

60-A-1

2011-369

113-201 W. Commercial St.

Text Amendment

JB Brown

**PLANNING BOARD REPORT
PORTLAND, MAINE**

**West Commercial Street Zoning Amendment
113-201 West Commercial Street
WPDZ and R-4 to B-5b and B-5b Text amendment
Application #: 2011-369
J.B. Brown and Sons, Applicant**



Submitted to: Portland City Council	Prepared by: Bill Needelman, Senior Planner Date: January 26, 2012 Planning Board Report #2-12 CBL: 60-A-1 and 2, 60-B-1, 60-E-1 to 4, and 71-C-2
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I. Introduction:

J.B. Brown & Sons, represented by Vincent Veroneau, requests a zone map change in the area of 113 to 201 West Commercial Street and an associated text change to the B-5b zone. Following three workshops on the proposal including a public site walk and a Public Hearing, the Planning recommends the requested zone changes to the City Council by unanimous vote.

The site is a 10.65 acre former rail yard and is predominantly vacant. The applicant proposes to change the zoning on the majority of the site (+/-5.8 acres) from Waterfront Port Development (WPDZ) to Mixed Use Commercial, B-5b. While no fixed plans are in place for a specific development, the applicant has provided conceptual master plans of the site showing commercial office buildings and surface parking along West Commercial Street.

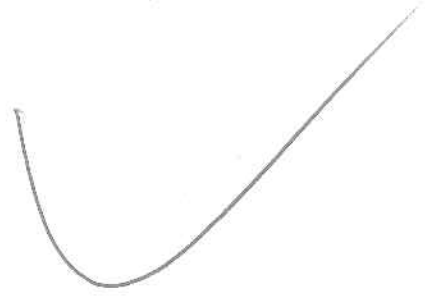
Previously, the applicant had proposed changing the zoning for a larger portion of the site (+/-8.5 acres) to B-5b, including land currently zoned R-4 located at the rear the site toward Danforth Street residential abutters. Responding to neighborhood requests and Planning Board comments, the applicant has amended the application to only those portions of the site currently zoned WPDZ. Furthermore, the amended application includes changing +/-0.5 acres of J.B. Brown land that is currently zoned WPDZ to R-4 to increase the residential buffer at the westerly-central portion of the site. The advertised zone change map additionally includes a proposed change on portions of two abutting residential properties that are currently zoned WPDZ. The revised notice map proposes that these properties change to R-4, consistent with their use and to avoid an isolated remnant of WPDZ if the applicant's proposal is approved.

The revised and advertised zone change map showing the proposed zoning on both J.B. Brown and abutting parcels is provided in Attachment 3.

60-A-1

#2011-369

West Commercial St.
Zoning Amendment
JB Brown + Sons



Need final
check.

The B-5b zone has a building height maximum of 65 feet, but buildings of this size raised concerns from uphill abutters and among some Planning Board members. Responding to these concerns, the Board's recommendation includes a text amendment request to the B-5b zone to modify the maximum building height to 45 feet for the westerly portions of the site and 55 feet over the easterly portions of the site of the site. Limits on rooftop structure heights are also now proposed for the easterly portion of the site. Building height is more thoroughly discussed below in section VII.b of this report.

II. Public Comment and Neighborhood Meeting

The J. B. Brown proposal generated a significant amount of public comment throughout the Planning Board process. Emails and letters relevant to the Board's considerations are compiled and provided in the chronological order in which they were received in Attachment 2.

The applicant held the required neighborhood meeting on January 5, 2012 and the certification, sign-in sheet, notes and notice are provided in Attachment G of the applicant's submittal.

III. Workshop Discussions:

During the three previous workshops, the following issues were raised by the proposal and discussed by the Board:

- The relationship between topography and the proposed rezoning and how the current R-4 zone acts as a buffer to Danforth Street neighbors;
- The relationship between the proposed rezoning and the West End Historic District;
- The potential view impacts of 65 foot buildings to Danforth Street neighbors and the potential for B-5b 100% lot coverage to allow new development to move up the slope and use "average grade" to build even larger buildings;
- The structural stability of the slope and its suitability for development;
- The loss of significant mature forest;
- The wide use allowances in the B-5b; and,
- The potential loss of waterfront land supporting marine industry.
- The R-4 should not change to B-5b and R-4/B-5b line could be amended follow the toe of slope to buffer abutters and protect potentially unstable soils.
- Explore varied building height requirements within the site as the impacts to Danforth Street differ from west to east.
- Traffic impacts.
- Urban design and the treatment of parking and potential for applying design standards.
- The "gateway" nature of the site and the desire for quality architecture.

IV. Right Title and Interest:

The applicants have recently purchased the subject property from longstanding previous owners, the Portland Terminal Company (Pan Am, aka Guildford.) The J.B. Brown deed is included in Attachment C.

V. Site Description and History:

The subject parcel is an elongated collection of parcels extending east from the Danforth Street/West Commercial Street intersection approximately 2800 feet along West Commercial Street. The site is bound by West Commercial Street to the south, other lands of J.B. Brown to the east (the "Star Match Company" complex,) and residential properties along Danforth Street to the north.

The site is vacant and heavily wooded with Benny's Fried Clams being the only active use. Portions of the site along West Commercial Street to the east are frequently used as informal parking or vehicle staging.



The site exhibits extreme topographic variation. The street frontage portions of the site were historically crossed by multiple rail corridors and sidings and are correspondingly flat at an elevation of +/- 22 feet to 30 feet above sea level. West Commercial Street itself generally lies at 16-24 feet above sea level. To the north, Danforth Street rises sharply from West Commercial Street reaching an elevation of 104-106 feet at the Vaughan Street intersection and +/-126 feet at Emery Street, which is located just to the east of the subject parcel. A steep slope rising between 50 feet to the west and 70 plus feet to the east occupies the rear of the site, while an expanse of relatively flat ground between 70 and 165 feet wide lies adjacent to West Commercial Street.



A topographic map of the site is provided with spot elevations in Attachment 4.

The historic rail use of the site is evident with former rail beds easily found along the lower portions of the site. The slopes exhibit periodic erosion and landfill sediments are not uncommon. Informal trails are found connecting to the Emery and Salem Street corridors and transient encampments are common on flat wooded ground. Many Portlanders remember the site as the location of the 1976 "Freedom Train" exhibition.



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Planning Division

Alexander Jaegerman, Director

Ms. Marjorie Shaw
400 Danforth Street
Portland, Maine 04102

December 7, 2011

Re: West Commercial Street Rezoning

Dear Ms. Shaw,

I am writing to inform you of some issues related to the proposed rezoning of land owned by J.B. Brown and Co along West Commercial Street. As you are probably aware from Planning Board notices, the J.B. Brown land abuts the southerly boundary of your property at 400 Danforth Street. The J.B. Brown proposal would change the zone of their land from WPDZ, Waterfront Port Development, to B-5b, Mixed-Use Urban Commercial. Currently, a portion of the WPDZ extends onto your land. If the J.B. Brown proposal were to move forward as proposed, the portion of WPDZ that is located on your land would become an isolated remnant of waterfront zone with no functional purpose. As a result, the Planning Board has asked to advertise the proposed zone change more broadly than the J.B. Brown application and has proposed changing the WPDZ on your property to the same R-4, West End Residential Zone, which underlies your home and associated buildings. A map of the proposed zone change is enclosed with this letter.

This letter is to inform you that the Planning Board is tentatively scheduled to hold a workshop on the proposed zone changes, including the potential changes to your property, on January 10, 2012. The meeting time has not yet been established, but it will likely be held in the evening. You will receive notices in the mail with the confirmed time and date of this and future public meetings on the J.B. Brown proposal.

If you have any questions or would like to discuss these issues, please feel free to contact me at any time and we can arrange a time to meet.

Summary notes of meeting

West End Neighborhood Meeting

January 5, 2012

Reiche School

6:30 P.m.

Purpose: Discuss zone change at 113-201 W. Commercial Street, Portland

Attendance: 40 (Sign-up sheet attached)

Meeting opened at approximately 6:35pm with Vin Veroneau, President of J.B. Brown & Sons making a presentation on the current zoning and the requested change. He showed the map used in the Public Notice titled "Proposed Zoning Map Changes" to explain the process and changes made from the original zone change request. The changes include a lowering of the building height from 65' to 45' for the area west of the Fletcher Street line, eliminating any R-4 land from the re-zoning request, and the addition of a small area of the WDPZ that is now proposed to be R-4. The changes were made as a result of concerns raised in previous meetings with the Planning Board and abutting neighbors.

He also provided an outline of the process going forward, which would include the 3rd Planning Board Workshop on Tuesday, January 10th @ 3:30pm, a tentative Planning Board Public Hearing on Tuesday, January 24th @7:00pm, and a potential City Council Public Hearing sometime in the February/March timeframe.

Question: What are the differences in uses between the existing zone and the proposed zone?

Answer: A list of uses allowed in the two zones was read from City Ordinance.

Question: What is difference in building heights?

Answer: B5-b allows for buildings up to 65' in height. The WDPZ allows for 45' in height.

Question: How tall is Star Match building?

Answer (from one of the residents): 40' to the tallest gable with chimney at 60'.

Question: What would J.B. Brown anticipate for a building on the site?

Answer: No construction plans are in the works. The zone change is the first step. Once that occurs, we would undertake a development project only with a secured tenant. Should J.B. Brown move forward on a project after any zone change, there would be another series of public meetings/hearings to discuss the site plan application.

Question: What does J.B. Brown realistically envision for the development?

Answer: We think the highest and best use for the site is office, but we do not have specific plans at this time. The site plan presented with our application was meant to provide some sense of the site's development potential.

Multiple Comments: Generally the audience expressed appreciation for J.B. Brown's responses to their concerns to date, but there is still concern that the zone allows for potential structures of 65' (plus mechanical equipment), which makes the residents along the top of the slope concerned about impacts on view and reduced property values. Concerns were also expressed with respect to the scale of the project's potential height and the "gateway" nature of the property, so that care should be given in any future design.

Answer: Based on the on-site workshop and public comment, the height on western end of the property was reduced to 45'. We did not think the 65' height at the eastern end would impact views as much as the abutters have expressed, but based on comments tonight we will take another look at the 65' height. Cross-sections prepared by the Portland Planning Department showing potential view impacts were made available to the public for review.

Question: Why doesn't J.B. Brown develop a plan that shows a completed development?

Answer: It is virtually impossible to entice a user to seriously consider the site with the confidence that the zoning would allow for the use. To try to develop a fully articulated a development plan without a user is difficult to put forth, especially if the plan changes based on a user's unique requirements.

Question: Did J.B. Brown recently post the property? There are concerns with camping activity on the site.

Answer: Yes we posted it for No Camping, No Loitering, and No Dumping. We hired a company to clean up the old camp sites and dump area. There are currently no campers on the land and we have given the Portland Police the authorization to enter the property to monitor activity. We are not opposed to walker and hikers using the property in a respectful manner.

Consensus of group: If the zone/code requirement were to have a potential building to be no taller than 45', then the majority of the group would have no further objection.

Consensus of group: Based on a show of hands, a majority (90+%) of the audience said they would fully support the zone change if the heights were limited to 45' on the entire site.

The meeting adjourned at 7:45.

Neighborhood Meeting Sign-in Sheet.

West End Neighborhood Meeting

Date: January 5, 2012

Where: Reicke School

Time: 6:30 p.m.

Purpose: Discuss zone change at 113-201 W. Commercial Street, Portland

Attendee:	Signature	Print
1		CONSTANCE BLOOMFIELD
2		Peter S. PLUM
3		SONIA B. Robertson
4		JOCK ROBERTSON
5		
6		Claire Kovaneau
7		MARJORIE SHAW
8		SALLY OLDHAM
9		Thomas MacMillan
10		STEVE GRAEF
11		Rosanne Graef
12		Stephen S. Dyro
13		JACK HUMENTUK
14		ARMAND DEMERS
15		TIM NELLIGAN
16		PETER FRYE
17		ANNE PRINGLE
18		PETER LAWRENCE
19		Jo Coyne
20		Dillon Bates
21		Victoria A. Dylewski
22		Forest Taber
23		MICHAEL BELLEAU
24		Holly Seeliger
25		Michael Curtis
26		WARDEN DILWORTH
27		bessimbessire@ps Mark Bessire
28		
29		
30		
31		Betty Duggan
32		David L. PERRY
33		Susan Perry
34		Debi Kruek
35		CHESTER A. KRUEK
36		Lynn Hallett
37		Lynn Hallett

Attendee:	Signature	Print
38	Robert C. Hains	
39	Michelle Crowley	Michelle Crowley
40	Vincent Veroneau	Vin Veroneau
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J.B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, ME 04112-0207
207-774-5908 (phone) 207-774-0898 (fax)

Neighborhood Meeting Invitation

December 21, 2011

Dear Neighbor:

Please join us for a neighborhood meeting to discuss our plans for a zone change located at 113-201 West Commercial Street, Portland, Maine. Enclosed is a map showing the proposed area to be re-zoned.

