

**CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM
Planning Copy**

2005-0089

Application I. D. Number

4/22/2005

Application Date

Jordans Mixed Use Development

Project Name/Description

Thomas Niles, PME I Limited Partnership

Applicant

1140 Reservoir Avenue, Cranston, RI 02920

Applicant's Mailing Address

38 - 38 India Street, Portland, Maine

Address of Proposed Site

029 L001001

Assessor's Reference: Chart-Block-Lot

Consultant/Agent

Applicant Ph: (401) 946-4600 Applicant Fax: (401) 943-6320

Applicant or Agent Daytime Telephone, Fax

Proposed Development (check all that apply): New Building Building Addition Change Of Use Residential Office Retail
 Manufacturing Warehouse/Distribution Parking Lot Other (specify) _____

38,000 s.f.

Proposed Building square Feet or # of Units

Acreage of Site

B3

Zoning

Check Review Required:

- | | | | |
|--|--|--|--|
| <input checked="" type="checkbox"/> Site Plan
(major/minor) | <input checked="" type="checkbox"/> Subdivision
of lots 84 | <input type="checkbox"/> PAD Review | <input type="checkbox"/> 14-403 Streets Review |
| <input type="checkbox"/> Flood Hazard | <input type="checkbox"/> Shoreland | <input type="checkbox"/> Historic Preservation | <input type="checkbox"/> DEP Local Certification |
| <input type="checkbox"/> Zoning Conditional
Use (ZBA/PB) | <input type="checkbox"/> Zoning Variance | <input type="checkbox"/> Other _____ | |

Fees Paid: Site Pla **\$3,000.00** Subdivision _____ Engineer Review _____ Date **4/22/2005**

Planning Approval Status:

Reviewer _____

- Approved Approved w/Conditions
See Attached Denied

Approval Date _____ Approval Expiration _____ Extension to _____ Additional Sheets
Attached

OK to Issue Building Permit _____
signature date

Performance Guarantee Required* Not Required

* No building permit may be issued until a performance guarantee has been submitted as indicated below

- | | | | |
|---|----------------|--|-----------------|
| <input type="checkbox"/> Performance Guarantee Accepted | _____ | _____ | _____ |
| | date | amount | expiration date |
| <input type="checkbox"/> Inspection Fee Paid | _____ | _____ | |
| | date | amount | |
| <input type="checkbox"/> Building Permit Issue | _____ | | |
| | date | | |
| <input type="checkbox"/> Performance Guarantee Reduced | _____ | _____ | _____ |
| | date | remaining balance | signature |
| <input type="checkbox"/> Temporary Certificate of Occupancy | _____ | <input type="checkbox"/> Conditions (See Attached) | _____ |
| | date | | expiration date |
| <input type="checkbox"/> Final Inspection | _____ | _____ | |
| | date | signature | |
| <input type="checkbox"/> Certificate Of Occupancy | _____ | | |
| | date | | |
| <input type="checkbox"/> Performance Guarantee Released | _____ | _____ | |
| | date | signature | |
| <input type="checkbox"/> Defect Guarantee Submitted | _____ | _____ | _____ |
| | submitted date | amount | expiration date |
| <input type="checkbox"/> Defect Guarantee Released | _____ | _____ | |
| | date | signature | |

participation in major long-term roadway projects. Of these, roadway and traffic improvements have the greatest potential cost for both the City and private developers.

The Eastern Waterfront Master Plan and the draft report of the Peninsula Traffic Study both identify other traffic improvements for both the Eastern Waterfront and along the Franklin Arterial corridor. It has been the expectation of recent planning for the area that traffic improvements will be implemented in conjunction with new development so as to ensure the free flow of traffic on Franklin Arterial and discourage increased traffic through abutting residential areas. Obviously, Franklin Arterial and the India Street district will be subject to new traffic generated by the project and the Board may want to consider how the proposed conditional rezoning agreement may want to address contributions toward anticipated traffic improvements. Below are two excerpted tables of improvement from the final draft *Peninsula Traffic Plan* report. These tables outline a list of anticipated traffic improvements for the Eastern Waterfront (Table 6.1) and Franklin Arterial (Table 8.1).

Conditional Rezoning Text:

The following tables referenced above are included to give the Board an idea of the range of traffic improvements contemplated for the area. These tables do not include streetscape amenities, potential pedestrian ways, or other public projects that may be linked to the subject proposal. How these improvements relate to the subject project will be revealed *later* through the zoning review, public input and site/traffic permitting process; but if the Board feels that the applicants should contribute toward these improvements, language should be inserted *now* into the conditional rezoning text pursuant to this end.

Staff would like to note that throughout the Eastern Waterfront and Peninsula Traffic Study planning processes, there have been consistent public commitments to keep traffic generated by new development out of residential neighborhoods. As this development occurs, the City should be diligent if finding funding necessary to implement the projects to fulfill this commitment.

Excerpted Tables of Improvements, Peninsula Traffic Plan, July 2005

Table 6.1 **Eastern Waterfront Traffic Improvements**

Improvements required by 2025 to Accommodate Forecast Volumes (projects shown in **Bold** are required due to anticipated development in the Eastern Waterfront district.)

Franklin Street Arterial at Marginal Way

- Provision of 100-foot northbound right turn lane for Franklin traffic
- Provision of dual left turn lanes for eastbound Marginal Way traffic
- Provision of dual left turn lanes for northbound Franklin traffic
- Provision of 250-foot eastbound right turn lane for eastbound Marginal Way traffic
- Provision of an additional northbound and southbound through lane for Franklin traffic
- Conversion of westbound approach of Marginal Way to right turns only

Franklin Street Arterial at Somerset and Fox Streets

- Provision of dual eastbound left turn lanes for Somerset traffic
- Provision of 400-foot westbound right turn lane for Fox street traffic
- Provision of 200-foot northbound and southbound right turn lanes for Franklin traffic
- Provision of an additional northbound and southbound through lane for Franklin traffic

Cumberland Avenue at Franklin Street Arterial

- Provide dual left turn lanes, one through lane for eastbound Cumberland traffic (short term)
- Grade separation of Franklin and Cumberland (long term)

Congress Street at Franklin Street Arterial

- Provide dual left turn lane, one through lane for eastbound Congress traffic (short term)
- Grade separation of Franklin and Congress (long term)

Franklin Street Arterial at Middle Street

- **Construct 200-foot southbound left turn lane for Franklin traffic**

Commercial Street at Franklin Street Arterial

- Restripe westbound Commercial Street to create 100' left turn lane, through/right turn lane
- **Addition of exclusive pedestrian phase to accommodate cruise ship activity**

Park Street at Commercial Street

- Installation of traffic signal

Washington Avenue at Cumberland Avenue

- Extend eastbound two-lane Cumberland approach to 150 feet

Commercial Street from Center Street to Casco Bay Bridge

- Restripe Commercial Street for two-way center left-turn lane
- Provide dedicated left turn lanes for Commercial traffic onto Park and High Streets
- Extend Commercial Street into Eastern Waterfront

Washington Avenue at Fox Street

- Construct 50-foot left turn lanes for Washington Street at Fox and Walnut

India Street at Fore Street

- Installation of traffic signal
- Provision of 50-foot southbound left turn lane for India traffic (would require removal of on-street parking)

India Street at Middle Street

- Installation of traffic signal

Mountfort Street at Fore Street

- Provision of separate southbound left turn/through and right turn lanes

India Street at Commercial Street

- Provision of 50-foot southbound left turn lane for India traffic
- Provision of 150-foot eastbound left turn lane for Commercial traffic

Hancock Street

- Extend Hancock Street to Commercial Street Extension

Mountfort Street

- Extension of Mountfort Street to Commercial Street Extension

To-Be-Named Street (East of proposed Commercial Street Extension)

- Creation of new street from end of Commercial Street Extension to Fore Street

Figure 8.1**Recommended Improvements for Franklin Street Arterial****Franklin Street Arterial (FSA) at I-295**

- Signalization of I-295 northbound off ramp at FSA
- Provision of additional lane for traffic on I-295 northbound off ramp
- Provision of additional lane for traffic on I-295 southbound on ramp
- Provision of three inbound FSA lanes for 500 feet along I-295 southbound off ramp

Franklin Street Arterial (FSA) at Marginal Way

- Provision of inbound and outbound third through lanes for FSA
- Provision of outbound right turn lane for FSA
- Provision of dual left turn lanes for outbound FSA turning onto Marginal Way
- Provision of dual left turn lanes for Marginal Way to I-295
- Provision of right turn lane for Marginal Way to FSA inbound
- Relocate east leg of Marginal Way to current Fox Street location;

former Marginal access restricted to right turns only.

Franklin Street Arterial (FSA) at Somerset and Fox Street

- Provision of inbound and outbound third through lanes for FSA
- Provision of dual left turn lanes for Somerset Street traffic turning onto FSA
- Provision of right turn lane for Somerset Street traffic turning onto FSA
- Provision of exclusive left, through and right turn lanes for Fox Street
- Provision of right turn lanes for inbound and outbound FSA to Somerset, Fox streets
- Provision of dual left turn lanes for inbound FSA to Fox Street

Site Development

Based on the proposed conditional rezoning, the building program will consist of approximately 220 hotel rooms, 100 to 110 residential condominiums (depending on final floor plan layout), 19 hotel/condominium units and approximately 20,000 sq. ft. of retail/commercial space including the hotel health club and spa space which is intended as facility for hotel guests, condominium owners and membership from the public. The condominium units will have access to hotel amenities, such as room service, use of the pool and the fitness center.

A traffic study has been completed and is included in this packet. The traffic study estimates that there will be a total of 175 PM peak hour trips. Traffic generated by the former Jordan Meats can be used as a "credit" when considering "net" new traffic. This former level of traffic is estimated at 50 PM peak hour trips leaving a net increase in new traffic of 125 trips, which will require a MDOT Traffic Movement Permit.

There is a High Crash Location identified at the intersection of Franklin Arterial and Middle Street. There were 26 accidents reported at this intersection, with 16 of those accidents being left turn collisions. The left turn collisions on north and southbound Franklin Arterial are likely the result of sight line problems that are exacerbated by the wide median and lack of head-to-head left turn lanes. The traffic study recommends that "dotted" pavement markings be used to guide both north and southbound left turns (to turn in front of each other) and possibly add a second stop bar at the end of the median to encourage drivers turning left to move into this position to aid sight lines and reduce crossing distance.

Off-Site Public Improvements

The subject project represents the first step in a historic transformation for Portland's eastern peninsula. The Westin Hotel and Residences development encompasses a full city block of 1.75 acres in the heart of Portland's urban core. The surrounding area is a transitional district that links the Old Port retail/office area with the India Street neighborhood. As one moves east from the subject site, the area's character transitions again from the mixed use India Street area to the under-developed Eastern Waterfront district. As has been widely publicized, the City is poised to experience significant redevelopment in the Eastern Waterfront that, when combined with the proposed Westin project, will place significant demands on public infrastructure on the eastern portion of Portland's peninsula. As new development occurs, it will be incumbent on the development review process to ensure that the public infrastructure of the area transitions along with and at a quality level equal to the private development.

A summary of the architectural program and commentary by Urban Designer Carrie Marsh is attached. At the previous workshop on June 14 (see also workshop memo, attached), the justification and public benefit of the proposed conditional rezoning was presented. The following excerpt from that memo summarizes the key public attributes desired from the increase in height being considered:

Building Design

At the time of the writing of this memo, staff has not had a chance to review the Conditional Rezoning language. Comments from staff will be available at the workshop meeting.

6. 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 portions shall be deemed as a separate, distinct and independent provision and such determinations shall not affect the validity of the remaining portions thereof.

5. The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit **PME**, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit and be enforceable by the **CITY**, by and through its duly authorized representatives.

4. Any change in the fee ownership of the Property shall be brought to the Planning Board for its review and approval, but this requirement shall not apply to (a) the conveyance of the fee interest in the Property from Zenco Industries, Inc. to **PME**; (b) the granting of mortgages by **PME** or any successor in interest, or to the enforcement by mortgages of their rights under such mortgages, or to the assignment or conveyance of the ownership to an entity in which **PME** and/or any of its general or limited partners holds at least a 20% interest; (c) the conveyance of any condominium units or to the granting of any mortgages upon individual condominium units; or (d) to the leasing or subleasing of any space within the building or on the Property. The restrictions on transfer contained in this paragraph 6 shall expire upon the completion of the Project as evidenced by the issuance of certificates of occupancy or similar approvals from the **CITY** for all portions of the Project.

b. add mid-block pedestrian access through the building by creating an entrance on each of Middle Street and Fore Street.

a. include commercial/retail space on the ground level along India Street and Middle Street; and

3. **PME** shall develop the Project to accommodate the **CITY**'s requests as follows:

“The public benefits of the proposed rezoning would include increased block permeability and transparency; and variation in building massing and articulation. Further, increased height would allow for more rooms above and thus open the first floor to opportunities for retail uses, particularly along India Street, which would complement other development in the area.”

“A benefits of the rezoning could potentially be that a semi-permeable corridor be inserted within the block along the projection of Hampshire Street, allowing public access through the lobby area, and possibly a high, semi-public glazed lobby extending all the way to Fore Street, that would allow some transparency through the block.”

The current proposal is very close to the massing model presented at the previous workshop. The addition of retail has been accomplished along India Street. The height requested along India Street at 88 feet, is considerably higher than the prevailing scale, and is two stories higher than the proposed 65 foot building across the street associated with the Riverwalk project. The taller building components range from 88 feet tall on India, to 78 feet along Middle, to 98 feet on Franklin. Franklin is such a wide street adjacent to large-scale downtown development that the 98 foot height is readily accommodated. The variations of 10 and 20 feet between adjacent wings provide some relief to the massing, but at this scale, the contrast is relatively slight. One wonders if some of the India Street program could be relocated to Franklin Street, thereby reducing the scale on India and increasing the variation in building form.

The permeability feature has been provided by a two story glazed lobby area running from the porte cochere to Fore Street along the axis of Hampshire Street. This is enhanced from the one story passage proposed by the applicant last week, in response to staff comments. The question for consideration is whether this glazed lobby will provide the transparency and public access intended. One aspect that is somewhat disappointing is the need to transition the Fore Street grade via a porch and stair perpendicular to the passage axis. If the stair could have been sited at the end of the passage, it would have created a more inviting and prominent effect. As designed, the pedestrian on Fore Street is faced with a wall at the end of the passageway, not a view up the passageway. The passage is only apparent after climbing the stairs to the porch. These are perhaps unavoidable design features, given the program and site grading. (There is a ramp to underground parking to be accommodated beneath the through block passage.)

The Board is invited to engage with staff and the applicant and their architects to further understand the trade-offs embodied in the plan. While the design has evolved in a positive direction, and the justifications for the design choices are reasonable, the public objectives have not been fully realized. The City does stand to gain, however, a substantial project that achieves many of the design objectives identified.

Attachments:

1. June 14, 2005 Planning Board Memo
2. Urban Designer's Memo dated July 22, 2005
3. Applicant's Submittal
4. Shadow Study
5. Site Plans
6. Elevations

Lori Gramlich, MSW
265 St. Joseph Street Portland, ME 04103 (207) 878 – 1317 / (207) 232 – 1067
Lgramli1@maine.rr.com

July 22, 2005

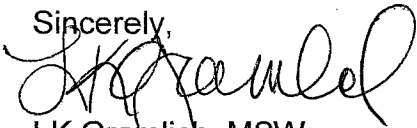
Dear Neighbor,

Please join us for a Neighborhood Meeting to discuss the PME, I Limited Partner proposal to develop a Westin Hotel / Condominium project at the Jordon Meat site located at 38 India Street in Portland. We will specifically be discussing our plans for conditional re-zoning of the site.

Meeting Location: Adams School, Moody Street, Portland
Meeting Date: Monday August 1st, 2005
Meeting Time: 6:30 pm – 8:00 PM

If you have any questions, please feel free to contact me at 878 – 1317.

Sincerely,



LK Gramlich, MSW
Consultant- The Procaccianti Group

THE HOME STAR GROUP[®]

Complete Property Analysis Services

August 1st, 2005

Ms. Kandi Talbot
Portland Planning Division
City of Portland
389 Congress
Portland, Maine 04101

Dear Ms. Talbot,

My name is Ronald Gan and I am one of the owners of the property at 44 Federal Street. My partner and I recently went through the planning process and are about to break ground for 7 townhome units at that location.

I am writing to you regarding the proposed conditional re-zone of the Jordan Meats site. As a developer I walk a thin line between the concepts of free enterprise and responsible development.

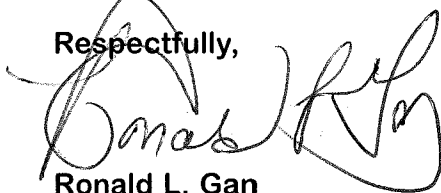
During our approval process, the height issues for the entire India Street neighborhood were on the front burner and I brought to the Planning Board photos of what the neighborhood would look like if 6 story buildings were allowed to be built. In the end, many of my neighbors were heard at the City Council and the height limits were put back for sites above Middle Street.

What drives these developments is the underlying land cost. It is the opinion of many of us who are developing in Portland, that both this site and the Village Cafe are aberrations in the market place and that they are not grounded in reality as to the real Portland market.

I trust that the Westin organization has done their research regarding hotel rooms, but as for condos, the market is much thinner than people realize and that historically there have been 300-400 units sold a year over the last 5 years. There are plans to add an additional 200-300 new units on top of the current resale pool. A partially sold building of any height would be a disaster for the neighborhood but taking the charm out of the neighborhood would be a much worse catastrophe.

I am not opposed to this project, but I believe that the request for additional height just because they cannot make economic sense at the current zoning is rewarding people for bad business decisions.

Respectfully,



Ronald L. Gan

Table of Contents

1. Comment Response Letter

Attachments

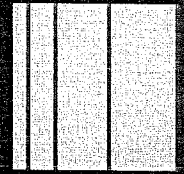
Attachment 1: Sewer Capacity Letter

Attachment 2: Environmental Conditions Summary

Attachment 3: Parking Deck Plans

Attachment 4: Site Signage

Attachment 5: Supplemental Drainage Calculations



December 6, 2005
05090

Ms. Kandi Talbot
City of Portland Planning Department
389 Congress Street
Portland, ME 04101

Site/Subdivision Public Hearing Plan Submission
Westin Hotel and Residences, 38 India Street
ID #2005-0089, CBL #029-L-001

Dear Kandi:

On behalf of PME I Limited Partnership, I am pleased to submit the enclosed information in response to review comments received from Staff and the Planning Board concerning the Westin Hotel and Residences at 38 India Street in Portland. The project was last presented to the Planning Board at a Workshop meeting on November 8, 2005. Subsequent to that meeting you provided me a letter dated November 9, 2005 summarizing the outstanding review items to be resolved prior to the projects public hearing. This letter summarizes our response to each of those items with supporting documentation attached.

This letter responds to the following sets of review comments. The text of each comment is provided for reference followed by our response. Supporting documentation is attached as indicated.

- Planning Staff (Ms. Talbot) Review Comments Dated November 9, 2005
- Public Works Comments- Sewer Department Comments of December 2, 2005
- Development Review Coordinator Mr. Bushey's Comments Dated November 9, 2005 ("Mr. Bushey's Comments")
- Public Works Comments- City Engineer November 18, 2005

Planning Staff (Ms. Talbot) Review Comments Dated November 9, 2005

1. *A sewer capacity letter shall be submitted from the Portland Sewer Division.*

A meeting was held with Sebago Technics and representatives of the Public Works Department Sewer Division on Friday December 2, 2005 to clarify details of the sewer connection design and to identify additional design flow data to be provided. Based on our meeting four (4) review comments were generated. These are addressed in detail below under the heading "Public Works- Sewer Department Comments of December 2, 2005". A revised set of plans and letter addressing those comments are being submitted directly to Mr. Michael Moore to address these items. This letter is included in Attachment 1.

2. *Public Works is currently reviewing the plans and the Development Review Coordinator's plans and comments shall be sent to you as soon as I have received them.*

We received comments from the Public Works Department by e-mail on November 18, 2005. Those comments are addressed under the heading "Public Works Comments- City Engineer November 18, 2005" below.

3. *The plans shall address the Development Review Coordinator's comments dated November 8, 2005.*

The Development Review Coordinator's comments are addressed below under the heading "Development Review Coordinator Review Comments Dated November 9, 2005 (Mr. Bushey's Comments)"

4. *The applicant shall address the Traffic Engineer's comments dated November 8, 2005. The Traffic Engineer is also currently reviewing the Parking Analysis Report and as soon as comments are available, I will forward them onto you.*

Responses to Tom Errico's comments of November 8, 2005 were submitted to your office and to Mr. Errico on November 22, 2005. A meeting was held with Planning Staff on Wednesday November 30, 2005 to review the proposed traffic improvement alternatives in anticipation of our presentation to the planning Board on December 6, 2005.

The enclosed site plans have been revised to reflect a proposed 200 ft. left turn lane from southbound Franklin Arterial to eastbound Middle Street as discussed. The improvements include reducing the curb radius at the southwest corner of Franklin Arterial and Middle Street and adding a curb extension at the intersection of Middle Street and India Street. The plans also indicate proposed pedestrian re-striping in the vicinity of the project.

We anticipate final traffic review comments and/or proposed conditions of approval following our planning Board Meeting on December 6, 2005.

5. *Condominium Documents shall be submitted for review and approval by Corporation Counsel. As the Board stated, this can be a condition of approval, but it would be beneficial to get them prior to public hearing, so that Corporation Counsel can review them.*

Nine (9) copies of the draft condominium documents were submitted to your office under separate cover by Preti, Flaherty, Beliveau, Pachios and Haley, LLP on November 22, 2005.

6. *The City Arborist is currently reviewing the landscaping plan and comments will be forwarded to you accordingly.*

Noted. No comments have been received to date.

7. *John Peverada, the City's Parking Manager is currently reviewing the plans and if any concerns are raised, his comments will be forwarded to you as soon as possible.*

Noted. Mr. Peverada attended our meeting on November 30, 2005 and we understand that his comments are incorporated in Mr. Errico's parking review memorandum dated December 2, 2005 and included in the Planning Board's packages for our December 6, 2005 workshop meeting.

8. *The Planning Board requested a Parking Management Plan for large-scale events at the hotel.*

The parking management plan was submitted under separate cover on December 2, 2005.

9. *The elevation drawings shall be labeled to discuss materials detail.*

The elevation drawings have been revised as requested. Revised architectural plans, and a material sample board will be provided under separate cover along with a letter addressing the review comments of the City's Urban Designer (Carrie Marsh).

10. *The Planning Board raised the question as to whether it would be possible to incorporate 100% of retail space on the floor level of India Street.*

The proposed hotel has very specific business requirements to provide meeting rooms on the same floor as the proposed ballroom. This program need, combined with the difficulty presented by the existing street grades along India Street makes adding additional retail space, beyond that required by the project's Conditional Rezoning agreement, impractical.

As currently proposed, the street level façade along India Street is more than 50% retail storefront, with retail entrances at the corner of Middle Street and Fore Street. The existing street grades and their relationship to the building floor elevations makes creating pedestrian accessible entrances at the center of the India Street façade difficult. It is the applicant's opinion that such retail space, with its difficult access, would not be a viable commercial space and would significantly impact the proposed hotel's core business operations.

11. *The developer shall identify the nearest Metro Bus Stop.*

The two nearest Metro Bus Stop locations are at the Casco Bay Ferry Terminal, at the intersection of Franklin Arterial and Commercial Street, approximately 675 feet walking distance from the site; and at the Intersection of India Street and Congress Street, approximately 600 feet walking distance from the Site.

12. *A neighborhood meeting shall be held two weeks prior to a public hearing.*

A neighborhood meeting was held on November 9th, 2005 at the St. Lawrence Community Art Center at 76 Congress Street. A copy of the meeting transcript and required certification was submitted to your office under separate cover on December 2, 2005.

Public Works – Sewer Department Comments of December 2, 2005

1. *Per our telephone call, and meeting, this morning, please send a C.A.D. drawing of the proposed Westin Hotel and residences, to Jessica Hanscom JGH@portlandmaine.gov (207-874-8849), so that she can assign an official address, for 911 purposes, etc. to your proposed development. Check with Jessica, on which plan sheet she wants.*

A current Site Plan has been delivered to Ms. Hanscom in AutoCAD format as requested. The project site plans will be revised to reflect the correct address when we have received that information.

2. *Please add one GPD/parking space to your proposed design wastewater flow calculations, as well as boosting the Three Meal Restaurant GPD, from 30/seat, to 45; and the Lounge GPD, from 10/seat, to 20, for this development.*

One (1) gallon per day per parking space has been added to the design flow calculations as requested. A copy of the revised sewer capacity calculations and request letter is attached. (Attachment 1). This letter is also addressed to Mr. Brad Rowland of the Public Works Department in order to provide him with the area of existing offsite development that is removed from the City's combined sewer system and drains to separated storm sewers as a result of the project improvements. See response to "Mr. Bushey's Comments", Item 2 below.

3. *Please contact the Portland Water District, for Jordan Meats' "existing" wastewater flows for the last full year of production, before they left the site. This can be subtracted from the proposed design wastewater flows. Show your homework.*

We have obtained Water District records as requested. The existing wastewater flows are now subtracted from the proposed wastewater flows in the calculations as requested (See Attachment 1)

4. *On the revised plan sheet, to be resubmitted, please show the "control manhole" dedicated to receiving the industrial process wastewater flows (separate from the domestic wastewater flows). Contact Steve Harris SKH@portlandmaine.gov regarding the "control manhole." Be sure to see that the manhole cover has a 7/8" diameter pick hole drilled four inches, from the outside edge of the manhole cover (see attached pdf).*

We have revised the project's Grading and Utility Plan as requested.

**Development Review Coordinator Review Comments Dated November 9, 2005
(Mr. Bushey's Comments)**

1. *The proposed project involves the demolition of the former Jordan Foods facility off Fore Street. It might be beneficial for the applicant to provide information pertaining to any environmental issues related to the demolition activities as well as a description of these activities. We suggest, for example, that all the existing utility services such as the water and sewers be removed entirely out to the main lines rather than abandoning in place.*

A Site Demolition Plan detailing utility removals in the vicinity of the site is attached. Existing utility services such as water and sewers will be removed entirely out to the main lines where practical. It is impractical to remove utilities completely to the main in locations where doing so risks damage to existing utilities to remain. Such locations are noted on the plans.

The Jordan's Meats building is known to contain hazardous building materials (asbestos) and universal waste (mercury containing light fixtures, thermostats etc) typical of a building constructed 1960's. The site includes an underground fuel storage tank. Other previously existing tanks were removed from the site in 1994. A summary of environmental site conditions is included in Attachment 2. Building and site abatement, based on the conclusions of the attached summary will be conducted by licensed contractors in accordance with local, state and federal regulations.

2. *The project will provide a substantial benefit to the City's combined sewer system, as approximately 7.6 acres of developed area will be removed from the combined sewer and connected directly to a stormwater overflow system. The Public Works Dept. may want to have the applicant provide an estimate on the volume of flow that will be removed from the combined flow stream that currently reaches the treatment plant or is discharged as a combined flow.*

We have discussed this issue with Mr. Brad Rowland, P.E. of the Portland Public Works Department. Mr. Rowland indicated that the only information required to document the impact of the combined sewer separation is a copy of the project's watershed plans that identify the drainage area tributary to the project site. A copy of these plans, along with a copy of our Sewer Capacity Request Letter (Attachment 1) has been forwarded to Mr. Rowland.

3. *The project involves a parking garage within the building. The submission materials however are unclear at this time as to the design of the garage facility. We assume additional design information will be forthcoming on this aspect of the project.*

Revised floor plans showing the parking garage layout are included in the architectural design plans and in Attachment 3.

4. *The stormwater report outlines the benefits of the drainage and combined system modifications. However, the report is not clear as to the measures that will be provided to meet the City's standards for water quality treatment of stormwater runoff. Further information should be provided as to the project's ability to meet these standards.*

Water quality treatment for stormwater runoff is not proposed. The development of the site will replace approximately 0.4 acres of existing parking and truck maneuver pavement with building rooftop and sidewalks significantly reducing pollutant loads in the stormwater runoff from the site. Only 6,500 square feet of pavement accessible to vehicles will remain on site after construction of the project.

All of the proposed parking structure is located below grade. It is not subject to rainfall and will not generate any significant volume of runoff. Therefore, the installation of a typical stormwater treatment unit is not a practical alternative.

The garage structure will include a limited number of floor drains for incidental runoff (wind driven rain, snow melt). By state plumbing code, these drains must be connected to the building sanitary sewer system. As indicated in our response to the Public Works comments dated December 2, 2005 above, the estimated sewer flows, prepared for the project's sewer capacity letter, have been adjusted to include 1 gallon per day of sanitary sewer flow per parking space to account for the floor drain connections. Please refer to our response to "Public Works – Sewer Department Comments of December 2, 2005", Item 2.

Site Layout Plan

1. *We recommend that the limits of work be identified on the drawing. This is especially important to understanding the work activities that are required within the public right-of-way. How much of the adjacent streets are expected to be reconstructed as part of the project?*

The limits of construction are indicated on the revised Grading and Utility Plan as requested.

2. *It may be beneficial to have a signage plan prepared that outlines how signage may be used to direct tenants/visitors to the various development access locations, parking etc. The signage plan could also include the regular traffic related signs at intersections, crosswalks etc.*

Site signage is limited to directional signs at the courtyard entrance to the hotel and building signage. Proposed signage details are included in Attachment 4. This material must be reviewed and approved by the Hotel operator. We request that the Planning Board consider a condition of approval requiring the applicant to submit a Building and Site Signage Plan for approval of the Planning Authority.

3. *The location of all parking on both sides of all the surrounding streets should be presented to allow the parking division the opportunity to review conditions on a broader scale. What restrictions, if any will be placed on the parking within the street, i.e. two hour limits etc?*

The existing parking spaces abutting the site are not striped. Existing parking meters are shown on the project's existing conditions plan. Proposed parking space striping along Fore Street and Middle Street is included on the site layout plan. The only alteration of on street parking is proposed by the creation of on street spaces along the proposed Fore Street sidewalk and the elimination of existing spaces to accommodate the courtyard entrance to the hotel. The result of these modifications is the creation of four (4) additional on street parking spaces abutting the site.

We are proposing that four (4) on-street spaces on Middle Street, approaching India Street be restricted to 15-minute maximum parking to allow their use for loading and unloading at the condominium entrance and to serve the proposed retail space associated with the project.

4. *The circulation pattern for the access drives off Middle Street should be clarified. Is this access intended on being one way or two-way flow?*

Arrows indicating the direction of traffic at the access drives off Middle Street have been added to the Site Plan (Sheet 4 of 10). Access to and from the auto courtyard will be one way. Drivers will enter the auto courtyard at the western access drive and exit at the eastern access drive. A signage plan is being prepared and is subject to review by the hotel operator. We request that the Planning Board consider a condition of approval requiring that the applicant submit a Building and Site Signage Plan for approval by the Planning Authority.

5. *The handicap ramps at all intersections should have a detectable surface in accordance with ADA requirements.*

The handicap ramp detail has been revised as requested.

6. *It may be beneficial to have some signage at the loading docks to minimize parking conflicts etc.*

Signs will be placed on the building directing traffic at the service and parking garage entrances and prohibiting parking in front of the loading docks on Fore Street. A signage plan is being prepared and is subject to review by the hotel operator. We request that the Planning Board consider a condition of approval requiring that the applicant submit a Building and Site Signage Plan for approval by the Planning Authority.

7. *The parallel parking space stall sizes on Fore Street should be reviewed and approved by the parking division.*

Noted. The parking spaces are shown as City standard 9' x 19' spaces

8. *Will the applicant be responsible for cross walk construction, striping etc. at the various intersections adjacent the site?*

The plans have been revised to clarify the cross walk and striping proposed by the applicant.

Grading and Utility Plan

1. *What will the disposition of the existing utility services be? We recommend removal out to the main line if possible.*

A Site Demolition Plan detailing utility removal in the vicinity of the site has been prepared and is attached. Existing utility services such as water and sewers will be removed entirely out to the main lines where practical. It is impractical to remove utilities completely to the main in some locations where doing so risks damage to existing utilities to remain. Such locations are noted on the plans.

2. *It appears that the overhead power along Middle Street will be slightly relocated, but remain overhead. Is the City interested in having this placed underground, if possible? It may not be possible due to the size of the circuits and cost.*

The applicant is working with CMP to evaluate alternatives to relocate the overhead power on Middle Street underground as this work would improve the value and appearance of the project site. However, this work is complicated by the need to obtain easements and agreements with offsite property owners to install pad mounted transformers and other equipment required for new underground services. The applicant is actively pursuing these arrangements and is working with CMP to define the scope of offsite utility work that would be required to accomplish this request.

We anticipate that the final resolution of the offsite utility design associated with relocating electrical services underground will extend beyond this project's December 13, 2005 Public Hearing. As such, we request that the Planning Board consider a condition of approval that the final offsite electrical utility design be submitted for approval by the Planning Authority when the offsite electrical design is completed.

3. *We recommend that a sewer manhole be installed for the new sewer out the rear of the Hugo's building since it appears that this main will service multiple tenant spaces in the building. The Public Works Dept. should also comment regarding the need for a manhole at the mainline in the street.*

A sewer manhole, SMH-3, has been added to the plans as requested.

4. *We recommend that a sewer manhole be considered for the 10" sewer exiting the Fore Street side of the new building.*

A sewer manhole, SMH-4, has been added to the plans as requested.

5. *Several existing storm drains in Fore Street are to be replaced at DMH-5. These lines should be removed and the connections into the existing sewer manhole sealed up.*

The existing storm drains and basins will be removed, and the connections to the existing sewer manhole will be sealed. This work is detailed on the Site Demolition Plan included in the project plan set.

6. *The engineer should provide additional information regarding the disposition of the existing sewer structures and pipes in Middle Street resulting from the onsite drainage modifications.*

The disposition of the sewer structures and pipes is detailed on the Site Demolition Plan included in the project plan set. It is impractical to remove utilities completely to the main in some locations were doing so risks damage to existing utilities to remain. Such locations are noted on the plans.

7. *There doesn't appear to be any new drainage collection measures in the area of the new Middle Street access drives. It appears that runoff will travel along the gutter line to an existing catch basin towards India Street. We recommend that a watershed map be*

provided to identify the travel paths for runoff along with information regarding the sizing of existing and any new structures.

A catch basin (CB-5) has been added on Middle Street, east of the access drives, to collect drainage from Middle Street and the new auto courtyard. The proposed CB-5 will collect runoff from approximately 19,500 sf, including the auto-courtyard as well as a small length of Middle Street. A watershed map identifying drainage areas and travel paths for the existing and proposed catch basins in Middle Street has been prepared and is attached. A HydroCAD model has also been prepared in order to confirm capacity of the existing and proposed storm drains. Hydrologic calculations are included in Attachment 5

8. *The plans do not provide any detail relating to the parking garage design and the measures for removing drainage from within the garage. The narrative discusses the use of foundation underdrains and at least the connections for these lines should be identified on the plans.*

A revised parking garage layout is provided on Sheets P1, P2 and P3 included in Attachment 3.

Landscape Plan

1. *We recommend that a structural soil mix be used for all the plantings within the sidewalk areas.*

The planting details have been revised as requested to include structural planting mix as requested.

Public Works Comments- City Engineer November 18, 2005

1. *#2. Public Works would like to have the volumes of flow estimated for the City's CSO report.*

We have discussed with issue with Mr. Brad Rowland, P.E. of the Portland Public Works Department. Mr. Rowland indicated that the only information required to document the impact of the combined sewer separation is a copy of the project's watershed plans that identify the drainage area tributary to the project site. A copy of these plans, along with a copy of our revised sewer capacity letter request (Attachment 1) has been forwarded to Mr. Rowland.

Grading

2. *#1. Public Works agrees, the pipe should be removed and discontinued at the main.*

A Site Demolition Plan detailing utility removals in the vicinity of the site has been prepared and is attached. Existing utility services such as water and sewers will be removed entirely out to the main lines where practical. It is impractical to remove utilities completely to the main in some locations were doing so risks damage to existing utilities to remain. Such locations are noted on the plans.

3. #2. *If it is feasible to place and utilities underground, this would be preferred. Consideration should also be given to the number of conduits and vault locations for future extensions.*

The applicant is working with CMP to evaluate alternatives related to relocating the overhead power on Middle Street underground as this work would improve the value and appearance of the project site. However, this work is complicated by the need to obtain easements and agreements with offsite property owners to install pad mounted transformers and other equipment required for new underground services. The applicant is actively pursuing these agreements and is working with CMP to define the scope of offsite utility work required to accomplish this request.

We anticipate that the final resolution of the offsite utility design associated with relocating electrical services underground will extend beyond this project's December 13, 2005 Public Hearing. As such we request that the Planning Board consider a condition of approval that the final electrical utility design be submitted for approval of the Planning Authority.

4. #3. *A manhole should be placed on the sewer main at the location where the Hotel's sewer service enters.*

The sewer connection manholes have been added as requested.

We believe that this response letter and supporting documentation addresses all of the review comments received to date.

If you have any questions or comments, please contact me. We appreciate your time and attention to this application, and we look forward to working proactively with you and the planning staff toward a successful project.

Sincerely,

SEBAGO TECHNICS, INC.



Daniel L. Riley
Senior Project Manager

DLR:dlr/df
Enc.

cc: Thomas Niles
Andrew Bedard

Attachment 1: Sewer Capacity Letter

December 6, 2005
05090

Mr. Michael Moore
Department of Public Works
City of Portland
55 Portland Street
Portland, ME 041041

Request for Sewer Service Capacity Letter
Westin Hotel and Residences, Portland
38 India Street, Portland, Maine

Dear Mr. Moore:

I am writing to request a letter verifying sewer service capacity for the proposed Westin Hotel and Residences, which is to be constructed on the site of the former Jordan Meats facility in Portland. The proposed multi-use development includes a 248-room hotel, 324-space parking garage, 97 condominium units, and retail/restaurant space. The project site occupies nearly a full city block bound by Fore Street, Middle Street, India Street and Franklin Arterial in Portland. The westerly corner of the block is occupied by the Hugo's Restaurant building. This structure is not part of the redevelopment program for the site.

There are existing sewer mains in each of the four surrounding right-of-ways. The existing Jordan Meats facility is served from the 12" main in India Street at two locations. There is also a sewer line that originates from a manhole in Middle Street, traverses the site at its southwest corner, and terminates at an overflow structure in Franklin Arterial. The relocation of this sewer and separation of storm flows is part of the off-site improvements for this project. The attached utility plan shows the proposed sewer separation and relocation.

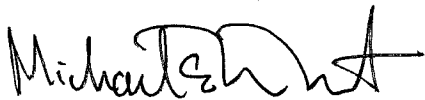
The approximate proposed domestic water usage for this development is based on the following calculations.

Use	Number	x	Gallons/day	Total
1 Bedroom Condominium	46		180	8,280 g/day
2 Bedroom Condominium	44		180	7,920 g/day
3 Bedroom Condominium	7		270	1,890 g/day
Hotelominium (2 Bedroom)	19		180	3,420 g/day
Hotel Rooms	229		100	22,900 g/day
3 Meal Restaurant	60 Seats		45	2,700 g/day
Lounge	30 Seats		20	600 g/day
Employees	50		15	750 g/day
Parking	324		1	324 g/day
Existing Flow from Jordan Meats (1 year average from Portland Water District)				-
TOTAL				48,784 g/day

Thank you for your response to this request. The project is currently scheduled for a final Planning Board workshop on December 6, 2005 and a Public Hearing on December 13, 2005. We request confirmation of sewer capacity as soon as possible in order to forward it to the Planning Board in a timely manner. If you have any questions or require additional information, please contact me.

Sincerely,

SEBAGO TECHNICS, INC.



Michael Tadema-Wielandt
Design Engineer

MTW:mtw/jc
Enc.

cc: Tom Niles
Brad Roland

Attachment 2: Environmental Conditions Summary

**Former Jordan's Meats Facility
38 India Street
Portland, Maine**

ENVIRONMENTAL SUMMARY

The subject site is an approximate 1.75-acre parcel containing the former Jordan's Meat processing facility located on the city block between Fore, Middle and India Streets, adjacent to Franklin Arterial. The site contains two large brick and block buildings making up the facility, including the main processing building and the adjacent maintenance building to the west of the site. The subject site is bounded from three sides by in-town streets, with the northwest portion bounded by existing restaurants and retail shops sharing a portion of the occupied maintenance building. A majority of the surrounding area is composed of many commercial businesses and warehousing, with various offices and parking areas representative of this area of in-town Portland.

The subject site is located in the "Downtown Business" Zone (B-3) and lies within a significantly developed commercial area located along Middle Street and Franklin Arterial. The subject site is in close proximity to Interstate 295 and the waterfront district of Portland, Maine. The property is serviced by Portland Water District (potable water) and Central Maine Power (electricity). Sanitary wastewater from the on-site buildings is discharged to the City of Portland's sanitary sewer system. Natural gas used at the facility is supplied by Northern Utilities, which owns and operates a gas line located under the eastern paved parking area.

Previous environmental investigations at the Jordan's facility have revealed the presence of subsurface contaminants associated with two of the previously existing underground storage tanks removed from the site in 1994. The contaminated soils were associated with a 1,000-gallon waste oil UST and a 500-gallon UST. At the time of tank removal, Acadia Environmental performed a UST Site Assessment, in which contamination from the tanks was assessed. Upon discovery of the soil staining and petroleum odor in the vicinity of the removed tanks, MDEP was contacted and response followed. MDEP inspected the site and subsequently classified the site as "Baseline" in which, based on the previous industrial activity in the vicinity, the soils should remain in place with no further action warranted. The Jordan's Meats site received liability protection through MDEP's Voluntary Remedial Action (VRAP) program on January 21, 2005.

The site presently contains one 5,000-gallon No.4 oil UST, located in the former location of the site's 4,000-gallon UST on the far northern edge of the site. This tank replaced the former 4,000-gallon tank and was installed in 1992. This tank is double-walled, with continuous electronic leak detection monitoring. No spills or releases have been associated with this tank. A smaller 275-gallon fuel oil tank was also observed within this boiler room. The tank was in good condition during STI's site inspection, however without secondary containment.

Based on the date of construction (1963), ACBMs are present in portions of the on-site facility. STI obtained the services of Northeast Test Consultants (NTC) for a Hazardous Materials Inspection of each building on the subject site. This assessment included the visual evaluation and physical collection of suspect ACBM for laboratory analysis. Results included positive identification of ACBM within the two buildings on the subject site. Based on the bulk sample analysis results, portions of the facility's roofing membranes on the stone and gravel roof, floor coverings and adhesives, gasket material, sprayed-on fire-proofing, and exterior siding contain asbestos fibers in quantities greater than 1% by volume and would be regulated as ACBM. Additionally, a significant amount of ACBM is believed to be contained within surfaces and insulation behind the first floor ovens. The current location of the ovens permits intrusive analysis in this specific area due to inaccessibility. Analyses for the collected bulk samples were performed in accordance with the U. S. Environmental Protection Agency's Method, EPA 600/R93-116, Asbestos in Bulk Samples. In addition, NTC identified mercury containing equipment at the former Jordan's Meats facility consisting of fluorescent light bulbs, halogen lights, and thermostats.

Deeds reviewed at the Cumberland County Registry of Deeds (CCRD) indicate that the subject site is owned by Jordan's Meats/Jordan's Ready to Eat Meats. Jordan's developed the site in the early 1960s, opening in 1963. Prior to the development of Jordan's, the site was primarily residential, with the exception of the car service facility occupying a portion of Jordan's maintenance building.

There is evidence of recognized environmental conditions (RECs) in connection with the subject site.

- Portions of the Jordan's Meats facility contain areas of asbestos. ACBM was identified within portions of the facility's roofing membranes on the stone and gravel roof, floor coverings and adhesives, gasket material, sprayed-on fire-proofing, and exterior siding.
- The locations of two of the site's previously located USTs contain areas of contamination due to leaks in the tanks. In the event that future construction activities take place at the site which identify petroleum saturated soil, the site owner/operator at the time must notify the VRAP (or its successor program) at the Maine Department of Environmental Protection to discuss investigation/remediation options. Additionally, any potential development/construction plans proposed for the site in the future should consider the potential petroleum vapor issue which could result if buildings are constructed in the area of the aforementioned USTs.
- Portions of the Jordan's Meats facility contain areas of Universal Waste. Mercury containing equipment identified at the former Jordan's Meats facility consists of fluorescent light bulbs, halogen lights, and thermostats.

This assessment has also revealed the following environmental issues associated with business environmental risk:

- The subject site is located in a geologic area that may be associated with radon gas.

RECOMMENDATIONS

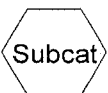
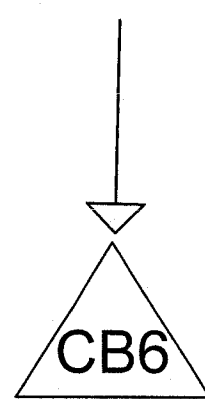
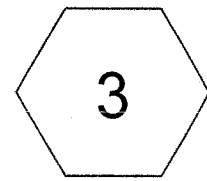
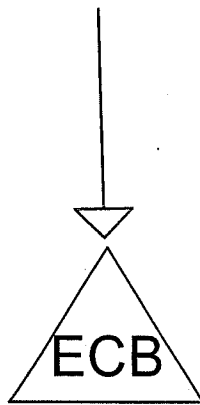
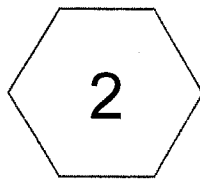
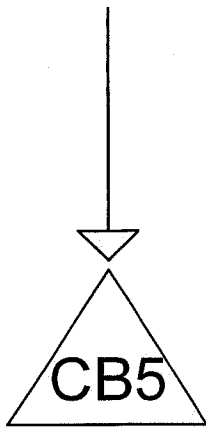
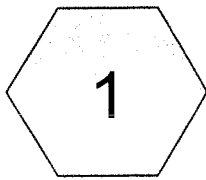
Based on the findings and conclusions of this assessment, STI makes the following recommendations with regard to the identified environmental issues:

- Areas noted with ACBM should be dealt with in accordance with established environmental procedures for demolition activities.
- Remove and appropriately dispose of OHM and Universal Waste from the two Jordan's buildings located on the subject site. New and used lubricants, paints, cleaners and detergents, oil drums, fluorescent bulbs, halogen lights, and mercury containing thermostats associated with the Jordan's facility should be removed and appropriately disposed of or recycled.
- Radon gas may be present in the below-grade soils. This is due to the potential presence of radon-containing bedrock and soils on the subject site that could allow radon to accumulate in future site structures and pose a health risk to the occupants.
- Jordan's Meats, by participating in MDEP's Voluntary Response Action Program, was granted liability protections pursuant to Title 38 MRSA § 343-E. The existing liability protection remains with the applicant (Jordan's Meats). STI recommends applying for the same liability protection with any change of ownership, offered through MDEP's Voluntary Response Action Program.

Attachment 3: Parking Deck Plans

Attachment 4: Site Signage

Attachment 5: Supplemental Drainage Calculations



Drainage Diagram for 05090_MIDDLEST
Prepared by Sebago Technics, Inc. 11/30/2005
HydroCAD® 6.00 s/n 000643 © 1986-2001 Applied Microcomputer Systems

05090_MIDDLEST

Type III 24-hr Rainfall=4.70" - 10-yr Storm - Storm Drain Sizing

Prepared by Sebago Technics, Inc.

