

Special City Council Meeting
January 20, 2016

1. Agenda Only

Documents: [AGENDA ONLY_2016-01-20.PDF](#)

2. Agenda And Packet

Documents: [AGENDA AND PACKET 01-20-16.PDF](#)

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

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

AGENDA
SPECIAL CITY COUNCIL MEETING
JANUARY 20, 2016

The Portland City Council will hold a Special 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) January 4, 2016, Regular City Council Meeting Minutes

PROCLAMATIONS:

Proc 17-15/16 Proclamation Honoring Officer Coreena Behnke as Police Officer
(Tab 2) of the Month for December 2015 – Sponsored by Mayor Ethan K. Strimling.

APPOINTMENTS:

CONSENT ITEMS:

LICENSES:

Order 138-15/16 Order Granting Municipal Officers' Approval of Oscar Pizza LLC
(Tab 3) d/b/a Otto. Application for a Class III & IV License (Wine & Beer) at
250 Read St. – Sponsored by Katherine L. Jones, City Clerk.

Application submitted on 12/21/15. New City and State applications.
Former location of a recording studio.

Five affirmative votes are required for passage after public comment.

**Order 139-15/16
(Tab 4)**

Order Granting Municipal Officers' Approval of Oscar Pizza LLC d/b/a Ocho. Application for a Class I FSE License with Outdoor Dining on Public Property at 190 State St. – Sponsored by Katherine L. Jones, City Clerk.

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**Order 140-15/16
(Tab 5)**

Order Granting Municipal Officers' Approval of Blue Phoenix Lounge LLC d/b/a Blue Phoenix Lounge. Application for a Class I FSE License with Entertainment without Dance at 211 Danforth St. – Sponsored by Katherine L. Jones, City Clerk.

Application submitted on 12/22/15. New City and State applications. Applicant applied for license at 845 Forest Ave. and was approved by Council on 12/7/15. Applicant decided to not pursue the license at that location.

Five affirmative votes are required for passage after public comment

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

UNFINISHED BUSINESS:

**Order 84-15/16
(Tab 6)**

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

On September 8, 2015, the Planning Board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend a map amendment to change the zoning for the property at 1945 Congress Street from Residential R-2 to Office Park (O-P), with a 40-foot buffer of R-2 retained at the easterly side of the site.

The amendment would make Office Park a permitted use on the site, and thus allow Northland Enterprises, LLC, the applicant, to redevelop the property with medical and general office buildings under the development standards and design criteria of the Office Park zone.

This item must be read on two separate days. It was given a first reading on October 5, 2015. At the December 21, 2015, Council meeting, this item was postponed to this meeting.

Public comment has already been taken with regard to this item. Five affirmative votes are required for passage.

**Order 172-14/15
(Tab 7)**

Order Approving Two-Party Agreement between the City of Portland and the Maine Department of Transportation Re: Improvements to Forest Avenue – Sponsored by Jon P. Jennings, City Manager.

City Council action is necessary to enter into a two-party agreement with Maine Department of Transportation (MDOT) for the Woodford's Corner transportation project.

This is standard practice once a project evolves into the design and construction phase, and follows a three-party agreement adopted via City Council Order 25-13/14. Without a two-party agreement in place, MaineDOT cannot finalize a bid package for construction.

As of this time, the Agreement indicates that the "base project cost" (i.e. the components of the project considered to be within the general identified scope) will be a total of \$1,918,751. As per the general funding agreement and requirements for this project, the City is responsible for ten percent (10%) of this total, or \$191,875.10.

This item was originally brought forward in March 2015 prematurely, and most recently postponed to the January 20, 2016 City Council meeting based on the assumption that financial matters would be clarified by that date. Of particular concern has been the significantly higher cost of necessary railroad crossing features.

Much progress has been made, including additional funding commitments from both PACTS and MaineDOT, in order to build this project in 2017. However, procedural steps at both PACTS and MaineDOT are required to appropriate their added funding; these steps will not occur until February 2016.

Therefore, staff recommends postponement of this action to the March 21, 2016 City Council meeting.

**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. It was given a first reading on January 4, 2015. Five affirmative votes are required for passage after public comment.

ORDERS:

Order 141-15/16 (Tab 9)

Order Authorizing Assignment of Credit Enhancement Agreement Held by Ocean Gateway Garage LLC to Portland Norwich Group LLC - Sponsored by Jon P. Jennings, City Manager.

The Riverwalk Development and Tax Increment Financing District was originally approved by the City Council on June 6, 2005, with its associated Credit Enhancement Agreement (CEA) between the City and Riverwalk, LLC. On October 6, 2006, the City Council authorized the assignment of the CEA from Riverwalk, LLC to Ocean Gateway, LLC – a wholly-owned subsidiary of Riverwalk, LLC.

Due to recent changes in property ownership, Ocean Gateway Garage, LLC wishes to assign its right, title, and interest in the Riverwalk TIF District to the Portland Norwich Group, LLC. Under the terms of the CEA, Section 8.2 "Assignment", assignment of the CEA cannot be done without the consent of the City, which consent shall not be unreasonably withheld for delayed for any reason or for no reason.

Five affirmative votes are required for passage after public comment.

Order 142-15/16 (Tab 10)

Order Accepting Public Pedestrian Access Easement and Granting a License RE: Midtown Project in Bayside – Sponsored by Jon P. Jennings, City Manager.

Federated Companies is requesting City Council approval of a license and easement for the Midtown project. The Midtown development received Planning Board site plan and subdivisions approval on March 3, 2015.

The development was approved subject to a number of conditions including City Council approval of a license for certain improvements within City rights-of-way and acceptance of an easement on private property. Approval of the license and easement is necessary for Midtown to proceed.

The license requested by Midtown covers a number of improvements within the public right-of-way:

1. Retaining walls, steps, ramps and planters (Somerset Street and Elm Street) ; and
2. Stormwater treatment systems (Somerset Street and Chestnut Street).

The easement on private property includes the following:

1. Public pedestrian walkway areas.

Five affirmative votes are required for passage after public comment.

**Order 143-15/16
(Tab 11)**

Order Approving Elementary School Construction Project with Total Costs not to Exceed \$29,720,456 and Authorizing General Obligation Bonds in an Amount not to Exceed \$29,720,456 Therefore – Sponsored by Councilor Edward J. Suslovic.

These items would authorize the construction of a new Hall Elementary School on the existing site, at a total cost of \$29,720,456. All but \$1,390,485 of the bonded amount would be reimbursed by the State. Both the Hall School Building Committee and the Portland Board of Education voted to recommend the locally funded options. The local share of the project would be for the following purposes:

Classroom Security Upgrades	\$	53,235
Operable Partitions	\$	38,455
Additional Play Equipment/Outdoor Learning	\$	49,690
Sod on Athletic Fields	\$	37,865
Rehabilitation of Orono Rd.	\$	31,950
LEED Certification	\$	35,000
Middle School Sized Gym	\$	538,090
Larger Cafeteria	\$	346,675
Stormwater Treatment	\$	194,525
Bond Anticipation Notes	\$	65,000
Total	\$	1,390,485

The existing enrollment at Hall School is approximately 440 students, and the targeted enrollment at the new school is 558 students, grades pre-k through 5. The existing school has an area of approximately 54,000 square feet, but is only a single-story building. The new school will have an area of approximately 84,890 gross square feet, and includes two classroom wings.

One wing is two-story, and the other is single-story but will be designed with the structural capability to allow for a second story expansion in the future if additional student capacity is needed.

On October 9, 2015 the State Board of Education voted to approve the site design for this project. The concept design was reviewed by the State Board's construction sub-committee on January 4, 2016 and is scheduled to be approved by the entire Board on January 13, 2016.

The proposed project schedule, assuming a positive referendum outcome, is for construction to begin in the late spring of 2017 with substantial completion the summer of 2018 and occupancy in the fall of 2018.

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

**Order 144-15/16
(Tab 12)**

Order Appropriating \$29,720,456 of Bond Proceeds – Sponsored by Councilor Edward J. Suslovic.

This is a companion order to Order 143-15/16 above.

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

**Order 145-15/16
(Tab 13)**

Order Submitting Elementary School Construction Project Bond Order to Referendum – Sponsored by Councilor Edward J. Suslovic.

This order submits the Elementary School Construction Project Bond Order to referendum at the special municipal election to be held on April 5, 2016

This is a companion order to Orders 143-15/16 and 144-15/16 above.

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

**Order 146-15/16
(Tab 14)**

Order Accepting an Easement Option for Public Access at the Portland Company Historic District – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

This order accepts an easement option from CPB2 LLC to allow public access at the Portland Company Historic District.

Five affirmative votes are required for passage. Staff is requesting that this item be postponed to the February 1, 2016 Council meeting to coincide with consideration of companion Order 147-15/16 and 148-15/16 below.

**Order 147-15/16
(Tab 15)**

Order Designating Portland Company as a Historic District and Amending the Map of Historic Districts – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

The Planning Board is recommending that a portion of the Portland Company complex at 58 Fore Street be designated a local historic district subject to the provisions of Portland's historic preservation ordinance (Article IX of the Land Use Code). The Planning Board's recommendation is pursuant to a recommendation forwarded by the Historic Preservation Board. In the case of a nominated historic district, the historic preservation ordinance requires sequential review by the Historic Preservation Board and Planning Board prior to consideration by the City Council.

The Historic Preservation Board's role in historic district deliberations is to determine whether the nominated historic district meets the designation criteria of the historic preservation ordinance, which address both the significance of the nominated resource, as well as its integrity, including integrity of condition.

Based upon its analysis, the Historic Preservation Board recommends district boundaries and assigns building classifications identifying which buildings warrant preservation and which, by virtue of condition or lack of significance, may be removed.

The Planning Board's role in the designation process is to confirm whether the designation criteria in the historic preservation ordinance have been met and to consider the effect of such designation on other aspects of the Comprehensive Plan.

The Planning Board's recommendation regarding designation of a Portland Company Historic District amends that of the Historic Preservation Board. The Planning Board is recommending a revised historic district involving both an area at the core of the property as well as an additional building located on the property's Western Boundary, as indicated on the revised map attached to the Planning Board's recommendation.

The Planning Board is also recommending that Building #1, which the Historic Preservation Board recommended classifying as a contributing structure, be reclassified as a noncontributing structure.

The Planning Board's recommendation for amended district boundaries and for reclassification of Building #1 is related to a finding by the Board that the goals of the Comprehensive Plan would be better achieved through the creation of a smaller district and the execution of a fifty (50) foot wide public access easement in favor of the City from Fore Street across the site to the waterfront.

In addition, the Planning Board is also recommending an amendment to the historic preservation ordinance making explicit that building heights in the Portland Company Historic District be controlled by the underlying zoning and not by historic preservation ordinance review standards as they pertain to regulation of building heights. The Historic Preservation Board did not take a position as to the regulation of building height.

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

AMENDMENTS:

**Order 148-15/16 Amendment to Portland City Code Chapter 14 Land Use, Article IX
(Tab 16) Historic Preservation, Section 14-651 Re: Building Height in Portland
Company Historic District.**

This is a companion order to Order 146-15/16 and 147-15/16 above.

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

BREAK FOR DINNER:

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

UNFINISHED BUSINESS: (Continued)

**Order 137-15/16 Amendment to Portland City Code Chapter 15 Licensing and Permits
(Tab 17) 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. It was given a first reading on January 4, 2015. Five affirmative votes are required for passage after public comment.

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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.

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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. It was given a first reading on January 4, 2015. Five affirmative votes are required for passage after public comment.

IN COUNCIL REGULAR MEETING JANUARY 4, 2016 VOL. 132 PAGE 61

ROLL CALL: Mayor Strimling called the meeting to order at 5:00 P.M. (Councilor Suslovic absent, Councilor Hinck arrived during Proclamation 16).

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Brenerman and seconded by Councilor Costa to approve the minutes as amended of December 21, 2015, Regular City Council Meeting. Passage as amended 7-0.

PROCLAMATIONS:

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

Proc 16-15/16 Proclamation Honoring Mirosław Kryszinski, Public Works 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 5826(6) Re: State v. Abdihakim Mohamed – Sponsored by Jon P. Jennings, City Manager.

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

UNFINISHED BUSINESS:

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 item was given first reading on December 21, 2015.

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

IN COUNCIL REGULAR MEETING JANUARY 4, 2016 VOL. 132 PAGE 62

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 was given first reading on December 21, 2015.

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

Order 136-15/16 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.

This is its first reading.

AMENDMENTS:

Order 137-15/16 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 is its first reading.

Motion was made by Councilor Brenerman and seconded by Councilor Hinck to recess the Regular City Council meeting. Passage 8-0.

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

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

Motion was made by Councilor Mavodones and seconded by Councilor Duson for passage. Passage 8-0.

Motion was made by Councilor Costa and seconded by Councilor Ray to adjourn. Passage 8-0, 7:04 P.M.

A TRUE COPY.

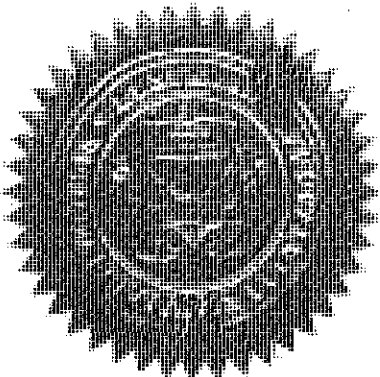
Katherine L. Jones, City Clerk

Dec 17-15/16
Tab 2 1-20-16

PROCLAMATION
HONORING
OFFICER COREENA BEHNKE

- WHEREAS,** **Officer Behnke** joined the Portland Police department in March of 1999 and is currently the Senior Lead Officer covering Libbytown, Stroudwater, Nason's Corner, Rosemont and Oakdale; and
- WHEREAS,** **Officer Behnke** has received the Myra Kraft Community MVP Award, Employee of the month for the City in 2014 and has instructed the Department's Rape Aggression Defense classes since 2002; and
- WHEREAS,** **Officer Behnke** is recommended for Officer of the Month by her supervisor for her diligent work in maintaining working relationships with more than a dozen schools and community groups to encourage communication and support for students and residents; and
- WHEREAS,** **Officer Behnke** is an invaluable resource for schools, students, parents and community members. She takes advantage of each opportunity to provide safety and remains a constant advocate for public safety at all levels of service.
- WHEREAS,** **Officer Behnke** is commended for her 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 Coreena Behnke as Officer of the Month for December 2015.**

Signed and sealed this 20th day of January 2016



A handwritten signature of Ethan K. Strimling in black ink, written over a horizontal line.

Ethan K. Strimling, Mayor
City of Portland, Maine

*Order 138-15/16
Tab 3 1-20-16*

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Oscar Pizza LLC d/b/a Otto. Application for a Class III & IV License (Wine & Beer) at 250
Read St.**

December 12, 2015

To:
Mayor and City Council Members

From:
Oscar Pizza LLC DBA OTTO

RE:
250 Read St Portland

This letter is sent with to express the intention of opening an OTTO at the location of 250 Read St in Portland. This location will offer delivery, dine-in and take-out services.

Our intention is to operate dine in service at tables as well as a service bar with Pizza, Beer, Salads, Wine and soft-drinks.

We plan to be open from 11am until 10pm Sunday through Thursday and 11am to 11pm Friday and Saturday.

Thank you for your consideration,

OTTO
Mike Keon and Anthony Allen

RECEIVED
DEC 21 2015
CITY CLERK

Portland, Maine



Yes. Life's good here.

Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557
www.portlandmaine.gov

Application for Food Service Establishment with Alcoholic Beverages License

RECEIVED
DEC 21 2015
STLB

Business Information			
Business Name (d/b/a):	Oscar Pizza LLC D/B/A OTTO	Phone:	517 3091
Location Address:	250 Reed St. Portland ME	Zip:	04103
If new, what was formerly at this location:			
Mailing Address:	576 Congress St Portland	Zip:	04101
Contact Person:	Alex Budd	Phone:	603 438 9875
Contact Person Email:	alex@ottoportland.com		
Manager of Establishment:	Ari Modugno	Date of Birth:	12.25.78
Owner of Premises (Landlord):	J & L Corp, a Maine Corporation		
Address of Premises Owner:	256 Reed St	Zip:	04103

Sole Proprietor/Partnership Information (If Corporation, leave blank)

Name of Owner(s)	Date of Birth	Residence Address

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

Corporate Name		Corporate Mailing Address	
Oscar Pizza LLC		576 Congress St	Zip: 04101
Contact Person:	Robin Goodwin	Phone:	207 517 3091
Principal Officers	Title	Date of Birth	Residence Address
Mike Keon	Owner	5/25/62	Portland, ME
Anthony Allen	Owner	9/3/62	Newburyport, MA

Class of Liquor License:	Class III & IV	
Type of food served:	Pizza & Salads	
Please circle all that will be served:	☒ Beer ☒ Wine ☐ Liquor	
Projected percentage of sales:	Generated from Food: 90%	Generated from Alcohol: 10%
Hours & days of operation:	Sun-Thurs 11am-10p FR/Sa 11a-11p	

QUESTIONS	Y/N
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	☒ Y ☐ N
If No, please explain:	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	☒ Y ☐ N
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)	☒ Y ☐ N
Will you permit dancing on the premises?	☒ Y ☐ N
Will you permit dancing after 1:00 a.m.?	☒ Y ☐ N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	☒ Y ☐ N
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).	
Will you have any amusement devices (pinball, video games, juke box)?	☒ Y ☐ N
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____	
What is your targeted opening date?	2/1/16
Does the issuance of this license directly or indirectly benefit any City employee(s)?	☒ Y ☐ N
If Yes, list name(s) of employee(s) and department(s):	
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	☒ Y ☐ N
If Yes, please list business name(s) and location(s):	
576 & 225 Congress, 100 Cumberland	
Is any principal officer under the age of 21?	☒ Y ☐ N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	☒ Y ☐ N
If Yes, please explain:	

I, Alex Budd do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature [Signature] Title District Manager Date 12/17/15

For more information about Liquor Licenses, see Portland City Code Chapter 15 at www.portlandmaine.gov and M.R.S.A. Title 28-A at www.maine.gov.

Department of Public Safety
Division

Liquor Licensing & Inspection



BUREAU USE ONLY

License No. Assigned:

Class:

Deposit Date:

Amt. Deposited:

Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded.

To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

PRESENT LICENSE EXPIRES N/A

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☐ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

☒ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTIONAL FOOD (Class I-A)

☐ CLASS A LOUNGE (Class X)

☐ CLUB (Class V)

☐ TAVERN (Class IV)

☐ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL (Class I,II,III,IV)

☐ CLUB-ON PREMISE CATERING (Class I)

☐ GOLF CLUB (Class I,II,III,IV)

☐ OTHER: _____

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) --(Sole Proprietor, Corporation, Limited Liability Co., etc.) <u>Oscar Pizza LLC</u> DOB: _____			2. Business Name (D/B/A) <u>OTTO</u>		
DOB: _____					
DOB: _____			Location (Street Address) <u>250 Read St</u>		
Address <u>576 Congress St</u>			City/Town <u>Portland</u>	State <u>ME</u>	Zip Code <u>04103</u>
			Mailing Address <u>576 Congress St</u>		
City/Town <u>Portland</u>	State <u>ME</u>	Zip Code <u>04101</u>	City/Town <u>Portland</u>	State <u>ME</u>	Zip Code <u>04101</u>
Telephone Number <u>517 3091</u>		Fax Number	Business Telephone Number <u>517 3091</u>		Fax Number
Federal I.D. # <u>27 4680884</u>			Seller Certificate #		

3. If premises are a hotel, indicate number of rooms available for transient guests: _____

4. State amount of gross income from period of last license: ROOMS \$ _____ FOOD \$ _____ LIQUOR \$ _____

5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

complete Supplementary Questionnaire, If YES

6. Do you permit dancing or entertainment on the licensed premises? YES ☐ NO ☒

7. If manager is to be employed, give name: Ari Modugno

8. If business is NEW or under new ownership, indicate starting date: 2/1/16

Requested inspection date: 1/25/16 Business hours: 5-Th 11a-10p FR/Sat 11a-11p

9. Business records are located at: 576 Congress St

10. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐

11. Is/are applicant(s) residents of the State of Maine? ~~MR~~ YES ☒ NO ☒ AA

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
Mike Keon	5/25/62	Lowell MA
Anthony Allen	9/3/62	Boston MA
Ari Modugno	12/25/78	NJ

Residence address on all of the above for previous 5 years (Limit answer to city & state)

Mike Keon - Portland ME Ari Modugno - Portland ME
Anthony Allen - Newburyport MA

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?

Yes ☐ No ☒ If Yes, give name: _____

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☒ NO ☐

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner: _____

JJL Corp 256 Read St Portland ME

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) _____

Restaurant serving pizza, salad, beer, wine & soft drinks

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?

YES ☒ NO ☐ Applied for: _____

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 1/2 mi Which of the above is nearest? School

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☐ NO ☒

If YES, give details: _____

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Portland ME on 12/21, 20 15
Town/City, State Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Anthony Allen
Anthony Allen

Signature of Applicant or Corporate Officer(s)

Mike Keon



State of Maine
Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement

Supplemental Information Required for
Business Entities Who Are Licensees

For Office Use Only:

License #: _____

Date Filed: _____

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. Please clearly complete this form in its entirety.

1. Exact legal name:

Oscar Pizza LLC

2. Other business name for your entity (DBA), if any:

~~OTTO~~ OTTO

3. Date of filing with the Secretary of State: 2-15-10

4. State in which you are formed: ME

5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: _____

6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

Name	Address for Previous 5 years	Date of Birth	Ownership %
Anthony Allen	2 Stanley Ave Newburyport MA	9/3/62	50
Mike Keen	576 Congress St Portland ME	5/25/62	50

7. Is any principal person involved with the entity a law enforcement official?

Yes ☐ No ☒

8. If Yes to Question 7, please provide the name and law enforcement agency:

Name: _____ Agency: _____

9. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes ☐ No ☒

10. If Yes to Question 9, please complete the following: (attached additional sheets as needed)

Name: _____

Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:

Signature of Duly Authorized Person

Date

12-21-2015

Print Name of Duly Authorized Person

Anthony Allen

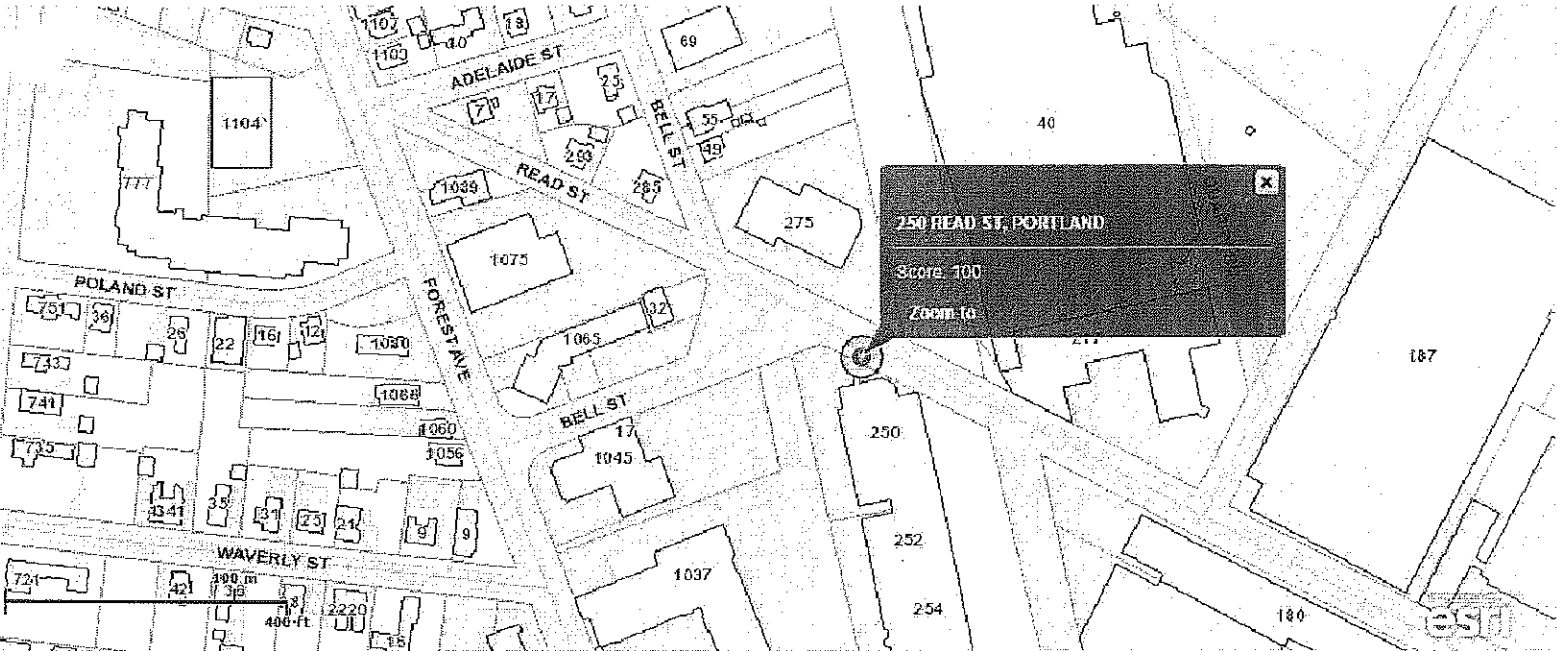
If you have questions regarding the legal name or assumed (DBA) name on file with the Secretary of State's office, please call (207) 624-7752. The SOS can only speak to the information on file with their office, not the filing of this supplemental information – please direct any questions about this form to our office at the number below.

Submit Completed Forms To:

Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing and Enforcement
164 State House Station
Augusta, Me 04333-0101
Telephone Inquiries: (207) 624-7220
Fax: (207) 287-3424
Email Inquiries: MaineLiquor@Maine.gov

Otto

250 Read St.





BEGIN

House-made Pork & Beef
Meatballs \$8
in pomodoro sauce

Bruschetta \$7
add fresh mozzarella +\$1.50

Sweet Italian Sausage with
Cannellini Beans, Fresh Herb
& Asiago \$7

SALADS

Chopped BLT Salad \$7
add crumbled blue cheese +\$1
bacon, tomato, scallion, with creamy
buttermilk dressing

Caesar \$7
add chicken +\$2
romaine lettuce, shaved parmesan,
cracked pepper, house-made croutons,
Caesar dressing

Romaine & Fennel \$6
romaine lettuce, sliced fennel, radishes,
apple, red onion, with creamy buttermilk
dressing and sunflower seeds

Tomato, Fresh Mozzarella
& Basil \$8
garden tomatoes, fresh whole milk
mozzarella, fresh lemon, extra virgin
olive oil, sea salt, cracked pepper
and basil

KIDS

12 & UNDER

8" Small Cheese Pizza \$6
add pepperoni +\$1

ASK ABOUT OUR WEEKLY PIE SPECIALS

PIES w



Mashed Potato, Bacon &
Scallion \$13/\$21

Pepperoni \$11/\$17

Chicken & Basil \$12/\$19

Sausage & Vidalia Onion \$12/\$19

Chicken, Caramelized Pears
& Fontina \$13/\$21

Pulled Pork & Mango \$12/\$19

Mushroom, Bacon & Vidalia
Onion \$13/\$21

Genoa Salami & Ricotta \$12/\$19

Spicy Pulled Pork with Scallion
\$12/\$19

Roasted Pineapple, Bacon &
Red Pepper Flake \$13/\$21

Sriracha, Chicken & Avocado
\$13/\$21

Sausage, Broccoli Rabe & Red
Pepper Flake \$13/\$21

Tomato, Salami & Scallion \$13/\$21

VEG PIES

Cheese \$10/\$15

Margherita \$12/\$19
fresh Roma tomatoes and basil

OTTO Four Cheese \$13/\$21
ricotta, fontina, asiago, mozzarella

Butternut Squash, Ricotta
& Cranberry \$13/\$21

Mushroom & Roasted Cauliflower
\$12/\$19

Ricotta & Basil \$12/\$19

Three-Cheese Tortellini \$11/\$17

Roasted Red Pepper, Kalamata
Olive & Roasted Garlic \$13/\$21

Eggplant, Ricotta & Basil \$13/\$21

Spinach, White Bean & Roasted
Garlic \$13/\$21

Blue Cheese, Roasted Pear
& Arugula \$13/\$21

★ Want a vegan option? Try one of
these without cheese.



Potatoes

are proudly sourced from
Green Thumb Farms, Fryeburg ME

Select meats

are proudly sourced from
Maine Family Farms, Portland ME

WHOLE PIES

12" = \$10 (+ \$1 per topping)

16" = \$15 (+ \$2 per topping)

● = tomato-based pies
all others white pies



GLUTEN-FREE CRUST PIZZA 12"

\$12 (+ \$1 per topping)

All pies available on gluten-free crust (with the exception of Three-Cheese Tortellini)

OTTO's gluten-free options are appropriate for guests with mild gluten sensitivity. However, they are not recommended for guests with celiac disease. While the crust is prepared off-site in a 100% gluten-free production facility, current store operations cannot guarantee that each handmade pizza does not contain trace amounts of gluten.



MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE)

JANICE GARDNER
389 CONGRESS STREET
ROOM 203
PORTLAND, ME 04101

Transaction Response #: MIQ99C723896

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2015-12-22) :
Inquiries Name(s) MICHAEL KEON (1962-05-25)

NO MATCH WAS FOUND FOR YOUR REQUEST.



MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE)

JANICE GARDNER
389 CONGRESS STREET
ROOM 203
PORTLAND, ME 04101

Transaction Response #: MIQ99C723899

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2015-12-22) :
Inquiries Name(s) ANTHONY ALLEN (1962-09-03)

NO MATCH WAS FOUND FOR YOUR REQUEST.



MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE)

JANICE GARDNER
389 CONGRESS STREET
ROOM 203
PORTLAND, ME 04101

Transaction Response #: MIQ99C723892

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2015-12-22) :

Inquiries Name(s)

ARI MODUGNO (1978-12-25)

NO MATCH WAS FOUND FOR YOUR REQUEST.

Business Licensing - OTTO - PENDING Business License Approval

From: Gary Hutcheson
To: Business Licensing
Date: 12/22/2015 5:51 PM
Subject: OTTO - PENDING Business License Approval

OTTO - PENDING is Approved for their Business License Inspection by the Police Dept.

Date: 12/22/2015

Zone:

Comments: No issues on PD side.

Lt. Gary L Hutcheson
Portland Police Department
109 Middle St
Portland, Maine 04101
(207) 756-8295

**Office of the City Clerk**

Katherine L. Jones, CCM, City Clerk

January 4, 2016

Oscar Pizza LLC
Attn: Mike Keon & Anthony Allen
576 Congress St.
Portland, ME 04101

Re: Oscar Pizza LLC d/b/a Ocho. Application for a Class I FSE License with Outdoor Dining on Public Property at 190 State St. and Oscar Pizza LLC d/b/a Otto. Application for a Class III & IV License (Wine & Beer) at 250 Read St.

Dear Mr. Keon & Mr. Allen,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Wednesday, January 20th, at 5:00 p.m.** for the review of your applications for a Class I FSE License with Outdoor Dining on Public Property at 190 State St. and a Class III & IV license at 250 Read St. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

You or a representative of the business must be present at this meeting in the event that the City Council has questions regarding the license application. If there is no representation and questions arise, the issue could be postponed.

Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, BL@portlandmaine.gov

Sincerely,

A handwritten signature in cursive script, appearing to read "Janice Gardner".

Janice Gardner
Business License Administrator
207-874-8557
bl@portlandmaine.gov

*Order 139-15/16
Tab 4 1-20-16*

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

CITY OF PORTLAND
IN THE CITY COUNCIL

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

**ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:**

**Oscar Pizza LLC d/b/a Ocho. Application for a Class I FSE License with Outdoor Dining on
Public Property at 190 State St.**

Oscar Pizza, LLC
574 Congress Street
Portland, ME 04101

November 6th, 2015

TO:
Mayor and Members of City Council
Portland, ME 04101

RE: 190 State Street, Portland, Maine

This letter sets forth the terms and conditions under which Oscar Pizza, LLC, (hereinafter referred to as "Tenant") is willing to enter into a lease agreement with Huckster Row Properties, LLC
24 St. Lawrence St
Portland, ME 04101
(hereinafter referred to as "Landlord") for space at 190 State Street, Portland, Maine:

Property: 190 State Street, Portland, ME, approximately 2,900sf of first floor restaurant space (currently operated as 'Petite Jacqueline')

Tenant: Oscar Pizza, LLC

Landlord:
Huckster Row Properties, LLC
24 St. Lawrence St
Portland, ME 04101

Lease Term: 5 years with a 3 (three) 5 (five) year options periods.

Option Term: Provided Tenant is not in default, Tenant shall have the option to renew the Lease for an additional Option Terms exercisable with 6 months prior written notice.

Lease Commencement Date: Early January, 2016

Rent Commencement Date: 60 days after the lease is executed.

Use: Tenant will use the demised premises as a restaurant, operating as OCHO, serving A full menu of Burritos, Tacos, Beer, Wine and Liquor.

RECEIVED
DEC 21 2015
BY CLERK

Signage: Signage on the building shall be permitted, subject to the prior written approval of design and location(s) by Landlord prior to installation and expressly subject to any standards in use at the property. Such approval shall not be unreasonably withheld or delayed. Tenant is solely responsible for obtaining all City of Portland approvals of signage.

Parking: NA

Contingencies: All City & State Licenses and Permits required to operate a 49 seat restaurant, including City and State approvals for a wine and beer license shall be granted to Tenants satisfaction. Tenant to be NOT responsible for City or State mandated Code requirement for Sprinkler System nor for 'improved' ADA Compliance requirements.

Facsimiles: The undersigned jointly and severally agree to accept fax or scanned, signed and emailed copies of the documents which have been sent by either party to the other, or to any other party or agent to this transaction, as original documents, with the exception of the final lease document.

Lease Agreement: In the event Tenant and Landlord have not executed a mutually agreeable lease by November 25th, Tenant's deposit shall be returned and neither party is under any further obligation to the other.

Very truly yours,

Anthony Allen



Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557
www.portlandmaine.gov

Application for Food Service Establishment with Alcoholic Beverages License

Business Information		DEC 21 2011	
Business Name (d/b/a):	Oscar Pizza LLC D/B/A OCHO	Phone:	
Location Address:	190 State St	Zip:	04101
If new, what was formerly at this location:	Petite Jaqueline		
Mailing Address:	576 Congress St	Zip:	04101
Contact Person:	Alex Budd	Phone:	603 438 9875
Contact Person Email:	alex.b@ottoportland.com		
Manager of Establishment:	Mike Ivas	Date of Birth:	11.29.76
		Phone:	619 764 2144
Owner of Premises (Landlord):	Hucksters Row Properties		
Address of Premises Owner:	24 Lawrence St	Portland ME	Zip: 04101

Sole Proprietor/Partnership Information (If Corporation, leave blank)

Name of Owner(s)	Date of Birth	Residence Address

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

Corporate Name		Corporate Mailing Address	
Oscar Pizza LLC	576 Congress St	Portland	Zip: 04101
Contact Person:	Robin Goodwin	Phone:	207 517-3091
Principal Officers	Title	Date of Birth	Residence Address
Mike Keon	Owner	5/25/62	Portland, ME
Anthony Allen	Owner	9/3/62	Newburyport, MA

Class of Liquor License:	Class 1	
Type of food served:	Burritos, Tacos, Salad	
Please circle all that will be served:	☒ Beer ☒ Wine ☒ Liquor	
Projected percentage of sales:	Generated from Food: 80 %	Generated from Alcohol: 20 %
Hours & days of operation:	Sun-Th 11a-12a FR/Sat 11a-1a	

QUESTIONS	Y/N
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	☒ Y ☐ N
If No, please explain:	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	☒ Y ☐ N
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)	☒ Y ☐ N
Will you permit dancing on the premises?	☒ Y ☐ N
Will you permit dancing after 1:00 a.m.?	☒ Y ☐ N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	☒ Y ☐ N
If yes, will the outside dining be on ☒ PUBLIC or ☐ PRIVATE property (circle one).	
Will you have any amusement devices (pinball, video games, juke box)?	☒ Y ☐ N
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____	
What is your targeted opening date?	2/1/15
Does the issuance of this license directly or indirectly benefit any City employee(s)?	☒ Y ☐ N
If Yes, list name(s) of employee(s) and department(s):	
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	☒ Y ☐ N
If Yes, please list business name(s) and location(s):	
Is any principal officer under the age of 21?	☒ Y ☐ N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	☒ Y ☐ N
If Yes, please explain:	

I, Alex Budd do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature [Signature] Title District Manager Date 12/17/15

For more information about Liquor Licenses, see Portland City Code Chapter 15 at www.portlandmaine.gov and M.R.S.A. Title 28-A at www.maine.gov.

Department of Public Safety
Division

Liquor Licensing & Inspection



BUREAU USE ONLY

License No. Assigned:

Class:

Deposit Date:

Amt. Deposited:

Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded. To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

PRESENT LICENSE EXPIRES N/A

INDICATE TYPE OF PRIVILEGE: ☐ MALT ☐ SPIRITUOUS ☐ VINOUS

INDICATE TYPE OF LICENSE:

☒ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTINONAL FOOD (Class I-A)

☐ CLASS A LOUNGE (Class X)

☐ CLUB (Class V)

☐ TAVERN (Class IV)

☐ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL (Class I,II,III,IV)

☐ CLUB-ON PREMISE CATERING (Class I)

☐ GOLF CLUB (Class I,II,III,IV)

☐ OTHER: _____

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) - (Sole Proprietor, Corporation, Limited Liability Co., etc.) <u>Oscar Pizza LLC</u> DOB: _____		2. Business Name (D/B/A) <u>D/B/A OCHO</u>	
DOB: _____			
DOB: _____		Location (Street Address) <u>190 State St</u>	
Address <u>576 Congress St</u>		City/Town <u>Portland</u>	State <u>ME</u> Zip Code <u>04101</u>
		Mailing Address <u>576 Congress St</u>	
City/Town <u>Portland</u>	State <u>ME</u> Zip Code <u>04101</u>	City/Town <u>Portland</u>	State <u>ME</u> Zip Code <u>04101</u>
Telephone Number <u>517 3091</u>	Fax Number	Business Telephone Number <u>517 3091</u>	Fax Number
Federal I.D. # <u>27-4680884</u>		Seller Certificate #	

3. If premises are a hotel, indicate number of rooms available for transient guests: _____

4. State amount of gross income from period of last license: ROOMS \$ _____ FOOD \$ _____ LIQUOR \$ _____

5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

complete Supplementary Questionnaire, If YES

6. Do you permit dancing or entertainment on the licensed premises? YES ☐ NO ☒

7. If manager is to be employed, give name: Mike Ivas

8. If business is NEW or under new ownership, indicate starting date: 2/1/16

Requested inspection date: 1/25/16 Business hours: 5-Th. 11a-12a Fr/Sa 11a-1a

9. Business records are located at: 576 Congress St

10. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐

11. Is/are applicant(s) residents of the State of Maine? HK YES ~~X~~ NO ~~X~~ AA

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
Anthony Allen	9/3/62	Boston MA
Mike Keon	5/25/62	Lowell MA
Mike Ivas	11/29/76	Malden MA

Residence address on all of the above for previous 5 years (Limit answer to city & state)

Anthony Allen - Newburyport MA
Mike Keon - Portland ME
Mike Ivas - San Diego CA, Portland ME

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?

Yes ☐ No ☒ If Yes, give name: _____

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☒ NO ☐

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner: _____

Hucksters Rows Properties 24 Lawrence St Portland ME

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) Restaurant

serving Burritos, beer, wine, soft drinks, and cocktails

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?

YES ☒ NO ☐ Applied for: _____

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? _____ Which of the above is nearest? _____

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☐ NO ☒

If YES, give details: _____

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Portland on 12/21/2015, 20 15
Town/City, State Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Anthony Allen

Signature of Applicant or Corporate Officer(s)

Mike Keon



State of Maine
Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement

For Office Use Only:

License #: _____

Date Filed: _____

Supplemental Information Required for
Business Entities Who Are Licensees

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. Please clearly complete this form in its entirety.

1. Exact legal name:

Oscar Pizza LLC

2. Other business name for your entity (DBA), if any:

Octo

3. Date of filing with the Secretary of State: 2.15.10

4. State in which you are formed: ME

5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: _____

6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

Name	Address for Previous 5 years	Date of Birth	Ownership %
Anthony Allen	2 Stanley Ave Newburyport MA	9/3/62	50
Mike Leon	576 Congress St Portland ME	5/25/62	50

7. Is any principal person involved with the entity a law enforcement official?

Yes

☐

No

☒

8. If Yes to Question 7, please provide the name and law enforcement agency:

Name: _____ Agency: _____

9. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes ☐ No ☒

10. If Yes to Question 9, please complete the following: (attached additional sheets as needed)

Name: _____

Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:

Signature of Duly Authorized Person

Date

12/21/2015

Print Name of Duly Authorized Person

Anthony Allen

If you have questions regarding the legal name or assumed (DBA) name on file with the Secretary of State's office, please call (207) 624-7752. The SOS can only speak to the information on file with their office, not the filing of this supplemental information – please direct any questions about this form to our office at the number below.

Submit Completed Forms To: Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing and Enforcement
164 State House Station
Augusta, Me 04333-0101
Telephone Inquiries: (207) 624-7220
Fax: (207) 287-3424
Email Inquiries: MaineLiquor@Maine.gov

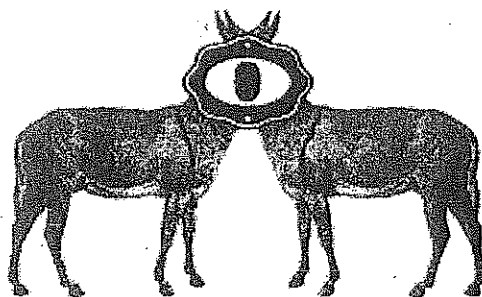


HOME

LOCATION/HOURS

ABOUT/MENU

CRAFTED FLAVORS, TIGHTLY
WRAPPED.



At Ocho we aren't about traditional
burritos but we adhere to the same
traditional cooking techniques. Low
and slow braising of meats and slow-
roasted vegetables accented with bold
sauces, slaws, and chutneys.
Expect the unexpected.

MENU

Our burrito rotation is always evolving, but these selections are almost always available. Stop by or call for daily specials.

Classic

Rice, black beans, corn/bean salad, salsa verde, pico de gallo, crema, cheddar jack

7.25

add beef, pork, chicken or roast vegetables 1.25

add fresh guacamole 1.25

Braised Beef

Sweet potato hash, braised beef, superfood salad, smoked gouda, horseradish crema

8.50

Cider Glazed Pork

Sweet potato hash, cider glazed pork, celery root slaw, chipotle goat cheese crema

8.50

Reubenesque

Braised corn beef, sauerkraut, swiss, rye crouton, thousand island

8.50

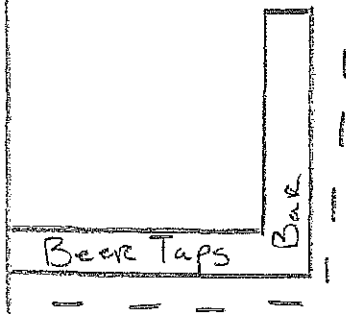
Vegan Roast Veggie

Roast cauliflower, roast brussels sprout, roast butternut squash, quinoa tabbouleh, citrus/cilantro hummus, horseradish vinaigrette

8.50



Kitchen



4 top

4 top

4 top

4 top

4 top

Basement



Wine /
Liquor
Storage
in
Locked
Cage
In
Basement



Outdoor Dining Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Check all that apply: ☒ New Application for Outdoor Dining or ☐ Renewal Application for Outdoor Dining ☐ Application for dining on Private Property		
☐ Outdoor Dining in a Public Park ☐ If Renewal , are there changes to previous permit?		
☐ Outdoor Dining in a Historic District ☐ Yes ☐ No		
☐ Petition for Exception for Special Circumstances		
☒ Liquor License required?		
City Clerk signature for liquor license approval: _____ OR Pending Council Date: _____		
Location Name & Address: OCHO 190 State Street	Chart	Block
Owner Name: Hucksters Row Properties	Total Square Footage of Proposed Outdoor Dining Area:¹ 200	
Owner Phone #:	Fee: \$80 (Public-Annual) \$125 (Private 1X)	
Applicant *must* be owner or lessee Name: Mike Keon	Total Sq. Ft.: _____	
Address: 576 Congress St	Sq. Ft. Fee: (sq ft x \$2) \$ _____ (sq ft x \$6 for public parks)	
City, State & Zip: Portland ME 04101	Total Fees: \$ _____	
E-Mail: mike@ottoportland.com	(Permit not issued until all fees are paid)	
Current use: Petite Jaqueline		
Business name: Oscar Pizza LLC		
Seating area dimensions: 200		
How many chairs? 18 How many tables? 6		
☒ Yes Alcohol is served.		
☐ No Alcohol being served.		
Who should we contact: Alex Budd Phone: 603-438-9875		
Address: 221 Salem St Medford MA E Mail: alexb@ottoportland.com		

Please submit all of the information outlined in the Outdoor Dining Application Checklist. Failure to do so will result in the automatic denial of your permit. New applications and renewals are reviewed on an annual basis and should be submitted no later than June 1st.

In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information visit us on-line at www.portlandmaine.gov, stop by the Building Inspections office, room 315 City Hall or call 874-8703.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of Applicant: Mike Keon

Date: 12/22/2015

¹ In no instance shall the total square footage of dining area equal more than 10% of park space, unless the applicant receives a waiver from the Director of Parks and Recreation or his or her designee.

Congress St

Congress St

Congress St

Longfellow
Square

State St

Lark

Pine St

Pine St

Blackstones

Google

Pine St

Allen & Walker Antiques

190 State St

Parthen Miyake

Tonic

Map data ©2015 Google 20 ft



MAINE STATE BUREAU OF IDENTIFICATION
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42
AUGUSTA, ME 04333
(207) 624-7240 (VOICE)

JANICE GARDNER
389 CONGRESS STREET
ROOM 203
PORTLAND, ME 04101

Transaction Response #: MIQ99C723895

Criminal History Record

Introduction

This criminal history record was produced in response to the following request (Produced on 2015-12-22) :

Inquiries Name(s) MICHAEL IVAS (1976-11-29)

NO MATCH WAS FOUND FOR YOUR REQUEST.

Business Licensing - OCHO - PENDING Business License Approval

From: Gary Hutcheson
To: Business Licensing
Date: 12/22/2015 5:52 PM
Subject: OCHO - PENDING Business License Approval

OCHO - PENDING is Approved for their Business License Inspection by the Police Dept.

Date: 12/22/2015

Zone:

Comments: No issues from Police.

Lt. Gary L Hutcheson
Portland Police Department
109 Middle St
Portland, Maine 04101
(207) 756-8295

Order 140-15/16
Tab 5 1-20-16

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

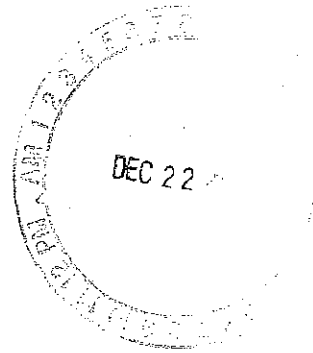
CITY OF PORTLAND
IN THE CITY COUNCIL

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

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Blue Phoenix Lounge LLC d/b/a Blue Phoenix Lounge. Application for a Class I FSE License
with Entertainment without Dance at 211 Danforth St.**

Blue Phoenix Lounge LLC
DBA Blue Phoenix Lounge
211 Danforth St
Portland, Me 04102



To The Mayor and City Council Members

I would like to thank you for approving the license for Blue Phoenix Lounge at 845 Forest Ave. There have been some changes in that location and I am reapplying for a license for a new location. The new location is 211 Danforth Street, I feel this is a much better venue and with such have changed up the business model to match.

Blue Phoenix Lounge LLC will DBA Blue Phoenix Lounge at 211 Danforth Street, Portland. Blue Phoenix Lounge will be a Lounge/Bistro offering a variety of comfort foods and cocktails along with acoustical entertainment such as Jaz, easy listening, etc.

As "Portland's Newest Contemporary and Glamorous Lounge" with a "Neighborhood Bar" mentality "Blue Phoenix Lounge" will offer a Lunch Menu, Dinner Menu, Signature Martinis and Cocktails as well as a very large selection of exotic Cheesecakes.

Blue Phoenix Lounge also plans to be a destination spot for the legendary "Happy Hour" offering discounts and creating an atmosphere to have appetizers and cocktails with friends after work with co-workers and friends.

The hours of operation will be Monday thru Saturday, 11am – 11pm at night. Blue Phoenix Lounge will be serving Lunch, Happy Hour, Dinner being a destination for early evening dining and entertainment, then the patrons can go home or go out in other locations for the rest of the evening.

Sincerely

A handwritten signature in black ink, appearing to read "Stephen A. Wallace". The signature is fluid and cursive.

Stephen A. Wallace
President

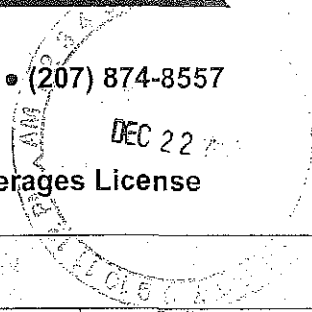
Portland, Maine



Yes. Life's good here.

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www.portlandmaine.gov

Application for Food Service Establishment with Alcoholic Beverages License



Business Information	
Business Name (d/b/a):	Blue Phoenix Lounge LLC DBA Blue Phoenix Lounge
Location Address:	211 Danforth St. Portland ME 04102
If new, what was formerly at this location:	
Mailing Address:	C/O Eagle Office Support Unit 1 Suite 4 68 Bishop St. Portland ME 04103
Contact Person:	Stephen A Wallace
Contact Person Email:	theofficeanywhere@gmail.com
Manager of Establishment:	Stephen A Wallace
Owner of Premises (Landlord):	Keith Hickman
Address of Premises Owner:	Clark St. Sali

Sole Proprietor/Partnership Information (If Corporation, leave blank)

Name of Owner(s)	Date of Birth	Residence Address

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

Corporate Name		Corporate Mailing Address	
Blue Phoenix Lounge LLC		C/O Eagle Office Support 68 Bishop St. Unit 1 Suite 4 Portland ME 04103	
Contact Person:	Stephen A Wallace	Phone:	207-376-5537
Principal Officers	Title	Date of Birth	Residence Address
Stephen A Wallace	President	5-4-62	19 Brianwood Lane Portland ME 04103

About Your Establishment

Class of Liquor License:	Class 1	
Type of food served:	Lunch Entrees Desserts	
Please circle all that will be served:	Beer Wine Liquor	
Projected percentage of sales:	Generated from Food: 50%	Generated from Alcohol: 50%
Hours & days of operation:	M - Sat 11-11pm	

QUESTIONS	Y/N
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	Y
If No, please explain:	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	Y
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)	Y
Will you permit dancing on the premises?	Y
Will you permit dancing after 1:00 a.m.?	Y
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	Y
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).	
Will you have any amusement devices (pinball, video games, juke box)?	Y
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____	
What is your targeted opening date?	2/14/15
Does the Issuance of this license directly or indirectly benefit any City employee(s)?	Y
If Yes, list name(s) of employee(s) and department(s):	
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	Y
If Yes, please list business name(s) and location(s):	
Is any principal officer under the age of 21?	Y
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	Y
If Yes, please explain:	

I Shawn White do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature Shawn White Title President Date 12/21/15

For more information about Liquor Licenses, see Portland City Code Chapter 15 at www.portlandmaine.gov and M.R.S.A. Title 28-A at www.maine.gov.

Portland, Maine



Yes. Life's good here.

Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557
www.portlandmaine.gov

DEC 22

Supplemental Application for Dancing and Entertainment License

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Alcohol license.

☒ Entertainment without Dancing: \$281 ☒ Entertainment with Dancing: \$504 ☐ After-Hours (1 a.m. to 3 a.m.): \$567

Business Information	
Business Name (d/b/a): DBA Blue Phoenix Lounge	Phone: 207-376-5537
Location Address: 211 Danforth St. Portland.	Zip:

About Your Establishment

Describe in detail the type and nature of the business and proposed entertainment: Restaurant Lounge Serving Bistro Style Food w/ Jazz and Acoustical Entertainment Maybe a little Comedy Every now & then.	
Will music be electric, acoustical, or both? (Circle)	Both.
Will amplification be used?	Yes little to stay within a law ☒ YIN
If yes, where and at what level? Within The Range allowed.	
Will music be played (Circle all that apply):	☒ Inside ☐ Outside
Will you permit dancing on the premises?	NO ☒ YIN
Will you permit dancing after 1:00 a.m.?	NO ☒ YIN
What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? Swelling 100+ feet.	
What is your targeted opening date?	2/14/15
Does the Issuance of this license directly or indirectly benefit any City employee(s)?	☒ YIN
If Yes, list name(s) of employee(s) and department(s):	

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above license and further agrees that any misstatement of material fact may result in refusal of license or revocation, if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

I/ We hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/ We hereby waive any rights to privacy with respect thereto.

Signature [Signature] Title President Date 12/21/2015

For more information, refer to the City Code of Ordinance: Chapter 4 Amusements, at www.portlandmaine.gov

**BUREAU OF ALCOHOLIC BEVERAGES
DIVISION OF LIQUOR LICENSING & ENFORCEMENT
8 STATE HOUSE STATION
AUGUSTA, ME 04333-0008**



Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded.

To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

DEPARTMENT USE ONLY

LICENSE NUMBER:

CLASS:

DEPOSIT DATE

AMT. DEPOSITED:

BY:

CK/MO/CASH:

PRESENT LICENSE EXPIRES _____

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

- ☒ RESTAURANT (Class I,II,III,IV)
☐ HOTEL-OPTINONAL FOOD (Class I-A)
☐ CLASS A LOUNGE (Class X)
☐ CLUB (Class V)
☐ TAVERN (Class IV)

- ☐ RESTAURANT/LOUNGE (Class XI)
☐ HOTEL (Class I,II,III,IV)
☐ CLUB-ON PREMISE CATERING (Class I)
☐ GOLF CLUB (Class I,II,III,IV)
☐ OTHER: _____

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) --(Sole Proprietor, Corporation, Limited Liability Co., etc.)			2. Business Name (D/B/A)		
Blue Phoenix Lounge LLC			Blue Phoenix Lounge		
DOB:			DOB:		
DOB:			DOB:		
DOB:			Location (Street Address)		
Address 6 Eagle Office Support			211 Danforth St		
City/Town Portland			State ME Zip Code		
68 Bishop St. Unit 1 Suite 4			Mailing Address 68 Bishop St. Unit 1 Suite 4 Portland ME 04103		
City/Town Portland			City/Town Portland		
State ME			State ME		
Zip Code 04103			Zip Code 04103		
Telephone Number 207-376-5537			Business Telephone Number 207-376-5537		
Fax Number			Fax Number		
Federal I.D. # 47-5516143			Seller Certificate # Applied For.		

3. If premises is a hotel, indicate number of rooms available for transient guests: _____
4. State amount of gross income from period of last license: ROOMS \$ _____ FOOD \$ _____ LIQUOR \$ _____
5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐
 YES, complete Supplementary Questionnaire
6. Do you permit dancing or entertainment on the licensed premises? YES ☒ NO ☐

7. If manager is to be employed, give name: _____

8. If business is NEW or under new ownership, indicate starting date: TBD

Requested inspection date: TBD Business hours: _____

9. Business records are located at: 68 Bishop St. Bldg 1 Suite 4 Portland ME 04103

10. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐

11. Is/are applicant(s) residents of the State of Maine? YES ☒ NO ☐

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married. Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
Stephen A Wallace	5-4-62	Portland ME

Residence address on all of the above for previous 5 years (Limit answer to city & state)

19 Brian Ward Lane Portland ME 04103

14 Tagmus Dr. Sebatus ME 04280

Have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, in any State of the United States? YES ☐ NO ☒

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?

Yes ☐ No ☒ If Yes, give name: _____

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☒ NO ☐

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner: _____

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) _____

See Attached

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?

YES ☐ NO ☒ Applied for: 12/23/15

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? _____ Which of the above is nearest? _____

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☒ NO ☐

If YES, give details: Personal loan from a friend.

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Potlatch on 12/22, 2015
Town/City, State Date

Please sign in blue ink

Stephen A Wallace
Signature of Applicant or Corporate Officer(s)

Signature of Applicant or Corporate Officer(s)

Stephen A Wallace
Print Name

Print Name

NOTICE – SPECIAL ATTENTION

All applications for NEW or RENEWAL liquor licenses must contact their Municipal Officials or the County Commissioners in unincorporated places for approval of their application for liquor licenses prior to submitting them to the bureau.

THIS APPROVAL EXPIRES IN 60 DAYS.

FEE SCHEDULE

Class I	Spirituos, Vinous and Malt	\$ 900.00
	CLASS I: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.	
Class I-A	Spirituos, Vinous and Malt, Optional Food (Hotels Only)	\$1,100.00
	CLASS I-A: Hotels only that do not serve three meals a day.	
Class II	Spirituos Only	\$ 550.00
	CLASS II: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.	
Class III	Vinous Only	\$ 220.00
	CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	
Class IV	Malt Liquor Only	\$ 220.00
	CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.	
Class V	Spirituos, Vinous and Malt (Clubs without Catering, Bed & Breakfasts)	\$ 495.00
	CLASS V: Clubs without catering privileges.	
Class X	Spirituos, Vinous and Malt – Class A Lounge	\$2,200.00
	CLASS X: Class A Lounge	
Class XI	Spirituos, Vinous and Malt – Restaurant Lounge	\$1,500.00
	CLASS XI: Restaurant/Lounge; and OTB.	
FILING FEE		\$ 10.00

UNORGANIZED TERRITORIES \$10.00 filing fee shall be paid directly to County Treasurer. All applicants in unorganized territories shall submit along with their application evidence of payment to the County Treasurer.



State of Maine
Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement

**Supplemental Information Required for
Business Entities Who Are Licensees**

For Office Use Only:

License #: _____

Date Filed: _____

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. Please clearly complete this form in its entirety.

1. Exact legal name:

~~Blue Phoenix Lounge LLC~~ Blue Phoenix Lounge LLC

2. Other business name for your entity (DBA), if any:

Blue Phoenix Lounge

3. Date of filing with the Secretary of State: Nov 2015

4. State in which you are formed: Maine

5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: _____

6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

Name	Address for Previous 5 years	Date of Birth	Ownership %
Stephen A Wallace	19 Bramwell Lane Pittsford ME 04103	5-4-62	100%
	14 Tagwas Dr. Sebastes ME 04280		

7. Is any principal person involved with the entity a law enforcement official?

Yes

☐

No

☒

8. If Yes to Question 7, please provide the name and law enforcement agency:

Name: _____ Agency: _____

9. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes ☐ No ☒

10. If Yes to Question 9, please complete the following: (attached additional sheets as needed)

Name: _____

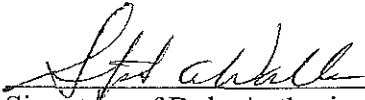
Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature:


Signature of Duly Authorized Person

12/21/2015
Date

Stephen A. Wallace | President
Print Name of Duly Authorized Person

If you have questions regarding the legal name or assumed (DBA) name on file with the Secretary of State's office, please call (207) 624-7752. The SOS can only speak to the information on file with their office, not the filing of this supplemental information – please direct any questions about this form to our office at the number below.

Submit Completed Forms To: Bureau of Alcoholic Beverages and Lottery
Operations Division of Liquor Licensing Enforcement
8 State House Station
Augusta, Me 04333-0008
Telephone Inquiries: (207) 624-7220
Fax: (207) 287-3434
Email Inquiries: MaineLiquor@Maine.gov

Appetizers

Buffalo Chicken Dip

w/ Crusty Bread glazed in either "bleu Cheese Dressing" or "Ranch"

Spinach and Artichoke dip

Served with Blue

French Onion Soup

served with Croutons in the soup and melted cheese over the to

Blue Chips w/ Salsa

The Wedge

Lettuce wedge, with Tomatoes, cucumbers, carrots, bacon and red onion
w/ choice of dressings

Soup & Salad

Daily Soups also served as a Bowl

Entree's

Bacon Wrapped Fillet Mignon with Garlic Mashed Potato and Veggie of the day

served with a side salad

Chicken Bacon Alfredo

served with a side salad

just a sample of entree's full menu to be created.

Specialty Sandwiches

Blue Philly

Sliced Steak smothered in Mozzarella and Provolone cheese
served on a french roll with a specialty mayo and AuJu on the side

Blue Phoenix

Sliced chicken breast topped with ham and melted swiss cheese
served on a ciabatta roll with a dijon mayo blend

add: Lettuce and Tomatoe

Lounge BLT

Bacon, Lettuce and Tomato with black pepper mayo
served on ciabatta roll

Additional Sandwiches added for specialty

Desserts

Cheese Cake Desserts : between 15 and 30 exotic Cheesecake per

an apple Alamode Dish

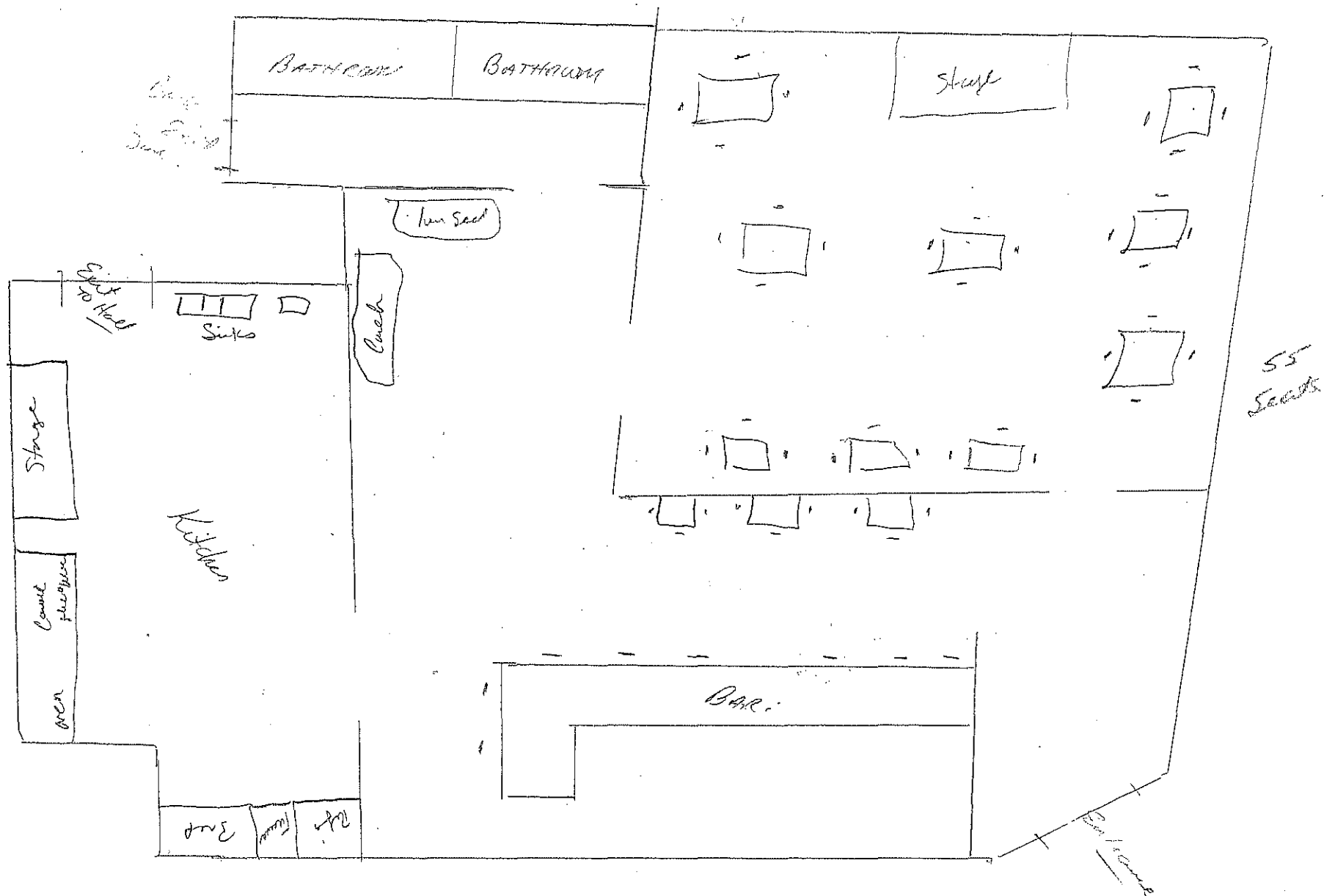
Some Kind of Decadent Chocolate Dessert

Blue Phoenix Lounge

211 Danforth St.



Copyright 2011 Esri. All rights reserved. Mon Jan 4 2016 03:34:44 PM.



Business Licensing - BLUE PHOENIX LOUNGE - PENDING Business License Approval

From: Gary Hutcheson
To: Business Licensing
Date: 12/27/2015 5:09 PM
Subject: BLUE PHOENIX LOUNGE - PENDING Business License Approval

BLUE PHOENIX LOUNGE - PENDING is Approved for their Business License Inspection by the Police Dept.

Date: 12/27/2015

Zone:
Comments: Class 1FSE.

Lt. Gary L Hutcheson
Portland Police Department
109 Middle St
Portland, Maine 04101
(207) 756-8295



Office of the City Clerk

Katherine L. Jones, CCM, City Clerk

January 4, 2016

Stephen Wallace
19 Briarwood Ln.
Portland, ME 04103

Re: Blue Phoenix Lounge LLC d/b/a Blue Phoenix Lounge. Application for a Class I FSE with Entertainment without Dance at 211 Danforth St.

Dear Mr. Wallace,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Wednesday, January 20th at 5 p.m.** for the review of your application for a Class I FSE License with Entertainment without Dance at 211 Danforth St. The meeting will take place in Council Chambers on the 2nd floor of City Hall, 389 Congress Street, Portland, ME 04101.

You or a representative of the business must be present at this meeting in the event that the City Council has questions regarding the license application. If there is no representation and questions arise, the issue could be postponed.

Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, BL@portlandmaine.gov

Sincerely,

A handwritten signature in cursive script, appearing to read "Janice Gardner".

Janice Gardner
Business License Administrator
207-874-8557
bl@portlandmaine.gov

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

**AMENDMENT TO ZONING MAP
RE: 1945 CONGRESS STREET**

Order 84-15/16
~~Tab 21~~ 10-5-15
~~Tab 20~~ 10-19-15
DAVID H. BRENERMA
L. C. DUSON, JR. (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

~~Tab 9~~ 11-16-15
~~Tab 9~~ 12-21-15
~~Tab 6~~ 1-20-16

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

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment and specifically rezoning the R-2 Zone at 1945 Congress Street to Office Park (O-P) in the red area of the figure below.





MEMORANDUM

TO: City Council

FROM: Jeff Levine, Director of Planning and Urban Development

DATE: 1/8/15

SUBJECT: 1945 Congress Street Zone Change Application Supplemental Information
(as Requested by City Council following the December 21, 2015 Council Meeting)

On December 21, 2015, the City Council took up Order 84-15/16- *Amendment to the Zoning Map Re: 1945 Congress Street*, which had been postponed from the November 2nd Council meeting. After a presentation by Planning Board Chair Elizabeth Boepple and staff and public comment, Council members raised several questions and requested further information be prepared by staff. The item was subsequently tabled until the January 20, 2016 to allow staff time to prepare responses. On December 23rd, staff received the written questions from the City Council.

Below please find the responses to the questions raised and several attachments further addressing the relevant issues:

QUESTION 1. Analysis of vacant parcels in residential zones

What other undeveloped parcels of land that are zoned R2 currently exist within the city? What about undeveloped parcels in other undeveloped residential zones (R3, R5, R5A, R6A)? Include locations and acreages for each of these categories.

Staff completed a high level analysis of the percentage of vacant land area in each residential zone, using parcel data provided by the city's GIS staff and the assessor (*Table 1*). Parcels coded as 'vacant land' in the assessor's database were grouped by zone and summed based on area (again using figures from the assessor's database). Percentages were then calculated based on total zone area. Figures were generated for both the city's residential zones and business zones which permit residential development (*Table 1*).

Table 1: Vacant acreage by zone

Zone	Total Acreage	Vacant Lot Acreage from Assessor	% Vacant
R1	164.75	15.12*	9.2%
R2	913.88	49.38	5.4%
R3	2,977.48	238.28	8.0%
R4	79.02	0.83	1.1%
R5	1,500.59	80.56	5.4%
R6	516.18	9.97	1.9%
IR-1	1,171.03	313.83	26.8%
IR-2	380.19	46.87	12.3%



Planning & Urban Development Department

IR-3	109.78	0	0%
B1	61.98	1.81	2.9%
B1b	8.78	0.29	3.3%
B2	373.64	5.20	1.4%
B2b	94.34	0.58	0.6%
B3	188.18	0.91	0.5%
B3c	4.90	0.26	5.4%
B5	109.08	5.56	5.1%
B5b	27.19	0.33	1.2%
B6	17.74	2.87	16.2%
B7	103.58	1.18	1.1%

**This figure has been manually altered to account for parcels erroneously coded as vacant in the database.*

Staff also developed a map to represent the city's 'vacant' parcels geographically (*Figure 1, attached*). This map shows all of the parcels from the assessor's database which are currently coded as 'vacant land,' set against the residential and business zones which permit residential development.

Note:

While the best proxy at our disposal for 'developable,' the 'vacant land' query captures some parcels which may not, in fact, be developable, due to steep topography, the presence of wetlands, etc. The 'vacant land' query also fails to capture underdeveloped parcels which might be redeveloped in the future. For example, the 1945 Congress Street site is not coded as 'vacant land.' Lastly, it should be noted that the assessor's data groups adjacent parcels under common ownership by 'lead CBL' and that land use coding is keyed to this lead CBL, not to each individual parcel. This means that some parcels which are technically vacant have been coded as developed. For example, this is the case for the parcels commonly referred to as 'Camelot.'

Last, staff conducted an analysis of total residential zoning as a percentage of all city land, based on the city's zoning layer in GIS. Per this analysis, residential zoning (R-1, R-2, R-3, R-4, R-5, R-5A, R-6A, IR-1, IR-2, and IR-3) accounts for 56.42% (or approximately 7,800 acres) of the city's land area. When business zones permitting residential development (B-1, B-2, B-3, B-5, B-6, and B-7, as well as India Street FBC) are added to this total, the percentage climbs to 63.9%.

QUESTION 2. Outer Congress Street housing units

What is the exact count of the number of housing units that currently exist along the Congress Street corridor between Westbrook Street and the Jetport Access Road? Please include housing units on side streets and cul-de-sacs in this number—not just those with direct frontage on Congress Street.

Staff used GIS to select all parcels with access from Congress Street between Westbrook Street and International Parkway. These parcels included lots with access from River's Edge, Garrison Street, Tide Mill Road, and Old Mast Road. Staff then used land use coding to identify residential properties (which included properties with the designation 'single family' and one property with a 'two family' designation). These properties were tallied, accounting for the two-family, to reach a total number of units of 111 (*Figure 2*).



Planning & Urban Development Department

QUESTION 3. Planning Board analysis of residential uses on the 1945 Congress Street site

Is the Planning Board unanimous in agreeing that 1945 Congress Street is not suitable for any form of residential housing development (R2, R3, R5, R5A, R6A), or merely that the R2 zone is no longer appropriate? And if the Planning Board does indeed assert that the parcel at 1945 Congress Street is unsuitable for all residential zoning, how have they come to this conclusion?

The Planning Board is preparing a response to this question and will submit its answer to the Council in a separate correspondence.

QUESTION 4. Residential buildout analysis

Please complete an analysis of the feasibility of developing housing on this site by city staff, independent from Northland's assessment.

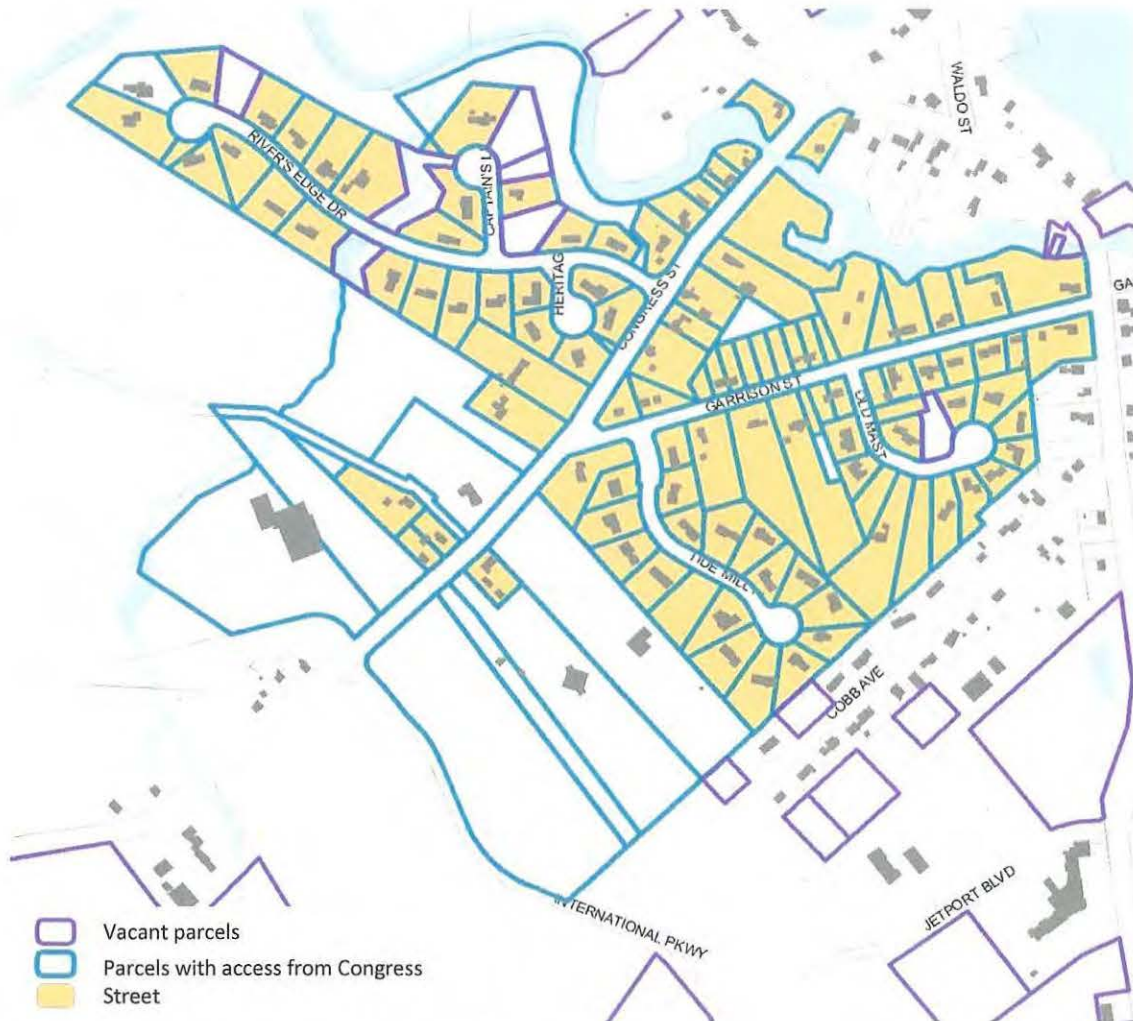


Figure 2: Outer Congress Street housing units



Planning & Urban Development Department

Staff conducted a high level buildout analysis under a rezoning to R-3, R-5, R-5A, and R-6A (*Table 2, attached*). It should be noted that these figures represent a theoretical maximum potential buildout. They have not accounted, at a fine-grained level, for outstanding issues around site access and other site constraints, for example.

4a. Developable portion of 1945 Congress

How much of the land is, in fact, developable? We know that it is a 7 acre site, but how much of the parcel is developable after accounting for appropriate buffers and any existing wetlands?

Without a survey, it is difficult to determine the exact proportion of the site which is developable. Based on the city's GIS, approximately 40% of the site is currently developed. However, the applicant's conceptual plans show additional developed land on the parcel. As a very rough proxy, if areas identified in the city's GIS as flood zone, which theoretically align with wet areas and areas of steep slopes, are deducted from the total parcel area, approximately 74% of the land area remains.

4b. Sewer and stormwater improvements for residential v. office development

How much more involved would sewer and storm water improvements need to be to accommodate a housing development vs. an office park development?

In general, sewer infrastructure is more extensive for residential development than for office development. Again and in general, stormwater management infrastructure is likely to be more advanced under an office development, where an applicant will be required to mitigate for the site development as a whole.

4c. Likelihood of additional curbcuts and turning movements from Congress Street under residential development

Finally, there was some concern that a housing development could lead to the addition of multiple turnings (streets or driveways, presumably) from Congress Street. Is it feasible to either have any future housing accessed via a side street connected to the north end of Jetport Access Road or side streets and cul-de-sacs branching off from a single access road connected to Congress Street? And if not, why not?

Access to any future development would likely occur from Congress Street or UNUM Park Drive (although this may be unlikely under a residential buildout scenario, as UNUM Park Drive is not currently an accepted city street). Given existing traffic on Congress Street, access management would be a priority under any buildout scenario for the site.

QUESTION 5: O-P zoning and potential impacts (excerpted from Planning Board report)

Please provide a more complete picture of the overall effect a change to O-P zoning would have on the surrounding neighborhood.

The question of the impacts of the proposed development emerged repeatedly over the course of the zone change review, with neighbors raising concerns about the traffic, environmental, and aesthetic implications of a zoning amendment. Specific impacts of any proposed development would be examined in detail at the site plan stage, but a cursory consideration of the potential repercussions of a zone change to O-P, given the type and intensity of uses which might be developed under the new zoning designation, was conducted early in the zone change review.



...[T]he permitted uses and the dimensional requirements of the existing R-2 essentially limit the site largely to single-family residential development. Given this, the R-2 does not bear the risk of exceptionally deleterious traffic, environmental, or other effects. If granted a permit by the planning board, some of the R-2's conditional uses, however, including schools or day care facilities, could come with traffic, light, and noise implications. To some extent, lot coverage and lot size requirements would serve to temper the effects of any development of this kind.

Environmental, noise, and traffic impacts are likely to be greater under a zone change to O-P, in light of the greater buildout allowed and the differing uses permitted. As previously discussed, the O-P does require a master plan which could help mitigate detrimental effects. The O-P development standards, written under *Section 14-230.13*, require that development proposals:

- Demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation, open space, drainage, and vegetation and other natural features;
- Include a landscape program;
- Conform to restrictions on impervious surfaces and the location of pavement;
- Include internal sidewalks which take advantage of the topography and natural features of the site;
- Include buffer areas abutting residential zones uses and screening for parking lots and driveways from public view;
- Include efforts to preserve natural features including, but not limited to, existing vegetation, flood plains, rock outcroppings, surface water bodies, drainage swales and courses, and wetlands;
- Demonstrate that additional traffic generated by the project itself can be reasonably accommodated on existing public streets;
- Coordinate the scale, texture, color, and massing of buildings, with emphasis on the appearance of building facades from public streets, driveways, parking areas, and other nearby buildings; and
- Identify the location and style of lighting and signage and coordinate these with the building and landscaping design.

Given the interest in the traffic implications of the proposed zone change, the board requested trip generation estimates from Tom Errico, the city's consulting traffic engineer, based on the full potential buildout under the existing and proposed zoning designations. These estimates represent a worst case scenario; they assume office development under an O-P zoning designation that maximizes the building envelope within height, impervious surface, and floor area ratio limits. The estimates show that considerably more traffic could theoretically be generated under the O-P zoning than could be generated with a residential redevelopment of the existing site under the existing R-2 zoning.

Mr. Errico writes,

I have conducted a preliminary trip generation analysis for the...development assumptions you have provided and the results are summarized in the following table. The trip generation estimates were computed for the Weekday AM and PM peak hours and were based on the Trip Generation Manual, Institute of Transportation Engineers, 9th Edition.



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

It should be noted that the 'Existing R-2' numbers cited here do not reflect actual trip generation numbers from the site under the current use by the Elks Lodge. The 2012 Husson application associated with the site included some trip generation estimates for the Elks Lodge use, based not on counts but on trip generation ratios from the Institute of Transportation Engineers. At the time, Husson's traffic engineer estimated 55-70 trips to/from the site during the AM and PM peak hours. Review of the Elks website finds lodge hours from 9:30 a.m. to 9 p.m. and regular meetings on Monday nights at 7, suggesting that much of the existing traffic from the site would actually be off-peak. Anecdotally, there is some indication that most trips under the existing condition may occur once a week during daytime hours when a regular event is held at the lodge. For reference, there are approximately 200 parking spaces on site.

In subsequent correspondence, Mr. Errico adds,

I would like to note that based upon the trip generation levels noted in my previous email, a comprehensive traffic impact study would be required to assess impacts to the area roadway system. Please note the following:

- The Congress Street/International Parkway/UNUM Drive intersection will serve as the primary access point for any development. Use of this existing signalized intersection seems appropriate, but any development application would be required to assess the ability of this traffic signal to adequately accommodate the added traffic.*
- The Congress Street/Johnson Road intersection seems to operate at an acceptable level of service, but review of conditions would be required.*

This traffic analysis would occur at the time of site plan review.

In this vein, it should be noted that the city is currently in the process of a design project for outer Congress Street near this area. The plans include pedestrian and transit improvements at Westbrook Street, additional crosswalks near Garrison Street, and enhancements to the inbound merge area east of International Parkway/UNUM Drive. In addition, Mr. Errico writes that the "MaineDOT will be upgrading the traffic signal at the Congress Street/Westbrook Street intersection. This intersection currently experiences congestion problems, but it is unlikely any capacity enhancements will be possible given constraints."

QUESTION 6: Potential for additional O-P rezoning requests (excerpted from Planning Board report)

Please provide an analysis of the likelihood that other similar parcels could seek a zone change to O-P if the zone change at 1945 Congress is granted. Could these parcels, which are now considered non-contiguous to the O-P zone, become contiguous one at a time, thereby making them more likely candidates for such a zoning change?



Planning & Urban Development Department

Over the course of this zoning amendment application review, concerns about precedent and commercial encroachment have repeatedly arisen as well. Neighbors have voiced strong objections to the idea of an O-P rezoning, arguing that a rezoning will have a “domino effect” on parcels to the east, including several other existing places of assembly, such as Faith Temple and Christchurch of Portland. These properties, much like the Elks’, sit in the R-2 zone on large lots fronting Congress Street. In some cases, O-P zoning can be found immediately adjacent to these sites, and in at least one case, these sites are currently for sale.

With the aim of informing the discussion on this matter, Corporation Counsel provided a memo which directly addresses the precedential effect of zoning decisions (*see Attachment D in Planning Board Report*). This memo states, first and foremost, that

Because zoning is a legislative act and ultimately an exercise of legislative judgment by the City Council (subject to the “consistency” analysis discussed above), a zoning decision is not binding per se. (Joseph T. Bockrath, Zoning Board’s Grant of New Application for Zone Change, Variance, or Special Exception After Denial of Previous Application Covering Same Property or Part Thereof, 52 A.L.R.3d 494, 2b (“Being the result of a ‘legislative process,’ a zone change is not binding on future determinations . . .”)) In other words, because zoning requires an exercise of discretion and legislative judgment, a legislative body like the Council is entitled to exercise that discretion however it sees fit – provided of course that its decision is consistent with the comprehensive plan, is not arbitrary, nor discriminatory. Therefore, even where the Board/Council denies a proposed zoning amendment with respect to a parcel of property this year, it would not be bound by that decision if the request were renewed next year. Id. at 3a (collecting cases). Having said that, in order to avoid an allegation that it is exercising its legislative discretion in an arbitrary or capricious manner, in such a situation the Board/Council would be well advised to articulate the change in circumstances that justifies a divergent exercise of its discretion with respect to the same parcel of land.

Ms. Thompson identifies examples from case law which have been used to justify differing zoning decisions with respect to “seemingly similar properties,” such as changes to the property in question, changes to the surrounding neighborhood, changed traffic impacts, or changes in the zoning amendment requested.

In this light, the planning board discussed several distinguishing factors which can be cited to differentiate the Elks’ site from the properties in question to the east (*Figure 3*). The 1945 Congress parcel, which is almost seven acres in size, is larger than the easterly sites, which generally range from less than an acre to five acres in size. The Elks’ site is contiguous with the O-P zone on two sides, while these other sites share one border with the O-P zone at most. Lastly, the 1945 Congress Street site has access from a secondary road with the benefit of a signalized intersection with Congress Street; all of the easterly sites would rely on access directly from Congress Street.



Planning & Urban Development Department

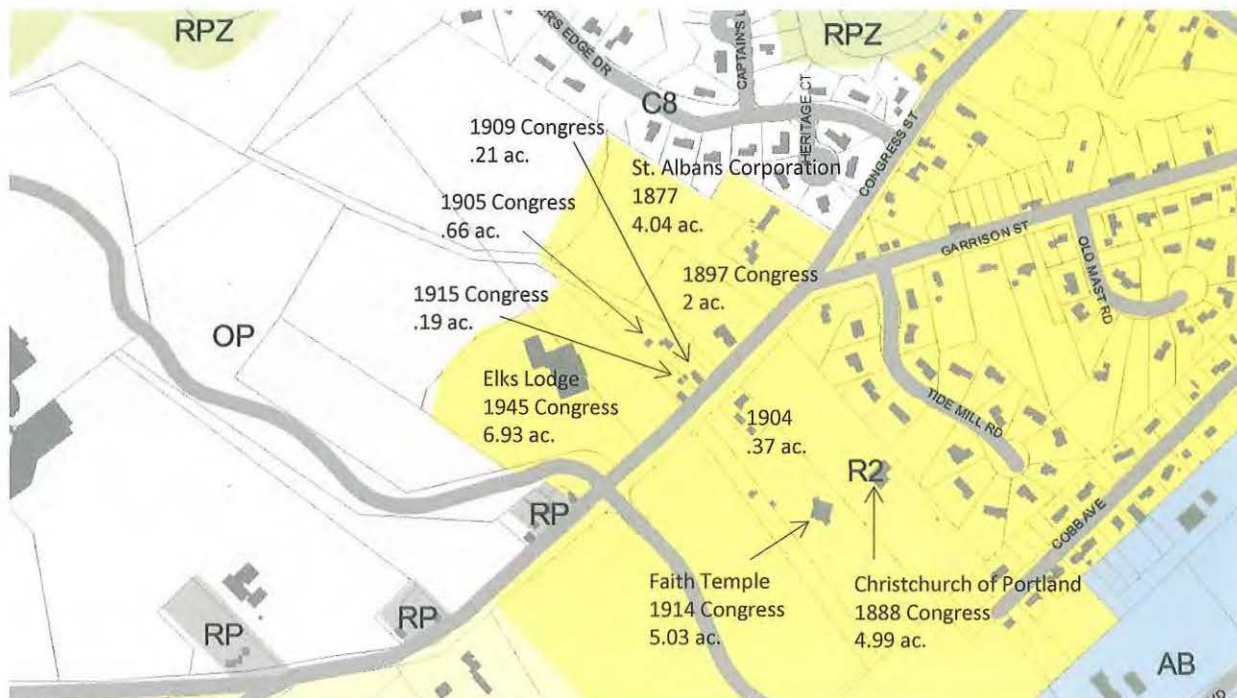


Figure 3: Parcel sizes and context in vicinity of 1945 Congress Street

OTHER: Outstanding questions on land use policy.

Over the course of this zone change review, the question of land use policy in this area of Outer Congress Street has continually arisen. In December 2015, and in response to this question, staff drafted a white paper intended to inform the land use discussion by describing the existing land use climate and presenting a basic outline for land use policy in the area (*Attachment 3*). The outlined approach is founded on recent land use work on the part of the city, the Jetport's master planning process, previous land use discussions for the area, national best practices, and the public input received during the course of this zone change review.

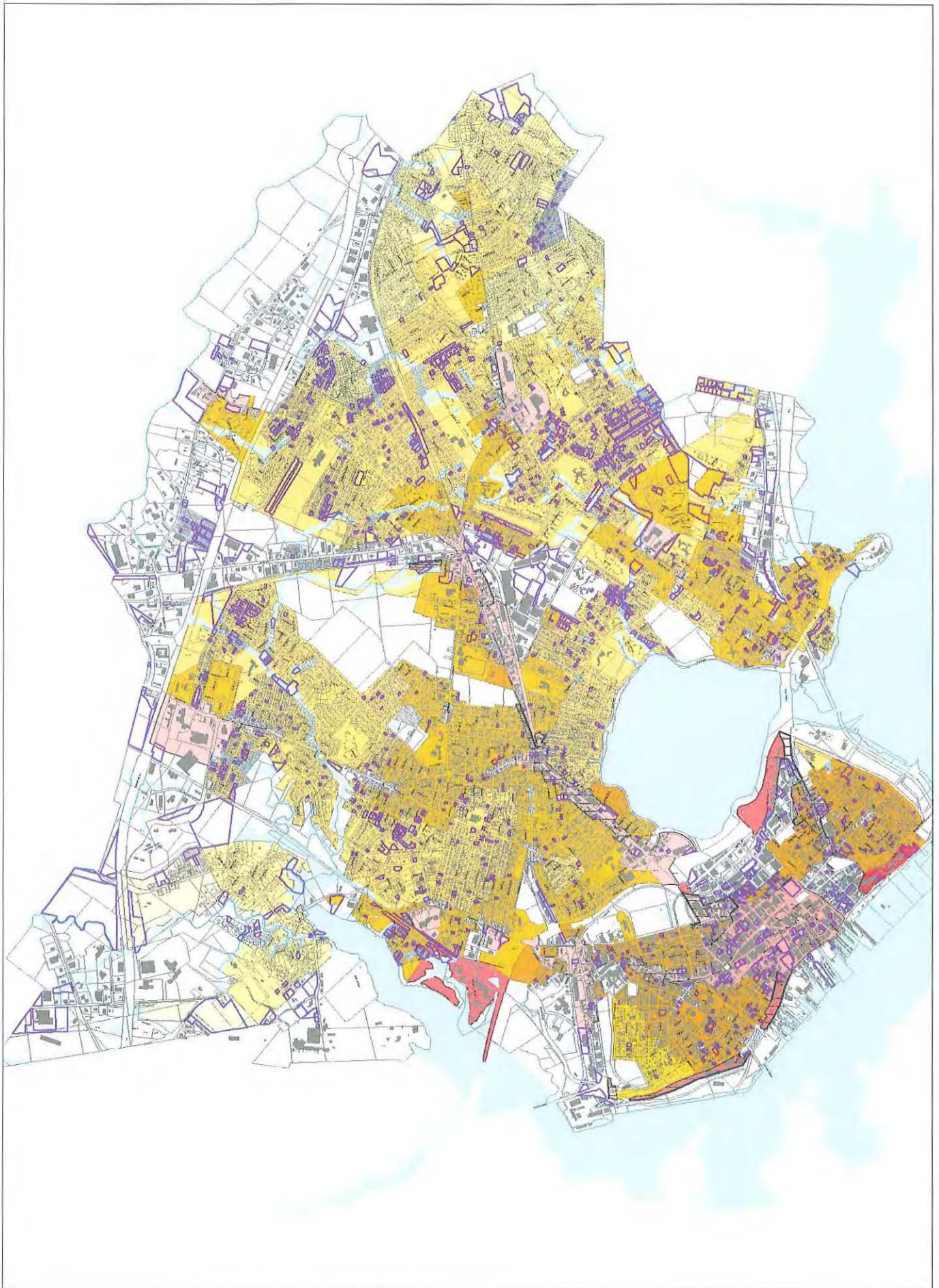


Table 2: 1945 Congress buildout analysis

	Total Acreage	Total SF	Total existing frontage (see below)	Existing R-2		R-3	R-5	R-5A	R-6A
				Total units permitted (based solely on minimum lot size requirement)	Total units (based on rough blocking of streets and 10,000 SF lots)	Total units (based solely on allowable density)	Total units (based solely on allowable density)	Total units (based solely on allowable density)	Total units (based solely on allowable density)
Redevelopment potential of entire parcel*	6.999	304,892	300	20	16	30	66	124	273
Redevelopment potential assuming Elks remain**		228,000		12	5	19	41	76	168

NOTE: The above figures represent a theoretical maximum potential buildout. Ultimately, their feasibility is a function of a variety of factors, including provisions for access.

* In full buildout scenarios, 35% deduction in land area applied to account for public streets, infrastructure and site constraints.

** In scenarios where Elks remain, figures include a 20% deduction in land area to account for public streets, infrastructure, and site constraints and assume half of remaining lot area is developed.

Assumptions

R-2 Dimensional Requirements

- 10,000 SF minimum lot size
- 50 minimum street frontage

street frontage calculations

- 300 feet on Congress (not included in calculations)
- 1200 feet internal street network (assuming curb cut from Congress Street)

R-3 Dimensional Requirements

- 3 acres min lot size for PRUD
- 6,500 SF of net land area per dwelling unit in PRUD

R-5 Dimensional Requirements

- 2 acres minimum lot size for PRUD
- 3,000 SF net land area per dwelling unit in PRUD

R-5A Dimensional Requirements

- 2 acres gross area minimum lot size for PRUD
- 1,600 SF of net land area per dwelling unit in PRUD

R-6A Dimensional Requirements

- 4 acres minimum lot size
- 725 SF lot area per dwelling unit

Portland, Maine



Yes. Life's good here.

Planning & Urban Development Department

Outer Congress Street Land Use

Outer Congress Street, with its historic residential district, natural resource and open space amenities, trail network, suburban housing fabric, and proximity to major transportation infrastructure and commercial areas, presents a series of challenges and opportunities distinct from other areas of Portland. In part as a function of these diverse attributes, the area has experienced considerable and varied land use pressure at times over the past several decades. Recently, improvements to the transportation system, positive trends in the use of the Jetport, and an evolving real estate market, coupled with the presence of large tracts of undeveloped and underdeveloped land, have again brought this tension to the forefront. The city's recent deliberations over the proposal to rezone the property at 1945 Congress Street exemplify the challenge of balancing these competing interests. This white paper is intended to inform the ongoing discussion by describing the existing land use climate and presenting a basic outline for land use policy in the area. The outlined approach is founded on recent land use planning work on the part of the city, the Jetport's master planning process, previous land use discussions for the area, national best practices, and public input received through the course of the recent deliberations on 1945 Congress Street.

Land Use Pattern

The permanent settlement of present day outer Congress Street dates to the colonial community of Stroudwater, the neighborhood first established around the junction of the Fore and Stroudwater Rivers in the 18th century. Rural agricultural land ringed the settlement through the turn of the 20th century, when Stroudwater Field, the precursor to today's Jetport, was founded. The mid-1900s brought connections to I-95 and the country's vast highway network, along with a corresponding increase in commercial development in areas to the immediate south and north. In the years since, the area has changed markedly and in ways common to many communities - with increasing pressure from auto-dependent retail and office uses, expanding residential development, and a road network built to carry large volumes of traffic.

Today, the area exhibits four general areas of land use and form:

1. *Stroudwater residential:* Stroudwater, a strong and largely single-family residential neighborhood, is focused around the intersection of Congress Street, Westbrook Street, and the Stroudwater River, a busy juncture which, in recent years, has worked to maintain its pedestrian scale. Originally, the airport gained entrance from Westbrook Street through the densest areas of this neighborhood. The decision to move the airport entrance to the west on Congress Street has helped to preserve the neighborhood's traditional residential feel. A significant portion of the neighborhood lies in a local historic district.



Stroudwater has been zoned low-density residential, R-1 and R-2, since the late 1950s. In the early 2000s, the city established a small area of Neighborhood Business B-1 at the intersection of Congress Street and the Fore River, reflecting the location's centuries-old traditional use for commercial purposes. The neighborhood is also home to a contract zone used to create the River's Edge residential subdivision, which was developed in the 1990s on previously undeveloped land.

2. Congress Street institutional: To the west of the residential neighborhood of Stroudwater, as Congress Street widens to four lanes, the land use pattern changes markedly. Institutional uses, including several churches, a fraternal club, and two cemeteries, predominate. These institutions generally occupy large lots and have broad front setbacks to Congress Street. Interspersed among these institutional uses are several residential homes, which sit in close proximity to Congress Street. Several of these have recently been repurposed for office use, with the rest continuing as residential.

Much of this area remains in residential zoning in the city's R-1 and R-2 zones, where institutional uses are permitted under conditional status. However, commercial zoning, including the Airport Business (A-B) and Office Park (O-P) has expanded eastward into this area in recent years. These new commercial uses are in many cases a function of, and relate to, the Jetport.

3. I-95 Industrial/Office: Office and industrial uses become more prevalent to the west on Congress Street near the I-95 interchange. UNUM, which occupies a large campus north of Congress Street, owns a great deal of the undeveloped land in this area. Other light industrial and large offices can be found west of I-95. These office and industrial uses sit on very large lots. This area is zoned O-P and Moderate Impact Industrial (I-M).



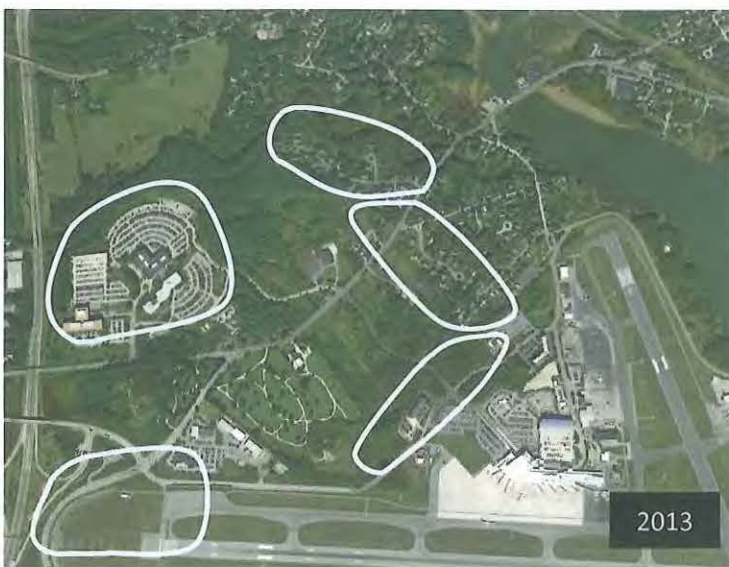
4. *Western Avenue and Maine Mall Road commercial:* Lastly, to the south and mainly in South Portland, the area hosts a pocket of auto-oriented commercial development surrounding the Maine Mall. These lots exhibit a typical suburban commercial form, and streets are designed to carry significant traffic volumes. The city land in this area is zoned B-4.

Land Use Change

Though this general pattern exists, it is far from concrete. For example, over the past 20 years, residential development has pushed westward from Stroudwater with the buildout of River's Edge and Tide Mill Road. These have emerged as strong single-family neighborhoods, with access to the river, local trail system, and historic resources of Stroudwater.

At the same time, commercial interests have expanded on the west end of Congress Street, where UNUM has grown, office and industrial uses have emerged, airport-related commercial has developed, and historically residential uses have turned over into commercial. Simultaneously, the downstream commercial area associated with the Maine Mall has continued to develop over time. Altogether, these changes have resulted in large traffic volumes on Congress Street through this area.

The cumulative effect is to place outer Congress Street at the crux of very disparate patterns of development, with each pressing its current



boundaries. As this pressure mounts, the area around the airport entrance road, with its large tracts of

undeveloped or underdeveloped land, has come to serve a critical purpose in the transition from the commercialized center to the south and west and the single-family, historic residential neighborhood to the east.

Current Plans

Recent planning work on the part of the city has attempted to address the nature of this transition. The second phase of the city's Congress Street Corridor Study has taken a careful look at Congress Street between Garrison Street and the Fore River and identified a series of improvements with the intent of reinforcing the street's human scale in this area. The plans include a road diet, landscaped medians, crosswalks, sidewalks, bicycle treatments, and transit improvements.

Likewise, ongoing planning around the Jetport considers land use change as airport operations continue to evolve. The Sustainable Airport Master Plan shows the airport entrance road remaining largely undeveloped; however, southern portions of this road have been identified as potential locations for commercial development as the demand for airport-related business grows.

Concepts to Guide Policy Direction

As the demand for developable land along Outer Congress Street grows, it is important that the city establish a policy direction for future land use decisions in this area:

- 1. Protect the residential area of Stroudwater and emphasize pedestrian, bicycle, and transit improvements on Congress Street in this area, particularly east of the airport entrance road and the Congress Street neckdown.** The residential neighborhood east of the Jetport entrance is well-established. The city should continue to support this residential neighborhood and reinforce pedestrian, bicycle, and transit improvements, in keeping with the Congress Street Corridor Study, in this area.
- 2. Focus commercial development and/or higher density residential development where the road network can support it and low-density residential development is unlikely.** The areas surrounding I-95 and the Maine Mall benefit both from proximity to the highway and from a road network that is designed to carry high volumes of traffic. In addition to these assets, the Jetport is a significant economic development resource, and should be leveraged appropriately to support the health and vitality of the city as a whole. Because of these factors, these areas are likely to experience additional highway-oriented commercial, industrial, and office pressures. There is no one "right" boundary where these commercial areas should end and residential neighborhoods should begin, but the capacity of Congress Street is one indicator. Currently, commercial uses are generally located west of where Congress Street increases to four lanes at Garrison Street. The lots in this area tend to be larger in size than those to the east.

The city should continue to balance commercial development with impacts to Congress Street to the east, prioritizing good access management, pedestrian and transit connections, and high quality design. Further, the city should continue to support higher density nodal residential development in proximity or even co-located with commercial uses as a matter of smart growth.

3. Preserve a greenscape along Congress Street in the vicinity of the airport entrance road to soften the transition between commercial areas to the south and west and the residential areas to the east. The green space associated with the Brooklawn and Temple Beth El cemeteries, as well as the manner in which UNUM, the airport, and the institutional uses east of the airport entrance road have developed have combined to create a sense of buffering between more commercially developed areas to the west and south and residential areas to the north and east. The city should continue to encourage planting and landscape preservation in this area. Sites along Congress Street should be carefully designed to help enhance this transition.

4. Reinforce small-scale nodal commercial and mixed-use development within the existing B-1 zone in Stroudwater proper. This existing B-1 zone at the intersection of Waldo Street and Congress Street could serve the surrounding residential area with walkable, neighborhood-scaled retail. Further, this intersection could potentially support mixed-use development with additional upper story housing, taking advantage of water views, Congress Street transit connections, and access to trails. Either of these uses would reinforce the pedestrian scale in this area of Congress Street, calm traffic, and reduce vehicular trips.

5. Continue to mitigate the airport's impacts on the surrounding neighborhood by preserving a vegetated buffer around the airport itself. The relationship between the airport and its neighbors, particularly its residential neighbors to the north, is at least in part a function of the health of the buffer between them. The undeveloped natural areas which currently border the airport to the north and south should be maintained to the extent possible, while still allowing the airport to serve the critical function of supporting the Portland region's economy.

6. Emphasize transit, bicycle, and pedestrian connections; context-sensitive site planning; and high quality design to minimize development impacts. In all cases, the city should focus on preserving and encouraging the elements of outer Congress Street that make it a desirable place for people to live, work, and shop, including accessibility and mobility, natural resource protection, historic resource protection, and high quality design.

CITY OF PORTLAND, MAINE
MEMORANDUM

To: *Jon Jennings, City Manager*
Jeff Levine, Planning & Urban Development Director

From: *Paul Bradbury, Airport Director*

Date: *December 9, 2015*

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

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

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

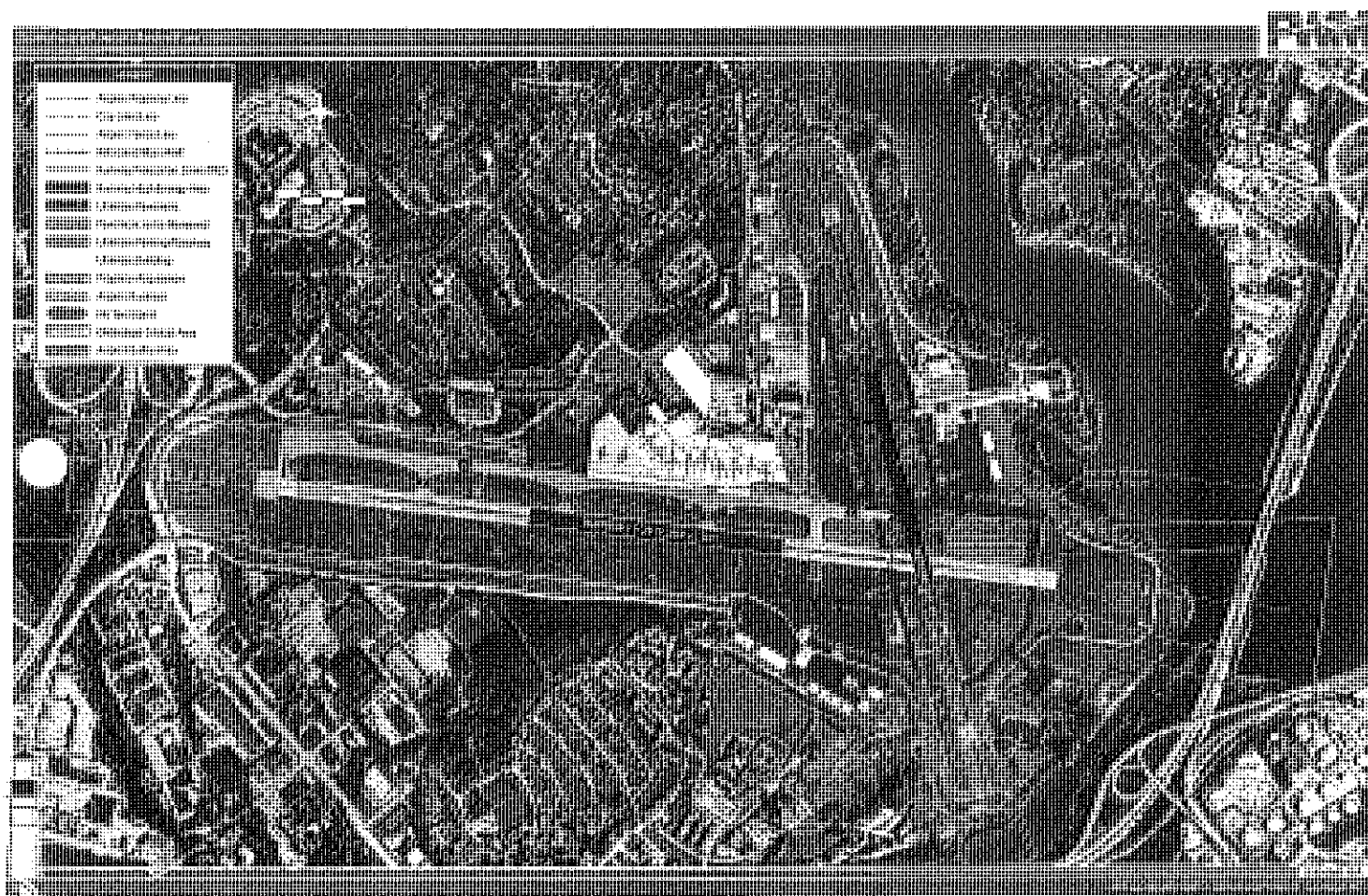
The initial alignment of this road and a perpendicular cross road was outlined in the Jetport's 1994 master plan. This planning ultimately led to the construction of the new access road from Congress Street named International Parkway in 1998 followed shortly thereafter by the construction of Jetport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

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

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

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

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



TO: Mayor Brennan and Members of the City Council

FROM: David Silk, 1187 Westbrook St

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

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

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

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

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

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

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

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

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

The Elks Club's property at 1945 Congress Street is presently zoned R-2. It consists of an almost 7 acre parcel. The property has been zoned residential since 1945. When the Elks Club acquired the property in the late 1960s, the parcel was zoned R-2. At that time the property was rezoned from R-2 to R-6 so as to allow the club to develop the property as a social/fraternal hall under what was then known as an "exception" to the uses permitted in the R-6.

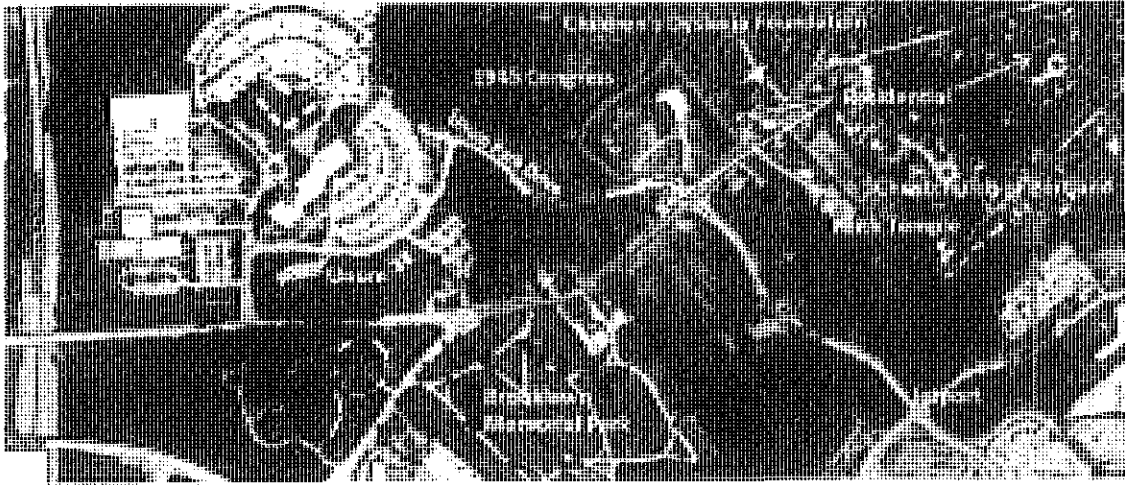
Social/fraternal halls, together with churches, are now known as "Places of Assembly" under the Land Use Code. Places of assembly, like institutional uses (schools) are conditional uses allowed in all residential zones. The City has many places of assembly located in residential zones on busy streets.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

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

The purpose of the OP zone is to "provide *substantial areas* for integrated development of professional offices *in a park-or campus-like setting* which are of the highest quality, are well maintained and *are compatible with their natural surroundings.*" The UNUM campus is in an OP zone and is an example of professional offices located in a park or campus-like setting with the offices set well back from any public way. That is not what the Elks Club's proposal calls for.

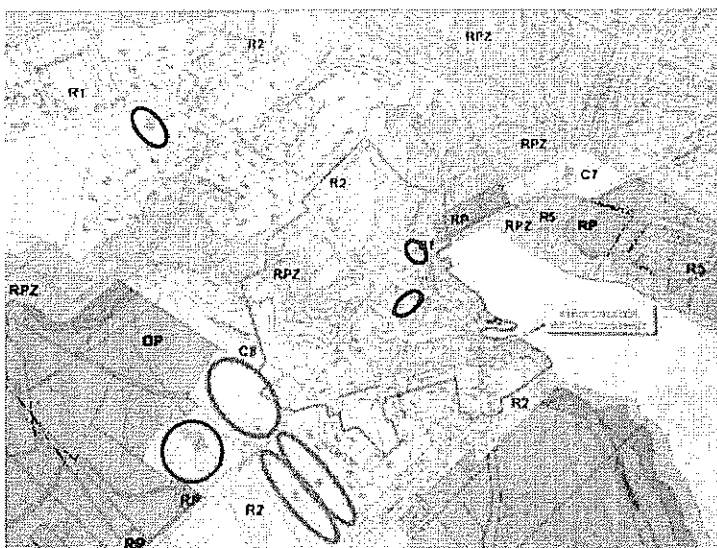
Places of assembly are not allowed in the OP zone. So if rezoned to OP, the Elks Club as a place of assembly will go from being a permitted/conforming use in the R-2 zone, to being a prohibited/nonconforming use in the OP zone. It is unheard of to rezone *a single parcel* in the City so that an existing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

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



Places of assembly are classified as a type of institutional use in the Land Use Code. They are required to have large areas. As the Comprehensive Plan at H-7 states: "Any new institutional use should be required to have a lot size of sufficient area to accommodate all activities, including parking and to absorb impacts and growth needs of the institution."

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



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

The Comprehensive Plan section on Transportation Resources at page 1 notes, *traffic must be minimized in order to maintain the health of neighborhoods*. "If residents who live in the city by choice come to believe their neighborhoods are not safe for walking, are not protected from noisy through-traffic, don't provide easy access to the daily necessities, don't give their children the freedom to move about independently – then the City has lost much of its competitive advantage over the suburbs."

The professional office use proposed under the Elks Club's rezone is already legal and can be readily accommodated without a zone change at Thompson's Point. So to rezone land zoned residential to allow for office development cannot be about filling a City need. To be consistent with the Comprehensive Plan, the City should be directing professional office space development to areas already zoned for that use, e.g., Thompson Point with ready access off of a parkway that does not run through a neighborhood.

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

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

The Elks Club's property is located in very close proximity to the Stroudwater Historic District ("SHD"). The SHD was added to the National Register of Historic Places in 1973.¹ It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district should be done with eye to ensuring the rezone will not negatively impact the historical district.

¹ *"The significance of Stroudwater Historic District is not limited to the merits of individual buildings. The whole formed by these single elements stands today as a fine example of a nineteenth-century village. The pattern of the village's growth is visible in the sequence of its architecture. Although the commercial enterprises carried on in the village are no longer in existence, their sites are clearly evident. The current residents of Stroudwater take pride in their historic village. Their homes are well maintained; many are restored to their original exterior appearance. The sense of history that envelops Stroudwater is heightened because the buildings have been continuously lived in and cared for."* Beard, p 302

OP designation for the UNUM property on Blueberry Hill ensured that the view from outer Congress Street was of a campus set back from the road. There are several cemeteries in the immediate area that provide for, and are consistent with, the preservation of the R-2 zone. Before this longstanding pattern is changed, having been last reaffirmed in the 1980s, there should be a master planning process.

A thoughtful process should unfold to develop a vision to govern the area, which looks at uses, setbacks, lighting, and design standards. This ensures that any non-residential development that occurs is compatible with the existing residential uses. It also ensures that development is not driven solely by the wants of just one property owner seeking to maximize its return regardless of the impact on others.

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

*"A good leader must have a well-thought-out plan and take risks to bring people together to realize that vision. Without direction, our priorities are not defined and our path is not clear. A good leader must listen. When residents feel like they have not been heard, and have been ignored, we end up as a city governed by referendum, as was the case with Congress Square and now the Portland Co. development. A good leader must bring people together. Without collaboration, people become frustrated and divided. They concern themselves more with getting their way than they do with making their way toward long-term solutions that work for everybody."*²

Vision and direction are not created by meeting the wants of one property owner to make as much money as it can through a rezone, regardless of how benevolent the property owner may be. Vision and direction are created through a collaborative, inclusive process that looks at what is best for the whole.

B. Rezoning is not intended to increase the return to a property owner.

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

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

It is worth reiterating the purposes of the OP zone, as it raises the question whether any use of that portion of the Elks Club's property to be rezoned OP can even be developed in any manner consistent with the purposes of the OP zone. If not, the property should not be rezoned.

The Comprehensive Plan describes the OP zone as follows: "Developments in the O-P zone are to be characterized by spacious and high quality development. Large lots, relatively low building coverage, low impervious surface areas, *significant open space* and landscaping and thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland." Neighborhood Commercial Land Use Policies and Land Use Plan, (1988) page 22.

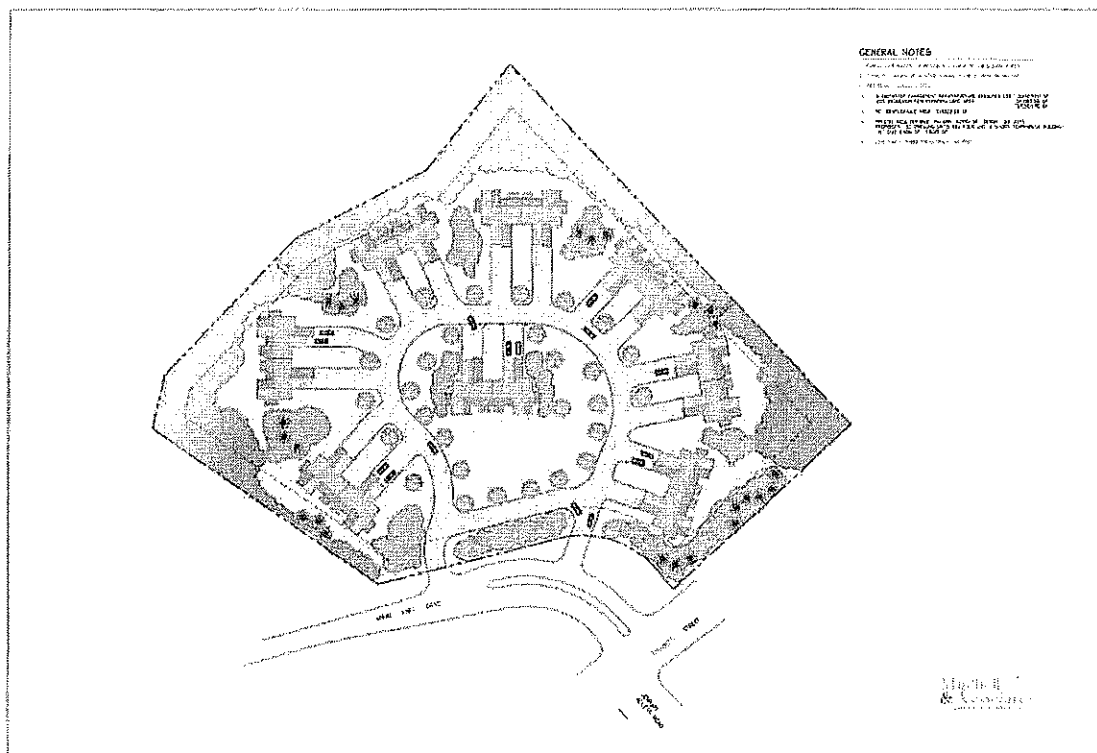
The best that may be said about the proposal is that it may, at the end of the day, look better than what is there now. But that is, has never been and never should be the test for a rezone; otherwise a place of assembly (or for that matter any property owner) can simply let its building become run down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

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

The OP standards also call for a "Master Plan" of the office park that shall include a design relationship to the site to show integration of open space and the natural features. The integration required in the Master Plan *"shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches."* Before the Council acted on rezoning what the Mercy Hospital parcel, it first required Mercy to submit a Master Plan for the site. As there, there should be here by the Elks Club, a showing of possible building envelopes and integration making a threshold showing the OP standards can be met. None of the concept plans the applicant presented to you make this threshold showing. If it is not practicable to meet the OP standards, the property should not be rezoned.

One is hard pressed to say that the to-be created lot, crammed with three buildings, constitutes a "substantial area" as that term is used in the OP zone. By comparison, UNUM's property designated OP is at least 15 times larger than what the Elks Club's proposed OP zone is. The applicant's proposal does not show any integrated development or any park- or campus-like setting. With the area to be occupied by the two new buildings with added pavement for

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



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

More importantly, the Council must ask what will be the impact of the rezone on both the abutting and nearby residential uses and will the rezone lead to the deterioration of those areas and eventual loss of residential uses. If the answer is yes, as I think it is, the rezone should not be approved as it will result in the loss of residential dwellings.

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

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

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

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

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

"Without direction, our priorities are not defined and our path is not clear." In an area where the existing pattern of development is clear, to change that pattern only to maximize the return to one property owner is unsound zoning. Right down the road is Thompson's Point where professional offices are intended to be located.

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

From: "James Casterella Jr." <jcasterella33@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 7/26/2015 8:03 PM
Subject: Tuesday, July 28th, workshop re: 1945 Congress St. proposed zoning amendment

Hi, Nell,

My name is James Casterella and I live at 1967 Congress St., two houses away from the Elks Club. I'm not sure if I can make Tuesday's Workshop so I wanted to email you with my thoughts.

First of all, I completely support Northland Enterprises' zoning map amendment application. I think it's very important that visitors to Maine, flying into Portland Jetport, drive onto Congress Street with a view of an attractive, modern building such as is being proposed by Northland. As it stands right now, those same visitors see somewhat of an eyesore: they see a huge, usually empty parking lot, and a somewhat rundown, tired looking Elks Club. The Elks Club deserves a facelift and also deserves the opportunity to stay at its current location.

Additionally, I'm hoping that the Planning Board will consider extending the zoning change to include my house (at 1967 Congress St) as well as my neighbor's house. We are the last two residential houses on Congress Street and the only two residential properties to the left of the UNUM entrance. My neighbor and I would like the opportunity to be zoned similar to the Elks Club so that professional development of our properties becomes a possibility.

If you have any questions please feel free to contact me via email or at 831-7297.

Thank you for your time,

James Casterella

To: City of Portland City Council

From: Paula Guillemette Agopian

Re: India Street HP Designation

The City of Portland was conceived and born here. It all began here. This proposal speaks to the core of the City and the neighborhood, and I emphasize "core". It has been a long time coming and should have been done long ago. "Better late than never". Our future is our past and our past is our future. There has been much thought and some compromise. We must all remember anything brought forward is subject to review as it is in all districts. Lets do it now!!!

Sincerely,

A handwritten signature in black ink, appearing to read "Paula", followed by a horizontal line.

Paula Guillemette Agopian

cc. Mayor Brennan, City of Portland Planning Board, Historic Preservation Board, Deb Andrews, Hillary Bassett, Landmarks

MEMORANDUM
City Council Agenda Item

TO: City Council

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

DATE: September 23, 2015

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

SUBJECT: O-P Zoning Map Amendment Request
1945 Congress Street

SPONSOR: Stuart O'Brien, Chair, Planning Board

COUNCIL MEETING DATE ACTION IS REQUESTED:

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

Can action be taken at a later date: Yes X **No (If no why not?)** Public notices will appear in the newspaper and be mailed in advance of the public hearing.

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

I. SUMMARY OF ISSUE (Agenda Description)

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

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

1945 Congress Street lies at the intersection of International Parkway/UNUM Park Drive and Congress Street, at a major gateway to the City of Portland. The site has been developed by the Elks Club since the late 1960s. Northland proposes to redevelop the site with medical and professional office buildings and renovate the Elks Lodge, allowing the Elks to remain on the property. This plan is contingent upon a rezoning of the site to allow office as a permitted use. Thus, Northland has applied for a zoning map amendment to change the zoning on the site to Office Park (O-P). The O-P zone can be found immediately west of the site on the UNUM property.

III. INTENDED RESULT

The proposed map change will allow the redevelopment of 1945 Congress Street for office use.

IV. COUNCIL GOAL ADDRESSED

The proposed map amendment will facilitate the redevelopment of an existing lot for medical and professional office use. In this, it will address the following council goal:

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

V. FINANCIAL IMPACT

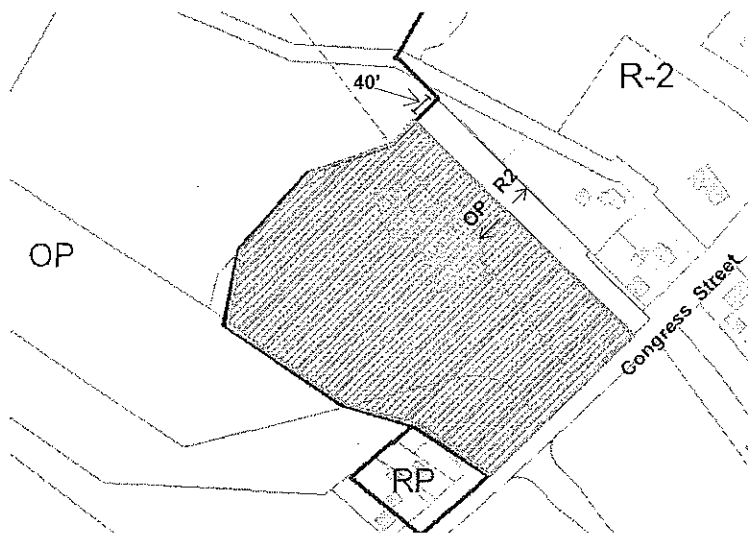
The zone change will allow the development of office uses on the 1945 Congress Street site, which has the potential to generate revenue for the city.

VI. PLANNING BOARD ANALYSIS

The four members of the board who supported the proposed zone change found that the site is more suitable for office than for residential use, given its location across from the Jetport entrance on a heavily-traveled commuter corridor. They held that that the zone change is a logical extension of the existing O-P zone which lies to the north and west. They identified distinguishing factors on the 1945 Congress Street site, including its size, its adjacency with the O-P zone on two sides, and its access from a secondary road with a signalized intersection on Congress Street, which differentiate it from neighboring sites to the east which might be considered for O-P zoning in the future. Lastly, they noted that the O-P zone includes strong provisions related to buffering and open space which, under site plan review, would serve to preserve or even enhance the Congress Street/UNUM Park Drive intersection as a gateway and green entry to the city.

Two members of the board expressed reservations with respect to the proposed zone change and therefore voted against its recommendation. These members questioned the ability of the site to support the "campus-like" setting prescribed by the O-P zoning and, likewise, the suitability of the location for such a use. These members also raised concerns regarding the desire of the Elks to remain on the site under legal non-conforming status. Lastly, these board members expressed reservations with reference to competing policies of the comprehensive plan, particularly those which promote the stability of residential neighborhoods and residential growth.

Ultimately, the majority of the board voted to support a rezoning to O-P for the 1945 Congress Street site. In order to create a buffer for the residential properties to the east, the board recommended rezoning to a line parallel with the eastern property boundary and offset at a distance of 40 feet. This line mirrors one proposed by the applicant in early discussions with the board and allows some R-2 to be preserved on the site.



VII. RECOMMENDATION

On September 8, 2015, the planning board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) that the proposed map amendment to change the zoning for 1945 Congress Street, as shown in the figure at left, is consistent with the comprehensive plan. The board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend adoption of the proposed amendment to the City Council.

VIII. ATTACHMENTS

1. Order
2. Planning Board Report to City Council

Prepared by:

Signature

September 23, 2015

Date

PLANNING BOARD REPORT PORTLAND, MAINE



Map Amendment for 1945 Congress Street
Rezone from R-2 to O-P
Northland Enterprises, LLC, Applicant

Submitted to: Portland City Council
Public Hearing Date: October 19, 2015
Project #: 2014-227

Prepared by: Portland Planning Board
Date: September 23, 2015
CBLs: 216-A-6, 217-A-1

I. INTRODUCTION

On September 8, 2015, the planning board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend to the city council a zoning map amendment, proposed by Northland Enterprises, LLC, for a site at 1945 Congress Street. The property is currently zoned Residential R-2 and is occupied by Elks Lodge #188. The applicant proposes to rezone the lot to Office Park (O-P) in order to allow the development of medical and general office buildings on the site.

The board originally considered the zone change request at a workshop in January, 2015, and subsequently reviewed the proposal at two additional workshops and one public hearing. These meetings included considerable discussion of the suitability of the O-P zone for this location, the type of development the O-P zone might foster on the site, possible alternative zoning designations, consistency with the comprehensive plan, and the potential for the rezoning to act as a precedent for further requests for rezoning to the east. The board heard public comments about encroachment on residential neighborhoods; traffic, environmental, and visual impacts; the need for more comprehensive planning efforts in this area of the city; and the opportunities this rezoning might present for this gateway area of the city. Ultimately, the board voted to recommend the rezoning to the city council.

A legal ad for the October 19 city council hearing will be posted on the city's web page and appear in the *Portland Press Herald* on October 13 and 14, 2015. Notices will also be sent to 70 property owners within 500 feet of the site and to the interested citizen list.

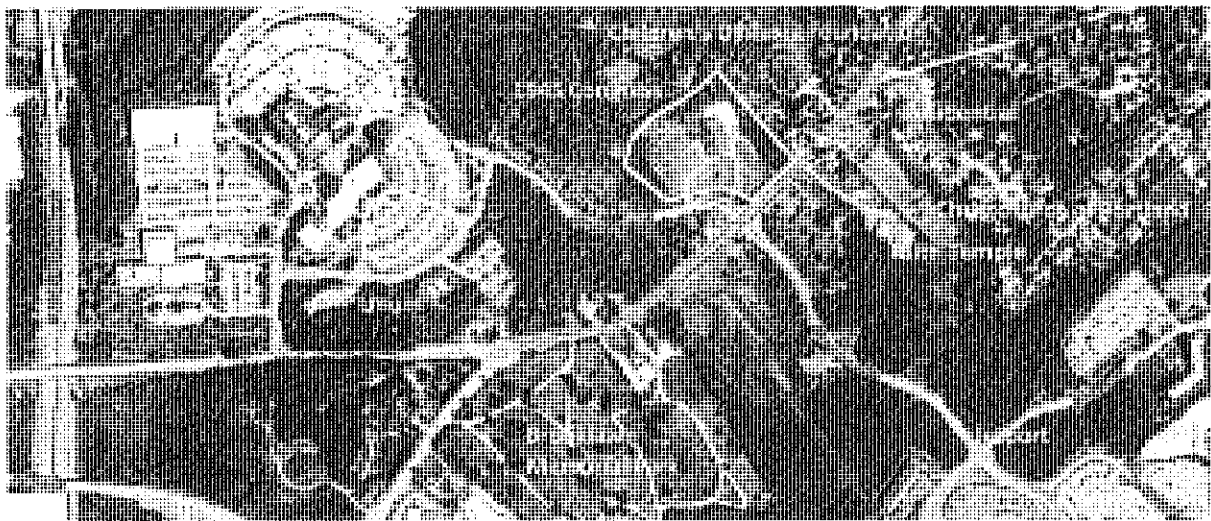


Figure 1: 1945 Congress Street in context.

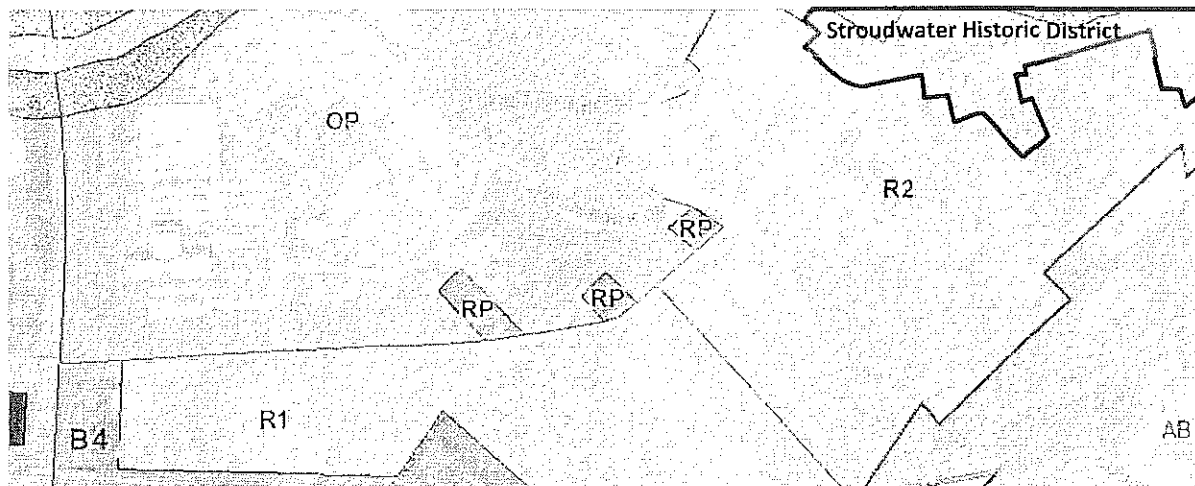


Figure 2: 1945 Congress Street, existing zoning

II. BACKGROUND

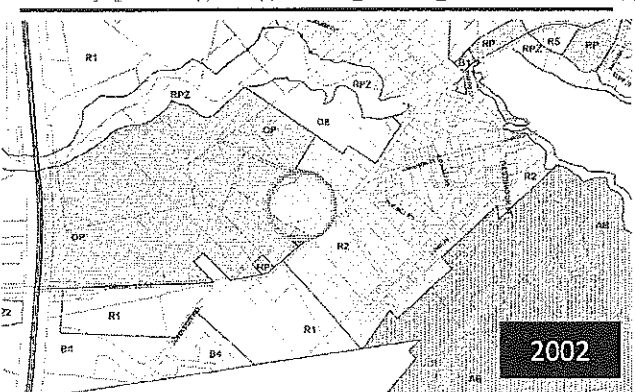
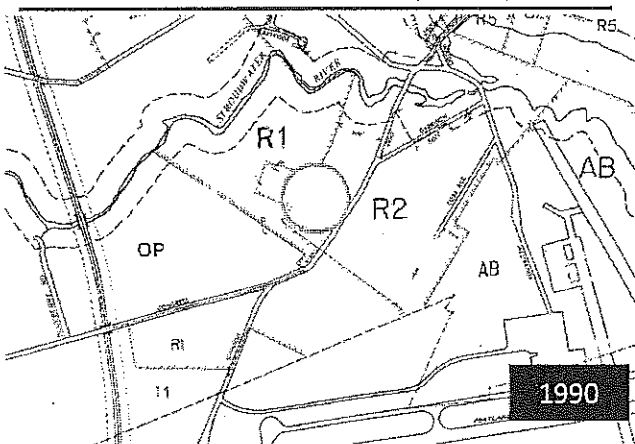
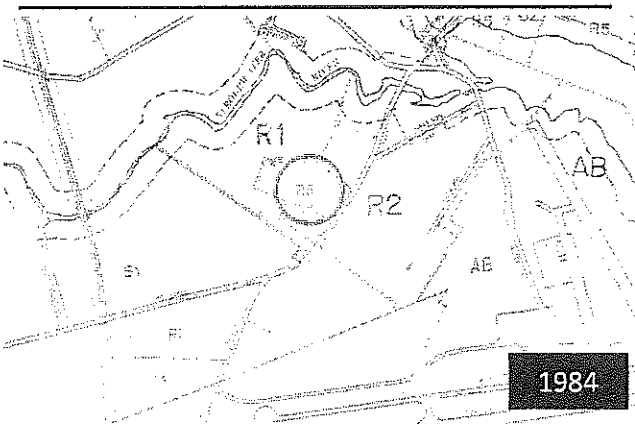
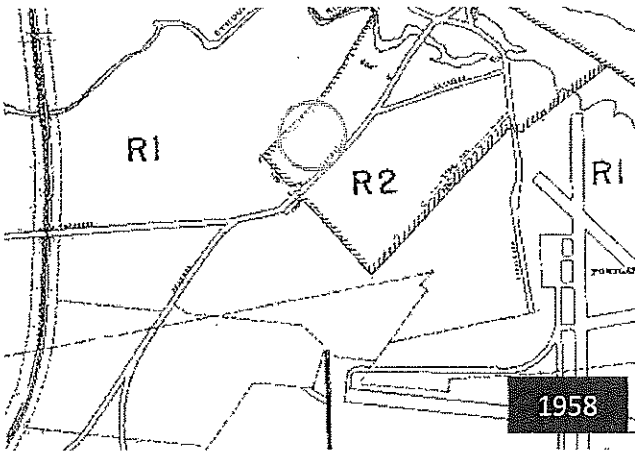
The 1945 Congress Street site is approximately 7 acres in size and has housed Lodge #188 of the Benevolent and Protective Order of Elks and their associated parking since the late 1960s. Although the site has frontage on Congress Street, access is from UNUM Park Drive. Residential uses abut the site both to the northeast and southwest. UNUM lies directly to the west, the Jetport lies due south, and several places of assembly sit across Congress Street to the east.

The site is currently zoned Residential R-2, as is the land to the south and east, which is developed largely with single-family homes (*Figure 2*). The residential neighborhood around Garrison Street, within this R-2 zone, is nationally designated as the Stroudwater Historic District. A Residential R-1 zone can be found to the west south of Congress Street; this zone houses the Brooklawn and Temple Beth El cemeteries. UNUM lies in the nearest Office Park (O-P) zone, to the immediate west and north of the site. Several small Residence-Professional (R-P) zones can also be found to the west on Congress Street. The R-P zone immediately west of 1945 Congress houses several single family homes; the other R-P zones in this area generally provide sites for retail and personal service establishments in repurposed residential buildings.

III. ZONING AND POLICY HISTORY

A brief examination of the zoning and policy record shows that the zoning in the vicinity of the 1945 Congress Street site has been fairly dynamic over time. Early city zoning maps show the property in residential (RA) zoning, reflecting the historic character of the area as farmland. Following a major initiative by the city to revise the zoning ordinance in the late 1950s, the 1945 Congress parcel and its surroundings were zoned to Residential R-2, the zoning designation that exists today. Records indicate that at some point in the mid- to late 1960s, however, the city council actually considered and approved a rezoning of the site to R-6 with the intent of allowing the Elks to develop, apparently under conditional status; the Elks appeared before the Board of Appeals in the late 1960s for an "exception" to the R-6 zoning in order allow the construction of their "club and lodge" and the "formation of a softball field." By the late 1970s, UNUM had also relocated to outer Congress Street, where the zoning map had been altered to depict a B-1 zone (*Figure 3*).

The early 1980s saw an effort by the city to consider the economic development potential of a number of city neighborhoods and commercial centers. The resulting reports suggested that the city aggressively market the "Airport Development Area," and more specifically the end of Cobb Avenue/Westbrook Street, as a major manufacturing or office headquarters site. However, no rezoning of this area was ever completed, and



the zoning remained unchanged through the early 1980s.

In 1988, as part of a review of the city's commercial land use policy, the city's *Neighborhood Commercial Land Use Policies and Land Use Plan* created the Office Park (O-P) zone. The plan read, "[t]he need exists for a zone that would allow larger scale office development on larger lots in what could be considered more suburban locations. The parcels, while suburban in character, might have limited potential for residential development, due in part, for example, by proximity to the Jetport, or to the topography of the site, or its physical boundaries such as a busy arterial [sic]" (22). In a continuation of the economic development work conducted by the city in the early 1980s, the plan identified UNUM and Congress Street/Cobb Avenue (in conjunction with the Airport Business zone) as areas for potential rezoning to O-P. In the wake of this plan, the city modified the zoning map to show O-P at the UNUM site. However, none of the surrounding area was converted to O-P. By the late 1980s, the Elks Lodge had actually been rezoned back to R-2. The area at the end of Cobb Avenue remained in R-2 as well. It should be noted that, through the 1990s, as UNUM grew, the O-P zone north of Congress Street did extend eastward, subsuming much of the R-1 residential zone south of the Stroudwater River and north of the existing R-2 zone.

In the early 1990s, the Portland International Jetport developed plans to relocate the airport access road from Westbrook Street to its current location. As part of the 1994 *Airport Master Plan*, the city generally considered land uses on airport land south of Congress Street in the location of the access road, ultimately suggesting that most of this property be held as open space/buffer, with small portion at the point of highest elevation to be used for "terminal support." While the road portion of the plan was realized, this land use recommendation was not, and the land around the access road remained as a buffer in the R-2 zone. Similarly, Cobb Avenue has never been rezoned.

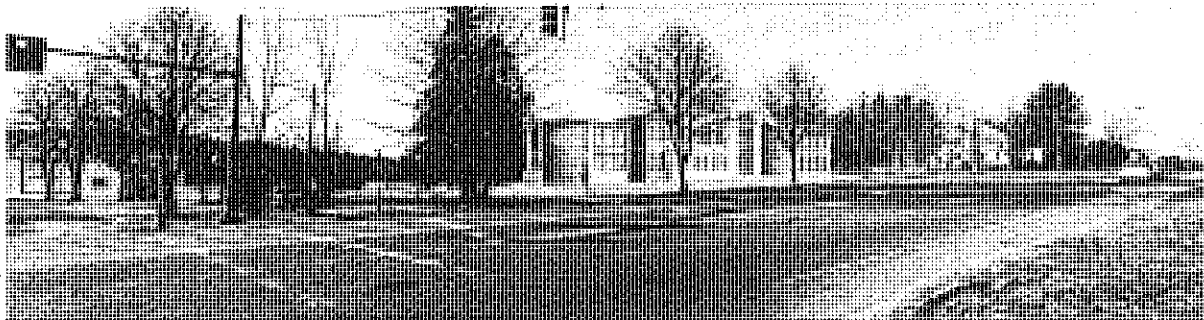
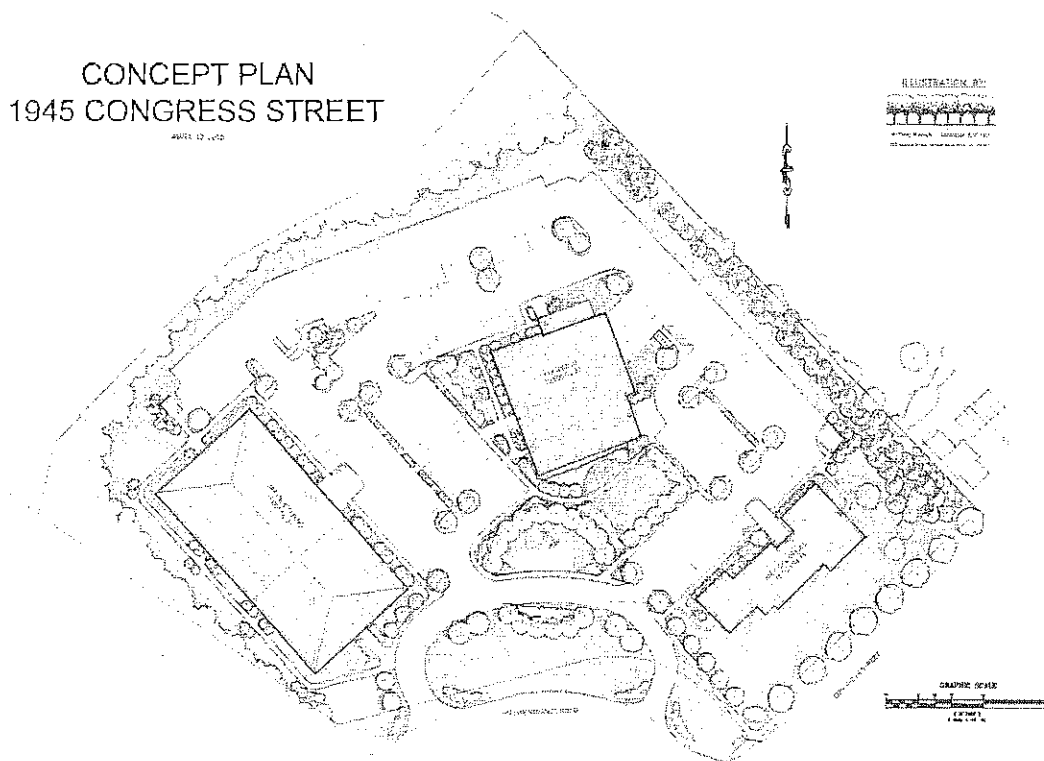
Figure 3: Zoning history, Outer Congress Street, with 1945 Congress highlighted

It

should be noted that the 1945 Congress site has been the subject of planning board and council deliberations as recently as 2012. At that time, Husson University proposed to develop the lot as part of their Southern Maine campus. In order to do so, they required a zoning text amendment to allow colleges, universities, and trade schools as conditional uses in the R-2 zone. Although the city council adopted the text amendment to this effect in April of 2012, Husson ultimately elected to locate elsewhere, and the 1945 Congress site was never redeveloped.

IV. SITE AND CONCEPTUAL PLAN

For reference, the applicant has provided a conceptual plan depicting the proposed development on the 1945 Congress site (*Figure 4 and Plan 1*). The plan shows access much as it exists today, with a landscaped focal area around the Elks statute at the entrance to the site. The Elks Lodge remains in a smaller renovated building at the rear of the property, with two new office buildings enclosing it to the south and west. The plan includes buffer plantings along the eastern property line, and existing landscaping is maintained at the rear and western boundaries of the site. The applicant has provided photos depicting thick evergreen landscaping as a treatment for the eastern property line (*Attachment 7*). The plan includes a significant amount of off-street parking, including bus and motorcycle parking spaces. A bus shelter is also included in the plans.



Figures 4 and 5: Conceptual plan (top); rendering from Congress Street looking east (bottom)



Figure 6: rendering of conceptual plan from Congress Street

In addition to the concept plan, the applicant has provided several renderings showing the site as envisioned under a zone change to the O-P (*Figures 5 and 6 and Plans 2-8*). These begin to depict the scale of the proposed buildings, the setbacks, and some of the buffering shown in the concept plan. The plan, as well as the design of the buildings proposed on the site, would be considered in detail under site plan review.

It should be noted that the applicant has submitted a purchase and sale agreement which demonstrates their intent to sell a 10 foot strip of land on the eastern portion of the site to the abutting landowner in an effort to allow the preservation of a buffer in that location and, further, allow that neighbor's property to become conforming under the R-2 zone. The purchase and sale agreement includes an exhibit depicting the land transfer, which would effectively cut a notch out of the eastern property line of the 1945 Congress Street site (*Attachment 10*).

V. REVIEW OF POTENTIAL ZONING DESIGNATIONS

Current Zoning:	R-2 (Residential)	Proposed Uses:	Elks Lodge; medical office; general office
Proposed Zoning:	O-P (Office Park)	Parcel Area:	304,892 SF (6.99 acres)
Current Uses:	Elks Lodge		

Over the course of this zone change review, the board discussed the possibility of a variety of alternatives to the proposed Office Park (O-P) zoning designation, including the Office Park (O-P) zone with a text amendment to allow places of assembly as conditional uses, the Residence-Professional (R-P) zone, the Neighborhood Business (B-1) zone, the Community Business (B-2) zone, and the Residential R-3 zone as well. All of these alternatives are briefly summarized below. Tables comparing purpose statements, permitted uses, and dimensional requirements of these zones appear in *Attachment A*.

1. Existing Residential R-2

The existing R-2 zone is clearly designed to encourage large lot, single-family residential development. The zone permits a very limited range of uses, including single-family homes, municipal uses, and home occupations, by right. With a conditional use permit under the existing R-2 zoning, the lot could be redeveloped as a university or school (as has been previously considered under a separate zoning amendment application related to Husson University), or as a long-term, extended care or day care facility, among other uses. Residential buildout would be governed by a 10,000 SF minimum lot size and a street frontage requirement of 50 feet. Non-residential buildout would basically be limited by the maximum lot coverage regulation of 20%, with floor area further restricted by maximums which would apply in the case of a college or university (24,000 SF) or place of assembly (5,000 – 9,000 SF for small or medium places of assembly). The applicant's desired use, medical and general office, is not permitted.

2. Office Park (O-P)

The purpose of the O-P zone is to provide locations for office and associated uses in “a park- or campus-like setting which are of the highest quality, are well designed and maintained, and are compatible with their natural surroundings.” Under the proposed zone change to O-P, in addition to office, some more industrial uses, such as printing and publishing establishments and high-technology manufacturing, would be permitted either by right or conditionally. The potential buildout of the lot is more significant, with 60% maximum impervious surface (which, it should be noted, includes building footprints and is meant to preserve some open space on site) and a height limit of 55 feet. The O-P zone requires a master plan subject to development standards specific to the zone. (This master plan requirement predates and is distinct from the recently adopted provisions under the site plan ordinance for master development plans.) Under the O-P zone’s master plan requirement, any office park developed in the zone would be reviewed according to development standards regulating the design, landscaping, sidewalks, screening, preservation of natural features, traffic, lighting, and signs of the development. The master plan review, in addition to site plan (as well as potentially subdivision) review, would provide the planning board a significant opportunity to guide the site’s development.

3. Office Park (O-P) with Text Amendment

At the first workshop on this zone change request, the planning board discussed the fact that an O-P zoning designation for the site would render the Elks Lodge a non-conforming use, as places of assembly are not technically permitted under the existing O-P language. It should be noted that Ann Machado, the city’s Zoning Administrator, has confirmed that the Elks Lodge would become a *legal* non-conforming use (*Attachment B*), and that the applicant has not indicated any concerns with the issue of non-conformity. However, the board did consider the option of a text amendment to make places of assembly a conditional use in the O-P zone. This option was largely dismissed given the desire to preserve O-P zones for the purposes of office uses.

4. Residence-Professional (R-P)

The R-P has also been examined as a potential option for the site, as this zone allows the proposed use and can be found proximate to the 1945 Congress Street site. The R-P zone is written to function as a buffer between residential and more intensive non-residential areas and is often used to bookend business zones. Under a zone change to R-P, a broad array of uses would be permitted, including residential, professional office, and business services. Daycares, schools, places of assembly, and long-term care facilities would be permitted as conditional uses. The buildout of these uses would be controlled by a .45 maximum floor area ratio and a 60% maximum impervious surface limit established by the nearest residential zone. The height limit, at 45 feet, would be less than under the O-P. However, the R-P does not provide for the master plan design control of the O-P zone. It also allows for much smaller lot size, lesser setbacks, and thus more intensive development. As a result, it is generally deemed a less desirable alternative than the O-P designation in this context.

5. Neighborhood and Community Business B-1 and B-2

Similarly, the board also considered the Neighborhood and Community Business B-1 and B-2 zones as options for the site. These zoning designations would allow a much broader range of uses than the R-2 or the O-P and would also allow much greater lot coverage on the site. For these reasons, these zoning designations were largely dismissed.

6. Residential R-3

Over the course of the review, the board also investigated the question of higher density residential rezoning. The R-3 zone, for example, would permit planned residential unit developments (PRUDs) of a townhouse style at a density of one unit/6,500 SF of net land area. At this ratio, 30-40 units could theoretically be permitted on the 1945 Congress Street site. The R-3 would also conditionally allow sheltered care group homes, schools, extended care facilities, hospitals, and day care facilities. The R-3 would not accommodate the applicant’s desire for office uses.

At the board’s request, the applicant submitted a housing feasibility analysis which examined the financial feasibility of residential development under the R-3 zone (*Attachment 9*). This analysis tested a 40-unit

multi-family housing scenario under the provisions for the R-3 zone, as well as higher density scenarios of 80 market rate or mixed income units under a theoretical zone, and generally found all of these scenarios financially untenable. (It is worth noting that the study also tested the financial viability of 8- and 15- lot single-family subdivision scenarios (assuming that the developer would sell the buildable lots under the R-2 provisions) and likewise found that development costs would necessitate sale prices out of line with the current market.) As a result, the concept of a residential rezoning was not pursued.

VI. O-P ZONING AND POTENTIAL IMPACTS

The question of the impacts of the proposed development emerged repeatedly over the course of the zone change review, with neighbors raising concerns about the traffic, environmental, and aesthetic implications of a zoning amendment. Specific impacts of any proposed development would be examined in detail at the site plan stage, but a cursory consideration of the potential repercussions of a zone change to O-P, given the type and intensity of uses which might be developed under the new zoning designation, was conducted early in the zone change review.

As discussed above, the permitted uses and the dimensional requirements of the existing R-2 essentially limit the site largely to single-family residential development. Given this, the R-2 does not bear the risk of exceptionally deleterious traffic, environmental, or other effects. If granted a permit by the planning board, some of the R-2's conditional uses, however, including schools or day care facilities, could come with traffic, light, and noise implications. To some extent, lot coverage and lot size requirements would serve to temper the effects of any development of this kind.

Environmental, noise, and traffic impacts are likely to be greater under a zone change to O-P, in light of the greater buildout allowed and the differing uses permitted. As previously discussed, the O-P does require a master plan which could help mitigate detrimental effects. The O-P development standards, written under *Section 14-230.13*, require that development proposals:

- Demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation, open space, drainage, and vegetation and other natural features;
- Include a landscape program;
- Conform to restrictions on impervious surfaces and the location of pavement;
- Include internal sidewalks which take advantage of the topography and natural features of the site;
- Include buffer areas abutting residential zones uses and screening for parking lots and driveways from public view;
- Include efforts to preserve natural features including, but not limited to, existing vegetation, flood plains, rock outcroppings, surface water bodies, drainage swales and courses, and wetlands;
- Demonstrate that additional traffic generated by the project itself can be reasonably accommodated on existing public streets;
- Coordinate the scale, texture, color, and massing of buildings, with emphasis on the appearance of building facades from public streets, driveways, parking areas, and other nearby buildings; and
- Identify the location and style of lighting and signage and coordinate these with the building and landscaping design.

Given the interest in the traffic implications of the proposed zone change, the board requested trip generation estimates from Tom Errico, the city's consulting traffic engineer, based on the full potential buildout under the existing and proposed zoning designations. These estimates represent a worst case scenario; they assume office development under an O-P zoning designation that maximizes the building envelope within height, impervious surface, and floor area ratio limits. The estimates show that considerably more traffic could theoretically be generated under the O-P zoning than could be generated with a residential redevelopment of the existing site under the existing R-2 zoning.

Mr. Errico writes,

I have conducted a preliminary trip generation analysis for the...development assumptions you have provided and the results are summarized in the following table. The trip generation estimates were computed for the Weekday AM and PM peak hours and were based on the Trip Generation Manual, Institute of Transportation Engineers, 9th Edition.

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

It should be noted that the 'Existing R-2' numbers cited here do not reflect actual trip generation numbers from the site under the current use by the Elks Lodge. The 2012 Husson application associated with the site included some trip generation estimates for the Elks Lodge use, based not on counts but on trip generation ratios from the Institute of Transportation Engineers. At the time, Husson's traffic engineer estimated 55-70 trips to/from the site during the AM and PM peak hours. Review of the Elks website finds lodge hours from 9:30 a.m. to 9 p.m. and regular meetings on Monday nights at 7, suggesting that much of the existing traffic from the site would actually be off-peak. Anecdotally, there is some indication that most trips under the existing condition may occur once a week during daytime hours when a regular event is held at the lodge. For reference, there are approximately 200 parking spaces on site.

In subsequent correspondence, Mr. Errico adds,

I would like to note that based upon the trip generation levels noted in my previous email, a comprehensive traffic impact study would be required to assess impacts to the area roadway system. Please note the following:

- The Congress Street/International Parkway/UNUM Drive intersection will serve as the primary access point for any development. Use of this existing signalized intersection seems appropriate, but any development application would be required to assess the ability of this traffic signal to adequately accommodate the added traffic.*
- The Congress Street/Johnson Road intersection seems to operate at an acceptable level of service, but review of conditions would be required.*

This traffic analysis would occur at the time of site plan review.

In this vein, it should be noted that the city is currently in the process of a design project for outer Congress Street near this area. The plans include pedestrian and transit improvements at Westbrook Street, additional crosswalks near Garrison Street, and enhancements to the inbound merge area east of International Parkway/UNUM Drive. In addition, Mr. Errico writes that the "MaineDOT will be upgrading the traffic signal at the Congress Street/Westbrook Street intersection. This intersection currently experiences congestion problems, but it is unlikely any capacity enhancements will be possible given constraints" (Attachment C).

VII. O-P ZONING AND THE COMPREHENSIVE PLAN

There has also been considerable discussion regarding the comprehensive plan over the course of this zone change review. In making a recommendation to the City Council, the board is asked to determine if the proposed zoning map amendment is "consistent" with the adopted comprehensive plan. In this light, the applicant's submittal includes a lengthy narrative arguing the question of consistency (Attachment 6). This narrative draws heavily from the *Community Commercial Policies and Land Use Plan* of 1987-88 which, among other goals, stated that the city should "[p]romote new office park development of high quality in outlying areas for development seeking a suburban-style setting" and "[a]ccommodate the city's commercial activity within a range of functionally and physically defined commercial centers." The narrative cites comprehensive plan policy around developing commercial centers on transit corridors. Maybe most convincingly, the submittal quotes the plan language creating the O-P zone, which, as stated above, explicitly noted the need for a "zone that would allow larger scale office development on larger lots in what

could be considered more suburban locations. The parcels, while suburban in character, might have limited potential for residential development, due in part, for example, by proximity to the Jetport, or to the topography of the site, or its physical boundaries such as a busy arterial." The plan identifies Congress Street/Cobb Avenue, south of the site across Congress Street, as a potential O-P zone. The comprehensive plan more broadly identifies this part of the city as a growth area (*Attachment E*).

Responding to concerns regarding encroachment into residential areas, the narrative also argues that Stroudwater has developed differently from other neighborhoods in the city, with significantly less of its land area in residential use, more of its land vacant, and more recent commercial and industrial development. The narrative further argues that, though the 1945 Congress site is currently zoned residential, the likelihood of residential redevelopment is small.

It should also be noted that there is policy in the comprehensive plan that counters some of these arguments. The comprehensive plan includes numerous goals and policies, many originating in the 1991 *Downtown Vision*, meant to concentrate office development in the city's downtown core and away from suburban locations. With respect to the loss of the R-2 zoning, in *Housing: Sustaining Portland's Future*, the city establishes a policy of protecting "the stability of Portland's residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental, and other non-residential uses." In a similar vein, the city's *Industry and Commerce Plan* from 1994 includes goals related to "protect[ing]...residential zones." Neighbors of the proposal have noted these comprehensive plan policies, and have suggested that removing land from the R-2 stock and placing it in a zone where housing is prohibited would serve to eliminate the potential for additional housing, directly contradicting elements of the comprehensive plan.

VIII. O-P ZONING AND THE QUESTION OF PRECEDENT

Over the course of this zoning amendment application review, concerns about precedent and commercial encroachment have repeatedly arisen as well. Neighbors have voiced strong objections to the idea of an O-P rezoning, arguing that a rezoning will have a "domino effect" on parcels to the east, including several other existing places of assembly, including Faith Temple and Christchurch of Portland. These properties, much like the Elks', sit in the R-2 zone on large lots fronting Congress Street. In some cases, O-P zoning can be found immediately adjacent to these sites, and in at least one case, these sites are currently for sale.

With the aim of informing the discussion on this matter, Corporation Counsel provided a memo which directly addresses the precedential effect of zoning decisions (*Attachment D*). This memo states, first and foremost, that

Because zoning is a legislative act and ultimately an exercise of legislative judgment by the City Council (subject to the "consistency" analysis discussed above), a zoning decision is not binding per se. (Joseph T. Bockrath, Zoning Board's Grant of New Application for Zone Change, Variance, or Special Exception After Denial of Previous Application Covering Same Property or Part Thereof, 52 A.L.R.3d 494, 2b ("Being the result of a 'legislative process,' a zone change is not binding on future determinations . . .")) In other words, because zoning requires an exercise of discretion and legislative judgment, a legislative body like the Council is entitled to exercise that discretion however it sees fit – provided of course that its decision is consistent with the comprehensive plan, is not arbitrary, nor discriminatory. Therefore, even where the Board/Council denies a proposed zoning amendment with respect to a parcel of property this year, it would not be bound by that decision if the request were renewed next year. Id. at 3a (collecting cases). Having said that, in order to avoid an allegation that it is exercising its legislative discretion in an arbitrary or capricious manner, in such a situation the Board/Council would be well advised to articulate the change in circumstances that justifies a divergent exercise of its discretion with respect to the same parcel of land.

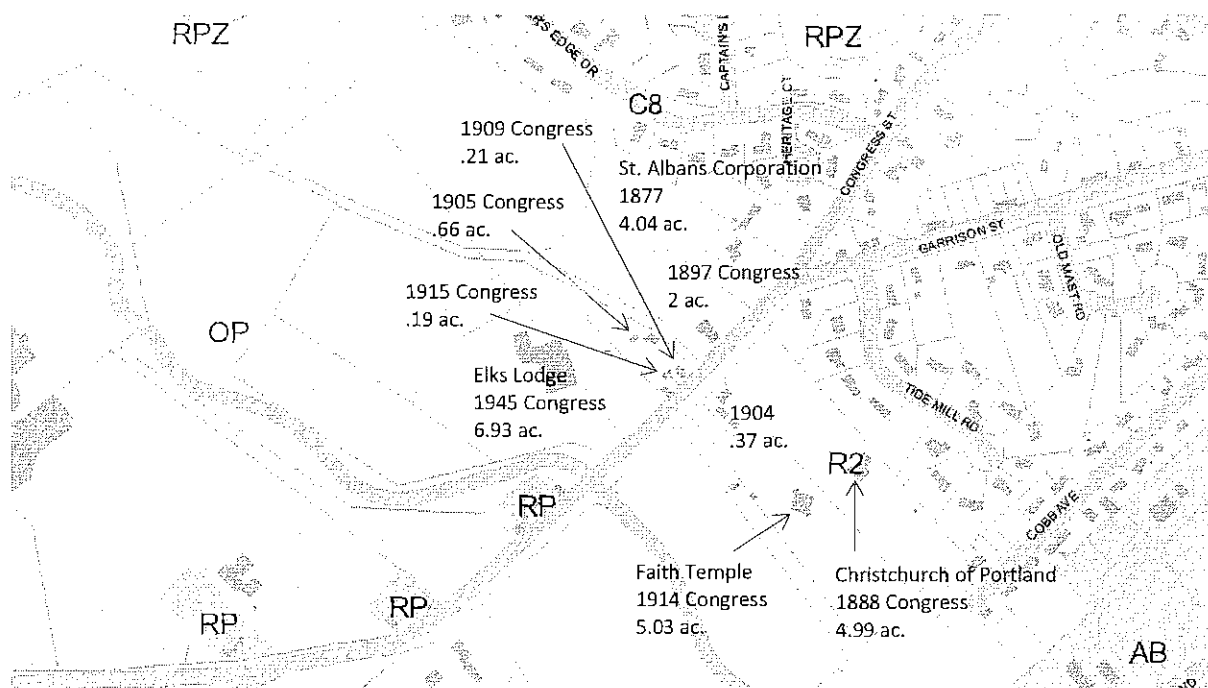


Figure 7: Parcel sizes and context in vicinity of 1945 Congress Street

Ms. Thompson identifies examples from case law which have been used to justify differing zoning decisions with respect to “seemingly similar properties,” such as changes to the property in question, changes to the surrounding neighborhood, changed traffic impacts, or changes in the zoning amendment requested.

In this light, the planning board discussed several distinguishing factors which can be cited to differentiate the Elks’ site from the properties in question to the east (Figure 7). The 1945 Congress parcel, which is almost seven acres in size, is larger than the easterly sites, which generally range from less than an acre to five acres in size. The Elks’ site is contiguous with the O-P zone on two sides, while these other sites share one border with the O-P zone at most. Lastly, the 1945 Congress Street site has access from a secondary road with the benefit of a signalized intersection with Congress Street; all of the easterly sites would rely on access directly from Congress Street.

IX. PUBLIC COMMENT

Over the course of the zone change review, the planning board received a significant number of public comments related to the proposed zone change (PC-1-43). These comments generally fall into several categories. A number express concerns about impacts of the proposed office development. These comments raise questions about potential traffic impacts; pedestrian safety in the area; building design, parking, and siting with respect to the O-P development standards; buffering from adjacent residential properties; and the effects on what many perceive as an important gateway with valuable natural resource and open space attributes. Other comments argue that the proposed zoning map amendment is inconsistent with the comprehensive plan. Most of these build cases on the housing objectives of the plan, raising concerns that land will be taken from the potential housing supply and that the zone change would eliminate the potential for single-family development on the site. The board has received a public comment from a neighbor which went so far as to develop a concept for residential redevelopment on the site (PC-21). Last, a number of comments raise larger questions regarding “piecemeal zoning,” the need for a broader vision for Stroudwater and outer Congress, and the potential for encroachment on existing residential neighborhoods, particularly to the east. The Stroudwater Village Association has requested repeatedly (and most recently in correspondence dated August 31) that the board defer any zoning decision until a more comprehensive neighborhood planning effort can be undertaken (PC-14, PC-23, and PC-31). It should be noted that the city also received a number of letters from Elks Club members requesting that the board approve the plans (PC-13).

X. BOARD DELIBERATION AND RECOMMENDATION

In its deliberations, the planning board clearly acknowledged the importance of this area of outer Congress Street to both the immediate neighborhood and as a gateway to the city more broadly. Board members also recognized the need to carefully consider the transition between a heavily commercial area west of this site and the sensitive residential and natural areas to the north and east. The board agreed that the Planning Division should work within its resources as part of the airport master planning process to address questions of land use in this unique and important part of the city.

The four members of the board who supported the proposed zone change, in contrast, argued that the site is more suitable for office than for residential use, given its location across from the Jetport entrance on a heavily-traveled commuter corridor. They held that that the zone change could be considered a logical extension of the existing O-P zone, which sits to the north and west. With respect to the question of precedent, they identified distinguishing factors on the 1945 Congress Street site, including its size, its adjacency with the O-P zone on two sides, and its access from a secondary road with a signalized intersection on Congress Street, which can be used to differentiate it from neighboring sites. Lastly, they noted that the O-P zone includes strong provisions related to buffering and open space which, under site plan review, could serve to preserve or even enhance the Congress Street/UNUM Park Drive intersection as a gateway and green entry to the city.

There were two members of the board who expressed reservations with respect to the proposed zone change and therefore voted against its recommendation. These members questioned the ability of the site to support the "campus-like" setting prescribed by the O-P zoning and, likewise, the suitability of the site for such a use. These members also raised concerns regarding the desire of the Elks to remain on the site under legal non-conforming status. Lastly, these board members expressed reservations with reference to competing policies of the comprehensive plan, particularly those which promote the stability of residential neighborhoods and residential growth.

Ultimately, the majority of the board voted to support a rezoning to O-P for the 1945 Congress Street site. In order to create a buffer for the residential properties to the east, the board recommended rezoning to a line parallel with the eastern property boundary and offset at a distance of 40 feet. This line mirrors one proposed by the applicant in early discussions with the board and allows some R-2 to be preserved on the site. This approach has been used in limited instances elsewhere in the city, often with a zone line that parallels a street.

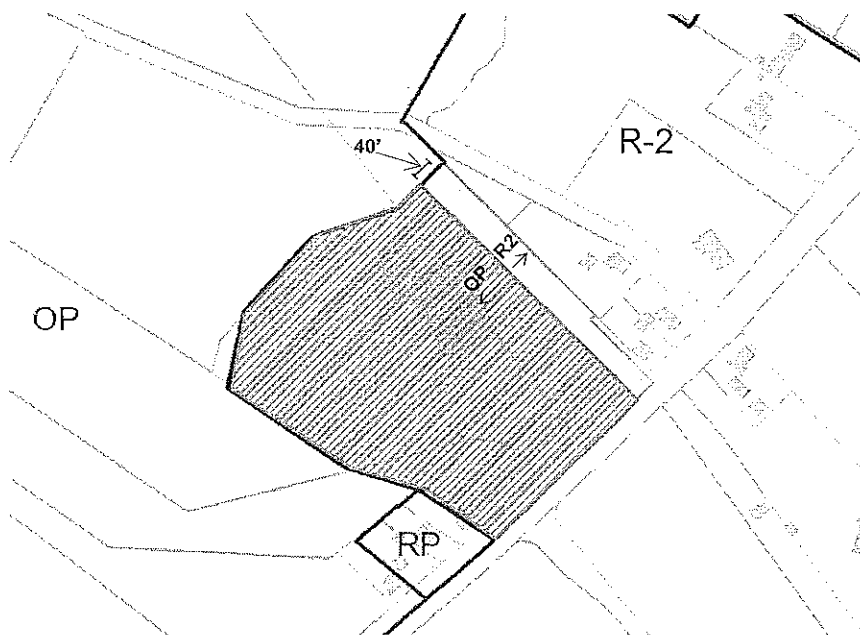


Figure 8: Area of proposed zone change, 1945 Congress Street

The board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) as follows:

Based on the material provided in this report, public testimony, a review of applicable policies, and other information, the planning board finds that the proposed map amendment to change the zoning on the north side of Congress Street at UNUM Park Drive from Residential R-2 to Office Park (O-P), as shown in the map

above, is consistent with the Comprehensive Plan and recommends adoption of the proposed amendment to the city council.

XI. ATTACHMENTS

PLANNING BOARD REPORT ATTACHMENTS

- A. Zoning alternatives tables
- B. Zoning administrator review (email from Ann Machado)
- C. Traffic engineer review (email from Tom Errico)
- D. Corporation counsel memo on zoning amendments (Memo from Jennifer Thompson)
- E. Growth area memo (excerpted from 6/28/15 memo to City Council)

APPLICANT'S SUBMITTALS

- 1. Applicant's cover letter (11/21/14)
- 2. Authorization letter (11/21/14)
- 3. Purchase & sale agreement (Elks Lodge)
- 4. Applicant's cover letter (4/13/15)
- 5. Zoning amendment application
- 6. Comprehensive plan narrative
- 7. Buffering photos
- 8. Neighborhood meeting packet
- 9. Housing redevelopment feasibility analysis
- 10. Purchase & sale agreement (DuBois)

PLANS

- Plan 1. Concept plan
- Plan 2. Propose Elks site from above
- Plan 3. Rendering of both proposed buildings
- Plan 4. Clark Insurance building
- Plan 5. Office building on Congress Street
- Plan 6. Congress Street view from east
- Plan 7. Congress Street view from west
- Plan 8. Rendering from Congress Street

PUBLIC COMMENT

- PC-1. Letter from Bill Linnell, Joyce Gauthier, and Janet Burns, 1/14/15
- PC-2. Letter from David Silk, 1/14/15
- PC-3. Letter from Bill Linnell, Joyce Gauthier, and Janet Burns, 1/16/15
- PC-4. Letter from Lucie Tardif, 1/19/15
- PC-5. Email from Joe and Carolyn Heasley, 1/19/15
- PC-6. Letter from Dan Koloski, SVA President, 1/20/15
- PC-7. Email from John Sommer, 1/20/15
- PC-8. Email from Rob Rosenberg, 1/22/15
- PC-9. Email from David Silk, 1/22/15
- PC-10. Email from Bill Linnell, 1/23/15
- PC-11. Email from Paul Dubois, 1/24/15
- PC-12. Letter from Margaret Doyle, 1/30/15
- PC-13. Letters from Elks Lodge Members, 3/15
- PC-14. Email from SVA, 5/25/15
- PC-15. Email from Angela Wheaton, 5/26/15
- PC-16. Email from Charlton Smith, 5/26/15
- PC-17. Email from Marc Hodroff, 5/26/15
- PC-18. Letter from David Silk, 5/26/15
- PC-19. Email from Elizabeth Hoglund, 5/26/15
- PC-20. Letter from Mary Lou Kimball, 5/27/15
- PC-21. Letter from Mitchell & Associates on behalf of Bill Linnell, 7/13/15

PC-22. Email from Paul Dubois, 7/22/15
PC-23. Statement from Stroudwater Village Association, 7/23/15
PC-24. Email from James Casterella, 7/26/15
PC-25. Email from William Linnell, 7/28/15
PC-26. Email from David Silk, 7/28/15
PC-27. Email from Charlton Smith, 8/20/15
PC-28. Email from Angela Wheaton, 8/20/15
PC-29. Email from Eugenia O'Brien, 8/21/15
PC-30. Email from Betsy Smith, 8/21/15
PC-31. Email from Karen Hinchliffe, 8/25/15
PC-32. Email from Patricia Adriance, 8/26/15
PC-33. Statement from the Stroudwater Village Association, 8/31/15
PC-34. Email from David Silk, 9/3/15
PC-35. Email from Bill Linnell, 9/3/15
PC-36. Email from Elizabeth Hoglund, 9/4/15
PC-37. Email from Patricia Bernard, 9/4/15
PC-38. Email from Barbara Turitz, 9/7/15
PC-39. Email from Edward Resnisky, 9/7/15
PC-40. Email from Valerie Libby, 9/8/15
PC-41. Email from Joseph McDonnell, 9/8/15
PC-42. Email from Bill Lairsey, 9/8/15
PC-43. Email from Anthony Buxton, 9/8/15

File: 13151

PINKHAM & GREER
CIVIL ENGINEERS

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

November 21, 2014

Att. 1

Ms. Barbara Barhydt, Planning Department
City of Portland
389 Congress Street, 4th Floor
Portland, ME 04101

RE: ELKS PROPERTY, ZONE CHANGE

Dear Barbara,

I would like to thank you and the City Staff Members that attended our meeting on Wednesday, for their input. Based on that starting point, on behalf of Northland Enterprises, Inc., we would like to continue our development process with a zone change. Attached is a revised zoning map that changes this property to Office Park (OP) from the existing Residential 2 (R2) designation. This will expand the OP District that currently encompasses the UNUM Development.

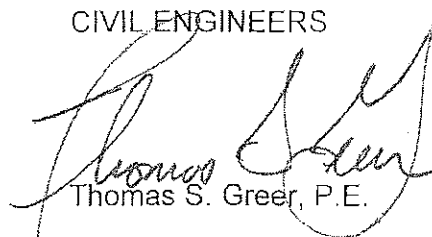
It is our understanding the Elks Club will be left as an existing non-conforming use. They will be allowed to shrink their footprint but not expand it.

Our goal is to get through the zone change and planning board approval process by April. We understand this is a tight time frame, but we do not want to loose track of that goal.

If you have any questions, please fell free to call. Thank you for your assistance.

Sincerely,

PINKHAM & GREER
CIVIL ENGINEERS



Thomas S. Greer, P.E.

cc: (1) David Lloyd, Josh Benthien, Rex Bell, Brad Fries, File

Enclosures

TSG/rjs

Northland Enterprises, LLC
17 South St, 3rd Flr
Portland, ME 04101

(207) 780-0223

November 21, 2014

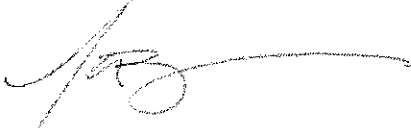
To Whom It May Concern

This letter is to inform you that Thomas S. Greer and his associates of Pinkham & Greer Civil Engineers in Portland are hereby authorized to represent Northland Enterprises, Inc. throughout the approval process of Elks Club in Portland, Maine.

This includes representing us with the City of Portland and Department of Environmental Protection, as well as any other State or local agencies who may become involved in the process.

Should you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read 'JB' or 'Josh Benthien', with a long horizontal flourish extending to the right.

Mr. Josh Benthien

FIRST AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("First Amendment") is dated as of August __, 2014 by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine ("Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, (the "Purchase Agreement").

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

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including September 30, 2014 and Buyer and Seller shall have until September 30, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate as set forth more fully in Paragraph 5.1.
2. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this First Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By:

Name: Timothy Smith
Title: Exalted Ruler

BUYER:

Northland Enterprises, LLC

By: _____

Name: _____

Title: _____

Dr. Michael Bedecs

SECOND AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Second Amendment") is dated as of September 22, 2014 by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine ("Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, (the "Purchase Agreement").

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

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including November 8, 2014 and Buyer and Seller shall have until November 8, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate as set forth more fully in Paragraph 5.1.
2. Buyer and Seller agree that Seller has obtained Member approval and that the deadline for Seller to obtain Grand Lodge approval has been extended to October 9, 2014.
2. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Second Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Second Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

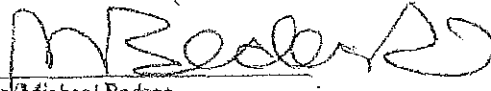
By:


Name: Timothy Smith
Title: Exalted Ruler

BUYER:

Northland Enterprises, LLC

By: 
Name: Rex Bell
Title: Partner 9/22/14

 9/23/14
Dr. Michael Bedecs

THIRD AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Third Amendment") is dated as of November 7, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, and that certain Second Amendment dated September 22, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

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

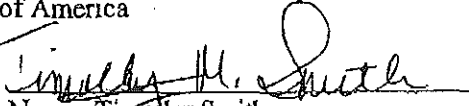
1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including November 25, 2014 and Buyer and Seller shall have until November 25, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Third Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By:


Name: Timothy Smith
Title: Exalted Ruler

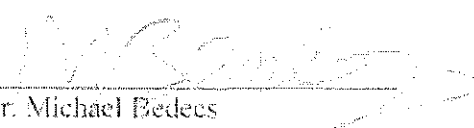
BUYER:

Northland Enterprises, LLC

By: _____

Name: _____

Title: _____



Dr. Michael Bedecs

FOURTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Fourth Amendment") is dated as of November 24, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedacs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, and that certain Third Amendment dated November 7, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

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

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including December 4, 2014 and Buyer and Seller shall have until December 4, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Future extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," may be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and any such extension agreement shall be binding on Buyer and Seller.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Fourth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By: _____

Name: Timothy Smith
Title: Exalted Ruler

BUYER:

Northland Enterprises, LLC

By: _____

Name: Russell
Title: Partner

Michael Bedees
Dr. Michael Bedees (M)

FIFTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Fifth Amendment") is dated as of December 4, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014 and that Fourth Amendment dated November 24, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree to amend the Purchase Agreement as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended as follows:
 - a. the "Additional Contingencies Expiration Date" is hereby extended, up to and including December 19, 2014 with respect to all matters listed in Paragraph 5.1 except for the matters described in Paragraph 5.1(1) and Buyer and Seller shall have until December 19, 2014 to agree upon all matters listed in Paragraph 5.1 (except for the matters described in Paragraph 5.1(1) which shall have a later date and are addressed below) or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
 - b. the "Additional Contingencies Expiration Date" is hereby extended, up to and including December 31, 2014 with respect to all matters described in Paragraph 5.1(1) including all matters relating to the specifications of, and the work to be performed with respect to, the code compliant exterior wall and façade listed in Paragraph 1(b) of the Purchase Agreement as well as the specific configuration of the Seller's Retained Building, including the location of the end of Seller's Retained Building, and including agreement on plans drafted with respect to such work (all of which hereinafter is referred to as the "Building Specification Contingency") and Buyer and Seller shall have until December 31, 2014 to agree upon all matters relating to the Building

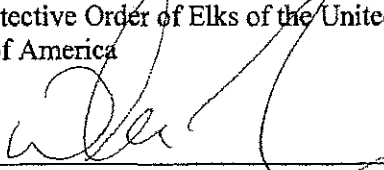
Specification Contingency or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.

2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Fifth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Fifth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

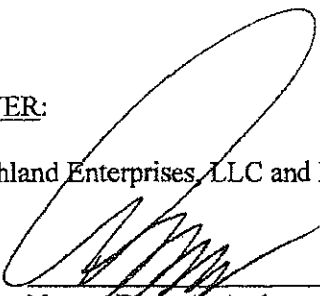
By: 

Name: William H. Leete, Jr., Esq.

Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.

Title: Its Attorney

SIXTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Sixth Amendment to Purchase and Sale Agreement ("Sixth Amendment") is dated as of December 18, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014 and that certain Fifth Amendment dated December 4, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

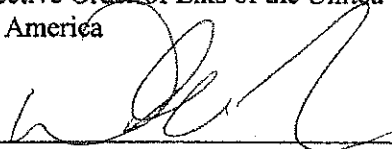
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including January 9, 2015 and Buyer and Seller shall have until January 9, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Sixth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Sixth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

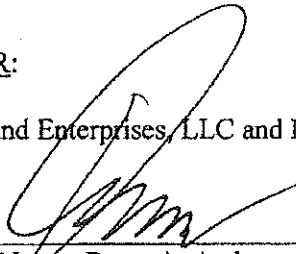
Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By: 

Name: William H. Leete, Jr., Esq.
Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.
Title: Its Attorney

SEVENTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Seventh Amendment to Purchase and Sale Agreement ("Seventh Amendment") is dated as of January 8, 2015, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014, that certain Fifth Amendment dated December 4, 2014, and that certain Sixth Amendment dated December 18, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

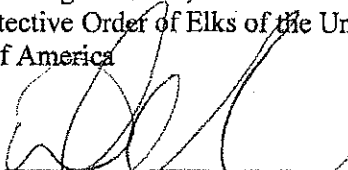
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including January 23, 2015 and Buyer and Seller shall have until January 23, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Seventh Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Seventh Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

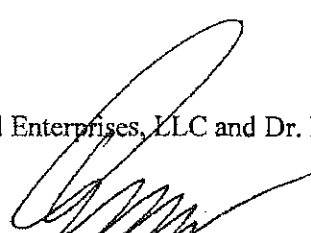
By: 

Name: William H. Lecte, Jr., Esq.

Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.

Title: Its Attorney

EIGHTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Eighth Amendment to Purchase and Sale Agreement ("Eighth Amendment") is dated as of January 20, 2015, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014, that certain Fifth Amendment dated December 4, 2014, that certain Sixth Amendment dated December 18, 2014, and that certain Seventh Amendment dated January 8, 2015 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

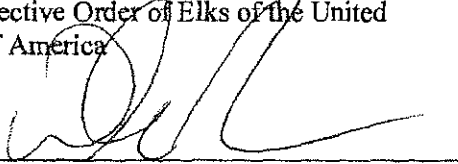
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including January 30, 2015 and Buyer and Seller shall have until January 30, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Eighth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Eighth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

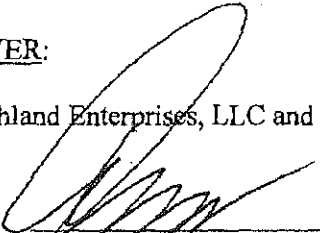
By: 

Name: William H. Leete, Jr., Esq.

Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.

Title: Its Attorney

NINTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Ninth Amendment to Purchase and Sale Agreement ("Ninth Amendment") is dated as of January 30, 2015, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014, that certain Fifth Amendment dated December 4, 2014, that certain Sixth Amendment dated December 18, 2014, that certain Seventh Amendment dated January 8, 2015, and that certain Eighth Amendment dated January 20, 2015 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

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

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including April 10, 2015 and Buyer and Seller shall have until April 10, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Ninth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Ninth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By: _____

Name: William H. Leete, Jr., Esq.
Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: _____

Name: Drew A. Anderson, Esq.
Title: Its Attorney

TENTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Tenth Amendment") is dated as of April 11, 2015, by and between Portland, Maine, Inc., a corporation ("Seller"), having a place of business at 944 Congress Street, Portland, Maine and Mr. Michael Beards, having a place of business at 1279 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3rd floor, Portland, Maine (collectively "Buyer").

RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, Third Amendment dated November 7, 2014, Fourth Amendment dated November 24, 2014, Fifth Amendment dated December 4, 2014, Sixth Amendment dated December 18, 2014, Seventh Amendment dated January 8, 2015, Eighth Amendment dated January 20, 2015, and Ninth Amendment dated January 30, 2015 (hereinafter the "Purchase Agreement") and

WHEREAS, Seller and Buyer acknowledge and agree that there are certain outstanding contingencies with respect to title and the zoning and land use contingency set forth in Section 6 of the Purchase Agreement, and certain of the Seller and Purchaser Additional Contingencies set forth in Section 5.1 of the Purchase Agreement as further described in this Amendment; and

WHEREAS, Seller and Buyer wish to confirm Buyer's exercise of its right to extend the Zoning Contingency Expiration Date to 90 days as provided in Section 6 of the Purchase Agreement;

WHEREAS, Seller and Buyer have agreed upon certain of the Seller and Purchaser Additional Contingencies as set forth in Section 5.1 (2), (3), (4) and (5) as set forth herein;

WHEREAS, Seller and Buyer wish to extend the time upon which the Seller and Purchaser Additional Contingencies set forth in Section 5.1 (1) and (2) and related matters shall be satisfied and make the Additional Contingencies Expiration Date with respect to those contingencies contemporaneous with the Zoning Contingency Expiration Date;

WHEREAS, Pursuant to paragraph 2.1 of the Purchase Agreement, "Seller and Purchaser Additional Contingencies", the parties have agreed upon extending certain of the Additional Contingencies and wish to memorialize those agreements in this Amendment; and

WHEREAS, Seller and Buyer acknowledge and agree that all contingency provisions and time periods set forth in the Purchase Agreement other than those set forth above or otherwise preserved under this agreement are in effect and that neither Seller nor Buyer have any rights to terminate the Purchase Agreement pursuant thereto;

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

1. Seller and Buyer acknowledge and agree that Schedules A, B and C, need not be separately executed, that Buyer and Seller agree to their terms, and further that the signatures of Seller and Buyer on this Tenth Amendment are intended to be and shall be deemed to be effective as though Seller's and Buyer's signatures each appeared upon Schedules A, B and C, and further that such schedules shall be incorporated into this Tenth Amendment as though fully set forth.

- a. Schedule A - Uniform Conditions of Vendor/Inland Declaration.
- b. Schedule B - Work Schedule and Property Use.
- c. Schedule C - Eminent Domain or First Refusal.

Seller and Buyer hereby acknowledge and agree that Schedules A, B and C, need not be separately executed, that Buyer and Seller agree to their terms, and further that the signatures of Seller and Buyer on this Tenth Amendment are intended to be and shall be deemed to be effective as though Seller's and Buyer's signatures each appeared upon Schedules A, B and C, and further that such schedules shall be incorporated into this Tenth Amendment as though fully set forth.

Buyer and Seller further agree that Schedules A, B and C satisfy the Additional Contingencies set forth in subparagraphs 2, 3, 4 and 5 of Paragraph 5.1 of the Purchase Agreement and represent the agreement of the parties with respect to such Additional Contingencies.

2. Seller and Buyer confirm Buyer's election to extend the Zoning Contingency Expiration Date by notice, which date is provided in Section 5.1 of the Purchase Agreement, which Zoning Contingency Expiration Date is now June 22, 2018.

3. Seller and Buyer acknowledge and agree that the Seller and Purchaser Additional Contingencies set forth in Section 5.1 of the Purchase Agreement, and work to be performed on Seller's Retailer Building, and (3) number of parking spaces to be allocated to Seller are currently to be determined only in consultation with, and as a part of, Buyer's zoning, permitting and approval process set forth in Section 5.1 of the Purchase Agreement. Therefore, the parties hereby amend the Purchase Agreement so that the Additional Contingencies Expiration Date with respect to the Section 5.1 (1) and (3) matters (the "Remaining 5.1 Matters") shall be the same as the Zoning Contingency Expiration Date, as extended and modified pursuant to this Amendment.

4. Seller and Buyer further agree that the "Remaining 5.1 Matters" shall be interpreted hereby as follows:

- a. The matters to be agreed upon under Section 5.1(1) shall include all work to be performed with respect to the Retail Building together with all work to be performed relating to the Building and the area surrounding the Building, including, without limitation the form and location of any sewer, water, or other utility connections in addition to the matters expressly set forth in 5.1(1) and other matters set forth in the Purchase Agreement.
- b. The matters to be agreed upon under Section 5.1(3) shall include the total number, configuration, size, ownership, location, appearance and maintenance of parking spaces, in addition to the matters expressly set forth in 5.1(3) and other matters set forth in the Purchase Agreement.

Nothing in this paragraph is intended to, nor shall be deemed to, constitute or waive any rights either Seller or Buyer have to terminate the Purchase Agreement pursuant to Section 5.

5. Buyer agrees to keep Seller apprised of the process of obtaining approvals and shall promptly notify Seller's counsel of any filings with the City of Portland with any municipal agency or any court filing or appeal.

6. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Tenth Amendment shall remain unchanged, except for the expressly stated amendments contained herein. Any capitalized terms not defined in this Amendment shall have the meaning given them in the Purchase Agreement.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent
and Protective Order of Elks of the United
States of America

By: _____

Name: Timothy Smith
Title: Exalted Ruler

BUYER:

Northland Enterprises, LLC

By: _____

Name: _____
Title: _____


Dr. Michael Berleus

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Agreement, dated the 11 day of June, 2014 (the "Contract Date"), is between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America ("Seller"), having a place of business at 1945 Congress Street, Portland, Maine, and Dr. Michael Bedecs having a place of business at 1375 Congress Street, Portland, ME and Northland Enterprises, LLC, or its permitted assignee (collectively, "Purchaser"), having a place of business at 17 South Street, 3rd floor, Portland, Maine 04101. The parties agree as follows:

I. Purchase and Sale of Property: Condominium Conversion.

(a) Subject to the terms and conditions set forth herein, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following described property owned by Seller (collectively, the "Property"):

- (i) That certain lot or parcel of real property known as 1945 Congress Street, Portland, Maine, being a portion of the property described in a deed from Elks Home, Portland, Maine, Lodge No. 188 Benevolent and Protective order of Elks to Seller, and recorded in the Cumberland County Registry of Deeds at Book 6157, Page 37, provided that the conveyance shall not include the retained portion of the Seller's building (being approximately 13,000 square feet of the total usable footprint of such building including the storage area) (the "Seller's Retained Building"). The property to be conveyed is generally identified on the Concept Plan attached to and made a part hereof as Exhibit A.
- (ii) A portion of the existing building on the real property shall be removed and demolished by Buyer and a new interior and exterior wall installed, with all of the foregoing in a manner acceptable to the parties as set forth in Section 5.1, and the configuration of the Seller's Retained Building to be as shown on the sketch plan attached to and made a part hereof as Exhibit B. All fixtures and improvements situated on the real property owned by Seller are to be retained by Seller and shall be part of Seller's Retained Building.
- (iii) For sake of clarity, Seller is retaining the Seller's Retained Building, an Elk statue and flag and flagpole as well as an Elks sign (such statue, flagpole and sign to be limited common elements under the condominium documents) to be located near Congress Street entrance at the general location designated on Exhibit C (such location to be subject to requirements that may be set out in any permits and approvals for the property and state and local sign ordinances), together with a pro rata

interest in the parking areas and common areas of the real property, all to be set forth in the condominium documents (more fully described below) to be prepared and recorded immediately following recording of the Deed (defined below). Purchaser agrees to cause a Maine Licensed Professional Surveyor to prepare and provide to Seller a metes and bounds description of the Property (including the property to be conveyed by Seller and the property to be retained) within ninety (90) days after the date the Lodge Approvals are obtained.

(b) Contemporaneously with the delivery and recording of the Deed, Purchaser shall cause to be recorded a Declaration of Condominium whereby the Property is converted to condominium ownership. The Condominium documents shall be prepared at Purchaser's cost and expense, shall be delivered in complete form to Seller on or before thirty (30) days after the Zoning Contingency expiration date and shall be subject to Seller's approval, not to be unreasonably withheld, delayed or conditioned. The Condominium documents shall, among other things, create a separate unit for the Seller's Retained Building ("Seller's Unit"), which shall include as limited common elements at a minimum the required number of parking spaces for Seller's Unit to satisfy all applicable zoning requirements, but at a minimum five (5) parking spaces per 1,000 square feet (Purchaser acknowledges, however, Seller's need for additional parking spaces on certain days and on weekends), and a pro-rata share of the common elements of the condominium, as well as provide a budget including anticipated condominium fees that will be due to the Condominium Association. Purchaser shall, as soon as practicable after the Closing and in consultation with Seller as to the schedule of work, perform the work necessary to reduce the size of the Seller's existing building to the Seller's Retained Building and erect a code-compliant exterior wall in form and substance acceptable to Seller as part of Seller's Unit. Purchaser shall also construct a new facade on all sides of Seller's Unit building and separate the utilities so that Seller's Unit is a separate and distinct Unit. Purchaser's work, the new building configuration and the location of the wall shall be more specifically identified in scope and cost as set forth in this Purchase and Sale Agreement (detail attached as Addendum #1).

Purchaser shall submit plans and specifications to Seller with respect to the foregoing work prior to submission to the City of Portland or its lender, which plans and specifications shall be subject to Seller's approval, not to be unreasonably withheld, delayed or conditioned. Purchaser will construct the improvements to Seller's Unit in accordance with the plans and specifications. Purchaser shall conduct such work in such a manner as to minimize as much as possible any disruption to Seller's use and enjoyment of Seller's Unit, in particular at times when any banquets, weddings, or similar revenue producing events are taking place. Work shall be conducted between the hours of 7:00 AM and 5:00 PM, Monday through Friday. Purchaser shall minimize any weekend or night construction activities, and if work is required during those times, Purchaser will notify Seller and to help minimize the impact to Seller's business, Seller's approval shall

be required prior to the performance of any such work. Without limiting the general nature of the foregoing, no blasting, pile driving or similarly loud work shall be performed on Tuesdays between 10:00 am and 4:30 pm (when barge operates) or on weekends from Friday at 5:00 pm until Monday morning at 7:00 am.

c) Seller shall give Purchaser a right of first refusal to purchase Seller's Unit at Purchaser's option if at any time Seller decides to sell the Seller's Unit. Purchaser shall pay the amount set forth in any written offer made in a purchase and sale agreement Seller receives from a bona fide arms-length third party, minus a credit equal to an amount to be determined (either a dollar amount or a manner for calculating a dollar amount) by the parties in accordance with Section 5.1 of this Agreement ("Purchaser's Improvement Credit"). Without limiting the foregoing, Purchaser's Improvement Credit shall be calculated based upon the costs that Purchaser anticipates it shall pay for work on the common area infrastructure and other common area improvements to the Property, together with the cost of renovations to Seller's Retained Building including erection of new exterior wall and re-skinning of Seller's Retained Building, pro-rated based on the ownership interests allocated to Seller's Unit under the condominium documents. The dollar amount of Purchaser's Improvement Credit shall be reduced by equal 10% increments upon each anniversary of the date Purchaser's renovations to Seller's Retained Building are completed, with the manner of establishing such date to be determined by the parties in accordance with Section 5.1 of this Agreement (such date, the "Completion Date"), such that Purchaser's Improvement Credit shall be reduced to zero upon the tenth anniversary of the Completion Date. Seller and Purchaser agree to enter into a Right of First Refusal Agreement as the Closing in recordable form, containing terms and conditions reasonably satisfactory to the parties.

2. Purchase Price. The agreed purchase price for the Property is One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) (the "Purchase Price"), payable as follows:

(a)(1) Fifty Thousand Dollars (\$50,000) has been paid into escrow prior to the date hereof, and an additional Fifty Thousand Dollars (\$50,000), for a total deposit of One Hundred Thousand Dollars (\$100,000.00) shall be paid within two (2) business days of the later to occur of (i) the Additional Contingencies Expiration Date (as defined in Paragraph 3.1) or (ii) the date the Lodge Approvals (as defined in Section 3(a)) are obtained, which amount shall be held by Malone Commercial Brokers ("Escrow Agent") as earnest money deposit hereunder and shall be applied as part payment of the purchase price (the "Deposit"). Purchaser may terminate this Agreement only based upon the grounds set forth below in paragraphs 5, 5.1 and 8, and only prior to the Zoning Contingency Expiration Date (defined below). Upon a timely, valid termination, the refundable portion of the Deposit shall be promptly returned to Purchaser. Nothing herein shall be deemed to limit Purchaser's right to terminate this Agreement pursuant to paragraph 6.

(a)(2)(i) Sixty (60) days after both the Lodge Approvals and UNUM Release as set forth in Paragraph 8 have been obtained (provided this Agreement has not been terminated in accordance with its terms by either party prior thereto), Five Thousand Dollars (\$5,000.00) of the Deposit shall become non-refundable notwithstanding anything in this Agreement to the contrary.

(ii) The remainder of the Deposit shall become non-refundable upon the Zoning Contingency Expiration Date (as defined below) provided this Agreement has not been terminated in accordance with its terms by either party prior thereto, and except for Seller's default under this Agreement or Seller's inability to convey title in accordance with Paragraph 4 of this Agreement; and

(b) The balance of the Purchase Price of \$1,150,000.00 shall be paid at the time of delivery of the deed in good certified or bank check(s), or by wire transfer.

The Deposit shall be placed in a non-interest-bearing escrow account.

3. Adjustments. Real estate taxes for the then current tax period shall be apportioned as of the day of closing under this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the Purchaser at the time of delivery of the Deed.

4. Conveyance: Title.

(a) Seller shall convey the Property to Purchaser by good and sufficient quitclaim deed with covenant (the "Deed"). Title to the Property shall be good and marketable and shall be free and clear of all liens and encumbrances except (i) zoning restrictions, building laws and land use matters, provided same do not prevent or unreasonably interfere with Purchaser's intended use and development of the Property; (ii) easements and restrictions of record; (iii) current taxes and assessments; (iv) any liens for municipal betterments assessed after the date of the Closing under this Agreement; and (v) any "Defects of Title" (defined below) as accepted or waived by Purchaser pursuant to Section 4(b).

(b) Purchaser shall notify Seller of any and all defects in title which are of record, or which would otherwise make Seller unable to give title to the Property as herein stipulated, including, without limitation as provided in Section 4(a) (any of which is called herein a "Defect of Title") within forty-five (45) days of the later to occur of the receipt of the Lodge Approvals or UNUM Release. With respect to the existence of any Defect of Title that does not exist on the date of this Agreement, but which arises prior to Closing, Purchaser shall notify Seller of any such Defect of Title which arises six (6) or more days prior to closing, at least five (5) days prior to closing, and any other defects

arising thereafter, on or prior to the Closing. If Purchaser notifies Seller of any Defects in Title, then the Seller shall use diligent efforts to remove any such Defects in Title (but shall not be required to expend in excess of \$10,000 to remove any such defect which shall be exclusive of any mortgages or liens which may be discharged by the payment of money only), in which event the time for performance hereof shall be extended for a period of time reasonably sufficient to permit the Seller to perform hereunder, not to exceed sixty (60) days in any event. Seller may also elect to use funds from the Closing under this Agreement to remove any Defects in Title, which shall be sufficient to correct such defects and satisfy its obligations under this paragraph. If such Defects of Title are not corrected or remedied as provided herein within such additional 60-day period, then Purchaser shall elect, either (i) to accept title to the Property subject to the uncured Defects of Title, or (ii) to terminate this Agreement, whereupon, notwithstanding Paragraph 2(a)(2)(ii) the entire Deposit, except for the \$5,000 described in Section 2(a)(2)(i) shall be returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

5. Due Diligence Period, Materials Delivered by Seller, Inspections and Right to Terminate.

(a) Seller shall provide to Purchaser copies of such surveys and plans, and engineering reports (including environmental reports, studies or evaluations) of the Property that Seller may have in its control or possession within seven (7) business days of the Contract Date.

(b) Purchaser and others whom Purchaser may designate may, at Purchaser's option and at its sole risk and expense, retain a person or persons to examine the Property and prepare mechanical, structural, environmental or physical reports of the Property, including without limitation surveying, conducting test borings, wetlands analysis, groundwater sampling, and in general conducting all other tests, analysis and studies of the Property which Purchaser deems prudent in connection with Purchaser's intended use and development of the Property. Purchaser and such designees shall have the right to enter the Property at all reasonable times during normal business hours with at least twenty four (24) hours prior notice to Seller to conduct such tests, studies and investigations. Purchaser shall not interrupt nor unreasonably interfere with Seller's business. Purchaser shall at its own expense restore the Property to its present condition, and agrees to hold Seller harmless and indemnify Seller from any loss or liability resulting from or arising out of the entrance by Purchaser, its agents, members, managers, officers, agents, subcontractors or employees upon the Property for the purposes set forth herein or for any other purpose, including, without limitation, any of their acts or omissions while on or about the Property, and this indemnity provision shall survive the Closing hereunder, or if the Closing does not occur, the termination of this Agreement.

All such inspections shall be done by qualified inspectors chosen and paid for by Purchaser.

(c) At any time on or prior to the date that is 30 days after the Contract Date (the "Due Diligence Period Expiration Date"), Purchaser shall have the right to terminate this Agreement if Purchaser determines, in its sole discretion, that it is not satisfied with (i) the material delivered to Purchaser pursuant to subsection (a) hereof, or (ii) any of the inspections set forth in subsection (b) above, by giving written notice to Seller on or before the end of the Due Diligence Expiration Date. If Purchaser timely gives notice of such dissatisfaction, then the Deposit shall be returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement. If Purchaser fails to give such written notice on or before the end of the Due Diligence Expiration Date, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this Section.

(d) Purchaser agrees that all information made available to Purchaser (all of which is referred to herein as "Confidential Information"), will be kept confidential and will be disclosed only to professional advisors engaged in connection with the proposed transaction. Purchaser agrees that it is Purchaser's responsibility to ensure that such advisors shall agree to and shall keep such information confidential. Any provisions herein to the contrary notwithstanding, the provisions of this Section 5(d) shall survive the Closing of this Agreement or if the Closing does not take place, the termination of this Agreement.

(e) For the purposes of this Section 5, the term "Property" shall be deemed to include Seller's Retained Building.

5.1 Seller and Purchaser Additional Contingencies. Seller and Purchaser agree that to expedite the execution of this Agreement, there are certain matters upon which the parties shall work to reach agreement within sixty (60) days of the Contract Date (the "Additional Contingencies Expiration Date") and if the parties are unable to reach such agreement, then either Purchaser or Seller may terminate this Agreement by notice in writing to the other party on or before the Additional Contingencies Expiration Date.

The matters which are to be agreed upon prior to the Additional Contingencies Expiration Date are:

1. The specifications of, and the work to be performed with respect to, the code compliant exterior wall and façade listed in Section 1(b) of the Agreement as well as the specific configuration of the Seller's Retained Building, including the location of the end of Seller's Retained Building;

2. The primary components of the condominium documents described in Section 1(b) of this Agreement, including, without limitation, the composition of ownership, voting and expenses (including the allocation of and responsibility for expenses with respect to buildings, the parking lot, common areas and limited common elements);
3. Purchaser's work schedule and limits on the same to accommodate Seller's business and event schedule;
4. The Right of First Refusal requested by Purchaser, including without limitation agreement on what a "bona fide arms-length third party" means and a mechanism to resolve any dispute over whether a party is a "bona fide arms-length party"; either a dollar amount or a manner for calculating the dollar amount of Purchaser's Improvement Credit and the manner in which the Completion Date is to be established; and
5. The number of parking spaces to be allocated to Seller, or to which Seller has right to use, under the condominium documents or otherwise and their location.
6. The future retail uses of the Property.

6. Zoning and Land Use Contingency. Except to the extent expressly provided herein, including, without limitation, with respect to the non-refundable character of some of the Deposit as set forth in Section 2 of this Agreement, Purchaser's obligations under this Agreement are subject and conditioned upon the Purchaser's ability to obtain all required local, state and federal permits and approvals, including without limitation FAA approval if required (including expiration of all applicable appeal periods with no appeal having been made) to construct an additional 55,000 square feet (or more if zoning and permitting allow) of commercial space (including but not limited to office, retail (subject to agreement of the parties in accordance with Section 5.1) and medical office space) on the Property (in one or more newly constructed buildings), such approvals to be satisfactory to Purchaser in its sole discretion, within 180 days after the date the Lodge Approvals have been obtained (the "Zoning Contingency Expiration Date"). Such approvals shall include a change in zoning classification to an office park or "O-P" classification. All costs associated with permitting and approvals to be at Purchaser's sole expense. Seller agrees to cooperate and participate in the approval process by attending meetings or causing its legal counsel or other representatives to attend such meetings as shall be reasonably requested by Purchaser, at Seller's reasonable cost and expense (Seller recognizing that all such permits and approvals are to Seller's benefit as well). Seller shall not be required to incur any costs other than those associated with attending such meetings. Purchaser agrees to provide Seller with copies of its development plans and any concept plans, as they may be amended or revised during the permitting process, for Seller's review and approval, such approval not to be unreasonably withheld, delayed or conditioned. Seller's approval to any such development plans shall be deemed granted if Seller has not responded to a request for approval within twenty (20) business days from the date of Purchaser's submission to

Seller. In the event this permit and approval condition is not satisfied by the Zoning Contingency Expiration Date, and provided Purchaser is using diligent good faith efforts to satisfy same, Purchaser shall have the right to extend that deadline by up to an additional ninety (90) days by written notice of extension to Seller, in which event the Zoning Contingency Expiration Date shall be extended to include such 90 day period. If Purchaser for any reason has not obtained all required local, state and federal permits and approvals, including, without limitation site plan approval, and expiration of all applicable appeal periods with no appeal having been made, by the Zoning Contingency Expiration Date, then Purchaser may terminate this Agreement by written notice to Seller within such period (as it may be extended), whereupon the refundable portion of the Deposit shall be returned to Purchaser and this Agreement shall be of no further force and effect.

7. Purchaser's Financial Capacity. Purchaser shall provide to Seller by on or before fifteen (15) days after the Contract Date with documentation reasonably satisfactory to Seller regarding Purchaser's financial capability to pay the Purchase Price and fund the cost of construction as contemplated in this Agreement. If Seller is not reasonably satisfied with Purchaser's evidence of financial capability, then Seller shall have the right to terminate this Agreement, whereupon the Deposit shall be returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

8. Seller's Authority to Convey; Release of Right of First Refusal.

(a). Seller's obligations under this Agreement are subject and conditioned upon Seller (i) obtaining the consent and approval of the transaction described herein from the members of its Lodge (the "Members' Approval"), and (ii) the Elks Club's Grand Lodge ("the Grand Lodge Approval") (collectively the "Lodge Approvals"). Seller agrees to seek to obtain the Members' Approval within sixty (60) days from the Contract Date and agrees to seek to obtain Grand Lodge Approval within ninety (90) days from Contract Date, provided however that Seller shall have the option by notice to Purchaser to extend each of the Lodge Approval deadlines by up to thirty (30) additional days if it determines such extension to be necessary. If both Lodge Approvals are not obtained within ninety (90) days from the Contract Date (or within such longer period as Seller shall elect as set forth above), Seller and Purchaser shall have the right at any time thereafter to terminate this Agreement, whereupon the Deposit shall be immediately returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

(b). Seller's obligations under this Agreement are also subject to and conditioned upon Seller obtaining from UNUM a release of its Right of First Refusal (the "UNUM

Release") within sixty (60) days from the Contract Date. If such Right of First Refusal is not obtained within such 60 day period, Seller and Purchaser shall have the right at any time thereafter to terminate this Agreement, whereupon the Deposit shall be immediately returned to Purchase and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

(c). Intentionally Omitted.

9. Time for Performance, Delivery of Deed. The transfer of title (the "Closing") shall take place on a date that is thirty (30) days after the Zoning Contingency Expiration Date at ten a.m. at the offices of Murray, Plumb & Murray or at such other place as shall be mutually agreed to by Purchaser and Seller, unless extended as provided herein. TIME IS OF THE ESSENCE.

10. Use of Purchase Money to Clear Title. To enable the Seller to make conveyance as herein provided, the Seller may at the time of delivery of the Deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of the Deed.

11. Possession and Condition of Property. Full possession of the Property (subject to Seller's retained ownership and rights set forth herein, including, without limitation, under any condominium documents) free of all tenants and occupants (except for Seller and its members, employees, affiliates and the like) is to be delivered at Closing.

12. Representations

(a) Seller represents, covenants and warrants to and agrees with Purchaser as follows:

(1) Seller is the current owner of the Property, and except for the approvals and releases that must be obtained as provided herein (including, without limitation, member approval) and to which its obligations hereunder are subject, has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with, or result in breach of any regulation, order, judgment, injunction or decree of any court or governmental authority or any agreement or instrument to which Seller is a party or by which it is bound.

