Regular City Council Meeting
December 21, 2015

1. Agenda Only

   Documents: AGENDA ONLY 12-21-15.PDF

2. Agenda And Packet

   Documents: 2015-12-21 AGENDA AND PACKET.PDF

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (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
REGULAR CITY COUNCIL MEETING
DECEMBER 21, 2015

The Portland City Council will hold a regular City Council Meeting at 5:00 p.m. in City Council Chambers, City Hall. The Honorable Ethan K. Strimling, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNUAL MEETINGS:

(Tab 1) **Annual Meeting of Corporator of Creative Portland – Sponsored by Mayor Ethan K. Strimling.**

The City Council is the Corporator of Creative Portland.

Pursuant to the Bylaws of Creative Portland, the Portland City Council, as Corporator of Creative Portland, shall hold its annual meeting in the month of November each year or at a special meeting. The Creative Board set the annual meeting date for the Corporator as December 21, 2015. This year's Annual Meeting Agenda includes:

1. Accepting Creative Portland FYE 2015 Activity and Financial Report.

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 2) December 7, 2015 Regular Organizational City Council Meeting Minutes
December 7, 2015 Special City Council Meeting Minutes

PROCLAMATIONS:

Proc 12-15/16 **Proclamation Declaring January 2016 as Human Trafficking**
(Tab 3) **Awareness Month – Sponsored by Mayor Ethan K. Strimling.**

Proc 13-15/16 (Tab 4) **Proclamation Honoring Portland High School Football Team – Sponsored by Mayor Ethan K. Strimling.**

APPOINTMENTS:

Order 127-15/16 (Tab 5) **Order Authorizing Special Council and Outside Boards and Commissions Appointments for 2016 - Sponsored by Mayor Ethan K. Strimling.**

This order appoints City Councilors and City staff to various outside Boards and Commissions for 2016.

Five affirmative votes are required for passage after public comment.

CONSENT ITEMS:

Order 128-15/16 (Tab 6) **Order Approving Transfer of Property Under 15 M.R.S. §§5824(3) and 5826(6) Re: State v. Eric Dunbar– Sponsored by Jon P. Jennings, City Manager.**

This order authorizes the City Council to approve the transfer of one (1) Kel Tec firearm seized from the above individual during a lawful search of a vehicle after the occupants were found to be in possession of heroin. The State forfeiture statute, 15 M.R.S. §5824(3) and §5826(6) requires that before any forfeitable item may transferred to a municipality, the legislative body of the municipality must publicly vote to accept the item.

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

LICENSES:

UNFINISHED BUSINESS:

Order 124-15/16 (Tab 7) **Order Appropriating Funds from the Clement P. Wescott Trust Fund for Barron Center – Sponsored by Jon Jennings, City Manager.**

The smoke stack at the Barron Center has been crumbling for several years and has become increasingly dangerous. The smokestack must be removed before winter because of the increased risk of injury to staff, visitors, and residents and the contractor's (Gray Goose Masonry) limited ability to work on this project during the winter.

On July 7, 1975, the Portland City Council accepted the trust fund. In Dr. Wescott's Last Will and Testament it was stated that the Trust be used, "for improvements in and additions to the buildings thereof, for the acquisition of equipment and other facilities and for any other purposes which shall improve the standard of said hospital and its services."

The City's Preservation staff has approved removal of the smokestack on the grounds of the Barron Center. Now the expenditure of funds from this account must be approved by the Hospital Director, the City Manager, and the majority of the Council.

The cost of removal is $40,000 and will be paid from the Wescott Trust Fund which has a current balance of $318,940, leaving a balance of $278,940.00.

This item must be read on two separate days. It was given a first reading on December 7th. Five affirmative votes are required for passage after public comment.

Order 126-15/16 (Tab 8) **Amendment to Portland City Code Chapter 21 Farmers' Markets Re: Location – Sponsored by Jon P. Jennings, City Manager.**

Over the past five years, representatives of the Portland Farmers' Market Association have contacted the city's Planning Department and Business Licensing Division on several occasions regarding possible locations for the Farmers' Market, as the growth in demand for locally sourced products and the success of the market has resulted in a changing set of needs. For example, the Association's winter market was originally held in the Irish Heritage Center on State Street, but due to parking constraints, moved to the Urban Farm Fermentory (UFF) in East Bayside in 2013.

This fall the organization realized that the UFF would no longer be large enough to accommodate the number of growers in the market; the association contacted the city once again regarding another move, this time to a vacant building on Cove Street in East Bayside.

However, Chapter 21 (Farmers' Markets) of the city's ordinance, which governs the location of the market, tightly confines the market's hours of operation, days of operation, and possible locations to four. Thus, every time that the market has moved over the past several years, an amendment to Chapter 21 has been required. In order to minimize the necessity of future text amendments as the market's needs continue to evolve, staff is suggesting a text amendment to Chapter 21 to broaden the potential market locations to include properties in both the IL-b zone (East Bayside) and any zone where retail establishments are a permitted by use.
The text amendment would also allow the market some flexibility in terms of hours of operation and days of operation in those zones. The market would still be subject to licensing through the city's Business Licensing Division.

This item must be read on two separate days. It was given a first reading on December 7th. In order for this item to take effect immediately, staff is asking that this item be passed as an emergency. Seven affirmative votes are required for emergency passage.

BREAK FOR DINNER 6:00 PM:

EXECUTIVE SESSION 6:00-7:00 PM – ROOM 209:
1) Portland Fire Department Contract Negotiations, Pursuant to 1 M.R.S.§405(6)(D).

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

7:00 P.M. PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS:

UNFINISHED BUSINESS: (Continued)

Order 84-15/16 (Tab 9) **Amendment to Zoning Map Re: 1945 Congress Street – Sponsored by the Planning Board, Elizabeth 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. It was given a first reading on October 5, 2015. At the November 2nd Council meeting, this item was postponed to this meeting. Five affirmative votes are required for passage after public comment.

Order 125-15/16 (Tab10) **Order Authorizing the Option to Purchase and Appropriation of $150,000 Re: 212 Canco Road - Sponsored by Jon P. Jennings, City Manager.**

The current Lease/Purchase Agreement, executed March 28, 2014 (included in the agenda backup), with 212 Canco Realty LLC has the timeline for the City to exercise its purchase option between March 1, 2017 through October 31, 2018.

City staff requests Council authorization to exercise that purchase option earlier, between January 1, 2016 through March 31, 2016.

Early acquisition does not change the property acquisition price, but it does require a financial appropriation. City acquisition in 2016 versus 2017 enables the City to advance City operations consolidation.

Acquisition of 212 Canco Road combined with 250 Canco Road (acquired by the City in September, 2015) and JB Brown Quarry Road property creates a 13+ acre campus for one City public service delivery location which has been a priority for the City for over a decade.

Existing City Council Approved Property Lease/Purchase Option for 212 Canco Road

An overview of the existing approved 212 Canco Road Lease with purchase option includes:

Property Location: The property is located in a "central service delivery location" in an industrially zoned property with adjacent industrial users.

Property Size: 4.2186 acres

Building Square Footage: 68,730

Municipal Assessed Value: $3,053,370

Agreed Upon Property Purchase Price: $2.9 million fixed for three years. The market value of industrial property is increasing and a fixed acquisition price provides the City with purchase price certainty.

The lease/purchase approach presented the City with a phased approach, over time, to fully implement the department consolidation plan. The lease/purchase option to acquire 212 Canco Road was structured to meet the needs of the property owners and enable City use of approximately fifty-five percent of the building starting April 2014 as detailed in the Lease.

The remaining forty-five percent of the building is occupied by two commercial tenants who have five (5) year leases through to the Summer/Fall of 2018.
The proposed lease/purchase approach honors the leases of the two existing tenants and enables the City to gain use of the entirety of the building in 2018.

Property Acquisition. On September 9, 2013, the City Council authorized issuance of $3.05 million in general obligation debt to support property acquisition to move ahead with the City department consolidation plan. This was combined with a previous appropriation of $100,000 for preliminary costs associated with the relocation of City operations out of Bayside.

City Costs to Lease 212 Canco Road. Separate from the above City Council debt service authorizations, the City Council financially appropriated funds to cover the cost of the City leasing space in 212 Canco for approximately four years through the date of the planned City acquisition in March, 2017.

Cost Benefit Analysis to Acquire the Property Early. Acquiring 212 Canco Road in the first quarter of 2016 versus Spring 2017 will result in the following:

The owners of 212 Canco Road are requesting a one-time payment of $150,000, which represents a portion of the base rent from the two commercial tenants, in order to allow for the City to acquire the property in the first quarter of 2016 versus Spring of 2017. Cost benefit analysis per the below table demonstrates it is in the City's best interest to proceed with an early acquisition of this property, and the one-time payment of $150,000 will be more than off-set with City space lease cost "savings", plus receiving revenue from two existing commercial tenants.

212 Canco Lease Payments	
January 1, 2016 through March 31, 2017	
City Lease Payment "Savings":	$132,641
2 Tenants:	$209,210
Total:	$341,851
Subtract One-Time Payment:	$150,000
Net Gain to City:	$191,851

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ORDERS:

Order 129-15/16 (Tab 11) **Order Approving the Amended and Restated Ground Lease to Northeast Air for a Fixed Base Operation at Portland International Jetport – Sponsored by Jon P. Jennings, City Manager.**

The Portland International Jetport is requesting approval to extend the term, expand the premises, and combine two ground leases currently held by Northeast Air and LCL Associates' into a single lease to Northeast Air.

These leases form the primary ground holdings for Northeast Air's longstanding Fixed Base Operation (FBO) at the Jetport.

As a FBO, Northeast Air provides aircraft fueling, maintenance, deicing, and other aviation services as outlined in the Jetport's minimum standards. Under the proposed new lease approximately 61,000 square feet will be added to the premises and the term will be extended by twenty years. Additionally this lease will be restated to fully conform with the FBO lease issued earlier this year to Hangar Group LLC for the development of the Fixed Base Operation on the Jetport's south general aviation ramp. The basic terms of this lease amendment and restatement are as follows:

- **Term**: Provides an option to extend the term of the existing lease by 20 years for a total of 40 years through June 30, 2056.
- **Investment**: Northeast Air will be required to invest $2.5 million to expand and improve their existing FBO building/hangar and site.
- **Rate**: Northeast Air will pay ground rent and 2% of gross receipts excluding aircraft sales/leasing, sales of aircraft parts and accessories, charter flights, or fixed rent from subtenants approved by the City.
- **Full Service FBO**: Northeast Air will be required to continue operating as a full service FBO with staffing, hours, and facilities that meet the requirements outlined in the Portland International Jetport's Minimum Standards.

Five affirmative votes are required for passage after public comment.

Order 130-15/16 (Tab 12)

Order Granting Easement to Central Maine Power for Hangar Associates South Fixed Base Operation – Sponsored by Jon P. Jennings, City Manager.

The City Council previously approved the ground lease with Hangar Associates (dba Maine Aviation and MAC Group) allowing for the construction of a new $4.5 million south Fixed Base Operation to provide aircraft fueling, service, etc. At this time an easement with Central Maine Power is needed to bring electrical utilities to the site.

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The developers of the Bayside Anchor housing development, a partnership of the Portland Housing Authority and AVESTA, are requesting City Council approval of a license agreement for certain improvements within public rights-of-way which are needed to construct this project. Bayside Anchor is a proposed 45-unit affordable housing development located on the corner of Boyd Street and Oxford Street.

The requested license covers a number of improvements within the public right-of-way and include:

1. Subsurface building footings
2. Permanent canopies above building entrances

Staff is requesting that this item be passed as an emergency so the license can be signed prior to their loan closing. Seven votes are required for emergency passage.

AMENDMENTS:

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The Department of Public Works, supported by Parking Division and the St. John Valley Street Neighborhood Association wish to convert parking in the St. John, Valley and Congress Street area to limit the parking to 1 and 2 hours. There are additional restrictions for street cleaning already in place, which will remain the same.

On October 7, 2015, the Transportation, Sustainability Committee met and voted 4-0 to forward this item to the City Council with a recommendation for passage.

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The Planning Board is recommending amendments to the Housing Preservation and Replacement Ordinance for adoption by the City Council, which would (1) define specific geographic areas where replacement units may be provided; (2) limit the amount of time that a developer could put up a guaranty for a removed unit to three years; and (3) define units that are intentionally vacant for three years or more as removed from the City's housing stock.

The Planning Board voted unanimously (6-0) to forward this item to the City Council with a recommendation for passage.

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LICENSE RENEWALS:

Tab 1 12-21-15

Portland, Maine Yes. Life's good here.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM
City Council Agenda Item

TO: Mayor and Members of the City Council

FROM: Greg Mitchell, Economic Development Director
Jennifer Hutchins, Executive Director/Creative Portland

DATE: December 11, 2015

CC: Sondra Bogdonoff, President/Creative Portland Board of Directors

SUBJECT: Annual Meeting of Corporator of Creative Portland (CP)

SPONSOR: Mayor Ethan K. Strimling

COUNCIL MEETING DATE ACTION IS REQUESTED: December 21, 2015

Can action be taken at a later date? No. **If not, why not?** At the December 2, 2015, meeting of the Creative Portland Board of Directors, the Board set the date for the Annual Meeting of the Corporator as December 21, 2015.

PRESENTATION: Sondra Bogdonoff, President/Creative Portland Board, 5 Minutes

I. SUMMARY OF ISSUE

Pursuant to the Bylaws of Creative Portland (CP), the Portland City Council, as Corporator of Creative Portland, shall hold its annual meeting in the month of November each year or at a special meeting. This year's Annual Meeting Agenda includes:

1. Accepting CP FYE 2015 Activity and Financial Report – see attached.

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

At the December 2, 2015, meeting of the Creative Portland Board of Directors, the Board set the date for the Annual Meeting of the Corporator as December 21, 2015.

III. INTENDED RESULT

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

IV. 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

There is no financial impact associated with these actions.

VI. STAFF ANALYSIS AND RECOMMENDATION

Creative Portland Board and its staff recommend that the Corporator hold the Annual Meeting of Creative Portland on December 21, 2015, to review and accept the annual Activity and Financial Report.

VIII. LIST ATTACHMENTS

- CP FYE15 Activity and Financial Report

CREATIVEPORTLANDME

CREATIVE PORTLAND CORPORATION
BOARD OF DIRECTORS
FISCAL YEAR 2015 ANNUAL REPORT

The Creative Portland Corporation (CP) submits this Annual Report to the Portland City Council, Corporator of Creative Portland, on December 21, 2015. This is the sixth Annual Report submitted as CP ended its fifth fiscal year of operations on June 30, 2015. A financial review of Creative Portland's FY15 revenue and expenses, conducted by an independent accounting firm, is included with this document.

The Creative Portland Board of Directors thanks the Portland City Council for allotting TIF funds in the amount of $100,000 during FY15 from the Creative Portland Development and Arts TIF District. With this investment, CP was able to leverage additional funding from various public and private sources in cash grants and donations just over $77,000, tens of thousands in in-kind support and countless hours contributed by dozens of volunteers.

Creative Portland is the lead for the City of Portland's Economic Development Plan section, **Enrich the Creative Economy**. The plan tasks Creative Portland with leading a task force to create a brand identity for Portland, developing a web and social media plan on a national level, creating incentives to attract and retain artists and entrepreneurs for development of live/work residences or common workspace and housing, and developing creative financing mechanisms to help support major new, expanded, or rehabilitated cultural facilities, among others.

MISSION & VISION

Creative Portland was founded by Portland City Council to grow and support the creative economy. Specifically, the bylaws state that Creative Portland supports the City's economic development efforts by "strengthening, stimulating and supporting Portland's creative industries, enterprises, and workforce, with specific regard for artists and cultural institutions who are critical assets to the city's identity, economy, and community."

In 2009, the organization adopted the visionary goal of attracting 10,000 people to the city who value and support creativity, innovation and arts and culture. CP programs are designed to attract and connect people to the creative community and to provide support to the artists and creative entrepreneurs who make up that community.

NOTABLE ACCOMPLISHMENTS FY15

NEFA Regional Leadership Award

In 2015, Creative Portland received a regional award and $2,000 grant from the New England Foundation for the Arts for exceptional leadership and work on behalf of the creative economy. Chairwoman Jane Chu from the National Endowment for the Arts was on hand to deliver the award at the regional conference in New Hampshire in June.

2 Degrees Portland & Live Work Portland programs

Founded in January 2011, the 2 Degrees Portland program, a referral and networking service for people who are interested in living and working in the city, continues to serve 20-30 people every month. The database of people who live and/or work in Portland volunteering to be "connectors" also grows every month. There are now over 250 connectors who are willing to connect with, and assist, people who are interested in moving here. **In FY15, 335 people from as far away at California and Australia contacted 2 Degrees for information and connections as they considered a move to the Portland area.**

We partner with companies like Vitalius Real Estate (our primary sponsor), LL Bean, Intermed, MaineHealth, Diversified Communications, Red Thread/Steelcase and others to apply our services like 2 Degrees and LiveWorkPortland.org to their recruitment efforts. These "business partnerships" that come with cash commitments represent direct leveraging of public funds.

We also organize six events each year at creative businesses and organizations throughout the city, including artist studios, co-working spaces, cultural institutions and historic buildings, as a means to introduce newcomers to Portland and encourage them to invest in these industries.

Creative Portland has collected dozens of examples of people whose decision to move to Portland was assisted by the services on the LiveWork Portland website and 2 Degrees.

Maine Startup and Create Week partnership

Creative Portland partners with many organizations in the community to leverage our resources by working with other who share our goals. In June 2015, Creative Portland as a co-host of MSCW, organized a special 2 Degrees Portland event for MSCW participants at Portland Museum of Art. Over 200 people attended to celebrate the value of creativity and innovation in our startup community.

One of the tangible benefits of MSCW has been increased national publicity highlighting the growth in entrepreneurial climate in the city. CP Executive Director Jennifer Hutchins was recently pictured in Delta Sky magazine at the MSCW/2 Degrees event in an extensive feature about Portland.

First Friday Art Walk

Now in its 15th year, the Art Walk continues to attract thousands to downtown Portland every month for Maine's largest monthly free cultural event. Based on research conducted in 2011, we estimate that **the Art Walk brings $1 million to the local economy every year**, as consumers spend an average of $28 per person when attending a Portland cultural event.

Creative Portland promotes and manages the Art Walk with free listings online and in print, generously sponsored by the Portland Phoenix and several organizational partnerships,

including Portland Ovations, Portland Museum of Art and the Maine College of Art. In 2015, we were awarded a $10,000 grant from the Davis Family Foundation to increase promotion of the Art Walk, which funded handmade signs designed and produced by the Portland-based Open Bench Project.

We also worked with a USM undergraduate class in cultural tourism in 2015 to gather attendees' perspectives of the Art Walk, which demonstrated that many people who attend the Art Walk purchase art during the event. We will be working with this class again to continue our research on the Art Walk's economic and community impact.

CREATIVE PORTLAND FORMATION HISTORY

The City Council, by Order #92 passed November 17, 2008, authorized the establishment of Creative Portland (CP) as an economic development initiative to support Portland's creative economy. Formation of the Board of Directors was complete, in the summer of 2009, with City Council appointments to the Board of Directors.

One city councilor serves as the City Council representative and Greg Mitchell, Portland's Economic Development Director, serves as the City Manager's representative on the CP Board. As of December 1, 2015, the members of Creative Portland's Board of Directors are:

Peter Bass, Random Orbit, *Treasurer*
Sondra Bogdonoff, retired, *President*
Zeke Callanan, Opticliff Law
Patrick Costin, Canal 5 Studio
Randy Ferrell, Ocean Gate Realty
Arthur Fink, Arthur Fink Photography
Dee Dee Germain, Angela Adams
Andy Graham, Designtex/Steelcase, *Secretary*
Penny Harris, Penny Harris Consulting
Tim Honey, consultant, *Vice President*
Alex Jaegerman, City of Yarmouth
Alice Kornhauser, Portland Chamber Music Festival, *Imm. Past President*
Pat May, Crossover Touring
Greg Mitchell, City of Portland
Genie O'Brien, retired
Mark Rubin, consultant

The City Council, by Order #94 passed November 17, 2008, established the Creative Portland Development and Arts Tax Increment Financing (TIF) District, as a ten-year program, to provide annual "seed" financing to support CP operations. In 2012, the Council voted to extend that funding to 15 years.

CREATIVE PORTLAND CORPORATION

Financial Report

June 30, 2015 and 2014

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Independent Accountants' Review Report

Creative Portland Corporation
Portland, Maine

We have reviewed the accompanying statements of financial position of Creative Portland Corporation (a nonprofit organization) as of June 30, 2015 and 2014, and the related statements of activities, and cash flows for the years then ended. A review includes primarily applying analytical procedures to management's financial data and making inquiries of Corporation management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements as a whole. Accordingly, we do not express such an opinion.

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statements.

Our responsibility is to conduct the review in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. Those standards require us to perform procedures to obtain limited assurance that there are no material modifications that should be made to the financial statements. We believe that the results of our procedures provide a reasonable basis for our report.

Based on our reviews, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with accounting principles generally accepted in the United States of America.

Macpage LLC

South Portland, Maine
October 22, 2015

Statements of Financial Position

Years Ended June 30,

ASSETS	**2015**	2014
Current Assets		
Cash and cash equivalents	$ **14,056**	$ 22,396
Contributions receivable	**13,928**	19,875
Other current assets	**794**	600
Total Current Assets	**28,778**	42,871
Property and Equipment		
Equipment	**1,591**	1,591
	1,591	1,591
Accumulated depreciation	**1,414**	884
Total Property and Equipment	**177**	707
Other Assets		
Investments - long-term	**8**	473
Total Assets	$ **28,963**	$ 44,051
LIABILITIES AND NET ASSETS		
Current Liabilities		
Accounts payable and accrued expenses	$ **559**	$ 1,214
Accrued payroll and payroll taxes	**6,414**	3,782
Total Current Liabilities	**6,973**	4,996
Total Liabilities	**6,973**	4,996
Net Assets		
Unrestricted net assets	**11,368**	30,555
Temporarily restricted	**10,622**	8,500
	21,990	39,055
Total Liabilities and Net Assets	$ **28,963**	$ 44,051

See independent accountants' review report.
The accompanying notes are an integral part of these financial statements.

Statement of Activities

Year Ended June 30, 2015

	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Operating Revenue				
Revenues and releases				
Annual fund	$ 5,636			$ 5,636
Arts District TIF Funding	100,000			100,000
Business partnerships	4,725			4,725
Corporate sponsorships	25,250			25,250
Programs	3,500	$ 12,500		16,000
Interest	86			86
Special events	1,369			1,369
Other income	24,465			24,465
Net assets released from restriction	10,378	(10,378)		-
Total Revenues and Releases	175,409	2,122		177,531
Expenses				
Personnel	81,017			81,017
Payroll taxes	5,441			5,441
Benefits	15,058			15,058
Professional services	46,736			46,736
Rent	5,200			5,200
Utilities	280			280
Bank service charges	2			2
Telecommunications	2,018			2,018
Printing and reproduction	535			535
Travel	435			435
Food and venue	2,765			2,765
Supplies	657			657
Equipment	199			199
Postage and delivery	118			118
Legal fees	70			70
Professional development	1,024			1,024
Dues	935			935
Board expense	10			10
Insurance	3,673			3,673
Advertising	1,441			1,441
Depreciation expense	530			530
Projects	23,225			23,225
Event sponsorship	3,000			3,000
Miscellaneous	227			227
Total Expenses	194,596			194,596
Change in Net Assets	(19,187)	2,122		(17,065)
Net Assets, Beginning of Year	30,555	8,500	-	39,055
Net Assets, End of Year	$ 11,368	$ 10,622	$ -	$ 21,990

See independent accountants' review report.
The accompanying notes are an integral part of these financial statements.

Statement of Activities

Year Ended June 30, 2014

	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Operating Revenue				
Revenues and releases				
Annual fund	$ 21,014			$ 21,014
Arts District TIF Funding	100,000			100,000
Business partnerships	6,250			6,250
Corporate sponsorships	10,000			10,000
Programs	68,981	$ 17,500		86,481
Interest	39			39
Other income	12,630			12,630
Net assets released from restriction	9,000	(9,000)		
Total Revenues and Releases	227,914	8,500		236,414
Expenses				
Personnel	78,971			78,971
Payroll taxes	5,429			5,429
Benefits	12,716			12,716
Professional services	17,986			17,986
Rent	4,975			4,975
Utilities	221			221
Bank service charges	34			34
Telecommunications	1,168			1,168
Printing and reproduction	624			624
Travel	6			6
Food and venue	7,354			7,354
Supplies	5,671			5,671
Equipment	566			566
Postage and delivery	217			217
Legal fees	70			70
Professional development	378			378
Dues	795			795
Board expense	29			29
Insurance	4,045			4,045
Advertising	765			765
Depreciation expense	530			530
Projects	66,092			66,092
First Friday Art Walk	8,904			8,904
Total Expenses	217,546			217,546
Change in Net Assets	10,368	8,500		18,868
Net Assets, Beginning of Year	20,187			20,187
Net Assets, End of Year	$ 30,555	$ 8,500	$ -	$ 39,055

See independent accountants' review report.
The accompanying notes are an integral part of these financial statements.

Statements of Cash Flows

Years Ended June 30,

	2015	2014
Cash flows from operating activities:		
Change in net assets	$ (17,065)	$ 18,868
Adjustments to reconcile change in net assets to net cash flows from by operating activities:		
Depreciation	530	530
(Increase) decrease in operating assets:		
Accounts receivable	5,947	3,523
Other current assets	(194)	(600)
Increase (decrease) in operating liabilities:		
Accounts payable and accrued expenses	1,977	(10,793)
Total adjustments	8,260	(7,340)
Net cash flows from operating activities	(8,805)	11,528
Cash flows from investing activities:		
Sales (purchases) of investments	465	(473)
Net cash flows from investing activities	465	(473)
Net increase (decrease) in cash and cash equivalents	(8,340)	11,055
Cash and cash equivalents at beginning of year	22,396	11,341
Cash and cash equivalents at end of year	$ 14,056	$ 22,396

See independent accountants' review report.
The accompanying notes are an integral part of these financial statements.

Notes to Financial Statements

June 30, 2015 and 2014

NOTE 1 – NATURE OF THE CORPORATION AND SIGNIFICANT ACCOUNTING POLICIES

Nature of the Corporation

Creative Portland Corporation (CPC), established November 2008, is a non-profit organization created to receive donations, grants and contributions in support of the City of Portland's economic development efforts which enhance and create economic business and arts district development and employment opportunities.

Basis of Presentation

The accompanying financial statements have been prepared on the accrual basis of accounting in accordance with generally accepted accounting principles. Net assets and revenues, expenses, gains and losses are classified based on the existence or absence of donor-imposed restrictions. Accordingly, net assets of CPC and changes therein are classified and reported as follows:

Unrestricted net assets – Net assets that are not subject to donor-imposed stipulations.

Temporarily restricted net assets – Net assets subject to donor-imposed stipulations that may or will be met, either by actions of CPC and/or the passage of time. When a restriction expires, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the statement of activities as net assets released from restrictions.

Permanently restricted net assets – Net assets resulting from contributions and other inflows of assets whose use by CPC is limited by donor-imposed stipulations that neither expire by passage of time nor can be fulfilled or otherwise removed by actions of CPC. CPC had no permanently restricted net assets as of June 30, 2015 and 2014.

Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Revenue Recognition

Support and revenue are accounted for under the accrual method of accounting which requires revenue to be recorded in the period it is earned. Contributions and grants are recorded as unrestricted, temporarily restricted, or permanently restricted support, depending on the existence and/or nature of any donor restriction.

Accounts Receivable

Accounts receivable are stated at the amount management expects to collect from balances outstanding at year-end. No allowance has been provided for these receivables as management considers them to be fully collectible.

Investments

Investments are carried at fair value, and realized and unrealized gains and losses are allocated to unrestricted and temporarily restricted net assets based on donor stipulations as reflected in the statement of activities.

Notes to Financial Statements

June 30, 2015 and 2014

NOTE 1 – NATURE OF THE CORPORATION AND SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

Property and Equipment

Property and equipment are stated at cost. CPC capitalizes all expenditures in excess of $1,000 for property and equipment. Depreciation of property and equipment is computed on accelerated and straight-line methods with lives varying from three to five years.

Fair Value Measurements

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In determining fair value, CPC uses various methods including market, income and cost approaches. Based on these approaches, CPC often utilizes certain assumptions that market participants would use in pricing the asset or liability, including assumptions about risk and or the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market corroborated, or generally unobservable inputs. CPC utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs. Based on the observability of the inputs used in the valuation techniques, CPC is required to provide the following information according to the fair value hierarchy.

The fair value hierarchy ranks the quality and reliability of the information used to determine fair values. Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three categories:

Level 1 – Unadjusted quoted prices in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date. The type of investments included in Level 1 include listed equities and listed derivatives.

Level 2 – Inputs other than quoted prices within Level 1 that are observable for the asset or liability, either directly or indirectly; and fair value is determined through the use of models or other valuation methodologies. Investments which are generally included in this category include corporate bonds and loans, less liquid and restricted equity securities and certain over-the-counter derivatives. A significant adjustment to a Level 2 input could result in the Level 2 measurement becoming a Level 3 measurement.

Level 3 – Inputs are unobservable for the asset or liability and include situations where there is little, if any, market activity for the asset or liability. The inputs into the determination of fair value are based upon the best information in the circumstances and may require significant management judgment or estimation. Investments that are included in this category generally include equity and debt positions in private companies.

CDC determined that all the investments were a Level 1.

Contributions

Contributions, including unconditional promises to give, are recorded as made. All contributions are available for unrestricted use unless specifically restricted by the donor. Conditional promises to give are recognized when the conditions on which they depend are substantially met. Unconditional promises to give due in the next year are recorded at their net realizable value. Unconditional promises to give due in subsequent years are reported at the present value of their net realizable value, using market interest rates.

Notes to Financial Statements

June 30, 2015 and 2014

NOTE 1 – NATURE OF THE CORPORATION AND SIGNIFICANT ACCOUNTING POLICIES – CONTINUED

Functional Expenses

CPC allocates its expenses on a functional basis among various programs. Accordingly, certain costs have been allocated among the programs and supporting services benefited. CPC incurred $147,228 and $143,454 in program related expenses, $38,921 and $28,994 in administrative expenses and $8,447 and $45,098 in fundraising expenses during the years ended June 30, 2015 and 2014, respectively.

Income Taxes

CPC is exempt from income taxes under Internal Revenue Code Section 501(c)(3).

CPC is currently open to audit under the statute of limitations by the Internal Revenue Service and state taxing authorities for the years ended June 30, 2012 through June 30, 2015.

Statements of Cash Flows

For purposes of the Statement of Cash Flows, CPC considers all cash and other highly liquid instruments with initial maturities of three months or less to be cash equivalents.

Advertising

CPC expenses advertising costs as they are incurred. Advertising expenses amounted to $1,441 and $765 for the years ended June 30, 2015 and 2014, respectively.

NOTE 2 – CASH AND CASH EQUIVALENTS

CPC maintains cash in bank deposit accounts that may at times exceed federally insured limits. CPC has not experienced any losses in these accounts and believes that it is not exposed to any significant risk on cash or cash equivalents.

NOTE 3 – TEMPORARILY RESTRICTED NET ASSETS

The following is a summary of the nature of restrictions on temporary restricted net assets at June 30, as follows:

	2015	2014
Restricted grants for programs	$ 10,622	$ 8,500

NOTE 4 – OPERATING LEASE

CPC has a one-year operating lease for office space in Portland, Maine, expiring on November 30, 2015. Monthly rent is $600 and rent expense for the years ended June 30, 2015 and 2014 was $5,200 and $4,975, respectively.

As of June 30, 2015, future minimum payments under this lease agreement are as follows for the year ending June 30:

2016	$ 3,000

Notes to Financial Statements

June 30, 2015 and 2014

NOTE 5 – FAIR VALUE MEASUREMENTS

Fair values of assets measured on a recurring basis are as follows:

		Fair Value of Measurements at Reporting Date		
	Fair Value	Level 1	Level 2	Level 3
June 30, 2015				
Cash	**$ 8**	**$ 8**	**$ -**	**$ -**
June 30, 2014				
Equities	$ 473	$ 473	$ -	$ -
	$ 473	$ 473	$ -	$ -

NOTE 6 – SUBSEQUENT EVENTS

Subsequent to June 30, 2015, CPC entered into an operating lease with payments in the amount of $618.00 due the 30th of each month, starting 12/01/2015 and ending 11/30/2016.

Management has made an evaluation of subsequent events through October 22, 2015, which was the date the financial statements were available to be issued.

Tab 1 12-21-15

IN COUNCIL REGULAR MEETING DECEMBER 7, 2015 VOL. 132 PAGE 50

ROLL CALL: Mayor Brennan called the meeting to order at 12:00. (All Councilors Present).

City Clerk Jones administered the oath of office to Councilor Mavodones, Councilor Thibodeau and Councilor Ray. City Clerk Jones also administered the oath of office to Mayor Strimling.

ROLL CALL: Mayor Strimling asked the Clerk to read the Call. (All Councilors Present).

BUSINESS MEETING

1. **Resolve 5 -15/16 - Adopting Council Rules.**

   Motion by Councilor Mavodones and seconded by Councilor Duson for passage. Passage 9-0.

2. **Order 112 – 15/16 Appointing Standing Committees and other Council Appointed Committees.**

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

4. **Order 113 - 15/16 – Appointing Nicholas M. Mavdones, Jr as Mayor Pro Tempore.**

   Motion by Councilor Duson and seconded by Councilor Brennerman for passage. Passage 9-0.

   Motion by Councilor Hinck and seconded by Councilor Mavodones to adjourn. Passage 9-0, 12:35 P.M.

A TRUE COPY.

ATTEST_____
Katherine L. Jones, City Clerk, CMC

ROLL CALL: Mayor Strimling called the meeting to order at 12:40 P.M. (All Councilors Present).

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Costa and seconded by Councilor Mavodones to approve the minutes of November 16, 2015 Regular City Council Meeting. Passage 9-0.

PROCLAMATIONS:

APPOINTMENTS:

Order 114-15/16 **Order Appointing Constables for 2016 – Sponsored by Jon P. Jennings, City Manager.**

Motion was made by Councilor Duson and seconded by Councilor Mavodones to separate out the Portland Public Library constables. Passage 9-0.

The order appoints the following individuals as constables for the 2016 calendar year:

Department of Building Inspections

Tammy Munson	Jonathan Rioux
Jeanie Bourke	Douglas Morin
Paul Fagone	Brian LaFlamme
Laurie Leader	Duane Hanson

Portland Housing Authority

Karin Lavigne	Trevor Nugent
David Gagne	Shannon Rafferty-Roy
Marcia Yeaton	

Jetport

Kate Oliver
Franklin L. Noiles

Portland Public Library

Joaquim Almeida

Miroslav M. Petrovic
Paul Tetzlaff

Parking Control

Kevin Ready
Paul Willey
John Peverada

Process Server, Portland Police Department
Kelly Watters

Cliff Island
Charles Green

Animal Control, Police Department
Debra Estrella

Fire Department
Keith Gautreau
David Petruccelli
Craig Messinger

Department of Public Works
Nancy Gagne
Rhonda Zazzara
Kevin Noyes
Mark Pinette
Paige L. Button

Motion was made by Councilor Suslovic and seconded by Councilor Duson for passage of Order 114. Passage 9-0.

Motion was made by Councilor Suslovic and seconded by Councilor Duson for passage of the Portland Public Library Constables. Passage 6-3 (Duson, Ray, Thibodeau).

CONSENT ITEMS:

LICENSES:

Order 115-15/16 **Order Granting Municipal Officers' Approval of ABK 30CC LLC d/b/a Hero. Application for a Class III & IV (Wine & Beer) FSE License with Outdoor Dining on Public Property at 30 City Center – Sponsored by Katherine L. Jones, City Clerk.**

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

Order 116-15/16 **Order Granting Municipal Officers' Approval of Rhum LLC d/b/a Rhum. Application for a Class I FSE License with Entertainment without Dance and Outdoor Dining on Private Property at 4 Free St. – Sponsored by Katherine L. Jones, City Clerk.**

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

Order 117-15/16 (Tab 5) **Order Granting Municipal Officers' Approval of Sneaker Tree, LLC d/b/a Po'Boys and Pickles. Application for a Class III & IV (Wine & Beer) FSE License with Outdoor Dining on Private Property at 1124 Forest Avenue – Sponsored by Katherine L. Jones, City Clerk.**

Motion was made by Councilor Thibodeau and seconded by Councilor Duson. Passage 9-0.

Order 118-15/16 **Order Granting Municipal Officers' Approval of Blue Phoenix Lounge LLC d/b/a Blue Phoenix Lounge. Application for a Class A Lounge License with Entertainment with Dance at 845 Forest Avenue – Sponsored by Katherine L. Jones, City Clerk.**

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

Order 119-15/16 **Order Granting Municipal Officers' Approval of Flatbread Company, Inc. d/b/a Flatbread Company. Application for a Class I FSE License with Outdoor Dining on Private Property at 72 Commercial Street – Sponsored by Katherine L. Jones, City Clerk.**

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

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

ORDERS:

Order 120-15/16 **Order Approving the Application and Acceptance of a Brownfields Revolving Loan Fund Grant – Sponsored by Jon P. Jennings, City Manager.**

Motion was made by Councilor Hinck and seconded by Councilor Brenerman for passage. Passage 9-0.

Order 121-15/16 **Order Accepting a Sidewalk Easement for Public Access from May Street 7-9 LLC - Sponsored by Jon P. Jennings, City Manager.**

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

Order 122-15/16 **Order Granting a Revocable License at 185 Fore Street to the East India Land Company LLC – Sponsored by Jon P. Jennings, City Manager.**

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

Order 123-15/16 **Order Accepting Easements for Public Access, Granting an Irrevocable License and Releasing Easement Rights for Sewers and Drainage to Redfern Longfellow, LLC – Sponsored by Jon P. Jennings, City Manager.**

Motion was made by Councilor Mavodones and seconded by Councilor Brennerman for passage. Passage 9-0.

Order 124-15/16 **Order Appropriating Funds from the Clement P. Wescott Trust Fund for Barron Center – Sponsored by Jon Jennings, City Manager.**

This is its first reading.

Order 125-15/16 **Order Authorizing the Option to Purchase and Appropriation of $150,000 Re: 212 Canco Road - Sponsored by Jon P. Jennings, City Manager.**

This is its first reading.

AMENDMENTS:

Order 126-15/16 **Amendment to Portland City Code Chapter 21 Farmers' Markets Re: Location – Sponsored by Jon P. Jennings, City Manager.**

This is its first reading.

Motion was made by Councilor Suslovic and seconded by Councilor Costa to adjourn. Passage 9-0, 1:05 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

Procc 12-15/16
Tab 3 12-21-15

PROCLAMATION

DECLARING

JANUARY 2016 AS HUMAN TRAFFICKING AWARENESS MONTH

****

WHEREAS: Human trafficking is a form of modern day slavery and is a crime against humanity that violates the most basic human rights and deprives victims of their freedom; and

WHEREAS: Human trafficking occurs when a person is recruited, harbored obtained, or exported through force fraud, or coercion for the purpose of sexual exploitation, forced labor, involuntary servitude, debt bondage and other methods of slavery; and

WHEREAS: Human trafficking effects as many as 27 million people worldwide including over 2 million children, 300,000 estimated in the US for child labor, and sexual exploitation; and

WHEREAS: Victims of human trafficking suffer emotional psychological, and physical horrors at the hands of their captors who instill fear to keep them enslaved; and

WHEREAS: Human trafficking is the fastest growing criminal enterprise in the world today and is second only to drug trafficking; and

WHEREAS: Human trafficking exists in the City of Portland; and

WHEREAS: The City of Portland is committed to protecting the vulnerable and ending human trafficking through continued prevention, education and awareness, partnering with law enforcement, the district attorney's office and non-governmental organizations.

NOW, THEREFORE, BE IT RESOLVED, THAT I, Ethan K. Strimling, Mayor of the City of Portland and members of the City Council do hereby recognize January 2016 as Human Trafficking Awareness Month

Signed and sealed this 21st day of December, 2015

Ethan K. Strimling, Mayor
City of Portland, Maine

Ord 13-15/16
Tab 4 12-21-15

PROCLAMATION

HONORING

PORTLAND HIGH SCHOOL

FOOTBALL TEAM

*****

WHEREAS: Portland High School has a long standing reputation for athletic and academic excellence and is an integral part of our community; and

WHEREAS: The Portland community is proud of Portland High School and its outstanding student athletes, coaches and administrators; and

WHEREAS: The 2015 Portland High School Football Team is comprised of the following outstanding athletes**: Joseph Esposito, Daniel Marzilli, Joseph Fusco, Jacob Hunnewell, Charles Kovarick, George Chasion-Lapine, Nehemiah Perez-Hughes, Thomas O'Donnell, John Williams, Austin Phillips, Nick Archambault, Nick Giaquinto, Dylan Bolduc, Felix Atienza-Gorman, Ethan Hoyt, Josh Pike, Issiah Bachelder, Dylan Wike, Jake Knop, Gage Turkewitz, Axel Nimbano Griffen Foley, Jack Kilbride, Randy Mancia, Charles Egeland, Vincent Pasquali, Kekoa Farnsworth, Leonard Bintabara;** and

WHEREAS: During the 2015 season the Portland High School Football Team experienced an undefeated season and went on to win the Class A North Championship. On November 21st the team participated in the Class A State Championship game against Thornton Academy under the direction of Coaches Jim Hartman, Mike Rutherford, Tim Marr, Dony Geary, Dave Geary, Eamon White and Rocco Navaro; and

WHEREAS: The City of Portland wishes to recognize the impressive achievements of the 2015 **Portland High School Football Team.**

NOW, THEREFORE, BE IT RESOLVED, THAT I, Ethan K. Strimling, Mayor of the City of Portland, Maine and the members of the Portland City Council do hereby congratulate the Portland High School Football Team on winning the Class A North Championship.

Signed and sealed this 21st day of December, 2015

Ethan K. Strimling, Mayor
City of Portland, Maine

Order 127-15/16
Tab 5 12-21-15

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 SPECIAL COUNCIL AND OUTSIDE BOARDS AND COMMISSIONS APPOINTMENTS FOR 2016

ORDERED, that the individuals identified in Attachment A to this order are hereby appointed as members of the committees listed in the attachment for the calendar year 2016.

ANNUAL APPOINTMENTS AND NOMINATIONS TO BOARDS AND COMMISSIONS
ATTACHMENT A

Casco Bay Island Transit District
Councilor Belinda Ray

Creative Portland
Councilor David Brenerman
Jennifer Hutchins

Council of Governments General Assembly
Councilor Edward Suslovic
(Executive Committee)
Councilor Jon Hinck
Councilor Justin Costa
Councilor Spencer Thibodeau
Alternates
City Manager Jon Jennings
(Executive Committee)

Cumberland County Finance Committee
Vacant
Vacant

ECOMaine
Councilor Ed Suslovic
Suzanne Knight, Assistant Finance Director
Bob Leeman, Public Works Director
Troy Moon, Sustainability
Alternate
Councilor Justin Costa

Fish Exchange
Councilor Nicholas Mavodones, Jr.

Fish Pier Authority
Councilor Nicholas Mavodones, Jr.
Deputy City Manager Anita LaChance

Greater Portland Transit District
Councilor Edward Suslovic
Councilor Councilor Belinda Ray
Councilor Spencer Thibodeau
Paul Bradbury, Jetport Director
Jeff Levine, Planning Director,

Island Advisory Committee
Councilor Belinda Ray
Mike Murray

Jetport Noise Advisory Committee
Councilor Edward Suslovic

Land Bank Commission
Councilor Justin Costa

Library Trustee
Councilor David Brenerman

Maine Municipal Association Legislative Policy Committee
Councilor Justin Costa
Councilor Jill Duson
Councilor Edward Suslovic
City Manager Jon Jennings
Alternates
Councilor Jon Hinck
Councilor Nicholas Mavodones, Jr.

Metro Regional Coalition
Councilor Edward Suslovic
City Manager Jon P. Jennings

Portland Area Comprehensive Transportation System (PACTS) Policy Committee
Councilor Justin Costa
Councilor Edward Suslovic
Councilor Jon Hinck
City Manager Jon Jennings
Bob Leeman, Director DPW
Alternates
Bruce Hyman, Transportation Program Manager
Kathi Earley, City Engineer

PACTS Technical Committee
Jeremiah Bartlett, Transportation Engineer

PACTS Planning Committee
Bruce Hyman, Transportation Program Manager

Maine Service Centers Coalition
City Manager Jon Jennings

Parks Commission
Councilor Belinda Ray

Portland Regional Chamber, Portland Community and City Affairs Committee
City Manager Jon Jennings, delegated to Greg Mitchell, Director of Economic Development

Portland Development Corporation
City Manager Jon Jennings
Mayor Ethan Strimling

Portland Downtown
Councilor Jon Hinck

Portland Public Arts Committee
Councilor Jill Duson

Waterfront Alliance
Councilor Nicholas Mavodones, Jr.

Northern New England Passenger Rail Authority Station Operations
Councilor Edward Suslovic

Order 128-15/16
Tab 6 12-21-15

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 TRANSFER OF FUNDS UNDER
15 M.R.S. §§ 5824(3) and 5826(6)
Re: Eric Dunbar

ORDERED, that the City Council hereby accepts a Kel Tec firearm, Serial Number RQD52, as a forfeited asset in the case of State of Maine vs. Eric Dunbar from the State of Maine to the City of Portland, pursuant to 15 M.R.S. § 5824(3) and § 5826(6) and as provided in the attached "Approval of Transfer."

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Michael J. Sauschuck, Chief of Police

DATE: December 3, 2015

SUBJECT: Firearm Forfeiture

SPONSOR:
(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading____X_____ Final Action_____

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)

I. **ONE SENTENCE SUMMARY** State law, requires the City Council's approval of the transfer of forfeited property to the Police Department (see attached approval form).

II. **AGENDA DESCRIPTION** State v. Eric Dunbar, CR 15-3270 and One Kel Tec Firearm

III. **BACKGROUND** Law enforcement officers may seize all firearms and dangerous weapons that they find in any lawful search for scheduled drugs in which scheduled drugs are found. One Kel Tec firearm was seized from the above individual during a lawful search of a vehicle after the occupants were found to be in possession of heroin. The State forfeiture statute, 15 M.R.S.A. §5824(3) and §5826(6) requires that before any forfeitable item may be transferred to a municipality, the legislative body of the municipality must publicly vote to accept the item.

IV. **INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED** The firearm will be transferred to the police department for destruction.

V. **FINANCIAL IMPACT** There may be a slight cost to the City for the destruction of the firearm.

VI. **STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION**

VII. RECOMMENDATION

VIII. LIST ATTACHMENTS

Prepared by: TBaker
Date: 12-3-15

Bean/agendarequestmemo/rev 11/2015

STATE OF MAINE **Cumberland, SS**	**UNIFIED CRIMINAL DOCKET** **Criminal Action** **Docket No. CR-15-3270**
State of Maine	}
	}
	} **City/Town Of Portland**
v.	} **Approval Of Transfer**
	} **15 M.R.S.A. §5824(3)**
Eric Dunbar,	} **and §5826(6)**
Defendant	}
	}
AND ONE KEL TEC FIREARM DEFENDANT IN REM #1	}

NOW COMES the City/Town of Portland, Maine, by and through its legislative body, the City/Town Council, and does hereby grant approval pursuant to Section 5824(3) and Section 5826(6) of Title 15 of the Maine Revised Statutes Annotated, to the transfer of the above captioned Defendant(s) *In Rem*, namely one kel tec firearm, serial number RQD52, on grounds that the City/Town of Portland Police Department did make a substantial contribution to the investigation of this or a related criminal case.

WHEREFORE, the City/Town of Portland Town/City Council does hereby approve of the transfer of the Defendant(s) *In Rem* to the City/Town of Portland, Maine pursuant to 15 M.R.S.A. §5824(3) and §5826(6).

Dated: _____

_____
Chairperson/Mayor/Selectman/Clerk

(Impress Legislative Body Seal Here)

Order 124-15/16
~~Tab 12 12-7-15~~
Tab 7 12-21-15

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 APPROPRIATING FUNDS FROM THE CLEMENT P. WESCOTT TRUST FUND FOR BARRON CENTER

ORDERED, that $40,000 is hereby appropriated from the Clement P. Wescott Trust Fund for costs associated with the removal of a unstable chimney stack at the Barron Center.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Dawn Stiles, Director, Health & Human Services

DATE: November 30, 2015

SUBJECT: Utilizing the Wescott Trust Fund to pay for the removal of a crumbling smoke stack at the Barron Center.

SPONSOR:
(If sponsored by a Council committee, include the date the committee met, the results of the vote, and the meeting minutes.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading_ Final Action_12/21
This item must be passed as an Emergency.

Can action be taken at a later date: ____ Yes __X__ No (If no why not?)
The smoke stack must be removed before winter because of the increased risk of injury to staff, visitors and residents and the contractor's (Gray Goose Masonry) limited ability to work on this project during the winter.

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

I. **ONE SENTENCE SUMMARY**
The Smoke Stack at the Barron Center has been crumbling for several years and has become increasingly dangerous.

II. **AGENDA DESCRIPTION**

II. **BACKGROUND**
The Westcott Trust Fund was left to the City of Portland in 1973 by Doctor Clement P. Westcott to "assist in the improvements and additions to the Portland City Hospital." On July 7, 1975 the Portland City Council accepted the trust fund. In Dr. Westcott's Last Will and Testament it was stated that the Trust be used, "for improvements in and additions to the buildings thereof, for the acquisition of equipment and other facilities and for any other purposes which shall improve the standard of said hospital and its services."

The City's Preservation staff has approved removal of the smokestack on the grounds of the Barron Center.

The Trust Fund requires the approval of the expenditure by the Hospital Director, City Manager and majority of the Council.

III. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The request to the Council is to allow payment of the removal to be taken from the Wescott Trust Fund designated for the Barron Center Trust.

IV. FINANCIAL IMPACT

The cost of removal is $40,000 and will be paid from the Wescott Trust Fund which has a current balance of $ 318, 940, leaving a balance of $ 278,940.00

V. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION

The smokestack must be removed before winter – it is an injury waiting to happen.

VI. RECOMMENDATION

Council approval of the use of the Wescott Trust fund to pay for the smokestack removal.

VII. LIST ATTACHMENTS

History of Wescott Trust Fund

Prepared by:
Date:

A. J. Wilson, City Manager 8/12/76

John G. DePalma, Director of Finance

Wescott Trust Fund

In March of 1973, the City of Portland was informed that Doctor Clement P. Wescott left in trust a certain amount of money in stocks to assist in the improvements and additions to the Portland City Hospital. In July of 1975, the City of Portland accepted this trust fund which at that time had a total principal amount of $57,290.69 plus approximately $12,000 in stocks for a total trust fund of approxmmately $69,000. The excerpt from the will reads as follows:

> I direct that no part of said trust either principal or income, shall be used for the ordinary maintenance operation or other current expenses of said hospital. I direct that said City of Portland shall from time to time expend said trust funds both income and principal as it may deem advisable for the improvement of said hospital. Such expenditures may be for improvements in and additions to the buildings thereof for the acquisition of equipment and other facilities and for other purposes which shall improve the standard of said hospital and its services. I direct that each proposed expenditure for the purposes for this paragraph shall be approved by the director of said hospital, the City Manager of the City of Portland, and a majority of the members of the City Council of said City who shall be in office at the time thereof.

At the present time, the City of Portland has $61,613.96 in cash and approximately $12,000 in common stocks for a total trust fund of approximately $73,600. There is certainly sufficient funds in the trust fund to allow for the centralized dietary kitchen at the Portland City Hospital and the expenditure for this equipment would be proper and lies within the scope and purpose of what the trust fund was established for.

JGD/nc
cc: Merle Mahany

COPY

421

ORDER

ACCEPTING THE CLEMENT P. WESCOTT TRUST FUND

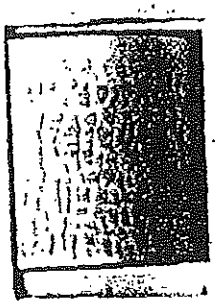
IN THE CITY COUNCIL

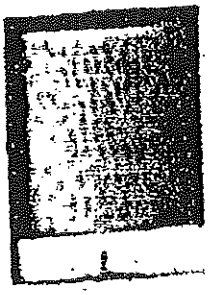
JULY 7, 1975

ACCEPTING THE DR. CLEMENT P. WESCOTT TRUST FUND. Read twice and passed, 8 Yeas (MacWilliams out).

Attest: [signature]
City Clerk.

Yeas Nays





City of Portland, Maine

IN THE CITY COUNCIL

Ordered, that the Director of Finance be and hereby is authorized and directed for and on behalf of the City of Portland to accept in trust the rest, residue and remainder of the Estate of Clement P. Wescott, now consisting of $57,290.69 in cash and securities as set forth on the list attached, to be held as the Clement P. Wescott Trust Fund to be expended for the benefit of the Portland City Hospital as set forth in Paragraph Eighth of the Will of said Clement P. Wescott, dated August 5, 1955.

survive me, said trust shall lapse, and the property herein devised and bequeathed in trust shall be disposed of in accordance with the provisions of the next paragraph of my will, and in any event, upon the death of my said sister, said trust shall terminate and said trust estate shall be disposed of as provided in the next paragraph of my will.

EIGHTH: Upon the decease of my said sister, Annie L. Wescott, I give, bequeath and devise all the rest, residue and remainder of my estate, both principal and accumulated income, remaining in the hands of my said Trustee to the City of Portland, a body politic and corporate, in trust nevertheless upon the following uses and purposes:

The Trust Fund herein created shall be designated and known as the "Clement P. Wescott Trust Fund", and shall be used by said City of Portland for the benefit of the Portland City Hospital, formerly known as the Farrington Hospital, as hereinafter directed.

I direct that no part of said Trust Fund, either principal or income, shall be used for the ordinary maintenance, operation or other current expenses of said Hospital. I direct that said City of Portland shall, from time to time, expend said Trust Fund, both income and principal, as it may deem advisable for the improvement of said Hospital. Such expenditure may be for improvements in and additions to the buildings thereof, for the acquisition of equipment and other facilities and for any other purposes which shall improve the standard of said Hospital and its services. I direct that each proposed expenditure for the purposes of this paragraph shall be approved by the Director of said Hospital, the City Manager of the City of Portland and a majority of the members of the City

Clement P. Wescott

deem advisable before making any expenditures under this paragraph.

NINTH: I direct that all inheritance and estate taxes upon any of the devises and legacies in this will shall be paid from the general fund of my estate and not deducted from the respective devises and legacies.

TENTH: I hereby nominate my said sister, Annie L. Wescott, to be the sole Executrix of this my Last Will and Testament, and request that she be excused from filing bond for the faithful discharge of her official duties. If my said sister, Annie L. Wescott, shall not survive me, or shall decline to serve, I hereby nominate Donald H. Bodge, of said Westbrook, to be the Executor of this my Last Will and Testament.

IN TESTIMONY WHEREOF, I hereunto set my hand and seal and subscribe my name in the margin of the five preceding pages of this will and publish and declare this to be my Last Will and Testament this fifth day of August, in the year of our Lord one thousand nine hundred and fifty-five.

Clement P. Wescott (seal)

Signed, sealed, published and declared by the above named Clement P. Wescott, as and for his Last Will and Testament in the presence of us who, at his request, in his presence, and in the presence of each other, hereunto subscribe our names as witnesses thereto, on this fifth day of August, A. D. 1955.

Milford G. Chapman

M. Donald Gardner

Alma F. Hight

Order 126-15/16
~~Tab 14 12-7-15~~
Tab 8 12-21-15

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 21 FARMERS' MARKETS
RE: LOCATION

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

1. That Chapter 21, Article I, In General, Section 21-1 of the Portland City Code is hereby amended to read as follows:

Sec. 21-1. Days, locations and products sold.

The City Council may permit by lease or license agreement the use of City property for the purpose of operating a Farmers' Market. The Farmers' Market may be held on Mondays and Wednesdays from 7:00 a.m. to 2:00 p.m. at Monument Square and Monument Way; ~~, and~~ Saturdays from 7:00 a.m. to ~~1~~2:00 p.m. at Deering Oaks Park, on Farmer's Market Road and Jenny Lane; ~~,~~ and ~~Saturdays from 8:00 a.m. until 2:00 p.m.~~ two days per week for six hours per day in community halls located in R-6 residential zones, ~~and in makers' market establishments~~ in the IL-b zone, and in any zone where retail establishments, as defined in §14-47 of the Portland City Code, are a permitted use, subject to the provisions of that zone. In addition to the sale of local fruit, vegetables, flowers, seedlings and plants and other items, the following items may also be sold, provided that he product is produced, processed or manufactured in an establishment licensed by the department of agriculture to produce the item and that the seller has produced, processed or manufactured the item: raw fiber and spun fiber; fresh meat and meat products and fresh poultry and poultry products provided that they are stored at or below forty (40) degrees Fahrenheit during transport to and display at the public market and frozen meat and meat products, and frozen poultry and poultry products, as defined in 22 M.R.S.A. § 2511, and amendments thereto, provided that it is stored such that it remains frozen during transport to an display at the public market; pasteurized milk and milk products, as defined in 7 M.R.S.A. §2900, and any amendments thereto, stored in compliance with state law, and unpasteurized milk and unpasteurized milk products, stored in

compliance with state law which products must be labeled as **NOT PASTEURIZED** in accordance with 7 M.R.S.A. Sec. 2902-B, and any amendments thereto. Failure to or store in compliance with state law will result in an order to—immediately cease the sale of these unpasteurized products, or suspension or revocation of the farmers market license in accordance with Section 21-18 of the City Code; farm-fresh eggs, provided that they are stored at or below forty-five (45) degrees Fahrenheit during transport to and display at the public market; cheese provided that it is stored at or below forty (40) degrees Fahrenheit during transport to and display at the public market, honey, jams, jellies, pickles, relishes, maple syrup, apple cider, hard cider, as defined in 28-A M.R.S.A. § 2 and any amendments thereto, provided however that the producer has a farm winery license; malt liquor and wine, produced subject to the provisions of 7 M.R.S.A Sec. 415, and any amendments thereto; packaged herbs or herb blend mixtures and pesto. The following items may be sold, provided that the total amount of sales from all such items does not exceed forty-nine (49) percent of the total amount of sales made by the licensee at the public market: any other edible product that is a derivative of plants or produce grown by the licensee, provided that the licensee also has a license from the department of agriculture to produce the item. Any baked goods sold at a public market must be individually or collectively wrapped while displayed and sold. In no event shall any licensee sell at a public market any potentially hazardous foods, which includes any perishable food or food product not processed or stored in compliance with state law.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Jeff Levine, Director, Planning and Urban Development

DATE: November 30, 2015

DISTRIBUTION: Mayor Ethan Strimling; Jon Jennings, City Manager; Danielle West-Chuhta, Corporation Counsel; Jennifer Thompson, Associate Corporation Counsel; Sonia Bean; Nancy English; and Julie Sullivan

SUBJECT: Text Amendment to Chapter 21 Farmer's Markets

SPONSOR: Department of Planning and Urban Development

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading December 7, 2015 **Final Action** December 21, 2015

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

PRESENTATION: Stuart O'Brien, Planning Division Director, 5 minute oral presentation

I. SUMMARY OF ISSUE (Agenda Description)
Over the past five years, representatives of the Portland Farmers' Market Association have contacted the city's Planning Department and Business Licensing Division on several occasions regarding possible locations for the Farmers' Market, as the growth in demand for locally-sourced products and the success of the market has resulted in a changing set of needs. For example, the Association's winter market was originally held in the Irish Heritage Center on State Street, but due to parking constraints, moved to the Urban Farm Fermentory (UFF) in East Bayside in 2013. This fall, the organization realized that the UFF would no longer be large enough to accommodate the number of growers in the market; the association contacted the city once again regarding another move, this time to a vacant building on Cove Street in East Bayside.

However, Chapter 21 (Farmers' Markets) of the city's ordinance, which governs the location of the market, tightly confines the market's hours of operation, days of operation, and possible locations to four. Thus, every time that the market has moved over the past several years, an amendment to Chapter 21 has been required. In order to minimize the necessity of future text amendments as the market's needs continue to evolve, staff is suggesting a text amendment to Chapter 21 to broaden the potential market locations to include properties in both the IL-b zone (East Bayside) and any zone where retail establishments are permitted by right. The text amendment would also allow the market some flexibility in terms of hours of operation and days

of operation in those zones. The market would still be subject to licensing through the city's Business Licensing Division.

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

Chapter 21 of the city's code of ordinances explicitly states that farmers' markets may be held on specific days at specific times in four locations: Monument Square, Deering Oaks, community halls in the R-6 zone, and makers' markets in the IL-b zone. In order to afford the market more flexibility in terms of future locations, hours of operation, and days of operation as it expands and changes, amendments to Chapter 21 are required.

III. INTENDED RESULT

As noted above, the amendment adds the IL-b zone and any zone where retail establishments are permitted by right as potential farmers' market locations. The amendment also loosens the restrictions on hours and days of operation in order to allow the winter market to operate on two days (as the summer market already does). Thus, the proposed amendment will allow the market to adapt to changing needs over the years to come.

IV. COUNCIL GOAL ADDRESSED

The proposed map amendment addresses the following Council goals:

- 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

A successful farmers' market can serve as an important economic development tool for the city.

VI. STAFF ANALYSIS

The proposed amendment to Chapter 21 was developed by the Planning Division, Zoning Administrator, and Business Licensing in concert with the Farmers' Market Association. Staff finds the proposed amendment consistent with the comprehensive plan, including *A New Vision for Bayside, Housing: Sustaining Portland's Future*, and the *Sustainable Portland* report.

VII. RECOMMENDATION

Staff recommends that the council adopt the ordinance amendment in order to allow the Portland Farmers' Market Association flexibility in their future operations.

VIII. ATTACHMENTS

1. Order
2. City Council Report

Prepared by:

___Nell Donaldson, Planner_____ ____ November 30, 2015_____
Signature Date

CITY COUNCIL REPORT
From
PLANNING DIVISION
PORTLAND, MAINE

Text Amendment to Chapter 21 (Farmer's Markets)
to Allow Farmers' Markets in the IL-b Zone and Zones Where Retail Uses are Permitted
City of Portland, Applicant

Submitted to: Portland City Council First Reading: December 7, 2015 Second Reading: December 21, 2015	Prepared by: Portland Planning Division Date: November 30, 2015

I. INTRODUCTION

The city of Portland Planning Division proposes a text amendment to Chapter 21 (Farmers' Markets) designed to explicitly allow the Portland Farmers' Market to operate in the IL-b zone and in any zone where retail establishments are permitted by right. Under existing language, the location, hours of operation, and days of operation for the farmers' market are tightly circumscribed. The amendment would afford the market more flexibility in terms of future locations, hours of operation, and days of operation as it continues to respond to growth in demand.

II. BACKGROUND

Over the past five years, representatives of the Portland Farmers' Market Association have contacted the city's Planning Department and Business Licensing Division on several occasions regarding possible locations for the Farmers' Market, as the growth in demand for locally-sourced products and the success of the market has resulted in a changing set of needs. For example, the Association's winter market was originally held in the Irish Heritage Center on State Street, but due to parking constraints, moved to the Urban Farm Fermentory (UFF) in East Bayside in 2013. This fall, the organization realized that the UFF would no longer be large enough to accommodate the number of growers in the market; the association contacted the city once again regarding another move, this time to a vacant building on Cove Street in East Bayside.

However, Chapter 21 (Farmers' Markets) of the city's ordinance, which governs the location of the market, tightly confines the market's hours of operation, days of operation, and possible locations to four. Thus, every time that the market has moved over the past several years, an amendment to Chapter 21 has been required. In order to minimize the necessity of future text amendments as the market's needs continue to evolve, staff is suggesting a text amendment to Chapter 21 to broaden the potential market locations to include properties in both the IL-b zone (East Bayside) and any zone where retail establishments are permitted by right. The text amendment would also allow the market some flexibility in terms of hours of operation and days of operation in those zones. The market would still be subject to licensing through the city's Business Licensing Division.

III. PROPOSED TEXT AMENDMENT

A text amendment to Chapter 21 is proposed as follows:

ARTICLE I. IN GENERAL

Sec. 21-1. Days, locations and products sold.

The City Council may permit by lease or license agreement the use of City property for the purpose of operating a Farmers' market. The Farmers' Market may be held on Mondays and Wednesdays from 7:00 a.m. to 2:00 p.m. at Monument Square and Monument Way; Saturdays from 7:00 a.m. to 1:00 p.m. at Deering Oaks Park, on Farmer's Market Road and Jenny Lane; and two days per week for six hours per day ~~Saturdays from 8:00 a.m. until 2:00 p.m.~~ in community halls located in R-6 residential zones, ~~and in makers' market establishments in the ILb zone,~~ in the IL-b zone, and in any zone where retail establishments are permitted by right, subject to the provisions of that zone.

IV. CONFORMANCE WITH THE COMPREHENSIVE PLAN

The proposed text amendment is consistent with the comprehensive plan. The amendment supports policies from *2002 Housing: Sustaining Portland's Future* which state that the city should "encourage neighborhood business centers throughout the city to reduce dependence on the car and to make neighborhood life without a car more practical" (21). Likewise, the ordinance change aligns with several objectives of the *Sustainable Portland* report, which encourages the development of infrastructure that supports fledgling, growing, and maturing businesses and promotes efforts such as the city's Buy Local campaign, which fosters consumer support of locally produced goods and services.

Lastly, the ordinance amendment also aligns with numerous elements from *A New Vision for Bayside,* a plan that envisions Bayside as a thriving, diverse neighborhood replete with housing, employment, and commercial space. The plan imagines that "Bayside will contain housing, workplaces, services, transportation, recreation, dining, and shopping, all within comfortable walking distance of each other and the downtown" (22) and highlights the use of the neighborhood for "small-scale affordable spaces for start-up and small businesses" (37).

Attachments:

1. Chapter 21, Farmers Market (Portland City Code, Chapter 21)

Chapter 21 FARMERS' MARKETS*

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*Cross reference(s)--Food and food handlers, Ch. 11; streets, sidewalks and other public places, Ch. 25.

Art. I. In General, §§ 21-1--21-15
Art. II. License, §§ 21-16--21-19
Art. III. On Private Property, §§ 21-20--21-22

ARTICLE I. IN GENERAL

Sec. 21-1. Days, locations and products sold.

The City Council may permit by lease or license agreement the use of City property for the purpose of operating a Farmers' market. The Farmers' Market may be held on Mondays and Wednesdays from 7:00 a.m. to 2:00 p.m. at Monument Square and Monument Way; Saturdays from 7:00 a.m. to 1:00 p.m. at Deering Oaks Park, on Farmer's Market Road and Jenny Lane; Saturdays from 8:00 a.m. until 2:00 p.m. in community halls located in R-6 residential zones and in makers' market establishments in the ILb zone, subject to the provisions of that zone. In addition to the sale of local fruit, vegetables, flowers, seedlings and plants and other items, the following items may also be sold, provided that he product is produced, processed or manufactured in an establishment licensed by the department of agriculture to produce the item and that the seller has produced, processed or manufactured the item: raw fiber and spun fiber; fresh meat and meat products and fresh poultry and poultry products provided that they are stored at or below forty (40) degrees Fahrenheit during transport to and display at the public market and frozen meat and meat products, and frozen poultry and poultry products, as defined in 22 M.R.S.A. § 2511, and amendments thereto, provided that it is stored such that it remains frozen during transport to an display at the public market; pasteurized milk and milk products, as defined in 7 M.R.S.A. §2900, and any amendments thereto, stored in compliance with state law, and unpasteurized milk and unpasteurized milk products, stored in compliance with state law which products must be labeled as **NOT PASTEURIZED** in accordance with 7 M.R.S.A. Sec. 2902-B, and any amendments thereto. Failure to or store in compliance with

state law will result in an order to immediately cease the sale of these unpasteurized products, or suspension or revocation of the farmers market license in accordance with Section 21-18 of the City Code; farm-fresh eggs, provided that they are stored at or below forty-five (45) degrees Fahrenheit during transport to and display at the public market; cheese provided that it is stored at or below forty (40) degrees Fahrenheit during transport to and display at the public market, honey, jams, jellies, pickles, relishes, maple syrup, apple cider, hard cider, as defined in 28-A M.R.S.A. § 2 and any amendments thereto, provided however that the producer has a farm winery license; malt liquor and wine, produced subject to the provisions of 7 M.R.S.A Sec. 415, and any amendments thereto; packaged herbs or herb blend mixtures and pesto. The following items may be sold, provided that the total amount of sales from all such items does not exceed forty-nine (49) percent of the total amount of sales made by the licensee at the public market: any other edible product that is a derivative of plants or produce grown by the licensee, provided that the licensee also has a license from the department of agriculture to produce the item. Any baked goods sold at a public market must be individually or collectively wrapped while displayed and sold. In no event shall any licensee sell at a public market any potentially hazardous foods, which includes any perishable food or food product not processed or stored in compliance with state law.

(Code 1968, ch. 419; Ord. No. 231-80, 12-22-80; Ord. No. 369-91, § 1, 5-6-91; Ord. No. 83-93, § 2, 9-8-93; Ord. No. 161-00, 3-6-00; Ord. No. 284-05/06, 6-5-06;Ord. No. 166-06/07, 3-19-07; Ord. No. 196-07/08, 4-28-08; Ord. No. 78-10/11, 12-6-10 emergency passage; Ord. No.102-11/12, 2-6-12; Ord. No. 159-12/13, 4-22-13; Order 92-13/14, 11/19/2013)

Sec. 21-2. Reserved.
Sec. 21-3. Reserved.
Sec. 21-4. Reserved.
Sec. 21-5. Reserved.
Sec. 21-6. Reserved.
Sec. 21-7. Reserved.
Sec. 21-8. Reserved.
Sec. 21-9. Reserved.
Sec. 21-10. Reserved.
Sec. 21-11. Reserved.
Sec. 21-12. Reserved.
Sec. 21-13. Reserved.
Sec. 21-14. Reserved.
Sec. 21-15. Reserved.

ARTICLE II. LICENSE*

Sec. 21-16. Reserved.
Sec. 21-17. Reserved.
Sec. 21-17.1. Reserved.
Sec. 21-18. Reserved.
Sec. 21-19. Reserved.

***Editor's Note:** Article II (License) was repealed in its entirety per council order 159-12/13 passed on 4-22-13. Article III (On Private Property) §§ 21-20 thru 21-22 was repealed in its entirety per council order 196-07/08 passed on 4-28-08.

Order 84-15/16
~~Tab 21 10-5-15~~
~~Tab 20 10-19-15~~
~~Tab 12 11-2-15~~
Tab 9 12-21-16

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

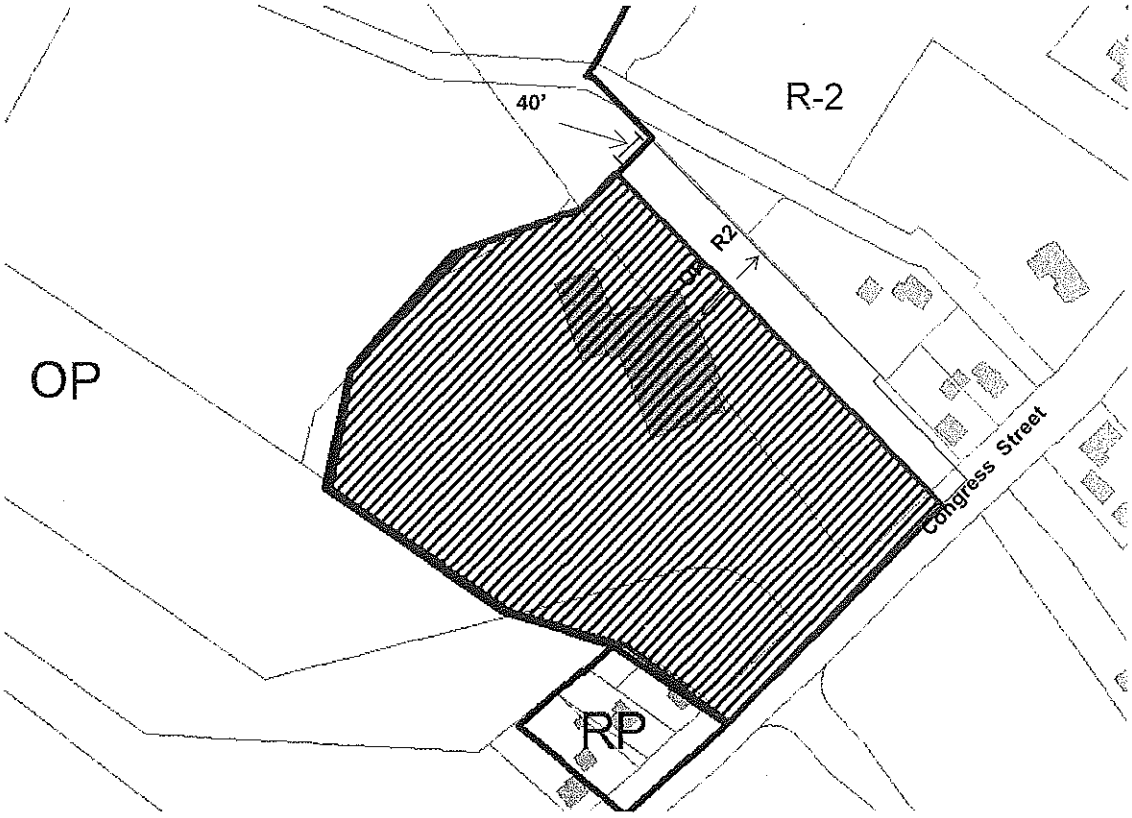
CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID H. BRENERMAN
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.



