

Regular City Council Meeting
January 4, 2016

1. Agenda Only

Documents: [2016-01-04 AGENDA ONLY.PDF](#)

2. Agenda And Packet

Documents: [2016-01-04 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
JANUARY 4, 2016

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:

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) December 21, 2015, Regular City Council Meeting Minutes

PROCLAMATIONS:

Proc 15-15/16 Proclamation Honoring Officer Zachary Theriault as Officer of
(Tab 2) the Month for November 2015 – Sponsored by Mayor Ethan K. Strimling.

Proc 16-15/16 Proclamation Honoring Miroslaw Krynski, Public Works
(Tab 3) Department, as Employee of the Month for January 2016 – Sponsored by Mayor Ethan K. Strimling.

APPOINTMENTS:

CONSENT ITEMS:

Order 134-15/16 Order Approving Transfer of Funds Under 15 M.R.S. §§5824(3) and
(Tab 4) 5826(6) Re: State v. Abdihakim Mohamed – Sponsored by Jon P. Jennings, City Manager.

This order authorizes the City Council to approve the transfer of \$1,041.00 and \$1,200.00 in forfeited assets from the State of Maine to the City of Portland from the case of the State of Maine v. Abdihakim Mohamed.

This money was seized during a drug investigation conducted by the Maine Drug Enforcement Agency in conjunction with the Portland Police Department.

The money will be deposited into the Portland Police Department's drug investigation account. The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor. The money may also be used to support the department's Law Enforcement Addiction Advocacy Program.

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

UNFINISHED BUSINESS:

Order 132-15/16 (Tab 5) Amendment to Portland City Code Section 28-51 Traffic Schedule Re: St. John Valley Neighborhood Parking Amendments – Sponsored by the Energy and Sustainability Committee, Councilor Jon Hinck, Chair.

The Department of Public Works, supported by the Parking Division and the St. John Valley Street Neighborhood Association, wishes 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.

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

Order 133-15/16 (Tab 6) Amendment to Portland City Code Chapter 14. Land Use, Article III. Zoning. Section 14-483 Re: Preservation and Replacement of Housing Units – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

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.

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

LICENSES:

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

ORDERS:

BREAK FOR DINNER:

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

ORDERS: (Continued)

Order 135-15/16 (Tab 7) **Order Setting Public Hearing on Hall Elementary School Construction Project and General Obligation Bonds Therefore – Sponsored by Councilor Edward J. Suslovic.**

The Portland City Council will hold a public hearing in the City Council Chambers of Portland City Hall, 389 Congress Street on February 1, 2016, at 7:00 p.m. to consider a bond order authorizing the City's general obligation bonds in the amount of \$29,720,456 to replace Hall Elementary School. All but \$1,390,485 of the project will be reimbursed by the State of Maine.

Per the City Charter, Article VII, Section 11, notice of a public hearing on any bond issue must be given at least two weeks prior to final action of the City Council. The City Council will hold a workshop on this item on January 11.

Order 136-15/16 (Tab 8) **Order Rescinding and Repealing Conditional Zone Agreement C-36 Re: Morrill's Corner and 33 Allen Avenue – Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

Based upon a request from the Economic Development Department, the Planning Board supported a recommendation to rescind the Conditional Rezoning Agreement Number C-36 that was adopted in 2004 for Morrill's Corner with the applicant, Packard Development.

The Planning Board considered the request at a public hearing on December 15, 2015 and unanimously (6-0) supported recommendations to rescind the contract zone and to amend the zoning map to revert to the underlying zones.

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

AMENDMENTS:

**Order 137-15/16
(Tab 9)**

**Amendment to Portland City Code Chapter 15 Licensing and Permits and Chapter 30 (Vehicles for Hire) Re: Tour Operator Licensing
Sponsored by the Health and Human Services Committee, Councilor Edward J. Suslovic, Chair.**

This ordinance amendment proposes to require a license for tour companies that currently operate in the City of Portland.

Adoption of the amendment will allow Portland to ensure public safety by confirming insurance requirements, reviewing background checks for tour company owners and operators, and conducting general safety inspections on tour vehicles. Requiring a license for tour companies is a logical step towards fostering a safe and productive tourist industry.

As an unlicensed business enterprise, mobile tour companies are currently prohibited from actively soliciting customers or selling tours on streets, sidewalks and public areas pursuant to Section 25-17(a) of the Portland City Code. The provision of licenses for tour companies will ensure that tour companies are permitted to conduct their business in a reasonable manner. A majority, if not all, of the current tour operators have indicated their support for a licensing program.

Portland has required licenses for horse-drawn carriages since 1984 and bicycle cabs since 1998. The proposed ordinance amendment will include similar requirements to those found in Chapter 30 for the horse-drawn carriages and bicycle cabs. Operators are required to keep the vehicles clean and presentable.

Following the initial inspection required for a license, the license inspector or any police officer is permitted to inspect the tour vehicle at any time in order to ensure compliance with safety measures and the absence of safety hazards. Unsafe vehicles would be removed from service until the compliance issue is attended to.

The Jetport staff has confirmed that they are prepared to process the license applications as they are received. Once the ordinance is adopted, city officials would develop regulations including requirements for application deadlines, inspection checklists, and the like. The inspection of the tour vehicles will be considered a pre-requisite to the application process and inspections will be conducted by the Director of Port Operations, Kathy Alves.

The Public Safety Health and Human Services Committee met on November 10, 2015, and voted 4-0 to forward this item to the City Council with a recommendation for passage.

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

LICENSE RENEWALS:

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
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The Public Safety Health and Human Services Committee met on November 10, 2015, and voted 4-0 to forward this item to the City Council with a recommendation for passage.

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

LICENSE RENEWALS:

Feb 1 1-4-16

IN COUNCIL REGULAR MEETING DECEMBER 21, 2015 VOL. 132 PAGE 56

ROLL CALL: Mayor Strimling called the meeting to order at 5:00 P.M. (Councilor Dusen arrived during public comment.

ANNUAL MEETINGS:

Motion was made by Councilor Mavodones and seconded by Councilor Suslovic to recess the meeting of the City Council and convene the annual meeting of the Corporator of Creative Portland. Passage 8-0.

Annual Meeting of Corporator of Creative Portland – Sponsored by Mayor Ethan K. Strimling.

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.

Motion was made by Councilor Brenerman and seconded by Councilor Costa to accept the report of the Corporator of Creative Portland. Passage 8-0.

Motion was made by Councilor Suslovic and seconded by Councilor Costa to reconvene the regular City Council meeting. Passage 8-0.

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Costa and seconded by Councilor Brenerman for approval of the minutes of December 7, 2015 Regular Organizational City Council Meeting and the December 7, 2015 Special City Council Meeting. Passage 8-0.

PROCLAMATIONS:

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

IN COUNCIL REGULAR MEETING DECEMBER 21, 2015 VOL. 132 PAGE 57

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

Motion was made by Councilor Suslovic and seconded by Councilor Costa to take up an unagenda item, Proclamation 14. Passage 8-0.

Proc 14-15/16

**Proclamation Honoring Officer Charles E. McIntosh – Sponsored by
Mayor Ethan K. Strimling.**

APPOINTMENTS:

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

Motion was made by Councilor Susloive and seconded by Councilor Ray to amend Order 127 by deleting Belinda Ray and adding Mike Murray to the Casco Bay Island Transit District. Passage 8-0.

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

CONSENT ITEMS:

**Order 128-15/16 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.**

Motion was made by Councilor Ray and seconded by Councilor Thibodeau for passage. Passage 8-0.

LICENSES:

UNFINISHED BUSINESS:

**Order 124-15/16 Order Appropriating Funds from the Clement P. Wescott Trust Fund
for Barron Center – Sponsored by Jon Jennings, City Manager. This
item was given first reading on December 7, 2015.**

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

**Order 126-15/16 Amendment to Portland City Code Chapter 21 Farmers' Markets
Re: Location – Sponsored by Jon P. Jennings, City Manager. This item was
given first reading on December 7, 2015.**

Motion was made by Councilor Suslovic and seconded by Councilor Brenerman for passage as an emergency. Passage 8-0.

Motion was made by Councilor Suslovic and seconded by Councilor Costa to recess the regular City Council Meeting and move into Executive Session pursuant to 1 M.R.S. §405(6)(D). RE: Portland Fire Department Contract Negotiations. Passage 8-0, 5:35 P.M.

Motion was made by Councilor Mavodones and seconded by Councilor Thibodeau to come out of Executive Session. Passage 8-0, 6:40 P.M.

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

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

Mayor Strimling announced that Order 84 would be taken up at the end of the regular agenda.

UNFINISHED BUSINESS: (Continued)

**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 item was given first reading on December 7, 2015.**

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

ORDERS:

Order 129-15/16 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.

Councilor Thibodeau recused himself from Orders 129 & 130, the Law Firm that he works for has a direct interest in Order 129 & 130.

Councilor Hinck recused himself from Orders 129 & 130 his wife also works for the Law Firm that has a direct interest in Order 129.

Motion was made by Councilor Suslovic and seconded by Councilor Duson to amend Order 129 by adding “that the assignment of the lease dated July 1, 1996 between LCL Associates and the City of Portland to Northeast Air is hereby approved; and”. Passage 7-0, (Thibodeau, Hinck recused).

Motion was made by Councilor Suslovic and seconded by Councilor Duson for passage as amended. Passage 7-0, (Thibodeau, Hinck recused).

Order 130-15/16 Order Granting Easement to Central Maine Power for Hangar Associates South Fixed Base Operation – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Suslovic and seconded by Councilor Brenerman for passage. Passage 7-0, (Councilor Thibodeau, Hinck recused).

Order 131-15/16 Order Granting a Revocable License to Bayside Anchor Apartments, LP – Sponsored by Jon P. Jennings, City Manager

Motion was made by Councilor Ray and seconded by Councilor Thibodeau for passage as an emergency. Passage 9-0.

AMENDMENTS:

Order 132-15/16 Amendment to Portland City Code Section 28-51 Traffic Schedule Re: St. John Valley Neighborhood Parking Amendments – Sponsored by the Energy and Sustainability Committee, Councilor Jon Hinck, Chair.

This is its first reading.

Order 133-15/16 Amendment to Portland City Code Chapter 14. Land Use, Article III. Zoning. Section 14-483 Re: Preservation and Replacement of Housing Units – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

This is its first reading.

IN COUNCIL REGULAR MEETING DECEMBER 21, 2015 VOL. 132 PAGE 60

Order 84-15/16 Amendment to Zoning Map Re: 1945 Congress Street – Sponsored by the Planning Board, Elizabeth Boepple, Chair. This item was given first reading on October 5, 2015.

Motion was made by Councilor Ray and seconded by Councilor Duson to postpone Order 84 to the January 21, 2015 City Council meeting. Passage 5-4 (Brenerman, Hinck, Thibodeau, Suslovic).

Motion was made by Councilor Suslovic and seconded by Councilor Duson to adjourn. Passage 9-0, 9:30 P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

*Proc 15-15116
Tab 2 1-4-16*

PROCLAMATION
HONORING
OFFICER ZACHARY THERIAULT

- WHEREAS,** **Officer Theriault** joined the Portland Police department in August of 2014 and is currently assigned to the late shift; and
- WHEREAS,** **Officer Theriault** is described by his superiors as hardworking, consistent, dependent and quick; and
- WHEREAS,** **Officer Theriault** is praised for playing a key role in detaining a male suspect fleeing a rollover accident on Commercial Street who attempted to escape by wading into the ocean; and
- WHEREAS,** **Officer Theriault** is further recognized for identifying, following and describing a vehicle fleeing the scene of a recent shooting incident resulting in the arrest of the suspect responsible for the shooting; and
- WHEREAS,** **Officer Theriault** is commended for his exemplary police work and commitment to maintaining public safety on the streets here in Portland.

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 proclaim honor and recognition to **Officer Zachary Theriault** as **Officer of the Month for November 2015.**

Signed and sealed this 4th day of January 2016

Ethan K. Strimling, Mayor
City of Portland, Maine

*Dec 16-15/16
Feb 3 1-4-16*

PROCLAMATION

Honoring

Miroslaw Krynski
Employee of the Month

December 2015

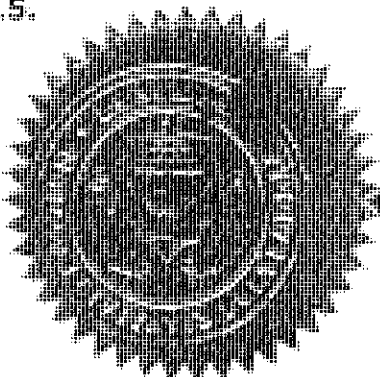
WHEREAS: **Miroslaw Krynski** of the Public Works Department has been named the City of Portland Employee of the Month by a committee of his peers and selected for this distinct honor from a workforce of 1,300; and

WHEREAS: This award is presented in recognition of **Miroslaw's** work as a Maintenance Worker III in the Wastewater Section of the Water Resources Division of Public Works, with over 11 years of service. **Miroslaw** performs a wide range of duties and tasks using a variety of heavy and light equipment including: cleaning, maintaining, repairing stormwater and sanitary structures such as sewers, drains, manholes, and catch basins; motor broom sweeping and special projects as needed; and

WHEREAS: **Miroslaw** is also a very dependable, reliable worker in winter operations, performing many duties over long hours often under arduous, challenging conditions. Regardless of the task or the conditions, his work ethic and production are consistently outstanding. Whether **Miroslaw** is working independently or with a crew, he accepts all assignments willingly; and

WHEREAS: **Miroslaw** maintains a positive, cooperative attitude and strives to always give his best and bring out the best in others to get the job done right. Overall, **Miroslaw's** performance is characterized by dedication to duty, dependability, reliability, willing and cooperative attitude and safety conscientiousness. **Miroslaw** is the type of employee that any organization would be proud to have on their team. **Miroslaw** truly is an asset to the Public Works Department and to the City.

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 proclaim honor and recognition to **Miroslaw Krynski** as **City Employee of the Month, December, 2015**.



Signed and Sealed this 4th day of January, 2016

A handwritten signature in black ink, appearing to read "Ethan K. Strimling", is written over a horizontal line.

Ethan K. Strimling, Mayor
City of Portland, Maine

*Order 134-15/16
Tab 4 1-4-16*

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 APPROVING TRANSFER OF FUNDS UNDER
15 M.R.S. §§ 5824(3) and 5826(6)
Re: Abdihakim Mohamed**

ORDERED, that the City Council hereby accepts the amount of \$1,041.00 and the amount of \$1,210.00 in forfeited assets in the case of State of Maine vs. Abdihakim Mohamed 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 15, 2015

SUBJECT: Approval of Transfer

SPONSOR: Police Department
(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 next available 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.** The State requires Council approval of the transfer of forfeited cash to the Portland Police Department. (See attached approval form)
- II. **AGENDA DESCRIPTION**
- III. **BACKGROUND.** 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 State agency, County or municipality, the legislative body of that entity must publicly vote to accept the item.
- IV. **INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED.** Funds may be transferred to the Portland Police Department for deposit in the drug investigations account.
- V. **FINANCIAL IMPACT.** The money is used to offset the costs of drug investigations, such as drug analysis, drug purchases, covert surveillance, surveillance equipment, drug training and protective gear, such as body armor. The money may also be used to support the department's Law Enforcement Addiction Advocacy Program.
- VI. **STAFF ANALYSIS AND BACKGROUND THAT WILL NOT APPEAR IN THE AGENDA DESCRIPTION**
- VII. **RECOMMENDATION**
- VIII. **LIST ATTACHMENTS**

Prepared by: Tiffany Bates

Date: 12.15.15

STATE OF MAINE
Cumberland, SS

State of Maine

v.

