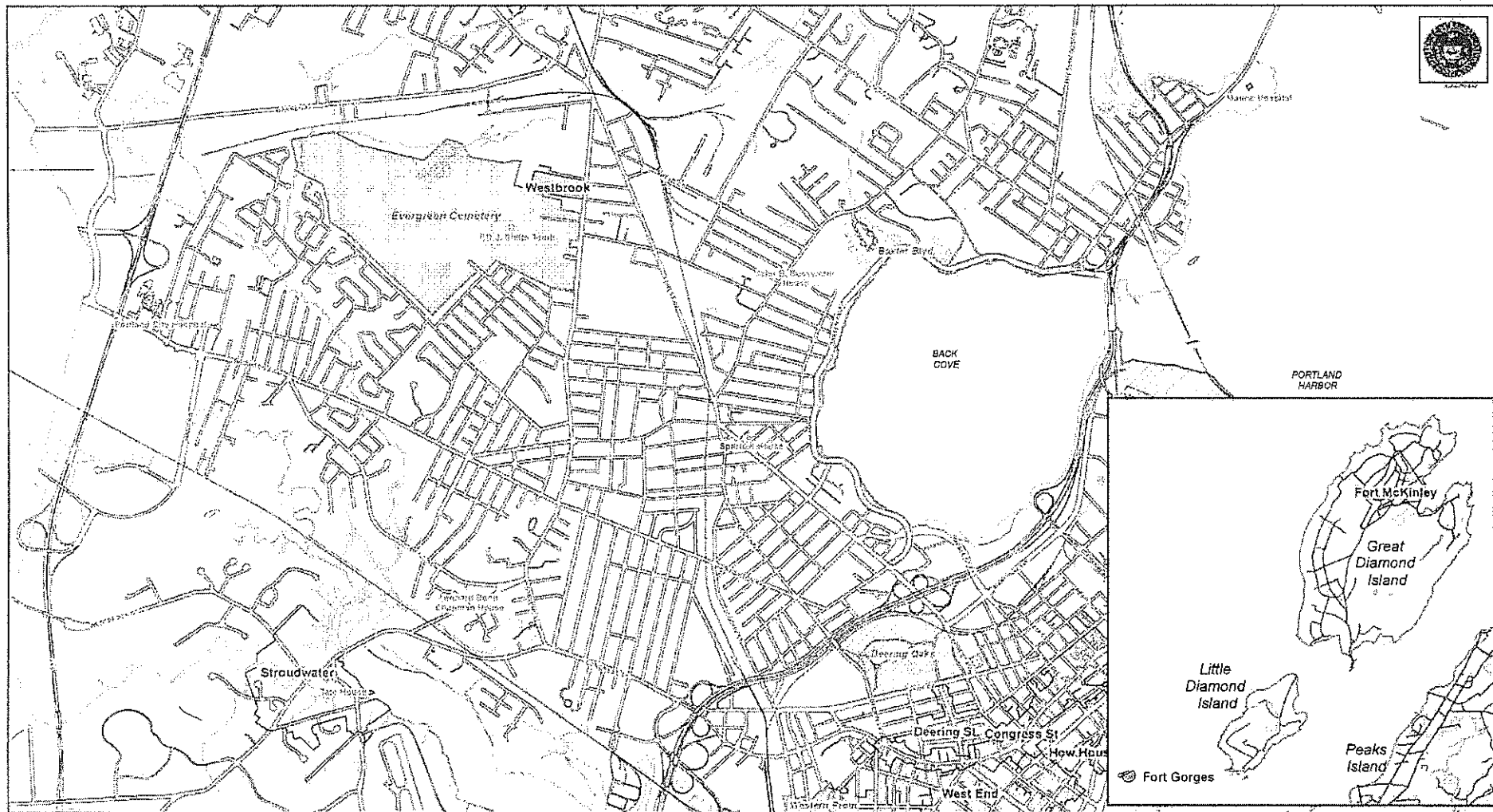


Figure 4: Parcel sizes and context in vicinity of 1945 Congress Street

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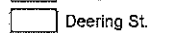


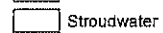
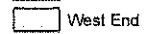
Historic Districts with Historic Landscapes, Cemeteries & Individual Landmarks

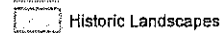
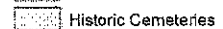
Off Peninsula & Islands
Effective April 15, 2009

City of Portland, Maine Department of Planning & Development and the Department of Public Services

Historic Districts

-  Congress St
-  Deering St.
-  Fort McKinley
-  How Houses

-  Old Port
-  Stroudwater
-  West End
-  Westbrook

-  Historic Landmarks
-  Historic Landscapes
-  Historic Cemeteries

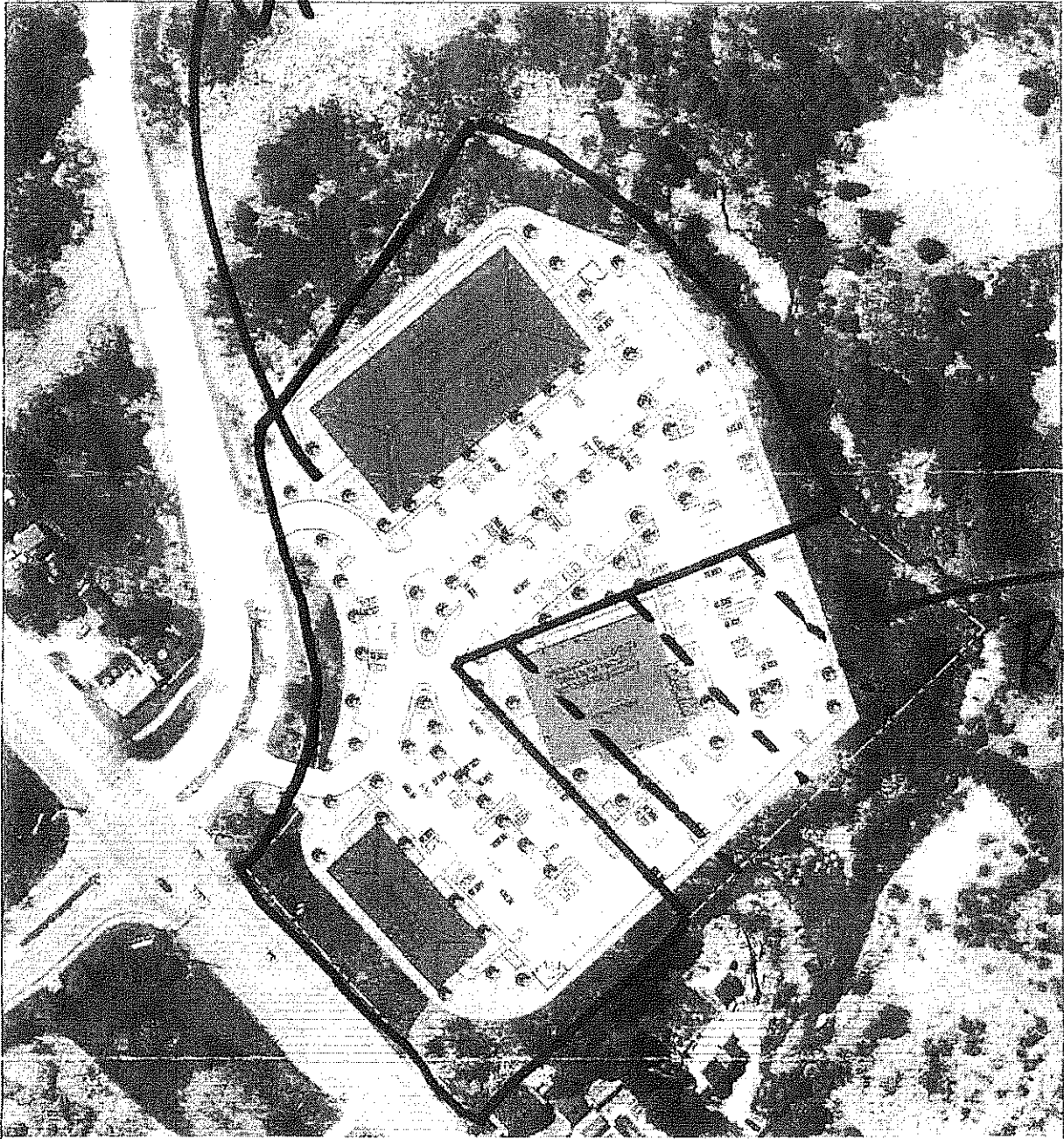


0 500 1,000 2,000 Feet

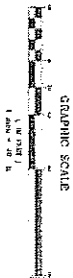
Ellis Club proposed resort.

