



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

*Greg Mitchell - Acting Director of Planning and Urban Development
Marge Schmuckal, Zoning Administrator*

February 24, 2012

Thomas F. Jewell, Esquire
Jewell & Boutin, P.A.
477 Congress Street
Suite 1104
Portland, ME 04101-3427

**RE: 5-7 Sumner Court – 13-K-49 – called “A”
R. 53-55 Cumberland Avenue – 13-K-71- called “B”**

Dear Tom,

I am in receipt of your request for a determination letter concerning the property owned by your client at 5-7 Sumner Court and R. 53-55 Cumberland Avenue.

I reviewed the copy of the 2006 determination letter addressed to attorney Barbara Vestal that was submitted with your request. The 2006 letter does not have the same or similar circumstances as the situation concerning the above property and in my opinion is inapplicable to this matter. In that instance one lot was developed and one lot was undeveloped. Both lots met the R-6 minimum lot size and yard dimensions. Your situation is different. In your case, however, both of the described properties are undeveloped. One of the properties does not meet the R-6 zone requirements and the other property appears to meet the requirements

The deed descriptions subsequently submitted seem to be incomplete. One description identified with the Assessor's chart-block-lot (CBL) of 013-K-049 is fully described in the deed by meets and bounds and which I will refer to as lot "A". The other lot, CBL 013-K-071 which I will refer to as lot "B" is not sufficiently described. The reference in the deed states that it is; "a lot numbered 2 on a plan of lots of Fort Sumner Terrace, otherwise known as the Anderson Estate....". I have not been given a copy of the Fort Sumner Terrace or Anderson Estate Subdivision for verification. If the current property "B" differs from the described lot number 2 on the Fort Sumner Terrace or Anderson Estate subdivisions, then this determination may be invalid.

Despite these errors, I have considered the original deed and the corrective deed submitted by you for review. Both properties "A" and "B" were previously owned in common by Sheldon Ashby. Historically, both properties were conveyed to Sumner Court Land Company LLC on 6/27/2003 and recorded 7/2/2003. Subsequently, a corrective deed (signed on 8/31/2007 and recorded on 9/10/2007) was recorded which attempts to reach back four (4) years and split the tract or original parcel of land into two

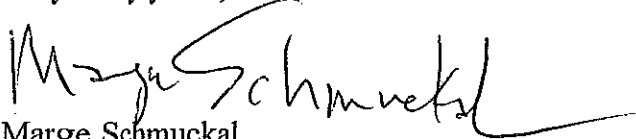
separate parcels, by conveying property "B" to Ronald L. Gan and Stephanie A. Evans and property "A" to Sumner Court Land Company, LLC. There is an accompanying affidavit by the attorney, Eric J. Schaeffer, who witnessed the original conveyance in 2003. The affidavit is witnessed and signed on August 14, 2007. Attorney Schaeffer affirms that the original intent of the 2003 transaction was to split the properties into two separately owned properties.

I am troubled by the corrective deed. In 2003, the corrective deed had the effect of creating a property that that was nonconforming and violated zoning requirements. Section 14-422 of the city of Portland's Land Use Code states, "No lot shall be so reduced that yards, lot width, lot frontage, lot area, area per dwelling unit and space for off-street parking and/or off-street loading shall be less than the minimum required under this article". The act of splitting the properties in 2003 would allow property "B" to be nonconforming in required lot size and lot frontage.

I have determined that both of the described properties, "A" and "B", merged before Sumner Court Land Company, LLC purchased the property. This is because both parcels were held in the same ownership by Sheldon Ashby and therefore are a single tract or parcel of land under the City Code and Maine law. See 30-A M.S.R.A. section 4401(6). Consequently, section 14-139(2) does not apply since the lot in question is 12,479 square feet in size. Instead, the dimensional requirements contained in section 14-139(1) are applicable.

Your client has the right to appeal my decision concerning this matter. If he wishes to exercise his right to appeal, he has thirty (30) days from the date of this letter in which to appeal. If he should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,


Marge Schmuckal
Zoning Administrator



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*Greg Mitchell - Acting Director of Planning and Urban Development
Marge Schmuckal, Zoning Administrator*

February 24, 2012

Thomas F. Jewell, Esquire
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Suite 1104
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**RE: 5-7 Sumner Court – 13-K-49 – called “A”
R. 53-55 Cumberland Avenue – 13-K-71- called “B”**

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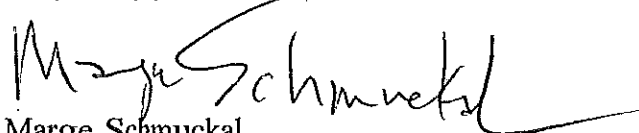
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Your client has the right to appeal my decision concerning this matter. If he wishes to exercise his right to appeal, he has thirty (30) days from the date of this letter in which to appeal. If he should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,



Marge Schmuckal
Zoning Administrator

Marge Schmuckal - Sumner Court Determination Letter

From: Marge Schmuckal
To: Tom Jewell
Date: 2/24/2012 2:32 PM
Subject: Sumner Court Determination Letter
Attachments: Sumner Court determination.doc

Tom,
Please see attached. I have put the originally signed determination letter in the mail.
Thank You,
Marge

JEWELL & BOUTIN, P. A.
Attorneys at Law
477 Congress Street
Suite 1104
Portland, ME 04101-3427

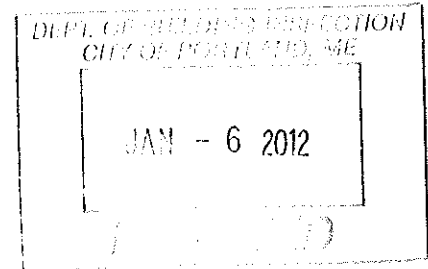
Thomas F. Jewell
Daniel W. Boutin

E-mail: tjewell@jewellandboutin.com
E-mail: dboutin@jewellandboutin.com

Telephone: 207-774-6665
Fax: 207-774-1626

January 4, 2012

Marge Schmuckal, Zoning Administrator
Portland Planning Department
389 Congress Street
Portland, Maine 04101



Dear Marge,

I am requesting a zoning determination regarding the following lots: 5-7 Sumner Court, 13-K-049 and rear 71 Cumberland Avenue, 13-K-71. A check for \$150.00 is enclosed.