Meeting Location: 2nd Floor, Community Room, Reiche School, 166 Bracket Street, Portland.
(Entrance off 2nd floor outside deck)
Meeting Date: January 5, 2012
Meeting Time: 6:30 p.m.

The City code requires that property owners within 500 feet of the proposed development and residents on an "interested parties list", be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and minutes of the meeting will be taken. Both the sign-in sheet and minutes will be submitted to the Planning Board.

If you have any questions, please call me at (207) 774-5908.

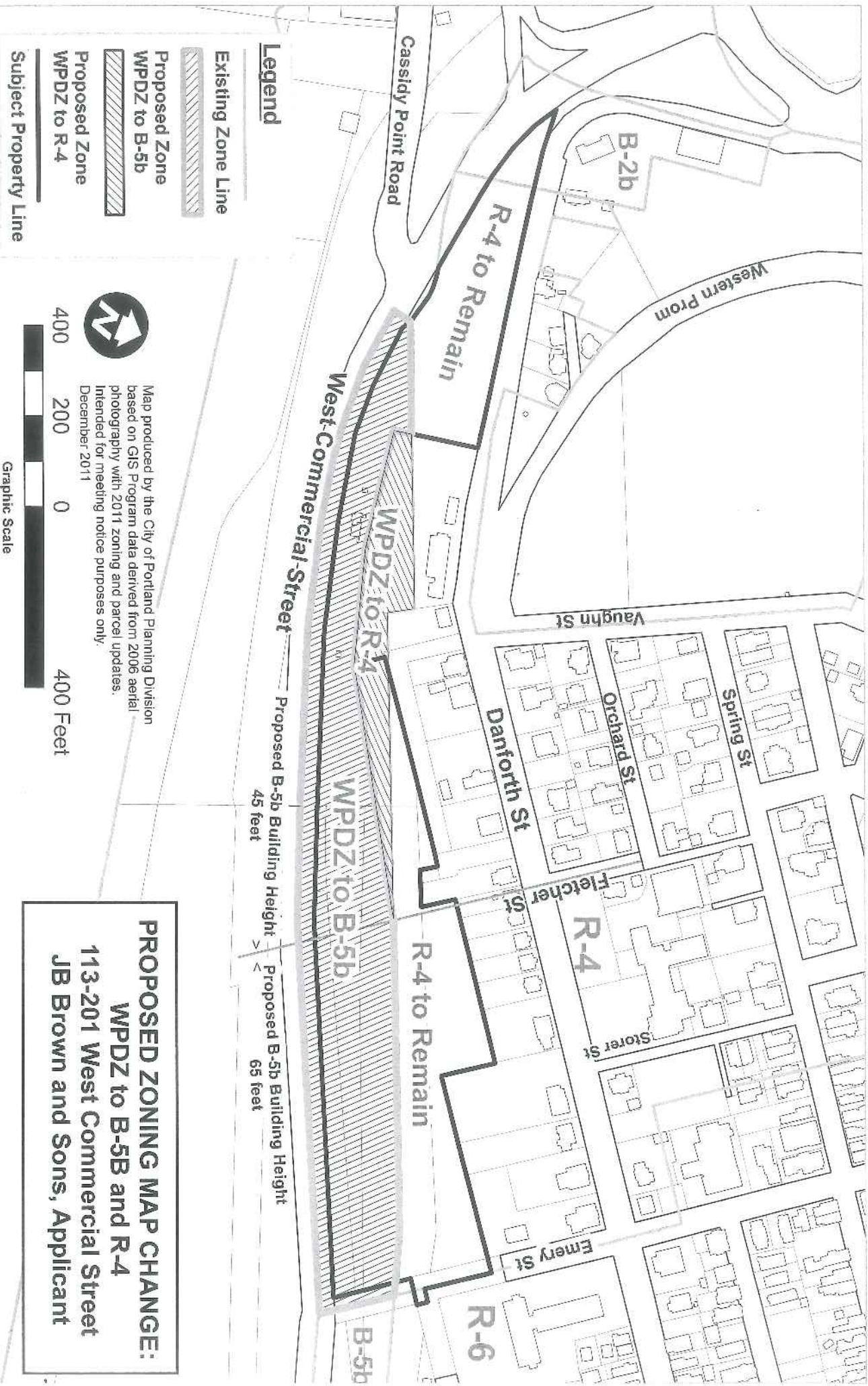
Sincerely,



Vincent P. Veroneau
J.B. Brown & Sons

Note:

Under Section 14-32(C) and 14-525 of the City Code of Ordinances, an applicant for a Level III development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting within three weeks of submitting a preliminary application or two weeks of submitting a final site plan application, if a preliminary plans was not submitted. The neighborhood meeting must be held at least seven days prior to the Planning Board public hearing on the proposal. Should you wish to offer additional comments on the proposed development, you may contact the Planning Division at 874-9832 or send written correspondence to the Planning and Urban Development Department, Planning Division 4th Floor, 389 Congress Street, Portland, ME 04101 or by e-mail: to bab@portlandmaine.gov



PROPOSED ZONING MAP CHANGE:
WPDZ to B-5B and R-4
113-201 West Commercial Street
JB Brown and Sons, Applicant

Map produced by the City of Portland Planning Division based on GIS Program data derived from 2006 aerial photography with 2011 zoning and parcel updates. Intended for meeting notice purposes only. December 2011





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Planning Division

Alexander Jaegerman, Director

Ms. Betty Duggan, President of the Danforth Street Condominium Association
C/O Mr. Richard Davy
418 Danforth Street
Portland, Maine 04102

December 7, 2011

Re: West Commercial Street Rezoning

Dear Ms. Duggan,

At the suggestion of Mr. Richard Davy, I am writing to inform your association of some issues related to the proposed rezoning of land owned by J.B. Brown and Co along West Commercial Street. As you are probably aware from Planning Board notices, the J.B. Brown land abuts the southerly boundary of your condominium association's land. The J.B. Brown proposal would change the zone of their land from WPDZ, Waterfront Port Development, to B-5b, Mixed-Use Urban Commercial. A portion of the WPDZ extends onto your association's land. If the J.B. Brown proposal were to move forward as proposed, the portion of WPDZ that is not located on Brown land would become an isolated remnant of waterfront zoning with no functional purpose. This letter is to inform you that the Planning Board has asked to advertise the zone change more broadly than the application and to propose changing the WPDZ on your association's property to the same R-4, West End Residential Zone, which underlies your existing condominium complex. A map of the proposed zone change is enclosed with this letter.

The Planning Board is tentatively scheduled to hold a workshop on the proposed zone changes, including the potential changes to your association's property, on January 10, 2012. The meeting time has not yet been established, but it will likely be held in the evening. Individual property owners within your condominium complex will receive notices in the mail with the confirmed time and date of this and future public meetings on the J.B. Brown proposal.

Please distribute the above information to your association members for their use. If you have any questions or would like to discuss these issues, please feel free to contact me at any time and we can arrange a time to meet.

VI. Current Zoning:

The site is currently covered by three zones: WPDZ, R-4, and B-2. The B-2 coverage is limited to a +/-0.25 acre triangle of land at the West Commercial Street/Danforth Street intersection. For the majority of the site, the WPDZ covers the West Commercial Street frontage to a depth of +/-150 to 170 feet and 6.5 acres. The R-4 zone covers the majority of the West End neighborhood and extends south from Danforth Street to the WPDZ boundary occupying +/-3.75 acres of the subject site. Given the topography, the majority of readily developable land is located in the WPDZ.



The Star Match Company complex, located directly to the east along West Commercial Street, is located in the B-5b zone.

VII. Proposed Zoning:

The proposed rezoning includes both map and text amendments.

a. Proposed Zone Map Amendments:

Attachments 3 and 4 show the revised zone lines as currently proposed. Compared to the original proposal, the revised zone map amendment includes nearly 3 fewer acres of subject parcel land proposed to change to B-5b and +/-0.5 acres more of R-4 land on site (in addition to off-site parcels proposed for R-4 on abutting residential properties.)

Starting at the east moving west, the proposed B-5b/R-4 line follows the existing WPDZ line until intersecting with an imaginary extension of the Fletcher Street right of way from Danforth Street. Continuing west, the proposed zone line angles southward toward West Commercial Street until intersecting with an internal corner of the subject property located +/- 300 easterly from Benny's Fried Clams. The line continues westerly along the subject property line, behind Benny's, until it meets the existing WDDZ line eventually terminating at the center line of West Commercial Street. The line returns to the point of beginning along the centerline of West Commercial Street to the existing B-5b zone at the Star Match Company site.

The above described R-4/B-5b line generally follows the toe of slope leaving the steep portions of the site in the R-4.

As noted in the introduction, the advertised zone map change also includes portions of two abutting residential properties showing a change from WPDZ to R-4. These

properties, the condominiums at 418 Danforth and the Shaw residence at 400 Danforth, were individually noticed of the proposed zone change to their properties. As the proposed change lies on steeply sloped portions of the lots, the change will have no functional impact on the use of the properties; and, staff has confirmed with the assessing office that neither will there be any property tax impacts.

b. Proposed building height text amendment:

Through the workshop process, neighborhood property owners and certain members of the Planning Board expressed discomfort with the potential for 65 foot buildings on the site as currently allowed in the B-5b zone. Responding to these concerns, the applicant agreed to amend the application to limit building heights on the site. The workshop process included a significant discussion regarding the varied lot width and rising topography of the site moving west to east. The discussion coalesced around the concept that taller structures were better suited to the easterly portion of the site where the abutting properties benefitted from higher elevations. The new text below takes cues the WPDZ text which likewise varies structure height maximums by location as determined by street right of way projections.

The current proposal reflects a compromise between some of the Danforth Street neighbors and the applicant, recognizing that other neighbors retain their concerns.

The current proposal provides a maximum 45 feet of building height west of Fletcher Street and 55 feet east of Fletcher Street as far as Emery Street. Rooftop structures, such as mechanical installations and elevator overruns, which are typically exempted from “building” height regulations, are limited to 62 feet above the average grade measured at the building foundation.

Proposed amendments to Division 12.6, B-5 Urban Commercial Mixed Use Zone, B-5b Building Height Amendments:
Section 14-230.4(f)

(f) Maximum building height: Sixty-five (65) feet; except for parcels of land in the B-5b located along West Commercial Street south of Danforth Street, maximum building heights shall be as follows:

West of the projection of the centerline of the Fletcher Street right of way, the maximum building height shall be forty-five (45) feet; and, east of the projection of the centerline of the Fletcher Street right of way and west of the projection of the centerline of the Emery Street right of way, the maximum building height shall be fifty-five (55) feet.

For purposes of this section, a projection of the centerline of a street is defined by extending the centerline of the referenced street right of way along its most

southerly block to the centerline of West Commercial Street.

Furthermore, notwithstanding the exception of roof top structures from building height regulations in Section 14-430(a), no rooftop structure located between the projections of the centerlines of Emery Street and Fletcher Street, as described above, shall exceed a height of sixty-two (62) feet as measured from the average grade of the building at its foundation.

VIII. Issues for Consideration

As the Board has reviewed material over the previous three workshops, the following issues have emerged as issues related to the proposed zone change and the potential development that may result.

a. Scale of Development

Responding to Board requests to better visualize the relationship between potential development and existing topography and buildings, Planning Staff produced a series of section profile drawings. The drawings show grade profiles at four locations from Danforth Street to West Commercial Street. A key map is provided in Attachment 5.1 and profiles are Attachments 5.2 to 5.5. **NOTE: The section drawings have not been amended to show the current 55 foot building height maximums at the easterly portion of the site.**

At Danforth Street, representative building forms are shown (in blue) that approximate existing residential development. As existing building heights are not known, the drawings do not depict individual buildings specifically, but intend to reflect the pattern of Danforth Street development.

On the subject site, speculative building forms are shown (in red) at the proposed building height maximums. The “buildings” are abstractions used to show relative size and elevations of potential development, and do not reflect specific proposals by the applicant. These building forms are placed within 10 feet of the street right of way as required by B-5b zoning and are drawn 100 feet deep, as shown on the applicants conceptual master plans. Dashed-line roof top shapes are shown above the building height maximums representing mechanical parapets and apparatus as may typically be found on a modern office structure.

