

Department of Planning & Urban Development

Marge Schmuckal
Zoning Administrator

Jeff Levine
Director Planning & Urban Development



CITY OF PORTLAND
ZONING BOARD OF APPEALS

Interpretation Appeal Application

APPLICANT INFORMATION:

MICHAEL J. PATTERSON
NAME

BUSINESS NAME

42 DEERING ST
ADDRESS

PORTLAND ME 04101

207-653-7508
TELEPHONE #

MICHAEL J. PATTERSON
APPLICANT'S RIGHT, TITLE OR INTEREST

(eg: owner, purchaser, etc)

R to Single Family - OWNER
CURRENT ZONING DESIGNATION

EXISTING USE OF PROPERTY:

RECEIVED
NOV 19 2012

Dept. of Building Inspections
City of Portland Maine

TYPE OF RELIEF REQUESTED:

RECLASSIFY ALL FOUNDATION HOME PROPERTIES
AS SHELTERED CARE GROUP HOMES

SUBJECT PROPERTY INFO:

38 + 40 DEERING ST
PROPERTY ADDRESS

38 - 047 201700
40 - 047 201600
CHART/BLOCK/LOT (CBL)

PROPERTY OWNER INFO (if Different):

PK HOLDINGS, DDA FOUNDATION
NAME
P.O. BOX 6079 TRON HOUSE
ADDRESS

CAPE EUZASSET, ME
04107

Disputed Provisions from Section 14:

SEE ATTACHED LETTER

Order, decision, determination or interpretation under dispute:

LETTER DATED 10/18/12

NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for an appeal as described above, and certifies that the information herein is true and correct to the best of his OR her knowledge and belief.

Michael J. Patterson
SIGNATURE OF APPLICANT

11/18/12
DATE



PORTLAND MAINE

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Jeff Levine, AICP, Director
Marge Schmuckal, Zoning Administrator

TO: David Marshall, City Counselor
FROM: Marge Schmuckal, Zoning Administrator
DATE: October 18, 2012
RE: Determination concerning the Foundation House uses

Hi David,

I am responding to your original request to re-analyze the uses for Foundation House in or around Deering Street. On October 17th I met with Danika and Patrick Babcock to discuss how they used their buildings that they own. I am attaching a copy of GIS map indicating the location of those properties. All properties are in the R-6 multi-family residential zone.

My focus was on the definition of a *Sheltered care group home*:

"A facility which, in addition to providing food and shelter to a defined population, provides guidance or counseling services. Such services are a primary function of the facility".

First, the Foundation properties charge rent. Secondly, food is not provided. Everyone provides their own meals. So the first criteria of providing food and shelter has not been met. The definition goes on to say that guidance or counseling services are a primary function of the facility. I did not find that any of the properties had any significant counseling or formal guidance on-site. All such counseling and guidance is off-site near by in the B-3 business zone. The Foundation leases several suites on the third floor of the State Theater building on Congress Street. I visited the site for a firsthand look. So I have concluded that none of the four properties could meet the definition of a "sheltered care group home".

Further discussions lead me to believe that 38 Deering Street is still functioning as a single family dwelling. The Foundation does use that address as a mailing address for their business. I discussed home occupation requirements with them concerning their use at that location. I am currently not convinced that it is a major "business" site. And yes, they have lived in the building on occasion. And they still have their home in Cape Elizabeth. They own two homes. I find that no different from many people who own a home on the mainland and a home on one of the islands.

I had further discussions concerning.

40 Deering Street which is legally considered to be a single family dwelling. I believe that property is now being use more like a lodging house. Currently the Babcocks are working with an architect, Will Winkleman, for some interior alterations to the building. I will be meeting with Will Winkleman to go over his plans. I am encouraging the

lodging house, a permitted listed use in the R-6 zone. There are other criteria for a lodging house that the applicant must meet. That is where the architect comes in. I will be meeting with the architect within the next two weeks. I can update you at that time as to the status of this property.