DP

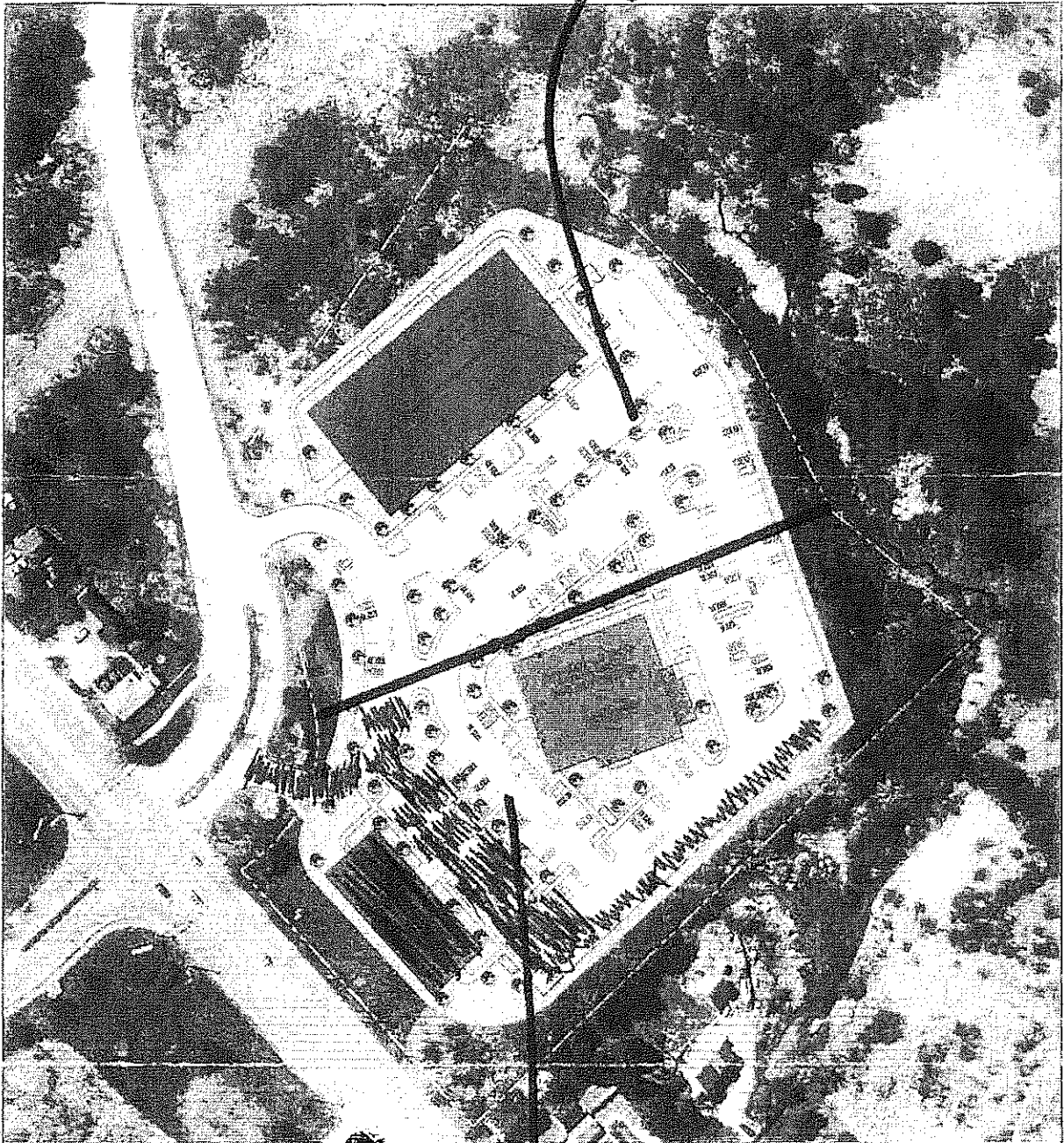
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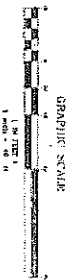
NOT FOR CONSTRUCTION



03	1945 CONGRESS STREET ELKS LODGE PORTLAND, MAINE	NORTHLAND ENTERPRISES LLC 17 SOUTH STREET PORTLAND, MAINE 04101			PINKHAM & GREER CIVIL ENGINEERS
SITE PLAN					



NOT FOR CONSTRUCTION



B-2

03	1945 CONGRESS STREET ELKS LODGE, PORTLAND, MAINE	NORTHLAND ENTERPRISES, LLC 17 SOUTH STREET PORTLAND, MAINE 04101			PINKHAM & GREER CIVIL ENGINEERS
SITE PLAN		DATE: 11/15/2011 DRAWN BY: JEC CHECKED BY: JEC			

Ms Helen Donaldson

September 3, 2015

City of Portland

Planning Board

Hi Nell,

Please share this letter with the Planning Board in advance of the 9.8.15 Public Hearing re the Elks Club Zoning Change Request.

I ask that the Planning Board recommend that the Elks Club zoning change request be denied.

The request is inappropriate: the Plan that the Elks have submitted doesn't fit the very zoning standard that they are asking for.

According to zoning rules, the Office Park Zone (OP), such as is found on the neighboring Unum property, requires a "park- or campus-like setting", with lots of open space, trees, walking paths, and so on. The Elks proposal is much different. The plan that they have submitted is too full of buildings and parking lots to begin to address the park-like requirements of the standard. As such, it is clearly an attempt to "shoehorn" buildings and parking into a much denser arrangement than the OP zone calls for. Buildings and a dominating parking lot do not make a campus-like setting. If the Planning Board is going to follow its own rules, the plan should be rejected, until and unless dramatically re-configured, probably with one-half as much new construction, to allow for "substantial areas for integrated development of professional offices in a park-or campus-like setting which are of the highest quality, are well-maintained, and are compatible with their natural surroundings."

In the meantime, the plan should be rejected. **As the applicant has presented a grossly inappropriate plan, it would be further inappropriate to approve the plan and rely on site planning to correct the gross inconsistencies with the spirit and intent of the OP zone.**

Approval of such a flawed plan would put the cart dramatically before the horse, sending a troubling and wrong message to the applicant and other would-be applicants.

Furthermore, as has also been revealed, the OP zone does not allow for uses such as the Elks Club within its boundaries. **The applicant hopes to literally circumvent the standard by drawing a line around the club, and changing the zoning just outside this line.** Approval of this scheme would make a mockery of the zoning process. Further, similar organizations could expect to step up for the same treatment, changing zoning where convenient, and circumventing the planning process.