Page 1

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11/30/2005

Time span=5.00-20.00 hrs, dt=0.05 hrs, 301 points

Runoff by SCS TR-20 method, UH=SCS, Type III 24-hr Rainfall=4.70"

Reach routing by Stor-Ind+Trans method - Pond routing by Stor-Ind method

Subcatchment 1: (new node)

Tc=5.0 min CN=98 Area=19,500 sf Runoff= 2.07 cfs 0.155 af

Subcatchment 2: (new node)

Tc=5.0 min CN=98 Area=2,730 sf Runoff= 0.29 cfs 0.022 af

Subcatchment 3: (new node)

Tc=5.0 min CN=98 Area=4,975 sf Runoff= 0.53 cfs 0.039 af

Pond CB5: (new node)

Peak Storage= 36 cf Inflow= 2.07 cfs 0.155 af
Primary= 2.07 cfs 0.154 af Outflow= 2.07 cfs 0.154 af

Pond CB6: (new node)

Peak Storage= 31 cf Inflow= 0.53 cfs 0.039 af
Primary= 0.53 cfs 0.039 af Outflow= 0.53 cfs 0.039 af

Pond ECB: (new node)

Peak Storage= 30 cf Inflow= 0.29 cfs 0.022 af
Primary= 0.29 cfs 0.021 af Outflow= 0.29 cfs 0.021 af

Runoff Area = 0.625 ac Volume = 0.216 af Average Depth = 4.15"

Subcatchment 1: (new node)

Runoff = 2.07 cfs @ 12.07 hrs, Volume= 0.155 af

Runoff by SCS TR-20 method, UH=SCS, Time Span= 5.00-20.00 hrs, dt= 0.05 hrs
Type III 24-hr Rainfall=4.70"

Area (sf)	CN	Description
19,500	98	Paved parking & roofs

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
1.0	58	0.0130	1.0		Sheet Flow, Sheet Flow Smooth surfaces n= 0.011 P2= 3.00"
0.6	109	0.0210	2.9		Shallow Concentrated Flow, Shallow Concentrated Flow Paved Kv= 20.3 fps
0.7	72	0.0070	1.7		Shallow Concentrated Flow, Shallow Concentrated Flow Paved Kv= 20.3 fps
2.7					Direct Entry, 5 Minute Min. Tc
5.0	239	Total			

Subcatchment 2: (new node)

Runoff = 0.29 cfs @ 12.07 hrs, Volume= 0.022 af

Runoff by SCS TR-20 method, UH=SCS, Time Span= 5.00-20.00 hrs, dt= 0.05 hrs
Type III 24-hr Rainfall=4.70"

Area (sf)	CN	Description
2,730	98	Paved roads w/curbs & sewers

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
0.4	22	0.0200	1.0		Sheet Flow, Sheet Flow Smooth surfaces n= 0.011 P2= 3.00"
0.6	60	0.0060	1.6		Shallow Concentrated Flow, Shallow Concentrated Flow Paved Kv= 20.3 fps
4.0					Direct Entry, 5 Minute Min. Tc
5.0	82	Total			

Subcatchment 3: (new node)

Runoff = 0.53 cfs @ 12.07 hrs, Volume= 0.039 af

Runoff by SCS TR-20 method, UH=SCS, Time Span= 5.00-20.00 hrs, dt= 0.05 hrs
Type III 24-hr Rainfall=4.70"

Area (sf)	CN	Description
4,975	98	Paved roads w/curbs & sewers

05090_MIDDLEST

Type III 24-hr Rainfall=4.70" - 10-yr Storm - Storm Drain Sizing

Prepared by Sebago Technics, Inc.

Page 3

HydroCAD® 6.00 s/n 000643 © 1986-2001 Applied Microcomputer Systems

11/30/2005

Tc (min)	Length (feet)	Slope (ft/ft)	Velocity (ft/sec)	Capacity (cfs)	Description
0.4	22	0.0200	1.0		Sheet Flow, Sheet Flow Smooth surfaces n= 0.011 P2= 3.00"
1.2	110	0.0060	1.6		Shallow Concentrated Flow, Shallow Concentrated Flow Paved Kv= 20.3 fps
3.4					Direct Entry, 5 Minute Min. Tc
5.0	132	Total			

Pond CB5: (new node)

Inflow = 2.07 cfs @ 12.07 hrs, Volume= 0.155 af
 Outflow = 2.07 cfs @ 12.07 hrs, Volume= 0.154 af, Atten= 0%, Lag= 0.1 min
 Primary = 2.07 cfs @ 12.07 hrs, Volume= 0.154 af

Routing by Stor-Ind method, Time Span= 5.00-20.00 hrs, dt= 0.05 hrs

Peak Elev= 24.30' Storage= 36 cf

Plug-Flow detention time= 3.9 min calculated for 0.154 af (100% of inflow)

Storage and wetted areas determined by Prismatic sections

Elevation (feet)	Surf.Area (sq-ft)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
21.50	13	0	0
27.50	13	78	78

Primary OutFlow (Free Discharge)

1=Culvert

#	Routing	Invert	Outlet Devices
1	Primary	23.50'	12.0" x 15.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 23.00' S= 0.0333 '/' n= 0.012 Cc= 0.900

Pond CB6: (new node)

Inflow = 0.53 cfs @ 12.07 hrs, Volume= 0.039 af
 Outflow = 0.53 cfs @ 12.07 hrs, Volume= 0.039 af, Atten= 0%, Lag= 0.1 min
 Primary = 0.53 cfs @ 12.07 hrs, Volume= 0.039 af

Routing by Stor-Ind method, Time Span= 5.00-20.00 hrs, dt= 0.05 hrs

Peak Elev= 23.36' Storage= 31 cf

Plug-Flow detention time= 13.5 min calculated for 0.039 af (98% of inflow)

Storage and wetted areas determined by Prismatic sections

Elevation (feet)	Surf.Area (sq-ft)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
21.00	13	0	0
27.20	13	81	81

Primary OutFlow (Free Discharge)

↑1=Culvert

#	Routing	Invert	Outlet Devices
1	Primary	23.00'	12.0" x 7.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 22.70' S= 0.0429 '/ n= 0.012 Cc= 0.900

Pond ECB: (new node)

Inflow = 0.29 cfs @ 12.07 hrs, Volume= 0.022 af
 Outflow = 0.29 cfs @ 12.07 hrs, Volume= 0.021 af, Atten= 0%, Lag= 0.2 min
 Primary = 0.29 cfs @ 12.07 hrs, Volume= 0.021 af

Routing by Stor-Ind method, Time Span= 5.00-20.00 hrs, dt= 0.05 hrs

Peak Elev= 23.05' Storage= 30 cf

Plug-Flow detention time= 22.9 min calculated for 0.021 af (97% of inflow)

Storage and wetted areas determined by Prismatic sections

Elevation (feet)	Surf.Area (sq-ft)	Inc.Store (cubic-feet)	Cum.Store (cubic-feet)
20.75	13	0	0
26.95	13	81	81

Primary OutFlow (Free Discharge)

↑1=Culvert

#	Routing	Invert	Outlet Devices
1	Primary	22.75'	8.0" x 15.0' long Culvert RCP, square edge headwall, Ke= 0.500 Outlet Invert= 22.40' S= 0.0233 '/ n= 0.012 Cc= 0.900

Att. 2

Traffic Impact Study

PROPOSED WESTIN HOTEL AND RESIDENCES
Portland, Maine

Prepared for

Sebago Technics
Westbrook, Maine



Topsham, Maine

October 2005

PROPOSED WESTIN HOTEL AND RESIDENCES

Portland, Maine

Traffic Impact Study

Introduction

The Procaccianti Group and the Liberty Companies propose to redevelop the former Jordan's Meat site located at 38 India Street into a Hotel/Condominium Complex. The site extends along India Street from Middle Street to Fore Street, east of Franklin Arterial. Proposed access to the site will be via both Middle Street (main Hotel access) and Fore Street (parking garage access). The anticipated size of the development is 229 hotel rooms and 116 condominiums (97 condominiums, 10 hotelominiums) plus a 5,871 square foot restaurant and 15,374 square feet of retail space. The purpose of this traffic impact study is to evaluate the impact of new site generated traffic on roadways in the vicinity of the development. At a Scoping Meeting with the City of Portland Traffic Engineer (Thomas A. Errico, P.E. of Wilbur Smith Associates) it was directed that the study area will include the intersections of Franklin Arterial @ Middle, Fore and Congress Streets, and India Street @ Middle and Fore Streets.

Pre-Development PM Peak Hour Traffic

Traffic impact analysis is typically performed for traffic conditions that occur during the weekday PM peak hour, as this is usually the time of heaviest traffic flow that occurs on a weekday. As part of the process of estimating weekday PM peak hour traffic volumes, manual traffic counts were conducted at the following intersections in April and May 2005.

Franklin @ Middle

Franklin @ Fore

India @ Middle

India @ Fore

The intersections of Congress Street @ Franklin Arterial NB and SB were counted in October 2005.

These “raw” volumes were reviewed and balanced for use in the analysis. Typically traffic volumes are adjusted to peak seasonal flows using MDOT adjustment factors. In most areas of Maine, the peak season occurs during July and August. In the case of this project an adjustment (increase) of 9 percent was applied to the April and May counts to estimate peak season volumes. The later October counts were balanced to match the earlier counts. The project is expected to be fully developed by 2007, thus the traffic volumes must be adjusted to reflect “background” traffic growth in the area from 2005 to 2007. MDOT traffic count data in the vicinity of the site indicates an annual growth rate of approximately 2 percent. Figure 2A (in the Appendix) presents the 2007 PM peak hour volumes in the study area.

There are several approved developments in the vicinity of the site whose traffic generation must be reflected in the pre-development volume estimates. These developments include Ocean Gateway, Pearl Place, 280 Fore Street and Somerset Market. PM peak hour site generated traffic estimates were obtained for each of these developments. Figure 2B presents the combined site generated PM peak hour trips for all of these approved developments. Figure 2 is the combination of Figures 2A and 2B and represents 2007 pre-development PM peak hour volumes.

Site Generated PM Peak Hour Traffic

Trip generation was estimated using the publication Trip Generation – Seventh Edition¹ for land use code 230 “Residential Condominium/Townhouse” and land use code 310 “Hotel”. The table below summarizes trip generation.

Westin Hotel and Residences Trip Generation

Land Use	Size	PM Peak Hour Trips (enter/exit)
Condominiums (includes Hotelominiums)	116 Units	44 (22/17)
Hotel (includes banquet/meeting space)	244 Rooms	135 (72/63)
Restaurant (50 percent non-guest)	5,871 sf	22 (14/8)
Shops/Commercial (50 percent non-guest/resident)	15,374 sf	39 (20/19)
Total		240 (133/107)

As the table above indicates, peak hour traffic will exceed 100 vehicle trips. Traffic generated by the former Jordan Meats can be used as a “credit” when considering “net” new traffic. This former level of traffic is estimated at 50 PM peak hour trips leaving a net increase in new traffic of 190 trips, thus a MDOT Traffic Movement Permit is required for this development. Figure 3

¹ Institute of Transportation Engineers, 2003

(see Appendix) presents the assignment of site generated PM peak hour trips in the study area, which assumes that 85 +/- percent of the traffic will approach/depart the site from the north.

Post-Development PM Peak Hour Traffic Volumes

Post-development PM peak hour volumes are the combination of pre-development volumes presented in Figure 2, and site generated traffic presented in Figure 3. Figure 4 (see Appendix) presents projected 2007 PM peak hour post-development traffic volumes.

Operational Assessment Pre/ Post-Development Traffic Volumes

Capacity analysis was performed for the pre- and post-development PM peak hour traffic projections for the intersections in the study area using the procedures contained in the Highway Capacity Manual². Capacity analysis provides a quantitative assessment of the quality of traffic flow at an intersection, and "rates" this quality in terms of its Level of Service (LOS). LOS ratings range from A to F, and much like a school rank card, A indicates very good conditions, and F indicates extremely congested conditions with long delays.

LOS for **signalized** intersections is based upon the average control delay for all vehicles using the intersection, which includes deceleration delay, stopped delay, queue move-up time and acceleration delay. The relationship between LOS and control delay is shown in the table below.

², Highway Capacity Manual, HCM2000, Transportation Research Board, 2000

Signalized Intersection Level of Service Measures

Level of Service	Control Delay Per Vehicle (seconds)
A	□ 10 Seconds
B	>10 - □ 20 Seconds
C	>20 - □ 35 Seconds
D	>35 - □ 55 Seconds
E	>55 - □ 80 Seconds
F	□ 80 Seconds

For this analysis the computer software package Synchro/SimTraffic was utilized, primarily to evaluate the interaction of the operation of the various intersections in the study area. Synchro replicates the procedures of the Highway Capacity Manual and additionally provides a better assessment of traffic signal operations, plus provides a microscopic model of the intersections in the study area to better evaluate vehicle queues and other operational features. Also for this analysis it was assumed that the intersection of India Street @ Fore Street was under traffic signal control (an off-site mitigation action associated with the Ocean Gateway project). In addition, concurrent pedestrian phases were modeled for crossings of Franklin Arterial, with 40 pedestrian actuations per hour (this means that nearly 2/3 of the time a pedestrian call will be placed, which will increase the green time for Middle and Fore Streets, and delay Arterial traffic somewhat; it also probably reflects more than 40 pedestrians, since many people will be in groups). In essence, the impacts of pedestrian crossings are explicitly reflected in the model output. Analysis was performed based upon existing timing and phasing at the intersections. Congress @ Franklin is a fully actuated/coordinated location, Franklin @ Middle and Fore are semi-actuated (vehicle detection on Middle and Fore Streets only) and Fore @ India was assumed to be fully actuated with no geometric changes (i.e. single lane on all approaches). The results of the pre- and post-development capacity analysis are shown below (computer printout in Appendix – all runs iterated 5 times with random seeds and averaged):

Signalized Intersection Analysis

Location	Pre-Development		Post-Development/	
	LOS	Control Delay (sec)	LOS	Control Delay (sec)

2007 PM Peak Hour Existing Timing/Phasing

Congress @ Franklin Southbound	C	22.5	C	24.6
Congress @ Franklin Northbound	B	19.8	B	19.9
Franklin @ Middle	A	8.7	A	8.8
Franklin @ Fore	A	9.0	B	10.9
India @ Fore	B	14.0	B	14.6

As can be seen, the additional traffic generated by the proposed project will have minimal impact on the delay and Level of Service at signalized intersections in the study area. It was noticed that there was some significant queuing on a number of approaches (queuing summary in Appendix).

There are some planned improvements to the signal system on Franklin Arterial, thus an analysis was performed assuming that the signals at Franklin @ Congress, Middle and Fore Streets would be operated as a fully actuated coordinated system. The new results are shown below:

Signalized Intersection Analysis

Location	Pre-Development		Post-Development/	
	LOS	Control Delay (sec)	LOS	Control Delay (sec)

2007 PM Peak Hour With Fully Actuated/Coordinated Control

Congress @ Franklin Southbound	B	19.2	C	20.2
Congress @ Franklin Northbound	B	18.3	B	19.5
Franklin @ Middle	B	11.0	B	10.4
Franklin @ Fore	C	16.0	B	18.4
India @ Fore	B	19.2	B	21.6

LOS for unsignalized intersections is also based upon average control delay. The relationship between LOS and average total delay for unsignalized intersections is shown below:

Level of Service Measurement for Unsignalized Intersections

Level of Service	Control Delay Per Vehicle (seconds)
A	□ 10 Seconds
B	>10 - □ 15 Seconds
C	>15 - □ 25 Seconds
D	>25 - □ 35 Seconds
E	>35 - □ 50 Seconds
F	□ 50 Seconds

The results of the analysis of the unsignalized intersections in the study area are presented below:

Unsignalized Intersection Analysis

Location/ Movement	Pre-Development		Post-Development	
	LOS	Average Total Delay (sec)	LOS	Average Total Delay (sec)
India @ Middle Street				
Left from India NB	A	2.7	A	2.6
Left from India SB	A	0.3	A	0.3
Middle Street EB	E	35.7	E	40.6
Middle Street WB	C	19.9	C	20.8

As can be seen in the table above, the additional traffic generated by the proposed project will not result in any significant degradation of LOS at the unsignalized intersection of Middle @ India.

Safety

Safety data for the most recent available 3 year period (2002-04) was obtained from the Accident Records Section of MDOT for roadways in the vicinity of the site. MDOT guidelines for identification of a High Crash Location (HCL - indicating a potential safety deficiency) is that a location must experience both 8 or more accidents in a 3 year period and have a Critical Rate Factor of 1.00 or greater. There are 2 HCL in the study area – Franklin Arterial @ Middle Street and Congress @ Franklin. Detailed collision diagrams were prepared for these locations. A summary of the analysis of the collision diagrams follows.

Franklin Arterial @ Middle Street: There were 27 accidents reported at this location. 16 of these were left turn collisions, with 7 of these occurring on the northbound approach of Franklin, 6 on

the southbound approach, and 3 on the westbound approach of Middle Street. The remainder of the accidents evidenced no particular pattern. The left turn collisions on north and southbound Franklin are likely the result of sight line problems that are exacerbated by the wide median and lack of head-to-head left turn lanes. A driver turning left off Franklin not only has to overcome the sight line problem, but must also travel the equivalent of 3 lanes of traffic. It is suggested that “dotted” pavement markings be used to guide both north and southbound left turns (to turn in front of each other) and possibly add a second stop bar at the end of the median to encourage drivers turning left to move into this position to aid sight lines and reduce crossing distance. This must be done carefully to minimize any impacts on pedestrian crosswalk visibility (i.e. the striping should start after the crosswalk). The obvious alternative is to construct a left turn lane, as is recommended in the Peninsula Traffic Study (Table 6.2 Improvements Required for 2025 Post-development Traffic Volumes with Eastern Waterfront Development - recommendation is for a 200’ SB left turn lane).

Congress Street @ Franklin Arterial NB and SB: There were 52 collisions listed in the MDOT database at this location. 51 accident reports were found in the files. There is a clear pattern of accident occurrence at this location. 20 of the accidents involved vehicles westbound on Congress colliding with vehicles southbound on Franklin. In most cases the cause was listed as “disregard of traffic control device” or “failure to yield the right of way”. This may reflect a signal visibility problem, or a persistent habit of red light running. The only other pattern of accidents noted was collisions between eastbound Congress vehicles with westbound Congress vehicles turning left to Franklin southbound. The lane setup on this section of Congress Street is similar to the problem noted at Middle @ Franklin – the left turn lanes are not head-to-head, and in a number of cases the accident reports noted that the left turning driver had been “waved on” to turn and was hit by a vehicle eastbound in the curb lane. Due to the short block length between Franklin NB and SB it is unlikely that any revision of lane configuration can be effected. All other collisions at this location were disparate and scattered, and no pattern was observed. Accident frequency fluctuates – there were 17 accidents in 2002, 20 in 2003 and 14 in 2004.

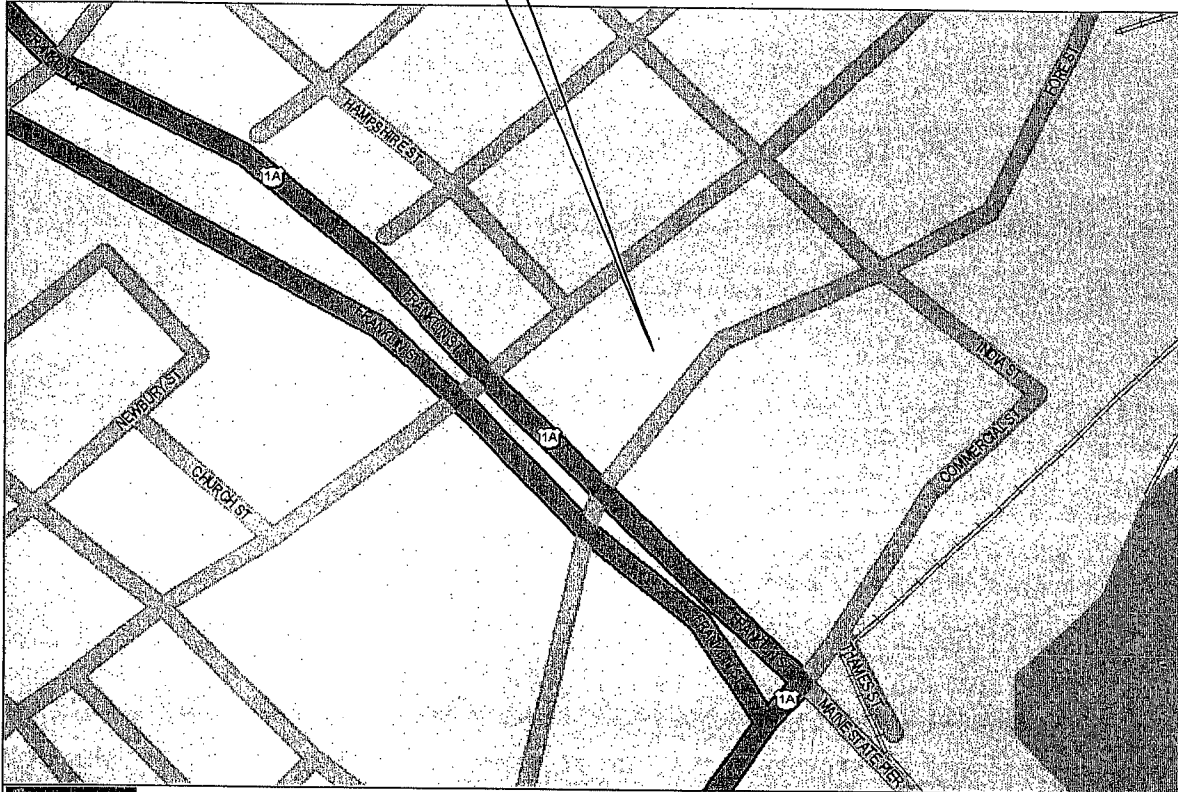
Summary of Findings

The proposed Westin Hotel and Residences is projected to generate 240 vehicle trips during the PM peak hour - 133 entering and 107 exiting the site. The intersections in the study area are not expected to have any significant degradation in capacity or level of service as a result of the additional traffic generated by the development. There are two High Crash Locations in the immediate vicinity of the site, based upon 2002-04 accident data. Suggested countermeasures to address this location are discussed in the previous section.

Appendix



SITE

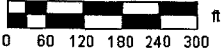


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MN (16.3°W)



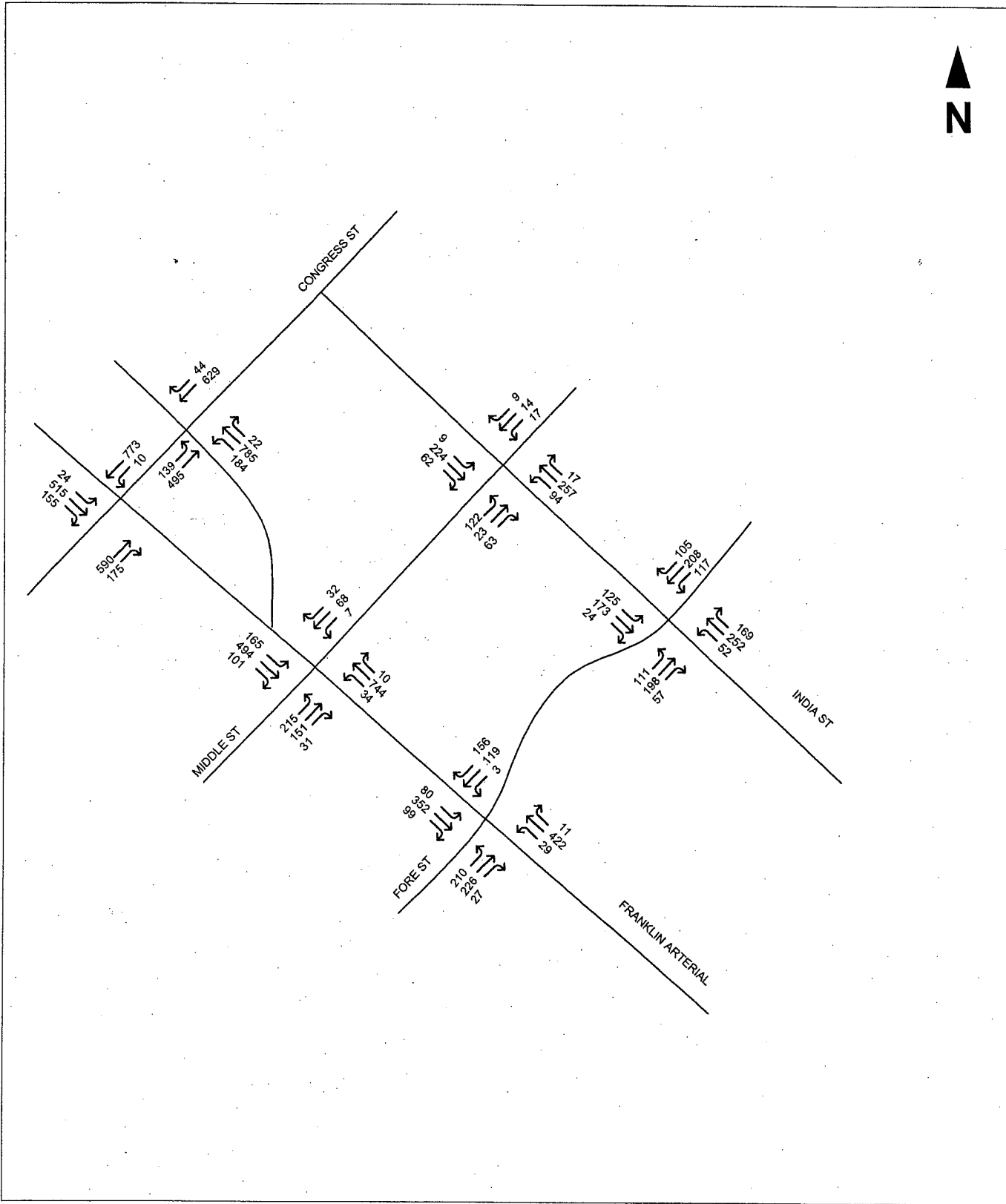
0 60 120 180 240 300 ft
Data Zoom 16-0



2 Miranda St. - Brunswick, Maine
(207) 725-9805 Fax (207) 725-0847

Figure 1
SITE LOCATION

PROPOSED WESTIN HOTEL AND RESIDENCES / PORTLAND, MAINE




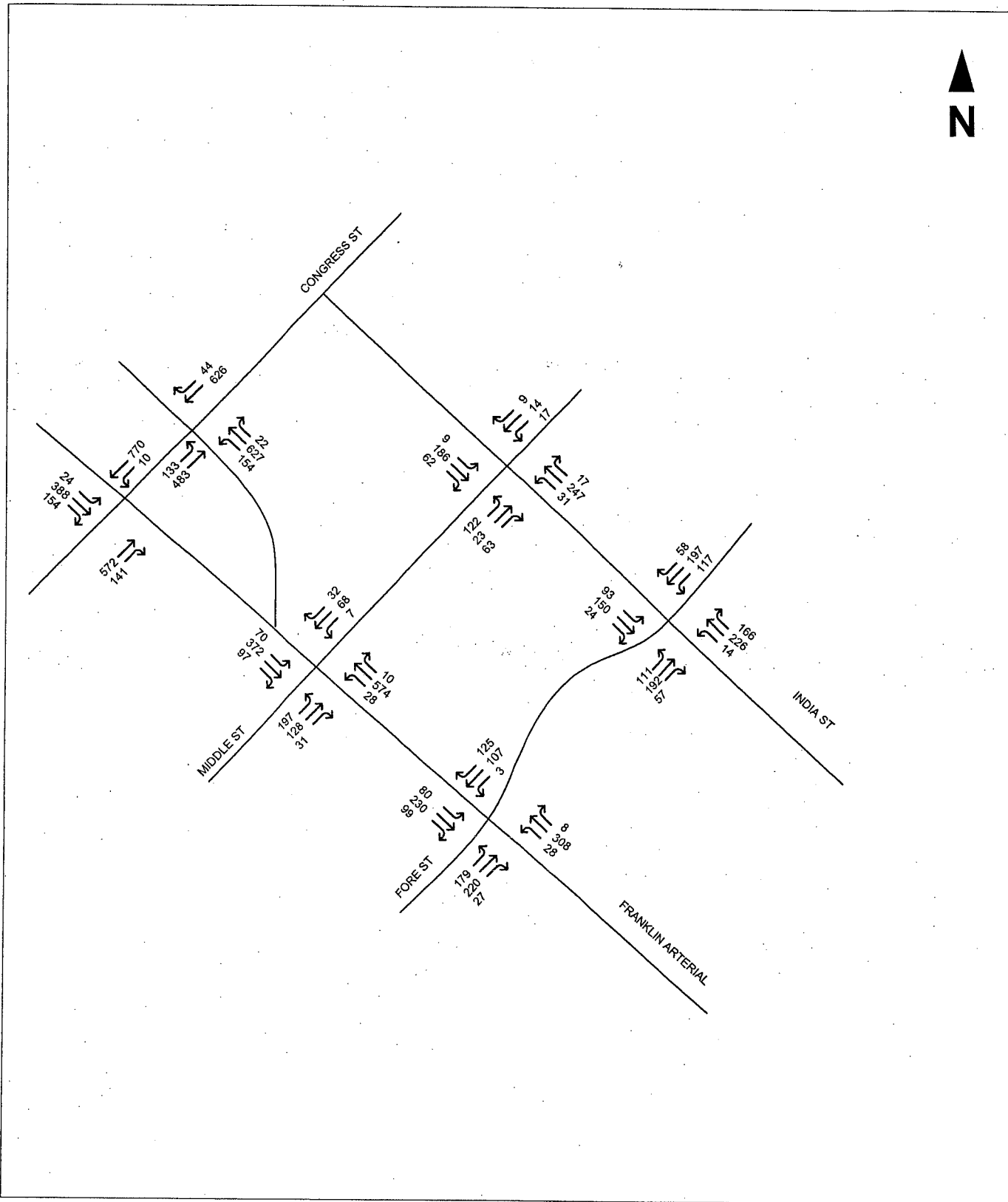
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Figure 2
ESTIMATED 2007 PM PEAK HOUR TRAFFIC - PRE-DEVELOPMENT
PROPOSED WESTIN HOTEL AND RESIDENCES / PORTLAND, MAINE




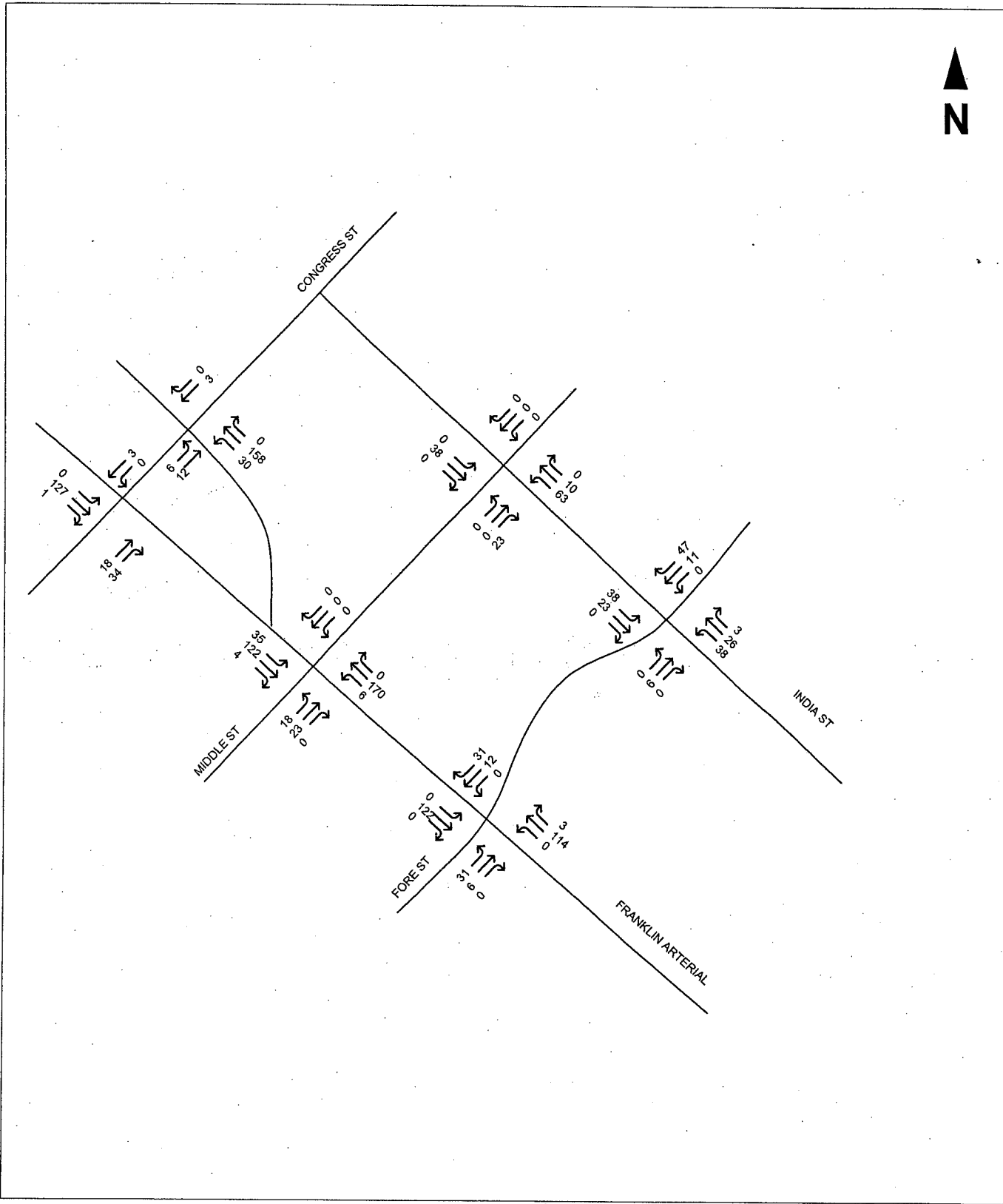
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Figure 2A
BALANCED 2007 PM PEAK HOUR TRAFFIC - WITHOUT OTHER DEVELOPMENT
PROPOSED WESTIN HOTEL AND RESIDENCES / PORTLAND, MAINE




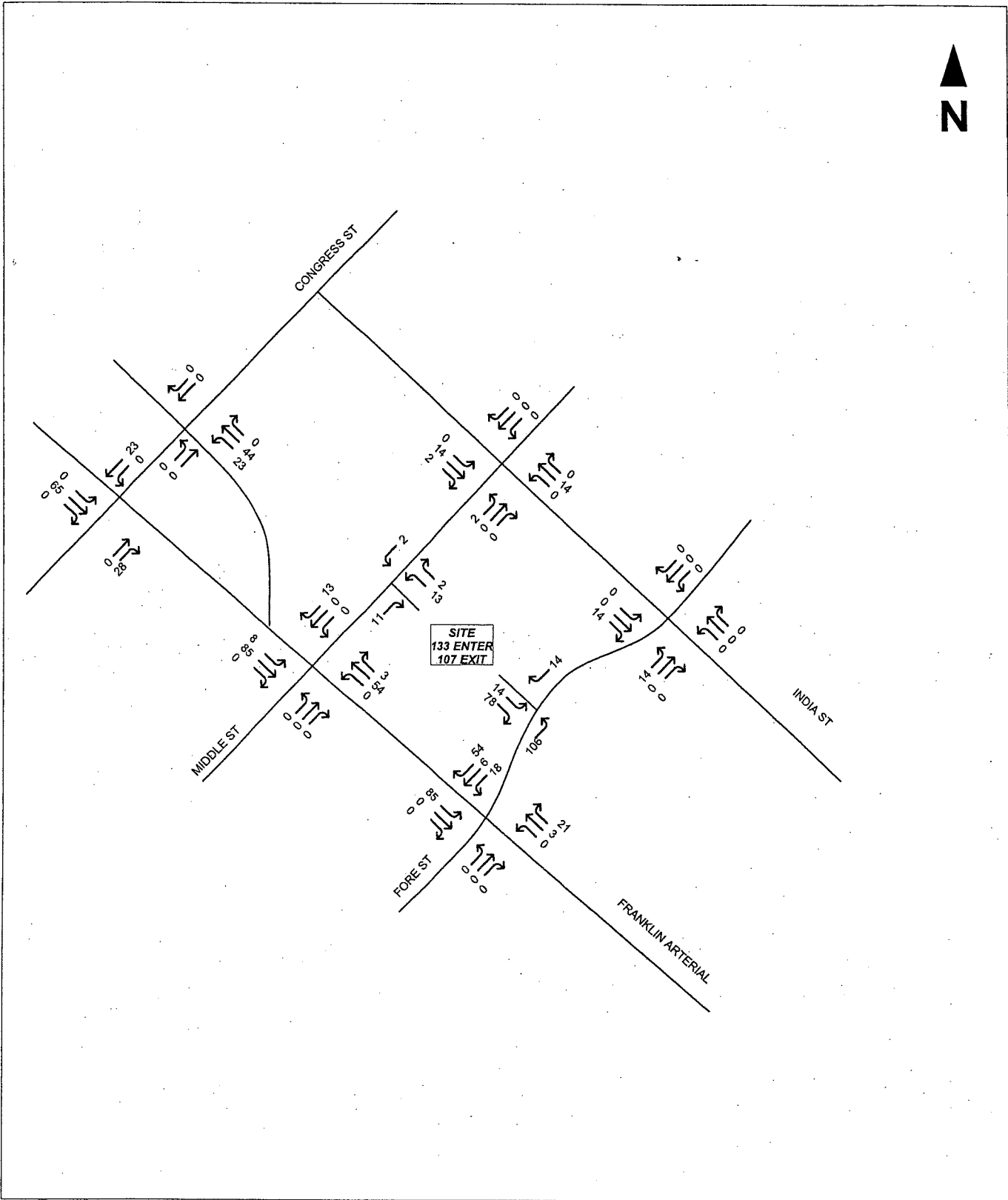
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Figure 2B
PM PEAK HOUR TRAFFIC FROM OTHER DEVELOPMENTS
PROPOSED WESTIN HOTEL AND RESIDENCES / PORTLAND, MAINE



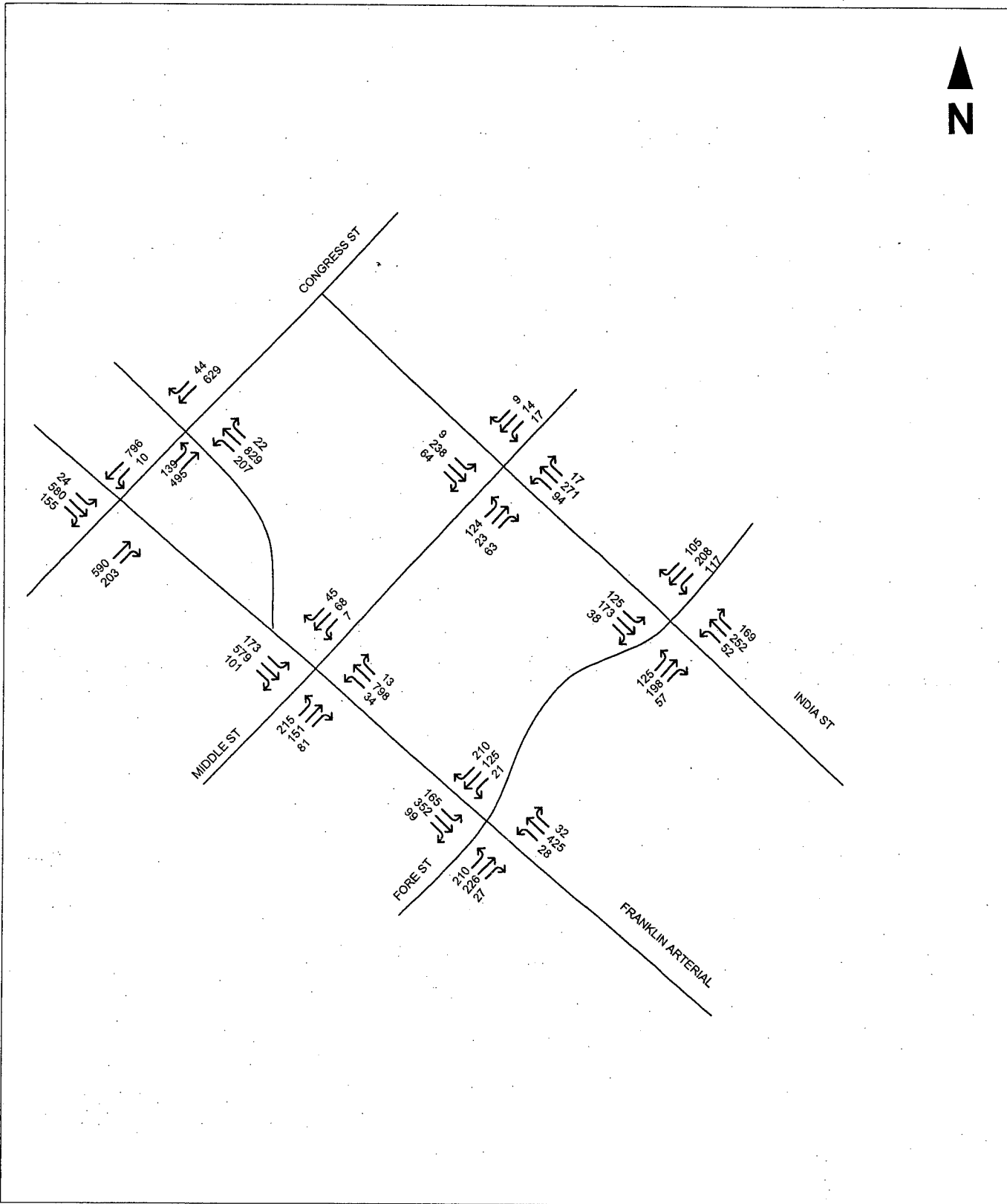


Figure 4

PROJECTED 2007 PM PEAK HOUR TRAFFIC - POST-DEVELOPMENT

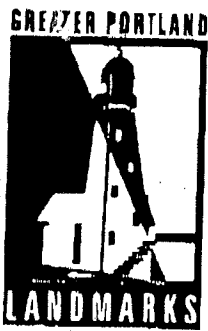
PROPOSED WESTIN HOTEL AND RESIDENCES / PORTLAND, MAINE



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Att. 3



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Hilary D. Bassett
Executive Director

November 2, 2005

Planning Board
 City of Portland
 389 Congress Street
 Portland, ME 04101

The Dear Members of the Planning Board:

We write in regard to the site plan review of 38 India Street, the Westin Hotel development at the former Jordan's Meats site.

The Westin project is set among some of the most important historic buildings and streetscapes in Portland including India Street, the Old Port and the Commercial Street warehouses. The East End was the original marine entry into Portland, and India Street, originally called King Street, was the first street in the City. In October 2005, construction began on the new Ocean Gateway Marine Terminal, which will reinforce India Street's role as Portland's oceanside "front door."

Greater Portland Landmarks encourages the Board to evaluate the Westin proposal carefully to ensure that it is pedestrian-friendly and compatible with Portland's character and the India Street neighborhood. Design considerations are especially important because of the exceptional height and massing of this project and its impact on the Portland streetscape and skyline. It is essential to signal to the Portland community and to developers that innovative, thoughtfully-designed projects in the urban context are expected and encouraged.

Recommendations for Public Amenities and Pedestrian Friendly Design:

- *Focus pedestrian and sidewalk improvements on India Street, Fore and Middle Streets* (the existing pedestrian areas that link to the East End and the Old Port).
- *Devote the entire India Street first floor street frontage to retail space.* India Street is a historically-dynamic pedestrian corridor. The project design currently proposes meeting rooms visible along a portion of the street level. This creates a discontinuous pedestrian corridor and does not enliven the streetscape. Both the Planning staff and the City Council's Community Development Committee encouraged retail along India Street.
- *Provide entrances for the proposed retail spaces directly onto the street.* Portland is a walkable city, and pedestrian-friendliness and pedestrian scale are fundamental to its identity. Though the design does show some retail entrances, the entrances at Fore and India and possibly India and Middle Streets are placed at the corners of the buildings. The corner placement of entrances does not fit within the character of the neighborhood. On India Street, typically, a series of entrances opens onto the street within a block, which encourages continuous foot traffic and human-scaled, visual connections between pedestrian-oriented uses.
- *Refine the design concepts for the Fore Street elevation.* The proposed long glass façade is out of scale with the neighborhood and will read as blank hallway when

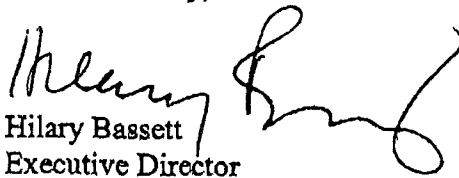
there are no events scheduled. The 98' tall Fore Street elevation should be detailed to break up the vertical and horizontal massing (see last bullet point below). Also, careful attention should be paid to the detail of the window openings, which are two stories tall on a majority of the façade.


- *Create a more inviting and accessible public space.* The area behind the autocourt and the alley next to Hugo's are not pedestrian friendly.
- *Improve permeability from Hampshire Street to Fore Street.* As proposed, the pedestrian path (into the autocourt, through the lobby, down the back stairs) will be difficult to locate and to follow, and generally not inviting for the public. Permeability should be simple, inviting, and visual in addition to being accessible through circulation paths.
- *Use high quality materials* that will stand the test of time.
- *Use design elements visually to break down the scale of the buildings* so that the building read more pedestrian-friendly from the street level. Through judicious changes in materials, color, set backs, and site amenities, the buildings can be more compatible within their context.

Precedents set with the Westin site plan review have the potential to impact the direction of the Eastern Waterfront redevelopment. Investing in good design and pedestrian friendly architecture that is compatible with Portland's scale and character are essential to the future of our city.

Thank you very much for your consideration.

Yours sincerely,


Hilary Bassett
Executive Director


Allison Zuchman
Assistant Director

Memorandum
Department of Planning and Development
Planning Division



To: Chair Lowry and Members of the Portland Planning Board
From: Kandice Talbot, Planner
Date: Prepared on November 4, 2005 for
November 8, 2005 Planning Board Workshop
Re: Westin Hotel Mixed Use Development; 38 India Street
PME I Limited Partnership, Applicant

Introduction

PME I Limited Partnership is requesting a workshop with the Planning Board for review of their proposal for the Westin Hotel Mixed Use Development located at 38 India Street. The site is bounded by India Street, Middle Street, Fore Street and Franklin Arterial. The site is zoned Conditional B-3.

The Westin Hotel and Residences project will consist of approximately 229 full service hotel guest rooms, support areas, function rooms, and banquet facilities. Additional uses on the site will include public circulation space, indoor recreation and pool areas, kitchen, restaurant, and retail space. The project also includes up to 97 luxury condominium units and 19 hotelominium units. A parking garage is proposed underneath the hotel and will provide for 324 parking spaces.

The development will be reviewed for compliance with the Site Plan and Subdivision ordinances of the Land Use Code and DEP Traffic Permit.

Zoning

On September 19, 2005 the City Council approved a B-3 Conditional rezoning. The conditions of the rezoning are as follows:

1. The City shall amend the Zoning Map of the City of Portland, dated December 2000, as amended from time to time and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by Portland City Code Sec. 14-49, by adopting the map change amendment.