This determination is subject to appeal. If you or anyone from the public wishes to exercise their right to appeal, they have 30 days from the date of this letter in which to appeal. If there is no appeal within a timely manner, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

I hope this helps you,
Marge Schmuckal

November 19, 2012

Zoning Board of Appeals
City of Portland
389 Congress Street
Portland, ME 04102

Re: Appeal of Determination Letter 10/18/12
Foundation House, 38 and 40 Deering Street
HAND-DELIVERED

Dear Members of the Board;

We, the undersigned residents of Parkside, appeal the Zoning Administrator's Determination Letter dated October 18, 2012.

In that letter, she finds that 38 Deering Street "is still functioning as a single family dwelling". We note that the City's definition of "single-family" requires that residents be living under a non-profit entity. A search of the Maine Secretary of State's corporation records indicates that PK Holdings, dba Foundation House, is a for-profit corporation (see enclosed) and so 38 Deering does not qualify as a single-family dwelling unit under the City's zoning definition. In addition, for the same reason, we believe that the three other Foundation House properties (40 Deering, 235 State, and 42 Mellen) do not meet the City's definition of single-family housing.

The Zoning Administrator further finds that "none if the four properties could meet the definition of a 'sheltered care group home'". We believe that, notwithstanding the principals' answers to the questions posed by the Zoning Administrator, all four Foundation House properties are operating as a transitional care treatment program for addicted young people.

A review of their website (<http://www.foundationhouse.net/>) indicates that they provide "short and long term, extended care sober living for men in early recovery from chemical dependency". The site refers to their "extended care living program", which includes a wide range of medical, physical, experiential, and psychological program components. The expected length of transitional stays is between three months and one year.

As we understand it, the principals claim they are not offering a "treatment program", yet they are a member of the National Association of Addiction Treatment Programs, which website (<https://www.naatp.org/facility/foundation-house/>) lists Foundation House as offering, under "Dimensions of Treatment Offered", **Extended Care**. On its face, it is obvious that the young men living in the four buildings came together, not by coincidence, all seeking to live in Parkside, but because they or their loved ones learned of and signed them up for the **extended care treatment program** offered.

To this point, we understand that monthly rents are more than \$3,000/person. If the rents can be verified (and we formally ask the City to request detail on the rents charged), we find it inconceivable that the rents do not reflect the level of treatment program support described on their website, whether delivered on-site or not. It is far too literal a reading to determine that the facility is not a treatment facility because they do not provide food or because program elements are provided in another location. Indeed, the City's definition of Sheltered Care Group Home does not specify that treatment must be received on-site for the definition to apply. And we submit, that food is not a primary element of the treatment program being provided. **We also**

formally ask the City to request a copy of the rental agreement to verify the terms of occupancy and the services provided, as they are integral to the housing component. In our view, Foundation House is clearly operating as a transitional Sheltered Care Group Home.

As policy background, the City conducted a multi-year comprehensive review of the location and type existing transitional housing in the early 1990s , in specific response to a concentration of transitional group homes, lodging houses, treatment programs, etc. in Parkside. In April 1993, the City's Housing Committee's report to the Council determined that such clustering "leaves Portland's neighborhoods vulnerable to concentration of such facilities. If current trends are allowed to continue, the traditional balance of residential uses, deemed critical to maintaining neighborhood diversity, could be upset."

In response, a City Council-approved process was established to review proposed new forms and locations of transitional housing, with the intent to disperse such uses so that they not overwhelm any residential neighborhood. Currently, two Foundation House transitional group homes are beside each other, another is within 500 feet, and the fourth is next to Serenity House, an existing alcohol treatment facility.

We are concerned that application of a narrow literal reading of the zoning language to Foundation House avoids the issue that they are, indeed, transitional housing meant to be dispersed. Indeed, it appears to us that Foundation House has carefully structured its operation to avoid the City's policy intent, which was both to preserve single-family housing stock and to avoid clustering of transitional housing by distributing housing uses throughout the city.