Abdihakim Mohamed,
Defendant

AND

\$1,041.00 US CURRENCY
DEFENDANT IN REM #1
\$1,210.00 US CURRENCY
DEFENDANT IN REM #2

UNIFIED CRIMINAL DOCKET
Criminal Action
Docket No. CR-15-4492

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City/Town Of Portland
Approval Of Transfer
15 M.R.S.A. §5824(3)
and §5826(6)

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* #1, namely \$1,041.00 US Currency, and to any portion of Defendant in Rem #2, namely \$1,210.00 US Currency (\$605.00), 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 132 - 15/16
~~Tab 14 12-21-15~~
Tab 5 1-4-16

ETHAN K. STRIMLING (MAYOR)
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**CITY OF PORTLAND
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DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
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

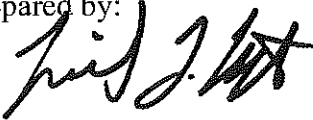
VI. STAFF ANALYSIS & RECOMMENDATION

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.

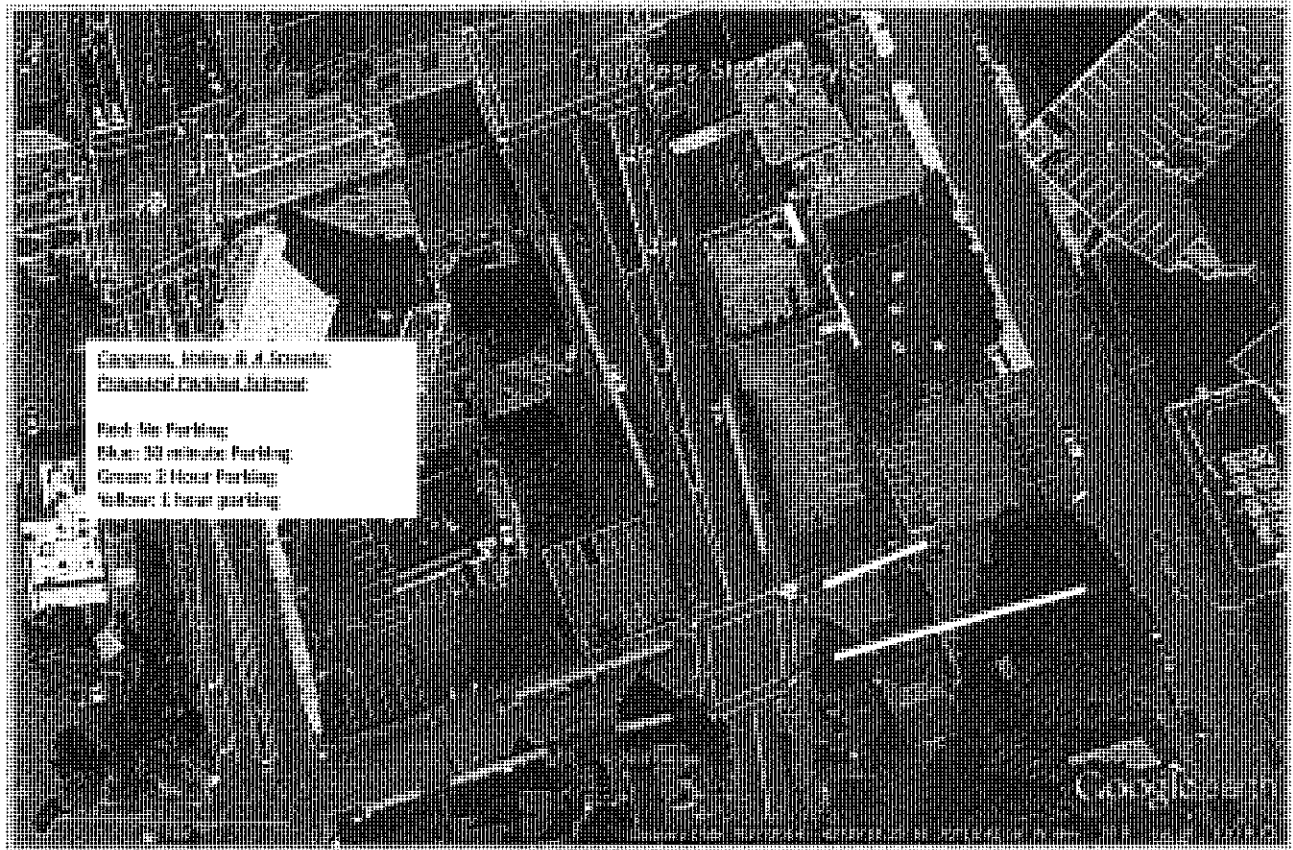
Please note that Hemlock Street, part of the Neighborhood Organization's request, will be part of a future TSE request.

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.



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~~ ~~12-1-15~~
Tab 6 1-14-16

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)

**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

dwelling, 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 ~~dwelling 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 ~~dwelling 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 subsection 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: ☒ 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	Prepared by: Portland Planning Board
First Reading: December 21, 2015	Report Prepared: November 24, 2015
Second Reading: January 4, 2016	

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 resulted 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 ~~dwelling units~~ 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 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 subsection (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].
2. Not previously have been on the market as of the date of application.

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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 Clerical Workers ("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.

(1) *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.

*Order 135-15/16
Feb 7 1-4-16*

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 SETTING PUBLIC HEARING ON HALL ELEMENTARY SCHOOL
CONSTRUCTION PROJECT AND GENERAL OBLIGATION BONDS THEREFORE**

ORDERED, that a public hearing will be held in the City Council Chambers of Portland City Hall, 389 Congress Street on February 1, 2016, at 7:00 p.m. or as soon as possible after said time on the construction of a new elementary school and the demolition of the existing Hall Elementary School and to consider a bond order authorizing the City's general obligation bonds therefore, the costs of which project and which bond amount is still being finalized but is expected to be approximately \$29,720,456, of which \$28,329,971 relates to state/local costs and \$1,390,485 relates to non-state-funded (local only) costs.

Order 136-15/16
Tab 8 1-4-16

ETHAN K. STRIMLING (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

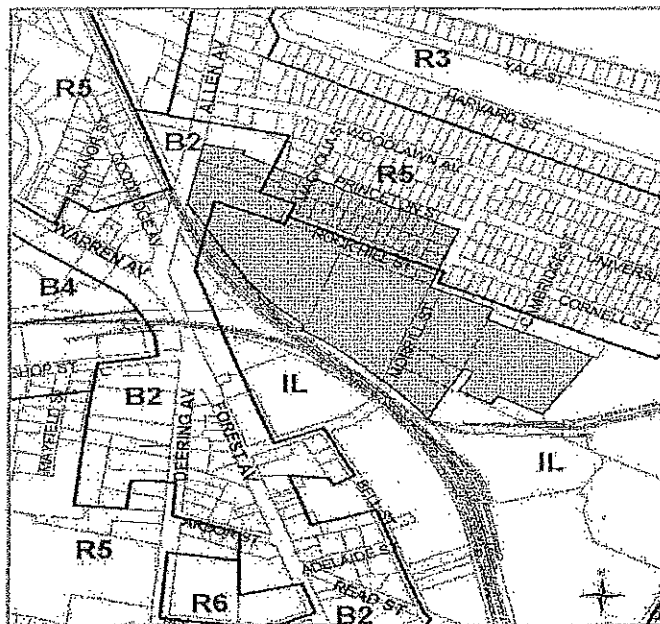
**CITY OF PORTLAND
IN THE CITY COUNCIL**

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

**ORDER RESCINDING AND REPEALING CONDITIONAL ZONE AGREEMENT C-36
RE: MORRILL'S CORNER AND 33 ALLEN AVENUE**

ORDERED, that the conditional zone agreement with Packard Development LLC, approved by Order 98-04/05 on November 29, 2004, regarding Morrill's Corner and 33 Allen Avenue is hereby rescinded and repealed; and

BE IT FURTHER ORDERED, that the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Urban Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect the repeal of the conditional zone agreement by reverting the zoning of the land under the agreement to the underlying zones in effect before the Conditional Zone Agreement C-36 was approved, as shown in the map below.



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, Planning and Urban Development

DATE: December 16, 2015

SUBJECT: Rescind Conditional Rezone Agreement for Morrill's Corner (C-36) and Revert to Underlying Zone Designations, I-L, B-2 and R-5

SPONSOR: Elizabeth Boepple, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading Jan 4, 2016 Final Action Jan 18, 2016

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, Chair, and Jeff Levine, Director, brief 5 minute presentation

I. ONE SENTENCE SUMMARY

The Planning Board is recommending that the Conditional Rezoning Agreement Number C-36 for Morrill's Corner/33 Allen Avenue, which was adopted in 2004 for a mixed use development, be rescinded and the zoning revert to the previous underlying zones of IL, B-2 and R-5.

II. AGENDA DESCRIPTION

Based upon a request from the Economic Development Department, the Planning Board supported a recommendation to rescind the Conditional Rezoning Agreement Number C-36 that was adopted in 2004 for Morrill's Corner and the applicant was Packard Development. The Board recommends amending the zoning map to return the zoning to the previous designations of IL, B-2, and R-5. The Planning Board considered the request at a public hearing on December 15, 2015 and unanimously (6-0) supported recommendations to rescind the contract zone and to amend the zoning map to revert to the underlying zones.

III. BACKGROUND

The conditional rezoning agreement included city held property The Economic Development Department is requesting that the C-36 agreement be rescinded, so the City can pursue a land exchange with JB Brown in this area and in the vicinity of Canco Road. The City Council approved the Land Exchange Agreement with JB Brown related to Parcel 151A-A-13 or 1 Cambridge Street located to the rear of the site adjacent to JB Brown property ownership. There are no plans for development of the property within the area of the conditional rezone agreement; however, the land exchange will permit the City to move the Public Works operational divisions to the Canco Road site and create certainty of the applicable zoning for the city property.

The C-36 agreement included a reversion clause if the applicant failed to record deeds transferring title ownership or long term leases. Jennifer Thompson, Associate Corporation Counsel, confirmed while some of the land was transferred, not all of the deeds and or long term leases were transferred as follows:

There are certainly no deeds or leases meeting the description in Paragraph 1 to Packard Development, LLC. However, there are deeds from Darling, Adams, Paul and Jonathan White and Allen Avenue Plaza, LLC to SS Morrills LLC. Although I find no deed or lease from White Chapel, LLC, I do find a deed from White Dove, LLC to SS Morrills, LLC for property that appears to be included in the CZA. My understanding is that SS Morrills, LLC is connected and likely a successor in interest to Packard Development and many of the deeds are given to SS Morrills, LLC c/o Packard Development so those likely satisfy the condition.

Importantly, however, I do not find a deed or lease to or from the City as required by the CZA. Therefore, it would appear that the condition has not been fully met.

In addition, Jennifer Thompson advised the Board that the City should pursue rescinding the agreement and reverting to the underlying zone designations, in order to create a clear record of the zoning status. She notes that without this affirmative action of the City Council, then there may be questions about whether the CZA does or does not remain in effect (see report from Planning Board). The Planning Board enthusiastically supported rescinding the contract as it re-enforces the Planning Board's efforts to increase the clarity and predictability in the code, by moving away from the use of contract zones toward consistent land use policies. Board members praised this action and noted it is long overdue to clean up the zoning map of void contract and conditional zoning agreements.

Therefore, given the combination of the failure to develop the property under the terms of the CZA and the failure to meet all conditions set in the CZA, the Planning Board recommends that the City Council affirmatively rescind C-36 and have the area revert to the original underlying zones as presented above.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The intended result is to create a clear record of the zoning status of the Morrill's Corner area. This addresses the City Council's Economic Development Goal that promotes 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

No financial impact for the city and it will enable the land exchange with J.B. Brown as approved by the City Council.

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

Packard Development LLC, was the applicant for the Conditional Rezoning Agreement for the property in the vicinity of Morrill's Corner and 33 Allen Avenue to allow a mixed use development with housing, grocery store, other retail uses, a boxing club and recreational improvements. The City Council unanimously adopted the conditional zone agreement on November 29, 2004. C-36 overlaid the existing zoning that included three zones, Light Industrial I-L, Community Business B-2, and Residential R-5.

The conditional rezone agreement was challenged in court and the Superior Court issued a decision on November 22, 2005. The Planning Board approved the subdivision and site plan application on July 11, 2006, which the applicant, Morrill's Corner, LLC. then challenged a condition of approval as an 80 B Appeal. The Court's decision was issued on March 27, 2008. A two-year extension of the development review approvals was issued in 2007 to July 10, 2009. A building permit for site work only was issued in

2009 and demolition permits for some of the buildings on the site were issued in 2009. No other permits were issued and thus the site plan approval has lapsed since no significant construction has been undertaken for a year and building is not ongoing.

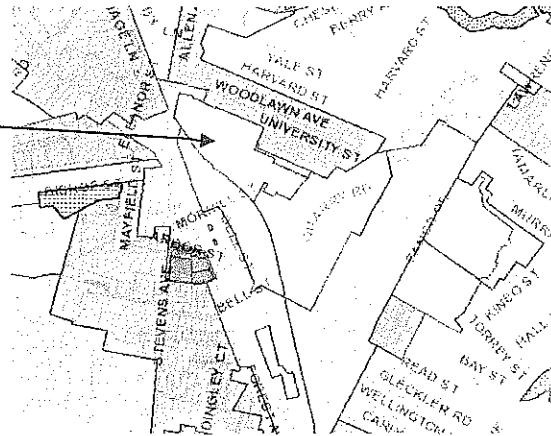
Jennifer Thompson advised the Planning Board that the City should pursue rescinding the agreement and reverting to the underlying zone in order to create a clear record of the zoning in the area. Without this affirmative action of the City Council, then there may be questions about whether the agreement does or does not remain in place. The Planning Board agreed with the staff analysis and noted that this recommendation supports the Board's efforts to increase the clarity and predictability in the code, by moving away from the use of contract zones toward consistent land use policies throughout the city.

VII. RECOMMENDATION

The Planning Board voted unanimously (6-0) to recommend to City Council the following:

1. The repeal of the conditional rezoning agreement # 36 for Property in the vicinity of Morrill's Corner/Allen Avenue and the rezoning of site to Conditional B-2 as shown on the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Urban Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, as shown below; and

Conditional Zone Agreement – C-36



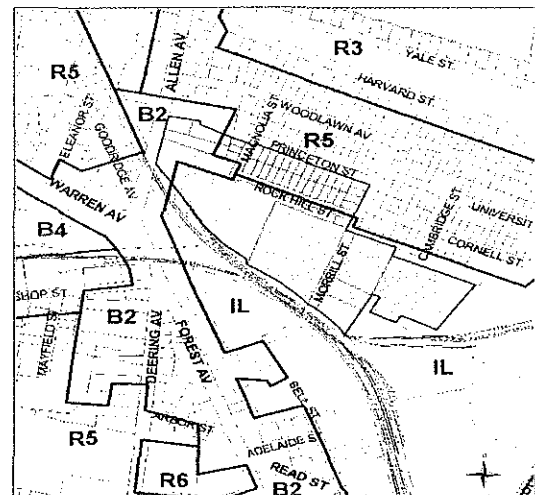
2. The Planning Board finds that the proposed reversion of the zoning to the original underlying zones for the a property located at Morrill's Corner and 33 Allen Avenue is consistent with the Comprehensive Plan for the City of Portland; and, therefore, recommends to the City Council approval of the zoning map amendments to revert to the previous underlying zones of Residential R-5, Community Business B-2 and Low Impact Industrial I-L, as shown on the map from the conditional agreement C-36 (map inset).