From the beginning, the Elks and their business associates have maintained that residential development would not be feasible at this location. But we have hired consultants who have

drawn an alternative development, with a 32-unit townhouse configuration, that we have previously shared with the Planning Board, and is clearly feasible.

Additionally, we now have figures from another consultant that put complete site development at \$24,775 per unit (\$792,800/32). See attached breakdown of costs. Site development costs of \$792,800, added to a sale price of \$512,000 (the assessed value of the land), yield per-unit costs of the site at \$40,775. If the sale price were \$1,000,000, the per-unit cost jumps (only) to \$56,025.

I am confident that townhouse lots that are builder-ready at \$40,775 to \$56,025 each, in one of the most desirable neighborhoods in Portland, would be easy to sell. Building costs of \$125 per square foot, including a contingency of 10%, would suggest sale prices of \$237,352 to \$254,127 for brand-new, 1,400 square-foot townhouses, and \$264,852 to \$281,627 for the 1,600 square-foot versions.

At the higher end, these prices translate to \$ 8,572,064 in taxable real estate for the city. **We welcome peer-reviewed studies from the City to verify these estimates.** So far, the only figures have come from the developers and their friends.

In sum, the premise that residential development is not feasible is flawed. And the plan simply doesn't fit the standards of the zone designation that the applicant is asking for. Therefore I ask that the Planning Board recommend, in accordance with its own standards, that this project be rejected.

Many Thanks,

Bill Linnell

1905 Congress

409-0100

CaptLinnell@yahoo.com

THE ELK'S LODGE		QUANTITY		UNIT COST		SUBTOTAL	
1945 Congress Street							
Building Demolition		23,100 SF		\$ 3.50 / SF		\$ 80,850.00	
Site Demolition		4,500 SY		\$ 3.50 / SY		\$ 15,750.00	
Roadway		1,000 LF		\$ 118 / LF		\$ 118,000.00	
Sidewalk		1,000 LF		\$ 12 / LF		\$ 12,000.00	
Earthwork		LS		\$ 15,000.00		\$ 15,000.00	
Sanitary Sewer Main		820 LF		\$ 110 / LF		\$ 90,200.00	
House Sewer Piping		800 LF		\$ 32 LF		\$ 25,600.00	
Water Main		1,200 LF		\$ 147 / LF		\$ 176,400.00	
Storm Drainage		LS		\$ 160,000.00		\$ 160,000.00	
Utilities		LS		\$ 36,000.00		\$ 36,000.00	
Landscaping		LS		\$ 55,000.00		\$ 55,000.00	
Erosion Control		LS		\$ 8,000.00		\$ 8,000.00	
					Total	\$ 792,800.00	

From: Elizabeth HOGLUND <eahoglund1@gmail.com>
To: <hcd@portlandmaine.gov>
CC: Elizabeth HOGLUND <ehoglund@maine.rr.com>
Date: 9/4/2015 11:44 AM
Subject: 1945 Congress Street

Dear Planning Board:

I have heard that some of this Board favor the rezoning of the parcel located at 1945 Congress Street, for among other reasons, that it would enhance or compliment development of the Jetport access road. Unfortunately, you are most likely unaware of the reasons that access road is, is to remain undeveloped.

The opinion and foresight of your predecessors and the City Council, saw the green entry road/exit road to be a fabulous statement of the nature of Portland and its wonderful uniqueness. They knew that a stream of ugly buildings touting merchandise etc that can be purchased anywhere, was not a benefit. They also agreed that the loss of farm land that was being taken to build this road was a significant loss to the neighborhood, the visual impact on visitors, and residents alike. To compensate for this loss and to preserve the value of a clean, green entry, the City Council promised the Stroudwater residents, and collaterally the citizens of Portland, that the road would never be developed.

A few years later, a proposal was made to allow some development such as car rentals, thankfully the promise of no development was "remembered" and that effort stopped. The current Council and Planning Board need to be reminded of their predecessors' vision of the value of the green space and, more importantly, the value of remaining true to commitments.

Thus in addition to such development being a poor idea, it is most contrary to the promises/representations made and at the heart of democratic principles and trust in city officials.

I urge you disapprise yourselves of any concept, let alone plan to develop the access road.

I further state that this is a baseless reason to support the zoning change for 1945 Congress Street.

As stated in a communication to you earlier, The property is ripe for residential development and absolutely does not need a complex set of office buildings to be viable- especially as proposed.

I urge you to heed the comments from those of us who live here, many for decades, and not fall prey to the whims of a lucrative sale to an existing landowner.

Thank You, Elizabeth Hoglund.(

a 25 year member of the Stroudwater Village Assoc Board of Trustees and ten year president of the Association with hundreds of hours spent working with the city on acceptable improvements. in

Stroudwater and elsewhere and a person with a good memory

From: Patricia Bernard <mainemama@hotmail.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 9/4/2015 8:52 PM
Subject: Elks club property

I'm concerned about the rezoning of the property. This city seems to be willy nilly about zoning commercial property in residential areas. There is an ordinance that says that commercial property cannot infringe on residential areas. The middle class is having enough trouble affording to live in this city without having commercial interests encroach on the livability of residential areas. The property was unsuitable for a college, what makes it suitable for an office park? I thought the comprehensive plan for the city locked in residential areas and the planning board should not invade them on the whim of some developers request to do so. Also those of us that live off Congress St have trouble accessing the street now, especially if we need to turn left, I feel that Congress St has reached it's saturation point in traffic. I remember from other meetings that there's a "failed" category for streets and I would like to know just how close Congress St. is from that designation. I'm also concerned looking at the picture, that the parking lot is awfully close to the embankment and the runoff and snow banks appear to threaten the river.

Ms. Donaldson could you please pass my concerns on to the board.

Thank you,

Patricia Bernard
13 Lassell St.

From: Barbara Turitz <barbara@turitz.com>
To: <HCD@portlandmaine.gov>
Date: 9/7/2015 2:40 PM
Subject: Elks Club rezoning

Dear Ms Donaldson

I am emailing you to ask that the Planning Board recommend that the Elks Club zoning change request be denied.

While we have little knowledge of zoning regulations, we do know that this particular request is an example of spot zoning. If allowed, what would stop the churches in the neighborhood from selling land to raise money by circumventing the rules in the same manner.

The Stroudwater neighborhood has worked diligently over the years with the city to retain the Village atmosphere. This request for rezoning would certainly erode that atmosphere.

Thank you very much for bringing this email to the planning board's attention

Sincerely
David and Barbara Turitz
33 Partridge Circle
Portland

From: Edward Resnisky <edwardresnisky@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 9/7/2015 8:52 PM
Subject: Elks Club Zone Change Proposal

To the Planning Board:

I live at 50 Rivers Edge Drive in Stroudwater. I am also somewhat acquainted with zoning issues as I own income property on the peninsula. One of the biggest questions that I look forward to hearing answered at the public hearing is how this proposal fits the standards for the Office Park Zone (?).

Also, it seems that a residential build-out of the property would generate far more tax revenue (double or triple) for the city than is currently received from the Elks Club.

Thank you.

Ed Resnisky 50 Rivers Edge Drive

From: Valerie Libby <valerieslibby@gmail.com>
To: <HCD@portlandmaine.gov>
Date: 9/8/2015 7:50 AM
Subject: The Elks Club/Rezoning

Ms. Donaldson,

I am writing because we won't be able to make the City Council meeting tonight about the Elks Club's proposed rezoning. We have lived in the Stroudwater section of Portland for more than 27 years. We are strongly opposed to the rezoning of the Elks Club. We concur with David Silk, who has articulated our concerns very well. We support his memo, which he will be presenting to the Planning Board this evening.