I have reviewed section 14-139(2) Small residential lot development. The conditions listed in the ordinance state that the lot shall be: "Vacant or is used exclusively for parking or contains structures not used for residential purposes as of January 1, 2005 and the lot existed as of January 1, 2005." In addition, it goes on to say that such a lot shall be no larger than 10,000 square feet in size.

I believe both of these lots meet the requirements listed above. 5-7 Sumner Court is 8,122 square feet, has no structures on it and has been solely used for parking since 1959.

71 Cumberland is 4,357 square feet, has never had a structure on it and has been vacant since 1877.

Both lots have had the same deed description as of and prior to January 1st, 2005.

I am attaching herewith a letter dated December 15, 2006, which you wrote to Barbara A. Vestal regarding a similar set of circumstances at 71 and 77 St. Lawrence Street, in which you gave an opinion that has allowed a single family house to be built at 71 St. Lawrence utilizing the Small Residential Lot Guidelines.

Your attention to this matter is greatly appreciated.

Yours truly,

Handwritten signature of Thomas F. Jewell, Esq.

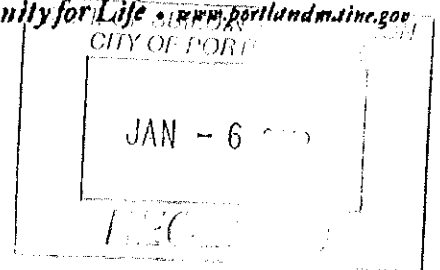
Thomas F. Jewell, Esq.

TFJ/t
Enclosures



Strengthening a Remarkable City, Building a Community for Life www.portlandmaine.gov

Lee Urban- Director of Planning and Development
Marge Schmuckal, Zoning Administrator



December 15, 2006

Barbara A. Vestal
Chester & Vestal
107 Congress Street
Portland, Maine 04101

revised

RE: 71 and 77 St. Lawrence Street – 16-E-23 and 16-E-12 – R-6 Zone

Dear Barbara,

I am in receipt of your request for a zoning determination concerning the lots located at 71 and 77 St. Lawrence Street, and in more particular the vacant lot at 71 St. Lawrence Street.

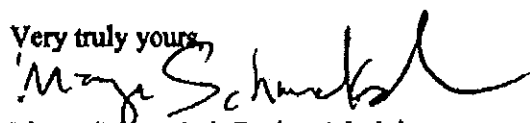
Both lots are owned in common as you have stated in your letter. As you also stated, the developed lot, 77 St. Lawrence Street, is a conforming lot in size, street frontage, lot width, and lot size per dwelling unit. Apparently the side setback abutting the vacant lot at 71 St. Lawrence is also being met.

I have reviewed section 14-139(2) Small residential lot development. The conditions listed in the ordinance state that the lot shall be: "Vacant or is used exclusively for parking or contains structure not use for residential purposes as of January 1, 2005 and the lot existed as of January 1, 2005". It goes on to say that such a lot shall be no larger than 10,000 square feet in size.

71 St. Lawrence Street, 016-E-023, has existed with the same deed description prior to and as of January 1, 2005. That same lot is vacant and has not been used for residential purposes as of January 1, 2005. This same lot is 5,250 square feet in size.

I have determined that 71 St. Lawrence Street, 016-E-023, is eligible for development under 14-139(2) small residential lot development. Please note that this determination letter is not an approval to start construction. Prior to development required permits with appropriate plans shall be submitted for review and approval.

Very truly yours,


Marge Schmuckal, Zoning Administrator

- (1) Maximum floor area for places of assembly not on a collector or arterial road:

Large	4,500 sq. ft.
Medium	2,250 sq. ft.
Small	1,125 sq. ft.

(2) *Small residential lot development:* Residential uses on small, vacant lots located in the R-6 are subject to site plan review and may use the dimensional requirements below if all of the following conditions are met:

The lot is:

Vacant or is used exclusively for parking or contains structure not used for residential purposes as of January 1, 2005; and the lot existed as of January 1, 2005.

- (a) Minimum lot size: None
- (b) Maximum lot size: Ten thousand (10,000) square feet.
- (c) Yard dimensions:

1. Front yard:

No more than ten (10) feet.

2. Rear yard:

None, except that rear yards between two (2) buildings on the same or different lots shall maintain a minimum ten (10) foot setback between buildings or the sum of the heights of the abutting buildings and proposed buildings divided by five (5), whichever is greater; and that either the rear yard or one of the side yards shall be at least fifteen (15) feet; provided, however, detached accessory structures with a ground floor area of one hundred (100) square feet or less need not have a setback more than five (5) feet from the property line. Notwithstanding the foregoing, no structure shall be closer than four (4) feet to side property line.

Pre-emptive

EXHIBIT A

A certain lot or parcel of land situated on Sumner Court, in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Commencing on the southerly line of a passageway leading from North Street at right angles to said street at a point one hundred fifty-six (156) feet from North Street; thence

Southerly parallel with North Street eighty-nine and one-half (89 1/2) feet, more or less, to the southerly line of Lot No. 16; Plan A in the division of estate of Lemuel Dyer; thence

Westerly by said line, ninety-seven (97) feet, more or less, to land Anderson called the covered way; thence

Northerly by said covered way, ninety-nine and five twelfths (99 5/12) feet, more or less, to the southerly line of passageway from North Street; thence

Along said line easterly, seventy-four and four twelfths (74 4/12) feet to the point of beginning.

Also the right of way and unobstructed use of a passageway leading from North Street, being part of a lot of land deeded to C.W. Baker by H.H. Shaw by deed dated April 21, 1884, recorded in the Cumberland County Registry of Deeds in Book 505, Page 395.

Also a certain lot or parcel of land situated on the southerly side of said Sumner Court in said City of Portland and being lot numbered 2 on a plan of lots of Fort Sumner Terrace, otherwise known as the Anderson Estate, which plan is recorded in the Cumberland County Registry of Deeds in Plan Book 11, Page 63, being the same lot as corrected by deed dated January 29, 1912, recorded in the said Registry of Deeds in Book 898, Page 183.