The profile drawings also show the intersection of existing and proposed zone lines. Existing forest cover is not depicted but should be considered when using this material.

b. Gateway Architecture

One of the outcomes of the previous workshops is the general agreement regarding the importance of the subject parcel as a gateway to the city. Members of the public

expressed desire to see some type of design guidance and these comments were reflected by some members of the Board.

The B-5b zone, as proposed, will help to ensure an urban presence by requiring building placement near the street. Additionally, development in the B-5 zones is subject to the following standards from the City's Design Manual:

Development located in the B-5 and B-5b zones shall meet the following additional standards:

- a. *Shared infrastructure: Shared circulation, parking, and transportation infrastructure shall be provided to the extent practicable, with utilization of joint curb cuts, walkways, service alleys, bus pull-out areas, and related infrastructure shared with abutting lots and roadways. Easements for access for abutting properties and shared internal access points at property lines shall be provided where possible to facilitate present or future sharing of access and infrastructure.*
- b. *Buildings and uses shall be located close to the street where practicable. Corner lots shall fill into the corner and shall provide an architectural presence and focus to mark the corner.*
- c. *Buildings shall be oriented toward the street and shall include prominent facades with windows and entrances oriented toward the street. Uses that include public access to a building or commercial/office uses in mixed-use developments shall be oriented toward major streets whenever possible.*
- d. *Parking lots shall be located to the maximum extent practicable toward the rear of the property and shall be located along property lines where joint use or combined parking areas with abutting properties are proposed or anticipated.*

Source: City of Portland, Maine Design Manual, adopted May 11, 2010

The Board did not express clear direction that additional design review was warranted, but there was a significant discussion regarding the importance of the site and the desire for enhancing the gateway experience entering the city.

C. Development Considerations

While the applicant's development plans are not before the Planning Board at this time, the following issues will be important factors to consider should the proposal move forward. The comments below are informed by the Conceptual Master Plan (Attachment F) understanding that the applicant is not held to this plan and no approvals are granted or implied during the rezoning review.

Urban form: The applicant will be encouraged to minimize the amount and appearance of surface parking visible from West Commercial Street. The applicant will be asked to explore the extent to which the positive context of the Star Match Company can be enhanced through new building placement, scale and design.

Number of Curbcuts and Traffic Management: West Commercial Street is often congested during peak hours. The applicant will be asked to minimize entrances onto the street and may need to participate in off-site traffic improvements for intersections impacted by the development. The intersection of Beach Street (access to the Casco Bay Bridge) and West Commercial Street will likely require improvements independent of new development in the area and a traffic signal has been considered for some time.

West Commercial Street Trail: The City has previously planned and approved concepts for a multiuse trail connecting the Fore River Parkway to the Harbor View Park at the Casco Bay Bridge. While one concept, the “off street alignment” is located on the subject parcel and is not depicted on the applicant’s Conceptual Master Plan, the “on-street alignment” has been incorporated along West Commercial Street. The applicant has expressed an openness to consider additional secondary off-street trails depending on future development. Staff will continue to work with the applicant to formalize trail planning for the area.

Stormwater infrastructure plans: The City will in the future need to construct significant stormwater infrastructure in the West Commercial Street area. Staff will work with the applicant to ensure that the proposed development and the City’s plans are complementary.

IX. Zoning Policy and Comprehensive Plan Analysis:

The proposed zone map amendments represent a significant change for the West Commercial Street area. Board members are directed to the applicant’s submittal, Attachment B-2, for their analysis of applicable policies. The policies informing the proposed amendments are found in the following documents:

- Purpose statements of the subject zones
- City’s Comprehensive Plan, specifically the Future Land Use Plan, 2005
- Housing: Sustaining Portland’s Future , Housing Plan for the City of Portland, 2002
- Waterfront Alliance Recommendations to the City of Portland, 1992

The three implicated zones are current zones, WPDZ and the R-4, and the proposed B-5b.

WPDZ Origins, Purpose and Place in the Future Land Use Plan

The Waterfront Port Development Zone originated with the *Waterfront Alliance Recommendations to the City of Portland*, 1992 report. The Waterfront Alliance formed in the aftermath of the 1987 moratorium on non-marine use on Portland's waterfront. The Alliance was, and is, a diverse group of property owners, business owners and advocates working to establish policies protecting working waterfront uses, while promoting sufficient economic activity to support marine infrastructure and industries.

The policies of the report summarized in its preamble, excerpted below:

PREAMBLE

Our recommendations are based on the recognition that as a working waterfront, Portland Harbor should be a regional economic force that supports local economies through jobs and tax revenues.

Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long-term growth. Measures to promote diversity include zoning, as well as economic assistance and partnerships between private and public interests.

In order to maintain and expand the Port as a working waterfront for the enjoyment and economic benefit of all, the Waterfront Alliance recommends the following measures be taken:

1. Preserve the entire perimeter of the Harbor from Tukey's Bridge to the Veteran's Memorial Bridge for berthing.
2. Recognize that property with direct water access is limited and should be reserved exclusively for marine use.
3. Allow marine compatible use of other property that does not interfere in any way with the activities of water-dependent users.
4. Divide the waterfront into four zones that reflect the type of berthing or land use that each zone can accommodate.
5. The Alliance believes that the City should renew its commitment to promoting public access to the Port for the benefit and enjoyment of its citizens and continue to insure ecological safety through the promotion of environmentally sound practices.

The 1992 report established four sub-areas that became the basis for the current zones established along the waterfront. The report additionally established policies for each area that formed the basis of adopted zoning text. The 1992 policies and application map for the WPDZ are as follows:

PORT DEVELOPMENT ZONE

Port Development Zone Purpose Statement:

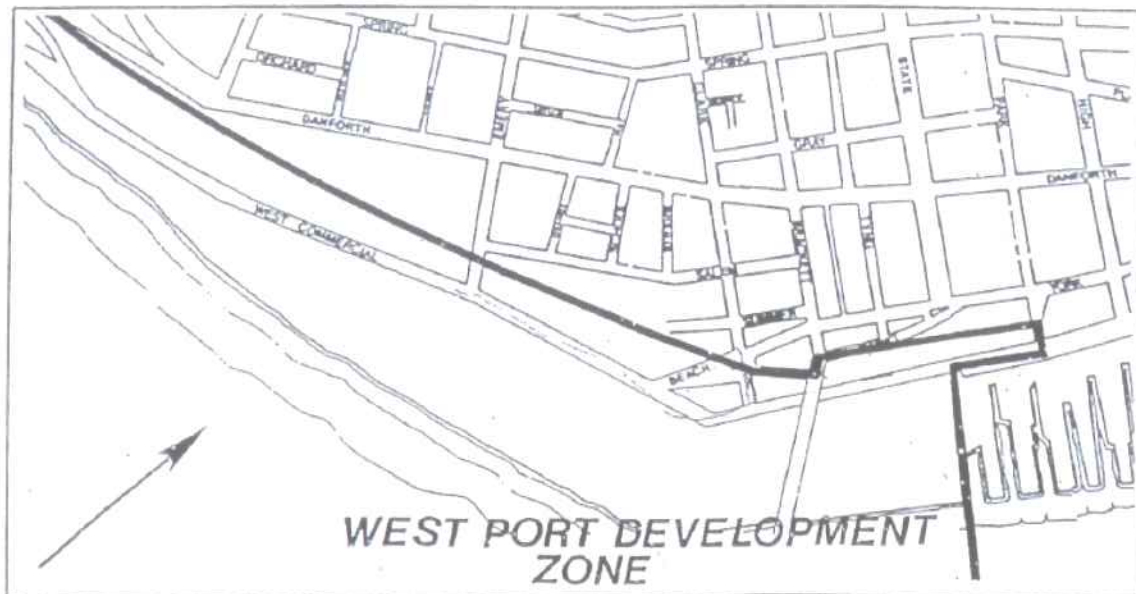
Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to insure the continued viability of the Port of Portland, ME. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those which are dependent upon access to deep water and contribute to port activity.

Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development.

(See the Pringle Amendment attached for clarification.)

PORT DEVELOPMENT WEST ZONE GEOGRAPHIC DESCRIPTION: Generally the land east of Veterans Memorial Bridge to the south side of State Street Wharf and all land west of the Million Dollar Bridge.



The Comprehensive Plan's Future Land Use Plan and the WPDZ purpose statement quote the Waterfront alliance text verbatim. The Future Land Use plan additionally adds the following zone summary:

"The (WPDZ) permitted uses include marine related uses, such as marine repair services, harbor and marine supplies, shipbuilding, cargo handling facilities, boat repair yards, marine construction and salvage, and marine pollution control facilities. The permitted commercial uses include intermodal transportation facilities principally serving vessels with regular scheduled destination service, warehousing

of goods awaiting shipment by cargo carriers, and marine cargo container maintenance and repair. The only dimensional requirements are a 5 foot setback from the pier line and a 45 foot building height limit.”

The Future Land Use Plan did not anticipate changes to the WPDZ as of its writing.

In Attachment B.2, the applicant notes that the focus of the WPDZ is directed to properties with direct access to deep water. Board members will note that the Waterfront Alliance sub area map (above) and adopted zone map both include the parcels on the land side of West Commercial Street despite their lack of water access. This apparent inconsistency likely reflects the historic ownership patterns for the area as rail entities held large parcels on both sides of the street. The inclusion of the subject parcels reflect a desire and policy direction promoting larger scale industry for these parcels where significant land-side support would be needed for marine enterprise. With the Portland Terminal Company now selling the landside portions of their holdings, the Planning Board and the City Council are asked to question the relationship between the water-centered language of the policies and the lack of water access on the subject parcel.

R-4, West End Residential Zone and Housing Policy

The Western Prom neighborhood exhibits a mature development pattern and the subject parcels are some of the largest vacant tracts existing within the R-4 zone. The R-4 zone is specifically drafted for application to the Western Promenade neighborhood as a means to promote compatible development and protection of its unique character. The Future Land Use Plan summarizes the zone’s purpose and policies as follows:

“The intent of the zone is to preserve the unique character of the Western Promenade area of the city by controlling residential conversions and by allowing the continued mix of single-family, two-family, and low-rise multifamily dwellings and other compatible development at medium densities. Single and two-family dwellings are permitted along with single-family manufactured housing, except in National Register Historic Districts. The residential conditional uses listed under R-4 include sheltered care group homes, alteration of an existing structure to accommodate one or more units, and multiplex development (building with 3 or more units). Other conditional uses include schools, churches, and day care facilities. The minimum residential lot size is 6,000 square feet in the R-4 zone and a multiplex (3 or more units) requires a minimum of 9,000 square feet with 3,000 square feet per unit. The minimum lot area per unit may be reduced by 20% for special needs independent living units. Potential text amendments will be considered to update the residential zones in conformance with the recommendations of Housing: Sustaining Portland’s Future. Neighborhoods are encouraged to address the city’s housing issues through the Neighborhood Based Planning Process. “

The practical implications of conversion of portions of the R-4 to B-5b in this area are difficult to determine due to the isolated nature of the site. The topography described above makes access to the R-4 sections of the site (proposed for amendment) practically impossible from West Commercial Street. Access from Danforth Street is limited by the fully developed nature of the street and access from Emery Street and Salem Street is also challenged by topography.

The City's Housing Plan, the 2002 Sustaining Portland's Future supports housing development opportunities on the Portland peninsula as a means to retain the City's position of a population center for the region. The R-4 is a relatively low density zone, with requirements for 3000 square feet of land per dwelling unit, suggesting that the 2002 housing plan's goals for increased density are supported by the B-5b zone, which allows a significantly higher density of dwellings (60 units per acre.) The Housing Plan, however, balances the call for density with the goal of maintaining and enhancing the livability of neighborhoods. Neighborhoods should be protected against inappropriate intrusion by commercial activity and development that is out of scale with the character and traditional development patterns of existing neighborhoods.

While the applicant's Conceptual Master Plan shows access from West Commercial Street only, the Board may want to explore with the applicant the rationale for rezoning the rear of the property and whether B-5b type development is anticipated toward the top of the slope.

B-5b, Urban Commercial Mixed Use Zone

As noted above, the B-5b currently exists on the directly abutting West Commercial Street property. The zone allows a wide variety of uses and is described in the Future Land Use Plan as follows:

"The purpose of the B-5 and B-5b zones is to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. The B-5 and B-5b zones are characterized by larger underdeveloped lots with great potential for denser, clustered, urban mixed use development and more efficient reuse of existing land and buildings.