2. The site plan, verticals, grading, parking schematic and floor plan schematic are attached as Exhibit 1 and are incorporated into this Agreement.
3. The property shall be governed by the zoning provisions, as such may be amended from time to time, applicable in the underlying B-3 Zone, except as follows:
 - (a) Permitted Uses. The project proposes, and is authorized to accommodate, up to nineteen "hotelominiums," for purposes of this Agreement defined as privately owned residential condominium units which may, on occasion be rented to the public through private contractual arrangement with the owners of the adjacent hotel, i.e. the Westin or its successor in interest. The "hotelominiums" shall be taxed by the City as private residential units. Any portion of the project that does not become a "hotelominium" shall be a part of the hotel and shall be taxed in accordance with such use.
 - (b) Street Wall Build To Line. The dimensional zoning requirements of Section 14-220(c) of the Zoning Ordinance are hereby modified to allow PME to
 - (1) construct a courtyard entranceway (the "Entrance") for the proposed hotel and condominium residences off of Middle Street, provided that the entrance shall not be further back from Middle Street than as shown on the attached plans, but may become narrower, wider or relocated no more than five (5) feet as may be approved by the Planning Board in its discretion; and
 - (2) create other entrances to the building as shown on the Plans, provided, however, that the location and/or dimensions of entrances to the building may be further modified as may be approved by the Planning Board in its discretion.
 - (c) Height Limits.
 - (1) The minimum structure height (measured according to the definition of "building, height of" in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be fifteen (15) feet for a portion of the building's frontage on Fore Street and seventeen (17) feet for a portion of the building frontage on India Street as shown on the Plan.
 - (2) The maximum structure height (as measured according to the definition of "building, height of" in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be as follows:

- (i) ninety-eight (98) feet for the westerly wing of the building with frontage on Franklin Arterial and Fore Street as shown on the plan;
 - (ii) seventy-eight (78) feet for the easterly wing of the building with frontage on Middle Street as shown on the plan; and
 - (iii) eighty-eight (88) feet for the easterly wing of the building with frontage on India Street as shown on the Plan.
- (d) Parking Requirements: A minimum of three hundred and twenty four (324) on site parking spaces shall be provided to service the needs of the Project and the total number of parking spaces required to service the project (including any off-site parking requirements) shall be determined by the Planning Board during site plan and subdivision review.
4. The Property will be developed and operated substantially in accordance with the Plans upon the site plan and subdivision approval by Portland Planning Board in compliance with the requirements of Chapter 14 of the City's Land Use Ordinance, provided that the uses between residential and hotel room portions of the building (and specifically excluding any retail spaces shown on the Plan) may change without requiring a modification to this Agreement by the City Council.
5. PME shall develop the Project to accommodate the City's requests as follows:
- (a) Community Contribution: The community contribution by the Project shall be as follows:
 - 1. PME shall donate \$400,000.00 to the City to address off site impacts of the Project. Such monies shall be used by the City, in its sole discretion, as follows:
 - (A) \$175,000.00 towards public improvements within ¼ mile of the Project, including but not limited to, sidewalk improvements;
 - (B) \$150,000.00 toward traffic improvements on the peninsula as defined more particularly in the Peninsula Traffic Plan, provided, however, that to the extent that PME is required to implement specific traffic improvements identified in the Peninsula Traffic Plan, dated January 22, 2004, during the site plan/subdivision/traffic movement permitting process, the \$150,000.00 contribution for traffic improvements, identified in this Section 5(a)(1)(B) herein, shall be credited against the cost of such traffic improvements; and

- (C) \$75,000.00 to finance activities in the vicinity of the project that support public art and the create economy, such activities to be proposed by the Portland Public Arts Committee and approved by the Council.

The above monetary contributions shall be made prior to the issuance of a building permit for the Project.

2. the Project shall include commercial/retail space on the ground level along India Street and Middle Street; and
 3. the Project shall provide mid-block pedestrian access through the building by creating an entrance on each of Middle Street and Fore Street.
6. Any change in the fee ownership of the **PROPERTY** shall be brought to the Planning Board for its review and approval, but this requirement shall not apply to (a) the conveyance of the fee interest in the **PROPERTY** from Zemco Industries, Inc. to **PME**; (b) the granting of mortgages by **PME** or any successor in interest, or to the enforcement by mortgagees of their rights under such mortgages, or to the assignment or conveyance of the ownership to an entity in which **PME** and/or any of its general or limited partners holds at least a 20% interest; (c) the conveyance of any condominium units or to the granting of any mortgages upon individual condominium units; or (d) to the leasing or subleasing of any space within the building or on the **PROPERTY**. The restrictions on transfer contained in this paragraph 6 shall expire upon the completion of the **PROJECT** as evidenced by the issuance of certificates of occupancy from the **CITY** for all portions of the **PROJECT**.
7. The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **PME**, its successors and assigns, and any party in possession or occupancy of said **PROPERTY** or any part thereof, and shall inure to the benefit and be enforceable by the **CITY**, by and through its duly authorized representatives.
8. 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 portions shall be deemed as a separate, distinct and independent provision and such determinations shall not affect the validity of the remaining portions thereof.
9. Except as expressly modified herein, the development, use, and occupancy of the **PROPERTY** 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.
10. In the event of **PME's** breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland Land Use Code that would otherwise be applicable to **PROPERTY** situated in the B-3 zone, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. § 4452, M.R.Civ.P. 80K, or in any other manner available by law. In addition, if such an enforcement action should result in a

finding that **PME** has breached the Agreement, then either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council that the Conditional Rezoning be modified or the **PROPERTY** rezoned.

11. **PME** shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds within sixty (60) days of City Council approval.

Proposed Development

Utilities

Existing utilities abutting this site include water mains in Middle Street, Fore Street, India Street and Franklin Arterial. Water service is currently provided to the Jordan's Meats facility at the northeast corner of the site from an existing 8" main in India Street. A proposed 8" fire protection and 8" domestic service for the project are located along Fore Street. A capacity letter from the Portland Water District is attached.

A 24" City of Portland combined sewer traverses the site from the intersection of Middle Street and Hampshire Street. The sewer runs in a recorded easement located between Jordan Meats building and Hugo's building. The sewer runs in a southerly direction, changes in size to 30", and turns to the southwest to connect to an existing combined sewer overflow structure located within the Franklin Arterial right-of-way. New storm and sanitary sewers are proposed in Middle Street and Franklin Arterial to bypass this combined sewer around to the west to Franklin Arterial. The proposed subdivision plan proposes abandoning the existing sewer easement upon completion of the proposed off-site storm drain and sanitary sewer construction.

A new storm drain is proposed in Fore Street. This construction will include the relocation of existing catch basins along Fore Street required as part of the project's streetscape improvements. The proposed storm drains will connect to the existing 48" combined sewer overflow line in the center of Franklin Arterial. The new storm drainage will effectively separate 7.5 acres of existing urban development from the City's combined sewer system.

The Development Review Coordinator is currently reviewing the plans and comments are anticipated to be available at the workshop meeting.

Sanitary sewer service for the existing Jordan Meats facility is provided by two connections to an existing 12" combined sewer in Fore Street. Sanitary sewer service for the Hugo's building, as well as the Jordan Meats maintenance building is provided by two connections to the existing 30" combined sewer that traverses the site. Three new sanitary sewer connections are proposed as part of this project. The applicant has requested a sewer capacity letter from the Portland Sewer Division, which will be available prior to the public hearing.

Public Works is currently reviewing the utility plans and comments will be available prior to public hearing.

Traffic

Access to the site will be from Middle Street and Fore Street. The Middle Street access will have a courtyard for residents and boarders to check-in and unload their bags. The Fore Street access will be to the parking garage under the hotel.

The project is proposed to generate 240 vehicle trips during the PM peak hour – 133 entering and 107 exiting the site. The intersections in the area are not expected to have any significant degradation in capacity or level of service as a result of the additional traffic generated by the development.

There are two High Crash Locations in the immediate vicinity of the site. These two high crash locations are at the intersection of Franklin Arterial and Middle Street and Congress Street at Franklin Arterial northbound and southbound. The Traffic Analysis states that at the Franklin Arterial and Middle Street intersection collisions are likely the result of sight line problems that are exacerbated by the wide median and lack of head-to-head left turn lanes. It is suggested that “dotted” pavement markings be used to guide both north and southbound left turns (to turn in front of each other) and possibly add a second stop bard at the end of the median to encourage drivers turning left to move into this position to aid sight lines and reduce crossing distances.

At the Franklin Street/Congress Street intersection, it is stated that because of the short block length between Franklin northbound and southbound it is unlikely that any revision of lane configuration can be effected.

The conditional rezoning agreement approved by the City Council for the Westin Hotel and Residences Project requires that “A minimum of three hundred and twenty four (324) on site parking spaces shall be provided to service the needs of the Project and the total number of parking spaces required to service the project (including any offsite parking requirements) shall be determined by the Planning Board during site plan and subdivision review.”

Since the conditional rezoning, the number of proposed hotel rooms has been reduced from the previously proposed 244 rooms to 229 rooms. This change reduces the proposed parking demand from 324 parking spaces to 320 parking spaces. It is anticipated that the total parking demand for the project may further be reduced because the final number of condominiums may reduce as buyers purchase and combine abutting units. If the parking demand is reduced, offsite parking may not be required.

The Traffic Study and Parking Demand Analysis are attached. Tom Errico, the City’s Review Traffic Engineer is currently reviewing the plans and comments will be available at the workshop meeting.

Financial Capability

Financial and Technical Capability is included for the Board's review.

6. Condominium Documents

Condominium documents will be required for this project. Staff is recommending that condo documents be submitted prior to public hearing for staff review.

7. Landscaping/Existing Vegetation

The applicant is proposing brick sidewalk along the entire frontage of the site. The applicant is also proposing a number of street trees around the site with some planting beds around the courtyard and within the alleyway behind the Hugo's building. The City Arborist is currently reviewing the plans.

8. Exterior Lighting

The applicant has submitted lighting catalogue cuts for the proposed lighting, but is still preparing the photometric plan. Staff is still reviewing the lighting, however, it appears that the lighting may require a waiver, because the fixtures are shielded up lights.

Issues To Be Resolved Prior to Public Hearing

Following is a list of items that will need to be resolved prior to scheduling of a public hearing:

- Sewer capacity letter
- Public Works' Review
- DRC's Review
- Traffic Engineer Review
- Condominium Documents
- Landscaping Review
- Neighborhood Meeting

Attachments:

1. Applicant's Submittal
2. Traffic Study
3. Letter from Landmarks
4. Plans



India Street Looking South



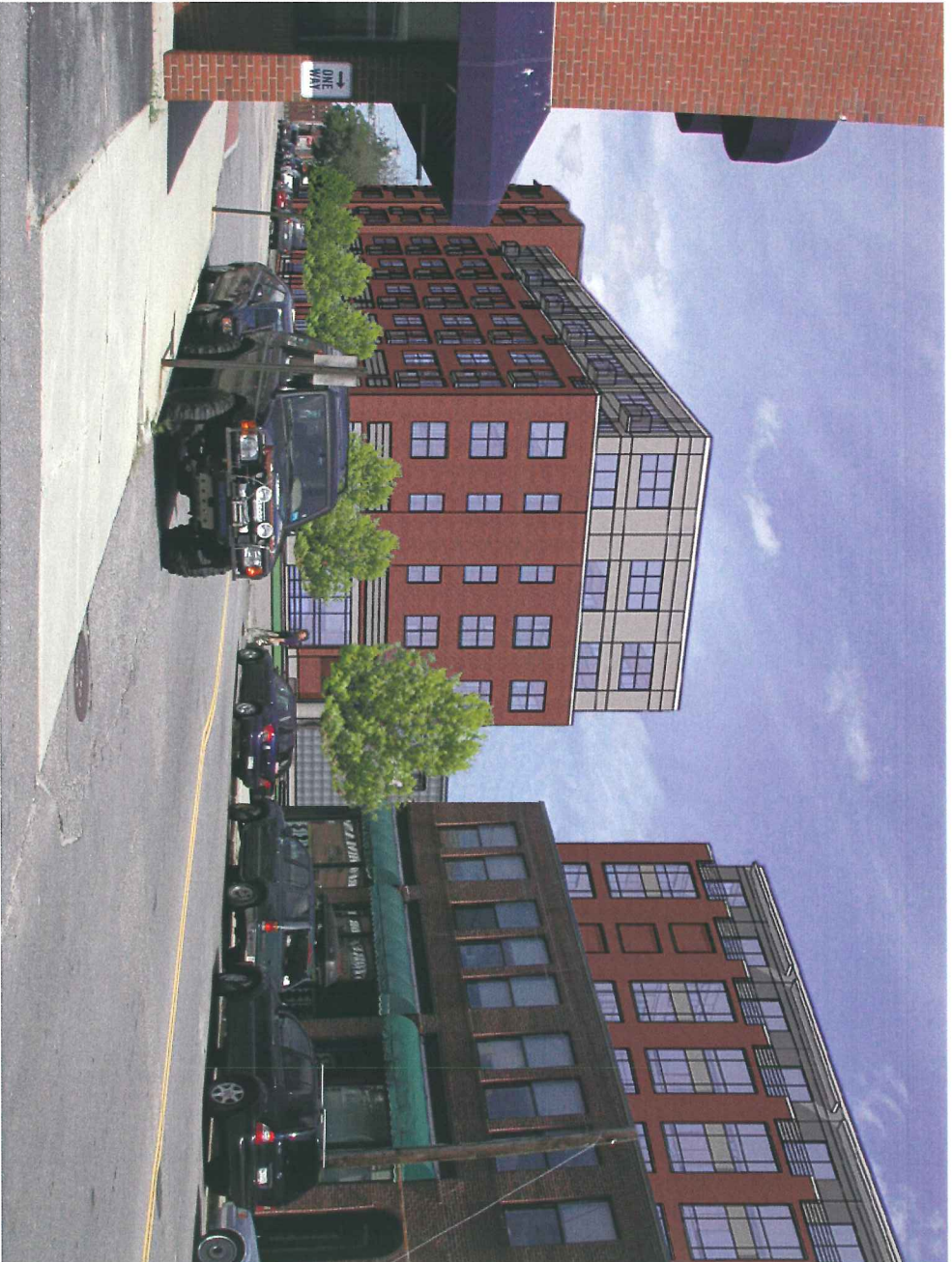
India Street Looking North



Middle Street Looking West

WESTIN HOTEL and RESIDENCES | Portland, Maine

Developer | PME 1 Limited Partnership | Planning and Design | Cooper Carry Architects • Winton Scott Architects • Sebago Technics



Middle Street Looking East

WESTIN HOTEL and RESIDENCES | Portland, Maine

Developer | PME 1 Limited Partnership **Planning and Design** | Cooper Carry Architects • Winton Scott Architects • Sebago Technics

**38 INDIA STREET
B-3 CONDITIONAL REZONING REQUEST
PME I LIMITED PARTNERSHIP, APPLICANT**

Submitted to:

Portland Planning Board
Portland, Maine
August 5, 2005

Submitted by:
Kandice Talbot, Planner

I. INTRODUCTION

PME I Limited Partnership is proposing a B-3 conditional rezoning for property located at 38 India Street. The site is the former Jordan's Meats and is bounded by Franklin Arterial, Middle Street, India Street and Fore Street.

The proposal is for the development of a Westin Hotel and Residences with underground parking. The developer is proposing 324 parking spaces. The building program will consist of approximately 220 hotel rooms, 100 to 110 residential condominiums (depending on final floor plan layout), and approximately 20,000 sq. ft. of retail/commercial space including the hotel health club and spa space which is intended as facility for hotel guests, condominium owners and membership from the public.

The program also includes 19 Hotelominium units. These are unique residential units located on the top floor of the hotel wing of the building. These buildings will be for sale under a variety of full and partial ownership options. The units, when not occupied full time, may be managed as suites within the hotel room pool.

Since the last workshop, the developer has submitted the following:

- Parking Demand Analysis
- Conditional Rezoning Rationale – Design Comparison, By-Rights vs. Conditional Rezoning
- Conditional Rezoning Rationale – Building Height
- Parking Garage Layout Plans
- India Street Context Study
- Neighborhood Meeting Sign-In Sheets and Minutes

461 notices were sent to area property owners. Two notices of the public hearing appeared in the Portland Press Herald. The notice was posted in the City Clerks office 14 days prior to the Public Hearing.

II. BACKGROUND

Attached is the workshop memo from the June 14, 2005 Planning Board meeting, which outlines the history of the proposal to date.

III. FINDINGS

Current Zoning:	B-3
Proposed Zoning:	B-3 Conditional Zone
Land Area:	1.7 acres
Existing Use:	Jordan's Meat
Proposed Use:	Hotel, Residential Condominiums, and Retail
Land Uses in the Vicinity:	Commercial, Retail, and Residential

IV. EXISTING USES

The uses along Franklin Arterial, Middle Street, Fore Street and India Street are commercial, retail and residential.

V. DEVELOPMENT PLAN

Based on the proposed conditional rezoning, the building program will consist of approximately 220 hotel rooms, 100 to 110 residential condominiums (depending on final floor plan layout), 19 hotelominium units and approximately 20,000 sq. ft. of retail/commercial space, including the hotel health club and spa space which is intended as facility for hotel guests, condominium owners and membership from the public. The condominium units will have access to hotel amenities, such as room service, use of the pool and the fitness center.

Traffic

A traffic study has been completed and is included in this packet. The traffic study estimates that there will be a total of 175 PM peak hour trips. Traffic generated by the former Jordan Meats can be used as a "credit" when considering "net" new traffic. This former level of traffic is estimated at 50 PM peak hour trips leaving a net increase in new traffic of 125 trips, which will require a MDOT Traffic Movement Permit.

There is a High Crash Location identified at the intersection of Franklin Arterial and Middle Street. There were 26 accidents reported at this intersection, with 16 of those accidents being left turn collisions. The left turn collisions on north and southbound Franklin Arterial are likely the result of sight line problems that are exacerbated by the wide median and lack of head-to-head left turn lanes. The traffic study recommends that "dotted" pavement markings be used to guide both north and southbound left turns (to turn in front of each other) and possibly add a second stop bar at the end of the median to encourage drivers turning left to move into this position to aid sight lines and reduce crossing distance.

Parking

Sec. 14-526(a)(2)b. states "Where construction is proposed of new structures having a total floor area in excess of fifty thousand (50,000) square feet, the planning board shall establish the parking requirement for such structures. The parking requirement shall be determined based upon a parking analysis submitted by the applicant, which shall be reviewed by the city traffic engineer, and upon the recommendation of the city traffic engineer." The applicant has submitted a parking analysis, which is attached.

As a starting point, the developer applied the City's parking requirements to the development. Based on that requirement, the number of spaces required is 408 spaces. The developer notes that this parking demand is based on "stand-alone" land uses. The proposed development is a mixed-use development, and because of this the parking demand would be expected to be lower due to shared parking. Based on the mixed-uses on this site, the proposed number of parking spaces is 324 spaces.

As stated previously, during site plan approval, the Planning Board determines the parking requirement based on the applicant's parking analysis. The Planning Board may wish to include the number of parking spaces in the conditional rezoning language.

The Traffic Engineer is currently reviewing the traffic analysis and comments will be available at Tuesday's public hearing.

Off-Site Public Improvements

The subject project represents the first step in a historic transformation for Portland's eastern peninsula. The Westin Hotel and Residences development encompasses a full city block of 1.75 acres in the heart of Portland's urban core. The surrounding area is a transitional district that links the Old Port retail/office area with the India Street neighborhood. As one moves east from the subject site, the area's character transitions again from the mixed use India Street area to the under-developed Eastern Waterfront district. As has been widely publicized, the City is poised to experience significant redevelopment in the Eastern Waterfront that, when combined with the proposed Westin project, will place significant demands on public infrastructure on the eastern portion of Portland's peninsula. As new development occurs, it will be incumbent on the development review process to ensure that the public infrastructure of the area transitions along with and at a quality level equal to the private development.

Recent Practice:

It has been the recent practice of the City that major projects are analyzed for their potential to provide a public benefit for the area in which they are sited. (Recent examples being: Maine Medical Center, OEI at Outer Congress Street, and Waterview Apartments at Cumberland Avenue.) Given the degraded state of many sidewalks and landscaping in the immediate area surrounding the site, the Board should consider how and to what extent this project should contribute to the public amenities for the Franklin Arterial/India Street area.

Potential Improvements:

The site is located between Franklin Arterial, Middle Street, India Street and Fore Street. Within these street segments, the project will inevitably be responsible for infrastructure improvements directly related to its site plan development. The project submittal identifies some striping and turning improvements to facilitate left hand turns from Franklin to Middle, and the project will obviously need to address sidewalks and curb cuts at the subject site. Other improvements that are functionally linked to the immediate needs of the project will be identified through the site plan review and traffic movement permit process and will be the unambiguous responsibility of the project. The types of potential improvements located off-site from, but related to, the proposed development include general streetscape amenities to upgrade the public infrastructure in the area, including decorative lighting, street trees, new sidewalks, and high quality street furniture such as benches, planters, and trash cans similar to those recently selected for placement along Congress Street.

For these types of improvements, which will enhance the general area of the new development and add to the experience of the hotel visitors and residents, a monetary contribution is appropriate. In conversations within this Department and with the City Manager, a contribution amount of

between \$100,000 and \$200,000 has been suggested. \$100,000 is the amount provided by the Waterview project, a 94-unit residential development, to be used either to assist in saving the house or for neighborhood sidewalk and trail improvements. This Westin Hotel & Residences project is two to three times larger than the Waterview project. The area proposed for public improvements funded through this contribution is within ¼ mile of the site, with the target area being east of Franklin, between Commercial and Congress, to Mountfort Street. This area includes the Waterfront East planning district, which this site adjoins and forms a connection to the Old Port and downtown.

We have discussed the prospect of off site traffic improvements, as proposed in the Peninsula Traffic Plan, recently completed. The consensus of opinion is to defer the issue of traffic related improvements to the site plan and traffic movement review phase of the project. We are presently evaluating the short and medium range traffic improvements that will be needed to accommodate development in the Eastern Waterfront and Bayside districts. It is possible that this project will be required to contribute to related traffic improvements at the site plan/development review stage. At this time, there is not a funding plan and policy for contributions. We expect the Peninsula Traffic Plan to be presented to the Planning Board and City Council in early fall. Regardless of the disposition of the Peninsula Traffic Plan, the site plan review and Traffic Movement Permit will identify required improvements needed to mitigate impacts from the proposed development.

Building Design

A summary of the architectural program and commentary by Urban Designer Carrie Marsh is attached. At the previous workshop on June 14 (see also workshop memo, attached), the justification and public benefit of the proposed conditional rezoning was presented. The following excerpt from that memo summarizes the key public attributes desired from the increase in height being considered:

“The public benefits of the proposed rezoning would include increased block permeability and transparency; and variation in building massing and articulation. Further, increased height would allow for more rooms above and thus open the first floor to opportunities for retail uses, particularly along India Street, which would complement other development in the area.”

“A benefits of the rezoning could potentially be that a semi-permeable corridor be inserted within the block along the projection of Hampshire Street, allowing public access through the lobby area, and possibly a high, semi-public glazed lobby extending all the way to Fore Street, that would allow some transparency through the block.”

The current proposal is very close to the massing model presented at the previous workshop. The addition of retail has been accomplished along India Street. The height requested along India Street at 88 feet, is considerably higher than the prevailing scale, and is two stories higher than the proposed 65 foot building across the street associated with the Riverwalk project. The taller building components range from 88 feet tall on India, to 78 feet along Middle, to 98 feet on Franklin. Franklin is such a wide street adjacent to large-scale downtown development that the 98 foot height is readily accommodated. The variations of 10 and 20 feet between adjacent wings provide some relief to the massing, but at this scale, the contrast is relatively slight. One wonders if some of the India Street program could be relocated to Franklin Street, thereby reducing the

scale on India and increasing the variation in building form.

The permeability feature has been provided by a two story glazed lobby area running from the porte cochere to Fore Street along the axis of Hampshire Street. This is enhanced from the one story passage proposed by the applicant last week, in response to staff comments. The question for consideration is whether this glazed lobby will provide the transparency and public access intended. One aspect that is somewhat disappointing is the need to transition the Fore Street grade via a porch and stair perpendicular to the passage axis. If the stair could have been sited at the end of the passage, it would have created a more inviting and prominent effect. As designed, the pedestrian on Fore Street is faced with a wall at the end of the passageway, not a view up the passageway. The passage is only apparent after climbing the stairs to the porch. These are perhaps unavoidable design features, given the program and site grading. (There is a ramp to underground parking to be accommodated beneath the through block passage.)

The Board is invited to engage with staff and the applicant and their architects to further understand the trade-offs embodied in the plan. While the design has evolved in a positive direction, and the justifications for the design choices are reasonable, the public objectives have not been fully realized. The City does stand to gain, however, a substantial project that achieves many of the design objectives identified.

VI. CONDITIONS FOR REZONING

The project was previously designed to meet the zoning height, but not the build-to provision on the street. The setback requirements and height limit of 65 feet are a constraint for the project. Following are the proposed conditions of the rezoning.

1. The property shall be governed by the zoning provisions, as such may be amended from time to time, applicable in the underlying B-3 zone, except as follows:
 - (a) Street Wall Build to Line. The dimensional zoning requirements of Section 14-220(c) of the Zoning Ordinance are hereby modified to allow **PME** to (1) construct a courtyard entranceway (the "Entrance") for the proposed hotel and condominium residences off of Middle Street and (2) create entrances to building that are compatible with existing street grades, as shown on the plan attached as Exhibit A (the "Plan").
 - (b) Height Limits. (1) The minimum structure height (measured according to the definition of "building, height of" in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be fifteen (15) feet for a portion of the building's frontage on Fore Street and seventeen (17) feet for a portion of the building's frontage on Fore Street and seventeen (17) feet for a portion of the building frontage on India Street as shown on the Plan.

(2) The maximum structure height (as measured according to the definition of "building, height of" in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be as follows:

(i) ninety-eight (98) feet for the westerly wing of the building with frontage on Franklin Arterial and Fore Street as shown on the Plan;

(ii) seventy-eight (78) feet for the easterly wing of the building with frontage on Middle Street as shown on the Plan; and

(iii) eighty-eight (88) feet for the easterly wing of the building with frontage on India Street as shown on the Plan.

2. The Property will be developed substantially in accordance with the Plan. The **CITY** hereby grants such waivers as may be necessary to permit the courtyard entranceway to exist as depicted on the Plan. The specific street level floor plan and uses and the location and dimensions of the building entrances may be changed and/or the height of the building may be changed to be more in conformance with the existing Land Use Code, in each case without any further amendment to this Conditional Rezoning Agreement.
3. **PME** shall develop the Project to accommodate the **CITY's** requests as follows:
 - a. include commercial/retail space on the ground level along India Street and Middle Street; and
 - b. add mid-block pedestrian access through the building by creating an entrance on each of Middle Street and Fore Street.
4. Any change in the fee ownership of the Property shall be brought to the Planning Board for its review and approval, but this requirement shall not apply to (a) the conveyance of the fee interest in the Property from Zemco Industries, Inc. to **PME**; (b) the granting of mortgages by **PME** or any successor in interest, or to the enforcement by mortgages of their rights under such mortgages, or to the assignment or conveyance of the ownership to an entity in which **PME** and/or any of its general or limited partners holds at least a 20% interest; (c) the conveyance of any condominium units or to the granting of any mortgages upon individual condominium units; or (d) to the leasing or subleasing of any space within the building or on the Property. The restrictions on transfer contained in this paragraph 6 shall expire upon the completion of the Project as evidenced by the issuance of certificates of occupancy or similar approvals from the **CITY** for all portions of the Project.
5. The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit **PME**, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit and be enforceable by the **CITY**, by and through its duly authorized representatives.
6. 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 portions shall be deemed as a separate, distinct and independent provision and such determinations shall not affect the validity of the remaining portions thereof.

Staff has reviewed the conditional rezoning language and revisions need to be made regarding minimum number of parking spaces, the hotelominium use and the public improvements dollar amount and a defined area that the public improvements would occur. Revised conditional rezoning language will be available at the Public Hearing.

VII. POLICY CONSIDERATIONS

The developer has cited many of the documents within the Comprehensive Plan, which would encourage a development of this nature. These documents include:

- * *Portland's Comprehensive Plan*
- * *Housing: Sustaining Portland's Future*
- * *Master plan for the Redevelopment of the Eastern Waterfront*
- * *Downtown Vision: A Celebration of Urban Living and a Plan for the Future of Portland – Maine's Center for Commerce and Culture*
- * *Portland Maine Downtown Height Study Policy Report*
- * *Downtown Urban Design Guidelines*
- * *Downtown Height Overlay Map*
- * *Draft Report Eastern Waterfront Building Height Study*

The developer discusses the policy considerations in detail in its July submittal, which is attached.

VIII. STAFF RECOMMENDATION

On the whole, this project comports with the policies and development plans for this area. It represents a step up in the scale of this neighborhood, which is undergoing development with scale increasing according to the Waterfront East Plan and zoning. While some refinements to the massing could improve the project plan and its fit with India Street, on balance this office supports the conditional rezoning. The Board and City Council will need to decide a monetary contribution. At this time we are recommending the sum of \$200,000.

IX. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by PME I Limited Partnership, the policies of the B-3 Downtown Business Zone, Comprehensive Plan, the information provided in Planning Board Report #48-05, and/or other findings as follows:

- i. The Board finds that the proposed B-3 Downtown Business Conditional Rezoning [is or is not] consistent with the policies of the B-3 Downtown Business Zone and Comprehensive Plan of the City of Portland. The Planning Board therefore [recommends or does not recommend] to the City Council approval of the proposed rezoning at 38 India Street.

Potential Condition of Approval:

- The conditional rezoning language shall be revised to include the minimum number of parking spaces, the hotel minimum use, the public improvements dollar amount and a defined area that the public improvement would occur, to be reviewed and approved by Corporation Counsel.

As required under 30-A M.R.S.A Section 4352, that the proposed conditional rezoning

- Be consistent with the local growth management program adopted under this chapter;
- Establish rezoned areas that are consistent with the existing and permitted uses within the original zones; and
- Only include conditions and restrictions that relate to the physical development or operation of the property.

Attachments:

1. June 14, 2005 Planning Board Workshop Memo
2. Urban Designer's Memo dated July 21, 2005
3. Applicant's Submittal dated July 20, 2005
4. Shadow Study
5. Neighborhood Meeting Packet
6. India Street Context Study
7. Parking Demand Analysis
8. Applicant's Submittal dated August 3, 2005
9. Plans and Elevations

Memorandum
Department of Planning and Development
Planning Division



To: Chair Cloutier and Community Development Committee
From: Alexander Jaegerman, Planning Division Director
Date: August 4, 2005
Re: Liberty Companies/PME Limited Partnership Project

Background

The developers of the Jordan's Meats site have been working on their plans for the Westin Hotel and Residences project. The developers would like to present the changes to the proposal since the last time they were before the Community Development Committee at the next meeting. Attached are the proposed plans and conditional rezoning language.

The development is scheduled for Planning Board Public Hearing on Tuesday, August 9, 2005. Staff will discuss the Planning Board meeting results at the Community Development Committee meeting.



Memorandum
Department of Planning and Development
Planning Division

To: Mayor Duson and Members of the Portland City Council
From: Carrie M. Marsh, Urban Designer, City of Portland, Planning Division
Date: 08/23/05
Re: Westin Hotel and Residences – 38 India Street

Introduction

The proposed Westin Hotel and Residences site is bounded by Franklin Arterial, Middle Street, India Street and Fore Street. The proposed use of the property is a mixed-use development which will include a hotel, condominiums, restaurants, retail space, and a parking garage.

This memo presents the design of the proposed project as it was approved at a Planning Board Hearing on August 9, 2005. Massing studies, computer models, renderings, material samples and a shadow study were provided to the Planning Board. The applicant also prepared a detailed narrative describing the justifications for a conditional rezone request.

Background

The applicant first presented conceptual plans for the Westin Hotel and Residences project at a Planning Board Workshop on May 10, 2005. At that time, there were two-dimensional requirements of the B-3 Zone (that relate to the design) which were identified for further resolution. These issues included the street wall build-to line, and the minimum building height.

The original "as of right" design consisted of two 65 foot high structures which shared a common base. The setback requirements and height limits impacted the building's permeability and massing, and limited the floor to ceiling heights, the number of rooms/units, and the mix of uses. The project "worked" with these constraints, but the applicant noted that there were multiple compromises as a result. Staff also recognized the potential to create a project that better met public and planning goals through rezoning.

The applicant presented its proposal at the Community Development Committee on June 8, 2005. The CDC was generally favorable of the project, with a few comments. The CDC recommended visual and pedestrian permeability, retail space on the ground floor of Middle and India Street, and thought that additional height was an option, especially on Franklin Arterial.

The applicant decided to pursue a conditional rezoning in order to allow the project to go forward in a better configuration that better met planning and economic development goals.

Description

The proposed Westin Hotel and Residences is a single building, with variety in its height and massing, which occupies a full block. The building is generally defined by two interlocking "L" shaped wings. Materials shown in the renderings are brick, tile, and glass with spandrel panels.

The West Elevation along Franklin Arterial includes primarily hotel related uses with high-end "hotelominiums" on the top floor. This portion of the building is proposed to be ten stories high and ninety-eight feet in height, with a step back at eighty-eight feet. The Franklin Street façade includes large storefront windows and a corner entrance at Fore Street into a restaurant space.

The South Elevation along Fore Street is made up of a variety of building heights. The applicant notes that the building height drops from ninety-eight feet to eighty-six feet at the corner of Fore Street and Franklin Arterial and varies in height from thirty-eight feet to thirty-five feet to fifteen feet along Fore Street, connecting to the eighty-eight foot tall wing at India Street.

The South Elevation is ten stories and ninety-eight feet in height at the west end with a step back at eighty-eight feet. This elevation includes two loading bays and parking garage ingress and egress at the ground level. Stairs lead from the sidewalk level up to a large "porch" with public access into the building. Large-scale windows are over the loading bays and along the porch.

The South Elevation is fifteen feet high at mid block with a ballroom, meeting rooms and support spaces that connect the two wings of the structure. This space is defined by double height windows along the street. A pergola type structure is shown as a rooftop amenity.

The South Elevation is nine stories high and eighty-eight feet in height at the east end. This is the condominium portion of the project. Balconies are shown on the elevations. A corner entrance at Fore and India Streets is shown into a first floor retail space.

The East Elevation includes a "base" that is seventeen feet high along India Street. The building steps back from the street above this base and rises to a total height of eighty-eight feet. This portion of the building is designed with step-backs which widen in the downhill direction to the corner of India and Fore Streets. This flared design narrows the building's visual profile when viewed from the north and east. This wing provides retail/commercial space at the street level and residential condominiums on the upper floors. Balconies are shown on the elevations. Smaller storefront windows (compared to other elevations) are shown at the street level.

The North Elevation of the building along Middle Street is eighty-eight feet high at the corner of India Street. The building drops down to a height of seventy-eight feet along Middle Street. The building steps back at fifty-eight feet. An entrance to the condominium portion of the project is shown at the street level. A bay of the structure immediately adjacent to the entrance is shown as a blank brick wall. Large storefront windows open into retail space along Middle Street.

The North Elevation includes a semi-circular drive entering and exiting off of Middle Street, with a two story high *port cochere* as an entrance. The applicant notes that the entrance is 115 feet from the build-to line along Middle Street. The entrance plaza is approximately 110 feet wide. This entrance plaza is connected to Franklin Arterial via a pedestrian alley behind Hugo's.

A semi-public corridor has been created through the block, roughly on an axis with Hampshire Street. The entrance from the Middle Street courtyard and the two story *porte cochere* allows access through the lobby area, out on to the “porch” and down a set of stairs to Fore Street. This feature allows transparency and permeability through the block.

Parking for the project is placed below grade with access at Fore Street.

Request for Rezoning

The applicant prepared a detailed narrative that describes the justifications for a conditional rezone request in order to accommodate desired changes in height and setbacks.

Additional height is being requested because of the unique physical constraints of the site; the provision of an onsite below grade parking structure which eliminates the visual challenges of above grade parking; the displacement of residential units to create street level retail space along India and Middle Streets; a pedestrian permeable corridor through the building which allows for views and access from Hampshire Street; a significant outdoor plaza; and a pedestrian alley to Franklin Street. Additional building height will provide for units at the top of the building.

The applicant is requesting that the minimum height of the building along a portion of Fore Street be reduced to fifteen feet in order to provide variation in the building heights and building massing in a manner that supports the building function and provides visual interest at the pedestrian level. The applicant notes that the proposed building program places the hotel ballroom and prefunction concourse at street level along Fore Street providing visual interest at street level, with activity within the building visible to pedestrians day and night.

The applicant is proposing setbacks that will reduce the visual impact of the street wall height.

The applicant is proposing to increase the building setback on Middle Street to allow the creation of a courtyard and pedestrian alleyway. The applicant notes that the courtyard provides an area for the safe operation of vehicle traffic accessing the main lobby of the proposed hotel and residential condominiums. The courtyard is designed with an emphasis on pedestrian access and amenities and allows for a pedestrian alleyway connected to Franklin Arterial.

The applicant notes that the proposed courtyard and pedestrian alley effectively narrows the project’s building footprint on the site, increasing the transparency, enticing pedestrians to take advantage of the permeability provided through the building, and enhancing and preserving the view corridor along Hampshire Street.

The applicant also proposes to increase the building setback at the intersection of Fore Street and Franklin Arterial and at the intersection of Fore Street and India Street. The applicant notes that the increased setback at these locations is required to create entrances to the building that are compatible with the existing street grades, enhance pedestrian access, comfort, usability of the building at street level and provide accessibility for the physically handicapped.

The applicant has proposed a building which provides a variety of building heights and massing profiles. The tallest elements are along Franklin Arterial and India Street where the height is balanced against the buildings across the street to achieve a 1:5:1 height to street width ratio. The height along Franklin Arterial is particularly important to balance the appearance of the building at 100 Middle Street across Franklin Arterial which is 105 feet in height. The design visually narrows the appearance of Franklin Arterial to the pedestrian. It further frames the views to the waterfront and maintains the panoramic views to the skyline from Portland Harbor.

Staff Comment

The design complies with the underlying B-3 *Downtown Urban Design Guidelines*, particularly with regard to orientation to the street, contextual design, and emphasis on the pedestrian environment through design details, entrances, and first floor uses.

The existing height requirements of the site impact the overall massing of the building and resulted in a building design that was monolithic in form in order to make the business program work. The public benefits of the proposed rezoning and increased height include increased block permeability and transparency; and variation in building massing and articulation.

The proposed height increases have been accompanied by design enhancements that meet public and planning objectives. A benefit of the rezoning includes a semi-permeable corridor that would be inserted within the block along the projection of Hampshire Street, allowing public access through the lobby area. This design element would include a high, semi-public glazed lobby extending all the way to Fore Street, that would allow transparency through the block.

Increased height would allow for more rooms above and thus open the first floor to retail and restaurant use, particularly on India Street, which would complement other development nearby.

The proposed change to the building setback would allow for an entry court to be created.

Conclusion

Staff encouraged the developer to consider changes in height and setbacks in order to improve the project design from a public benefit perspective. The applicant also desired to relieve some of the design constraints compromising the hotel, retail and residential program elements.

The public benefits of the proposed rezoning would include increased block permeability and transparency; and variation in building massing and articulation. Further, increased height would allow for more rooms above and thus open the first floor to opportunities for retail uses, particularly along India Street, which would complement other development in the area.

In evaluating the plans approved by the Planning Board, the Planning staff believes that the increase in height has achieved the desired goals of articulation, variation in massing, permeability, and view corridors. The increased height has achieved a goal of first floor retail.

4. Right, Title and Interest

EVIDENCE OF RIGHT, TITLE AND INTEREST

The subject property is currently owned by Zemco Industries, Inc., as successor by merger to Jordan's Meats. Please see the attached Certificate of Merger. Jordan's Meats acquired title to the property via two separate deeds: a quitclaim deed from Area Development Council Project #1, Inc., dated April 3, 1972 and recorded in the Cumberland County Registry of Deeds in Book 3221, Page 206, and by deed from David Astor and Esta J. Astor, dated April 25, 1979 and recorded in such Registry in Book 4410, Page 277. A copy of each deed is attached.

PME I, Limited Partnership has the opportunity to purchase the former Jordan's Meats property from Zemco Industries, Inc. pursuant to a Real Estate Purchase Agreement, dated February 2, 2005, between Liberty Group, Inc. and Zemco Industries, Inc., and subsequently assigned to PME I, Limited Partnership by Liberty Group Inc. with the consent of the seller. Please see attached letter confirming the existence of this Agreement.



Tyson Foods, Inc.

April 22, 2005

Ms. Sarah Hopkins
City of Portland Planning Department
389 Congress Street
Portland, Maine 04101

Re: Former Jordan's Meats Plant, 38 India Street, Portland, Maine

Dear Ms. Hopkins:

This letter confirms that the property known as 38 India Street, Portland, Maine and comprising the former Jordan's Meats property located between India Street, Fore Street, Franklin Arterial and Middle Street is under contract to be sold by Zemco Industries, Inc. (a part of the Tyson Foods, Inc. family) to PME I, Limited Partnership in accordance with the terms and conditions of that certain Real Estate Purchase Agreement, dated February 2, 2005, between Zemco Industries, Inc. and Liberty Group, Inc., as assigned by Liberty Group, Inc. to PME I, Limited Partnership, by an assignment dated March 29, 2005, which assignment was consented to by Zemco Industries, Inc.

Very truly yours,

A handwritten signature in cursive script that reads "Jenna R. Johnston".

Jenna R. Johnston
Sr. Counsel and Assistant Secretary

CERTIFICATE OF MERGER
MERCING
JORDAN'S MEATS
INTO
ZEMCO INDUSTRIES, INC.

Zemco Industries, Inc., a Delaware corporation (the "Corporation"), pursuant to Section 252 of the Delaware General Corporation Law,

DOES HEREBY CERTIFY:

FIRST. That the names of each of the constituent corporations are Zemco Industries, Inc., a Delaware corporation, and Jordan's Meats, a Maine corporation.

SECOND. That the board of directors and the sole shareholder of each of the Corporation and Jordan's Meats has approved the merger of Jordan's Meats with and into the Corporation pursuant to the terms of an agreement of merger in accordance with the provisions of Section 252 of the Delaware General Corporation Law which has been approved, adopted, certified, executed and acknowledged.

THIRD. That the executed agreement of merger is on file at an office of the surviving corporation, which is located at 665 Perry Street, Buffalo, Erie County, New York;

FOURTH. That a copy of the agreement of merger will be furnished by the surviving corporation, on request and without cost, to any stockholder of either constituent corporation;

FIFTH. That the name of the surviving corporation is Zemco Industries, Inc.;

SIXTH. That the certificate of incorporation of Zemco Industries, Inc. shall be the certificate of incorporation of the surviving corporation;


SEVENTH. That Jordan's Meats has an authorized capitalization of 1,000 shares of common stock, par value \$0.01 per share, 100 of which are issued and outstanding, and all of such issued and outstanding shares are held by IHC Acquisition Corp. All of such shares were voted for the plan of merger.

EIGHTH. That Zemco Industries, Inc. has an authorized capitalization of 1,000 shares of common stock, par value \$0.01 per share, 1,000 of which are issued and outstanding, and all of such issued and outstanding shares are held by Foodbrands America, Inc. All of such shares were voted for the plan of merger; and

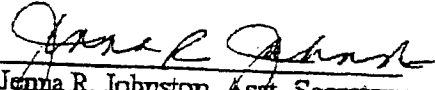
NINTH. This merger shall be effective at 11:59 p.m., Eastern Standard Time, on June 30, 2001.

IN WITNESS WHEREOF, Zemco Industries, Inc. has caused this certificate to be signed by its Vice President and attested by its Assistant Secretary, this 27th day of June, 2001.

ZEMCO INDUSTRIES, INC., a Delaware corporation

By 
William L. Brady, Vice President

ATTEST:


Jenna R. Johnston, Asst. Secretary

ARTICLES OF MERGER
MERCING
JORDAN'S MEATS
INTO
ZEMCO INDUSTRIES, INC.

Jordan's Meats, a Maine corporation, and Zemco Industries, Inc., a Delaware corporation, pursuant to the Maine Business Corporation Act,

DO HEREBY CERTIFY:

FIRST. That the names of each of the participating corporations are Jordan's Meats, a Maine corporation, and Zemco Industries, Inc., a Delaware corporation.

SECOND. That the current address of the registered office in the State of Maine of Jordan's Meats is Ten Free Street, Portland, Cumberland County, Maine.

THIRD. That the plan of merger, a copy of which is attached hereto as Exhibit "A," has been approved, adopted, certified, executed and acknowledged by each of the participating corporations and the sole shareholders of each of the participating corporations in accordance with the provisions of the Maine Business Corporation Act;

FOURTH. That the name of the surviving corporation is Zemco Industries, Inc.;

FIFTH. That the certificate of incorporation of Zemco Industries, Inc. shall be the certificate of incorporation of the surviving corporation;

SIXTH. That Jordan's Meats has an authorized capitalization of 1,000 shares of common stock, par value \$0.01 per share, 100 of which are issued and outstanding, and all of such issued and outstanding shares are held by IHC Acquisition Corp. All of such shares were voted for the plan of merger;

SEVENTH. That Zemco Industries, Inc. has an authorized capitalization of 1,000 shares of common stock, par value \$0.01 per share, 1,000 of which are issued and outstanding, and all of such issued and outstanding shares are held by Foodbrands America, Inc. All of such shares were voted for the plan of merger;


EIGHTH. This merger shall be effective at 11:59 p.m., Eastern Standard Time, on June 30, 2001; and

NINTH. That Zemco Industries, Inc. may be served with process in the State of Maine in any proceeding to enforce any obligation of Jordan's Meats, or to enforce the right of Jordan's Meats against Zemco Industries, Inc. Zemco Industries, Inc. irrevocably appoints the Secretary of State of the State of Maine as its agent to accept service of process in any such proceedings. The Secretary of State shall mail a copy of any process in such proceeding to Zemco Industries, Inc. at 1601 NW Expressway, Suite 1700, Oklahoma City, OK 73118.

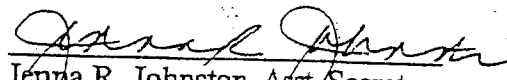
The corporation agrees that it will promptly pay to the dissenting shareholders of any participating domestic corporation the amount, if any, to which they are entitled under 13-A MPSA (Maine Business Corporation Act) with respect to the rights of dissenting shareholders.

IN WITNESS WHEREOF, Jordan's Meats and Zemco Industries, Inc. have each caused these articles of merger to be signed by its Vice President and attested by its Assistant Secretary, this 27th day of June, 2001.

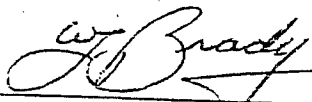
JORDAN'S MEATS, a Maine corporation

By 
William L. Brady, Vice President

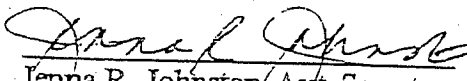
ATTEST:


Jenna R. Johnston, Asst. Secretary
I certify that I have custody of
the minutes.

ZEMCO INDUSTRIES, INC., a Delaware
corporation

By 
William L. Brady, Vice President

ATTEST:


Jenna R. Johnston, Asst. Secretary

AGREEMENT AND PLAN OF MERGER
(Zemco/Jordan's)

AGREEMENT AND PLAN OF MERGER (the "Plan") dated as of June 27, 2001, by and between Zemco Industries, Inc., a Delaware corporation ("Zemco"), herein sometimes referred to as the "Surviving Corporation," and Jordan's Meats, a Maine corporation ("Jordan's"). Zemco and Jordan's are herein sometimes collectively referred to as the "Constituent Corporations."

WITNESSETH:

WHEREAS, Zemco is a corporation organized and existing under and by virtue of the laws of the State of Delaware and having an authorized capitalization of 1,000 shares of common stock, par value \$0.01 per share (the "Zemco Common Stock"); and

WHEREAS, Jordan's is a corporation organized and existing under and by virtue of the laws of the State of Maine and having an authorized capitalization of 1,000 shares of common stock, par value \$0.01 per share (the "Jordan's Common Stock"); and

WHEREAS, the respective boards of directors of each of Zemco and Jordan's deem it advisable and in the best interest of each corporation and each of their respective shareholders that Jordan's be merged with and into Zemco in the manner contemplated herein and have adopted resolutions approving this Plan;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained and subject to the conditions herein set forth and for the purpose of stating the terms and conditions of the Merger, the mode of carrying the same into effect, the manner and basis of converting the shares of Jordan's Common Stock and other such details and provisions as are deemed desirable, the parties hereto have agreed and do hereby agree, subject to the terms and conditions hereinafter set forth, as follows:

ARTICLE I

The Constituent Corporations shall be merged into a single corporation by Jordan's merging into and with Zemco, which shall survive the Merger, pursuant to the provisions of the Delaware General Corporation Law and the Maine Business Corporation Act. Upon such Merger, the separate existence of Jordan's shall cease, and the Surviving Corporation shall become the owner, without transfer, of all rights and property of the Constituent Corporations, in the same manner as if the Surviving Corporation had itself incurred them.