(2) There are no tenancies, occupancies or licenses affecting the Property, except as set forth explicitly in this Agreement.

(3) Intentionally Omitted.

(4) No work has been done on the Property which could give rise to any liens on the Property, except those for which Seller intends to pay in the ordinary course of business and no contracts are outstanding or in effect with respect to the doing of any such work except those for which Seller intends to pay in the ordinary course of business.

(5) To the best of Seller's knowledge there is no notice, suit, order, decree, claim, writ, injunction, or judgment relating to material violations of any laws, ordinances, codes, regulations or other requirements with respect to the Property (or any portion thereof) in, of or by any court or governmental authority having jurisdiction.

(6) To the best of Seller's knowledge there is no condemnation proceeding pending or threatened against any portion of the Property.

(7) During the period of Seller's ownership and to the best of Seller's knowledge prior to its ownership of the Property, there has been no leakage, seepage or other release or discharge of any hazardous waste or matter, toxic substance, pesticide or petroleum product or derivative on the Property. The Property has not been used during Seller's ownership, or to Seller's knowledge during any prior period of ownership, for the storage, collection or depositing, whether intentional or unintentional, of any hazardous waste, toxic substance, pesticide or petroleum product or derivative, except for an underground storage tank or to the extent oil or gas products have been stored for heating, cooking or other use by Seller. There are no underground storage tanks located at the Property that have not been removed or filled and Seller is not aware of any underground storage tanks at the Property placed there by Seller or anyone else that have not been removed or filled. If the existing underground storage tank(s) must be removed for any reason, Purchaser shall remove the tank at its cost and expense, but the cost of such removal shall be included in Purchaser's Improvement Credit.

(b) Purchaser represents, covenants and warrants to and agrees with Seller that Purchaser has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Purchaser of its obligations hereunder (i) have been duly authorized by all requisite organizational action; and (ii) will not conflict with, or result in a breach of, any of the terms, covenants and provisions of the by-laws or articles of

organization of Purchaser or any law or any regulation, order, judgment, writ, injunction or decree of any court or governmental authority, or any agreement or instrument to which Purchaser is a party or by which it is bound.

13. Affirmative Covenants of Seller Seller agrees, pending closing, that:

(a) Unless disputed by Seller, Seller shall pay, when due, all taxes and assessments of every type or nature levied or assessed against the Property of which Seller has actual notice, and unless disputed by Seller, any claim, lien or encumbrance of which Seller has actual notice against the Property that might materially affect Seller's ability to fulfill its obligations hereunder. To the extent Seller disputes such a tax, assessment, claim, lien or encumbrance, Seller agrees to take reasonable steps to contest the same.

(b) Seller (i) shall not commit or suffer waste and (ii) shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property and will not suffer or permit any violation thereof.

14. Broker's Commissions If this transaction closes, Seller shall be responsible for the payment of a brokerage commission to Malone Commercial Brokers. Seller shall have no obligation to make any payment to the The Bonlos Company which Purchaser agrees shall obtain any commission which it may claim solely from Malone Commercial Brokers. If either Seller or Purchaser have employed or engaged any other broker or agent in connection with this transaction or have incurred any other obligation, contingent or otherwise, for a broker's or finder's fee with respect to the matters provided for in this Agreement, the party incurring any such obligation shall be solely responsible therefor. Each party agrees to indemnify and hold the other party harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys and paralegal fees, resulting from a violation of the representations, warranties and covenants set forth in this Section and this agreement to indemnify and hold harmless shall survive the Closing hereunder, or if the Closing does not occur, the termination of this Agreement.

15. Default

(a) If Purchaser fails to perform its obligations as set forth in this Agreement, then Seller as its sole remedy at law or in equity shall be entitled to retain the Deposit as liquidated damages as a result of such failure to perform and this Agreement shall be deemed terminated. Purchaser acknowledges that Seller's damages because of Purchaser's failure to perform are difficult to ascertain and agree that the amount of the Deposit represents a reasonable estimate of the minimum amount of Seller's damages as a result thereof.

(b) If Seller fails to perform its obligations as set forth in this Agreement, Purchaser shall, in addition to its remedies in equity to which it is otherwise limited (including the right to specific performance), be entitled to receive the Deposit together with reimbursement for expenses incurred by Purchaser in obtaining the reports referred to in Paragraph 5 which shall not exceed \$5,000. Except for such reimbursement for expenses which shall not exceed \$5,000, Purchaser shall not be entitled to any damages of any kind whatsoever.

(c) In the event either Purchaser or Seller is alleged to have failed to perform its obligations hereunder, the party so claiming shall give notice in writing to the allegedly breaching party and the party shall have ten (10) days following the receipt of such notice in which to cure the alleged breach.

16. Purchaser's Conditions. The obligation of Purchaser to close under this Agreement is subject to the following conditions precedent:

(a) The representations and warranties of Seller shall be materially true in all respects, and Seller shall so certify, unless an event has occurred which makes such representation untrue, in which case Seller shall give notice of the same to Purchaser prior to closing.

(b) Seller shall have performed and complied with all the terms and conditions required by this Agreement to be performed and complied with by Seller at or prior to Closing.

17. Notice. Whenever notice is given or required to be given by either of the parties hereto to the other, it shall be deemed to have been given if in writing and mailed by certified or registered mail, return receipt requested, postage prepaid, or hand delivered, addressed to the parties at the address set forth in the first paragraph above or to such other address(es) as either party shall have last designated by like notice in writing. Copies of all notices to Purchaser shall be sent to Murray, Plumb & Murray, 75 Pearl Street, Portland, Maine 04101, Attention: Drew A. Anderson, Esq. Copies of all notices to Seller shall be sent to Exalted Ruler Timothy Smith, Elk's Lodge, Portland Lodge 188, 1945 Congress Street, Portland, Maine 04103, with a copy to counsel, William H. Leete, Jr., Esq., Leete & Lemieux, P.A., P.O. Box 7740, Portland, Maine 04112. All notices shall be effective upon hand delivery, receipt or two (2) business days after date of mailing, whichever first occurs. The respective attorneys for the parties are authorized to give and receive notices with the same effect as if given or received by the parties hereto.

18. Further Assurances. The parties agree that up to and after the date of Closing, they shall do such things and execute, acknowledge and deliver any and all

additional instruments, documents and materials as either party may reasonably request to fully effectuate the purposes of this Agreement.

19. Construction of Agreement. This instrument, executed in duplicate, is to be construed as a Maine contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by both the Seller and Purchaser. If two or more persons are named herein as Purchaser and Seller their obligations hereunder shall be joint and several. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it. This Agreement may not be recorded by Purchaser, and any such recording shall be deemed to automatically terminate this Agreement.

20. Risk of Loss. The risk of loss shall remain on Seller at all times until closing except for loss or damage to the extent either caused by or arising from the act or omission of Purchaser, its members, managers, officers, agents, subcontractors or employees.

21. Miscellaneous

(a) Seller and Purchaser shall each pay their portion of the Maine State Transfer Tax.

(b) Seller hereby certifies that Seller is a resident of the State of Maine. Seller hereby acknowledges Purchaser's requirement to withhold 2½% of the purchase price pursuant to 36 M.R.S.A. §5250-A if Seller is not a resident of the State of Maine, unless Seller presents to Purchaser at closing a Certificate of Exemption or Certificate of Reduction from the State of Maine Bureau of Taxation.

(c) By signing this Contract, Purchaser acknowledges that Purchaser has been notified of the State of Maine's withholding tax requirement pursuant to 36 M.R.S.A. §5250-A.

(d) Seller hereby certifies that Seller is a resident of the United States of America and is not subject to the 10% withholding tax imposed upon "foreign persons" by Section 1445(a) of the Internal Revenue Code of 1954.

(e) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and assigns. Purchaser shall be entitled to assign its right, title and interest herein to any limited liability company, partnership or other entity, whether now existing or hereafter

formed, controlled by, controlling or under common control with Purchaser or its principals. Any assignee shall expressly assume all of Purchaser's duties, obligations and liabilities hereunder. No such assignment shall release the named Purchaser from its obligations hereunder.

(f) It is understood and agreed that all understandings, agreements, warranties or representations, either oral or in writing, including without limitation any letters of intent or prior agreements, heretofore between the parties hereto are merged in and superseded by this Agreement, which document alone fully and completely expresses the parties' agreement with respect to the transactions covered hereby. This Agreement may not be modified in any manner except by a subsequent instrument in writing signed by Seller and Purchaser.

(g) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall constitute but one and the same instrument.

(h) If the date for performance of any obligation hereunder, or the giving of any notice hereunder, falls on a Saturday, Sunday or a legal holiday in the State of Maine, the period for such performance, or the giving of any notice hereunder, shall be extended to the next business day.

(i) This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Maine.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date set forth below their respective signatures, to be effective as of the Contract Date.

SELLER:

Portland Lodge No. 133, of the Benevolent
and Protective Order of Elks of the United
States of America

Dated: _____

By: _____

PURCHASER:

Northland Enterprises, LLC

Dated: June 11th 2014

By: _____

Dr. Michael Bedeas
Dr. Michael Bedeas

ACKNOWLEDGEMENT

The undersigned acknowledges receipt of the \$100,000.00 Deposit and a copy of this Agreement and agrees to hold, account for and deliver the Deposit in accordance with the terms of this Agreement.

Mahone Commercial Brokers

By: _____

SEVENTH DAY Purchase and Sale Agreement title property, Mahone

File: 13151

PINKHAM & GREER
CIVIL ENGINEERS

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

April 13, 2015

Att. 4

Ms. Helen Donaldson, Planner-Planning & Urban Development
City of Portland
389 Congress Street
Portland, ME 04101

RE: REQUEST FOR ZONE CHANGE, 1945 CONGRESS STREET
NORTHLAND DEVELOPMENT

Dear Helen,

Based on the input from the Planning staff and Board as well as from the public, we have modified the site design of 1945 Congress Street. The current re-development plans proposes the following:

- The Elks Club building will remain on site, and their building will be reduced from 23,204 sq/ ft. to 13,646 sq. ft. The developer will make improvements to the exterior of the building and Elks Club officials have stated they intend to make substantive improvements to the interior of the building.
- The medical building of 15,000 sq. ft. is included as a separate stand-alone building placed along Congress Street.
- The third building on the campus will be a two-story building with a 25,000 sq. ft. footprint and 10,000 sq. ft. on the 2nd floor. This building will be utilized for general office.
- Attached is a revised Zone Map and Text Application.

The two new buildings relate to each other physically. The renovated Elks club is set back from the street and is the less dominate architecture of the campus. The campus is tied together with its master plan and circulation pattern.

Our request to the City has two components:

1. We request the 7.01 acre property be rezoned from Residential (R2) to Office Park (OP); the same zone that abuts 2 sides of the subject property to include the adjacent Unum site.
2. We request that "places of assembly" be added to the OP Zone as a *conditional* use. This is consistent with what we believe the Planning Board has recommended.

As part of the submission, please find attached a letter from our attorney, Mr. John Bannon of Murray Plumb & Murray which addresses why the proposed project and the request for zone change of the subject property to O-P and a zoning text amendment to allow *places of assembly* to be a conditional use is consistent with the intent of the City of Portland Comprehensive Plan.

Ms. Helen Donaldson
April 13, 2015
Page 2 of 2
File: 13151

PINKHAM & GREER
CIVIL ENGINEERS

Attached is a revised Illustrative Site Plan prepared by Tony Muench, RLA Landscape Architect. The entrance to the site and the parking has been revised in an attempt to create more of a campus feeling. In addition, buffering between the subject site and the adjacent residential neighbors has been increased. See attached photographs of the current screen and what a proposed screen would look like. It will create a full screen when mature.

David Lloyd AIA, of Archetype, has done further work on the architectural design which illustrate street views of the 3 buildings.

Considerable thought and has gone into the amount of and the layout of the parking areas. We have taken into consideration the future needs of our building owners and tenants, while attempting to keep the parking to the smallest practical amount. The current site has 205 lined parking spaces and a gravel parking area that can accommodate an additional 45 parking spaces (a total of 250 current parking spaces). The current plan is to increase the total amount of building square footage on the site by 40,442 SF and increase the number of parking spaces to a total of 282 parking spaces. This is an increase of 32 new parking spaces, or less than 1 new parking space per 1,000 SF of new building SF. We believe this is a very reasonable increase. Based on the condominium plan, and resulting 3 distinct condo units, we feel that the city's initial parking & traffic impact study should be revised.

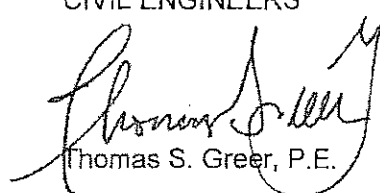
We have also added a bus shelter at the Congress Street stop. This should encourage the use of public transportation.

We believe the current re-development plan for the Elks site addresses buffering concerns of abutter's; has attempted to give the site a more campus like feel and has provided for adequate parking for the owners and tenants while addressing the Planning Board request to reduce parking spaces, from the original proposal of 305 parking spaces. We believe with Attorney Bannon's letter we have addressed the fact that this project is consistent with the City's Comprehensive Plan.

Thank you in advance for your consideration.

Sincerely,

PINKHAM & GREER
CIVIL ENGINEERS



Thomas S. Greer, P.E.

cc: File

Enclosures

TSG/rjs

PROJECT NAME: 1945 Congress Street

PROPOSED DEVELOPMENT ADDRESS:

1945 Congress Street

PROJECT DESCRIPTION:

The project renovates the Elks building and adds a 15,000 sq. ft medical building
and a 35,300 sq. ft. general office building.

CHART/BLOCK/LOT: 216-A-6 / 217-A-1

CONTACT INFORMATION:

Applicant – must be owner, Lessee or Buyer Name: Josh Benthien & Rex Bell Business Name, if applicable: Northland Enterprises, LLC Address: 17 South Street City/State : Portland, ME Zip Code: 04101	Applicant Contact Information Work # 207.780.0223 Home# Cell # Fax# e-mail: josh@northlandus.com rex@northlandus.com
Owner – (if different from Applicant) Name: Portland Lodge #188 BPOE of USA Address: 1945 Congress Street City/State : Portland, ME Zip Code: 04102	Owner Contact Information Work # Home# Cell # Fax# e-mail:
Agent/ Representative Pinkham & Greer, Civil Engineers Name: Thomas S. Greer, P.E. Address: 28 Vannah Avenue City/State : Portland, ME Zip Code: 04103	Agent/Representative Contact information Work # 207.781.5242 Cell # e-mail: tgreer@pinkhamandgreer.com
Billing Information Josh Benthien & Rex Bell Name: Northland Enterprises, LLC Address: 17 South Street City/State : Portland, ME Zip Code: 04101	Billing Information Work # 207.780.0223 Cell # Fax# e-mail: josh@northlandus.com rex@northlandus.com

Engineer Pinkham & Greer Civil Engineers Name: Thomas S. Greer, P.E. Address: 28 Vannah Avenue City/State : Portland, ME Zip Code: 04103	Engineer Contact Information Work # 207.781.5242 Cell # Fax# 207.781.4245 e-mail: tgreer@pinkhamandgreer.com
Surveyor Maine Survey Consultants, Inc Name: Del Maxfield Address: PO Box 485 City/State : Harrison, ME Zip Code: 04040	Surveyor Contact Information Work # 207.583.6159 Cell # Fax# e-mail: dmaxfield@mainesurveyconsultants.com
Architect Archetype Architects Name: David Lloyd Address: 48 Union Wharf City/State : Portland, ME Zip Code: 04101	Architect Contact Information Work # 207.772.6022 Cell # Fax# e-mail: llloyd@archetypepa.com
Attorney Murray, Plumb & Murry Name: Drew Anderson Address: PO Box 9785 City/State : Portland, ME Zip Code: 04104	Attorney Contact Information Work # 207.773.5651 Cell # Fax# e-mail: DAA@mpmlaw.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

We have a Purchase and Sales Agreement.

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property.
(For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use.
(Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Existing Use: Describe the existing use of the subject property:

The existing property is used by the Elks as a place of assembly.

Current Zoning Designation(s): Residential 2

Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

The existing Elks use will continue. We are adding a general office use and
a medical office use.

Site Plan: On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

APPLICATION FEES:

Check all reviews that apply. (Payment may be made by Credit Card, Cash or Check payable to the City of Portland.)

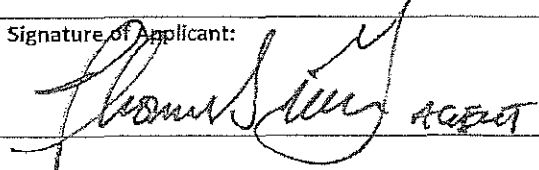
Zoning Map Amendment ☒ \$2,000.00 (from <u>R2</u> zone to <u>OP</u> zone) Zoning Text Amendment ☒ \$2,000.00 (to Section 14-_____) 230.11.1 Combination Zoning Text Amendment and Zoning Map Amendment ☒ \$3,000.00 Conditional or Contract Zone ____ \$3,000.00 (A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)	The City invoices separately for the following: • Notices (\$.75 each) • Legal Ad (% of total Ad) • Planning Review (\$40.00 hour) • Legal Review (\$75.00 hour) • Third party review fees are assessed separately. Any outside reviews or analysis requested from the Applicant as part of the development review, are the responsibility of the Applicant and are separate from any application or invoice fees.
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APPLICATION SUBMISSION:

1. All plans and written application materials must be submitted electronically on a CD or thumb drive with each plan submitted as separate files, with individual file names which can be found on the Electronic Plan and Document Submittal page of the City's website at <http://me-portland.civicplus.com/764/Electronic-Plan-and-Document-Submittal>
2. The submission shall include the following materials:
 - a. One (1) paper set of the zoning amendment application, concept plan and written narrative.
 - b. Contract and conditional rezoning applications must include site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations and compatible with the surrounding neighborhood.

APPLICANT SIGNATURE:

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of Applicant: 	Date: 4/13/15
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April 16, 2015

Helen Donaldson, Planner
Department of Planning and Urban Development
City of Portland
389 Congress Street
Portland, Maine 04101

***Re: Application of Northland Enterprises, LLC for Zoning
Map Amendment and Zoning Text Amendment for 1945
Congress Street / Consistency with the Comprehensive
Plan***

Dear Nell:

This office represents Northland Enterprises, LLC (hereafter "Northland"), which has applied to the Planning Board for review and approval of a zoning map amendment for the Elks Club property located at 1945 Congress Street (hereafter the "Property") as well as a zoning text amendment to LUO § 14-230.11.1 to add "places of assembly" as a conditional use within the O-P Office Park District. I am writing today to explain why amending the official zoning map to change the Property's zoning designation from the R-2 Residential District to the O-P Office Park District, and adding places of assembly as conditional uses in the O-P Office Park District, would be consistent with the City's Comprehensive Plan.

I. ZONING MAP AMENDMENT

A. The Meaning of "Consistency with the Comprehensive Plan."

In *Rommel v. City of Portland*, 2014 ME 114, ¶ 13-14, 102 A.3d 1168, 1172, the Maine Supreme Court recently summarized the City's broad discretion to determine when a proposed rezoning is consistent with the Comprehensive Plan. It is unnecessary that a proposed zoning map amendment comply strictly with every portion of the Plan. Rather, when a court reviews the City's decision to rezone a property, the scope of the court's inquiry is limited to determining whether the City Council could have, from the evidence before it, found that the rezoning was in "*basic harmony*" with the Comprehensive Plan:

Celebrating over 40 years and thousands of valued relationships

A zoning or rezoning action need not perfectly fulfill the goals of a comprehensive plan; it may be in basic harmony with the plan so long as it “strikes a reasonable balance among the municipality’s various zoning goals” or “overlap[s] considerably” with the plan.

Id. In addition, because the Comprehensive Plan consists of numerous different land use policies, adopted at different times, that sometimes conflict, whether a proposed rezoning is “consistent” with the Comprehensive Plan can only be determined by examining the Plan as a whole. *Id.* “A municipality may conclude that a rezoning action is consistent with a comprehensive plan when it is in harmony with *some* provisions of the plan, even if the action appears *inconsistent* with *other* provisions of the plan.” *Id.* (emphasis added).

B. The Property and Its Context

The Property is an approximately 7-acre parcel that has been the site of Elks Lodge #188 (hereafter the “Lodge”) since the late 1960’s. The Lodge is a “place of assembly” as defined in LUO § 14-47. The zoning districts in the Property’s immediate vicinity are shown in Figure 1 below:

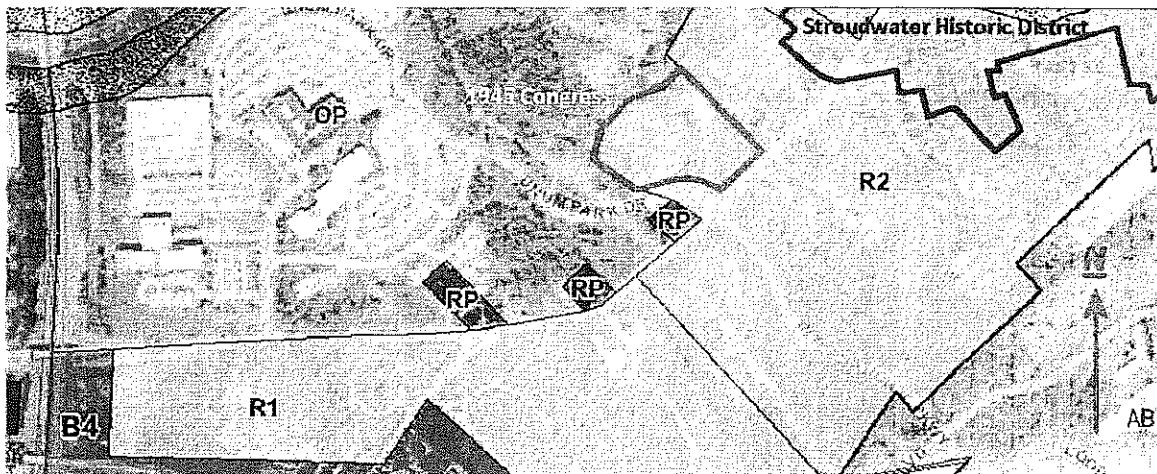


Figure 1
Zoning Districts in the Vicinity of the Property¹

¹ Figure 1 appears as “Figure 2” in the Planning Board Memorandum by Nell Donaldson, Planner, dated January 20, 2014 (hereafter the “Donaldson Memorandum”).

The Property is bounded on the northwest and west by the existing OP District occupied by Unum. Although a small portion of the westerly boundary abuts an area within the R-2 District, that area is consumed by the entrance and exit of Unum Park Drive, which also serves as the sole access to the Property. Likewise, although the Property's southeasterly boundary abuts a portion of the R-2 District, the closest portion of that R-2 District is occupied by the right-of-way of outer Congress Street. Only on the northeast is the Property directly abutted by land within the R-2 District that is substantially devoted to residential purposes.

Some of the actual land uses in the Property's immediate vicinity are shown in Figure 2 below:

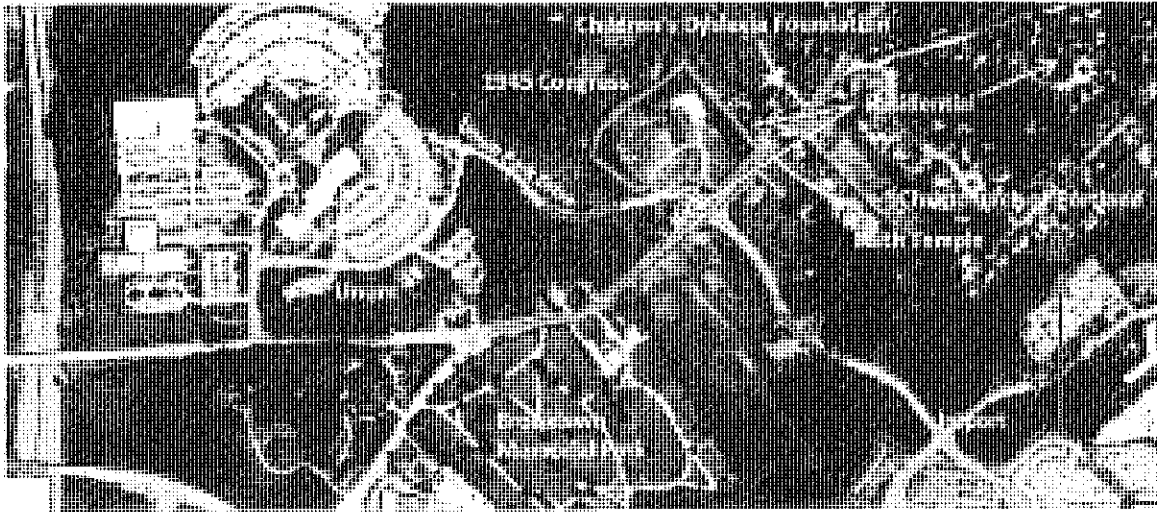


Figure 2
Actual Land Uses in the Vicinity of the Property²

It is apparent from Figure 2 that a majority of the land area in the Property's immediate vicinity is put to non-residential uses. Directly opposite the Property on the southeast is a large tract of R-2 District land which is owned by the Jetport and bisected by Jetport Access Road/International Parkway. Much of the R-1 District to the southwest side of the Jetport land is occupied by Brooklawn Memorial Park. Although a significant amount of residentially-used

² Figure 2 appears as "Figure 1" in the Donaldson Memorandum. Note that, although the lot just south of the entrance/exit from the Unum campus is indicated in Figure 2 above as being a residential *structure*, is – as shown in Figure 1 on the previous page of this letter – *zoned* within a Residence-Professional (RP) District.

R-2 District land can be found to the north and east of the Property, even that area is punctuated by non-residential establishments permitted as a conditional use in the R-2 District: for example, The Children's Dyslexia Foundation, Christ Church of Portland, and Faith Temple.

Northland understands and respects the desires expressed by local residents that the residential portions of the Stroudwater neighborhood be protected as much as is reasonable. However, it is unrealistic to expect that the Property itself can feasibly be devoted to residential uses. The Property is now, and for half a century has been, the site of a large Lodge building and a correspondingly expansive, paved parking lot. Significantly, Northland's proposed redevelopment of the Property would require no significant increase in the number of parking spaces on the Property. As currently laid out, the Property includes 204 marked parking spaces plus a gravel parking area large enough to accommodate 45-50 additional parking spaces. The most recent Project design calls for a total of 256 parking spaces plus 26 handicapped and compact size parking spaces.

The area surrounding the Property has evolved in a manner that is predominantly commercial and institutional rather than residential. Because of, among other things, (a) its location between the Unum campus, Faith Temple, and the rapidly-expanding International Jetport; (b) its placement directly opposite the intersection of Congress Street and the Jetport Access Road/International Parkway; and (c) the fact that its only access will for the indefinite future be shared by a multitude of Unum employees and customers, the Property can never be developed as a desirable residential neighborhood. The Property's future has been determined, not by the aims of the applicants, but by the course of adjacent development.

C. To Rezone the Property from R-2 to O-P is Consistent With the Comprehensive Plan

To rezone the Property from R-2 to O-P is in basic harmony with the Comprehensive Plan because it would promote the goals of:

1. Strengthening and diversifying the City's economy

"Portland is the largest city in Maine and is the economic and service center for the region. Portland continues to attract people of workforce age due to diverse job opportunities (particularly in business and

technology), quality employment, and a stable economy."³ (emphasis added)

*"Portland's future will...[c]apitalize on Portland's economic assets and develop a strong economy based upon traditional industries, a strong retail and office center, and emergent opportunities in industry, business, and coastal commerce."*⁴ (emphasis added)

"[The City should:]

- Accommodate the City's commercial activity within a range of functionally and physically defined commercial centers.*
- Promote preservation and revitalization of its existing commercial centers and maintain a scale within them that is compatible and integrated with other land use.*
- Encourage the development of new commercial enterprises within the existing neighborhood centers and CBD.... [and]*
- Promote new office park development of high quality in outlying areas for development seeking a suburban-style setting.*⁵ (emphasis added)

³ II. PORTLAND'S COMMUNITY VISION FOR THE FUTURE / Distinctive Features to Value, Preserve and Build Upon And Future Directions for Portland / A COMMUNITY VISION FOR PORTLAND / DISTINCTIVE FEATURES OF PORTLAND TO VALUE, PRESERVE & BUILD UPON / I. A City That Provides For People

(unnumbered page near beginning of the Comprehensive Plan) [Throughout this analysis citations to the Comprehensive Plan will be made with reference both to the specific section/subsection of the Plan as well as the page number, where available]

⁴ II. PORTLAND'S COMMUNITY VISION FOR THE FUTURE / Distinctive Features to Value, Preserve and Build Upon And Future Directions for Portland / A COMMUNITY VISION FOR PORTLAND / FUTURE DIRECTIONS FOR PORTLAND / I. Build a Vibrant Small City

(unnumbered page near beginning of the Comprehensive Plan)

⁵ VII. COMMUNITY COMMERCIAL POLICES AND LAND USE PLAN - September 1987-1988 / Development Goals

*"[The City should:] [p]rovide for economic growth and development in the City as set forth in the Comprehensive Plan."*⁶ (emphasis added)

"[The City should:]

Strengthen and Diversify the Economic Base

- create a variety of job opportunities for the full spectrum of the labor pool which:
 - o are appropriate to our current and potential skills
 - o provide good pay and benefits - a living wage
 - o are rewarding/satisfying ... [and]
 - o "strengthen and diversify the tax base.

Improve the Quality of Life

- recognize that jobs and prosperity improve the standard of living for residents ...
- reduce tax burden on residential property owners.⁷(emphasis added)

(Comprehensive Plan, page 28)

⁶ STATE GOAL B: To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development;

I. PORTLAND CAPITAL IMPROVEMENT PLAN — 2001-2010

Capital Improvement Goals

(Comprehensive Plan, page 29)

"[Portland should:]

Target Specific Opportunities

- *capitalize on location/telecommunications/transportation infrastructure, port, airport, highways, etc."*⁸

"A positive trend of late has been the development of offices above retail uses which has helped to enhance the character of commercial development. An office's image is often very important to the business person and more effort toward property maintenance and site planning is evident. Such efforts can send a positive message to residential property owners that commercial and residential uses can coexist."⁹ (emphasis added)

"Coupled with the existing centers, office parks on carefully selected sites can help improve the City's economic base by offering developers a choice of development opportunities."¹⁰(emphasis added)

⁷ STATE GOAL C. To promote an economic climate which increases job opportunities and overall economic well-being;

II. PORTLAND INDUSTRY AND COMMERCE PLAN – 1994

(Comprehensive Plan, page 37)

⁸ STATE GOAL C. To promote an economic climate which increases job opportunities and overall economic well-being;

II. PORTLAND INDUSTRY AND COMMERCE PLAN – 1994

(Comprehensive Plan, page 38)

⁹ *Community Commercial Policies and Land Use Plan* (1988), page 14

¹⁰ *Id.*

2. Acknowledge that Stroudwater has evolved differently from other neighborhoods

B. Off-Peninsula - Outer Ring Neighborhoods — Existing Land Uses

The outer ring neighborhoods grew significantly with residential development, but the percentage of land devoted to residential uses is less than found in the inner neighborhoods. It is important to note that vacant land accounts for a larger share of each neighborhood's total land area. Over 77% of North Deering is developed in residential use followed by Riverton with 71%, Nason's Corner with 63% and Riverside with 44%. Stroudwater has only 17.5% of its land area developed in residential use. ...Vacant land in the outer ring neighborhoods has declined to less than half of its 1978 share. Stroudwater has the largest percentage of vacant land (24%) and Riverton has the least with 2%.

Commercial uses have remained relatively stable in the outer ring neighborhoods, except for Stroudwater where commercial uses grew by 9% in 1989 and 23% in 1999. A new airport access road and a new Maine Turnpike Interchange have spurred new business development within Stroudwater....The industrial uses in Nason's Corner, North Deering, and Riverton remained constant or declined slightly during the 20-year time frame. Industrial uses expanded in Riverside and Stroudwater to 21% and 10.4% of the total neighborhood land area, respectively. Tax-exempt property declined as a percentage of the total land area in all of these neighborhoods, except Stroudwater.¹¹ (emphasis added)

In sum, the Comprehensive Plan confirms that less than 20% of the Stroudwater neighborhood is devoted to residential uses; that nearly a quarter of the total land mass is vacant; that Stroudwater has experienced a higher rate of commercial development than any other outer-ring-neighborhood, and ranks second only to Riverside in industrial development; and that Stroudwater is the only such neighborhood in which the percentage of the total land mass devoted

¹¹ EXISTING LAND USE / Inventory and Analysis / EXISTING LAND USE AND DEVELOPABLE LAND / ... III. EXISTING LAND USE BY NEIGHBORHOODS

to tax-exempt uses has increased. A rezoning of the Property from R-2 to O-P is, relative to parcels in other outer-ring neighborhoods, particularly appropriate.¹²

3. Facilitate integration of the City's land use patterns with the development of a modern, multi-modal transportation system

Although traffic-management considerations might not initially seem to interact with land use policy, the Comprehensive Plan sees them as being inextricably linked:

Issues of transportation cannot be resolved unless the use of land is organized in a way that allows them to be resolved. It's been said that the best way to solve problems of congestion and pollution caused by autos is to build cities that don't need them. That is no longer realistic. But the Plan recognizes that there must be fundamental change in land use regulations: from a code of land use patterns that leave no choice but the single-occupant auto to a code of patterns that give other modes a fighting chance. The new patterns must phase away from separating the elements that make up a community (like homes, schools, churches, and small businesses) and allow a mixing and proximity of such uses where it seems natural to do so.¹³ (emphasis in original)

In other words, a philosophy of maintaining strict separation between residential and business uses within the City is not only outdated, but undesirable.

The Property is located on one of the most heavily-traveled bus routes within the Greater Portland Transit District.¹⁴ The City has already identified the

¹² Some neighbors have critiqued the proposed rezoning because it would eliminate the *potential* for the Property to be converted from use as a place of assembly to a residential use. It is true that one policy of the Comprehensive Plan is to "establish a standard of 'no net loss of housing' for all proposed development." L. Housing: Sustaining Portland's Future –November 18, 2002 /Goal/ Policies (Comprehensive Plan, page 45). However, that policy does not advocate that land, such as the Property, which has never been put to residential purposes, be converted to housing. There can be no "net loss" of housing that has never existed. As noted elsewhere in this analysis, the Comprehensive Plan recognizes that factors such as proximity to the Jetport and to busy arterial and collector streets renders residential development infeasible on the Property.

¹³ *A Time of Change: Portland Transportation Plan* (1993), page 2

¹⁴ *Id.* at page 27.

Outer Congress Street area, which includes the Property, as the location for a pilot project for “a package of measures for ‘travel demand management,’” including “strong intermodal design at the Jetport.”¹⁵ Stroudwater/Libbytown has been identified as one of the City’s eight “transportation districts.”¹⁶ The Comprehensive Plan advocates that transportation districts serve as centers for the integration of the diverse land uses needed to serve the needs of the residents of those districts:

The City should promote a land use pattern that allows for opportunities for people to work and meet a larger share of their everyday needs within or adjacent to their transportation district.

The City should continue to encourage businesses to locate in established employment centers, including Downtown, that are served by public transportation or that have the critical mass necessary to support alternative modes of transportation.

*The City should allow development along transit corridors and near community commercial centers to evolve at a density sufficient to make public transit, walking, and biking viable options.*¹⁷(emphasis added)

*[The City should] [e]ncourage neighborhood business centers throughout the city to reduce dependence on the car and to make neighborhood life without a car more practical.*¹⁸ (emphasis added)

¹⁵ *Id.* at pages 9-10, 70.

¹⁶ *Id.* at page 23

¹⁷ *Id.* at page 24

¹⁸ -- PORTLAND’S GOALS AND POLICIES FOR THE FUTURE

STATE GOAL A: To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl;...

...I. HOUSING: SUSTAINING PORTLAND'S FUTURE — November 18, 2002

...Policies

"[Portland should] [c]reate local multi-modal centers for the City's commuters and mass transit passengers, building on the presence of existing centers of activity, connected with each other and with regional transport centers."¹⁹ (emphasis added)

"The City should continue to develop an interconnected and seamless transportation system encompassing both local and regional transportation centers."²⁰

4. Achieve the City's original goals for creating the O-P Zone in general, and near the Jetport in particular.

The City created the O-P Zone in 1988 because of concern that the existing Residence-Professional (RP) District was being used to develop office complexes that were too large to serve as a transition between residential and business uses:

Historically there has been one zone (R-P) in the City which permits, almost exclusively, professional offices and residential uses. Originally, the R-P Zone developments in the City were small-scale, and met the intent of the zone as a transitional or buffer district. Recently, however, approximately half the developments on the sites zoned to R-P are bigger in size (two acres or more) and scale than what was originally intended for the zone.²¹ (emphasis added)

(Comprehensive Plan, page 22)

¹⁹ -- III. A TIME OF CHANGE: PORTLAND TRANSPORTATION PLAN - July 1993 / Transportation Policies

(Comprehensive Plan, p. 24)

²⁰ II. A TIME OF CHANGE: PORTLAND TRANSPORTATION PLAN - July 1993
....Transportation Policies

(Comprehensive Plan, page 31)

²¹ Neighborhood Commercial Land Use Policies and Land Use Plan (1988), page 22

Thus the Property, which is 7 acres in size, is more than three times larger than the largest site the City had intended to be zoned within the R-P District.²²

Moreover, the Property is the very type of area where the Comprehensive Plan considers the O-P Zone to be most appropriate: one that has limited potential for residential development because of proximity to the Jetport and adjacency to a busy thoroughfare such as outer Congress Street:

The need exists for a zone that would allow larger scale office development on larger lots in what could be considered more suburban locations. The parcels, while suburban in character, might have limited potential for residential development, due in part, for example, by proximity to the Jetport, or to the topography of the site, or its physical boundaries such as a busy arterial. ...²³ (emphasis added)

Indeed, the creators of the O-P District could have had the Property in mind when they wrote:

Land is more plentiful in these outlying locations, which may be a critical factor if a significant amount of parking is required for the development.... These settings provide a suitable location for a company headquarters or complex of office buildings serving several tenants. Access to the office parks is primarily from major arterials, although secondary roads may also provide access....²⁴

To be sure, the City established a quid pro quo for developers who seek to develop land in an O-P Zone:

Developments in the O-P zone are to be characterized by spacious and high quality development. Large lots, relatively low building coverage, low impervious surface area, significant open space and landscaping,²⁵ and

²² Presently, the minimum lot size within the R-P Zone is a mere 6,000 sq. ft. LUO § 14-149(a).

²³ *Neighborhood Commercial Land Use Policies and Land Use Plan* (1988), page 22

²⁴ *Id.*

²⁵ Northland acknowledges the ambitious design standards intended for O-P office complexes and intends to create a suitably high-quality development. However, it is important to recall that the Property is not a vacant lot with significant amounts of vegetation or other natural

*thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland.*²⁶

However, contrary to what some critics of this proposal evidently believe, the O-P Zone was not intended to be reserved only for extraordinarily large or topographically complex parcels such as the UNUM site. Recall that the O-P Zone is intended to be only one step up from the R-P District, in which the City considered the largest suitable lot to be about *two* acres in size. Under the LUO, an Office PUD or Office Subdivision may be built on a parcel with a minimum gross area of only *three* acres. LUO § 14-230.11. Significantly, three of the seven areas that the Plan drafters specifically mentioned as potential candidates for O-P Zoning are in close proximity to the Property: UNUM (directly adjacent to the Property), “Congress Street/Cobb Avenue (in conjunction with AB zone)” (almost directly across Congress Street from the Property), and the “Northwest corner of Congress Street and Frost Street” (about 4,000 linear feet from the nearest corner of the Property, and half that distance from the Stroudwater Historic District).²⁷ Neither were the buildings considered suitable for an O-P District limited to those of a modest size or simple configuration: *“This type of zone can accommodate single or multiple buildings on a site. Large scale or tall buildings are also appropriate.”*²⁸ (emphasis added) Thus, although the O-P District is plainly intended to encourage high-quality office development, it is also intended to accommodate a wide variety of potential design approaches to such development.

II. ZONING TEXT AMENDMENT

Northland will not repeat here the portions of the above discussion that are already pertinent to the proposed zoning text amendment to LUO § 14-230.11.1 to add places of assembly as a conditional use in the O-P Zone. The purpose of that zoning text amendment is to prevent the existing Elks’ Lodge from being reduced to the status of a legally nonconforming use if the zoning of the Property is changed from the R-2 Zone to the O-P Zone.

features. Rather, it is occupied by a large building, extensive areas of impervious parking space, and mowed lawns.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

A. The Context of Uses Allowed in the O-P Zone.

Under LUO § 14-230.11, the O-P Zone allows, as expressly-permitted uses, office parks containing professional offices and office complexes, research and development establishments, printing and publishing establishments, day care facilities, and wind energy systems. In addition, LUO § 14-230.11.1 authorizes, as conditional uses, “high technology manufacturing of biotechnology, pharmaceutical, and nanotechnology products;” temporary wind anemometer towers; and free-standing wind energy systems. A place of assembly would be less intensive than most of those uses.

B. The Context of “Places of Assembly” as Conditional Uses.

For several decades, the LUO has allowed “places of assembly” as a conditional use in virtually every residential district, including the R-2 Zone in which the Property is currently included:

R-1 Zone	LUO § 14-68(b)(3)
R-2 Zone	LUO § 14-78(b)(3)
R-3 Zone	LUO § 14-88(b)(3)
R-4 Zone	LUO § 14-103(b)(2)
R-5 Zone	LUO § 14-118(b)(3)
R-6/6A Zone	LUO § 14-137(b)(4)
IR-1 Zone	LUO § 14-145.3(b)(2)
IR-2 Zone	LUO § 14-145.9(b)(2)

Because places of assembly such as the Elks Lodge are deemed compatible with such a wide variety of residential uses, it would be irrational to exclude such an activity from the list of conditional uses allowed in the more commercially-oriented O-P Zone. In the context of the Property in particular, the proposed zoning text amendment would limit places of assembly to the same conditional status they have under the present R-2 Zoning.

C. The Proposed Zoning Text Amendment Adding Places of Assembly as a Conditional Use in the O-P Zone is Consistent with the Comprehensive Plan.

The Comprehensive Plan does not specifically address the subject of “places of assembly.” However, because “places of assembly” are classified in all zoning districts as a species of “institutional” use, it is useful to review how the Comprehensive Plan describes the City’s policies toward institutional uses.

The Comprehensive Plan discusses institutional uses only in connection with their suitability for inclusion in residential zones. The Plan evidently has identified no problems associated with institutional uses in business or commercial zones such as the O-P Zone. Even in the context of residential zones, the Comprehensive Plan says only the following:

- *Institutional uses, where they are to be allowed in residential zones, should be designated conditional uses with review before the Planning Board.*
- *Any new institutional use should be required to have a lot size of sufficient area to accommodate all activities, including parking and to absorb impacts and growth needs of the institution.*
- *Reasonable expansion of existing institutions should be accommodated, but effective use of existing lot area should be required.*
- *For both new development and expansion of existing institutions, the displacement or conversion of existing dwellings should be avoided, and that an institutional development proposal that causes significant residential displacement should be cause for denial of conditional use approval.²⁹*

At the same time, concerns have been raised about institutional expansions, which have converted or demolished housing or purchased residential structures only to neglect them until they are a blight on the neighborhood. Housing is a critical component of the city's infrastructure. Any redevelopment initiatives, commercial or residential, should result in a no "net loss" of housing for the city as a whole.³⁰

²⁹ STATE GOAL D: To encourage and promote affordable, decent housing opportunities for all Maine citizens: ...

V. REGULATION OF INSTITUTIONAL USES IN RESIDENTIAL ZONES
– 1983 (Planning Board Report #46-83)

(Comprehensive Plan, page 48)

³⁰ HOUSING AND POPULATION –Inventory and Analysis

The proposed zoning text amendment to add “places of assembly” as a conditional use in the O-P Zone is in basic harmony with the above principles because it would apply only to the O-P Zone, not to any residential zone. The proposed zoning text amendment allows “places of assembly” in the O-P Zone only as a conditional use, and all Office Park Planned Unit Developments and Subdivisions are further subject to mandatory Planning Board Site Plan Review. LUO § 14-230.11.

The proposed zoning text amendment does not, by itself, increase the likelihood that the building or expansion of institutional uses in O-P Zones would cause unreasonable displacement of existing housing. That issue can be adequately addressed by the Board of Appeals during Conditional Use Review and by the Planning Board under Site Plan review of any particular development proposal. In the context of the proposed Project, however, that issue cannot arise, because the Property has not been in the past, and cannot realistically be in the future, used for residential housing that could be displaced by institutional uses.

CONCLUSION

Although the proposed rezoning of 1945 Congress Street and zoning text amendment may not simultaneously satisfy *every* policy goal expressed in the Comprehensive Plan, they are not legally required to do so. All that the law mandates is that the proposals be in “basic harmony” with the Comprehensive Plan either by striking “a reasonable balance among the municipality’s various zoning goals” or by “overlap[ping] considerably” with the Plan.

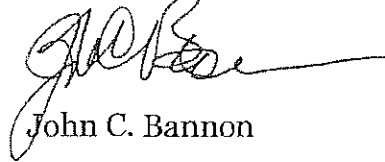
A municipality may conclude that a rezoning action is consistent with a comprehensive plan when it is in harmony with *some* provisions of the plan, even if the action appears *inconsistent* with *other* provisions of the plan.

Rommel v. City of Portland, 2014 ME 114, ¶ 13-14, 102 A.3d 1168, 1172. Under that liberal standard, Northland’s proposals are consistent with the Comprehensive Plan.

April 16, 2015
Page 17

Thank you for your attention to this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John C. Bannon", with a long horizontal flourish extending to the right.

JCB/kpm

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



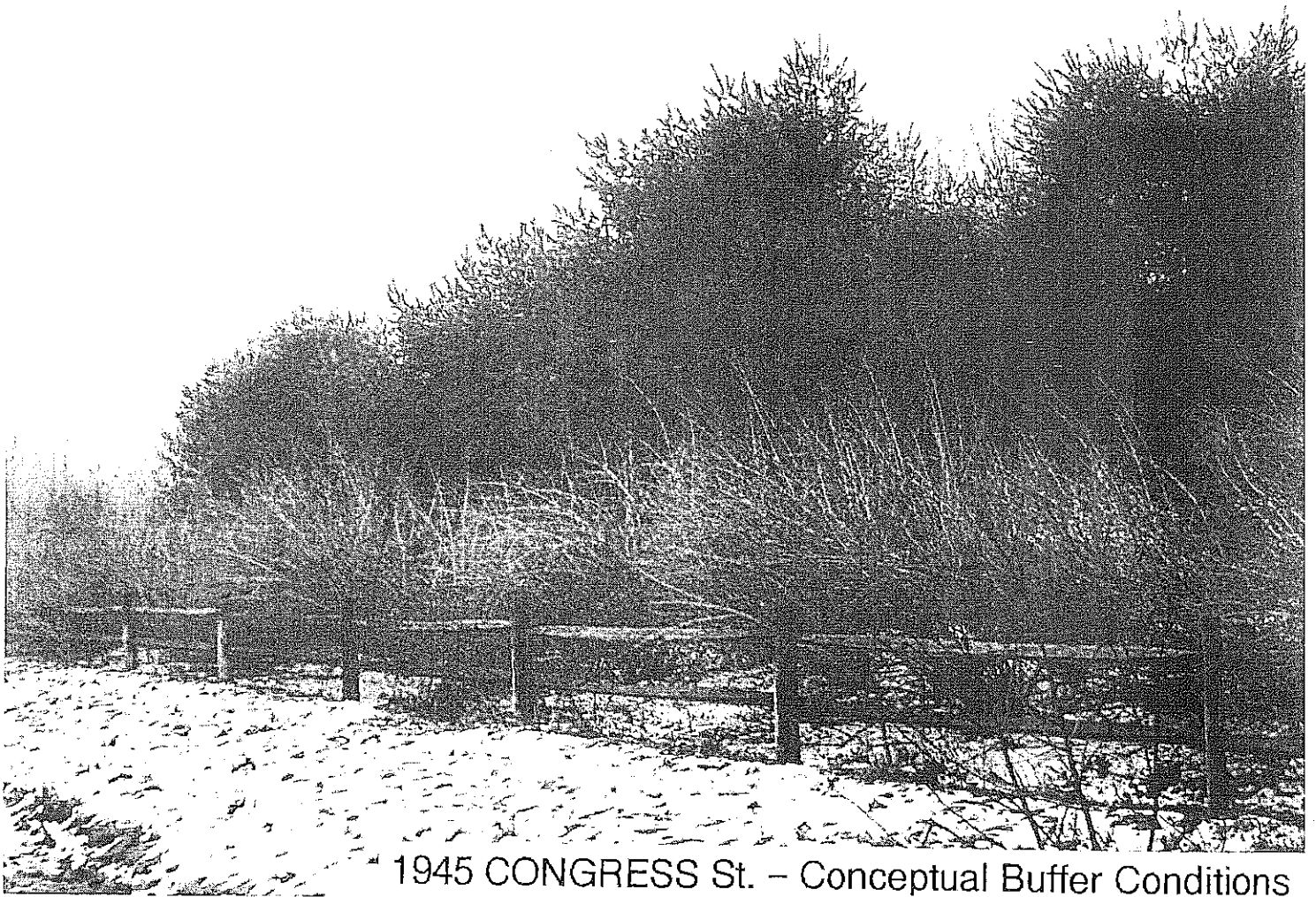
1945 CONGRESS St. - Existing Conditions



1945 CONGRESS ST - Existing Conditions



1945 CONGRESS St. – Conceptual Buffer Conditions



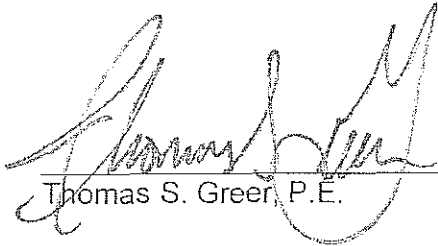
1945 CONGRESS St. – Conceptual Buffer Conditions

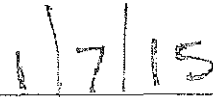
Neighborhood Meeting Certification

I, Thomas S. Greer, P.E., Pinkham & Greer, Civil Engineers hereby certify that a neighborhood meeting was held on January 5, 2015 at 1945 Congress Street at 5:00 pm.

I also certify that on December 22, 2014, invitations were mailed to the following:

1. All addresses on the mailing list provided by the Planning Division which includes property owners within 500 feet of the proposed development or within 1000 feet of a proposed industrial subdivision or industrial zone change.
2. Residents on the "interested parties" list.
3. A digital copy of the notice was also provided to the Planning Division (jmy@portlandmaine.gov and ldobson@portlandmaine.gov) and the assigned planner to be forwarded to those on the interested citizen list who receive e-mail notices.


Thomas S. Greer, P.E.


(date)

Attached to this certification are:

1. Copy of the invitation sent
2. Sign-in sheet
3. Meeting minutes

You are Invited to
a
Neighborhood Meeting

December 22, 2014

Dear Neighbor:

The team at Northland Enterprises, LLC is working with the Elks' to create a new look and use of the site. The Elks' building will be downsized and renovated to give it a fresh look and become more functional for their use.

The additions to the site will include a 15,000 sq. ft. medical building along Congress Street and a 35,000 sq. ft. building along the UNUM side of the site. These changes will allow the site to be brought up to current environmental standards.

This meeting is for a Zone Change for the property. As part of the City's approval process, we will hold two public informational meetings which you are invited to attend. The first meeting will be:

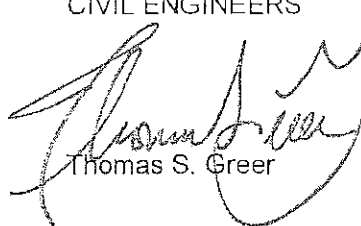
Meeting Location: 1945 Congress Street, the Elks Building
Meeting Date: Monday, January 5, 2015
Meeting Time: 5:00 pm

The City code requires that property owners within 500 feet of the proposed development and residents on the "interested parties list" be invited to participate in the neighborhood meeting. A sign in sheet will be circulated and minutes of the meeting will be taken. Both the sign up sheet and minutes will be submitted to the Planning Board.

If you have any questions, please call Tom Greer @ 207-781-5242.

Sincerely,

PINKHAM & GREER
CIVIL ENGINEERS



Thomas S. Greer

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

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

NEIGHBORHOOD MEETING ATTENDEE LIST
1945 Congress Street
January 5, 2015

TOM GREEN BIRKHAM & GREEN 23 VANDERBILT AVE PORTLAND, ME.	DAN HOLOSHI (SVI PRESIDENT) 1296 WESTBOROUGH ST PORTLAND STROUDWATER VILLAGE EAST MEATZON C) GMAIL.COM
Tim Smith 1945 Congress St Portland ME.	Anita Barnes 33 Old Mast Rd. Portland, ME 04102
Jim R. Fox, UACM 211 Congress St Portland, ME 04102	BILL LINNELL + JOYCE BATHIER. 1905 CONGRESS ST PORTLAND, ME 04102 (A)
James Casterella 1967 Congress St Portland, 04102	JOSH BENTHIEU - NORTHLAND 9 Rocky Hill Road CAPE ELIZABETH, 04107
BRAD FRIES 17 South St, 3rd Fl PORTLAND, ME 04101	Rex Bell - Northland 40 Wood Road CAPE ELIZABETH, ME 04107
Mary Joa Kimball 49 Vindele St. Scarborough, ME 04074	CATHERINE ALEXANDER UNWA 2211 Congress St Portland, ME 04122
PAT ADRIANCE 16 LONGFELLOW ROAD GORNHAM, ME 04058	JOE Winschel 1945 Congress St Portland, ME
RON ADRIANCE SAME AS ABOVE	MICHAEL ROGERS 66 RIVER'S EDGE DR PORTLAND
Dennis S. Richett 20 Woodbury St. Portland, Me.	Joan & Sandy Boal 37 Old Mast Rd. Portland, Me.
Carol Burdick 194 DEBOR ST Scarborough ME 04074	ERIC GRIFFIN 42 PENRITH RD PORTLAND ME 04102

(A)

CAPT LINNELL @ YAHOO.COM

Neighborhood Meeting Summary
1945 Congress Street
January 5, 2015

The meeting started at 5:10pm and concluded around 5:45pm. It seemed to be well attended. The Attendance List is attached. Several people showed up during the meeting but did not sign in.

- A presentation by Thomas Greer was made highlighting the location of the project and noting the process for the zone change, the site plan and subdivision approvals. This is the first of two public information meeting to be held for this project.
- The features of the site were noted, including removing a section of the Elk's building, and renovating the remainder of the building. A new 15,000 sq. ft. medical office building will be constructed along Congress Street and a 25,000 to 35,000 sq. ft. building will be constructed on the west side of the existing parking lot.

In response to questions the following responses were made:

- The entrances to the site will remain in the same locations.
- A pylon sign will likely be placed out at the Congress Street entrance and some type of signage will be on the buildings. Way finding signs and parking signs will be throughout the parking fields.
- Bike racks, motorcycle, and scooter parking is provided and sidewalks for pedestrian connections are provided. No trail network is included.
- The parking meets or exceeds the City's requirements. On Tuesday's, Bingo at the Elk's will create the maximum demand. A parking study will be part of the submittals to the City.
- The site will have improved stormwater management. It will include treatment and flow control. A final selection of the treatment system has not been made.
- The site will have new lighting, meeting current standards. It will be computer controlled so it can be limited in the time it is on. It will be shielded and at lower levels than older parking lots. It will be LED lights.

The schedule for the project includes:

- Zone Change in the next 2 months.
- Site Plan and Subdivision Approval by May.

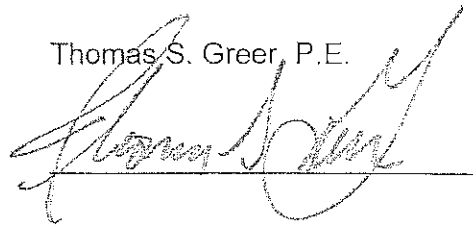
- Start Construction on the Elk's in June.
- Medical Building construction in June.

The general office building will be constructed when a tenant/owner is confirmed.

- The preliminary elevation views of the Elk's building and the general office building were shown. No drawings of the medical office were shown.
- Our neighbor, adjacent Congress Street, Bill Linnell, noted he was opposed to the project and thought a housing project would meet the Comprehensive Plan better. We noted we had sent a brief summary of how this project conforms to the Comprehensive Plan to the staff already. He will get a copy of that.
- There was general discussion about the bus route and if the rerouting of the line would impact this project. We did not think it would have much impact on the project.

The above summary of the meeting is respectfully prepared and submitted by:

Thomas S. Greer, P.E.

A handwritten signature in dark ink, appearing to read 'Thomas S. Greer', is written over a horizontal line.



July 8, 2015

Via email

Helen Donaldson
City of Portland Planning Division
389 Congress Street
Portland, Maine 04101

RE: Housing redevelopment feasibility for 1945 Congress Street

Neil,

At the May 26th Planning Board workshop, the Board requested that we provide an analysis of the feasibility of single family and low density multifamily housing on the Elks Site. Members of the Stroudwater Village have suggested that such a use would be more consistent with the Comprehensive Plan, but have failed to test the fiscal reality and sustainability of such a redevelopment.

Single Family Home Development Experience:

While one of our principals has significant firsthand experience, Northland as a company has never undertaken a single family subdivision project, so our analysis of that option has been limited to pricing out a subdivision with buildable lots that would be sold for housing construction, rather than incorporating assumptions regarding the costs associated with building and selling single family homes.

Multifamily Development Experience:

Northland has developed and owned over 400 units of multifamily housing projects. Those properties include those financed with Low Income Housing Tax Credits, backed by Section 8 Contracts and "market rate" conventionally financed complexes. It is with this institutional knowledge and understanding of the costs associated with their respective developments and operations that we have developed our analysis regarding multifamily housing feasibility.

Single Family Analysis:

Based on the current R2 Zone and the required minimum lot size, eight lots could be created if the Elks remained on site, and fifteen lots could be created if the Elks were to leave the site. In both scenarios, two lots would require curb cuts on Congress

Street, the others would utilize a shared interior road within the development. In our analyses we used the current purchase price in the eight-lot scenario, and for the fifteen-lot scenario, we used the previous contract price when the Elks had contemplated leaving the site when Husson College was the prospective buyer. We asked an experienced construction estimator to come up with the costs associated with both subdivision scenarios to include all paving, stubbing of utilities and landscape buffering. We applied estimates for soft costs for the two scenarios that averaged under 8% of the total deal size. Finally, we estimated the carrying costs associated with the construction financing and equity raise that would be required to fund the development and projected that it would take twelve months to sell eight lots, and a total of sixteen months to sell out the entire fifteen lots.

In the eight-lot scenario we are assuming the purchase price of the land is equal to our current contract price approved by the Portland Elks and the Grand Lodge. In the Fifteen Lot scenario we have assumed a purchase price of \$2.5 million, which is equal to the price that the Elks have previously agreed to for an outright sale. These purchase price assumptions aside the feasibility of either scenario does not change if the site were sold for \$1.

Based on these assumptions, the following sale prices for buildable lots would need to be achieved for the project to be viable *(Note that we have backed into a break-even sale price, not accounting for profit to the Developer or Equity Investors).*

Eight Lot Scenario:

Total Development Costs:	\$2,891,566
Price per lot:	\$385,000
Less Sales Cost:	-\$184,800
Net Profit:	\$3,634

Fifteen Lot Scenario:

Total Development Costs:	\$4,496,606
Price per lot:	\$319,000
Less Sales Cost:	-\$287,100
Net Profit:	\$1,294

There have been two sales of housing lots within the last year within a one mile radius, neither of which justify the pricing that would be required of either the eight or fifteen lot development scenarios. The comps are:

House Lots w/in 1 mile in 12 last months	Comp #1	Comp # 2
Address	15 Riverview St.	1331 Westbrook St.
Size (acres):	.14 Acre	1.48 Acre
Lot Square Footage:	6,098	64,469
Sale Price:	\$44,000	\$92,625
Price Per SF:	\$7.22	\$1.44
Equivalent price for a 10,000sf lot:	\$72,200	\$14,440
Sale Date:	9/22/14	10/17/14

In our opinion, based on these recent sales, and the price required to break even on selling single family house lots, the redevelopment of the Elks site into single family housing lots would not be feasible under the current market conditions. See attached Appendix A for a more detailed list of currently listed and recently sold land parcels within one mile of the Elks Site.

Multifamily Housing Analysis:

Income Assumptions:

For our multifamily feasibility analysis we used rental rate assumptions based on a Portland wide market study that we commissioned for a downtown project that we are planning to begin later this year. In April 2015 Northland hired the Signal Group of South Portland to determine the current market rate rents for 1 and 2 bedroom units, and compare those to the rents that someone making 100% of the Area Median Income (AMI) could afford. The resulting \$1,460 per-month suggested market rents for 2bdrm units were used in our analysis. For vacancy loss we used 5% annually, which is consistent with larger scattered site off-peninsula apartments.

Expense Assumptions:

Our annual apartment expense assumptions were based on our historical per/unit expenses across our five apartment complexes in Southern Maine. We also utilized the 2013 Institute of Real Estate Management (IREM) income and expense analysis for garden style apartments in our region (attached as Appendix B). The expense ratio in IREM is listed as between 36.5% of Revenue on the low side, and 53.2% on the high side; for this analysis we used 37.1% as a target; a percentage which in our opinion is quite aggressive.

Scenarios:

We tested three "market rate" apartment scenarios. The first scenario is based on the unit count for a multifamily development that would be allowed if the zone is changed to R3, as *it is important to note that under the current R2 Zoning, no multifamily housing would be legally permissible*. The other two scenarios were analyzed after the first scenario proved financially unfeasible, and both of these scenarios would require further zone changes to allow for even more density.

Scenario #1 – 40 market rate units at market rents per the Signal Group study
Scenario #2 – 80 market rate units at market rents per the Signal Group study
Scenario #3 – 80 luxury rental units at rents required to make project feasible.

Summary:

Scenario	#1	#2	#3	Notes
# of units	40	80	80	

Monthly Rent	\$1,460	\$1,460	\$1,920	
P/Unit Cost	250,000	\$198,568	\$205,078	Includes acquisition and all site and soft costs
P/Unit appraised value	\$139,917	\$139,917	\$205,352	Based on 7.25% Cap Rate
Funding Gap (difference between appraised value and total costs of the development)	-\$4,403,310	-\$4,692,037	+\$21,888	

The funding gap resulting in both the 40 and 80 unit market rate complexes is not unusual for this market, but does render both of those scenarios unfeasible. In our experience for a new construction market rate housing to make financial sense, rents need to be greater than \$1,650 per month for a one-bedroom apartment.

This analysis assumes that the Elks leave the site, and are justly compensated for the land, but even if they sold the land for \$1, the result of the analysis for the first two scenarios would be the same; neither scenario would be feasible with funding gaps over \$2million.

Low Income Housing Scenario:

Northland has completed multifamily projects utilizing both the competitive 9% Low Income Housing Tax Credit ("LIHTC") and the 4% Tax Exempt Bond Financing. The 9% LIHTC program is a competitive program utilizing a finite amount of scarce resources from the Maine State Housing Authority ("MSHA"). Every year, developers apply for this credit with specific projects in mind, and MSHA reviews the application and scores the project based on a number of qualitative criteria.

Based on the profile of this project, and the current scoring guidelines, there is little chance that it would qualify for the 9% LIHTC credit, therefore the only possible LIHTC financing that we have analyzed is the 4% Tax Exempt Bond financing which is considered "as of right" and administered without the competitive scoring associated with the 9% credit.

The construction costs of this type of development are slightly lower than a conventional market rate apartment complex, and we have taken that into account, but the soft costs associated with the bond financing are significantly higher than those associated with market rate complexes. The program requires that a minimum of 40% of the units are limited to tenants who make less than 60% of Area median income ("AMI") and those rents are limited to \$1,041 per month (see Appendix C for detail on Tax Credit income and rent limits). The remainder of the units would be leased without income restriction at the previously noted \$1,460 per month market rate. The assumption for land costs in this scenario is the aforementioned \$2.5million purchase price.

The summary of the 4% LIHTC scenario is as follows:

Total Number of Units	80
60% AMI units (\$1,041)	32
Market rate units (\$1,460)	48
Expense Ratio	39%
Construction Cost Per Unit	\$120,000
Total Development cost per Unit	\$211,224
Total Gross Development cost	\$16,897,959
Conventional Debt and Equity	-\$10,641,655
Tax Credit Equity & Deferred Fee	\$1,888,818
Resulting Funding Gap	-\$4,367,486

As the above gap demonstrates, even utilizing the 4% Low Income Housing Tax Credit in conjunction with bond financing does not solve for the funding gap that exists. The lower rents required under the LIHTC program reduces the resulting appraised value, as the \$10,641,655 valuation (\$133,021 Per Unit) would be developed utilizing using the net income of the property, and the lower rents reduce that annual income.

It should be noted that even if the Elks sold the site for \$1. the funding gap would be nearly \$1.8 million in this scenario.

SUMMARY:

Based on our experience in developing multifamily housing, both market rate and affordable, and our understanding of the costs associated with creating lots for single family housing, and the realities of the current rental market and the demand and prices paid for housing lots, neither scenarios are feasible development alternatives for 1945 Congress Street.

Despite the desire of those who want to see this developed for housing, the reality is that without a zone change allowing for a commercial use, this property will not be redeveloped until rents rise significantly (32%) in Portland or the price paid for housing lots quadruple.

Sincerely,



Josh Benthien
Partner
Northland Enterprises

CMA 1 - Line

Prepared By: Conor R Beliveau

Listings as of 07/07/15 at 1:17 pm

Property Type is 'Land' Status is 'Active' Status is 'Sold' Status Contractual Search Date is 07/07/2015 to 07/07/2014 Latitude, Longitude is within 100 ft of 1845 Congress St, Portland Maine

Land

Active Properties

MLS #	Address	Town	Acres	\$/Acre	Lot SqFt	\$/Lot SqFt	List Price	DOM
1145603	1677 Congress Street	Portland	4.04		175,982	\$2.16	\$380,000	
# LISTINGS:	1	Medians:			175,982	\$2.16	\$380,000	462
		Minimums:			175,982	\$2.16	\$380,000	462
		Maximums:			175,982	\$2.16	\$380,000	462
		Averages:			175,982	\$2.16	\$380,000	462

Sold Properties

MLS #	Address	Town	Acres	\$/Acre	Lot SqFt	\$/Lot SqFt	List Price	Sold Price	Sold Date	SP%LP	DOM
1148877	15 Riverview Street	Portland	0.14	\$314,285.71	6,098	\$7.22	\$54,900	\$44,000	09/22/2014	80.15	
1123502	1331 Westbrook Street	Portland	1.48	\$62,584.46	64,469	\$1.44	\$109,000	\$92,625	10/17/2014	84.95	
# LISTINGS:	2	Medians:		\$188,435.09	35,284	\$4.33	\$81,950	\$68,313		82.56	13
		Minimums:		\$62,584.46	6,098	\$1.44	\$54,900	\$44,000		80.15	3
		Maximums:		\$314,285.71	64,469	\$7.22	\$109,000	\$92,625		84.98	23
		Averages:		\$188,435.09	35,284	\$4.33	\$81,950	\$68,313		82.56	13

Quick Statistics (3 Listings Total)

	Min	Max	Average	Median
List Price	\$54,900	\$380,000	\$181,300	\$109,000
Sold Price	\$44,000	\$92,625	\$68,313	\$68,313

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



61 BUILDINGS 72.9% APARTMENTS
2,776,570 RENTABLE SQUARE FEET

61 BUILDINGS 72.9% APARTMENTS
2,092,645 RENTABLE SQUARE FEET

	BLDG.	---% OF GPR---			---\$/SQ.FT.---			\$/UNIT	BLDG.	---% OF GPR---			---\$/SQ.FT.---			\$/UNIT
		MED	LOW	HIGH	MED	LOW	HIGH			MED	LOW	HIGH	MED	LOW	HIGH	
INCOME																
RENTS-APARTMENTS	(64)	97.2%	95.8%	98.4%	16.07	12.22	18.93	13748	(91)	96.6%	94.5%	98.5%	14.96	12.83	17.99	13203
RENTS-GARAGE/PARKING	(16)	.4	.2	.8	.10	.02	.13	72	(20)	.8	.3	1.2	.16	.06	.24	154
RENTS-STORES/OFFICES	(21)	17.9			2.73			2896	(1)	2.5			.47			327
GROSS POSSIBLE RENTS	(64)	97.5%	96.2%	98.6%	16.07	12.22	19.25	13912	(91)	96.9%	94.8%	98.7%	15.56	12.83	18.29	13208
CONCESSIONS	(26)	.9	.5	1.3	.13	.08	.25	107	(55)	.8	.4	1.3	.13	.04	.32	121
VACANCIES/RENT LOSS	(64)	4.8	2.7	6.4	.76	.45	1.17	633	(89)	5.4	4.1	9.2	.92	.63	1.31	366
TOTAL RENTS COLLECTED	(64)	92.0	88.7	93.9	14.90	11.23	17.92	13131	(91)	89.1	85.4	92.6	13.76	11.50	16.67	12328
OTHER INCOME	(57)	2.7	1.8	3.9	.46	.27	.79	409	(78)	4.0	2.0	5.8	.62	.26	1.01	558
GROSS POSSIBLE INCOME	(64)	100.0%	100.0%	100.0%	16.55	12.31	19.69	14379	(91)	100.0%	100.0%	100.0%	15.59	13.23	19.04	13848
TOTAL COLLECTIONS	(64)	95.0	92.8	96.4	16.17	11.29	18.52	13499	(91)	94.2	89.4	95.7	14.80	11.99	17.50	12928
EXPENSES																
MANAGEMENT FEE	(61)	4.8	4.0	6.1	.71	.55	.96	627	(87)	4.4	3.2	4.9	.60	.52	.78	631
OTHER ADMINISTRATIVE**	(64)	8.1	5.6	11.8	1.27	.89	1.68	1097	(87)	5.1	2.7	7.6	.81	.41	1.21	708
SUBTOTAL ADMINIST.	(64)	13.6%	9.8%	17.0%	2.11	1.58	2.45	1762	(91)	8.2%	6.5%	11.7%	1.41	1.02	1.88	1304
SUPPLIES	(59)	.4	.1	.8	.07	.02	.14	59	(81)	.3	.1	.8	.05	.01	.13	47
HEATING FUEL-CA ONLY*	(20)	1.3	.4	3.1	.13	.05	.35	157	(30)	4	.2	1.2	.06	.03	.18	15
CA & APTS.*	(30)	3.7	2.4	5.5	.62	.35	1.05	483	(43)	4.6	2.9	7.2	.72	.41	1.00	572
ELECTRICITY-CA ONLY*	(43)	1.5	.9	1.7	.19	.11	.28	165	(74)	1.1	.4	1.6	.17	.06	.25	140
CA & APTS.*	(19)	2.8	1.9	3.8	.44	.29	.54	363	(9)	2.1			.34			200
WATER/SEWER-CA ONLY*	(17)	3.4	1.8	5.0	.67	.27	.97	609	(27)	1.9	.9	3.1	.34	.20	.55	365
CA & APTS.*	(44)	3.5	2.0	5.1	.92	.33	.74	483	(59)	3.9	2.7	5.2	.65	.44	.80	574
GAS-----CA ONLY*	(12)	.7	.5	.8	.12	.03	.17	95	(19)	.2	.1	.3	.03	.01	.05	27
CA & APTS.*	(20)	3.9	.6	4.5	.82	.06	.81	488	(9)	5.5			.92			362
BUILDING SERVICES	(58)	1.4	.7	2.0	.19	.14	.33	177	(82)	1.3	.7	3.2	.21	.11	.59	181
OTHER OPERATING	(47)	.3	.2	.8	.04	.02	.13	33	(47)	.9	.3	1.9	.15	.05	.45	140
SUBTOTAL OPERATING	(64)	11.8%	8.4%	15.4%	1.72	1.23	2.61	1498	(91)	10.0%	6.0%	16.9%	1.67	1.08	2.54	1364
SECURITY**	(26)	.2	.0	.5	.03		.09	26	(26)	.2	.1	.3	.03	.01	.07	21
GROUPS MAINTENANCE**	(60)	1.6	.9	2.3	.27	.15	.35	235	(87)	1.8	1.1	2.5	.32	.16	.60	256
MAINTENANCE-REPAIRS	(64)	2.6	1.6	3.9	.43	.28	.58	370	(91)	2.6	1.2	3.8	.43	.18	.55	294
PAINTING/DECORATING**	(59)	1.2	.7	1.4	.20	.07	.25	109	(85)	1.2	.8	1.6	.21	.17	.29	184
SUBTOTAL MAINTENANCE	(64)	5.8%	4.5%	7.4%	.88	.66	1.29	778	(91)	5.7%	4.1%	6.9%	.87	.64	1.16	762
REAL ESTATE TAXES	(64)	9.6	6.8	13.0	1.41	1.13	3.01	1203	(89)	9.8	7.6	13.3	1.61	1.17	2.17	1385
OTHER TAX/FEE/PERMIT	(33)	.2	.1	1.5	.04	.01	.20	27	(38)	.2	.1	1.1	.03	.01	.18	30
INSURANCE	(64)	2.5	1.7	3.7	.38	.30	.49	320	(87)	2.1	1.1	2.9	.35	.26	.43	286
SUBTOTAL TAX-INSURANCE	(64)	12.7%	9.4%	15.7%	1.80	1.57	2.63	1710	(89)	12.9%	10.0%	15.9%	1.97	1.62	2.57	1702
RECREATION/AMENITIES**	(37)	.5	.4	.7	.08	.06	.13	71	(44)	.2	.1	.3	.03	.01	.05	42
OTHER PAYROLL	(60)	6.1	4.1	7.8	.92	.58	1.22	749	(67)	4.5	3.6	6.1	.72	.60	1.01	649
TOTAL ALL EXPENSES	(64)	51.5%	44.4%	60.9%	7.59	6.31	9.98	6223	(91)	43.8%	36.5%	53.2%	6.96	5.83	8.40	6243
NET OPERATING INCOME	(64)	42.3%	33.7%	51.4%	6.37	4.50	9.59	6271	(91)	39.2%	37.2%	35.4%	7.13	4.68	10.46	6622
PAYROLL RECAP**	(47)	9.4	6.7	11.7	1.50	1.01	1.59	1188	(62)	7.9	5.1	10.5	1.31	.93	1.77	1169

FOOTNOTE: For a description of Utility Expense (*) and Payroll Cost (**) reporting and an explanation of the report layouts and method of data analysis, refer to the sections entitled *Guidelines for the Use of this Data and Interpretation of a Page of Data*. For definitions of the income and expense categories, refer to the Appendix. Copyright © 2013, Institute of Real Estate Management

Appendix C



If you would like to engage Novogradac & Company LLP to calculate the rent & income limits for your property, please contact Thomas Stagg at thomas.stagg@novoco.com.

You can view demographic information and a detailed list of affordable housing properties in [compsMART](#).

Click on the icons below to view historical charts.

Affordable Housing Program	IRS Section 42 Low-Income Housing Tax Credit (LIHTC)
Year (1)(2)	2015 (effective 03/06/15)
State	ME
County	Cumberland County
MSA	Portland, ME HUD Metro FMR Area
Persons / Bedroom	1.5 Person / Bedroom
4-person AMI	\$77,100
National Non-Metropolitan Median Income (3)(4)	\$54,100
HERA Special (5)	Not eligible
Held Harmless (6)	You have indicated that your project was placed in service on or after 03/06/2015 and is therefore eligible to have its income and rent limit held harmless beginning with the 2015 limits.
Placed in Service Date (7)	On or after 03/06/2015.
Rent Floor Election (8) (9)	Effective on or after 03/06/2015.

		50.00%	45.00%
1 Person		32,400	45,360
2 Person		37,020	51,828
3 Person		41,640	58,296
4 Person		46,260	64,764
5 Person		48,980	69,972
6 Person		53,700	75,180
7 Person		57,420	80,388
8 Person		61,080	85,512
9 Person		64,740	90,636
10 Person		68,460	95,844
11 Person		72,180	101,052
12 Person		75,840	106,176

Bedrooms (People):

50.00%

FAIR

2 Bedrooms (3.0)



1,041

1,074

Before using the numbers from the Rent & Income Limit Calculator®, we strongly recommend that you check with the applicable state housing agency to verify that the state agrees with the numbers. The numbers round down to the nearest \$1.

This Rent & Income Limit Calculator® does not calculate low-income housing tax credit (LIHTC) limits greater than 50% LIHTC or 60% LIHTC limits, depending on the minimum set-aside elected with the IRS on Form 8609 in accordance with Internal Revenue Code Section 42(i)(3)(A). In other words, if the 20/50 minimum set-aside was elected then 50% LIHTC is the maximum rent calculated and allowed to qualify as a tax credit unit; or if the 40/60 minimum set-aside was elected then 60% LIHTC is the maximum allowed to qualify as a tax credit unit.

Revenue Ruling 89-24 require that the LIHTC rent & income levels start their calculations with the HUD published very low-income (VLI) amounts because the HUD published VLI amounts include certain HUD adjustments, such as high housing cost for high FMR areas to increase income, and state non-metropolitan median income to provide a floor for income limits. The result is that many counties have VLI amounts that are different than 50% of the AMI published by HUD (the 4-person AMGI we have shown above). The Novogradac Rent & Income Calculator® starts by default with the HUD published VLI amounts in accordance with Revenue Ruling 89-24.

(1) The rent and income limits for each year are effective beginning with the effective date shown above. There is a grace period for 45 days to implement the new rent and income limits, which means that the old limits can be relied upon for 45 days after the effective date of the new limits. For example income limits effective 12/04/2012, can be relied on until 1/17/2013. For more information, see Revenue Ruling 94-57.

IRS LIRC Newsletter #49 and IRS LIRC Newsletter #50 clarify that for projects placed in service during the 45-day grace period, the owner may choose the new or the old income limits. For example, if a project was placed in service on 1/8/2013 and the 2012 income limits are higher than the 2013 income limits, an owner may use the higher income limits from 2012 to income qualify tenants and set rents accordingly because the project was placed in service with the 45-day grace period.

Please note, the Rent & Income Limit Calculator® does not apply a 45-day grace period automatically. The user needs to indicate that the placed in service date and/or gross rent floor date occurred 45 days earlier (in the prior HUD Fiscal Year) if they want to apply the 45-day rule under Revenue Ruling 94-57 that allows owners to rely on the prior year. Therefore, projects that were placed in service during the 45-day grace period, and want to use the prior year, should select that they were placed in service as of the prior year. For example, if a project placed in service on 1/8/2013, and the project wanted to use the 45-day grace period, the user should select that their project was in service prior to 12/4/2012. Similarly, projects that have a gross rent floor effective as of the carryover allocation date (or reservation letter date for bond projects) during the 45-day grace period, and want to use the prior year, should select that the gross rent floor was effective as of the prior year. For example, if a project received a carryover allocation letter on 1/8/2013, and the owner did not elect placed in service date as the gross rent floor, and the project wanted to use the 45-day grace period, the user should select that their gross rent floor was effective prior to 12/4/2012.

(2) For HUD FY 2013 HUD originally issued income limits on December 4, 2012 then issued revised income limits on December 11, 2012. In IRS LIRC Newsletter #50, the IRS has stated that the effective date for the revised FY 2013 income limits is December 4, 2012. Based on this guidance, the Rent & Income Limit Calculator® uses December 4, 2013 for the effective date for the revised FY 2013 limits. Please see IRS LIRC Newsletter #50 for more detail.

(3) An area may lose its rural area status. There is no clear guidance that a project is held harmless at the national non-metropolitan income limits when an area loses its rural status. The Rent & Income Limit Calculator® assumes that a project that is not indicated as rural in the current year was also not rural in the prior year, and therefore, does not receive hold harmless treatment based on the prior year national non-metro amount.

Please consult your state agency and tax advisor for further clarification.

(4) USDA may change their determination of what projects qualify as rural during the course of a year. Please periodically check with USDA to determine the continued rural eligibility of your project.

The national non-metropolitan median income has been adjusted for household size based on the family size adjustments outlined in the HUD Briefing Materials and as shown in each year's HUD FAQ. The IRS did not specify whether or not to round to the nearest \$50, however, the Rent & Income Limit Calculator® will round to the nearest \$50 in accordance with the methodology referenced in HUD Briefing Materials.

⁽⁶⁾ A project uses HERA Special if income was determined prior to 1/1/2009 and the project is in a HERA Special county. A project's income limits are held harmless at the prior year income limits if income was determined in the prior year or earlier and the income limits have decreased. Please note that the IRS has informally indicated that the definition of "determined" for purposes of the HERA Special and MTSP Hold Harmless income limits means that a project was placed in service. Please see [IRS LHO Newsletter #25](#) for more information about "determined" and projects with buildings that were placed in service before and after HUD income limit effective dates. Therefore, projects placed in service prior to 1/1/2009 are generally eligible for HERA Special. Please see footnote 7 for information about acquisition/rehabilitation projects.

⁽⁶⁾ Internal Revenue Code Section 142(d)(2)(ii) indicates that hold harmless applies on a calendar year. The Rent & Income Limit Calculator® assumes that "calendar year" in the hold harmless rule means the HUD Fiscal Year. For example, the 2009 calendar year means the HUD Fiscal Year from 3/19/2009 through 5/13/2010. In other words, the Rent & Income Limit Calculator® assumes that "calendar year" in the hold harmless rule means the highest income level achieved during any HUD Fiscal Year.

The Rent & Income Limit Calculator® assumes that a rural project will receive hold harmless treatment at the national non-metro amount based on the prior year national non-metro amount if the national non-metro median income were to fall from year to year. If a rural project qualifies for HERA Special and the HERA Special is higher than the national non-metro, then the HERA Special amount will be used. Please note that the IRS has not issued guidance that specifically allows hold harmless treatment at the national non-metro amount for rural projects, however, Internal Revenue Code 42(g)(4) by reference to Internal Revenue Code 142(d)(2)(E) implies that hold harmless treatment would apply at the national non-metro amount for rural projects. Please consult your tax advisor for further clarification.

⁽⁷⁾ Please note that for acquisition/rehabilitation projects, the IRS guidance indicates that income and rent limits are determined at the later of the acquisition date or when management begins income-qualifying households in the project. For example, if a project was acquired in 2011, the rehabilitation was placed-in-service in 2012, and management began income-qualifying households in 2011 then the project would be considered placed in service in 2011 for income and rent purposes. If a project was acquired in 2011, the rehabilitation was placed-in-service in 2012, and management began income-qualifying households when the rehabilitation placed-in-service in 2012, then the project would be considered placed in service in 2012 for income and rent purposes. Please see [IRS LHO Newsletter #25](#) for more detail. Please consult your tax advisor for further clarification.

⁽⁸⁾ [Revenue Procedure 94-57](#) gives guidance on the gross rent floor election

Tax credit projects without bond financing:

"The Internal Revenue Service will treat the gross rent floor in section 42(g)(2)(A) as taking effect on the date an Agency initially allocates a housing credit dollar amount to the building [generally referred to as the 42M letter] under section 42(h)(1). However, the Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that made the allocation to the building no later than the date on which the building is placed in service."

Tax credit projects with bond financing:

"The Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that issued the determination letter to the building no later than the date on which the building is placed in service."

⁽⁹⁾ The Rent & Income Limit Calculator® assumes all buildings in a project have a rent floor effective date under [Revenue Procedure 94-57](#) in the same HUD Fiscal Year. However, if your buildings have rent floor effective dates under [Revenue Procedure 94-57](#) in different HUD Fiscal Years, then you should run the calculator separately for each group of buildings in a particular HUD Fiscal Year.

The Rent & Income Limit Calculator® assumes that different AMGI limits (40%, 35%, 30%, etc.) chosen by the user will also have a rent floor election under [Revenue Procedure 94-57](#) from the same HUD Fiscal Year that applies to the federal level of 50% or 60%.

⁽¹⁰⁾ The Consolidated Appropriations Act of 2014 changed how the 30% income limits is calculated. The 30% limit,

which is now called the extremely low income limit, is determined by taking the greater of the 30% income limit as calculated by HUD or the poverty level as determined by the Department of Health and Human Services, which is then capped at the 50% Very Low Income Limit ("VLI") published by HUD. HUD has only published the data up to 8 people. For household sizes above 8 people please visit the following website:
[http://www.cuduser.org/mortgageassess/vli/4/index_1\(20\).htm](http://www.cuduser.org/mortgageassess/vli/4/index_1(20).htm)

Terms of Use:

Utility allowances are inputted by the user and are not reviewed or verified by Novogradac & Company LLP. Novogradac & Company LLP provides no assurance of the accuracy of the particular results you may obtain from the Rent & Income Limit Calculator®; which is designed only to be a quick reference tool and is no substitute for professional tax and accounting advice. The Rent & Income Limit Calculator® should not be used for any final financial decisions. IRS guidelines and actual HUD amounts should be used for any final decisions. Novogradac & Company LLP does not guarantee the accuracy of the amounts shown above. As consideration for your use of this tool, free of any requirement to pay any related monetary compensation to Novogradac & Company LLP, you agree to hold Novogradac & Company LLP harmless from any damages and claims related to use of the Rent & Income Limit Calculator®. If you do not agree with the terms of this paragraph, you may not use the Rent & Income Limit Calculator®.

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REAL ESTATE PURCHASE AND SALE AGREEMENT

This AGREEMENT, dated the 27th day of August, 2015 (the "Contract Date"), is between Northland Enterprises, LLC, or its permitted assignee, having a place of business at 17 South Street, 3rd floor, Portland, Maine 04101, and Dr. Michael Bedecs having a place of business at 1375 Congress Street, Portland, Maine 04102 (collectively, "Seller") and Paul Dubois and Kimberly A. Dubois (collectively "Purchaser"), an individual with an address at 1915 Congress Street, Portland, Maine 04102.

WHEREAS, pursuant to that certain Real Estate Purchase and Sale Agreement dated June 11, 2014, as amended (the "Elks P&S"), by and among Seller, Dr. Michael Bedecs ("Bedecs"), and Portland Lodge No. 188 of the Benevolent and Protective Order of Elks of the United States of America (the "Elks"), and subject to terms and conditions thereof, Seller (together with Bedecs), is the potential purchaser of certain land and buildings as further described in the Elks P&S (the "Elks Property"); and

WHEREAS, in order to proceed with the purchase of the Elks Property and Seller's intended development thereof, Seller requires the City of Portland to approve a change in zoning from Residential R-2 to Office Park (O-P) (the "Zoning Change"); and

WHEREAS, Purchaser's existing property abuts the Elks Property ("Purchaser's Abutting Lot"); and

WHEREAS, Purchaser's Abutting Lot is a non-conforming lot; and

WHEREAS, Seller, contingent upon the closing on the Elks Property by Seller, has agreed to convey a 10 foot wide strip of land to Purchaser, pursuant to the terms hereof;

NOW, THEREFORE, the parties agree as follows:

1. **Purchase and Sale of Property.** Subject to the terms and conditions set forth herein, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, a certain strip of land measuring approximately 10 feet by 156 feet long (the "Property") abutting Purchaser's existing property, as further described on the sketch plan attached hereto as Exhibit A. The parties agree that the final description of the Property shall be a metes and bounds description to be prepared by Seller.

2. **Consideration.** Purchaser agrees to make the following agreed consideration for the Property (the "Consideration"):

(a) Purchaser shall pay Seller's actual costs and expenses of the conveyance, including without limitation Seller's engineering, surveying,

Paul Dubois *Kimberly A. Dubois*

and legal fees; provided, however, that the total of such fees shall not exceed \$1,750; and

(b) Purchaser shall make a one-time donation to the Elks of \$1,500.

The foregoing Consideration shall be paid at Closing.

3. **Adjustments.** Real estate taxes for the then current tax period shall be apportioned as of the day of performance of this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the Consideration payable by the Purchaser at the time of delivery of the deed.

4. **Conveyance.** Seller shall convey the Property to Purchaser by good and sufficient quitclaim deed with covenant (the "Deed").

5. **Contingencies.** The Seller's obligation to close hereunder is expressly conditioned on the following:

(a) Seller shall have obtained the Zoning Change;

(b) Seller shall have obtained Site Plan Approval and all other approvals from the City of Portland as Seller may deem necessary and proper for Seller's intended use of the Elks Property;

(c) Seller shall have obtained all building and other permits for the commencement of work on the Elks Property; and

(d) Seller shall have closed on the Elks Property pursuant to the Elks P&S.

6. **Time for Performance; Delivery of Deed.** The transfer of title (the "Closing") shall take place on same date, time, and place as the closing to be held pursuant to the Elks P&S, as such date may be extended, or at such other place as shall be mutually agreed to by Purchaser and Seller. TIME IS OF THE ESSENCE.

7. **Broker's Commissions.** Seller and Purchaser represent to each other that no real estate broker, licensed or otherwise, brought about this transaction. The parties agree to indemnify and hold each other harmless from and against any and all claims, liabilities, damages, costs and expenses (including without limitation, reasonable attorneys and paralegal fees) arising out of or in connection with any claim made against the other party by any person claiming any fee or commission with respect to the sale of

the Property. The provisions of this paragraph shall survive the delivery of the deed hereunder.

8. **Default.**

(a) If Purchaser fails to perform its obligations as set forth in this Agreement, then Seller's sole and exclusive remedy shall be to seek equitable relief for specific performance in lieu of recovering money damages.

(b) If Seller fails to perform its obligations as set forth in this Agreement, Purchaser may pursue any remedy at law or in equity to which it may be entitled, including without limitation specific performance.

9. **Acceptance of Deed.**

The acceptance of the Deed by Purchaser at the Closing shall be deemed to be the full performance and discharge of every agreement, obligation and representation made on the part of Seller, except as expressly set forth herein or in such Deed. No provisions, agreements or representations herein shall survive the Closing except as specifically stated herein. The Property is being sold and will be conveyed "as is" without any representation or warranties as to habitability, merchantability, fitness, condition or otherwise. Neither party is relying upon any statements or representations not embodied in this Agreement.

10. **Risk of Loss.** The risk of loss shall remain on Seller at all times until closing except for loss or damage to the extent caused by Purchaser.

11. **Miscellaneous.**

(a) Seller and Purchaser shall each pay their portion of the Maine State Transfer Tax, if any. The parties anticipate no Maine State Transfer Tax shall be due.

(b) Seller hereby certifies that Seller is a resident of the State of Maine. Seller hereby acknowledges Purchaser's requirement to withhold 2½% of the Consideration pursuant to 36 M.R.S.A. § 5250-A if Seller is not a resident of the State of Maine, unless Seller presents to Purchaser at closing a Certificate of Exemption or Certificate of Reduction from the State of Maine Bureau of Taxation.

(c) By signing this Agreement, Purchaser acknowledges that Purchaser has been notified of the State of Maine's withholding tax requirement pursuant to 36 M.R.S.A. § 5250-A.

(d) Seller hereby certifies that Seller is a resident of the United States of America and is not subject to the 10% withholding tax imposed upon "foreign persons" by Section 1445(a) of the Internal Revenue Code of 1954.

(e) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and permitted assigns.

(f) Purchaser's rights under the Agreement are not assignable without the prior written consent of Seller, which consent shall not be unreasonably withheld. Any purported assignment in violation of this provision shall, at Seller's option, be null and void and shall confer no rights on the purported assignee and may, at Seller's option, be treated as a default by Purchaser hereunder.

(g) It is understood and agreed that all understandings, agreements, warranties or representations, either oral or in writing, including without limitation any letters of intent or prior agreements, heretofore between the parties hereto are merged in and superseded by this Agreement, which document alone fully and completely expresses the parties' agreement with respect to the transactions covered hereby. This Agreement may not be modified in any manner except by a subsequent instrument in writing signed by Seller and Purchaser.

(h) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall constitute but one and the same instrument.

(i) If the date for performance of any obligation hereunder, or the giving of any notice hereunder, falls on a Saturday, Sunday or a legal holiday in the State of Maine, the period for such performance, or the giving of any notice hereunder, shall be extended to the next business day.

(j) This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Maine.

12. **Expiration of Offer.** This Agreement, executed by Seller, constitutes an offer to sell to Purchaser on the terms described herein, which offer shall be deemed automatically withdrawn if not accepted by Purchaser, evidenced by delivery to Seller of a copy of this Agreement executed by Purchaser, on or before Friday, August 28, 2015, at 5PM.

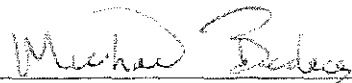
IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date set forth below their respective signatures, to be effective as of the Contract Date.

SELLER:

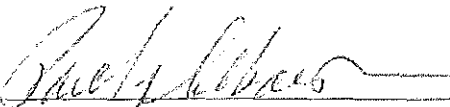
Northland Enterprises, LLC.

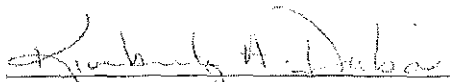
By:  9/27/15
Rex Ben

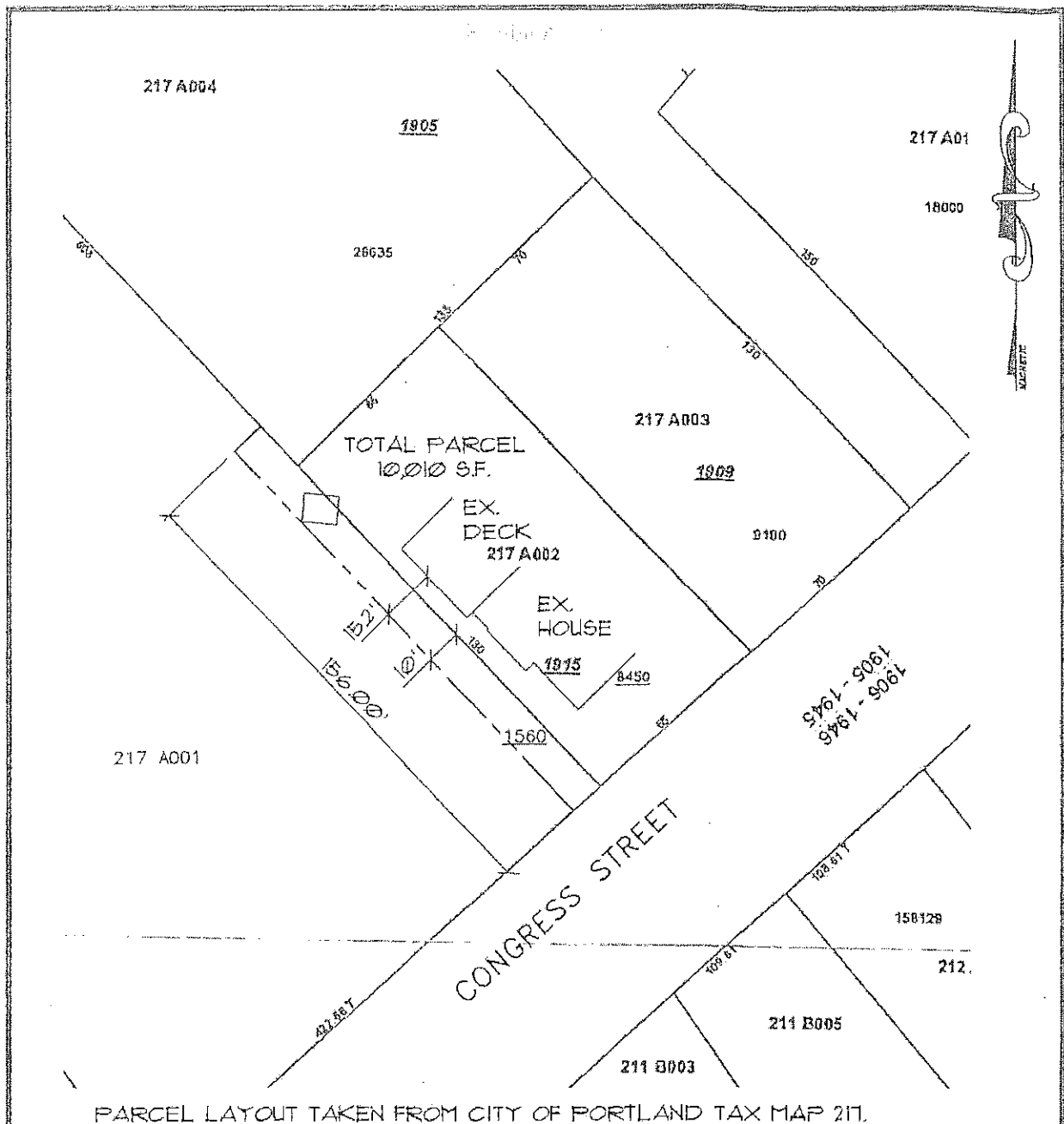
Its: Manager


Dr. Michael Bedecs

PURCHASER:


Paul Dubois


Kimberly A. Dubois



1915 CONGRESS STREET LAND TRANSFER

PINKHAM & GREER
CIVIL ENGINEERS
 29 VANNAH AVE. PORTLAND, ME. 04103

NORTHLAND ENTERPRISES, LLC
 1945 CONGRESS STREET
 ELKS LODGE, PORTLAND, MAINE

CSK-2

SCALE: 1"=40'

DATE: AUGUST 24, 2015 CHK BY: TSG

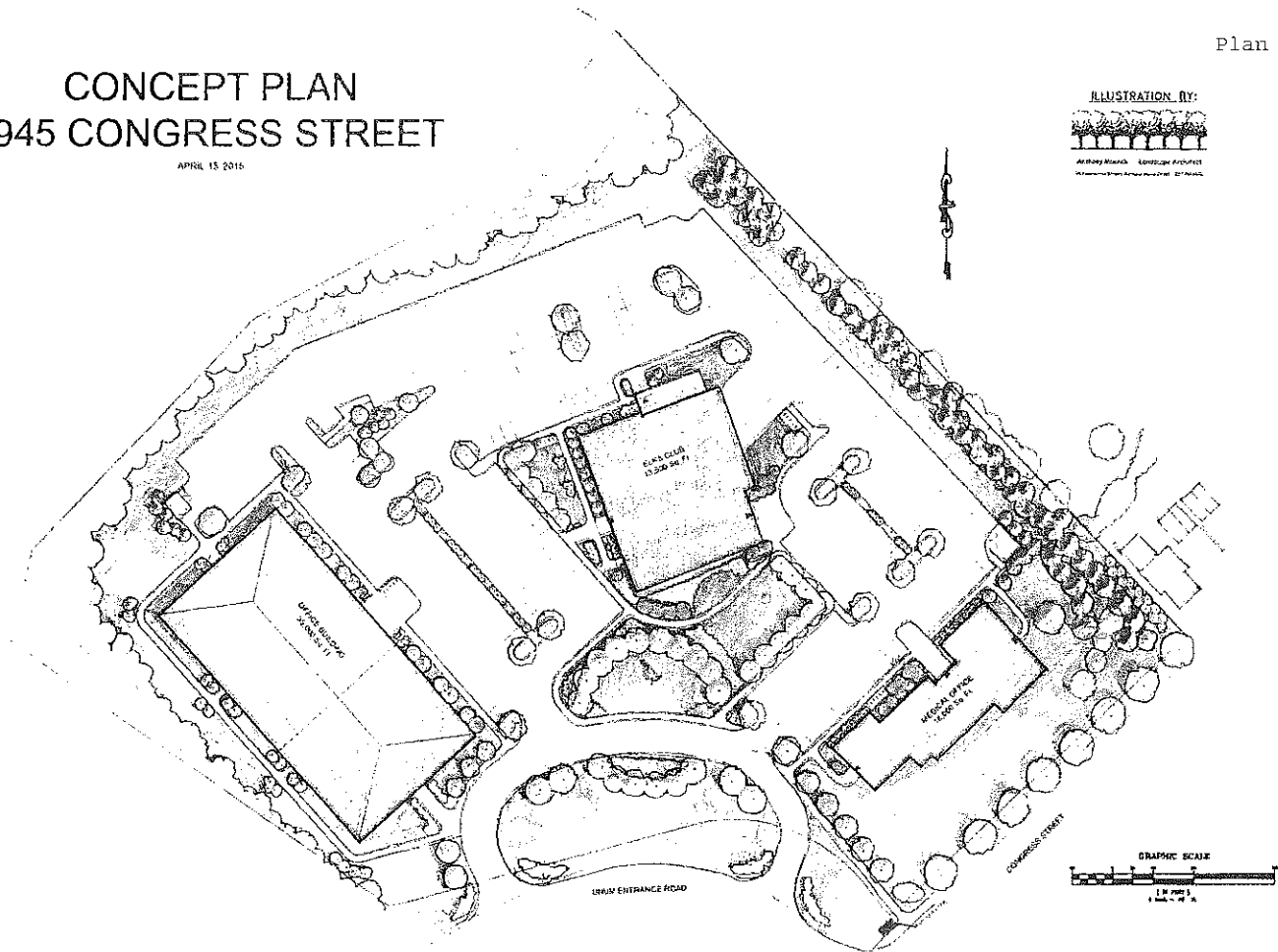
PROJECT: 13151

PJL KMD

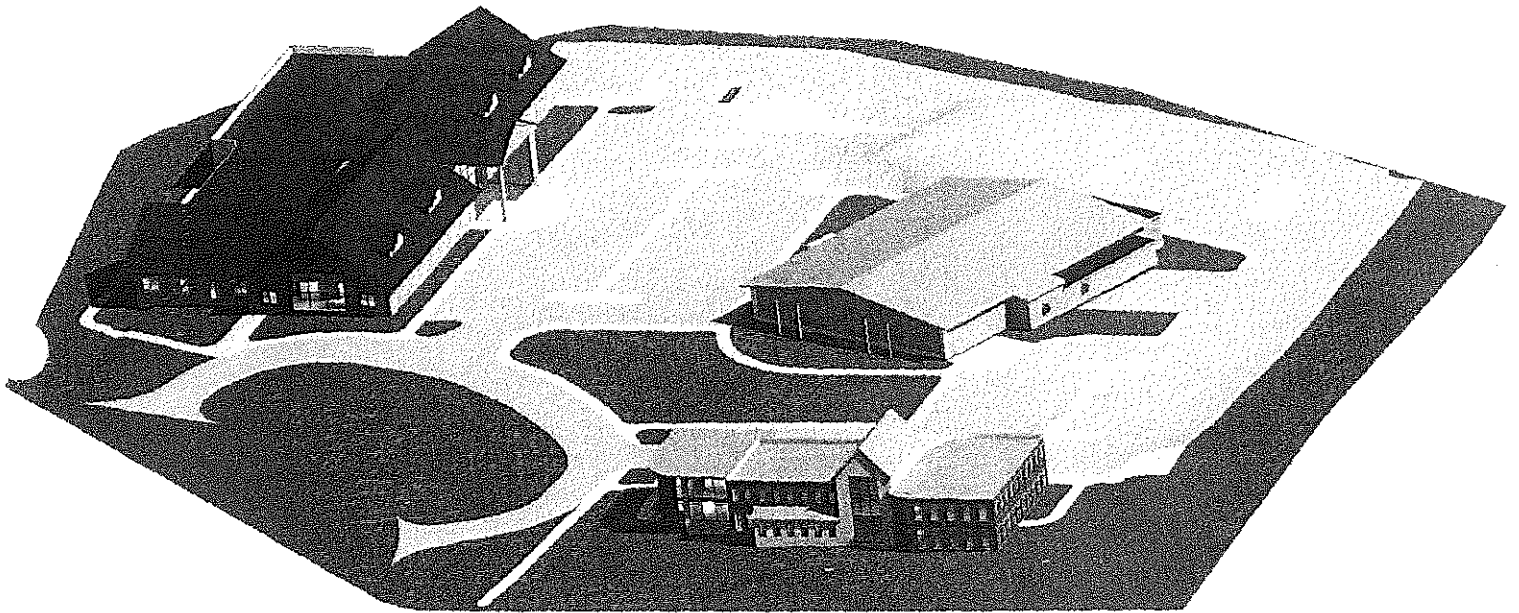
APRIL 15 2015

ILLUSTRATION BY:

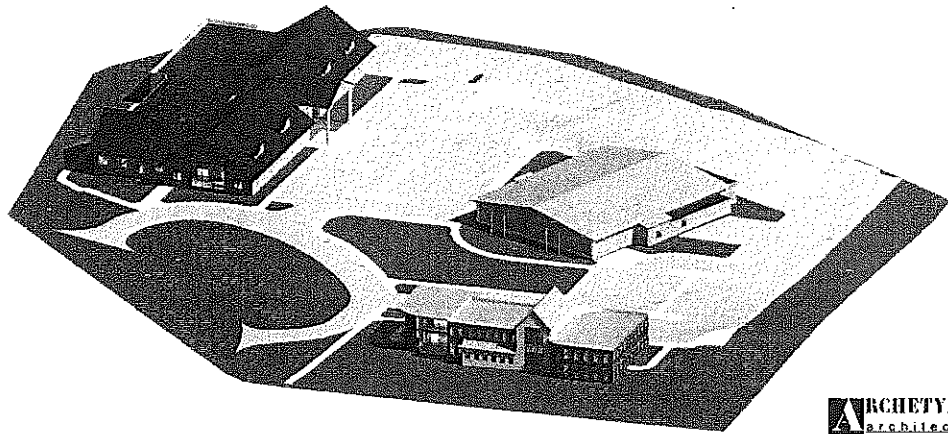
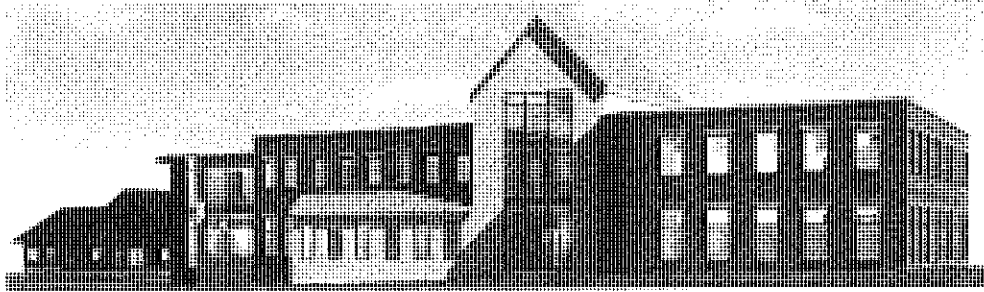
 Anthony Murch - Landscape Architect
 161 Kensington Street, Kensington, NSW 2153 - 02 9439 6622

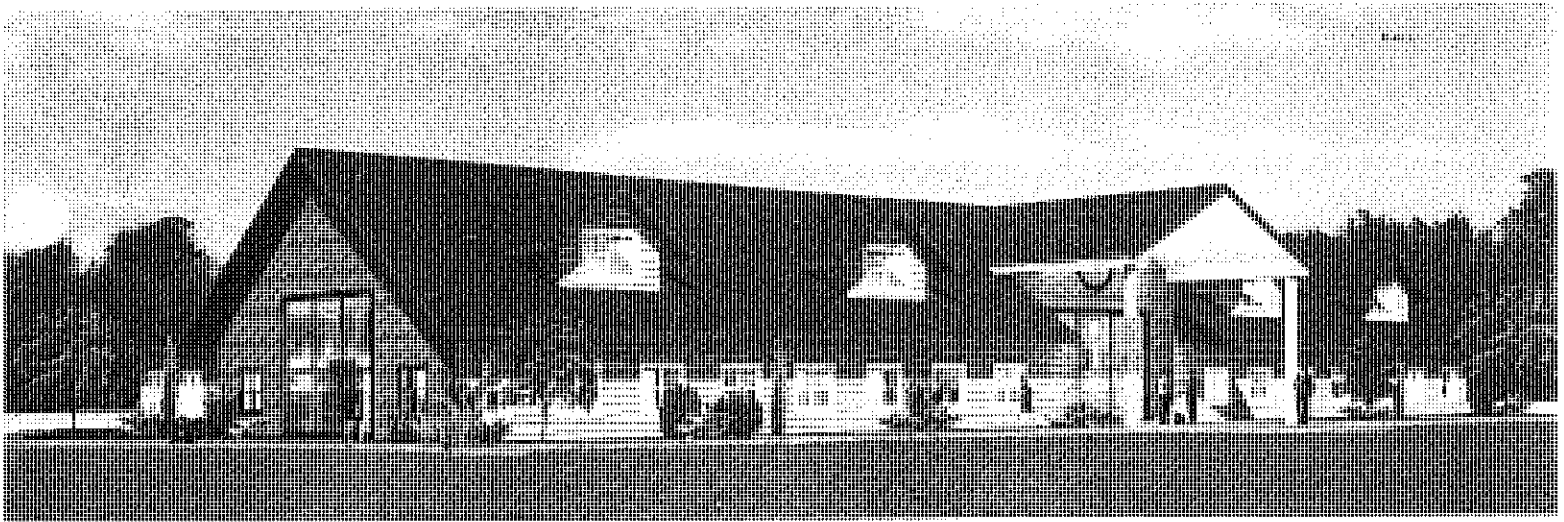


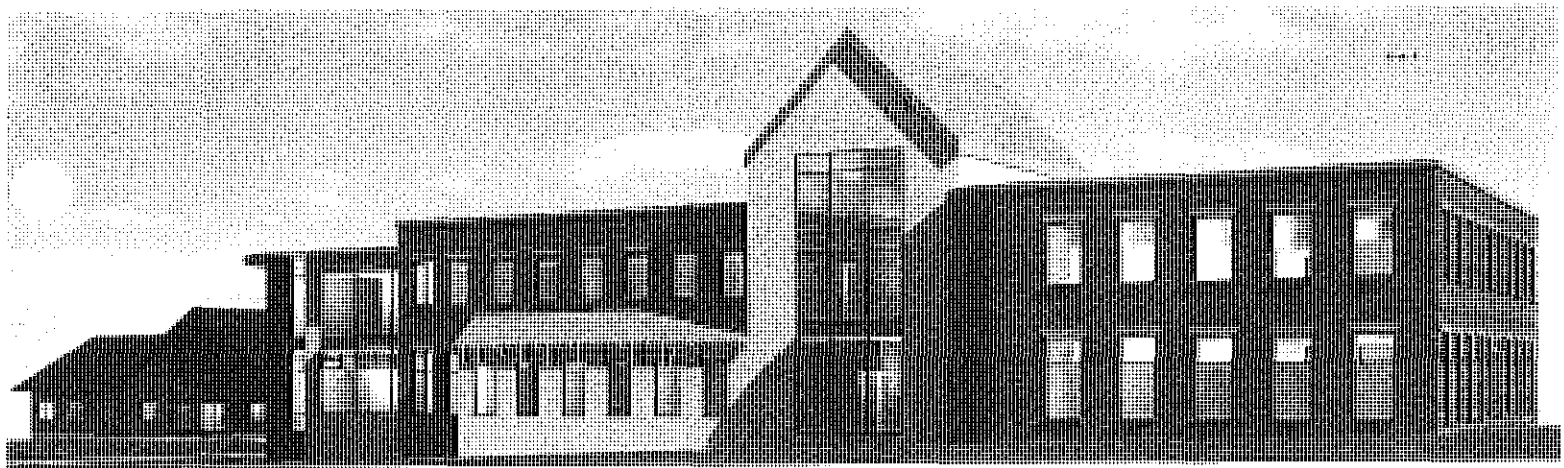
plan 1

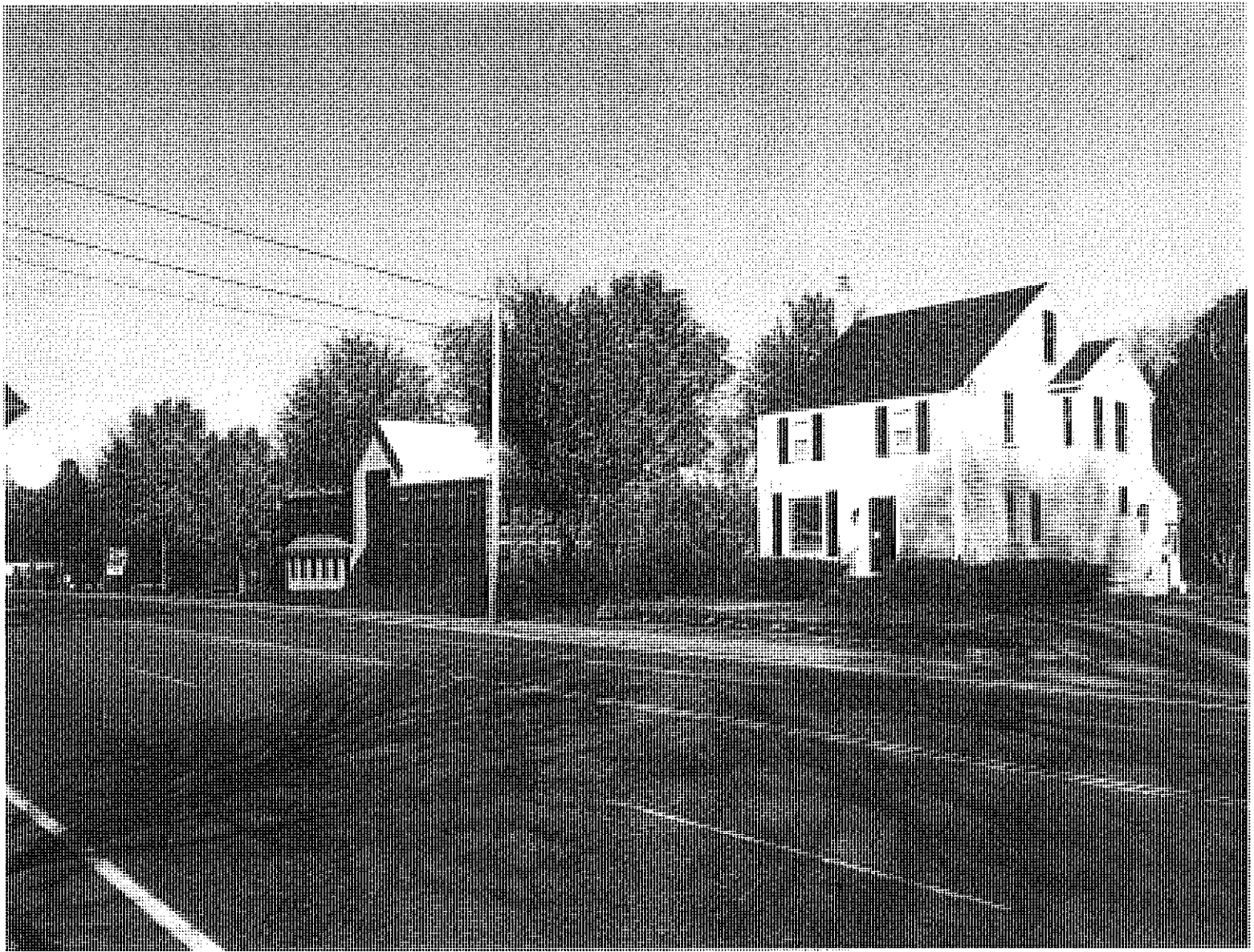


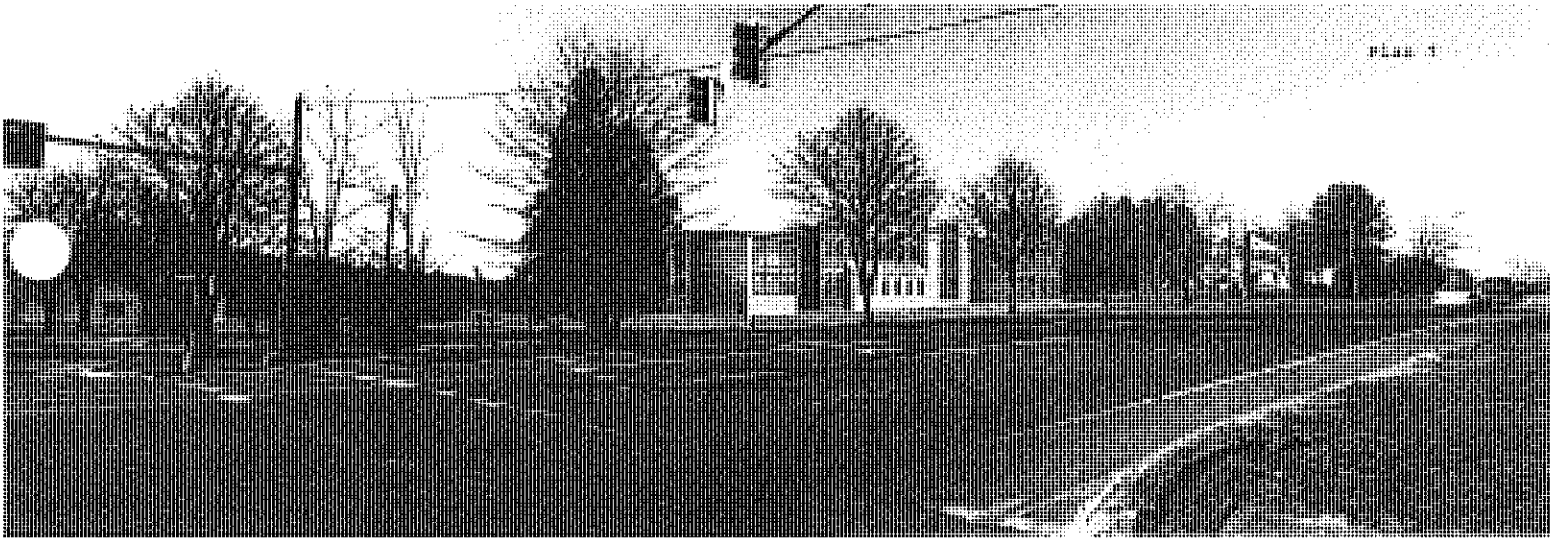
Plan 3











William S. Linnell & Joyce Gauthier, et al,
1905 Congress Street
Portland, ME 04102-1903

January 16, 2015

Mr. Alex Jaegerman
Director,
Planning and Urban Development Department
City of Portland
389 Congress Street
Portland, ME 04101

RE: Elks Club Property Zone Change Application, 1945 Congress Street

Dear Alex:

In addition to the comments we sent along Wednesday, please distribute and post these comments describing our concerns regarding the proposed zoning change.

First: There have been comments suggesting that instead of changing the zoning to OP, that there may be interest in changing the zoning to R-P. We believe that R-P zoning would be equally inappropriate for this project, as the ordinance states that the purpose of the R-P zone is for low-intensity business use.

Section 14-146 of the code reads:

"The purposes of the R-P residence-professional zone are:

- (a) To provide appropriate location for the development and operation of low-intensity business uses, including professional offices on or near major arterials, that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods; or
- (b) To serve as a transition or buffer zone between residential and more intensive nonresidential zones. "

This project, by no stretch of the imagination, can be legitimately called "low-intensity". It actually calls for a high-intensity build out, traffic, and use of the property. Indeed, the submittal calls for 45,310 square feet of building footprint, with 137,201 square feet of office space. Further, nearly every available square inch of remaining land is to be paved, with capacity for some three hundred cars. The city's traffic analysis estimates that during peak hours, traffic volume entering and leaving would be 214 cars *per hour* in the morning, and 204 cars *per hour* in the evening.

In reality, this project simply cannot be deemed low-intensity, and therefore it cannot meet the very definition of the purpose of the R-P zone. To vote in support of a change to R-P would be to declare open season on Portland's zoning laws.

Second: The heavy traffic expected with this project, as mentioned above, would seriously compromise all the efforts, planning, and resources that the city has expended in traffic calming in this very location from Westbrook Street to the Airport. To add this onslaught of traffic to this area of limited additional capacity, would be at cross purposes to all that has been done, and is still planned. In stark contrast, keeping the lot zoned R-2 would have little increase in traffic.

Third: There are three churches in the area which may follow the Elks' lead if these zoning changes are approved. Their membership could either increase or decline, resulting in their desire to sell, and apply for the same zoning changes as the Elks. The Planning Board, and particularly those who live near these churches would be faced with a dramatic change in the character of the neighborhood.

Fourth: As staff has noted in their comments on this project, (see Memorandum dated 1-16, section VII, Comprehensive Plan Analysis) the Comprehensive Plan calls for directing office development to the downtown area.

The Planning staff says, "It should also be noted that there is policy in the comprehensive plan that seeks to focus office development in the downtown core; the "Office Economy" goals from the 1991 Downtown Vision plan include "[s]trengthen[ing] and enhanc[ing] the Downtown as the prominent professional office center of the State and northern New England." In a similar vein, the city's Industry and Commerce Plan from 1994 includes goals related to "preserv[ing], protect[ing], and strengthen[ing] neighborhoods" and "protect[ing]...residential zones."

The proposed plan to increase office development out of the downtown area is in direct contradiction to the Comprehensive Plan. For this reason also, the Planning Board should reject the zone change.

Fifth: I also note that the staff analysis of the Comprehensive Plan mentioned in section VII would benefit from more discussion of the Comprehensive Plan's stated goals to create all kinds of housing. Page 43 of the Comprehensive Plan is devoted to housing goals, yet the staff analysis is practically silent on the issue. I quote at length from page 43 of the comprehensive Plan because it is unequivocally adamant about creating housing:

Page 43 reads, "... Portland has a long history of planning for its housing needs and programs ...

I. HOUSING: SUSTAINING PORTLAND'S FUTURE- November 18, 2002

Overall Goal

Portland, as Maine's largest city, will strive to provide a sufficient supply of quality housing commensurate with a manageable level of growth to sustain the city as a healthy urban center in which to live and work, and its position as a growing regional economic and service center.

The existing housing stock will be enhanced and preserved, **and a wide variety of housing will be designed and created** to support Portland's continued economic development, insure the safety of its citizens, and **maintain its vibrant and stable neighborhoods**.

When seeking solutions to Portland's housing needs and issues, the city will strive for innovation and creativity in the areas of urban design, **expenditure of its financial resources**, and **the use and reuse of land** and buildings to ensure that residential development fits within Portland's unique living environment.

Goal

Ensure that an adequate supply of housing is available to meet the needs, preferences, and financial capabilities of all Portland households, now and in the future." (emphasis added)

It is hard to imagine that the Comprehensive Plan could be any clearer or stronger in calling for more housing. This imperative for more housing should be recognized by planning staff and Planning Board members, and applied in consideration of this proposal. The Elks Club proposal is 180 degrees contrary to the Comprehensive Plan.

Sixth: I would like to straighten out a disconnect in the staff report on the January 5th neighborhood meeting. In the Memorandum to the Planning Board dated January 16, section VIII, "Public Comment," the staff report states that

"Comments at that meeting seemed to include questions about signs, parking requirements, stormwater management and environmental impacts, and lighting. Some neighbors expressed general opposition (Attachment 3)." (emphasis added)

Please contrast that assessment of "general opposition" with the developer's report of the meeting:

"Our neighbor, adjacent Congress Street, Bill Linnell, noted he was opposed to the project and thought a housing project would meet the Comprehensive Plan better. We noted we had sent a brief summary of how this project conforms to the Comprehensive Plan to the staff already. He will get a copy of that."

-I, the undersigned Bill Linnell, was the one who expressed opposition, speaking also for Joyce Gauthier, who was present, and Janet Burns, who was not. My opposition was specific in challenging the plan as "grossly inconsistent with the Comprehensive Plan."

I would like those who read about that neighborhood meeting to know that from day one, I expressed, on behalf of myself, a neighbor across the street, and another abutter, an unambiguous challenge to the

proposal with respect to its inconsistency with the Comprehensive Plan, namely that the proposed zone change is grossly inconsistent with the clear, stated, unmistakable policy goal of creating more housing in the future. I compared the Comprehensive Plan's focus on housing to the new Meghan Trainor song "All About that Bass," saying that "the Comprehensive Plan is **all about housing**." I said further that 'When you remove land from R-2 to OP, you are eliminating the possibility for housing. The City's Comprehensive Plan is all about creating new housing—all kinds of housing, including single family. In fact, if you knock down an existing apartment building to be replaced with non-residential uses, the developer has to contribute money for replacement housing. In this instance, the City would be totally eliminating land zoned for housing, and changing it to a zone that does not allow for housing."

In short, the neighborhood meeting included specific, pointed opposition to the proposal as it contradicts the Comprehensive Plan's mandate of creating more housing. I ask that this opposition be recorded in the staff's comments.

Finally: For all the reasons listed above, we continue to respectfully ask the Planning Board to recommend to the City Council that the proposed zoning changes be denied.

Sincerely,

William S. Linnell & Joyce Gauthier 1905 Congress Street

Janet Burns 1904 Congress Street

January 14, 2015

David P. Silk
1187 Westbrook Street
Portland, ME 04102-1928

Ms. Helen Donaldson
Planning and Urban Development Department
City of Portland
389 Congress Street
Portland, ME 04101

RE Elks Club Property Zone Change Application, 1945 Congress Street

Dear Neil:

I live in the Stroudwater neighborhood and I am a member of the Stroudwater Village Association. I write in my own individual capacity to express my view as to why the Planning Board should not recommend to the City Council approval of Northland Enterprises, Inc.'s application to rezone the Elks Club property at 1945 Congress Street from R-2 to OP. Can you please forward this letter to the Board as part of the packet of information the Board is to receive on the applicant's proposal.

As an initial matter, in the applicant's material you were kind enough to send to me, I did not see anywhere the applicant's explanation on how the proposed zone change is consistent with the Comprehensive Plan. Unless and until the applicant attempts to explain how it's parcel specific zone change application is consistent with the Comprehensive Plan, and makes that information timely available to the public prior to any Planning Board meeting, the Board should defer hearing the proposal.

I am not aware of any proposed one parcel only zone change (as opposed to a large area with multiple parcels) that sought to change an existing and to be continued use on the property from legally conforming to legally nonconforming but that is what the applicant seeks here. The applicant represents that with the proposed parcel zone change the Elks Club will continue to be used as a place of

assembly. Application at 4. A place of assembly is a conditional use in the R-2 zone because it is viewed as typically harmonious with residential uses. Places of assembly are not permitted, either by right or as a conditional use, in the OP zone. I cannot think of any zoning justification for a parcel only zone change that has the effect of converting an existing and to be continued use from legally conforming to legally nonconforming. I am not aware of anywhere in the Comprehensive Plan where it is a planning goal of the City through a parcel only zone change to convert a legally conforming use that is to be continued to nonconforming. By definition if the change is approved, the City would be permitting a nonconforming use to continue. But the goal of zoning is to eliminate over time nonconforming uses, not to convert legal uses into to a use prohibited in the proposed zone. It cannot be consistent with the Comprehensive Plan to approve a parcel only zone change that makes an existing lawful use nonconforming.

Continuing on the issue of consistency with the Compressive Plan, the City has a very clear goal of creating more housing, all kinds of housing. As a R-2 zone, permitted uses include single family detached residential housing. The area of the City zoned R-2 is finite and located in the outlying areas (off of outer Auburn Street, outer Washington Ave, outer Allen Ave, outer Westbrook Street and outer Congress Street). Most of these streets are major traffic carrying arterials and have limited additional capacity for traffic.

The purpose of R-2 is to “provide for low-density residential development characterized by single-family home on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity.” Looking at the zoning map one can see that much of the R-2 has been built out over the last twenty to thirty years consistent with the standards in the R-2. But some open areas remain including areas along outer Congress Street. I am not aware of any reason why the stated policy of the R-2 zone remains less vibrant today. In contrast to the applicant’s proposed multi-story professional office buildings, single family detached residential uses in these areas would cause less of an impact on already overburdened roads.

Conditional uses in the R-2 include places of assembly. In the R-2 over the last 30 years several places of assembly located to the R-2 zone. That can be seen on outer Congress Street (as well as outer Washington Ave., outer Allen Ave. and

outer Westbrook Street). On outer Congress Street there are two places of assembly (churches) located almost across the street from the Elks Club. When these places of assembly located to outer Congress Street they knew of the limited uses in the R-2 zone. Because of the limitation on use, they knew if they ever decide to sell, the market would be quite limited. That limitation on use has served the conditional uses quite well as the uses have been established in a residential zone in a manner consistent with the characteristics of the area. The two churches and the Elks Club are situated with significant open space facing Congress Street with the building to hold the assembly and parking set back quite a distance from Congress Street, all to preserve the open space characteristics of outer Congress Street and to be compatible with the permitted R-2 uses. The proposed zone change will destroy this balance.

A zone change should not be approved simply to accommodate the financial goals of a property owner especially when the owner developed the property aware of the limitations on use. Unlike the Williston West Church, the Elks Club building lacks any unique historical features. It is not a landmark structure and need not be preserved if its location interferes with the development of residential subdivision which means more housing for the City in an area zoned for housing.

Also relative to outer Congress Street, in the last 20 years two significant single family residential subdivisions (Tide Mills and River's Edge) have been built out directly off of Congress Street in very close proximity to the Elks Club as contemplated by the R-2 zone. River's Edge was built as a contract zone (conditional R-3) but is fully consistent with the policy and permitted uses in the R-2. They are both very close to Congress Street and are fully built out as there is a demand for single family detached housing within the City.

The Comprehensive Plan has as a goal of no net loss of housing for all development. That goal is incorporated into the Land Use Code. While there is no existing housing on the Elks Club property, changing the zone from R-2 to OP removes the land from the R-2 capable of being developed for residential housing. Residential uses are prohibited in the OP zone. Rezoning land to eliminate residential uses like removing dwelling units with no replacement of those units is clearly not consistent with the Comprehensive Plan's goal of creating more housing in the City.

While the Board is not acting on any site plan application at this time, the applicant's proposed site plan visual shows that the applicant is proposing two multi-story generic commercial/medical office buildings with lots of parking and nothing close to what meets the OP purposes and standards.

The purpose of the OP is to "provide substantial areas for integrated development of professional offices in a park-or campus-like setting which are of the highest quality, are well maintained and are compatible with their natural surroundings." One is hard pressed to see in the visual any park or campus like setting compatible with the natural surroundings. The 1945 Congress Street lot is not a "substantial area." If Board members are not familiar with an OP zone, they should ride by and through UNUM's campus. That will show that there is little if any parking visible from the street, significant natural features remain between the street and improvements, open space remains and is visible from the public way, trails and sidewalks are available, and the site clearly has a park or campus like feel. Compare UNUM's development to the OP policies and standard and you will see UNUM fits. The applicant's proposal absolutely does not.

In reality, the applicant's proposal is a run of the mill multi-story professional office structure that pretty much consumes most of the site. It is clearly not a campus. It clearly does not create a park like setting. Unlike the UNUM campus, and the places of assembly along outer Congress Street and near the site, one of the two proposed multi-story office buildings fronts immediately on Congress Street. It is not set back from Congress Street with an open space and natural vegetation buffer between the development and the street. It is not compatible with the natural surroundings and with the existing development pattern created by the nearby homes and places of assembly.

The OP standards call for a Master Plan of the office park that shall include a design relationship to the site to show integration of open space and the natural features. That integration "shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches." None of that can be included on the proposed site given the proposed building envelopes and parking. One cannot shoehorn the features of an OP zone into this site and legitimately call what is proposed within the realm of what the OP zone envisions.

On the visual there are no internal sidewalks that take advantage of the "topography and natural features of the site." There is a mass of parking being proposed right next to what will still be a R-2 zone with little preserved of the natural features. Because of the lack of a campus setting and retention of natural features, the proposed multi-story buildings will loom large over the abutting residential dwelling units. I see no buffer and screening of the type called for by the OP standards which shall be of a "dense and continuous nature and shall incorporate trees, shrubs, fencing, berms and related elements." I do not see any preservation of natural features which includes existing vegetation. It appears it will be mostly paved over. To call this site suitable for OP designation based on the proposed plan is not possible.

In sum, it appears to me the only reason for the zone change is to accommodate the applicant and to maximize the financial return to the Elks Club. The proposed zone change permits broader uses, professional offices, which makes the land more valuable. But the standard to judge the merits of a zone change is not whether the owner, a place of assembly that is often a non-profit and not subject to property tax, should be able to maximize the return on its investment when the assembly loses critical mass. Otherwise we might as well not have zoning. Having located in the R-2 zone as a place of assembly the owners were on notice that permitted and conditional uses are quite limited. The zone should not be changed simply to broaden the market and/or increase the return for the owners.

Both Tide Mill and River's Edge are successful residential subdivisions located on outer Congress Street on the same block as 1945 Congress. The purpose of the R-2 zone is to direct the placement of additional residential subdivisions in the area. That has occurred. There remains demand for single family detached residential housing in the City. Such development increases the population of the City which is also a goal of the Comprehensive Plan (helps reverse the urban flight). The land is clearly suitable for residential development as it is similar in kind and location to the land that has been recently developed for residential uses. The land should not be removed from the inventory of land available to serve that need simply to maximize the Elks Club's return.

Throughout the City, many places of assembly are conditional uses in residential zones located on major arterials in zones that do not allow for office complexes or other commercial developments. As noted above see outer Washington Ave.,

Allen Ave. and Westbrook Street for recent (last 30 years) examples of development of places of assembly in residential zones. Permitting those conditional uses in otherwise residential zones was not an invitation once the assembly's financial health changes to throw away the limitations on uses in the residential zones. When it purchased the 1945 Congress Street property and located to outer Congress Street, presumably the price the Elks Club paid recognized the then limitation on uses. There is nothing unfair or unwise here in affirming the value of the R-2 zone.

The R-2 zone was created consistent with the Comprehensive Plan. As stated in the overall purpose of the Land Use Ordinance, section 14-46: "This article is made with reasonable consideration, among other things, to the character of each zone and its peculiar suitability for particular uses and with a view to conserving and stabilizing the value of property and encouraging the most appropriate use of land throughout the community."

In light of the above, I respectfully request the Board vote not to recommend to the City Council the proposed parcel only zone change for 1945 Congress Street. It is entirely consistent with the Comprehensive Plan for the property to remain R-2 as it will conserve and stabilize the value of property and encourage the use of the property in the manner consistent with the R-2 zone.

Thanks for reading this letter and your service to the City.

Sincerely

A handwritten signature in black ink, appearing to read "David P. Silk", written in a cursive style.

David P. Silk

William S. Linnell, et al,
1905 Congress Street
Portland, ME 04102-1903

January 14, 2015

Ms. Helen Donaldson,
Planning and Urban Development Department
City of Portland
389 Congress Street
Portland, ME 04101

RE: Elks Club Property Zone Change Application, 1945 Congress Street

Dear Ms. Donaldson:

We are abutters to the proposed development. We believe that, to be consistent with the City's stated goals, zoning ordinances, and the Comprehensive Plan, the Planning Board should not recommend to the Council their approval of Northland Enterprise's proposed zoning change from R-2 to OP. Please share this letter with the Planning Board so that they may read it before the workshop on the 20th.

First: Taking this land out of R-2 forever reduces the opportunity for more single-family housing which is a major city goal. This proposal is in total opposition to the Comprehensive Plan, and the purpose of the R-2 zone which is "To provide for low-density residential development in outlying areas of the city and along traffic corridors with limited additional traffic capacity." (Code of Ordinances Sec. 14-76).

The Comprehensive Plan states that the housing goal is to "Ensure that an adequate supply of housing is available to meet the needs, preferences, and financial capabilities of all Portland households, now and in the future." (page 43. Emphasis added.) To change the zoning would therefore be in direct contradiction to stated policies of providing housing including single family detached residential units, for the future. That goal is to help stop sprawl. Further, there is still an increasing demand for housing in the city; that has not changed, and neither have these policies.

Second: When the Elks bought this land, they knew there were limits to its uses, just as we did when we bought the abutting property. Instead of following the limitations of the zone in which they settled, they are asking the board to change the rules for maximum profit. They could follow the existing rules and develop the land for housing, which we would welcome, just as two fairly recent developments have done nearby, namely, at Rivers' Edge and Tide Mills. That would be consistent with current, established rules and policies. It's nice for developers to increase their profits, but their profits should not dictate public policy, nor circumvent the rules and reasons for zoning.

Third: The developer seems to want to create a brand new zone, where two different, mutually exclusive, zones can exist. The current zone allows for the Elks Club to exist (meeting places). But such meeting places are not allowed in the proposed OP zone. Yet the developer wants to change the zone AND keep the Elks Club there. It seems that this approach is asking too much of the Planning Board. It is certainly a radical notion, which would result in the back-door creation of a bizarre new zone.

Fourth: If approved, the proposal would be zoned OP, but would really just look like they stuck in a couple of office buildings, oversized for the area, and then paved the rest of the lot. A few scattered shrubs and a bike rack by no sense of the imagination meet the OP standards for a "park or campus like setting". This lot is not very big. Adding the needed elements such as open space, preserving natural features, trails, sidewalks, gardens, and setbacks with full buffering is not be possible given the size of the buildings they are trying to cram into this lot. To allow this project to proceed would be to ignore the intent and purpose of the OP zone.

Fifth: Traffic is already heavy on Congress Street. Adding more office buildings instead of single family homes would make traffic much worse, not better. The current zoning properly recognizes that single family homes work better on (repeated from above) "outlying areas of the city and long traffic corridors with limited additional traffic capacity." If there's a better example of an 'outlying traffic corridor with limited additional traffic capacity' than the area around 1945 Congress Street, we'd like to know what it is.

Sixth: No developer should be able to achieve, by Planning Board vote, what the City's ordinances and policies clearly don't allow. To create a bizarre new zone at the expense of the integrity of the zoning process would be a mistake. The developer would enjoy the windfall, and the tax base would admittedly increase from what it is today, but nearby and recent developments attest to the viability of neighborhood housing development on outer Congress Street, without sacrificing the protection of the zoning policies and process. Throwing two multi-story office buildings with an ocean of parking into the neighborhood will only lead to a deterioration of the neighborhood., a neighborhood that has been recently improved by the traffic movement changes and will be enhanced with the proposed cross walk at the end of Garrison Street and a lower speed limit. There is a neighborhood here even if you do not see it when you head out to SOPO to shop. The tax base can be increased without shortchanging the process.

Finally, for the above reasons, we ask that the Planning Board to vote not to recommend the proposed zoning change for 1945 Congress Street to the City Council.

Sincerely,

William S. Linnell & Joyce Gauthier 1905 Congress Street

Janet Burns 1904 Congress Street (diagonally across Congress Street from the site)

From: "Lucie Tardif" <ltardifl@maine.rr.com>
To: <aqj@portlandmaine.gov>
Date: 1/19/2015 6:27 PM
Subject: Zoning change proposal for 1945 Congress Street

Dear Mr. Jaegerman,

I am a resident of the Stroudwater area and have been made aware of the Elks Club's application for a zoning change at their property on outer Congress Street.

If the Elks succeed in their application, the zoning change proposed would have serious implications to the area and Stroudwater residents' way of life. Lack of a car warrants that I travel mostly by bus to and from work at the Jetport Plaza or downtown. In order to commute to work, I must cross Congress Street near the light just above Stroudwater Crossing in the wake of southbound (toward the Mall) traffic at a very busy time of the morning.

Should the Elks achieve their desired result, that traffic will increase substantially, particularly if they erect two professional office buildings (and keep the current Elks Club building) with space for up to 300 cars. If traffic is increased further, I'll never get across the street! I am in my late 50s, but I know some elderly who take the bus and must make that trek across the street. Since they cannot move very fast, they are taking their very lives into their hands.

This zoning change which would allow for two buildings as well as increased traffic (at high speeds, despite posted limits) would raise the risk level for accidents and loss of life. It would also fly in the face of traffic calming plans for the area. You cannot allow the construction of professional office buildings and expect to calm the increased traffic. Outer Congress Street is already a speedway!

I also find it disturbing that an area with lots of green space and lush growth right now, complementing the historic neighborhood it abuts, would be eliminated by further construction. That area is a welcome break to the eyes after one leaves behind dense residential area and approaches a busy commercial area at the other end (the airport, shopping centers, the Mall, etc.). It is relaxing to travel through that area right now and creates a calming effect on its own. New professional buildings will reduce the beauty of nature that exists there now, exacerbating traffic and increasing the number of drivers and therefore the level of tension already present in drivers anxious to get to work and eager to leave at the end of the day.

I understand the Elks Club's request will also violate the city's Comprehensive Plan. What was the point of the Plan if the City does not intend to enforce it? Portland has already come precariously close to doing that with the Midtown project, and were it not for some savvy and watchful citizens, the City just might have gotten away with pushing it past Portland residents.

Please pay attention to your own policies and consider the detrimental effect the Elks Club's proposal will have on the area. Do not allow them the ability to push this through.

Thank you for your attention.

Sincerely,
Lucie Tardif
13 Brewer Street
Portland

From: Joe Heasly <jheasly1@maine.rr.com>
To: <hcd@portlandmaine.gov>
CC: <stroudwatervillageassociation@gmail.com>, <captinell@yahoo.com>, Carolyn Heasly <caroalic@maine.rr.com>
Date: 1/19/2015 9:33 PM
Subject: 1945 Congress St (Elks Club) Proposal comment

Hello Ms Donaldson,

My wife and I live at 1832 Congress St, and have recently become aware of the Elks Club's proposal for their parcel at 1945 Congress St. We'd like to offer our thoughts on the project as we understand it, which is to create an 'office condominium' of three buildings (two new, one a smaller incarnation of the current Elks building) if the current R-2 zoning can be changed to OP.

We prefer that the parcel remain residential. There are two nearby 'assembly' uses on outer Congress St; we don't want a precedent set in this instance that would increase the pressure for non-residential uses bordering Stroudwater Village.

We are concerned about how this project will impact the traffic-calming efforts that the city has underway for this stretch of Congress St. Additional offices on the site will certainly generate a small but steady increase in the number of vehicles traveling to and from the site.

We'd like a chance to hear more from the Elks and their partners in this exercise about their plans. It may have gotten lost in the holiday shuffle, but I don't recall getting any notice of the neighborhood meeting that was apparently held recently. I understand that the Stroudwater Village Association has a community meeting coming up in February and that they are willing to host a meeting of the Elks, et al, with the community. Is it possible for the board to defer any decisions until that to happen before the board makes its decision?

We will not be able to attend the Board's workshop tomorrow afternoon, would you please convey our thoughts to the Board?

Finally, would you please add us to the 'interested parties' list for this project?

Thank you,
Joe Heasly
Carolyn Heasly
1832 Congress St

From: Stroudwater Village Association Board of Trustees <stroudwatervillageassociation@gmail.com>
To: <hed@portlandmaine.gov>
CC: Edward Suslovic <edsuslovic@portlandmaine.gov>, Mike Murray <msm@portlandmaine.gov>
Date: 1/20/2015 11:49 AM
Subject: Stroudwater Village Association Letter to Planning Board RE: 1945 Congress Street (Elks Club)

TO: Nell Donaldson, Planner, Planning Division
 FROM: Stroudwater Village Association
 RE: 1945 Congress Street. (Elks Club) rezoning request from Northland Enterprises
 DATE: January 20, 2015

*The Stroudwater Village Association requests a tabling of the zoning decision requested by Northland Enterprises for the Elks property at 1945 Congress Street until residents can understand more specifics about the proposed project and the wider implications for the neighborhood. *

Specifically, we would like to invite the developers and city staff to present to area residents in person at the SVA's annual pancake breakfast event, to be held on Saturday, February 14th at 8:30-10:00AM at the Stroudwater Baptist Church. We suggest this event as we believe it will provide a good representative turnout from area residents, though another public meeting would also be possible.

Many neighborhood residents have reported to the SVA that they have only been recently made aware of the project, and those who have been made aware of it are very divided in their reactions.

Some residents have viewed the proposal as a general improvement to the existing site usage, even while expressing concerns about the details, building locations, aesthetics and environmental impact of the proposed development. Those residents expect to work with the developers to assuage their concerns before providing support to such a project.

Other residents, in clear opposition to the overall development, have expressed a preference for residential (as opposed to commercial) development on the site, referencing incompatibility with the residential nature of the neighborhood, increased traffic flows, impact on abutting property owners, that the current proposal does not comply with the City's Comprehensive Plan, as well as concern about setting precedent for other similar sites within our neighborhood.

In any case, it's clear that more information is needed in order for residents to assess the impact of this zoning change and project. As such, we request the decision be tabled until further information about the project can be provided.

-Dan Koloski, SVA President
 On behalf of the Stroudwater Village Association

The Stroudwater Village Association is a Maine Non-Profit corporation. All residents of Stroudwater are members and invited to participate in all of our activities.

Find us on the web at <http://www.livinginportland.org/stroudwater.htm>
 Find us on Facebook at
<https://www.facebook.com/StroudwaterVillageAssociation>

From: John Sommer <john@svindulgence.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>, "edsuslovic@portlandmaine.gov" <edsuslovic@portlandmaine.gov>
Date: 1/20/2015 8:46 AM
Subject: 1945 congress street proposed zoning change

Hello Nell, I live on Garrison Street, nearby to the proposed changes. I am writing to provide some comments regarding the proposed zoning change at 1945 congress street. My concerns follow below:

- This change is in direct opposition to the city's comprehensive plan and zoning rules. Avoiding a piecemeal approach to zoning (what this change represents) is the underlying objective to the comprehensive plan.

- Would help establish the precedent for creeping changes....I notice there is an abutting parcel up for sale (behind the mason's school)...will the changes be applied to that parcel as well?

- At present there is a "buffer" between the residential areas of Stroudwater and the commercial areas; that area is the R2 zone on both sides of Congress Street (elks and churches across the street). This zoning change would effectively end that "buffer".

Thank you for your consideration. John Sommer 51 Garrison Street Portland, ME 04102

From: Rob Rosenberg <robkellyrosenberg@gmail.com>
To: <hcd@portlandmaine.gov>
Date: 1/22/2015 7:59 AM
Subject: RE: Elks Club Property Zone Change Application, 1945 Congress Street

Mr. Alex Jaegerman

Planning and Urban Development Department

City of Portland

389 Congress Street

Portland, ME 04101

Dear Mr. Jaegerman,

We live at 1859 Congress Street, near the Elks Club and abutters to the Masonic Learning Center. We are across from the top of Garrison Street, where the new traffic light and crosswalk will make it easier to cross Congress Street and walk to the dam. The historic district starts with our property, but does us little good if the current zoning laws and the Comprehensive Plan are scuttled.

The zoning change is not what the Comprehensive Plan dictates. The significant traffic impact would undo what we've achieved in restoring the neighborhood which has been spit by Congress Street for too long.

The proposed change would also set a precedent for the Masons, whom we abut, as well as the four or five churches in the area.

Please ask the Planning Board to follow the Comprehensive Plan and recommend that the City Council leave the zoning for 1945 Congress Street as it is, with no changes.

Sincerely,

Rob Rosenberg robkellyrosenberg@gmail.com

1859 Congress St 409-9652

From: David Silk <DSilk@curtisthaxter.com>
To: Helen Donaldson <hcd@portlandmaine.gov>
Date: 1/22/2015 9:38 AM
Subject: RE: 1945 Congress

Hi Neil: Thanks for the update. I understand there will be another workshop. Can you let me know when that will be? In the interim can I get a copy of the recording of Tuesday's workshop. I am happy to pay whatever cost are incurred in making a copy of the recording.

You saw by my letter that I fail to see how this project fits within either the OP or RP zone. I just do not see it. My main issue is that the project should not drive the zoning. The land in the area is zoned R-2. Maybe it should remain residential with options for more dense residential uses such as apartments. If the City does not want the land used for residential development, then maybe the zoning should be changed but it should be done with a vision to what the area should become, one that should insure it is compatible with the area and effort to calm traffic. Area wide rezone could incorporate design standards for commercial uses. Piece meal parcel specific zone changes to accommodate an individual property owner's needs (and a particular buyer's needs) of the moment will only lead to hodgepodge of uses and designs that will not create any continuity in the area that is on the edge of a historic district. I am not sure folks understand the positive image the open space creates to those new to Portland when exiting the JetPort onto Congress Street. If that is to be changed I would think the City wants to see what comes in its place maintains that positive experience. It is a gateway.

David

-----Original Message-----

From: Helen Donaldson [mailto:hcd@portlandmaine.gov]
Sent: Tuesday, January 20, 2015 9:45 AM
To: David Silk
Subject: RE: 1945 Congress

David,

I'm back in the office now and have had a chance to read your letter. I appreciate your thoughts, and I will make sure that the Board is aware of your correspondence at the workshop this afternoon.

The date of a hearing will depend on how the conversation goes at the workshop. I will be sure to let you know when a date is set.

Best,
Neil

Neil Donaldson
 Planner, City of Portland
 874-8723
 hcd@portlandmaine.gov

>>> David Silk 01/14/15 11:57 AM >>>
 Hi Neil:

I have some concerns on the 1945 Congress Street parcel zone change application and have put them in the attached letter. Can you include the letter in the PB packet for the upcoming workshop scheduled on the 20th. I may not be able to make the workshop because of a work commitment but let me know when the public hearing occurs as I hope I can attend that hearing. I assume the packet for the workshop will be available on line prior to the workshop but if not, could you send it to me when it is publically available. Thanks for your help and have a great day. David

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

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

Nell,

Please include these sentiments in the discussion on the Elks Club Property:

How about this approach: What if the city looked at the Elks parcel from the point of view of the Comprehensive Plan: plan it to be truly compatible with the existing neighborhood, with historic-compatible single-family-looking houses near Congress street, appropriate for this gateway location coming into the city, and address housing needs as outlined in the Comprehensive Plan- a development with apartments, including some handicapped accessible, some suited for large families. Maybe a community building with a basketball court; a soccer field, garden space, and parking in the center. More density for the developer, but traffic would be much less intense. Housing needs are improved.

Bill Linnell

Sent from Windows Mail

>>> Paul Dubois <pdubois1915@yahoo.com> Saturday, January 24, 2015 10:00 PM >>>

Our property is a single family home abutting the Elks club property. After listening to the board, we feel strongly that the board should consider the Elk's application for a zoning change very carefully. We have a wonderful home in a residential area adjacent to Stroudwater Village and cannot begin to tell you how fantastic it is to live on outer Congress. We get to live in Portland but have off street parking. We have immediate access to the Stroudwater Trail, easy kayak access to the Fore River, Casco Bay and Stroudwater River. We have enough room for raised bed gardens and compost all our green waste on site. We have great access to the city bus system and the Jetport (literally walking distance). I can sit in my recliner and occasionally see deer that live in the area. Last year we were visited by a family of wild turkeys on a daily basis. My wife works 3 miles up Congress Street and I get to my job in 12 minutes every morning. The City's Comprehensive Plan directed the Board to facilitate new residential housing opportunities and I can't think of a better neighborhood to build a home. Changing the zoning for over 7 acres of potential housing is inconsistent with that mandate. The Elk's claim that they will never sell or in no possible scenario would they ever allow residential development on the property seems ridiculous especially in light of the fact that they have entered into several contract over that last few years to do just that. The reason they are asking for a zone change is to maximize the sale or development potential for their property. We all know that the financial potential of selling or developing commercial property far out ways that of residential, this is why the City's Comprehensive Plan had to address the matter specifically. If the Elks want to further develop their property then they can do so by providing up to 14 new fantastic housing lots. Their contention that residential homes cannot be near the Elk's property (because they sell alcohol) falls flat on our ears. We have lived here and raised our children here with no negative impacts from the private and locked club. If the Board approves this application then we will never get to know if in fact the Elks will sell and move (opening up a wonderful opportunity for new housing for Portland). Even if they stay, there is a chance that future members will decide to sell several housing lots-the truth is that we don't know, and definitely the Elk's don't know, what a future membership will or won't do. The Elk's bought the property at a significant discount as compared to buying similar property in a commercial zone and they have reaped the benefits of lower valuation resulting in lower property taxes for all these years- they got what they paid for. If the Board approves this zoning change they will increase the value of the Elk's property substantially but only by devaluing the abutters properties-where is the fairness in that.

Having said all that, it seemed clear at the workshop that the board members were intent on going through with a zoning change even if it meant changing the text (once again for this property) of the zoning ordinance. We are extremely concerned about maintaining or creating the maximum buffer possible especially in light of the fact that we have a nonconforming lot with inadequate set backs all along the abutting property line. The Elks have been very poor at maintaining their property and despite our best efforts we have been unable to get them to do so (trees have actually fallen and damaged our house). We heard the developer say that their intent is to maintain the existing tree line as a buffer and implied they would somehow enhance it. Well, our property is not at all protected by a tree line. Our house is 6 ft from the Elk's line which gives us absolutely no room to create our own buffer. We have asked the Elk's to sell us a small piece of land (about .10 acre) to allow us to conform with set backs. They could not come to consensus. Transferring this small amount of land would allow us to maintain our own buffer in the likely event the Elk's fail to follow through over time. The land we're talking about is currently part of a bamboo growth that is very unique and provides a perfect green barrier. The Elks have (at least once in the past) considered destroying this buffer and creating a "park". We feel this would be terrible and could preserve this truly unique ecological treasure if they would only allow this small concession. I believe that this is a fair request and ask that the Board make it a condition of the zoning change approval that the Elks sell us enough land to at least have the recommended setback of 15 feet from our house as a buffer.

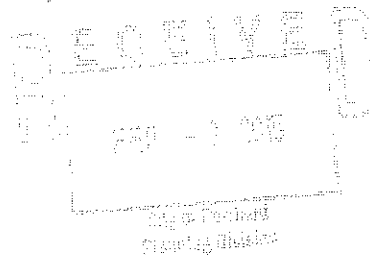
We do thank the Board for your efforts to maximize the tax base but this particular zoning change with the implied text changes discussed is at the least impulsive and at worst in complete violation of the intent of the City's Comprehensive Plan. If you are intent on proceeding then please consider the impact on our property and neighborhood and act to minimize those impacts that are negative. If you approve this zoning change then the Elk's will realize a significant windfall and should be required to share that windfall by minimizing the negative effects on abutters and the neighborhood. Wouldn't it be nice to have an public access to the Stroudwater trails with a few parking spaces or a kayak and canoe access to the Stroudwater River?

Thank you in advance for your diligent consideration.

Paul And Kimberly Dubois
1915 Congress Street
Portland Maine 04102
(207)899-2599

188 Whitney Avenue
Portland, Maine 04102
January 30, 2015

Planning and Urban Development Department
City of Portland
389 Congress Street
Portland, Maine 04101



RE: Elks Club Property Zone Change Application, 1945 Congress Street

To Whom It May Concern:

I frequently travel outer Congress Street along the route of the Elks Club and the Portland Airport. It seems to me that a number of drivers using that route ignore the traffic laws that are in place along that section of the Stroudwater neighborhood.

If a change must be made in the zoning from R-2 to OP, I hope you would decide that a better plan would follow existing zoning already in place in Portland.

The area needs more opportunities for family housing units to help stop sprawl. The city is in desperate need of affordable housing for the middle class workers who work here and would like to be able to live in Portland.

I think the Stroudwater neighborhood and other residents of Portland deserve a safe thoroughfare through that outlying area of the city.

Very truly yours,

Margaret C. Doyle
(Mrs. Leonard F. Doyle)

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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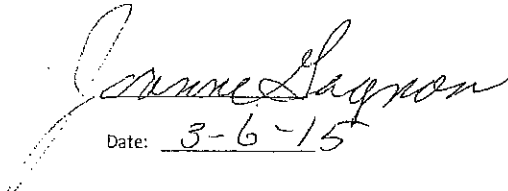
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Notification from your Board to our Lodge of an actual date that you are ready to review our request would be so appreciated.

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

Respectfully,



Date: 3-6-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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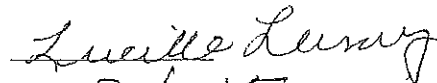
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Marleae Haraden

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date: 3-26-13

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,


Date: March 6, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Earl C. Beckett Jr.
3-6-2019
Date: 2019

Member *TH* 01/08/12

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

A handwritten signature in cursive script, appearing to read "L. J. Macdonald".

Date:

3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Thank you so much!

Kathy Miller Cripps

Date: 3/

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date: 3-6-2015

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Robert G. Pomeroy

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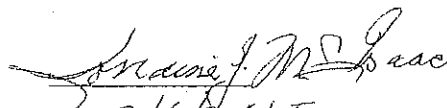
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Date: 3-06-15

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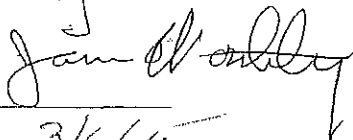
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Respectfully,



Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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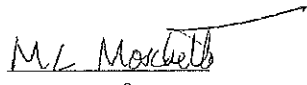
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M.L. MacArthur

Date: MAR 6, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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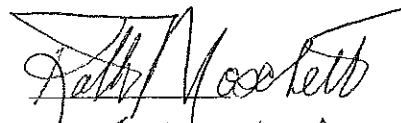
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Date: 6 MARCH 15

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Joseph W. Wundel, TREASURER

Date:

3/6/15

To: Planning Board

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389 Congress Street

Portland, Maine 04101

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Louise Erickson

Date: 3-6-2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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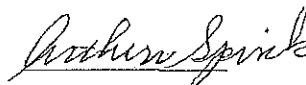
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Geraldine A. Pomerleau

Date: March 6, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date: 3-6-15

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Date: 3-6-15

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Warren Gilman

Date:

3/6/15

To: Planning Board

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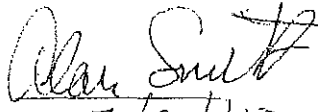
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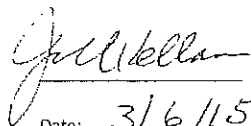
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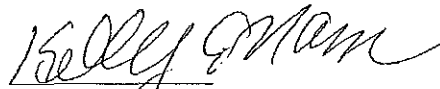
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Date: 3-16-05

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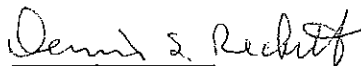
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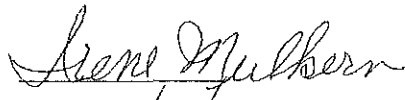
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Respectfully,


Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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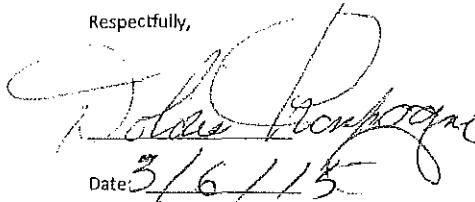
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Date 3/6/15

Champagne

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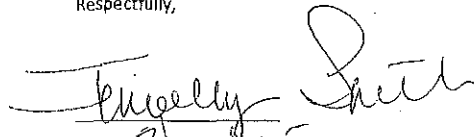
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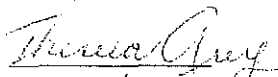
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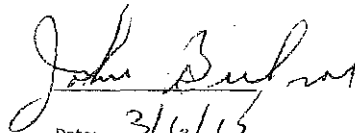
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Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date: 8/6/15

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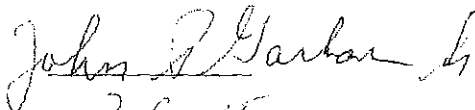
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Date: 3-6-15

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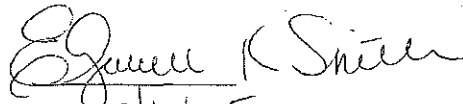
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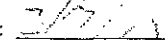
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Martha Brette
Scholarship Chair

Date: 09/07/15

To: Planning Board

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389 Congress Street

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Date:

3/7/15

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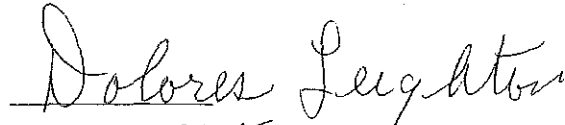
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Date: 3-8-15

To: Planning Board

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Date: Feb 8

To: Planning Board

Portland, Maine

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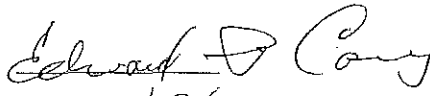
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Date: 3/8/15

To: Planning Board

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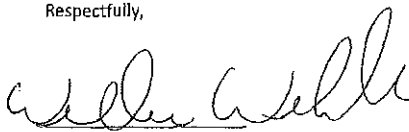
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Please give this request your immediate attention and to that end, we thank you in advance

Respectfully,



Date:

3-8-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Karen R. Tacillo

Date: 3/8/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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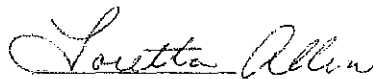
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Date: 3-8-15

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Portland, Maine

389 Congress Street

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George Pacillo

Date: 3/8/10

Pacillo

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Doc Roberts

Date: 3-8-15

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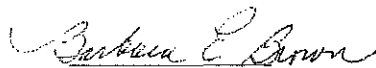
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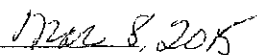
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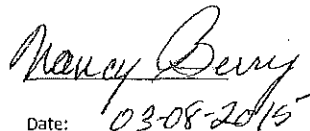
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Date: 03-08-2015

To: Planning Board

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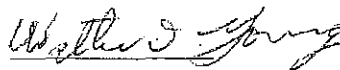
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Date: 3/8/15

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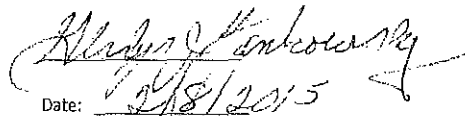
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Date: 12/18/2015

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Judith Von Thelen
Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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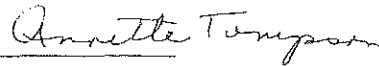
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Date: 3/9/15

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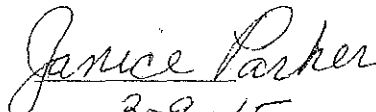
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Date: 3-9-15

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389 Congress Street

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Respectfully,

Bruce M. Jordan

Date: 3/9/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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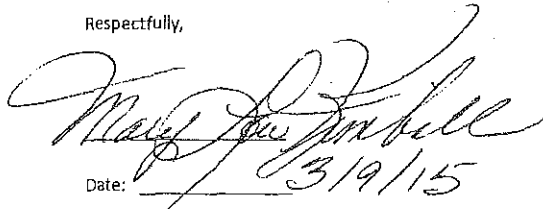
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Date: 3/19/15

To: Planning Board

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Portland, Maine 04101

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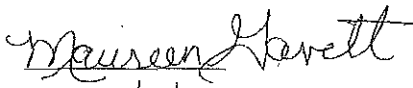
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Date: 3/9/15

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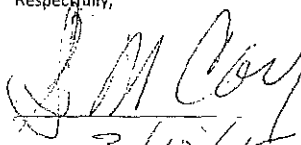
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Notification from your Board to our Lodge of an actual date that you are ready to review our request would be so appreciated.

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

Respectfully,


Date: 3/12/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

Dear Board Members,

I am a member of the Portland Elk's Lodge #188. As a member, I am aware of the plans we have to make some exciting changes to our building and property.

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Respectfully,

James H. Butler #11571

Date: 3/12/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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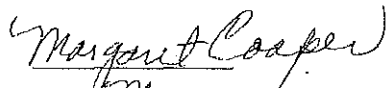
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Respectfully,


Date: March 12, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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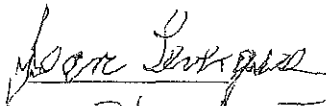
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Date: 3/13/15

Levesque

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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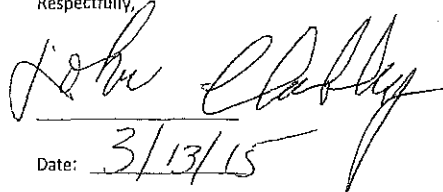
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Date: 3/13/15

To: Planning Board

Portland, Maine

389 Congress Street

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Date: 3/13/15

Dougherty

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Victoria M. Doughty

Date: 3/13/2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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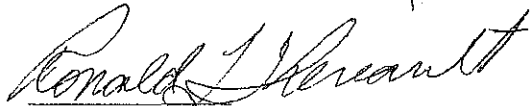
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Date:

3-13-14

To: Planning Board

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Sharon Castellucci
Date: 3/13/15

To: Planning Board

Portland, Maine

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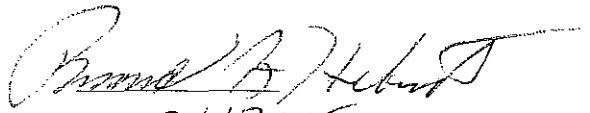
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Respectfully,


Date: 3/12/15

From: Stroudwater Village Association Board of Trustees <stroudwatervillageassociation@gmail.com>
To: Helen Donaldson <hcd@portlandmaine.gov>
CC: Edward Suslovic <edsuslovic@portlandmaine.gov>, Paul Bradbury <phb@portlandmaine.gov>, Jeff Levine <jlevine@portlandmaine.gov>, Mike Murray <msm@portlandmaine.gov>
Date: 5/25/2015 5:25 PM
Subject: Statement from the Stroudwater Village Association regarding proposed rezoning of 1945 Congress Street

May 25, 2015

*TO: *Helen Donaldson, Portland Planning Office

*CC: *Ed Suslovic, Jeff Levine, Paul Bradbury, Mike Murray

Statement from the Stroudwater Village Association regarding proposed rezoning of 1945 Congress Street

The SVA has been actively conversing with residents and SVA members regarding the proposed rezoning and redevelopment of the Elks Club property at 1945 Congress Street. Based on the feedback we have received over several meetings, *the SVA recommends the city deny the request for zoning conversion at this time and instead undertake a comprehensive planning process* *for the intersection and contiguous properties as a whole* rather than just this one single property.

Specifically:

- The intersection in question (Congress and International Parkway) represents a gateway intersection to Portland and to the Jetport, and redevelopment of this parcel provides an opportunity to shape many visitors' first impression of our city.
- Many Stroudwater residents desire to see the specific property remained zoned as residential, in anticipation of potential residential development similar to the River's Edge and Tide Mill neighborhoods, which would also be in keeping with the city's Comprehensive Plan.
- Almost all Stroudwater residents are concerned about the precedent a potential zoning conversion establishes for numerous other similar properties within the neighborhood.
- There is concern about the visual effect the specific proposed building along Congress Street would have on traffic/speeding as well as on abutting property owners, especially as we complete the Phase II Outer Congress St. traffic and safety improvements in partnership with the City.
- Residents very much appreciate the openness with which the proposed developers and buyer have shared information and we note and applaud their attempts to incorporate some of our feedback into the proposal. On the other hand, it should be noted that the seller (Elks Club), who will be remaining on site, has shown no interest in engaging with the neighborhood in the past or regarding this latest proposal.

To sum up, residents have meaningful concerns about some aspects of the specific development proposal, but our larger concerns relate to the overall zoning conversion and implications for the intersection and the neighborhood. Given the importance of this intersection to the neighborhood, the Jetport, UNUM and the City,*the SVA recommends the city deny the request for zoning conversion at this time and instead undertake a comprehensive planning process* *for the intersection and contiguous properties as a whole* rather than just this one single property.

- The Stroudwater Village Association Board of Trustees

The Stroudwater Village Association is a Maine Non-Profit corporation. All residents of Stroudwater are members and invited to participate in all of our activities.

Find us on the web at <http://www.livinginportland.org/stroudwater.htm>

Find us on Facebook at

<https://www.facebook.com/StroudwaterVillageAssociation>

From: "Angela J. Wheaton" <angelajwheaton@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
CC: "stroudwatervillageassociation@gmail.com" <stroudwatervillageassociation@gmail.com>
Date: 5/26/2015 10:18 AM
Subject: Deny Stroudwater Zoning Conversion Proposal

Dear Portland Planning Board, As a resident of the Stroudwater neighborhood, I would like to ask that you deny the zoning conversion request re: the Elks Club site.

I greatly appreciate your thoughtful review and consideration of this proposal as well as your inclusion of current residents in the process. I strongly urge you to deny this request in favor of a more comprehensive plan that would take the entire area into consideration.

Thanks for your time and consideration. Sincerely, AJW

Angela J. Wheaton
30 Partridge Rd.
Portland, ME 04102

From: Charlton Smith <charltonsmith@inac.com>
To: <hcd@portlandmaine.gov>
Date: 5/26/2015 10:38 AM
Subject: Elk's Club zoning change question

Dear Ms. Donaldson,

I live at 85 River's Edge Drive off Congress St. between the airport entrance and Westbrook St.

The traffic on Congress St. at commuting times is extremely heavy now and will be overwhelmed by the addition of the number of cars that will result from the commercial development that has been proposed for the Elk's Club property.

Residents of River's Edge Drive already have difficulty getting on to Congress St. and sometimes we must resort to turning right (when we want to turn left) and driving to the intersection where the Elk's Club is located to turn around by using the entrance road to the Elk's Club and then returning to the streetlights opposite the airport entrance road in order to turn left. If more cars are forced to use this method to get to downtown Portland from River's Edge Drive the congestion at the Elk's Club entrance will be even more extreme than the Planning Department perhaps realizes.

There are presently 26 homes at River's Edge Drive many with 2 or more cars coming and going at typical commuting times. It is important that the Planning Department takes into account these cars when determining how much traffic Congress St. can accommodate, especially when some of the traffic from River's Edge Drive will be forced to use the entrance to the Elk's Club property as a means for getting from River's Edge Drive to downtown Portland.

Thank you for your consideration.

Charlton Smith

From: Marc Hodroff <marchodroff@yahoo.com>
To: <hcd@portlandmaine.gov>
CC: "stroudwatervillageassociation@gmail.com" <stroudwatervillageassociation@gmail.com>
Date: 5/26/2015 12:34 PM
Subject: 1945 Congress Street (Elks Club Property)

To whom it may concern:

I will not currently be able to attend the meeting for 5/26/15. I appreciate the opportunity to provide feedback. For the current time I would not be in favor of rezoning the area to an office park from its current residential status.

In review, this would have an impact on the area and adjacent residential areas including the potential impact on the river and environment. Noise and traffic will also have an impact on the current residents.

I think a big impact will be traffic management. Currently as a resident in the Stroudwater area, I know that enter Congress in that area is already too busy and becomes bottle necked in that area across from the Elks Club at commute times. I have seen several accidents in that area and have a concern it is already not able to accommodate the current traffic load.

Sincerely,
Marc Hodroff 48 Partridge Circle Portland

To: Planning Board Members:

RE: Portland Elks Lodge -1945 Congress Street -Rezone Proposal

From: David Silk, 1187 Westbrook St.

Dated: May 26, 2015

Sorry I could not be present at today's workshop to speak to the Portland Elks Lodge ("Lodge") revised rezone application that if approved would allow for the addition of construction of two large medical office buildings on the Lodge's property at 1945 Congress Street currently zoned as R-2 and allow in a Office Park zone places of assembly. I previously expressed my concerns with the proposal which in my mind are not resolved simply by making places of assembly permitted uses in the Office Park zone. That just raises more red flags. In sum, there is no good reason to approve the rezone request. That the Lodge does not want to sell its land to a residential developer is not a valid reason to grant the Lodge's application. Unlike the recently granted Williston West rezone, the Lodge's building is not a historic structure. There is no compelling reason to rezone the Lodge's property because the building is not worth preserving. The Lodge has not suggested as much. Also unlike Williston West, the Lodge has not demonstrated residential development of the parcel is not feasible.

Rezoning should not be about maximizing the economic return to the property owner. The Lodge wants the rezone as it will get paid a lot more money for commercial development than for a residential development. With an aging membership, the payment will go a long way to help the Lodge continue. But that is not the reason the rezone. Otherwise every place of assembly with excess land located as a conditional use in a residential zone will be looking to enrich its treasury through a rezone to permit a commercial use on the property together with a place of assembly. Just in this area there are several other places of assembly with open space fronting on Congress Street that could be rezoned to allow on the front portion of the parcel commercial or retain use. The places of assembly were located at the back end of the properties to preserve the open space and residential characteristics of the area. With the added funds from a rezone, those places of assembly could extend their lives and I expect will be next in line.

The fact that the place of assembly has been permitted as a conditional use in a residential zone should not be used as shoehorn to add to the conditional use prohibited commercial uses once the organization no longer can sustain itself. Places of assembly do have a limited life and as the Board has seen throughout the City, they close. Most recently last month the Methodist church off of Forest Ave was placed on the market because membership declined so that the assembly could not be maintained. It happened with Williston West. It happened with the Chestnut Street church and St. Patrick's Church. It is a common occurrence in Maine. http://www.pressherald.com/2013/07/31/here-is-the-church--where-are-the-people_2013-07-31/ As society changes, it will happen elsewhere in the City. Absent compelling needs to say save a historic structure, the answer when a place of assembly no longer economically can work is not to rezone to allow commercial uses in a residential zone but to allow the conditional use to revert to its residential status so residential development consistent with the underlying zone can occur. If that means the building is demolished so be it.

So I respectfully request that the Board not support the Lodge's rezone application. Instead, the Board should encourage the City to develop a vision for outer Congress Street (between Garrison Street and Johnson Street) and for International Pkwy and determine whether all or some of that area should remain zoned R-2 and if not, what uses should be permitted and what design standards should be adopted to ensure if any housing complex, commercial or retail development is to be permitted, that that development occur in this area is compatible with the existing residential uses and historic nature of SVA. The vision should also include the JetPort as the drive from the JetPort on International Pkwy to Congress Street is a gateway into the City.

Background

The Lodge was built in the late 1960s on a 7 acre parcel located on outer Congress Street in the R-2 zone. The R-2 zone is a residential zone intended primarily for single family homes. As a place of assembly the Lodge is a conditional use in the R-2 zone. Single family homes abut the Club property. Almost next door to the Lodge property is property owned by the Masonic Lodge, also is a conditional use in the R-2 zone. Single family homes also abut the Masonic property. On the opposite side of the street, the land is also zoned R-2

with single family homes and churches (places of assembly) permitted as a conditional use. Commercial uses such as three or four story medical office buildings and retail uses are prohibited in the R-2 zone.

According to the City's Land Use Ordinance (LUO) the purpose of the R-2 zone is to "provide for low-density residential development characterized by single-family homes on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity." That describes outer Congress Street between Garrison Street and Johnson Street quite accurately.

In the last few years, the City has invested money to slow traffic as it moves through outer Congress Street into the City. The City plans to install a cross walk from Garrison Street across Congress Street in order to make pedestrian movements safer. The hope is to eliminate or minimize the canyon like effect Congress Street has on the Stroudwater neighborhood.

Lodge looking to sell

The Lodge has been looking to sell and/or develop its property for some time. At one point the Lodge intended to sell all of its land to Husson College and relocate to Warren Ave. So there is a market short of permitting commercial uses.

Per statements made by Lodge representatives at a recent Planning Board workshop, apparently the Lodge is adamant it will not sell its property for residential development as the Lodge would not realize any return on its building (it would likely be removed) which has been partially exempt from property taxes for many years. Instead, the Lodge wants to maximize its return by getting money for the building and the land believes it can with a zone change to allow for commercial uses. The Lodge's proposal would max out development on the lot. The Lodge would stay on the lot and two new multi-story medical office buildings with a parking lot for over 200 cars would be installed. More traffic on Congress Street would be added at the peak times. The Lodge needs a zone change to make this happen.

The Masonic property just down the street is also for sale. It is not clear if the Lodge gets a zone change, whether the Masons will be next in line. I surmise they would be. Both churches across the street would see the value of their tax

exempt property increase significantly if rezoned to commercial uses. Like the Lodge, they too could become interested in permitting development on that portion of their property along Congress Street to reap the gains from a zone change.

These areas are all in close proximity to International Pkwy, which is also zoned on either side as R-2. Many commercial and retail operations, super gas stations, hotels, coffee and doughnut shops, convenient stores, etc. would jump at the opportunity to have a place of business along outer Congress Street between Garrison and Johnson Streets or along International Pkwy. With piece meal rezoning, the intersection of International Pkwy at Congress Street could resemble say the corner of Auburn Street and Allen Ave. Not my vision for the area but a good possibility with what I call Let's Make a Deal piece meal zoning. The traffic calming measures recently added could be eliminated to handle the resulting increased traffic demands. Congress Street could be widened more.

There are other uses residential in nature that would be much more compatible with the area and serve the Comprehensive Plan. Located on a bus line close, the site would be a great site for senior citizen housing. For the last 20 years, I have served on the board of a not for profit corporation that develops rent restricted senior housing. The location of the Lodge's property along a bus line and a short bus ride to needed services is ideal location for senior housing. Rezoning the property to allow for senior housing would be much more consistent with the Comprehensive Plans number one goal of creating more housing for all of Portland's citizens.

Why the Board should not support the Lodge's rezone application.

The Board should not support the Club's rezone application. On a broad scale, given the City's most prominent zoning goal is to create more housing, all kinds of housing, throughout the City, why the City would ever want to rezone land from residential to commercial or retail so as to eliminate the possibility of residential development is beyond me.

There are those who believe commercial development is needed in order to increase property tax revenue. The City needs more money or tax rates will be even higher. If the Board's view is that any land should be rezoned at any owner's

behest regardless of the underlying zone so as to increase the tax base, then the Board should support the rezone. Just be aware that rezone applications that will soon follow not only for land along outer Congress Street between Garrison and Johnson Street and International Pkwy also perhaps outer Westbrook Street and/or where uses can be changed from say a conditional use (say an existing church) to a commercial or retail use. You will end up with a hodgepodge of commercial and retail development that fits the needs of the particular developer. A four-story medical building for one, a doughnut/coffee shop for another. A super gas/food-stop for another. Greater tax revenue for sure. So much for the existing folks who live in the single family homes as they will eventually find living in their homes intolerable. Those houses can be torn down (loss of housing for the City). In its place the City will have a helter-skelter retail/commercial development right on the edge of Stroudwater that makes for a bright neon gateway into the City.

Personally, I think rezoning simply to boost the economic return to an existing property owner is about the worst reason to justify any rezone of a property. Regardless of how bad the City needs more property tax revenues, zoning in the City is intended to direct and guide suitable development and at the same time provide stability to neighborhoods. Neighborhoods should not be sold down the river simply based on the latest and greatest development plan that needs a contract or rezone to happen. So I suggest the first question to ask is not how the City can find a way for the Lodge to increase its return on property the Lodge bought knowing it was zoned residential. It is not finding a shoe horn to fit the Lodge's particular proposal under the OP or RP zone when clearly the proposed development is totally inconsistent with those zones.

The first question to ask I suggest is whether the underlying area zoned as R-2, not just the specific parcel, but all of the area mentioned above, should be changed in the first instance. Given the City's housing goals and recent efforts to change the LUO to make it easier to create more housing, and given the recent (in the last 15 years) full build out of the River's Edge and Tide Mills residential subdivisions, I have a hard time seeing any legitimate justification to change from a residential zone as it will make less housing. Sure, the Lodge may not make as much money and the Mason's buyer's pool may be smaller, but it is entirely consistent with the Comprehensive Plan to keep the area zoned R-2 or similar residential use. With 7 acres of land, and a minimum lot size of 10,000 square

feet, the property could be developed with a number of homes. Or it could be developed into senior housing.

But others may disagree on what the area should become. Change is constant whether we like it or not. I respect that and that leads to the second question. What do the neighborhood and the City want the area from Johnson Street to Garrison Street inclusive of International Pkwy to become? What type of uses should be permitted? What types of design standards should be developed? What heights and massing should be permitted? What is the vision for the area all now zoned as R-2? We need a vision to guide any rezoning. We should rely on the whims of any particular property owner's self-interest.

Need for a Vision

That vision creating process should include not only the area from Johnson Street to Garrison Street inclusive of International Pkwy but also JetPort Blvd. International Parkway runs from Congress Street almost to the JetPort Blvd and as noted above is zoned R-2 on both sides. It serves as the gateway into the City and is located in the shadows of a historic district. For many visitors to Maine it is the first site they see on exiting the JetPort.

That portion of the JetPort Blvd in Portland is zoned Airport Business (an area intended to provide for the development of airport-related development). Just over the line in South Portland on JetPort Blvd an office building (for DHS) was located, clearly not an airport-related development. With only so much land available to meet future needs, the vision process should include the JetPort and the City of South Portland relative to zoning along all of JetPort Blvd so as to be consistent with any common goals.

The vision needs to account for traffic demands both now and projected in the future as it is the JetPort's goal to serve more and not less. Both the City and South Portland have shared traffic issues which are impacted by the uses permitted.

In sum, the vision creating process would include all of the stakeholders in the area including the owners and residents of the homes to be greatly impacted by any change. A vision creating process can examine existing zoning, possible uses, and design standards that are compatible with the existing uses and the historic

nature of Stroudwater. Sure, a vision creating process takes time but in the last decade the City has found the resources to engage in a vision creating process for such places as India Street, Bayside, East End Waterfront, USM, outer Brighton Ave, etc.

The Lodge's property should not be rezoned until the vision process is completed. That is not an unjust result. The Lodge property is a conditional use in a residential zone and commercial uses are not allowed. Over the years and today it has received a substantial property tax break because it is considered a fraternal society with the land assessed based on other than a commercial use. The Lodge can sell today at a price that recognizes the legal uses applicable today if need be. Sure, it may not maximize its return but rezoning should not be about maximizing the owners return. The Lodge's needs should not trump the needs of the local community to decide whether the R-2 no longer makes sense for the area, and if so what uses permitted and what design standards should be adopted to ensure development occurs in a cohesive pattern respectful of existing uses and limited road capacity.

There is no reason simply to rezone to meet the needs of a particular buyer who has a development plan, a plan that in no uncertain terms can be called consistent with the standards for an Office Park zone (the rezone it wants) or Residence-Professional (a fall back rezone). The Office Park zone is intended to create a campus type setting with lots of open space among other features. The Lodge's development plan is anything but that. The Residence-Professional zone allows for existing residential structures or structures of similar size and scale to be used for professional offices. The Lodge's development plan is also anything but that. The closest business zones, at Westgate, are B-1 and B-2, and those zones would allow for a multitude of commercial and retail uses. The Lodge's development plan fits like a glove into the B-2 zone except for the fact it abuts single family residences.

In sum, I ask that the Board decline to recommend to the City Council the Lodge's rezone application and instead recommend the City initiate a master planning process for the area. That way a vision can be created that will be inclusive of all the stakeholders, resulting in development compatible with the existing residential uses and a great gateway into historic Stroudwater and the City.

From: Elizabeth Hoglund <eahoglund1@gmail.com>
To: <hcd@portlandmaine.gov>
CC: Ed Suslovic <edsnslovic@portlandmaine.gov>, Stroudwater Village Association Board of Trustees <stroudwatervillageassociation@gmail.com>
Date: 5/26/2015 1:56 PM
Subject: Re1945 Congress Street Zone Change

Please present the contents of this email to the Planning Board

I write to opine on the matter of rezoning 1945 Congress Street. I have reviewed the materials, attending some meetings and draw on my past experiences regarding this parcel and the neighborhood.

I do not accept the point that the zone has to be changed to make the property marketable or that it is valueless unless it can be used as proposed. The property can be used as currently zoned; the impediment to the sale is price and the desires of the sellers. While the Elks have not been able to lure a buyer for residential use, it does not mean that the parcel cannot so be used. Until recently, as I am sure you are aware, the development of such parcels was weak. The market has changed and if the price fit the market it would be desirable. The Stroudwater neighborhood is a very desirable neighborhood and will remain so unless it gets undermined by zone changes allowing commercial, including large medical buildings, development.

In sum, zones should not be changed simply to allow the seller to obtain a better price, especially when the parcel is well suited for the existing zone.

A second concern is the size and location of the proposed development. The essence of Stroudwater is not tall buildings on the edge of the street. Such a structure would visually change the neighborhood. The requirement that buildings are of the same size and nature of neighbors would not be met. The small, lovely residences abutting this parcel do not look like tall office complexes. The visual impact would be to negate the traffic problems by sending a message this is not a residential neighborhood. The city and state have spent many hours and dollars trying to preserve this aspect while moving traffic. More importantly, the remaining residences could then build similar structures to match this proposed building.

The proposed zone change a few years ago to also for an educational use is different from the current request. The sale of the property to Husson University, a few years ago was acceptable because of the nature and size of the building, its location on the property and the overall use of the property as an educational facility. It was Not a number of medical and other use buildings on the edge of the street. These uses can be built elsewhere in an appropriately zoned area.

Please recognize the serious negative impact this zone change would have on the neighborhood and therefore the city.

I am a resident of 138 Stroudwater Road, and have many years of experience in trying to balance the needs of development with the preservation of the neighborhood. Many projects and proposals have been endorsed because they fit the needs of the land owner and the neighborhood. This one does not.

Thank you for your consideration of these points.

Mary Lou Kimball
49 Vindale Street

Scarborough, ME 04074

207-232-1613

marylou@canfieldsystems.com

May 27, 2015

City Planning Board
City of Portland
389 Congress St.
Portland, ME 04101

Dear Sirs and Madame;

I would like to start my letter today by apologizing for standing at an inappropriate time in your workshop last night. I know and understand protocol and procedure and do respect your need to follow them. I am a member of the Portland Elk's Lodge #188 and would like to add comments that I only seem to have after listening to the Board's discussion.

My reason for standing was the hope to add to your summary a reminder of the comment that Carol, and again I apologize for the familiarity, made with regard to when the R2 zone was put in place. She suggested that if she felt that the City had forced that zoning on The Elk's, that she might be more sympathetic to our quest. I had hoped to get that question into your charge to your staff for the next workshop. I was told by Northland and by the Exalted Ruler that they individually would get the answer and present it to you.

Since I have further comments, I thought that I would take this opportunity to add a bit more information, as your chairman did comment that in this case, more is better. One of the Board members, and I think it was David, said that you need to think about "What we would want for this area if we set the Elk's Lodge aside?". I believe that's smart thinking because if we weren't in the picture, I believe you would see the value in making this Gateway to the City an Op or RP zone. As the chairman said you have the authority to then consider the inclusion of the Portland Elk's Lodge as a non-conforming entity.

A comment I heard repeated last night from the Board that I heard in January, really bothers me and I would like to speak to it at this time. "The Portland Elk's Lodge bought their own problem when they came to this location.". Well, here's the thing; we came to this location in 1968 and I am reasonable confident that we were in that location before any of our neighbors could have "bought their problem". They knew we were there, just like they knew the airport was here. Whenever I hear a comment about "our problem", financial or otherwise, I am disturbed and I'd like to tell you why. Granted we have a need to downsize as membership has dropped off for many fraternal organizations but we all believe that we can continue to aid the people in our community, in a better way with more resources. Our finances should not enter into your decision at all. WE DO CARE about our neighbors, in fact, we invited them to meet with us at the lodge at the outset of this endeavor. We don't view ourselves as a problem but are eager to be a part of the solution.

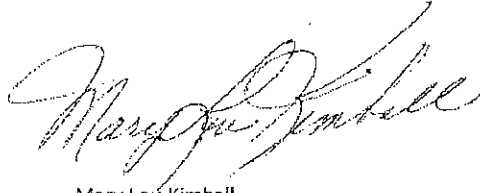
But, as long as we are on the subject of our finances, please allow me to plant another thought in your discussion. Since we arrived at this location in Portland, we have been paying property tax on 7 acres currently in excess of \$25,000 and that is with a non-profit discount. Why do I mention that? Because if this project goes through the discount will only apply to our footprint of approx. 12,000 sq. ft. and the city will realize a greater tax revenue, as I see it.

Last night was the first I heard of the Clark Insurance Co. joining in the development of this project. I was thrilled to hear it for a variety of reasons, not the least of which is traffic and parking. As the gentleman said, the traffic pattern would go virtually unaltered as they are currently just a few hundred feet down the road, now. This is largely, I believe, an office for corporate work and is predominantly housing employees not a "large insurance selling outlet". The parking would be used predominately for their employees. I see us; The Elk's, Dr. Bedec, and the Insurance Company as good neighbors.

I am curious, on a side note, and I will ask the question of others. One neighbor commented that a taller building would encourage speed. I may not be the sharpest knife in the drawer but I am hard pressed to get that. And Dr. Bedec's building is no taller than the neighbor's house. My curiosity is such that I think I would like to see that in a study.

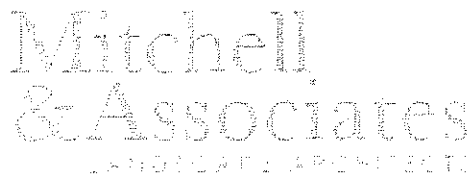
I have taken up enough of your time and will close by saying that, I personally recognize that your task for the City is a daunting one. It's a large old City that has evolved rapidly over the last century. I wish you best of luck in your efforts.

With respect,

A handwritten signature in cursive script, appearing to read "Mary Lou Kimball". The signature is fluid and somewhat stylized, with the first name "Mary" and last name "Kimball" being clearly distinguishable.

Mary Lou Kimball

Member Portland Elk's Lodge #188



PC21

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July 13, 2015

Ms. Nell Donaldson, Planner
and Planning Board Members
City of Portland
389 Congress Street
Portland, Maine 04101

RE: 1945 Congress Street

Dear Nell and Planning Board Members,

On behalf of the Stroudwater neighbors, Mitchell & Associates has prepared the enclosed concept residential development plan based on an R3 zoning change and using the PRUD provisions of the Land Use Ordinance. The proposed concept is for 32 dwelling units in four (4) unit townhouse style residential housing. Based on our understanding of the site, the calculations for determining density used a conservative number for stormwater management and the 20% deduction for the remaining land area. The net density, using these calculations would allow 33 dwelling units. The layout has been designed to provide adequate buffering along Congress Street and the adjacent residential neighborhood, create usable open space and safe access for residents and emergency vehicles.

Page 2 of 2

This plan has been prepared to demonstrate an alternative development proposal that is more in keeping with the Comprehensive Plan, current zoning, the Stroudwater neighborhood and provide a reasonable expectation of a viable use of the property. Enclosed for your review is a copy of the concept site plan. We would be happy to respond to any questions or comments you may have.

Sincerely,

Mitchell & Associates

A handwritten signature in black ink, appearing to read "Rob Metcalf". The signature is stylized with a large, looped "R" and a cursive "Metcalf".

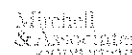
Robert B. Metcalf, Principal

Maine Licensed Landscape Architect

Enclosure

Cc Janet Burns

Bill Linnell



From: Paul Dubois <pdubois1915@yahoo.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 7/22/2015 9:28 AM
Subject: 1945 Congress zoning change submittal response from Dubois, 1915 Congress St

Neil, I'm so sorry for the confusion but I've received differing info from the neighbors about the proposal. Once I had a opportunity to read it for myself, I realized that I needed to correct some of the statements that were in the email I submitted yesterday. Is it possible to disregard or delete that response and submit this one instead. Thanks again for your help and sorry for the extra work.

July 28th will be the 4th time I have had to take a day off from work to speak at a workshop about this property development. Despite the fairly significant loss of income and the scrambling I have to do to find someone to replace me at work, we will come to speak because my wife, Kiki and I feel we have to do whatever we can to preserve the home we have made here in Portland. We are very fortunate to have created a great home bordering Stroudwater Village that is both relatively private yet convenient to all the amenities that this great city has to offer. We bought this distressed and non-conforming property (at the height of a real estate boom) because we knew with enough blood sweat and tears that we could build a home that we can afford while still being located in what is arguably the best city in the US. The biggest benefit to living at 1915 Congress is the privacy we enjoy especially at the property line bordering the Elks. For the last 14 years the city has enjoyed accepting about 3 times the taxes they would have received if we had not renovated this property. In that same period, the Elks have enjoyed reduced taxes due to their R2 residential zoning and have neglected their property to the point that they are once again in front of the Board, hat in hand, looking for a bailout claiming they can't afford to keep their property. If this proposal is passed, they get to sell their property for almost twice it's value while the best feature of our property (the privacy we enjoy) will be destroyed. Let's be clear, this proposal is specifically a way for the Elks to maximize the profitability of their real estate. By their own admission they point out that the property is only worth maybe \$1.5 million in a residential zone while a change in zoning may bring the value to 2.5 million. This is at least \$1,000,000 that they have to gain. That is a great incentive for the Elks to influence this Board. The neighboring property owners do not have these resources and we rely primarily on this Board and City Council to provide some balance. We have banded together in our opposition and even are providing some plans that support our position that this zoning change, if approved, 1) will be detrimental to the surrounding properties and is inherently unfair to those families that live in this area 2) is without question too large and intrusive a build out of the property and 3) will forever eliminate the opportunity for this property to be used for what it is best suited - residential development. The Elks have no right to maximize every last cent from the development of their property but all the incentives are there- 1 million of them.

Each time we are asked to return to review additional submittals, I am dismayed to find that they lack any substantive changes reflecting the suggestions from the neighbors. They have 7 acres to work with but still seem to insist on placing a huge and unattractive building as close to the corner of Congress St and the closest residential property-my house. The latest submittal, proposing a 40 ft preservation of the R2 zone, is a step in the right direction but once again we are looking at virtually the same plan. I cannot blame the developer for trying to develop this property to it's fullest potential but the Board should not let this happen. Maintaining the R2 zone for the Elks building while sacrificing the most visible (and most proximal area to the existing residential structure) is really insufficient to minimize the impact on the neighboring properties. Please do not reward the Elks for their neglect and poor judgement while penalizing those of us that have acted prudently and improved our properties for the benefit of our families and the community. Every neighbor (except for one property hoping to be included in the zoning change) is telling you that this proposal is ill advised. Don't be confused, this proposal is all about greed and the proponents have one million reasons to influence your decision. Paul and Kiki Dubois

1915 Congress Street
 Portland Maine 04102
 (207)899-2599

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

This statement specifically references updates to the rezoning proposal in July, 2015 and should be considered in addition to our prior letters to the Planning Board from January 2015 and May 2015.

The Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken. Such a visioning process should involve all stakeholders, including but not limited to residents, the City of Portland, the Portland Jetport, MDOT, UNUM and other businesses and organizations in the neighborhood such as the Elks Club, the Tate House, area places of assembly and the several businesses on Congress Street near the Fore River. **The Planning Board has been reticent to undertake such a process, but the latest zoning map submitted by the applicant (Fig 1) illustrates perfectly why such a visioning process is critical before any decisions are made.**

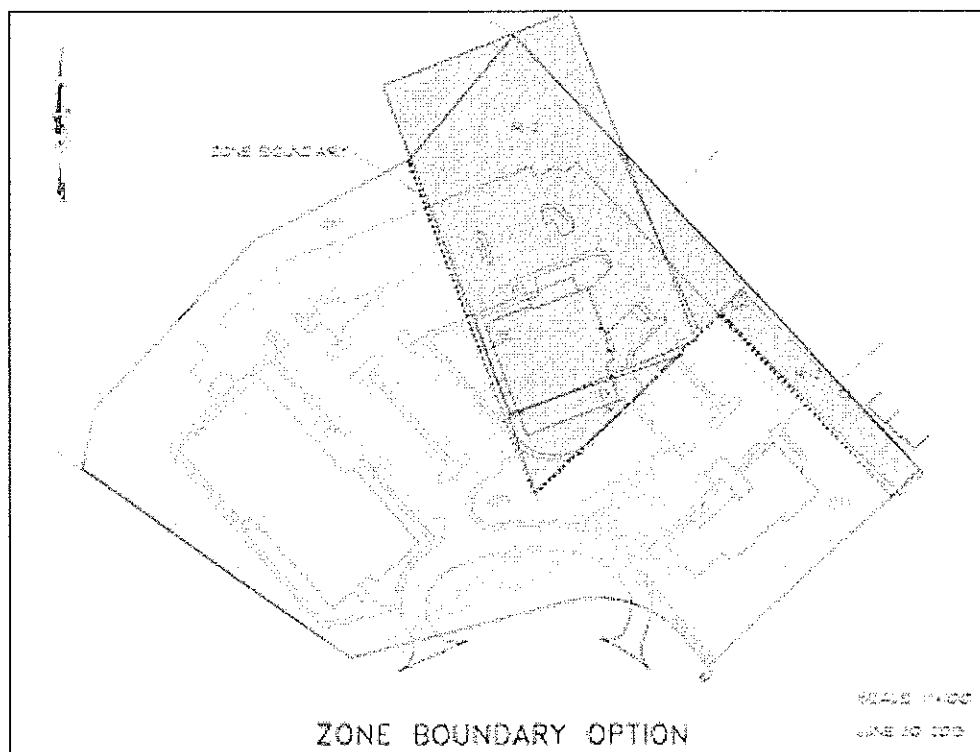


Figure 1. Zone Boundary Option submitted by Applicant, showing the small amount of R-2 zoning remaining (blue) that would allow a tax-exempt, conditional-use seller to stay on the land in comparison with the large amount of land (green) allowed to the seller to “cash out” to a commercial developer.

Put simply, the zoning proposal allows an existing tax-exempt, conditional-use organization to simply draw a box around itself and then carve up and “cash out” the rest of its land at maximum market value for commercial development, regardless of the will of other area stakeholders. Clearly a great deal for

the seller/organization and commercial developers, but a bad deal for the City and for the neighborhood – not to mention probably not the intent of conditional use zoning and tax exemption in the first place.

Far more ominous and concerning to the SVA than just this one parcel is the precedent this would establish for similar would-be sellers in the area. Figure 2 shows the potential “domino effect” of the potential rezoning gift from the city to other would-be sellers. Once the Elks (blue circle) are allowed to do this, why wouldn’t any responsible board member of other similar organizations (churches, Masons, the Tate House), consider “cashing out” their land? We know that Congress Street and Westbrook Street frontage would be very attractive to gas stations, donut and coffee shops, etc. On what leg would the city or neighborhood stand to prevent that kind of future activity when we are allowing it now?

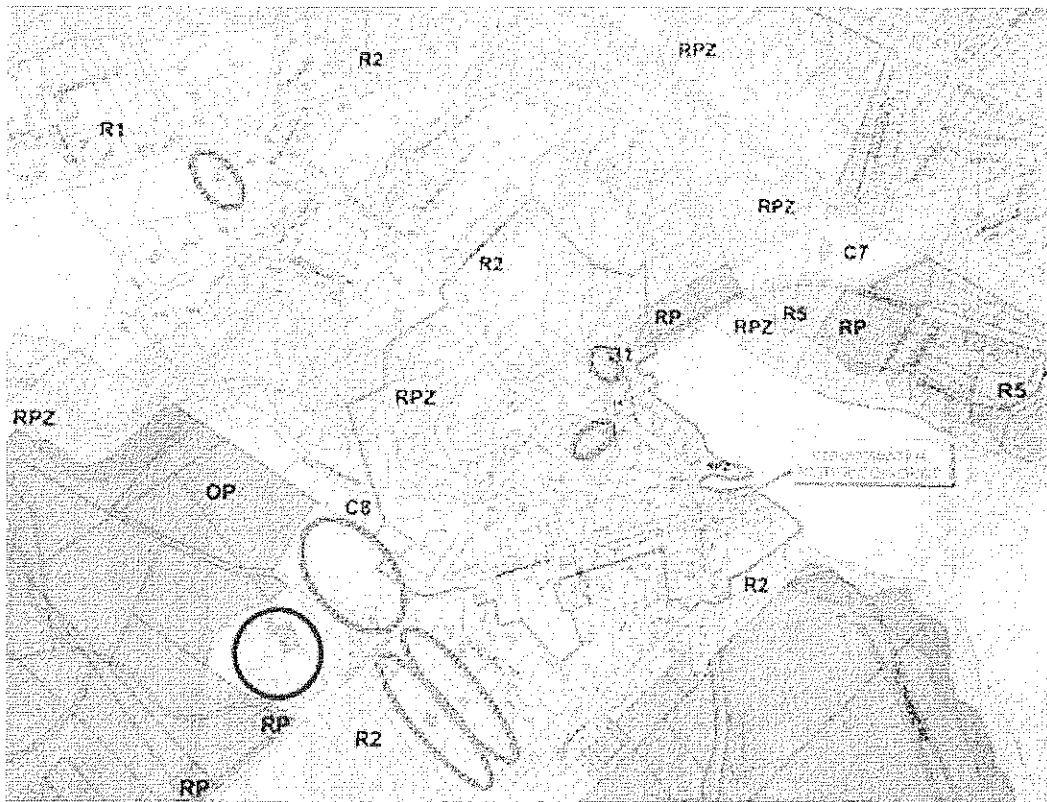


Figure 2. Stroudwater Village neighborhood zoning map highlighting potential sellers in red who are similar to the Elks (in blue). “Similar” in this case means tax-exempt, conditional use organizations sitting on large amounts of land that may be attractive to “cashing out” via piecemeal development.

Stroudwater residents, and the SVA, are not opposed to all change in principle. If the City would like to have a conversation about how to incorporate more mixed-use activity into Stroudwater, by all means, let’s have it. But let’s have it with all stakeholders, and think about the big-picture effects, not just parcel-by-parcel. To restate, **the Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.**

From: "James Casterella Jr." <jcasterella33@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 7/26/2015 8:03 PM
Subject: Tuesday, July 28th, workshop re: 1945 Congress St. proposed zoning amendment

Hi, Neil,

My name is James Casterella and I live at 1967 Congress St., two houses away from the Elks Club. I'm not sure if I can make Tuesday's Workshop so I wanted to email you with my thoughts.

First of all, I completely support Northland Enterprises' zoning map amendment application. I think it's very important that visitors to Maine, flying into Portland Jetport, drive onto Congress Street with a view of an attractive, modern building such as is being proposed by Northland. As it stands right now, those same visitors see somewhat of an eyesore: they see a huge, usually empty parking lot, and a somewhat rundown, tired looking Elks Club. The Elks Club deserves a facelift and also deserves the opportunity to stay at its current location. Additionally, I'm hoping that the Planning Board will consider extending the zoning change to include my house (at 1967 Congress St) as well as my neighbor's house. We are the last two residential houses on Congress Street and the only two residential properties to the left of the UNUM entrance. My neighbor and I would like the opportunity to be zoned similar to the Elks Club so that professional development of our properties becomes a possibility.

If you have any questions please feel free to contact me via email or at 831-7297.

Thank you for your time,
James Casterella

From: <captlinnell@yahoo.com>
To: Helen Donaldson<HCD@portlandmaine.gov>
Date: 7/28/2015 11:19 AM
Subject: Elks Club comments

William S. Linnell
 1905 Congress Street
 Portland, Maine 04102
 207-409-0100
 CaptLinnell@yahoo.com

Helen Donaldson
 Planning Board

July 28, 2015

Dear Nell:

Please add these comments for the Planning Board concerning the Elks Club project--

This proposal is a farce: The developer is asking the Planning Board to throw its own rules out the window and approve what is essentially a contract zone, while calling it an OP Zone. Let's call it what it is. It is a contract zone proposal. It fits neither Office Park nor Residence Professional zoning specifications. A contract zone is a contract zone is a contract zone. It is a contract zone, and should be voted down as such. The Planning Board should not be complicit in this thinly veiled mockery of its rules.

The mockery continues as the developer's most strenuous argument for a zoning change is for greater profits. Portland's zoning laws do not contain any language that allows desire for greater profits as criteria for zoning decisions.

If profits are to be a major factor in the Planning Board's decision-making, then the ordinances should reflect this factor, and outline guidelines and criteria for weighing profit margins in decision-making for zoning changes. But the zoning laws contain no such provisions.

In short, the developer is asking the Planning Board to approve a contract zone, pretend that it is an Office Park Zone, and justify it for reasons that do not exist in zoning regulations. It is hard to imagine a more farcical mission for the Planning Board to join in on. Clearly, this request has no respect for the Planning Board, its rules, regulations, or process.

A cautionary note: If the Planning Board doesn't respect its own rules, regulations or process, no one else will, either: No doubt other non-profits and developers in Portland would also like to take advantage of this "approve, pretend, and justify" approach to zoning, if it comes to fruition.

I also find no ordinance that allows for zoning classification due to the owner's claim to being "a good citizen" or "doing a lot for the community".

I ask that the Planning Board confirm that this type of argument is irrelevant and inappropriate, lest those in opposition to the Elks Plan be obligated to list our contributions to society also, for Planning Board consideration.

Abutters to the Elks property have produced a preliminary but accurate drawing which shows the feasibility of 32 town house units on this parcel. We suggest that a zoning change to R3, which would easily allow residential development of the property in question, would be far more reasonable, would be consistent with zoning rules, and would have the support of the neighborhood.

Thank you for your consideration

Bill Linnell

William S. Linnell

1905 Congress Street

Sent from Windows Mail

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

Nell: Can you share this email with the Planning Board members as my comments on the latest proposed rezone for 1945 Congress Street. I expect the PB members in their packets will have my comments from the prior two proposed rezone proposals for 1945 Congress Street so I will not repeat in detail my earlier comments which I fully stand behind.

The current zone is a residential zone. There is no compelling reason to rezone the property to allow for commercial uses. I am not aware of any provision in the Land Use Ordinance that allows for the Board to consider as part of a rezoning analysis the need for the property owner to maximize his or her economic return but that is in essence what the applicant is now asking the Board to do.

The applicant has stated several times that it will never consider selling the property for residential use even though the property is zoned for residential use. The message is loud and clear that under the Comprehensive Plan the penultimate goal is the creation of more housing. Removing land from a residential zone to allow a non-profit operating as a conditional use place of assembly in a residential zone to maximize its return makes no sense whatsoever. Unlike Williston-West Church, there is no compelling need to preserve the building at 1945 Congress Street. There are numerous other places of assembly in residential zones that would jump at the chance for a partial rezone of their parcel because to allow for the non-residential use of land would make the land more valuable and help pay bills. But that should not be what rezoning of a conditional use in a residential zone should be about.

The Northland alternative housing analysis is flawed. It does not provide the estimates generated by the unnamed "experienced construction estimator" who arrived at the estimated costs for a eight lot or fifteen lot subdivision scenario. That estimate clearly should see the light of day so it can be subject to critical review and comment. Since this a workshop, the Board should ask the applicant to submit immediately the detailed estimates referenced in the report.

The analysis assumes that the cost of the land is the present contract price of \$2.5M. Per City records on file, the land today is assessed by the City for \$500,000. There is no analysis prepared by Northland of either an eight or fifteen lot subdivision using \$500,000 as the land development cost. Northland uses two land sales within a one mile radius of the subject to determine market rates for vacant lots. The market area is much greater than one mile of the subject and obviously should have included a much broader reach.

Northland's analysis does not include an analysis of what would be permitted under R-3, not as multi-family rental units, but as owner occupied townhouses, which would not be subject to Northland's rent limitation assumptions. It does not use \$500,000 as the land development cost and does not provide the detail of the analysis. Again since this a workshop, the Board should ask the applicant to submit immediately the detailed estimates referenced in the report.

