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Planning & Urban Development Department
Jeff Levine, AICP, Director

Planning Division
Alexander Jaegerman, FAICP, Director

August 19, 2013

Seth Parker
Avesta Housing, Avesta 409 Cumberland, LP
307 Cumberland Avenue
Portland, ME, 04101

Dear Mr. Parker,

On June 20, 2013, Mitchell & Associates provided a written request for a ruling on the applicability of the City's Housing Preservation and Replacement ordinance (City Land Use Code, Division 29), namely the number of units to be replaced, as applied to 409 Cumberland Avenue. Your request asks whether the proposed development is responsible for replacing the 10 dwelling units previously on the site of 409 Cumberland Avenue in addition to the 16 units from the Lighthouse Shelter to be replaced by this project. The 10 units in question were demolished in 2005 as part of another housing proposal on the site, Waterview, which was never built and therefore, the 10 dwelling units were not replaced. If the Housing Preservation and Replacement ordinance is found to be applicable to those 10 units, your request goes on to ask whether an exemption of the performance guarantee for those 10 dwelling units may be granted.

City Planning and Legal staff met to discuss your request and found that the Housing Preservation and Replacement ordinance applies to 409 Cumberland Avenue for the 16 dwelling units of the Lighthouse Shelter but not in the case of the 10 units previously demolished. At the time of the demolition in 2005, a determination had been made by the City that a performance guarantee was not required for the demolition of those 10 units. A demolition permit was issued and the demolition without a performance guarantee was therefore lawful. No appeal of the City's determination or of the issuance of a demolition permit was taken.

Although the ordinance has since been amended to require a performance guarantee in connection with the loss and replacement of housing units, that amendment did not retroactively alter the terms of the permit that was issued or the determination that the 10 units could be demolished without a performance guarantee.

Moreover, under its express terms, the housing replacement ordinance only applies to the loss of housing units "in a five year period." City Code § 14-483(c). Because the demolition of the 10 units

at issue here occurred more than 5 years ago, the housing replacement requirements contained in the City's ordinance simply do not apply to those units.

Based on that reasoning, the Housing Preservation and Replacement ordinance will be upheld for the 16 dwelling units of the Lighthouse Shelter as requested by Avesta Housing, but the applicant is not responsible for the replacement of the former 10 dwelling units previously on site. Should you wish to seek relief from the housing replacement obligation, Section 14-483 (k) describes the process for *Partial waiver of replacement requirements*.

As you continue to work with the property at 409 Cumberland Avenue, we will continue to be available to assist in any way possible within the limits of our ordinance. If you have any questions or would like to discuss further, please contact me at any time.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alexander Jaegerman".

Alexander Jaegerman, FAICP, Planning Division Director

CC:

Jeff Levine, Planning and Urban Development Director

Alex, Jaegerman, Planning Division Director

Danielle West-Chuhta, Corporation Counsel

Barbara Barhydt, Development Review Services Manager

Jennifer Thompson, Associate Corporation Counsel