ARTICLE II

The name of the Surviving Corporation shall be Zemco Industries, Inc.

ARTICLE III

A. On the effective date of the Merger, which shall be 11:59 p.m., Eastern Standard Time, on June 30, 2001 (the "Effective Date of the Merger"), the certificate of incorporation of Zemco, as currently in effect, shall be the certificate of incorporation of the Surviving Corporation.

B. On the Effective Date of the Merger, the Bylaws of Zemco, as in effect on the Effective Date of the Merger, shall become the Bylaws of the Surviving Corporation. Subsequent to the Effective Date of the Merger, such Bylaws shall be the Bylaws of the Surviving Corporation until they shall thereafter be duly amended.

ARTICLE IV

On the Effective Date of the Merger:

(1) Each share of Jordan's Common Stock issued and outstanding immediately prior to the Effective Date of the Merger, by virtue of the Merger and without any action on the part of the holder thereof, shall be cancelled and no payment shall be made in respect thereof.

(2) Each share of Zemco Common Stock issued and outstanding immediately prior to the Effective Date of the Merger, by virtue of the Merger and without any action on the part of the holder thereof, shall remain outstanding immediately following the Effective Date of the Merger.

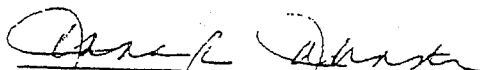
ARTICLE V


For the convenience of the parties hereto and to facilitate the filing and recording of this Plan, any number of counterparts hereof may be executed, and each such counterpart shall be deemed to be an original instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused this Plan to be executed by its respective duly authorized officers as of the day and year first above written.

JORDAN'S MEATS, a Maine corporation


ATTEST:

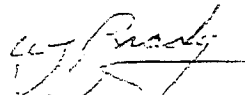

Jenna R. Johnston, Asst. Secretary
(Seal)

By 
William L. Brady, Vice President

ZEMCO INDUSTRIES, INC., a Delaware corporation

ATTEST:


Jenna R. Johnston, Asst. Secretary
(Seal)

By 
William L. Brady, Vice President

File No. 19320011 D Pages 5
Fee Paid \$ 80
DCN 2011831300003 MERG
FILED--06/29/2001
EFFECTIVE-06/30/2001 @ 11:59 p.m

Julie R. Higgins

Deputy Secretary of State - Maine

A true copy attests:

Julie R. Higgins

Deputy Secretary of State - Maine

Know All Men by These Presents,

That AREA DEVELOPMENT COUNCIL PROJECT #1, INC.

a Corporation organized and existing under the laws of the State
of Maine and located at Portland
in the County of Cumberland and State of Maine
in consideration of One Dollar (\$1.00) and other valuable consideration,

paid by JORDAN'S READY TO EAT MEATS, a Corporation organized and existing under
the laws of the State of Maine and located at said Portland,

the receipt whereof it does hereby acknowledge, does hereby make,
release, bargain, sell and convey and Surrender Quit-Claim unto the said
JORDAN'S READY TO EAT MEATS, its successors and assigns

~~whereof and assigns forever.~~
A certain lot or parcel of land together with all buildings and improvements there-
on, situated on Fore Street as relocated on July 7, 1958 in the City of Portland,
County of Cumberland, State of Maine, bounded and described as follows:

Beginning at the most easterly corner of a lot of land conveyed by Slum Clearance
and Redevelopment Authority to the Middle Realty Company by deed dated October 10,
1958 and recorded in Cumberland County Registry of Deeds in Book 2438, Page 470;
said corner also being N 53° 31' E 141.48 feet along the northerly sideline of said
Fore Street from its intersection with the easterly sideline of Franklin Street;
thence by the land of said Middle Realty Company on the following described courses:
N 36° 29' W 73.40 feet; thence N 22° 23' W 103.57 feet to the southerly sideline of
Middle Street; thence by said Middle Street N 66° 23' E 325.62 feet to the westerly
sideline of India Street; thence by said India Street S 31° 37' E 182.01 feet to
its intersection with the northerly sideline of said Fore Street; thence by said
Fore Street on the following described courses: S 58° 23' W 12.11 feet; thence S
80° 49 1/2' W 123.41 feet to a point of curvature; thence by a curve to the left
tangent to the last described course whose radius is 199.68 feet, a distance of
95.32 feet when measured on the arc thereof to a point of tangency; thence tangent
to the last described course S 53° 31' W 113.64 feet to the point of beginning.
Said above courses are magnetic and of the date of 1954.

Said above described parcel is also subject to so much of Railroad easement "A" as
shown on a plan entitled "Vine-Deer-Chatham Project Area II-2" made for the Slum
Clearance and Redevelopment Authority of Portland, Maine, and recorded in Cumberland
County Registry of Deeds in Book 47, Page 48, as lies within the bounds of the above
described parcel.

Together with a right of way for the passage of vehicles in common with Middle Realty
Co., its successors and assigns, over the triangular parcel of land hereinafter des-
cribed, including, without limitation, the right to install and maintain within the
premises hereinafter described a spur railroad track from the existing railroad
track to serve the premises of Area Development Council Project #1, Inc., its
successors and assigns, which lie adjacent to the premises hereinafter described.

A certain lot or triangular parcel of land situated on the northerly side of Fore
Street in said Portland, bounded and described as follows:

Beginning on the northerly side of Fore Street at the southeast corner of the lot of
land conveyed by the Slum Clearance & Redevelopment Authority to the Middle Realty
Co. by deed dated October 8, 1958 and recorded in said Registry of Deeds in Book
2438, Page 470: said point also marking the most southerly corner of a lot of land
conveyed by the Slum Clearance & Redevelopment Authority to Area Development
Council Project #1, Inc.; thence by said land of Area Development Council Project

Us here and to hold the same, together with all the privileges and appurtenances thereunto belonging, to it the said JORDAN'S READY TO EAT MEATS, its successors

Hold and Assigns forever.

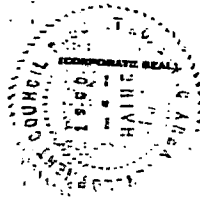
In Witness Whereof, the said AREA DEVELOPMENT COUNCIL PROJECT #1, INC.

has caused this instrument to be sealed with its corporate seal and signed in its corporate name by PHILIP E. STULTZ, its President thereunto duly authorized, this 3rd day of April in the year one thousand nine hundred and seventy-two.

Signed, Sealed and Delivered in presence of

[Handwritten signature]

AREA DEVELOPMENT COUNCIL PROJECT #1, INC.
By *[Handwritten signature]*
Its President



State of Maine, Cumberland ss. April 3, 1972.

Personally appeared the above named Philip E. Stultz, President

of said Grantor Corporation 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 corporation.

APR 4 1972

Before me,

[Handwritten signature]
Justice of the Peace

REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE

Received at 4 B North, and recorded in
OF 322 PAGE 206 *[Handwritten initials]*

Register

NOTICE TO CONSUMER:
1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT. 2. YOU ARE ENTITLED TO A COPY OF THIS AGREEMENT. 3. YOU MAY PREPAY THE UNPAID BALANCE AT ANY TIME WITHOUT PENALTY, EXCEPT FOR MINIMUM CHARGES AS PERMITTED BY LAW.

Signed, Sealed and Delivered
in presence of

Roslyn A. D'Amato
to both

Stephen T. Dinsmore
Mary L. Dinsmore

STATE OF MAINE
Cumberland, ss

Personally appeared the above named *Stephen T. Dinsmore*
and acknowledged the above instrument to be his free act and deed.

RECORDING OFFICE, CUMBERLAND COUNTY, MAINE APR 25 1979
Received at 2 H 57 1/2 PM, and recorded in

BOOK 4410 PAGE 76 *Leah's Leas*
Before me, *Roslyn A. D'Amato*
DEPUTY REGISTER

MY COMMISSION EXPIRES
OCTOBER 10, 1982

9021
(101)

Know all Men by these Presents,

That WE, DAVID ASTOR and ESTA J. ASTOR, of Raymond, County of Cumberland and State of Maine,

in consideration of One Dollar (\$1.00) and other valuable consideration

paid by JORDAN'S MEATS, a Maine corporation with a place of business in Portland, County of Cumberland and State of Maine,

and whose mailing address is P.O. Box 588, 38 India Street, Portland, Maine 04101

the receipt whereof we do hereby acknowledge, do hereby remise, bargain, sell and convey and forever quit-claim unto the said JORDAN'S MEATS, its successors

and assigns forever,

a certain lot or parcel of land with the buildings thereon, situated on the southeasterly side of Middle Street, in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Northwesterly by Middle Street; Southwesterly by Franklin Street; Southeasterly by Fore Street, as relocated, and Easterly by land of the Slum Clearance and Redevelopment Authority, subject to sewer easements "E" and "F" as shown on plan recorded in Cumberland County Registry of Deeds in Plan Book 47, Pages 48 and 49, and Railroad easement "A" as shown on said plan, to which plan reference is hereby made.

Including also the right of way conveyed by Area Development Council Project #1, Inc. to Middle Realty Co. by deed dated June 16, 1961 and recorded in said Registry of Deeds, in Book 2611, Page 286, and subject to the right of way granted to said Area Development Council Project #1, Inc.

Being the same premises conveyed to the said David Astor and Esta J. Astor by Middle Realty Co. by Deed dated January 29, 1965 and recorded in said Registry of Deeds in Book 2877, Page 457.

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (the "Agreement"), made and entered into this 2nd day of ~~January~~^{February}, 2005 by and between **Zemco Industries, Inc.**, a Delaware corporation (hereinafter called "Seller"), and **Liberty Group, Inc.** (hereinafter referred to as "LGI" or "Buyer"). This Agreement shall become effective on the date Buyer has been notified of the full execution hereof by Seller ("Effective Date").

WITNESSETH:

WHEREAS, Seller is the owner of certain real property located in Cumberland County County, Maine; and

WHEREAS, subject to the terms and conditions set forth herein, Buyer desires to purchase said property from Seller and Seller desires to sell said property to Buyer;

NOW, THEREFORE, in consideration of the premises recited, of the covenants, agreements and provisions of this Agreement, and of other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereby agree as follows:

1. Agreement to Sell and Buy. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, for the consideration and upon the terms and conditions hereinafter set forth, the lands situated in Cumberland County, Maine, more particularly described on Exhibit "A" attached hereto, together with all improvements thereon, and all rights, privileges and appurtenances pertaining thereto, but subject to any matter disclosed herein, all recorded or restrictions, easements, and other matters of record. All property sold pursuant to this Agreement is hereinafter referred to as the "Property."

2. Price and Terms of Payment. As the purchase price for the Property, Buyer agrees to pay and Seller agrees to accept, a total purchase price of [REDACTED] (the "Purchase Price") as adjusted pursuant to the terms of this Agreement. Within five (5) days after Buyer's receipt of a fully-executed copy of this Agreement, Buyer shall tender to Seller (or Seller's representative), the sum of [REDACTED]

[REDACTED] (the "Earnest Money" or "Deposit") as earnest money in connection with the above-described transaction. Following a period of sixty five (65) days after the Effective Date (the "Inspection Period"), the Earnest Money shall be applicable to the purchase price, but otherwise non-refundable except as provided herein.

3. **Closing.**

(a) **Time and Place.** Subject to the terms and conditions set forth in this Agreement, closing and settlement for the sale and purchase of the Property shall take place at a time and place as is mutually agreed to by Seller and Buyer; provided, however that if any of the conditions to Closing set forth in this Agreement have not been satisfied or waived by the party entitled to the benefit of such condition, the Closing will take place on the third business day after such condition has been satisfied or waived, but in no event shall the closing occur later than one hundred eighty days (180) following the Effective Date. The time at which such closing and settlement occurs shall hereinafter be referred to as the "Closing" and the date on which the Closing occurs shall hereinafter be referred to as the "Closing Date."

(b) **Payment of the Purchase Price.** The Purchase Price shall be paid by the Buyer to the Seller at the Closing, and Buyer shall deliver to Seller cash in the form of a wire transfer in an amount equal to the Purchase Price, less the Earnest Money and adjusted by any prorations or other amounts described herein.

4. **Conditions Precedent to Closing.** Buyer represents and Seller hereby acknowledges that Buyer intends to use the Property for a mixed-use development of offices, retail, residential and hotels ("Intended Use"). Therefore, the purchase contemplated by this Agreement, and the obligations of Buyer hereunder, are subject to the following conditions precedent:

(a) Buyer shall have until expiration of the Inspection Period to inspect the Property and to determine that they are suitable for the Intended Use and otherwise acceptable to Buyer. During the Inspection Period, Buyer shall have the right to review zoning and development issues relating to the Intended Use, inspect the structures and construction of the improvements on the Property; and to perform such environmental inspections as Buyer deems appropriate. If Buyer determines in its sole and absolute discretion that the Property is unsuitable for any reason

whatsoever and notifies Seller of such decision prior to expiration of the Inspection Period, the Deposit and any interest earned thereon shall be promptly returned to Buyer, at which time this Agreement shall be null and void and neither party shall have any further rights or obligations under this Agreement. Buyer's failure to object as aforesaid prior to expiration of the Inspection Period shall be deemed a waiver by Purchaser of the condition contained in this paragraph. If the Survey provided for in Section 10 discloses any condition which renders the Property unusable for the Intended Use (as determined in Buyer's reasonable discretion), then Buyer may rescind this Agreement and the Deposit will be refunded to Buyer, provided, however, that Buyer has exercised such rescission right by giving Seller written notice with evidence of such condition no later than sixty five (65) days following the Effective date.

(b) If the results of the analyses, inspections, test borings, or studies pursuant to this Agreement, disclose that the physical condition of the Property, including the existence of hazardous wastes and toxic substances, will prevent Buyer from reasonably developing the Property for the Buyer's intended use, then either Buyer or Seller may rescind this Agreement, whereupon the Deposit will be refunded to Buyer; provided however, that Buyer or Seller has notified the other party in writing with evidence of such unacceptable condition within fifteen (15) days after Buyer or Seller receives the results of such analyses, inspections, borings, or engineering studies, but not later than sixty five (65) days following the Effective date.

(c) The representations and warranties contained in Section 5 shall be true, complete and correct on and as of the Closing Date as though such representations and warranties had been made on and as of such dates, and the Seller shall have performed and complied with all agreements contained herein required to be performed or complied with by it prior to or at the Closing Date

(d) The Seller without representation or warranty as to accuracy or completeness will deliver or make available to the Buyer within fifteen (15) days of the full execution of this Agreement copies of land surveys, soil, geological or environmental reports which were prepared by 3rd parties, if any, and which may be in the Seller's possession. Seller is not obligated to deliver any internally prepared documentation.

5. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer, now and at Closing, as follows:

(a) Authority; Enforceability. No authorizations or approvals, whether of governmental bodies, creditors, or otherwise, are necessary to enable Seller to enter into and perform the transactions contemplated herein with respect to the purchase of the Property. This Agreement has been duly and validly executed and delivered by Seller, is a valid and legally-binding agreement of Seller, and, assuming due acceptance and execution thereof by Buyer, is enforceable against Seller in accordance with its terms, except as limited by bankruptcy and insolvency laws and by other laws affecting the rights of creditors generally; and

(b) Title to Property. Seller has good and marketable title to, and is in possession of, the Property free and clear of all security interests, including any conditional sale or other title retention agreements, mortgages, pledges, assessments, or defects in title that would render the title to the Property uninsurable or unmarketable, except for current ad valorem taxes, matters of public record and minor encroachments or matters, with none of such public record matters, encroachments or other matters being not material to the use or occupation thereof. Seller has not granted any options to purchase or otherwise acquire all or any part of the Property. Neither the whole nor any portion of the Property has been condemned, requisitioned or otherwise taken by any public authority, and no notice of any such condemnation, requisition or taking has been received by Seller. To the knowledge of Seller, no such condemnation, requisition or taking is threatened or contemplated.

(c) Disclaimer. **SELLER MAKES NO REPRESENTATION OR WARRANTY (EXCEPT AS TO THE WARRANTY OF TITLE CONTAINED IN THE DEED) CONCERNING THE VALUE OF THE PROPERTY, THE CONDITION OF ANY IMPROVEMENTS LOCATED UPON THE PROPERTY, THE ENVIRONMENTAL CONDITION OF THE PROPERTY, THE PRESENCE OR ABSENCE OF ANY HYDROCARBONS, ASBESTOS, ENVIRONMENTAL, HAZARDOUS MATERIAL OR TOXIC CONTAMINATION OF THE PROPERTY, THE SUITABILITY OF THE PROPERTY FOR A PARTICULAR PURPOSE, THE GEOLOGICAL CONDITION OF THE PROPERTY, THE MERCHANTABILITY OF THE PROPERTY, OR ITS FITNESS FOR A PARTICULAR PURPOSE. THIS SECTION SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THE AGREEMENT.** The term "Hazardous Materials" means any substance (a) the presence of which requires reporting, investigations, or remediation

under any current federal, state, or local statute, regulation or ordinance or (b) which are currently defined as hazardous substances, toxic substances, regulated substances, pollutants, or contaminants under any current federal, state, or local statute, regulation, or ordinance, including hydrocarbons and asbestos.

6. **Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller, now and at Closing, as follows:

(a) **Authority; Enforceability.** No authorizations or approvals, whether of governmental bodies, creditors, or otherwise, are necessary to enable Buyer to enter into and perform the transactions contemplated herein with respect to the purchase of the Property. This Agreement has been duly and validly executed and delivered by Buyer, is a valid and legally-binding agreement of Buyer, and, assuming due acceptance and execution thereof by Seller, is enforceable against Buyer in accordance with its terms, except as limited by bankruptcy and insolvency laws and by other laws affecting the rights of creditors generally; and

(b) **Advice of Attorney.** Buyer understands and acknowledges that the purchase of the Property and the other transactions contemplated hereby are typical of transactions in which the advice of an attorney is typically sought. Buyer has either sought and obtained the advice of an attorney in this regard or waived the right to seek such advice.

(c) **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER ACKNOWLEDGES THAT IT HAS INSPECTED (OR WILL INSPECT) THE PROPERTY AND WILL TAKE THE SAME AT CLOSING IN AN "AS IS, WHERE IS, WITH ALL FAULTS" CONDITION. BUYER HEREBY WAIVES AND RELEASES ANY CAUSES OF ACTION OR CLAIMS THAT IT MIGHT HAVE AGAINST SELLER RELATING TO THE CONDITION OF THE PROPERTY OTHER THAN FOR BREACHES OF THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE CLOSING.**

7. **Covenants of the Parties.** Each party to this Agreement shall use its reasonable efforts to cause conditions to their obligations herein set forth to be satisfied prior to the date of Closing. Each of the parties hereto agrees to execute and deliver any and all further agreements, documents or instruments reasonably necessary to effectuate this Agreement or the Closing contemplated hereby and the transactions referred to herein or contemplated hereby or reasonably requested by the other party to perfect or evidence their rights hereunder, including those

documents customarily executed in connection with the closing of real estate transactions in the State of Maine. Assuming the timely satisfaction, or the waiver, of the conditions precedent to Closing set forth herein, all parties shall use their reasonable efforts to effect and complete the transactions contemplated by this Agreement as promptly as practicable. Each party shall promptly notify the other party of any information delivered to or obtained by such party which would prevent the consummation of the transactions contemplated by this Agreement, or would indicate a breach by the other party (or parties) of the representations, warranties and covenants of either party to this Agreement.

8. **Title Insurance and other Closing Costs.** Seller shall obtain at the Seller's expense either a certificate of title to, or a policy insuring fee simple title to the Real Property in favor of Buyer, from a Title Company/Escrow Agent of Seller's choice ("Escrow Agent"). Buyer shall have five (5) days following receipt of said title insurance commitment in which to notify Seller in writing of any exceptions to which Buyer objects, other than those set forth in Section 5(b) of this Agreement. Seller shall be obligated to remove at or before Closing (i) any encumbrances placed or allowed by Seller with the intent of avoiding Seller's obligations hereunder being the "Mandatory Cure", Otherwise, Seller may elect, in Seller's sole discretion, to cure those exceptions which can be cured by the payment of money, and Seller shall have fifteen (15) days in which to cure any remaining exceptions. In the event Seller elects not to cure all such exceptions (other than the Mandatory Cure, the failure of which to cure shall constitute a default by Seller) within such fifteen (15) day period, Buyer may by notice in writing given to Seller within ten (10) days thereafter such election not to cure, either waive its objections to the exceptions which Seller has elected not to cure, whereupon the parties shall proceed with the Closing in accordance herewith, or terminate this Agreement, and in which event Seller will refund Buyer the Earnest Money. Buyer and Seller hereby agree that all closing costs not expressly addressed herein shall be paid by the party typically responsible for such costs pursuant to local custom of the county where the Property is situated.

9. **Deed.** Prior to Closing, Seller shall deliver to Escrow Agent a special quitclaim warranty deed with covenant ("Deed") conveying insurable title to the Property, subject to permitted exceptions and the deed restriction as set forth in section 17. Upon receipt of the entire

Purchase Price, Escrow Agent shall record the Deed and other recordable documents as may be delivered in connection with the Closing.

10. **Survey.** Buyer, at Buyer's sole responsibility and expense, may obtain a current survey of the Property made in accordance with the "Minimum Standard Detail Requirements for ALTA Land Title Surveys, Urban Classification" prepared by a registered/licensed surveyor ("Survey") no later than sixty (60) days after full execution of this agreement. Within five (5) days after receipt, Buyer shall furnish a copy of the Survey to both Seller and the Title Company.

Buyer hereby acknowledges it has been given the opportunity to obtain a new certified survey. Should Buyer decline to obtain a survey as offered pursuant to this section, Buyer agrees to hold Seller harmless of any problems relative to any survey discrepancies that may exist or be discovered (or occur) after Closing.

11. **Right of Entry.** At any reasonable time prior to the closing, and at Buyer's sole cost and responsibility, Buyer or its authorized agents shall have the right to enter upon the Property for any lawful purpose, including, without limitation, conducting the Survey as contemplated by this Agreement and any site analyses, test borings, and engineering studies following advance notice to Seller of Buyer's need for access, including the scope and location of any invasive testing. If requested by Seller, the Buyer will reasonably cooperate with Seller's environmental group in conducting its environmental studies on the Property. Buyer agrees to defend, indemnify and hold harmless Seller from any damages or liability to persons or property that might arise therefrom, and Buyer agrees to repair at its sole cost and responsibility, or pay Seller the cost of, any damages caused to the Property by such entry. This Section shall survive the Closing or earlier termination of this Agreement.

12. **Indemnity.** Buyer indemnifies and holds harmless Seller for any claims, damages, liabilities, losses, costs and expenses (including reasonable attorney's fees and expenses) incurred or paid in settlement as a result of or relating to any environmental soil or groundwater contamination or Hazardous Materials on or below the Property. Buyer also agrees to indemnify and hold harmless Seller for any claims, damages, liabilities, losses, costs and expenses (including reasonable attorney's fees and expenses) incurred or paid in settlement as a result of or related to Buyer's negligence in any removal or alteration of the existing underground storage tank ("UST") currently located on the Property.

13. **Taxes and Assessments.** Seller shall, prior to Closing, have paid all property taxes and assessments levied or extended in the future on the Property for 2004 and prior years; such taxes and assessments for 2005 and any year thereafter, shall be prorated between the parties as of the Closing Date.

14. **Real Property Transfer Tax.** Any real property or other transfer tax imposed by the State of Maine in connection with the transactions contemplated hereby shall be split equally between the Buyer and Seller.

15. **Broker's Commission.** Each of the parties hereto represents and warrants to the other that there are no real estate broker's commissions due or payable on account of this Agreement or as a result of the sale of the Property to Buyer pursuant hereto. Each party agrees to defend, indemnify and hold the other hereunder harmless from and against any claim for any such commissions, fees or other form of compensation by any such third party claiming through the indemnifying party, including, without limitation, any and all claims, causes of action, damages, cost and expenses (including reasonable attorney's fees and court costs), associated therewith.

16. **Termination.**

(a) This Agreement may be terminated at any time prior to the Closing:

- (i) by mutual consent of Seller and Buyer; or
- (ii) by Buyer pursuant to Sections 4 or 7 hereof; or
- (iii) due to a material default by either party of the Agreement which goes uncured for ten (10) days after notice.

(b) In the event of termination of this Agreement by Seller or Buyer as provided above, this Agreement will forthwith become void, provided, however, if terminated pursuant to 16(a)(i) or a Buyer default under 16(a)(iii), the sole and exclusive remedy of Seller shall be to retain the Deposit herein provided as liquidated damages in satisfaction of all claims against Buyer arising out of this Agreement. If the purchase and sale of the Property contemplated hereby is not consummated because of a default by Seller under this Agreement, then the Deposit and any interest earned thereon shall be returned to Buyer as Buyer's sole and exclusive remedy, Buyer shall reimburse Seller for all costs, including but not limited too, title fees, survey costs and legal fees, incurred in connection with this Agreement. If terminated pursuant to 16(a)(ii) or a Seller default under 16(a)(iii), the Earnest money will be refunded to Buyer, and Seller will be

responsible to reimburse the reasonable out-of-pocket costs incurred by Buyer in connection with this Agreement and Buyer's due diligence investigation.

17. **Deed Restrictions.** With respect to Deed Restrictions to be placed on the Property, Seller and Buyer hereby agree to the following:

(a) Buyer covenants that the Property (as to the existing structure located thereon as of the Closing Date) shall not be used for or in support of the following: (i) the manufacturing or storage of processed meats. However, the storage of such meats by a bonafide restaurant or grocery or retail store for resale or by an individual for personal use shall not be considered a violation of this restriction.

(b) All such covenants, conditions, and restrictions shall remain in effect for a period of Twenty (20) years. The aforesaid covenants, conditions, and restrictions shall run with and bind the Property, and shall bind Buyer, or its successors or assigns, and shall inure to the benefit of and be enforceable by Seller, or an affiliated company, or its successors and assigns, by any appropriate proceedings at law or in equity to prevent such violations of such covenants, conditions, and restrictions and/or to recover damages for such violations.

18. **Notices.** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, postage prepaid, or nationally recognized overnight courier, and shall be considered given upon receipt, addressed as follows:

If to Seller:

Tyson Foods, Inc.
Attn: Elizabeth Stanberry
2210 W. Oaklawn Drive
Springdale, AR 72762-6999

with copy to:

Tyson Foods, Inc.
Attn: Jeremy Snell (AR058124)
2210 W. Oaklawn Drive
Springdale, AR 72762-6999

If to Buyer:

Mr. John Horne
600 Sable Oaks Drive
South Portland, ME 04106
Facsimile 207-772-0481

with copy to:

Michael L. Sheehan, Esq.
443 Congress St One City Center
Portland, ME 04101
Facsimile 207-791-3111772-0481

19. Miscellaneous.

(a) **Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of Maine, all rights and remedies being governed by said laws.

(b) **Assignment.** This Agreement shall apply to, and shall be binding in all respects upon, and shall inure to the benefit of, the respective successors, assigns and legal representatives of the parties hereto; provided, however, that this Agreement may not be assigned, in whole or in part, by any party without first obtaining the written consent of the other party, which shall not be unreasonably withheld and provided further that Buyer shall have the right to assign this Agreement to an affiliate without consent from Seller. No assignment shall relieve or release either party of any obligation under this Agreement (including, but not limited to any indemnity obligations set forth in this Agreement). This Agreement shall apply to, and shall be binding in all respects upon, and shall inure to the benefit of, the respective successors, assigns, and legal representatives of the parties hereto. This Section shall survive Closing.

(c) **Waiver.** No waiver of any term, provision or condition of this Agreement in any one or more instances, shall be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement. The rights or remedies set forth herein are in addition to any rights or remedies which may be granted by law or equity.

(d) **Entire Agreement and Modification.** This Agreement is intended by the parties hereto as a final expression of their agreement with respect to the subject matter hereof and is intended as a complete and exclusive statement of the terms and conditions of this Agreement.

This Agreement may not be modified, rescinded or terminated orally, and no modification, rescission, termination or attempted waiver of any of the terms, provisions or conditions hereof (including this subsection) shall be valid unless in writing and signed by the party against whom the same is sought to be enforced.

(e) Section Headings. The headings of sections contained in this Agreement are provided for convenience only. They form no part of this Agreement and shall not affect its construction or interpretation. All references to sections or subsections refer to the corresponding sections and subsections of this Agreement. All words used herein shall be construed to be of such gender or number as the circumstances require. This "Agreement" shall mean this Agreement as a whole and as the same may, from time to time hereafter, be amended, supplemented or modified. The words "herein," "hereby," "hereof," "hereinabove" and "hereinbelow," and words of similar import, refer to this Agreement as a whole and not to any particular section, subsection, paragraph, clause or other subdivision hereof, unless otherwise specifically noted.

(f) Time of Essence. With respect to all time periods and duties set forth in this Agreement, time is of the essence.

(g) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to be but one and the same Agreement.

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be duly executed as of the date first above written.

WITNESS:

[Handwritten Signature]

BUYER:

LIBERTY GROUP, INC.

[Handwritten Signature]

SELLER:

ZEMCO INDUSTRIES, INC., a
Delaware corporation

By: [Handwritten Signature]

Title: SVP Finance, Treasurer & Interim CFO ES #

ATTEST:

[Handwritten Signature]
Title: SVP CONTRACTOR

EXHIBIT "A"
PROPERTY DESCRIPTION

EXHIBIT A
(Fore Street, Portland)

A certain lot or parcel of land located on the southwesterly side of India Street, the southeasterly side of Middle Street, the northeasterly side of Franklin Arterial, and the northwesterly side of Fore Street, in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows:

Beginning at a point at the intersection of the northwesterly sideline of Fore Street and the southwesterly sideline of India Street. Thence:

- (1) S 43°44'54" W by said Fore Street a distance of Twelve and 11/100 (12.11) feet to a point.
- (2) S 66°11'24" W by said Fore Street a distance of One Hundred Twenty-Three and 41/100 (123.41) feet to a point of curvature.
- (3) Southwesterly by said Fore Street, following a curve to the left having a radius of One Hundred Ninety-Nine and 68/100 (199.68) feet, an arc distance of Ninety-Five and 17/100 (95.17) feet to a point of tangency.
- (4) S 38°52'54" W by said Fore Street, a distance of Two Hundred Fifty-Six and 48/100 (256.48) feet to a point and the northeasterly sideline of said Franklin Arterial.
- (5) N 50°51'49" W by said Franklin Arterial, a distance of One Hundred Forty-Nine and 00/100 (149.00) feet to a point and the southerly corner of land now or formerly of CLW Associates I as described in a deed recorded in the Cumberland County Registry of Deeds in Book 6939, Page 39, said point also being located opposite a certain partition wall.
- (6) N 39°00'21" E by said partition wall and by land of said CLW Associates I a distance of Twenty-Two and 41/100 (22.41) feet to a point.
- (7) N 25°19'11" W by said partition wall and by land of said CLW Associates I a distance of Eleven and 53/100 (11.53) feet to a point.
- (8) N 51°57'17" E by said partition wall and by land of said CLW Associates I a distance of One Hundred One and 72/100 (101.72) feet to a point.
- (9) N 36°58'32" W by land of said CLW Associates I a distance of Forty-Five and 19/100 (45.19) feet to a drill hole found and the southeasterly sideline of Middle Street.
- (10) N 51°56'17" E by said Middle Street a distance of Three Hundred Fifty-Six and 10/100 (356.10) feet to a point and the southwesterly sideline of said India Street.
- (11) S 46°15'06" E by said India Street a distance of One Hundred Eighty and 25/100 (108.25) feet to the point of beginning.

The above described parcel contains 76,107 square feet and being the same as described in a deed to Jordan's Ready To Eat Meats recorded in said Registry in Book 3221, Page 206, and as described in a deed to Jordan's Meats recorded in said Registry in Book 4410, Page 277. Bearings are referenced to grid north.

RAE/Jordan's Meats (1998)/Documents/Schedule A Portland legal description

AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT

THIS AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT (the "Amendment"), is made and entered into this 30th day of March, 2005 by and between Zemco Industries, Inc. ("Zemco"), and Liberty Group, Inc. (hereinafter referred to as "LGI").

WITNESSETH:

WHEREAS, Zemco and LGI (collectively hereinafter referred to as the "Parties") entered into that certain real estate purchase agreement dated February 2, 2005 (hereinafter the "Agreement"), regarding the sale of that certain property located in Portland, Maine (the "Property");

WHEREAS, section 2 of the Agreement specified that Earnest Money would become applicable to the purchase price but otherwise non-refundable following the expiration of the Inspection Period.

WHEREAS, the due diligence deadline in sections 4(a) & 4(b) of the Agreement specified that the LGI would give notice to Zemco as required no later than sixty five (65) days following the Effective Date.

WHEREAS, subject to the terms and conditions set forth below, Zemco and LGI agree to modify the Agreement as set forth below;

NOW, THEREFORE, in consideration of the premises recited, of the covenants, agreements and provisions of this Agreement, and of other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, and the Parties hereby agree as follows:

- 1. PAYMENT OF ADDITIONAL EARNEST MONEY AND EXTENSION OF INSPECTION PERIOD:** LGI shall wire to Zemco within three (3) days of the full execution of this Amendment additional earnest money in the amount of [REDACTED] ("Additional Earnest Money"). It is understood between the parties that said Additional Earnest Money shall be in addition to any previous Earnest money deposited with Zemco by LGI, and is not intended to be a substitution or replacement thereof. Furthermore, the Inspection Period as specified in section 2 of the Agreement is hereby extended such that it shall extend until **May 7, 2005**.

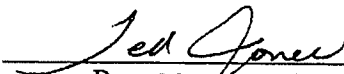
2. **EXTENSION OF DUE DILIGENCE DATE:** The notice deadline as specified in sections 4(a) & 4(b) of the Agreement are hereby extended such that notice shall be given no later than **May 7, 2005**.

Counterparts. This Amendment may be executed in one or more counterparts, including by facsimile, all parties need not be signatories to the same documents, and all counterpart signed documents shall be deemed to be an original and one (1) instrument.

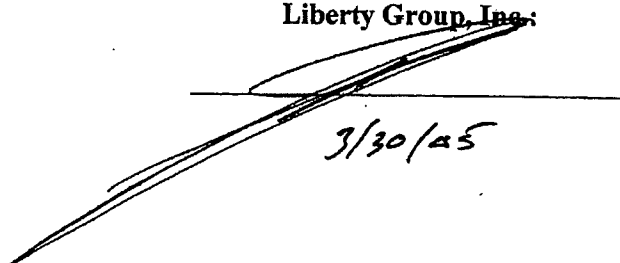
Modification. Except as modified herein, the terms of the Agreement shall remain in full force and effect, and in the event of a conflict, the terms of this Amendment shall govern.

IN WITNESS WHEREOF, Zemco, and LGI have caused this Agreement to be duly executed as of the date first above written.

Zemco Industries, Inc.:


By: **TED JONES**
Title: *Director of Corp. Finance*

Liberty Group, Inc.:


3/30/05

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is made this 21th day of March, 2005, by and between LIBERTY GROUP, INC., a _____ ("Assignor") and PME I, LIMITED PARTNERSHIP, a Delaware limited partnership ("Assignee").

RECITALS

Assignor and ZEMCO INDUSTRIES, INC., a Delaware corporation ("Seller") have entered into that certain Real Estate Purchase Agreement dated February 2, 2005 (as amended, the "Purchase Agreement"). All capitalized terms not otherwise defined in this Assignment shall have the meaning ascribed to them in the Purchase Agreement.

Pursuant to the Purchase Agreement, Assignor agreed to purchase the Property from the Seller.

Assignor desires and intends to transfer and assign all of its right, title and interest in and to the Purchase Agreement.

Assignee desires and intends to accept Assignor's transfer of all its right, title and interest in and to the Purchase Agreement and is willing to assume all of Assignor's duties, liabilities and obligations to perform under the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

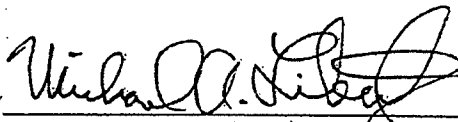
1. Assignor hereby assigns, transfers and delivers to Assignee all of its right, title and interest in and to the Purchase Agreement.
2. Assignee hereby accepts the foregoing assignment, and assumes and agrees to keep, observe and perform all of the terms, covenants, conditions and obligations of Assignor to be observed under the Purchase Agreement from and after the effective date of this Assignment.
3. The rights and obligations of the parties hereunder shall extend to, be binding upon and inure to the benefit of their respective successors and assigns.
4. Each of the parties hereto shall cooperate with the other and execute and deliver to the other such other instruments and documents and take such other actions as may be reasonably requested by the parties. The Assignor, at the Assignee's request, shall execute, acknowledge and deliver to the Assignee such other instruments of conveyance and transfer and shall take such other actions and execute and deliver such other documents, certifications and further assurances as the Assignee may reasonably require in order to transfer the Purchase Agreement to Assignee.

5. This Assignment may be modified or amended only by an instrument in writing signed by all parties hereto.

6. This Agreement shall be governed by the laws of the State of Maine.

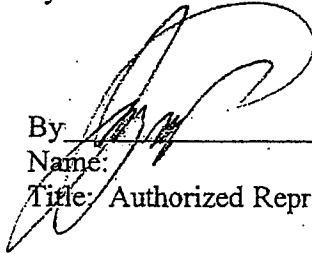
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Assignor:

By 
Name: Michael A. Liberty
Title: Chairman - Liberty Group Inc.

Assignee:

PME I LIMITED PARTNERSHIP
by its General Partner PMEGP, LLC

By 
Name: _____
Title: Authorized Representative

CONSENT TO ASSIGNMENT:

The undersigned consents to the assignment of the Purchase Agreement from Assignor to Assignee

Seller:
ZEMCO INDUSTRIES, INC.

BY _____
Name: _____
Title: _____
Date: _____

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is made this 21th day of March, 2005, by and between LIBERTY GROUP, INC., a ("Assignor") and PME I, LIMITED PARTNERSHIP, a Delaware limited partnership ("Assignee").

RECITALS

Assignor and ZEMCO INDUSTRIES, INC., a Delaware corporation ("Seller") have entered into that certain Real Estate Purchase Agreement dated February 2, 2005 (as amended, the "Purchase Agreement"). All capitalized terms not otherwise defined in this Assignment shall have the meaning ascribed to them in the Purchase Agreement.

Pursuant to the Purchase Agreement, Assignor agreed to purchase the Property from the Seller.

Assignor desires and intends to transfer and assign all of its right, title and interest in and to the Purchase Agreement.

Assignee desires and intends to accept Assignor's transfer of all its right, title and interest in and to the Purchase Agreement and is willing to assume all of Assignor's duties, liabilities and obligations to perform under the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor hereby assigns, transfers and delivers to Assignee all of its right, title and interest in and to the Purchase Agreement.
2. Assignee hereby accepts the foregoing assignment, and assumes and agrees to keep, observe and perform all of the terms, covenants, conditions and obligations of Assignor to be observed under the Purchase Agreement from and after the effective date of this Assignment.
3. The rights and obligations of the parties hereunder shall extend to, be binding upon and inure to the benefit of their respective successors and assigns.
4. Each of the parties hereto shall cooperate with the other and execute and deliver to the other such other instruments and documents and take such other actions as may be reasonably requested by the parties. The Assignor, at the Assignee's request, shall execute, acknowledge and deliver to the Assignee such other instruments of conveyance and transfer and shall take such other actions and execute and deliver such other documents, certifications and further assurances as the Assignee may reasonably require in order to transfer the Purchase Agreement to Assignee.

5. This Assignment may be modified or amended only by an instrument in writing signed by all parties hereto.

6. This Agreement shall be governed by the laws of the State of Maine.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Assignor:

By Michael A. Liberty
Name: Michael A. Liberty
Title: Chairman - Liberty Group Inc.

Assignee:

PME I LIMITED PARTNERSHIP
by its General Partner PMEGP, LLC

By [Signature]
Name:
Title: Authorized Representative

CONSENT TO ASSIGNMENT:

The undersigned consents to the assignment of the Purchase Agreement from Assignor to Assignee

Seller:
ZEMCO INDUSTRIES, INC.

BY Ted Jones
Name: TED JONES, Tyson Foods, Inc.
Title: Director of Corp. Finance

Date: _____

5. Proposed Conditional Re-zoning Agreement

**CITY OF PORTLAND
IN THE CITY COUNCIL**

**ORDER AUTHORIZING AMENDMENT OF CITY CODE
SEC. 14-220(c), SEC. 14-220(h) and SEC. 14-220(i) (SET BACK AND HEIGHT
REQUIREMENTS)
RE: CONDITIONAL REZONING FOR 38 INDIA STREET**

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 the conditional rezoning as detailed below;

BE IT FURTHER ORDERED, that the conditional rezoning amendment authorized herein shall become effective thirty (30) days after the rezoning.

**CONDITIONAL ZONE AGREEMENT
PME I, LIMITED PARTNERSHIP**

This Agreement made this _____ day of _____ 2005 by **PME I, LIMITED PARTNERSHIP**, a Delaware limited partnership with an office in South Portland, Maine (hereinafter “PME”).

WITNESSETH:

WHEREAS, PME is the buyer under that certain Agreement for the Purchase of Real Estate, as amended, to purchase the property commonly referred to 38 India Street, Portland, Maine, consisting of parcels shown on City of Portland Tax Map 29, Block L, Lots 001, 002 and 003 (the “Property”); and

WHEREAS, the Property consists of approximately 1.75 acres, being the site of the former Jordan’s Meat plant and is bounded by India Street, Middle Street, Franklin Arterial and Fore Street, occupying nearly an entire City block; and

WHEREAS, the Property is uniquely located in downtown Portland, close to the waterfront, in an area that has received extensive investigation in which mixed-use projects such as the Project (as defined below) are encouraged; and

WHEREAS, the topography of the Property is such that it is almost rectangular, with a narrow “waist”, and a significant slope of approximately

thirteen (13) feet, with the higher land being on Middle Street and the lower land fronting on Fore Street;

WHEREAS, PME proposes to construct a mixed-use project on the Property consisting of a hotel with accessory restaurants and bars, residential condominium units, restaurants, bars and retail/commercial space, as well as an underground parking garage (the "Project"); and

WHEREAS, PME has requested the rezoning of the Property to permit the (i) establishment of an off-street, courtyard entrance way for the proposed hotel and condominium residences; (ii) increase of the building setback at the intersection of Fore Street and Franklin Arterial and at the intersection of Fore Street and India Street; (iii) decrease in the height requirement for a portion of the building fronting on Fore Street; and (iv) increase in the height allowance to permit additional retail space on the ground level, mid-block pedestrian access through the semi-public hotel lobby between Middle and Fore Streets, maintaining view corridors and for the creation of variations in roof heights; and

WHEREAS, in connection with the Project, **PME** is proposing certain off-site improvements that include, but are not limited to, (i) striping improvements on Franklin Arterial to enhance the safety of drivers making left hand turns onto Middle Street; (ii) relocation of an existing sewer line that will further the **CITY's** (as defined below) goal of separating the storm and sanitary sewers; (iii) creating a pedestrian streetscape corridor along Fore Street that does not exist today; and (iv) extensive streetscape plantings; and

WHEREAS, the planning Board of the **CITY OF PORTLAND** (hereinafter the "**CITY**"), pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Land Use Code (the "**Code**") §§ 14-60 to 14-62 , after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to certain conditions; and

WHEREAS, the **CITY,** by and through its City Council, has determined that because of:

- the potential of the Project to vitalize commercial activity in the Downtown area,
- the additional commercial/retail space to be included on the ground level of the Project,
- the Project's use of space above the ground level commercial/retail space for residential uses,
- the potential of the Project to reconnect the **CITY's** Downtown area on each side of the Franklin Arterial,
- the underground parking garage sufficient to handle all of the Project's parking requirements,

- the Project's compatibility with the CITY's planned development of the Downtown waterfront area, including the Ocean Gateway project,
- the unique location and topography of the Property, and
- the quality of the design and uses of the Project

it is necessary and appropriate to impose, with PME's agreement, the conditions and restrictions set forth herein, in order to insure that said rezoning is consistent with the CITY's comprehensive land use plan; and

WHEREAS, the City Council of the CITY authorized the execution of this Agreement on _____, 2005, by City Council Order No. _____, a true copy of which is attached hereto as Attachment 1; and

WHEREAS, PME has agreed to enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind PME, its successors and assigns;

NOW, THEREFORE, in consideration of the rezoning of the Property, PME contracts to be bound by the following terms and conditions:

1. The Property shall be governed by the zoning provisions, as such may be amended from time to time, applicable in the underlying B-3 Zone, except as follows:
 - (a) Street Wall Build To Line. The dimensional zoning requirements of Section 14-220(c) of the Zoning Ordinance are hereby modified to allow PME to (1) construct a courtyard entranceway (the "Entrance") for the proposed hotel and condominium residences off of Middle Street and (2) create entrances to building that are compatible with existing street grades, as shown on the plan attached as Exhibit A (the "Plan").
 - (b) Height Limits. (1) The minimum structure height (measured according to the definition of "building, height of" in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be fifteen (15) feet for a portion of the building's frontage on Fore Street and seventeen (17) feet for a portion of the building frontage on India Street as shown on the Plan.
 - (2) The maximum structure height (as measured according to the definition of "building, height of" in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be as follows:

- (i) ninety-eight (98) feet for the westerly wing of the building with frontage on Franklin Arterial and Fore Street as shown on the Plan;
- (ii) seventy-eight (78) feet for the easterly wing of the building with frontage on Middle Street as shown on the Plan; and
- (iii) eighty-eight (88) feet for the easterly wing of the building with frontage on India Street as shown on the Plan.

2. The Property will be developed substantially in accordance with the Plan and. The **CITY** hereby grants such waivers as may be necessary to permit the courtyard Entranceway to exist as depicted on the Plan. The specific street level floor plan and uses and the location and dimensions of the building Entrances may be changed and/or the height of the building may be changed to be more in conformance with the existing Land Use Code, in each case without any further amendment to this Conditional Re-zoning Agreement.

3. **PME** shall develop the Project to accommodate the **CITY's** requests as follows:

- a. include commercial/retail space on the ground level along India Street and Middle Street; and
- b. add mid-block pedestrian access through the building by creating an entrance on each of Middle Street and Fore Street.

4. Any change in the fee ownership of the Property shall be brought to the Planning Board for its review and approval, but this requirement shall not apply to (a) the conveyance of the fee interest in the Property from Zemco Industries, Inc. to **PME**; (b) the granting of mortgages by **PME** or any successor in interest, or to the enforcement by mortgagees of their rights under such mortgages, or to the assignment or conveyance of the ownership to an entity in which **PME** and/or any of its general or limited partners holds at least a 20% interest; (c) the conveyance of any condominium units or to the granting of any mortgages upon individual condominium units; or (d) to the leasing or subleasing of any space within the building or on the Property. The restrictions on transfer contained in this paragraph 6 shall expire upon the completion of the Project as evidenced by the issuance of certificates of occupancy or similar approvals from the **CITY** for all portions of the Project.

5. The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit **PME**, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit and be enforceable by the **CITY**, by and through its duly authorized representatives.

6. 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 portions shall be deemed as a separate, distinct and independent provision and such determinations shall not affect the validity of the remaining portions thereof.