The piecemeal cut up of the parcel makes no sense whatsoever, with zone lines cutting through parking stalls. When an applicant has to reach that far it should send off alarms. As mentioned earlier, the OP is for a campus like setting. What is presented for OP on the plan marked "Zone Change Option" leaves no room in the sea of pavement and buildings for a campus like setting.

Finally, Northland makes no showing that the land and building cannot be used by another non-profit as a place of assembly. A place of assembly (a church) uses space at 58 City Line Drive which is former warehouse right down the street the 1945 Congress. Apparently it has outgrown the location and is looking to relocate to Spring Street in Westbrook. Another example is the growing Muslim community that is bursting at the seams at their present place assembly in Bayside. Recently a former Lutheran place of assembly on outer Brighton Street was purchased by a growing a Hispanic congregation and continues as a place of assembly. The applicant has not demonstrated the absence of a market for other non-profit organizations which utilizes places of assembly and who could make use of the site. To be sure, I doubt those nonprofit organizations will pay \$2.5M for the property but zoning should not be about gerrymandering the zoning to maximize economic return for a non-profit that for years has operated as a conditional use in a residential zone and has been and remains exempt in whole or in substantial part from paying property taxes.

Thanks for listening.

David Silk
 1187 Westbrook Street

From: Charlton Smith <charltonsmith@me.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 8/20/2015 8:26 PM
Subject: Re: Planning Board Hearing - Proposed Zone Change at 1945 Congress Street

Dear Ms. Donaldson,

Thank you for your email.

As I have written to your office before I am very concerned that roughly 25 families living at River's Edge will have substantially increased difficulty exiting from River's Edge Drive onto Congress St. We are already forced by the Congress St. traffic to turn right at times in order to go left into Portland and that means that we have to turn around in the Elks Club entrance road and use the lights at Airport Drive to get on the inbound side of Congress St. This not only inconveniences us but it will add substantially to the traffic congestion at the streetlights and intersection in front of the Elks Club.

This is a very serious matter and I hope that the City's engineers have taken it into consideration.

Best regards,

Charlton Smith
 85 River's Edge Drive

On Aug 19, 2015, at 8:46 AM, Helen Donaldson wrote:

> Dear Interested Party,
 >
 > The Planning Board will hold its final hearing on the proposed zone change at 1945 Congress Street on Tuesday, September 8 at 7 p.m. in City Council chambers. (Please note that this item will likely not be first on the agenda. The final agenda will be posted on the city's website (<http://www.portlandmaine.gov/Calendar.aspx?EID=1582>) closer to the meeting date.) As of now, the applicant has submitted no additional materials for review.
 >
 > All public comments received by our office will be provided to the board at the hearing. However, if you have additional comments (or questions), please don't hesitate to let me know.
 >
 > Best,
 > Nell
 >
 >
 >
 > _____
 > Nell Donaldson
 > City of Portland Planning Division
 > 389 Congress Street
 > Portland, Maine 04101
 > 874-8723
 > hcd@portlandmaine.gov
 >
 > --

From: "Angela J. Wheaton" <angelajwheaton@yahoo.com>
To: Helen Donaldson <hcd@portlandmaine.gov>
Date: 8/20/2015 3:03 PM
Subject: Fw: Deny Stroudwater Zoning Conversion Proposal

Dear Portland Planning Board, As a resident of the Stroudwater neighborhood, I would like to ask that you deny the zoning conversion request re: the Elks Club site.

I greatly appreciate your thoughtful review and consideration of this proposal as well as your inclusion of current residents in the process. I strongly urge you to deny this request in favor of a more comprehensive plan that would take the entire area into consideration.

Thanks for your time and consideration. Sincerely, AJW

Angela J. Wheaton

30 Partridge Rd.

Portland, ME 04102

From: Eugenia O'Brien <genieme80@gmail.com>
To: <hed@portlandmaine.gov>
CC: Stroudwater Village Association of Trustees <stroudwatervillageassociation@gmail.com>
Date: 8/21/2015 10:25 PM
Subject: 1945 Congress Street: Elks re-Zoning in Stroudwater

August 21, 2015

Dear Planning Board and City Council Members,

I wish to express dismay, even horror, regarding the proposed changes to the current zoning which would impact 1945 Congress Street (Elks site) in Stroudwater.

My concerns come from a long history of attentiveness to this 'Gateway Area' to the city, which was so named by the city and airport representatives as part of the big push for the massive expansion at the Portland International Jetport. 'Forever Green' was the other term tossed around regarding both sides of Congress Street as an entrance into the historic center of Stroudwater, which was to be preserved as 'open vista'. Homes along outer Congress Street past the Elks/UNUM entrance have long ago been turned into businesses while Portland continues its need for residential housing. Instead, we should be reversing this trend back to family homes and directing new business construction to sites already zoned for those purposes.

This concentrated large scale construction will also negatively impact the migratory patterns of the wild life that currently have access to the open field setting and Stroudwater River. A long-time Portland resident, my home is located on this fresh water source and we have a parade of foxes, turkey, fisher cats, coyotes and deer through our yard. The songbirds, water birds and fowl are a separate issue, as Cornell Ornithologists and other scientists work to educate how to preserve habitat that nourishes what we seem hellbent on destroying. The bees and butterflies continue to return to the milkweed and field flowers while animals enjoy scrub cover and wild berries which will be irreparably altered by this degree of construction with its quantity of impervious ground cover and resultant contamination by parking lot run off. The animal sculptures at the jetport become a mockery of what WAS in the neighborhood if we do not protect this part of Portland's very real charm.

Please think long and hard before approving this construction. This does not fit the site of residential homes or neighborhood feel and mars the Forever Green and Gateway Area stance the city espoused previously. It would irreparably harm the entrance to Historic Stroudwater with commercial buildings. The city should not backtrack on its promises to its citizens and honor the words and commitment previously made.

Sincerely,
 Eugenia O'Brien
 1376 Westbrook Street
 Portland, Maine 04102 (207) 773-5610

PS - We can't keep encroaching on animal habitat and be surprised when there are repercussions we have self-created. Leave this space open, green, and the wild habitat that creates that buffer to the fresh water source upon which nature relies. Additionally, we have bears, moose, cows and chickens out here - and we choose to be here and pay high taxes for that reason.

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

Neil,

My family (we're a family of four with two children) built a home in the Stroudwater Village area just last year. We built here because we loved the feel and nature of the community, with its historic homes, and small and close knit neighborhoods.

We jumped through hoops ensuring we followed all the codes and regulations set forth by the city of Portland. At times we questioned why we were building in Portland because there were so many darn restrictions.

The answer, of course, is that the result of those strict codes and regulations is what makes Portland such a wonderful place to live. Clearly, there have been smart and forward looking people involved in making codes and regulations for Portland, and the result is a city that has beauty with function.

I understand the city wants to rewrite some of the codes and regulations to allow mega commercial development at 1945 Congress St. Seriously? Isn't this the area of town where we had to jump through all the code-and-regulation hoops in order to live within the context of this beautiful village? Why in the world would you change the codes to allow mega commercial development in a village where the codes result in a beautiful livable city? And if you do change the codes, shouldn't it be done in the same smart and forward looking context that the people before you did -- to ensure you keep Portland beautiful, functional, and livable?

We should not rezone this beautiful residential village to allow commercial development until we have a suitable master plan and we know what impact the change of codes will have on this area. It's not smart or strategic or forward looking -- all the things that make Portland the great city it is.

Betsy Smith
63 Stroudwater Road

207-939-7769

From: <kshstrat@maine.rr.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 8/25/2015 3:02 PM
Subject: Re: Elks property

Let me be clear: I do NOT believe this will be wise. I opposed. This Rezoning at this location seems to contradict what we have been working toward and been told at every turn by our city planners fit our area: traffic calming, environmental concern, neighborhood, historic preservation etc etc

From Karen S Hinchliffe 207 671-2353

On Aug 25, 2015, at 2:53 PM, Helen Donaldson <HCD@portlandmaine.gov> wrote:

Ms. Hinchliffe,

I will make sure your comment appears in the planning board report for the hearing on this proposal on Tuesday, 9/8/15.

Best,
Neil

Neil Donaldson
City of Portland Planning Division
389 Congress Street
Portland, Maine 04101
874-8723
hcd@portlandmaine.gov
>>> <kshstrat@maine.rr.com> 8/25/2015 4:33 AM >>>
Rezoning? We haven't understood how this will be better for our community.

Stroudwater resident
Karen
1221 westbrook street

2076712353

From Karen S Hinchliffe 207 671-2353

--

Patricia C. Adriance
16 Longfellow Road, Gorham ME 04038-1845
207-839-4445

August 26, 2015

Neil Donaldson, Planner
Planning Division
City Hall, 4th Floor
389 Congress Street
Portland, ME 04101

Re: Public Hearing – 1945 Congress Street
Application #2014-227 or CBL #216-A-6

Dear Mr. Donaldson,

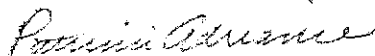
As a member of the Portland Elk's Lodge #188 I want to thank you and members of the Planning Board for your indulgence during this zoning change ordeal that has pitted the local residents and the applicant, Northland Enterprises, and the Elks against each other.

I have attended most of the work shop meetings along with meetings at the Elk's lodge to address many of the concerns raised during the meetings. That being said, I believe that the issues raised have all been met by Northland Enterprises.

It is fair to say we'll never satisfy the Stroudwater Association. No one (even myself) embraces change, but after reviewing all aspects of what has been submitted to the Planning Board, I believe it is economically the best that can be achieved and to keep the Elk's Club in Portland; a club which has been part of the Portland landscape for over 100 years. We're a great organization and have not caused the City or our neighbors with any problems and it will stay that way.

We've been trying for three years to make changes at the Lodge and I'd like to think we've earned your vote to change the zoning from R-2 to OP and move us closer to making the Gateway to Portland a pleasant site.

Yours truly,



Patricia Adriance

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

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

The Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.

At the July 2015 workshop regarding this zoning request, those in attendance heard members of the planning board and City staff say that the City does not have time or resources to initiate a visioning process for the neighborhood at this time. As taxpayers, we understand the problems of limited resources and are disappointed that such a process needs to be delayed. We are willing to wait, however, so that we can focus our collaborative work with the City in implementing the Outer Congress Street Phase II improvements scheduled for this year.

However, just as we are being told to wait, the same planning board and City staff are able and willing to muster the time and interest to make one-off zoning changes like the proposed one. Instead of thinking about the big picture and placing a project in its context, the planning board is green-lighting a project that will redraw the big picture. Whether or not this redrawing is the intended consequence of the individual action is irrelevant. The fact remains that this proposed zoning conversion will pave the way for other zoning conversion proposals in the Stroudwater area. At this point there are essentially no rules of engagement or generally understood expectations in place to deal with the proposals that will follow.

In the prior workshop, the planning board seemed to accept the fact that zoning decisions do not imply legal precedent. That offers small consolation since this is not a legal matter. We are not discussing lawbreaking here – we are discussing what we want an area of the city we love to look like in 2, 5, 10, 20 years – coincidentally at the same time that the City is revising the Comprehensive Plan and we are working with our neighbors at the Jetport on their Sustainability Master Plan. These conversations should be coupled, not siloed – if stakeholders are invited to have such a big picture discussion, who knows what we will learn – perhaps there's an interest in more retail, or arts and entertainment, or different kinds of residential development such as housing for UNUM and/or Jetport employees.

But if we choose not to have that big picture conversation now, and instead let it be redrawn by itself, the opportunity is lost.

To restate, the Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.

TO: Members of the Planning Board

FROM: David Silk, 1187 Westbrook St

RE: Proposed Rezone of 1945 Congress Street

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

For the following reasons, I urge you to vote not to recommend to the City Council the Elks Club's rezone request. The rezone proposal is not consistent with the existing pattern of development and the comprehensive plan, the OP zone being proposed, and represents unsound planning.

The Elks Club property at 1945 Congress Street is presently zoned R-2. It consists of a 6.9993 acre parcel. The portion of the lot to be rezoned OP is about 4.7 acres. As the Planning Staff's July 28, 2015 memo explains, the property has been zoned residential since 1945. When the Elks Club acquired the property in the late 1960s, the parcel was zoned R-2. At that time the property was rezoned from R-2 to R-6 so as to allow the club to develop the property as a social/fraternal hall under what was then known as an "exception" to the uses permitted in the R-6. Exceptions in the late 1960s are now known as conditional uses. Conditional uses are permitted on the basis in general, the conditional use is compatible with the underlying permitted uses. Places of assembly, like schools, are conditional uses in all of the present residential zones. Without objection from the Elks Club, the property in the late 1980s was rezoned from R-6 back to R-2. Today the club is known as a place of assembly and permitted as a conditional use in the R-2.

The Elks Club wants to rezone because its property is worth a lot more when zoned as a commercial property. Zoned R-2, the land is assessed at \$512,000. With the zone change, Northland will pay a reported \$1.25M for just the land. The Elks Club annually receives a substantial tax break (about 30%) due to its status as a not for profit social fraternal organization. The Elks Club recognizes that the short strip of land along Congress Street, between Westbrook Street and where outer Congress Street merges with Johnson Road, has lots of traffic. The very high volume of traffic means great visibility to any commercial use located on the strip. Any open space along Congress Street, if rezoned, will significantly increase in value. Someone like Northland will pay a lot of money to develop commercial land.

The Elks Club is not alone as a conditional use in the R-2 zone with open space along a busy road. As the map on page 6 of the July 28, 2015 Planning Staff memo shows (copy attached), in the immediate vicinity of the Elks Club and in the R-2 zone, there are three other properties of between 4 and 6 acres with conditional uses located thereon, Faith Temple, Christchurch of Portland and St. Albans Corporation (Masonic Learning Center). Like the Elks Club, they too could seek to divide their existing parcels and rezone to a commercial zone the front portion of

the lot with frontage along Congress Street. The lots zoned commercial may be a bit smaller than the 4.7 acre lot the Elks Club seeks to create, but the difference would not preclude location of a commercial development. Note the Elks Club seeks to erect two multi-story buildings with a total square footage of 40,000 square feet on the to be created 4.7 acre parcel. The other conditional uses could easily seek just to place one building along Congress Street and forgo a second building.

The same occurrence is ripe to happen at other places of assembly conditional uses located in residential zones such as ones situated along Allen Ave, Westbrook Street, Outer Washington Ave and Ocean Ave, just to identify a few locations off peninsula. With high traffic counts and frontage available to be developed, numerous places of assembly could seek to divide their present lot to allow for commercial development on a to be created front lot abutting the street in what otherwise is a residential zone while maintaining the conditional use place of assembly in the rear. No one can begrudge the Elks Club or others from attempting to do so. Self-interest often involves attempting to maximize what one can. Brokers earn more based on higher sale prices and look for ways to make deals happen. But allowing conditional uses in residential zones with ample frontage along an outer arterial to divide and develop the front portion for commercial uses is unsound zoning.

Note there is no shortage of land zoned for commercial development in the City. So the need to rezone to allow for commercial development is not about filling a need. To allow any property owner to divide just a portion of its property and rezone the new parcel simply to make more money is not a legitimate reason to rezone. Otherwise this Board will be flooded with rezone requests.

Zoning is also not about guaranteeing to a property owner the highest price that can be had if some or all of a parcel were to be rezoned.

Rezoning should be about respecting the process and at looking at the neighborhood in which the property is situated and examining whether the rezone will have adverse impacts on surrounding properties, whether it is compatible with existing uses, whether it is consistent with existing patterns of development and consistent with overall goals of the City. Viewed from a process perspective, the Elks Club's proposal is unsound and should not be recommended for approval to the City Council.

A. Piece-meal rezoning is unwise and unsound.

As an initial matter, any rezoning in this area should not be done piece-meal. The Elks Club's property is located in very close proximity to the Stroudwater Historic District ("SHD"). The SHD was added to the National Register of Historic Places in 1973.¹ Attached hereto is a map

¹ *"The significance of Stroudwater Historic District is not limited to the merits of individual buildings. The whole formed by these single elements stands today as a fine example of a*

showing the breath and extent of the SHD. It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district, especially when the rezone is to change an existing residential zone and convert it to commercial uses, should be done with eye to ensuring the rezone will not negatively impact the historical district.

The Elks Club's property is located in close proximity to the City's main entrance to the Jetport and sits across the street from two large parcels owned by the City also zoned R-2. The area is a gateway to the Jetport and an entrance to the UNUM campus. As part of the 1994 Jetport Master plan, the City owned land was identified as land to be held and maintained as open space/buffer in the R-2 zone. See July 23, 2015 Planning Staff report at page 3. While the report does not say as a buffer to what, it is clear the buffer is to protect the existing residential uses and the SHD located nearby from non-residential uses that would adversely impact the existing residential uses and the SHD. If the City owned land located directly across the street from the Elks Club is zoned as R-2 in order to be a buffer for this purpose, it makes absolutely no sense to remove the R-2 designation for the Elks Club's property located just across the street. The distance and proximity of both the City property and the Elks Club's property to existing residential homes and the SHD are no different. Keeping the R-2 designation for the Elks Club's property is therefore consistent with a zoning goal of the City, as stated in the Jetport Master Plan, to keep the R-2 zone as is to serve as a buffer to existing residences and the SHD.

If you look at the map presented on page 6 of the July 23, 2015 Planning Staff report (copy attached), and if you have visited the area, you will observe that the four conditional uses located in the R-2 zone in the area just along Congress Street just outside of the SHD were all developed in a similar manner. This was not achieved by accident. The main building and parking on each lot are located well off of Congress Street. The structures housing the Elks Club, Faith Temple, Christchurch of Portland and the Masonic Learning Center were located in such a way that significant open and green space remained between Congress Street and the area developed. The open space was at least as deep as the lots used for residential uses. The conditional uses and parking associated therewith were all well set back from the street. Why? All of the conditional uses were located so as to not negatively impact the existing abutting residential uses and the character of the area at the doorstep to the SHD. That is the clear pattern of development in the area. It is unsound planning to allow for a rezone that is totally disregards the planning that has occurred in the area as evidenced by the actual development that has occurred and the Jetport Master Plan discussed above. Yet that is what the Elks Club's proposal asks you to do.

nineteenth-century village. The pattern of the village's growth is visible in the sequence of its architecture. Although the commercial enterprises carried on in the village are no longer in existence, their sites are clearly evident. The current residents of Stroudwater take pride in their historic village. Their homes are well maintained; many are restored to their original exterior appearance. The sense of history that envelops Stroudwater is heightened because the buildings have been continuously lived in and cared for." Beard, p 302

The Elks Club proposed rezone which would allow for a multi-story office building located right along Congress Street. Such a result is entirely inconsistent with the development that has occurred along this segment of Congress Street over the last 50 years. It is an unwarranted, disrespectful and unsound and driven by money and not by sound zoning.

These observations have led many to request that before any piece-meal zoning occurs, that the City undertake a planning process to best identify how the area should be zoned. The area is a very important gateway to Portland, not only from the west but for travelers who arrive by air. It is bordered to the east by two large cemeteries, to the west by the SHD and to the North by the UNUM campus that has all of its offices setback at significant distances from Congress Street. There are numerous residential structures in use in the area including ones abutting the Elks Club's property. The planning to date in this area intentionally maintained open space characteristics along Congress Street by preventing structures housing conditional uses from being sited right along Congress Street. The 1995 Jetport Master plan reaffirmed the important role the open space has in creating a buffer for the existing residential uses and the SHP. The OP designation for the UNUM property on Blueberry Hill ensured that the view from outer Congress Street was of a campus set back from the road. There are several cemeteries in the immediate area that provide for and are consistent with the preservation of the R-2 zone. Before this longstanding pattern is changed, there should be a master planning process.

In other areas of the City, the USM neighborhood, India Street and Forest Ave, a thoughtful process has been followed to look at uses, setbacks, lighting, and design standards all to develop a vision to govern the area. This ensures that any non-residential development that occurs is compatible with the existing residential uses. It also ensures that development is not driven solely by the wants of just one property owner seeking to maximize its return regardless of the impact on others. With the Jetport gateway and the SHD at the footstep of the Elks Club's property, and in an area that since at least 1945 has been zoned residential, sound zoning requires process that looks at the whole area, and includes all of the stakeholders.

Those who speak against a master planning process need to offer reasons why it should not be undertaken. The District Councilor for Stroudwater, who is fully supportive of the Elks Club rezone proposal, naturally states no money can be had to pay for a master planning process. So therefore he says consideration of the rezone proposal should not be held up pending a planning process. In other words, it is not a priority and therefore let the market drive the zoning and forget about vision. That approach will only result in unsound zoning. If there is a will, there is a way. If the City can find money to pay to pave the floor of the duck pond in Deering Oaks, it can find the money to fund the development of a "well-thought-out plan" for this important area of the City. With the revenue the Jetport brings in, some of that can be earmarked to study this critical area.

Interesting the same Councilor had this to say recently about the importance of collaboration and vision in processing zoning changes.

*"A good leader must have a well-thought-out plan and take risks to bring people together to realize that vision. Without direction, our priorities are not defined and our path is not clear. A good leader must listen. When residents feel like they have not been heard, and have been ignored, we end up as a city governed by referendum, as was the case with Congress Square and now the Portland Co. development. A good leader must bring people together. Without collaboration, people become frustrated and divided. They concern themselves more with getting their way than they do with making their way toward long-term solutions that work for everybody."*²

Vision and direction are not created by meeting the want of one property owner to make as much money as it can through a rezone, regardless of how benevolent the property owner may be. Vision and direction are created through a collaborative inclusive process that looks at what is best for the whole.

B. Rezoning is not intended to increase the return to property owner.

To the extent any part of your decision is premised on the Elks Club's assertion that its property cannot be put to other uses, there has been no showing that is the case. It has not to my knowledge been put on the market for non-commercial uses. Recent examples show that places of assembly permitted as conditional uses in residential zones can be sold and used for other than commercial purposes. Earlier this year, the former Saint Patrick's Roman Catholic Church located next to Westgate on Congress Street was sold to the non-profit Jewish Community Alliance. The Church had been on the market for several years and eventually a buyer was found. Selling that Church can be no more difficult than selling the Elks Club. The former Saint Patrick's property was zoned R-5. The Church and its broker did not come to the City to seek a zone change to allow for commercial uses in order to maximize its return even though property abutted a business district (Westgate zoned B-2). Instead, working with its broker, it found a buyer who did not need a zone change to make a productive use of the property. The Elks Club has made no showing that it could not find a similar type of buyer for its property. The fact that the Elks Club would make less money is not a valid reason to rezone.

The Elks Club, a non-profit organization partially exempt from paying property taxes, is on record in the proceedings before this Board that it would "never" list the property for sale for residential use and "never" sell its property for any residential use. Having its land valued as residential for the last 50 years and taken advantage of that valuation to pay a lot less in taxes than had the land been valued commercial, it is an interesting pronouncement to make. In any event, it is unsound zoning to rezone a property simply because the owner refuses even to consider selling for the permitted or conditional uses for the zone.

For sure, the Elks Club will point to the Northland submittal dated July 8, 2015 purporting to show that selected residential uses of the property cannot be had. That is beside the point. I am sure Saint Patrick's Roman Catholic Church could have submitted a similar analysis but that did

² Press Herald, August 25, 2015.

not preclude the Church from finding a buyer for the property that could use the property without a zone change.

To the extent any reliance is to be placed on the self-serving Northland analysis, that analysis should be submitted to peer review. It should be part of this Board's due diligence to do so. This Board as a matter of course submits for peer review traffic studies, engineering plans, storm-water plans and the like for properties to be developed under site plan review consistent with permitted uses in the zone. If a property owner is going to present an analysis to show that even if the property was given away, no residential development would be economically feasible, such an analysis needs to be submitted to peer review. There is more at stake with a rezone than with development consistent with permitted uses. The Board needs to do its homework.

Given recent residential developments, planned and proposed in the City, I find it difficult to find Northland's claim credible. But the Board should not take my word, it should submit the question of whether the property could be economically developed for residential uses to peer review along with the rest of Northland's analysis. As an example, I am sure Avesta or Community Housing of Maine could review Northland's LIHTC analysis and offer meaningful insights. Other residential uses can be similar submitted to an experienced entity for peer review.

Do not be confused by Northland's initial use of \$2.5M as the value of the property in its analysis. The assessed value of the land is \$512,000. Also I do not believe it is sound to base a zoning decision on the claim that the property cannot be used for uses permitted in residential zone when the property has been used since 1945 in a manner consistent with the residential zone it is in.

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

Common sense should suggest to you that the Elks Club's proposed rezone map is unsound. See attached for copy of map. It is driven by the fact that in the OP zone, places of assembly are not permitted uses. The Elks Club's building still to be used as a place of assembly will remain in the R-2 zone as a conditional use with 10 foot setbacks. The remaining portion of the lot is to be carved off and rezoned to OP. So the net result is to allow for a non-permitted use in the OP zone to be located just 10 feet away from the new OP zone line. That is unsound zoning and an abuse of the process.

It is worth reiterating again the purposes of the OP zone as it raises the question whether any use of that portion of the Elks Club's property to be rezoned OP can even be developed in any manner consistent with the purposes of the OP zone. If not, the property should not be rezoned.

The purpose of the OP zone is to "provide *substantial areas* for integrated development of professional offices in a park-or campus-like setting which are of the highest quality, are well

maintained and *are compatible with their natural surroundings.*” The Elks Club’s entire parcel is about 7 acres (6.993 per the Assessor’s records). It is not clear what is the exact size of that portion of the lot proposed to be rezoned OP, but it appears from the map provided to be about two-thirds of the whole lot, or say 4.7 acres.

One is hard pressed to say that the to be created 4.7 acre lot is a “substantial area” as that term is used in the OP zone. By comparison UNUM’s property designated OP is at least 15 times larger than what the Elks Club’s proposed OP zone. The applicant’s map does not show any integrated development. The applicant’s visual does not even attempt to show any park or campus like setting compatible with the natural surroundings. With the area to be occupied by the two new buildings with added pavement for parking it is impossible to see any potential for any park or campus like setting as viewed from the Congress Street corridor. Compare the applicant’s proposed view with the view of the UNUM campus from Congress Street.

On the visuals there are no internal sidewalks that take advantage of the “topography and natural features of the site.” There is a mass of parking being proposed right next to what will still be a R-2 zone with little preserved of the natural features. I see no room for any buffer and screening of the type called for by the OP standards between the remaining R-2 zone and the proposed OP zone: “dense and continuous nature and shall incorporate trees, shrubs, fencing, berms and related elements.” Instead there is pavement. I do not see any preservation of natural features which includes existing vegetation. It appears it will be mostly paved over.

The OP standards call for a “Master Plan” of the office park that shall include a design relationship to the site to show integration of open space and the natural features. It would be prudent before the Board makes any recommendation on the rezone to require the applicant to actually submit a Master Plan evidencing *it is even possible to develop the 4.7 acre to be created parcel in a manner consistent with the OP standards.* The integration required in the Master Plan “shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches.” There should be a showing of possible building envelopes and integration making a threshold showing the OP standards can be met. None of the concept plans the applicant presented to you make this threshold showing. That fact should be a red flag to the Board. If it is not practicable to meet the OP standards the property should not be rezoned.

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

Turning to the Comprehensive Plan, that plan has as a goal no net loss of housing for all development. City reports issued over the last 12 months repeat the same message; there is a huge need for all kinds of housing in the City. For example, the Director of Planning and Urban Development for the City reported at a City Housing and Community Development meeting earlier this year that based on current trends, there is a gap of 24% to 33% in the supply and demand of workforce housing. He noted that there is unmet demand for 3 bedroom housing that

can accommodate working families. Other City officials have noted there is substantial unmet need for senior housing to accommodate for downsizing by existing Portland seniors. Having served for the last 20 years on the board of non-profit developer of senior housing projects in Maine and New Hampshire, I can vouch for that need. The site certainly is capable of sustaining a viable senior housing development. There is an unmet need for all kinds of housing. Peer review will show the property can be developed for residential use.

The goal of not losing any and creating more housing is incorporated into the Land Use Code and is likely the highest goal of the Comprehensive Plan. While there is no existing housing on the Elks Club's property, changing the zone from R-2 to OP removes the land from being used for residential housing. Residential uses are prohibited in the OP zone. Rezoning land to eliminate residential uses like removing dwelling units with no replacement of those units is clearly not consistent with the Comprehensive Plan's goal of creating more housing in the City.

More importantly, the Board must ask what will be the impact of the rezone on the abutting and nearby residential uses and will the rezone lead to the deterioration of those areas and eventual loss of residential uses? If the answer is yes, as I think it is, the rezone should not be approved as it will result in the loss of residential dwellings. These residences have already been burdened with the traffic on Congress Street. Soon commercial developers will be looking to buy the existing residences conditioned on a zone change and they will point to the new 40,000 square feet of office space nearby as the basis for the change in the character of the area. The goal is to protect the integrity of neighborhoods and not allow them to be eroded away. That is why the Jetport Master Plan recognizes the R-2 zone along Congress Street as an important buffer.

E. The Elks Club's proposed rezone should not be recommended to the City Council.

In sum, it appears to me the only reason for the proposed zone change is to maximize the financial return to the Elks Club. The Elks Club's proposal does not seek just to rezone that rear portion of its property contiguous with the existing OP zone which would ensure that any commercial building would be located well off of Congress Street and the green space along Congress Street would be preserved. That more limited zone change would provide less money to the Elks Club but at the same time preserve the pattern of development that has occurred on Congress Street in this area, a pattern intended to act as a buffer to the R-2 zone and the SHD. See attached drawing. Of course proposing a more modest zone change consistent with the character of the neighborhood would not yield as high a return to the Elks Club. Hence that is why a more modest proposal is not before you.

Taking the proposal as the Elks Club has presented, with two buildings and not just one, extending the OP zone so it fronts Congress Street so the applicant can place a large commercial building right along Congress Street, and not just limiting the OP rezone to the rear of the lot, contiguous with the present OP zone to ensure the green space along Congress Street remains, the proposal is unsound. If the Elks Club is bound and determined at all costs to develop that

portion of its property between its existing building and Congress Street, the Board should not recommend the proposed zone change until a master planning process occurs that looks at the section of Congress Street from the edge of the SHD to Johnson Road and includes review of the all of the R-2 designation along this section of Congress Street with all of the stakeholders at the table.

“Without direction, our priorities are not defined and our path is not clear.” In an area where the existing pattern of development is clear, to change that pattern only to maximize the return to for one property owner is unsound zoning. It is not a path this Board should follow and it is not a path this Board should recommend that the City Council follow. If there is to be change in this area, change from the R-2 acting as buffer, it should be the result of a *“well-thought-out plan.”* The Elks Club’s proposal is not a well-thought-out plan.

Thank you for your consideration.

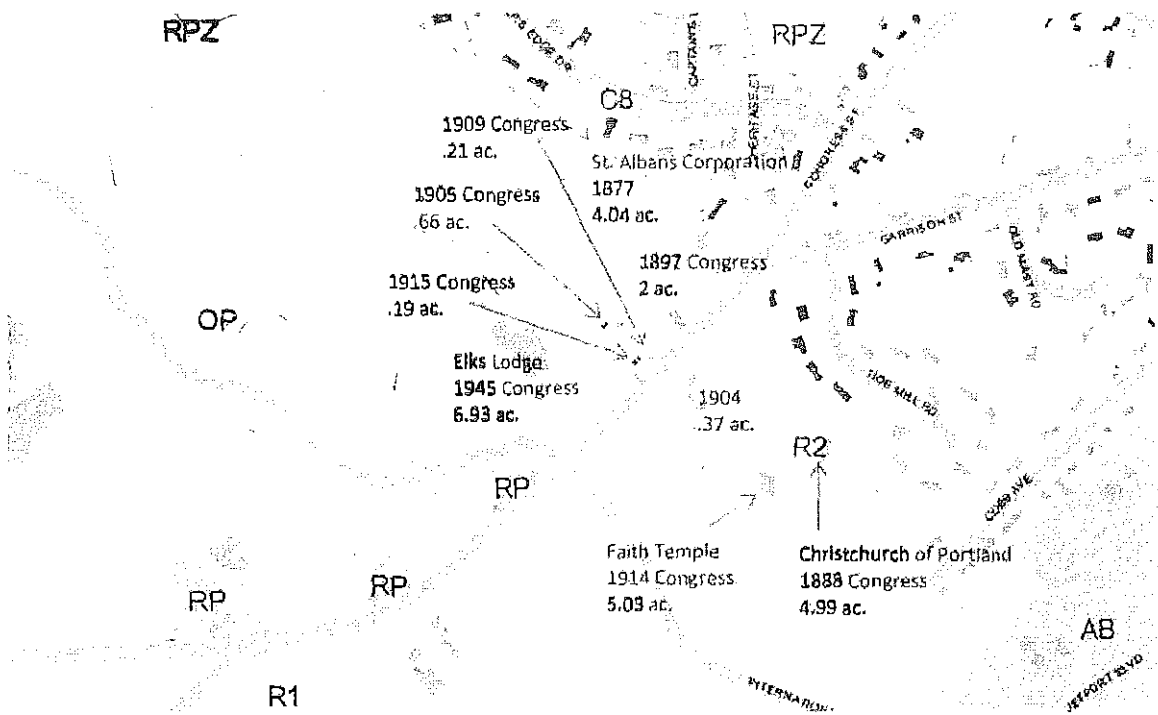
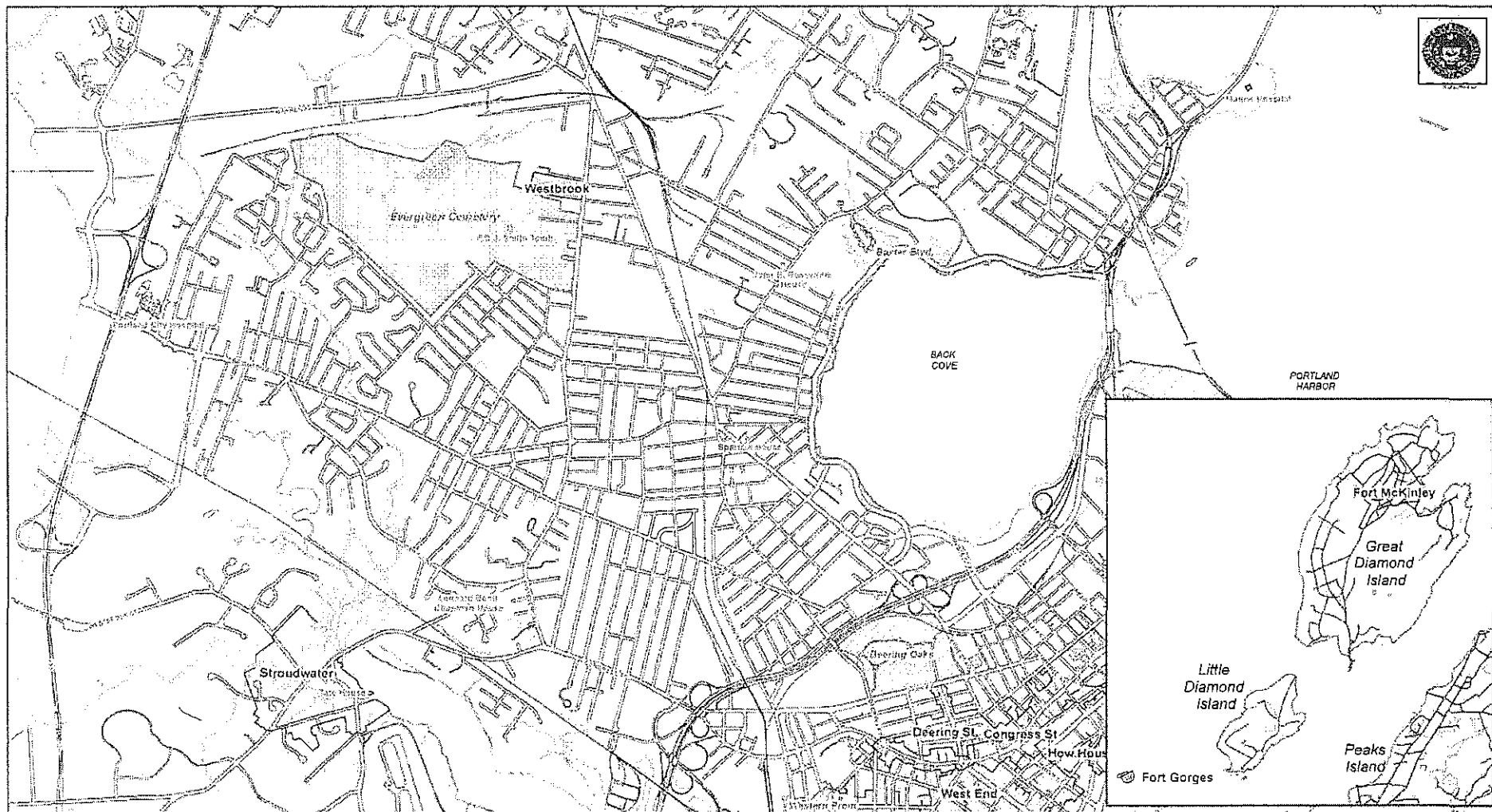


Figure 4: Parcel sizes and context in vicinity of 1945 Congress Street

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Historic Districts with Historic Landscapes, Cemeteries & Individual Landmarks

Off Peninsula & Islands
Effective April 15, 2009

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

Historic Districts

	Congress St.		Old Port		Historic Landmarks
	Deering St.		Stroudwater		Historic Landscapes
	Fort McKinley		West End		Historic Cemeteries
	How Houses		Westbrook		

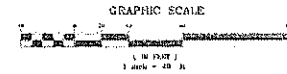
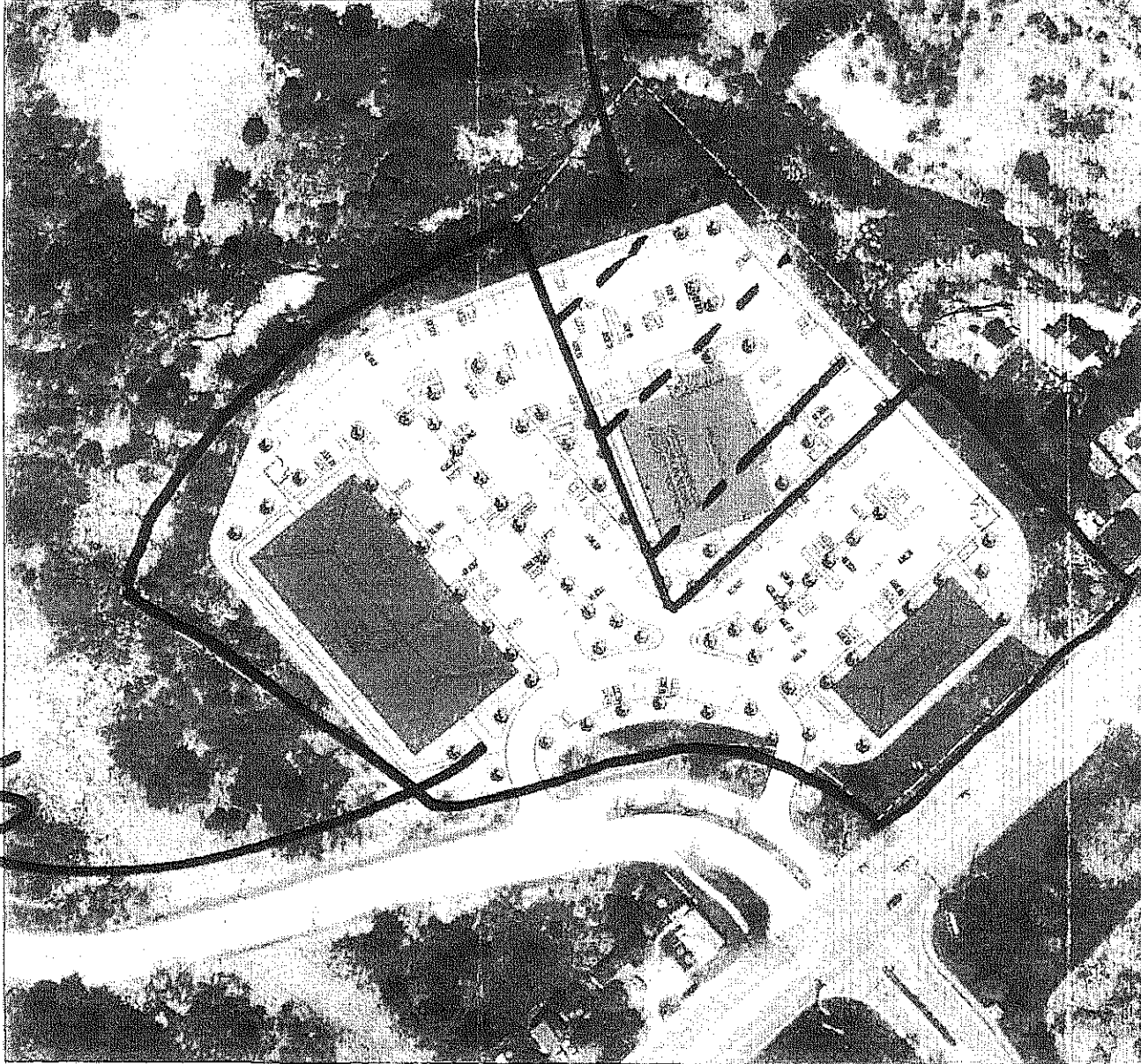


0 500 1,000 2,000 Feet

Ellis Club proposed 122012.

OP

2

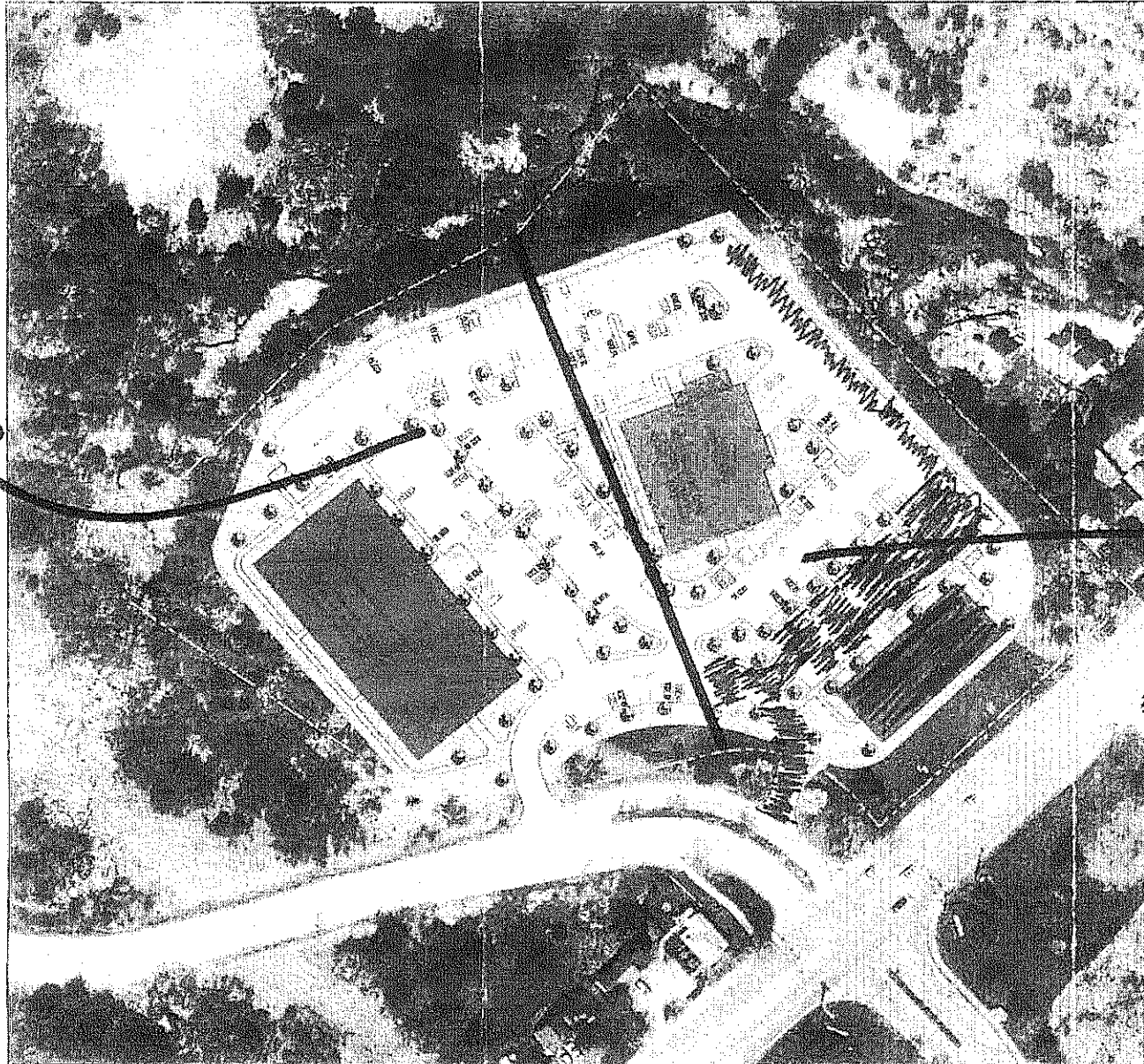


NOT FOR CONSTRUCTION

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

BP

B-2



NOT FOR CONSTRUCTION

03		1945 CONGRESS STREET ELKS LODGE, PORTLAND, MAINE		NORTHLAND ENTERPRISES, LLC 17 SOUTH STREET PORTLAND, MAINE 04101		PINKHAM & GREER CIVIL ENGINEERS 2000 WASHINGTON AVENUE PORTLAND, MAINE 04101	
SITE PLAN		DATE: 11-11-11		DRAWN BY: JAC		CHECKED BY: JAC	
PROJECT NO. 11-11-11		SHEET NO. 03		SHEET TOTAL: 03		SHEET TOTAL: 03	

Ms Helen Donaldson

September 3, 2015

City of Portland

Planning Board

Hi Nell,

Please share this letter with the Planning Board in advance of the 9.8.15 Public Hearing re the Elks Club Zoning Change Request.

I ask that the Planning Board recommend that the Elks Club zoning change request be denied.

The request is inappropriate: the Plan that the Elks have submitted doesn't fit the very zoning standard that they are asking for.

According to zoning rules, the Office Park Zone (OP), such as is found on the neighboring Unum property, requires a "park- or campus-like setting", with lots of open space, trees, walking paths, and so on. The Elks proposal is much different. The plan that they have submitted is too full of buildings and parking lots to begin to address the park-like requirements of the standard. As such, it is clearly an attempt to "shoehorn" buildings and parking into a much denser arrangement than the OP zone calls for. Buildings and a dominating parking lot do not make a campus-like setting. If the Planning Board is going to follow its own rules, the plan should be rejected, until and unless dramatically re-configured, probably with one-half as much new construction, to allow for "substantial areas for integrated development of professional offices in a park-or campus-like setting which are of the highest quality, are well-maintained, and are compatible with their natural surroundings."

In the meantime, the plan should be rejected. **As the applicant has presented a grossly inappropriate plan, it would be further inappropriate to approve the plan and rely on site planning to correct the gross inconsistencies with the spirit and intent of the OP zone.** Approval of such a flawed plan would put the cart dramatically before the horse, sending a troubling and wrong message to the applicant and other would-be applicants.

Furthermore, as has also been revealed, the OP zone does not allow for uses such as the Elks Club within its boundaries. **The applicant hopes to literally circumvent the standard by drawing a line around the club, and changing the zoning just outside this line.** Approval of this scheme would make a mockery of the zoning process. Further, similar organizations could expect to step up for the same treatment, changing zoning where convenient, and circumventing the planning process.

From the beginning, the Elks and their business associates have maintained that residential development would not be feasible at this location. But we have hired consultants who have

drawn an alternative development, with a 32-unit townhouse configuration, that we have previously shared with the Planning Board, and is clearly feasible.

Additionally, we now have figures from another consultant that put complete site development at \$24,775 per unit (\$792,800/32). See attached breakdown of costs. Site development costs of \$792,800, added to a sale price of \$512,000 (the assessed value of the land), yield per-unit costs of the site at \$40,775. If the sale price were \$1,000,000, the per-unit cost jumps (only) to \$56,025.

I am confident that townhouse lots that are builder-ready at \$40,775 to \$56,025 each, in one of the most desirable neighborhoods in Portland, would be easy to sell. Building costs of \$125 per square foot, including a contingency of 10%, would suggest sale prices of \$237,352 to \$254,127 for brand-new, 1,400 square-foot townhouses, and \$264,852 to \$281,627 for the 1,600 square-foot versions.

At the higher end, these prices translate to \$ 8,572,064 in taxable real estate for the city. **We welcome peer-reviewed studies from the City to verify these estimates.** So far, the only figures have come from the developers and their friends.

In sum, the premise that residential development is not feasible is flawed. And the plan simply doesn't fit the standards of the zone designation that the applicant is asking for. Therefore I ask that the Planning Board recommend, in accordance with its own standards, that this project be rejected.

Many Thanks,

Bill Linnell

1905 Congress

409-0100

CaptLinnell@yahoo.com

THE ELK'S LODGE		QUANTITY		UNIT COST		SUBTOTAL	
1945 Congress Street							
Building Demolition		23,100 SF		\$ 3.50 / SF		\$ 80,850.00	
Site Demolition		4,500 SY		\$ 3.50 / SY		\$ 15,750.00	
Roadway		1,000 LF		\$ 118 / LF		\$ 118,000.00	
Sidewalk		1,000 LF		\$ 12 / LF		\$ 12,000.00	
Earthwork		LS		\$ 15,000.00		\$ 15,000.00	
Sanitary Sewer Main		820 LF		\$ 110 / LF		\$ 90,200.00	
House Sewer Piping		800 LF		\$ 32 LF		\$ 25,600.00	
Water Main		1,200 LF		\$ 147 / LF		\$ 176,400.00	
Storm Drainage		LS		\$ 160,000.00		\$ 160,000.00	
Utilities		LS		\$ 36,000.00		\$ 36,000.00	
Landscaping		LS		\$ 55,000.00		\$ 55,000.00	
Erosion Control		LS		\$ 8,000.00		\$ 8,000.00	
					Total	\$ 792,800.00	

From: Elizabeth HOGLUND <eahoglund1@gmail.com>
To: <hcd@portlandmaine.gov>
CC: Elizabeth HOGLUND <ehoglund@maine.rr.com>
Date: 9/4/2015 11:44 AM
Subject: 1945 Congress Street

Dear Planning Board:

I have heard that some of this Board favor the rezoning of the parcel located at 1945 Congress Street, for among other reasons, that it would enhance or complement development of the Jetport access road. Unfortunately, you are most likely unaware of the reasons that access road is, is to remain undeveloped.

The opinion and foresight of your predecessors and the City Council, saw the green entry road/exit road to be a fabulous statement of the nature of Portland and its wonderful uniqueness. They knew that a stream of ugly buildings touting merchandise etc that can be purchased anywhere, was not a benefit. They also agreed that the loss of farm land that was being taken to build this road was a significant loss to the neighborhood, the visual impact on visitors, and residents alike. To compensate for this loss and to preserve the value of a clean, green entry, the City Council promised the Stroudwater residents, and collaterally the citizens of Portland, that the road would never be developed.

A few years later, a proposal was made to allow some development such as car rentals, thankfully the promise of no development was "remembered" and that effort stopped. The current Council and Planning Board need to be reminded of their predecessors' vision of the value of the green space and, more importantly, the value of remaining true to commitments.

Thus in addition to such development being a poor idea, it is most contrary to the promises/representations made and at the heart of democratic principles and trust in city officials.

I urge you disapprise yourselves of any concept, let alone plan to develop the access road.

I further state that this is a baseless reason to support the zoning change for 1945 Congress Street.

As stated in a communication to you earlier, The property is ripe for residential development and absolutely does not need a complex set of office buildings to be viable- especially as proposed.

I urge you to heed the comments from those of us who live here, many for decades, and not fall prey to the whims of a lucrative sale to an existing landowner.

Thank You, Elizabeth Hoglund.

a 25 year member of the Stroudwater Village Assoc Board of Trustees and ten year president of the Association with hundreds of hours spent working with the city on acceptable improvements. in

Stroudwater and elsewhere and a person with a good memory

From: Patricia Bernard <mainenama@hotmail.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 9/4/2015 8:52 PM
Subject: Elks club property

I'm concerned about the rezoning of the property. This city seems to be willy nilly about zoning commercial property in residential areas. There is an ordinance that says that commercial property cannot infringe on residential areas. The middle class is having enough trouble affording to live in this city without having commercial interests encroach on the livability of residential areas. The property was unsuitable for a college, what makes it suitable for an office park? I thought the comprehensive plan for the city locked in residential areas and the planning board should not invade them on the whim of some developers request to do so. Also those of us that live off Congress St have trouble accessing the street now, especially if we need to turn left, I feel that Congress St has reached it's saturation point in traffic. I remember from other meetings that there's a "failed" category for streets and I would like to know just how close Congress St. is from that designation. I'm also concerned looking at the picture, that the parking lot is awfully close to the embankment and the runoff and snow banks appear to threaten the river.

Ms. Donaldson could you please pass my concerns on to the board.

Thank you,

Patricia Bernard
13 Lasseil St.

From: Barbara Turitz <barbara@turitz.com>
To: <HCD@portlandmaine.gov>
Date: 9/7/2015 2:40 PM
Subject: Elks Club rezoning

Dear Ms Donaldson

I am emailing you to ask that the Planning Board recommend that the Elks Club zoning change request be denied.

While we have little knowledge of zoning regulations, we do know that this particular request is an example of spot zoning. If allowed, what would stop the churches in the neighborhood from selling land to raise money by circumventing the rules in the same manner.

The Stroudwater neighborhood has worked diligently over the years with the city to retain the Village atmosphere. This request for rezoning would certainly erode that atmosphere.

Thank you very much for bringing this email to the planning board's attention

Sincerely
David and Barbara Turitz
33 Partridge Circle
Portland

From: Edward Resnisky <edwardresnisky@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 9/7/2015 8:52 PM
Subject: Elks Club Zone Change Proposal

To the Planning Board:

I live at 50 Rivers Edge Drive in Stroudwater. I am also somewhat acquainted with zoning issues as I own income property on the peninsula. One of the biggest questions that I look forward to hearing answered at the public hearing is how this proposal fits the standards for the Office Park Zone (?).

Also, it seems that a residential build-out of the property would generate far more tax revenue (double or triple) for the city than is currently received from the Elks Club.

Thank you.

Ed Resnisky 50 Rivers Edge Drive

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

Ms. Donaldson,

I am writing because we won't be able to make the City Council meeting tonight about the Elks Club's proposed rezoning. We have lived in the Stroudwater section of Portland for more than 27 years. We are strongly opposed to the rezoning of the Elks Club. We concur with David Silk, who has articulated our concerns very well. We support his memo, which he will be presenting to the Planning Board this evening.

We have tried to call Ed Suslovic to voice our concerns and to urge him to vote against the rezoning but his voice mailbox is full.....likely from people attempting to reach him about this issue and his misguided position about tipped wage earners. The City Council members really need to find a way to make it easier for their constituents to reach them! We have tried to reach him and others on other issues and they do not keep their voice mailboxes accessible. Nor so they respond to e-mails sent to them.

On behalf of my husband, W. John Wipfler, as well as myself,

Valerie Libby-Wipfler
71 Tide Mill Road, Portland
207-879-1917

From: Joseph McDonnell <jmcdonnell20@gmail.com>
To: "HCD@portlandmaine.gov" <HCD@portlandmaine.gov>
Date: 9/8/2015 10:29 AM
Subject: Elk Club Proposal

Dear Ms. Donaldson,

My wife and I are residents of Stroudwater and are unable to attend the hearing on the Elk Club proposal. We urge that the planning board deny this request, keep Stroudwater residential, and encourage commercial activity to be located downtown. In good economic times, there is a tendency to encourage commercial activity to wonder beyond the downtown area but with such a policy planning boards run the risk of having an empty downtown during recessions. Thank you for this consideration.

Joseph and Carla McDonnell
1413 Westbrook Street
Portland, Maine 04102

Sent from my iPad

From: "Bill Lairsey" <wlairsey@maine.rr.com>
To: <hcd@portlandmaine.gov>
CC: <Mlairsey8@aol.com>, <captlinnell@yahoo.com>, <edsuslovic@portlandmaine.gov>
Date: 9/8/2015 11:35 AM
Subject: Re-Zoning of Elks Property

Nell Donaldson,

After review my wife and I are against this proposal and favor the solution offered by Bill Linnell to keep this area residential. The Elks Re-Zoning would set the stage in the long run for a McDonalds at the Airport entrance. NO THANKS. Bill Lairsey

Bill Lairsey

40 Spar Ln.

Portland, ME 04102

Tel: 207.828.3918

Cell: 207.650.1761

From: "Buxton, Anthony W." <ABuxton@preti.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 9/8/2015 5:07 PM
Subject: Tonight's Planning Board Consideration of the Proposal for 1945 Congress Street

Dear Mr Donaldson:

I have met with the developers of the proposed project and with opponents. I write to offer a comment that would seem to be critical to the decision to be made this evening.

For more than a decade, a critical focus of land use planning in Portland has been improvement of the " Gateways" to Portland, those entry points which make the critical first impressions on visitors and subsequent reinforcing impressions on residents. By coincidence, the Elks Club site and the Jetport entrance across Congress Street are Portland's Western Gateway.

By good planning (to date), this Western Gateway has become a " brand "for both Portland and Maine, light woods and fields populated by gifts of wildlife sculpture that emphasize our state's beauty and respect for the environment. The Gateway, seen by hundreds of thousands of travelers each year, tells people weary of the mundane ugliness of most airports that Maine is a different, better place.

Further development of the Elks Club site must occur, if at all, only after careful consideration of the effect on the Western Gateway of Portland. Land use decisions which are by nature piecemeal will inevitably destroy the opportunity to make a sound, wholistic decision.

This is why zoning is comprehensive in nature and in law. The decision before you tonight is far more than a decision about one piece of land. It is a decision about whether, as a community with choices, we will make those decisions comprehensively with our eyes on a better future or myopically with our eyes only on the details of the political moment.

This is why spot zoning is unlawful, and why zoning requires a longer view. Please step back tonight. And decide to take that longer view. Please deny the requested zoning change unless and until the Planning Board undertakes a comprehensive review of Portland's Western Gateway and it's zoning. Then, and only then, will the sound purposes of our zoning ordinance, and our society, be properly considered.

Thank you for your consideration.

Anthony W. Buxton
 138 Stroudwater Road
 Portland, Maine.

Anthony W. Buxton
 Chair, Energy Group | Co-Chair, Climate Strategy Group
 207.623.5300 Tel
 abuxton@preti.com
 Bio | LinkedIn | Twitter | preti.com

PretiFlaherty
 45 Memorial Circle
 P.O. Box 1058
 Augusta, ME 04332-1058

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Table 1: Comparison of Purpose Statements

Att. A

R-2	R-3	B-1	B-2	O-P	R-P
To provide for low-density residential development characterized by single-family homes on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity.	To provide for medium-density residential development characterized by single-family homes on individual lots and also to provide for planned residential unit developments on substantially sized parcels. Such development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.	To provide limited areas for the location of small-scale commercial establishments intended to serve a local market. As a result, uses shall be complimentary, quiet and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment. Uses shall be designed for the pedestrian scale and will provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3). This zone shall encourage mixed use buildings such as commercial first floor with residential uses above or combined retail/office uses in a multistory structure. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations. Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service	1. To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community. 2. The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood 3. The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding 4. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials.	To provide substantial areas for integrated development of professional offices in a park- or campus-like setting which are of the highest quality, are well designed and maintained and are compatible with their natural surroundings.	To provide appropriate location for the development and operation of low-intensity business uses, including professional offices on or near major arterials, that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods; or To serve as a transition or buffer zone between residential and more intensive nonresidential zones.

Table 3: Comparison of Permitted and Conditional Uses

	Permitted Use	R-2	R-3	B-1/B-1b	B-2/B-2b/B-2c	O-P	R-P
	Conditional Use						
Residential	Alteration or construction of single-family detached dwelling to accommodate accessory dwelling unit	4	4				
	Alteration of existing structure to accommodate 1+ dwelling units						
	Alteration of existing structure to accommodate 3+ dwelling units						
	Any residential use permitted in the abutting (or nearest) residential zone			A, B			
	Attached single-family and two-family dwellings						
	Single-family detached dwellings						
	Two-family dwellings						
	Multi-family dwellings			A, B, D			
	Handicapped family units						
	Sheltered care group home	3	3				
	Special needs independent living units						
	Single-family single- or multiple-component manufactured housing						
	Combined living/working spaces			A, B			
	Lodging houses (or conversion into)			A			
	PRUDs						
Institutional	Multiplex development						
	Elementary, middle, and secondary schools	5	5	A			
	Chancellery						
	Clinics			A, B			
	College, university or trade schools	5					
	Day care facilities or home babysitting services	4	4	A			
	Governmental buildings and uses						
	Hospital		5				
	Intermediate care facilities for 13+ people	5	5				
	Long-term and extended care facilities	5	5				
	Municipal uses		2	A, B			
	Nursery schools and kindergartens						
	Places of assembly	5	5				
	Schools						
	Veterinary hospitals						
	Automobile dealerships				4		
	Banking services						
	Bed and breakfasts (or conversion into)			A, B			
	Beverage dealers			A, B			
	Billiard parlors						
	Business services			A, B			
	Car washes				4		
	Conversion into bed and breakfast						
	Craft and specialty shops						
	Drinking establishments						
	Drive-throughs when accessory to a principal use on the same lot				B, C only		
	Exhibition halls						
	General offices			A, B			
	Health clubs and gymnasiums						
	Home occupation						
	Hostels			A, B			
	Hotels				1		
	Laundry and dry cleaning services						
	Lumber and building materials dealers						
	Major and minor gasoline service stations				4		
	Meeting and convention halls						
	Miscellaneous repair services						
	Mortuaries or funeral homes						
	Motel						
	Museums and art galleries						
	Offices of building tradespeople			A, B			
	Offices other than professional offices						
	Off-street parking lots and garages		4				
	Personal services						
	Professional offices ¹²						
	Registered medical marijuana dispensaries						

Table 3: Comparison of Permitted and Conditional Uses

	Permitted Use	R-2	R-3	B-1/B-1b	B-2/B-2b/B-2c	O-P	R-P
	Conditional Use						
Business	Restaurants			1	2		
	Retail establishments			3	4		
	Theaters				5		
Industrial	Breweries, including associated bottling activities						
	Building contractors and construction and engineering services						
	Cabinet and carpentry shops						
	Cold storage facilities						
	Commercial kitchens or other food preparation						
	Communication studios or broadcast and receiving facilities				6		
	Correctional pre-release facilities						
	Dairies and bakeries				7		
	Food processing						
	High-technology manufacturing						
	Intermodal transportation facilities						
	Low impact industrial uses						
	Lumber yards						
	Nurseries						
	Printing and publishing establishments				8	9	
	Recycling & solid waste disposal facilities						
	Research and development and back office uses				8	10	
	Studios for artists and craftspeople			4	5		
	Temporary wind anemometer towers	4	4	4	4		
	Tow lots						
	Utility substations			5	6		7
	Warehousing and wholesaling				4		
	Wind energy systems	5	6	7	8	9	10
Marine	Boat repair yards						
	Boat storage facilities						
	Harbor and marine supplies and services and ship supply						
	Marine products wholesaling and retailing						
	Marine repair services and machine shops						
	Marine museums and aquariums						
	Seafood processing for human consumption						
	Seafood packing and packaging						
	Seafood distribution						
	Shipbuilding and facilities for construction, maintenance and repair of vessels						
Other	Accessory uses	1	2	3	4	5	6
	Any conditional uses permitted in abutting residential zones						
	Agriculture	7					
	Parking and storage of agricultural equipment used on premises						
	Cemeteries						
	Parks	8	9				
	Raising of domestic animals for noncommercial purposes						
	Neighborhood center			10			

1 See applicable performance standards in code.

2 Excluding those explicitly noted in the code.

3 For up to 12 individuals. See code for additional regulations.

4 Subject to certain conditions. See code.

5 Subject to conditions of 14-474 as well as others under zoning designation.

6 Permitted or conditional depending on size. See code.

7 Permitted uses in the R-7 Compact Urban Residential Overlay Zone, shall be the uses permitted in the R-6 Zone, except that different dimensional requirements shall apply.

8 Permitted in the B-1 and on the ground floor of buildings in the B-1b.

9 In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.

10 Permitted in the B-1 and above the ground floor of buildings in the B-1b.

11 Permitted in an office park with a minimum gross area of at least 3 acres of land, consisting of either an Office Park PUD on one lot or a subdivision.

12 Professional offices are defined in Section 14-47 as "the office of a doctor, dentist, optometrist, psychologist, accountant, lawyer, architect, engineer, or similar professional."

Table 2: Comparison of Dimensional Requirements

	B-2	R-3 ²⁰	B-1/B-1b ²²	B-2/B-2b/B-2c	O-P	R-P ²⁴
Min. Lot Size	Residential: 10,000 SF Long term, extended, Intermediate care: 3 School: 2 ac. Municipal: 10,000 SF College, univ.: 2 ac. Other: 10,000 SF For all, see note ²⁶	Residential: 6,500 SF ³ Long term, extended, Intermediate care: 2 ac. Place of assembly: see code Municipal: 6,500 SF Hospital: 10 ac. PRUD: 3 ac.	School: 20,000 SF Place of Assembly: 10,000 SF Other Non-Res Uses: None	None	1.5 ac.	6,000 SF
Min. Lot Area per D.U.	10,000 SF	PRUD: 6,500 SF net land area Other: 6,500 SF	Residential: None On-peninsula: 435 SF Off-peninsula: min. lot area of nearest residential zone, except 1,000 SF for multi-family dwellings above first floor	On-peninsula: 435 SF Off-peninsula: 1,500 SF, or 435 SF if active street frontage		
Min. Street Frontage	50 ft.	50 ft. ²⁷	20 ft.	20 ft.	100 ft.	60 ft.
Min. Lot Width	80 ft.	65 ft.	None	None	150 ft.	60 ft.
Min. Front Yard	25 ft. (principal or accessory)	25 ft. (principal or accessory) ¹⁸	None	None	50 ft. ²⁸	20 ft., except that front yard need not exceed avg. depth of adjacent yards ²⁷
Max. Front yard			10 ft., or the maximum front yard setback shall not exceed the average depth of nearest developed lots if that average depth is less than 10 ft.	No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. ²⁸		
Min. Rear Yard	Principal or accessory >100 SF: 25 ft. Accessory detached <144 SF: 5 ft.	Principal or attached accessory > 100 SF: 25 ft. Accessory detached <144 SF: 5 ft.	Principal: None, except 10 ft. if abutting a residential zone. Accessory: None, except 5 ft. if abutting a residential zone	Principal: 10 ft. Accessory: 5 ft.	50 ft. ²⁸	Principal: 20 ft. Accessory detached: 7 ft.
Min. Side Yard	Principal or accessory >100 SF: 1-1 1/2 stories: 12 ft. ³⁰ 2 stories: 14 ft. ³⁰ 2 1/2 stories: 16 ft. ³⁰ Accessory detached <144 SF: 5 ft. Side yard on side street: 20 ft.	1 story: 8 ft. ²⁹ 1 1/2 stories : 8 ft. ²⁹ 2 stories : 14 ft. ²⁹ 2 1/2 stories: 16 ft. ²⁹ Accessory detached <144 SF: 5 ft. Side yard on side street: 20 ft.	Principal: None, except 5 ft. if abutting residential zone. Accessory: None, except 5 ft. if abutting a residential zone Side yard on side street: 10 ft. max (only applies to one side street in cases with more than one)	Principal: None Accessory: 5 ft. Side yard on side street: None	25 ft., except 40 ft. where side yard abuts residential zone or use ²⁵	Principal: 1 story: 10 ft. 2 stories: 12 ft. 3+ stories: 14 ft. ²⁹ Accessory detached: 7 ft. Side yard on side street: 1-2 stories: 15 ft. 3+ stories: 18 ft.
Setbacks			Portions of a structure above 35 ft. shall be no closer than 10 ft. from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.	Portions of a structure above 35 ft. shall be no closer than 5 ft. from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.		
Max. Structure Height	Principal or attached accessory: 35 ft. Accessory detached: 18 ft.	Principal or attached accessory: 35 ft. Accessory detached: 18 ft.	Off-peninsula: 35 ft., except where abutting R-6, where max. height shall be the max. height of R-6 ³³ On-peninsula: 45 ft., except 50 ft. along Congress Street if commercial first floor & residential upper floors	45 feet except as provided for below: a. 50 feet if first floor is partially or wholly occupied by a commercial use. b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet. c. 65 feet within 65 feet of Franklin St.	55 ft., except that on lots or within office-park subdivisions which are > 50 ac., 75 ft. is permitted, including roof appurtenances, if each minimum yard dimension is increased by 1 ft. for each 1 ft. of height above 55 ft.	45 ft., except where the lot abuts an R-6 residential zone, the maximum permitted height shall be the maximum permitted height of the R-6 zone. If there is a difference in height between abutting R-6 zones, the least restrictive height limitation shall apply.
Max. Floor Area	See note ²	See note ²	Total maximum first floor area for non-residential uses per structure: 10,000 SF ³⁴ Total maximum floor area per retail establishment: 5,000 SF	None		
Max. Floor Area Ratio						See abutting residential zone. If none, see nearest residential zone. ³⁵
Max. Lot Coverage	20%	35%		None		
Open Space Ratio				None		
Max. Impervious Surface			90%	Residential: None Other uses in B-2 and B-2c: 80% Other uses in B-2b: 90%	60%	See abutting residential zone. If none, see nearest residential zone. ³⁵

¹ except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.

² See definition in 14-188

³ except as provided for lots of record is section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article. A lot in an unsewered residential district shall meet the provisions of the state Minimum Lot Size Law, 32 M.R.S.A. Section 4807

* Other restrictions apply for lodging houses, intermediate care facilities

⁵ The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than ten (10) feet, in the case of a lot of record existing as of June 5, 1957, and held under separate and disti

⁶ Other restrictions apply for bed and breakfasts.

⁷ Minimum/maximum gross floor area requirements exist for particular uses, which may include places of assembly; beds and breakfasts; and colleges, universities, or trade schools. See code.

¹ Other dimensional standards apply for small residential lot developments.

³ These amendments will be brought to the Planning Board in the fall of 2014 for review, and are still subject to change.

¹⁰ for uses other than utility substations (B-4).

¹² The front yard of a lot existing as of May 23, 1988 and less than 100 ft. deep need not be deeper than 20% the depth of the lot.

¹²The commercial front boundary shall utilize at least 36 feet of a 6" x 6" post and rail fence system and shall have an average depth of at least 20 feet; residential use off a principal undergarment 14.5671a shall mark requirements of location or extent.

²²The commercial first floor uses shall utilize at least 75 percent of the first floor frontage.

¹⁷Except when B-1 properties abut an R-6A zone, the maximum height shall be 45 ft.

¹⁴ Structures which existed prior to date of enactment of the B-1/B-1b zones are exempt.

¹³ Building additions do not have to meet this section; If a lot has less than 40 ft. of frontage and is more than 100 ft. deep, then no max. setback is required. If existing structures are within 20 ft. of the street or meet the front yard max. and the remainder of the lot has

16 Provided that for uses specified, no minimum lot area shall be required in the following cases: 2 Uses existing as of June 1, 1983; 3 Expansion onto land abutting the lot on which the principal use is located; 4 Expansion onto land other than the

17 except that lots located in a subdivision approved after the effective date of Ord. No. 165-97 pursuant to section 34-497.5 shall meet the street frontage requirements approved as part of the subdivision plan under the terms of that section.

18 A front yard need not exceed the average depth of front yards on either side of the lot. A lot of record existing as of June 5, 1957, and less than one hundred (100) feet deep need not be deeper than twenty (20%) percent of the depth of the lot.

19 The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than eight (8) feet in width. In the case of a lot of record existing as of June 5, 1967, and held under separate and distinct ownership from adja

20 See other dimensional requirements relating specifically to P8UDs.

21 See other dimensional requirements for small residential lot development, which can be applied if a lot is vacant, used exclusively for parking, contains structures not used for residential purposes, or created from a single lot division of a developed lot and results in a lot meeting the dimensional in

22 Maximum length of undifferentiated blank wall along a public street or publicly accessible pedestrian way: 15 ft. in PAD overlay zone; 30 ft. in all other areas

23 FARs for residential zones as follows: R-1/R-2: .45; R-3: .55; R-4/R-5/R-6: .65

24 For parcels in B-5b on West Commercial south of Danforth and parcels on Thompson's Point, see code.

25 The Planning Board can reduce by up to fifty (50) percent the minimum yard setback if another yard within the lot is correspondingly increased so that the combined minimum setbacks on all four (4) sides equal one hundred fifty (150) feet. If two (2) or more buildings are located on one (1) lot, only 1

26 Residential uses permitted under section 14-147(a) shall meet the requirements of such abutting or nearest residential zone.

27 The front yard of a lot existing as of April 4, 1986, which lot is less than one hundred (100) feet deep, need not be deeper than ten (10) percent of the depth of the lot.

28 The width of one (1) side yard may be reduced one (1) foot for each foot that the other side yard is correspondingly increased, provided, however, no side yard shall be reduced to less than seven (7) feet in width.

29 Imperious surface ratios as follows: R=1/N=2; G: R=3; J; R=4/R=5/N=5a/R=6; J

30 The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than twelve (12) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots

3) Maximum FADs are as follows: R-2/R-2: .45; R-3: .55; R-4/R-5/R-5A/R-6: .65

32 This requirement may be reduced by up to twenty (20) percent for a special needs independent living unit.

33 The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than ten (10) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots,

34 A side yard on a side street need not exceed the average depth of front setback directly abutting the lot.

35 except as described in section 14-201(b).

35 No structure may extend beyond the building line established for an airway or highway. If recorded, rear yards must not be less than five (5) feet in width.

35 No structure may extend beyond the building line established for any runway or taxiway. If provided, rear yards must not be less than five (5) feet in width.

MEMORANDUM

To: FILE
From: Nell Donaldson
Subject: Application ID: 2014-227
Date: 12/17/2014

Comments Submitted by: Ann Machado/Zoning on 12/2/2014

The proposal is for a Map Amendment to change the zone for the property located at 1945 Congress Street from R-2 Residential to O-P Office Park Zone in order to build a 15,000 sf medical building and a 35,300 sf office building. These two proposed uses are permitted uses in the O-P zone. The Elks building is a conforming use in the R-2 zone as a place of assembly (fraternal organization). If the lot is changed to the O-P zone, the Elks building as a place of assembly would become a legal nonconforming use. The use could be maintained but the building could not be expanded and the nonconforming use would be abandoned if the use as a place of assembly is discontinued for twelve months. The existing lot meets the minimum gross area requirement of three acres for an office park and it meets the minimum street frontage of one hundred feet.

Att. C

From: Tom Errico <thomas.errico@tylin.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 1/9/2015 3:51 PM
Subject: RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Hi Nell – I would like to note that based upon the trip generation levels noted in my previous email, a comprehensive traffic impact study would be required to assess impacts to the area roadway system. Please note the following:

The Congress Street/International Parkway/UNUM Drive intersection will serve as the primary access point for any development. Use of this existing signalized intersection seems appropriate, but any development application would be required to access the ability of this traffic signal to adequately accommodate the added traffic.

The City recently implemented Phase I of the Outer Congress Street Streetscape Study with the intent of providing a balanced multi-modal transportation street. Phase I primarily reduced the number of travel lanes on certain sections of Congress Street between Steven Avenue and International Parkway/UNUM Drive. The City continues to review conditions and will be implementing Phase II of the Plan this year which will seek to enhance the inbound merge area east of International Parkway/UNUM Drive, add a crosswalk near Garrison Street, and implement pedestrian and transit improvements at Westbrook Street.

MaineDOT will be upgrading the traffic signal at the Congress Street/Westbrook Street intersection. This intersection currently experiences congestion problems, but it is unlikely any capacity enhancements will be possible given constraints.

The Congress Street/Johnson Road intersection seems to operate at an acceptable level of service, but review of conditions would be required.

If you have any questions, please let me know.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
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Twitter | Facebook | LinkedIn | YouTube

"One Vision, One Company"

Please consider the environment before printing.

From: Helen Donaldson [mailto:HCD@portlandmaine.gov]
Sent: Monday, January 05, 2015 10:27 AM
To: Tom Errico
Subject: RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Great. Thanks, Tom. There are likely to be questions about impacts to operations on Congress Street and the light at Unum Park Drive. Can you make any general statements on that? Maybe alluding to existing trips generated by the Elks?

Tell me if I'm asking you to go too far out on a limb here!

Nell

Nell Donaldson
City of Portland Planning Division
389 Congress Street
Portland, Maine 04101
874-8723

hcd@portlandmaine.gov <mailto:hcd@portlandmaine.gov>

>>> Tom Errico <thomas.errico@tylin.com> <mailto:thomas.errico@tylin.com>>> 1/5/2015 9:54 AM >>>

Hi Nell – I have conducted a preliminary trip generation analysis for the three development assumptions you have provided and the results are

summarized in the following table. The trip generation estimates were computed for the Weekday AM and PM peak hours and were based on the Trip Generation Manual, Institute of Transportation Engineers, 9th Edition.

Land Use Zone

Density

AM Peak Hour Traffic Volume Enter and Exiting

PM Peak Hour Traffic Volume Enter and Exiting

Existing R-2

14 Residential Units

10 Vehicles

14 Vehicles

Office Park (OP)

192,563 Square Feet of Office Space

302 Vehicles

288 Vehicles

Resource Protection (RP)

137,201 Square Feet of Office Space

214 Vehicles

204 Vehicles

If you have any questions or need additional information, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
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From: Helen Donaldson [mailto:HCD@portlandmaine.gov]
Sent: Monday, January 05, 2015 8:22 AM
To: Tom Errico
Subject: RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Thanks, Tom. This is helpful.

I'm trying to get a draft of this memo to Barbara this week, as I'm out for some of next and the workshop is on the 20th. Can you take a look at those buildout calculations when you get a chance (attached again here) and let me know what you think in terms of a general comparison of trip generation?

Thanks, Tom.

Neil

>>> Tom Errico <thomas.errico@tylin.com<mailto:thomas.errico@tylin.com>> 12/31/2014 3:59 PM >>>

Hi Neil – Attached is a concept plan set that is still evolving, so please note that it will be changing. Thanks and let me know if you have any questions.

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
[T.Y. Lin International] T.Y. Lin International
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Please consider the environment before printing.

From: Helen Donaldson [mailto:HCD@portlandmaine.gov]
Sent: Wednesday, December 31, 2014 11:09 AM
To: Tom Errico
Subject: Re: Fwd: Office Development at Elks Lodge Site off Unum Drive

Thanks, Tom. I can't think of anything else in terms of development out there, but Barbara may know of something.

I'm looking forward to seeing the outer Congress plans when you get a chance. I didn't even realize anything was happening there.

Neil

>>> Tom Errico <thomas.errico@tylin.com<mailto:thomas.errico@tylin.com>> 12/31/2014 9:48 AM >>>

Sent from my iPhone

Begin forwarded message:

From: "Diane W. Morabito" <mtrdwm@myfairpoint.net<mailto:mtrdwm@myfairpoint.net>>
Date: December 29, 2014, 1:09:18 PM EST
To: 'Barbara Barhydt' <BAB@portlandmaine.gov<mailto:BAB@portlandmaine.gov>>
Cc: Tom Errico <thomas.errico@tylin.com<mailto:thomas.errico@tylin.com>>
Subject: Office Development at Elks Lodge Site off Unum Drive

Hi Barbara,

I am writing regarding the proposed medical and general offices at the Elks Lodge site off Unum Drive (off Congress Street). We are doing the traffic study and traffic permitting for the office development. Are there any other development projects approved but not constructed, or pending approval, that will impact Congress Avenue volumes in that area that I should consider in my traffic analysis?

As always, thanks for your assistance and Best Wishes for the New Year.

Diane

Diane W. Morabito, P.E. PTOE

President

Maine Traffic Resources

25 Vine Street

Gardiner, ME 04345

(O) 207-582-5252

(M) 207-441-0703

From: Tom Errico <thomas.errico@tylin.com>
To: Helen Donaldson <HCD@portlandmaine.gov>
Date: 1/5/2015 10:07 AM
Subject: RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Hi Nell – I have conducted a preliminary trip generation analysis for the three development assumptions you have provided and the results are summarized in the following table. The trip generation estimates were computed for the Weekday AM and PM peak hours and were based on the Trip Generation Manual, Institute of Transportation Engineers, 9th Edition.

<i>Zone</i>	<i>Density</i>	<i>AM Peak Hour Traffic Volume Enter and Exiting</i>	<i>PM Peak Hour Traffic Volume Enter and Exiting</i>
<i>Existing R-2</i>	<i>14 Residential Units</i>	<i>10 Vehicles</i>	<i>14 Vehicles</i>
<i>Office Park (OP)</i>	<i>192,563 Square Feet of Office Space</i>	<i>302 Vehicles</i>	<i>288 Vehicles</i>
<i>Residence Professional (RP)</i>	<i>137,201 Square Feet of Office Space</i>	<i>214 Vehicles</i>	<i>204 Vehicles</i>

If you have any questions or need additional information, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
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MEMORANDUM

TO: Nell Donaldson and City of Portland Planning Board

FROM: Jennifer L. Thompson, Associate Corporation Counsel

DATE: September 8, 2015

RE: Zoning Amendments

I understand that, in connection with an application to amend the zoning map for 1945 Congress Street, a question has arisen as to the precedential effect of map amendments and the extent to which a recommendation by the Planning Board or a zoning change approved by the Council can or should bind further requests for zoning changes. This memo will address that question.

I. Overview of Zoning

As you know, “[z]oning is a legislative function, the authority for which flows from the police powers of governmental bodies,¹ and all property is held subject to the right of the government to regulate its use in the exercise of the police power.” 83 Am Jur 2d Zoning and Planning § 6. Under the Maine statute authorizing municipalities to enact zoning regulations, a municipal “zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body . . .” 30-A M.R.S. § 4352(2).

Accordingly, when considering a proposed zoning ordinance or a proposed amendment to an existing zoning ordinance, the first question is whether the proposal is “consistent” with the Comprehensive Plan. The Maine Law Court has interpreted the term *consistent* to mean that the proposed use/agreement must be “in basic harmony with . . .” the City’s comprehensive plan (the “Plan”) and existing and permitted uses in the original zone. *Consistency* does not mean, however, that a project has to be the “best possible use” for a site/location. See *Vella v. Town of Camden*, 677 A.2d 1051, 1053 (Me. 1996) (citing *LaBonta, et al. v. City of Waterville*, 528 A.2d 1262, 1265); see also *City of Old Town v. Dimoulas*, 2002 ME 133, ¶ 20, 803 A.2d 1018, 1024.

The Comprehensive Plan outlines “a compilation of policy directives and goals” for the development of the City. Among other things, the policies outlined in the Plan address the City’s infrastructure, commercial/business development, transportation resources, industry, and commerce and residential housing. See City of Portland Comprehensive Plan. Since these goals and policies can sometimes compete and/or conflict with one another, it is the Planning Board’s/City Council’s task to

balance and accommodate the many goals and policies contained in the Plan in a way that advances the City's overall best interests. See *Adelman v. Town of Baldwin et al.*, 2000 ME 91, ¶ 24, 750 A.2d 577, 585-586 (citations omitted); see also *LaBonta*, 528 A.2d at 1265.

Recently, the Law Court further clarified the consistency analysis in *Remmel v. City of Portland*, 2014 ME 114, ¶¶ 13-14, 102 A.3d 1168, 1172 and the City's broad discretion to determine when a proposed rezoning is consistent with the Comprehensive Plan. According to the Court in *Remmel*, it is not necessary that a proposed zoning amendment comply strictly with every portion of the Plan. Rather, when a court reviews the City's decision to rezone a property, the scope of the court's inquiry is limited to determine whether the Planning Board/City Council could have, from the evidence before it, found that the rezoning was in "basic harmony" with the Comprehensive Plan:

A zoning or rezoning action need not perfectly fulfill the goals of a comprehensive plan; it may be in basic harmony with the plan so long as it "strikes a reasonable balance among the municipality's various zoning goals" or "overlap[s] considerably" with the plan.

In addition, because the Comprehensive Plan consists of numerous different land use policies, adopted at different times, that sometimes conflict, whether a proposed rezoning is "consistent" with the Comprehensive Plan can only be determined by examining the Plan as a whole. "A municipality may conclude that a rezoning action is consistent with the comprehensive plan when it is in harmony with some provisions of the plan, even if the action appears inconsistent with other provisions of the plan." *Id.*

II. Precedential Effect of Zoning Enactments or Amendments

With that general overview of zoning, I turn now to the question at hand, namely: Does this Board's recommendation (or the Council's ultimate decision) on rezoning a particular piece of property somehow bind it with respect to future amendments to zoning of the same property or of surrounding areas or properties? Generally speaking, the answer is no . . . with a caveat.

Because zoning is a legislative act and ultimately an exercise of legislative judgment by the City Council (subject to the "consistency" analysis discussed above), a zoning decision is not binding per se. Joseph T. Bockrath, *Zoning Board's Grant of New Application for Zone Change, Variance, or Special Exception After Denial of Previous Application Covering Same Property or Part Thereof*, 52 A.L.R.3d 494, 2b ("Being the result of a 'legislative process,' a zone change is not binding on future determinations . . .") In other words, because zoning requires an exercise of discretion and legislative judgment, a legislative body like the Council is entitled to exercise that discretion however it sees fit – provided of

course that its decision is consistent with the comprehensive plan, is not arbitrary, nor discriminatory. Therefore, even where the Board/Council denies a proposed zoning amendment with respect to a parcel of property this year, it would not be bound by that decision if the request were renewed next year. *Id.* at 3a (collecting cases). Having said that, in order to avoid an allegation that it is exercising its legislative discretion in an arbitrary or capricious manner, in such a situation the Board/Council would be well advised to articulate the change in circumstances that justifies a divergent exercise of its discretion with respect to the same parcel of land.¹

Additionally, there may be situations where a prior zoning decision by the Board or Council might be looked to by a future Board/Council and where, while not binding, that prior decision may nevertheless inform or impact a future decision. For example, if the Board/Council were to amend the boundaries of a zone this year to include an additional parcel of property (Parcel A) and then a request came in next year to further extend the boundary to a neighboring lot (Parcel B), the Board/Council may feel constrained by the “consistency analysis” done with respect Parcel A when it is doing that analysis of Parcel B. That is, if rezoning Parcel A this year from R-3 to R-2 is consistent with the comprehensive plan, and Parcel B is substantially the same as Parcel A, the Board/Council may be hard pressed to conclude next year that including Parcel B in R-2 is not also consistent with the Comprehensive Plan. After all, if rezoning A was consistent, why wouldn’t rezoning B also be consistent?

On the other hand, however, parcels of property each inherently unique such that there may well be more than sufficient differences in the consistency analysis to justify different zoning decisions with respect to different, though neighboring, parcels of land. Therefore, while legislative acts like zoning enactments and amendments are not binding in the same way that judicial decisions are binding, in order to avoid confusion or the appearance of inconsistent or arbitrary exercises of legislative discretion, the Planning Board and the Council would be well advised to expressly articulate the bases for their conclusions regarding consistency and where those conclusions differ with respect to seemingly similar properties, articulate the differences that underlie those conclusions.

¹ Some examples in the case law include, changes to the property, changes to the surrounding neighborhood, changed traffic impacts, or changes in the zoning amendment requested.

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

Dear Ms. Donaldson,

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

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

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

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

1. Constant speeding, often at highway speeds of 45 mph past our homes. I am told this has been an on-going problem and has actually improved.

Commercial vehicles and heavy equipment (dump trucks, tree company trucks, flatbeds hauling large equipment) exceeding the speed limit daily.

** when I spoke with the city, I was told they "had no jurisdiction" and I had to talk with DOT. DOT told me they "leave that to the city."

** Our street is clearly used as a sort of bypass in to Portland and accidents occur on a regular basis. I don't believe the city wants to correct

this problem because this usage is convenient and thus complaints are ignored. Speeding vehicles include Portland Water District, RTP, and even Portland school buses.

** The traffic speed and congestion on Congress St. in the western gateway are becoming serious issues, yet I have not heard of any "plan" to

deal with this issue, even though the Elks development would increase traffic there during peak hours.

2. In the winter, our sidewalks are not cleared, and snow removal does not happen. Thus the sidewalk becomes a large frozen snowbank and I must

walk in the road with my dog, taking my life in my hands because of speeding traffic. I am aware that home owners are expected to clear sidewalks in front of their house, but this is often not sufficient.

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

4. When the gas company needed a 20 foot corridor through the woodland that is adjacent to the Fore River Trail, they sent in a harvester that hacked

major thoroughfares through the woods that are 30-40 feet wide, with stumps jutting up everywhere (frontage) and no run-off remediation. Since the

PWD decided they needed a corridor as well, more than 60 % of this woodland has been clearcut and left a mess. Scattering a bit of hay on an

embankment is not sufficient. The loss of these trees represents decades of growth, and the loss of understory impacts vernal pools on the trail

which support natural ecologies. Yes, it is city land. However, the city could have informed residents of this action and worked to do it in a low impact

manner, preserving the remaining green space and keeping it tidy. That did not happen.

5. Now, the Camelot Farm acreage is on the market. The sign says "Ideal for Development." The location of this large parcel is at the end of Westbrook

St. but begins near Stroudwater Christian Church just a few houses from my own. I have grave concerns that this land will be allowed to develop as a commercial endeavor and destroy what remains of the green space out here. Why do I think that could happen? I believe that the

development pressure will trump the wishes of the residents and the existing comprehensive plan for our city. This is exactly why we need

TO: Mayor Brennan and Members of the City Council

FROM: David Silk, 1187 Westbrook St

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

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

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

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

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

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

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

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

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

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

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

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

The area:



The Elks Club's property at 1945 Congress Street is presently zoned R-2. It consists of an almost 7 acre parcel. The property has been zoned residential since 1945. When the Elks Club acquired the property in the late 1960s, the parcel was zoned R-2. At that time the property was rezoned from R-2 to R-6 so as to allow the club to develop the property as a social/fraternal hall under what was then known as an "exception" to the uses permitted in the R-6.

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

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

The purpose of the OP zone is to "provide *substantial areas* for integrated development of professional offices *in a park-or campus-like setting* which are of the highest quality, are well maintained and *are compatible with their natural surroundings.*" The UNUM campus is in an OP zone and is an example of professional offices located in a park or campus-like setting with the offices set well back from any public way. That is not what the Elks Club's proposal calls for.

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

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

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

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

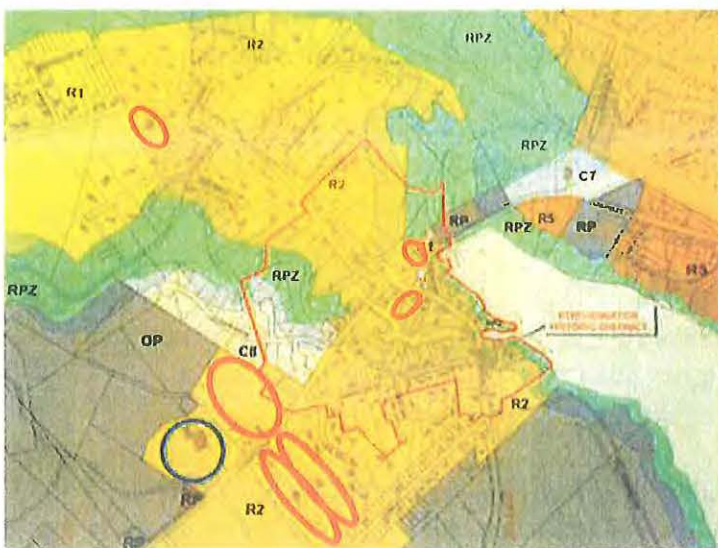
In recent years, places of assembly with declining membership have been repurposed without (a) making the use nonconforming in the zone and (b) without changing the underlying zone. The most recent example occurred less than a mile away from the Elks Club. Earlier this year, the former Saint Patrick's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

In the immediate vicinity of the Elks Club and in the R-2 zone, there are three other properties of between 4 and 6 acres with conditional uses (places of assembly) located thereon, Faith Temple, Christchurch of Portland and St. Albans Corporation (Masonic Learning Center).



Places of assembly are classified as a type of institutional use in the Land Use Code. They are required to have large areas. As the Comprehensive Plan at H-7 states: "Any new institutional use should be required to have a lot size of sufficient area to accommodate all activities, including parking and to absorb impacts and growth needs of the institution."

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



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

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

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

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

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

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

The Comprehensive Plan section on Transportation Resources at page 1 notes, *traffic must be minimized in order to maintain the health of neighborhaads*. "If residents who live in the city by choice come to believe their neighborhoods are not safe for walking, are not protected from noisy through-traffic, don't provide easy access to the daily necessities, don't give their children the freedom to move about independently – then the City has lost much of its competitive advantage over the suburbs."

The professional office use proposed under the Elks Club's rezone is already legal and can be readily accommodated without a zone change at Thompson's Point. So to rezone land zoned residential to allow for office development cannot be about filling a City need. To be consistent with the Comprehensive Plan, the City should be directing professional office space development to areas already zoned for that use, e.g., Thompson Point with ready access off of a parkway that does not run through a neighborhood.

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

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

The Elks Club's property is located in very close proximity to the Stroudwater Historic District ("SHD"). The SHD was added to the National Register of Historic Places in 1973.¹ It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district should be done with eye to ensuring the rezone will not negatively impact the historical district.

¹*"The significance of Stroudwater Historic District is not limited to the merits of individual buildings. The whole formed by these single elements stands today as a fine example of a nineteenth-century village. The pattern of the village's growth is visible in the sequence of its architecture. Although the commercial enterprises carried on in the village are no longer in existence, their sites are clearly evident. The current residents of Stroudwater take pride in their historic village. Their homes are well maintained; many are restored to their original exterior appearance. The sense of history that envelops Stroudwater is heightened because the buildings have been continuously lived in and cared for."* Beard, p 302

The Elks Club's property is also located in close proximity to the City's main entrance to the Jetport and sits across the street from two large parcels owned by the City which are also zoned R-2. The area is a gateway to the Jetport and an entrance to the UNUM campus.

As part of the 1994 Jetport Master plan, the City-owned land was identified as land to be held and maintained as open space/buffer for the existing R-2 zone. See July 23, 2015 Planning Staff report at page 3. If the City-owned land, located directly across the street from the Elks Club is zoned as R-2 in order to be a buffer, it makes absolutely no sense to remove the R-2 designation for the Elks Club's property located just across the street. The distance and proximity of both the City property and the Elks Club's property to existing residential homes and the SHD are no different. As a place of assembly in a residential zone, the Elks Club was required to have a large parcel with open space to act as a buffer to the adjacent residences. Unless and until the Master Plan is revisited, which should be done, keeping the R-2 designation for the Elks Club's property is fully consistent with the zoning goals of the City.

The history of zoning and development in the area is important. If you look at the map above and if you have visited the area, you will observe that the four conditional uses located in the R-2 zone in the area just along Congress Street just outside of the SHD were all developed in a similar manner as the Elks Club. This was not achieved by accident. The main building and parking on each lot are located well off of Congress Street so as to provide buffering to the residences located on Congress Street. The open space was at least as deep as the lots used for residential uses. The conditional uses and parking associated therewith were all well set back from the street. That is the clear pattern of development in the area. It is unsound planning to allow for a rezone that is totally disregards the planning that has occurred in the area as evidenced by the actual development that has occurred and the Jetport Master Plan discussed above. Yet that is what the Elks Club's proposal asks you to do.

These observations have led many to request that before any piece-meal zoning occurs, that the City, through the ongoing JetPort master planning process, undertake a planning process to best identify how the area should be rezoned, if at all. The area is an important gateway to Portland, not only from the west, but for travelers who arrive by air. It is bordered to the east by two large cemeteries, to the west by the SHD, and to the North by the UNUM campus that has its entire office complex set back at significant distances from Congress Street, fully consistent with the OP standards. There are numerous residential structures in use in the area *including ones abutting the Elks Club's property*. The planning to date in this area intentionally maintained open space characteristics along Congress Street by preventing structures housing conditional uses from being sited right along Congress Street, thereby buffering the places of assembly from the existing residences. The 1995 Jetport Master plan reaffirmed the important role the open space has in creating a buffer for the existing residential uses and the SHP. The

OP designation for the UNUM property on Blueberry Hill ensured that the view from outer Congress Street was of a campus set back from the road. There are several cemeteries in the immediate area that provide for, and are consistent with, the preservation of the R-2 zone. Before this longstanding pattern is changed, having been last reaffirmed in the 1980s, there should be a master planning process.

A thoughtful process should unfold to develop a vision to govern the area, which looks at uses, setbacks, lighting, and design standards. This ensures that any non-residential development that occurs is compatible with the existing residential uses. It also ensures that development is not driven solely by the wants of just one property owner seeking to maximize its return regardless of the impact on others.

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

*"A good leader must have a well-thought-out plan and take risks to bring people together to realize that vision. Without direction, our priorities are not defined and our path is not clear. A good leader must listen. When residents feel like they have not been heard, and have been ignored, we end up as a city governed by referendum, as was the case with Congress Square and now the Portland Co. development. A good leader must bring people together. Without collaboration, people become frustrated and divided. They concern themselves more with getting their way than they do with making their way toward long-term solutions that work for everybody."*²

Vision and direction are not created by meeting the wants of one property owner to make as much money as it can through a rezone, regardless of how benevolent the property owner may be. Vision and direction are created through a collaborative, inclusive process that looks at what is best for the whole.

B. Rezoning is not intended to increase the return to a property owner.

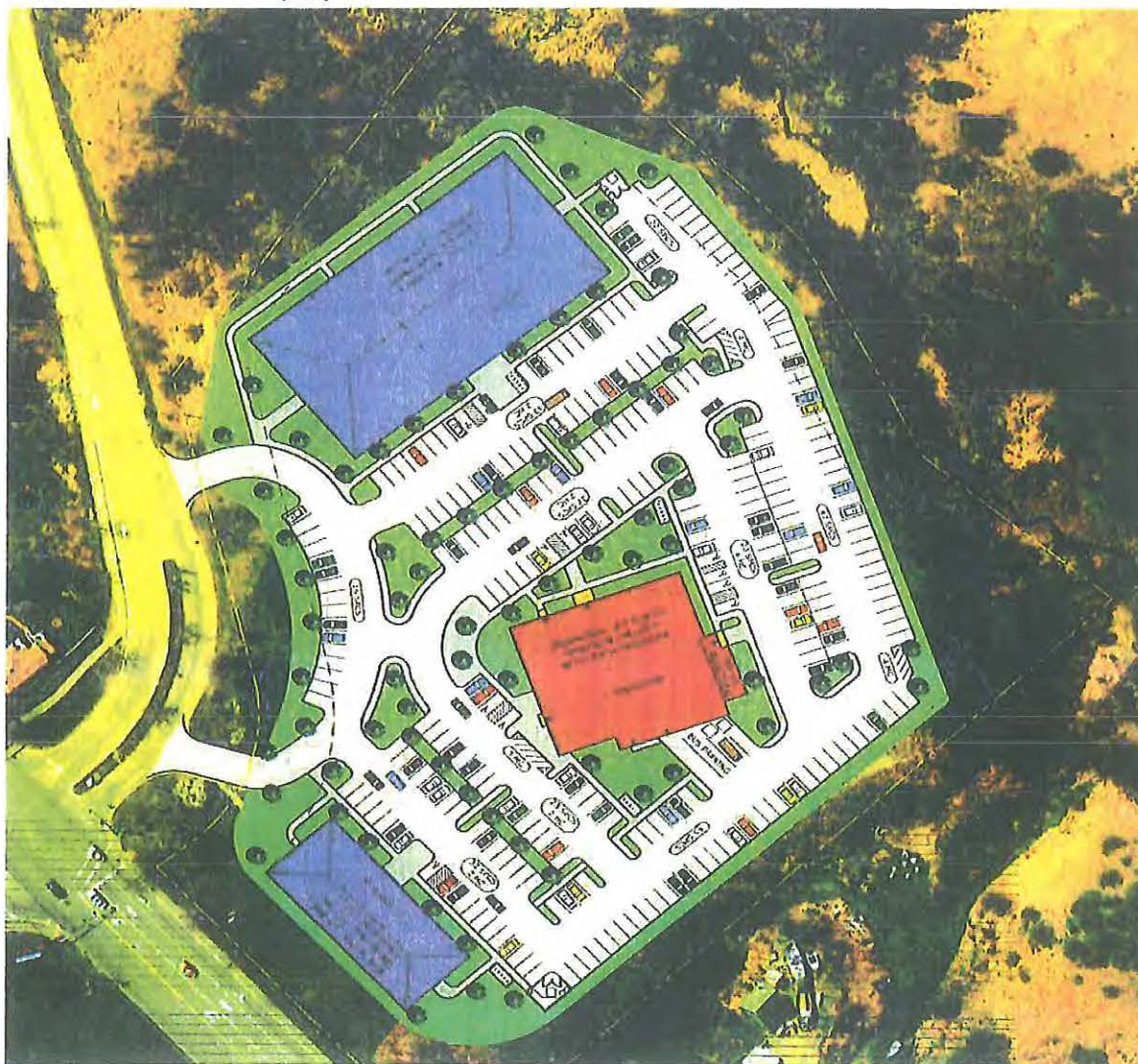
To the extent that any part of your decision is premised on the Elks Club's assertion that its property cannot be put to other uses, it is important to understand that there has been no showing that such is the case. The property has not, to my knowledge, ever been placed on the market for non-commercial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

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

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

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

Here is the Elks Club’s proposal:



It is worth reiterating the purposes of the OP zone, as it raises the question whether any use of that portion of the Elks Club's property to be rezoned OP can even be developed in any manner consistent with the purposes of the OP zone. If not, the property should not be rezoned.

The Comprehensive Plan describes the OP zone as follows: "Developments in the O-P zone are to be characterized by spacious and high quality development. Large lots, relatively low building coverage, low impervious surface areas, *significant open space* and landscaping and thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland." Neighborhood Commercial Land Use Policies and Land Use Plan, (1988) page 22.

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

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

The OP standards also call for a "Master Plan" of the office park that shall include a design relationship to the site to show integration of open space and the natural features. The integration required in the Master Plan "*shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches.*" Before the Council acted on rezoning what the Mercy Hospital parcel, it first required Mercy to submit a Master Plan for the site. As there, there should be here by the Elks Club, a showing of possible building envelopes and integration making a threshold showing the OP standards can be met. None of the concept plans the applicant presented to you make this threshold showing. If it is not practicable to meet the OP standards, the property should not be rezoned.

One is hard pressed to say that the to-be created lot, crammed with three buildings, constitutes a "substantial area" as that term is used in the OP zone. By comparison, UNUM's property designated OP is at least 15 times larger than what the Elks Club's proposed OP zone is. The applicant's proposal does not show any integrated development or any park- or campus- like setting. With the area to be occupied by the two new buildings with added pavement for

parking it is impossible to see any potential for any park- or campus-like setting as viewed from the Congress Street corridor. Compare the applicant's proposed view with the view of the UNUM campus from Congress Street.

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

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

Turning to the Comprehensive Plan, that plan has, as a goal, no net loss of housing for all development, and the creation of new housing of all kinds. City reports issued over the last 12 months repeat the same message; there is a huge need for all kinds of housing in the City. For example, the Director of Planning and Urban Development for the City reported at a City Housing and Community Development meeting earlier this year, that based on current trends, there is a gap of 24% to 33% in the supply and demand of workforce housing. He noted that there is unmet demand for 3 bedroom housing that can accommodate working families. Other City officials have noted there is substantial unmet need for senior housing to accommodate for downsizing by existing Portland seniors. That downsizing will free up existing housing to be filled with families and others. Having served for the last 20 years on the board of a non-profit developer of senior housing projects in Maine and New Hampshire, I can vouch for that trend and need. While perhaps not at a land cost of \$1.25M, the site certainly is capable of sustaining a viable housing development. In sum, there is an unmet need for all kinds of housing in Portland, and the Elk's proposal is in direct conflict with this significant unmet need.

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

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

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



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

More importantly, the Council must ask what will be the impact of the rezone on both the abutting and nearby residential uses and will the rezone lead to the deterioration of those areas and eventual loss of residential uses. If the answer is yes, as I think it is, the rezone should not be approved as it will result in the loss of residential dwellings.

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

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

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

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

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

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

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

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

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

"Without direction, our priorities are not defined and our path is not clear." In an area where the existing pattern of development is clear, to change that pattern only to maximize the return to one property owner is unsound zoning. Right down the road is Thompson's Point where professional offices are intended to be located.

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

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

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

Thank you for your consideration.



October 13, 2015

To The Portland City Council,

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

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

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

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

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

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

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

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

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

Sent from my iPhone

From: "James Casterella Jr." <jcasterella33@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 7/26/2015 8:03 PM
Subject: Tuesday, July 28th, workshop re: 1945 Congress St. proposed zoning amendment

Hi, Nell,

My name is James Casterella and I live at 1967 Congress St., two houses away from the Elks Club. I'm not sure if I can make Tuesday's Workshop so I wanted to email you with my thoughts.

First of all, I completely support Northland Enterprises' zoning map amendment application. I think it's very important that visitors to Maine, flying into Portland Jetport, drive onto Congress Street with a view of an attractive, modern building such as is being proposed by Northland. As it stands right now, those same visitors see somewhat of an eyesore: they see a huge, usually empty parking lot, and a somewhat rundown, tired looking Elks Club. The Elks Club deserves a facelift and also deserves the opportunity to stay at its current location.

Additionally, I'm hoping that the Planning Board will consider extending the zoning change to include my house (at 1967 Congress St) as well as my neighbor's house. We are the last two residential houses on Congress Street and the only two residential properties to the left of the UNUM entrance. My neighbor and I would like the opportunity to be zoned similar to the Elks Club so that professional development of our properties becomes a possibility.

If you have any questions please feel free to contact me via email or at 831-7297.

Thank you for your time,
James Casterella

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

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

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

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

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

The Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.

Consider these facts:

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

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

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

To restate, the Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.

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

Dear Ms. Donaldson,

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

To the members of the Portland City Council:

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

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

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

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

Thank you for your consideration of our input,

Joe and Carolyn Heasly
1832 Congress Street

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

Good morning Neil Donaldson,

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

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

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

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

Sandy Beal

Sandy Beal * Senior Underwriter
Tel: 207.775.2791

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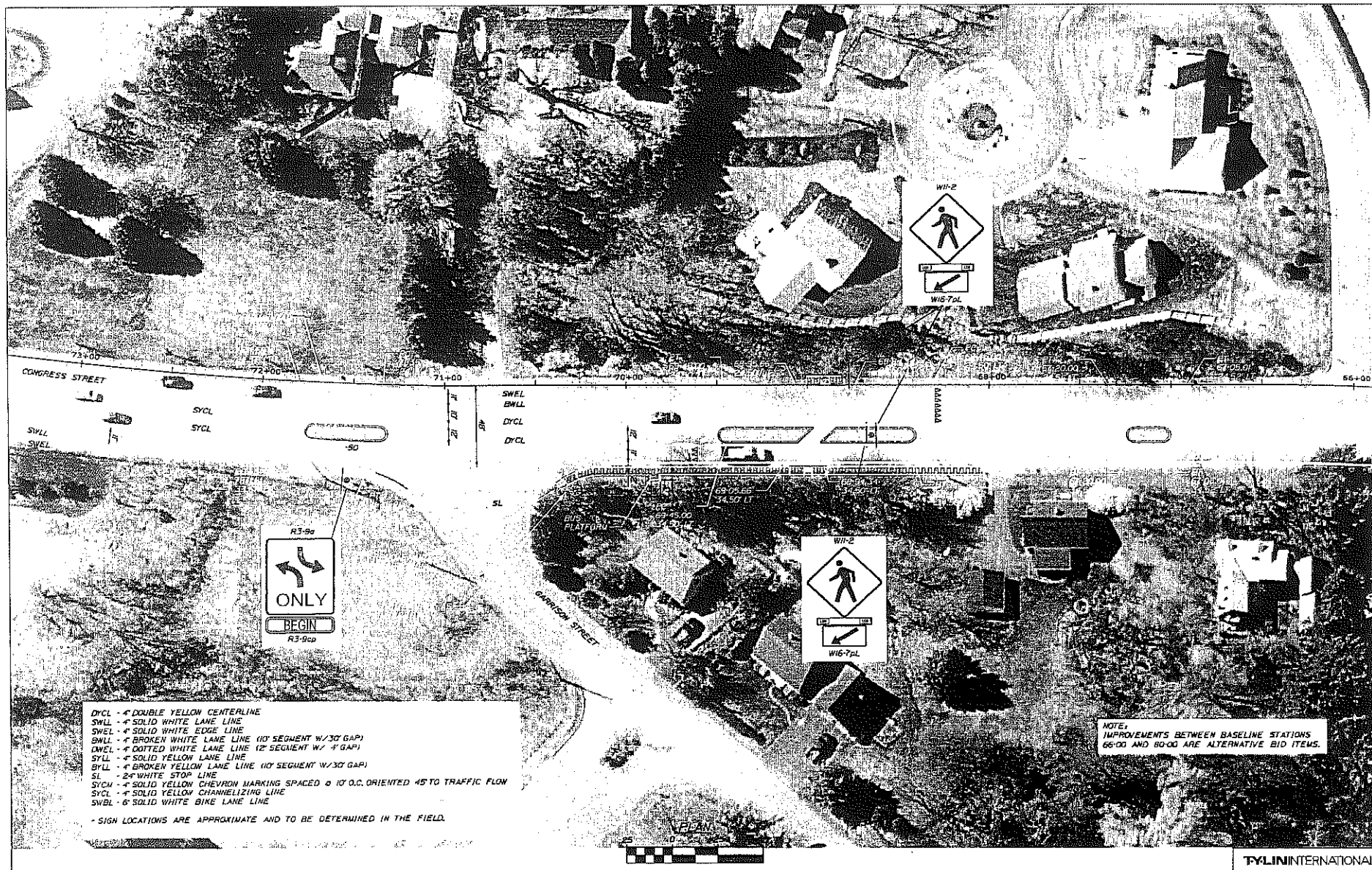
One City Center * PO Box 15275 * Portland, Maine 04112-5275
www.medicalmutual.com<<http://www.medicalmutual.com/>> * Follow: @MedicalMutual<<https://twitter.com/medicalmutual>>

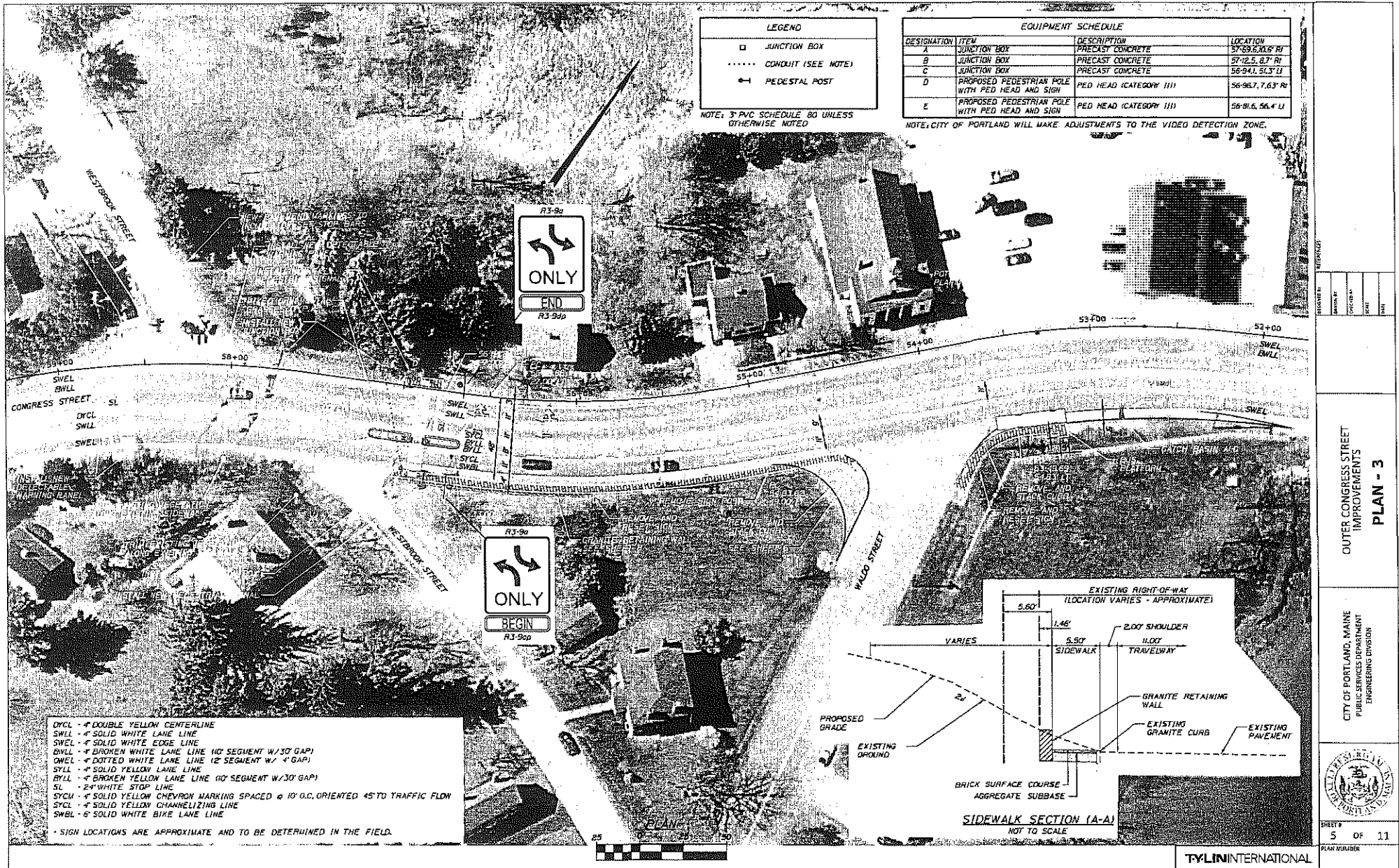
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From: Paul Dubois <pdubois1915@yahoo.com>
To: Rex Bell <rex@northlandus.com>, Michael Bedecs <mbedecs@gmail.com>, Josh Benthien <josh@northlandus.com>, Helen Donaldson <hcd@portlandmaine.gov>
Date: 10/19/2015 10:40 AM
Subject: Tonight's Council Meeting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

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

Paul and Kimberly Dubois 1915 Congress Street Portland Maine 04102 (207)899-2599





*Additional
material provided
11-2-2015*

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

Dear Ms. Donaldson,

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

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

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

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

1. Constant speeding, often at highway speeds of 45 mph past our homes. I am told this has been an on-going problem and has actually improved.

Commercial vehicles and heavy equipment (dump trucks, tree company trucks, flatbeds hauling large equipment) exceeding the speed limit daily.

** when I spoke with the city, I was told they "had no jurisdiction" and I had to talk with DOT. DOT told me they "leave that to the city."

** Our street is clearly used as a sort of bypass in to Portland and accidents occur on a regular basis. I don't believe the city wants to correct

this problem because this usage is convenient and thus complaints are ignored. Speeding vehicles include Portland Water District, RTP, and even Portland school buses.

** The traffic speed and congestion on Congress St. in the western gateway are becoming serious issues, yet I have not heard of any "plan" to

deal with this issue, even though the Elks development would increase traffic there during peak hours.

2. In the winter, our sidewalks are not cleared, and snow removal does not happen. Thus the sidewalk becomes a large frozen snowbank and I must

walk in the road with my dog, taking my life in my hands because of speeding traffic. I am aware that home owners are expected to clear sidewalks in front of their house, but this is often not sufficient.

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

4. When the gas company needed a 20 foot corridor through the woodland that is adjacent to the Fore River Trail, they sent in a harvester that hacked

major thoroughfares through the woods that are 30-40 feet wide, with stumps jutting up everywhere (frontage) and no run-off remediation. Since the

PWD decided they needed a corridor as well, more than 60 % of this woodland has been clearcut and left a mess. Scattering a bit of hay on an

embankment is not sufficient. The loss of these trees represents decades of growth, and the loss of understory impacts vernal pools on the trail

which support natural ecologies. Yes, it is city land. However, the city could have informed residents of this action and worked to do it in a low impact

manner, preserving the remaining green space and keeping it tidy. That did not happen.

5. Now, the Camelot Farm acreage is on the market. The sign says "Ideal for Development." The location of this large parcel is at the end of Westbrook

St. but begins near Stroudwater Christian Church just a few houses from my own. I have grave concerns that this land will be allowed to develop as a commercial endeavor and destroy what remains of the green space out here. Why do I think that could happen? I believe that the

development pressure will trump the wishes of the residents and the existing comprehensive plan for our city. This is exactly why we need

to

have a plan for this area and honor those decisions.

You may say that the issues highlighted here are not directly about the Elks Club development proposal. However, I list them as a resident homeowner because it seems to be part of a disturbing pattern by the city that does not respect the rights of homeowners here. Stroudwater is diverse in its population. Not everyone can be lumped into one category. There are many families, with children and pets on our street, as well as retired seniors. Not all of us are affluent. We care about our neighborhood and would like to see its beauty and value preserved the same way as any other neighborhood. In the years to come, development pressure in Portland will most certainly increase, and this area will be seen as a viable option even though it is residential. I urge the PB to consider the big picture and work to create a long term plan for Stroudwater that respects resident homeowners and preserves the quality green space that exists here.

Respectfully Yours,

Mihku Paul
1603 Westbrook St.

mihkupaul@gmail.com

TO: Mayor Brennan and Members of the City Council

FROM: David Silk, 1187 Westbrook St

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

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

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

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

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

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

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

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

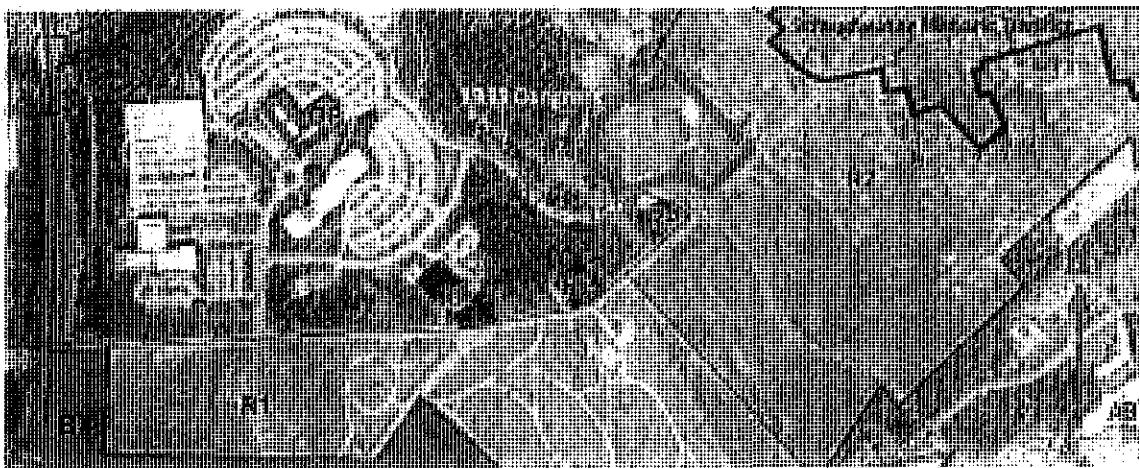
The Elks Club's proposal is doubly problematic, as it would ignore unmet needs outlined in the Comprehensive Plan, in favor of zoning that is already plentiful. Meanwhile, there's an ideal location for new professional offices at nearby Thompson's Point that taxpayers are already supporting with \$32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

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

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

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

The area:



The Elks Club's property at 1945 Congress Street is presently zoned R-2. It consists of an almost 7 acre parcel. The property has been zoned residential since 1945. When the Elks Club acquired the property in the late 1960s, the parcel was zoned R-2. At that time the property was rezoned from R-2 to R-6 so as to allow the club to develop the property as a social/fraternal hall under what was then known as an "exception" to the uses permitted in the R-6.

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

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

The purpose of the OP zone is to "provide *substantial areas* for integrated development of professional offices *in a park-or campus-like setting* which are of the highest quality, are well maintained and *are compatible with their natural surroundings.*" The UNUM campus is in an OP zone and is an example of professional offices located in a park or campus-like setting with the offices set well back from any public way. That is not what the Elks Club's proposal calls for.

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

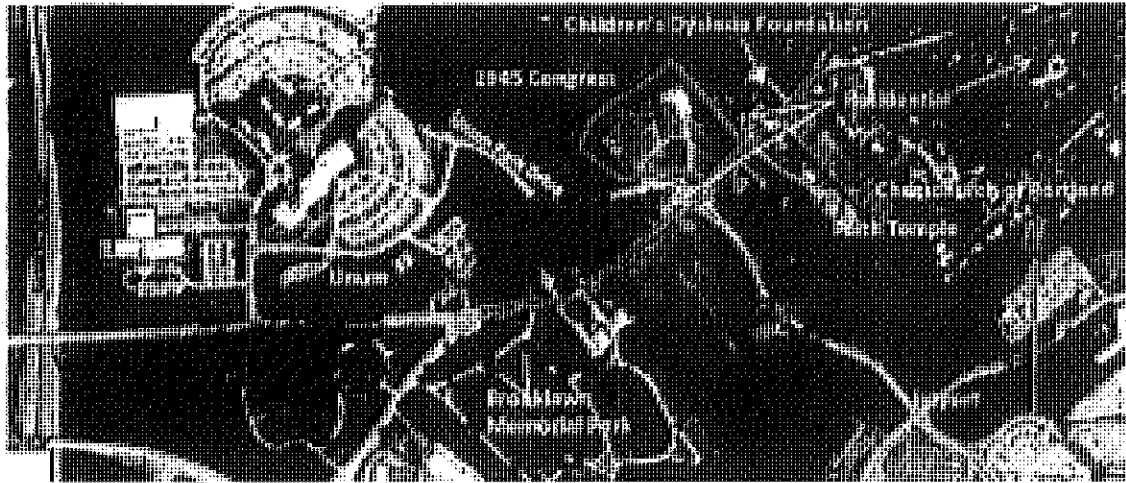
In my 11 years on the Planning Board, I do not recall any rezoning proposal for just one parcel that called for converting an existing legal use on the parcel from conforming to nonconforming. That is because the goal of zoning is to eliminate non-conforming uses. What the Elks Club proposes here is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

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

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

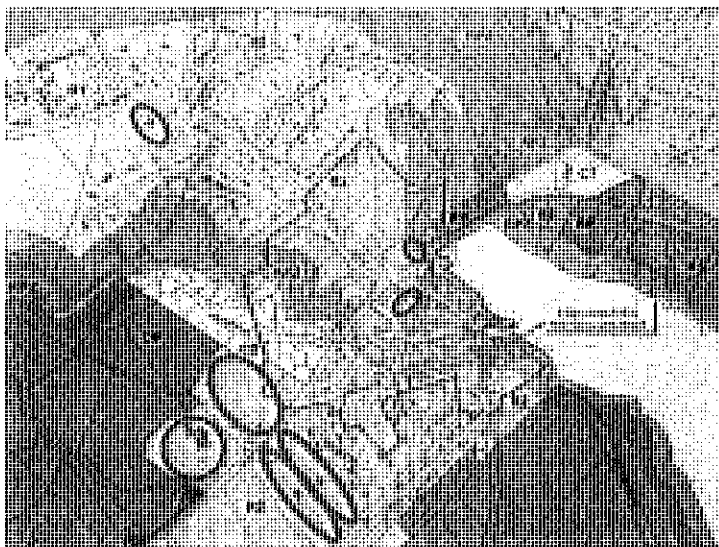
In recent years, places of assembly with declining membership have been repurposed without (a) making the use nonconforming in the zone and (b) without changing the underlying zone. The most recent example occurred less than a mile away from the Elks Club. Earlier this year, the former Saint Patrick's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

In the immediate vicinity of the Elks Club and in the R-2 zone, there are three other properties of between 4 and 6 acres with conditional uses (places of assembly) located thereon, Faith Temple, Christchurch of Portland and St. Albans Corporation (Masonic Learning Center).



Places of assembly are classified as a type of institutional use in the Land Use Code. They are required to have large areas. As the Comprehensive Plan at H-7 states: "Any new institutional use should be required to have a lot size of sufficient area to accommodate all activities, including parking and to absorb impacts and growth needs of the institution."

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



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

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

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

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

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

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

The Comprehensive Plan section on Transportation Resources at page 1 notes, *traffic must be minimized in order to maintain the health of neighborhoods*. "If residents who live in the city by choice come to believe their neighborhoods are not safe for walking, are not protected from noisy through-traffic, don't provide easy access to the daily necessities, don't give their children the freedom to move about independently – then the City has lost much of its competitive advantage over the suburbs."

The professional office use proposed under the Elks Club's rezone is already legal and can be readily accommodated without a zone change at Thompson's Point. So to rezone land zoned residential to allow for office development cannot be about filling a City need. To be consistent with the Comprehensive Plan, the City should be directing professional office space development to areas already zoned for that use, e.g., Thompson Point with ready access off of a parkway that does not run through a neighborhood.

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

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

The Elks Club's property is located in very close proximity to the Stroudwater Historic District ("SHD"). The SHD was added to the National Register of Historic Places in 1973.¹ It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district should be done with eye to ensuring the rezone will not negatively impact the historical district.

¹ "The significance of Stroudwater Historic District is not limited to the merits of individual buildings. The whole formed by these single elements stands today as a fine example of a nineteenth-century village. The pattern of the village's growth is visible in the sequence of its architecture. Although the commercial enterprises carried on in the village are no longer in existence, their sites are clearly evident. The current residents of Stroudwater take pride in their historic village. Their homes are well maintained; many are restored to their original exterior appearance. The sense of history that envelops Stroudwater is heightened because the buildings have been continuously lived in and cared for." Beard, p 302

The Elks Club's property is also located in close proximity to the City's main entrance to the Jetport and sits across the street from two large parcels owned by the City which are also zoned R-2. The area is a gateway to the Jetport and an entrance to the UNUM campus.

As part of the 1994 Jetport Master plan, the City-owned land was identified as land to be held and maintained as open space/buffer for the existing R-2 zone. See July 23, 2015 Planning Staff report at page 3. If the City-owned land, located directly across the street from the Elks Club is zoned as R-2 in order to be a buffer, it makes absolutely no sense to remove the R-2 designation for the Elks Club's property located just across the street. The distance and proximity of both the City property and the Elks Club's property to existing residential homes and the SHD are no different. As a place of assembly in a residential zone, the Elks Club was required to have a large parcel with open space to act as a buffer to the adjacent residences. Unless and until the Master Plan is revisited, which should be done, keeping the R-2 designation for the Elks Club's property is fully consistent with the zoning goals of the City.

The history of zoning and development in the area is important. If you look at the map above and if you have visited the area, you will observe that the four conditional uses located in the R-2 zone in the area just along Congress Street just outside of the SHD were all developed in a similar manner as the Elks Club. This was not achieved by accident. The main building and parking on each lot are located well off of Congress Street so as to provide buffering to the residences located on Congress Street. The open space was at least as deep as the lots used for residential uses. The conditional uses and parking associated therewith were all well set back from the street. That is the clear pattern of development in the area. It is unsound planning to allow for a rezone that is totally disregards the planning that has occurred in the area as evidenced by the actual development that has occurred and the Jetport Master Plan discussed above. Yet that is what the Elks Club's proposal asks you to do.

These observations have led many to request that before any piece-meal zoning occurs, that the City, through the ongoing JetPort master planning process, undertake a planning process to best identify how the area should be rezoned, if at all. The area is an important gateway to Portland, not only from the west, but for travelers who arrive by air. It is bordered to the east by two large cemeteries, to the west by the SHD, and to the North by the UNUM campus that has its entire office complex set back at significant distances from Congress Street, fully consistent with the OP standards. There are numerous residential structures in use in the area *including ones abutting the Elks Club's property*. The planning to date in this area intentionally maintained open space characteristics along Congress Street by preventing structures housing conditional uses from being sited right along Congress Street, thereby buffering the places of assembly from the existing residences. The 1995 Jetport Master plan reaffirmed the important role the open space has in creating a buffer for the existing residential uses and the SHP. The

OP designation for the UNUM property on Blueberry Hill ensured that the view from outer Congress Street was of a campus set back from the road. There are several cemeteries in the immediate area that provide for, and are consistent with, the preservation of the R-2 zone. Before this longstanding pattern is changed, having been last reaffirmed in the 1980s, there should be a master planning process.

A thoughtful process should unfold to develop a vision to govern the area, which looks at uses, setbacks, lighting, and design standards. This ensures that any non-residential development that occurs is compatible with the existing residential uses. It also ensures that development is not driven solely by the wants of just one property owner seeking to maximize its return regardless of the impact on others.

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

"A good leader must have a well-thought-out plan and take risks to bring people together to realize that vision. Without direction, our priorities are not defined and our path is not clear. A good leader must listen. When residents feel like they have not been heard, and have been ignored, we end up as a city governed by referendum, as was the case with Congress Square and now the Portland Co. development. A good leader must bring people together. Without collaboration, people become frustrated and divided. They concern themselves more with getting their way than they do with making their way toward long-term solutions that work for everybody."²

Vision and direction are not created by meeting the wants of one property owner to make as much money as it can through a rezone, regardless of how benevolent the property owner may be. Vision and direction are created through a collaborative, inclusive process that looks at what is best for the whole.

B. Rezoning is not intended to increase the return to a property owner.

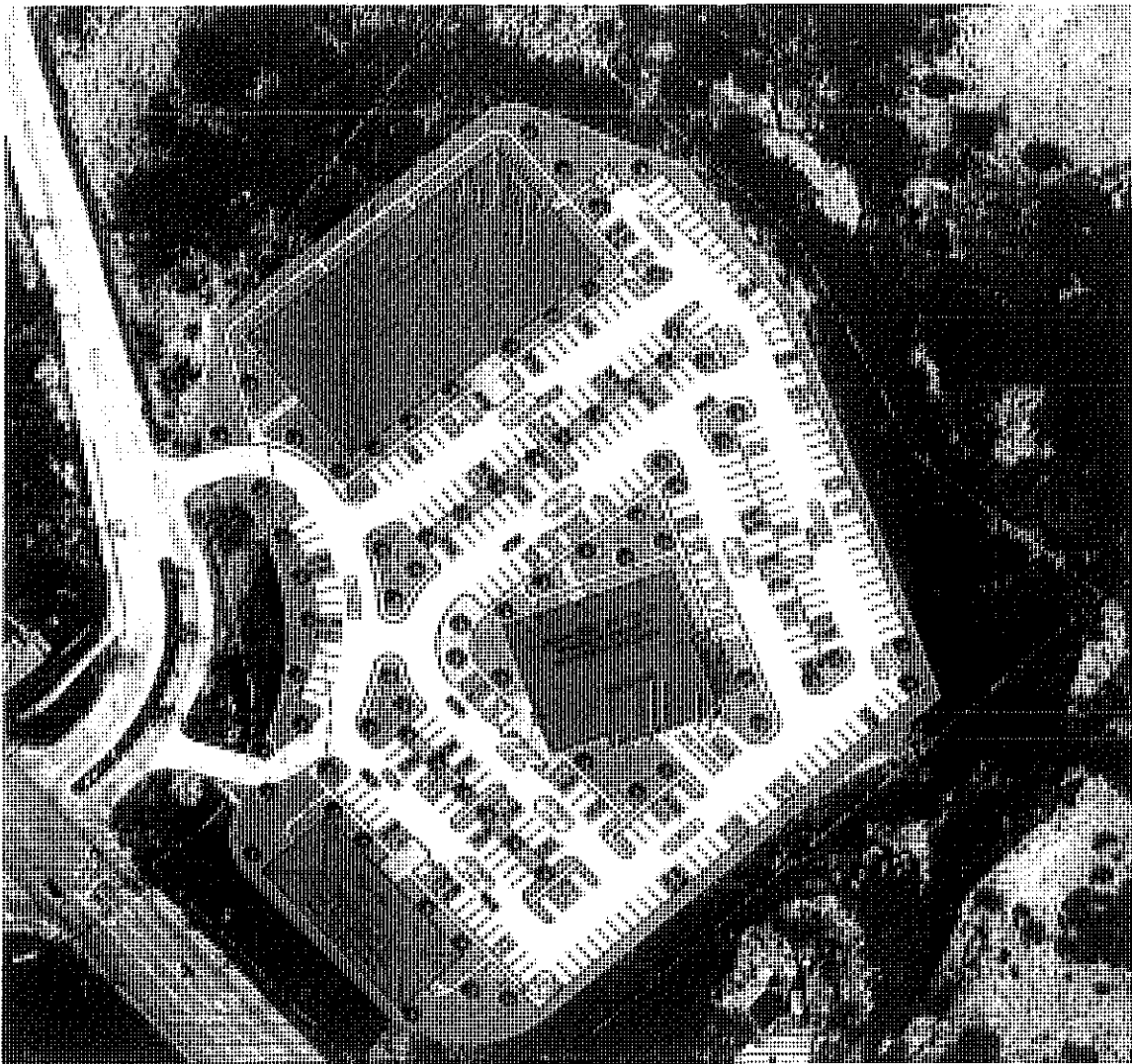
To the extent that any part of your decision is premised on the Elks Club's assertion that its property cannot be put to other uses, it is important to understand that there has been no showing that such is the case. The property has not, to my knowledge, ever been placed on the market for non-commercial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

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

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

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

Here is the Elks Club’s proposal:



It is worth reiterating the purposes of the OP zone, as it raises the question whether any use of that portion of the Elks Club's property to be rezoned OP can even be developed in any manner consistent with the purposes of the OP zone. If not, the property should not be rezoned.

The Comprehensive Plan describes the OP zone as follows: "Developments in the O-P zone are to be characterized by spacious and high quality development. Large lots, relatively low building coverage, low impervious surface areas, *significant open space* and landscaping and thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland." Neighborhood Commercial Land Use Policies and Land Use Plan, (1988) page 22.

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

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

The OP standards also call for a "Master Plan" of the office park that shall include a design relationship to the site to show integration of open space and the natural features. The integration required in the Master Plan *"shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches."* Before the Council acted on rezoning what the Mercy Hospital parcel, it first required Mercy to submit a Master Plan for the site. As there, there should be here by the Elks Club, a showing of possible building envelopes and integration making a threshold showing the OP standards can be met. None of the concept plans the applicant presented to you make this threshold showing. If it is not practicable to meet the OP standards, the property should not be rezoned.

One is hard pressed to say that the to-be created lot, crammed with three buildings, constitutes a "substantial area" as that term is used in the OP zone. By comparison, UNUM's property designated OP is at least 15 times larger than what the Elks Club's proposed OP zone is. The applicant's proposal does not show any integrated development or any park- or campus- like setting. With the area to be occupied by the two new buildings with added pavement for

parking it is impossible to see any potential for any park- or campus-like setting as viewed from the Congress Street corridor. Compare the applicant's proposed view with the view of the UNUM campus from Congress Street.

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

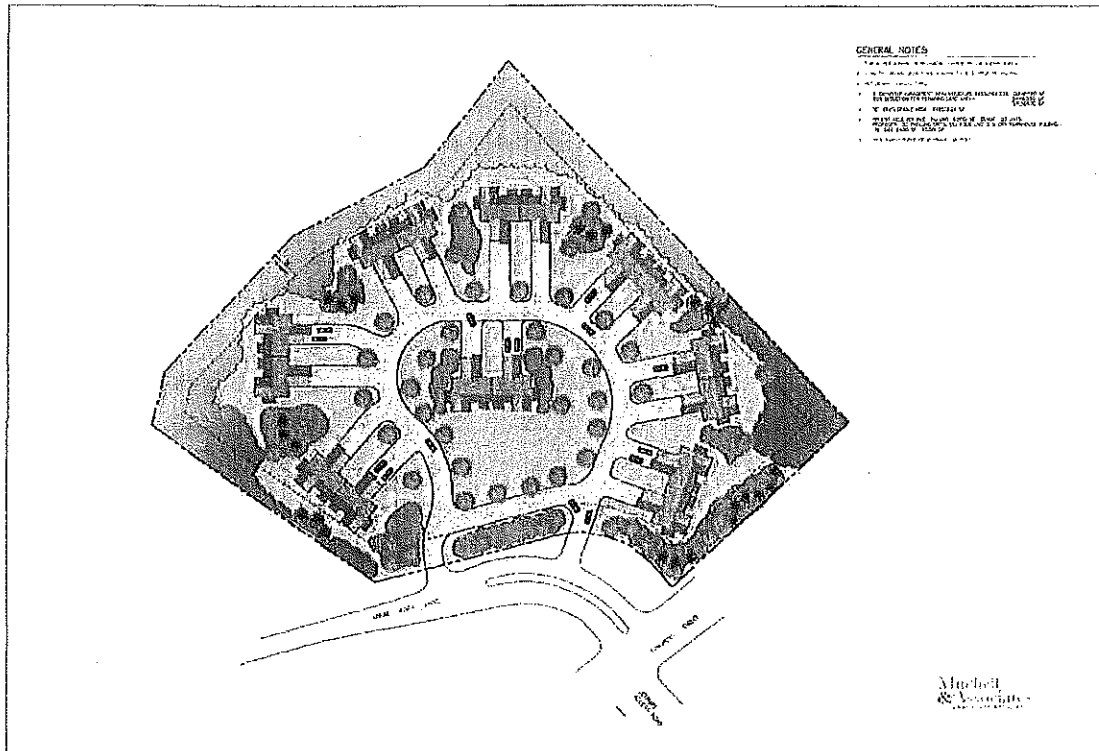
D. The proposed rezone is not consistent with the Comprehensive Plan.

Turning to the Comprehensive Plan, that plan has, as a goal, no net loss of housing for all development, and the creation of new housing of all kinds. City reports issued over the last 12 months repeat the same message; there is a huge need for all kinds of housing in the City. For example, the Director of Planning and Urban Development for the City reported at a City Housing and Community Development meeting earlier this year, that based on current trends, there is a gap of 24% to 33% in the supply and demand of workforce housing. He noted that there is unmet demand for 3 bedroom housing that can accommodate working families. Other City officials have noted there is substantial unmet need for senior housing to accommodate for downsizing by existing Portland seniors. That downsizing will free up existing housing to be filled with families and others. Having served for the last 20 years on the board of a non-profit developer of senior housing projects in Maine and New Hampshire, I can vouch for that trend and need. While perhaps not at a land cost of \$1.25M, the site certainly is capable of sustaining a viable housing development. In sum, there is an unmet need for all kinds of housing in Portland, and the Elk's proposal is in direct conflict with this significant unmet need.

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

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

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



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

More importantly, the Council must ask what will be the impact of the rezone on both the abutting and nearby residential uses and will the rezone lead to the deterioration of those areas and eventual loss of residential uses. If the answer is yes, as I think it is, the rezone should not be approved as it will result in the loss of residential dwellings.

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

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

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

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

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

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

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

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

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

"Without direction, our priorities are not defined and our path is not clear." In an area where the existing pattern of development is clear, to change that pattern only to maximize the return to one property owner is unsound zoning. Right down the road is Thompson's Point where professional offices are intended to be located.

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

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

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

Thank you for your consideration.



October 13, 2015

To The Portland City Council,

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

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

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

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

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

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

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

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

I have no objection to the re-zoning.

I do feel it would be wise to follow up with a vision for the city for Stroudwater area and residents.

Sent from my iPhone

From: "James Casterella Jr." <jcasterella33@yahoo.com>
To: "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>
Date: 7/26/2015 8:03 PM
Subject: Tuesday, July 28th, workshop re: 1945 Congress St. proposed zoning amendment

Hi, Nell,

My name is James Casterella and I live at 1967 Congress St., two houses away from the Elks Club. I'm not sure if I can make Tuesday's Workshop so I wanted to email you with my thoughts.

First of all, I completely support Northland Enterprises' zoning map amendment application. I think it's very important that visitors to Maine, flying into Portland Jetport, drive onto Congress Street with a view of an attractive, modern building such as is being proposed by Northland. As it stands right now, those same visitors see somewhat of an eyesore: they see a huge, usually empty parking lot, and a somewhat rundown, tired looking Elks Club. The Elks Club deserves a facelift and also deserves the opportunity to stay at its current location. Additionally, I'm hoping that the Planning Board will consider extending the zoning change to include my house (at 1967 Congress St) as well as my neighbor's house. We are the last two residential houses on Congress Street and the only two residential properties to the left of the UNUM entrance. My neighbor and I would like the opportunity to be zoned similar to the Elks Club so that professional development of our properties becomes a possibility.

If you have any questions please feel free to contact me via email or at 831-7297.

Thank you for your time,

James Casterella

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

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

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

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

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

The Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.

Consider these facts:

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

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

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

To restate, **the Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.**

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

Dear Ms. Donaldson,

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

To the members of the Portland City Council:

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

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

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

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

Thank you for your consideration of our input,

Joe and Carolyn Heasly
1832 Congress Street

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

Good morning Nell Donaldson,

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

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

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

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

Sandy Beal

Sandy Beal * Senior Underwriter
Tel: 207.775.2791

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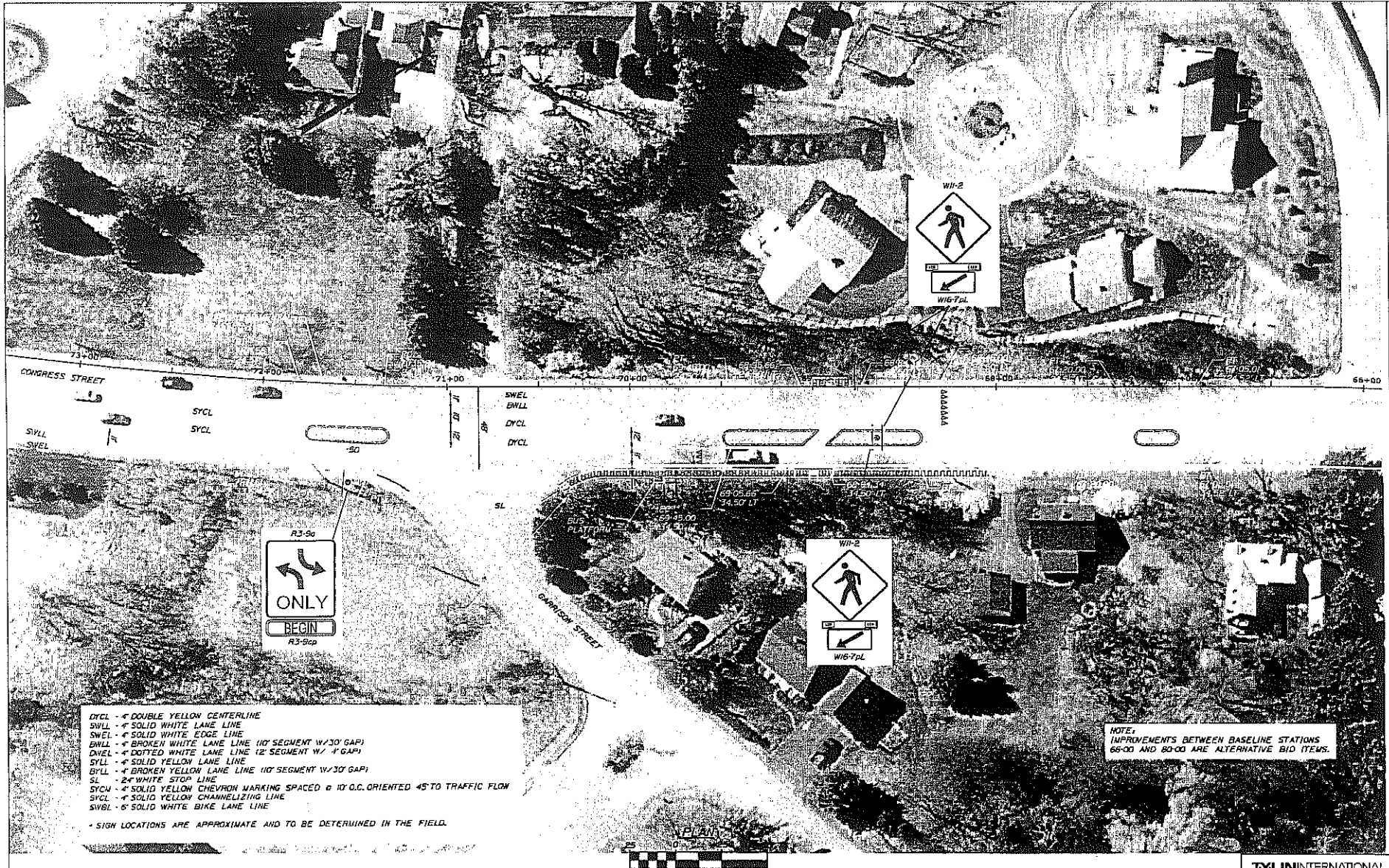
One City Center * PO Box 15275 * Portland, Maine 04112-5275
www.medicalmutual.com <<http://www.medicalmutual.com/>> * Follow: @MedicalMutual <<https://twitter.com/medicalmutual>>

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

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

Paul and Kimberly Dubois 1915 Congress Street Portland Maine 04102 (207)899-2599



REVISION	DATE

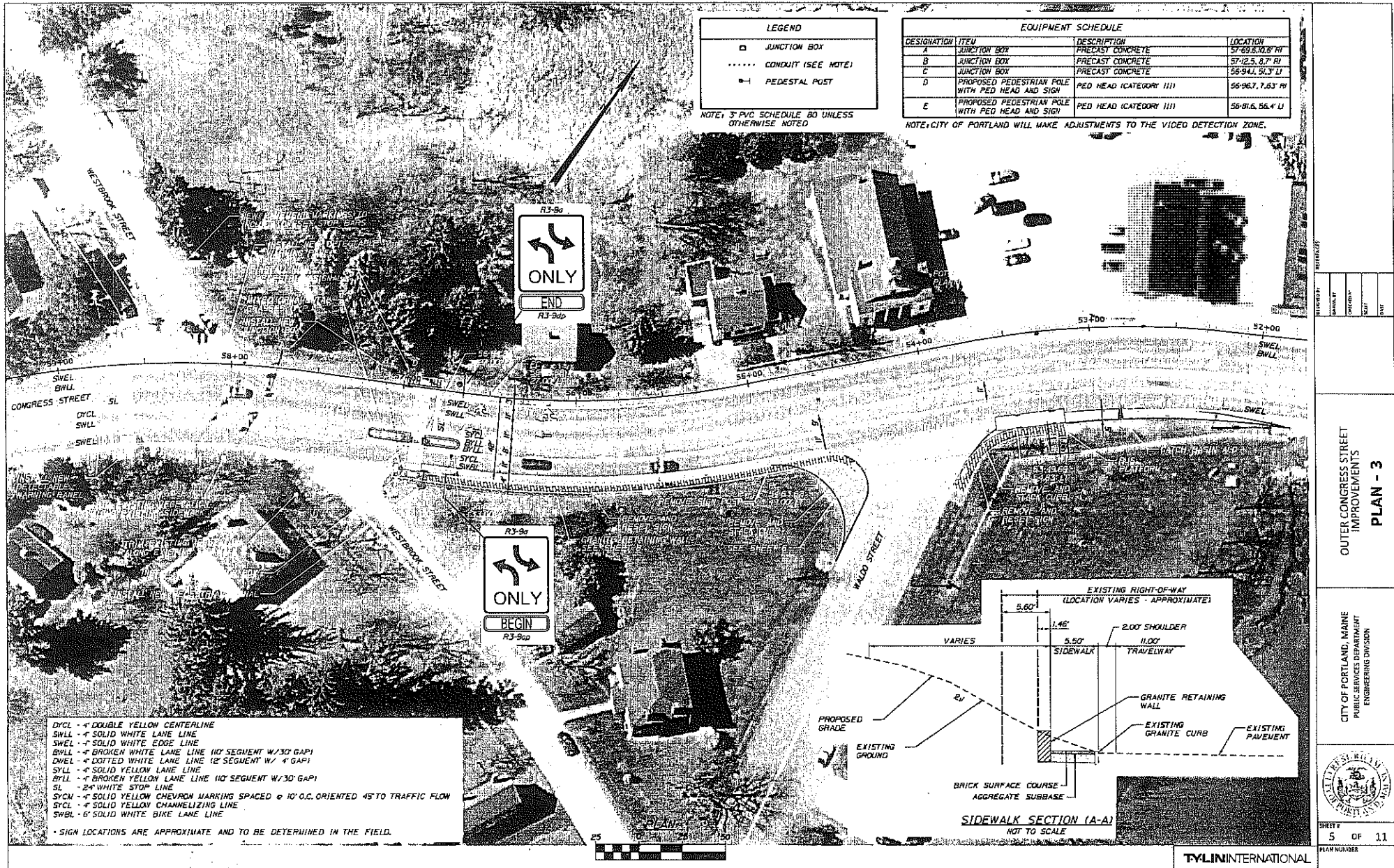
OUTER CONGRESS STREET
IMPROVEMENTS
PLAN - 2

CITY OF PORTLAND, MAINE
PUBLIC SERVICE DEPARTMENT
ENGINEERING DIVISION



SHEET
4 OF 11
PLAN NUMBER

TYLIN INTERNATIONAL



OUTER CONGRESS STREET
IMPROVEMENTS
PLAN - 3

CITY OF PORTLAND, MAINE
PUBLIC SERVICES DEPARTMENT
ENGINEERING DIVISION



SHEET
5 OF 11
PLAN NUMBER

TYLIN INTERNATIONAL

Sonia Bean - Fwd: Elks Lodge

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

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

Nell

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

Dear Neal and Jeff

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

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

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

Thank You,

Justin Walsh

28 Garrison st

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Order 172-14/15
~~Feb 15 3-2-15~~
~~Feb 12 3-16-15~~
~~Feb 27 5-4-15~~
~~Feb 29 6-15-15~~
DAVID H. BRENNERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONFS JR (A/L)

**ORDER APPROVING TWO-PARTY AGREEMENT
BETWEEN THE CITY OF PORTLAND
AND THE MAINE DEPARTMENT OF TRANSPORTATION
RE: IMPROVEMENTS TO FOREST AVENUE**

~~Feb 8 9-21-15~~
~~Feb 10 10-19-15~~
~~Feb 17 1-20-16~~

ORDERED, that the Acting City Manager is authorized to enter into the two-party partnership agreement between the City of Portland and the Maine Department of Transportation (MaineDOT), in substantially the form attached, for work on Forest Avenue:

- WIN #020543, Proposed Improvements to Forest Avenue

BE IT FURTHER ORDERED, that the Acting City Manager is hereby authorized to sign the two-party agreements and any other documents necessary to effect the purpose of this order.

MEMORANDUM
City Council Agenda Item

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

FROM: Katherine Earley, Engineering Manager/City Engineer

DATE: January 8, 2016

SUBJECT: Woodford's Corner Two-Party Agreement (Order 172-14/15)

SPONSOR: Jon Jennings, City Manager
(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 March 15, 2015 **Final Action** Jan 20, 2016 (March 21, 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)
N/A

I. ONE SENTENCE SUMMARY

Authorization to enter into a two-party agreement with MaineDOT is necessary to finalize the design process for the "Woodford's Corner Intersection Improvement" project funded through the PACTS 14/15 TIP Program.

II. AGENDA DESCRIPTION

This item was brought forward in March 2015 prematurely, and most recently postponed to the January 20, 2016 City Council meeting based on the assumption that financial matters would be clarified by that date. Of particular concern has been the significantly higher cost of necessary railroad crossing features.

Much progress has been made; including additional funding commitments from both PACTS and MaineDOT, in order to build this project in 2017. However, procedural steps at both PACTS and MaineDOT are required to appropriate their added funding; these steps will not occur until February 2016.

Therefore we recommend postponement of this action item to the March 21, 2016 City Council meeting.

Prepared by: Katherine Earley
Date: Jan 8, 2016

MEMORANDUM

Agenda request

TO: Mayor Michael Brennan & City Councilors

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

DATE: October 2, 2015

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

SUBJECT: Endorse Two-Party Agreement with MaineDOT – Woodford’s Corner 14/15 TIP Project

SPONSORS: Jon Jennings, City Manager
Bob Leeman, Acting DPS Director

COUNCIL MEETING DATE ACTION IS REQUESTED:

1ST Reading: March 2, 2015 Final Action: October 19, 2015

Can this Action be taken at a later date? X Yes No (if no, why not)

PRESENTATION: None

I. SUMMARY OF ISSUE

City Council action is necessary to enter into a two-party agreement with MaineDOT for the Woodford’s Corner transportation project. This is standard practice once a project evolves into the design and construction phase, and follows a three-party agreement adopted via City Council Order #25-13/14. Without a two-party agreement in place, MaineDOT cannot finalize a bid package for construction.

As of this time, the Agreement indicates that the “base project cost” (i.e. the components of the project considered to be within the general identified scope) will be a total of \$1,918,751. As per the general funding agreement and requirements for this project, the City is responsible for ten percent (10%) of this total, or \$191,875.10.

In addition to the base scope, MaineDOT has identified additional work that has been requested by the City, generally consisting of adding a milling and paving component, which will result in an additional cost of \$335,000. This results in a municipal cost of \$526,875.10, as specified in the agreement.

However, it is important to note that there are two significant outstanding components either directly or closely connected to this project that are in a state of flux, which are as follows:

- ***Railroad Crossing Equipment:*** As part of the widening of Forest Avenue at the Pan Am main line crossing, significant railroad crossing modifications will be required, especially to signaling and related equipment. Based on our most recent conversations with MaineDOT, this work will cost \$554,602 for the primary equipment, plus another \$50,000 for a supplemental traffic signal and island to provide advance notice to drivers heading southbound on Forest Avenue. While it appears that MaineDOT may have secured some other funding sources to help offset this significant cost, the components and funding sources are not yet final.
- ***Sewer Separation:*** As part of the City's work to meet Combined Sewer Overflow (CSO) Abatement compliance deadlines, the Woodford's Corner area is expected to undergo sewer separation construction. The City's CSO compliance program requires definition of this project by December 2017, and the Woodford's Corner transportation project construction timing has now slipped from 2015 to 2017, largely due to railroad coordination issues. This is an emergent topic, and City staff are strategizing how best to coordinate these efforts.

II. REASON FOR SUBMISSION

This two-party agreement had a first reading in March 2015, and final action has been postponed at least twice since then due to the still unknown final costs of the project. The last postponement was to the October 19, 2015 City Council meeting.

However, it is staff's recommendation that a two-party agreement not be finalized until such time as the railroad crossing upgrade features are fully identified and funded. This project is not expected to go out to bid until August of 2016; there is sufficient time to bring a fully informed Agreement to the Council in early 2016. If the City acts on this agreement now; all emerging costs will be entirely borne by the City.

III. INTENDED RESULT

The intended result of this Agreement, upon finalization, is to allow MaineDOT to finalize the bid package for the Woodford's Corner transportation improvement project.

IV. COUNCIL GOAL ADDRESSED

This project addresses a significant portion of the Council-approved master plan for Transforming Forest Avenue, and is expected to help foster economic development for the Woodford's Corner area.

V. FINANCIAL IMPACT

Project Component	City Share	State/Federal Share	Total
Design	\$22,481.30	\$202,331.70	\$224,813.00
Right-of-Way	\$6,250.00	\$56,250.00	\$62,500.00
Construction	\$163,143.80	\$1,468,294.20	\$1,631,438.00
Base Project Cost	\$191,875.10	\$1,726,875.90	\$1,918,751.00
Additional City Items	\$335,000.00	\$0.00	\$335,000.00
Total Project Cost*	\$526,875.10	\$1,726,875.90	\$2,253,751.00

*Cost subject to change based upon railroad crossing cost and funding adjustments.

VI. STAFF ANALYSIS & RECOMMENDATION

The Department of Public Services recommends postponement to January 18, 2016 so that costs and funding sources related to railroad equipment can be resolved.

VII. LIST ATTACHMENTS

- Exhibit A: Two Party Agreement

Prepared by:


Signature

October 2, 2015

Date



MaineDOT

**MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT**

PROPOSED IMPROVEMENTS TO WOODFORD'S CORNER

<i>MaineDOT use only</i>	
TEDOCS #:	_____
CT #:	_____
CSN #:	_____
PROGRAM:	<u>Multimodal Program</u>

(MaineDOT Use Only)

Project Location: Portland

State WIN #: 020543.00

Federal Aid Project #: STP-2054(300)

Estimated Municipal Share: \$526,875.10

Vendor Customer #: 17A12984

Agreement Begin Date: _____

Agreement End Date: (3 years from the date last signed below)

This Agreement is entered into between the Maine Department Of Transportation (hereafter the "MaineDOT") and the Municipality of Portland, a municipal corporation located in the County of Cumberland (hereafter the "Municipality") (hereinafter the "Parties") regarding the planning, development, design, right of way, construction, cost sharing and reimbursement for a project to make improvements to Woodford's Corner, in Portland, Maine, (hereafter Project) as follows:

The following checked appendices are hereby incorporated into this Agreement by reference:

- ☒ Appendix A – Project scope, cost sharing, and payment schedule
- ☒ Appendix B – Perpetual Bicycle/Pedestrian Facility Maintenance
- ☒ Appendix B – Perpetual Landscape Maintenance
- ☒ Appendix B – Perpetual Operation and Maintenance of Lighting/Flashing Beacon and/or signage and associated light(s)
- ☒ Appendix B – Perpetual Traffic Signal Operation and Maintenance
- ☐ Appendix B – Perpetual Bridge Lighting/Approach Lighting Maintenance & Snow Plowing
- ☒ Appendix C – Additional work requested by Municipality

- A. MaineDOT agrees to procure and administer a contract to construct the Project in accordance with the plans and specifications developed by MaineDOT and, subject to Department approval. This would include any additional plans, specifications and estimates furnished by the Municipality. Please refer to Appendix A of this Agreement for the outline of the scope, limits of work and cost sharing.
- B. MaineDOT shall be the sole administrator of this contract. MaineDOT will pay all project costs, subject to cost sharing by the Municipality, when applicable, as specified in this agreement. Neither MaineDOT nor its contractors will be required to pay for inspections and permits from the Municipality.
- C. MaineDOT reserves the right to terminate the Project for any reason prior to the award of a contract to construct the Project. MaineDOT also reserves the right to terminate all provisions pertaining to work requested by the Municipality at any time prior to the award of a contract to construct the Project

because of any failure by the Municipality to meet any of the conditions and stipulations set forth in this Agreement.

- D. Upon acceptance of plans, specifications and estimates, MaineDOT shall solicit competitive bids for the Project. Upon acceptance of the lowest acceptable responsive, responsible bid to construct the Project and fulfillment of all terms set forth herein, MaineDOT will submit the information to the Municipality, who will have up to five (5) business days to review the information and notify MaineDOT of any questions or concerns. If MaineDOT is not presented with any questions or concerns during the time allotted all decisions pertaining to the acceptance of the bids, the award and administration of the contract and all payments thereunder shall be the sole discretion of MaineDOT.
- E. The Municipality, at its election, may request that changes be made or work added to the Project during the period of construction, provided the Municipality agrees in writing to pay any additional cost plus an amount not to exceed ten (10%) percent of such construction cost to cover all necessary engineering, inspection and administrative costs associated therewith, unless specified otherwise. All such requests shall be subject to approval by MaineDOT. In the event that such changes or work are approved for federal participation in the cost thereof, such additional cost may be reduced to the non-federal share.
- F. The Municipality agrees to allow MaineDOT's contractor to control all traffic through the work areas in accordance with the Traffic Control Plan approved by MaineDOT. The development of the Traffic Control Plan will follow the process outlined below:
 - 1. The PM will submit the project for Traffic Analysis and Movement Evaluation (TAME), when possible, approximately one year prior to advertisement. Once the results are received, the PM/Regional Traffic Engineer will discuss the proposed project with the Municipality (scope, limits, day or night work, work window, etc).
 - 2. The Municipality will comment on their concerns/issues (two week timeframe allowed).
 - 3. The PM & Designer will incorporate these comments where practical based on engineering judgment.
 - 4. If the Municipality desires, a meeting will be held prior to PS&E to review the project design, Special Provision 105 – Limitations of Operations, Special Provision 107 - Time, etc.
 - 5. The Municipality will have the opportunity to review and comment.
- G. The Municipality agrees to alter, move, relocate or remove, or cause to be, at no cost to the Project, any municipal property, including all fixtures, facilities or monuments, located on, under or above the ground, as necessary to permit construction of the Project, which has not otherwise been provided for during the development of the Project. Any work necessary to do so during the period of construction shall be coordinated with the contractor for the Project.
- H. The Municipality will, at no cost to MaineDOT, assure proper adjustment, relocation, or repair of any portion of a service, whether above or below ground, that is located within the limits of the highway right-of-way and connected to any municipal utility, which might become necessary to permit construction of the Project. The Municipality agrees to hold MaineDOT harmless from any claims for damages occurring as a result thereof.

- I. The Municipality agrees that during and after construction it will apply the requirements of the most recent version of MaineDOT's "Utility Accommodation Policy" as the minimum guidelines not withstanding any municipal rules that are more lenient.
- J. To the extent that it is statutorily responsible therefore, the Municipality agrees to provide utilities, and to maintain all improvements and fixtures constructed, installed or furnished as a part of the Project in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. To the extent any warranty exists for said improvements or fixtures, said warranty shall be first relied on by MaineDOT to address maintenance and/or repairs described in this paragraph.
- K. The Municipality agrees that except for an emergency, or as allowed in § 3351-A, it will prohibit the excavation of the highway within the limits of the Project for a period of at least five (5) years after completion of the Project, and agrees to make all necessary notifications to abutters and occupants of the highway as otherwise required of any city government under the provisions of 23 M.R.S.A. § 3351. Thereafter, all future excavations within the right-of-way of the Project shall be regulated and controlled in the manner specified by MaineDOT in its most recent *"Rules, Regulations and Policies for Highway Openings"*, which is incorporated herein and made a part hereof by reference.
- L. The Municipality will be responsible to keep new or replaced/rehabilitated pedestrian facilities in usable condition.
- M. The Municipality agrees to keep the right-of-way of the Project inviolate from all encroachments and agrees to remove, or cause to be removed, anything that may encroach thereon.
- N. When applicable the Municipality agrees to regulate all entrances to the highway within the limits of the Project in accordance with the provisions of 23 M.R.S.A. § 704.
- O. The Municipality with city council approval agrees to limit all on-street parking to the parking spaces as designed and constructed under the Project.
- P. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to MaineDOT's option to withhold for the purposes of set-off any monies owed to the Municipality with regard to this Agreement and any other agreement with MaineDOT, including any agreement for a term commencing prior to the term of this Agreement, plus any amounts owed to the Municipality for any other contract with any State of Maine department or agency.
- Q. To the extent permitted by law, the Municipality shall indemnify, defend and hold harmless MaineDOT, its officers, agents and employees from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Municipality, its officials, employees, agents, consultants or contractors. Nothing herein shall waive any defense, immunity or limitation of liability that may be available to either party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. *Any other provision of this agreement to the contrary notwithstanding, this provision shall survive any termination or expiration of this Agreement.*
- R. MaineDOT may postpone, suspend, abandon or otherwise terminate this Agreement upon thirty (30) days written notice to the Municipality and in no event shall any such action be deemed a breach of contract. Postponement, suspension, abandonment or termination may be taken for any reason by

MaineDOT or specifically as the result of any failure by the Municipality to perform any of the services required under this Agreement to the satisfaction of MaineDOT.

In the event of Project termination, all provisions of this Agreement shall become null and void except for those set forth under *Appendices A and C, if attached to this Agreement, as well as those provisions that by their very nature are intended to survive.*

- S. The Municipality certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. If the Municipality is unable to certify to this statement, it shall attach an explanation to this Agreement. The Municipality shall promptly notify MaineDOT if it or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- T. The Parties agree to: comply with and abide by all applicable State and Federal laws, statutes, rules, regulations, standards and guidelines, including the MUTCD and OSHA standards, and Agreement provisions; avoid hindering each other's performance; fulfill all obligations diligently; and cooperate in achievement of the intent of this Agreement.
- U. All provisions of this Agreement, *except those provided above in Paragraphs J-Q and those that by their very nature are intended to survive*, shall expire at Project final voucher, or upon final payment by the Municipality of any Project costs as hereinbefore provided, whichever occurs later.
- V. Anything herein to the contrary notwithstanding, the Municipality acknowledges and agrees that although the execution of this agreement by MaineDOT manifests its intent to honor its terms and to seek funding to fulfill any obligations arising hereunder, by law any such obligations are subject to available budgetary appropriations by the Maine Legislature and, therefore, this agreement does not create any obligation on behalf of MaineDOT in excess of such appropriations.
- W. No assignment of this agreement is contemplated, and in no event shall any assignment be made without the express written permission of MaineDOT.

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT in duplicate effective on the day and date last signed below.

MUNICIPALITY OF PORTLAND

MAINE DEPARTMENT OF TRANSPORTATION

By: _____
Sheila Hill-Christian, Acting City Manager

By: _____
Dale Doughty, Director, Maintenance &
Operations

(Date Signed)

(Date Signed)

I certify that the signature above is true and accurate. I further certify that the signature, if electronic: (a) is intended to have the same force as a manual signature; (b) is unique to myself; (c) is capable of verification; and (d) is under the sole control of myself.

APPENDIX A
PROJECT SCOPE AND COST SHARING
MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO WOODFORD'S CORNER

FEDERAL AID PROJECT NO. STP-2054(300)

STATE PROJECT IDENTIFICATION NUMBER (WIN) 20543.00

Project Scope:

Reconfigure Forest Ave. traffic pattern at Woodford's Corner and Ocean Ave, widen sidewalks, add streetscape aesthetics, extend shared lane bikeways and reduce crossing distances for pedestrians.

ding Outline:

The Total Project Estimated Cost is \$ 2,253,751.00 , and the Parties agree to share costs through all stages of the Project under the terms outlined below.

Work Element	Municipal Share		Project Share				Total Cost
			MPO	Portion	MaineDOT (State) Portion		
	%	\$	%	\$	%	\$	\$
Preliminary Engineering	10.0%	\$ 22,481.30	80.0%	\$ 179,850.40	10.0%	\$ 22,481.30	\$ 224,813.00
Right of Way	10.0%	\$ 6,250.00	80.0%	\$ 50,000.00	10.0%	\$ 6,250.00	\$ 62,500.00
Construction	10.0%	\$ 148,156.30	80.0%	\$ 1,185,250.40	10.0%	\$ 148,156.30	\$ 1,481,563.00
Construction Engineering	10.0%	\$ 14,987.50	80.0%	\$ 119,900.00	10.0%	\$ 14,987.50	\$ 149,875.00
PROJECT SHARES		\$ 191,875.10		\$ 1,535,000.80		\$ 191,875.10	\$ 1,918,751.00
Total Cost of Additional Work Requested by Municipality (Below)	100.0%	\$ 335,000.00					
TOTAL ESTIMATED MUNICIPAL SHARE (Receivable Amount)		\$ 526,875.10					

(Check if applicable)

- ☒ Additional Work as outlined in Appendix C to this Agreement.

Funding Outline: The Municipality agrees to pay 100% of the costs for the work outlined below.

Additional Work	Cost: 100% Municipal Share
PE - Design to include milling and paving on Forest Ave.	\$ 10,000.00
Milling and paving on Forest Ave. and upgrading the RR crossing on Forest Ave.	\$ 315,000.00
CE - Construction Engineering and inspection/testing	\$ 10,000.00
TOTAL COST OF ADDITIONAL WORK REQUESTED BY MUNICIPALITY	\$ 335,000.00

Payment:

The Municipality shall submit payment to MaineDOT within 30 days from the invoice date.

1. Prior to award of the contract for Project construction, the Municipality will be invoiced a portion of its share of the cost of the Project.

Invoicing will include the following:

- a. 100% of the local share of the Preliminary Engineering and Right of Way costs; plus
- b. Fifty percent (50%) of the local share of the Construction and Construction Engineering cost based on the total bid price of the Project; plus
- c. 100% of all additional work requested by the Municipality.

2. **Final Voucher Payment to the Contractor.** A final bill will be created following MaineDOT's final voucher payment to the Contractor, after all quantities are verified, and any required adjustments have been made. The cost of the work for which MaineDOT will bill the Municipality shall be determined by the contract prices and the completed quantities of the work items or, in the event of termination, the local share of Project development cost to the point of termination as stipulated above. The final invoice will include the Municipality's share of any remaining costs.

Invoicing Schedule: The Municipal Payment Schedule shown below includes estimated invoicing dates based upon the estimated schedule and estimated cost of the Project:

Municipality Name	Receivable Amount	Estimated Invoice Date
PORTLAND	\$50,000.00	3/1/2016
PORTLAND	\$238,437.00	8/1/2016
PORTLAND	\$238,438.10	1/1/2017
Total Receivable Amount:	\$526,875.10	

APPENDIX B
PERPETUAL BICYCLE/PEDESTRIAN FACILITY MAINTENANCE

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO WOODFORD'S CORNER

FEDERAL AID PROJECT NO. STP-2054(300)

STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00

The Municipality will be responsible for year round maintenance of new or replaced/rehabilitated bicycle/pedestrian facilities in such a manner as necessary to preserve the use and function thereof for the expected period of their normal useful life as determined by accepted engineering and/or industry standards. When necessary, the Department reserves the right to undertake maintenance and invoice the municipality.

APPENDIX B
PERPETUAL LANDSCAPE MAINTENANCE

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO WOODFORD'S CORNER

FEDERAL AID PROJECT NO. STP-2054(300)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00

The Municipality agrees to be responsible for maintenance of planting and landscaping, including structures, including, but not limited to privies, picnic shelters, interpretive panels, and park areas, as installed or modified, as part of the above referenced project upon completion of said project. The Municipality also agrees to maintain such planting and landscaping upon the expiration of all warranties applicable to such landscaping, including the maintenance of all lawn areas, trees, and shrubs. These responsibilities shall include, but are not limited to, the following:

1. Plantings shall be watered during periods of drought or extreme dryness.
2. Measures shall be taken to remove any build-up of winter sand in planting areas.
3. Pruning, trimming, and removal of dead branches to maintain healthy plant growth or so as not to pose safety hazards or unsightly conditions.
4. Measures shall be taken to control disease and insects using appropriate insecticides and to control weeds on a timely basis, including hand weeding, mulching and/or application of herbicides through proper legal application.
5. Dead or dying plant material shall be replaced with new material of the same type and size as originally planted.
6. Lawns and grassy areas shall be mowed at least weekly during the late spring and early summer growing season and at least once a month during the remainder of the growing season, unless unusual weather conditions or rapid growth dictate otherwise.
7. All areas of turf, trees and shrubbery shall be fertilized using suitable materials.
8. All litter and refuse shall be removed expeditiously.
9. The Department shall provide technical assistance to the Municipality upon request, by recommending the materials and procedures necessary for such maintenance.

APPENDIX B

PERPETUAL OPERATION AND MAINTENANCE of LIGHTING/FLASHING BEACON and/or signage with associated light(s)

MAINE DEPARTMENT OF TRANSPORTATION MUNICIPAL/STATE AGREEMENT Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO WOODFORD'S CORNER

FEDERAL AID PROJECT NO. STP-2054(300)

STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00

- A. The Municipality agrees to operate and maintain the lighting/flushing beacon and/or signage associated light(s) installed under the Project in such a manner as is necessary to preserve the use and function thereof as designed and intended by the Project as follows:
1. The Municipality shall repair or correct all malfunctions and deficiencies with the lighting/flushing beacon and/or signage and associated light(s) expeditiously. Any failure to correct the lighting/flushing beacon and/or signage and associated light(s) to function as designed could, upon written notification from MaineDOT, result in MaineDOT making all necessary repairs at the Municipality's expense.
 2. The Municipality agrees to be responsible for electrical service for the lighting/flushing beacon and/or signage and associated light(s) and agrees to execute any necessary documentation required to establish such service and provide any local permits necessary for installation of such service, if applicable.
 3. The Municipality shall preserve and maintain the visibility of the lighting/flushing beacon and/or signage and associated light(s) at all times by removing all visual impairments thereto.
 4. The Municipality shall make no operational changes or modifications to the lighting/flushing beacon and/or signage and associated light(s) without the express written approval of MaineDOT.
 5. The Municipality shall notify MaineDOT in writing prior to any removal or replacement of the lighting/flushing beacon and/or signage and associated light(s).
 6. The Municipality shall maintain all signs and striping necessary or incidental to the operation of the lighting/flushing beacon and/or signage and associated light(s) as furnished and installed under the Project.
 7. The Municipality agrees to maintain the lighting/ flushing beacon and/or signage and associated light(s) with equipment technology equal to or greater than what has been installed.
- B. The Municipality shall implement a Traffic Control Plan in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) including a provision for Municipality employees and/or contractors entering the State's right-of-way for long-term maintenance.

APPENDIX B
PERPETUAL TRAFFIC SIGNAL OPERATION AND MAINTENANCE

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO WOODFORD'S CORNER

FEDERAL AID PROJECT NO. STP-2054(300)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00

- A. The Municipality agrees to operate and maintain the traffic signal to function as designed and installed by the Department, unless approved otherwise as hereinafter provided or as necessary as follows:
1. All malfunctions and deficiencies in the traffic signal or any equipment appurtenant that is not covered by warrantee shall be repaired or corrected expeditiously in accordance with the Institute of Transportation Engineer's (ITE) "Traffic Signal Installation and Maintenance Manual". Any failure to repair or correct the traffic signal to function as designed could, upon written notification from the Department, result in the Department making all necessary repairs at the Municipality's expense.
 2. The visibility of the traffic signal shall be preserved and maintained at all times by removing any visual impairment thereto.
 3. Except in the case of an emergency, no change in operation or modification to the traffic signal or any equipment appurtenant thereto shall be made without the express written approval of the Department.
 4. The Department shall be notified in writing prior to any removal or replacement of the traffic signal or any equipment and appurtenant thereto. Upon removal, such traffic signal or equipment shall be returned to the Department, at no cost to the Department, unless otherwise agreed upon in writing.
- B. The Municipality agrees to be responsible for the electrical service for the traffic signal and agrees to execute any necessary documentation required to establish such service and provide any local permits necessary for the installation of such service.
- C. The Municipality agrees to maintain all pavement markings (including stop bars, lane use arrows and all striping necessary to delineate the turning lane) and all traffic control signs as furnished under the project.

APPENDIX C
Additional Work

MAINE DEPARTMENT OF TRANSPORTATION
MUNICIPAL/STATE AGREEMENT
Transportation Improvement Project

MUNICIPALITY OF PORTLAND

PROPOSED IMPROVEMENTS TO WOODFORD'S CORNER

FEDERAL AID PROJECT NO. STP-2054(300)
STATE PROJECT IDENTIFICATION NUMBER (WIN) 020543.00

1. Description of Work Being Added to Project By The Municipality:

Mill and fill along Forest Ave. from Station 12+50 to 28+50 and upgrade the crossing signals at approximately Station 26+50+/-

2. The Municipality agrees to furnish all plans, specifications and estimates necessary to include additional work under the Project; No ☒ - Disregard this Section, or Yes ☐ - as follows:

- a) All plans and specifications shall conform to the standards used by the Department as set forth in the latest version of its *"Highway Design Guide"* and *"Standard Details for Highways and Bridges"* and comply with the Department's Utility Accommodation Policy as set forth in its *"Policy On Above Ground Utility Locations"*.
- b) All plans shall be size "D" drawings measuring 22 inches by 36 inches reproducible in black and white print.
- c) All specifications shall be printed on 8-1/2 inch wide by 11 inch long paper suitable for binding in the Department's proposal book.
- d) The Municipality shall provide a detailed engineer's estimate of the cost of such additional work calculated in a manner acceptable to the Department and allowable for bidding. The Municipality agrees that all cost information developed for such bidding shall be kept confidential pursuant to the provisions of Title 23 of the Maine Revised Statutes Annotated (M.R.S.A.) Section 63.
- e) The Municipality shall obtain all permits, licenses, releases and approvals necessary or incidental to the additional work described in Section 1 above.
- f) The submission of all plans, specifications and estimates; as well as all permits, licenses, releases and approvals shall be done in such a timely manner as not to unreasonably delay the Department's schedule for soliciting bids to construct the Project.
- g) The Municipality may utilize the electronic exchange of CADD data; the Municipality must accept pertinent electronic input data as specified by the Department. A copy of the

Department's specifications can be found on its website under Business and CADD support. It is the responsibility of the Municipality to translate this data into other formats required for use in their design software.

3. Following solicitation of competitive bids for the Project under Paragraph D of the Agreement; but before award of a contract to construct the Project that includes additional work as described in Section 1 above; action must be taken by the Municipality:

- a) If the bid price received for such additional work exceeds the detailed engineers estimate by any more than ten (10%) percent, the Municipality may reject such bid price by notifying the Department in writing within five (5) business days following the opening of such bids. The Municipality may waive such right by doing so in writing anytime prior to or during such period. Otherwise, all decisions pertaining to the acceptance of bids and the award of any construction contract shall be the sole discretion of the Department.
- b) If the bid price for such additional work is acceptable to the Municipality, the Municipality shall pay the Department, an amount equal to the Municipality's share of the estimated cost of such additional work based upon the prices of the successful bidder. Following receipt of payment, the Department agrees to award a contract to construct the Project including the additional work.
- c) The parties agree that any additional adjustments to the amount of any payment or deposit made pursuant to the provisions of subparagraph b) above because of any differences between estimated and actual quantities which effects the actual cost of such additional work shall be due and payable upon determination of final quantities, unless the Department determines that the actual cost of such additional work is expected to differ measurably from the amount of such payment, due to changes in quantities placed or work performed during the period of construction.

Order 136-15/16
~~Tab 8~~ +4-16
~~Tab 8~~ 1-20-16

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

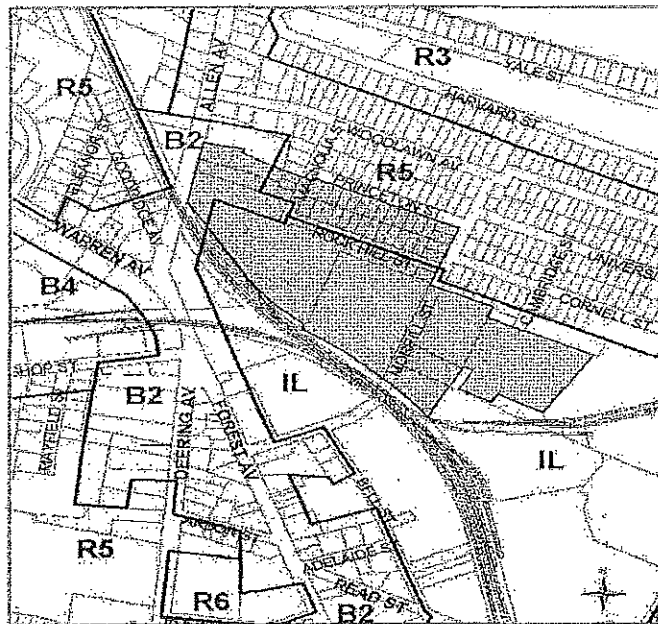
**CITY OF PORTLAND
IN THE CITY COUNCIL**

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.

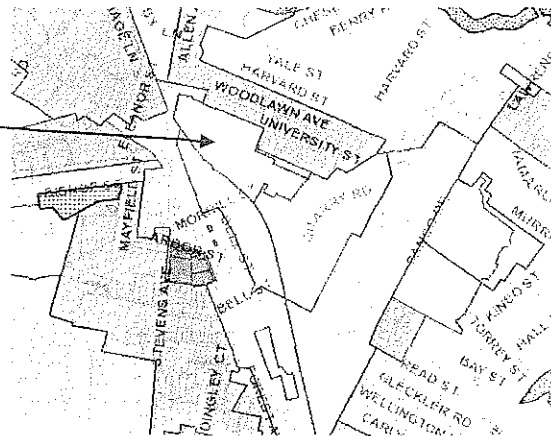
Jennifer Thompson advised the Planning Board that the City should pursue rescinding the agreement and reverting to the underlying zone in order to create a clear record of the zoning in the area. Without this affirmative action of the City Council, then there may be questions about whether the agreement 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



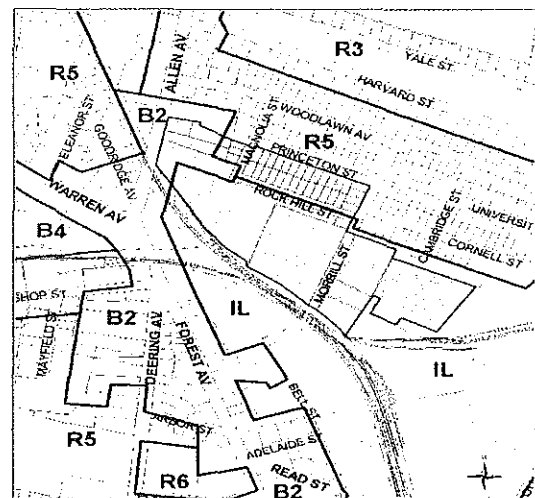
2. The Planning Board finds that the proposed reversion of the zoning to the original underlying zones for the a property located at Morrill's Corner and 33 Allen Avenue is consistent with the Comprehensive Plan for the City of Portland; and, therefore, recommends to the City Council approval of the 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

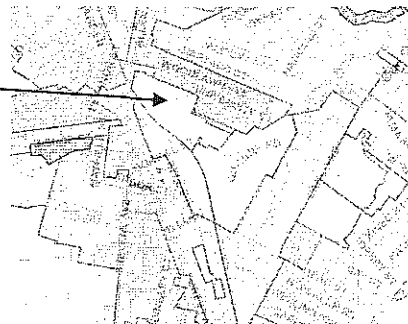
Based upon a request from Portland's Economic Development Department, the Planning Board recommends to City Council that the Conditional Rezoning Agreement Number C-36 be rescinded, which was adopted in 2004 for the Packard Development proposed at Morrill's Corner. The proposal includes reverting to the previous underlying zones of I-L, 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

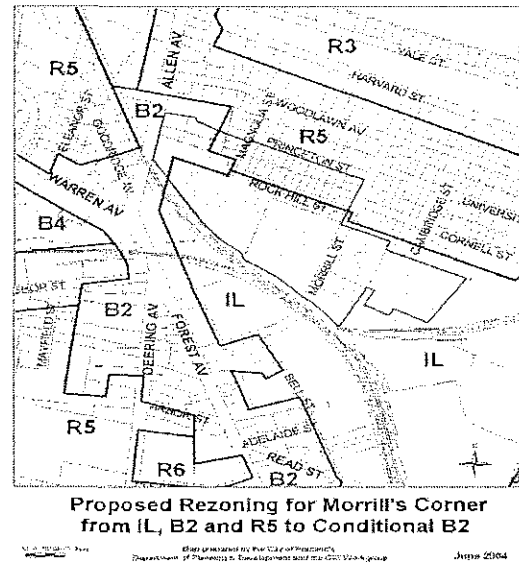
The Planning Board fully supported rescinding a contract zone that has not been realized and that the development review approvals have expired. They stated that the elimination of defunct conditional zones reduces uncertainty for future development within the city. It also re-enforces the Planning Board's 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.

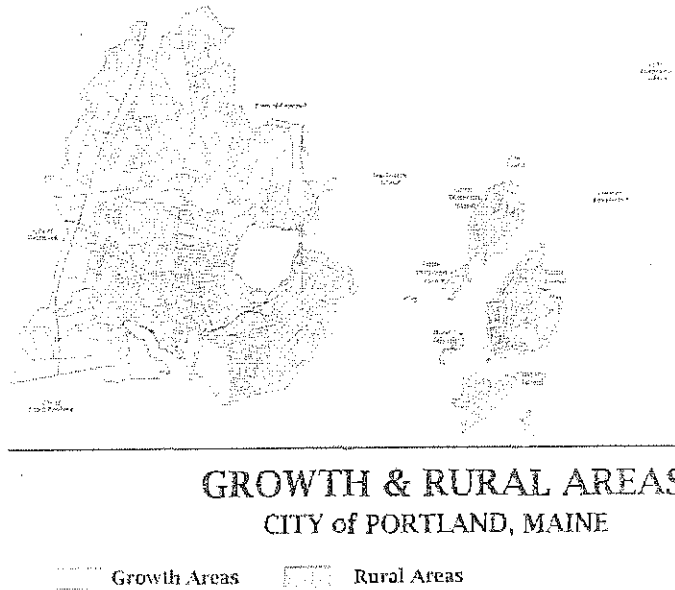
Volume II

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. GERAUGHTY (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**").

W I T N E S S E T H

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

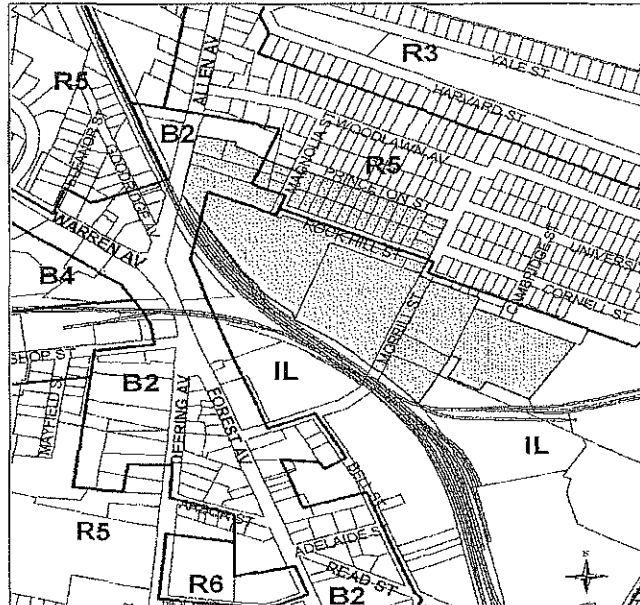
WHEREAS, the **CITY** has determined that because of the unusual nature and unique location of the proposed development and the need for significant public improvements it is necessary and appropriate to have imposed the following conditions and restrictions in order to ensure that the rezoning is consistent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

RD 11 35, 100000 Feet

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 loamed 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

O:\OFFICE\PENNY\CONTRACT
rezone\Packard112304
CDCClean version to Council.DOC

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:

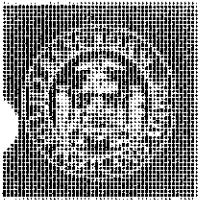
i. that the Boxing Club, in order to be in compliance with the Conditional Rezoning, must be redesigned not to exceed 14,000 sq. ft., in total, and that amended plans and architectural drawings shall be submitted for Planning Authority review and approval.

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 Barhydt, 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 Turling, City Arborist
Captain Greg Cass, Fire Prevention
Assessor's Office
Approval Letter File

AUG 03 REC'D

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO: AP06-042 ✓

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 33 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 11,922 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 75, ¶ 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.

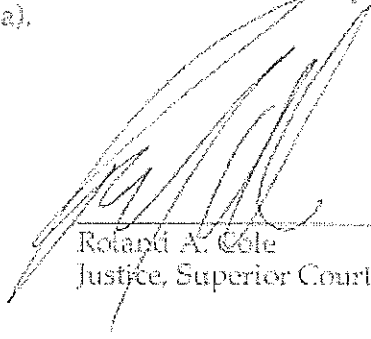
The entry is:

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. Its 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 build 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 earIt 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 others 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 its 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 members 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 14/-15/16
Feb 9 1-20-16*

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 AUTHORIZING ASSIGNMENT OF CREDIT ENHANCEMENT
AGREEMENT HELD BY OCEAN GATEWAY GARAGE LLC TO
PORTLAND NORWICH GROUP LLC**

ORDERED, that the City Council hereby approves the assignment of the Credit Enhancement Agreement held by Ocean Gateway Garage LLC in the Riverwalk Development and Tax Increment Financing District to Portland Norwich Group LLC; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents.



Economic Development Department
Gregory A. Mitchell, Director

TO: Mayor and City Council

FROM: Gregory A. Mitchell, Economic Development Director

DATE: December 16, 2015

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

SUBJECT: Order Authorizing Assignment of Credit Enhancement Agreement from Ocean Gateway Garage, LLC to Portland Norwich Group, LLC

SPONSOR: Jon P. Jennings, City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading and Final Action: January 4, 2016

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

PRESENTATION: Greg Mitchell, Economic Development Director (5 Minutes)

I. SUMMARY OF ISSUE (Agenda Description)

The Riverwalk Development and Tax Increment Financing District was originally approved by the City Council on June 6, 2005, with its associated Credit Enhancement Agreement (CEA) between the City and Riverwalk, LLC. On October 16, 2006, the City Council authorized the assignment of the CEA from Riverwalk, LLC to Ocean Gateway Garage, LLC – a wholly-owned subsidiary of Riverwalk, LLC.

Due to recent changes in property ownership, Ocean Gateway Garage, LLC wishes to assign its right, title, and interest in the Riverwalk TIF District to the Portland Norwich Group, LLC. Under the terms of the attached CEA, Section 8.2 "Assignment", assignment of the CEA cannot be done without the consent of the City, which consent shall not be unreasonably withheld or delayed for any reason or for no reason.

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

City Council authorization of the Assignment is required.

III. INTENDED RESULT

The intended result will allow for Portland Norwich Group, LLC to have the Riverwalk TIF District CEA assigned to them.

IV. COUNCIL GOAL ADDRESSED

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

V. FINANCIAL IMPACT

The TIF District CEA's term runs from Fiscal Year 2007 through Fiscal Year 2019. The TIF District past payments have been adjusted based upon the actual amount of taxable real estate investment per a formula contained in the CEA in Section 8.2(b) and Table 1. The below table summarizes the history of past TIF District funding allocations to date.

RIVERWALK								
TIF PLAN YEAR	CITY FY	TOTAL ASSESSED VALUE	ORIGINAL ASSESSED VALUE (OAV)	TIF CAPTURED VALUE	TAX RATE	PROCEEDS TO DEVELOPER	PROPERTY TAXES RETAINED BY CITY	PROPERTY TAXES FROM OAV
1	2007	1,731,700	\$1,085,550	\$646,150	0.01631	\$ 118.37	\$ 10,420.34	\$17,705.32
2	2008	4,557,200	\$1,085,550	\$3,471,650	0.01710	\$ 20,829.90	\$ 38,535.32	\$18,562.91
3	2009	10,812,900	\$1,085,550	\$9,727,350	0.01774	\$ 116,728.20	\$ 55,834.99	\$19,257.66
4	2010	12,946,800	\$1,085,550	\$11,861,250	0.01774	\$ 142,335.00	\$ 68,083.58	\$19,257.66
5	2011	12,946,800	\$1,085,550	\$11,861,250	0.01792	\$ 142,335.00	\$ 70,218.60	\$19,453.06
6	2012	12,946,800	\$1,085,550	\$11,861,250	0.01828	\$ 142,335.00	\$ 74,488.65	\$19,843.85
7	2013	12,946,800	\$1,085,550	\$11,861,250	0.01882	\$ 142,335.00	\$ 80,893.73	\$20,430.05
8	2014	12,946,800	\$1,085,550	\$11,861,250	0.01941	\$ 142,335.00	\$ 87,891.86	\$21,070.53
9	2015	12,946,800	\$1,085,550	\$11,861,250	0.02	\$128,101.00	\$ 109,123.50	\$21,711.00
TOTALS						\$ 977,452.97	\$ 595,490.57	\$177,292.03
Total of OAV and City Retained Property Taxes:								\$772,782.59

This TIF District has three remaining fiscal years, after the current fiscal year, before it expires. The table, on the next page, reports current and future estimated TIF District funding allocations based upon existing and planned approved development projects.

11/30/2015 Riverwalk TIF District Analysis

Fiscal Year	Estimated TIF Payment to Developer	Estimated City Revenue (OAV and Increase in Value)
2015/2016	\$128,101.50*	130,834.50
2016/2017	\$190,668.00**	\$228,268.00
2017/2018	\$229,401.88***	\$429,535.00
2018/2019	\$114,700.50	\$544,235.50
Total	\$662,871.88	\$1,332,873.00

*Municipal assessed value at \$12,946,880.

**With 8 Million in additional assessed value to \$20,946,800.

***With \$12 Million in additional assessed value to \$32,946,800.

Note: Assumed a Mil Rate of \$20/\$1,000 in municipal value.

It is noted that after expiration of this TIF District starting Fiscal Year 2019/2020, the city will retain one hundred percent of all property tax revenue.

VI. STAFF ANALYSIS

The original TIF District Development Program and current proposed development projects with notes are compared below:

RIVERWALK TIF DISTRICT

Original Proposed Development Projects	2015/2016 Planned Development Projects
750 Space Parking Garage (constructed)	Existing parking garage/ no change
33,000 sf of ground floor retail space (not constructed due to economic recession)	18,000 sf of ground floor retail space
Up to 110 residential condominium units (not constructed due to economic recession)	50 residential condominium and rental units
50 room hotel (not constructed due to economic recession)	150 room AC Hotel, with 4,000 sf of ground floor retail or restaurant space, and 16 residential condominiums on the top floor
20,000 sf of class A office space (not constructed due to economic recession)	50,000 sf of first class office space

The above table above shows that the TIF District's original proposed development projects and the 2015/2016 proposed development projects are very similar, and the City's rationale to enter into this public-private partnership, in 2005, to financially support investment in a privately owned parking garage will provide a positive financial return on investment to Portland.

VII. RECOMMENDATION

Staff recommends that the City Council authorize the Assignment of the CEA from Ocean Gateway Garage, LLC, to Portland Norwich Group, LLC for the following four reasons:

1. The TIF Development Original Proposed Development Program is comparable to the 2015/2106 proposed development program;
2. The City benefits from increased taxable property assessed value in this TIF District;
3. Starting Fiscal Year 2019/2020, this TIF District will expire and 100% of the property taxes will go to the City's General Fund and;
4. The positive economic impact to the City based upon future planned development, associated new property taxes and new jobs.

VIII. LIST ATTACHMENTS

- A. Proposed Assignment to Portland Norwich Group
- B. Assignment to Ocean Gateway Garage
- C. Original CEA

Prepared by: Greg Mitchell, Economic Development Director

ASSIGNMENT AND ASSUMPTION OF AGREEMENT

This **ASSIGNMENT AND ASSUMPTION OF AGREEMENT** is entered into by and between **OCEAN GATEWAY GARAGE, LLC**, a Maine limited liability company ("Assignor") and **PORTLAND NORWICH GROUP LLC**, a Delaware limited liability company ("Assignee"), and the City of Portland, Maine, a Maine municipal corporation ("City").

RECITALS:

WHEREAS, the City is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate and did designate in May, 2005 (as finalized by Council action on June 6, 2005), specified areas within the municipal boundaries of the City as the Riverwalk Development and Tax Increment Financing District ("**District**") and adopted a development program and financial plan for tax increment financing for the District, as described in the Riverwalk Development Tax Increment Financing Program Application dated April 29, 2005 (the "**TIF Development Program**"); and

WHEREAS, the Maine Department of Economic and Community Development approved the District and the TIF Development Program on September 15, 2005; and

WHEREAS, in furtherance of the goals of the TIF Development Program and the creation of the District, City and Riverwalk, LLC, a Maine limited liability company ("Riverwalk") entered into that certain Credit Enhancement Agreement between the City and Riverwalk dated as of September 2, 2005 (the "**TIF Agreement**", which together with the TIF Development Program are called herein the "**TIF Documents**"); and

WHEREAS, Riverwalk, with the consent of the City, assigned all of its right, title, interest, duties and obligations under the TIF Agreement to Assignor, a wholly-owned subsidiary of Riverwalk pursuant to an Assignment and Assumption Agreement dated October 20, 2006; and

WHEREAS, Assignor has constructed and owns the parking garage that is contemplated by the TIF Development Program; and

WHEREAS, Assignor is now preparing to sell and transfer to Assignee ownership of the garage located at 167 Fore Street, Portland, and Assignor's related entity, LRAR, is selling and transferring to Assignee LRAR's remaining interests in property located in the Development District, including property on India Street, Commercial Street, Hancock Street and Fore Street;

WHEREAS, Assignor, for and in consideration of the parties' mutual agreement pursuant to said transfer, has agreed to assign all of its right, title, and interest in, and its duties and obligations under, the TIF Documents as they relate to and concern the District to the Assignee; and

WHEREAS, Assignee wishes to, and hereby does, accept such assignment and agrees to assume Assignor's obligations under the TIF Documents.

AGREEMENTS:

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

1. **Review**. Assignee hereby represents and warrants that Assignee has received and fully reviewed a copy of the TIF Documents, which documents are incorporated herein by reference.
2. **Assumption**. Assignee hereby assumes Assignor's right, title, interest, duties, and obligations under, and agrees to be bound by, the terms and conditions set forth in the TIF Documents.
3. **Effect of Assignment**. All parties hereto agree that the TIF Documents remain in full force and effect notwithstanding this Agreement.
4. **Release**. All parties hereto agree that upon execution of this Agreement, Assignor shall be released from any actual or potential liability arising from or related to the District, the TIF Agreement and/or the TIF Development Program after the date of this Agreement. Assignor shall remain liable to the City for the performance and observance of the obligations, terms, conditions, provisions and covenants in the TIF Agreement to be performed and observed prior to the date of this Agreement. The Assignor's obligations to defend, indemnify, and hold the City harmless set forth in Section 9.11 of the TIF Agreement shall survive this assignment to Assignee.
5. **Further Assurances**. In furtherance of the agreements set forth herein, each of the parties hereto shall execute and deliver such additional instruments and documents required to confirm and assure the rights and obligations provided for herein, and render effective the consummation of the transactions contemplated hereby.
6. **City Consent**. The City hereby executes this Assignment and Assumption to evidence its consent to this agreement, as required under the TIF Documents.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption
as of this ____ day of _____, 2016.

OCEAN GATEWAY GARAGE LLC

By: Riverwalk Venture LLC, Its
Manager
By: Intercontinental Fund IV Ocean
Gateway LLC, Its Manager
By: Intercontinental Real Estate
Investment Fund IV, LLC,
Its Manager
By: Intercontinental Real Estate
Corporation, Its Manager

Witness

By: _____
Peter Palandjian
Its President and Treasurer

PORTLAND NORWICH GROUP LLC

Witness

By: _____
David Leatherwood,
Duly Authorized

CITY OF PORTLAND

Witness

By: _____
Jon P. Jennings,
Its City Manager

Approved as to Form: _____
(Corporation Counsel)

Approved as to Funds: _____
(Finance Dept.)

ASSIGNMENT AND ASSUMPTION OF AGREEMENT

This **ASSIGNMENT AND ASSUMPTION OF AGREEMENT** is entered into by and between **RIVERWALK, LLC**, a Maine limited liability company ("Assignor") and **OCEAN GATEWAY GARAGE, LLC**, a Maine limited liability company ("Assignee").

RECITALS:

WHEREAS, The City of Portland, Maine (the "City") is authorized pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, to designate and did designate in May 2005 specified areas within the City as the Riverwalk Development and Tax Increment Financing District ("District") and adopted a development program and financial plan for tax increment financing for the District (the "TIF Development Program"); and

WHEREAS, the Maine Department of Economic and Community Development approved the District and the TIF Development Program on September 15, 2005; and

WHEREAS, in furtherance of the goals of the TIF Development Program and the creation of the District, the City and Riverwalk, LLC ("Riverwalk") entered into that certain Agreement between the City and Riverwalk dated as of September 2, 2005 (the "TIF Agreement"); and

WHEREAS, Ocean Gateway Garage, LLC ("Ocean Gateway") is a wholly-owned subsidiary of Riverwalk. Ocean Gateway will construct and own the parking garage that is contemplated by the TIF Development Program; and

WHEREAS, Assignor, for and in consideration of the parties' mutual agreement to perform obligations pursuant to said transfer, assign all of its right, title, interest, duties and obligations under the TIF Agreement and the TIF Development Program as they relate to and concern the District (collectively "TIF Documents") to the Assignee; and

WHEREAS, Assignee wishes to, and hereby does, accept such assignment and to assume Assignors' obligations under the TIF Documents.

AGREEMENTS:

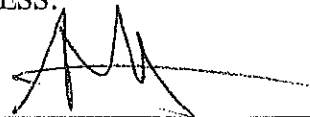
NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Review.** Assignee hereby represents and warrants that Assignee has received and fully reviewed a copy of the TIF Documents, which documents are incorporated herein by reference.
2. **Assignment.** Assignor hereby assigns to Assignee all of Assignor's right, title, interest, duties, and obligations under the TIF Documents.

3. **Assumption.** Assignee hereby assumes Assignor's right, title, interest, duties, and obligations under, and agrees to be bound by, the terms and conditions set forth in the TIF Documents.
4. **Effect of Assignment.** All parties hereto agree that the TIF Documents remain in full force and effect notwithstanding this Agreement.
5. **Release.** All parties hereto agree that upon execution of this Agreement, Assignor shall be released from any actual or potential liability arising from or related to the District, the TIF Agreement and/or the TIF Development Program.
6. **Further Assurances.** In furtherance of the agreements set forth herein, each of the parties hereto shall execute and deliver such additional instruments and documents required to confirm and assure the rights and obligations provided for herein, and render effective the consummation of the transactions contemplated hereby.

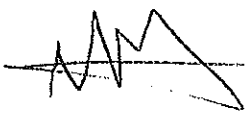
IN WITNESS WHEREOF, the parties have executed this Assignment as of this 20th day of ~~September~~ October, 2006.

WITNESS:


Name: Nathan H. Smith

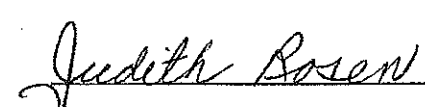
RIVERWALK, LLC
(Assignor)

By: 
Name: Drew E. Swenson
Its Manager


Name: Nathan H. Smith

OCEAN GATEWAY GARAGE, LLC
(Assignee)

By: 
Name: Drew E. Swenson
Its Manager



CITY OF PORTLAND

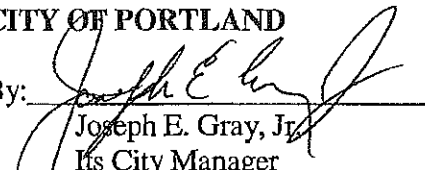
By: 
Joseph E. Gray, Jr.
Its City Manager

EXHIBIT B

Request for Payment

The undersigned does hereby request payment in the amount of \$_____ from the Riverwalk Development Program Fund and does hereby certify that the amount requested will be used to pay Project Costs as that term is defined in Chapter 206 of Title 30-A of the Maine Revised Statutes.

OCEAN GATEWAY GARAGE, LLC

Date: _____

By: _____
Its Manager

FILE
Copy executed

CREDIT ENHANCEMENT AGREEMENT

between

CITY OF PORTLAND, MAINE

and

RIVERWALK, LLC

Dated as of September, 2005

April 25, 2005

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THIS CREDIT ENHANCEMENT AGREEMENT dated as of ~~April~~ ^{September} 2, 2005, between the City of Portland, Maine (the "City"), a municipal body corporate and politic and a political subdivision of the State of Maine, Riverwalk, LLC, a limited liability company duly organized and existing under the laws of the State of Maine, with a place of business in Portland, Maine (the "Company").

WITNESSETH THAT

WHEREAS, the City designated the Riverwalk Municipal Development District and Tax Increment Financing District (the "District") pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended, by action of the Portland City Council on ~~September~~ ^{September} 2, 2005 (the "Vote"), and pursuant to the same Vote adopted a development program and financial plan for the District (the "Development Program"); and

WHEREAS, upon submission of an application to DECD, the City expects DECD to review and approve the District and the Development Program; and

WHEREAS, the City designated the District, adopted the Development Program and entered into this Agreement in order to induce the Company to build the Project by enabling the City to contribute toward the capital cost of the Project the amounts contemplated by the Development Program and this Agreement; and

WHEREAS, in connection with the Development Program, and as contemplated thereby, the City and the Company have agreed to execute and deliver this Agreement; and

WHEREAS, the City and the Company desire and intend that this Agreement be and constitute the credit enhancement agreement contemplated by and described in the Development Program;

NOW, THEREFORE, in consideration of the foregoing and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise. All other capitalized terms not otherwise defined herein shall have the meaning given such terms in the Development Program.

"Account" shall mean the Project Cost Account, also known as the Riverwalk Development Program Fund.

"Act" means Chapter 206 of Title 30-A of the Maine Revised Statutes, as amended.

"Agreement" shall mean this Credit Enhancement Agreement dated as of the date set forth above between the City and the Company, as such may be amended by the parties from time to time.

"Captured Assessed Value" means the annual percentage of Increased Assessed Value retained in the District in each tax year during the term of the District, as specified in Section 3.1 hereof.

"City" shall have the meaning given such term in the recitals hereto.

"City Tax Increment Revenues" means in each year this Agreement is in effect, an amount of money equal to the Retained Tax Increment Revenues allocated to the City at the time and according to the schedule specified in Section 3.1 hereof.

"City TIF Account" means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Company" shall have the meaning given such term in the first paragraph hereto, and shall also mean and include any assignee or successor thereof.

"Company TIF Account" means the account described in the Financial Plan section of the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Company Tax Increment Revenues" means in each year this Agreement is in effect an amount of money equal to the Retained Tax Increment Revenues allocated to the Company at the times and according to the schedule specified in Section 3.1 hereof.

"Current Assessed Value" means the then current assessed value of the Property located within the District to be determined by the City's Assessor as of April 1 of each year that this Agreement remains in effect.

"DECD" means the State of Maine Department of Economic and Community Development.

"Development Program" means the development program and financial plan for the District adopted by the City as described in the document entitled "Riverwalk Tax Increment Financing District Application", a copy of which is attached hereto as Appendix A.

"District" shall have the meaning given such term in the recitals hereto.

"Financial Plan" means the financial plan described in the "Financial Plan" section of the Development Program.

"Fiscal Year" means the time period from July 1 through June 30.

"Increased Assessed Value" means the valuation amount by which the Current Assessed Value exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any year, there is no Increased Assessed Value in that year.

"Original Assessed Value" means \$1,085,550, the assessed value of the District as of March 31, 2005.