It is anticipated that such denser, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management, and driveways. The B-5 zones permit a wide array of business, low impact industrial, marine, residential, public, institutional, and other uses. Dimensional requirements are as follows: there is no minimum lot size requirement; it allows 100% maximum lot coverage; a maximum residential density of 60 units per acre is possible; and a maximum building height of 65 feet is allowed. B-5b requires that building be setback from the street no more than 10 feet. "

The B-5b is well suited to this area and the major policy implications appear to be more centered on the retreat from the existing zones than the application of the proposed zone. The Board and Council are asked to find that the existing zones are less supported by policy and realistic development expectations than the B-5b: the WPDZ due to lack of water access, and R-4 due to lack of developability caused by isolation and topography.

An important factor to consider in the B-5b zone is the requirement that buildings are located within 10 feet of the street right of way, which given the topography of the subject site, will encourage concentration of activity and development toward West Commercial Street and away from uphill neighbors.

X. Staff Recommendation

Based on analysis of the site, the Board's discussion, the applicant's submission and a review of relevant City policy documents, Planning Staff recommended to the Board that proposed zoning map and text changes are consistent with the Comprehensive Plan and suggested a positive recommendation.

XI. Board Recommendation

Following three workshops, including a well-attended public site walk, and a Public Hearing, the **Board voted unanimously to pass** the following Motions:

Zone Map Amendment:

Based on the applicant's submission, analysis of the site, public testimony, material, information in Planning Board Report #2-12, and other information, the Planning Board **recommends** that proposed zoning map changes (attached) **are** consistent with the Comprehensive Plan and further **recommends** their adoption to the City Council.

B-5b Building Height Text Change:

Based on the applicant's submission, analysis of the site, public testimony, material, information in Planning Board Report #2-12, and other information, and after holding a Public Hearing, the Planning Board **recommends** that the proposed amendments to the Land Use Code, namely *Division 12.6, B-5 Urban Commercial Mixed Use Zone, Section 14-230.4(f), B-5b Building Height Amendments* [attached] **are** consistent with the Comprehensive Plan and further **recommends** their adoption to the City Council.

The Planning Board's workshops and Public Hearing deliberations included a thorough discussion of the proposed changes and issues raised by the public. Two issues that occupied a considerable amount of discussion, but are not reflected in the motions as passed, warrant additional note: design guidelines and working waterfront.

Design Guidelines: The prominent gateway location of the West Commercial Street generated a clear consensus that quality architecture would be critical to the successful development of the J.B. Brown site. A transition from a wooded and vacant rail yard to a developed site will alter and hopefully improve the entry experience for visitors and commuters traveling to the Old Port and Downtown from Veteran’s Bridge and the Fore River Parkway. Some members of the public requested that architectural design standards/guidelines be linked to the rezoning – with specific mention made of the B-3 design standards and the Downtown Urban Design Guidelines. After hearing from the Portland Society of Architects, Greater Portland Landmarks, neighbors, and the applicant, the Board chose not to vote on including additional design review applicable to the subject property or the B-5b generally. Board member Patterson noted specifically that the site plan standards for the B-5 and the “build to street” provisions of the B-5b were adequate to address the core issues.

Working Waterfront: Loss of working waterfront potential was an early discussion point in the Board’s process and the issue was raised again at the Public Hearing by members of the waterfront industrial community. Ultimately, the Board expressed comfort with the rezoning, citing the following reasons:

- The site is not located on the water and does not have water access and is not well suited for deep-water support uses, beyond office-type uses, which are allowed in the B-5b.
- The types of uses allowed under the WPDZ could have greater compatibility challenges than those in the B-5b with the residential abutters.
- There is a large reserve (30-36 acres) of vacant land on the water side of West Commercial Street available to marine industry in addition to the active port uses at the IMT, Cianbro, and Sprague Energy. Even with the re-zoning, there is room for waterfront industry expansion.

The Board did not discuss or frame their support for the JB Brown proposal as precedent for zoning changes on the water side of West Commercial and Board members expressed a hope for expanded waterfront industrial development and employment. Moreover, Board members stressed that JB Brown should make tenants aware that industrial development was a potential future neighbor across the street.

Attachments:

1. Current Zone Text Excerpts: R-4 Purpose Statement; WPDZ Purpose Statement and “No Adverse Impact” clause; and, B-5 complete current text.
2. Public Comment: Letters and Emails. Curtis, 11-5-11; Stone, 11-5-11; Cleaves, 11-6-11; Coyne, Greaf (WENA), 11-6-11; Greaf, 11-6-11; Bloomfield, 11-8-11; Curtis, 11-30-11,

Pringle, 1-4-12; Bessier, 1-9-12; Stone (multiple party email chain), 1-10-12; Coyne, 1-11-12; Hillary Bassett (Greater Portland Landmarks)

3. Amended Zone Map Change
4. Site Topography Map
5. Building Height Sections

Applicant's Submittal:

- A. Rezone application
- B. Written Statements with Comprehensive Plan analysis
- C. Subject Parcel Deed
- D. Existing conditions and survey
- E. Applicant's re-zone map
- F. Conceptual Master Plans
- G. Required Neighborhood Meeting – certification, notes and notice

DIVISION 5. R-4 RESIDENTIAL ZONE*

*Editor's note--Ord. No. 535-84, adopted May 7, 1984, repealed former Div. 5, §§ 14-101--14-104, and enacted a new Div. 6, §§ 14-101--14-106. The result of this action was that this Art. III contained no division designated 5. The editor has, therefore, in agreement with the city, retained the division designation 5. Formerly §§ 14-101--14-104 were derived from Code 1968, § 602.5.A--D; Ord. No. 499-74, § 2, adopted Aug. 19, 1974; and Ord. No. 91-83, §§ 1, 2, adopted Aug. 3, 1983.

Sec. 14-101. Purpose.

The purpose of the R-4 residential zone is:

- (a) To preserve the unique character of the Western Promenade area of the city by controlling residential conversions and by allowing the continued mix of single-family, two-family, and low-rise multifamily dwellings and other compatible development at medium densities.

(Ord. No. 535-84, 5-7-84)

DIVISION 18.5. WATERFRONT PORT DEVELOPMENT ZONE*

*Editor's Note--See the editor's note to division 18 of this article.

Sec. 14-318. Purpose.

Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to ensure the continued viability of the Port of Portland. Uses in the port development zone, while governed by the same performance standards as other industrial zones, are limited to those uses which are dependent upon deep water and which contribute to port activity.

Nonmarine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water-dependent development.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-318.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (b) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

(Ord. No. 168-93, § 2, 1-4-93)

DIVISION 12.6. B-5 URBAN COMMERCIAL MIXED USE ZONE

Sec. 14-230. Purpose.

The purpose of the B-5 and B-5b zones is to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. The B-5 and B-5b zones are characterized by larger underdeveloped lots with great potential for denser, clustered, urban mixed use development and more efficient reuse of existing land and buildings.

It is anticipated that such denser, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management, and driveways.

Sec. 14-230.1. Permitted uses.

The following uses are permitted in the B-5 and B-5b urban commercial mixed use zones:

(a) *Commercial:*

1. Professional, business and general offices;
2. Restaurants and other eating and drinking establishments;
3. Meeting and convention halls;
4. Hotels and motels;
5. Craft and specialty shops, including the on-premises production of handcrafted goods;
6. Retail and service establishments except convenience stores with gas pumps;
7. Theaters and places of public assembly;
8. Banking services, except that any drive-up banking service shall be a conditional use;
9. Laundry and dry cleaning services;
10. Cabinet and carpentry shops;
11. Indoor recreation and family amusement establishments;
12. Intermodal transportation facilities;
13. Off-street parking lots and garages except in the B-5 zoning district between Forest Avenue and Franklin Street surface parking lots shall be considered a conditional use;
14. Cold storage facilities;
15. Lumber and building materials dealers (in existence on date of passage);

16. Major and minor gasoline service stations, as defined in section 14-47. Major and minor gasoline service stations shall be located at least two thousand (2,000) feet from each other;
17. Personal services;
18. Business services;
19. Billiard parlors;
20. Offices of business tradespeople;
21. Miscellaneous repair services;
22. Communication studios, broadcast and receiving facilities;
23. Theaters;
24. Exhibition halls;
25. Indoor amusement and recreation centers.
26. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:
 - a. All applicable provisions of Article V of this chapter shall be met.
 - b. Parking shall be provided in compliance with Division 20 of this Article.
 - c. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
 - d. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.
 - e. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.

(b) *Industrial:*

1. Warehousing and wholesaling;
2. Low impact industrial uses with total floor area of less than ten thousand (10,000) square feet and which meet the performance standards of the I-L zone;
3. Breweries, including associated bottling activities.

(c) *Marine:*

1. Marine products wholesaling and retailing;
2. Marine repair services and machine shops;
3. Harbor and marine supplies and services and ship supply;
4. Reserved;
5. Shipbuilding and facilities for construction, maintenance and repair of vessels;
6. Marine museums and aquariums;
7. Reserved;
8. Boat repair yards;
9. Boat storage facilities;
10. Seafood processing for human consumption;
11. Seafood packing and packaging;
12. Seafood distribution;

(d) *Residential:*

1. Attached single-family, two-family and multifamily dwellings;

2. Handicapped family units;
3. Lodging houses;
4. Combined living/working spaces, including but not limited to artist residences with studio space.

(e) *Public:*

1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures;
2. Museums and art galleries;
3. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces.

(f) *Institutional:*

1. Public or private schools of any type;
2. Clinics;
3. Places of religious assembly;
4. Private clubs or fraternal organizations;
5. Colleges, universities or trade schools;
6. Governmental buildings and uses;
7. Nursery schools, kindergartens, and day care facilities or home babysitting services.

(g) *Other:*

1. Studios for artists and craftspeople including but not limited to, carpenters, cabinetmakers, and silk screeners;
2. Printing and publishing establishments;
3. Accessory uses customarily incidental and subordinate to the location, function and

operation of permitted uses, excluding in the B-5b all drive-up services for retail, banking, or automotive repair uses. In the B-5 zoning district between Forest Avenue and Franklin Street, all drive-up services for all retail or drive-up automotive repair uses are prohibited. In the B-5 zone between Forest Avenue and Franklin Street, surface parking lots shall be considered a conditional use subject to the conditional use section of the B-5 zone.

(Ord. No. 168-93, § 3, 1-4-93; Ord. No. 39-96, § 4, 10-7-96; Substitute Ord. No. 164-97, § 2, 5-19-97; Ord. No. 164-97, § 5, 12-1-97; Ord. No. 80, 12-8-04; Ord. No. 215-04/05, 5-2-05; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 279-09/10, 6-6-11)

 *Editor's Note: The text changes adopted in Ord. No. 215-04/05 Section 14-230.1 (a)8 and 13 and (g) 3 shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.2. Conditional uses.

(a) The following uses shall be permitted as conditional uses in the B-5 and B-5b urban commercial mixed use zones, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority, and further provided that, in addition to the provisions of section 14-474(c)(2), they shall also meet the requirements set forth below:

(1) *Commercial:*

a. Reserved.

(2) *Industrial:*

a. Low impact industrial uses over ten thousand (10,000) square feet provided that they meet the following requirements:

i. Truck loading and access and vehicle parking shall be located in the rear or side yard of

the site where possible.

- ii. Street frontage shall be designed for pedestrian scale or interest.
- iii. Shared infrastructure to the extent practicable, including, but not limited to, service alleys, parking areas, stormwater treatment, public transportation facilities and driveways, shall be utilized.

(3) *Surface Parking:*

- a. In the B-5 zoning district located between Forest Avenue and Franklin Street, surface parking lot provided the following requirements are met.
 - i. No new surface parking lot shall be developed within thirty-five (35) feet of any street except in the case of a property in which eighty percent (80%) of the property frontage has a building within ten (10) feet of the street.
 - ii. No surface parking lot shall be encumbered by lease or other use commitment to an off-site use exceeding a twenty-four month term.
 - iii. For surface parking lots of 20,000 sq. ft or greater in area, lease or other use agreements for surface parking shall not preclude the relocation of such parking for more than a twenty-four (24) month term.
 - iv. Any such parking shall in its lease stipulate that developer/owner reserves the right to relocate said parking or convert surface parking to structured parking as long as the relocated parking is located within a reasonable distance from the use.
 - v. Surface parking shall be laid out in a manner conducive to development of future buildings and/or structured parking.