7. In the event of **PME's** breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland Land Use Code that would otherwise be applicable to property situated in the B-3 zone, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. § 4452, M.R.Civ.P. 80K, or in any other manner available by law. In addition, if such an enforcement action should result in a finding that **PME** has breached the Agreement, then either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council that the Conditional Rezoning be modified or the Property rezoned.

8. **PME** shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

9. Except as expressly modified herein, the development, use and occupancy of the Property shall be governed by and comply with the applicable provisions of the Portland City Code and any applicable amendments thereto or replacements thereof.

WITNESS:

PME I, LIMITED PARTNERSHIP
By PMEGP, LLC, its General Partner

By: _____
Name:
Title:

STATE OF _____

COUNTY OF _____ ss _____, 2005

Then personally appeared before me the above-named _____,
_____ of PMEGP, LLC, a _____, General Partner of PME I, Limited Partnership, a Delaware limited partnership, and acknowledged the forgoing instrument to be his free act in deed in said capacity and the free act and deed of PMEGP, LLC, general partner of PME I, Limited Partnership.

Notary/Attorney at Law

Print name: _____

My commission expires: _____

6. Conditional Rezoning Narrative

**Conditional Re-Zoning Narrative
Portland Mixed Use Project
38 India Street, Portland**

INTRODUCTION

Background

PME I, Limited Partnership (the "Developer") proposes to develop a mixed use development comprised of a hotel, residential condominiums, retail/commercial space, bars and restaurants, and underground parking. This mixed-use project (the "Project") is located on the former Jordan's Meats site at 38 India Street (the "Site").

In May 2005 the Developer presented a mixed use development concept for the Site. The design was planned as a "by right" design intended to meet the requirements of the underlying zone. This design approach was undertaken to meet the Developer's requirements for permitting, financing and construction schedule for the Project. In its review of the development concept, the City's Planning Department staff identified two dimensional standards of the B-3 Zone requiring further resolution for the Project to proceed. Consultations with the planning staff undertaken to address the dimensional zoning concerns identified the potential for conditional rezoning of the property to account for the Site's unique features (as further described below), and to create an exceptional Project that would better meet the goals of Portland's Comprehensive Plan, draft dated November 2002 (the "Plan"), and it's associated height studies and design guidelines.

The Developer has the right to purchase the Site from Zemco Industries, Inc. (the "Owner"), pursuant to a Purchase and Sale Agreement.

This narrative has been prepared to present the requested zoning amendments and a rationale for their approval based on the Plan and design guidelines pertinent to development of this area of the City. The Developer proposes to develop the Site in substantial compliance the site plans and building elevation drawings included in Exhibit A (the "Site Plan").

**Conditional Re-Zoning Narrative
Portland Mixed Use Project
38 India Street, Portland**

INTRODUCTION

Background

PME I, Limited Partnership (the “Developer”) proposes to develop a mixed use development comprised of a hotel, residential condominiums, retail/commercial space, bars and restaurants, and underground parking. This mixed-use project (the “Project”) is located on the former Jordan’s Meats site at 38 India Street (the “Site”).

In May 2005 the Developer presented a mixed use development concept for the Site. The design was planned as a “by right” design intended to meet the requirements of the underlying zone. This design approach was undertaken to meet the Developer’s requirements for permitting, financing and construction schedule for the Project. In its review of the development concept, the City’s Planning Department staff identified two dimensional standards of the B-3 Zone requiring further resolution for the Project to proceed. Consultations with the planning staff undertaken to address the dimensional zoning concerns identified the potential for conditional rezoning of the property to account for the Site’s unique features (as further described below), and to create an exceptional Project that would better meet the goals of Portland’s Comprehensive Plan, draft dated November 2002 (the “Plan”), and it’s associated height studies and design guidelines.

The Developer has the right to purchase the Site from Zemco Industries, Inc. (the “Owner”), pursuant to a Purchase and Sale Agreement.

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Requested Zoning Amendments

The Owner, through the Developer, seeks to amend the following provisions of the B-3 Zone identified in the City of Portland Land Use Ordinance (the "Ordinance") in Section 14-220 Dimension Requirements.

- Section 14-220(c) -- *"Street wall build-to line: All buildings or structures shall be located within five (5) feet of the property line along street frontages, unless the Planning Board requires and approves an additional distance to comply with the requirements of 14-526 (a) (16)."*

The Developer proposes to increase the building setback on Middle Street to allow the creation of a courtyard and pedestrian alleyway as indicated on the Site Plan. The courtyard provides an area for the safe operation of passenger cars, taxis and other vehicle traffic accessing the main lobby of the proposed hotel and the residential condominiums. The courtyard is designed with an emphasis on pedestrian access and amenities and allows for a pedestrian alleyway connected to Franklin Arterial.

The proposed courtyard and pedestrian alley effectively narrows the Project's building footprint on the Site, increasing transparency, enticing pedestrians to take advantage of the permeability provided through the building, and enhances and preserves the view corridor along Hampshire Street.

The Developer also proposes to increase the building setback at the intersection of Fore Street and Franklin Arterial and at the Intersection of Fore Street and India Street. The increased setback at these locations is required to create entrances to the building that are compatible with the existing street grades, enhance pedestrian access, comfort and usability of the building at street level and provide accessibility for the physically handicapped.

- Section 14-220(h) -- *"Minimum Building Height: No new construction of any building shall be less than thirty-five (35) feet in height within 50 feet of any street frontage, except for parking attendant booths or bank remote teller facilities".*
- Section 14-220(i) -- *"Maximum height of structures:*
 1. *The overall maximum permitted height of structures shall be as depicted on the downtown height overlay map, a copy of which is on file in the department of planning and urban development.*
 2. *Maximum height along street frontages and minimum step-back dimensions shall be as depicted on the downtown maximum street wall height and minimum step-back map, a copy of which is on file in the department of planning and urban development."*

The Developer proposes a building with a varied roofline profile as recommended in the Downtown Height Studies and detailed in the building elevation drawings included in Exhibit A.

The proposal includes a single building with two interlocking "L" shaped wings. The westerly wing, fronting on Franklin Arterial and Fore Street, includes primarily hotel related uses. The easterly wing, fronting on Middle Street and India Street, provides retail/commercial space at street level and residential condominiums on the upper floors. The two wings are connected by the hotel ballroom, meeting rooms and supporting spaces at the Middle Street and Fore Street levels.

This innovative floor plan takes advantage of the Site's unique topographic features and incorporates the Plan design guidelines related specifically to pedestrian oriented uses at street level and mid block permeability. The building design allows the project to meet its parking needs with a below grade structure. The Plan's emphasis on providing street level retail/commercial uses to maintain the historic and existing commercial character of Middle Street and India Street requires that the previously proposed street level residential uses be displaced upward. Currently envisioned as retail/commercial space, the opportunity exists to provide residential use, in the form of two-story townhouse style units along, the Middle Street frontage of the condominium wing of the building.

Meeting the Plan requirements with a viable development program requires the building height to be in excess of the current zoning limitations, especially in light of changes to the Project made by the Developer at the request of the City's Planning Department staff. Reduced height is requested along a portion of the Fore Street frontage to provide variation in building heights and building massing in a manner that supports the building function and provides visual interest at pedestrian level. The proposed building program places the hotel ballroom and pre-function concourse at street level along Fore Street providing visual interest at street level, with activity within the building visible to pedestrian's day and night.

The development proposes to amend the zoning height requirements as follows and as indicated in the Site Plan. The building heights are referenced as height above the project datum elevation of 25.72 feet and as elevations referenced to the City of Portland survey datum elevations shown the to Project's existing conditions plan.

- Decrease the minimum building height within fifty (50) feet of the street frontage to fifteen (15) feet (Elev. 50.72) for a portion of the building's frontage on Fore Street and seventeen 17 feet (Elev. 40.72) for a portion of the building frontage on India Street.
- Increase the maximum building height to ninety eight (98) feet (Elev. 123.72) for the westerly wing of the structure with frontage on Franklin Arterial and Fore Street.
- Increase the maximum building height to seventy eight (78) feet (Elev. 103.72) for the easterly wing of the building with frontage on Middle Street.
- Increase the maximum building height to eighty eight (88) feet (Elev. 113.72) for the easterly wing of the building with frontage on India Street.

The building elevations along the Site's street frontages are designed with heights and step-backs in compliance with the Plan and with design guidelines and recommendations presented in the height studies commissioned by the City

CONDITIONAL RE-ZONING RATIONAL

The City of Portland Zoning Ordinance permits conditional re-zoning of development sites where, for reasons such as the unusual nature or unique location of the development, the City Council finds it necessary and appropriate to impose, by agreement with the property owner or applicant, certain conditions or restrictions to ensure that the re-zoning is in compliance with the Plan.

The following narrative identifies the unique features of the Site, the Project's compliance with the general goals of the Plan, and the individual zoning amendments' compliance with the Plan.

Unique Site Features

The Project is located on the site of the former Jordan's Meats plant on a parcel bounded by Franklin Arterial to the west, Middle Street to the north, Fore Street to the south, and India Street to the east. The Site occupies nearly the entire City block, with the exception of the existing building at the corner of Franklin Arterial and Middle Street, currently occupied by Hugo's Restaurant and the Pepper Club. The Site is approximately 1.75 acres in size and is identified on the City of Portland Tax Map 29 as Block L, Lots 001 and 002 and 003.

The Site is located in Portland's B-3 Downtown Business Zone, The Old Port Overlay District Zone, and an Overlay Zone where the City encourages certain aspects of the Pedestrian Overlay Zone to be observed. The Site is located in an area designated for 65 ft building heights on the City's Downtown Height Overlay Map.

The Site is unique and unusual based on its dimensions, location and topography. Occupying nearly the entire City block, the Site is generally rectangular with a somewhat narrow "waist" created by the alignment of Fore Street, which follows the contour of the City's colonial shore line. In addition, the Site is relatively steeply sloped with approximately 13 feet of grade change from Middle Street to Fore Street, along the Site's narrow dimension.

The Site is bisected by a drainage easement that contains a City of Portland combined sewer from Hampshire Street to Franklin Arterial. The Project design relocates this sewer to the public right of way furthering Portland's goals of separating existing storm drainage from the City's combined sewer system.

Unique Location

The Site is located nearby the City's desirable waterfront in an area of the City which has received significant planning attention over the years. Several planning documents comprising or otherwise referenced in the Plan address potential development of property within the vicinity of the Site, including the Site itself. These studies include:

- *Portland's Comprehensive Plan, draft dated November 2002.*
- *Housing: Sustaining Portland's Future, November 18, 2002*
- *Master plan for the Redevelopment of the Eastern Waterfront, June 3, 2002*
- *Downtown Vision: A Celebration of Urban Living and a Plan for the Future of Portland - Maine's Center for Commerce and Culture (A component of the comprehensive plan of the City of Portland Adopted by the City Council of the City of Portland, Maine on March 11, 1991) (the "Downtown Vision").*
- *Portland Maine Downtown Height Study Policy Report, by Carr, Lynch, Hack and Sandel, February 1989. (a component of the Downtown Vision)*
- *Downtown Urban Design Guidelines, January 1991*
- *Downtown Height Overlay Map*
- *Draft Report Eastern Waterfront Building Height Study, by MRLD, LLC, Dated September 2004*

The Plan identifies the Site's block as an important and historical link between the more commercial areas of Downtown Portland and the mixed uses of the Eastern Waterfront and India Street neighborhoods. The construction of the Franklin Arterial cleared several blocks of residential neighborhoods. "This Demolition destroyed the urban fabric that connected the area to the Downtown."¹

The Plan calls for re-development in this area to "focus on strengthening the vitality of the community within and establishing clearer connections to the Downtown and Munjoy Hill. India, Middle and Congress Street would reinforce their identities as active retail corridors, through building infill along the street line and through encouraging small business to relocate to the area. As well, infrastructure improvements and landscaping would make these corridors pedestrian-oriented spaces. *It is critical to maintain the residential enclaves east and west of India Street, with special attention to the upper story residential along retail corridors in order to maintain a certain level of activity.*"² (emphasis added)

The Downtown Vision continues, "As industrial use becomes less evident in the area, attention needs to be given to the two block area that includes Jordan's Meats and is bounded by India, Middle, Franklin and Commercial Streets. *This would become an extension of the Downtown Business District that could entice the commercial fabric across the Arterial.*"³ (emphasis added)

The Plan encourages innovative plans for development which can respond to changing market conditions and can help achieve other public policy goals.⁴ By their nature, mixed use projects are designed to respond to changing market conditions. The specific mix of uses contemplated for the Site includes a high end Westin Hotel franchise that might otherwise not be supported in the Portland Market without the associated benefits of the proposed residential condominiums.

It is this overriding vision that guides the proposal for the Portland Mixed Use Project and argues for a conditional rezoning of the Site that includes increased building height compatible with downtown development and the abutting uses on India Street. The Plan's implementation outline for development the Eastern Waterfront calls for:

*"Either through the RFP process, or through direct partnership with abutting landowners, the City will work to realize the vision of the Master Plan. The Committee recognizes the advantages of the private sector to bring resources and vision to the redevelopment effort. Where mutually advantageous relationships can be forged, the City should engage with private property owners to simultaneously provide public amenities, private development, and tax revenue to the City of Portland."*⁵ (emphasis added)

The unique configuration and location of the Site and a design which achieves the goals of the Plan in a financially successful project justify the application for a Conditional Rezoning of the Site.

The Developer is working closely with the City to develop a Project meeting the City's short and long term goals, as well as creating an economically viable project, all without requesting any financial assistance, tax breaks or other economic assistance from the City. The City has requested that the Project contain certain features, including additional, but somewhat uneconomic, retail/commercial space at the street level, as well as pedestrian "permeability" through the Project, creating and maintaining for the City another pedestrian access and view corridor to the harbor. Meeting the City's desires on these points come at a cost to the Developer, but in the end will create a beautiful and successful Project for Portland's Downtown.

The Project has been revised to include the following features.

- The revised building program includes extensive retail/commercial floor space on the ground level, below the proposed residential condominiums on Middle and India Street. While this revision meets the City's goal of retail space at the pedestrian level, it increases the proportion of lower value square footage in the Project and requires previously proposed street level residential uses to be displaced to the building's upper stories and relocated, in part, to the top floor of the hotel wing of the building. These "Hotelominium" units provide a unique residential experience. Functioning as much as hotel rooms as residential condominiums, these units will be available for sale under a variety of ownership options. These units, when not occupied full time, may be managed as suites as part of the hotel room pool.
- At the City's request, the Developer revised the design of the Project to include permeability from Hampshire Street, through the proposed building, to Fore Street. The revised design facilitates the convenient movement of pedestrians by shortening walking distance between the streets and providing inviting, dramatic entrances to the semi-public hotel lobby space.

- The Project proposes significant streetscape improvements, including new pedestrian oriented designs along all of the Site's frontages. Particularly significant is the creation of a pedestrian alley linking Franklin Arterial to the Project's entrance courtyard on Middle Street. The courtyard provides a distinctive plaza connected to the abutting sidewalks and the proposed through block connection. These spaces are designed to enhance the experience of the pedestrian. The pedestrian linkages are coordinated with existing view corridors.
- The Project provides for its parking requirements with an on-site, below grade structure at a premium cost per parking space. A significant achievement considering the size and configuration of the Site, this design eliminates the visual challenges of above grade parking.

The revisions made to the building program alter the financial framework of the Project and argue for additional residential units to provide a financial balance. Because of the unique physical constraints of the Site, the displacement of residential units to create street level retail space and a pedestrian permeable corridor through the Project, additional building height is requested.

PUBLIC BENEFITS AND PLANNING OBJECTIVES

The Project provides an extraordinary opportunity to develop a project providing multiple public benefits to the City of Portland, is consistent with goals and design guidelines of the Plan, and will be economically successful for the Developer, without any economic assistance from the City. With these goals achieved, the Project will provide a long term, high value addition to the City's tax base.

The proposal meets a wide range of public benefit and planning goals, both general and specific, stated in the Plan, a number of which are summarized below.

Comprehensive Plan- General Goals and Public Benefits

Housing: Promote Affordable, Decent Housing Opportunities

The Plan describes Portland as experiencing a significant shortage of all types of housing, with the City seeking to encourage construction of new housing necessary for the City's long term economic health.

The City's population has remained constant, but the percentage in comparison to Cumberland County's population has declined over the years. Portland is seeking to increase its residential population to 25% of Cumberland County's total population. The City requires significant new housing development to do meet this goal. The Plan's identifies a number of housing initiatives including:

Encourage and Support Private Market Rate Development: In addition to the need for affordable housing, there is also a critical need for market rate housing that serves middle and higher

*income households. Eliminating barriers to housing development and supporting market rate projects through the approval process will assist in expanding the market rate housing stock*⁶

The proposed Project meets this objective and a wide range of additional housing goals.

- The Project is located and designed to reduce impacts on environmentally sensitive areas.
- More housing is needed, but vacant land is scarce. The Project places over 100 residential units in service on an infill development site at a location where existing infrastructure is available and mixed use development is encouraged.
- The proposed mix of uses will support and sustain commercial and waterfront developments without occupying significant land space. The Project will help sustain Portland and the Eastern Waterfront as a healthy urban center in which to live and work.
- The Project provides a variety of new housing designed and created to support City's socially and economically diverse population, as well as supporting existing and proposed marine uses on the waterfront.
- The mixed use design protects the stability of residential neighborhoods from excessive encroachment of inappropriately scaled and obtrusive commercial uses.
- The Plan calls for the support of projects that maintain and upgrade housing in neighborhoods within and adjacent to Downtown. The Plan identifies India Street as a perimeter growth area where mixed use development is encouraged.
- The Project's mixed use design provides commercial/retail uses on India Street, with residential uses on the upper stories.

Capital Improvement and Economic Well Being

The Project's mixed-use design is intended to achieve a number of the stated economic goals and objectives of the Plan. The Project's ability to achieve the City's economic goals is dependent on a successful development model that includes a taller building than is allowed by current zoning.

- The Project will provide economic growth and development in the downtown area. The project Site is identified as an important economic as well as physical transition from downtown to the Waterfront and Munjoy Hill. The building design reflects this transition in use, form and function.
- The Project provides a significant area of higher end residential and commercial space providing a reduction of tax burden on existing residential property owners.
- The Project strengthens and enhances Downtown retail sector and develops appropriate attractions and improvements that complement and enhance the role of tourism and hospitality industry.

Resource Protection

The proposed Project maximizes the development potential of the Site while protecting a wide range of resources.

- The infill/re-development of the Site will have no adverse affect on the State's water resources. No wetlands or other natural resources are adversely affected.
- The proposed streetscape incorporates the City's design guidelines for street plantings that are important to Downtown development.
- The proposed mixed-use design complements the abutting waterfront resources providing a mix of residential, commercial and hotel uses as well as onsite parking. This unique combination supports the proposed redevelopment of the Eastern Waterfront, including the Ocean Gateway project and other tourist and recreation based Waterfront uses.

Parking and Traffic

The Project meets it's parking requirements with an on-site below grade structure. This parking supports the proposed building program. The Project proposes traffic striping improvements to improve the safety of the intersection of Middle Street and Franklin Arterial. The existing wide median in the Arterial presents difficult lines of sight for drivers making opposing left had turns onto Middle Street. The proposed striping improvements mitigate this existing condition. The Project traffic study indicates that the Project will not have a significant impact on the traffic capacity of the abutting intersections.

Combined Sewer Improvements

The Project proposes to relocate an existing combined sewer that is installed within a drainage easement that bisects the Site running from Hampshire Street to Franklin Arterial. The Project plans include a relocation of the sewer into the public right of way. This work will effectively separate the existing stormwater runoff from the Site from the City's combined sewer system and direct it to a dedicated storm drain located within Franklin Arterial.

In addition, as part of the Project, a new storm drain will be installed along the Project's frontage on Fore Street. This sewer, and the catch basins relocated as part of the Project's streetscape improvements will separate all of the existing storm drainage from Fore Street, between Franklin Arterial and India Street, from the City's combined sewer system. This work advances the City's ongoing combined sewer separation program, increases sanitary sewer capacity down gradient of the site, and reduces demand on the City's sanitary sewer treatment system.

Downtown Vision General Goals

The Plan references the Downtown Vision document to provide general goals and objectives for development at the Site. The following items identify the Projects compliance with the general goals for development listed in the Downtown Vision document:⁷

1. The Project preserves and enhances the livability and walk ability of downtown Portland for residents, workers, shoppers and visitors. The proposal includes significant pedestrian amenities and streetscape improvements. The entry courtyard, pedestrian alley and through block permeability provided in the design have a distinctive character and add significant pedestrian interest to the site. The entry courtyard and pedestrian alley are key components of the development plan designed to entice pedestrians to utilize the through block permeability.

The proposed streetscape improvements significantly enhance the pedestrian experience along Fore Street providing an important link from the Old Port to India Street and the Eastern Waterfront.

2. The proposed development maintains and enhances the Downtown's prominence as the regional center for commerce. The Project is located adjacent to a developing area of the Eastern Waterfront anchored by the public development of the Ocean Gateway project. The proposed mix of uses on the Site supports and enhances the economic viability of the tourism and waterfront recreation uses envisioned for the Eastern Waterfront, while simultaneously providing a residential balance to the development.
3. The Project provides growth and development in the Downtown area while preserving and strengthening the unique identity and character of the Downtown. The proposed mix of uses supports the existing and proposed commercial and residential uses contemplated for the development of the Eastern Waterfront. The hotel ballroom and function space are an important element for attracting a broader mix of tourism and hospitality industry visitors to Portland.

The building height design reflects the importance of the Site's location as a transition from the upper peninsula to the waterfront. The profile provides a transition for the 105' building heights to the west of Franklin Arterial to the existing and proposed 65' developments to the east. This transition is also reflected the Project's mixed use which includes elements of the more intense commercial development to west towards a decidedly mixed set of commercial and residential uses to the east.

The building design provides a varied and interesting visual profile. The design is guided by the Downtown Vision which suggests that *"the variation of building forms and building heights that currently exists should continue to be encouraged. This includes slender elements that pierce the skyline as well as blockier background elements providing a rhythm of light and building."*⁸

4. The Project provides diversity to the Downtown's economy by attracting residential, tourism, hospitality, commercial and retail users in a location that is fully supported by existing infrastructure.
5. The Project provides a high quality urban experience providing high standards of architectural design and the enhancement of the pedestrian environment. The Project contemplates significant streetscape improvements on all four of its street frontages. The

creation of a new sidewalk and streetscape along Fore Street is an important feature designed to entice pedestrian activity across Franklin Arterial to the Eastern Waterfront and significantly improves the existing pedestrian experience along the Site's Fore Street frontage.

6. The residential uses proposed will infuse the local area with additional full time residents and hotel guests. The Project sits at a key location along Franklin Arterial, poised to re-establish the traditional links between India Street, the Old Port and Downtown. The infusion of residential, commercial and hospitality users will entice and support pedestrian activity providing vitality to the surrounding areas.

The building height frames the view corridor to the waterfront along Franklin Street and visually balances the streetscape against the taller 100 Middle Street development to the west. The proposed 95 foot building height visually narrows the roadway for the pedestrian, making the crossing of Franklin Arterial less daunting, further enticing pedestrian activity between Downtown, India Street and the Eastern Waterfront.

7. The project is located along Franklin Arterial, a traffic corridor that accommodates ingress and egress to the Downtown and waterfront with maximum efficiency. The traffic studies prepared for the Project indicate that the Arterial and abutting street intersections operate with sufficient capacity to accommodate the Project without congestion. The Project traffic study is coordinated with and takes into account the significant developments proposed near the project Site.

Lane striping improvements proposed for the intersection of Franklin Arterial and Middle Street will improve the safety of the intersection for motorists making left hand turns onto Middle Street.

8. The Project is designed with vehicular entrances at the auto courtyard on Middle Street and the parking structure entrance on Fore Street to diminish the concentration of traffic and provide safe and efficient vehicular access to the site. The building design provides a creative, but costly solution to the Site's parking requirements by proposing below grade parking to meet the Project's needs. The onsite parking will help to decentralize the concentration of private vehicles from the heart of the downtown with a creative parking solution.
9. The Project presents an innovative design in the Downtown area that takes advantage of the Site's unique features and location. The mixed use of the Project has been developed to respond to changing market conditions. The mix of residential, hotel and commercial use provides financial balance to the Project, with each proposed use supporting the others as well as other development contemplated for Downtown.

Of particular significance is the ability of the condominium owners to have full access to the hotel amenities and services. This integrated design allows the residential patrons to support hotel services and employment during the lower ends of the seasonal and cyclic business cycles typical the hospitality industry. The number of proposed condominium

units strikes a careful balance in the building program to ensure that the Project's long term economic viability for the benefit of the owners and the City of Portland.

Building and Site Design Compliance with Comprehensive Plan Design Guidelines

The individual zoning amendments included in the Project's Conditional Re-Zoning application have been carefully designed to comply recommendations of the Plan and its associated design guidelines and building height studies. The following narrative discussed the specific amendments requested and how the proposed design is in compliance with the Plan.

Relief From the Street Wall Build-To Line Contained In Section 14-220 (Set Back For Hotel Entrances)

The Developer is seeking re-zoning regarding the strict build-to line contained in Section 14-220(c) of the Ordinance. This section of the Ordinance contains a rigid requirement that new structures be constructed to within 5 feet of the street line on all street frontages, with no allowances for side yards or other breaks in the street wall. The Ordinance was drafted with the anticipation that the Planning Board would be able to rely on Section 14-526(a)(16) of the Ordinance to create developments in the B-3 Zone that would meet the City's goals as outlined in the Plan and other related documents. Due to a Law Court decision regarding a zoning ordinance in another municipality, the Planning Board is without the power to use such Section of the Ordinance, resulting in the City's Planning Department staff recommendation that a conditional re-zoning of the Site would be useful in achieving the City's and Developer's goals.

The current Project design contemplates that the entrance for the hotel will be a semi-circular drive entering and exiting off of Middle Street, with guests arriving under a *port cochere*. The entrance is approximately 115 feet from the build-to line and is approximately 110 feet wide. This entrance area is to be connected to Franklin Arterial sidewalk via a pedestrian path. The entrance for the hotel portion of the Project is designed to provide a welcoming environment to both guests and pedestrians alike.

Safety is of utmost importance in designing this feature of the Project. Guests and condominium residents, along with their families, need an off-street location from which they can arrive and depart the hotel and their residences, with their luggage, groceries and other items in tow.

The courtyard design and pedestrian alley effectively minimize the width of the building across its narrow dimension and encourages pedestrians to congregate and use the mid block permeability through the hotel lobby. The courtyard, pedestrian alley, streetscape design on the abutting roads are designed to enhance the pedestrian oriented ground floor use contemplated for the building. The design and setback required for its construction meet several specific design goals articulated in the Plan.

- The design enhances the pedestrian environment by providing a through block connection between Middle and Fore Streets.

“Through-block connections facilitate the convenient movement of pedestrians by shortening walking distances between streets. These connections can be extremely valuable during winter months when the pedestrian wished to minimize exposure to cold or inclement weather. These can be formal and provide access to multiple retail or service businesses, such as One Monument Way, or for the familiar Downtown pedestrian can be less formal and include through businesses which have entrances on two streets, such as Porteous, Carroll Reed or Maine National Bank. These connections are enlivened by the merchandise and daily activity of the respective businesses...”⁹

- The design provides multiple entry points to the building, which has frontage on four streets.

“More than one front face may be required if several streets bound the property. The building should be punctuated by frequent inviting entry points, with one or more formal main entrances.”¹⁰

- The design provides street-level retail and commercial opportunities.

“The storefront or street-level retail on many Downtown streets encourages impulse shopping, pedestrian activity, and is visually appealing.”¹¹

An increased setback of up to 12 feet is requested for the building entrances at the intersection of Fore Street and Franklin Arterial and at the intersection of Fore Street and India Street. The Section 14-526 (16) of the Ordinance provides Site Plan design standards for the B-3 Zone requiring that building entrances be designed to contemplate factors such as compatibility with the building façade, prominence along the street, access to the street and accessibility for the physically handicapped and for those with special needs. The increased setback is requested to meet these design requirements and accommodate the relatively steep grades of Franklin Arterial and India Streets.

*Relief From the Minimum Height Requirement Contained In Section 14-220(h) of the Ordinance.
Relief From the Maximum Height Restriction Contained In Section 14-220(i) of the Ordinance*

The building height and rooflines have been developed with careful consideration of the design guidelines established in Plan and the various heights studies referenced above. Specific guidance in establishing building heights was taken from the Downtown Vision and the associated Downtown Height Study.

These studies were undertaken to establish building heights adopted in the Downtown Height Overlay Map, maintained by the planning department. The authors of the Downtown Height Studies and Downtown Vision understood that a variety of development scenarios could occur in the Downtown area that would justify higher building heights and acknowledge that the studies should be used as guidance for the review of projects where discretionary action is required.¹² The authors note:

...the precise height limits proposed are, quite obviously, the result of judgments, not scientific deduction. They seek to reconcile a desire to preserve the existing fabric of the city with the equally important objective of providing room for the continued expansion of Downtown Portland. Could the maximum building height as reasonably be 190 feet as 180 feet? The answer is a qualified "yes", but a recognition that as height is lowered, it diminishes in importance in influencing the pattern of development, since there is less incentive for developers to locate in the preferred area rather than other locations. While we have studied the issue carefully, with the aid of the computer model of the peninsula, it is worth the reminder that setting height limits is more of an art than a science.¹³

The proposed building height design has been guided by specific recommendations and principals identified in the Downtown Height Study. The important design characteristics identified in the study include the following.

Street Wall

The height studies identify the height of the street wall as a critical dimension affecting the scale of a development and the experience of the pedestrians and motorists using the area as the pedestrians awareness of the environment diminishes above a height of 30 to 50 feet.

The height study suggests that the most comfortable pedestrian street wall to street width ratio, as a rule of thumb, is between 1:1 and 1.5:1. Streets with such proportions tend to feel enclosed, but not canyon-like. A 1.5:1 ratio measured at the Site suggests acceptable building heights of over 125 feet on Franklin Street, approximately 100 feet on Middle and India Street and between 75 feet and 100 feet on Fore Street.

The building is designed with step-backs, as suggested in the height studies, to further mitigate the visual impact of the street wall height. The hotel wing of the building, with frontage on Franklin and Fore Streets, steps back at a height of 88 feet. The condominium wing of the building, fronting on Middle Street steps back at a height of 56 feet, 10 feet below the maximum elevation defined in the Ordinance.

The condominium wing of the building along India Street is proposed with a maximum height of 88 feet. The India Street elevation incorporates a step back at height of 17 feet. The step back widens in the downhill direction to the corner of India Street and Fore Street. This flared design narrows the building's visual profile when viewed from the north and east. The flared step back preserves and frames the view corridor along India Street to the waterfront. Cross sections of India Street, identifying the 1.5:1 street wall height ratio are included in the architectural plan set in Exhibit A.

The building frontage along Fore Street presents a varied roofline height visible from the street line. The building height at the street drops from 98 feet to 86 feet at the corner of Fore and Franklin Street and varies height from 38 feet to 35 feet to 15 feet along Fore Street, connecting to the 85 feet tall wing at India street. The design provides a varied and visually interesting roofline punctuated with tallest features at the corners of the building.

Architectural Massing, Skyline and View Corridors

The building is designed with a varied architectural massing developed to provide a variety of building heights, preserve views to the Waterfront and present a varied profile. The Downtown Height Study suggests:

The Interest of the skyline is enhanced when the massing of structures is not completely uniform and when buildings have distinct profiles”¹⁴ The study suggests that “The variation of building heights and forms that currently exists should continue to be encouraged. This includes slender elements that pierce the skyline as well as blockier elements providing a rhythm of light and building”¹⁵; and “Wherever Possible, view corridors should be “framed” by consistent street walls this dramatizes the view, while creating a coherent streetscape”¹⁶.

The massing has been designed such that the tallest elements are located along Franklin Arterial and India Street where the height is balanced against the buildings across the street and achieve the desirable 1.5:1 height to street width ratio. This design effectively frames the views to the waterfront and maintains the panoramic views to the skyline from Portland Harbor.¹⁷

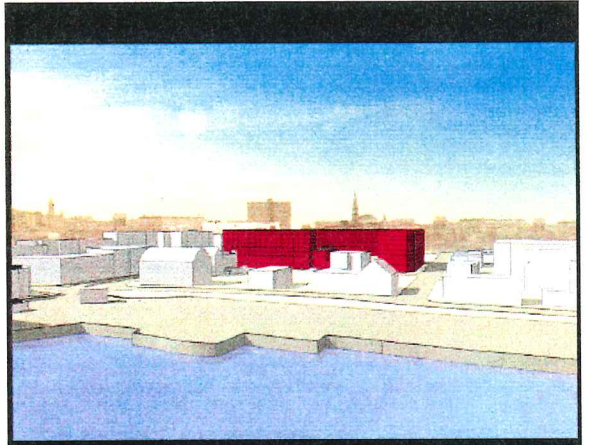
The height along Franklin Arterial is particularly important to balance the appearance of the 105 foot building at 100 Middle Street across Franklin Arterial. The design frames the view corridor to the waterfront and visually narrows the appearance of Franklin Arterial to the pedestrian, creating a more inviting link from Downtown to the waterfront and India Street to the east. This design is compatible with the stated goals of the Plan which seeks to reconnect India Street and Eastern Waterfront to Downtown, across Franklin Arterial.

CONCLUSION

With the City’s input, the Developer is designing a project that furthers the City’s goals as defined in the Plan in many respects. The Project is a mixed-use project, including residential, retail and hotel uses and is expected to be of high quality construction. It will increase the number of residential housing units in the City’s inventory, while adding additional retail space at the street level. The design contemplates the creation of a pedestrian permeable view corridor through the building from Middle Street to Fore Street. These development features coincide with the economic benefits the Project will bring to the City and the State.

With these benefits in mind, the Developer is requesting a minimal amount of re-zoning to achieve a project design that is in compliance with the Comprehensive plan.

-
- ¹ Downtown Vision, p.102
 - ² Downtown Vision, p. 102
 - ³ Downtown Vision, p. 102
 - ⁴ Downtown Vision, p.4
 - ⁵ Comprehensive Plan , Volume II Section 14 Major Implementation Initiatives p.22
 - ⁶ Comprehensive Plan Volume II Section 14 Major Implementation Initiatives p.4
 - ⁷ Downtown Vision, p.4
 - ⁸ Downtown Vision, p.76
 - ⁹ Downtown Vision p.64
 - ¹⁰ Downtown Vision p.76
 - ¹¹ Downtown Vision p.24
 - ¹² Downtown Height Study P.22
 - ¹³ Downtown Height Study P.22
 - ¹⁴ Downtown Height Study P.4
 - ¹⁵ Downtown Height Study P.6
 - ¹⁶ Downtown Height Study P.4
 - ¹⁷ Downtown Height Study P.6



WESTIN HOTEL AND RESIDENCES PORTLAND, ME

City of Portland
Conditional Rezoning
Application

Addendum
August 3, 2005

Developer |
PME 1 Limited Partnership

Planning and Design |
Cooper Carry Architects
Winton Scott Architects
Sebago Technics

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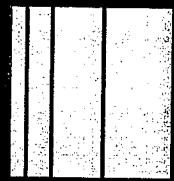
Exhibit A – Volume I – Architectural Plans

1. Sheet P View from Franklin Arterial
2. Sheet P View along Fore Street
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4. Sheet E Building Elevations
5. Sheet E Building Elevations
6. Sheet S Street Wall Sections
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15. Sheet 7-8 Levels 7 and 8
16. Sheet 9 Level 9
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20. Sheet P3 Parking Level 3

Exhibit A – Volume II – Site Plans

1. Sheet 1 of 10 Cover Sheet
2. Sheet 2 of 9 Existing Conditions Plan
3. Sheet 3 of 9 Existing Condition Plan
4. Sheet 4 of 9 Site Plan
5. Sheet 5 of 9 Grading and Utility Plan
6. Sheet 6 of 9 Landscape Plan
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8. Sheet 8 of 9 Details
9. Sheet 9 of 9 Details
10. Sheet 10 of 10 Details

1. Cover Letter



August 3, 2005
05090

Ms. Sarah Hopkins
City of Portland Planning Department
389 Congress Street
Portland, ME 04101

Public Hearing Submittal - Conditional Rezoning Application
Westin Hotel and Residences Portland- Jordan Meats Site, 38 India Street, Portland

Dear Sarah:

On behalf of PME I Limited Partnership, we are pleased to submit the attached supplemental material in support of the application for conditional rezoning for the Westin Hotel and Residences project on the site of the former Jordan's Meats facility at 38 India Street. This material has been prepared to provide additional information requested by the Planning Board at our workshop meeting on July 26, 2005 and scheduled for Public Hearing on August 9, 2005.

Included in the attached bound documents are the following items which have been prepared and revised in response to the Planning Board's comments. This material supplements the information included in the Planning Board's July 26, 2005 workshop packages.

1. Supplemental Conditional Rezoning Rationale Narratives prepared to address Planning Board comments and questions related to:
 - a. Comparison of the original by-rights proposal to the current conditional rezoning proposal.
 - b. Further discussion of building height compliance with the comprehensive plan.
2. Parking Study.
3. Revised Architectural Plans and Site Plans.
4. 3-D Building Model Images (to be delivered under separate cover).

Supplemental Conditional Rezoning Rationale Narratives

Two narratives have been prepared to address the Planning Boards requests for additional information related to the proposed development.

Included is a narrative presenting a comparison of the original "by-rights" design proposal to the current conditional rezoning building program. The narrative presents a summary of the decision process to pursue conditional rezoning of the site, the specific public benefit design changes requested by the staff and City Council Community Development Committee, and summary tables comparing the original and current building programs.

The second narrative provides additional information related to the proposed building heights and their compliance with the building height patterns recommended in the Downtown Height study.

Parking Study

A parking study prepared by Eaton Traffic Engineers is attached. This study has been prepared at the Planning Board's request to establish the proposed parking requirements for the site project.

Conditional Rezoning Agreement

At the project's last Planning Board workshop, Ms. Littel, the City's Corporate Counsel, indicated that comments on the language of the proposed conditional rezoning agreement would be forthcoming. At the date of this writing, we have not received those comments. We will be pleased to address any comments related to the agreement language with the staff prior to the project's public hearing.

Physical and Electronic Models

Winton Scott Architects has prepared an updated three dimensional electronic model of the proposed building. Images of this model have been previously presented to the Planning Board. The model has been updated to reflect the current building design and accurately represents the topography of the Portland peninsula and the existing and proposed development surrounding the project site.

We will be prepared to present a computerized, fly-through demonstration of this model to the Planning Board at our public hearing on August 9, 2005. A booklet of representative building perspectives will be forwarded to you under separate cover for your review and for inclusion in the Planning Board's packages.

Cooper Carry Architects is preparing the physical model of the proposed building as requested by the staff and Planning Board. This model will be presented to the Planning Board at our public hearing.

Revised Architectural and Site Plans

Attached is an up-to-date set of architectural and site plans. Only minor revision have been made to the plans to provide additional detail related to the parking garage design. Specifically Sheets P1, P2 and P3 have been added to the set to document proposed parking capacity and circulation within the structure. Sheet SS provides a longitudinal section of the building cut parallel to Middle Street to illustrate the proposed parking levels.

Minor modifications have been made to the project site design plans. These revisions are limited to minor modifications to the building footprint such that the site plans are consistent with current building floor plans.

A full set of plans has been provided to facilitate the Planning Board's review and to avoid confusion with previous plan submittals.

Attached as Exhibit A to the Conditional Zone Application is the "Site Plan" comprised of the following architectural and site design plans.

Exhibit A, Volume I- Architectural Plans

1. Sheet P View from Franklin Arterial
2. Sheet P View along Fore Street
3. Sheet P View from India Street Looking North
4. Sheet E Building Elevations
5. Sheet E Building Elevations
6. Sheet S Street Wall Sections
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19. Sheet P2 Typical Parking Level
20. Sheet P3 Parking Level 3

Exhibit A- Volume II- Site Plans

1. Sheet 1 of 9 Existing Condition Plan
2. Sheet 2 of 9 Existing Conditions Plan
3. Sheet 3 of 9 Site Plan
4. Sheet 4 of 9 Grading and Utility Plan
5. Sheet 5 of 9 Landscape Plan

6. Sheet 6 of 9 Details
7. Sheet 7 of 9 Details
8. Sheet 8 of 9 Details
9. Sheet 9 of 9 Details

Schedule

We are confirming that the Conditional Rezoning application has been placed on the Planning Board's agenda for public hearing agenda on August 9, 2005.

Thank you again for the time and attention the City Planning staff has provided to this project. We appreciate the staff's accommodation of our permitting schedule requests. We are confident that our collaborative approach will result in a successful project for the City and the project owners.

Please contact me with any questions or comments.

Sincerely,

SEBAGO TECHNICS, INC.



Daniel L. Riley
Senior Project Manager

DLR:dlr/jc

Enc.

cc: Tom Niles
Andrew Bedard

2. Supplemental Conditional Re-Zoning Narrative- Design Comparison

**Conditional Rezoning Narrative
Portland Mixed Use Project
38 India Street
Portland, Maine**

**Conditional Rezoning Rationale- Design Comparison, By-Rights
Vs. Conditional Rezoning**

The Westin Hotel and Residences project was initially conceived as mixed use development centered on a four-star Westin Hotel with associated restaurant and bars, support areas, function rooms and banquet facilities, public circulation space, indoor recreation and pool areas, kitchen, and hotel support space. The proposal included residential condominiums and an underground parking garage.

The proposal included a single building with two interlocking "L" shaped wings. The westerly wing, fronting on Franklin Arterial and Fore Street, included primarily hotel related uses. The easterly wing, fronting on Middle Street and India Street, included residential condominiums, including two-story townhouse units, accessed from street level. The two wings are connected by the hotel ballroom, meeting rooms and supporting spaces at the Middle Street and Fore Street levels. The site was designed with an auto courtyard at the hotel entrance from Hampshire Street and a pedestrian alley connecting to Franklin Street. The building was designed with a maximum building height of 65 feet, the height allowed by the project site's existing zoning.

The concept plan for this proposal was presented to the Planning Board on May 10, 2005. The planning staff's review memorandum for that meeting (dated May 6, 2005) identified two dimensional requirements of the B-3 Zone which needed further resolution; specifically, the maximum setback/street build-to line and the minimum building height requirements.

The provisions of the Ordinance which the Planning Board has historically relied on to allow increased building setbacks in the B-3 zone is no longer valid. As such, some form of amended zoning was required for the development to proceed. The applicant and design team met at length with planning staff to identify options for resolving the zoning issues. Options considered included an application to the Zoning Board of Appeals related to the build-to line/setback requirement, redesign of the Middle Street façade to meet the street line, a text amendment to the B-3 Zone related to minimum setbacks, and the possibility of deeding land to the City to bring the property line to the building and to eliminate street frontages.

The result of our meetings with planning staff was a consensus that conditional re-zoning was the most appropriate method for addressing the zoning concerns. The staff encouraged the applicant to consider conditional rezoning and additional height if the changes would resolve the zoning issues, improve the project design from a public benefit standpoint and relieve design constraints compromising the hotel and residential elements. The staff encouraged the applicant to include the follow features in the building program.

- Incorporate visual transparency and mid-block pedestrian permeability between Hampshire/Middle Streets and Fore Street.

Although not required by the Land Use Ordinance, this transparency and permeability is a design feature that has been encouraged by the planning staff. The revised design facilitates the convenient movement of pedestrians by shortening walking distance between the streets and providing inviting, dramatic entrances to the semi-public hotel lobby space. The ability to incorporate this type of design feature without disrupting the operational needs of the hotel development is a challenge, and feasible design options depend to a great extent on an approval of additional building height. The design of this semi-public, pedestrian permeable space has subsequently evolved into a two-story tall vestibule and hotel lobby, connected to a grand porch and stairway along Fore Street.

- Include retail/commercial space at street level, specifically on Middle Street and India Street.

The floor plan has been revised to add over 15,000 square feet of retail space to the building program. This retail space, accessed at street level on Middle Street and India Street, was also a stated request of the City Council's Community Development Committee. While this revision meets the City's goal of retail space at the pedestrian level, it increases the proportion of lower value square footage in the project and requires previously proposed street level residential uses to be displaced to the building's upper stories and relocated, in part, to the top floor of the hotel wing of the building. Creating these "Hotelominium" units at the top of the hotel wing provides a unique residential experience. Functioning as much as hotel rooms as residential condominiums, these units will be available for sale under a variety of ownership options. These units, when not occupied full time, may be managed as suites as part of the hotel room pool.

- Provide variation in the height, massing and articulation of the building.

The proposed height revisions allow a more flexible, dynamic building design with opportunities for variation in building height and massing and articulation unavailable under the existing zoning height limitations. The existing zoning height restrictions limited the floor to ceiling height of the hotel rooms and condominium units, and limited the height of the hotel lobby. These restriction resulted in the somewhat monolithic form of the original by-rights development.

The proposed building height allows for additional variation in building height and massing. The revised plan includes step backs on all frontages, with the most significant stepping occurring on the Middle Street and India Street elevations. The India Street elevation is designed with a series of steps such that the face of the upper stories pulls away from the street line as India Street descends towards Fore Street. This design respects and frames the view corridor along India Street, mitigates the visual impact of the building height to the pedestrian, and presents a narrower profile of the building when viewed from the north and northeast.

- Retain the pedestrian courtyard and alleyway proposed in the original by-rights design.

The proposed courtyard at the entrance to the hotel is an important functional feature for the safe operation of vehicles loading and unloading hotel guests. The courtyard has been designed as an attractive, active pedestrian space that provides an appropriate terminus of Hampshire Street. The courtyard and the building porch opposite it on Fore Street effectively narrow the building footprint on the site, enhancing the transparency and pedestrian permeability through the hotel lobby.

- Retain Underground Parking

The public benefit features have been incorporated into the design while providing the project's parking requirements with an on-site, below grade structure. A significant achievement considering the size and configuration of the site, this design eliminates the visual challenges of above grade parking.

On July 26, 2005, members of the Planning Board requested additional information comparing the building programs of the original by-rights proposal to the current plan. This comparison is summarized in the following tables.

Table 1 Building Program Comparison		
Building Program Component	April 22, 2005 Building Program Area (s.f.)	July 20, 2005 Building Program Area (s.f.)
I. Hotel		
A. Total Guestroom Area	94,995	121,481
B. Total Public Area	35,301	37,883
C. Total Public Support	35,603	31,974
Total Hotel Area =	165,899	191,338
II. Hotelominiums		
A. Total Hotelominium Area	0	14,464
B. Total Hotelominium Support	0	3,149
Total Hotelominium Area =	0	17,613
III. Condominiums		
A. Total Area Of Condominium Units	100,729	126,789
B. Condo Support Areas	27,663	Inc. in above
Total Condominium Area =	128,392	126,789
IV. Parking Deck		
A. Total Area of Parking Deck	130,105	130,000
B. Parking Deck Support	Inc. in above	Inc. in above
Total Parking Deck Area =	130,105	130,000
V. Retail Space		
A. Total Retail Space	0	15,374
Total Retail Space =	0	15,374
Total Building Area	424,396	481,114

Table 2 Building Program Comparison		
Building Program Component	April 22, 2005 Building Program	July 20, 2005 Building Program
Hotel Program		
I. Hotel Guestrooms	189 Bays, 176 Keys	244 Bays, 244 Keys
II. Hotelominiums	0	19
III. Food and Beverage (net s.f.)	4,265	8,452
IV. Meeting Space (net leasable s.f.)	6,785	9,601
Condominium		
I. Condominium Units	89	97

The summary tables demonstrate the following key comparisons of the original by-rights design and current building program.