"Project" means the design and construction of the facilities described in the Riverwalk proposal dated September 8, 2004, or any subsequent revisions of that proposal as approved by City and as described in the Development Program.

"Project Cost Account" means the account in the Development Program Fund described in the Development Program and established and maintained pursuant to the Development Program and Article II hereof.

"Project Costs" means all costs incurred by the Company on the Project within the meaning set forth in 30-A M.R.S.A. §5222(14), as amended.

"Property" means all real or personal property, including but not limited to the Project, now or hereafter located within the District, whether or not the Company owns such Property or is otherwise liable for property taxes imposed and assessed thereon by the City.

"Property Taxes" means any and all ad valorem property taxes in excess of any county, state or special district taxes levied, charged or assessed against the Property by the City or on its behalf and actually paid to the City.

"Qualified Investments" shall mean any and all securities, obligations or accounts in which municipalities may invest their funds under applicable Maine law, and which are of the same type and tenor as the investments in which the City invests its own funds.

"Retained Tax Increment" means that portion of Property Taxes assessed and collected by the City on the Captured Assessed Value.

"Tax Payment Date" means the later of the date(s) on which Property Taxes assessed by the City with respect to the Property are due or are paid, or if any such day is not a business day, the next succeeding business day.

Section 1.2. Interpretation and Construction.

In this Agreement, unless the context otherwise requires:

a. The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this Agreement.

b. Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

c. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.

d. Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

e. All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.

f. If any clause, provision or Section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or Section shall not affect any of the remaining provisions hereof except as expressly provided in Section 3.4.

ARTICLE II DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS

Section 2.1. Creation of Development Program Fund.

The City hereby confirms the creation and establishment of a segregated account in the name of the City designated as the "Riverwalk Development Program Fund" pursuant to, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. §5227(3), as amended from time to time. The Development Program Fund shall consist of a Project Cost Account that is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. §5227(3)(A)(1), as amended from time to time. The Project Cost Account shall include two subaccounts designated as the "Company TIF Account" and "City TIF Account".

Section 2.2. Deposits into Account.

There shall be deposited into the Account contemporaneously with each payment of property tax by the Company an amount equal to that portion of the property tax payment constituting Retained Tax Increment for the period to which the payment relates. Any and all revenues, if any, resulting from investment of monies on deposit shall be retained by the City and withdrawn from the Account contemporaneously with payment to the Company TIF Account.

Section 2.3. Use of Monies in Account.

Monies deposited in the Account shall be used and applied exclusively to fund the City's payment obligation described in Article III hereof. Monies deposited into the Account and any earnings thereunder will be designated and appropriated by City Council annually in the

municipal budget in accordance with Chapter 206 of Title 30-A, and in accordance with the Development Program.

Section 2.4. Monies Held in Trust.

All monies required to be paid into the Company TIF Account under the provisions hereof and the provisions of the Development Program, other than investment earnings thereon, shall be held by the City, in trust, for the benefit of the Company.

Section 2.5. Investments.

Any monies in the Account shall be invested and reinvested in Qualified Investments as determined by the City. The City shall have discretion regarding the investment of such monies, provided such monies are invested in Qualified Investments. As and when any amounts thus invested may be needed for disbursements, the City shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of such account. The City shall have the sole and exclusive right to designate the investments to be sold and to otherwise direct the sale or conversion to cash of investments made with monies in the Account.

Section 2.6. Tax Payments.

The Company shall pay when due all Property Taxes assessed by the City on property owned by the Company unless contested by the Company by appropriate proceedings pursuant to Maine law. No payments shall be made by the City under this Agreement unless the Company has paid in full all real or personal Property Taxes assessed by the City on the Company's Property when due.

**ARTICLE III
PAYMENT OBLIGATIONS**

Section 3.1. Captured Assessed Value; Retained Tax Increment.

Annually, the following percentages of Increased Assessed Value shall be retained as Captured Assessed Value and the Property Tax assessed on such Captured Assessed Value shall be retained as Retained Tax Increment, which Retained Tax Increment shall be deposited when received by the City into the Company TIF Account and the City TIF Account pursuant to the following allocation table, in accordance with the provisions of Article II of this Agreement and the priorities established by 30-A M.R.S.A. §5227(3)(B), each year starting with the 2007 fiscal year of the City and continuing for each of the next 12 fiscal years of the City, ending with the 2019 fiscal year, all as indicated on Table No. 1 below. In no event shall any additional sums be allocated to the Company and deposited into the Company TIF Account over and above the allocation listed in the Project Revenue column of Table 1 below. The company shall receive in the Company TIF Account the annual payment listed in the Company Project Revenue column of Table 1 below, or 75% of the Retained Tax Increment, whichever is less. For purposes of computing the amounts owed pursuant to this section, the amount of tax collected for reimbursement as Project Revenue shall be calculated on June 30th of each fiscal year.

TABLE 1

Tax Year	Projected Increased Assessed Value	Percentage Captured	Projected Captured Assessed Value	Estimated Mil Rate	Estimated Retained Tax Increment	Maximum Company Project Revenue	Estimated City Project Revenue
FY07	\$ 646,150	100%	\$ 646,150	15.75	\$ 10,177	\$ 7,633	\$ 2,544
FY08	\$ 37,713,422	100%	\$ 37,713,422	16.07	\$ 605,866	\$ 250,000	\$ 355,866
FY09	\$ 46,756,107	100%	\$ 46,756,107	16.39	\$ 766,160	\$ 500,000	\$ 266,160
FY10	\$ 68,823,016	100%	\$ 68,823,016	16.71	\$ 1,150,310	\$ 500,000	\$ 650,310
FY11	\$ 68,823,016	100%	\$ 68,823,016	17.05	\$ 1,173,316	\$ 500,000	\$ 673,316
FY12	\$ 68,823,016	100%	\$ 68,823,016	17.39	\$ 1,196,782	\$ 500,000	\$ 696,782
FY13	\$ 68,823,016	100%	\$ 68,823,016	17.74	\$ 1,220,718	\$ 500,000	\$ 720,718
FY14	\$ 68,823,016	100%	\$ 68,823,016	18.09	\$ 1,245,132	\$ 500,000	\$ 745,132
FY15	\$ 68,823,016	100%	\$ 68,823,016	18.45	\$ 1,270,035	\$ 450,000	\$ 820,035
FY16	\$ 68,823,016	100%	\$ 68,823,016	18.82	\$ 1,295,436	\$ 450,000	\$ 845,436
FY17	\$ 68,823,016	100%	\$ 68,823,016	19.20	\$ 1,321,344	\$ 400,000	\$ 921,344
FY18	\$ 68,823,016	100%	\$ 68,823,016	19.58	\$ 1,347,771	\$ 300,000	\$ 1,047,771
FY19	\$ 68,823,016	100%	\$ 68,823,016	19.97	\$ 1,374,727	\$ 150,000	\$ 1,224,727
TOTALS					\$ 13,977,773	\$ 5,007,633	\$ 8,970,140

Table is for illustrative purposes only.

Section 3.2. Completion of Development Program.

Under this Agreement, the Company shall make a good faith effort to substantially complete the project as described in the Development Program.

Section 3.3. Credit Enhancement Payments.

a. Subject to Section 3.3(b), the City shall pay on December 31 and June 30 of each year of this Agreement to the Company all Company Tax Increment Revenues then on deposit in the Company TIF Account. The obligation of the City to make such payment shall be limited obligation payable solely out of monies on deposit in the Company TIF Account and shall not constitute a general debt or obligation on the part of the City or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine or any political subdivision thereof.

b. In the event that City is subject to a claim by a third party to pay Company Tax Increment Revenues to such third party, City shall not pay such amount to Company pursuant to Section 3.3(a) nor to the third party, but shall deposit then Company Tax Increment Revenues in an amount equal to such amount so claimed (but only to the extent available) into an interest bearing escrow account and shall file an interpleader or other comparable action with a court of competent jurisdiction requesting a ruling to determine whether such Company Tax Increment Revenues should be paid to Company or to said third party. The assessed value of the District will increase by the reason of a phased in revaluation in fiscal years 2006 and 2007. Such increase may lead to an adjustment to the amount of taxes deposited in the TIF account by

Company. Company's share of the retained tax increment payable to it by City pursuant to paragraph 3.1 of this Agreement shall not be adjusted as a result of said revaluation.

Section 3.4. Failure to Make Payment.

In the event the City should fail to, or be unable to, make any of the payments to the Company required under the foregoing provisions of this Article III, the item or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Company shall have the right to initiate and maintain an action to specifically enforce the City's obligations hereunder, including without limitation, the City's obligation establish and maintain the Company TIF Account and to deposit Company Tax Increment Revenues into the Company TIF Account and its obligation to make required payment to the Company.

Section 3.5. Manner of Payments.

The payments provided for in this Article III shall be paid directly to the Company in the manner provided hereinabove for its own use and benefit, which use and benefit shall be consistent with the Development Program and Chapter 206 of Title 30-A of the Maine Revised Statutes. The City shall make required payments in response to requests for payment submitted by the Company setting forth the amount of the payment and containing a certification in the form attached hereto as Exhibit B.

Section 3.6. Obligations Unconditional.

Except as otherwise expressly provided in this Agreement, the obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Company. Notwithstanding the above, the City reserves the right to terminate this Agreement upon receipt of a final judgment by a court of competent jurisdiction to the effect that the Agreement or Development Program adopted in connection herewith or any payment made thereunder is or would be illegal or invalid. In such event, the termination shall relate back to the original date of the Agreement which shall be deemed void ab initio, and neither party shall have any obligations or liability hereunder, under the Development Program or in respect of any of the transactions contemplated thereby, and shall be left in whatever positions, financial or otherwise, they may be in as of the date of termination. Such termination shall not, however, affect the indemnifications set forth in Section 9.10, which obligations shall survive any such termination.

Section 3.7. Limited Obligation.

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Retained Tax Increment Revenues and any earnings thereon, pledged therefore under this Agreement. The City's obligations hereunder shall not constitute a general debt or a general obligation on the part of the City or a charge against or pledge of the faith and credit or taxing power of the City, but shall be payable solely from the Retained Tax Increment received by the City, and any earnings thereon. This Agreement shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefore or to

make any appropriation for their payment, excepting the City's obligation to assess property taxes upon the Project and the pledge of the Retained Tax Increment established under this Agreement.

Section 3.8 Administrative Fee.

The Company shall pay to the City an annual administrative fee to the City equal to 1% of the Retained Tax Increment (net of any penalties) paid by the City to the Company. Such payment shall be deducted pursuant to Section 9.9 of this Agreement contemporaneously with the payment by the City to the Company.

**ARTICLE IV
COVENANTS OF THE COMPANY**

Section 4.1. Project Development

a. The Company shall construct the project outlined in the September 8, 2004 proposal, as may be amended with the approval of the Portland City Council.

b. If in any year this Agreement is in effect the Increased Assessed Value is less than \$41,666,667, the obligation of the city to pay into the Company TIF Account per Section 3.1 of this agreement, shall be reduced. The reduction shall be calculated as follows: The increased assessed value divided by \$41,666,667 multiplied by the corresponding scheduled fiscal year Company Project Revenue payment amount on Table 1.

Notwithstanding the above in any fiscal year, the actual amount to be deposited into the Company TIF Account shall be the lesser of the Company Project Revenue, as adjusted pursuant to this Section if necessary, or 75% of the Retained Tax Increment.

Section 4.2. Job Requirement

All construction jobs related to the Project shall go to City and State of Maine citizens when possible, and all subcontractor work shall go to City and State union firms offering a sustainable, living wage, when possible."

**ARTICLE V
PLEDGE AND SECURITY INTEREST**

Section 5.1. Pledge of Company TIF Account.

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Company by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, the City does hereby grant a security interest in and pledge to the Company the Company TIF Account and all sums of money and other securities and investments therein.

Section 5.2. Further Instruments.

The City and the Company shall, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement, provided, however that no such instruments or agreements shall pledge the credit of the City.

Section 5.3. Liens.

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Company TIF Account and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

Section 5.4. Access to Books and Records.

All books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Account shall at all reasonable times be open to inspection by the Company, its agents and employees.

**ARTICLE VI
DEFAULTS AND REMEDIES**

Section 6.1. Events of Default.

Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

- a. Any failure by the City to pay any amounts due to Company when the same shall become due and payable if such non-payment is not a result of a final determination by a court that this Agreement is illegal or invalid;
- b. Any failure by the City to make deposits into the Company TIF Account as and when due;

c. Other than as provided in paragraph (a) and (b) above, any failure by the City or the Company to observe and perform in all material respects any respective covenant, condition, agreement or provision contained herein on the part of the City or the Company respectively to be observed or performed, including any failure of the Company to use payments made under this Agreement as required in Section 3.5 of this Agreement or to perform the covenant under Section 4.1(a) of this Agreement, which failure is not cured within thirty (30) days following written notice thereof; provided, however, that this subsection (c) shall not be construed to include the Company's failure to pay Property Taxes on the Property in the District for any reason as an Event of Default hereunder; and

d. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises shall appoint a conservator or receiver or liquidator for the City, or if any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings for the winding up or liquidation of the City's affairs shall have been entered against the City or if the City shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the City or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the City or the failure by the City to have a petition in bankruptcy dismissed within a period of 90 consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the City.

e. Any failure of Company to pay taxes to City when due.

f. Any failure of the Company or any agents, assigns or successors in interest to operate the Garage as a garage and pay taxes on it during the term of this Agreement.

Section 6.2. Remedies on Default.

Whenever any Event of Default described in Section 6.1 hereof shall have occurred and be continuing, the nondefaulting party may take any one or more of the following remedial steps following any applicable cure period, shall have all rights and remedies available to it.

a. The non-defaulting party may take whatever action at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may appear necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements, or covenants of the non-defaulting party under this Agreement and any documents, instruments, and agreements contemplated hereby or to enforce any rights or remedies available hereunder; and

b. In addition, in the event of a default under Section 6.1 (c)(e) or (f) relating to Section 3.5 or 4.1(a), the City may suspend further payments until such default is cured. If there is any dispute as to either party's performance of any of its obligations under this Agreement, such dispute may, by agreement of the parties, be submitted to non-binding mediation and, following such mediation or in the absence of any such agreement to submit the dispute to mediation, shall be submitted to arbitration in accordance with the rules of the American

Arbitration Association. Payments by the City will not be suspended prior to a final determination in such proceeding in favor of the City.

Section 6.3. Remedies Cumulative.

No remedy herein conferred upon or reserved by any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to the remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Delay or omission to exercise any right or power accruing upon any Events of Default or to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the rights to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

Section 6.4. Enforcement Rights.

The City and the Company agree that each party hereto shall have the right to initiate a legal proceeding to enforce the specific performance of this Agreement, it being understood and agreed that this Agreement is a material inducement to the Company continuing its pursuit of the Project. The parties agree that in the event of any dispute or disagreement hereunder the Company and the City shall continue to make payment of all amounts due hereunder in the manner and at the times specified herein until final resolution of such dispute, whether by mutual agreement or final decision of a court, arbitrator or other dispute resolution mechanism.

**ARTICLE VII
EFFECTIVE DATE, TERM AND TERMINATION**

Section 7.1. Effective Date and Term.

This Agreement shall become effective upon its execution and delivery by the parties hereto and shall remain in full force from the date hereof and shall expire on the later of the end of the _____ fiscal year of the City or upon the performance of all obligations on the part of the City and the Company hereunder, unless sooner terminated under Section 3.6 or 9.2 hereof.

Section 7.2. Cancellation and Expiration of Term.

At the termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Company shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

**ARTICLE VIII
ASSIGNMENT AND PLEDGE OF COMPANY'S INTEREST**

Section 8.1. Consent to Pledge, Collateral Assignment Or Grant of a Security Interest.

The City hereby acknowledges that the Company may pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Project, although no obligation is hereby imposed on the Company to make such assignment or pledge. Recognizing this possibility, the City does hereby consent and agree to the pledge and assignment of all the Company's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Company hereunder, to third parties as collateral or security for indebtedness related to the Project, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by the prospective pledgee or assignee, including without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder and any and all such other documentation as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this

Agreement and provide to the pledgee or assignee such rights and/or remedies as it may deem necessary for the establishing, perfection and protection of its interest herein.

Section 8.2. Assignment.

Except as provided in Section 8.1, this Agreement and the obligations of the City hereunder are personal to the Company and may not be assigned or transferred by the Company without the consent of the City which consent shall not be unreasonably withheld or delayed for any reason or for no reason.

**ARTICLE IX
MISCELLANEOUS**

Section 9.1. Successors.

a. In the event the City or the Company are dissolved, merged into or consolidated with another entity, or undergo any form of corporate reorganization (other than with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company), the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred, subject to approval of the City, which consent shall not be unreasonably withheld or delayed.

b. No consent from the City shall be required with respect to any dissolution, merger, consolidation or corporate reorganization solely involving the Company and any other company related to or affiliated with the Company. In such case, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of the Company shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

Section 9.2. Parties in Interest.

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Company any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Company; provided, however, that if the payment obligations of the City to the Company hereunder are held by a final and binding proceeding to be illegal or invalid, this Agreement shall terminate. In such event all obligations of the parties shall terminate, and no party shall have any further liability to the other hereunder.

Section 9.3. Severability.

Except as otherwise provided herein, in case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall

not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 9.4. No Personal Liability.

a. No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity and neither the members of the City Council of the City, or any official, officer, agent, servant or employee of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

b. No covenant, stipulation, obligation or agreement of the Company contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future director, member, officer, agent, servant or employee of the Company in his or her individual capacity and neither the directors, members, officers, agents, servants or employees of the Company shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

Section 9.5. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

Section 9.6. Governing Law.

The laws of the State of Maine shall govern the construction and enforcement of this Agreement in all respects.

Section 9.7. Notices.

All notices, certificates, requests, requisitions or other communications by the City or the Company pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, or, for any notice of an Event of Default, by registered or certified mail, return receipt requested, addressed as follows:

If to the City:

City of Portland
389 Congress Street
Portland, ME 04101
Attn: City Attorney

If to the Company:

Riverwalk, LLC
2 Market Street
Portland, ME 04101
Attn: Drew Swenson

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

Section 9.8. Amendments.

Neither this Agreement nor the Development Program may be amended without the express written consent of all of the parties hereto, which consent shall not be unreasonably withheld. Provided, however, the parties agree to amend this Agreement in order to fulfill such reasonable requirement that a lender may require in connection with financing of the Project. This Agreement may only be amended in compliance with the provisions of 30-A M.R.S.A. § 5221 et seq., as amended.

Section 9.9. Net Agreement.

It is understood that the City's payment obligations are to be satisfied solely from Retained Tax Increment Revenues actually paid in by the Company and received by the City, and earnings thereon and provided further that the City may deduct from any payment owed to the Company the administrative fee described in Section 3.8 hereof.

Section 9.10. Integration.

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Company relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

Section 9.11. Indemnification.

a. The Company agrees to defend, indemnify and hold harmless the City, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with the City's approval of the District and its preparation of and participation in this Agreement, including expenses arising from any default hereunder by the Company but excluding any such claims or expenses as may relate to actions or proceedings resulting from a default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

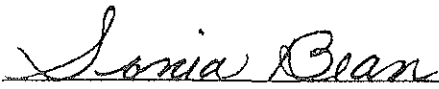
b. The City agrees to defend, indemnify and hold harmless the Company, its officers, agents and employees from any and all claims and expenses, including its attorney fees, arising out of or associated with any default hereunder by the City. This indemnification obligation shall survive termination of this Agreement or a finding that this Agreement is void or invalid.

Section 9.12. Waiver of Recapture if Agreement Found Void.

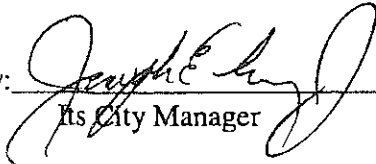
In the event this Credit Enhancement Agreement is found void "ab initio" by a Court of law with final jurisdiction over this Agreement, City agrees to waive its rights to recapture all TIF proceeds paid to Company pursuant to this Agreement.

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers or members, as the case may be, all as of the date first above written.

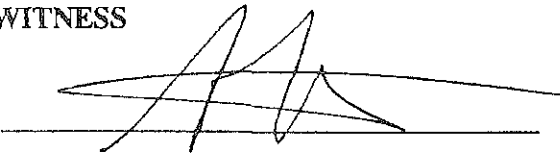
WITNESS



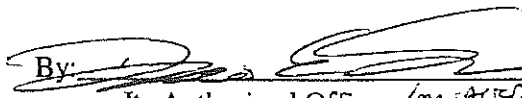
CITY OF PORTLAND, MAINE

By: 
_____ Its City Manager

WITNESS



RIVERWALK, LLC

By: 
_____ Its Authorized Officer / *MANAGER*

*Order 142-15/16
Feb 10 1-20-16*

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 ACCEPTING PUBLIC PEDESTRIAN ACCESS EASEMENT
AND GRANTING A LICENSE
RE: MIDTOWN PROJECT IN BAYSIDE**

ORDERED, that a public pedestrian access easement from FEDEQ DV001, LLC is hereby accepted in substantially the form attached hereto as Exhibit A; and

BE IT FURTHER ORDERED, that an revocable license agreement to FEDEQ DV001, LLC is hereby granted in substantially the form attached hereto as Exhibit B; and

BE IT FURTHER ORDERED, that the City Council hereby authorizes the City Manager or his or her designee to execute said documents and any other related documents necessary or convenient to carry out the intent of said documents and this Order.

MEMORANDUM
City Council Agenda Item

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

FROM: Jeff Levine, Director of Planning and Urban Development

DATE: January 5, 2015

SUBJECT: Midtown Request for Easements and Licenses

SPONSOR: Jeff Levine, Director of Planning and Urban Development

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ Final Action January 20, 2015

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

City Council action is needed on these items for the Midtown project to proceed.

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

Short presentation by Planning Board Chair. Short presentation by Planning Staff (if necessary).

Short presentation by Midtown representative.

I. ONE SENTENCE SUMMARY

Federated Companies, developer of the Midtown project, has requested City Council approval of various licenses and easements that are necessary for this development to meet certain Planning Board conditions of approval.

II. AGENDA DESCRIPTION

Federated Companies is requesting City Council approval of various licenses and easements for the Midtown project. The Midtown development received Planning Board site plan and subdivisions approval on March 3, 2015. The development was approved subject to a number of conditions including City Council approval of licenses for certain improvements within City rights-of-way and acceptance of various easements on private property. Approval of these licenses and easements is necessary for Midtown to proceed.

Licenses requested by Midtown cover a number of improvements within the public right-of-way:

1. Retaining walls, steps, ramps and planters (Somerset Street and Elm Street)
2. Stormwater treatment systems (Somerset Street and Chestnut Street)

Easements on private property include:

1. Public pedestrian walkway areas

III. BACKGROUND

The Midtown development received Planning Board site plan and subdivisions approval on March 3, 2015. The development was approved subject to a number of conditions including City Council approval of licenses for certain improvements within City rights-of-way and acceptance of various easements on private property. Approval of these licenses and easements is necessary for Midtown to proceed.

Licenses requested by Midtown cover a number of improvements within the public right-of-way:

1. Retaining walls, steps, ramps and planters (Somerset Street and Elm Street)
2. Stormwater treatment systems (Somerset Street and Chestnut Street)

Easements on private property include:

1. Public pedestrian walkway areas

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

The request supports the general Council goal to “Promote Housing Availability”.

V. FINANCIAL IMPACT

The granting of easements and licenses supports the redevelopment of the Midtown project which represents a positive impact on property tax revenue. The improvements proposed within the public right-of-way will be maintained by the developer.

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

Planning Staff recommends approval of the requested licenses and easements for the Midtown project. The licenses and easements were a condition of the Planning Board approval and must be approved by the City Council for this project to proceed. The requested licenses and easements are fairly typical for larger size peninsula projects.

VII. RECOMMENDATION

Planning Staff recommends approval of the licenses and easements since they are a critical part of the Midtown Planning Board approval. City Council approval of the licenses and easements is needed for this project to proceed. The requested licenses and easements are fairly typical for larger size peninsula projects.

VIII. LIST ATTACHMENTS

1. Proposed licenses and easements

Prepared by: Richard Knowland

Date: December 12, 2015

Bean/agendarequestmemo/rev 11/2015

PUBLIC PEDESTRIAN ACCESS EASEMENT
TO THE
CITY OF PORTLAND

KNOW ALL PERSONS BY THESE PRESENTS that FEDEQ DV001, LLC a Maine limited liability company with a mailing address of P.O. Box 370008, Miami, FL 33137 (hereinafter, "GRANTOR), in consideration of the subdivision approval granted by the Portland Planning Board for Grantor's proposed project known as 'MiDTOWN,' as well as in compliance with conditions of said approval, does hereby grant to CITY OF PORTLAND, a body politic and corporate with a mailing address of 389 Congress Street, Portland, Maine 04101 (hereinafter "GRANTEE"), the perpetual easement and rights described below on the land described below.

The purpose of said easement is to grant public pedestrian access afforded by this grant to GRANTEE as a public body authorized to acquire interests in real property for such purposes, in, on, under, and over the portions of that certain parcel of land of the Grantor identified as easement areas on Exhibits A and B attached hereto and made a part hereof, said Exhibits A and B are also to be recorded in a Plan Book at the Cumberland County Registry of Deeds. Said Easement area(s) represent those portions of the area shown as "Limited Open Space Easement(s)" on plan "Amended Subdivision/Recording Plat on Somerset Street, Portland, Maine made for Fay, Spofford & Thorndike by Owen Haskell, Inc. Falmouth, Maine" dated April 10, 2013, revised January 21, 2015, and as is more particularly described in the legal descriptions within Exhibits A and B. The function, responsibility of maintenance and repair, and ownership of all improvements within the easement areas are as more particularly described in Exhibit C, also attached hereto and made a part hereof.

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

IN WITNESS WHEREOF, GRANTOR has caused this instrument to be executed by
Jonathan Cox, its Manager, thereunto duly authorized as of the ____ day of _____, 2016.

STATE OF FLORIDA
COUNTY OF DADE, SS.

_____, 2016

Personally appeared the above named Jonathan Cox, in his capacity as Manager of
FEDEQ DV001, LLC, who acknowledged the foregoing instrument to be his free act and deed in
his capacity and the free act and deed of FEDEQ DV001, LLC.

Before me,

Name: Lloyd Cox
Notary Public

My Commission Expires: _____

EXHIBIT A

The attached Plan shows all portions of sidewalks located on private property and adjacent to the street right of way which are necessary to provide an ADA-compliant public pedestrian accessible route in satisfaction of Planning Board conditions of approval requiring the same, for that portion of the Midtown site located northeast of Chestnut Street. Immediately following and also part of this Exhibit A is a metes and bounds description for all easement areas referenced herein.

Pedestrian Access Easement over Lot 6

A certain parcel of land situated northeasterly of Chestnut Street in the City of Portland, County of Cumberland and State of Maine designated as 5' Easement area as shown on "Pedestrian Access Easement Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northeasterly sideline of Chestnut Street at the new northwesterly sideline of Somerset Street;

Thence, N 40°59'38" W along the new northeasterly sideline of said Chestnut Street 126.00 feet to land now or formerly of the City of Portland;

Thence, N 49°00'22" E along land of said City of Portland 5.00 feet;

Thence, S 40°59'38" E across Lot 6 as shown on said plan 126.00 feet to the new northwesterly sideline of said Somerset Street;

Thence, S 49°00'22" W along the new northwesterly sideline of said Somerset Street 5.00 feet to the point of beginning, containing 630 square feet more or less.

Pedestrian Access Easement over Lot 7

A certain parcel of land situated on the northwesterly side of Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as Easement Area as shown on "Pedestrian Access Easement Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street at the most easterly corner of Lot 7 as shown on said plan;

Thence, S 49°00'22" W along the new northwesterly sideline of said Somerset Street 7.67 feet;

Thence, N 40°59'38" W across said Lot 7 a distance of 4.00 feet;

Thence, S 49°00'22" W across said Lot 7 a distance of 6.00 feet;

Thence, S 40°59'38" E across said Lot 7 a distance of 4.00 feet to the new northwesterly sideline of said Somerset Street;

Thence, S 49°00'22" W along the new northwesterly sideline of said Somerset Street 48.00 feet;

Thence, N 40°59'38" W across said Lot 7 a distance of 4.00 feet;

Thence, S 49°00'22" W across said Lot 7 a distance of 89.33 feet to Lot 6 as shown on said plan;

Thence, N 40°59'38" W along said Lot 6 a distance of 5.00 feet;

Thence, N 49°00'22" E across said Lot 7 a distance of 146.00 feet;

Thence, N 40°59'38" W across said Lot 7 a distance of 142.00 feet to land now or formerly of the City of Portland;

Thence, N 49°00'22" E along land of said City of Portland 5.00 feet;

Thence, S 40°59'38" E along land of said City of Portland 151.00 feet to the point of beginning, containing 1,688 square feet more or less.

EXHIBIT B

The attached Plan shows all portions of sidewalks located on private property and adjacent to the street right of way which are necessary to provide an ADA-compliant public pedestrian accessible route in satisfaction of Planning Board conditions of approval requiring the same, for that portion of the Midtown site located southwest of Chestnut Street. Immediately following and also part of this Exhibit B is a metes and bounds description for all easement areas referenced herein.

Pedestrian Access Easement over Lot 3

A certain parcel of land situated northwesterly of Somerset Street and southwesterly of Chestnut Street in the City of Portland, County of Cumberland and State of Maine designated as 4' Wide Easement area and 5' Easement Area as shown on "Pedestrian Access Easement Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being the southeasterly corner of Lot 3 as shown on said plan;

Thence, N 63°10'10" W along the southerly line of said Lot 3 a distance of 4.32 feet;

Thence, N 49°00'22" E across said Lot 3 a distance of 434.35 feet;

Thence, N 40°59'38" W across said Lot 3 a distance of 136.00 feet to the westerly line of said Lot 3;

Thence, N 49°00'22" E along the westerly line of said Lot 3 a distance of 5.00 feet to the new southwesterly sideline of Chestnut Street;

Thence, S 40°59'38" E along the new southwesterly sideline of said Chestnut Street 140.00 feet to the new northwesterly sideline of said Somerset Street;

Thence, S 49°00'22" W along the new northwesterly sideline of said Somerset Street 437.72 feet to the point of beginning, containing 2,434 square feet more or less.

EXHIBIT C

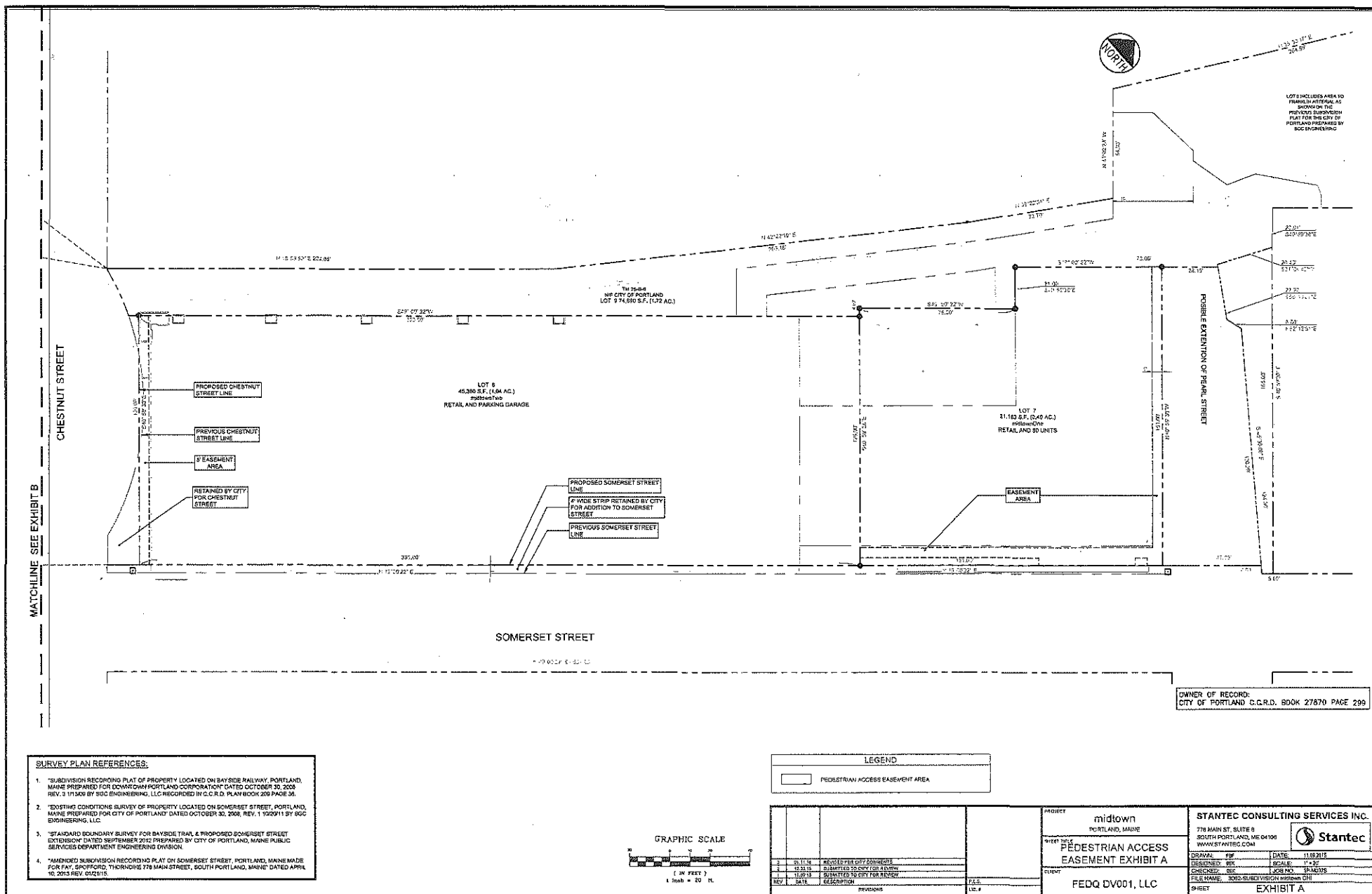
The Easement areas shall function as a public ADA Compliant sidewalk for pedestrian, bicycle and similar non-motorized pedestrian recreational uses, subject, however, to such rules or ordinances that Grantee may adopt from time to time in the interests of public safety.

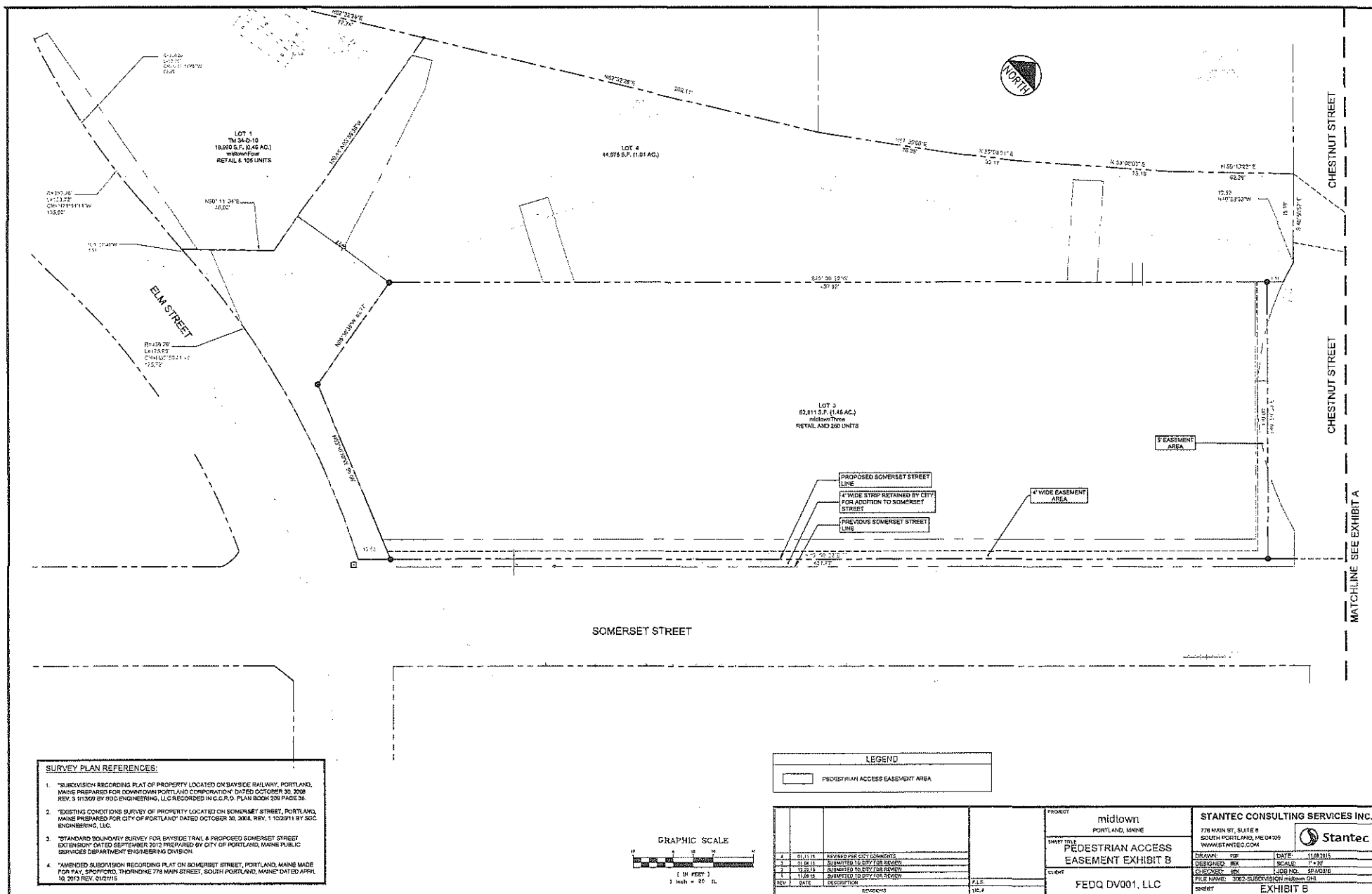
Notwithstanding the foregoing, wheelchair and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices or vehicles or equipment.

All improvements within the Easement areas shall be owned by Grantor or any party to whom or to which such property is conveyed or assigned.

Maintenance and repair responsibilities within the Easement areas shall belong to Grantor or any party to whom or to which such property is conveyed or assigned. It shall be the responsibility of the Grantor to remove snow and ice from said sidewalk and to otherwise comply with all laws, rules, regulations, and ordinances governing the removal of snow and ice. Grantee shall have the right but not the obligation to repair or maintain the easement areas when Grantee, in its sole discretion, deems such repairs or maintenance necessary to ensure public safety.

The Easement areas shall, as provided and permitted herein, be maintained as a sidewalk for the uses set forth and described herein and Grantor shall not use or permit any use, condition or state of disrepair that would be contrary to or otherwise inhibit such uses.





LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of the 20th day of January, 2016, between the **CITY OF PORTLAND**, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "City" or "Licensor"), and **FEDEQ DV001, LLC** a Maine limited liability company with a place of business in Portland, Maine and mailing address of P.O. Box 370008, Miami, FL 33137 and its successors and assigns (hereinafter the "Licensee"), who hereby agree as follows:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, a license is hereby granted to Licensee by Licensor to occupy portions of land owned by the City at, along, under, above or within portions of Elm Street, Somerset Street, Chestnut Street, Pearl Street Extension, and the Bayside Trail in the City of Portland, Cumberland County, Maine, which property abuts the property of Licensee's planning board-approved project known as 'MiDTOWN' ("Midtown" or "Licensee's Project"), described in Licensee's purchase and sale agreement with Licensor dated June 23, 2011, as amended, and as more particularly shown on that certain "Amended Subdivision/Recording Plat on Somerset Street, Portland, Maine" prepared for Fay, Spofford & Thorndike by Owen Haskell, Inc. dated April 10, 2013, revised January 21, 2015 and approved as amended by the Portland Planning Board on March 3, 2015 ("Licensee's Property"), for the purpose of permitting the encroachment of (i) Stormwater Infrastructure, and (ii) stairs, landings, planters, walls or canopies, and ramps (the "Licensed Infrastructure"), all as more fully depicted in **Exhibits A & B** attached hereto and made a part hereof (the "Licensed Areas"), said Exhibits A and B are also to be recorded in a Plan Book at the Cumberland County Registry of Deeds, together with the right from time to time to bring upon the Licensed Areas and areas adjacent thereto workers, materials and machinery necessary for the use and enjoyment of the License granted herein, all in connection with the development of Licensee's Project being developed on the Licensee's Property. Occupancy of the Licensed Areas is subject to the following conditions:

1. All work performed upon and use of the Licensed Areas by Licensee and related to the Licensed Infrastructure for the purposes set forth herein shall be at Licensee's sole cost and expense (unless otherwise agreed in writing), the parties acknowledging that there may be temporary interruptions in enjoyment of the City's property adjacent to the Licensed Areas related to the conduct of any work related to this License. Licensee agrees at its sole expense to restore any portion of the Licensed Areas and adjacent City property damaged by work conducted by Licensee related to this License to substantially its condition prior to such work, or as shown on the Site Plan (as defined below) for the Project, or as close to that condition as is reasonably practicable. Licensee, its successors and assigns, shall defend, indemnify and hold the City, its officers, agents, and employees harmless from any and all claims, including but not limited to claims for damage to City property and reasonable attorney's fees, which arise out of Licensee's use, or the use of others, of the City's property within or abutting the Licensed Areas in connection with the Licensed Infrastructure as described above.

2. At all times during the Term of this License Agreement, Licensee, its agents and assigns, specifically including, but not limited to any condominium association as soon as any unit is transferred, shall exclusively be responsible for repairing, keeping and maintaining the

Licensed Areas in a safe condition generally, by, among other things: ensuring prompt removal of, or otherwise eliminating, snow and ice from all encroachments and in a manner that does not endanger pedestrians; preventing, by design and rules and supervision, objects stored or otherwise present on the encroachments from falling or being dropped or thrown onto the City's sidewalk; repairing, replacing repairing, maintaining or removing all encroachments as necessary for public safety; taking any and all other measures necessary to protect pedestrians in the sidewalk from injury or other harm arising out of the presence of the encroachments.

3. Prior to completion of installation of any Licensed Infrastructure, Licensee shall procure and maintain liability insurance in an amount of at least Four Hundred Thousand Dollars (\$400,000) combined single limit (or the amount stated in the Maine Tort Claims Act as the same may be amended from time to time), covering claims for bodily injury, death and property damage and shall either name the City of Portland as an additional insured with respect to such coverage or shall obtain a contractual liability endorsement covering the obligations of Licensee under the terms of this license. Licensee shall provide City with evidence of such insurance coverage and shall obtain an endorsement providing City with no less than ten (10) days notice prior to non-renewal or cancellation thereof. Such notice shall be sent to City of Portland, Corporation Counsel, 389 Congress Street, Portland, ME 04101. Failure of Licensee to procure or maintain such insurance coverage shall be an Event of Revocation as set forth in section 5 below.

4. This license is assignable to any subsequent owners of the building or buildings located on the land described on the approved site and subdivision plan for Licensee's Project, Address: 59 Somerset Street, Portland, Maine, conditionally approved by the Portland Planning Board on March 3, 2015, which shall be recorded in the Cumberland County Registry of Deeds upon satisfaction of remaining conditions (the "Site Plan").

5. Subject to the provisions of Sections 6 and 7 hereof, this Agreement may be revoked six (6) months after receipt by the Licensee of written notice that an Event of Revocation has occurred, identifying such Event of Revocation, provided that such Event of Revocation is not cured within six (6) months after receipt of such notice by Licensee, or any longer period of time as agreed to in writing by the City, except as set forth in clause 3) below. "Event of Revocation" shall mean: 1) the building(s) shown on the Site Plan fail(s) to be constructed substantially in accordance with the Site Plan or any amendments thereto; 2) the building(s) as shown on the Site Plan are destroyed, removed or otherwise thereafter cease to exist on Licensee's Property and construction to rebuild said building(s) has not begun within twelve (12) months of said destruction or removal; or 3) failure to maintain insurance as required under Section 2 above, and such failure is not remedied within thirty (30) days after written notice thereof. This Licensee may be amended by the City Manager in his or her discretion as necessary to correct and/or revise the Exhibits, to more accurately show the encroachments described above that are being licensed under this Agreement.

6. Any notice of an Event of Revocation delivered pursuant to Section 5 of this Agreement must be sent by certified mail, return receipt requested to the Licensee at the address for Licensee set forth above, or at such other address as the Licensee may provide to the City in writing from time to time. Copies of any notices sent to Licensee shall also be sent to:

Jonathan Cox, via email, at j_cox@federatedcomapnies.com
Nick Wexler, via email, at n_wexler@federatedcompanies.com
Patrick Venne, via email, at p_venne@federatedcompanies.com

7. Notwithstanding any other provision herein, in the event that a notice of an Event of Revocation is delivered pursuant to Section 5 hereof, any mortgagee of Licensee's Property shall be entitled to cure the matter set forth in such notice within the time frames set forth in Section 5 hereof, and the City agrees to accept such performance by any such mortgagee of Licensee's obligations hereunder.

IN WITNESS WHEREOF, the City of Portland has caused this License to be executed by Jon P. Jennings, its City Manager thereunto duly authorized, as of the day and year first written above.

CITY OF PORTLAND

By: _____
Jon P. Jennings
City Manager

STATE OF MAINE
CUMBERLAND, ss

_____, 2015

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

Before me,

Notary Public/Attorney at Law

Print name: _____
My commission expires: _____

Seen and Agreed to:

FEDEQ DV001, LLC

BY: Jonathan Cox ,

Its: Manager

EXHIBIT A

The attached Plan shows the planters (designated "PL"), stairs, walls or canopies (designated "CAN"), landings, ramps (designated "AC" to denote access) and stormwater infrastructure (designated "SW") for the Midtown project which extend into or occupy the public right of way and that are subject to the License, for that portion of the Midtown site lying northeast of Chestnut Street. Immediately following and also part of this Exhibit A is a metes and bounds description for all licensed infrastructure referenced herein, other than planters for which the City is not requiring such a description.

AC 1

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as AC1 as shown on "Storm Water and Planter License Locations Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 6.67 feet on a course of S 49°00'22" W from the most easterly corner of Lot 7 as shown on said plan;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 3.00 feet;

S 49°00'22" W a distance of 125.58 feet;

N 40°59'38" W a distance of 3.00 feet to the new northwesterly sideline of said Somerset Street;

Thence, N 49°00'22" E along the new northwesterly sideline of said Somerset Street 125.58 feet to the point of beginning, containing 377 square feet more or less.

CAN 2

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as CAN 2 as shown on "Storm Water and Planter License Locations Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 8.12 feet on a course of N 49°00'22" E from the new northeasterly sideline of Chestnut Street;

Thence, N 49°00'22" E along the new northwesterly sideline of said Somerset Street 16.50 feet;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 7.43 feet;

S 49°00'22" W a distance of 16.50 feet;

N 40°59'38" W a distance of 7.43 feet to the new northwesterly sideline of said Somerset Street and the point of beginning, containing 123 square feet more or less.

SW 1

A certain parcel of land situated on the northwesterly side of Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 1 as shown on "Storm Water and Planter License Locations Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded bounded and described as follows:

Commencing at a point on the new northwesterly sideline of Somerset Street at the most easterly corner of Lot 7 as shown on said plan;

Thence, N 40°59'38" W along the line of said Lot 7 a distance of 1.58 feet to the point of beginning of the herein described parcel;

Thence, N 40°59'38" W from the point of beginning along the line of said Lot 7 a distance of 27.42 feet;

Thence the following courses and distances across land of the City of Portland:

N 49°00'22" E a distance of 4.75 feet

S 40°59'38" E a distance of 18.42 feet;

N 49°00'22" E a distance of 10.25 feet

S 40°59'38" E a distance of 9.00 feet;

S 49°00'22" W a distance of 15.00 feet to the point of beginning, containing 223 square feet more or less.

SW 2

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 2 as shown on "Storm Water and Planter License Locations Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 23.05 feet on a course of S 49°00'22" W from the most easterly corner of Lot 7 as shown on said plan;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 13.55 feet;

S 49°00'22" W a distance of 10.56 feet;

N 40°59'38" W a distance of 13.55 feet to the new northwesterly sideline of said Somerset Street;

Thence, N 49°00'22" E along the new northwesterly sideline of said Somerset Street 10.56 feet to the point of beginning, containing 143 square feet more or less.

SW 3

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 3 as shown on "Storm Water and Planter License Locations Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the southeasterly sideline of Somerset Street, said point being 18.26 feet on a course of S 49°00'22" W from the southwesterly sideline of Pearl Street;

Thence, S 49°00'22" W along the southeasterly sideline of said Somerset Street 31.50 feet

Thence, the following courses and distances into said Somerset Street:

N 40°59'38" W a distance of 10.00 feet;

N 49°00'22" E a distance of 31.50 feet;

S 40°59'38" E a distance of 10.00 feet to the southeasterly sideline of said Somerset Street and the point of beginning, containing 315 square feet more or less.

SW 4

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 4 as shown on "Storm Water and Planter License Locations Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the southeasterly sideline of Somerset Street, said point being 314.19 feet on a course of N 49°00'22" E from the northeasterly sideline of Chestnut Street;

Thence, the following courses and distances into said Somerset Street:

N 40°59'38" W a distance of 11.50 feet;

S 49°00'22" W a distance of 41.50 feet;

S 40°59'38" E a distance of 11.50 feet to the southeasterly sideline of said Somerset Street;

Thence, S 49°00'22" W along the southeasterly sideline of said Somerset Street 41.50 feet to the point of beginning, containing 477 square feet more or less.

SW 5

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 5 as shown on "Storm Water and Planter License Locations Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 252.77 feet on a course of N 49°00'22" E from the new northeasterly sideline of Chestnut Street;

Thence, N 49°00'22" E along the new northwesterly sideline of said Somerset Street 26.96 feet;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 15.00 feet;

S 49°00'22" W a distance of 26.96 feet;

N 40°59'38" W a distance of 15.00 feet to the new northwesterly sideline of said Somerset Street and the point of beginning, containing 404 square feet more or less.

SW 6

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 6 as shown on "Storm Water and Planter License Locations Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the southeasterly sideline of Somerset Street, said point being 114.19 feet on a course of N 49°00'22" E from the northeasterly sideline of Chestnut Street;

Thence, the following courses and distances into said Somerset Street:

N 40°59'38" W a distance of 11.50 feet;

N 49°00'22" E a distance of 56.50 feet;

S 40°59'38" E a distance of 11.50 feet to the southeasterly sideline of said Somerset Street;

Thence, S 49°00'22" W along the southeasterly sideline of said Somerset Street 56.50 feet to the point of beginning, containing 650 square feet more or less.

SW 7

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 7 as shown on "Storm Water and Planter License Locations Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 69.77 feet on a course of N 49°00'22" E from the new northeasterly sideline of Chestnut Street;

Thence, N 49°00'22" E along the new northwesterly sideline of said Somerset Street 37.49 feet;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 15.00 feet;

S 49°00'22" W a distance of 37.49 feet;

N 40°59'38" W a distance of 15.00 feet to the new northwesterly sideline of said Somerset Street and the point of beginning, containing 562 square feet more or less.

SW 18

A certain parcel of land situated within Chestnut Street in the City of Portland, County of Cumberland and State of Maine designated as SW 18 as shown on "Storm Water and Planter License Locations Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northeasterly sideline of Chestnut Street, said point being 5.19 feet on a course of S 49°00'22" W from the most westerly corner of Lot 6 as shown on said plan;

Thence, southeasterly along the previously proposed northeasterly sideline of said Chestnut Street, along a curve to the right having a radius of 135.00 feet an arc length of 3.51 feet to a point, said point being located 3.51 feet on a course of S 59°16'51" E from the point of beginning;

Thence, the following courses and distances into said Chestnut Street:

S 32°17'33" W a distance of 12.40 feet;

N 57°42'27" W a distance of 9.00 feet;

N 32°17'33" E a distance of 11.97 feet to the northeasterly sideline of said Chestnut Street;

Thence, southeasterly along northeasterly sideline of said Chestnut Street along a curve to the right having a radius of 135.00 feet an arc length of 5.50 feet to the point of beginning, said point being located 5.50 feet on a course of S 61°11'36" E from the last named point, containing 110 square feet more or less.

SW 19

A certain parcel of land situated northerly of but not adjacent to Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 19 as shown on "Storm Water and Planter License Locations Exhibit A" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at the most westerly corner of Lot 7 as shown on said plan;

Thence, N 40°59'38" W across land now or formerly of the City of Portland 5.00 feet;

Thence, N 49°00'22" E across land of said City of Portland 78.00 feet to Lot 7;

Thence, S 40°59'38" E along said Lot 7 a distance of 5.00 feet;

Thence, S 49°00'22" W along said Lot 7 a distance of 78.00 feet to the point of beginning, containing 390 square feet more or less.

EXHIBIT B

The attached Plan shows the planters (designated "PL"), stairs, walls, landings, ramps (designated "AC" to denote access) and stormwater infrastructure (designated "SW") for the Midtown project which extend into or occupy the public right of way and that are subject to the License, for that portion of the Midtown site lying southwest of Chestnut Street. Immediately following and also part of this Exhibit B is a metes and bounds description for all licensed infrastructure referenced herein, other than planters for which the City is not requiring such a description.

AC2

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as AC2 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 27.37 feet on a course of N 49°00'22" E from the northeasterly sideline of Elm Street;

Thence, N 49°00'22" E along the new northwesterly sideline of said Somerset Street 83.07 feet;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 9.00 feet;

S 49°00'22" W a distance of 83.07 feet;

N 40°59'38" W a distance of 9.00 feet to new northwesterly sideline of said Somerset Street and the point of beginning, containing 748 square feet more or less.

AC3

A certain parcel of land situated northwesterly of Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as AC3 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 2.71 feet on a course of N 49°00'22" E from the northeasterly sideline of Elm Street;

Thence, N 40°59'38" W across land now or formerly of the City of Portland 10.92 feet;

Thence, N 12°52'19" W across land of said City of Portland 10.97 feet to Lot 3 as shown on said plan;

Thence, S 63°10'10" E along said Lot 3 a distance of 22.24 feet to the new northwesterly sideline of said Somerset Street;

Thence, S 49°00'22" W along the new northwesterly sideline of said Somerset Street 13.57 feet to the northeasterly sideline of said Elm Street and the point of beginning, containing 168 square feet more or less.

CAN 1

A certain parcel of land situated northeasterly of but not adjacent to Elm Street in the City of Portland, County of Cumberland and State of Maine designated as CAN 1 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the easterly line of Lot 1 as shown on said plan, said point being 11.40 feet on a course of N 50°11'34" E from the northeasterly sideline of said Elm Street;

Thence, N 50°11'34" E along said Lot 1 a distance of 26.80 feet;

Thence, the following courses and distance across land now or formerly of the City of Portland:

S 39°48'26" E a distance of 8.00 feet;

S 50°11'34" W a distance of 26.80 feet;

N 39°48'26" W a distance of 8.00 feet to the easterly line of said Lot 1 and the point of beginning, containing 214 square feet more or less.

SW 8

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 8 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the southeasterly sideline of Somerset Street, said point being 33.81 feet on a course of S 49°00'22" W from the southwesterly sideline of Chestnut Street;

Thence, the following courses and distances into said Somerset Street:

N 40°59'38" W a distance of 15.00 feet;

S 49°00'22" W a distance of 9.00 feet;

S 40°59'38" E a distance of 6.00 feet;

S 49°00'22" W a distance of 28.43 feet;

S 40°59'38" E a distance of 9.00 feet to the southeasterly sideline of said Somerset Street;

Thence, N 49°00'22" E along the southeasterly sideline of said Somerset Street 37.43 feet to the point of beginning, containing 391 square feet more or less.

SW 9

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 9 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 10.41 feet on a course of S 49°00'22" W from the new southwesterly sideline of Chestnut Street;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 15.00 feet;

S 49°00'22" W a distance of 10.68 feet;

N 40°59'38" W a distance of 10.00 feet;

S 49°00'22" W a distance of 24.32 feet;

N 40°59'38" W a distance of 5.00 feet to the new northwesterly sideline of said Somerset Street;

Thence, N 49°00'22" E along the new northwesterly sideline of said Somerset Street 35.00 feet to the point of beginning, containing 282 square feet more or less.

SW 10

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 10 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 77.57 feet on a course of S 49°00'22" W from the new southwesterly sideline of Chestnut Street;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 2.27 feet;

S 49°00'22" W a distance of 7.00 feet;

N 40°59'38" W a distance of 2.27 feet to the new northwesterly sideline of said Somerset Street;

Thence, N 49°00'22" E along the new northwesterly sideline of said Somerset Street 7.00 feet to the point of beginning, containing 16 square feet more or less.

SW 11

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 11 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 240.76 feet on a course of N 49°00'22" E from the northeasterly sideline of Elm Street;

Thence, continuing N 49°00'22" E along the new northwesterly sideline of said Somerset Street 52.50 feet;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 15.00 feet;

S 49°00'22" W a distance of 22.50 feet;

N 40°59'38" W a distance of 10.50 feet;

S 49°00'22" W a distance of 30.00 feet;

N 40°59'38" W a distance of 4.50 feet to the new northwesterly sideline of said Somerset Street and the point of beginning, containing 472 square feet more or less.

SW 12

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 12 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Commencing at the intersection of the southeasterly sideline of Somerset Street with the northeasterly sideline of Elm Street;

Thence, N 49°00'22" E along the southeasterly sideline of said Somerset Street 182.24 feet;

Thence, N 40°59'38" W into said Somerset Street 7.50 feet to the point of beginning of the herein described parcel;

Thence, from the point of beginning the following courses and distances in said Somerset Street:

N 40°59'38" W a distance of 7.50 feet;

N 49°00'22" E a distance of 73.29 feet;

S 40°59'38" E a distance of 7.50 feet;

S 49°00'22" W a distance of 73.29 feet to the point of beginning, containing 550 square feet more or less.

SW 13

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 13 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 200.03 feet on a course of N 49°00'22" E from the northeasterly sideline of Elm Street;

Thence, continuing N 49°00'22" E along the new northwesterly sideline of said Somerset Street 7.00 feet;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 8.00 feet;

S 49°00'22" W a distance of 7.00 feet;

N 40°59'38" W a distance of 8.00 feet to the new northwesterly sideline of said Somerset Street and the point of beginning, containing 56 square feet more or less.

SW 14

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 14 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 164.27 feet on a course of N 49°00'22" E from the northeasterly sideline of Elm Street;

Thence, continuing N 49°00'22" E along the new northwesterly sideline of said Somerset Street 9.00 feet;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 9.00 feet;

S 49°00'22" W a distance of 9.00 feet;

N 40°59'38" W a distance of 9.00 to the new northwesterly sideline of said Somerset Street and the point of beginning, containing 81 square feet more or less.

SW 15

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 15 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Commencing at the intersection of the southeasterly sideline of Somerset Street with the northeasterly sideline of Elm Street;

Thence, N 49°00'22" E along the southeasterly sideline of said Somerset Street 1.97 feet;

Thence, N 40°59'38" W into said Somerset Street 8.0 feet to the point of beginning of the herein described parcel;

Thence, from the point of beginning the following courses and distances in said Somerset Street:

N 40°59'38" W a distance of 7.00 feet;

N 49°00'22" E a distance of 45.21 feet;

S 40°59'38" E a distance of 7.00 feet

S 49°00'22" W a distance of 45.21 feet to the point of beginning, containing 316 square feet more or less.

SW 16

A certain parcel of land situated within Somerset Street in the City of Portland, County of Cumberland and State of Maine designated as SW 16 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new northwesterly sideline of Somerset Street, said point being 20.05 feet on a course of N 49°00'22" E from the northeasterly sideline of Elm Street;

Thence, continuing N 49°00'22" E along the new northwesterly sideline of said Somerset Street 9.00 feet;

Thence, the following courses and distances into said Somerset Street:

S 40°59'38" E a distance of 15.00 feet;

S 49°00'22" W a distance of 9.00 feet;

N 40°59'38" W a distance of 15.00 feet to the new northwesterly sideline of said Somerset Street and the point of beginning, containing 135 square feet more or less.

SW 17

A certain parcel of land situated within Chestnut Street in the City of Portland, County of Cumberland and State of Maine designated as SW 17 as shown on "Storm Water and Planter License Locations Exhibit B" Midtown project by Stantec Consulting Services Inc. to be recorded, bounded and described as follows:

Beginning at a point on the new southwesterly sideline of Chestnut Street, said point being 109.27 feet on a course of N 40°59'38" W from the new northwesterly sideline of Somerset Street;

Thence, N 40°59'38" W along the new southwesterly sideline of said Chestnut Street 8.99 feet to a point on the previously proposed southwesterly sideline of said Chestnut Street;

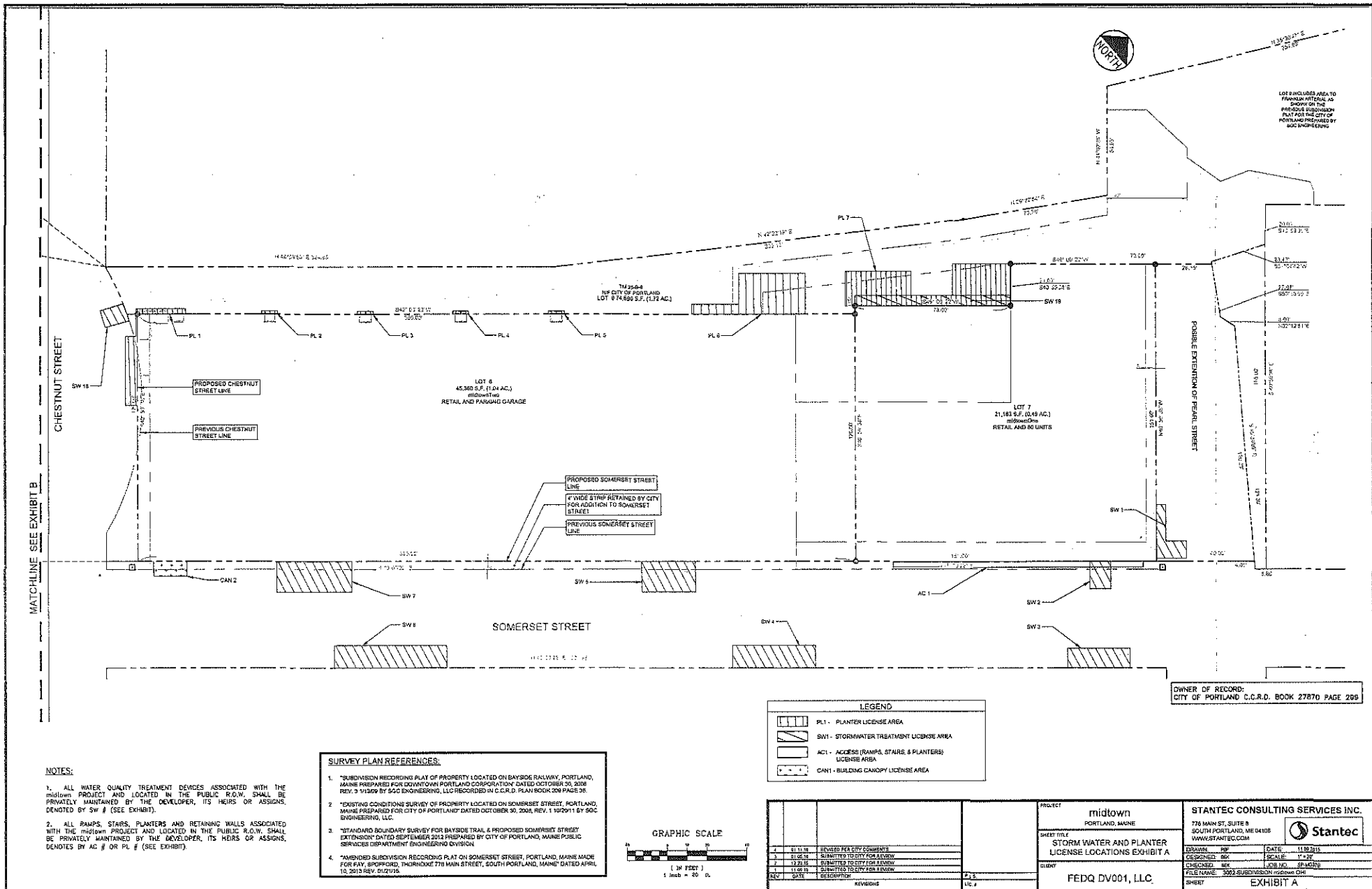
Thence, northwesterly along the previously proposed southwesterly sideline of said Chestnut Street along a curve to the right having a radius of 135.00 feet an arc length of 28.20 feet to a point, said point being located 28.15 feet on a course of N 19°24'00" W from the last named point;

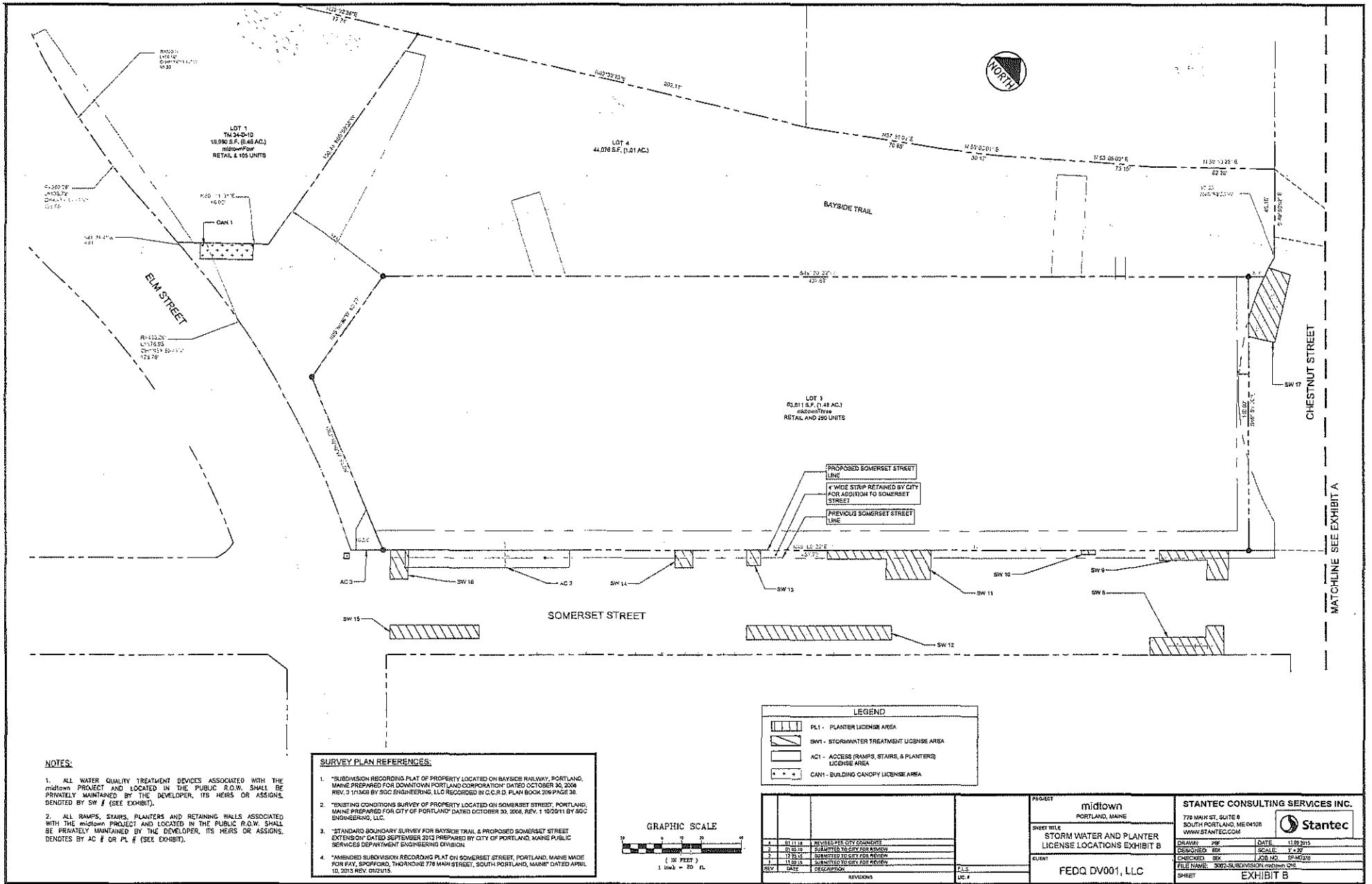
Thence, the following courses and distances into said Chestnut Street:

N 67°36'07" E a distance of 11.61 feet;

S 27°48'37" E a distance of 35.51 feet;

S 62°11'23" W a distance of 13.62 feet to the new southwesterly sideline of said Chestnut Street and the point of beginning, containing 515 square feet more or less.



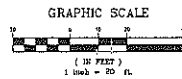


NOTES:

1. ALL WATER QUALITY TREATMENT DEVICES ASSOCIATED WITH THE MIDTOWN PROJECT AND LOCATED IN THE PUBLIC R.O.W. SHALL BE PRIVATELY MAINTAINED BY THE DEVELOPER, ITS HEIRS OR ASSIGNS, DENOTED BY SW # (SEE EXHIBIT).
2. ALL RAMPS, STAIRS, PLANTERS AND RETAINING WALLS ASSOCIATED WITH THE MIDTOWN PROJECT AND LOCATED IN THE PUBLIC R.O.W. SHALL BE PRIVATELY MAINTAINED BY THE DEVELOPER, ITS HEIRS OR ASSIGNS, DENOTED BY AC # OR PL # (SEE EXHIBIT).

SURVEY PLAN REFERENCES:

1. "SUBDIVISION RECORDING PLAT OF PROPERTY LOCATED ON BAYSIDE RAILWAY, PORTLAND, MAINE PREPARED FOR DOWNTOWN PORTLAND CORPORATION DATED OCTOBER 30, 2008 REV. 1 11/16/08 BY SSC ENGINEERING, LLC RECORDED IN C.C.P.D. PLAN BOOK 296 PAGE 38.
2. "EXISTING CONDITIONS SURVEY OF PROPERTY LOCATED ON SOMERSET STREET, PORTLAND, MAINE PREPARED FOR CITY OF PORTLAND DATED OCTOBER 30, 2008 REV. 1 10/20/11 BY SSC ENGINEERING, LLC.
3. "STANDARD BOUNDARY SURVEY FOR BAYSIDE TRAIL & PROPOSED SOMERSET STREET EXTENSION DATED SEPTEMBER 2010 PREPARED BY CITY OF PORTLAND, MAINE PUBLIC SERVICES DEPARTMENT ENGINEERING DIVISION.
4. "AMENDED SUBDIVISION RECORDING PLAT ON SOMERSET STREET, PORTLAND, MAINE MADE FOR KAY, SPOFFORD, THORNDIKE 778 MAIN STREET, SOUTH PORTLAND, MAINE DATED APRIL 10, 2015 REV. 02/20/15.



LEGEND	
	PL1 - PLANTER LICENSE AREA
	SW1 - STORMWATER TREATMENT LICENSE AREA
	AC1 - ACCESS (RAMPS, STAIRS, & PLANTERS) LICENSE AREA
	CAN1 - BUILDING CANOPY LICENSE AREA

REV	DATE	DESCRIPTION	REVISIONS
1	01/11/18	REVISED PER CITY COMMENTS	
2	01/16/18	FORWARDED TO CITY FOR REVIEW	
3	12/26/18	SUBMITTED TO CITY FOR REVIEW	
4	11/28/18	SUBMITTED TO CITY FOR REVIEW	

PROJECT midtown PORTLAND, MAINE		STANTEC CONSULTING SERVICES INC. 778 MAIN ST., SUITE 8 SOUTH PORTLAND, ME 04106 WWW.STANTEC.COM	
SHEET TITLE STORM WATER AND PLANTER LICENSE LOCATIONS EXHIBIT B		DRAWN: JPM DATE: 11/01/2015 CHECKED: BSW SCALE: 1" = 20' FILE NAME: 3002-SUBDIVISION-midtown ONE SHEET EXHIBIT B	
CLIENT FEDQ DV001, LLC		PROJECT midtown PORTLAND, MAINE	

Order 143-15/16
Tab 11 1-20-16

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 ELEMENTARY SCHOOL CONSTRUCTION PROJECT WITH
TOTAL PROJECT COSTS NOT TO EXCEED \$29,720,456 AND AUTHORIZING GENERAL
OBLIGATION BONDS IN AN AMOUNT NOT TO EXCEED \$29,720,456 THEREFORE**

FOLLOWING a public hearing of the City Council of the City of Portland, Maine, held upon due notice pursuant to Article VII, Section 9 of the City Charter, IT IS HEREBY

ORDERED THAT:

There be and hereby is authorized and approved the design, construction, furnishing and equipping of a new elementary school to replace Hall Elementary School with total project costs not to exceed \$29,720,456 (the "Project"), and that there be and hereby is authorized the issue and sale of the City's general obligation bonds in the aggregate principal amount not to exceed \$29,720,456 to finance the costs of such Project.

BE IT FURTHER ORDERED

1. That the Director of Finance be and hereby is authorized to prepare, issue, and sell such bonds in the name of and on behalf of the City, in the aggregate amount of \$29,720,456 (the "Bonds") at one time, or from time to time, as one or more separate bond issues, and to determine the date, form, minimum denomination, interest rates (as term bonds or serial bonds or some combination thereof), maturities (with the last maturity not to exceed the maximum term permitted by law) and all other details, terms and provisions, not inconsistent herewith, including the form and manner of their sale and award as he may approve, such approval to be conclusively evidenced by the execution thereof;

2. That the Director of Finance be and hereby is authorized to borrow money in anticipation of said Bonds by the issuance and sale of notes or renewal notes in anticipation of said Bonds ("BANs"), and to determine the date, form, minimum denominations, interest rate, maturities (with the last maturity not to exceed 3 years from its date of issuance) and all other details of each issue of BANs, including the form and manner of their sale and award, subject to the provisions of the law, the City Charter and this Order;

3. That the Director of Finance be and hereby is authorized to provide that any of the Bonds and BANs hereinbefore authorized be made subject to call for redemption, with or without premium, prior to their stated dates of maturity, as provided in 30-A M.R.S.A. §5772(6), as amended;

4. That any Bond or BAN issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof;

5. That the Director of Finance is authorized to negotiate, execute, and deliver, in the name of and on behalf of the City such contracts, agreements, and other documents, including leases, instruments and certificates as may be necessary or appropriate as determined and approved by the Director of Finance in connection with the financing of the Project, which documents shall be in such form and contain such terms and conditions, not inconsistent herewith, as may be approved by the Director of Finance such approval to be conclusively evidenced by his execution thereof;

6. That the Director of Finance be and hereby is authorized to select the underwriter for the Bonds or BANs heretofore authorized and the Director of Finance be and hereby is authorized and empowered to execute and deliver such contracts or agreements as may be necessary or appropriate in connection therewith;

7. That the Director of Finance be and hereby is authorized to prepare, or cause to be prepared, a Preliminary Official Statement and an Official Statement for use in the offering and sale of the Bonds or BANs heretofore authorized, such Preliminary Official Statement and Official Statement to be in such form and contain such information as may be approved by the Director of Finance, with the advice of the bond counsel for the City, and that the use and distribution of the Preliminary Official Statement and the Official Statement in the name of and on behalf of the City in connection with offering the Bonds or BANs for sale be and hereby is approved;

8. That the Director of Finance be and hereby is authorized to select the registrar, paying agent and transfer agent (the "Transfer Agent") for the Bonds or BANs heretofore authorized and to execute and deliver such contracts and agreements as may be necessary or appropriate to secure their services;

9. That the Bonds or BANs heretofore authorized shall be transferable only on the registration books of the City kept by the Transfer Agent, and said principal amount of the bonds of the same maturity (but not of other maturity) in minimum denominations of \$5,000 and any integral multiple in excess thereof upon surrender thereof at the principal office of the transfer agent, with a written instrument of transfer satisfactory to the transfer agent duly executed by the registered owner or his attorney duly authorized in writing. Upon each exchange or transfer of a bond the City and the Transfer Agent shall make a charge sufficient to cover any tax, fee or any other governmental charge required to be payable with respect to such exchange or transfer, and with respect to such exchange or transfer, and subsequent to the first exchange or transfer, the cost of preparing new bonds upon exchanges or transfer thereof to be paid by the person requesting the same;

10. That the Director of Finance be and hereby is authorized to undertake all acts necessary to provide for the issuance and transfer of such Bonds or BANs heretofore authorized in book-entry form pursuant to the Depository Trust Company Book-Entry Only System, as an alternative to the provisions of the foregoing paragraph above regarding physical transfer of Bonds or BANs, and the Director of Finance be and hereby is authorized and empowered to enter into a Letter of Representation or any other contract, agreement or understanding necessary or, in his opinion, appropriate in order to qualify the Bonds or BANs for and participate in the Depository Trust Company Book-Entry Only System;

11. That the Director of Finance and Mayor from time to time shall execute such Bonds or BANs as may be required to provide for exchanges or transfers of Bonds or BANs as heretofore authorized, all such Bonds or BANs to bear the original signature of the Director of Finance and Mayor, and in case any officer of the City whose signature appears on any Bond or BAN shall cease to be such officer before the delivery of said Bond or BAN, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery thereof;

12. That if the Bonds or BANs, or any part of them, are issued on a tax exempt basis, the Director of Finance be and hereby is authorized and directed to covenant and certify on behalf of the City that no part of the proceeds of the issue and sale of the Bonds or BANs authorized to be issued hereunder shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause such Bonds or BANs to be "arbitrage bonds" or "private activity bonds" within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended;

13. That if the Bonds or BANs, or any part of them, are issued on a tax exempt basis, the officers or officials executing the Bonds or BANs be and hereby are individually authorized to covenant and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports and take any other action that may be necessary to insure that interest on the notes will remain exempt from federal income taxation, and that the City will refrain from any action that would cause interest on the Bonds or BANs to be subject to federal income taxation;

14. That the officers executing the Bonds or BANs be and hereby are individually authorized to covenant, certify and agree, on behalf of the City, for the benefit of the holders of such Bonds or BANs, that the City will file any required reports, make any annual financial or material event disclosure, and take any other action that may be necessary to insure that the disclosure requirements imposed by Rule 15c2-12 of the Securities and Exchange Commission, if applicable, are met;

15. That any or all of the Bonds or BANs issued hereunder may be consolidated with and become a part of any other issue of temporary notes or general obligation bonds authorized to be issued by any previous or subsequent order of the City Council of the City of Portland;

16. That the term "cost" or "costs" as used herein and applied to the Project, or any portion thereof, includes, but is not limited to (1) the purchase price or acquisition cost of all or any portion of the Projects; (2) the cost of construction, building, alteration, enlargement, reconstruction, renovation, improvement, furnishing and equipping of the Projects; (3) the cost of all appurtenances and other facilities either on, above, or under the ground which are used or usable in connection with the Projects; (4) the cost of demolition, site preparation, landscaping and remodeling of any improvements or facilities; (5) the cost of all labor, materials, building systems, machinery, furnishings and equipment; (6) the cost of land, structures, real property interests, rights, easements, and franchises acquired in connection with the Projects; (7) the cost of all utility extensions and site improvements and development; (8) the cost of planning, developing, preparation of specifications, surveys, engineering, feasibility studies, legal and other professional services associated with the Projects; (9) the cost of environmental studies and assessments; (10) the cost of financing charges and issuance costs, including premiums for insurance, interest for a period not to exceed three years from the issue date of the Bonds or BANs, and for any additional period permitted under Section 148 of the Internal Revenue Code of 1986, as amended, underwriters' fees and costs, legal and accounting fees and costs, application fees, and other fees and expenses relating to the financing transaction; and (11) the cost of all other financing authorized hereunder, whether related or unrelated to the foregoing;

17. That the Director of Finance, Mayor and Clerk and other proper officials of the City be, and hereby are authorized and empowered in its name and on its behalf to do or cause to be done all such acts and things, not inconsistent herewith, as may be necessary or desirable in order to effect the issuance, sale and delivery of the Bonds or BANs hereinabove authorized;

18. That if any of the officers or officials of the City who have signed or sealed the Bonds shall cease to be such officers or officials before the Bonds or BANs so signed and sealed shall have been

actually authenticated or delivered by the City, such Bonds or BANs nevertheless may be authenticated, issued, and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds or BANs had not ceased to be such officer or official; and also any such bonds or notes may be signed and sealed on behalf of the City by those persons who, at the actual date of the execution of such Bonds or BANs, shall be the proper officers and officials of the City, although at the nominal date of such Bonds or BANs any such person shall not have been such officer or official;

19. That if the Director of Finance, Mayor or Clerk are for any reason unavailable to approve and execute the Bonds or BANs or any other documents necessary or convenient to the issuance, execution and delivery of the Bonds or BANs, the person or persons then acting in any such capacity, whether as an assistant, a deputy, or otherwise, is authorized to act for such official with the same force and effect as if such official had performed such act.

20. That the Bonds or BANs authorized by this Order are in addition to any bonds or notes previously authorized for the same or similar purposes;

21. That to the extent not payable from other funds, an amount sufficient for the payment of the annual payments of principal and interest on the Bonds or any BANs issued hereunder shall be included in the tax levy of each year until the debt represented by said Bonds or BANs is extinguished.

22. That during the term any of the Bonds (or bonds issued to refund such Bonds) are outstanding, the Director of Finance be and hereby is authorized to issue and deliver refunding bonds to refund some or all of the Bonds then outstanding, and to determine the date, form, interest rate, maturities and all other details of such refunding bonds, including the form and manner of their sale and award. The Director of Finance be and hereby is further authorized to provide that any of such refunding bonds hereinbefore authorized be made callable, with or without premium, prior to their stated date(s) of maturity, and each refunding bond issued hereunder shall be signed by the Director of Finance and by the Mayor, either or both of whose signatures may be by facsimile to the extent permitted by law, attested to by the City Clerk, under the seal of the City, and shall be in such form and contain such terms and provisions not inconsistent herewith as they may approve, their approval to be conclusively evidenced by their execution thereof.

BE IT FURTHER ORDERED that the question of whether the voters approve and ratify this Order, and the Project and the Bonds authorized hereby shall be placed upon the ballot at a municipal referendum election to be held on April 5, 2016.

TO: Jon Jennings, City Manager

FROM: Anita LaChance, Deputy City Manager

SUBJECT: City Council Orders re: New Hall Elementary School

DATE: January 5, 2016

These items would authorize the construction of a new Hall Elementary School on the existing site, at a total cost of \$29,720,456. All but \$1,390,485 of the bonded amount would be reimbursed by the State. Both the Hall School Building Committee and the Portland Board of Education voted to recommend the locally funded options. The local share of the project would be for the following purposes:

Classroom Security Upgrades	\$ 53,235
Operable Partitions	\$ 38,455
Additional Play Equipment/Outdoor Learning	\$ 49,690
Sod on Athletic Fields	\$ 37,865
Rehabilitation of Orono Rd.	\$ 31,950
LEED Certification	\$ 35,000
Middle School Sized Gym	\$ 538,090
Larger Cafeteria	\$ 346,675
Stormwater Treatment	\$ 194,525
Bond Anticipation Notes	\$ 65,000
Total	\$ 1,390,485

The existing enrollment at Hall School is approximately 440 students, and the targeted enrollment at the new school is 558 students, grades pre-k through 5. The existing school has an area of approximately 54,000 square feet, but is only a single-story building. The new school will have an area of approximately 84,890 gross square feet, and includes two classroom wings. One wing is two-story, and the other is single-story but will be designed with the structural capability to allow for a second story expansion in the future if additional student capacity is needed.

On October 9, 2015 the State Board of Education voted to approve the site design for this project. The concept design was reviewed by the State Board's construction sub-committee on January 4, 2016 and is scheduled to be approved by the entire Board on January 13, 2016.

The proposed project schedule, assuming a positive referendum outcome is for construction to begin in the late spring of 2017 with substantial completion the summer of 2018 and occupancy in the fall of 2018.



OAK POINT
ASSOCIATES

architecture
engineering
planning

MEMORANDUM

To: Portland City Council
Subject: New Construction Project
Project Name: Hall Elementary School
Date: January 6, 2016

In April 2014, the Fred P. Hall Elementary School was placed on the State Department of Education's priority list for Major Capital School Construction. Oak Point Associates was selected to be the architect for the project in the fall of 2014, and the first meeting of the Hall School Building Committee was held on January 7, 2015. Over the past twelve months Oak Point Associates, the Hall School Building Committee, the Portland Board of Public Education, and the City of Portland have been working together to develop a predominantly state-funded new school construction project. The following is a brief project description, and a summary of the activities undertaken within the past year.

Project Description

The project objective is to construct a new elementary school to replace the existing school, with a slightly larger population than the existing school. The existing enrollment at Hall School is approximately 440 students, and the targeted enrollment at the new school is 558 students. The new school will accommodate the increasing enrollment that is projected to happen as a result of the Portland Public Schools' plan to better manage population growth at the Ocean Avenue Elementary School by shifting portions of the OAES district to the Hall School district, as well as adding two pre-Kindergarten classrooms. The existing school has an area of approximately 54,000 square feet, but is only a single-story building. The new school will have an area of approximately 84,890 gross square feet (gsf), and includes two classroom wings. One wing is two-story, and the other is single-story but will be designed with the structural capability to allow for a second story expansion in the future if additional student capacity is needed. (See attached floor plans) Of the 84,890gsf, 81,220gsf is supported by state funding, and 3,670gsf is proposed as locally funded increases to gym and cafeteria size (see "Locally Funded Options" below).

The new school will be constructed on the existing Hall School site. (A preliminary look at alternate school sites within the Hall School district was conducted but no property of the size needed was found that would be located in proximity to the district population center, and with the desired characteristics of a school site.) After conducting a regional analysis that considered consolidating the Longfellow and Hall Schools, the School Board voted on June 16, 2015 to move ahead with planning for a new Hall School on the existing Hall School site.

The concept developed for the new school proposes to construct the new school adjacent to the existing school, but further back on the site to allow for better vehicular circulation (and also to allow portions of the new school to be constructed while the majority of the existing school remains open). It aims to be sensitive to the Capisic Brook Watershed, and to retain as many of the character-defining aspects of the site that have a benefit to the school and to the public (Portland Trails, for example). It includes a playground and playing fields. The concept also proposes a new school entrance for parents and staff at Riggs Street, which would alleviate traffic congestion on Orono Road, provide flexibility and

additional vehicle capacity for drop-off and pick-up. (Bus traffic would utilize Orono Road.) The project includes separate bus and parent loops, as well as a parking lot for 100 cars. (See attached site plan)

Activity Summary

Architect hired	Fall 2014
Building Committee convened	January 7, 2015
Regional Analysis completed	June 16, 2015
Site Approval by State Board of Education	December 9, 2015
Concept Approval State Board of Education	January 13, 2016 (anticipated)

An April 2016 referendum is desired, and upon successful voter approval of the project Oak Point Associates would begin development of construction documents, with the intent to put the project out to competitive bid in the Spring of 2017. (See attached Project Schedule)

Locally Funded Options

The State of Maine has specific parameters within which state funding is allocated to major capital construction projects. The Department of Education (DOE) has published guidelines and standards that set a consistent baseline standard for new schools, which communities are allowed to supplement with local funding.

Over the past several months, the building committee has been developing a list of locally funded options to improve the educational delivery within the building, improve energy efficiency, enhance the security for students and staff as well as reducing the costs associated with stormwater management. At its November 4, 2015 meeting the building committee voted to recommend that specific items be considered by the Portland Board of Public Education and Portland City Council as locally funded improvements. On December 8, 2015 the Portland Board of Public Education voted to approve the list of locally funded improvements for City Council action.

Descriptions and estimated costs for locally funded options are attached (see School Board Recommended Local Improvements summary and Construction Budget sheet).



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ASSOCIATES

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planning

Hall Elementary School

Summary-School Board Recommended Local Improvements and Final local financing requirements

January 6, 2016

The following improvements were recommended by the Portland Board of Public Education at their December 8, 2015 Meeting

Improvements Recommended by the Portland Board of Public Education

1 Classroom security upgrades	\$	53,235
2 Operable Partitions	\$	38,455
3 Additional Play Equipment/Outdoor Learning	\$	49,690
4 Sod on athletic fields	\$	37,865
5 Rehabilitation of Orono Road	\$	31,950
6 LEED Certification	\$	35,000
7 Middle School Sized Gymnasium	\$	538,090
8 Larger Cafeteria	\$	346,675
9 Stormwater Treatment	\$	194,525

Additional required Local Funding

10 BAN Interest Reserve	\$	65,000
Total	\$	1,390,485



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Hall Elementary School

Summary-Building Committee Recommended Local Improvements

January 6, 2016

Recommended improvements		
1 Classroom security upgrades	\$	53,235
Providing a safe and secure learning and work environment for all students and staff is a critical component of modern school design. Planned improvements would provide an electronic locking system that would allow designated staff members to initiate emergency lockdown procedures remotely as well as hardening of the interior vestibule doors/glass. These enhancements will be coordinated with district emergency management policies as well as first responders to ensure a comprehensive solution is obtained.		
2 Operable Partitions	\$	38,455
Staff has requested the ability to have two rooms per grade (K-5) serve as team teaching spaces. The current school has two team teaching rooms. Operable partitions would be used to allow the two classroom spaces to be combined. The existing Hall Elementary School has two teams successfully using a team teaching model for their instructional practices. DOE has listed these partitions as premium in their guidelines but have agreed to provide two as replacements for existing spaces. These locally funded partitions are in addition to those supported by DOE.		
3 Additional Play Equipment/Outdoor Learning	\$	49,690
The DOE provides \$160 per student for play equipment and very limited landscaping for the total project which typically will not be sufficient to construct outdoor learning spaces. The Playground/Outdoor Learning Spaces subcommittee has been working with the City and Hall Elementary Staff to develop a comprehensive outdoor learning plan to further the educational goals of the school and provide the much needed community play spaces. Purchase of additional equipment through the contract would provide cost savings and align equipment warranties.		
4 Sod on athletic fields	\$	37,865
The construction of the athletic fields will occur after the demolition of the existing school, in the final summer of construction. The fields are being used not only for the physical education curriculum and community athletics, but as part of the recreational space for recess and the after school recreation program. Because almost everything else has to be constructed before lawn can be seeded, seeding will likely occur in the late summer/early fall, making the field unusable for at least one year while a sustainable stand of turfgrass is established. Sod would allow the field to be used for athletics the following spring, and would be less vulnerable to accidental foot damage during the fall months, even though use of the fields for recreation and recess will be prohibited or significantly limited until roots have knit with the underlying soil.		

Hall Elementary School
Summary-Building Committee Recommended Local Improvements

January 6, 2016

5 Rehabilitation of Orono Road	\$	31,950
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Installation of a new water main on Orono Road serving the new school will require excavation and trenching of the street. The trench is estimated to be 8' wide and the road is 24' wide in total. The State will cover the cost of the trench patch but not resurfacing of the entire street. There would be savings to the city to perform this work as part of the project as the contractor will be mobilized for this work.

6 LEED Certification	\$	35,000
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The City of Portland's Code of Ordinances, Section 6-165-Green Building code establishes the energy performance requirements for construction and renovation projects in the city and aims to minimize the impact of projects on the environment, promotes healthy workplaces and conserving natural resources. Section 6-167 requires that all new construction and renovation projects over 2,000 sf that are owned or occupied by the City of Portland be certified to the LEED Silver level. DOE will not support the additional application fees and expenses relating to LEED Certification.

7 Middle School Sized Gymnasium	\$	538,090
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Review of available athletic facilities by Parks and Recreation noted a deficiency of gymnasium space for community uses. The larger gym would also provide the school and community a larger performance space. It would not be possible to enlarge the gymnasium after the completion of construction. A middle school-sized gymnasium is 2,275 square feet larger than the DOE-funded elementary school gymnasium.

8 Larger Cafeteria	\$	346,675
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Hall Elementary staff has requested that the cafeteria be sized to accommodate two lunch seatings (DOE supports a cafeteria sized for three lunch seatings). Staffing the three lunches takes away from the instructional opportunities for students because ed techs are covering 90 minutes of lunch supervision. The cafeteria is one of the most important social learning centers of an elementary school. By providing more space we could spread students out and be more responsive to unmet needs. It would be expensive to enlarge the cafeteria after the completion of construction. The cafeteria would increase in size by 1,395 square feet.

Hall Elementary School
Summary-Building Committee Recommended Local Improvements

January 6, 2016

9 Stormwater Treatment	\$	194,525
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The DOE will fund stormwater treatment necessary to obtain DEP permitting. With impending City of Portland stormwater impact fees, options to reduce the fee were evaluated to either reduce or eliminate the fee. The additional improvements utilize the infrastructure that is constructed through the State project and increases the overall system capacity. This improvement will fund treatment sufficient enough to eliminate the impact fee.

10 BAN Interest Reserve	\$	65,000
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The Maine Department of Education rules governing Major Capital Improvement Projects require that the interest between BAN and Bond are balanced. Analysis by bond counsel indicates that the current design and construction schedule will result in a deficit which is required to be a local expense.

Total	\$	1,390,485
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Portland Public Schools
Hall Elementary School
 Grades Pre-K through 5, Capacity: 558 Students

Oak Point Associates
Concept Approval
 January 13, 2015

	State/Local	Local Only & Other Funding	Total
A CONSTRUCTION			
1 Construction Estimate	\$22,091,000	\$1,077,000	\$23,168,000
	\$0	\$0	\$0
Subtotal	\$22,091,000	\$1,077,000	\$23,168,000
B ADMINISTRATIVE COSTS & RESERVES			
2 Land Purchase and Related Costs	\$1,150	\$0	\$1,150
3 Moveable Equipment	\$1,461,960	\$16,740	\$1,478,700
4 Advertising and Legal	\$167,257	\$65,000	\$232,257
5 Percent for Art	\$50,000	\$0	\$50,000
6 Project Reserves	\$75,000	\$35,000	\$110,000
7 Project Contingency	<u>\$2,209,100</u>	<u>\$107,700</u>	<u>\$2,316,800</u>
Subtotal	\$3,964,467	\$224,440	\$4,188,907
C FEES AND SERVICES			
8 Architect / Engineer Basic Services	\$1,502,188	\$73,236	\$1,575,424
9 Architect / Engineer Additional Services	\$54,000	\$0	\$54,000
10 Architect / Engineer Reimbursables	\$63,845	\$0	\$63,845
11 Site Selection	\$15,225	\$0	\$15,225
12 Permitting & Approvals	\$213,105	\$0	\$213,105
13 Survey and Soils	\$71,760	\$0	\$71,760
14 Construction Testing	\$25,000	\$0	\$25,000
15 Project Coordination	\$76,281	\$3,719	\$80,000
16 Clerk of the Works	\$167,056	\$8,144	\$175,200
17 Commissioning	\$80,944	\$3,946	\$84,890
18 Other Professional Services	<u>\$5,100</u>	<u>\$0</u>	<u>\$5,100</u>
Subtotal	\$2,274,504	\$89,045	\$2,363,549
D TOTAL PROJECT COST	\$28,329,971	\$1,390,485	\$29,720,456
E Other Funding Sources	\$0	\$0	\$0
F Maximum Bond Amounts	\$28,329,971	\$1,390,485	\$29,720,456

Portland Public Schools

Hall Elementary School

Concept Approval
December 21, 2015

PROPOSED PROJECT SCHEDULE

<u>Activity</u>	<u>Date</u>
Site Approval by State Board of Education	December 09, 2015
Concept Approval by State Board of Education	January 13, 2016
Referendum Date	April 5, 2016
Design Development Complete	October 2017
100% Construction Documents Complete	February 2017
Design & Funding Approval by State Board of Education	March 2017
Project out to Bid	March 2017
Bid Opening	May 2017
Final Funding Approval by the Commissioner of Education	Spring 2017
*Dept. of Education Established Bond Date	Spring 2018
Substantial Completion	Summer 2018
Occupancy	Fall 2018

**Bond date contingent upon Legislative appropriation.*

SQUARE FOOT SUMMARY

<u>Space Definition</u>	<u>State/Local</u>	<u>Local Only</u>	<u>Total</u>
New Construction (sf)	81,220	3,670	84,890 sf
Renovation (sf)	0	0	0 sf
Total	81,220	3,670	84,890 sf

*Order 144-15/16
Tab 12 1-20-16*

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 APPROPRIATING \$29,720,456 OF BOND PROCEEDS

IT IS HEREBY ORDERED THAT:

1. Subject to paragraph 2 below, the sum of \$29,720,456 be and hereby is appropriated to finance the design, construction and equipping of a new elementary school to replace Hall Elementary School.
2. The appropriation set forth in paragraph 1 above is and shall be contingent upon the approval by the City Council (and, as necessary, the voters of the City of Portland) of general obligation bonds for such purpose (the amount appropriated to be adjusted to reflect the principal amount of bonds so authorized) and the issuance and delivery of such bonds or notes in anticipation thereof for such purposes. The foregoing appropriations shall also be applied to issuance costs for such bonds (or notes in anticipation thereof).

Question __: Shall the Order entitled "ORDER APPROVING ELEMENTARY SCHOOL CONSTRUCTION PROJECT WITH TOTAL PROJECT COSTS NOT TO EXCEED \$29,720,456 AND AUTHORIZING GENERAL OBLIGATION BONDS IN AN AMOUNT NOT TO EXCEED \$29,720,456 THEREFORE", with provisions for early redemption as set forth in said Order be Approved?

- (a) Project Location. The new elementary school and related improvements will be located at and near 23 Orono Road, Portland, Maine.
- (b) State/Local and Non-State-Funded (Local Only) Portion of the New Elementary School. The project budget for the new elementary school and related improvement includes \$28,329,971 of state/local costs and \$1,390,485 of non-state-funded (local only) costs.
- (c) Responsibility for Bond Payments. The City is responsible for the local share of the annual principal and interest payments for the new elementary school and related improvements included in the total cost of education appropriated pursuant to 20-A M.R.S.A. §15690(1), if any, and for the annual principal and interest payments for the non-state-funded (local only) portion of the new elementary school construction project.
- (d) Additional Operating Costs. The estimated amount of the additional operating costs of the new elementary school and related improvements following completion of construction is \$_____ for the first year and \$_____ for the second year. The entire additional operating costs of the new elementary school during its first two years shall be borne by the City.

FINANCIAL STATEMENT PURSUANT TO 30-A M.R.S. § 5772(2-A)

The undersigned Director of Finance of the City of Portland hereby provides the following statement as required by 30-A MRSA §5772(2-A).

A. City Debt:

- 1. Bonds outstanding and unpaid: \$_____
- 2. Bonds authorized but unissued: _____
- 3. Bonds to be issued if the Order is approved: \$29,720,456

B. Costs:

The anticipated average interest rate on the proposed bonds is 4.00%. The actual interest rate will be determined at the time the bonds are sold. Assuming level principal payments over a twenty (20) year term, the estimated cost of the new bonds is:

Bond Principal:	\$29,720,456
<u>Estimated Interest Cost:</u>	<u>\$13,268,564</u>
Total Estimated Debt Service:	\$42,989,020

C. Validity:

The foregoing represents an estimate of costs associated with the financing and the actual costs may differ due to changes in term and maturities of the bonds and market conditions. Under Maine law, the validity of the bonds and the voters' ratification of the bonds will not be affected by any errors in the foregoing estimates and the ratification of the voters is conclusive and the validity of the bonds is not affected by reason of any variance of actual costs or total debt service from the estimates provided above.

By: _____
 Brendan T. O'Connell
 Director of Finance

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 145-15/16
Tab 13 1-20-16*

**ORDER SUBMITTING ELEMENTARY SCHOOL CONSTRUCTION PROJECT BOND
ORDER TO REFERENDUM**

WHEREAS, contemporaneously herewith the City Council adopted an order authorizing the design, construction, furnishing and equipping of a new elementary school to replace Hall Elementary School with total project costs in the aggregate not to exceed \$29,720,456 (the "Project"), and further authorizing issuance of the City's bonds in an amount not to exceed \$29,720,456 to finance the costs of the Project (the "School Order") and

WHEREAS, Article VII, Section 16 of the City Charter and 20 M.R.S.A. §15904 require that the School Order be submitted to the voters of the City following a public hearing;

WHEREAS, the City Council held a public hearing on the School Order at its regular meeting held February 1, 2016;

NOW, THEREFORE, BY THE CITY COUNCIL OF THE CITY OF PORTLAND BE IT HEREBY ORDERED:

THAT the City Council hereby submits to the legal voters of the City of Portland in accordance with Article VII, Section 16 of the City Charter and 20-A M.R.S.A. §15904, a proposition for the enactment of the School Order substantially in the form attached hereto as Exhibit A.

THAT the referendum questions be submitted to the voters at a special municipal election to be held on April 5, 2016, for the purpose of voting for or against the enactment of such School Order and the authorization of the project and the financing provided for therein.

THAT the City Manager, Director of Finance and Clerk be and hereby are authorized and directed to undertake all action necessary or appropriate to place said School Order before the voters at such election.

*Order 146-15/16
Tab 14 1-20-16*

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 ACCEPTING AN EASEMENT OPTION
FOR PUBLIC ACCESS
AT THE PORTLAND COMPANY HISTORIC DISTRICT**

ORDERED, that a Public Access Easement Option from CPB2 LLC to allow public access at the Portland Company Historic District is hereby accepted in substantially the form attached hereto; and

BE IT FURTHER ORDERED, that the City Manager or his or her designee is authorized to exercise the Easement Option as set forth in paragraph 4 of the Easement Option upon Corporation Counsel's approval of the public access easement.

PUBLIC ACCESS EASEMENT OPTION

This PUBLIC ACCESS EASEMENT OPTION is dated as of _____, 2016 (the "Effective Date"), by and between **CPB2 LLC**, a Delaware limited liability company having a mailing address of c/o CPB2 Management LLC, P.O. Box 7987, Portland, Maine 04112 ("Grantor"), and the **CITY OF PORTLAND**, a body politic and corporate having a mailing address of 389 Congress Street, Portland, Maine 04101 ("Grantee" or "City").

WHEREAS, Grantor is the owner of that certain real property known as 58 Fore Street in the City of Portland, County of Cumberland and State of Maine, which is more particularly described in deeds dated July 19, 2013 and April 1, 2014 and recorded in the Cumberland County Registry of Deeds in Book 30879, Page 75 and Book 31425, Page 267 respectively ("Grantor's Property"); and

WHEREAS, the existing improvements on Grantor's Property include, among other things, buildings associated with the former Portland Company; and

WHEREAS, the City has designated a portion of Grantor's Property as the Portland Company Historic District and has designated certain, existing buildings within the Historic District as contributing and non-contributing; and

WHEREAS, Section 14-610(d) of the City's Land Use Code requires the City Council to consider the effect of historic district designation on other aspects of the City's comprehensive plan; and

WHEREAS, the Statement of Principles in the Eastern Waterfront Master Plan lists several principles and objectives which are to be treated with equal value and applied uniformly; and

WHEREAS, the objectives of the Eastern Waterfront Master Plan include, but are not limited to the following: "encourage historic preservation and the adaptive reuse of historic structures;" "increase public use of the water, waterfront and shore through public access and green space development;" and "encourage public physical and visual access to the water where appropriate;" and

WHEREAS, in recognition of and consistent with the objectives of the Eastern Waterfront Master Plan, the Grantor has agreed to provide the City with a fifty-foot wide public access easement across Grantor's Property from Fore Street to the southerly boundary of the Grantor's Property in the location set forth below in order to provide physical and visual public access to the water for pedestrians; and

WHEREAS, the existence of physical and visual public access across the Property in the location set forth below informed the City's conclusion that its delineation of the District boundaries and its determination as to contributing and non-contributing structures are consistent with the City's Eastern Waterfront Master Plan;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee, intending to be legally bound hereby, do hereby agree as follows:

1. GRANT OF OPTION. Subject to the terms and conditions contained herein, Grantor hereby grants, bargains, sells, conveys and delivers unto Grantee a binding, exclusive and irrevocable option (the "Option") to acquire an easement on a portion of Grantor's Property for the purpose of providing physical and visual public access to the water for pedestrians (the "Public Access Easement").

2. EASEMENT AREA and TERMS.

(a) The location of the Public Access Easement described herein shall be determined as follows:

(i) Easement Area A: If Grantor or its successor or assign shall remove Building 1, the Public Access Easement shall be located on and over a fifty (50) foot wide portion of Grantor's Property traversing a portion of the footprint of former Building 1, and extending from Fore Street to the southerly boundary of Grantor's Property ("Easement Area A"), subject to the provisions of Paragraph 2(b).

(ii) Easement Area B: If Grantor or its successor or assign elects not to remove Building 1 for any reason, the Public Access Easement shall be on and over a fifty (50) foot wide portion of Grantor's Property lying westerly of the building commonly known as "Building 2," and extending from Fore Street to the southerly boundary of Grantor's Property ("Easement Area B"), subject to the provisions of Paragraph 2(b).

(b) Grantor and Grantee agree that the above descriptions of Easement Area A and Easement Area B are intended to be general in nature and that the final location and configuration of the Public Access Easement shall be determined by Grantor in Grantor's reasonable discretion, subject to approval by the Portland Planning Board and Corporation Counsel's office.

(c) Before either (i) the submission of a site plan application by Grantor or its successor or assign for the portion of Grantor's Property that includes the Public Access Easement or (ii) the submission of an application by Grantor or its successor or assign for a demolition permit to demolish Building 1, Grantor or its successor or assign shall negotiate the terms of the Public Access Easement with Grantee. The parties agree to include in the Public Access Easement terms that are consistent with the terms contained in the draft easement attached hereto as Exhibit A. Grantor and Grantee agree to negotiate in good faith to finalize the Public Access Easement within sixty (60) calendar days after Grantee's receipt of the first draft of the Public Access Easement.

(d) At any time on or before either (i) the submission of a site plan application by Grantor or its successor or assign for the portion of Grantor's Property that includes the Public Access Easement or (ii) the submission of an application by Grantor or its successor or assign for a demolition permit to

demolish Building 1, Grantor shall submit to the Grantee the negotiated Public Access Easement containing the terms and conditions set forth herein and other customary provisions.

3. OPTION TERM. The term of the Option shall commence when (i) the date when Grantor or its successor or assign has received final site plan approval by the Portland Planning Board for the portion of Grantor's Property that includes the Public Access Easement or (ii) the date when Grantor or its successor or assign has received a demolition permit for Building 1, whichever occurs first, and when all applicable appeal periods have expired without an appeal being filed (or, if an appeal has been timely filed, the appeal has been fully adjudicated). The term of the Option shall expire ninety (90) calendar days thereafter (the "Option Term"). If Grantee does not exercise the Option within the Option Term in the manner set forth in Paragraph 4, then the Option shall automatically expire, but Grantor's right to remove Building 1 shall not be affected by such expiration. In no event shall Grantor remove Building 1 prior to Grantee's exercise of the Option or prior to the expiration of the Option Term, whichever occurs first.

4. OPTION EXERCISE. Grantee shall exercise this Option on or before the expiration of the Option Term by (i) executing and acknowledging, without amendment, the final Public Access Easement previously executed and acknowledged by Grantor or its successor or assign, and (ii) delivering the same to Grantor or its successor or assign for recordation, without any reservation or any condition other than, if applicable, the finalization of the location of the Public Access Easement. Grantor and Grantee shall further sign and deliver, together with the Public Access Easement, such other forms and documents as may be customary or required by state and/or federal law in order to effect the transaction contemplated herein.

5. MISCELLANEOUS.

(a) Execution by Both Parties: This instrument shall not become effective and binding until fully executed by both Grantor and Grantee. This instrument may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

(b) Notice: Grantee, its successors and assigns, shall at all times keep Grantor advised of the representative of Grantee who will handle inquiries and notifications. All notices and other communications required or permitted to be delivered hereunder shall be in writing and delivered in hand or mailed postage prepaid, by United States mail, or by electronic mail to the parties or their agents, with evidence of receipt by the primary addressee, at the following addresses or to such other address as the person to whom notice is to be given may have previously furnished to the other in writing in the manner set forth above:

IF TO GRANTOR: CPB2LLC
c/o CPB2 Management LLC
P.O. Box 7987
Portland, Maine 04112

WITH COPY TO: Bernstein, Shur, Sawyer & Nelson, P.A.
Attention: Mary E. Costigan, Esq.
100 Middle Street, West Tower

Portland, Maine 04101

IF TO GRANTEE:

City of Portland
Attention: _____
389 Congress Street
Portland, Maine 04101

WITH COPY TO:

(c) Governing Law: This instrument shall be governed by and construed in accordance with the laws of the State of Maine.

(d) Successors and Assigns: This instrument shall apply to, inure to the benefit of and be binding upon and enforceable against the parties hereto and their respective heirs, successors, and or assigns, to the extent as if specified at length throughout this instrument.

(e) Time: Time is of the essence of this agreement.

(f) Cost of this Agreement: Any cost and/or fees incurred by the Grantor or Grantee in preparing and executing this Agreement shall be borne by the respective party incurring such cost and/or fee, other than as provided herein.

(g) Amendments: This instrument may not be modified or amended unless such amendment is set forth in writing and executed by both Grantor and Grantee.

(h) Severability: In the event that any of the provisions of this instrument are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized representatives as of _____, 2016.

WITNESS:

CPB2LLC

By: _____

Print Name:

Its:

WITNESS:

CITY OF PORTLAND

By: _____

Print Name:

Its:

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2016

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

Before me,

Print Name:

Notary Public/Attorney-at-law

My Commission Expires:

DRAFT PUBLIC ACCESS EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that _____, a Maine limited liability company with a place of business in Portland, Maine and mailing address of _____ Portland, ME, 04101 (the "Grantor"), FOR CONSIDERATION PAID, hereby GRANTS to the CITY OF PORTLAND, a Maine body corporate and politic, with a mailing address of City Hall, 389 Congress Street, Portland, Maine 04101 (the "Grantee" or the "City"), a public access easement for the purpose described below, over portions of Grantor's property at _____ in Portland, Maine, more particularly described in Exhibit A attached hereto and as depicted in the drawing attached hereto as Exhibit B and made a part hereof (the "Easement Area").

The purpose of the public access easement granted herein is to provide physical and visual public access to the waterfront for pedestrians within the Easement Area, which access shall include an ADA compliant access way for pedestrians, subject, however, to such rules or ordinances that Grantee may adopt from time to time in the interests of public safety; and provided that wheelchair access to the access way shall be provided on the southern end of the Easement Area. Notwithstanding the foregoing, wheelchairs and emergency vehicles as well as snow removal equipment shall be permitted in accordance with applicable federal and/or state laws regulating accessibility for such devices, vehicles or equipment. Maintenance, repair and snow removal responsibilities within the Easement Area shall belong solely to the Grantor, its heirs and assigns; however, Grantee shall have the right, but not the obligation, to maintain or repair the Easement Area, or to remove snow therefrom, when Grantee, in its sole discretion, deems such maintenance, repair or snow removal necessary to ensure public safety and Grantor has failed to perform the same within a reasonable time after notice from Grantee.

Grantor agrees not to use or permit any use, condition or state of disrepair that would be contrary to or otherwise unreasonably interfere with the use of the Easement Area by pedestrians in the manner contemplated herein.

This easement is given for recreational use and the Grantor and Grantee claim the rights and protections against liability in accordance with Title 14 MRS §159-A to the maximum extent permitted by law.

TO HAVE AND TO HOLD the aforegranted and bargained public access easement, with all privileges and appurtenances thereof, to the Grantee, its successors and assigns, to its and their use and behoof, forever.

IN WITNESS WHEREOF, _____, the Grantor has caused this instrument to be executed by _____, its _____ thereunto duly authorized, this ____ day of January, 2016.

*Order 147-15/16
Feb 15 1-20-16*

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 DESIGNATING PORTLAND COMPANY AS A HISTORIC DISTRICT
AND AMENDING THE MAP OF HISTORIC DISTRICTS**

WHEREAS, the City Council is authorized pursuant to Portland City Code Chapter 14, Section 622 to designate a defined area in the City as an historic district; and

WHEREAS, the Portland Historic Preservation Board and Planning Board have both recommended the designation of the Portland Company Historic District; and

WHEREAS, the designation of the Portland Company Historic District will fulfill a stated objective of the Comprehensive Plan to protect the City's historic resources through ongoing identification and designation of eligible landmarks and districts; and

WHEREAS, the designation of the Portland Company Historic District will fulfill the stated objectives of the Eastern Waterfront Master Plan to increase public use of the water, waterfront and shore through public access and green space development and encourage public physical and visual access to the water where appropriate by the grant and acceptance of a fifty (50) foot wide public access easement in favor of the City from Fore Street across the site to the waterfront, thereby creating high quality public access; and

WHEREAS, the designation will formally recognize the unique history of the Portland Company, founded in 1846 in conjunction with the construction of the Atlantic & St. Lawrence Railroad built to connect Portland to Montreal, and it remained in operation at its 58 Fore Street location for 137 years until its closing in 1982; and

WHEREAS, the designation will prevent the demolition of identified historic structures within the Portland Company district; avoid the incremental loss of character that can occur through inappropriate building alterations and additions over time; and encourage new infill development that is compatible with the neighborhood's historic character;

NOW THEREFORE BE IT HEREBY ORDERED that, pursuant to Chapter 14, Section 622, the Portland City Council hereby designates a portion of the Portland Company property, as shown on the attached map, as the Portland Company Historic District; and

BE IT FURTHER ORDERED, that, pursuant to Chapter 14, Section 622, the Portland City Council hereby designates the buildings located within the Portland Company Historic District as either contributing or non-contributing, as shown on the attached map; and

BE IT FURTHER ORDERED, that notwithstanding its non-contributing designation, "Building 1," as depicted on the attached map, shall not be eligible for a demolition permit until such time as the Easement Option granted by CPB2 LLC has been exercised by the City or has expired; and

BE IT FURTHER ORDERED, that the map of Historic Districts with Landmarks and Historic Landscape Districts is hereby amended to include the Portland Company Historic District as set forth on the attached map.

MEMORANDUM
City Council Agenda Item

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

FROM: Stuart O'Brien, City Planning Director
Deborah Andrews, Historic Preservation Program Manager

DATE: January 6, 2016

SUBJECT: Recommendation to Designate Portland Company Historic District

SPONSOR: Portland Planning Board, Elizabeth Boepple, Chair

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading January 20, 2016 **Final Action** February 1, 2016

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

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

Not applicable (1st reading only)

I. ONE SENTENCE SUMMARY

The Planning Board is recommending that a portion of the Portland Company complex at 58 Fore Street be designated a local historic district subject to the provisions of Portland's historic preservation ordinance.

II. AGENDA DESCRIPTION

The Planning Board is recommending that a portion of the Portland Company complex at 58 Fore Street be designated a local historic district subject to the provisions of Portland's historic preservation ordinance (Article IX of the Land Use Code). The Planning Board's recommendation is pursuant to a recommendation forwarded by the Historic Preservation Board. In the case of a nominated historic district, the historic preservation ordinance requires sequential review by the Historic Preservation Board and Planning Board prior to consideration by the City Council. The Historic Preservation Board's role in historic district deliberations is to determine whether the nominated historic district meets the designation criteria of the historic preservation ordinance, which address both the significance of the nominated resource as well as its integrity, including integrity of condition. Based upon its analysis, the Historic Preservation Board recommends district boundaries and assigns building classifications identifying which buildings warrant preservation and which, by virtue of condition or lack of significance, may be removed. The Planning Board's role in the designation process is to confirm whether the designation

criteria in the historic preservation ordinance have been met and to consider the effect of such designation on other aspects of the Comprehensive Plan.

The Planning Board's recommendation regarding designation of a Portland Company Historic District amends that of the Historic Preservation Board. The Planning Board is recommending a revised historic district involving both an area at the core of the property as well as an additional building located on the property's Western Boundary, as indicated on the revised map attached to the Planning Board's recommendation. The Planning Board is also recommending that Building #1, which the Historic Preservation Board recommended classifying as a contributing structure, be reclassified as a noncontributing structure. The Planning Board's recommendation for amended district boundaries and for reclassification of Building #1 is related to a finding by the Board that the goals of the Comprehensive Plan would be better achieved through the creation of a smaller district and the execution of a fifty (50) foot wide public access easement in favor of the City from Fore Street across the site to the waterfront. In addition, the Planning Board is also recommending an amendment to the historic preservation ordinance making explicit that building heights in the Portland Company Historic District be controlled by the underlying zoning and not by historic preservation ordinance review standards as they pertain to regulation of building heights. The Historic Preservation Board did not take a position as to the regulation of building height.

III. BACKGROUND

The Portland Company was founded in 1846 in conjunction with the construction of the Atlantic & St. Lawrence Railroad which was built to connect Portland to Montreal. The company remained in operation at its 58 Fore Street location for 137 years, until its closing in 1982. The Portland Company was the first locomotive works in the country to bring all the necessary shops and a foundry together in a single facility. Putting all stages of large machinery production in one location was a radical advance over traditional practices and contributes to the complex's significance. In addition to the extraordinary volume of locomotives, engines, cars and other railroad-related items it produced, the Portland Company manufactured and installed marine engines, boilers, navigational aids and other equipment for hundreds of vessels constructed at shipyards throughout Maine and other parts of the country. The company also produced numerous vessels from the keel up, including tugboats, fireboats, freighters, fishing vessels, and ferries. Beyond these two initial areas of focus, the Portland Company produced essential equipment for Maine's paper, textile and canning industries, as well as numerous other industries throughout the country.

The Portland Company was the state's largest 19th century foundry/machine shop and is the only intact 19th/early 20th century industrial complex remaining in the city. Based on the complex's significance at the local, state and national level, the Maine Historic Preservation Commission determined in 1976 that the Portland Company complex was eligible for listing in the National Register of Historic Places. In 1990, when Portland's historic preservation program was established, the Portland Company complex was specifically identified as eligible for local designation. The current owners of the property were informed of the complex's eligibility for local historic district designation and of the Planning & Urban Development Department's interest in pursuing designation prior to their purchase of the property.

The recommendation now before the Council follows a review process that began in September 2014. The Historic Preservation Board's and Planning Board's deliberations were aided by a detailed report prepared by a preservation consultant on the complex's history and significance, as well as two building condition assessments prepared structural engineers.

IV. INTENDED RESULT AND OR COUNCIL GOAL ADDRESSED

Designation of a Portland Company Historic District fulfills a stated objective of the Comprehensive Plan, which calls for the protection of Portland's historic resources through the ongoing identification and designation of eligible landmarks and districts.

V. FINANCIAL IMPACT

Final resolution of the issue of what, if any, portion of the site to designate, will inform the redevelopment of this complex. Any redevelopment of the complex is likely to have significant positive financial impacts for the City in terms of net tax revenues and the economic multiplier effect of the development.

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

See Planning Board report, with attachments, including the Historic Preservation Board recommendation.

VII. RECOMMENDATION

Staff sees merit in designating a portion of the complex given the level of significance of the Portland Company complex at a local, state and national level. The preservation of Portland's unique resources and character has a proven track record as a community and economic development tool. Considering the scope of the City's goals for the area, however, that designation must be balanced with other public policy goals. The Council will need to make a decision on the scope and size of the proposed historic district, recognizing that the Planning Board and Historic Preservation Board are not in full agreement regarding the scope of the district. Specifically, they offer different recommendations on district boundaries and the preservation status of Building #1. The Preservation Board did not recommend designating the entire complex but recommends preserving 8 of 16 extant structures on the site and creating a single contiguous district that includes Building #1 as a contributing structure. The Planning Board recommends a smaller historic district, excluding Building #1 as a contributing structure, based on the Planning Board's finding that the Eastern Waterfront Master Plan places significant emphasis on providing physical and visual access from Fore Street to the waterfront as part of any property redevelopment within the eastern waterfront. The Planning Board found that amending the historic district proposal is appropriate in order to guarantee, by way of an easement benefitting the City, the Comprehensive Plan's goals of high quality public access from Fore Street across the site.

VIII. LIST ATTACHMENTS

1. 1/5/16 Planning Board Report--Recommendation to Designate Portland Company Historic District, 58 Fore Street

Report Attachments

- A. Map - Portland Company Historic District Boundaries and Building Classifications as recommended by the Planning Board at 10/27/15 public hearing
- B. Formal Findings and Recommendation of the Planning Board as voted upon at 10/27/15 public hearing
- C. Map - Portland Company Historic District Boundaries and Building Classifications as recommended by the Historic Preservation Board at its June 27, 2015 public hearing
- D. Staff Report for 10/27/2015 Public Hearing - Recommendation of Historic Preservation Board to Designate Portland Company Historic District. Report includes following attachments:
 - 1. Proposed Historic District Map with Boundaries and Individual Building Classifications
 - 2. Portland Company Historic District Designation Report

Attachments prepared in response to questions raised at PB's 7/28 Workshop

- 3. 9/2/15 Memo from Scott Hanson, Sutherland Conservation & Consulting, regarding Building 1
- 4. 9/4/15 Letter from Al Hodson, Resurgence Engineering, re: condition of Buildings 1 and 16
- 5. 9/4/15 Letter from Maine Historic Preservation Commission
- 6. 8/26/15 letter from Mary Costigan on behalf of CPB2

Information and Public Comment received since 9/8

- 7. Staff memo summarizing HP Board's 10/21/15 review of latest condition report prepared by Becker Structural Engineers
 - a. Staff memo for 10/21/15 HP Board review
 - b. October 13, 2015 report from Becker Structural Engineers
 - c. Copy of GPL testimony at 10/21 meeting
- 8. Compilation of most recent public comment

- E. Easement proposed by CPB2

Supplemental Information

- F. Introductory remarks of Historic Preservation Board member John Turk at 10/27/15 Planning Board public hearing
- G. Proposed historic district boundaries and building classifications as presented by CPB2 on 10/27/15

- H. Planning Board report filed in Clerk's office following 10/27 public hearing
- I. Excerpts from Portland's historic preservation ordinance (Article IX of the Land Use Code).
- J. *The Portland Company: Historic Significance and Integrity*, prepared for City of Portland by Sutherland Conservation & Consulting
- K. *Portland Company Complex General Building Condition Report*, prepared for City of Portland by Resurgence Engineering and Preservation Inc.
- L. Evaluation of *Existing Buildings at the Portland Company Property*, prepared for CPB2 by Becker Structural Engineers
- M. Appendix A: Comparative Condition/Cost Analysis (excerpted from Resurgence report)
- N. March 31, 2014 Letter from Maine Historic Preservation Commission regarding eligibility of Portland Company Complex for Listing in the National Register of Historic Places

Prepared by: Stuart O'Brien, City Planning Director
Date: January 5, 2016

Bean/agendarequestmemo/rev 11/2015



PLANNING BOARD REPORT PORTLAND, MAINE

Recommendation of Planning Board regarding Designation of Portland Company Historic District 58 Fore Street

Submitted to: Portland City Council	Prepared by: Stuart O'Brien, City Planning Director Date: January 6, 2016
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I. INTRODUCTION

On October 27, 2015 the Planning Board voted 5-0 (Hall absent) to recommend to the City Council that a portion of the Portland Company building complex at 58 Fore Street be designated a local historic district subject to the protections and provisions of Portland's historic preservation ordinance. A map illustrating the Planning Board's recommended boundaries for the Portland Company Historic District is enclosed as **ATTACHMENT A**. Note that the map includes a legend with recommended classifications for each building within the proposed district boundaries (i.e. "contributing", "noncontributing"). The Board's findings and formal recommendation are recorded in **ATTACHMENT B**. A description of the Planning Board's October 27th public hearing including summaries of introductory presentations made to the Board, information and clarification provided by staff, a breakdown of public comment, discussion of the Planning Board's deliberations and the stated basis for its final recommendation is provided in Section II of this report. Pursuant to ordinance requirements, a report of the Planning Board's decision was posted in the City Clerk's office within 10 days of the public hearing. This report has been amended for purposes of clarity and to eliminate typographical errors. The version of the report filed in the Clerk's office is included as **ATTACHMENT I**.

The Planning Board's consideration of a Portland Company Historic District was pursuant to a formal recommendation forwarded by the Historic Preservation Board. (In the case of a nominated historic district, the historic preservation ordinance requires review by both the Historic Preservation Board and the Planning Board prior to consideration by the City Council.) The Historic Preservation Board began its analysis of a potential Portland Company Historic District in September 2015 and, following four workshops and two site visits, held a public hearing and voted on a formal recommendation on June 27, 2015. The Historic Preservation Board's recommended historic district boundaries and building classifications are shown in **ATTACHMENT C**. A detailed description of the Historic Preservation

Board's review process, findings and formal recommendation is provided in the staff report prepared for the Planning Board's October 27th public hearing. (See ATTACHMENT D.)

The Historic Preservation Board's role in historic district designation deliberations is to determine whether the nominated historic district meets the designation criteria included in Division 3 of the historic preservation ordinance. These criteria address both the *significance* of the nominated resource as well as its *integrity*, including integrity of condition. The HP Board must first address the merits of the overall resource or area nominated for designation—in this case, the Portland Company *building complex*. Following consideration of the overall district, the Board takes up the question of relative significance and integrity of *individual buildings within the district*. Based upon this analysis and following guidelines established by the National Park Service, the Historic Preservation Board is charged with delineating boundaries for the recommended historic district and assigning building classifications, identifying which buildings warrant preservation and which, by virtue of poor condition or lack of significance, may be removed. The Historic Preservation Board is also required to prepare a Designation Report on the proposed district which summarizes the district's history, areas of significance and visual character. (The Portland Company Historic District Designation Report is enclosed as ATTACHMENT G.2)

The Planning Board's role in the historic district designation process is to confirm whether the Historic Preservation Board's recommended historic district meets all applicable designation criteria of the historic preservation ordinance and that proposed district boundaries and building classifications are clearly defensible. The Planning Board also considers the effect of such designation on other aspects of the Comprehensive Plan. Based on its findings, the Planning Board forwards its own recommendation to the City Council, which has the final authority as regards local designation of nominated historic properties.

As noted in the following section of this report, the Planning Board's recommendation regarding the designation of the Portland Company complex as a local historic district differs from that of the Historic Preservation Board. The Planning Board is recommending a smaller contiguous historic district on the east side of the current entrance yard and a second "subdistrict" on the western boundary of the property. The subdistrict consists of one building (Building #12). The Planning Board is also recommending that Building #1 (the Erecting Shop), which was classified by the HP Board as a contributing structure, be reclassified as a noncontributing structure. The Planning Board's recommendation for amended district boundaries and for reclassification of Building #1 is contingent upon the execution of a fifty (50) foot wide public access easement in favor of the City from Fore Street across the site to the waterfront (See ATTACHMENT E). The Planning Board is also recommending adoption of a design guideline specific to the Portland Company Historic District making explicit that building heights in the district will be controlled by the underlying zoning (recently adopted by the Council) and not by historic preservation ordinance review standards as they pertain to regulation of building heights.

II. SUMMARY OF 10/27 PLANNING BOARD PUBLIC HEARING AND DELIBERATIONS

On October 27, 2015, the Planning Board held a public hearing on the recommendation forwarded by the Historic Preservation Board to designate a portion of the property at 58 Fore Street as a local historic district. The Planning Board's public hearing followed one workshop on the designation proposal, held on July 28th. The public hearing had originally been scheduled for September 8th, but was postponed at the request of the property owner to provide more information regarding the status of Building #1 within the proposed historic district boundaries. In agreeing to table the public hearing, the Planning Board requested that the property owner present any supplemental information to the HP Board before the Planning Board's rescheduled public hearing to provide an opportunity for HP Board comment. The supplemental information was presented to the HP Board on October 21. The property owner's supplemental information, as well as the HP Board's response to the new information was provided to the Planning Board as part of the 10/27 public hearing report. (See **ATTACHMENT D, # 7.**)

The proposed Portland Company Historic District as recommended by the Historic Preservation Board encompasses 4.3 acres of the 9.93 acre parcel at 58 Fore Street. Of the sixteen (16) extant Portland Company structures on site, the HP Board-recommended district includes eight (8) "contributing" historic structures and eight (8) "noncontributing" structures. A "noncontributing" classification was assigned to those buildings which were 1) constructed in recent decades, well after the Portland Company's period of most significant production (i.e. the office building of 1950 and the large 1968 addition to the original foundry) or 2) were found to be in severely deteriorated condition, making their rehabilitation infeasible. The district boundary proposed by the Historic Preservation Board also encompasses site elements original to the complex and integral to the Portland Company's operations, such as the entrance yard and entrance drive. As noted above, the basis for the HP Board's recommendation is discussed in detail in the October 27 Planning Board public hearing report. (See **ATTACHMENT D.**)

The Planning Board's public hearing began with an introduction of the Historic Preservation Board's recommendation by HP Board member John Turk (see **ATTACHMENT F** for text of Mr. Turk's remarks), followed by a detailed presentation by Historic Preservation Program Manager Deb Andrews. The Planning Board then provided an opportunity for property owner CPB2, represented by Jim Brady, to make a presentation. Mr. Brady presented an alternative district proposal, details of which are discussed below. The Board then heard public testimony from twenty-three (23) individuals or organizational representatives regarding the relative merits of the proposed historic district designation. Thirteen (13) spoke in support of the HP Board's recommendation; five (5) spoke in support of an amended district as presented by CPB2; two (2) voiced non-specific support for a historic district; and one (1) individual raised general questions/concerns about any designation of the property.

At the conclusion of the public hearing, the Planning Board deliberated on the Historic Preservation Board's recommendation, addressing the research, analysis and findings upon which the HP Board's recommendation was made. The Planning Board also discussed the merits of the alternative proposal made by the property owner at the start of the public hearing. Mr. Brady had proposed that, pursuant to

CPB2 granting to the City a fifty (50) foot wide public access easement from Fore Street across the site (and within the footprint of Building #1) to the waterfront, Building 1 be reclassified as a “noncontributing” structure within the Portland Company Historic District. Mr. Brady also proposed that the boundaries of the historic district be reduced, removing from the district the area that included the Portland Company’s original entrance yard and entrance drive. Finally, CPB2’s proposal called for creating a second “subdistrict” comprised of one building--Building #12, which is located west of the current entrance yard. (See **ATTACHMENT G** for the historic district map proposed by CPB2 at the meeting.)

During the Planning Board discussion that followed, staff was asked questions related to the potential implications of pursuing a modified historic district proposal such as that proposed by CPB2. In response, staff summarized the implications of a modified district in the context of the preceding Historic Preservation Board review. Staff addressed potential eligibility for historic tax credits, the significance of Building #1, and physical and visual access through the site. Staff cautioned that reclassifying Building #1 to “noncontributing” status despite findings that it was significant to the complex and in salvageable condition, removing from the district boundaries areas and site features that were integral elements of the historic industrial complex, and creating a second, separate “subdistrict” could potentially affect the property owner’s eligibility for federal or state historic tax credits. In order to qualify for tax credits the local historic district will need to be “certified” by the National Park Service (NPS) and, based on staff’s understanding of NPS requirements for historic district designations and discussions with the Maine Historic Preservation Commission, it is uncertain that a modified district as described above would be supported by the National Park Service. Meeting NPS requirements had been an important consideration for the Historic Preservation Board in developing its historic district proposal because the Board was aware that tax credits could become important to the economics of any future redevelopment of the property.

In responding to CPB2’s alternative district proposal, staff reiterated the Historic Preservation Board’s findings as regards the significance and condition of Building #1 (the Erecting Building), noting that the building played a key and integral role in the Portland Company’s manufacturing process since its construction in 1918 and that it had replaced an earlier wood-frame erecting building in the same location. Building #1 was also found eligible for rehabilitation by both CPB2’s consulting engineer and the consulting engineer retained by the City. To be considered noncontributing, the HP Board would have needed to find the building insignificant in the history of the Portland Company and/or to have become “so deteriorated that the overall integrity of the structure has been irretrievably lost”.

Beyond the question of Building #1’s significance and condition, the Historic Preservation Board found Building #1 to contribute significantly to the historic industrial complex’s unique *visual character*. (See *discussion of the complex’s visual character in the Portland Company Designation Report—ATTACHMENT D.2.*) The Portland Company complex is characterized by a series of linear rows of connected buildings separated by private “streets” or alleys. The placement of the buildings in linear rows and the connected nature of the buildings communicate the sequential nature of the metal fabrication process. With the necessary removal of Building #4 due to its deteriorated condition, the HP Board

found that Buildings #1, #2 and #3 of the complex's core manufacturing row become especially important in illustrating how industrial machinery was fabricated in a sequential fashion from start to finish on this site. In the opinion of the HP Board, preserving Buildings #2 and #3 alone would not be enough to communicate this essential characteristic of the complex. Also, if Building #1 were removed from the property, one would no longer be able to appreciate the impressive scale of the Portland Company's operations or its significant presence on the Portland waterfront for more than a century. *(Note: a more detailed response to the preceding questions had been provided in the staff report for the 10/27 hearing—see ATTACHMENT D., Section VIII, beginning on page 14).*

Lastly, staff responded to the suggestion that removing Building #1 was necessary to provide visual and physical access from Fore Street to the waterfront. Pointing to aerial photographs, staff described how visual and physical access to the waterfront could be provided across the site in a position immediately west of Building #1 and that the removal of Building #7 (which had been classified by the HP Board as noncontributing due to its condition) further facilitated this option. Staff noted that other options could likely be possible as well.

During deliberations, members of the Planning Board noted that its role in historic district designation deliberations is distinct from that of the Historic Preservation Board in that the Planning Board must not only confirm the HP Board's findings that the designation criteria included in the historic preservation ordinance have been met and that the proposed district boundaries are clearly defensible, but also consider the effect of such designation on other aspects of the Comprehensive Plan. The Planning Board did not disagree with the Historic Preservation Board's findings that the district as delineated and described in the HP Board's recommendation clearly meets the historic preservation ordinance's district designation criteria and that the proposed classifications of individual buildings within the district--including the categorization of Building 1 under the criteria of Section 14-602 of the Historic Preservation Ordinance relating to the definition of a contributing structures --are supported by documentation and analysis.

The property owner had argued and presented information throughout the review process that Building #1 was not significant in the history of the Portland Company complex and that its preservation was infeasible due to its condition. While acknowledging that the historic district recommendation forwarded by the Historic Preservation Board was well-founded, the Planning Board discussed the need to balance preservation goals with other goals and objectives included in the Comprehensive Plan, specifically the Eastern Waterfront Master Plan. They noted that the Eastern Waterfront Masterplan includes numerous goals related to the general goal of providing the public visual and physical access to the waterfront as part of any future redevelopment of property along the eastern waterfront. In consideration of the opportunity to secure in perpetuity a public access easement from Fore Street to the waterfront that would ensure consistency with this key goal of the Eastern Waterfront Master Plan and in consideration of CPB2's proposal to locate the public access easement across the site, the Board found that it was appropriate to recommend to the City Council that Building #1 be classified as a "noncontributing" structure.

The Planning Board also discussed the option of reducing the size of the historic district and creating a separate “subdistrict”, based on a proposal by CPB2. Planning Board members noted that if the district were made smaller, the Historic Preservation Board would still have at least an advisory role in the review of any new development within the area removed from the original recommended district boundary. Under the site plan ordinance’s “100-foot standard”, if a proposed development is located within 100 feet of a landmark or historic district boundary the Planning Board must find the project to be “generally compatible” with the abutting portion of the historic district. The standard requires that staff provide a written analysis of the proposed development’s immediate historic context to aid the Planning Board in its review and HP staff has the option of forwarding the proposal to the HP Board for preliminary comment. Although not expressly stated, in addition to the provision of the easement, it appeared that the Planning Board’s ultimate decision to support a smaller historic district was based in part on its understanding that the HP Board would continue to have a role in the review of projects abutting the reconfigured historic district boundaries.

Following the Planning Board’s discussion of historic district boundaries and building classifications, the Board took up the question of how building height will be regulated within the proposed historic district. Although building height is specifically listed in the historic preservation ordinance as one of the building characteristics subject to review by the Historic Preservation Board in its review of new construction within historic districts (see Sec. 14-651 Standards for Review of New Construction), Planning Board members noted that the question of allowable building heights for the 58 Fore Street property had only recently been studied in considerable detail by the Planning Board and Council as part of the applicant’s rezoning request. Given this recent analysis and the precedent set for exempting HP review of building heights in the Congress Street and India Street historic districts, members of the Planning Board expressed the view that it was appropriate in this district to allow the underlying zoning to govern building height and not be superseded by the historic preservation review process.

FORMAL PLANNING BOARD RECOMMENDATION

Following a series of formal findings that the historic district proposal as recommended by the Historic Preservation Board meets all applicable designation criteria (Sec. 14-610 a & b and Sec. 14-611) within the historic preservation ordinance and a separate finding that the designation of the Portland Company Historic District is consistent with the goals of the Comprehensive Plan (Sec. 14-610 (d)), the Planning Board voted 5-0 (Hall absent) as follows:

On the basis of the above findings, the Planning Board recommends that the City Council designate the former Portland Company complex as a local historic district, as amended by the Planning Board pursuant to amended ATTACHMENT 2 adopted at the October 27, 2015 Planning Board Hearing and to designate Building #1 as a non-contributing building, subject to finalization and execution in favor of a fifty (50) foot wide public access easement from Fore Street across the site. A district, including provision of this access easement, ensures consistency with the goals of the Eastern Waterfront Masterplan including supporting public access to the waterfront, enhancement of the pedestrian environment, increased recreation opportunities, protection and preservation of key views of the harbor, the creation of quality open spaces and supports the idea of the eastern waterfront developing into an extension of the surrounding neighborhood

while establishing an identity as a new urban neighborhood. The location of said easement is necessary to satisfy those goals. The easement discussed herein should be reviewed by Corporation Counsel prior to submission of the designation to the City Council to ensure consistency with this recommendation.

In a separate motion, the Planning Board also voted 5-0 as follows:

In the adoption of design guidelines for the Portland Company Historic District that it be made explicit that building height will be controlled by the underlying zoning and not the historic preservation ordinance review standards.

(Staff note: this is an amendment to Sec. 14-651 (a) of the historic preservation ordinance.)

See **ATTACHMENT B** for full text of Planning Board's formal findings and recommendation to the City Council.

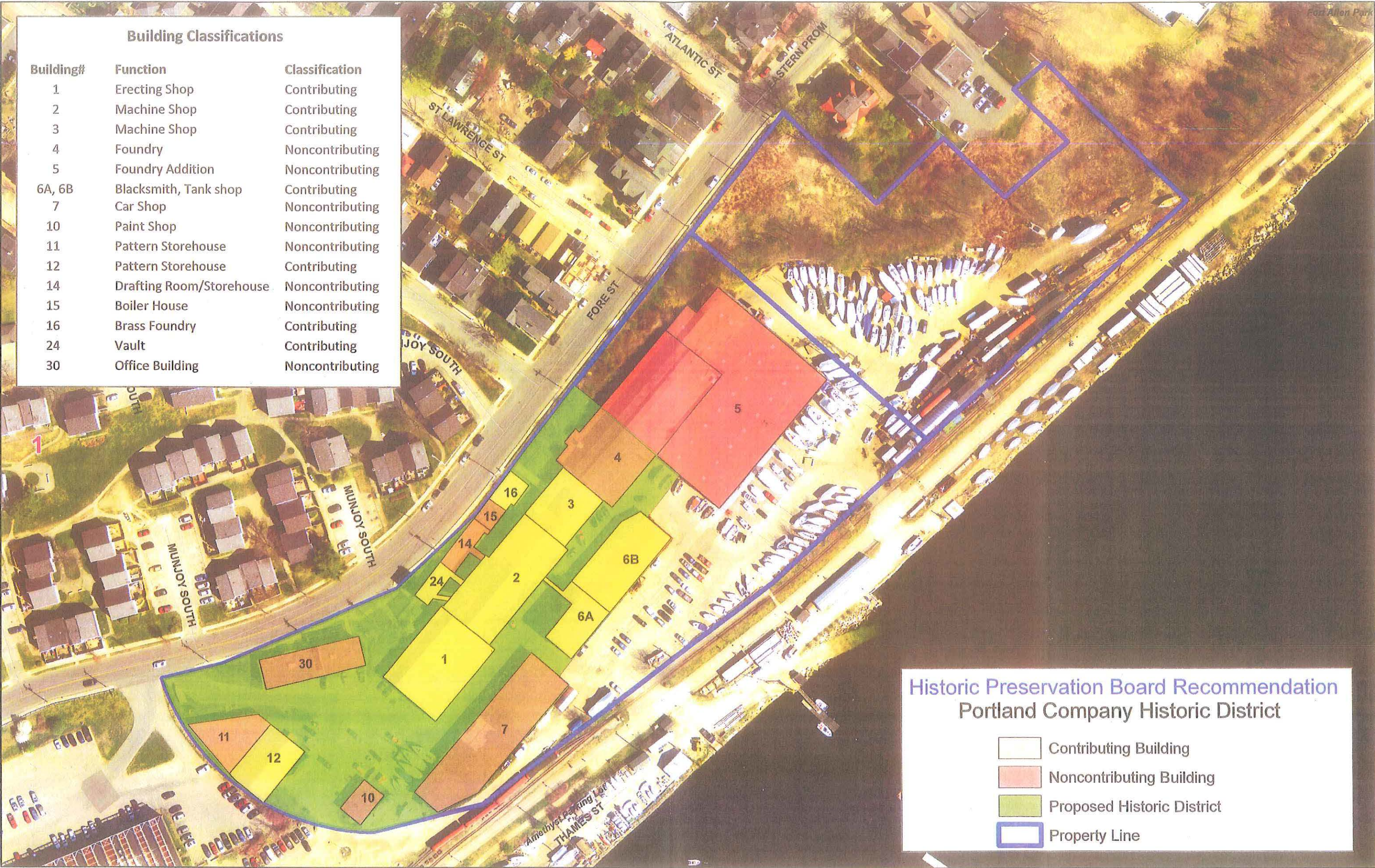
ATTACHMENTS

- A. Map - Portland Company Historic District Boundaries and Building Classifications as recommended by the Planning Board at 10/27/15 public hearing
- B. Formal Findings and Recommendation of the Planning Board as voted upon at 10/27/15 public hearing
- C. Map - Portland Company Historic District Boundaries and Building Classifications as recommended by the Historic Preservation Board at its June 27, 2015 public hearing
- D. Staff Report for 10/27/2015 Public Hearing - Recommendation of Historic Preservation Board to Designate Portland Company Historic District. Report includes following attachments:
 - 1. Proposed Historic District Map with Boundaries and Individual Building Classifications
 - 2. Portland Company Historic District Designation Report

 - Attachments prepared in response to questions raised at PB's 7/28 Workshop
 - 3. 9/2/15 Memo from Scott Hanson, Sutherland Conservation & Consulting, regarding Building 1
 - 4. 9/4/15 Letter from Al Hodson, Resurgence Engineering, re: condition of Buildings 1 and 16
 - 5. 9/4/15 Letter from Maine Historic Preservation Commission
 - 6. 8/26/15 letter from Mary Costigan on behalf of CPB2
 - Information and Public Comment received since 9/8
 - 7. Staff memo summarizing HP Board's 10/21/15 review of latest condition report prepared by Becker Structural Engineers
 - a. Staff memo for 10/21/15 HP Board review
 - b. October 13, 2015 report from Becker Structural Engineers
 - c. Copy of GPL testimony at 10/21 meeting
 - 8. Compilation of most recent public comment
- E. Easement proposed by CPB2

Supplemental Information

- F. Introductory remarks of Historic Preservation Board member John Turk at 10/27/15 Planning Board public hearing
- G. Proposed historic district boundaries and building classifications as presented by CPB2 on 10/27/15
- H. Planning Board report filed in Clerk's office following 10/27 public hearing
- I. Excerpts from Portland's historic preservation ordinance (Article IX of the Land Use Code).
- J. *The Portland Company: Historic Significance and Integrity*, prepared for City of Portland by Sutherland Conservation & Consulting
- K. *Portland Company Complex General Building Condition Report*, prepared for City of Portland by Resurgence Engineering and Preservation Inc.
- L. Evaluation of *Existing Buildings at the Portland Company Property*, prepared for CPB2 by Becker Structural Engineers
- M. Appendix A: Comparative Condition/Cost Analysis (excerpted from Resurgence report)
- N. March 31, 2014 Letter from Maine Historic Preservation Commission regarding eligibility of Portland Company Complex for Listing in the National Register of Historic Places



10/27/15 Findings and Formal Recommendation of the Planning Board Regarding Designation of Portland Company Historic District

Upon the recommendation of the Historic Preservation Board and on the basis of the Portland Company Historic District Designation Report, documentation and analysis provided in reports prepared by Sutherland Conservation & Consulting and Resurgence Engineering & Preservation, and information included in the staff report for the September 8, 2015 public hearing, and additional evidence presented at the October 27, 2015 continuation of the September 8th hearing,

- 1) The Planning Board finds that the proposed Portland Company Historic District:
 - a) meets the historic preservation ordinance's minimum criteria for designation as set forth in Sec. 14-610 (a), specifically Criteria 1, 2, 3, 4, 5 and 6, based on the Board's findings that all of the summary statements as to significance of the Portland Company complex included in the 9/8/15 and 10/27/15 public hearing reports are well-founded and based on detailed research and documentation. Accordingly, the Board confirms and references the report's statements of significance as the basis for its finding; and
 - b) meets the criterion in Sec. 14-610 (b), based on the Board's finding that a substantial number of the structures and sites within the proposed district have a high degree of historic and/or architectural significance and integrity, many of which qualify as landmarks, and that the proposed district also has within its boundaries other sites and structures which contribute to the overall visual characteristics of the significant structures located within it. Pursuant to this finding, the Board supports the building classifications included in the Designation Report, except as to Building 1 as discussed in (3) below; and
 - c) meets the integrity criterion set forth in Sec. 14-611, based on the Board's finding that the district and identified contributing structures therein have sufficient integrity of location, design, condition, materials and workmanship to make them worthy of preservation or restoration.
- 2) The Planning Board also finds that designation of the Portland Company Historic District, as amended herein, is consistent with the goals of the Comprehensive Plan pursuant 14-610(d), including the Masterplan for Redevelopment of the Eastern Waterfront, based on the analysis provided in the 9/8/15 public hearing report and further evidence provided at the October 27th Planning Board Hearing .
- 3) On the basis of the above findings, the Planning Board recommends that the City Council designate the former Portland Company complex as a local historic district, as amended by the Planning Board pursuant to amended ATTACHMENT 2 adopted at the October 27, 2015 Planning Board Hearing and to designate Building #1 as a non-contributing building, subject to finalization and execution in favor of a fifty (50) foot wide public access easement

from Fore Street across the site. A district, including provision of this access easement, ensures consistency with the goals of the Eastern Waterfront Masterplan including supporting public access to the waterfront, enhancement of the pedestrian environment, increased recreation opportunities, protection and preservation of key views of the harbor, the creation of quality open spaces and supports the idea of the eastern waterfront developing into an extension of the surrounding neighborhood while establishing an identity as a new urban neighborhood. The location of said easement is necessary to satisfy those goals. The easement discussed herein should be reviewed by Corporation Counsel prior to submission of the designation to the City Council to ensure consistency with this recommendation.

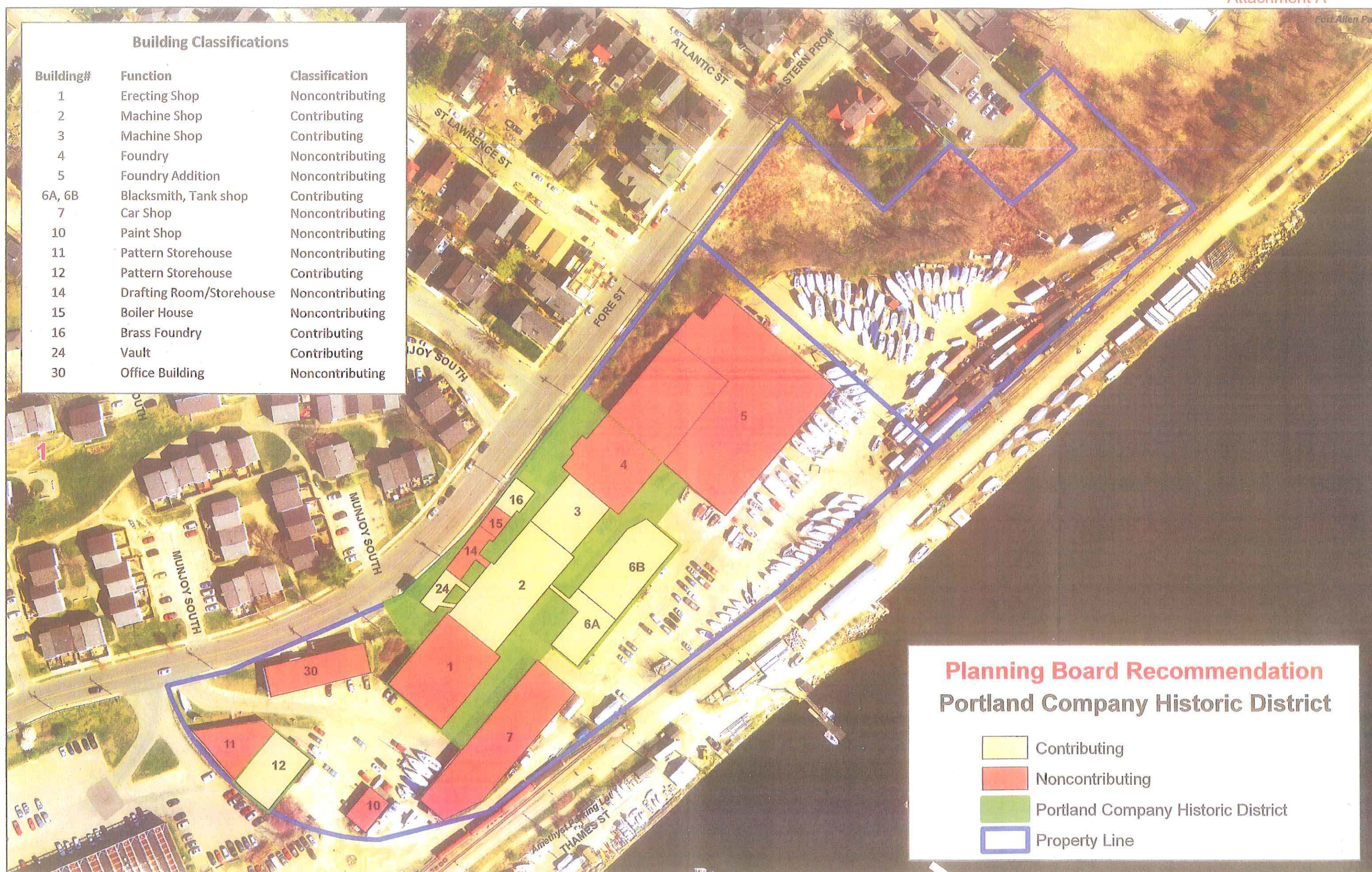
Vote: 5-0 (Hall absent)

- 4) The Board also recommends that in the adoption of design guidelines for the district that it be made explicit that the height for the district will be controlled by the underlying zoning and not the historic preservation ordinance review standards. *(Staff note: this is an amendment to Sec. 14-651 (a) of the historic preservation ordinance.)*

Vote: 5-0 (Hall absent)

Building Classifications

Building#	Function	Classification
1	Erecting Shop	Noncontributing
2	Machine Shop	Contributing
3	Machine Shop	Contributing
4	Foundry	Noncontributing
5	Foundry Addition	Noncontributing
6A, 6B	Blacksmith, Tank shop	Contributing
7	Car Shop	Noncontributing
10	Paint Shop	Noncontributing
11	Pattern Storehouse	Noncontributing
12	Pattern Storehouse	Contributing
14	Drafting Room/Storehouse	Noncontributing
15	Boiler House	Noncontributing
16	Brass Foundry	Contributing
24	Vault	Contributing
30	Office Building	Noncontributing



Planning Board Recommendation Portland Company Historic District

- Contributing
- Noncontributing
- Portland Company Historic District
- Property Line



PLANNING BOARD REPORT PORTLAND, MAINE

Recommendation of Historic Preservation Board to Designate Portland Company Historic District 58 Fore Street

Submitted to: Portland Planning Board	Prepared by: Deborah Andrews, HP Program Manager
Public Hearing Date: October 27, 2015	Date: September 4, 2015 and October 22, 2015

Note: The following report was prepared in advance of the Planning Board's scheduled September 8 public hearing on the proposed historic district designation. On September 8, the Planning Board agreed to table the public hearing to October 27 to allow time for the property owner to submit additional information related to the condition of Building #1. The Board directed the property owner to submit any additional information to the Historic Preservation for its review and comment in advance of the new hearing date. The supplementary information provided to the Historic Preservation Board at its October 21 meeting, together with a summary of the HP Board's comments are included in ATTACHMENT 14. Public comment received since September 8 is enclosed as ATTACHMENT 15.

INTRODUCTION

The Planning Board will hold a public hearing and final deliberations on a recommendation by the Historic Preservation Board to designate a portion of the property at 58 Fore Street as a local historic district subject to the provisions of Article IX (Historic Preservation) of the Land Use Code. The Planning Board's role in this matter is to determine whether the nominated **Portland Company Historic District** meets applicable designation criteria in Division 3 of the historic preservation ordinance, specifically the criteria identified in Sec. 14-610 (a) and (b). The Planning Board is also charged with considering the effect of such designation on other aspects of the Comprehensive Plan. Based on its determination, the Planning Board will forward its recommendation regarding designation of the Portland Company Historic District to the City Council, which has the final authority as regards local designation of nominated historic properties.

The proposed designation applies to an area occupying approximately 4.3 acres of the 9.93 acre 58 Fore Street parcel and includes 8 identified contributing structures, the footprint of several structures classified as noncontributing due to physical condition or date of construction and common areas associated with the historic Portland company complex.

A workshop on the proposed designation was held on July 28, 2015. Much of the material provided in the July 28 workshop memo is included in the public hearing report. **New material** included in this report includes:

- Responses to questions raised during the preliminary workshop--see Section IX of the report, page 14. Additional attachments related to these responses are enclosed as ATTACHMENTS 10, 11, 12 and 13.
- An evaluation of the effect of the proposed designation on other aspects of the Comprehensive Plan, prepared by Senior Planner Christine Grimando—see Section X of the report, page 19
- Motions for the Board's consideration

I. HISTORIC PRESERVATION BOARD RECOMMENDATION

On June 24, 2015, the Historic Preservation Board voted 7-0 to recommend to the Planning Board and City Council that the Portland Company complex at 58 Fore Street be designated a local historic district as delineated below and as further defined/described in the attached Portland Company Historic District Designation Report—see ATTACHMENT 2. The Historic Preservation Board's recommendation was based on findings that the proposed district meets the designation criteria in Division 3 (Categories and Criteria for Designation) of the historic preservation ordinance (Article IX of the Land Use Code).



II. ROLE OF THE HISTORIC PRESERVATION BOARD IN THE DESIGNATION PROCESS

As prescribed in Portland's historic preservation ordinance, the Historic Preservation Board's role in the designation of landmarks and historic districts is to review the merits of the nomination and, based on findings as to whether or not the nominated resource meets the ordinance's designation criteria, forward a recommendation regarding designation to the Planning Board and Council for their consideration. The ordinance requires that the Historic Preservation Board's recommendation be accompanied by a report which includes the following information (see Sec. 14-617):

- Explanation of the significance or lack of significance of the nominated district as it relates to the ordinance's criteria for designation
- Explanation of the integrity or lack of integrity (as defined in the ordinance) of the nominated historic district.
- Any proposed design guidelines for review of alterations or construction in the proposed historic district
- Explanation of the relationship of the nominated district to the ongoing effort by the Historic Preservation Board to identify and nominate potential areas, sites and structures that meet the criteria for designation.
- A map showing the boundaries of the nominated district.
- A list of every site, structure and object in the nominated historic district indicating their degree of cultural, historic, architectural or archaeological significance by classification as of a landmark or contributing significance.

The formal **Portland Company Historic District Designation Report**, including map and building classifications, is enclosed as ATTACHMENT 2. The report reflects the findings of the Historic Preservation Board and is informed by documentation and analysis provided in two consultant reports commissioned by the Portland Planning Department for the City's evaluation of a potential Portland Company historic district. These include *The Portland Company: Historic Significance and Integrity*, prepared by Sutherland Conservation & Consulting (ATTACHMENT 4) and *Portland Company Complex General Building Condition Report*, prepared by Resurgence Engineering and Preservation Inc. (ATTACHMENT 5).

III. ROLE OF THE PLANNING BOARD

In the case of a recommendation for historic district designation, the Historic Preservation Board forwards its recommendation to the Planning Board for its review and recommendation to the City Council. (Recommendations for individual landmark designations are forwarded directly to the City Council.) Like the Historic Preservation Board, the Planning Board must determine whether the district as defined and delineated in the Designation Report meets the minimum criteria for designation set forth in Division 3, Sec. 14-610 (a) and (b) AND Sec. 14-611 of the historic preservation ordinance. These criteria address the *significance, historic and architectural integrity, as well as physical integrity* of the nominated historic district. The Planning Board shall also consider the effect of the proposed designation on other aspects of the comprehensive plan.

IV. BACKGROUND – DOCUMENTATION AND ASSESSMENTS COMMISSIONED BY THE PLANNING DEPARTMENT

In preparation for the Historic Preservation Board's consideration of the proposed designation, the Planning Department commissioned two detailed reports to provide the level of documentation and assessment needed to fairly evaluate the nominated resource and its eligibility for local historic district designation. Mindful of the fact that the Maine Historic Preservation Commission identified the Portland Company as eligible for listing in the National Register of Historic Places as early as 1976 but that the detailed documentation required for nomination had never been prepared, the Planning Department contracted with Sutherland Conservation & Consulting to document the history of the company (which remained in continuous operation on Fore Street from 1847 to 1982) and to assess its place in the history of Portland and its significance in the history of manufacturing and transportation at the local, state and national levels. The Sutherland report provides a detailed description of the development history of the complex itself as the company evolved to accommodate changes and expansion in production over time. The report also provides a description and assessment of the individual extant historic structures within the complex, describing their respective role in the Portland Company's operations and their level of historic and architectural integrity. Finally, the Sutherland report provides an analysis of the visual character of the overall building complex. See ATTACHMENT 4 for a copy of the Sutherland report.

The Planning Department also commissioned a building condition report on the individual structures within the complex. A condition report was important in this instance given the fact that the historic structures within the Portland Company complex appear not to have received any significant level of maintenance, repair or rehabilitation in recent decades and given that the historic preservation ordinance requires that a nominated district not only meet the ordinance's designation criteria related to *significance*, but also a separate criterion related to the *integrity* of the resource. In order to designate a landmark or historic district, the nominated resource must be found to have sufficient integrity of location, design, *condition*, materials and workmanship to make it worthy of preservation (see Sec. 14-611). The Sutherland report provided adequate information to assess the question of several other relevant aspects of integrity, but it did not address the question of condition.

Although the owners of the property had retained Becker Structural Engineers to provide a condition assessment for their own planning purposes and had provided a copy of the report to the City (see ATTACHMENT 6), Planning and Historic Preservation staff determined that an independent condition assessment would be important to the Board's deliberations. Resurgence Engineering & Preservation, a structural engineering firm with expertise and experience in historic rehabilitation, was hired by the City to conduct the assessment. It should be noted that the Resurgence report, like the Becker report, was necessarily limited in scope and taken from a "30,000-foot view". Given the number of buildings to be assessed, the limited budget for the report and the fact that no specific use had yet been identified for any of the buildings which would inform a full assessment of applicable building code, life safety and other requirements, the review was limited to the current condition of the building envelope and structural systems. (The limited parameters of the assessments were acknowledged in both reports.) Additionally, neither consulting firm was asked to explore or recommend specific solutions to address identified building envelope and structural deficiencies.

Although the two condition reports include a fairly detailed written narrative for each building that describes the building envelope and structural system and include observations and identification of issues, both reports also summarize their findings in a rating system for ease of reference—with 1

representing very poor condition and 5 representing a good structural condition. Although the Resurgence report, which came after the Becker report, used the same rating system for ease of comparison, Resurgence provided an alternative rating system as well. As stated in the Resurgence report, “REP believes there is a more accurate and further defined way to classify the buildings in terms of condition.”

In addition to the condition index, both reports provide a “relative structural renovation cost index”. As stated in the Becker report, the cost index was prepared “in an effort to quantify what a renovation might cost”. An inverse rating system was used here—with 1 representing a relatively low renovation cost and 5 representing a relatively high renovation cost. It should be noted that the historic preservation ordinance does not include rehabilitation cost as a factor in the evaluation of nominated historic resources.

A copy of Resurgence Engineering’s *Portland Company Complex General Building Condition Report* is enclosed as ATTACHMENT 5. An excerpted chart from the Resurgence Report (ATTACHMENT 7) provides a building-by-building comparison of Resurgence Engineering’s findings as regards condition and relative rehab cost with those of Becker Structural Engineers.

V. SUMMARY OF PRELIMINARY HP BOARD REVIEW SESSIONS

As noted in the introduction, the Historic Preservation Board held four preliminary workshops on the proposed historic district designation, as well as two site walks.

Workshop and Site Visit to Review History and Significance of Complex

The first workshop, held on September 24, 2014, followed the completion of the Sutherland report. Sutherland’s Scott Hanson made a detailed, illustrated presentation on the history of the Portland Company itself, explaining that it was built in conjunction with construction of the Atlantic & St. Lawrence Railroad and was the first complex in the country built specifically for the manufacture of railroad equipment where the foundry and all of the necessary related shops were located on a single site. He reviewed the extraordinary range of machines, engines and products related to the fields of railroad and marine transportation, industry, manufacturing, and architecture that were produced over the company’s 135-year history, as well as the distribution of its products to industries and municipalities throughout the country. Mr. Hanson also described the pivotal role the Portland Company played in the city of Portland’s development and economy (it was the single largest business in the City in the mid-19th century), as well as that of the state of Maine.

Mr. Hanson also discussed the Portland Company’s “period of significance”, noting that National Register listing requires the identification of a period of significance. (Portland’s ordinance does not specifically require the identification of a period of significance.) The Maine Historic Preservation Commission had determined a period of significance extending from the company’s founding in 1847 to its closing in 1982. Within that period, however, Sutherland found that there are more specific (and more limited) periods of significance for key aspects of the Portland Company’s production. Mr. Hanson indicated that as of the end of World War II, most of the Portland Company’s marine and transportation-related work--the type of engines, machinery and products the company had been founded to produce--had ended and it had diversified its operations to produce a wide range of architectural, industrial and other products. The last building constructed for the express purpose of serving the company’s marine and transportation-related work was the Erecting Building, built in 1918.

In his presentation, Mr. Hanson described the specific role each of the extant buildings played in the overall manufacturing process and the sequence in which products moved throughout the complex—from the initial drawing and pattern-making stage onto the foundry and machine shops and finally, onto assembly in the Erecting Building or Car Shop. Mr. Hanson explained that while some of the Portland Company's original buildings were lost due to fires or were replaced or expanded over time to respond to changing production needs, the historic buildings that remain on the site today collectively encompass the complete historic manufacturing process of the Portland Company. In this respect alone, the Portland Company complex as it exists today is highly significant and underscores Sutherland's finding that *the Portland Company property derives its significance as a complex of related, interdependent structures*. Collectively, the buildings provide a substantially complete record of the type of industry that was located at this site and of the specific functions or steps involved in its fabrication process. The number and size of extant buildings on the site also convey the company's scope and scale of operations during the 19th and 20th centuries.

Mr. Hanson also reviewed Sutherland's findings regarding the historic integrity of each of the extant buildings on the Portland Company property. As Mr. Hanson explained, historic integrity, as defined by the National Register," is based on the retention of sufficient essential physical features from the historic period, including location, design, setting, materials, workmanship, feeling, and/or association, to convey the significance of a property." Sutherland found that all of the buildings retained sufficient historic integrity to convey the significance of the property. Most of the buildings were found to retain a high degree of historic integrity.

Finally, Mr. Hanson reviewed the visual character of the Portland Company site and described how the complex's visual character contributed to the overall significance of the historic property. Contributing elements to the complex's visual character are the primary entrance drive into the site from Fore Street, which has been the entrance since 1847, as well as the entrance yard which serves the function of entranceway to the linear manufacturing paths of circulation. The entrance yard is also the point from which one can best appreciate the linear alignment of the manufacturing complex. The historic functional organization and placement of the Portland Company buildings in linear proximity to each other is also a major visual characteristic of the site and is unique to Portland in the way that the industrial buildings form private streets or alleys. The overhead pedestrian bridges spanning these private streets were also found to be unique in Portland and contribute to the visual character of the site. As summarized in the Sutherland written report, "to a large degree, the architectural significance of the Portland Company exists in the relationship of the buildings to each other within the complex. The proximity and orientation of the buildings to each other permitted related manufacturing processes to take place in a way that allowed for the efficient progress of stages in the production of the company's products."

Except for a follow-up site walk of the complex in December led by Mr. Hanson, the Historic Preservation Board's consideration of potential historic district designation of the Portland Company was temporarily suspended until April of 2015. Board review was suspended at the request of the Planning Director in order to allow the property owners' pending rezoning request for the property to proceed through review by the Planning Board and Council to conclusion and provide for a sequential review process. Rezoning was felt to be a threshold issue for any potential redevelopment of the site and that consideration of potential historic district designation would appropriately follow.

Formal District Nomination

On February 23, 2015, Board members John Turk and Ted Oldham submitted a formal letter to the Planning Department nominating the Portland Company complex as a local historic district, consistent

with the requirements for nomination and designation set forth in the preservation ordinance. While the previous workshops had been conducted in anticipation of/preparation for the formal designation review process, the nomination letter set the formal process into motion. The letter of nomination was filed as the Planning Board was concluding its review of the rezoning request and the matter was being sent to the City Council for final action.

Workshops and Site visit to Review Building Condition

On April 1, 2015, Al Hodson, principal of Resurgence Engineering, presented his analysis and findings regarding building condition in a detailed workshop session. Like Mr. Hanson, Mr. Hodson provided a building-by-building analysis, describing each building's original structural system and building envelope as well as any modifications which had affected the structural system over time. He reviewed his general observations of condition and highlighted specific areas of concern. He also presented the ratings he had assigned to each building based on his analysis and explained that he had adopted the same rating system used in the Becker report for ease of reference and comparison, while noting that perhaps a more nuanced rating system would provide a more accurate summary of the condition and potential of the buildings. An alternative building condition index was offered for consideration.

Mr. Hodson explained that while all of the buildings had suffered some level of deterioration due to years of deferred maintenance, three buildings stood out as presenting the greatest structural and building envelope challenges. Of the buildings his firm evaluated, three buildings were found to be in the most compromised condition. These were Building #7 (Car Shop), Building #10 (Paint Shop), and Building #11 (Pattern Storehouse). (*Resurgence Engineering's report is enclosed as ATTACHMENT 5. See pg. 2 of Executive Summary; pgs. 25-28 for written condition analysis of each building; pg. 1 of Appendix A for assigned condition and cost rating.*)

Mr. Hodson also identified Building #4 as having unique condition issues with an exterior brick masonry wall system that is integrated with built-up iron or steel structural columns, which columns are exposed to weather and in an advanced state of disrepair. The columns at the building exterior would require replacement as part of any rehabilitation program. Detailing for replacement would need to consider both improved performance as well as preservation of historic integrity, including degree of replacement of original material. Like the roof structures at Buildings #1, #2, and #3, Mr. Hodson noted that the roof structure at Building #4 will need to be evaluated for snow load capacity, the decking above the beams will need to be replaced at deteriorated areas and all of the roof sheathing may need replacement. Recognizing these issues, Mr. Hodson's report also noted that the large and consistently framed building has fewer variations in its framing than many other structures on the Portland Company site and this repetition in detailing along with open access to structural members may serve to simplify necessary structural repairs. (*See pg. 1 of Executive Summary, pgs. 19-22 for written condition analysis of Building #4, pg. 1 of Appendix A for assigned condition and cost rating, and pg. 6 of Appendix A for an explanation of the basis for cost opinion conclusions for Building #4.*)

In preparation for the April 1 workshop, Board members were provided copies of the Resurgence Engineering report as well as the Becker Structural Engineers report, which had been produced for the current property owner. During the workshop session, Mr. Hodson made frequent reference to the findings of the Becker report as well as his own. Based on Resurgence's written report and Mr. Hodson's presentation, it appeared that the findings of the two reports were quite similar as regards most buildings. (A comparison chart of the summary rankings for building condition and relative cost to address condition was provided in Mr. Hodson's report (Appendix A, pg. 1) and is enclosed with this report as a separate attachment – ATTACHMENT 7.)

On May 20, a second site walk was conducted of the Portland Company complex, this walk focusing on the issue of condition. Both Mr. Hodson and Paul Becker of Becker Structural Engineers provided commentary, summarizing their findings relative to each building. Given the constraints of a site visit in terms of providing opportunity for Board discussion or public comment, a follow-up workshop session was scheduled for May 27th in City Hall. At the May 27 workshop, Board members shared their observations from the site visit. Staff also provided information about the requirements of the federal and state historic tax credit program and summarized discussions held with staff of the Maine Historic Preservation Commission (MHPC) regarding potential access to tax credits.

Consideration of NPS Certification and Availability of Tax Credits

As the availability of historic tax credits can be a significant factor in the feasibility of an historic rehabilitation project, staff and the HP Board had identified early on in the review process that it would be important to learn more about what might affect the property owners' eligibility for the tax credits. Staff explained that distinctions between Portland's local designation criteria and National Register designation criteria (especially as regards the issue of building condition) made the question of whether current or future owners of the property would be able to take advantage of tax credits fairly complicated. Eligibility for tax credits might be particularly challenging if several buildings were determined under Portland's designation criteria to be noncontributing by virtue of condition. MHPC staff had indicated, however, that if a strong case could be made that the *local* Portland Company Historic District was clearly based on and supported by its local designation criteria, it might be approved as a "Certified Local Historic District" and thereby make the project eligible for federal and state tax credits. A clear and rational basis would have to be demonstrated for the boundaries of the local district and the assigned classifications of individual buildings (landmark, contributing, and noncontributing).

Final Workshop – Preliminary Board Deliberations

On June 10th, the Historic Preservation Board held a final workshop to synthesize the information provided in the various consultant reports, staff reports, site visits and preliminary workshop sessions. While each of the previous workshops had focused on a specific aspect of the Board's overall deliberations, the June 10 session was the first opportunity for Board members to consider the various applicable designation criteria in the aggregate and begin to assign a net "preservation value" for each structure within the complex. The Board also took up the question of appropriate, defensible district boundaries. Chair Benson organized the discussion, focusing on the specific designation criteria (Sec. 14-610 and 611) that must be met in the ordinance and the questions that must be addressed in the designation report that accompanies the Board's recommendation to the Planning Board and City Council (Sec. 14-617).

Following discussion of the significance and integrity of the complex as a whole, the Board spent considerable time discussing the integrity (*historic/architectural* as well as *condition*) of each building and assigned a preliminary classification to each. In taking up each building, Chair Benson summarized the salient findings for each structure included in each of the consultants' reports.

The assignment of a classification is required by the ordinance as part of the designation process. A list of every building, object or site within a nominated historic district must be included in the designation report and assigned a classification of "landmark", "contributing" or "noncontributing" indicating its degree of significance and that a list of structures.

The ordinance's definitions for these terms are instructive in assigning a classification:

Landmark: A property, site, structure or object designated by the Council as having a high degree of historical, cultural and/or architectural significance.

Contributing: A classification applied to a site, structure or object within a historic district signifying that it contributes generally to the qualities that give the historic district cultural, historic, architectural or archaeological significance as embodied in the criteria for designating an historic district, but without being itself a landmark.

Noncontributing: A classification applied to a site, structure, object, or portion thereof within a historic district signifying that 1) it does not contribute generally to the qualities that give the district...significance as embodied in the criteria for designating a historic district; 2) was built within 50 years of the date of district designation unless otherwise designated in the historic resources inventory; or 3) where the location, design, setting, materials, workmanship and association have been so altered or have so deteriorated that the overall integrity of the site, structure or object has been irretrievably lost. A portion of an otherwise contributing or landmark structure may be determined by the historic preservation board to be noncontributing if it meets one or more of the above conditions.

The Board's June 10 preliminary deliberations informed its formal findings and vote on June 24, a summary of which follows.

VI. HP BOARD PUBLIC HEARING – BOARD FINDINGS AND FORMAL RECOMMENDATION

A public hearing on the nomination was held on June 24, 2015. At the start of the hearing, attorney Mary Costigan, representing the property owner, distributed a letter requesting a reclassification of several buildings identified as contributing structures during the Board's preliminary deliberations. These included Buildings 1, 4, 14, and 16. Arguments for reclassifying the buildings were included in her letter. (See ATTACHMENT 9). Ms. Costigan also proposed that the district boundaries be reduced. Finally, Ms. Costigan asked that the Board include in its recommendation to the Planning Board language (likely in the form of an ordinance amendment) making clear that the height allowances established by zoning supersede the historic preservation regulations as they would apply to height for new construction.

Following a review of the Ms. Costigan's letter and a public hearing, the Board conducted its formal deliberations. Following are the Board's formal findings:

CRITERIA FOR DESIGNATION

Sec. 14-610 (a) Minimum Criteria for Designation (Note: nominated districts must satisfy a minimum of one of the following criteria)

1. Its value as a significant example of the cultural, historic, architectural, archeological or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States.

Finding: the Portland Company complex exhibits local, state and national significance, as described in detail in the Sutherland report, *The Portland Company: Historic Significance and Integrity*. The Board identified the following major areas of significance:

National significance

- Research suggests that the Portland Company was the first complex in the country built specifically for the manufacture of railroad equipment with all necessary shops and foundry on a single site.
- Rare surviving example of a pre-civil War foundry, machine shop and car shop complex, and apparently the only surviving plant in the nation where locomotives were built for the US Government as part of the war effort.

Significance to the State of Maine

- Contributed significantly to the development of Maine's railroads and maritime industries through manufacture of locomotives, railroad cars, marine engines and boilers.
- Played a significant role in the development of Maine's paper-making, textile and canning industries.
- The state's largest 19th century foundry/machine shop

Local significance

- Founding was directly tied to the establishment of the Atlantic & St. Lawrence Railroad. Company was founded to manufacture railroad locomotives for the railroad.
- Company's founding was directly associated with the creation of Commercial Street and filling of Broad and Clay Coves, as well as the organization of rail service throughout the City
- Only intact 19th and early 20th century industrial complex remaining in the city.
- Largest 19th century employer in the city.

2. Its location as a site of significant historic or prehistoric activity which may have taken place within or which involved the use of any existing structure on the property.

Finding: The Portland Company complex was the site of significant industrial activities of local, state and national importance, as detailed in #1 above, which took place within extant structures on the property.

3. Its identification with a person or persons who significantly contributed to the cultural, historic, architectural, archaeological or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States.

Finding: The Portland Company was founded by John Poor, director of the Atlantic and St. Lawrence Railroad and the person most responsible for Portland's successful bid over Boston to become Montreal's winter port via rail. Other stockholders in the company included noted industrialist, developer and civic leader J.B. Brown and U.S. Secretary of the Treasury William Pitt Fessenden. William Chapman, electrical engineer in charge of the company's research department, did important work in the research that led to the development of microwave technology as well as experimentation and invention related to the use of electricity in manufacturing. Chapman's inventions were used in mills and factories throughout the state.

4. Its exemplification of a significant architectural type, style or design distinguished by innovation, rarity, uniqueness or overall quality of design, detail, materials or craftsmanship.

Finding: The building complex as a whole, and the individual structures included in it express the evolution of construction techniques developed for industrial building types as was required to enclose increasingly complex and large scale manufacturing processes. Located within the complex are substantially unaltered examples of several distinctive industrial building types constructed between 1847 and 1920. The Portland Company buildings from the 1840's and 50's are the only industrial buildings of that period remaining in the city today.

5. Its identification of the work of an architect, designer, engineer or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England Region or the United States.

Finding: Although noted Portland architect Frederick Thompson was responsible for the design of the projecting shed dormers that were added to the roof of Building # 2 (Machine Shop), this designation criterion is not applicable for the Portland Company.

6. Its representation of a significant cultural, historic, architectural or related theme expressed through distinctive areas, site, structures or objects that may or may not be contiguous.

Finding: The Portland Company complex is representative of Portland's role as a major center of rail and maritime transportation for Maine and northern New England as described in detail in the Sutherland report.

Sec. 14-610 (b) In the case of a nominated historic district, the historic preservation board shall also determine whether a substantial number of the properties, site, structures or objects have a high degree of cultural, historic, architectural or archaeological significance and integrity, many of which may qualify as landmarks, and which may also have within its boundaries other properties site, structures or objects, which while not of such cultural,...significance to qualify as landmarks, nevertheless contribute to the overall visual characteristics of the significant properties, sites structures or objects located within it.

Finding: The Board found that the Portland Company complex meets this requirement. Given the high degree of significance of the district as a whole and the interrelated role each building plays within the district, the Board discussed the possibility of designating it as "landmark district", however this designation type is not included in the preservation ordinance. Also discussed was the possibility of classifying each building as a landmark. Ultimately, the Board determined that the individual buildings are appropriately characterized as "contributing" structures to the overall complex, which is highly significant.

Sec. 14-611. Integrity of landmarks and historic districts.

Any area structure or object that meets the criteria in Section 14-610 must also have sufficient integrity of location, design, condition, materials and workmanship to make it worthy of preservation or restoration. (Note that this integrity standard applies to the district as a whole; the question of integrity also applies in the assignment of a classification or "preservation value" to each individual building or structure within the nominated district boundary.)

Finding: As described in the Sutherland report, the complex as a whole retains a high degree of *historic and architectural integrity* within its identified period of significance. (A period of significance *for the buildings* within the complex was identified as extending from 1847 when the first building was constructed to 1920 when the last building associated with the Portland Company's core transportation and/or marine-related business had been completed. Note that the *company's* period of significance extends much longer, as it remained a leader in its field until the end of WW II, and continued to operate until 1982. It should be noted that Portland's ordinance does not require a determination of period of significance, but the Board discussed the question as part of its effort to determine the relative significance of the more recent extant structures on site: the office building, built in 1950, and the large metal building, built in 1968.

As regards the question of *integrity of condition*, the Board found that although a number of the 16 extant structures have become so deteriorated due to deferred maintenance as to make their rehabilitation infeasible (see assigned classifications of individual structures below), the complex as a whole retains sufficient integrity of condition to make it worthy of preservation and rehabilitation. This finding was based on assessments provided in two separate condition reports prepared by Resurgence Engineering & Consulting and Becker Structural Engineers.

DESIGN GUIDELINES

In the report which is required to accompany the Historic Preservation Board's recommendation regarding designation, the Board may recommend specific design guidelines for the review of alterations or new construction within the proposed district—See Sec. 14-617-(c). Following discussion, the Board elected not to recommend specific design guidelines for the Portland Company district, but to include in the designation report a description of the complex's major visual characteristics that contribute to the district's significance and should be recognized in evaluating future proposals for alterations and infill construction within the district. (See pages 8-10 of Designation Report, ATTACHMENT 2.) The visual character of the site is also described in the Sutherland report (see pg. 4). Major visual characteristics include the presence of a major entrance off Fore Street at the west end of the complex; the open entrance yard; the linear alignment and east-west orientation of the buildings; the separation of connected buildings by private streets and alleys; the presence of overhead pedestrian bridges; the predominance of brick and granite building exteriors; and large scale windows typical of industrial structures.

DISTRICT BOUNDARY DELINEATION and ASSIGNED BUILDING CLASSIFICATIONS

Taking into consideration the documented significance of the Portland Company complex as a whole, the assessment of the complex's extant historic structures in terms of their significance and current condition, and in consideration of the identified visual character of the Portland Company complex, which was determined by the Board to contribute significantly to one's understanding of and appreciation of the historic resource, the Board determined that the district boundary and building classifications as delineated on ATTACHMENT 1 should be recommended to the Planning Board and Council.

Assigned Classifications for Individual Structures within the Proposed District Boundaries

Building 1	Erecting Shop	1918	Contributing
Building 2	Machine Shop	c. 1847	Contributing (a)

Building 3	Machine Shop	c. 1847	Contributing
Building 4	Foundry	1895	Noncontributing (b)
Building 5	Foundry Addition	c. 1980's	Noncontributing (c)
Building 6A, 6B	Blacksmith & Tank Shop	1883, 1896-1904	Contributing
Building 7	Car Shop	1873, 1904	Noncontributing (d)
Building 10	Paint Shop	c. 1873	Noncontributing (e)
Building 11	Pattern Storehouse	1885	Noncontributing (f)
Building 12	Pattern Storehouse	1895	Contributing
Building 14	Drafting Rm/Storehouse	1858-64	Noncontributing (g)
Building 15	Boiler House	1848-64	Noncontributing (h)
Building 16	Brass Foundry	1864-71	Contributing
Building 24	Vault	c. 1905	Contributing
Building 30	Office Building	1950	Noncontributing (i)

Notes:

- (a) Cantilevered roof addition noncontributing due to structural instability
- (b) Noncontributing due to condition, potential requirement for significant reconstruction
- (c) Constructed in 1968, outside the period of significance
- (d) Noncontributing due to severely deteriorated condition
- (e) Noncontributing " " " " " "
- (f) Noncontributing " " " " " "
- (g) Noncontributing " " " " " "
- (h) Noncontributing " " " " " "
- (i) Constructed in 1956, outside the period of significance

Note that a classification of noncontributing allows a building to be demolished as of right. Any proposed replacement new construction would, however, be subject to review and approval under the historic preservation ordinance's new construction standards.

Although several of the buildings included within the recommended district boundary were determined by the Board to be noncontributing due to condition or date of construction, Board members expressed the view that the boundary should include the footprint of most of these noncontributing buildings.

In coming to this conclusion, the Board noted that the placement, alignment and relationship of the extant structures is key to conveying the Portland Company's history and significance and is an important character-defining element of the complex. They also noted that whatever is built in close proximity to the remaining historic structures has the potential to either reinforce or undermine the remaining buildings and one's appreciation of this historic complex. Acknowledging that noncontributing buildings may be demolished as of right under the provisions of Portland's historic preservation ordinance and that new construction within the district is likely, including the footprints of most of the historic extant structures within the district boundary will ensure that whatever new construction is introduced within the historic core of the complex will be reviewed for general compatibility with the abutting or adjacent contributing structures. They also noted that district designation would not preclude future adjustments or alterations to buildings or site features within the district boundaries.

In response to the property owner's request to classify additional buildings as noncontributing (i.e. Buildings 1 and 16), Board members found these buildings to be important contributing structures to the overall complex, as documented in the preservation consultant's report, and that their condition did not warrant their removal. Board members also expressed the view that allowing the removal of additional historic structures from the property would materially affect one's ability to understand and appreciate the history, significance and scale of operations of the former Portland Company complex.

REQUESTED ORDINANCE AMENDMENT

As noted above, Ms. Costigan requested that the Board include as part of its recommendation to the Planning Board an ordinance amendment providing that the height allowances established by the underlying zoning for this property supersede the HP Board's authority as regards review of building height. As the Historic Preservation Board had not been involved in discussions regarding building heights for this property and had not been briefed on details of the final rezoning, including allowable building heights, the Board did not think it was appropriate to include such an amendment as part of its recommendation. They also noted that review of building height for compatibility with a development's surrounding context is an integral part of the Historic Preservation Board's review process for new construction. While it is rare that the Board has required heights lower than that allowed by zoning, maintaining the authority to impose this requirement may be important in some instances. The Board also pointed out that they made an exception to this rule for the Congress Street Historic District given the wide range of building heights exhibited within the district and the fact that recently adopted building heights for the B3 zone had been based on a careful analysis of Congress Street's existing building stock.

VII. FINAL HP BOARD VOTE ON PROPOSED DISTRICT DESIGNATION

Based on the above findings, the Board voted 7-0 to recommend to the Planning Board and City Council that the former Portland Company complex be designated as a local historic district as delineated in the map enclosed as ATTACHMENT 1.

Note: Following the Historic Preservation Board's formal vote on June 24, staff prepared a draft designation report for the Board's review and comment. The draft designation report was reviewed on July 15. Following an opportunity for public comment, the Board confirmed the content of the report with minor clarifications and amendments.

New Information (for 9/8/15 public hearing)

VIII. RESPONSES TO QUESTIONS RAISED AT PLANNING BOARD's 7/28 WORKSHOP

At the Planning Board's July 28 workshop a number of questions were raised about various aspects of the Historic Preservation Board's deliberations and recommendation. Following are responses to specific questions raised by members of the Planning Board as well as clarification on aspects of the Historic Preservation Board's deliberations and findings that appeared to warrant further explanation.

What was the Historic Preservation Board's process for assigning a classification to each building? Is it a balancing act between consideration of significance and condition?

The Board's review process began with an analysis of the Portland Company complex *as a whole*, rather than a focus on individual buildings. This was the appropriate approach given the fact that the Portland Company property is comprised of buildings that are historically and functionally related to each other. Only after the

significance and integrity of the overall complex was evaluated was it appropriate to move on to a detailed evaluation of the individual buildings within it. The building-by-building evaluation focused primarily on the question of *condition* because the *significance* of virtually every extant building within the complex was made clear in the report prepared by Sutherland Conservation & Consulting. The Sutherland report explained that each building within the complex played a specific, necessary and interdependent function in the overall manufacturing process and that much of the property's significance is due to the fact that, collectively, the existing buildings encompass the complete historic manufacturing process of the Portland Company.

The Board's first task was to consider whether the complex of buildings meets the ordinance's *minimum criteria for designation*, which are outlined in Sec. 14-610 (a) and (b) of the ordinance.

Sec. 14-610 (a) lists six potential areas of significance, at least one of which must be clearly met by the nominated resource. In the case of the Portland Company complex, all six of the criteria were found to be met. For two of the criteria, the Portland Company complex was found to be significant at the local, state *and* national level. (A more detailed description of the Board's findings as regards significance is included in the 9/2/15 PUBLIC HEARING report.)

Next, the Board had to determine whether the complex (proposed district) meets the criterion in Sec. 14-610 (b), which states: "In the case of a nominated historic district, the historic preservation board shall also determine whether a substantial number of the properties, sites, structures or objects have a high degree of cultural, historic, architectural or archeological significance and integrity, many of which may qualify as landmarks, and which may also have within its boundaries other properties, sites, structures or objects which, while not of such cultural, historic, architectural or archeological significance to qualify as landmarks, nevertheless contribute to the overall visual characteristics of the significant properties, sites, structures or objects located within it."

Here, the Board determined that all of the extant buildings within the Portland Company complex, with the exception of the 1956 office building (Building #30) and the large 1968 metal building addition to the foundry (Building #5), exhibit a high degree of historic significance as they all played an important, distinct and interdependent role in the overall manufacturing process of the Portland Company. Since the office building did not represent the core function of the historic complex and was added much later in its history, it was found not to be significant. Building #5 was found not to be significant because it was built late in the company's history, when the nature of company's product line began to change.

Note that this review criterion also requires demonstration of "integrity". "Integrity" as defined under this ordinance criterion applies only to a structure's cultural, historic or architectural integrity. Historic integrity is distinct from structural integrity or integrity of condition. "Historic integrity", as explained in the Sutherland report, "is based on the retention of sufficient essential physical features from the historic period, including location, design, setting, materials, workmanship and/or association to convey the significance of the property. The Sutherland report includes an entire section on the integrity of the individual buildings within the complex and on the integrity of the complex as a whole--see SECTION II, beginning on page 21. Here, the Board found that the remaining historic structures within the complex exhibited a high level of *historic and architectural integrity*, as they remain in relatively unaltered condition from the time of their construction.

Following consideration of these two threshold criteria, the ordinance requires that the Board then address the nominated resource's *integrity of condition*:

Sec. 14-611. Integrity of landmarks and historic districts

Any area, structure or object that meets the criteria in section 14-610 must also have sufficient integrity of location, design, condition, materials and workmanship to make it worthy of preservation or restoration.

Under this criterion, the Board considers the *integrity of condition of the overall complex*, taking into consideration the condition of the individual buildings within the complex. Notwithstanding the poor condition of a number of individual buildings, as documented in two reports available for the Board's reference, the Board found that the complex, or proposed district as a whole, had "sufficient integrity of location, design, condition, materials and workmanship to make it worthy of preservation or restoration."

The assignment of a classification for each building within a proposed district is a requirement of the historic preservation ordinance and must be provided as part of the historic district designation report that accompanies the Historic Preservation Board's recommendation. (See Sec. 14-617 (f).) It should be noted that the ordinance does not provide specific criteria which must be met to prove that a building is "noncontributing"; the only guidance provided for this determination is the ordinance definition included in Sec. 14-602 Definitions, which states:

Noncontributing: A classification applied to a site, structure, object, or portion thereof, within a historic district signifying that 1) it does not contribute generally to the qualities that give the historic district cultural, historic, architectural or archaeological significance as embodied in the criteria for designating a historic district; 2) was built within 50 years of the date of district designation unless otherwise designated in the Historic Resources Inventory; or 3) where the location, design, setting, materials, workmanship and association have been so altered or have so deteriorated that the overall integrity of the site, structure or object has been irretrievably lost. A portion of an otherwise contributing or landmark structure may be determined by the historic preservation board to be non-contributing if it meets one or more of the above conditions.

In reviewing the results of the condition reports, the question for the Board was not whether a building was in poor condition, but whether it had "so deteriorated that the overall integrity of the...structure...had been irretrievably lost." The two condition reports, one prepared for the CPB2 for initial planning purposes and cost/benefit analysis (which is not a relevant consideration in the designation review process) and the other for the City for the purposes of designation deliberations, were by their nature preliminary assessments of the overall condition of the buildings. Neither consultant was asked to develop specific proposals for addressing identified structural or building envelope deficiencies. Without knowing what use was proposed for a given building, it would be impossible to develop specific recommendations or to reasonably determine the feasibility of its adaptive reuse.

Given the preliminary nature of the condition reports, it is fair to say that the Historic Preservation Board demonstrated a willingness to accept the findings of the reports where the two reports were clear, definitive and in strong agreement. Accordingly, Buildings #7, #10, #11 and #15 were identified early on in Board's discussions as noncontributing due to condition. Later, based on additional information from CPB2, the Board reclassified Building #14 as well, from contributing as noncontributing

Classification of the foundry (Building #4) proved to be the most difficult. In the Resurgence report, Building #4 was not one of the buildings identified as being in significantly deteriorated condition. (See pg. 32 of Resurgence report, Recommendations and Conclusion - ATTACHMENT 5. Both the Resurgence and the Becker reports, however, noted that Building #4 exhibits unique condition issues with an exterior brick masonry wall system that is integrated with iron structural columns. The columns are exposed to weather and

in an advanced state of disrepair. They noted that in order to correct the structural deficiencies, it might be necessary to dismantle the exterior masonry walls (or portions thereof). The roof structure was also identified as inadequate for snow loads and might need replacement or substantial reinforcement. In response to the findings in the two reports, CPB2 representatives questioned whether this degree of potential intervention (partial or complete reconstruction) could reasonably be defined as preservation or rehabilitation.

At the final workshop, several members of the Board argued that it was premature to classify the foundry as noncontributing without a more detailed structural analysis or exploration of options. They suggested that Building #4 be classified as contributing, but that the classification be annotated to indicate the Board's willingness to reconsider its classification upon more detailed structural analysis. CPB2 argued that the ordinance does not provide for annotated or qualified classifications. Ultimately, the Board voted to classify Building #4 as noncontributing due to condition. This was a particularly difficult decision, as the foundry represents to a large extent the "heart" or center of the Portland Company's operations. The foundry is also a key component of the complex's core manufacturing row, which is comprised of four connected structures through which most of the company's product line moved from raw material stage to final assembly. Also making the decision difficult was the Board's recognition that the removal of the large foundry building would inevitably impact one's ability to appreciate the scale and magnitude of the Portland Company's operations and the significance of the company to Portland's economy from the mid-19th to the mid-20th century.

How were the district boundaries determined? Why does the proposed boundary include the footprint, or partial footprint, of buildings that have been determined to be noncontributing due to condition?

As noted above, the Portland Company property derives its significance *as a complex*. This complex is defined not only by the buildings within it, but also by the alignment and spatial relationship of the buildings and by its contributing site features such as the entrance drive, the alleyways, the entrance yard and the elevated bridges. Collectively, these elements communicate how this industrial complex functioned.

Although several buildings within the complex have been determined to be noncontributing due to their physical condition and it is very likely that new development will be introduced in their place, the question of how future development relates to the remaining historic resources--in terms of placement, orientation, massing, etc.--is an important consideration. It is appropriate to include the footprints (or portion thereof, in the case of Building 4) of these noncontributing structures within the district boundary because of their close proximity to what will likely become the only remaining historic structures on site and so that the architectural characteristics that distinguish this historic complex are taken into consideration in future development. Similarly, it is appropriate to include within the district boundary the entrance drive and entrance yard, as these are elements have been part of the complex since the company's inception. While it is likely that the position, size and/or function of these key site elements will change with any future redevelopment scheme (the Historic Preservation Board has acknowledged this possibility) including them within the district boundary provides an opportunity to preserve the primary visual characteristics of the Portland Company complex by maintaining such attributes as the spatial relationship between the buildings and building rows as well as a general sense of the footprint, scale and sequential nature of the overall complex.

See page 4, *Historic Significance and Visual Character of the Portland Company Site* of Sutherland report (ATTACHMENT 4) for a description of the contribution each element makes in conveying the significance of this property.

Is Building 1 (Erecting Building) significant and does its condition warrant classification as a noncontributing building?

With respect to the question of the Erecting Building's significance, please see attached memo from preservation consultant Scott Hanson, the principal author of the Sutherland report. (ATTACHMENT 10)

With respect to the Erecting Building's condition and feasibility of rehabilitation, please see attached letter from structural engineering consultant Al Hodson, who prepared the building condition report for the City. (ATTACHMENT 11)

It should also be noted that, apart from the Erecting Building's individual merits, it is a key component of the Portland Company's core manufacturing/assembly row, which is currently made up of four buildings. With the potential removal of Building #4 due to condition, preservation of Building I becomes especially important if the overall scale and magnitude of the Portland Company's operations and its major presence on the Portland waterfront for almost 150 years is to be conveyed. The Executive Summary in the Sutherland report (see pg. 4) includes the following: "The removal of any of the historic buildings existing in the complex will diminish the ability of the complex to demonstrate the historic manufacturing process of the Portland Company."

What is the condition of Building 16 (brass foundry) and how will the removal of Building 15 affect Building 16?

Please see attached memo from Al Hodson of Resurgence Engineering & Preservation. (ATTACHMENT 11)

Why is the district's eligibility for National Park Service certification (and thus eligibility for historic tax credits) a relevant consideration in the City's local district designation process?

Any conversation about eligibility for Federal or State historic tax credits is only to highlight the opportunity as a possible path to pursue for a future rehabilitation project. Tax credits have proven to be a powerful financial incentive and have been employed in approximately 110 historic rehabilitation projects in Portland alone. It behooves the City of Portland to determine whether the proposed historic district is likely to meet the requirements for National Park Service certification, because NPS certification will be *required* in order to access the historic tax credits.

Reference to the possibility of NPS certification and tax credit eligibility is also relevant to the discussion because Portland's designation criteria are patterned directly after the criteria used by the Maine Historic Preservation Commission and the National Park Service. (The only difference is that Portland's ordinance takes into consideration the physical condition of nominated resources while the National Park Service does not.) If the National Park Service determines that the Portland Company Historic District as proposed by the City of Portland does not include sufficient historic resources to adequately convey the history and significance of the Portland Company complex, it will not certify the district. Portland must be able to make a strong and defensible argument for the removal of historically significant buildings and site elements if the district is to be certified.

See letter from the Maine Historic Preservation Commission - ATTACHMENT 12.

Should the height allowances established in the underlying zoning should govern height within the proposed district or should the HP review standards as they apply to height supersede the zoning regulations?

The Historic Preservation Board did not include as part of its recommendation a proposed ordinance amendment that would pertain to the regulation of building height for new construction within the Portland Company Historic District. As the Historic Preservation Board was not involved in discussions regarding allowable building heights for this property and has not been briefed on details of the final rezoning, the Board did not think it was appropriate to include such an amendment as part of its recommendation. Board members noted that review of building height for compatibility with a proposed development's surrounding context is a standard and integral part of the Historic Preservation Board's review process for new construction. While it is rare that the Board has required a height lower than that allowed by zoning, maintaining the authority to impose this requirement may be important in the review of some projects, particularly in very sensitive contexts. While an exception to this rule was made for the Congress Street Historic District, it was based on the fact that Congress Street exhibits a very wide range of building heights. Additionally, the allowable building heights in the B3 zone had been based on a careful, and recent, analysis of Congress Street's existing building stock. In the Board's view, waiving otherwise applicable review standards should be carefully considered.

Responses to information and attachments included in Ms. Costigan's letter of August 26, 2015:

Note that the district boundary map proposed by CPB2 as provided in Ms. Costigan's letter of August 26 (ATTACHMENT 13) includes two separate boundaries: one around several buildings on the east side of the entrance yard and another around Building # 12. According to cite NR Bulletin 16A, pg. 57, as cited by staff of the Maine Historic Preservation Commission, this is not consistent with standard requirements for delineating boundaries of historic districts. Historic *districts* typically comprise a single contiguous area.

Also, on page 2 of Ms. Costigan's letter, she states "as we know, these credits are reviewed annually and should not be considered as planning tools and may in fact not be available at the time of development or any other rehabilitation project". Maine Historic Preservation Commission staff has confirmed that there is no sunset provision for the Federal tax credits and the State tax credits were recently extended to 2023. An annual *report* on state historic tax credit activity is required, but no *reauthorization review* is required.

IX. ANALYSIS OF PROPOSED DESIGNATION'S CONSISTENCY WITH COMPREHENSIVE PLAN

Senior Planner Christine Grimando has evaluated the proposed historic district designation consistency with the Comprehensive Plan. Following are Ms. Grimando's findings:

The Comprehensive Plan is widely supportive of preservation of Portland's historic resources. Volume 1, State Goal I, *To preserve the State's historic and archeological resources*, endorses preserving and enhancing distinctive areas, sites, structures and objects that have historic, cultural, architectural and archeological significance. It includes an overview of preservation efforts in the city, recommendations for furthering preservation, and reference to the adoption, as part of the 1990 Comprehensive Plan, of the Historic Preservation Ordinance, and the Historic Resources Design Manual, both still being utilized today.

There are several, but not extensive, references to the Portland Company site/58 Fore Street, as well as more general policy for the Eastern Waterfront as a whole, within elements of the Comprehensive Plan. Below are pertinent components for preservation as it concerns 58 Fore Street.

- Volume 1 gives an overview of the years of waterfront planning efforts of the City, and addresses redevelopment of the Waterfront East specifically, which encompasses and extends beyond the Portland Company complex. It outlines four redevelopment principles for development in this area: 1) Character and Impact of Development; 2) Mixed-use as a component of an active, vibrant urban area; 3) maintaining Maritime Resources; and 4) Economically Responsible Development that benefits the city and the region. *Character and Impact of Development* calls for a variety of related outcomes, including compatibility with surrounding neighborhoods and maritime uses, historic preservation and adaptive reuse, compatible architecture, protection of view corridors, as well as integrated street and trail networks.
- Volume I, State Goal I references the Historic Resources Design Manual, which identifies 58 Fore Street as eligible for the National Register of Historic Places on the basis of the 1976 Portland Historic Resources Inventory.
- **A Masterplan for Redevelopment of the Eastern Waterfront** (Masterplan) consists of three documents: 1) **A Masterplan for Redevelopment of the Eastern Waterfront**, 2) **Eastern Waterfront Building Height Study** (Height Study), and 3) **Design Guidelines for the Eastern Waterfront** (Design Guidelines) - the latter are two freestanding documents that were both adopted by reference into the Masterplan. The Height Study does not mention preservation of historic structures, and is focused on height recommendations for new construction, without explicit consideration of how new construction would interact with the existing urban fabric.

The Masterplan reiterates and expands upon the four redevelopment principles for the Eastern Waterfront of Volume 1, encouraging historic preservation and active reuse of historic structures as a component of the *Character and Impact of Development* principle (page 12). The document also encourages aggregation of surface parking for better use of valuable land, including more intensive reuse of historic buildings, replacement of non-historic structures, and open space enhancement (page 6). This also is a recommendation that applies to the entirety of the Eastern Waterfront. In regard to specific recommendations for the Portland Company complex (page 8), the Masterplan notes its potential for adaptive reuse, and that it is a property that has been deemed eligible for inclusion in the National Register of Historic Places. It goes on to note that parking enhancements and better site access will better integrate the property with the rest of the Eastern Waterfront, which in turn is expected to spur adaptive reuse and restoration of historic structures. Finally, adaptive reuse and sensitive rehabilitation of existing historic structures is a primary development consideration.

The Design Guidelines note the historic character of the area by making strong recommendations for new construction that respects the historic character of the waterfront, while representing the best elements of contemporary design (page 4). In regard to historic structures the guidelines state: *Historically and architecturally significant structures and sites should be inventoried and protected from demolition and carefully rehabilitated in a way that is consistent with their original architectural intent. The challenge and opportunity is to adaptively reuse significant structures while retaining their historic character. New additions to historically significant buildings should be designed for compatibility with the original structure in size, composition and material and should result in the minimum necessary loss of original architectural material* (page 7).

An historic district on the site of the Portland Company complex is consistent with Comprehensive Plan policy. The Comprehensive Plan recognizes the importance of historic preservation and rehabilitation for the city as a whole, the unique characteristics of the Eastern Waterfront, and the significant legacy of the Portland Company complex. It also anticipates new construction, and the need for sensitive, compatible architecture beside and (in some cases) in place of the existing building stock. While recognizing the value of preservation and adaptive reuse, its support is framed broadly enough to allow for the Historic Preservation Board, and ultimately the Planning Board and City Council, to make final, informed determinations about the appropriate parameters of a district boundary and its specific contents.

X. MOTIONS FOR CONSIDERATION

Upon the recommendation of the Historic Preservation Board and on the basis of the Portland Company Historic District Designation Report, documentation and analysis provided in reports prepared by Sutherland Conservation & Consulting and Resurgence Engineering & Preservation, and information included in the staff report for the September 8, 2015 public hearing,

- 1) The Planning Board finds that the proposed Portland Company Historic District:**
 - a) meets the historic preservation ordinance's minimum criteria for designation as set forth in Sec. 14-610 (a), specifically Criteria 1, 2, 3, 4, 5 and 6, based on the Board's findings that all of the summary statements as to significance of the Portland Company complex included in the 9/8/15 public hearing report are well-founded and based on detailed research and documentation. Accordingly, the Board confirms and references the report's statements of significance as the basis for its finding; and**
 - b) meets the criterion in Sec. 14-610 (b), based on the Board's finding that a substantial number of the structures and sites within the proposed district have a high degree of historic and/or architectural significance and integrity, many of which qualify as landmarks, and that the proposed district also has within its boundaries other sites and structures which contribute to the overall visual characteristics of the significant structures located within it. Pursuant to this finding, the Board supports the building classifications included in the Designation Report.; and**
 - c) meets the integrity criterion set forth in Sec. 14-611, based on the Board's finding that the district and identified contributing structures therein have sufficient integrity of location, design, condition, materials and workmanship to make them worthy of preservation or restoration.**
- 2) The Planning Board also finds that designation of the Portland Company Historic District is consistent with the goals of the Comprehensive Plan, including the Masterplan for Redevelopment of the Eastern Waterfront, based on the analysis provided in the 9/8/15 public hearing report.**

On the basis of the above findings, the Planning Board recommends that the City Council designate the former Portland Company complex as a local historic district (as delineated in ATTACHMENT 2 of the 9/8/15 public hearing report) subject to the provisions of Article IX of the Land Use Code.