(4) *Drive Up Banking Services:*

- a. In the B-5 zoning district located between Forest Avenue and Franklin Street, drive up banking services provided the following requirements are met:
 - i. The drive up banking services are attached to a building which houses banking services other than, or in addition to, automated banking machines; and
 - ii. The drive up banking services are attached to a building with a minimum floor area of 20,000 square feet; and
 - iii. Any service window or automated teller machine shall not extend nearer than twenty-five (25) feet to the street; and the site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular or pedestrian circulation or creating hazards to vehicles or pedestrians on adjoining streets; and
 - iv. There shall be no more than a total of two (2) vehicle lanes for both the service window and automated teller machine.

(b) The following use shall be permitted only upon the issuance of a conditional use permit by the Board of Appeals, subject to the provisions of section 14-474 (conditional uses), and any special provisions, standards or requirements specified below:

- (1) Temporary wind anemometer towers, as defined in sec. 14-47, are permitted provided the following standards are met in addition to sec. 14-430:
 - a. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and

- b. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and
- c. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and
- d. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and
- e. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and
- f. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and
- g. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and
- h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to

the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

(Ord. No. 168-93, § 3, 1-4-93; Ord. No. 39-96, § 5, 10-7-96; Substitute Ord. No. 164-97, § 3, 5-19-97; Ord. No. 215-04/05, 5-2-05; Ord. No. 29-09/10, 8-3-09, emergency passage)

*Editor's Note: The text changes adopted in Ord. 215-04/05 Section 14-230.2 (c) and (d) shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.3. Prohibited uses.

Uses which are not enumerated in either section 14-230.1 as permitted uses or in section 14-230.2 as conditional uses are prohibited.

(Ord. No. 168-93, § 3, 1-4-93)

*Editor's Note: The text changes adopted in Ord. 215-04/05 Section 14-230.2 (c) and (d) shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.4. Dimensional requirements.

In addition to the provisions of article III, division 25 of this Code, lots in the B-5 and B-5b urban commercial mixed use zones shall meet the following requirements:

(a) *Minimum lot size:* None.

(b) *Minimum frontage:* None.

(c) *Yard dimensions:*

1. Minimum yards in the B-5 and B-5b zones:

Front setback: None required.

Side setback: None required.

Rear setback: None required.

2. Maximum front yard setback in the B-5b zone: Ten (10) feet.

3. Maximum street setback: In the B-5 zoning district located between Forest Avenue and Franklin Street the following street setbacks shall apply:

- a. Ten (10) feet except for parking structures, public transportation facilities and secondary building components such as truck loading docks, mechanical equipment enclosures and refrigeration units. The setback can be increased more than ten (10) feet if all of the conditions are met below:
 - i. Seventy-five (75) percent of the total building wall length facing the abutting streets shall be setback no greater than ten (10) feet.
 - ii. The increased setback area includes a functional public pedestrian entrance into the building that faces the street.
 - iii. The increased setback is not used for surface parking.
- b. For any new construction on a lot abutting three (3) or more streets, the maximum setback shall apply only to two (2) streets.
- c. Lots having frontage on streets in which the curve of the street frontage precludes a rectangular shaped building along the street line, for purposes of calculating the setback, the average setback of the building from the street line may be used, but in no event shall the average setback along the

length of the building edge exceed an average setback of fifteen (15) feet nor shall the maximum setback exceed twenty (20) feet. The increased setback shall not be used for surface parking, vehicular loading or vehicular circulation.

- d. Additions to and relocations of designated historic structures or structures determined to be eligible by the Historic Preservation Committee shall be exempt from this provision.
- (d) *Maximum lot coverage:* One hundred (100) percent.
 - (e) *Maximum residential density:* Sixty (60) dwelling units per acre.
 - (f) *Maximum building height:* Sixty-five (65) feet.
 - (g) *Minimum building height:*
 - 1. In the B-5 zoning district between Forest Avenue and Franklin Street, within thirty-five (35) feet of any public street, no new construction of any building shall have less than three (3) floors of occupiable or habitable space above the average adjacent grade. This provision shall not apply to:
 - a. Accessory building components such as truck loading docks, mechanical equipment enclosures, refrigeration units;
 - b. Information kiosks and ticketing booths;
 - c. Parking garages;
 - d. Public transportation facilities;
 - e. Additions to buildings existing as of March 9, 2005 provided that the cumulative additions since March 9, 2005 does not exceed 25% of the building footprint on March 9, 2005 except that such restriction shall not apply to those portions of the building addition that are constructed

closer to the street line than the building footprint existing as of March 9, 2005;

- f. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic enclosures and other similar structures; and
- g. Additions to and relocations of designated historic structures or structures determined by the Historic Preservation Committee to be eligible for such designation.

(Ord. No. 168-93, § 3, 1-4-93; Substitute Ord. No. 164-97, § 4, 5-19-97; Ord. No. 215-04/05, 5-2-05)

 *Editor's Note: The text changes adopted in Order 215-04/05 Section 14-230.4 I3 and (g) shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.5. Performance standards.

All uses shall comply with the following standards:

- (a) *Storage:* Any storage of new materials, finished products, or related equipment must be suitably screened from the public way and from abutting properties by a solid fence at least five (5) feet in height, or by a solid evergreen planting strip. All waste shall be stored in covered containers that do not leak or otherwise permit liquids or solids to escape from the container. All food processing waste shall be stored within a completely enclosed structure and if not refrigerated shall be removed from the site in an enclosed container within forty-eight (48) hours of its generation. All enclosed and exterior areas shall be cleaned and sanitized on a regular basis. Outdoor storage of refuse or debris shall be in an appropriate container or located within a designated, screened area.
- (b) *Noise:*

1. *Definitions:*

- a. Tonal sounds are defined as sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time.
- b. Impulse sounds are defined as sound events characterized by brief excursions of sound pressure, each with a duration of less than one (1) second.

2. *Measurement:* Sound levels shall be measured with a sound level meter with a frequency weighting network manufactured according to standards prescribed by the American National Standards Institute (ANSI) or its successor body. Measurements shall be made at all major lot lines of the site, at a height of at least four (4) feet above the ground surface. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ₁).

3. *Maximum permissible sound levels:* The maximum permissible sound level of any continuous, regular or frequent source of sound produced by an activity shall be as follows:

- a. Sixty (60) dBA between the hours of 7:00 a.m. and 10:00 p.m.
- b. Fifty (50) dBA between the hours of 10:00 p.m. and 7:00 a.m., as measured at or within the boundaries of any residential zone.

In addition to the sound level standards established above, all uses located within this zone shall employ best practicable sound

abatement techniques to prevent tonal sounds and impulse sounds or, if such tonal and impulse sounds cannot be prevented, to minimize the impact of such sounds in residential zones.

4. *Exemptions:*

- a. Noises created by construction and maintenance activities between 7:00 a.m. and 10:00 p.m. are exempt from the maximum permissible sound levels set forth in subsection (a)3 of this section. Construction activities on a site abutting any residential use between the hours of 10:00 p.m. of one (1) day and 7:00 a.m. of the following day shall not exceed fifty (50) dBA.
- b. The following uses and activities shall also be exempt from the requirements of subsection (a)3 of this section:
 - i. The noises of safety signals, warning devices, emergency pressure relief valves, and any other emergency devices.
 - ii. Traffic noise on public roads or noise created by airplanes and railroads.
 - iii. Noise created by refuse and solid waste collection, provided that the activity is conducted between 6:00 a.m. and 7:00 p.m.
 - iv. Emergency construction or repair work by public utilities, at any hour.
 - v. Noise created by any recreational activities which are permitted by law and for which a license or permit has been granted by the city, including but not limited to parades, sporting events, and fireworks displays.

(c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments

at lot boundaries.

- (d) *Federal and state environmental regulations:* All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.
- (e) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days, and outdoor storage of any used automotive tires on the premises shall not be permitted.
- (f) *Off-street parking and loading:* Off-street parking and loading are required as provided in division 20 and division 21 of this article.
- (g) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.
- (h) *Glare, radiation or fumes:* Glare, radiation or fumes shall not be emitted to an obnoxious or dangerous degree beyond lot boundaries.
- (i) *Enclosure of uses:* All uses shall be operated within a fully enclosed structure, except for those customarily operated in open air.
- (j) *Materials or wastes:* Any permitted outdoor storage of materials shall be done in such a manner as to prevent the breeding and harboring of insects or vermin, to prevent the transfer of such materials from the site by natural causes or forces and to contain fumes, dust, or other materials which constitute a fire hazard. This storage shall be accomplished within enclosed containers or by one (1) or more of the following methods: raising materials above ground, separating materials, preventing stagnant water, or by some other means. Any areas used for permitted outdoor storage of materials shall be screened from view of any adjoining properties and public rights-of-way. No outdoor storage shall be permitted in the required yard between the front of any building on the site and the street.

(k) *Odor*: It shall be a violation of this chapter to create an odor nuisance.

1. *Determination of odor nuisance*: An odor nuisance shall be considered to exist when ten (10) confirmed complaints occur in an area within two (2) separate twenty-four-hour periods. The ten (10) confirmed complaints must originate from ten (10) different households in an area zoned residential or from ten (10) different individuals in a commercial or industrial facility. The building authority shall only respond to a complainant who confirms that the odor is detectable at the time of the actual complaint. In order to confirm a complaint, the building authority or its designee shall first determine that an odor is detectable in the area of the complaint. The building authority or its designee shall interview the complainant to verify that the detectable odor is in fact the odor that resulted in the complaint. If the complainant verifies the odor as the source of the complaint, then the building authority shall notify the owner or operator of the alleged odor source either in person or by telephone within one (1) working day, with a written confirmation within seven (7) working days of the complaint. In the event that the building authority is unable to contact the owner or operator of the alleged odor source in person or by telephone within one (1) working day, then the building authority shall send written notice to the operator within seven (7) working days of the complaint.

In the event that ten (10) complaints are confirmed as set forth in subsection 1. in two (2) separate twenty-four-hour periods within a ninety-day period, the building authority shall cause a certified odor inspector to investigate any odor complaints received in the next thirty (30) days following the receipt of the tenth confirmed complaint from the second twenty-four-hour period. If the odors remain under the ambient intensity standard as established in this subsection for the next

thirty (30) days, then a new odor nuisance must be established after that time in accordance with the requirements of this section. The certified odor inspector shall do the following in response to a complaint under this section:

- a. Verify that an odor is detectable in the area of the complaint and confirm that it is the odor that resulted in the complaint;
- b. Quantify the intensity of the odor on the eight-point n-butanol intensity scale as defined in regulations promulgated by the director of the planning authority to establish training and technical standards to support this section; and
- c. Track the odor to its source.

When the certified odor inspector determines that a violation has occurred because an odor has exceeded the maximum ambient odor levels set forth in this section, the building authority shall notify the owner or operator either by telephone or in person of the violation within one (1) working day of the violation. The building authority shall confirm this notification in writing within seven (7) working days of this initial notice. In the event that the building authority is unable to contact the owner or operator by telephone or in person within the required time period, then it will send written notification within seven (7) working days of the violation.

Upon receipt of the written notice of violation, the owner or operator of the odor source shall do the following:

- a. Implement odor reduction procedures immediately upon notification by the building authority that the facility has violated this section wherever odor reduction can be achieved by operational or procedural changes at the facility;
- b. Submit to the building authority, within

thirty (30) days of the written notice of violation, an odor reduction plan which is designed to reduce ambient odors attributable to emissions from that source to the maximum allowable intensity for that zone. The plan shall include a detailed summary of the measures that the owner or operator will take to mitigate the community annoyance and estimated dates for completion of those measures. In the event that it will take longer than thirty (30) days to develop the odor reduction plan, the owner or operator of the facility shall submit within the thirty-day time period a schedule for the development of the odor reduction plan. The building authority shall review this plan to determine whether it will be adequate to resolve the odor nuisance in a reasonable time period; and

- c. Implement the plan in accordance with the schedule approved by the building authority.
2. *Ambient odor limits:* The maximum ambient intensity standard for odors generated by uses located in the I-L zone shall not exceed the following levels when the odor is measured in the zone indicated:
- 4.0 in any industrial or business zone for odors resulting from any use in the B-5 zone.
- 3.0 in any residential zone for odors resulting from any use in the B-5 zone.
- (l) *Smoke:* Discharges of smoke shall not exceed opacity percentage of forty (40) percent or number 2 on the Ringelman chart.
 - (m) *Discharge into sewers:* No discharge shall be permitted at any point into any private sewage disposal system, or stream, or into the ground, of any materials in such a way or of such nature or temperature as to contaminate any water supply, or otherwise cause the emission of dangerous or objectionable elements, except in accordance with standards approved by the health authority or by the public works authority.