DJC

CITY OF PORTLAND, MAINE
MEMORANDUM

To: *Jon Jennings, City Manager*

Jeff Levine, Planning & Urban Development Director

From: *Paul Bradbury, Airport Director*

Date: *December 9, 2015*

Re: *Future Development of Jetport Property adjacent to International Parkway and Congress Street*

There has been significant discussion around a request by Northland Enterprises, LLC to rezone property at 1945 Congress Street from R-2 to O-P. Since this parcel is directly across from the Portland International Jetport's entrance from Congress Street there have been questions regarding the long range plans for Jetport property in this vicinity also zoned R-2. This specifically refers to Jetport property along International Parkway bounded to the north by Congress Street and to the south by Jetport Boulevard.

The City of Portland/Portland International Jetport acquired this property in 1991 in order to build a new Jetport access road from Congress Street. The new access road was highly supported and advocated for by the Stroudwater Neighborhood Association (now Stroudwater Village Association) because it allowed for the closure of Westbrook Street as an access way to the Jetport. In doing so, the new road would eliminate all Jetport traffic entering and exiting through this section of the historic Stroudwater neighborhood.

The initial alignment of this road and a perpendicular cross road was outlined in the Jetport's 1994 master plan. This planning ultimately led to the construction of the new access road from Congress Street named International Parkway in 1998 followed shortly thereafter by the construction of Jetport Boulevard and the closure of the former access via Westbrook Street.

The majority of Jetport property has been zoned Airport Business (AB), but the parcel purchased in 1991 to construct International Parkway was never changed from R-2. This is likely because the roadway is an allowable use and no further Jetport development has occurred on this parcel. The Jetport's 1994 and 2005 master plans indicated limited future development on this parcel within the 20 year planning horizons reviewed. Both outlined development options north of International Parkway and set back from Congress Street by more than 600 feet.

The current sustainable airport master plan now under development continues with this methodology. As shown on the attached Exhibit 6A, proposed development on this parcel is limited to an area north of the intersection of International Parkway and Jetport Boulevard. This section

remains over 600 feet from Congress Street and will have a 40 foot R-2 zoned open space buffer along its northerly boundary with the adjacent R-2 zone.

You will note the allocation of this AB zone outlined in the sustainable master plan is being proposed to meet long term needs. There are no plans for development of this parcel within the short or medium planning horizon covering the next 10 years.

Sustainable Airport Master Plan

PDX Portland International Airport

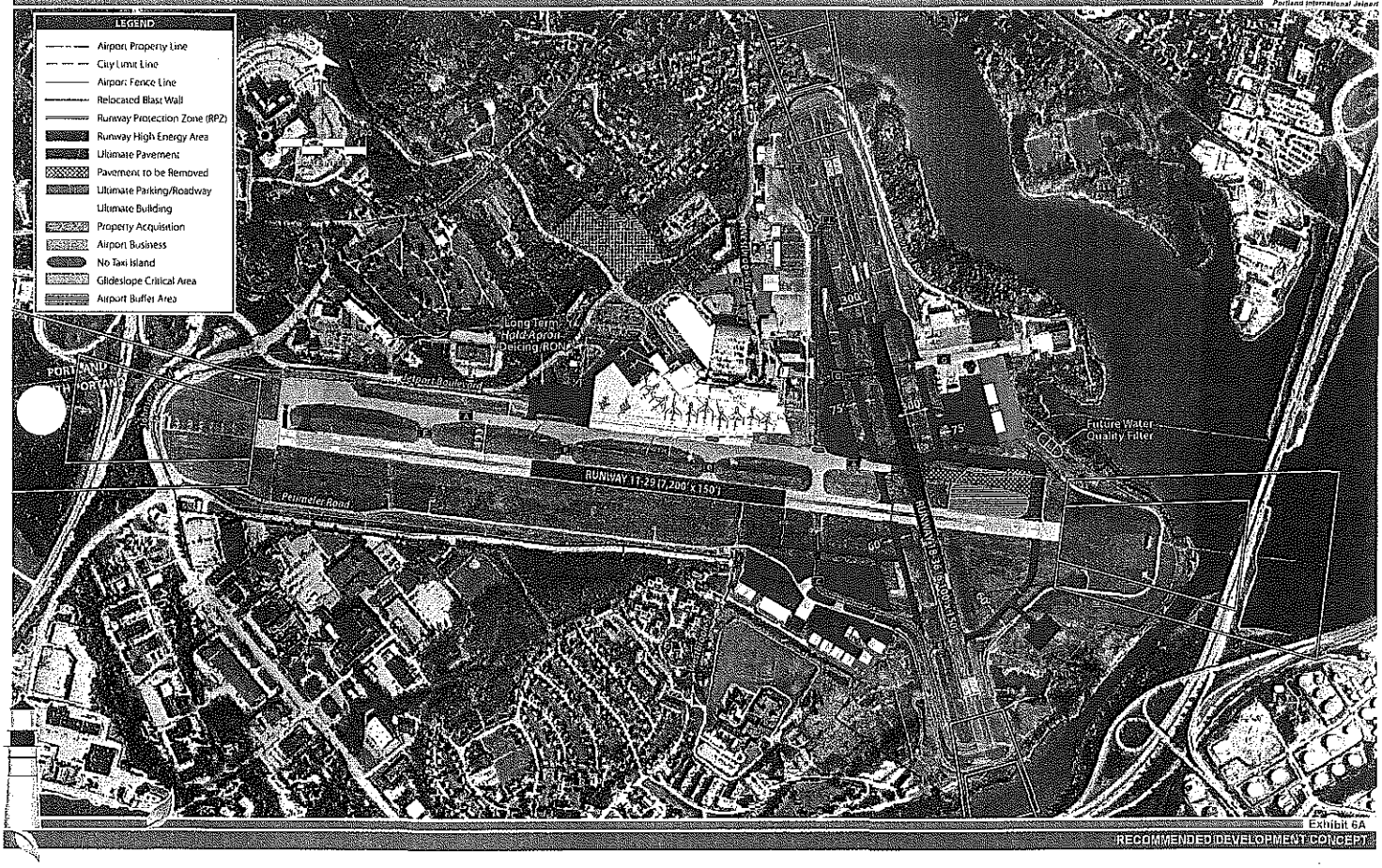


Exhibit 6A

RECOMMENDED DEVELOPMENT CONCEPT

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

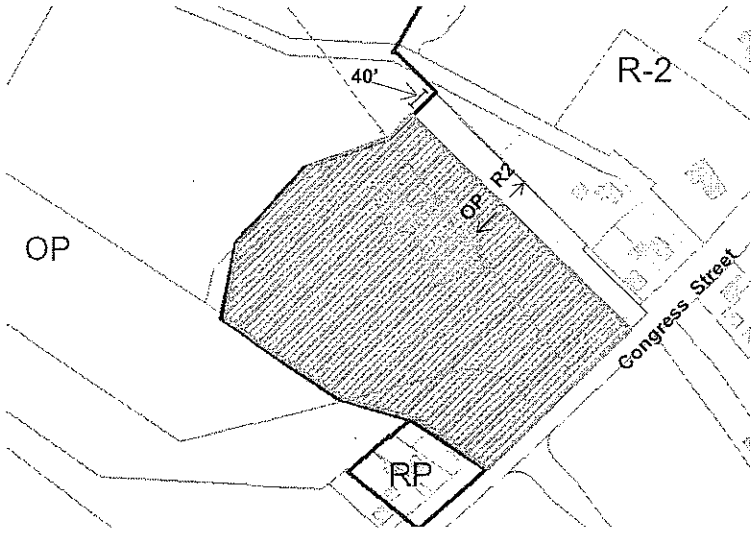
The zone change will allow the development of office uses on the 1945 Congress Street site, which has the potential to generate revenue for the city.

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 Morrissette 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 Morrissette 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:

_____ September 23, 2015

Signature Date

O:\City Council Agenda Items\10-5-15\1945 Congress map amendment\agenda request memo_1945 Congress.docx

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 Morrissette 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.

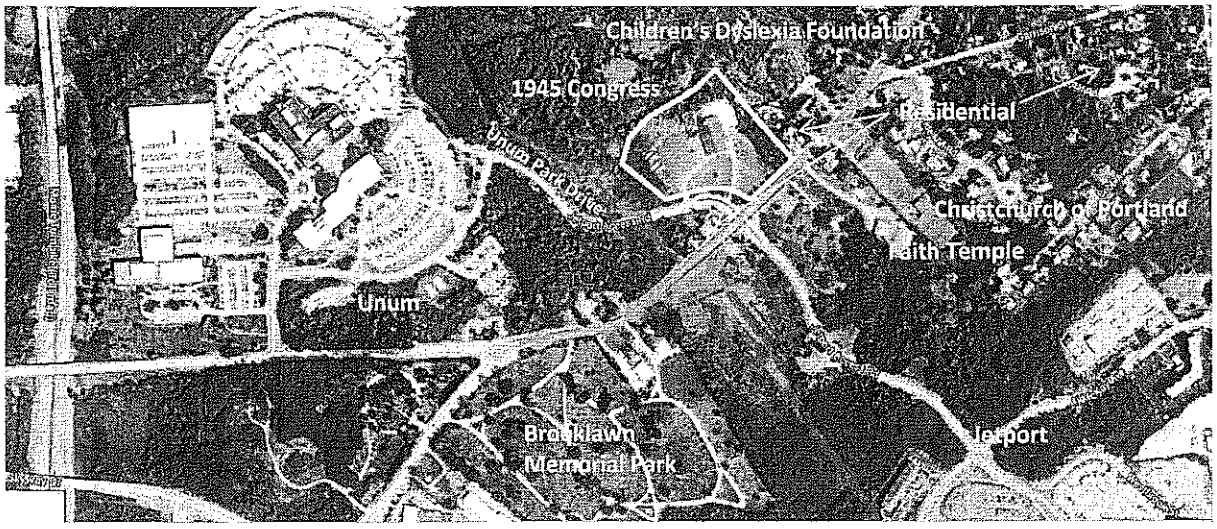


Figure 1: 1945 Congress Street in context.

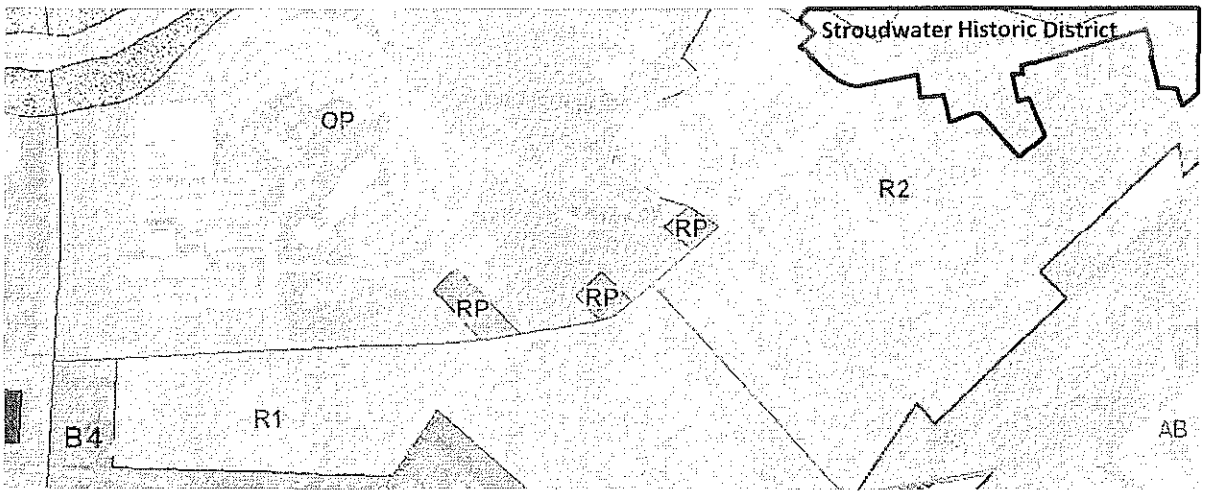


Figure 2: 1945 Congress Street, existing zoning

II. BACKGROUND

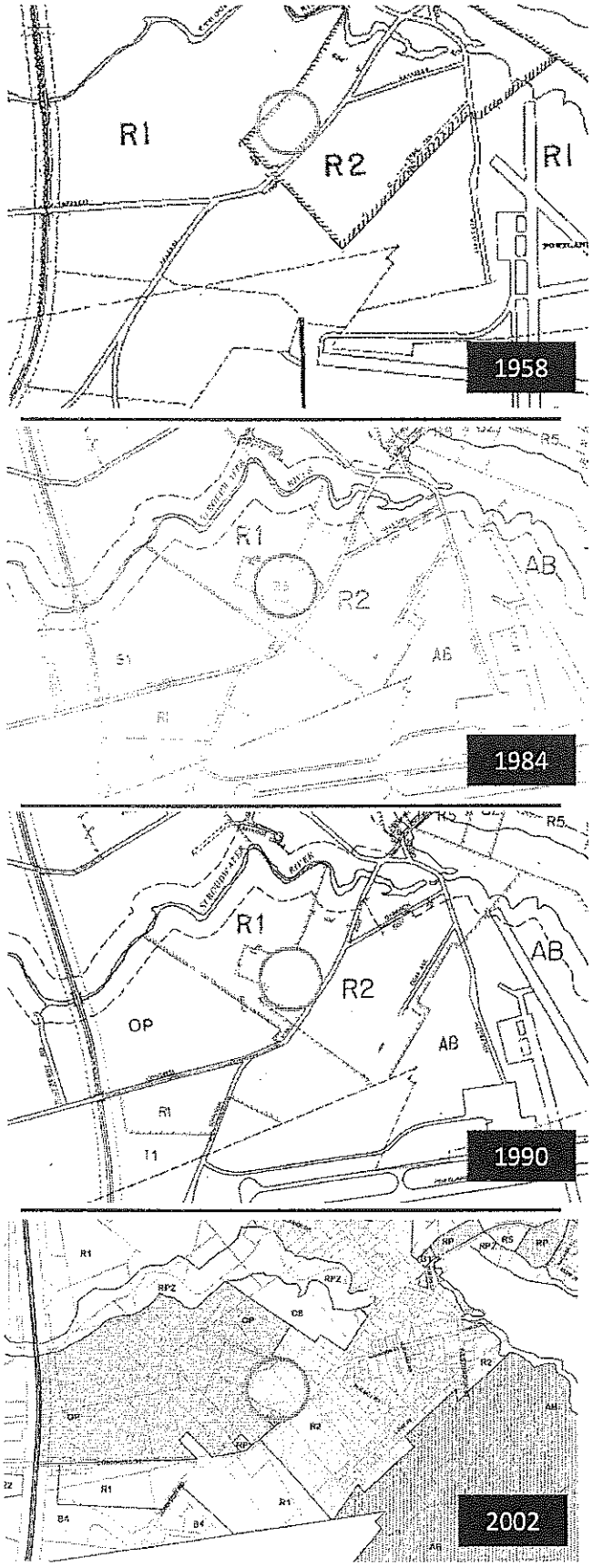
The 1945 Congress Street site is approximately 7 acres in size and has housed Lodge #188 of the Benevolent and Protective Order of Elks and their associated parking since the late 1960s. Although the site has frontage on Congress Street, access is from UNUM Park Drive. Residential uses abut the site 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.

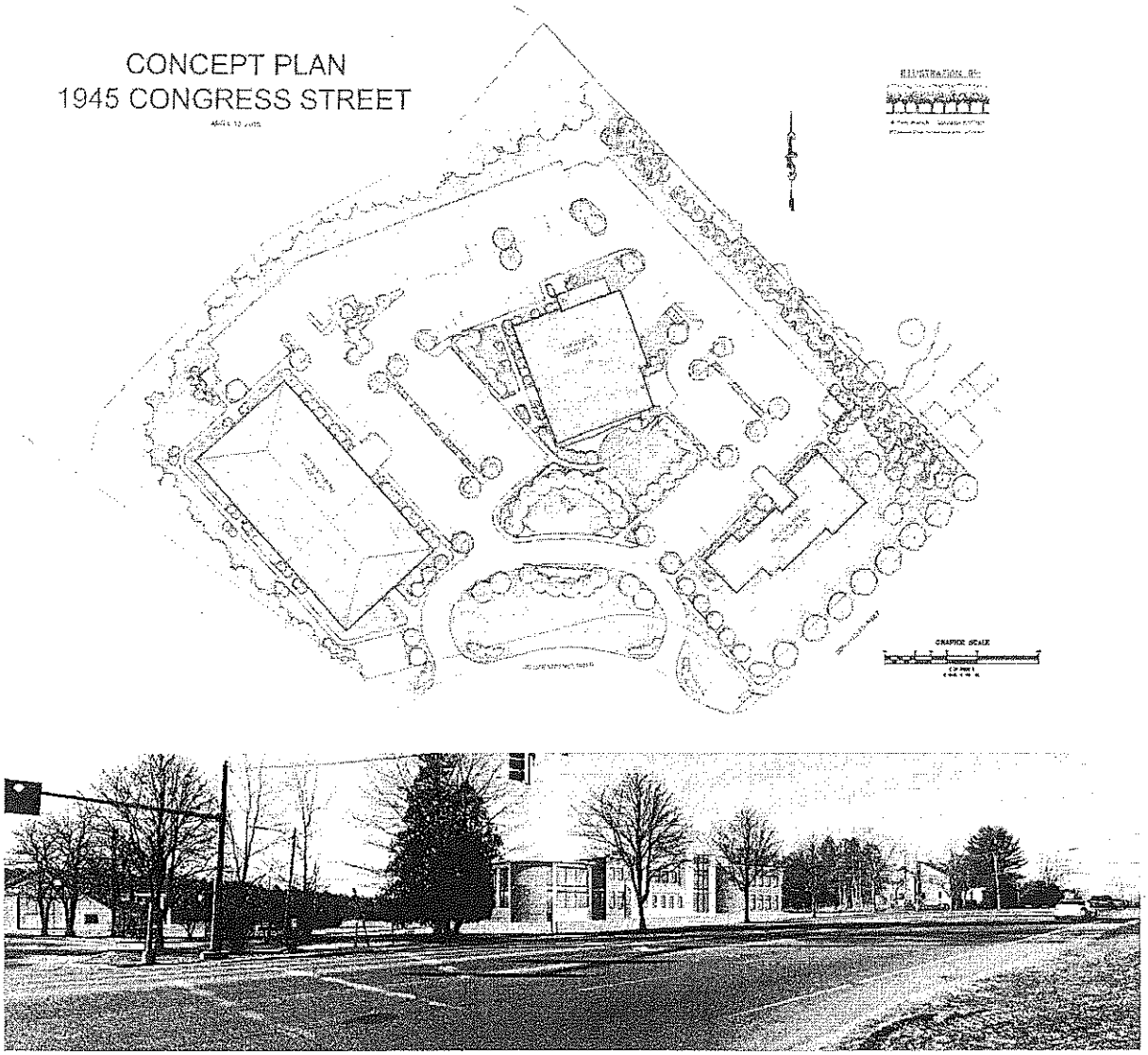
Figure 3: Zoning history, Outer Congress Street, with 1945 Congress highlighted

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 statute 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;
Proposed Zoning:	O-P (Office Park)		general office
Current Uses:	Elks Lodge	**Parcel Area:**	304,892 SF (6.99 acres)

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 the1945 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.

		Peak Hour Volume Entering and Exiting	
Zone	**Density**	**AM**	**PM**
Existing R-2	*14 Residential Units*	*10 Vehicles*	*14 Vehicles*
Office Park (OP)	*192,563 SF Office*	*302 Vehicles*	*288 Vehicles*

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 a[ss]ess 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.

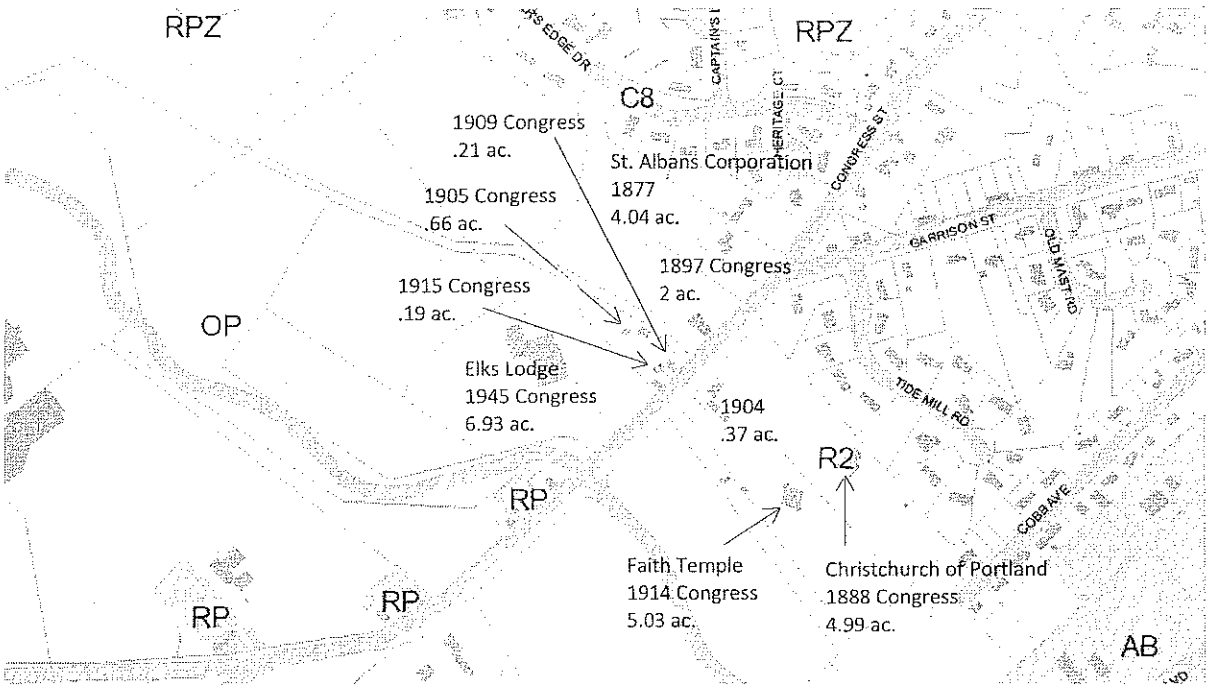


Figure 7: Parcel sizes and context in vicinity of 1945 Congress Street

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.

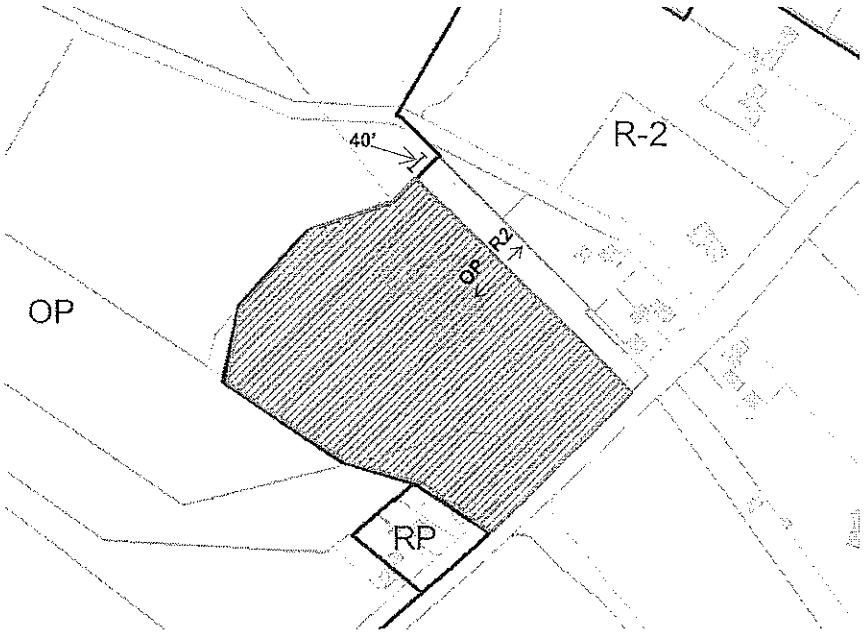


Figure 8: Area of proposed zone change, 1945 Congress Street

The board voted 4-2 (Hall and Morrissette 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 Heasly, 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

PINKHAM & GREER
CIVIL ENGINEERS

28 VANNAH AVE. PORTLAND, ME. 04103
Tel: 207.781.5242 Fax: 207.781.4245

File: 13151

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 fell 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

Att. 2

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,

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 25 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

Title: Partner

9/22/14

_____ 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: _____
Title: _____

_____
Dr. Michael Bedees

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 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, 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:
Title:

_____
Dr. Michael Bedecs

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. Leete, 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. Leete, 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 __, 2015, by and between Portland Bridge No. 158, as the Surrendered and Protected Ship of the United States of America (collectively "Seller"), having a place of business at 1388 Congress Street, Portland, Maine and Dr. Michael Bindas, having a place of business at 1275 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 8, 2014, that certain Second Amendment dated September 22, 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 8, 2015, Eighth Amendment dated January 23, 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 to the purchase of the Property 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 5.1 of the Purchase Agreement as further described in this Amendment; and

WHEREAS, Seller and Buyer wish to confirm Buyer's exercise of it 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 Section 5.1.2, 5.1.3, 5.1.4 and as set forth herein;

WHEREAS, Seller and Buyer wish to extend the date upon which the Seller and Purchaser Additional Contingencies set forth in Section 5.1.1, and 5.1.5 and related matters shall be satisfied, and make the Additional Contingencies Expiration Date with respect to those contingencies contemporaneous with the Zoning Contingency Expiration Date;

WHEREAS, Pursuant to paragraph 5.1 of the Purchase Agreement, "Seller and Purchaser Additional Contingencies", the parties have agreed upon extending certain of the Additional Contingencies, and wish to memorialize those 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 hereto and made a part of this Amendment are certain additional agreements of Buyer and Seller, as follows:

a. Schedule A – Statutory Acknowledgment of Independent Investigation
b. Schedule B – Work Schedule and Property Use
c. Schedule C – Assignment 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 Tenth 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 Tenth Amendment as though fully set forth.

Buyer and Seller further agree that Schedules A, B and C satisfy the Additional Contingencies set forth in subparagraphs C, 3, d and e of Paragraph 3.1 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 virtue of Buyer's right as provided in Section 4 of the Purchase Agreement, which Zoning Contingency Expiration Date is now June 22, 2015.

3. Seller and Buyer acknowledge and agree that the Seller and Purchaser Additional Contingencies set forth in Section 3.1 (d) (representations and work to be performed on Seller's Retained Building and (e) (number of parking spaces to be allocated to Seller) are now 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 will appear in the Section 3.1 (d) and (e) matters (the "Remaining 3.1 Matters") shall be the same as the Zoning Contingency Expiration Date, as extended and amended pursuant to this Amendment.

4. Seller and Buyer further agree that the "Remaining 3.1 Matters" shall be interpreted broadly as follows:

a) The matters to be agreed upon under Section 3.1(d) shall include all work to be performed with respect to the Retained 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 towers, water or other utility connections in addition to the matters expressly set forth in 3.1(d) and other matters set forth in the Purchase Agreement.

b) The matters to be agreed upon under Section 3.1(e) shall include the total number, configuration, size, accessibility, location, appearance and maintenance of parking spaces, in addition to the matters expressly set forth in 3.1(e) and other matters set forth in the Purchase Agreement.

Nothing in this paragraph 5 shall be deemed to withdraw or waive any rights either Seller or Buyer have to terminate the Purchase Agreement pursuant to Section 6.1.

6. 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 Portland agency or any court filing or appeal.

7. 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 Term Amendment shall remain unchanged, except for the expressly noted amendments amended hereby. 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 Lodge No. 189, 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 Behrens

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 façade 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 bingo operates] or on weekends from Friday at 5:00 pm until Monday morning at 7:00 am.

b) 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 at 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)(i) 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 6.1) 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 6.

(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.

8. 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 35,000 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 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.

(e). 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, writ, 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 Boules 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 Seller 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. 188, of the Benevolent and Protective Order of Elks of the United States of America

Dated: _____ By: _____

PURCHASER:
Northland Enterprises, LLC

Dated: _____ By: _____

Dr. Michael Bedecs

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: _____

PINKHAM & GREER
CIVIL ENGINEERS

28 VANNAH AVE. PORTLAND, ME. 04103
Tel: 207.781.5242 Fax: 207.781.4245

File: 13151

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.

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 buiding.

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@nortlandus.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@nortlandus.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 X $2,000.00 (from R2 zone to OP zone) **Zoning Text Amendment** X $2,000.00 (to Section 14-_____) 230.11.1 **Combination Zoning Text Amendment and Zoning Map Amendment** X $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:
Thomas S. Hall AGENT	4/13/15

MURRAY PLUMB & MURRAY
ATTORNEYS AT LAW

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 *Remmel 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:

> 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:

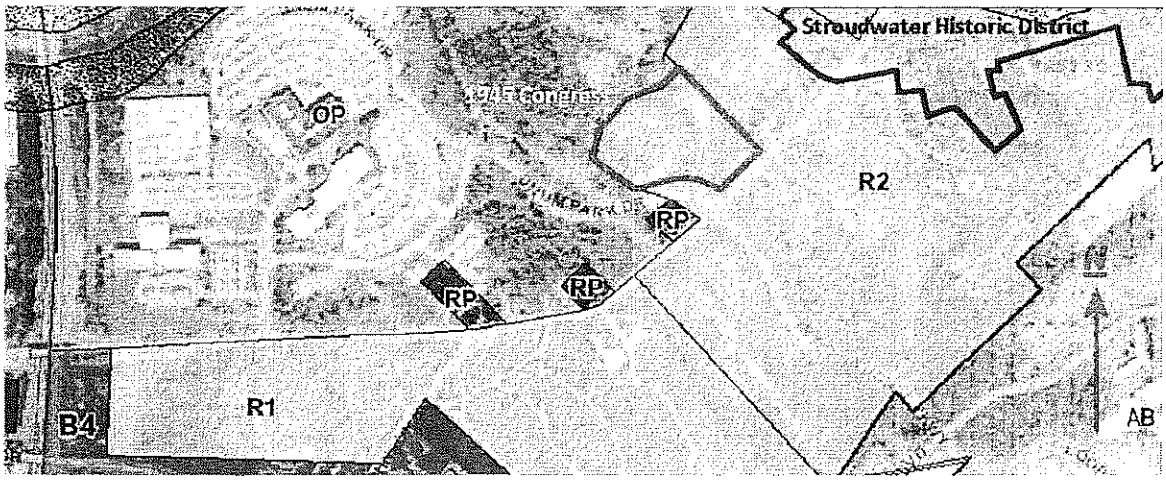


Figure 1
Zoning Districts in the Vicinity of the Property[1]

[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:

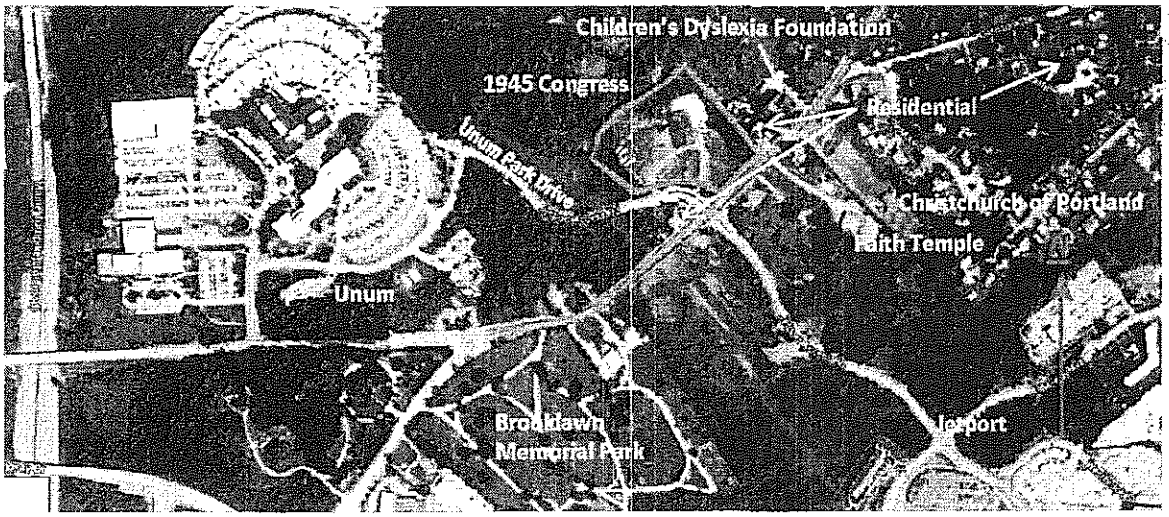


Figure 2
Actual Land Uses in the Vicinity of the Property[2]

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:*
  - *are appropriate to our current and potential skills*
  - *provide good pay and benefits - a living wage*
  - *are rewarding/satisfying ... [and]*
  - *"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

- *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

(Comprehensive Plan, page EX-6)

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

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[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)*

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[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.

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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]

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[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.

(Comprehensive Plan, page H-7)

Thank you for your attention to this letter.

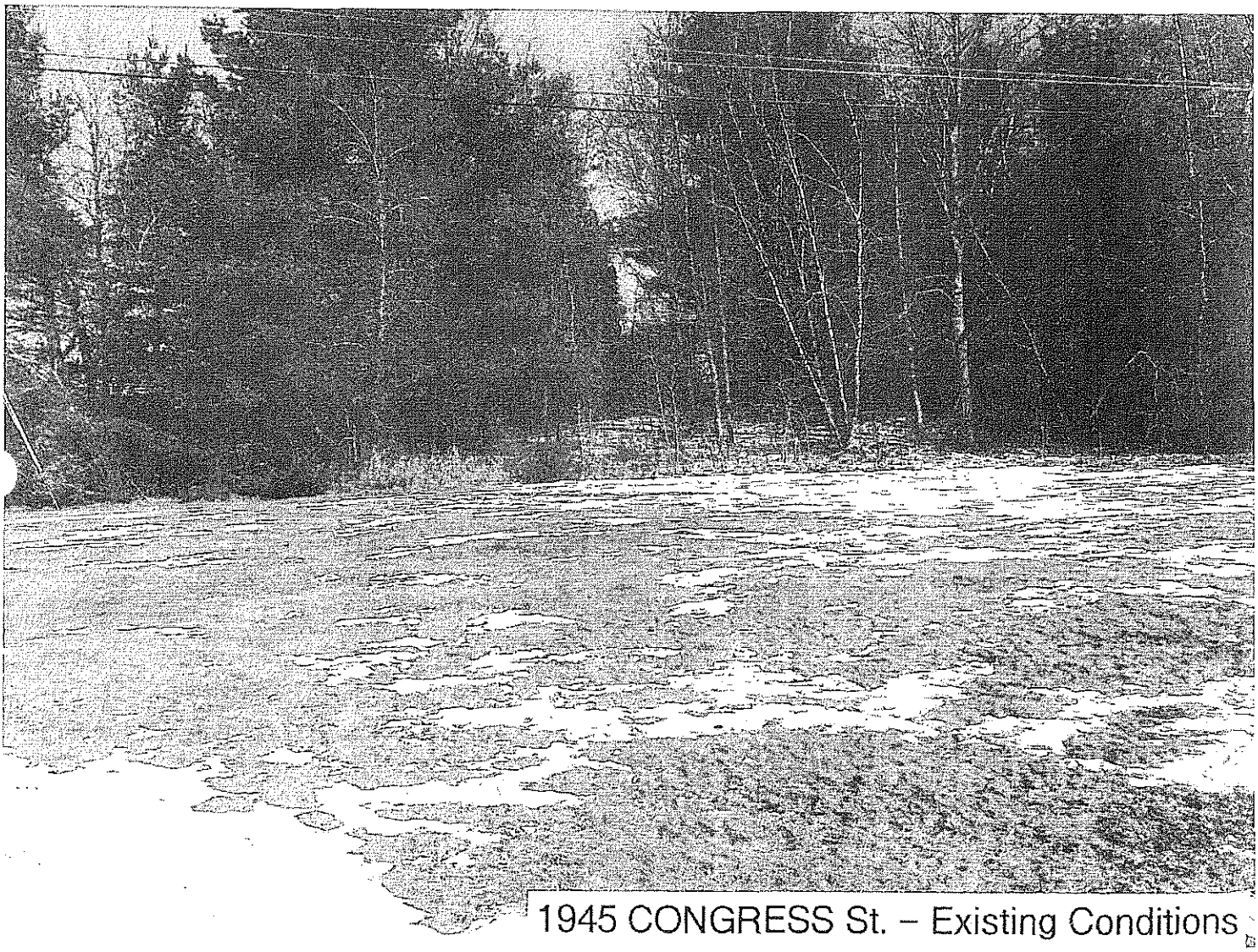
Respectfully submitted,

John C. Bannon

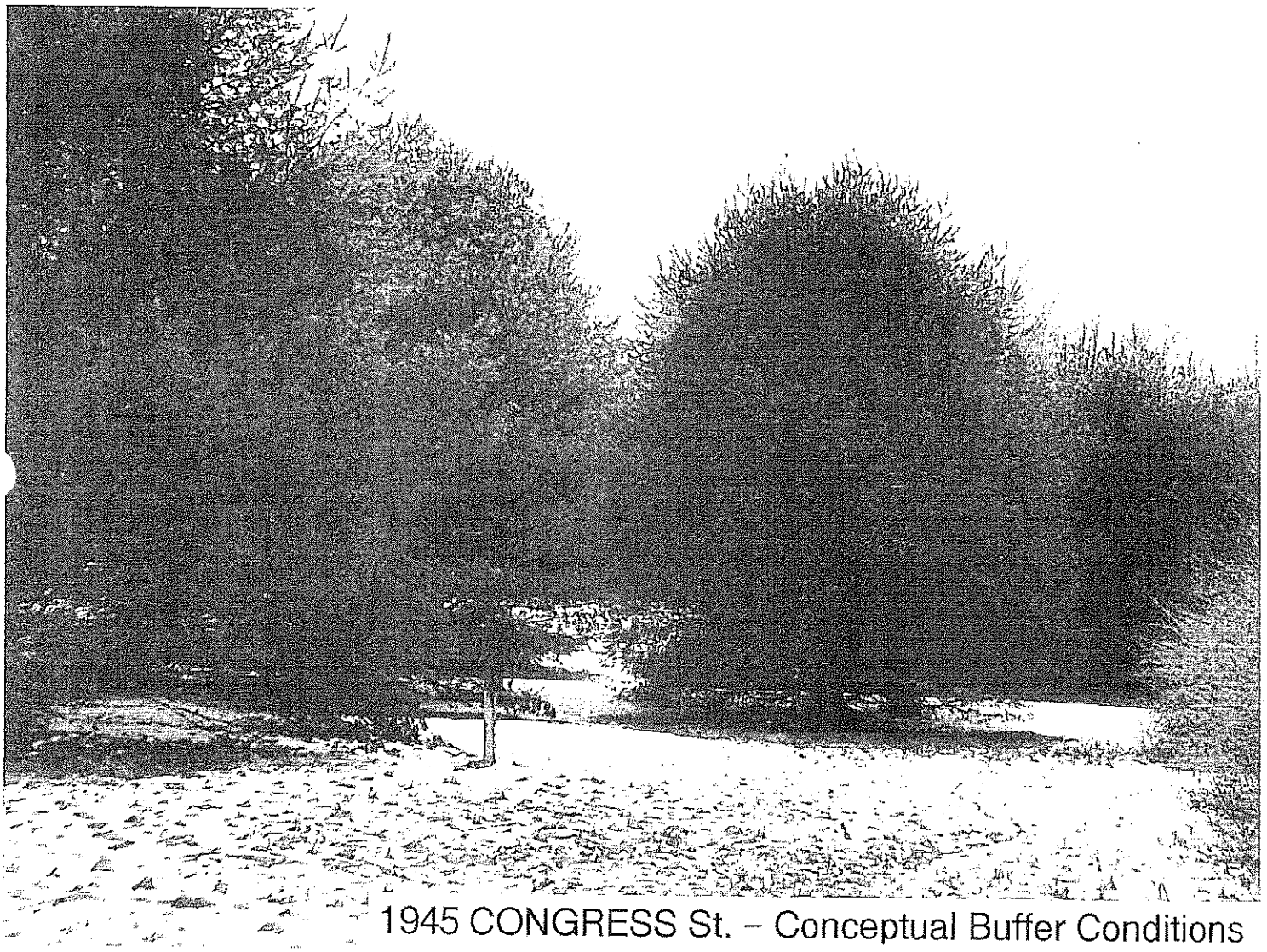
JCB/kpm

cc: Rex Bell
Josh Benthian
Alex Jaegerman, Director, Planning Division

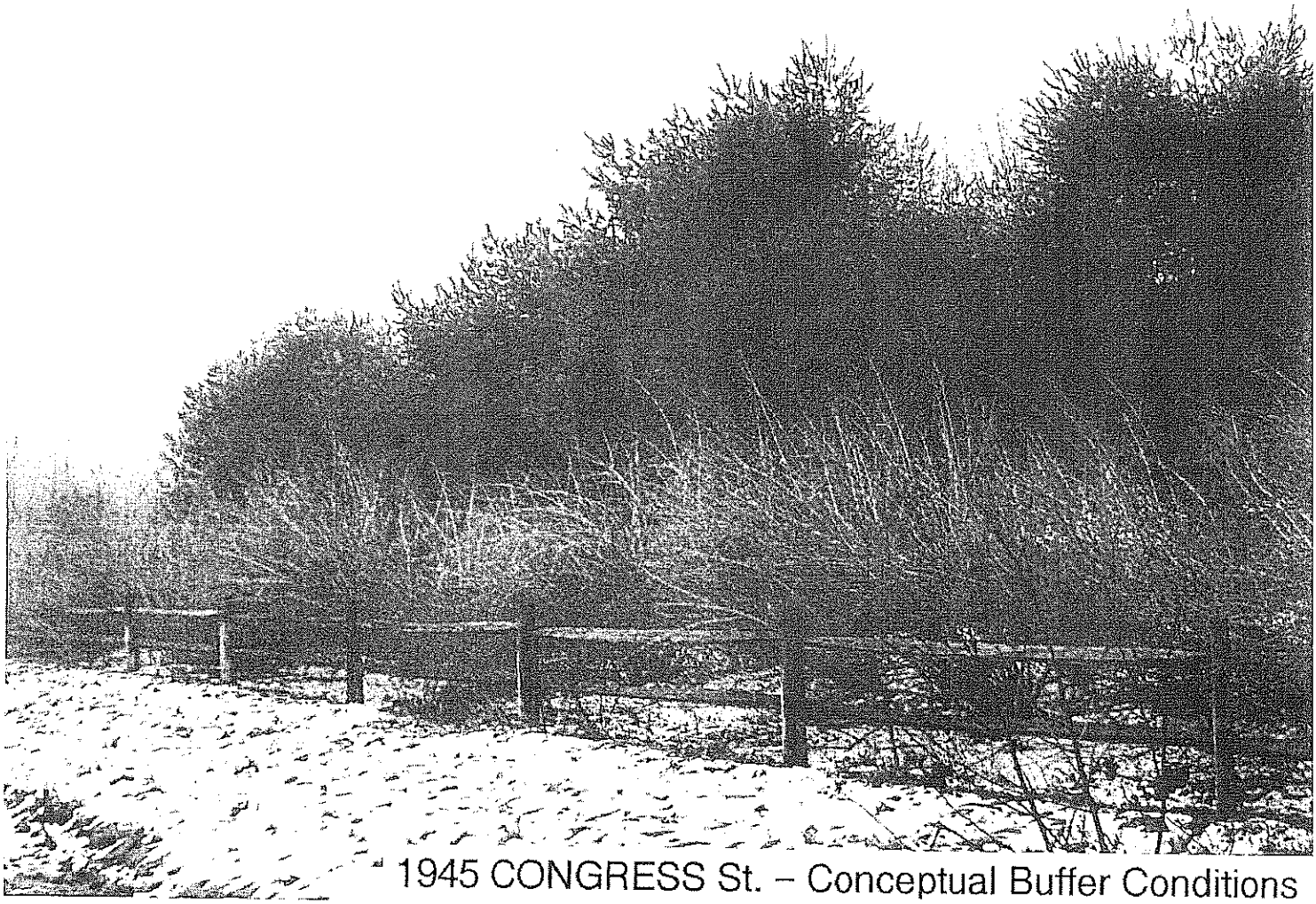
1945 CONGRESS St. – Existing Conditions



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 VANNAH 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.

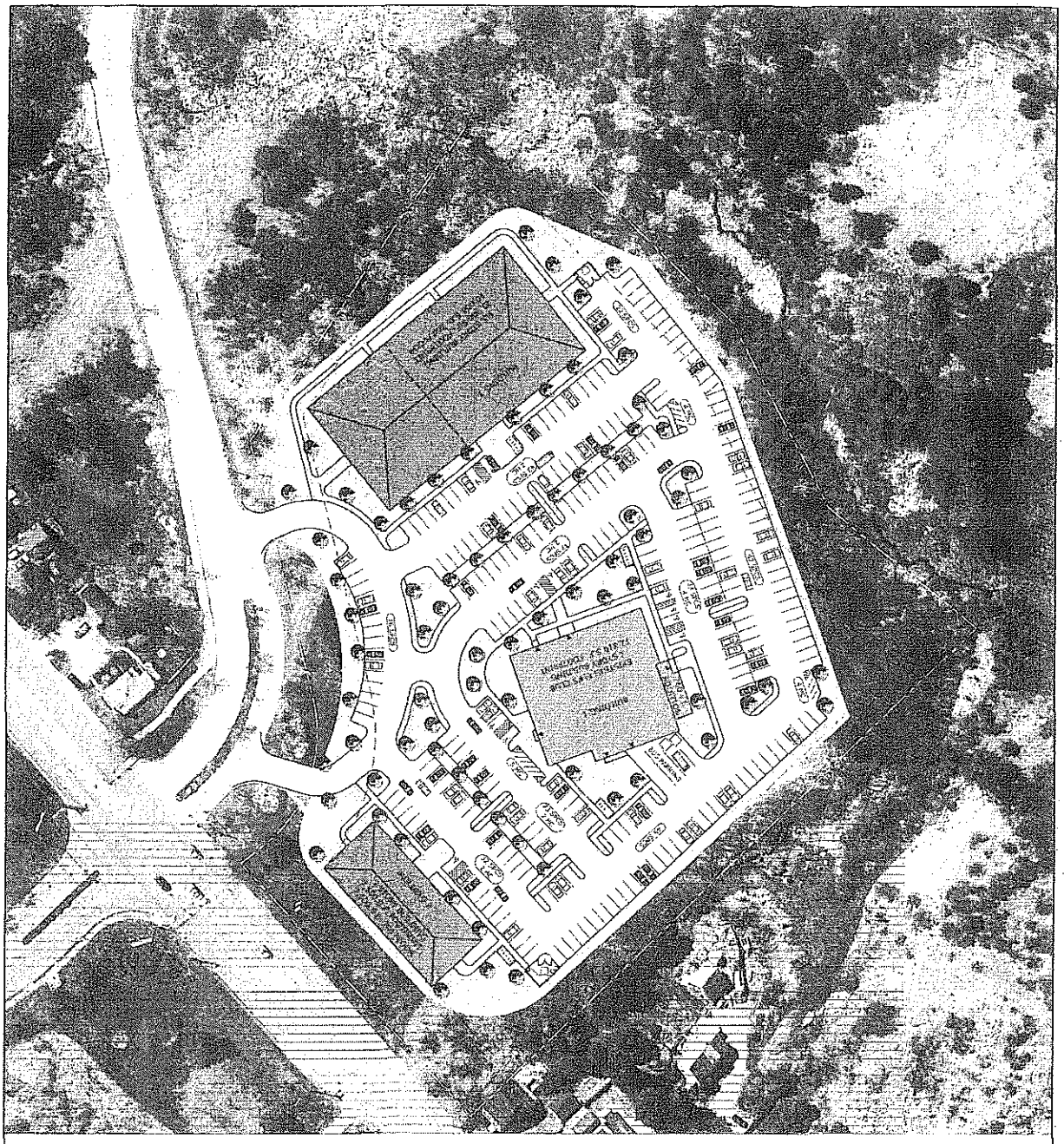
Sincerely,

PINKHAM & GREER
CIVIL ENGINEERS

Thomas S. Greer

Applicant: Northland Enterprises, LLC (Josh Benthien & Rex Bell)
17 South Street
Portland, ME 04101

Owner: Portland Logde #188 BPOE of USA
1945 Congress Street
Portland, ME 04102



GRAPHIC SCALE

NOT FOR CONSTRUCTION

03	1945 CONGRESS STREET ELKS LODGE, PORTLAND, MAINE SITE PLAN	NORTHLAND ENTERPRISES, LLC 17 SOUTH STREET PORTLAND, MAINE 04101 SCALE: AS SHOWN DRAWN BY: JDG DATE: CHKD BY: TBS PROJECT: 13151 CHK BY:	NO. DATE DESCRIPTION		PINKHAM & GREER CIVIL ENGINEERS

NEIGHBORHOOD MEETING ATTENDEE LIST

1945 Congress Street

January 5, 2015

TOM GREEN FINKHAM & GREEN 28 VAUGHAN AVE PORTLAND, ME.	DAN KOLOSKI (SVA PRESIDENT) 1296 WESTBROOK ST PORTLAND STROUDWATERVILLAGEASSOCIATION@GMAIL.COM
TIM SMITH 1945 CONGRESS ST PORTLAND ME.	ANITA BJONES 55 OLD MAST RD. PORTLAND, ME 04102
[illegible] 1945 CONGRESS ST PORTLAND, ME 04102	BILL LINNELL + JOYCE BARTHIER. 1905 CONGRESS ST PORTLAND, ME 04102
JAMES CASTERELLA 1967 CONGRESS ST PORTLAND, 04102	JOSH BENTHIEN - NORTHLAND 9 ROCKY HILL ROAD CAPE ELIZABETH, 04107
BRAD FRIES 17 SOUTH ST, 3RD FL PORTLAND, ME 04101	REX BELL - NORTHLAND 40 WOOD ROAD CAPE ELIZABETH, ME 04107
MARYJOE DIABELL 49 WINDSOR ST. SCARBOROUGH, ME 04074	CATHERINE ALEXANDER UNUM 2211 CONGRESS ST PORTLAND, ME 04122
PAT ADRIANCE 16 LONGFELLOW ROAD GORHAM, ME 04058	JOE WINSCHEL 1945 CONGRESS ST PORTLAND, ME
RON ADRIANCE SAME AS ABOVE	MICHAEL ROGERS 66 RIVER'S EDGE DR PORTLAND
DENNIS S. RICHOTT 20 WOODBURY ST. PORTLAND, ME.	JOAN & SANDY BOAL 3704 MAST RD. PORTLAND, ME.
CAROL BURCHILL 49 DEBORY ST SCARBOROUGH ME 04074	ERIC GRIFFIN 42 PENRITH RD PORTLAND ME 04102

CAPTLINNELL@YAHOO.COM

PINKHAM & GREER
CIVIL ENGINEERS

28 VANNAH AVE. PORTLAND, ME. 04103
Tel: 207.781.5242 Fax: 207.781.4245

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 thoughout 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.

- 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.

NORTHLAND

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 1.00 mi of 1845 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	SS/Acre	Lot SqFt	SS/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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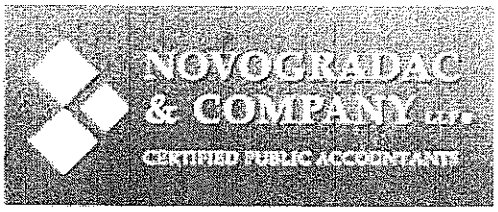
This is a broker price opinion or comparative market analysis and should not be considered an appraisal. In making any decision that relies upon my work, you should know that I have *not* followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.

REGION X
WASHINGTON
OREGON
IDAHO
REGION VIII
MONTANA
NORTH DAKOTA
SOUTH DAKOTA
WYOMING
UTAH
COLORADO
REGION V
MINNESOTA
WISCONSIN
MICHIGAN
ILLINOIS
INDIANA
OHIO
REGION I
MAINE
VERMONT
NEW HAMPSHIRE
MASSACHUSETTS
RHODE ISLAND
CONNECTICUT
REGION II
NEW YORK
NEW JERSEY
REGION IX
NEVADA
REGION VII
NEBRASKA
IOWA
REGION III
PENNSYLVANIA
DELAWARE
MARYLAND
DISTRICT OF COLUMBIA
WEST VIRGINIA
VIRGINIA
LOUISIANA
NORTH CAROLINA
SOUTH CAROLINA
ALABAMA
GEORGIA
FLORIDA
REGION IX
HAWAII

	61 BUILDINGS	2,776,370 RENTABLE SQUARE FEET							91 BUILDINGS	20,978,345 RENTABLE SQUARE FEET						
	BLDGS.	—% OF GPI—			—$/SQ.FT.—			$/UNIT	BLDGS.	—% OF GPI—			—$/SQ.FT.—			$/UNIT
		MED	LOW	HIGH	MED	LOW	HIGH	MED		MED	LOW	HIGH	MED	LOW	HIGH	MED
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	14205
RENTS-GARAGE/PARKING	(16)	.4	.2	.8	.10	.02	.13	72	(20)	.8	.3	1.2	.16	.06	.29	154
RENTS-STORES/OFFICES	(21)	17.9			2.73			2096	(1)	2.5			.47			327
GROSS POSSIBLE RENTS	(64)	97.5 %	96.2%	98.6%	16.07	12.22	19.25	13942	(91)	96.9%	94.8%	98.7%	14.96	12.83	18.29	13205
CONCESSIONS	(36)	.9	.5	1.3	.13	.08	.25	107	(55)	.8	.4	1.3	.15	.04	.32	122
VACANCIES/RENT LOSS	(64)	4.8	2.7	6.4	.76	.45	1.17	633	(89)	5.4	4.1	9.2	.92	.63	1.31	766
TOTAL RENTS COLLECTED	(64)	93.0	88.7	93.9	14.90	11.23	17.92	13134	(91)	89.1	85.4	92.6	13.36	11.50	16.62	13528
OTHER INCOME	(57)	2.7	1.8	3.9	.46	.27	.79	609	(78)	4.0	2.6	5.6	.62	.26	1.01	588
GROSS POSSIBLE INCOME	(64)	100.0 %	100.0%	100.0%	16.85	12.31	19.69	14579	(91)	100.0%	100.0%	100.0%	15.50	13.23	19.04	13648
TOTAL COLLECTIONS	(64)	95.0	92.8	96.4	16.17	11.29	18.52	13499	(91)	91.2	89.3	95.7	14.09	11.99	17.56	12928
EXPENSES																
MANAGEMENT FEE	(61)	4.8	4.0	6.1	.71	.55	.96	637	(87)	4.4	4.2	4.9	.64	.52	.78	633
OTHER ADMINISTRATIVE**	(64)	8.1	5.6	11.8	1.27	.99	1.68	1097	(80)	5.1	2.3	7.6	.81	.41	1.23	798
SUBTOTAL ADMINIST.	(64)	13.6 %	9.8%	17.0%	2.11	1.58	3.43	1762	(90)	8.3%	6.6%	11.7%	1.41	1.02	1.88	1364
SUPPLIES	(59)	.4	.1	.8	.07	.02	.14	59	(85)	.3	.1	.8	.05	.01	.13	57
HEATING FUEL-CA ONLY*	(20)	1.3	.4	4.1	.13	.05	.35	137	(30)	.4	.2	1.2	.09	.03	.18	135
CA & APTS.*	(36)	3.7	2.4	5.8	.62	.35	1.05	483	(43)	4.6	2.9	7.2	.72	.43	1.60	532
ELECTRICITY--CA ONLY*	(43)	1.5	.9	1.7	.19	.11	.28	165	(74)	1.3	.4	1.6	.17	.06	.25	146
CA & APTS.*	(19)	2.8	1.9	3.8	.44	.29	.54	363	(9)	2.1			.34			290
WATER/SEWER--CA ONLY*	(17)	3.4	1.6	5.0	.67	.23	.93	609	(27)	1.9	.9	3.1	.34	.20	.55	465
CA & APTS.*	(44)	3.5	2.6	5.1	.57	.33	.74	483	(59)	3.9	2.7	5.2	.65	.44	.80	554
GAS-------CA ONLY*	(12)	.7	.5	.8	.12	.07	.17	95	(19)	.2	.1	.3	.03	.01	.05	27
CA & APTS.*	(20)	5.9	4	4.5	.52	.06	.81	488	(9)	5.5			.92			362
BUILDING SERVICES	(58)	1.4	.7	2.0	.19	.13	.35	177	(82)	1.3	.7	3.2	.21	.11	.59	181
OTHER OPERATING	(47)	.3	.2	.8	.01	.02	.13	33	(47)	.9	.3	1.9	.15	.05	.45	148
SUBTOTAL OPERATING	(64)	11.8 %	8.4%	15.3%	1.72	1.23	2.61	1498	(91)	10.4 %	6.0%	16.9%	1.67	1.08	2.94	1384
SECURITY**	(36)	.2	.0	.5	.03		.09	26	(26)	.2	.1	.3	.03	.01	.07	22
GROUNDS 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	339	(91)	2.6	1.2	3.8	.43	.16	.55	294
PAINTING/DECORATING**	(59)	1.2	.7	1.4	.20	.07	.25	189	(86)	1.2	.8	1.6	.21	.13	.29	184
SUBTOTAL MAINTENANCE	(64)	5.8 %	4.8%	7.4%	.88	.66	1.29	778	(91)	6.7 %	4.1%	9.9%	.87	.64	1.46	762
REAL ESTATE TAXES	(64)	9.6	6.8	13.0	1.41	1.13	3.01	1203	(89)	9.8	7.0	13.5	1.61	1.17	1.11	1385
OTHER TAX/FEE/PERMIT	(33)	.2	.1	1.5	.04	.01	.20	37	(56)	.2	.1	1.1	.03	.01	.15	30
INSURANCE	(64)	2.5	1.7	3.7	.38	.30	.49	328	(87)	2.1	1.4	2.9	.35	.26	.43	296
SUBTOTAL TAX-INSURANCE	(64)	12.7 %	9.4%	15.7%	1.81	1.57	2.63	1716	(89)	12.9%	10.0%	15.9%	1.97	1.62	2.57	1902
RECREATN/AMENITIES**	(37)	.5	.4	.7	.08	.06	.13	71	(41)	.2	.1	.3	.03	.01	.05	42
OTHER PAYROLL	(60)	6.1	4.1	7.8	.92	.58	1.22	749	(67)	4.5	3.6	6.1	.72	.60	1.04	649
TOTAL ALL EXPENSES	(64)	51.5 %	44.4%	60.9%	7.59	6.51	9.98	6723	(91)	43.8 %	36.3%	53.2%	6.96	5.83	8.40	6285
NET OPERATING INCOME	(64)	42.3 %	33.3%	51.4%	6.37	4.50	9.59	6251	(91)	49.2 %	37.2%	55.8%	7.13	4.65	10.46	6632
PAYROLL RECAP**	(47)	9.4	6.7	11.7	1.30	1.01	1.59	1188	(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 layouts 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

Regions 1 & 2



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 coreMART+.

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 (3)(4)	$54,100
HERA Special (5)	Not eligible
Hold 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.

		50.00%	140.00%
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		49,980	69,972
6 Person		53,700	75,180
7 Person		57,420	80,388
8 Person		61,080	85,512
9 Person		64,740	90,636
10 Person		68,460	95,844
11 Person		72,180	101,052
12 Person		75,840	106,176

Bedrooms (Family)		50.00%	FMR
2 Bedrooms (3.0)		1,041	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 89-24 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 89-24.

(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 LIHC Newsletter #42 and IRS LIHC 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 LIHC 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 LIHC 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 LIHC Newsletter #38 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 3/19/2009 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 LIHC Newsletter #38 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/datasets/il/il16/index_il16.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,

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.

KAD

(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.

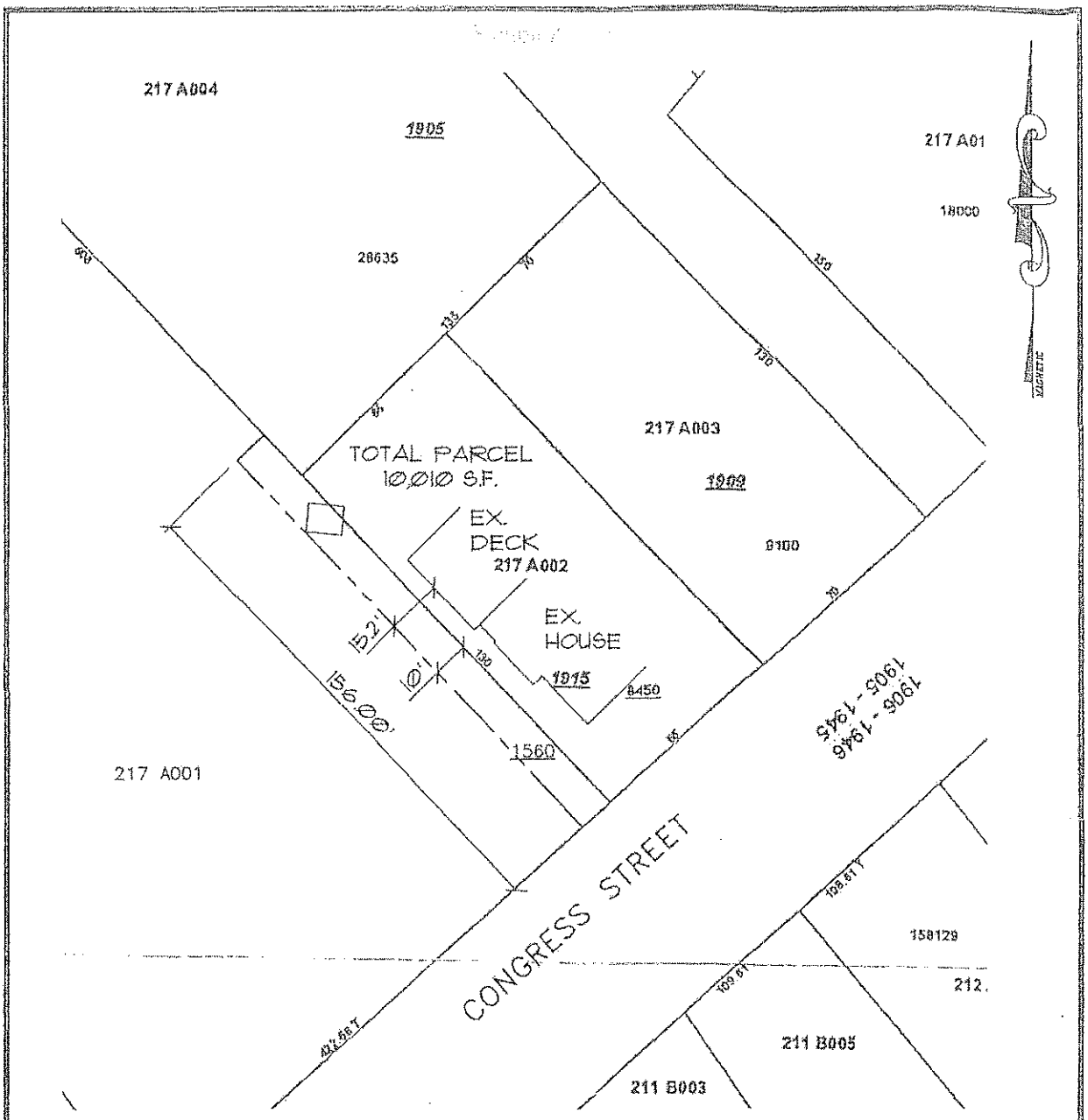
By: _____ 9/27/15
Rex Bell
Its: Manager

_____
Dr. Michael Bedecs

PURCHASER:

_____
Paul Dubois

_____
Kimberly A. Dubois



PARCEL LAYOUT TAKEN FROM CITY OF PORTLAND TAX MAP 217.