We have tried to call Ed Suslovic to voice our concerns and to urge him to vote against the rezoning but his voice mailbox is full.....likely from people attempting to reach him about this issue and his misguided position about tipped wage earners. The City Council members really need to find a way to make it easier for their constituents to reach them! We have tried to reach him and others on other issues and they do not keep their voice mailboxes accessible. Nor so they respond to e-mails sent to them.

On behalf of my husband, W. John Wipfler, as well as myself,

Valerie Libby-Wipfler
71 Tide Mill Road, Portland
207-879-1917

From: Joseph McDonnell <jmcdonnell20@gmail.com>
To: "HCD@portlandmaine.gov" <HCD@portlandmaine.gov>
Date: 9/8/2015 10:29 AM
Subject: Elk Club Proposal

Dear Ms. Donaldson,

My wife and I are residents of Stroudwater and are unable to attend the hearing on the Elk Club proposal. We urge that the planning board deny this request, keep Stroudwater residential, and encourage commercial activity to be located downtown. In good economic times, there is a tendency to encourage commercial activity to wonder beyond the downtown area but with such a policy planning boards run the risk of having an empty downtown during recessions. Thank you for this consideration.

Joseph and Carla McDonnell
1413 Westbrook Street
Portland, Maine 04102

Sent from my iPad

From: "Bill Lairsey" <wlairstey@maine.rr.com>
To: <hcd@portlandmaine.gov>
CC: <Mlairstey@aol.com>, <captlinnell@yahoo.com>, <edsuslovic@portlandmaine.gov>
Date: 9/8/2015 11:35 AM
Subject: Re-Zoning of Elks Property

Nell Donaldson,

After review my wife and I are against this proposal and favor the solution offered by Bill Linnell to keep this area residential. The Elks Re-Zoning would set the stage in the long run for a McDonalds at the Airport entrance. NO THANKS. Bill Lairsey

Bill Lairsey

40 Spar Ln.

Portland, ME 04102

Tel: 207.828.3918

Cell: 207.650.1761

From: "Buxton, Anthony W." <ABuxton@preti.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 9/8/2015 5:07 PM
Subject: Tonight's Planning Board Consideration of the Proposal for 1945 Congress Street

Dear Mr Donaldson:

I have met with the developers of the proposed project and with opponents. I write to offer a comment that would seem to be critical to the decision to be made this evening.

For more than a decade, a critical focus of land use planning in Portland has been improvement of the " Gateways" to Portland, those entry points which make the critical first impressions on visitors and subsequent reinforcing impressions on residents. By coincidence, the Elks Club site and the Jetport entrance across Congress Street are Portland's Western Gateway.

By good planning (to date), this Western Gateway has become a " brand "for both Portland and Maine, light woods and fields populated by gifts of wildlife sculpture that emphasize our state's beauty and respect for the environment. The Gateway, seen by hundreds of thousands of travelers each year, tells people weary of the mundane ugliness of most airports that Maine is a different, better place.

Further development of the Elks Club site must occur, if at all, only after careful consideration of the effect on the Western Gateway of Portland. Land use decisions which are by nature piecemeal will inevitably destroy the opportunity to make a sound, wholistic decision.

This is why zoning is comprehensive in nature and in law. The decision before you tonight is far more than a decision about one piece of land. It is a decision about whether, as a community with choices, we will make those decisions comprehensively with our eyes on a better future or myopically with our eyes only on the details of the political moment.

This is why spot zoning is unlawful, and why zoning requires a longer view. Please step back tonight. And decide to take that longer view. Please deny the requested zoning change unless and until the Panning Board undertakes a comprehensive review of Portland's Western Gateway and it's zoning. Then, and only then, will the sound purposes of our zoning ordinance, and our society, be properly considered.

Thank you for your consideration.

Anthony W. Buxton
 138 Stroudwater Road
 Portland, Maine.

Anthony W. Buxton
 Chair, Energy Group | Co-Chair, Climate Strategy Group
 207.623.5300 Tel
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 Augusta, ME 04332-1058

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Table 1: Comparison of Purpose Statements

Att. A

R-2	R-3	B-1	B-2	O-P	R-P
To provide for low-density residential development characterized by single-family homes on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity.	To provide for medium-density residential development characterized by single-family homes on individual lots and also to provide for planned residential unit developments on substantially sized parcels. Such development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.	To provide limited areas for the location of small-scale commercial establishments intended to serve a local market. As a result, uses shall be complimentary, quiet and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment. Uses shall be designed for the pedestrian scale and will provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3). This zone shall encourage mixed use buildings such as commercial first floor with residential uses above or combined retail/office uses in a multistory structure. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations. Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service	1. To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community. 2. The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood 3. The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding 4. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials.	To provide substantial areas for integrated development of professional offices in a park- or campus-like setting which are of the highest quality, are well designed and maintained and are compatible with their natural surroundings.	To provide appropriate location for the development and operation of low-intensity business uses, including professional offices on or near major arterials, that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods; or To serve as a transition or buffer zone between residential and more intensive nonresidential zones.

Table 3: Comparison of Permitted and Conditional Uses

: Permitted Use		R-2	R-3	B-1/B-1b	B-2/B-2b/B-2c	O-P	R-P
: Conditional Use							
Residential	Alteration or construction of single-family detached dwelling to accommodate accessory dwelling unit	4	4				
	Alteration of existing structure to accommodate 1+ dwelling units						
	Alteration of existing structure to accommodate 3+ dwelling units						
	Any residential use permitted in the abutting (or nearest) residential zone			4, 10			
	Attached single-family and two-family dwellings						
	Single-family detached dwellings						
	Two-family dwellings						
	Multi-family dwellings			4, 10			
	Handicapped family units						
	Sheltered care group home	3	3				
	Special needs independent living units						
	Single-family single- or multiple-component manufactured housing		3				
	Combined living/working spaces			4, 10			
	Lodging houses (or conversion into)			4			
	PRUDs		4				
	Multiplex development						
Institutional	Elementary, middle, and secondary schools	5	5	4			
	Chancellery						
	Clinics			4			
	College, university or trade schools	5					
	Day care facilities or home babysitting services	4	4			10	
	Governmental buildings and uses						
	Hospital		5				
	Intermediate care facilities for 13+ people	5	5				
	Long-term and extended care facilities	5	5				
	Municipal uses			4			
	Nursery schools and kindergartens			4			
	Places of assembly	5	5				
	Schools						
	Veterinary hospitals						
	Automobile dealerships				4		
	Banking services						
	Bed and breakfasts (or conversion into)			4, 10			
	Beverage dealers			4, 10			
	Billiard parlors						
	Business services			4			
	Car washes				4		
	Conversion into bed and breakfast						
	Craft and specialty shops						
	Drinking establishments				4		
	Drive-throughs when accessory to a principal use on the same lot				B-2 only		
	Exhibition halls						
	General offices			4			
	Health clubs and gymnasiums						
	Home occupation						
	Hostels						
	Hotels						
	Laundry and dry cleaning services						
	Lumber and building materials dealers						
	Major and minor gasoline service stations				4		
	Meeting and convention halls						
	Miscellaneous repair services						
	Mortuaries or funeral homes						
	Motel						
	Museums and art galleries						
	Offices of building tradespeople						
	Offices other than professional offices						
	Off-street parking lots and garages		4				
	Personal services						
	Professional offices ¹²						
	Registered medical marijuana dispensaries						