- (n) *Lighting:* All lighting shall be designed and installed with cut-off fixtures to direct illumination onto the site and to prevent illumination from such fixtures on neighboring properties.
-

November 8, 2011

**Planning Board Workshop
Public Comment on the JB Brown and Sons West Commercial Street Proposal
Provided after the writing of the Planning Board Memo**

November 5, 2011
Mr. Needleman

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We understand that because of the proximity to the historic district this development will require a written analysis from the staff of Historic Preservation.

Thank you for considering these concerns.
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354 Danforth Street
Portland, ME, 04102
699-4074

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I look forward to hearing from you.

Thank you.

Mike Stone
116 Salem Street
Portland, ME
mstone11@maine.rr.com

11-6-2011

From Brad Cleaves

Bill---I totally concur with Michael Stone..please reschedule this meeting.....Bradford Cleaves (122 Salem Street)

From: Michael Stone [mstone11@maine.rr.com]

Sent: Saturday, November 05, 2011 6:05 PM

To: Bill Needelman

Cc: Bill Burbine; Brad Cleaves; Laura Burbine; Jo Coyne; damarshall@portlandmaine.gov; Jeannie Home; Ellen Grant

Subject: Proposed Commercial Street Zoning Change

11-6-2011

From Jo Coyne

Thanks for making this request, Mike. As you know, I'm quite distressed that this workshop would be scheduled for Election Day. I'm also disturbed that the nature of JBB's proposal seems to keep changing, at least in what I read and hear about it. The initial talk of a 3-story office building quickly changed to 3- or 4-story, then to an admission that no specific plans have been made. Rather, JBB apparently needs a quick zoning change in order to close on the property in December, then at some later date a firm proposal for development will be presented but that could be for something very different.

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11-6-2011

From Rosanne Graef

WENA Board

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meeting on September 14 and presented their proposal to us at that time. The agendas for our meetings are posted on the WENA website at www.wenamaine.org and our meetings are open to all those interested in the West End. Increased involvement in the neighborhood associations by local residents would be a good way to prevent these scheduling and sharing issues from unnecessarily becoming a bone of contention. If any of you would like to be put on the WENA mailing list, please let us know at wendneighborhood@yahoo.com.

Sincerely,

Rosanne Graef
WENA Board



Presented at the November 8, 2011 Planning Board Workshop
Constance Bloomfield – homeowner – 380 Danforth St.
In reference to West Commercial St. re-zoning proposal.

SEVERAL OTHER WAYS OF LOOKING AT RE-ZONING THIS LAND

THE B5b - It's a very nice zone for the kind of mixed use development that is intended to make Portland a more urbane and sustainable city. (It is important to note that there is nothing in the ordinance that requires mixed use or shared parking or transit options – it just doesn't make them illegal.) In fact it doesn't make any use specifically illegal. It allows anything from homes to ship building to civic centers.

The developer is showing us an office use plan with large parking areas on the flats. They are totally candid in stating that they don't actually know what they'll do with the land. Because of JB Brown's deep pockets and favorable reputation, many people seem to be fairly confident that they'll aim for something that is not too horrendous. But as you know, zoning does not rely on the good will of present owners, nor the common sense of public officials. It addresses to the land – not the quality of the succession of people who own it. We do not have a clue what the future will bring in terms of booms and busts, or changing technologies.

So imagine for the moment that the next generation of JB Brown's leadership is a different cast of characters; or that for one reason or another the land is sold – in 5, 10 or 50 years. UNUM was a reputable old Maine – owned company – it's now based in Tennessee; one person meets an untimely death and Maine Bank and Trust ends up being part of a Delaware-based financial behemoth. Whoever owns this land on West Commercial St., as it is proposed to be re-zoned, can rip out the vegetation, build virtually anything they want on 100% of the land and to a height of 65 feet.

We regret some of the past decisions that were made about Portland's built environment; decisions by people no dumber than us and with equally good intentions for the city, but with only a slightly different set of ideas. You have no idea what the future holds; the people who built the houses along Danforth St. would never have imagined that live-in help would disappear – that people wouldn't heat with coal – or that owners would share their house with tenants!

This planning board has temporary guardianship of the city's built environment. If you support this proposal, the next planning board and all the subsequent ones after you will be unable to stop this site from being developed or re-developed for the next generation of Lowe's or SuperWalmart – maybe even a casino. This is NOT a proposal to build some office buildings – it is a proposal to cover 8 to 10 acres of wooded hillside with a block of impervious material 65' high. That kind of development here is only inconceivable if it is illegal. And that is up to you.

Look at the other B5's: first of all, none of them abut an historic district. The one incorporating the Shipyard Brewery is small, and is not relevant to this situation (although a really big brewery would be a permitted use here). The B-5 that adjoins a portion of this land, is also owned by JB Brown, and has been developed for years - with the historic Star Match buildings – that should be land marked, but aren't. (There is no reason whatsoever that common ownership leads to a common zone.) Further east is the Rufus Deering B-5 site – also already developed and not abutting a residential area. In fact, the only other comparable B5 on the Peninsula is along outer Marginal Way; it abuts a light industrial area and a B7 zone. Even though re-zoning this West Commercial St. site is inevitable and probably makes sense, the B-5, as it is currently written, is not a very nice zone for this particular parcel.

Actually I think a variation on the OP (office park) zone is more appropriate to this site – strange as that seems. The OP was created to deal with a forested leftover piece of land with significant terrain challenges and neighborhood issues. It requires a clustered site plan that retains vegetation and landscape. It allows a 55' height. The only way it is a mis-match for this area is its requirement for a significant front set-back. But as you know, the ordinance can be altered to require minor changes for specific locations – as the B-5 does for parking issues in certain locations. So please consider an OP –b or x,y,z. It makes a huge amount of sense.

But, if you are inclined to permit the B-5 with its 100% lot coverage of a large wooded parcel abutting an historic district, I hope you consider a height reduction to 50' – which as you know, accommodates 3-story office buildings and all the other uses contemplated by this zone – including the next version of Bed, Bath and Beyond.

Now I'd like to address the R-4 on this site, much of which this proposal eliminates. (One has to wonder why this developer says its intention is to build on the flats – but then wants permission to build on the hillside). At the western end of the site, the narrow strip of R-4 is proposed to be entirely eliminated. This is truly unfortunate as the abutting houses are among the oldest in the historic district and are already doubly compromised by the curving of Commercial St. and the gradual reduction in elevation of Danforth St. as it goes west.)

There is only one solid argument that the developer can make for destroying the R-4 district and that is that this portion of the property is too steep and inaccessible -- undevelopable as R-4. I believe that that is no longer entirely true. Originally there were two, maybe three active rail lines below it in the WDZ – definitely not the right side of the tracks for the type of houses that were built along Danforth St. back then. As an undeveloped remnant of R-4 it buffered the substantial houses along Danforth St. from the once-noxious uses that lined the waterfront. But the rail lines have been gone for decades. And this parcel has been in the hands of a group that has had no interest in any form of development on the land.

As you know, in the last boom, vacant lots all over the West End were snapped up as building sites; so it is not so weird to imagine houses here. I'm asking you to deny the developer the opportunity to grab this long strip of R-4.

If the steep and presently inaccessible R-4 is not developable as an R-4, why is it suddenly developable as B-5? This doesn't make sense. If it is actually truly is undevelopable, then why not make it a dedicated habitat area? The only reason to allow JB Brown to grab the R-4 is because it permits 100% lot coverage, offers no vegetation protection and allows the 65' high rear end of buildings to face an historic district. Why might that be a good thing? Only because it makes the land potentially more valuable to them.

That is not a reason for a zoning change. Zoning "is enacted for the purpose of decreasing congestion in streets; securing safety from fire, panic and other dangers; providing adequate light and air; preventing the over-crowding of land; avoiding undue concentration of population; facilitating the adequate provision of transportation, sewerage, schools, parks and other community facilities and utilities; thus promoting the health, safety, convenience and general welfare of the citizens of the city. This article is made with reasonable consideration, among other things, to the character of each zone and its peculiar suitability for particular uses and with a view to conserving and stabilizing the value of property and encouraging the most appropriate use of land throughout the community."

Now in what way does allowing a wooded hillside to be entirely plastered with a shopping center, brewery or yet another office complex meet these standards?

The Code doesn't say anything about making more money for property owners, but it does speak of conserving and stabilizing the value of property. The value of this West Commercial Street property is what JBBrown is willing to pay for it; that value is going to increase no matter how you re-zone the land. I believe you need to focus on conserving the character and value of the perimeter of the West End Historic District.

If it were up to me, which it is not, I would keep the R-4 where it is reasonable; establish a habitat zone or deed restriction covering the woods and go for B-5 on the flats.

I hope you will take a field trip as you consider the proposal. I hope you will also require a complete assessment of the land – including the actual zone boundaries and topography which vary among these maps. Please visit my house and lot. I will show you our back line and you can marvel at the damaging effect of this proposal on the stability of the hillside as well as on the value and character of the historic district.

Thank you.

Constance Bloomfield, presented at Planning Board Workshop, 11-8-11

November 30, 2011

Mr Needleman,

I am the owner of the home at 354 Danforth street and I am supportive of reasonable development on Commercial Street. I prefer to think of myself as a RIMBY (Reasonable In My BackYard) rather than a NIMBY. I was discouraged to see so prominently the Lift at 65 feet on November 22. If the rezoning occurs as presently proposed, the permitted buildings would substantially disturb the view and residential feel of our neighborhood.

I consider the view from our home a privilege not an entitlement. I respect that

you and the Planning Board have many issues to consider. To the extent that the view from Danforth Street is of any significance, please know that this resident finds that it will be negatively affected by development of the scope permitted by B-5b.

Thank you for listening

Sincerely
Michael Curtis
354 Danforth Street
Portland ME 04102

November 8, 2011

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The Code doesn't say anything about making more money for property owners, but it does speak of conserving and stabilizing the value of property. The value of this West Commercial Street property is what JBBrown is willing to pay for it; that value is going to increase no matter how you re-zone the land. I believe you need to focus on conserving the character and value of the perimeter of the West End Historic District.

If it were up to me, which it is not, I would keep the R-4 where it is reasonable; establish a habitat zone or deed restriction covering the woods and go for B-5 on the flats.

I hope you will take a field trip as you consider the proposal. I hope you will also require a complete assessment of the land – including the actual zone boundaries and topography which vary among these maps. Please visit my house and lot. I will show you our back line and you can marvel at the damaging effect of this proposal on the stability of the hillside as well as on the value and character of the historic district.

Thank you.

Constance Bloomfield, presented at Planning Board Workshop, 11-8-11

November 30, 2011

Mr Needleman,

I am the owner of the home at 354 Danforth street and I am supportive of reasonable development on Commercial Street. I prefer to think of myself as a RIMBY (Reasonable In My BackYard) rather than a NIMBY. I was discouraged to see so prominently the Lift at 65 feet on November 22. If the rezoning occurs as presently proposed, the permitted buildings would substantially disturb the view and residential feel of our neighborhood.

I consider the view from our home a privilege not an entitlement. I respect that

you and the Planning Board have many issues to consider. To the extent that the view from Danforth Street is of any significance, please know that this resident finds that it will be negatively affected by development of the scope permitted by B-5b.

Thank you for listening

Sincerely
Michael Curtis
354 Danforth Street
Portland ME 04102

you and the Planning Board have many issues to consider. To the extent that the view from Danforth Street is of any significance, please know that this resident finds that it will be negatively affected by development of the scope permitted by B-5b.

Thank you for listening

Sincerely
Michael Curtis
354 Danforth Street
Portland ME 04102

ANNE B. PRINGLE

44 Neal Street Portland, ME 04102-3527 207/774-0437
oldmayor@maine.rr.com

January 4, 2012

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

Re: Rezoning Request - J.B. Brown

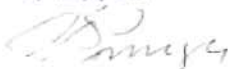
Dear Chair Lewis and Members of the Board:

As many of you know, I have been involved with waterfront zoning policy and its evolution for almost twenty years. In particular, as a sitting Councilor, I took a leadership role in the Council's debate on the comprehensive, post-referendum zoning changes passed in early 1993. I am totally committed to preserving the economic value and potential of our working waterfront and have consistently cautioned that any incremental zoning changes consider carefully their impact on that potential.