City policy should be balanced between competing interests. A narrow determination on this matter does not serve balance and leaves the City open to an uncontrolled influx of transitional treatment facilities, as are already emerging in another nearby neighborhood. While there is no question that such facilities are providing a needed service, they should be required to meet the City's established policy framework, designed to protect residential neighborhood integrity.

We therefore formally appeal the Zoning Administrator's October 18, 2012 determination, which will then allow further public discussion of these definitions and the policies they are meant to support.

Very truly yours,

Waite and Christine Maclin
39 Deering Street

Michael J. Patterson
42 Deering Street

Robert Giovannini and Barbara Mascarenes
48 Deering Street

Anthony Holt and Deborah T. Cook
35 Deering Street



MAINE

Department of the Secretary of State
Bureau of Corporations, Elections and Commissions

Corporate Name Search

Information Summary

Subscriber activity report

This record contains information from the CEC database and is accurate as of: Mon Oct 22 2012 14:27:22. Please print or save for your records.

| Legal Name | Charter Number | Filing Type | Status |
|------------------|----------------|----------------------|---------------|
| PK HOLDINGS INC. | 20030411 D | BUSINESS CORPORATION | GOOD STANDING |

| Filing Date | Expiration Date | Jurisdiction |
|-------------|-----------------|--------------|
| 09/12/2002 | N/A | MAINE |

| Other Names | (A=Assumed ; F=Former) |
|------------------|------------------------|
| FOUNDATION HOUSE | A |

Clerk/Registered Agent

DREW A. ANDERSON
P.O. BOX 9785
PORTLAND, ME 04104 5085

[Back to previous screen](#)

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Click on a link to obtain additional information.

List of Filings

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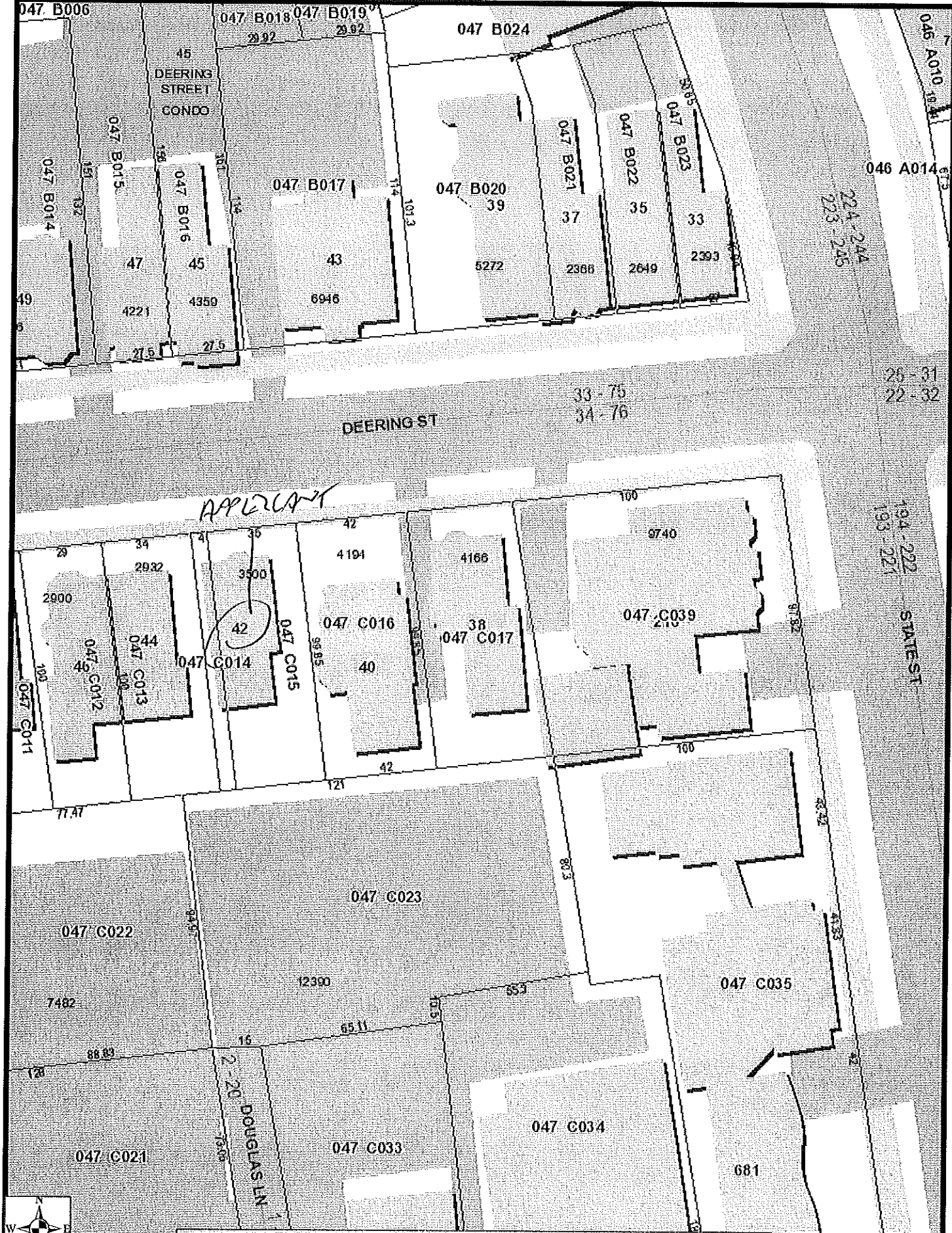
Certificate of Existence [\(more info\)](#)