- The building has increased in overall size by approximately 13%.
- The program has added over 15,000 square feet of retail space, occupying the first two floors of condominium wing of the building where townhouse units were originally proposed. This residential square footage has been displaced to the upper floors along Middle and India Streets.
- Revisions to the condominium floor plans and changes to the mix of unit types has created a more efficient condominium layout. The condominium count has increased by 8 units, while the total condominium square footage has decreased.
- Hotel area increased from 166,000 square feet to 191,000 square feet; nearly all of this increase is attributable to additional guestrooms. This increase was achieved with minor modifications to the building footprint, increasing the number of rooms per floor through more efficient layouts, and utilizing some space within in the envelope of the building as floor area rather than double and triple floor height (specifically in the area over the restaurant).
- The number of hotel “bays” has increased to 244. The final number of “keys” or leasable hotel rooms will likely be somewhat less than 244. The final number of keys depends on final decisions regarding the finish of the floor space by the hotel operator; that is, how many bays are combined into suites and the number of bays dedicated to hospitality areas and service functions. The increased number of hotel rooms is a requirement of the hotel operator to improve the efficiency of the building in terms of total hotel square footage per room.
- For purposes of determining traffic generation and parking demand, we have assumed that all 244 bays are to be leased hotel rooms.
- Revision in the floor to ceiling heights in the hotel design allowed us to achieve an additional floor of hotel or for sale units (Hotelominium units) on the Arterial wing. A total of 17,600 square feet of Hotelominium floor space and support space has been designed. This design may include up to 19 residential units.
- Revisions to the sectional development of the hotel wing allowed us to achieve an additional half-floor of guestrooms above the two-story volume of the restaurant, and an additional floor of hotel or for sale units (Hotelominium units). A total of 17,600 square feet of Hotelominium floor space and support space has been designed. This design may include up to of 19 residential/hotel units.

3. Supplemental Conditional Re-Zoning Narrative- Building Height

**Conditional Rezoning Narrative
Portland Mixed Use Project
38 India Street
Portland, Maine**

Conditional Rezoning Rationale- Building Height Design

During our workshop hearing on July 26, 2005, the Planning Board requested clarification of certain aspects of the Downtown Height Study (Carr Lynch, Hack and Sandell, February 1989) referenced in our conditional rezoning rationale. Specifically, the Board requested that we address the provision in the Downtown Height Study that recommends a pattern of development and zoning regulations that graduates building heights from a "High Spine" along Congress Street to lower levels at the waterfront.

The downtown Height Study presents three scenarios as strategies to distribute projected growth of office, retail, and residential development onto physical sites within the Downtown area. Each scenario assumed different patterns of height restrictions and projected how this might influence the patterns of development. Each scenario suggested different height limits for the Westin Hotel and Residences project site (the Site). The three scenarios were¹:

1. Development under the existing height limits in place in 1989. The zoning height limits at the time were 45 feet at the site, 125 feet to the west across Franklin Arterial, 65 feet to the north across Middle Street, and 45 feet across India and Fore Streets.
2. Concentrating development along the Congress Street spine, allowing higher development in this area (the "high spine"). In this scenario, shown in Figure 1, the height study recommends a 45 foot height limit for the site, with 125 feet recommended for the block to the west across Franklin Street and 45 feet to across India Street, Middle Street and Fore Street.
3. Creation of two Growth Districts, in South Bayside and in the India Street area, and encouraging new development to concentrate in these areas. In this scenario, shown in Figure 2, the height study recommends 85 feet at the site, 125 feet to the west across Franklin Arterial, and 65 feet across India Street, Middle Street and Fore Street.

Ultimately, the City Council adopted, as the downtown Height Overlay Map (Figure 3), what can be described as a combination of the "high spine" and "growth district" scenarios. The height overlay map establishes a 65 foot height limit at the site, 85 feet to the west across Franklin Arterial, and 65 feet the south across Fore Street. The adopted map did not address heights across Middle Street and India Street. These areas remained at the heights established by the Ordinance for the underlying B2b Zone (45 feet for small parcels and 65 feet for larger parcels greater than 5 acres in size).

The adopted height overlay map generally follows the Downtown Height Study recommendations for graduated height zones from the spine to the waterfront. In general, the Council adopted somewhat lower heights along Franklin Arterial and reduced the sizes of the transitional zones from the proposals of the Height Study.

We believe that this was a judicious response by the Council as the Height Overlay Map establishes the limits under which new development can occur without additional scrutiny of building height. We do not believe that the adopted Height Overlay Map is intended to establish absolute height limits which preclude any taller development. It does, however, ensure that taller developments are reviewed in the context of their surroundings through an appropriate rezoning process.

Viewing the proposed building in the context of the existing and proposed development in the vicinity of the site indicates that the proposed building design accomplishes an appropriate height transition from the higher ground and the taller existing development to the west to the existing (approximately 45 feet) and proposed building heights (65 feet) to the south and east of the site.

- The existing development to the west across Franklin Arterial is located in area zoned for 85 feet tall buildings. However, this block is dominated by the 100 Middle Street building, whose existing height is in excess of 100 feet.

The proposed building height is approximately one floor lower than the 100 Middle Street building. The proposal presents a coherent street wall, framing and defining the view corridor along Franklin Arterial. The tallest wing of the hotel building effectively balances the existing building heights to the west and the width of Franklin Arterial, visually reconnecting the site across the roadway to Downtown and the Old Port.

- The proposed building provides variations in roof height, dropping to 78 feet and 58 feet on Middle Street. The requested increase of 13 feet above the current zoning limit at this location does not present a significant obstruction to sites to the north and west which would otherwise be obscured by a building constructed at 65 feet.

The requested height, although somewhat taller than the existing zoning, falls well within what the downtown height study considers a comfortable ratio of building height to street width. This height is also lower than the 85 feet supported by the Downtown Height Study's Growth Area development scenario.

- The interlocking "L" form of the building encourages lower height at its center along Fore Street. The lower roof height, stepping to 38 feet, 35 feet and 15 feet transitions height towards the waterfront and provides a level of variety in mass and articulation which is very unusual for a single development site in Portland and is desired goal of the City. The design allows the observer from higher elevations west of the site and lower elevations east of the site to see through portions of the site, further reducing the building's visual mass and reinforcing the variety and transition in height across the site.

Further, the lower roof height at the center of building, punctuated by the taller hotel and condominium wings, balances effectively against the existing development across Fore Street and potential redevelopment at the current zoning height limit of 65 feet.

The 88 foot tall proposed condominium wing of the building along India Street completes the transition from the existing development in excess of 100 feet across Franklin Arterial to the 65 foot height limits proposed as part of the Eastern Waterfront Master Plan and the proposed Riverwalk development to the east.

As the planning staff has indicated in their discussion with the Planning Board, India Street is an area in transition. In 1991, when the Downtown height Study was completed, the existing height limit for India Street and the Eastern Waterfront was 45 feet. This guided, in part, the adoption of the 65 foot height limit at the site.

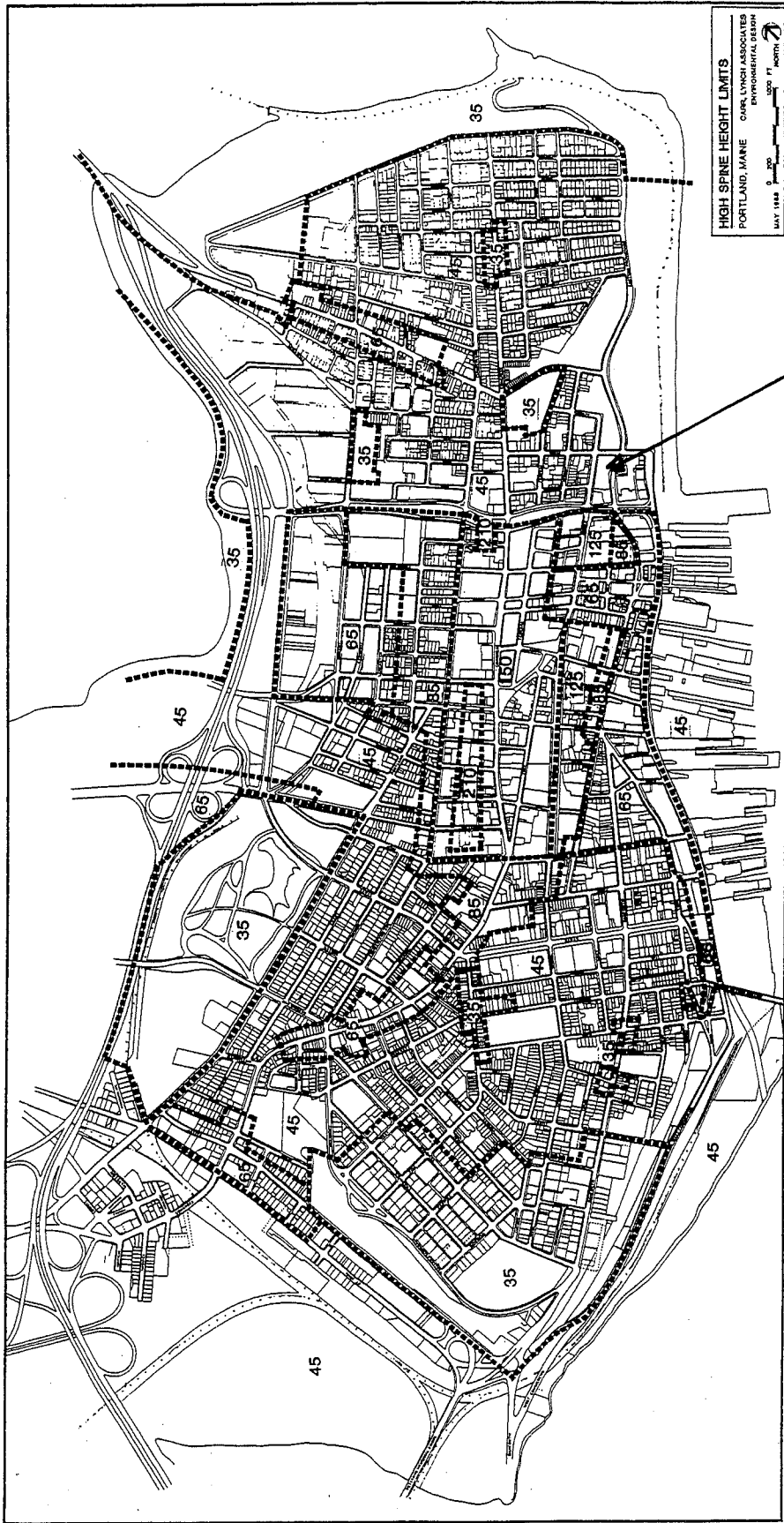
Since that time, the City has completed, in draft final format, the Eastern Waterfront Building Height Study (City of Portland Planning Department and Mitchell Razor, September 2004) as part of the implementation of the Eastern Waterfront Master Plan. This study proposes to revise the maximum allowable building height to 65 feet in the Eastern Waterfront, an area adjacent to the project site. Figure 4 is a copy of "Illustration 33: Height Map and Building Envelopes" taken from the Eastern Waterfront Height Study. This figure illustrates the anticipated building heights for sites abutting the Westin Hotel project to the east.

The adoption of this study will encourage the development of 65 foot tall buildings along India Street. This increase in building height on the Eastern Waterfront argues for increased building heights on the site to reinforce the height transition from the upper peninsula to the waterfront. Further, the increased height will help establish the site as "*...an extension of the downtown business district that could entice the commercial fabric across the Arterial*"², a stated goal of the Downtown Vision Component of the City's Comprehensive Plan.

The currently proposed Riverwalk project is proposed at 65 feet and will occupy portions of India Street opposite the site and on the block between Fore Street and Commercial Street. This proposed development and the potential build out of India Street is illustrated on the three-dimensional electronic building model presented with our application for conditional rezoning. The model and the street wall cross section drawings demonstrate that the proposed building height of the condominium wing along India Street is compatible with the height of existing and proposed development.

¹ Downtown Height Study p.10

² Downtown Vision, P.102



17 Height Limits with the High Spine Scenario

FIGURE 1
DOWNTOWN HEIGHT STUDY
"HIGH SPINE" SCENARIO

DOWNTOWN OREGON

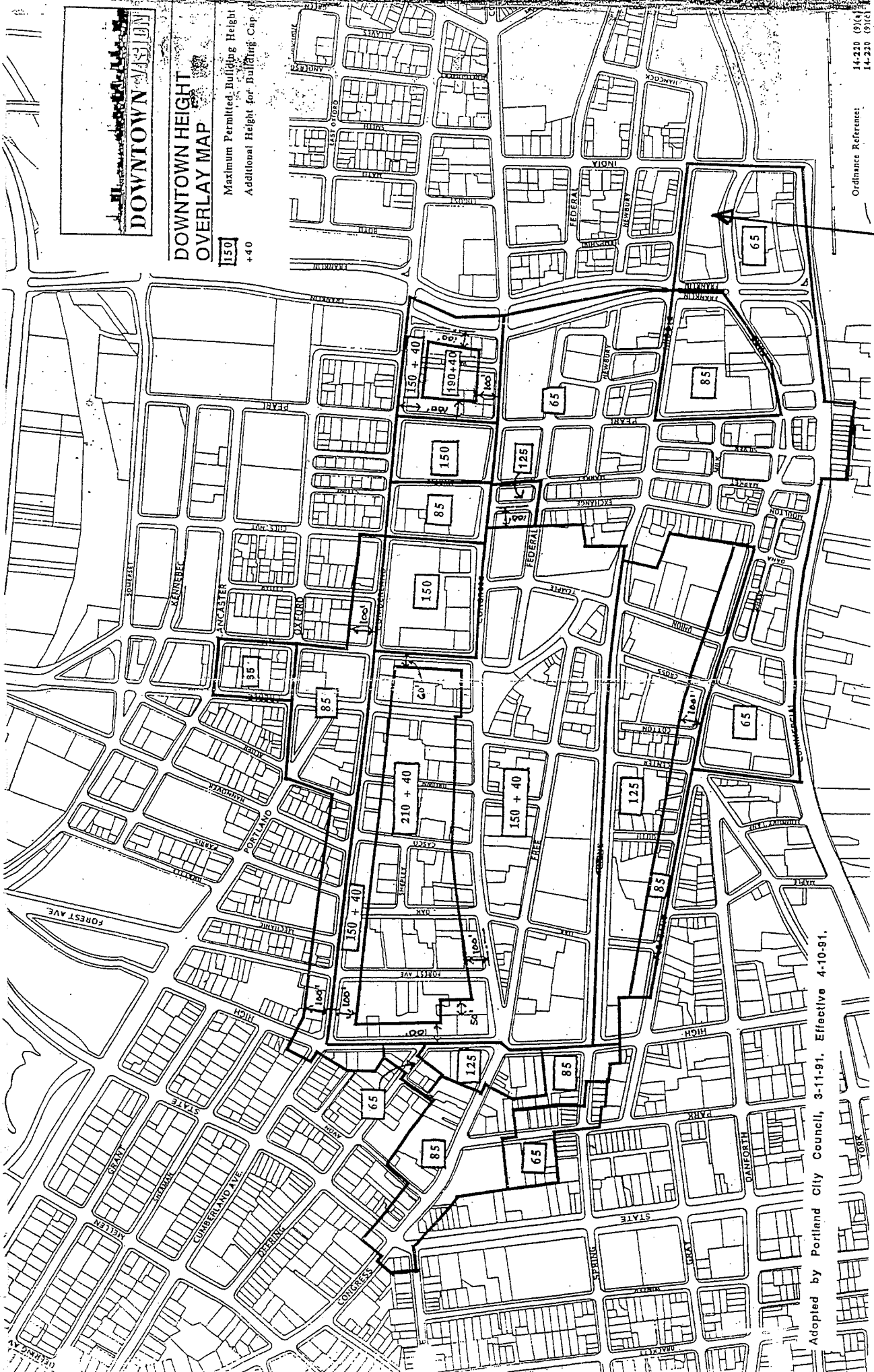
DOWNTOWN HEIGHT OVERLAY MAP

Maximum Permitted Building Height
Additional Height for Building Cap

150
+40

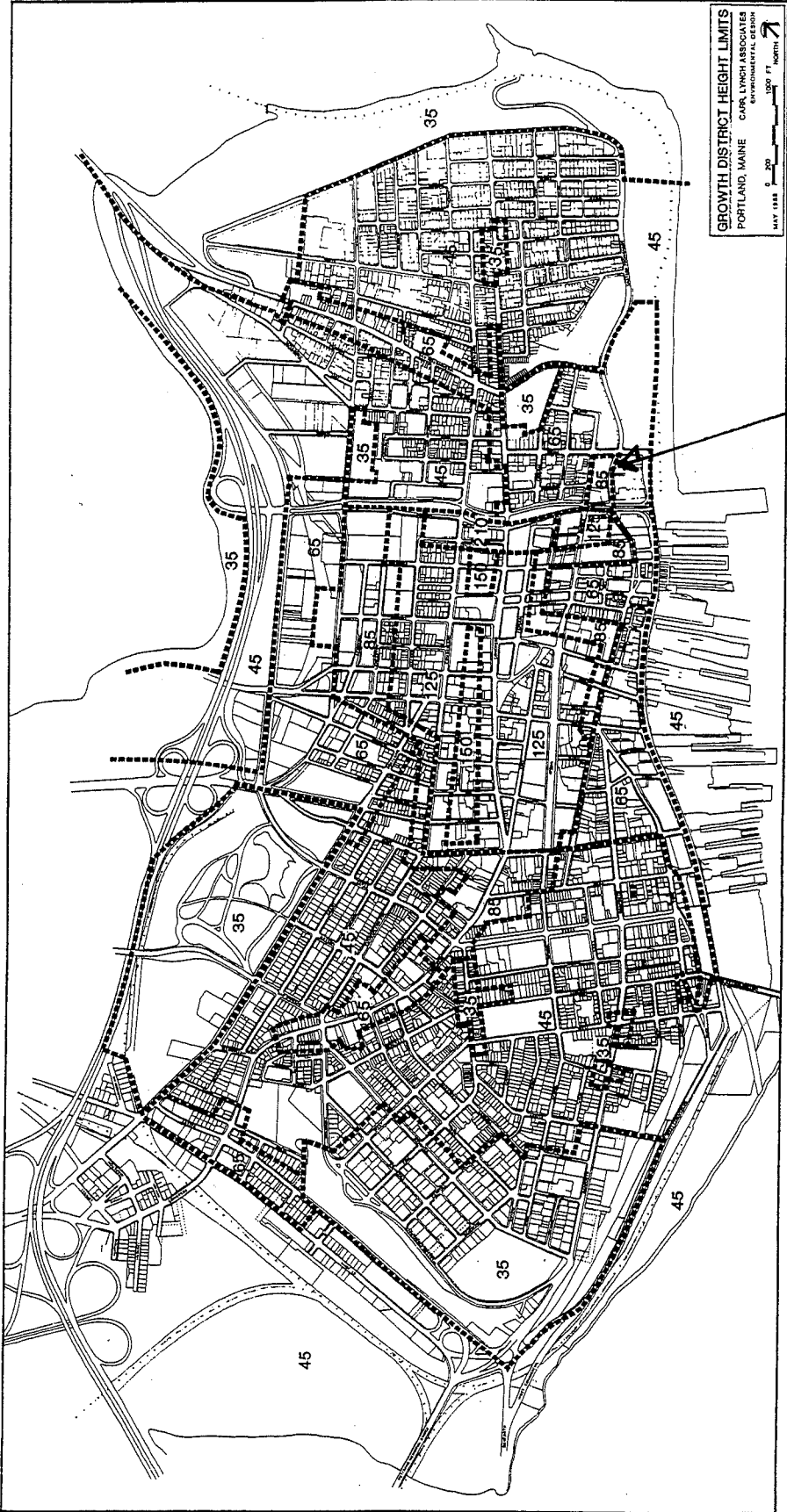
Ordinance Reference:
14-220 (B)(1)
14-220 (B)(2)

← SITE



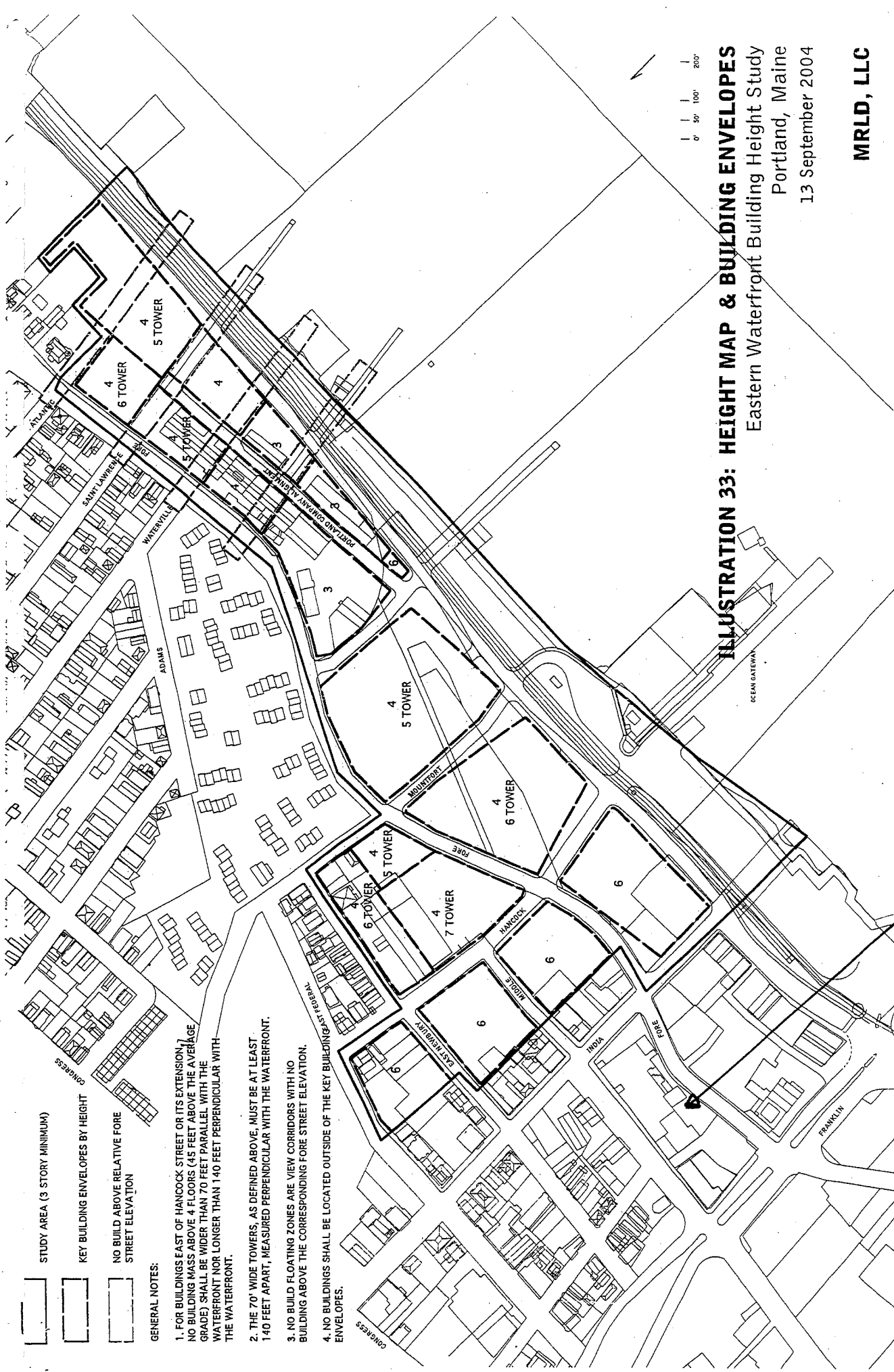
Adopted by Portland City Council, 3-11-91. Effective 4-10-91.

FIGURE 3
DOWNTOWN HEIGHT OVERLAY MAP



23 Height Limits with the Growth District Scenario

FIGURE 2
DOWNTOWN HEIGHT STUDY
"GROWN AREA" SCENARIO



- 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, NO BUILDING MASS ABOVE 4 FLOORS (45 FEET ABOVE THE AVERAGE GRADE) SHALL BE WIDER THAN 70 FEET PARALLEL WITH THE WATERFRONT NOR LONGER THAN 140 FEET PERPENDICULAR WITH THE WATERFRONT.
2. THE 70' WIDE TOWERS, AS DEFINED ABOVE, MUST BE AT LEAST 140 FEET APART, MEASURED PERPENDICULAR WITH THE WATERFRONT.
3. NO BUILD FLOATING ZONES ARE VIEW CORRIDORS WITH NO BUILDING ABOVE THE CORRESPONDING FORE STREET ELEVATION.
4. NO BUILDINGS SHALL BE LOCATED OUTSIDE OF THE KEY BUILDING ENVELOPES.

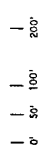


ILLUSTRATION 33: HEIGHT MAP & BUILDING ENVELOPES
 Eastern Waterfront Building Height Study
 Portland, Maine
 13 September 2004

MRLD, LLC

FIGURE 3

SITE

Parking Study



**Westin Hotel/Condominium Development
 Parking Demand Analysis**

The Westin Hotel/Condominium development is in excess of 50,000 square feet, and as such the parking requirement for the development must be based upon an analysis of parking demand and approved by the Portland Planning Board. As a starting point, the parking supply requirements in the Portland ordinances for developments less than 50,000 square feet was applied to the development. The table below summarizes the results:

Land Use	Size	Parking Rate	Spaces Required
Hotel	244 Rooms	0.25 per room	61
Hotelominiums	19 Units	1.25 per unit*	24
Condominiums	97 Units	1.25 per unit*	121
Restaurant	5,871 sq. ft.	1 per 150 sq. ft.	39
Shops/Commercial	15,374 sq. ft.	1 per 200 sq. ft. (over 2000 sq. ft)	67
Meeting/Banquet	9,601	1 per 100 sq. ft.	96
Total			408

* Per recommendation of Portland Planning Staff

The table above indicates that the parking demand is 408 spaces. It should be noted that these parking rates as applied generally reflect parking demand for “stand-alone” land uses. The proposed development is a mixed use development, and because of this the parking demand would be expected to be lower due to the phenomenon of “shared parking”. Shared parking simply means that the parking demand for two land uses, such as the hotel and the restaurant, may be satisfied by the demand for one of the uses. For example, if a hotel patron visits the restaurant on site, a new parking space will not be required as the vehicle is already on site. A

review of the publication Parking¹ indicates that parking demand for restaurants which are located in a hotel typically assumes that 50 percent of the patrons are hotel guests, thus the parking demand used for a stand-alone should be reduced by 50 percent in this case. Parking demand for meetings is also likely to be lower than indicated above as a number of the participants are likely to be guests at the hotel for the duration of the conference/event. Parking publications are mute on this issue, but it would seem reasonable that at least one-third of the participants would be staying at the hotel. Finally, retail/commercial parking demand is likely to be much lower, not only because it is part of a mixed use development where many of its customers will be drawn for hotel guests and condominium residents, but also because it is located in the Portland downtown where it will draw customers from pedestrians already in the area for other reasons (employment, shopping, personal business). Accordingly it seems reasonable that at least 50 percent of the customers of retail/commercial space in the development will be drawn from persons already in the area. A revised parking demand analysis based upon the modifications discussed above is presented below:

Land Use	Size	Parking Rate (Revised)	Spaces Required (Revised)
Hotel	244 Rooms	0.25 per room	61
Hoteliminiums	19 Units	1.25 per unit*	24
Condominiums	97 Units	1.25 per unit*	121
Restaurant	5,871 sq. ft.	1 per 300 sq. ft.	20
Shops/Commercial	15,374 sq. ft.	1 per 400 sq. ft. (over 2000 sq. ft)	34
Meeting/Banquet	9,601	1 per 150sq. ft.	64
Total			324

* Per recommendation of Portland Planning Staff

¹ Robert A. Weant and Herbert S. Levinson, Eno Foundation for Transportation, 1990

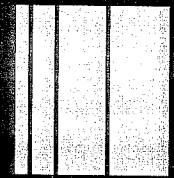
Table of Contents

1. Cover Letter
2. Conditional Rezoning Agreement (August 9, 2005)

APPENDICES

1. Conditional Rezoning Application Booklet (July 20, 2005)
2. Conditional Rezoning Addendum (August 3, 2005)
3. Parking Study
4. Architectural Plans (Separate Attachment)
5. Site Plans (Separate Attachment)
6. India Street Context Study (August 3, 2005)
(Separate Attachment)

Cover Letter



August 24, 2005
05090

Ms. Sarah Hopkins
City of Portland Planning Department
389 Congress Street
Portland, ME 04101

City Council Workshop Submittal – Conditional Rezoning Application
Westin Hotel and Residences Portland- Jordan Meats Site, 38 India Street, Portland

Dear Sarah:

On behalf of PME I Limited Partnership, we are pleased to submit the attached material in support of the application for Conditional Rezoning for the Westin Hotel and Residences project on the site of the former Jordan's Meats facility at 38 India Street. As you are aware, the Planning Board held a public hearing on the Conditional Rezoning Application on August 9, 2005. At the conclusion of that meeting the Planning Board approved a motion finding that the proposed Conditional Rezoning is consistent with the policies of the B-3 Downtown Business Zone and the Comprehensive Plan and recommended that the City Council approve the Conditional Rezoning.

On August 10, 2005 we met with City Council's Community Development Committee to present the application materials and a computer generated fly-through animation showing the proposed building in the context of the existing topography of the eastern peninsula and the development surrounding the site. The project was well received by the Community Development Committee who encouraged us to proceed with scheduling a first reading and workshop with the full council as soon as possible.

Based on the Planning Board approval and the positive feedback from the Community Development Committee, we are requesting that the application be placed on the City Council's agenda on September 7, 2005 for first reading and workshop review. In support of this request we are submitting twenty (20) copies of the application materials recently reviewed by the Planning Board and Community Development Committee.

This submittal includes the following items, previously submitted to the Planning Board on July 26, 2005 and August 3, 2005. No revisions to the building or site plans have been made since our Planning Board Approval.

1. This Cover Letter
2. Conditional Rezoning language approved by the Planning Board on August 9, 2005
3. Conditional Rezoning Application Booklet Dated July 20, 2005. This application booklet includes:
 - a. Cover letter (July 21, 2005)
 - b. Application for Zoning Amendment form
 - c. Evidence of the Applicant's right title and interest in the property
 - d. Draft Conditional Rezoning Language (subsequently revised)
 - e. Conditional Rezoning Narrative
4. Conditional Rezoning Application Addendum Booklet Dated August 3, 2005. This application material was provided in response to Planning Board comments and includes:
 - a. Cover letter (August 3, 2005)
 - b. Supplemental Conditional Rezoning Narrative- Design Comparison
 - c. Supplemental Conditional Rezoning Narrative – Building Height
5. Parking Study (submitted August 3, 2005)
6. Architectural Plans, dated July 20, 2005, and reviewed by the Planning Board on August 9, 2005
7. Site Plans, dated August 3, 2005 with a colored landscape plan rendering
8. India Street Context Study dated August 3, 2005
9. Physical and electronic models (to be presented to the Council on September 7, 2005)

Conditional Rezoning Agreement

At the project's public hearing meeting, the Planning Board made a number of revisions to the language of the conditional re-zoning agreement. Ms. Penny Littel, the City's Corporate Counsel, has updated the language of the agreement based on the Board's comments. A copy of the revised agreement dated August 9, 2005 is attached.

We request that the staff and Council consider revisions to the agreement as follows:

- Paragraph 5.a.1 recommends a monetary contribution to the City to address offsite impacts. We request that the Staff and Council consider defining a specific geographic area, in the vicinity of the Hotel, where such money may be spent.
- The staff has previously indicated that the City may also seek funding for offsite traffic improvements, to be defined as part of the Peninsula Traffic Plan, potentially outside of the Westin Hotel project's traffic permit study area.

It is our understanding that the Peninsula Traffic Study has not yet been adopted by the Council and the planning staff has not yet established policies requiring developments to fund the recommended short and medium term offsite improvements.

We request that the Council consider revising the language such that money contributed under Paragraph 5.a.1 will be reduced by any amount required to be paid by PME for offsite traffic improvements determined during the Site Plan Review process.

We welcome the opportunity to discuss the proposed revisions with staff at your earliest convenience, and will be pleased to submit proposed Conditional Rezoning Agreement language revisions for the Council's review prior to our September 7, 2005 workshop.

Conditional Rezoning Rationale Narratives

Three narratives have been prepared to present the requested zoning amendments and a rationale for their approval based on the City's Comprehensive Plan and the design guidelines pertinent to development at the project site. The July 20, 2005 application includes our original application narrative. The August 3, 2005 application addendum includes supplemental narratives prepared in response to questions from the Planning Board.

Parking Study

A parking study prepared by Eaton Traffic Engineers is attached. This study has been prepared at the Planning Board's request to establish the proposed parking requirements for the site project.

Physical and Electronic Models

Winton Scott Architects has prepared a three dimensional electronic model of the proposed building. This model has been presented to the Planning Board and the Community Development Committee. The model reflects the current building design and accurately represents the topography of the Portland peninsula and the existing and proposed development surrounding the project site.

We will be present a computerized, fly-through demonstration of this model to the City Council at our workshop hearing on September 7, 2005.

Cooper Carry Architects has prepared a physical model of the proposed building as requested by the staff and Planning Board. This model was presented to the Planning Board at our public hearing and will be available at our workshop hearing on September 7, 2005.

Architectural and Site Plans

Included are up-to-date set of architectural and site plans reviewed by the Planning Board and Community Development Committee.

Attached as Exhibit A to the Conditional Zone Application is the "Site Plan" comprised of the following architectural and site design plans.

Exhibit A, Volume I- Architectural Plans

1. Sheet P View from Franklin Arterial
2. Sheet P View along Fore Street
3. Sheet P View from India Street Looking North
4. Sheet E Building Elevations
5. Sheet E Building Elevations
6. Sheet S Street Wall Sections
7. Sheet S Site Section
8. Sheet SS Longitudinal Site Section
9. Sheet R Roof Plan
10. Sheet 1 Restaurant Entry Level
11. Sheet 2 Hotel Lobby Level
12. Sheet 3 Interstitial Level/First Floor Condominiums
13. Sheet 4 First Guestroom Level/Pool Terrace
14. Sheet 5-6 Levels 5 and 6
15. Sheet 7-8 Levels 7 and 8
16. Sheet 9 Level 9
17. Sheet 10 Hotelominium Level
18. Sheet P1 Typical Parking Level
19. Sheet P2 Typical Parking Level
20. Sheet P3 Parking Level 3

Exhibit A- Volume II- Site Plans

1. Sheet 1 of 9 Existing Condition Plan
2. Sheet 2 of 9 Existing Conditions Plan
3. Sheet 3 of 9 Site Plan
4. Sheet 4 of 9 Grading and Utility Plan
5. Sheet 5 of 9 Landscape Plan
6. Sheet 6 of 9 Details
7. Sheet 7 of 9 Details
8. Sheet 8 of 9 Details
9. Sheet 9 of 9 Details

Schedule

We are requesting that the Conditional Rezoning application be placed on the City Council's agenda for first reading and workshop on September 7, 2005.

Thank you again for the time and attention the City Planning staff has provided to this project. We are confident that our collaborative approach will result in a successful project for the City and the project owners.

Please contact me with any questions or comments.

Sincerely,

SEBAGO TECHNICS, INC.

A handwritten signature in black ink, appearing to read "Daniel Riley". The signature is fluid and cursive, with the first name "Daniel" written in a larger, more prominent script than the last name "Riley".

Daniel L. Riley
Senior Project Manager

DLR:dlr/df

Enc.

cc: Tom Niles
Andrew Bedard

**Conditional Rezoning Agreement
(August 9, 2005)**

**CITY OF PORTLAND
IN THE CITY COUNCIL**

**ORDER AUTHORIZING AMENDMENT OF CITY CODE
RE: CONDITIONAL REZONING AT 38 INDIA STREET**

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 the conditional rezoning as detailed below.

**CONDITIONAL ZONE AGREEMENT
PME I, LIMITED PARTNERSHIP**

This Agreement made this _____ day of _____ 2005 by **PME I, LIMITED PARTNERSHIP**, a Delaware limited partnership with an office in South Portland, Maine (hereinafter "PME").

WITNESSETH:

WHEREAS, PME wishes to develop the property commonly referred to 38 India Street, Portland, Maine, consisting of parcels shown on City of Portland Tax Map 29, Block L, Lots 001, 002 and 003 (the "**PROPERTY**"); and

WHEREAS, the **PROPERTY** consists of approximately 1.75 acres, being the site of the former Jordan's Meat plant and is bounded by India Street, Middle Street, Franklin Arterial and Fore Street, occupying nearly an entire City block; and

WHEREAS, the **PROPERTY** is uniquely located in downtown Portland, close to the waterfront, in an area that has received extensive investigation in which mixed-use projects such as the Project (as defined below) are encouraged; and

WHEREAS, the topography of the **PROPERTY** is such that it is almost rectangular, with a narrow "waist", and a significant slope of approximately thirteen (13) feet, with the higher land being on Middle Street and the lower land fronting on Fore Street; and

WHEREAS, PME proposes to construct a mixed-use project on the **PROPERTY** consisting of a hotel, residential condominium units, restaurants, bars and retail/commercial space, as well as an underground parking garage (the "**PROJECT**"); and

WHEREAS, **PME** has requested the rezoning of the **PROPERTY** to permit the (i) establishment of an off-street, courtyard entrance way for the proposed hotel and condominium residences; (ii) increase of the building setback at the intersection of Fore Street and Franklin Arterial and at the intersection of Fore Street and India Street to facilitate welcoming entrances to building located on the **PROPERTY**; (iii) decrease in the height requirement for a portion of the building fronting on Fore Street; and (iv) increase in the height allowance to permit additional retail space on the ground level of the Project and mid-block pedestrian access through the semi-public hotel lobby between Middle and Fore Streets, thereby maintaining view corridors and creating attractive variations in roof heights; and

WHEREAS, in connection with the **PROJECT**, **PME** is proposing certain off-site improvements that include, but are not limited to, (i) striping improvements on Franklin Arterial to enhance the safety of drivers making left hand turns onto Middle Street; (ii) relocation of an existing sewer line that will further the **CITY's** (as defined below) goal of separating the storm and sanitary sewers; (iii) creating a pedestrian streetscape corridor along Fore Street that does not exist today; (iv) extensive streetscape plantings; and (v) a monetary contribution to the City of Portland (the "**CITY**") for other off site improvements necessitated by the **PROJECT**; and

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

WHEREAS, the **CITY**, by and through its City Council, has determined that because of:

- the potential of the **PROJECT** to vitalize commercial activity in the Downtown area,
- the additional commercial/retail space to be included on the ground level of the **PROJECT**,
- the **PROJECT's** use of space above the ground level commercial/retail space for residential uses,
- the potential of the **PROJECT** to reconnect the **CITY's** Downtown area on each side of the Franklin Arterial,
- the underground parking garage sufficient to handle all of the **PROJECT's** parking requirements,
- the **PROJECT's** compatibility with the **CITY's** planned development of the Downtown waterfront area, including the Ocean Gateway project,
- the unique location and topography of the **PROPERTY**, and
- the quality of the design and uses of the **PROJECT**

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 Plan; and

WHEREAS, PME has agreed to enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind **PME**, its successors and assigns;

WHEREAS, on _____, 2005, the **CITY** authorized an amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and conditions become part of the zoning requirements for the **PROPERTY**;

NOW, THEREFORE, in consideration of the rezoning of the **PROPERTY**, **PME** contracts to be bound by the following terms and conditions:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 2000, as amended from time to time and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by Portland City Code §14-49, by adopting the map change amendment below.

INSERT MAP

2. The site plan, verticals, grading, parking schematic and floor plan schematic (collectively, the "Plans") are attached as Exhibit 1 and are incorporated into this Agreement.

3. The **PROPERTY** shall be governed by the zoning provisions, as such may be amended from time to time, applicable in the underlying B-3 Zone, except as follows:

(a) Permitted uses. The **PROJECT** proposes, and is authorized to accommodate up to nineteen "hotelominiums," for purposes of this Agreement defined as privately owned residential condominium units which may, on occasion be rented to the public through private contractual arrangement with the owners of the adjacent hotel, i.e. the Westin or its successor in interest. The "hotelominiums" shall be taxed by the **CITY** as private residential units. Any portion of the **PROJECT** that does not become a "hotelominium" shall be a part of the hotel and shall be taxed in accordance with such use.

(b) Street Wall Build To Line. The dimensional zoning requirements of Section 14-220(c) of the Zoning Ordinance are hereby modified to allow **PME** to

(1) construct a courtyard entranceway (the "Entrance") for the proposed hotel and condominium residences off of Middle Street, provided that the Entrance shall not be further back from

Middle Street than as shown on the attached Plans, but may become narrower, wider or relocated no more than five (5) feet as may be approved by the Planning Board in its discretion; and

(2) create other entrances to the building as shown on the Plans, provided, however, that the location and/or dimensions of entrances to the building may be further modified as may be approved by the Planning Board in its discretion.

(c) Height Limits.

(1) The minimum structure height (measured according to the definition of "building, height of" in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be fifteen (15) feet for a portion of the building's frontage on Fore Street and seventeen (17) feet for a portion of the building frontage on India Street as shown on the Plan.

(2) The maximum structure height (as measured according to the definition of "building, height of" in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be as follows:

(i) ninety-eight (98) feet for the westerly wing of the building with frontage on Franklin Arterial and Fore Street as shown on the Plan;

(ii) seventy-eight (78) feet for the easterly wing of the building with frontage on Middle Street as shown on the Plan; and

(iii) eighty-eight (88) feet for the easterly wing of the building with frontage on India Street as shown on the Plan.

(d) Parking Requirements: A minimum of three hundred and twenty four (324) on site parking spaces shall be provided to service the needs of the **PROJECT** and the total number of parking spaces required to service the project (including any off-site parking requirements) shall be determined by the Planning Board during site plan and subdivision review.

4. The **PROPERTY** will be developed and operated substantially in accordance with the Plans upon site plan and subdivision approval by Portland Planning Board in compliance with the requirements of Chapter 14 of the **CITY's** Land Use Ordinance, provided that the uses between residential and hotel room portions of the building (and specifically excluding any retail spaces shown on the Plan) may change without requiring a modification to this Agreement by the City Council.

5. **PME** shall develop the Project to accommodate the **CITY's** requests as follows:

a. Community Contribution: The community contribution by the **PROJECT** shall be as follows:

1. **PME** shall donate \$ _____.00 to the **CITY** to address off site impacts of the **PROJECT** determined by the **CITY** in its sole discretion. This monetary contribution shall be made prior to the issuance of a building permit for the **PROJECT**.

2. the **PROJECT** shall include commercial/retail space on the ground level along India Street and Middle Street; and

3. the **PROJECT** shall provide mid-block pedestrian access through the building by creating an entrance on each of Middle Street and Fore Street.

6. Any change in the fee ownership of the **PROPERTY** shall be brought to the Planning Board for its review and approval, but this requirement shall not apply to (a) the conveyance of the fee interest in the **PROPERTY** from Zemco Industries, Inc. to **PME**; (b) the granting of mortgages by **PME** or any successor in interest, or to the enforcement by mortgagees of their rights under such mortgages, or to the assignment or conveyance of the ownership to an entity in which **PME** and/or any of its general or limited partners holds at least a 20% interest; (c) the conveyance of any condominium units or to the granting of any mortgages upon individual condominium units; or (d) the leasing or subleasing of any space within the building or on the **PROPERTY**. The restrictions on transfer contained in this paragraph 6 shall expire upon the completion of the **PROJECT** as evidenced by the issuance of certificates of occupancy from the **CITY** for all portions of the **PROJECT**.

7. The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **PME**, its successors and assigns, and any party in possession or occupancy of said **PROPERTY** or any part thereof, and shall inure to the benefit and be enforceable by the **CITY**, by and through its duly authorized representatives.

8. 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 portions shall be deemed as a separate, distinct and independent provision and such determinations shall not affect the validity of the remaining portions thereof.

9. Except as expressly modified herein, the development, use, and occupancy of the **PROPERTY** 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.

10. In the event of **PME's** breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland Land Use Code that would otherwise be applicable to **PROPERTY** situated in the B-3 zone, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. § 4452, M.R.Civ.P. 80K, or in any other manner available by law. In addition, if such an enforcement action should result in a finding that **PME** has breached the Agreement, then either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council that the Conditional Rezoning be modified or the **PROPERTY** rezoned.

11. **PME** shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds within sixty (60) days of City Council approval.

WITNESS:

PME I, LIMITED PARTNERSHIP
By PMEGP, LLC, its General Partner

By: _____

Name:

Title:

STATE OF _____

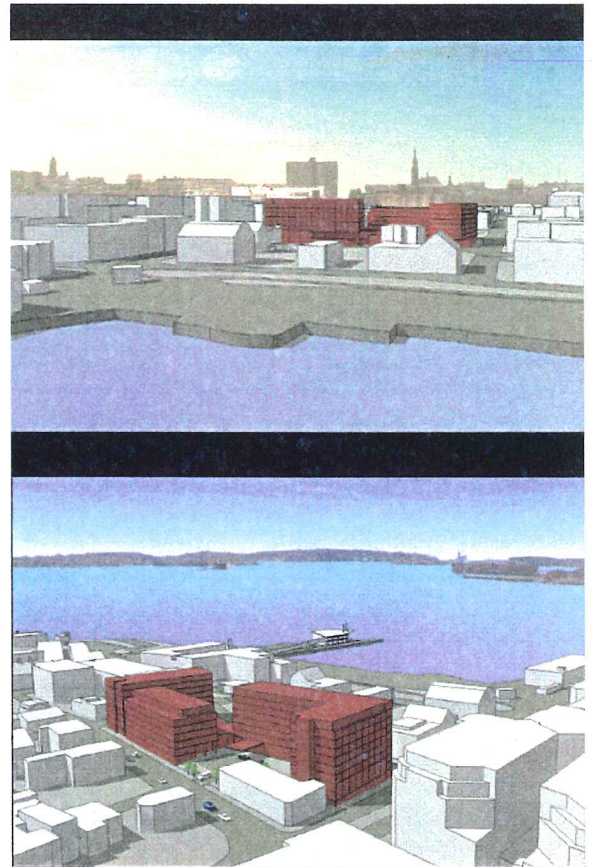
COUNTY OF _____ ss _____, 2005

Then personally appeared before me the above-named _____,
_____ of PMEGP, LLC, a _____, General Partner of PME I, Limited Partnership, a Delaware limited partnership, and acknowledged the forgoing instrument to be his free act in deed in said capacity and the free act and deed of PMEGP, LLC, general partner of PME I, Limited Partnership.

Notary/Attorney at Law

Print name: _____

My commission expires: _____



**WESTIN HOTEL AND
RESIDENCES
PORTLAND, ME**

City of Portland
Conditional Rezoning
Application

July 20, 2005

Developer |
PME 1 Limited Partnership

Planning and Design |
Cooper Carry Architects
Winton Scott Architects
Sebago Technics

Table of Contents

1. Cover Letter
2. Application for Zoning Amendment
3. Vicinity Map
4. Right, Title and Interest
5. Proposed Conditional Re-zoning Agreement
6. Conditional Rezoning Narrative

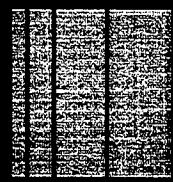
Exhibit A – Volume I – Architectural Plans

1. Sheet P View from Franklin Arterial
2. Sheet P View along Fore Street
3. Sheet P View from India Street Looking North
4. Sheet E Building Elevations
5. Sheet E Building Elevations
6. Sheet S Street Wall Sections
7. Sheet S Site Section
8. Sheet R Roof Plan
9. Sheet 1 Restaurant Entry Level
10. Sheet 2 Hotel Lobby Level
11. Sheet 3 Interstitial Level/First Floor Condominiums
12. Sheet 4 First Guestroom Level/Pool Terrace
13. Sheet 5-6 Levels 5 and 6
14. Sheet 7-8 Levels 7 and 8
15. Sheet 9 Level 9
16. Sheet 10 Hotelominium Level
17. Sheet P Typical Parking Level

Exhibit A – Volume II – Site Plans

1. Sheet 1 of 10 Cover Sheet
2. Sheet 2 of 9 Existing Conditions Plan
3. Sheet 3 of 9 Existing Condition Plan
4. Sheet 4 of 9 Site Plan
5. Sheet 5 of 9 Grading and Utility Plan
6. Sheet 6 of 9 Landscape Plan
7. Sheet 7 of 9 Details

1. Cover Letter



July 21, 2005
05090

Ms. Sarah Hopkins
City of Portland Planning Department
389 Congress Street
Portland, ME 04101

Workshop Submittal No. 3 – Conditional Re-Zoning Application
Westin Hotel and Residences Portland- Jordan Meats Site, 38 India Street, Portland

Dear Sarah:

On behalf of PME I Limited Partnership, we are pleased to submit the attached application for conditional re-zoning of the former Jordan's Meats site at 38 India Street. The site is proposed for redevelopment as the Westin Hotel and Residences, Portland; a mixed use project consisting of a hotel, residential condominiums, retail/commercial uses at street level and a below grade parking garage.