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

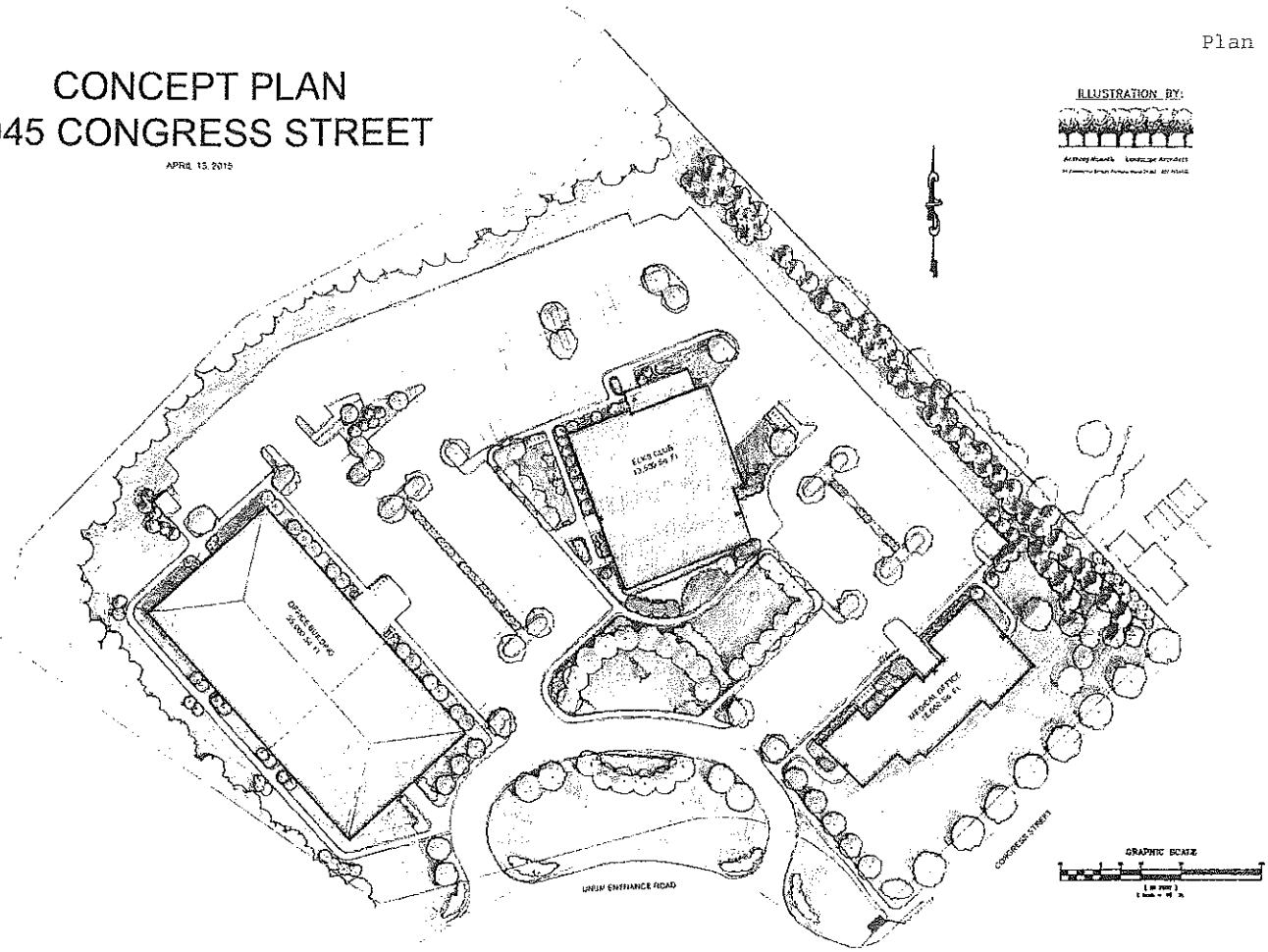
CSK-2

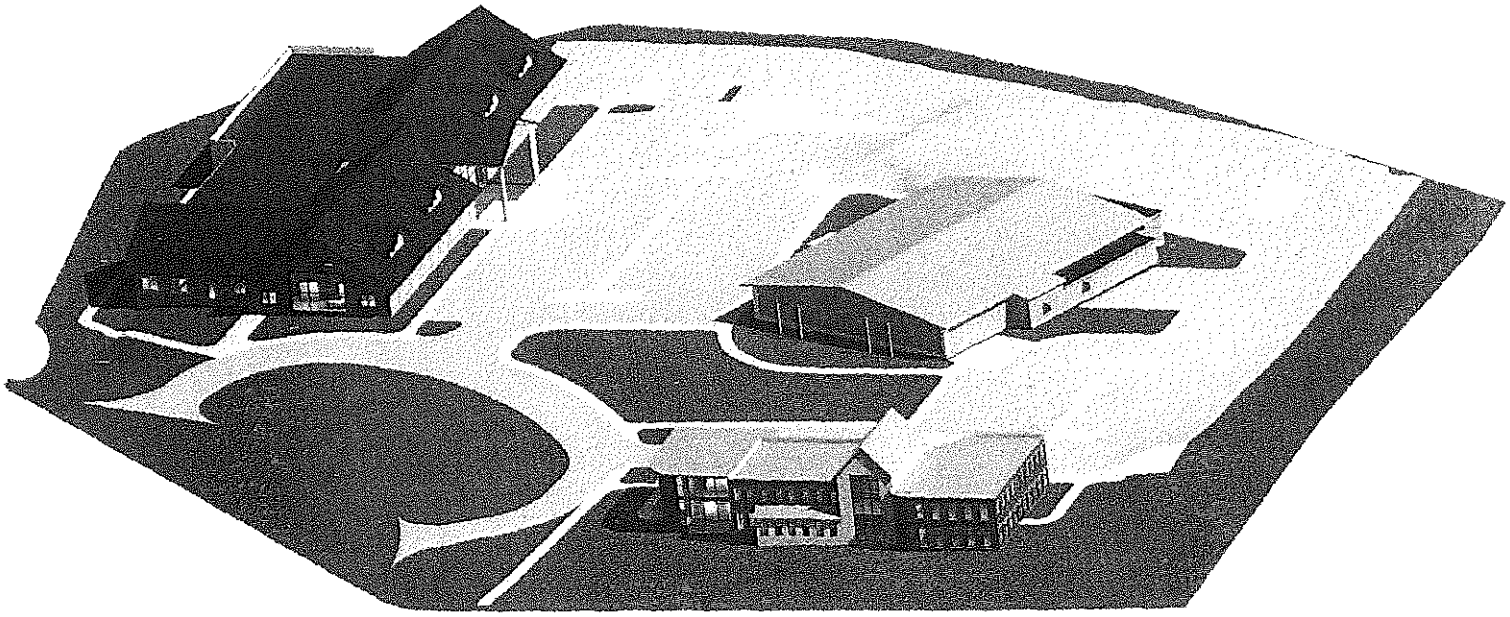
SCALE: 1"=40'± DATE: AUGUST 24, 2015 CHK BY: TSG PROJECT: 13151

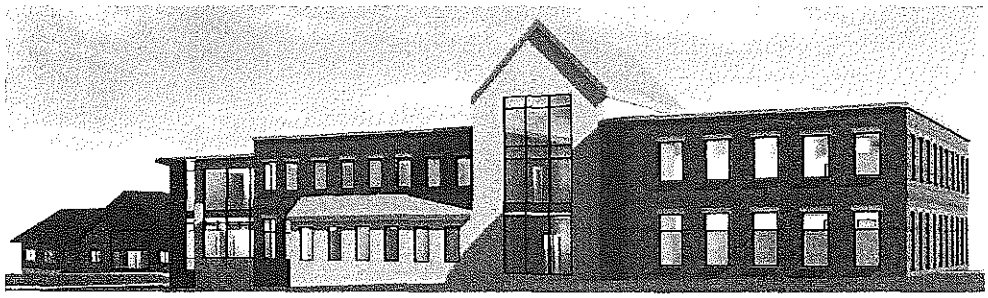
Plan 1

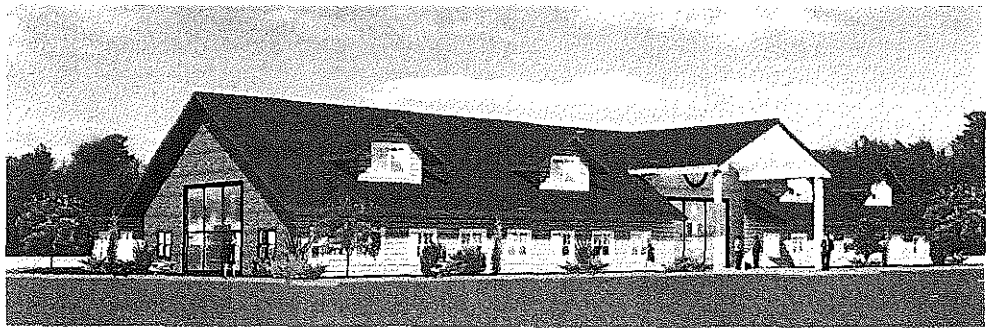
CONCEPT PLAN
1945 CONGRESS STREET

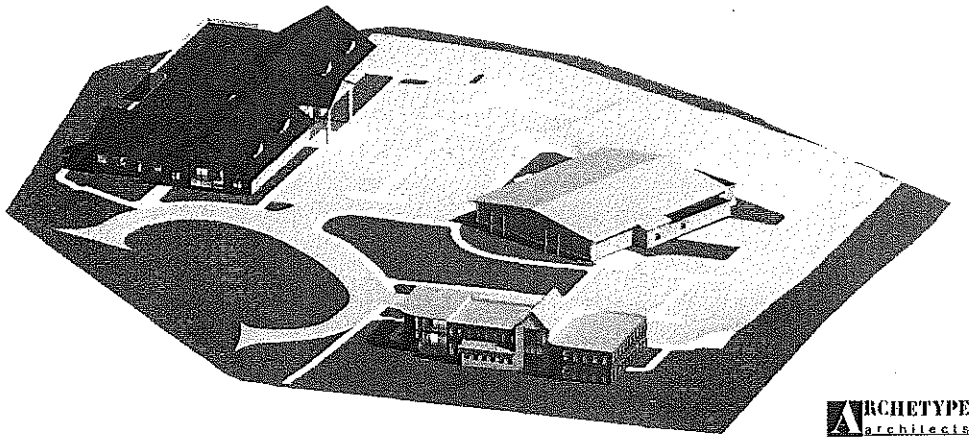
APRIL 15, 2015











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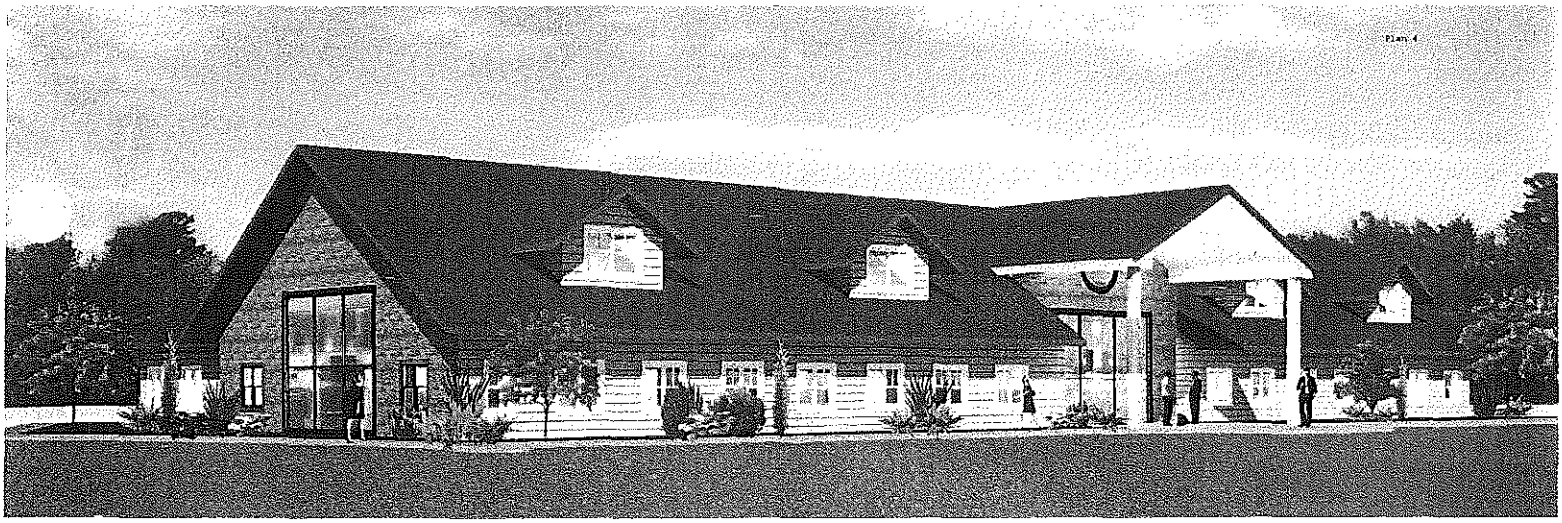
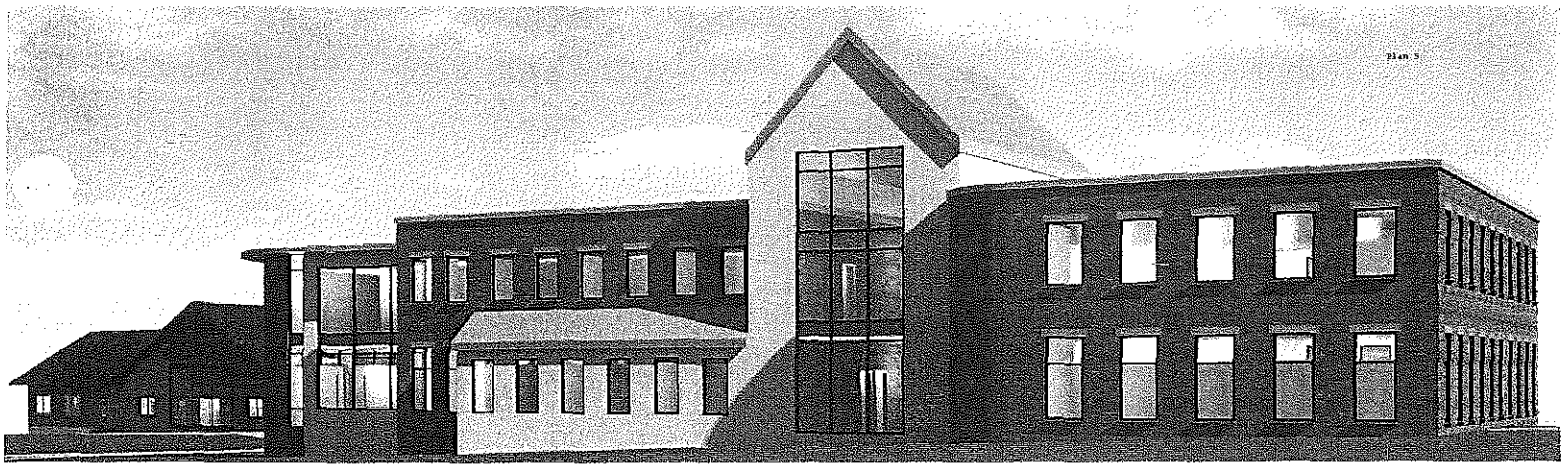
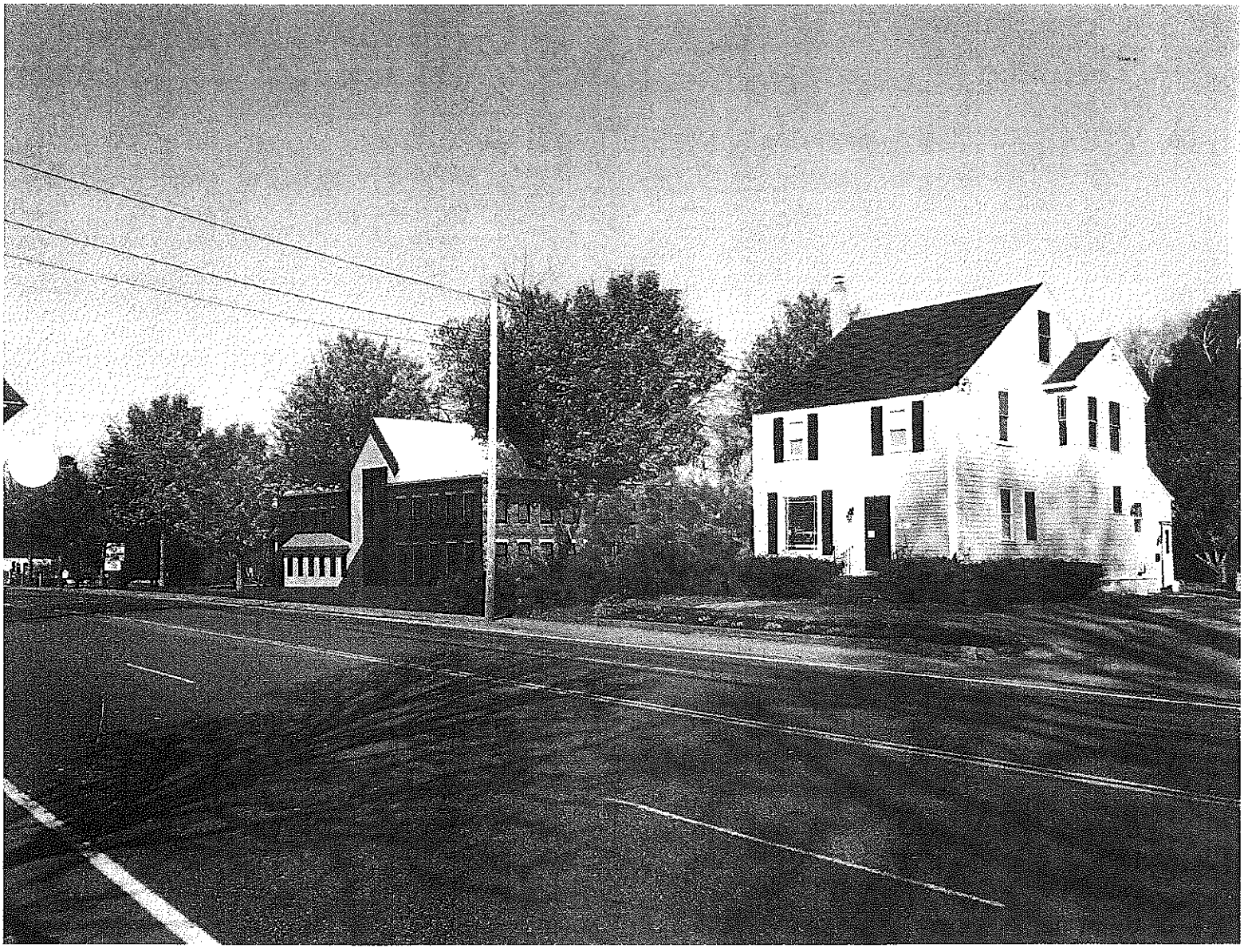
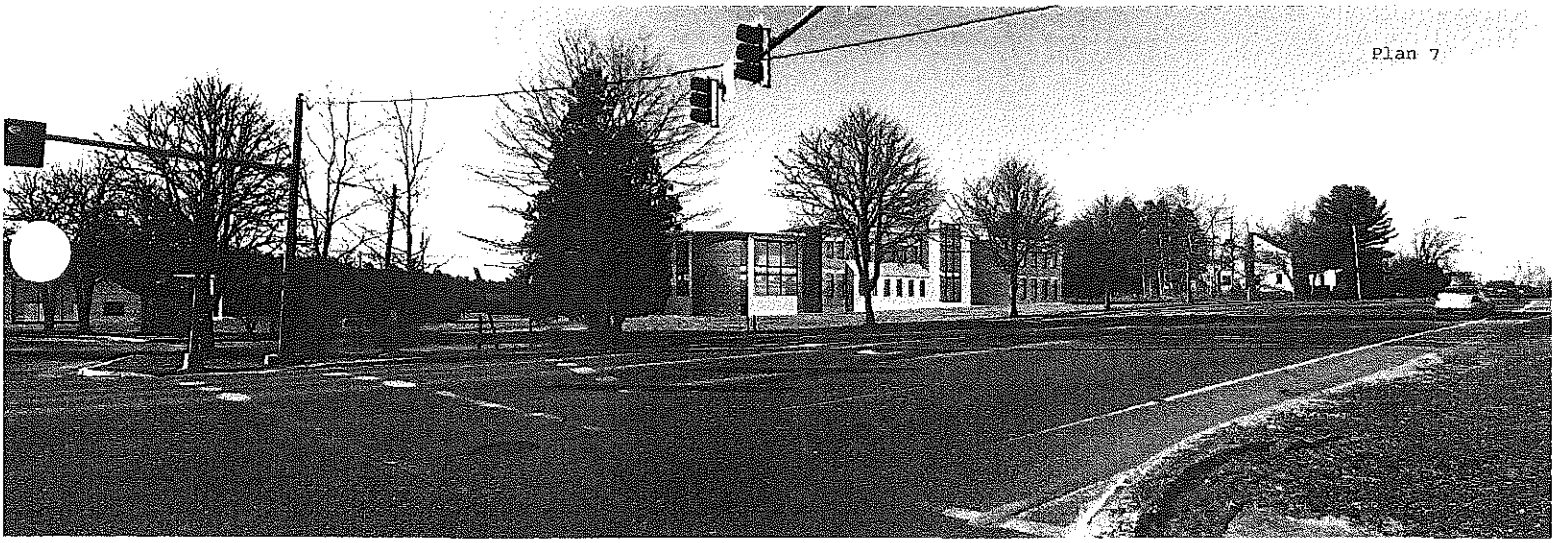
architects









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

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)

PC4

From: "Lucie Tardif" <ltardif1@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 are 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

PC5

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 abut 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 added 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: <hcd@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: Nell 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

PC7

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 the 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 Sommer51 Garrison StreetPortland, ME04102

PC8

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

Nell 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.

PC10

From: <captlinnell@yahoo.com>
To: Helen Donaldson<hcd@portlandmaine.gov>
Date: 1/23/2015 9:01 AM
Subject: Food for thought

Nell,

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.

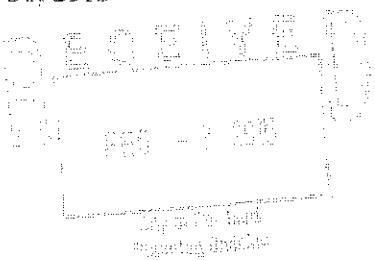
Having said all that, it seemed clear at the workshop that the board members were intent on going through with a zoning change even if it meant changing the text (once again for this property) of the zoning ordinance. We are extremely concerned about maintaining or creating the maximum buffer possible 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 E. 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.

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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,

Janice Lagnon

Date: 3-6-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Lucille Lussy

Date: 3-6-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Marlene Hardison

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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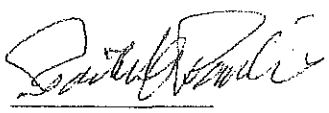

Date: 3-26-13

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Harold D. Chadbourne

Date: March 6, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Earl C Pickett Jr.

3-6-2015
Date:

Member # 01088/12

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Please give this request your immediate attention and to that end, we thank you in advance

Thank you so much!

Respectfully,

Kathryn Mullen Cripps

Date: 3/

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Vassar C Houghton

Date: 3-6-2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Robert J. Pomerleau

Date: 3-6-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Louis J. MacIsaac

Date: 3/6/2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Francis Wilkes

Date: 3-6-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Ronald Laughlin

Date: 3-06-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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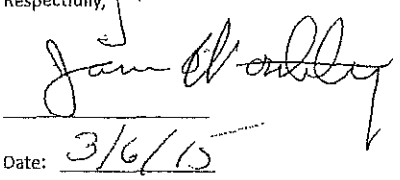

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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M L Macbeth

Date: March 6, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Date: 6 MARCH 15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Joseph Winnikoff, TREASURER

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

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Date: 3-6-2015

To: Planning Board

Portland, Maine

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Geraldine A. Pomerleau

Date: March 6, 2015

To: Planning Board

Portland, Maine

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Renee DeProy

Date: 3 - 6 - 15

To: Planning Board

Portland, Maine

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Portland, Maine 04101

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Dean C. Nora

Date: 3-6-15

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Warren Gilman

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Adam Smith

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Jill Mellan

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Kelly Mann

Date: 3-6-15

Mason

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Dennis L. Rackliff

Date: 3-6-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Gene Mulkern

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Date: 3/6/15

Champagne

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Phillip P Clarendon

Date: 3-6-15

To: Planning Board

Portland, Maine

389 Congress Street

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Timothy Smith

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Theresa Grey

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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John Budroe

Date: 3/6/15

Budroe

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Carole Gillespie

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

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Date: 9/4/15

To: Planning Board

Portland, Maine

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Portland, Maine 04101

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John P. Garhar Jr

Date: 3-6-15

Garhar

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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E James K Smith

Date: 3/6/15

Smith

To: Planning Board

Portland, Maine

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Portland, Maine

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Martha Boutte

Scholarship Chair

Date: 03/07/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Carol A Burchell

Date: 3/9/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Dolores Leighton

Date: 3-8-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date: 12/8

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Edward D Carey

Date: 3/8/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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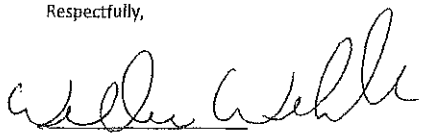

Date: 3-8-15

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Karen R. Pacillo

Date: 3/8/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Loretta Allen

Date: 3-8-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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George Pacillo

Date: 3/8/15

Pacillo

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Dan Roberts

Date: 3-8-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Barbara E Brown

Date: Dec 8, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Nancy Berry

Date: 03-08-2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Walter J Young

Date: 3/8/15

To: Planning Board

Portland, Maine

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Portland, Maine 04101

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Date: 7/28/2015

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Judith Von Thelen

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Annette Thompson

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

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Brian M. Jordan

Date: 3/9/15

To: Planning Board

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Date: 3/9/15

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Maureen Lovett

Date: 3/9/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date: 3/12/15

To: Planning Board

Portland, Maine

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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,

Thomas A. Butler #11571

Date: 3/12/15

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;

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Respectfully,

Margaret Cooper

Date: March 2, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Joan Levesque

Date: 3/13/15

Levesque

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

John Cadley

Date: 3/13/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Hey R. Doughty

Date: 3/13/15

Doughty

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Victoria A. Doughty

Date: 3/13/2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Ronald L Theriault

Date: 3-13-14

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

George E Walker

Date: 3/13/2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Sharon Castellucci

Date: 3/13/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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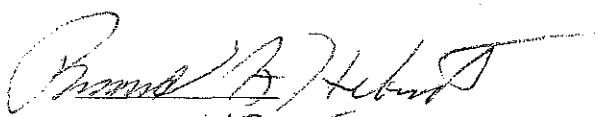


Date: 3/12/15

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

PC15

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

PC17

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 Hodroff48 Partridge CirclePortland

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. Art 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 Vison

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: Re1945 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 aloo 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.

PC20

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.

TO: Mayor Brennan and Members of the City Council

FROM: David Silk, 1187 Westbrook St

RE: Proposed Rezone of 1945 Congress Street from R-2 to OP

Property Owner: Portland Lodge #188 BPOE of USA ("Elks Club")

I respectfully urge you to vote against the Elks Club's proposal to change the existing R-2 zone for the property at 1945 Congress St to an Office Park ("OP") zone.

There is a litany of problems, inconsistencies, and concerns with the Elks Club's request:

The proposal is piece-meal rezoning, unwise and unsound. There is no compelling need for this zone change. It is, moreover, inconsistent with the Comprehensive Plan, good zoning practices, the City's Jetport Plans, including how the Jetport interacts with the Historic District and the neighborhood, the history and pattern of development in this area, taxpayer investment in Thompson's Point, the documented overloading of already saturated traffic in the JetPort area, and the way in which the City has handled other areas and developments, including St. Patrick's Church and Mercy Hospital. Further, approval would send a problematic message to many similar properties throughout the City, encouraging them to line up and cash out with similar zone changes, from residential to commercial.

The sole motivation behind this far-reaching effort for piece-meal rezoning is increased financial benefit for the property owner. There is little else to recommend it. Changing zoning to create a windfall for one property owner is hardly consistent with the Comprehensive Plan, or good zoning practices.

The Elks Club's proposal would replace a conforming use with a non-conforming use, as the Elks Club as a place of assembly is not allowed in an OP zone. This switch is clearly not consistent with the Comprehensive Plan. The purpose of zoning is to eliminate non-conforming uses, not to create more of them.

Further, the proposal is 180 degrees opposite the Comprehensive Plan's goal to address serious unmet needs for more housing, including housing for seniors and working families. Taking land that is zoned for residential use and switching it to a zone that prohibits all residential use is not consistent with the Comprehensive Plan. In stark contrast, preserving land zoned for residential use is consistent with the City's Comprehensive Plan.

The Elks Club's proposal is doubly problematic, as it would ignore unmet needs outlined in the Comprehensive Plan, in favor of zoning that is already plentiful. Meanwhile, there's an ideal location for new professional offices at nearby Thompson's Point that taxpayers are already supporting with $32 million in Tax Incentive Financing (TIF).

The Elks Club's property at 1945 Congress Street is presently zoned R-2. It consists of an almost 7 acre parcel. 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.

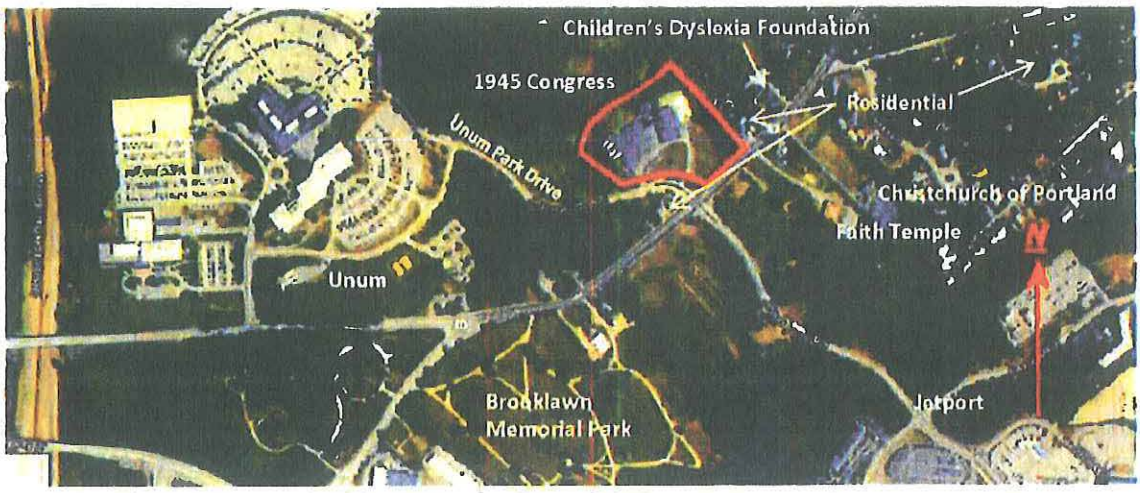
Social/fraternal halls, together with churches, are now known as "Places of Assembly" under the Land Use Code. Places of assembly, like institutional uses (schools) are conditional uses allowed in all residential zones. The City has many places of assembly located in residential zones on busy streets. In the late 1980s when the new entrance to the Jet Port and to UNUM was proposed, zoning for the area site was examined. At that time, the Elks Club property was subsequently rezoned back to R-2 and not to OP. When the OP zone was extended to accommodate UNUM's expansion, the site was not included in the OP zone, likely due to the fact that on either side of the site are existing residents. Residential uses are not permitted in the OP zone.

The Elks Club now wants to rezone the property to OP because its property is worth a lot more when zoned to allow for nonresidential uses. Zoned R-2, the land is assessed at $512,000. With the zone change, the developer will pay $1.25M for just the land. The Elks Club will remain on the property and continue to operate out of its existing building. In addition, the developer proposes to build two large professional office buildings on the property, one 15,000 square feet in area to be sited right on Congress Street, and the other 25,000 square feet in area.

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 UNUM campus is in an OP zone and is an example of professional offices located in a park or campus-like setting with the offices set well back from any public way. That is not what the Elks Club's proposal calls for.

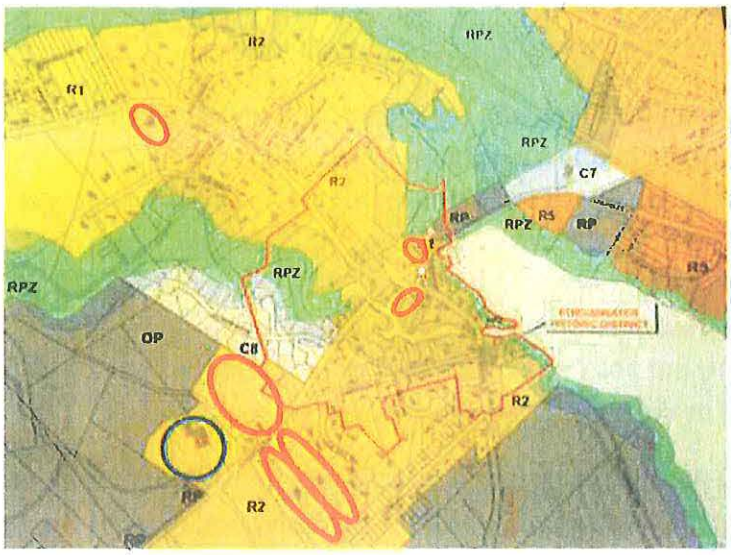
Places of assembly are not allowed in the OP zone. So if rezoned to OP, the Elks Club as a place of assembly will go from being a permitted/conforming use in the R-2 zone, to being a prohibited/nonconforming use in the OP zone. It is unheard of to rezone *a single parcel* in the City so that an existing use on that *single parcel* that is intended to continue indefinitely after the zone change is converted from conforming to non-conforming. Yet that is what the Elks Club's proposal calls for.

In my 11 years on the Planning Board, I do not recall any rezoning proposal for just one parcel that called for converting an existing legal use on the parcel from conforming to nonconforming. That is because the goal of zoning is to eliminate non-conforming uses. What the Elks Club proposes here is the antithesis of zoning and totally against the Comprehensive



Places of assembly are classified as a type of institutional use in the Land Use Code. They are required to have large areas. As the Comprehensive Plan at H-7 states: "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."

Because proper zoning has required places of assembly located in residential areas to have large lots, these organizations, when their membership falls off, will be motivated, as the Elks Club is now, to seek to rezone their lots to permit professional offices or other commercial uses. Three such organizations are located on the same stretch of Congress Street as the Elks Club. While these lots are not quite as large as the Elks Club's parcel, on which the Elks Club seeks to locate two multistory professional office buildings, these lots are clearly sufficient to locate say one professional office building. See areas circled in red below.



Thompson's Point, located about a mile away, traffic and other enhancements have already been made as part of the $32M TIF to make ready for among other uses, the professional offices as proposed at the Elks Club site.

The Comprehensive Plan section on Transportation Resources at page 1 notes, *traffic must be minimized in order to maintain the health of neighborhoods.* "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 professional office use proposed under the Elks Club's rezone is already legal and can be readily accommodated without a zone change at Thompson's Point. So to rezone land zoned residential to allow for office development cannot be about filling a City need. To be consistent with the Comprehensive Plan, the City should be directing professional office space development to areas already zoned for that use, e.g., Thompson Point with ready access off of a parkway that does not run through a neighborhood.

To allow any property owner like the Elks Club to rezone its parcel simply to make more money is not a legitimate reason to rezone. Otherwise the Council will be flooded with rezone requests in coming years by other places of assembly located in residential zones with parking and excess land with access to a major street. If the Elks Club can cash out, they too, will want to cash out as well, with a zone change that will allow for office buildings in what has been a residential zone.

A. The Elks Club proposal is piece-meal rezoning, unwise and unsound.

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] It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district should be done with eye to ensuring the rezone will not negatively impact the historical district.

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[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 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

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, having been last reaffirmed in the 1980s, there should be a master planning process.

A thoughtful process should unfold to develop a vision to govern the area, which looks at uses, setbacks, lighting, and design standards. 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.

Two members of this Council have recognized the need for sound planning before embarking on zone changes. They recently stated:

> *"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 wants 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 a property owner.

To the extent that any part of your decision is premised on the Elks Club's assertion that its property cannot be put to other uses, it is important to understand that there has been no showing that such is the case. The property has not, to my knowledge, ever been placed on the market for non-commercial uses. The Elks Club has not engaged the City to work with it on possible residential development opportunities. The fact that the Elks Club could make more money is not a valid reason to rezone.

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[2] E. Suslovic & N. Mavodones, *Portland Press Herald*, August 25, 2015.

It is worth reiterating 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 Comprehensive Plan describes the OP zone as follows: "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 areas, *significant open space* and landscaping and thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland." Neighborhood Commercial Land Use Policies and Land Use Plan, (1988) page 22.

The best that may be said about the proposal is that it may, at the end of the day, look better than what is there now. But that is, has never been and never should be the test for a rezone; otherwise a place of assembly (or for that matter any property owner) can simply let its building become run down and lose any charm, and then claim that, if the rezone is permitted, the eye sore will be gone.

Looking at the purposes for the OP zone, it is clear that the proposal cannot be called "spacious." It is not a large lot with low building coverage but a small lot with three buildings to be shoehorned on the lot with a sea of parking. There is no open space. There is no campus-like feel. The proposed office buildings are run-of-the- mill office buildings, with one located on the front at Congress Street. None of UNUM's buildings are located within 200 feet of Congress Street. The proposal, clearly on its face, does not meet the City's standard for an OP zone.

The OP standards also 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. 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."* Before the Council acted on rezoning what the Mercy Hospital parcel, it first required Mercy to submit a Master Plan for the site. As there, there should be here by the Elks Club, 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. If it is not practicable to meet the OP standards, the property should not be rezoned.

One is hard pressed to say that the to-be created lot, crammed with three buildings, constitutes 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 is. The applicant's proposal does not show any integrated development or any park- or campus- like setting. With the area to be occupied by the two new buildings with added pavement for

Extending commercial zones so as to displace all residential uses is not a goal of the Comprehensive Plan. Instead, the Comprehensive Plan has as a goal to "encourage neighborhood livability with higher density multi-family & innovative mixed use protects along major public transpiration routes." Congress Street is served by METRO. The Elks Club property could readily be developed into multi-family housing. One proposal submitted to the Planning Board depicted the possible development of 32 units of housing at the site as follows:

The City has a limited supply of land zoned residential and that land certainly should not be rezoned for the benefit of a place of assembly so as to eliminate the possibility of any residential use in the future without serious study and an overwhelming, compelling need. The Comprehensive Plan speaks to encouraging residential development and discouraging any development that could displace housing for non-residential uses. With its $32M TIF already in place, Thompson's Point stands ready, willing, and able to accommodate the development proposed here. It makes no sense to rezone the Elks Club for two professional office buildings simply to enrich the Elks Club.

More importantly, the Council must ask what will be the impact of the rezone on both 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.

setbacks, to ensure any new development that occurs is consistent with the area being a gateway to the City and with bordering a large, residential, historic district.

As an example, when entering SHD near the Fore River, when the office building known as "Stroudwater Crossing" was built, a significant design feature was the use of distinctive clapboard siding and pane windows in recognition that the building borders a historic district. These design features are totally absent from the Elks Club's proposal. Under the OP standards, there is no way for the Board to require the developer to take into account the location of the site bordering a historic district in reviewing the design and siting of the proposed office buildings. Any rezoning could add those elements.

Additionally, the Elks Club's analysis submitted to the Planning Board on how the rezone is consistent with the Comprehensive Plan suffers from a fatal flaw. That analysis necessarily assumes that the OP zone text would be amended to allow for places of assembly so that places of assembly would be a permitted use in the OP zone. On one level, this makes sense because as noted earlier, it is contrary to zoning practice to rezone *one parcel* alone and convert an existing conforming use that is to be continued after the zone change to a nonconforming use. The purpose for zoning is to eliminate nonconforming uses, not to create nonconforming uses. But the Planning Board did not recommend changing the OP zone to allow for any places of assembly. No text changes to the OP zone have been proposed. Without a change to the OP zone to allow for places of assembly as a permitted use, there is no basis to conclude the rezone proposal is consistent with the Comprehensive Plan.

Nowhere in the Comprehensive Plan is there a goal to rezone a parcel so as to convert an ongoing legal conforming use to a nonconforming use. The City should not be promoting such a practice simply to accommodate the needs of one property owner.

E. The Elks Club's proposed rezoning should be denied and only revisited after a master planning process is completed for the area.

"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 one property owner is unsound zoning. Right down the road is Thompson's Point where professional offices are intended to be located.

If there is to be change in this area, a substantial change from the R-2 and places of assembly serving as buffers to existing abutting residences, it should be the result of a *"well-thought-out plan."* This is a gateway area to the City in many ways. There should be a plan for the area. The Elks Club's proposal is not a well-thought-out plan. It converts a present legal use to one prohibited in the proposed new zone. The parcel is not suitable for OP designation. The

NORTHLAND

October 13, 2015

To The Portland City Council,

Northland Enterprises and Doctor Michael Bedecs, have the Elks Lodge property at 1945 Congress Street under contract. We have plans to collaborate with the Elks to redevelop the property following a zoning map amendment request to change the site from R2 to OP, which is the zone on the adjacent Unum campus. .

Northland and Bedecs propose to purchase the property, remove part of the existing Elks building and make improvements to the exterior of the remaining building; build a 15,000 square foot medical building for Dr. Bedecs and develop a 25,000 square foot building for Clark Insurance.

Through our numerous neighborhood and city meetings it has come to our attention that the City of Portland has plans to make improvements to Congress Street in the vicinity of the Elks property. We have come to learn that there is a gap in the amount of funding required to perform the work, which has caused significant delays in implementing the improvements.

Northland met recently with City Manager Jon Jennings, City Councilor Ed Suslovic and Jeff Levine of the City Planning office to discuss making a contribution towards the Congress Street improvement project. Assuming the we are successful in getting all the necessary approvals to close on the acquisition of the property, Northland is in agreement to make a financial contribution to the street improvement project. We are not able to commit to a dollar amount until we have a better understanding of our total development cost, however we will go on record of stating we will support the street project.

Thank you for your consideration of our request for a zone change.
Sincerely,

Rex Bell, Josh Benthien, Northland Enterprises and
Dr. Michael Bedecs.

17 South Street, 3rd Floor
Portland, Maine, 04101
207-780-0223
www.northlandus.com

From: <roz@homesinmaine.com>
To: <hcd@portlandmaine.gov>
Date: 10/6/2015 11:16 PM
Subject: Elks Club land re-zoning

I have no objection to the re-zoning.
I do feel it would be wise to follow up with a vision for the city for Stroudwater area and residents.

Sent from my iPhone

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: paul jeffery <pj6481@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 10/13/2015 9:29 PM
Subject: Fw: 1945 congress st project

On Tuesday, October 13, 2015 9:21 PM, paul jeffery <pj6481@yahoo.com> wrote:

support projecthigh and best use
DOESNT EFFECT THE STROUDWATER NIEGHBORHOODLETS KEEP ELKS AND CLARKS INSUR IN PORTLAND

STATEMENT from the Stroudwater Village Association regarding the proposed rezoning of 1945 Congress Street (Elks Club Property), October 2015. stroudwatervillageassociation@gmail.com

This statement should be considered in addition to our prior letters to the Planning Board from January 2015, May 2015, July 2015 and September 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.

Consider these facts:

- At the September 2015 workshop regarding this zoning request, several members of the planning board and City staff stated their agreement that it makes sense to do a proper visioning exercise for the Jetport and Stroudwater area, including but not limited to the abutting intersection and the Stroudwater Historic District, before a split vote of 4-2 (nowhere near unanimous) to recommend approval of the request.
- The City has just now kicked off the process to review and re-certify its Comprehensive Plan, and is in the middle of the process of updating the Jetport's Sustainability Master Plan.
- The Outer Congress Street Phase II traffic calming improvements (some of which are quite close to this parcel) are scheduled to be implemented in the near future.
- Most alarming, in the short time since this application process began, parcels surrounding several other similar properties (flagged by the SVA in our July letter) have come on the market or changed their market status (for example, gone under contract). Rumor abounds that these are commercial developments. In addition, we know that several individual residential owners have petitioned to be included in any hypothetical commercial zoning. Given the financial incentive that "cashing out" to commercial developers represents, it is likely more will follow.

The SVA and our members remain surprised by and uncomfortable with the City's insistence on rezoning a single parcel ahead of proper planning for the area. We believe that to do so is shortsighted and reckless, especially given the timing relative to planning processes already underway. Inputs from the Comprehensive Plan and Jetport Master Plan updates, as well as from the stakeholders (including but not limited to SVA members and the Elks Club), should be incorporated into a clear and transparent visioning process. This is especially important since, as described in the last bullet above, we are already seeing evidence of the "domino effect" of this potential parcel rezoning. There are at this point no rules of engagement or even a common understanding about the implications of this potential change.

Bottom line: we have not heard a valid reason for tinkering with zoning *before* thinking about the big picture. Indeed, given the potential mess being created, we believe the big picture should be driving zoning, not the other way around.

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: Joe Heasly <jheasly1@maine.rr.com>
To: Helen Donaldson <hcd@portlandmaine.gov>
CC: Ed Suslovic <edsuslovic@portlandmaine.gov>, <stroudwatervillageassociation@gmail.com>, <captlinnell@yahoo.com>, Carolyn Heasly <caroalic@maine.rr.com>
Date: 10/18/2015 7:55 PM
Subject: 1945 Congress Street zone change - comment for Council meeting

Dear Ms. Donaldson,

Thank you for the notice of the upcoming City Council consideration of the Elks Clubs' zone change request for 1945 Congress Street. Will you please forward our comments to the Council members for their consideration during the meeting? Schedule conflicts don't allow us to attend in person.

To the members of the Portland City Council:

It is pretty clear to us that the primary driver for their zone change request is the B. P. O. Elks Lodge's desire to achieve a profitable end-game as their membership and resources have dwindled beyond the point where they can maintain their presence at 1945 Congress St. However, as many of our neighbors have pointed out, the primary purpose of zoning, and of zoning change, is not to maximize profits for a particular property owner or developer , but to maximize conformance with a municipal development plan.

As property owners at 1832 Congress Street, we 'bought into' the pros and cons of our purchase in 1978, much as the Elks did 10 years before us. When our resources have dwindled to the point were we can no longer maintain our presence at 1832 Congress St, we will also sell. In contrast to the Elks, we expect to have to live with financial impacts of those same pros and cons – as they have evolved in the intervening decades – without recourse to a change in the zoning rules to allow us to maximize our return. This issue of basic fairness is a primary reason for our opposition to the proposed zoning change at 1945 Congress Street from 'R-2' to 'OP'.

We have other reasons for our opposition, as well. If the Elks' request is granted, there are many other parcels, nearby and across the city, where place of assembly usages could also become the bases for zone change requests. These parcels are big enough, and impacted by factors such as major arterials and existing industrial or commercial uses, that they meet the basic OP criteria. The rebuttal that the Board and the Council would not be setting precedents in the judicial sense is specious – if essentially the same political and economic arguments are in play for essentially the same kinds of parcels, why would the Board and/or Council be moved to come to different determinations? We believe that the correct determination is to deny this request.

It will be unfortunate if the Elks' request is granted. In the event that it is, we have this request: that the interest in and emphasis on this parcel's importance as a significant contributor to the western Gateway to Portland be given real weight. The OP zone's emphases on buffering between the development and the surrounding area, the importance of a park or campus-like appearance with corresponding amenities, as well as the aesthetic appearance of the buildings themselves, will gain in importance if we are not to end by trading an old eyesore for a new one.

Thank you for your consideration of our input,

Joe and Carolyn Heasly
1832 Congress Street

From: "Beal, Sandy" <abeal@medicalmutual.com>
To: "'hcd@portlandmaine.gov'" <hcd@portlandmaine.gov>
Date: 10/19/2015 9:47 AM
Subject: Elks Clubs' zone change request for 1945 Congress Street

Good morning Nell Donaldson,

I reside at 37 Old Mast Road, in Stroudwater Village.

I am extremely concerned about the current activity that may lead to future pressures to develop more of the Stroudwater area for other than residential development. I am concerned about the development for the surrounding area of the jetport entrance. With the amount of traffic flow through this area, I believe developers may find this land area attractive for commercial development, regardless of current zoning. At a recent workshop I attended at USM, a statement was made that the person had never met a developer who thought that zoning was not restrictive enough. In other words, current zoning is just a start for most developers and they normally want exceptions made.

Currently there is 4 acres of land under contract just past 1871 Congress Street, and on the other side of Stroudwater the Rogers estate on Westbrook Street near the turnpike overpass now has 44 acres of land posted for sale/development.

To accept a re-zoning of the Elks Club without a solid vision of what Stroudwater should look like for the immediate and long-term future is short-sighted on the part of the City of Portland. What's next??? I am extremely concerned about what Stroudwater might become without the City of Portland having a vision in place. So much of what I have seen in this process of the Elks Club is basically "Follow The Money," i.e. the primary factor is economic benefit to the Elks Club, Dr. Bedecs and the developer. It is not upholding current zoning, and this may lead to future pressures along the same line.

Sandy Beal

Sandy Beal * Senior Underwriter
Tel: 207.775.2791

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www.medicalmutual.com<http://www.medicalmutual.com/> * Follow: @MedicalMutual<https://twitter.com/medicalmutual>

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From: Paul Dubois <pdubois1915@yahoo.com>
To: Rex Bell <rex@northlandus.com>, Michael Bedecs <mbedecs@gmail.com>, Josh Benthien <josh@northlandus.com>, Helen Donaldson <hcd@portlandmaine.gov>
Date: 10/19/2015 10:40 AM
Subject: Tonight's Council Meeting regarding 1945 Congress St Zoning Change

Nell, I just got a call from work, they are no longer able to cover my shift for tonight so I won't be able to attend the Council meeting.
We had expected to speak before the Council in favor of the zoning change. As you know, our change of heart resulted from the executed P&S agreement that modifies the lot line thereby allowing our adjacent residential house lot to be conforming in size and set back. We believe this helps us secure a better buffer and results in an enhanced residential character for our home at 1915 Congress Street despite the obvious impacts of the proposed development of the adjacent property. As I have testified in several Planning Board meetings, we believe that it is crucial to promote whatever can be done to buffer these adjacent properties from commercial developments such as the one proposed tonight. We feel that Northland and Dr. Bedecs have been sensitive to our concerns and recommend that the Council approve their request for a zoning change.
Nell, would you please make this email available to the Board Members for review. Again, thanks for all your help as I don't believe we would have come to this resolution without it.
Paul and Kimberly Dubois 1915 Congress Street Portland Maine 04102 (207)899-2599

TO: Mayor Brennan and Members of the City Council

FROM: David Silk, 1187 Westbrook St

RE: Proposed Rezone of 1945 Congress Street from R-2 to OP

Property Owner: Portland Lodge #188 BPOE of USA ("Elks Club")

I respectfully urge you to vote against the Elks Club's proposal to change the existing R-2 zone for the property at 1945 Congress St to an Office Park ("OP") zone.

There is a litany of problems, inconsistencies, and concerns with the Elks Club's request:

The proposal is piece-meal rezoning, unwise and unsound. There is no compelling need for this zone change. It is, moreover, inconsistent with the Comprehensive Plan, good zoning practices, the City's Jetport Plans, including how the Jetport interacts with the Historic District and the neighborhood, the history and pattern of development in this area, taxpayer investment in Thompson's Point, the documented overloading of already saturated traffic in the JetPort area, and the way in which the City has handled other areas and developments, including St. Patrick's Church and Mercy Hospital. Further, approval would send a problematic message to many similar properties throughout the City, encouraging them to line up and cash out with similar zone changes, from residential to commercial.

The sole motivation behind this far-reaching effort for piece-meal rezoning is increased financial benefit for the property owner. There is little else to recommend it. Changing zoning to create a windfall for one property owner is hardly consistent with the Comprehensive Plan, or good zoning practices.

The Elks Club's proposal would replace a conforming use with a non-conforming use, as the Elks Club as a place of assembly is not allowed in an OP zone. This switch is clearly not consistent with the Comprehensive Plan. The purpose of zoning is to eliminate non-conforming uses, not to create more of them.

Further, the proposal is 180 degrees opposite the Comprehensive Plan's goal to address serious unmet needs for more housing, including housing for seniors and working families. Taking land that is zoned for residential use and switching it to a zone that prohibits all residential use is not consistent with the Comprehensive Plan. In stark contrast, preserving land zoned for residential use is consistent with the City's Comprehensive Plan.

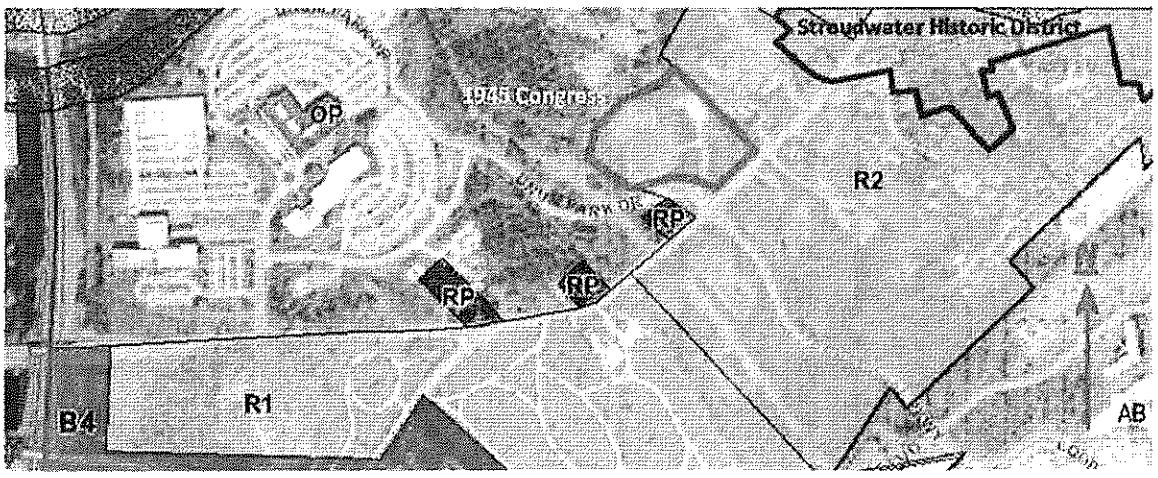
The Elks Club's proposal is doubly problematic, as it would ignore unmet needs outlined in the Comprehensive Plan, in favor of zoning that is already plentiful. Meanwhile, there's an ideal location for new professional offices at nearby Thompson's Point that taxpayers are already supporting with $32 million in Tax Incentive Financing (TIF).

With the Thompson's Point development zone change in place and traffic improvements already implemented there, the Elks Club's proposed 40,000 square feet of professional office space, which will generate 300 additional vehicle trips at peak time, should be directed to Thompson's Point. Per Tom Errico, in this area of Congress Street, intersections are already maxed out. If the rezone is approved, the increased traffic will among other impacts stifle the JetPort's needs down the road, a result that makes no sense given the traffic capacity for this type of development recently built out at Thompson's Point.

As the two most longstanding members of the Planning Board (Hall and Morrissette) recognized in voting against this proposed rezone, rezoning one property used a place of assembly as a conditional use in a residential zone so the assembly members can achieve a much great sale price is not a goal of the Comprehensive Plan. Rezoning a parcel, to allow for a use not allowed in the zone, absent compelling needs such as the need to preserve a significant historic landmark, is unwise and unsound zoning.

Instead of the rezone, zoning for this gateway area of the City should be reviewed comprehensively to determine whether the zoning should be changed at all, and if so, to what uses, and with what design guidelines. This review should be done in conjunction with the ongoing JetPort master planning process, as this area is on the border of both an historic residential district and the JetPort. Instead of piece-meal zoning, driven here by the wants of just one property owner, any rezoning should only occur after full participation and consideration of the interests of all of the stakeholders. The City should be leading the way, not the developer.

<u>The area:</u>



The Elks Club's property at 1945 Congress Street is presently zoned R-2. It consists of an almost 7 acre parcel. 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.

Social/fraternal halls, together with churches, are now known as "Places of Assembly" under the Land Use Code. Places of assembly, like institutional uses (schools) are conditional uses allowed in all residential zones. The City has many places of assembly located in residential zones on busy streets. In the late 1980s when the new entrance to the Jet Port and to UNUM was proposed, zoning for the area site was examined. At that time, the Elks Club property was subsequently rezoned back to R-2 and not to OP. When the OP zone was extended to accommodate UNUM's expansion, the site was not included in the OP zone, likely due to the fact that on either side of the site are existing residents. Residential uses are not permitted in the OP zone.

The Elks Club now wants to rezone the property to OP because its property is worth a lot more when zoned to allow for nonresidential uses. Zoned R-2, the land is assessed at $512,000. With the zone change, the developer will pay $1.25M for just the land. The Elks Club will remain on the property and continue to operate out of its existing building. In addition, the developer proposes to build two large professional office buildings on the property, one 15,000 square feet in area to be sited right on Congress Street, and the other 25,000 square feet in area.

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 UNUM campus is in an OP zone and is an example of professional offices located in a park or campus-like setting with the offices set well back from any public way. That is not what the Elks Club's proposal calls for.

Places of assembly are not allowed in the OP zone. So if rezoned to OP, the Elks Club as a place of assembly will go from being a permitted/conforming use in the R-2 zone, to being a prohibited/nonconforming use in the OP zone. It is unheard of to rezone *a single parcel* in the City so that an existing use on that *single parcel* that is intended to continue indefinitely after the zone change is converted from conforming to non-conforming. Yet that is what the Elks Club's proposal calls for.

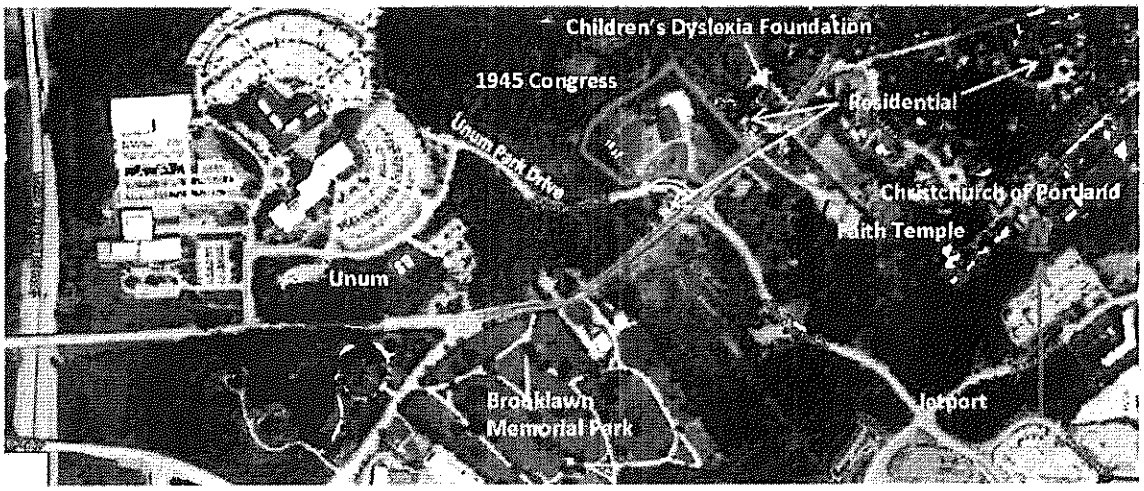
In my 11 years on the Planning Board, I do not recall any rezoning proposal for just one parcel that called for converting an existing legal use on the parcel from conforming to nonconforming. That is because the goal of zoning is to eliminate non-conforming uses. What the Elks Club proposes here is the antithesis of zoning and totally against the Comprehensive

Plan. Maine courts have always observed that the purpose of zoning is to eliminate non-conforming uses, not to create them. *See Oliver v City of Rockland*, 1998 ME 88, ¶ 9, 710 A.2d 905, 908 ("The policy of zoning is to abolish nonconforming uses as speedily as justice will permit."). For this reason alone you should vote against the rezone.

Places of assembly often have limited lives. A few years back, this Council wrestled with a conditional zoning agreement for a place of assembly in an R-4 zone. The owner of the former Williston West Church sought a conditional zoning agreement to allow for the operation of a business on the property and promised to invest money to preserve a historic landmark. Such a use was not permitted in the R-4 zone. Given the Church was a very significant historic structure and the property could not be redeveloped solely for residential use unless the conditional zoning agreement was approved, the Church building's future was at best unclear. However, the Elks Club's building on the property is not a historic landmark and there is no suggestion from anyone that it should be considered one.

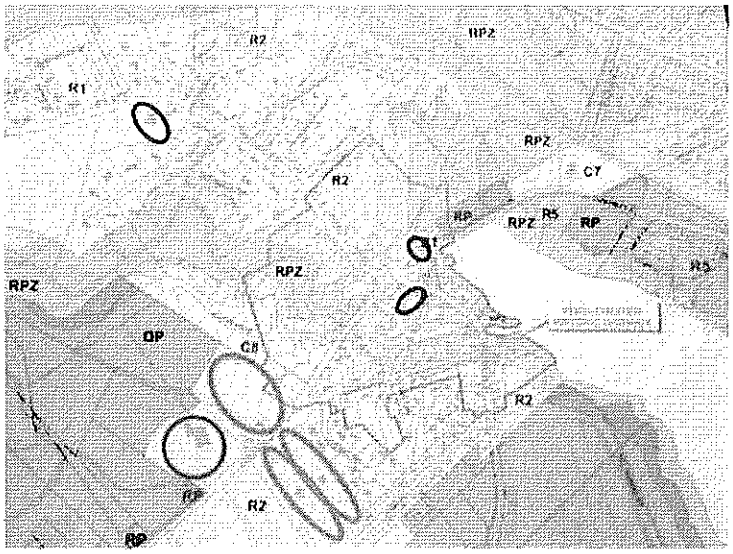
In recent years, places of assembly with declining membership have been repurposed without (a) making the use nonconforming in the zone and (b) without changing the underlying zone. The most recent example occurred less than a mile away from the Elks Club. Earlier this year, the former Saint Patrick's Roman Catholic Church, (a place of assembly permitted as a conditional use in a residential zone), located next to Westgate on Congress Street, was sold to the non-profit Jewish Community Alliance. The Church had been on the market for many years and eventually a buyer was found. The Saint Patrick's property was zoned R-5. The Church 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 very active business district (Westgate zoned B-2). Instead, it found a buyer that did not need a zone change. It took time but it happened.

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 (places of assembly) located thereon, Faith Temple, Christchurch of Portland and St. Albans Corporation (Masonic Learning Center).



Places of assembly are classified as a type of institutional use in the Land Use Code. They are required to have large areas. As the Comprehensive Plan at H-7 states: "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."

Because proper zoning has required places of assembly located in residential areas to have large lots, these organizations, when their membership falls off, will be motivated, as the Elks Club is now, to seek to rezone their lots to permit professional offices or other commercial uses. Three such organizations are located on the same stretch of Congress Street as the Elks Club. While these lots are not quite as large as the Elks Club's parcel, on which the Elks Club seeks to locate two multistory professional office buildings, these lots are clearly sufficient to locate say one professional office building. See areas circled in red below.



The same occurrence is ripe to happen at other places of assembly, city-wide. Many other places of assembly have been permitted as conditional uses in residential zones in the City, ones that have a lot of sufficient size to absorb the impacts and growth needs of the place of assembly. Such places of assembly are situated along Allen Ave., Forest Ave., Westbrook St., Washington Ave., Brighton Ave., Woodfords St., Stevens Ave., Canco Road and Ocean Ave., just to identify a few locations of places of assembly with large lot sizes. They are also similar in that they border busy streets with high traffic counts, with parking and large areas that were intended to serve as buffer to adjacent residential uses. Numerous places of assembly could follow the Elks Club's lead and seek a zone change so the "excess land" (really the land intended to act as a buffer to adjacent residences) can be used for professional offices or other nonresidential uses.

The place of assembly at Canco Road and Washington Ave in a R-3 zone is a prime example as it has ample size, parking and access near a signalized intersection. The case is the same on outer Allen Ave, outer Washington Ave, Westbrook Street, and Ocean Ave., where, if need be, signaled intersections could be installed.

Note there is no shortage of land zoned for professional offices in the City. The 2011 rezone at the 30 plus acre Thompson's Point project located off of Congress Street, a project that received a $32 million TIF, allows for the development of over 100,000 square feet of professional offices. The proposed users of the office buildings to be located on the Elks Club both are already located on Congress Street. In fact for one of the proposed users, Thompson Point is much closer to its existing office than the Elks Club's property. With the substantial street improvements already made at Thompson's Point, improvements made to handle increased capacity, the traffic resulting from the two professional offices can already be handled at Thompson's Point. That is not the case at the Elks Club's property, where recent traffic improvements have been made to minimize the impact on the surrounding neighborhood. Lanes have been reduced from two lanes to one as an example.

Tom Errico made clear to the Planning Board that with the proposed zone change, peak hour trips at the site will be 302 vehicles in the morning and 288 vehicles in the evening, substantially more than anticipated for an R-2 zone and way more than the peak trips now at the site. Mr. Errico notes that most of the traffic at the site presently is off peak, which is typical with most places of assembly permitted as conditional uses in a residential zone. He observed that the Congress Street/Westbrook Street intersection "currently experiences congestion problems" and it is simply not possible to make further "any capacity enhancements." In other words, at peak time, it is already at capacity.

With the Jetport looking to increase demand, any rezoning should take into account the finite road capacity. The solution is not to add 300 trips at peak time, especially not, when at

Thompson's Point, located about a mile away, traffic and other enhancements have already been made as part of the $32M TIF to make ready for among other uses, the professional offices as proposed at the Elks Club site.

The Comprehensive Plan section on Transportation Resources at page 1 notes, *traffic must be minimized in order to maintain the health of neighborhoods.* "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 professional office use proposed under the Elks Club's rezone is already legal and can be readily accommodated without a zone change at Thompson's Point. So to rezone land zoned residential to allow for office development cannot be about filling a City need. To be consistent with the Comprehensive Plan, the City should be directing professional office space development to areas already zoned for that use, e.g., Thompson Point with ready access off of a parkway that does not run through a neighborhood.

To allow any property owner like the Elks Club to rezone its parcel simply to make more money is not a legitimate reason to rezone. Otherwise the Council will be flooded with rezone requests in coming years by other places of assembly located in residential zones with parking and excess land with access to a major street. If the Elks Club can cash out, they too, will want to cash out as well, with a zone change that will allow for office buildings in what has been a residential zone.

A. The Elks Club proposal is piece-meal rezoning, unwise and unsound.

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] It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district should be done with eye to ensuring the rezone will not negatively impact the historical district.

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[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 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's property is also 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 which are 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 for the existing R-2 zone. *See* July 23, 2015 Planning Staff report at page 3. 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, 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. As a place of assembly in a residential zone, the Elks Club was required to have a large parcel with open space to act as a buffer to the adjacent residences. Unless and until the Master Plan is revisited, which should be done, keeping the R-2 designation for the Elks Club's property is fully consistent with the zoning goals of the City.

The history of zoning and development in the area is important. If you look at the map above 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 as the Elks Club. This was not achieved by accident. The main building and parking on each lot are located well off of Congress Street so as to provide buffering to the residences located on Congress Street. 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. 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.

These observations have led many to request that before any piece-meal zoning occurs, that the City, through the ongoing JetPort master planning process, undertake a planning process to best identify how the area should be rezoned, if at all. The area is an 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 its entire office complex set back at significant distances from Congress Street, fully consistent with the OP standards. 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, thereby buffering the places of assembly from the existing residences. 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, having been last reaffirmed in the 1980s, there should be a master planning process.

A thoughtful process should unfold to develop a vision to govern the area, which looks at uses, setbacks, lighting, and design standards. 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.

Two members of this Council have recognized the need for sound planning before embarking on zone changes. They recently stated:

> *"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 wants 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 a property owner.

To the extent that any part of your decision is premised on the Elks Club's assertion that its property cannot be put to other uses, it is important to understand that there has been no showing that such is the case. The property has not, to my knowledge, ever been placed on the market for non-commercial uses. The Elks Club has not engaged the City to work with it on possible residential development opportunities. The fact that the Elks Club could make more money is not a valid reason to rezone.

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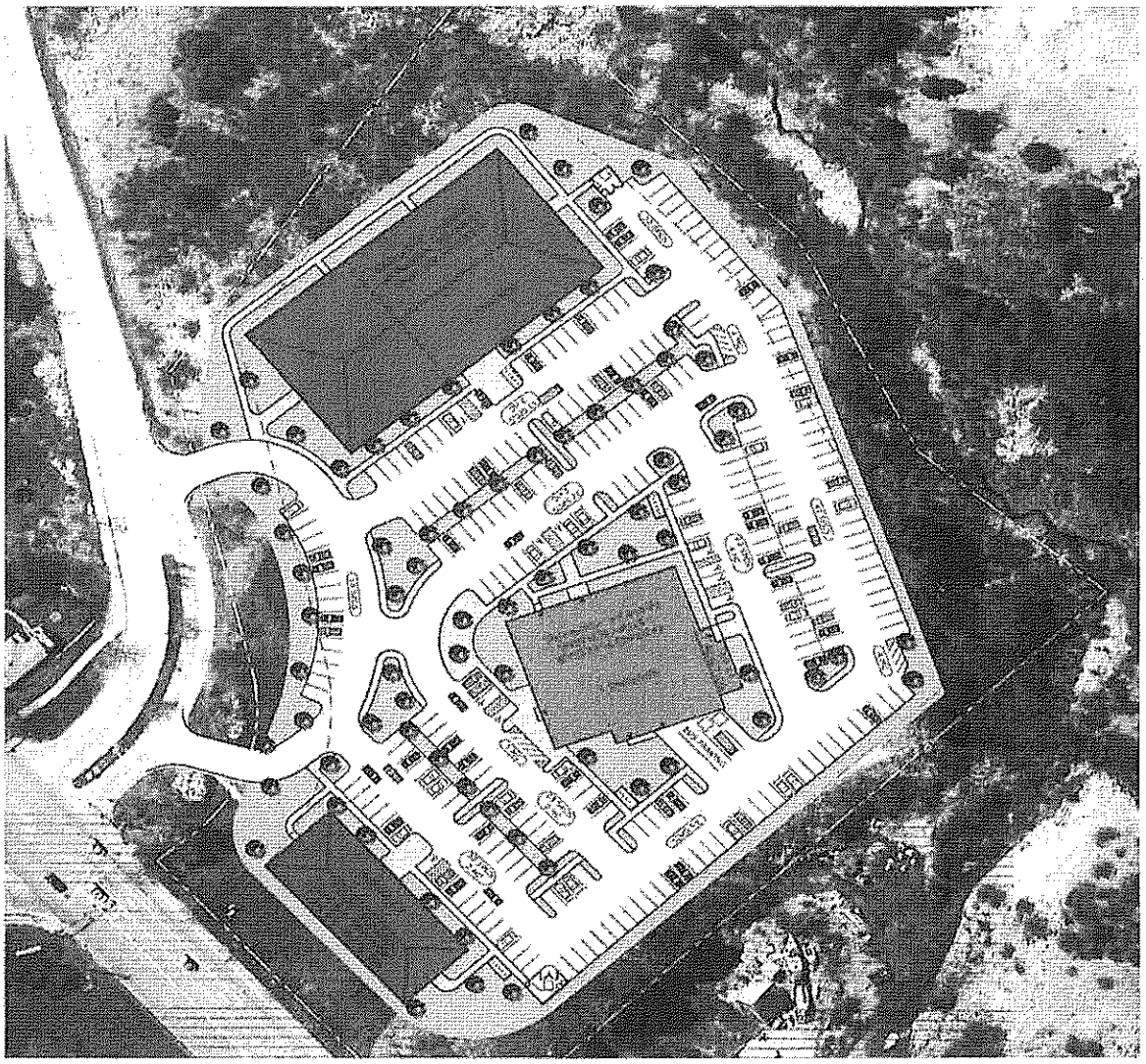
[2] E. Suslovic & N. Mavodones, *Portland Press Herald*, August 25, 2015.

Indeed, the Elks Club told the Planning Board that it would "never" list the property for sale for residential use and would "never" sell its property for any residential use. It has not looked at rezoning the property as an R-5 or even as a conditional use. It has not engaged the City for a TIF or other means of assistance (density change) in the development of housing on the site. Why? -Because the Elks Club will not get paid $1.25M for land assessed at just over $500k. It will make far less without a zone change. But again, the zone change should not be about what is good for the place of assembly. 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.

C. The Elks Club has not shown that the property to be rezoned OP can even be developed consistent with the OP standards.

Here is the Elks Club's proposal:



It is worth reiterating 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 Comprehensive Plan describes the OP zone as follows: "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 areas, *significant open space* and landscaping and thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland." Neighborhood Commercial Land Use Policies and Land Use Plan, (1988) page 22.

The best that may be said about the proposal is that it may, at the end of the day, look better than what is there now. But that is, has never been and never should be the test for a rezone; otherwise a place of assembly (or for that matter any property owner) can simply let its building become run down and lose any charm, and then claim that, if the rezone is permitted, the eye sore will be gone.

Looking at the purposes for the OP zone, it is clear that the proposal cannot be called "spacious." It is not a large lot with low building coverage but a small lot with three buildings to be shoehorned on the lot with a sea of parking. There is no open space. There is no campus-like feel. The proposed office buildings are run-of-the- mill office buildings, with one located on the front at Congress Street. None of UNUM's buildings are located within 200 feet of Congress Street. The proposal, clearly on its face, does not meet the City's standard for an OP zone.

The OP standards also 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. 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."* Before the Council acted on rezoning what the Mercy Hospital parcel, it first required Mercy to submit a Master Plan for the site. As there, there should be here by the Elks Club, 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. If it is not practicable to meet the OP standards, the property should not be rezoned.

One is hard pressed to say that the to-be created lot, crammed with three buildings, constitutes 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 is. The applicant's proposal does not show any integrated development or any park- or campus- like setting. 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.

The test is not whether it looks better than what is existing. As the proposed development does not fit the characteristics of an OP zone, you should vote against the proposed rezone. If this lot, which has no open space and has no campus feel, is deemed suitable for OP designation (a designation again that prohibits actually places of assembly and residential uses) I am sure when the fiscal need arises, other places of assembly with excess land on a busy street will be looking to obtain a zone change to OP. Why wouldn't they?

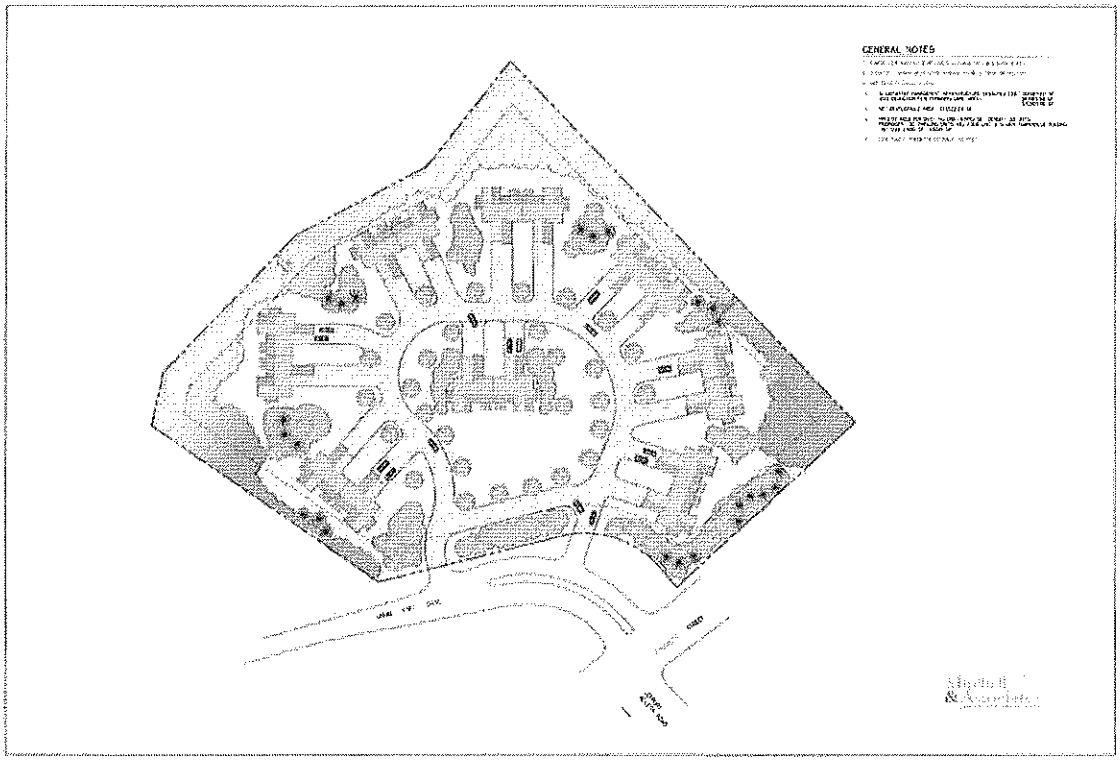
D. The proposed rezone is not consistent with the Comprehensive Plan.

Turning to the Comprehensive Plan, that plan has, as a goal, no net loss of housing for all development, and the creation of new housing of all kinds. 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. That downsizing will free up existing housing to be filled with families and others. Having served for the last 20 years on the board of a non-profit developer of senior housing projects in Maine and New Hampshire, I can vouch for that trend and need. While perhaps not at a land cost of $1.25M, the site certainly is capable of sustaining a viable housing development. In sum, there is an unmet need for all kinds of housing in Portland, and the Elk's proposal is in direct conflict with this significant unmet need.

The goal of not losing any and creating more housing is incorporated into the Land Use Code and is the highest goal of the Comprehensive Plan. Part of the Comprehensive Plan implementation plan calls for an analysis of each residential zone *"to identify opportunities to increase the capacity of all the neighborhoods to accommodate new housing."* The implementation plan also calls for the City to be proactive and to work with residential developers to identify and remove barriers to housing development of all kinds.

Here, the Elks Club has made no effort to work with the City on possible residential development, whether it be rezoning for a different residential district, a conditional use agreement, changes in density or a TIF. Rather, the sole focus of the Elks Club has been on maximizing its economic return and to do so it wants to rezone the land so all residential uses will be prohibited. Maximizing economic return is not a goal of the Comprehensive Plan.

Extending commercial zones so as to displace all residential uses is not a goal of the Comprehensive Plan. Instead, the Comprehensive Plan has as a goal to "encourage neighborhood livability with higher density multi-family & innovative mixed use protects along major public transpiration routes." Congress Street is served by METRO. The Elks Club property could readily be developed into multi-family housing. One proposal submitted to the Planning Board depicted the possible development of 32 units of housing at the site as follows:



The City has a limited supply of land zoned residential and that land certainly should not be rezoned for the benefit of a place of assembly so as to eliminate the possibility of any residential use in the future without serious study and an overwhelming, compelling need. The Comprehensive Plan speaks to encouraging residential development and discouraging any development that could displace housing for non-residential uses. With its $32M TIF already in place, Thompson's Point stands ready, willing, and able to accommodate the development proposed here. It makes no sense to rezone the Elks Club for two professional office buildings simply to enrich the Elks Club.

More importantly, the Council must ask what will be the impact of the rezone on both 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.

The two residential property owners located on Congress Street on the other side of the UNUM entrance submitted a letter to the Board asking that as part of the Elks Club's rezoning request that their two residential properties be rezoned to OP "so that professional development of our properties becomes a possibility." (See letter attached.) It is not known why the Board ignored their request and did not include the two residential properties within the area for rezoning consideration. The property owners clearly asked for such consideration. Both of the residential properties abut the existing OP zone. A rezone of the two parcels to OP would accomplish the same result as the rezone for the Elks Club: increase the value of the two residential lots and make existing conforming uses (residential) nonconforming in the OP zone. The properties are the same distance from the signalized intersection and could be accessed from the UNUM entrance. Why say yes to the Elks Club and no to the two residents of the City?

This highlights the problem with piece-meal rezoning driven by the desire of a single property owner to maximize his or her return. The OP zone borders a number of residences as well as the Elks Club. If the justification offered for the Elks Club rezone is it is a "natural extension of the existing OP zone" for property that can be accessed from the UNUM access road with a signalized intersection, then there is no reason not to also honor the residential property owners' request and rezone those lots as well to OP. They will make a lot more money selling their land if rezoned OP just like the Elks Club seeks to do. But to what end: the loss of residential housing. The City should be seeking to preserve residential housing and not be taking steps to make housing less desirable, like making them islands surrounded by a wall of professional offices.

Similarly, across the street from the Elks Club is land owned by the City presently zoned R-2 with frontage on the International Parkway that benefits from a signalized intersection. Why not extend the OP across the street to this land as it benefits from the same characteristics offered by the Elks Club to support it rezone request? It could be sold simply as a "natural extension" of the OP as the Elks Club tries to sell its rezone request. The City would stand to make a lot of money. But we know, when last examined in the late 1980s, the decision was made not to extend the OP zone to the Elks Club property, not to extend the OP to the two residences, and not to extend the OP across the street to the City land, likely due to the fact that none of these areas met the definition of the OP zone (substantial area, significant open space and natural features and campus like environment). What has changed in the area since then? Not much by way of any further development since the 1980s. The only thing that has changed since then is the Elks Club's desire to maximize its take on any sale of its land.

All of these observations point to the need for planning to occur at this area before any rezoning is considered-- planning that can look not only at uses, but performance standards and

setbacks, to ensure any new development that occurs is consistent with the area being a gateway to the City and with bordering a large, residential, historic district.

As an example, when entering SHD near the Fore River, when the office building known as "Stroudwater Crossing" was built, a significant design feature was the use of distinctive clapboard siding and pane windows in recognition that the building borders a historic district. These design features are totally absent from the Elks Club's proposal. Under the OP standards, there is no way for the Board to require the developer to take into account the location of the site bordering a historic district in reviewing the design and siting of the proposed office buildings. Any rezoning could add those elements.

Additionally, the Elks Club's analysis submitted to the Planning Board on how the rezone is consistent with the Comprehensive Plan suffers from a fatal flaw. That analysis necessarily assumes that the OP zone text would be amended to allow for places of assembly so that places of assembly would be a permitted use in the OP zone. On one level, this makes sense because as noted earlier, it is contrary to zoning practice to rezone *one parcel* alone and convert an existing conforming use that is to be continued after the zone change to a nonconforming use. The purpose for zoning is to eliminate nonconforming uses, not to create nonconforming uses. But the Planning Board did not recommend changing the OP zone to allow for any places of assembly. No text changes to the OP zone have been proposed. Without a change to the OP zone to allow for places of assembly as a permitted use, there is no basis to conclude the rezone proposal is consistent with the Comprehensive Plan.

Nowhere in the Comprehensive Plan is there a goal to rezone a parcel so as to convert an ongoing legal conforming use to a nonconforming use. The City should not be promoting such a practice simply to accommodate the needs of one property owner.