ATTACHMENTS

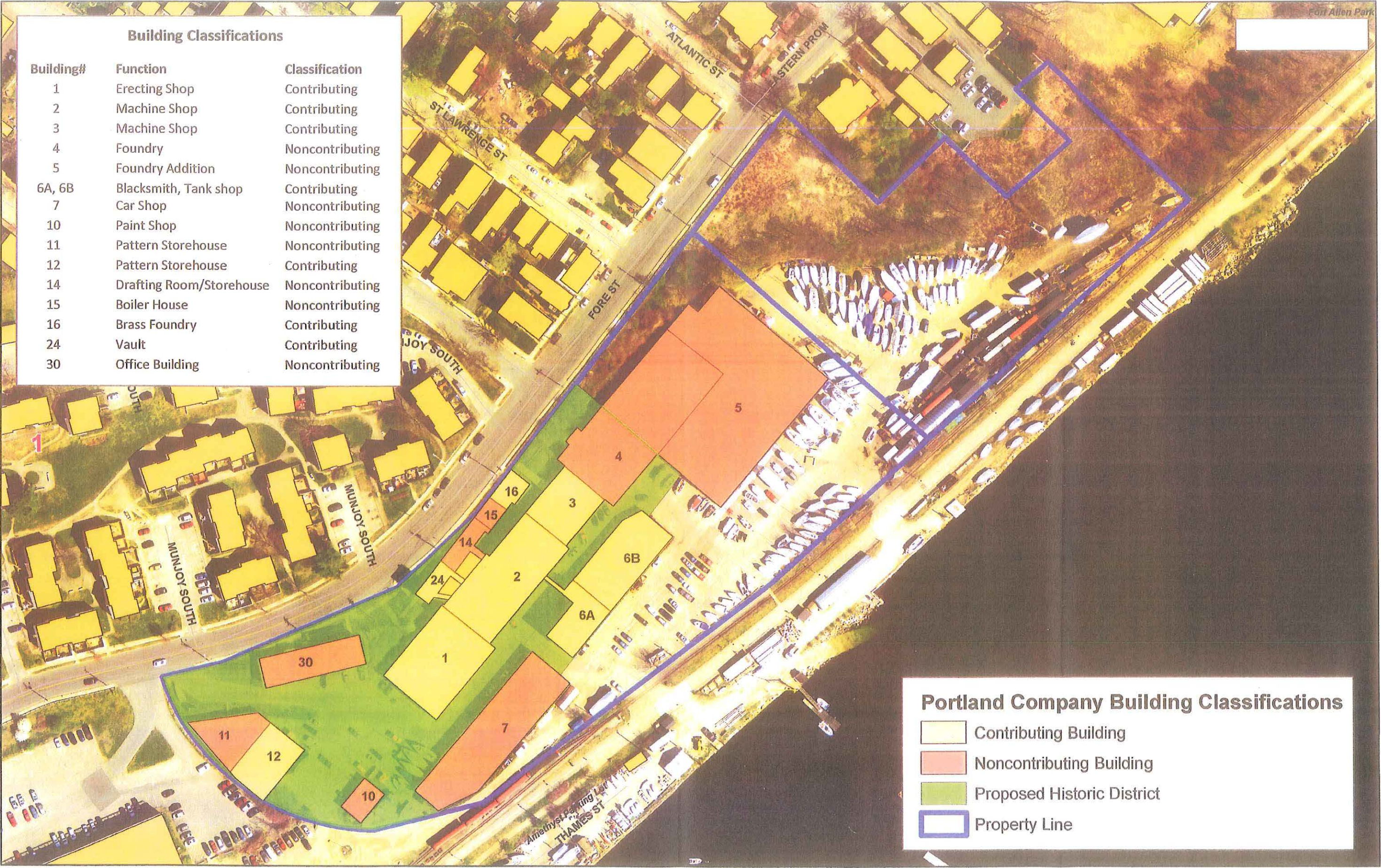
1. Proposed Historic District Map with Boundaries and Individual Building Classifications
 2. Portland Company Historic District Designation Report
 3. Excerpts from Portland's historic preservation ordinance (Article IX of the Land Use Code).
 4. *The Portland Company: Historic Significance and Integrity*, prepared for City of Portland by Sutherland Conservation & Consulting
 5. *Portland Company Complex General Building Condition Report*, prepared for City of Portland by Resurgence Engineering and Preservation Inc.
 6. Evaluation of *Existing Buildings at the Portland Company Property*, prepared for CPB2 by Becker Structural Engineers
 7. Appendix A: Comparative Condition/Cost Analysis (excerpted from Resurgence report)
 8. March 31, 2014 Letter from Maine Historic Preservation Commission regarding eligibility of Portland Company Complex for Listing in the National Register of Historic Places
 9. Letters from interested parties
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Attachments prepared in response to questions raised at PB's 7/28 Workshop

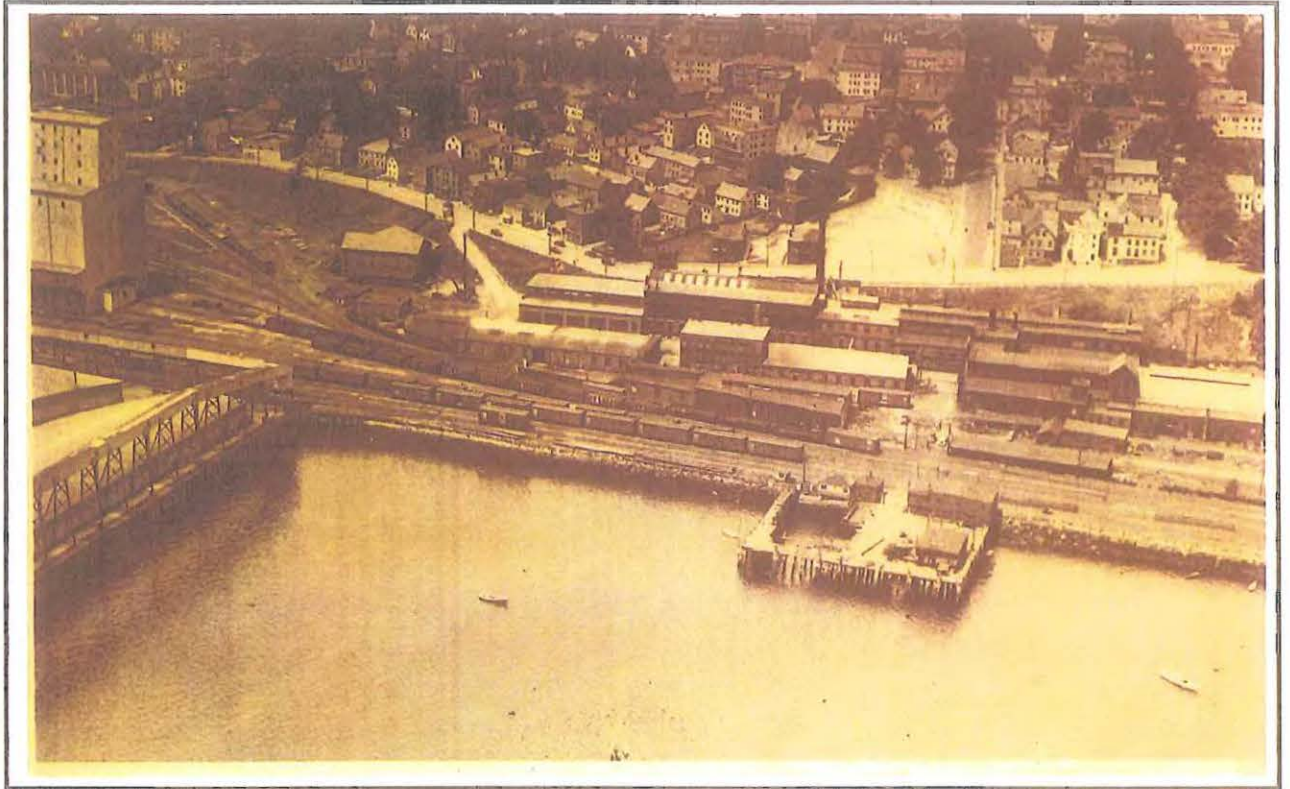
10. 9/2/15 Memo from Scott Hanson, Sutherland Conservation & Consulting, regarding Building 1
 11. 9/4/15 Letter from Al Hodson, Resurgence Engineering, re: condition of Buildings 1 and 16
 12. 9/4/15 Letter from Maine Historic Preservation Commission
 13. 8/26/15 letter from Mary Costigan on behalf of CPB2
-

Information and Public Comment received since 9/8

14. Staff memo summarizing HP Board's 10/21/15 review of latest condition report prepared by Becker Structural Engineers
 - A. Staff memo for 10/21/15 HP Board review
 - B. October 13, 2015 report from Becker Structural Engineers
 - C. Copy of GPL testimony at 10/21 meeting
15. Compilation of most recent public comment



Portland Company Historic District Designation Report



Portland Company circa 1938

Portland Company Historic District

Designation Report

General Description of Complex

The Portland Company complex today is comprised of 16 extant structures occupying approximately 4.3 acres of a 9.93 acre parcel. The complex is located below the original shoreline along Fore Street on filled land that was created to accommodate the construction of the St. Lawrence and Atlantic Railroad.



With the exception of an office building constructed in 1950, all of the buildings within the complex are industrial structures built to house a specific function within the Portland Company's overall manufacturing process. These include both the core production buildings where the company's diverse line of cast metal products were fabricated and assembled (i.e. the principal foundry, a brass foundry,

two machine shops, an erecting building, blacksmith shop, tank shop, and car shop) as well as various accessory structures that housed functions or materials important to the overall operations of the industrial complex. Accessory structures include two pattern storehouses, a paint shop, a drafting room/storehouse and vault. The pattern storehouses and paint shop were purposefully sited well away from the core production buildings to keep flammable materials such as pattern molds and paints away from production areas.

The construction date of the extant buildings ranges from 1847, shortly after the Portland Company was founded, to a large metal building addition constructed circa 1968. Most of the extant structures, however, and all of the structures specifically associated with the company's significant railroad- and marine-related work, were constructed before 1920. With the growth of the company and the need to accommodate the changing demands of the various manufacturing processes that took place in the plant, additional buildings, replacement buildings, and building additions were introduced in the 1870's, 1880's, 1890's and 1910's. As such, the Portland Company complex exhibits several industrial building types, each representative of its respective era in terms of design and structural system. Although the buildings have suffered from decades of deferred maintenance and expedient repairs since the Portland Company closed its doors in 1982, most remain in remarkably unaltered condition from the time of the company's occupation.

Most of the buildings on the site are organized in a linear alignment, running more or less parallel to the water's edge. During the Portland Company's tenure, multiple rail lines ran between the southern edge of the manufacturing complex and the water's edge; the locomotives and thousands of other items produced by the company were loaded onto these rails. Today, the number of tracks is significantly reduced.

The individual buildings within the manufacturing core (on the east side of the entrance yard) are physically connected at their end walls to allow for the efficient movement of products from one stage of the manufacturing process to the other. This manufacturing core includes three "rows" of buildings separated by private "streets" or alleys. (The northwest row of buildings is actually built against the Fore Street retaining wall. The retaining wall forms the rear wall of these buildings; the side walls of the buildings form buttresses that help support the retaining wall.) Overhead pedestrian bridges span the private alleyways to provide upper floor access between building rows.

Virtually all of the extant buildings within the complex are brick. (While some of the early buildings were wood, they were typically replaced with brick, in some cases due to fire.) Another consistent feature in all of the core manufacturing structures is the presence of large multi-light windows, which were needed to maximize the amount of daylight reaching the interior of these buildings.

The industrial complex is approached from a curving entrance drive off Fore Street, near the western end of the property. The drive leads to a wide entrance yard which separates the manufacturing facilities to the east from the paint shop and pattern storage buildings to the west.

History of the Portland Company

Following is a brief history of the Portland Company. For more detailed and illustrated history of the company, see the Sutherland report or The Portland Company 1846-1982 by David H. Fletcher.

The Portland Company was founded as the Portland Iron Manufacturing Company in 1845 on filled land on Portland's eastern waterfront. The name was changed to the Portland Company in 1846 and the company remained in operation at its 58 Fore Street location for 137 years, until 1982.

The Portland Company was established in conjunction with the construction of the Atlantic & St. Lawrence Railroad which was built to connect Portland to Montreal. John A. Poor, the individual most responsible for Portland's successful bid over Boston to become Montreal's winter port via rail, was a Director of the Atlantic & St. Lawrence and became to Portland Company's first president. The company was founded primarily to build steam railroad locomotives for the newly formed railroad and was sited to be convenient to it, as the railroad's main line ran between the shop buildings and the waterfront and down Commercial Street.

The first locomotive produced by the company, the *Augusta*, was completed in 1848. For the next 60 years, the manufacturing facility turned out a total of 630 steam locomotives in at least five different gauges. The company built locomotives for Boston & Maine, Maine Central, Northern Pacific, Panama Railroad, Mexican Central, Sandy River, Wiscasset and Quebec, Portland & Rochester, as well as many other railroad lines.



This 1938 view illustrates the scale and scope of the industrial complex. The Portland Company was the city's largest employer in the 19th century and spurred residential development on Munjoy Hill and in the India Street neighborhood.

The Portland Company was the only locomotive works in the country to be established specifically to produce locomotives, as most of the other builders had their start as general machine shops. Here, all of the necessary shops, as well as two foundries to pour both iron and bronze castings, were brought together in a single facility. The use of cast metals, particularly iron, was central to the rapid

industrialization and expansion of the United States in the nineteenth century and the use of it at the scale undertaken during the period the Portland Company was founded was unprecedented. Cast iron has been called “the plastic of the nineteenth century” for the way it transformed production and expanded the range of products available to industry and the public. Putting all of the stages of production for large machines in one place was a radical advance over traditional practices.

In addition to the hundreds of railroad-related engines, cars and other items it produced, the Portland Company manufactured and installed marine engines and boilers, aids, and other equipment for hundreds of vessels constructed at shipyards throughout Maine. It also shipped marine equipment to other shipyards throughout the country. The Portland Company also produced numerous vessels from the keel up, including tugboats, fishing vessels, yachts, dredges, freighters, fireboats and ferries. Also significant was the Portland Company’s production of lighthouse components and navigation buoys. “Bug Light” at the entrance to Portland Harbor was entirely produced by the Portland Company.

Beyond these two core areas of focus, the Portland Company produced equipment for Maine’s paper, textile and canning industries, as well as other industries throughout the region. Its extraordinary range of manufactured products included freight and passenger cars, fire engines, heavy snowplows, cast iron storefronts, elevators, light poles, manhole covers, and even neutron reactor shells for nuclear power plants late in the company’s existence.

Areas of Significance

As documented in the report prepared for the Portland Planning Department by Sutherland Conservation & Consulting, the Portland Company complex is significant at the local, state and national level. At the local level, the complex exhibits both historic *and* architectural significance.

The Portland Company has national historic significance because it appears to have been the first complex in this country built specifically for the manufacture of railroad equipment with all of the necessary shops and a foundry on a single site. The Portland Company complex as it stands today is a rare surviving example of a pre-Civil War foundry, machine shop, and car shop complex because it retains a number of its original and early buildings, whereas most, if not all, other pre-Civil War complexes have been substantially or wholly demolished. As such, the Portland Company complex contains the oldest surviving railroad shop buildings in the nation still within their historic manufacturing complex context. Recent research indicates the Portland Company appears to be the only surviving pre-Civil War locomotive manufacturing plant in the nation, making it the only one surviving where locomotives were built for the U.S. Government as part of that war effort.

The Portland Company has statewide historic significance because the company made a significant contribution to the development of Maine’s railroads (including the state’s iconic two-foot gauge lines) and maritime shipping industry. The locomotives, railroad cars, marine engines and boilers, and maritime navigation aids produced entirely or in part at the Portland Company were important to the

development of rail and maritime transportation in the State of Maine from the middle of the nineteenth century into the twentieth century. Industrial expansion, natural resource extraction, commerce, and tourism all benefited from improved transportation made possible by products manufactured by the Portland Company.

The Portland Company was the state's largest nineteenth century foundry and machine shop, with those two shops combined in a way that was unprecedented in Maine. The company grew to be the state's most substantial engineering and machine manufacturing business, employing 150 of the 500 machinists in the state at one point. The Portland Company also played a significant role in the development of many important Maine industries including the paper-making, textile, and canning industries. A number of industrial processes likewise benefitted from the research and development of electrical engineer and inventor William Chapman for the Portland Company and through the Chapman Electric Neutralizer Company at the Portland Company.

The Portland Company has local historic significance because it is the only intact nineteenth and early twentieth century industrial complex remaining in the city. Thirty-three manufacturing plants can be identified in the 1876 Bird's Eye View of Portland. Only the Portland Company complex remains largely intact 139 years later. Portland had 60 sizable companies engaged in industrial production of various sorts in 1924, occupying more than 85 buildings. Of these 85 buildings, fewer than a dozen survive outside the Portland Company, none as complexes.

The Portland Company also has local historic significance for its direct association with several major nineteenth century planning and development initiatives within the city of Portland. As part of John A. Poor's vision for creating a modern international port at Portland, he conceived of a wide new street along the waterfront which would contain railroad tracks to connect the Atlantic & St. Lawrence Railroad on the east end of the city to the Portland, Saco & Portsmouth Railroad on the west end while providing both railroads access to the numerous wharves between their terminals. The narrow original waterfront street, Fore Street, followed the natural landform, snaking along the shore around Clay and Broad coves. The new street would be built by filling between the existing wharves below Fore Street, far enough out into the harbor to allow the construction of large new warehouse buildings along the land side of the street. Broad Cove would be filled for construction of the Atlantic & St. Lawrence Railroad terminal and for the Portland Company works and Clay Cove would be filled for the street and new buildings. The Portland Company site alone was originally almost seven acres, the majority of it made by filling the mud flats and cove. This project was undertaken cooperatively by the two railroads, the Portland Company, and the City of Portland, with the railroads paying the cost of filling between the wharves and the City paying wharf owners for the value of their properties seized through eminent domain. The mile-long and one hundred foot wide street would be named Commercial Street. This project was the largest urban planning initiative undertaken in the city of Portland in the nineteenth century and was transformative in its effects.

The buildings of the Portland Company complex have historic architectural significance because they illustrate several distinctive industrial building types constructed between 1847 and 1920; in both their design and their structural system, they are representative of their period of construction. These buildings remain substantially unaltered from their time of the company's occupancy. Additionally, the Portland Company buildings from the 1840s and 1850s are the only industrial buildings of that period remaining in the city of Portland today.

The buildings of the Portland Company also have historic architectural significance because each of the remaining buildings served distinctive function(s) within the overall manufacturing process. Collectively, the existing buildings encompass the complete historic manufacturing process of the Portland Company.

National Register Eligibility: In 1976 the Portland Company complex was identified by the Maine Historic Preservation Commission as being eligible for listing in the National Register of Historic Places. The fact that the historic industrial complex was recognized as being highly significant as early as the 1970's is noteworthy, as the buildings and neighborhoods identified as National Register-eligible during that time period were typically landmark structures or neighborhoods with concentrations of high-style, architecturally notable buildings. Just like vernacular buildings or early working class neighborhoods, industrial sites were slower to gain recognition for their historic or architectural significance. It was the Portland Company's significant role in transportation and marine history at the local, state and national level, as well as its extraordinary importance to the history and economic growth of the City of Portland and the State of Maine that led to its early recognition as a National Register-eligible site.

Integrity of Portland Company Complex

As documented in the Sutherland report, the extant historic structures within the Portland Company complex retain a high degree of historic integrity. Historic integrity is based on the retention of sufficient essential physical features from the historic period, including location, design, setting, materials, workmanship and/or association, to convey the significance of a property. Except for some reversible alterations (e.g. infilled or enlarged window or door openings), most of the buildings remain substantially unchanged from the time of their original construction or alteration during the Portland Company's period of significance. For local designation purposes, the complex's *period of significance* has been defined as extending from 1847 (when the first building was constructed) until 1920, when the last purpose-built structure for the company's marine- and transportation-related work had been constructed.

As regards integrity of condition, six of the fourteen extant historic structures within the complex have been determined to be so deteriorated as to make their rehabilitation infeasible. Accordingly, these buildings have been classified as "noncontributing" structures due to their condition. (See map

and list of buildings with classifications in ATTACHMENTS 2 and 3. The assignment of this classification was based on applicable ordinance definitions and the professional assessment of two independent structural engineering firms. This level of deterioration is due primarily to a lack of maintenance and necessary repairs in recent decades. In the case of Buildings 4 and 11, however, other complicating factors have accelerated their deterioration. In the case of Building 11, the siting of the building against the Fore Street slope has undermined its structural integrity. In the case of Building 4, its exposed-to-the-weather structural system, which was experimental at the time the building was constructed, has failed.

Notwithstanding the finding as regards these six structures, the complex as a whole retains sufficient integrity of condition to make the remaining buildings and contributing site features worthy of preservation and feasible to rehabilitate. As has been demonstrated in numerous historic rehabilitation projects since Portland's historic preservation ordinance went into effect in 1990, once-significantly deteriorated buildings such as the former Cumberland Cold Storage Building on Merrill's Wharf, the Tracy-Causser Building at 507 Fore Street and the Portland Packing Company Building at 14-26 York Street, have been successfully rehabilitated and creatively adapted to new uses. Additionally, state and federal historic tax credits are available to offset the costs of challenging historic rehabilitation projects.

Visual Character of the Portland Company Site

One's ability to understand and appreciate the Portland Company as a historic industrial site relies in great measure on the *relationship* of the buildings to each other within the complex. Indeed, the Portland Company derives its significance *as a complex*. Unlike most of Portland's other historic districts which are comprised of individual, often unrelated, structures that were sited according to a pre-established street grid, the Portland Company buildings were sited to perform a specific function within a larger manufacturing process. The proximity and orientation of the buildings to each other permitted related manufacturing processes



The linear alignment of the buildings east of the entrance yard creates a series of private streets or alleys. The distance between building rows allows one to observe the connected nature of the buildings and appreciate the scale of the historic complex.

to take place in a way that allowed for efficient progression of stages in the overall production process. Not only does this functional organization and placement of buildings in linear proximity to each other convey the history of this particular property, it also creates a visual character for the site that is unique for Portland. Also unique to this district is the way that the spacing between individual rows of connected buildings forms private streets or alleys. The overhead pedestrian bridges spanning these private alleyways also contribute to the district's distinct visual character.



A number of architectural characteristics serve to unify the individual buildings within this district. These include a shared material palette (mostly brick with granite or concrete window lintels and sills), a simplicity of form and a linear nature generally associated with industrial architecture. The repetitive nature of the buildings' fenestration is also a unifying characteristic.

A unifying characteristic of the industrial buildings within the Portland Company complex is their simplicity of form and repetition of detail. Most buildings are brick with granite or concrete window lintels and sills.

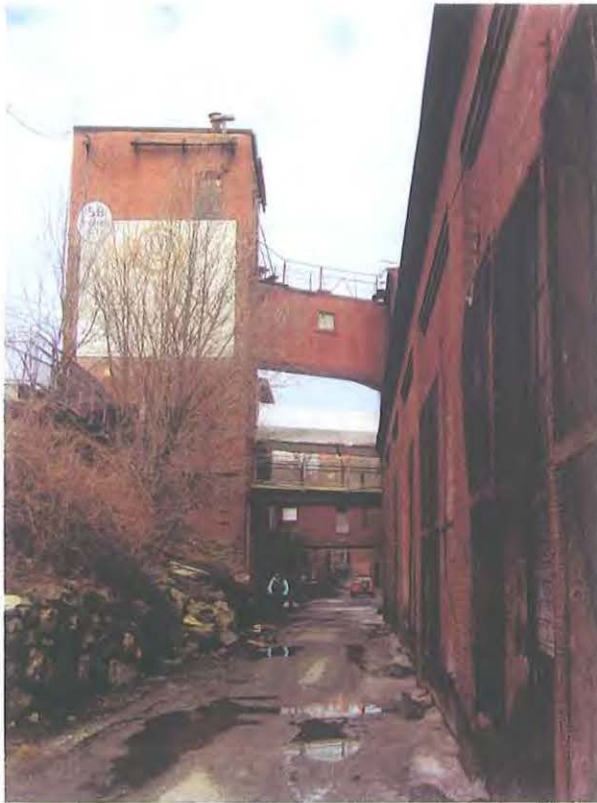
Other important visual characteristics of the Portland Company site include the presence of a major entrance at the west end of the property that follows the grade between the original shoreline at Fore Street and the complex below. (The current driveway has been the primary entrance to the complex since 1847.)

Important site characteristics include a major entrance into the complex from Fore Street near the west end of the district and a generous open space between Building 12 and the historic manufacturing rows. It is from this open yard that the original alignment of the production buildings is observed and the alleys are accessed.



The entrance yard is another important character-defining feature of the property. The yard has been, and continues to be, an open space serving the function of entranceway to the linear manufacturing paths of circulation. It is the point from which the streets or alleys of the complex are accessed. Historically, the entrance yard also served as a fire break between the manufacturing facilities to the east and the pattern and paint storage buildings to the west. The entrance yard has been in its current configuration since 1918.

It is important that these strong and identifiable visual characteristics be considered in the review of future infill development, new construction and site improvements within the district boundaries. New construction within the district should be a clear product of its own time but should also respect and reinforce the industrial architectural vocabulary, site organization and features that are unique to this historic property.



The pedestrian bridges connecting the manufacturing rows at the upper floor level are character-defining features of the industrial complex.



Windows within the manufacturing rows, whether on mid-19th century structures or this 1918 Erecting Building, are typically large and multi-lite.

Proposed Historic District Boundary

The land area encompassed by the proposed historic district is approximately 3.45 acres. Given that much of Building 4 and all of Building 5 are not included within the proposed boundary, the area of the proposed district is smaller than the area occupied by the current building complex (approximately 4.3 acres). The size of the entire property is 9.93 acres.

The district boundary has been drawn to encompass most of the extant historic structures on the Portland Company property, as well as site features and areas that are original to the complex and which contribute to its visual character. Although some of the historic structures within the boundary have been classified as non-contributing and may therefore be demolished as of right, any new development that might occupy the area of the demolished structures will likely affect one's appreciation and understanding of the remaining historic buildings and the complex as a whole. Accordingly, the boundary includes (almost) all of the extant historic structures. The one exception to this rule is the way the boundary is drawn in the vicinity of Building 4 (the 1895 foundry). Here, the boundary encompasses about one third of the length of the original structure. Given Building 4's classification as a noncontributing structure (due to its structural condition), its considerable length and its distance from several major view corridors within the site itself, including its entire footprint within the district boundary was determined to be unwarranted. Including a portion of the footprint, however, ensures that whatever is built adjacent to the remaining historic core of manufacturing buildings (Buildings 1-3) will be generally compatible with this historic core.

On the upland side of the district, the boundary extends to Fore Street. On the water's edge of the district, the boundary is held to the edge of the historic buildings themselves.

See ATTACHMENT 1 for a larger version of the district boundary map shown below.



Structures Included Within Proposed Historic District Boundary

ATTACHMENT 2 is a color-coded map showing the buildings by classification. See ATTACHMENT 3 for photographs of each building within the existing complex, together with its classification (i.e. Contributing or Noncontributing).

Note: The findings in this designation report are based in part on documentation and professional assessments provided in two studies commissioned by the Portland Planning Department. These include *The Portland Company: Historic Significance and Integrity* prepared by Sutherland Conservation & Consulting and *Portland Company Complex General Building Condition Report* prepared by Resurgence Engineering and Preservation, Inc. Copies of the full reports are available in the Portland Planning Office.

ATTACHMENTS

1. Proposed District Boundary
2. District Boundary with Building Classifications Shown
3. List of Individual Buildings within Proposed District

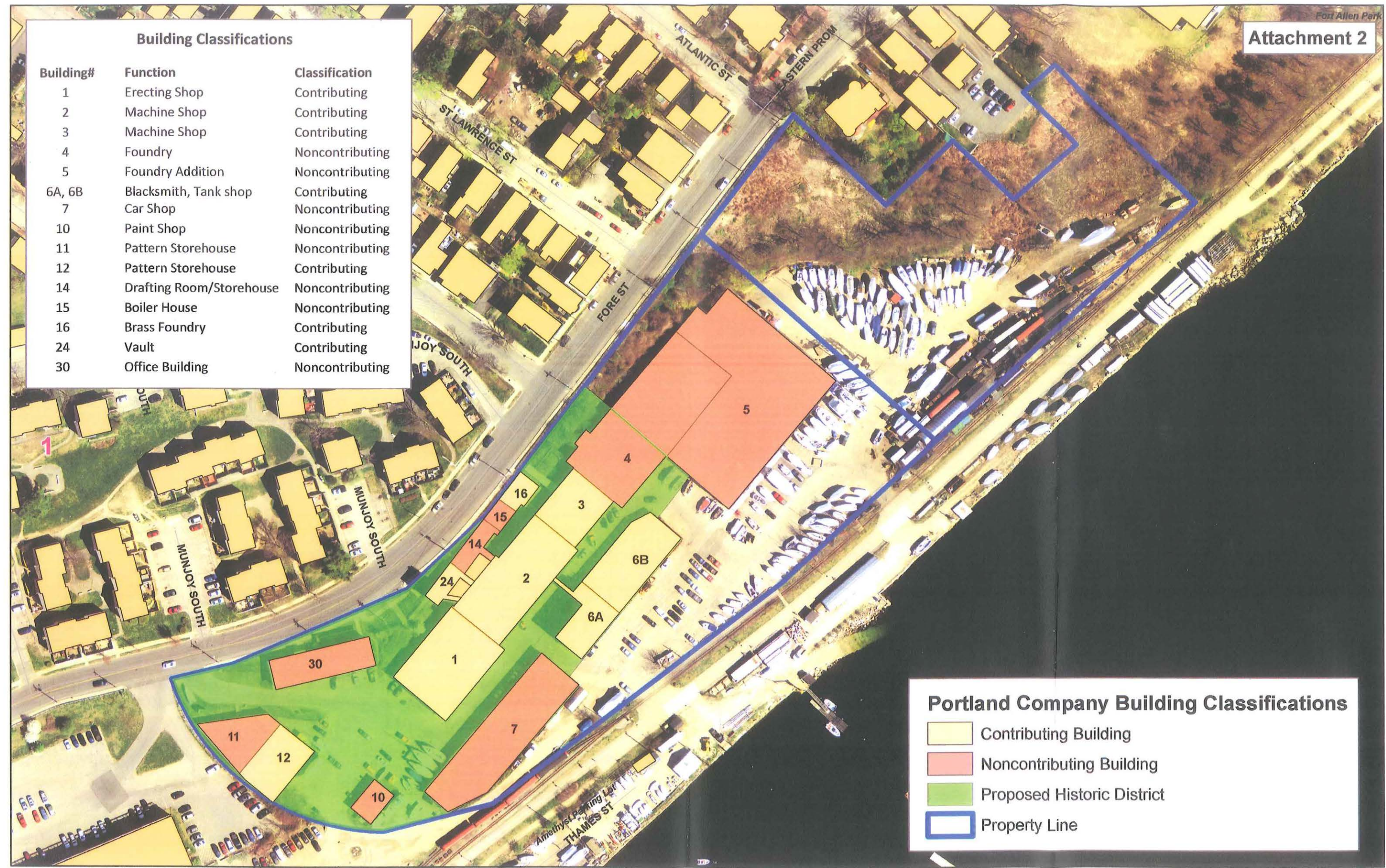


Proposed Portland Company Historic District
Property Line

0 70 140 280 420 560 Feet

Building Classifications

Building#	Function	Classification
1	Erecting Shop	Contributing
2	Machine Shop	Contributing
3	Machine Shop	Contributing
4	Foundry	Noncontributing
5	Foundry Addition	Noncontributing
6A, 6B	Blacksmith, Tank shop	Contributing
7	Car Shop	Noncontributing
10	Paint Shop	Noncontributing
11	Pattern Storehouse	Noncontributing
12	Pattern Storehouse	Contributing
14	Drafting Room/Storehouse	Noncontributing
15	Boiler House	Noncontributing
16	Brass Foundry	Contributing
24	Vault	Contributing
30	Office Building	Noncontributing



Portland Company Building Classifications

- Contributing Building
- Noncontributing Building
- Proposed Historic District
- Property Line

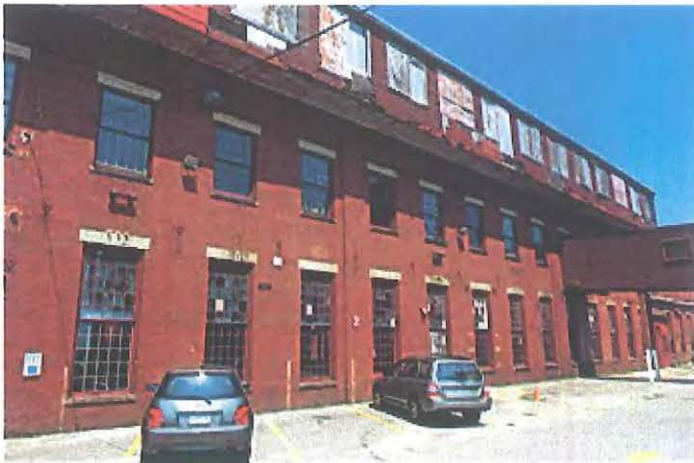
List of Portland Company District Buildings, with Classifications



Building 1

Erecting Shop, 1918

CONTRIBUTING

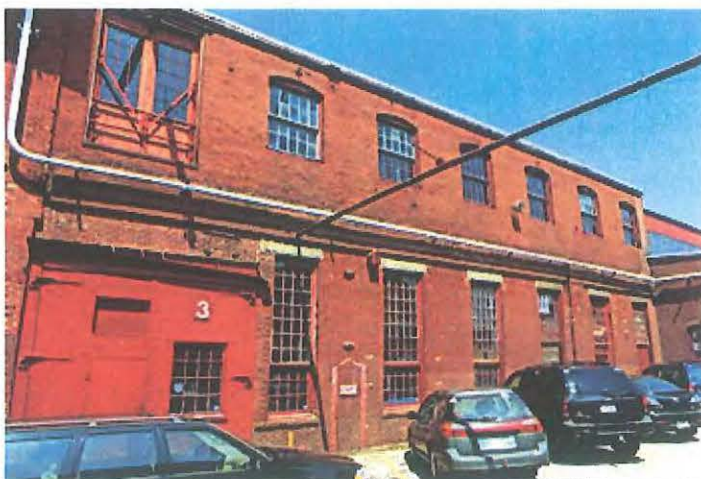


Building 2

Machine Shop, 1847

CONTRIBUTING*

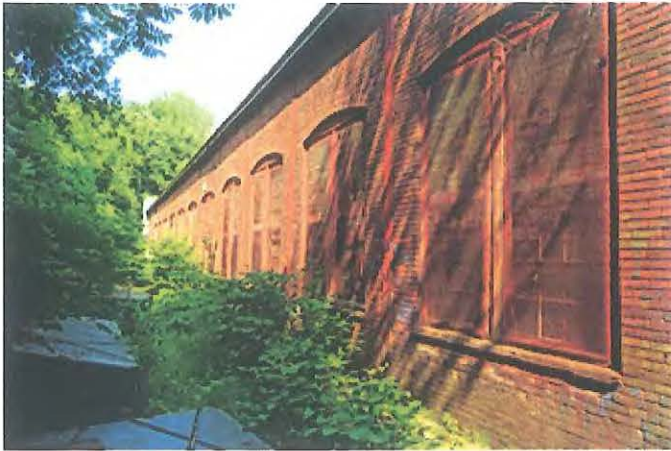
*shed dormer noncontributing based on structural condition



Building 3

Machine Shop, ca. 1847, addition ca 1895

CONTRIBUTING



Building 4

Foundry, 1895, addition 1904-1909

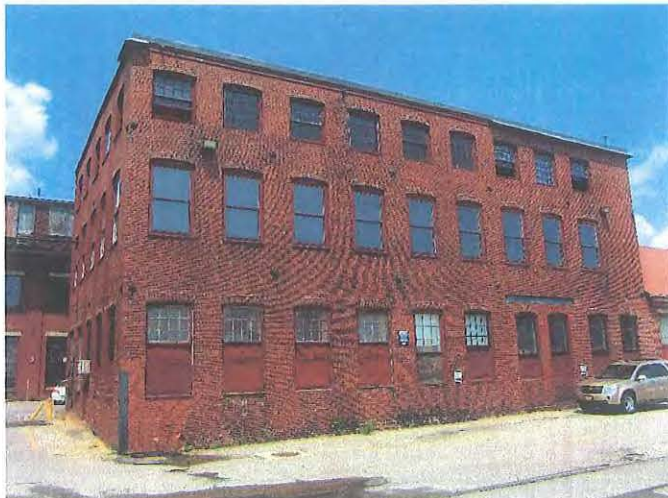
NONCONTRIBUTING based on structural condition



Building 5

Circa 1968 Addition to Foundry

NONCONTRIBUTING (outside the period of significance)



Buildings 6A

Chapman Electric Company building, 1896-1904

CONTRIBUTING



Building 6B

Blacksmith & Tank Shop, 1883

CONTRIBUTING



Building 7

Car Shop, c. 1873, addition 1904

NONCONTRIBUTING based on overall condition



Building 10

Paint Shop, c. 1873

NONCONTRIBUTING based on overall condition



Building 11

Pattern Storehouse, c. 1885, 1895 addition

NONCONTRIBUTING based on structural condition



Building 12

Pattern Storehouse, 1895

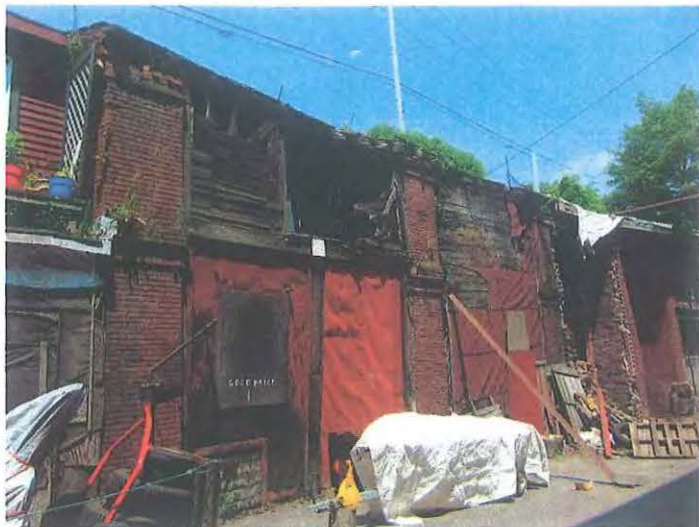
CONTRIBUTING



Building 14

Drafting/Storehouse, ca. 1858-64

NONCONTRIBUTING based on condition, alterations



Building 15

Boiler, 1858-1864

NONCONTRIBUTING based on condition



Building 16

Brass Foundry, 1864-1871

CONTRIBUTING



Building 24

Vault Storage, ca. 1905

CONTRIBUTING



Building 30

Office Building, 1950

NONCONTRIBUTING (outside period of significance)



To: Deb Andrews
 Historic Preservation Program Manager
 City of Portland

From: Scott Hanson
 Sutherland Conservation & Consulting

September 2, 2015

RE: Portland Company Building 1(Erecting Shop)

Dear Deb:

You have requested that I provide specific information regarding to the role of Building 1(Erecting Shop) at the Portland Company throughout the productive life of the company, and its relative significance within the complex. I understand that this question is pursuant to questions raised at the July 28 Planning Board Workshop relative to the historic and architectural significance of the building. The following is from our August 2014 report commissioned by the City of Portland:

Building 1: Erecting Shop (Construction Date: 1918)

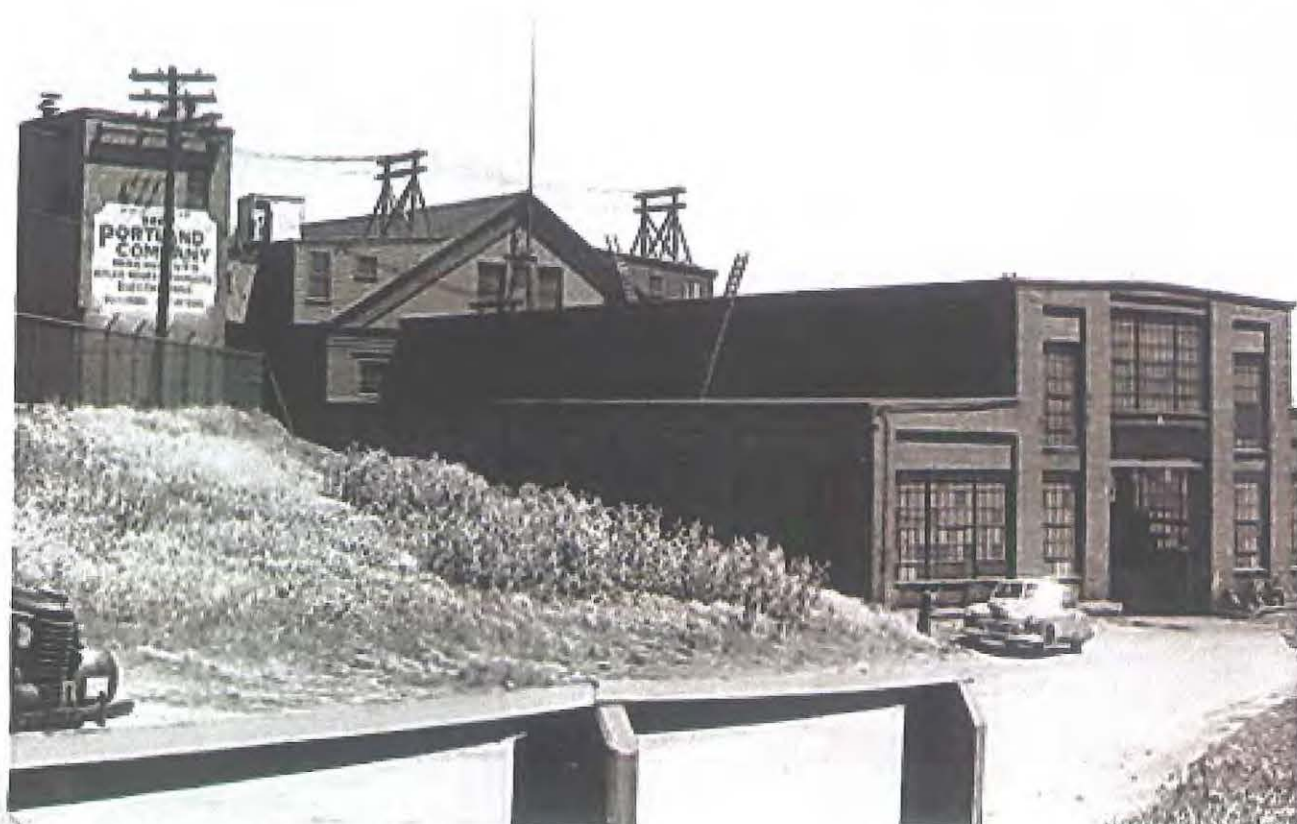
The Erecting Shop was built to replace an earlier wooden erecting shop, built between 1871 and 1880 on the same site. The Foundry, Machine Shop, and Erecting Shop were closely related in the production process, and were aligned so the steps of the work could flow from the Foundry, through the Machine Shop, and into the Erecting Shop, where a locomotive or other large piece of machinery could be assembled above railroad tracks that led from the building to the Grand Trunk rail yard. The brick wall construction relates it to earlier buildings on the site, but its steel truss roofing system, electric overhead traveling crane, clerestory, and large steel framed windows provided maximum utility with a large open floor space and considerable natural light for the assembly process. The building retains a very high degree of integrity to the time of its construction with some alterations to the south and east elevations. These involve increasing the size of the bay doors on the south elevation, likely during the period of significance; and infilling two windows on the east elevation with modern siding material. The remainder of original windows are intact, with some limited areas of deterioration to the frames.

As stated in our report, "The buildings of the Portland Company complex embody the distinctive characteristics of a type, period, or method of construction, specifically several types of industrial buildings built between 1847 and 1920," and "The buildings of the complex retain a high degree of architectural integrity to the period of Portland Company production..." The uses of Building 1 are detailed in the report, stating that the building was, "constructed as the Erecting Shop to replace an earlier one-story wood building from the 1870s that was used for the same purpose. By 1949 Building 1 was used as a machine shop."

The report only briefly addresses late 19th/Early 20th century diversification at the Portland Company, after the period of locomotive construction was over. In the interest of keeping our report on the long and complex history of the site to a readable length, the emphasis of the report was on the development of the buildings, not on their subsequent uses. Like most fabrication shops, the Portland Company was in a state of flux and constant change throughout its lifetime. The many areas of significance documented in the Sutherland report make plain this wide range of products produced by the company. To imply that it has one significant purpose during a short period is to misunderstand the very nature of the Portland Company's ever-changing business. This report's emphasis on the pre-1920 period in no way suggests that the significance of the complex ends at that point in history. As is repeatedly stated in the report, the period of significance continues well into the 20th century. This later period was not detailed in the report to the degree the earlier period was because there were few changes to the physical plant after the construction of Building 1 in 1918. 1918 represents the end of the significant historic development of the complex, not the end of its significant historic functions.

Like all industrial concerns in the U.S., the Portland Company struggled through the Depression. Unlike many companies, it survived that difficult period and was returned to full production during World War II. Following the war, the company continued its long-time function in providing machinery and equipment for production of consumer products. Following changes in the market, the company began making machinery for the new thermo-plastics industry while continuing to make machinery for paper and textile mills. This type of shift in production is typical of historic industrial facilities and does not constitute a disruption in historic significance as long as the essential stages of production remain the same. At the Portland Company, the essential stages of production described in our report continued until the end of the period of significance. From steam locomotives in 1847 to nuclear reactor containment shells in the 1970s, the production process remained essentially unchanged. Building 1 provided the second largest clear floor space of all the buildings (only the foundry was larger). The large modern steel framed windows made it the best day-lit space in the complex. After the period of use in the erection of massive equipment for paper mills and hydroelectric power plants largely ended, the space was used for an expansion of the neighboring machine shop. As the newest building in the complex, it remained essential to the functioning of the company until the end of the period of significance.

A series of photographs taken at the Portland Company by photographer Leyland Whipple (below) includes a number of images of Building 1 in 1949-50. These photos clearly document that the building was an important functional part of the operations of the Portland Company more than thirty years after it was built. This photo album can be found at: <https://www.flickr.com/photos/mvfotog/sets/72157604779520888/> (accessed September 2, 2015).



1. Portland Company Building 1 from Gate, c. 1950.



2. Employee Charlie Pratt at work in Building 1, c. 1950.



3. Employee Happy Pettis at work in Building 1, c. 1950.



4. Employee Frank Riley at work in Building 1, c. 1950.

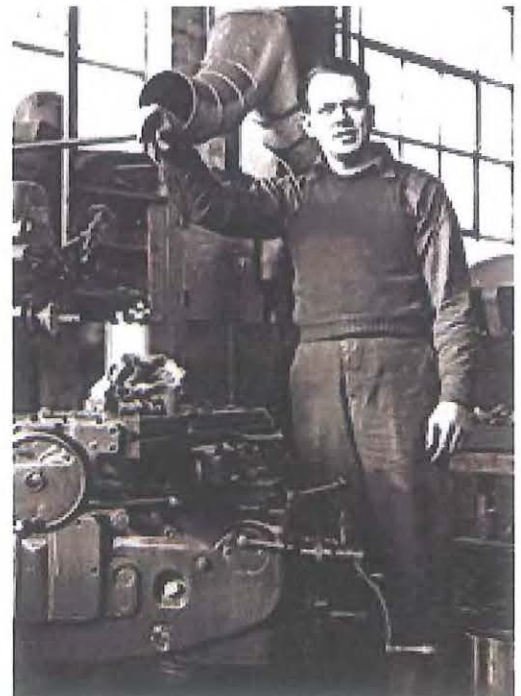


5. Employee Ritchie Murray at work in Building 1, c. 1950.



6. Employee Vic Hammon at work in Building 1, c. 1950.

7. Employee Win Strout at work in Building 1, c. 1950.



RESURGENCE

ENGINEERING AND PRESERVATION, INC.

132 BRENTWOOD STREET
PORTLAND, MAINE 04103
V/F (207) 773-4880
WWW.RESURGENCEENGINEERING.COM

September 4, 2015

City of Portland Planning Department
Attn: Deb Andrews
Via email to: dga@portlandmaine.gov

RE: Portland Company Complex, 58 Fore Street, Portland, Maine

Dear Deb,

As I understand, during the Planning Board meeting of July 28, the Board raised questions about the overall condition of Building 1 and Building 16 of the Portland Company Complex. The following discussion provides more background on the building assessment that we performed, and further describes the work required to rehabilitate these two structures. Following are the summary statements regarding the condition of the two buildings included in my March 26, 2015 report. (More detailed analyses were also included in the report.).

Building 1 - Erecting Building, c.1918

Relative rehabilitation costs for this structure and building envelope are based primarily upon the fact that the structure is repetitive in construction technique, offset by the likely reconstruction of the front masonry (west) wall. The staging and access cost required to perform clerestory rehabilitation from interior and exterior will be an increasing cost factor in building rehabilitation. A significant amount of steel-framed window glazing would require repair or replacement. Since this is the youngest building in the study, existing steel materials may be of higher quality and some understanding of snow loading requirements was incorporated into the design.

Building 15/16 – Boiler House and Brass Foundry c.1858, 1864

We did not enter Building 15, but the visible condition of the second floor framing means the structure would likely need to be rebuilt. Building 16, the Brass Foundry, requires several of the same structural assessments and likely upgrades that Building 14 requires, as well as the rehabilitation of the small south façade.

Additional Comments:

Building 1 – Erecting Building, c. 1918

Our historic construction research, described in our report, reveals that Building 1 was constructed in an era that did, in fact, consider the effects of snow loading on buildings, although that snow loading did not consider drift loading adjacent to lower and upper roof intersections. We understand that change of occupancy and conformance with contemporary code requirements dictates full evaluation and strengthening of the roof. Roof strengthening is common in a redevelopment project that involves changing a building's occupancy from industrial or storage occupancy to business or assembly occupancy.

When rehabilitating Building 1, it is possible that original roof decking, which is rotted in many areas, could be recycled and replaced with metal decking or plywood that would create a much stronger roof system. Original roof decking could be cleaned and re-integrated as a finish ceiling surface between new or supplemental roof framing, maintaining the architectural feature of the open structure while providing necessary structural strength to resist snow, wind, and seismic forces.

Exposed steel lintels are often replaced in century-old buildings undergoing rehabilitation. Contemporary coating systems and galvanizing can provide far better long-term corrosion protection than welding and rehabilitating existing corroding lintels, and preserve the original appearance of the original construction. Replacing the lintel systems can also present opportunities to improve lateral force stability.

It is commonplace to replace missing mortar and repoint brick during building redevelopment projects. Change of building ownership often spurs masonry rehabilitation regardless of whether a building structure is rehabilitated or if the building is redeveloped.

The pilaster cracks at the south-facing elevation of Building 1 can be rebuilt and strengthened as part of the overall rehabilitation of that front-facing façade. Other locations in Building 1, toward Building 2 could be modified to provide masonry expansion joints to mitigate future thermal expansion concerns by providing movement joints in the long walls. Returning the front-facing façade to its appearance during the time of historic significance can also provide opportunities to strengthen the end wall by installing supplemental steel bracing or reinforced shotcrete shear wall elements.

While the Structural Outcomes for Renovation/Restoration described in the BSE letter are correct, we wish to point out that the anticipated outcomes for Building 1 are often part of a building structural rehabilitation. In fact, Buildings 2 and 3 present far greater structural challenges than the relatively consistent challenges presented by Building 1. We also reiterate that the more recent construction date (1918), combined with the repetitive nature of the building elements can allow for a slightly less expensive rehabilitation than indicated in the BSE report for Building 1. All repairs and modifications anticipated for the structural rehabilitation of Building 1 will employ standard means and methods normal to steel frame construction and masonry rehabilitation, and from a technical standpoint can be accomplished in a manner that will maintain the integrity of the historic structure.

Building 16 – Brass Foundry, c.1864

We considered Building 15/16 as a joined structure, separated by the chimney and a buttress wall. We did not access Building 15 for safety reasons, nor do we argue its potential removal. However, Building 16 is in much better condition, relatively speaking, than Building 15.

Building 16 can, in fact, survive the removal of Building 15, if the buttress wall between Building 15 and Building 16 is preserved. If necessary for a future design program for the site, Building 16's roof could either be strengthened or bridged (eliminating snow loads) to accommodate construction adjacent to or above Building 16. Several contemporary multi-story structures on Munjoy Hill are being constructed to bridge them over the slope descending toward Washington Avenue.

Potential complexity of the Building 16 alley façade rehabilitation is clearly offset by the small size of the building and by the simple materials used in its construction. The entire alley-facing façade comprises a very small percentage of the overall façade area encompassed by Buildings 2 and 3, let alone the project as a whole.

Conclusion:

In conclusion, Building 1, The Erecting Shop, and Building 16, the Brass Foundry, are in poor condition (Building 1) and in very poor Condition (Building 16), but both buildings are salvageable. Appendix A of our original report, dated March 2016, 2015, further describes these conclusions and degrees to which a structure in poor or very poor condition can be rehabilitated. If you have any further questions, please feel free refer to the original report and to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Alfred H. Hodson III, P.E." The signature is fluid and cursive, with the "P.E." part written in a slightly different style.

Alfred H. Hodson III, P.E.

AHH/ah



PAUL R. LEPAGE
GOVERNOR

MAINE HISTORIC PRESERVATION COMMISSION
55 CAPITOL STREET
65 STATE HOUSE STATION
AUGUSTA, MAINE
04333

EARLE G. SHETTLEWORTH, JR.
DIRECTOR

4 September 2015

Deborah Andrews
Historic Preservation Program Manager
Planning & Urban Development Department
389 Congress Street
Portland, Maine 04101

Re: Portland Company, 58 Fore Street

Dear Deb:

In a letter received on September 2, 2015, the Maine Historic Preservation Commission (Commission) was asked to comment as to whether the local historic district at the Portland Company complex, as proposed by the Portland Historic Preservation Board, would be eligible for certification by the National Park Service based on applicable criteria as expressed in Portland's Historic Preservation Ordinance. Technical Preservation Services is the branch of the National Park Service that certifies local historic districts under local historic ordinance.

In 1976 the Commission determined that the entire Portland Company complex was eligible for listing in the National Register of Historic Places. We revisited this finding in 2014 and at that time confirmed the earlier assessment. In a March 31, 2014 letter to Deborah Andrews we stated that the property meets National Register Criterion A, in the areas of Industry, Engineering and Transportation, and Criterion C as a historic district. For both Criteria the period of significance began in 1845/6 and ended in 1982, the year the foundry closed. The only non-contributing building in the complex would be Building 5, which was built after the foundry closed.

As you know, a certified district must substantially meet the National Register criteria (see 36 CFR 67.9). Although a historic district designated under a local statute must meet the National Register criteria as defined in 36 CFR 60, the criteria for local designation in Portland includes additional parameters that are not components of the National Register criteria. "Condition" is not one of the aspects of integrity evaluated under the National Register, nor is there a clause linking integrity to

worthiness of preservation or restoration. For this reason, the Commission does not feel that we have an adequate understanding of how the Technical Preservation Services branch of the National Park Service would apply and evaluate these two factors with respect to the Portland Company Complex, nor can we speculate on how that evaluation might be altered if any of the existing historic buildings were demolished.

Please do not hesitate to contact the Commission if you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Christi A. Mitchell".

Christi A. Mitchell

National Register Coordinator

BERNSTEIN SHUR

COUNSELORS AT LAW

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 207-774-1127 facsimile
 bernsteinshur.com

100 Middle Street
 PO Box 9729
 Portland, ME 04104-5029

Mary E. Costigan
 207 228-7147 direct
 mcostigan@bernsteinshur.com

August 26, 2015

Portland Planning Board
 City of Portland
 389 Congress Street
 Portland, Maine 04101

Re: Proposed Designation of Portland Company Historic District

Dear Planning Board Members:

This letter and the attached materials are intended to address the Board's requests for more information from the July 28th workshop. To remind the Board of CPB2's position on the Historic Preservation Board's recommended historic district on their property at 58 Fore Street: 1) Buildings 1 and 16 should be categorized as non-contributing; 2) the boundaries of the District should be limited to our proposed boundary set forth in the attached; and 3) the following language should be added to the Portland Company Historic District: "the height allowances established by zoning shall be honored in reviewing proposals for new construction within the district."

Building 1

Structural Integrity: We have attached a letter from Becker Structural Engineers that includes an executive summary of the structural condition of Building 1, providing further detail on their original findings. In the letter, Becker concludes that Building 1 is rated "very poor/salvageable with significant structural rework and investment/questionable economic viability/consider demolition." Further, Becker states, "Our justification of this rating is that all major structural systems are affected in a renovation." Becker's full review of Building 1 can be found on pages 5-10 of the March 28, 2014 Structural Report which has been submitted to the Board.

Historic Significance: As we have stated previously, the current Building 1 was built at the end of the period of significance, in 1918. As you can see in the attached timeline, the vast majority of the historically-significant activities of the Portland Company took place between 1847 and 1918. In reviewing the Sutherland Report for further information, it is notable that the Report does not discuss any activities of significance that took place on the site after 1918. Appendix H of the Sutherland Report references a Building Inventory by Tremont Preservation Services, but includes only the significant activities that occurred prior to 1918. In the full text of the Tremont Inventory, the history of the site beyond 1918 states as follows: "During the Depression years, manufacturing plummeted and the Portland

Company suffered bankruptcy." The company stock was purchased by Phineas Sprague's grandfather, who owned it with his cousin through 1956, diversifying the operations to include the manufacturing of snow plows, washing machines, etc. The property changed hands a few more times and produced things such as a machine to form Styrofoam containers, as well as components for the nuclear industry. These are the activities that occurred in the current Building 1 – not the historically significant activities such as the extensive locomotive production mentioned in the Sutherland Report. Those significant activities took place in the original building 1, which was constructed in 1880, was made of wood and had a smaller footprint. Additional photographs of the original building 1 are attached.

Building 2 façade: In addition, to the lack of structural integrity and lack of historic significance of Building 1, the removal of Building 1 will allow for the revealing and restoration of the façade of Building 2 (an original Portland Company Building built by John Poore in 1847) and the original rail yard. The attached artist renderings show CPB2's conceptual ideas of how Building 2 can be showcased and the original yard used as a public plaza.

Historic Tax Credits: Although the Historic Preservation Board, City staff and Maine Preservation are focused on historic tax credits as a reason for retaining Building 1, as we know, these credits are reviewed annually and should not be considered as planning tools and may in fact not be available at the time of development or any other rehabilitation project. Furthermore, availability of potential historic tax credits is not a element of Portland's city ordinances or its comprehensive plan.

Building 16: We have attached photographs and the summary of the structural condition of Building 16 which was rated a 1.5 by Becker Structural Engineers: Very poor/unsafe/demolition likely.

We therefore propose that Building 1 be classified as Non-Contributing based upon the date of construction, the fact that it is not the original erecting shop for the Portland Company, and because of its poor structural integrity and that Building 16 be classified as non-contributing based on its structural condition.

Proposed Historic District

Should the Planning Board recommend a historic district on the Portland Company property, we have attached a depiction of the proposed boundaries. It includes the significant historic core of the complex: buildings 2, 3, 6A, 6B, 12, 24, 14, 15, and 16, as well as a portion of Building 1, to be preserved as open space.

Building Height

We request that language be added to the Portland Company district as follows: "the height allowances established by zoning shall be honored in reviewing proposals for new construction within the district" consistent with language in the Congress Street historic district. We have attached the B-6 Building Height Overlay for your reference. As you can

August 26, 2015
Page 3 of 3

see, the majority of the proposed historic district has a maximum building height of 35 feet and about 25% of the proposed district has a maximum building height of 45 feet.

Thank you for your time and consideration.

Sincerely,



Mary E. Costigan



August 25, 2015

CPB2 Management LLC
P. O. Box 7519
Portland, Maine 04112
Attn: Kevin Costello

The Portland Company
58 Fore Street
Portland, Maine

Dear Kevin:

Per your request we have prepared an executive summary regarding the structural condition and likely remedial work associated with Building 1 of the above noted Portland Company complex. Our opinions are based on visual observations made in December 2013 thru February 2014. The intent of our visual review was to provide CPB2 with a general understanding of the structural condition of the existing buildings on the property. We evaluated the structural condition of Building 1 and identified the following:

Findings

- The steel frame high roof structure is likely not rated for snow loadings and the low bay roofs are likely not designed for snow drifting due to the high-low roof condition. Both conditions will likely cause overstresses in framing and decks and will need to be reinforced to meet current code requirements.
- Wood plank roof decking was rotted in several locations, particularly at eaves due to leaking roofs. In general, the roof appears to have leaks throughout. Wood decking is not effective as diaphragm to transfer lateral loads.
- Masonry piers along south elevation had large vertical cracks, likely a result of thermal stresses in the brick and discontinuity of steel lintels. Steel lintel framing over large windows cause disruption of brick piers and cause structural instability of piers with a hinge type condition. Cracks allow water infiltration which causes further structural damage.
- The lintel flanges are exposed over windows at the exterior side and rust jacking is causing expansion, rotation and masonry damage.
- Concrete window sills are spalled and cracked with exposed reinforcing in many locations.
- Many brick masonry joints have missing mortar, particularly at eave drip line below window sills. Moss was noted to be growing in masonry joints at and above the pavement line. Masonry also has wide spread areas of distress including loose and missing mortar, cracks and spalls.
- Upper roof appears to be an out of date tar and chip roof which will need replacement.

- No definable lateral load resisting system in either principal direction.
 - Limited frame action in high bay of transverse direction. Offset column splices at low/high roof transition and crane girder create a stiffness discontinuity.
 - No method to transfer clerestory loads to lower level in longitudinal direction.
 - End wall and side walls have large openings with unreinforced masonry bearing walls known to have poor performance in seismic events.
 - Wood roof diaphragms are likely inadequate to transfer diaphragm shears to exterior walls.

Based on our observations, the anticipated Structural Outcomes for Renovation/Restoration include:

- Replacement of roof decking with metal deck along with new roofing and insulation and re-establishment of diaphragm connections to existing walls.
- Reinforcement of roof framing to meet snow loading requirements.
- Introduce lateral load resisting system with wall shotcrete or steel frame.
- Repair exterior masonry and rebuild certain areas as required. Extensive rebuilding will be necessary to address cracked masonry pier conditions. Clean masonry.

Structural Condition Rating

Based on the level of structural work required to all major structural elements, we rate the structural condition of Building 1 as "very poor/salvageable with significant structural rework and investment/questionable economic viability/consider demolition". Our justification of this rating is that all major structural systems are affected in a renovation. Exterior masonry piers have major vertical cracks. Steel lintels create a hinge condition in exterior masonry piers and therefore their stability is questionable. The end bay has large masonry openings that are not original to construction and seismic performance of the system is very questionable.

Structural Renovation Costs

Rehabilitation of open one story space would have high unit costs considering necessary investment in structure versus net usable space.

In closing, our review indicates that most of the structural systems of Building 1 are in very poor condition. Further, based on the current conditions and the level of alteration needed to repurpose the building, the existing structure will need most elements and systems improved to meet the code requirements of 2009 IEBC and IBC codes which will entail a significant cost in comparison to the useable area of the building. We suggest you reference our original report dated March 28, 2014 for more details on existing conditions and code requirements.

We trust this information meets your needs at this time. If you have any questions, please feel free to contact me.

Sincerely,
BECKER STRUCTURAL ENGINEERS, Inc.

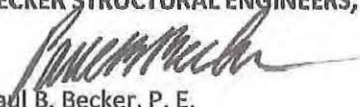

Paul B. Becker, P. E.
President





Photo 1-1: General View, Building 1



Photo 1-2: Wood deck condition at eave.



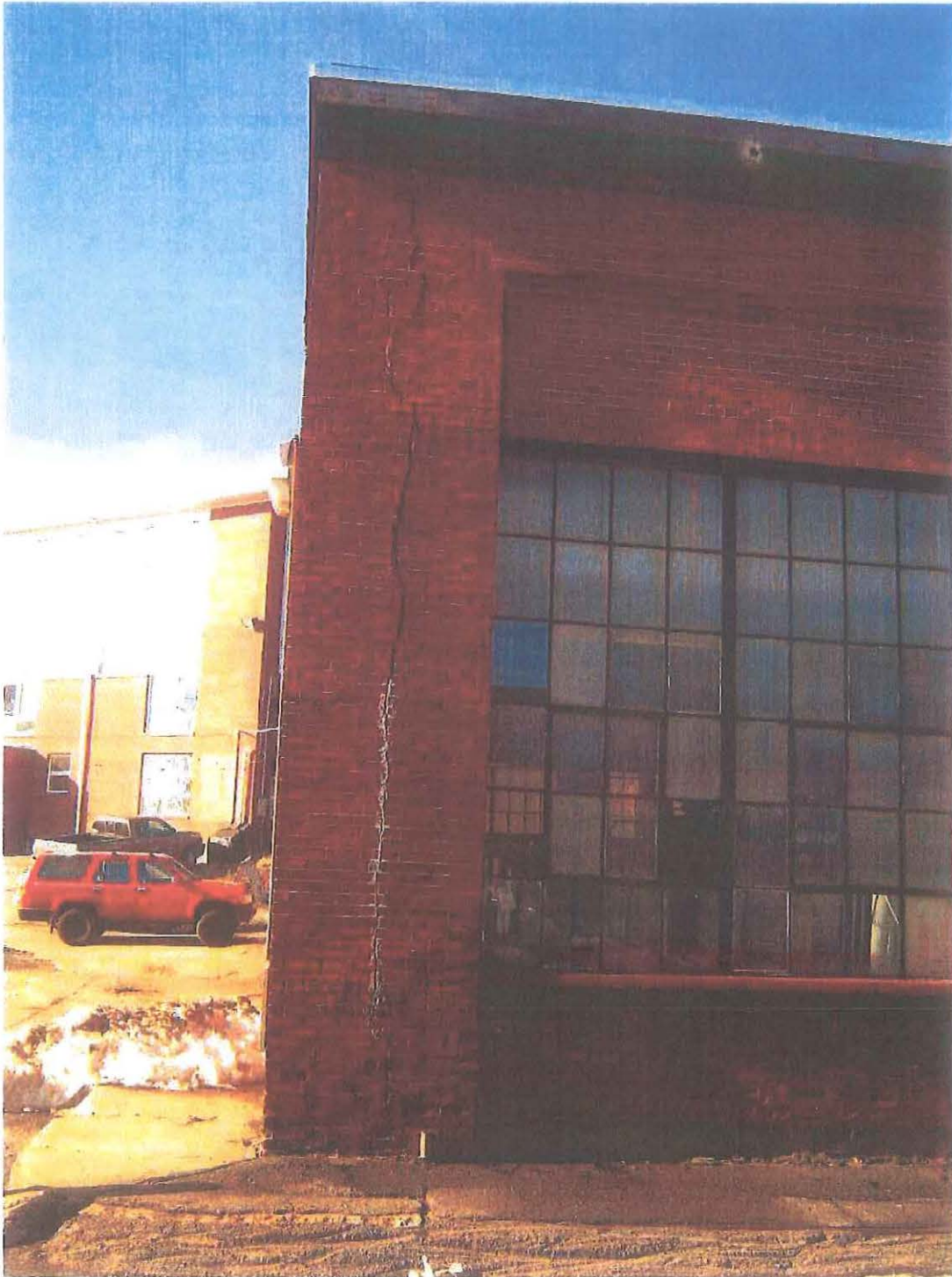


Photo 1-4: Vertical brick masonry crack at southwest pilaster.



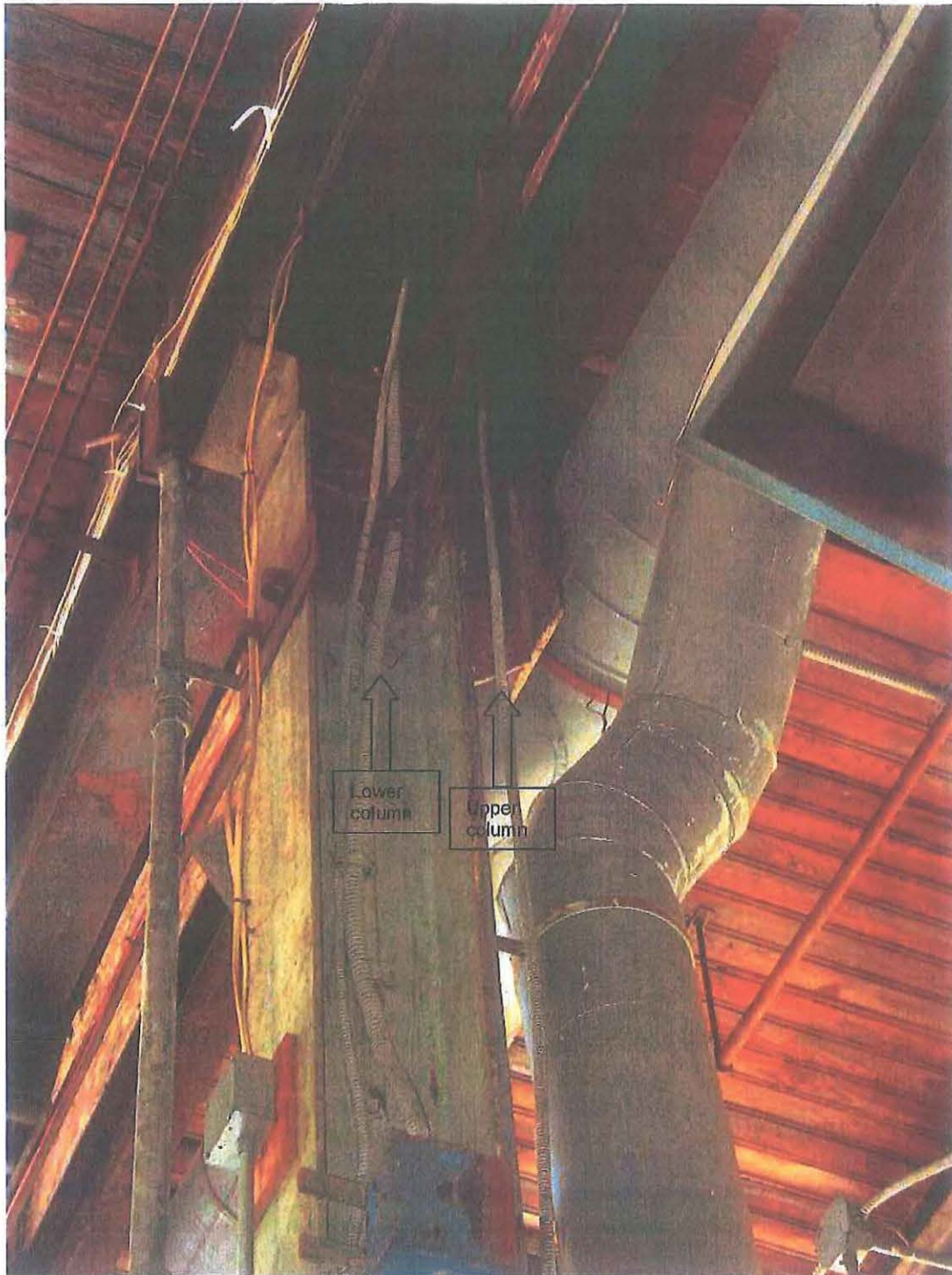


Photo 1-5: Column discontinuity at low-high roof condition.



APPENDIX A
PORTLAND COMPANY COMPLEX – MARCH 2015
RELATIVE CONDITION AND REHABILITATION COST COMPARISON

BUILDING NUMBER – NAME DATE	RELATIVE STRUCTURAL CONDON			RELATIVE REHABILITATION COST	
	BECKER	RESURGENCE /BECKER SCALE	RESURGENCE SCALE	BECKER	RESURGENCE
BUILDING 1 - ERECTING BUILDING 1918	2.0	2.5 (REPETITIVE DTLS)	P2	4.0	3.5 (REPETITIVE DTLS)
BUILDING 2 - MACHINE SHOP 1847	2.5	2.5	P2+	4.5	4.5
BUILDING 3 - MACHINE SHOP 1847	3.0	3.0	P2+	3.0	3.0
BUILDING 4 – FOUNDRY/ACETYLENE HS 1895, 1904-09	1.5	1.5	VP2	4.5	4.0 (REPETITIVE DETAILS, CUSTOM REHABILITATION)
BUILDING 6B - TANK SHOP 1896-1904	3.0	3.0	P2+	3.5	3.5
BUILDING 7 - CAR SHOP 1873, 1904	2.0	1.5 (BOWED WALLS)	VP1	5.0	5.0
BUILDING 10 - PAINT SHOP 1873	1.0	1.0	VP1	4.5	4.0 (REBUILD IN KIND)
BUILDING 11 - PATTERN STOREHOUSE 1885	2.5	2.0 (NORTH WALL)	VP2	4.5	4.5
BUILDING 14 – DRAFTING ROOM AND STOREHOUSE 1858, 1864	NOT INSPECTED	2.0	VP3	NOT INSPECTED	3.5
BUILDING 15/16 (NO ACCESS TO B15) BOILER HOUSE/BRASS FOUNDRY 1858, 1864	1.5	1.5	VP3	3.0	3.0
Averages of common buildings inspected (excluding Building 14)	2.11	2.06		4.06	3.89

SEE FOLLOWING PAGES FOR EXPLANATION OF BECKER STRUCTURAL ENGINEERS AND RESURGENCE ENGINEERING RATING SYSTEMS

Notes:

1. Coordinate this document with "Portland Company Complex General Building Assessment" prepared by Resurgence Engineering et al, March 2015, and "Evaluation of Existing Buildings at the Portland Company Property" prepared by Becker Structural Engineers, March 28, 2014.
2. Further discussion about relative rehabilitation costs related to these structures, by Resurgence Engineering, follows this page.

RESURGENCE ENGINEERING RELATIVE STRUCTURAL CONDITION SCALE OF EXISTING BUILDINGS IN POOR CONDITION

BSE condition #	REP NUMBER	DESCRIPTION OF CONDITION, PRE AND POST MITIGATION	LOCAL/MAINE BUILDING EXAMPLES PRE AND POST MITIGATION
(n/a)	VP1 (very poor, not salvageable)	PRE: Immediate <u>widespread public safety threat</u> and <u>site/occupant safety threat</u> if not barricaded and structurally shored; evacuate nearby buildings, streets, sidewalks, block off parking spaces. Potential for widespread debris field in event of collapse; Building cannot be re-occupied following triggering event. POST: Condemn and demolish building.	Buildings with extensive fire damage
1	VP2 (very poor but salvageable, expensive to rehabilitate, i.e. approx. BSE cost #4 to #5)	PRE: Immediate <u>widespread public safety threat</u> and <u>site/occupant safety threat</u> if not barricaded and structurally shored; evacuate nearby buildings, streets, sidewalks, block off parking spaces. Potential for widespread debris field in event of collapse; Building cannot be re-occupied following triggering event. POST: Building assessed, barricaded, structurally shored; nearby buildings deemed safe for return; streets, and/or sidewalks and parking spots remain blocked off. Building itself cannot be occupied after stabilization. Unsafe for rescue personnel to enter if trespassers are inside. Shored and secured structure relatively expensive, but feasible, to rehabilitate.	PRE: Norway Opera House, 2007-09 POST: Norway Opera House, 2010+
1	VP3 (very poor but salvageable, moderately expensive to rehab, i.e. BSE cost #3 to 4)	PRE: <u>Immediate site/occupant safety threat</u> and <u>localized public safety threat</u> if not if not barricaded and structurally shored; Block off streets, sidewalks, and parking spaces. Potential for localized debris field in event of collapse; Building can be occupied following the triggering event. POST: Building assessed, barricaded, structurally shored; nearby buildings deemed safe for return; streets, and/or sidewalks and parking spots can remain blocked off or reopened following mitigation. Building itself can be occupied.	PRE: Buildings with widespread loose façade components. i.e. Masonic Temple Localized structural failures i.e. Portland Company Complex Building 4 POST: Stabilized structures, removing loose components or installing covered sidewalk and blocked off parking spaces.
2	P1 (very poor but salvageable, less expensive to rehab; i.e. BSE cost #2)	PRE: <u>Likely site/occupant safety threat</u> and <u>localized public safety threat</u> if not if not barricaded and structurally shored; Block off streets, sidewalks, and parking spaces. Potential for localized debris field in event of element failure; Building can be occupied following the triggering event. POST: Building assessed, barricaded, structurally shored; nearby buildings deemed safe for return; streets, and/or sidewalks and parking spots can remain blocked off or reopened following mitigation. Building itself can resume occupancy.	PRE: Buildings with a few loose façade components that can easily be removed or snow and ice buildup that can easily and quickly be removed, POST: Stabilized structures, removing loose components or installing covered sidewalk and blocked off parking spaces.
3	P2	PRE: <u>Possible site/occupant safety threat</u> and <u>localized public safety threat</u> if not if not barricaded and structurally shored; No triggering event causing distress; possible change of use makes economics questionable. POST: Rehabilitation Feasibility Study considering economics for specific buildings and structures.	PRE: Portland Company Building Complex Building #1

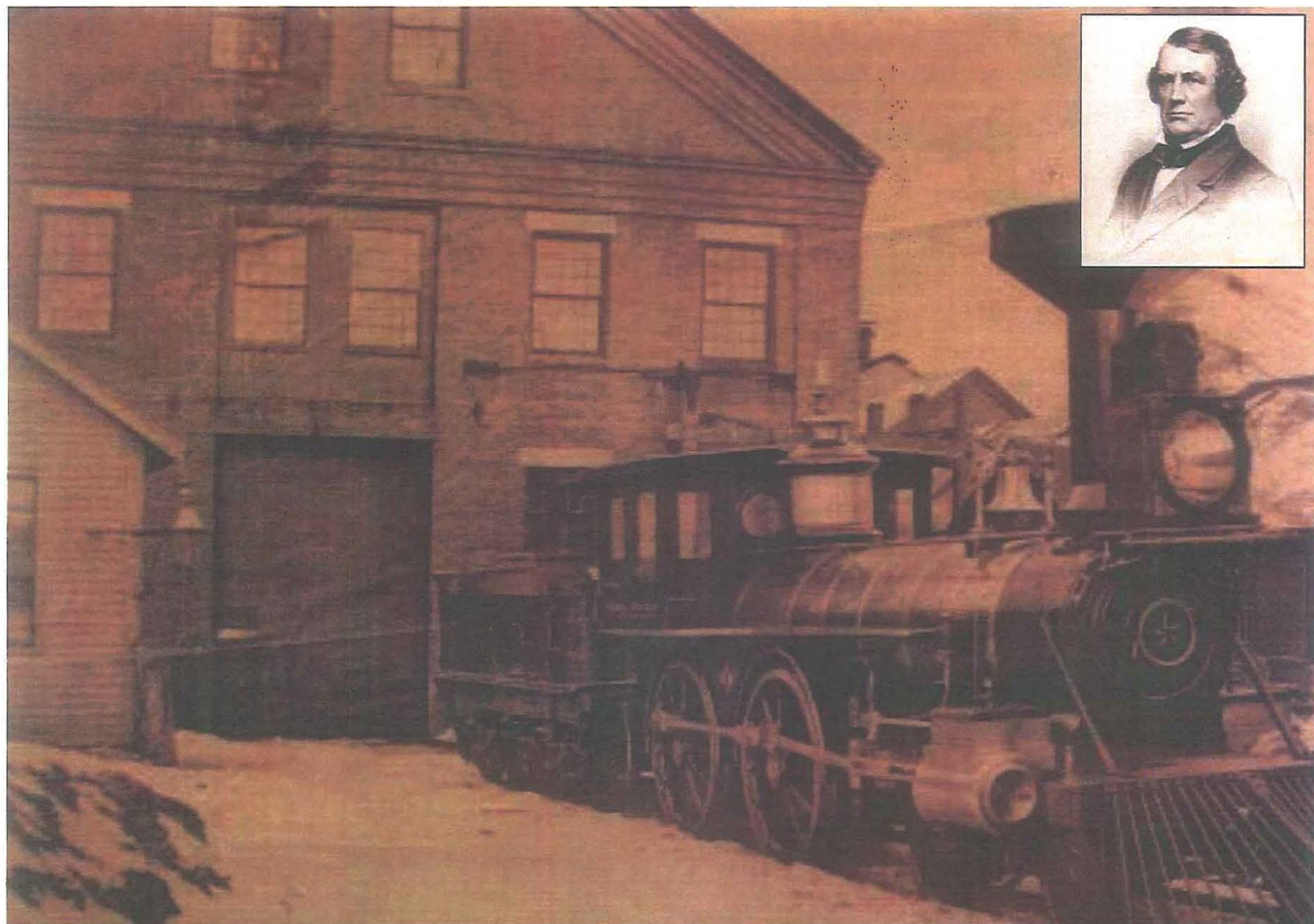


PHOTO A : Façade of Building 2 built in 1847, original to the Portland Company (photo circa 1871)



PHOTO B: Original version of Building 1 with low profile and no monitor built ~ 1880

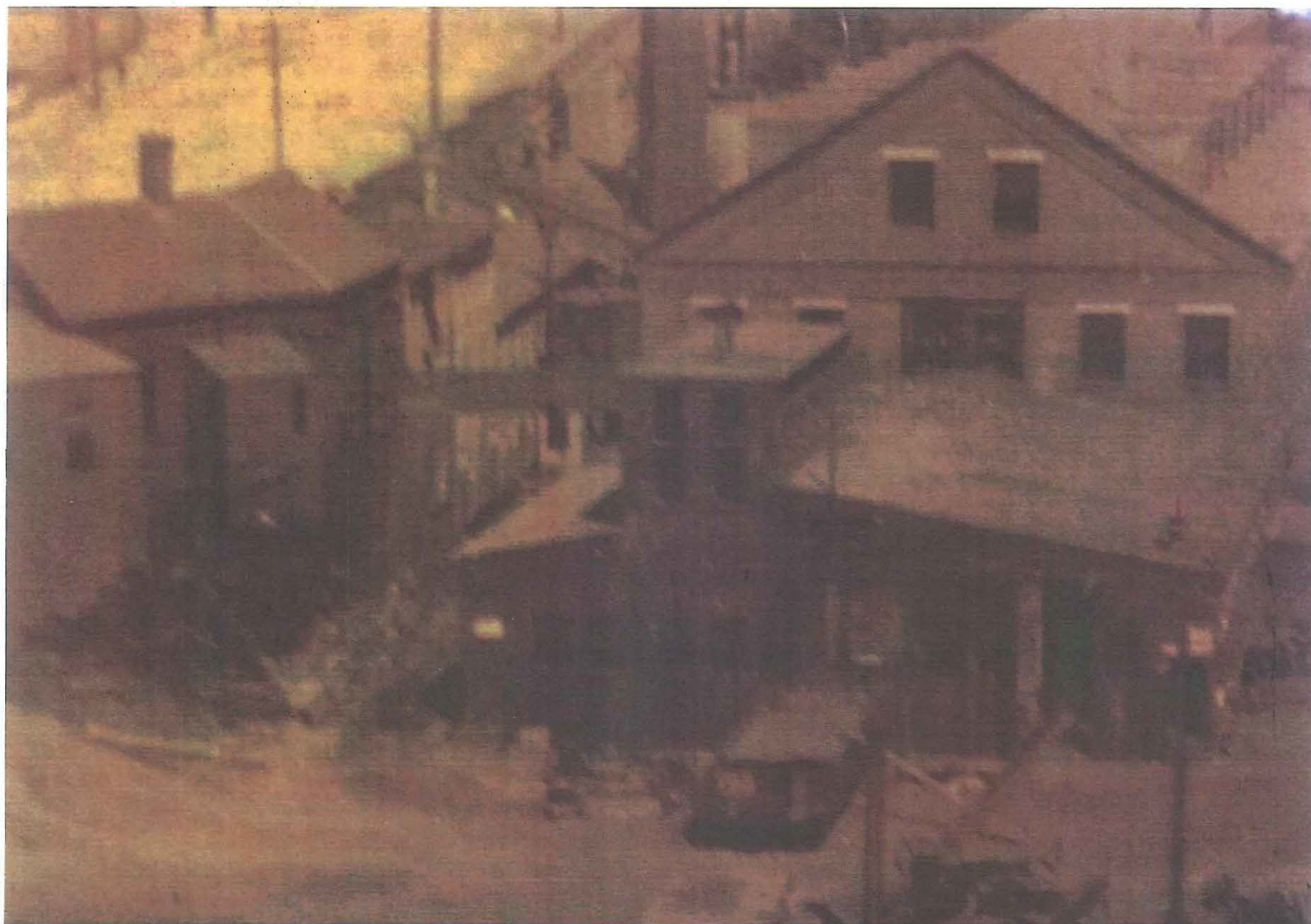


PHOTO C: Second version of Building 1 with roofline change and addition of monitor (photo circa 1896)

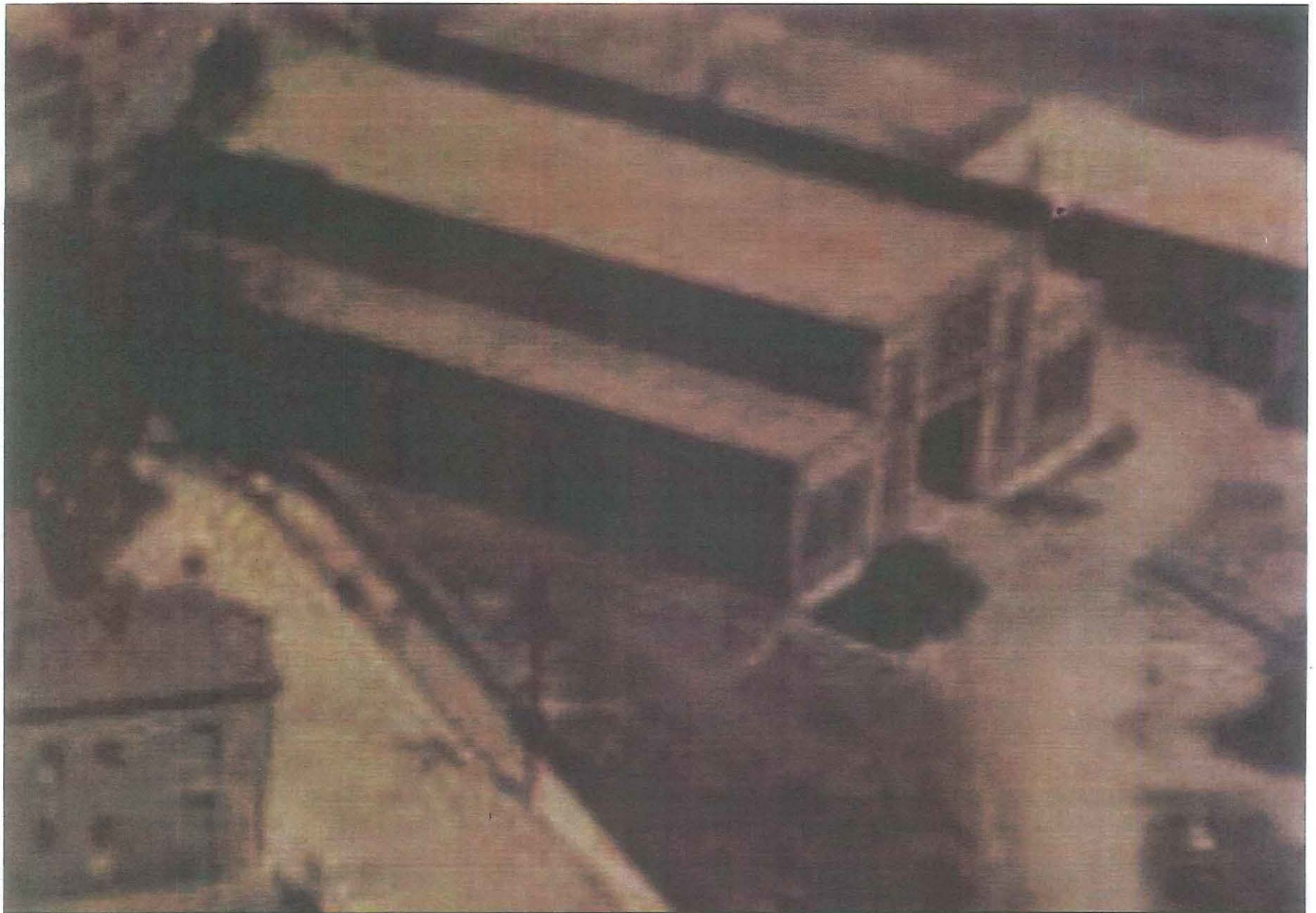


PHOTO D: New 1918 version of Building 1 with original western façade (photo circa 1938)

History of the Portland Company and Historic Significance of Products Created

Source: Summarized directly from Sutherland Preservation Consultants and Tremont Preservation Services Reports submitted to the Portland Historic Preservation Board.

The Portland Company: Mid-19th Century Manufacturing: The Portland Company was the only company in the U.S. founded for the sole purpose of manufacturing locomotives.

Locomotives: 1848 - c.1900

The Portland Company's first locomotive, the Augusta, was completed in 1848 for the Portland, Saco, & Portsmouth Railroad. Over the next 60 years, 630 more steam locomotives (and hundreds of freight and passenger cars) were constructed. The Portland Company also built locomotives for the U.S. Government during the Civil War.

Fire Engines: c.1860 - 1870s

The Portland Company manufactured the first of its horse drawn steam fire engines, the "Greyhound," in 1860. The Portland Company subsequently produced at least seven steam engines for the Portland Fire Department. Several more steam fire engines were built during the 1860's and into the 1870s.

Steamships and Other Vessels: c.1860 - c.1920

The Portland Company built over 350 steam engines and boilers for marine, as well as, industrial uses. They outfitted towboats, fishing vessels, yachts, dredges, freighters, fireboats, and ferries.

The Portland Company: Late 19th/Early 20th Century Diversification: Portland's economy—and the Portland Company's portfolio—diversified as industrialization progressed. The Portland Company began manufacturing elevators, cast iron elements, and paper industry equipment, and for WWI, they produced brass shell casings. They even distributed automobiles and trucks.

Elevators: Early 20th century

The Portland Company manufactured passenger and freight elevators, at first hydraulically powered and later electrically. The Portland Company also produced the elevators for the Portland City Hall.

Cast Iron: Late 1800s

The Portland Company cast storefronts, man-hole covers, parts for lighthouses (lanterns, lamp decks, spiral stairways, doors and sashes, walkways, railings, vents, spindles and markers, upper sections of light tower), lamp posts, ornate gates, and industrial boilers. They also operated a bronze and brass foundry.

Paper Industry: Late 1800s - 1900s

The Portland Company manufactured equipment used in the paper industry including pulp digesters, boilers, tanks, steam accumulators, chippers and debarkers, vomit stacks, turbines, penstocks, water-control gates, and gate-hoisting equipment.

The advent of electricity meant convenience and new challenges, like the heavy static charge that can be produced during the manufacturing process, causing problems in paper and textile mills. The remedy came in the form of an electric neutralizing machine, patented by electrical engineer, William Chapman, in 1908. The Chapman Corporation operated as a subsidiary of the Portland Company in Building 6 at the waterfront mill yard.

Automobile Sales: c1907 - c1914

The Portland Company served as Maine's exclusive distributor of the high-end Knox automobiles, trucks, firetrucks, and three-wheeled tractors which were manufactured in Springfield, Massachusetts. In 1910, they added the Brush, Cole, and Thomas automobile line to appeal to middle and lower income buyers.

Brass Howitzer Shell Casings for the War: 1917 - 1918

The onset of WWI prompted the need for further diversification and brought a brief respite to the regional decline in manufacturing. Tens of thousands of brass shell casings were produced by the Portland Company, packed in pairs, and shipped to another factory to be filled before being sent to the US Army between 1917 and 1918. Women replaced men, who were overseas serving in the military, in this, and other factories

NOTE: The following section appeared in the Tremont Preservation Services historical survey of the Portland Company report, but was omitted from the Sutherland Consulting Appendix H, which cited the full Tremont Preservation Services Report

Depression Era through 1950s: Snow Plows, Washing Machines, Canning Industry Equipment, Stainless Steel c1920s - 1950s

During the Depression years, manufacturing plummeted and the Portland Company suffered bankruptcy. William "Widgery" Thomas (grandfather to most recent owner, Phineas Sprague Jr.) and his cousin, Charles Payson, purchased the Portland Company's stock and maintained ownership through 1956. They continued to diversify operations, manufacturing snow plows, washing machines, rotary welders, steam retorts (pressure cookers) for the canning industry, cast bean pots for Burnham & Morrill Company (B & M Baked Beans), marker buoys, and a wood match-making machine for Diamond Match Company.

Mid-20th Century through Present: Nuclear Industry Components, Plastic Bottle Extruding Machines: 20th Century.

In 1956, Thomas and Payson sold the Portland Company to United Industrial Syndicate of New York. UIS sold the business back to descendants of William Thomas, the Sprague family, in 1978. The Spragues operated Portland Engineering on the property and manufactured, among other products, components for the nuclear industry through 1981.

The Historic Core of the former Portland Company at 58 Fore Street





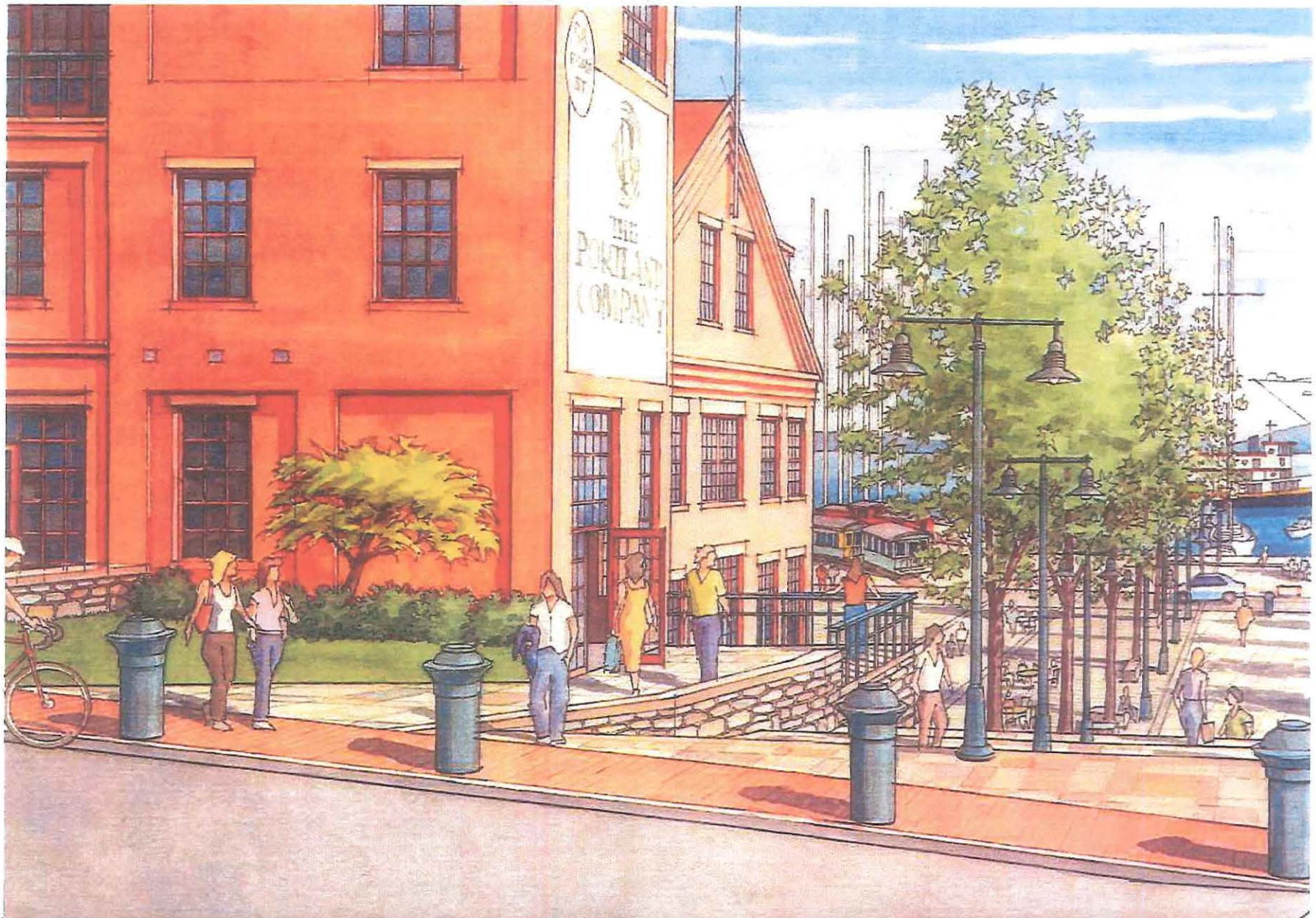
58 Fore St Historic Core Concept – Building 2, original to Portland Co, and oldest building on 58 Fore Site



Historic Core Concept – Creating Public Access from Fore Street to Portland's Waterfront



Historic Core Concept – Iconic Facades of the Portland Co Tower, Building 2 c. 1848, and Building 6



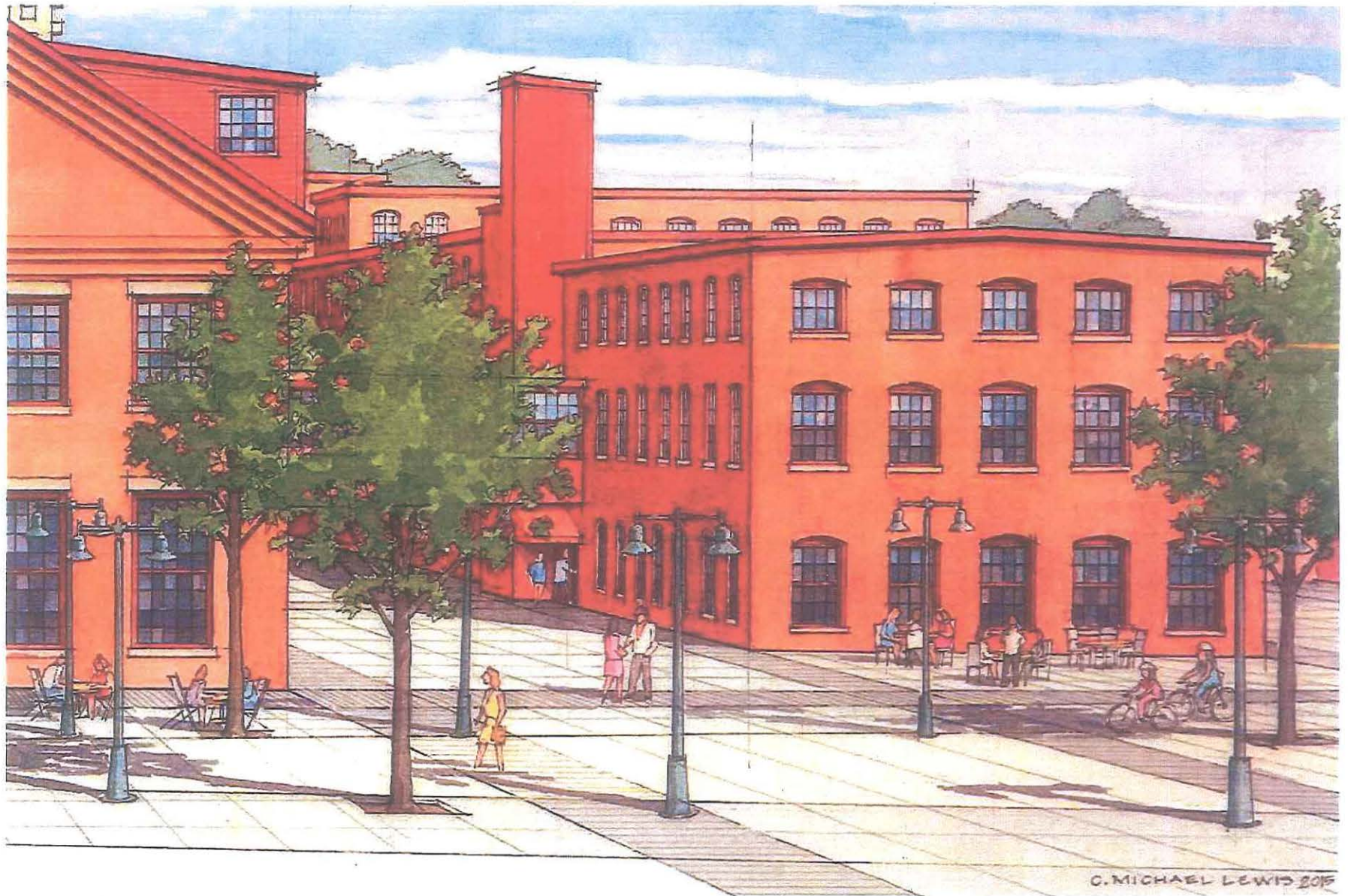
Historic Core Concept – Iconic Facades of the Portland Co Tower and Building 2 c. 1848



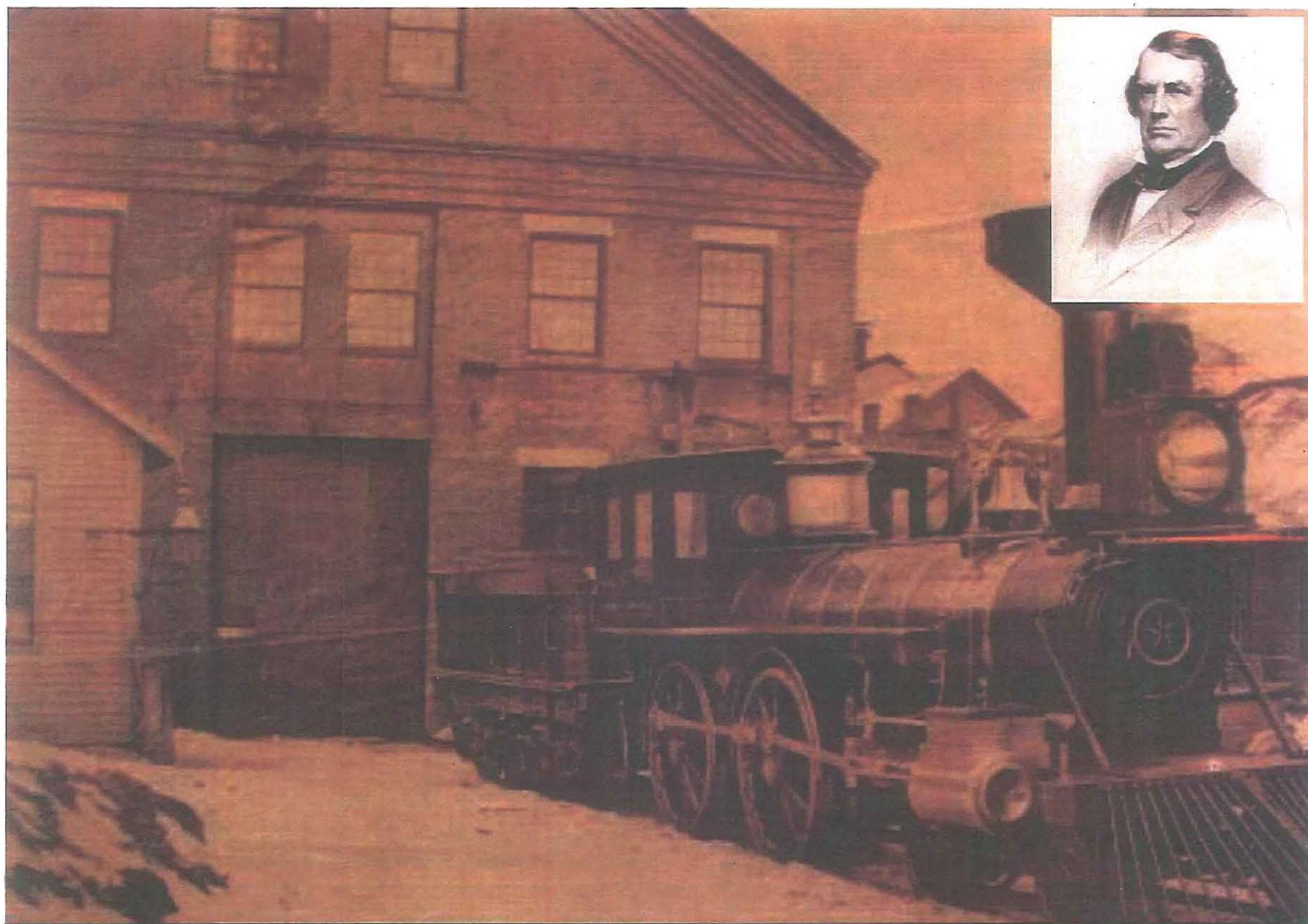
Historic Core Concept – Creating Public Access from Fore Street to Portland's Waterfront



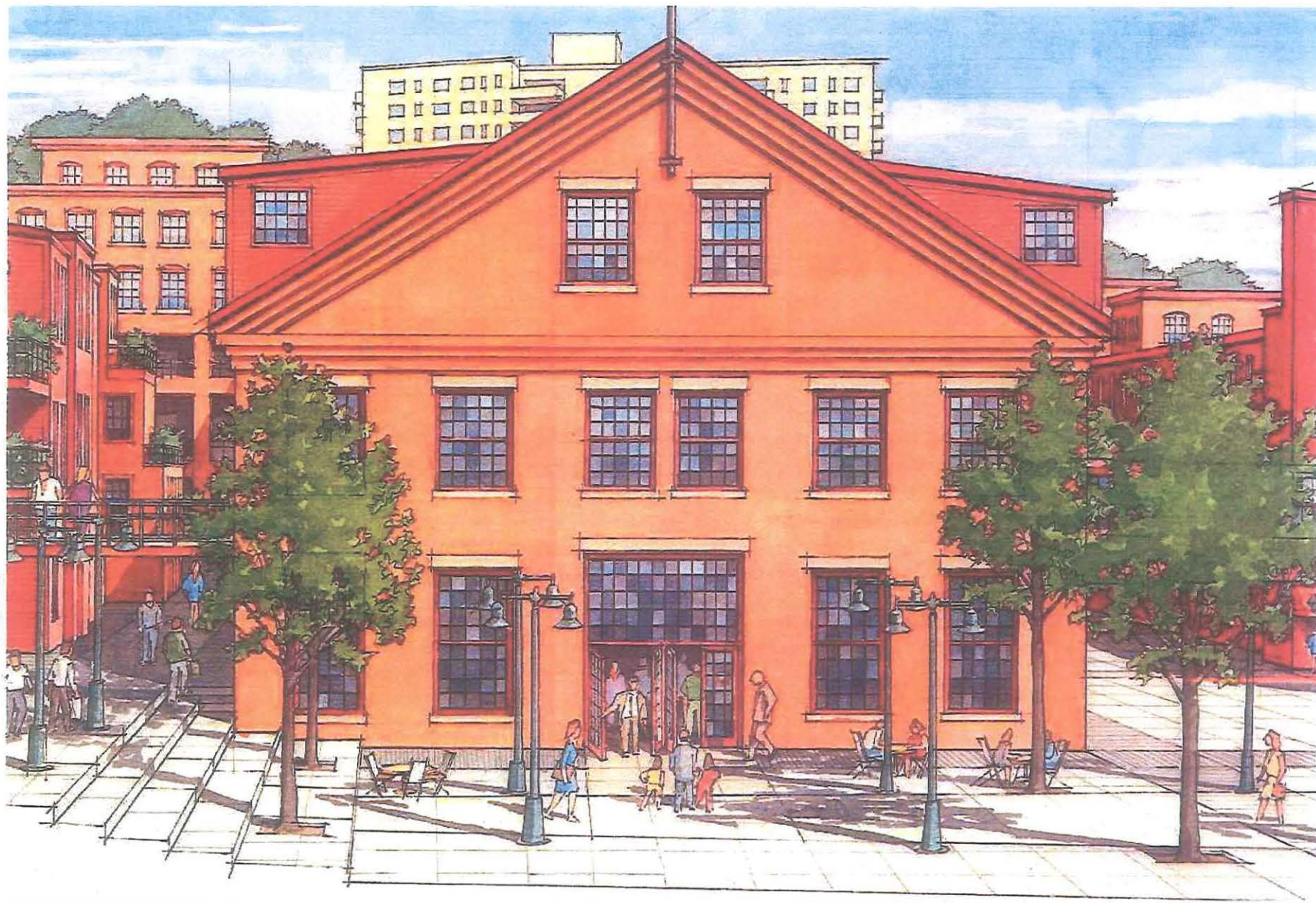
Historic Core Concept – Reinvigorating the Portland Co Alleys and Linear Alignment



Historic Core Concept – Creating public space between Building 2 and Building 6

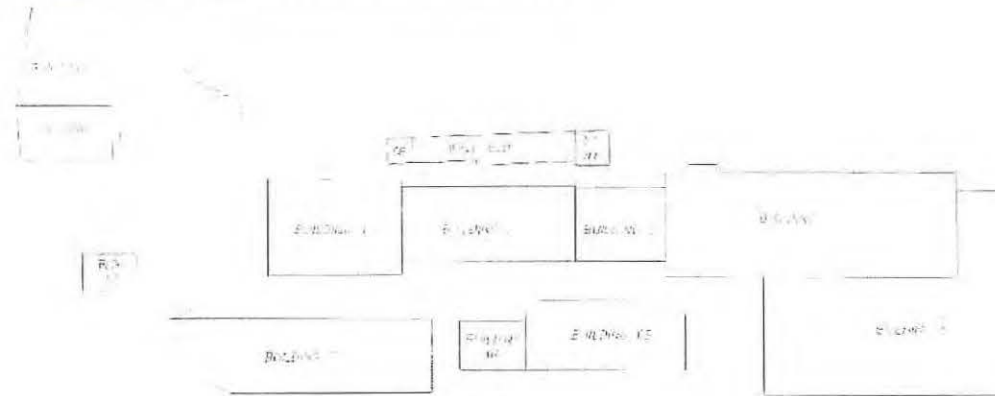


58 Fore Historic Core Concept – Celebrating the Portland Company's Most Historically Significant Building



Revealing the Iconic Façade of Building 2, the Portland Company's first Building (c. 1848)

Building Number: Blacksmith Shop (Building 16)



Location Plan

Description, Condition and Assessment:

- Wood rafter framed roof, back wall and side walls are stone retaining wall for embankment, brick masonry front wall (Photo 16-1).
- Fore Street stone retaining wall at is dry stacked. It was apparent that water travels through the wall.
- North stone walls may be buttressing Fore Street retaining wall.
- Brick masonry had numerous open joints, missing bricks, bulging and moss growth near drip line.
- East side stone wall butts brick masonry front wall to the south; condition is poorly bonded with an open joint.
- Roof rafters appeared to be in good condition, but daylight was visible through roof around chimney penetration.
- Roof eave has been redecked with OSB at eave; roof is covered with shrink wrap.
- Entry did not meet code due to door height.
- Wood windows have broken panes and missing sashes.
- No eave board, building generally not weather tight.
- It is believed that groundwater penetrates this building through the retaining wall.

Anticipated Structural Outcomes for Restoration:

- Repair exterior masonry including extensive repointing and rebuilding to creating contiguous wall conditions.
- Replace windows.
- Create accessible entrance and incorporate 2 means of egress.
- Roof reinforcing to support snow load of properly insulated roof.

Structural Condition Rating	1.5
Structural Renovation Cost Rating	3.0



The Portland Company
58 Fore Street
Portland, Maine

Page 57 of 60

Rating Justification:

Building currently is not weather tight and extensive work will be necessary address this condition. Entry conditions will need to be brought up to current code for fire and egress compliance. Roof likely not framed to address drifted snow from adjacent high roof/street and will require reinforcement.



Photo 16-1: Exterior view of blacksmith shop/Building 16.





**PHOTO
#16.1**
R 57.jpg

Building 16: View from southeast from alleyway. Note masonry wall return cracks on east elevation (arrow).



**PHOTO
#16.2**
R 56.jpg

Building 15: View from southeast from alleyway. Building did not appear to be safe to enter, and we did not enter first floor.



**PHOTO
#16.3**
a f 93.jpg

Building 16: Enlarged opening in south elevation wall. Entire south wall requires repointing, repair, and anchoring into east wall.



**PHOTO
#16.4**
P 23.jpg

Building 15/16: Remnants of boiler house chimney stack between Buildings 15 and 16.



**PHOTO
#16.5**
P 25.jpg

Building 16: North wall doubles as Fore Street retaining wall. Sloped roof rafters bear onto top of wall. Need to check condition of top plate above this wall.



**PHOTO
#16.6**
A 29 35.jpg

Building 16 south wall (detail): Masonry has simple details and small cornice at the top. Window header at left has been replaced with brick soldier course and steel lintel.



**PHOTO
#16.7**
A 29 36.jpg

Building 16 roof framing, south wall: Roof previously had skylights or vents on south side of roof. Note center line of bearing at braced column. Framing likely undersized.



**PHOTO
#16.8**
A 29 37.jpg

North and east walls: Barrels beneath multiple active roof leaks.



**PHOTO
#16.9**
A 29 42.jpg

Catch basin grate, east of Building 16: Grate covered by leaves and debris, and basin itself appears to be clogged.



**PHOTO
#16.10**
A 30 42.jpg

Building 15 southeast wall corner: Masonry repair is required to create weatherproof and structurally sound transition from brick to stone wall.

APPENDIX A
PORTLAND COMPANY COMPLEX – MARCH 2015
RELATIVE CONDITION AND REHABILITATION COST COMPARISON

BUILDING NUMBER – NAME DATE	RELATIVE STRUCTURAL CONDITION			RELATIVE REHABILITATION COST	
	BECKER	RESURGENCE /BECKER SCALE	RESURGENCE SCALE	BECKER	RESURGENCE
BUILDING 1 - ERECTING BUILDING 1918	2.0	<u>2.5</u> (REPETITIVE DTLS)	P2	4.0	<u>3.5</u> (REPETITIVE DTLS)
BUILDING 2 - MACHINE SHOP 1847	2.5	2.5	P2+	4.5	4.5
BUILDING 3 - MACHINE SHOP 1847	3.0	3.0	P2+	3.0	3.0
BUILDING 4 – FOUNDRY/ACETYLENE HS 1895, 1904-09	1.5	1.5	VP2	4.5	<u>4.0</u> (REPETITIVE DETAILS, CUSTOM REHABILITATION)
BUILDING 6B - TANK SHOP 1896-1904	3.0	3.0	P2+	3.5	3.5
BUILDING 7 - CAR SHOP 1873, 1904	2.0	<u>1.5</u> (BOWED WALLS)	VP1	5.0	5.0
BUILDING 10 - PAINT SHOP 1873	1.0	1.0	VP1	4.5	<u>4.0</u> (REBUILD IN KIND)
BUILDING 11 - PATTERN STOREHOUSE 1885	2.5	<u>2.0 (NORTH WALL)</u>	VP2	4.5	4.5
BUILDING 14 – DRAFTING ROOM AND STOREHOUSE 1858, 1864	NOT INSPECTED	2.0	VP3	NOT INSPECTED	3.5
BUILDING 15/16 (NO ACCESS TO B15) BOILER HOUSE/BRASS FOUNDRY 1858, 1864	1.5	1.5	VP3	3.0	3.0
Averages of common buildings inspected (excluding Building 14)	2.11	2.06		4.06	3.89

SEE FOLLOWING PAGES FOR EXPLANATION OF BECKER STRUCTURAL ENGINEERS AND RESURGENCE ENGINEERING RATING SYSTEMS

Notes:

1. Coordinate this document with "Portland Company Complex General Building Assessment" prepared by Resurgence Engineering et al, March 2015, and "Evaluation of Existing Buildings at the Portland Company Property" prepared by Becker Structural Engineers, March 28, 2014.
2. Further discussion about relative rehabilitation costs related to these structures, by Resurgence Engineering, follows this page.

APPENDIX A EXPLANATION OF BECKER AND RESURGENCE RATING SYSTEMS

Becker Structural Engineers' (BSE) Rating System

The relative structural conditions rating system used in the Becker Structural Engineers Report is shown below:

- 1 = Very poor/unsafe/demolition likely
- 2 = Very poor/salvageable with significant structural rework and investment/questionable economic viability/consider demolition
- 3 = Poor/requires substantial structural work to elements and systems
- 4 = Fair/requires nominal structural work to elements
- 5 = Good condition/minor structural work required

Becker's relative rehabilitation cost rating system is based upon structural complexity and size of building, using a scale of 1 to 5 -- 1 being relatively low costs and 5 being relatively high costs. BSE gives no specific definitions of the relative costs, simply a numerical grading system. Such an approach appears to be reasonable, given the preliminary nature of assessment that both firms were instructed to provide.

Resurgence Engineering and Preservation's (REP) Rating System

For ease of comparison, REP used the same relative structural conditions rating system as BSE in the summary chart. However, REP believes there is a more accurate and further defined way to classify the buildings in terms of condition. *See chart on following page for REP's proposed rating system as regards condition.*

REP has used the same relative rehabilitation cost rating system as BSE. The BSE report provided no specific definition of cost for each rating category.

RESURGENCE ENGINEERING RELATIVE STRUCTURAL CONDITION SCALE OF EXISTING BUILDINGS IN POOR CONDITION

BSE condition #	REP NUMBER	DESCRIPTION OF CONDITION, PRE AND POST MITIGATION	LOCAL/MAINE BUILDING EXAMPLES PRE AND POST MITIGATION
(n/a)	VP1 (very poor, not salvageable)	PRE: Immediate <u>widespread public safety threat and site/occupant safety threat</u> if not barricaded and structurally shored; evacuate nearby buildings, streets, sidewalks, block off parking spaces. Potential for widespread debris field in event of collapse; Building cannot be re-occupied following triggering event. POST: Condemn and demolish building.	Buildings with extensive fire damage
1	VP2 (very poor but salvageable, expensive to rehabilitate, i.e. approx. BSE cost #4 to #5)	PRE: Immediate <u>widespread public safety threat and site/occupant safety threat</u> if not barricaded and structurally shored; evacuate nearby buildings, streets, sidewalks, block off parking spaces. Potential for widespread debris field in event of collapse; Building cannot be re-occupied following triggering event. POST: Building assessed, barricaded, structurally shored; nearby buildings deemed safe for return; streets, and/or sidewalks and parking spots remain blocked off. Building itself cannot be occupied after stabilization. Unsafe for rescue personnel to enter if trespassers are inside. Shored and secured structure relatively expensive, but feasible, to rehabilitate.	PRE: Norway Opera House, 2007-09 POST: Norway Opera House, 2010+
1	VP3 (very poor but salvageable, moderately expensive to rehab, i.e. BSE cost #3 to 4)	PRE: <u>Immediate site/occupant safety threat and localized public safety threat</u> if not if not barricaded and structurally shored; Block off streets, sidewalks, and parking spaces. Potential for localized debris field in event of collapse; Building can be occupied following the triggering event. POST: Building assessed, barricaded, structurally shored; nearby buildings deemed safe for return; streets, and/or sidewalks and parking spots can remain blocked off or reopened following mitigation. Building itself can be occupied.	PRE: Buildings with widespread loose façade components. i.e. Masonic Temple Localized structural failures i.e. Portland Company Complex Building 4 POST: Stabilized structures, removing loose components or installing covered sidewalk and blocked off parking spaces.
2	P1 (very poor but salvageable, less expensive to rehab; i.e. BSE cost #2)	PRE: <u>Likely site/occupant safety threat and localized public safety threat</u> if not if not barricaded and structurally shored; Block off streets, sidewalks, and parking spaces. Potential for localized debris field in event of element failure; Building can be occupied following the triggering event. POST: Building assessed, barricaded, structurally shored; nearby buildings deemed safe for return; streets, and/or sidewalks and parking spots can remain blocked off or reopened following mitigation. Building itself can be resume occupancy.	PRE: Buildings with a few loose façade components that can easily be removed or snow and ice buildup that can easily and quickly be removed, POST: Stabilized structures, removing loose components or installing covered sidewalk and blocked off parking spaces.
3	P2	PRE: <u>Possible site/occupant safety threat and localized public safety threat</u> if not if not barricaded and structurally shored; No triggering event causing distress; possible change of use makes economics questionable. POST: Rehabilitation Feasibility Study considering economics for specific buildings and structures.	PRE: Portland Company Building Complex Building #1

4.10 BUILDING 15/16 – BOILER HOUSE/BRASS FOUNDRY, 1858, 1864

Structure and Building Envelope Description:

- Small (unknown area), two-story structure with conventional lumber framing (15) and unreinforced multi-wythe brick masonry bearing wall (16) along the south (alley) elevation. Building 16 also has an infill wooden partition below a steel beam that previously created a large door opening. Refer to photos #16.1 and #16.2.
- Brick vaults reportedly extend from Building #15 beneath the Fore Street sidewalk. We did not observe these vaults.
- Rubble dry-stacked retaining walls exist at north, west and east elevations. At Building 16, it appears that water penetrates the wall or has in the past.
- Back wall (north wall) is large stone masonry retaining wall supporting hillside at Fore Street.
- Mono-pitch wood-framed roof slopes down toward the south (alley-facing) wall.
- Two-wythe brick masonry front wall features a mixture of granite (likely original) brick, and steel or iron headers on the window and door openings.
- The remnants of the Boiler House chimney base remain between Building 15 and Building 16.
- A large standpipe at east end of building.

Observations and Evaluation:

- The wooden and brick masonry walls of both buildings are in poor condition.
- The chimney base bricks should be checked and stabilized in place.
- Timber and lumber roof framing at Building 16 is undersized for contemporary snow loads.

Adaptive Reuse Potential:

- The building's current use is as a blacksmith's forge, a use not dissimilar to its original purpose as a brass foundry. It may be necessary to rebuild most of the Building 15 framing. In that case, Building 15 would likely need to conform to contemporary code requirements for new structures. From a preservation standpoint, the blacksmith occupancy is likely to be considered as the best and highest use of the structure.
- Open access to framing in Building 16 permits relatively simple structural strengthening techniques. We assume that much of the Building 15 structure will need to be rebuilt.
- As discussed in the Building 14 section, this structure provides opportunities for unique occupancies if properly secured and lighted.

Recommended Building Envelope and Structural Rehabilitation Scope:

- Strip existing roofing, repair damaged sheathing, and add a structural diaphragm, consisting either of plywood sheathing or metal decking above the interior exposed roof decking.
- Insulate roof, and resurface with proper edge flashing and counterflashing.
- Strengthen or rebuild existing roof structure as required, particularly near potential drift areas.
- Strengthen existing roof structure as required to provide wind uplift resistance and to transfer lateral loads through roof.
- Repair or replace existing doors and windows with thermally efficient units that meet National Park Service Standards.
- Repair/replace existing steel lintels with properly galvanized, painted or prepared/painted steel.
- Rebuild the south elevation and Building 15 timber or lumber structures as required.
- Rehabilitate brick masonry front wall of Building 16, to match period of historic significance.
- Improve site drainage and grading around the alley and hillside.



**Memorandum
Planning and Urban Development Department
Planning Division**

To: Chair Boepple and Members of the Portland Planning Board

From: Deborah Andrews, Historic Preservation Program Manager

Date: October 22, 2015

Re: 10/21/15 Historic Preservation Board Review of Supplemental Information Re:
Condition of Building #1, Portland Company Complex

Mtg. Date: October 27, 2015

At its meeting on October 21, the Historic Preservation Board reviewed a new condition report prepared by Becker Structural Engineers for Building #1 (Erecting Building) within the Portland Company complex. The October 13 report provides a more detailed level of analysis of the building's current condition and identifies the work that would be required to put the building into service. The supplemental report was commissioned by CPB2 to support its position that the building should not be classified as a "contributing" structure within any historic district designation proposal. The Historic Preservation Board's review was at the direction of the Planning Board, who agreed to accept additional information regarding the condition of the building provided the HP Board have an opportunity to review and comment on the new findings.

During the Historic Preservation Board's discussion, members expressed the view that the findings of the report were not surprising and were largely consistent with the previous, more general condition reports prepared by Becker and Resurgence Engineering and reviewed as part of the Board's original designation deliberations. Citing the ordinance's definition of "noncontributing" which requires that the Board find that "[the structure's] location, design, setting, materials, workmanship and association have been so altered or have so deteriorated that the overall integrity of the...structure... has been irretrievably lost", Board members found that the building's integrity had not been irretrievably lost. Mr. Oldham noted that the Becker report, in identifying measures to address and rectify the building's condition issues, demonstrates that the building can reasonably be salvaged. Board members Harmon, Turk and Oldham, who are architects, each noted that they had seen buildings in worse condition be successfully rehabilitated and reused. Chair Benson, also an architect, added that nothing in the new Becker report indicates that suggested methods for reinforcing the building go beyond what could be considered normal measures.

Following discussion, Chair Benson took a straw poll of the members present on whether, in consideration of the new information provided by BES, the Board still supported its prior finding as regards Building #1's classification within the proposed historic district. The five Historic Preservation Board members present (Benson, Harmon, Oldham, Turk and Wood) voted unanimously to uphold their previous finding that Building #1 is a contributing structure within the proposed historic district.

Given that the question before the Historic Preservation Board was limited to the *condition* of Building 1, only that aspect of the building's contributing status was addressed at the October 21 meeting. The other requirement of contributing buildings within historic districts is that they "contribute generally to the qualities that give the historic district cultural, historic, architectural or archaeological significance as embodied in the criteria for designating a historic district." (See Sec. 14-602 for definitions of "contributing" and "noncontributing" structures.) As described in the public hearing report, the Historic Preservation Board had also found during its designation deliberations that Building 1 contributes to the qualities that give the Portland Company complex its historic and architectural significance.

Attachments

- A. Staff memo for 10/21/15 HP Board review
- B. October 13, 2015 report from Becker Structural Engineers
- C. Copy of GPL testimony at 10/21 meeting

HISTORIC PRESERVATION BOARD
CITY OF PORTLAND, MAINE

PUBLIC HEARING
PORTLAND COMPANY COMPLEX
58 FORE STREET

TO: Chair Benson and Members of the Historic Preservation Board

FROM: Deborah Andrews, Historic Preservation Program Manager

DATE: October 15, 2015

RE: October 21, 2015 **Public Hearing – Review and Comment on Additional Information re: Condition of Building #1, Portland Company Complex**

Address: former Portland Company complex
 58 Fore Street

Introduction

Representatives of CPB2 will be presenting the findings of a recent report prepared by Becker Structural Engineers (BES) regarding the condition of Building #1 within the Portland Company Complex. The report provides a more detailed level of structural analysis of the building than the two reports provided to the Historic Preservation Board during their review of the building complex for potential historic district designation. Both reports, which addressed most of the buildings within the complex, were conducted at the same level of analysis, which was described as a “30,000-foot view”. This level of analysis was considered sufficient for purposes of evaluating the general feasibility of preserving/rehabilitating each of the 16 individual buildings within the complex as part of the designation review process. The latest Becker report was commissioned by CPB2 to support their position that Building #1 lacks sufficient integrity of condition to warrant classification as a “contributing” structure within the proposed Portland Company historic district, a position expressed by CPB2 in letters and testimony to both the Historic Preservation Board and the Planning Board.

Review of the latest Becker report by the Historic Preservation Board is at the direction of the Planning Board. Board members will recall that the Planning Board was scheduled to hold a public hearing and conduct final deliberations on the Portland Company Historic District designation recommendation on September 8th. The public hearing followed a July 28 informational workshop on the Historic Preservation Board’s designation recommendation. At the start of the September 8 meeting, representatives of CPB2 requested that the public hearing be postponed to provide more time for the development team to review and respond to material

provided in the staff report for the public hearing. The report included a series of responses to specific questions raised by Planning Board members at the preliminary workshop, including questions related to the significance and condition of Building # 1. (See Attachment 2, with supporting material.) Mary Costigan, on behalf of her clients, also submitted a letter in advance of the September 8 public hearing addressing the Planning Board's requests for more information. (See Attachment 3, with supporting material.)

During the course of discussion with the Planning Board on September 8, representatives of CPB2 requested an opportunity to provide a more detailed analysis of Building #1 for the Board's consideration. It was the consensus of the Planning Board members that any additional information should first be presented to the Historic Preservation Board, as the HP Board had made the initial determination as to Building #1's classification and had spent considerable time evaluating the condition of each building within the complex during its deliberations on the proposed district designation. The public hearing was tabled to October 27th, with the understanding that any additional information would be presented during the intervening period to the Historic Preservation Board and that the HP Board's input on the supplemental information would be taken into consideration by the Planning Board during its final deliberations.

Role of the Historic Preservation Board

Although the role of the Historic Preservation Board in this matter was not explicitly defined by the Planning Board, staff understands that the Historic Preservation Board is being asked to review and comment on the new information as it relates to their previous finding that Building #1 meets the ordinance criteria of a "contributing" structure. The Board is not being asked to formally amend its July 24 recommendation to the Planning Board, but to act in an advisory role. Additional input from the Historic Preservation Board will be considered by the Planning Board as it reviews the HP Board's historic district designation recommendation for purposes of forwarding its own recommendation to the City Council.

Questions for Consideration

The recent request to provide a more detailed level of analysis for one of the buildings within the Portland Company complex raises the following threshold questions:

- What level of analysis is appropriate to establish "integrity of condition" as part of the historic designation process outlined in Portland's ordinance?
- How does one fairly evaluate the additional information regarding Building #1 when the same level of information is not available for other buildings within the complex?

Moving on to the findings included in the new Becker report, the Board shall, as before, consider whether Building #1 meets the historic preservation ordinance's definition of a "noncontributing" structure, which reads as follows:

Noncontributing: *A classification applied to a site, structure, object, or portion thereof within a historic district signifying that 1) it does not contribute generally to the qualities that give the district...significance as embodied in the criteria for designating a historic district; 2) was built within 50 years of the date of district designation unless otherwise designated in the historic resources inventory; or 3) where the location, design, setting, materials, workmanship and association have been so altered or have so deteriorated that the overall integrity of the site, structure or object has been irretrievably lost. A portion of an otherwise contributing or landmark structure may be determined by the historic preservation board to be noncontributing if it meets one or more of the above conditions.*

In order for the Board's input to the Planning Board be as clear and informative as possible, Board members are encouraged to fully describe the basis for their findings and to identify the historic preservation ordinance criteria and definitions that guide the Board's determination. (Applicable provisions of the ordinance are cited in 9/8/15 Planning Board report, Attachment 2.)

Attachments

1. October 13, 2015 report from Becker Structural Engineers
2. September 8, 2015 staff report for (postponed) Planning Board Public Hearing, including selected attachments
3. August 26, 2015 letter from Mary Costigan for (postponed) September 8 public hearing
4. Recent public comment



October 13, 2015

Mr. Kevin Costello
 Manager
 CPB2, LLC
 PO Box 7987
 Portland, ME 04112

Dear Kevin,

Per your request, we are issuing this letter report to you as a summary of our evaluation of Building 1 of The Portland Company Complex, located at 58 Fore Street in Portland, Maine. The purpose of our evaluation is to assess the condition of the building's structure in order to determine the modifications and repairs required to meet current adopted codes and standards. Our analysis of this structure has expanded from a high level conditions assessment of the 58 Fore Street Complex performed by Becker Structural Engineers (BSE) in 2014, to a more detailed evaluation that will determine the scope of repair work needed to occupy Building 1.

The basis of our analysis as well as itemized descriptions of recommended modifications to the building are included in the following sections of this report. In addition, we have attached drawings S1-S5, which document the recommendations of this report and can be used to reference each of the repair items. After performing our evaluation, we have determined that the repairs and alterations required to meet the current code are extensive.

BASIS OF EVALUATION:

Building 1 at 58 Fore Street was constructed circa 1918. It consists of an exterior masonry wall shell supporting a combination of steel and timber roof structures. Members of BSE visited the building on September 22, 2015 to perform observations and take field measurements of the existing structural elements and systems. Our evaluation is based on these findings and the City's adopted codes, which include the International Building Code (IBC) 2009 edition and the International Existing Building Code (IEBC) 2009 edition. As referenced by IBC, gravity and lateral loads have been determined using the American Society of Civil Engineers, ASCE 7 Minimum Design Loads for Buildings and Other Structures, 2005 edition. The future occupancy of the building is unknown at this time, but for the purposes of this evaluation, we have assumed that this building will serve a public assembly occupancy.

ROOF FRAMING:

Building 1 consists of a center, clerestory roof structure with lower "saddle-bag" roofs along each side. The high roof consists of timber decking spanning to steel purlins. The purlins are supported by clear-spanning steel trusses spaced approximately 20'-0" on center (o.c.), which are in turn supported by steel columns. The lower roofs also consists of timber decking spanning

to steel beams. These beams are carried by steel girders that span to the main steel columns and to the exterior brick walls.

Our recommendations for repairs and modifications to the roof structure are as follows:

- Item R1: Approximately 30% of the existing timber decking is rotted and needs to be replaced. The areas requiring repair are scattered throughout the lower and upper roofs. Our opinion is that it will be more efficient and cost effective to replace all of the decking rather than replace the individual areas of rot. We recommend using a 3" nominal tongue and groove (T&G) timber decking as replacement.
- Item R2: Some of the elements in the roof trusses are overstressed for snow loads. We recommend reinforcing the chords and some of the web members with new steel rods or angles. Further analysis is required to determine if the riveted connections at the truss members are adequate. This detailed analysis was not performed for this report.
- Item R3: The existing columns supporting the roof structure are overstressed. We recommend reinforcing them with new steel tee-shapes and plates. In addition, the column splice that occurs at the low roof is inadequate, and we recommend reinforcing it with new steel side plates.
- Item R4: Our analysis showed the existing bottom chord bridging is inadequate to brace the truss during uplift caused by wind loads. We recommend welding steel reinforcement to the existing bridging and cross-bracing, as well as adding new bridge lines near the ends of the trusses.

LATERAL FORCE RESISTING SYSTEM:

A lateral force resisting system collects wind and seismic loads from the exterior envelope of the building and transfers them to the foundations and substructure. To transfer loads effectively, there must be positive load paths from the envelope to the roof diaphragms (existing roof decking), from the diaphragms to the lateral resisting elements (existing masonry walls), and from the walls to the foundations. Our observations determined that many of these load paths are inadequate or do not exist. Examples of this include inadequate fastening of the roof deck to the exterior walls, as well as several openings and discontinuities in the walls that reduce overall stiffness and capacity. Our opinion is that Building 1 does not have a functioning lateral force resisting system, and thus a new system should be installed.

Our recommendations for the lateral force resisting system are as follows:

- Item L1: To create an effective structural diaphragm for resisting wind and seismic loads, we recommend sheathing over the all of the new timber decking with 1/2" thick plywood.
- Item L2: New steel channels and new beam nailers should be installed to allow the roof diaphragm to be positively connected to its support structure.
- Item L3: For lateral forces in the long direction of the building, we recommend installing new steel rod cross-braces within four bays of the clerestory.
- Item L4: To transfer forces from the cross braces identified in item L3, as well as the low roof diaphragms, we recommend installing new columns, beams and braces along the exterior walls and between the existing columns to create moment frames. Further



analysis may allow for the existing crane rail beam to be used as part of the new moment frames, eliminating some of the new structural steel.

- Item L5: For lateral forces in the short direction of the building, we recommend installing HSS cross-braced frames (or frames of a similar configuration). A total of six new frames are proposed to control uplift forces due to wind and seismic loads. We believe the six frames will best lessen the uplift demand on the mat foundations, reducing their size and the overall pile quantity as much as possible.

FOUNDATIONS AND SUBSTRUCTURE:

Little is known about the foundations for Building 1 since most of them are not exposed to view. Based on our past experience with sites along the Portland Waterfront, existing soils typically consist of poorly compacted fill that is often unsatisfactory for support of structures. Historical maps of the area indicate the site was originally underwater and was filled in order to construct the facility. Building 1, however, appears to be well founded with little to no signs of settlement or foundation distress. Therefore, we believe the building may be supported by shallow rock or deep foundation elements, such as pilings or piers, extending to more favorable soils or bedrock below. Prior to proceeding with the design of structural modifications for the building, further geotechnical observations and testing would be required to determine the existing soil properties and the existing foundation characteristics.

Our recommendations for the foundations are as follows and are based on a pile-supported foundation:

- Item F1: The existing concrete slab is in fair to good condition but has several surface deformations and poor levelness. We also found locations where voids beneath the slab are present. To meet the needs of an assembly occupancy, we recommend replacing the slab. Prior to placing the new slab, the existing soils will likely require re-compaction, and new compacted structural fill may also be necessary.
- Item F2: All new columns will require support from new concrete footings. We recommend supporting new footings using steel mini-piles driven to refusal. The existing exterior wall will likely be undermined during the installation of the new footings. Therefore, the scope of foundation work will need to include temporary shoring of the existing exterior walls to install the new footings.
- Item F3: To control uplifts at the braces and moment frames, new mat foundations and strip footings will be required. All new foundations will likely need support from mini-piles. Mini-piles will need to be connected to the mat foundations with uplift anchors. Lastly, the existing columns will need temporary shoring to allow for the existing footing to be removed prior to construction of the new mats.

EXTERIOR WALLS AND FACADE:

The exterior structure of Building 1 consists primarily of multi-wythe, solid brick walls. The building has several large openings for windows, both at the main level and the clerestory. Brick above the openings is typically supported by steel plates attached to steel beam lintels. The brick at the clerestory, however, is supported directly by the roof structure. There are several steel hangers from the high roof structure to the low roof beams that support the brick. The eccentric load from the hangers has caused the high roof beams to twist into the building.



Along the south elevation, several vertical cracks are present in each of the brick piers between the windows. The steel lintels above the windows are anchored into the piers at each end. As thermal expansion and contraction has occurred over time, our opinion is the lintel anchorage is restraining movement and causing the cracks. Further evidence of this is shown by the north elevation, where the larger cracks are not present. This elevation is mostly concealed from exposure to the sun, which would suggest why the cracks have not developed.

Our recommendations for the exterior of the building are as follows:

- Item E1: The cracked piers at the south wall are beyond repair and need to be rebuilt. During the rebuild, we recommend providing vertical control joints in the center of each of the brick piers to control future cracking.
- Item E2: The hanging structure that supports the clerestory facade is not performing adequately, as shown by the twisting beams. We recommend installing new HSS purlins, removing the hanger connections from the existing beams and connecting them to the new HSS beams. The HSS members have resistance to torsion and will not twist.
- Item E3: The steel plates at all of the lintels are heavily corroded and require replacement. We recommend temporarily shoring the facade, removing the plates, removing any rust or corrosion on the lintel, and welding new galvanized plates to the lintels. New flashing details will be required to protect the lintels from future corrosion.
- Item E4: The lintels in the north and south walls create a hinge in the exterior wall, significantly reducing its ability to resist out-of-plane wind loads. To eliminate the hinge, we recommend connecting each of the brick piers to the new columns with clip angle connections.
- Item E5: The exterior brick below the main windows is in poor condition due to rising damp and splash-back from the rain that falls from the upper roofs. Partial reconstruction and repair of this brick will be required..
- Item E6: The steel framed windows and windows sashes throughout the building are in poor condition and should be replaced. In addition, the cast-stone sills beneath the windows are showing signs of heavy corrosion and should also be replaced.
- Item E7: As mentioned in item R1, the roof decking requires replacement at the low roofs. Our observations determined that the brick walls at the clerestory partially bear on the existing deck. These walls are in poor shape, with the brick below the window sills bowing out in most locations. Given the condition of the walls and the wall damage that may occur during the roof deck replacement, we recommend that the clerestory walls be rebuilt.

CONCLUSION AND CLOSING:

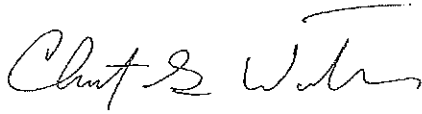
Our evaluation of Building 1 has shown that the structure does not meet current code requirements for resisting gravity and lateral forces, including snow, wind and seismic loads. As a result, a significant amount of structural modifications to the foundations and framing will be required. Repair or replacement is recommended for approximately 50% of the existing foundations, 100% of the roof deck, 70% of the roof framing and 40% of the masonry. In addition to these repairs, we believe a significant amount of new structural systems are required to upgrade the building, including braced frames, moment frames, mat foundations and mini-



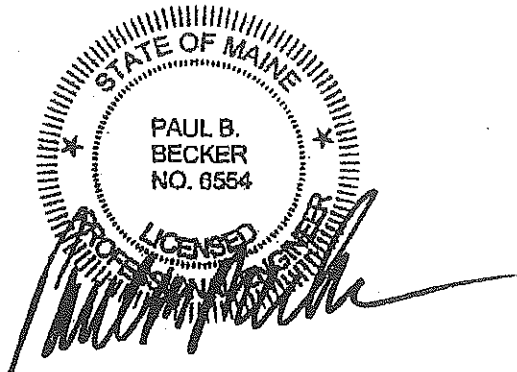
piles. Our review addresses structural concerns only, and it should be understood that there will be mechanical, electrical, plumbing and life-safety upgrades required as well.

We trust that this information addresses your concerns at this time and will be helpful in planning for the future use of Building 1 at 58 Fore Street. This letter report should be understood in the context it is provided. It is based upon our site observations and preliminary analysis of existing conditions. It has been prepared to provide an overview of the building's structural condition, and to identify the scope and nature of structural issues, which may impact future use. As there have been some assumptions made regarding the existing framing and proposed scope of future work, it is important to review, whenever possible, the building for conformance with the assumptions made. We would be happy to discuss this further, so please contact us if you have any questions.

Sincerely,
BECKER STRUCTURAL ENGINEERS, Inc.



Christopher G. Williams, P.E., S.E.
Project Engineer

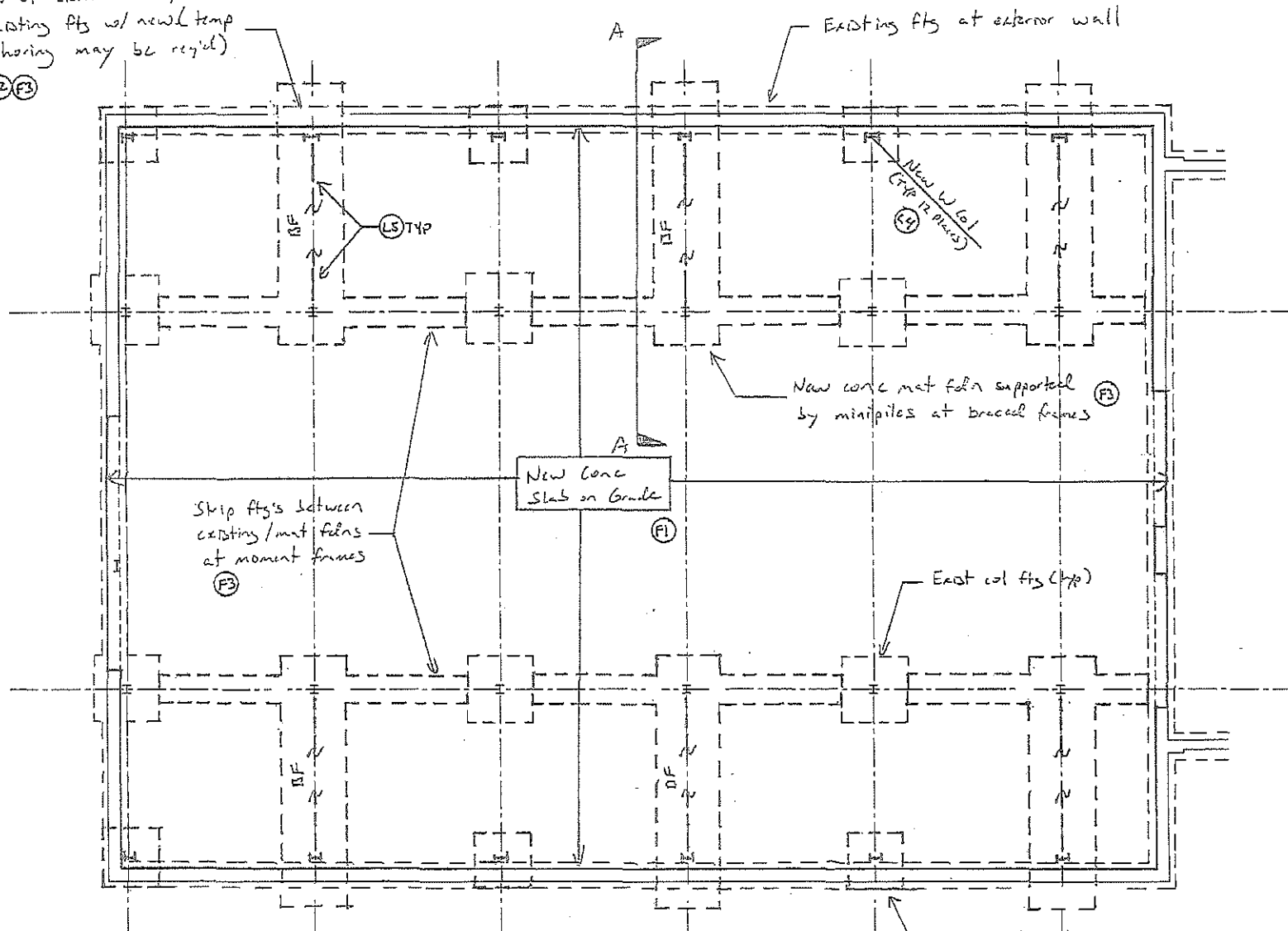


Paul B. Becker, P.E.
President



Typ of exterior wall, undermine
existing fts w/ new temp
shoring may be req'd)

(P2)(P3)



FIRST FLOOR/FDN PLAN

3/32"=1'-0"

1. B.F. indicates new steel braced frame

51

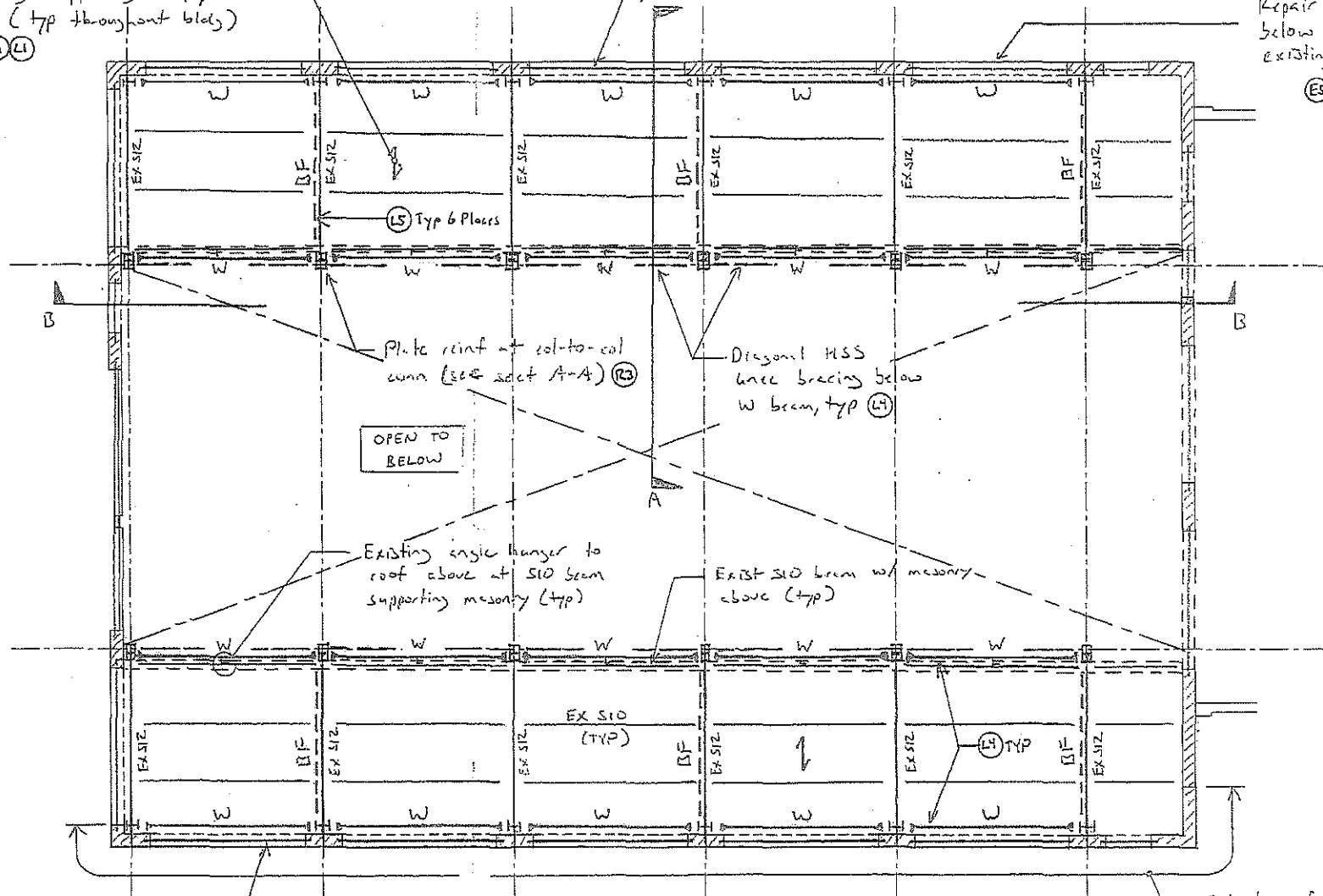
Remove and replace existing roof decking w/ 3" nominal timber decking supporting 1/2" plywood sheathing (typ throughout bldg)

(E1) (L1)

Typ all Exist Lintels: Remove corroded relieving plates or lintels. Provide new galvanized plate or angle and new flashing as required. (E3)

Repair damaged masonry below windows. Replace existing windows (typ)

(E5) (E6)



OPEN TO BELOW

Existing angle hanger to roof above at SID beam supporting masonry (typ)

EXIST SID beam w/ masonry above (typ)

EX SID (TYP)

(L1) TYP

Shore existing lintels and masonry above during lintel and masonry repairs (typ)

LOW ROOF PLAN

3/32"=1'-0"

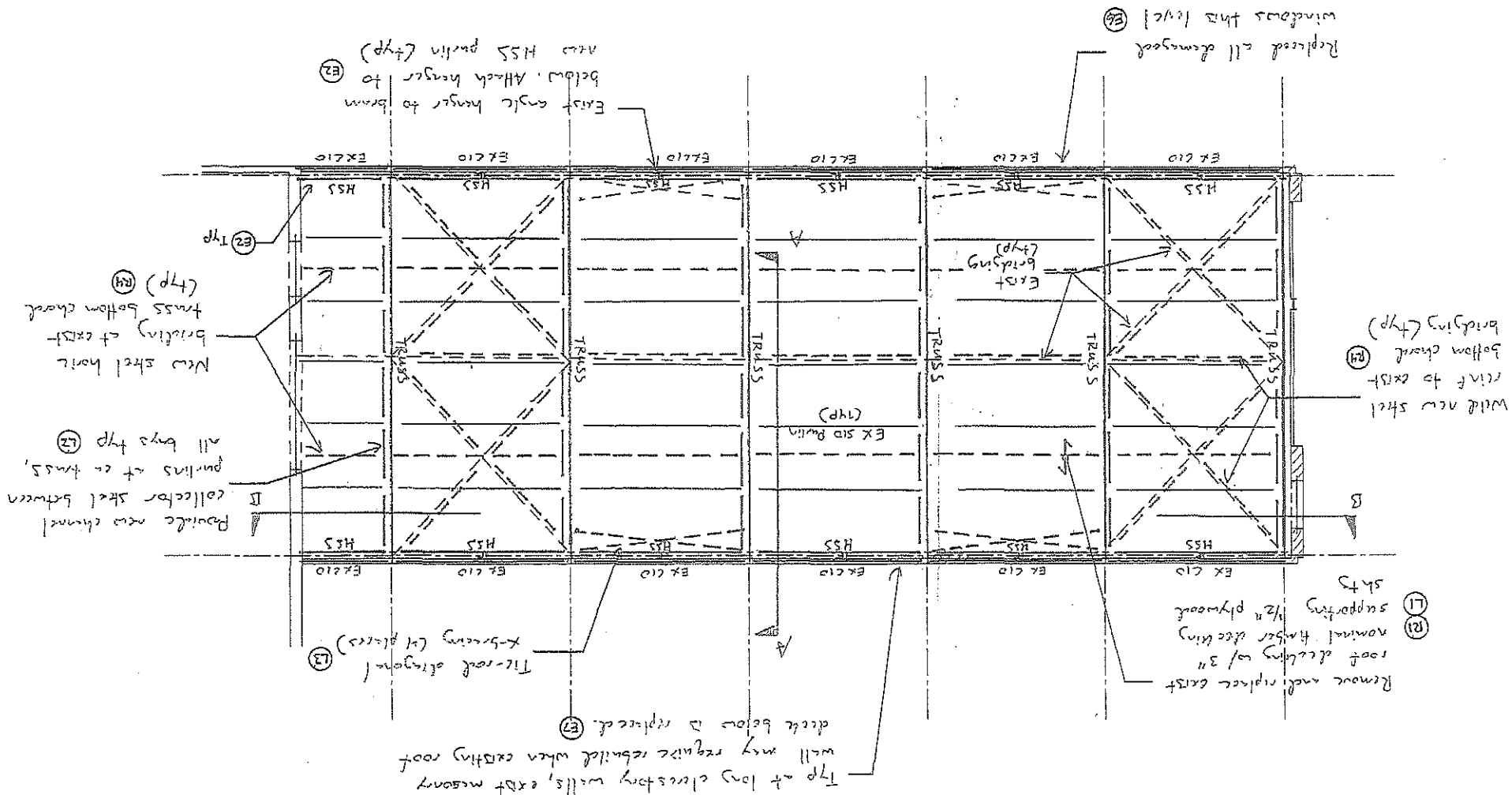
1. B.F. indicates new steel brace frame.
2. indicates new moment frame connection

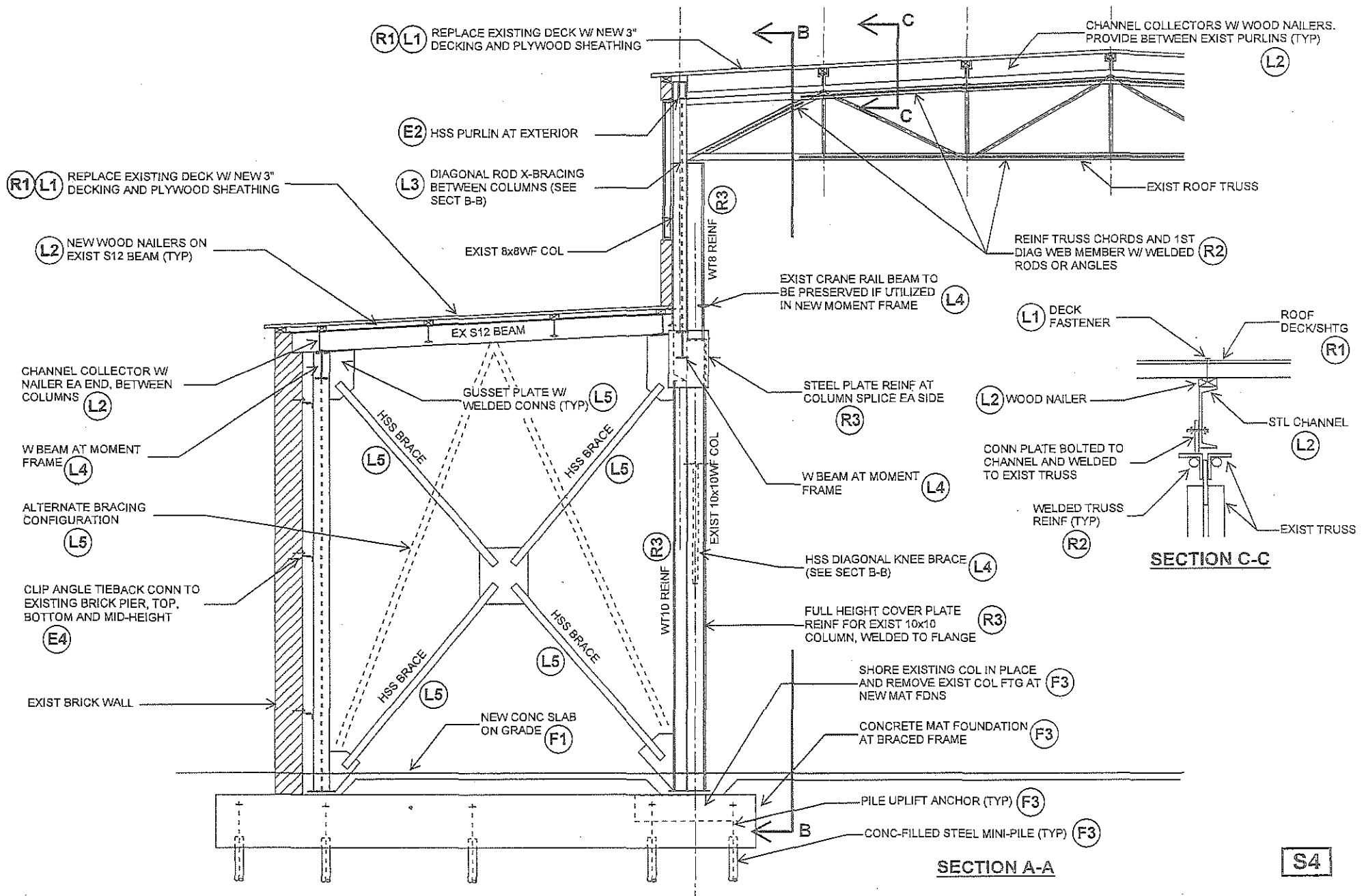
Extents of existing pier and/or wall rebuilt to replaced damaged masonry. (E1) (E5)

52

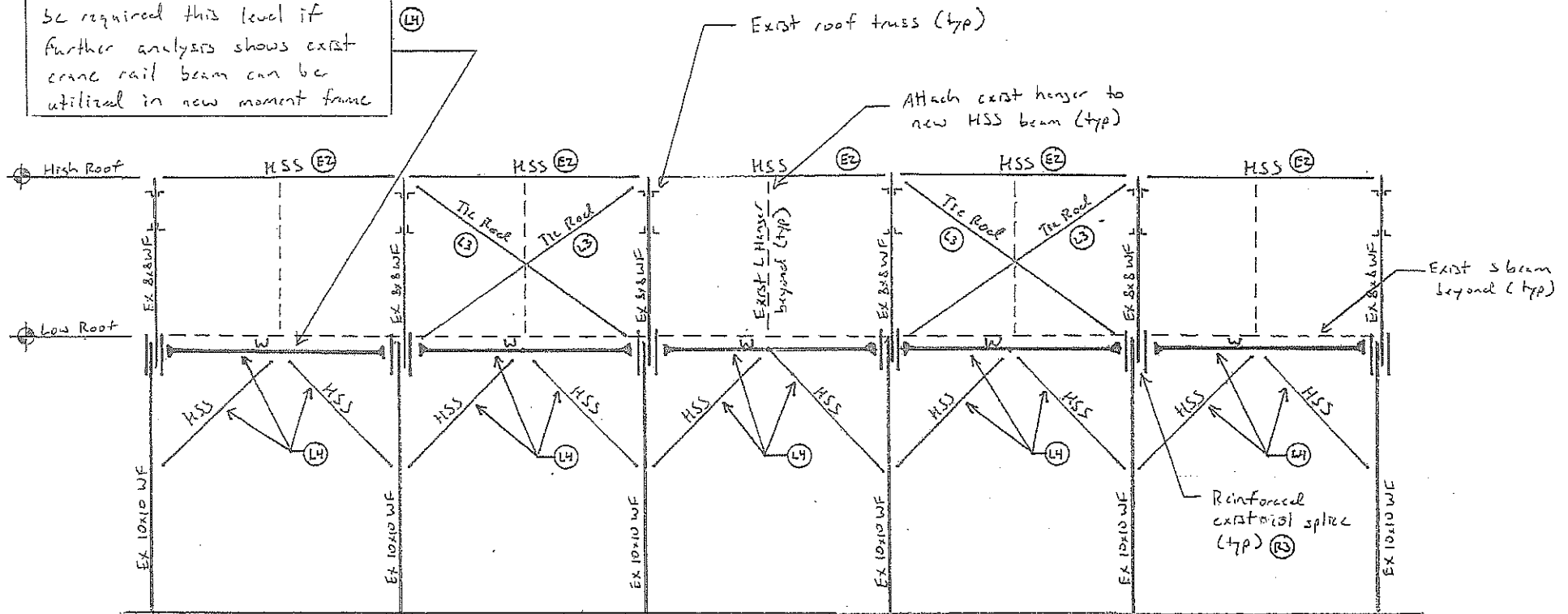
HIGH ROOF PLAN

3/32"=1'-0"





Note: New W beams may not be required this level if further analysis shows exist crane rail beam can be utilized in new moment frame



SECTION B-B



Statement for Historic Preservation Board Public Hearing

Portland Company, 58 Fore Street

21 October 2015

Greater Portland Landmarks originally supported the Historic Preservation Board's finding that Building No. 1 be classified as a contributing building in the proposed Portland Company Local Historic District and continues to do so. Building No. 1 contributes to the general qualities that characterize the proposed district. It is an important structure in the interconnected buildings that comprise the core of the Portland Company's manufacturing process. Architecturally it expresses the qualities of industrial building design during the early 20th century in its large multi-paned window openings and clerestory roof form.

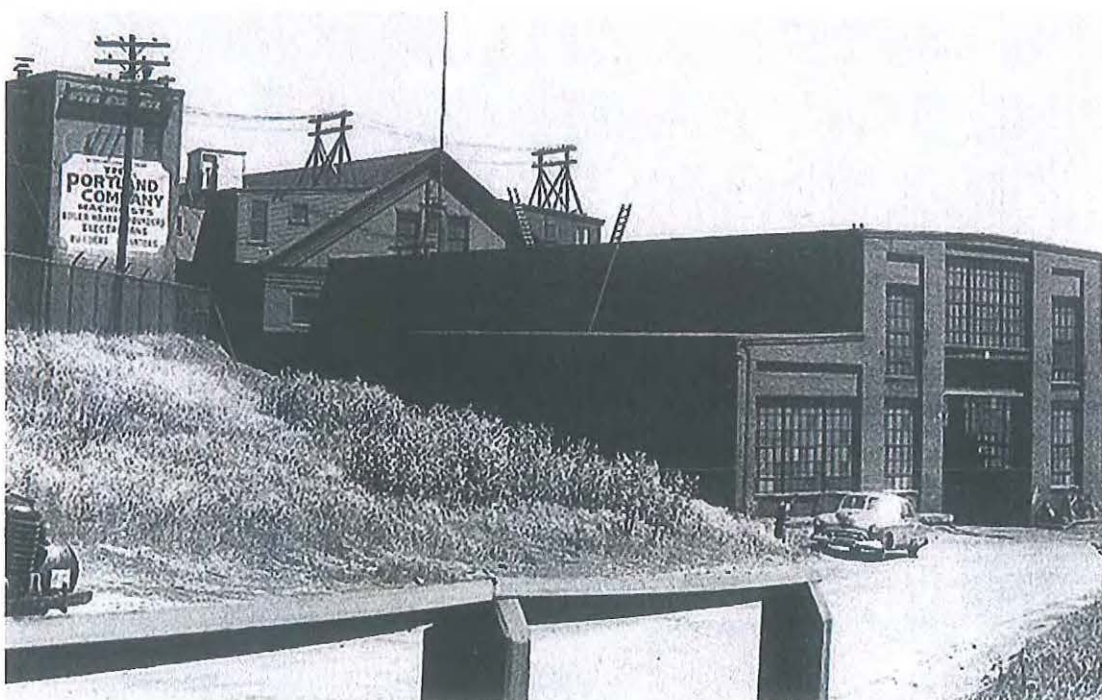
The new report prepared by Becker Structural Engineers (BSE) on the scope of the structural repair work needed for an assembly use in Building No.1 goes beyond the level of information usually considered during the classification of a building as contributing or non-contributing in an historic district. This level of information was not considered or requested during the board's deliberations on the classification of this or other buildings in the complex. In addition this level of information has not been utilized to assess integrity of condition in the proposed India Street Historic District or the newly designated House Island Historic District.

As noted in various reports, Building No. 1 exhibits some deterioration of its exterior materials and has been altered by a new overhead door on the west façade. However the materials and design of the structure have not been so altered or deteriorated to degrade the building's integrity of condition to the point of being "irretrievably lost".

Of the nine buildings inspected by BSE in March of 2014 Building One was assigned a relative structural condition score of 2.0 and a relative rehabilitation cost of 4.0. Only four (Nos. 2, 3, 6, & 11) of the nine buildings inspected were noted by BSE to be in better structural condition and only three (Nos. 3, 6, & 16) had lower anticipated rehabilitation costs. From this assessment and the report completed by Resurgence Engineering, Building No. 1 does not appear to be in substantially worse condition relative to other buildings in the complex designated as contributing and has an average estimated rehabilitation cost. Neither of the structural reports identified a structural need to immediately vacate or demolish the structure that would qualify it to be described as "irretrievably lost". The October 2015 BSE evaluation of Building No.1 does not identify any new structural or safety issues not present in March of 2014. Greater Portland Landmarks strongly supports the continued finding that Building No. 1 be classified as a contributing building in the proposed Portland Company Local Historic District.



Circa 2012 (*Greater Portland Landmarks*)



Circa 1950 (*Portland Maine History 1786 to Present, Facebook Page*)

Attachment D8

From: Herb Adams <hadams@smccme.edu>
To: Deb Andrews <dga@portlandmaine.gov>
Date: 10/23/2015 12:02 PM
Subject: RE: 58 Fore Street

TO: Members of the Portland Planning Board
c/o D.G. Andrews, City of Portland

RE: Designations in footprint of 58 Fore Street

Dear Board Members :

This message is to strongly encourage the Board to designate as broadly as possible the protections for the area and the structures now at 58 Fore Street, the former Portland Company, and to make the protected footprint on this site as large and encompassing as possible.

As you know, 58 Fore Street, the Portland Company, is one of the very last virtually intact industrial sites of its kind remaining in the United States. It is unique by any yardstick of comparison.

Here the very contours of industrial Maine and American were -- literally -- forged. From steam locomotives to the nation's first nuclear reactor containment vessel, to the static eliminator in the photocopier that reproduced this document, to the foam extrusion machine that made the Big Mac Styrofoam box -- all were invented or perfected at the Portland Company.

Its legacy is vast. None of it should be lost. I believe that we, its heirs, should protect it. And whoever may own it should celebrate it -- and not demolish it.

Yes, historic designations may seem inconvenient at the moment. In the long run they always pay off. Yes, they may cost a bit more in the present -- but the prudent investor looks to the long term payoff in the future.

As an example, I strongly encourage the Board to include Building No. 4, in its entire and intact form, within the broadest drawn Historic District footprint as possible. This building was an integral part of the assembly-line process (of which the Portland Company was a national pioneer) for its steam locomotives and large industrial equipment of all kinds. The massive productions then moved down a succession of buildings and exited thru the great doors of what (I believe) is termed Building No. 1 on the digital maps.

There is nothing left in the United States like this -- largely intact, still identifiable, and redolent of the very mastery of iron and steel-shaping work that the Portland Company pioneered in America.. Henry Ford himself was well aware of the Portland Company's linear processes, and cited them in construction of his vast River Rouge auto plant (much of which has long since been lost)

I am puzzled by the developer's plans to demolish or demote so much of what is intact -- these are treasures a prudent investor

should see as gems, not rough at all, just in need of a period of polishing after long neglect.

Such careful thinking should be given to every building on the site.

There is nothing in America left like the Portland Company. Once gone, there will be nothing to ever replace it. Careful prudent, building-by-building restoration and wise re-use should be the rule here -- and the public and the developer both will profit by it.

Demolition of this heritage, and replacing it with a plaque nodding to "What Once Stood Here " is not progress. Holding on to our heritage, and enhancing it, IS progress.

Just like Joan A. Poor, who founded the Portland Company, looked to build for a future he knew he would not see, we should hold on to the best we have for a future we know we WILL see.

Please remember that 20 years ago nay-sayers denounced the very idea of an Historic Preservation Ordinance as a job-killer and a city-destroyer , and the very idea of panels (like the one you sit on) as progress-killers. Today we know they are anything but. Our beautiful city -- and our wallet in tourist dollars -- have benefitted from their existence.

In summary, I believe our best and wisest act for Portland would be to make the Historic District for the Portland Company as big as possible, to embrace as many structures as possible, and to save Building 4 entirely as one example of this broad embrace.

It is an embrace of the future, after all, not just the past.

Thank you for your consideration.

Sincerely,

Herb Adams
Former State Representative
Adjunct Professor History and Social Science, SMCC

To: City of Portland Planning Board

From: Paula Guillemette Agopian

Re: 58 Fore Street aka (The Portland Co.)

I was present for the Planning Board meeting on 9/8/15 when the item regarding The Portland Co. was tabled to October since CPB2 requested more time to revisit building #1. Let me say that building #4 (The Foundry) should be revisited by the Planning Board as well!

Compromises and concessions have been made by the HP Board and the Planning Dept's HP Office. If I had my way about it I would have placed an "Historic Shroud" over the entire complex except the metal building in the rear and the new office building at the entrance.

I have attended presentations and workshops since October, when the Sutherland Report was unveiled. I have witnessed the HP Board struggle with angst on the issues presented them. I felt a sincere sense of concern for preservation while maintaining pragmatism and sensitivity related to the costs of rehabilitation and preservation.

Building #1 was the last building built within the period of significance (1918) and represents it's era as much as building 2 (1847). It was an intragal part of the operation. While not as architecturally appealing as building #2 we need to bear in mind "this is not a beauty contest" (Ted Olden). In the Resurgence Report done by Al Hodson it reveals that the costs to rehabilitate and retrofit this building are feasible. Another level could be constructed doubling the rentable space \$\$\$.

Building #4 The Foundry, performed the most important function in the production process. It was the heart that pumped the life blood. Yes, it had a failed system from day one, yet it still stands today and the Resurgence Report states it could be remedied with reinforcement and supports.

In real estate the rule of thumb is, if it's attached it is part of the structure. #1 is attached to #2, #2 to #3 and #4. They are all one structure!

I encourage you to have the fortitude and courage to listen to the Chair of the HP Board and accept the proposal as presented with one exception, building #4 (The Foundry) be put on hold and reconsider it to be included. Remember historic preservation's purpose is to re-enforce and not to undermine!

Sincerely,



Paula Guillemette Agopian

cc. Mayor Brennan, Portland City Council, Historic Preservation Board, Deb Andrews, Landmarks

Deb Andrews, Historic Preservation Program Manager
City of Portland Planning Division
389 Congress Street
Portland, ME 04101

September 25, 2015

Dear Deb,

I will not be able to attend the Planning Board's meeting in October and so would be happy if you were to share my reflections with the members of the Historic Preservation and the Planning Boards.

When I was Executive Director of the Maine Historical Society (1985-1995), one of my favorite collections to peruse was the Portland Company. The abundance of sketches, plans and specifications all pointed to the vibrancy of this Portland enterprise. The watercolor presentation drawings transcended industrial history to art. But by the late 20th century, what was left of Portland's industrial past? Very little. How could this extraordinary story of Portland's manufacturing past best be told?

Portland has the opportunity to do this now, not just for the few researchers who could consult this archive but also for the many, many residents and visitors who will be drawn to the reborn Portland Company site. As a resident of nearby Waterville Street, I have been concerned about the safety of the site as buildings have deteriorated and the property has been underutilized. I fully support the concept of a mixed-use and look forward to the integration of contemporary design into the historical context. I also support the compromise approach that the current nomination proposes; saving all the buildings just isn't feasible. Nor is it the way Portland should step into its future.

At the same time, Portland's history doesn't stop at the end of the 19th century, in spite of what the tourist literature tells visitors. Preserving building #1 should be considered not just "contributing," but essential. The design of building #1 with its large windows and uninterrupted workspace leaves no doubt that the Company was vibrant well into the 20th century. Without it, the story that the preserved buildings tell is truncated to a 19th century history, denying the breadth of the site's architectural and historical significance.

Preserving and adapting building #1 will certainly be an expensive proposition. But there is no other building that explains the whole continuum. Without it, I fear that the Portland Company's redevelopment will resemble a theme park of 19th century picturesqueness. Building #1 challenges us to move into a gutsier, brawnier version of our community's history. It is the building that offers the most intriguing opportunity for the new vision of a Portland Company.

My thanks and appreciation to you and to the members of the Historic Preservation Board for your efforts to create an historic district at the Portland Company.

Sincerely,



Elizabeth Miller
46 Waterville Street #3
Portland, ME 04101
elizabethmiller1953@hotmail.com
207-878-8604

Deb Andrews - Portland Company District

From: Jack Bauman<baumanj@roadrunner.com>
To: "cdg@portlandmaine.gov" <cdg@portlandmaine.gov>
Date: 9/5/2015 12:03 PM
Subject: Portland Company District
CC: Deb Andrews<dga@portlandmaine.gov>
Attachments: PortCo.FIN.docx

Dear Christine, I am writing in support of the Portland Company Historic District. In my estimation the Portland Company is one of the most important sites in the city. As the attached article indicates, it was not only the birthplace of industrialism in Portland, but as John A. Poor intended, it simultaneously helped transform what had been an important regional seaport into an international port, a significant rail hub, and the major destination for Canadian winter wheat. An important employer of Irish labor, the company also contributed to the shaping of the city's Irish community and Irish culture. Physically, without the Portland Company and the Atlantic and St. Lawrence Railroad, would Commercial Street and the "Old Port" exist? I doubt it. The city's edge today might easily be Fore Street. Without doubt, the Portland Company should exist as a monument to the city's past and its romance with the sea. It is sacred. Very Sincerely, John F. Bauman, Visiting Professor, USM, and author of Gateway to Vacationland: The Making of Portland, Maine (2012)
Sent from Windows Mail

August 27, 2014

"Historic Portland Company Should be Preserved"
John F. Bauman

At the foot of Munjoy Hill, on Fore Street near India, sits a sprawling brick, industrial complex called the Portland Company and known better today as the site of the annual flower show. It is one of the most important clusters of buildings not only in Portland, but in the State of Maine. In 1846 the lawyer/entrepreneur John Alfred Poor, mesmerized by the potential of the railroad, conjured a vision of Portland as a thriving railroad Mecca. Poor beheld "the coast of Maine lined with cities rivaling the cities of the coast of the Baltic." For him, the Forest City, closer to Europe than Boston, was an obvious destination for Canada's winter wheat harvest bound by rail for Liverpool, Le Harve, or Bremen, but blocked at Montreal by an ice-locked St. Lawrence River.

Poor's vision captivated Portland's Judge William Preble who with other city businessmen funded a survey for a viable rail route from Portland north through Dixville Notch to the Canadian border. In 1845 the group successfully lobbied the Maine legislature to charter the Atlantic and St. Lawrence Railroad. Then, amidst blizzard conditions, Poor raced by sleigh along his proposed route to Montreal, convincing the Montreal Board of Trade of the superiority of his proposed route over his Boston competitor.

But the Atlantic and St. Lawrence railroad needed infrastructure; it needed locomotives, freight and passenger cars, and a mill to both build and maintain this rolling stock. In 1846 Poor and his backers incorporated the Portland Company capitalized at \$250,000. For expertise Poor turned to Philadelphia's renowned Norris Company, which helped build the brick edifice, and in

1848 produced the plant's first locomotive.

Together with the Portland Company, the Atlantic and St. Lawrence, which soon became the Grand Trunk Railroad, literally transformed Portland. It ushered Portland into the "Age of Industrialism." To more efficiently link the Grand Trunk terminal at the foot of Munjoy Hill, one block from the Portland Company, with the city's Fore-Street port facilities, Portland removed the top of Munjoy Hill, and with the resulting fill covered over the existing Fore Street piers. This engineering *tour de force* produced a new, 100 foot-wide, 5,993-foot long Commercial Street, an avenue laced with rails and accommodating the bustling pier and warehouse cityscape in the twenty-first century familiar to all.

Portland, once an Ante-bellum shipbuilding and sugar-refining center in the 1870s became a thriving rail center and until 1923 the sole destination for Canadian winter wheat. The Grand Trunk's extensive operations, its rail yards, elevators and loading apparatus, plus, of course, the Portland Company, became the city's main employer. In 1876 the Portland Company boasted over 450 employees, many of them Irish immigrants. Writer Edward Elwell, that year expostulated about the Portland Company's "vastness." "These are the only works for the building of locomotives in the state," he wrote. "Indeed, no others have so capacious workshops, or are so favorably situated on tide water and the line of a far-reaching railway." While the company produced hundreds of locomotives and rail cars, it also produced snow plows, stationary steam engines and boilers. During the Civil War it supplied the Union Army with heavy canons. In the 1920s it manufactured automobiles. During World War II the company built turbines for war ships and cast 30,000-pound propellers for South- Portland-built

Liberty Ships. After World War II the Portland Company produced giant pulp digesters for the paper industry and equipment for nuclear power plants.

Until 1982, the year the Portland Company ceased production, the complex remained the city's singular industrial enterprise. It had helped transform Portland into a transcontinental shipping port with flourishing warehouses, strong banking and commercial sectors, and with an extensive railroad network that linked the city commercially to Philadelphia, New York, Chicago, and San Francisco. The rail network which it serviced made Portland a gateway to other tourist destinations: Camden, Boothbay Harbor, Bar Harbor, the White Mountains. It helped make Portland the city that we know and love today. On a par with Victoria Mansion, the Customs House, Monument and Longfellow squares, and the Old Port, the Portland Company complex is of immeasurable historic significance to the city. A unique opportunity exists to reuse the complex in a way that both preserves its remarkable history and brings an exciting new chapter to the Portland waterfront.

The writer, John F. Bauman, is the author of *Gateway to Vacationland: the Making of Portland, Maine* (University of Massachusetts Press, 2012).

From: Denise Preisser <dpreisse@maine.rr.com>
To: <dga@portlandmaine.gov>
Date: 9/8/2015 5:01 PM
Subject: 58 Fore Street

To whom it may concern:

I can not attend tonight's meeting. As a taxpayer and a resident of Portland I am in favor of granting the 58 Fore Street property as an Historic District. However, I am disappointed that building 4 was not included in the district, due to the back door workings of the developers saying it was too expensive to repair - not by work but due to size of structure.

The developers knew this site was a proposed Historic District before purchase and they should not be able to force the city's hand in what has been working here with this fine board.

Best,
Denise Preisser

Comments of Barbara Vestal, 7 Fore St., Portland submitted to Portland's Historic Preservation Board, July 15, 2015

I would like to raise one question about the designation report. 14-617 says that your designation report will contain "proposed design guidelines for review of alteration or construction." However on page 8, it says that specific design guidelines will not be proposed for the district.

There is a lot in the report that is very much like design guidelines. Could they be recast as design guidelines? The photos illustrate some key visual characteristics. The report says that it is import that these strong visual characteristics be considered in future infill development, new construction and site improvements. Would it take much more work to affirmatively state these as design guidelines? I think it would help future Boards to have that as a reference.

Having design guidelines in the district designation report is important. The Design Guidelines for the Eastern Waterfront are not very detailed. The B-6 design guidelines are written so they apply to structures along public streets. The internal circulation pattern may be private ways rather than public streets. In that case, they will not apply.

Even if you do not propose overall design guidelines, I would encourage you in the designation report to consider the "Portland Company Alignment". That appeared as a "no build area" as part of the 2004 Eastern Waterfront Building Height Study. (Copy attached.) In this Illustration 33, the building envelope of the building to the south is pulled back so from Thames St, one would have a view into the alley between the buildings.

By the time the application got out of the Planning Board, the "no build zone" Portland Company alignment had turned into a "building break line." Note #4 addresses it. Instead of a 50' or so break between buildings, it has no particular width. If you think it is important to maintain the alley pattern in this location, that should be addressed in a design guideline.

I understand you have been asked to agree that the maximum building heights by zoning should trump the ability of HP to ask for any lower heights for purposes of meeting the historic preservation standards. This would be unusual, and is only done in Portland in the Congress St. District. It made some sense in the Congress St. district because it applied to existing buildings with a wide variety of heights. Here there is a basic fabric of 2-3 story buildings.

It seems like the designation report should say that you do not feel that it is appropriate to tie your hands like this. It could be particularly relevant along Fore Street, where the Planning Board approved heights being measured from average grade, and allowed buildings along Fore St. to go up to 35' above the grade of Fore St. Depending on the grade measurements, this height calculation might allow buildings to be constructed on top of buildings 16 and 24. Under some interpretations, if you have no option but to defer to the zoning heights, you might not be able to prevent that even if it violates many of your review standards.

F

B6 Building Height Overlay & Building Envelopes

B6 Building Height Overlay Notes:

- 1) For Buildings located East of Hancock Street, no building mass higher than 45 feet shall be wider than 70 feet measured parallel with the waterfront nor longer than 140 feet measured perpendicular with the waterfront. The 70 foot wide building extension allowed above must be at least 80 feet apart, measured parallel with the waterfront, and if abutting Mountfort Street (extension) must be set back 25 feet from any street.
- 2) No Buildings shall be located outside of the Key Building Envelopes. In Defined View Corridors, no Building allowed above the corresponding Fore Street elevation.
- 3) For buildings located East of Mountfort Street (extension), no building shall exceed 35 feet in height above the adjacent Fore Street grade within 100 feet of the Fore Street right-of-way, as measured perpendicular to the Fore Street right-of-way.
- 4) Location of Building Break Line is approximate as shown, and intended to promote a break in building mass to allow for the development of blocks and site permeability. The exact location of blocks and site permeability shall be identified, defined, and reviewed under a Master Development Plan or Subdivision/Site Plan review.

Legend

- Key Building Envelopes
 - Building Break Line
 - View Corridor - No Build Above Relative Fore Street Elevation
 - Proposed Mountfort Street Extension
 - B6 Zone
 - Parcel Boundary
- Building Envelope**
- 35 foot maximum building height
 - 45 foot maximum building height
 - 45 foot maximum building height, building height measured from feet above flood plain, not average grade
 - 45 foot maximum building height with building extension to 55 feet
 - 45 foot maximum building height with building extension to 65 feet
 - 65 foot maximum building height

0 100 200 400 Feet

Feb 20, 2015

- STUDY AREA (3 STORY MINIMUM)
- KEY BUILDING ENVELOPES BY HEIGHT
- NO BUILD ABOVE RELATIVE FORE STREET ELEVATION

GENERAL NOTES:

1. FOR BUILDINGS EAST OF HANCOCK STREET OR ITS EXTENSION, BUILDING MASS ABOVE 4 FLOORS (45 FEET ABOVE THE AVERAGE GRADE) SHALL NOT BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.

2. THE HEIGHT OF BUILDINGS AND TOWER MASSES EAST OF MOUNTFORT STREET OR ITS EXTENSION SHALL BE MEASURED FROM 2' ABOVE THE FLOOD PLAIN ELEVATION FOR THE SITE BASED ON THE NATIONAL GEODETIC VERTICAL DATUM. WHERE ALLOWED, BUILDING MASS ABOVE 4 FLOORS SHALL NOT BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.

3. THE 70' WIDE TOWERS, AS DEFINED ABOVE, MUST BE AT LEAST 140 FEET APART, MEASURED PERPENDICULAR WITH THE WATERFRONT.

4. NO BUILD FLOATING ZONES ARE VIEW CORRIDORS WITH NO BUILDING ABOVE THE CORRESPONDING FORE STREET ELEVATION.

5. NO BUILDINGS SHALL BE LOCATED OUTSIDE OF THE KEY BUILDING ENVELOPES.

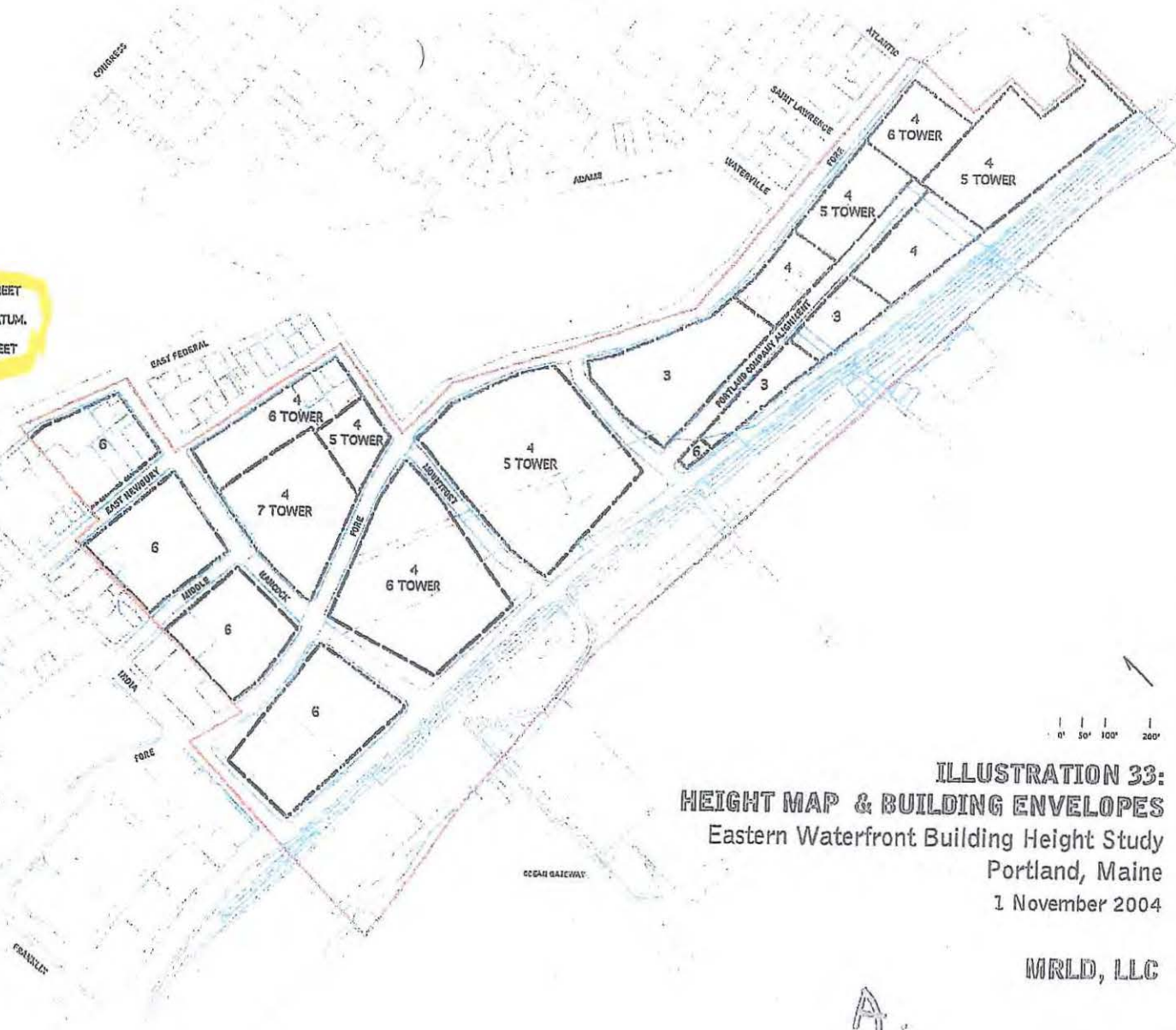


ILLUSTRATION 33:
HEIGHT MAP & BUILDING ENVELOPES
 Eastern Waterfront Building Height Study
 Portland, Maine
 1 November 2004

MRLD, LLC

A.

To: City of Portland Planning Board

From: Paula Guillemette Agopian

Re: 58 Fore Street aka (The Portland Co.)

I was present for the Planning Board meeting on 9/8/15 when the item regarding The Portland Co. was tabled to October since CPB2 requested more time to revisit building #1. Let me say that building #4 (The Foundry) should be revisited by the Planning Board as well!

Compromises and concessions have been made by the HP Board and the Planning Dept's HP Office. If I had my way about it I would have placed an "Historic Shroud" over the entire complex except the metal building in the rear and the new office building at the entrance.

I have attended presentations and workshops since October, when the Sutherland Report was unveiled. I have witnessed the HP Board struggle with angst on the issues presented them. I felt a sincere sense of concern for preservation while maintaining pragmatism and sensitivity related to the costs of rehabilitation and preservation.

Building #1 was the last building built within the period of significance (1918) and represents it's era as much as building 2 (1847). It was an intragal part of the operation. While not as architecturally appealing as building #2 we need to bear in mind "this is not a beauty contest" (Ted Olden). In the Resurgence Report done by Al Hodson it reveals that the costs to rehabilitate and retrofit this building are feasible. Another level could be constructed doubling the rentable space \$\$\$.

Building #4 The Foundry, performed the most important function in the production process. It was the heart that pumped the life blood. Yes, it had a failed system from day one, yet it still stands today and the Resurgence Report states it could be remedied with reinforcement and supports.

In real estate the rule of thumb is, if it's attached it is part of the structure. #1 is attached to #2, #2 to #3 and #4. They are all one structure!

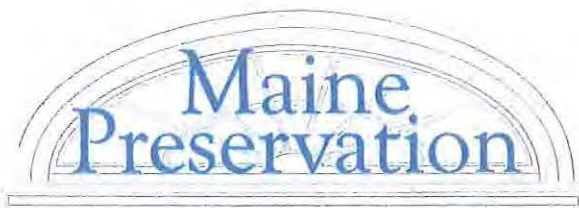
I encourage you to have the fortitude and courage to listen to the Chair of the HP Board and accept the proposal as presented with one exception, building #4 (The Foundry) be put on hold and reconsider it to be included. Remember historic preservation's purpose is to re-enforce and not to undermine!

Sincerely,



Paula Guillemette Agopian

cc. Mayor Brennan, Portland City Council, Historic Preservation Board, Deb Andrews, Landmarks



Our Heritage, Our Legacy

233 West Main Street • Yarmouth, Maine 04096
Tel (207) 847-3577 • info@mainepreservation.org
www.mainepreservation.org

September 8, 2015

Members of the Portland Planning Board:

On behalf of Maine Preservation, the statewide nonprofit historic preservation organization, I am writing an additional letter to support the unanimous recommendation by the Portland Historic Preservation Board to designate a portion of The Portland Company Complex site on Fore Street as a Local Historic District.

The Portland Company complex has local, statewide and national historic significance, yet years of deferred maintenance have left the complex buildings in serious disrepair. Maine Preservation (MP) concurs with the HP Board assessment that several of the buildings are noncontributing because of their date of construction, including buildings 30 and 5; or because of their deteriorated condition, including buildings Nos. 4, 7, 10, 11, 14 and 15 – each of which engineers estimated would cost more to rehabilitate than building 1. MP recognizes that a great deal of thoughtful consideration of “the realities on the ground” went into determining that half the buildings could be demolished, and it signifies a dramatic shift on the part of the preservation community, which originally desired that all historic buildings be rehabilitated.

Buildings No. 1, 2, 3, and 4 form the core of the historic complex. With Building No. 4, the forge, the most significant building at the heart of the complex, structurally unable to be rehabilitated, it makes Building No. 1 even more significant. The Resurgence engineering report also shows that Building No. 1 is in the same structural condition as Building No. 2 and both engineers estimate that it will cost less to rehabilitate Building No. 1 than Building No. 2.

CPB2 has arbitrarily selected Building Nos. 2 and 3 to represent the historic core of the complex, and argues that removal of Building No. 1 would reveal and restore the façade of Building 2, an original Portland Company Building built in 1847. However, it is important to note that the exterior façade of Building No. 2 was originally exposed for only about 30 years and has been hidden behind other major buildings for more than 135 years. The complex and company were significant both before and long after Building No. 1 was built, and the ongoing and evolving manufacturing business of the Portland Co. was precisely why additional buildings were added to the complex. Rather than diminish its significance, the later construction date of Building No. 1 documents The Portland Company’s continued cutting-edge vibrancy in the manufacturing industry as shown by the attached illustrations of boats outfitted and projects built after 1918. In fact the company played a key role in World Wars I and II manufacturing and throughout the 1920s. The period of significance used by the Historic Board was the period that the significant buildings were built, including Building No. 1, not the significance of the company’s operation, which continued on.

In our judgment, Building No. 1 will be required to make a credible case in applying for historic tax credits. The state and federal historic credits of 45% or 51% for affordable housing usually spell the difference between feasibility and infeasibility in projects. With no plan in place for uses for the existing historic properties or other future development on the site, it is premature to make decisions that would rule out the use of historic tax credits based on a designer’s early conceptual view. We believe that removal of Building No. 1 will rule out any possibility of acquiring tax credits, and that these credits may well be what makes rehabilitation and preservation of the contributing buildings feasible, while also ensuring rehabilitation to preservation standards.

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As you know, historic properties and preservation often drive the success of a project, spur revitalization of a neighborhood, and create long-term economic value. Historic commercial districts and neighborhoods across the country, such as Faneuil Hall Market Place in Boston and the Old Port and the West End in Portland have the highest property values and rents and attract residents and visitors alike.

There is no indication that the tax credit is in danger. In fact, it was created by an all-Democratic legislature and Governor in 2008, and extended indefinitely by an all-Republican legislature and Governor LePage in 2011 by nearly unanimous votes. Having spurred more than a third-of-a-billion dollars (\$339 million) in privately developed construction in Maine since 2008, the taxes collected from these projects will surpass the entire cost to the taxpayers in 2016, according to a 2015 study by Planning Decisions, Inc. Spurring economic vibrancy all over Maine, with oversight by 4 public agencies and payback only after investment is completed, the historic credit is a model tax incentive and will remain in place.

Maine Preservation testified in favor of the rezoning of this complex, which will permit this project to be developed with height restrictions that we think are reasonable. We remain in favor of this project as approved by the Portland Historic Board. With the possibility of acquiring historic tax credits, Portland has an opportunity for a revitalized complex to become once again a vital community asset. We hope the Planning Board will support the Historic Preservation Board's recommendation in full in order to preserve and enhance the architectural integrity, feel and spirit of the complex as a whole.

Thank you for your continuing service.

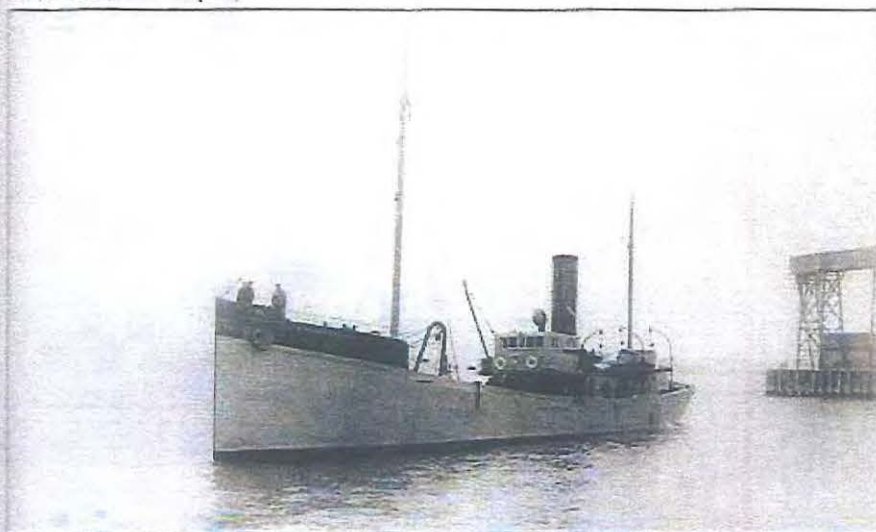
Sincerely,

A handwritten signature in black ink, appearing to read "Greg Paxton", with a stylized flourish at the end.

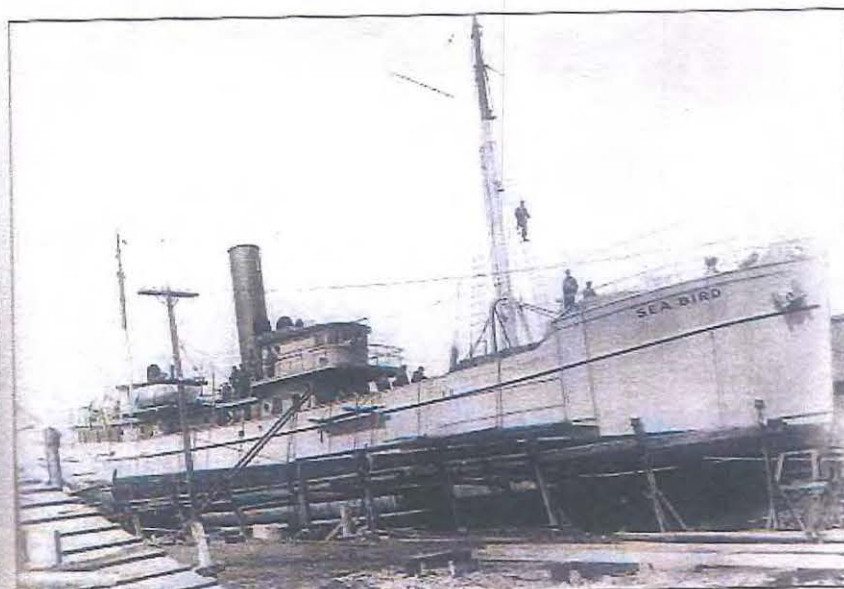
Greg Paxton
Executive Director



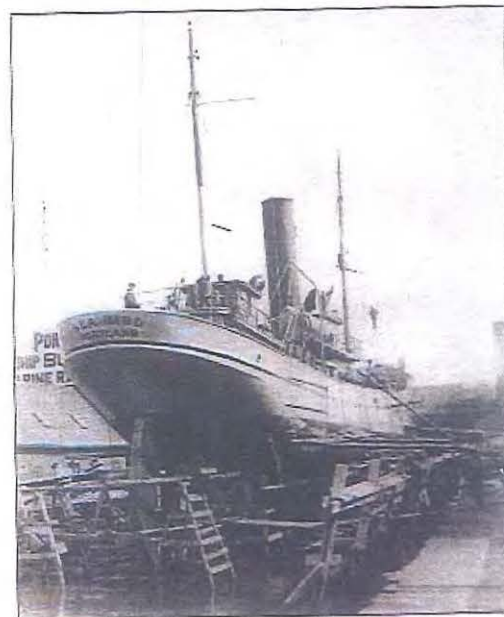
Pictured is another fishing trawler just off the Portland Company waterfront near the Grand Trunk grain conveyers, where Canadian grain was loaded aboard ships for Europe and the southern United States. The *Pelican* was built in South Portland, Maine, in 1919 for the East Coast Fisheries Company.



An "otter" trawler, the *Gloucester* out of Gloucester, Massachusetts, was built in Essex, Massachusetts, in 1919 for the Cape Ann Trawling Company. She was 164 feet long, 488 gross tons, and fully equipped by the Portland Company. "Otter" refers to the type of trawling gear using "doors" to keep the mouth of the net open.



The nearly completed fishing trawler *Sea Bird* is still on the ways in the South Portland yard in 1919. She will be launched shortly after a few last-minute adjustments are finished. The 163-foot trawler weighed 383 gross tons and was built for the East Coast Fisheries Company of Portland, Maine.



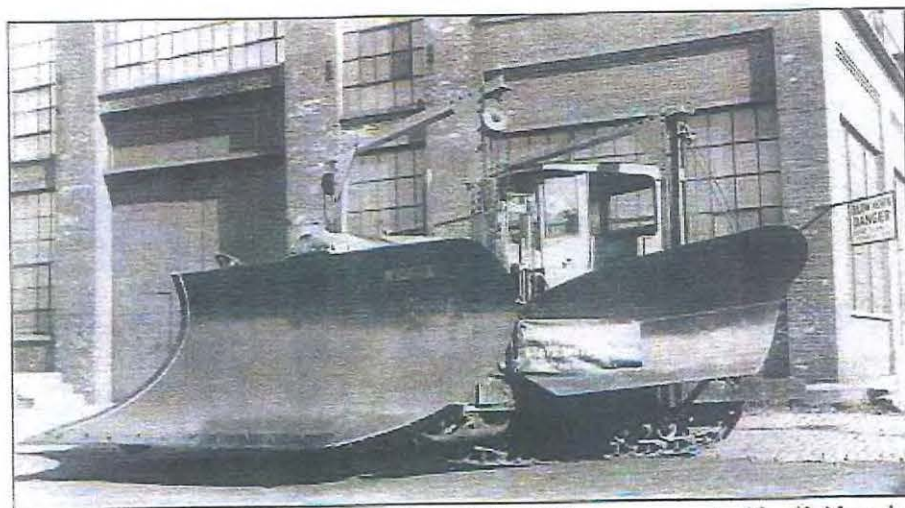
Shown here is a stern view of the trawler *Sea Bird* on the ways in South Portland, Maine.



Boat fabrication, Portland Company, 1921



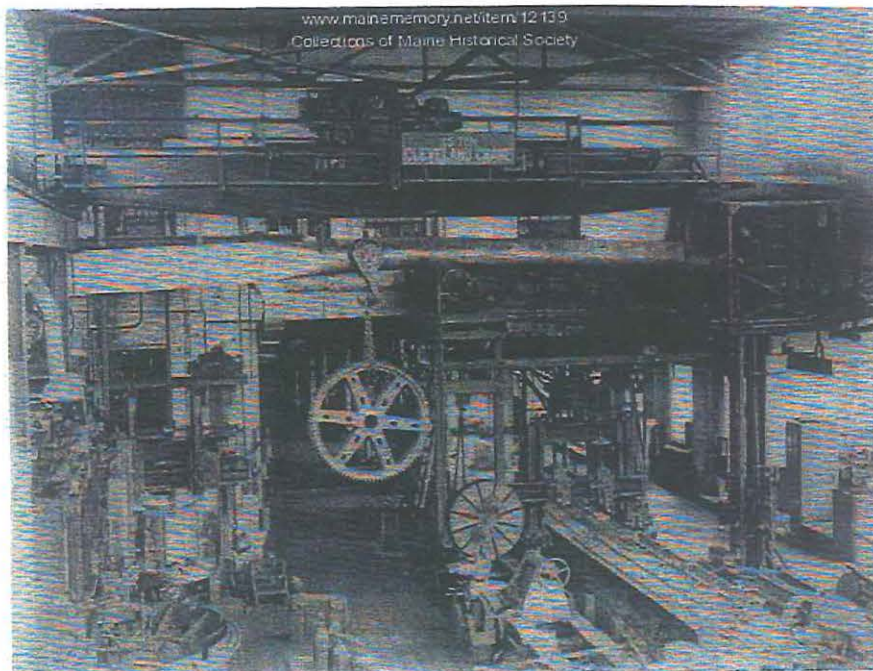
The Portland Company also manufactured Sargent snow loaders that were propelled by a tracked vehicle under them, such as a Cletrac crawler. Portland Company No. 1, shown here, is clearing the streets of snow during the winter of 1927-1928.



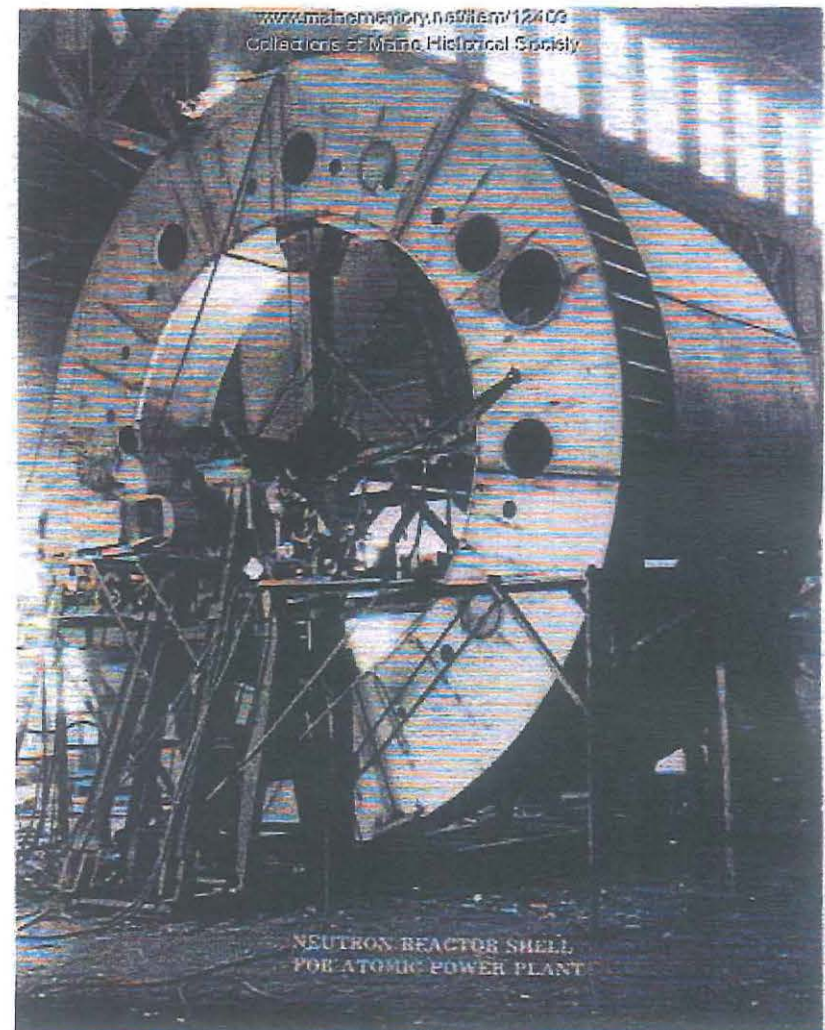
Shown is a side view of the Cletrac crawler with the 100-horsepower engine No. 62. Note the cable lift arrangement, which was used on all machines of the period. Hydraulic lifting systems were not commonly being used in 1928, when this picture was taken.



A Mack truck, bearing Maine 1927 municipal license plates, is being loaded with snow by this Sargent snow loader, Portland Company No. 1. Again we see the solid rubber tires on heavy trucks of the 1920s.



Portland Company Erecting Shed (Building 1), post-1918



Neutron Reactor Shell, Portland Company

September 3, 2015

To: Members of Portland's Planning Board

Re: Public Hearing on Proposed Designation of Portland Co. Historic District – Sept. 8

From: Sally Oldham, Portland Resident

My name is Sally Oldham. I am a resident of Portland residing on Vaughan Street. I am writing these comments to urge members of the Planning Board to support the proposal to designate the Portland Company Historic District approved unanimously by the Historic Preservation Board in July, 2015.

The proposed historic district encompasses a complex of interrelated historic buildings and site features that together tell the story of one of the most significant industrial plants in mid-19th to mid-20th century Maine. The Historic Preservation Board has carefully considered the eligibility of this complex under the criteria outlined in Portland's Historic Preservation Ordinance, basing its recommendations on the work of the City's qualified preservation staff, of technical experts contracted by the City, site visits led by these experts, and its own extensive review and deliberations.

I would like to address the requests that CPB2 made to the Planning Board at its workshop held on July 28, 2015 to reclassify Buildings 1 and 16 as non-contributing and to reduce the boundaries of the proposed district.

1. Request to reclassify Buildings 1 and 16 as non-contributing based on condition:

The Planning Board's responsibility under the Historic Preservation Ordinance (Sec. 14-610 Minimum Criteria for Designation) is to apply the criteria for designation of "subsections (a), (b) and (c)" already addressed by the Historic Preservation Board and to "consider the effect of such designation on other aspects of the comprehensive plan of the city."

The ordinance further calls upon the Historic Preservation Board to evaluate the integrity of proposed landmarks and historic districts (Sec. 14-611) calling for "sufficient integrity of location, design, condition, materials and workmanship to make it worthy of preservation or restoration". It appears to me that the responsibility to assess integrity of condition is a responsibility of the Historic Preservation Board alone, not of the Planning Board. CPB2's request that the Planning Board reconsider the findings of the Historic Preservation Board regarding integrity of condition for Buildings 1 and 16 appears misguided as the ordinance places responsibility for this evaluation with the Historic Preservation Board which has considerable expertise to offer and has spent much time on this task.

2. Request to reclassify Building 1 as non-contributing based on historic significance:

CPB2 also called for Building 1 to be reclassified as non-contributing based on its historic significance, citing its construction date of 1918 as being close to the end of the period of significance cited in the Historic Preservation Board's designation report. There is no basis in nationally accepted preservation standards and guidelines to assume that buildings dating from the earliest years of a complex like this should be deemed significant while a building dating close to the end of a period of significance would not be deemed significant.