Table 3: Comparison of Permitted and Conditional Uses

	Permitted Use	R-2	R-3	B-1/B-1b	B-2/B-2b/B-2c	O-P	R-P
	Conditional Use						
Business	Restaurants			1, 4, 5	6		
	Retail establishments			1, 4	6		
	Theaters				6		
Industrial	Breweries, including associated bottling activities						
	Building contractors and construction and engineering services						
	Cabinet and carpentry shops						
	Cold storage facilities						
	Commercial kitchens or other food preparation						
	Communication studios or broadcast and receiving facilities				4		
	Correctional pre-release facilities						
	Dairies and bakeries				4		
	Food processing						
	High-technology manufacturing						
	Intermodal transportation facilities						
	Low impact industrial uses						
	Lumber yards						
	Nurseries						
	Printing and publishing establishments				4	6	
	Recycling & solid waste disposal facilities				4	6	
	Research and development and back office uses					6	
	Studios for artists and craftspeople			4, 5	6		
	Temporary wind anemometer towers	4	4	4	4		
	Tow lots						
	Utility substations			6	6		6
	Warehousing and wholesaling				4		
	Wind energy systems	6	6	6	6	6	6
Marine	Boat repair yards						
	Boat storage facilities						
	Harbor and marine supplies and services and ship supply						
	Marine products wholesaling and retailing						
	Marine repair services and machine shops						
	Marine museums and aquariums						
	Seafood processing for human consumption						
	Seafood packing and packaging						
	Seafood distribution						
	Shipbuilding and facilities for construction, maintenance and repair of vessels						
Other	Accessory uses	6	6	6	6	6	6
	Any conditional uses permitted in abutting residential zones						
	Agriculture	6					
	Parking and storage of agricultural equipment used on premises						
	Cemeteries						
	Parks	6	6				
	Raising of domestic animals for noncommercial purposes						
	Neighborhood center			6			

1 See applicable performance standards in code.

2 Excluding those explicitly noted in the code.

3 For up to 12 individuals. See code for additional regulations.

4 Subject to certain conditions. See code.

5 Subject to conditions of 14-474 as well as others under zoning designation.

6 Permitted or conditional depending on size. See code.

7 Permitted uses in the R-7 Compact Urban Residential Overlay Zone, shall be the uses permitted in the R-6 Zone, except that different dimensional requirements shall apply.

8 Permitted in the B-1 and on the ground floor of buildings in the B-1b.

9 In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.

10 Permitted in the B-1 and above the ground floor of buildings in the B-1b.

11 Permitted in an office park with a minimum gross area of at least 3 acres of land, consisting of either an Office Park PUD on one lot or a subdivision.

12 Professional offices are defined in Section 14-47 as "the office of a doctor, dentist, optometrist, psychologist, accountant, lawyer, architect, engineer, or similar professional."

Table 2: Comparison of Dimensional Requirements

	R-2	R-3 ¹⁶	B-1/B-1b ¹⁵	B-2/B-2b/B-2c	O-P	R-P ¹⁴
Min. Lot Size	Residential: 10,000 SF Long-term, extended, intermediate care: 3 School: 2 ac. Municipal: 10,000 SF College, univ.: 2 ac. Other: 10,000 SF For all, see note ¹⁶	Residential: 6,500 SF ¹ Long-term, extended, intermediate care: 2 ac. Place of assembly: see code Municipal: 6,500 SF Hospital: 10 ac. PRUD: 3 ac.	School: 20,000 SF Place of Assembly: 10,000 SF Other Non-Res Uses: None Residential: None	None	1.5 ac.	6,000 SF
Min. Lot Area per D.U.	10,000 SF	PRUD: 6,500 SF net land area Other: 6,500 SF	On-peninsula: 435 SF Off-peninsula: min. lot area of nearest residential zone, except 1,000 SF for multi-family dwellings above first floor	On-peninsula: 435 SF Off-peninsula: 1,500 SF, or 435 SF if active street frontage		
Min. Street Frontage	50 ft.	50 ft. ¹⁷	20 ft.	20 ft.	100 ft.	60 ft.
Min. Lot Width	80 ft.	65 ft.	None	None	150 ft.	60 ft.
Min. Front Yard	25 ft. (principal or accessory)	25 ft. (principal or accessory) ¹⁸	None	None	50 ft. ¹⁵	20 ft., except that front yard need not exceed avg. depth of adjacent yards ²⁷
Max. Front yard			10 ft., or the maximum front yard setback shall not exceed the average depth of nearest developed lots if that average depth is less than 10 ft.	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. ¹⁵		
Min. Rear Yard	Principal or accessory >100 SF: 25 ft. Accessory detached <144 SF: 5 ft.	Principal or attached accessory > 100 SF: 25 ft. Accessory detached <144 SF: 5 ft.	Principal: None, except 10 ft. if abutting a residential zone. Accessory: None, except 5 ft. if abutting a residential zone	Principal: 10 ft. Accessory: 5 ft.	50 ft. ²⁵	Principal: 20 ft. Accessory detached: 7 ft.
Min. Side Yard	Principal or accessory >100 SF: 1-1 1/2 stories: 12 ft. ³⁰ 2 stories: 14 ft. ³⁰ 2 1/2 stories: 16 ft. ³⁰ Accessory detached <144 SF: 5 ft. Side yard on side street: 20 ft.	1 story: 8 ft. ³⁰ 1 1/2 stories: 8 ft. ³⁰ 2 stories: 14 ft. ³⁰ 2 1/2 stories: 16 ft. ³⁰ Accessory detached <144 SF: 5 ft. Side yard on side street: 20 ft.	Principal: None, except 5 ft. if abutting residential zone. Accessory: None, except 5 ft. if abutting a residential zone Side yard on side street: 10 ft. max (only applies to one side street in cases with more than one)	Principal: None Accessory: 5 ft. Side yard on side street: None	25 ft., except 40 ft. where side yard abuts residential zone or use ³⁵	Principal: 1 story: 10 ft. 2 stories: 12 ft. 3+ stories: 14 ft. ²⁸ Accessory detached: 7 ft. Side yard on side street: 1-2 stories: 15 ft. 3+ stories: 18 ft.
Stackbacks			Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.	Portions of a structure above 35 ft shall be no closer than 5 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.		
Max. Structure Height	Principal or attached accessory: 35 ft. Accessory detached: 18 ft.	Principal or attached accessory: 35 ft. Accessory detached: 18 ft.	Off-peninsula: 35 ft., except where abutting R-6, where max. height shall be the max. height of R-6 ³³ On-peninsula: 45 ft., except 50 ft. along Congress Street if commercial first floor & residential upper floors.	45 feet except as provided for below: a. 50 feet if first floor is partially or wholly occupied by a commercial use. b. 65 feet in B-2 and B-2c zones on lots > 5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet. c. 65 feet within 65 feet of Franklin St.	55 ft., except that on lots or within office-park subdivisions which are > 50 ac., 75 ft. is permitted, including roof appurtenances, if each minimum yard dimension is increased by 1 ft. for each 1 ft. of height above 55 ft.	45 ft., except where the lot abuts an R-6 residential zone, the maximum permitted height shall be the maximum permitted height of the R-6 zone. If there is a difference in height between abutting R-6 zones, the least restrictive height limitation shall apply.
Max. Floor Area	See note ⁷	See note ⁷	Total maximum first floor area for non-residential uses per structure: 10,000 SF ¹⁴ Total maximum floor area per retail establishment: 5,000 SF	None		
Max. Floor Area Ratio						See abutting residential zone. If none, see nearest residential zone. ³¹
Max. Lot Coverage	20%	35%		None		
Open Space Ratio				None		
Max. Impervious Surface			90%	Residential: None Other uses in B-2 and B-2c: 80% Other uses in B-2b: 90%.	60%	See abutting residential zone. If none, see nearest residential zone. ²⁹

¹ except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.