E. The Elks Club's proposed rezoning should be denied and only revisited after a master planning process is completed for the area.

"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 one property owner is unsound zoning. Right down the road is Thompson's Point where professional offices are intended to be located.

If there is to be change in this area, a substantial change from the R-2 and places of assembly serving as buffers to existing abutting residences, it should be the result of a *"well-thought-out plan."* This is a gateway area to the City in many ways. There should be a plan for the area. The Elks Club's proposal is not a well-thought-out plan. It converts a present legal use to one prohibited in the proposed new zone. The parcel is not suitable for OP designation. The

development will substantially burden an already maxed- out traffic corridor when just down the road at Thompson's Point, traffic improvements have already been made to handle the exact type of development proposed here. The parcel only rezone only sets the stage for other places of assembly located in residential zones to seek a similar zone change.

I respectfully request you vote to deny the rezone proposal and fold this area into the Jetport master planning process. A planning process should first be undertaken to determine what all stakeholders see this area becoming so that any reasoning can be consistent with an overall plan. Changes should not unfold on a piece meal basis driven solely by the financial needs of a single property owner. While that solution may work very well for the Elks Club, it is not a solution that is in the best interest of all the other stakeholders. There needs to be an overall plan first.

Thank you for your consideration.

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.
Additionalty, 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

TO: Mayor Brennan and Members of the City Council

FROM: David Silk, 1187 Westbrook St

RE: Proposed Rezone of 1945 Congress Street from R-2 to OP

Property Owner: Portland Lodge #188 BPOE of USA ("Elks Club")

I respectfully urge you to vote against the Elks Club's proposal to change the existing R-2 zone for the property at 1945 Congress St to an Office Park ("OP") zone.

There is a litany of problems, inconsistencies, and concerns with the Elks Club's request:

The proposal is piece-meal rezoning, unwise and unsound. There is no compelling need for this zone change. It is, moreover, inconsistent with the Comprehensive Plan, good zoning practices, the City's Jetport Plans, including how the Jetport interacts with the Historic District and the neighborhood, the history and pattern of development in this area, taxpayer investment in Thompson's Point, the documented overloading of already saturated traffic in the JetPort area, and the way in which the City has handled other areas and developments, including St. Patrick's Church and Mercy Hospital. Further, approval would send a problematic message to many similar properties throughout the City, encouraging them to line up and cash out with similar zone changes, from residential to commercial.

The sole motivation behind this far-reaching effort for piece-meal rezoning is increased financial benefit for the property owner. There is little else to recommend it. Changing zoning to create a windfall for one property owner is hardly consistent with the Comprehensive Plan, or good zoning practices.

The Elks Club's proposal would replace a conforming use with a non-conforming use, as the Elks Club as a place of assembly is not allowed in an OP zone. This switch is clearly not consistent with the Comprehensive Plan. The purpose of zoning is to eliminate non-conforming uses, not to create more of them.

Further, the proposal is 180 degrees opposite the Comprehensive Plan's goal to address serious unmet needs for more housing, including housing for seniors and working families. Taking land that is zoned for residential use and switching it to a zone that prohibits all residential use is not consistent with the Comprehensive Plan. In stark contrast, preserving land zoned for residential use is consistent with the City's Comprehensive Plan.

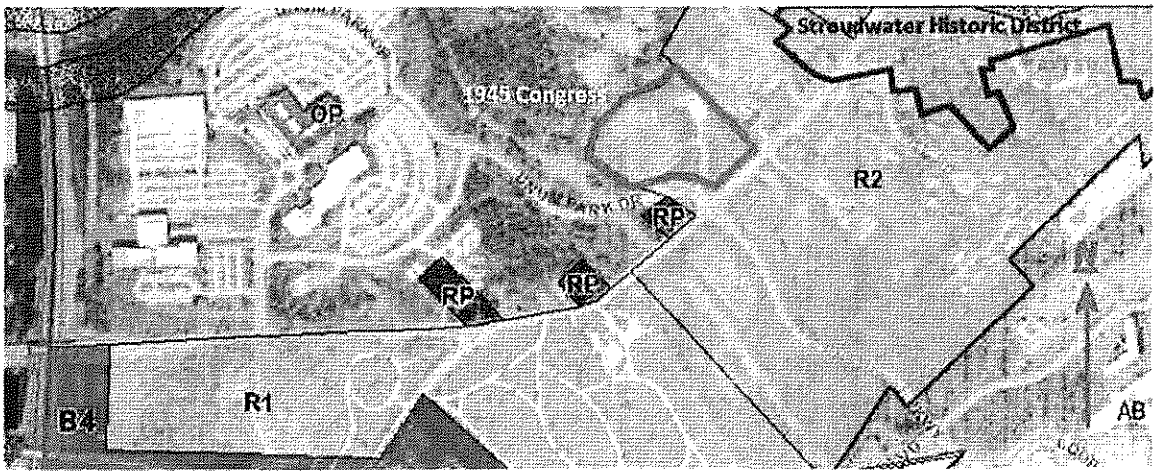
The Elks Club's proposal is doubly problematic, as it would ignore unmet needs outlined in the Comprehensive Plan, in favor of zoning that is already plentiful. Meanwhile, there's an ideal location for new professional offices at nearby Thompson's Point that taxpayers are already supporting with $32 million in Tax Incentive Financing (TIF).

With the Thompson's Point development zone change in place and traffic improvements already implemented there, the Elks Club's proposed 40,000 square feet of professional office space, which will generate 300 additional vehicle trips at peak time, should be directed to Thompson's Point. Per Tom Errico, in this area of Congress Street, intersections are already maxed out. If the rezone is approved, the increased traffic will among other impacts stifle the JetPort's needs down the road, a result that makes no sense given the traffic capacity for this type of development recently built out at Thompson's Point.

As the two most longstanding members of the Planning Board (Hall and Morrissette) recognized in voting against this proposed rezone, rezoning one property used a place of assembly as a conditional use in a residential zone so the assembly members can achieve a much great sale price is not a goal of the Comprehensive Plan. Rezoning a parcel, to allow for a use not allowed in the zone, absent compelling needs such as the need to preserve a significant historic landmark, is unwise and unsound zoning.

Instead of the rezone, zoning for this gateway area of the City should be reviewed comprehensively to determine whether the zoning should be changed at all, and if so, to what uses, and with what design guidelines. This review should be done in conjunction with the ongoing JetPort master planning process, as this area is on the border of both an historic residential district and the JetPort. Instead of piece-meal zoning, driven here by the wants of just one property owner, any rezoning should only occur after full participation and consideration of the interests of all of the stakeholders. The City should be leading the way, not the developer.

<u>The area:</u>



The Elks Club's property at 1945 Congress Street is presently zoned R-2. It consists of an almost 7 acre parcel. 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.

Social/fraternal halls, together with churches, are now known as "Places of Assembly" under the Land Use Code. Places of assembly, like institutional uses (schools) are conditional uses allowed in all residential zones. The City has many places of assembly located in residential zones on busy streets. In the late 1980s when the new entrance to the Jet Port and to UNUM was proposed, zoning for the area site was examined. At that time, the Elks Club property was subsequently rezoned back to R-2 and not to OP. When the OP zone was extended to accommodate UNUM's expansion, the site was not included in the OP zone, likely due to the fact that on either side of the site are existing residents. Residential uses are not permitted in the OP zone.

The Elks Club now wants to rezone the property to OP because its property is worth a lot more when zoned to allow for nonresidential uses. Zoned R-2, the land is assessed at $512,000. With the zone change, the developer will pay $1.25M for just the land. The Elks Club will remain on the property and continue to operate out of its existing building. In addition, the developer proposes to build two large professional office buildings on the property, one 15,000 square feet in area to be sited right on Congress Street, and the other 25,000 square feet in area.

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 UNUM campus is in an OP zone and is an example of professional offices located in a park or campus-like setting with the offices set well back from any public way. That is not what the Elks Club's proposal calls for.

Places of assembly are not allowed in the OP zone. So if rezoned to OP, the Elks Club as a place of assembly will go from being a permitted/conforming use in the R-2 zone, to being a prohibited/nonconforming use in the OP zone. It is unheard of to rezone *a single parcel* in the City so that an existing use on that *single parcel* that is intended to continue indefinitely after the zone change is converted from conforming to non-conforming. Yet that is what the Elks Club's proposal calls for.

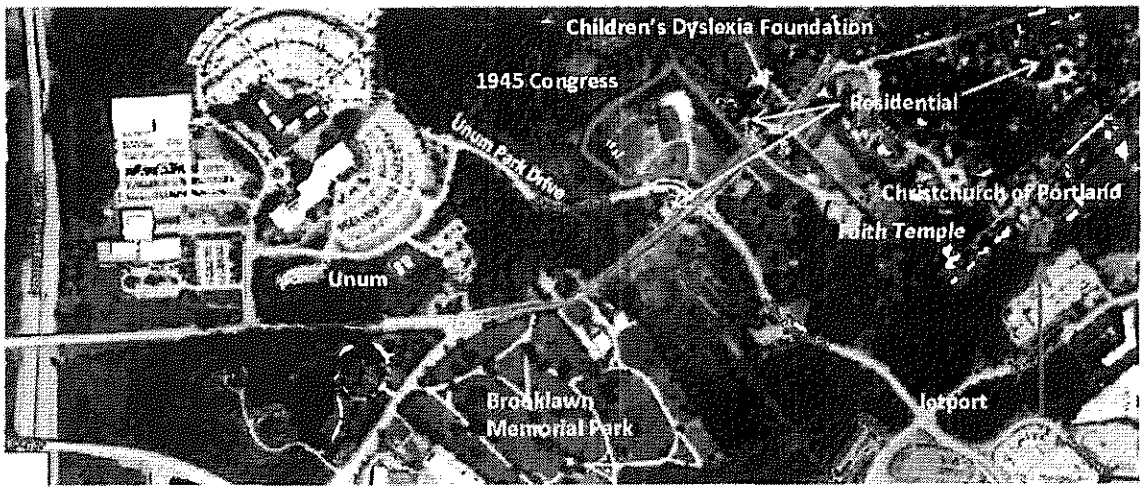
In my 11 years on the Planning Board, I do not recall any rezoning proposal for just one parcel that called for converting an existing legal use on the parcel from conforming to nonconforming. That is because the goal of zoning is to eliminate non-conforming uses. What the Elks Club proposes here is the antithesis of zoning and totally against the Comprehensive

Plan. Maine courts have always observed that the purpose of zoning is to eliminate non-conforming uses, not to create them. *See Oliver v City of Rockland*, 1998 ME 88, ¶ 9, 710 A.2d 905, 908 ("The policy of zoning is to abolish nonconforming uses as speedily as justice will permit."). For this reason alone you should vote against the rezone.

Places of assembly often have limited lives. A few years back, this Council wrestled with a conditional zoning agreement for a place of assembly in an R-4 zone. The owner of the former Williston West Church sought a conditional zoning agreement to allow for the operation of a business on the property and promised to invest money to preserve a historic landmark. Such a use was not permitted in the R-4 zone. Given the Church was a very significant historic structure and the property could not be redeveloped solely for residential use unless the conditional zoning agreement was approved, the Church building's future was at best unclear. However, the Elks Club's building on the property is not a historic landmark and there is no suggestion from anyone that it should be considered one.

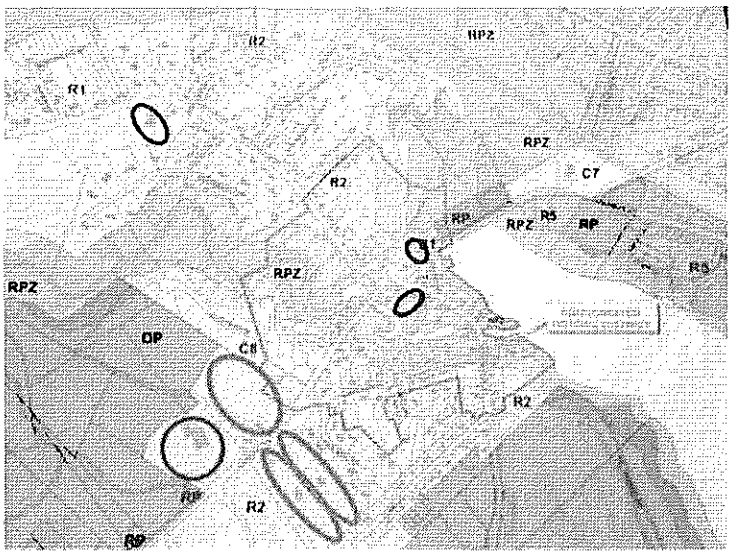
In recent years, places of assembly with declining membership have been repurposed without (a) making the use nonconforming in the zone and (b) without changing the underlying zone. The most recent example occurred less than a mile away from the Elks Club. Earlier this year, the former Saint Patrick's Roman Catholic Church, (a place of assembly permitted as a conditional use in a residential zone), located next to Westgate on Congress Street, was sold to the non-profit Jewish Community Alliance. The Church had been on the market for many years and eventually a buyer was found. The Saint Patrick's property was zoned R-5. The Church 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 very active business district (Westgate zoned B-2). Instead, it found a buyer that did not need a zone change. It took time but it happened.

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 (places of assembly) located thereon, Faith Temple, Christchurch of Portland and St. Albans Corporation (Masonic Learning Center).



Places of assembly are classified as a type of institutional use in the Land Use Code. They are required to have large areas. As the Comprehensive Plan at H-7 states: "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."

Because proper zoning has required places of assembly located in residential areas to have large lots, these organizations, when their membership falls off, will be motivated, as the Elks Club is now, to seek to rezone their lots to permit professional offices or other commercial uses. Three such organizations are located on the same stretch of Congress Street as the Elks Club. While these lots are not quite as large as the Elks Club's parcel, on which the Elks Club seeks to locate two multistory professional office buildings, these lots are clearly sufficient to locate say one professional office building. See areas circled in red below.



The same occurrence is ripe to happen at other places of assembly, city-wide. Many other places of assembly have been permitted as conditional uses in residential zones in the City, ones that have a lot of sufficient size to absorb the impacts and growth needs of the place of assembly. Such places of assembly are situated along Allen Ave., Forest Ave., Westbrook St., Washington Ave., Brighton Ave., Woodfords St., Stevens Ave., Canco Road and Ocean Ave., just to identify a few locations of places of assembly with large lot sizes. They are also similar in that they border busy streets with high traffic counts, with parking and large areas that were intended to serve as buffer to adjacent residential uses. Numerous places of assembly could follow the Elks Club's lead and seek a zone change so the "excess land" (really the land intended to act as a buffer to adjacent residences) can be used for professional offices or other nonresidential uses.

The place of assembly at Canco Road and Washington Ave in a R-3 zone is a prime example as it has ample size, parking and access near a signalized intersection. The case is the same on outer Allen Ave, outer Washington Ave, Westbrook Street, and Ocean Ave., where, if need be, signaled intersections could be installed.

Note there is no shortage of land zoned for professional offices in the City. The 2011 rezone at the 30 plus acre Thompson's Point project located off of Congress Street, a project that received a $32 million TIF, allows for the development of over 100,000 square feet of professional offices. The proposed users of the office buildings to be located on the Elks Club both are already located on Congress Street. In fact for one of the proposed users, Thompson Point is much closer to its existing office than the Elks Club's property. With the substantial street improvements already made at Thompson's Point, improvements made to handle increased capacity, the traffic resulting from the two professional offices can already be handled at Thompson's Point. That is not the case at the Elks Club's property, where recent traffic improvements have been made to minimize the impact on the surrounding neighborhood. Lanes have been reduced from two lanes to one as an example.

Tom Errico made clear to the Planning Board that with the proposed zone change, peak hour trips at the site will be 302 vehicles in the morning and 288 vehicles in the evening, substantially more than anticipated for an R-2 zone and way more than the peak trips now at the site. Mr. Errico notes that most of the traffic at the site presently is off peak, which is typical with most places of assembly permitted as conditional uses in a residential zone. He observed that the Congress Street/Westbrook Street intersection "currently experiences congestion problems" and it is simply not possible to make further "any capacity enhancements." In other words, at peak time, it is already at capacity.

With the Jetport looking to increase demand, any rezoning should take into account the finite road capacity. The solution is not to add 300 trips at peak time, especially not, when at

Thompson's Point, located about a mile away, traffic and other enhancements have already been made as part of the $32M TIF to make ready for among other uses, the professional offices as proposed at the Elks Club site.

The Comprehensive Plan section on Transportation Resources at page 1 notes, *traffic must be minimized in order to maintain the health of neighborhoods.* "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 professional office use proposed under the Elks Club's rezone is already legal and can be readily accommodated without a zone change at Thompson's Point. So to rezone land zoned residential to allow for office development cannot be about filling a City need. To be consistent with the Comprehensive Plan, the City should be directing professional office space development to areas already zoned for that use, e.g., Thompson Point with ready access off of a parkway that does not run through a neighborhood.

To allow any property owner like the Elks Club to rezone its parcel simply to make more money is not a legitimate reason to rezone. Otherwise the Council will be flooded with rezone requests in coming years by other places of assembly located in residential zones with parking and excess land with access to a major street. If the Elks Club can cash out, they too, will want to cash out as well, with a zone change that will allow for office buildings in what has been a residential zone.

A. The Elks Club proposal is piece-meal rezoning, unwise and unsound.

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] It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district should be done with eye to ensuring the rezone will not negatively impact the historical district.

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[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 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's property is also 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 which are 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 for the existing R-2 zone. *See* July 23, 2015 Planning Staff report at page 3. 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, 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. As a place of assembly in a residential zone, the Elks Club was required to have a large parcel with open space to act as a buffer to the adjacent residences. Unless and until the Master Plan is revisited, which should be done, keeping the R-2 designation for the Elks Club's property is fully consistent with the zoning goals of the City.

The history of zoning and development in the area is important. If you look at the map above 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 as the Elks Club. This was not achieved by accident. The main building and parking on each lot are located well off of Congress Street so as to provide buffering to the residences located on Congress Street. 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. 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.

These observations have led many to request that before any piece-meal zoning occurs, that the City, through the ongoing JetPort master planning process, undertake a planning process to best identify how the area should be rezoned, if at all. The area is an 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 its entire office complex set back at significant distances from Congress Street, fully consistent with the OP standards. 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, thereby buffering the places of assembly from the existing residences. 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, having been last reaffirmed in the 1980s, there should be a master planning process.

A thoughtful process should unfold to develop a vision to govern the area, which looks at uses, setbacks, lighting, and design standards. 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.

Two members of this Council have recognized the need for sound planning before embarking on zone changes. They recently stated:

> *"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 wants 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 a property owner.

To the extent that any part of your decision is premised on the Elks Club's assertion that its property cannot be put to other uses, it is important to understand that there has been no showing that such is the case. The property has not, to my knowledge, ever been placed on the market for non-commercial uses. The Elks Club has not engaged the City to work with it on possible residential development opportunities. The fact that the Elks Club could make more money is not a valid reason to rezone.

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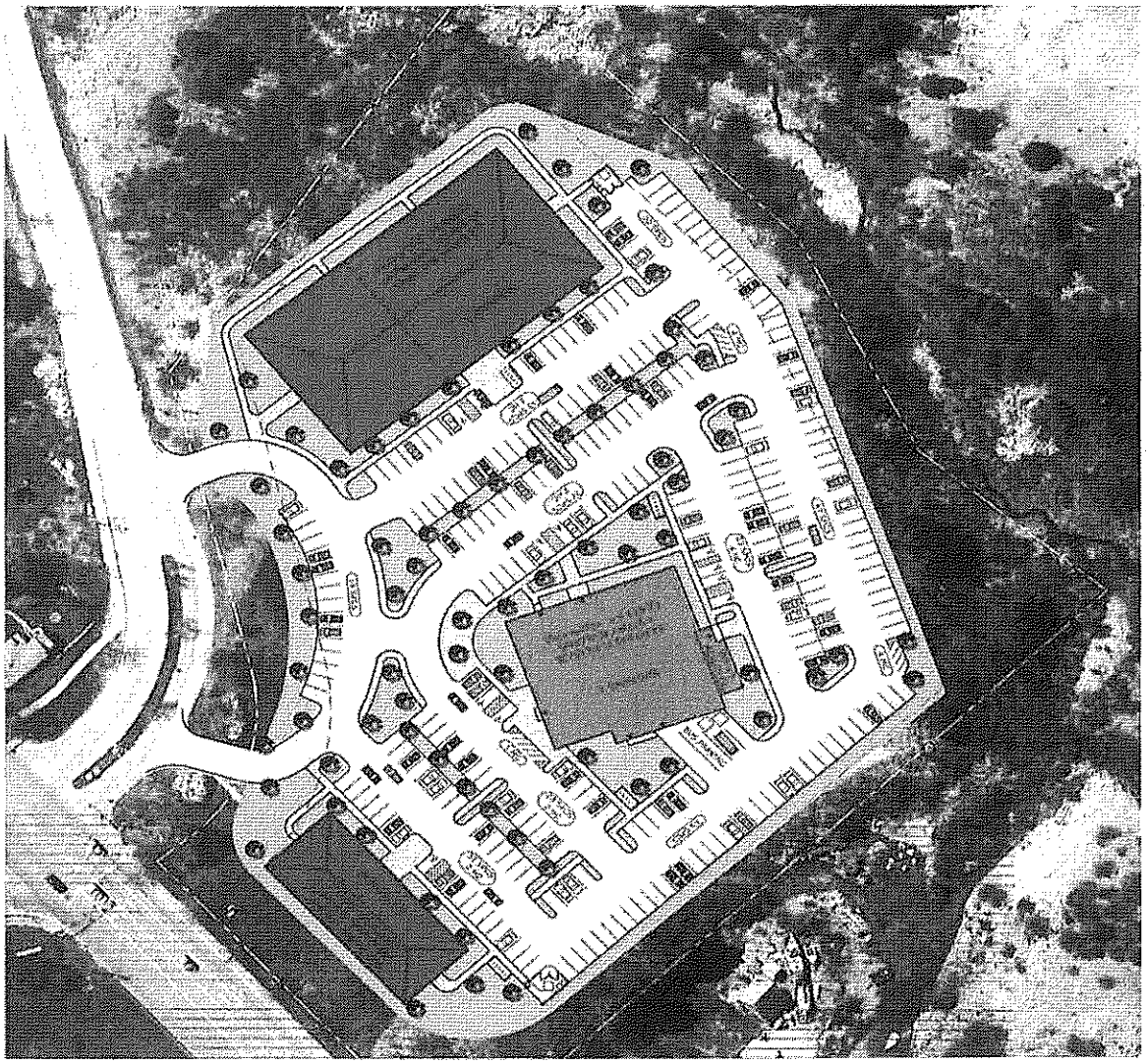
[2] E. Suslovic & N. Mavodones, *Portland Press Herald*, August 25, 2015.

Indeed, the Elks Club told the Planning Board that it would "never" list the property for sale for residential use and would "never" sell its property for any residential use. It has not looked at rezoning the property as an R-5 or even as a conditional use. It has not engaged the City for a TIF or other means of assistance (density change) in the development of housing on the site. Why? -Because the Elks Club will not get paid $1.25M for land assessed at just over $500k. It will make far less without a zone change. But again, the zone change should not be about what is good for the place of assembly. 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.

C. The Elks Club has not shown that the property to be rezoned OP can even be developed consistent with the OP standards.

Here is the Elks Club's proposal:



It is worth reiterating 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 Comprehensive Plan describes the OP zone as follows: "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 areas, *significant open space* and landscaping and thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland." Neighborhood Commercial Land Use Policies and Land Use Plan, (1988) page 22.

The best that may be said about the proposal is that it may, at the end of the day, look better than what is there now. But that is, has never been and never should be the test for a rezone; otherwise a place of assembly (or for that matter any property owner) can simply let its building become run down and lose any charm, and then claim that, if the rezone is permitted, the eye sore will be gone.

Looking at the purposes for the OP zone, it is clear that the proposal cannot be called "spacious." It is not a large lot with low building coverage but a small lot with three buildings to be shoehorned on the lot with a sea of parking. There is no open space. There is no campus-like feel. The proposed office buildings are run-of-the- mill office buildings, with one located on the front at Congress Street. None of UNUM's buildings are located within 200 feet of Congress Street. The proposal, clearly on its face, does not meet the City's standard for an OP zone.

The OP standards also 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. 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."* Before the Council acted on rezoning what the Mercy Hospital parcel, it first required Mercy to submit a Master Plan for the site. As there, there should be here by the Elks Club, 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. If it is not practicable to meet the OP standards, the property should not be rezoned.

One is hard pressed to say that the to-be created lot, crammed with three buildings, constitutes 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 is. The applicant's proposal does not show any integrated development or any park- or campus- like setting. 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.

The test is not whether it looks better than what is existing. As the proposed development does not fit the characteristics of an OP zone, you should vote against the proposed rezone. If this lot, which has no open space and has no campus feel, is deemed suitable for OP designation (a designation again that prohibits actually places of assembly and residential uses) I am sure when the fiscal need arises, other places of assembly with excess land on a busy street will be looking to obtain a zone change to OP. Why wouldn't they?

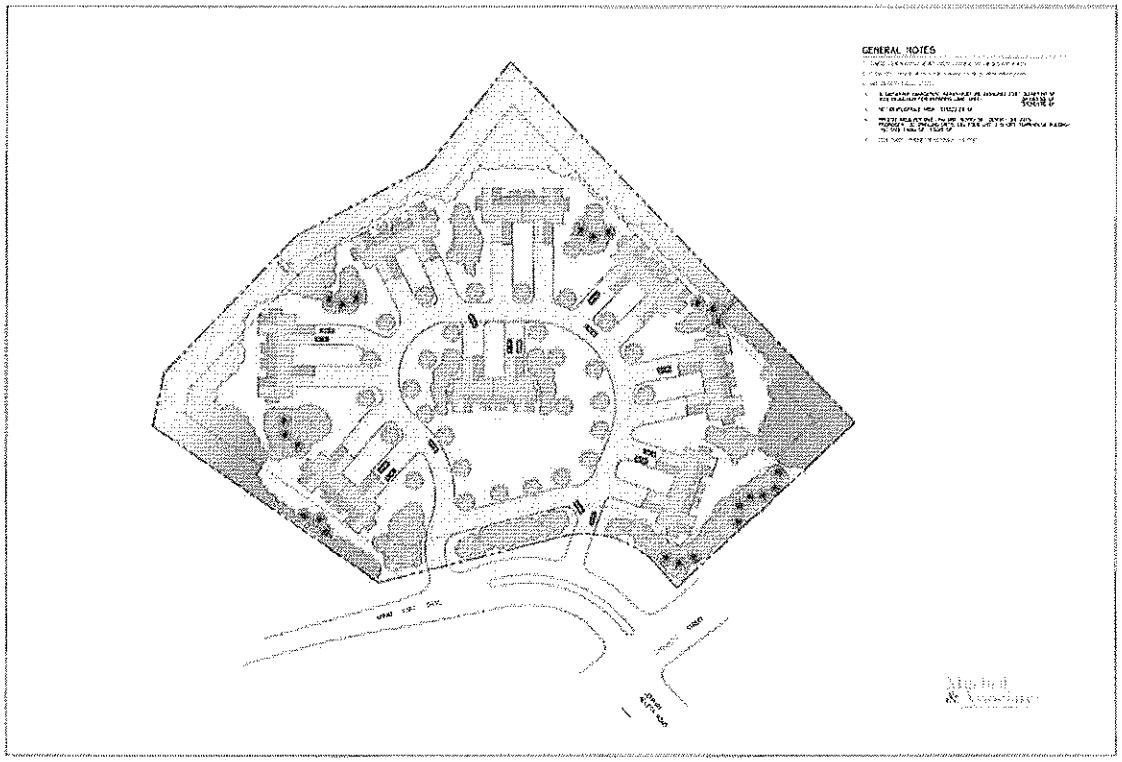
D. The proposed rezone is not consistent with the Comprehensive Plan.

Turning to the Comprehensive Plan, that plan has, as a goal, no net loss of housing for all development, and the creation of new housing of all kinds. 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. That downsizing will free up existing housing to be filled with families and others. Having served for the last 20 years on the board of a non-profit developer of senior housing projects in Maine and New Hampshire, I can vouch for that trend and need. While perhaps not at a land cost of $1.25M, the site certainly is capable of sustaining a viable housing development. In sum, there is an unmet need for all kinds of housing in Portland, and the Elk's proposal is in direct conflict with this significant unmet need.

The goal of not losing any and creating more housing is incorporated into the Land Use Code and is the highest goal of the Comprehensive Plan. Part of the Comprehensive Plan implementation plan calls for an analysis of each residential zone *"to identify opportunities to increase the capacity of all the neighborhoods to accommodate new housing."* The implementation plan also calls for the City to be proactive and to work with residential developers to identify and remove barriers to housing development of all kinds.

Here, the Elks Club has made no effort to work with the City on possible residential development, whether it be rezoning for a different residential district, a conditional use agreement, changes in density or a TIF. Rather, the sole focus of the Elks Club has been on maximizing its economic return and to do so it wants to rezone the land so all residential uses will be prohibited. Maximizing economic return is not a goal of the Comprehensive Plan.

Extending commercial zones so as to displace all residential uses is not a goal of the Comprehensive Plan. Instead, the Comprehensive Plan has as a goal to "encourage neighborhood livability with higher density multi-family & innovative mixed use protects along major public transpiration routes." Congress Street is served by METRO. The Elks Club property could readily be developed into multi-family housing. One proposal submitted to the Planning Board depicted the possible development of 32 units of housing at the site as follows:



The City has a limited supply of land zoned residential and that land certainly should not be rezoned for the benefit of a place of assembly so as to eliminate the possibility of any residential use in the future without serious study and an overwhelming, compelling need. The Comprehensive Plan speaks to encouraging residential development and discouraging any development that could displace housing for non-residential uses. With its $32M TIF already in place, Thompson's Point stands ready, willing, and able to accommodate the development proposed here. It makes no sense to rezone the Elks Club for two professional office buildings simply to enrich the Elks Club.

More importantly, the Council must ask what will be the impact of the rezone on both 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.

The two residential property owners located on Congress Street on the other side of the UNUM entrance submitted a letter to the Board asking that as part of the Elks Club's rezoning request that their two residential properties be rezoned to OP "so that professional development of our properties becomes a possibility." (See letter attached.) It is not known why the Board ignored their request and did not include the two residential properties within the area for rezoning consideration. The property owners clearly asked for such consideration. Both of the residential properties abut the existing OP zone. A rezone of the two parcels to OP would accomplish the same result as the rezone for the Elks Club: increase the value of the two residential lots and make existing conforming uses (residential) nonconforming in the OP zone. The properties are the same distance from the signalized intersection and could be accessed from the UNUM entrance. Why say yes to the Elks Club and no to the two residents of the City?

This highlights the problem with piece-meal rezoning driven by the desire of a single property owner to maximize his or her return. The OP zone borders a number of residences as well as the Elks Club. If the justification offered for the Elks Club rezone is it is a "natural extension of the existing OP zone" for property that can be accessed from the UNUM access road with a signalized intersection, then there is no reason not to also honor the residential property owners' request and rezone those lots as well to OP. They will make a lot more money selling their land if rezoned OP just like the Elks Club seeks to do. But to what end: the loss of residential housing. The City should be seeking to preserve residential housing and not be taking steps to make housing less desirable, like making them islands surrounded by a wall of professional offices.

Similarly, across the street from the Elks Club is land owned by the City presently zoned R-2 with frontage on the International Parkway that benefits from a signalized intersection. Why not extend the OP across the street to this land as it benefits from the same characteristics offered by the Elks Club to support it rezone request? It could be sold simply as a "natural extension" of the OP as the Elks Club tries to sell its rezone request. The City would stand to make a lot of money. But we know, when last examined in the late 1980s, the decision was made not to extend the OP zone to the Elks Club property, not to extend the OP to the two residences, and not to extend the OP across the street to the City land, likely due to the fact that none of these areas met the definition of the OP zone (substantial area, significant open space and natural features and campus like environment). What has changed in the area since then? Not much by way of any further development since the 1980s. The only thing that has changed since then is the Elks Club's desire to maximize its take on any sale of its land.

All of these observations point to the need for planning to occur at this area before any rezoning is considered-- planning that can look not only at uses, but performance standards and

setbacks, to ensure any new development that occurs is consistent with the area being a gateway to the City and with bordering a large, residential, historic district.

As an example, when entering SHD near the Fore River, when the office building known as "Stroudwater Crossing" was built, a significant design feature was the use of distinctive clapboard siding and pane windows in recognition that the building borders a historic district. These design features are totally absent from the Elks Club's proposal. Under the OP standards, there is no way for the Board to require the developer to take into account the location of the site bordering a historic district in reviewing the design and siting of the proposed office buildings. Any rezoning could add those elements.

Additionally, the Elks Club's analysis submitted to the Planning Board on how the rezone is consistent with the Comprehensive Plan suffers from a fatal flaw. That analysis necessarily assumes that the OP zone text would be amended to allow for places of assembly so that places of assembly would be a permitted use in the OP zone. On one level, this makes sense because as noted earlier, it is contrary to zoning practice to rezone *one parcel* alone and convert an existing conforming use that is to be continued after the zone change to a nonconforming use. The purpose for zoning is to eliminate nonconforming uses, not to create nonconforming uses. But the Planning Board did not recommend changing the OP zone to allow for any places of assembly. No text changes to the OP zone have been proposed. Without a change to the OP zone to allow for places of assembly as a permitted use, there is no basis to conclude the rezone proposal is consistent with the Comprehensive Plan.

Nowhere in the Comprehensive Plan is there a goal to rezone a parcel so as to convert an ongoing legal conforming use to a nonconforming use. The City should not be promoting such a practice simply to accommodate the needs of one property owner.

E. The Elks Club's proposed rezoning should be denied and only revisited after a master planning process is completed for the area.

"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 one property owner is unsound zoning. Right down the road is Thompson's Point where professional offices are intended to be located.

If there is to be change in this area, a substantial change from the R-2 and places of assembly serving as buffers to existing abutting residences, it should be the result of a *"well-thought-out plan."* This is a gateway area to the City in many ways. There should be a plan for the area. The Elks Club's proposal is not a well-thought-out plan. It converts a present legal use to one prohibited in the proposed new zone. The parcel is not suitable for OP designation. The

development will substantially burden an already maxed- out traffic corridor when just down the road at Thompson's Point, traffic improvements have already been made to handle the exact type of development proposed here. The parcel only rezone only sets the stage for other places of assembly located in residential zones to seek a similar zone change.

I respectfully request you vote to deny the rezone proposal and fold this area into the Jetport master planning process. A planning process should first be undertaken to determine what all stakeholders see this area becoming so that any reasoning can be consistent with an overall plan. Changes should not unfold on a piece meal basis driven solely by the financial needs of a single property owner. While that solution may work very well for the Elks Club, it is not a solution that is in the best interest of all the other stakeholders. There needs to be an overall plan first.

Thank you for your consideration.

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: paul jeffery <pj6481@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 10/13/2015 9:29 PM
Subject: Fw: 1945 congress st project

On Tuesday, October 13, 2015 9:21 PM, paul jeffery <pj6481@yahoo.com> wrote:

support projecthigh and best use
DOESNT EFFECT THE STROUDWATER NIEGHBORHOODLETS KEEP ELKS AND CLARKS INSUR IN PORTLAND

STATEMENT from the Stroudwater Village Association regarding the proposed rezoning of 1945 Congress Street (Elks Club Property), October 2015. stroudwatervillageassociation@gmail.com

This statement should be considered in addition to our prior letters to the Planning Board from January 2015, May 2015, July 2015 and September 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.

Consider these facts:

- At the September 2015 workshop regarding this zoning request, several members of the planning board and City staff stated their agreement that it makes sense to do a proper visioning exercise for the Jetport and Stroudwater area, including but not limited to the abutting intersection and the Stroudwater Historic District, before a split vote of 4-2 (nowhere near unanimous) to recommend approval of the request.
- The City has just now kicked off the process to review and re-certify its Comprehensive Plan, and is in the middle of the process of updating the Jetport's Sustainability Master Plan.
- The Outer Congress Street Phase II traffic calming improvements (some of which are quite close to this parcel) are scheduled to be implemented in the near future.
- Most alarming, in the short time since this application process began, parcels surrounding several other similar properties (flagged by the SVA in our July letter) have come on the market or changed their market status (for example, gone under contract). Rumor abounds that these are commercial developments. In addition, we know that several individual residential owners have petitioned to be included in any hypothetical commercial zoning. Given the financial incentive that "cashing out" to commercial developers represents, it is likely more will follow.

The SVA and our members remain surprised by and uncomfortable with the City's insistence on rezoning a single parcel ahead of proper planning for the area. We believe that to do so is shortsighted and reckless, especially given the timing relative to planning processes already underway. Inputs from the Comprehensive Plan and Jetport Master Plan updates, as well as from the stakeholders (including but not limited to SVA members and the Elks Club), should be incorporated into a clear and transparent visioning process. This is especially important since, as described in the last bullet above, we are already seeing evidence of the "domino effect" of this potential parcel rezoning. There are at this point no rules of engagement or even a common understanding about the implications of this potential change.

Bottom line: we have not heard a valid reason for tinkering with zoning *before* thinking about the big picture. Indeed, given the potential mess being created, we believe the big picture should be driving zoning, not the other way around.

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: <roz@homesinmaine.com>
To: <hcd@portlandmaine.gov>
Date: 10/6/2015 11:16 PM
Subject: Elks Club land re-zoning

I have no objection to the re-zoning.
I do feel it would be wise to follow up with a vision for the city for Stroudwater area and residents.

Sent from my iPhone

From: Mihku Paul-Anderson <mihkupaul@gmail.com>
To: <hcd@portlandmaine.gov>
Date: 10/19/2015 1:19 PM
Subject: Elks Lodge re-zoning

Dear Ms. Donaldson,

I am writing in opposition to the Elks Club re-zoning and development by Northland Corp. I am well aware that this project will most likely go forward as the city Planning Board supports granting the zone change. But I would like to add my voice to this issue as much activity is taking place in my neighborhood that is not positive in nature.

I've seen Portland undergo many changes since I moved here in 1986. I was born and raised in Maine, upstate, and moved to Portland for job opportunities. That said, I left an excellent job at Rennsalaer Polytechnic Institute in order to return to Maine because the quality of living is so good. Portland is somewhat unique as a city, in that it contains many diverse businesses, a burgeoning arts community and a robust historical society that works to protect heritage buildings. The runaway development that I've seen in the last 5 years is rapidly changing the face and feel of our little city, not always for the better.

I am a homeowner on the western edge of the city, on Westbrook St. across from Camelot Farm. We were happy to have found such a fantastic neighborhood with plenty of green space in Portland. In just 2 years I have seen that space being steadily eroded. I often speak with my neighbors on Westbrook St. about their concerns here, and one thing I hear is that they feel the city doesn't really care about them because they are not in the affluent section of Stroudwater.

Here is what I have observed in my short time of living in Stroudwater:

1. Constant speeding, often at highway speeds of 45 mph past our homes. I am told this has been an on-going problem and has actually improved.
Commercial vehicles and heavy equipment (dump trucks, tree company trucks, flatbeds hauling large equipment) exceeding the speed limit daily.
** when I spoke with the city, I was told they "had no jurisdiction" and I had to talk with DOT. DOT told me they "leave that to the city."
** Our street is clearly used as a sort of bypass in to Portland and accidents occur on a regular basis. I don't believe the city wants to correct this problem because this usage is convenient and thus complaints are ignored. Speeding vehicles include Portland Water District, RTP, and even Portland school buses.
** The traffic speed and congestion on Congress St. in the western gateway are becoming serious issues, yet I have not heard of any "plan" to deal with this issue, even though the Elks development would increase traffic there during peak hours.

2. In the winter, our sidewalks are not cleared, and snow removal does not happen. Thus the sidewalk becomes a large frozen snowbank and I must walk in the road with my dog, taking my life in my hands because of speeding traffic. I am aware that home owners are expected to clear sidewalks in front of their house, but this is often not sufficient.

3. The sidewalks along our street are very overgrown in places so that it has become quite narrow. Street drains are clogged with debris. I say this because Westbrook St. is not well maintained by the city even though our taxes here are quite high. We seem to have been forgotten.

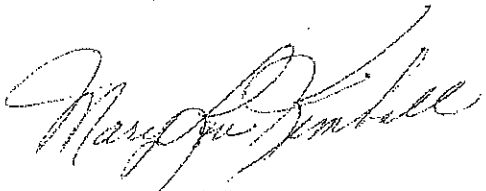
4. When the gas company needed a 20 foot corridor through the woodland that is adjacent to the Fore River Trail, they sent in a harvester that hacked major thoroughfares through the woods that are 30-40 feet wide, with stumps jutting up everywhere (frontage) and no run-off remediation. Since the PWD decided they needed a corridor as well, more than 60 % of this woodland has been clearcut and left a mess. Scattering a bit of hay on an embankment is not sufficient. The loss of these trees represents decades of growth, and the loss of understory impacts vernal pools on the trail which support natural ecologies. Yes, it is city land. However, the city could have informed residents of this action and worked to do it in a low impact manner, preserving the remaining green space and keeping it tidy. That did not happen.

5. Now, the Camelot Farm acreage is on the market. The sign says "Ideal for Development." The location of this large parcel is at the end of Westbrook St. but begins near Stroudwater Christian Church just a few houses from my own. I have grave concerns that this land will be allowed to develop as a commercial endeavor and destroy what remains of the green space out here. Why do I think that could happen? I believe that the development pressure will trump the wishes of the residents and the existing comprehensive plan for our city. This is exactly why we need

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 that 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,



Mary Lou Kimball

Member Portland Elk's Lodge #188

PC21

Mitchell & Associates
LANDSCAPE ARCHITECTS
[illegible]

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

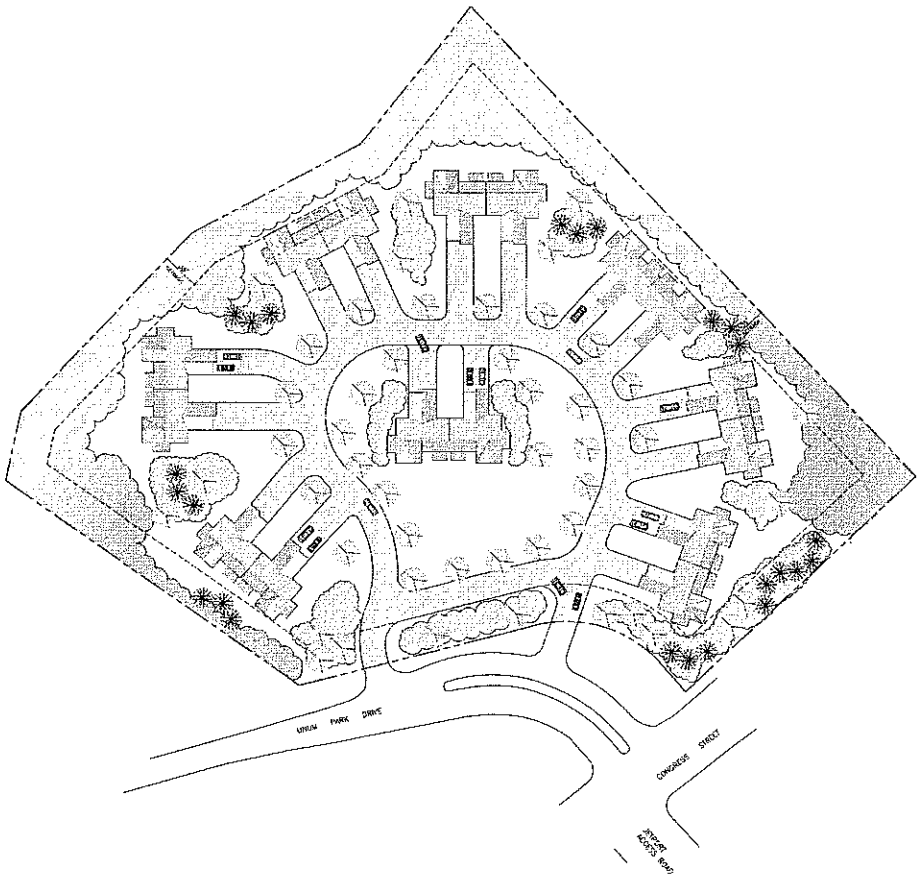
Robert B. Metcalf; Principal

Maine Licensed Landscape Architect

Enclosure

Cc Janet Burns

Bill Linnell



GENERAL NOTES

1. PARCEL PER ASSESSOR RECORDS CONTAINS 54,414 SF OR 1.249 ACRES.
2. CONCEPT- BASED UPON ZONE CHANGE TO R-3 PACE PROVISIONS.
3. NET DENSITY CALCULATIONS:
   - STORMWATER MANAGEMENT INFRASTRUCTURE (ASSUMED 20%= 10,882.80 SF
     SITE SUBDIVISION FOR REMAINING LAND AREA= 43,531.20 SF
     43,531.20 SF
   - NET DEVELOPABLE AREA= 32652.24 SF
   - PER LOT AREA PER DWELLING UNIT: 5,000 SF- DENSITY 25 UNITS
     PROPOSED: 24 DWELLING UNITS, (12 TOTAL UNIT, 2-STORY TOWNHOUSE BUILDING
     UNIT SIZE 1,600 SF= 1,600 SF
   - SIDE YARD/ PERIMETER SETBACK: 20 FEET

Alternate Housing Development
1945 Congress Street

June 8, 2015
Scale: 1"=40'

Prepared by:

Mitchell & Associates

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.**

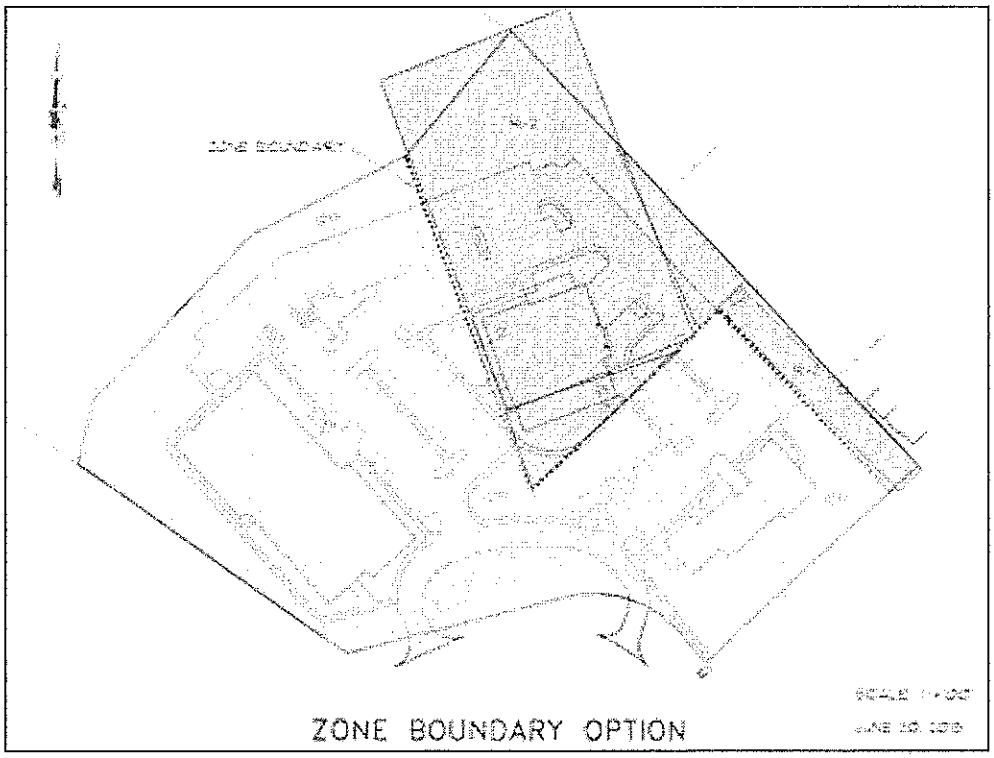


Figure 1. Zone Boundary Option submitted by Applicant, showing the small amount of R-2 zoning remaining (blue) that would allow a tax-exempt, conditional-use seller to stay on the land in comparison with the large amount of land (green) allowed to the seller to "cash out" to a commercial developer.

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?

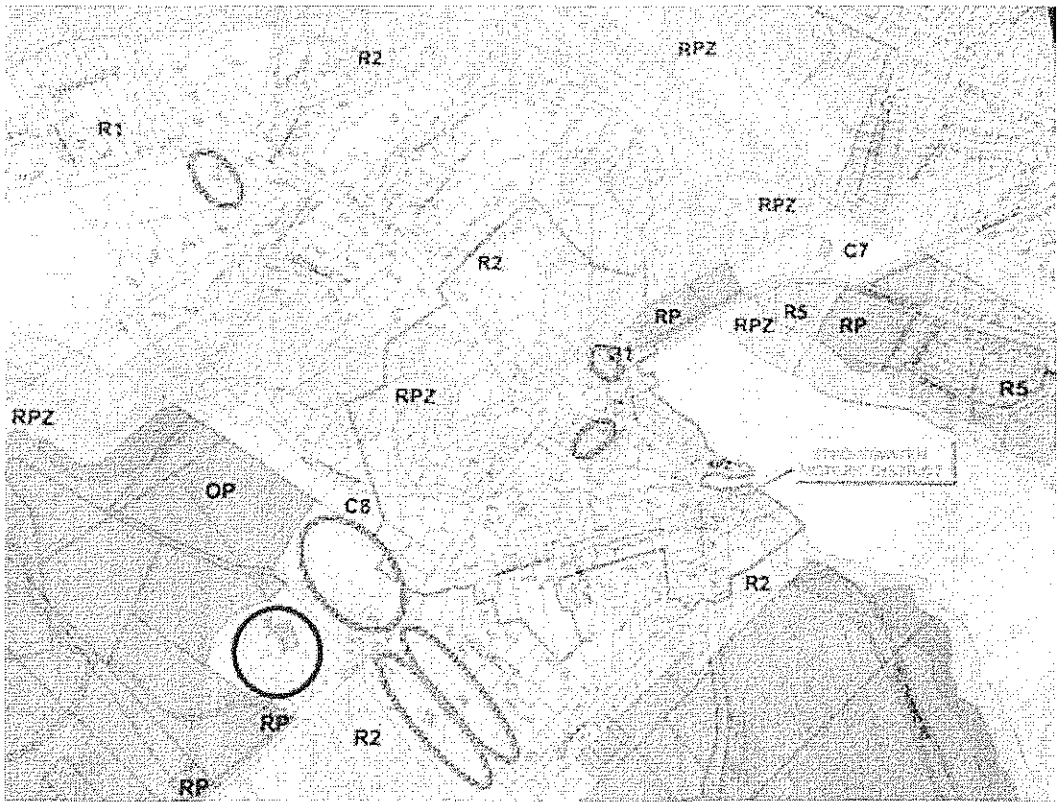


Figure 2. Stroudwater Village neighborhood zoning map highlighting potential sellers in red who are similar to the Elks (in blue). "Similar" in this case means tax-exempt, conditional use organizations sitting on large amounts of land that may be attractive to "cashing out" via piecemeal development.

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 July 28, 2015

Planning Board

Dear Nell:

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

PC26

From: David Silk <DSilk@curtisthaxter.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 7/28/2015 9:09 AM
Subject: 1945 Congress Street

Nell: 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?EID=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,
> Nell
>
>
> _____
> Nell 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

PC29

From: Eugenia O'Brien <genieme80@gmail.com>
To: <hcd@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.

PC30

From: Betsy Smith <betsysmith429@gmail.com>
To: <bcd@portlandmaine.gov>
CC: Stroudwater Village Association Board of Trustees <stroudwatervillageassociation@gmail.com>
Date: 8/21/2015 4:39 PM
Subject: 1945 Congress Street

Nell,

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,
Nell

Nell 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

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 a 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.

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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 thought 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, planed 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.

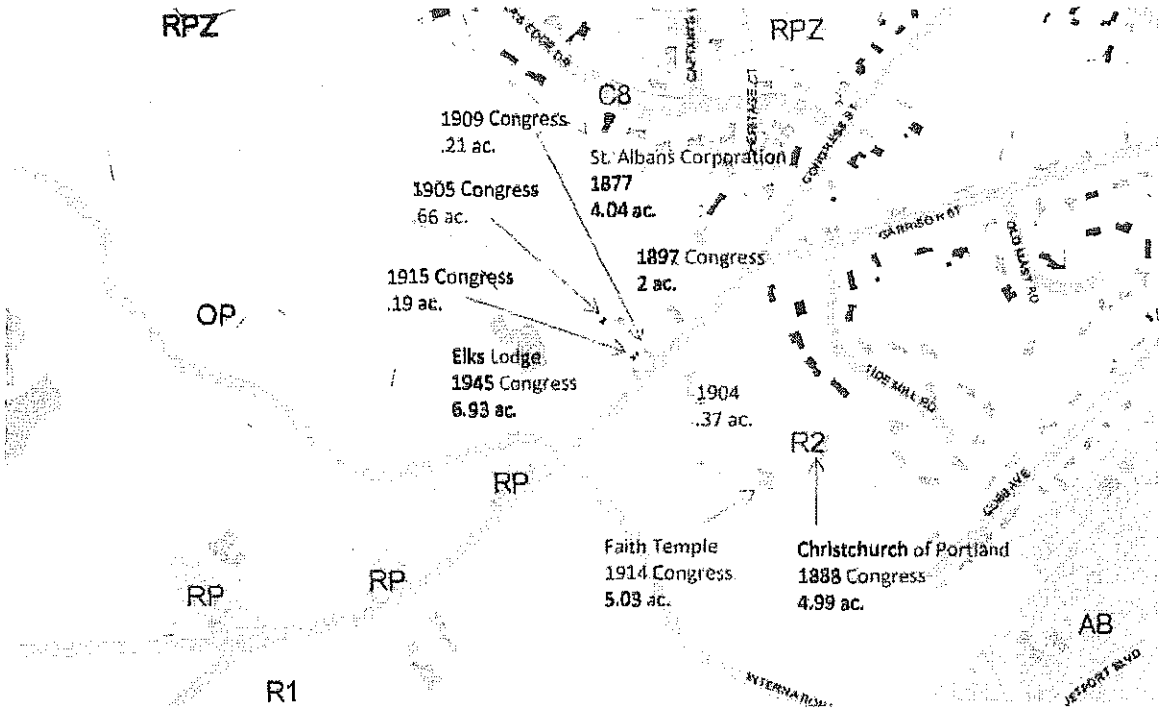

Figure 4: Parcel sizes and context in vicinity of 1945 Congress Street

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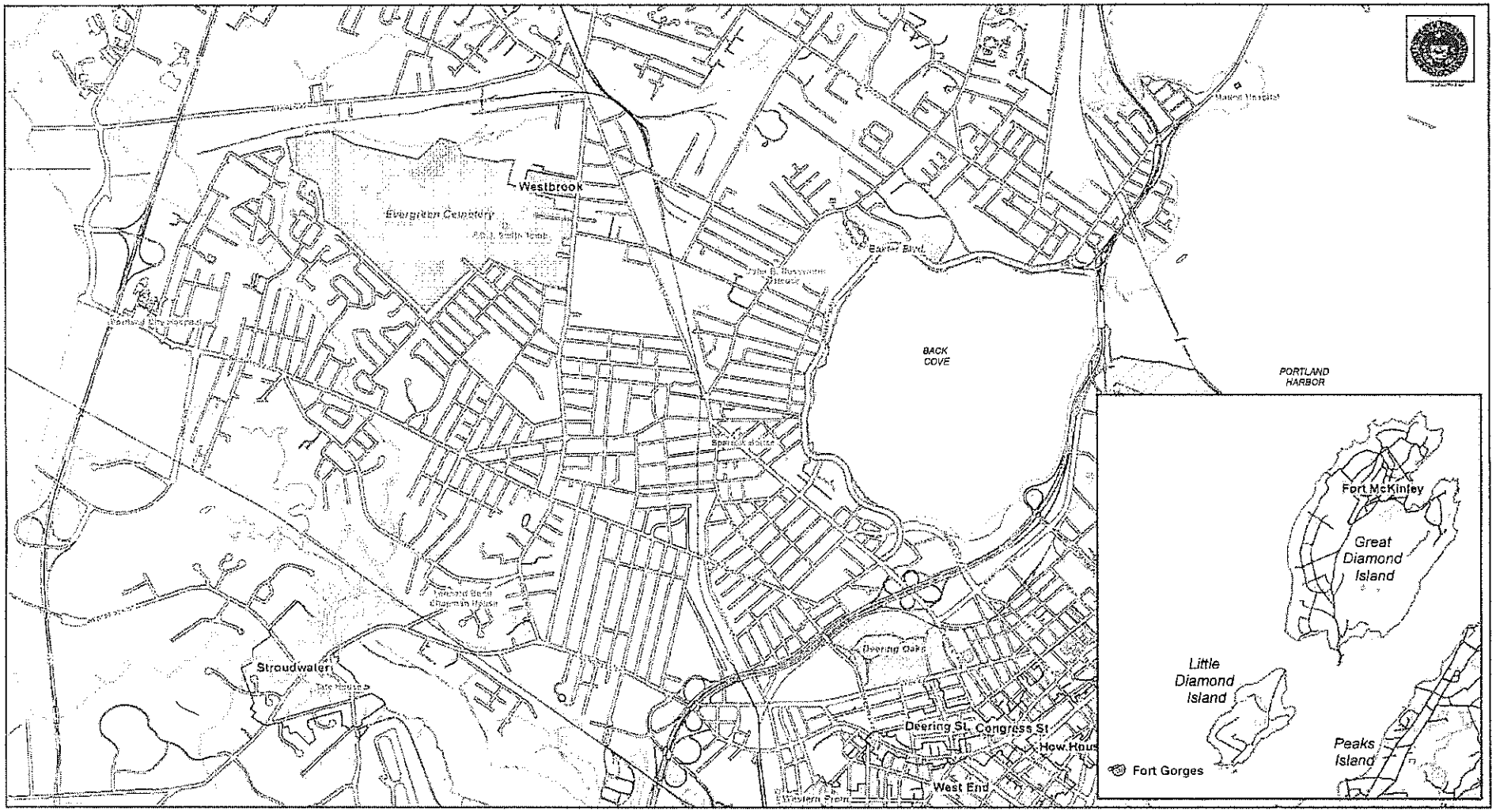


Historic Districts with Historic Landscapes, Cemeteries & Individual Landmarks

Off Peninsula & Islands

Effective April 15, 2009

City of Portland, Maine Department of Planning & Development and the Department of Public Services

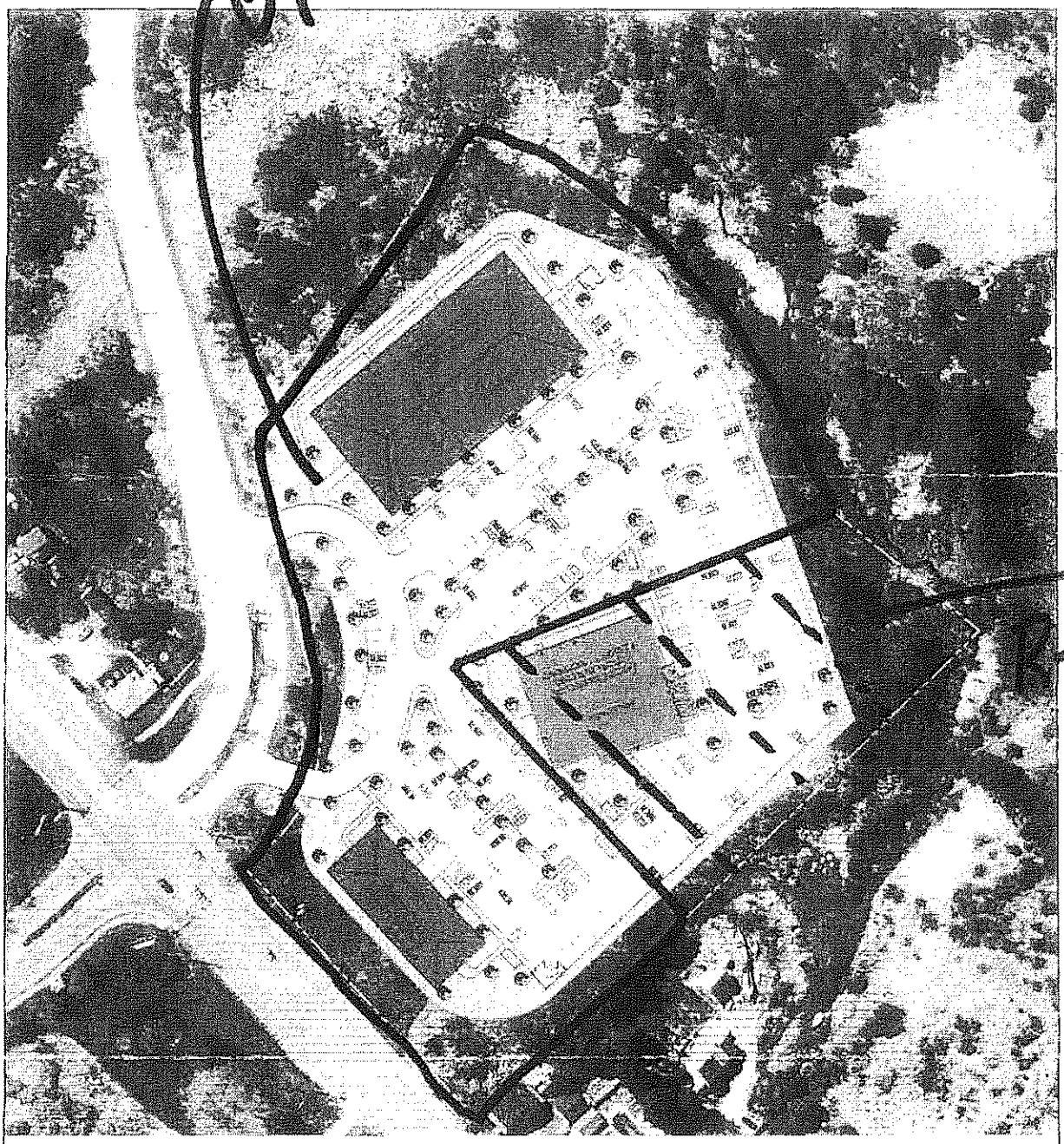
Historic Districts

- 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

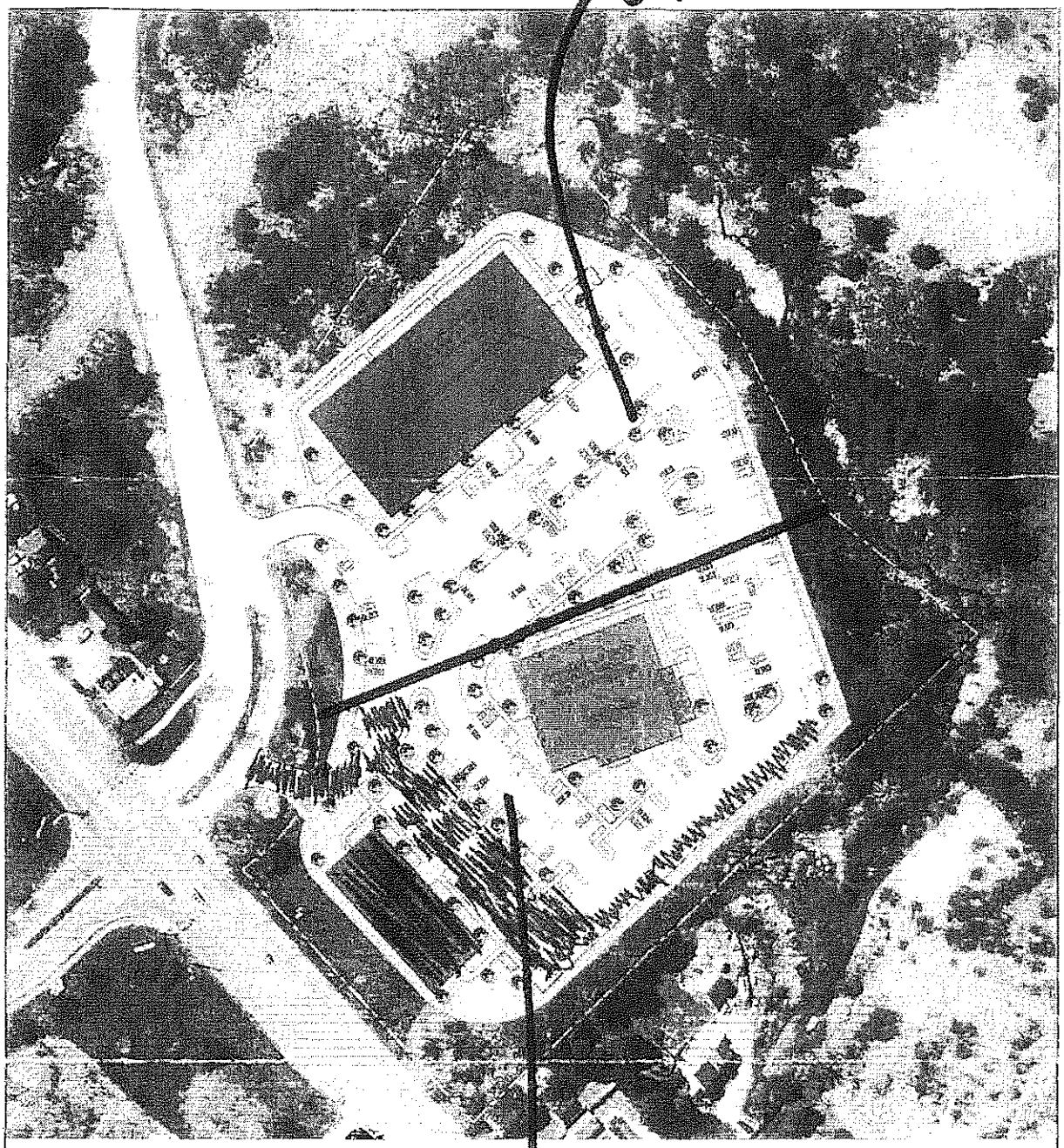
Ellis Club proposed rezone.



NOT FOR CONSTRUCTION

GRAPHIC SCALE

03	1945 CONGRESS STREET ELKS LODGE, PORTLAND, MAINE SITE PLAN	NORTHLAND ENTERPRISES, LLC 17 SOUTH STREET PORTLAND, MAINE 04101				PINKHAM & GREER CIVIL ENGINEERS



GRAPHIC SCALE

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03	1945 CONGRESS STREET ELKS LODGE, PORTLAND, MAINE SITE PLAN	NORTHLAND ENTERPRISES, LLC 17 SOUTH STREET PORTLAND, MAINE 04101			PINKHAM & GREER CIVIL ENGINEERS

Ms Helen Donaldson

City of Portland

Planning Board

September 3, 2015

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**	

PC36

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 Congtress Street, for among other easons, 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 Councill, 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 rentails, 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 princes 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

PC37

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. if 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 Resnisky50 Rivers Edge Drive

PC40

From: Valerie Libby <valerieslibby@gmail.com>
To: <HCD@portlandmaine.gov>
Date: 9/8/2015 7:50 AM
Subject: The Elks Club/Rezoning

Ms. Donalsdon,

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 tied 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

PC41

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

PC42

From: "Bill Lairsey" <wlairsey@maine.rr.com>
To: <hcd@portlandmaine.gov>
CC: <Mlairsey8@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-Zoining 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 ungliness 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
abuxton@preti.com
Bio | LinkedIn | Twitter | preti.com

PretiFlaherty
45 Memorial Circle
P.O. Box 1058
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 useand 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.	T 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			[illegible]			[illegible]
	Attached single-family and two-family dwellings				[illegible]		
	Single-family detached dwellings	[illegible]	[illegible]				
	Two-family dwellings						
	Multi-family dwellings			[illegible]	[illegible]		
	Handicapped family units	[illegible]	[illegible]		[illegible]		
	Sheltered care group home	3	3				
	Special needs independent living units						
	Single-family single- or multiple-component manufactured housing	[illegible]	[illegible]				
	Combined living/working spaces			[illegible]	[illegible]		
	Lodging houses (or conversion into)			[illegible]	[illegible]		
	PRUDs		[illegible]				
	Multiplex development						
Institutional	Elementary, middle, and secondary schools	5	5	[illegible]	[illegible]		
	Chancellery						
	Clinics			[illegible]	[illegible]		
	College, university or trade schools	5			[illegible]		
	Day care facilities or home babysitting services	4	4	[illegible]	[illegible]	[illegible]	[illegible]
	Governmental buildings and uses						
	Hospital		5				
	Intermediate care facilities for 13+ people	5	5		[illegible]		
	Long-term and extended care facilities	5	5		[illegible]		
	Municipal uses	[illegible]	[illegible]	[illegible]	[illegible]		
	Nursery schools and kindergartens			[illegible]	[illegible]		
	Places of assembly	5	5	[illegible]	[illegible]		
	Schools						
	Veterinary hospitals				[illegible]		
	Automobile dealerships				4		
	Banking services						
	Bed and breakfasts (or conversion into)			[illegible]	[illegible]		
	Beverage dealers			[illegible]			
	Billiard parlors				[illegible]		
	Business services			[illegible]			[illegible]
	Car washes				4		
	Conversion into bed and breakfast						
	Craft and specialty shops						
	Drinking establishments				[illegible]		
	Drive-throughs when accessory to a principal use on the same lot				[illegible]		
	Exhibition halls						
	General offices			[illegible]	[illegible]		
	Health clubs and gymnasiums				[illegible]		
	Home occupation	[illegible]	[illegible]				
	Hostels			[illegible]	[illegible]		
	Hotels				[illegible]		
	Laundry and dry cleaning services						
	Lumber and building materials dealers						
	Major and minor gasoline service stations				4		
	Meeting and convention halls						
	Miscellaneous repair services				[illegible]		
	Mortuaries or funeral homes				[illegible]		[illegible]
	Motel						
	Museums and art galleries						
	Offices of building tradespeople			[illegible]	[illegible]		
	Offices other than professional offices						
	Off-street parking lots and garages		4				
	Personal services			[illegible]	[illegible]		
	Professional offices[12]			[illegible]	[illegible]	[illegible]	[illegible]
	Registered medical marijuana dispensaries				[illegible]		

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			4,8	4		
	Retail establishments			4,8			
	Theaters						
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						
	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	11	
	Recycling & solid waste disposal facilities						
	Research and development and back office uses				4	11	
	Studios for artists and craftspeople			4,8	4		
	Temporary wind anemometer towers	4	4	4	4		
	Tow lots						
	Utility substations			8			
	Warehousing and wholesaling				4		
	Wind energy systems	4	4	4	4	11	4
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	4	4	4,8	4	11	4
	Any conditional uses permitted in abutting residential zones						
	Agriculture	4					
	Parking and storage of agricultural equipment used on premises						
	Cemeteries						
	Parks	4	4				
	Raising of domestic animals for noncommercial purposes						
	Neighborhood center			8			

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 professiona

Table 2: Comparison of Dimensional Requirements

	R-2	R-3[10]	B-1/B-1b[12]	B-2/B-2b/B-2c	O-P	R-P[36]
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[3] 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.[37]	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)[24]	None	None	50 ft.[25]	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.[35]		
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.[19] 1 1/2 stories : 8 ft.[19] 2 stories : 14 ft.[19] 2 1/2 stories: 16 ft.[19] 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[25]	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.
Stepbacks			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[13] 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.

[3] See definition in 14-188

[3] except as provided for lots of record is 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 disti

[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, 1968 and less than 100 ft. deep need not be3 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 re

[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 hve 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, 1989;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 tha

17 except that lots located in a subdivision approved after the effective date of Ord. No. 165-97 pursuant to section 14-497.5 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 adja

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 or created from a single lot division of a developed lot and results in a lot meeting the dimensional re

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-1: .45; R-3: .55; R-4/R-5/R-5A/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 14-147(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 lot 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: .6; R-3: .7; R-4/R-5/R-5A/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 l

31 Maximum FARs are as follows: R-1/R-2: .45; R-3: .55; R-4/R-5/R-5A/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.

Att. B

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 dicontinued 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
[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)
thomas.errico@tylin.com<mailto:thomas.errico@tylin.com>
Visit us online at www.tylin.com<http://www.tylin.com>
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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
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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" <mtrdwm@myfairpoint.net<mailto:mtrdwm@myfairpoint.net>>
Date: December 29, 2014, 1:09:18 PM EST
To: 'Barbara Barhydt' <BAB@portlandmaine.gov<mailto:BAB@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 Neil – 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.

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*
Residence Professional (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
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12 Northbrook Drive
Falmouth, ME 04105
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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 *Remmel 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 *Remmel*, 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.

DYCL - 4" DOUBLE YELLOW CENTERLINE
SWLL - 4" SOLID WHITE LANE LINE
SWEL - 4" SOLID WHITE EDGE LINE
BWLL - 4" BROKEN WHITE LANE LINE (10' SEGMENT W/ 30' GAP)
DWEL - 4" DOTTED WHITE LANE LINE (2' SEGMENT W/ 4' GAP)
SYLL - 4" SOLID YELLOW LANE LINE
BYLL - 4" BROKEN YELLOW LANE LINE (10' SEGMENT W/ 30' GAP)
SL - 24" WHITE STOP LINE
SYCM - 4" SOLID YELLOW CHEVRON MARKING SPACED @ 10' O.C. ORIENTED 45° TO TRAFFIC FLOW
SYCL - 4" SOLID YELLOW CHANNELIZING LINE
SWBL - 6" SOLID WHITE BIKE LANE LINE

* SIGN LOCATIONS ARE APPROXIMATE AND TO BE DETERMINED IN THE FIELD.