As you may recall, this project was last presented to the Planning Board on June 14, 2005. At that time a schematic design and conditional re-zoning application package was presented. Since that meeting the project design has been revised and developed in greater detail. A complete conditional re-zoning application was submitted to your office on July 12, 2005 and reviewed with the Planning Staff in a meeting on July 15, 2005. Included in the attached bound document are the following items which have been revised in response to the staff's comments.

1. Application for Zoning Amendment (Conditional Re-Zoning)
2. Vicinity Map and list of abutting property owners
3. Evidence of the developer's Right, Title and Interest in the property
4. Proposed Conditional Rezoning legal language
5. Conditional Re-Zoning Narrative

The Conditional Re-Zoning Narrative has been prepared to present the requested zoning amendments and a rationale for their approval based on the City's Comprehensive Plan and design guidelines pertinent to development at the project site.

Attached as Exhibit A to the Conditional Zone Application is the "Site Plan" comprised of the following architectural and site design plans.

Exhibit A, Volume I- Architectural Plans

1. Sheet P View from Franklin Arterial
2. Sheet P View along Fore Street
3. Sheet P View from India Street Looking North
4. Sheet E Building Elevations
5. Sheet E Building Elevations
6. Sheet S Street Wall Sections
7. Sheet S Site Section
8. Sheet R Roof Plan
9. Sheet 1 Restaurant Entry Level
10. Sheet 2 Hotel Lobby Level
11. Sheet 3 Interstitial Level/First Floor Condominiums
12. Sheet 4 First Guestroom Level/Pool Terrace
13. Sheet 5-6 Levels 5 and 6
14. Sheet 7-8 Levels 7 and 8
15. Sheet 9 Level 9
16. Sheet 10 Hotelominium Level
17. Sheet P Typical Parking Level

Exhibit A- Volume II- Site Plans

1. Sheet 1 of 9 Existing Condition Plan
2. Sheet 2 of 9 Existing Conditions Plan
3. Sheet 3 of 9 Site Plan
4. Sheet 4 of 9 Grading and Utility Plan
5. Sheet 5 of 9 Landscape Plan
6. Sheet 6 of 9 Details
7. Sheet 7 of 9 Details
8. Sheet 8 of 9 Details
9. Sheet 9 of 9 Details

The design team is continuing to develop final design plans or the project. The attached plans are dimensionally correct and illustrate the project design in sufficient detail and to define the zoning amendments requested in the Conditional Re-Zoning application. The design plans have been revised in response to comments received from Staff, the Planning Board and the City Council's Community Development Committee.

The revised building program includes approximately 220 hotel rooms, 100 to 110 residential condominiums (the unit count is depended on final floor plan layout), and approximately 20,000 square feet of retail/commercial space including the hotel health club and spa space which is intended as facility for hotel guests, condominium owners and membership from the public.

The revised program also includes 19 Hotelominium units. These are unique residential units located on the top floor of the hotel wing of the building. These units will be available for sale under a variety of full and partial ownership options. The units, when not occupied full time, may be managed as suites within the hotel room pool.

The architectural plans reflect revisions to the building elevation design discussed in our meeting on July 15, 2005. These revisions include an increase in the height of the entrance vestibule from the auto courtyard on Middle Street. At the staff's suggestion, the entrance vestibule height has been raised to match the hotel lobby ceiling height, creating a greater sense of transparency and permeability through building. The design is illustrated in the Site Section and Elevation drawings included in the architectural plan set.

Also included within Exhibit A is a full set of site design plans illustrating the existing conditions, and proposed site, grading, landscape and utility design for the project. Although the project is currently under review for conditional re-zoning, the site plans have been developed and submitted so that the Planning Board can review, understand and comment on the proposed site design.

At the staff's suggestion we have prepared shadow study of the proposed development illustrating the extent of shadowing in the morning, midday and afternoon on the spring, summer winter and fall equinoxes.

Schedule

We request that the Conditional Re-Zoning application be placed on the Planning Board's agenda for workshop review on July 26, 2005 and on the public hearing agenda on August 9, 2005.

We recognize that this is an accelerated review schedule. However, this request is made by necessity based on our understanding of the Planning Board upcoming meeting schedule. It is our understanding August 9 is the only planning Board meeting currently scheduled for August, putting the next potential public hearing date at September 13 or September 27 adding significant time the project's permitting schedule.

In order to meet this accelerated schedule the design team is continuing to develop the building and site design plans and is prepared to respond quickly to staff and Planning Board comments. This revised conditional re-zoning application is being submitted to meet the City's advertisement requirements for a public hearing on August 9, 2005.

Thank you again for the time and attention the City Planning staff has provided to this project. We appreciate the staff's accommodation of our permitting schedule requests. We are confident that our collaborative approach will result in a successful project for the City and the project owners.

Please contact me with any questions or comments.

Sincerely,

SEBAGO TECHNICS, INC.



Daniel L. Riley
Senior Project Manager

DLR:dlr/df
Enc.

cc: Tom Niles
Andrew Bedard

2. Application for Zoning Amendment



APPLICATION FOR ZONING AMENDMENT
City of Portland, Maine
Department of Planning and Development
Portland Planning Board

1. Applicant Information:

Tom Niles, PME I Limited Partnership
 Name

1140 Reservoir Avenue
 Address

Cranston, RI 02920

(401) 946-4600 (401) 943-6320
 Phone Fax

2. Subject Property:

38 India Street
 Address

29 - L - 1
29 - L - 2
29 - L - 3

Assessor's Reference (Chart-Block-Lot)

3. Property Owner: Applicant X Other

Name

Jordan Meats
 Address

38 India Street

(401) 946-4600 (401) 943-6320
 Phone Fax

4. Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Purchase and Sale 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.)

5. 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.)

6. **Existing Use:**

Describe the existing use of the subject property:

Former Sit of Jordan Meats Plant. Currently vacant.

7. **Current Zoning Designation(s):** B-3 Downtown Business Zone, Old Port Overlay District Zone, and an Overlay Zone in which the city encourages certain aspects of the Pedestrian Activity District Overlay Zone to be observed.

8. **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.

Mixed use development including hotel, condominiums, restaurant, retail, and parking garage.

9. **Sketch Plan:** On a separate sheet please provide a sketch 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"=100'.)

10. **Proposed Zoning:** Please check all that apply:

A. Zoning Map Amendment, from to

B. Zoning Text Amendment to Section 14-

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C. X Conditional or Contract Zone

A conditional or contract rezoning may 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 and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

11. **Application Fee:** A fee for must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Workshop and Public Hearing Notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

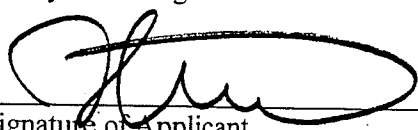
_____ Zoning Map Amendment	\$2,000.00
_____ Zoning Text Amendment	\$2,000.00
<u> X </u> Contract/Conditional Rezoning	
Under 5,000 sq. ft.	\$1,000.00
X 5,000 sq. ft. and over	\$3,000.00
Legal Advertisements	percent of total bill
Notices	.55 cents each
(receipt of application, workshop and public hearing)	

NOTE: Legal notices placed in the newspaper are required by State Statue and local ordinance. Applicants are billed directly by the newspaper for these notices.

12. **Signature:** The above information is true and accurate to the best of my knowledge.

July 12, 2005

Date of Filing


Signature of Applicant

Further Information:

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

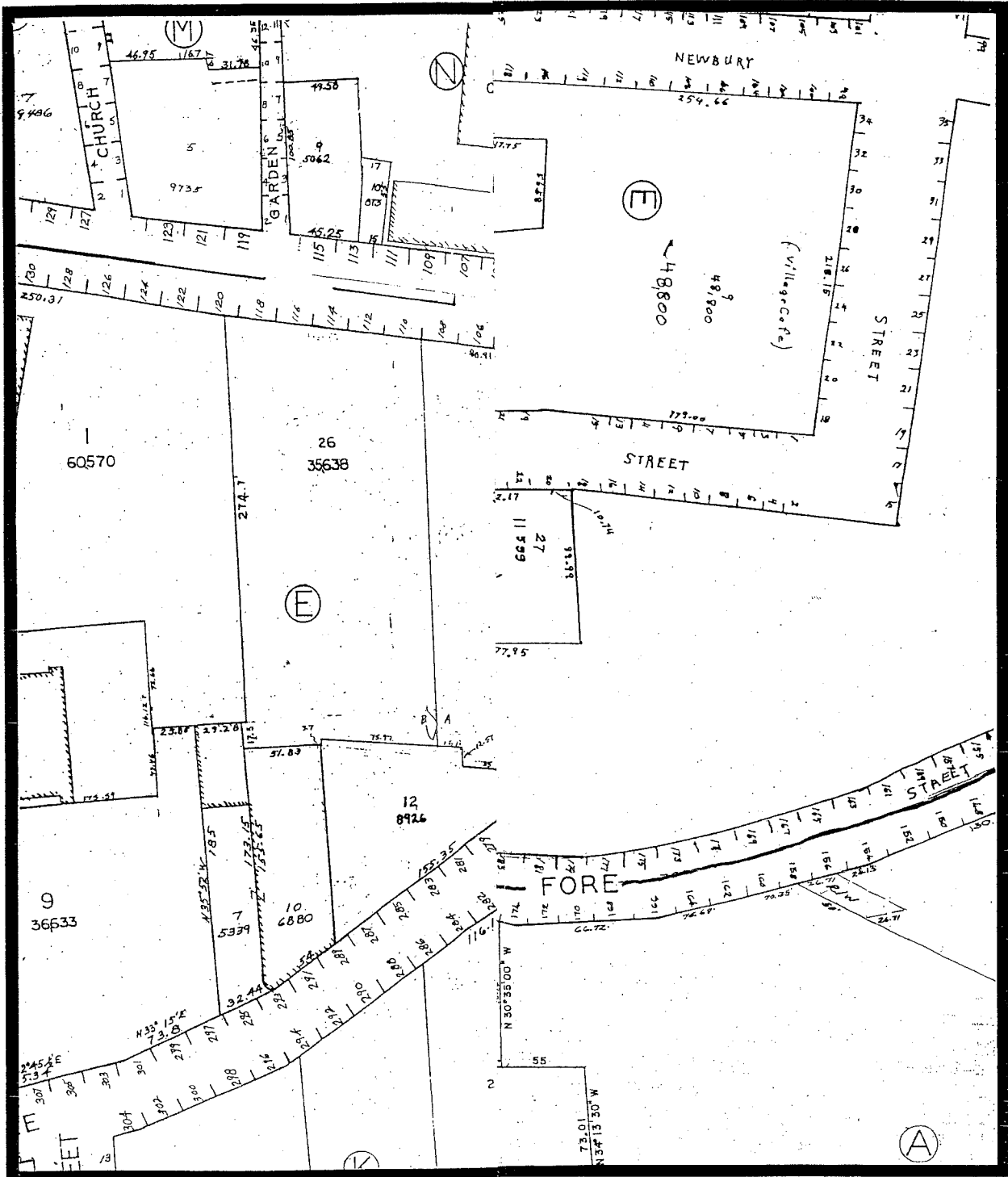
Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board
Portland, Maine

Effective: July 6, 1998

3. Vicinity Map



VICINITY MAP
PORTLAND, ME
MAP # 19, 20, 28 &
SCALE 1" = 50'±

Map	Block	Lot	Name & Address
29	L	3	Jordan's Ready to Eat Meats 38 India Street Portland, ME 04101
29	L	1,2	Jordan's Meats 38 India Street Portland, ME 04101
29	L	4	80-90 Corps 100 Silver Street Portland, ME 04101
29	N	3	Simba Inc. 446 Commercial Street Portland, ME 04101
29	N	4	M & A Partners Inc. 120 Exchange Street Portland, ME 04101
29	N	5	Simba Inc. 446 Commercial Street Portland, ME 04101
29	N	8	Antigonish Holdings Co LLC 208 Fore Street Portland, ME 04101
29	N	9	Edward Kravitz PO Box 176 Wharton, NJ 07885
29	K	5	Olympia Equity Investors 280 Fore Street, Ste. 202 Portland, ME 04101
29	E	19	City of Portland 389 Congress Street Portland, ME 04101
29	E	6	Middle Street Office Tower A 100 Middle Street Portland, ME 04101
19	A	12	Portland Water District 225 Douglass Street Portland, ME 04102
20	C	21, 27	Bruce Micucci, et al 961 Riverside Street Portland, ME 04103
20	C	23	Gilbert Enterprises, LLC 92 Commercial Street Portland, ME 04101

Map	Block	Lot	Name & Address
28	P	15	Port City Glass 50 India Street Portland, ME 04101
28	P	16	Joseph M. & Ann Marie Malone 30 Highland Street Portland, ME 04103
28	P	13, 14	Mark Malone 5 Moulton Street Portland, ME 04101
28	P	10, 11, 12	80-90 Corps 100 Silver Street Portland, ME 04104
28	O	11	77 Middle Street Associates LLC 155 Center Street, Bldg G Box 7 Auburn, ME 04210
28	N	1	City of Portland 389 Congress Street Portland, ME 04101
20	E	26, 27	India & Middle LLC PO Box 2808 S. Portland, ME 04116
28	O	17	City of Portland 389 Congress Street Portland, ME 04101

PLANNING BOARD REPORT #51-05

**38 INDIA STREET
B-3 CONDITIONAL REZONING REQUEST
PME I LIMITED PARTNERSHIP, APPLICANT**

Submitted to:

Portland City Council
Portland, Maine
August 26, 2005

Submitted by:
Kandice Talbot, Planner

I. INTRODUCTION

PME I Limited Partnership is proposing a B-3 conditional rezoning for property located at 38 India Street. The site is the former Jordan's Meats and is bounded by Franklin Arterial, Middle Street, India Street and Fore Street.

The proposal is for the development of a Westin Hotel and Residences with underground parking. The developer is proposing 324 parking spaces. The building program will consist of approximately 220 hotel rooms, 100 to 110 residential condominiums (depending on final floor plan layout), and approximately 20,000 sq. ft. of retail/commercial space including the hotel health club and spa space which is intended as facility for hotel guests, condominium owners and membership from the public.

The program also includes 19 Hotelominium units. These are unique residential units located on the top floor of the hotel wing of the building. These buildings will be for sale under a variety of full and partial ownership options. The units, when not occupied full time, may be managed as suites within the hotel room pool.

The applicant requests a conditional rezoning to increase building height from 65 ft. to 95 ft. and relax the maximum building setback and minimum building height requirements of the B-3 zone.

461 notices were sent to area property owners. Two notices of the public hearing appeared in the Portland Press Herald.

II. BACKGROUND

The applicant first present conceptual plans for the Westin Hotel and Residences project at a Planning Board Workshop on May 10, 2005. At that time there were two dimensional requirements of the B-3 zone which were identified for further resolution. These issues included the street wall build-to line, and the minimum building height.

The applicant subsequently presented its proposal at the CDC meeting on June 8, 2005. The CDC was generally favorable to the project, with a few comments. The CDC recommended visual and pedestrian permeability, retail space on the ground floor of Middle and India Street, and thought that additional height, especially on Franklin Arterial was an option.

The original "as of right" design consisted of two 65 foot high, "L-shaped" buildings which covered the block. Several zoning issues were identified through consultation with the applicant which constrained the design of the project. The setback requirements and height limits impacted the building's permeability and massing, and limited the floor to ceiling heights, the number of rooms/units, and the mix of uses. While the project "worked" with these constraints, the applicant indicated that there were multiple comprises imbedded within it. Staff has also recognized the potential of rezoning to result in a better project that meets public and planning goals. These items are presented further in the report.

III. FINDINGS

Current Zoning: B-3
Proposed Zoning: B-3 Conditional Zone
Land Area: 1.7 acres
Previous Use: Jordan's Meat
Proposed Use: Hotel, Residential Condominiums, and Retail
Land Uses in the Vicinity: Commercial, Retail, and Residential
Current Maximum
Building Height: 65 ft.
Proposed Building
Height: 98 ft. at Franklin Street; 88 ft. at India Street

IV. EXISTING USES

The uses along Franklin Arterial, Middle Street, Fore Street and India Street are commercial, retail and residential.

V. DEVELOPMENT PLAN

Based on the proposed conditional rezoning, the building program will consist of approximately 220 hotel rooms, 100 to 110 residential condominiums (depending on final floor plan layout), 19 hotelominium units and approximately 20,000 sq. ft. of retail/commercial space, including the hotel health club and spa space which is intended as facility for hotel guests, condominium owners and membership from the public. The condominium units will have access to hotel amenities, such as room service, use of the pool and the fitness center.

Traffic

A traffic study has been completed and is included in this packet. The traffic study estimates that there will be a total of 175 PM peak hour trips. Traffic generated by the former Jordan Meats can be used as a "credit" when considering "net" new traffic. This former level of traffic is estimated at 50 PM peak hour trips leaving a net increase in new traffic of 125 trips, which will require a MDOT Traffic Movement Permit.

There is a High Crash Location identified at the intersection of Franklin Arterial and Middle Street. There were 26 accidents reported at this intersection, with 16 of those accidents being left turn collisions. The left turn collisions on north and southbound Franklin Arterial are likely the result of sight line problems that are exacerbated by the wide median and lack of head-to-head left turn lanes. The traffic study recommends that "dotted" pavement markings be used to guide both north and southbound left turns (to turn in front of each other) and possibly add a second stop bar at the end of the median to encourage drivers turning left to move into this position to aid sight lines and reduce crossing distance.

Parking

Sec. 14-526(a)(2)b. states “Where construction is proposed of new structures having a total floor area in excess of fifty thousand (50,000) square feet, the planning board shall establish the parking requirement for such structures. The parking requirement shall be determined based upon a parking analysis submitted by the applicant, which shall be reviewed by the city traffic engineer, and upon the recommendation of the city traffic engineer.” The applicant has submitted a parking analysis, which is attached.

As a starting point, the developer applied the City’s parking requirements to the development. Based on that requirement, the number of spaces required is 408 spaces. The developer notes that this parking demand is based on “stand-alone” land uses. The proposed development is a mixed-use development, and because of this the parking demand would be expected to be lower due to shared parking. Based on the mixed-uses on this site, the proposed number of parking spaces is 324 spaces.

As stated previously, during site plan approval, the Planning Board determines the parking requirement based on the applicant’s parking analysis.

Off-Site Public Improvements

The subject project represents the first step in a historic transformation for Portland’s eastern peninsula. The Westin Hotel and Residences development encompasses a full city block of 1.75 acres in the heart of Portland’s urban core. The surrounding area is a transitional district that links the Old Port retail/office area with the India Street neighborhood. As one moves east from the subject site, the area’s character transitions again from the mixed use India Street area to the under-developed Eastern Waterfront district. As has been widely publicized, the City is poised to experience significant redevelopment in the Eastern Waterfront that, when combined with the proposed Westin project, will place significant demands on public infrastructure on the eastern portion of Portland’s peninsula. As new development occurs, it will be incumbent on the development review process to ensure that the public infrastructure of the area transitions along with and at a quality level equal to the private development.

Recent Practice:

It has been the recent practice of the City that major projects are analyzed for their potential to provide a public benefit for the area in which they are sited. (Recent examples being: Maine Medical Center, OEI at Outer Congress Street, and Waterview Apartments at Cumberland Avenue.) Given the degraded state of many sidewalks and landscaping in the immediate area surrounding the site, the Council may consider how and to what extent this project should contribute to the public amenities for the Franklin Arterial/India Street area.

Potential Improvements:

The site is located between Franklin Arterial, Middle Street, India Street and Fore Street. Within these street segments, the project will inevitably be responsible for infrastructure improvements directly related to its site plan development. As stated above, the project submittal identifies some striping and turning improvements to facilitate left hand turns from Franklin to Middle, and the project will obviously need to address sidewalks and curb cuts at the subject site. Other improvements that are functionally linked to the immediate needs of the project will be identified through the site plan review and traffic movement permit process and will be the unambiguous responsibility of the project. The types of potential improvements located off-site from, but related to, the proposed development include general streetscape amenities to upgrade the public infrastructure in the area, including decorative lighting, street trees, new sidewalks, and high quality street furniture such as benches, planters, and trash cans similar to those recently selected for placement along Congress Street.

For these types of improvements, which will enhance the general area of the new development and add to the experience of the hotel visitors and residents, a monetary contribution is appropriate. In conversations within this Department and with the City Manager, a contribution amount of between \$100,000 and \$200,000 has been suggested. \$100,000 is the amount provided by the Waterview project, a 94-unit residential development, to be used either to assist in saving the house or for neighborhood sidewalk and trail improvements. This Westin Hotel & Residences project is two to three times larger than the Waterview project. The area proposed for public improvements funded through this contribution is within ¼ mile of the site, with the target area being east of Franklin, between Commercial and Congress, to Mountfort Street. This area includes the Waterfront East planning district, which this site adjoins and forms a connection to the Old Port and downtown.

The City Council will need to determine the monetary contribution amount that the Developer will be required to submit for off-site public improvements.

We have discussed the prospect of off site traffic improvements, as proposed in the Peninsula Traffic Plan, recently completed. The consensus of opinion is to defer the issue of traffic related improvements to the site plan and traffic movement review phase of the project. We are presently evaluating the short and medium range traffic improvements that will be needed to accommodate development in the Eastern Waterfront and Bayside districts. It is possible that this project will be required to contribute to related traffic improvements at the site plan/development review stage. At this time, there is not a funding plan and policy for contributions. We expect the Peninsula Traffic Plan to be presented to the Planning Board and City Council in early fall. Regardless of the disposition of the Peninsula Traffic Plan, the site plan review and Traffic Movement Permit will identify required improvements needed to mitigate impacts from the proposed development.

Building Design and Conditional Rezoning

A summary of the architectural program and commentary by Urban Designer Carrie Marsh is attached. The following items are proposed to be addressed with the conditional rezoning:

Minimum Setback and Build-To Line (Section 14-220(c))

Section 14-220(c) requires that new structures be constructed to the street line on all street frontages, with no allowances for side yards or other breaks in the street wall.

The proposed conditional rezoning would increase the minimum building setbacks to allow the proposed entrance courtyard at Middle Street and the pedestrian alley running from Franklin Street to the entrance courtyard, between the Hugo's Restaurant and the proposed hotel. It will also allow for greater flexibility and articulation in the building facades.

Minimum Building Height on Fore Street (Section 14-220(h))

The proposed conditional rezoning will reduce the minimum building height requirement of 35 feet on Fore Street. The building design includes a rooftop deck along Fore Street, between the hotel and condominium wings of the building. The proposed deck was between 30 feet and 33 feet above Fore Street, but was only 25 feet above the building height base line datum.

Maximum Building Height (Section 14-220(i)1)

The zoning allows for a maximum height limitation of 65 feet. The applicant is proposing additional building heights.

The proposed conditional rezoning would increase the height of the hotel wing to approximately 98 feet at Franklin Street, and the height of the condominium wing to 88 feet at India Street. The amended height would allow an increase in the ceiling heights of the hotel rooms, lobby and condominium units. The new height allows for additional floor to the hotel and condominium wing. This height will allow for desired variation in massing and increased permeability.

The public benefits of the proposed rezoning would include increased block permeability and transparency; and variation in building massing and articulation. Further, increased height would allow for more rooms above and thus open the first floor to opportunities for retail uses, particularly along India Street, which would complement other development in the area.

A benefits of the rezoning could potentially be that a semi-permeable corridor be inserted within the block along the projection of Hampshire Street, allowing public access through the lobby area, and possibly a high, semi-public glazed lobby extending all the way to Fore Street, that would allow some transparency through the block.

The addition of retail has been accomplished along India Street. The height requested along India Street at 88 feet, is considerably higher than the prevailing scale, and is two stories higher than the proposed 65 foot building across the street associated with the Riverwalk project. The taller building components range from 88 feet tall on India, to 78 feet along Middle, to 98 feet on Franklin. Franklin is such a wide street adjacent to large-scale downtown development that the 98 foot height is readily accommodated. The variations of 10 and 20 feet between adjacent wings provide some relief to the massing, but at this scale, the contrast is relatively slight. One wonders if some of the India Street program could be relocated to Franklin Street, thereby reducing the scale on India and increasing the variation in building form.

The permeability feature has been provided by a two story glazed lobby area running from the porte cochere to Fore Street along the axis of Hampshire Street. This is enhanced from the one story passage proposed by the applicant, in response to staff comments. The question for consideration is whether this glazed lobby will provide the transparency and public access intended. One aspect that is somewhat disappointing is the need to transition the Fore Street grade via a porch and stair perpendicular to the passage axis. If the stair could have been sited at the end of the passage, it would have created a more inviting and prominent effect. As designed, the pedestrian on Fore Street is faced with a wall at the end of the passageway, not a view up the passageway. The passage is only apparent after climbing the stairs to the porch. These are perhaps unavoidable design features, given the program and site grading. (There is a ramp to underground parking to be accommodated beneath the through block passage.)

VI. CONDITIONS FOR REZONING

The project was previously designed to meet the zoning height, but not the build-to provision on the street. The setback requirements and height limit of 65 feet are a constraint for the project. Following are the proposed conditions of the rezoning.

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 2000, as amended from time to time and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by Portland City Code Section 14-49, by adopting the map change amendment below.
2. The site plan, verticals, grading, parking schematic and floor plan schematic (collectively, the "Plans") are attached as Exhibit 1 and are incorporated into this Agreement.
3. The **PROPERTY** shall be governed by the zoning provisions, as such may be amended from time to time, applicable in the underlying B-3 Zone, except as follows:
 - (a) Permitted uses. The **PROJECT** proposes, and is authorized to accommodate up to nineteen "hotelominiums," for purposes of this Agreement defined as privately owned residential condominium units which may, on occasion be rented to the public through private contractual arrangement with the owners of the adjacent hotel, i.e. the Westin or its successor in interest. The "hotelominiums" shall be taxed by the **CITY** as private residential units. Any portion of the **PROJECT** that does not become a "hotelominium" shall be part of the hotel and shall be taxed in accordance with such use.
 - (b) Street Wall Build To Line. The dimensional zoning requirements of Section 14-220(c) of the Zoning Ordinance are hereby modified to allow **PME** to
 - (1) construct a courtyard entranceway (the "Entrance") for the proposed hotel and condominium residences off of Middle Street, provided that the Entrance shall not be further back from Middle Street than as shown on the attached Plans, but may become narrower, wider or relocated no more than five (5) feet as may be approved by the Planning Board in its discretion; and

- (2) create other entrances to the building as shown on the Plans, provided, however, that the location and/or dimensions of entrances to the building may be further modified as may be approved by the Planning Board in its discretion.
- (c) Height Limits.
- (1) The minimum structure height (measured according to the definition of “building, height of” in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be fifteen (15) feet for a portion of the building’s frontage on Fore Street and seventeen (17) feet for a portion of the building frontage on India Street as shown on the Plan.
 - (2) The maximum structure height (as measured according to the definition of “building, height of” in Section 14-47 but not less than 25.72 feet as shown on the Plan) shall be as follows:
 - (i) ninety-eight (98) feet for the westerly wing of the building with frontage on Franklin Arterial and Fore Street as shown on the Plan;
 - (ii) seventy-eight (78) feet for the easterly wing of the building with frontage on Middle Street as shown on the Plan; and
 - (iii) eighty-eight (88) feet for the easterly wing of the building with frontage on India Street as shown on the Plan.
- (d) Parking Requirements: A minimum of three hundred and twenty four (324) on site parking spaces shall be provided to service the needs of the **PROJECT** and the total number of parking spaces required to service the project (including any off-site parking requirements) shall be determined by the Planning Board during site plan and subdivision review.
4. The **PROPERTY** will be developed and operated substantially in accordance with the Plans upon site plan and subdivision approval by Portland Planning Board in compliance with the requirements of Chapter 14 of the City’s Land Use Ordinance, provided that the uses between residential and hotel room portions of the building (and specifically excluding any retail spaces shown on the Plan) may change without requiring a modification to this Agreement by the City Council.
5. **PME** shall develop the Project to accommodate the City’s requests as follows:
- (a) Community Contribution: The community contribution by the **PROJECT** shall be as follows:
 - 1. **PME** shall donate \$____.00 to the **CITY** to address off site impacts of the **PROJECT** determined by the **CITY** in its sole discretion. This monetary contribution shall be made prior to the issuance of a building

August 3, 2005

VIA HAND DELIVERY

Kandi Talbot, Planner
City of Portland Planning Division
389 Congress Street
Portland, ME 04101

Re: PME I Limited Partnership/Mixed Use Project

Dear Ms. Talbot:

Enclosed please find the following original materials from the neighborhood meeting that was held August 1st with respect to the above-refernced project:

- Neighborhood Meeting Certification;
- Form of Notice;
- Sign In Sheet; and
- Neighborhood Meeting Minutes.

Dan Riley, of Sebago Technics, will be delivering other materials to you today related to the project.

Very truly yours,



Bonnie L. Martinolich

Enclosures

cc: Thomas Niles (with enclosure)
Dan L. Riley (with enclosure)
Lori K. Gramlich (with enclosure)

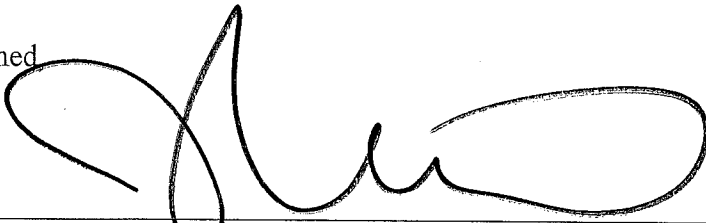
1044263.1

Neighborhood Meeting Certification

I, PME I Limited Partnership hereby certify that a neighborhood meeting was held on Monday, August 1, 2005 at Adams School, 48 Moody Street, Portland, ME at 6:30 PM.

I also certify that on Saturday July 23, 2005, invitations were mailed to all addresses on the mailing list provided by the Planning Division, including property owners within 500 feet of the proposed development and the residents on the "interested parties" list.

Signed



Tom Niles, Executive VP Development, The Procaccianti Group
PME I Limited Partnership

8-1-05

Date

Attached to this certification are

1. Copy of the invitation sent
2. Sign-in sheet
3. Meeting minutes

LORI K. GRAMLICH

265 St. Joseph Street Portland ME 04103

(207) 878 - 1317 (207) 232 - 1067

Email : Lgramli1@maine.rr.com

July 22, 2005

Dear Neighbor,

Please join us for a Neighborhood Meeting to discuss the PME I Limited Partnership proposal to develop a Westin Hotel / Condominium project at the Jordon Meat site located at 38 India Street in Portland. We will specifically be discussing our plans for conditional re-zoning of the site.

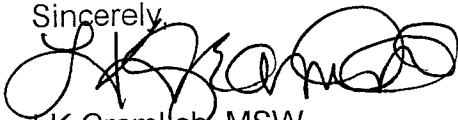
Meeting Location: Adams School

Meeting Date: Monday August 1, 2005

Meeting Time: 6:30 - 8:00 PM

If you have any questions, please feel free to contact me at 878 - 1317.

Sincerely,



LK Gramlich, MSW

Consultant, The Procaccianti Group

PME I Limited Partnership
Neighborhood Meeting for Conditional Re-zoning
Adams School Gymnasium 48 Moody Street, Portland, Maine
August 1, 2005 6:30pm - 8:00pm

SIGN IN SHEET

NAME	ADDRESS	PHONE	EMAIL
1 Christina Fellos	95 MERRIMACK ST	773-4336	cfellos@maine.com
2 Paul Guearin	Shipyard Brewing Co 86 Newbury St	761-0807	paucenic@shipyard.com
3 STEPHEN HAMIL	2 ATLANTIC ST	761-0552	
4 Angela Adams	2 ATLANTIC ST.	761-0552	aaa@angelaadams.com
5 DAN I. HALEY JR	140 EASTERN PROMENADE	774-2617	Dan.Haley@ins.com
6 ROSE SINGLAIR	45 EASTERN PROM	819-0968	
7 Nancy Holmes	45 Eastern Prom	773-2945	

PMI Limited Partnership
Neighborhood Meeting for Conditional Re-zoning
Adams School Gymnasium 48 Moody Street, Portland, Maine
August 1, 2005 6:30pm - 8:00pm
SIGN IN SHEET

NAME	ADDRESS	PHONE	EMAIL
8. Allison + Rush Brown	125 Newbury ST	Portland	abrown1@maine.n.com 874-0924
9. Marc Dugas	286 Fore Street	Portland	553-7194
10. Carolann Present	415 Eastern Promenade Unit 6K	Portland	475-3126
11. Liz Gotthard	35 State St #2	Portland	blizards@watermail.com
12. Markos Miller	17 Atlantic St	Portland	807-2681 markosmiller@hotmail
13. Frank Koshi	10 Howard St	Portland	774-0589
14. Ken Baileg	59 Mountfort	Portland	774-5295

NEIGHBORHOOD MEETING

Adams School
48 Moody Street
Monday, August 1, 2005
6:30 p.m.

Transcription of proceedings, PME 1 Limited
Partnership's proposal to develop a Westin
Hotel/Condominium project, neighborhood meeting held at
the Adams School, 48 Moody Street, Portland, Maine, August
1, 2005, 6:30 p.m.

APPEARANCES:

LORI K. GRAMLICH, Community Relations Consultant
TOM NILES, Executive Vice President Development, The
Procaccianti Group, PME I Limited Partnership
WINTON SCOTT, Winton Scott Architects
DAN RILEY, Sebago Technics Inc.
ANDY BEDARD, Liberty Companies

PROCEEDINGS

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3 MS. LORI GRAMLICH: My name is Lori Gramlich, and I'm
4 a consultant working with PME I Limited Partnership. And
5 we are having a neighborhood meeting. Thank you so much
6 all for coming. We've got some folks from the
7 partnership, we've got folks from the architects, and
8 we've got folks from the civil engineers. And I'd like to
9 introduce to you Tom Niles. He is Executive Vice
10 President of the Procaccianti Group in development.

11 And pardon me, we're using the microphones because we
12 have somebody that's recording and doing a transcript, as
13 required by the City. Thanks.

14 MR. TOM NILES: Thank you, Lori. Thanks for coming
15 tonight. As Lori mentioned, this is part of the Planning
16 Board process. And the reason it's recorded is that the
17 Planning Board will listen to all the comments by our
18 team, all the questions, and all the responses to those
19 questions as part of the process to move the project
20 forward. Thanks a lot for coming again on a -- on a
21 summer night.

22 I'm going to be very brief in the comments. The
23 reason we're here is that we have proposed a mixed-use
24 project to include a hotel and residences, retail, and the
25 associated service -- support public services and parking,

1 initially conceived to exist within the envelope that fit
2 into by-rights zoning project for that particular zone.
3 As we started with the process and as the team prepared a
4 program, a mix of uses and square footages that -- that
5 yielded a viable program, we became aware of certain
6 issues with the city planners, issues that are a result
7 of, I think, perhaps 15 years of studies, including the
8 height study, a downtown vision study from the early '90s,
9 and the comprehensive plan, that really wanted to create
10 activity along street fronts, that wanted to create
11 permeability through projects that had certain mass to
12 them, that wanted to create building articulation reveals,
13 and bring some interest to the architecture down to the
14 street level. And also important to them was to create a
15 view corridor down Hampshire Street, and continue it on to
16 the harbor. And so the problem at the time was that to
17 achieve all those goals and to try to fit a program into
18 the by-rights zoning at the time, it simply wasn't going
19 to work. And the Planning Board themselves didn't have
20 the wherewithal to allow us to create some of that
21 activity.

22 It was -- it was mutually agreed that perhaps the
23 best approach was to go to conditional rezone of the
24 property to try to address all of those issues and still
25 get the program that was originally intended and create a

1 great project for the city. That's why we went to the
2 conditional rezone and that's why we're here tonight as
3 part of the process.

4 And the team that we've put together has worked very
5 hard to make sure we listen to the Planning Board and --
6 and -- and the members of the planning staff, and that we
7 studied not just the -- the studies that I referred to
8 earlier, but several studies, perhaps eight or nine, and
9 make sure we responded to the direction, responded to the
10 vision, the health of the project. And we believe that
11 we've strongly hit on the issues of permeability, strongly
12 hit on the issues of creating activity on the street, and
13 continuing the type of -- of activity that exists along
14 Middle Street and Fore Street, right down to the Old Port,
15 and creating a very, very interesting architecturally
16 appealing building, and creating that -- that vision
17 through Hampshire Street to the harbor.

18 MR. PAUL GUERIN: Can you define permeability?

19 MR. NILES: I originally thought it had something to
20 do with osmosis and the membrane and the egg yolk, but
21 it's really not defined specifically in these documents.
22 However, it's referred to by example. And Winton may be
23 better for certain examples, but there are certain
24 buildings, I think more in the downtown area and the
25 financial district, that have public -- public

1 thoroughfares through the lobbies, where you can cut, at
2 least in one direction, along one access, and perhaps in
3 two directions.

4 What we've created -- what we refer to as
5 permeability is the ability for someone coming down
6 Franklin Arterial to walk in an alleyway between Hugo's
7 building and our building that -- that we would try to
8 achieve some more retail features along that alley into
9 our motor court and yard. So you -- you're not -- you
10 don't have this huge obstacle. It creates what we think
11 is Portland's full, beautiful alleyways, and we wanted to
12 create one there. Permeability is the ability to walk
13 down Hampshire Street or Middle Street into our project
14 through a lobby, which is -- also serves as the hotel
15 lobby, and -- and have a straight shot through to the
16 harbor to an outdoor porch and down a set of stairs that
17 goes along with the internal set of stairs that goes to
18 the meeting rooms and the pre-function rooms, onto Fore
19 Street, and then continue that with -- with additional
20 doorways on Fore Street that get you into retail at both
21 corners, India and Franklin Arterial. Also gets you into
22 the hotel in two locations. So there's -- all buildings
23 have a back. They necessarily have to have a back, and
24 this is no exception, being a 4 Star-level service hotel.
25 But we've tried -- we believe this building doesn't really

1 have a back. It has four fronts. And architecturally
2 there's no distinguishing one elevation from another,
3 short of being able to get vehicles in and get trucks in
4 and out.

5 But I'd like to hand it over to the experts and the
6 team who've -- who've put these -- the scope and design
7 together, and have addressed these issues. We're
8 fortunate to have with us today Dan Riley from Sebago
9 Technics and Winton Scott of Winton Scott Architects. And
10 I'm going to hand it over to Winton. We're going to try
11 to be brief, and we're happy to answer any questions that
12 you have after -- after that time. Thank you.

13 MR. WINTON SCOTT: My long arms are going to come in
14 handy. Good afternoon, or evening. Thank you for coming.
15 And some of you I recognize from before, but there are
16 lots of newcomers. That's good. Let me just give you a
17 brief -- a quick overview of the pieces of the plan and
18 how they relate to each other.

19 This is Middle Street. Everybody here -- is this
20 working? And India Street, Fore, and Franklin.
21 Basically, the building is two L-shaped forms. There's an
22 L-shaped form here, the Middle and India, mostly
23 residential, with most of the commercial on the street --
24 on the sidewalk level here. The other building is all
25 hotel, with a hotel lobby on the ground floor here, the

1 hotel restaurant there, and banquet facilities coming from
2 here under this roof area here and sort of the inside
3 corner of the condos. So that's -- that's banquet
4 facility. And this, as -- as Tom mentioned, is -- is our
5 auto court, the entrance to the hotel by car. There's an
6 entrance by car to the garage around the opposite side
7 here. This is actually what got us in trouble with the --

8 MS. CHRISTINA FELLER: Winton, can you step back a
9 little, or try to --

10 MR. SCOTT: Yeah -- got us in trouble with the zoning
11 ordinance.

12 MR. NILES: We can bring this down a little more up
13 front. Is that all right? Does that help?

14 MR. SCOTT: Does that help?

15 MS. FELLER: Well, I don't know if it is for other
16 people.

17 MR. SCOTT: Yeah. It may be better to leave it up
18 there, Tom, just for --

19 MS. FELLER: It's just that you need a pointer or
20 something.

21 MR. SCOTT: Yeah. My arm's in the way. This is the
22 auto court, and basically the ordinance says you can have
23 a maximum of -- what was it? I've forgotten. Ten or five
24 feet?

25 MR. DAN RILEY: Five feet.

1 MR. SCOTT: Five foot setback is maximum in this
2 zone, in the B-3 zone, and so it almost seemed like on a
3 side like this, which is sort of hourglass shaped, they
4 were looking for a building that was sort of like a
5 hospital block, with about three or four corridors inside,
6 and you know, your building would be building right out to
7 the street. Well, it would be a huge monolith, and we
8 didn't want to do a monolith here. And we wanted to do a
9 space that answered Hampshire Street with -- with greenery
10 and landscaping and human activity. And Tom mentioned the
11 pedestrian alley that we created here. And we -- we
12 envision this as sort of a beautiful green oasis in this
13 part of town. You see public spaces on private land
14 elsewhere in the city. There aren't that many of them,
15 but they do exist. And we thought it would be a good
16 place in this neighborhood to have this type of a space.
17 And so that was one of the things that we couldn't do,
18 according to the zoning ordinance by-rights.

19 Another thing that we couldn't do is have this roof
20 be less than 35 feet. We were trying to create variety.
21 And the planning staff has been saying for years they want
22 more variety, but their -- their zoning ordinances give --
23 you know, it's either 45 feet or it's 65 feet. And people
24 tend to come along and they build at whatever the
25 prescribed height is. And on this site we've been trying

1 all along to create a variety of roof heights. We
2 actually have about five -- four or five roof heights
3 here. And we wanted this low roof height because there
4 are lower buildings across the street, and we're trying to
5 tie back the roof heights to some of the other --
6 Breakaway Tavern, I guess, has been sold now, but there
7 are some other low buildings along here, and two- and
8 three-story buildings, and we were trying to come down and
9 -- and match that. So that was one of the things also.
10 This is what -- what it looks like in elevation. This is
11 the banquet hall, and this is the lower element that we
12 were trying to do. And by code it would have had to have
13 been up here. And we didn't want this space to be filled
14 up with buildings. We wanted that to be a swimming pool
15 and a nice outdoor space for the -- for the tenants.

16 And so those two things really drove us. Plus, we
17 heard feedback from the Board and from the community that
18 -- people just walked up to me a couple times and said,
19 you know, why don't you have more retail on Middle Street,
20 and why don't you have more retail on India Street. And
21 the -- and the sort of greenish turquoise color, this is
22 the floor plan of the upper -- this is the lower floor
23 plan, the floor plan of Fore Street -- I'm going to get
24 tangled up here -- and the -- the lobby is upstairs at the
25 auto court level. The -- the permeability -- my

1 definition of permeability is just not opaque. You know,
2 it -- it encourages through traffic and -- and penetration
3 of the building.

4 And in the case -- the planning staff actually wanted
5 not only penetration, they wanted the -- the view corridor
6 preserved, which we have done. The glass walls are
7 something like 25 feet apart. Basically, you see right
8 through, and on the other side is -- is a long porch.
9 That's a public porch. And so we've made -- we've made a
10 public space on private land, sort of like this space and
11 this -- this courtyard. It's basically open to the
12 public, and the public can come in. And eventually
13 there'll probably be shops on both sides of this alleyway.
14 Pepper Club is here, as you know, and Hugo's is here.
15 Hugo's is already in conversations with us about how
16 they'd like to use that alley.

17 So, you know, having the building be open to public
18 intrusion, I guess -- we want the public to come in. We
19 want to be a part of the neighborhood. So that was the
20 reason we -- the practical reason was we needed an auto
21 entrance, where people could be dropped off and picked up.
22 But the other reason was we recognized from the beginning
23 the importance of Hampshire Street, looking down the
24 street, of -- that it -- that it be an appropriate
25 terminus for that street. But also if you stand over

1 here, until they build something really big on the
2 opposite side of Fore Street, you'll be able to stand over
3 here and look up and see at least three of the spires on
4 the church. I think it has, what, four spires? And we've
5 taken pictures through our computer model, and we know we
6 can see three of them. So it's kind of interesting. Even
7 from over here, if they built a taller building -- I think
8 the City's actually going to try to keep this open, once
9 this is in place. They're going to try to somehow zone
10 this as some sort of pedestrian access down to Commercial
11 Street.

12 Can we just save the questions until the end? I'll
13 just try to make this as brief as possible.

14 So the retail space was one of the changes that we
15 made. This -- this feature right here with the porch was
16 one of the changes that we made since we were last here.
17 This basically displaced a couple of levels of
18 condominiums, which was the primary reason why this end of
19 the building got a little bit taller. The -- the reason
20 why this got taller was not quite that simple. Actually,
21 the planning department wanted this site to be taller, and
22 this actually grew -- was it two stories, Dan?

23 MR. RILEY: About that, yeah.

24 MR. SCOTT: Yeah, over here on Franklin Street. And
25 this -- this hotel block is -- is the taller piece, and it

1 relates to -- to Franklin Arterial, basically. But the
2 reason why the other side got taller basically was because
3 we -- we introduced retail space here, and to try to keep
4 the condo count the same, we grew things up.

5 So the -- that's sort of the broad outlines. Let me
6 just walk you through these prospective sketches. This is
7 the shot from down by -- this is Benkay right here. The
8 sewer pump station is right here. That's Breakaway
9 Tavern. And the new building actually steps back on this
10 street, so that it -- it widens up -- actually, I can
11 probably show you that. This drawing shows it -- shows it
12 the best. It steps back, so we leave a one-story
13 commercial space, and then it steps back, easing up --
14 easing away from the street line and -- and opening up the
15 view corridor from looking down the other way. We don't
16 have the other view, but the reason we did that stepping
17 was to just ease this open space here. So that -- that
18 shows you the height. This is 88 feet from a point that's
19 about halfway between Fore and Middle, so it's about 85
20 feet from -- from Middle Street.

21 This is the image of the -- of the side of the hotel.
22 This is Fore Street. This is the building along Fore
23 Street that used to have Allied Contracting in it. This
24 would be the glass wall of the banquet hall, and here's
25 that porch that -- that sort of peels away from the

1 sidewalk, right up into the building. I call it a
2 veranda. It's like a -- it's like a veranda in a sense,
3 where people would sit. But it also, I think, would be an
4 interesting traffic way. And this is a view -- so we've --
5 -- what we've tried to do is keep the roof lines as varied
6 as possible. There's -- there are two roof heights on
7 this building. There's one, two, three on the condo
8 building. And so they're all sort of terracing around.
9 And I think it helps us to blend with Hugo's, which is
10 only a two-story building.

11 So this is across -- this is 100 Middle Street, right
12 here, and this shows how in our -- in our minds, anyway,
13 and conceptually, these buildings are -- each one is like
14 two or three parts. So they're -- you know, what we're
15 trying to do is get the feel of this. You can see right
16 through the building on a diagonal. From taller buildings
17 downtown, you'll be able to look all the way out to
18 Cushing through here, through this slot between the
19 buildings. But we're trying to -- to create something
20 that looks like it's very much articulated into separate
21 pieces.