SUMNER

13-K-49
Parcel A

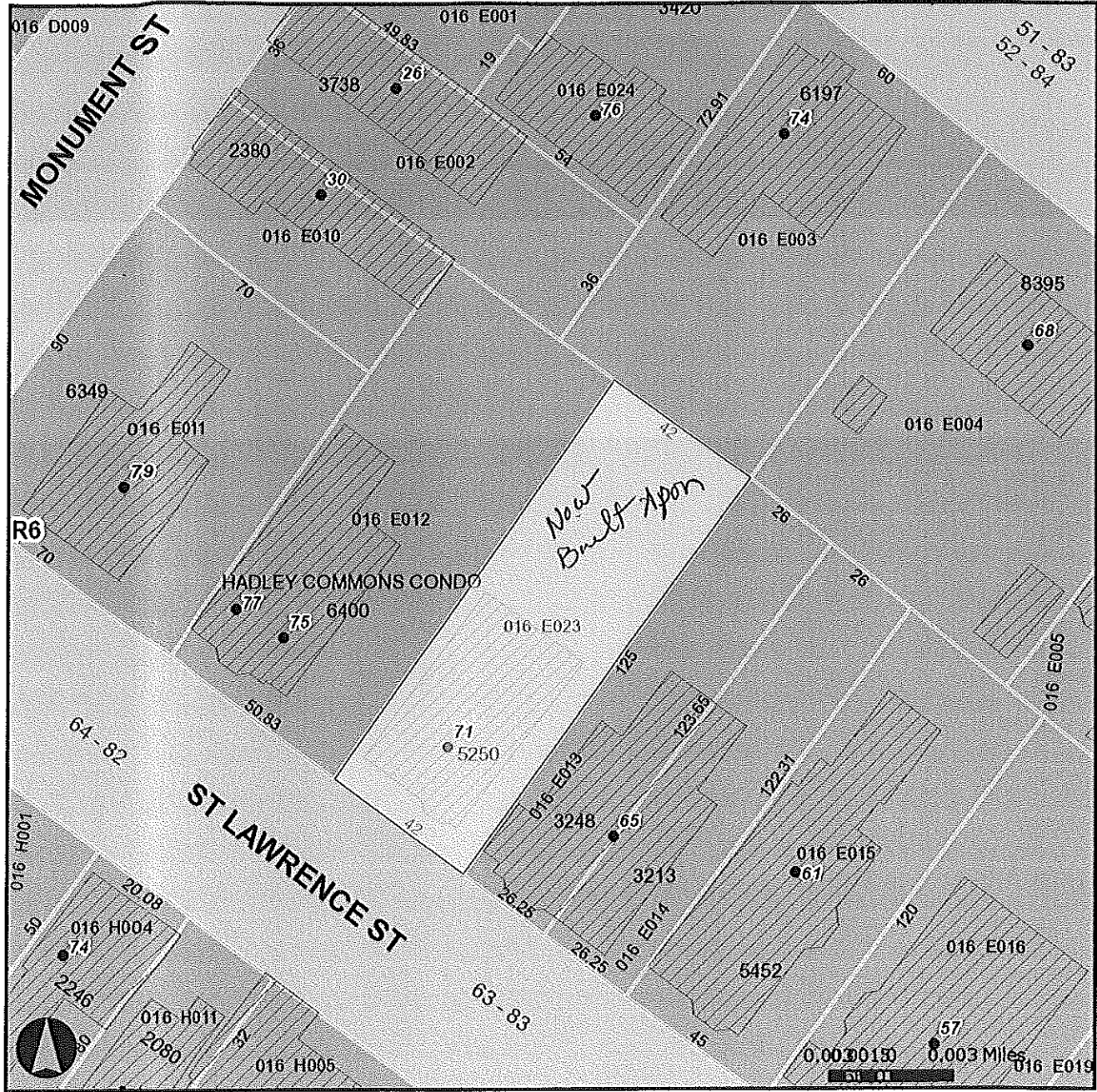
?
13-K-71
Parcel B

Received
Recorded Register of Deeds
Jul 02, 2003 02:41:46P
Cumberland County
John B. O'Brien

After Recording Return to:
Hopkinson, Abbonanza & Backer
511 Congress Street, Ste. 801
Portland, Maine 04101
(207) 772-5845

RE: Barbara Vestal letter

Map



Address Candidates



Parcels



Interstate



Streets



Buildings



Shoreland Overlay Zone



Stream Overlay Zone



Island Zoning



Zoning (continued)



Zoning (continued)





CITY OF PORTLAND, MAINE

Department of Building Inspections

Original Receipt

James 2012

Received from 15 Commercial Street LLC

Location of Work 50 Commercial Street # 013 K049
71 Commercial St # 013 F011

Cost of Construction \$ _____ Building Fee: _____

Permit Fee \$ _____ Site Fee: _____

Certificate of Occupancy Fee: _____

Total: _____

Building (IL) _____ Plumbing (I5) _____ Electrical (I2) _____ Site Plan (U2) _____

Other Termination

CBL: _____

Check #: 409 Total Collected \$ 150.00

**No work is to be started until permit issued.
Please keep original receipt for your records.**

Taken by: [Signature]