NOTES:
1. IMPROVEMENTS BETWEEN BASELINE STATIONS 66+00 AND 80+00 ARE ALTERNATIVE BID ITEMS.
2. ALTERNATE MERGING DIAGRAM SIGNS ARE 36" x 36".

PLAN
25 0 25 50

DESIGNED BY: P. NICOLAS
DRAWN BY: P. NICOLAS
CHECKED BY: P. NICOLAS
APPROVED BY: K. KERN
SCALE: 1" = 50'
DATE: 10/07/22

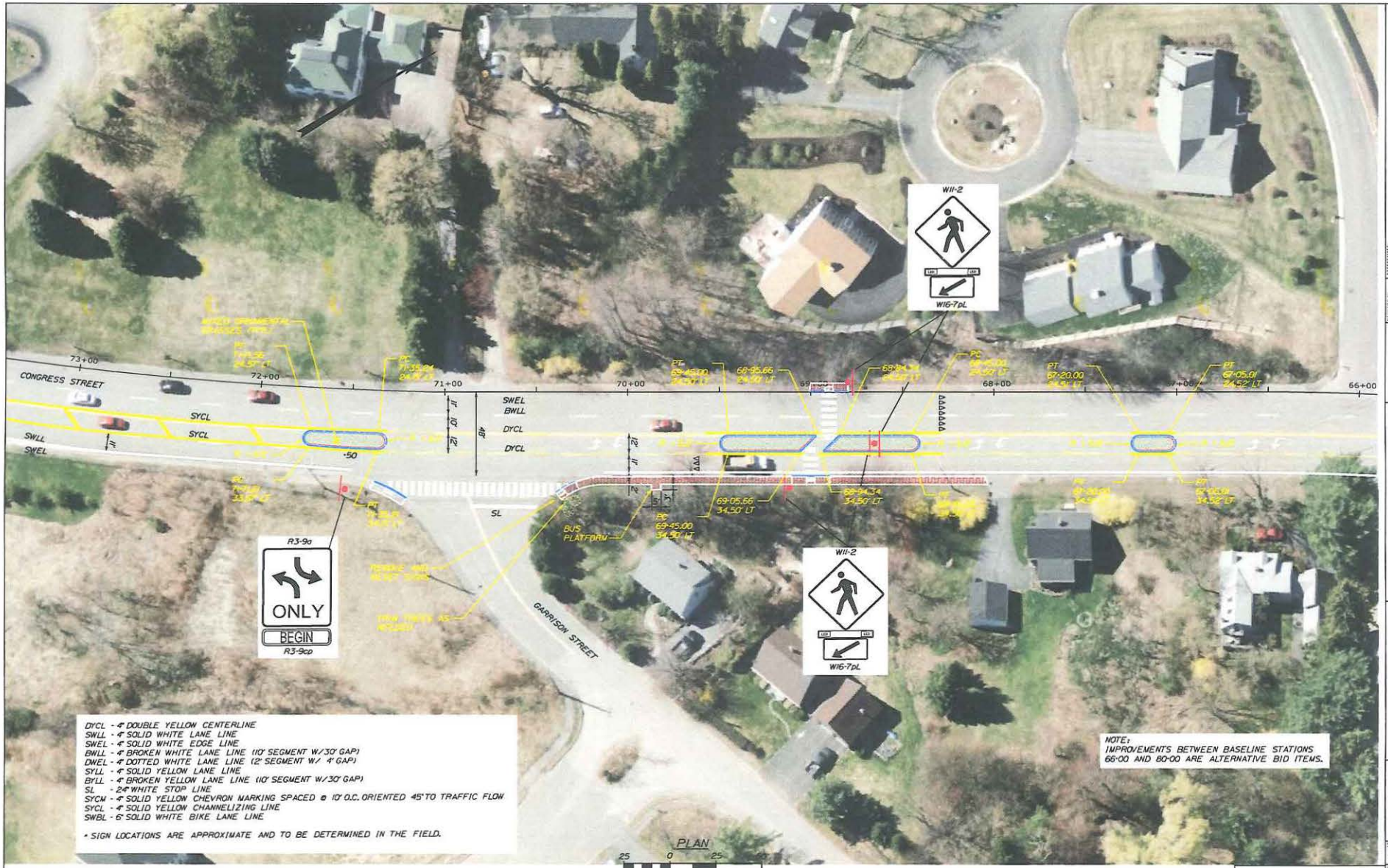
OUTER CONGRESS STREET IMPROVEMENTS
PLAN - 1

CITY OF PORTLAND, MAINE
PUBLIC SERVICES DEPARTMENT
ENGINEERING DIVISION

SHEET # 3 OF 11

PLAN NUMBER

TY LIN INTERNATIONAL



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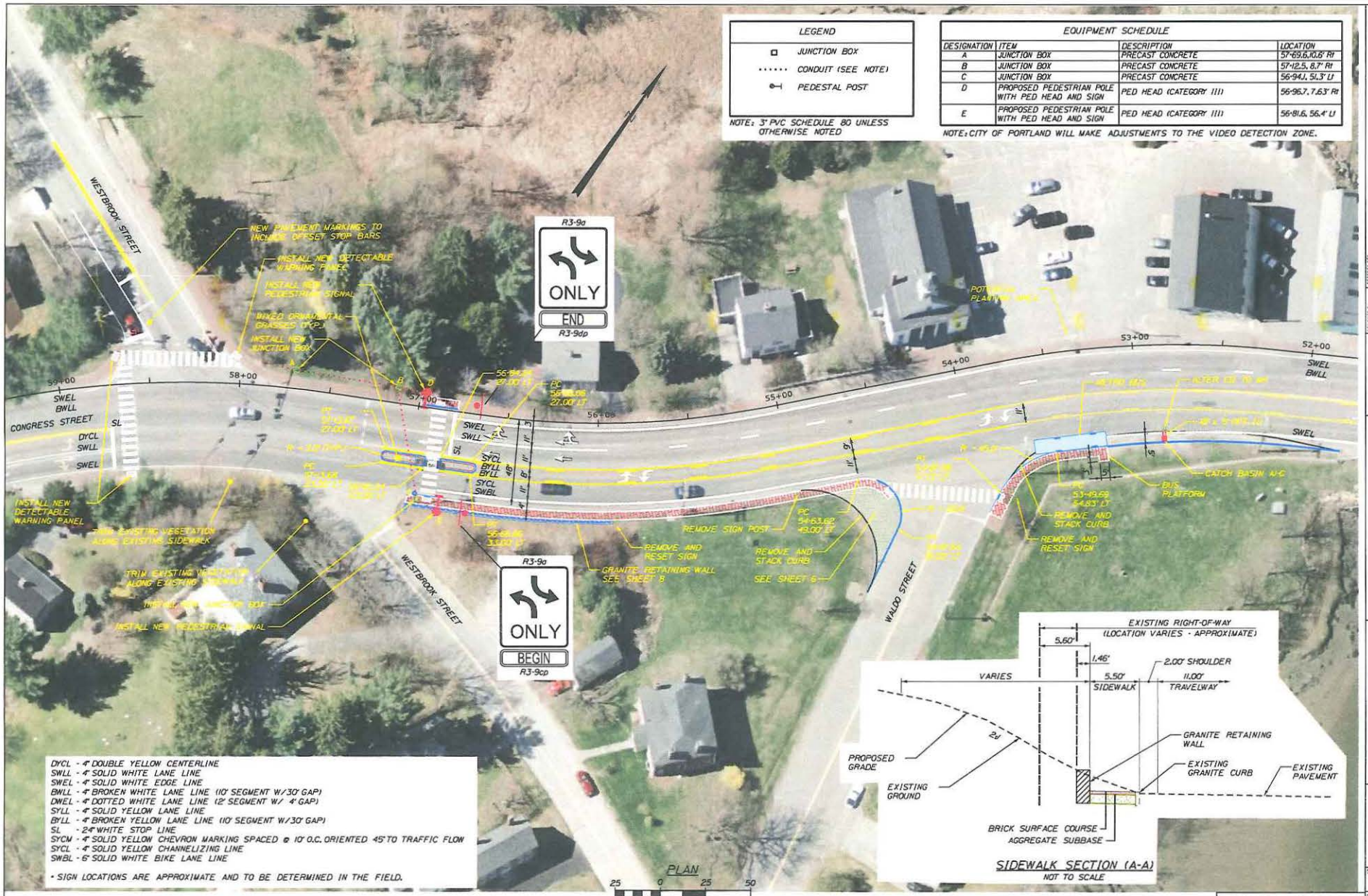
NOTE:
IMPROVEMENTS BETWEEN BASELINE STATIONS 66+00 AND 80+00 ARE ALTERNATIVE BID ITEMS.

TY LIN INTERNATIONAL

OUTER CONGRESS STREET IMPROVEMENTS
PLAN - 2

CITY OF PORTLAND, MAINE
PUBLIC SERVICES DEPARTMENT
ENGINEERING DIVISION

SHEET # 4 OF 11
PLAN NUMBER



OUTER CONGRESS STREET IMPROVEMENTS

PLAN - 3

CITY OF PORTLAND, MAINE
PUBLIC SERVICES DEPARTMENT
ENGINEERING DIVISION

SHEET # 5 OF 11

PLAN NUMBER

TY LIN INTERNATIONAL

Additional material provided 11-2-2015

From: Mihku Paul-Anderson <mihkupaul@gmail.com>
To: <hcd@portlandmaine.gov>
Date: 10/19/2015 1:19 PM
Subject: Elks Lodge re-zoning

Dear Ms. Donaldson,

I am writing in opposition to the Elks Club re-zoning and development by Northland Corp. I am well aware that this project will most likely go forward as the city Planning Board supports granting the zone change. But I would like to add my voice to this issue as much activity is taking place in my neighborhood that is not positive in nature.

I've seen Portland undergo many changes since I moved here in 1986. I was born and raised in Maine, upstate, and moved to Portland for job opportunities. That said, I left an excellent job at Rennsalaer Polytechnic Institute in order to return to Maine because the quality of living is so good. Portland is somewhat unique as a city, in that it contains many diverse businesses, a burgeoning arts community and a robust historical society that works to protect heritage buildings. The runaway development that I've seen in the last 5 years is rapidly changing the face and feel of our little city, not always for the better.

I am a homeowner on the western edge of the city, on Westbrook St. across from Camelot Farm. We were happy to have found such a fantastic neighborhood with plenty of green space in Portland. In just 2 years I have seen that space being steadily eroded. I often speak with my neighbors on Westbrook St. about their concerns here, and one thing I hear is that they feel the city doesn't really care about them because they are not in the affluent section of Stroudwater.

Here is what I have observed in my short time of living in Stroudwater:

1. Constant speeding, often at highway speeds of 45 mph past our homes. I am told this has been an on-going problem and has actually improved.
Commercial vehicles and heavy equipment (dump trucks, tree company trucks, flatbeds hauling large equipment) exceeding the speed limit daily.
** when I spoke with the city, I was told they "had no jurisdiction" and I had to talk with DOT. DOT told me they "leave that to the city."
** Our street is clearly used as a sort of bypass in to Portland and accidents occur on a regular basis. I don't believe the city wants to correct this problem because this usage is convenient and thus complaints are ignored. Speeding vehicles include Portland Water District, RTP, and even Portland school buses.
** The traffic speed and congestion on Congress St. in the western gateway are becoming serious issues, yet I have not heard of any "plan" to deal with this issue, even though the Elks development would increase traffic there during peak hours.

2. In the winter, our sidewalks are not cleared, and snow removal does not happen. Thus the sidewalk becomes a large frozen snowbank and I must walk in the road with my dog, taking my life in my hands because of speeding traffic. I am aware that home owners are expected to clear sidewalks in front of their house, but this is often not sufficient.

3. The sidewalks along our street are very overgrown in places so that it has become quite narrow. Street drains are clogged with debris. I say this because Westbrook St. is not well maintained by the city even though our taxes here are quite high. We seem to have been forgotten.

4. When the gas company needed a 20 foot corridor through the woodland that is adjacent to the Fore River Trail, they sent in a harvester that hacked major thoroughfares through the woods that are 30-40 feet wide, with stumps jutting up everywhere (frontage) and no run-off remediation. Since the PWD decided they needed a corridor as well, more than 60 % of this woodland has been clearcut and left a mess. Scattering a bit of hay on an embankment is not sufficient. The loss of these trees represents decades of growth, and the loss of understory impacts vernal pools on the trail which support natural ecologies. Yes, it is city land. However, the city could have informed residents of this action and worked to do it in a low impact manner, preserving the remaining green space and keeping it tidy. That did not happen.

5. Now, the Camelot Farm acreage is on the market. The sign says "Ideal for Development." The location of this large parcel is at the end of Westbrook St. but begins near Stroudwater Christian Church just a few houses from my own. I have grave concerns that this land will be allowed to develop as a commercial endeavor and destroy what remains of the green space out here. Why do I think that could happen? I believe that the development pressure will trump the wishes of the residents and the existing comprehensive plan for our city. This is exactly why we need

TO: Mayor Brennan and Members of the City Council

FROM: David Silk, 1187 Westbrook St

RE: Proposed Rezone of 1945 Congress Street from R-2 to OP

Property Owner: Portland Lodge #188 BPOE of USA ("Elks Club")

I respectfully urge you to vote against the Elks Club's proposal to change the existing R-2 zone for the property at 1945 Congress St to an Office Park ("OP") zone.

There is a litany of problems, inconsistencies, and concerns with the Elks Club's request:

The proposal is piece-meal rezoning, unwise and unsound. There is no compelling need for this zone change. It is, moreover, inconsistent with the Comprehensive Plan, good zoning practices, the City's Jetport Plans, including how the Jetport interacts with the Historic District and the neighborhood, the history and pattern of development in this area, taxpayer investment in Thompson's Point, the documented overloading of already saturated traffic in the JetPort area, and the way in which the City has handled other areas and developments, including St. Patrick's Church and Mercy Hospital. Further, approval would send a problematic message to many similar properties throughout the City, encouraging them to line up and cash out with similar zone changes, from residential to commercial.

The sole motivation behind this far-reaching effort for piece-meal rezoning is increased financial benefit for the property owner. There is little else to recommend it. Changing zoning to create a windfall for one property owner is hardly consistent with the Comprehensive Plan, or good zoning practices.

The Elks Club's proposal would replace a conforming use with a non-conforming use, as the Elks Club as a place of assembly is not allowed in an OP zone. This switch is clearly not consistent with the Comprehensive Plan. The purpose of zoning is to eliminate non-conforming uses, not to create more of them.

Further, the proposal is 180 degrees opposite the Comprehensive Plan's goal to address serious unmet needs for more housing, including housing for seniors and working families. Taking land that is zoned for residential use and switching it to a zone that prohibits all residential use is not consistent with the Comprehensive Plan. In stark contrast, preserving land zoned for residential use is consistent with the City's Comprehensive Plan.

The Elks Club's proposal is doubly problematic, as it would ignore unmet needs outlined in the Comprehensive Plan, in favor of zoning that is already plentiful. Meanwhile, there's an ideal location for new professional offices at nearby Thompson's Point that taxpayers are already supporting with $32 million in Tax Incentive Financing (TIF).

The Elks Club's property at 1945 Congress Street is presently zoned R-2. It consists of an almost 7 acre parcel. 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.

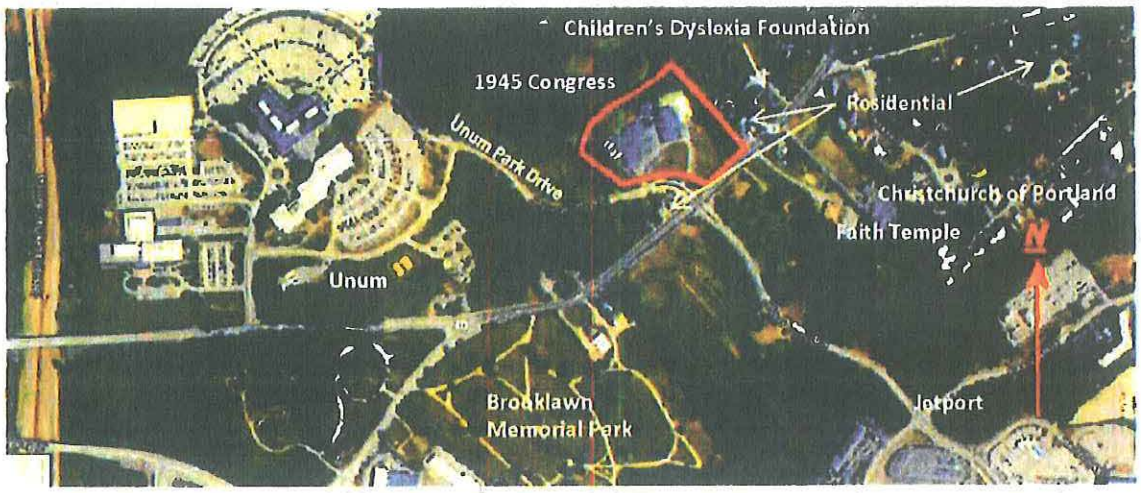
Social/fraternal halls, together with churches, are now known as "Places of Assembly" under the Land Use Code. Places of assembly, like institutional uses (schools) are conditional uses allowed in all residential zones. The City has many places of assembly located in residential zones on busy streets. In the late 1980s when the new entrance to the Jet Port and to UNUM was proposed, zoning for the area site was examined. At that time, the Elks Club property was subsequently rezoned back to R-2 and not to OP. When the OP zone was extended to accommodate UNUM's expansion, the site was not included in the OP zone, likely due to the fact that on either side of the site are existing residents. Residential uses are not permitted in the OP zone.

The Elks Club now wants to rezone the property to OP because its property is worth a lot more when zoned to allow for nonresidential uses. Zoned R-2, the land is assessed at $512,000. With the zone change, the developer will pay $1.25M for just the land. The Elks Club will remain on the property and continue to operate out of its existing building. In addition, the developer proposes to build two large professional office buildings on the property, one 15,000 square feet in area to be sited right on Congress Street, and the other 25,000 square feet in area.

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 UNUM campus is in an OP zone and is an example of professional offices located in a park or campus-like setting with the offices set well back from any public way. That is not what the Elks Club's proposal calls for.

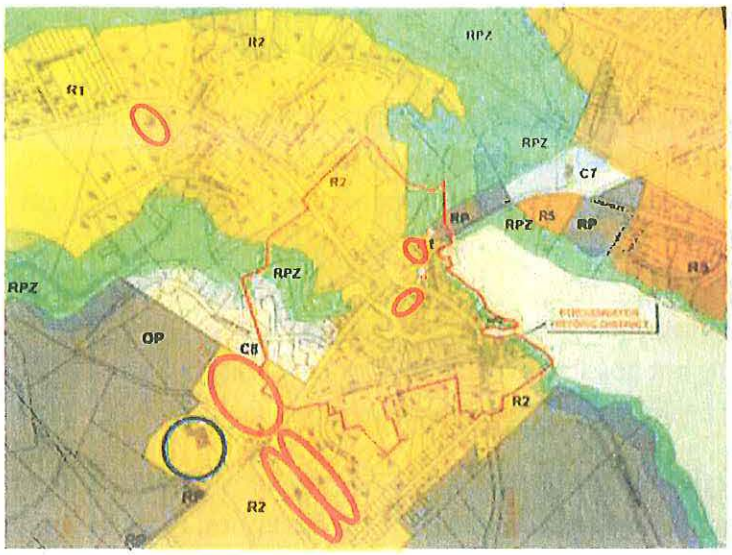
Places of assembly are not allowed in the OP zone. So if rezoned to OP, the Elks Club as a place of assembly will go from being a permitted/conforming use in the R-2 zone, to being a prohibited/nonconforming use in the OP zone. It is unheard of to rezone *a single parcel* in the City so that an existing use on that *single parcel* that is intended to continue indefinitely after the zone change is converted from conforming to non-conforming. Yet that is what the Elks Club's proposal calls for.

In my 11 years on the Planning Board, I do not recall any rezoning proposal for just one parcel that called for converting an existing legal use on the parcel from conforming to nonconforming. That is because the goal of zoning is to eliminate non-conforming uses. What the Elks Club proposes here is the antithesis of zoning and totally against the Comprehensive



Places of assembly are classified as a type of institutional use in the Land Use Code. They are required to have large areas. As the Comprehensive Plan at H-7 states: "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."

Because proper zoning has required places of assembly located in residential areas to have large lots, these organizations, when their membership falls off, will be motivated, as the Elks Club is now, to seek to rezone their lots to permit professional offices or other commercial uses. Three such organizations are located on the same stretch of Congress Street as the Elks Club. While these lots are not quite as large as the Elks Club's parcel, on which the Elks Club seeks to locate two multistory professional office buildings, these lots are clearly sufficient to locate say one professional office building. See areas circled in red below.



Thompson's Point, located about a mile away, traffic and other enhancements have already been made as part of the $32M TIF to make ready for among other uses, the professional offices as proposed at the Elks Club site.

The Comprehensive Plan section on Transportation Resources at page 1 notes, *traffic must be minimized in order to maintain the health of neighborhoods.* "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 professional office use proposed under the Elks Club's rezone is already legal and can be readily accommodated without a zone change at Thompson's Point. So to rezone land zoned residential to allow for office development cannot be about filling a City need. To be consistent with the Comprehensive Plan, the City should be directing professional office space development to areas already zoned for that use, e.g., Thompson Point with ready access off of a parkway that does not run through a neighborhood.

To allow any property owner like the Elks Club to rezone its parcel simply to make more money is not a legitimate reason to rezone. Otherwise the Council will be flooded with rezone requests in coming years by other places of assembly located in residential zones with parking and excess land with access to a major street. If the Elks Club can cash out, they too, will want to cash out as well, with a zone change that will allow for office buildings in what has been a residential zone.

A. The Elks Club proposal is piece-meal rezoning, unwise and unsound.

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] It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district should be done with eye to ensuring the rezone will not negatively impact the historical district.

---

[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 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

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, having been last reaffirmed in the 1980s, there should be a master planning process.

A thoughtful process should unfold to develop a vision to govern the area, which looks at uses, setbacks, lighting, and design standards. 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.

Two members of this Council have recognized the need for sound planning before embarking on zone changes. They recently stated:

> *"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 wants 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 a property owner.

To the extent that any part of your decision is premised on the Elks Club's assertion that its property cannot be put to other uses, it is important to understand that there has been no showing that such is the case. The property has not, to my knowledge, ever been placed on the market for non-commercial uses. The Elks Club has not engaged the City to work with it on possible residential development opportunities. The fact that the Elks Club could make more money is not a valid reason to rezone.

---

[2] E. Suslovic & N. Mavodones, *Portland Press Herald*, August 25, 2015.

It is worth reiterating 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 Comprehensive Plan describes the OP zone as follows: "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 areas, *significant open space* and landscaping and thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland." Neighborhood Commercial Land Use Policies and Land Use Plan, (1988) page 22.

The best that may be said about the proposal is that it may, at the end of the day, look better than what is there now. But that is, has never been and never should be the test for a rezone; otherwise a place of assembly (or for that matter any property owner) can simply let its building become run down and lose any charm, and then claim that, if the rezone is permitted, the eye sore will be gone.

Looking at the purposes for the OP zone, it is clear that the proposal cannot be called "spacious." It is not a large lot with low building coverage but a small lot with three buildings to be shoehorned on the lot with a sea of parking. There is no open space. There is no campus-like feel. The proposed office buildings are run-of-the- mill office buildings, with one located on the front at Congress Street. None of UNUM's buildings are located within 200 feet of Congress Street. The proposal, clearly on its face, does not meet the City's standard for an OP zone.

The OP standards also 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. 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."* Before the Council acted on rezoning what the Mercy Hospital parcel, it first required Mercy to submit a Master Plan for the site. As there, there should be here by the Elks Club, 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. If it is not practicable to meet the OP standards, the property should not be rezoned.

One is hard pressed to say that the to-be created lot, crammed with three buildings, constitutes 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 is. The applicant's proposal does not show any integrated development or any park- or campus- like setting. With the area to be occupied by the two new buildings with added pavement for

Extending commercial zones so as to displace all residential uses is not a goal of the Comprehensive Plan. Instead, the Comprehensive Plan has as a goal to "encourage neighborhood livability with higher density multi-family & innovative mixed use protects along major public transpiration routes." Congress Street is served by METRO. The Elks Club property could readily be developed into multi-family housing. One proposal submitted to the Planning Board depicted the possible development of 32 units of housing at the site as follows:

The City has a limited supply of land zoned residential and that land certainly should not be rezoned for the benefit of a place of assembly so as to eliminate the possibility of any residential use in the future without serious study and an overwhelming, compelling need. The Comprehensive Plan speaks to encouraging residential development and discouraging any development that could displace housing for non-residential uses. With its $32M TIF already in place, Thompson's Point stands ready, willing, and able to accommodate the development proposed here. It makes no sense to rezone the Elks Club for two professional office buildings simply to enrich the Elks Club.

More importantly, the Council must ask what will be the impact of the rezone on both 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.

setbacks, to ensure any new development that occurs is consistent with the area being a gateway to the City and with bordering a large, residential, historic district.

As an example, when entering SHD near the Fore River, when the office building known as "Stroudwater Crossing" was built, a significant design feature was the use of distinctive clapboard siding and pane windows in recognition that the building borders a historic district. These design features are totally absent from the Elks Club's proposal. Under the OP standards, there is no way for the Board to require the developer to take into account the location of the site bordering a historic district in reviewing the design and siting of the proposed office buildings. Any rezoning could add those elements.

Additionally, the Elks Club's analysis submitted to the Planning Board on how the rezone is consistent with the Comprehensive Plan suffers from a fatal flaw. That analysis necessarily assumes that the OP zone text would be amended to allow for places of assembly so that places of assembly would be a permitted use in the OP zone. On one level, this makes sense because as noted earlier, it is contrary to zoning practice to rezone *one parcel* alone and convert an existing conforming use that is to be continued after the zone change to a nonconforming use. The purpose for zoning is to eliminate nonconforming uses, not to create nonconforming uses. But the Planning Board did not recommend changing the OP zone to allow for any places of assembly. No text changes to the OP zone have been proposed. Without a change to the OP zone to allow for places of assembly as a permitted use, there is no basis to conclude the rezone proposal is consistent with the Comprehensive Plan.

Nowhere in the Comprehensive Plan is there a goal to rezone a parcel so as to convert an ongoing legal conforming use to a nonconforming use. The City should not be promoting such a practice simply to accommodate the needs of one property owner.

E. The Elks Club's proposed rezoning should be denied and only revisited after a master planning process is completed for the area.

"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 one property owner is unsound zoning. Right down the road is Thompson's Point where professional offices are intended to be located.

If there is to be change in this area, a substantial change from the R-2 and places of assembly serving as buffers to existing abutting residences, it should be the result of a *"well-thought-out plan."* This is a gateway area to the City in many ways. There should be a plan for the area. The Elks Club's proposal is not a well-thought-out plan. It converts a present legal use to one prohibited in the proposed new zone. The parcel is not suitable for OP designation. The

NORTHLAND

October 13, 2015

To The Portland City Council,

Northland Enterprises and Doctor Michael Bedecs, have the Elks Lodge property at 1945 Congress Street under contract. We have plans to collaborate with the Elks to redevelop the property following a zoning map amendment request to change the site from R2 to OP, which is the zone on the adjacent Unum campus. .

Northland and Bedecs propose to purchase the property, remove part of the existing Elks building and make improvements to the exterior of the remaining building; build a 15,000 square foot medical building for Dr. Bedecs and develop a 25,000 square foot building for Clark Insurance.

Through our numerous neighborhood and city meetings it has come to our attention that the City of Portland has plans to make improvements to Congress Street in the vicinity of the Elks property. We have come to learn that there is a gap in the amount of funding required to perform the work, which has caused significant delays in implementing the improvements.

Northland met recently with City Manager Jon Jennings, City Councilor Ed Suslovic and Jeff Levine of the City Planning office to discuss making a contribution towards the Congress Street improvement project. Assuming the we are successful in getting all the necessary approvals to close on the acquisition of the property, Northland is in agreement to make a financial contribution to the street improvement project. We are not able to commit to a dollar amount until we have a better understanding of our total development cost, however we will go on record of stating we will support the street project.

Thank you for your consideration of our request for a zone change.
Sincerely,

Rex Bell, Josh Benthien, Northland Enterprises and
Dr. Michael Bedecs.

17 South Street, 3rd Floor
Portland, Maine, 04101
207-780-0223
www.northlandus.com

From: <roz@homesinmaine.com>
To: <hcd@portlandmaine.gov>
Date: 10/6/2015 11:16 PM
Subject: Elks Club land re-zoning

I have no objection to the re-zoning.
I do feel it would be wise to follow up with a vision for the city for Stroudwater area and residents.

Sent from my iPhone

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: paul jeffery <pj6481@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 10/13/2015 9:29 PM
Subject: Fw: 1945 congress st project

On Tuesday, October 13, 2015 9:21 PM, paul jeffery <pj6481@yahoo.com> wrote:

support projecthigh and best use
DOESNT EFFECT THE STROUDWATER NIEGHBORHOODLETS KEEP ELKS AND CLARKS INSUR IN PORTLAND

STATEMENT from the Stroudwater Village Association regarding the proposed rezoning of 1945 Congress Street (Elks Club Property), October 2015. stroudwatervillageassociation@gmail.com

This statement should be considered in addition to our prior letters to the Planning Board from January 2015, May 2015, July 2015 and September 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.

Consider these facts:

- At the September 2015 workshop regarding this zoning request, several members of the planning board and City staff stated their agreement that it makes sense to do a proper visioning exercise for the Jetport and Stroudwater area, including but not limited to the abutting intersection and the Stroudwater Historic District, before a split vote of 4-2 (nowhere near unanimous) to recommend approval of the request.
- The City has just now kicked off the process to review and re-certify its Comprehensive Plan, and is in the middle of the process of updating the Jetport's Sustainability Master Plan.
- The Outer Congress Street Phase II traffic calming improvements (some of which are quite close to this parcel) are scheduled to be implemented in the near future.
- Most alarming, in the short time since this application process began, parcels surrounding several other similar properties (flagged by the SVA in our July letter) have come on the market or changed their market status (for example, gone under contract). Rumor abounds that these are commercial developments. In addition, we know that several individual residential owners have petitioned to be included in any hypothetical commercial zoning. Given the financial incentive that "cashing out" to commercial developers represents, it is likely more will follow.

The SVA and our members remain surprised by and uncomfortable with the City's insistence on rezoning a single parcel ahead of proper planning for the area. We believe that to do so is shortsighted and reckless, especially given the timing relative to planning processes already underway. Inputs from the Comprehensive Plan and Jetport Master Plan updates, as well as from the stakeholders (including but not limited to SVA members and the Elks Club), should be incorporated into a clear and transparent visioning process. This is especially important since, as described in the last bullet above, we are already seeing evidence of the "domino effect" of this potential parcel rezoning. There are at this point no rules of engagement or even a common understanding about the implications of this potential change.

Bottom line: we have not heard a valid reason for tinkering with zoning *before* thinking about the big picture. Indeed, given the potential mess being created, we believe the big picture should be driving zoning, not the other way around.

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: Joe Heasly <jheasly1@maine.rr.com>
To: Helen Donaldson <hcd@portlandmaine.gov>
CC: Ed Suslovic <edsuslovic@portlandmaine.gov>, <stroudwatervillageassociation@gmail.com>, <captlinnell@yahoo.com>, Carolyn Heasly <caroalic@maine.rr.com>
Date: 10/18/2015 7:55 PM
Subject: 1945 Congress Street zone change - comment for Council meeting

Dear Ms. Donaldson,

Thank you for the notice of the upcoming City Council consideration of the Elks Clubs' zone change request for 1945 Congress Street. Will you please forward our comments to the Council members for their consideration during the meeting? Schedule conflicts don't allow us to attend in person.

To the members of the Portland City Council:

It is pretty clear to us that the primary driver for their zone change request is the B. P. O. Elks Lodge's desire to achieve a profitable end-game as their membership and resources have dwindled beyond the point where they can maintain their presence at 1945 Congress St. However, as many of our neighbors have pointed out, the primary purpose of zoning, and of zoning change, is not to maximize profits for a particular property owner or developer , but to maximize conformance with a municipal development plan.

As property owners at 1832 Congress Street, we 'bought into' the pros and cons of our purchase in 1978, much as the Elks did 10 years before us. When our resources have dwindled to the point were we can no longer maintain our presence at 1832 Congress St, we will also sell. In contrast to the Elks, we expect to have to live with financial impacts of those same pros and cons – as they have evolved in the intervening decades – without recourse to a change in the zoning rules to allow us to maximize our return. This issue of basic fairness is a primary reason for our opposition to the proposed zoning change at 1945 Congress Street from 'R-2' to 'OP'.

We have other reasons for our opposition, as well. If the Elks' request is granted, there are many other parcels, nearby and across the city, where place of assembly usages could also become the bases for zone change requests. These parcels are big enough, and impacted by factors such as major arterials and existing industrial or commercial uses, that they meet the basic OP criteria. The rebuttal that the Board and the Council would not be setting precedents in the judicial sense is specious – if essentially the same political and economic arguments are in play for essentially the same kinds of parcels, why would the Board and/or Council be moved to come to different determinations? We believe that the correct determination is to deny this request.

It will be unfortunate if the Elks' request is granted. In the event that it is, we have this request: that the interest in and emphasis on this parcel's importance as a significant contributor to the western Gateway to Portland be given real weight. The OP zone's emphases on buffering between the development and the surrounding area, the importance of a park or campus-like appearance with corresponding amenities, as well as the aesthetic appearance of the buildings themselves, will gain in importance if we are not to end by trading an old eyesore for a new one.

Thank you for your consideration of our input,

Joe and Carolyn Heasly
1832 Congress Street

From: "Beal, Sandy" <abeal@medicalmutual.com>
To: "'hcd@portlandmaine.gov'" <hcd@portlandmaine.gov>
Date: 10/19/2015 9:47 AM
Subject: Elks Clubs' zone change request for 1945 Congress Street

Good morning Nell Donaldson,

I reside at 37 Old Mast Road, in Stroudwater Village.

I am extremely concerned about the current activity that may lead to future pressures to develop more of the Stroudwater area for other than residential development. I am concerned about the development for the surrounding area of the jetport entrance. With the amount of traffic flow through this area, I believe developers may find this land area attractive for commercial development, regardless of current zoning. At a recent workshop I attended at USM, a statement was made that the person had never met a developer who thought that zoning was not restrictive enough. In other words, current zoning is just a start for most developers and they normally want exceptions made.

Currently there is 4 acres of land under contract just past 1871 Congress Street, and on the other side of Stroudwater the Rogers estate on Westbrook Street near the turnpike overpass now has 44 acres of land posted for sale/development.

To accept a re-zoning of the Elks Club without a solid vision of what Stroudwater should look like for the immediate and long-term future is short-sighted on the part of the City of Portland. What's next??? I am extremely concerned about what Stroudwater might become without the City of Portland having a vision in place. So much of what I have seen in this process of the Elks Club is basically "Follow The Money," i.e. the primary factor is economic benefit to the Elks Club, Dr. Bedecs and the developer. It is not upholding current zoning, and this may lead to future pressures along the same line.

Sandy Beal

Sandy Beal * Senior Underwriter
Tel: 207.775.2791

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One City Center * PO Box 15275 * Portland, Maine 04112-5275
www.medicalmutual.com<http://www.medicalmutual.com/> * Follow: @MedicalMutual<https://twitter.com/medicalmutual>

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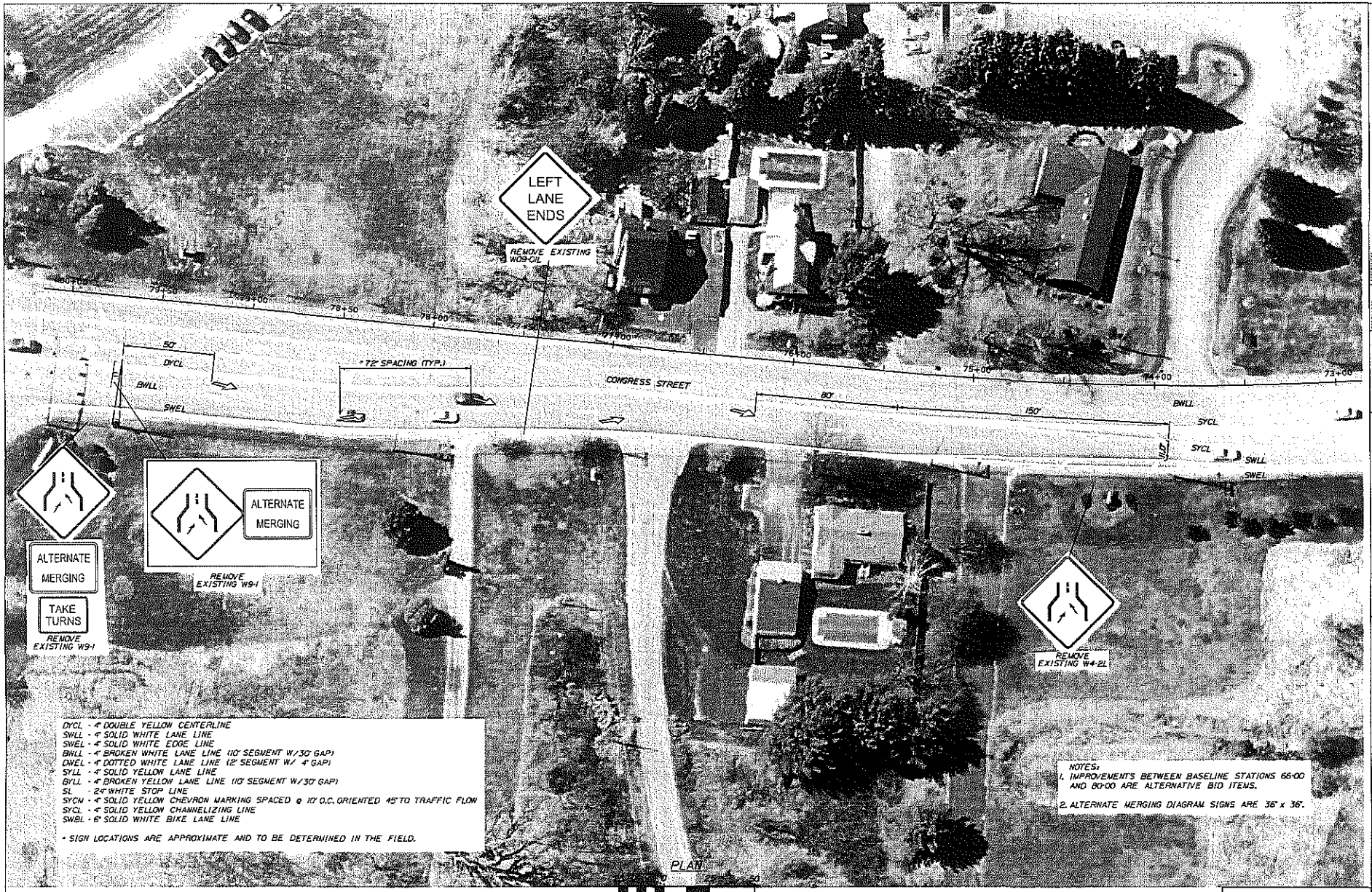
From: Paul Dubois <pdubois1915@yahoo.com>
To: Rex Bell <rex@northlandus.com>, Michael Bedecs <mbedecs@gmail.com>, Josh Benthien <josh@northlandus.com>, Helen Donaldson <hcd@portlandmaine.gov>
Date: 10/19/2015 10:40 AM
Subject: Tonight's Council Meeting regarding 1945 Congress St Zoning Change

Nell, I just got a call from work, they are no longer able to cover my shift for tonight so I won't be able to attend the Council meeting.
We had expected to speak before the Council in favor of the zoning change. As you know, our change of heart resulted from the executed P&S agreement that modifies the lot line thereby allowing our adjacent residential house lot to be conforming in size and set back. We believe this helps us secure a better buffer and results in an enhanced residential character for our home at 1915 Congress Street despite the obvious impacts of the proposed development of the adjacent property. As I have testified in several Planning Board meetings, we believe that it is crucial to promote whatever can be done to buffer these adjacent properties from commercial developments such as the one proposed tonight. We feel that Northland and Dr. Bedecs have been sensitive to our concerns and recommend that the Council approve their request for a zoning change.
Nell, would you please make this email available to the Board Members for review. Again, thanks for all your help as I don't believe we would have come to this resolution without it.
Paul and Kimberly Dubois 1915 Congress Street Portland Maine 04102 (207)899-2599



DYCL - 4" DOUBLE YELLOW CENTERLINE
SWLL - 4" SOLID WHITE LANE LINE
SWEL - 4" SOLID WHITE EDGE LINE
BWLL - 4" BROKEN WHITE LANE LINE (10' SEGMENT W/30' GAP)
DWEL - 4" DOTTED WHITE LANE LINE (2' SEGMENT W/ 4' GAP)
SYLL - 4" SOLID YELLOW LANE LINE
BYLL - 4" BROKEN YELLOW LANE LINE (10' SEGMENT W/30' GAP)
SL - 24" WHITE STOP LINE
SYCW - 4" SOLID YELLOW CHEVRON MARKING SPACED @ 10' O.C. ORIENTED 45° TO TRAFFIC FLOW
SYCL - 4" SOLID YELLOW CHANNELIZING LINE
SWBL - 6" SOLID WHITE BIKE LANE LINE

* SIGN LOCATIONS ARE APPROXIMATE AND TO BE DETERMINED IN THE FIELD.

NOTES:
1. IMPROVEMENTS BETWEEN BASELINE STATIONS 66+00 AND 80+00 ARE ALTERNATIVE BID ITEMS.
2. ALTERNATE MERGING DIAGRAM SIGNS ARE 36" x 36".

REFERENCES

DESIGNED BY	
DRAWN BY	
CHECKED BY	
QC'd	
APPVD	
DATE	06/09/2022

OUTER CONGRESS STREET IMPROVEMENTS

PLAN - 1

CITY OF PORTLAND, MAINE
PUBLIC SERVICES DEPARTMENT
ENGINEERING DIVISION

SHEET # 3 OF 11

PLAN NUMBER

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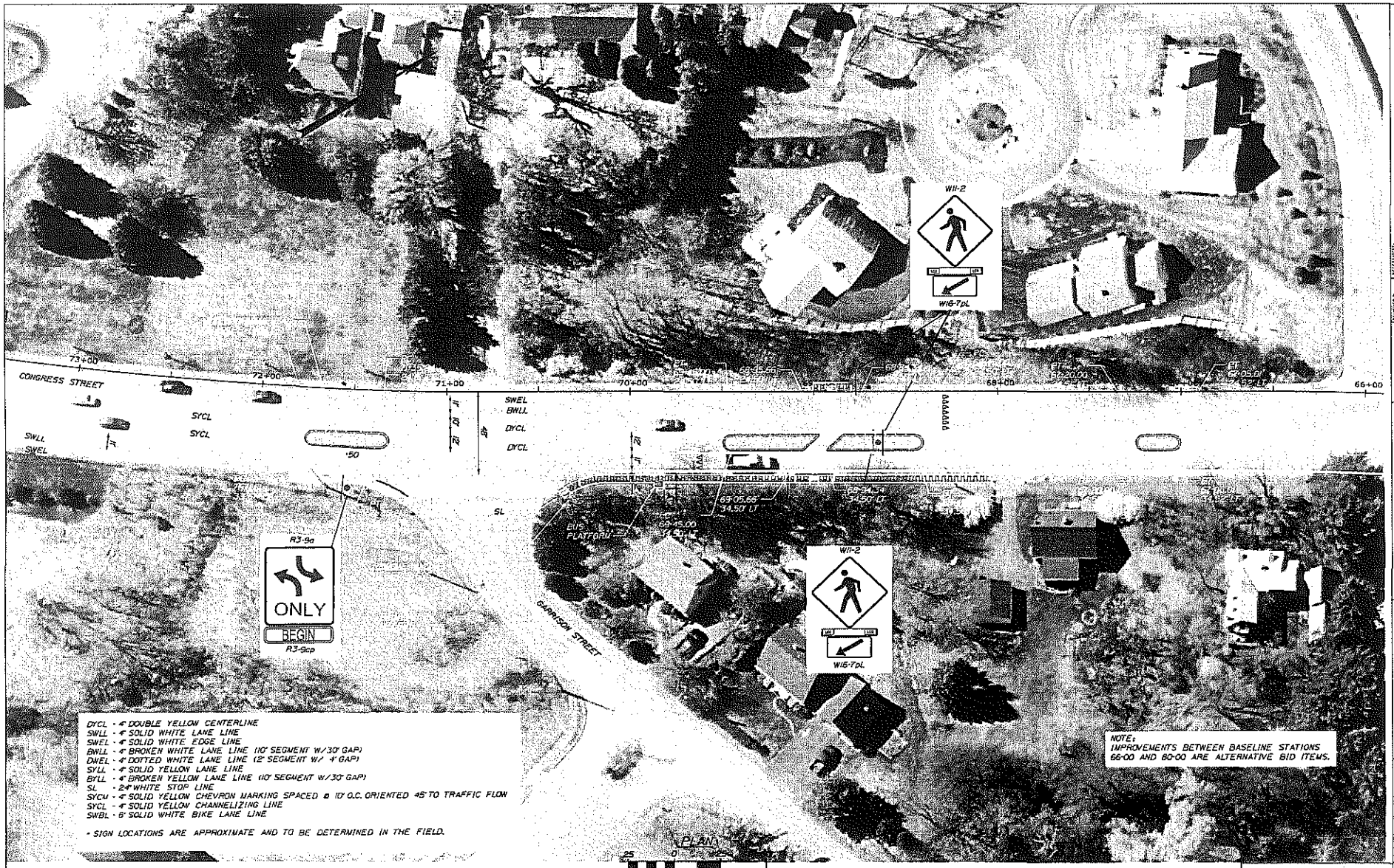

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DESIGNED
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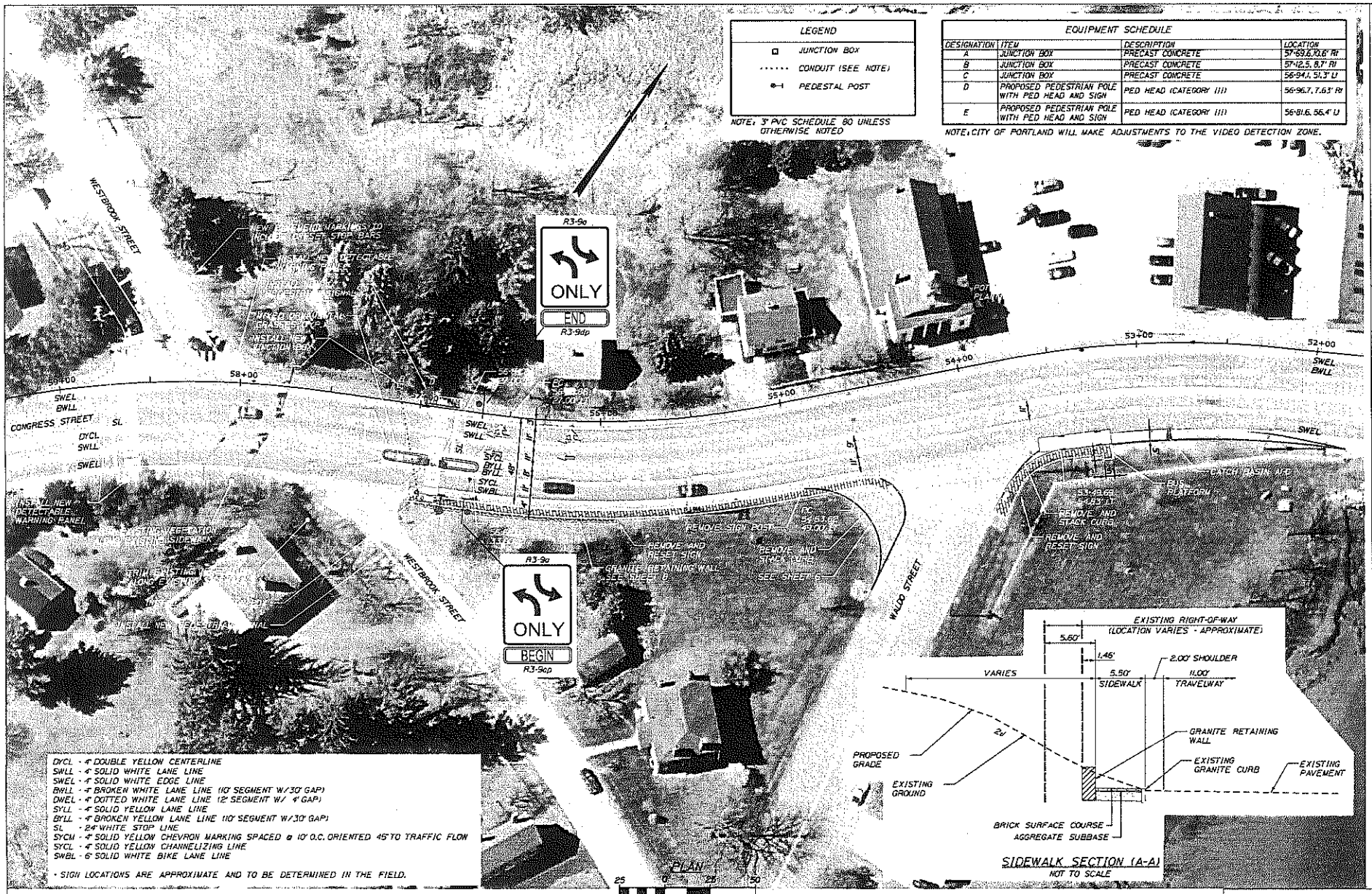
REFERENCES

OUTER CONGRESS STREET IMPROVEMENTS
PLAN - 2

CITY OF PORTLAND, MAINE
PUBLIC SERVICES DEPARTMENT
ENGINEERING DIVISION

SHEET # 4 OF 11
PLAN NUMBER

TYLIN INTERNATIONAL



OUTER CONGRESS STREET IMPROVEMENTS

PLAN - 3

CITY OF PORTLAND, MAINE
PUBLIC SERVICES DEPARTMENT
ENGINEERING DIVISION

SHEET #
5 OF 11

PLAN NUMBER

TYLININTERNATIONAL

Sonia Bean - Fwd: Elks Lodge

From: Helen Donaldson
To: Sonia Bean
Date: 12/16/2015 4:12 PM
Subject: Fwd: Elks Lodge

Thanks, Sonia. This relates to the proposed rezoning at 1945 Congress.

Nell

>>> Justin Walsh <justincwalsh@gmail.com> 12/16/2015 1:45 PM >>>

Dear Neal and Jeff

I am writing to you to express my support for the proposed project at the Elks Lodge. I am a Stroudwater resident and live less than a half mile from the project. Zone changes for a single parcel of land are always controversial. Due to the development of the surrounding property and the current building on the property I believe that changing this land to an OP zone is the right choice.

This property is geographical in our neighborhood. But, it is not part of it. The new development is a more attractive and appropriate us of this property. A residential development doesn't work on this location and if it did someone would have purchase this property over the course of the ten years it was for sale. I understand that my neighbors are concerned with additional property in our neighborhood seeking a rezoning change. I think we need to deal with each individual case and not play what-if. You don't' have an issue with the building being located on Congress street. I find it more attractive than a parking lot of cars.

At our last meeting it came to light that one of the largest opponents of this project tried to sell his property to the developers. When they decided to pass on his astronomical price, that is when he started to voice his opinion. All the talk about good for the neighborhood and good for Portland was just sour grapes.

Thank You,

Justin Walsh

28 Garrison st

Order 125-15/16
~~Tab 13 12-7-15~~
Tab 10 12-21-15

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 THE OPTION TO PURCHASE AND APPROPRIATION OF $150,000
Re: 212 CANCO ROAD

ORDERED, that the City Manager is hereby authorized to exercise the option to purchase in the Lease Option Agreement with 212 Canco Road Realty LLC for property at 212 Canco Road, in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the amount of $150,000 is hereby appropriated for a one-time fee to exercise the option to purchase the property at 212 Canco Road; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to execute whatever documents are necessary to effect the intent and purpose of the Agreement.

Portland, Maine Yes. Life's good here.

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Mayor and Members of the Portland City Council
Jon Jennings, City Manager

FROM: Greg Mitchell, Economic Development Director

DATE: November 20, 2015

SUBJECT: **Order Authorizing First Amendment to Commercial Lease to Allow for Early Acquisition of 212 Canco Road Property to Support City Department Operations Consolidation**

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: December 7, 2015 **Final Action:** December 21, 2015

Can action be taken at a later date: No. If no why not? This item requires a financial appropriation and two city council readings which need to be acted upon in December.

PRESENTATION: Greg Mitchell, Economic Development Director, Overview/10 Minutes

SUMMARY OF THE ISSUE

The existing approved Commercial Lease (Net Lease) With Option to Purchase, executed March 28, 2014 (copy attached), with 212 Canco Realty LLC has the timeline for the City to exercise its purchase option between March 1, 2017 through October 31, 2018. City staff would request Council authorization to exercise that purchase option earlier, between January 1, 2016 through March 31, 2016, per the First Amendment to Commercial Lease (Net Lease) With Option to Purchase. Early acquisition does not change the property acquisition price, but it does require a financial appropriation. City acquisition in 2016 versus 2017 enables the City to advance City operations consolidation.

Acquisition of 212 Canco Road combined with 250 Canco Road (acquired by the City in September, 2015) and JB Brown Quarry Road property creates a 13+ acre campus for one City public service delivery location which has been a priority for the City for over a decade.

Existing City Council Approved Property Lease/Purchase Option for 212 Canco Road

An overview of the existing approved 212 Canco Road Lease with purchase option includes:

Property Location: The property is located in a "central service delivery location" in an industrially zoned property with adjacent industrial users.

Property Size: 4.2186 acres

Building Square Footage: 68,730

Municipal Assessed Value: $3,053,370

Agreed Upon Property Purchase Price: $2.9 million fixed for three years. The market value of industrial property is increasing and a fixed acquisition price provides the City with purchase price certainty.

The lease/purchase approach presented the City with a phased approach, over time, to fully implement the department consolidation plan. The lease/purchase option to acquire 212 Canco Road was structured to meet the needs of the property owners and enable City use of approximately fifty-five percent of the building starting April 2014 as detailed in the Lease. The remaining forty-five percent of the building is occupied by two commercial tenants who have five (5) year leases through to the Summer/Fall of 2018. The proposed lease/purchase approach honors the leases of the two existing tenants and enables the City to gain use of the entirety of the building in 2018.

REASON FOR THE SUBMISSION

The earlier purchase option requires approval by the City Council due to a financial appropriation.

INTENDED RESULT

City Council approval and financial appropriation to acquire 212 Canco Road in the first quarter of 2016 versus 2017.

COUNCIL GOAL ADDRESSED

Relocation of a portion of Public Services Department operations out of Bayside.

FINANCIAL IMPACT

Property Acquisition. On September 9, 2013, the City Council authorized issuance of $3.05 million in general obligation debt to support property acquisition to move ahead with the City department consolidation plan. This was combined with a previous appropriation of $100,000 for preliminary costs associated with the relocation of City operations out of Bayside.

City Costs to Lease 212 Canco Road. Separate from the above City Council debt service authorizations, the City Council financially appropriated funds to cover the cost of the City leasing

space in 212 Canco for approximately four years through the date of the planned City acquisition in March, 2017.

Cost Benefit Analysis to Acquire the Property Early. Acquiring 212 Canco Road in the first quarter of 2016 versus Spring 2017 will result in the following:

The owners of 212 Canco Road are requesting a one-time payment of $150,000, which represents a portion of the base rent from the two commercial tenants, in order to allow for the City to acquire the property in the first quarter of 2016 versus Spring of 2017. Cost benefit analysis per the below table demonstrates it is in the City's best interest to proceed with an early acquisition of this property, and the one-time payment of $150,000 will be more than off-set with City space lease cost "savings", plus receiving revenue from two existing commercial tenants.

212 Canco Lease Payments Analysis	
January 1, 2016 through March 31, 2017	
City Lease Payment "Savings"	$132,641
2 Tenants Revenue	$209,210
Total:	$341,851
Subtract One-Time Payment:	$150,000
Net Gain to City:	$191,851

STAFF ANALYSIS/RECOMMENDATION

City staff analysis results in a recommendation for approval and financial appropriation of $150,000 to acquire the 212 Canco Road in the first quarter of 2016, versus Spring 2017.

Attachments:

- First Amendment to Commercial Lease (Net Lease) With Option to Purchase
- Commercial Lease (Net Lease) With Option to Purchase

FIRST AMENDMENT TO COMMERCIAL LEASE (NET LEASE)
WITH OPTION TO PURCHASE

This First Amendment to Commercial Lease (Net Lease) with Option to Purchase (the "First Amendment") is made as of the ___ day of December, 2015 by and between 212 Canco Realty LLC, a Maine limited liability company, with a mailing address of 212 Canco Road, Portland, ME 04103 ("Landlord") and the City of Portland, Maine, a Maine municipality with a mailing address of 389 Congress Street, Portland, ME 04107 ("Tenant").

WHEREAS, the Landlord and Tenant entered into a certain Commercial Lease (Net Lease) with Option to Purchase dated March 28, 2014 (the "Lease/Option Agreement"); and

WHEREAS, the Tenant has an option to purchase the property owned by the Landlord and located at 212 Canco Road, Portland Maine (described as the "Property" as such term is defined in Paragraph 29 of the Lease/Option Agreement) during the option period beginning on March 1, 2017 and ending on October 31, 2018, (the "Original Option Period"); and

WHEREAS, the Tenant wishes to consolidate its real estate holdings and therefore, has requested that the Landlord allow the Tenant to exercise its option to purchase and close on its acquisition of the Property during the period beginning January 1, 2016 and ending on March 1, 2016 (the "Acquisition Period"); and

WHEREAS, the Landlord is willing to accommodate the Tenant's request to close its purchase of the Property during the Acquisition Period upon the terms and conditions set forth below;

NOW THEREFORE, in consideration of ONE DOLLAR and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree to amend the Lease/Option Agreement as follows:

1. Delete Exhibit B, Paragraph 29 subparagraph 3 of the Lease/Option Agreement in its entirety and replace it with the following:

"3. Term of Option and Exercise of Option: The Tenant hereby exercises its option to purchase the Property,

a. As long as the Tenant is not in default of either of the Tenant leases with the Landlord described below and as long as the Tenant is then leasing both leaseholds described below, the Tenant shall have the right to purchase the Property during the Acquisition Period. The Tenant shall give the Landlord at least fourteen (14) days prior notice of its designation of the specific closing date during the Acquisition Period, time being of the essence.
b. As a material inducement to Landlord to accommodate the Tenant's request to close the Property during the Acquisition Period; and, in consideration of the rent loss the Landlord will incur by agreeing to close the Property transaction earlier than originally contemplated, the Tenant will pay the Landlord One Hundred Fifty Thousand Dollars ($150,000) as a Rent Share (as that term is defined below), at

closing, in addition to the purchase price. The One Hundred Fifty Thousand Dollars ($150,000) represents a portion of the base rent that Webber Supply and Unified Technologies, the two independent tenants, would have otherwise paid to the Landlord for the period following the closing date and ending at the beginning of the Tenant's Original Option Period (the "Rent Share.") (The Tenant shall keep all common area maintenance and property tax payments paid by the two independent tenants after the closing during the Rent Share period and thereafter.)

2. Delete Exhibit B, Paragraph 29 subparagraph 8 of the Lease/Option Agreement in its entirety and replace it with the following:

8.1 At the closing, title to the Property shall be conveyed by good and marketable title evidenced by Quitclaim Deed with Covenant (the "Deed"), and shall be free of liens , but subject to other encumbrances of record that in Tenant's commercially reasonable opinion do not materially and adversely impair the value of the Property. No leases shall encumber the property except for the leases identified in the Lease/Option to Amend. In the event Landlord is unable to convey title as aforesaid, Landlord shall be given a reasonable period of time, not to exceed sixty (60) days after receipt of written notice, in which Landlord shall elect whether to remedy any of the identified title defects at Landlord's sole expense. In the event that Landlord elects not to remedy any defects or if such defects cannot be corrected or remedied within said period, then Tenant may elect to (1) close this transaction notwithstanding said defects, or (2) terminate this Amendment, in which case all terms and conditions of the Lease/Option Agreement (other than Paragraph 29) shall remain in full force and effect.

8.2 Adjustments, prorations, closing costs.

i. Real estate taxes and any other assessments that may be due on the Property shall be prorated as of the date of the closing.

ii. The Maine real estate transfer tax shall be paid by Landlord and Tenant in accordance with 36 M.R.S.A., §4641-A.

iii. The recording fee for the deed of conveyance shall be paid for by Tenant.

iv. A portion of the purchase price shall be withheld at the closing by Tenant if required by 36 M.R.S.A. § 5250-A.

8.3 Landlord represents and warrants to Tenant that to its knowledge, the following are true as of the date of this Agreement and will be true as of the closing:

i. There are no outstanding pending or threatened liens, claims, rights of first refusal to purchase, or licenses against or affecting the Property.

ii. All outstanding bills and/or accounts payable concerning the Property are either paid or will be paid prior to or at the time of closing.

iii. The only leases affecting the Property are the leases identified in the Lease/Option Agreement. Landlord has provided Tenant with copies of all leases and all amendments and extensions thereto.

8.4 Conditions Precedent. Tenant's obligation to close hereunder is subject to Tenant's full and complete satisfaction with all of the following:

i. Except for changes in the condition of the Property caused by Tenant or its agents, there shall have been no material adverse change in the condition of the Property occurring after the conclusion of Tenant's inspections under subparagraph 7 above, and the Property shall be substantially in the same condition as they were at the time of the inspections;

ii. Title to the Property shall be in compliance with subparagraph 8.1 above; and

iii. As of the date hereof, and as of the closing date, all of Landlord's representations and warranties shall be true and correct in all material respects, and

iv. If the conditions described in subsections (i) through (iii) above are not satisfied as of the dates specified, or if no date is specified, by the closing date, then Tenant may elect to (1) close this transaction notwithstanding said defects, or (2) terminate this Amendment, in which case all terms and conditions of the Lease/Option Agreement , other than this Paragraph 29, shall remain in full force and effect.

8.5 The Landlord represents that it has engaged Thomas Dunham of NAI The Dunham Group as its broker in this transaction (the"Broker") The Broker shall be compensated solely by the Landlord pursuant to its agreement with the Broker. Except as disclosed above by the Landlord, Landlord and Tenant each represents and warrants that neither has dealt with a real estate broker in connection with this transaction. Landlord and Tenant agree to indemnify, defend, and hold the other harmless from any claims made by any broker should the indemnifying party's representation in this paragraph be false. The foregoing indemnities shall include reasonable legal fees and costs incurred in defense against any such claim, and shall survive closing.

3. The Landlord and Tenant each reaffirm and ratify the Lease/Option Agreement and all terms and conditions of the Lease/Option Agreement, including all defined terms, except as specifically amended by this First Amendment shall have the same meaning and shall remain in full force and effect. No covenant or condition of the Lease/Option Agreement shall be deemed waived by any action or non-action in the past.

4. The terms and conditions set forth in Exhibit B, Paragraph 29, of the Lease/Option Agreement as amended shall constitute all of the terms and conditions of the purchase and sale and shall constitute a binding Purchase and Sale Agreement between the parties.

DISCLAIMER: THIS IS A LEGAL DOCUMENT, IF NOT FULLY UNDERSTOOD, CONSULT AN ATTORNEY.

IN WITNESS WHEREOF, the said parties hereunto set their hands and seals this ___ day of November, 2015.

TENANT:	LANDLORD:
City of Portland Legal Name of Tenant	212 Canco Realty LLC Legal Name of Landlord
By Signature	By Signature
By Jon P. Jennings, Its City Manager	By David L. Small, Owners' representative
Witness to Tenant	Witness to Landlord

Approved as to form:

Corporation Counsel's Office

Approved as to funds:

Finance Department

COMMERCIAL LEASE (NET LEASE)
WITH OPTION TO PURCHASE

1. PARTIES

212 Canco Realty LLC, a Maine limited liability company, with a mailing address of 212 Canco Road, Portland, ME 04103 ("LANDLORD"), hereby leases to the City of Portland, Maine, a Maine municipality with a mailing address of 389 Congress St., Portland, Maine Attn: Corporation Counsel ("TENANT"), and TENANT hereby leases from LANDLORD the following described premises.

2. LEASED PREMISES

The leased premises are deemed to contain 12,170 square feet of warehouse space, another 5,211square feet of warehouse/mixed use and shared loading dock space, and 2,000 square feet of second floor office space (a total of 19,381 square feet), all as shown on the attached Exhibit A. The leased premises are located at 212 Canco Road, Portland, Maine. Together with the right to use, in common with others entitled thereto, the hallways and stairways necessary for access to the leased premises. TENANT shall also have the right to use, in common with others, 8 to 10 parking spaces at the rear of the building in areas designated by LANDLORD. Although the parties acknowledge that there are only 8 to 10 available parking spaces to accommodate TENANT's parking needs, the TENANT is granted the right to develop additional parking at the 212 Canco Road, Portland, Maine facility by improving, at TENANT's sole cost and expense, the rear yard area behind the building. If TENANT elects to develop said additional parking, it will do so in compliance with all applicable zoning and land use requirements, laws and ordinances. The leased premises are accepted in "as is" condition except if specifically set forth to the contrary in this Lease. TENANT acknowledges that: a) LANDLORD has made no representations and TENANT is not relying on any representations about the leased premises, their suitability for any particular use and/or the physical condition thereof; and b) that TENANT has conducted its own due diligence inquiries with respect to the leased premises and is satisfied with the results thereof. The shared loading dock space shall be used by the TENANT in common with other persons and other tenants as designated by LANDLORD, fully in accordance and compliance with the reasonable rules and regulations issued by LANDLORD or its building manager from time to time and the TENANT covenants to comply with such rules and regulations.

3. TERM

The term of this Lease shall be until November 1, 2018, unless sooner terminated as herein provided, commencing on April 1, 2014 (the "Commencement Date") provided however, the Commencement Date for the 2,000 square feet of second floor office space shall be the later of July 1, 2014."). And however, if by November 1, 2018 TENANT has exercised the right to purchase pursuant to the Option which is part of this agreement, then the term of this Lease shall be continued until the leased premises have been conveyed to the TENANT pursuant to said Option.

4. RENT

TENANT shall pay to LANDLORD base rent at the rate of Five Dollars Fifty Cents ($5.50) NNN per square foot for the 2,000 square feet of second floor office space and One Dollar Sixty Cents ($1.60) NNN per square foot for the remaining 17,381 square feet of wharehouse space and warehouse/mixed use and shared loading dock space as shown on the attached Exhibit A in the annual amount of Thirty-Eight Thousand Eight Hundred and Nine Dollars and Sixty Cents ($38,809.60) payable in advance in equal monthly installments in the amount of Three Thousand Two Hundred Thirty-Four Dollars and Thirteen Cents ($3,234.13) on the first day of each month during the term without deduction or setoff, said rent to be prorated for portions of a calendar month at the beginning or end of said term, all payments to be made to LANDLORD or to such agent and at such place as LANDLORD shall from time to time in writing designate; provided, however, that TENANT shall pay the first month's rent and the last month's rent contemporaneously with the execution of this Lease. If TENANT does not pay base rent, supplemental and additional rents, or other fees and charges when due pursuant to the term of this Lease, then LANDLORD, in its sole discretion, may charge, in addition to any other remedies it may have, a late charge for each month or part thereof that TENANT fails to pay the amount due after the due date. The late charge shall be equal to four percent (4%) of the amount due LANDLORD each month in addition to the rent then due. Notwithstanding the above, until the 2,000 square feet of second floor office space becomes a portion of the leased premises, the annual base rent shall be Twenty-Seven Thousand Eight Hundred and Nine Dollars and Sixty Cents ($27,809.60) and the monthly base rent shall be Two Thousand Three Hundred Seventeen Dollars and Forty-Seven Cents ($2,317.47) payable without deduction or off set as set forth above.

5. RENT ADJUSTMENT

A. TAXES

Commencing on the Commencement Date, TENANT will pay to LANDLORD as additional rent hereunder, in accordance with subparagraph B of this Article, an amount deemed to be 25.9% of all real estate taxes on the land and buildings of which the leased premises are a part in each year of the term of this Lease or any extension or renewal thereof and proportionately for any part of a fiscal year in which this Lease commences or ends. Notwithstanding the above, if and when the 2,000 square feet of second floor office space becomes a portion of the leased premises, the additional rent percentage shall be deemed to be 28.9% for the remaining term of this Lease. For purposes of this calculation, the building is deemed to contain 67,000 square feet. If LANDLORD obtains an abatement of any such excess real estate tax, a proportionate share of such abatement, less the reasonable fees and costs incurred in obtaining the same, if any, shall be refunded to TENANT.

B. OPERATING COSTS

Commencing on the Commencement Date, TENANT shall pay to LANDLORD as additional rent hereunder in accordance with subparagraph B of this Article, an amount deemed to be 25.9% of all operating expenses. Notwithstanding the above, if and when the 2,000 square feet of second floor office space becomes a portion of the leased premises, the additional rent percentage shall be deemed to be 28.9% for the remaining term of this Lease. For purposes of this calculation, the building is deemed to contain 67,000 square feet. Operating expenses are defined for the purposes of this agreement as operating expenses per annum of the building and its appurtenances and all exterior areas, yards, plazas, sidewalks, landscaping, parking areas, and the like then (i.e. as of said last day of the calendar year concerned) located outside of the building but related thereto and the parcels of land on which they are located (said building appurtenances, exterior areas, and land hereinafter referred to in total as the "building"). Operating expenses include, but are not limited to: (i) all costs of furnishing electricity, heat, air-conditioning, water and sewer and other utility services and facilities to the leased premises and the building; (ii) all costs of any insurance carried by LANDLORD related to the building; (iii) all costs for common area cleaning and janitorial services; (iv) all costs of maintaining the building including the operation and repair of heating and air conditioning equipment servicing the leased premises and the building and any other common building equipment, and all repairs, improvements and replacements required by law or necessary to keep the building in a well maintained condition; (v) all costs of snow and ice removal, landscaping and grounds care; (vi) all other costs of the management of the building, including, without limitation property management fees; and (vii) all other reasonable costs relating directly to the ownership, operation, maintenance and management of the building by LANDLORD. TENANT's share of operating expenses shall be prorated should this Lease be in effect with respect to only a portion of any calendar year.

LANDLORD estimates that taxes and operating costs during the first year of the term of this Lease shall be approximately Two Dollars and ~~Twenty~~ thirty-four Cents (~~$2.20~~ 2.34) per square foot. During each year of the term of this Lease, TENANT shall make monthly estimated payments to LANDLORD, as additional rent for TENANT'S share of real estate taxes and operating expenses for the then current year. Said estimated monthly payments shall be made along with base rent payments and shall be equal to one twelfth (1/12) of TENANT'S annualized share of LANDLORD'S real estate taxes and operating expenses for the current year. Within one hundred and twenty (120) days after the end of each calendar year, LANDLORD shall deliver to TENANT a statement showing the amount of such real estate taxes and operating expenses also showing TENANT'S share of the same. In the event that TENANT does not object to such statement in writing within ninety (90) days of receipt of same, such statement shall be deemed accurate. Upon written request by TENANT to LANDLORD made within said ninety (90) day period, LANDLORD shall provide to TENANT reasonable supporting documentation for any item of expense on such statement objected to by TENANT. TENANT shall, within thirty (30) days after such delivery, pay TENANT'S share to LANDLORD, as additional rent, less any estimated payments. If the estimated payments exceed TENANT'S share, then the excess shall be applied to the next year's monthly payments for estimated increases.

6. UTILITIES

LANDLORD agrees to furnish all utilities as described in section 5.B above. LANDLORD agrees to furnish water for ordinary drinking, cleaning, lavatory and toilet facilities and reasonable heat and air conditioning, if installed as part of the structure of the building so as to maintain the leased premises and common areas of the building at comfortable levels during normal business hours on regular business days of the heating and air condition seasons of each year, to furnish elevator service, if installed as a part of the structure of the building, and to light passageways and stairways during business hours, and to furnish such common area cleaning service as is customary in similar building in said city or town, all subject to interruption due to any accident, to the making of repairs, alterations or improvements, to labor difficulties, to trouble in obtaining fuel, electricity, service, or supplies from the sources from which they are usually obtained for said building, or to any cause beyond LANDLORD'S control.

LANDLORD shall have no obligation to provide utilities or equipment other than the utilities and equipment within the leased premises as of the commencement date of this Lease. In the event TENANT requires additional utilities or equipment, the installation and maintenance thereof shall be TENANT'S sole obligation, provided that such installation shall be subject to the written consent of LANDLORD.

7. USE OF LEASED PREMISES

TENANT may use the leased premises for any purpose or use permitted by law and local ordinance. If such use increases the cost of LANDLORD'S insurance on the building, TENANT shall pay, as additional rent hereunder, any such increase. Neither LANDLORD nor LANDLORD'S BROKER have made any representations to TENANT regarding the uses of the leased premises allowed under applicable law, nor TENANT acknowledges and agrees that TENANT assumes all responsibility and risk for investigating the same.

