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Planning & Urban Development Department

Jeff Levine, AICP, Director

Planning Division

Alexander Jaegerman, FAICP, Director

May 8, 2013

Tom B. Federle
Federle/Mahoney
254 Commercial Street
Portland, Maine, 04101

Dear Tom,

On April 23, 2013, you provided a written request for a ruling on applicability of the City's Housing Preservation and Replacement ordinance (City Land Use Code, Division 29), namely the replacement fee, as applied to 160 Newbury Street. Your request asks that the City consider exempting the three residential units of record at 160 Newbury Street from the housing replacement fee due to their long-standing vacancy as well as the uninhabitable condition of the building. If the Housing Preservation and Replacement ordinance is found to be applicable, your request goes on to ask whether an exemption of the replacement fee is possible as provided under the ordinance section 14-483 (d)(1), *Property which has been ordered demolished by the City*.

City Planning and Legal staff met to discuss your request and found that the Housing Preservation and Replacement ordinance applies to 160 Newbury Street. Our finding centers on the fact that City building records indicate that 3 legal residential units existed at the subject property as of July 1, 2002 – the threshold established in the ordinance. While your letter states that the units have been vacant since "sometime prior to 2006," this information is not sufficient to exempt the units from the aforementioned ordinance requirement. If you have credible information documenting abandonment of the residential use prior to the date provided in the ordinance (i.e. July 1, 2002) we will of course revisit this finding.

Next, regarding the condemnation exemption contained in section 14-483(d)(1), we also find inapplicable for the following reasons.

Firstly, the ordinance states that the requirements of Division 29 shall not apply to "property which has been ordered demolished by the City, ..." At this time, no such action has been taken by the City to condemn the property pursuant to the "dangerous building" act (17 M.R.S.A. 2851.) A condemnation action requires City Council action and in order to apply this exemption such an action would need to have been ordered prior to the request for exemption. In addition to the procedural

question of timing, at a staff level we are uncomfortable suggesting use of this exemption, or initiating a condemnation process for the primary purpose of avoiding the housing replacement fee.

Secondly, the ordinance does not allow for exempting fees through use of the condemnation provision where "the deterioration was caused by neglect or lack of maintenance." While your client may have purchased the buildings in their deteriorated state, the ordinance does not distinguish between neglect by present or prior owners. If you can document a fire, storm or other specific and dated damaging event that prompted abandonment of the residential use and deterioration of the building, we can further discuss this finding.

These findings resulted from a thorough discussion of your request, the information provided, and review of the applicable regulations. As City staff we appreciate the complexity and difficulty redeveloping these properties, but the language of the ordinance does not provide the flexibility suggested by your request. As you continue to work with the properties along Hampshire and Newbury Streets, we will continue to be available to assist in any way possible within the limits of our ordinance. If you have any questions or would like to discuss further, please contact me at any time.

Best regards,

A handwritten signature in black ink, appearing to read "Bill Needelman". The signature is fluid and cursive, written over a light blue horizontal line.

Bill Needelman, AICP
Senior Planner

CC:

Jeff Levine, Planning and Urban Development Director
Alex, Jaegerman, Planning Division Director
Danielle West-Chuhta, Corporation Counsel
Barbara Barhydt, Development Review Services Manager