² See definition in 14-188

³ except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article. A lot in an unsewered residential district shall meet the provisions of the state Minimum Lot Size Law, 12 M.R.S.A. Section 4807

⁴ Other restrictions apply for lodging houses, intermediate care facilities

⁵ The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than ten (10) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots,

⁶ Other restrictions apply for bed and breakfasts

⁷ Minimum/maximum gross floor area requirements exist for particular uses, which may include places of assembly, beds and breakfasts; and colleges, universities, or trade schools. See code.

⁸ Other dimensional standards apply for small residential lot development

⁹ These amendments will be brought to the Planning Board in the fall of 2014 for review, and are still subject to change.

¹⁰ for uses other than utility substations (B-4)

¹¹ The front yard of a lot existing as of May 23, 1988 and less than 100 ft. deep need not be deeper than 20% the depth of the lot

¹² The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet; residential uses off-peninsula under section 14-162(a) shall meet requirements of abutting or nearest residential zone.

¹³ Except when B-1 properties abut an R-6A zone, the maximum height shall be 45 ft.

¹⁴ Structures which existed prior to date of enactment of the B-1/B-1b zones are exempt.

¹⁵ Building additions do not have to meet this section; if a lot has less than 40 ft. of frontage and is more than 100 ft. deep, then no max. setback is required. If existing structures are within 20 ft. of the street or meet the front yard max. and the remainder of the lot has

¹⁶ Provided that for uses specified, no minimum lot area shall be required in the following cases: A. Uses existing as of June 1, 1993; B. Expansion onto land abutting the lot on which the principal use is located; C. Expansion onto land other than the lot on which the principal use is located to the extent the

¹⁷ except that lots located in a subdivision approved after the effective date of Ord. No. 166-97 pursuant to section 14-487.5 shall meet the street frontage requirements approved as part of the subdivision plan under the terms of that section.

¹⁸ A front yard need not exceed the average depth of front yards on either side of the lot. A lot of record existing as of June 5, 1957, and less than one hundred (100) feet deep need not be deeper than twenty (20%) percent of the depth of the lot.

¹⁹ The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than eight (8) feet in width. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots,

²⁰ See other dimensional requirements relating specifically to PRUDs

²¹ See other dimensional requirements for small residential lot development, which can be applied if a lot is vacant, used exclusively for parking, contains structures not used for residential purposes, or is created from a single lot division of a developed lot and results in a lot meeting the dimensional requirements

²² Maximum length of undifferentiated blank wall along a public street or publicly accessible pedestrian way: 15 ft. in PAD overlay zone; 30 ft. in all other areas

²³ FARs for residential zones as follows: R-1/R-2: .45; R-3: .55; R-4/R-5/R-6A/R-6: .65

²⁴ For parcels in B-5b on West Commercial south of Danforth and parcels on Thompson's Point, see code.

²⁵ The Planning Board can reduce by up to fifty (50) percent the minimum yard setback if another yard within the lot is correspondingly increased so that the combined minimum setbacks on all four (4) sides equal one hundred fifty (150) feet, if two (2) or more buildings are located on one (1) lot, only

²⁶ Residential uses permitted under section 14-141(a) shall meet the requirements of such abutting or nearest residential zone.

²⁷ The front yard of a lot existing as of April 4, 1988, which is less than one hundred (100) feet deep, need not be deeper than ten (10) percent of the depth of the lot.

²⁸ The width of one (1) side yard may be reduced one (1) foot for each foot that the other side yard is correspondingly increased, provided, however, no side yard shall be reduced to less than seven (7) feet in width.

²⁹ Impervious surface ratios as follows: R-1/R-2: .8; R-3: .7; R-4/R-5/R-6A/R-6: .8

³⁰ The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than twelve (12) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots,

³¹ Minimum FARs are as follows: R-1/R-2: .45; R-3: .55; R-4/R-5/R-6A/R-6: .65

³² This requirement may be reduced by up to twenty (20) percent for a special needs independent living unit.

³³ The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than ten (10) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots,

³⁴ A side yard on a side street need not exceed the average depth of front setback directly abutting the lot.

³⁵ except as described in section 14-201(b).

³⁶ No structure may extend beyond the building line established for any runway or taxiway. If provided, rear yards must not be less than five (5) feet in width.

MEMORANDUM

To: FILE
From: Nell Donaldson
Subject: Application ID: 2014-227
Date: 12/17/2014

Comments Submitted by: Ann Machado/Zoning on 12/2/2014

The proposal is for a Map Amendment to change the zone for the property located at 1945 Congress Street from R-2 Residential to O-P Office Park Zone in order to build a 15,000 sf medical building and a 35,300 sf office building. These two proposed uses are permitted uses in the O-P zone. The Elks building is a conforming use in the R-2 zone as a place of assembly (fraternal organization). If the lot is changed to the O-P zone, the Elks building as a place of assembly would become a legal nonconforming use. The use could be maintained but the building could not be expanded and the nonconforming use would be abandoned if the use as a place of assembly is discontinued for twelve months. The existing lot meets the minimum gross area requirement of three acres for an office park and it meets the minimum street frontage of one hundred feet.

Att. C

From: Tom Errico <thomas.errico@tylin.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 1/9/2015 3:51 PM
Subject: RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Hi Nell – I would like to note that based upon the trip generation levels noted in my previous email, a comprehensive traffic impact study would be required to assess impacts to the area roadway system. Please note the following:

· The Congress Street/International Parkway/UNUM Drive intersection will serve as the primary access point for any development. Use of this existing signalized intersection seems appropriate, but any development application would be required to access the ability of this traffic signal to adequately accommodate the added traffic.

· The City recently implemented Phase I of the Outer Congress Street Streetscape Study with the intent of providing a balanced multi-modal transportation street. Phase I primarily reduced the number of travel lanes on certain sections of Congress Street between Steven Avenue and International Parkway/UNUM Drive. The City continues to review conditions and will be implementing Phase II of the Plan this year which will seek to enhance the inbound merge area east of International Parkway/UNUM Drive, add a crosswalk near Garrison Street, and implement pedestrian and transit improvements at Westbrook Street.

· MaineDOT will be upgrading the traffic signal at the Congress Street/Westbrook Street intersection. This intersection currently experiences congestion problems, but it is unlikely any capacity enhancements will be possible given constraints.

· The Congress Street/Johnson Road intersection seems to operate at an acceptable level of service, but review of conditions would be required.

If you have any questions, please let me know.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
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From: Helen Donaldson [mailto:HCD@portlandmaine.gov]
Sent: Monday, January 05, 2015 10:27 AM
To: Tom Errico
Subject: RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Great. Thanks, Tom. There are likely to be questions about impacts to operations on Congress Street and the light at Unum Park Drive. Can you make any general statements on that? Maybe alluding to existing trips generated by the Elks?

Tell me if I'm asking you to go too far out on a limb here!

Nell

Nell Donaldson
City of Portland Planning Division
389 Congress Street
Portland, Maine 04101
874-8723

hcd@portlandmaine.gov <mailto:hcd@portlandmaine.gov>

>>> Tom Errico <thomas.errico@tylin.com> <mailto:thomas.errico@tylin.com>> 1/5/2015 9:54 AM >>>

Hi Nell – I have conducted a preliminary trip generation analysis for the three development assumptions you have provided and the results are

summarized in the following table. The trip generation estimates were computed for the Weekday AM and PM peak hours and were based on the Trip Generation Manual, Institute of Transportation Engineers, 9th Edition.