WHITE - Applicant's Copy
YELLOW - Office Copy
PINK - Permit Copy

15 CUMBERLAND AVE. A LLC
202 WASHINGTON AVE.
PORTLAND, ME 04101

429

1-9-12
Date

52-60/112
57133

Pay to the Order of City of Portland \$ 150.00

ONE HUNDRED FIFTY Dollars



KeyBank National Association
Portland, Maine 04101
1-800-KEY2YOU Key.com

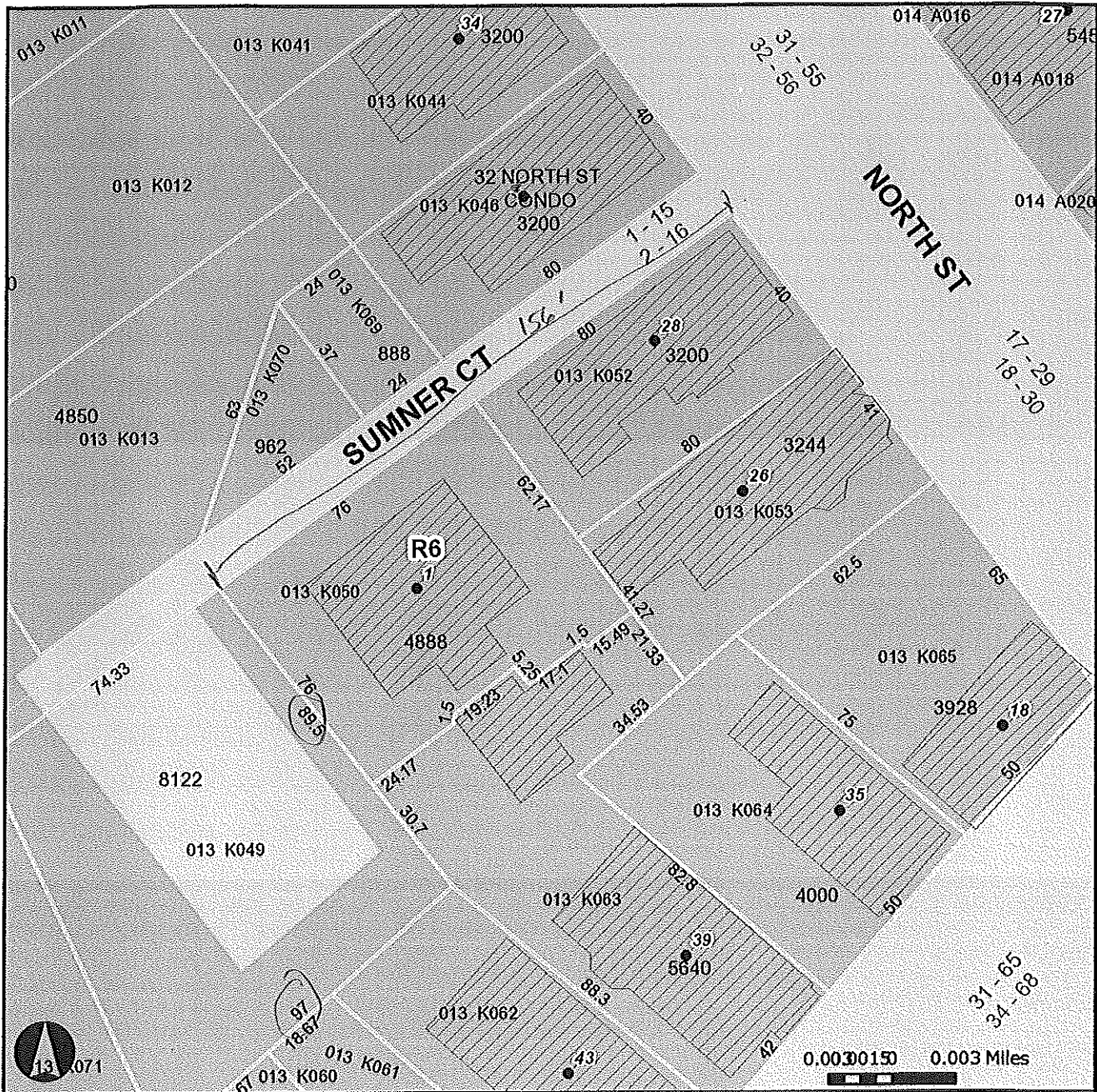


Security Center on
line

For My own James J. J.
⑆011200608⑆ 191331000452⑆ 0429 MP

Harvard College

Map



Address Candidates



Parcels



Interstate



Streets



Buildings



Shoreland Overlay Zone



Stream Overlay Zone



Island Zoning



Zoning (continued)



Zoning (continued)



Marge Schmuckal - Sumner Court

From: Tom Jewell <tjewell@jewellandboutin.com>
To: Marge Schmuckal <MES@portlandmaine.gov>
Date: 1/24/2012 2:11 PM
Subject: Sumner Court
Attachments: 2003 deed.pdf; 2007 deed.pdf; Schaeffer affidavit.pdf

Here are recent deeds and affidavit regarding the title to these lots. The Assessor seems to have it screwed up, as the title for lot 13-K-~~30~~⁴⁹ has been in Sumner Court Land Company, LLC since 2003, whereas the Assessor is showing it in Gan & Evans. ⁴⁹

Both lots 13-K-~~30~~⁴⁹ and 13-K-71 were conveyed to Sumner Court Land Company in 2003 per deed 19681/46. A corrective deed was recorded in 2007 at 25457/131, which conveyed 13-K-71 from Sumner Court Land Company to Ron Gan and Stephanie Evans.

As stated in that 2007 deed, as well as the accompanying affidavit recorded at 25457/130, the intent was to have separate ownership of the two lots as of the date when they were originally conveyed in 2003.

Let me know if you need anything else.

Thomas F. Jewell, Esq.
 Jewell & Boutin, P.A.
 477 Congress Street
 Suite 1104
 Portland, ME 04101
 Tel.: (207) 774-6665
 Fax: (207) 774-1626

This e-mail message together with any attachment is confidential and is subject to the attorney-client privilege and every other privilege. The intended recipient should print a copy of this message and then delete it. If you are not the intended recipient, you must not review, retransmit, convert to hard copy, copy, use or disseminate this e-mail or any attachments to it. If you have received this e-mail in error, please immediately notify us by return e-mail or by telephone at (207) 774-6665 and delete this message. Please note that if this e-mail message contains a forwarded message or is a reply to a prior message, some or all of the contents of this message or any attachments may not have been produced by Jewell & Boutin, P.A. This notice is automatically appended to each e-mail message leaving Jewell & Boutin, P.A. Thank you.

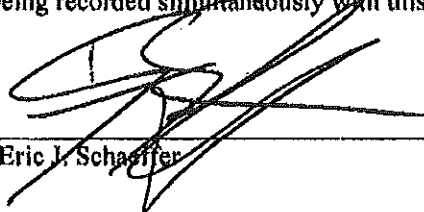
AFFIDAVIT OF ERIC J. SCHAEFFER

NOW COME the Affiant, Eric J. Schaeffer, and depose as follows:

1. My name is Eric J. Schaeffer, I am an attorney duly licensed to practice law in the State of Maine.
2. I have personal knowledge of each of the matters stated herein.
3. On June 27, 2003, I witnessed and acknowledged a Warranty Deed executed Sheldon Ashby, to my client, Sumner Court Land Company, LLC, said Warranty Deed being recorded in the Cumberland County Registry of Deeds in Book 19681, Page 46 (the "Deed").
4. As attorney for Sumner Court Land Company, LLC it was my understanding that the second parcel as described in the Deed, said second parcel being lot numbered 2 on Plan Book 11, Page 63 recorded in the Cumberland County Registry of Deeds, was to be vested in Ronald L. Gan and Stephanie A. Evans, and not Sumner Court Land Company, LLC.
5. To honor the intent of the transfer there has been prepared a Corrective Warranty Deed by Sumner Court Land Company, LLC to Ronald L. Gan and Stephanie A. Evans conveying the second parcel as described in Paragraph 4 of this Affidavit.
6. The purpose for this Affidavit is to outline the facts and circumstances surrounding the execution, delivery and recording status of the Deed.
7. The Corrective Warranty Deed by Sumner Court Land Company, LLC to Ronald L. Gan and Stephanie A. Evans is being recorded simultaneously with this Affidavit.