VIII. LIST ATTACHMENTS

1. Planning Board Report to City Council with Attachments

Prepared by: Barbara Barhydt, Development Review Services Manager

Date: December 16, 2015



Proposed Rezoning for Morrill's Corner from IL, B2 and R5 to Conditional B2

Map prepared by the City of Portland's Department of Planning & Development and the GIS Workgroup June 2004



PLANNING BOARD REPORT TO THE CITY COUNCIL PORTLAND, MAINE

Rescind Conditional Rezoning Agreement # C-36 & Revert to Underlying Zone Designations of I-L, B-2 and R-5
Morrill's Corner/33 Allen Avenue
Economic Development, City of Portland, Applicant

Submitted to: Portland City Council First Reading: January 4, 2016 Second Reading: January 18, 2016	Report from: Portland Planning Board Prepared by: Barbara Barhydt, Development Review Services Manager Date: December 17, 2015
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I. INTRODUCTION

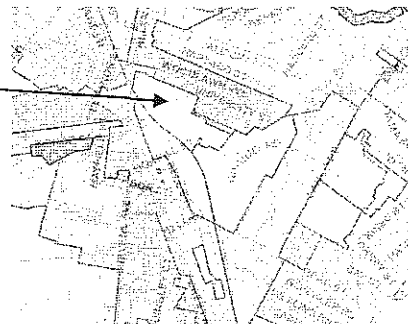
Based upon a request from Portland's Economic Development Department, the Planning Board recommends to City Council that the Conditional Rezoning Agreement Number C-36 be rescinded, which was adopted in 2004 for the Packard Development proposed at Morrill's Corner. The proposal includes reverting to the previous underlying zones of IL, B-2, and R-5. The Planning Board considered the request at a public hearing on December 15, 2015 and unanimously (6-0) supported recommendations to rescind the contract zone and to amend the zoning map to revert to the underlying zones.

II. PLANNING BOARD RECOMMENDATION

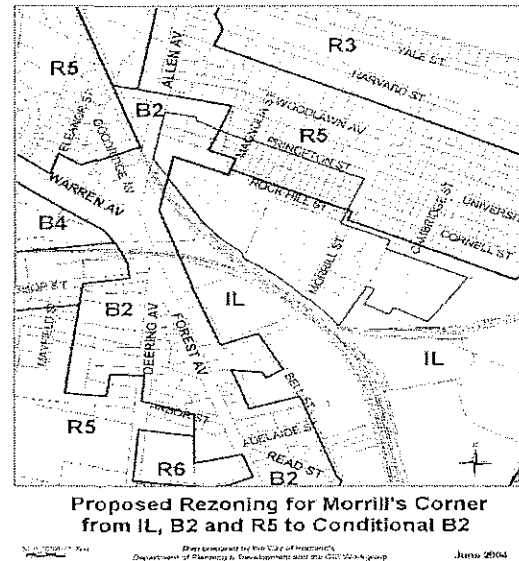
The Planning Board fully supported rescinding a contract zone that has not been realized and that the development review approvals have expired. They stated that the elimination of defunct conditional zones reduces uncertainty for future development within the city. It also re-enforces the Planning Board's efforts to increase the clarity and predictability in the code, by moving away from the use of contract zones toward consistent land use policies. Board members praised this action and noted it is long overdue to clean up the zoning map of void contract and conditional zoning agreements. The Planning Board voted unanimously (6-0) to recommend to City Council the following:

1. The repeal of the conditional rezoning agreement # 36 for Property in the vicinity of Morrill's Corner/Allen Avenue and the rezoning of site to Conditional B-2 as shown on the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Urban Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, as shown below; and

Conditional Zone Agreement – C-36



2. The Planning Board finds that the proposed reversion of the zoning to the original underlying zones for the a property located at Morrill's Corner and 33 Allen Avenue is consistent with the Comprehensive Plan for the City of Portland; and, therefore, recommends to the City Council approval of the zoning map amendments to revert to the previous underlying zones of Residential R-5, Community Business B-2 and Low Impact Industrial I-L, as shown on the map from the conditional agreement C-36 (map inset)



III. PUBLIC COMMENT

Notices were sent to property owners within 1,000 feet of the site for the Planning Board hearing. A total of 366 were sent and the notice appeared in the Portland Press Herald on Saturday, December 5 and Monday, December 7, 2015. Written public comments were received from Deb Keenan and Tyler Sterling of Delhaise America (Attachments 7 and 8). Mr. Sterling on behalf of Delhaise America requested that the Planning Board table this item; however, the Board proceeded with the hearing. Three residents spoke at the public hearing raising questions about the future plans for the area and raising concerns about impacts to the neighborhood. Notices will be sent for the City Council's second reading and will appear in the Portland Press Herald on January 4 and January 5, 2016.

IV. REQUEST TO RESCIND THE CONDITIONAL REZONE AGREEMENT.

The conditional rezoning agreement included city held property. The Economic Development Department is requesting that the C-36 agreement be rescinded, so the City can pursue a land exchange with JB Brown in this area and in the vicinity of Canco Road. The City Council approved the Land Exchange Agreement with JB Brown related to Parcel 151A-A-13 or 1 Cambridge Street located to the rear of the site adjacent to JB Brown property ownership. There are no plans for development of the property within the area of the conditional rezone agreement; however, the land exchange will permit the City to move the Public Works operational divisions to the Canco Road site and create certainty of the applicable zoning for the city property.

The C-36 agreement included a reversion clause if the applicant failed to record deeds transferring title ownership or long term leases as provided below:

*This conditional rezoning shall become null and void and the **PROPERTY** shall revert to the existing R-5, B-2 and I-L zones in the event that **PACKARD** fails to record deeds transferring title ownership or long-term leases from White Chapel, LLC; Paul G. and Jonathan White; the City of Portland, except as otherwise provided in Section 6.G of this Agreement; James E. Darling, Jr.; Madeline F. and Jack Adams; and Allen Avenue Plaza, LLC to **PACKARD** within one year from the date of the Council vote. This one-year period shall be extended up to an additional one year period if:*

- a. ***PACKARD** has applied for all required approvals but has not received all required approvals within the one-year period;*

b. *Any other event beyond the control of **PACKARD** has occurred which will delay the closing on some or all of the parcels and **PACKARD** has notified the **CITY** of such event and the projected time period for resolution of the event.*

*If any required approval, including the approval of the conditional rezoning, has been appealed, then this conditional rezoning shall become null and void and shall revert if **PACKARD** fails to commence construction of Phase I within one (1) year from the final disposition of such appeal.*

Jennifer Thompson, Associate Corporation Counsel, confirmed that while some of the land was transferred, not all of the deeds and or long term leases were transferred (Attachment 5). Her analysis is as follows:

I've done a registry search in relation to the rescission of the CZA and can report the following: There are certainly no deeds or leases meeting the description in Paragraph 1 to Packard Development, LLC. However, there are deeds from Darling, Adams, Paul and Jonathan White and Allen Avenue Plaza, LLC to SS Morrills LLC. Although I find no deed or lease from White Chapel, LLC, I do find a deed from White Dove, LLC to SS Morrills, LLC for property that appears to be included in the CZA. My understanding is that SS Morrills, LLC is connected and likely a successor in interest to Packard Development and many of the deeds are given to SS Morrills, LLC c/o Packard Development so those likely satisfy the condition.

Importantly, however, I do not find a deed or lease to or from the City as required by the CZA. Therefore, it would appear that the condition has not been fully met.

In addition, Jen has advised Planning and Economic Development that the City should pursue rescinding the agreement and reverting to the underlying zone designations, in order to create a clear record of the zoning status. She notes that without this affirmative action of the City Council, then there may be questions about whether the CZA does or does not remain in effect (Attachment 6). She wrote:

Additionally, and as outlined below, as a legal matter, it is best that the City take affirmative action to enforce a condition in a CZA that has not been met by affirmatively rescinding the agreement.

According to Corbin on Contracts: "Frequently in a contract an express provision is included to the effect that if payments are not made exactly as agreed, if clear title is not made by a stated time, or if some other performance by one of the parties is not rendered, the contract shall be 'null and void.' This type of provision seldom means what it appears to say." Rather, "null and void" provisions simply render a contract voidable at the election of the party who was to receive the benefit of the condition. According to Corbin, although one party's failure to perform a condition can relieve the other party of its duty to perform, "[l]ike other conditions, this condition can be waived by the promisor whose duty is conditional. If payment is not on time, or if title is not perfect, or if other specified performance is defective, the purchaser can overlook defects and still require such performance as is possible." Corbin on Contracts Section 40.10.

The Planning Board agreed with the staff analysis and the Board stated complete support for rescinding a contract zone that has not been realized and that the development review approvals have expired. The Board reiterated that the elimination of defunct conditional zones reduces uncertainty for future development within the city. It also re-enforces the Board's efforts to increase the clarity and predictability in the code, by moving away from the use of contract zones toward consistent land use policies. Board members praised this action and noted it is long overdue to clean up the zoning map of void contract and conditional zoning agreements.

Therefore, given the combination of the failure to develop the property under the terms of the CZA and the failure to meet all conditions set in the CZA, the City is seeking to affirmatively rescind C-36 and have the area revert to the original underlying zones as presented above.

V. BACKGROUND

Packard Development LLC, was the applicant for the Conditional Rezoning Agreement for the property in the vicinity of Morrill's Corner and 33 Allen Avenue ([Attachment 1](#)). The City Council unanimously adopted the conditional zone agreement on November 29, 2004. C-36 overlaid the existing zoning that included three zones, Light Industrial I-L, Community Business B-2, and Residential R-5. It encompassed the following parcels:

Tax Assessor's Maps:

Map 435, Block G, Lots 10-12, 21, 22, and 26.

Map 151A, Block A, Lots 12 and 13

Map 152, Block C, Lots 2 and 5; and

Map 435, Block D, Lots 15, 16, 17, and 18.

The map contained within the conditional rezone agreement (shaded area) showing the underlying zones is inserted above.

The proposal was for a mixed use development, which included a minimum of ten (10) apartments, between 18 to 24 townhouses, 24 additional residential units in Phase III, a community shopping center with a grocery store, other retail uses, restaurants, offices up to 25,000 sf, and a boxing club/gym facility. The agreement included development standards that addressed landscaping, vehicular access, signs, traffic improvements, and open space improvements.

The conditional rezone agreement was challenged in court. The Superior Court issued a decision on November 22, 2005 and it was not appealed. On July 11, 2006, the Planning Board approved with waivers and conditions the subdivision and site plan application for Morrill's Corner, applicant Morrill's Corner, LLC. A copy of the approval letter is included as [Attachment 2](#) and Findings of Fact were issued on August 3, 2006 ([Attachment 3](#)).

As part of that approval, one of the conditions of approval limited the size of the boxing facility to 14,000 sf. Morrill's Corner, LLC filed an 80 B Appeal challenging the condition of the size limitation placed upon the boxing facility. The Court remanded the matter to the Board for further fact finding, ordering it to clarify its rationale for the limitation. The Board held a public hearing for the purpose of discussing and adopting findings of fact regarding the limitation, and then both parties agreed that the matter should be decided on the written descriptions. The Court's decision issued on March 27, 2008 is included as [Attachment 4](#).

A two-year extension of the development approval was granted in 2007, which extend the approval to July 10, 2009. The applicant submitted final plans, paid the performance guarantee, addressed housing replacement, and obtained a building permit for site work only in July 2009. Site work was performed under the building permit in 2009, but no other building permits were issued for the construction of this development. The site plan ordinance in effect at the time included the following expiration provisions:

Sec. 14-525 (f) Expiration of approval. A site plan approved under this article shall expire twelve (12) months from the date of approval as excerpted below unless:

1. Significant construction has been undertaken and building is ongoing. Any lapse in construction for a period in excess of twelve (12) months shall result in an expiration of the site plan; or
2. [Planner note: provisions for extensions not listed here as applicant had used to fullest extent]

Thus the approval for the site plan has expired, since there has been a lapse in construction for a period in excess of 12 months. In addition, the subdivision plat for this proposal does not appear to have been recorded at the Registry of Deeds.

VI. COMPLIANCE WITH THE COMPREHENSIVE PLAN

Portland's adopted Comprehensive Plan includes provisions that address housing, commercial and industrial development, which pertain to returning the zoning in the Morrill's Corner area to the underlying zones in

existence in 2004. Relevant provisions that support rescinding the agreement and reverting to the underlying zoning are excerpted below:

Volume I

Portland Industry and Commerce Plan – 1994

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
- Create a strong industrial base which is beneficial to the community
- Strengthen and diversify the tax base

Improve the Quality of Life

- Recognize that jobs and prosperity improve the standard of living for residents
- Preserve, protect, and strengthen neighborhoods
 - Compatible development
 - Confidence/peace of mind regarding our industrial neighbors
 - Reduce tax burden on residential property owners.
- Make Portland attractive to new residents and businesses.

Revise Zoning

- Protect neighboring residential zones
- Adopt clear, predictable, and enforceable regulations
- Promote compatible development within industrial districts
- Create a process that provides a quick response on development permitting.

Housing: Sustaining Portland's Future

- 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.
- Ensure the construction of a diverse mix of housing types that offers a continuum of options across all income levels, which are both renter and owner-occupied.

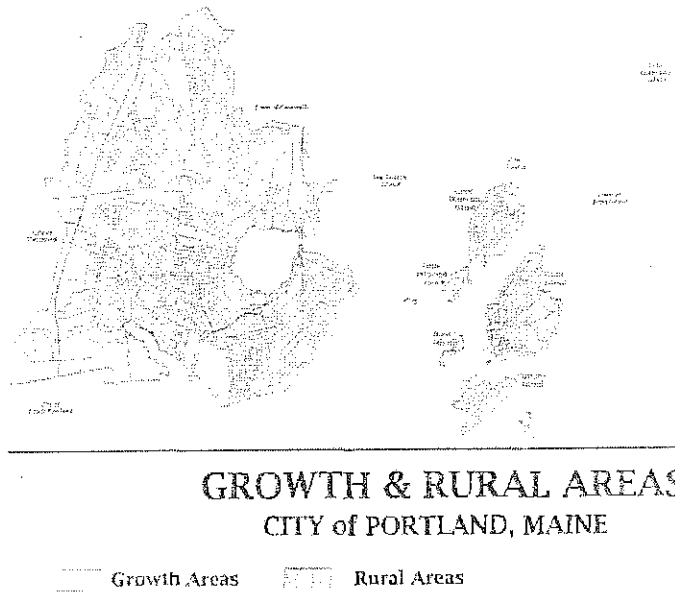
Volume II

Under Portland's Future Land Use Plan contained within Volume II, the state's growth management definitions for growth areas in 2005 is listed below including the designated growth areas (in yellow, which includes the Morrill's Corner area:

Growth Areas:

The land use plan must designate as "growth area" those land areas within the municipality into which the municipality intends to direct the future growth and development planned to occur during the planning period. Use designation of growth areas is intended to ensure that planned growth and development is directed to areas most suitable for such growth and development and away from areas in which growth and development would be incompatible with the protection of rural resources. Land areas designated as "growth area" must be consistent with the following provisions.

1. Growth areas must be limited to land areas within which public facilities and services are efficiently provided or can be efficiently provided during the planning period.
2. Growth areas must be limited to land areas that are physically suitable for development or redevelopment. (Growth areas may include land areas that are physically unsuitable for development or redevelopment if such areas such as a river, stream, floodplain, small natural hazard area, small lake, or small critical natural resource area run through or are located in the middle of a growth area.)
3. Growth areas must include enough land area suitable for development or redevelopment to accommodate all growth and development planned to occur during the planning period, based on the plan's policies and implementation strategies.
4. Growth areas must be limited to an amount of land area and a configuration that will encourage compact, efficient development patterns and discourage development sprawl and strip development along roads.



Attachments:

1. Conditional Rezoning for Property in the Vicinity of Morrill's Corner/Allen Avenue – C-36
2. Approval Letter, August 3, 2006
3. Approval Letter (Extension) 11-28-07
4. Plaintiff's Appeal Denied 080107
5. E-mail from Jennifer Thompson, dated December 11, 2015
6. E-mail from Jennifer Thompson, dated December 7, 2015
7. Public Comment from Deb Keenan, dated December 11, 2015
8. Public Comment from Tyler Sterling, dated December 15, 2015

Order 98-04/05

Given first reading: 11/1/04 Postponed on 11/15/04

Public hearing, Amended & Passage 11/29/04 9-0

NATHAN H. SMITH (MAYOR)(3)
WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

CITY OF PORTLAND
IN THE CITY COUNCIL

PETER E. O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

**ORDER AUTHORIZING AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR PROPERTY
IN THE VICINITY OF
MORRILL'S CORNER/ALLEN AVENUE**

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

**CONDITIONAL ZONE AGREEMENT
PACKARD DEVELOPMENT, LLC**

AGREEMENT made this ____ day of _____, 2004 by **PACKARD DEVELOPMENT, LLC** a Delaware limited liability company with a mailing address of One Wells Avenue, Newton, Massachusetts 02159, and its successors and assigns (hereinafter "**PACKARD**").