[Short Form without amendments](#)

[Long Form with amendments](#)

[\(\\$30.00\)](#)

[\(\\$30.00\)](#)



APPLICANT



047 C033

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40 Feet

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

City Home Departments City Council E-Services Calendar Jobs

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

Current Owner Information:

Services

Applications

Doing Business

Maps

Tax Relief

Tax Roll

Q & A

browse city services a-z

browse facts and links a-z



Best viewed at 800x600, with Internet Explorer

CBL 047 C017001
Land Use Type SINGLE FAMILY
Property Location 38 DEERING ST
Owner Information LCB38 LLC
 PO BOX 6279
 CAPE ELIZABETH ME 04107
Book and Page 28686/115
Legal Description 47-C-17
 DEERING ST 38
Acres 0.0956

Current Assessed Valuation:

| | | |
|----------------------------------|--------------|---|
| TAX ACCT NO. | 7500 | OWNER OF RECORD AS OF APRIL 2012 |
| LAND VALUE | \$147,900.00 | LCB38 LLC |
| BUILDING VALUE | \$339,500.00 | PO BOX 6279 |
| NET TAXABLE - REAL ESTATE | \$487,400.00 | CAPE ELIZABETH ME 04107 |
| TAX AMOUNT | \$9,172.88 | |

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

Building Information:

Building 1

Year Built 1869
Style/Structure Type OLD STYLE
Stories 2
Units 1
Bedrooms 4
Full Baths 3
Half Baths 1
Total Rooms 10
Attic FULL FINSH
Basement FULL
Square Feet 3353

[View Sketch](#)

[View Map](#)

[View Picture](#)

Sales Information:

| Sale Date | Type | Price | Book/Page |
|-----------|-----------------|--------------|-----------|
| 5/9/2011 | LAND + BUILDING | \$825,000.00 | 28686/115 |
| 8/19/1999 | LAND + BUILDING | \$225,000.00 | 14990/318 |
| 3/1/1995 | LAND + BUILDING | \$0.00 | 11859/23 |

New Search!