Portland's ordinance and the procedures of its historic preservation program are based on national preservation standards. The National Register of Historic Places Bulletin, "How to Complete the National Register Registration Form" provides the following guidance about determining a period of significance: "For architecturally significant properties, the period of significance is the date of construction and/or the dates of any significant alterations and additions." "For properties associated with historic trends, such as commercial (in this case industrial) development, the period of significance is the span of time when the property actively contributed to the trend." Building 1 clearly qualifies as contributing for its 1918 construction date based on architectural significance as well for exemplifying its relationship to historic industrial trends in manufacturing over a period post-1918.

3. Request to reduce historic district boundaries:

The Historic Preservation Board's task to identify what is the historic resource here that is worthy of preservation has been a challenging one. While the Sutherland report indicated that all the buildings of the complex are significant and that they retain historic integrity, the evaluation of which buildings retain integrity of condition has resulted in a recommendation that approximately half of the buildings of the complex lack the necessary integrity of condition. Assuming that these building may be demolished, one must look to the remaining buildings and to site features and organization to evaluate whether a critical mass exists sufficient to convey to a lay person the evolution of this industrial factory as well as the many industrial processes and assembly methods that produced the myriad of products of such import to Maine's and in many cases, the nation's economy.

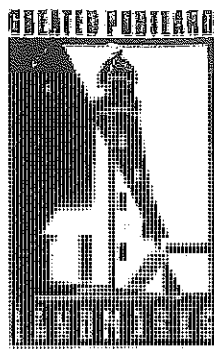
CPB2's proposal to reduce the historic district boundary would leave a remnant of this industrial complex unable to convey its full significance and would leave Building 12 as an orphan with little relation to the remaining buildings. It is through the ability to include within the historic district boundary site features including the entryway, the central yard, the alleys and overhead bridges, as well as the footprint of non-contributing buildings, that it will be possible once the site is fully developed, for the public to comprehend the essential nature of this industrial complex and to learn about the many stories it will help to tell to generations to come.

Conclusion

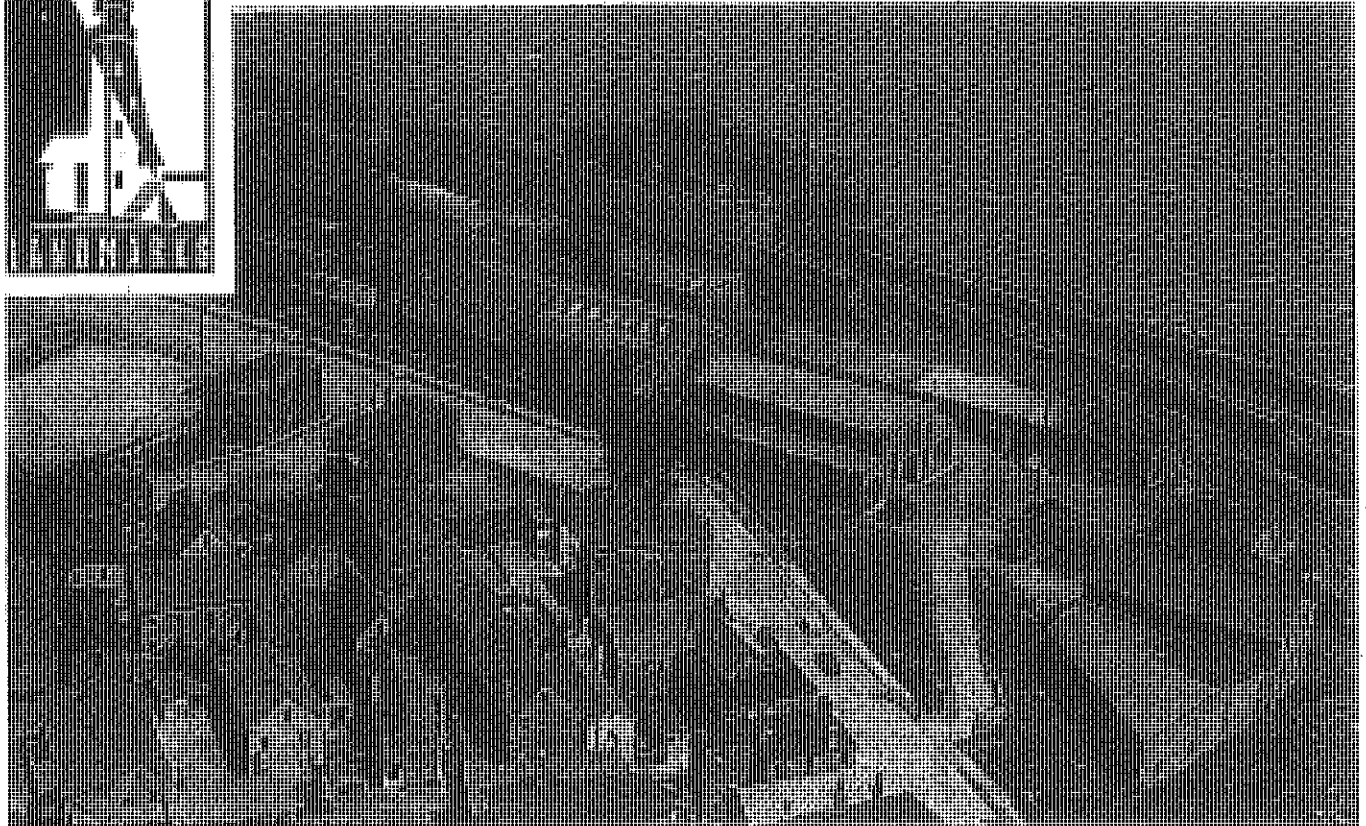
Finally, I would ask that you stay focused on the task at hand, to review the Historic Preservation Board's recommendations about what buildings, site features and organization should be included within a Portland Company Historic District. Your role in these proceedings is not to make judgments about design concepts for the site. The concept drawings that the developers released at a recent press conference reflect their thinking about reuse of historic buildings and inclusion of site features that has not changed over the past 17 months, from early meetings that they held with representatives of Greater Portland Landmarks, despite all of the newly acquired information about significance, historic integrity and condition that we have gained through the City's efforts over this same period.

The reuse of the Portland Company complex as part of larger mixed-use project will require great creativity, but this magnificent site is of sufficient size to enable preservation of the identified historic district area as well as to meet other City goals of the Eastern Waterfront Master Plan and the Comprehensive Plan. I urge you to recommend to the City Council designation of the Portland Company Historic District as recommended by the Historic Preservation Board.

delivered 6/24/15



A POTENTIAL PORTLAND COMPANY HISTORIC DISTRICT

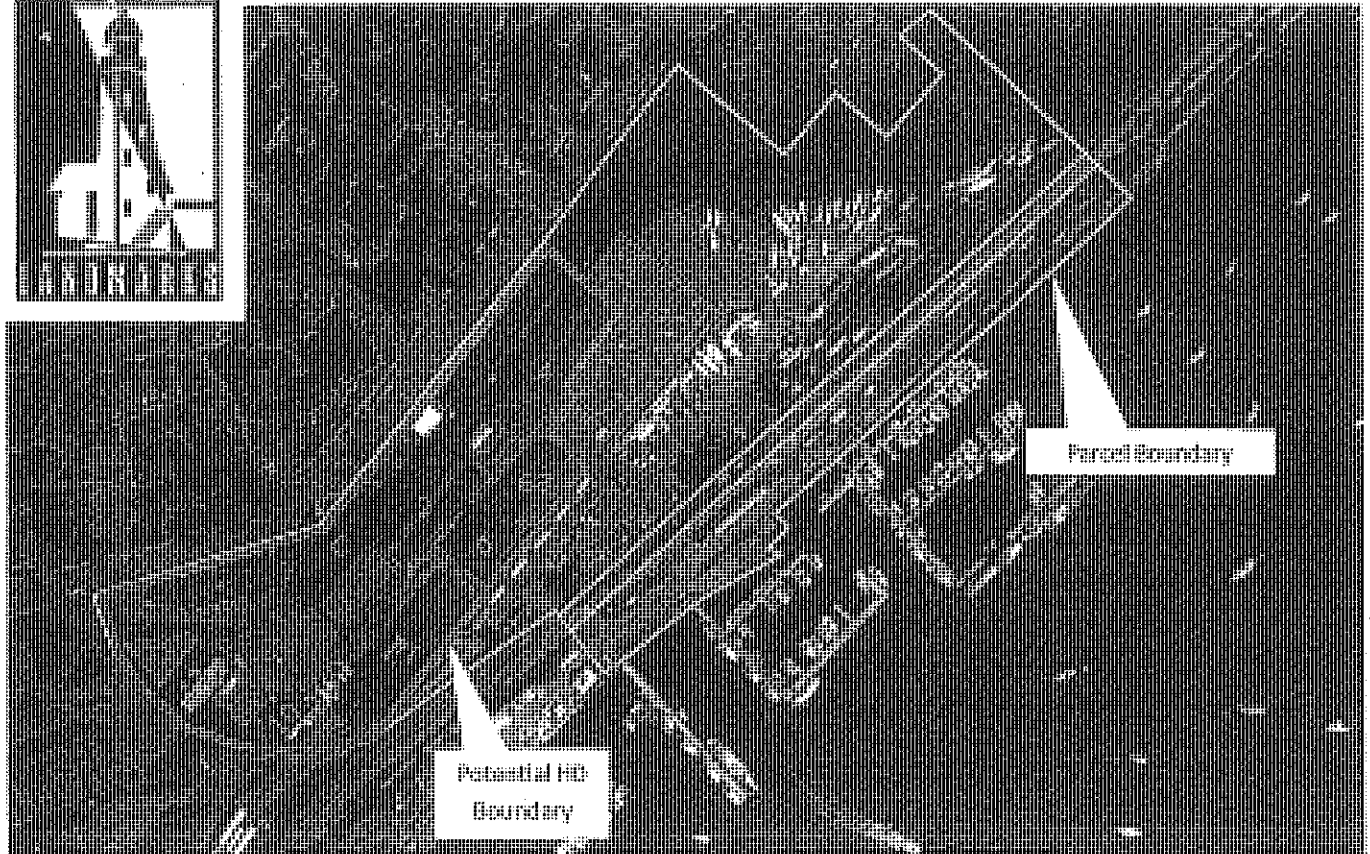
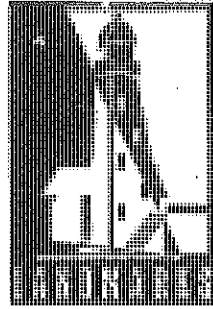


The Sutherland Consulting report identifies the Portland Company as a unique nationally significant example of a complete 19th century locomotive manufacturing facility. It appears to have been the first complex in the United States built specifically for the manufacture of railroad equipment with all of the necessary work shops and a foundry on a single site. It contains the oldest surviving railroad shop buildings in the nation still within their historic manufacturing complex context. It is also significant at the state and local level in the areas of industry, community planning and development, and architecture. Greater Portland Landmarks supports local historic district designation to preserve this rare example of an industrial manufacturing complex.

The visual character of the historic complex is defined by the relationship of the buildings to each other and its location below the original shoreline along Fore Street. Still accessed by the 1847 curving driveway off Fore Street, the complex is located on former mud flats and land filled to accommodate the construction of the St. Lawrence and Atlantic Railroad. The proximity and linear orientation of the buildings permitted related manufacturing processes to take place in an efficient progression of production. The alleys formed by the closely built manufacturing buildings are spanned by pedestrian bridges that afforded covered passage between interconnected areas of production. The entrance yard at the south end of the site separated the manufacturing buildings from the combustible materials in the paint shop and the invaluable patterns stored in the two pattern buildings and accommodated railroad tracks to carry locomotives to the nearby railroad yard.

The complex should be locally designated by the City of Portland to preserve the elements of this complex sufficient to illustrate the evolution of this industrial factory as well as the industrial processes and assembly methods that produced the locomotives, boilers, and other products for Maine and the nation.

Greater Portland Landmarks supports a Portland Company Local Historic District that would include nine contributing industrial buildings and site features that comprise the historic foundry-machine shop complex and its historic entrance yard off Fore Street. The boundary of the potential district includes those resources that are historically associated with the manufacture of locomotives, boilers, and other cast iron items for the transportation, paper making, and canning industries during its period of significance from 1847-1920* and retain adequate integrity to portray their relationship to the manufacturing process.



The boundary encompasses all of the significant resources and features that comprise the proposed district as well as six non-contributing resources. The non-contributing resources include Buildings 4 and 7, large scale masonry buildings that contribute significantly to the complex's alley-way character, but are structurally deficient, the significantly altered former boiler house, and two small scale masonry buildings that are also structurally deficient, Buildings 11 and 10. The proposed boundary was drawn based on the limits of the manufacturing complex during its period of significance and to exclude modern intrusions and parking areas as much as possible. The northern boundary is determined by Fore Street. The western boundary is defined by the historic limits of the parcel. The northern and eastern boundaries were drawn to exclude modern buildings and areas of the site that no longer contribute to the integrity of the complex.

*The period of significance begins with the construction of the oldest buildings in the complex and ends after the last significant manufacturing building was completed.

1 Erecting Shop, 1918 (C)	7 Car Shop, c1873, 1904 (N)	24 Vault Storage, c1905 (C)
2 Machine Shop, c1847 (C)	10 Paint Shop, c1873 (N)	30 Office, 1950 (N)
3 Machine Shop, c1847, c1895 (C)	11 Pattern Storehouse, c1885, 1895 (N)	A Entrance Drive (C)
4 Foundry, 1895, 1904-1909 (N)	12 Pattern Storehouse, 1895 (C)	B Entrance Yard (C)
5 Late 20th century (N)	14 Drafting/Storehouse, c1858-64 (C)	C Alley (C)
6 Chapman Elec Co., 1896-1904 (C)	15 Boiler, 1858-1864 (N)	
6B Black Smith & Tank Shop, 1883 (C)	16 Brass Foundry, 1864-1871 (C)	

C = Contributing, N = Non Contributing

Chair Boepple, members of the Planning Board,

My name is John Turk. I am a preservation architect and a member of the Historic Preservation Board as well as past chair of the Board. I am standing in tonight for our Chair, Scott Benson, who is out of town.

First, I'd like to give face to the months worth of careful consideration and deliberation by the Historic Preservation Board, which the formal recommendation before you represents. With that in mind I want to recognize a number of Board members in the audience. Perhaps members could raise their hands to show who they are. This current Board is comprised of architects, preservationists, a builder and a lawyer. It's a knowledgeable and engaged Board, versed in Federal and State preservation precedence and standards from which our local ordinance is closely modeled.

As you know, the focus of tonight's public hearing is on the merits of designating the Portland Company complex as a local historic district, based on the designation criteria spelled out in the City's historic preservation ordinance. Much like the rezoning of the property--which was considered by the Planning Board several months ago and which was evaluated on its own merits without regard for any specific redevelopment plan--the question of historic district designation should also be evaluated on its own merits. Appropriate zoning for the site and the historic district designation of this unique historic resource should be decided upon as threshold issues to inform any future redevelopment scenario for this property.

I am not going to review in detail the Historic Preservation Board's lengthy review process involving the Portland Company other than to state without hesitation that the complex clearly meets all six Criteria for Designation outlined in Section 14-610 (a) exhibiting local, state and national significance. The Complex also clearly meets all the requirements of Section 14-610 (b), which pertains specifically to proposed districts. We found that almost every the building within the proposed district -- with the exception of Building 5, which is the 1968 metal building addition to Building 4, and Building 30, which is the 1956

office building -- contains a high degree of cultural, historic and architectural significance and historic integrity. It should be noted that the Portland Company site is highly significant as a *complex* and not for any one building. Accordingly, the Board did not identify any one building for landmark status. Also, in the case of an historic resource like the Portland Company, the earliest buildings on the site are not necessarily more important to preserve than others that were added later to meet the needs of a thriving and increasingly diversified manufacturing business. It is a *collection of structures* each contributing to a singular, large scale historic manufacturing process--from design and pattern-making to foundry, to machine shop, to erecting shop leading directly to train tracks and the country beyond.

The third and final criterion for designation, which appears in Section 14-611, presented the Board with its greatest struggle. Thoughtful analysis and consideration was required to understand and grapple with the definition of the single word "Condition" as it applies to designation of the complex as a whole and to each individual building within it. Let me read Section 14-611:

*Any area, structure or object that meets the criteria in Section 14-610 must also have sufficient integrity of location, design, **condition**, materials and workmanship to make it worthy of preservation or restoration.*

Again, our Board determined that **all** of the buildings, except for Buildings 5 and 30, clearly meet each of the factors for consideration included in this particular criterion with the exception of "Condition" as applied to several of the structures. Our board made its best effort to understand the Ordinance's threshold definition of "noncontributing", which speaks to the question of condition. I will read the applicable definition included in Section 14-602, Definitions:

Noncontributing, item 3): where the location, design, setting, materials, workmanship and association have been so altered or have so deteriorated that the overall integrity of the site, structure or object has

been irretrievably lost. The structure may be determined to be non-contributing if it meets this test.

In applying this test of "irretrievably lost", the Board made--in my estimation--very reasonable building-by-building determinations based upon careful analysis of extant physical characteristics and attributes. This understanding was informed by review of the 2 structural reports available to the Board, as well as tours of the site where the Board viewed the property and asked questions of the two structural engineers. It was also informed by the experience and expertise of the Board members themselves, several of whom are architects with extensive experience in the adaptive reuse of historic structures. In several cases, where there were questions about a building's overall condition, we gave the property owner the benefit of the doubt, concluding--in some cases with regret-- that the subject building was noncontributing based on its condition.

At this point, reclassification of additional contributing structures to noncontributing, particularly with regard to Building 1, will so erode the significance of the complex that it would no longer retain its primary character defining feature. That being, a physical expression of a historic, manufacturing process represented by connected buildings that communicate the sequential nature of the metal fabrications industry. Preserving Buildings 2 and 3 is not enough to communicate that essential characteristic. The Historic Preservation Board feels that the current boundaries and listing of contributing buildings are the *minimum* needed to qualify as a historic district. Any further loss of buildings will *materially impact one's understanding and appreciation* of what was once Portland's premier industrial complex that played a *pivotal* role in the history of this city, the state of Maine and beyond.

The Historic Preservation Board recognizes and welcomes future development within the identified historic district boundaries and beyond. We encourage new development that will complement the historic structures and will be a positive reflection of its own era. I hope you will consider these findings regarding preservation matters to be well-founded and useful when you deliberate on matters regarding the

Comprehensive Plan and preservation's role in retaining and enhancing Portland's unique sense of place.

With that I will turn the discussion over to Deb Andrews who will present the Board's recommendation in greater detail. Following her presentation, I'm happy to answer any specific questions of the Board. Thank you.



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Barbara Barhydt
City of Portland
389 Congress Street
Portland, ME 04101

November 5, 2015

RE: CPB2 PowerPoint Presentation

Dear Barbara:

Enclosed please find CPB2's Power Point presentation from the October 27, 2015 Planning Board meeting. Please note that all drawings in the attached presentation are conceptual drawings and not drawn to scale.

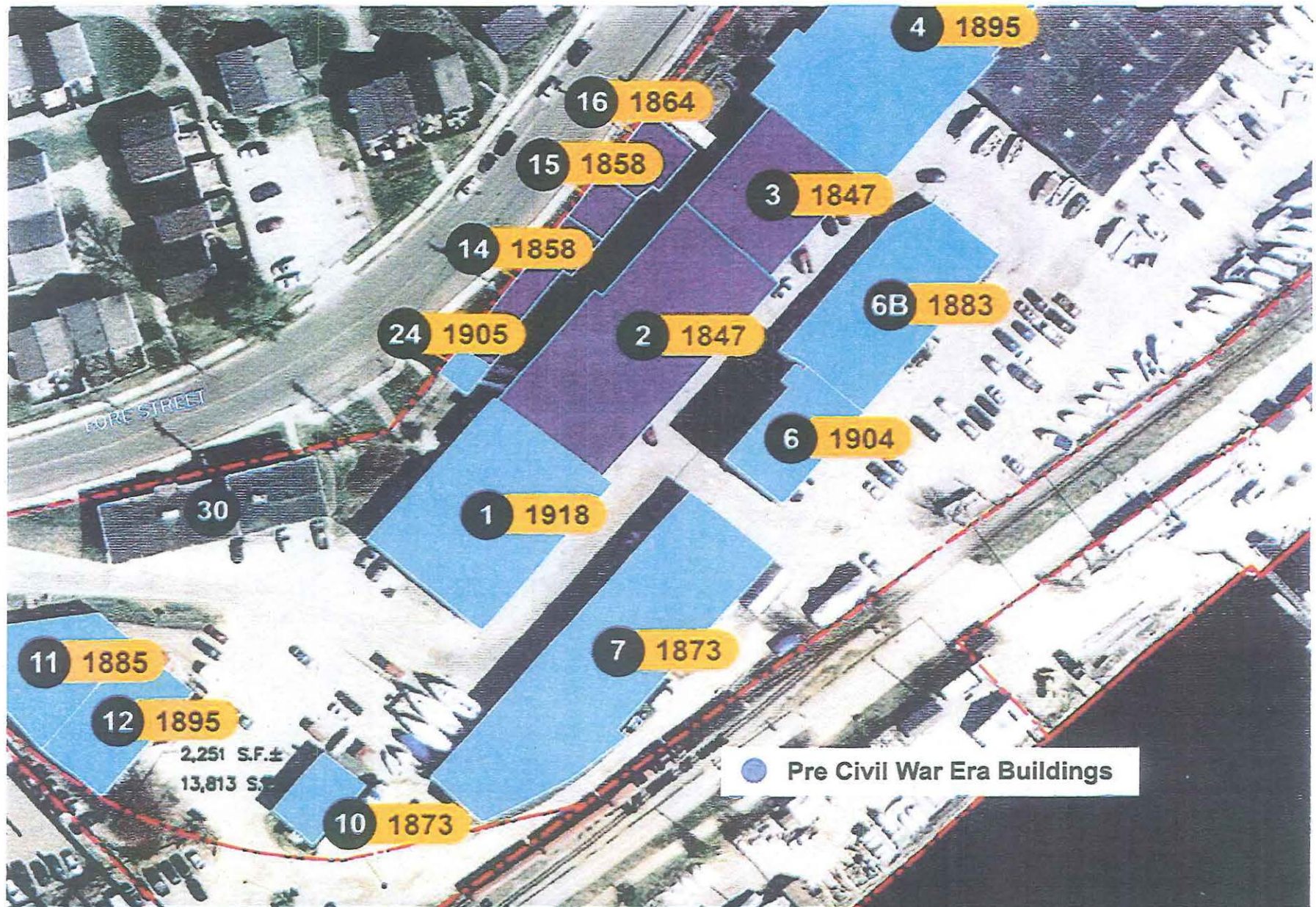
Sincerely,

A handwritten signature in black ink, appearing to read "Mary E. Costigan", with a long, sweeping horizontal line extending to the right.

Mary E. Costigan

Historic Preservation of 58 Fore Street, the former Portland Company

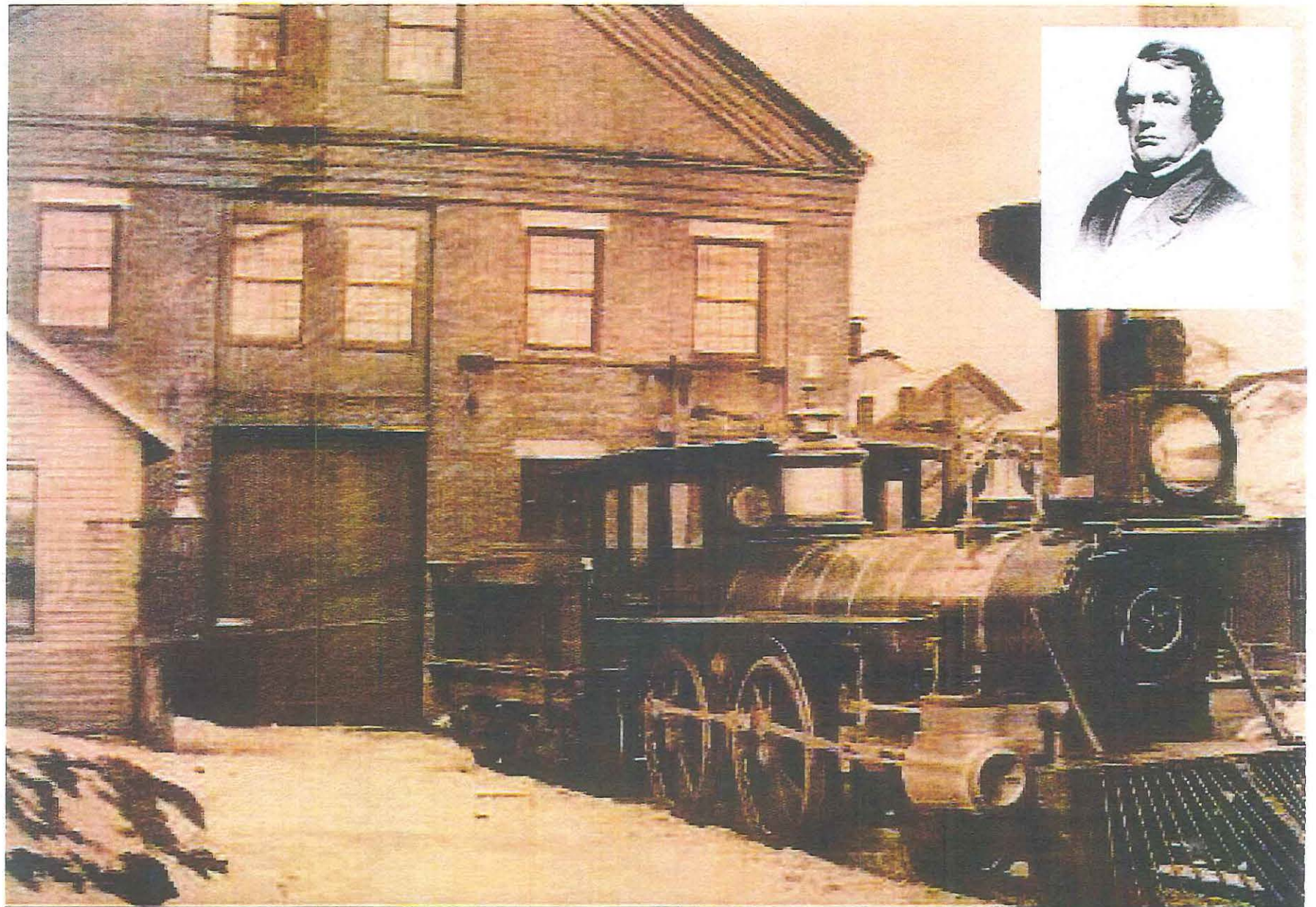




Building Ages – 1865 and Older

Ref.: Tremont Preservation Services
Inventory of Historic Buildings

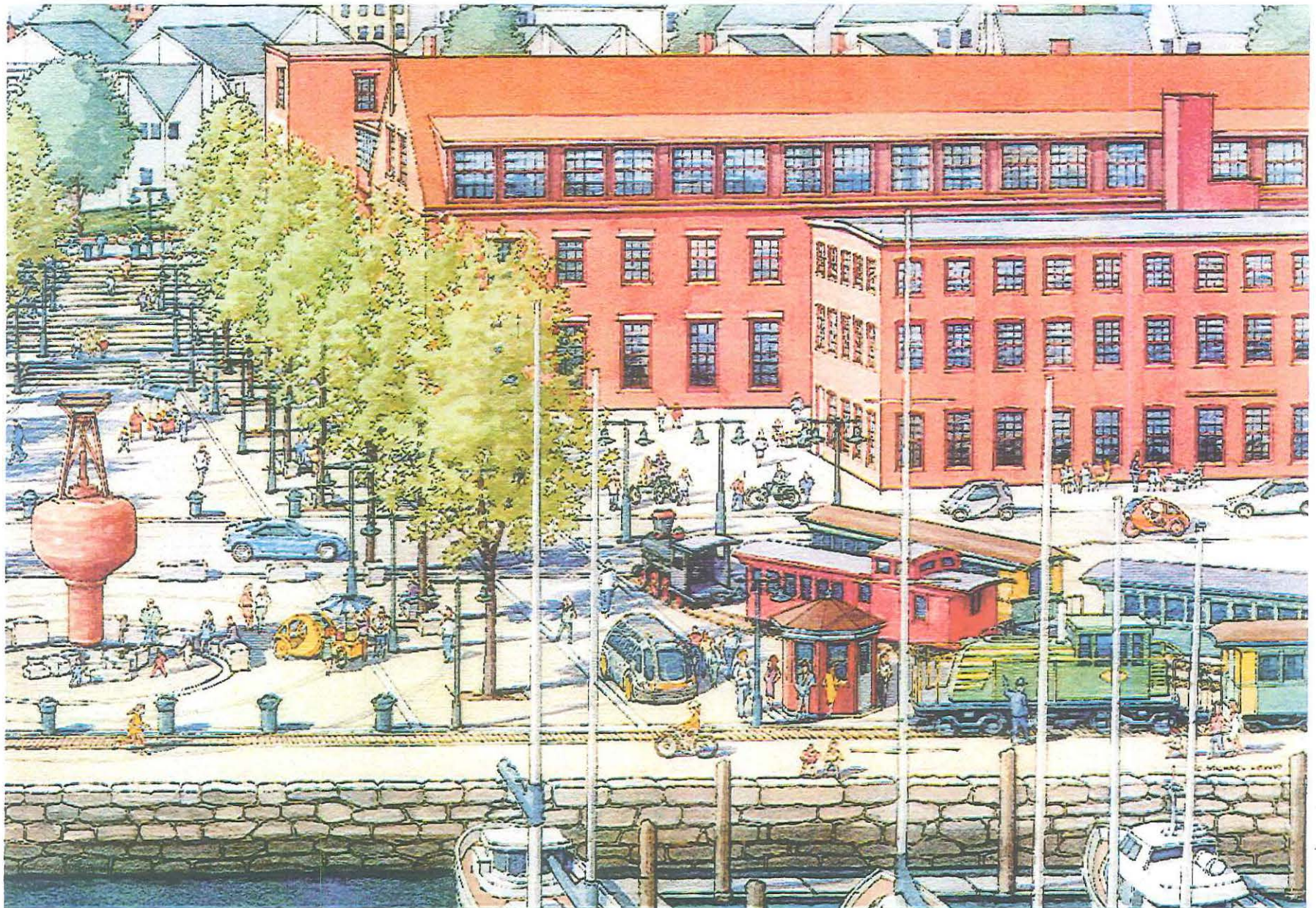




58 Fore Street Historic Core Concept – Celebrating Portland Co's Most Historically Significant Building



Historic Core Concept – Iconic Facades of the Portland Co Tower and Building #2 (c. 1848)

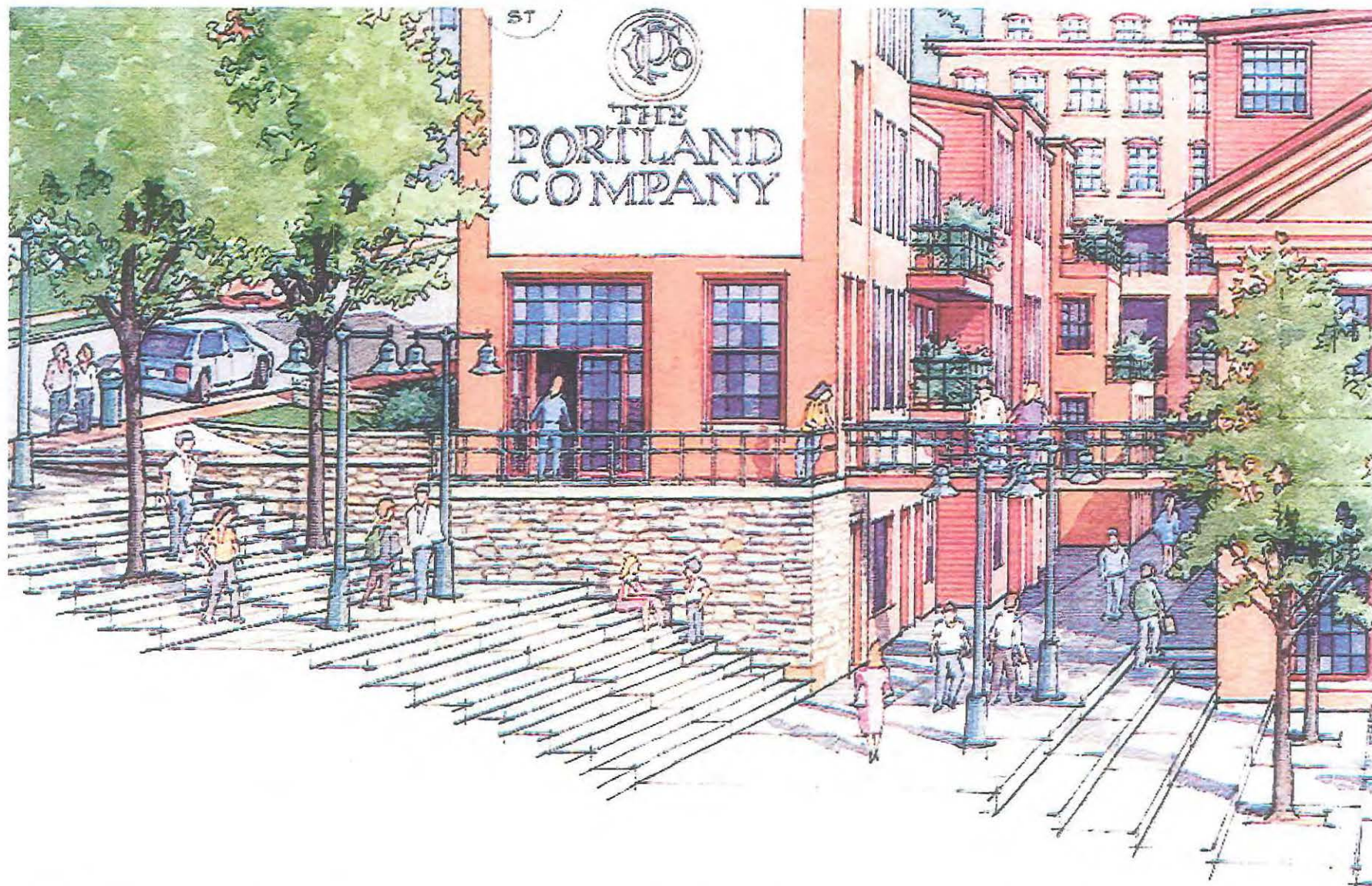


Historic Core Concept – Creating Public Access from Fore Street to Portland's Waterfront

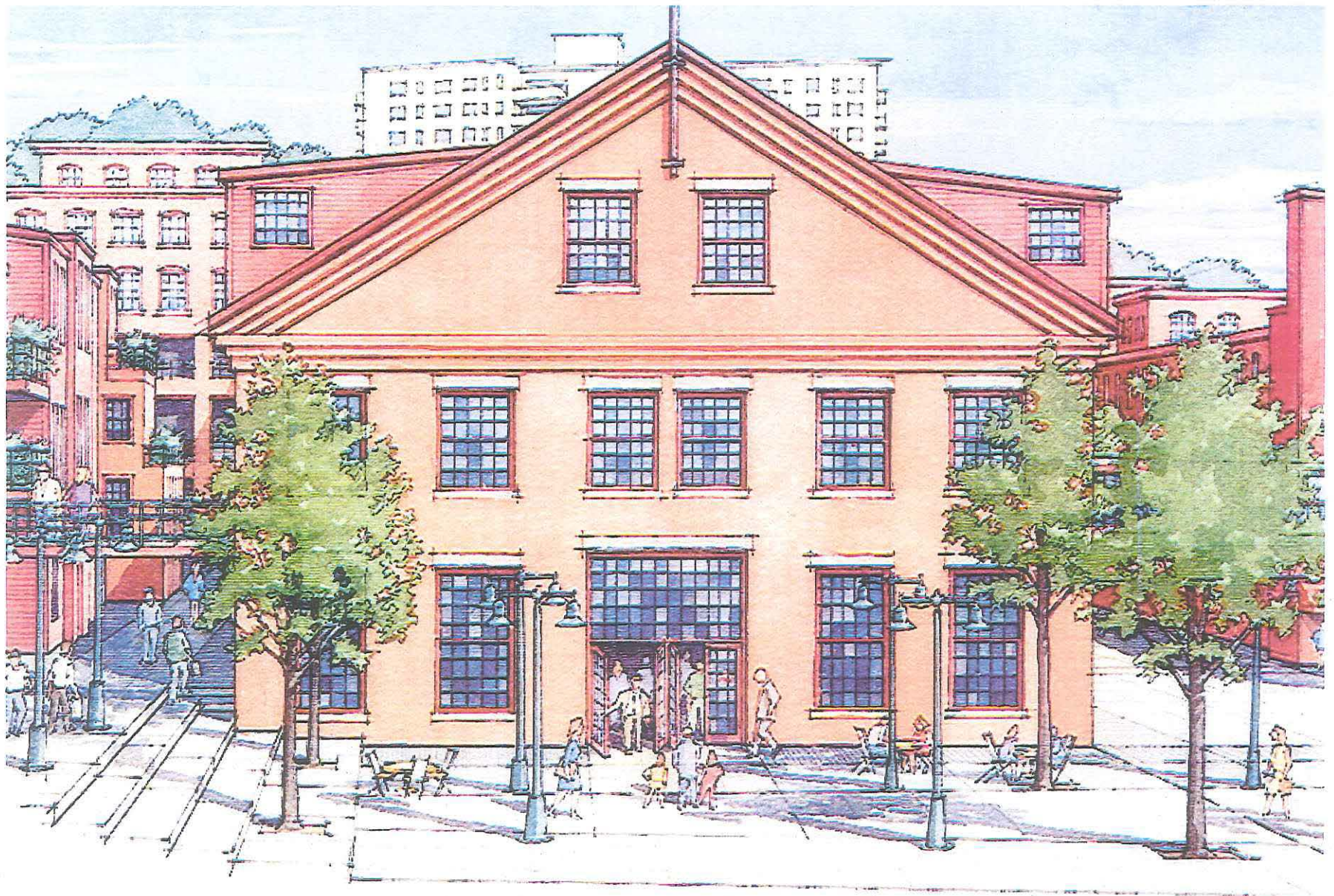
Looking East at facades of Bldg 24, narrow alley, Bldg 2, alley and then Bldg 6 of the Historic Core



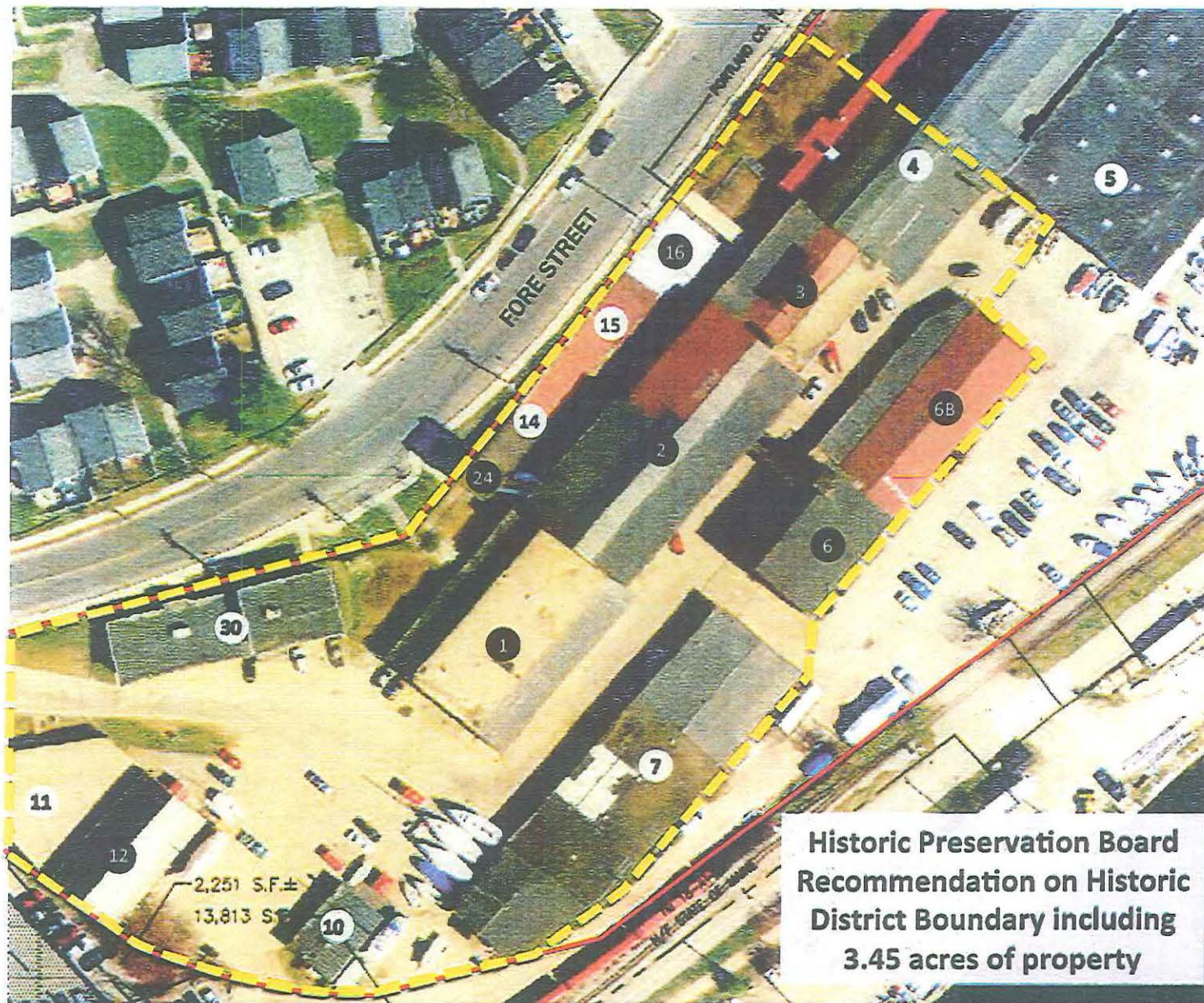
Historic Core Concept – Iconic Facades of the Portland Co Tower and Building #2 from 1848



Historic Core Concept – Reinvigorating the Portland Co Alley-ways and Linear Alignment

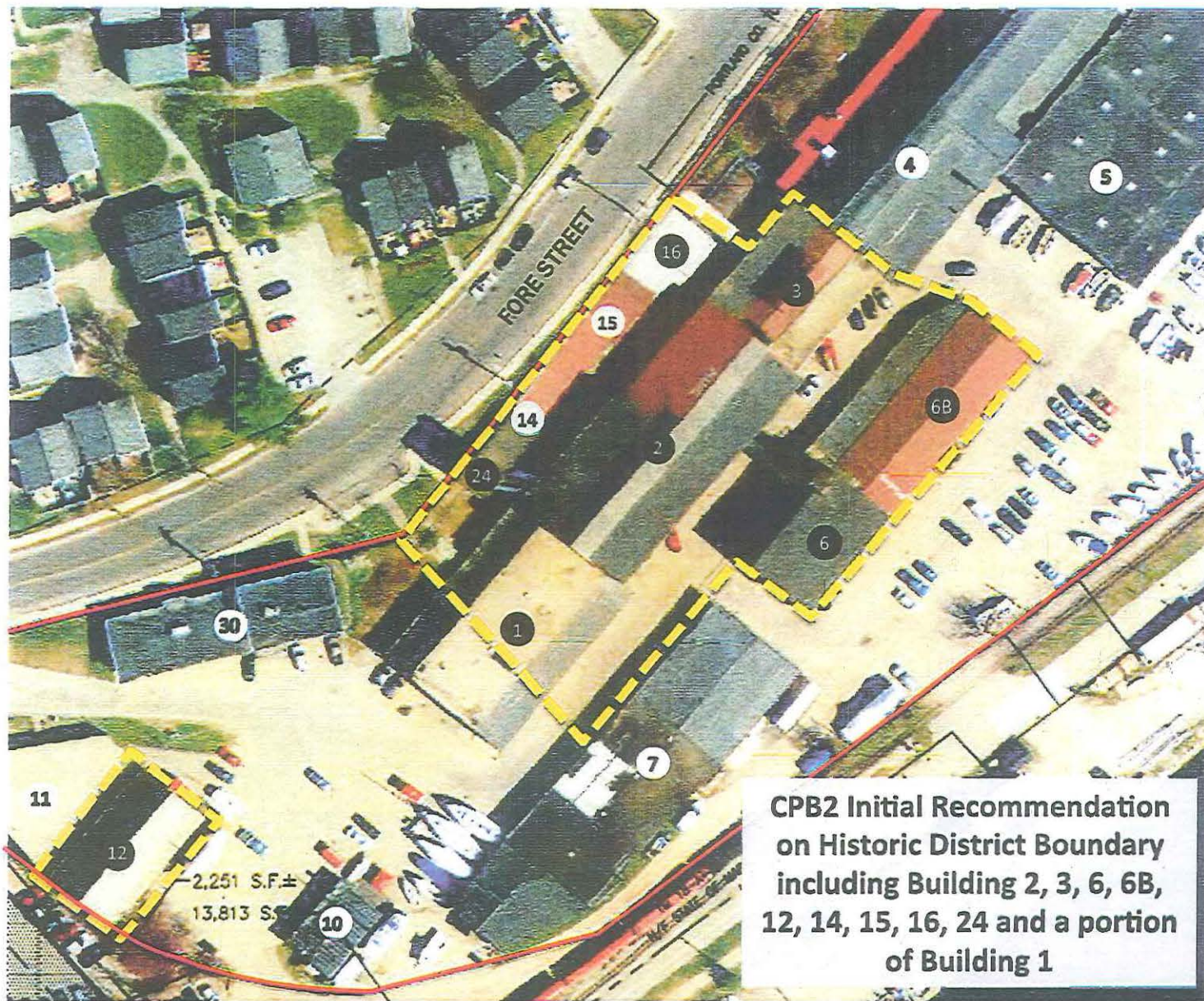


Historic Core Concept – Revealing the Iconic Façade of the Portland Company's first Building (c. 1848)



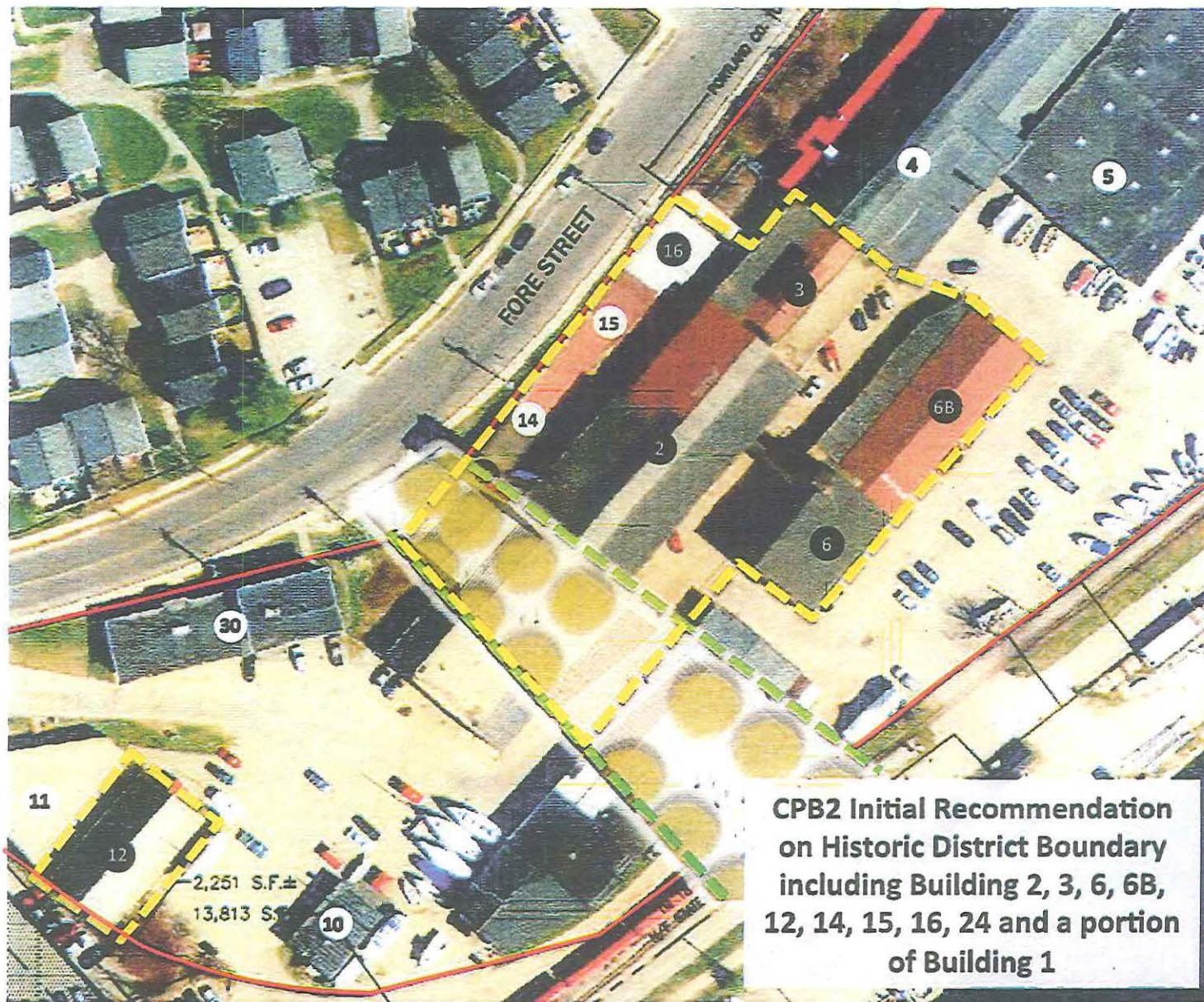
58 Fore Street: Historic Preservation Local Historic District Nomination





58 Fore Street: Historic Preservation Local Historic District Nomination





58 Fore Street: Historic Preservation Local Historic District Nomination



**CPB2 Revised
Recommendation on
Historic District Boundary
including Building 1, 2, 3,
6, 6B, 12, 14, 15, 16, 24
and a portion of Building 4**



58 Fore Street: Historic Preservation Local Historic District Nomination





Historic Core Concept – Iconic Facades of the Portland Co Tower and Building #2 (c. 1848)



PLANNING BOARD REPORT PORTLAND, MAINE

Recommendation of Planning Board re: Designation of Portland Company Historic District 58 Fore Street

Submitted to: Portland City Council	Prepared by: Stuart O'Brien, Planning Division Director Date: November 9, 2015
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INTRODUCTION

On October 27, 2015 the Planning Board voted 5-0 (Hall absent) to recommend to the City Council that a portion of the Portland Company building complex at 58 Fore Street be designated a local historic district subject to the protections and provisions of Portland's historic preservation ordinance. The Planning Board's recommended boundaries for the Portland Company Historic District as well as recommended classifications for individual buildings therein are shown on **ATTACHMENT A**. The Board's findings and formal recommendation are recorded in **ATTACHMENT B**. A description of the October 27 public hearing—including summaries of introductory presentations made to the Board, information and clarification provided by staff, a breakdown of public comment, discussion of the Planning Board's deliberations and the stated basis for its final recommendation—is provided in following section of this report.

The Planning Board's consideration of a Portland Company Historic District was pursuant to a recommendation forwarded by the Historic Preservation Board. The Historic Preservation Board began its analysis of a potential Portland Company Historic District in September 2014 and made its formal recommendation on June 24, 2015. The Historic Preservation Board's role in historic district designation deliberations is to determine whether the nominated historic district meets the designation criteria included in Division 3 of the historic preservation ordinance. These criteria address both the question of the nominated resource's significance as well as the question of its integrity, including integrity of condition. The HP Board must first address the merits of the overall district—in this case, the Portland Company building complex—and then take up the question of relative significance and integrity of individual buildings within the complex. Based on this analysis and following National Park Service

guidelines, the Historic Preservation Board delineates boundaries for the recommended historic district and assigns building classifications identifying which buildings warrant preservation and which, by virtue of their condition or lack of significance, may be removed. The Historic Preservation Board's recommended historic district boundaries and building classifications are shown on **ATTACHMENT C**. A detailed description of the Historic Preservation Board's analysis, findings and formal recommendation is provided in the staff report prepared for the Planning Board's October 27 public hearing. (See **ATTACHMENT G**.)

The Planning Board's role in the historic district designation process is to determine whether the Historic Preservation Board's recommended historic district meets all applicable designation criteria in Division 3 of the historic preservation ordinance. The Planning Board is also charged with considering the effect of such designation on other aspects of the Comprehensive Plan. Based on its determination, the Planning Board forwards its own recommendation regarding designation of the Portland Company Historic District to the City Council, which has the final authority as regards local designation of nominated historic properties.

As you will note, the Planning Board's recommendation differs from that of the Historic Preservation Board. The Planning Board is recommending a smaller contiguous historic district on the east side of the current entrance yard and a second "subdistrict" on the western boundary of the property consisting of one building (Building #12). The Planning Board is also recommending that Building #1 (the Erecting Shop) be reclassified as a "noncontributing" building. The Planning Board's recommendation for amended district boundaries and for reclassification of Building #1 is contingent upon the execution of a fifty (50) foot wide public access easement in favor of the City from Fore Street across the site to the waterfront. The Planning Board is also recommending adoption of a design guideline specific to the Portland Company Historic District making explicit that building heights in the district will be controlled by the underlying zoning and not the historic preservation ordinance review standards as they pertain to regulation of building heights.

SUMMARY OF PLANNING BOARD PUBLIC HEARING AND DELIBERATIONS

On October 27, 2015 the Planning Board held a public hearing on a recommendation forwarded by the Historic Preservation Board to designate a portion of the property at 58 Fore Street as a local historic district. The public hearing followed one workshop on the district designation proposal, held on July 28th. The public hearing was originally scheduled for September 8th, but was postponed at the request of the property owner to provide more information regarding the status of Building #1 within the proposed historic district boundaries. In tabling the public hearing, the Planning Board stipulated that the property present any supplemental information to the HP Board before the Planning Board's rescheduled public hearing to provide the HP Board an opportunity to comment. The supplemental information, as well as the HP Board's response to the new information was provided to the Planning Board as part of the October 27 public hearing report.

The proposed **Portland Company Historic District** as recommended by the Historic Preservation Board encompasses 4.3 acres of the 9.93 acre parcel at 58 Fore Street. Of the sixteen (16) extant Portland Company structures on site, the recommended district includes eight (8) “contributing” historic structures, eight (8) “noncontributing” structures based on physical condition or recent date of construction, as well as site elements integral to the development and operations of the historic Portland Company complex. As noted above, the basis for the HP Board’s recommendation is discussed in detail in the October 27 public hearing report.

Following an introduction by Historic Preservation Board member John Turk (see **ATTACHMENT D** for text of Mr. Turk’s remarks) and a detailed presentation by Planning staff, the Planning Board provided an opportunity for Jim Brady, representing property owner CPB2, to make a presentation. The Board then heard public testimony from twenty-three (23) individuals or organizational representatives regarding the relative merits of the proposed historic district designation. Thirteen (13) spoke in support of the HP Board’s recommendation; five (5) spoke in support of an amended district as presented by CPB2; two (2) voiced non-specific support for a historic district; and one (1) individual raised general questions/concerns.

At the conclusion of the public hearing, the Board deliberated on the Historic Preservation Board’s recommendation, addressing the analysis and findings upon which the recommendation was made. The Planning Board also discussed the merits of an alternative district proposal made by the property owner in their presentation at the start of the meeting. CPB2 proposed that, pursuant to CPB2 granting to the City a fifty (50) foot wide public access easement from Fore Street across the site and within the footprint of Building #1 to the waterfront, the classification of Building 1 (Erecting Building) within the Portland Company historic district be reclassified as “noncontributing” and that the boundaries of the historic district be reduced. (See **ATTACHMENT E** for the historic district map proposed by the CPB2 at the meeting.)

During the Planning Board’s discussion, several questions were asked of staff, including questions related to the implications of pursuing a modified historic district proposal. (Some of these questions had also been addressed in the staff report provided in advance of the 10/27 public hearing—see Sec. IX of report(enclosed as **ATTACHMENT G**), as well as referenced attachments.) With respect to the proposal to reclassify Building #1 and reduce the historic district boundaries, staff cautioned that the potential removal of Building 1, a reduction in boundaries that removed site features integral to the Portland Company complex (e.g. the entrance yard and entrance drive), and the creation of a separate “subdistrict” may well foreclose the property owner’s eligibility for historic tax credits and that tax credits could become important to the success of any future redevelopment of the property. In order to qualify for tax credits, the local district would need to be certified by the National Park Service and it was likely that these changes would not be supported by NPS based on staff’s understanding of NPS requirements for historic district designations. Staff also reiterated the HP Board’s findings as regards the significance and condition of Building #1 and noted that the removal of the building, which played a key and integral part of the Portland Company’s manufacturing process well into the 20th century, would materially impact the complex’s primary character-defining feature—that being a series of connected

buildings that communicate the historic metal fabrications industry and sequential nature of the fabrication process. In the opinion of the HP Board, preserving Buildings #2 and #3 is not enough to communicate that essential characteristic. During public comment, several individuals noted that removing Building #1 would result in a district that did not accurately convey the true story, significance or scale of the Portland Company.

Staff also addressed the notion that the removal of Building #1 was necessary to provide visual and physical access through the site to the waterfront from Fore Street. Pointing to photographs of the site and the Historic Preservation Board's recommended historic district map, staff described how visual and physical access could be provided immediately west of the façade of Building #1 and that the removal of Building #7, which has been classified as noncontributing due to condition, further facilitated this option. Staff noted that other options were likely as well.

During deliberations, members of the Board noted that the Planning Board's role in historic district designation deliberations is distinct from that of the Historic Preservation Board in that the Planning Board must not only confirm the Historic Preservation Board's findings that the designation criteria included in the historic preservation ordinance have been met, but also consider the effect of such designation on other aspects of the Comprehensive Plan. The Planning Board did not disagree with the Historic Preservation Board's findings that the district as delineated and described in the HP Board's recommendation clearly meets the historic preservation ordinance's district designation criteria and that the proposed classifications of individual buildings within the district—including Building 1 as a contributing structure—are supported by extensive documentation and thorough analysis. (The property owner had argued that Building 1 was not significant in the history of the Portland Company complex and that its preservation was infeasible due to its condition.) While acknowledging that the historic district recommendation forwarded by the Historic Preservation Board was well-founded, the Planning Board discussed the need to balance preservation goals with other goals and objectives included in the Comprehensive Plan, specifically the Eastern Waterfront Master Plan. They noted that the EWMP includes numerous goals related to the general goal of providing the public visual and physical access to the waterfront as part of any future redevelopment within the subject area. In consideration of the opportunity to secure in perpetuity a public access easement from Fore Street to the waterfront (as pledged by CPB2) that would ensure consistency with these key goals of the Eastern Waterfront Master Plan, the Board found that it was appropriate to recommend a modified historic district proposal to the City Council.

PLANNING BOARD RECOMMENDATION

Following a series of formal findings that the historic district proposal as recommended by the Historic Preservation Board meets all applicable designation criteria (Sec. 14-610 a & b and Sec. 14-611) within the historic preservation ordinance and a separate finding that the designation of the Portland Company Historic District is consistent with the goals of the Comprehensive Plan (Sec. 14-610 (d)), the Planning Board voted 5-0 (Hall absent) as follows:

On the basis of the above findings, the Planning Board recommends that the City Council designate the former Portland Company complex as a local historic district as amended by the Planning Board, to and pursuant to amended Attachment 2 (adopted at the October 27, 2015 Planning Board hearing) and to designate Building #1 as a noncontributing building subject to the finalization and execution in favor of the City of a fifty (50) foot wide public access easement from Fore Street across the site as is consistent with the goals of the Eastern Waterfront Master Plan that support public access to the water, enhancement of the pedestrian environment, increased recreation opportunities, protection and preservation of key views of the harbor and creation of quality open spaces which are oriented to maximize exposure to the harbor and how the Plan encourages a vision that supports the idea that the eastern waterfront develop into an extension of the surrounding neighborhood while establishing an identity as a new urban neighborhood. The location of said easement is necessary to satisfy those goals. Said easement to be reviewed by Corporation Counsel prior to submission of the designation recommendation to the City Council.

In a separate motion, the Planning Board also voted 5-0 as follows:

In the adoption of design guidelines for the district that it be made explicit that the height for the district will be controlled by the underlying zoning and not the historic preservation ordinance review standards.

See ATTACHMENT B for full text of Planning Board's formal findings and recommendation to the City Council.

ATTACHMENTS

- A. Portland Company Historic District Boundaries and Building Classifications as recommended by the Planning Board at 10/27/15 public hearing
- B. Formal Findings and Recommendation of the Planning Board as voted upon at 10/27/15 public hearing
- C. Portland Company Historic District Boundaries and Building Classifications as recommended by the Historic Preservation Board
- D. Introductory remarks of Historic Preservation Board member John Turk at 10/27/15 Planning Board public hearing
- E. Proposed historic district boundaries and building classifications as presented by CPB2 on 10/27/15
- F. Compilation of Written Public Testimony from 10/27/15 public hearing
- G. Staff Report for 10/27/2015 Public Hearing - Recommendation of Historic Preservation Board to Designate Portland Company Historic District. Report includes following attachments:
 - 1. Proposed Historic District Map with Boundaries and Individual Building Classifications
 - 2. Portland Company Historic District Designation Report
 - 3. Excerpts from Portland's historic preservation ordinance (Article IX of the Land Use Code).
 - 4. *The Portland Company: Historic Significance and Integrity*, prepared for City of Portland by Sutherland Conservation & Consulting
 - 5. *Portland Company Complex General Building Condition Report*, prepared for City of Portland by Resurgence Engineering and Preservation Inc.
 - 6. Evaluation of *Existing Buildings at the Portland Company Property*, prepared for CPB2 by Becker Structural Engineers
 - 7. Appendix A: Comparative Condition/Cost Analysis (excerpted from Resurgence report)
 - 8. March 31, 2014 Letter from Maine Historic Preservation Commission regarding eligibility of Portland Company Complex for Listing in the National Register of Historic Places
 - 9. Letters from interested parties

Attachments prepared in response to questions raised at PB's 7/28 Workshop

- 10. 9/2/15 Memo from Scott Hanson, Sutherland Conservation & Consulting, regarding Building 1
- 11. 9/4/15 Letter from Al Hodson, Resurgence Engineering, re: condition of Buildings 1 and 16
- 12. 9/4/15 Letter from Maine Historic Preservation Commission
- 13. 8/26/15 letter from Mary Costigan on behalf of CPB2

Information and Public Comment received since 9/3

- 14. Staff memo summarizing HP Board's 10/21/15 review of latest condition report prepared by Becker Structural Engineers
 - A. Staff memo for 10/21/15 HP Board review
 - B. October 13, 2015 report from Becker Structural Engineers
 - C. Copy of GPL testimony at 10/21 meeting
- 15. Compilation of most recent public comment

(s) To annually report to the council with following matters:

1. Survey work in progress or completed;
2. The number of projects reviewed (by type);
3. How many certificates of each type were issued.

(Ord. No. 235-90, 2-16-90; Ord. No. 155-04/09, 3-16-09)

DIVISION 3. CATEGORIES AND CRITERIA FOR DESIGNATION

Sec. 14-610. Minimum criteria for designation.

(a) The historic preservation board shall limit its consideration to the following criteria in making a determination on a proposed nomination of an area, site, structure or object for designation by ordinance as a landmark or district:

- (1) Its value as a significant example of the cultural, historic, architectural, archeological or related aspect of the heritage of the City of Portland, State of Maine, New England region, or the United States;
- (2) Its location as a site of a significant historic or prehistoric event or activity which may have taken place within or which involved the use of any existing structure on the property;
- (3) Its identification with a person or persons who significantly contributed to the cultural, historic, architectural, archeological or related aspect of the development of the City of Portland, State of Maine, New England region, or the United States;
- (4) Its exemplification of a significant architectural type, style or design distinguished by innovation, rarity, uniqueness or overall quality of design, detail, materials or craftsmanship;
- (5) Its identification as the work of an architect, designer, engineer or builder whose individual work is significant in the history or development of the City of Portland, the State of Maine, the New England region, or the United States; or
- (6) Its representation of a significant cultural, historic,

Sec. 14-614. Procedure.

The provision of this division shall govern the nomination, consideration and designation of landmarks and districts.
(Ord. No. 235-90, 2-26-90)

Sec. 14-615. Initiation of nomination.

(a) Nomination of an area, site, structure or object for consideration of designation as a landmark, historic district or historic landscape district shall be submitted to the department, on a form provided by the department, by the following:

- (1) Any two (2) members of the historic preservation board on their own initiative, by written notice to the department; or
- (2) By written petition of any owner, in the case of a landmark; or
- (3) By written petition of one (1) or more owners of affected property in the case of a district; provided two (2) members of the historic preservation board must sponsor the petition.

(b) A nomination shall be completed and filed with the department with all required signatures and any fees specified therefore for the nomination to be pending.

(c) Upon nomination, the department shall notify the owner or owners of the nomination and shall transmit the nomination to the historic preservation board for its consideration at its next scheduled meeting, which in no event shall be held later than thirty (30) days following nomination.

(d) At any time after a complete nomination is filed for an historic district, the owner of a structure who seeks a permit for demolition may apply to the historic preservation board for a determination that the structure to be demolished is noncontributing and eligible for a demolition permit. The determination of the historic preservation board that the structure is eligible for a permit shall be conclusive.

(Ord. No. 235-90, 2-26-90; Ord. No. 165-08/09, 3-16-09)

Sec. 14-616. Notification of nomination and public hearing.

(a) A public hearing on the nomination shall be held by the historic preservation board within thirty (30) days following the first scheduled meeting referred to in section 14-615(c), but in no event later than sixty (60) days following receipt of the completed nomination form by the department. Notice of the nomination and of the public hearing shall be in accordance with the procedures for public hearings before the planning board for site plan approval.

(b) The hearing shall be conducted in accordance with procedures adopted by the historic preservation board. The historic preservation board shall consider all testimony or evidence relating to the designation criteria in division 3 from any person who makes written submissions or appears at the public hearing. Historic preservation board members may also present testimony or make submissions. The owner of a nominated landmark or of property within a nominated district shall be allowed reasonable opportunity to present testimony or evidence concerning the applicability of the designation criteria in division 3.
(Ord. No. 235-90, 2-26-90)

Sec. 14-617. **Recommendation by historic preservation board.**

Within thirty (30) days following the close of the public hearing, the historic preservation board shall make recommendation to the council in the case of a landmark, or to the planning board in the case of a district, upon the evidence as to whether the nominated landmark or district meets the criteria for designation in division 3. Such recommendation shall be approved by at least four (4) members of the historic preservation board and shall be accompanied by a report to the council or planning board containing the following information:

- (a) Explanation of the significance or lack of significance of the nominated landmark or district as it relates to the criteria for designation.
- (b) Explanation of the integrity or lack of integrity of a nominated landmark or historic district.
- (c) Proposed design guidelines for review of alteration or construction. The specific design guidelines may provide explanation by text and/or schematic examples of visual compatibility for purposes of division 7.
- (d) Relationship of the nominated landmark or district to the ongoing effort by the committee to identify and nominate

department evidencing a determination that specific plans for alteration of a structure or new construction on a site do not require approval under this article.

Contributing: A classification applied to a site, structure or object within a historic district signifying that it contributes generally to the qualities that give the historic district cultural, historic, architectural or archeological significance as embodied in the criteria for designating an historic district, but without being itself a landmark.

Council: The city council.

Demolition: Any act or process that partially or totally destroys a structure or object.

Department: The department of planning and urban development.

Design guidelines: Any design standard specified for alteration or new construction which is unique to a particular landmark, historic district or historic landscape district.

Design manual: The historic resources design manual described in section 14-675.

District: An historic district or historic landscape district.

Historic district: An area designated as an "historic district" by the council.

Historic landscape district: An area designated as an "historic landscape district" by the council.

Landmark: A property, site, structure or object designated as a "landmark" by the council as having a high degree of historical, cultural and/or architectural significance.

Major development: As defined in article V of this chapter.

Minor development: As defined in article V of this chapter.

New construction: The adding to a structure by an addition; the erection or placement of any new structure on a lot or property; or the comprehensive redesign/renovation of an existing structure.

Noncontributing: A classification applied to a site, structure, object, or portion thereof, within a historic district signifying that 1) it does not contribute generally to the qualities that give the historic district cultural, historic, architectural or archaeological significance as embodied in the criteria for designating a historic district; 2) was built within 50 years of the date of district designation unless otherwise designated in the historic resources inventory; or 3) where the location, design, setting, materials, workmanship and association have been so altered or have so deteriorated that the overall integrity of the site, structure or object has been irretrievably lost. A portion of an otherwise contributing or landmark structure may be determined by the historic preservation board to be non-contributing if it meets one or more of the above conditions.

Object: Anything constructed, fabricated or created, the use of which does not require permanent or semi-permanent location on or in the ground.

Open space: Any park and any other area outside of a building open to the public.

Ordinary maintenance: Acts of maintenance or repair which do not include a change in the design, material or outer appearance of a structure, including without limitation repainting, replacement of materials or windows of the same scale, texture and color, and landscaping other than within an historic landscape district.

Owner: The person or persons holding record title to the building, site or property; provided, however, the last previous tax roll in the records of the city assessor's office may be relied upon as showing record ownership in the absence of substantial evidence to the contrary.

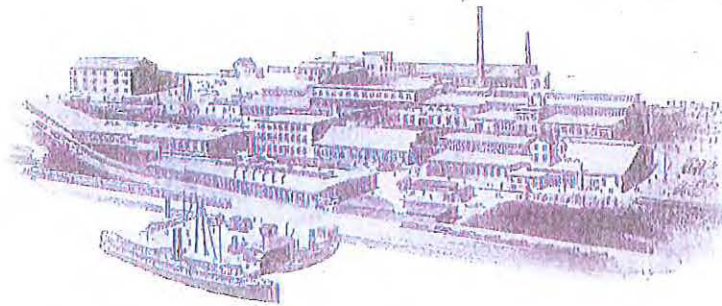
Property: Land and improvements identified as a separate lot for purposes of subdivision, site plan, or zoning regulation.

Relocation: Any removal or relocation of a structure on its site or to another site.

Restoration: Any act which returns a structure or a feature of a structure to a prior state of historic significance.

Sign: As defined in section 14-47.

Site: The location of an event, activity, structure or object.



The Portland Company
Historic Significance and Integrity

Sutherland Conservation & Consulting
2014

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The Portland Company: Historic Significance and Integrity

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Introduction

Sutherland Conservation & Consulting (SCC) has been retained by the City of Portland to research, document and analyze the historic and architectural significance of the Portland Company complex. The historic assessment report is intended to address the place and significance of the Portland Company within the city of Portland, the state of Maine, and beyond; especially in the context of national trends in manufacturing and transportation during the company's years of operation (1847-1982).

This historic assessment report will:

- identify the areas of historic significance for the complex at the National, State, and Local levels
- identify the historic period(s) of significance for the complex
- use developmental modeling to analyze and assess the relative historic significance of the individual structures as well as the role each structure played in the manufacturing processes of the Portland Company and within the complex as a whole, and how each contributes to the ability to understand and appreciate the evolution of complex over time.

Additionally, SCC has been asked to assess the historic integrity of the individual buildings and the complex as a whole. Historic integrity is distinct from structural integrity. Historic integrity is based on the retention of sufficient essential physical features from the historic period, including location, design, setting, materials, workmanship, feeling, and/or association, to convey the significance of a property.

The work of this report does not duplicate the Inventory of Historic Buildings by Tremont Preservation Services dated January, 2014 or the Evaluation of Existing Buildings at the Portland Company Property by Becker Structural Engineers dated March 28, 2014, but it does utilize the same numbering system for the buildings in the complex to the greatest extent possible to facilitate cross-referencing the reports. The text of the Tremont report has been included as an appendix to this report with annotations that have been added to provide additional information and clarifications based on research completed by Sutherland Conservation & Consulting.

A summary history of the Portland Company has not been included in the body of this report because the Historical Context section of the Tremont report (pages 44-51) provides this information.

Methodology

Primary and secondary sources were reviewed and utilized including extensive research in the Portland Company records at the Maine Historical Society and in depth research into the early history of railroad locomotive manufacturing in the United States. Using historic maps, site plans, building plans and numerous historic photographs, the historic development and evolution of the buildings of the Portland Company complex have been documented and compiled in a series of site plans and developmental models to illustrate how the complex has changed over time. A site visit was completed on July 23, 2014 to inspect and photo-document the interiors and exteriors of all the existing buildings to assess how much of the original design and materials remain intact for the buildings individually and the complex collectively.

The historic photographs and developmental models were compared to the existing conditions photographs to evaluate the historic integrity and significance of the buildings individually and the complex as a whole. The historic and architectural significance and integrity of the Portland Company complex has been assessed utilizing the criteria of the National Register of Historic Places, which is recognized as the standard for determining historic and architectural significance in the United States and is also the basis for the City of Portland's Designation Criteria.

Executive Summary

The Portland Company was established in 1846 in conjunction with construction of the Atlantic & St. Lawrence Railroad which was built to connect Portland to Montreal. John A. Poor, the individual most responsible for Portland's successful bid over Boston to become Montreal's winter port via rail, was a Director of the Atlantic & St. Lawrence Railroad and became the first President of the Portland Company.¹ Other Atlantic & St. Lawrence Directors were also stockholders in the Portland Company, including Portland's wealthiest individual John Bundy Brown, who would become President of the company in 1864; Congressman and later Senator and U. S. Secretary of the Treasury William P. Fessenden; and Captain George Turner, who was given a seat on the railroad's Board between the regular annual Director's elections, shortly after selling property to the Portland Company for their works.

The period of significance for the Portland Company complex begins with the start of operations in 1847 and extends to the end of foundry work at the Portland Company in 1982. Within this period, specific periods of significance are identified for different areas of significance in Appendix G. During the period of significance, the plant experienced several substantial expansions and numerous small alterations. In 1873, fire destroyed several buildings at the south end of the property which were then rebuilt. No substantial changes have been made since 1920 except for the demolition of the wooden blacksmith and tin shop and the replacement of the late-19th century wooden boiler shop by a large modern steel building in the second half of the 20th century. A modern brick and wood office building was built on the site of earlier stables circa 1950. Through all of this, a number of the pre-Civil War buildings have remained largely intact and would be easily recognizable to John A. Poor and the original company directors and employees of the Portland Company.

The use of cast metals, particularly iron, was central to the rapid industrialization and expansion of the United States in the nineteenth century. Although the technology was ancient, the use of it at the scale undertaken during the period the Portland Company was founded was unprecedented. Cast iron has been called, "the plastic of the nineteenth century" for the way it transformed production and expanded the range of products available to industry and the public. Putting all of the stages of production for large machines, like steam locomotives, in one place was a radical advance over traditional practices. Combined with the use of patterned cast iron parts, as opposed to individually hand-crafted unique parts, this advance laid the foundation for Henry Ford's next step in the progression of efficient production, the assembly line. The Portland Company complex represents an important advance in this process and is possibly the only surviving example of such a complex documenting this stage of industrial production in the United States. Its survival in largely intact condition in 2014 is noteworthy and remarkable.

National, State and Local Historic Significance

The Portland Company has national historic significance because it appears to have been the first complex in this country built specifically for the manufacture of railroad equipment with all of the necessary shops and a foundry on a single site. The Portland Company complex as it stands today is a rare surviving example of a pre-Civil War foundry, machine shop, and car shop complex because it retains a number of its original and early buildings, whereas most, if not all, other pre-Civil War complexes have been substantially or wholly demolished. As such, the Portland Company complex contains the oldest surviving railroad shop buildings in the nation still within their historic manufacturing complex context. Recent research indicates the Portland Company appears to be the only surviving pre-Civil War locomotive manufacturing plant in the nation, making it the only one surviving where locomotives were built for the U.S. Government as part of that war effort.

The Portland Company has statewide historic significance because the company made a significant

¹ Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor*, 1890

contribution to the development of Maine's railroads (including the state's iconic two-foot gauge lines) and maritime shipping industry. The locomotives, railroad cars, marine engines and boilers, and maritime navigation aids produced entirely or in part at the Portland Company were important to the development of rail and maritime transportation in the state of Maine from the middle of the nineteenth century into the twentieth century. Industrial expansion, natural resource extraction, commerce, and tourism all benefited from improved transportation made possible by products of the Portland Company.

The Portland Company was the state's largest nineteenth century foundry-machine shop, with those two shops combined in a way that was unprecedented in Maine. The company grew to be the state's most substantial engineering and machine manufacturing business, employing 150 of the 500 machinists in the state at one point. The Portland Company also played a significant role in the development of many important industries in Maine including the paper-making, textile, and canning industries. A number of industrial processes likewise benefitted from the research and development of electrical engineer and inventor William Chapman for the Portland Company and through the Chapman Electric Neutralizer Company at the Portland Company.

The Portland Company has local historic significance because it is the only intact nineteenth and early twentieth century industrial complex remaining in the city. Thirty-three manufacturing plants can be identified in the 1876 Bird's Eye View of Portland. Only the Portland Company complex remains largely intact 138 years later. Portland had 60 sizable companies engaged in industrial production of various sorts in 1924, occupying more than 85 buildings. Of these 85 buildings, fewer than a dozen survive outside the Portland Company, none as complexes.

The Portland Company has local historic significance for its association with several significant 19th century planning and development initiatives within the city of Portland. As part of John A. Poor's vision for creating a modern international port at Portland, he conceived of a wide new street along the waterfront which would contain railroad tracks to connect the Atlantic & St. Lawrence R. R. on the east end of the city to the Portland, Saco & Portsmouth R. R. on the west end while providing both railroads access to the numerous wharves between their terminals. The narrow original waterfront street, Fore Street, followed the natural landform, snaking along the shore around Clay and Broad coves. The new street would be built by filling between the existing wharves below Fore Street, far enough out into the harbor to allow the construction of large new warehouse buildings along the land side of the street. Broad Cove would be filled for construction of the Atlantic & St. Lawrence Railroad terminal and for the Portland Company works and Clay Cove would be filled for the street and new buildings. The Portland Company site alone is seven acres, the majority of it made by filling the mud flats and cove. This project was undertaken co-operatively by the two railroads, the Portland Company, and the city of Portland, with the railroads paying the cost of filling between the wharves and the City paying wharf owners for the value of their properties seized through eminent domain. The mile-long and one hundred foot wide street would be named Commercial Street.² This project was the largest urban planning initiative undertaken in the city of Portland in the nineteenth century and was transformative in its effects.

Historic Architectural Significance

The buildings of the Portland Company complex have historic architectural significance because they remain substantially unaltered from the time of their original construction and consequently show clearly the distinguishing characteristics (design and construction materials) of several distinctive types of industrial buildings constructed between 1847 and 1920. Additionally, the Portland Company buildings from the 1840s and 1850s are the only industrial buildings of that period remaining in the city of Portland today.

2 Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor*, 1890.

Records of the Atlantic & St. Lawrence Railroad, Maine Historical Society.

The buildings of the Portland Company also have historic architectural significance because each of the remaining buildings served distinctive function(s) in the historic manufacturing process. Collectively, the existing buildings encompass the complete historic manufacturing process of the Portland Company.

Historic Significance and Visual Character of the Portland Company Site

The primary entrance to the site off Fore Street is a curving roadway that follows the grade between the original shoreline at Fore Street and the filled mudflat land on which the complex is built. This has been the entrance to the property since 1847 and is historically significant as an original site feature that has not been substantially altered. This curving roadway leads to the historic entrance yard of the complex.

The entrance yard has historically been, and continues to be, an open space serving the function of entranceway to the linear manufacturing paths of circulation. It is the point from which these streets and alleys of the complex are accessed. Historically, it also served as a fire break between the manufacturing facilities, the paint shop and the pattern storage buildings. At different points in time a car shop and other buildings have projected into this space, especially prior to the construction of the much larger erecting shop (building 1) in 1918. The entrance yard has been in its current configuration for nearly 100 years.

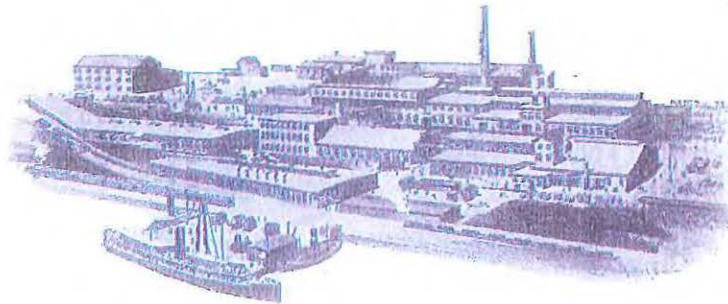
The historic functional organization and placement of the Portland Company buildings in linear proximity to each other creates a visual character for the site that is unique for Portland in the way that the industrial buildings form private streets or alleys. The overhead pedestrian bridges spanning these private streets are also unique in Portland and contribute to the visual character and historic significance of the site.

To a large degree, the architectural significance of the Portland Company exists in the relationship of the buildings to each other within the complex. The proximity and orientation of the buildings to each other permitted related manufacturing processes to take place in a way that allowed for the efficient progression of stages in the production of the company's products.

Findings:

- The Portland Company complex is historically significant within local, state and national historic contexts related to industry, transportation, community planning and architecture.
- The buildings individually and the complex as a whole retain a high degree of architectural integrity to the period of significance for the complex (Portland Company production 1847 – 1982).
- All of the buildings of the complex constructed over 50 years ago contribute to the historic significance and integrity of the Portland Company complex.
- Collectively, the existing buildings encompass the complete historic manufacturing process of the Portland Company with the exception of one shop for the construction of boilers.
- Together, the historic significance and historic integrity of the Portland Company complex make it one of the most historically important sites in the city of Portland.
- The removal of any of the historic buildings existing in the complex will diminish the ability of the complex to demonstrate the historic manufacturing process of the Portland Company.
- The Portland Company was the largest business in the city in the mid-nineteenth century and is the only remaining intact nineteenth and early twentieth century industrial complex in the city of Portland today.
- The Portland Company buildings remaining from the 1840s and 1850s are the only industrial buildings of that period surviving in the city of Portland.

- The outstanding nature of the architectural integrity of the complex and exceptional historic value of the Portland Company as the first self-contained complex in the nation built specifically for the manufacture of railroad equipment may make it a strong candidate for National Historic Landmark eligibility consideration.
- The historic Portland Company complex is a compact manufacturing facility characterized by two distinct areas, the entrance yard and the manufacturing corridors.
- The historic functional organization and placement of the Portland Company buildings in linear proximity to each other along the manufacturing corridors creates a visual character for the site that is unique for Portland in the way that the industrial buildings form private streets or alleys. This is similar to the character found in large textile mill complexes in Maine cities like Lewiston, Biddeford, and Sanford but not found elsewhere in Portland.
- The compact nature, visual continuity and circulation routes of the historic manufacturing facility of the Portland Company are significant character defining features of the site. The removal of any contributing building would adversely impact the historic significance and character of the whole complex.
- Currently the only modern intrusion into the visual continuity of the complex is building 5, located on the northeast side of the foundry building (building 4).
- In considering the redevelopment of the property for new uses while retaining the essential physical features that give it integrity, a large city-owned vacant parcel to the southwest of the site might provide an opportunity for a connection from the site to Thames Street, allowing enhanced access without altering the historic entrance to the site or the visual character of the entrance yard and “streets” between the historic buildings.
- A large area of vacant land on the east end of the site abuts the largest building on the property, the not-historically-significant modern building wrapping around the two sides of the Foundry. Removal of the modern building could allow access to new development at the east end of the site in a way that maintains the visual character of the “street” between the Erection Shop, Machine Shop, and Foundry and the Car Shop and Blacksmith Shop.
- Compatible new buildings on the sites of the demolished Boiler Shop and Tin and Smith Shop could reinforce the historic character of the site’s “streets.”

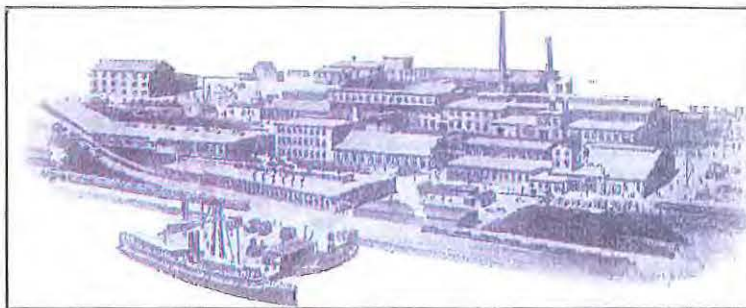


Section I:
Historic Significance of the Portland Company

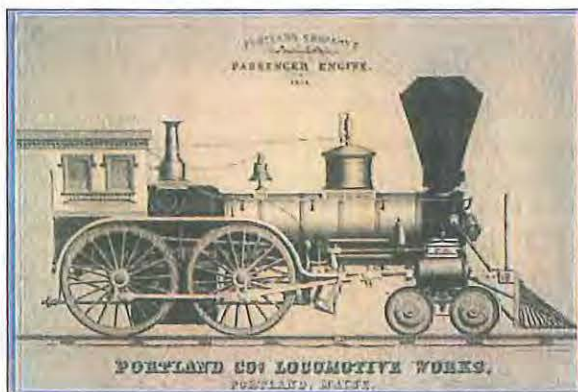
National Historic Significance of the Portland Company

The Portland Company complex is a rare surviving example of a pre-Civil War foundry, machine shop, and car shop complex built for the manufacture of railroad equipment in 1847. It appears to have been the first such self-contained complex in the nation built specifically for that purpose, with all of the necessary shops and a foundry on a single site. It also contains the oldest surviving railroad shop buildings in the nation.

The first companies to produce railroad locomotives in the United States beginning in 1830 were existing machine shops and/or foundries which adapted existing machinery and practices to build steam locomotives. The few companies established specifically to produce locomotives in the 1830s and early 1840s used outside foundries for the necessary castings. This included the Norris Steam Carriage Company (later Norris Locomotive Works) in Philadelphia and the Baltimore & Ohio Railroad shops at Mount Clare, Maryland, which were begun in 1829. The first foundry at the Mount Clare Shops, now a National Historic Landmark, was not constructed until after the Civil War. The earliest surviving shop building at Mount Clare dates from 1869-70. A number of early locomotives were manufactured by the West Point Foundry in New York, established after the War of 1812 to produce armaments and ammunition for the American forces. This plant exists now only as fragmentary ruins in a state park. Baldwin Locomotive Works, which would become America's largest producer of steam locomotives, began when former watchmaker Mathias Baldwin built a working model steam locomotive for the Peale Museum in Philadelphia in 1831. Baldwin and a partner had established a machine shop in 1825 to manufacture bookbinding tools and textile printing cylinders. In 1832, they built the first full scale Baldwin locomotive, again using an outside foundry. The original Baldwin works were demolished in 1937, after a new plant was built at another location. The neighboring Norris Locomotive Works buildings had been demolished in 1896. Surviving railroad locomotive foundries and shops from before the Civil War are extremely rare today. It appears from recent research that except for a possible few individual buildings that were once part of locomotive manufacturing complexes, the pre-1860 Portland Company buildings are the only ones remaining. As mentioned above, the Portland Company complex was apparently the first fully self-contained complex built specifically for locomotive construction. It is also the only surviving plant where locomotives were built for the U.S. Government for the use of the Union Army as part of the Civil War effort.¹



Sketch of the Portland Company c. 1910. Courtesy of the Maine Historic Preservation Commission.



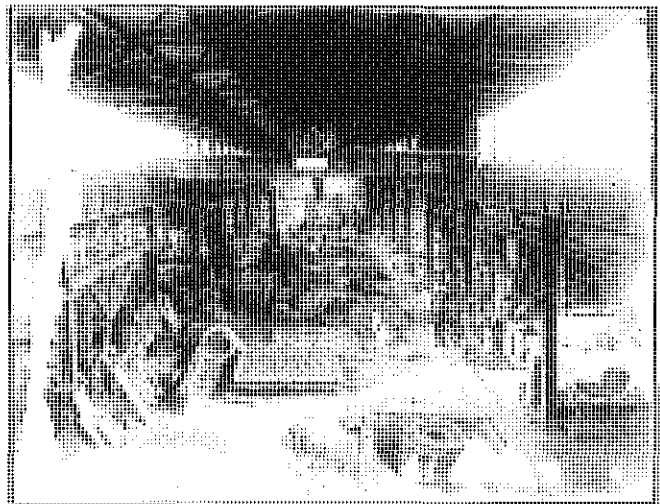
Locomotive rendering, 1851. Courtesy of the Maine Historical Society.

¹ Information contained in this paragraph was compiled from numerous sources, the most important being: Meyer, David R. *Networked Machinists: High-Technology Industries in Antebellum America*. Converse, John H. "Locomotive Building in the United States," *Cassier's Magazine*, Volume 20, 1901. 221-237. Colburn, Zerah. *The Locomotive Engine: Including a Description of Its Structure, Rules for Estimating Its Capabilities, and Practical Observations on Its Construction and Management*, 1851. Lamb, J. Parker. *Perfecting the American Steam Locomotive*, 2003. Simmons-Boardman Publishing Company. "The Norris Locomotive Works," *Railway Age and Railway Review*,

The use of cast metals, particularly iron, was central to the rapid industrialization and expansion of the United States in the nineteenth century. Although the technology was ancient, the use of it at the scale undertaken during the period the Portland Company was founded was unprecedented. Cast iron has been called, "the plastic of the nineteenth century" for the way it transformed production and expanded the range of products available to industry and the public. Putting all of the stages of production for large machines, like steam locomotives, in one place was a radical advance over traditional practices. Combined with the use of patterned cast iron parts, as opposed to individually hand-crafted unique parts, this advance laid the foundation for Henry Ford's next step in the progression of efficient production, the assembly line. The Portland Company complex represents an important advance in this process and is possibly the only surviving example of such a complex documenting this stage of industrial production in the United States. Its survival in largely intact condition in 2014 is noteworthy and remarkable.

State Historic Significance of the Portland Company

The Portland Company made a significant contribution to the development of Maine's railroads (including the state's iconic two-foot gauge lines) and maritime shipping industry. The locomotives, railroad cars, marine engines and boilers, and maritime navigation aids produced entirely or in part at the Portland Company were important to the development of rail and maritime transportation in the state of Maine from the middle of the nineteenth century into the twentieth century. Industrial expansion, natural resource extraction, commerce, and tourism all benefited from improved transportation made possible by products of the Portland Company. The Portland Company was the state's largest nineteenth century foundry-machine shop, with those two shops combined in a way that was unprecedented in Maine. The company grew to be the state's most substantial engineering and machine manufacturing business, employing 150 of the 500 machinists in the state at one point.² The Portland Company also played a significant role in the development of many important industries in Maine including the paper-making, textile and canning industries. A number of industrial processes likewise benefitted from the research and development of electrical engineer and inventor William Chapman for the Portland Company and through the Chapman Electric Neutralizer Company located at the Portland Company.



Interior view of the Foundry Building, c. 1880. Courtesy of the Maine Historical Society.

Railroads

The Portland Company was created as an adjunct to the Atlantic & St. Lawrence Railroad shortly after

Volume 47, 1909, 231-236.

Swank, James Moore. *History of the Manufacture of Iron in All Ages: And Particularly in the United States from Colonial Time to 1891*.

White, John H. *A History of the American Locomotive: Its Development, 1830-1880*.

A. Sinclair Company. *Railway and Locomotive Engineering: A Practical Journal of Railway Motive Power and Rolling Stock*, Volume 16, 1903.

Solomon, Brian. *American Steam Locomotive*, 1998.

Kinert, Reed. *Early American Steam Locomotives*, 2012.

2 Rivard, Paul E. *Made in Maine: From Home and Workshops to Mills and Factories*, 2007, 144.

that line was chartered to run from Portland to Montreal. The principal proponent of the Atlantic & St. Lawrence Railroad, John A. Poor, was the first president of the Portland Company as well as a director of the railroad company.

Maine railroads that used Portland Company produced locomotives and cars included the Atlantic & St. Lawrence, the Grand Trunk, the Portland, Saco & Portsmouth, Portland & Kennebec, Portland & Rochester, Portland & Ogdensburg, Eastern, Maine Central, Boston & Maine, and Rumford Falls & Buckfield railroads. A number of locomotives were built for Maine's iconic two-foot gauge railroads including the Phillips & Rangely, Sandy River, Kennebec Central, Bridgton & Saco River, and the Wiscasset & Quebec. Maine's logging railroads also used Portland Company equipment, including geared locomotives to run on the rough temporary tracks of logging railroads and log bunks to transport logs on. In addition to locomotives, the Portland Company manufactured passenger and freight cars, wheels, and rail components including switch frogs.

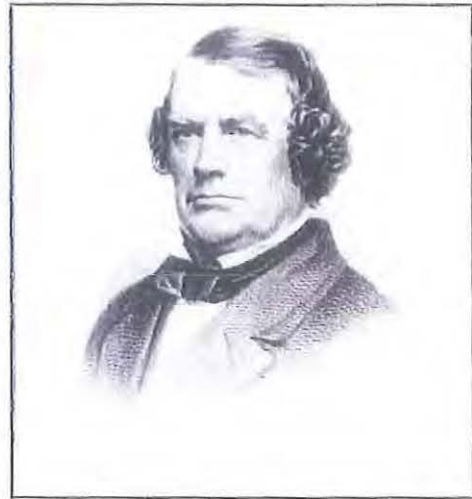
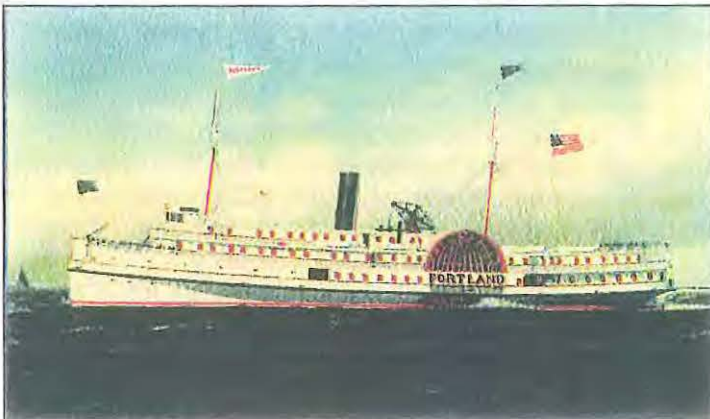


Illustration of John A. Poor. Courtesy of the Maine Historical Society.

Portland Company locomotives were also built for many out-of-state railroads. One hundred locomotives were manufactured for the Northern Pacific Railroad, with half delivered overland and half loaded on ships and sent around Cape Horn to the West Coast. Locomotives were also built for Canadian railroads including the New Brunswick & Canada and the Quebec, Montreal, and the Ottawa, & Occidental, as well as for the Panama Railroad in Central America. Appendix C contains a list of all the railroads named in the records of the Portland Company at the Maine Historical Society.³



Courtesy of the Maine Historical Society.

Maritime Transportation

The directors of the new Portland Company received the first request for the company to build a boiler for a steam ship before the first buildings were completed or operations begun. During the course of its history, the Portland Company manufactured and installed boilers, marine engines and other equipment for hundreds of vessels constructed at shipyards from Kennebunkport to Lubec, as well as its own shipyard in South Portland. Outside of Maine, Portland Company supplied boilers, engines, and other equipment to hundreds of vessels built at yards as

close as Massachusetts and as far away as Oregon. Vessels included massive passenger steamers like the *Portland* (280' long), trawlers and porgy boats for commercial fishing, freighters, passenger ferries, tow and tug boats, private yachts, and the 205' long steam gun ships *Agawam* and *Pontoosuc*, built for the U. S. Navy during the Civil War.⁴

³ Records of the Portland Company, Maine Historical Society. Fletcher, David H. *The Portland Company, 1846-1982*, 2002.

⁴ Records of the Portland Company, Maine Historical Society. Fletcher, David H. *The Portland Company, 1846-1982*, 2002.

Also significant to marine transportation was the Portland Company's production of lighthouse components and navigation buoys. Drawings at the Maine Historical Society from the late 1860s through the late 1890s include cast iron parts such as lanterns, lamp decks, spiral stairways, doors, sashes, walkways, railings, and other parts for lighthouses in Maine, New Hampshire and Massachusetts. In some cases, such as "Bug Light" at the entrance to Portland Harbor, they manufactured the entire Greek Revival style cast iron structure. They also produced elaborate fog signal whistles which included a boiler, timer, and whistle for installation at light stations and fog signal stations.

Other Maine Industries

Maine companies that used Portland Company equipment include the Burnham & Morrill and Portland Packing Company canning companies, S. D. Warren Paper Company, and Sanford Mills. Specialized equipment for the paper industry included chipper discs and massive debarking drums, washing drums, and sulphite digesters. Numerous large industrial plants and mills were heated and powered by Portland Company steam boilers. In the mid-twentieth century the Portland Company produced parts for rotary welding inside pipes used in nuclear power plants and manufactured neutron reactor shells for those plants. They also manufactured machinery for forming and extruding plastics.



View of a Portland Company digester sitting between the Blacksmith & Tank shop and Boiler Shop. Courtesy of the Maine Historical Society.

William H. Chapman

In the early twentieth century, inventor and electrical engineer William H. Chapman (1860 - 1944) was in charge of the Portland Company's research department and did important work in the basic research that led to the development of microwave technology as well as experimentation and invention related to the use of electricity in manufacturing.⁵ Portland Company voltage regulators were used in mills and factories throughout Maine and beyond. Chapman also invented the Chapman Electric Neutralizing Machine while at the Portland Company in 1906.⁶ This device removed static electricity during the manufacturing process and was critical to the paper and textile industries of Maine. *Who's Who in New England*, 1909, lists Chapman as electrical engineer for the Portland Company and also as director and electrical engineer for Chapman Electric Neutralizer Company, with an office at 58 Fore Street – indicating that Chapman had his own company within the complex of the Portland Company while working for the company. Chapman received a second patent for improvements to the original electric neutralizing design in 1916, the same year he patented an elevator brake.

Local Historic Significance of the Portland Company

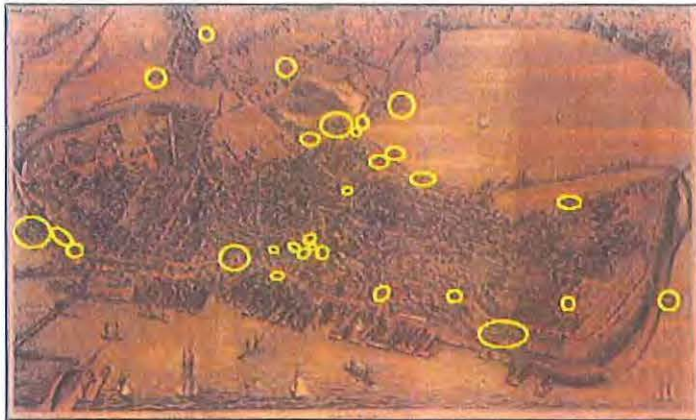
Portland Company is the only intact 19th – early 20th century industrial complex in the city of Portland

The Portland Company has local historic significance as the largest business in the city in the mid-nineteenth century and the only remaining intact nineteenth and early twentieth century industrial complex in the city of Portland. Virtually all evidence of Portland's nineteenth century industrial history has been lost with the exception of the Portland Company complex. In *Portland Maine, Its Representative Business Men and Points of Interest*, author George F. Bacon wrote of the Portland Company in 1891, "Since the

⁵ Sprague, Phineas. Society for Industrial Archaeology conference tour of the Portland Company complex, June 16, 2014.

⁶ US Patent #878273 A, filed May 25, 1906, granted February 4, 1908.

incorporation of the Portland Company about 45 years ago it has done more than any other one corporation or firm to make the name of the city well and favorably known throughout the United States, and if there is one enterprise entitled above all others to be classed as representative it is that conducted by the company in question, for this is a Portland undertaking, has always been conducted by Portland men, is located on Portland territory, and by distributing about a quarter of a million of dollars in wages annually has been and is a most powerful factor in attracting skilled workmen to and otherwise promoting the growth of the city.”⁷



Top: view showing 1876 aerial drawing with industrial complexes circled in white.
Below: similar view with remaining industrial sites highlighted.

Thirty-three manufacturing plants can be identified in the 1876 Bird's Eye View of Portland. Of the thirty-three, which include Portland Stove Foundry, J. B. Brown & Son's Sugar Refinery, Forest City Sugar Refining Company, Eagle Sugar Refining Company, Portland Packing Company, and Portland Stoneware Company, only three complexes survive to any extent in 2014. Two of these have only a single surviving building, one from the Star Match Factory on West Commercial Street and one from the original Burnham & Morrill Cannery complex on Franklin Street (yellow stars at left). Only the Portland Company complex remains largely intact 138 years later. In 1924 Portland had 60 sizable companies engaged in industrial production of various sorts, occupying more than 85 buildings. Of these individual buildings, fewer than a dozen survive outside the Portland Company. Six companies had large complexes of buildings, including the E. T. Burrowes Company, Thomas Laughlin Company, and Southworth Machine Company.⁸ Fragmentary remains of some of these complexes, such as the early twentieth century Thomas Laughlin Company

foundry building on Hampshire Street now used by Shipyard Brewery, only hint at the history of these sites where hundreds of Portland residents made their livings over many decades.

Portland Company development associated with the creation of Commercial Street

The Portland Company has local historic significance for its association with several significant 19th century planning and development initiatives within the city of Portland. As part of John A. Poor's vision for creating a modern international port at Portland, he conceived of a wide new street along the waterfront which would contain railroad tracks to connect the Atlantic & St. Lawrence R. R. on the east end of the city to the Portland, Saco & Portsmouth R. R. on the west end while providing both railroads access to the numerous wharves between their terminals. The narrow original waterfront street, Fore Street, followed the natural landform, snaking along the shore around Clay and Broad coves. The new street would be built by filling between the existing wharves below Fore Street, far enough out into the harbor to allow the construction of large new warehouse buildings along the land side of the street. Broad Cove would be filled

⁷ Bacon, George F. *Portland Maine, Its Representative Business Men and Points of Interest*, 1891, 156.

⁸ Compiled from the City of Portland 1924 Tax Records.

for construction of the Atlantic & St. Lawrence Railroad terminal and for the Portland Company works and Clay Cove would be filled for the street and new buildings. The Portland Company site alone is seven acres, the majority of it made by filling the mud flats and cove. This project was undertaken cooperatively by the two railroads, the Portland Company, and the city of Portland, with the railroads paying the cost of filling between the wharves and the City paying wharf owners for the value of their properties seized through eminent domain. The mile-long and one hundred foot wide street would be named Commercial Street.⁹

This project was the largest urban planning initiative undertaken in the city of Portland in the nineteenth century and was transformative in its effects. Before arrival of the Atlantic & St. Lawrence Railroad and Portland Company with the related construction of Commercial Street, Portland had a waterfront infrastructure left over from the eighteenth century that was inefficient and ill suited to the age of steam. Shipyards building wooden sailing vessels still launched into Broad Cove. The last vessel launched from these, on November, 9, 1847, was the *Lemuel Dyer*, which struck the railroad trestle then under construction across Broad Cove during its launching.¹⁰ Following the construction of Commercial Street, wharves were extended and directly accessible by rail. Goods could be efficiently transferred between ships and trains, connecting industry and agriculture in interior Maine, New Hampshire, and Vermont to ports in America and Europe via sail and steam ships. With the completion of the Atlantic & St. Lawrence Railroad to Montreal, and subsequent leasing of the line to the Canadian and British owned Grand Trunk Railroad, all of the wharves on the Portland waterfront were connected to interior Canada. As the Grand Trunk extended westward in Canada, eventually reaching the Mid-West of both countries, the Portland waterfront had a direct connection to the agricultural products of the Mid-West and to cities such as Detroit and Chicago with Portland Company-built locomotives pulling Portland Company freight and passenger cars. Direct service between Portland and Chicago began in 1889. The massive grain elevators that would rise over the Grand Trunk yard where Broad Cove had been were the result of this connection. Trans-Atlantic passenger steamship service was instituted the year the railroad to Canada was completed, turning Portland into an international port of entry. This direct connection between Portland and Europe resulted in the immigration of people of numerous nationalities and ethnicities to Portland, diversifying and expanding the population of the city.

The cooperation between the City of Portland in the planning and implementation of the various components of Poor's modernization plan can clearly be seen in the City's investment of \$2 million dollars in the construction of the railroad to Canada, approved by the legislature and funded through municipal bonds approved by the City Council and voters.¹¹ Existing plans for the first stone retaining wall for the Portland Company along Fore Street, in the collections of the Maine Historical Society, were drawn for the company by City Engineer William Goodwin. This wall was constructed in the 1870s to allow room for the company to expand on its increasingly tight site between Munjoy Hill and the Grand Trunk Railroad tracks. It stood on Portland Company property but was rebuilt by the City of Portland in the 1890s, when the original wall developed structural issues¹².

Residential development of the portion of Munjoy Hill across Fore Street from the Portland Company was clearly triggered by the opening of the plant in 1847. Atlantic, St. Lawrence, Sherbrooke, and Waterville streets were laid out opposite the site while the original Portland Company buildings were under construction. The city directory from 1850 shows a heavy concentration of Portland Company employees residing on these streets, including 12 machinists, 6 blacksmiths, a boiler maker, a "car builder." Sixty-five additional Portland Company workers lived on other nearby streets including Fore, Adams, India,

9 Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor*, 1890.

Records of the Atlantic & St. Lawrence Railroad, Maine Historical Society.

10 Thurston & Company. *The Portland Reference Book and City Directory, 1850-1851*, 221.

11 Records of the Atlantic & St. Lawrence Railroad, Maine Historical Society.

12 Drawings in City of Portland Public Service vault. 55 Portland Street, Portland, ME.

Sumner, Mountfort, Hancock, Hampshire, and Federal. Nine “steam engineers” were also residing in the neighborhood but it is unclear whether they were involved with the Portland Company or Atlantic & St. Lawrence Railroad locomotive engineers, possibly some of each.¹³ By 1858, another street, called Warren Street (now Kellogg), had been extended from Adams, parallel with Waterville, Atlantic, and St. Lawrence. The 1876 Bird’s Eye View illustration of Portland shows two rows of five identical two-story buildings. Such a development pattern suggests housing built for employees of an industrial concern. The Portland Company was the only major industry near the site and one of its original directors was George Warren, suggesting a possible connection between the housing and the company. Minutes of the Director’s meeting held August 3, 1866, record a vote of the Board authorizing the Treasurer to lease unoccupied lands of the company across Fore Street for the erection of temporary housing for employees of the company made homeless by the Great Fire. The buildings in the Bird’s Eye View are likely the result of this action. At a meeting of the Board in 1871 the Directors authorized the sale of the company’s lands north of Fore Street, which may have included the temporary housing built after the fire. The Portland 1924 tax record photos indicate that all of those buildings were gone by that date, replaced by three story “triple-decker” tenement housing facing onto Kellogg and Sheridan streets. Most of the triple-deckers were replaced by contemporary multiunit housing in the 1960s, but several houses of the 1860s period remain on the opposite side of the street that was home to the displaced Portland Company workers in 1866.

Historic Architectural Significance of the Portland Company Buildings and Site

The buildings of the Portland Company complex have historic architectural significance because they remain substantially unaltered from the time of their original construction and consequently clearly show the distinguishing characteristics (design and construction materials) of several distinctive types of industrial buildings built between 1847 and 1920.



Interior view of the Machine Shop. Courtesy of the Maine Historical Society.

The Portland Company buildings remaining from the 1840s and 1850s are the only industrial buildings of that period surviving in the city of Portland.

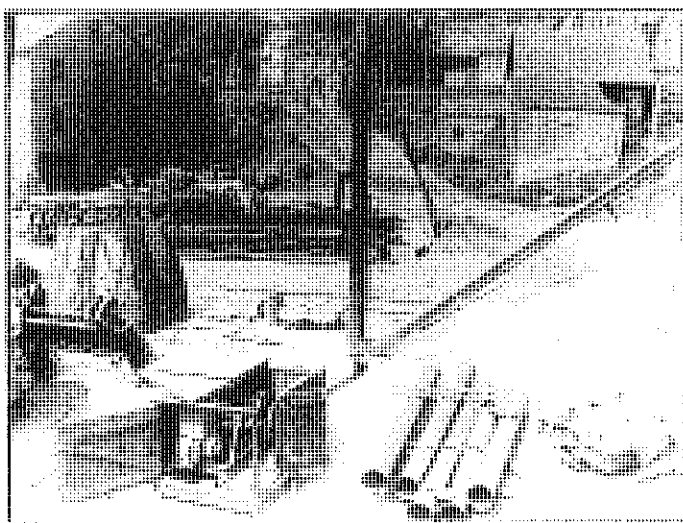
The buildings of the Portland Company also have historic architectural significance because each of the remaining buildings served distinctive function(s) in the historic manufacturing process. Collectively, the existing buildings encompass the complete historic manufacturing process of the Portland Company.

The earliest buildings constructed by the Portland Company were typical of industrial buildings of the period, with brick walls, granite lintels, and slate roofs. Projecting pilasters on the exterior

walls provided a suggestion of the Greek Revival style then dominant while adding strength to the walls. The large multi-light wood double-hung windows were also typical of the period, when it was essential to maximize the amount of daylight reaching the interior of the building. The additional buildings constructed for the complex between the 1850s and the 1880s are in the same architectural vocabulary and use the same materials as the 1840s buildings.

13 Thurston & Company. *The Portland Reference Book and City Directory, 1850-1851.*

As the company grew rapidly in the early years, some buildings or building additions were constructed of wood for the sake of speed and cost. Many of these were replaced with brick buildings, sometimes after being destroyed by fire.¹⁴ Alterations were made to the buildings over time to accommodate the changing needs of the manufacturing processes that took place in the plant, as is typical of industrial buildings. One of the more interesting alterations was the early twentieth century addition of projecting shed dormers to the 1847 Machine Shop building designed by Portland architect Frederick A. Thompson to create space for the company's offices and drafting department as well as the research and development laboratory of inventor/engineer William H. Chapman. The vault in the "tower" along Fore Street was part of this same project by Thompson for which the blueprints survive.¹⁵ The Foundry building of 1895 and Erecting Shop of 1918 are typical of industrial buildings built after the introduction of structural steel for this type of building. This change in technology allowed for the creation of much larger open floor spaces with over-head traveling cranes to facilitate more efficient production.



View of the Portland Company yard. Courtesy of the Maine Historical Society.

The buildings of the complex retain a high degree of architectural integrity to the period of significance for the complex (Portland Company production 1847 – 1982). While much of the manufacturing machinery has been removed, evidence of industrial uses can be found throughout the buildings, such as overhead shafting for operating machinery, and wood and iron cranes attached to support columns. Overhead traveling cranes remain in the Foundry and Erecting Shop. The most significant loss to the architectural integrity of the complex was the demolition of the boiler shop building (1858, 1890) in the late-20th century and its replacement by a larger modern metal building that abuts two sides of the foundry building. The one story Tin and Smith Shop (1882), which stood to

the southeast of the Blacksmith Shop, was removed before 1949. The attached timeline (Appendix D) details the construction and alteration dates for the buildings of the complex.

The various buildings of the complex contain examples of a wide variety of building construction engineering techniques employed to increase the strength or functionality of the buildings. These include a number of wood and metal roof truss systems; large floor areas hung from wooden roof truss systems; brick barrel vaulting; cast concrete and steel beam vaulting; cantilevered shed dormers; and single and double trussed girders used to increase the load carrying capacity of upper floors without obstructing the lower floors with posts. The earliest buildings are of load-bearing masonry wall construction with internal timber framing and later buildings utilize steel framing systems. The 1895 Foundry uses an unusual integrated steel column and brick exterior wall system. This was a comparatively early use of structural steel in Maine and represents a transitional phase in the construction technology as large buildings moved from load-bearing masonry walls to steel skeleton framing.

Historic Significance and Visual Character of the Portland Company Site

The primary entrance to the site off Fore Street is a curving roadway that follows the grade between the original shoreline at Fore Street and the filled mudflat land on which the complex is built. This has been the

¹⁴ See attached Developmental Timeline and Development Modeling.

¹⁵ Portland Company Records, Maine Historical Society.



Historic view of the lab/office space, third floor of the machine shop. Courtesy of the Maine Historical Society.



Current view of the lab/office space.

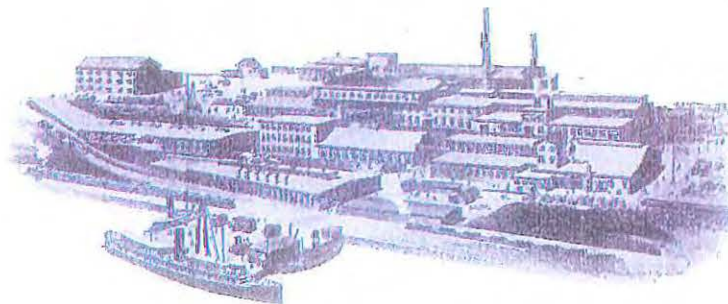
entrance to the property since 1847 and is historically significant as an original site feature that has not been substantially altered. This curving roadway leads to the historic entrance yard of the complex.

The entrance yard has historically been, and continues to be, an open space serving the function of entranceway to the linear manufacturing paths of circulation. It is the point from which these streets and alleys of the complex are accessed. Historically, it also served as a fire break between the manufacturing facilities, the paint shop and the pattern storage buildings. At different points in time a car shop and other buildings have projected into this space, especially prior to the construction of the much larger erecting shop (building 1) in 1918. The entrance yard has been in its current configuration for nearly 100 years.

The historic functional organization and placement of the Portland Company buildings in linear proximity to each other creates a visual character for the majority of the site that is unique for Portland in the way that the industrial buildings form private streets or alleys. This is similar to the character found in large textile mill complexes in Maine cities like Lewiston, Biddeford, and Sanford but not found elsewhere in Portland. The overhead pedestrian bridges spanning these private streets are also unique in Portland and contribute to the visual character of the site. Although the railroad tracks that once served many of these buildings have been removed or buried under pavement, the arrangement of the buildings retains a lineal character that resulted from that historic infrastructure serving the buildings. The placement of several buildings outside these rows of buildings also documents considerations for their historic uses. Both the Pattern Storage buildings and the Paint Shop were placed away from other buildings to reduce the risk of fire spreading to them or from them. This was important for the Pattern buildings because they contained very valuable wood patterns for all of the products made by the Portland Company and for the Paint Shop because of the flammable nature of oil paints. The only significant fire at the complex started in the previous Paint Shop and spread to other nearby wooden buildings, destroying several.

Also unique in Portland is the manner in which the Fore Street retaining wall forms the rear wall of the buildings along the northwest side of the alley, with the side walls of the buildings forming buttresses to help support the retaining wall. The brick barrel vaults of the Boiler House support the retaining wall above and allow the space to project under the Fore Street sidewalk.

To a large degree, the architectural significance of the Portland Company exists in the relationship of the buildings to each other within the complex. The proximity and orientation of the buildings to each other permitted related manufacturing processes to take place in a way that allowed for the efficient progression of stages in the production of the company's products. Certain buildings focused on the later stages of manufacturing for particular categories of product, such as the Erecting Shop, Car Shop or Boiler Shop, with the earlier stages of production for all categories of product undertaken in the Foundry and Machine Shop. Research and development, design/drafting, drawing storage, pattern making, pattern storage, and paint storage buildings also served all of the product categories collectively.



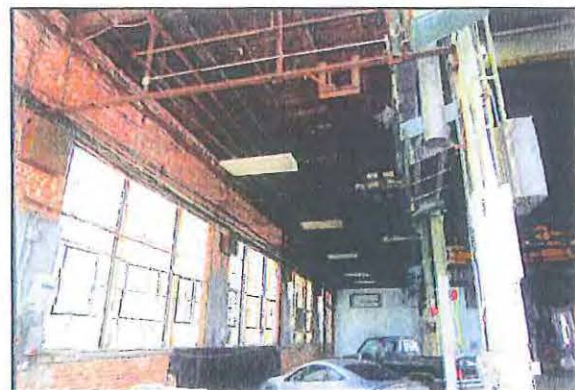
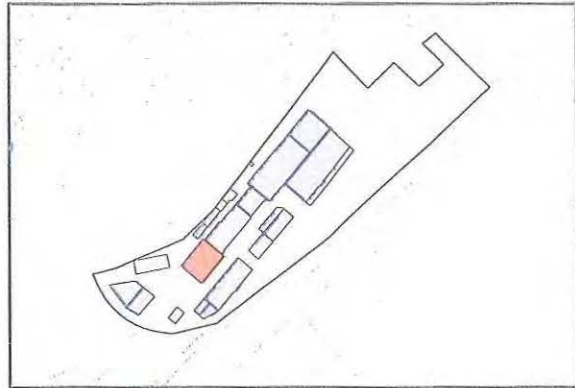
Section II:
Integrity of the Existing Portland Company Resources



Building 1: Erecting Shop

Construction Date: 1918

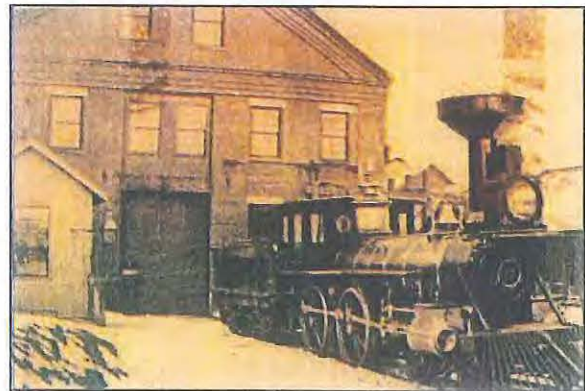
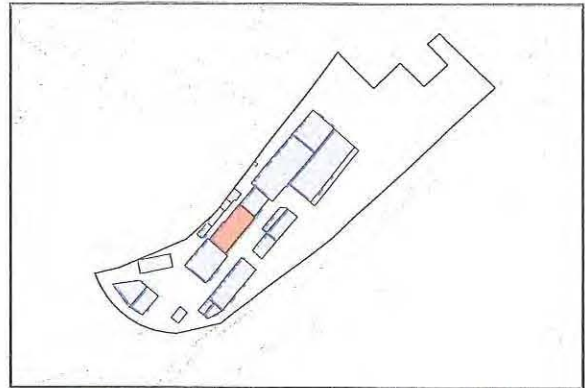
The Erecting Shop was built to replace an earlier wooden erecting shop, built between 1871 and 1880 on the same site. The Foundry, Machine Shop, and Erecting Shop were closely related in the production process, and were aligned so the steps of the work could flow from the Foundry, through the Machine Shop, and into the Erecting Shop, where a locomotive or other large piece of machinery could be assembled above railroad tracks that led from the building to the Grand Trunk rail yard. The brick wall construction relates it to earlier buildings on the site, but its steel truss roofing system, electric overhead traveling crane, clerestory, and large steel framed windows provided maximum utility with a large open floor space and considerable natural light for the assembly process. The building retains a very high degree of integrity to the time of its construction with some alterations to the south and east elevations. These involve increasing the size of the bay doors on the south elevation, likely during the period of significance; and infilling two windows on the east elevation with modern siding material. The remainder of original windows are intact, with some limited areas of deterioration to the frames.



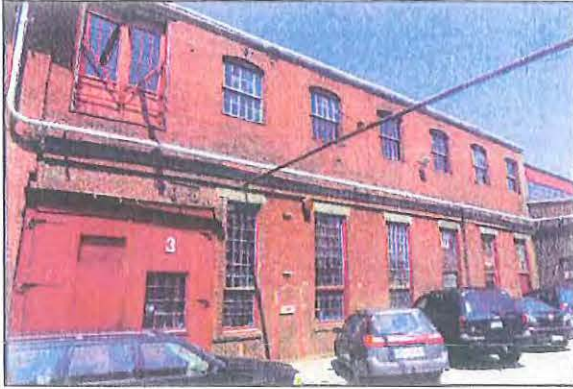


Building 2: Machine Shop
Construction Date: c. 1847

The Machine Shop is one of the first buildings constructed on the site and was one of the key buildings in the production process of locomotives. It is where castings made in the Foundry were finished and prepared for installation. Prior to the construction of the first Erecting Shop (c. 1880) locomotive assembly took place in the Machine Shop. The boilers for the earliest locomotives were also assembled here, before the Boiler Shop was built. Post-mounted cranes and carts were used to move heavy items within the shop, with smaller items moved to the second floor for machining. A truss system allowed the second floor to hang from the roof, leaving the first floor largely open. Some wooden posts have been added in the first floor, to meet modern code requirements for the second story to function as a public assembly space. The building retains a high degree of integrity to the time of its construction with early 20th century alterations to the roof and attic. The c. 1905 Frederick A. Thompson designed offices, drafting room, and electrical laboratory at the attic level are intact, including beadboard office partitions, drafting tables, desks drawing storage drawer units, and electrical equipment in the laboratory. The apparatus used to reflect sunlight from a skylight to develop blueprints remains in place below the roof. Historic plans show tables for 17 draftsmen; desks for 21 clerks and assistant clerks; bookkeeper; purchasing agent; and office boy; with cubicles for the assistant electrical engineer, assistant elevator engineer, assistant mechanical engineer, assistant manager, sales manager, superintendant, and manager; with a private office for the general

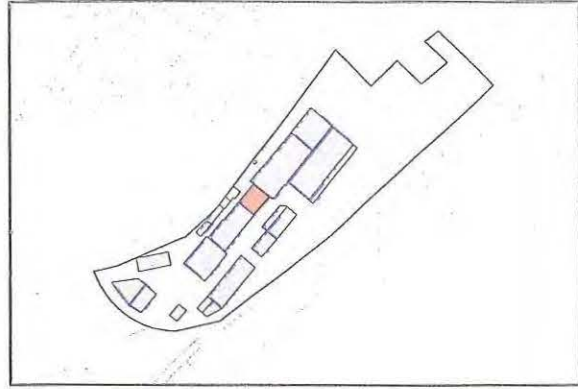


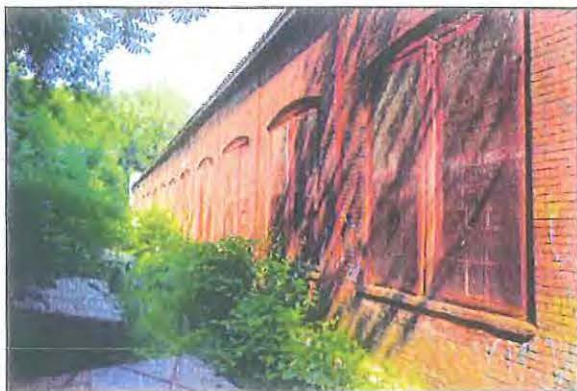
manager and three additional private offices. An upper attic level above the laboratory contains a walkway lined with storage bins for wooden casting patterns, still full of patterns. The original wood and wrought iron Queen Post Truss roof system remains in place with the second floor suspended from it. The use of iron rods for the Queen Posts in the trusses represents an advance in technology from the all-wood trusses common in New England in the 18th and early 19th centuries, as America's increased industrialization made the use of structural metals possible.



Building 3: Machine Shop
Construction Date: c. 1847

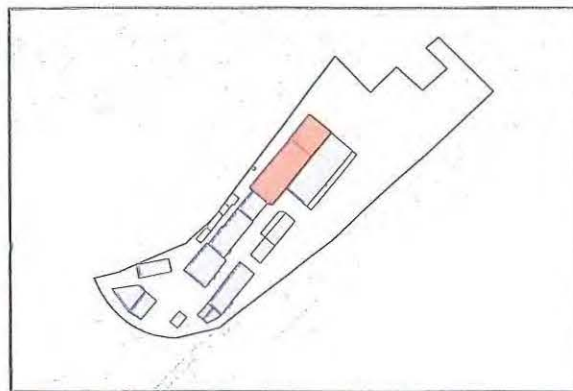
This section of the Machine Shop was built in 1847 as a one story blacksmith shop. When the second story was added, c. 1895, the original wood and wrought iron Queen Post Truss roof system was left in place and the floor hung from it with iron rods and double-strut trussed girders. The added wall height essentially creates full-length shed dormers on each side of the original roof and a double-pitched roof with the original gable peak remaining above the much shallower pitch of the shed dormers on either side. Because both ends of the building abut other buildings, this unusual roof form is not visible from the ground. A monitor, probably dating from the original construction, extends along the center portion of the ridge. The ingenious approach taken to expanding this building allowed a second story to be added while retaining the original roof truss structure and the open first floor it made possible. This section of the Machine Shop retains a very high degree of integrity to the period of its expansion into a two story building, c. 1895, while retaining nearly all of the materials from its original 1847 construction. Some wooden posts have been added in the first floor, to meet modern code requirements for the second story to function as a public assembly space. The second floor was the pattern shop, where wooden patterns were made for the iron castings made in the Foundry.





Building 4: Foundry and Acetylene House
Construction Date: 1895; 1904-09

The Foundry was the most important building in the production process, being the space where molten iron and steel were cast in sand molds to produce the parts for the various machines and engines made by the company. Using then cutting-edge technology, it was built in the late 19th century to replace the original 1847 foundry and additions on the same site. The 1896 foundry features a steel truss roof system and could be wider and taller than the earlier building, with a tall clerestory for lighting the center of the building and a modern electric overhead traveling crane to move cauldrons of molten metal and heavy castings. The building utilizes an unusual transitional construction system in its exterior walls. The riveted steel roof trusses were erected on posts formed of back-to-back U channel steel with spacers between them to allow the roof truss gusset plate to be riveted in place between the two U channels at the top. Once the roof system was erected, the spaces between the posts were filled with brick laid up in common bond and engaging with the posts by extending into the recess of the U channel. Above the tops of the posts, the brick wall encased and engaged the steel trusses to the eaves. It appears that once the brick was in place, the roof trusses were supported primarily by the brick walls, not by the steel posts. The Foundry building retains a high degree of integrity to the period of significance and stands largely as built in 1895 except for the northeast end, which was removed entirely when the building was extended in the mid-20th century. Much of the southeast elevation is now contained within the abutting modern metal building and its windows



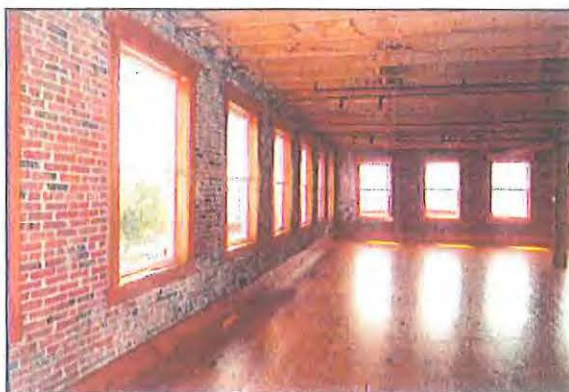
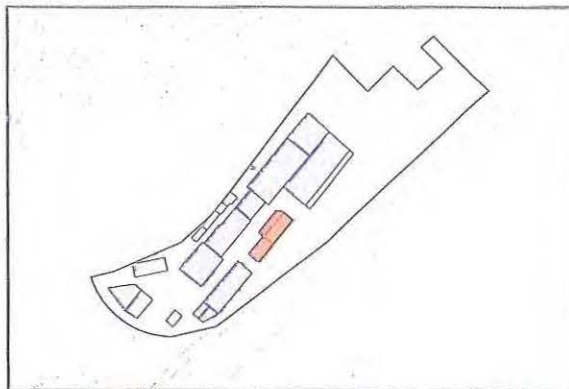
have been infilled. There is some infill construction along this side for offices and storage areas. The original exterior wall and roof system appear to be intact within the later building addition.

The Acetylene House, located on the terrace below the upper retaining wall to the west of the foundry, was a simple brick box, approximately eight feet square. Its roof has failed, and the masonry arch over the door has collapsed. Original drawings for the acetylene house show a shed roof.



Building 6: Blacksmith & Tank Shop
Construction Date: 1883; 1896-1904

As the plant expanded during the 19th century, additional blacksmith shops were constructed to serve different areas of production. Originally freestanding and serving both the machine shop and car shop, this blacksmith shop later served the attached tank shop, where the company produced tanks for various uses from industrial water tanks to municipal standpipes. This building replaced an earlier and wider blacksmith shop on the same site and was likely built reusing the brick and granite of the earlier shop. Its design and use of materials are more like the 1840s and '50s buildings on the site than the 1860s and '70s buildings that followed. It is unclear why the building was rebuilt, but its change in width increased the clearances between the blacksmith shop and the machine shop and foundry, which had additions made to their width during this period. This may have been the reason for rebuilding. The Blacksmith & Tank Shop retains a high degree of integrity to the period of significance. The former Tank Shop now contains the Maine Narrow Gauge Railroad Museum with exposed structural framing and brick walls. Original drawings for the building show it to be longer than it currently exists. A portion of it was likely demolished for the construction of the three story block between 1896 and 1904. This portion of the building contained the Chapman Electric Company, a subsidiary of the Portland Company run by the company's electrical engineer, William Chapman. The Portland Company's electric elevator production also occurred in this building, starting in the early 20th century. The three-story block retains integrity to the period of significance



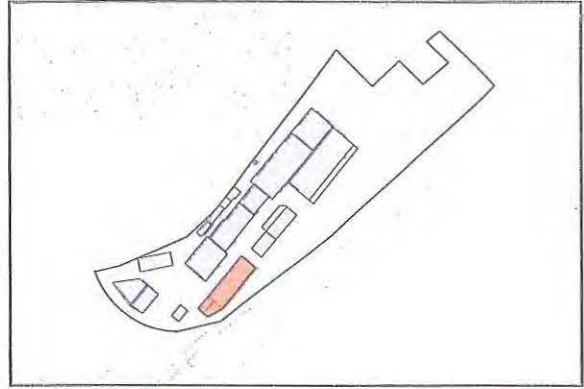
with some alterations to the interior spaces to create offices on the third floor and a meeting room on the second floor. The elevator tower, with historic machinery remains attached to the north side of the building. Many original windows in the three-story block have been replaced.



Building 7: Car Shop

Construction Date: c. 1873; 1904

The Portland Company was founded to manufacture railroad passenger and freight cars as well as locomotives and other equipment. The first wooden car shop was built south of the blacksmith shop around 1847-48. A second car shop was constructed between 1858 and 1864 just slightly to the southwest of the first car shop. Both buildings were destroyed by fire in 1873, and replaced by this brick building. Like the Pattern Storage Building and its additions from the same period, this building uses segmental brick arches over the windows in place of the granite lintels on the earlier buildings. The placement of this building was dictated by the need to have railroad tracks enter the building from the south end. Railroad cars of the period were largely of wood construction with cast and wrought iron fittings, hence the 1904 lumber storage addition to the building. Prior to the construction of the lumber sheds, the car shop had an open car shed adjacent to the original 50' x 21' painting and erecting area of the car shop (projecting from the south end). Like the Foundry/Machine Shop/Erecting Shop, the Car Shop was aligned with the Blacksmith Shop, allowing ironwork for the cars to be efficiently transported into the car shop. It is possible that the car frames and wheel sets were assembled in the blacksmith shop and then rolled over to the Car Shop for construction of the superstructure and finishing. After the Portland Company ceased production of railroad cars, around 1900, the Car Shop was used as a showroom and repair shop for automobiles produced by the Knox Automobile Co. and others and sold by the Portland Company. Subsequently, the Car Shop was used for steel

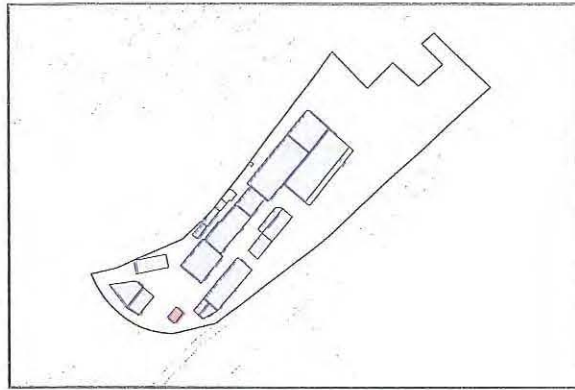


fabrication and had a related sandblasting room built into it. The Car Shop retains a high level of integrity with some alterations to openings to create additional garage bay entry doors. Some easily reversible modern finishes have been installed on the interior. The Lumber Shed addition at the southeast corner is largely intact from construction, with exposed wood framing.



Building 10: Paint Shop
Construction Date: c. 1873

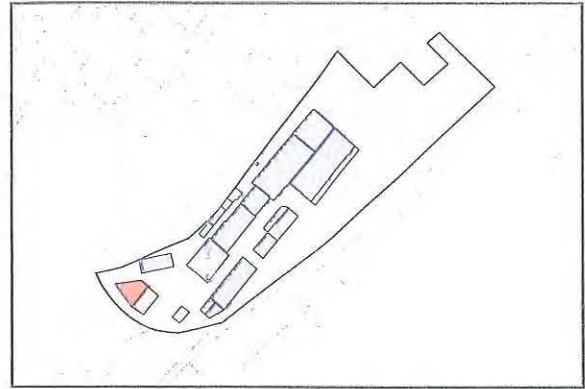
An earlier wood paint shop (likely one of the earlier car shops, converted for use) was destroyed by fire in 1873, taking the car shop and several other buildings with it. It was rebuilt in brick, probably to be less flammable, and was originally located at some distance from other buildings, likely to limit the possibility of fire spreading. Fires in paint shops were quite common, given the highly flammable nature of the paints and solvents used. At the other end of Portland, the railroad shops at Thompson's Point were destroyed in 1903 by a fire that started in the paint shop there. The Paint Shop retains integrity as a simple brick structure with a wood-framed roof. In 1904, the large lumber shed connected to the east elevation of the Paint Shop and extended down to connect to the Car Shop. The portion of the lumber shed connecting to the Paint Shop has since been demolished. The south wall has been partially reconstructed and the interior features many modern surfaces to create various ventilated painting areas. Original wood structural members are visible throughout the building, though most of the original window openings have been infilled with brick.





Building 11: Pattern Storehouse
Construction Date: 1885; 1895

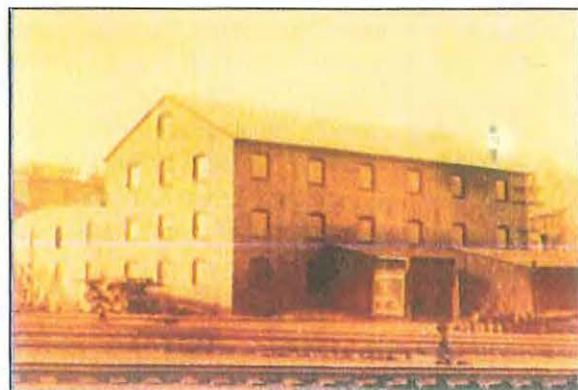
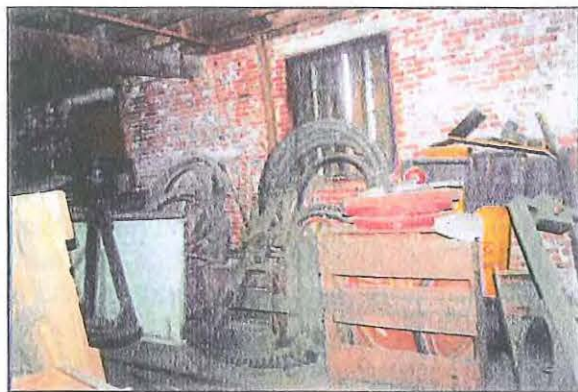
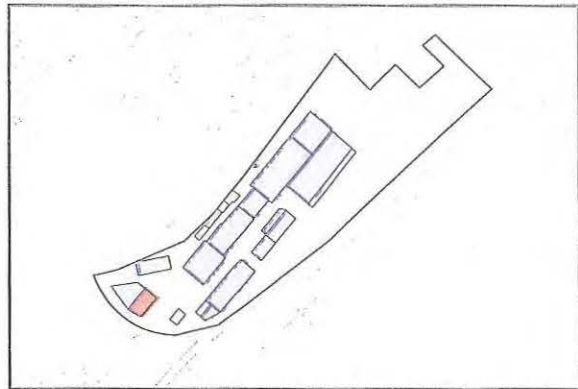
The design and production of the hand-made wood patterns that were used for casting iron and steel in sand molds was central to the functioning of the Portland Company, and represented a large capital investment for the company. Patterns were reused over long periods of time and their preservation was of critical importance. Documentation indicates that patterns were stored in several locations, including the attic of the Machine Shop, for the first several decades of operation. In 1885, a separate Pattern Storehouse was constructed for their storage. It is not coincidental that it was located at some distance from the other buildings and was built of brick with a slate roof. It was also placed up-wind from the prevailing breezes. This provided additional protection for the company's large investment in flammable wooden patterns if other buildings in the complex caught fire. The Pattern Storehouse retains a high level of integrity to the period of significance. The interior still has an exposed wood structural system and brick walls. The first floor has been fitted for a retail space, though original materials are still exposed. The second floor has a modern drop ceiling and carpet installed over the originally exposed elements.





Building 12: Pattern Storehouse Addition
Construction Date: 1895

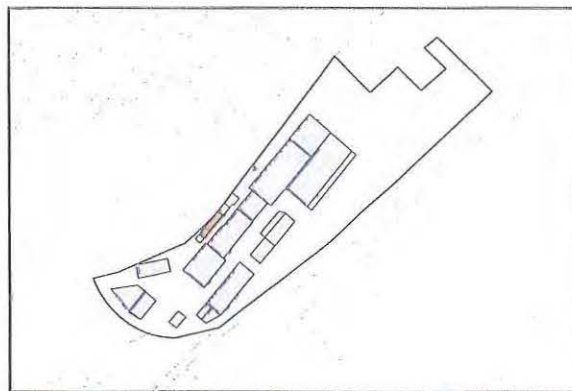
The Pattern Storehouse Addition was built immediately adjacent to the original storehouse, built a decade earlier, using the same materials and technology. From an early date, this building has had "PORTLAND CO." painted across its south elevation, making the complex immediately recognizable from Fore Street and the waterfront. The Pattern Storehouse Addition has a high level of integrity to the period of significance. The building has had no alterations to the interior and still contains many patterns used by the Portland Company.





Building 14: Drafting Room and Storehouse
Construction Date: 1858-64

The Portland Company constructed a variety of smaller service structures along the Fore Street retaining wall during the 19th century, and made alterations to many of them to adapt them to differing uses into the 20th century. The masonry side walls of all the spaces along the north side of the alley, including the Boiler House and Brass Foundry, serve as buttresses for the stone retaining wall along Fore Street. The spaces were created by roofing over the recesses between the buttresses and building a wall along the alley. The placement of the Drafting Room and Storehouse, separate from the manufacturing buildings and adjacent to the original office building, is both functionally and symbolically relevant. As the company grew, the drafting department outgrew the space, and was moved to the new offices on the expanded third floor of the Machine Shop around 1905. The old drafting room was then used for drawing storage, with a new vault for drawings constructed above it (See Building 24 – Vault Storage). The Drafting Room and Storehouse retain integrity and has had little alterations over their history. The south portion of the original Drafting Room became part of the Vault upon its construction in the beginning of the 20th century. Numerous labeled wooden bins that were used for storage of parts during the Portland Company's operation remain in several of the spaces.

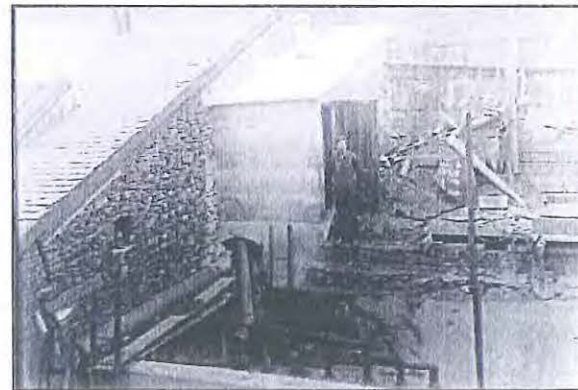
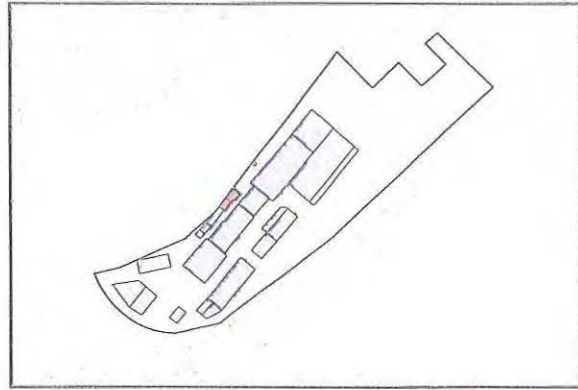




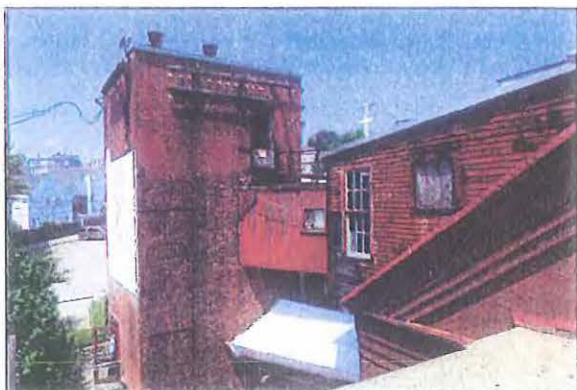
Buildings 15 & 16: Boiler House and Brass Foundry

Construction Date: 1858-64; 1864-71

Based on maps and plans of the complex, it appears the existing Boiler House was constructed between 1858 and 1864; the Brass Foundry was constructed between 1864 and 1871. The 1858 plan of the complex (in the collection of the Maine Historical Society) shows a brick building in this general location, though it is not likely either of the extant buildings. The 1886 Sanborn Map of the Portland Company does not show another Boiler House as suggesting in the Tremont Report. There is a Boiler Shop, where boilers were fabricated, in the northeast quadrant of the complex which may have led to the confusion. The side walls of these buildings, and of the small storage spaces to their west, serve as buttresses for the granite retaining wall the supports Fore Street as it climbs Munjoy Hill adjacent to the complex. The conversion of these voids between the structural buttresses into functional spaces for the complex is an example of ingenuity and determination to utilize every available space on the increasingly crowded site with Fore Street and Munjoy Hill containing one side of the property and the Grand Trunk Railroad properties containing the others. The Boiler House has suffered the loss of a majority of its façade, though remnants illustrate key architectural features that were included in the original construction. The interior, however, retains a remarkable pair of tall brick barrel vaults on stone walls that extend the space under the Fore Street esplanade and sidewalk. The Brass Foundry retains a high degree of integrity on the exterior. The interiors of both buildings appear to retain integrity. The Boiler House still contains the boilers



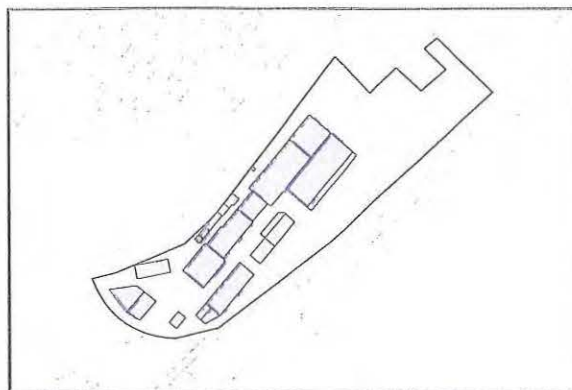
and machinery used by the Portland Company. At the north side of the Brass Foundry, exposed piping and valves remain from a small shed once attached to the Brass Foundry.



Building 24: Vault

Construction Date: c. 1905

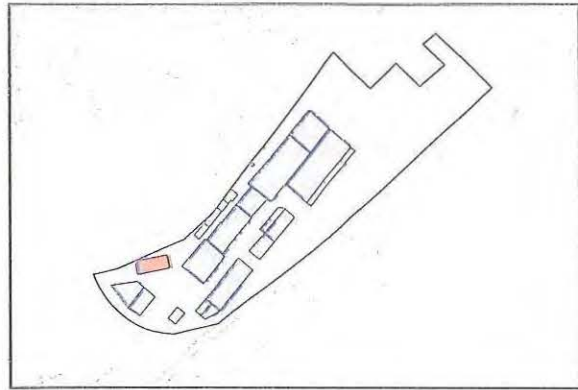
As noted with Building 14 – Drafting Room/Storehouse, the Vault was added on top of one end of the original drafting room when the new drafting room was constructed c. 1905. It was connected to that space on the top floor of the Machine Shop by an overhead pedestrian bridge. With brick walls and vaulted iron beam and concrete floors, the space was intended to protect paper drawings in case of fire. An additional story was added at some point by 1924 to contain the electrical transformers for the plant. The Vault retains a high degree of integrity as it has undergone very few changes over time. The top floor continues to be used for electrical transformers. The c. 1905 vault containing Portland Company drawings (assumed) is not accessible due to safety concerns with the bridge that supplies access from the office and drafting room in the attic of the Machine Shop.





Building 30: Office
Construction Date: 1950

Like most of the earlier buildings at the Portland Company, the 1950 Office Building was representative of architecture and technology of the time of its construction. It was located just to the southwest of the site of the original wood office building, retaining access to the offices from Fore Street without entering the manufacturing complex itself. This building was built after the company had ceased its transportation related work and it is not associated with that area of significance. At an earlier date, sheds and stables for the company were located on the site. It is a modern building, clad in a combination of wood siding and brick. The interiors contain typical features of the period such as pressed-paper acoustical tile ceilings, fluorescent lighting, and aluminum Venetian blinds on the windows. A (non-functional) period office kitchen with built-in dishwasher, range, and refrigerator remains in its original location. The Office Building retains a relatively high degree of integrity. Relatively minor alterations to the interior of the space do not detract from the minimal detail of the mid-century architectural style, much of which still exists. Although built more recently than the other contributing buildings, the Office Building helps to maintain a sense of enclosure for the entrance yard that had previously been provided by the sheds, stables, and fencing that occupied this site. This sense of enclosure is important to the integrity of the entrance yard, a primary feature of the site.

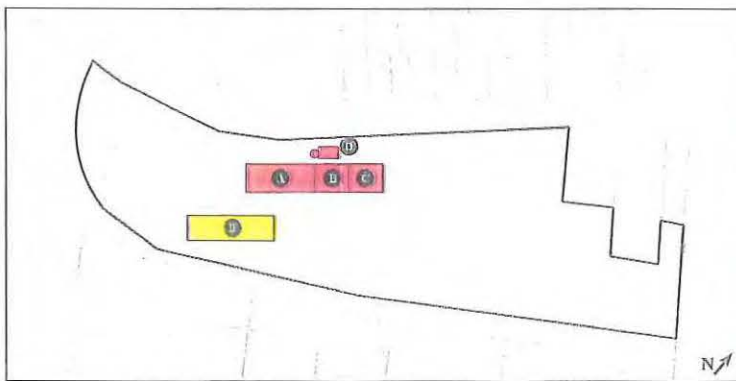


The Portland Company site retains a high level of historic integrity. The property has been the site of the company since its founding in 1846. Located north of the former Grand Trunk Railroad site, the Portland Company retains its feeling as a complex significant for its association with industrial manufacturing. The site features parallel rows of buildings aligned with the former Grand Trunk Railroad tracks with interiors of large, open spaces for heavy manufacturing. The Portland Company was largely built on filled land on the former site of Broad Cove with a large two-tiered retaining wall along Fore Street. Across the street is a residential neighborhood where many of the Portland Company workers lived historically. To the south of the site, modern commercial buildings are located on the former Grand Trunk Railroad yard site on the east side of Fore Street. Within the Portland Company complex, the proximity of the buildings to each other documents how each building played an important role in the production process. Catwalks connect buildings over the private streets of the complex and the historic function of individual buildings relates to that of adjacent buildings.

The individual buildings of the Portland Company generally retain a high level of integrity as they illustrate typical design and construction technologies of industrial buildings between the mid-19th century and early-20th century. The Portland Company complex as a whole also has a high degree of integrity through the retention of essential physical features related to its significance in the areas of industry, transportation, and architecture. Over the history of the Portland Company site, some important buildings were lost to fire (particularly a large conflagration in 1873 that destroyed several buildings at the southeast corner of the property). Other buildings were replaced with new over time, as is common in industrial complexes. The majority of these changes occurred within the period of significance. Of the three original brick buildings built in 1847, two remain. All of the other buildings except two predate 1920. The most recent construction appears to be the addition at the north end of the foundry and the replacement of the boiler shop, both of which occurred between 1951 and 1980. These two buildings were later connected with infill construction. Small secondary buildings were located around the property and had different uses during the history of the complex. Most of these wooden buildings are no longer present, leaving the primary industrial structures to illustrate the manufacturing industry of locomotives, railroad cars, marine, boilers, etc.

The following maps and models illustrate the evolution of the site from 1847 until 2014.

See Appendix E for listing of Portland Company's contemporaries and their current significance, configuration and integrity.



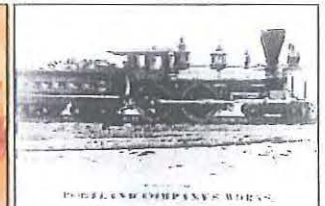
**The Portland Company
1847**

	Masonry
	Wood
	Metal
	Extant Masonry
	Extant Wood
	Extant Metal

A: Machine Shop
B: Smith Shop
C: Foundry
D: Boiler House
E: Car Shop



Boston & Maine parlor car. Courtesy of the Maine Historical Society.



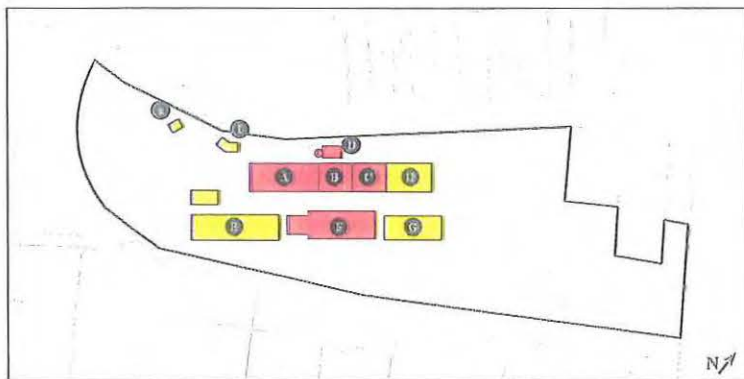
Locomotive from the Portland Company. Courtesy of the Maine Historical Society.



1851 drawing of a locomotive. Courtesy of the Maine Historical Society.



Locomotive crane. Courtesy of the Maine Historical Society.



**The Portland Company
1858**

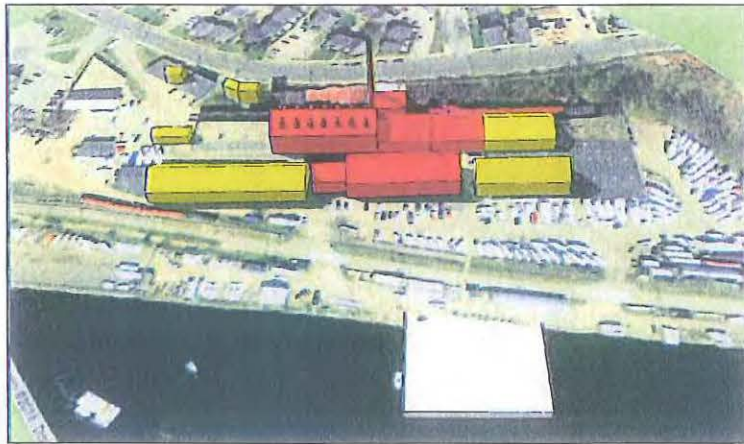
	Masonry
	Wood
	Metal
	Extant Masonry
	Extant Wood
	Extant Metal

PRIMARY:

- A: Machine Shop
- B: Smith Shop
- C: Foundry
- D: Boiler House
- E: Car Shop
- F: Blacksmith Shop
- G: Boiler Shop
- H: Foundry Expansion
- I: Office Building

SECONDARY:

- a: Stable



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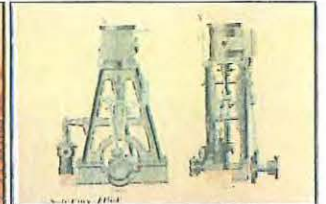
Colon railroad engine. Courtesy of the Maine Historical Society.



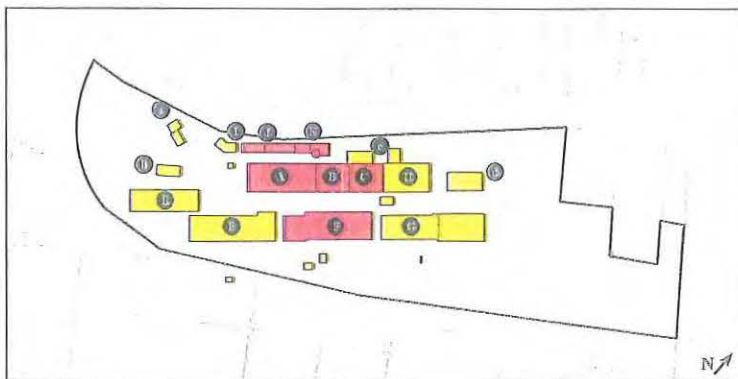
"Blocks" drawing from the Portland Company. Courtesy of the Maine Historical Society.



Portland & Ogdensburg locomotive. Courtesy of the Maine Historical Society.



Propeller Engines. Courtesy of the Maine Historical Society.



**The Portland Company
1871**

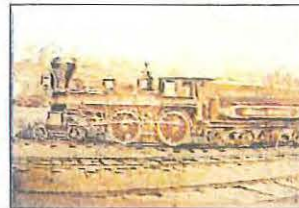
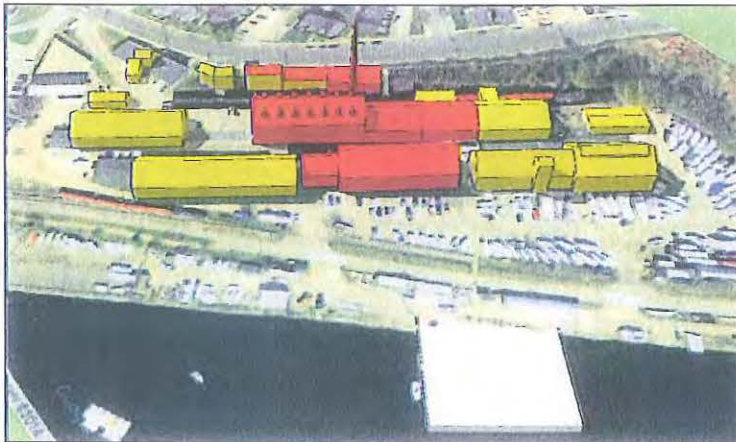
	Masonry
	Wood
	Metal
	Extant Masonry
	Extant Wood
	Extant Metal

PRIMARY:

- A: Machine Shop
- B: Smith Shop
- C: Foundry
- E: Car Shop
- F: Blacksmith Shop
- G: Boiler Shop
- H: Foundry Expansion
- I: Office Building
- J: Drafting Room & Storehouse
- K: Boiler House & Brass Foundry
- L: Car Shop

SECONDARY:

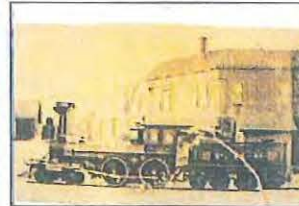
- a: Stable
- b: Babbitt Shop
- c: Air Furnace & Core Shop
- d: Scratch House



Portland Company locomotive. Courtesy of the Maine Historical Society.



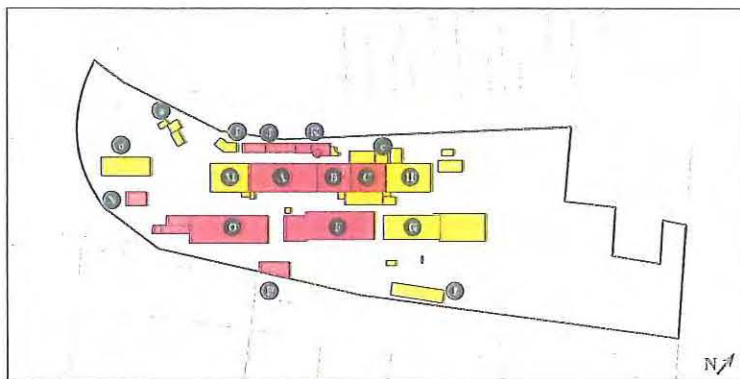
Locomotive south of the Machine Shop. Courtesy of the Maine Historical Society.



Locomotive with office building at rear. Courtesy of the Maine Historical Society.



View of the Portland Company yard from the north. Courtesy of the Maine Historical Society.



The Portland Company 1880	
	Masonry
	Wood
	Metal
	Extant Masonry
	Extant Wood
	Extant Metal

PRIMARY:

A: Machine Shop
B: Smith Shop
C: Foundry
F: Blacksmith Shop
G: Boiler Shop
H: Foundry Expansion
I: Office Building
J: Drafting Room & Storehouse
K: Boiler House & Brass Foundry
M: Erecting Shop
N: Paint Shop
O: Car Shop
P: Tin & Babbitt Shop

SECONDARY:

a: Stable
c: Air Furnace, Foundry
Expansion & Core Shop
d: Scratch House
e: Storehouse
f: Sand Shed



View of the Portland Company yard. Courtesy of the Maine Historical Society.



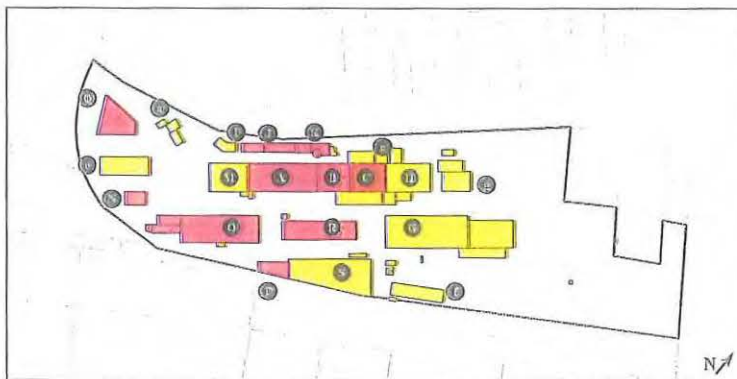
Portland Company works. Courtesy of the Maine Historical Society.



Interior of the machine shop. Courtesy of the Maine Historical Society.



Interior of the boiler shop. Courtesy of the Maine Historical Society.



The Portland Company
1890

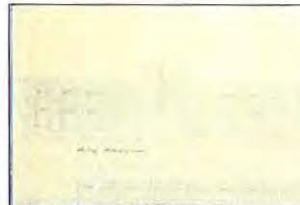
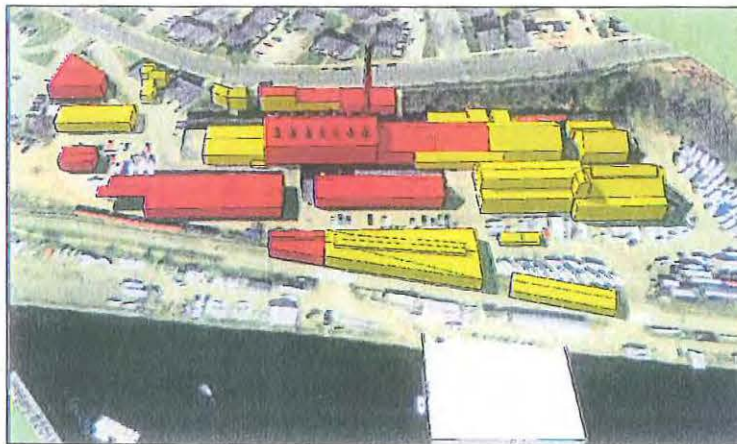
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	Wood
	Metal
	Extant Masonry
	Extant Wood
	Extant Metal

PRIMARY:

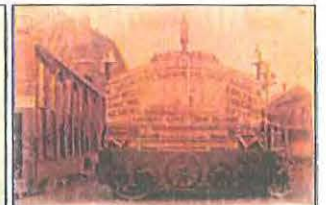
A: Machine Shop
B: Smith Shop
C: Foundry
F: Blacksmith Shop
G: Boiler Shop
H: Foundry Expansion
I: Office Building
J: Drafting Room & Storehouse
K: Boiler House & Brass Foundry
M: Erecting Shop
N: Paint Shop
O: Car Shop
P: Tin & Babbitt Shop
Q: Pattern Storehouse
R: Blacksmith & Tank Shop
S: Blacksmith & Tank Shop

SECONDARY:

a: Stable
c: Air Furnace, Foundry
Expansion & Core Shop
d: Scratch House
e: Storehouse
f: Sand Shed
g: Wheel Foundry



Drawing for new blacksmith and tin shop. Courtesy of the Maine Historical Society.



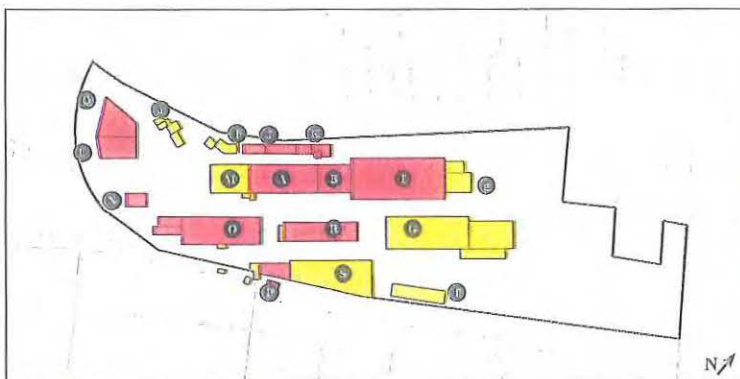
View from the Portland Company erecting shop. Courtesy of the Maine Historical Society.



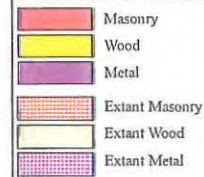
Various Portland Company buildings in section. Courtesy of the Maine Historical Society.



North end of the Portland Company yard. Courtesy of the Maine Historical Society.



The Portland Company
1896



PRIMARY:

- A: Machine Shop
- B: Smith Shop
- F: Blacksmith Shop
- G: Boiler Shop
- I: Office Building
- J: Drafting Room & Storehouse
- K: Boiler House & Brass Foundry
- M: Erecting Shop
- N: Paint Shop
- O: Car Shop
- P: Tin & Babbitt Shop
- Q: Pattern Storehouse
- R: Blacksmith & Tank Shop
- S: Blacksmith & Tank Shop
- T: Foundry
- U: Pattern Storehouse Addition

SECONDARY:

- a: Stable
- d: Scratch House
- f: Sand Shed
- g: Wheel Foundry

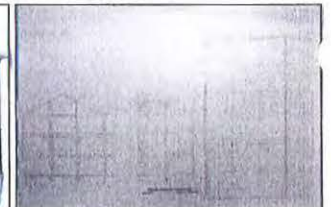


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Courtesy of the Maine Historical Society.



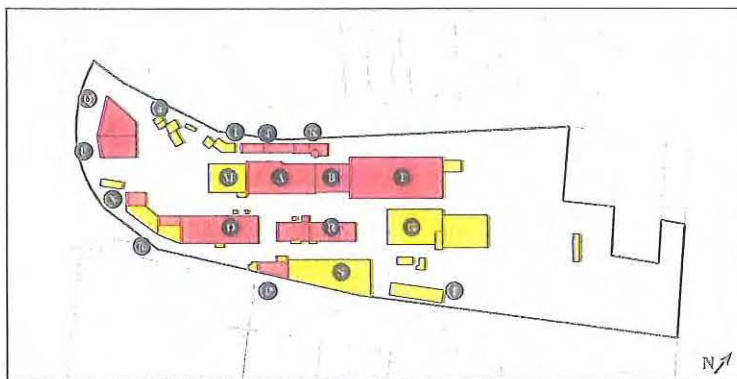
Drawings for the Pattern Storehouse addition.
Courtesy of the Maine Historical Society.



View of the Portland Company entry yard. Cour-
tesy of the Maine Historical Society.



View of the Portland Company works. Courtesy
of the Maine Historical Society.



The Portland Company 1909

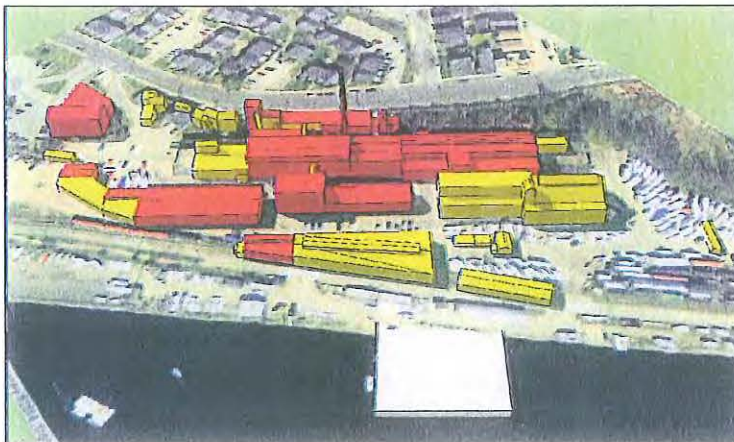
	Masonry
	Wood
	Metal
	Extant Masonry
	Extant Wood
	Extant Metal

PRIMARY:

A: Machine Shop
B: Smith Shop
F: Blacksmith Shop
G: Boiler Shop
I: Office Building
J: Drafting Room & Storehouse
K: Boiler House & Brass Foundry
M: Erecting Shop
N: Paint Shop
O: Car Shop
P: Tin & Babbitt Shop
Q: Pattern Storehouse
R: Blacksmith & Tank Shop
S: Blacksmith & Tank Shop
T: Foundry
U: Pattern Storehouse Addition

SECONDARY:

a: Stable
d: Scratch House
f: Sand Shed
h: Lumber Sheds



Interior view on the third floor of the machine shop. Courtesy of the Maine Historical Society.



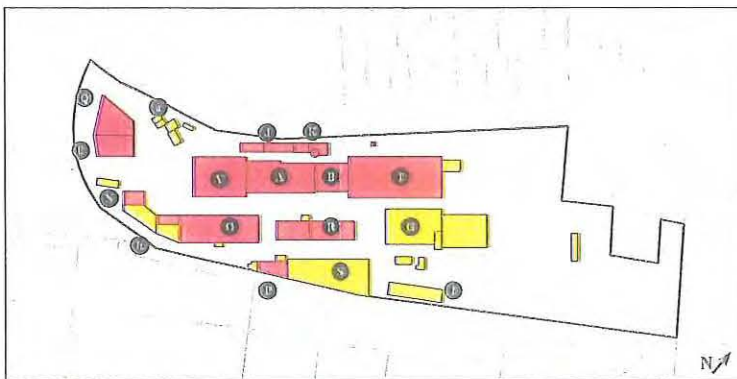
Knox automobile at the Portland Company. Courtesy of the Maine Historical Society.



Large boiler outside the tank shop. Courtesy of the Maine Historical Society.



Knox automobile at the Portland Company. Courtesy of the Maine Historical Society.



**The Portland Company
1918**

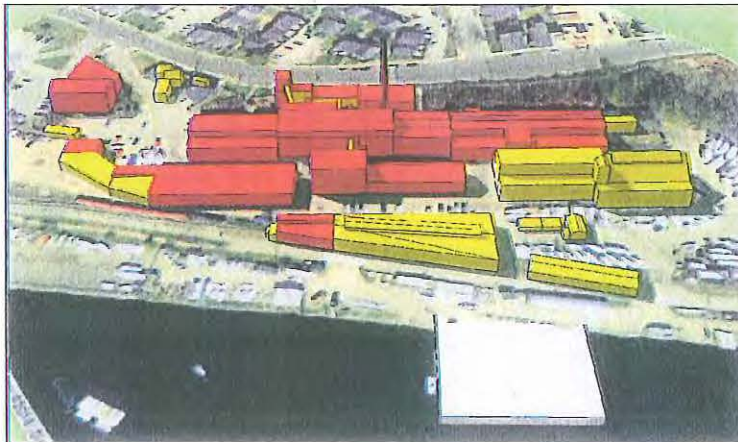
	Masonry
	Wood
	Metal
	Extant Masonry
	Extant Wood
	Extant Metal

PRIMARY:

A: Machine Shop
B: Smith Shop
F: Blacksmith Shop
G: Boiler Shop
J: Drafting Room & Storehouse
K: Boiler House & Brass Foundry
N: Paint Shop
O: Car Shop
P: Tin & Babbitt Shop
Q: Pattern Storehouse
R: Blacksmith & Tank Shop
S: Blacksmith & Tank Shop
T: Foundry
U: Pattern Storehouse Addition
V: Erecting Shop

SECONDARY:

a: Stable
f: Sand Shed
h: Lumber Sheds



Aerial of the Portland Company. Courtesy of the Maine Historical Society.



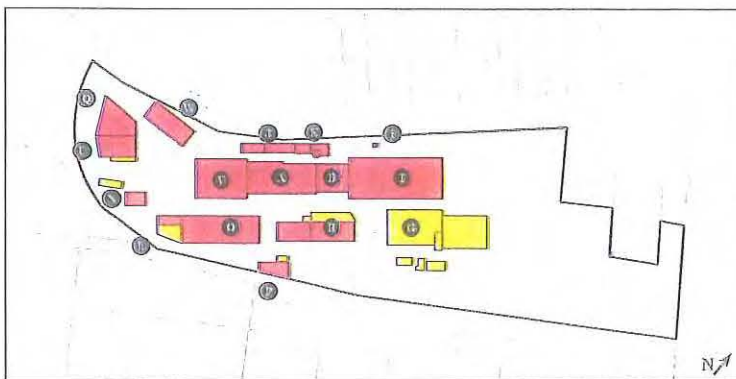
Aerial of the Portland Company. Courtesy of the Maine Historical Society.



Large debarking drums. Courtesy of the Maine Historical Society.



Courtesy of the Maine Historical Society.



The Portland Company
1951

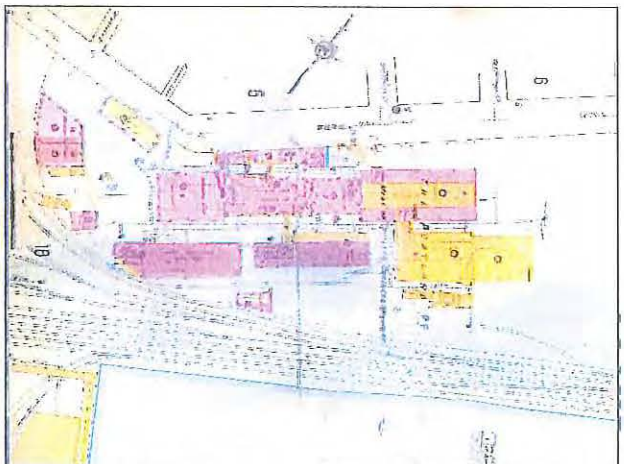
	Masonry
	Wood
	Metal
	Extant Masonry
	Extant Wood
	Extant Metal

PRIMARY:

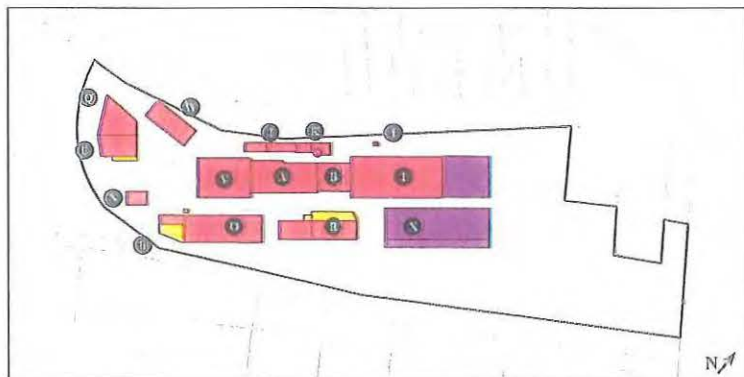
- A: Machine Shop
- B: Smith Shop
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- J: Drafting Room & Storehouse
- K: Boiler House & Brass Foundry
- N: Paint Shop
- O: Car Shop
- P: Tin & Babbitt Shop
- Q: Pattern Storehouse
- R: Blacksmith & Tank Shop
- T: Foundry
- U: Pattern Storehouse Addition
- V: Erecting Shop
- W: Office Building

SECONDARY:

- h: Lumber Sheds
- i: Acetylene House



1951 Sanborn Map for the Portland Company.



The Portland Company
1986

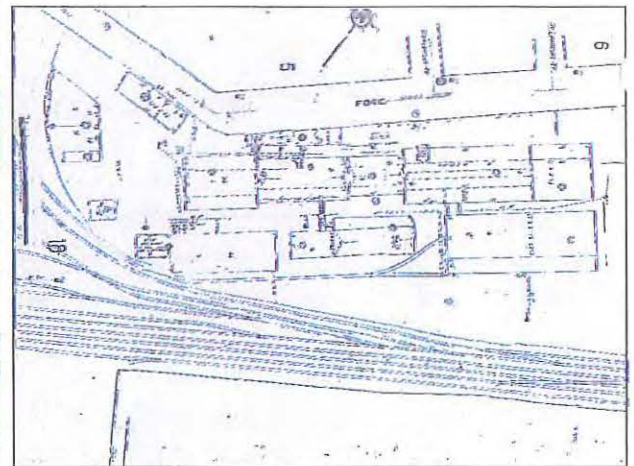
 Masonry
 Wood
 Metal
 Extant Masonry
 Extant Wood
 Extant Metal

PRIMARY:	SECONDARY:
A: Machine Shop	h: Lumber Sheds
B: Smith Shop	i: Acetylene House
J: Drafting Room & Storehouse	
K: Boiler House & Brass Foundry	
N: Paint Shop	
O: Car Shop	
Q: Pattern Storehouse	
R: Blacksmith & Tank Shop	
T: Foundry	
U: Pattern Storehouse Addition	
V: Erecting Shop	
W: Office Building	
X: Modern Construction	

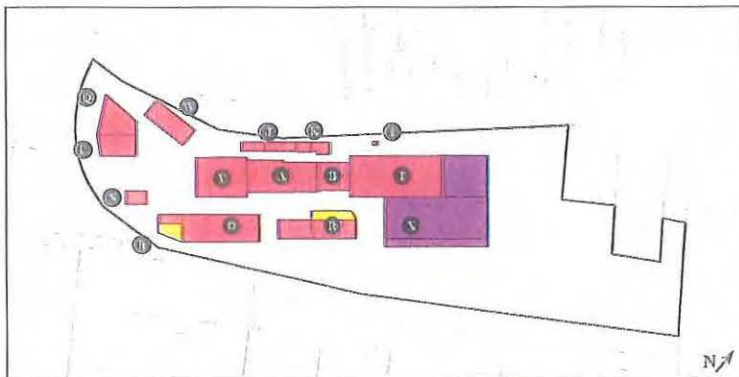


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Historic Significance and Integrity



1986 Sanborn Map for the Portland Company.



**The Portland Company
2014**

 Masonry
 Wood
 Metal
 Extant Masonry
 Extant Wood
 Extant Metal

PRIMARY:

A: Machine Shop
B: Smith Shop
J: Drafting Room & Storehouse
K: Boiler House & Brass Foundry
N: Paint Shop
O: Car Shop
Q: Pattern Storehouse
R: Blacksmith & Tank Shop
T: Foundry
U: Pattern Storehouse Addition
V: Erecting Shop
W: Office Building
X: Modern Construction

SECONDARY:

h: Lumber Sheds
i: Acetylene House



Current view north of the Portland Company.



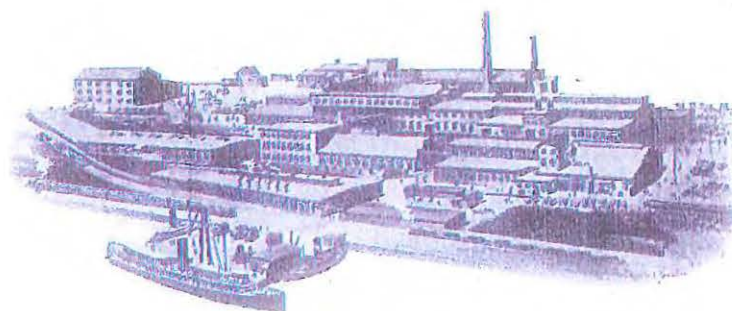
View north in the alley at the west end of the complex.



View east between the car shop and electric company building.



View north between the machine shop and blacksmith and tank shops.



Section III:
Appendices

APPENDIX A: HISTORY OF THE ESTABLISHMENT OF THE PORTLAND COMPANY

The Portland Company was established in conjunction with construction of the Atlantic & St. Lawrence Railroad which was built to connect Portland to Montreal. John A. Poor, the individual most responsible for Portland's successful bid over Boston to become Montreal's winter port via rail, was a Director of the Atlantic & St. Lawrence Railroad and became the first President of the Portland Company.¹ Other Atlantic & St. Lawrence Directors were also stockholders in the Portland Company, including Portland's wealthiest individual John Bundy Brown, who would become President of the company in 1864; Congressman and later Senator and U. S. Secretary of the Treasury William P. Fessenden; and Captain George Turner, who was given a seat on the railroad's Board between the regular annual Director's elections shortly after selling property to the Portland Company for their works. In October 1846, the Directors of the Atlantic & St. Lawrence Railroad contracted with established Philadelphia locomotive builder Septimus Norris to produce locomotives, cars, wheels, rail, and other necessary castings for the construction and operation of the line with the stipulation that these be manufactured in Portland. Septimus Norris was one of eight brothers who were pioneers in the development and fabrication of steam locomotives in the U. S. No facilities existed in Portland to undertake this contract and Norris partnered with several prominent Portland residents, including John A. Poor, as the "Portland Company" in 1846, to undertake this work. The partners appear to have purchased a charter that had been granted by the Maine legislature for the Portland Iron Manufacturing Company in 1845, five days after the charter for the Atlantic & St. Lawrence Railroad was granted. In August 1846, the legislature approved an act changing the name of the corporation to the Portland Company and increasing the allowed capital of the company from fifty-thousand dollars to two-hundred-and-fifty thousand dollars. The act specified that the Portland Company would manufacture locomotive engines, railroad cars, machinery and implements of all kinds, which had not been mentioned in the original charter.²

The first meeting of the Directors of the Portland Company was held on November 11, 1846, at the Exchange Street office of Attorney John A. Poor. John Fox was chosen chairman, and A. W. H. Clapp, Secretary. Other Directors present included Septimus Norris, James C. Churchill, and George Warren. John A. Poor was elected President, Woodbury Storer elected Treasurer, Septimus Norris was elected Chief Engineer, and Horace Felton Superintendent. Horace Felton was an experienced superintendent from the Norris locomotive works in Philadelphia. All of the directors except Norris and Felton were Portland residents. At this first meeting, the Chief Engineer and Superintendent were requested to report as soon "as may be" what buildings would be required and also engines and tools for the company. Norris submitted a list of tools "to be purchased of Norris & Brothers Locomotive Builders, Philadelphia", totaling \$13,500 which were "required to commence our business." These were part of a longer list included all tools, machines, and equipment needed to set up fully operational shops, with a total cost of \$46,955. Additionally, Norris submitted a list of ten men to fill the positions of Foreman, Draftsman, Foreman Finisher, Foreman Foundry, Foreman Pattern Shop, Clerk, Time Keeper, Foreman Boiler Shop, Foreman Putting Shop, and Foreman Smith. All these men, "who understand fully the whole detail of this particular branch of mechanics," apparently having worked at the Norris shops in PA. Also at this meeting, Directors Fox, Warren, Churchill, and Clapp were appointed to a committee to "negotiate with Capt. George Turner and other individuals in relation to a site for the necessary works of the Company." Turner owned land, mud flats, and a wharf along Fore Street at the base of Munjoy Hill. Later the same day, the committee reported that Capt. Turner wanted \$8,500 for his property.³

Five days later the committee had a verbal agreement with Turner to sell a portion of his land below Fore Street for \$4,750 with his consent to move the line of Fore Street and place water reservoirs for the works

1 Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor*, 1890

2 Records of the Portland Company and records of the Atlantic & St. Lawrence Railroad, Maine Historical Society.

3 Records of the Portland Company, Maine Historical Society.

on land owned by Turner across the street. The Board approved the agreement and Turner signed it within several days. On the same day, the company President was requested to "make application to the City Government for leave to erect stationary engines and whatever else may be necessarily connected with the Company Works and requiring such licenses," and Directors Fox, Churchill, and Clapp to, "be a Committee on that part of this Board to confer with the President and Directors of the Atlantic & St. Lawrence Railroad Company on the subject of the location of the works of the Portland Company, with power to negotiate with said Railroad Company, or any committee thereof, touching their right of way, in front of or upon the land of the Portland Company: and all questions that may arise requiring the mutual and concurring action of this Board and said Rail Road Company, prior to the erection of the works of this Company, with a view to such mutual and reciprocal arrangements as may be found advantageous to both parties." In 1846, the legislature had granted the railroad the right to claim by eminent domain, "so much of the lands, flats, and other real estate ... lying within the City of Portland, and adjoining the navigable waters of Portland harbor," (essentially within the area bounded by India Street, Fore Street to the point where the street is closest to the harbor, then southeast to the navigation channel of the Fore River and back to India Street) as required for a railroad terminus at Portland including a depot, wharves, docks, etc. The Turner property purchased by the Portland Company was a short distance east of the railroad's boundary with a lot retained by Turner between them. The fact that the railroad's eminent domain boundaries did not include the Portland Company property when established by the legislature suggests that space for an adjoining locomotive manufacturer may have been part of the railroad's plan from the outset. Much of the "property" of both companies was comprised of the mud flats and waters of Broad Cove. The Portland Company directors immediately undertook to plan and contract for a stone sea wall, filling, and grading their site to create sufficient level land for their works.⁴

By late December 1846, less than six weeks after the first meeting of the Board of Directors, tensions had appeared between the Portland Directors and Septimus Norris, brought to a head on December 21, when the Board voted not to pay an invoice for \$138 drawn in the name of President Poor by Norris for drawings for buildings, locomotives, and cars because Norris had no authorization to do so and because Norris had failed to pay an assessment of \$5.00 per share on the 1000 shares of company stock he controlled. Within a short time, the shares had been transferred back to the corporation and Norris was fired as Chief Engineer. There is no documentation that the company purchased the recommended tools and machinery from Norris Locomotive Works of Philadelphia before the ouster of Septimus Norris. Eventually, Norris would settle with the company, receiving \$400 to renounce any claims on the company while allowing them the non-exclusive use of all the patents he controlled for the manufacture of railroad equipment, which he had previously assigned to the company. Horace Felton was also fired briefly but apparently determined he had a better future with the Portland Company than Norris Locomotive Works. Shortly after letting him go, the Board appointed him General Superintendent and he was primarily responsible for making the works operational during the following year and a half.⁵

A seriously complicating factor in the removal of Septimus Norris was his contract with the Atlantic & St. Lawrence Railroad to produce locomotives and other equipment for that company. Norris attempted to retain the contract, offering to lease or buy property from the Portland Company on which to erect shops, but ultimately the contract was canceled by the railroad and the work assigned to the Portland Company. Negotiating the complex legal and practical issues involved with the Norris contract appears to have been helped by John A. Poor's presence on both Boards. It is clear that the Directors of the railroad were determined to have a manufacturing plant for locomotives and other railroad equipment in Portland and it isn't surprising that they worked to insure it would happen under local control once Norris proved unable to fulfil his obligations as a stockholder in the Portland Company. Further close cooperation between the companies was required in the building of the shops and establishment of a rail connection to them, as well as construction of a wharf for the Portland Company on the harbor side of the railroad's trestle from Fish

4 Records of the Portland Company and records of the Atlantic & St. Lawrence Railroad, Maine Historical Society.

5 Records of the Portland Company, Maine Historical Society.

Point to the depot at India Street. Eventually the Portland Company would expand, filling all the water between their first sea wall and the railroad, which would fill around its trestle and build a stone sea wall along the harbor edge.⁶

Beginning in April 1847, the foundry, smith shop, and machine shop, were constructed of brick using plans by Felton. The company contracted with Thomas Cummings as Master Carpenter at \$2.50 per day and Lorenzo D. Mason as Master Mason or Bricklayer at \$2.00 per day. Both were "encouraged to employ carpenters and masons who are stockholders in the company at the same rates as other mechanics." A cargo of stone then in the harbor was purchased for the buildings from Mr. Littlefield. The stone was used for stone for foundations, underpinning, and window caps. John Soule of Freeport supplied 175,000 bricks at \$5.25 per thousand delivered and Dennison & Kelsey of Freeport supplied two kiln of bricks (approx. 250,000) at \$5.00 per thousand delivered, "to be hard burnt and merchantable." The foundry was 75' x 62', smith shop 75' x 62', and machine shop 150' x 62' with slate roofs. Fenton was authorized to contract for tools and machinery up to \$8,000 and President Poor contracted with Hinckley & Egery of Bangor for a stationary engine with two boilers 20' long by 40" diameter to power the machinery of the plant. It was to be installed and operational by August 1. The President and General Supervisor also began to look for a pattern maker and foreman to hire while the shops were under construction. Two additional lots were purchased from Capt. George Turner in November 1847, one to the east of the first lot purchased for \$1,550 and one to the west for \$1,350. The sea wall was extended and a wooden car shop was built on the west lot. The boundaries were apparently not clear as the car shop was built partially on Atlantic & St. Lawrence Railroad land west of the new lot. The railroad sold a piece of property to the company so the car shop was entirely on their own land. The railroad would sell additional land for further expansion of the complex in the early twentieth century. The company's shops began operation in October 1847, with the first locomotive, the "Augusta," completed in July 1848. The Augusta was built for the Portland, Saco & Portsmouth Railroad, not the Atlantic & St. Lawrence Railroad. The first locomotive for that line, the "Montreal," was completed in September 1848. The Portland Company would manufacture a total of 628 locomotives between 1848 and 1909 in addition to hundreds of marine and industrial boilers and numerous other products.⁷

⁶ Records of the Portland Company and records of the Atlantic & St. Lawrence Railroad, Maine Historical Society.

⁷ Records of the Portland Company, Maine Historical Society.

APPENDIX B: ADDITIONAL INFORMATION ON JOHN A. POOR

John Alfred Poor was born in Andover, Maine, to Dr. Silvanus and Mary Merrill Poor in January 1808. He spent part of his boyhood with an uncle in Bangor where he attended school at an academy. In 1827, he began the study of law in Bangor. He was admitted to the bar on his 24th birthday and opened a practice in Old Town. In 1833, he returned to Bangor and married Elizabeth Adams Hill, going into partnership with his uncle, also a lawyer. Upon the retirement of his uncle, Poor and his brother, Henry Varnum Poor, also a lawyer, established a partnership. John A. Poor practiced law in Bangor for fourteen years before moving to Portland to pursue other interests, principally railroads.¹

Poor had been present in Boston in April 1834 when the first steam locomotive ran in New England. He later wrote of that experience: "It gave me such a shock that my hair seemed to start from the roots rather than to stand on end; and as I reflected in after years, the locomotive engine grew into a greatness in mind that left all other created things far behind it as marvels and wonders." In a speech given in Bangor in 1869, Poor described how he came to become the leading proponent of railroad building in Maine:

From 1830, onward, I watched with eager curiosity the development of the railway, its mysterious workings and marvelous power; and I sighed and longed for the introduction of railroads into Maine. I saw how the railroad, wherever introduced, attracted capital and industry. As early as 1835, I perceived that the tide of immigration into Maine, from other parts of New England gradually diminished, and finally was checked completely by the growth of manufactures. I could not help seeing that a time of emigration from Maine was rolling on; for in 1843, on a visit to my native town with less than seven hundred people, eighty young persons had been drawn from it to the workshops and factories of Massachusetts. I felt irresistibly impelled to an effort to resist if possible this state of things. I tried in 1843, as a citizen of Bangor, to move in a plan for a railway east, toward St. John and Halifax, but the time had not come, and I threw my energies into the project of a line from Portland to Montreal, as the great section to begin upon.²

In 1844, Poor wrote a letter to the *Portland Advertiser* outlining his plan for a rail line from Portland to Montreal. His biographer states, "His letter created a profound sensation in Portland ... compared to 'an alarm bell in the night struck by the hand of a stranger.'" A short time later, Poor relocated to Portland and began organizing the effort to secure a charter from the legislature for the railroad. John A. Poor's role in the creation of the line from Portland to Montreal is well documented – from his speaking tours through Maine and Quebec, promoting the plan, to his frantic journey from Portland to Montreal by sleigh in a blizzard to head off efforts by Boston to secure the proposed line for their city, and subsequent his efforts to get the railroad financed, built, and equipped.³ Shortly after the line was completed to Montreal, it was leased to the Grand Trunk Railroad, which operated it until the 1980s.⁴

In 1846, a committee of Directors of the Atlantic & St. Lawrence Railroad, which included Poor, negotiated an agreement with the railroads connecting Portland to Portsmouth and Boston which would allow the transfer of passengers and freight between the lines without unnecessary delay or cost. According to Poor's biography, "The idea itself originated with Mr. Poor, who thus early recognized the impolicy of placing any restriction upon railway transit. To carry it out, he suggested the building of a new street, extending across a part of the city from the station of the Atlantic and St. Lawrence Railway to that of the Boston roads, on

1 Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor*, 1890

2 Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor*, 1890

3 Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor*, 1890

4 Records of the Atlantic & St. Lawrence Railroad, Maine Historical Society.

which a railway track should be laid.”⁵ This would be built several years later and be named Commercial Street. The effect of Poor’s railroad related developments on Portland and Maine cannot be over stated. On a state-wide level, Poor’s efforts greatly increased international trade with both Canada and Europe, provided the state with direct trans-Atlantic passenger ship service, and facilitated the immigration of thousands of French-Canadian families to work in the mills made possible by the improved transportation network.

Poor was also President of the Portland Gas Light Company, incorporated in 1849, which began to supply gas for domestic and street lighting in 1850. In 1849, he purchased the *American Railway Journal* and made his brother, Henry Varnum Poor manager and editor. H. V. Poor later owned the publication and expanded into compiling statistical information on the financing and operation of railroads in the U. S., establishing the foundation of the Standard and Poor’s financial services company. In 1851, he was elected President of the York and Cumberland (later Portland and Rochester) Railroad and conceived of the route of that line over the mud flats of Back Cove in Portland, to connect with the Atlantic & St. Lawrence near that line’s Back Cove Bridge. Kennebec Street and a portion of the Bayside Trail follow this right of way today. Poor established *The State of Maine* newspaper in Portland in 1853 and was its owner and editor until it merged with the *Daily Advertiser* in 1859. The newspaper was devoted to the advocacy of the development of the state and particularly, his own scheme for building the European and North American Railway. In the late 1860s and early 1870s, he was President of the Portland, Rutland, Oswego, and Chicago Railway, a never-built line that was to have replaced the Grand Trunk Railroad in his transcontinental plan, after that railroad declined to become involved in the plan.⁶

The European and North American Railway was John A. Poor’s great dream, of which the Atlantic & St. Lawrence Railroad was to be merely a part. He wanted to create a railroad line that would run from Halifax, Nova Scotia, through New Brunswick and into Maine at Calais, then run to Bangor and on to Auburn, where it would connect with the Atlantic and St. Lawrence line to Montreal. From Montreal, Poor envisioned a line that would run to the Great Lakes and ultimately to the West Coast, serving both the United States and Canada. His vision was for this grand trunk line to connect with trans-Atlantic steam ships at Halifax, providing the shortest possible route from “British America” (the U.S. and Canada) to England and Europe and from the West Coast to Asia. In 1869, he wrote, “For more than thirty years I have contemplated as a certainty the completion of a line of railway across the continent of North America, at its widest part, as the means of securing the shortest possible transit of passengers, mails, and valuable merchandise between the centers of Europe and Asia.” His great concept ran into competition from another plan for a railroad from the Canadian Maritime Provinces to Montreal that stayed entirely within Canada, and resistance from his Atlantic & St. Lawrence partners in Portland, who saw no advantage to the plan, fearing a line from Halifax would make Portland redundant. Poor believed there would be enough business for both. His advocacy for the European & North American Railroad scheme would lead to his failing to be reelected to the Atlantic and St. Lawrence Board of Directors in 1849 and to his disassociation with the Portland Company Board in 1851. Portions of the E. & N. A. Railway in New Brunswick were built between 1851 and 1869, ending at the U. S. Border at St. Croix, N. B. The American European & North American, chartered in 1850, was built from Bangor to Vanceboro, opposite St. Croix, between 1868 and 1871. U.S. President Ulysses S. Grant and Canadian Governor General Lord Lisgar attended the ceremony to open the boundary bridge crossing the St. Croix River and connecting the two parts of the E. & N. A. R. in 1871. From Bangor southward, The Penobscot & Kennebec and Androscoggin & Kennebec railroads (later merged at the Maine Central) provided a link to Portland. Poor was still working on his westward dream, via the proposed Portland, Rutland, Oswego, and Chicago Railway when he died, six weeks before the opening of the European & North American bridge over the St. Croix.⁷

5 Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor*, 1890. 49, 50.

6 Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor*, 1890

7 Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New Eng-*

Poor spent much of the 1860s in Washington, D. C., advocating and lobbying for his international railroad scheme as well as other projects related to Maine. Among other things, he was the principal proponent for the construction of Fort Popham at the mouth of the Kennebec River during the Civil War. When much of Portland was destroyed in the Great Fire of 1866, Poor undertook to raise funds for the relief of the residents of the city in Washington, where he was residing at the time.⁸

For many years, Poor was an active supporter of the Maine Historical Society, which had accepted him as a member in 1846 (membership of the organization was then limited to 100 persons). Poor devoted much of his leisure time to researching and writing about the early history of New England. In 1859, he read his first paper, "English Colonization in America" to both the Maine Historical Society and the New York Historical Society. Upon his death, the Society held a special meeting and passed a series of resolutions, "expressing a sense of deep obligation to Mr. Poor for his great services in the department of history, as well as in behalf of the material interests of the state, and declaring that he is entitled to be considered a public benefactor, and to be held in grateful remembrance by his fellow-citizens."⁹

land, Life and Writings of John Alfred Poor, 1890.

⁸ Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor, 1890.*

⁹ Baxter, James P. "Reminiscences of a Great Enterprise," 1890. Maine Historical Society.

Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor, 1890.*

APPENDIX C: RAILROADS FOR WHICH THE PORTLAND COMPANY PRODUCED LOCOMOTIVES

Alabama & Chattanooga RR	Northern Pacific RR
Androscoggin & Kennebec RR	Nova Scotia RR
Annapolis & Elk Ridge RR	Ogdensburg & Lake Champlain RR
Aroostook Valley RR	Ontario, Simcoe & Lake Huron RR
Atlantic & St. Lawrence RR	Panama RR
Bangor & Piscataquis RR	Penobscot & Kennebec RR
Bangor, Oldtown, & Milford RR	Peoria & Pekin Union RR
Bartlett & Albany RR	Peoria, Pekin and Jacksonville RR
Black Rock and Salisbury Beach RR	Phillips & Rangeley RR
Boston & Maine RR	Port Hope, Lindsay, & Beaverton RR
Bridgton & Saco River RR	Portland & Kennebec RR
Brockville & Ottawa RR	Portland & Ogdensburg RR
Calais & Baring RR	Portland & Rochester RR
Canadian Pacific RR	Portland Saco & Portsmouth RR
Central Mexicano RR	Quebec Central RR
Chicago, Alton, & St. Louis RR	Quebec, Montreal, Ottawa & Occidental RR
Complete Combustion Boiler Co.	Richmond & Danville RR
Dominion of Canada RR	Rumford Falls & Buckfield RR
E. M. Boynton Bicycle Railway	Rutland & Washington RR
Eastern RR	Sandy River RR
European & North American RR	Sawyer River RR
Fredericton Branch RR	Scioto Valley RR
Galveston, Houston & Henderson RR	Spartenburg & Union RR
Grand Trunk RR	St Lawrence & Atlantic RR
Hanover Branch RR	St. Francis & Megantic International RR
Inter-Colonial RR	St. Johnsbury & Lake Champlain RR
John Wood Co.	St. Lawrence & Ottawa RR
Kennebec & Portland RR	St. Stephens Branch RR
Kennebec Central RR	Steel Co. of Canada RR
Kilkenny Lumber Co.	Toledo, Peoria & Burlington RR
Lake Shore & Michigan RR	Toledo, Peoria & Warsaw RR
Lexington & Danville RR	U. S. Government
Logansport, Peoria & Burlington RR	Utica, Ithaca & Elmira RR
Mad River & Lake Erie RR	Vale Coal Co. RR
Maine Central RR	Western Counties RR
McKean & Buffalo RR	Whitby & Port Perry RR
Midland RR	Whiteby, Port Perry & Lindsay RR
Milwaukee & Mississippi RR	Windsor & Annapolis RR
Milwaukee & St. Paul RR	Wiscasset & Quebec RR
Milwaukee, Lake Shore & Western RR	Wood & Black Co.
New Brunswick & Canada RR	Worcester & Nashua RR
New York & Boston RR	York & Cumberland RR
New York City & Northern RR	

APPENDIX D: TIMELINE OF DEVELOPMENT

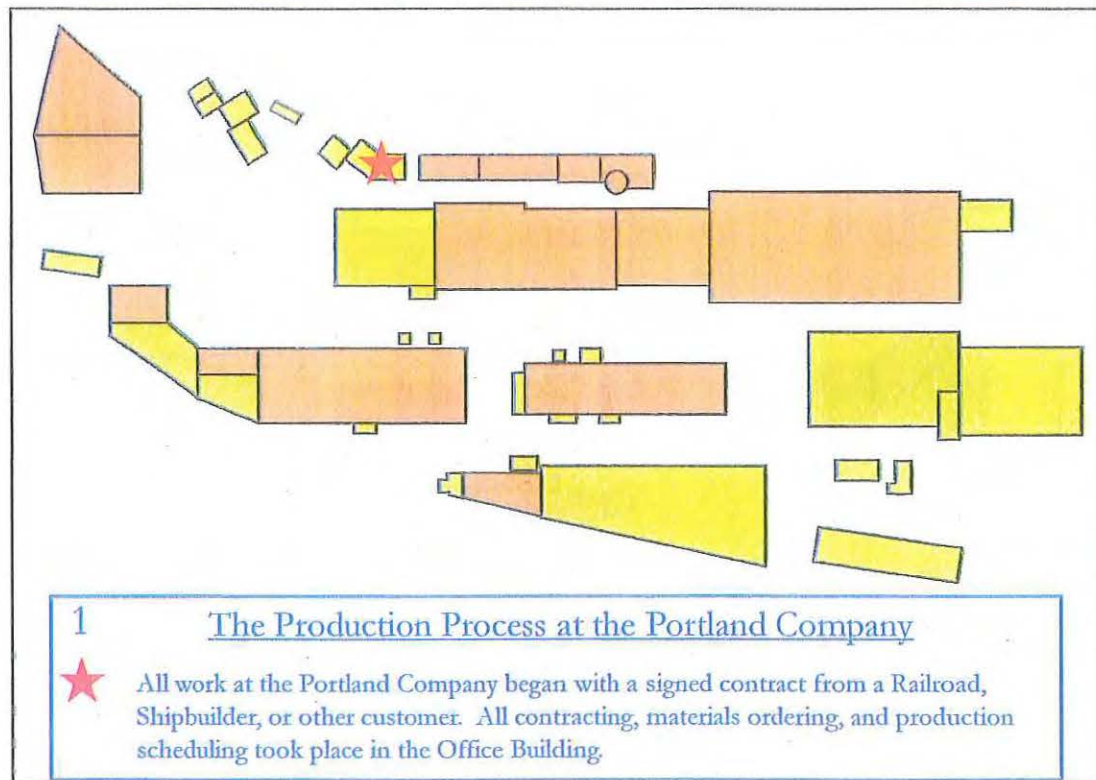
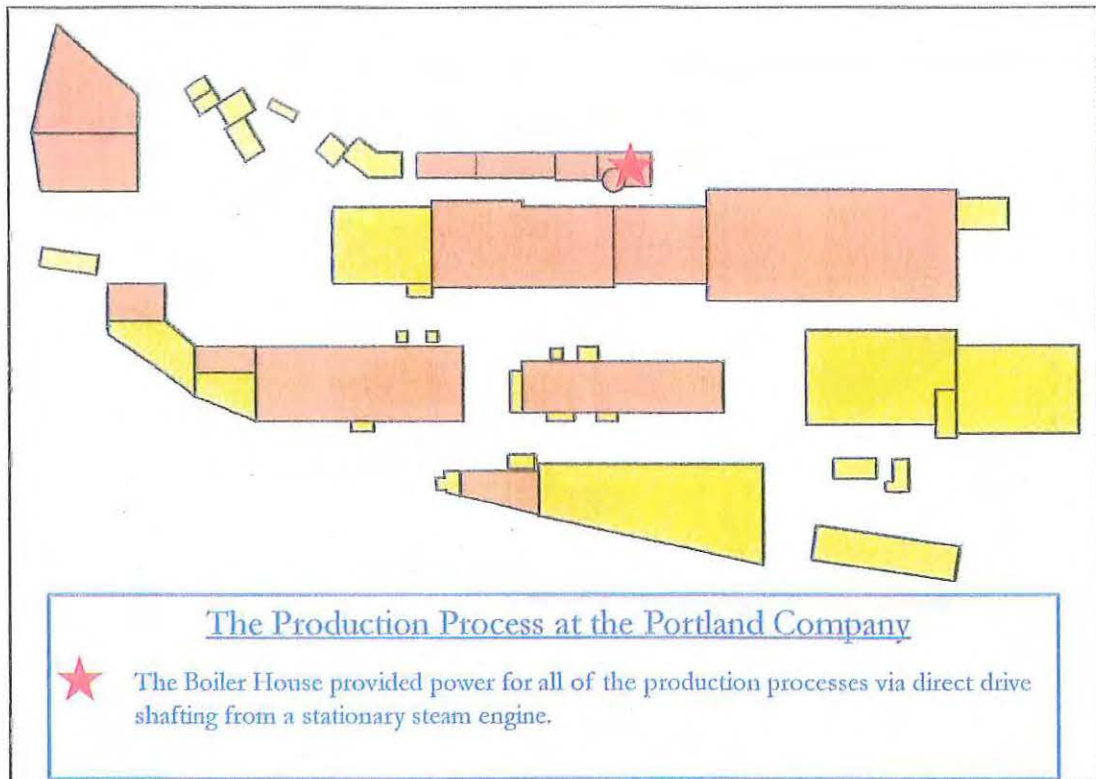
DATE	ITEM
1847	Construction of Machine Shop
1847	Construction of Smith Shop
1847	Construction of Foundry
1847 c.	Construction of Blacksmith Shop
1847 c.	Construction of Car Shop
1847-1858	Construction of Boiler House and 110' Chimney
1847-1858	Construction of Boiler Shop
1847-1858	Construction of Stable
1847-1858	Construction of Office Building
1848	Construction of Foundry Expansion
1858-1864	Large Addition to north end of Boiler Shop
1858-1864	Addition to east end of Stable
1858-1864	Construction of Drafting Room
1858-1864	Construction of Storehouse
1858-1864	Construction of new Boiler House
1858-1864	Addition of Core House to Foundry
1858-1864	Construction of Babbitt Shop at south end of lot
1858-1864	Construction of New Car Shop
1858-1864	Construction of Timekeeper Office
1858-1864	Construction of Scratch House north of Foundry
1862	Construction of Air Furnace east of Foundry
1864-1871	Small addition to southeast end of Blacksmith Shop
1864-1871	Replacement of Boiler House
1864-1871	Construction of Brass Foundry
1871-1880	Addition to west end of Stable
1871-1880	Removal of Timekeeper Office
1871-1880	Construction of Setting-Up Shop
1871-1880	Construction of Sand Shed
1871-1880	Construction of Flask House over Reservoir
1871-1880	Construction of Foundry Expansion
1871-1880	Construction of various additions to Foundry
1873	Destruction of Babbitt Shop by fire
1873	Destruction of New Car Shop by fire
1873	Construction of Car Shop with car shed at south end
1873	Construction of Tin and Babbitt Shop
1873	Construction of Wood Storehouse
1873 c.	Construction of Paint Shop
1880-1886	Three story tower addition to Boiler Shop
1880-1886	Air Furnace addition used for patterns

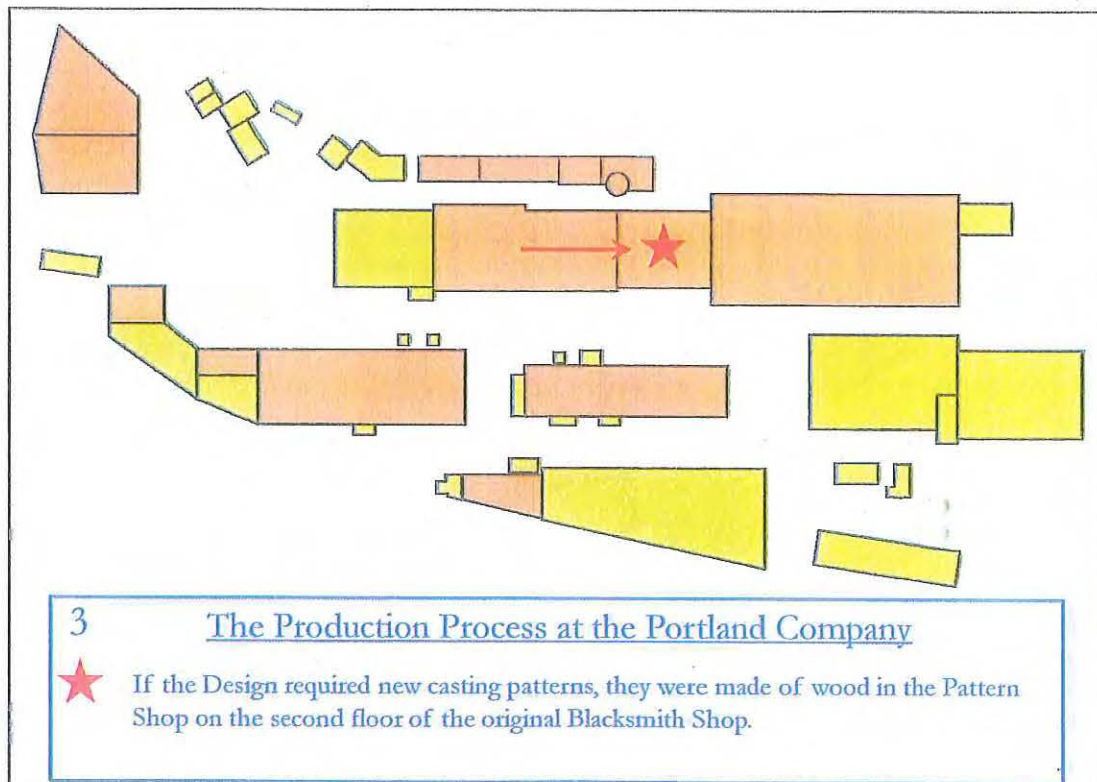
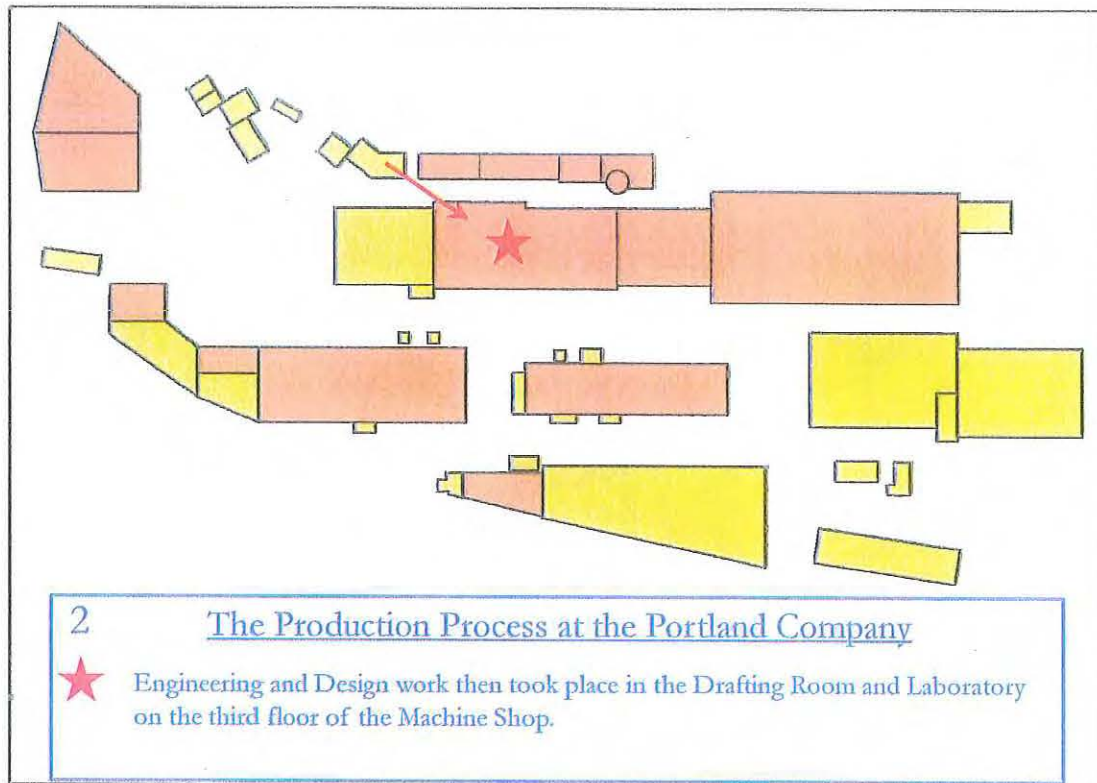
1881	Construction of Wheel Foundry
1882	Construction of Blacksmith and Tank Shop
1883-1884	Reconstruction of Blacksmith Shop
1885	Construction of Pattern Storehouse
1890	Reconstruction of south end of Boiler Shop
1891	Addition to Office Building
1894-1895	Removal of Core House
1894-1895	Removal of Air Furnace addition
1894-1895	Removal of Foundry Expansion
1894-1895	Removal of Wood Storehouse
1895	Construction of New Foundry
1895	Construction of Pattern Storehouse Addition
1896 c.	Second Floor added to Smith Shop
1896-1904	Small additions to east side of Office Building
1896-1904	Construction of three-story section of Blacksmith shop
1896-1904	Removal of Wheel Foundry
1896-1904	Construction of Coke Shed
1904	Construction of Lumber Shed
1904-1909	Brass Foundry used for Storage
1904-1909	Drafting Room used as Storage
1904-1909	Construction of Vault
1909 c.	Expansion of Machine Shop third floor
1909-1914	Removal of Office Building
1914-1924	Removal of Coke Shed
1914-1949	Removal of Stable
1918	Construction of Erecting Shop
1918 c.	Removal of Setting-Up Shop
1918 c.	Construction of Erecting Shop
1924-1949	Removal of Sand Shed
1924-1949	Removal of Blacksmith and Tank Shop
1932	Removal of south portion of Lumber Shed
1949-1951	Removal of Flask House
1949-1951	Construction of Office Building
1951-1980	Removal of 110' Chimney
1951-1980	Removal of Boiler Shop
1951-1980	Construction of large addition at north end of Foundry
1980-1986	Removal of Tin and Babbitt Shop

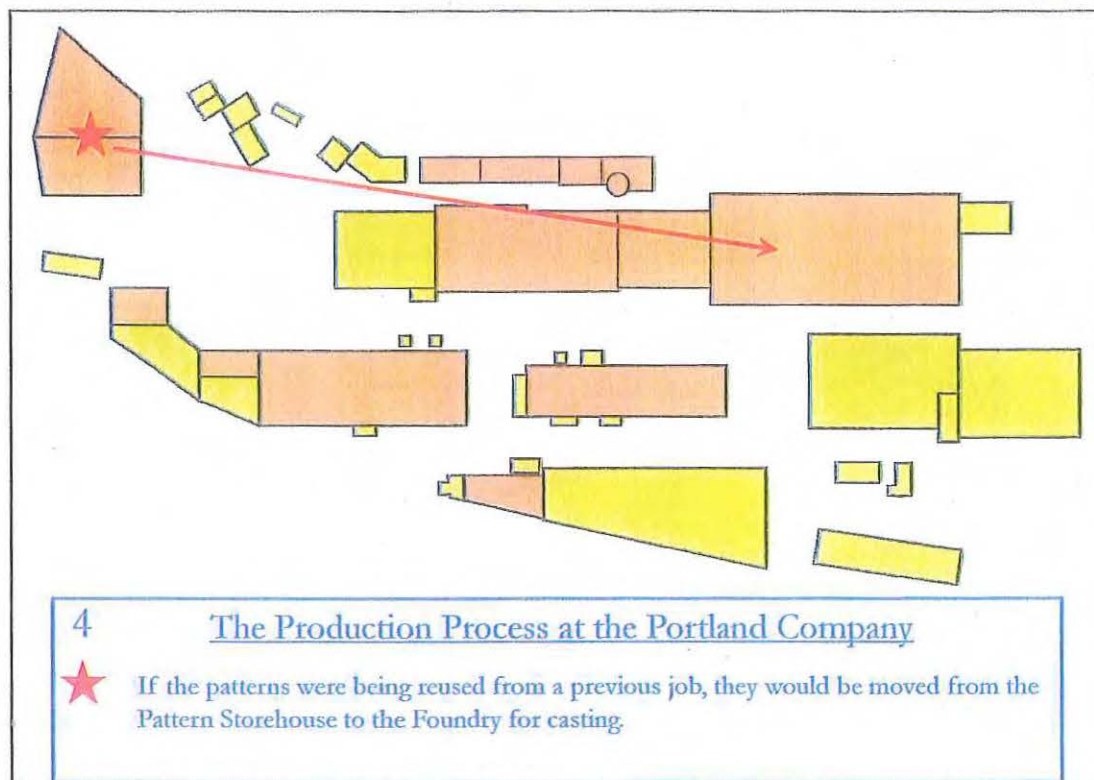
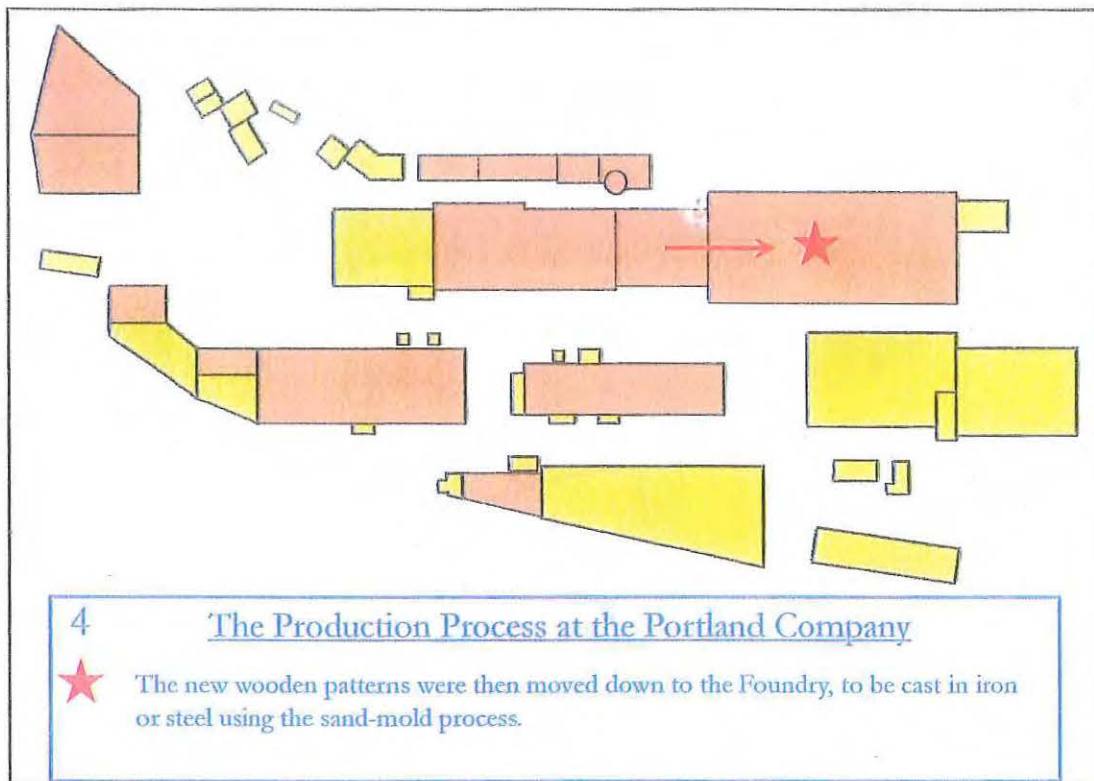
APPENDIX E: OTHER MANUFACTURERS OF LOCOMOTIVES

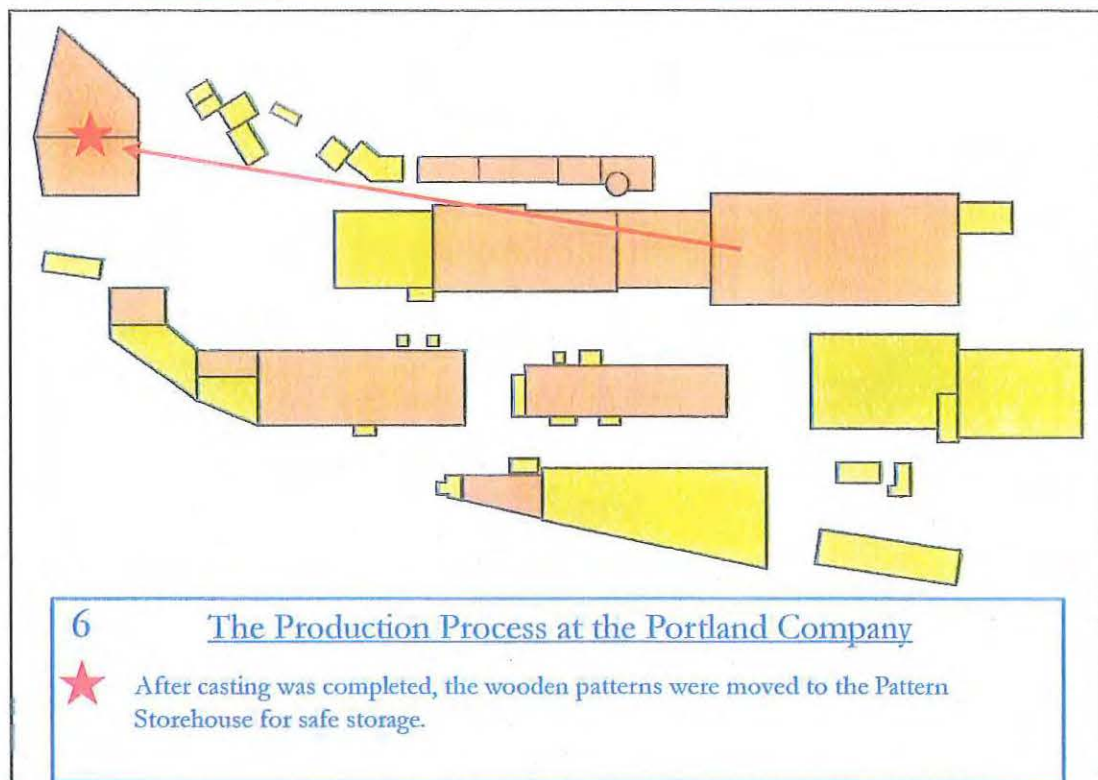
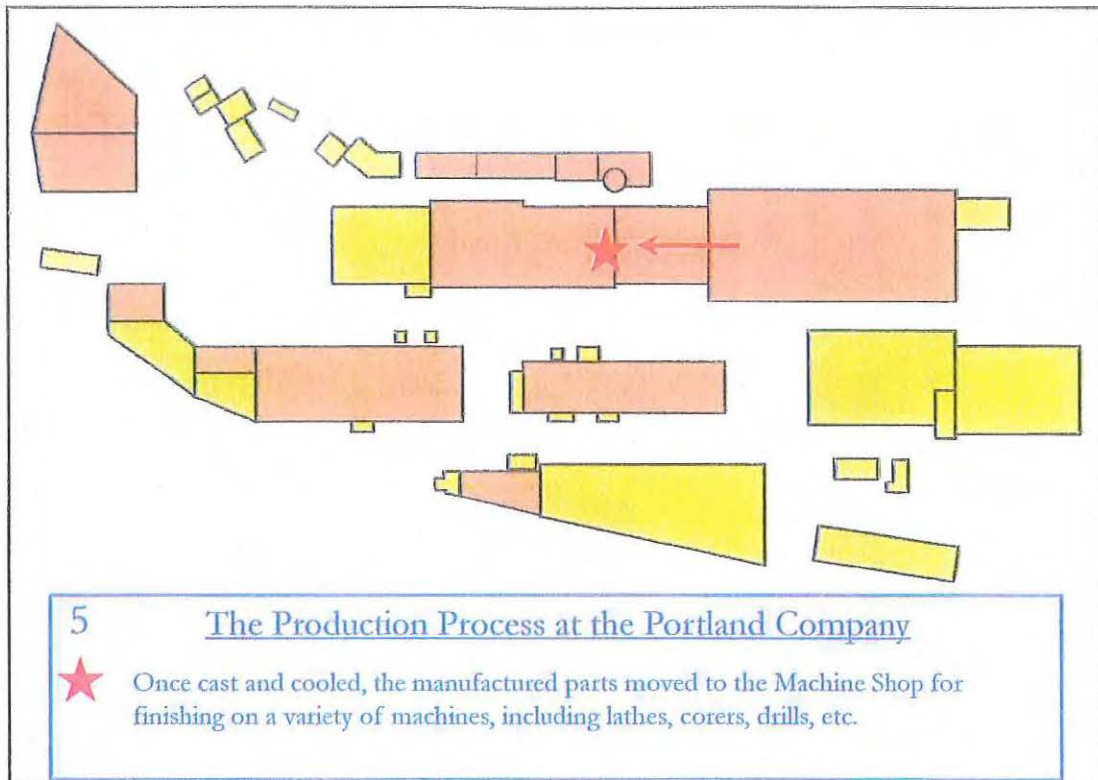
Year Locomotive Production Started	Company Name	Location	Pre-existing Company?	Extent of Facilities – Dates	Surviving Buildings? Dates?
1829	B&O Mt. Clare Shops	Baltimore, MD	No	Car Shops - 1829-30 Ironworks - 1830 Engine service shop and more car shops -1850s Foundry, blacksmith - post-Civil War Circ. Car shop – 1884 Loco., machine, & tender shops and saw mill – 1900-1920	Erecting shop destroyed by fire – 1961 Most remaining buildings demolished – 1976 Surviving: Passenger Car works –1869-70 Circular Car Shop and Annex – 1884 Freight Car Repair Shop (ruin) – 1919 B&O Passenger Depot (not shop related) - 1851
1830	Canton Locomotive Works – Peter Cooper	Baltimore, MD	Est. 1828 to manuf. Rail for the B&O RR.	1 st loco. Built of scavenged parts, including rifle barrels for boiler tubes. No loco shops built.	No surviving buildings
1831	West Point Foundry	West Point, NY	Est. 1817 to manuf. armaments	Best Fried of Charleston built for the S. Carolina RR	Closed 1911, site now a state park with limited ruins of the manufacturing buildings.
1832	Wm. Norris – Norris Locomotive Works	Philadelphia, PA	Est. 1832 as American Steam Carriage Co.	First loco built in small shop with power from adjacent wheelwright shop. Used Phoenix Foundry for castings	Full set of shops by 1857. Closed 1866. Buildings demolished 1896.
1832	Mattias Baldwin – Baldwin Locomotive Works	Philadelphia, PA	1825 machine shop to manufacture bookbinding machinery and textile printing cylinders	Model loco. For Peale Museum in 1831. First real loco, 1832, using outside foundry	Original site abandoned in 1928 for a new plant in Eddystone, PA. All buildings at first plant demolished 1937.
1834-35	Lowell Machine Shops	Lowell, MA	Est. 1814 (Boston Manuf. Co.) for manuf. Of textile machinery. Moved to Lowell 1824.	Extensive shops for textile machinery production. Locomos made in Locks and Canal Shop, 1834-1861	Closed 1928. Site now a parking lot.
1834	Mill Dam Foundry	Boston	Est. 1832	Built first loco. in New England, no others	Buildings in use by other companies by 1838. Current state unknown.
c. 1835	Mattewson Company	New York	Est. 1814. To produce machinery for cotton and sugar mills, etc. Foundry by 1834.	Built two locos c. 1835 for Hudson River RR.	No information found.
1836	Eastwick & Harrison	Philadelphia, PA	Est. 1835 as as Garrett & Eastwick. Former watchmaker, making stat. steam engines	First loco, 1838, apparently in a small shop using an outside foundry. Built a total of 17 locos.	Firm moved to Russia in 1843. No buildings appear to survive.
1837	Rogers Locomotive Works	Patterson, NJ	Est. 1831 to produce textile machinery	First loco 1837, also cast tires for Norris and Baldwin	Became one of the "big three" with Norris and Baldwin. Patterson Museum occupies the 1873 Erecting shop, all other buildings demolished.
1840	Hinckley	Boston, MA	Est. 1831 as small machine shop, later Boston Machine Works. Built 1 st stationary steam engine in MA.	1 st loco 1840, numerous name changes.	Closed 1859. Property and buildings bought by Boston Elevated RR Co., used one building for temp power plant and demolished remainder to clear site for new power plant. The Hinckley building appears not to survive in 2014.
1845	Boston & Providence RR Shops	MA/RI	B&P chartered 1831, const. started 1832, opened 1834.	1 st loco 1845. Used Geo. Griggs Foundry	Railroad absorbed into Old Colony RR and then into New York. Now Haven, and Hartford. Location of B&P shops undetermined.
1848	Portland Company	Portland, ME	Est. 1845 to build locomotives and other railroad equipment	Foundry, Machine Shop, and Blacksmith shop built 1847, car shop in 1848, later additions 1850s, 1880s, 1890s, 1918.	2 of 3 pre-Civil War brick buildings are extant along with many other buildings from period of locomotive construction.

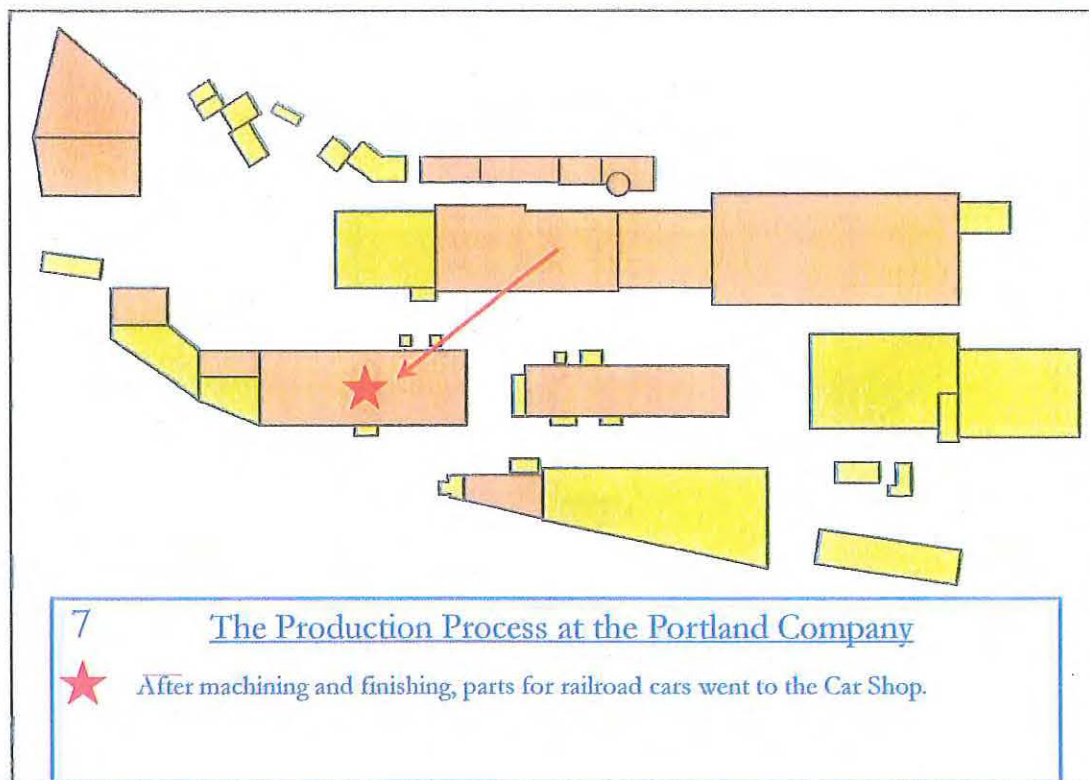
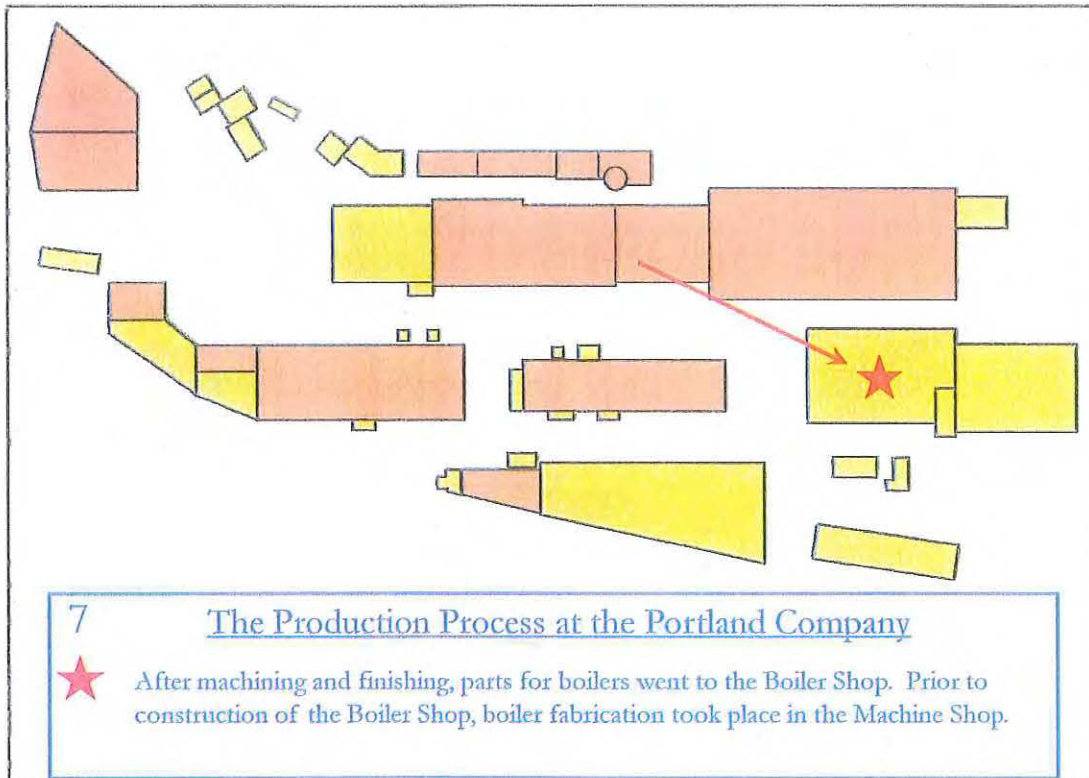
APPENDIX F: PRODUCTION

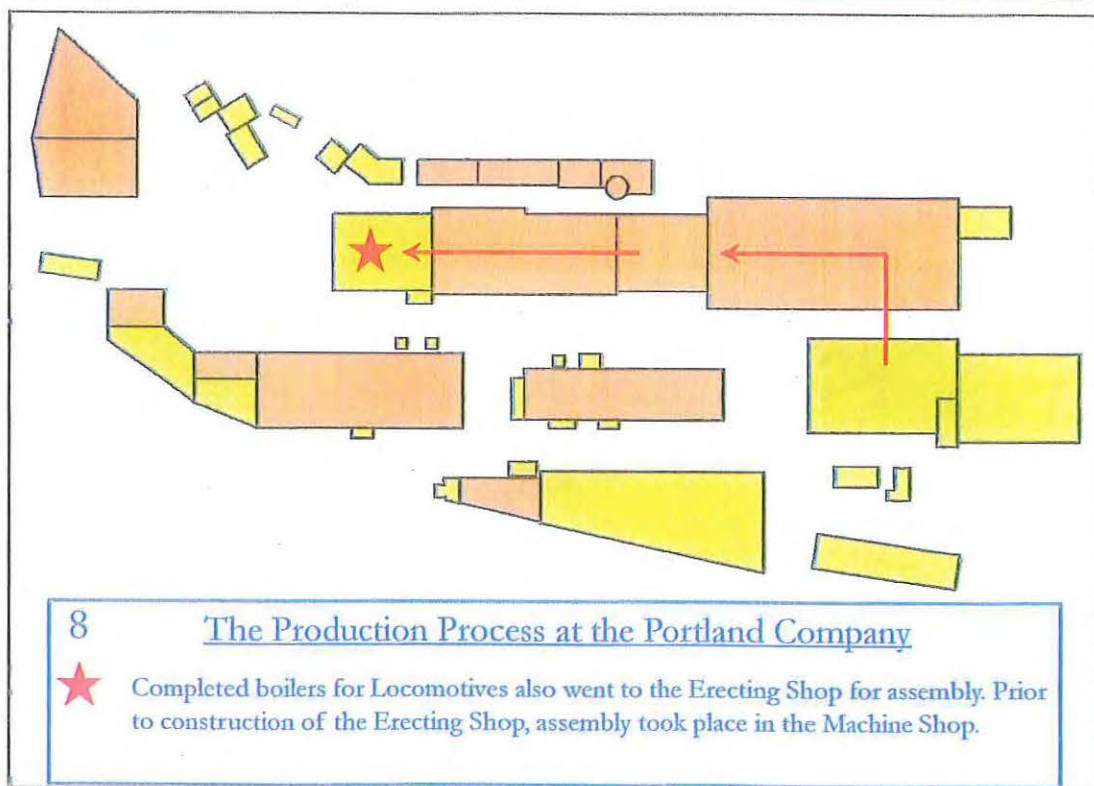
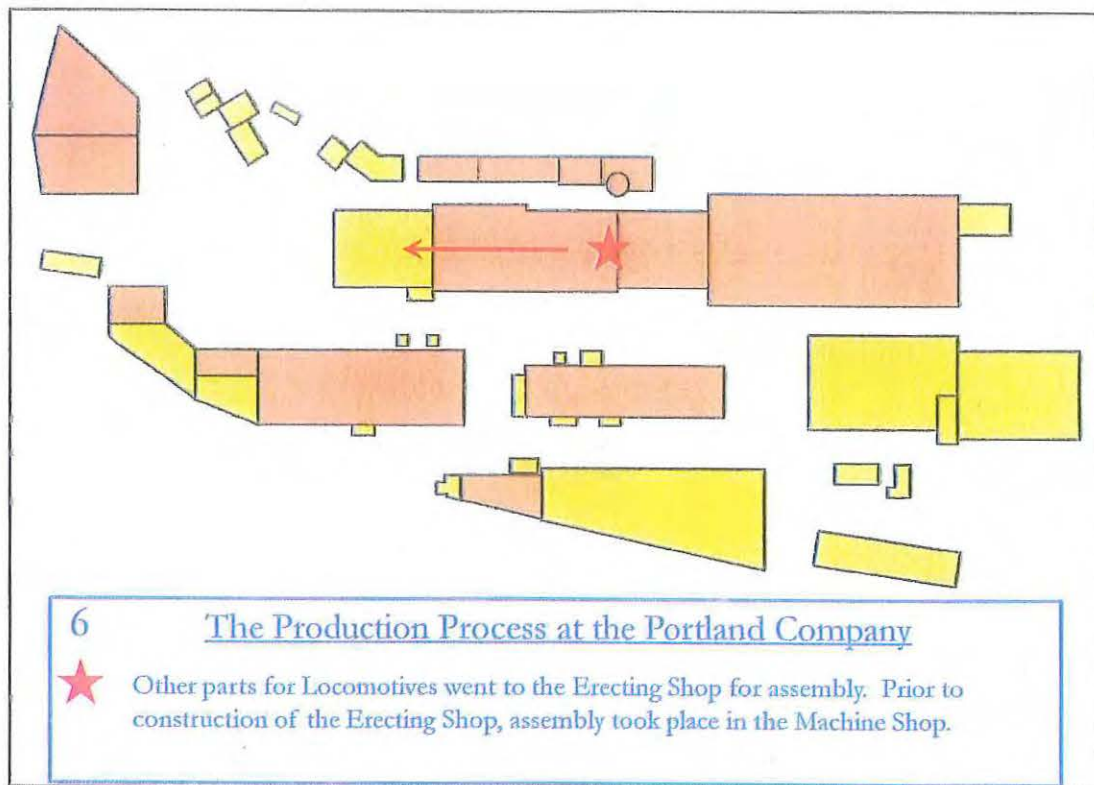


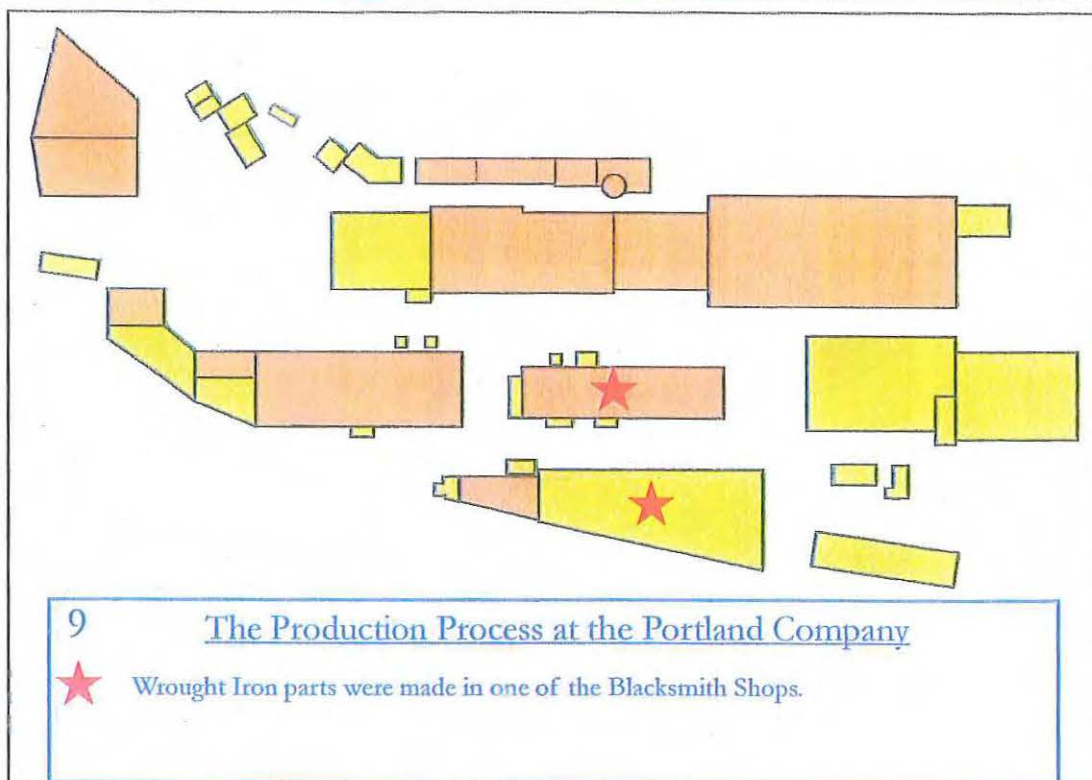
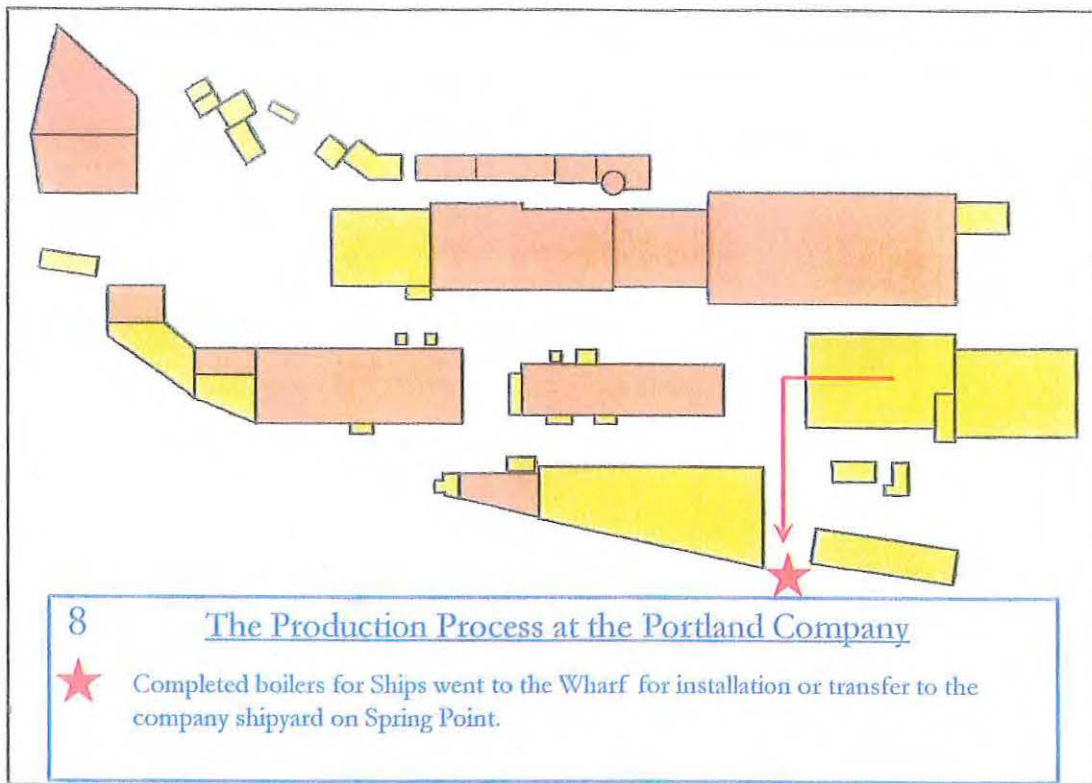


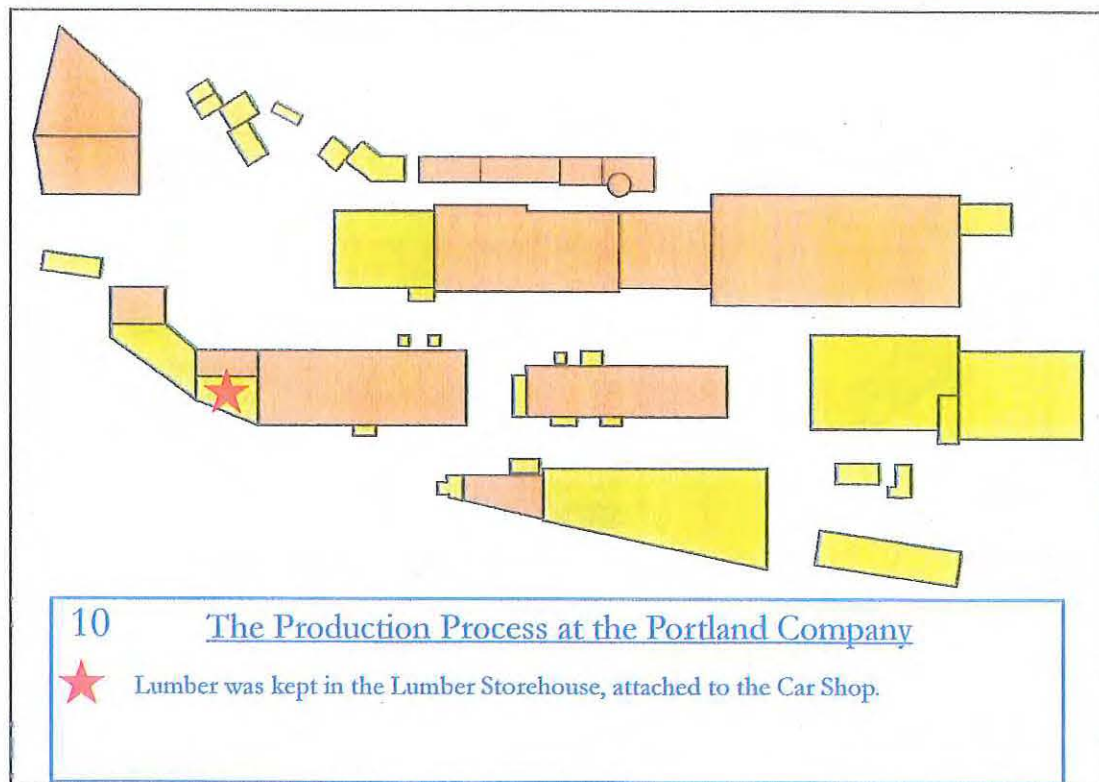
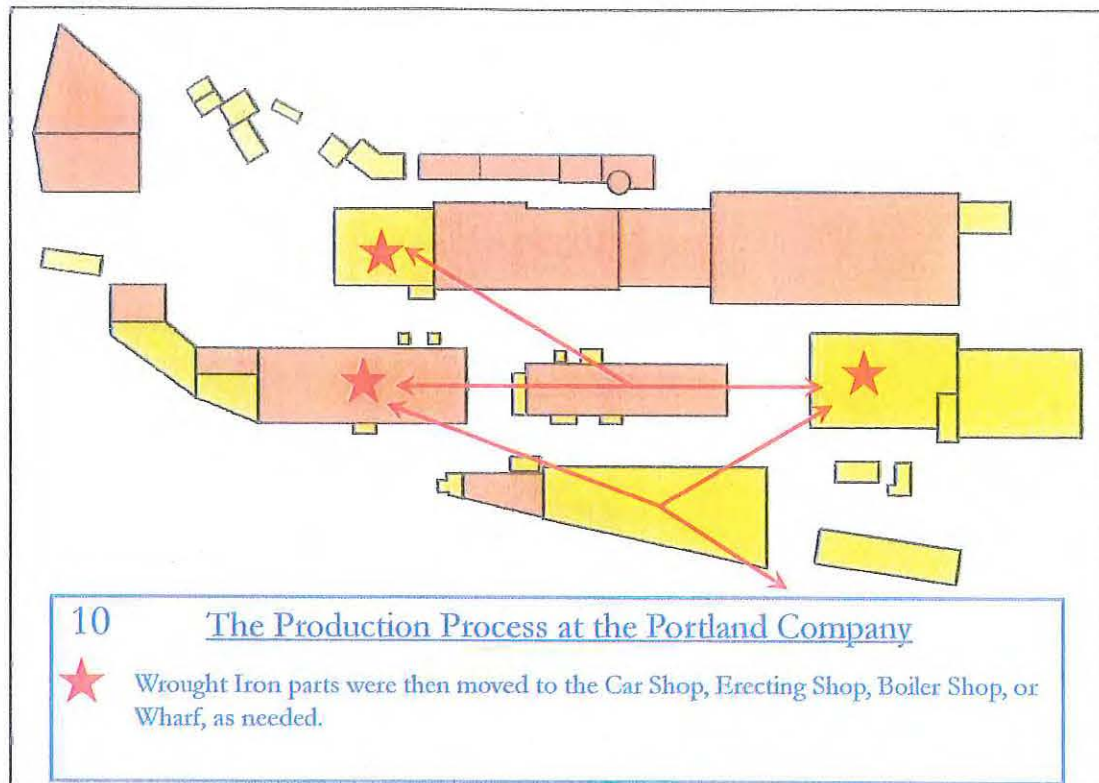


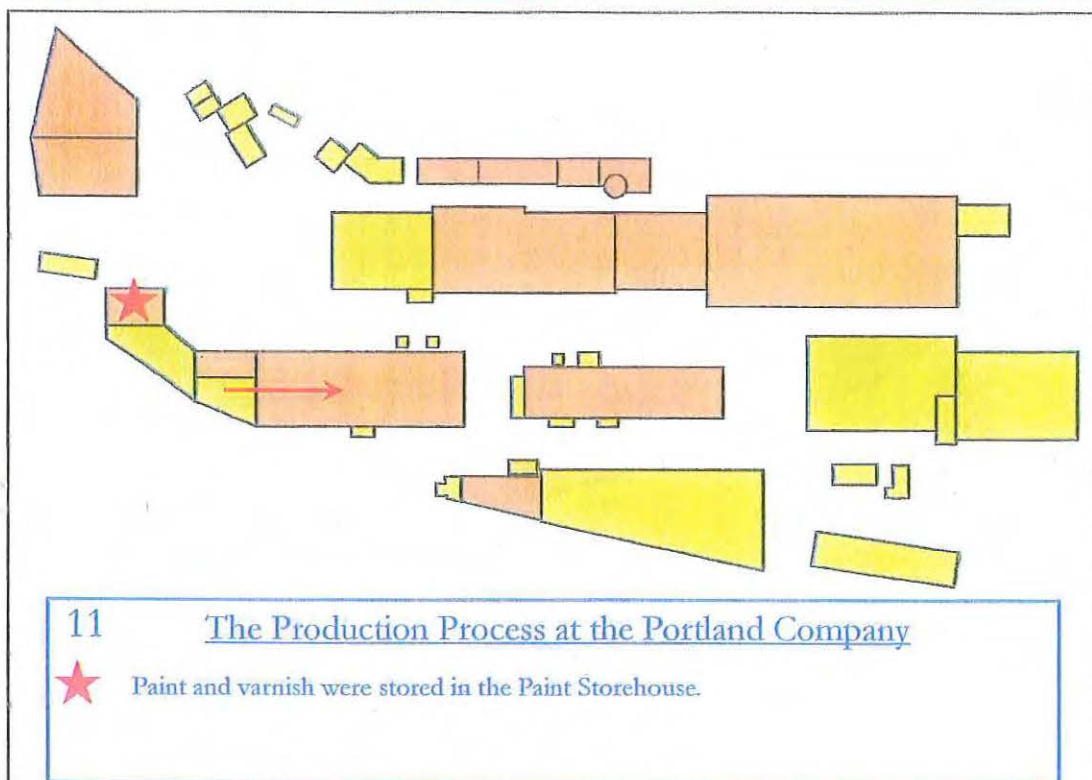
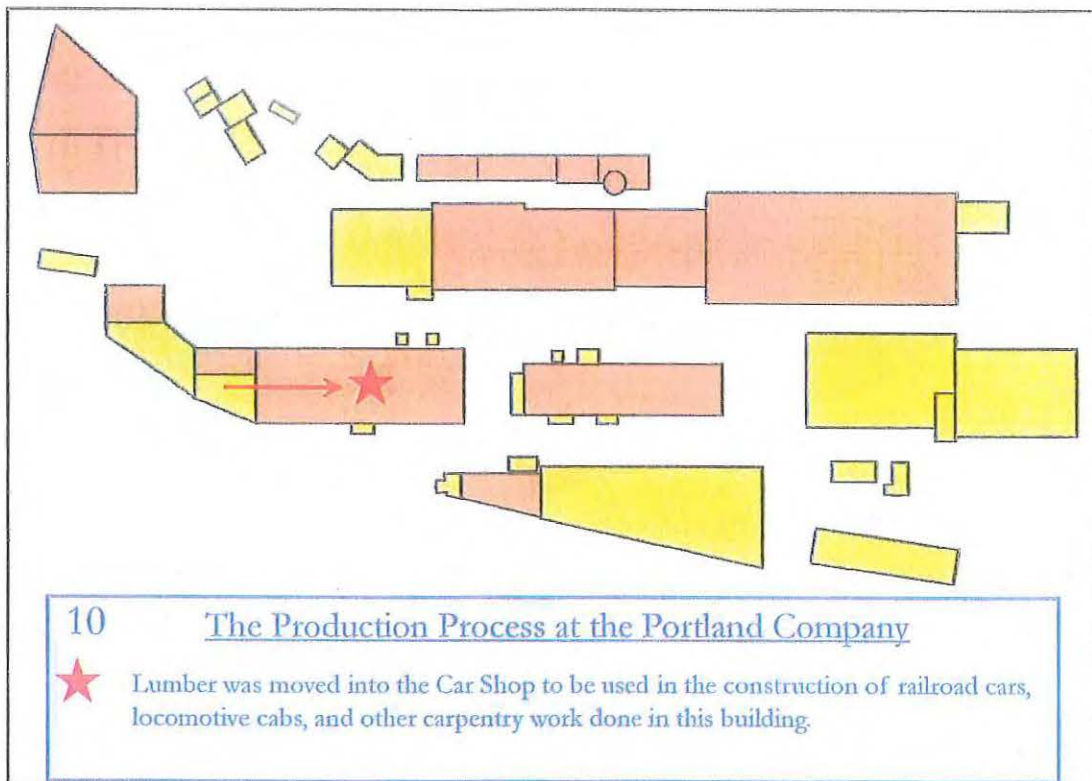


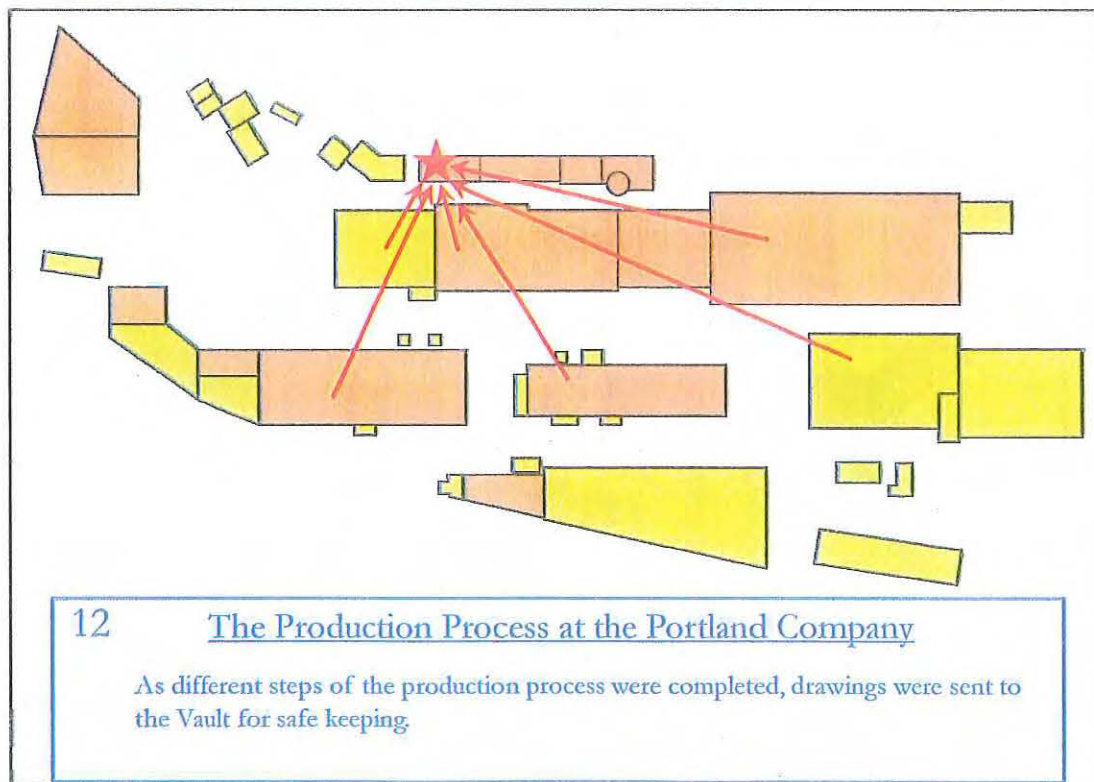
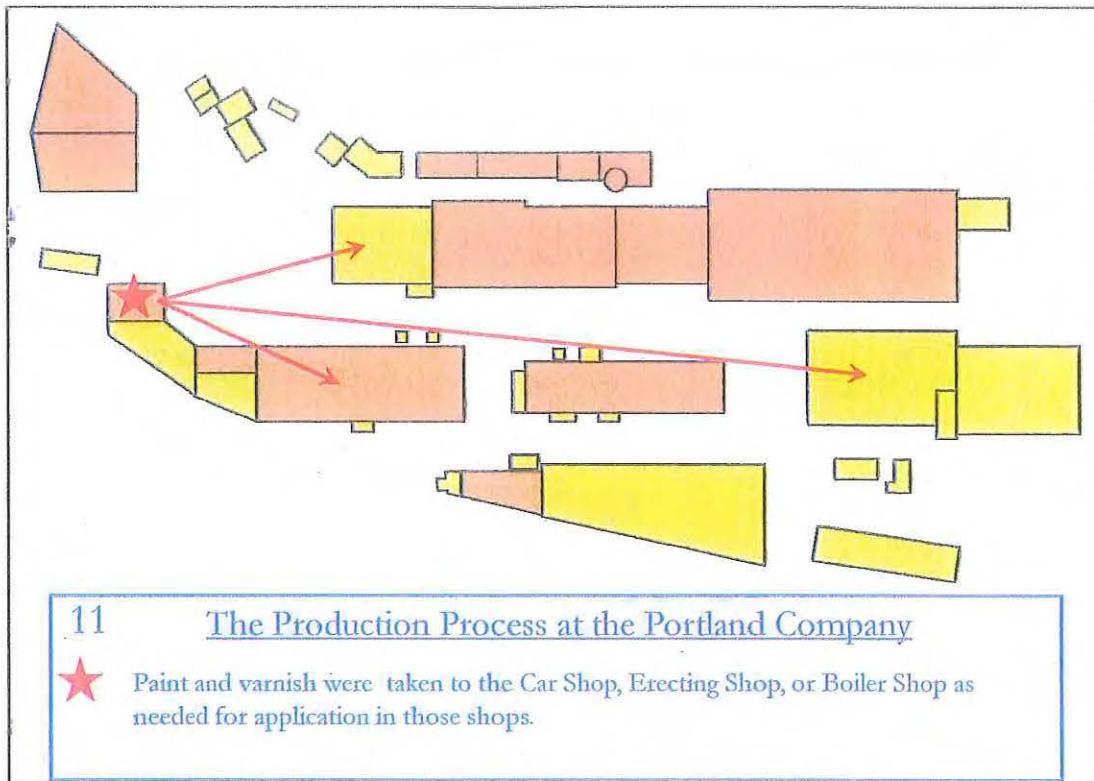












APPENDIX G: NATIONAL REGISTER OF HISTORIC PLACES CRITERIA FOR EVALUATION OF SIGNIFICANCE AND INTEGRITY AS APPLIED TO THE PORTLAND COMPANY (National Register Bulletin Number 15)

For a property to qualify for the National Register it must meet one of the National Register Criteria for Evaluation by:

- Being associated with an important historic context *and*
- Retaining historic integrity of those features necessary to convey it significance.

The significance of a historic property can be judged and explained only when it is evaluated within its historic context. Historic contexts are historical patterns that can be identified through consideration of the history of the property and the history of the surrounding area. Historic contexts are found at a variety of geographical levels or scales.

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- That are associated with events that have made a significant contribution to the broad patterns of our history (Criterion A); or
- That are associated with the lives of persons significant in our past (Criterion B); or
- That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction (Criterion C); or
- That have yielded, or may be likely to yield, information important in prehistory or history (Criterion D).

The Portland Company complex is associated with important historic contexts at the National, State and Local levels as delineated in the historic context summary paragraphs below, and retains historic integrity of those features necessary to convey its significance at the National, State and Local levels.

National Level of Significance

National Register Criterion A: Industry (1847 - 1865)

The Portland Company complex is associated with events that have made a significant contribution to the broad patterns of our history at the national level as a rare surviving example of a pre-Civil War foundry, machine shop, and car shop complex built for the manufacture of railroad equipment in 1847. It appears to have been the first such self-contained complex in the nation built specifically for that purpose, with all of the necessary shops and a foundry on a single site. It also contains the oldest surviving railroad shop buildings in the nation. Locomotives, gunships, and cannon were manufactured here for the Union forces during the Civil War.

State Level of Significance

National Register Criterion A: Industry (1847 – 1982)

The Portland Company complex is associated with events that have made a significant contribution to the broad patterns of our history in the area of industry within the city of Portland, Maine. In addition

to the national industrial significance of the Portland Company as the first complete locomotive works built in the United States and a rare surviving pre-Civil War railroad equipment manufacturing plant, the Portland Company played a significant role in the development of many important industries in Maine. These include the paper-making industry, textile industry, canning industry, commercial fishing, and many smaller industries.

National Register Criterion A: Transportation (1847 – 1945)

The Portland Company is associated with events that have made a significant contribution to the broad patterns of our history for its critical role in the development of Maine railroads, including the state's iconic two-foot gauge lines, and also built boilers, marine engines, and other equipment for steam ships, including the famed "Portland." The company was created as an adjunct to the Atlantic & St. Lawrence Railroad shortly after that line was chartered to run from Portland to Montreal. The principal proponent of the Atlantic & St. Lawrence Railroad, John A. Poor, was the first president of the Portland Company as well as a director of the railroad company.

National Register Criterion B: Association with John A. Poor (1847 – 1851)

The Portland Company complex includes the most important surviving buildings associated with John A. Poor (1808-1871), a person significant to the past of the state of Maine. John A. Poor was significant to the past of Maine in numerous areas, but particularly in the areas of transportation and industry. Like the Atlantic & St. Lawrence Railroad, the Portland Company was part of a plan devised by Bangor Attorney John A. Poor to make Portland the winter port for eastern Canada during the months in which the St. Lawrence River was frozen. Starting in 1844, Poor actively promoted his vision for the continent's first international railroad and attracted others to help make it a reality in the 1840s and '50s. Construction of the 250 mile long railroad, estimated to cost ten million dollars, began on July 4, 1846 and the line to Montreal was completed in July 1853. As a director of the Atlantic & St. Lawrence Railroad and President of the Portland Company, Poor was instrumental in ensuring that a locomotive manufacturing plant would be built in Portland.¹

While Poor's success in creating the Atlantic & St. Lawrence Railroad was perhaps his most significant achievement, none of the associated buildings or structures built in Portland during the period of his activity with the railroad survive. Only one Atlantic & St. Lawrence Railroad building from the same period has been identified elsewhere in Maine, a small wooden freight house built in Gilead in 1851 and moved to Auburn after 1968. The few other surviving buildings on the line date from after 1853, when the Grand Trunk Railroad leased the entire Atlantic & St. Lawrence line.² The original buildings of the Portland Company are the most significant surviving buildings associated with John A. Poor, who was President of the company during the period of their construction. The Portland Company Board of Director's meeting minutes from 1847 document that he had a direct role in acquiring materials for their construction and served with General Superintendent Horace Felton as the Building Committee.

Local Level of Significance

National Register Criterion A: Industry (1847 – 1982)

The Portland Company is also significant for industry at the local level, as the largest business in the city in the mid-nineteenth century and only intact nineteenth and early twentieth century industrial complex in the city of Portland. Virtually all evidence of Portland's nineteenth century industrial history has been lost with

1 Records of the Portland Company and records of the Atlantic & St. Lawrence Railroad, Maine Historical Society.

Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor*, 1890

2 Mohney, Kirk F. *Along the Rails, a Survey of Maine's Historic Railroad Buildings*. 2000.

the exception of the Portland Company complex. Thirty-three manufacturing plants can be identified in the 1876 Bird's Eye View of Portland. Of the thirty-three, which include Portland Stove Foundry, J. B. Brown & Son's Sugar Refinery, Forest City Sugar Refining Company, Eagle Sugar Refining Company, Portland Packing Company, and Portland Stoneware Company, only three complexes survive to any extent in 2014. Two of these have only a single surviving building, one from the Star Match Factory on West Commercial Street and one from the original Burnham & Morrill Cannery complex on Franklin Street. Only the Portland Company complex remains largely intact 138 years later. In 1924 Portland had 60 sizable companies engaged in industrial production of various sorts, occupying more than 85 buildings. Of these individual buildings, fewer than a dozen survive outside the Portland Company. Six companies had large complexes of buildings, including the E. T. Burrowes Company, Thomas Laughlin Company, and Southworth Machine Company.³ Fragmentary remains of some of these complexes, such as the early twentieth century Thomas Laughlin Company foundry building on Hampshire Street now used by Shipyard Brewery, only hint at the history of these sites where hundreds of Portland residents made their livings over many decades.

Criterion A: Community Planning and Development (1847 – 1853)

The Portland Company is associated with events that have made a significant contribution to the broad patterns of our history in the area of community planning and development. It is associated with and/or responsible for several significant planning and development initiatives within the city of Portland. As part of John A. Poor's vision for creating a modern international port at Portland, he conceived of a wide new street along the waterfront which would contain railroad tracks to connect the Atlantic & St. Lawrence R. R. on the east end of the city to the Portland, Saco & Portsmouth R. R. on the west end while providing both railroads access to the numerous wharves between their terminals. The narrow original waterfront street, Fore Street, followed the natural landform, snaking along the shore around Clay and Broad coves. The new street would be built by filling between the existing wharves below Fore Street, far enough out into the harbor to allow the construction of large new warehouse buildings along the land side of the street. Broad Cove would be filled for construction of the Atlantic & St. Lawrence Railroad terminal and for the Portland Company works and Clay Cove would be filled for the street and new buildings. The Portland Company site alone is seven acres, the majority of it made by filling the mud flats and cove. This project was undertaken cooperatively by the two railroads and the city of Portland, with the railroads paying the cost of filling between the wharves and the City paying wharf owners for the value of their properties seized through eminent domain. The mile-long and one hundred foot wide street would be named Commercial Street.⁴

This project was the largest urban planning initiative undertaken in the city of Portland in the nineteenth century and was transformative in its effects. Before arrival of the Atlantic & St. Lawrence Railroad and Portland Company with the related construction of Commercial Street, Portland had a waterfront infrastructure left over from the eighteenth century that was inefficient and ill suited to the age of steam.

National Register Criterion C: Architecture (1847 – 1951)

The buildings of the Portland Company complex embody the distinctive characteristics of a type, period, or method of construction, specifically several types of industrial buildings built between 1847 and 1920. The Portland Company buildings from the 1840s and 1850s are the only industrial buildings of that period remaining in the city of Portland. The buildings of the complex retain a high degree of architectural integrity to the period of Portland Company production (1847 – 1982). While much of the machinery of the complex has been removed, evidence of industrial uses can be found throughout the buildings, such as overhead shafting for operating machinery, and wood and iron cranes attached to support columns.

3 Compiled from the City of Portland 1924 Tax Records.

4 Poor, Laura Elizabeth, John A. Poor. *The First International Railway and the Colonization of New England, Life and Writings of John Alfred Poor*, 1890.

Records of the Atlantic & St. Lawrence Railroad, Maine Historical Society.

Overhead traveling cranes remain in the Foundry and Erecting Shop.

The various buildings of the complex contain examples of a wide variety of building construction engineering techniques employed to increase the strength or functionality of the buildings. These include a number of wood and metal roof truss systems; large floor areas hung from wooden roof truss systems; brick barrel vaulting; cast concrete and steel beam vaulting; cantilevered shed dormers; and single and double trussed girders used to increase the load carrying capacity of upper floors without obstructing the lower floors with posts. The earliest buildings are of load-bearing masonry wall construction with internal timber framing and later buildings utilize steel framing systems. The 1895 Foundry uses an unusual integrated steel column and brick exterior wall system. This was a comparatively early use of structural steel in Maine and represents a transitional phase in the construction technology as large buildings moved from load-bearing masonry walls to steel skeleton framing.

APPENDIX H: TREMONT PRESERVATION SERVICES BUILDING DESCRIPTIONS WITH ADDITIONAL INFORMATION

SITE OVERVIEW

The former Portland Company site encompasses a 9-acre parcel at 58 Fore Street, situated on filled land along the eastern waterfront of Portland, Maine, bordering the Fore River to the east. The Portland Company site is located at the northern end of a long stretch of industrial and commercial buildings that line the Portland waterfront. The property directly to the south was formerly the Grand Trunk Railway Company site but the historic buildings of the rail company were replaced by modern industrial structures by subsequent owners. To the northeast of the Portland Company site are six residential buildings (from the late 19th and early 20th centuries), a modern apartment building, and the 68-acre Fort Allen Park and Eastern Promenade beyond. The Munjoy Hill neighborhood, largely developed in the 19th century, lies to the northwest of the Portland Company site, where the land slopes sharply upward from the waterfront and to the south by the Casco River. A section of the 2.1 mile Eastern Promenade Walking Trail and a set of railroad tracks run through the property near the water's edge.

The property comprises a complex that includes 13 historic buildings and one large modern building on a paved lot with minimal vegetation (except for a cluster of trees at the northeast corner). There are also about a dozen scattered smaller sheds and outbuildings that all appear to post-date the 1980s. The historic buildings on the site range in age from about 1845 to 1950, as described below.

Additional information:

Dates for the extant buildings range from 1847 to the late-20th century.

BUILDING DESCRIPTIONS

Building 1 - Erecting Building

Construction Date: 1914 (according to Portland 1924 tax assessment)

Description: Rectangular in plan, Building 1 measures roughly 80 feet by 113 feet and joins the south elevation of Building 2, leaving exposed elevations facing west, south and east. It is a single-story building with a taller central bay lit by a roof monitor. The building is constructed of red brick and has little in the way of architectural ornamentation aside from corbeling around the window bays. Brick piers separate the elevations into large window bays that hold the original tripartite multi-pane steel windows. Window openings include concrete sills. The brick roof monitor retains the original multi-pane steel sash running along the entire west and east sides (Photos 7 & 8). The principal elevation (south) features a tall central entry bay that is divided into two asymmetrical openings by a vertical steel beam; each bay holds a modern overhead metal door (Photo 2). Historic photos show that this opening was originally only about half the height it is currently and it was topped by a large panel of windows. A pedestrian entry just west of center holds a modern door as well. In addition to the installation of replacement doors, alterations include infilling of two window bays at the east elevation (Photo 3). The interior is a single open space with utilitarian finishes, including exposed brick walls and exposed steel framing.

Uses: Building 1 was constructed as the Erecting Shop to replace an earlier one-story wood building from the 1870s that was used for the same purpose. By 1949 Building 1 was used as a machine shop.

Additional Information:

Drawings in the collection of the Maine Historical Society date the Erecting Shop to 1918.

Building 2 - Machine Shop

Construction Date: c. 1845

Description: Building 2 is rectangular in plan and measures roughly 150 feet by 62 feet. It joins Building 2 to the south and Building 3 to the north, leaving fully exposed elevations on the east and west sides. The south elevation was fully exposed until about 1875 when a single-story wood frame building was constructed, to be replaced by the existing Building 1 around 1914. Only the brick gables are visible at the north and south elevations today. The 2 1/2 story brick Building 2 was designed in the Greek Revival style, with pedimented gables, tall compound cornices, and symmetrical fenestration, all hallmarks of the style. The building is enclosed by a gabled roof to which were added two wide overhanging she-dormers, one along the entire east side and another along the southern half of the west side (added between 1896 and 1909 - Photo 1). The roofline is defined by a tall compound brick cornice. The exposed side elevations (east and west) feature regularly spaced window openings with rough-cut granite sills and lintels and double-hung wood windows in a 25/25 configuration at the first floor and 15/15 at the second floor. The existing sashes appear to be a mix of original and replacements. Enclosed bridges from the late 19th and early 20th centuries connect the second floor of Building 2 to neighboring structures (Photos 1 & 4). The interior is divided into three levels and is typical of mill construction of the mid-19th century, with exposed brick walls and exposed wood framing. There have been a number of partitions added to the interior over the years.

Uses: Building 2 is the earliest surviving structure of the Portland Company complex. Built as the original machine shop. When originally constructed the south elevation was exposed and a rail spur ran from the mill yard directly into the building through a tall opening at the center of the south elevation. Prior to the 1890s there was also an office at the attic level. The attic level was later used for pattern storage.

Additional Information:

The Machine Shop was built in 1847 with projecting shed dormers added to the attic story by architect Frederick A. Tompson in 1904. This alteration created a new company drafting room and the laboratory of William H. Chapman, the Portland Company's electrical engineer.

Building 3 - Machine Shop

Construction Date: Constructed in two phases. The first floor appears to have been part of the earliest construction in the mill yard, in the late 1840s or early 1850s. The second floor was added in 1895 (according to map research).

Description: Building 3 is rectangular in plan and measures roughly 80 feet by 62 feet. It joins Building 2 to the south and Building 4 to the north, so that only the east and west elevations are fully exposed. Both the first and second floors are constructed of red brick that is consistent in color, although the two floors were built at different times (Photo 1). The first floor is the earliest construction and features detailing similar to that of Building 2, including a tall compound brick cornice, rough-cut granite window sills and lintels (flat heads), and double-hung wood windows. Most windows at the first floor appear to be original and have a 25/25 pane configuration, except three windows at the east elevation, which have an unusual 35/15 configuration. Several window openings at the first floor of the west elevation have been infilled with brick. The east elevation features a wide double doorway at its south end (holding replacement doors: Photos 1 & 2).

The second story was built in the 1890s and is typical of late 19th century construction, with its segmental arched windows with brick heads. Window openings hold what appear to be the original wood double-

hung sashes, in an 8/8 pane configuration. The second floor is enclosed by a pitched roof on which has been placed a temporary storage enclosure. The roofline is defined by simple wood fascia boards. A loading bay with glazed infill, that does not appear to be original but has been in place since at least the early 20th century, is located at the south end of the east elevation (Photo 2). A relatively recent bridge joins the second floor of Building 3 at the west elevation to the neighboring Building 16 (Photo 4).

The utilitarian interior of the building is divided into two levels and is typical of 19th century mill construction, with exposed brick walls and exposed wood framing.

Uses: Building 3 was used as a machine shop into the early 20th century. By 1924 it was set up as a carpentry shop and by mid-20th century was storage space.

Additional Information:

This section of the Machine Shop was built in 1847 as a one story blacksmith shop. When the second story was added, c. 1895, the original wood and wrought iron Queen Post Truss roof system was left in place and the floor hung from it with iron rods and double-strut trussed girders. The added wall height essentially creates full-length shed dormers on each side of the original roof and a double-pitched roof with the original gable peak remaining above the much shallower pitch of the shed dormers on either side. Because both ends of the building abut other buildings, this unusual roof form is not visible from the ground. A monitor, probably dating from the original construction, extends along the center portion of the ridge.

Building 4 – Foundry

Construction Date: 1895 (according to map research)

Description: Building 4 is the largest of the historic buildings in the complex, with a long rectangular plan measuring roughly 203 feet by 87 feet. The building was originally fully exposed at three elevations (north, west, and east). Today it joins Building 3 to the south and is surrounded on its north and east sides by modern structures. Constructed of brick, Building 4 is a single-story structure with three central raised bays, creating a two-tiered monitor along the center of the roof and a tall open span on the interior. Two large vents protruded from the roof at the east side of the building; they are no longer extant but the two-story brick section of the building along the east wall toward the south end marks their location; window openings in this two-story block were infilled with brick (visible in Photo 1). A brick ell off the south end of the west elevation was originally the location of the core oven for the foundry (Photo 7). Although this building has been altered considerably on the exterior, the west elevation remains largely intact, with paired segmental arched windows with brick heads and a simple box cornice defining the roofline (Photo 5). Windows hold original 16/16 wood double-hung sashes. The lower level walls are reinforced with what appears to be vertical steel strapping. Walls of the raised monitor have been inconsistently covered with modern materials and siding so that few windows are visible, especially along the east side (Photo 8). The long band of multi-pane windows can still be seen along the west side of the monitor (historic sashes remain but are in poor condition). A large loading bay at the south end of the east elevation holds a modern garage door. The adjacent window was modified to hold a pedestrian door (visible in Photo 1). The interior is a large open utilitarian space with exposed brick walls and exposed framing.

Uses: Building 4 was historically used as the main foundry for the Portland Company. This use did not change throughout the company's occupancy.

Additional Information:

The Foundry utilizes an unusual transitional construction system in its exterior walls. The riveted steel

roof trusses were erected on posts formed of back-to-back U channel steel with spacers between them to allow the roof truss gusset plate to be riveted in place between the two U channels at the top. Once the roof system was erected, the spaces between the posts were filled with brick laid up in common bond and engaging with the posts by extending into the recess of the U channel. Above the tops of the posts, the brick wall encased and engaged the steel trusses to the eaves. It appears that once the brick was in place, the roof trusses were supported primarily by the brick walls, not by the steel posts.

Building 6 - Blacksmith/Tank Shop; Machine Shop

Construction Dates: northern half - c. 1850; southern half - c. 1900

Description: The freestanding Building 6 was constructed in two distinct rectangular sections. The northern portion was the earliest and measures roughly 120 feet by 41 feet, while the southern section measures approximately 70 feet by 41 feet. The north block is a one-story brick structure enclosed by a gable roof (Photo 2). The construction is consistent with the earliest buildings on the site and it was likely built in the late 1840s. Regularly spaced window openings line the east elevation, while the west elevation is covered by a one-story addition that was built between 1914 and 1949 (today covered by recent siding - Photo 9). Original window openings have rough-cut granite sills and lintels and hold original wood double-hung sashes in a 20/20 pane configuration. Window bays are separated by shallow brick piers. A simple brick fascia defines the roofline. The gabled north elevation features a large central entryway holding a modern overhead door (Photo 4). A diamond-shaped window (now blocked) is located above the central doorway. Brick piers with simple corbeled capitals flank the lower level at the north elevation. The interior of the northern block is divided into large utilitarian spaces with exposed brick walls and exposed framing.

The southern portion of the building was constructed around 1900 and is a three-story brick block with evenly spaced segmental arched window openings (Photo 5). Otherwise, architectural ornamentation is limited to a corbelled brick cornice. There are a number of the original wood double-hung windows remaining (12/12 at the first floor, 8/12 at the second floor, and 8/8 at the third floor. Many of the windows at the second floor were replaced with 1/1 windows. Most of the first floor windows have the lower half of the sash blocked. The west elevation includes a tall tower (original to the south block) with modern siding and added exterior stairs that lead up to the third floor of the south block (Photo 8). An enclosed bridge (that appears to be an original feature - was there by 1906) extends from the second floor of the west elevation to Building 2 (Photo 7). The interior is divided into floor levels and spaces are utilitarian, with exposed brick walls and exposed framing.

Uses: The earlier northern portion was built at a "black smith and tank" shop according to historic maps. When the southern section was erected around 1900, the building shifted to use as a machine shop. By 1949 the southern portion was occupied by Chapman Electric Neutralizer Company, who had an office on the first floor and machine shops above (here until at least 1980). It appears that the northern portion of the building continued in use as a machine shop for the Portland Company.

Additional Information:

Drawings in the collection of the Maine Historical Society show the plans for the one-story tank shop, drawn in 1883. The three-story section of the building was constructed between 1896 and 1904 according to map research.

Building 7 - Carpentry-& Woodworking Shop

Construction Date: c. 1870, with c. 1900 addition

Description: Building 7 is a freestanding one-story brick building. It appears that it was originally constructed with a rectangular main block (170 feet by 60 feet) and a small brick ell off the southwest corner (roughly 50-feet by 21 feet). A small one-story wood-frame addition was constructed off the south end of the main block around 1900 (Photo 5). The building was constructed with evenly-spaced windows with segmental arched brick heads and rough-cut granite sills. Although many windows have been blocked with plywood, original sashes with a 20/20 pane configuration remain in a number of openings. There are several original segmental arched doorways as well, including a large loading door on the east elevation (Photo 4). Only one of the doorways (north elevation-west end) appears to hold the original double doors. Fenestration on Building 7 has been substantially altered over the years. A number of windows have been infilled with brick or partially blocked, while another on the west elevation was infilled and a pedestrian door was created (Photo 7). Several wide loading doors with steel lintels were added, at both the west and east elevations (Photos 3 & 7). A modern temporary storage shed was erected near the northeast corner of the building but it is freestanding (Photo 3).

Uses: The building was constructed for use as the carpentry and woodworking shop. By 1896 the main block was a "car shop" and also held the woodworking department. The woodworking shop remained as late as 1909, at which time the building also functioned as a garage and auto repair shop. By 1949 the space had been given over to steel fabrication (continued into the 1980s). Historic maps indicate that the rear ell was originally used for "printing and erecting," and later for "printing." By 1909 it was used for pattern storage. The wood-frame addition just east of the ell was added around 1900 along with a second wood addition further to the south that connected Building 7 to Building 10. The two wood additions were used for storage. The southern addition was removed by 1949, by which time the ell and the northernmost addition were occupied by an electric welding shop (remained into the 1980s).

Additional Information:

The car shop was constructed c. 1873 following a large fire that destroyed many buildings at the southeast corner of the complex. Drawings in the collection of Maine Historical Society include plans for the addition (former lumber shed) dating to 1904.

Building 10 - Paint Shop

Construction Date: c. 1885

Description: Building 10 is a small single-story brick building measuring roughly 46 feet by 30 feet. This freestanding rectangular structure has a shallow pitched roof and little in the way of architectural ornamentation, aside from segmental arched window opening with brick heads and rough-cut granite sills. Window openings along the east elevation have been infilled with brick (Photo 2), while those at the west and north elevations are blocked with plywood. It appears that the original wood double-hung windows (in 12/12 pane configuration) remain beneath the plywood (Photo 4). The principal elevation (north) is dominated by a large loading bay that may have been an added feature (Photo 1), although it was in place as early as 1924 (now infilled with modern materials). Secondary access to the building is currently provided by means of an added doorway on the west elevation - holding a modern flush door (Photo 4). The interior has been finished with modern materials.

Uses: When first constructed around 1885 the building was used as a paint shop. By 1909 auto painting was undertaken here. In the mid-20th century it served as a storage shed (into the 1980s).

Additional Information:

Additional research shows the Paint Shop to have been constructed c. 1873, following the fire at the

southeast corner of the complex.

Building 11 - Pattern Storehouse

Construction Date: c. 1885

Description: Building 11 is a two-story brick building with an irregular footprint, a quadrilateral measuring 30 feet along the north wall, 85 feet along the east wall, 90 feet along the south wall and 89 feet along the northwest wall. It joins Building 12 to the east and is constructed into the side of a hill so that an areaway runs along the northwest wall to expose the lower level windows. Typical of many of the buildings in the complex from the late 19th century, Building 11 is enclosed by a shallow pitched roof and has little architectural ornamentation, aside from segmental arched window openings with brick heads. Unlike most of the other buildings, window here have wood sills and 16-pane wood sashes that appear to be casements (Photo 3). The principal elevation (north) features a large loading bay that is now infilled with two recent doorways (Photo 1). A third doorway is located just to the west (a doorway in this location appears in historic images). A secondary entry was added to the northwest elevation in a former window location, together with a wood pedestrian bridge (Photo 3). The interior is divided into two floors and has been updated somewhat with the addition of carpeting, suspended panel ceilings, and a small number of recent partitions. The brick walls and wood framing remain exposed on the interior.

Uses: Building 11 was used as a pattern warehouse throughout the occupation by the Portland Company.

Building 12 - Pattern Storehouse

Construction Date: Map research indicates that Building 12 was constructed in 1895.

Description: Rectangular in plan, Building 12 measures roughly 40 feet by 80 feet and joins Building 11 to the west. Building 12 is constructed of red brick and, like the other late 19th century buildings in the complex, has little in the way of architectural ornamentation, aside from segmental arched window openings with brick heads. One notable difference from other buildings of the period is that Building 12 has a gable roof (rather than a low-pitched roof), a treatment more typical of the early to mid-19th century buildings of the Portland Company. The rooflines are trimmed with simple unadorned rake boards. While many of the evenly-spaced window opening (with wood sills) are now blocked with plywood, a number retain the original 16-pane wood sashes that appear to function as casements (Photo 3). The principal elevation (north) has two large loading bays with steel lintels (likely original, as they appear in historic photos) flanking an added (post 1988) central brick entry enclosure (Photo 1). The south elevation features a sign painted directly onto the brick wall reading "PORTLAND CO." (appears in early images of the building - Photo 3). The interior is divided into three principal floors, which remain utilitarian spaces with exposed brick walls, wood plank flooring, and exposed wood framing.

Uses: Building 12 was used as a pattern storage warehouse throughout occupancy by the Portland Company.

Additional Information:

The Pattern Storehouse Addition was constructed in 1895, according to drawings in the collection of the Maine Historical Society. At one time, a one-story shed addition was constructed along the east elevation, but it has since been removed.

Building 14 - Drafting Room/Storage

Construction Date: c.1875

Description: Building 14 is rectangular in plan and has two distinct sections, both of which appear to have been built about the same time. The northern section is two stories tall and measures roughly 85 feet by 20 feet (Photo 2), while the southern portion is three stories and measures approximately 30 feet by 20 feet (Photo 1). The building includes a combination of brick and wood-frame construction. The south elevation was originally exposed but now joins Building 24. The north wall abuts Building 15. Building 14 is built up against a retaining wall so that only the upper level, a simple paneled brick wall, is visible from Fore Street (west elevation - Photo 5). The east elevation is sided with clapboards and trimmed with flat wood stock. This facade has been substantially altered, with multiple changes in fenestration, inconsistent window and door replacement, and a small shed addition at the north end. Building 14 is joined to Building 2 by an enclosed walkway at the second floor (extant as early as 1886 - Photo 3). The interior has been altered extensively and finishes are largely modern.

Uses: The southern portion of Building 14 served as a drafting room until about 1895, while the northern portion was always used as a storage facility. By 1896 the southern end of the building was also used for storage and also held an office on the third floor. During the 20th century the building remained in use by the Portland Company as a storehouse.

Additional Information:

The Drafting Room and Storehouse were constructed sometime between 1858 and 1864 according to map research.

Building 15 & 16 - Boiler House/Brass Foundry

Construction Date: c.1850s (based on 1858 plan)

Description: Buildings 15 and 16 appear to have been constructed together and may have been part of the earliest construction on the site (likely late 1840s or early 1850s). Building 15 has been so heavily altered that it is impossible to know for certain what its original appearance may have been. It has a rectangular plan measuring roughly 35 feet by 20 feet and is built up against a stone retaining wall that runs along the Fore Street (west) side of the building. This one story brick building abuts Building 14 to the south and Building 16 to the north. All that remains evident of the historic east elevation (the only exposed elevation) are several wide brick piers between which has been added infill of various types (all in poor condition - Photo 2). The piers are decorated by string courses with corbels and dentils (Photo 3). The same detailing also appears along the cornice line and carries over across the face of Building 16. The rafters of both buildings are currently exposed but appear to have originally been covered by simple fascia boards.

Building 16 is a bit more intact than Building 15 but has also been altered. It is a one-story rectangular brick structure measuring roughly 41 feet by 27 feet. The north elevation abuts a concrete retaining wall, leaving only the east elevation exposed. There were originally four large window openings along the east elevation, trimmed with rough-cut granite sills and lintels; two still retain the original 16/16 wood double-hung sashes (Photo 4). The two southernmost windows were modified when a large loading bay with a steel lintel was installed (now infilled with added materials). Where Building 15 joins Building 16 are the remnants of a brick smoke stack (the base of it is still visible - Photo 5). (No access to interior due to dangerous conditions.)

Uses: Research indicates that Buildings 15 and 16 were constructed as the boiler house for the complex. A brick building appears in this location as early as 1858 and the design details, window in particular with their flat granite heads, are consistent with the earliest construction in the complex. The boilers were held

in what is today Building 15. It is likely that the mill quickly outgrew this relatively small boiler house; by 1886 a much larger boiler building had been constructed elsewhere on the site (no longer extant) and Building 16 was being used as a brass foundry; there were boilers still located in Building 15. This use continued until at least 1924 but had ceased by 1949. The buildings were later used by the Portland Company for storage.

Additional Information:

Based on maps and plans of the complex, it appears the Boiler house was constructed between 1858 and 1864; the Brass Foundry was constructed between 1864 and 1871. The 1858 plan of the complex (in the collection of the Maine Historical Society) shows a brick building in this general location, though doesn't appear to be the existing buildings. Research into the 1886 Sanborn Map of the Portland Company do not show an alternative Boiler House as previously determined. A Boiler Shop is present in the northeast quadrant of the complex.

Building 24 - Vault Storage

Construction Date: between 1896 and 1909

Description: Building 24 is a four-story utilitarian brick structure with minimal fenestration. It is built into a hill and thus has three exposed floors at the west and south elevations and four at the east (Photo 1). It is joined to Building 14 to the north and linked to Building 2 by an older enclosed bridge at the third floor (from c. 1900) and a more recent open bridge sheltered by an awning at the second floor (visible in Photo 1); the latter leads to an entry on the east elevation in the former location of a window. Many of the original windows have been infilled with brick, particularly at the second floor. The few historic window openings that remain (one at the south elevation and three at the east elevation) have segmental arched brick heads and rough-cut granite sills. One at the west elevation was converted to a doorway (second floor) and now holds a flush metal door. Also at the west elevation, an original loading door with historic glazed wood double doors survives at the fourth floor (Photo 4). An entry was added at the second floor of the south elevation (prior to 1924) and today holds recent double doors (Photo 2). The south elevation also features a sign painted directly onto the brick - the existing sign replaced an earlier painted sign of the Portland Company. The north elevation is void of fenestration (Photo 3). The interior is utilitarian (exposed brick walls) with no notable architectural features.

Uses: Building 24 was constructed for vault storage and remained in that use during occupancy by the Portland Company.

Additional Information:

The construction of the Vault dates from between 1904 and 1909 as evidenced by historic maps. It appears that a floor was added before 1924, though it is unclear when or why the Vault was expanded.

Building 30 – Office

Construction Date: 1950

Description: Building 30 is a freestanding Modern office building with a rectangular plan measuring roughly 32 feet by 120 feet. Typical of the style, there is little in the way of ornamentation. The northern third of the building stands three stories, while the southern portion is only two stories (Photo 1). It is built into a hillside so that only the second and third floors are visible from Fore Street (west elevation - Photo 2). The building is enclosed by a shallow shed roof with deep overhanging eaves. It rises from a red brick base that steps up at irregular intervals into the second and third floors. The upper portion of the building

is sheathed with wide clapboard siding. Bands of asymmetrical windows light the second and third floors, while openings at the first level are more evenly-spaced single windows. All sashes were replaced in the 1970s when a major renovation was undertaken. A brick entry shelter was also added to the east elevation as part of the 1970s work. There are two simple entrances off the Fore Street (west) elevation, both holding what appear to be replacement doors. The more prominent of the two is recessed within an entry shelter (Photo 4). The interior was heavily renovated in the 1970s.

Uses: The building was constructed as offices for the Portland Company and has remained in use as office space.

Acetylene House

Construction Date: c. 1909

Description: A small brick Acetylene House measuring approximately 8 feet square is located atop the first tier of the retaining wall to the east of the Foundry's Coke Oven. With no roof, the acetylene house is nearly in ruins, including a severely rotted door frame on the east elevation. Access to the structure is limited by overgrowth of vegetation.

Uses: The Acetylene House was used as the source of acetylene for welding and metal work.

HISTORICAL CONTEXT

Overview

The Portland Company was founded in 1845 as the Portland Iron Manufacturing Company. The name was shortened almost immediately in 1846; its new name has endured since, although operations ceased in 1981. During its nearly 140 year history, the Portland Company manufactured (or outfitted) steam locomotives, passenger cars, vessels, fire engines, elevators, lamp posts, lighthouse segments, ornate architectural elements, manhole covers, and more.

The history of the Portland Company and its associated buildings represent 19th and 20th century national trends in manufacturing and transportation, Portland's position as a seaport and transportation center, and the impact of industrialization on Portland.

Additional Information:

The charter for the Portland Iron Manufacturing Company was granted to individuals not associated with the Portland Company, suggesting that the charter was purchased from the original grantees by John A. Poor and associates, who then requested that the legislature change the name to the Portland Company in 1846.

Portland - 17th Century Settlement and Growth as a Seaport

Portland is located on a peninsula in Casco Bay and is well-known for its advantageous deep water port, its hilly topography, and varied street pattern. Portland has a predominance of 19th century buildings, representing its prosperity as an industrial era seaport and transportation center.

The earliest settlers came to the peninsula by 1628 to fish, trap, and trade. By the mid-1700s, Portland (then known as the Neck and part of Falmouth) was experiencing the wealth and population growth that came with having the "best natural harbor on the eastern seaboard." Lumber was prolific and Portland's main commodity; it was processed and shipped to Boston, England, and the West Indies. Settlers clustered along Fore Street (then at the water's edge) and the base of King Street (renamed India Street).

A period of recovery and rapid growth followed the Civil War and the Neck separated from Falmouth to become Portland. Capitalizing on her natural resources -deep water port, lumber, and fish - Portland thrived during the late 1700s and into the early 1800s.

Additional Information:

The period of recovery and rapid growth followed the Revolutionary War, not the Civil War.

Early 19th Century: Development as a Transportation Center

Portland's population more than doubled between 1800 and 1820 to over 8,500, and by 1832, the population reached over 13,000. Commercial activity was centered along streets familiar today - Fore, Middle, Market, State - and along wharves in the general location they exist today. Homes were built along the base of Munjoy Hill and a new, fashionable neighborhood in the western part of the city.

Portland continued to exploit its abundance of lumber and fish and participated in the booming shipbuilding

and maritime trade industries. By the 1830s, Portland's harbor had the largest commercial fleet on the eastern seaboard. While shipbuilding was at its peak during this time, the U.S. canal system was exploding. A group of Portland businessmen took notice and in 1825 financed the Cumberland and Oxford Canal. Completed in 1830, the canal connected Portland to the Sebago Lake region and provided a new means to transport Maine timber. Moreover, Montreal used the canal system and the St. Lawrence River to transport agricultural products to Portland for export, except during the winter months when the river iced over.

Additional Information:

The Cumberland & Oxford Canal only reached Long Lake in Harrison, Maine, approximately 50 miles from Portland. Its termination was nearly 200 miles from Montreal and it was not used for transportation between Montreal and Portland.

Mid 19th Century: Industrialization, the Railroad, & the Founding of the Portland Company

Nineteenth century advances in transportation and industry, particularly the railroad, brought Portland her greatest growth and prosperity yet and by mid-century, precipitated businesses like the Portland Company. Portland's first railroad, the Portsmouth, Saco, & Portland Railroad, arrived in the city by 1842 and connected southern Maine with Boston. Soon after, in 1845, attorney and savvy businessman, John A. Poor, with engineer, Septimus Norris, founded the Portland Iron Manufacturing Company to produce locomotives for the growing railroads. Furthermore, through Poor's vision and determination, Portland won the bid, over Boston, for the much coveted Atlantic & St. Lawrence Railway terminal in 1847 (later taken over by the Grand Trunk). The Atlantic & St. Lawrence Railway connected Portland with Canada and the west, making Portland Canada's primary port in the northeast, even during the winter.

All three were located on the waterfront: the Portsmouth, Saco, & Portland Railroad terminus was located just southwest of the commercial center, at the base of State Street; the Atlantic & St. Lawrence Railway was located further east, at the base of India and Hancock Streets; and the Portland Iron Manufacturing Co. (by 1846 known simply as the Portland Company) was located on filled land at the base of Waterville Street and just across a small cove from the Atlantic & St. Lawrence Railway. Initially, there was no direct link by railroad between them. To connect the three properties, another stretch of the waterfront was filled, upon which railroad tracks and Commercial Street were constructed; the project was completed by 1853. Now, well situated with a direct link to the railroad (which eventually included a network of six railroads and several steamship routes), a wharf on Casco Bay, and an indirect link to the canal system, the Portland Company was part of a thriving commercial and transportation network.

Additional Information:

As noted above, the Portland Iron Manufacturing Company was founded by individuals not connected with the Portland Company. John A. Poor and others appears to have purchased the charter for that company from the grantees and had the legislature change the name to the Portland Company in 1846.

The involvement of Septimus Norris in the Portland Company was very brief. The Portland Company Director's meeting minutes for 1846, located at the Maine Historical Society, show that Norris was only associated with the company for approximately 6 weeks in November and December of that year. There is no indication that the Portland Company purchased tools and machinery from the Norris Brothers Locomotive Builders in Philadelphia, as recommended by Norris, nor hired any of the ten men he recommended. Horace Fenton, who had come with Norris from Philadelphia, was retained as General Superintendent by the Portland Company directors after Norris was removed from the board. Following legal action, the

Portland Company paid Septimus Norris \$400 for the non-exclusive use of patents he had transferred to the Portland Company during the six weeks he was a director.

Before Broad Cove was filled for the railroad yard between the Portland Company and the Atlantic and St. Lawrence RR depot at India Street, the railroad crossed the cove on a timber trestle, with a siding on another trestle to the Portland Company Works, providing a rail connection to the plant from the outset of operations in 1847.

The Portland Company: Mid-19th Century Manufacturing

The Portland Company was the only company in the U.S. founded for the sole purpose of manufacturing locomotives; others were originally machine shops, adapted for their new purpose. Its complex was a nearly self sufficient operation, able to produce almost every part needed in the manufacturing process. Their buildings evolved with their operations – as industrial and transportation innovation dictated, they redesigned their old shops and added new shops. The Portland Company complex included three buildings as early as 1851—a foundry, a counting room, and a “car house” (Building 2 -machine shop). By the century’s end there were roughly two dozen buildings and sheds supporting their operations and the company was manufacturing a range of products, as follows.

Additional Information:

In 1847, a foundry, machine shop, and blacksmith shop were constructed of brick and a car shop built of wood. The original office, or “counting room” may have been an existing building on the site, as the director’s records do not show any reference to its construction.

Locomotives. Fire Engines. Steamships

Locomotives

1848 - c.1900

The railroad brought economic vitality to Portland and served as the impetus for the founding of the Portland Company. The Portland Company’s first locomotive, the Augusta, was completed in 1848 for the Portland, Saco, & Portsmouth Railroad. Over the next 60 years, 630 more steam locomotives (and hundreds of freight and passenger cars) were constructed for, among others, the Boston & Maine, Maine Central, Northern Pacific, Panama, Mexican Central, Sandy River, Wiscasset, and Quebec Railroads. The Portland Company also built locomotives for the U.S. Government during the Civil War.

Following the war, the railroad (and steamboats) served Maine’s burgeoning tourism industry. As the wealthier looked to escape the heat of the cities, railroads and steamships connected cities with rustic coastal communities and inland areas like Rangeley Lakes. By 1872, 65 trains a day stopped in Portland. Six railroads eventually served the city; the Grand Trunk alone had direct lines to New Hampshire, Vermont, Montreal, and the West.

While railroad track gauge is of standard dimension nationwide today, up to six different dimensions were used until the 1870s. This meant that the Portland Company built locomotives and cars to fit varied width tracks.

Fire Engines

c.1860 - 1870s

The Portland Company manufactured the first of its horse drawn steam fire engines, the "Greyhound," in 1860. It was used by the Portland Company and the adjacent Grand Trunk Railway as well as being loaned to the City of Portland. The Portland Company subsequently produced at least seven steam engines for the Portland Fire Department. Several more steam fire engines were built during the 1860's and into the 1870s.

No event made the need for fire engines more evident than the fire that swept through Portland on July 4, 1866. The fire burned the commercial center to the base of Munjoy Hill, stopping just short of the Portland Company but destroying 1500 buildings and leaving ten thousand homeless.

Steamships and Other Vessels c.1860 - c.1920

The advent of steamboat transportation translated to additional business for the Portland Company. The Portland Company built over 350 steam engines and boilers for marine, as well as, industrial uses. They outfitted towboats, fishing vessels, yachts, dredges, freighters, fireboats, and ferries. Some of these vessels were built elsewhere and others were fully constructed at the Portland Company's boatyard across the harbor in South Portland. Once launched, the vessel would be towed to the Portland Company wharf to be outfitted. For example, the side-wheel passenger steamer, the "Bay State," was built in Bath, Maine, and then towed to Portland to be outfitted by the Portland Company in 1890.

The Portland Company: Late 19th/Early 20th Century Diversification

Portland's economy-and the Portland Company's portfolio-diversified as industrialization progressed. The Portland Company began manufacturing elevators, cast iron elements, and paper industry equipment, and for WWI, they produced brass shell casings. They even distributed automobiles and trucks, making good use of their existing large buildings, expansive property, and proximity to rail transportation.

Elevators early 20th century

The Portland Company manufactured passenger and freight elevators, at first hydraulically powered and later electrically. Most elevator cars were built of solid oak with an iron and steel framework. The Portland Company manufactured three elevators for the Fidelity Trust building. One of them survives in the building today, now known as the Maine Bank and Trust Co. building on Congress St. The Portland Company also produced the elevators for the Portland City Hall.

Cast Iron Late 1800s

During the 19th century, cast iron could be produced cheaply and in vast quantities. It could be cast in a variety of forms and painted different colors making it a desirable alternative to carved stone and wooden architectural elements. Cast iron production was prolific late in the century; whole streetscapes can be found dating from this period, lined with cast iron facades.

The Portland Company cast storefronts, man hole covers, parts for lighthouses (lanterns, lamp decks, spiral stairways, doors and sashes, walkways, railings, vents, spindles and markers, upper sections of light tower), lamp posts, ornate gates, and industrial boilers. They also operated a bronze and brass foundry.

Paper Industry Late 1800s - 1900s

By the 1870s, Maine's lumber supply, namely desirable pine, was becoming depleted. Spruce and fir were plentiful, however, and ideal for the paper industry. Between 1880 and 1900 about 40 mills were built in Maine. Processing moved right to the source, creating small industrial centers in towns like Rumford, Millinocket, Berlin Mills, Sprague's Falls, and Westbrook.

The Portland Company manufactured equipment used in the paper industry including pulp digesters, boilers, tanks, steam accumulators, chippers and debarkers, vomit stacks, turbines, penstocks, water-control gates, and gate-hoisting equipment. Equipment, some of which measured as large as 15' in diameter, was transported by rail directly from the Portland Company to many of the mills.

The advent of electricity meant convenience and new challenges, like the heavy static charge that can be produced during the manufacturing process, causing problems in paper and textile mills. The remedy came in the form of an electric neutralizing machine, patented by electrical engineer, William Chapman, in 1908. The Chapman Corporation operated as a subsidiary of the Portland Company in Building 6 at the waterfront mill yard.

Automobile Sales c1907 - c1914

The Portland Company served as Maine's exclusive distributor of the high-end Knox automobiles, trucks, firetrucks, and three-wheeled tractors which were manufactured in Springfield, Massachusetts. In 1910, they added the Brush, Cole, and Thomas automobile line to appeal to middle and lower income buyers. The Portland Company used their garage for auto and truck repairs, and snowplow fittings.

Brass Howitzer Shell Casings for the War 1917 - 1918

The onset of WWI prompted the need for further diversification and brought a brief respite to the regional decline in manufacturing. Tens of thousands of brass shell casings were produced by the Portland Company, packed in pairs, and shipped to another factory to be filled before being sent to the US Army between 1917 and 1918. Women replaced men, who were overseas serving in the military, in this, and other factories.

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PORTLAND COMPANY COMPLEX
GENERAL BUILDING CONDITION REPORT

PERFORMED FOR
CITY OF PORTLAND, MAINE PLANNING DEPARTMENT
389 CONGRESS STREET
PORTLAND, ME 04101

MARCH 26, 2015
SUPERSEDES REPORT DATED MARCH 11, 2015



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- March 26 revisions include edits to Executive Summary, Introduction, Recommendations and Conclusion to reflect comments from March 18, 2015 meeting with City of Portland, Greater Portland Landmarks, and CPB2.
- March 26 revisions also include renumbering of Appendix A, Appendix B, and Appendix C. Appendix A edits further compare Becker Structural Engineers and Resurgence Engineering and Preservation rating systems.

1.0 EXECUTIVE SUMMARY

The individual structures within the Portland Company complex that were included in the project scope are in generally poor condition due to deferred maintenance and, in some cases, inherent but correctable lack of stability against lateral forces and snow loads. The severity of deterioration varies from building to building; it also varies within any given building. In some cases, significant deterioration is quite localized; in other cases, the overall structure is in a state of significant disrepair.

Buildings in poor condition do not necessarily warrant demolition. The fact that a number of the buildings within the Portland Company Complex continue to be occupied – some by large assemblies for special events and some by business tenants – attests to the fact that most of the buildings are still serviceable and are in salvageable condition.

In our opinion, it is possible to address the identified structural and building envelope conditions in ways that retain each building's historic character and that are feasible from a cost perspective. To do so, however, will require case-by-case assessment, creative design solutions, and the involvement of consultants and contractors experienced in historic building rehabilitation.

At this site, business and assembly occupancies can continue as long as structural conditions are monitored while the owners develop their plans for the site. Structure and building envelope rehabilitation will be expensive, but may still be cost-competitive with new construction of the same volume and footprint within the existing framework. Historic rehabilitation tax credits could likely make rehabilitation costs more competitive with new construction. Whether one is building anew or rehabilitating the existing buildings, quality materials, detailing, and craftsmanship must be employed to withstand the formidable climatic conditions that occur on the waterfront.

Structural work needs to be performed on the roof and floor structures to increase snow and live load capacity, and to increase lateral stability. Building envelope improvements are necessary to create viable rehabilitated shells that can ward off the elements for decades to come. Other masonry rehabilitation strategies will be required to provide the structural continuity between roof, wall and foundation of the buildings.

After the buildings were assessed by Resurgence Engineering and Preservation in late December 2014, snow loads took a toll on two buildings, causing localized roof truss failure and roof rafter failure in Buildings 4 and 7, respectively. Prior to scheduled public events, the current owners stabilized these deficiencies, and in the case of Building 4, corrected or mitigated them.

We concur with many of the primary findings of Becker Structural Engineers' report as to the current condition of the individual buildings. However, the simplified construction techniques that characterize Buildings 1 and 4, together with the repetitive nature of many of the required repairs, make possible a relatively straightforward rehabilitation project for those two structures. Buildings 2 and 3 are more complicated and careful assessment will be necessary to deal with their structural complexities.

The linear, connected nature of Buildings 1 through 4 also presents an opportunity to improve lateral stability of the buildings within contemporary code requirements while making other repairs. The simple,

modular nature of these long buildings allows for replication of the individual structural repair details. The exposed floor and roof structures provide easy access to make repairs. After additional structural inspection is completed, the limited hidden conditions lower the need to include large cost contingency factors for structural upgrades.

In summary, most of these exposed-frame industrial structures, with the exception of Buildings 2 and 3, are not that complicated when compared to many other historic commercial building rehabilitation projects undertaken in Portland and in Maine during the last quarter century.

In our opinion, three structures stand out as buildings presenting the greatest structural and building envelope challenges. The buildings in the most compromised condition include:

Building 7 (Car Shop)
Building 10 (Paint Shop) and
Building 11 (Pattern Storehouse).

We recommend that Building 11 remain unoccupied until the north (Fore Street) wall can be stabilized. The immediate safety concerns identified by Becker Structural Engineers at the wall between buildings 6A/6B, and of the overall condition of Building 10, are valid concerns and should be addressed as soon as possible, if they have not been already. Stabilizing the wall and roof framing between 6A and 6B can be performed as a stand-alone project prior to other rehabilitation of these buildings.

In any rehabilitation project, it is important to match existing buildings with compatible uses. Existing volumes, architectural complexity, and inherent structural limitations should all be considered to place proper occupancy types within any given building. Higher-risk occupancies (such as schools or other uses anticipating large assemblies) should be matched with buildings that can be strengthened to withstand increased structural loading factors with the least amount of structural intervention.

For purposes of this report we assume that the existing structures would be rehabilitated according to the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*. These Rehabilitation standards allow considerable leeway to perform less expensive repair or replacement, rather than strict – and more costly – restoration or conservation, of deteriorated structural framing elements, thereby making projects more economically feasible. The property's eligibility for the *National Register of Historic Places* also allows access to State and Federal Historic Preservation Tax credits, which can total up to 45% of qualified rehabilitation expenditures.

Building code advances in recent years have come to recognize that deficiencies in historic structures can be individually and specifically repaired, as opposed to replacing entire structural components. These advances can make structural rehabilitation easier and less expensive than comprehensive replacement.

2.0 INTRODUCTION

In November 2014, the City of Portland Planning Department solicited qualification submittals to provide a general building condition report for eight extant structures within the former Portland Company industrial complex at 58 Fore Street. Subsequently, the City increased the number of buildings to be studied to ten, adding Building 3 and Building 14. For each of the structures, the qualified team was asked to assess and provide a written report on the current conditions of the buildings' exterior envelope, structural systems(s) and potential for adaptive reuse, with a preliminary assessment of the relative expense to address current deficiencies in the building envelope and structural systems.

Alfred H. Hodson III, P.E. of Resurgence Engineering and Preservation, Inc. (RE&P) performed a structural evaluation of the Portland Company Complex. Richard Curtis, AIA performed additional building envelope assessment, and Ivan Myjer of Building and Monument Conservation performed masonry assessment. These three individuals completed the work required to inspect the identified buildings. The work scope did not include evaluation of any mechanical or electrical systems, accessibility issues, or life safety code requirements. Specific Buildings in the inspection scope include:

Building 1	Erecting Building	c.1918
Building 2	Machine Shop	c.1847
Building 3	Machine Shop	c.1847
Building 4	Foundry	c. 1895
Building 6B	Tank Shop	c. 1896-1904
Building 7	Car Shop	c. 1873,1904
Building 10	Paint Shop	c. 1873
Building 11	Pattern Storehouse	c. 1885
Building 14	Drafting Room and Storehouse	c. 1858-64
Building 15/16	Boiler House and Brass Foundry	c. 1858, 1864

Assessment of the majority of the buildings occurred on December 29 and 30, 2014. On subsequent return visits, Mr. Hodson and Mr. Curtis visited the site to confirm and discuss items following completion of a draft report, and Mr. Hodson assessed the remaining two buildings.

The intent of the evaluation and this report, for each building within the scope, is to:

- a. Assess and provide a written report on the current condition of the building's individual exterior envelope, the current condition of the building's structural systems, and the building's potential for adaptive re-use.
- b. Provide a preliminary budget of the relative expense to address current building envelope and structural system, including structural alterations and upgrades per IEBC 2009 requirements for a change of use, including the provisions included in Chapter 11 (Historic Structures), as well as upgrades to lateral force resisting systems and diaphragms for wind and seismic loads.
- c. Review previous reports to understand past determinations of conditions, to compare them to current structural conditions. In particular, we reviewed a report prepared by Becker Structural Engineers (BSE) for the current property owners in March 2014, and worked both parallel and independent of their assessment to compare our findings with theirs;

Reporting Requirements in the Project Scope included:

- d. Meet with the Planning Department and the city Historic Preservation Board to describe our findings *(not performed yet)*, and;
- e. Submit a final report to City of Portland, Maine Planning Department.

Appendix A of this report provides tables and narrative explaining the rating systems used by Becker Structural Engineers and Resurgence Engineering and Preservation. Appendix B of this report provides photographs documenting the individual buildings and site. The report and appendices should be read in their entirety. Some photos shown in the appendices may indicate damage not specifically mentioned in the report. Appendix C includes a bibliography of sources used as part of this project.

Working within the same parameters as BSE did during their study, we did not consider building code requirements, egress, accessibility, flooding, ventilation, hazardous materials, fire safety and energy code. We did not perform invasive testing or formal structural analysis. We understand that more comprehensive structural and building envelope assessment, including invasive and nondestructive testing, is necessary to perform schematic design, understand building code requirements, and provide more refined cost opinions. Other conditions may exist beneath concealed surfaces that appeared sound or in areas that were not visible during the inspection. This is typical of any older building or complex of buildings facing potential rehabilitation.

For purposes of this report, the long axis of the Portland Company Complex faces north toward Fore Street, and south toward the waterfront. The west side faces the Hamilton Marine complex, and the east side faces the adjacent wooded hillside. This orientation is in keeping with the BSE and SCC reports.

Also for purposes of this report it is assumed that the existing structures would be rehabilitated according to the *Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*. These Rehabilitation standards allow considerable leeway to perform replacement, rather than strict restoration or conservation, of deteriorated structural framing elements, thereby making projects more economically feasible. (The property's eligibility for the National Register also allows for use of historic preservation tax credits. Preservation tax credits, which can total up to 45% of qualified expenditures, are intended to encourage investment in the rehabilitation of historic structures.)

We have not attended any presentations by Sutherland Conservation and Consulting or CPB2 Management, LLC, in order to retain objectivity in this study.

3.0 DOCUMENT REVIEW

3.1 ORIGINAL CONSTRUCTION DOCUMENTS

We were unable to review original construction documents of the Portland Company Complex. However, we understand some documents are available at Maine Historical Society. Any further assessment of the buildings should include review of these documents in order to compare specified materials with field conditions. This is important for any building rehabilitation project, in order to compare a designer's intent with what was constructed. Occasionally, archived drawings include notes made during construction to document specific construction changes and to provide insight into why those changes occurred.

3.2 PREVIOUS STUDIES AND HISTORIC RESEARCH

In accordance with the Request for Qualifications, we were provided access to two previous reports about the structural condition and history of the buildings in question, including the following:

- Evaluation of Existing Buildings at the Portland Company Property, March 28, 2014, by Becker Structural Engineers(BSE) Paul Becker, P.E., and Ethan Rhile, P.E.
- The Portland Company Historic Significance and Integrity, 2014, by Sutherland Conservation and Consulting (SCC), Scott T. Hanson, Amy Cole Ives, Matthew Corbett. We have not attended any of the presentations about the site that have been occurred since the report's publication.

We reviewed the BSE report to help understand their specific report format, narrative, and scope for purposes of defining our work scope. We worked both independently and in parallel with the BSE report. We reviewed the SCC report primarily to develop an understanding of the site's evolution and to gain an understanding of the relative age of the individual structures within the work scope.

We also performed a brief literature search to better understand some of the construction techniques used in several of the longer mill buildings. References reviewed included texts about late 19th and early 20th century construction design, materials, methods, and techniques. Appendix B lists a full bibliography of materials researched or reviewed for this report, including site surveys and maps available on the Maine Memory Network.

We viewed several historic maps online to view general conditions and layouts of the site, understanding that such maps included some artistic license and potential inaccuracies not found in formal survey maps or photographic images.

OBSERVATION, EVALUATION, RECOMMENDATIONS

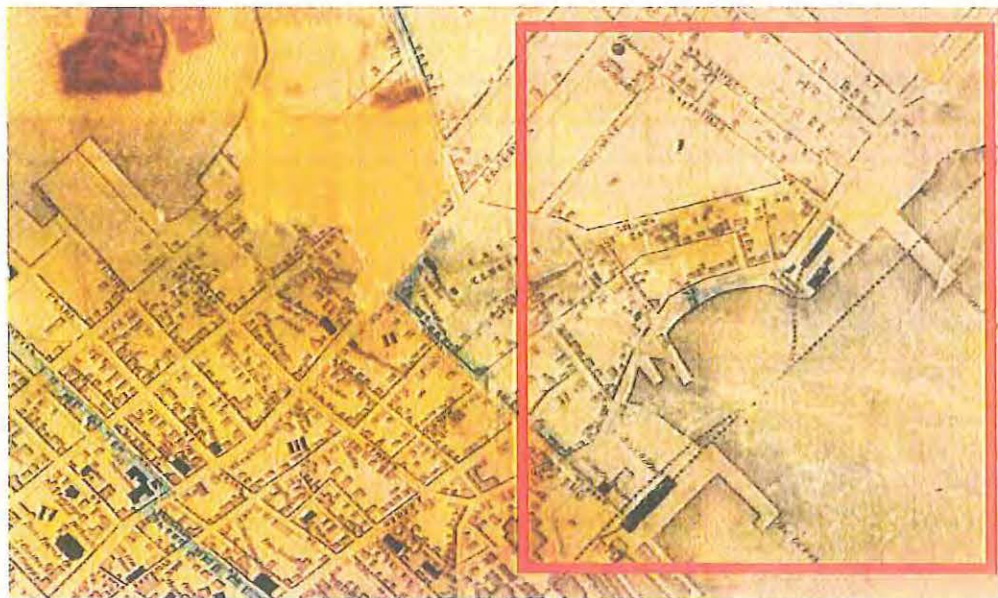
4.0 GENERAL OBSERVATIONS AND EVALUATIONS

Site Considerations and Conditions:

The site surrounding the buildings in the work scope is an essentially flat, mostly paved site, with the exception of the north section of the site facing Fore Street. A steep drop from Fore Street to the ground level of the buildings rises from the west end of the site toward the east end, as Fore Street ascends Munjoy Hill toward the Eastern Promenade. This steeply-sloped topography has a direct impact upon Buildings 1 through 4 and Buildings 11 through 16 as stormwater runoff flows off the hillside toward these structures. The first floor of Building 11 sits below the exterior grade of the north wall of that structure. Buildings 14, 15 and 16 share a rubble stone masonry north wall that primarily serves as the Fore Street retaining wall.

The majority of the site surrounding the studied buildings is paved right up to the building perimeter walls. Perimeter site drainage around the buildings is likely not present or operational. We observed only a few catch basins near the buildings, but snowfall hampered a more comprehensive assessment.

At a site with buildings that predate sophisticated topographical surveys and largely available commercial photography, historic maps are often a key resource to determining site conditions. However, one must take into consideration any "artistic license" taken by the cartographer. An 1837 map by James Hall shows the site without any of the Portland Company structures. An 1851 map by H.F. Walling shows the ocean extending up to near the location of Buildings 6 and 7. The present-day Hamilton Marine site was a small cove. By 1857, the site is largely filled in, and several parallel rail tracks are shown extending eastward across the site along the present Eastern Promenade Trail and East Coast Greenway.



Beginnings of the Portland Company Complex indicated in an 1851 map by H.F. Walling. Note the cove area to the southwest of the complex, now filled in and occupied by Hamilton Marine and other structures.

Siting of the buildings with a generally east-west orientation creates shade on north-facing roof surfaces during the winter months. While south-facing roofs absorb sun and melt snow, north-facing roofs tend to keep snow longer, creating potential uneven snow loading conditions. Uneven snow loading is a cause of many winter roof failures, when the building is not able to sustain thrust loads created on the structure.

While the orientation would have minimal effect upon structures that generate their own heat, such as the Building 4 foundry, orientation would create more likely drift conditions on other buildings, as well as Building 4 since its closing as a foundry.

Structural Framing:

The structural framing of the different buildings provides insight into several generations of industrial construction. Heavy timber framing, cast iron hardware and loadbearing masonry walls support the oldest structures that date between 1847 and 1900. The heavy industrial truss construction in the timber-framed structures utilizes Queen Rod trusses (Queen Post trusses using two vertical iron rods to support the tie beam, instead of timber material) to create long, open spans in the work areas of Buildings 2, 3, and 6B. The shallow-pitched roofs of timber-framed Buildings 7, 10, and 11 used more standard post-and-beam techniques. Nineteenth-century builders already knew to use simpler, less efficient King Post trusses in smaller spans, such as in the roof of Building 14.



Queen Rod Truss in Building 6B (left); King Post Truss in Building 14 (right)

Building 2 and Building 3 utilize a 19th-century technique of suspending the second floor from the roof trusses to create more open space at that level. This technique has been observed in several buildings in Maine, and is a visual structural indicator of how the buildings have evolved over time as the Portland Company grew. Other structural features, such as the use of trussed girders (seen in Buildings 2 and 3) were commonly used to strengthen longer framing spans in accordance with formulas from handbooks.

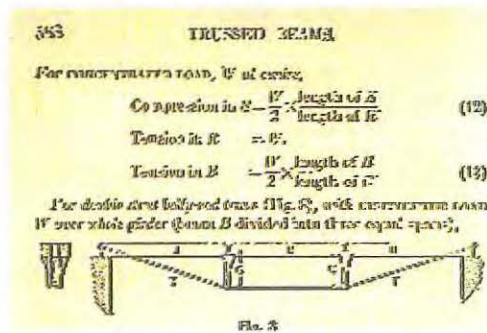


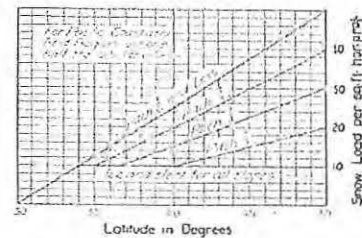
Illustration of "Double Strut Belly Rod Truss" from Architects and Builders Pocket Book, 14th ed. 1905.

Construction techniques changed with the advent of more readily available wrought iron and later, steel, toward the end of the 19th century. The buildings examined in this project scope illustrate the overlapping technological use of iron or steel structural framing beginning with the 1895 replacement Foundry (Building 4) and the 1918 replacement Erecting Building (Building 1). Each of these buildings is an example of steel (or iron) mill building construction, featuring a wide center bay supporting a rail crane, and side bays for other work processes.



SNOW LOAD ON ROOFS

11



1895 Steel Mill Building Construction in Building 4 (left) and c.1904 snow loading diagram from Ketchum text. Snow loading diagram in this text is based upon latitude in degrees, and upon roof pitch.

Windows and Doors:

Overview:

Buildings 1-4 have a very large proportion of glazed openings to the wall surfaces, likely due to the desire for abundant natural light and ventilation opportunities in these industrial/manufacturing buildings. The windows in the walls and clerestories are important architectural components of the complex, and should be maintained or replicated. Almost all of the windows have single pane glass, and due to the high proportion of glazed openings, they afford very little in terms of energy conservation. While there are fewer original, existing windows in the remaining buildings, they too are important architectural components of the complex and of the individual structures. The conditions of the windows vary from fair to very poor, and will demand attention to make the buildings usable for new purposes.

The many sizes and functions of doors in the complex reflect the varied requirements for the different manufacturing processes. Unfortunately, many of the larger original doors have been replaced with more recent doors after the site's period of significance. Like the windows, remaining doors from the period of significance for the site are important architectural components, and should be maintained, if possible, or recreated in kind to meet Park Service standards.

Energy Conservation:

Overview:

Section 101.4.2 (Historic buildings) of the 2009 International Energy Conservation Code (IECC) specifically states that: "Any building that is listed in the State or National Register of Historic Places; designated as a historic property under local or state designation law or survey; certified as a contributing resource with a National Register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the National or State Registers of Historic Places either individually or as a contributing building to a historic district by the State Historic Preservation Officer or the Keeper of the National Register of Historic Places, are exempt from this code."

This could seem to imply that the buildings at the Portland Company complex are totally exempt from any requirements for insulation, heating system performance and electricity use. However, the Commentary on the IECC makes it clear that if any additions, alterations or renovations are undertaken that are not

classified as "historic" they should comply with Section 101.4.3 (Additions, alterations, renovations or repairs). This section requires that additions, alterations, renovations or repairs conform to the new construction requirements of the IECC. It further requires that additions, alterations, renovations or repairs not overload existing building systems.

What this all means for the Portland Company complex is that there are portions of the building envelope that may be affected by these provisions. For example, in the discussion on exemptions to the requirements, Section 101.4.3 requires that during reroofing activities, roofs without insulation where the sheathing is exposed during reroofing shall be insulated either above or below the sheathing.

Most of the buildings in the complex have no insulation at the walls or roofs. If reroofing is undertaken, it would be rational and more code compliant to add insulation to the roofs. By installing insulation on top of the roof decks, the existing framing could remain exposed on the interior. The requirement for roof insulation in Table 502.2(1) for insulation above the deck is R20, which could be achieved with about 3" of rigid insulation, which should not seriously alter the historic appearance of the exterior.

All of the buildings have solid brick exterior walls, with the brick exposed both inside and out. Insulation of these walls could only be accomplished by covering up the brick on the interior, which may or may not be desired, depending on the final uses. Section 101.4.3 does not require that mass exterior walls such as those in this property be insulated.

Brick Masonry Construction:

The brick masonry at the Portland Company is typical of 19th and early 20th-century construction. The masonry is unreinforced multi-wythe brick construction primarily bonded by lime-rich mortar. As masonry construction changed in the early 20th century, stronger mortar mixes using Portland cement became a preferred construction material. Cement-rich mortar bonds the bricks in Building 1, the most recent structure. Cement-rich mortar is less flexible than lime-rich mortar. This property may have contributed to the cracking visible at the masonry piers in Building 1.

Loadbearing masonry supports most of the structures within the complex. However, the brick masonry in Building 4 serves only to enclose the structural steel frame that supports the roof.

All of the buildings suffer the effects of long-deferred maintenance. Roofs, gutters, flashings, downspouts and brick mortar joints generally require rehabilitation.

All of the buildings suffer from deterioration of the brick masonry caused by rising damp related to poor site drainage and hardscape. The hardscape, in particular, often directs water towards the masonry rather than away from it, and traps water running down the building walls in the joint between the pavement and the foundation. Opening the pavement joints along the buildings may help the soil ventilate, if used in conjunction with gutters, downspouts, and catch basins in strategic locations.

4.1 BUILDING 1 – ERECTING BUILDING, 1918



Building 1 – Erecting Shop, west Elevation

Structure and Building Envelope Description:

- 9,400 square foot footprint, single story with high center bay and clerestory (Photo #1.1)
- Five interior bays with an additional smaller bay near Building 2 west wall (Photo #1.2)
- Unreinforced multi-wythe brick masonry perimeter bearing walls on three sides
- A shared end wall with the older Building 2 brick masonry end wall
- Flat Warren steel roof trusses and steel I-beam purlins with wood board sheathing at high roof
- Flush-framed steel I-beam roof beams and purlins with wood board roof sheathing at low roofs
- Interior steel columns that support both the high bay and the low bay framing, typical of steel mill building construction
- Extensive steel-framed window glazing on west, north, and south walls
- Ballasted rolled asphalt (high roof) membrane roofing (low roofs)

Observations and Evaluation:

- Upper roof surfacing consists of ballasted rolled asphalt, in good to fair condition (Photo #1.3). On lower roofs, a membrane surface covers the roof. We could not determine if it was insulated, or to what extent. Insulation would likely be required on the roofs, especially if there is a goal to retain the visible structure inside the building.
- Roof framing consists of steel trusses and intermediate beams at the clerestory (Photo #1.4). The beams and trusses will need to be analyzed for snow load capacity, and the decking above the beams will need to be replaced at deteriorated areas. The existing board sheathing is a combination of edge bead and edge-and-center bead. We were not able to measure the sheathing thickness. The sheathing does not provide an adequate diaphragm to transfer lateral loads, and it likely does not have sufficient nailing to resist code-required wind uplift forces.
- At the high/low roof intersection, the steel columns are offset, effectively placing an eccentric load on the lower column. This construction technique was typical of mill building construction when travelling cranes occupied the center bay of the structure. The columns, and their connection details, will need to be analyzed to confirm stability in conformance with current codes.
- Large-scale steel frame windows allow significant natural light into the building. The single-pane glazing lacks significant thermal resistance, and would likely need to be replaced with more energy-efficient glazing to keep heat in during the colder months and to keep heat out during the warmer months. Most of the windows are in poor condition and would require extensive rehabilitation or replacement regardless of energy efficiency concerns. As the windows are an important architectural feature of the building, they will need to be rehabilitated to National Parks Service Standards.

- Many of the steel window lintels and precast concrete window sills (Photo #1.6) are damaged and will require replacement. Steel lintels may need to be enlarged to carry loads imposed by current building codes. If replaced, the lintels should be galvanized prior to installation and painted as historically appropriate.
- The building has three load-bearing masonry walls. At the east end of the building the structure ties into the older (c. 1847) end wall of Building 2, transferring both gravity and lateral loads into that wall and building. An additional partial shear wall could help transfer lateral loads at the end of Building 1, and keep the more ornate Building 2 wall gable end wall visible.
- Unreinforced brick masonry walls are in good to fair condition. The bricks are hard, well-fired, and set in a cement rich mortar. Much of the masonry requires repointing, particularly near the south elevation ground level.
- Large cracks exist in the north and south wall masonry near the west end of the building, most likely due to thermal expansion on the long structure (Photo #1.7). The walls at the northwest and southwest corners will need to be rebuilt to tie the three walls back together. Smaller cracks occur in the intermediate piers between the windows, where the side bay framing bears on steel lintels. The cement rich mortar may have induced some of this cracking if it was stronger than the surrounding brick masonry, and the building was restrained from thermal expansion.
- The bottom masonry on the north side of the building is in poor condition due to raised grade and likely saturation from snow accumulation, rising damp, and poor site drainage.

Adaptive Reuse Potential:

- The tall center structure provides opportunity to insert an independent structure inside to provide additional floor space while maintaining some of the open qualities of the building. Another option could be to insert a floor structure inside the building that helps to transfer gravity and lateral loads from the original building into engineered frames and foundations.
- Ground-level access provides potential to sustain a wide range of occupancies, including large-scale assembly, with minimal egress and accessibility issues.
- Space is relatively straightforward to subdivide. Subdividing the space could also improve the lateral rigidity of the structure.
- Reconstruction of the west elevation to its original appearance (Photo #1.8) would address identified deficiencies in the masonry and improve the overall lateral stability of the building.
- Open access to the structural components permits relatively simple structural strengthening techniques that will be repetitive in nature. Much of the structure is well exposed, which should allow for straightforward assessment for corrosion, rot or other potential structural damage.

Recommended Building Envelope and Structural Rehabilitation Scope:

- Strip existing roofing, repair damaged sheathing, and add a structural diaphragm, consisting either of plywood sheathing or metal decking above the interior exposed roof decking.
- Insulate roof, and resurface with proper edge flashing and counterflashing.
- Strengthen existing roof structure as required, particularly near potential drift areas.
- Strengthen existing roof structure as required to provide wind uplift resistance and to transfer lateral loads through roof.
- Repair or replace existing steel windows with thermally efficient units that meet National Park Service Standards.
- Repair or replace existing steel lintels with properly galvanized and painted or prepared and painted steel.
- Repair or replace precast concrete window sills.

- Rebuild the west elevation, wrapping around to the north and south elevations, to match period of historic significance and to strengthen lateral capacity of west end wall.
- Provide shear wall at east end of building as necessary.
- Provide lateral bracing as required to resist code-required lateral loads.

4.2 BUILDING 2 – MACHINE SHOP, 1847, 1905 (3D FLOOR)



Structure and Building Envelope Description:

- 11,300 square foot footprint, three stories with overhanging third floor added in 1905 (above).
- Third floor overhangs for nearly the entire building length on the south side, and approximately half the building length on the north side. Cantilevered floor has little backspan.
- Building may have originally had gutters and downspouts (Photo #2.3), which were rendered obsolete when the third floor was added.
- Building has fifteen window bays and structural bays. Other supplemental columns, girders, and trusses have been added, likely to provide additional upper-floor and roof support as the third floor was added and the building responded to additional loads.
- Unreinforced multi-wythe brick masonry perimeter bearing walls on four sides
- A shared end wall with Building 1 and with Building 3. The west gable wall (Photo #2.6 through Photo #2.8) is a significant architectural feature of the building.
- Two rows of large iron columns and timber posts create 15 structural bays on the first-floor.
- Second floor framing is suspended from original roof framing, which later became the third floor (Photo #2-13).
- Fourteen rows of iron hanger rods pass through the third floor framing to the second floor framing. A few of the hanger rods have been relocated or are missing.
- Timber and iron or steel queen rod roof trusses support raised roof above the 1905 drafting offices. (Photo #2-20, #2-11, and #2-12). The third-floor office spaces extended beyond the masonry wall of the original structure, cantilevered from the first interior (former) attic joist and spanning over the masonry walls.
- Third-floor shed dormer cladding at north elevation consists of stamped metal sheeting in a clapboard pattern (Photo #2.6), while red rolled asphalt clads the South dormer. Areas of missing cladding exist all along the dormers.
- Extensive wood window glazing exists on north and south walls at bottom two stories; with wood windows boarded up on third floor. First floor windows are 25/25 divided light, second floor windows are 15/15 divided light, and third floor windows may have been 2/2 divided light, more common to the early 1900s.
- Roof surfacing partially observed, appears to be rubber membrane as visible from satellite photos and site observations.

Observations and Evaluation:

- Upper roof surfacing appears to consist of membrane. We could not access the upper roof.
- Roof framing consists of queen rod wooden trusses, with a single purlin that carries the junction of the sloped and shed roofs. The beams and trusses will need to be analyzed for snow load capacity, and the vertically-sawn, wide-board decking above the beams will need to be replaced at deteriorated areas. We were not able to measure the sheathing thickness. The sheathing does not provide an adequate diaphragm to transfer lateral loads, and it likely does not have sufficient nailing to resist code-required wind uplift forces.
- The roof structure originally supported the second floor with iron suspension rods to create wide-open first floor and second-floor space. At some point, possibly when the third floor was added, additional timber and iron posts were installed to provide additional second floor support.
- While the structure itself is somewhat regular, many variations in the framing details will require detailed assessment to adequately confirm the integrity of existing load paths. The building has undergone many subtle framing modifications as the building evolved.
- Large wood frame windows allow significant natural light into the building. The single-pane glazing lacks significant thermal resistance, and would likely need to be replaced with more energy-efficient glazing to keep heat in during the colder months and to keep heat out during the warmer months. Most of the windows are in poor condition and would require extensive rehabilitation or replacement regardless of energy efficiency concerns. As the windows are an important architectural feature of the building, they will need to be rehabilitated to National Parks Service Standards.
- Granite headers over the first and second floor windows are mostly in good condition. Several are cracked, and will require either epoxy-dowel repair or in-kind replacement.
- The building has four load-bearing masonry walls. At the east end of the building the structure ties into the end wall of Building 3, transferring both gravity and lateral loads into that wall and building. A roof truss near the west gable end carries much of the gravity load of the roof, but part of the Building 1 roof ties into the wall in other locations.
- The brick masonry exterior of the machine shop is constructed from well-fired bricks set in a mid-19th century lime mortar. The multi-wythe brick walls double in thickness on the interior to form piers that support the second floor beams. The masonry of Building 2 is in very good condition suffering only from the effects of deferred maintenance and poor site drainage. There are some areas of brick replacement that were completed with bricks and mortar that do not match the originals very well.
- It does not appear that the masonry exterior was ever completely repointed in the 20th century. The extremely weathered original lime mortar is visible in almost all of the joints. At the top of the building, there is very little mortar left between the bricks that form the outer wythe of the cornice. There is a real danger that bricks may start to fall out of the upper wall if remedial steps such as repointing and rebuilding of these areas are not undertaken in the near future.
- As with the other buildings at the complex there is a problem with site drainage that is affecting the first ten to twelve courses of brick above the foundation.
- On the east and west elevations, the brickwork starts to corbel outward in increments starting at one brick above the second floor lintels to form a cornice that is 20 courses high. On the north and south gable ends the brickwork corbels out to form a cornice that is 13 courses high.
- Additional openings at the first floor may have been punched into the south elevation of Building 2 when Building 1 was constructed. The original second floor windows of Building 2 are visible from inside Building 1, indicating that the wall between Buildings 1 and 2 is the original exterior wall of Building 2.
- Diamond shaped iron brick ties are visible at the location of the second floor beams on the east and west elevations.
- The top portion of the granite foundation is visible on the exterior, but not interior, of the building.

Adaptive reuse potential:

- This building is the most complex structure of all the buildings we assessed. Its size and height provide the most interesting options and potential views of the water in the complex.
- Second-floor open floor plan provides excellent assembly space, assembly occupancy (or educational occupancy), but assembly occupancy increases load factors on the existing structure. Supplemental posts on the first floor and improved lateral bracing can mitigate the increased load factors resulting from more intense occupancies.
- Ground-level access provides potential to sustain a wide range of occupancies, including large-scale assembly, with minimal egress and accessibility issues.
- Space is relatively straightforward to subdivide.
- Open access to the structural components permits relatively simple structural strengthening techniques that will be repetitive in nature. Structural strengthening will require the analysis of many different isolated framing conditions created as the building was modified over time.

Recommended Building Envelope and Structural Rehabilitation Scope:

- Strip existing roofing, repair damaged sheathing, and add a structural diaphragm, consisting either of plywood sheathing or metal decking above the interior exposed roof decking.
- Insulate roof, and resurface with proper edge flashing and counterflashing.
- Strengthen existing roof structure as required, particularly near potential drift areas. Provide wind uplift resistance and transfer lateral loads through the roof to the walls.
- Repair or replace existing steel windows with thermally efficient units that meet NPS Standards.
- Strengthen cantilevered third floor framing to adequately support contemporary code required loads and wind uplift resistance.
- Repair/replace existing steel lintels with properly galvanized and painted/prepared and painted steel.
- Repair or replace cracked granite window sills.
- Repair the bearing wall between Building 1 and Building 2, and Building 2 and Building 3.
- Test a sample of the original brick setting mortar to determine what kind of lime was used in the original mortar and if additives, such as natural cement, were used to make the mortar hydraulic.
- Repoint 100% of the exterior brickwork using a mortar that replicates the binder and aggregate in the original mortar as closely as possible.
- Remove and reset bricks that are loose at the cornice.
- Modify site drainage to drain water away from the base of the building.

4.3 BUILDING 3 – MACHINE SHOP, 1847

Structure and Building Envelope Description:

- 4,900+/- square foot footprint, two stories with second floor added sometime around 1895, according to the SCC report.
- Second floor walls constructed of multi-wythe brick masonry, and roof trusses supplemented with additional framing to create shallow pitched continuous shed dormers while maintaining the original monitor roof (Photo #3.7).
- Building has seven window bays and six interior structural bays. Supplemental columns, girders, and trusses have been added, likely to provide additional upper-floor and roof support as the second floor was added and the building responded to additional loads (Photo #3.5, Photo #3.6).
- Unreinforced multi-wythe brick masonry perimeter bearing walls on four sides, including the shared end walls with Building 4 and with Building 2.
- Timber and iron or steel roof trusses support additional lumber and rafter framing to support the raised roof above the second floor.
- Wood windows on north and south walls. First floor windows are 25/25 divided light, second floor windows are 10/10 divided light. These windows comprise a comparable surface area to wall ratio as those in the bottom two floors of Building 2, but less area than those in Building 1 and Building 4. Windows on first floor have granite lintels, while those at second floor have shallow arch brick masonry lintels.
- Roof surfacing partially observed, appears to be rubber membrane as visible from satellite photos and site observations.

Observations and Evaluation:

- Upper roof surfacing appears to consist of membrane. We could not access the upper roof.
- Similar to Building 2, roof framing consists of queen rod wooden trusses. The building was added onto by raising the second floor roof and landing on the existing bearing wall, unlike Building 2, which relied on cantilevered floor framing over the top of the bearing wall.
- The beams and trusses will need to be analyzed for snow load capacity, and the vertically-sawn, wide-board decking above the beams will need to be replaced at deteriorated areas. We were not able to measure the sheathing thickness. The sheathing does not provide an adequate diaphragm to transfer lateral loads, and it likely does not have sufficient nailing to resist code-required wind uplift forces.
- While the structure itself is somewhat regular, some variations in the framing details will require detailed assessment to adequately confirm the integrity of existing load paths. There are fewer structural bays and trusses, which means fewer potential differences in truss conditions. Techniques used in modifying the structure included the use of double strut belly-rod trusses, which stiffened the second floor girders.
- Wood frame windows allow significant natural light into the building. The single-pane glazing lacks significant thermal resistance, and would likely need to be replaced with more energy-efficient glazing to keep heat in during the colder months and to keep heat out during the warmer months. Most of the windows are in poor condition and would require extensive rehabilitation or replacement regardless of energy efficiency concerns. As the windows are an important architectural feature of the building, they will need to be rehabilitated to NPS Standards.
- Granite headers over the first floor windows are mostly in good condition. Several are cracked, and will require either epoxy-dowel repair or in-kind replacement. Arched masonry openings over second floor windows also require spot repairs and repointing.
- The building has four load-bearing masonry walls. At the east end of the building the structure ties into the end wall of Building 4, transferring both gravity and lateral loads into that wall and building.

A roof truss near the west gable end carries much of the gravity load of the roof, but part of the Building 2 roof ties into the wall in other locations.

- The brick masonry exterior is in fair condition, in need of widespread repointing and repair of loose and missing brick. Rising damp is a problem at Building 3, as it is at all structures.
- As with the other buildings at the complex there is a problem with site drainage that is affecting the first ten to twelve courses of brick above the foundation.

Adaptive reuse potential:

- This building is the second-most complex structure of all the buildings assessed in this project scope. The later addition of another floor to the building creates more discontinuities that need to be repaired. It's much smaller size and more "in-line" load path at the north and south walls makes it less complicated to rehabilitate than Building 2.
- Second-floor floor plan provides less than optimal assembly space because existing roof trusses interrupt each bay near the sides of the building. Office space could be a possible occupancy, with individual offices or rooms placed within each truss bay and a wider, open central space.
- Ground-level access provides potential to sustain a wide range of occupancies, including components large-scale assembly combined with the other adjacent buildings, with minimal egress and accessibility issues. This structure could perhaps serve as auxiliary space to neighboring Buildings 2 and 4, potentially including service and egress functions.
- Space is relatively straightforward to subdivide, if necessary on the upper floor.
- Open access to the structural components permits relatively simple structural strengthening techniques that will be repetitive in nature. Structural strengthening will require the analysis of many different isolated framing conditions created as the building was modified over time.

Recommended Building Envelope and Structural Rehabilitation Scope:

- Strip existing roofing, repair damaged sheathing, and add a structural diaphragm, consisting either of plywood sheathing or metal decking above the interior exposed roof decking.
- Insulate roof, and resurface with proper edge flashing and counterflashing.
- Strengthen existing roof structure as required, particularly near potential drift areas, and to resist wind uplift.
- Repair or replace existing wood windows with thermally efficient units that meet National Park Service Standards.
- Strengthen second floor framing to adequately support contemporary code required loads for the intended occupancy, if required.
- Repair or replace existing granite lintels at first floor level as required, and Repair or replace granite window sills (first floor) and wood sills (second floor).
- Repair the bearing wall between Building 2 and Building 3, and Building 3 and Building 4.
- Provide lateral bracing or reinforcement as required.
- Rehabilitate the masonry, paying specific attention to details between the first and second floors, and at the top plate of the second floor.

4.4 BUILDING 4 – FOUNDRY, 1895

Structure and Building Envelope Description:

- 16,500+/- square foot footprint, single story structure with center clerestory and continuous rooftop monitor. A part of the south part of the building is two stories, and ties into the more recent Building 5 along the east and south elevations.
- Building is a relatively early example of "steel mill building construction", and served the purpose as a foundry. Second floor walls along the south side of the building are constructed of multi-wythe brick masonry.
- Two rows of steel or iron columns support the side bay roofs and a continuous crane rail. A spliced upper column, outboard of the crane rail, is tied into longitudinal metal trusses.
- Building has unreinforced multi-wythe brick masonry perimeter screen (not bearing) walls on the north and south sides.
- A concrete masonry block wall replaced the brick masonry wall at building's east end. The east end was removed and replaced with a more recent extension incorporated into Building 5.
- North and south wall columns are partially exposed on the interior and exterior. The columns consist of four angles joined together with steel lacing bars.
- Extensive wood window glazing on north and south walls, clerestory, and monitor allow significant natural light into the building. First floor windows are double-width, with shallow arch tops and 16/16 light sash. Clerestory window sash are 30-light, single-sash windows that were likely operable
- Roof surfacing partially observed, appears to be metal roofing along the north side bay and rubber membrane on the upper bays and south side, as visible from satellite photos and site observations.

Observations and Evaluation:

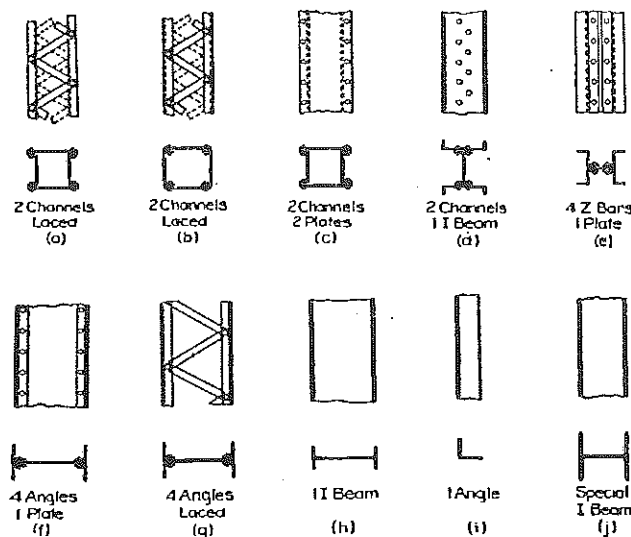
- The building is a relatively early example of "steel mill building" construction, in which steel or iron becomes the primary roof support material. Texts written in that time period detail that the four-angle, laced lower columns are intended for "light loading" which would certainly be the case in a hot foundry structure.

COLUMNS.—The common forms of columns used in mill buildings are shown in Fig. 98. For side columns where the loads are not excessive, column (g) composed of four angles laced is probably the best. In this column a large radius of gyration about an axis at right angles to the direction of the wind is obtained with a small amount

TYPES OF MILL BUILDING COLUMNS

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of metal. The lacing should be designed to take the shear, and should be replaced by a plate, (f) Fig. 98, where the shear is excessive, or where the bending moment developed at the base of the column requires the use of excessive flanges. The I beam column (h) makes a good side column where proper connections are made, and is commonly used for end columns (see Fig. 81). The best corner column is made of an equal legged angle with 4, 5 or 6-in. legs, (i) Fig. 98. Details for the bases of the three columns above described are shown in Fig. 99.



Types of Mill Building Columns from Milo Ketchum Text "The Design of Steel Mill Buildings". Column "g" (bottom row, second from left) is the type of column used in Building 4.

- The building design is similar in design to Building 1, if not completely similar in framing. Both buildings feature large banks of window glass to allow in natural light and provide ventilation. Building 1 relies upon interior bearing on masonry walls at the side bays, rather than on an iron or steel column exposed to external elements and rising damp. Later steel mill buildings, like Building 1, likely evolved from structural designs of earlier steel mill buildings, like Building 4, using more durable structural details.
- The laced angle side bay columns are in poor condition and have failed from a structural standpoint. They will need to be substantially repaired, or likely replaced. The columns are likely realizing some remaining axial capacity due to friction and incidental bond between the corroded steel and the masonry bed joints.
- The condition of the structure, particularly of the partially-exposed, corroded columns presents a complex preservation problem. Should one re-create a building detail that is faulty by design and

ill-suited for a marine-industrial environment, in the interest of authenticity and preservation? Or should a stronger structural column be placed within a new economical curtain wall built of concrete masonry, insulated appropriately, and clad on the interior and exterior with bricks? Could a less thermally-conductive substitute material fill the vertical control joints between the bricks on both faces of the wall to match the appearance of the original column? National Parks Service Preservation Brief 16, *The Use of Substitute Materials on Historic Building Exteriors* addresses some of these concerns. While the repair and conservation of original fabric is of utmost importance in preservation practice, certain building conditions and costs can justify the use of substitute materials.

- Responsible preservation practice also requires design professionals to consider the longevity of any repair or rehabilitation techniques that they specify. Future environmental exposure (marine environment atmosphere, splashback from de-icing salts) maintenance considerations (snow plowing, leaf or sand-blowing) could all undermine a designer's decision to use, for example, galvanized steel columns that replicate the original. One only needs to think about the considerable painting maintenance that all steel-framed parking structures need to undergo to understand the effects of the environment. Re-creating a failed structural detail that provides no true access to maintenance could be considered a failure of preservation to address practicality.
- The double-wide, shallow arch windows illustrate that the north and south walls were not intended to be significant load bearing elements. The side bay trusses bear directly onto plates supported by the tops of the laced angle columns, and the masonry between them was infilled. This construction technique was a major selling point of the steel mill building companies, many of which were major bridge companies. Bridge companies that branched out into steel mill building construction included American Bridge Company and the Pittsburg Bridge Company. The American Bridge company had a sales office in Portland in 1904 (as advertised in Kidder's Handbook), but we have yet to determine if they were present in 1895. In fact, at the time of publication of his *Steel Mill Buildings* text, Milo Ketchum served as the Contracting Manager for American Bridge Company's Kansas City office.
- The beams and trusses must be analyzed for snow load capacity, and the vertically-sawn, wide-board decking above the beams will need to be replaced at deteriorated areas, especially along the eaves. We were not able to measure the sheathing thickness, but its deteriorated appearance and frequent visible instances of failure causes us to believe that it does not provide an adequate diaphragm to transfer lateral loads, and it likely does not have sufficient nailing to resist code-required wind uplift forces. It is possible that all of the roof sheathing in this building may need to be replaced. Salvageable sheathing could be milled into finish trim lumber or reinstalled on shorter spans below the structural diaphragm sheathing above.
- The structure is one of the more consistently framed buildings in the complex, aside from the large concrete block wall that supports Building 5. There are fewer variations in the framing as the uniform steel components were economically mass fabricated.
- Wood frame windows allow significant natural light into the building. The single-pane glazing lacks significant thermal resistance, and would likely need to be replaced with more energy-efficient glazing to keep heat in during the colder months and to keep heat out during the warmer months. Most of the windows are in poor condition and would require extensive rehabilitation or replacement regardless of energy efficiency concerns. As the windows are an important architectural feature of the building, they will need to be rehabilitated to NPS Standards.
- Shallow arch headers over the first floor windows should be spot repaired.
- The brick masonry exterior is in fair to poor condition, in need of widespread repointing and removal at the deteriorated columns. Rising damp is a problem at Building 4, as it is at all structures, especially along the north wall.

- As with the other buildings at the complex there is a problem with site drainage that is affecting the first ten to twelve courses of brick above the foundation.

Adaptive reuse potential:

- It appears that much of the concrete masonry wall and Building 5 extension could be removed if the goal were to preserve Building 4. This would require temporary shoring of Building 4 and rebuilding the south wall to resemble the original south wall (or modified new south wall)
- Ground-level access provides potential to sustain a wide range of occupancies, including large-scale assembly, with minimal egress and accessibility issues.
- Space is relatively straightforward to subdivide, if necessary.
- Like Building 1, an infill floor could be installed independent of or in support of the existing structure to add space or lateral support.
- Open access to the structural components permits relatively simple structural strengthening techniques that will be repetitive in nature. Structural strengthening will require the analysis of many different isolated framing conditions created as the building was modified over time.

Recommended Building Envelope and Structural Rehabilitation Scope:

- As a first step, explore the feasibility of making structural modifications that meet Historic Tax Credit criteria by consulting with the National Park Service.
- Shore and stabilize the structure as required to address south and north wall column deficiencies. Shore and stabilize building as required to replace concrete masonry walls at the east end of the building, and to rebuild the east gable wall to resemble conditions from the period of historic significance.
- Strip existing roofing, repair damaged sheathing, and add a structural diaphragm, consisting either of plywood sheathing or metal decking above the interior exposed roof decking.
- Insulate roof, and resurface with proper edge flashing and counterflashing.
- Strengthen existing roof structure as required, particularly near potential drift areas, and to resist wind uplift.
- Repair or replace existing wood windows with thermally efficient units that meet National Park Service Standards.
- Repair the bearing wall between Building 3 and Building 4, and the curtain walls on the north and south sides of the building.

4.5 BUILDING 6B – BLACKSMITH SHOP, C. 1896-1904

Structure and Building Envelope Description:

- 6,500+/- square foot footprint, single story structure with relatively steep timber-framed roof and trapezoidal wood-framed shed addition at north side. We did not access the north side addition.
- Timber frame structure has nine interior roof bays along the length of the building (Photo #6B7). Building has ten interior bays spaced at regular intervals.
- Main part of structure lacks interior timber columns. All queen-rod trusses bear on masonry piers or upon timber plates on masonry.
- Exterior masonry features brick piers that extend one wythe beyond the primary masonry field, creating a rhythmic façade that illustrates the pattern of the structural roof framing.
- Large, tall windows, fairly low to the ground, provide excellent natural light. Most windows on the south elevation have been boarded over.
- Three-tab brick-colored asphalt shingles clad the roof, and appear to be in good condition.
- Fiberboard eave trim has completely failed.

Observations and Evaluation:

- We concur with the BSE assertion that repairs need to be performed to temporarily support the wall framing at the Building 6 and Building 6B intersection.
- Extensive water infiltration at the top of the wall is resulting in the degradation of the setting mortar and loose bricks. The brick has widespread open and failed mortar joints.
- The treatment of the masonry is tied to correcting defects in the roofing. The mortar in the courses directly below the roof is deteriorated from water infiltration and as a result the upper courses of brick are loose. Resetting the upper courses of brick may be required.
- Trusses appear to be generally in good to fair condition. However, the bearing conditions at the ends are questionable, due to the eave conditions that have caused significant water infiltration onto the upper masonry. Truss ends and bearing points should be assessed individually to confirm that no rot is present.
- Roof rafters and purlins are undersized. Supplemental rafters are required, and purlins should be intermediately supported to shorten their span. If excessive deflection has already occurred in the rafters, it will be more complex, but not insurmountable, to sister the rafters. A longitudinal bracing system, made clearly distinctive from the original structure, could transfer loads from the center of the purlins to the bottom chord of the queen rod trusses, leaving the purlins in place.

Adaptive reuse potential:

- The building is a short, easily accessed structure with a sloped roof that could easily be repaired. The ample windows allow significant natural light, and the long, regular structure could easily be converted into multiple units.
- Ground-level access provides potential to sustain a wide range of occupancies, including large-scale assembly, with minimal egress and accessibility issues.
- Space is relatively straightforward to subdivide, if necessary.
- Open access to the structural components permits relatively simple structural strengthening techniques that will be repetitive in nature. Structural strengthening will require the analysis of many different isolated framing conditions, particularly at the truss eaves.

Recommended Building Envelope and Structural Rehabilitation Scope:

- Make necessary temporary and permanent stabilizations and repairs at the wall between Building 6 and Building 6B.

- Investigate the top of the brick walls to determine extent of mortar deterioration.
- Investigate the end bearing of the trusses and the top plate of the wall to determine if replacement is needed.
- Strengthen roof rafters, as is likely necessary.
- Analyze the original mortar to determine the type of binder and ratio of aggregate used.
- Remove and reset loos sections of brick.
- Repoint 100% of the exterior walls with a mortar that matches the properties and appearance of the original mortar.
- Replace non-matching modern granite sills with sills that match the existing.
- Perform necessary structural upgrades.

4.6 BUILDING 7 – CAR SHOP, C. 1873, 1904

Structure and Building Envelope Description:

- The building appears to have been originally a long rectangular structure (Photo #7.1 and Photo #7.2), supplemented later on by a shed addition on the south side (Photo #7.5). We did not access the south side addition, which apparently served as a lumber shed.
- The single-story building has perimeter loadbearing masonry walls, and some interior loadbearing masonry partition walls.
- Shallow brick arch lintels top the windows, and granite sills are located at the base of the openings.
- The interior timber frame supports a low-pitched roof. The roof rafters at the center of the structure are rectangular rafters topped with a sloped shim piece (Photo #7.5). The rafters have long spans placing substantial weight on the masonry side walls.
- A combination of membrane and asphalt roofing covers the structure (Photo #7.9).
- Many large openings have been cut into the side bearing walls (Photo #7.1, #7.2, and #7.3).

Observations and Evaluation:

- There appears to have been significant water infiltration from defects in the roof into the brickwork at the top of the wall. The mortar in the upper courses, just below the shallow eaves, is deteriorated as a result of the water infiltration. A similar condition exists at the bottom of the wall where rising damp has deteriorated the mortar in the brick courses just above grade.
- The outer wythes are bowing and detached from the inner wythes at the brick panels between the windows on the south elevation (Photo #7.8, Photo #7.10).
- There are a significant number of cracked and damaged bricks as well as bricks that have been repaired in the past with the same cement rich pointing mortar used to point the bricks.
- There is some corrosion and brick jacking at the steel lintels installed at the newer openings into the building.
- The roof framing is in poor condition and is undersized. In many locations, water infiltration appears to have caused framing rot, and there is likely significant top wall plate rot at the eaves (Photo #7.7). In a few places, we could see daylight through the rotted roof sheathing and failed surfacing.
- The finish grade around the shed addition (Photo #7.4) appears to direct roof runoff back to the base of the south wall.

Adaptive Reuse Potential:

- The building is in poor condition. While its spaces could be rehabilitated and converted to a wide variety of uses, it would likely need to be almost completely rebuilt. The overall condition of the structure would likely dictate that it be placed on new foundations.

Recommended Rehabilitation Scope:

- Comprehensive rebuilding of the existing perimeter loadbearing walls, roof surface and sheathing removal and replacement, significant roof framing strengthening and/or replacement; essentially demolition and reconstruction on the same footprint.

4.7 BUILDING 10 – PAINT SHOP, 1873



Structure and Building Envelope Description:

- 1,350 square foot footprint, single story (Photo #10.1);
- Unreinforced multi-wythe brick masonry perimeter bearing walls;
- Numerous infilled brick windows and enlarged door openings (Photo #10.3, #10.6, #10.8);
- west masonry wall has been partially rebuilt and is currently structurally unstable (Photo #10.3, #10.9);
- Some wood-framed window glazing on north and west walls;
- Battened membrane roof with numerous patches and ponding (Photo #10.2), indicating that the rafters have sagged significantly or rotted near the eaves.

Observations and Evaluation:

- We were unable to access the building interior.
- Upper roof surfacing consists of battened roof membrane, in fair to poor condition. The roof appears to be insulated, judging from conditions viewed through one of the windows.
- The masonry walls are in poor condition, with the west wall in unstable condition. This wall is in sufficiently unstable condition to warrant vacating the building, as stated in the Becker report.
- Roof framing was not visible but reportedly consists of wood rafters. It is possible that the rafters have tapered wedges placed atop each joist to create the very shallow roof pitch, as was done in Building 7 (see Photo #7.5), built around the same time.

Adaptive Reuse Potential:

- The building has a little adaptive reuse potential, due to its overall poor condition. Rehabilitating the structure would require significant time and effort, which may not be economically feasible when compared to a rebuilt structure on the same footprint.
- If the building were rebuilt, it would have to thoroughly comply with all contemporary code requirements for new construction, including foundation design.
- Reconstructing a new building to match the building during its period of historical significance is possible, depending upon future site use.

Recommended Building Envelope and Structural Rehabilitation Scope:

- Demolish and rebuild existing walls, roof, and foundation.
- Rebuild structure to match period of historic significance, using windows that meet National Park Service Standards and building systems complying with building codes for new construction.

4.8 BUILDING 11 – PATTERN STOREHOUSE, 1885

Structure and Building Envelope Description:

- Irregularly shaped, approximately 4,600 square foot footprint, two stories (Photo #11.1)
- Timber-framed interior with reported four-foot deep crawl space below first floor.
- Unreinforced multi-wythe brick masonry perimeter bearing walls on four sides. Building 12 upper wall appears to have been built on top of Building 11 South wall.
- Nearly-flat roof framing, pitched to the south and the north by stacking timber crib pieces beneath roof rafters (Photo #11.7 through #11.10)
- Roof appears to pitch two ways, to the east and to the west, at the intersection with the upper wall of Building 12.
- Relatively little number of wood window openings per square foot of wall.
- Climbing hillside at Fore Street drains runoff to the base of the north wall, several feet above the first floor (Photo #11.3).

Observations and Evaluation:

- We did not access the reported crawl space below the first floor. Given our experience working on structures with significant quantities of runoff pitched toward them, combined with the significant bow in the north wall, we believe that the first floor framing is probably rotting near the north wall, and no longer bracing it.
- The north masonry wall has failed (Photo #11.3, #11.5). Lateral earth pressures and possible first floor framing rot have caused the wall to bulge inward several inches. We believe that this condition creates as significant concern as the wall conditions at Building 10, and that the building should be vacated until this condition is evaluated and repaired.
- We observed evidence of a perimeter drain along the north elevation, but we were unable to confirm if it is operable.
- Roof framing consists of timber framing. The roof framing members are cribbed off of the columns at various heights to create a central ridge and adjacent slopes. This roofing system cannot transfer diaphragm loads from the roof into the timber frames below.
- The west and north unreinforced brick masonry walls are in good to fair condition. Much of the masonry requires repointing, particularly near the west elevation ground level.
- We observed active roof leaking into barrels placed on the second floor (Photo #11.8).
- The bottom masonry on the north side of the building is in poor condition due to raised grade and likely saturation from snow accumulation, rising damp, and poor site drainage.
- There appears to have been some relatively structural reinforcement to a girder tying into the common wall between Building 11 and Building 12 (Photo #11.10).
- The high roof of building 12 presents a significant potential for snow drifting (Photo #11.1, #11.2). Runoff from both roofs drains from the wall at the building junction (Photo #11.2). Previous masonry repointing repairs attempted to solve the problem, but only temporarily eliminated the symptoms.

Adaptive Reuse Potential:

- The building has a relatively short floor-to floor height between the first and second floors. Combined with the lack of windows, the ground floor space feels confining and may not be suitable for occupancies that require substantial daylight. It could become a future tenant storage area if structural concerns are addressed.
- The lack of windows results from the use as a pattern storehouse, to minimize potential draft situations in the event of a fire.
- The second floor space, despite the relative lack of windows, appears to be brighter and amenable to different commercial occupancies, if the egress were improved.

- The structural failure of the north wall presents a significant economic concern that could be an obstacle to building rehabilitation.

Recommended Building Envelope and Structural Rehabilitation Scope:

- Shore building and rebuild north masonry wall. This will likely require excavation along the base of the north wall, and slope stabilization further back toward Fore Street. Additional work will likely be required to confirm condition of first floor framing.
- Strip existing roofing, repair damaged sheathing, and add a structural diaphragm, consisting either of plywood sheathing or metal decking above the interior exposed roof decking. Provide legitimate connections to transfer forces from upper roof through cribbing to the tops of posts, and to the tops of walls.
- Insulate roof, and resurface with proper edge flashing and counterflashing. Reconsider relationship of roof against Building 12, because splashing and snow drift will likely continue to cause structural problems along this wall.
- Strengthen existing roof structure as required, particularly near potential drift areas.
- Strengthen existing roof structure as required to provide wind uplift resistance and to transfer lateral loads through roof.
- Repair or replace existing wood windows with thermally efficient units that meet National Park Service Standards.

4.9 BUILDING 14—DRAFTING ROOM & STOREHOUSE, 1858-64

Structure and Building Envelope Description:

- Undetermined square foot footprint, two story (Photo #14.1)
- A shared end wall with Building 15/16.
- Wood construction at south-facing wall; use of site retaining wall buttresses for lower side walls at east and west ends (Photo #14.3, Photo #14.4).
- The wood-framed façade has more recently been re-sided, and the some windows replaced.
- A bridge leads from Building 14 to the second floor of Building 3 is in poor condition, but not assessed as part of this survey. (Photo #14.1). A bridge between Building 2 or Building 58 connects the second floor "Map Room" to the Building third floor drafting shop (Photo #14.2).

Observations and Evaluation:

- Upper roof surfacing consists of ballasted rolled asphalt, in good to fair condition. The roof is possibly insulated in some areas, but we could not determine the extent.
- Roof framing consists of timber king post trusses, purlins, and rafters. The rafters, purlins, and trusses must be analyzed for snow load capacity, and the decking above the beams will need to be replaced at deteriorated areas.
- We were not able to measure the sheathing thickness, but it likely does not provide an adequate diaphragm to transfer lateral loads, and it likely does not have sufficient nailing to resist code-required wind uplift forces.
- The current tenant reports that warm-weather condensation is prevalent, as the heat in the building rises to the peak at the Fore Street masonry wall. The condition at the top of the Fore Street wall should be assessed to provide appropriate insulation and weather protection.

Adaptive Reuse Potential:

- Ground-level access to second floor (from 58 Fore St.) and from alleyway provides potential to sustain a wide range of business occupancies, including mercantile, office, and artists' studios, with some thought to egress and accessibility issues. This structure, along with that of Building 15/16 presents a configuration almost unique within the City of Portland. While the structures do not engage Fore Street, they create a unique alleyway on the north side of the site. Properly secured and lighted, it could present unique occupancy opportunities.
- Lateral stone walls provide fire separation between individual units if second-floor walls above are outfitted with appropriate fire-rated doors.
- Reconstruction of the south elevation to its original appearance would address identified deficiencies in the wood façade and improve the overall lateral stability of the building.
- Exposed rubble stone walls, if properly repaired, could become a unique architectural feature of the interior spaces.

Recommended Building Envelope and Structural Rehabilitation Scope:

- Strip existing roofing, repair damaged sheathing, and add a structural diaphragm, consisting either of plywood sheathing or metal decking above the interior exposed roof decking.
- Insulate roof, and resurface with proper edge flashing and counterflashing. Develop a method to insulate the uppermost wall near Fore Street to protect against water and air infiltration.
- Strengthen existing roof structure as required.
- Strengthen existing roof structure as required to provide wind uplift resistance and to transfer lateral loads through roof.

- Repair/ replace existing wood windows with thermally efficient units that meet National Park Service Standards.
- Rebuild the south first-floor elevation to match period of historic significance and to strengthen lateral capacity of south wall.

4.10 BUILDING 15/16 – BOILER HOUSE/BRASS FOUNDRY, 1858, 1864

Structure and Building Envelope Description:

- Small (unknown area), two-story structure with conventional lumber framing (15) and unreinforced multi-wythe brick masonry bearing wall (16) along the south (alley) elevation. Building 16 also has an infill wooden partition below a steel beam that previously created a large door opening. Refer to photos #16.1 and #16.2.
- Brick vaults reportedly extend from Building #15 beneath the Fore Street sidewalk. We did not observe these vaults.
- Rubble dry-stacked retaining walls exist at north, west and east elevations. At Building 16, it appears that water penetrates the wall or has in the past.
- Back wall (north wall) is large stone masonry retaining wall supporting hillside at Fore Street.
- Mono-pitch wood-framed roof slopes down toward the south (alley-facing) wall.
- Two-wythe brick masonry front wall features a mixture of granite (likely original) brick, and steel or iron headers on the window and door openings.
- The remnants of the Boiler House chimney base remain between Building 15 and Building 16.
- A large standpipe at east end of building.

Observations and Evaluation:

- The wooden and brick masonry walls of both buildings are in poor condition.
- The chimney base bricks should be checked and stabilized in place.
- Timber and lumber roof framing at Building 16 is undersized for contemporary snow loads.

Adaptive Reuse Potential:

- The building's current use is as a blacksmith's forge, a use not dissimilar to its original purpose as a brass foundry. It may be necessary to rebuild most of the Building 15 framing. In that case, Building 15 would likely need to conform to contemporary code requirements for new structures. From a preservation standpoint, the blacksmith occupancy is likely to be considered as the best and highest use of the structure.
- Open access to framing in Building 16 permits relatively simple structural strengthening techniques. We assume that much of the Building 15 structure will need to be rebuilt.
- As discussed in the Building 14 section, this structure provides opportunities for unique occupancies if properly secured and lighted.

Recommended Building Envelope and Structural Rehabilitation Scope:

- Strip existing roofing, repair damaged sheathing, and add a structural diaphragm, consisting either of plywood sheathing or metal decking above the interior exposed roof decking.
- Insulate roof, and resurface with proper edge flashing and counterflashing.
- Strengthen or rebuild existing roof structure as required, particularly near potential drift areas.
- Strengthen existing roof structure as required to provide wind uplift resistance and to transfer lateral loads through roof.
- Repair or replace existing doors and windows with thermally efficient units that meet National Park Service Standards.
- Repair/replace existing steel lintels with properly galvanized, painted or prepared/painted steel.
- Rebuild the south elevation and Building 15 timber or lumber structures as required.
- Rehabilitate brick masonry front wall of Building 16, to match period of historic significance.
- Improve site drainage and grading around the alley and hillside.

5.0 RECOMMENDATIONS AND CONCLUSION

The individual structures within the Portland Company complex that were included in the project scope are in generally poor condition due to deferred maintenance and, in some cases, inherent but correctable lack of stability against lateral forces and snow loads. The severity of deterioration varies from building to building; it also varies within any given building. In some cases, significant deterioration is quite localized; in other cases, the overall structure is in a state of significant disrepair.

Buildings in poor condition do not necessarily warrant demolition. The fact that a number of the buildings within the Portland Company complex continue to be occupied—some by large assemblies for special events and some by business tenants—attests to the fact that most of the buildings are still serviceable and are in salvageable condition.

In our opinion, it is possible to address the identified structural and building envelope conditions in ways that retain each building's historic character and that are feasible from a cost perspective. To do so, however, will require case-by-case assessment, creative design solutions, and the involvement of consultants and contractors experienced in historic building rehabilitation.

We concur with many of the primary findings of the Becker Structural Engineers report as to the current condition of the individual buildings. We believe, however, that the simplified construction techniques that characterize these buildings together with the repetitive nature of many of the required repairs make possible a relatively straightforward rehabilitation project. These attributes also present an opportunity to improve lateral stability of the building within contemporary code requirements while making other repairs. The simple, modular nature of the long buildings allows for replication of the individual structural repair details. The exposed floor and roof structures provide easy access to make repairs. The limited hidden conditions lower the need to include large cost contingency factors for structural upgrades. In summary, most of the building structures are not that complicated when compared to many other historic commercial building rehabilitation projects undertaken in Portland and in Maine during the last quarter century. With proper planning, specification, and construction administration, most of the existing structures can be rehabilitated by contractors trained in preservation work, primarily in masonry rehabilitation and timber framing. Appropriate planning, engineering, and site inspection will need to occur to ensure the proper execution of the repairs.

In our opinion, three structures stand out as buildings presenting the greatest structural and building envelope challenges. The buildings in the worst condition include Building 7 (Car Shop) #10 (Paint Shop), and 11 (Pattern Storehouse). The immediate safety concerns identified by Becker Structural Engineers at the wall between buildings 6A/6B, and of the overall condition of Building 10, are valid concerns and should be addressed as soon as possible. Stabilizing the wall and roof framing between 6A and 6B can be performed as a stand-alone project prior to other rehabilitation of these buildings. Additionally, Building 11 should not be occupied due to lateral pressures exerted by soil and snow against the north wall.

It has been a pleasure to assist you with this project. If you have any further questions about the content of this report, please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in blue ink that reads "Alfred H. Hodson III, P.E." The signature is written in a cursive style with a large, stylized 'A' and 'H'.

Alfred H. Hodson III, P.E.
Resurgence Engineering and Preservation, Inc.

C:\2014jobs\14-032 Portland Company Complex\0326 14-032 Portland Company Complex report.doc (pdf)
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APPENDIX A

**RELATIVE STRUCTURAL CONDITION AND
RELATIVE REHABILITATION COSTS
RESURGENCE ENGINEERING AND
BECKER STRUCTURAL ENGINEERS**

APPENDIX A
PORTLAND COMPANY COMPLEX – MARCH 2015
RELATIVE CONDITION AND REHABILITATION COST COMPARISON

BUILDING NUMBER – NAME DATE	RELATIVE STRUCTURAL CONDITON			RELATIVE REHABILITATION COST	
	BECKER	RESURGENCE /BECKER SCALE	RESURGENCE SCALE	BECKER	RESURGENCE
BUILDING 1 - ERECTING BUILDING 1918	2.0	<u>2.5</u> (REPETITIVE DTLS)	P2	4.0	<u>3.5</u> (REPETITIVE DTLS)
BUILDING 2 - MACHINE SHOP 1847	2.5	2.5	P2+	4.5	4.5
BUILDING 3 - MACHINE SHOP 1847	3.0	3.0	P2+	3.0	3.0
BUILDING 4 – FOUNDRY/ACETYLENE HS 1895, 1904-09	1.5	1.5	VP2	4.5	<u>4.0</u> (REPETITIVE DETAILS, CUSTOM REHABILITATION)
BUILDING 6B - TANK SHOP 1896-1904	3.0	3.0	P2+	3.5	3.5
BUILDING 7 - CAR SHOP 1873, 1904	2.0	<u>1.5</u> (BOWED WALLS)	VP1	5.0	5.0
BUILDING 10 - PAINT SHOP 1873	1.0	1.0	VP1	4.5	<u>4.0</u> (REBUILD IN KIND)
BUILDING 11 - PATTERN STOREHOUSE 1885	2.5	<u>2.0 (NORTH WALL)</u>	VP2	4.5	4.5
BUILDING 14 – DRAFTING ROOM AND STOREHOUSE 1858, 1864	NOT INSPECTED	2.0	VP3	NOT INSPECTED	3.5
BUILDING 15/16 (NO ACCESS TO B15) BOILER HOUSE/BRASS FOUNDRY 1858, 1864	1.5	1.5	VP3	3.0	3.0
Averages of common buildings inspected (excluding Building 14)	2.11	2.06		4.06	3.89

SEE FOLLOWING PAGES FOR EXPLANATION OF BECKER STRUCTURAL ENGINEERS AND RESURGENCE ENGINEERING RATING SYSTEMS

Notes:

1. Coordinate this document with "Portland Company Complex General Building Assessment" prepared by Resurgence Engineering et al, March 2015, and "Evaluation of Existing Buildings at the Portland Company Property" prepared by Becker Structural Engineers, March 28, 2014.
2. Further discussion about relative rehabilitation costs related to these structures, by Resurgence Engineering, follows this page.

APPENDIX A EXPLANATION OF BECKER AND RESURGENCE RATING SYSTEMS

Becker Structural Engineers' (BSE) Rating System

The relative structural conditions rating system used in the Becker Structural Engineers Report is shown below:

- 1 = Very poor/unsafe/demolition likely
- 2 = Very poor/salvageable with significant structural rework and investment/questionable economic viability/consider demolition
- 3 = Poor/requires substantial structural work to elements and systems
- 4 = Fair/requires nominal structural work to elements
- 5 = Good condition/minor structural work required

Becker's **relative rehabilitation cost rating system** is based upon structural complexity and size of building, using a scale of 1 to 5 -- 1 being relatively low costs and 5 being relatively high costs. BSE gives no specific definitions of the relative costs, simply a numerical grading system. Such an approach appears to be reasonable, given the preliminary nature of assessment that both firms were instructed to provide.

Resurgence Engineering and Preservation's (REP) Rating System

For ease of comparison, REP used the same **relative structural conditions rating system** as BSE in the summary chart. However, REP believes there is a more accurate and further defined way to classify the buildings in terms of condition. *See chart on following page for REP's proposed rating system as regards condition.*

REP has used the same **relative rehabilitation cost rating system** as BSE. The BSE report provided no specific definition of cost for each rating category.

RESURGENCE ENGINEERING RELATIVE STRUCTURAL CONDITION SCALE OF EXISTING BUILDINGS IN POOR CONDITION

BSE condition #	REP NUMBER	DESCRIPTION OF CONDITION, PRE AND POST MITIGATION	LOCAL/MAINE BUILDING EXAMPLES PRE AND POST MITIGATION
(n/a)	VP1 (very poor, not salvageable)	PRE: Immediate <u>widespread public safety threat and site/occupant safety threat</u> if not barricaded and structurally shored; evacuate nearby buildings, streets, sidewalks, block off parking spaces. Potential for widespread debris field in event of collapse; Building cannot be re-occupied following triggering event. POST: Condemn and demolish building.	Buildings with extensive fire damage
1	VP2 (very poor but salvageable, expensive to rehabilitate, i.e. approx. BSE cost #4 to #5)	PRE: Immediate <u>widespread public safety threat and site/occupant safety threat</u> if not barricaded and structurally shored; evacuate nearby buildings, streets, sidewalks, block off parking spaces. Potential for widespread debris field in event of collapse; Building cannot be re-occupied following triggering event. POST: Building assessed, barricaded, structurally shored; nearby buildings deemed safe for return; streets, and/or sidewalks and parking spots remain blocked off. Building itself cannot be occupied after stabilization. Unsafe for rescue personnel to enter if trespassers are inside. Shored and secured structure relatively expensive, but feasible, to rehabilitate.	PRE: Norway Opera House, 2007-09 POST: Norway Opera House, 2010+
1	VP3 (very poor but salvageable, moderately expensive to rehab, i.e. BSE cost #3 to 4)	PRE: <u>Immediate site/occupant safety threat and localized public safety threat</u> if not if not barricaded and structurally shored; Block off streets, sidewalks, and parking spaces. Potential for localized debris field in event of collapse; Building can be occupied following the triggering event. POST: Building assessed, barricaded, structurally shored; nearby buildings deemed safe for return; streets, and/or sidewalks and parking spots can remain blocked off or reopened following mitigation. Building itself can be occupied.	PRE: Buildings with widespread loose façade components. i.e. Masonic Temple Localized structural failures i.e. Portland Company Complex Building 4 POST: Stabilized structures, removing loose components or installing covered sidewalk and blocked off parking spaces.
2	P1 (very poor but salvageable, less expensive to rehab; i.e. BSE cost #2)	PRE: <u>Likely site/occupant safety threat and localized public safety threat</u> if not if not barricaded and structurally shored; Block off streets, sidewalks, and parking spaces. Potential for localized debris field in event of element failure; Building can be occupied following the triggering event. POST: Building assessed, barricaded, structurally shored; nearby buildings deemed safe for return; streets, and/or sidewalks and parking spots can remain blocked off or reopened following mitigation. Building itself can be resume occupancy.	PRE: Buildings with a few loose façade components that can easily be removed or snow and ice buildup that can easily and quickly be removed, POST: Stabilized structures, removing loose components or installing covered sidewalk and blocked off parking spaces.
3	P2	PRE: <u>Possible site/occupant safety threat and localized public safety threat</u> if not if not barricaded and structurally shored; No triggering event causing distress; possible change of use makes economics questionable. POST: Rehabilitation Feasibility Study considering economics for specific buildings and structures.	PRE: Portland Company Building Complex Building #1

Most of REP's condition and cost ratings align with those of BSE. Using our own rating system, however, REP's conclusions are slightly different, especially in regards to the potential for rehabilitating buildings in distress (i.e. Buildings with a "1" to "2" condition ranking). We would not have necessarily characterized these buildings as unsalvageable, as Becker suggests. Our justification for this would be to consider the cost benefits that could be realized using historic preservation tax credit incentives, along with the added flexibility afforded historic structures under the IEBC. Tax credit incentives could offset the costs of more custom-designed engineering and building envelope rehabilitation solutions. They would also offset the cost of higher-quality, longer lasting building materials necessary for the marine climate.

Our primary departures from BSE exist in Building 1, Building 4, Building 7, Building 10, and Building 11. We downgraded the relative structural condition of Building 7 and Building 11, while we upgraded the relative structural condition of Building 1. We lowered the relative rehabilitation costs of Building 1, Building 4, and Building 10. The paragraphs that follow explain the reason for our departure at each building.

For Building 1 we believe that the more recent construction date (1918), combined with the repetitive nature of the building elements, can allow for a slightly less expensive rehabilitation than indicated in the BSE report.

Building 4 could yield a relatively less expensive rehabilitation if a customized approach to reframing the edge columns and rebuilding the masonry could be achieved economically. Such an approach would have to be understood and approved in advance by the National Park Service if tax credits were desired on this building project. If historic preservation tax credits can be used on this project using a different approach to reframing the edge columns and rebuilding the masonry, while strengthening the existing structure, we disagree that this building is a likely candidate for demolition.

In our opinion, the condition of Building 7 is slightly worse than considered in the BSE report, because of the poor condition of the loadbearing masonry at the north elevation. We concur with the relative rehabilitation costs for the building.

We depart from the BSE cost condition assessment of Building 10, only in the sense that it may make the most economic sense to demolish the existing structure.

The compromised north wall at Building 11 necessitates downgrading its condition from 2.5 to 2.0 in comparison to the BSE report. We recommend that the building remain unoccupied until the north wall is stabilized. Demolition of this structure may be warranted pending further understanding of the roof framing and first floor framing conditions.

As stated in the BSE report, immediate safety concerns need to be addressed, whether as isolated repairs (Building 6A/6B common wall and truss) or comprehensive measures (vacancy of Building 11).

Basis for Cost Opinion Conclusions for Each Building

Building 1 - Erecting Building, c.1918

Relative rehabilitation costs for this structure and building envelope are based primarily upon the fact that the structure is repetitive in construction technique, offset by the likely reconstruction of the front masonry (west) wall. The staging and access cost required to perform clerestory rehabilitation from interior and exterior will be an increasing cost factor in building rehabilitation. A significant amount of steel-framed window glazing would require repair or replacement. Since this is the most recent building in the study, existing steel materials may be of higher quality and some understanding of snow loading requirements was incorporated into the design.

Building 2 – Machine Shop, c.1847

This building, the most structurally complicated and tallest within the buildings studied, would likely cost the most to rehabilitate, but could present the greatest risk/reward. The structure itself will likely take the most time to thoroughly assess from a structural and building envelope standpoint, given the number of changes that occurred over the years and the addition of the third floor. The large wooden windows on the first and second floors would be very labor intensive to rehabilitate, given the large number of individual panes. Third floor windows might not be as expensive to rehabilitate or replace, because they may have been 2:2 light sash, which were common in the early 20th century. A well thought-out temporary shoring plan is necessary to tie the cantilevered third-floor framing further back into the existing building. Third floor cladding, though high up, could be replaced relatively simply. At approximately 45 feet high and three stories, this building will be subjected to the greatest wind and seismic forces of all the buildings studied.

Building 3 – Machine Shop, c.1847

Building 3 is the second most structurally complicated building within the complex, but is not as relatively expensive to rehabilitate as Building 2. The additional floor support structure is less complicated than Building 2, lacking the cantilever framing existing at that neighboring building. The second floor also provides interior access to the much smaller clerestory, facilitating any structural work required there. The smaller overall footprint and lower percentage of glazing helps contain rehabilitation costs.

Building 4 – Foundry, c.1895

The Foundry rehabilitation work likely involves wholesale rethinking of the structure and building envelope along the exterior walls. Structural upgrades and replacement of an existing structural system that was improper for its marine, cold-weather climate may actually simplify the rehabilitation by permitting a complete column removal and replacement with contemporary steel columns, not exposed to the exterior elements. However, this more significant structural change may require the longest lead time to confirm whether the structure and building envelope modifications would be eligible to receive historic tax credits.

Building 6B – Tank Shop, c.1896-1904

Tank Shop rehabilitation is simplified because of its relatively short height, simple gable roof, and relatively small windows. Added longitudinal roof bracing can support the intermediate roof purlins between trusses and stiffen the roof against wind and seismic forces. The low roof height will likely keep the building from experiencing significant wind load increases due to height. Each one of the trusses will require further inspection, nondestructive testing and/or invasive inspection to confirm that end bearing conditions are structurally sound.

Building 7 – Car Shop, c. 1873, 1904

Although the Car Shop is a single-story structure, rehabilitation becomes complicated and more costly due to the overall poor condition and insufficient depth of the roof framing and because of the poor condition of the existing exterior masonry. The existing roof framing has such a low slope that it likely has permanent deflection "set", which will complicate efforts to strengthen the framing by sistering. Significant roof leaks in the structure have likely rotted sheathing and possibly framing, in more areas than are visible due to penetrating sunlight. The windows are not large or great in area relative to the total façade area, which would diminish the rehabilitation costs somewhat. However, the existing loadbearing masonry would likely require complete rebuilding because it is in such poor condition.

Building 10 – Paint Shop, c. 1873

Originally isolated by the remaining structures for safety purposes, the paint shop stands alone as the most significantly altered structure in the worst overall condition. Building rehabilitation is hard to justify, given the small size and poor condition. Rebuilding the structure to resemble the original during the site's period of significance, in conformance with contemporary codes, would be a more straightforward option, despite the likely required foundation upgrades.

Building 11 – Pattern Storehouse, c. 1885

The Pattern Storehouse carries with it the greatest uncertainty about rehabilitation costs. It is the only building studied that has a wood-framed first floor situated over an earthen crawl space, and it is the only structure that had the majority of its roof framing concealed by ceilings. The low-slope roof, pitching partially toward Building 12, creates drift conditions and roof runoff that are detrimental to both buildings.

Building 14 – Drafting Room and Storehouse, c. 1858-64

Tucked in between buttresses of the Fore Street retaining wall, Building 14, like the Boiler House and Brass Foundry to the immediate north, contains relatively limited floor space in a structure that is practically unique. The existing timber frame purlin and rafter system needs to be carefully assessed near the peak, as that area is vulnerable to condensation and leakage due to snow buildup and insufficient insulation.

Building 15/16 – Boiler House and Brass Foundry c.1858, 1864

We did not enter Building 15, but the visible condition of the second floor framing means the structure would likely need to be rebuilt. Building 16, the Brass Foundry, requires several of the same structural assessments and likely upgrades that Building 14 requires, as well as the rehabilitation of the small south façade.

APPENDIX B
PHOTOGRAPHS



PHOTO
#1.1
A 2 95.jpg

Building 1: View from west. Large, tall bay door has replaced original smaller overhead door and symmetrical high windows. Increased roof pitch at right side of photo appears to have been in place since late 1930s.



PHOTO
#1.2
R 07.jpg

Building 1: View along south elevation looking toward Building 2, showing five bays of steel-framed windows and a small bay near Building 2. Note large crack at left, near joint with west wall.

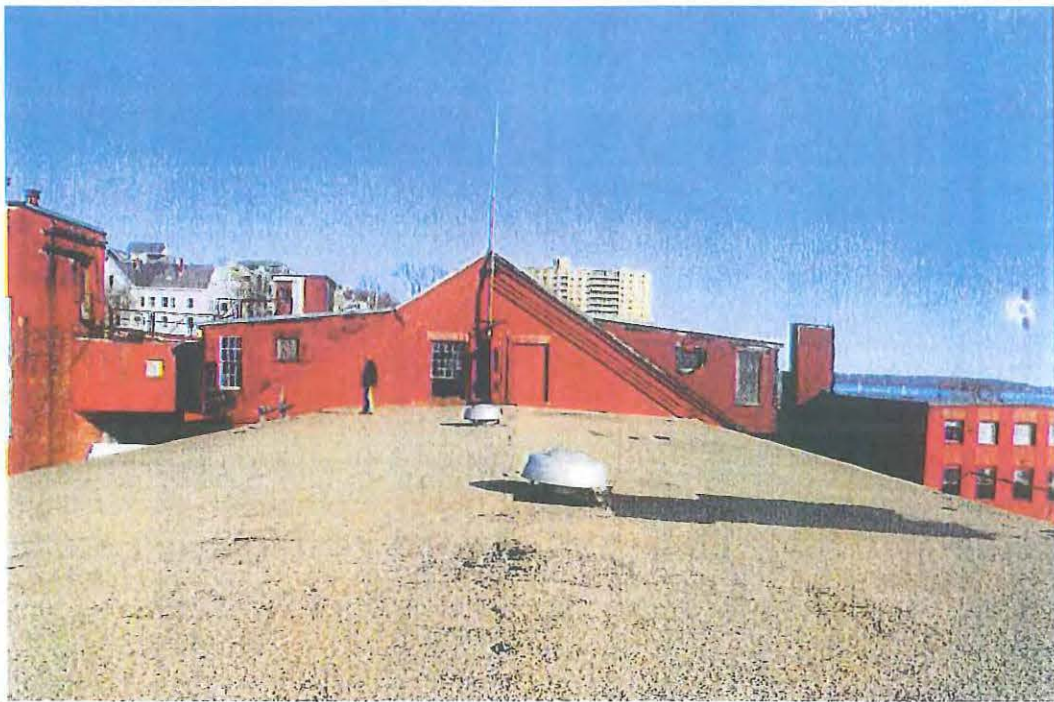


PHOTO
#1.3
A 30 86.jpg

Building 1: View from west end of upper roof, showing felt and gravel surface. Lower side roof levels, not visible, consist of rubber membrane on south side and possibly felt on the north side. Building 2 gable roof visible in background.

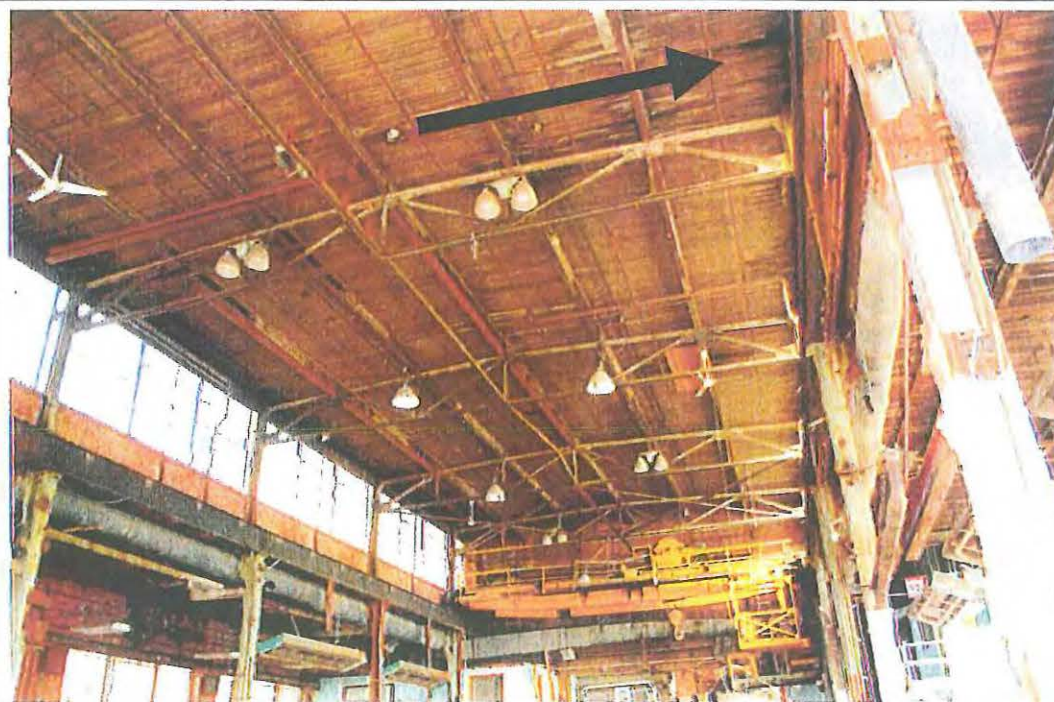


PHOTO
#1.4
R 17.jpg

Building 1: Interior view of upper roof framing, showing flat Warren trusses, I-beam purlins, and edge and center-bead roof decking. Note rotted decking areas (arrow) and steel-framed clerestory windows.



PHOTO
#1.5
R 37.jpg

Building 1: Existing rail crane is supported by girders spanning the length of the building. Rail cranes in mill buildings require offset framing at columns in order to support low roofs and upper roof framing. Note horizontal angle bracing at high roof.



PHOTO
#1.6
R 32.jpg

Building 1: Rising damp at perimeter wall base, failed concrete sills, and significantly damaged steel-framed windows.

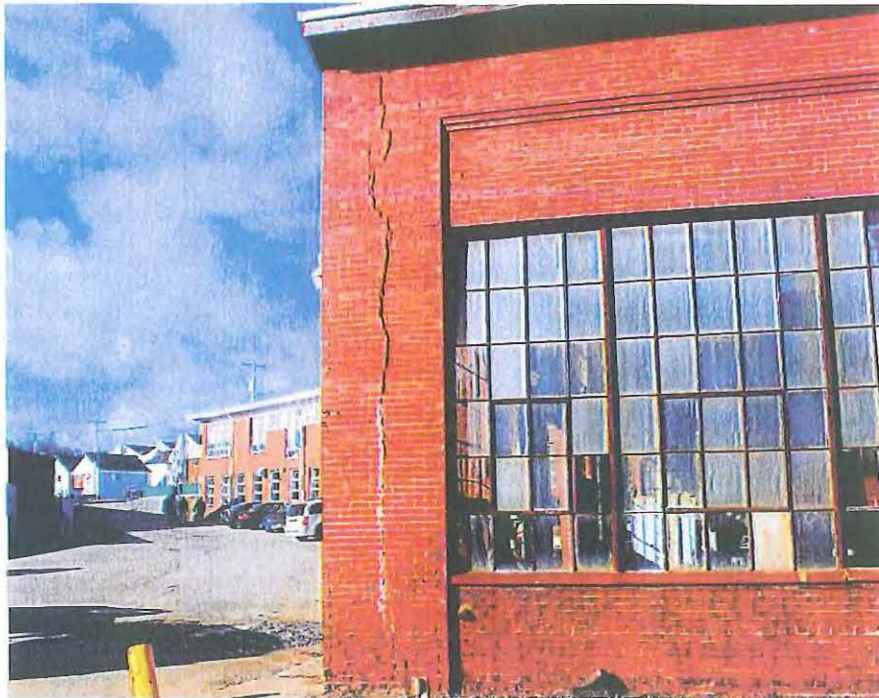


PHOTO
#1.7
R 06.jpg

Building 1: Brick masonry crack, northwest corner of building. Rebuilding the west wall of the building and performing other masonry repairs can improve lateral stability of the building. .

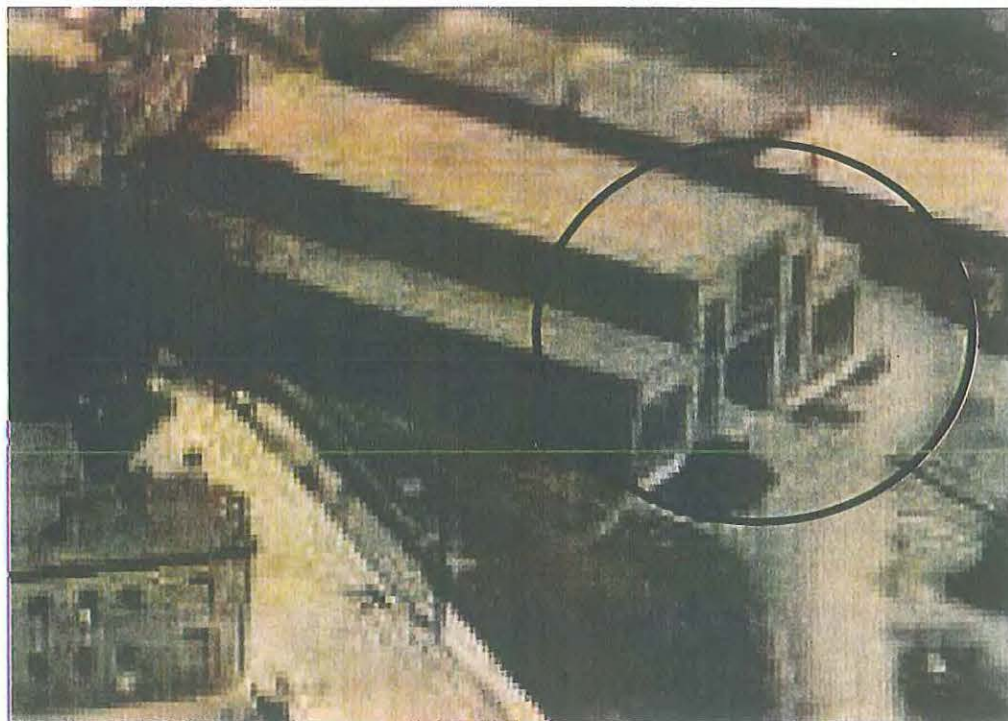


PHOTO
#1.8
maine memory
nhulk

Building 1: 1938 aerial photo shows smaller-scale door opening and symmetrical windows. Rebuilding west wall to a similar configuration could strengthen wall and return elevation to its period of significance.

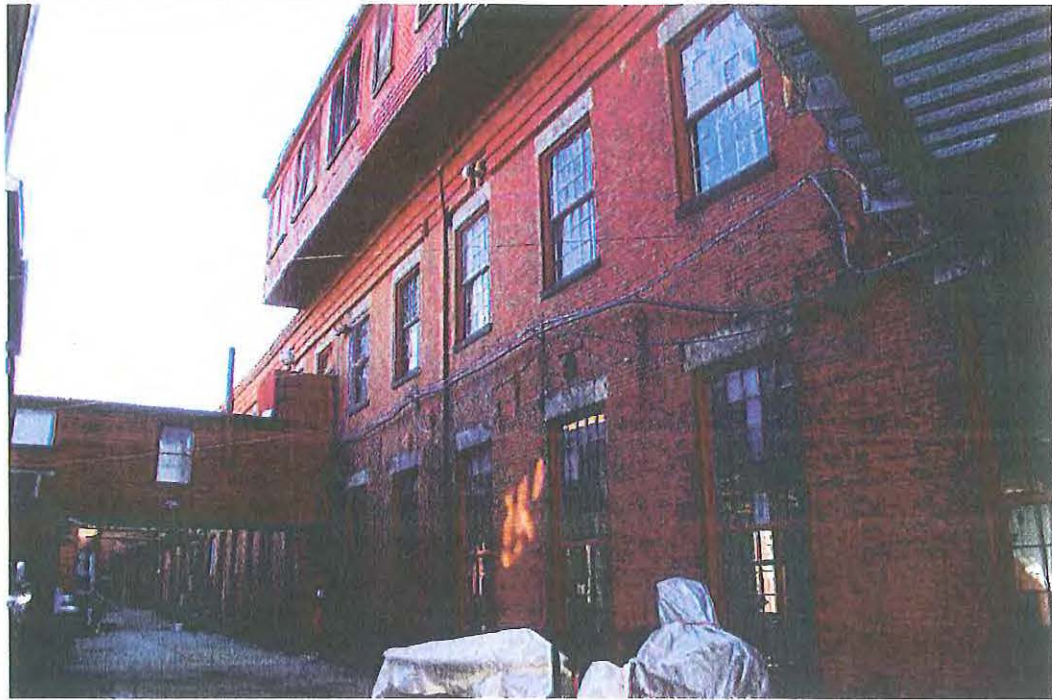


PHOTO
#2.1
R 26.jpg

Building 2: View from southeast. Note third floor (added in 1905) cantilevered over original building cornice. Walkway to Building 6 was not assessed as part of this study.

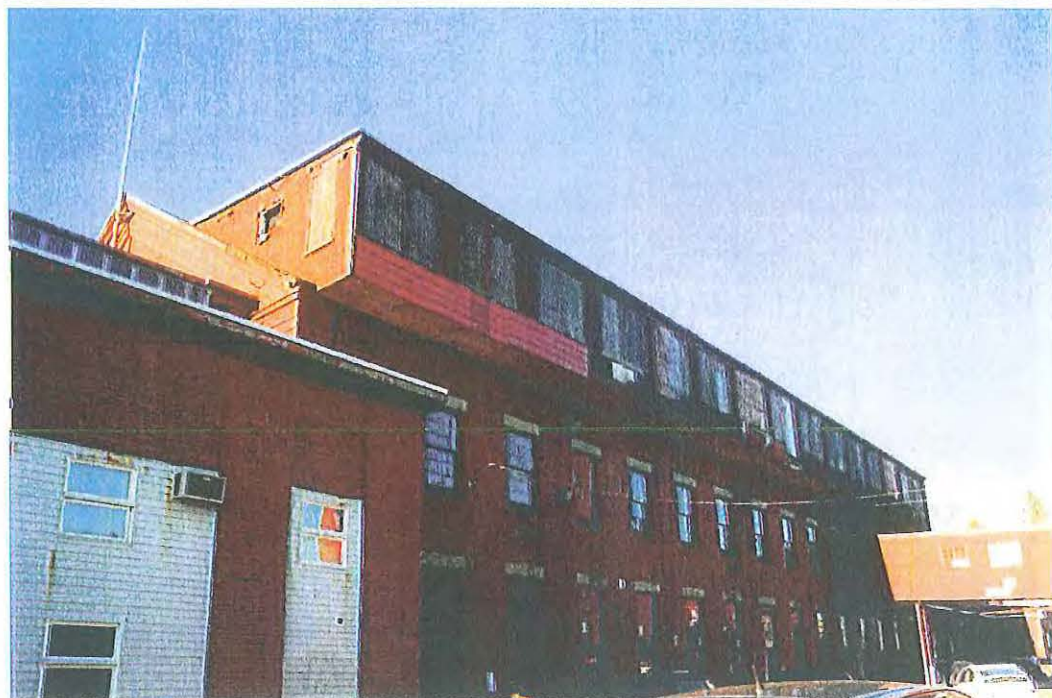


PHOTO
#2.2
A P 5.jpg

Building 2: View from southwest showing continuous third-floor shed dormer cantilevered over original roof cornice.



PHOTO
#2.3
A 29 14.jpg

Building 2: View of southeast corner of building, looking up at cantilevered dormer. Note relief in brick cornice above window. A downspout likely descended from that location before the addition was built.

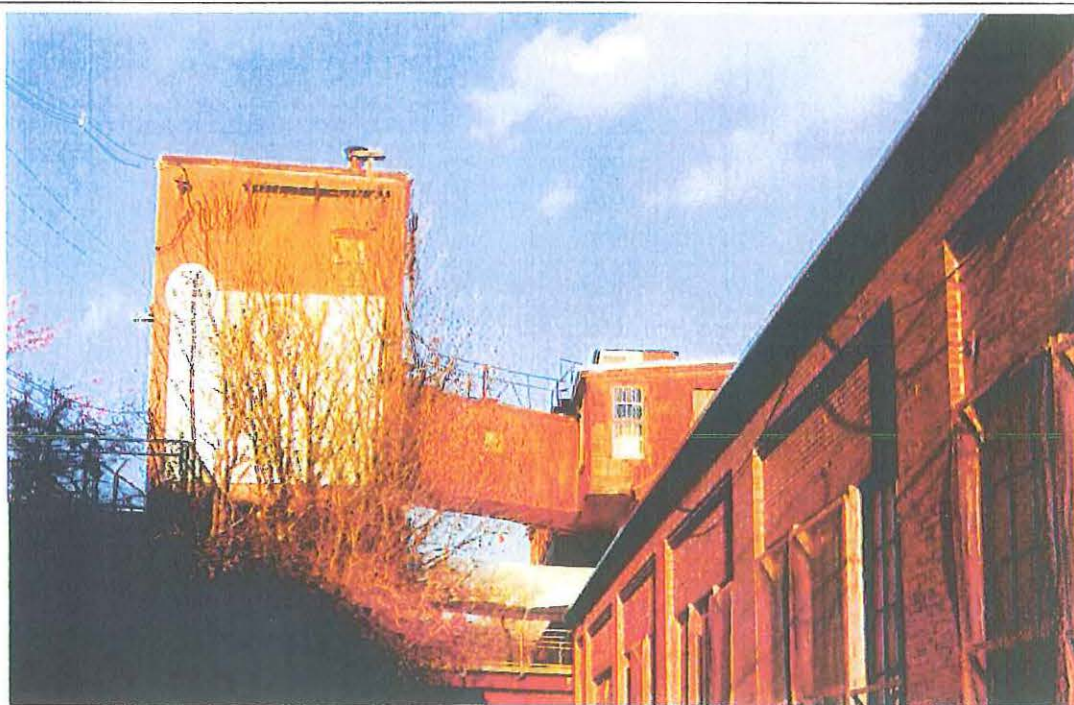


PHOTO
#2.4
A 29 107.jpg

Building 2: Walkway from third-floor drafting room to plan vault. Walkway was not assessed as part of this project.

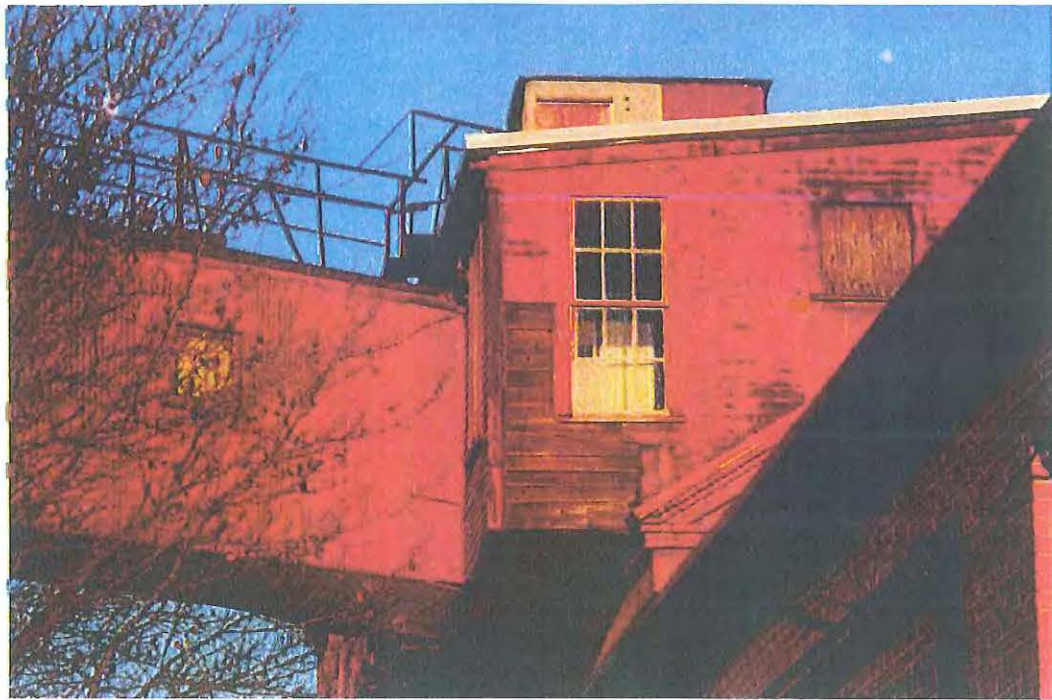


PHOTO
#2.5
ah 1 x 0.jpg

Building 2: Metal-clad walkway extending from Building 24 (vault storage) to drafting office allowed quick access to drawings in progress and drawings from archives, without exposing drawings or draftsmen to weather conditions.

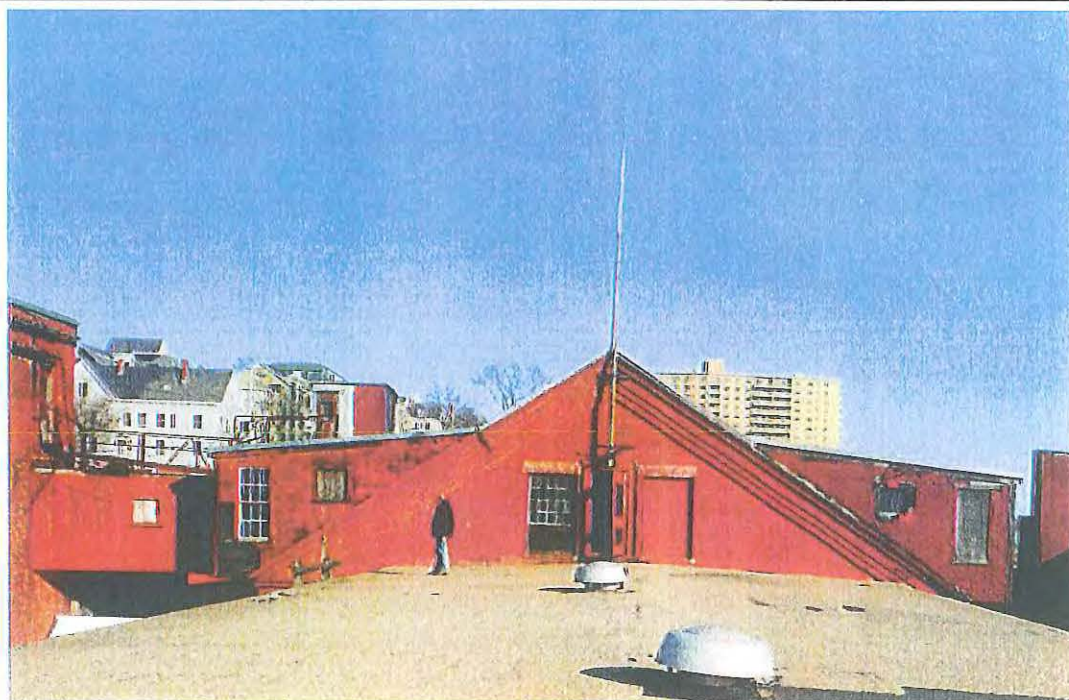


PHOTO
#2.6
A 30 86.jpg

Building 2: West gable viewed from West end of Building 1. Third floor dormers extending from each side of gable require strengthening to ensure integrity of cantilevered structure. Note different dormer cladding materials.

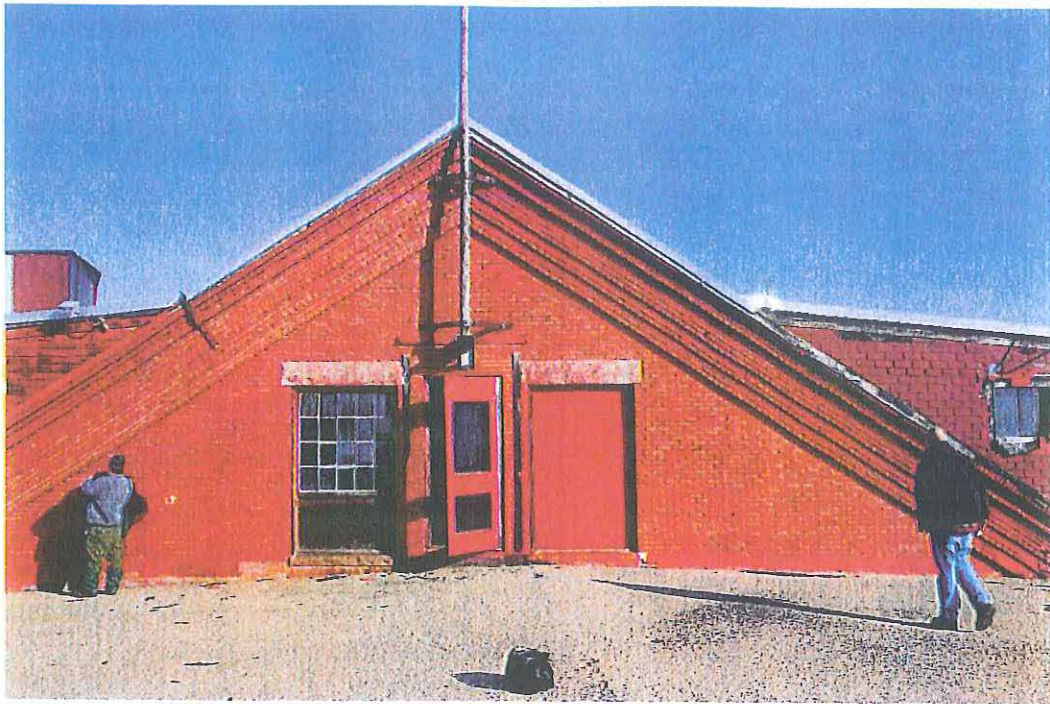


PHOTO
#2.7
R 179.jpg

Building 2: Gable end rake viewed from Building 1 roof. With proper safety precautions, much of the rake and gable peak can be repointed without extensive scaffolding.

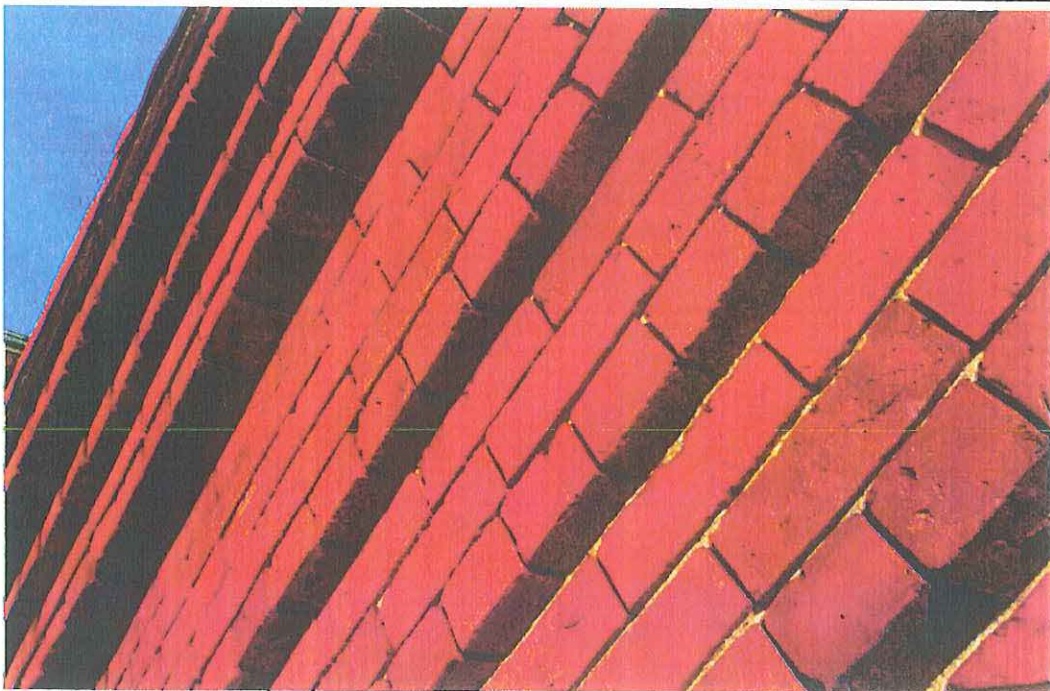


PHOTO
#2.8
A 30 68.jpg

Building 2: West Gable end rake (detail) comprised of 15 courses of brick masonry corbelling out over one foot beyond outside face of primary gable end wall. Repointing required, but otherwise in good condition.