WITNESSETH

WHEREAS, PACKARD seeks to develop property located at and in the vicinity of 33 Allen Avenue in the City of Portland and identified on the City of Portland on the Assessor's maps at Map 435, Block G, Lots 10-12, 21, 22, and 26; Map 151A, Block A, Lots 12 and 13; Map 152, Block C, Lots 2 and 5; and Map 435, Block D, Lots 15, 16, 17 and 18 (hereinafter referred to as the "**PROPERTY**") (See Exhibit A); and

WHEREAS, PACKARD proposes to develop the **PROPERTY** as a mixed use development, including residential units, a community shopping center with a grocery store, other retail uses, restaurants, offices, and a boxing club/ gym facility; and

WHEREAS, the PROPERTY is currently located in three different zoning districts, R-5, B-2 and I-L; and

WHEREAS, the purpose of this contract rezoning is to provide for a mixed use development, including a community shopping center, residential units, offices and a boxing and fitness facility; and

WHEREAS, substantial public improvements will be required to support any redevelopment of the **PROPERTY**, including but not limited to traffic improvements in the Morrills Corner area; and

WHEREAS, **PACKARD** has developed a traffic improvement plan, which plan has been reviewed by the **CITY**; and

WHEREAS, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62, and after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY**, subject, however, to certain conditions; and

WHEREAS, the **CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY'S** comprehensive land use plan and will establish uses that are consistent with the uses in the original zones and the surrounding areas; and

WHEREAS, the **CITY** has determined that the proposed development will be designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal through the design and implementation of significant public traffic improvements, stormwater drainage improvements, landscaping and buffering; and

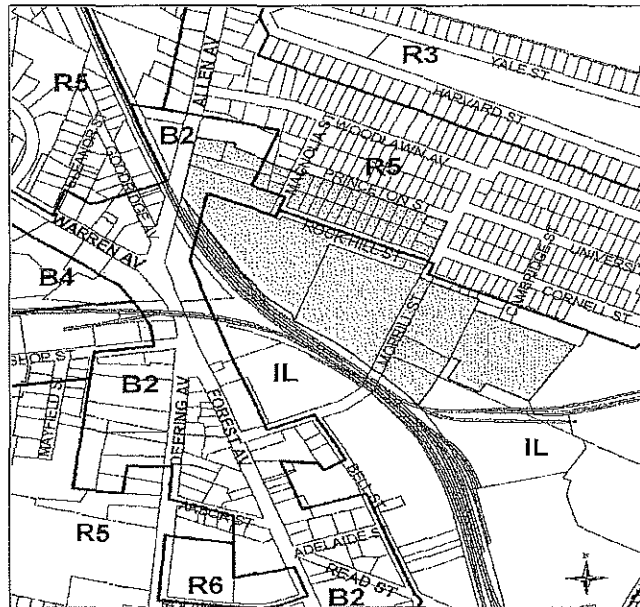
WHEREAS, the **CITY** has determined that because of the unusual nature and unique location of the proposed development and the need for significant public improvements it is necessary and appropriate to have imposed the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY'S** comprehensive land use plan; and

WHEREAS, on _____, 2004, the **CITY** authorized amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and conditions become part of the **CITY'S** zoning requirements; and

NOW, THEREFORE, in consideration of the rezoning, **PACKARD** covenants and agrees as follows:

1. Effective thirty days from the affirmative vote of the City Council on rezoning the **PROPERTY**, by Council Order No. _____, the City amends 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 of the Portland City Code, by adopting the map change amendment for the **PROPERTY** shown herein.



**Proposed Rezoning for Morrill's Corner
from IL, B2 and R5 to Conditional B2**

NO. 11, 2004-0001-0001

Map prepared by the City of Portland's
Department of Planning & Development and the GIS Workgroup

June 2004

This conditional rezoning shall become null and void and the **PROPERTY** shall revert to the existing R-5, B-2 and I-L zones in the event that **PACKARD** fails to record deeds transferring title ownership or long-term leases from White Chapel, LLC; Paul G. and Jonathan White; the City of Portland, except as otherwise provided in Section 6.G of this Agreement; James E. Darling, Jr.; Madeline F. and Jack Adams; and Allen Avenue Plaza, LLC to **PACKARD** within one year from the date of the Council vote. This one-year period shall be extended up to an additional one year period if:

- a. **PACKARD** has applied for all required approvals but has not received all required approvals within the one-year period;
- b. Any other event beyond the control of **PACKARD** has occurred which will delay the closing on some or all of the parcels and **PACKARD** has notified the **CITY** of such event and the projected time period for resolution of the event.

If any required approval, including the approval of the conditional rezoning, has been appealed, then this conditional rezoning shall become null and void and shall revert if **PACKARD** fails to commence construction of Phase I within one (1) year from the final disposition of such appeal.

2. The following plans and documents are attached and incorporated into this Agreement:

Exhibit A: **PARCEL**

Exhibit B: Site plan and signage plan

Exhibit C: Minimum off site traffic improvements

Exhibit D: Architectural renderings

Exhibit E: Phasing plan

Exhibit F: Potential lot divisions/long term leases

3. The **PROPERTY** shall be developed substantially in accordance with the Site Plan shown on Exhibit B (including the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and landscaping) and the architectural renderings shown on Exhibit D, provided, however, that each Phase, whether classified as a major or minor development, shall be subject to site plan review by the Planning Board, and if applicable, subdivision review by the Planning Board. Any site plan review applications shall fully comply with the Site Plan attached as Exhibit B, and the architectural renderings shown on Exhibit D, and the application requirements contained in article V (site plan) of the Land Use Code. The Planning Board may permit minor deviations from the Site Plan, as long as the deviations are consistent with the purposes of this Agreement. The structure labeled "Existing Boxing/Proposed Expansion" in the northeasterly corner of Exhibit B shall be built with architecture similar to and compatible with that in Exhibit D for the other structures associated with this project.

4. The **CITY** shall not issue **PACKARD** any building permits for the project until **PACKARD** has 1) acquired the **PROPERTY** in accordance with the requirements of Section 1 of this Agreement and 2) has received all necessary federal, state and **CITY** permits.

5. *Permitted Uses.* **PACKARD** shall be authorized to establish and maintain the following uses on the **PROPERTY**:

- a. Retail establishments, restaurants, business services and personal services, all as defined by Portland City Code § 14-47. Drive through restaurants, gasoline sales and major and minor service stations shall not be permitted on the site.
- b. Professional and business offices occupying no more than 25,000 square feet.

- c. Day care facilities and adult day care facilities.
- d. Exercise and fitness centers, and health clubs, including but not limited to a boxing and fitness facility. Any boxing facility shall comply with the following restrictions:
 - 1. Any event at a boxing club located on the **PROPERTY** with ticket sales or attendance numbers in excess of three hundred (300) hundred shall be limited to twelve (12) times per year; and
 - 2. the days of the week such events may be held may be limited by the City, in its discretion, based on concerns of traffic conditions, other events around the City or any other reason deemed to negatively impact public health, welfare or safety; and
 - 3. **PACKARD** shall notify the **CITY'S** parking division four (4) weeks in advance of such event.
 - 4. **PACKARD** shall provide an annual parking management plan to handle the requirements for parking at said events.
 - 5. **PACKARD** shall include in the annual parking management plan appropriate provisions for prohibiting parking on streets neighboring the property.

The initial plan shall be submitted for review as part of the site plan review for the boxing facility. The plan must include provisions for off site parking and shuttle bus transportation to the **PROPERTY**. Thereafter, the parking management plan shall be updated annually and shall be reviewed and approved on an annual basis by the City's Planning Authority and Parking Division, in its discretion. In any case, parking for daily use and for normal boxing club events shall be met on site.

- e. Dwellings, as specified herein:

- 1. There shall be no fewer than ten (10) apartments (which may be combined live/work spaces) located in the building delineated on the Site Plan as "Proposed Mixed Use: Office/Prof. Service/ Retail/ Residential and "Proposed Retail"). The same and their associated parking shall be built in Phase I of the project. These units may serve as the replacement units for housing units to be displaced by construction of Phase I of the development in accordance with the requirements of the City's Preservation and Replacement of Housing Units Ordinance, § 14-483 et seq. if approved by the City during site plan review. Replacement units shall be available for occupancy before a certificate of occupancy may be issued for the new construction on the original site.
- 2. There shall be no fewer than 18 or more than 24 townhouses located adjacent to Princeton Street and shown on Exhibit E as Phase II. The same and their associated parking shall be built in Phase

II of the project. No temporary or permanent certificate of occupancy shall be granted for the grocery store building until all municipal approvals have been obtained for the Phase II townhouse development and a building permit has been issued for the first townhouse units. Building permits for at least 18 townhouses shall be obtained within 2 years of the commencement of construction of Phase II. **PACKARD** shall post a performance guarantee in the amount of \$50,000.00 per dwelling unit for the 18 townhouses required under this condition (hereinafter referred to as the "Housing Guarantee"), in a form acceptable to the **CITY**. The Housing Guarantee shall be reduced in amount for every six (6) townhouses built and certificates of occupancy issued for such units. In the event that **PACKARD** fails to complete any or all of the 18 required townhouses, the **CITY** shall have the right to all funds remaining in the Housing Guarantee at the time of default. The **CITY** may utilize the funds in the Housing Guarantee for any housing project or housing-related purpose that it deems appropriate. Notwithstanding any contrary provision of this Agreement, **PACKARD's** completion of the 18 townhouse unit development or the **CITY'S** call of the Housing Guarantee for any or all of the 18 required units shall satisfy **PACKARD's** obligations under this subsection to provide 18 dwelling units in Phase II. The Housing Guarantee shall be separate from the performance guarantee required for site improvements on the townhouse site.

3. **PACKARD** may also construct up to 24 additional units in the area designated on Exhibit B as "Area Reserved for Potential Residential Development" (hereinafter referred to as Phase III) subject to prior subdivision and site plan review. Such development shall comply with the setback and height requirements established for the R-5 zoning district. Pending development of Phase III, the Area Reserved for Potential Residential Development shall be loaned and seeded as part of Phase I of the redevelopment of the site, as required by Section 6. Should **PACKARD** fail to develop or cause to be developed Phase III within seven (7) years after the date of issuance of the final certificate of occupancy for Phase I, **PACKARD** shall offer to sell and/or assign to the **CITY** **PACKARD'S** interest in the area labeled "Area Reserved for Potential Residential Development" for \$100, which offer must be accepted by the **CITY** within 60 days of its receipt. In the event that the **CITY** does not accept the offer within the 60 day period, **PACKARD** shall retain its interest in the Area Reserved for Potential Residential Development, subject to the limitations as set forth in this paragraph. Should the **CITY** accept **PACKARD'S** offer, its use of the property shall be limited to development of up to 24 units of housing, subject to subdivision and site plan review.

f. Accessory uses, including, but not limited to, public trails, parking facilities and structures, utility services, stormwater management systems, community meeting center, and site amenities. The uses listed in this subparagraph f shall be functionally related, physically oriented, and complementary to the principal uses of the site.

6. The uses on the **PROPERTY** will be within multiple buildings, which shall be constructed in phases as specifically set forth on Exhibit E. All sections of Phase I and Phase II are required to be developed. Phase II shall be constructed in accordance with the schedule requirements set forth in Paragraph 5 e.

The following improvements must be constructed during Phase I: no fewer than 10 housing units in compliance with Portland City Code § 14-483 et seq., minimum off-site traffic improvements as shown on Exhibit C, the trail network shown on Exhibit B and E (except for that area labeled "Proposed Pedestrian Way in Princeton Street Right of Way" which shall be constructed as part of Phase II), the construction of the multi-purpose field and the Area Reserved for Residential Development shall be loamed and seeded. No certificate of occupancy at this site will be issued for any purpose, unless and until such improvements are completed. Trails shall be constructed with bituminous surface or another surface approved by the City and complying with trail construction specifications of Portland Trails.

If the **PROPERTY** is constructed in Phases, in addition to the requirements contained in the Portland City Code, **PACKARD** nonetheless will be required at the outset to post a performance guarantee to cover all of the following improvements regardless of the Phase:

- Landscaping for approved portions of the plan and any temporary landscaping or screening determined necessary by the Planning Authority, in its discretion, to buffer the adjacent residential zone
- At minimum, the traffic improvements as shown on Exhibit C
- Trail amenities
- Stormwater system

7. *Development Standards.* All site plans in conformance with Exhibit B and Exhibit D (architectural renderings) may be approved by the Planning Board only if, in addition to the dimensional requirements of paragraph 9 and the applicable provisions of article IV (subdivisions) and article V (site plan), the development meets the following additional development standards:

a. *Landscaping:* Development proposals shall include a landscape program that is consistent with the landscaping plan shown on Exhibit B. All land areas not covered by structures, parking areas, bus facilities or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips as shown on Exhibit B. Development proposals shall

include appropriate fencing and/or berming and planting treatment of a dense and continuous nature in order to buffer parking lot visibility from adjacent properties.

b. Vehicular access. Vehicular access to the Phase I portion of the site shall be from the signalized access as shown on Exhibit B and shall be coordinated with other minimum off-site traffic improvements as shown on Exhibit C. A gated emergency access shall be provided at the terminus of Morrill Street as shown on Exhibit B. Vehicular access to Phase II shall be as shown on Exhibit B, with the location of the access to the Area Reserved for Potential Residential Development to be established during site plan and subdivision review of such development.

c. Signs: Development proposals shall identify all proposed signage. Building signage shall be designed in proportion and character with the building facades. A pylon sign including tenant signage shall be located as depicted on Exhibit B. All signs shall be constructed of permanent materials and shall be coordinated with the building and landscaping design through the use of appropriate materials and finishes. Signage for the development shall meet the standards established in Section 14-369 for multi-tenant lots in the B-2 zoning district, except as otherwise approved pursuant to Section 14-526(a)(23).

d. Traffic improvements: **PACKARD** shall be responsible for the design and installation of, at minimum, the off-site traffic improvements shown on Exhibit C, which improvements shall be made at **PACKARD'S** sole expense, following review and approval by the **CITY**. Such traffic improvements may include, but not be limited to, roadway widening, signal modifications, installation of a new traffic signal, provisions for bicycle facilities, bus stops, esplanades with street trees, railroad preemption upgrades and pedestrian facilities (e.g. sidewalks, crosswalks). In addition, within twelve (12) months after issuance of the final certificate of occupancy for Phase I, **PACKARD** shall undertake a post-development traffic study of the unsignalized intersections identified within the scope of the MDOT traffic movement permit. In the event that this study demonstrates that the impact from traffic attributable to the development is materially different than what was approved as part of the project's MDOT traffic movement permit, the **CITY** may require **PACKARD** to fund mitigation measures to address those impacts, to the extent that such mitigation is technically and economically feasible. As well, the applicant shall be obligated to mitigate impacts created by the development, to the extent technically and economically feasible, which result in a degradation of traffic service at said intersections.

e. Open space improvements: In addition to the trail and other open space amenities delineated on Exhibit B, **PACKARD** shall be responsible for improving the parcel currently owned by the **CITY** and located in the vicinity of Cambridge Street (Tax Map 151A-A-13). **PACKARD** shall be responsible for the remediation of the site and

for grading a level surface, installation of loam and seed or sod, installation of associated parking, creation of appropriate drainage, and installation of irrigation equipment appropriate to create a multi-purpose field. **PACKARD** shall also be responsible for providing those funds necessary to purchase the playground and similar equipment necessary to improve the multi purpose field to similar condition to the multi-purpose field similar to the **CITY'S** Fox Street multipurpose field as it exists as of June 8, 2004. **PACKARD** shall work with the **CITY'S** Department of Parks and Recreation in determining the design and construction standards for the multipurpose field. In the event that ownership of this parcel will remain with the **CITY** or will be reconveyed to the **CITY** after the completion of improvements **PACKARD** shall be granted or shall retain an easement for its stormwater facilities, which shall be located and incorporated on this site in a manner as to allow the construction and use of the multi-purpose field. The open space in this area shall remain accessible to the users of the **PROPERTY**, as well as the general public, by use of the walking trails and any other available access.