Dated: August 14 2007

Received
Recorded Register of Deeds
See 10,2007 03:33:28P
Cumberland County
Pazela E. Lovley


Eric J. Schaeffer

STATE OF MAINE
COUNTY OF CUMBERLAND

August 14, 2007

Personally appeared before me the above-named Eric J. Schaeffer and made oath that the facts stated in this Affidavit are true to the best of his personal knowledge and belief and made oath that his signature on this document is his voluntary act and deed.

Before me,


Notary Public/Attorney-at-Law

WARRANTY DEED

SHELDON ASHBY

of 37 William Street, Portland, ME 04103

for consideration paid, grants to

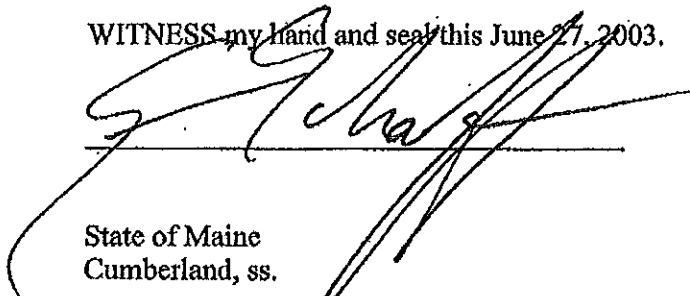
SUMNER COURT LAND COMPANY, LLC

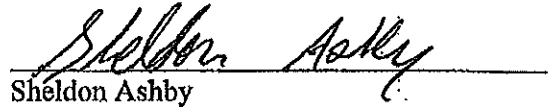
A Maine Limited Liability Company with a mailing address of 4646 North Hermitage, Chicago, IL 60640, with WARRANTY COVENANTS, the following described real property in Portland, County of Cumberland and State of Maine:

See Exhibit A attached hereto and made a part hereof

Also hereby conveying all rights, easements, privileges, and appurtenances, belonging to the premises hereinabove described.

WITNESS my hand and seal this June 27, 2003.



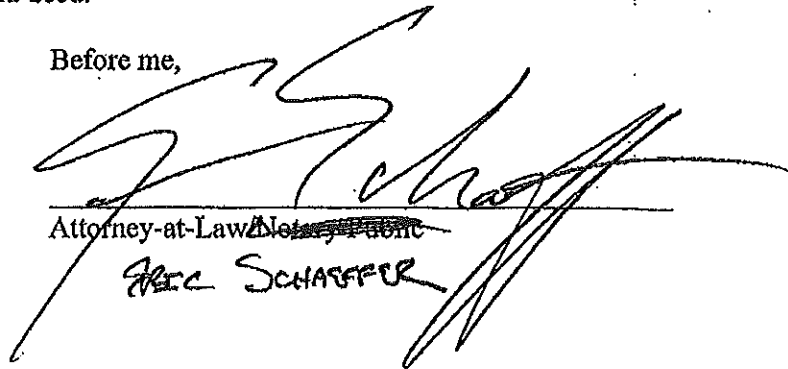

Sheldon Ashby

State of Maine
Cumberland, ss.

June 27, 2003

Personally appeared before me the above-named Sheldon Ashby and acknowledged the foregoing instrument to be his free act and deed.

Before me,



Attorney-at-Law/Notary Public
ERIC SCHAFER

SUMNER

CORRECTIVE WARRANTY DEED

SUMNER COURT LAND COMPANY, LLC

a Maine limited liability company with a mailing address of 15 Longfellow Street, Portland, Maine 04103

for consideration paid, grants to

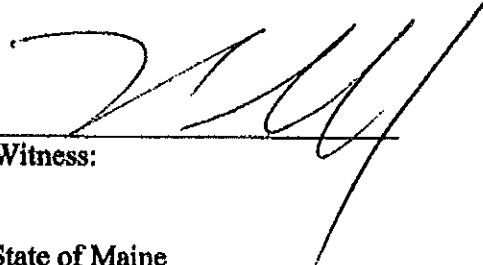
RONALD L. GAN and STEPHANIE A. EVANS

their mailing address being 15 Longfellow Street, Portland, Maine 04103, with WARRANTY COVENANTS, as Joint Tenants and not as tenants in common, the following described real property in the City of Portland, County of Cumberland and State of Maine:


See Exhibit A attached hereto and made a part hereof

Also hereby conveying all rights, easements, privileges, and appurtenances, belonging to the premises hereinabove described.

IN WITNESS WHEREOF Sumner Court Land Company, LLC has caused this instrument to be signed in its corporate name and sealed with its corporate seal by Ronald L. Gan its duly authorized member this ^{31st} of August 2007.



Witness:

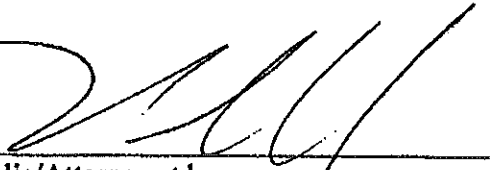
Sumner Court Land Company, LLC


By: Ronald L. Gan
Its: Member

State of Maine
County of Cumberland, ss.

August 31, 2007

Personally appeared before me the above-named Ronald L. Gan, Member of Sumner Court Land Company, LLC and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of Sumner Court Land Company, LLC.

Before me,


Notary Public/Attorney at law
Name: *Nicholas J. Merrill*
Commission Expiration: _____

EXHIBIT A

A certain lot or parcel of land situated on the southerly side of said Sumner Court in said City of Portland and being lot numbered 2 on a plan of lots of For Sumner Terrace, otherwise known as the Anderson Estate, which plan is recorded in the Cumberland County Registry of Deeds in Plan Book 11, Page 63, being the same lot as corrected by deed dated January 29, 1912, recorded in the Cumberland County Registry of Deeds in Book 898, Page 183.

Being a portion of the premises as conveyed by Sheldon Ashby to Sumner Court Land Company, LLC by virtue of a Warranty Deed dated June 27, 2003 and recorded in the Cumberland County Registry of Deeds in Book 19681, Page 46.