Land Use Zone

Density

AM Peak Hour Traffic Volume Enter and Exiting

PM Peak Hour Traffic Volume Enter and Exiting

Existing R-2

14 Residential Units

10 Vehicles

14 Vehicles

Office Park (OP)

192,563 Square Feet of Office Space

302 Vehicles

288 Vehicles

Resource Protection (RP)

137,201 Square Feet of Office Space

214 Vehicles

204 Vehicles

If you have any questions or need additional information, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
[T.Y. Lin International] T.Y. Lin International
12 Northbrook Drive
Falmouth, ME 04105
207.781.4721 (main)
207.347.4354 (direct)
207.400.0719 (mobile)
207.781.4753 (fax)
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From: Helen Donaldson [mailto:HCD@portlandmaine.gov]
Sent: Monday, January 05, 2015 8:22 AM
To: Tom Errico
Subject: RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Thanks, Tom. This is helpful.

I'm trying to get a draft of this memo to Barbara this week, as I'm out for some of next and the workshop is on the 20th. Can you take a look at those buildout calculations when you get a chance (attached again here) and let me know what you think in terms of a general comparison of trip generation?

Thanks, Tom.

Nell

>>> Tom Errico <thomas.errico@tylin.com<mailto:thomas.errico@tylin.com>> 12/31/2014 3:59 PM >>>

Hi Nell -- Attached is a concept plan set that is still evolving, so please note that it will be changing. Thanks and let me know if you have any questions.

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
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From: Helen Donaldson [mailto:HCD@portlandmaine.gov]
Sent: Wednesday, December 31, 2014 11:09 AM
To: Tom Errico
Subject: Re: Fwd: Office Development at Elks Lodge Site off Unum Drive

Thanks, Tom. I can't think of anything else in terms of development out there, but Barbara may know of something.

I'm looking forward to seeing the outer Congress plans when you get a chance. I didn't even realize anything was happening there.

Nell

>>> Tom Errico <thomas.errico@tylin.com<mailto:thomas.errico@tylin.com>> 12/31/2014 9:48 AM >>>

Sent from my iPhone

Begin forwarded message:

From: "Diane W. Morabito" <mtrdwn@myfairpoint.net<mailto:mtrdwn@myfairpoint.net>>
Date: December 29, 2014, 1:09:18 PM EST
To: 'Barbara Barhydt' <BAB@portlandmaine.gov<mailto:BAR@portlandmaine.gov>>
Cc: Tom Errico <thomas.errico@tylin.com<mailto:thomas.errico@tylin.com>>
Subject: Office Development at Elks Lodge Site off Unum Drive

Hi Barbara,

I am writing regarding the proposed medical and general offices at the Elks Lodge site off Unum Drive (off Congress Street). We are doing the traffic study and traffic permitting for the office development. Are there any other development projects approved but not constructed, or pending approval, that will impact Congress Avenue volumes in that area that I should consider in my traffic analysis?

As always, thanks for your assistance and Best Wishes for the New Year.

Diane

Diane W. Morabito, P.E. PTOE

President

Maine Traffic Resources

25 Vine Street

Gardiner, ME 04345

(O) 207-582-5252

(M) 207-441-0703

From: Tom Errico <thomas.errico@tylin.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 1/5/2015 10:07 AM
Subject: RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Hi Nell – I have conducted a preliminary trip generation analysis for the three development assumptions you have provided and the results are summarized in the following table. The trip generation estimates were computed for the Weekday AM and PM peak hours and were based on the Trip Generation Manual, Institute of Transportation Engineers, 9th Edition.

<i>Zone</i>	<i>Density</i>	<i>AM Peak Hour Traffic Volume Enter and Exiting</i>	<i>PM Peak Hour Traffic Volume Enter and Exiting</i>
<i>Existing R-2</i>	<i>14 Residential Units</i>	<i>10 Vehicles</i>	<i>14 Vehicles</i>
<i>Office Park (OP)</i>	<i>192,563 Square Feet of Office Space</i>	<i>302 Vehicles</i>	<i>288 Vehicles</i>
<i>Residence Professional (RP)</i>	<i>137,201 Square Feet of Office Space</i>	<i>214 Vehicles</i>	<i>204 Vehicles</i>

If you have any questions or need additional information, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
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MEMORANDUM

TO: Nell Donaldson and City of Portland Planning Board
FROM: Jennifer L. Thompson, Associate Corporation Counsel
DATE: September 8, 2015
RE: Zoning Amendments

I understand that, in connection with an application to amend the zoning map for 1945 Congress Street, a question has arisen as to the precedential effect of map amendments and the extent to which a recommendation by the Planning Board or a zoning change approved by the Council can or should bind further requests for zoning changes. This memo will address that question.

I. Overview of Zoning

As you know, “[z]oning is a legislative function, the authority for which flows from the police powers of governmental bodies,¹ and all property is held subject to the right of the government to regulate its use in the exercise of the police power.” 83 Am Jur 2d Zoning and Planning § 6. Under the Maine statute authorizing municipalities to enact zoning regulations, a municipal “zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body . . .” 30-A M.R.S. § 4352(2).

Accordingly, when considering a proposed zoning ordinance or a proposed amendment to an existing zoning ordinance, the first question is whether the proposal is “consistent” with the Comprehensive Plan. The Maine Law Court has interpreted the term *consistent* to mean that the proposed use/agreement must be “in basic harmony with . . .” the City’s comprehensive plan (the “Plan”) and existing and permitted uses in the original zone. *Consistency* does not mean, however, that a project has to be the “best possible use” for a site/location. See *Vella v. Town of Camden*, 677 A.2d 1051, 1053 (Me. 1996) (citing *LaBonta, et al. v. City of Waterville*, 528 A.2d 1262, 1265); see also *City of Old Town v. Dimoulas*, 2002 ME 133, ¶ 20, 803 A.2d 1018, 1024.

The Comprehensive Plan outlines “a compilation of policy directives and goals” for the development of the City. Among other things, the policies outlined in the Plan address the City’s infrastructure, commercial/business development, transportation resources, industry, and commerce and residential housing. See City of Portland Comprehensive Plan. Since these goals and policies can sometimes compete and/or conflict with one another, it is the Planning Board’s/City Council’s task to

balance and accommodate the many goals and policies contained in the Plan in a way that advances the City's overall best interests. See *Adelman v. Town of Baldwin et al.*, 2000 ME 91, ¶ 24, 750 A.2d 577, 585-586 (citations omitted); see also LaBonta, 528 A.2d at 1265.

Recently, the Law Court further clarified the consistency analysis in *Rommel v. City of Portland*, 2014 ME 114, ¶¶ 13-14, 102 A.3d 1168, 1172 and the City's broad discretion to determine when a proposed rezoning is consistent with the Comprehensive Plan. According to the Court in *Rommel*, it is not necessary that a proposed zoning amendment comply strictly with every portion of the Plan. Rather, when a court reviews the City's decision to rezone a property, the scope of the court's inquiry is limited to determine whether the Planning Board/City Council could have, from the evidence before it, found that the rezoning was in "basic harmony" with the Comprehensive Plan:

A zoning or rezoning action need not perfectly fulfill the goals of a comprehensive plan; it may be in basic harmony with the plan so long as it "strikes a reasonable balance among the municipality's various zoning goals" or "overlap[s] considerably" with the plan.

In addition, because the Comprehensive Plan consists of numerous different land use policies, adopted at different times, that sometimes conflict, whether a proposed rezoning is "consistent" with the Comprehensive Plan can only be determined by examining the Plan as a whole. "A municipality may conclude that a rezoning action is consistent with the comprehensive plan when it is in harmony with some provisions of the plan, even if the action appears inconsistent with other provisions of the plan." *Id.*

II. Precedential Effect of Zoning Enactments or Amendments

With that general overview of zoning, I turn now to the question at hand, namely: Does this Board's recommendation (or the Council's ultimate decision) on rezoning a particular piece of property somehow bind it with respect to future amendments to zoning of the same property or of surrounding areas or properties? Generally speaking, the answer is no . . . with a caveat.