PACKARD shall deed to the **CITY** a public recreational easement on and over the "Recreation/Open Space" area, the "Proposed Walking Trail," the sidewalk traversing the site, as well as the "Proposed Pedestrian Way in Princeton Street Right of Way" as delineated on Exhibit B. **PACKARD** shall be responsible for installing the "Proposed Walking Trail" as part of Phase I, as shown on Exhibit B and E, of the development. **PACKARD** shall grant a public recreational easement to the **CITY** for the trail or other recreational improvements. **PACKARD** shall also be responsible for construction of the multi-purpose field as set forth above in Phase I unless, after **PACKARD** has expended all reasonable efforts, permitting by the Maine DEP is held up or delayed for any reason beyond the control of **PACKARD**. In such case, **PACKARD** shall have an additional one (1) year from the issuance of required DEP permits in which to install the multipurpose field.

8. *Phasing:* **PACKARD** shall be authorized to develop the **PROPERTY** in multiple phases. These phases shall occur in accordance with the phasing plan attached hereto as Exhibit E. As specified in paragraphs 4 and 5, all sections of Phase I and Phase II are required to be developed. The Area Reserved for Future Residential Development shall be loamed and seeded or constructed for parking/green space as otherwise approved during site plan review.

9. *CSO contribution:* **PACKARD** shall be required to contribute up to \$100,000.00 to the **CITY'S** Fall Brook Combined Sewer Overflow project, as determined by Public Works Authority.

10. *Dimensional Requirements.* The dimensional standards established in Section 14-185 for the B-2 zoning district, as further modified by this Agreement or by Exhibit B, shall apply to the **PROPERTY** as a whole, and not additionally to individual lots (if any) within the **PROPERTY**. For purposes of front yard setbacks, the front yard for each office or retail building developed on the **PROPERTY** shall have as the front yard the area between the building and Allen Avenue. The potential lot divisions for residential development and areas to be subject to long-term ground leases are delineated

on Exhibit F. These locations may be changed as part of the subdivision review process. Amendments to these locations, once approved, may occur after Planning Board review and approval of the proposed amendments.

11. **PACKARD**, and its successors and assigns shall maintain the **PROPERTY** and the perimeter of the **PROPERTY** in order to ensure litter and other garbage is not spread/ blown to adjacent properties/neighborhood. **PACKARD** shall provide to the **CITY** a Maintenance Agreement which, in the event **PACKARD** or its successor fails to maintain the **PROPERTY**, would give the **CITY** the right to enter the property for purposes of cleaning up litter and debris, and charge **PACKARD** for its costs. The Property Maintenance Agreement shall include a retrieval program for shopping carts that have been removed from the **PROPERTY**.

The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to replace the uses and requirements of the existing R-5 and I-L zones and to limit and supplement the requirements of the existing B-2 zone as set forth in this Agreement, except that the conditional uses included within Portland City Code § 14-483 are specifically excluded.

The above stated restrictions, provisions, and conditions, including all Exhibits to this Agreement, are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **PACKARD**, any entity affiliated with **PACKARD** that takes title to the **PROPERTY**, their successors and assigns, and any party in possession or occupancy of said **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. **PACKARD** shall record a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **PROPERTY**.

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

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

In the case of any issue related to the **PROPERTY** which is governed by this section, neither **PACKARD** nor its successors or assigns may seek relief which might otherwise be available to them from Portland's Board of Appeals by means of a variance, practical difficulty variance, interpretation appeal, miscellaneous appeal or any other relief which the Board would have jurisdiction to grant. Nothing herein, however, shall bar the issuance of stop work orders.

This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. Following any determination of a zoning violation by the Court or the Zoning Administrator, the City Council, after recommendation of the Planning Board, may amend, modify or rescind its conditional rezoning of the site.

WITNESS:

PACKARD DEVELOPMENT, LLC

_____ By _____

Its: _____

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

_____, 2004

Personally appeared before me the above-named _____, in his/her capacity as _____, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of Packard Development, LLC.

Before me,

Notary Public/Attorney at Law

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CITY OF PORTLAND, MAINE

PLANNING BOARD

Kevin Beal, Chair
Michael Patterson, Vice Chair
John Anton
Lee Lowry III
Shalom Odokara
David Silk
Janice E. Tevanian

August 3, 2006

Paul Cincotta
Packard Development
One Wells Avenue
Newton, MA 02459

RE: Morrill's Crossing, LLC

Dear Mr. Cincotta:

On July 11, 2006, the Portland Planning Board

- A. Voted 6-0 (Lowry recused) that the proposal is substantially in accordance with the conditional rezoning agreement, with the following condition of approval:
 - i. That the Boxing Club, in order to be in compliance with the Conditional Rezoning, must be redesigned not to exceed 14,000 sq. ft., in total, and that amended plans and architectural drawings shall be submitted for Planning Authority review and approval.
- B. Voted 5-1 (Odokara opposed; Lowry recused) on a motion to waive sidewalk on one side of Morrill Street (east side) as the Board was satisfied that the Applicant has met criteria 3 and 6 of the City's sidewalk waiver provision of the Land Use Code §14-506(b).;
- C. Voted 1-5 (Odokara, Silk, Tevanian, Patterson and Beal opposed; Lowry recused) on a motion to grant a waiver of Morrill Street from 28 to 24 feet, thus the waiver was denied;
- D. Voted 1-5 (Odokara, Silk, Tevanian, Patterson and Anton opposed; Lowry recused) on a motion to waive requirement for a hammerhead turnaround, thus the waiver was denied;
- E. Voted 6-0 (Lowry recused) to grant a waiver of the lighting uniformity standard;
- F. Voted 4-2 (Anton and Tevanian opposed; Lowry recused) on a motion to approve the subdivision, subject to the following conditions of approval:
 - i. that the fence along the entry drive be continuous and not include a gap around the Metro bus shelter.
 - ii. That no activities be allowed after dark on the multi-purpose recreation field.

- iii. That the Applicant make any additional improvements to the buffering and landscaping as determined by the Planning Authority and Landscape Architect consultant one year after the issuance of a Certificate of Occupancy for the Project.

G. Voted 4-2 (Anton and Tevanian opposed; Lowry recused) on a motion to approve the site plan subject to ten (10) conditions of approval; and

- i. The Applicant shall conduct a post-occupancy safety study confirming the safety benefits of their off-site mitigation plan. If crash rates and patterns indicate existing problems either persist or have been exacerbated by the Project, the Applicant shall identify and implement other reasonable and appropriate improvement strategies to be approved by the City Traffic Engineer.
- ii. The Applicant shall provide a pavement marking plan for the southbound Forest Avenue left-turn lane for review and approval by the City Traffic Engineer.
- iii. The left-turn queue into the site at the Allen Avenue Driveway shall be extended to a length that will allow access without blockage from the through lane queue. The revised plan shall be submitted for review and approval by the City Traffic Engineer.
- iv. The Applicant shall conduct a post-occupancy Traffic Operations Study confirming the proposed off-site mitigation plan addresses impacts associated with the Project. If significant queuing is documented following Project opening, the Applicant shall identify and implement other reasonable and appropriate improvement strategies, to be approved by the City Traffic Engineer.
- v. Prior to the issuance of a building permit, the Applicant shall contribute \$25,000 to the Riverton Safety Project.
- vi. The Planning Board waives the requirement for a sidewalk on both sides of Morrill Street as it is satisfied the Applicant has met criteria 3 and 6 of the City's sidewalk waiver provision of the Land Use Code §14-506(b).
- vii. That a public vehicle access easement from the Morrill Street circle over the Applicant's Townhouse Driveway and through to the Allen Avenue Mixed Use Driveway to Allen Avenue be provided for review and approval by Corporation Counsel.
- viii. That the Applicant satisfy all other conditions contained within Tom Errico's 6/6/06 and 7/6/06 memos (included herein.).
- ix. That the Applicant provide to the City, prior to the release of the Performance Guarantee, a vehicular and utility easement over the existing, undeveloped portion of Morrill's Street (from University Street to the Railroad tracks).
- x. That the Applicant revise the plans in accordance with the City's Technical Standards to reflect Morrill's Street width at 28 feet and the location of a hammerhead Turnaround off Morrill Street at the rear of the Site.

H. Voted 4-2 (Anton and Tevanian opposed; Lowry recused) to approve the Traffic Movement Permit.

The approval is based on the submitted site plan and the findings related to site plan and subdivision review standards as contained in Planning Report 36-06, which is attached.

Findings of Fact were also adopted by the Planning Board on July 25, 2006 which are included herein.

Please note the following provisions and requirements for all site plan approvals:

1. Where submission drawings are available in electronic form, the applicant shall submit any available electronic Autocad files (*.dwg), release 14 or greater, with seven (7) sets of the final plans.
2. An additional performance guarantee will not be required for this work.
3. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the expiration date.
4. Prior to construction, a pre-construction meeting shall be held at the project site with the contractor, development review coordinator, Public Work's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
5. If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Sarah Hopkins at 874-8720.

Sincerely,

Kevin Beal, Chair
Portland Planning Board

cc: Lee D. Urban, Planning and Development Department Director
Alexander Jaegerman, Planning Division Director
Sarah Hopkins, Development Review Services Manager
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Inspections Division
Michael Bobinsky, Public Works Director
Traffic Division
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Greg Cass, Fire Prevention
Assessor's Office
Approval Letter File

Portland Planning Board

Findings of Fact and Decision **Morrill's Crossing LLC at 33 Allen Avenue**

The Portland Planning Board (the "Planning Board" or "Board") hereby issues the following findings of fact and decision regarding the application of Morrill's Corner LLC (the "Applicant") for Site Plan and Subdivision Approval and for a Traffic Movement Permit in the vicinity of 33 Allen Avenue, Portland, Maine (the "Site").

Following six (6) workshops on this Project, the Planning Board held a public hearing on the application on July 11, 2006. At the conclusion of the public hearing, and after deliberations, the Planning Board voted (4 to 2, Anton and Tevanian) in public session to approve, with conditions, the Applicant's Site Plan, Subdivision and the Traffic Movement Permit requests.

I. FINDINGS OF FACT

A. REVIEW PROCESS

1. Following the receipt of a Conditional Rezoning of property in the vicinity of 33 Allen Avenue, the Applicant submitted an application for Site Plan, Subdivision and Traffic Movement Permit approval (the "Project"). The application was received by the City on July 1, 2005. Notices were sent to 232 area residents. A notice also appeared in the *Portland Press Herald*. A neighborhood meeting was held on December 15, 2005.

2. The Planning Board reviewed the Project according to the Land Use Code of the City of Portland (the "Code"), Chapter 14, Articles IV and V, as well as the standards applicable for a Traffic Movement Permit. It also reviewed the Decision and Order of Justice Robert Crowley, in the case of Morrill's Neighborhood Association et al v. City of Portland, et al

B. SUBDIVISION REVIEW

This Project is a mixed use development which includes twenty three (23) apartments and twenty (20) townhouses. It is therefore subject to subdivision review.

On the basis of plans and materials submitted by the Applicant, and on the basis of the information contained within Planning Report #37-06 (which we hereby incorporate into our findings of fact), as well as testimony (both written and oral) received from professional consultants, City staff, and the public at the July 11, 2006 public hearing relevant to standards for subdivision approval as set forth in Section 14-497 of the Land Use Code, the Portland Planning Board finds the following:

1. **Water and Air Pollution.** The Planning Board finds development of the Site will not cause water or air pollution. The site is mostly flat, slopes away from Allen Avenue (elevation 109) to Milliken Brook at the eastern end of the site (elevation 80), and consists of a mixture of silty and sandy loams. Soils, floodplain and off-site drainage information, included in the Applicant's Stormwater Management report dated June 2005, revised May 2006, is credible. The stormwater system has been designed to collect runoff from the proposed retail and residential development to a closed drainage system. Runoff will be collected in deep sump catchbasins and directed to subsurface filter systems, prior to being routed to the closed pipe system. The runoff is directed to a wet pond located east of the recreational field. The pond is designed with a discharge to the Milliken Brook. Downstream impacts will be mitigated by the City's upgrade of Fall Brook. The developer will contribute \$100,000.00 toward this effort. The Planning Board requires the developer to copy the City on any correspondence with the DEP concerning Site Location of Approval.

Based on the method of stormwater treatment proposed (which includes underground filtration systems to treatment the impervious surface, the creation of a detention pond at the rear of the site, and the financial contribution of \$100,000.00 to the City for use in improving the downstream receiving waters) and with the conditions recommended by Engineers Steve Bushey and Eric Labelle in memos to the Planning Board dated 6/5/06 and 6/6/06, respectively, the Planning Board finds the Project will not result in undue water or air pollution.

2. **Water.** Water for domestic use and fire suppression will be provided by water lines from Allen Avenue. The Applicant provided the Board with a letter from Portland Water District stating that sufficient capacity exists to serve the proposed development. The Planning Board finds that the Project has sufficient water available and will not cause an unreasonable burden on the existing water supply.

3. **Soil Erosion.** A sedimentation and erosion control plan was submitted meeting both the State of Maine's Chapter 500 requirements and the City's standards and guidelines. The Planning Board accepts the comments of the City's Development Review Coordinator, Stephen Bushey, P.E., and finds that the Project will not result in unreasonable soil erosion or a reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

4. **Traffic.** The Planning Board was very concerned about the Applicant's ability to meet the traffic standards of the City Code and the Traffic Movement Permit requirements. In order to address those concerns, the Applicant submitted a Traffic Impact and Access Study, prepared by Vanasse Hangen Brustlin (VHB) Engineers. VHB detailed the results of its traffic study and explained why, with the multitude of improvements proposed to be installed by the Applicant (including but not limited to physical roadway improvements, traffic signal installation, traffic control measures and follow-up monitoring), the Project meets the City of Portland's traffic standards as well as those applicable for a Traffic Movement Permit.

Thomas Errico, Consulting Traffic Engineer for the City, reviewed all the traffic reports submitted in this case since the fall of 2003. He met with the Applicant and VHB

on numerous occasions, and made requests for more information (additional counts, queuing analysis, as well as accident data, parking counts, and trip generation data) necessary to satisfy his analysis of the traffic in the vicinity of the Site. Mr. Errico also reviewed two letters containing comments by Creighton Manning Engineering LLP, a traffic engineering firm hired by Hannaford Bros. Co. to review, analyze and offer comments on the VHB Traffic Impact and Access Study. The Board heard from Mr. Errico, on the issue of traffic, at numerous workshops and at the public hearing. The Board accepts the findings of Mr. Errico (summarized in his memo dated 7/6/06) as credible and determines the Project meets the traffic requirements for subdivision ¹with the following conditions:

- xi. The Applicant shall conduct a post-occupancy safety study confirming the safety benefits of their off-site mitigation plan. If crash rates and patterns indicate existing problems either persist or have been exacerbated by the Project, the Applicant shall identify and implement other reasonable and appropriate improvement strategies to be approved by the City Traffic Engineer.
- xii. The Applicant shall provide a pavement marking plan for the southbound Forest Avenue left-turn lane for review and approval by the City Traffic Engineer.
- xiii. The left-turn queue into the site at the Allen Avenue Driveway shall be extended to a length that will allow access without blockage from the through lane queue. The revised plan shall be submitted for review and approval by the City Traffic Engineer.
- xiv. The Applicant shall conduct a post-occupancy Traffic Operations Study confirming the proposed off-site mitigation plan addresses impacts associated with the Project. If significant queuing is documented following Project opening, the Applicant shall identify and implement other reasonable and appropriate improvement strategies, to be approved by the City Traffic Engineer.
- xv. Prior to the issuance of a building permit, the Applicant shall contribute \$25,000 to the Riverton Safety Project.
- xvi. The Planning Board waives the requirement for a sidewalk on both sides of Morrill Street as it is satisfied the Applicant has met criteria 3 and 6 of the City's sidewalk waiver provision of the Land Use Code §14-506(b).
- xvii. That a public vehicle access easement from the Morrill Street circle over the Applicant's Townhouse Driveway and through to the Allen Avenue Mixed Use Driveway to Allen Avenue be provided for review and approval by Corporation Counsel.
- xviii. That the Applicant satisfy all other conditions contained within Tom Errico's 6/6/06 and 7/6/06 memos.
- xix. That the Applicant provide to the City, prior to the release of the Performance Guarantee, a vehicular and utility easement over the existing, undeveloped portion of Morrill's Street (from University Street to the Railroad tracks).