The purpose of this Corrective Warranty Deed is to vest title to the above-described parcel of land in the name of Ronald L. Gan and Stephanie A. Evans. It was the intent of Ronald L. Gan and Stephanie A. Evans, both individually and as Members of Sumner Court Land Company, LLC, on June 27, 2003 to take title to the above-described parcel of land in his individual name, while taking title to the other land described in the Warranty Deed recorded in the Cumberland County Registry of Deeds in Book 19681, Page 46 in the name of Sumner Court Land Company, LLC.

G:\CLIENTS\G\Gan\Sumner Court\Corrective Warranty Deed.doc

Received
Recorded Registrar of Deeds
Sep 10, 2007 03:34:34P
Cumberland County
Paula E. Lovley

5-7 Sumner Ct
13-K-49
8122

Parcel "A"

Sheldon Ashby
↓

Sumner Court Land Company LLC
BK: 19681 pg 46, 47

signed 6/27/2003
recorded 7/2/2003

R. 53-55 Cumberland Ave
13-K-71 ? Lot #2
Parcel "B" 4357 A East Sumner Terrace

Sheldon Ashby
↓

Sumner Court Land Com. LLC
BK: 19681 pg 46, 47

signed 6/27/2003
recorded 7/2/2003

Then
(Corrective Warranty Deed)

Sumner Court Land Comp. LLC
↓

Affidavit of Error
8/11/2007
Schreffler ←

Ross Garnie, Stephanie Evans
JTs

BK: 25457 pg: 131-132
signed 8/31/2007
recorded 9/10/2007

Danielle
8429

2/6/12 met with Danielle

Assessor's Office | 389 Congress Street | Portland, Maine 04101 | Room 115 | (207) 874-8486

[City](#) [Home](#) [Departments](#) [City Council](#) [E-Services](#) [Calendar](#) [Jobs](#)

This page contains a detailed description of the Parcel ID you selected. Press the **New Search** button at the bottom of the screen to submit a new query.

Current Owner Information:

Services

Applications

Doing Business

Maps

Tax Relief

Tax Roll

Q & A

[browse city services a-z](#)

[browse facts and links a-z](#)

CBL 013 K049001
Land Use Type VACANT LAND
Property Location 0 SUMNER CT
Owner Information GAN RONALD L & STEPHANIE A EVANS JTS
 4646 N HERMITAGE
 CHICAGO IL 60640
Book and Page 25457/131
Legal Description 13-K-49
 SUMNER COURT
 8122 SF
Acres 0.186

5-7 Sumner Ct

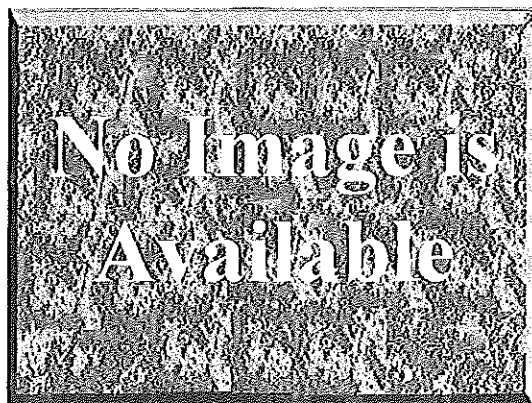
Current Assessed Valuation:

TAX ACCT NO.	1564	OWNER OF RECORD AS OF APRIL 2011
LAND VALUE	\$16,200.00	GAN RONALD L &
BUILDING VALUE	\$0.00	STEPHANIE A EVANS JTS
NET TAXABLE - REAL ESTATE	\$16,200.00	4646 N HERMITAGE
TAX AMOUNT	\$296.14	CHICAGO IL 60640

Any information concerning tax payments should be directed to the Treasury office at 874-8490 or [e-mailed](#).



Best viewed at 800x600, with Internet Explorer



[View Map](#)

Sales Information:

Sale Date	Type	Price	Book/Page
9/10/2007	LAND + BUILDING	\$0.00	25457/131
7/1/2003	LAND	\$20,000.00	19681/46
10/11/2001	LAND	\$20,000.00	16831/3

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Assessor's Office | 389 Congress Street | Portland, Maine 04101 | Room 115 | (207) 874-8486

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Doing Business

Maps

Tax Relief

Tax Roll

Q & A

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browse facts and links a-z

CBL 013 K071001
Land Use Type VACANT LAND
Property Location 71 CUMBERLAND AVE ?
Owner Information GAN RONALD L & STEPHANIE A EVANS JTS
 4646 N HERMITAGE
 CHICAGO IL 60640
Book and Page 25457/131
Legal Description 13-K-71
 CUMBERLAND AVE R 53-55
 4357 SF
Acres 0.1

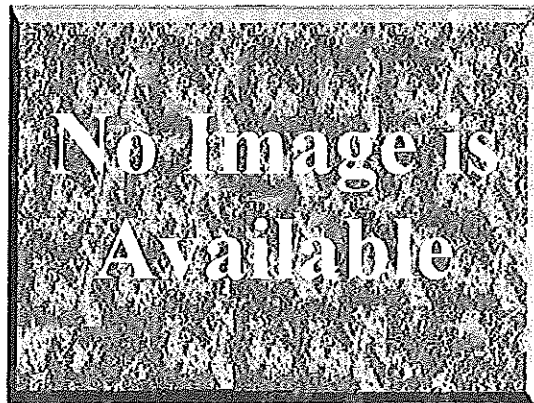
Current Assessed Valuation:

TAX ACCT NO.	1604	OWNER OF RECORD AS OF APRIL 2011
LAND VALUE	\$26,600.00	GAN RONALD L &
BUILDING VALUE	\$0.00	STEPHANIE A EVANS JTS
NET TAXABLE - REAL ESTATE	\$26,600.00	4646 N HERMITAGE
TAX AMOUNT	\$486.26	CHICAGO IL 60640

Any information concerning tax payments should be directed to the Treasury office at 874-8490 or [e-mailed](#).