8. COMPLIANCE WITH LAWS

TENANT agrees to conform to the following provisions during the entire term of this Lease: (i) TENANT shall not injure or deface the leased premises or building; (ii) No auction sale, inflammable fluids, chemicals, nuisance, objectionable noise or odor shall be permitted on the leased premises; (iii) TENANT shall not permit the use of the leased premises for any purpose other than set forth herein or any use thereof which is improper, offensive, contrary to law or ordinance, or liable to invalidate or increase the premiums for any insurance on the building or its contents or liable to render necessary any alterations or additions to the building; and (iv) TENANT shall not obstruct in any manner any portion of the building not hereby demised or the sidewalks or approaches to said building or any inside or outside windows or doors. TENANT shall observe and comply with all codes, ordinances, laws, regulations and other governmental or quasi-governmental orders or inspections affecting TENANT, the leased premises and/or TENANT's use and all reasonable rules and security regulations now or hereafter made by LANDLORD for the care and use of the leased premises, the building, its facilities and approaches. TENANT agrees to keep the leased premises equipped with all safety appliances and make all accessibility alterations, improvements or installations to the building, and/or accommodations in TENANTS use thereof required by law or any public authority as a result of TENANT'S use or occupancy of the premises or TENANT'S alterations or additions thereto, which alterations, improvements and installations shall be subject to LANDLORD'S consent as provided in this Lease.

9. MAINTENANCE

A. TENANT'S OBLIGATIONS

TENANT acknowledges by entry thereupon that the leased premises are in good and satisfactory order, repair and condition, and covenants during said term and further time as TENANT holds any part of said premises to keep the leased premises (including without limitation windows, doors and all systems serving exclusively the leased premises) in as good order, repair and condition as the same are in at the commencement of said term, or may be put in thereafter, damage by fire or unavoidable casualty and reasonable use and wear only excepted. Notwithstanding anything to the contrary herein, if TENANT has leased ground floor space, TENANT covenants to keep all plate glass windows in good repair and condition and to carry adequate insurance to provide for the replacement of any such plate glass which is damaged or destroyed.

B. LANDLORD'S OBLIGATIONS

LANDLORD agrees to maintain and repair the roof, exterior walls and structure of the building of which the leased premises are a part, building systems not exclusively serving the leased premises and the common areas, in the same condition as they are at the commencement of the term or as it may be put in during the term of this Lease, reasonable wear and tear, damage by fire and other casualty only excepted, unless such maintenance or repair is made necessary by fault or neglect of TENANT or the employees, contractors, agents or invitees of TENANT, in which case such maintenance or repair shall be at the expense of TENANT and TENANT shall pay all costs therefor.

10. ALTERATIONS-ADDITIONS

TENANT shall not make any alterations or additions, or permit the making of any holes in any part of said building (except for nail holes for hanging art), or paint or place any signs, drapes, curtains, shades, awnings, aerials or flagpoles or the like, or permit anyone except TENANT to use any part of the leased premises for desk space of for mailing privileges without on each occasion obtaining prior written consent of LANDLORD. TENANT may install signs of the following dimensions in the following locations, which signs shall be installed at TENANT'S sole expense, in compliance with all applicable laws and ordinances, and subject to LANDLORD's prior approval, which shall not be unreasonably withheld. TENANT shall not suffer or permit any lien of any nature or description to be placed against the building, the leased premises or any portion thereof, and in the case of any such lien attaching to immediately pay and remove the same; this provision shall not be interpreted as meaning that TENANT has any authority or power to permit any lien of any nature or description to attach or to be placed upon LANDLORD'S title or interest in the building, the leased premises, or any portion thereof.

11. ASSIGNMENT-SUBLEASING

TENANT shall not by operation of law or otherwise, assign, mortgage or encumber this Lease, or sublet or permit the leased premises or any part thereof to be used by others, without LANDLORD'S prior express written consent in each instance (cross out if not applicable). In any case where LANDLORD shall consent to such assignment or subletting, TENANT named herein and any guarantor of this Lease shall remain fully liable for the obligations of TENANT hereunder, including, without limitation, the obligation to pay the rent and other amounts provided under this Lease. For purposes of this Lease, the sale of controlling interest in the stock of a corporate TENANT, sale of the controlling membership interest in an LLC or similar entity, or the change of a general partner of a partnership TENANT shall constitute an assignment of this Lease.

12. SUBORDINATION AND QUIET ENJOYMENT

This Lease automatically shall be subject and subordinate to any and all mortgages, deeds of trust and other instruments in the nature of a mortgage, that is now or at any time hereafter a lien or liens on the property of which the leased premises are a part and TENANT shall, within ten (10) days after they are requested, promptly execute and deliver such written instruments as shall be necessary to show the subordination of this Lease to said mortgages, deeds of trust or other such instruments in the nature of a mortgage. Provided TENANT performs all of its obligations under this Lease, TENANT shall be entitled to the quiet enjoyment of the leased premises; provided TENANT covenants that it holds the leased premises subject to all easements, covenants and other matters of record, and agrees to abide by same to the extent the same affect the leased premises. TENANT agrees to sign within ten (10) days after they are requested, such estoppel certificates as are requested by LANDLORD or LANDLORD's lender.

13. LANDLORD'S ACCESS

LANDLORD or agents of LANDLORD may, at all reasonable times during the term of this Lease, enter the leased premises to examine the leased premises and, if LANDLORD shall so elect, to make any repairs or additions LANDLORD may deem necessary and, at TENANT'S expense, to remove any alterations, additions, signs, drapes, curtains, shades, awnings, aerials or flagpoles, or the like, not consented to in writing.

14. INDEMNIFICATION AND LIABILITY

Subject to and limited by the defenses and immunities afforded by the Maine Tort Claims Act and other applicable law, TENANT will defend and, except to the extent caused solely by the negligence or willful conduct of LANDLORD, will indemnify LANDLORD and its employees, agents and management company, and save them harmless from any and all injury, loss, claim, damage, liability and expense (including reasonable attorney's fees) in connection with the loss of life, personal injury or damage to property or business, arising from, related to, or in connection with the occupancy or use by TENANT of the leased premises or any part of LANDLORD'S property or the building, or occasioned wholly or in part by any act or omission of TENANT, its contractors, subcontractors, subtenants, licensees or concessionaires, or its or their respective agents, servants or employees while on or about the leased premises. TENANT shall also pay LANDLORD'S expenses, including reasonable attorney's fees, incurred by LANDLORD in successfully enforcing any obligation, covenant or agreement of this Lease or resulting from TENANT's breach of any provisions of this Lease (including without limitation any attorneys' fees incurred to monitor or intervene in any bankruptcy proceeding involving TENANT), or any document, settlement or other agreements related to this Lease. The provisions of this Article shall survive the termination or earlier expiration of the term of this Lease. Without limitation of any other provision herein, neither LANDLORD, its employees, agents nor management company shall be liable for, and TENANT hereby releases them from all claims for, any injuries to any person or damages to property or business sustained by TENANT or any person claiming through TENANT due to the building or any part thereof (including the premises), or any appurtenances thereof, being in need of repair or due to the happening of any accident in or about the building or the leased premises or due to any act or negligence of TENANT or of any employee or visitor of TENANT. Without limitation, this provision shall apply to injuries and damage caused by nature, rain, snow, ice, wind, frost, water, steam, gas or odors in any form or by the bursting or leaking of windows, doors, walls, ceilings, floors, pipes, gutters, or other fixtures; and to damage caused to fixtures, furniture, equipment and the like situated at the leased premises, whether owned by TENANT or others. Notwithstanding the foregoing, all obligations of indemnification

herein by TENANT to the Landlord are subject to, and limited by, the limitation of liability, defenses and immunities available to the TENANT under the Maine Tort Claims Act (14 M.R.S.A. § 8101 et seq.) (as it may be amended from time to time) or under any other applicable law. Landlord shall give the TENANT prompt notice of any matter as to which it may seek indemnity hereunder, and shall not settle any such matter without the City's consent.

15. TENANT'S LIABILITY INSURANCE

LANDLORD acknowledges having been informed by TENANT that TENANT self-insures for the risks generally that would be covered by commercial general liability insurance, in connection with the Maine Municipal Associations 'Risk Management Pool."

16. FIRE CASUALTY-EMINENT DOMAIN

Should a substantial portion of the leased premises, or of the property of which they are a part, be damaged by fire or other casualty, or be taken by eminent domain, LANDLORD may elect to terminate this Lease. When such fire, casualty, or taking renders the leased premises unfit for use and occupation and LANDLORD does not so elect to terminate this Lease, a just and proportionate abatement of rent shall be made until the leased premises, or in the case of a partial taking what may remain thereof, shall have been put in proper condition for use and occupation. LANDLORD reserves and excepts all rights to damages to the leased premises and building and the leasehold hereby created, accrued or subsequently accruing by reason of anything lawfully done in pursuance of any public, or other, authority; and by way of confirmation, TENANT grants to LANDLORD all TENANT'S rights to such damages and covenants to execute and deliver such further instruments of assignment thereof as LANDLORD may from time to time request. LANDLORD shall give TENANT notice of its decision to terminate this Lease or restore the premises within ninety (90) days after any occurrence giving rise to LANDLORD'S right to so terminate or restore. Notwithstanding anything to the contrary contained herein, LANDLORD'S obligation to put the leased premises or the building in proper condition for use and occupation shall be limited to the amount of the proceeds from any insurance policy or policies or of damages which accrue by reason of any taking by a public or other authority, which are available to LANDLORD for such use.

17. DEFAULT AND BANKRUPTCY

In the event that:

(a) TENANT shall default in the payment of any installment of rent or other sum herein specified when due which default is not corrected within seven (7) days after written notice thereof; or

(b) TENANT shall default in the observance or performance of any other of the TENANT'S covenants, agreements, or obligations hereunder and such default shall not be corrected within ten (10) days after written notice thereof; or

(c) The leasehold hereby created shall be taken on execution, or by other process of law; or

(d) Any assignment shall be made of TENANT'S property for the benefit of creditors, or a receiver, guardian, conservator trustee in bankruptcy or similar officer shall be appointed by a court of competent jurisdiction to take charge of all or any part of TENANT'S property, or a petition is filed by TENANT under any bankruptcy, insolvency or other debtor relief law,

then and in any of said cases (notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance), LANDLORD shall be entitled to all remedies available to LANDLORD at law and equity including without limitation, the remedy of forcible entry and detainer, and LANDLORD lawfully may, immediately or at any time thereafter, and without demand or notice, mail a notice of termination to TENANT, or, if permitted by law, enter into and upon the leased premises or any part thereof in the name of the whole and repossess the same as of its former estate, and expel TENANT and those claiming through or under it and remove it or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, and upon such mailing or entry as aforesaid, this Lease shall terminate; and TENANT covenants and agrees, notwithstanding any entry or re-entry by LANDLORD, whether by summary proceedings, termination, or otherwise, that TENANT shall, as of the date of such termination, immediately be liable for and pay to LANDLORD the entire unpaid rental and all other balances due under this Lease for the remainder of the term. In addition, TENANT agrees to pay to LANDLORD, as damages for any above described breach, all costs of reletting the leased premises including real estate commissions and costs of renovating the premises to suit any new tenant, and TENANT agrees to reimburse LANDLORD for all attorneys' and paralegals' fees incurred by LANDLORD in connection with a TENANT default, including without limitation such fees incurred in connection with a bankruptcy proceeding.

18. NOTICE

Any notice from LANDLORD to TENANT relating to the leased premises or to the occupancy thereof, shall be deemed duly served, upon mailing to: City of Portland Corporation Counsel, 389 Congress St., Portland, ME 04101-3509 , certified mail, return receipt requested, postage prepaid,. Such notice shall be deemed served on the date postmarked, and any time period in this Lease running from the date of notice shall commence on the date of postmark. Any notice from TENANT to LANDLORD relating to the leased premises or to the occupancy thereof, shall be deemed duly served, if mailed to LANDLORD by registered or certified mail, return receipt requested, postage prepaid, addressed to LANDLORD at LANDLORD'S address set forth in Article 1, or at such other address as LANDLORD may from time to time advise in writing.

19. SURRENDER

IF TENANT has not exercised its option to purchase and closed on such purchase (as set forth in Paragraph 29 Addendum), or if this Lease terminates for any other reason prior to Tenant exercising its option to purchase, TENANT, shall at the expiration or other termination of this Lease, peaceably yield up the leased premises and all additions, alterations, fixtures (including those installed by TENANT), and improvements thereto in good order, repair and condition, damage by fire, unavoidable casualty, and reasonable wear and tear only excepted, first moving all goods and effects not attached to the leased premises, repairing all damage caused by such removal, and leaving the leased premises clean and tenantable. If LANDLORD in writing permits TENANT to leave any such goods and chattels at the leased premises, and TENANT does so, TENANT shall have no further claims and rights in such goods and chattels as against LANDLORD or those claiming by, through or under LANDLORD, and TENANT shall be deemed to have conveyed such items to LANDLORD unless LANDLORD elects to reject acceptance of the same.

20. HAZARDOUS MATERIALS

TENANT covenants and agrees that, with respect to any hazardous, toxic or special wastes, materials or substances including asbestos, waste oil and petroleum products (the "Hazardous Materials") which TENANT, its agents or employees, may use, handle, store or generate in the conduct of its business at the leased premises TENANT will: (i) comply with all applicable laws, ordinances and regulations which relate to the treatment, storage, transportation and handling of the Hazardous Materials (ii) that TENANT will in no event permit or cause any disposal of Hazardous Materials in, on or about the leased premises and in particular will not deposit any Hazardous Materials in, on or about the floor or in any drainage system or in the trash containers which are customarily used for the disposal of solid waste; (iii) that TENANT will with advance notice and at all reasonable times permit LANDLORD or its agents or employees to enter the leased premises to inspect the same for compliance with the terms of this paragraph and will further provide upon five (5) days notice from LANDLORD copies of all records which TENANT may be obligated by federal, state and/or local law to obtain and keep; (iv) that upon termination of this Lease, TENANT will at its expense, remove all Hazardous Materials, which came to exist on, in, or under the leased premises during the term of this Lease or any extensions thereof, from the leased premises and comply with applicable local, state and federal laws as the same may be amended from time to time; and (v) TENANT further agrees to deliver the leased premises to LANDLORD at the termination of this Lease free of all Hazardous Materials which came to exists on, in, or under the leased premises during the term of this Lease or any extensions thereof. The terms used in this paragraph shall include, without limitation, all substances, materials, etc., designated by such terms under any laws, ordinances or regulations, whether federal state or local.

21. LIMITATION OF LIABILITY

TENANT agrees to look solely to LANDLORD'S interest in the building for recovery of any judgment from LANDLORD or any of LANDLORD's partners, managers, or owners, it being agreed that LANDLORD and any other such party is not personally liable for any such judgment. The provision contained in the foregoing sentence shall not limit any right that TENANT might otherwise have to obtain an injunctive relief against LANDLORD or LANDLORD'S successors in interest, or any other action not involving the personal liability of LANDLORD and any other such party. Under no circumstances shall LANDLORD ever be liable for lost profits, indirect or consequential damages.

22. LANDLORD DEFAULT

LANDLORD shall in no event be in default in the performance of any of its obligations hereunder unless and until LANDLORD shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by TENANT to LANDLORD properly specifying wherein LANDLORD has failed to perform any such obligation. Further, if the holder of the mortgage on the building of which the leased premises are a part notifies TENANT that such holder has taken over LANDLORD'S rights under this Lease, TENANT shall not assert any right to deduct the cost of repairs or any monetary claim against lender or holder from rent thereafter due and accruing, but shall look solely to LANDLORD for satisfaction of such claim.

23. WAIVER OF RIGHTS

No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition or duty of the other, shall be construed as a consent or waiver to or of any other breach of the same or other covenant, condition or duty.

24. SUCCESSORS AND ASSIGNS

The covenants and agreements of LANDLORD and TENANT shall run with the land and be binding upon and inure to the benefit of them and their respective heirs, executors, administrators, successors and assigns, but no covenant or agreement of LANDLORD, express or implied, shall be binding upon any person except for defaults occurring during such person's period of ownership nor binding individually upon any fiduciary, any shareholder or any beneficiary under any trust.

25. HOLDOVER

If TENANT fails to vacate the leased premises at the termination of this Lease and has not exercised its option to purchase the 212 Canco Road premises, then the terms of this Lease shall be applicable during said holdover period, except for base rent, which shall be increased to two (2) times the then-current base rent for the period just preceding such termination; but this provision shall not be interpreted as consent or permission by LANDLORD for TENANT to holdover at the termination of this Lease and the terms of this holdover provision shall not preclude LANDLORD from recovering any other damages which it incurs as a result of TENANT'S failure to vacate the leased premises at the termination of this Lease.

26. JURY TRIAL WAIVER

NOTWITHSTANDING ANYTHING IN THIS LEASE TO THE CONTRARY, TENANT AND LANDLORD, FOR THEMSELVES AND THEIR SUCCESSORS AND ASSIGNS, HEREBY KNOWINGLY, WILLINGLY, AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS TENANT AND/OR LANDLORD MAY HAVE TO A TRIAL BY JURY IN ANY FORCIBLE ENTRY AND DETAINER ("FED") ACTION OR PROCEEDING BROUGHT BY LANDLORD OR LANDLORD'S SUCCESSORS AND/OR ASSIGNS BASED UPON OR RELATED TO THE PROVISIONS OF THIS LEASE. LANDLORD AND TENANT HEREBY AGREE THAT ANY SUCH FED ACTION OR PROCEEDING SHALL BE HEARD BEFORE A SINGLE JUDGE OF THE APPROPRIATE DISTRICT COURT OR A SINGLE JUDGE OF THE APPROPRIATE SUPERIOR COURT, OR A FEDERAL DISTRICT COURT JUDGE SITTING IN THE DISTRICT OF MAINE.

27. MISCELLANEOUS If TENANT is more than one person or party, TENANT'S obligations shall be joint and several. Unless repugnant to the context, "LANDLORD" and "TENANT" mean the person or persons, natural or corporate, named above as LANDLORD and TENANT respectively, and their respective heirs, executors, administrators, successors and assigns. LANDLORD and TENANT agree that this Lease shall not be recordable but each party hereto agrees, on request of the other, to execute a Memorandum of Lease in recordable form and mutually satisfactory to the parties. If any provision of this Lease or its application to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease and the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. The submission of this Lease or a summary of some or all of its provisions for examination by TENANT does not constitute a reservation of or option for the premises or an offer to lease said premises, and this document shall become effective and binding only upon the execution and delivery hereof by both LANDLORD and TENANT. Employees or agents of LANDLORD have no authority to make or agree to make a lease or any other agreement or undertaking in connection herewith. All negotiations, considerations, representations and understandings between LANDLORD and TENANT are incorporated herein and no prior agreements or understandings, written or oral, shall be effective for any purpose. No provision of this Lease may be modified or altered except by agreement in writing between LANDLORD and TENANT, and no act or omission of any employee or agent of LANDLORD shall alter, change, or modify any of the provisions hereof. Time is of the essence of this agreement. This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of Maine. The headings herein contained are for convenience only, and shall not be considered a part of this Lease.

28. BROKERAGE TENANT warrants and represents to LANDLORD that it has not dealt with any broker, finder or similar person concerning the leasing of the leased premises, and agrees to defend and indemnify LANDLORD against any claim from a broker or finder claiming by or through TENANT. LANDLORD warrants and represents to TENANT that it has not dealt with any broker, finder or similar person concerning the leasing of the leased premises other than The Boulos Company ("LANDLORD'S BROKER"). LANDLORD agrees to pay LANDLORD'S BROKER any commission due upon execution of this Lease, and in the event of any brokerage claims against TENANT by LANDLORD'S BROKER, LANDLORD agrees to defend the same and indemnify TENANT against any such claim.

29. OPTION TO PURCHASE LANDLORD hereby grants TENANT as part of this lease agreement, the right and option to purchase all of the LANDLORD's real property at 212 Canco Road, on the terms and conditions set out in this paragraph 29 as further set forth in the attached continuation of paragraph 29 in Exhibit B, OPTION TO PURCHASE; and the terms and conditions therein are hereby incorporated herein.

DISCLAIMER: THIS IS A LEGAL DOCUMENT. IF NOT FULLY UNDERSTOOD, CONSULT AN ATTORNEY.

IN WITNESS WHEREOF, the said parties hereunto set their hands and seals this 28th day of March, 2014.

TENANT:	LANDLORD:
City of Portland, Maine	212 Canco Realty LLC
Legal Name of Tenant	Legal Name of Landlord
Signature	Signature
Mark H. Rees, City Manager	David L. Small, Manager
NAME/TITLE	NAME/TITLE
Witness to Tenant	Witness for Landlord

Approved as to form:

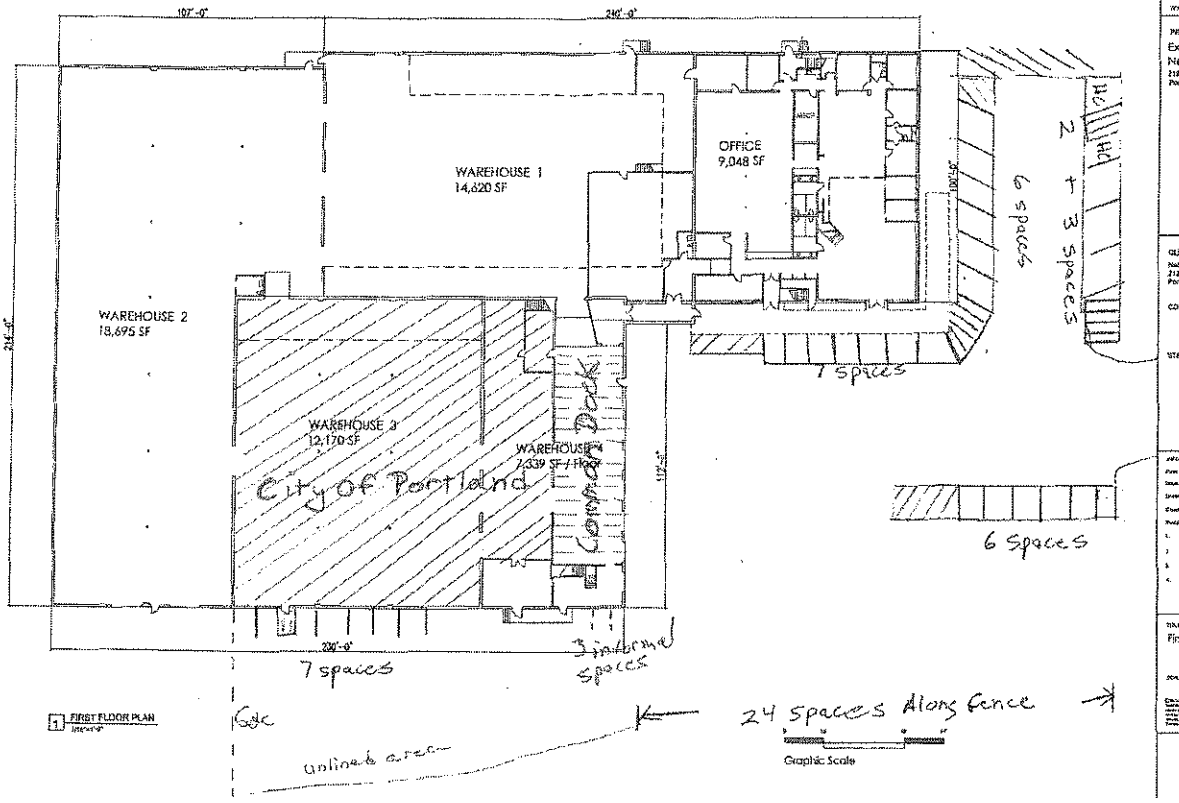
Corporation Counsel's Office

Approved as to funds:

Finance Department

O:\OFFICE\LARRY\misc real docs\212 Canco\212 Canco City of Portland Lease new space.DOC

Exhibit A
Page 1 Ground Floor Only



Graham Architects

PROJECT
Existing Conditions
Nelson and Small

04.14.13

CLIENT
Nelson and Small

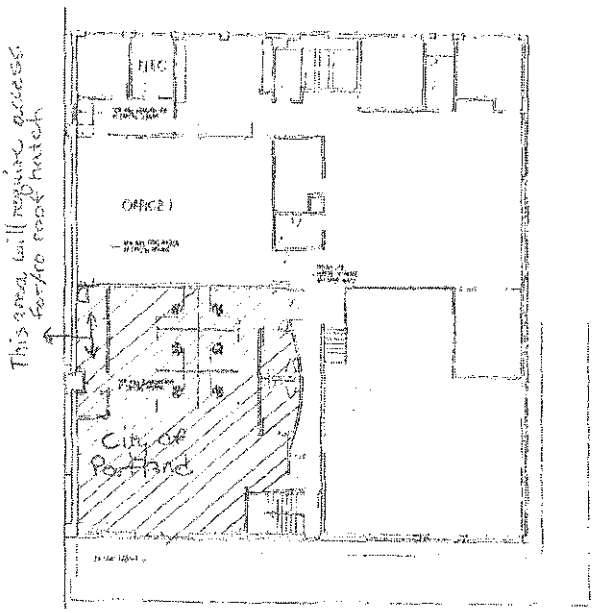
CONTRACTOR

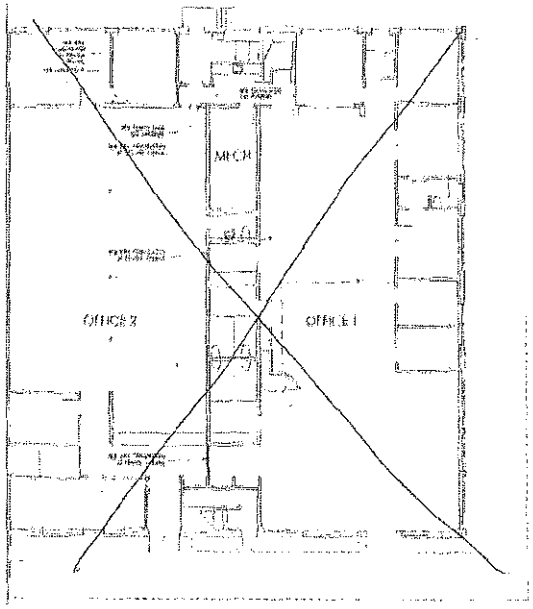
STRUCTURAL ENGINEER

TITLE
First Floor Plan

A101

Exhibit A
Page 2, Second Floor Office





Graham Architects

09.20.13

EXHIBIT B, contains Paragraph 29 of the
COMMERCIAL LEASE (NET LEASE)
WITH OPTION TO PURCHASE

29. OPTION TO PURCHASE REAL ESTATE

The LANDLORD hereby grants to the TENANT, its successors and assigns, the exclusive option and right to purchase the premises owned by LANDLORD and located at 212 Canco Road, Portland, Cumberland County, Maine, Map 148, Block A, Lot 7 (the "Property"), more fully described in the deed recorded in the Cumberland County Registry of Deeds in Book 25041, Page 277, attached Exhibit A, subject to the following terms and conditions:

1. Purchase Price and Credit for Lease Payment. The purchase price for the premises shall be Two Million Nine Hundred Thousand Dollars ($2,900,000). The TENANT represents and warrants that it has the funds required to complete the purchase contemplated by this Option and that a purchase has been approved by all necessary parties and departments within the TENANT.

2. Use. LANDLORD understands that TENANT intends to use this property for municipal needs, but this option is not intended to limit the TENANT's use of this property.

3. Term of Option. As long as the TENANT is not in default of its leasehold obligations set forth below in both of the TENANT leases with LANDLORD described below and as long as the TENANT is then leasing both leaseholds described below, the TENANT may exercise its option to purchase at any time after March 1, 2017; but, no later than October 31, 2018, time being of the essence.

4. Existing Leases. There are now existing four leases of portions of the Property, and the parties expect there to be a fifth, as well; with their term dates, they are:

Tenant	Term start(s)	Term ends	Approx. Sq. Ft
Webber Supply*	7/1/2013	6/30/2018	20,268
Unified Technologies*	11/1/2013	10/31/2018	12,243
Nelson & Small	----	6/30/2014	---
City of Portland	10/1/2013	9/30/2014	18,695
City of Portland	3/1/2014	10/31/2018	19,381

*the above listed :Term ends" date for both the Webber Supply Lease and the Unified Technologies Lease are subject to TENANT extension options as well as LANDLORD early termination provisions.

a) As long as the TENANT is not in default of its lease hold obligations as set forth in both of the TENANT's leases with the LANDLORD, LANDLORD will cause the Nelson & Small lease as it relates to the existing ground floor and second floor office space to terminate not later than June 30, 2014.

b) As long as the TENANT is not in default of its leasehold obligations as set forth in both of the TENANT's leases with LANDLORD described below and as long as the TENANT is then leasing both leaseholds described above, LANDLORD will renew both of the TENANT's leases, if requested by the TENANT, to extend the term until the date when LANDLORD conveys the Property to the TENANT. LANDLORD has provided the TENANT with copies of the Webber Supply lease and Unified Technologies lease, prior to the execution of second TENANT Lease of which this option to purchase is a part. At closing, the TENANT will assume the LANDLORD's interest in and obligations under said leases.

c) As long as the TENANT is not in default of its leasehold obligations set forth in both of the TENANT's leases with LANDLORD described below and as long as the TENANT is then leasing both leaseholds described below, LANDLORD agrees not to lease any portion of the Premises to any party (except to the TENANT) before October 31, 2018, unless TENANT does not exercise its right to lease such space when offered the right below to lease such empty space. Accordingly, LANDLORD will offer any space other then the spaces leased to the TENANT, as and if it becomes available, on the same terms and conditions as in the Lease to which this Option is attached except as to rent which shall be $4.00 per sq. ft. per year plus all CAMS, taxes and operating expenses, and TENANT shall exercise its right to lease said space within ten (10) days after such notice. If TENANT does not exercise its right to lease such space, LANDLORD shall have the right to lease such space to a third party. Also, LANDLORD will ensure that the entire building on the Property shall be in 'broom clean' condition upon the date when LANDLORD conveys the Property to the TENANT. That said, the sale will be "As Is" with all faults, and the LANDLORD makes no representations as to the condition of the Property.

d) Upon the execution of this Lease to TENANT, the TENANT and LANDLORD agree to amend the lease with the TENANT dated June 21, 2013 eliminating Tenant's right to terminate on 30 days' notice in Section 3. At the end of the current term of the June 21, 2013, lease (September 30, 2014) the TENANT shall have the right to extend the term of said lease such that the June 21, 2013 lease term ends on October 31, 2018.

5. Exercise of Option. This option to purchase may be exercised by the TENANT so long as it is a tenant in good standing under two different leases with LANDLORD, one dated June 21, 2013 and the other dated March ____, 2014, and both leases are then in full force and effect by giving written notice to LANDLORD by FEDEX or Certified U.S. Mail, return receipt requested, addressed as follows: 212 Canco Realty LLC, Attn: General Manager, 212 Canco Road, Portland, ME 04103, or by delivery in hand to the General Manager of 212 Canco Realty LLC and with a duplicate copy to Leonard M. Nelson, c/o Bernstein Shur, 100 Middle Street, PO Box 9729, Portland, ME 04104-5029.

6. Settlement. Following the exercise of this option to purchase, the closing shall be held within three (3) months of the receipt by LANDLORD of the written Notice of Exercise (the "Closing Period"), time being of the essence at a location and time mutually agreed upon by the parties. Payment of the purchase price shall be by certified bank check or by wire transfer of funds.

7. Inspection and Survey. During the term of the option to purchase, the TENANT, its successors and assigns shall have the right to enter the Property at all reasonable times with prior notice to LANDLORD for the purpose of conducting such inspections, surveys, wetlands, environmental and soils investigation and studies as it deems necessary. The TENANT shall assume all responsibility for such entry, inspections or investigations and shall hold LANDLORD harmless from any claims related to such entry, inspections or investigations.

8. Deed. At the Closing, LANDLORD shall deliver to the TENANT a duly executed and acknowledged Quitclaim with Covenant.

   LANDLORD shall pay its share of the real estate transfer tax, if any. The TENANT shall be responsible for the cost of recording the Deed.

9. "Put" in favor of Canco Realty. At any time between the date hereof and October 31, 2018, LANDLORD shall have the right to request the TENANT that it execute its $2.9 Million option to purchase the Property. In the event the TENANT does not exercise its option right within 90 days of the request, the TENANT's option to purchase the Property shall automatically terminate and be of no further force and effect. Exercise by the TENANT of its lease and option to purchase shall be accomplished by notifying LANDLORD pursuant to Paragraph 5 above.

10. Notices. Any notice under this Option shall be delivered or sent by Fed Ex or certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to Canco Realty, to:
212 Canco Realty LLC
Attn: General Manager
212 Canco Road
Portland, ME 04103

With copy to:
Leonard M. Nelson, Esq.
Bernstein Shur
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029

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

11. Execution and Recording. This option to purchase set forth in this paragraph 29 of the lease is a portion of the lease between LANDLORD and TENANT and may not be recorded. Upon the request of TENANT a Memorandum of Lease and Option shall be executed in a form eligible for recordation, and may be recorded at TENANT's expense at the Cumberland County Registry of Deeds.

12. Release of Option. Concurrently with this lease being executed, the TENANT shall execute and deliver to LANDLORD a written release, quitclaim deed or other instrument specified by LANDLORD, evidencing the non-exercise or termination of its option rights. The instrument shall be signed and acknowledged in a form eligible for recordation. LANDLORD's attorney shall hold said executed instrument in escrow and shall be entitled to release and record said instrument if a) the option to purchase is not exercised within the Exercise Period; or b) such earlier time as is set forth in Paragraph 9 above; or, c) if either of the two City Leases with Canco Realty described above terminates prior to the City's exercise of this Option; or, d) if the TENANT exercises its option and does not close within the Closing Period.

13. Binding Effect. This option to purchase shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

14. Assignment. This option to purchase may not be assigned by the City. Any purported assignment shall be void and in such event the TENANT's rights in this option to purchase shall terminate and be of no further force and effect.

15. Severability. If any provision of this option to purchase is found to be invalid or unenforceable, such finding shall not affect the validity or enforceability of any other provision hereof.

16. Compensation for Option. The City's entering into this Commercial Lease and performing its obligations set forth therein is hereby deemed to be, and include, partial consideration for this option to purchase. Other consideration includes the City's representation and warranty that it has the funds required to complete the purchase contemplated by this option to purchase and that a purchase has been approved by all necessary parties and Departments at the City.

17. Governing Law. This option to purchase shall be governed by and construed in accordance with the laws of the State of Maine.

EXHIBIT A

[Deed at Book 25041, Page 277]

Doc#: 24527 Bk:25041 Pg: 277

QUITCLAIM DEED

Leonard M. Nelson, Kenneth M. Nelson, and **Andrew J. Nelson**, holders of a one-third interest by virtue of a Trustees' Deed of Distribution from Leonard M. Nelson and Kenneth M. Nelson as Trustees of the Harold P. Nelson Family Trust dated October 4, 2006 and recorded in the Cumberland County Registry of Deeds in Book 24435, Page 193; **Harriette Small**, holder of a one-third interest by virtue of a warranty deed from N&S Realty Corp. dated March 1, 1961 and recorded in the Cumberland County Registry of Deeds in Book 2600, Page 210, and **212 Associates**, a Maine general partnership, holder of a one-third interest by virtue of a deed from Donald J. Nelson dated December 28, 1984 and recorded in said Registry of Deeds in Book 6659, Page 146 (by and through **Leonard M. Nelson, Kenneth M. Nelson, Andrew J. Nelson, Mary Nelson, Merle Nelson, David Small and Betty Small**, being all of the general partners of 212 Associates, thereunto duly authorized) (collectively the "Grantors") FOR CONSIDERATION PAID, grant to **212 Canco Realty, LLC**, a Maine limited liability company, with a mailing address of 212 Canco Road, Portland, ME ("Grantee") all their right, title and interest in certain real property, together with any improvements thereon, known as 212 Canco Road, in the City of Portland, County of Cumberland and State of Maine, more particularly described in Exhibit A attached hereto and made part of.

WITNESS our hands and seals this ~~day~~ as of April 1st, 2007.

WITNESSES:

Claire Connell
Witness

Leonard M. Nelson

Claire Connell
Witness

Kenneth M. Nelson

Claire Connell
Witness

Andrew J. Nelson

Witness

Harriette Small

Claire Connell
Witness

212 ASSOCIATES

By:
Leonard M. Nelson
Its General Partner

Claire Connell
Witness

By:
Kenneth Nelson

Witness

By: _____
Mary Nelson

Witness

By: _____
Merle Nelson

Witness

By: _____
Andrew Nelson

Witness

By: _____
David Small

Witness

By: _____
Betty Small

STATE OF MAINE
COUNTY OF CUMBERLAND, ss

April 12, 2007

PERSONALLY APPEARED Leonard M. Nelson and acknowledged the foregoing instrument to be his free act and deed, his free act and deed in his capacity as general partner of 212 Associates and the free act and deed of 212 Associates.

Before me,

Peter J. Van Hemel, Attorney-at-Law ~~Notary Public~~
Commission Expires:
Print Name:

Exhibit A

A certain lot or parcel of land with buildings thereon, located in the City of Portland, Cumberland County, Maine, bounded and described as follows:

Beginning at an iron pipe at a point in the northwesterly side line of Canco Road in the division line between land conveyed by the City of Portland to Cumberland Securities Corporation by deed dated April 1, 1954 and recorded in Cumberland County Registry of Deeds in Book 2172, Page 4 (now or formerly owned by New England Union Mutual Life Insurance Company and under lease to Central Maine Power Company) and the land herein conveyed, said point being distant northeasterly along said side line of Canco Road 800 feet from the northeasterly side line of Bay Street; thence northeasterly by the northwesterly side line of Canco Road a distance of 219.83 feet to a point and an iron pipe in the northwesterly side line of Canco Road; thence northwesterly by the division line between the land herein conveyed and land now or formerly of Montefusco and making an included angle of 100° 58' through the west with the southwesterly direction of the northwesterly side line of Canco Road a distance of 417.34 feet to an angle and an iron pipe; thence northwesterly and making an included angle of 165° 15' through the west with the southeasterly direction of the last described line a distance of 167.55 feet to a copper bolt set in a granite monument; thence on a prolongation in a straight line of the last described course a distance of 84.50 feet to a point and an iron pipe; thence southwesterly and making an angle of 90° with the last described line a distance of 159.06 feet, more or less, to a point and an iron pipe in the easterly side line of the railroad spur right-of-way conveyed by the City of Portland to Quincy Market Cold Storage & Warehouse Company by deed recorded in the Cumberland County Registry of Deeds in Book 2076, Page 145; thence southerly by said easterly side line of said right-of-way about 337 feet to a point and an iron pipe; thence southeasterly by the division line between the land hereby being conveyed and the aforementioned land conveyed by the City of Portland to Cumberland Securities Corporation by deed dated April 1, 1954 and recorded in the Cumberland County Registry of Deeds in Book 2172, Page 4 (now or formerly owned by New England Union Mutual Life Insurance Company and under lease to Central Maine Power Company) a distance of 435.05 feet, more or less, to Canco Road and the point of beginning, said last mentioned division line making an angle of 90° with the northwesterly side line of Canco Road, containing 182,952 square feet. The land hereinabove described is a part of the property acquired by the City of Portland by deed of Goodrich, Stickney & Burnham Land Company, dated April 24, 1944, and recorded in the said Registry of Deeds in Book 1745, Page 244, and by deed of Charles L. Goodrich et als, dated June 10, 1918, and recorded in the said Registry in Book 1010, Page 1. LMW

Excepting and reserving, however, from the aforesaid premises and to the City of Portland, its successors and assigns, forever, a right-of-way for the purpose of maintaining, operating, altering, repairing, removing and replacing a sewer line or lines, said right-of-way being bounded and described as follows:

Beginning in the northwesterly side line of Canco Road in the division line between the land being above conveyed and land conveyed to Cumberland Securities Corporation; thence northwesterly by said division line about 435.05 feet, more or less, to the above mentioned railroad spur right-of-way, said right-of-way or easement to be thirty (30) feet wide and to lie wholly on the northeasterly side of the described line.

This conveyance is made upon the express condition that the said Grantee, its successors and assigns, shall not erect, place, or maintain any structures on, above, or under said right-of-way or easement which in any way will interfere with the use of said right-of-way or easement by the City of Portland, its successors and assigns, for the purpose above reserved.

There is also conveyed in the deed the following interest in land:

The right, pursuant to reservations set forth in a certain deed from the City of Portland to Quincy Market Cold Storage & Warehouse Company, dated January 29, 1952 and recorded in the Cumberland County Registry of Deeds in Book 2076, Page 145, to use in common for railroad purposes as therein defined, and

subject to the provisions therein set forth, the railroad spur track constructed by the said Quincy Market Cold Storage & Warehouse Company in the right-or-way referred to therein.

Together with any interests, in any and all, easements and rights of way, now or in the future, benefiting the premises herein conveyed, including without limit, a certain easement conveyed from J.B. Brown & Sons to Harold P. Nelson, et al. their successors and assigns for pedestrian and vehicular ingress and egress, over and upon property of said J.B. Brown & Sons, its successors and assigns, as more particularly described in the Easement Deed dated July 1, 1996 and recorded in the Cumberland County Registry of Deeds in Book 12596, Page 164 to which reference may be had for a more particular description of the easement.

This conveyance is made subject to covenants, agreements, terms and conditions set forth in a deed from the City of Portland to N & S Realty Corp. dated January 14, 1960, and recorded in said Registry in Book 2520, Page 313.

This conveyance includes all of the Grantors' rights in and to any agreements relating to railroad spur and sidetracks which serve said land and buildings.

CMJ

Received
Recorded Register of Deeds
Apr 25,2007 03:45:40P
Cumberland County
Pamela E. Lovley

Order 129-15/16
Tab 11 12-21-15

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 THE AMENDED AND RESTATED GROUND LEASE TO NORTHEAST AIR FOR A FIXED BASE OPERATION AT PORTLAND INTERNATIONAL JETPORT

ORDERED, that the 20-year renewal of the LCL Associates Ground Lease Agreement and the 20-year renewal of the Northeast Air Ground Lease Agreement are hereby approved and such leases are hereby combined under the name of Northeast Air for a Fixed Base Operation on expanded premises, including a $2.5 million investment by Northeast Air at Portland International Jetport, with an option to renew for an additional 20 years, in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said document and any other related documents necessary or convenient to carry out the intent of said document.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Paul Bradbury, Airport Director

DATE: December 9, 2015

DISTRIBUTION: Jon Jennings, City Manager; Mayor Strimling; Anita LaChance, Deputy City Manager; Danielle West-Chuhta, Corporation Counsel; Sonia Bean; Nancy English; Julie Sullivan

SUBJECT: Amended and restated ground lease with Northeast Air to allow improvements and expansion of their current Fixed Base Operation (FBO) facilities at the Portland International Jetport

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: December 21, 2015 **Final Action:** December 21, 2015

Can action be taken at a later date: X **Yes** _____ **No (If no why not?)**
Action can be taken at a later date, but Northeast Air wants construction complete in time for their busy summer season. In order to facilitate this schedule, action is requested at the December 21, 2015 Council meeting.

I. SUMMARY OF ISSUE (Agenda Description)

The Portland International Jetport is requesting approval to extend the term, expand the premises, and combine two ground leases currently held by Northeast Air and LCL Associates' into a single lease to Northeast Air. These leases form the primary ground holdings for Northeast Air's longstanding Fixed Base Operation at the Jetport. As a FBO, Northeast Air provides aircraft fueling, maintenance, deicing, and other aviation services as outlined in the Jetport's minimum standards. Under the proposed new lease approximately 61,000 square feet will be added to the premises and the term will be extended by twenty years. Additionally this lease will be restated to fully conform with the FBO lease issued earlier this year to Hangar Group LLC for the development of the Fixed Base Operation (FBO) on the Jetport's south general aviation ramp. The basic terms of this lease amendment and restatement are as follows:

- **Term**: Provides an option to extend the term of the existing lease by 20 years for a total of 40 years through June 30, 2056.
- **Investment**: Northeast Air will be required to invest $2.5 million to expand and improve their existing FBO building/hangar and site.

- **Rate**: Northeast Air will pay ground rent and 2% of gross receipts excluding aircraft sales/leasing, sales of aircraft parts and accessories, charter flights, or fixed rent from subtenants approved by the City.
- **Full Service FBO**: Northeast Air will be required to continue operating as a full service FBO with staffing, hours, and facilities that meet the requirements outlined in the Portland International Jetport's Minimum Standards.

Northeast Air has been an FBO in good standing at the Portland International Jetport for decades. The expansion and improvements being proposed provide a significant private investment in the Portland International Jetport that will result in an improved product and FBO experience for all our aeronautical customers.

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

This amended and restated ground lease agreement does not contain a termination at the convenience of the City clause, so it must be approved by the City Council.

III. INTENDED RESULT

The approval of this agreement with Northeast Air provides private investment and development on the north general aviation ramp. The improved FBO facilities proposed by Northeast Air will provide a better product to our aeronautical users and raise the competitive baseline for these services between Northeast Air and our new south FBO that is scheduled to commence operation in late March of 2016.

IV. COUNCIL GOAL ADDRESSED

The private investment in and development of these improvements at the Portland International Jetport will allow more competition and the opportunity for increased business activity at the Jetport. The revenues generated by this business activity, like all others generated at the Jetport, allow it to be a self-sustaining air transportation hub for the City of Portland with no reliance on local taxes. The Portland International Jetport provides a robust connection for the region to the national air transportation system and in doing so plays an important role in supporting the City Council's economic development goals.

V. FINANCIAL IMPACT

If approved, the Portland International Jetport will receive an additional ground rent payment of $15,256 annually that increases every July 1 by the Consumer Price Index. Additionally, the City of Portland will receive increased property tax revenue based on the valuation of these improvements.

VI. STAFF ANALYSIS

Northeast Air has had a long and successful business relationship with the Jetport and its aeronautical users. Their operations have consistently received positive reviews by the FAA and Jetport staff during our annual certification inspections.

The proposed expansion and improvements by Northeast Air on the North General Aviation Ramp are consistent with the two prior master plans and the current sustainable airport master plan now being developed. The proposed expansion and site improvements are appropriate, timely, and will be funded entirely with private capital.

VII. RECOMMENDATION

Jetport staff highly recommends the City Council approve the issuance of this Amended and Restated Ground Lease Agreement with Northeast Air.

VIII. LIST ATTACHMENTS

1. Amended and Restated Ground Lease Agreement between the City of Portland and Northeast Air.

Prepared by:

Signature

December 9, 2015
Date

AMENDED, CONSOLIDATED AND RESTATED GROUND LEASE AGREEMENT

THIS AMENDED AND RESTATED LEASE AGREEMENT made and entered into this _____day of _____ 2015, by and between the **CITY OF PORTLAND,** a municipal corporation, existing under and by virtue of the laws of the State of Maine, hereinafter called "**CITY**", and **NORTHEAST AIR**, a Maine corporation with a principal office located at 1001 Westbrook Street, Portland, Maine, hereinafter called "**TENANT**" (**CITY** and/or **TENANT** also referred to herein singly or collectively as, "Party" or "Parties").

W- I- T- N- E- S- S- E- T-H:

WHEREAS, CITY and **TENANT** are parties to a certain Ground Lease, Parking and Aircraft Tiedown Agreement dated November 14, 1997 ("Lease 1") for certain space consisting of approximately 82,100 square feet at the Portland International Jetport (the "Airport"); and

WHEREAS, by virtue of a certain December ____, 2015 Assignment of Lease, **CITY** and **TENANT,** are parties to a certain Ground Lease Agreement dated July 1, 1996 ("Lease 2") for certain space consisting of approximately 45,160 square feet at the Airport; and

WHEREAS, the initial terms of Lease 1 and Lease 2 expire on June 30, 2016, and **TENANT** desires to exercise its option to renew both leases for twenty years, which **TENANT** may do subject to renegotiation of the rent, as more fully set forth in Lease 1 and Lease 2; and

WHEREAS, TENANT also desires to expand its operations at the Airport by increasing its current leased premises by an additional 61,026 square feet (the "New Space") to a total of approximately 188,286 square feet, investing no less than $2,500,000.00 in the New Space, as more fully described in **TENANT**'s _____2015 _____ (the "Proposal"), a copy of which is attached hereto as **Exhibit A** and incorporated herein, and the **CITY** desires that it do so; and

WHEREAS, in order to facilitate the expansion of **TENANT's** operations at the Airport, **TENANT** and **CITY** desire to consolidate their leases, add the New Space to the leased premises and extend the lease terms by twenty years, subject to the terms and conditions set forth herein; and

NOW, THEREFORE in consideration of the mutual covenants and considerations herein contained, **CITY** and **TENANT** hereby agree that Lease 1 and Lease 2 be consolidated,

amended and restated as of the Effective Date (as defined in Article 3) as follows:

ARTICLE 1 - LEASED PREMISES

1.1 LEASED PREMISES

1.1.1 In consideration of the rent hereinafter to be paid by **TENANT**, and other consideration, and the covenants and agreements hereinafter contained, to be kept and performed by **TENANT**, **CITY** does hereby demise, lease and let unto **TENANT**, the property located at the Airport, and more particularly described below, to have and to hold unto said **TENANT** on the terms and conditions in this Lease.

1.1.2 The term "Leased Premises" or "Premises" as used in this Lease Agreement, shall mean and include the premises described in Lease 1 and Lease 2 (the "Existing Space") together with an additional adjacent 61,026 square feet of space as described in the Proposal (the "New Space") all of which is located at Portland International Jetport in the City of Portland, Cumberland County, State of Maine, on Westbrook Street, adjacent to the Airport and consisting of a total of approximately 188,286 square feet as shown and described in **Exhibit A** attached hereto and incorporated herein, including the rights of ingress thereto and egress therefrom and the right to install, use and maintain utilities, subject to any utility or other easements of record.

1.2 "AS IS" CONDITION.

TENANT takes the Premises in "as is" condition. Other than **CITY** ownership thereof, **CITY** makes no representation or warranty as to the physical condition of the Premises nor as to any other matter concerning the Premises, including but not limited to the presence of any environmental hazards thereon. Without limiting the foregoing, the **CITY** represents that, as of the execution date of this Lease, it has not received notice of any such hazards. All **TENANT** improvements, additions and alterations at or to the Premises will be at **TENANT**'s sole cost and expense and **CITY** shall have no responsibility therefor.

ARTICLE 2 – CONSTRUCTION OF FBO FACILITY

2.1 TENANT OBLIGATIONS

2.1.1 **TENANT** shall, at its own cost and expense, construct, operate and maintain a general aviation facility and fixed base operation (the "Project") on the Premises in accordance with the Proposal.. To the extent reasonable, the Exhibits to this Lease shall be read to be supplemental to it, but in the event of conflict between the terms of this document and the Exhibits, this document shall control.

2.1.2 The minimum capital investment for this Project shall be Two Million Five Hundred Thousand Dollars ($2,500,000). Prior to construction, the proposed design and materials, including but not limited to landscaping, to be used for such construction shall be subject to the review and approval of the Airport Director, which approval shall not be unreasonably withheld or delayed. The Airport Director's review shall include review for compatibility with existing

airport design and materials and for compliance with the Airport Master Plan then in effect. In addition, prior to construction, **TENANT** shall provide proof of financial ability to complete the project which proof shall be satisfactory to the Airport Director, after consultation with the **CITY**'s Finance Director. The Airport Director's approval hereunder shall not be unreasonably withheld or delayed.

2.1.3 **TENANT** shall pay for and obtain all required Federal, State, County, City of Portland and **CITY** permits or approvals prior to such construction, including but not limited to any required Planning Board approval, and Federal Aviation Agency (hereinafter the "FAA") approvals, including filing of FAA Form 7460-1, Notice of Proposed Construction or Alteration, or applicable successor form. In addition to complying with any applicable **CITY** ordinance, all exterior signage to be placed or erected on the Premises shall be subject to the prior written approval of the Airport Director. In the event any substantive change is made in the proposed design and materials to be used after all other applicable review, such changes shall be submitted to the Airport Director for final review and approval, which approval shall not be unreasonably withheld or delayed. **TENANT** shall arrange and attend a pre-construction meeting, including all site and construction contractors and subcontractors and representatives of the Airport, prior to beginning site work. This meeting shall include, but not be limited to, a review of **TENANT**'s security plan during such site and construction work. **TENANT** shall ensure that a "badged" person acceptable to the Airport shall monitor all entry and exit to and from the site during such site work and construction.

2.1.4 In the event **TENANT** is unable to obtain any required federal, state or local approvals and permits necessary for construction of its Project and to begin construction no later than Twelve (12) months from the date of execution of this Lease, each party reserves the right to terminate this Lease upon no less than thirty (30) days prior written notice, with no further obligations of either party hereunder. Upon obtaining all federal, state and local approvals and permits required for construction of the facility, **TENANT** shall promptly commence and diligently complete such construction, subject to any agreed upon phasing of construction of portions of the Project.

2.1.5 Except as provided above, **TENANT** shall not erect any structures, make any improvements, nor do any construction work on the Premises, without the prior written approval of the Airport Director, whose approval shall not be unreasonably withheld or delayed. Alterations, modifications, additions to or replacements of any structure constructed on the Premises which are in excess of the amounts provided in Section 5.2.4 below are subject to the prior written approval of the Airport Director, which approval shall not be unreasonably withheld or delayed. The requirement for the Airport Director's prior approval shall not apply to any improvements, repairs or replacements which are immediately necessary because of an emergency caused by no fault of **TENANT**, but **TENANT** shall inform the Airport Director of such emergency work as soon as reasonably practicable.

2.1.6 Performance and Payment Bonds; Letters of Credit; Insurance. Prior to the commencement of any construction under this Agreement, **TENANT** shall provide **CITY** with evidence of a performance and payment bond from its contractor(s) in the full amount of the final construction contracts, naming the **TENANT** obligee on such bonds and **TENANT** shall

provide **CITY** with one or more letters of credit in a form satisfactory to the **CITY** in the full amount of the final construction contracts. In addition, **TENANT** shall provide evidence of commercial general liability insurance coverage in the minimum amount of Two Million Dollars ($2,000,000) from the general contractor, and naming the **CITY** as an additional insured thereon, as well as automobile and workers compensation insurance.

2.2 USES

2.2.1 Permitted Uses. **TENANT**, as a full service fixed base operator at the Airport, is required to continuously provide the following services during the term of this Agreement, unless otherwise agreed in writing by the **CITY**:

(i) Aircraft/airline fueling, de-icing and servicing (e.g. cleaning);
(ii) Aircraft maintenance and servicing, by a licensed aircraft mechanic (Aircraft and Power) on staff and/or on-call;
(iii) Aircraft tiedowns
(iv) Aircraft hangar storage;
(v) Pilots lounge, with sanitary facilities;
(vi) Charter, directly, through contract or through referral service;
(vii) Automobile parking; and
(viii) **TENANT** business office.

Failure to provide the foregoing services on a reasonable basis for thirty (30) consecutive calendar days shall be, at the option of the **CITY**, a breach of this Agreement, subject to termination pursuant to Article 11 below. Notwithstanding the foregoing, de-icing services shall be subject to all applicable federal and state environmental regulations and airport regulations, and shall be performed only in designated areas off-Premises, and in such manner as is permitted by such regulations.

2.2.2 In addition to the foregoing, **TENANT** shall have the right, but is not required, to use the Premises for the following purposes, and purposes incident thereto:

(i) Ground handling, including freight handling;
(ii) Airline maintenance;
(iii) Sales of aircraft (including aircraft leasing) and aircraft parts;
(iv) Avionics sales;
(v) Flight school;
(vi) GSE equipment servicing; and
(vii) Major and minor overhaul and repair of aircraft and associated accessories.

No air meets shall be conducted at said Airport unless prior approval shall have been obtained in writing from the Airport Director and the Federal Aviation Administration.

2.2.3 In addition to the foregoing, **TENANT** shall manage, on a non-exclusive, non-discriminatory public basis, the aircraft ramp recently reconstructed by **CITY** and located adjacent to the Premises, and identified on Exhibit A (hereinafter the "Ramp"). **TENANT** shall

have the right to rent aircraft tiedowns for general aviation use at fair market rentals. For purposes of this Agreement, the term "aircraft tiedown" shall refer to a generally accepted method of securing small aircraft to pavement. **TENANT** shall manage the use and condition of the aircraft tiedowns in such a manner that such use and condition will not interfere with nor endanger the general operations at the Airport. **TENANT** shall be entitled to the reasonable service or use fees to be paid by users of the aircraft tiedowns, subject to **CITY**'s percentage rentals contained in this Agreement. Upon request, **TENANT** shall provide **CITY** with the names, addresses and other reasonably available information regarding renters/users of the tiedowns hereunder.

2.2.4. **TENANT** is entitled to use the areas designated for "parking" on Exhibit A for parking of customer and employee motor vehicles.

2.2.5. No use of the Premises shall be permitted hereunder without the specific written consent of the Airport Director except those uses specifically required or permitted herein.

2.2.6 Upon thirty (30) days prior written notice to **CITY, TENANT** may request permission for an expansion or change in use on the Premises, which permission shall not be unreasonably withheld by Airport Director. **TENANT** covenants that it shall not use nor permit the use of the Premises for any purpose other than those provided in Section 2.2.1 - 2.2.4 above without the prior written approval of the Airport Director.

2.2.7 Prohibited Uses: **TENANT** shall not use the Premises for the conduct of any non-aeronautical business, for residential use, or for non-aeronautical storage or non-aeronautical activities.

2.2.8 **TENANT** shall not store fuel upon the Premises except to the extent permitted by applicable City Code(s) and applicable state or other law or regulation, and shall not block a taxiway nor park any aircraft in such a location as to interfere with Airport operations, nor permit any other person to do so. No damaged aircraft shall be parked on the Ramp, nor at the aircraft tiedowns at any time without the prior approval of the Airport Director, which approval may be granted for such storage up to a maximum of sixty (60) days. In the event of such approval, **TENANT** shall cover such damaged aircraft within twenty-four (24) hours of a request to do so by the Airport Director, such cover to be in a manner as is reasonably approved by the Airport Director. Aircraft ramp and service equipment shall not be stored on the Premises, except in a manner and in such designated locations as the Airport Director may reasonably authorize in writing in advance. All aircraft and equipment repairs except minor repairs shall be performed inside a structure and not on the aircraft apron. All such minor repair shall be subject to the approval of the Airport Director, which approval shall not be unreasonably withheld. **TENANT** covenants that it shall not do any, and shall not permit anyone to do, any engine run-ups on the Premises. Off-Premises run ups at sites approved by the Airport Director between the hours of 7:00 a.m. and 10:00 p.m. must be coordinated in advance with the Airport's Communications Center.

2.2.9 All activities hereunder must be conducted pursuant to the Airport Minimum Standards and Rules and Regulations and policies in effect on the date of execution of this Agreement and as

may be later amended or revised, and all applicable federal, state and local laws and regulations. Prior to undertaking any activities hereunder, **TENANT** shall obtain, at **TENANT**'s own cost and expense, all approvals and permits required under the Airport Minimum Standards, as well as any other required federal, state or local approvals and permits.

2.2.10 Fuel Trucks. TENANT shall have the right to use the airfield perimeter road as shown on Exhibit A to provide access by fuel trucks, de-icing vehicles and other vehicles used in connection with this Lease, from the Premises to the terminal ramp. Such use by fuel trucks shall be permitted so long as such use of the road by the fuel trucks is permitted under state and federal law and regulations.

ARTICLE 3 – TERM

3.1 INITIAL TERM

The Initial Term of this Lease commences upon the date of execution of this Lease Agreement (the "Effective Date"), and ends at 11:59 p.m. on June 30, 2036 (the "Termination Date").

3.2. RENEWAL TERM

TENANT shall have the option to renew this Lease for an additional Twenty (20) years so long as **TENANT** has been and is continuing in full compliance with all of the terms and conditions herein, and subject to renegotiation of the rent as provided in Article 4 below. **TENANT** shall provide **CITY** with no less than One Hundred and Eighty (180) days notice of its intent to renew prior to expiration of the initial term of this Lease. **CITY** shall renew the Lease pursuant to Section 4.3 below and subject to the continuing compliance by **TENANT** with all the terms and conditions herein. Such renewal shall be in writing signed by both parties.

3.3 HOLDING OVER

3.3.1 In the event **TENANT** shall continue to occupy the Leased Premises beyond the Lease term or any extension thereof without **CITY**'s written renewal thereof, such holding over shall not constitute a renewal or extension of this Lease, but shall create a tenancy at sufferance which may be terminated at any time by **CITY** or **TENANT** by giving thirty (30) days' written notice to the other party. Any such tenancy at sufferance shall otherwise be on all of the terms and conditions of this Lease Agreement, except that the monthly Rent shall be one and one-half times the amount due on the first day of the last month of the term of the Lease.

ARTICLE 4 - RENTALS, FEES AND RECORDS

4.1 FIXED GROUND RENT

4.1.1 Fixed ground rent per square foot for Existing Space. For the rights and privileges granted herein, **TENANT** shall pay a fixed annual rental of $0.25 per square foot for the Existing Space, which consists of approximately 127,260 square feet of land at the Airport. Fixed ground rent shall be payable in equal monthly installments. The initial monthly rental for the Existing

Space shall be Two Thousand Six Hundred Fifty-One Dollars and Twenty-Five Cents ($2,651.25) per month.

4.1.2 Fixed Ground Rent and Rent Commencement Date for New Space. For the rights and privileges granted herein, **TENANT** shall pay a fixed annual rental of $0.25 per square foot for the New Space, which consists of approximately 61,026 square feet of land at the Airport, provided, however, that such ground rent for the New Space shall be due and payable commencing the first day of the month following the month in which TENANT obtains the certificate of occupancy for all building structures and parking areas comprising the Project, or on August 1, 2016, whichever is earlier in time (the "New Space Rent Commencement Date"), and continuing on the first day of each subsequent month during the initial term and any renewal term of this Lease. Beginning on the New Space Rent Commencement Date, the initial fixed ground rent for the New Space shall be One Thousand Two Hundred Seventy-One Dollars and Thirty-Eight Cents ($1,271.38) per month.

4.1.3. Monthly rent for Aircraft Tiedowns. During the term hereof, **TENANT** shall pay to **CITY** a fixed monthly rental of Ten Dollars and Nine Cents ($10.09) for each tiedown on the Ramp.

4.1.4 Rent increases. Beginning on the first July 1 following the New Space Rent Commencement Date, and annually thereafter during the Initial Term, the fixed rent in Section 4.1.1 and 4.1.2 will be adjusted, based on the increase in the prior 12 months' Consumer Price Index of the U.S. Department of Labor, All Urban Consumers, all items (1982-84 = 100) for the U.S. City Average, or comparable successor index for the immediately prior twelve months.

4.2 PERCENTAGE RENT

4.2.1 In addition to the foregoing monthly rent, **TENANT** shall pay to **CITY** two percent (2%) of all gross receipts actually received by **TENANT,** by the entities listed on Exhibit C, by any member or shareholder of TENANT or of the entities listed on Exhibit C, and by any of TENANT's subtenants or sub-subtenants, from all of their operations on the entire Premises and from all of their operations on the premises covered by the leases listed on Exhibit B attached hereto; provided, however, that the following shall not be subject to the percentage rental hereunder: 1) aircraft sales and leasing; 2) sales of aircraft parts and accessories; 3) charter flight sales; 4) fixed rent collected from the subtenants and sub-subtenants approved by the **CITY**, up to the amount due to **CITY** under Section 4.1 above; 5) any rent payable to **TENANT** from an entity wholly owned by **TENANT**, or by any entity listed on Exhibit C (Tenant and the entities listed on Exhibit C may be referred to herein individually as a "Tenant Party" or collectively as "Tenant Parties"); 6) aircraft maintenance performed by a Tenant Party on aircraft owned or dry leased by a Tenant Party; and 7) the 2% payment itself, whether paid by **TENANT** or a Tenant Party, or by an approved subtenant.

4.2.2 "Gross receipts" shall mean and include all gross revenues received by any person and arising out of or resulting from any operations or activities from, at or on the Premises, but shall not include the amount of any tax on sales whether designated a sales tax or not and imposed by

any federal, state or local governmental authority, either now or in the future. Said operations and activities shall be performed and/or charged in accordance with normal and customary industry rates. To the extent that any question arises as to whether the normal and customary rates are being charged, the Airport Director, in his discretion, may adjust the rates to be consistent with market rates charged for services at the following airports: BGR, BDL, ALB, MHT and BVT.

4.2.2.1 "Dry lease" shall mean an agreement between a Tenant Party and an aircraft leasing or financing company under which the aircraft is provided to the Tenant Party with no crew, insurance, ground staff, supporting equipment, maintenance, etc., transferring possession and operational control over the aircraft to the Tenant Party.

4.2.3 **CITY** reserves the right to amend or modify the percentage rent payable, or the manner in which such rent, or any portion thereof, is calculated under this Lease Agreement, to the extent that such amendment or modification is applicable generally in a non-discriminatory manner to all persons providing similar services at the Airport and providing that such amendment, modification or increase is reasonably revenue neutral to **TENANT.** In such case, **CITY** shall provide **TENANT** with no less than thirty (30) days written notice prior to the effective date of such new rates or charges. In addition to the foregoing, **CITY** reserves the right to impose landing fees on all charters landing at the Airport pursuant to generally applicable, non-discriminatory rules and regulations issued pursuant to Airport rule-making.

4.2.4 Without limiting the foregoing, **TENANT** agrees to renegotiate the rent payable hereunder in the event of commencement or renewal of the term of the Lease of any other FBO located on the Airport, with the goal to minimize any discriminatory rental structure between competing FBO's at the Airport.

4.3 RENEWAL RENT

In the event **TENANT** renews this Lease as provided in Section 3.2 above, all rent, including without limitation fixed and percentage rent, under this Lease Agreement during said renewal term shall be in the amount negotiated in good faith by the parties. Notice of intent to negotiate a new rent term shall be given no less than 120 days prior to renewal of the Lease; provided, however, that failure to give such notice shall not diminish nor negate the Parties' obligation to negotiate a new rent hereunder. If the parties have been unable to agree upon a new rental within 45 days after such notice (the "Rent Agreement Date"), the parties agree to submit the issue of rent only to the following appraisal process. CITY and TENANT shall use reasonable good faith efforts to agree, within fifteen (15) days after the Rent Agreement Date, upon a single appraiser to determine the renewal rent for the Premises. Such appraiser shall use its best efforts to render the appraisal to CITY and TENANT on or before twenty (20) days after its selection, and such appraisal shall be final and binding upon the parties. In the event CITY and TENANT cannot agree upon a single appraiser within ten (10) days after the Rent Agreement Date (the "Election Date"), then each of CITY and TENANT shall, within ten (10) days after the Election Date,

select an appraiser. Such two (2) appraisers shall select a third appraiser within five (5) days. Such third appraiser shall use its best efforts to render the appraisal to the CITY and TENANT on or before twenty (20) days after its selection. The fair rental value determined by such third appraiser shall be final and binding upon the parties and shall be the rent for the renewal term hereunder. The cost of the appraiser appointed by each party shall be borne by such party, and the cost of the third appraiser or, if the CITY and TENANT shall have jointly selected one appraiser, the jointly-selected appraiser, shall be borne one-half (½) by the CITY and one-half (½) by the TENANT.

4.4 TIME AND PLACE OF PAYMENTS

4.4.1 The foregoing fixed rents of Section 4.1 shall be payable, without need for invoice, in equal monthly installments in advance on or before the first business day of each calendar month of the Term or any renewal term, at the office of the Airport Director, Portland International Jetport, 1001 Westbrook Street, Portland, Maine 04103, or such other place as the **CITY** may direct in writing from time to time.

4.4.2 The percentage of gross receipts shall be due and payable monthly, without need for invoice, at the office of the Airport Director at the address above, on the fifteenth (15th) day of each month based upon the gross receipts of the previous calendar month, the first of which shall be due and payable on the fifteenth (15th) day of the month following the month during which **TENANT** begins operations on the Premises. A detailed monthly revenue statement of all revenues received by any person as a result of any transaction at or on the Premises, regardless of the location of the person receiving such revenue and regardless of where such revenue is paid, shall be kept on file at the Airport office of **TENANT** for review by the Airport Director or his or her designee during regular business hours. The monthly revenue statement shall provide such detail as the Airport Director may require, including without limitation, a description of each such transaction, to whom the money was paid and the location of such person, and the gross amount of such money, showing the amount of the permitted deductions of sales taxes actually paid. **CITY** agrees that it shall endeavor to keep all such information reviewed by the Airport Director or his or her designee confidential, and shall not share such information with any person or entity, unless City, in its sole discretion, determines that disclosure of such information is required by law.

4.4.3 Within one hundred and eighty (180) days of the close of **TENANT**'s fiscal year, **TENANT,** at its sole cost and expense, shall have prepared a reviewed financial statement, prepared and signed by an independent accountant, of all operations conducted at or from the Leased Premises for the previous fiscal year and will keep a copy of such statement on file in its office located at the Airport for review during regular business hours by the **CITY**. **TENANT** will notify **CITY** when said financial statement is available for review. In the event such financial statement discloses any payment due to **CITY** which has not been paid, such payment of any unpaid balance shall be made immediately upon completion of such financial statement. **TENANT**'s fiscal year is from January 1 to December 31 of each year and **TENANT** shall provide the Airport Director with written notice of any change in said fiscal year. A late fee of Fifty Dollars ($50.00) per day will be assessed for every day that the said financial statement is late in being made available to the **CITY** and said late fee shall be due and payable upon demand

by **CITY. CITY** agrees that it shall endeavor to keep all such financial statements reviewed by **CITY** confidential, and shall not share such information with any person or entity, unless CITY, in its sole discretion, determines that disclosure of such information is required by law.

4.4.4 **CITY** reserves the right to conduct an audit of **TENANT**'s records, upon reasonable notice and during regular business hours, to determine the accuracy of amounts paid hereunder. In the event such audit discloses an underpayment to **CITY** of more than Ten Percent (10%) in any year, **TENANT** shall pay to **CITY,** in addition to the amount owed and any applicable late charges, the reasonable cost to **CITY** of its audit. In the event said audit shows an overpayment by **TENANT**, said overpayment shall be deducted from **TENANT**'s next due monthly percentage payment or payments. All records related to operations at or from the Leased Premises shall be maintained by **TENANT** for a minimum of six (6) years. **CITY** agrees that it shall endeavor to keep any and all information reviewed by **CITY** in connection with any such audit confidential, and shall not share such information with any person or entity, unless CITY, in its sole discretion, determines that disclosure of such information is required by law.

4.4.5 **TENANT** shall make prompt and timely payment, without deduction or setoff, of all rentals, fees, assessments, taxes and other charges due hereunder as the same may from time to time come due.

4.5 DELINQUENT RENTALS

There shall be added to all sums which the **TENANT** is required to pay hereunder (whether as rental or otherwise) to **CITY** and which are unpaid ten (10) days after their due date, a late charge of one and one-half percent (1-1/2%) of the unpaid sum for each full calendar month of delinquency computed as simple interest on a daily basis, using thirty (30) days in the month for purposes of calculating the daily rate. Any late charge assessed shall be computed from the original due date of the unpaid sum. The rate of the late charge may be changed from time to time pursuant to generally applicable Airport Rules and Regulations. Any late charge hereunder shall be additional to any interest or other charge imposed by the **CITY** generally, including without limitation, interest on unpaid real or personal property taxes.

ARTICLE 5 – MAINTENANCE AND OPERATIONS

5.1 NET LEASE

The use and occupancy of the Leased Premises by **TENANT** will be without cost or expense to **CITY** and all rent payable hereunder shall be net to the **CITY.** It shall be the sole responsibility of **TENANT** to maintain, repair and operate the entirety of the Leased Premises and any improvements and facilities constructed thereon at **TENANT**'s sole cost and expense, except as otherwise explicitly stated herein.

5.2 MAINTENANCE AND OPERATIONS

5.2.1 Premises. All repair, and maintenance of the Premises, including, but not limited to, general asphalt maintenance, landscaping, trimming and mowing, paving and snow and ice removal, shall be the responsibility of the **TENANT. TENANT** shall maintain the Premises and all of the fixtures, equipment and personal property which may be located in or upon any part thereof in a reasonably neat, clean and sanitary condition. **TENANT** shall not store snow off the Premises without written approval from the Airport Director. Snow removal shall not block any aircraft movement areas at any time.

5.2.2 5.2.2 **CITY** has reconstructed the Ramp with airport and FAA funds in compliance with FAA requirements and the Ramp will be maintained by **CITY** for twenty years from and after the Rent Commencement Date. **TENANT** assumes all liability for the safe use of the Ramp during the term of this Lease and any renewal term. **CITY** shall have no obligation to reconstruct the Ramp during the term of the Lease or any renewal term. **CITY** will plow, sand and de-ice the Ramp and Ramp taxiway and tiedown taxi lanes to the extent that such lanes can accommodate a Thirty (30) foot plow blade; if not, **TENANT** shall be responsible for all such plowing, sanding and de-icing. **TENANT** will be responsible for removing all snow at the tie downs on the Ramp. **TENANT** will further be responsible for the installation, maintenance and repair of the tiedowns themselves and painting of tiedown parking spots. **TENANT** shall not store snow in **CITY** plowed areas without the prior written approval of the Airport Director.

5.2.3 **TENANT** shall take good care of the Premises; shall reasonably maintain the Premises and the improvements, buildings and fixtures thereon in good condition at all times; shall make all repairs and replacements inside and outside, ordinary and extraordinary, structural or otherwise. Such repairs and replacements by **TENANT** shall be in quality and class not inferior to the original material and workmanship. **TENANT** shall pay promptly the costs and expenses of such repairs, replacements and maintenance, and maintain and repair all utility service lines located upon the Leased Premises to the extent they are used by **TENANT**, except to the extent such maintenance or repair is the obligation of the utility company providing such utility service.