¹ For the same reasons, the Board also finds that the Project meets the requirements for the issuance of a Traffic Movement Permit. 23 MRSA §704-A and its accompanying Rules.

- xx. That the Applicant revise the plans in accordance with the City's Technical Standards to reflect Morrill's Street width at 28 feet and the location of a hammerhead Turnaround off Morrill Street at the rear of the Site.

5. **Parking.** The Project provides 666 parking spaces (inclusive of 39 parking spaces for the apartment complex) and is expected to have a parking demand of 632 parking spaces during the peak December period. The Applicant will be implementing a Parking Management Plan during the peak season that will require retail employees to use the parking spaces located in the rear of the site.

The Planning Board determines that the 666 parking spaces, with a depth of eighteen (18) feet as opposed to nineteen (19) feet (as supported by the Public Works Department) is sufficient to avoid any unreasonable highway public road congestion or unsafe conditions with respect to use of the highway or public roads existing or proposed.

6. **Sanitary Sewer/Solid Waste Disposal.** The Applicant provided a letter from the City of Portland stating that sufficient sanitary sewer capacity exists to serve the proposed development. In addition, solid waste for the development will be collected privately. The Board finds that the Project will provide for adequate sanitary waste/sewage disposal and will not cause an unreasonable burden on municipal services.

7. **Stormwater.** See B. Subdivision Review ¶ (1), above.

8. **Scenic Beauty, Historic Sites and Habitat Areas.** The proposed development is located on an underutilized, blighted property that many in the public described as "derelict." It presently contains remnants of buildings, large expanses of impervious surface (consisting of decrepit pavement and packed dirt) and abandoned shells of buildings. There is no significant wildlife habitat on this site identified either by the Department of Inland Fisheries and Wildlife or by the City, nor rare and irreplaceable natural areas. Also there is no proximity to the shoreline. The Planning Board finds that the Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

9. **Comprehensive Plan.** Both the Portland City Council and the Superior Court of Maine have reviewed the Conditional Rezoning Agreement, which incorporates the general requirements of the proposed site plan, including its mixed use and traffic improvements, among other things. The Planning Board, therefore, defers to and adopts the Superior Court and the City Council decisions finding that the Project consistent with the City's Comprehensive Plan.

10. **Financial and Technical Capability.** The Applicant submitted a satisfactory letter of financial capability from Citizen's Bank and Stop and Shop, and provided a list of the professional consulting team (with their professional license numbers) working on the Project. The Planning Board finds that

the Applicant has adequate financial and technical capacity to meet the requirements of the subdivision standards.

11. **Water Bodies.** The Project is not located within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river and this standard does not apply.
12. **Groundwater.** The Project will be served by public water and sewer, thus it will not adversely affect the quality or quantity of ground water.
13. **Flood Hazard/Shoreland.** The Project site is not located within a flood-prone area or a flood plain zone or a shoreland zone.
14. **Wetlands/Abutting Rivers, Streams or Brook.** Wetlands have been appropriately identified by VHB on the plans, as has the location of adjacent Milliken Brook.

C. SITE PLAN REVIEW

As a development of over 10,000 square feet, this Project is subject to Site Plan review. Due to the buildings' square footage exceeding 50,000 sq ft, the Planning Board sets the parking requirement.

On the basis of plans and materials submitted by the Applicant, and on the basis of the information contained within Planning Report #37-06 (which we hereby incorporate into our findings of fact), as well as testimony (both written and oral) received by professional consultants, City staff, and the public at the July 10, 2006 public hearing relevant to standards for Site Plan approval as set forth in Section 14-521 of the Land Use Code, the Portland Planning Board finds the following:

1. **Loading, Parking, Traffic and Circulation:** See **B. Subdivision Review.** ¶ 4 (Traffic) and 5 (Parking), above. The developer has also adequately accounted for pedestrian and vehicular loading into and through the Site to safely move people, including pedestrians wishing to take the Metro Bus System. In addition, the Project offers a pedestrian trail link through the site to the open space at the rear of the site.
Loading at the retail stores is located at the rear of the buildings. The largest building, the proposed grocery store, allows for adequate loading space. The Planning Board finds that the developer has met the standards contained in §14-526(1).
2. **Bulk, Location, Height of Proposed Buildings, Diminution of Value, Health, Safety, Air:** The proposed development will include residential units, a supermarket, restaurant, miscellaneous retail, a boxing club and a recreation field. The Applicant submitted elevations of the buildings, as well as the architecture for the main structures. The height of the proposed buildings are below the maximum height allowed for the zone. The townhouses, in particular, were designed at the height and location in order to

buffer the residential neighbors to the north from impacts of the retail development. At the public hearing, Andy Hyland, Architect for the Applicant, presented the design of the buildings, which contain significant architectural detailing. The Planning Board finds that the bulk, location and height of the buildings within the Project, and the proposed uses thereof, will not create a diminution in value of property and will not cause health or safety problems as to existing uses in the neighborhood, with the following condition:

- i. that the townhouses be required to provide rear porch low wattage lights that will be turned on and off at dusk and dawn by a centrally controlled switch and not left to the discretion of individual unit owners.

3. **Sewers, Stormdrains, Water** See findings **B. Subdivision Review.** ¶ 1,2 and 6, above.

4. **Landscaping and Existing Vegetation.** The landscaping associated with the development was reviewed by peer reviewer Pat Carroll of Carroll and Associates. It utilizes a combination of tools, including stockade fencing, preservation of existing vegetation, and a planting plan to buffer the development and neighboring properties. The most sensitive areas are treated with a mixture of fencing and landscaping which creates a good buffer. While significant vegetation is lacking on the site due to its prior uses, the developer is preserving critical wetland vegetation along the stream at the east end of the property. We agree with the conclusion of independent reviewer Carroll and find that the Project's landscaping provides adequate buffering between the Project and neighboring properties so as to adequately protect each from any detrimental features of the other and minimizes, to the extent feasible, any disturbance or destruction of significant existing vegetation with the following conditions of approval:

- iv. that the fence along the entry drive be continuous and not include a gap around the Metro bus shelter.
- v. That no activities be allowed after dark on the multi-purpose recreation field.
- vi. That the Applicant make any additional improvements to the buffering and landscaping as determined by the Planning Authority and Landscape Architect consultant one year after the issuance of a Certificate of Occupancy for the Project.

5. **Soils and Drainage.** The Project does not create any significant soil and drainage problems, whether on or off site, and adequately provides for control of erosion and sedimentation during construction and afterward. See findings **B. Subdivision Review.** ¶ 1 and 3.

6. **Exterior Lighting.** While the entrance drive to the Project is to be lit with 250 watt fixtures (which exceed the City's Technical Standards) the photometric plan, the absence of spill over from the proposed lighting, and the recommendation of Pat Carroll to waive the Technical Standard in this regard, convince the Board that a waiver of the lighting wattage standard is justified for the main entrance driveway. In addition, the Board requires a single light and electrical service be installed in the recreation field parking lot for safety purposes, such lighting to be reviewed and approved by the

Planning Authority. With the above conditions of approval in place, the Planning Board finds the Project's provision for exterior lighting will not be hazardous to motorists traveling on adjacent public streets, is adequate for the safety of occupants or users of the Project site, and such lighting will not cause significant glare or direct spillover onto adjacent properties and complies with the applicable specifications of the City of Portland Technical and Design Standards and Guidelines.

6. **Fire/Safety Hazards/Emergency Site Access.** Primary fire access is from Allen Avenue and two secondary emergency access points: one on Allen and a crash gate on Morrill Street. There is a primary access to the rear apartments from Morrill Street. This latter access also provides a mountable curb for emergency access to the rear of the supermarket and boxing club. Public Works has confirmed that in the case of emergency, the Radcliffe Glen emergency gate can be opened, thereby providing emergency vehicular access from the site and neighborhood via Morrill and University Streets to Washington Avenue. The Planning Board finds that the Project will not create fire or other safety hazards and provides adequate access to the site and to the Project building for emergency vehicles.

7. **Noise.** The Applicant submitted a Noise Impact Study which was reviewed by the City's peer reviewer, R. Scott Bodwell, of Resource Systems Engineering. Mr. Bodwell analyzed the revised Sound Level Impact Assessment Report prepared by Epsilon Associates Inc. on behalf of the Applicant. Mr. Bodwell appeared at the public hearing and testified the City's noise standards could be met by the Project with the sound mitigation techniques to be employed by the Applicant. Mr. Bodwell offered conditions of approval (contained in his 7/19/06 letter -Planning Board Report 37-06 Exhibit 1h). We adopt Mr. Bodwell's findings and recommendations including that a noise study be conducted one year after occupancy of the grocery store. In addition, the following condition of approval is imposed:

i. that deliveries for any retail or restaurant establishment will only be accepted between 7:00am and 10:00pm and that the store hours for the supermarket shall not exceed 6:00 am to 11:00 pm..

8. **City Infrastructure and Utilities.** Both the traffic and stormwater management plans have been designed to be consistent with the planned and existing off-premises infrastructure surrounding the site. The traffic improvements have been designed in concert with previous work done by the MDOT and the City in Morrill's Corner. The City has participated in the design of the traffic and stormwater improvements, including

the provision for bike shoulders and improved crosswalks and sidewalks as proposed by the development. Likewise, the design of the stormwater plan has been reviewed by Public Works and our reviewing engineer for compliance with our standards and consistency with the City's goals and policies related to Milliken Brook and the Fall Brook watershed. The Planning Board finds the Project consistent with planned and existing off-premises infrastructure.

9. **Exterior Design.** The Planning Board finds that the exterior design of the Project complements and enhances the nearest residential neighborhood and the design of the exterior facades provides positive visual interest by incorporating appropriate architectural elements. Upstairs apartments are integrated into the design of the Allen Avenue retail building with brick facades, cement board clapboards and trim. The three apartment buildings at the end of Morrill Street are designed to be compatible with the surrounding residential neighborhood. The upstairs apartments, Townhouses, and Morrill Street apartments have all been designed with ample fenestration.

The residential portions of the proposed development are designed to build upon a relationship of buildings to public streets. Given that the entire 20-acre parcel has minimal frontage along Allen Avenue, the development has been designed with a hierarchy of proposed roadways, albeit private, within the site. The Allen Avenue retail building is built alongside the entry drive with sidewalks and other streetscape amenities. The Townhouses are built along Princeton Street with entrances and pathways adjacent to the right-of-way. Lastly, the 12 apartments to the rear have been redesigned with access from Morrill Street at the request of planning staff so that the apartments could be connected to the adjacent residential neighborhood.

The Project respects the existing relationship of buildings to public streets and is integrated with the existing city fabric and streetscape. The exterior design of the portion of the Project Building within the first thirty-five (35) feet of height enhances the character, attractiveness, comfort, security and usability of the street level pedestrian environment. The Project building design provides ample windows to enhance opportunities for sunlight and air in each dwelling in principal living areas and provides sufficient storage areas.

10. **Historic Districts.** The Project is not within one hundred (100) feet of any landmark, historic district or historic landscape district.

11. **Impact on Natural Resources.** See findings **B. Subdivision Review.** ¶8 .

D. TRAFFIC MOVEMENT PERMIT

The Planning Board has been satisfied that the Project meets the requirements of a Traffic Movement Permit for all of the reasons listed in findings **B. Subdivision Review.** ¶ 4.

VI. CONDITIONAL REZONING

The Morrill's Crossing development is subject to the terms and restrictions set forth in the rezoning document enacted by the Portland City Council. The Rezoning grants to the Planning Board the authority to make findings of fact regarding the Project's adherence to the site plan attached to, and incorporated in, the Rezoning. The Planning Board has reviewed the Rezoning and finds that the Project is substantially in accordance with the Rezoning with the following condition of approval:

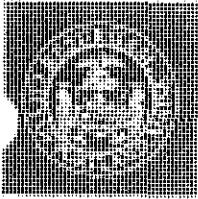
i. that the Boxing Club, in order to be in compliance with the Conditional Rezoning, must be redesigned not to exceed 14,000 sq. ft., in total, and that amended plans and architectural drawings shall be submitted for Planning Authority review and approval.

II. FINAL DECISION

Based on the foregoing findings of fact and conditions of approval, the Portland Planning Board approves the application of Morrill's Corner LLC for Site Plan, Subdivision and Traffic Movement Approval of the mixed use development in the vicinity of Morrill's Corner, Portland, Maine ("Project") with a vote of (4 to 2, Anton and Tevanian opposed) on July 11, 2006.

Dated: July 25, 2006

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Planning and Development Department
Lee D. Urban, Director

Planning Division
Alexander Jaegerman, Director

November 28, 2007

Natalie Burns
Jensen Baird Gardner and Henry
10 Free Street, P.O. Box 4510
Portland, ME 04112-4510

RE: Morrill's Crossing Development
CBL: 152-D-2
Application ID: #2005-0147

Dear Ms. Burns:

Thank you for meeting with us on November 26, 2007 and for your past correspondence seeking a two year extension for the Morrill's Crossing Development located at 33 Allen Avenue.

In my capacity as Planning Division Director for the City of Portland, I am granting your request to extend your approval to July 10, 2009. If you have any questions, please contact me at 874-8724.

Sincerely

Alexander Jaegerman
Planning Division Director

Electronic Distribution:

cc: Lee D. Urban, Planning and Development Department Director
Alexander Jaegerman, Planning Division Director
Barbara Barbydt, Development Review Services Manager
Philip DiPiero, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Jeanie Bourke, Inspections Division
Lisa Danforth, Administrative Assistant
Michael Bobinsky, Public Works Director
Kathi Earley, Public Works
Bill Clark, Public works
Jim Carmody, Transportation Manager
Michael Farmer, Public Works
Jeff Farling, City Arborist
Captain Greg Cass, Fire Prevention
Assessor's Office
Approval Letter File

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO: AP06-042 ✓

RECEIVED

MORRILLS CORNER, LLC

Plaintiff

ORDER ON PLAINTIFF'S
RULE 80B APPEAL

v.

CITY OF PORTLAND

Defendant

This matter comes before the Court on Morrills Corner, LLC's 80B appeal of administrative action taken by the City of Portland. For the reasons stated below, the appeal is DENIED.

BACKGROUND

Plaintiff Morrills Corner, LLC ("Morrills Corner") is a Delaware limited liability company that was formed for the purpose of handling a development project in Portland, Maine. To initiate the project, Packard Development, LLC, Morrills Corner's predecessor in interest, entered into a Conditional Zoning Agreement ("CZA") with Defendant City of Portland ("the City") in 2004, which was revised in May 2005.¹ The CZA was intended to govern development of twenty acres of land in the vicinity of 53 Allen Avenue in Portland, to be called Morrill's Crossing.

According to the CZA, the project must comply with and be subject to the City's Land Use Code. The project consists of a redevelopment of apartments

¹ The May 2005 version is recorded in the Cumberland County Registry of Deeds at Deed Book 23341, Page 114.

and townhouses and adds more residential units, a grocery store, walking trails, a playing field, and a boxing / health club facility. The CZA incorporated several exhibits, including Exhibit B, a site plan drawing, and Exhibit D, architectural renderings of the proposed development. Also, Paragraph 13 of the CZA states that the agreement is subject to restrictions imposed by the City Council.