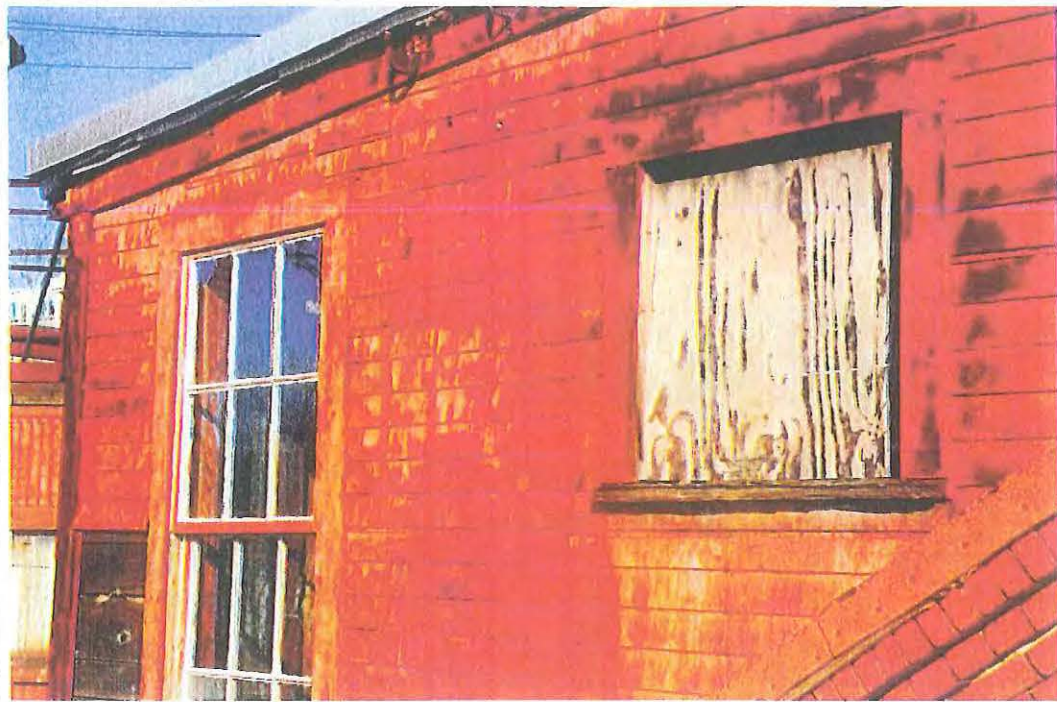


PHOTO
#2.9
A 30 95.jpg

Building 2: West end of north-facing third-floor dormer. Note corroded metal siding and missing siding. 6/6 window sash is likely original.



PHOTO
#2.10
R 169.jpg

Building 2: View from east end of third floor. Plastic sheeting has been used throughout to prevent roof leaks from reaching the assembly space below.

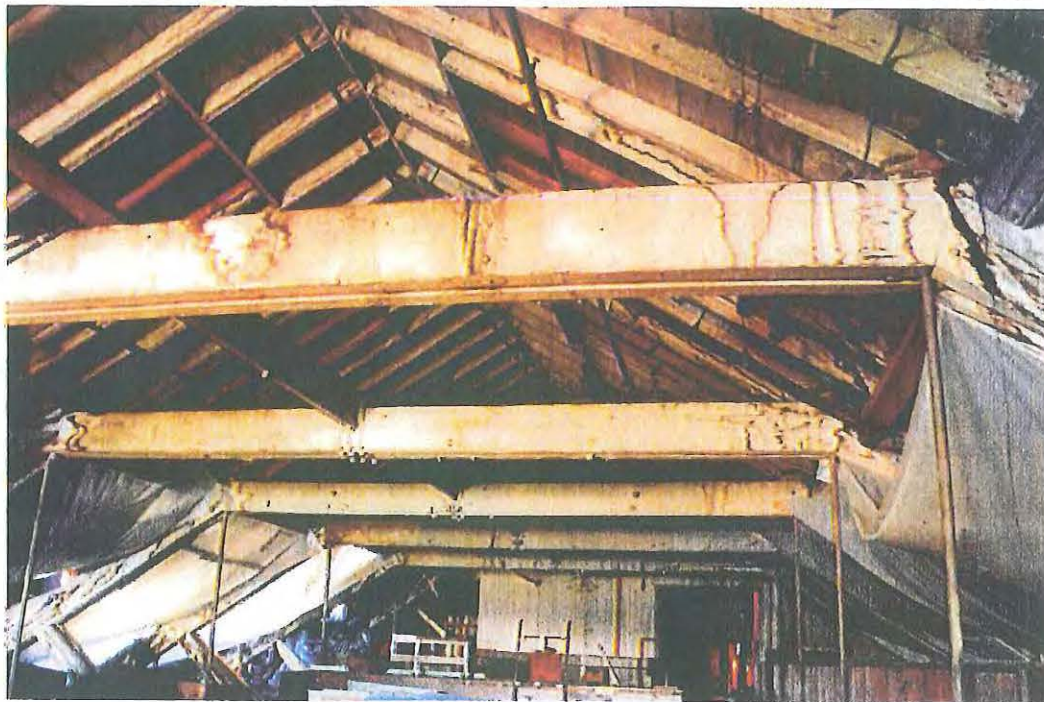


PHOTO
#2.11
A 30 100.jpg

Building 2: 3rd floor drafting office viewed from west wall. Queen rod trusses support roof structure, and lower half of roof extends out as low-slope shed dormers, not visible in this photo.

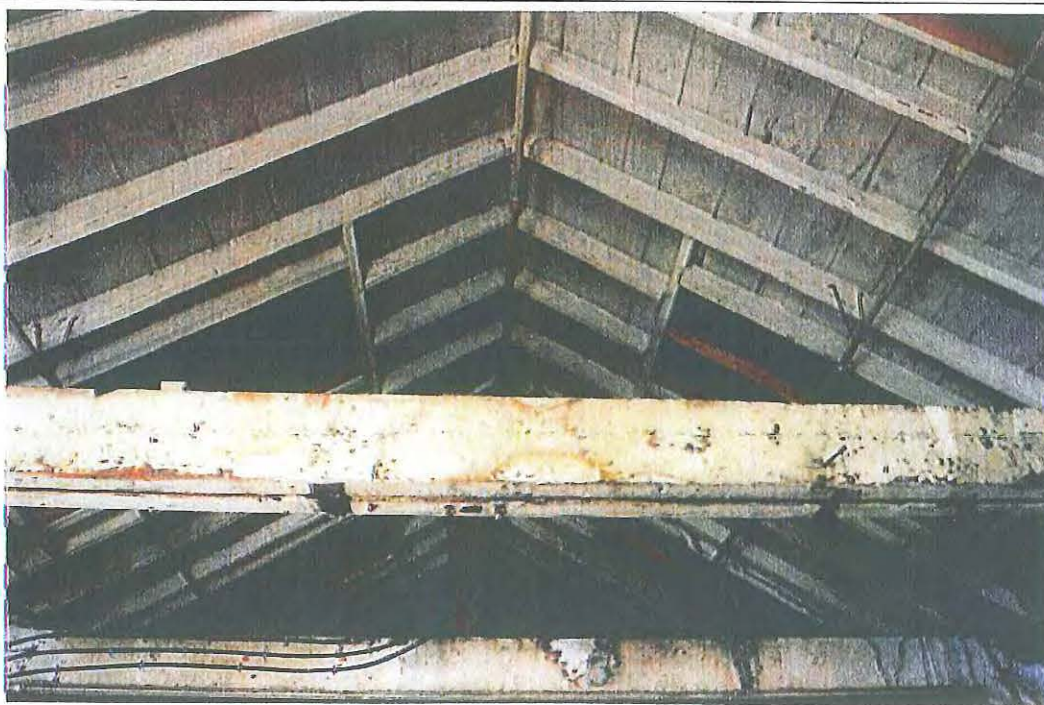


PHOTO
#2.12
A 30 55.jpg

Building 2 upper roof: Note skylights previously located along roof.

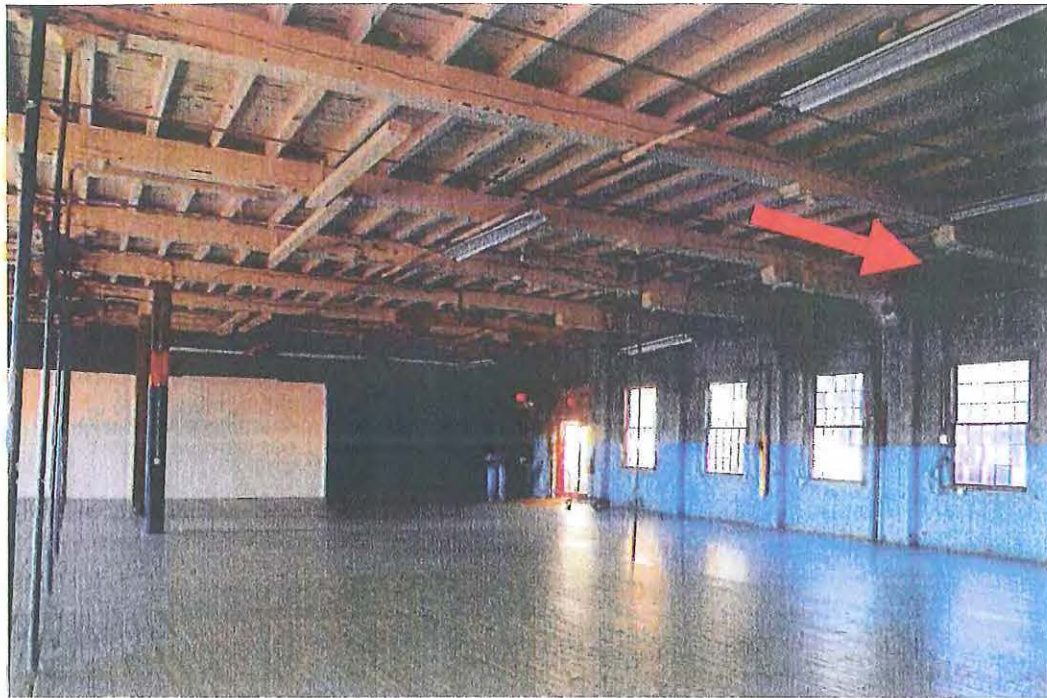


PHOTO
#2.13
A 29 58.jpg

Second floor assembly area, supported below by additional cast iron and timber posts. Iron rods were used to suspend the floor from the roof trusses. Dormer cantilever floor framing has very little backspan (arrow).



PHOTO
#2.14
A P 1.jpg

Second floor assembly area: In use as assembly facility, December 2014.



PHOTO
#2.15
A 3 23.jpg

Building 2 (right side of wall) and Building 3 (left side of wall) share a common partition that consists primarily of 12-inch (3 wythe) brick masonry. Arrow indicates point of view from stair landing shown in Photo 2.24 below.

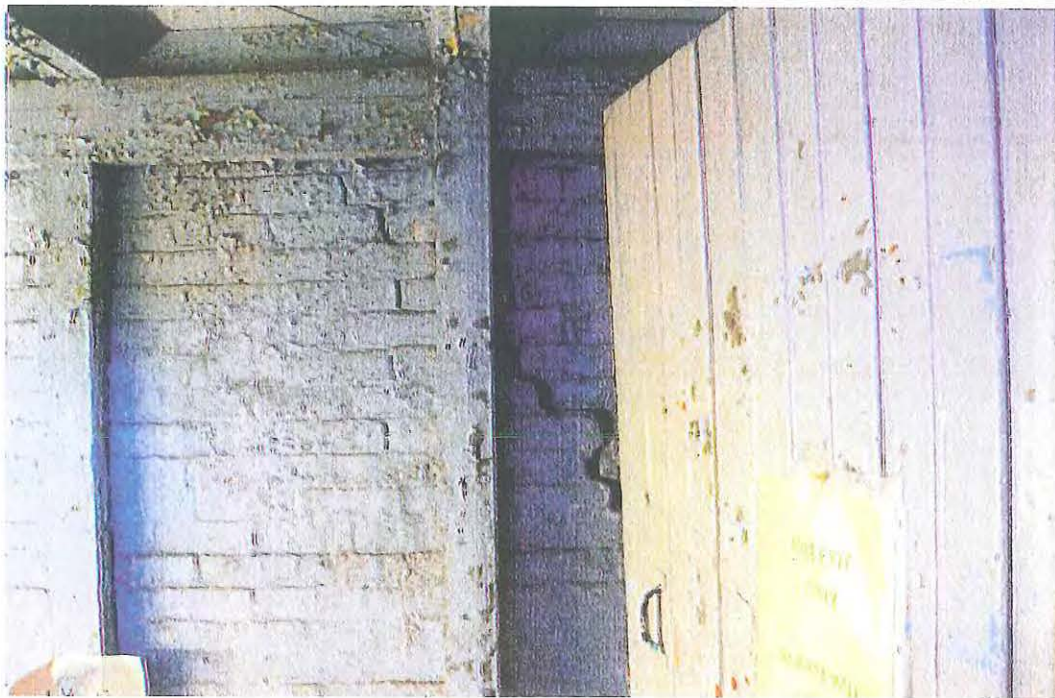


PHOTO
#2.16
A 3 37.jpg

Building 2: Common wall with Building 3: Extensive masonry crack near second floor south door.

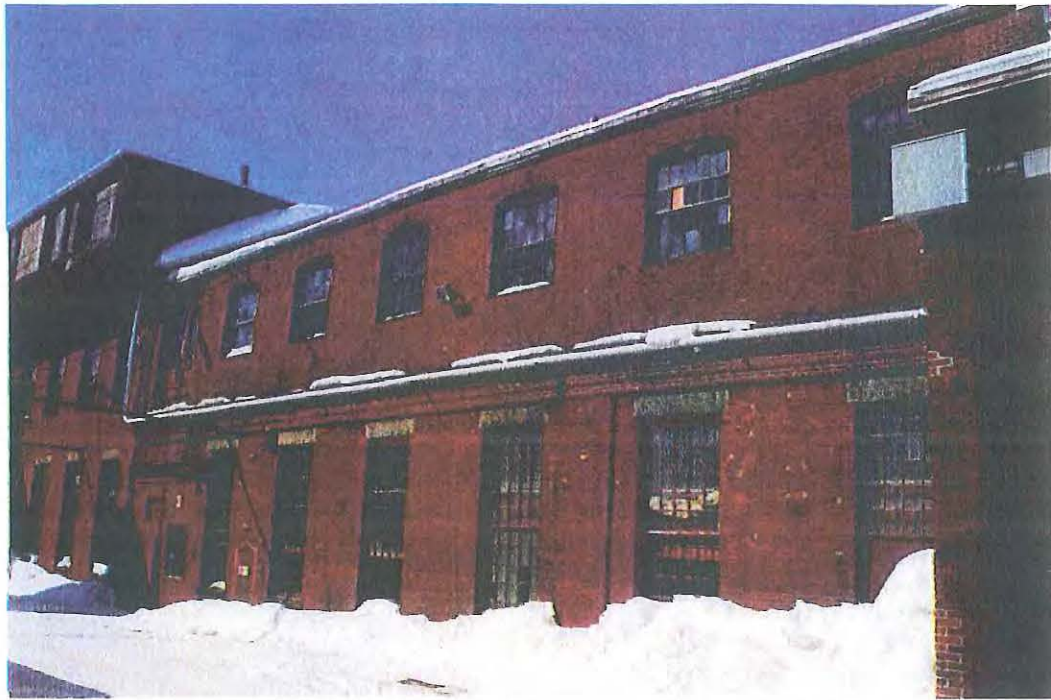


PHOTO
#3.1
A 2 78.jpg

Building 3: View from southeast. Second floor added sometime around 1895. Unlike level added at Building 2 (at left) second floor wall consists of loadbearing brick masonry in alignment with the first-floor masonry wall.

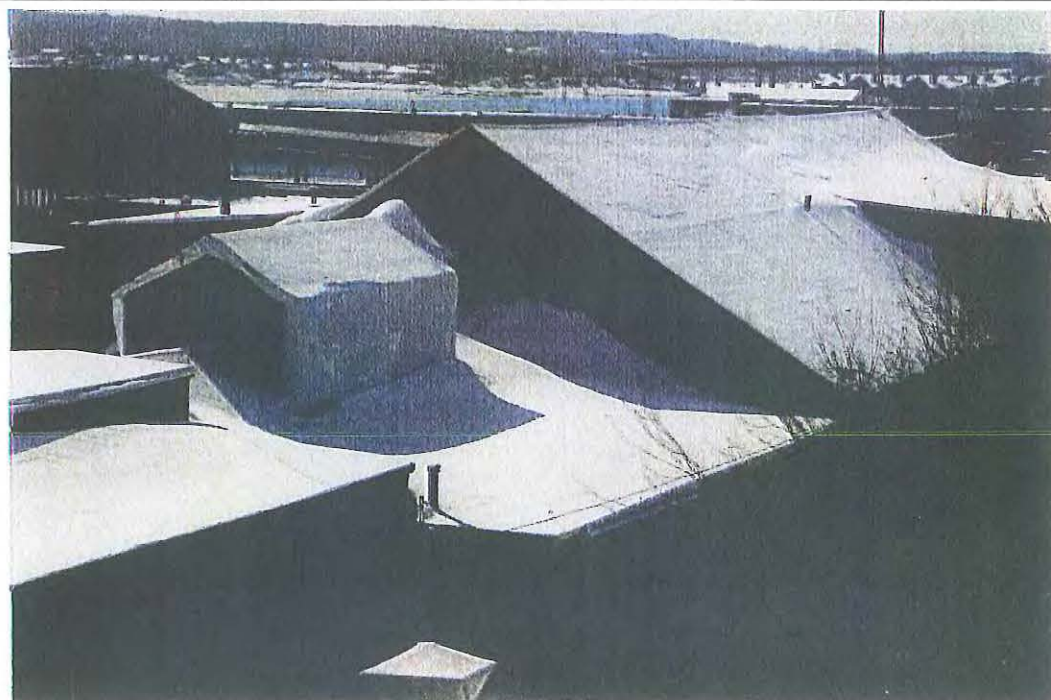


PHOTO
#3.2
A 2 73.jpg

Building 3: View from northeast showing original monitor roof extending above clerestory roof now covered in snow. Note drifting patterns developing around various roof intersections.

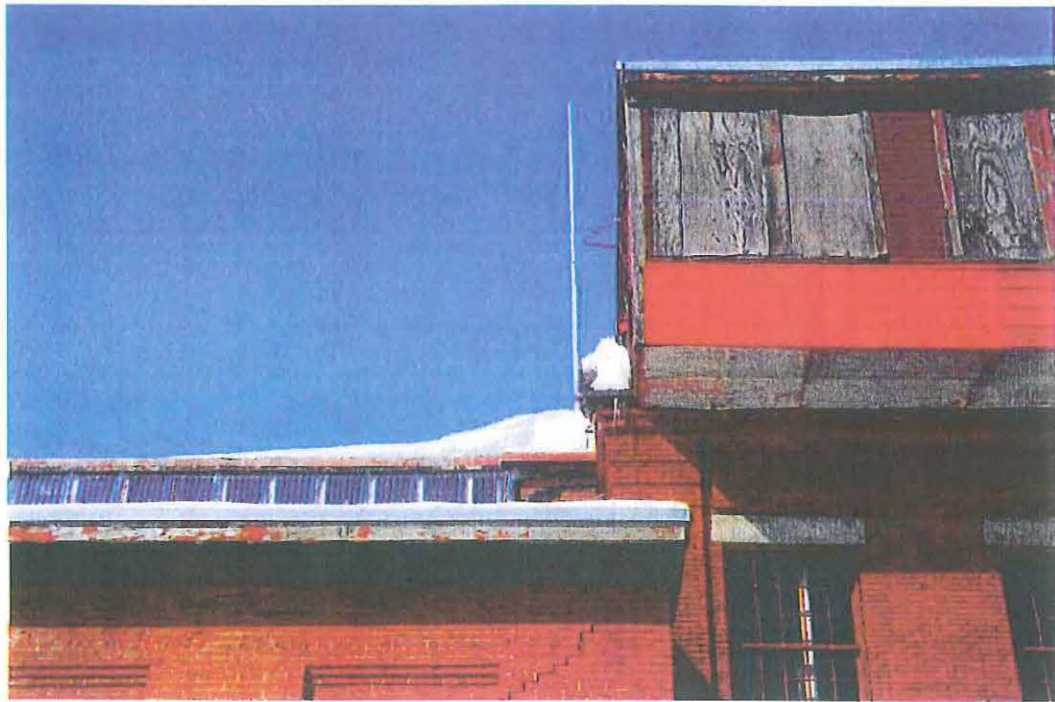


PHOTO
#3.3
A 2 107.jpg

Building 3: View of northwest corner of building, looking up at cantilevered dormer of Building 2 (right) and clerestory of Building 3 (left).



PHOTO
#3.4
A 2 63.jpg

Building 3: Walkway from second--floor space to stair landing leading to Fore Street. Walkway was not assessed as part of this project.



PHOTO
#3.5
A 3 20.jpg

Building 3: Second floor framing viewed from east. Added rods and turnbuckles create double-strut trussed beams that also serve as the bottom chord of the roof trusses.

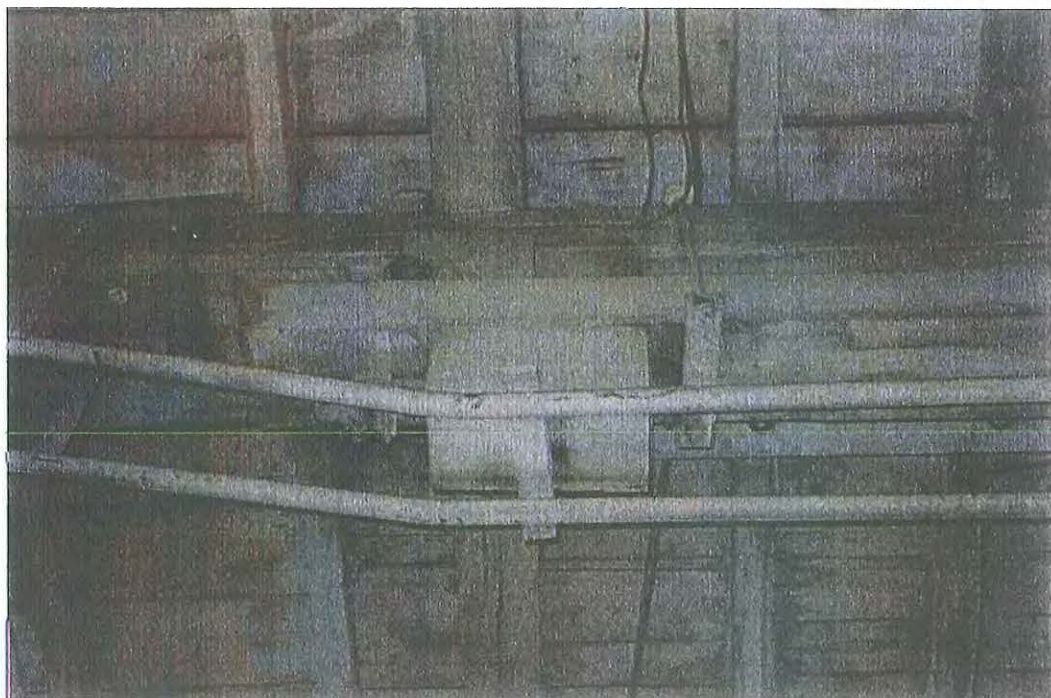


PHOTO
#3.6
A 3 21.jpg

Building 3: Detail looking up at reinforced bottom chord of underhung queen rod truss/trussed girder. Further inspection is necessary to better understand the load path of this framing system.

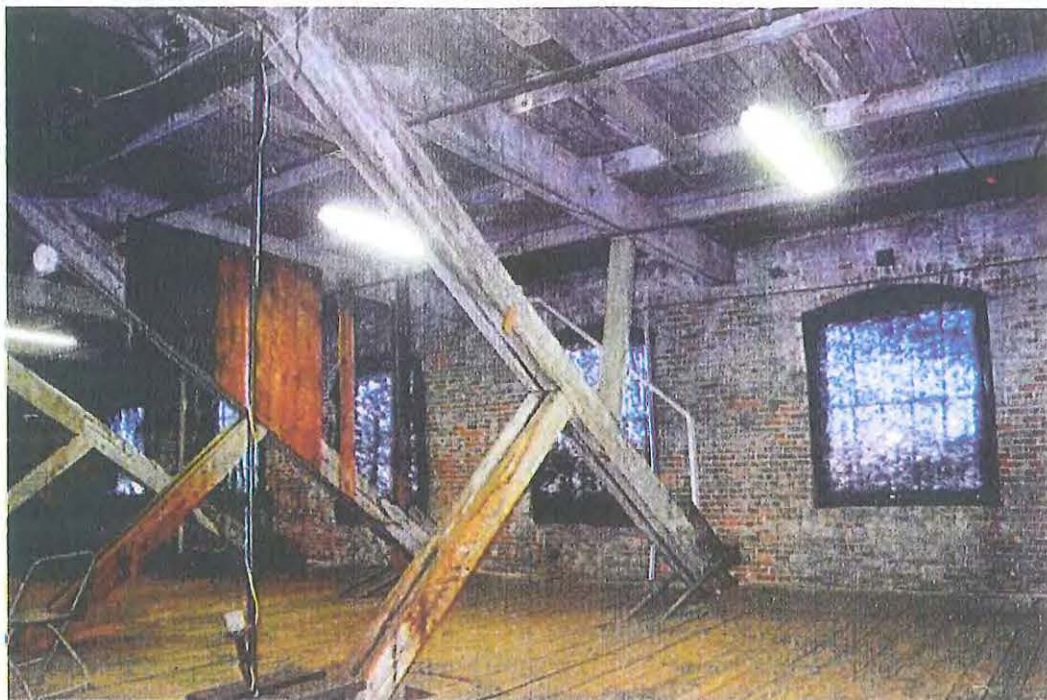


PHOTO
#3.7
A 3 29.jpg

Building 3: Original roof truss modified to create third-floor dormer. View taken looking toward south facing wall.



PHOTO
#3.8
A 3 31.jpg

Building 3: Potentially rotted sheathing at south eave. Closely examine ends of sheathing and eave plates for rot. Additional sheathing may be needed to create sufficient diaphragm action between roof edges and wall.

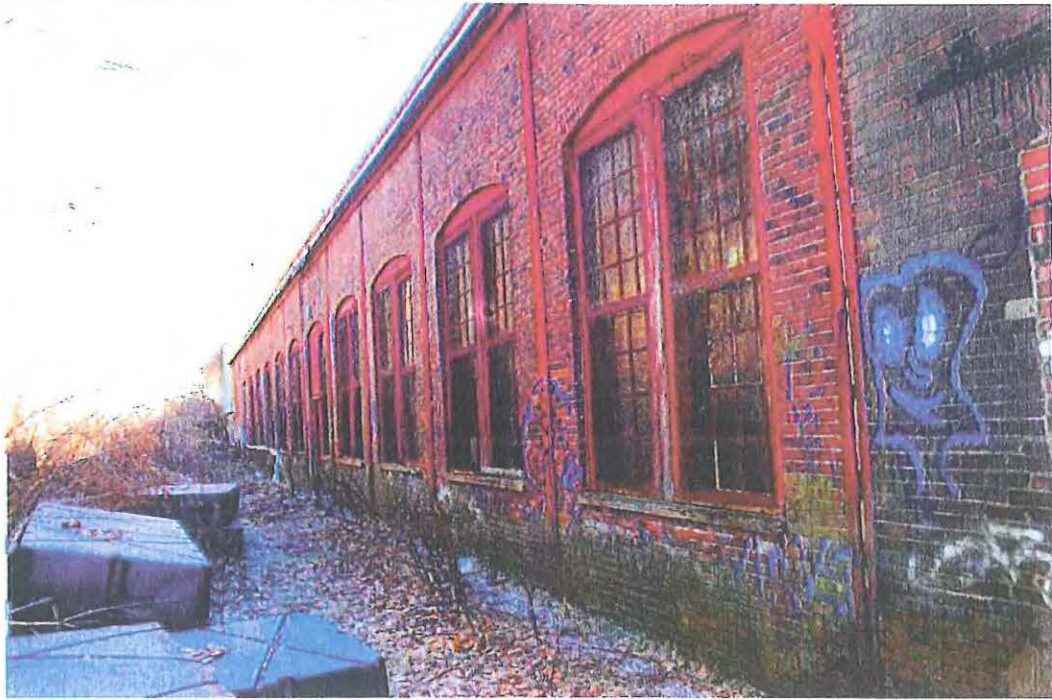


PHOTO
#4.1
R 61.jpg

Building 4: View from northwest, looking along north elevation. Hill descending from left drains substantial water toward the Building 4 foundation, and plant growth limits available sunlight in summer months.

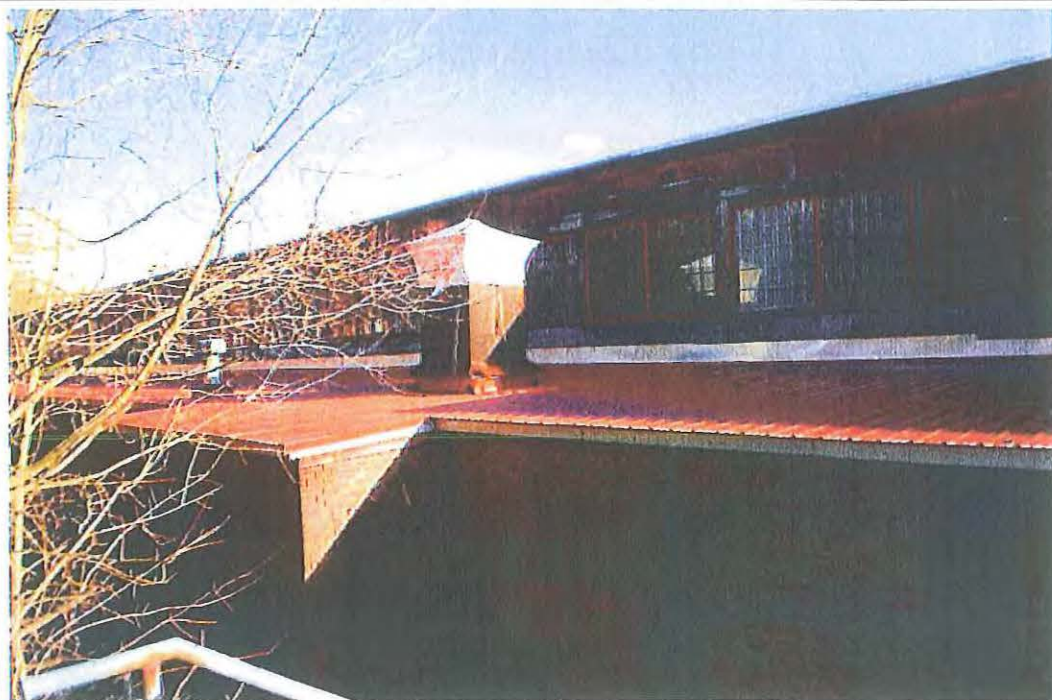


PHOTO
#4.2
R 65.jpg

Building 4: View looking east shows 30-light clerestory windows. As a foundry building, snow loads likely never accumulated on the roof while the foundry was operational. Since closing, snow loads can accumulate on roof.



PHOTO
#4.3
R 79.jpg

Building 4: View looking north. Construction date of taller two-story structure at right is unknown but reportedly dates to original construction.



PHOTO
#4.4
R 89.jpg

Building 4: View toward east, where new roof structure of Building 5 spans across the building width with contemporary steel roof joists.



PHOTO
#4.5
A 29 63.jpg

Building 4: Expansive open space and high ceiling provides natural light, unless monitor windows are covered. East end of Building 4 ties into surrounding Building 5, eliminating the pattern of structure and light.

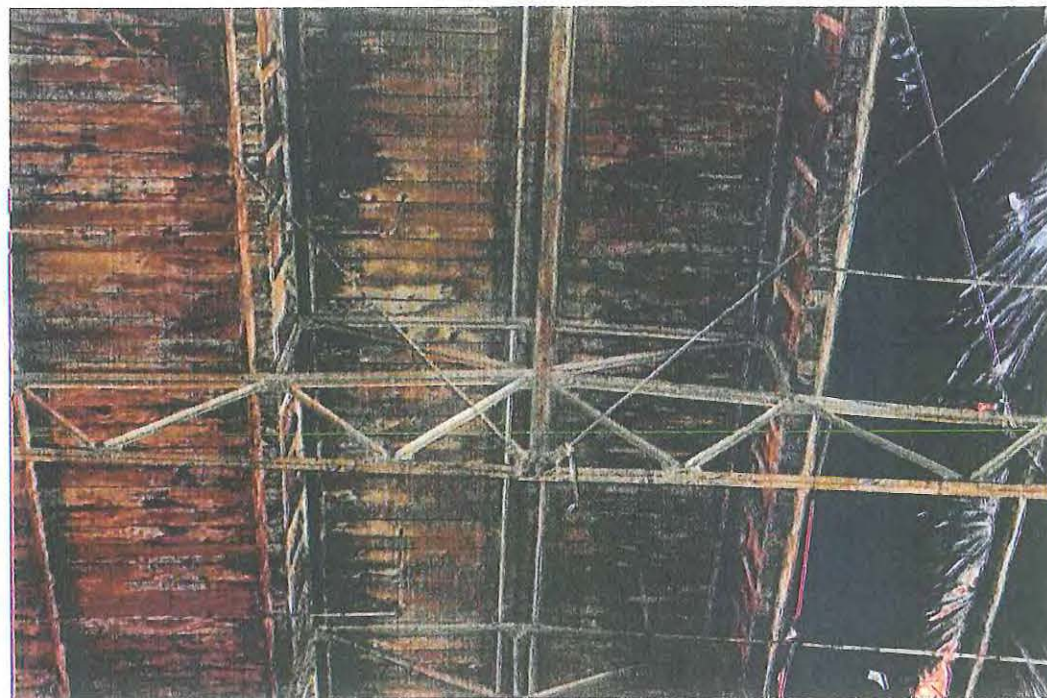


PHOTO
#4.6
A 29 64.jpg

Building 4: Monitor roof at center of photo supported by small steel truss framed onto clerestory truss.

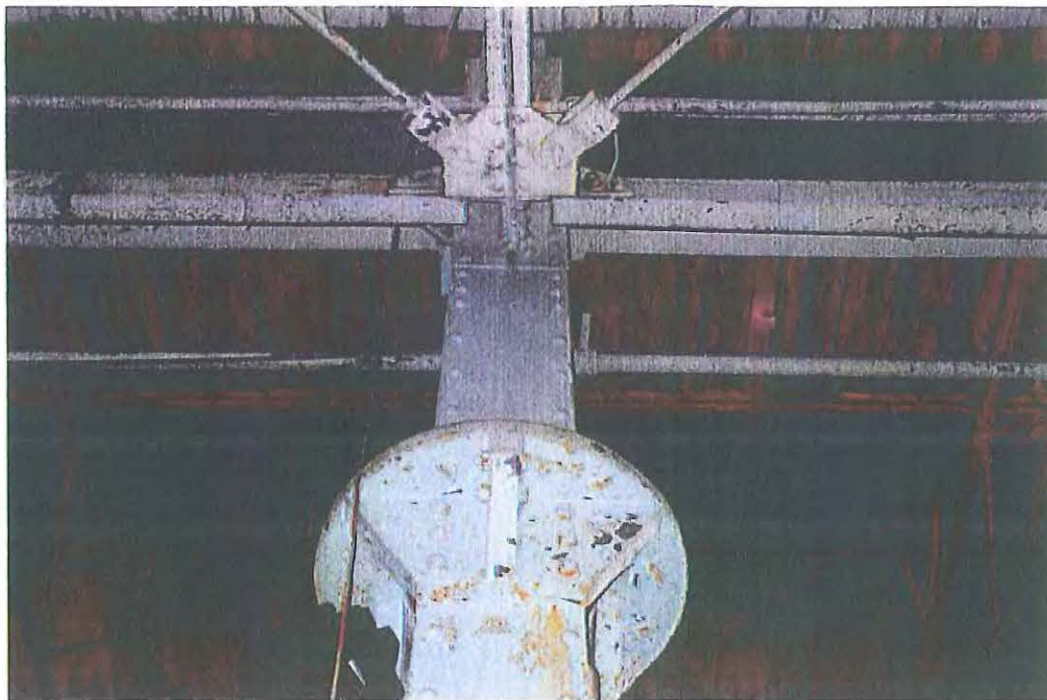


PHOTO
#4.7
A 29 68.jpg

Building 4: Ornate column cap and diagonal bracing visible at the bottom of the crane rail.

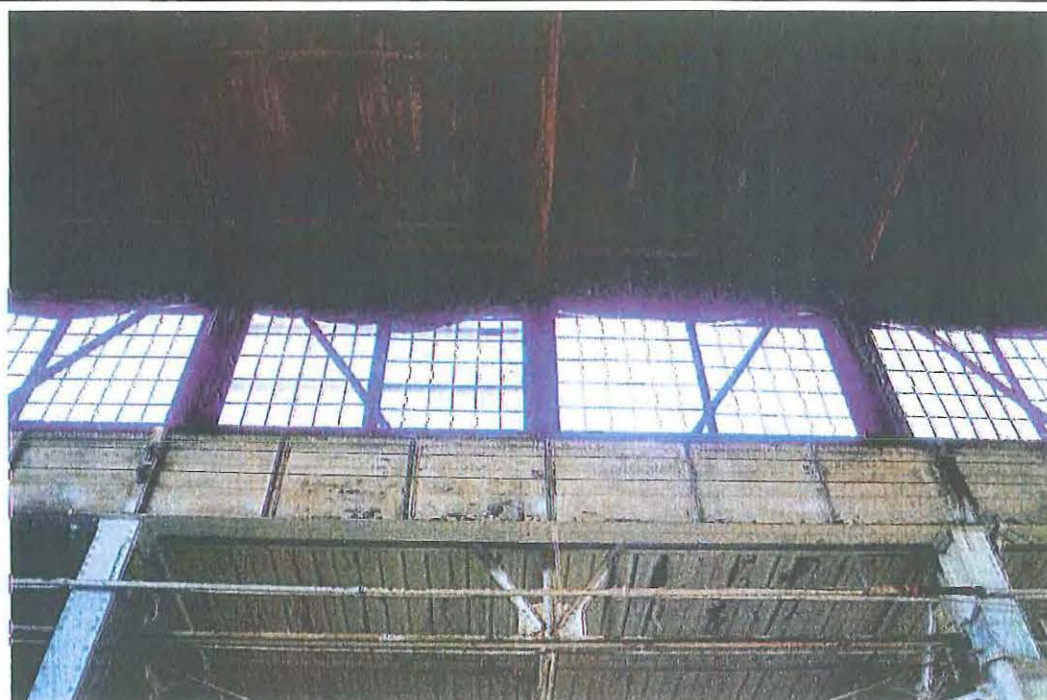


PHOTO
#4.8
A 30 109.jpg

Building 4: South-facing upper wall and clerestory roof, with significant wood staining and possible rot. Continuous crane rail is visible in the foreground.

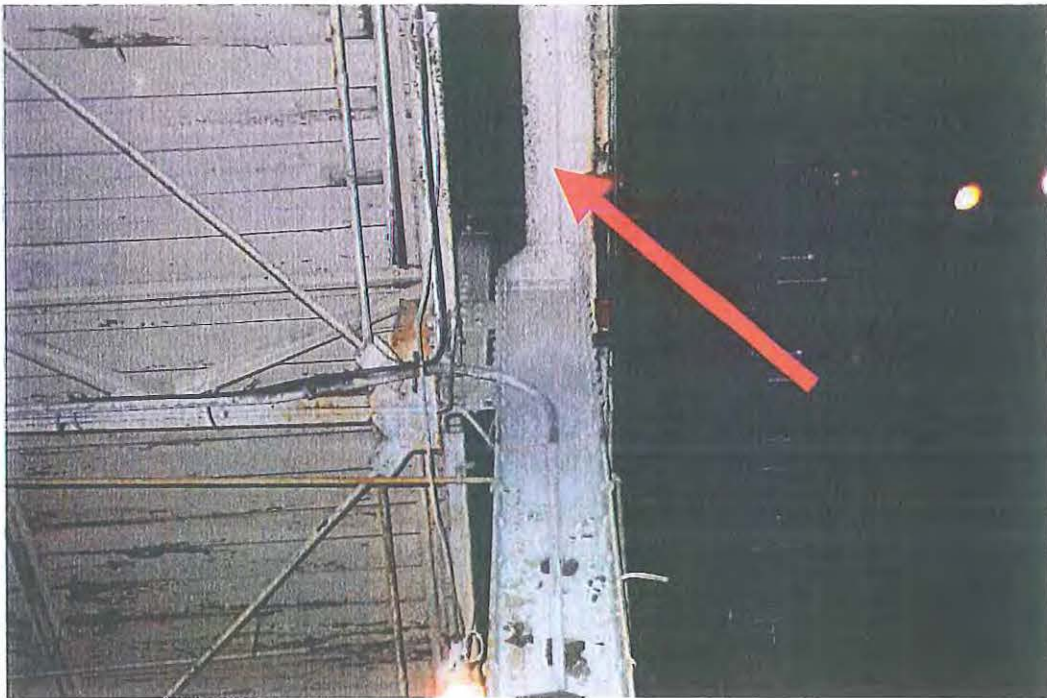


PHOTO
#4.9
A 3 38.jpg

Building 4: Detail view of upper and lower columns joining and overlapping to provide clearance for continuous crane rail (arrow)

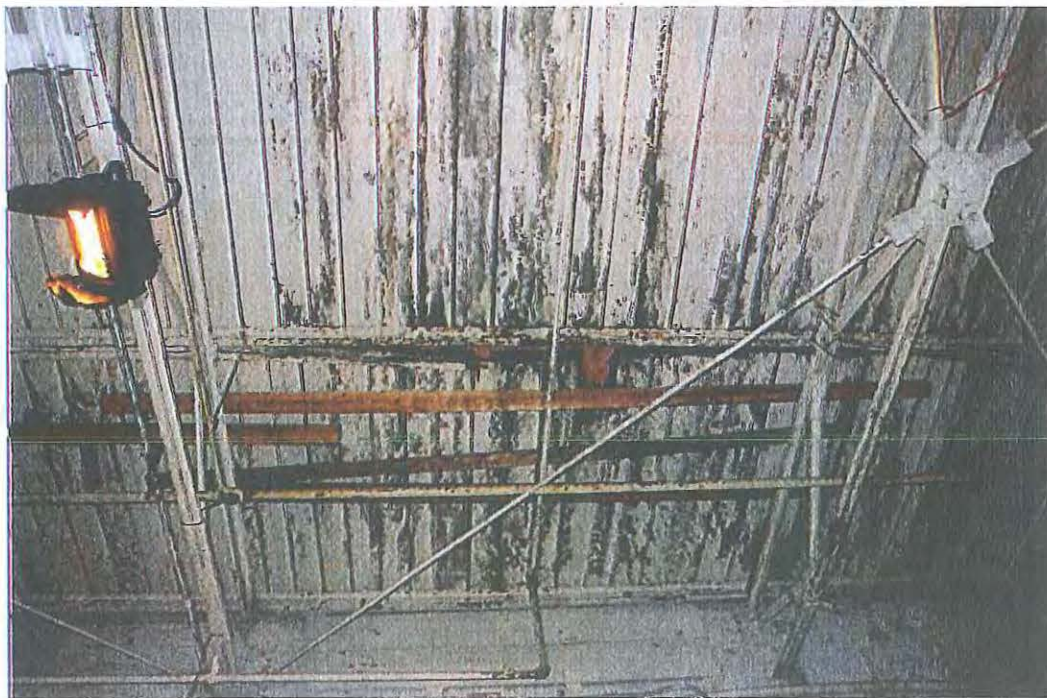


PHOTO
#4.10
A 3 40.jpg

Building 4: North bay roof decking: Local roof sheathing rot supported by multiple 2x framing members spanning between trusses.



PHOTO
#4.11
A 29 49.jpg

Building 4: Significantly deteriorated built-up angle column. Constant exposure to a shoreline environment, along with inherent construction flaw, caused failure of these columns for several feet above the base.



PHOTO
#4.12
A 29 79.jpg

Building 4: Built-up column consists of four steel angles attached with riveted lacing bars. Columns are intended to support the side bay trusses.



PHOTO
#4.15
A 2 69.jpg

East end of Building 4, surrounded by slightly lower roof at Building 5, at left and toward water. View taken from Fore Street shows high drift at east end of lower roof.

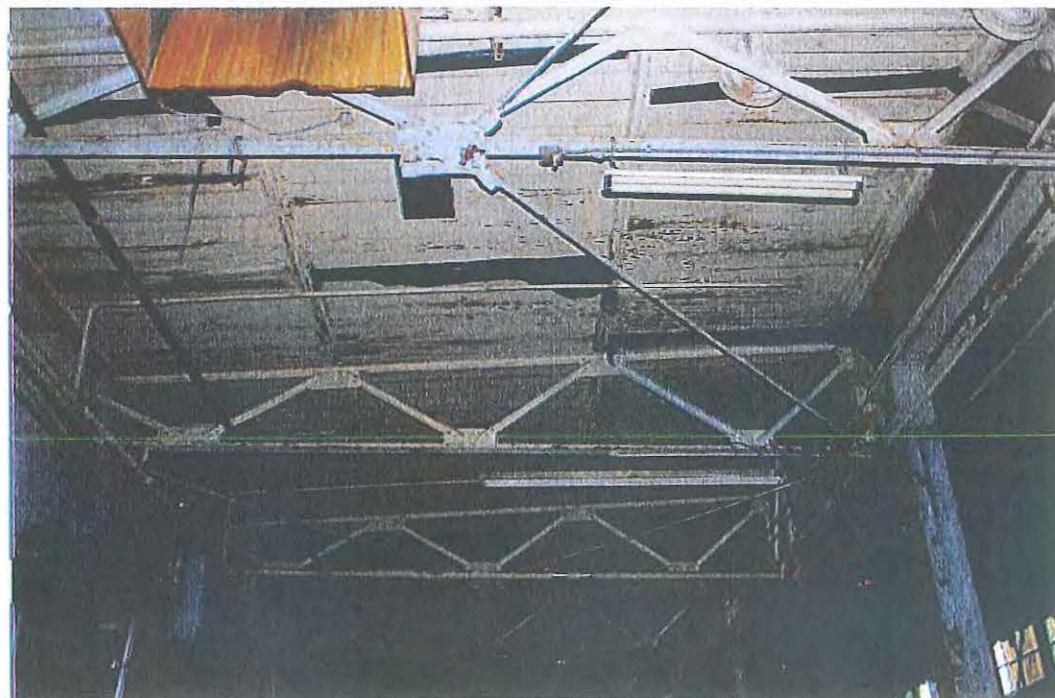


PHOTO
#4.16
R 82.jpg

Building 4: North side low bay truss framing. Small Warren-type trusses bear on plate and angle column at exterior wall, and tie into upper wall column at interior post.



PHOTO
#4.13
A 2 81.jpg

Building 4: South elevation, with more recent steel structure attached. A concrete masonry bearing wall picks up the primary load from the new roof, and new steel columns support the upper south wall and roof.

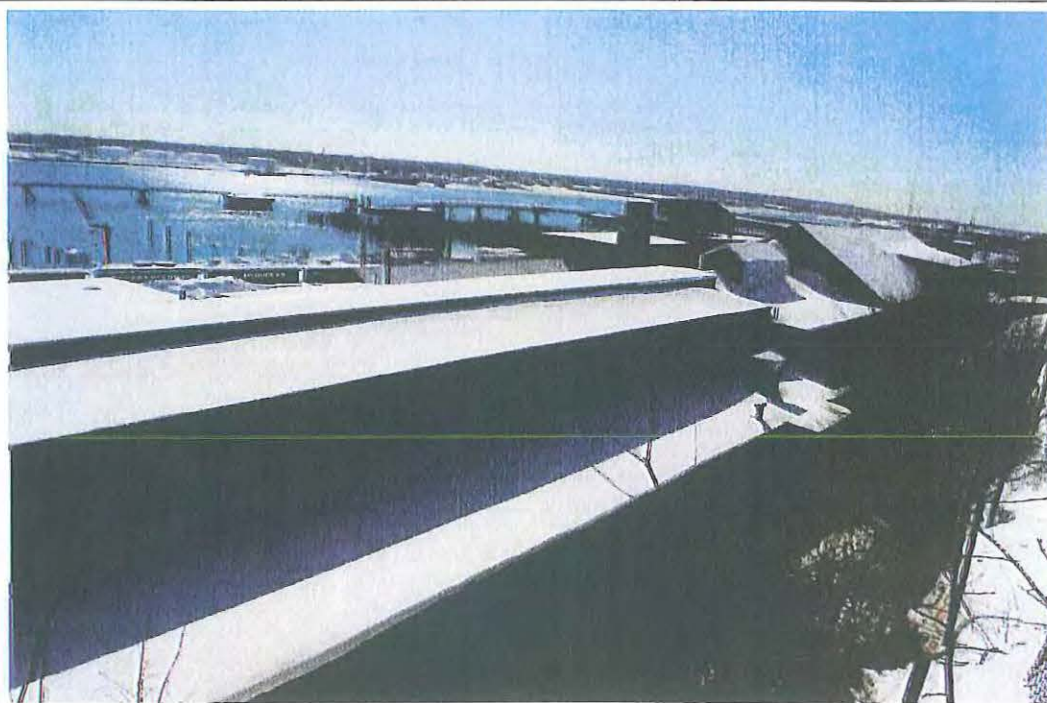


PHOTO
#4.14
A 2 70.jpg

Building 4, looking Southwest along upper roofs. Note tall clerestory roof and smaller upper monitor roof at clerestory roof ridge.



**PHOTO
#6B.1**

A 2 35.jpg

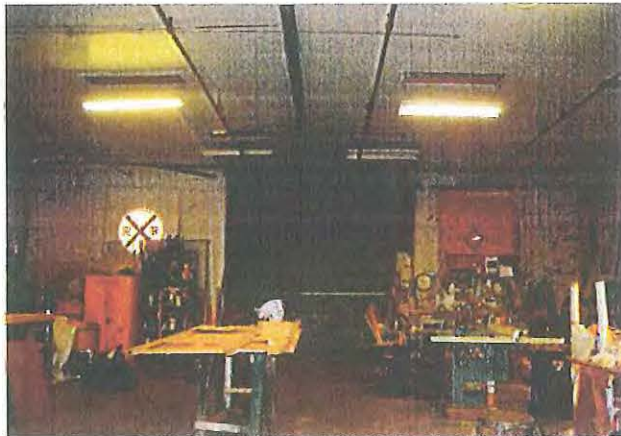
Building 6B: View from southwest. Building 6A is at far left of photo. Building has relatively steep pitched roof in comparison with most buildings on site.



**PHOTO
#6B.2**

A 2 75.jpg

Building 6B: South elevation and east (gable) elevations viewed from southeast. Building contains ten window bays and nine interior truss bays.



**PHOTO
#6B.3**

A 30 06.jpg

Building 6B: East wall interior elevation. Attic space above ceiling served as storage.



**PHOTO
#6B.4**

A 30 03.jpg

Building 6B: Roof truss framing showing flush-framed rafters, purlins, and diagonal knee bracing.



**PHOTO
#6B.5**

A 30 02.jpg

Building 6B west end roof truss: Deteriorated south end of roof truss. Building 6A second floor visible at right. Provide temporary shoring beneath truss.



**PHOTO
#6B.6**

A 30 13.jpg

Typical framing bay: Rafters extend from center purlin up to ridge. Knee braces serve to provide lateral stability in the longitudinal direction of roof.



PHOTO
#6B.7
AP 11.jpg

Building #6B, looking toward east gable wall: Interior view showing expanse of roof framing and storage area shown in Photo #6B.3.



PHOTO
#7.1
R 101.jpg

Building 7: View from northwest showing large overhead door openings cut into masonry bearing wall.



PHOTO
#7.2
R 102.jpg

Building 7: North elevation, looking west. Many changes have been made to the building facades, weakening existing walls and diminishing original fabric.



PHOTO
#7.3
R 100.jpg

Building 7: East elevation wall showing large overhead door cut into south end of wall. Also note bow of adjacent north wall at right of photo.

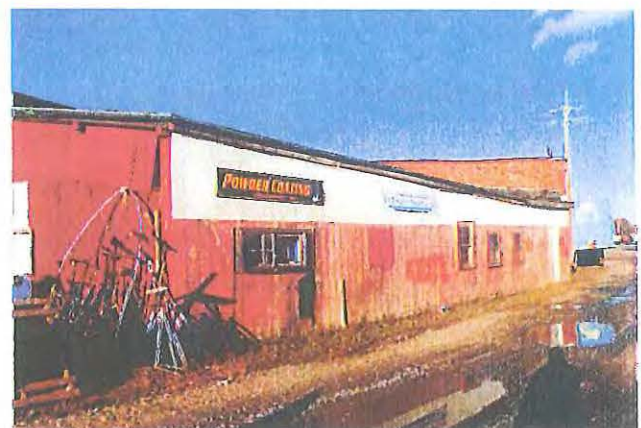


PHOTO
#7.4
R 108.jpg

Building 7: Back shed addition, in very poor condition. Site pitches back toward the building immediately beneath eaves.



PHOTO
#7.5
A 30 15.jpg

East end unit: Conventional flat rafters with tapered shim on top provide roof pitch in this area. Rafters appear to be significantly undersized for span length.

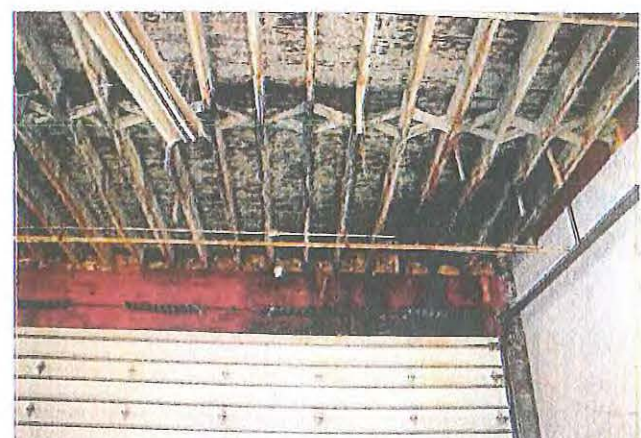
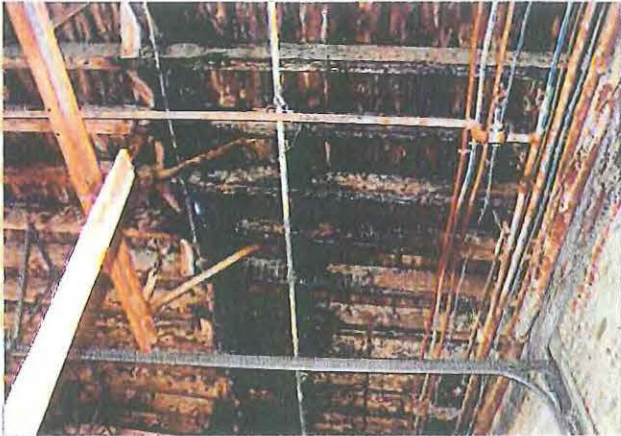


PHOTO
#7.6
A 30 20.jpg

North wall overhead door opening: Roof leaking near eaves is possibly causing wall top plate rot and infiltration into masonry above steel header.



**PHOTO
#7.7**
A 30 21.jpg

Roof framing: Deteriorated rafters and sheathing at location of previous fire. North bearing wall is visible at right of photo.



**PHOTO
#7.8**
A 30 23.jpg

North wall: Masonry suffers from significant bowing throughout and will likely need to be rebuilt, as opposed to stabilized.



**PHOTO
#7.9**
A 30 89.jpg

Roof surfacing: Built-up asphalt roof exhibits many repairs. Open areas of the roof were visible toward the west end of the building.



**PHOTO
#7.10**
A 30 42.jpg

North wall: Visible wall bowing along the length of the structure. Necessary stabilization efforts will be significant. Walls will likely need to be rebuilt.



**PHOTO
#10.1**
A30 87.jpg

Building 10: View from Building 1 Roof showing Building 10 roof and East elevation. Note very low slope roof with surface partially covered by battens.



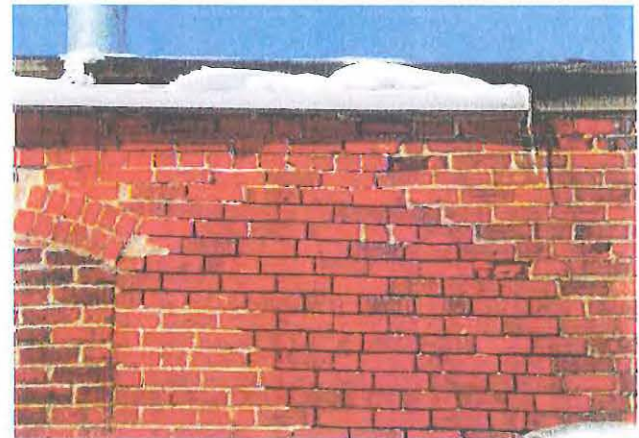
**PHOTO
#10.2**
a 30 88.jpg

Building 10: Close up of low slope roof. Note numerous patches in roofing system and ponding at right. Roofing system has far exceeded anticipated life.



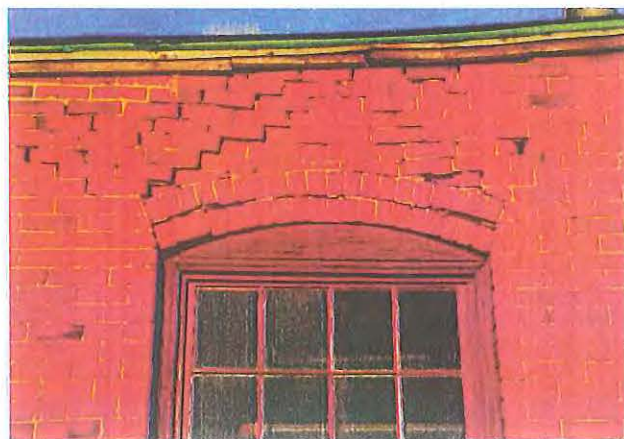
**PHOTO
#10.3**
A 2 93.jpg

Building 10: West elevation wall showing unstable rebuilt south half (right) and deteriorated north section (left). Original window remains at south half.



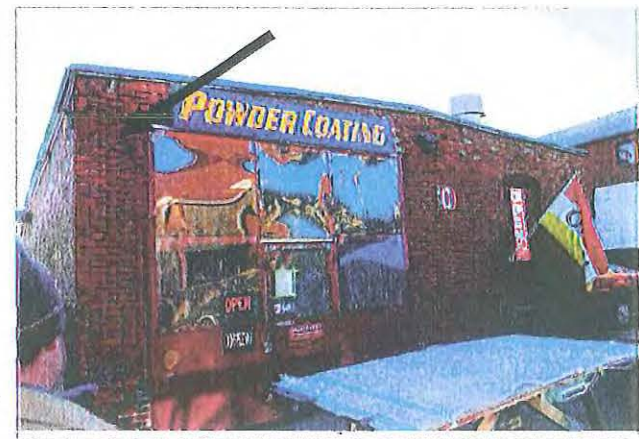
**PHOTO
#10.4**
A 2 92.jpg

Building 10: Loose mortar and deteriorated masonry on South elevation near infilled window. Building likely retains few of its original windows.



**PHOTO
#10.5**
A 29 114.jpg

West elevation window: Significant bow in masonry wall and failed brick. Potential exists for significant water infiltration from driven rain.



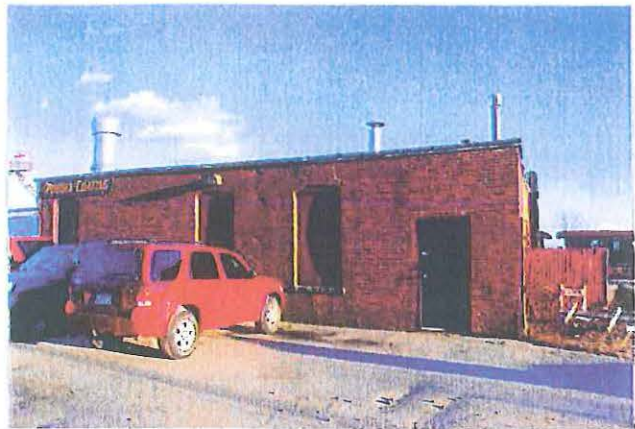
**PHOTO
#10.6**
R 129.jpg

East elevation (detail): Contemporary door infill. Note badly deteriorated mortar visible at left side of door and along upper roof (arrow).



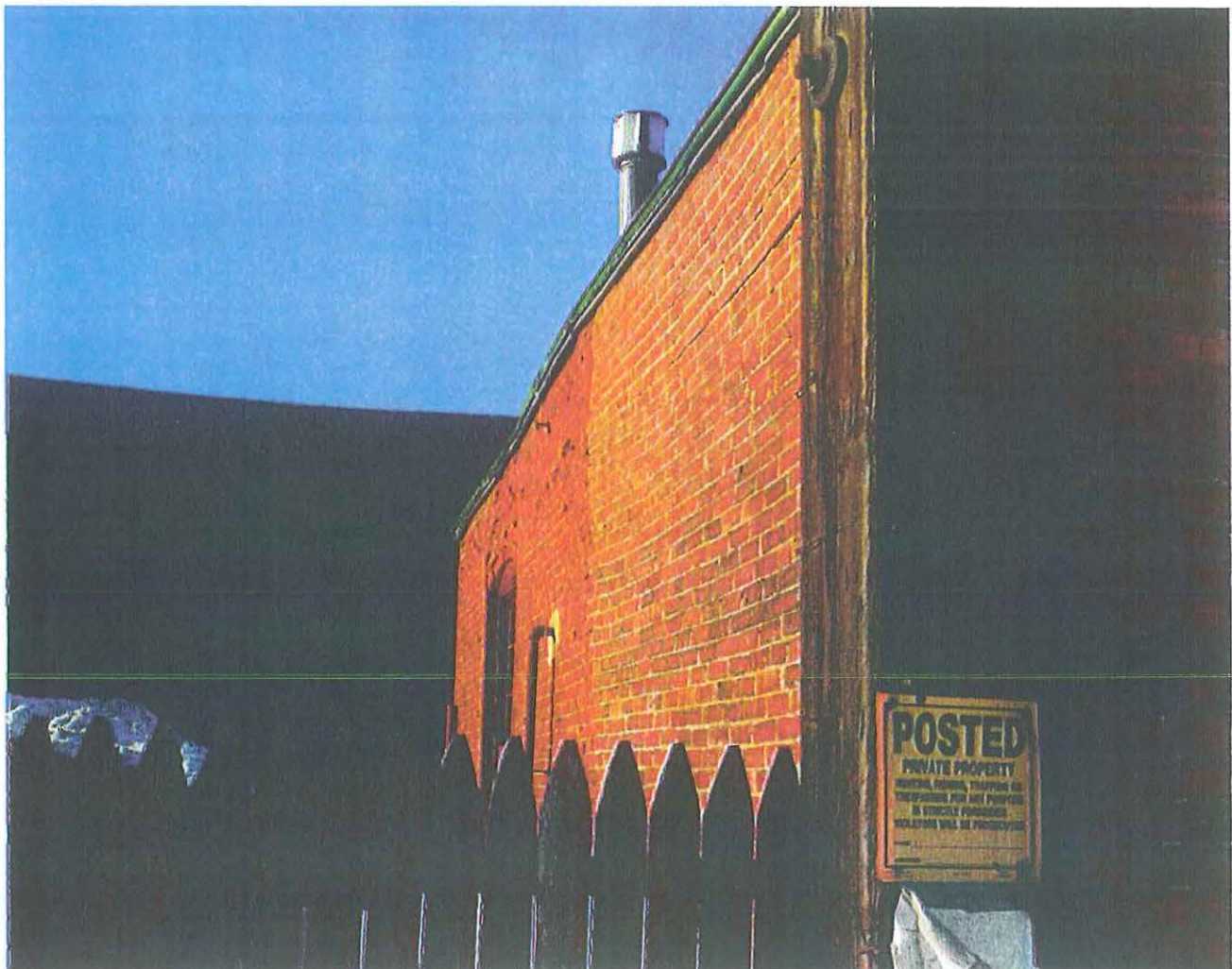
**PHOTO
#10.7**
R 128.jpg

Building 10 south wall; Note infilled windows with granite sills and arched headers.



**PHOTO
#10.8**
R 124.jpg

Building 10 north wall; Infilled wood windows (one opening remaining) and recently-added door.



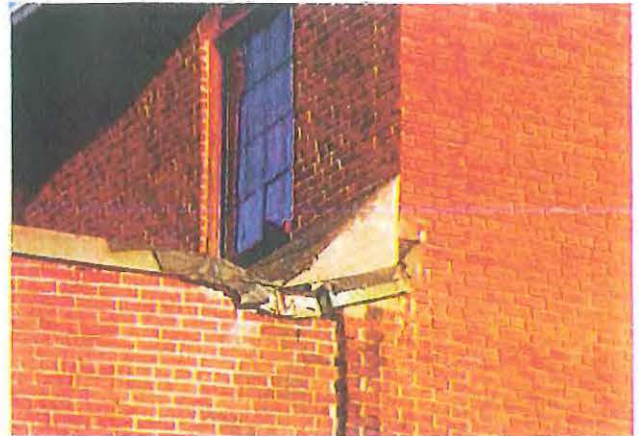
**PHOTO
#10.9**
A 3 5.jpg

West elevation, viewed from south; Significantly bowed masonry at south half of wall is unstable. Upper masonry at north half of wall is in poor condition (see Photo #10.5) We concur with the BSE report that the building should not be occupied.



**PHOTO
#11.1**
A 29 103.jpg

Building 11: West and north elevations viewed from northwest on Fore Street. Note roof taper back toward Building 12, and relative lack of windows.



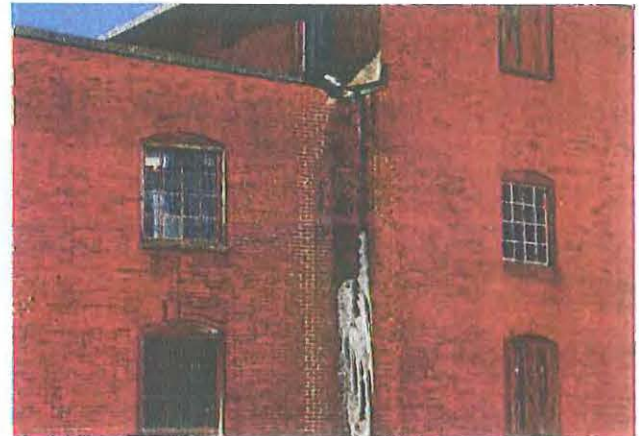
**PHOTO
#11.2**
A 29 99.jpg

Building 11: Southeast corner at junction with Building 12. Temporary cricket has been set up to help divert water away from second floor windows and wall @ Bldg 12.



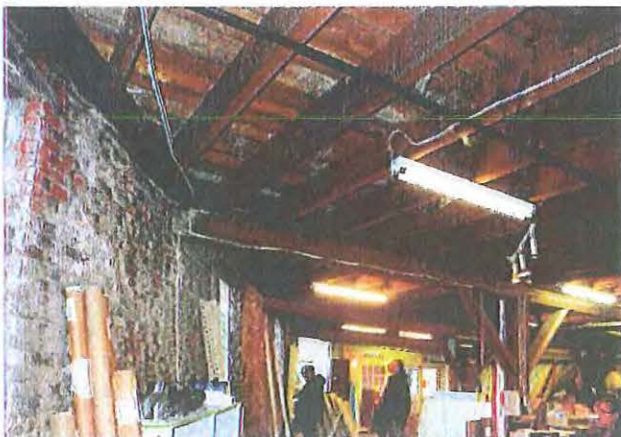
**PHOTO
#11.3**
A 3 81.jpg

Building 11: North elevation along driveway. Snow and water accumulations lead to infiltration, mortar erosion, lateral pressures and wall failure.



**PHOTO
#11.4**
A 3 2.jpg

Building 11: Ice and water runoff at west wall junction between Building 11 and Building 12. Masonry repointing cured symptoms of damage, but not cause.



**PHOTO
#11.5**
A 30 30.jpg

Ground floor north wall: Significant bow in masonry wall caused by lateral earth pressure and potential local rot beneath floor.



**PHOTO
#11.6**
A 30 32.jpg

Ground floor north wall (detail): Significant bow in unstable masonry wall, caused by lateral earth pressure. Wall is bowed several inches out of plumb over four feet.



PHOTO
#11.7
A 30 34.jpg

Second floor assembly space: Open area features visible timber framing and exposed masonry walls. Space has low ceilings and relatively few windows.



PHOTO
#11.8
A 30 45.jpg

Second floor assembly space, east end: Barrels beneath multiple active roof leaks.



PHOTO
#11.9
A 30 40.jpg

Roof framing: Built-up stub support for sloped roof girder. Roof appears to have two-way slope on its irregular floor plan.



PHOTO
#11.10
A 30 42.jpg

Roof framing: Apparent attempt to strengthen roof girder below drift area at Building 12 intersection. Ceiling conceals most framing, leaving condition unknown.



**PHOTO
#14.1**
A 2 35.jpg

Building 14: View from walkway into Building 2 second floor. Fore Street runs roughly parallel to the Building 14 roofline.



**PHOTO
#14.2**
A 3 62.jpg

Building 14: East side of walkway to Building 2 third floor. Bridge connected drafting room to map room. Note rotted framing and water damage at base.



**PHOTO
#14.3**
A 3 57.jpg

Building 14: First floor wall at west side of Building 14 serves as a buttress for the larger retaining wall at right.



**PHOTO
#14.4**
A 3 59.jpg

Building #14: East side of Building 14 wall buttress.



**PHOTO
#14.5**
A 3 52.jpg

Building #14, second floor: Kingpost timber truss supporting pitched roof central purlin. Ceiling prohibited view of roof rafters and purlins in this room.



**PHOTO
#14.6**
A 3 51.jpg

North wall at second floor bindery space: Ceiling at top of wall is higher than adjacent Fore Street sidewalk, creating condensation in warm months.



PHOTO
#14.7
A 3 54.jpg

Roof framing center section of Building 14:
North wall visible at left. Note rafters
running on top of purlins that span between
trusses.



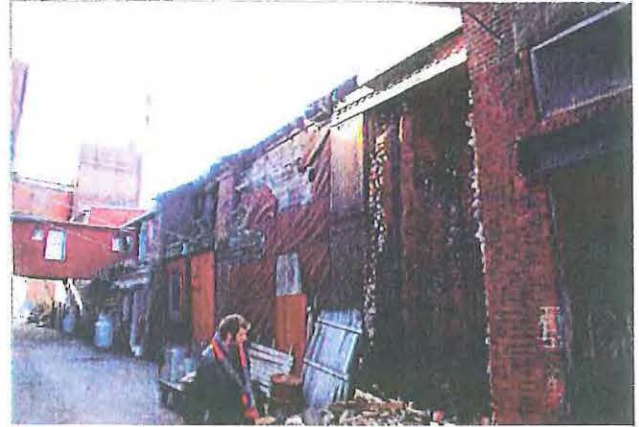
PHOTO
#14.8
A 3 53.jpg

Map room, looking east: Mold growth on
wall resulting from water infiltration
required tenant to leave in late 2014.



**PHOTO
#16.1**
R 57.jpg

Building 16: View from southeast from alleyway. Note masonry wall return cracks on east elevation (arrow).



**PHOTO
#16.2**
R 56.jpg

Building 15: View from southeast from alleyway. Building did not appear to be safe to enter, and we did not enter first floor.



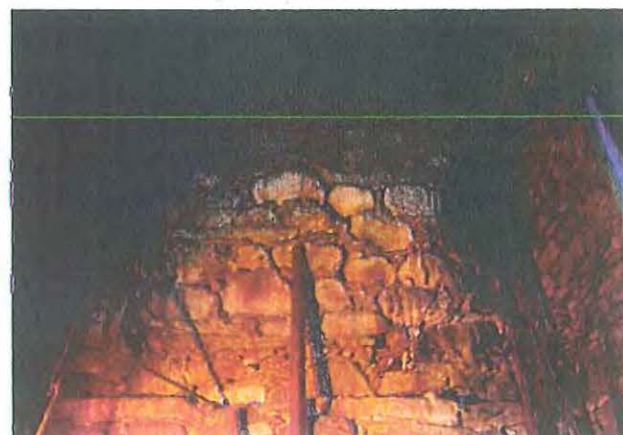
**PHOTO
#16.3**
a f 93.jpg

Building 16: Enlarged opening in south elevation wall. Entire south wall requires repointing, repair, and anchoring into east wall.



**PHOTO
#16.4**
P 23.jpg

Building 15/16: Remnants of boiler house chimney stack between Buildings 15 and 16.



**PHOTO
#16.5**
P 25.jpg

Building 16: North wall doubles as Fore Street retaining wall. Sloped roof rafters bear onto top of wall. Need to check condition of top plate above this wall.



**PHOTO
#16.6**
A 29 35.jpg

Building 16 south wall (detail): Masonry has simple details and small cornice at the top. Window header at left has been replaced with brick soldier course and steel lintel.



**PHOTO
#16.7**
A 29 36.jpg

Building 16 roof framing, south wall: Roof previously had skylights or vents on south side of roof. Note center line of bearing at braced column. Framing likely undersized.



**PHOTO
#16.8**
A 29 37.jpg

North and east walls: Barrels beneath multiple active roof leaks.



**PHOTO
#16.9**
A 29 42.jpg

Catch basin grate, east of Building 16: Grate covered by leaves and debris, and basin itself appears to be clogged.



**PHOTO
#16.10**
A 30 42.jpg

Building 15 southeast wall corner: Masonry repair is required to create weatherproof and structurally sound transition from brick to stone wall.

APPENDIX C

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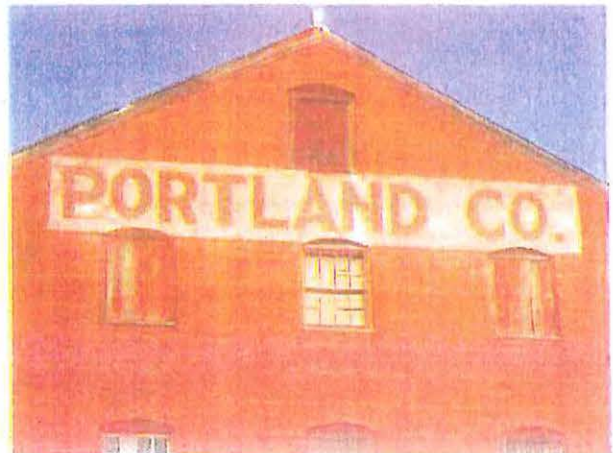
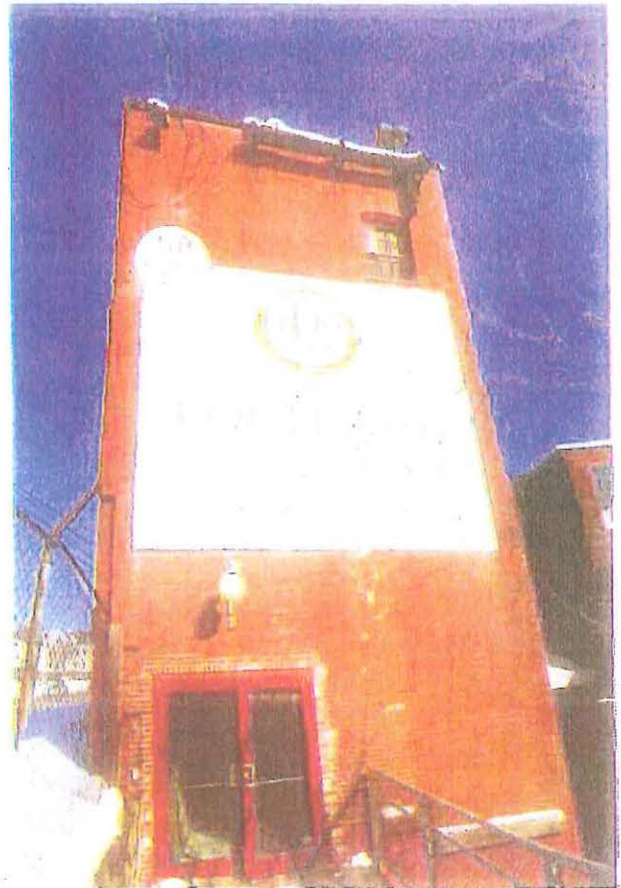
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Evaluation of Existing Buildings
at the
Portland Company Property
58 Fore Street
Portland, Maine

March 28, 2014

Prepared for:
CP82 Management LLC
Portland Maine



Paul B. Becker
3-28-14



Prepared by:
BECKER
ENGINEERING

Evaluation of Existing Buildings at the Portland Company Property
58 Fore Street, Portland, Maine
March 28, 2014

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Book 2

Appendix A – Building Drawings



March 28, 2014

CPB2 Management LLC
P. O. Box 7519
Portland, Maine 04112
Attn: Kevin Costello

The Portland Company
58 Fore Street
Portland, Maine

Dear Kevin:

Per our agreement, Becker Structural Engineers, Inc. performed a review of the buildings associated with the property at the Portland Company complex located at 58 Fore Street in Portland, Maine. We visually reviewed the building exteriors and interior spaces that were reasonably accessible to provide CPB2 with a general understanding of the condition of the existing buildings on the property.

Structural Code Overview

The City of Portland, Maine enforces the Maine Uniform Building and Energy Code (MUBEC) which is an amended version of the 2009 Edition International Code Series prepared and published by the International Code Council (ICC). The International Existing Building Code (IEBC) specifically governs existing construction.

In considering the structural impacts of the redevelopment of the Portland Company property, the chapters of the IEBC discussing Repairs (Chapter 5), Alterations (Chapters 6 to 8), Change of Occupancy (Chapter 9), Additions (Chapter 10), and Historic Buildings (Chapter 11) will need to be addressed if the buildings are to be maintained in the redevelopment plan. Likely impacts of these code sections are discussed below.

Repairs (IEBC Chapter 5)

Due to the observed condition of the buildings at the Portland Company, we anticipate that of repairs will be necessary in all of the buildings. Certain conditions that can be considered dangerous were observed as part of our field investigation, and are detailed later in this report. IEBC requires that dangerous conditions shall be remedied. Repairs are permitted to be made with any material permitted by current code. In most cases repairs are permitted to be made so as to restore the elements to pre-damaged conditions. In the case of substantial structural damage, defined by a 20 percent reduction or greater in critical elements, the repair must meet the requirements of the International Building Code which governs new construction.

Alterations (IBC Chapters 6 to 8)

We anticipate that building alterations may be desired as part of the redevelopment of the Portland Company property. The IBC defines three levels of alteration. Since each redeveloped building will likely encompass a total building work area of more than 50 percent of the building aggregate area, the alterations will be defined as a Level 3 Alteration. Note that the IEBC requirements for alterations are cumulative, and a Level 3 Alteration will be required to meet the requirements of Level 1 & 2 Alterations. Critical components are as follows:

- **New Elements:** New structural elements are required to meet the requirements of the International Building Code governing new construction (reference IBC Section 707.2).
- **Gravity Modifications:** With some code exceptions, alteration shall not reduce the capacity of the existing load capacity of gravity load carrying elements more than 5 percent of their current capacity and loads shall not be increased by more than 5 percent on existing structure members (reference IBC 707.4). We anticipate that re-roofing will be necessary and that the addition of insulation will likely be required as part of the State Energy Code. The addition of insulation will increase snow loading on roofs and will require that roofs be analyzed for current snow loads which will likely lead to structural strengthening. In addition, several of the structures have high-low roof conditions which introduce snow drifting from aerodynamic shade. In our experience, building design of this era did not consider these drifting loads and thus we anticipate that roof reinforcing will likely be required in these conditions.
- **Lateral Load Force Resisting System:** The evaluation of the structure for the resistance of wind and seismic loads per the IBC requires an evaluation of the lateral load resisting system. The level to which the building will require upgrading is determined by the level to which the structure is involved with the alteration. Where more than 30 percent of the total floor and roof area of the building is involved in structural alterations, the altered building must comply with IBC 2009 for wind loads and 75 percent of IBC 2009 for seismic forces. Below the 30 percent structural alteration threshold, the overall system only needs to meet the requirements from the time of original construction, but if alterations increase the stresses by more than 10 percent in a component or element, then the component or element must be upgraded to IBC 2009 wind forces or reduced seismic forces. In general, if wall sections are to be removed or if dead weight is added to the building as part of the redevelopment, the stresses in the existing lateral load resisting system will need to be evaluated. If the resulting stresses as a result of the redevelopment increase by greater than 10 percent then upgrades will be required.

Change of Occupancy (IEBC Chapter 9)

If maintained as part of the redevelopment, the existing buildings at the Portland Company property will be utilized in a different manner than their current use as industrial buildings. The structural portion of the building code defines four occupancy categories, the least stringent being assigned to agricultural and minor storage buildings, and the most stringent being assigned to facilities considered to be essential such as emergency response facilities and hospitals. Based on our code review the current use of these buildings would be assigned to Occupancy Category II which is the default category. We anticipate that the future use of these buildings will be of the same category, and thus the anticipated work will likely not trigger modifications or upgrades per this chapter. The exception would be in the case where a building may be used as an assembly space, education facility or medical facility. In these cases upgrades to the building's lateral load resisting system and roof structure to support snow loadings would be required.

Additions (IEBC Chapter 10)

If additions are part of the redevelopment at the Portland Company, they will be governed by Chapter 10 of the IBC. Additions must comply with the International Building Code for new construction. If an addition is tied to or built on top of an existing building, then all or a portion of the existing building must meet the requirements of the International Building Code for new



construction. Due to the age and construction of the existing buildings it is unlikely that additions tied to the existing building can be considered without significant structural system upgrades. Thus in our experience it is generally more cost effective to keep additions structurally independent of existing building structures. This would include floor mezzanines within an existing building.

Historic Structures (IEBC Chapter 11)

Understanding the age and history of the buildings at the Portland Company, the provisions of Chapter 11 of the IEBC may apply. Historic buildings must comply with the other sections of the IEBC, except that at the discretion of the local building code official certain exceptions may be permitted. Specifically, a floor not meeting live loading requirements may be accepted provided operational controls are put in place to limit occupancy or access. Additionally, repairs to dangerous conditions may be repaired only such that the specific component or portion need be repaired rather than the entire assembly.

Additional Considerations and Limitations

Our review of the buildings within the Portland Company Complex is limited to the structural systems. Other requirements building code requirements, including but not by limitation, egress, accessibility, flooding, ventilation, fire safety and energy code requirements will need to be addressed as part of redevelopment plans. Also note our review was limited to conditions that were readily visible and accessible. There were spaces that were not safe to access as part of our review. No formal structural analysis was performed as part of this work, and material testing was not performed.

Immediate Safety Concerns

In reviewing the buildings at on the Portland Company property, we identified the following safety concerns:

Building 6A/6B: The east wall of Building 6A is supported by a timber truss at the first floor level. The truss end at the south bearing condition was found to be severely deteriorated and is considered unsafe. Temporary shoring is recommended until such time that permanent repairs can be made.

Building 10: Building 10 exterior masonry walls are severely distress and it unclear if brick wythes are still bonded together. Interior or exterior wall facing could peel off without warning. There is evidence of creep deflection at roof and concerns over ponding roof loads. It is recommended that this building not be occupied.



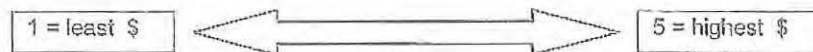
Building Review Notes

The following pages summarize the observed structural condition of the building in the Portland Company complex. To aid the reader we have assigned a number rating between 1 and 5 to each building. The intent is to provide within that number a summary of its structural condition with 1 representing a very poor/unsafe condition and 5 representing a good structural condition. This rating is based on our visual observation and professional opinion of costs to repair, stabilize and remediate the structural issues noted.

A more specific description of the structural rating system is as follows:

1. Very poor/unsafe/demolition likely
2. Very poor/salvageable with significant structural rework and investment/questionable economic viability/consider demolition
3. Poor/requires substantial structural work to elements & systems
4. Fair/requires nominal structural work to elements
5. Good Condition/minor structural work required.

We have also assigned a relative structural renovation cost index to each building in an effort to quantify what a renovation may cost. The cost rating on a similar scale, with 1 representing the least cost to renovate and 5 representing a major reconstruction. Note the cost rating is scaled to the size of the building in addition to the complexity of the repair.



Included on the following pages are high level review notes for the buildings on the Portland Company property. A more detailed review including structural analysis can be completed if requested.

We trust this information meets your needs at this time. If you have any questions, please feel free to contact us at any time.

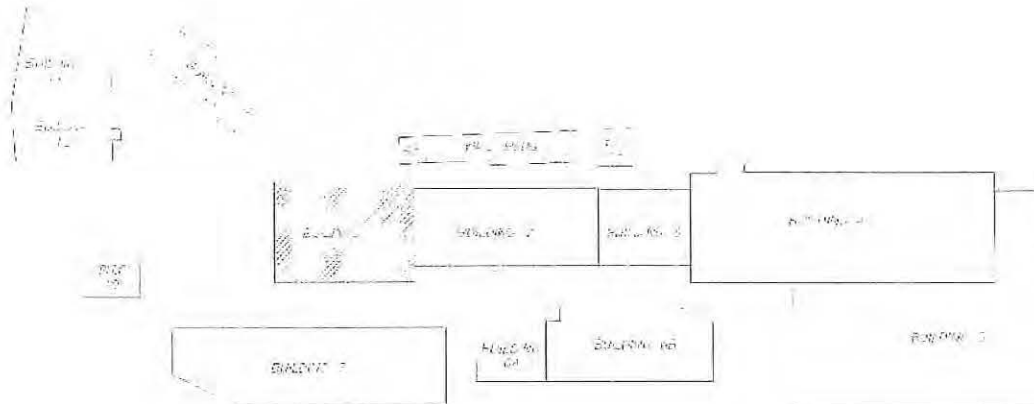
Sincerely,
BECKER STRUCTURAL ENGINEERS, Inc.

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Building Number: 01



Location Plan

Description, Condition and Assessment:

- Building 1 features a central, longitudinal clerestory high bay space with low "saddle bag" roofs to each side (Photo 1-1).
- The high bay space has bridge crane rails with dual bridge & trolley systems.
- High bay is a steel frame with bridge crane girders at elevation of low "saddle bag" roofs. High bay is framed with clear span steel trusses and decked with wood board sheathing.
- Low roofs are framed with steel beams and girders, and decked with wood board sheathing.
- Low bay exterior walls are multi-wythe unreinforced brick masonry bearing walls.
- The steel frame high roof structure is likely not rated for snow loadings and the low bay roofs are likely not designed for snow drifting due to the high-low roof condition. Both conditions will likely cause overstresses in framing and decks.
- Wood plank roof decking was rotting in several locations, particularly at eaves due to leaking roofs (Photo 1-2). In general, roof appears to have leaks throughout. Wood deck not effective as diaphragm to transfer lateral loads.
- Wooden roof eaves with missing pieces and rot.
- Masonry piers along south elevation had large vertical cracks, likely a result of thermal stresses in the brick and discontinuity of steel lintels. Steel lintel framing over large windows cause disruption of brick piers and cause structural instability of piers with a hinge type condition. Crack allows water infiltration which causes further structural damage (Photo 1-4).
- The lintel flanges exposed over windows at the exterior are rusted with expansion causing rotation and masonry damage.
- Windows are archaic with steel frames, single pane glazing, no thermal break, poor glazing seals, broken panes and corrosion.
- Concrete window sills are spalled and cracked with exposed reinforcing in many locations.
- Many brick masonry joints have missing mortar, particularly at eave drip line below window sills. Moss was noted to be growing in masonry joints at and above the pavement



line. Masonry also has wide spread areas of distress including loose and missing mortar, cracks and spalls. (Photo 1-3)

- South high bay windows have been covered with opaque corrugate panels indicating poor condition.
- South low roof appears to have been overframed to enhance slope.
- Upper roof appears to be an out of date far and chip roof.
- No definable lateral load resisting system in either principal direction.
 - Limited frame action in high bay of transverse direction. Offset column splices at low/high roof transition and crane girder create a stiffness discontinuity (Photo 1-5).
 - No method to transfer clerestory loads to lower level in longitudinal direction.
 - End wall and side walls have large openings; unreinforced masonry bearing walls known to have poor performance in seismic events.
 - Wood diaphragms likely inadequate to transfer diaphragm shears to exterior walls.

Anticipated Structural Outcomes for Renovation/Restoration:

- Replace roof decking with metal deck along with new roofing and insulation. Establish diaphragm connections to existing walls.
- Reinforce roof to meet snow loading requirements.
- Introduce lateral load resisting system with wall shotcrete or steel frame.
- Repair exterior masonry and rebuild certain areas as required. Extensive rebuilding will be necessary to address cracked masonry pier conditions. Clean masonry.

Structural Condition Rating	2.0
Structural Renovation Cost Rating	4.0

Rating Justification:

All major structural systems are affected in a renovation. Exterior masonry piers have major vertical cracks. Steel lintels create a hinge condition in exterior masonry piers and therefore their stability is questionable. End bay has large masonry openings that are not original to construction and seismic performance of system is very questionable. Rehabilitation of open one story space would have high unit costs considering necessary investment in structure verse net usable space.





Photo 1-1: General View, Building 1



Photo 1-2: Wood deck condition at eave.





Photo 1-3: Building 1 at eave drip line. Note sill condition, window condition, moss and missing mortar.



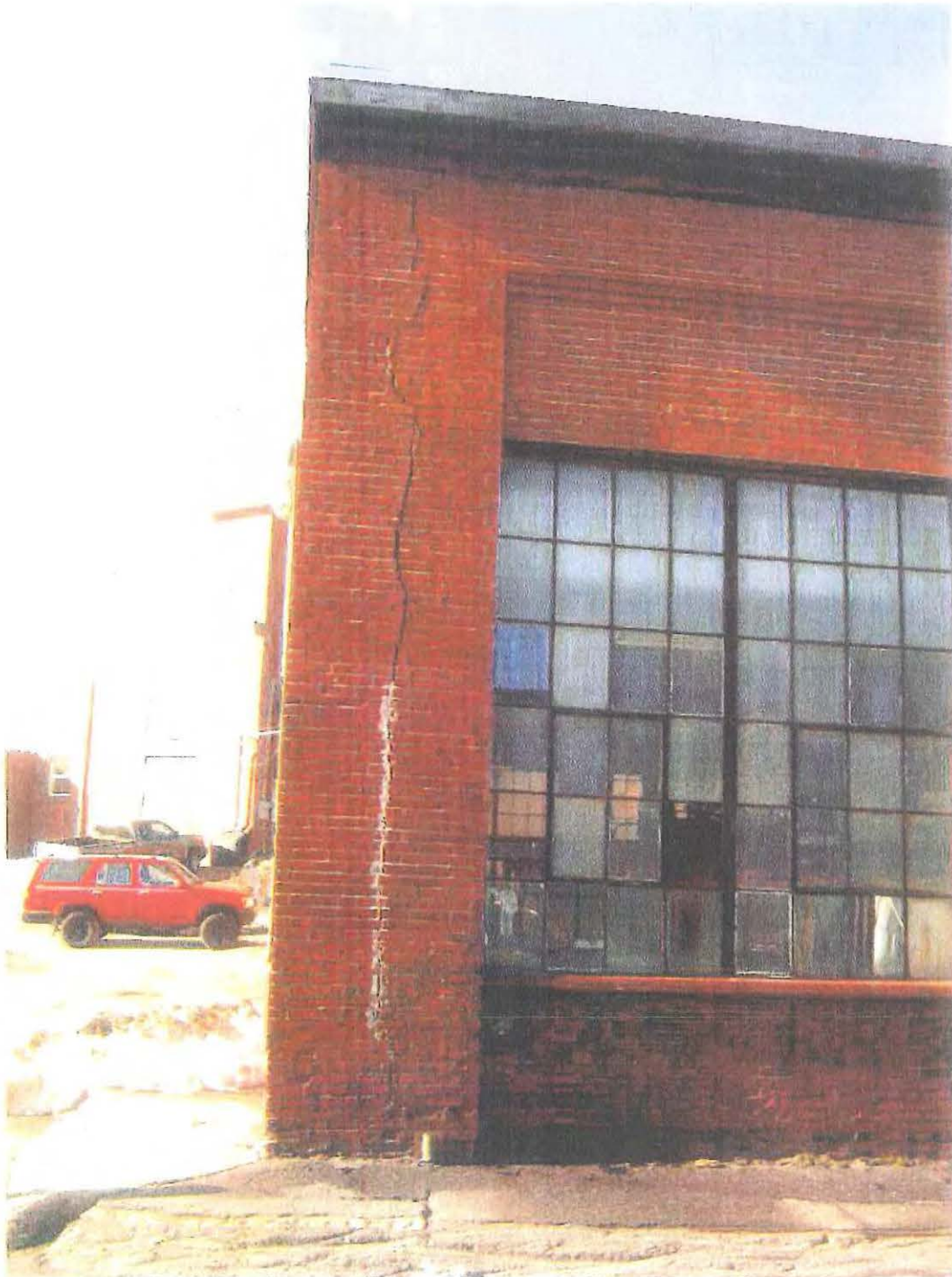


Photo 1-4: Vertical brick masonry crack at southwest pilaster.



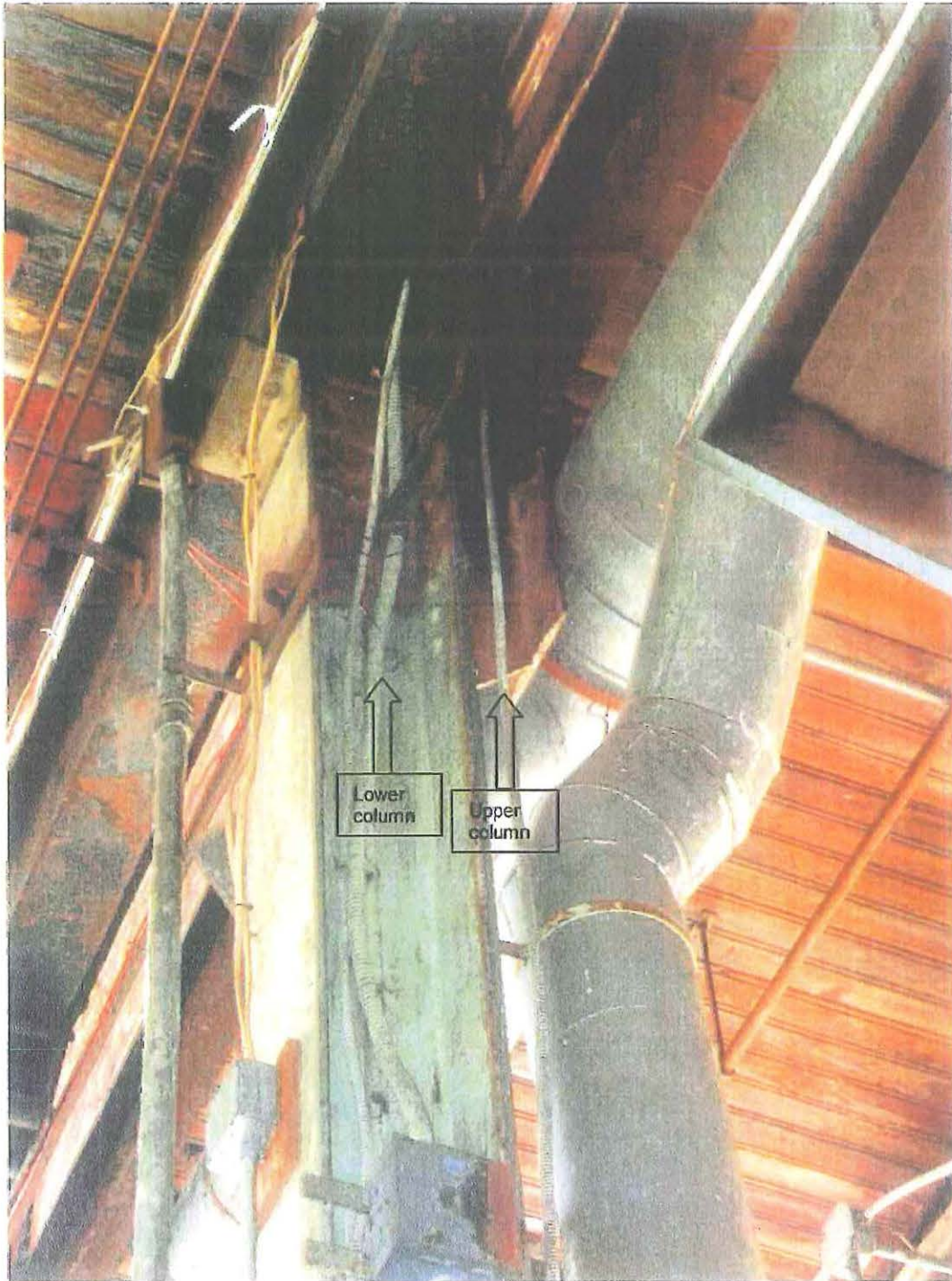
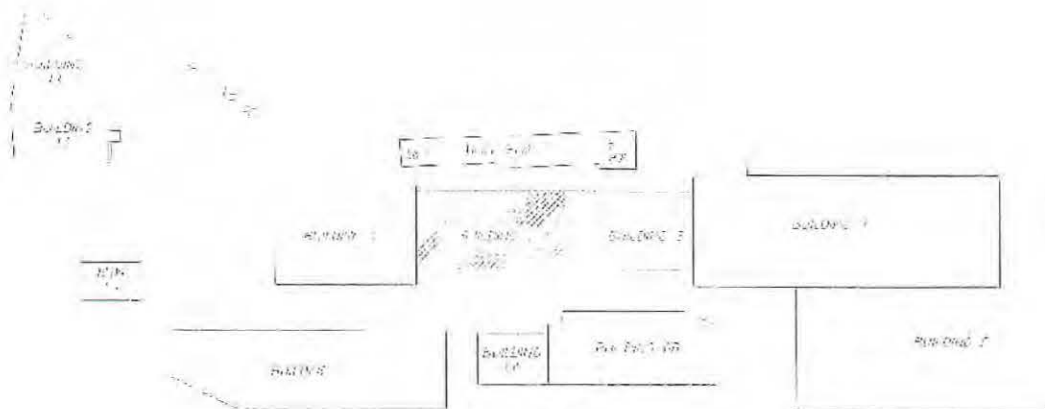


Photo 1-5: Column discontinuity at low-high roof condition.



Building Number: 02



Location Plan

Description, Condition and Assessment:

- Building 2 features open bay ground floor, second floor hung from timber trusses/loft area above (Photo 2-1). Loft area has overhanging shed roof structure that appears to be added after the original construction. Exterior brick masonry walls are load bearing.
- Several timber posts have been added between the ground floor and second floor for supplemental support. Hanger rods from above were removed in several locations and it is likely these posts were provided to supplement the structure (Photo 2-2).
- Second floor and loft show evidence of significant permanent creep deflection.
- Queen and king post trusses rods, steel beams and other methodology have been utilized to supplement the second floor framing in an inconsistent manner (Photo 2-2).
- Modified hangers were noted extending from the loft trusses to the second floor framing.
- At the roof and loft level, charring and fire damage of truss members and wood decking was noted. Several members had substantial charring damage (Photo 2-3).
- Evidence of roof leaking was prevalent.
- At the trusses, broken truss cast iron hanger saddles were noted in several locations (Photo 2-4).
- At the trusses, separation at member compression joints was noted suggesting overstresses and/or broken connection (Photo 2-5).
- A double truss diagonal was replaced with a single, undersized diagonal in one location.
- The roof rafters appeared undersized by current standards.
- The loft overhangs appear to have an insufficient back span on cantilever members.
- Exterior asphalt siding of loft overhangs is in poor condition with large area missing. Windows are covered with plywood panels. Underside of overhang appears to be covered with metal corrugated panels. Some panels appear loose.
- Exterior masonry has open joints and wide spread areas of distress including missing mortar and missing bricks.
- Windows are archaic with wood frame double hung sashes, single pane glazing, no thermal break, and poor glazing seals. Some windows have been replaced.
- Windows in loft area covered with plywood.
- Granite window sills cracked in several locations.



- Loft level is sided with asphalt shingle siding. Siding in poor condition with pieces falling off.
- No definable lateral load resisting system in either principal direction.
 - Open space with no cross walls in transverse direction.
 - Wood diaphragms likely inadequate to transfer diaphragm shears to exterior walls.

Anticipated Structural Outcomes for Renovation/Restoration:

- Reinforce roof rafters to meet snow loading requirements.
- Reinforce and repair timber roof trusses to address charring, broken and ineffective connections.
- Introduce lateral load resisting system with wall shotcrete or steel frame.
- Reinforce floor sheathing and establish diaphragm connections at second floor and loft level.
- Level and strengthen floors with new vertical load carrying elements and isolated horizontal framing.
- Repair exterior masonry and rebuild certain areas as required. Clean masonry.
- Remove loft cantilevers and restore historic dormer framing and detailing.
- Introduce permanent columns at lower level to relieve truss loads.

Structural Condition Rating	2.5
Structural Renovation Cost Rating	4.5

Rating Justification:

Existing roof trusses have broken hanger connections, separated joints and some fire damage. Hanger rods extending to from the roof to the second floor structure have been removed. Re-establishment of load paths is necessary to correct these conditions and will require extensive rework including the establishment of alternate load paths. Loft overhangs will likely be replaced with dormer to match historic conditions which will require extensive reframing. Exterior masonry is in need of wide repointing. Structural repair/alteration cost is high, but costs are distributed over a large area reducing unit costs. Basic "bones" of building are good. It has a permanent "set" to many floors and framing members, and appears to have been heavily loaded in its lifetime and yet remains structural "significant". There is much to work with.



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Photo 2-1: Building 2 exterior south elevation.



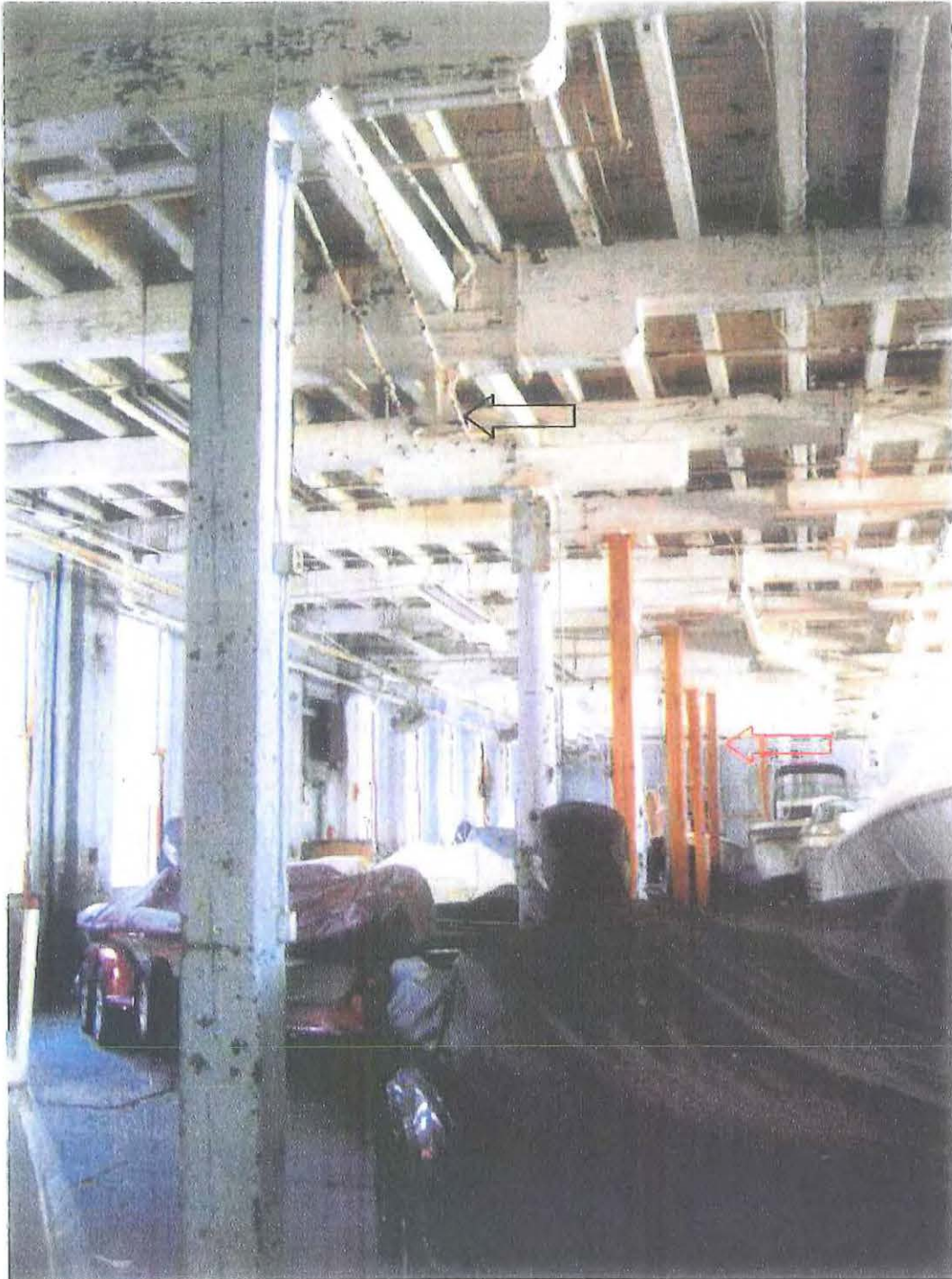


Photo 2-2: Interior photo, building 2 taken from the ground floor. Note added posts, king post truss.





Photo 2-3: Charring of truss top chord.

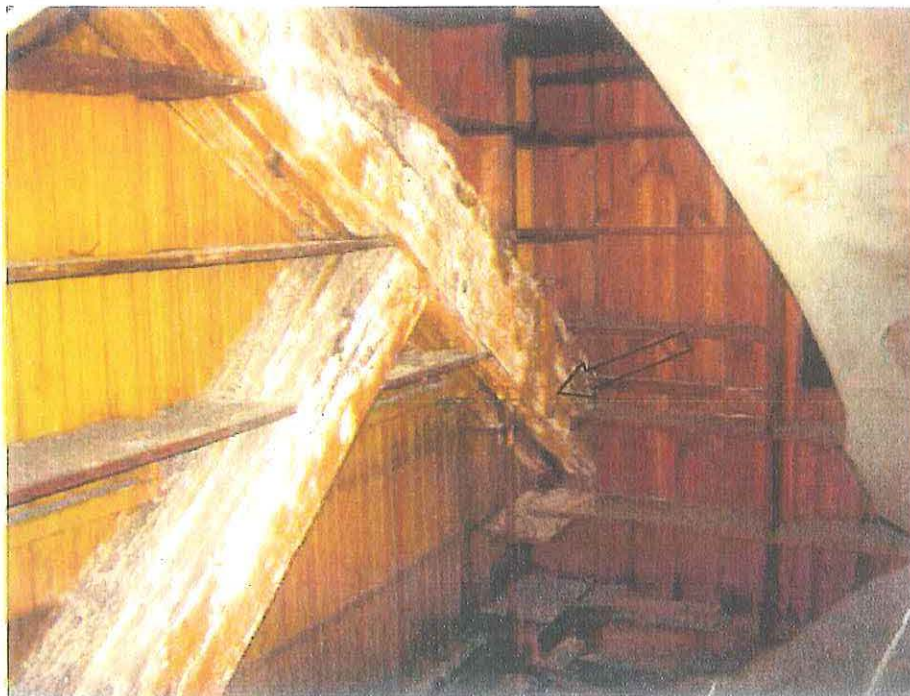


Photo 2-4: Broken truss hanger saddle hanger.



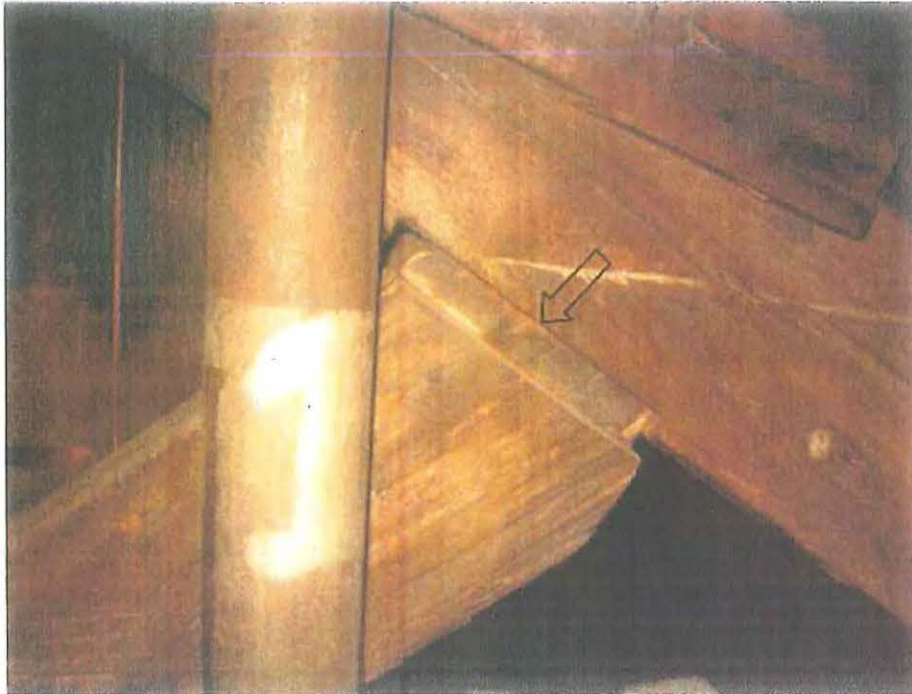


Photo 2-5: Timber truss joint separation.



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Description, Condition and Assessment:

- Anticipated Structural Outcomes for Restoration:

- Reinforce roof rafters to meet snow loading requirements.
- Introduce lateral load resisting system with wall shotcrete or steel frame.



- Reinforce floor sheathing and establish diaphragm connections at second floor and loft level.
- Level and strengthen floors with new vertical load carrying elements and isolated horizontal framing.
- Repair exterior masonry and rebuild certain areas as required. Clean masonry.

<i>Structural Condition Rating</i>	<i>3.0</i>
<i>Structural Renovation Cost Rating</i>	<i>3.0</i>

Rating Justification:

Leveling and strengthening of floors will require extensive re-work of floor framing. Roof framing will require reinforcing throughout the roof for strengthening to meet IBC snow loading requirements. Exterior masonry is in need of wide spread repointing/repair. Building has no "deal breakers".



Photo 3-1: Exterior view of Building 3





Photo 3-2: Interior view of Building 3. Note supplemental post, "T" column, queen post trusses.



Technical drawing of a building floor plan. The drawing shows a large rectangular area on the left, a central corridor, and several smaller rooms on the right. Dimensions are provided for various sections, including a large area labeled "200.00" and "100.00", and a smaller area labeled "100.00" and "100.00". The drawing is oriented horizontally with a north arrow pointing towards the top right.

Description, Condition and Assessment:

- Building 4 features a central, longitudinal double clerestory high bay space with low “saddle bag” roofs to each side [configuration similar to building 1] (Photo 4-1 & 4-2).
- The high bay space has bridge crane.
- High bay is a steel frame with bridge crane girders at elevation of low roofs. High bay is framed with clear span steel trusses and decked with wood board sheathing (Photo 4-3).
- Low roofs are framed with steel trusses, and decked with wood board sheathing.
- Exterior lattice steel columns were intended to support low roofs at exterior brick walls. In most instances, the steel lattice columns are corroded at ground level to the point that the columns are no longer effective and the only remaining support is the exterior masonry wall (Photos 4-4 & 4-5). Relying on a secondary load such as these unreinforced brick infill walls is not structural sound. Shoring of building exterior steel frame where columns are deteriorated is advised.
- Low bay exterior walls are multi-wythe unreinforced brick masonry, originally intended as non-loadbearing infill between steel columns.
- The steel frame high roof structure is likely not rated for snow loadings and the low bay roofs are likely not designed for snow drifting due to the high-low roof condition. Both conditions will likely cause overstresses in framing and decks.
- Wood plank roof decking was rotting in several locations, particularly at eaves due to leaking roofs (Photo 4-2). In general, roof appears to have leaks throughout. Wood deck not effective diaphragm to transfer lateral loads.
- Wood window trim with missing and rotten pieces.
- Siding at high bay area covered with an asphalt roofing material appears in poor condition.
- Windows are archaic with wood frames, single pane glazing, no thermal break, and poor glazing seals.
- Wood window sills rotting and in poor condition.
- Concrete window sills are spalled and cracked in many locations.
- Masonry also has wide spread areas of distress. Many open joints, spalls and cracked bricks and diagonal cracking are noted, particularly at base of building (Photo 4-5).
- No definable lateral load resisting system in either principal direction.



- Limited frame action in high bay of transverse direction. Compromised exterior columns render frame action ineffective.
- Trussing of clerestory in longitudinal direction provides method of transferring high roof shears to low roof. Resolution of this shear to the exterior masonry walls would require transfer across wood, board sheathed diaphragm and this diaphragm is likely ineffective.

Anticipated Structural Outcomes for Restoration:

- Lattice columns are compromised and will require complete replacement if structure is to be maintained. Replacement would require substantial reconfiguration of exterior wall system in order to remove and replace existing columns.
- Replace roof decking with metal deck along with new roofing and insulation. Establish diaphragm connections to existing walls.
- Reinforce roof to meet snow loading requirements.
- Introduce lateral load resisting system with wall shotcrete or steel frame.
- Repair exterior masonry and rebuild certain areas as required. Extensive rebuilding will be necessary to address deteriorated steel columns. Clean masonry.

<i>Structural Condition Rating</i>	<i>1.5</i>
<i>Structural Renovation Cost Rating</i>	<i>4.5</i>

Rating Justification:

In order to repair exterior severely corroded columns embedded in exterior masonry walls, the entire exterior masonry façade will need to be deconstructed, the columns repaired and the exterior masonry reconstructed. Many of the original relic bricks will likely be destroyed in this process. If original foundation is to be reutilized, façade will need to be reconfigured to protect columns from corrosion. Given the large open volume of this building, the required structural repairs identified in the above sections have a high unit cost.





Photo 4-1: Exterior of Building 4. Note a majority of the south and east faces of the building are wrapped by Building 5.



Photo 4-2: Exterior of Building 4, North Side.





Photo 4-3: View of Building 4 interior looking east. Note plastic leak catch.



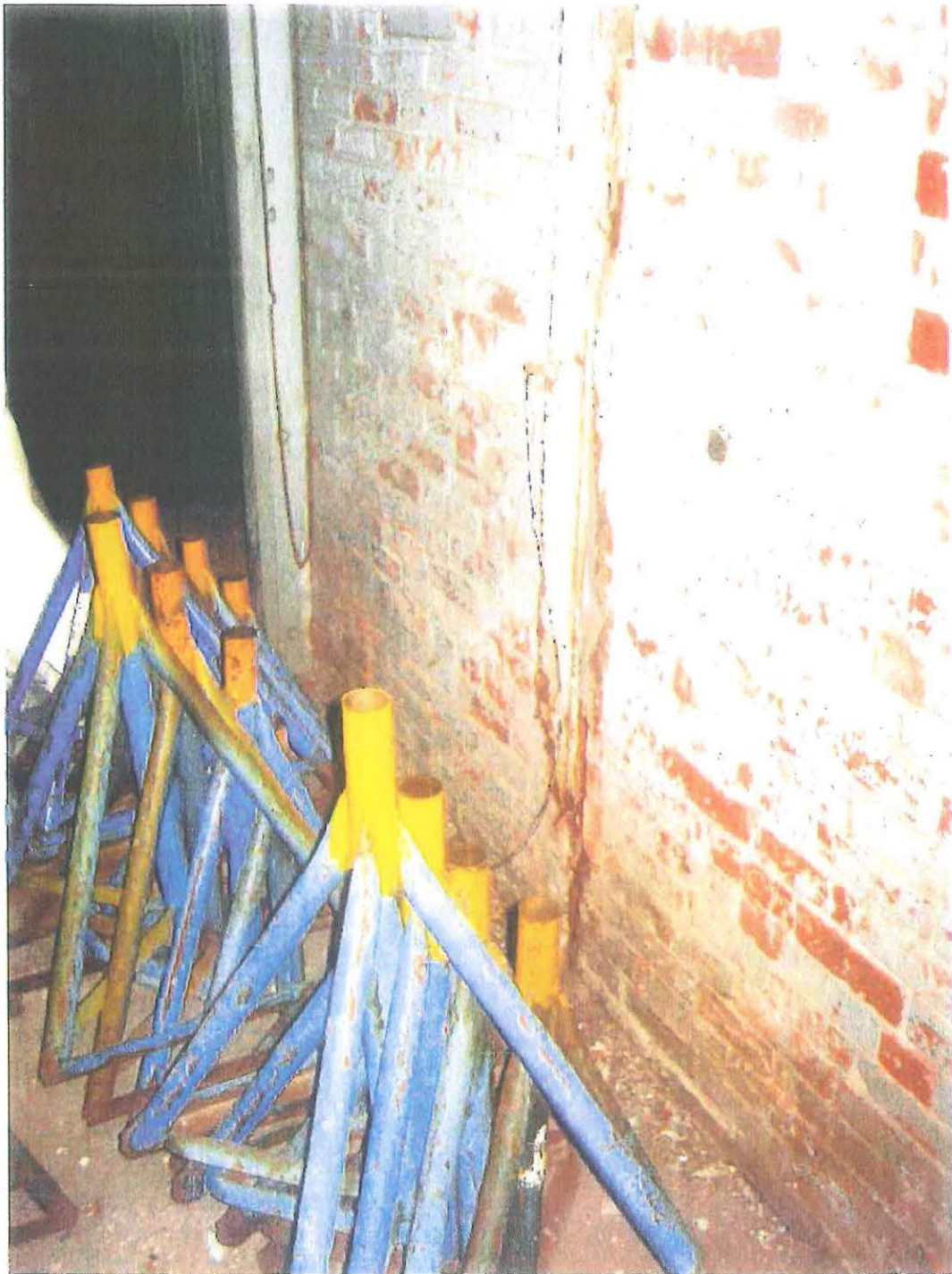


Photo 4-4: Column at exterior wall embedded in masonry. Note column section completely deteriorated.

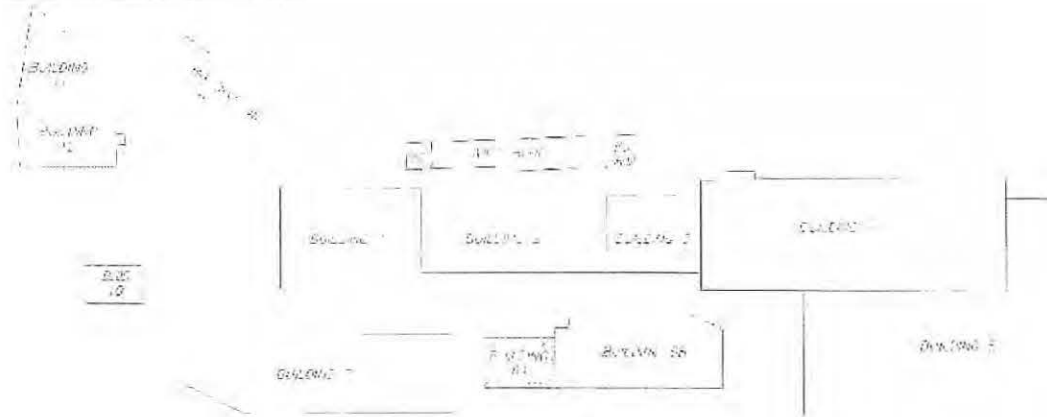




Photo 4-5: Column at exterior wall embedded in masonry. Note column section completely deteriorated. Also note open masonry joints, cracked bricks.



Building Number: 6A



Location Plan

Description, Condition and Assessment:

- Building 6A is a 3-story building with centerline timber beam and column line supporting rough sawn floor and roof joists. Exterior walls are load bearing multiwythe brick masonry. Note first floor open space that is part of Building 6B extends below building 6A (Photo 6A-1).
- Floors have slope to center beam bearing line. It is suspected that the center bearing line has either settled or timber column bases have deteriorated (Photo 6A-2). Timber column bases were surrounded by a concrete slab-on-grade and could not be observed.
- The east wall of Building 6A is supported by a timber truss at the first floor level. The truss end at the south bearing condition was found to be severely deteriorated and is considered unsafe. Temporary shoring is recommended until such time that permanent repairs can be made.
- Several floor joists have longitudinal splitting and may have been overstressed (Photo 6A-3 & 4).
- Visual evidence of prior leaking was visible at the roof level, but leaks did not appear to be active (Photo 6A-5).
- Some roof rafters appeared to be out of plumb. Stabilization means to prevent rotation such as wood blocking was not present (Photo 6A-5).
- Masonry also has wide spread areas of distress. Areas of missing mortar, areas of bulging noted. Southeast corner appears to have been repaired from either a drainage issue or a vehicle impact. Open joints noted in various locations particularly at window heads. Spalled bricks were noted. Moss was noted to be growing in masonry joints at and above the pavement line (Photo 6A-6).
- Rotting wood noted at window sills and at roof eaves (6A-6).
- First and third floor windows constructed of wood and are in poor conditions. Replacement windows noted at second floor.
- Elevator shaft present, but elevator removed.
- Lateral Load Resisting System relies on un-reinforced exterior masonry walls.
 - o Unreinforced masonry bearing walls known to have poor performance in seismic events.



- o The east wall of building 6A appears to be wood framed and bears on a truss above the first floor level and does not extend to the ground floor. This results in a stiffness discontinuity for the lateral force resisting system which may amplify seismic loads in other portions of the system.

Anticipated Structural Outcomes for Restoration:

- Center bearing foundations may require rework; additional investigation will be required to understand cause of column settlement.
- Lateral load resisting system will require retrofit to address stiffness discontinuity. Introduce lateral load resisting system with wall shotcrete or steel frame.
- Repair exterior masonry including repointing, rebuilding bulged areas, cleaning.
- Replace first and third floor windows.
- Replace wood elements and repaint.

<i>Structural Condition Rating</i>	3.5
<i>Structural Renovation Cost Rating</i>	3.0

Rating Justification:

Basic building structure was well built and is in fair condition. Building masonry will require repairs and rebuilding in several locations, but extent is limited. Upgrades in roof insulation will likely require an upgrade of the roof structure to support additional snow load, but this is very accessible and of limited area. Unsafe condition of building east wall/truss will require shoring and repair. Foundation work inside an existing building, if required, will add to cost. An elevator may need to be added and shaft may need to be expanded to support elevator of sufficient size per current IBC and Maine State requirements. Nature of upgrades is not daunting.





Photo 6A-1: Building 6A exterior view.



Photo 6A-2: General view of center bearing line of Building 6A at second floor level.





Photo 6A-3: Floor joist splitting.



Photo 6A-4: Floor joist splitting.



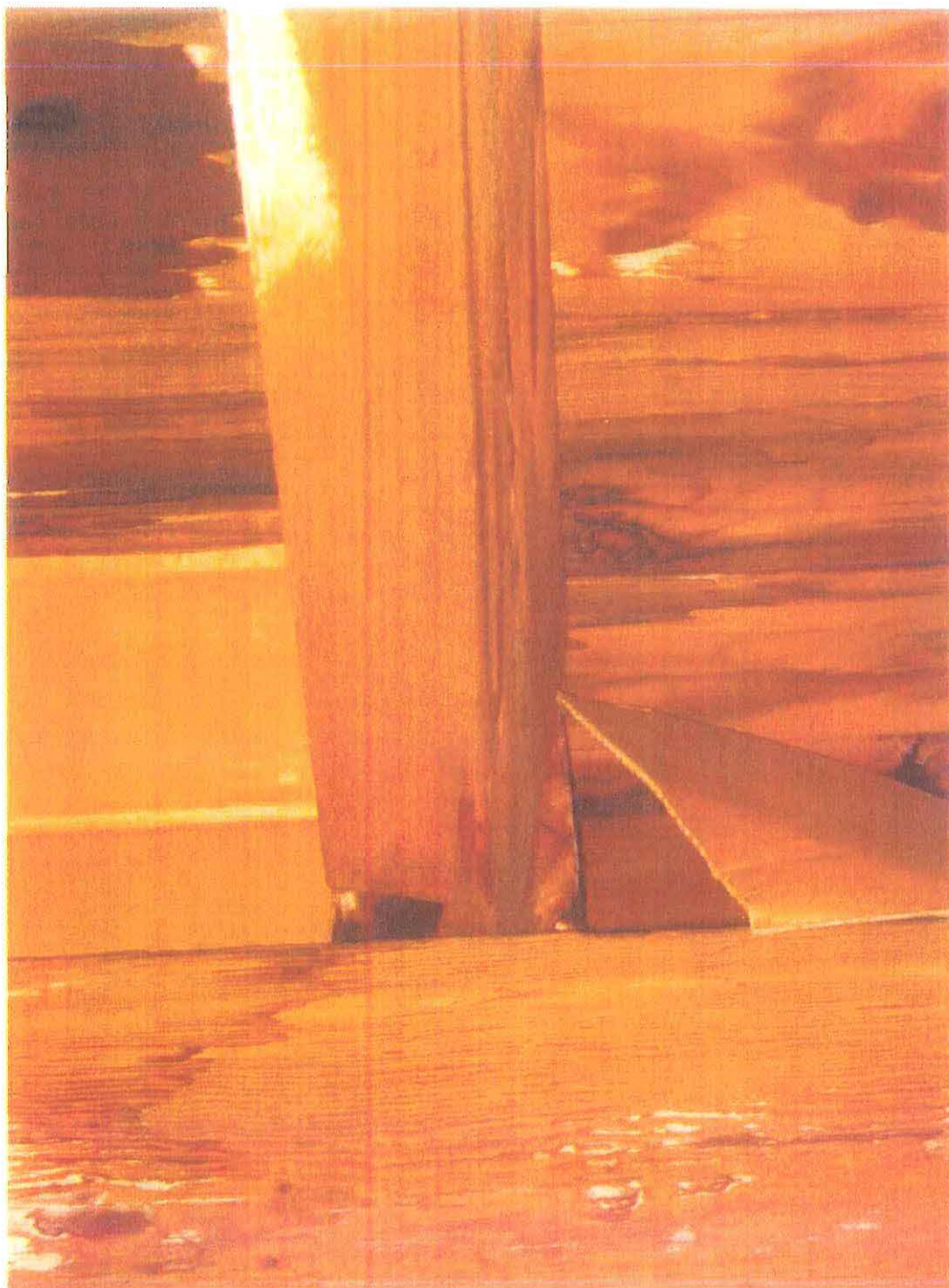


Photo 6A-5: Rotated roof rafter and evidence of prior leaking.



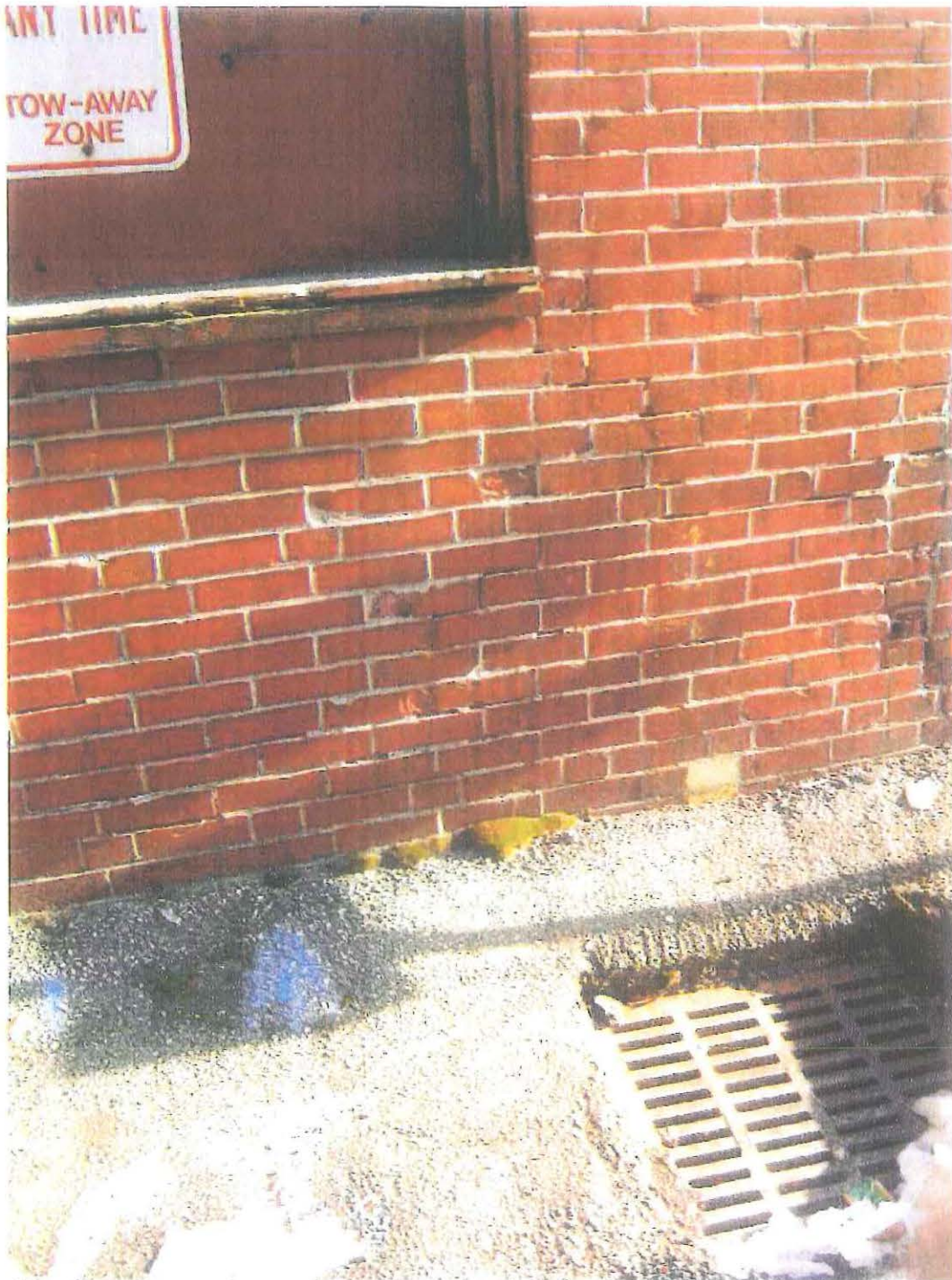
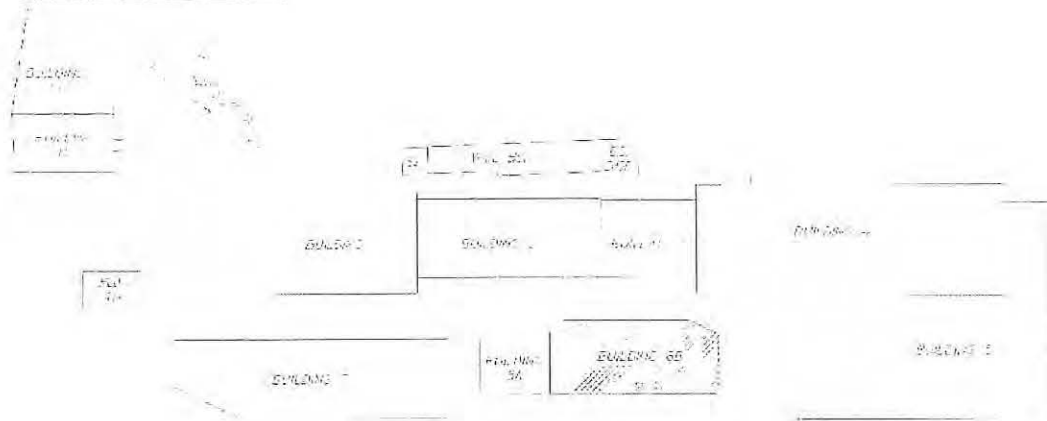


Photo 6A-6: Moss, spalled bricks, open masonry joints and rotting wood sill at Building 6A.



Building Number: 6B



Location Plan

Description, Condition and Assessment:

- Building 6B is a 1-story building with timber gable roof trusses spanning the space. The open floor space extends under building 6A.
- The east wall of Building 6A (visible in 6B space) is supported by a timber truss at the first floor level. The truss end at the south bearing condition was found to be severely deteriorated and is considered unsafe. Temporary shoring is recommended until such time that permanent repairs can be made.
- Roof rafters supported by truss/purlin system appear undersized for snow load.
- Roof trusses appear well built but are likely not designed for current snow loads.
- Visual evidence of prior leaking was visible at the roof level, but leaks did not appear to be active (Photo 6A-5).
- Masonry also has wide spread areas of distress. Areas of missing mortar noted.
- Wood eave trim in poor condition and peeling off the building.
- Several windows are covered with asphalt roofing material. Remaining wood windows are in good to fair condition.
- Lateral Load Resisting System relies on un-reinforced exterior masonry walls.
 - Unreinforced masonry bearing walls known to have poor performance in seismic events.
 - The east wall of building 6A appears to be wood framed and bears on a truss above the first floor level and does not extend to the ground floor. This results in a stiffness discontinuity for the lateral force resisting system which may amplify seismic loads in other portions of the system.
 - Wood diaphragms likely inadequate to transfer diaphragm shears to exterior walls.



Anticipated Structural Outcomes for Renovation/Restoration:

- Repair timber roof truss supporting the exterior wall of Building 6A.
- Lateral load resisting system will require retrofit to address stiffness discontinuity. Introduce lateral load resisting system with wall shotcrete or steel frame.
- Repair exterior masonry including repointing, cleaning.
- Reinforce existing roof rafters and existing wood trusses.
- Replace wood elements and repaint.

<i>Structural Condition Rating</i>	<i>3.0</i>
<i>Structural Renovation Cost Rating</i>	<i>3.5</i>

Rating Justification:

Building masonry will require repairs and rebuilding in many locations. Upgrades in roof insulation will likely require an upgrade of the roof structure, including roof rafters and timber trusses to support additional snow load. Truss upgrades may be costly. Unsafe condition of truss supporting Building 6A will require shoring and repair.





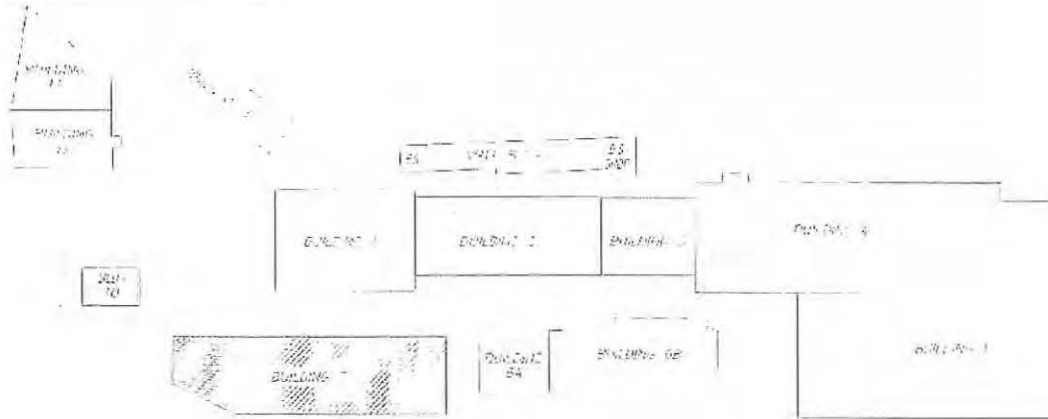
Photo 6B-1: Buildings 6A (left) and 6B (right).



Photo 6B-2: Failed (deteriorated) end of timber truss supporting exterior wall of Building 6A.



Building Number: 7



Location Plan

Description, Condition and Assessment:

- Building 7 is a 1-story building flat roof building with an addition at the west end, south side.
- Roof is wood framed. Roof framing is undersized. Portions of roof have been covered with bituthane and appear to be in poor condition. Roof has many leaks causing deterioration of wood. Daylight visible through roof in at least one condition.
- A small portion of the roof was repaired from a previous failure.
- Eaves appear to be in poor condition with rotting and loose wood, and loose flashing.
- Exterior brick masonry south wall has significant sweep to the north.
- Windows appear to be original wood windows, appear to be in poor condition with missing panes, covered in rigid insulation in many areas.
- Brick masonry has bulging, numerous open joints, spalled bricks and cracking at steel lintels.
- Wood frame shed in the southeast portion of the building is in poor condition with roof sagging and uneven/bowed walls.

Anticipated Structural Outcomes for Renovation/Restoration:

- Reinforce or replace all roof framing
- Repair all column rot.
- Replace/repair/patch/overlay existing wood decking.
- Reconstruct, repair and strengthen masonry bearing walls.
- Remove existing wood framed shed.

Structural Condition Rating	2.0
Structural Renovation Cost Rating	5.0



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Rating Justification:

Building masonry walls are in poor condition and in most cases will require rebuilding with new bearing structure meeting current IBC code requirements. Foundation condition is unknown and may require upgrade to current IBC code requirements as a result of reconstruction. Roof framing is in poor condition and extensive replacement would be necessary. Exterior masonry walls require strengthening with any renovation. Essentially rebuilding entire framings system and lateral system.





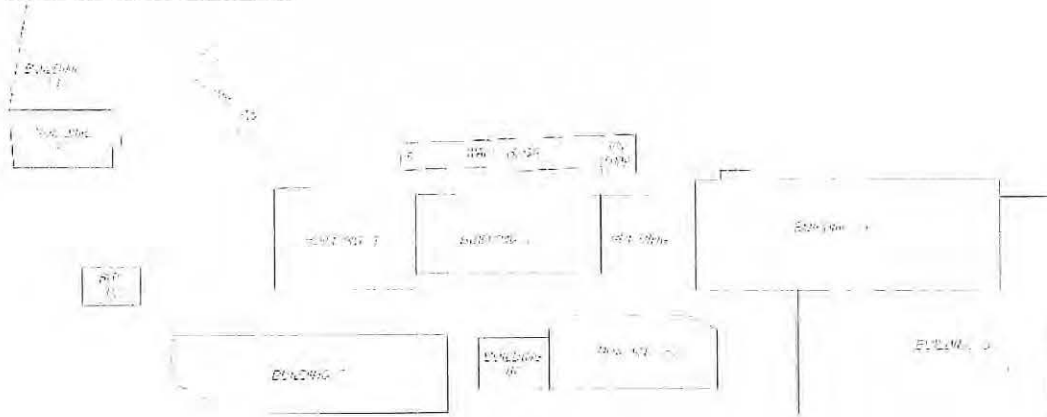
Photo 7-1: South elevation of Building 7.



Photo 7-2: North elevation of Building 7.



Building Number: 10



Location Plan

Description, Condition and Assessment:

- Building 10 is a 1-story building flat roof building.
- Based on operations we did not enter this building.
- Roof is presumed to be wood framed. From exterior the roof appears to be sagging.
- Eaves appear to be in poor condition with rotting and loose wood, and loose flashing.
- Exterior brick masonry walls have sweep, large bows and evidence of settlement, numerous open joints, repairs without toothing, loose and spalled bricks.
- A majority of the original brick masonry window openings have been filled with brick or wood infill panels.
- Windows appear to be original wood windows, appear to be in poor condition.
- Building 10 exterior masonry walls are severely distress and it unclear if brick wythes are still bonded together. Interior or exterior wall facing could peel off without warning. Evidence of creep deflection at roof and concerns over ponding roof loads. It is recommended that this building not be occupied

Anticipated Structural Outcomes for Renovation/Restoration:

- Reconstruct and repair masonry bearing walls
- Reinforce or reconstruct all roof framing
- Replace/repair/patch/overlay existing wood decking.

Structural Condition Rating	1.0
Structural Renovation Cost Rating	4.5

Rating Justification:

Building masonry walls are in poor condition and in most cases will require rebuilding with new bearing structure meeting current IBC code requirements. Foundation condition is unknown and may require upgrade to current IBC code requirements as a result of reconstruction. Roof framing is in poor condition and extensive or complete replacement would be necessary.





Photo 10-1: Exterior view of Building 10.

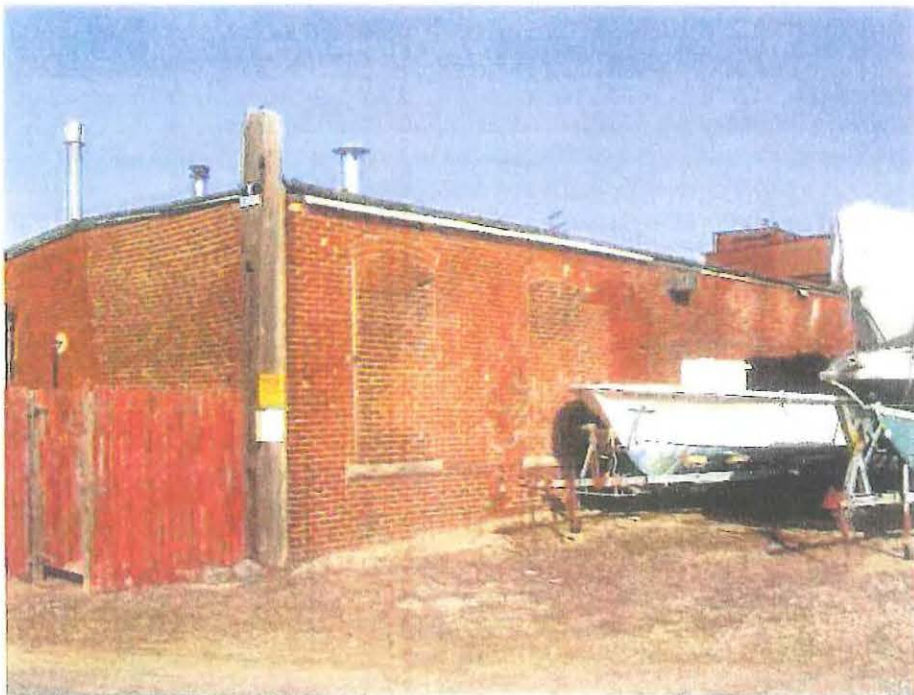
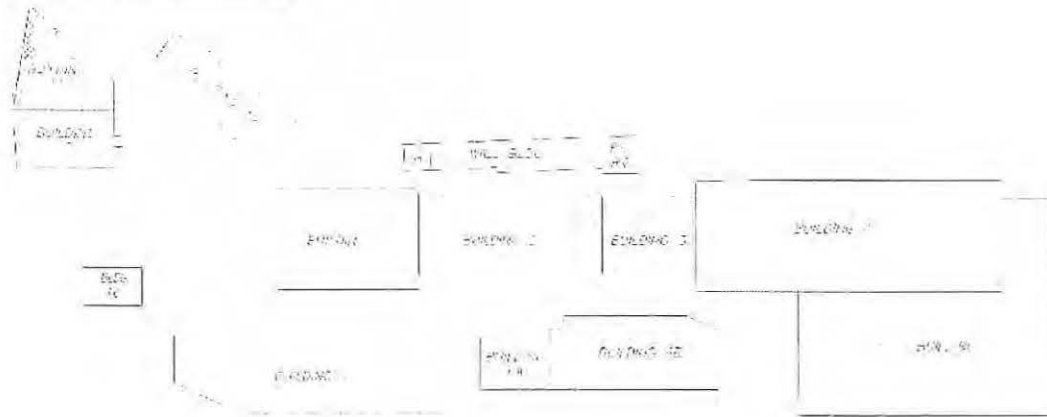


Photo 10-2: Exterior view of Building 10.



Building Number: 11



Location Plan

Description, Condition and Assessment:

- Building 11 story is a two story building with a shallow pitch roof (Photos 11-1 & 2).
- South half of roof pitches into wall of building 12 and is a poor drainage condition. Building 12 roof also drains into the same area. The resulting drain water runs down the back wall of the building. It is evident that the masonry in this area has been repaired previously. The wall is stained and continues to suffer damage from water (Photo 11-2).
- Roof is likely not designed for sliding and drifting snow coming from adjacent Building 12 pitched roof.
- The exterior ground floor wall to north is retaining an embankment and is severely bowed inward from the window sill line up (Photo 11-3). Window wells in this area provide avenue for water entry (Photo 11-4).
- The ground floor dips suggesting there may be deterioration of wood joists and sills below the floor, similar to Building 12. The floor has been decked over with plywood and painted so examination of columns and framing was not possible.
- Second floor framing is rough saw wood joist framing with timber beams and posts. Beam checking was noted, perhaps due to drying from unit heaters.
- Roof framed utilizing timber girders supporting rough sawn wood joists and decking. Acoustic ceiling conceals roof framing; catch buckets were spread throughout and staining indicates roof actively leaks (Photo 11-5).
- Roof framing utilizes stacked system to create pitch. There is no bracing present to stabilize stacked wood and prevent roll-over (Photo 11-5).
- Tar and chip roof system is beyond design life and leaks.
- Lap jointed framing showed cracking extending from tension corner.
- Exterior brick masonry bearing walls show distress over windows, wide spread open joints. Open joints at eave noted and some small areas of bulging. Open joints noted at drip lines.
- Corroded steel lintels.
- West elevation wall is swept inward to the east. East wall also noted as swept.
- Bow noted over main entry.



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<i>Structural Condition Rating</i>	<i>2.5</i>
<i>Structural Renovation Cost Rating</i>	<i>4.5</i>

Rating Justification: Exterior grade retained by north wall has created severe bow in exterior wall. Fore Street right-of-way is well established and unlikely to be modified, and therefore retaining condition will remain. Roof pitching toward Building 12 with drainage water running down the west wall constantly jeopardizes the envelope of Building 12. Roof framing is undersized. Repitching roof would require complete upgrade to address drifting and sliding snow from adjacent Building 12 Roof.





Photo 11-1: Buildings 11 (right) and 12 (left) looking at southeast corner.



Photo 11-2: West elevation of Building 11. Note drainage condition where building 11 meets building 12.



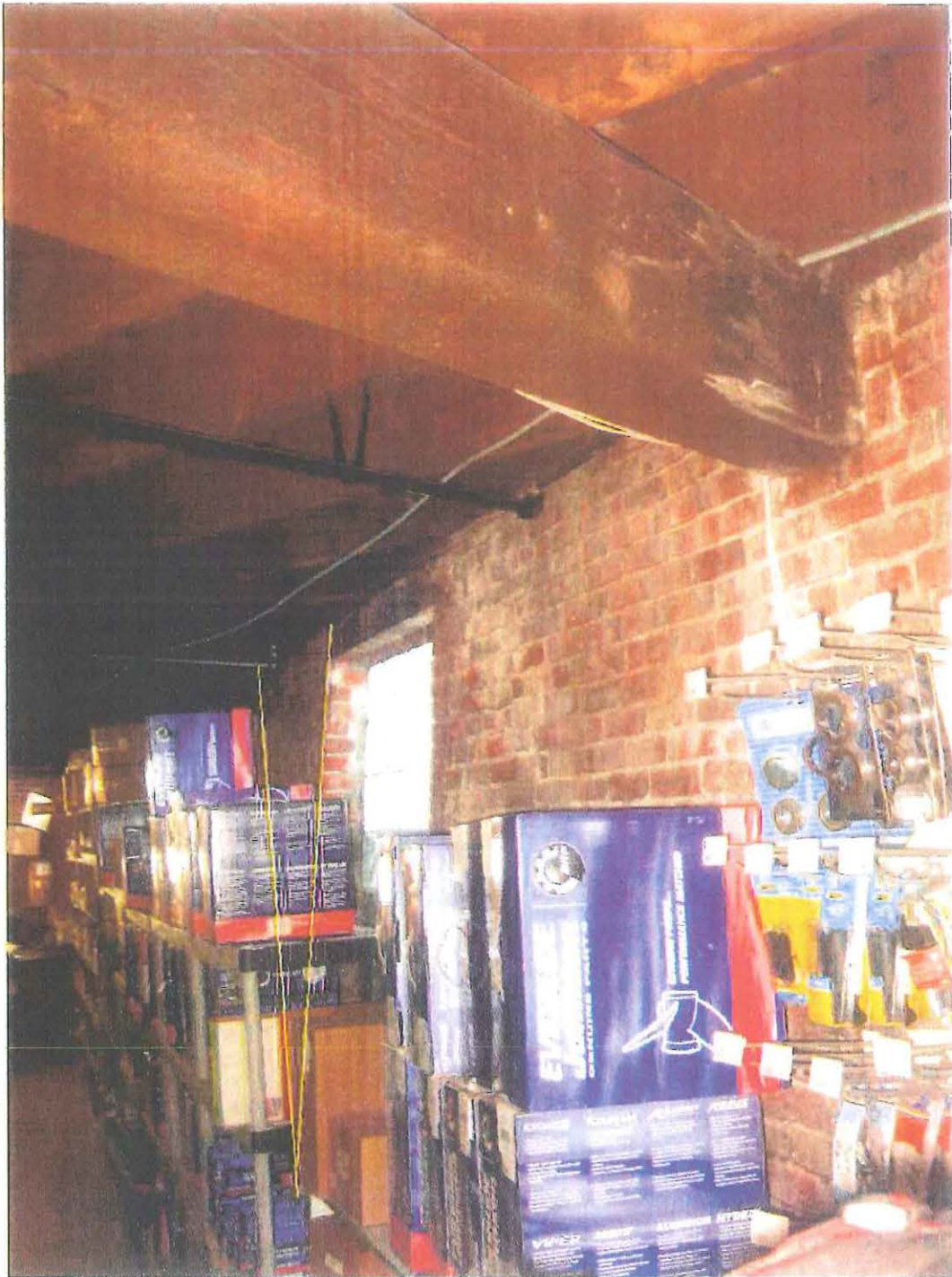


Photo 11-3: Bowed north wall retaining embankment (lines added for emphasis).





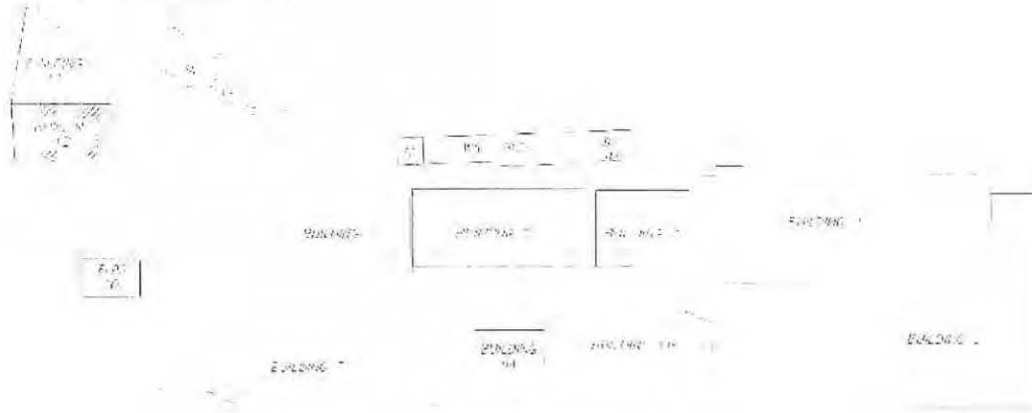
Photo 11-4: Window wells and embankment at north wall.



Photo 11-5: Stacked framing system for Building 11 roof. Note leak catch bucket behind column.



Building Number: 12



Location Plan

Description, Condition and Assessment:

- Building 12 story is a three story building with gable roof and mezzanine space in gable.
- Slate roof materials are loose and missing in many locations, particularly at corners. North half of gable drains onto the roof of Building 11. Wood roof eave trim rotten loose or missing in several locations (Photo 12-2). Some rafter tails appear rotten in some locations. Daylight visible through roof on the east side and rotten sheathing noted in many locations. Roof rafter framing appeared undersized.
- Roof has sag along the longitudinal axis.
- Third floor deck and joists rotten in areas below leaking roofs.
- The ground floor dips to the center. Wood sills bearing on grade and columns bearing on grade were observed to be rotten. In one location the post supporting from the structure above was actually hanging from the floor beam due to the deterioration of the column base (Photo 12-4).
- Note that foundation drains are visible along the west side of the building and that wall appears to be in a low spot. It is likely that the ground floor wood sills and wooden column bases are frequently exposed to wetting.
- Second floor framing is rough saw wood joist framing with timber beams and posts. In general, framing appeared to be in good condition with framing practices consistent of the period. A joist at the northwest corner of the building had the end completely rotted off, possibly from a roof leak running down the face of the wall.
- Separation was noted at the diagonal beam supports at the columns extending from the first to second floor.
- Exterior brick masonry bearing walls show distress and are in fair condition- Distress noted included:
 - Arching & diagonal cracks over windows that extend through the entire width of the masonry (Photo 12-5).
 - Open joints in many locations.
 - Bulging in some locations.
 - Rust jacking at steel lintel on the east side.
 - Walls bowed inward on south and west elevations.



- Evidence of previous shed roof removal- Bulging and slip plane from flashing left in place.
- Entry shed masonry in poor condition.
- Open joints noted in west gable (east gable appears to have been repointed).
- Wooden lintels noted at interior rotting and sagging.
- Wooden window and sills in poor condition with broken and missing panes, rotting wood (Photo 12-1, 2 & 5).

Structural Condition Rating	3.0
Structural Renovation Cost Rating	4.0

Rating Justification: The roof of building 12 is in poor condition and has been letting water into the building for an extended duration. Roof, upper floor and columns of building will require repairs or reconstruction. Masonry damage is significant and portions of masonry walls will need to be rebuilt. Building is located at a low point on the site and drainage condition at crawlspace will need to be resolved. Despite issues, structural "bones" of building are substantial and it was well constructed in its day.

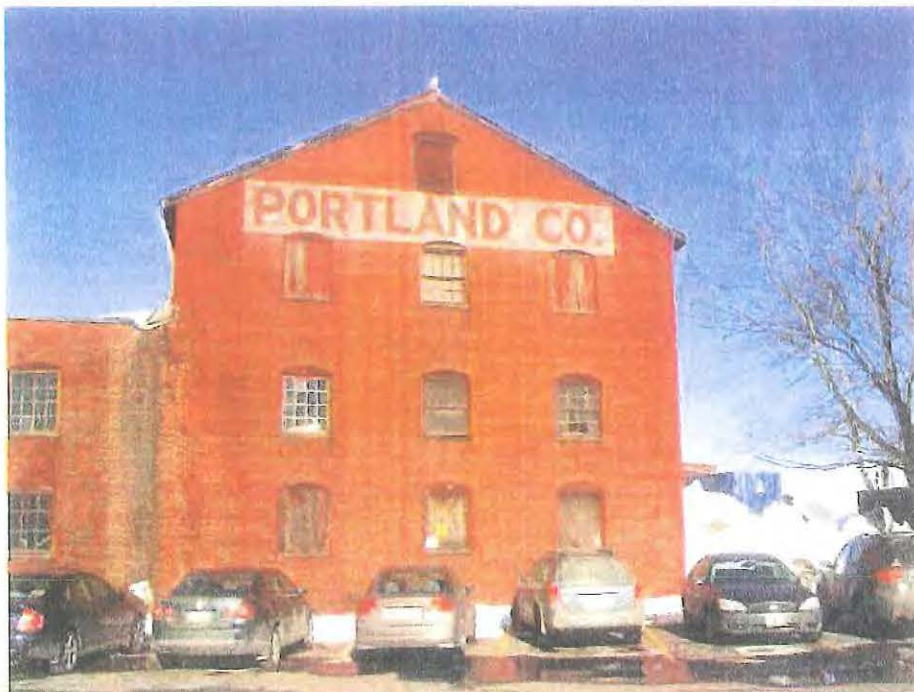


Photo 12-1: West elevation of building 12. Note windows with missing and broken panes, loose slates at eaves.





Photo 12-2: Eave with loose slates, missing eave trim, masonry cracking and broken windows.



Photo 12-3: Daylight visible at through roof sheathing. Condition is at both ends of roof.





Photo 12-4: Rotting column bottom, floor joists and sills at ground floor.



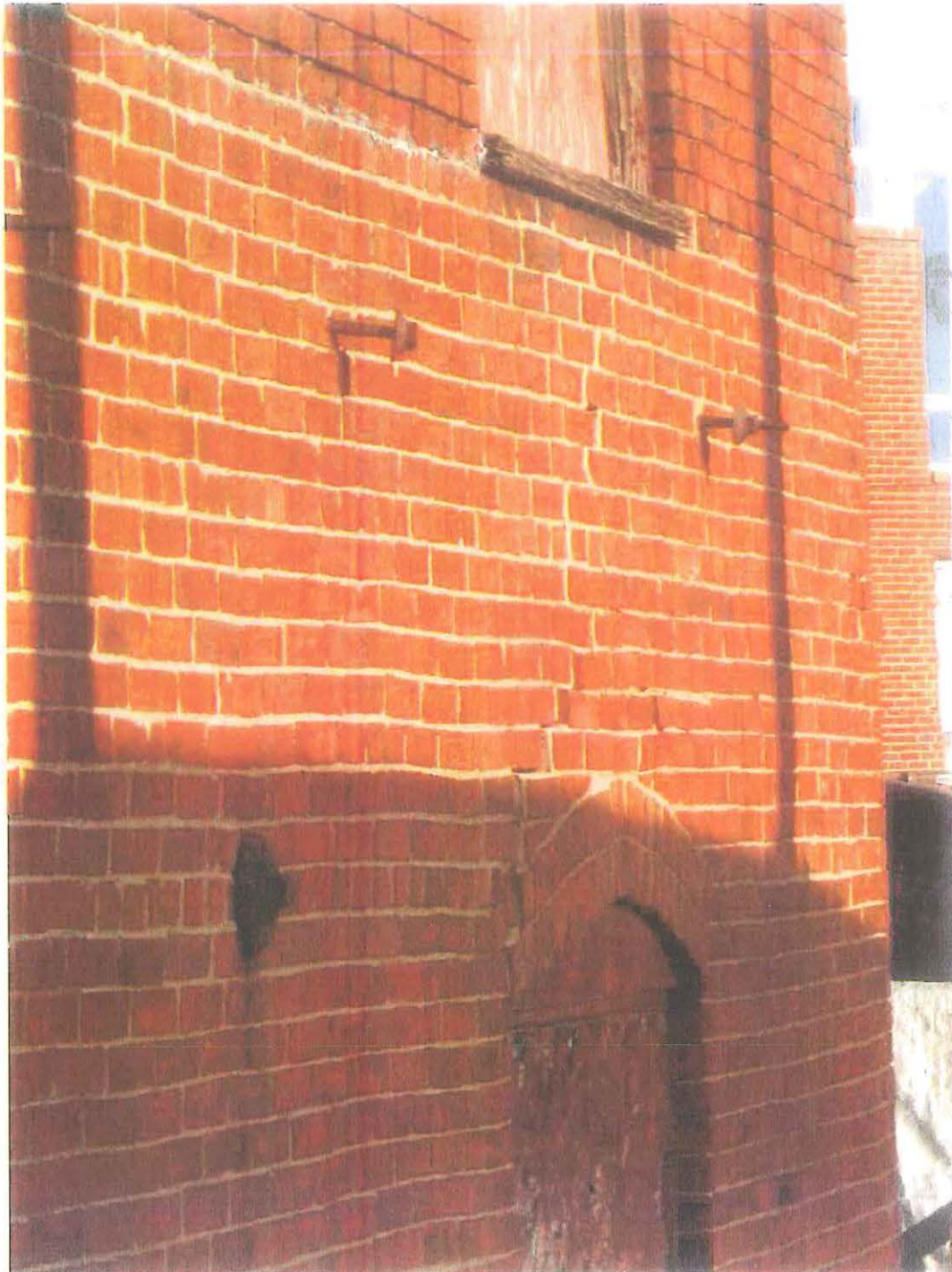
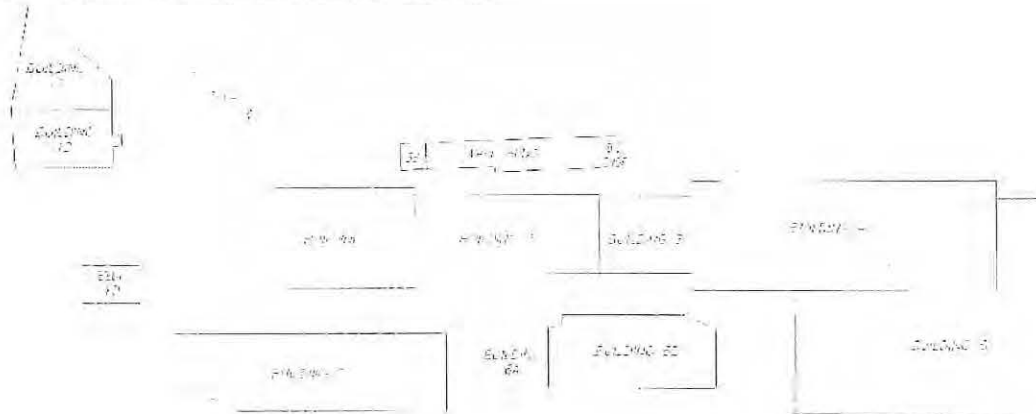


Photo 12-5: Diagonal masonry cracking over window opening, open joints, rotting window sill.



Building Number: 58 Fore Vault/Tower



Location Plan

Description, Condition and Assessment:

- Brick masonry vault tower structure with concrete and steel beam floors. Upper floor was inaccessible due to poor condition of connecting bridge.
- Interior walls were wet and growing moss indicating substantial water penetration or condensation within space.
- Rust flaking where steel beams entered wall may indicate damage to beam end at penetration.
- Exterior brick masonry had joints missing mortar, missing bricks, staining.
- Roof not reviewed.
- Windows broken with missing panes.

Anticipated Structural Outcomes for Restoration:

- Exterior masonry repointing, replacement of bricks and small areas of rebuild. Clean all brick surfaces and apply breathable masonry sealer.
- Remove brick around beams ends, repair beams end and rebuild brick.
- Seismic upgrade may be necessary depending on final use.
- Roof condition unknown, but based on condition of roofs on other buildings in complex, assume roof may be leaking.

<i>Structural Condition Rating</i>	3.5
<i>Structural Renovation Cost Rating</i>	2.5

Rating Justification: Moisture transmission through masonry must be stopped to prevent further degradation of this structure. In order to do so, exterior masonry walls will need to be repaired and repointed, and a breathable sealant applied to the building. Air exchanges and ventilation must be provided on the interior to help dry the structure. Steel beam ends may be compromised requiring repairs. Extensive shoring will be required to repair beam ends.





Photo 58-1: 58 Fore Street Vault/Tower structure viewed from Fore Street.





Photo 58-1: Moss growing on interior walls.





Photo 58-3: Beam end condition with flaking rust.



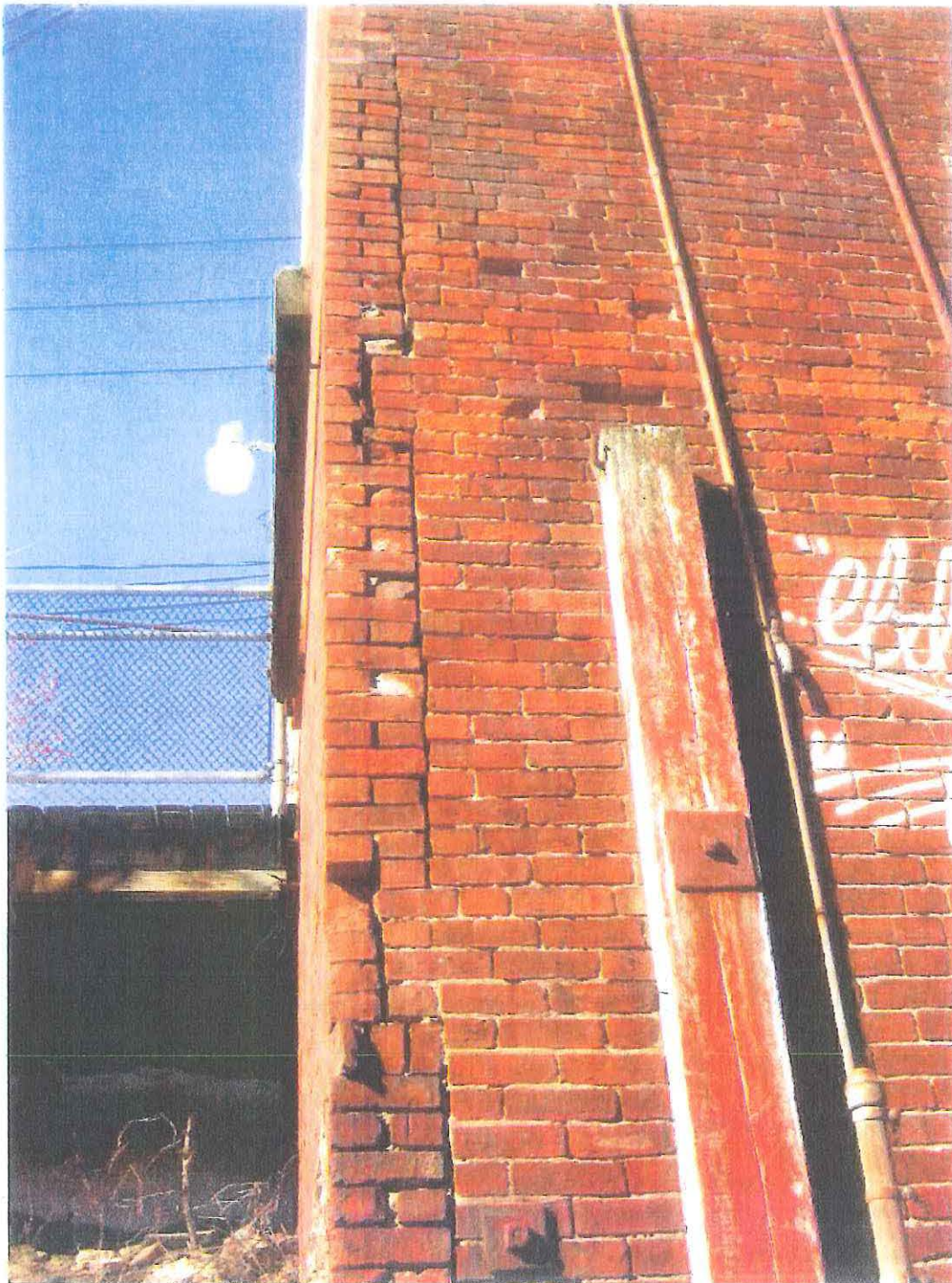
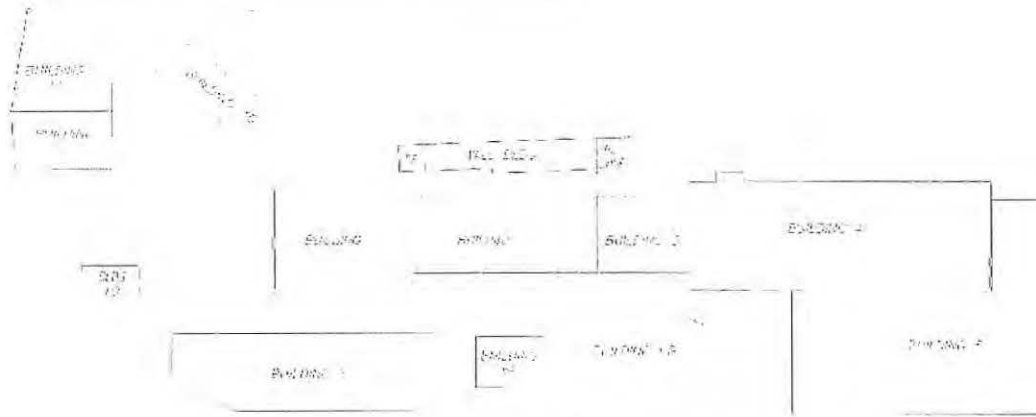


Photo 58-4: Open joints and missing bricks at the corner of the vault/tower.



Building Number: Blacksmith Shop (Building 16)



Location Plan

Description, Condition and Assessment:

- Wood rafter framed roof, back wall and side walls are stone retaining wall for embankment, brick masonry front wall (Photo 16-1).
- Fore Street stone retaining wall at is dry stacked. It was apparent that water travels through the wall.
- North stone walls may be buttressing Fore Street retaining wall.
- Brick masonry had numerous open joints, missing bricks, bulging and moss growth near drip line.
- East side stone wall butts brick masonry front wall to the south; condition is poorly bonded with an open joint.
- Roof rafters appeared to be in good condition, but daylight was visible through roof around chimney penetration.
- Roof eave has been redecked with OSB at eave; roof is covered with shrink wrap.
- Entry did not meet code due to door height.
- Wood windows have broken panes and missing sashes.
- No eave board, building generally not weather tight.
- It is believed that groundwater penetrates this building through the retaining wall.

Anticipated Structural Outcomes for Restoration:

- Repair exterior masonry including extensive repointing and rebuilding to creating contiguous wall conditions.
- Replace windows.
- Create accessible entrance and incorporate 2 means of egress.
- Roof reinforcing to support snow load of properly insulated roof.

<i>Structural Condition Rating</i>	<i>1.5</i>
<i>Structural Renovation Cost Rating</i>	<i>3.0</i>

Rating Justification:

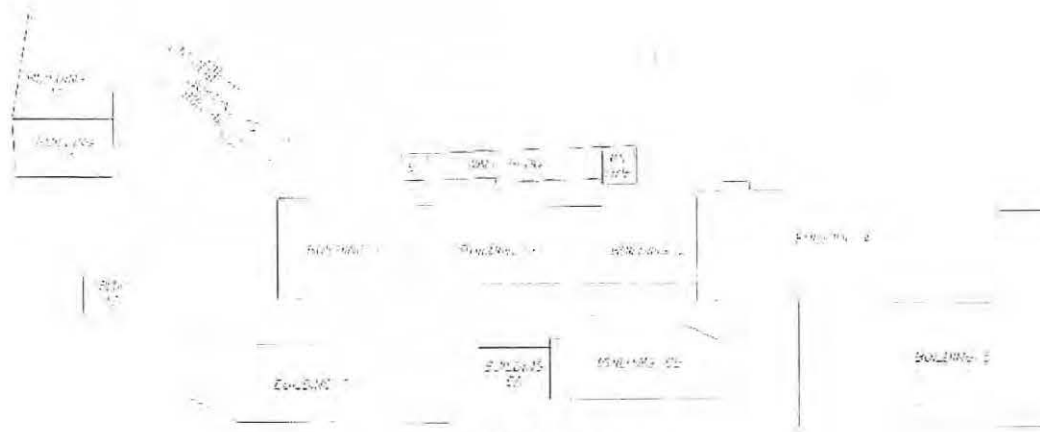
Building currently is not weather tight and extensive work will be necessary address this condition. Entry conditions will need to be brought up to current code for fire and egress compliance. Roof likely not framed to address drifted snow from adjacent high roof/street and will require reinforcement.



Photo 16-1: Exterior view of blacksmith shop/Building 16.



Building Number: 30



Location Plan

Description, Condition and Assessment:

- Building 30 is a two story building with a third story roof pop up area to the east.
- Review as limited- Hard ceilings were in place at time of review and spaces were occupied.
- Peeling paint was noted particularly at the high roof eave (Photo 30-2).
- Siding was uneven and may suggest underlying issues (Photo 30-2).
- Evidence of leaking was noted in several locations on the fixed ceiling adjacent to the southwest wall (Photo 30-3).
- On the south face open joints were noted with horizontal steel protruding. The steel was corroded. Other open joints and missing bricks were noted.
- Window lintels were rusted with mortar separation from the horizontal leg.
- Building exterior sealants are past design life.
- Downspout were leaking and frozen.
- Entry step heights do not meet code requirements.

Anticipated Structural Outcomes for Restoration:

- Repaint existing building.
- Repair exposed lintel conditions with replacement, hot dipped galvanized steel lintels.
- Consider residing and updating air vapor barrier systems.
- Isolate leaking and repair condition with flashing, replacement siding and/or masonry sealing.
- Replace building sealants

Structural Condition Rating	5.0
Structural Renovation Cost Rating	1.0

Rating Justification:

Building is considerably more modern than other structures reviewed on property; majority of repairs will be cosmetic or performed to improve energy efficiency/weather tightening.





Photo 30-1: Southwest elevation of building 30.



Photo 30-2: Peeling paint at roof eave, uneven siding.





Photo 30-3: Leaking noted at ceiling adjacent to southwest wall.



Photo 30-4: Mortar falling from joint with steel protruding; corroded steel lintel and broken mortar adhesion.



APPENDIX A
PORTLAND COMPANY COMPLEX – MARCH 2015
RELATIVE CONDITION AND REHABILITATION COST COMPARISON

BUILDING NUMBER – NAME DATE	RELATIVE STRUCTURAL CONDITON			RELATIVE REHABILITATION COST	
	BECKER	RESURGENCE /BECKER SCALE	RESURGENCE SCALE	BECKER	RESURGENCE
BUILDING 1 - ERECTING BUILDING 1918	2.0	2.5 (REPETITIVE DTLS)	P2	4.0	3.5 (REPETITIVE DTLS)
BUILDING 2 - MACHINE SHOP 1847	2.5	2.5	P2+	4.5	4.5
BUILDING 3 - MACHINE SHOP 1847	3.0	3.0	P2+	3.0	3.0
BUILDING 4 - FOUNDRY/ACETYLENE HS 1895, 1904-09	1.5	1.5	VP2	4.5	4.0 (REPETITIVE DETAILS, CUSTOM REHABILITATION)
BUILDING 6B - TANK SHOP 1896-1904	3.0	3.0	P2+	3.5	3.5
BUILDING 7 - CAR SHOP 1873, 1904	2.0	1.5 (BOWED WALLS)	VP1	5.0	5.0
BUILDING 10 - PAINT SHOP 1873	1.0	1.0	VP1	4.5	4.0 (REBUILD IN KIND)
BUILDING 11 - PATTERN STOREHOUSE 1885	2.5	2.0 (NORTH WALL)	VP2	4.5	4.5
BUILDING 14 - DRAFTING ROOM AND STOREHOUSE 1858, 1864	NOT INSPECTED	2.0	VP3	NOT INSPECTED	3.5
BUILDING 15/16 (NO ACCESS TO B15) BOILER HOUSE/BRASS FOUNDRY 1858, 1864	1.5	1.5	VP3	3.0	3.0
Averages of common buildings inspected (excluding Building 14)	2.11	2.06		4.06	3.89

SEE FOLLOWING PAGES FOR EXPLANATION OF BECKER STRUCTURAL ENGINEERS AND RESURGENCE ENGINEERING RATING SYSTEMS

Notes:

1. Coordinate this document with "Portland Company Complex General Building Assessment" prepared by Resurgence Engineering et al, March 2015, and "Evaluation of Existing Buildings at the Portland Company Property" prepared by Becker Structural Engineers, March 28, 2014.
2. Further discussion about relative rehabilitation costs related to these structures, by Resurgence Engineering, follows this page.



PAUL R. LEPADE
GOVERNOR

MAINE HISTORIC PRESERVATION COMMISSION
55 CAPITOL STREET
61 STATE HOUSE STATION
AUGUSTA, MAINE
04333

GABRIEL STETLEWORTH, JR.
DIRECTOR

31 March 2014

Deborah Andrews
Historic Preservation Program Manager
Planning & Urban Development Department
389 Congress Street
Portland, Maine 04101

Re: Portland Company, 58 Fore Street

Dear Deb:

As per our phone conversation of March 28, 2014, I am writing to confirm the findings of the Maine Historic Preservation Commission with regard to the National Register of Historic Places eligibility for the former Portland Company complex at 58 Fore Street. Staff of the Commission reviewed the historic photographs and maps you sent, as well as three reports on the complex (Robert Parker, 1990; Max Yeston, 2012; Tremont Preservation Services, 2014), and it is our opinion that this property is eligible for listing in the National Register as a relatively intact foundry with over a 130 year history.

This property meets National Register Criterion A, in the areas of *Industry, Engineering and Transportation*, with a period of significance that commences with the erection of the first building in 1845/6 and ends with the closing of the foundry in 1982. It is also eligible under Criterion C, as a historic district. All the extant buildings in the complex (1-7, 10-12, 14-16, and 24) are contributing resources. We were not provided information on Building 5 to review, presumably because it constructed recently.

Please do not hesitate to contact me if you need any additional information at this time.

Sincerely,

Christi A. Mitchell
Architectural Historian



CITY OF PORTLAND, MAINE

JAN 11 2015

City Managers Office

Bernstein, Shur,
Sawyer & Nelson, P.A.
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T (207) 774-1200

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Mary E. Costigan
(207) 228-7147 direct
mcostigan@bernsteinshur.com

January 8, 2016

Portland City Council
389 Congress Street
Portland, Maine 04101

Re: Proposed Designation of Portland Company Historic District

Dear Mayor and Councilors:

I am writing on behalf of CPB2 LLC, the owners of 58 Fore Street, in regard to the recommendation by the Planning Board to designate a portion of the 58 Fore Street property as a local historic district. We fully support the Planning Board's unanimous recommendation and respectfully request that the Council adopt their recommendation.

On October 27, 2015 the Planning Board held a public hearing on the proposed historic district and voted unanimously to designate the former Portland Company complex as a local historic district, to establish the district boundaries, and categorize certain buildings within the historic district as contributing and non-contributing. The Planning Board's recommendation differed from the recommendation by the Historic Preservation Board in only 2 ways: 1) the Planning Board unanimously voted to recommend that Building 1 be classified as non-contributing subject to the execution, in favor of the City, of a fifty-foot wide public access easement from Fore Street across the site, as consistent with the goals of the Eastern Waterfront Master Plan; and 2) the Planning Board modified the boundary of the proposed historic district to more closely align it with the location of the contributing buildings in the proposed district. Any new development on the vacant land on the western end of the site will be subject to

In all other respects, the Planning Board recommendation aligns with the recommendation of the Historic Preservation Board. Of the 16 buildings on the site today, 7 have been recommended to be classified as contributing buildings. The remaining buildings are recommended to be classified as non-contributing due to either the structural condition or lack of historic significance. The attached aerial photograph of the site shows the proposed district boundaries and building classifications.

Finally, the Planning Board also voted unanimously to recommend that the design guidelines for the historic district state that the height for the buildings in the district be controlled by the underlying zoning and not the historic preservation review standards, a precedent set in the Congress Street Historic District. The Historic Preservation Board did not make any recommendations regarding building height, noting that the Planning

Board and Council were much more informed regarding the B-6 height overlay to make that decision.

Section 14-610 of the City's Land Use Code sets forth the criteria to consider when making a determination on a proposed historic district nomination. The Historic Preservation Board is limited to a list of criteria regarding historic significance and integrity. Both the Planning Board and the City Council, however, are required to also consider the effect of the historic designation on other aspects of the comprehensive plan of the city. It is this provision of the ordinance that the Planning Board was focused on and acting under in recommending a more limited-sized district and in recommending to classify Building 1 as non-contributing.

At the October 27th meeting, CPB2 offered to grant the City a public access easement through and across the property from Fore Street to the waterfront in the location where Building 1 currently stands. This would require that Building 1 be classified as non-contributing in order for Building 1 to be removed from the site in the future. In its deliberations and decision, the Planning Board found that the Eastern Waterfront Master Plan requires an equal balancing of several goals. These goals include historic preservation, as well as public access to the water, enhancement of the pedestrian environment, increased recreation opportunities, protection and preservation of key views of the harbor, and creation of quality open spaces which are oriented to maximize exposure to the harbor. The Planning Board also referred to the overarching goal for the eastern waterfront to develop into an extension of the surrounding neighborhood while also establishing an identity as a new urban neighborhood. The Planning Board found that the acceptance and location of the public access easement is necessary to satisfy the goals of the Eastern Waterfront Master Plan and therefore recommended that Building 1 be classified as non-contributing.

In addition to the public access easement, Building 1 should be classified as non-contributing due to its structural integrity and lack of historic significance. The Planning Board record contains a report and additional letter from Becker Structural Engineers regarding the structural condition of Building 1. In the materials, Becker concludes that Building 1 is rated *"very poor/salvageable with significant structural rework and investment/questionable economic viability/consider demolition."* Further, Becker states, *"Our justification of this rating is that all major structural systems are affected in a renovation."* The Building 1 excerpt from the Becker Report is attached.

Building 1 also lacks the historic significance necessary to earn a classification of a contributing building. The current Building 1 was built in 1918, which is over 70 years after the founding of the Portland Company in 1847 and at the end of the period of significance for the property as determined by the Historic Preservation Board. In addition, the main facade of the building has been significantly altered with the increase in the size of the bay doors.

The current Building 1 replaced the original, smaller erecting building, estimated to have been originally built between 1871 and 1880. The vast majority of the historically-

significant activities of the Portland Company took place in the prior building between 1847 and 1918. Notably, the Sutherland Report prepared for the City regarding the history of the Portland Company does not discuss any activities of significance that took place on the site after 1918.

The Sutherland Report references a Building Inventory by Tremont Preservation Services, but includes only the significant activities that occurred prior to 1918. In the full text of the Tremont Inventory, the history of the site beyond 1918 states as follows: *"During the Depression years, manufacturing plummeted and the Portland Company suffered bankruptcy."* The company stock was purchased by Phineas Sprague's grandfather, who owned it with his cousin through 1956, diversifying the operations to include the manufacturing of snow plows, washing machines, etc. The property changed hands a few more times and produced things such as a machine to form Styrofoam containers, as well as components for the nuclear industry. These are the activities that occurred in the current Building 1 – not the historically significant activities such as the extensive locomotive production mentioned in the Sutherland Report. Those significant activities took place in the original erecting building, which was constructed around 1880, was made of wood and had a smaller footprint.

Further, the construction of Building 1 masked the architecturally significant Greek Revival façade of Building 2, which was the original machine shop built by John Poore in 1847. The removal of Building 1 would reveal the original façade of the 1847 building, as well as the original rail yard and allow for a truer restoration to the original Portland Company.

The attached artist renderings show CPB2s conceptual plans of how Building 2 can be showcased and the original rail yard used as a public plaza, which would be the location of the public access easement. As you can see, rather than the altered façade of Building 1 being the face of the property, the location of a public plaza in front of Building 2 allows the public to view the architecturally significant 1847 façade of Building 2 and to fully appreciate and experience the alignment of the buildings and alleys as they existed in the 19th century.

We therefore request that the Council adopt the recommendations of the Planning Board both in regard to the district boundaries and the classification of the buildings within the district.

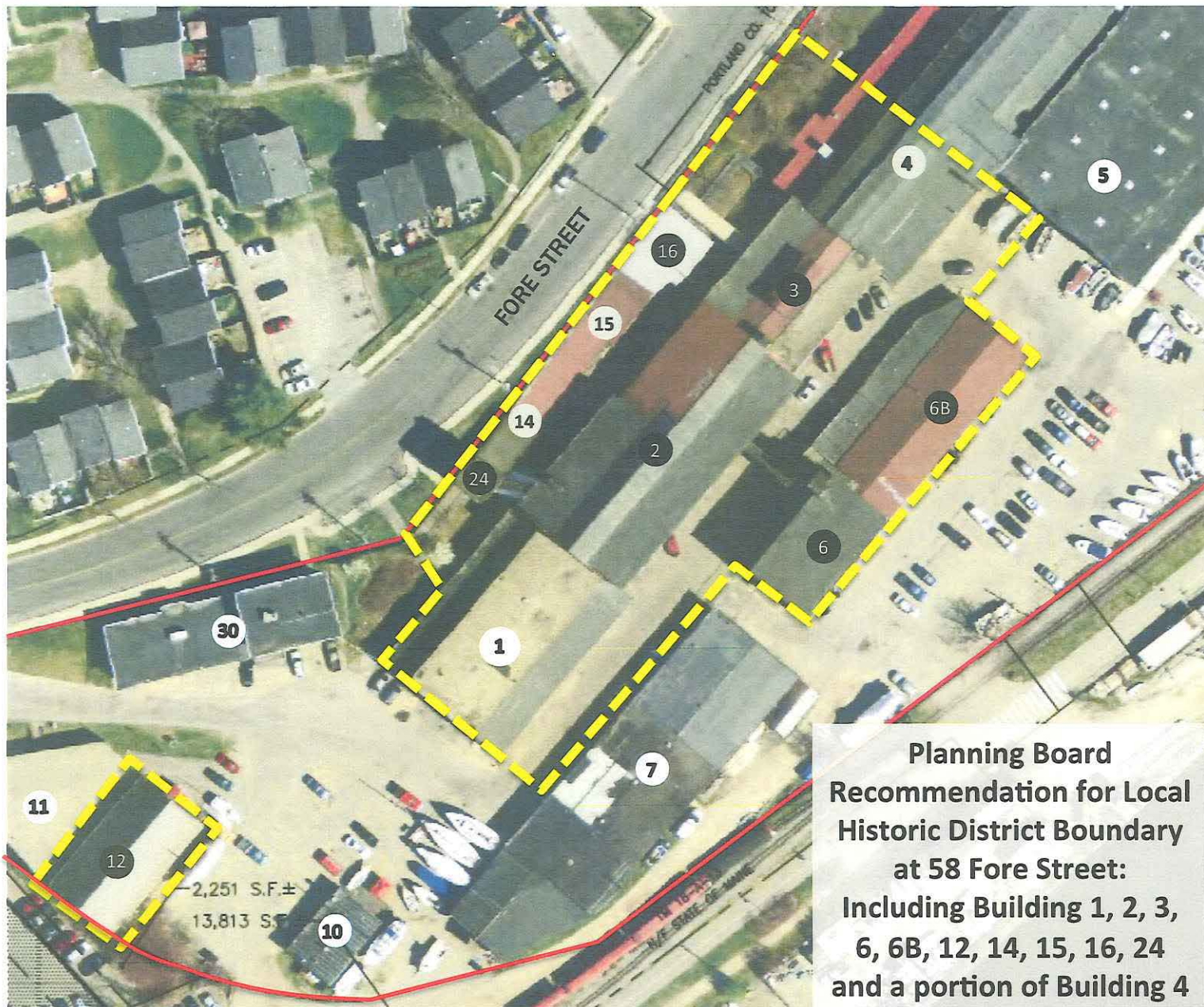
Thank you for your time and consideration.

Sincerely,



Mary E. Costigan

cc: CPB2





Historic Core Concept – Iconic Facades of the Portland Co Tower and Building #2 (c. 1848)



Historic Core Concept – Creating Public Access from Fore Street to Portland's Waterfront

Looking East at facades of Bldg 24, narrow alley, Bldg 2, alley and then Bldg 6 of the Historic Core

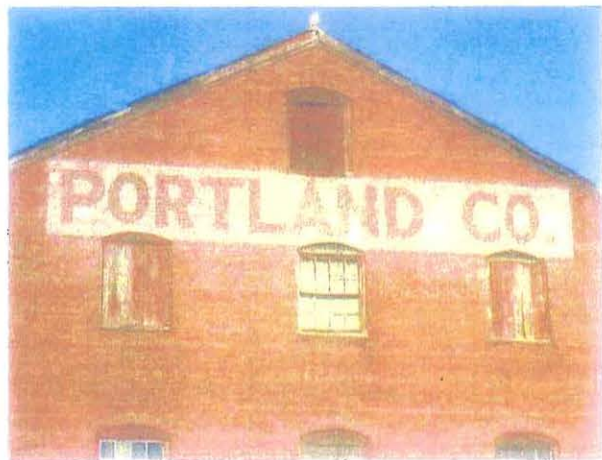
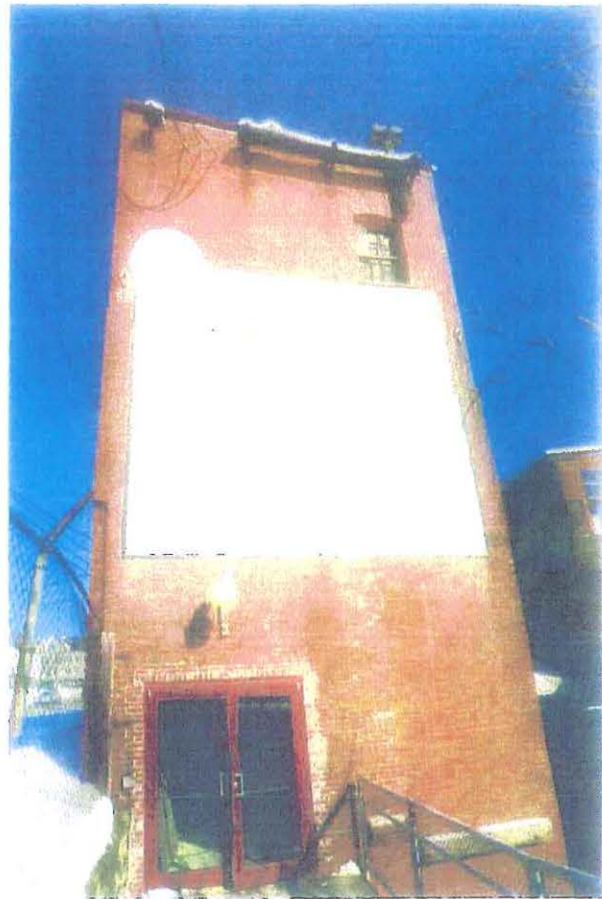


Historic Core Concept – Iconic Facades of the Portland Co Tower and Building #2 from 1848

Evaluation of Existing Buildings
at the
Portland Company Property
58 Fore Street
Portland, Maine

March 28, 2014

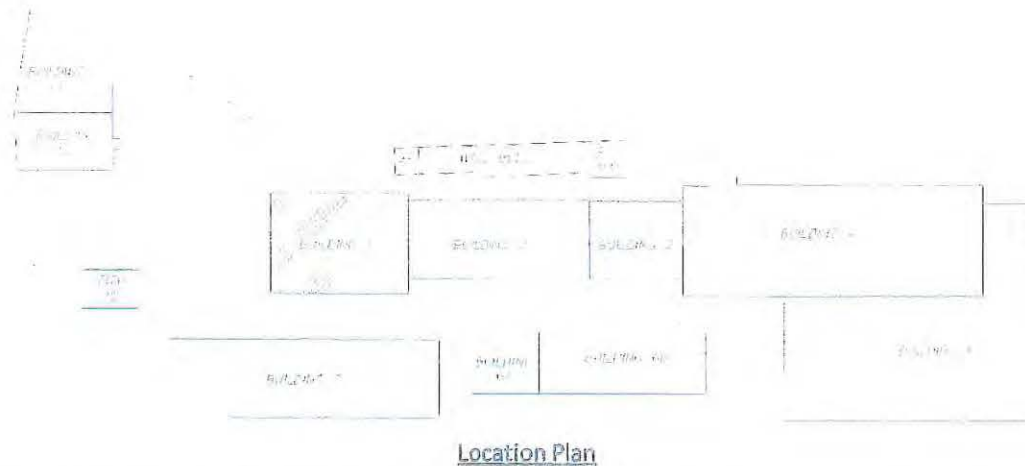
Prepared for:
CPB2 Management LLC
Portland Maine



Prepared by:



Building Number: 01



Location Plan

Description, Condition and Assessment:

- Building 1 features a central, longitudinal clerestory high bay space with low “saddle bag” roofs to each side (Photo 1-1).
- The high bay space has bridge crane rails with dual bridge & trolley systems.
- High bay is a steel frame with bridge crane girders at elevation of low “saddle bag” roofs. High bay is framed with clear span steel trusses and decked with wood board sheathing.
- Low roofs are framed with steel beams and girders, and decked with wood board sheathing.
- Low bay exterior walls are multi-wythe unreinforced brick masonry bearing walls.
- The steel frame high roof structure is likely not rated for snow loadings and the low bay roofs are likely not designed for snow drifting due to the high-low roof condition. Both conditions will likely cause overstresses in framing and decks.
- Wood plank roof decking was rotting in several locations, particularly at eaves due to leaking roofs (Photo 1-2). In general, roof appears to have leaks throughout. Wood deck not effective as diaphragm to transfer lateral loads.
- Wooden roof eaves with missing pieces and rot.
- Masonry piers along south elevation had large vertical cracks, likely a result of thermal stresses in the brick and discontinuity of steel lintels. Steel lintel framing over large windows cause disruption of brick piers and cause structural instability of piers with a hinge type condition. Crack allows water infiltration which causes further structural damage (Photo 1-4).
- The lintel flanges exposed over windows at the exterior are rusted with expansion causing rotation and masonry damage.
- Windows are archaic with steel frames, single pane glazing, no thermal break, poor glazing seals, broken panes and corrosion.
- Concrete window sills are spalled and cracked with exposed reinforcing in many locations.
- Many brick masonry joints have missing mortar, particularly at eave drip line below window sills. Moss was noted to be growing in masonry joints at and above the pavement



line. Masonry also has wide spread areas of distress including loose and missing mortar, cracks and spalls. (Photo 1-3)

- South high bay windows have been covered with opaque corrugate panels indicating poor condition.
- South low roof appears to have been overframed to enhance slope.
- Upper roof appears to be an out of date tar and chip roof.
- No definable lateral load resisting system in either principal direction.
 - Limited frame action in high bay of transverse direction. Offset column splices at low/high roof transition and crane girder create a stiffness discontinuity (Photo 1-5).
 - No method to transfer clerestory loads to lower level in longitudinal direction.
 - End wall and side walls have large openings; unreinforced masonry bearing walls known to have poor performance in seismic events.
 - Wood diaphragms likely inadequate to transfer diaphragm shears to exterior walls.

Anticipated Structural Outcomes for Renovation/Restoration:

- Replace roof decking with metal deck along with new roofing and insulation. Establish diaphragm connections to existing walls.
- Reinforce roof to meet snow loading requirements.
- Introduce lateral load resisting system with wall shotcrete or steel frame.
- Repair exterior masonry and rebuild certain areas as required. Extensive rebuilding will be necessary to address cracked masonry pier conditions. Clean masonry.

<i>Structural Condition Rating</i>	<i>2.0</i>
<i>Structural Renovation Cost Rating</i>	<i>4.0</i>

Rating Justification:

All major structural systems are affected in a renovation. Exterior masonry piers have major vertical cracks. Steel lintels create a hinge condition in exterior masonry piers and therefore their stability is questionable. End bay has large masonry openings that are not original to construction and seismic performance of system is very questionable. Rehabilitation of open one story space would have high unit costs considering necessary investment in structure verse net usable space.





Photo 1-1: General View, Building 1



Photo 1-2: Wood deck condition at eave.





Photo 1-3: Building 1 at eave drip line. Note sill condition, window condition, moss and missing mortar.





Photo 1-4: Vertical brick masonry crack at southwest pilaster.





Photo 1-5: Column discontinuity at low-high roof condition.



October 13, 2015

Mr. Kevin Costello
Manager
CPB2, LLC
PO Box 7987
Portland, ME 04112

Dear Kevin,

Per your request, we are issuing this letter report to you as a summary of our evaluation of Building 1 of The Portland Company Complex, located at 58 Fore Street in Portland, Maine. The purpose of our evaluation is to assess the condition of the building's structure in order to determine the modifications and repairs required to meet current adopted codes and standards. Our analysis of this structure has expanded from a high level conditions assessment of the 58 Fore Street Complex performed by Becker Structural Engineers (BSE) in 2014, to a more detailed evaluation that will determine the scope of repair work needed to occupy Building 1.

The basis of our analysis as well as itemized descriptions of recommended modifications to the building are included in the following sections of this report. In addition, we have attached drawings S1-S5, which document the recommendations of this report and can be used to reference each of the repair items. After performing our evaluation, we have determined that the repairs and alterations required to meet the current code are extensive.

BASIS OF EVALUATION:

Building 1 at 58 Fore Street was constructed circa 1918. It consists of an exterior masonry wall shell supporting a combination of steel and timber roof structures. Members of BSE visited the building on September 22, 2015 to perform observations and take field measurements of the existing structural elements and systems. Our evaluation is based on these findings and the City's adopted codes, which include the International Building Code (IBC) 2009 edition and the International Existing Building Code (IEBC) 2009 edition. As referenced by IBC, gravity and lateral loads have been determined using the American Society of Civil Engineers, ASCE 7 Minimum Design Loads for Buildings and Other Structures, 2005 edition. The future occupancy of the building is unknown at this time, but for the purposes of this evaluation, we have assumed that this building will serve a public assembly occupancy.

ROOF FRAMING:

Building 1 consists of a center, clerestory roof structure with lower "saddle-bag" roofs along each side. The high roof consists of timber decking spanning to steel purlins. The purlins are supported by clear-spanning steel trusses spaced approximately 20'-0" on center (o.c.), which are in turn supported by steel columns. The lower roofs also consists of timber decking spanning

to steel beams. These beams are carried by steel girders that span to the main steel columns and to the exterior brick walls.

Our recommendations for repairs and modifications to the roof structure are as follows:

- Item R1: Approximately 30% of the existing timber decking is rotted and needs to be replaced. The areas requiring repair are scattered throughout the lower and upper roofs. Our opinion is that it will be more efficient and cost effective to replace all of the decking rather than replace the individual areas of rot. We recommend using a 3" nominal tongue and groove (T&G) timber decking as replacement.
- Item R2: Some of the elements in the roof trusses are overstressed for snow loads. We recommend reinforcing the chords and some of the web members with new steel rods or angles. Further analysis is required to determine if the riveted connections at the truss members are adequate. This detailed analysis was not performed for this report.
- Item R3: The existing columns supporting the roof structure are overstressed. We recommend reinforcing them with new steel tee-shapes and plates. In addition, the column splice that occurs at the low roof is inadequate, and we recommend reinforcing it with new steel side plates.
- Item R4: Our analysis showed the existing bottom chord bridging is inadequate to brace the truss during uplift caused by wind loads. We recommend welding steel reinforcement to the existing bridging and cross-bracing, as well as adding new bridge lines near the ends of the trusses.

LATERAL FORCE RESISTING SYSTEM:

A lateral force resisting system collects wind and seismic loads from the exterior envelope of the building and transfers them to the foundations and substructure. To transfer loads effectively, there must be positive load paths from the envelope to the roof diaphragms (existing roof decking), from the diaphragms to the lateral resisting elements (existing masonry walls), and from the walls to the foundations. Our observations determined that many of these load paths are inadequate or do not exist. Examples of this include inadequate fastening of the roof deck to the exterior walls, as well as several openings and discontinuities in the walls that reduce overall stiffness and capacity. Our opinion is that Building 1 does not have a functioning lateral force resisting system, and thus a new system should be installed.

Our recommendations for the lateral force resisting system are as follows:

- Item L1: To create an effective structural diaphragm for resisting wind and seismic loads, we recommend sheathing over the all of the new timber decking with 1/2" thick plywood.
- Item L2: New steel channels and new beam nailers should be installed to allow the roof diaphragm to be positively connected to its support structure.
- Item L3: For lateral forces in the long direction of the building, we recommend installing new steel rod cross-braces within four bays of the clerestory.
- Item L4: To transfer forces from the cross braces identified in item L3, as well as the low roof diaphragms, we recommend installing new columns, beams and braces along the exterior walls and between the existing columns to create moment frames. Further



analysis may allow for the existing crane rail beam to be used as part of the new moment frames, eliminating some of the new structural steel.

- Item L5: For lateral forces in the short direction of the building, we recommend installing HSS cross-braced frames (or frames of a similar configuration). A total of six new frames are proposed to control uplift forces due to wind and seismic loads. We believe the six frames will best lessen the uplift demand on the mat foundations, reducing their size and the overall pile quantity as much as possible.

FOUNDATIONS AND SUBSTRUCTURE:

Little is known about the foundations for Building 1 since most of them are not exposed to view. Based on our past experience with sites along the Portland Waterfront, existing soils typically consist of poorly compacted fill that is often unsatisfactory for support of structures. Historical maps of the area indicate the site was originally underwater and was filled in order to construct the facility. Building 1, however, appears to be well founded with little to no signs of settlement or foundation distress. Therefore, we believe the building may be supported by shallow rock or deep foundation elements, such as pilings or piers, extending to more favorable soils or bedrock below. Prior to proceeding with the design of structural modifications for the building, further geotechnical observations and testing would be required to determine the existing soil properties and the existing foundation characteristics.

Our recommendations for the foundations are as follows and are based on a pile-supported foundation:

- Item F1: The existing concrete slab is in fair to good condition but has several surface deformations and poor levelness. We also found locations where voids beneath the slab are present. To meet the needs of an assembly occupancy, we recommend replacing the slab. Prior to placing the new slab, the existing soils will likely require re-compaction, and new compacted structural fill may also be necessary.
- Item F2: All new columns will require support from new concrete footings. We recommend supporting new footings using steel mini-piles driven to refusal. The existing exterior wall will likely be undermined during the installation of the new footings. Therefore, the scope of foundation work will need to include temporary shoring of the existing exterior walls to install the new footings.
- Item F3: To control uplifts at the braces and moment frames, new mat foundations and strip footings will be required. All new foundations will likely need support from mini-piles. Mini-piles will need to be connected to the mat foundations with uplift anchors. Lastly, the existing columns will need temporary shoring to allow for the existing footing to be removed prior to construction of the new mats.

EXTERIOR WALLS AND FACADE:

The exterior structure of Building 1 consists primarily of multi-wythe, solid brick walls. The building has several large openings for windows, both at the main level and the clerestory. Brick above the openings is typically supported by steel plates attached to steel beam lintels. The brick at the clerestory, however, is supported directly by the roof structure. There are several steel hangers from the high roof structure to the low roof beams that support the brick. The eccentric load from the hangers has caused the high roof beams to twist into the building.



Along the south elevation, several vertical cracks are present in each of the brick piers between the windows. The steel lintels above the windows are anchored into the piers at each end. As thermal expansion and contraction has occurred over time, our opinion is the lintel anchorage is restraining movement and causing the cracks. Further evidence of this is shown by the north elevation, where the larger cracks are not present. This elevation is mostly concealed from exposure to the sun, which would suggest why the cracks have not developed.

Our recommendations for the exterior of the building are as follows:

- Item E1: The cracked piers at the south wall are beyond repair and need to be rebuilt. During the rebuild, we recommend providing vertical control joints in the center of each of the brick piers to control future cracking.
- Item E2: The hanging structure that supports the clerestory facade is not performing adequately, as shown by the twisting beams. We recommend installing new HSS purlins, removing the hanger connections from the existing beams and connecting them to the new HSS beams. The HSS members have resistance to torsion and will not twist.
- Item E3: The steel plates at all of the lintels are heavily corroded and require replacement. We recommend temporarily shoring the facade, removing the plates, removing any rust or corrosion on the lintel, and welding new galvanized plates to the lintels. New flashing details will be required to protect the lintels from future corrosion.
- Item E4: The lintels in the north and south walls create a hinge in the exterior wall, significantly reducing its ability to resist out-of-plane wind loads. To eliminate the hinge, we recommend connecting each of the brick piers to the new columns with clip angle connections.
- Item E5: The exterior brick below the main windows is in poor condition due to rising damp and splash-back from the rain that falls from the upper roofs. Partial reconstruction and repair of this brick will be required..
- Item E6: The steel framed windows and windows sashes throughout the building are in poor condition and should be replaced. In addition, the cast-stone sills beneath the windows are showing signs of heavy corrosion and should also be replaced.
- Item E7: As mentioned in item R1, the roof decking requires replacement at the low roofs. Our observations determined that the brick walls at the clerestory partially bear on the existing deck. These walls are in poor shape, with the brick below the window sills bowing out in most locations. Given the condition of the walls and the wall damage that may occur during the roof deck replacement, we recommend that the clerestory walls be rebuilt.

CONCLUSION AND CLOSING:

Our evaluation of Building 1 has shown that the structure does not meet current code requirements for resisting gravity and lateral forces, including snow, wind and seismic loads. As a result, a significant amount of structural modifications to the foundations and framing will be required. Repair or replacement is recommended for approximately 50% of the existing foundations, 100% of the roof deck, 70% of the roof framing and 40% of the masonry. In addition to these repairs, we believe a significant amount of new structural systems are required to upgrade the building, including braced frames, moment frames, mat foundations and mini-



Order 148-15/16
Tab 16 1-20-16

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 (S)
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 IX
HISTORIC PRESERVATION, SECTION 14-651
Re: Building Height in Portland Company Historic District**

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

*That Chapter 14, Article IX, Section 14-651 of the Portland
City Code is hereby amended to read as follows:*

Sec. 14-651. Standards for review of new construction.

In considering an application for a certificate of appropriateness involving new construction, the historic preservation board and the planning board shall apply the following general standards as may be applicable to the context of the proposed construction. The intent and application of the following standards are further described in the historic resources design manual and shall guide the board in its review.

(a) Scale and form:

1. *Height.* In addition to the applicable requirements of articles III, IV and V of this chapter, the proposed height shall be visibly compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.

...

8. Applicability to the Portland Company historic district. For new construction within the Portland Company historic district, the height requirements of the B-6 zone as shown on the B6 Building Height Overlay & Building Envelopes map shall be controlling and the historic preservation board shall not impose conditions more restrictive than the building height requirements of the B-6 zone.

Order 137-15/16
~~Feb 9~~ +4/16
Feb 17 1-20-16

ETHAN K. STRIMLING (MAYOR)
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**CITY OF PORTLAND
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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. <u>V</u>	<u>Tour</u> <u>companies</u>	<u>300.00,</u> <u>plus 30.00 per</u> <u>vehicle/operator</u>	<u>March 31</u>

...

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