5.2.4 All exterior repairs, replacements and maintenance shall be compatible with the original improvements and shall be in quality and class not inferior to the original material and workmanship. Except in the case of emergency repairs, all such exterior repairs and replacements in excess of Twenty Thousand Dollars ($20,000.00) shall be subject to the prior written approval of the **CITY**, which shall not be unreasonably withheld or delayed, and shall comply with all applicable federal, state and local permit requirements. Standard design plans for such exterior repairs and replacement shall be submitted to the Airport Director for review and approval, which approval shall not be unreasonably withheld or delayed. Exterior repair and replacement shall be governed by applicable Minimum Standards and Development Guidelines.

5.2.5 **TENANT** shall paint, repair, replace or rebuild all or any part of the Premises, interior or exterior, structural or non-structural, as provided above, which may be damaged or destroyed (subject to the provisions of Article 9 below). In such case, **TENANT** shall have the right to apply any available insurance proceeds to such purposes.

5.2.6 **TENANT** shall provide, at its sole cost and expense, the necessary receptacles and arrangements for adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse which results from use of, or activities on, the Premises. Unless otherwise agreed in writing by **CITY,** all such trash, garbage and other refuse shall be disposed of at EcoMaine in Portland, or successor thereto. **CITY** reserves the right to require **TENANT** to participate in any recycling program which may be imposed by Airport rules or by local, state or federal law or regulation. **TENANT** shall defend, indemnify and hold the **CITY** harmless from any cost, expense, claim, fine or liability, including without limitation attorney's fees and court costs, arising out of or resulting from **TENANT**'s storage, collection, transportation or disposal of any trash, garbage or other refuse hereunder. This obligation of defense and indemnification shall remain in full force and effect after termination or expiration of this Lease.

5.2.7 **TENANT** shall provide and use suitable covered metal receptacles for all such garbage, trash, and other refuse and must be stored inside the hangar. Piling of boxes, cartons, barrels, pallets, debris, or similar items in an unattractive or unsafe manner, on or about the Leased Premises, shall not be permitted. Dumpster(s) can be stored outside if suitable covering and a good appearance is maintained at all times.

5.2.8 To the extent that **TENANT** does not undertake or pay for any of its obligations under this Subsection 5.2, **CITY** reserves the right to undertake such obligations or to pay such costs, in its sole discretion, and to charge all costs thereof to **TENANT** as additional rent. Except in the case of a threat to public health or safety as determined by the **CITY**, in which case **CITY** may proceed immediately, prior to such undertaking or payment, **CITY** shall provide **TENANT** with written notice of such failure to meet such obligations or to pay such costs, and shall provide **TENANT** with thirty (30) days from the date of such notice to undertake such obligation and proceed diligently to complete it, or to pay such cost. In the event **CITY** undertakes any such obligation or pays such cost hereunder, **TENANT** shall repay the **CITY** all such amounts immediately upon **CITY**'s demand therefor. Nothing herein shall prevent or prohibit the **CITY** from declaring a default hereunder and terminating the Lease as provided in Article 11 below.

5.3 CITY RIGHT TO INSPECT AND REPAIR

5.3.1 **CITY**, through its agents, may come on the Premises and its structures to inspect same for compliance with the requirements of this Lease, Airport rules and regulations, environmental laws, or other applicable legal and regulatory requirements. Such inspection will generally take place during normal business hours and following seventy two (72) hours advance notice to the **TENANT**, but the **CITY** reserves the right to enter the Premises unannounced at any time that the Airport Director determines such entry is necessary for public safety or security reasons. In the event of such unannounced entry, **CITY** shall notify the **TENANT** that such inspection occurred within a reasonable time thereafter. **TENANT** shall provide **CITY** with the ability to access the Premises and the buildings for such public safety and security purposes.

5.3.2 **CITY**, at its reasonable discretion, shall be the sole judge of the quality of the exterior repair and maintenance; and **TENANT,** upon notice by **CITY** to **TENANT** shall be required to perform whatever repair and maintenance **CITY** deems reasonably necessary. If said repair and maintenance is not undertaken by **TENANT** within thirty (30) days after receipt of written

notice, **CITY** shall have the right to enter upon the Leased Premises and perform the necessary repair and maintenance, the cost of which shall be borne by **TENANT** as additional rent to be paid to **CITY** immediately upon demand therefor. Notwithstanding the foregoing, in the case of a threat to public health or safety, **CITY** may undertake such repairs as it deems reasonably necessary and charge the cost thereto to **TENANT** as additional rent to be paid to **CITY**, without regard to any notice requirement herein. No waste shall be committed or damage done to the Premises, the buildings and equipment located thereon, nor to property of **CITY.**

5.4 UTILITIES

TENANT shall have the right to bring utilities to the Premises at its own cost and expense and in accord with all applicable laws, rules and regulations for the extension and hookup of such utilities. **TENANT** shall assume and pay for all construction, installation and periodic costs or charges for utility services furnished to **TENANT** during the term hereof; provided, however, that, consistent with applicable laws, regulations or permit requirements, **TENANT** shall have the right to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense, subject to the approval of the Airport Director, which shall not be unreasonably withheld or delayed; and **TENANT** shall pay for any and all service charges incurred there from. The **TENANT** must also meet the requirements of the Airport's Storm Water Pollution Prevention Plan and any amendments thereto.

5.5 PAYMENT OF TAXES AND OTHER ASSESSMENTS

5.5.1 **TENANT** agrees to pay promptly when due, and not to permit to become delinquent, levies, taxes, assessments, excises, permit fees, license fees, charges, impositions or burdens of whatsoever kind and nature, whether general or special, ordinary or extraordinary, foreseen or unforeseen, or for any public improvements or utility services (hereinafter "impositions") which, at any time during the term of this Lease Agreement, may be created, levied, assessed, imposed or charged upon or with respect to the Leased Premises or any part thereof, by any federal, state, county, municipal or other authority, which imposition would be valid and applicable to **TENANT** irrespective of this section.

5.5.2 Nothing herein contained shall be construed as stopping or preventing **TENANT** from contesting in good faith, however, the validity or applicability to its operations hereunder of any such law, ordinance, rule, regulation, tax assessment, excise fee or charge, including the exhaustion of all appeal rights, provided that the Leased Premises shall not be in danger of being forfeited nor the **CITY** exposed to any threat of fine, penalty or violation.

5.5.3 Notwithstanding the foregoing, **TENANT** acknowledges that **CITY** has the right from time to time to establish and impose reasonable charges and fees for users of the Airport or its facilities, provided that such charges and fees are charged in a uniform and non-discriminatory manner and do not significantly increase the total fixed and percentage rent due hereunder; and provided, further, that **CITY** shall provide **TENANT** with no less than thirty (30) days prior written notice prior to imposing any new fee or charge which directly or indirectly affects **TENANT** or any sub-tenant of **TENANT.**

5.6 NONDISCRIMINATION; AFFIRMATIVE ACTION

5.6.1 The **TENANT**, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with this Lease of the Premises that, to the extent applicable to **TENANT**'s operations hereunder:

(a) no person on the grounds of age, race, color, sex, disability, religion, national origin or sexual orientation shall be excluded from participation in, denied the benefits of, or be otherwise subject to, discrimination in the use of said facilities;

(b) that in the construction of any improvements on, over, or under such Premises and the furnishing of services thereon, no person on the grounds of age, race, color, sex, disability, religion, national origin, or sexual orientation shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(c) that the **TENANT** shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended; and

(d) that **TENANT** shall undertake an affirmative action program as required by 14 CFR Part 152, Sub E, to insure that no person shall on the grounds of race, creed, color, national origin, or sexual orientation be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E.

5.6.2 **TENANT** agrees to furnish service on a fair, equal, and non discriminatory basis to all users thereof, and to charge fair, reasonable, and non discriminatory prices for each unit of service.

5.6.3 Nothing in this Section 5.6.3 is intended, nor shall it be deemed, to permit **TENANT** to establish or carry out any non-aeronautical commercial activity from the Premises.

5.7. Intentionally omitted.

5.8 OBSERVANCE OF STATUTES, ETC.

5.8.1 During the Term hereof and renewal term, **TENANT** shall, at its own cost and expense, promptly observe and comply with all existing and future applicable laws, ordinances, rules, regulations, licenses, permits, decisions and decrees of the Federal, State, County and **CITY** Governments (including but not limited to Airport Rules and Regulations, Airport Minimum Standards, Airport Storm Water Pollution Prevention Plan, Airport Security Plan and Regulations, Airfield Regulations, Airport Development Guidelines, and the Airport Certification Manual), as well as those of any other government authority having jurisdiction over the Premises or any part thereof, including without limitation all applicable Federal Aviation Administration rules and regulations, whether the same are in force at the

commencement of the term of this Agreement or should be enacted in the future.

5.8.2 **TENANT** shall not make any use of the Premises which is improper, offensive or contrary to any law or ordinance, nor to permit any act or thing to be done which shall constitute a nuisance or which may make void or voidable any insurance on the Premises or the buildings or improvements thereon.

5.8.3 **TENANT** shall pay all fines, penalties, damages, expenses or costs, including reasonable counsel fees, and shall indemnify and hold the **CITY** harmless therefrom, which may in any manner arise out of or are imposed on **TENANT, CITY** or Airport because of the failure of the **TENANT** to comply with the requirements of this Section 5.8. Without limiting any other right of **CITY** hereunder, **TENANT**'s non-compliance with any provision of this Section 5.8 shall be grounds for termination of this Lease Agreement.

5.8.4 **TENANT** shall have the right, but not the obligation, to contest, without cost or expense to **CITY,** the validity or application of any law, ordinance, rule, regulation, or requirement of the type referred to in the preceding sub-section. If by the terms of any such provision, compliance may be legally delayed without risk of forfeiture or lien on the Premises or penalty to the **CITY,** pending resolution of the legal challenge, **TENANT** may delay compliance therewith until final determination of such proceeding.

5.8.5 **CITY** agrees to execute and deliver any appropriate papers or other instruments which may be reasonably necessary or proper to permit **TENANT** to contest the validity or application of any such provision.

5.9 ENVIRONMENTAL STATUTES

5.9.1 **TENANT** covenants and agrees to comply with all applicable environmental laws, including without limitation all laws governing hazardous substances and all requirements related to storm water discharges and permits, and to provide to **CITY**, immediately upon receipt, copies of any correspondence, Notice, Pleading, Citation, Indictment, Complaint, Order, Decree or other document from any source asserting or alleging a circumstance or condition which requires, or may require, a clean-up, removal, remedial action, or other response by or on the part of **TENANT** under environmental laws, or which seek civil, criminal or punitive penalties from **TENANT** for an alleged violation of environmental laws. **TENANT** further agrees to advise the **CITY** in writing as soon as **TENANT** becomes aware of any condition or circumstances which may result in a potential violation of any environmental laws. **TENANT** shall comply with the Airport's Storm Water Pollution Prevention Plan and any amendments thereto, and shall grant access to the **CITY** for inspections required by the plan. **TENANT** agrees, at its expense, and at the request of **CITY** when it has a reasonable belief that there is a problem or when required by another governmental entity, to permit an environmental audit for the benefit of **CITY** and **TENANT**, to be conducted by **CITY**. This provision shall not relieve **CITY** from conducting its own environmental audits or taking any other steps necessary to comply with environmental laws.

5.9.2 Without limiting the foregoing, **TENANT** shall not dump, flush, or in any way introduce

any hazardous materials or hazardous waste or any other toxic materials upon the Leased Premises nor shall it improperly store, or dispose of any hazardous materials or hazardous waste from any such property, except in full compliance with all applicable laws and regulations. For purposes of this paragraph, the term hazardous materials shall mean inflammable, explosives, radioactive materials and hazardous substances defined as "hazardous substances," "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, the Hazardous Conservation and Recovery Act, and the Resources Conservation and Recovery Act, or any similar federal, state or local law, or in any regulations promulgated pursuant thereto, or in any other applicable law. The term "hazardous materials" shall also include any other chemical, material or substance which is or may be regulated as toxic or hazardous or exposure to which is prohibited, limited or regulated by any federal, state or other governmental authority or agency or which, even if not so regulated, may or could pose a hazard to human health and safety.

5.9.3 If in the opinion of **CITY**, there exists any uncorrected violation by **TENANT** of an environmental law which requires, or may require, a cleanup, removal or any condition or other remedial action by **TENANT** under any environmental law, regulation, permit, license, judgment or decree, and such cleanup, removal or other remedial action is not completed, or commenced and diligently pursued, within thirty (30) days from the date of written notice from **CITY** to **TENANT**, the same shall, at the option of **CITY**, constitute an event of default hereunder.

5.9.4 For the purposes of this Section 5.9, the term "environmental law or laws" shall mean all Federal, State and local laws including statutes, regulations, ordinances, codes, rules, permits, licenses, judgments, decrees, or other governmental restrictions and requirements relating to the environment or any hazardous substance, including but not limited to, the State of Maine environmental protection statutes, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Research Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility, Cleanup and Liability Act of 1980 as amended by the Super Fund Amendments and Reauthorization Act of 1986, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Agency, and regulations of any State Department of Environmental Protection or successor agency now or anytime hereafter in effect.

5.9.5 **TENANT** shall defend, indemnify and hold the **CITY** harmless from and against and in respect of any and all damages, costs and expenses, including without limitation, fines, penalties, reasonable attorney's fees, consequential damages and remedial costs and other liabilities arising from claims based upon the environmental condition of the Premises and the surrounding property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), resulting from (a) **TENANT**'s use of the Premises or operations thereon by or on behalf of **TENANT**; (b) claims arising out of, related to, or in connection with (i) the release by **TENANT** of any hazardous material into, onto or from the Premises; or (ii) any arrangement by **TENANT** for the treatment, recycling, storage or disposal at any facility owned or operated by any person or entity of a hazardous material which is present on the Premises or has been or may be deposited at, disposed on or released onto the Premises; and (c) claims related to demolition, cleanup or other remedial measure with regard to

environmental conditions on or around the Premises by **TENANT;** or (d) claims resulting from any act or omission of **TENANT** in violation of any federal, state or local environmental laws or regulations with respect to **TENANT**'s use of the Leased Premises.

5.9.6 **CITY** shall give to **TENANT** prompt and reasonable notice of any such claim or action, and **TENANT** shall have the right to investigate, compromise, and defend the same.

5.9.7 **TENANT,** as used in this Section 5.9, shall mean and include the named **TENANT,** its officers, agents, employees, invitees, customers, subcontractors, transferees, licensees, subtenants, vendors, suppliers or anyone for whose act **TENANT** may be legally liable.

5.9.8 The Terms of this Section 5.9 shall expressly survive the expiration or earlier termination of this Lease Agreement, including without limitation the terms of Subsection 5.9.5.

5.10 HAZARD LIGHTS

TENANT shall, at its expense, provide and maintain hazard lights on any structure erected by **TENANT** on the Leased Premises, if required by **CITY** or FAA regulations. Any hazard lights so required shall comply with the specifications and standards established for such installations by the FAA.

5.11 OTHER RESTRICTIONS

TENANT shall not, and shall not permit any person, to use the Premises in such a manner as to create electrical interference with navigational signals or radio communication between the Airport and aircraft, make it difficult for pilots to distinguish between Airport lights and other lights, result in glare in the eyes of pilots using the Airport, impair visibility in the vicinity of the Airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

5.12 CONFLICTING REGULATIONS

Where there exists a conflict between any of the regulations or limitations prescribed in this Lease and any other regulations applicable to the same area, whether the conflict is with respect to the height of structures or trees, and the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.

5.13 AIRPORT ZONE HEIGHT LIMITATIONS

TENANT shall comply with all applicable zone height limitations in its operations hereunder, including but not limited to 14 CFR Federal Aviation Regulation, Part 77, or any successor law or regulation, and shall not, nor permit any person to, erect, alter or maintain any structure, or grow any vegetation in any zone to height in excess of the height limitations. **CITY** reserves the right to enter upon the Premises and to remove any such structure or vegetation, and charge the cost thereof to **TENANT** as additional rent should **TENANT** fail to effect such removal promptly after written notice from the Airport Director to do so. **TENANT** shall submit FAA

Form 7460-1 Notice of Proposed Construction or Alteration, or applicable successor form, to the FAA, with a copy to the Airport Director, prior to erecting any possible obstruction on the Premises.

5.14 NOISE ABATEMENT

5.14.1 The **TENANT** agrees that it will comply, and require all flight crews of aircraft based at the facility on the Premises to comply with all applicable elements of the Airport's Noise Compatibility Plan (FAR Part 150 Study) approved by the FAA. This includes use of preferred noise abatement departure routes, use of Airport's voluntary noise abatement departure procedures, use of the preferential runway use program, use of the maintenance run-up procedure, and attendance at noise advisory committee meetings if requested.

5.14.2. If operations on the Premises cause or are projected to cause substantial shifts in the noise contours surrounding the Airport (from the projected contours developed by HMMH as provided in the Noise Exposure Map dated March, 2007 available from the Airport Director) that bring or are projected to bring neighboring residences within the 65 DNL contour, the **TENANT** agrees to accept operational restrictions on its use of the Premises to the degree consistent with FAA requirements.

ARTICLE 6 - OBLIGATIONS OF CITY

6.1 OPERATION AS PUBLIC AIRPORT

CITY covenants and agrees that at all times during the term of this Lease it will operate and maintain the Airport as a public airport consistent with and pursuant to the Sponsor's Assurances given by **CITY** to the United States Government under the Federal Airport Act or any successor Assurances or Act.

6.2 INGRESS AND EGRESS

Upon paying the rental hereunder and performing the covenants of this Lease, **TENANT** shall have the right of ingress to and egress from the Premises for the **TENANT**, its officers, employees, agents, servants, vendors, suppliers, customers, and invitees over the roadway provided by **CITY** serving the Premises. **TENANT's** access shall be in common with other users and shall be subject to applicable security requirements and to possible episodic interruptions due to security or safety concerns. **CITY**'s roadways shall be used jointly with other tenants on the Airport, and **TENANT** shall not interfere with the rights and privileges of other persons or firms using said facilities and shall be subject to such weight and type use restrictions as **CITY** deems necessary.

6.3 CONSTRUCTION BY CITY

There are no facilities to be constructed by **CITY** under this Agreement.

6.4 "MOST FAVORED NATIONS"

CITY agrees that if it contracts with a full service fixed base operator operating at the Airport for any more favorable term in regard to permitted and required uses, or in regard to the fixed rent or percentage rent payable hereunder, **CITY** agrees, upon **TENANT**'s request, to offer such term or terms to **TENANT** as an amendment to this Agreement. "Full service fixed base operator" as used herein shall mean a fixed base operator operating, at a minimum, at the Airport on a daily basis from 8:00 a.m. to 5:00 p.m. and providing all of the services required to be provided in Section 2.1.1 above, as such Section is in effect as of the execution date of this Agreement.

ARTICLE 7 - CITY'S RESERVATIONS

7.1 IMPROVEMENT, RELOCATION OR REMOVAL OF STRUCTURES

7.1.1 **CITY**, at its sole discretion, reserves the right to further develop or improve the aircraft operating area and other portions of the Airport, including the right to remove or relocate any structure on the Airport, as it sees fit, and to take any action it considers necessary to protect the instrument approaches of the Airport against obstructions, together with the right to prevent **TENANT** from erecting or permitting to be erected, any buildings or other structure on the Airport which, in the opinion of **CITY** would limit the usefulness of the Airport or constitute a hazard to aircraft. **CITY** acknowledges that it has agreed to permit **TENANT** to construct the Project.

7.1.2 In the event **CITY** requires the use of the Premises for expansion, improvement, or development of the Airport, **CITY** reserves the right, on six (6) months notice, to relocate or replace **TENANT**'s improvements in substantially similar form at another generally comparable location on the Airport. The costs of such relocation or replacement shall be paid or reimbursed, as appropriate, by **CITY**.

7.2 WAR OR NATIONAL EMERGENCY

During any time of war or national emergency, **CITY** shall have the right to lease the Airport or any part thereof to the United States Government for military use, and if any such lease or agreement is executed, the provisions of this Lease Agreement insofar as they are inconsistent with the lease or agreement with the Government shall be suspended, and in that event, a just and proportionate part of the rent hereunder shall be abated, and **TENANT** shall be entitled to receive that portion of rental payments received by the CITY that exceed the amounts owed to the CITY under this Lease.

ARTICLE 8 - INDEMNITY AND INSURANCE

8.1 INDEMNIFICATION

8.1.1 To the fullest extent permitted by law, **TENANT** agrees to defend, indemnify, and save forever harmless the **CITY**, its officers, agents and employees, from and against all claims and

actions and all reasonable expenses incidental to the investigation and defense thereof, based on or arising out of claims for damages or injuries to any person or property, including wrongful death and loss of use of property, and arising, in whole or in part, out of **TENANT**'s use, occupancy or management of the Leased Premises or the Ramp; **CITY** shall give to **TENANT** prompt and reasonable notice of any such claims or actions, and **TENANT** shall have the right and obligation to investigate and defend the same; and provided further, that **TENANT** shall not be liable for any claims, actions, injury, damages or losses to the extent they are occasioned by the negligent or intentional act of **CITY**, its officers, agents or employees. Notwithstanding the foregoing, **TENANT** shall defend the **CITY** from all such claims. **"TENANT"** as used in this Subsection 8.1.1 and in Section 8.2 shall mean and include the named **TENANT**, the Tenant Parties, their officers, agents, employees, invitees, customers, subcontractors, transferees, licensees, subtenants, vendors, suppliers and anyone for whose act **TENANT** or Tenant Parties may be legally liable.

8.1.2 **TENANT** shall, at its own cost and expense defend any and all suits or actions, just or unjust, which may be brought against **CITY** or in which **CITY** may be impleaded with others upon any such above-mentioned matter, claim or claims, including claims of contractors, employees, laborers, material, men, and suppliers. **CITY** shall have the right to participate in such suits and no action shall be settled without prior consent of the **CITY**. Such obligation of indemnity and defense shall not be construed to negate nor abridge any other right of indemnification or contribution running to the **CITY** which would otherwise exist. The extent of this indemnity provision shall not be limited by any requirement of insurance contained herein.

8.1.3 If **TENANT** is required to obtain workers compensation coverage under Maine law, **TENANT** agrees to procure and maintain throughout the term of this Lease Agreement, an endorsement to its Workers Compensation coverage waiving any and all rights of subrogation against **CITY.** In the event such waiver is not available, **TENANT** shall defend, indemnify and hold the **CITY** harmless from any such subrogated claims.

8.1.4 This indemnity and hold harmless provision of this Section 8.1 includes indemnity against all reasonable expenses, fees, costs and liabilities incurred in or in connection with any such claim or proceeding brought thereon, and the defense thereof with counsel reasonably acceptable to the **CITY.** The provisions of this Article 8 and the obligations of **TENANT** hereunder shall survive the termination or expiration of this Lease.

8.1.5 Notwithstanding anything to the contrary contained in this Lease, in no case shall either party be liable to the other, or to any third party, for any incidental, indirect, consequential, special or punitive damages arising out of or relating to this Lease.

8.2 LIEN INDEMNIFICATION

Throughout the term of this Lease, **TENANT** shall not cause nor permit any lien against the Leased Premises, any portion thereof or any **CITY** property wherever located, or any improvements thereto, to arise out of or accrue from any action, omission or use thereof by **TENANT**. **TENANT** may in good faith, however, contest the validity of any alleged lien. **TENANT** shall defend and indemnify and hold the **CITY** harmless from any cost, expense,

attorney's fees or other liability arising out of or resulting from any such lien or liens, and shall promptly discharge such lien or stay or prevent its foreclosure by bond or other appropriate legal procedure which is acceptable to the **CITY**. So long as **TENANT** defends **CITY** in any action concerning any such lien, **TENANT** shall not be required to post a bond with respect to such lien prior to the commencement of a foreclosure action against the **CITY.** This provision shall survive termination or expiration of this Lease Agreement. If (a) **TENANT** is not defending against such lien; and (b) foreclosure proceedings have been commenced by a lienor other than **CITY**, and (c) **TENANT** has not bonded off or otherwise made provision for the subject lien, **CITY** may, at its sole discretion, pay any amounts secured by any such lien and in such case, **TENANT** shall repay all such payments to **CITY** immediately upon **CITY**'s demand therefor.

8.3 INSURANCE

8.3.1 Without expense to the **CITY**, and with no lapse in coverage, **TENANT** shall obtain and cause to be kept in force at all times during the term of this Agreement, insurance no less than that required by the Jetport Minimum Standards for FBO operations at the Airport. A copy of the insurance requirements in effect as of the execution date of this Agreement is attached as Exhibit D.

8.3.2 **TENANT** shall procure and maintain, as of the date of beneficial occupancy of the Leased Premises, all risks fire and casualty insurance, in an amount no less than ninety percent(90%) of the replacement value of the Project and related fixtures, or in such maximum amount as is available if ninety percent (90%) is not available.

8.3.3 **TENANT** and the **CITY** understand and agree that the minimum limits of the insurance herein required may become inadequate during the term of this Agreement and **CITY** reserves the right to amend the minimums as needed throughout the term of this Lease. **TENANT** agrees that it will increase such minimum limits upon receipt of notice in writing from the **CITY**.

8.3.4 In the event any construction or renovation on the Premises or the Ramp is approved by the **CITY**, **TENANT** shall procure and maintain, or cause to be procured and maintained, commercial general liability insurance covering bodily injury and property damage, including special hazards insurance, in such amount as the **CITY** may reasonably require, covering such construction. Said insurance shall protect **TENANT** and **CITY** from any claims or damages arising out of or resulting from such construction or renovations, and shall name the **CITY** as an additional insured thereon. In addition to the foregoing, **TENANT** shall cause to be procured and maintained automobile liability and workers compensation insurance in such amounts as the **CITY** may reasonably require.

8.3.5 All policies of insurance required herein shall be in a form and issued by a company or companies approved to do insurance business in the State of Maine. Each such policy affecting the Premises or the Ramp shall provide that such policy may not be changed, altered or canceled by the insurer during its term without first giving thirty (30) days' notice in writing to the Airport Director. Each liability policy required to be obtained hereunder shall name the **CITY** as an additional insured thereunder and shall be on an occurrence basis. All policies required hereunder shall be primary to any insurance or self-insurance which **CITY** may maintain for its

own benefit.

8.3.6 Certificates or other evidence of insurance coverage required of **TENANT** in this Article, in amounts no less than those stipulated herein or as may be in effect from time-to-time, shall be delivered to the **CITY** prior to the execution of this Lease Agreement and annually thereafter. **TENANT** shall at all times during the term of this Lease Agreement provide **CITY** with at least thirty (30) days prior written notice of any change or modification in insurance coverage or insurance carrier affecting the Leased Premises or the Ramp. Insurer shall provide no less than thirty (30) days written notice prior to cancellation, reduction in coverage or expiration of each policy required hereunder, said notice to be sent to the Airport Director. It shall be **TENANT**'s responsibility throughout the term of this Lease to provide or have provided to the Airport Director renewal insurance certificates with no lapse in coverage prior to such renewal.

8.3.7 If at any time **TENANT** should fail either to obtain or to maintain in force the insurance required herein, the **CITY** shall notify **TENANT** of its intention to purchase such insurance for **TENANT**'s account; and, if **TENANT** has not delivered evidence of insurance to the Airport Director prior to the date on which the current insurance expires, the **CITY** may effect such insurance by taking out policies in companies satisfactory to the **CITY** and charging the costs thereof to **TENANT** as additional rent. Such insurance shall be in amounts no greater than those stipulated herein or as may be in effect from time-to-time. The amount of the premiums for such insurance obtained by the **CITY** shall be payable by **TENANT** as additional rental immediately upon demand therefor by **CITY**. Nothing herein is intended nor shall it be deemed to waive any right of **CITY** to declare the Lease in default hereunder.

8.4 LEASE SURETY

8.4.1 Prior to the Rent Commencement Date, **TENANT** shall provide the Airport Director with a bond or letter of credit (the "Surety") guaranteeing **TENANT**'s performance of its obligations hereunder in the amount of One Hundred Thousand Dollars ($100,000.00). **CITY** shall be the obligee on such Surety and it shall be in a form satisfactory to the Airport Director. If **TENANT** shall default in the payment of any rent, tax, fees or charge due under this Agreement to any entity, or the performance of any other obligations under this Lease Agreement, **CITY** shall have the right to call the Surety and upon notice from **CITY** to said Surety, said Surety shall pay any amounts owed by **TENANT** and unpaid, and to reimburse **CITY** any loss, costs or expenses it incurs in the event of any default hereunder by **TENANT.** Notwithstanding the foregoing, **TENANT** shall remain liable for any amounts due hereunder and unpaid, and any costs and expenses incurred by **CITY** in excess of the amount of said letter of credit. The **CITY**'s rights under this Subsection shall be in addition to all other rights and remedies provided to the **CITY** under this Agreement.

8.4.2. **CITY** reserves the right to require any successor, assignee, subtenant or other transferee of **TENANT** as tenant under this Lease, as a condition of **CITY** consent to such succession, assignment, sublease or transfer, to provide **CITY** with a Surety as provided in Subsection 8.4.1 above.

8.4.3. Notwithstanding the reimbursement of any amounts owed through the letter of credit, **CITY** reserves the right to declare **TENANT** in default under the Lease for the underlying failure of **TENANT** to pay any amounts or undertake any obligation required herein, which failure resulted in **CITY** drawing upon the letter of credit.

ARTICLE 9 - DESTRUCTION OF PREMISES

9.1 In the event the buildings and improvements on the Premises, or any substantial part thereof, should be damaged or destroyed by an insured casualty, such buildings or improvements shall be repaired or rebuilt by **TENANT** and paid for with the **TENANT**'s insurance proceeds; and, if such proceeds are insufficient for such purposes, the **TENANT** shall pay the deficiency, unless otherwise agreed as provided herein. Repair or restoration of the buildings and improvements shall be in accordance with the original Plans and Specifications, together with alterations or modifications made or agreed upon prior to the casualty, unless the parties otherwise mutually agree to new or modified plans or such new or modified plans are required by then applicable law or regulation.

9.2 Notwithstanding the foregoing, during the last ten (10) years of this Agreement or any renewal thereof, in the event the buildings and improvements on the Premises, or a substantial part thereof, should be destroyed, then **TENANT** may terminate this Agreement by written notice to **CITY** within ninety (90) days of the casualty and all obligations of each party hereunder shall terminate. In the event of such termination, **TENANT** shall return the Premises to **CITY** restored to a clean and usable condition, with removal of all personal and real property as provided in Article 12.3 below, "Termination for **TENANT** Default". If **TENANT** does not provide notice of such termination, **TENANT** shall proceed diligently to rebuild and restore the Premises and the buildings and improvements thereon in accord with the original plans and specifications or such other plans and specifications as may be approved by the Airport Director and any applicable planning authority.

9.3 If the building or buildings shall be damaged in such manner as to render them unusable in whole or in part during repair and restoration thereof, the rent provided to be paid under the terms of this Lease Agreement shall be abated or reduced proportionately during the period from the date of such damage or destruction until the work of repairing, restoring or reconstructing said building or buildings is completed.

ARTICLE 10 - CONDEMNATION

10.1 **CITY** agrees to give prompt written notice to **TENANT** of any eminent domain, condemnation, compulsory acquisition or like proceedings by any competent authority which might result in a partial or full, temporary or permanent, taking of the Leased Premises and of which **CITY** has actual notice. Each party may file and prosecute their respective claims for an award, but all awards and payments on account of a taking shall be held in trust by the recipient to be distributed according to the respective interests of the parties, i.e., payments allocable to the value of the Leased Premises and the residual interest in the Leased Premises shall be paid to **CITY** and payments allocable to **TENANT**'s leasehold interest and improvements shall be paid to **TENANT.**

10.2 In the case of a taking (other than for temporary use) of the fee of the entire Leased Premises, or so substantial a part of the Leased Premises that such taking materially impairs **TENANT**'s conduct of its operations at or from the Premises, this Agreement shall terminate as of the effective date of such taking. In the case of a temporary taking (including without limitation a temporary taking as a result of relocation under 7.1.2 above), this Agreement shall be suspended during such time as **TENANT** is unable to use the Leasehold Premises for the uses provided herein. In the case of a temporary taking which does not permit **TENANT** to use the Premises as provided herein for a period of ninety (90) days or more, at the conclusion of said ninety (90) day period, **TENANT** may, in its discretion, give **CITY** a thirty (30) day notice of its intent to terminate the Lease Agreement, during which thirty (30) day period **CITY** may provide **TENANT** with comparable leased space from which to conduct its operations; and, in such event, this Lease will be amended to cover such alternative space and shall not terminate. In the event **CITY** does not provide such alternative space, this Lease shall terminate at the end of the thirty (30) day notice period, with no further obligation by either party. Nothing herein shall prevent or prohibit the **CITY** from providing alternative space to **TENANT** prior to receipt of the thirty (30) day notice of termination. **TENANT**'s obligation to pay rent hereunder shall be suspended during any temporary taking during which **TENANT** is unable to conduct its operations at or from the Leased Premises; provided, however, to the extent **TENANT** is able to continue its operations hereunder from the Premises or from an alternative site, the **TENANT** shall continue to pay the fixed rent based upon the square footage then available to **TENANT**, and the percentage rent, if applicable.

ARTICLE 11 - TERMINATION OF LEASE

11.1 **CITY**'s Right to Terminate. The **CITY**, in addition to any other rights to which it may be entitled by law, acting by and through its City Manager, may declare this Lease Agreement terminated in its entirety, subject to and in the manner provided herein, upon or after the happening of any one or more of the following events, and may exercise all rights of entry and re-entry upon the Premises:

(a) To the extent permitted by law, the filing by **TENANT** of a voluntary petition in bankruptcy or any assignment for benefit of creditors of all or any part of **TENANT**'s assets;

(b) To the extent permitted by law, the entry of an order for relief against the **TENANT,** by a court of applicable jurisdiction, pursuant to any involuntary bankruptcy petition filed against the **TENANT**;

(c) To the extent permitted by law, the taking of jurisdiction by a court of competent jurisdiction of **TENANT** or its assets, pursuant to proceedings brought under the provisions of any Federal reorganization act;

(d) To the extent permitted by law, the appointment of a receiver or trustee of **TENANT**'s assets by a court of competent jurisdiction or a voluntary agreement with **TENANT**'s creditors;

(e) The voluntary abandonment by **TENANT** of the Leased Premises (and the failure to pay rent thereon) for a period in excess of thirty (30) days; or

(f) The material breach by **TENANT** of any of the covenants or agreements herein contained and not cured as provided below. A material breach shall include, but not be limited to, the failure of the **TENANT** to comply with the mandatory elements of the Airport's Part 150 program and the failure of **TENANT** to pay any rental, tax, fee, or charge required to be paid by the terms of this Lease Agreement.

11.2 TENANT's Right to Terminate. **TENANT**, in addition to any other right given to it herein or to which it may be entitled by law, may terminate this Agreement in its entirety, subject to and in the manner provided herein, upon or after the happening of any one of the following events:

(a) The issuance by any court of competent jurisdiction of an injunction which materially prevents or restrains the use of the Airport or the Leased Premises for the purposes permitted under this Lease Agreement and such injunction remaining in force for a period of at least ninety (90) days after the date of receipt of written notice of such injunction by **CITY;**

(b) Subject to **TENANT**'s obligation to restore or repair the Premises under Article 9 above, the inability of **TENANT** to use said Leased Premises and Airport facilities due to war, earthquake or other casualty for a longer period than ninety (90) days after the date of receipt of written notice of such inability from **TENANT;**

(c) Any action of any governmental authority, board, agency or officer having jurisdiction thereof preventing **TENANT** from conducting the activities permitted hereunder at or on the Leased Premises by a taking, directly or indirectly, in whole or a substantial part, of the Leased Premises for a period of at least ninety (90) days after receipt of written notice of such action by **CITY**, subject to Article 10 above;

(d) The taking, through the process of eminent domain, of all or a substantial part of the Premises leased by **TENANT**, subject to Article 10 above; or

(e) The material breach by **CITY** of any of the covenants or agreements herein contained and not cured as provided below.

11.3 Default by CITY. In the event of any default by **CITY** of any of its obligations under this Lease Agreement, **TENANT** may declare the **CITY** in default by delivering by hand during regular business hours or sending by certified mail, return receipt requested, of written notice to **CITY**'s Airport Director in the office of the Airport Administration, addressed and copied as provided in Section 14.9 below, specifying both the date upon which termination will take effect and also the cause for which this Lease Agreement is being terminated. No termination shall be effective until not less than thirty (30) days have elapsed after the date of delivery of notice by **TENANT** to **CITY,** and such default shall not have been cured during such thirty (30) day

period by the **CITY.** If such default by its nature cannot be cured within such thirty (30) day period, no termination shall be effective if the **CITY** commences to correct such default within said thirty (30) days from the date of delivery of the notice of default, and continues with due diligence to correct the same as promptly as reasonably practicable.

11.4 Default by **TENANT.** In the event of any default by **TENANT** of any of its obligations under this Lease Agreement, **CITY** may declare the **TENANT** in default by delivering by hand during regular business hours or sending by certified mail, return receipt requested, of written notice to **TENANT** addressed as provided in Section 14.9 below, specifying both the date upon which termination will take effect and also the cause for which this Lease Agreement is being terminated. Except as provided otherwise in this Lease Agreement whereby no opportunity to cure is required, no termination shall be effective until not less than thirty (30) days have elapsed after the date of delivery of notice by **CITY** to **TENANT,** and such default shall not have been cured during such thirty (30) day period by the **TENANT.** If such default by its nature cannot be cured within such thirty (30) day period, no termination shall be effective if the **TENANT** commences to correct such default within said thirty (30) days from the date of delivery of the notice of default, and continues with due diligence to correct the same as promptly as reasonably practicable. In the event **TENANT** knew or should have known of the default prior to receipt of **CITY** notice, said thirty (30) day period to cure shall be deemed to begin as of the date **TENANT** knew or should have known of said default. Notwithstanding the foregoing, if **TENANT** should fail to pay any sum, including without limitation any rental, tax, assessment or use fee or charge, as required hereunder, **TENANT** shall have ten (10) days from receipt of **CITY** notice of default to cure said default, and if not so cured, termination of this Lease Agreement shall be effective as of the eleventh day following said receipt of notice.

ARTICLE 12 - RIGHTS UPON TERMINATION

12.1 **TENANT** agrees that upon the expiration of the term of this Lease or sooner termination thereof, the Leased Premises will be delivered to **CITY** in good condition, reasonable wear and tear excepted, and all buildings, fixtures and personal property located on the Leased Premises shall remain on, or be removed from, the Leased Premises as provided herein. Upon the termination or expiration of this Lease Agreement, all rights of **TENANT** hereunder to possession of the Leased Premises shall immediately terminate.

12.2 Lease Expiration or Termination for **CITY** Default. Upon expiration of this Lease Agreement or termination for default by **CITY, TENANT** shall have the right, but not the obligation, upon notice to **CITY** prior to the effective date of such expiration or termination, to enter upon the Premises within thirty (30) days after the effective date of such expiration or termination and to remove all buildings, fixtures and personal property installed on the Premises, and to repair any damage to the Leased Premises caused by said removal and to restore the Premises to its original condition, all at **TENANT**'s cost and expense. In the event **TENANT** does not provide such notice to **CITY**, title to all buildings, fixtures and personal property located thereon shall vest in the **CITY** as of the day following the effective date of expiration or termination of this Lease Agreement.

12.3 Termination for **TENANT** default.

12.3.1 Personal Property. If termination of this Lease Agreement is for default by **TENANT** hereunder, **TENANT** shall remove all personal property located on the Premises within thirty (30) days after the date of such termination. Title to and ownership of any personal property left on the Premises after the expiration of said thirty (30) day period shall immediately vest in **CITY** as of the thirty-first day following the effective date of such termination. Personal property as used hereunder shall not include any buildings or fixtures located on the Premises.

12.3.2 Buildings and Fixtures. If termination of this Lease Agreement is for default by **TENANT** hereunder, all buildings and fixtures on the Leased Premises shall become the property of **CITY** and title thereto shall vest in **CITY** as of the thirty-first day following the effective date of such termination; provided, however, upon written notice from **CITY** to **TENANT** prior to the date of termination of this Lease Agreement, **CITY** may require **TENANT** to remove all such buildings and fixtures within thirty (30) days after the date of such termination and to repair any damage to the Leased Premises caused by said removal and to restore the Premises to its original condition, all at **TENANT**'s cost and expense.

12.4 **TENANT** Failure to Remove. Upon vesting of title in **CITY** in any buildings, fixtures or personal property pursuant to the terms of this Article, **CITY** shall have the right to use, lease, sell, assign, remove or otherwise dispose of, or store such property, subject to the requirements of any then applicable laws for the disposition of abandoned property. **CITY** shall be entitled to all proceeds from any such use, lease, sale, assignment or other disposition; and in the event **TENANT** was required to remove such buildings, fixtures or personal property under the terms of this Article and failed to do so, **TENANT** shall be liable to **CITY** for all losses, fees, or costs incurred by **CITY** in such use, lease, sale, assignment, removal, storage or other disposition, including without limitation reasonable attorney's fees, and any costs or expenses incurred by **CITY** to repair any damage to the Leased Premises caused by said removal and to restore the Premises to its original condition.

ARTICLE 13 - NO ASSIGNMENT AND SUBLETTING

13.1 The **TENANT** shall not assign, rent, sublease, convey, mortgage, encumber or otherwise transfer in any manner all or any part of the Leased Premises or the improvements located thereon or any of the privileges granted to **TENANT** hereunder, without the prior written consent of the **CITY**, which approval shall not be unreasonably withheld or delayed. To the degree consistent with this Lease Agreement and the scope of use described herein, the **CITY** consents to operation of the FBO through the wholly owned entities of **TENANT** or through any one or more of the Tenant Parties, as identified in Exhibit C. **TENANT** shall provide **CITY** with a list of all persons, companies, corporations, or other entities who operate at or from the Premises under a sublease or other agreement, transfer or assignment by or with **TENANT**, such list to be provided on an annual basis or upon **CITY**'s request. **CITY** reserves the right to review the form of all subleases. **CITY** further reserves the right to place such reasonable conditions upon any such transfer as it deems to be in the best interest of the **CITY**. In the event of any approved transfer, sublease or assignment, **TENANT** shall continue to be liable to **CITY** for all rent, fees, taxes and assessments for which it is liable hereunder. All approved

transferees, subleases or assignees shall be required to conform to all of the terms and conditions of this Lease Agreement, including without limitation, all insurance requirements hereunder.

13.2 Any violation of the terms of this Article by any person at or on the Premises, or conducting any activities from, at or on the Premises, shall be deemed a breach of this Lease Agreement and, at **CITY** option, may result in termination of this Lease Agreement pursuant to Article 11.

13.3 Any sale or transfer, whether to one or more persons or entities and whether at one or more different times, of a total of fifty percent (50%) or more of the ownership interest in any corporation, partnership, limited liability company or other entity which is then the legal tenant under this Lease Agreement shall be deemed an assignment of this Lease Agreement within the meaning of this Article 13. Any establishment of a separate LLC or other entity by **TENANT**, other than those identified in Exhibit C, to operate on or from the Premises shall be deemed a transfer of this Lease, even if such LLC or other entity is wholly owned by **TENANT** or other entity named in Exhibit C.

13.4 Despite any permitted assignment, subletting or other transfer, **TENANT** shall not be relieved of its obligations under this Lease Agreement but shall continue to remain primarily liable hereunder and shall not be relieved of such liability by an extension of time or other indulgence granted by **CITY** to any transferee, assignee or sublessee or by failure of **TENANT** to receive notice thereof and **TENANT** hereby waives suretyship defenses.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1 NON-INTERFERENCE WITH OPERATION OF AIRPORT

14.1.1 **TENANT**, by accepting this Lease, expressly agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft at **CITY**'s Airport or otherwise constitute a hazard or interfere with or endanger general operations at the Airport. In the event the aforesaid covenant is breached, the **CITY** reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at the expense of the **TENANT**, and reimbursement for such **CITY** expense shall be paid by **TENANT** immediately upon **CITY**'s demand therefor.

14.1.2 **CITY** hereby reserves for itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Premises, together with the right to cause in said air space such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of, or flight in the air, using said air space, or landing at, taking off from, or operating at the Airport. In addition, **TENANT** acknowledges that because of the close location of the Premises to the "airfield operations area", that noise, vibration, fumes, debris and other interference with the Premises will be caused by Airport operations. **TENANT** hereby waives any and all rights and remedies against **CITY** arising out of any noise, vibration, fumes, debris and/or interference that is caused by the operation of the Airport. **CITY** reserves the right to enter the Premises for navigational needs.

14.2 QUIET ENJOYMENT

The **CITY** agrees that on payment of the rentals and fees hereunder, and subject to performance and compliance by **TENANT** of the covenants, conditions and agreement on its part to be performed and complied with herein, **TENANT** shall peaceably have and enjoy the rights, uses and privileges of the Airport, its appurtenances and facilities, and of the Leased Premises, to the extent granted herein. It is mutually agreed, however, that this Lease Agreement is made subject to the covenants, requirements and restrictions contained in the Deeds by which **CITY** obtained title to the Airport.

14.3 AGREEMENTS WITH FEDERAL GOVERNMENT

This Lease Agreement is subject and subordinate to the provisions of any agreements that have been or shall be made between the **CITY** and the United States of America relative to the operation or maintenance of the Airport, the execution of which have been or shall be required as a condition precedent to the transfer of Federal rights of property to the **CITY** for Airport purposes, or to the expenditure of Federal funds for the extension, expansion, or development of the Airport, including the expenditure of Federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act of 1958, as it has been amended from time to time (the "Sponsor's Assurances"). **TENANT** agrees to comply with all applicable federal law, regulations and Sponsor's Assurances and to modify or amend this Agreement as required to comply with such applicable laws, regulations and Sponsor's Assurances.

14.4 LICENSE FEES AND PERMITS

TENANT shall obtain and pay for all licenses, permits, fees or other authorization or charges as required under Federal, State or local laws and regulations insofar as they are necessary to comply with the requirements of this Agreement and the privileges extended hereunder.

14.5 SECURITY AGREEMENT

TENANT, at its own cost and expense, shall be responsible for ensuring that all building entrances, gates (Intellikey locks required to be provided by **TENANT** or equal approved by the Airport Security Coordinator), exits, and any access to the Leased Premises are in compliance with the Airport Security Program as required by 49 CFR Part1542, and any amendments thereto. **TENANT** must control and regulate any doors, openings or entrances to the Security Identification Display Area (SIDA) to prevent unauthorized access by persons and/or vehicles. It shall be **TENANT**'s responsibility, at its own cost and expense, to be in compliance with all existing and future security requirements of the Department of Transportation, Transportation Security Administration, and/or the Airport Security Program, and **TENANT** shall hold the **CITY** harmless and shall pay any fines, penalties, cost or expenses incurred by **CITY** or by **TENANT** and arising out of any breach of said security requirements by **TENANT,** its officers, agents, employees, customers, invitee, subtenants, contractors, subcontractors or anyone for whose act **TENANT** may be liable.

14.6 PARAGRAPH HEADINGS

The paragraph headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provision of the Lease.

14.7 INTERPRETATIONS

The laws of the State of Maine shall govern the validity, interpretation, performance and enforcement of this Agreement. Words of gender used in this Agreement shall be held and construed to include the other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires. Unless the context specifically provides otherwise, "person" wherever used in this Lease shall include, without limitation, an individual, a sole proprietor, a corporation, a partnership or any legal entity authorized by law.

14.8 DISPUTE RESOLUTION

Except as provided herein for determination of Renewal Rent in Section 4.3, all disputes hereunder which are not mutually resolved shall be resolved by trial without a jury in the Courts of Cumberland County, State of Maine. Notwithstanding the foregoing, **TENANT** and **CITY** may mutually agree to submit any dispute hereunder to binding arbitration, subject to the following terms and conditions:

14.8.1 A request for arbitration shall be directed to the American Arbitration Association, under its commercial arbitration rules. The jurisdiction and authority of the arbitrator selected and the arbitrator's opinion and award shall be confined exclusively to the interpretation of the express provision or provisions of this Lease at issue between the parties and in accordance with the laws of the State of Maine. The arbitrator shall have no authority to add to, detract from, alter, amend or modify any provision of the Lease Agreement. The arbitrator shall not impose on either party hereto a limitation or obligation not expressly provided for in this Agreement.

14.8.2 The award shall be in writing and shall set forth the arbitrator's findings of fact and conclusions of law in a form sufficient to appraise the parties and any appellate court of the basis for the decision.

14.8.3 The award is subject to review by the Cumberland County Superior Court, sitting without a jury, which may affirm, modify or reverse the award pursuant to 14 M.R.S.A. Section 5927 et. seq. In the event of any conflict between said statute and this Lease Agreement, this Lease Agreement shall prevail.

14.8.4 The review by the court shall be based upon the record of proceedings before the arbitrator, unless the court, by order, provides otherwise. The appellant shall have the responsibility to prepare the record of proceedings and its submission to the court.

14.9 NOTICES

Except as otherwise provided in Article 11 for certified mail or hand delivery of notice of default, whenever any notice or payment is required by this Lease Agreement to be made, given or transmitted to the parties hereto, such notice or payment shall be enclosed in an envelope with

sufficient postage attached to insure delivery and deposited in the United States Mail, addressed to, or hand-delivered to:

CITY:

Airport Director
Portland International Jetport
1001 Westbrook Street
Portland, Maine 04101
with a copy to:

City Manager
389 Congress Street
Portland, ME 04101

and notices, consents and approvals to **TENANT** addressed to, or hand delivered to:

_____

Northeast Air
1001 Westbrook Street
Portland, Maine 04102

With a copy to:

or such place as either party shall designate in writing.

14.10 ENTIRE AGREEMENT

This Lease Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the parties and all other representations or statements heretofore made, verbal or written, are merged herein, and this Lease Agreement may be amended only in a writing executed by duly authorized representatives of the parties hereto.

14.11 NON-WAIVER

No waiver by either party of any of the terms, covenants, and conditions hereof to be performed kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept, and observed by the other party. The receipt by **CITY** of any rent with knowledge of any breach of this Lease Agreement by **TENANT** or of any default by **TENANT**

in the observance or performance of any of the terms, covenants or conditions of this Lease Agreement shall not be deemed to be a waiver of any provision of this Lease Agreement. If any action by **TENANT** shall require the consent or approval of **CITY, CITY**'s consent to, or approval of, such action on any one occasion shall not be deemed a consent to, or approval of, said action on any subsequent occasion, or consent to, or approval of, any other action on the same or any subsequent occasion.

14.12 REMEDIES CUMULATIVE

All rights and remedies of the parties herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise by either party of any remedy provided herein or allowed by law shall not be to the exclusion of any other remedy.

14.13 TIME OF ESSENCE

Time is and shall be of the essence in respect to the performance of each and every provision of this Lease Agreement.

14.14 FORCE MAJEURE

Neither the **CITY** nor **TENANT** shall be deemed in violation of this Lease Agreement if either should be prevented from performing any of the obligations hereunder (other than any obligations to make payments) by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not within its control. The party claiming Force Majeure shall give prompt written notice to the other party of such event or events, and shall resume performance promptly upon the conclusion of the event or events preventing its performance.

14.15 PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Lease Agreement shall be valid and be enforced to the fullest extent permitted by law. In the event of such invalid provision, there will be added to this Lease Agreement a provision as similar to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

14.16 NON EXCLUSIVE RIGHTS

Nothing herein contained shall be deemed to grant to **TENANT** any exclusive right or privilege within the meaning of section 308 of the Federal Aviation Act for the conduct of any activity at the Airport.

14.17 Intentionally omitted.

14.18 MEMORANDUM OF LEASE

Either party at the request of the other, shall execute, acknowledge and deliver for recording, a memorandum or short form lease prepared by the requesting party; provided, however, that the relations between **CITY** and **TENANT** shall be governed solely by the provisions of this Lease Agreement and not by any such memorandum or short form lease which may be executed, delivered and recorded.

14.19 SUCCESSORS AND ASSIGNS

All of the terms, provisions, covenants, stipulations, conditions and considerations in this Lease Agreement shall extend to and bind the legal representatives, heirs, successors, and any permitted assigns of the respective parties hereto. Nothing herein shall be deemed to authorize or permit any assignment or other transfer, in whole or in part, of the interest of **TENANT** in violation of any other provisions contained in this Lease Agreement.

14.20 ASSIGNMENT TO CITY SUCCESSOR IN INTEREST

The **CITY** may assign or otherwise convey its interest, rights, duties and/or obligations hereunder to any airport authority or other successor in interest.

14.21 NO PERSONAL LIABILITY

No Councilor, director, partner, officer, shareholder, member, manager, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement, or because of any breach thereof, or because of its or their execution or attempted execution.

14.22 AUTHORITY OF PARTIES

14.22.1 **CITY** represents that it has the right to lease said property designated herein as the Airport and the Leased Premises, together with all facilities, rights, licenses and privileges herein granted, and has full power and authority to enter into this Lease Agreement in respect thereof.

14.22.2 **TENANT** hereby makes the following representations as the basis for its undertakings herein contained:

(a) **TENANT** is a corporation duly organized under the laws of the State of Maine; it is _____; it is in good standing under the laws of said State; has the power to enter into this Agreement; by proper corporate action has duly authorized the execution and delivery of this Agreement; and is in full compliance with all applicable Maine laws relating to the conduct of its business in Maine; and

(b) **TENANT** will occupy and possess the Leased Premises subject to the control and jurisdiction of the **CITY** in accordance with the terms hereof.

14.23 TRANSITION PROVISION

Prior to the Effective Date, the rights and obligations of **CITY** and **TENANT** are those described in Lease 1 and Lease 2. On the Effective Date, Lease 1 and Lease 2 shall be deemed amended and restated so as to contain all of the terms of this Lease, and this Lease as amended and restated shall govern all future rights, obligations, duties and liabilities of the parties.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized representatives as of the date first above mentioned at Portland, Maine.

WITNESS

CITY OF PORTLAND, MAINE

_____

_____
Jon P. Jennings, Its City Manager

NORTHEAST AIR

_____

_____

STATE OF MAINE
Cumberland, ss. , 2015

Personally appeared the above-named Jon P. 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 the municipal corporation.

Before me,

_____
Notary Public/Attorney at Law

STATE OF MAINE
Cumberland, ss. , 2015

Personally appeared the above-named _____, _____ of Northeast Air, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said corporation.

Before me,

_____
Notary Public/Attorney at Law

EXHIBIT A

Tenant's Proposal

Northeast Air Leases:

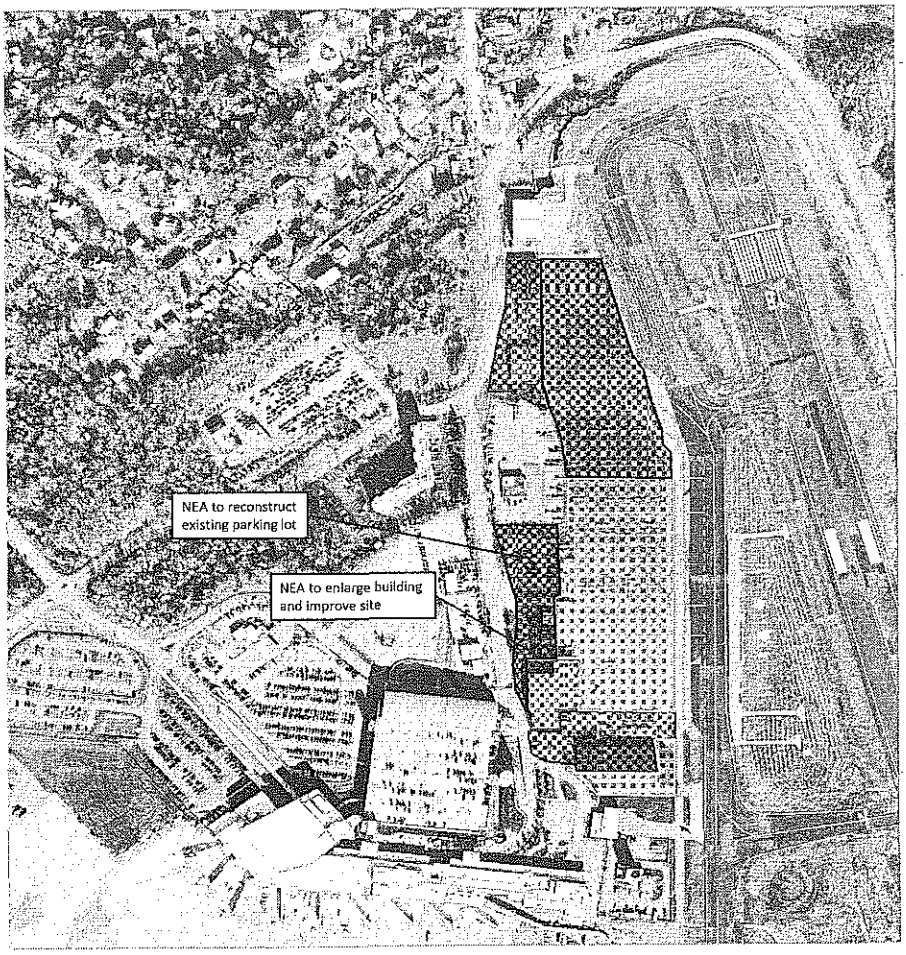
Lease # 1: Dated March 30, 1970 and restated and revised on November 14, 1997.
Agreement with Northeast Air
Term: Initial term through June 30, 2016
One twenty year renewal expiring June 30, 2036.
Premises: Hangar building 44,000 sq. ft.
Additional building property 22,000 sq. ft.
Parking lot approximately 16,100 sq. ft.
Ground rent based on 82,100 sq. ft. area shaded in red at right. Also includes management of ramp south of hangar and ramp/tiedowns north of hangar shaded in orange at right.

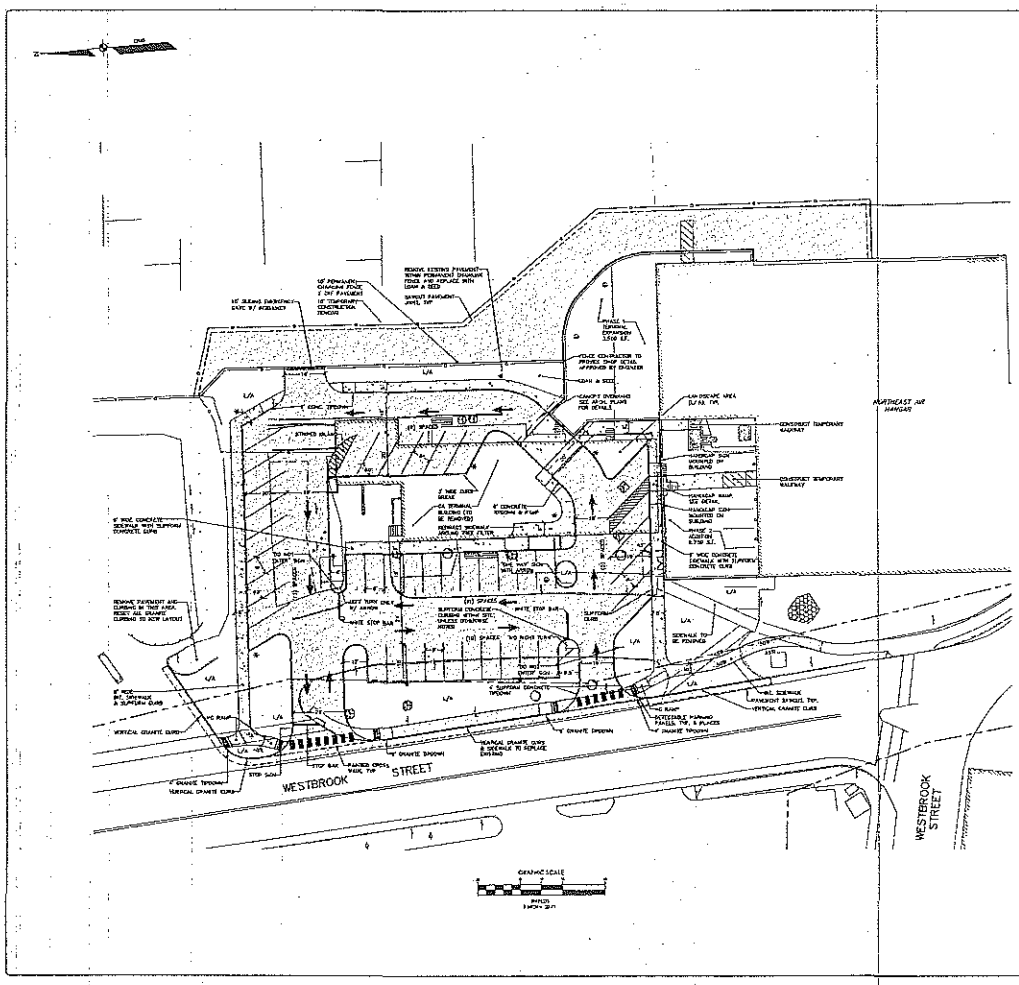
Lease #2: Dated July 1, 1996.
Term: Initial term 20 years through June 30, 2016
Agreement with LCL Associates
One twenty year renewal through June 30, 2036
Premises: Hangar building property 45,160 sq. ft. shaded in blue at right.

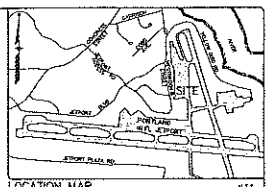
Lease #3: Former Airborne Parcel on FSDO ramp not shown. Dated January 20, 1998
Term: Twenty five year initial term through January 2023 with one option to extend 25 years to January 2048.
Agreement with HLJ Associates by assignment from LCL associates
Premises: Hangar property 68,553 sq. ft.

Lease #4: Dated August 12, 1976 with Maine Aviation Corporation. Assigned to Irving Oil Corporation September 8, 1995. Assigned to Northeast October 4, 2000.
Term: Initial ten year option followed by one ten and one twenty year option. Original agreement with all options expires August 11, 2016. An additional 20 year option was issued on August 3, 2011 and must be exercised 60 days prior to August 11, 2016. It requires a $465,000 investment in the premises.
Premises: Hangar property 44,500 sq. ft. shaded in green to right. Also includes management of ramp shaded in **purple** to right.

Proposed Restatement, Expansion, & Revision of Leases #1 and #2:
Proposed December 2015.
Term: Extends Lease #1 and #2 by 20 years to June 30, 2056.
Requires investment of $2.5 million
Premises: Ground lease increased by 61,026 sq. ft. as shown in **burgundy** at right. Total leased premises of 188,286 includes areas in Lease #1 of 82,100 sq. ft. and management of ramp/tiedowns, Lease #2 of 45,160 sq. ft., and new area of 61,026 sq. ft. Lease is revised to conform with all terms of recent City of Portland lease with Hangar Group.







LOCATION MAP N.T.S

GENERAL NOTES

1. THE RECORD OWNER OF THE LOT IS THE CITY OF PORTLAND AS SAID RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS.
2. THE PROPERTY IS SHOWN ON THE CITY OF PORTLAND'S CHART 59, BLOCK 001, AS AMENDED.
3. PLAN ORIENTATION IS BASED ON AN ASSUMED COORDINATE SYSTEM. GEOGRAPHIC INFORMATION SHOWN IS REFERENCED TO THE NATIONAL VERTICAL GEODETIC DATUM OF 88 (NVD 88), BASED ON STATE PLANE EAST ZONE WITH A RECORD ELEVATION OF 63.67'.
4. PROPERTY IS LOCATED IN THE AIRPORT BUSINESS ZONE

MIN. LOT SIZE:	20,000 SF.
MIN. FRONTAGE:	100 FEET
MIN. FRONT YARD:	30 FEET
MIN. SIDE YARD:	NONE

5. EXISTING AND PROPOSED USE: GENERAL AVIATION FACILITY.
6. ALL UTILITIES SHALL BE UNDERGROUND AND CONSTRUCTED TO THE CITY OF PORTLAND AND INDIVIDUAL UTILITY REQUIREMENTS.
7. AN APPROVED SET OF PLANS AND ALL APPLICABLE PERMITS MUST BE AVAILABLE AT THE CONSTRUCTION SITE. THE DEVELOPER OR AN AUTHORIZED AGENT MUST BE AVAILABLE AT ALL TIMES DURING CONSTRUCTION.
8. WARNING SIGNS, MARKERS, BARRICADES OR FLAGGER, APPROPRIATE FOR THE TYPE OF CONSTRUCTION MUST BE EMPLOYED TO REGULATE TRAFFIC.
9. EXISTING STORM DRAIN SYSTEM MUST BE FLUSHED, SILTS CLEANED AND AN EQUAL REMOVED FROM CATCH BASIN AREAS AND ASSOCIATED REACHES OF THE CONSTRUCTION WITHIN THE PROJECT LIMITS, AND AS STATED ON PLANS.
10. PRIOR TO ANY SITE CONSTRUCTION ACTIVITIES THE CONTRACTOR SHALL CONTACT THE AIRPORT OPERATIONS MANAGER AT 207-771-3414 AND ARRANGE FOR A PRE-CONSTRUCTION MEETING AT THE PROJECT SITE. THE CONTRACTOR SHALL HAVE A DETAILED SCHEDULE AND SHALL INCORPORATE THE AIRPORT'S REQUIREMENTS FOR SECURITY, SAFETY AND OPERATIONAL CONTROLS ARE MAINTAINED. THE CONTRACTOR OR CONTRACTOR'S PERSONNEL AND EQUIPMENT ARE NOT ALLOWED WITHIN THE AIRPORT SECURITY PERIMETER WITHOUT PRIOR OBTAINING APPROPRIATE ESCORTS, CLEARANCES AND SUBMITTING A SECURITY PLAN. ANY CONSTRUCTION WORK SCHEDULE THAT MUST BE APPROVED BY THE AIRPORT OPERATIONS MANAGER.
11. ALL WORK RETURNED BY PLAN NOTES AND NECESSARY TO COMPLETE THE PROJECT IN ITS ENTIRETY SHALL BE CONSIDERED INCIDENTAL TO CONSTRUCTION WHICH NOT EXISTING IN CONTRACT EXCLUSIONS AND PAY ITEMS. NO EXTRA PAYMENTS WILL BE MADE TO THE CONTRACTOR.
12. CONTRACTOR SHALL BE RESPONSIBLE FOR TEMPORARY SEDIMENT CONTROL. THE CONTRACT DRAWINGS DEPICT PROPOSED LOCATIONS OF TEMPORARY AND PERMANENT SEDIMENT CONTROL PLACED BY AIRPORT AND THE APPROVAL PROPOSED MEASURES (THOSE IS INTENDED TO ALLOW MORE BUT NOT LESS THAN THE AMOUNT SHOWN). THE CONTRACTOR IS RESPONSIBLE TO MAINTAIN SEDIMENT CONTROL MEASURES AS NECESSARY TO MEET ALL REGULATORY AGENCY REQUIREMENTS FOR RELOCATION AND REMOVAL OF TEMPORARY AND PERMANENT EROSION CONTROL MEASURES. CONTRACTOR MUST CHECK WITH AIRPORT OPERATIONS PRIOR TO ANY REMOVAL OR RELOCATION, AND MUST COORDINATE WORK WITH OWNER AND AIRPORT OPERATIONS MANAGER.

LEGEND

(existing)	PROPOSED
	PROPERTY LINE/EASEMENT
	CENTERLINE
	BUILDING
	EDGE (CURB) / EMBANKMENT
	EDGE PAVEMENT
	PAVEMENT SHADED
	EDGE CONCRETE
	PAVEMENT PAINT
	CONTOUR LINE
	CHAIN LINK FENCE
	GUARD RAIL
	RETAINING WALL
	STOCKADE FENCE
	DECIDUOUS TREE
	SIGN
	SHRUB

PROGRESS PRINT

DESIGNED: ASH | CHECKED: KMH

NO.	DESCRIPTION	DATE
1	REVISED PER COMMENTS	10/31/08
2	REVISED PER COMMENTS	11/21/08
3	REVISED PER COMMENTS	12/19/08
4	REVISED PER COMMENTS	1/16/09
5	REVISED PER COMMENTS	2/13/09
6	REVISED PER COMMENTS	3/13/09
7	REVISED PER COMMENTS	4/10/09
8	REVISED PER COMMENTS	5/15/09
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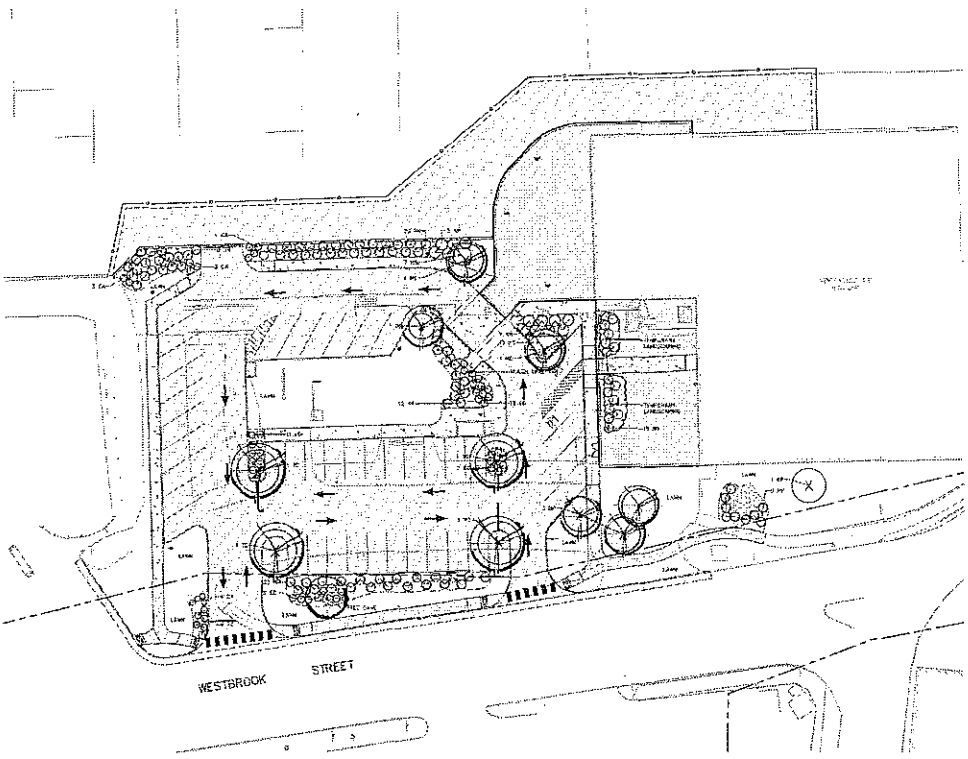


LEGEND

PLANT SCHEDULE:

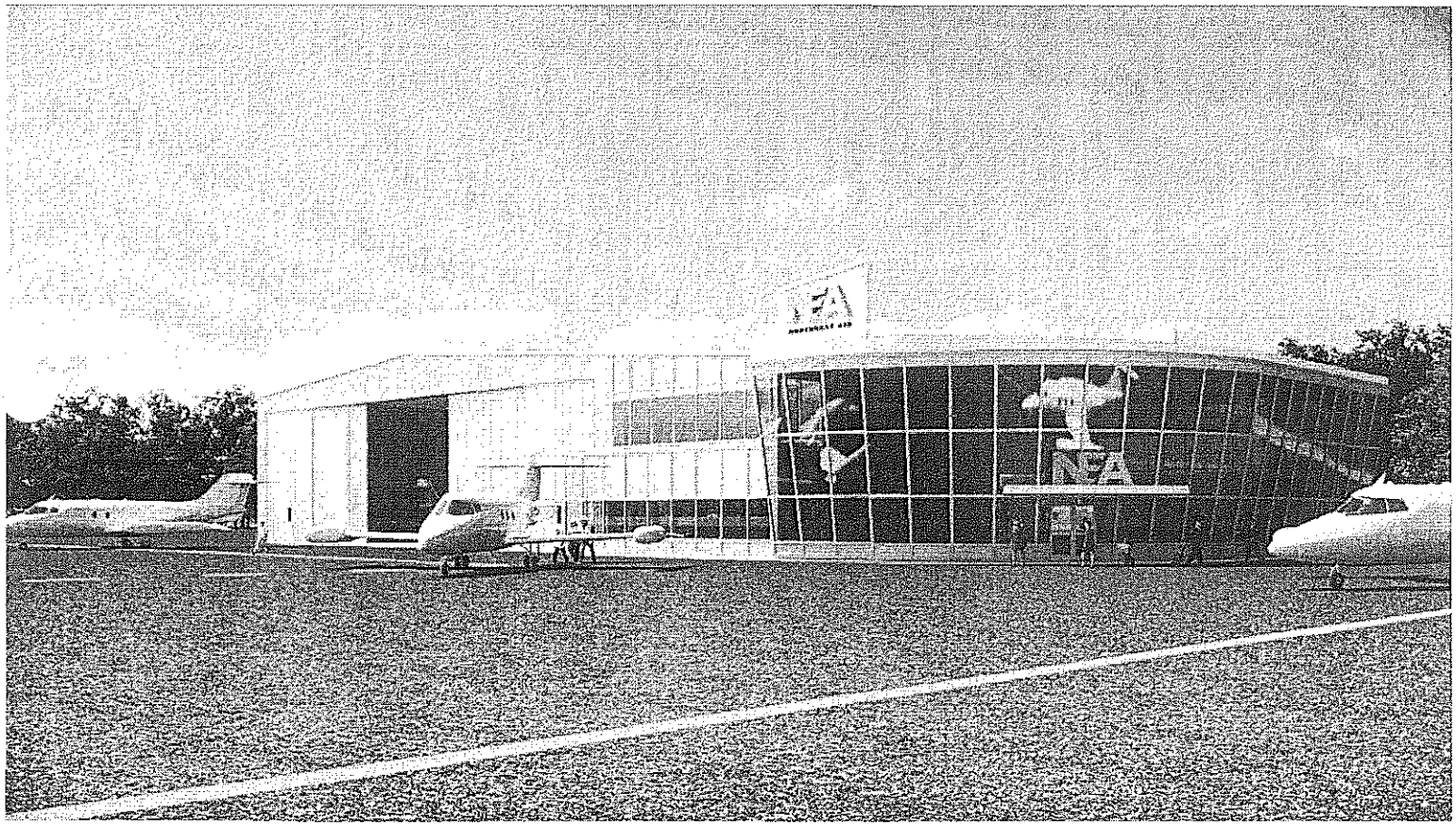
LANDSCAPE PLAN

NORTHEAST AIR-FIXED BASE OPERATOR

NORTHEAST AIR

SEBAGO

SHEET 5 OF 10



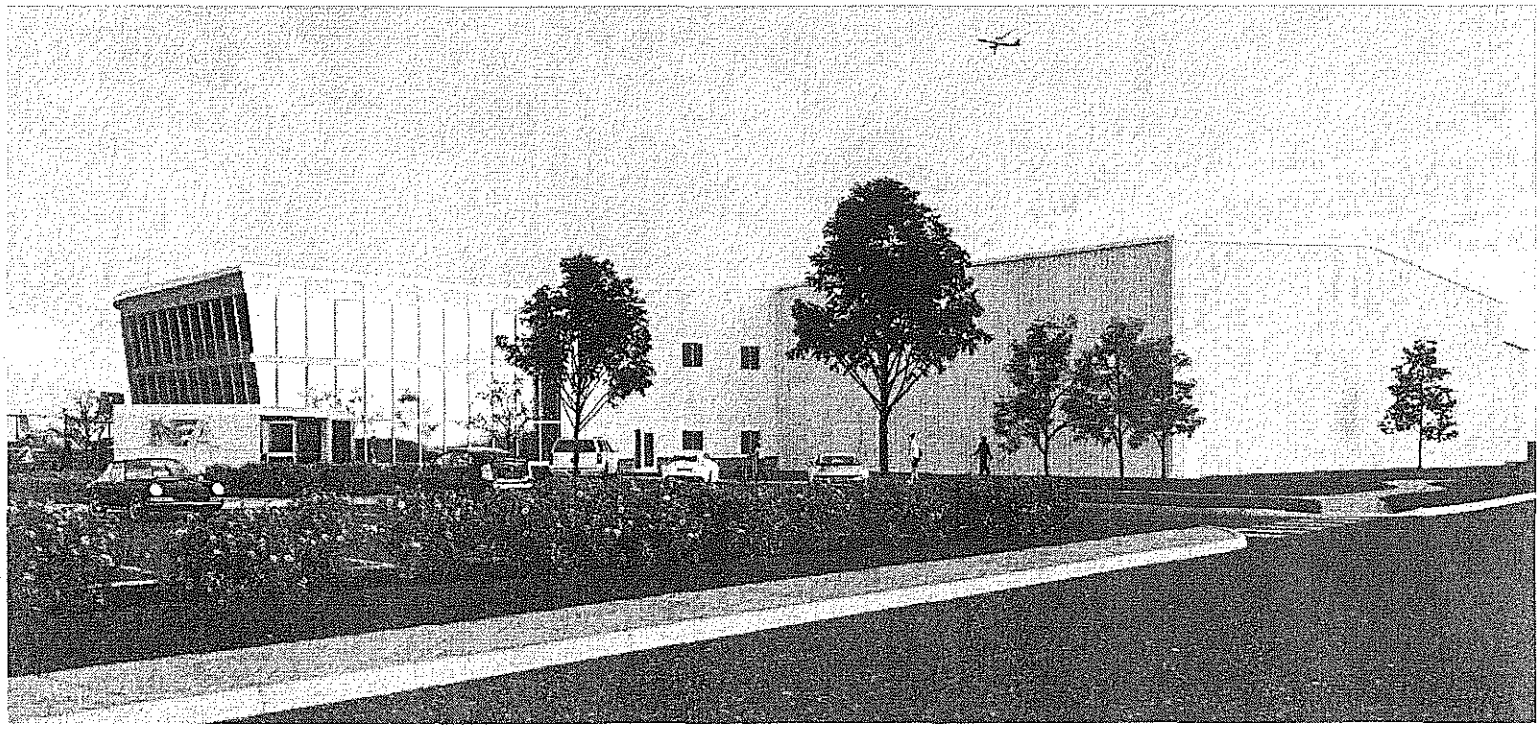


EXHIBIT B

List of Leases Between City of Portland and Tenant Parties

1. November 14, 1997 Restated and Revised Lease between City of Portland and Northeast Air.
2. January 20, 1998 Lease between HLJ Associates and City of Portland.
3. August 12, 1976 Lease between Northeast Air and City of Portland.