Best viewed at 800x600, with Internet Explorer



[View Map](#)

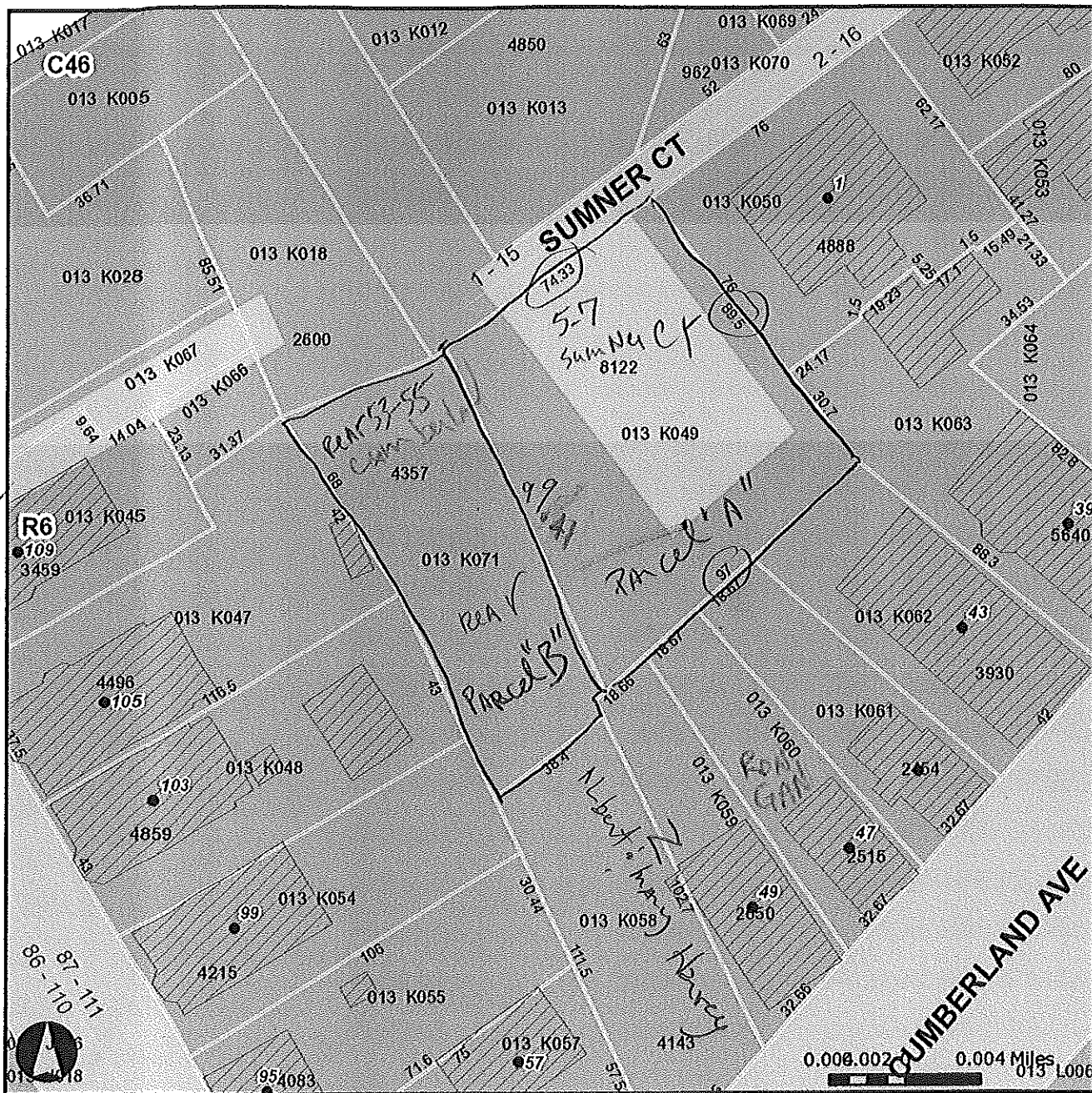
Sales Information:

Sale Date	Type	Price	Book/Page
9/10/2007	LAND + BUILDING	\$0.00	25457/131
7/1/2003	LAND	\$20,000.00	19681/46
10/11/2001	LAND	\$20,000.00	16831/3

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North
of

Map



Sheridan St

Interstate <input type="checkbox"/>	Stream Overlay Zone <input checked="" type="checkbox"/> Stream_protection	Zoning (continued) <input type="checkbox"/> R1 Residential	Zoning (continued) <input type="checkbox"/> C23	Ocean <input type="checkbox"/>
Streets <input type="checkbox"/>	Island Zoning <input type="checkbox"/> C43	<input type="checkbox"/> R2 Residential	<input type="checkbox"/> C24	
Buildings <input checked="" type="checkbox"/> Building <input checked="" type="checkbox"/> Out Building	<input type="checkbox"/> I-B	<input type="checkbox"/> R3 Residential	<input type="checkbox"/> C25	
Parcels <input type="checkbox"/>	<input type="checkbox"/> I-TS	<input type="checkbox"/> R4 Residential	<input type="checkbox"/> C26	
	<input type="checkbox"/> I-R1	<input type="checkbox"/> R5 Residential	<input type="checkbox"/> C27	
	<input type="checkbox"/> I-R2	<input checked="" type="checkbox"/> R6 Residential	<input type="checkbox"/> C28	
		<input type="checkbox"/> ROS Recreation	<input type="checkbox"/> C29	

I. **BASIC DEFINITION:** "Subdivision" means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. Also, the division of certain buildings into 3 or more dwelling units within any 5 year period beginning September 23, 1988, and the construction or placement of 3 or more dwelling units on a single parcel of land within any 5 year period beginning June 29, 1989. § 4401(4). See also Section II(B), Subdivision of Dwelling Units.

A. **What is a "division"?** A lot or dwelling unit created by "sale, lease, development, buildings or otherwise". § 4401(4).

1. Original 1971 definition was "the division of a tract or parcel of land into 3 or more lots for the purpose of sale, development or building". See P.L. 1971, Chpt. 454, effective September 23, 1971. Current language adopted by P.L. 1973, Chpt. 465, effective October 3, 1973.

2. **"Sale":** Conveyance of property interest.

a. Town of Arundel v. Swain, 374 A.2d 317 (Me. 1977), held that creation of campground, with "campsites" rented to campers for "a period of one day, several days or a longer period" did not create a subdivision.

b. However, Planning Board of Town of Naples v. Michaud, 444 A.2d 40 (Me. 1982), held that fee simple sale of "campsites", even without fixed boundaries, did create a subdivision.

3. **"Lease":** Divisions created by any verbal or written tenancy.

4. **"Buildings":** Placing or constructing 3 or more buildings on a single site. See also Section II(C) below.

5. **"Development or Otherwise":** Other transfers that meet Naples v. Michaud standards. A Mortgage Deed of a portion of a parcel does create a "lot" for subdivision purposes. See Orrington v. Pease 660 A. 2d 919 (Me. 1995).