22 Let me just give you a quick -- the elevations are a
23 little bit harder to read. This is Franklin Arterial.
24 This is the corner entrance to the hotel, and the -- the
25 hotel restaurant is here. This is Hugo's. These are the

1 other two roof heights on the -- on the condo building, so
2 it goes one, two, three, four, five, right there. And
3 then this is a section through the ballroom. Here you see
4 the different levels, roof levels, of the condominiums.
5 So it's two, three, four -- it's about 50 feet to the roof
6 here, 55 feet to that railing. The buildings across the
7 street on -- on Middle Street, Norm's and the other one,
8 are roughly 37 feet tall, so they would be -- we've got
9 another section -- they're about to there, say, on this --
10 on this piece.

11 So this is the building elevation along India. As I
12 said, there's a one-story element. This is sort of a
13 base. The material changes, and then it's brick and other
14 materials up above. These are the balconies that step
15 back. So this is a picture of the entry court. This is
16 looking down Hampshire Street. This is the entranceway
17 that you could see right through right there. It's a two-
18 story high entranceway. And this is the back side, very
19 glassy, looking towards the harbor. Banquet hall and
20 basically the hotel lobby are essentially one space. So
21 when you come in down here on the corner, you come up a
22 stair. You're in a space that's 400 feet long and
23 curving, and -- and very glassy. And this, we think, is
24 going to be a very interesting place to walk at night
25 because of all the activities inside and vice versa. The

1 people inside will be able to look outside and see what's
2 going on in the harbor and see who's walking down the
3 street. So this is going to be very much an interactive
4 space all along here because of the -- the glass. This is
5 the entrance to the garage here. This is our loading
6 dock, and this is the -- another loading dock. So we have
7 two loading dock doors and an entrance to the parking
8 garage. And this will probably be some sort of a -- a
9 tureen for announcements for what -- you know, who's
10 playing in the -- in the hotel at a certain location, or
11 that sort of thing.

12 I should probably stop there because we've gone over
13 time. I just wanted to ask Dan briefly to just touch on
14 the traffic study that we had done for the project, and
15 then we can answer questions.

16 MS. FELLER: Are those -- are those the only two
17 loading docks for the whole building?

18 MR. SCOTT: Yes. Actually, one of them is more or
19 less -- one of them is dumpster, right?

20 MR. RILEY: Yeah. There's one loading bay.

21 MR. SCOTT: So there's one loading bay for tractor-
22 trailers basically.

23 MR. RILEY: Deliveries in and out of the building
24 would enter through this garage, and then the -- the
25 garbage and trash collection would be behind that door.

1 MS. FELLER: And that's on Fore Street?

2 MR. SCOTT: Yes.

3 MR. RILEY: Yeah. This is as if you were standing on
4 Fore Street, looking up the hill. Thanks, Winton. Again,
5 my name's Dan Riley, and I'm a civil engineer with Sebago
6 Technics, and we're the -- we're the site civil engineer
7 responsible really for the design of all the
8 infrastructure surrounding the facility, the design of the
9 -- the streetscape and sidewalks. And we also help move
10 the project through the whole permitting process, do a lot
11 of the applications. And we worked hard with the
12 architects, reviewing the -- all the planning documents
13 that Tom mentioned that talked about -- to address this
14 issue of building height and -- and how we arrived at the
15 heights that we -- that we came to, and ensured from the
16 studies that we were -- that we were in compliance with
17 the comprehensive plans.

18 A conditional rezoning, as Tom mentioned, is an
19 agreement between the City Council, essentially, and a
20 developer. And what it is, is it's a -- it's a specific
21 legal agreement that essentially changes very specific
22 provisions of the zoning ordinance that relate to one
23 parcel of land and -- and to develop a specific project.
24 So the plans that you see and that we're presenting here
25 become part of that agreement. And so essentially what --

1 what it is, is that the developer requests from the City
2 Council to alter the zoning for a specific parcel, and in
3 return the City looks for certain design elements that are
4 considered public benefits. Tom talked about many of them
5 that the City requested specifically of this project: The
6 permeability through the building; the retail space,
7 particularly on India Street and Middle Street; the auto
8 courtyard, we really wanted to incorporate that into our
9 design feature.

10 There's a number of other benefits to the project
11 that are more detail related to do with the utility
12 infrastructure around. We're doing improvements for the
13 sewer system that will improve the sewer overflow
14 situation that the City has an ongoing project to --
15 throughout the city to improve. And also mentioned in --
16 in the language of the contract zone, the -- the staff is
17 recommending that a monetary contribution be made to the
18 City to be dedicated to streetscape improvements or street
19 beautification projects in the vicinity of the project.
20 So areas that are outside necessarily of the direct impact
21 of the project would receive funding potentially for, you
22 know, sidewalk improvement, street trees, in the areas
23 surrounding the project.

24 So those -- that's the reason why we're here. And as
25 one of the public benefits that came up that Winton asked

1 about was the traffic impacts. And obviously in any
2 development where you bring traffic onto a site, the City
3 does require that we follow a permitting procedure and get
4 a permit for that traffic movement. So any traffic that
5 our site generates would be addressed through the planning
6 process. Right now, because of the development that
7 occurred -- that has been going on on this site on the
8 Jordan's Meats facility, there was a pretty significant
9 amount of truck traffic that would go in and out of that
10 building every day. So the -- the net increase in
11 traffic, if you would, of our development versus what's
12 there currently is reduced somewhat. Right now we
13 envision that the impact of our project would require some
14 lane striping improvements at the intersection of Middle
15 Street and Franklin Arterial. If the study based on, you
16 know, the final rendition of the project, number of units,
17 and how much traffic it generates, requires improvements
18 beyond that, that's all handled as part of the planning
19 process. And so it's -- right now the staff is
20 recommending that that not be included in -- in the
21 language of our contract, but it be addressed through the
22 -- through the traffic permitting process that will follow
23 our meetings coming up.

24 So that's, in a nutshell, what we're here to present
25 tonight. And we'd be glad to answer any questions that

1 you might have about the project or the process.

2 I would like to mention also, before I leave, there
3 is a -- as a bit of record keeping, there is a sign-in
4 sheet that's going around. The City's asked us to pass
5 that around and have everyone sign it. The information
6 that goes on there, we do submit that to the City, along
7 with the -- the transcription of what we're talking about
8 tonight. That goes in a package, in a written form that
9 the Planning Board has so they'll be aware of everything
10 that we've talked about tonight and any concerns or
11 questions you have, and our answers to them. So with
12 that, we'd be happy to answer any questions.

13 MS. GRAMLICH: And we've got another mic here that's
14 got a longer cord that we can use for folks.

15 MS. CAROLANN PRESENT: Hi, Carolann Present. I have
16 two questions. One is about the material that's going to
17 be used for the siding, where you said it was going to be
18 brick and other materials. And that brings to mind the
19 Hilton Garden Inn, which is not my idea of aesthetically
20 pleasing. And I just want to make sure that that's not
21 setting the precedent for the redevelopment in town. Also
22 wondering how many condos are you planning on putting in,
23 and what the price range is going to be.

24 MR. SCOTT: Interested? There -- what now -- what's
25 the current count of condos?

1 MR. RILEY: I'll talk about that later. If you
2 address the materials --

3 MR. SCOTT: Yeah. The materials, other than the
4 brick, are probably going to be pre-cast concrete. We are
5 not using titanium. We're not using any kind of metal
6 siding like that. And the -- you know, some of the
7 details here, the lintels and the -- and the sills will
8 probably also be pre-cast concrete. I'm trying to think
9 of a building -- 10 Middle Street's a building that we did
10 back a long time ago that was on -- on land that's owned
11 by Landmarks. That's brick and -- and pre-cast concrete
12 that's probably similar to this. This -- this is also
13 probably pre-cast concrete, and -- and, of course, glass.
14 So pretty straightforward and -- and very much a Portland-
15 based materials vocabulary.

16 MR. RILEY: Winton, I was going to add to that that
17 the -- at our next meeting with the Planning Board,
18 they've asked us to provide samples, and the Planning
19 Board's asked about that. And we're going to be providing
20 samples at our coming-up meeting with the Planning Board.
21 And then as we go through the process, you know, if any
22 changes come up, those are going to be presented to the
23 Planning Board, as well, for their input on that.

24 MR. SCOTT: Does that answer all your questions?

25 MS. PRESENT: How many condos?

1 MR. SCOTT: Oh, well I think it's --

2 MS. PRESENT: But you were going to get to that
3 later.

4 MR. NILES: We have presently 97 residential units
5 associated with the project. Over the past five months,
6 it has continually been in a state of flux as we have
7 changed the configuration of the building through the
8 planning. And it's almost impossible to take a unit on an
9 individual basis and start to lay it out and determine how
10 many bedrooms it is or -- or what it's square footage is.
11 And -- and likewise we haven't started a marketing -- we
12 don't have a marketing entity to start talking about these
13 units. Hopefully, as we move through the next phase,
14 through the public hearing phase and we kind of lock down
15 on a floor plate, then we can ascertain exactly what the
16 sizes are to be for the market, start laying them out on a
17 floor and start a marketing campaign where we could come
18 up with some prices specific to units. We have never had
19 the opportunity to do that. We also obviously can't
20 actively market and sell until we have an approved project
21 and get -- and -- and acquire the property outright. So
22 it's perhaps several weeks away still that we come up with
23 those -- those figures.

24 MR. KEN BAILEY: Yes. My name's Ken Bailey. I -- I
25 was just curious as to with approval, how long is this

1 project going to take and -- and what about the traffic,
2 construction traffic and so forth, and how long do you
3 plan to -- because it's going to create traffic problems
4 when you're in the building process, and how long will
5 that take?

6 MR. SCOTT: Hopefully it won't be -- well, maybe
7 you'd like to answer this. I'd just like to say,
8 hopefully there won't be traffic going through your
9 neighborhood. If -- if there is, then somebody is --

10 MR. BAILEY: I and other residents, we do go down
11 Commercial Street, and we do use Fore Street, and -- and
12 there will be inconvenience. But I was just trying to get
13 a ballpark figure on how many months you plan to --

14 MR. SCOTT: So it's probably -- what, a two-year --

15 MR. NILES: Well, we -- we -- first of all, this is a
16 project that has underground parking, self-contained
17 parking, and we have quite an excavation to do, and -- and
18 one of the motivating factors for moving through the
19 process is that the best time to dig a hole is when it's
20 driest, and that's through the winter months, which is --
21 you know, we're -- we're anticipating perhaps a winter
22 start in 2005. The overall schedule would be
23 approximately 22 months of construction. And the -- the
24 hotel would most likely open up hopefully within 30 or 45
25 days of occupancy of the residences. In a site like this

1 in an urban setting, there will be a very, very
2 comprehensive construction management plan as part of the
3 building permit process. This site will be enclosed,
4 fenced in. There will be gates assigned for access, both
5 to workers and also to vehicles. There will be staging
6 areas set up on or adjacent to the site, you know, as
7 approved by the City. These are very technical
8 circumstances. It's -- it's not unique to Portland. And
9 we have very tight sites in Boston and Washington, D.C.,
10 and -- and Providence, Rhode Island that are even tighter
11 than this. They don't have any open space within them.
12 And we've come up with plans that -- that will work with
13 the City. Most of your deliveries -- some, in cases, are
14 staged well, well off-site, and they're called for between
15 certain hours of the day. So we don't have that
16 construction management plan. We don't have a general
17 contractor. But there will be one filed, and -- and we're
18 going to stay consistent with the traffic patterns that
19 ultimately we'll use for the site. And Fore Street
20 probably will be the main staging area for getting trucks
21 in and out of the site.

22 MR. BAILEY: So you're looking about opening the
23 spring of 2008? Is that what your projection --

24 MR. NILES: I'd say we'd like to try for the end of -
25 - the fall of 2007, like to start in December. That would

1 be an objective of ours.

2 MS. ALLISON BROWN: My name is Allison Brown. I live
3 at 125 Newbury Street. I can see the Jordan Meat plant
4 from my living room. Will you be doing any blasting to
5 dig this hole?

6 MR. NILES: Fortunately, Sebago Technics is a full-
7 service shop for us, so they've done site survey, civil
8 engineering, geo-technical, and environmental work. And
9 they've done significant borings, and we have -- once we
10 are able to get into the building and do some more
11 demolition so we can get drill rigs in there, we'll get
12 more penetrations. What's the consensus presently on
13 ledge?

14 MR. RILEY: We don't think we're going to hit it.
15 We've done about 12 borings on the site already. Right
16 now the -- the Fore Street, the curve in Fore Street,
17 follows what was the colonial shoreline. So this whole
18 area of the site was filled over the years since the
19 colonial times. And so what we found in our borings is
20 that -- you know, varying thicknesses, 12 to 15 feet of
21 man-made, placed material that's been placed since the
22 1700's, over the top of some marine clay material. And
23 then below that is glacial till, which is a glaciated
24 deposit that's been crushed, and a very hard material but
25 not rock and can be excavated. We don't believe our

1 foundations are going to get down quite to that on their
2 own, and so there may be some piles constructed or there
3 may be some over-excavation done to get our footings on
4 that material. But none of the borings we -- we drilled
5 hit any rock. That's not to say there can't be any there,
6 but we don't expect it.

7 MS. FELLER: My name is Christina Feller, and I live
8 on Morning Street. And I would just like to say that this
9 looks like a very nice project. I leave it up to you and
10 your investors on how you're going to make money on yet
11 another hotel here in this city, but that's up to you. My
12 -- I have comments and I have questions. At the same time
13 you're going to be doing this construction, there's going
14 to be the Ocean Gate, there's going to be the new parking
15 garage, there's going to be whatever happens at the -- at
16 the Village Café, all of these things. And as Ken says,
17 you know, coming down Fore Street is going to be a mass,
18 it seems to me, of -- of construction and everything. So
19 have you thought about all that? That's my first question
20 of how everybody's going to be maneuvering to get all this
21 done.

22 My second question, and I'm very serious about this,
23 is, I would like to know your plans -- I don't know if you
24 have to file an Environmental Impact Statement or any kind
25 of an environmental materials usage operation management,

1 but we would love it if somehow you could come forward and
2 tell us all of the green aspects of this in terms of the
3 water use, everything that's going on in this building.
4 And also, you know, we have a new task force on climate
5 control, so we're very much worried not just about
6 traffic, but idling traffic, carbon emissions and all of
7 this. So I don't know if you're required to do any kind
8 of a report like this, but I would heartily encourage you,
9 if you're going to be good neighbors, to tell us all of
10 these types of things that you're going to be using. And
11 not just what types of materials, but how are they -- your
12 recycling plans, everything that goes with that.

13 And then my other question, I can't remember, but if
14 I do, I'll ask you again. Thank you.

15 MR. RILEY: Well, I guess I'll address maybe a little
16 more detail about the traffic question. We have met with
17 the Public Works Department. I met with the Director, the
18 city engineer, and a number of the people that deal with
19 the sewer and street construction infrastructure. They
20 were specific about there will be restrictions during
21 construction for when -- we -- we have some work that
22 needs to be done in Franklin Arterial and in Middle
23 Street, in terms of relocating sewers. Right now there's
24 a city sewer that runs right through the middle of our
25 project site, which needs to be relocated. Obviously,

1 it's an expense and a disturbance of the street, but it
2 does further some of the City's goals. They recently did
3 some sewer work on Hampshire Street, separated the
4 sanitary sewer from the storm drainage. We're going to be
5 continuing that down another block, and likely separating
6 some of the storm drainage that's currently getting into
7 this combined sewer for Fore Street that eventually makes
8 its way down to Commercial Street to the -- to the pump
9 station on India Street, and then it's pumped to the
10 treatment plant. During -- right now during storm events,
11 those combined sewers do overflow into the harbor. So
12 anything that's done to separate the sewage from the storm
13 drainage advances the City's program of -- of eliminating
14 those combined sewers. So that's one item.

15 They do have restrictions. The City's been clear
16 about what they've talked to us about -- we will have to
17 have -- like Tom said, have a plan to manage traffic,
18 specifically on India Street and Franklin, as those are
19 mobility corridors where people -- during hours of rush
20 hour, there are restrictions on when the -- the work can
21 be accomplished. So there will be restricted hours of the
22 day when that work will be done. Fortunately, in the
23 greater scheme of the 22-month construction period, that's
24 relatively early and it's relatively short compared to the
25 rest of it. And everyone has an incentive to get into

1 India Street, get the work done, and get out of it. And
2 so the City's well aware of it. They will require us to
3 have the traffic management plan.

4 Integrating that with the other projects depends a
5 lot on their schedules. You know, we don't know when
6 Ocean Gateway's going to be built, or -- or if, or in what
7 form. So we can't really address that, but the City's
8 aware of it, and we have -- they've expressed that to us,
9 that we'll have to address that.

10 I don't know if you want to answer some of the
11 questions about the building.

12 MR. SCOTT: Yeah. Unfortunately, I can't lay out the
13 plan for, you know, green -- for recycling and for waste
14 management on site. But I'm sure that on the waste
15 management issue, we're going to have to have a plan for
16 that because of the limited space and limited places to
17 put waste these days. I'm sure we're going to have to
18 come up with that at some point. But we're -- we're kind
19 of at a more abstract level right now. We're -- all we're
20 trying to do right now is trying to get approval by the
21 Council for the contract zone, which is still like the
22 broad outlines. And we have to -- once we get that, we
23 have to go all -- all the way back through two workshops
24 and a public hearing with the -- with the Planning Board
25 again. And so there's plenty of time for -- for you to

1 get those answers, and for me to do more work, or
2 homework.

3 MS. FELLER: Okay. Thank you.

4 MR. GUERIN: Paul Guerin, Shipyard Brewing Company.
5 I'm just curious about how much retail space you're
6 planning on having, and what drove that. And I'm also
7 wondering, do you have any archeological considerations
8 with this site that you have to deal with?

9 MR. RILEY: Sure. As part of the site plan review
10 process the City has, we do have to contact and provide
11 project information to the State Historic Preservation
12 Commission. We've done that. They've responded to us
13 that we don't have any archeological sites in the area.
14 So we've gone through that. We cleared that -- in the --
15 in the early due diligence phases of the project, before
16 we -- the owners committed to the project.

17 MR. NILES: Presently the retail is fairly well
18 quantified somewhere. Certainly in our initial approach
19 to the project for the B-3 zone, we had residences that
20 would come down onto Middle Street, residences at the
21 corner, and residences at the corner of Fore Street. We
22 always maintained -- the red area at the corner was always
23 maintained as a restaurant -- a restaurant and bar --
24 sorry -- and in many cases operated by the hotel operator.
25 In some cases, that is a third party lease. That was

1 there. For the most part, the retail along Middle Street,
2 the retail here, which also has an opportunity to go
3 downstairs and creates more retail below for a particular
4 application that that would be viable for, and also the
5 retail down on the corner. This is 7,100; this is 1,675
6 square feet, including the lower level; and that is 2,500
7 square feet of -- of retail. It's a challenge for us.
8 You know, if we had the option, we think it's -- it's a
9 lot of retail. We're trying to respond to the -- the
10 City. It's new construction. It's expensive construction
11 with structured parking, so we hope that in the long run
12 it does what it's supposed to do and enlivens the street
13 and is something that is supported by the hotel and by the
14 residents and by neighbors. But we don't really have any
15 strong designs on -- on who and how that would be
16 presently. It's -- it's fairly -- it's fairly recent that
17 we've added that -- that much retail. I think the depths
18 are good. I think the opportunity for store fronts is --
19 is very good. But, you know, we're not certain as to --
20 as to who in the market would like to be there.

21 MR. BAILEY: Yes. I have a question on the parking.
22 Now, I understand you say there are going to be 97
23 residences. I assume that some of them will have assigned
24 parking spaces in that -- in that parking lot?

25 MR. NILES: Yes.

1 MR. BAILEY: And how -- and what's the capacity of
2 the parking lot?

3 MR. NILES: The -- Dan can go through the -- the
4 numbers. Each of the different types of uses, hotel
5 rooms, retail, ballroom, meeting room, function space, and
6 residences, have -- have referenced standards for -- for
7 the counts. Right now we're at 374 below-grade parking
8 spaces, and that allows for one -- one-and-a-quarter
9 spaces per condo unit. So each -- each condo owner would
10 get a space and would have the opportunity to, in some
11 cases, buy another space.

12 MR. BAILEY: Okay. So if we take that into account
13 then, what you're doing is you're only adding about 150 or
14 175 outside spaces then; is that correct?

15 MR. NILES: Outside? I'm not -- outside spaces?

16 MR. BAILEY: Well, I mean, for -- for people coming
17 in to --

18 MR. NILES: Oh, no. The -- the larger share is for
19 the hotel. Out of 374, we have --

20 MR. RILEY: There's 375 total parking spaces in the
21 garage. There's probably -- there's likely to be more
22 parking capacity than that, particularly when you use
23 valet services, where the valets can double park in -- in
24 the lower levels of their basement. The parking
25 requirement is spelled out in the ordinance. They have

1 ratios that the City defines for different uses. You need
2 a certain number of parking spaces for every 150 square
3 feet of restaurant space. You need a certain number of
4 spaces for every hotel room. And that parking generation
5 is based on the City's requirements. So the project is
6 designed to meet all its parking requirements on site. So
7 there's 120, roughly, parking spaces for -- dedicated for
8 the condo owners, and then the remaining 250 are for hotel
9 guests, functions, and those sort of uses.

10 MR. BAILEY: Well, he said, you know, that they had
11 an opportunity to acquire a second space. That's what I
12 was taking into account. But that's --

13 MR. RILEY: Well --

14 MR. NILES: Not everyone -- I mean, in other words --

15 MR. BAILEY: Well, not everyone --

16 MR. NILES: -- every unit would have a parking space,
17 and there's a limited opportunity to have a second space.

18 MR. BAILEY: I see.

19 MS. FELLER: Will there still be on-street parking
20 the way there is now on Fore Street?

21 MR. SCOTT: Yes, on one side.

22 MS. FELLER: On one side? Yeah.

23 MR. SCOTT: Yeah, that's what there is now. Yeah.
24 We're going to actually move it to our side of the street,
25 I think.

1 MR. RILEY: Yeah. That's our plan.

2 MR. SCOTT: It's on the harbor side of the street
3 right now.

4 THE REPORTER: Microphone, please.

5 MR. RILEY: Right now, there's a -- there's no -- no
6 sidewalk on the Jordan's Meat side of Fore Street right
7 now. There's a sidewalk along Fore Street. What we've
8 talked about in concept and what our plan shows, and we'll
9 still be -- we're still going through the review process,
10 is that we're actually going to take the -- we're going to
11 -- we're going to narrow Fore Street somewhat to create a
12 sidewalk on our side of the project. That will still
13 allow two lanes of traffic. And essentially, we were
14 going to take -- because of the improvements along here
15 and just because of the quality of that development and
16 how a sidewalk with the street trees -- you know, people
17 feel walking down the street, we're going to take the
18 parking that's currently provided on this side of Fore
19 Street and move it to our side of the street. So we're
20 not looking to reduce the parking. We may actually
21 increase it somewhat because of all the curb cuts that
22 we're eliminating on our side of the road. But there will
23 still be street parking along Fore Street. We're not
24 affecting the street parking along Middle Street, with the
25 exception of our driveways. And neither are we affecting

1 the -- the parking on India Street.

2 MR. SCOTT: If you've walked along there, there is --
3 as you know, the sidewalks are very narrow on both sides.
4 And with all the traffic going in and out of Jordan Meat
5 right now, it's not very friendly for pedestrians. So
6 we're hoping to create at least one side of the street
7 that is quite friendly with the trees, and -- and the
8 parking on that side will actually be kind of a little
9 extra protection for the pedestrians and a little traffic
10 calming on that side. So one day the City wants to
11 improve the sidewalk on this side, too, and they've talked
12 about that in just about every meeting we've had with the
13 Planning Board.

14 MR. MARKOS MILLER: Hi. Markos Miller. I live on
15 Atlantic Street. A couple questions. First, I was
16 wondering if you could show where the entrances to the
17 retail are, and I was wondering what else there were for
18 entrances along Franklin and Fore Street besides the
19 passageway with the porch.

20 MR. SCOTT: I can't -- if you can just hold that --
21 there's an entrance, like we said, at the corner that
22 takes you into the restaurant and then up -- there's a bar
23 at this level, too, and then up to the lobby.

24 MR. NILES: Well, Winton, it's -- describe it. It
25 actually is -- the entrance is on a 45, so it --

1 MR. SCOTT: Right.

2 MR. NILES: -- and it's -- it will probably have
3 doors on the Franklin side and doors on the Fore Street
4 side. So it's meant to be a real focal point coming --
5 coming down Fore Street from the downtown, or coming up
6 from --

7 MR. SCOTT: So because of all the discussions that
8 are still inconclusive up in here, we're not sure where
9 the entrances are going to be, you know, from the -- from
10 the auto court -- courtyard side, or it may be from here.
11 We have all kinds of possibilities. It depends kind of
12 what's going to happen across the street. But isn't it a
13 fair assumption that there'll be some entrances at this
14 end of the space?

15 MR. NILES: Yes. I guess the critical issue here is
16 whether we create a public space adjacent to the lower
17 level, or a public space adjacent to their street level.
18 And they proposed the former, which gives us some other
19 challenges on how we -- we might get there. I would love
20 -- like I mentioned earlier, we would love to have some
21 alleyway entrances and activity here. So -- but going
22 back, you definitely have an entry here off of Fore and an
23 entry here off of --

24 MR. SCOTT: These are little benches, sort of little
25 square stone benches right there, sort of a little

1 protection and places for people to sit. So the next
2 entrance really is right here, is where the stair starts
3 up to that porch up above. Inside, there's a matching --
4 the stair actually -- the steps sort of go right through
5 the glass, if you can see that. So it matches up with the
6 stair that's inside that connects the banquet lobby to the
7 hotel lobby upstairs. You can see it better on that
8 drawing over there. The stair steps actually go right
9 through the glass, which would be kind of dramatic.

10 MR. NILES: So if a pedestrian was on the porch and a
11 pedestrian was inside the lobby and one was outside, and
12 they started to walk down, they'd literally appear to be
13 on the same step divided by a glass wall.

14 MR. SCOTT: Yeah.

15 MR. NILES: This allows people on the street to -- to
16 engage with inside activity much earlier, as they come up
17 the side. So -- and actually there are four doors on the
18 porch level.

19 MR. SCOTT: And then at the end of this lobby,
20 there's another vestibule that takes you out to the street
21 directly. At one time, we had a bigger lobby here that
22 took you that way and this way, but we've separated that
23 now. There's a retail piece right here and a separate
24 sort of a porch on the corner that's covered. Because
25 there's so -- going to be so much traffic one day, but --

1 from Ocean Gateway up this way and -- and Drew Swenson's
2 development, which has commercial space on both sides of
3 Fore Street. There's going to be a lot of commercial
4 space down here. He's got an office building planned
5 right across the street that's six stories, I believe.
6 And there's going to be commercial space on the ground
7 floor of that. So there's going to be a lot of shops,
8 commercial space at grade, all along Fore going this way
9 and up India. Mucicci's, of course, is up there at that
10 corner.

11 MR. NILES: So continue on, Winton, with the rest of
12 the entrances.

13 MR. SCOTT: Yeah. So there are entrances -- and we
14 keep getting asked -- well, we don't have any entrances
15 right here. These are meeting rooms that are -- at least
16 at the moment we don't. But the meeting rooms are sort of
17 turned inward to the ballroom, but they'll have windows on
18 the street. And then at the corner there would be retail.
19 Most -- I think, one way or another we're going to have to
20 have entrances to this retail from India Street because
21 it's been asked about seven times. And we may end up just
22 doing kind of a cupped corner here, like on the Hilton
23 Hotel or something like that. There are all kinds of
24 places around town that have done that.

25 MR. NILES: To explain that, the -- the floor level

1 of this retail is literally ten feet lower than the floor
2 level of this retail. And since India Street has a fairly
3 steep grade downwards, the minute you go around the
4 corner, you've now created a problem where your floor
5 level is lower, even -- even here. So it would require a
6 landing or steps, and then you have ADA access issues to
7 deal with. At one point there was retail here, and we
8 thought about coming all the way back and making this 20 -
9 - this 20 feet clear height from this level. And this was
10 also 20 feet clear, but it started ten feet below. And it
11 was just really difficult retail to -- to determine how
12 anyone would use it. So we put an interstitial floor
13 here. This doesn't have the kind of retail heights that
14 this would have, double -- double retail height, but it
15 does work. So we would like to get a door around the
16 corner, and we'll figure out a way to do that. And then
17 keep going with that.

18 MR. SCOTT: Yeah. So this would probably be -- what
19 do you think, Tom, at least three, two or three divisions?
20 Or it's possible there might be one?

21 MR. RILEY: Depends on the tenant.

22 MR. NILES: Twelve hundred, 1,500 --

23 MR. SCOTT: Yeah. Yeah.

24 MR. NILES: -- 1,800 seems to be a pretty good
25 number, and with these depths.

1 MR. SCOTT: So there would be multiple entrances
2 along here.

3 MR. NILES: Keep going with the entrances?

4 MR. SCOTT: Well, he said Franklin and Fore.

5 MR. MILLER: No, but -- yeah. You've been -- you've
6 been pretty thorough in addressing them.

7 MR. NILES: Okay.

8 MR. MILLER: I had one other question, too. I don't
9 know exact details or requirements, but I believe that
10 there's -- the City requires some sort of greenery for
11 residential units. And if you have 97 condos,
12 approximately, I was wondering how you were going to
13 account for that or accommodate those requirements,
14 besides just the -- the trees we see on the sketches.
15 Yeah.

16 MR. SCOTT: I don't know.

17 MR. RILEY: Obviously, our landscape plan that's part
18 of the submittal is going through the -- the process.
19 There are guidelines that are specific to the design of
20 the building that relate to the B-3 zone. There's a whole
21 section of the ordinance that specifically relates to what
22 you need to do in that zone. And the Planning Board's
23 been clear that we need to be paying attention to that.
24 And they've already commented on it, even in this -- even
25 in this -- the conditional zoning application. The --

1 well, obviously it's an in-field development site, so that
2 obviously presents some challenges to providing green
3 space, but we do have a lot of opportunity in our
4 courtyard. This is our concept for how that development
5 may look. The configuration could change. Certainly more
6 landscaping could be provided, less hardscape. The street
7 trees are an important aspect, both preserving or adding
8 to those trees. And then there's an open space on the
9 upper level that Winton can talk to. This -- the pool
10 deck could be another opportunity to provide some of that,
11 as well.

12 MR. SCOTT: Good question.

13 MR. MILLER: Thanks.

14 MR. DAN HALEY: My name's Dan Haley from the Eastern
15 Promenade, number 140. Just a couple of comments. I like
16 what I'm seeing, but what's this skyscape look like when
17 you're standing at the head of Fore Street where it starts
18 at the Promenade and you're looking back? Right now the
19 Bangor Savings Bank has quite an imprint on it.

20 MR. SCOTT: Uh-huh.

21 MR. HALEY: How does this building fit in there?

22 MR. SCOTT: We're much lower than that. And I'm
23 sorry, I didn't bring the other -- we have a model that
24 we've been carrying -- lugging around with us, a kind of
25 electronic image -- electronic images, looking back up

1 towards the spine, towards Congress Street. And Franklin
2 Towers is a lot taller, the City Hall auditorium and all
3 the, you know, the towers there are much taller. We're
4 lower than 100 Middle Street by about ten feet or 11 feet.
5 So, you know, from there it starts terracing up even
6 higher from 100 Middle Street. So in a way, this is --
7 because 100 Middle Street is taller and the police station
8 is a little taller, this is sort of a transition between
9 the 66- or 65-foot height limits down on the waterfront in
10 the -- in the development parcel that the City is working
11 on right now. And I think it's a nice transition going up
12 because it -- you know, Middle Street really goes up quite
13 rapidly right -- right by the police station. And so the
14 buildings on -- beyond that, up on Exchange Street and
15 City Hall, are taller than -- and you can sort of see it.

16 MR. HALEY: But if you're looking from this end of
17 town, if you're on the Promenade looking back down Fore
18 Street?

19 MR. WHITTEN: Yeah. It's probably going to block
20 your views of -- of -- of, say, Commercial Street itself,
21 depending on where you are and how high you are. You
22 know, it's probably not going to block your view of the
23 water, of the harbor.

24 MR. HALEY: Block the bridge line, maybe?

25 MR. SCOTT: I don't know. What -- what building are

1 you in?

2 MR. HALEY: Well, if you're -- if you're just on the
3 Eastern Promenade, just before you start down the hill on
4 Fore Street --

5 MR. SCOTT: Uh-huh. Well --

6 MR. HALEY: -- if you're standing there. When they
7 put in the Bangor Savings Bank --

8 MR. SCOTT: -- I see what -- I see what you're
9 saying.

10 MR. HALEY: -- at night you see about four stories of
11 that from standing level.

12 MR. SCOTT: Yeah. This, I think because of the
13 angle, you'll be able to look right down Fore Street. I'd
14 have to test that, but I think that you'd be looking to
15 the left of this project.

16 MR. HALEY: Yeah. Because I'd be interested in
17 seeing that. And then following up on the archeological,
18 Fort Loyal was right there.

19 MR. SCOTT: Uh-huh. That's right.

20 MR. HALEY: And Mowatt's bombardment was right there.

21 MR. SCOTT: That's right.

22 MR. HALEY: I would think you're going to find
23 something when you start digging.

24 MR. SCOTT: Uh-huh.

25 MR. HALEY: So I would hope some care would be taken

1 to find those things.

2 MR. SCOTT: Uh-huh. Uh-huh.

3 MR. HALEY: Okay. Other than that, I think it looks
4 good, and find out what the price of those condos are.

5 MR. FRANK KADI: Thank you. I think the question
6 about views and what will be cut off was a very important
7 question.

8 THE REPORTER: Could you please identify yourself?

9 MR. KADI: My name is Frank Kadi, and I'm a long-time
10 resident of Munjoy Hill. What would be very useful would
11 be to take some photographs of existing views from
12 different points of view, trying to make them fairly
13 panoramic. You might use Photo Shop or something and
14 connect them together. And then either draw in or use
15 Photo Shop tools or illustrative tools or something to add
16 to that photograph. You know, it doesn't have to be too
17 filled in, but the outline of -- of buildings, so that
18 people can get a very clear visual idea of what -- what's
19 going to be cut off. Because nobody really knows, and you
20 can't know because you haven't, you know, done it like
21 that. And that's -- going to those different spots and,
22 you know, making those views, that would be the only way.

23 MR. SCOTT: Uh-huh.

24 MR. KADI: So you want to do that. And that's where
25 an awful lot of questions come from at this point.

1 MR. SCOTT: Are you at all familiar with the height
2 study that the City commissioned?

3 MR. KADI: No, I'm not.

4 MR. SCOTT: Okay.

5 MR. KADI: And they had some graphics, I assume?

6 MR. SCOTT: Yeah, they had some graphics. And they -
7 - and they had pictures of that very view that the
8 gentleman just mentioned. They had cross sections down
9 through there to show what views would be lost, depending
10 on what the heights were, say, on the -- on the Shipyard
11 Brewery property and on the -- on the city property.

12 MR. KADI: Yeah. That might be something to include
13 in it. It sounds like it's useful.

14 MR. SCOTT: Yeah.

15 MR. KADI: It would also be important to get it from
16 multiple views because it's very different from different
17 places.

18 MR. SCOTT: Yes. Yeah. I was just going to say that
19 the -- the conclusion of that study was that they wanted
20 to limit the -- the height to 66 feet on properties that
21 were closer to you than -- than this site is. And they
22 wanted to keep the -- the recommendation was to keep the -
23 - the higher parts of the buildings perpendicular to the
24 waterfront. So they're sort of at an angle to the view
25 that you're talking about from looking up on -- at the top

1 of Fore Street looking down.. But we've got that -- we've
2 got copies of that report, and we'll -- and we'll do what
3 you suggest, you know, take some pictures and from
4 different angles.

5 MR. KADI: Yeah. But different angles is -- is very
6 important. You know, like any of the different
7 residential streets --

8 MR. SCOTT: Uh-huh.

9 MR. KADI: -- you know, that have any view at all of
10 that --

11 MR. SCOTT: Uh-huh.

12 MR. KADI: -- as you go from place to place to place,
13 it's going to all shift.

14 MR. SCOTT: Right. Well, this gentleman right here,
15 also I remember from last time, he has a house, I think,
16 near the corner of Congress, and I don't remember -- is it
17 Mountfort.

18 MR. BAILEY: It's Mountfort Street.

19 MR. SCOTT: And I've gone by there and I've sort of
20 eyeballed it, and that's another place that I think I
21 should take some pictures, and -- and take a look at that.

22 MS. FELLER: I would just like to add that while you
23 may take that study out of the drawer, please don't do
24 what they did. I think it's a terrible job of what they
25 did on that height study. I don't know if all the rest of

1 you were here when they gave that presentation --

2 MR. SCOTT: Uh-huh.

3 MS. FELLER: -- but with the computer skills we have
4 today --

5 MR. SCOTT: Yeah.

6 MS. FELLER: -- I found it to be very lacking.

7 MR. SCOTT: Uh-huh.

8 MS. FELLER: So I'm sure you can do a better job than
9 -- than they did.

10 MR. SCOTT: One of the things that we're doing right
11 now is that we're expanding our -- we've expanded our
12 computer model to include all the way up, you know, to
13 Franklin -- not Franklin, there's Eastern -- Portland
14 House. And we're -- we're doing -- we're going to be
15 doing sort of walk-throughs and fly-throughs the
16 neighborhood, over around the Village Café and back down,
17 to show what this development looks like in context. And
18 I think at the same time we could probably go up and take
19 some -- look down some of the view corridors, as well.

20 MR. MILLER: You said the height of the building is
21 85 feet from Middle-India corner. Is that counting
22 whatever you would need, air conditioning and stuff, on
23 top?

24 MR. SCOTT: No.

25 MR. MILLER: And if not, how much more is that?

1 MR. SCOTT: It doesn't count structures like that.

2 MR. MILLER: How much additional height would that
3 be?

4 MR. SCOTT: Well, we're going to have elevator
5 overruns. That's usually almost a whole story, so there's
6 probably --

7 THE REPORTER: Microphone, please.

8 MR. SCOTT: There would probably be another ten feet
9 or so, enclosures for air conditioning equipment, cooling
10 towers, and --

11 MR. NILES: Significantly set back from --

12 MR. SCOTT: Yeah. It will be set way back.

13 MR. NILES: We have tried to taper all the roofs
14 back, so that when you -- by the time you get to the roof
15 -- I'm sorry, I'm not used to this -- when you -- when you
16 see the model, there's a physical model being developed
17 with Styrofoam blocks with painted elevations or current
18 elevations in the context of the buildings surrounding it.
19 The computer models are fairly interesting and dynamic in
20 their ability to move you around from your perspectives.
21 And most notably as a pedestrian in the neighborhood, we
22 haven't -- we've tried to move the street wall back a way
23 so it's not overwhelming. We've also done a shadow study
24 that's part of this package in the -- in the submission to
25 the Planning Board. So the rooftop elements -- believe

1 me, the other thing to keep in mind is that Westin Hotel
2 is the -- is the selected hotel operator. And their
3 standards and -- and they're a very demanding operator.
4 And so when you consider architecture and features and --
5 and things like that, we're going to work hard to make
6 sure this building is -- is -- is -- its appearance is --
7 in every way is appealing. So those elevator overrides,
8 you typically probably don't recognize them walking
9 downtown Portland, and you won't probably recognize them
10 on our building, as well.

11 MR. MILLER: I think one -- I really am pretty
12 impressed with the sensitivity you have to what it's going
13 to be like walking past that building and through that
14 building, and your use of public -- creating public spaces
15 in the private space. One thing that makes this a little
16 more interesting project, at least from my perspective, is
17 up here, we're actually looking down at your building.
18 We're going to be walking along those streets and using
19 those spaces, but we're also seeing the skyline, and in
20 some cases looking down on top of it, too. But I
21 appreciate the efforts that you've made here.


22 MS. FELLER: How about a bright red roof?

23 MS. GRAMLICH: Are there other questions? Thank you
24 so much for coming.

25 (The hearing concluded at 7:45 p.m.)

C E R T I F I C A T E

I hereby certify that this is a true and accurate transcript of the proceedings, which have been electronically recorded by me in this matter on the aforementioned date.



Notary Public

My Commission Expires
November 19, 2010

**CITY OF PORTLAND, MAINE
CITY COUNCIL AGENDA REQUEST FORM**

TO: Sonia Bean, Senior Administrative Assistant
FROM: Alexander Jaegerman, Chief Planner
DATE: August 25, 2005
SUBJECT: Agenda Request Re: Westin Hotel and Residences
B-3 Conditional Rezoning Request
PME I Limited Partnership, Applicant

Sponsored by: Portland Planning Board

1) Council Meeting at which action is requested:

1st Reading: September 7, 2005
Final Action: September 19, 2005

Submission Deadlines:

- 1 electronic copy of packet due 2 weeks prior to Council meeting date for the agenda meeting
- 5 hard copies due the Thursday before the Council meeting

2) Can action be taken at a later date? __ YES _X_ NO

I. SUMMARY OF ISSUE

PME I Limited Partnership is proposing a B-3 conditional rezoning for property located at 38 India Street. The site is the former Jordan's Meats and is bounded by Franklin Arterial, Middle Street, India Street, and Fore Street. The proposal is for the development of a Westin Hotel and Residences with underground parking. Restaurant and retail uses are also proposed.

The applicant first presented conceptual plans for the Westin Hotel and Residences project in at a Planning Board Workshop on May 10, 2005. At that time there were two dimensional requirements of the B-3 Zone which were identified for further resolution. These issues included the street wall build-to line, and the minimum building height.

The applicant subsequently presented its proposal at the CDC meeting on June 8, 2005. The CDC was generally favorable to the project, with a few comments. The CDC recommended visual and pedestrian permeability, retail space on the ground floor of Middle and India Street, and thought that additional height, especially on Franklin Arterial was an option.

The original "as of right" design consisted of two 65 foot high, "L-shaped" buildings which covered the block. Several zoning issues were identified through consultation with the applicant which constrained the design of the project. The setback requirements and height limits impacted the building's permeability and massing, and limited the floor to ceiling heights, the number of rooms/units, and the mix of uses. While the project "worked" with the constraints, the applicant indicated that there were multiple compromises imbedded within it. Staff has also recognized the potential of rezoning to result in a better project that meets public and planning goals.

II. REASON FOR SUBMISSION (What issue/problem will this address?)

As stated previously, the original "as of right" design consisted of two 65 foot high, "L-shaped" buildings which covered the block. Several zoning issues were identified, which constrained the design of the project. The setback requirements and height limits impacted the building's permeability and massing, and limited the floor to ceiling heights, the number of room/units, and the mix of uses.

III. INTENDED RESULT (How does it resolve the issue/problem?)

The proposed rezoning would allow for flexibility, which will result in a program that works for the applicant, but will also allow for first floor retail space, permeability through the site, and greater flexibility and articulation in the building facades.

IV. FINANCIAL IMPACT

There will be no financial impact to the City. The recommended conditional rezoning requires that the developer provide a monetary contribution, to be determined by the City Council, to be used for off-site improvements within the Waterfront East area. These off-site improvements include general streetscape amenities to upgrade the public infrastructure in the area, including decorative lighting, street trees, new sidewalks, and high quality street furniture such as benches, planters, and trashcans similar to those recently selected for placement along Congress Street.

V. STAFF ANALYSIS & RECOMMENDATION

On the whole, the project comports with the policies and development plans for this area. It represents a step up in the scale of this neighborhood, which is undergoing development with scale increasing according to the Waterfront East Plan and zoning. While some refinements to the massing could improve the project plan and its fit with India Street, on balance staff supports the conditional rezoning. The City Council will need to decide a monetary contribution, which has been recommended in the sum of \$200,000.

VI. SPONSOR

On August 9, 2005, the Portland Planning Board voted unanimously (4-0, Tevanian, Anton and Odokara absent) to recommend to the City Council that the Board finds that the proposed B-3 Downtown Business Conditional Rezoning is consistent with the policies of the B-3 Downtown Business Zone and Comprehensive Plan of the City of Portland. The Planning Board therefore recommended to the City Council approval of the proposed rezoning at 38 India Street with the following conditions:

- i. The conditional rezoning language shall be revised to include the minimum number of parking spaces, subject to review and approval by the City's Traffic Engineer.
- ii. The conditional rezoning language shall be revised to include the public improvements dollar amount and a defined area that the public improvements would occur and shall be provided at the City Council review stage.

3) Index of Supplemental Material (available material not included in basic Council packet)

1. Planning Board Report
2. Conditional Rezoning Language
3. Packet Submitted by Developer

Attachments:

cc: Elizabeth Boynton, Associate Corporation Counsel

Kandi Talbot - RE: Westin Hotel

From: Dan Riley <driley@sebagotechnics.com>
To: 'Kandi Talbot' <KCOTE@portlandmaine.gov>
Date: 08/31/2005 8:41 PM
Subject: RE: Westin Hotel

Kandi,

Thank you for sending the City Council workshop memo to me. I have a couple of questions and items that require some discussion with you and the staff.

1. This memo indicates that there is an attached memo from Carrie Marsh. Can I have a copy of that?
2. Has Tom Errico prepared any final comments on the parking analysis? At the Planning Board meeting he indicated that he had done a preliminary review and through that the parking number may be around 360.

The issue of the number of underground spaces that we provide on site is a very important aspect of this project. Every space is very expensive to build, on the order of \$25,000-\$30,000 per space!

Although we are pleased that the number of onsite spaces required in the proposed contract zone language was held to 324, we were encouraged by Lee Lowry's comments that perhaps this could be established as maximum number of spaces. Further, that if the planning board determined that a higher number are required during Site Plan review, that those spaces could be potentially be provided offsite. Councilor Gorman had similar comments during our meeting with the CDC.

I would like to work with the staff to come to a final consensus on the number of spaces as I am sure that this will be an issue discussed with the council.

3. An updated traffic permit application has been submitted. I have forwarded copies directly to Tom Errico and to Randy Dunton at MDOT. The revised permit application will require a scoping meeting with Tom and Randy. I will call Tom to schedule that meeting as soon as possible so that the traffic permit process can move along at the same schedule as site plan approvals.

Has the staff had any additional policy discussion concerning the implementation of the Peninsula Traffic Study recommendations? Alex has indicated that the staff would be working on this in the near future. My concern is related to the monetary "contribution" recommended in the conditional rezoning language.

As I indicated in my August 24, 2005 submittal cover letter (included in the City Council Packages), Alex Jaegerman has indicated to the Planning Board that the City may seek funding, for offsite traffic improvements, defined in the Peninsula Traffic Plan, potentially outside of the Westin Hotel project's traffic permit study area.

It is my understanding that the peninsula traffic study has not yet been adopted by the Council and the Planning Staff has not yet established policies requiring developments to fund the study's recommended short and

medium term offsite improvements.

We are concerned that the monetary contributions associated with his project are still open ended. In my cover letter I requested that the Council consider revising the language such that money contributed under paragraph 5.a.1 of the agreement be reduced by any amount required to be paid by PME for offsite traffic improvements determined during the Site Plan Review process. Does the staff have any comments on this?

I will give you a call tomorrow to discuss these items further. Thanks for your time and effort on this project.

Dan

Daniel L. Riley, P.E.
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Westbrook, ME 04098
(207) 856-0277 ph
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driley@sebagotechnics.com

-----Original Message-----

From: Kandi Talbot [mailto:KCOTE@portlandmaine.gov]
Sent: Monday, August 29, 2005 1:48 PM
To: driley@sebagotechnics.com
Subject: Westin Hotel

Dan,

Attached is the report to the City Council. Any questions, please do not hesitate to contact me. Thanks.

Kandi