As required by the CZA, Morrills Corner submitted an application for site plan and subdivision approval in July 2005. These applications were supported by traffic and parking studies, and notice of the project was provided to residents in the neighborhood. A neighborhood meeting was held on December 15, 2005 to discuss the project. The Community Development Committee ("CDC"), a subset of the City Council, also participated in numerous workshops and evaluations of the project. The developer also represented to the CDC that the boxing facility would not exceed 15,000 square feet. The full City Council extensively discussed the project and analyzed the site plan that was incorporated into the CZA.

In October 2005, the City's zoning administrator, Marge Schmuckal, issued an opinion that the site plan complied with zoning regulations. The dimensions on Exhibit B initially had been listed as 4,000 square feet for the existing boxing facility, with an expansion of approximately 10,000 square feet. No mention of the number of stories was made on Exhibit B, although the number of stories was listed for other buildings on the plan.

The administrator issued a revised opinion in January 2006, again stating that the project complied with zoning regulations, including setbacks, permitted uses, and the height limit. But, she also stated that consistency with the CZA remained at issue and would have to be reviewed by the Planning Board.

Specifically, she noted that CZA paragraph 3 requires that the development occur "substantially in accordance with the Site Plan shown on Exhibit B." The CZA provides that it may allow minor deviations and that each phase of development remains subject to site plan review.

In February 2006, Morrills Corner submitted a revised site plan, reducing the footprint to 14,000 square feet and showing a single-story building. By June 2006, however, another revised plan was submitted, depicting a three-story, 42,484 square foot building due to the terms of Morrills Corner's lease. The new plan listed a ground floor area of 15,090 square feet, a second floor area of 17,922 square feet, and a third floor area of 15,462 square feet.

The Planning Board ("the Board") held a public hearing on July 11, 2006, after which it determined, by a vote of 6-0, that the application complied with the CZA. The Board also granted subdivision and site plan approval, subject to a condition that the boxing facility would not exceed 14,000 total square feet. It also stated that it would have to review and approve an amended plan incorporating the reduction in size. The Board issued findings and conclusions to that effect on August 3, 2006. As the condition of approval would become final and binding absent an appeal, Morrills Corner filed this 80B appeal, solely contesting the condition limiting the boxing facility to 14,000 square feet.

After hearing, this Court remanded the matter to the Board for further fact finding, ordering it to clarify its rationale for the limitation. On July 10, 2007, the Board called a public hearing for the purpose of discussing and adopting findings of fact regarding the limitation. After the Board adopted findings as requested by the Court, the City and Morrills Corner agreed that the matter should be decided on the parties' written submissions.

DISCUSSION

1. Standard of Review.

Review of board findings is “for an abuse of discretion, error of law, or findings unsupported by substantial evidence in the record.” *O’Toole v. City of Portland*, 2004 ME 130, ¶ 8, 865 A.2d 555, 558. This Court is “limited to determining whether the record contains evidence to justify the Board’s determination.” *Lewis v. Maine Coast Artists*, 2001 ME 73, ¶ 14, 770 A.2d 644, 650. The Court will uphold the decision of the Planning Board unless the record evidence compels a contrary conclusion. *Gensheimer v. Town of Phillipsburg*, 2005 ME 22, ¶¶ 16-18, 868 A.2d 161, 166. The party appealing the zoning board’s decision bears the burden of persuasion. *Twigg v. Town of Kennebunk*, 662 A.2d 914, 916 (Me. 1996).

2. Did the City Err By Adding a Condition to Morrills Corner’s Approval?

The issue presented by this appeal is whether the Board’s approval of the project, subject to a condition limiting the size of the boxing facility, was supported by substantial evidence in the record.

The Portland Land Use Ordinance (“LUO”) states that when any site plan approval is conditional, the Board will issue a written decision that clearly explains its rationale. LUO § 14-256(c). Accordingly, at its July 2007 hearing, the Board officially adopted findings, explaining that its limitation of the square footage to 14,000 was based on the site plan attached to the CZA as Exhibit B. On the site plan, the square footage for the boxing facility is listed as approximately 14,000 (4,000 existing and 10,000 proposed). Nothing on the plan indicated that the building would be more than one story.

Morrills Corner had argued that the Board's prior decision did not explain whether the condition was solely based on the size restrictions in the CZA, or whether there were other reasons for it, such as non-compliance with the LUC. After remand, the Board clarified that the initial square footage was 14,000, and the subsequent increase to over 42,000 was inconsistent with the site plan. It further explained that the CZA requires the development to be built "substantially in accordance with the site plan." CZA ¶ 3. Because the site plan listed the boxing facility at 14,000 square feet, the Board's position is that any expansion would have to be pursued in the City Council via a proposed amendment to the CZA.

Morrills Corner correctly notes that "minor deviations" from the site plan are allowed. In its July 2007 Findings, however, the Board explicitly states that, in its view, the proposed increase to over 42,000 square feet constituted a "substantial deviation" from the site plan because it would amount to an increase of approximately 400% in the facility's size. July 2007 Findings of Fact, ¶ 2. Additionally, the new findings stated that the proposal for a substantially larger boxing facility "represented a substantial change in proportion and relation of the boxing facility to the other buildings on the site plan." July 2007 Findings of Fact, ¶ 3.

The Board has clarified that it based the condition on its interpretation of the CZA, which requires alterations to be substantially in accordance with the site plan. It explicitly determined that the proposed alterations to the square footage and height of the boxing facility were not substantially in accordance with the site plan. Given this Court's deferential review of the Board's factual findings, the Court finds that the record and the July 2007 findings support the

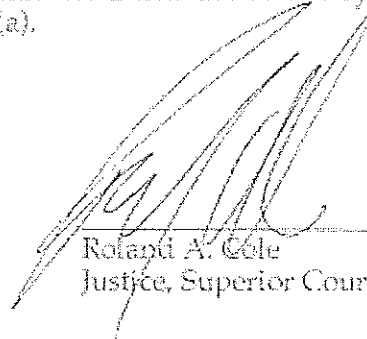
Board's conclusion that the condition was warranted. This project has undergone careful scrutiny at the municipal level and this Court will not disturb the Board's imposition of a condition to its approval in light of the substantial evidence supporting it.

The entry is:

Plaintiff's SOB appeal is DENIED. The decision of the Portland Planning Board to conditionally approve the project with the square footage limitation is AFFIRMED.

The clerk shall incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

DATE: August 1, 2007



Roland A. Cole
Justice, Superior Court

From: Jennifer Thompson
To: Barbara Barhydt
Date: Friday, December 11, 2015 10:52 AM

Hi Barbara -

I've done a registry search in relation to the rescission of the CZA and can report the following:

There are certainly no deeds or leases meeting the description in Paragraph 1 to Packard Development, LLC. However, there are deeds from Darling, Adams, Paul and Jonathan White and Allen Avenue Plaza, LLC to SS Morrills LLC. Although I find no deed or lease from White Chapel, LLC, I do find a deed from White Dove, LLC to SS Morrills, LLC for property that appears to be included in the CZA. My understanding is that SS Morrills, LLC is connected and likely a successor in interest to Packard Development and many of the deeds are given to SS Morrills, LLC c/o Packard Development so those likely satisfy the condition.

Importantly, however, I do not find a deed or lease to or from the City as required by the CZA. Therefore, it would appear that the condition has not been fully met.

From: Jennifer Thompson
To: Barbara Barhydt
Date: Monday, December 07, 2015 4:09 PM
Subject: rescinding CZAs

Hi Barbara - here is the reasoning behind rescinding CZAs. In summary, doing so creates a clear record of the status of things, avoids confusion in the future, and makes sure all parties understand where things stand. In the future, if the Council does not affirmatively vote to rescind, there may be questions about whether the CZA does or does not remain in effect.

Additionally, and as outlined below, as a legal matter, it is best that the City take affirmative action to enforce a condition in a CZA that has not been met by affirmatively rescinding the agreement.

According to Corbin on Contracts: "Frequently in a contract an express provision is included to the effect that if payments are not made exactly as agreed, if clear title is not made by a stated time, or if some other performance by one of the parties is not rendered, the contract shall be 'null and void.' This type of provision seldom means what it appears to say." Rather, "null and void" provisions simply render a contract voidable at the election of the party who was to receive the benefit of the condition. According to Corbin, although one party's failure to perform a condition can relieve the other party of its duty to perform, "[l]ike other conditions, this condition can be waived by the promisor whose duty is conditional. If payment is not on time, or if title is not perfect, or if other specified performance is defective, the purchaser can overlook defects and still require such performance as is possible." Corbin on Contracts Section 40.10.

I hope this helps. Let me know if you have any questions.
Jen

From: Deb Keenan <debkeen2@cs.com>
To: <BAB@portlandmaine.gov>
Date: Friday, December 11, 2015 2:14 PM
Subject: Morrill's Corner

Dear Planning Board Members,

Like many of the rezonings in this City, this one created MANY conflicts between the city, the developers and the neighbors. After a nearly 4 year process that consumed our lives, The Planning Board itself OPPOSED the rezoning and voted against it (in a rare and exceptional event) because we made a compelling argument against it. Despite that, rare and exceptional Planning Board opposition, the majority of CITY council supported it and we sued them. It was a conflict that made the Fore Street rezoning conflict look like they were playing patty cakes!!!

I encourage you to read some of the public comment from the time of the rezoning so you can better understand the issues. I will try to summarize them here.

Your job as Planning Board members is neither to facilitate NOR to oppose development. You are not the economic development department. Although at times it has been called the Planning and ECONOMIC Development office and joined together as one department with ONE common boss, the two concept "Planning" and "economic development" are different. It's easy to understand how your role might be "confused" and muddled. The two function (planning and economic development) have also often been separated from each other, into distinct and separate function and offices with separate "bosses" to help prevent that confusion and conflict. Then, as now, there might be many political forces at work, which in a variety of ways are telling you "we want to encourage development"; "we want to facilitate and accommodate business" etc. While that may be your function in your day job, that is not your job and role...as Planning Board Members.

Your job as Planning Board Members is very simple, although I know it is not simple to do: TO respect the comprehensive plan and the ZONING that result from it.

The comprehensive plan is our long term vision for OUR city and how WE want it developed in the future to preserve what WE VALUE. It is our HOPES and DREAMS for the perfect City as we envision it, while respecting all of our long standing and core VALUES. The different components of our comprehensive plan focus on different issues and were created by groups of people who focused on those specific issues for several years, (such as housing, transportation, green spaces etc.). They were long discussed and well thought out. They were not knee jerk or developer driven and they were intended to be respected not disregarded and manipulated or misinterpreted. They are the bones for future development in our City.

The ZONING emanates from the various comprehensive plans. They are the meat placed on the bones. They are the details that make the comprehensive plan and the VISION for our CITY, clear, REAL, understandable and knowable in a concrete way applicable to development. They are the rules that determine what can be built where... why and how. They are our values and protect our values.

Zoning determines what can be built where,.... how, and why .. in order TO avoid the conflict of incompatible uses. ZONING provides certainty for all...it protects everyone property rights equally. It provides a place for all the various uses and function that a CITY wants and needs to function well. OUR zoning works well when it is respected!!!!. When it is respected, we have peace in the land and peace in our souls.... we have peace in our neighborhoods and peace with our neighbors. Zoning isn't a secret, it is a KNOWN. Any developer or potential land owner can see clearly in black and white what uses are allowed where and what is not. IF they do due diligence, no one is blind sided or deceived. Good developers do due diligence.

A request for a rezoning throws all that peace in the soul on it's ear It is an intrusion and invasion and an attack into the certainty of the neighborhood and of what we VALUE as a CITY. A rezoning request is an active and frontal assault on our values, the known, and the certainty of the neighborhood. Whether it is the lifting of height restrictions, the placement of a BIG box, or the conversion of public park for commercial use, the affect is the same a disrespect for our well established values as a CITY, a disregard for the rules, and a violation of the certainty and the property rights of others.

A re-zoning request (no matter what form it takes), by its very nature, creates conflict, with the expected response of so called NIMBYISM or more correctly NIABY(not in anyone's back yard). EVERY neighborhood has been invaded BY inappropriate rezoning request and empathizes with each other, as each new rezoning request attempts to invade and topple their peace, serenity and certainty.

Most developers respect the zoning because they respect, and want to get along with, their neighbors. They quietly and with little fan fare do their jobs. They never come before you, because they are following the rules. Rezoning request are rare and are NOT the norm. It takes a certain amount of hubris to request a rezoning. A rezoning request is very risky a developers know that from the start. They have every right to request one; but you have no obligation to deliver it to them. No one opposes minor revision to a zone that has NO impact for others. We are a reasonable people.

We do object to rezoning requests that attack our values, our sense of peace, safety, and security. Our homes are the greatest investment of our

lifetimes and are as important as any developer's investment . If we have chosen to make Portland our home, we expect to live in our homes unintruded for our lifetimes. We have followed the rules and expect other to do likewise.

We don't go looking for trouble ,trouble finds us, with the zoning requests . WE protect our neighborhood like we would protect our child from danger. WE actively and with great thought and commitment chose our residential neighborhoods, just like you did. I looked at 16 homes before choosing one. Some of us look for a neighborhood to provide quiet low traffic streets with pocket parks and empty fields to have our "quiet place". We chose kid and pet friendly neighborhoods because of what we value... we still want kids to have fields to play in and trees to climb and wetland to explore and learn ... to still see the circle of life -from pollywog to frog and migratory birds. Simply put, the needs of residential neighborhoods conflict with the needs of large scale retail or noisy smelly industrial development. The contract zone for this parcel should NEVER have been approved.

The previous UNDERLYING zone was specifically created to be a transitional zone from residential to HIGHER level and less compatible industrial development.. The IL zone was a new zone created to consider it's proximity to a residential neighborhood and to RESPECT the unique needs and uses in a residential zone and to protect it from noxious intrusion from higher level industry. If you have a chance this weekend ,I encourage you to visit the area and specifically the residential neighborhood next door. One of the great things about Portland is all the hidden neighborhoods.

Basically I support this reversion to the original zone and I would actually like to celebrate it. I would like to enjoy it at face value. BUT experience and skepticism tells me to be cautiousI would like to trust that this is a simple reversion but frankly I don't.

I have concerns that this is going straight to a public hearing rather than having a "stop" at a workshop first so the public can be better informed before commenting and so they can provide informed comments rather than knee jerk ones. The process and the reversion itself is highly unusual.

The purpose of workshops is to ensure the public can be informed BEFORE commenting and so the planning board members can be informed before deciding. It gives the chance for thought, consideration, and processing before commenting and deciding. Workshops before public hearings provide the opportunity for INFORMED public comment and public participation and informed decision making. It is HIGHLY unusual and perhaps even illegal for this to go straight to public hearing.

The reason council agendas have 1st and second readings is to inform and alert the public that a decision is about to occur..... and because we in a democracy value, welcome and encourage public participation in important decision making.The planning board workshop fulfills a similar role. Important decision must not be rushed.

I find it interesting that several former Planning Board member who vigorously supported this rezoning request , use our same argument, now ... as much smaller and less invasive rezonings, invade their own neighborhoods peace and tranquility ! It seems like poetic justice.

Debra Keenan



VIA EMAIL: bab@portlandmaine.gov

December 15, 2015

City of Portland Planning Board
c/o Portland Planning Division
389 Congress Street
Portland, ME 04101

RE: Public Hearing December 15, 2015 - Proposal to extinguish Conditional Rezoning Agreement (C-36)

Dear Planning Board:

We are furnishing this comment in regard to the above proposal on behalf of our subsidiary SS Morrills, LLC, which was formally owned by Packard Development LLC (Packard).

We believe there are questions regarding the status of the Conditional Rezoning Agreement (C-36). Moreover, we believe there are questions regarding the status of a Purchase and Sale Agreement between the City of Portland and Packard dated February 3, 2005 regarding property at 1 Cambridge Street -- Parcel 151-A-A-13 (Purchase Contract). The Purchase Contract, which was assigned to SS Morrills, LLC, provided for an escrow of \$355,000 and was amended multiple times.