B. **What is a "tract or parcel of land"?** "All contiguous land in the same ownership", provided that parcels divided by public or private road, which is not created by the subdivider, are separate tracts of land. § 4401(6)

1. First defined by P.L. 1975, Chpt. 475, effective October 1, 1975.

2. "In the same ownership" probably means title held in same name(s) with same estate. See 1995 Orrington v. Pease Law Court decision and other cases discussed in Section III(A)(2) below.

- Sec. 14-417. Reserved.
Sec. 14-418. Reserved.
Sec. 14-419. Reserved.
Sec. 14-420. Reserved.

DIVISION 25. SPACE AND BULK REGULATIONS AND EXCEPTIONS

Sec. 14-421. Generally.

The requirements of this article shall be subject to the space and bulk regulations and exceptions of this division.
(Code 1968, § 602.19.A)

Sec. 14-422. Reduction of lot area prohibited.

No lot shall be so reduced that yards, lot width, lot frontage, lot area, area per dwelling unit, and space for off-street parking and/or off-street loading shall be less than the minimum required under this article.
(Code 1968, § 602.19.A)

Sec. 14-423. Reserved.

*Editor's Note: Pursuant to Council Order No. 240-09/10, passed on June 21, 2010, Section 14-423 (Joint occupancy) was repealed in its entirety.

Sec. 14-424. Required open space.

No part of a yard or other open space required about any building under this article shall be included as a part of a yard or other open space required for another building.
(Code 1968, § 602.19.C)

Sec. 14-425. Projections in required yard areas.

Any yard may be occupied by a one-story entrance porch not enclosed, with or without a roof, if the area of the porch does not exceed fifty (50) square feet nor the projection from the building exceed six (6) feet. A basement bulkhead of similar size, but not more than twenty four (24) inches in height, is also permitted. A cornice eave, sill, canopy, chimney, or other similar architectural feature, but not including a bay window, may project into any

194. 280 Fore Street -029-K-005 – B-3 Zone with PAD Encouragement & Historic Overlay, Bangor Saving Bldg. for Zoning Info Inc., in OK – a general letter with certificates of occupancy. – \$150 pd – 1/23/07



195. 120 Seashore Ave & Maple, P.I. – 85-O-1 & 39 and 85-O-36, 37, 38 – IR-2 Zone with a Shoreland Overlay Zone, Scoblionko, owners, for Richard Golden of Clifford & Golden in Lisbon Falls and David Lourie – to determine whether an inadvertent recording of a deed by David Lourie created a merger of lots. Results were that it did not because of *Walter v. Grover* where basically the intent was NOT to record the deed evidenced by the divorce decree and the corrective deed recording when the error was realized. \$150 pd. – 2/8/07

196. 120 Web Street & Terrace Ave – 262-C-14 & 28 thru 38 – R-3 Zone – Kelly & Anthony Zarate, owners. To determine whether a division of land into two lots meets the underlying zoning – both lots would meet the R-3 zone – needs to bring the street (Webb) up to City standards (14-403) – \$150 pd – 3/9/07

197. Tamaralane Apts – 988 Washington Avenue – 161-B-25 & 162 -B-10 – R-3 Prime zone, R-5 secondary zone, for Nichole D. Mitchell from Pierce Atwood – needed just a basic letter concerning the approved use and copies of C of O's. – \$150 pd – 3/12/07

198. 745 Forest Ave – 130-K-001 – B-2 Zone – Steve Mardigan, owner. Bob Greenlaw of Back Bay Boundary wanted a determination of how to determine the front of a lot for the purposes of a front setback. He declared that the front for this building should be determined by the location of the entry door which is on the side of the building and not abutting the street. Zoning states otherwise. My determination states that the front of the building is determined by the orientation of the building to the street. Bob G. will probably be appealing the determination. \$150 pd – finalized 3/13/07 after note. Bob Greenlaw appealed this interpretation before the ZBA on 4/19/07. My interpretation was affirmed by the ZBA and his request to overturn my determination letter was denied.

199. 456-458 Fore St, cor 10-20 Union St – 38-F-9 – B-3 Zone with Historic Overlay, The Portland Harbor Hotel. For Brandy McGraw with the Zoning Analysis

CORRECTIVE DEED

THAT **DAVID P. SCOBLIONKO**, of Pennsylvania, for consideration, GRANTS to **JAN E. SCOBLIONKO**, of Pennsylvania, with WARRANTY COVENANTS, a one-half (1/2) interest in and to the following described lots or parcels of land located in the City of Portland, County of Cumberland and State of Maine, being more particularly described as follows:

Three certain lots or parcels of land with the buildings thereon situated on Peaks Island, in the City of Portland, County of Cumberland and State of Maine, and being lots 94, 95 and 96, as shown on Plan of Henry M. Brackett Estate, recorded in the Cumberland County Registry of Deeds in Plan Book 9, Page 57, to which plan reference is hereby made for a more particular description.

The purpose of this deed is to correct an earlier deed from Jan E. Scoblionko to David P. Scoblionko dated May 4, 2006 and recorded in the Cumberland County Registry of Deeds at Book 30783, Page 321. The previous Deed was not to be recorded until after the adjacent land owned by David P. Scoblionko was sold or conveyed pursuant to the terms of a Property Settlement Agreement between the parties. The parties did not intend to transfer title of the above-described parcel until after the aforesaid conveyance of the abutting parcel. The Deed was mistakenly recorded by the parties' agent.

I have hereunto set my hand and seal this 29th day of August, 2006.

David P. Scoblionko

David P. Scoblionko

David P. Scoblionko

David P. Scoblionko

STATE OF PENNSYLVANIA
COUNTY OF LEHIGH

August 29, 2006

Personally appeared the above-named **David P. Scoblionko** and acknowledged the foregoing instrument to be his free act and deed, before me,

Janet Lichty

Attorney at Law/Notary Public
Janet Lichty

Typed/Printed Name

Received
Recorded Register of Deeds
Sep 18, 2006 01:23:38P
Cumberland County
John S O'Brien

NOTARIAL SEAL
JANET LICHTY
Notary Public
HANOVER TWP, NORTHAMPTON COUNTY
My Commission Expires Aug 27, 2007

CORRECTIVE DEED

THAT **DAVID P. SCOBLIONKO**, of Pennsylvania, for consideration, GRANTS to **JAN E. SCOBLIONKO**, of Pennsylvania, with WARRANTY COVENANTS, a one-half (1/2) interest in and to the following described lots or parcels of land located in the City of Portland, County of Cumberland and State of Maine, being more particularly described as follows:

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