That said, I am personally comfortable with J.B. Brown's request to rezone the land side of the Port Development Zone on West Commercial Street to B.5 b. I do not believe that the land-locked parcel is essential to the future of the working waterfront, given the size of the large parcel across the street, adjacent to deep water. Based on the site walk and extensive public comment in workshops, the details of the B.5 b provisions should, however, take into account issues raised by nearby residents regarding context, height, massing, design standards, etc.

Finally, in making this zoning change, I suggest that the Planning Board note on the record, in strong terms, that this change is in response to the unique character of the land locked parcel and in no way signifies any receptivity to entertaining a zoning change on the deep water parcel that will remain in the PDZ. In the first workshop, several members expressed a commitment to protect the working waterfront and I think the Board should reinforce this commitment with an explicit vote, so its policy intent is clear to the Council and the public.

Very truly yours,



January 9, 2012

Dear Alex,

Please forward my letter to the Planning Board and concerned persons.

Thank you for taking the time to review the request from JB Brown to rezone the area on Commercial Street.

This parcel of land is one of the most important left in Portland, because it is located in a key gateway to our city. It is also one of the last green spaces left in the city. For these two reasons it is very important to the future of Portland that the development of the land reflects our community's aspiration for the wonderful city we choose to live in and hope will continue to attract a diverse and creative population. We need an innovative development that reflects those aspirations.

We do not think JB Brown has presented a strong enough argument to rezone this area to B-5B, which carries almost no design standards and heights of 65 feet. The proposal to allow a zoning with no design standards and such tall heights does not secure the quality of life or paced development that makes Portland special. Our city deserves an elegantly scaled and welcoming gateway that suits the entrance to our historic and working waterfront and Old Port. As you consider this rezoning please be mindful of scale and design and the impact this rezoning will have on the future of Portland. Is there a way your committee could include design standards and height limitations to assure it is a development we are proud of?

Mark and Aimee Bessire
314 Danforth Street
Portland, ME 04102

January 10, 2012

Dear Mr. Needelman,

My name is Mike Stone. I am a resident of 116 Salem Street.

If you wouldn't mind, please take a few minutes of your day to read the few emails below concerning my thoughts on the proposed JB Brown development of the Commercial Street land from the Star Match building to Benny's. The email string begins (below) with my message to Vin Veroneau on 1/6. As my work and travel schedule doesn't allow me to conveniently attend workshops and Planning Board meetings, email is my only way to communicate my opinion and concerns regarding this proposed development.

I stand firm in my position Mr. Needelman, that while I am not opposed to the development of the land from the Star Match building to Benny's, I am, however, very strongly opposed to a height of any structures exceeding 45'. This land has been vacant for a very long time. This end of Commercial Street is the gateway to our waterfront and Old Port district...a destination that our City is very proud of. I also very strongly feel that we have an extraordinary opportunity here...to create something that will be an attractive and acceptable precedent for future development in the West Commercial Street area. It's safe to assume that the land on the opposite waterfront side will one day also be developed. Let's start the development of this area with very thoughtful consideration for the present and the future.

Thank you for taking the time to review these comments. Please feel free to enter my comments in the record of public opinion concerning this matter.

Sincerely,

Michael P. Stone
116 Salem Street

On Jan 9, 2012, at 6:41 PM, Michael Stone wrote:

Jo, et al,

Just getting to Jo's emails of today.

I did not send my email of January 6th to the Planning Board. And yes, I will not be able to attend the 3:30 workshop meeting on January the 10th due to work. Nor will I be at the public hearing on January the 24th. I will be in Colorado for a week-long training session.

Although I have not been able to attend the meetings, I do, of course, have a great deal of interest in the development of the Commercial Street property between the Star Match building and Benny's. In your earlier email today Jo, you indicated that JB Brown has compromised on the zoning request from 65' to 55' for the section of the land running from Fletcher to Emery Streets. Yet, (as stated) JB Brown has agreed to a height of 45' from Valley to Fletcher.

My initial reaction to this is inconsistency. That is, why shouldn't the height requirement be a consistent 45' for the whole parcel? As I stated in my 1/6 message, I am opposed to any form of development that would disrupt what is very important to all of the neighbors who surround the land. Without understanding the rationale of the 55' compromise, I would question if this would satisfy the issues at hand (i.e. impacting views, disrupting the banking and impact on property values.) Let's not forget that with any building height, there is the equipment that sits on top of the building, i.e. heating, HVAC, etc.

This is a relatively long piece of property. It would seem to me that JB Brown could develop a fairly good size building or a couple of buildings on the site...something on the concept of "long

and low." If not mistaken, a 45' high building would provide for three or four floors of office space. That would appear to be a fair amount of space. How much more office space do we need in Portland? There seems to be an awful lot of vacant office space in the Greater Portland area now. I'm sure someone has looked at these statistics. This should be a factor in this whole process.

Unless I can be totally convinced otherwise, I would continue to support the 45' height for the entire piece of property from the Star Match building to Benny's.

If any of my neighbors would like to chime in on this important issue, please feel free to do so. If so, please respond to everyone.

My thanks,

Mike Stone

On Jan 9, 2012, at 2:12 PM, Jo Coyne wrote:

I don't know whether Mike sent his letter to the Planning Board. I'll copy this to him as a suggestion. Mike said the 3:30 start time probably will make it impossible for him to attend the workshop but I believe he's hoping to attend the public hearing on January 24. I just called City Hall to confirm the Jan 24 time and place. Planning said no details were available yet but I believe it should start at 7 p.m.

----- Original Message -----

From: [Anne Pringle](#)

To: [Jo Coyne](#)

Cc: [Constance Bloomfield](#) ; robertsonsonia@hotmail.com ; [Peter Plumb](#)

Sent: Monday, January 09, 2012 1:59 PM

Subject: Re: Fw: Commercial Street Project

Wow, what a thoughtful letter from Mike Stone. Has he sent this to the Planning Board?

Can he come tomorrow to to the public hearing on 1/24?

Anne

On 1/6/12 5:07 PM, Jo Coyne wrote:

Thought you might enjoy reading Mike Stone's letter and (especially) Vin Veroneau's response.

----- Original Message -----

From: [Vincent Veroneau](#)

To: ['Michael Stone'](#)

Cc: ['Jeannie Home'](#) ; ['Bill Burbine'](#) ; ['Laura Burbine'](#) ; ['Jo Coyne'](#) ; ['Brad Cleaves'](#) ; ['Ellen Grant'](#)

Sent: Friday, January 06, 2012 4:25 PM

Subject: RE: Commercial Street Project

Dear Mike,

Thank you for sharing your thoughts and perspectives on the area. I also grew up in Portland (between Forest Ave & Baxter Blvd) and now live in Deering Center. I remember riding my bike in 1976 to the West Commercial Street tracks to visit the Freedom Train, but I won't wreck your dinner by telling you about my memories of Back Bay growing up!

We certainly want to try to develop the land in a way that is respectful to both the neighbors and the entire Portland community. It's rarely easy and sometimes messy, but with open communication and reasonable expectations I've found common ground is usually found. To that end and in light of the comments from last evening's meeting, we are reevaluating more closely the 65' height that would be allowed if the property were to be rezoned to B5b. As you know, based on previous discussions and public comment the height would be limited to 45' from Fletcher Street heading west. The 65' height in the area between Emery and Fletcher is the section that we are looking at further. I hope to have a clearer idea of things by Tuesday's meeting. Thank you again for your comments and interest.

Regards,

Vin Veroneau

From: Michael Stone [<mailto:mstone11@maine.rr.com>]

Sent: Friday, January 06, 2012 8:32 AM

To: veroneau@jbbrown.com

Cc: Jeannie Home; Bill Burbine; Laura Burbine; Jo Coyne; Brad Cleaves; Ellen Grant

Subject: Commercial Street Project

Dear Mr. Veroneau,

My name is Mike Stone. I am a resident at 116 Salem Street. My house is the next to the last at the dead-end of Salem Street. Unfortunately, I was not able to attend the neighborhood meeting at Reiche School on January 5th. I do want to thank you and your team for holding this meeting. As you can well imagine, any development on the stretch of Commercial Street from the Star Match Building to Benny's is of great interest to the residents (above) along Danforth Street as well as those of us on Salem Street and others surrounding the vacant land.

I, of course, am one of the interested parties. If I may, let me give you a little history from the perspective of a long-time native of the area. I grew up on Danforth Street...just above my current Salem Street home. I was around when the (proposed) land was very active with freight cars from Maine Central Railroad. In fact, as children, we referred to it as the "car grounds."

When there were few or no freight cars parked on the site, we used to play ball there.

Occasionally we were driven off by railroad personnel!! The land across the street from the JB Brown proposed land was a working waterfront. We all grew up with the railroad cars and ships that docked to load or unload freight. Four large cranes were on the docks to accommodate the loading and unloading. Longshoremen would come and go at all hours of the day and night.

There was a walking bridge built from Commercial Street (over the railroad tracks) part way up to the end of Emery Street as a passageway for the longshoremen to come and go to their homes at the surrounding streets. It was certainly a very busy waterfront hub at the time. And then sometime in the 60's all that was gone. Since then, all of the neighboring residents (Danforth, Salem, etc) have enjoyed the peacefulness, the views and the non-disruption of the banking up from the JB Brown property. This has provided a very desirable attraction and quality of life for all of us...not to mention, the very important property values that we all want to preserve.

However, I (and I'm sure my neighbors) have waited and wondered what development would eventually occur on any of this long-term vacant land.

In August of 2004, I moved into my current Salem Street home after my father passed away. We had moved to this house when I was in high school. My folks had owned the house for about forty years. (I will turn 60 this year.) My decision to renovate and move into the house stemmed

from the fact that I love the area, the relative peacefulness, the views and the proximity to the downtown Portland area where I've worked all my life. I, like my neighbors, want very much to preserve as much of what we have that has attracted us to want to live here.

I am not familiar or by any means an expert with all of the codes that allows certain types of development. As I understand, the land from Emery Street east to the Star Match building is zoned to allow a development height of 65 feet. I also understand that this does not include any "equipment" that would sit on top of a proposed building...i.e. heating, HVAC, etc...making it high than 65 feet. Yet, as I also understand, it would be proposed that the land from Emery Street west to Benny's would be zoned for a development height of 45 feet. Please correct me on any of this if I'm wrong in my interpretation.

As we all know, the Star Match building has been there for many years. It's certainly a unique building (size and shape), but with all of the attention it's been given over the years, it has maintained that certain historical charm that is conducive to the Portland waterfront setting. And, as we all know, pertaining to height and other site considerations, it is grandfathered. Quite frankly, it's a neat old building...much like all of the old preserved buildings on Commercial Street.

So now, my thoughts on any proposed development. I am not opposed to development on the proposed site. It's inevitable. I am, however, opposed to any form of development that would disrupt what is very important to all of the neighbors who surround the land. Had I been at the meeting at Reiche, like many others, I would have raised my hand in support of a building of no more than 45 feet.

I implore you to seriously consider all of the factors and concerns brought forth by the neighbors...now and as this project moves forward. If you haven't already done so, walk the (*entire*) area to gain the same perspective we all have to understand where we are coming from. Consider all of the properties on Danforth and Salem Streets, etc. All have historic significance to the area that must be preserved. Look to developing the site in a way that makes sense to everybody. That is, something that fits into the site that doesn't impact views, disrupt the banking and impact property values. Something that (perhaps) looks like it's been there for a long time...like the other fine old buildings on Commercial Street. Don't make it something that we all have to look at when we are enjoying our back yards or would see if we look out our windows. Think as we do...if I were to sell my property down the road, what might a perspective buyer think if they were looking over the top of an office building?

Let me end at this time with this quote from Frank Lloyd Wright. "No house should ever be on a hill or on anything. It should be of the hill. Belonging to it. Hill and house should live together each the happier for the other." I hope you would agree that the words in this quote have meaning to the cause at hand.

Thank you for your time and your respectful consideration.

Mike Stone
207-632-0732
mstone11@maine.rr.com

Jo Coyne
36 Salem Street
Portland, Maine 04102
207.775.3902 / jocoyne@gwi.net

January 11, 2012

Carol Morrissette, Chair
Planning Board
City Hall - 389 Congress St
Portland ME 04101

Dear Ms. Morrissette:

The description of Planning Board activities on the City's website refers to the "increase in public participation in the development reviews" which "has led to positive changes in citizen involvement during the Planning Board workshops and review process, as well as an overall improvement in the quality of development proposals." I'm sure this is true at times. However, if yesterday's workshop is any indication, I doubt many of us involved in the current West Commercial Street rezoning proposal will feel at the end that our participation has been valued.