We request that the Planning Board table this matter until additional investigations and discussions can be completed.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Sterling".

Tyler Sterling
Senior Real Estate Representative

Delhaize America Shared Services Group, LLC | P.O. Box 1000, Portland, ME 04104 USA
T: +1 207.883.2911 | www.delhaizegroup.com

the companies of
DELHAIZE AMERICA

FOOD LION



Order 137-15/16
Feb 9 1-4-16

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)

**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 15 LICENSING AND PERMITS AND
CHAPTER 30 (VEHICLES FOR HIRE)
Re: Tour Operator Licensing**

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

1. That Section 15-12 of the Portland City Code is hereby
amended to read as follows:

Sec. 15-12. Fees and expiration dates.

(a) Unless specified elsewhere in this Code, fees for
licenses issued pursuant to this Code and the expiration date of
each license shall be as follows:

...

Ch. 30, Art. III	Horse-drawn cabs	200.00, plus 20.00 per driver	April 30
Ch. 30, Art. III IV	Bicycle cabs	100.00, plus 20.00 per driver	
Ch. 30, Art. V	Tour companies	300.00, plus 30.00 per vehicle/operator	March 31

...

2. That Chapter 30 of the Portland City Code is hereby amended
by adding Sections 30-93 to 30-109, which said sections read as
follows:

ARTICLE V. TOUR COMPANIES

DIVISION 1. GENERAL PROVISIONS

Sec. 30-93. Definitions.

As used in this article, unless the context otherwise indicates, the following words shall have the following meanings:

Tour company means any individual, group, or entity that provides tours for profit to the public of and in any portion of the City of Portland.

Tour vehicle means any motorized vehicle or apparatus that is used to transport individuals or passengers during a tour of and in any portion of the City. Tour vehicles shall include, but shall not be limited to, cars, trucks, vans, buses, motorcycles, mopeds, and segways.

Forma

Street, way, or public place means any street, way, trail, path, promenade, park, plaza, square, or other public property, or portion thereof.

To operate means to drive, pedal, pull, push or otherwise cause the tour vehicle to move.

Sec. 30-94. General licensing provisions to apply.

Except to the extent that this article contains a contrary provision, all general licensing provisions of chapter 15 shall apply to this article.

DIVISION 2. LICENSES

Sec. 30-95. License Required.

No tour company shall operate a tour vehicle on any street or way or in any public place without a tour company license. In obtaining or renewing a tour company license, accurate information for each operator and vehicle shall be provided pursuant to Section 30-96. An operator for whom such information has not been provided to the Licensing Authority is not licensed to operate. A vehicle for which such information has not been provided to the Licensing Authority is not licensed to be operated. Any operator who is less than eighteen (18) years old shall be restricted to operation between the hours of 8 a.m. to 6 p.m.

Sec. 30-96. Applications.

In addition to the general provisions of chapter 15 relating to the contents of applications, applications for tour company licenses shall contain the following:

- (a) A complete listing of all operators to be employed by or associated with the applicant, giving each person's full name, age and present address.
- (b) A complete record (Maine Criminal History Record search) of disqualifying criminal convictions or civil offenses as defined in Section 30-33(b)(3-6), if any, for all operators to be employed by or associated with the applicant, and for the applicant, or if the applicant is other than an individual, for each principal officer of the applicant.
- (c) A detailed description of each tour vehicle and any other equipment to be used by the applicant, including a photograph of each tour vehicle and the make, model, color, year, power, and seating capacity specifications of each such vehicle.

Sec. 30-97. Licensing authority and regulations.

Notwithstanding any provision of chapter 15 to the contrary, the City Manager or his or her designee shall be the licensing authority for the owner/operator, vehicle, and operator licenses. The City Manager or his or her designee shall also have the authority to promulgate rules and regulations for tour licenses as he or she may deem necessary.

Sec. 30-98. Conditions precedent to issuance.

Prior to the issuance of any tour company license, and in addition to any other requirements of this article or chapter 15, the applicant shall file with the City Manager or his or her designee the following:

- (a) A certificate issued by the applicant that the tour company to be licensed and all operators operating thereunder shall comply with the rules made under authority of this article by the licensing authority; and

- (b) An insurance policy covering the term of the license and executed by an insurance company authorized to issue such policies in this state in the usual form of vehicle or other liability insurance policies in this state for injuries to persons and property resulting from the use and operation of the tour company to be licensed. Such policy of insurance shall be issued for a principal sum sufficient to provide indemnity in the amount of not less than four hundred thousand dollars (\$400,000.00) per occurrence, for bodily injury, death and property damage. A certificate of insurance bearing an endorsement thereon by the issuing agent shall be deposited with the licensing authority. Such certificate shall state that the issuing agent shall notify the licensing authority in writing no less than thirty (30) days prior to the cancellation thereof. The City of Portland shall be included in the policy as an additional named insured.

Sec. 30-99. Denial, suspension, or revocation.

In addition to the general provisions of chapter 15 relating to the grounds for denial, suspension or revocation of license, a tour company, tour operator, or tour vehicle license may be denied, suspended or revoked on any of the following grounds:

- (a) The applicant or licensee or any operator is less than seventeen (17) years of age or has had a disqualifying criminal conviction or civil offense as provided in Section 30-33(b) (3-6);
- (b) Disobeying any order or direction of the City Manager or his or her designee, including, but not limited to, the city traffic engineer, license inspector, or any police officer; or
- (c) Causing or permitting any violation of this article or chapter 25.

DIVISION 3. OPERATING REQUIREMENTS

Sec. 30-100. Operation limited to roadways; carrying of passengers; prohibited locations.

Licensed tour vehicles shall be operated within roadways only. Tour vehicles shall not be operated upon sidewalks or

bicycle paths, except those paths specifically designated for that purpose by the Director of Parks and Recreation. Tour vehicles may carry passengers to locations chosen by the passengers or may follow an agreed-upon route for sightseeing purposes. The City Manager or his or her designee shall have the right to prohibit tour vehicles from streets or roadways where the operation of such vehicles will present a threat to the safety of the tour vehicle operator and passengers or to other users of the street or roadway. The City Manager or his or her designee also shall have the authority to erect appropriate signs or markers, and to impose such conditions on the use of routes and locations as he or she deems proper, including limiting the number of such tour vehicles in operation on the same route or at the same location at any one (1) time, and restricting the days, times, or other circumstances of operation on any such route or at any such location. No such vehicle shall stop, stand, or park in any place while on route, to load or unload passengers or otherwise, except in accordance with traffic regulations, traffic-control devices, or the directions of a police officer or other authorized person. In no event shall a tour vehicle utilize a designated taxicab stand for any purpose whatsoever, unless required for an immediate response to an emergency situation. Tour vehicles shall not be permitted at the Jetport.

Sec. 30-101. Not to obstruct traffic; police orders.

No tour company or tour vehicle shall be operated in any manner which unreasonably or unnecessarily obstructs or impedes the free flow of vehicular or pedestrian traffic or otherwise endangers public safety. Any designee of the City Manager, including, but not limited to, police officers and the city traffic engineer, may at any time order the operator of any such company or vehicle to move along, pull over, make way, or temporarily discontinue the use of any such route or location, or any portion thereof, for the public safety or reduction of high-traffic areas.

Sec. 30-102. Traffic regulations to apply.

Except to the extent that this article contains a contrary provision, all traffic regulations of chapter 28, article III, shall apply to the operation of licensed tour companies and tour vehicles.

Sec. 30-103. Display of plate and badge.

A plate, to be issued by the licensing authority and bearing an identification number shall be displayed in a conspicuous place on each licensed tour vehicle at all times while in service. A badge, to be issued by the licensing authority and identifying the wearer by number as a licensed operator of such tour company or tour vehicle, shall be worn prominently on his or her person by each such operator at all times while on duty.

Sec. 30-104. Solicitation of business.

No person shall solicit business in any manner for any licensed tour company or tour vehicle while on route. Prohibited solicitation while standing shall include shouting, hollering, whistling, clapping, or making other loud noises, grabbing or otherwise annoying or harassing passersby, or any other conduct detrimental to the image or reputation of the trade or the public safety or convenience.

The City Manager or his or her designee may restrict the solicitation of business to certain designated areas within a specified zone in certain high-traffic areas.

Sec. 30-105. Passengers to be seated and well-behaved.

No operator of any tour company or tour vehicle shall load or admit more passengers at any one (1) time than may be fully seated in such tour vehicle. Every passenger in any such tour vehicle shall be and remain fully seated at all times while on route and shall refrain from any other conduct or behavior detrimental to the safety or comfort of passengers or others.

Sec. 30-106. Care and maintenance of tour vehicle.

Each licensed tour vehicle shall be at all times clean and in good repair.

Sec. 30-107. Conduct and appearance of operators; rule-making authority.

Every operator of a licensed tour company or tour vehicle shall be courteous at all times when on duty and shall refrain from any loud argument, fight or disturbance, or any other conduct or behavior detrimental to the image or reputation of the trade or the safety or comfort of passengers or others. The City Manager or his or her designee shall have authority to make

reasonable rules and regulations, consistent with the public safety and the image and reputation of the trade, governing the training and qualifications of such operators.

Sec. 30-108. Unsafe vehicles; inspections; order from service.

No licensed tour vehicle shall be operated at any time while unsafe, defective or in disrepair. The City Manager or his or her designee, including, but not limited to, any police officer or the license inspector may inspect a tour vehicle at any and all reasonable times, prior to being placed into service, while in service, or otherwise, and may at any time order such vehicle to be removed from service for any defect, unsafe condition, or want of repair. No such vehicle shall be returned to service except upon re-inspection by such officer, the license inspector or the licensing authority, and upon a finding that such repair has been made or that such defect or unsafe condition has been corrected.

Sec. 30-109. Storage of vehicles and equipment.

No tour vehicle or related equipment shall be kept or stored on any street or way or in any public place while not in service.

MEMORANDUM
City Council Agenda Item

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

FROM: Adam R. Lee, Associate Corporation Counsel

DATE: 12/9/15

SUBJECT: Tour Company Licensing Ordinance

SPONSOR: Public Safety Health and Human Services Committee, Ordinance Amendments approved by Committee 4-0 on November 10, 2015

(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 __December 21, 2015 Final Action __January 4, 2016

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

Passage is recommended now so that Staff can make preparation for implementation of the licensing process and advise Tour Companies of the process in advance of "tour season" in the spring.

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

I. ONE SENTENCE SUMMARY

This Ordinance Amendment would require that those providing guided tours with vehicles within the City of Portland acquire a license to do so.

II. AGENDA DESCRIPTION

See Attached Memo

III. BACKGROUND

See Attached Memo

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

The licensing fees will be utilized primarily for administration of the licensing process.

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

See Attached Memo

VII. RECOMMENDATION

The unanimous PSHHS Committee recommended passage.

VIII. LIST ATTACHMENTS

October 5, 2015 Background Memorandum

November 10, 2015 Memorandum regarding solicitation limitation

Approved Ordinance Amendments

Prepared by: Adam R. Lee

Date: 12/9/15

Bean/agendarequestmemo/rev 11/2015

MEMORANDUM

To: Public Safety, Health and Human Services Committee

From: Adam Lee, Esq., Associate Corporation Counsel
Richard M. Bianculli Jr., Esq., Neighborhood Prosecutor

Re Proposed Ordinance Amendment to License Tour Companies

Date: October 5, 2015

The attached ordinance amendment proposes to require a license for tour companies that currently operate in the City of Portland. Adoption of the amendment will allow Portland to ensure public safety by confirming insurance requirements, reviewing background checks for tour company owners and operators, and conducting general safety inspections on tour vehicles. Requiring a license for tour companies is a logical step towards fostering a safe and productive tourist industry.

As an unlicensed business enterprise, mobile tour companies are currently prohibited from actively soliciting customers or selling tours on streets, sidewalks and public areas pursuant to Section 25-17(a) of the Portland City Code. The provision of licenses for tour companies will ensure that tour companies are permitted to conduct their business in a reasonable manner. A majority, if not all, of the current tour operators have indicated their support for a licensing program.

Portland has required licenses for horse-drawn carriages since 1984 and bicycle cabs since 1998. The proposed ordinance amendment will include similar requirements to those found in Chapter 30 for the horse-drawn carriages and bicycle cabs. Operators are required to keep the vehicles clean and presentable. Following the initial inspection required for a license, the license inspector or any police officer is permitted to inspect the tour vehicle at any time in order to ensure compliance with safety measures and the absence of safety hazards. Unsafe vehicles would be removed from service until the compliance issue is attended to.

The Jetport staff has confirmed that they are prepared to process the license applications as they are received. Once the ordinance is adopted, city officials would develop regulations including requirements for application deadlines, inspection checklists, and the like. The inspection of the tour vehicles will be considered a pre-requisite to the application process and inspections will be conducted by the Director of Port Operations, Kathy Alves.

MEMORANDUM

To: Public Safety, Health and Human Services Committee

From: Adam R. Lee, Esq., Associate Corporation Counsel

Re: Limitation on Solicitation of Tour Companies Within a Distance of a Fixed-Base Tour Company

Date: November 10, 2015

At the October 13, 2015 meeting, this Committee approved Ordinance amendments creating a process by which Tour Companies are required to obtain licenses. The Committee suggested modifications to the amendments permitting the City Manager or his/her designee to issue and enforce the provisions of the Ordinance. The Committee also suggested an amendment that precludes solicitation by non-fixed-base tour companies within a certain distance of fixed-base tour companies. The Committee suggested that such amendment should be provided to the full Council at the time the Ordinance was placed on the Council's agenda. As a result of scheduling and additional research, Corporation Counsel determined it would be useful to present the issue again for discussion to the Committee before presentation to the full Council.

The amendment requested by the committee to prevent solicitation within a distance of a fixed-base company is a regulation on commercial speech. While the First Amendment affords less protection to commercial speech, it "does not fall outside the purview of the First Amendment." *Lorillard Tobacco v. Reilly*, 533 U.S. 525, 554 (2001). The U.S. Supreme Court established a four-part test in *Central Hudson Gas & Elect. Corp. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 557 to determine whether regulations of commercial speech violate the First Amendment: 1) Is the commercial speech protected (does it concern lawful activity and is not misleading)?; 2) Is the asserted governmental interest substantial?; If the answer to both of the first two questions is yes, 3) does the regulation directly advance the governmental interest asserted?; and 4) Is the regulation more extensive than necessary to serve the interest?

From Corporation Counsel's perspective, the most likely issue on which this Ordinance would be challenged is what government interest it serves and whether it is narrowly tailored to serve that interest. Those challenging the Ordinance may argue that it was enacted for purposes of protecting certain companies from economic competition. Courts have held that such purposes are not legitimate government interests. *St. Joseph Abbey v. Castille*, 700 F.3d 154, 161 (5th Cir. 2012) ("As we see it, neither precedent nor broader principles suggest that mere economic protection of a pet industry is a legitimate governmental purpose[.]"); *Craigsmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002) ("Courts have repeatedly recognized that protecting a discrete interest group from economic competition is not a legitimate governmental purpose.").

Economic protectionism is distinct from another governmental purpose that could be served by the proposed amendment, that of public safety. There is no doubt that protection of public safety – specifically in the context of pedestrian and traffic safety – is a legitimate and significant governmental interest. See *McCullen v. Coakley*, 134 S.Ct. at 2535 and *Cutting v. City of Portland*, 2015 U.S. App. Lexis 16206. If the proposed amendment is enacted, it should be enacted on the basis of protecting public safety. It is Corporation Counsel’s advice that prior to enactment of an amendment that would prohibit solicitation within a distance from fixed-base tour companies, the Council hears testimony regarding the congregating of solicitors in front of fixed-base establishments and that any amendment is narrowly-tailored and not more extensive than necessary to serve the public safety interest.

Adam R. Lee

Associate Corporation Counsel