Because zoning is a legislative act and ultimately an exercise of legislative judgment by the City Council (subject to the "consistency" analysis discussed above), a zoning decision is not binding per se. Joseph T. Bockrath, *Zoning Board's Grant of New Application for Zone Change, Variance, or Special Exception After Denial of Previous Application Covering Same Property or Part Thereof*, 52 A.L.R.3d 494, 2b ("Being the result of a 'legislative process,' a zone change is not binding on future determinations . . .") In other words, because zoning requires an exercise of discretion and legislative judgment, a legislative body like the Council is entitled to exercise that discretion however it sees fit – provided of

course that its decision is consistent with the comprehensive plan, is not arbitrary, nor discriminatory. Therefore, even where the Board/Council denies a proposed zoning amendment with respect to a parcel of property this year, it would not be bound by that decision if the request were renewed next year. *Id.* at 3a (collecting cases). Having said that, in order to avoid an allegation that it is exercising its legislative discretion in an arbitrary or capricious manner, in such a situation the Board/Council would be well advised to articulate the change in circumstances that justifies a divergent exercise of its discretion with respect to the same parcel of land.¹

Additionally, there may be situations where a prior zoning decision by the Board or Council might be looked to by a future Board/Council and where, while not binding, that prior decision may nevertheless inform or impact a future decision. For example, if the Board/Council were to amend the boundaries of a zone this year to include an additional parcel of property (Parcel A) and then a request came in next year to further extend the boundary to a neighboring lot (Parcel B), the Board/Council may feel constrained by the “consistency analysis” done with respect Parcel A when it is doing that analysis of Parcel B. That is, if rezoning Parcel A this year from R-3 to R-2 is consistent with the comprehensive plan, and Parcel B is substantially the same as Parcel A, the Board/Council may be hard pressed to conclude next year that including Parcel B in R-2 is not also consistent with the Comprehensive Plan. After all, if rezoning A was consistent, why wouldn’t rezoning B also be consistent?

On the other hand, however, parcels of property each inherently unique such that there may well be more than sufficient differences in the consistency analysis to justify different zoning decisions with respect to different, though neighboring, parcels of land. Therefore, while legislative acts like zoning enactments and amendments are not binding in the same way that judicial decisions are binding, in order to avoid confusion or the appearance of inconsistent or arbitrary exercises of legislative discretion, the Planning Board and the Council would be well advised to expressly articulate the bases for their conclusions regarding consistency and where those conclusions differ with respect to seemingly similar properties, articulate the differences that underlie those conclusions.

¹ Some examples in the case law include, changes to the property, changes to the surrounding neighborhood, changed traffic impacts, or changes in the zoning amendment requested.

Order 85-15/16
Tab 22 10-5-15

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 13 (GENERAL ASSISTANCE)
RE: Eligibility**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*That Chapter 13, Sections 13-2 and 13-4 of the Portland
City Code are hereby amended to read as follows:*

Sec. 13-2. Definitions.

Unless otherwise defined here or in the text or in 22
M.R.S.A., Chapter 1161, all words used will have their common
meanings. Words and phrases having special definitions will be
defined when they first appear in the chapter, except for the
following definitions:

Administrator is the social services administrator of the
city's department of health and human services to whom the day
to day administration of the general assistance program is
delegated. The administrator is authorized to delegate some or
all of his duties to caseworkers and other employees of the
city's division of social services, and references to the
administrator shall include the duly authorized designees of
said administrator.

...

Eligible person is a person who is qualified to receive
general assistance from the city according to the standards of
eligibility set forth in this chapter and 22 M.R.S. §4301(3).

...

Sec. 13-4. Eligibility factors.

(a) *Residence.* The administrator shall provide general
assistance to all eligible persons applying for assistance who

are residents of the city. A resident is a person who has no other residence and is physically present in the city and who intends to remain here and establish a household.

...

~~(g) Work requirement. If unemployed, persons who receive general assistance are expected to fulfill a work requirement either by participating in a work search program, job training program, or rehabilitation program, and/or workfare, as appropriate as determined by the caseworker. Recipients are expected to fulfill the work requirement assigned to them, and will be exempted from the requirement only for just cause.~~

...

(i) Immigration Status. Beginning July 1, 2015, the administrator shall provide general assistance to all eligible persons who are lawfully present in the United States or who are pursuing a lawful process to apply for immigration relief, except that assistance for such a person may not exceed 24 months. Only months of general assistance provided after July 1, 2015 for eligible persons who are lawfully present in the United States or who are pursuing a lawful process to apply for immigration relief shall be counted toward the 24-month limit.

For the purposes of this section and determining eligibility under this chapter, an eligible person who is lawfully present in the United States or who is pursuing a lawful process to apply for immigration relief shall be defined as a person who:

- (1) Has applied for asylum;
- (2) Has not yet applied for asylum, but has been in the United States less than one (1) year;
- (3) Is a parent, guardian or sibling of an American-born minor child; or
- (4) Is an unaccompanied minor.

...

BE IT FURTHER ORDERED, that this amendment is enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, and that notwithstanding 1

M.R.S. §302, this amendment shall be effective as of
October 15, 2015.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Dawn Stile, Director, Health & Human Services

DATE: October 1, 2015

DISTRIBUTION: City Manager, Mayor, Sonia Bean, Danielle West-Chuhta,
Nancy English, Julie Sullivan

SUBJECT: General Assistance Ordinance Changes to Implement PL 324

SPONSOR: Jon P. Jennings, City Manager

(If sponsored by a Council committee, list the date the committee met and the results of vote.)

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading__10/5/2015__ **Final Action**__10/19/2015__

Can action be taken at a later date: ____ Yes __X__ No (If no why not?)
Law goes into effect 10/15/2015.

PRESENTATION: (List the presenter(s), type and length of presentation)

Dawn Stiles – Verbal Presentation – 5-10 minutes.

I. SUMMARY OF ISSUE (Agenda Description)

Staff requests that the City's General Assistance ordinance be amended in order to address the changes required by PL 324 (see attached) passed during the last legislative session and effective 10/15/2015.

II. REASON FOR SUBMISSION (Summary of Issue/Background)

PL 324 expands GA eligibility to individuals who are "lawfully present" in the United States or who are "pursuing a lawful process to apply for immigration relief." The City should amend its ordinance to address PL 324 in order to ensure compliance with state law/rules and maximize reimbursement from the State.

III. INTENDED RESULT

The City Council approves the recommended amendments to the City's General Assistance ordinance.

IV. COUNCIL GOAL ADDRESSED

Health and Wellbeing of our local Community.

V. FINANCIAL IMPACT

PL 324 expands GA eligibility to those currently in the Portland Community Support Fund, as well as to new individuals who meet the eligibility definition and standards in the City's

ordinance and under State law. The proposed ordinance amendments will allow the City to seek reimbursement (at 70%) from the State, which should maximize funds with the potential for savings over the amount allocated for the Community Support Program.

VI. STAFF ANALYSIS

The terms “lawfully present” and “pursuing a lawful process to apply for immigration relief” in PL 324 are not defined and to date the State hasn’t provided guidance (through rule-making) on how they will define these terms. This leaves the City potentially vulnerable to reimbursement with-holdings by the State and/or litigation with the State and individuals who not covered by the amendments enacted by the City Council.

VII. RECOMMENDATION

The City Council amends the City’s General Assistance ordinance as described in the attached order.

VIII. LIST ATTACHMENTS

PL 324; Proposed Order; Memo from Corporation Counsel; Resolution Adopting the Community Support Program; and City Council requested material from the Sept. 28th workshop (to follow).

Prepared by: Dawn Stiles

Date: September 29, 2015