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

City Home Departments City Council E-Services Calendar Jobs

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

Current Owner Information:

| | |
|---|--|
| <p>Services</p> <hr/> <p>Applications</p> <p>Doing Business</p> <p>Maps</p> <p>Tax Relief</p> <p>Tax Roll</p> <p>Q & A</p> | <p>CBL 047 C016001</p> <p>Land Use Type SINGLE FAMILY</p> <p>Property Location 40 DEERING ST</p> <p>Owner Information BWB40 LLC PO BOX 6279 CAPE ELIZABETH ME 04107</p> <p>Book and Page 29313/104</p> <p>Legal Description 47-C-16 DEERING ST 40 4194 SF</p> <p>Acres 0.0963</p> |
|---|--|

Current Assessed Valuation:

| | | | | | | | | | | | | | | | | |
|---|--|---|------|---|-------------------|--------------|-----------|-----------------------|--------------|-------------|----------------------------------|--------------|-------------------------|-------------------|------------|--|
| <p>browse city services a-z</p> <hr/> <p>browse facts and links a-z</p> | <table border="0"> <tr> <td>TAX ACCT NO.</td> <td>7498</td> <td>OWNER OF RECORD AS OF APRIL 2012</td> </tr> <tr> <td>LAND VALUE</td> <td>\$148,000.00</td> <td>BWB40 LLC</td> </tr> <tr> <td>BUILDING VALUE</td> <td>\$256,800.00</td> <td>PO BOX 6279</td> </tr> <tr> <td>NET TAXABLE - REAL ESTATE</td> <td>\$404,800.00</td> <td>CAPE ELIZABETH ME 04107</td> </tr> <tr> <td>TAX AMOUNT</td> <td>\$7,618.34</td> <td></td> </tr> </table> | TAX ACCT NO. | 7498 | OWNER OF RECORD AS OF APRIL 2012 | LAND VALUE | \$148,000.00 | BWB40 LLC | BUILDING VALUE | \$256,800.00 | PO BOX 6279 | NET TAXABLE - REAL ESTATE | \$404,800.00 | CAPE ELIZABETH ME 04107 | TAX AMOUNT | \$7,618.34 | |
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| LAND VALUE | \$148,000.00 | BWB40 LLC | | | | | | | | | | | | | | |
| BUILDING VALUE | \$256,800.00 | PO BOX 6279 | | | | | | | | | | | | | | |
| NET TAXABLE - REAL ESTATE | \$404,800.00 | CAPE ELIZABETH ME 04107 | | | | | | | | | | | | | | |
| TAX AMOUNT | \$7,618.34 | | | | | | | | | | | | | | | |



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

Building Information:

Best viewed at 800x600, with Internet Explorer

| Building 1 | |
|-----------------------------|------------|
| Year Built | 1875 |
| Style/Structure Type | OLD STYLE |
| # Stories | 2 |
| # Units | 1 |
| Bedrooms | 6 |
| Full Baths | 3 |
| Half Baths | 1 |
| Total Rooms | 10 |
| Attic | FULL FINSH |
| Basement | FULL |
| Square Feet | 3369 |

[View Sketch](#) [View Map](#) [View Picture](#)

Sales Information:

| Sale Date | Type | Price | Book/Page |
|-----------|-----------------|--------------|-----------|
| 1/31/2012 | LAND + BUILDING | \$750,000.00 | 29313/104 |
| 7/9/2007 | LAND + BUILDING | \$760,000.00 | 25269/199 |
| 3/3/2006 | LAND + BUILDING | \$425,000.00 | 23726/88 |
| 12/7/2005 | LAND + BUILDING | \$0.00 | 22094/066 |

| | | | |
|-----------|-----------------|--------------|----------|
| 3/1/2003 | LAND + BUILDING | \$350,000.00 | 19071/90 |
| 12/2/1986 | LAND + BUILDING | \$0.00 | 7511/124 |

[New Search!](#)