EXHIBIT C

Tenant Parties

HJL Associates, a Maine corporation with a mailing address of _____.
LCL Associates, a Maine corporation with a mailing address of_____

EXHIBIT D

Insurance Requirements

		Fixed Base Operator	Aircraft Maintenance	Avionics, Instrument, Propeller Repair	Aircraft Rental, Flying Club, Flight Training	Aircraft Charter or Aircraft Management	Aircraft Sales	Specialized Commercial	Specialized Commercial	Commercial Hangar	Air Carrier De-Icing	General Aviation Deicing	Non-Commercial Hangar	Self-Fueling
COMMERCIAL GENERAL LIABILITY (Combined Single Limit)														
	Each Occurrence	$ 10,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 25,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000
VEHICULAR LIABILITY of BUSINESS AUTOMOBILE LIABILITY (Combined Single Limit)														
	Each Occurrence	$ 2,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 10,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000
HANGAR KEEPER'S LIABILITY (Largest Aircraft Accommodated)														
SE Piston	Each Aircraft		$ 150,000	$ 150,000	$ 150,000	$ 150,000	$ 150,000	$ 150,000	$ 150,000	$ 150,000				
	Each Occurrence		$ 300,000	$ 300,000	$ 300,000	$ 300,000	$ 300,000	$ 300,000	$ 300,000	$ 300,000				
ME Piston	Each Aircraft		$ 250,000	$ 250,000	$ 250,000	$ 250,000	$ 250,000	$ 250,000	$ 250,000	$ 250,000				
	Each Occurrence		$ 500,000	$ 500,000	$ 500,000	$ 500,000	$ 500,000	$ 500,000	$ 500,000	$ 500,000				
SE Turboprop	Each Aircraft		$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000				
	Each Occurrence		$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000				
ME Turboprop	Each Aircraft		$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000	$ 2,000,000				
	Each Occurrence		$ 4,000,000	$ 4,000,000	$ 4,000,000	$ 4,000,000	$ 4,000,000	$ 4,000,000	$ 4,000,000	$ 4,000,000				
Light Turbine	Each Aircraft		$ 2,500,000	$ 2,500,000	$ 2,500,000	$ 2,500,000	$ 2,500,000	$ 2,500,000	$ 2,500,000	$ 2,500,000				
	Each Occurrence		$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000				
Medium Turbine	Each Aircraft		$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000	$ 5,000,000				
	Each Occurrence		$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000				
Heavy Turbine	Each Aircraft	$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000				
	Each Occurrence	$ 20,000,000	$ 20,000,000	$ 20,000,000	$ 20,000,000	$ 20,000,000	$ 20,000,000	$ 20,000,000	$ 20,000,000	$ 20,000,000				
AIRCRAFT AND PASSENGER LIABILITY (Combined Single Limit, Each Occurrence)														
SE Piston					$1,000,000 CSL/$100,000 sub limit per seat/passenger									
ME Piston					$1,000,000 CSL/$100,000 sub limit per seat/passenger									
SE and ME Turboprop					$5,000,000 CSL/$200,000 sub limit per seat/passenger									
Light Turbine					$5,000,000 CSL/$200,000 sub limit per seat/passenger									
Medium Turbine					$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000						
Heavy Turbine					$ 10,000,000	$ 10,000,000	$ 10,000,000	$ 10,000,000						
Student and Renters					$ 100,000									
CFI Professional Liability					$ 100,000									

Order 130-15/16
Tab 12 12/21/15

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 GRANTING EASEMENT TO CENTRAL MAINE POWER FOR HANGAR ASSOCIATES SOUTH FIXED BASE OPERATION

ORDERED, that an easement is hereby authorized and granted to Central Maine Power, in substantially the form attached hereto, for utility access to the Hangar Associates South Fixed Base Operation at the Portland International Jetport; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is hereby authorized to execute said easement and any other documents necessary to affect the purpose of this Order.

MEMORANDUM
City Council Agenda Item

TO: Mayor and City Council

FROM: Paul Bradbury, Airport Director

DATE: December 9, 2015

DISTRIBUTION: Jon Jennings, City Manager; Mayor Strimling; Anita LaChance, Deputy City Manager; Danielle West-Chuhta, Corporation Counsel; Sonia Bean; Nancy English; Julie Sullivan

SUBJECT: Central Maine Power utility easement for South Fixed Base Operation (FBO) Construction.

SPONSOR: Jon Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading: December 21, 2015 **Final Action:** December 21, 2015

Can action be taken at a later date: __ Yes _X_ No (If no why not?)
Construction is under way on the Maine Aviation FBO on the south side of the airport and a Central Maine Power utility easement is needed in order for electrical service connection to proceed. This is time sensitive issue for the South FBO development.

I. SUMMARY OF ISSUE (Agenda Description)

The City Council previously approved the ground lease with Hangar Associates (dba Maine Aviation and MAC Group) allowing for the construction of a new $4.5 million south Fixed Base Operation to provide aircraft fueling, service, etc. At this time an easement with Central Maine Power is needed to bring electrical utilities to the site.

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

Electrical utility easements require City Council approval.

III. INTENDED RESULT

Allow electrical utilities to be brought to the South FBO complex development previously approved by the City Council.

IV FINANCIAL IMPACT

There is no financial impact to the City.

V. RECOMMENDATION

Jetport staff recommends the City Council approve the Central Maine Power utility easement as outlined in the attachments to allow for electrical service installation at the previously approved South FBO development.

VI. LIST ATTACHMENTS

1. Proposed Central Maine Power Easement with the City of Portland

Prepared by:

Signature

December 9, 2015
Date

Easement

WO# 10300122065

Form 1199, Rev. 07/08

City of Portland, Maine (Portland International Jetport), a Maine Municipality with a mailing address of 389 Congress Street, Portland, ME, 04101 (Grantor(s)), for consideration given, grants to CENTRAL MAINE POWER COMPANY, a Maine Corporation with an office at 83 Edison Drive, Augusta, Maine 04336, and , and their respective successors and assigns (collectively Grantees), without covenant, the right and easement to erect, bury, maintain, rebuild, respace, patrol, operate, and remove and do all other actions involving electric and communication distribution equipment and facilities, consisting of poles, wires and cables, anchors, guywires or pushbraces, together with all necessary fixtures and appurtenances over, across and under a portion of the surface of the land of the Grantor(s) in the City/Town of South Portland, Cumberland County, Maine. The said equipment and facilities are attached to a line commencing at Pole/Pad 68, Westbrook Street, South Portland and extending to include Pole(s)/Pad(s) 68,69 and MH1, MH2,PM2.1,MH3 ,PM3.1 Aviation Blvd, Westbrook St., as generally depicted on the diagram attached hereto as Exhibit A. This easement affects land conveyed to the Grantor(s) in a deed from State of Maine, dated December 26, 2001, and recorded in the Cumberland County Registry of Deeds in Book 17126 Page 328. This easement is an easement in gross and is not for the sole purpose of serving the Grantor(s) or Grantor's land. The rights granted herein include the right to cut down and trim trees and other vegetation and to use formulations registered with the Environmental Protection Agency or its successor to eliminate vegetation, and modify the growth of trees, which vegetation or growth, in the judgment of Grantees, may interfere with the operation and maintenance of its equipment or facilities; and the right to restrict the construction of buildings, structures and improvements within 15 feet of its equipment and facilities; and the right to keep the surface of ground above its underground cables and other electrical equipment free from structures, improvements and growth which, in the reasonable judgment of the Grantees, may interfere with the proper operation or maintenance of said underground cables; and the right to enter upon the land of the Grantor(s) for any and all of the foregoing purposes.

WITNESS the hand(s) and seal(s) of Grantor(s) duly authorized representatives on _____, _____.

Signed, Sealed and Delivered in the presence of:

City of Portland, Maine Brendan O'Connell, Finance Director

_____

State Of _____
County Of_____

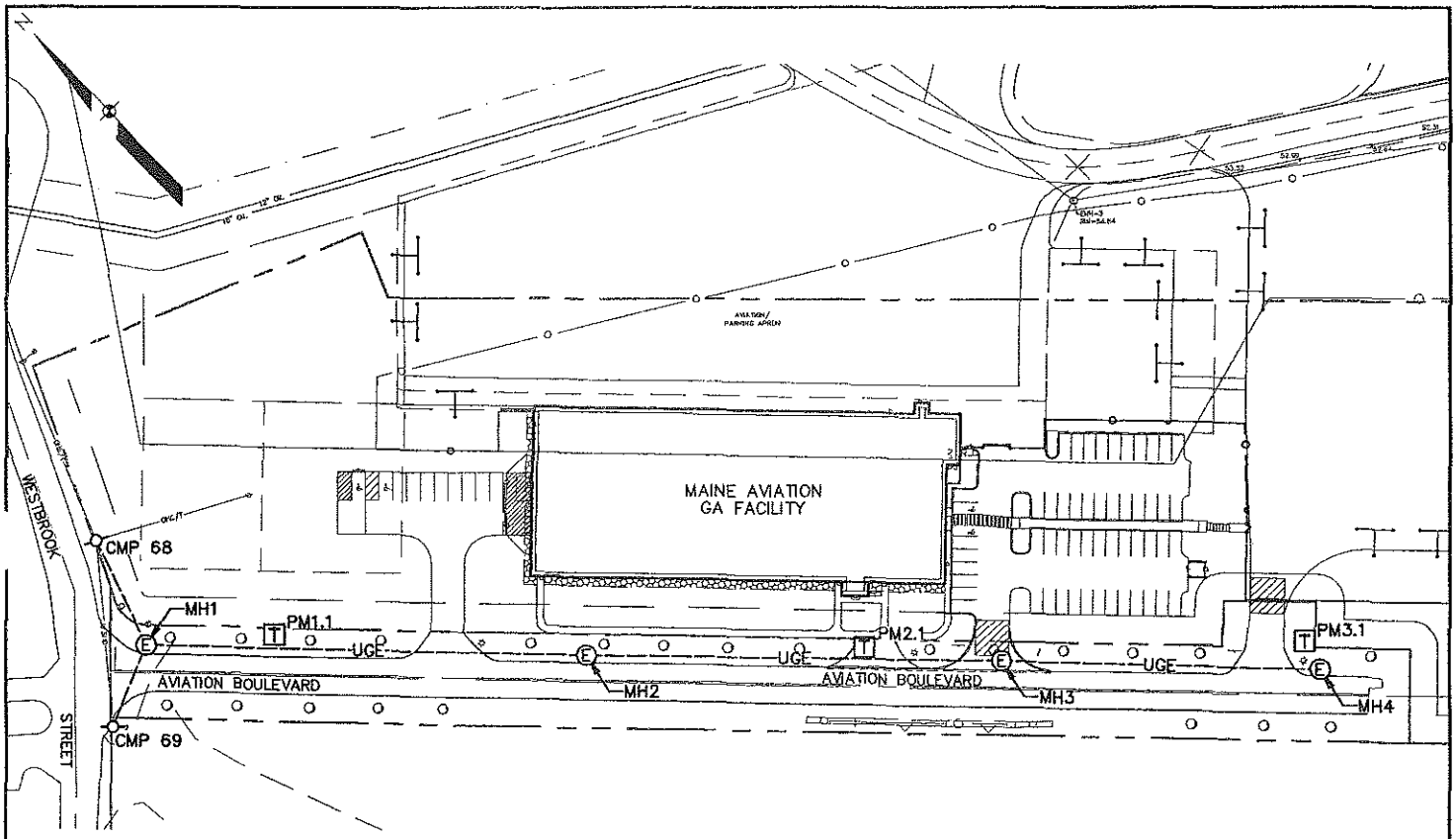
The above-named Brendan O'Connell, Finance Director of the City of Portland, personally appeared before me this _____day of _____, _____ and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said City of Portland, Maine .

_____

Notary Public/Attorney

Printed Name:

My Commission Expires



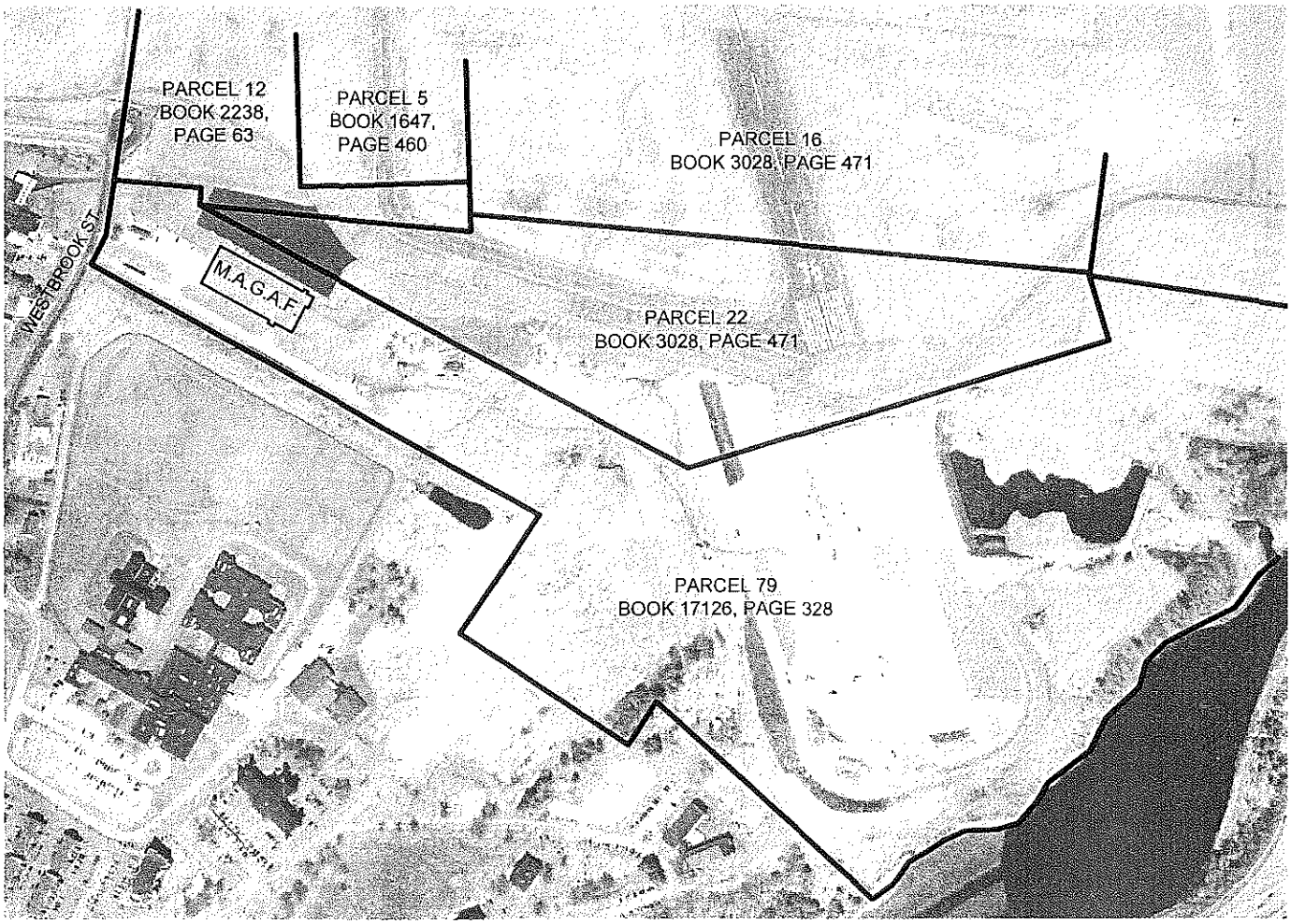
SEBAGO TECHNICS
WWW.SEBAGOTECHNICS.COM
75 John Roberts Rd. - Suite 1A
South Portland, ME 04106
Tel. 207-200-2100
250 Goddard Rd. - Suite B
Lewiston, ME 04240
Tel. 207-783-5656

EXHIBIT A

OF CENTRAL MAINE POWER COMPANT EASEMENT

LOCATION: AVIATION BOULEVARD PORTLAND, MAINE	FOR: PORTLAND INTERNATIONAL JETPORT PORTLAND, MAINE	SCALE:	1"=100'
		DATE:	11-19-20
		SHEET:	1 OF 1

07674-GAF-gu.dwg, TAB: EX A



1"=500'

0' 500'

PROJECT: 14078 DATE: 12-08-2015 SCALE: AS NOTED	EXHIBIT PARCELS CITY OF PORTLAND IN THE VICINITY OF PROPOSED CENTRAL MAINE POWER COMPANY EASEMENT	PLISGA & DAY LAND SURVEYORS 72 MAIN STREET BANGOR, ME 04401 (207) 947-0019	SITE NO. JETPORT 1 OF 1 PAGE PAGES

Order 131-15/16
Tab 13 12-21-16

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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 GRANTING
A REVOCABLE LICENSE TO BAYSIDE ANCHOR APARTMENTS, LP

ORDERED, that a revocable license agreement to Bayside Anchor Apartments, LP to allow foundation footings within the street right-of-way and a permanent canopy above the entrance is hereby granted in substantially the form attached hereto as Exhibit A; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager to execute said document and any other related documents necessary or convenient to carry out the intent of said document and this Order; and

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 and permit approval of financing for the developer that would otherwise be delayed, affecting the project's completion.

MEMORANDUM
City Council Agenda Item

DISTRIBUTE TO: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julianne Sullivan

FROM: Jeff Levine, Director of Planning and Urban Development

DATE: December 10, 2015 **(updated)**

SUBJECT: Bayside Anchor License Agreement

SPONSOR: Jeff Levine, Director of Planning and Urban Development

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading_____ **Final Action** December 21, 2015

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

The Bayside Anchor developer indicates the license agreement must be approved prior to the project's loan closing which is scheduled for December 30, 2015. Bayside Anchor requests the license be approved by the City Council on an emergency basis since the license needs to be signed by the City Manager prior to their loan closing.

PRESENTATION: (List the presenter(s), type and length of presentation)
Short presentation by Planning Board Chair. Short presentation by Planning Staff (if necessary). Short presentation by Bayside Anchor representative.

I. ONE SENTENCE SUMMARY

Bayside Anchor, an affordable housing development, is requesting City Council approval of a license agreement for improvements within public rights-of-way which are needed to construct this project.

II. AGENDA DESCRIPTION

The developers of the Bayside Anchor housing development, a partnership of the Portland Housing Authority and AVESTA, are requesting City Council approval of a license agreement for certain improvements within public rights-of-way which are needed to construct this project. Bayside Anchor is a proposed 45 unit affordable housing development located on the corner of Boyd Street and Oxford Street.

The requested license covers a number of improvements within the public right-of-way and include:

1. Subsurface building footings
2. Permanent canopies above building entrances

III. BACKGROUND

The developers of the Bayside Anchor, a partnership of the Portland Housing Authority and AVESTA, are requesting City Council approval of a license agreement for certain improvements within public rights-of-way which are needed to construct this project. Bayside Anchor is a proposed 45 unit affordable housing development located on the corner of Boyd Street and Oxford Street.

The requested license agreement covers a number of improvements within the public right-of-way and include:

1. Subsurface building footings
2. Permanent canopies above building entrances

Bayside Anchor received Planning Board site plan and subdivision approval on July 23, 2014 with conditions and one of the conditions referenced City Council approval of the licenses.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Granting the license for Bayside Anchor supports the general City Council goal to "Promote Housing Availability".

V. FINANCIAL IMPACT

There are no known adverse financial impacts associated with granting the license. The Bayside Anchor development will have a positive impact in terms of providing affordable housing.

VI. STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION

Planning Staff recommends approval of the license agreement since they are a critical part of the Bayside Anchor development. City Council approval of the license is needed for the project to proceed. Bayside Anchor received Planning Board site plan and subdivision approval on July 23, 2014 with conditions and one of the conditions referenced City Council approval of the licenses. The requested license is similar to other licenses requested by other peninsula developments.

VII. RECOMMENDATION

Planning Staff recommends approval of the license agreement since they are a critical part of the Bayside Anchor development. City Council approval of the licenses is needed for the project to proceed. Bayside Anchor received Planning Board site plan and subdivision approval on July 23, 2015 with conditions and one of the conditions referenced City Council approval of the licenses.

VIII. LIST ATTACHMENTS

1. Bayside Anchor License Agreement

Prepared by: Richard Knowland
Date: December 10, 2015

Bean/agendarequestmemo/rev 11/2015

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of the _____ day of December, 2015, between the **CITY OF PORTLAND**, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "City" or "Licensor"), and **BAYSIDE ANCHOR APARTMENTS, LP**, a Maine limited partnership with a place of business in Portland, Maine and mailing address of 14 Baxter Blvd., Portland, ME 04101 and its successors and assigns (hereinafter the "Licensee"), who hereby agree as follows:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, a revocable license is hereby granted to Licensee to occupy portions of land owned by the City on Boyd and Oxford Streets in the City of Portland, Cumberland County, Maine, which property abuts the property of Licensee described in a deed to Licensee recorded in the Cumberland County Registry of Deeds in Book _____, Page _____ ("Licensee's Property"), for the purpose of permitting the encroachment of (i) concrete foundation footings, and (ii) permanent canopies above the entrance to the new building to be constructed on Licensee's Property, all of the foregoing to be located according to, and used as shown on the Recording Plat made for Bayside Anchor Apartments, by Owen Haskell, Inc., dated September 11, 2015, to be recorded in the Cumberland County Registry of Deeds (collectively the "Licensed Areas"), together with the right from time to time to bring upon the Licensed Areas and areas adjacent thereto workers, materials and machinery necessary for the use and enjoyment of the License granted herein, all in connection with the development of Licensee's affordable multi-family apartment project being developed on the Licensee's Property (the "Project"). A legal description of the Licensed Areas for the foundation footings and the permanent canopies is attached hereto as Exhibit A. A plan depicting the Licensed Areas for such footings and canopies is attached hereto as Exhibit B.

Occupancy of the Licensed Areas is subject to the following conditions:

1. All work performed upon and use of the Licensed Areas for the purposes set forth herein shall be at Licensee's sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the City's property adjacent to the Licensed Areas related to the conduct of any work related to this License. Licensee agrees at its sole expense to restore any portion of the Licensed Areas and adjacent City property damaged by work conducted by Licensee related to this License to substantially its condition prior to such work, or as shown on the Site Plan (as defined below) for the Project, or as close to that condition as is reasonably practicable. Licensee, its successors and assigns, shall defend, indemnify and hold the City, its officers, agents, and employees harmless from any and all claims, including but not limited to claims for damage to City property and reasonable attorney's fees, which arise out of Licensee's use, or the use of others, of the City's property as described above.

2. At all times during the Term of this License Agreement, Licensee, its agents and assigns, specifically including, but not limited to any condominium association (in the event the Project becomes a condominium) as soon as any unit is transferred, shall exclusively be responsible for repairing, keeping and maintaining the Licensed Areas in a safe condition generally, by, among other things: ensuring prompt removal of, or otherwise eliminating snow and ice from the Licensed Areas and in a manner that does not endanger pedestrians; preventing, by design and rules and supervision, objects stored or otherwise present on the Licensed Areas from falling or being dropped or thrown onto the City's sidewalk; repairing, replacing or removing all above-ground encroachments as necessary for public safety; taking any and all other measures necessary to protect pedestrians in the sidewalk from injury or other harm arising out of the presence of any such encroachments.

3. Licensee shall procure and maintain liability insurance in an amount of at least Four Hundred Thousand Dollars ($400,000) combined single limit (or the amount stated in the Maine Tort Claims Act as the same may be amended from time to time), covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations of Licensee under the terms of this license. Licensee shall provide City with evidence of such insurance coverage and shall obtain an endorsement providing City with no less than ten (10) days notice prior to non-renewal or cancellation thereof. Such notice shall be sent to City of Portland, Corporation Counsel, 389 Congress Street, Portland, ME 04101. Failure of Licensee to procure or maintain such insurance coverage shall be an Event of Revocation as set forth in Section 4 below.

4. This license is assignable to any subsequent owners of the building located on the land described on the approved site and subdivision plan for Bayside Anchor, Address: 81 East Oxford Street, Portland, Maine, recorded in the Cumberland County Registry of Deeds in Plan Book _____, Page _____ (the "Site Plan").

5. Subject to the provisions of Sections 6 and 7 hereof, this Agreement may be revoked six (6) months after receipt by the Licensee of written notice that an Event of Revocation has occurred, identifying such Event of Revocation, provided that such Event of Revocation is not cured within six (6) months after receipt of such notice by Licensee except as set forth in clause 3) below. "Event of Revocation" shall mean: 1) the building shown on the Site Plan fails to be constructed substantially in accordance with the Site Plan or any amendments thereto; 2) the building as shown on the Site Plan is destroyed, removed or otherwise thereafter ceases to exist on Licensee's Property and construction to rebuild said building has not begun within twelve (12) months of said destruction or removal, or 3) failure to maintain insurance as required under Section 2 above, and such failure is not remedied within thirty (30) days after written notice thereof. City acknowledges that Licensee may amend this Agreement, upon the written approval of the City, for the purpose of correcting and/or revising Exhibit A, to more accurately show the encroachments described above that are being licensed under this Agreement.

6. Any notice of an Event of Revocation delivered pursuant to Section 4 of this Agreement must be sent by certified mail, return receipt requested to the Licensee at the address

for Licensee set forth above, or at such other address as the Licensee may provide to the City in writing from time to time. Copies of any notices sent to Licensee shall also be sent to: (i) Boston Capital Corporate Tax Credit Fund XLI, A Limited Partnership and BCCC, Inc., c/o Boston Capital Partners, Inc., One Boston Place, Boston, MA 02108 and (ii) Maine State Housing Authority, Attn: Legal Department, 353 Water Street, Augusta, Maine 04330.

7. Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered pursuant to Section 4 hereof, any mortgagee of Licensee's Property shall be entitled to cure the matter set forth in such notice within the time frames set forth in Section 4 hereof, and the City agrees to accept such performance by any such mortgagee of Licensee's obligations hereunder. In addition, the City agrees to accept any cure by the Licensee's limited partner of any Event of Revocation.

[Signature Pages Follow]

IN WITNESS WHEREOF, the City of Portland has caused this Revocable License to be executed by Jon Jennings, its City Manager thereunto duly authorized, as of the day and year first written above.

CITY OF PORTLAND

By:_____
Jon Jennings
City Manager

STATE OF MAINE
CUMBERLAND, ss

December ____, 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

Print name:_____
My commission expires:_____

Seen and Agreed to:

BAYSIDE ANCHOR APARTMENTS, LP

BY: Bayside Anchor Development Company,
Its Sole General Partner

By: _____
Name: Mark B. Adelson
Title: Its President

EXHIBIT A

Canopy License

A certain lot or parcel of land situated in Oxford Street, in the City of Portland, County of Cumberland and State of Maine described as follows:

Commencing at the intersection of the northerly sideline of Oxford Street with the easterly sideline of Boyd Street thence, N 48°37'04" E along the northerly sideline of said Oxford Street 66.30 feet to the Point of Beginning;

Thence, from the Point of Beginnig N 48°34'04" E along the northerly sideline of said Oxford Street 24.40 feet;

Thence, S 41°22'56"E into said Oxford Street 1.50 feet;

Thence, S 48°37'04" W a distance of 24.40 feet;

Thence, N 41°22'56" W a distance of 1.50 feet to the northerly sideline of said Oxford Street and the point of beginning containing 37 square feet more or less.

The above described parcel of land is shown as "Canopy License" on "Recording Plat on Oxford Street & Boyd Street, Portland, Maine made for Bayside Anchor Apartments, LP" dated October 8, 2015 by Owen Haskell, Inc.

Footing and Canopy License

A certain lot or parcel of land situated in Oxford and Boyd Street, in the City of Portland, County of Cumberland and State of Maine described as follows:
Beginning at the intersection of the northerly sideline of Oxford Street with the easterly sideline of Boyd Street thence, N 48°37'04" E along the northerly sideline of said Oxford Street 27.85 feet;
Thence, S 42°26'05"E into said Oxford Street 0.75 feet;

Thence, S 48°37'04" W a distance of 30.10 feet into said Boyd Street;

Thence, the following courses and distances in Boyd Street:
N 42°25'38" W a distance of 21.21 feet;
S 47°34'13" W a distance of 0.75 feet;
N 42°25'47" W a distance of 15.00 feet;
N 47°34'13" E a distance of 0.75 feet;

N 42°25'38" W a distance of 20.42 feet;
N 47°34'13" E a distance of 2.25 feet to the easterly sideline of said Boyd Street;

Thence, S 42°25'47" E along the easterly sideline of said Boyd Street 55.92 feet to the northerly sideline of said Oxford Street and the point of beginning containing 160 square feet more or less.

The above described parcel of land is shown as "Footing & Canopy License" on "Recording Plat on Oxford Street & Boyd Street, Portland, Maine made for Bayside Anchor Apartments, LP" dated October 8, 2015 by Owen Haskell, Inc.

EXHIBI

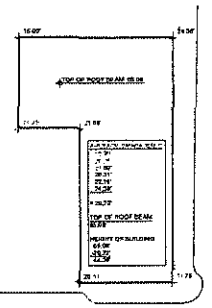
BAY
09/03/2015

UNIT MIX: GROUND FLOOR	
Zone Category	Quantity
1 BR	5
EFFICIENCY	2
	6

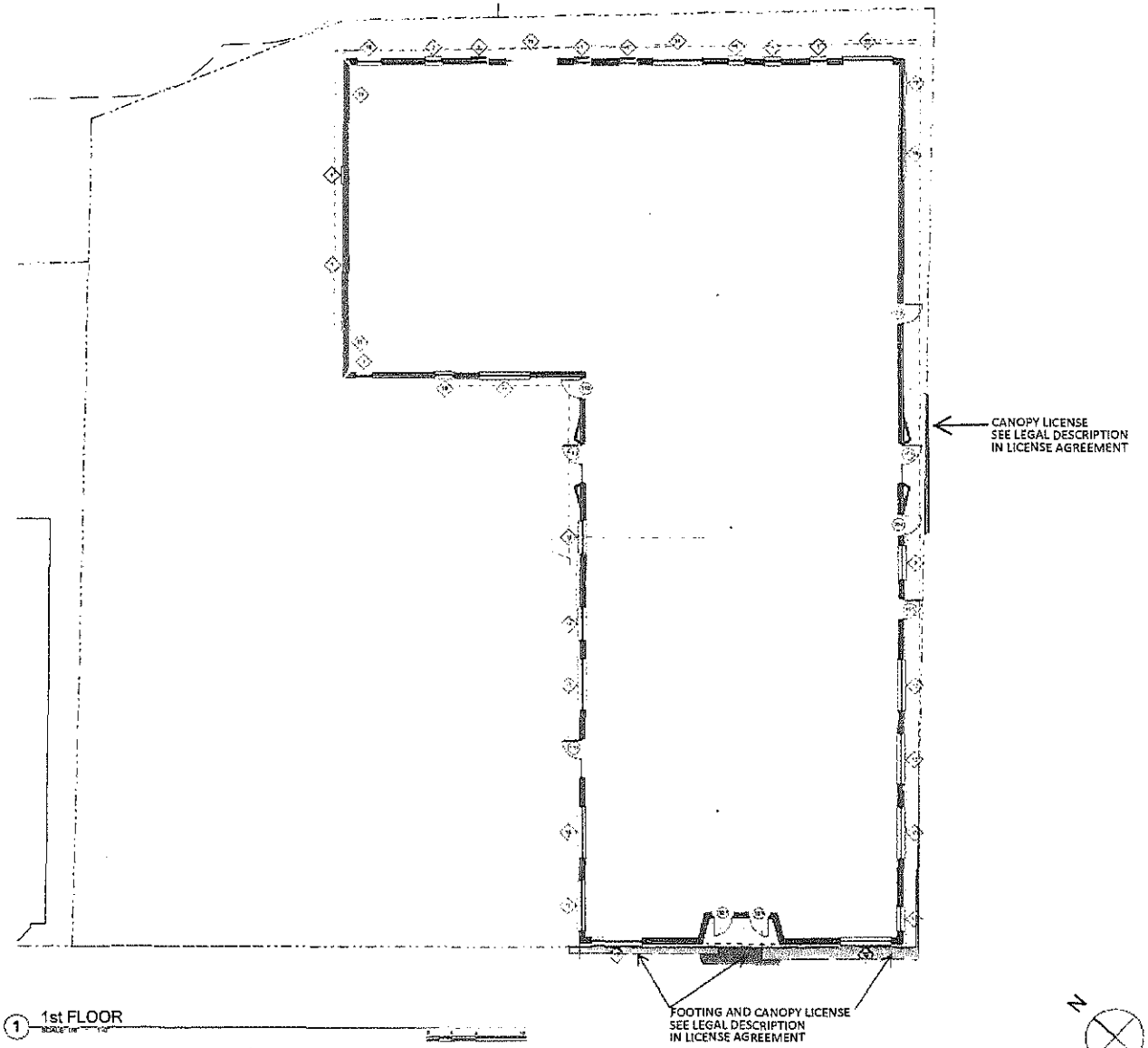
UNIT MIX: TOTAL	
Zone Category	Quantity
1 BR	34
2 BR	5
EFFICIENCY	5
	45

UNIT MIX: TOTAL BUILDING		
Floor (Story)	Zone Category	Quantity
1st FLOOR	1 BR	4
1st FLOOR	EFFICIENCY	2
2nd FLOOR	1 BR	10
2nd FLOOR	2 BR	2
2nd FLOOR	EFFICIENCY	1
3rd FLOOR	1 BR	10
3rd FLOOR	2 BR	2
3rd FLOOR	EFFICIENCY	1
4th FLOOR	1 BR	10
4th FLOOR	2 BR	2
4th FLOOR	EFFICIENCY	1
		45

GROUND FLOOR PROGRAM			
Room #	Room Name	Area	Type
100	GROSS AREA	9,423	GROSS AREA
101	1 BR - ANSI B	503	1 BR
102	1 BR - ADA/AG	518	1 BR
103	EFF - ANSI B	407	EFFICIENCY
104	1 BR - ANSI B	480	1 BR
105	ELECTRICAL	125	UTILITY
106	MECH/MAINT.	182	UTILITY
107	TRASH	123	UTILITY
108	B KE STOR.	145	UTILITY
109	LAUNDRY	112	UTILITY
110	VESTIBULE	93	CIRCULATION
111	LOBBY	988	CIRCULATION
112	COMMUNITY POLICE	233	COMMUNITY SERVICE FACILITY
113	OFFICE	91	COMMUNITY SERVICE FACILITY
114	ADA	50	COMMUNITY SERVICE FACILITY
115	ADA	50	COMMUNITY SERVICE FACILITY
128	COMMUNITY ROOM	521	COMMUNITY SERVICE FACILITY
129	CORRIDOR	190	COMMUNITY SERVICE FACILITY
130	EFF - ANSI B	373	EFFICIENCY
131	1 BR - ANSI B	539	1 BR
140	Corridor 1/2	427	CIRCULATION
142	JANITOR CL	72	UTILITY
143	STAIR 1	295	CIRCULATION
144	STAIR 2	327	CIRCULATION
T101	HEAD START CLASSROOM	739	TENANT SPACE
T102	HS DIRECTOR'S OFFICE	115	OFFICES
T103	HS MEETING & STORAGE	115	OFFICES
T104	HS WARMING KITCHEN	144	COMMUNITY SERVICE FACILITY
T105	HS MECH. CLOSET	39	COMMUNITY SERVICE FACILITY
T106	HS CHILDREN'S TOILET	87	COMMUNITY SERVICE FACILITY
T111	PHA RECEPTION	178	TENANT SPACE
T112	PHA OFFICES	1197	TENANT SPACE
T113	PHA SM MEETING RM	85	MEETING ROOMS
T114	PHA LG MEETING RM	124	MEETING ROOMS
T115	PHA HOUSING OFFICER	103	OFFICES
T116	PHA PROPERTY MANAGER	102	OFFICES



2 BUILDING HEIGHT CALC
NOT TO SCALE



1 1st FLOOR
SCALE: 1/16" = 1'-0"

KAPLAN THOMPSON ARCHITECTS
424 FORE ST PORTLAND, ME 04101
207-842-2888

PORTLAND HOUSING
14 BAXTER BLVD
PORTLAND, ME 04101
P: 207 773.4753

AVESTA HOUSING
307 CUMBERLAND AVE
PORTLAND, ME 04101
P 207 553.7777

CAMPBELL ASSOCIATES LANDSCAPE ARCHITECTS
20 COMMERCIAL STREET, STE 4A
FOOT OF WALNUT STREET
PORTLAND, MAINE 04101
P: 207 772-1332

BECKER
75 YORK ST.
PORTLAND, ME 04101
P: 207 879.1838

RANSOM
Consultants and Engineers
400 COMMERCIAL ST.
SUITE 404
PORTLAND, ME 04101
P: 207 772 2891

190 US ROUTE ONE
PMB 345 FALMOUTH, ME
04105
P 207 847 3445

PRICING DOCUMENTS

PROJECT:
BAYSIDE ANCHOR
PHDC & AVESTA HOUSING
61 EAST DEERING STREET
PORTLAND, ME

DRAWING: EASEMENT PLAN
SCALE:
DRAWN BY: JJT
DATE: 9/10/15
REVISED:

A106

Order 132-15/16
Tab 14 12-21-15

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
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JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

AMENDMENT TO PORTLAND CITY CODE
SECTION 28-51 TRAFFIC SCHEDULE
RE: ST. JOHN VALLEY NEIGHBORHOOD PARKING AMENDMENTS

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

That the City of Portland's Traffic Schedule be and hereby is amended as follows:

Deleted: **A Street** - Northside - from a point 43 easterly of Valley Street to a Point 25 feet westerly of Valley Street. **Schedule I - No Parking Anytime**

Deleted: **A Street** - Northside From a point 21 feet westerly of Gilman to a point 43 feet easterly of Valley **- Schedule VII - 1 hour parking**

Added: **A Street** -Northside - from a point 20 feet easterly of Valley Street to a point 20 feet westerly of Valley Street. **Schedule I - No Parking**

Added: **A Street** - Northside - from a point 102 feet from the intersection of A Street and Gilman and running westerly to a point 20 feet easterly of Valley - **Schedule XVII - 1 hour Parking**

Added: **A Street** - Northside - from St. John Street and running easterly to a point 82 feet From the intersection of St. John and A Street - **Schedule I No parking**

Added: **A Street** - Northside - from a point 102 feet from the intersection of St. John and Valley and running easterly to a point 112 feet from the same intersection - **Schedule I - No Park**

ing

Added: **A Street** - Northside - From a point running 112 feet from intersection of St. John and A Street and running easterly to a point 20 feet from the intersection of Valley and A Streets. **Schedule XVIII - 2 hour parking**

Added: **A Street** - Northside - from a point the Intersection of A Street and Gilman and running 102 feet westerly - **Schedule 1 - No parking**

Added: **A Street** - Southside - from the intersection of St. John Street and Valley Streets and running 20 feet easterly - **Schedule 1 - No Parking**

Added: **A Street** - Southside - from a point 20 feet from the intersection of St. John and A Streets And running to a point 60 westerly of the intersection of Valley and A Streets. - **Schedule XVIII 2 hour Parking**

Added: **A Street** - Southside - From the intersection of Valley & A Streets and running 20 westerly - **Schedule 1 - No Parking**

Added: **A Street** - Southside - From a point 20 feet from the intersection of Valley and A Streets and running 80 feet easterly - **Schedule XVIII - 2 Hour Parking**

Added: **A Street;** - Southside - From a point 80 feet from the intersection of Valley and A Streets and running easterly 40 feet - **Schedule 1 - No Parking**

Added: **A Street** - Southside - From a point 20 feet from the intersection of Valley and A Streets and running easterly to 20 feet west of the intersection of Valley and Gilman Street- **Schedule XVII - 1 Hour Parking**

Added: **A Street** - Southside - From the intersection of Gilman and A Streets and running 20 feet westerly -**Schedule I - No Parking**

Added: **Valley Street** - Westside - from the intersection of

Congress and Valley Streets and running southerly 20 feet on Valley Street – **Schedule I – No parking**

Added: **Valley Street** – Westside - from a point 20 feet southerly of the intersection of Congress and Valley and running to 60 feet – **Schedule XVI – 30 Minute Parking**

Added: **Valley Street** – Westside - from a point 60 feet from the Intersection of Congress and Valley Streets and running westerly 300 feet to the curb cut for parking – **Schedule XVIII – 2 Hour Parking**

Added: **Valley Street** – Westside – from a point 360 feet from the intersection Congress and Valley and running to the Intersection of Valley and A Streets – **Schedule I – No Parking**

Added: **Valley Street – Eastside –** from the intersection of Congress and Valley and running southerly 420 feet. – Schedule I – No Parking

Added: **Valley Street – Eastside –** from a point 420 feet southerly of the intersection of Congress and Valley and running southerly to a point 20 feet from the intersection of Valley & A Streets
– Schedule XVIII – 2 Hour Parking

Added: **Valley Street –** Eastside – from the intersection of Valley and A Streets and running northerly to a point 20 feet from the intersection, – **Schedule I – No Parking**

Added: **Congress Street – Southside –** from the intersection of Congress and Valley Streets and running westerly 20 feet – **Schedule I – No Parking**

Added: **Congress Street –** Southside - from 20 feet from the intersection of Congress and Valley Streets and running to 40 feet from the intersection – **Schedule XVI – 30 Minute Parking**

Added: **Congress Street –** Southside - from 40 feet from the intersection of Congress and Valley, running westerly to the intersection of Congress and St. John Streets. – **Schedule I – No Parking**

MEMORANDUM
Agenda request

TO: **Mayor Michael Brennan & City Councilors**

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

DATE: November 30, 2015

DISTRIBUTION: Jon Jennings, City Manager
Michael Brennan, Mayor
Anita LaChance, Assistant City Manager
Bob Leeman, Acting Director of Public Works
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 – Congress, Valley & A Streets

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

This measure was approved by the TS & E committee at their October 7, 2015 meeting on a 4-0 vote.

COUNCIL MEETING DATE ACTION IS REQUESTED:
1ST Reading: December 21, 2015 Final Action: TBD

Can this Action be taken at a later date? __Yes ___ **No (if no, why not) –.**

PRESENTATION: None

I. SUMMARY OF ISSUE

The Department of Public Works, supported by Parking Division and the St. John Valley Street Neighborhood Association wish to convert parking in the St. John, Valley and Congress Street area to limit the parking to 1 and 2 hours (there are additional restrictions for street cleaning already in place, which will remain the same.)

II. REASON FOR SUBMISSION

As stated in the letter from the neighborhood association and confirmed by Traffic Section staff, parking in the area has become difficult as employees of Maine Medical Center and other businesses are using the street parking for entire days.

Additionally, parking had been designated on the north side of A Street at the intersection with St. John. Upon review, no parking was re-designated to this area after the TS & E committee met and public comments were reviewed, this change is reflected on the attached map.

III. INTENDED RESULT

Employees of neighboring businesses will relocate to lots and garages in place for long term parking and street parking will turn over on a more regular basis.

IV. COUNCIL GOAL ADDRESSED

This proposed change will further the goals of greater parking turnover in neighborhoods providing for greater opportunity for all residents.

V. FINANCIAL IMPACT

Sign Changes: $1000
Staff Time (Equivalent): $600
Total: $1,600

VI. STAFF ANALYSIS & RECOMMENDATION

The Departments of Public Works and the Traffic Division have reviewed this change and formally support this action.

LIST ATTACHMENTS

- Exhibit A: Council Order
- Exhibit B: Graphic
- Letter of Support from neighborhood association
- Background Memo

Prepared by:

To: Transportation, Sustainability and Energy Committee Members
From: Jeremiah J. Bartlett, PE, PTOE, Transportation Systems Engineer
Date: October 5, 2015
Subject: Proposed Parking Changes to Valley, A and Congress Streets

This memorandum serves as an update to the materials provided in the meeting packet to the Committee, as well as providing some additional background on the topic.

Background

The desire for parking changes had largely come through the St. John Valley Neighborhood Association and residents within the neighborhood, who had been challenged by the lack of turnover at unrestricted spaces on Valley Street and A Street by various users, most often Maine Medical Center employees. These employees have dedicated space in various off-street locations, which have been part of the MMC site plan and transportation demand management plan requirements.

The spaces that are not currently time-restricted will generally be one and two-hour parking, which will result in greater turnover for non-residents, but should still allow for patrons to frequent nearby businesses. Residents who obtain neighborhood parking stickers will be able to park as long as needed.

Department staff did have conversations with Steve Hobart, who directs security and operations at Maine Medical Center, to make sure that these changes were not a problem, and he was clear that the hospital's intent is indeed to have employees use dedicated parking areas.

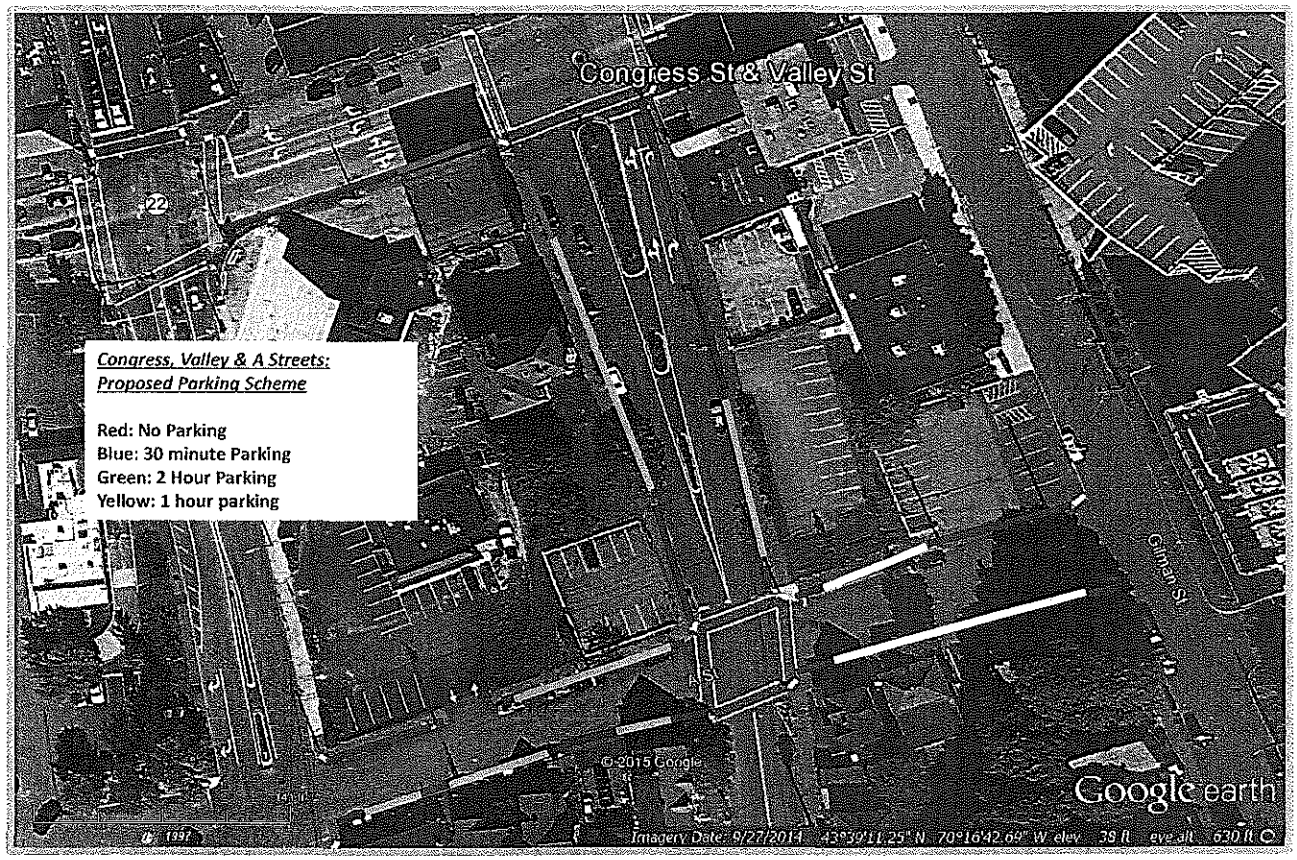
Lastly, striping modifications on Congress Street allowed for the placement of a small amount of parking on the south side of Congress Street just west of Valley Street.

Please note that Hemlock Street, part of the Neighborhood Organization's request, will be part of a future TSE request.

Summary of Parking Changes

- *A Street North Side from St. John to Valley Street*: About 55 feet of this street is no parking, and about 90 feet is unrestricted; this would all become two hour parking. The width of the street allows for parking on both sides.
- *A Street South Side from St. John Street to Valley Street:* This portion of the street would remain 2 hour parking.

- *A Street North Side from Valley Street to Gilman St:* This portion of the street will remain 1 hour parking. However, the easternmost existing 1 hour parking space will be eliminated, as it is only about 15 feet in length.
- *A Street South Side from Valley Street to Gilman St:* This segment of A Street will be changed from unrestricted to 1 hour parking.
- *Valley Street West Side from Congress Street to A Street.* About 40 feet will remain 30 minute parking adjacent to Pizza Villa, and the remaining 150 feet of unrestricted parking will become 2 hour parking.
- *Valley Street East Side from Congress Street to A Street*: The 90 feet of unrestricted parking north of A Street will become 2 hour parking.
- *Congress Street South Side West of Valley Street:* The 35 feet currently signed as no parking fronting Pizza Villa will become 30 minute parking.


Congress St & Valley St
22
Congress, Valley & A Streets:
Proposed Parking Scheme
Red: No Parking
Blue: 30 minute Parking
Green: 2 Hour Parking
Yellow: 1 hour parking
Gilman St
© 2015 Google
Google earth
Imagery Date: 9/27/2014 43°39'11.25" N 70°16'42.69" W elev 39 ft eye alt 630 ft

St John Valley Neighborhood Association
Portland, Maine
Stjohnvalley@live.com
Est 2008

September 28, 2015

Judith H. Harris, Manager
Regulatory Compliance
City of Portland
Dept. Of Public Services
55 Portland Street
Portland, Maine 04101
Tel: 207-874-8828
jh@portlandmaine.gov

Re: Unregulated Parking: Valley, A and Hemlock Streets

Dear Ms Harris

We write to request a shift to time restricted parking on the following streets in our neighborhood:

Valley Street between A Street and Congress
A Street between St John and Gilman Street
Hemlock Street from Congress to the dead end of that street.

We would like parking to be restricted to one or two hours daily between the hours of 9am and 9pm.

This request comes from the frequent frustration of local residents and property owners who are unable to find on street parking within a block or two of their own homes. Parking in these requested change areas are quite often occupied all day by employees or vendors of Maine Medical Center or in the evening or weekend by event goers to Hadlock Field or the Portland Expo. In the case of Hemlock Street, only one side is available for parking and those spots are frequently occupied by vehicles under repair or by non-residents of the Hemlock /Cherry Street neighborhood.

As a neighborhood Association we understand that this process involves review by the Transportation, Sustainability and Energy Committee and then the City Council. We also understand that some degree of outreach is required to property owners and abutters who may be impacted by this shift.

Please direct me as to what steps our group might take next to facilitate this shift from unregulated parking to time restricted parking in our neighborhood.

Sincerely,
Tim McNamara
St John Valley Neighborhood Association

Order 133-15/16
Tab 15 10-21-15

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (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. SECTION 14-483
Re: Preservation and Replacement of Housing Units

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, Section 14-483 of the Portland City Code is hereby amended to read as follows:

DIVISION 29. HOUSING PRESERVATION AND REPLACEMENT

Sec. 14-483. Housing preservation and replacement.

(a) *Purpose.* The purpose of these regulations is:

1. To promote and facilitate an adequate supply of housing, particularly affordable housing for all economic groups;

2. To limit the net loss of housing units in the city;

3. To preserve housing in zones where housing is permitted for in the city for all residents in order to promote the health, safety and welfare of its citizens.

(b) *Definitions.*

Dwelling unit. A dwelling unit is one (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit. For purposes of this section only it also includes single family, two-family and multi-family dwellings and any dwelling units in those

dwellings, or dwelling units, or rooms that people rent or sleep in within lodging houses, dormitories, shelters and sheltered care group homes.

Loss of ~~dwelling or~~ dwelling unit for purposes of this section means the elimination or conversion to nonresidential use of a ~~dwelling or~~ dwelling units~~;~~ and dwelling units that remain vacant for three years or more or are ~~elimination includes dwelling units~~ lost due to demolition unless the vacancy or demolition ~~resulted~~ results from accidents outside of the owner's control, fire, natural disasters, or acts of war.

Original site means the location where the demolition or conversion to non-residential use of ~~dwellings and~~ dwelling units will take place.

...

(e) *Site plan administrative authorization or approval required.* Notwithstanding any other provision of this section, a person who proposes to demolish or to convert to a nonresidential use three or more ~~dwellings or~~ dwelling units in the City, in a zone where such use is otherwise permitted, must first obtain administrative authorization or site plan approval from the City's Planning Authority or Planning Board pursuant to Sec. 14-521, et. seq.

In addition the requirements of 14-521, et. seq., where this section is applicable, the applicant must also submit a statement certifying the number of dwelling units to be demolished or converted to nonresidential use, as well as a description of the characteristics of each of those units.

...

(h) *Replacement Unit Requirement.* In addition to the foregoing, all replacement units built pursuant to sub-section (g)(1) or (2) above shall:

1. Be located within the ~~City of Portland~~ same United States Census Block Group as the parcel from which the dwelling units are being removed or within 1,500 feet of the dwelling units being removed;~~.~~

2. Not previously have been on the market as of the date of application;~~.~~

3. Be situated within a development which has not been a candidate for site plan approval as of the date of the application; and.

4. Be comparable in size to the units replaced; for the purpose of this section, "comparable in size" means that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

...

(j) *Performance Guaranty/Letter of Credit.* Owners or affiliates must post a performance guaranty in the form of a letter of credit, or other security acceptable to the city attorney in amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Trust Fund if the applicant had chosen that option pursuant to sub-section g. Such a performance guaranty shall be valid for no more than three years, after which the full amount due shall be provided to the City's Housing Trust Fund if replacement units satisfying the conditions of this Division 29 do not have Certificates of Occupancy.

...

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Jeff Levine, Planning & Urban Development Director

DATE: 12/1/15

DISTRIBUTION: Mayor Ethan Strimling; Jon Jennings, City Manager; Danielle West-Chuhta, Corporation Counsel; Jennifer Thompson, Associate Corporation Counsel; Sonia Bean; Nancy English; and Julie Sullivan

SUBJECT: Amendments to 14-483 re: Housing Preservation and Replacement

SPONSOR: Elizabeth Boepple, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:
1st reading___12/21/15_____ Final Action____1/4/15_____

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)
Elizabeth Boepple, Planning Board Chair; Jeff Levine, Planning & Urban Development Director. Brief overviews.

I. SUMMARY OF ISSUE (Agenda Description)
The Planning Board is recommending amendments to the Housing Preservation and Replacement Ordinance for adoption by the City Council, which would (1) define specific geographic areas where replacement units may be provided; (2) limit the amount of time that a developer could put up a guaranty for a removed unit to three years; and (3) define units that are intentionally vacant for three years or more as removed from the City's housing stock.

II. REASON FOR SUBMISSION (Summary of Issue/Background)
The Housing and Community Development Committee, the Planning Board, and City staff all agree that there are ways in which this section of the Land Use Ordinance is not functioning as well as it could. These changes are designed to head off potential future situations where the goals of the ordinance are not achieved.

III. INTENDED RESULT
To further preserve the existing housing stock and to better ensure that when units are removed there exist suitable opportunities to replace those units in a timely fashion.

IV. COUNCIL GOAL ADDRESSED

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

V. FINANCIAL IMPACT

No significant impact. May provide funding for the City Housing Trust to produce more affordable and workforce housing.

VI. STAFF ANALYSIS

Staff and the Planning Board found that these proposed changes are consistent with the City's Comprehensive Plan and will make the Housing Preservation and Replacement Ordinance more effective. The Planning Board report to the City Council is included as an attachment.

VII. RECOMMENDATION

The Planning Board unanimously (6-0) recommended passage of these amendments. See attached report for more details.

VIII. LIST ATTACHMENTS

1. Order
2. Planning Board Report

Prepared by:

_____ _____

Signature Date

CITY COUNCIL REPORT
from
PLANNING BOARD
PORTLAND, MAINE

Amendment to Division 29
Housing Preservation and Replacement Ordinance

Submitted to: Portland City Council First Reading: December 21, 2015 Second Reading: January 4, 2016	Prepared by: Portland Planning Board Report Prepared: November 24, 2015

I. INTRODUCTION

On November 24, 2015, the Planning Board voted 6-0 to recommend changes approved by the Housing and Community Development Committee at their meeting on October 14 to amend Division 29 of the Land Use Ordinance relating to housing preservation and replacement, as well as one additional change to the ordinance and some administrative cleanup to the language.

In addition to legal ads appearing in the November 2, 2015 and November 3, 2015 editions of the Portland Press Herald, notices were sent to the Interested Parties List.

II. PROPOSAL

The three ordinance changes proposed by the Planning Board are as follows:

- Requiring that any replacement units provided off-site be located within the same U.S. Census Block Group as the units removed. Alternatively, staff is offering that these replacement units could be within a set distance of the dwelling units removed, though that was not the Housing & Community Development Committee's final recommendation;
- Adding a three-year timeframe to situations where a performance guaranty or letter of credit is held in lieu of replacement units or a payment to the Housing Trust; and
- Clarifying that "loss of dwelling unit" includes units remaining vacant for extended periods of time.

The first two of these changes were recommended unanimously by the Housing and Community Development Committee of the City Council at their meeting on October 14.

Finally, the Board recommends removing redundant references to "dwellings and/or dwelling units" and replaced them with the term "dwelling unit" as that is the defined term in Division 29. The text amendments before the City Council include the amendments as recommended by the Planning Board.

III. BACKGROUND

The Housing Preservation and Replacement Ordinance was originally adopted in 2002 and last amended in 2011. The ordinance requires that anyone demolishing or otherwise removing housing units, with limited exceptions, replace the units or make a payment in the City's Housing Trust. That payment is adjusted based on the cost of living, and is currently approximately $64,200 per unit.

The Housing Trust contributions have been a valuable way to produce replacement housing. The Trust is far more flexible than federal sources of funds and provides a tool for the City to support creation of workforce and affordable housing at no direct cost to the City's general fund. Most recently, the Housing Trust was used to help fund the 65 Munjoy Street project, an eight unit affordable home ownership project.

However, as the housing market has strengthened, there have been fewer units being removed. In addition, since there are housing developments occurring in the City, those wishing to remove units have been seeking to partner with developers of other housing projects to replace the lost units. In theory, that means the ordinance is functioning as planned. However, there is a need to clarify the rules under which units are actual replacements, and not simply housing that may have been developed elsewhere in the city regardless.

There is also a need to bring closure to situations where the City holds performance guarantees in lieu of replacement units or payments to the Housing Trust.

Finally, there is a concern that units that are left vacant voluntarily are reducing our housing stock. These amendments would state that a unit is considered removed when it has been vacant for three years or more unless it has been posted against occupancy due to circumstances beyond the owner's control.

IV. Land Use Policy and Comprehensive Plan Considerations

These changes are consistent with the Comprehensive Plan goal that "[t]he existing housing stock will be enhanced and preserved." They are also consistent with the three purposes of Division 29:

1. To promote and facilitate an adequate supply of housing, particularly affordable housing for all economic groups;
2. To limit the net loss of housing units in the city;

3. To preserve housing in zones where housing is permitted for in the city for all residents in order to promote the health, safety and welfare of its citizens.

These changes will better limit the net loss of housing units in residential zones in the city by ensuring that replacement units are truly related to the units being removed, both geographically and in terms of timing.

V. DRAFT OF PROPOSED AMENDMENTs

The proposed text amendments are attached to the Council Order

VI. SUMMARY

The amendments are summarized in III. Background above.

VII. PLANNING BOARD RECOMMENDATION

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for the public hearing on November 10, 2015 and on the basis of the testimony presented at the public hearing, the Planning Board found that the proposed zoning text amendments are consistent with Portland's Comprehensive Plan and recommends adoption of the amendments to the City Council.

PROPOSED DIVISION 29 AMENDMENTS

DIVISION 29. HOUSING PRESERVATION AND REPLACEMENT

Sec. 14-483.
Housing preservation and replacement.

(a) *Purpose.* The purpose of these regulations is:

1. To promote and facilitate an adequate supply of housing, particularly affordable housing for all economic groups;

2. To limit the net loss of housing units in the city;

3. To preserve housing in zones where housing is permitted for in the city for all residents in order to promote the health, safety and welfare of its citizens.

(b) *Definitions.*

Dwelling unit. A dwelling unit is one (1) or more rooms with private bath and kitchen facilities comprising an independent self- contained dwelling unit. For purposes of this section only it also includes single family, two-family and multi-family dwellings and any dwelling units in those dwellings, or dwelling units, or rooms that people rent or sleep in within lodging houses, dormitories, shelters and sheltered care group homes.

Loss of ~~dwelling or~~ dwelling unit for purposes of this section means the elimination or conversion to nonresidential use of a ~~dwelling or~~ dwelling units~~;~~ and dwelling units that remain vacant for three years or more or are ~~elimination includes dwelling units~~ lost due to demolition unless the vacancy or demolition result~~ed~~ from accidents outside of the owner's control, fire, natural disasters, or acts of war.

Original site means the location where the demolition or conversion to non-residential use of ~~dwellings and~~ dwelling units will take place.

(c) *Applicability.* Except as otherwise provided in this section, this section shall apply to the loss of three or more dwelling units in a five year period, provided that such dwelling units were a legally registered residential use as of July 1, 2002.

Except as otherwise provided in this section, this section shall also apply to proposals that (a) result in the loss of fewer than three (3) dwelling units which were legally registered residential use as of July 1, 2002, and (b) creates surface parking.

Determination of number of the dwelling units within a structure or structures and the number of units lost will be based on records in the Department of Planning and Urban Development indicating the legal, registered use of the property since July 1, 2002 through the time of application. The actual use of the property for purposes of applicability of this section may be rebutted by the owner by proof of documentary evidence including but not limited to photographs, letters, and sworn affidavits. The Planning Authority may conduct its own investigation of the actual use and shall determine the applicability of this section based on the totality of the evidence.

(d) *Exemptions.*

This section does not apply to:

1. Consolidation, elimination or reconfiguration of one (1) or more dwelling units within an existing structure, as long as all the resulting units remain as dwelling units after such consolidation, elimination or reconfiguration, except as provided by subsection 5 below. Conversion of a dwelling unit to a hotel or motel room shall not qualify for the exemption provided by the paragraph.

   The amendments to paragraph (d)(1) approved by the City Council on June 6, 2011 shall have an effective date of April 25, 2011 but not apply to any final determination regarding the applicability of this section made by the Planning Authority prior to April

25, 2011.

2. Proposals that result in a number of units equal to or greater than the number of units lost as determined by the Planning Authority; or

3. Grandfathered dwelling units existing in zones which no longer permit residential uses.

4. Property which has been ordered demolished by the City, pursuant to 17 M.R.S.A. §2851, et seq., as amended, except where it is determined by the Building Authority that the deterioration was caused by neglect or lack of maintenance.

5. Subparagraph 1, above notwithstanding, the conversion to a non-residential use of any dwelling units located on the ground floor of a building within a business zone.

(e) *Site plan administrative authorization or approval required.* Notwithstanding any other provision of this section, a person who proposes to demolish or to convert to a nonresidential use three or more ~~dwellings or~~ dwelling units in the City, in a zone where such use is otherwise permitted, must first obtain administrative authorization or site plan approval from the City's Planning Authority or Planning Board pursuant to Sec. 14-521, et. seq.

In addition the requirements of 14-521, et. seq., where this section is applicable, the applicant must also submit a statement certifying the number of dwelling units to be demolished or converted to nonresidential use, as well as a description of the characteristics of each of those units.

(f) *Tenant Notification Requirements.* Prior to elimination as a result of demolition or conversion to non-residential use, the owner shall:

1. Provide the Planning Authority a list containing the name of each tenant currently residing in the

dwelling units to be demolished or converted to non-residential use, as well as verification of compliance with tenant notice requirements of this section.

2. Deliver to each tenant who occupies such a dwelling unit a written notice to vacate the unit. The notice shall either be sent by certified mail, return receipt requested, or served in-hand. The notice will grant the tenant not less than ninety (90) days from the date of receipt of the notice to vacate the unit; and

3. File proof of service of the notice with the Planning Authority.

(g) *Housing Replacement Requirements*. In addition to the requirements of 14-521, et. seq, the Planning Authority shall require, as a condition of approval, that an owner shall replace any dwelling units that are demolished or converted to non-residential use.

This section may be satisfied in any one of the following ways:

1. Construction of Units. The construction of housing units within a new structure or a new addition either on site or off-site;

2. Residential Conversion. The conversion of a nonresidential building to residential use; or

The applicant may use either of the two methods or a combination of the two to fulfill their replacement requirement.

(h) *Replacement Unit Requirement*. In addition to the foregoing, all replacement units built pursuant to sub-section (g)(1) or (2) above shall:

1. Be located within ~~the City of Portland~~the same Census Block Group as the parcel from which the units are being removed or within 1500 feet of the units being removed].

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2. Not previously have been on the market as of the date of application.

3. Be situated within a development which has not been a candidate for site plan approval as of the date of the application; and

4. Be comparable in size to the units replaced; for the purpose of this section, "comparable in size" means that the aggregate size of the replacement units will be no less than 80% of the size of the aggregate of the original units.

(i) *Contribution to the Housing Trust Fund.*

1. The applicant may meet the requirements of this section by depositing $50,000 for each dwelling unit into the City's Housing Trust Fund in section 14-489.

2. Beginning on January 1, 2004 and annually thereafter, the amount of the contribution shall be adjusted by multiplying this amount originally deposited for each unit by a fraction, the denominator of which shall be the "Consumer Price Index for Urban Wage Earners and ClericalWorkers ("CPI-W")," U.S. City Average, "All Items Index," as published by the United States Bureau of Labor Statistics ("the Index") for January 1, 2003 Year, and the numerator of which shall be the Index for the same month in each subsequent year. In the event that the Index is not then in existence, the parties shall use such equivalent price index as is published by any successor governmental agency then in existence; or, if none, then by such nongovernmental agency as may then be publishing an equivalent price index, in lieu of and adjusted to the Index. If the Index shall cease to use 1982-84 equals 100 as the basis of calculation, or if a substantial change is made in the terms or number of items contained in the Index, the Base Index shall be adjusted to conform to such change, using such computation thereof, if available, as shall be employed by the United States Department of Labor in computing same. Notwithstanding anything herein to the contrary, contributions made after January 1, 2004 shall not be less than the

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amount originally required to be deposited pursuant to sub-section (i)(1) for each rooming or dwelling unit.

(j) *Performance Guaranty/Letter of Credit.* Owners or affiliates must post a performance guaranty in the form of a letter of credit, or other security acceptable to the city attorney in amount equivalent to the amount the applicant would have been required to contribute to the City's Housing Trust Fund if the applicant had chosen that option pursuant to sub-section g. Such a performance guaranty shall be valid for no more than three years, after which the full amount due shall be provided to the City's Housing Trust if replacement units satisfying the conditions of this Division 29 do not have Certificates of Occupancy.

(k) *Partial waiver of replacement requirements.* Any owner who has applied for site plan review for elimination or conversion to non-residential use of dwelling units may apply to the Zoning Board of Appeals for a partial waiver from the housing replacement requirements of this section. Such waiver may be a downward adjustment of up to fifty percent (50%) of the owner's housing replacement obligation if the owner establishes to the board's satisfaction that:

1. The proposed development is consistent with the comprehensive plan;

2. The proposed development provides significant value and benefit to the immediate and surrounding neighborhood, including, but not limited to, community enhancement, social benefits or job creation;

3. The applicant demonstrates with objective evidence that the imposition of the requirements of this section would impose such an economic burden upon the project relative to its scope that it renders the project impossible to develop; and

4. The requested relief does not constitute a grant of a special privilege inconsistent with the limitations upon similar properties.

The Zoning Board of Appeals must make positive findings on each of the four (4) criteria above in order for any such adjustment to be valid. An applicant aggrieved of a decision of the Zoning Board of Appeals may appeal a decision under this sub- section pursuant to Sec. 14-553 of the City Code.

(l) *Effect of Other City Ordinances.*

1. *Historic Preservation.* Nothing in this division shall permit the demolition or conversion to non-residential use, of dwelling units in residential property protected by the Historic Preservation Ordinance (Sections 14-601, et seq.), except as permitted by that ordinance.

2. *Conditional Zone.* A conditional zone may not be used to circumvent the application of this section. The terms of this section shall apply to any conditional zone which involves dwelling units affected by this section. Notwithstanding the foregoing, nothing herein shall be deemed to prevent the City and the applicant from agreeing to terms which exceed those imposed by this section by means of a conditional zone.

(m) *Appeals.* Any applicant aggrieved by a decision of the Planning Authority under this section may appeal to the Zoning Board of Appeals within 30 days of that decision.