It was shocking, after strong citizen involvement in three workshops, a site walk and a well-attended neighborhood meeting, to hear so many members of the Planning Board focusing on personal preferences rather than discussing the site and its relationship to the neighborhood. "I like tall, sexy buildings," "I'm fine with height - 65' is not a problem," etc. Despite assurances given at one point that written comments are read, that citizen input is valued and that minds are not made up until after a full, public hearing, I heard little acknowledgment of neighbors' concerns. Even though I'm sure the minutes were shared as required, the only reference to the neighborhood meeting was a question as to whether it had taken place.

I was disappointed that the Danforth Street neighbors agreed to a 55' compromise before the workshop. However, they worried that the Planning Board might still approve 65' and it looks like they were right to be concerned. This is proving to be a hard lesson, especially for residents who are less directly affected by the rezoning proposal but who care very much about the greater neighborhood.

I hope neighbors still will turn out for the public hearing on January 24, despite their discouragement. If they do, I hope they will feel confident that their voices have been heard, not just by one or two of you, but by the Board as a whole.

Yours truly,

Jo Coyne

copies Members of the Planning Board
 Bill Needelman, Senior Planner

Greater Portland Landmarks Testimony on West Commercial Street Rezoning Proposal 1/10/2012

My name is Hilary Bassett and I am here to present testimony on behalf of Greater Portland Landmarks. Our interest in West Commercial Street stems from its importance as a gateway into the city of Portland and link to two of our most important historic districts, the West End Historic District and the Old Port Historic District.

First, I would like to recognize the excellent community engagement and consultation process on this issue to date. Notably, J. B. Brown, and especially Vin Veroneau its President, has done an excellent job in contacting affected neighborhood groups early, meeting in person with neighbors when requested, and following City procedures not just in letter but in spirit in terms of encouraging open dialogue at forums, listening closely and being responsive. Likewise the neighbors and abutters have shown strong interest, participated in good faith and been open to considering reasonable options.

The West Commercial Street area is identified as a Gateway to Portland's downtown in the Downtown Urban Design Guidelines. Landmarks has been interested in this Gateway area for some time, most recently in our advocacy for strong design in the landscaping and amenities associated with the new Veterans Bridge, now nearing completion. The West Commercial Street site is highly visible to thousands as they enter the city.

We would like to propose that the rezoning to a B 5-B zone incorporate the city's "Downtown Urban Design Guidelines" to help steer future development on this parcel. J.B. Brown has been a good steward of the Star Match Building and is clearly proud of its visual and economic contribution to the area. Many greater Portland citizens appreciate the distinctive character and positive impact that these buildings have on the streetscape. A future project that continues the quality of architectural expression represented by Star Match will establish the transition toward the historic core of the Commercial Street waterfront. Requiring the

Urban Design Guidelines in the zoning approval would be a reasonable way to encourage and guide a positive outcome and support the City's urban design goals.

Landmarks would also like to support the proposal to protect the vulnerable embankment area through zoning in the R-4, or other means that prohibit future development there. This area backs onto the Historic District and any construction that encroaches upon it could undermine the houses above. Beyond zoning, ideas worthy of consideration that have been mentioned during the community meetings include offering an easement on the sloped land to prohibit development on it, and inviting Portland Trails to create a trail through the area.

Again, we appreciate the thoughtful process and discussion on this important Gateway to Portland. We encourage incorporating the city's urban design guidelines into any zoning change, protecting the embankment area from development, and promoting the highest quality design for a new building on the site.

Thank you for considering our views.

Portland Society of Architects

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P.O. Box 5321
Portland, Maine 04101
www.portlandarchitects.org

I am Patrick Costin, Vice President of the Board of Directors of the Portland Society of Architects. I am appearing to speak on the issue of attaching design guidelines to the B5b zone considered for West Commercial Street.

PSA has spoken frequently about the inadvisability of using design guidelines to require particular architectural styles and forms in many parts of the city. Not only do the guidelines sentimentalize the past and discourage innovation – they are also entirely open to interpretation and thus contribute hugely to the lack of predictability and delay encountered in getting projects permitted in Portland.

In some cases, like the one proposed by some here, aspects of the design guidelines are just plain inappropriate. The Downtown Urban Design Guidelines place a heavy emphasis on the design of store fronts, proportions of glass on the ground floor and the separation of ground floor entrances from upper floor access typical of Congress Street and the core of Downtown. While an architect may choose to reference the character of the Star Match Building Complex or the West End Neighborhood at this location – there is little in the guidelines that do either. In fact, the Star Match Complex would probably not be approved if these standards were applied to it. There is especially nothing in the guidelines that would encourage the design of a “gateway” building – these guidelines would actually do the reverse by encouraging something akin to the Forest Avenue Shopping Center, only with the parking in the back and some extra trim fastened on the front.

The West End Commercial Street parcel has great potential. We hope that the developer engages an architect who will be challenged by the beauty and location of the site rather than the challenge of dotting the “I’s” and crossing the “T’s” of guidelines—especially ones that seem to be motivated by fear of change rather than the pursuit of excellence.

The Portland Society of Architects urges you to reject the idea of attaching guidelines to the approval of this zoning change application

Thank you.

William Needelman - West Commercial St. project

From: Christian MilNeil <c.neal.milneil@gmail.com>
To: Bill Needelman <WBN@portlandmaine.gov>, Molly Casto <MPC@portlandmaine.gov>
Date: 1/23/2012 10:41 AM
Subject: West Commercial St. project
CC: <portland-bikeped-comm@yahoogroups.com>, Bruce Hyman <BHYMAN@portlandmai...

Hi Bill and Molly,

I wanted to share a couple of thoughts on the proposed West Commercial St. project before tomorrow's planning board hearing.

As you know, this development would go in right in the path of the proposed West Commercial shared-use path, which is going to be an important regional bike/ped connection between the Casco Bay Bridge, downtown Portland, and the new Veterans Bridge path. I'm hoping that the new bike/ped comp plan will include some rough design guidelines for off-street shared use pathways to help guide the project when it comes up for site plan review.

But in the meantime, I'd like to suggest that new paths in the city (including this one) should follow at least these rough design guidelines, and give the developers a heads up that similar guidelines are anticipated in the city's upcoming comp. plan update:

- minimize the number of driveways and parking lot lanes that the path crosses;
- provide as direct a route as possible, minimizing sharp turns and hill climbs, in order to provide a more convenient route for path users and to minimize construction costs;
- treat shared use paths as other city streets are treated, and require good human-scaled streetscapes along their routes (i.e., quality facades, building entrances located along pathways; minimize the number of parking lots that front pathways).
- Provide convenient connections to adjacent neighborhood streets.

Comparing the applicant's proposed master plan against these guidelines, I'd prefer to see a trail corridor reserved through the middle of the site, running directly behind the proposed buildings - to provide a better streetwall for the path, to provide direct bike/ped access to the buildings, and to avoid the hilly topography at the rear of the site. I also share planners' preference to see the number of driveways and parking lanes consolidated.

I also note that the developer is proposing to build a parking lot inside the city-owned Emery Street right of way. As is visible in the 1950s photos of West Commercial St., this was once the location of a public staircase. It's currently a well-used but poorly maintained goat path through the woods, and with the future arrival of the Veterans Bridge path and the West Commercial path, it could once again become an important connection between the West End and the waterfront. The city should reserve this right of way for bicycle and pedestrian use at a minimum, and possibly for a neighborhood street in the future.

Finally, I'd like to strongly encourage the applicant to take advantage of the city's new parking cash-out ordinance, which could help finance the new trail's construction and right of way acquisition through a reduction in the developers' parking costs and stormwater fees. If the developers donated a 12' right of way for the path through the middle of their site, the fair market value of that donation could easily satisfy the cash-out requirements for at least a dozen parking spaces. It would also be nice if the

Planning Board would also nudge the developer in that direction - given the project's proximity to downtown and the West End, it's likely that lots of workers and visitors to these offices will be arriving by foot or by bike.

I'm hoping we can talk about this project formally in the Bike/Ped Committee at the next meeting, before this project goes to site plan review, so you may hear a more formal response from our group in the future.

Thanks!

-Christian

The Vigorous North:
A field guide to the wilderness areas of American cities.
<http://www.vigorousnorth.com>

We are very disturbed at how this process has been handled by the Planning Board thus far. From the accounts we've heard it appears that some (and perhaps many) of the PB members have not taken the time to thoroughly review the thoughts and concerns expressed by the neighbors, especially those who will be most affected by any proposed development. We hope this is not the case. Also, we don't need to repeat the comments (by a couple of PB members) at the recent workshop. However, we find this completely unprofessional and inconsiderate of the comprehensive thought, time and effort that many have put into this process.

We respectfully request that each PB member review all of the comments (written and verbal) from the residents who have provided input towards this proposal. Not only is this important, but it is critical in the overall decision process. After all, we (the neighbors) have respectfully submitted our thoughts and concerns on different occasions. Not only is it fair, it's the responsibility for the PB to make decisions based on complete data, and not simply what some (or all) may think is simply ok to do.

We have no problem with tall buildings. However, not any place on the parcel of land in question. Although we will not be directly affected by the height, we would caution our neighbors on Danforth Street to not consider a height of anything above 45 feet. The Gulf of Maine building provides a good perspective. With the gable this appears to be the equivalent of a 5-story building. This is potentially what you'd have on the parcel in question. There are many other buildings in Portland that would provide good perspectives as well. In our opinion, the top of any building taller than 45' (along with heating and HVAC units) would be in clear view of that Danforth Street neighbors from their back yards and (perhaps) locations within their homes.

We would highly recommend that the Planning Board members do a complete site visit. That is, from all perspectives. Not just looking up from Commercial Street or down from Danforth Street. We would hope that the Danforth Street neighbors would allow the PB members to enter their back yards to gain this perspective as well.

Personally, we would like to see this land developed....into something that absolutely fits into the existing landscape....without disruption to the residents that surround the property. Our fear is that there would be regrets if something were to be built that adversely affects values, historical perspective and a certain quality of living to the homes that have been there for many years. As I've said before, I feel that we have an opportunity to do this right...not only for the immediate future, but many years into the future. Design and height plays a very important role in the decision to rezone and subsequently build on the parcel. We would really hate to see this whole process result in an "it's too late now" scenario.

The J.B Brown Company is a well-respected long-term institution here in Portland. It's reputation has been guided by the principles set forth by its founder (John Bundy Brown) over 180 years ago. Given the proper guidelines of what is appropriate, we would like to remain confident that they would develop the proposed parcel into something that truly makes sense and blends appropriately into all aspects of the landscape and environment.

We continue to support a rezoning that does not permit any development in excess of 45' on any part of the site from the Star March Building to Benny's.

Respectfully submitted,

Michael Stone and Jeannie Verrando
116 Salem Street

Applicant's Submittal

113-201 West Commercial Street
PROJECT ADDRESS: _____

60-A-1, 60-B-1, 60-E 1, 60-E-4, 60-E-3 60-E-2, 60-A-2, 71-C-2
CHART/BLOCK/LOT: _____

DESCRIPTION OF PROPOSED ZONE CHANGE AND PROJECT:

The applicant seeks a zone change from WPDZ/R-4 to B-5b which will

 better reflect the Purpose Statement§ contained _____ in the Code of

Ordinances for this particular parcel and increase the possibility of its future
CONTACT INFORMATION: _____ development

Applicant – must be owner, Lessee or Buyer Name: Vincent Veroneau Business Name, if applicable: J.B. Brown & Sons Address: 36 Danforth Street City/State: Portland, ME Zip Code: 04101	Applicant Contact Information Work # (207) 774-5908 Home# Cell # 207-838-3397 Fax# 207-774-0898 e-mail: veroneau@jbbrown.com
Owner – (if different from Applicant) Name: Portland Terminal Company Attn: Roland L. Theriault Address: 1700 Iron Horse Park City/State: No. Billerica, MA Zip Code: 01862	Owner Contact Information Work # 978-663-6952 Home# Cell # Fax# e-mail:
Agent/ Representative Name: N/A Address: City/State : Zip Code:	Agent/Representative Contact information Work # Cell # e-mail:
Billing Information Name: Applicant Address: City/State : Zip Code:	Billing Information Work # Cell # Fax# e-mail:
Engineer Name: Thomas Greer Address: Pinkham & Greer City/State: 380 US Route 1 Zip Code: Falmouth, ME 04105	Engineer Contact Information Work # 207-871-5242 Cell # Fax# e-mail: tgreer@pinkhamandgreer.com

- e-plan
 Contact

A.1

Surveyor Name: John Swan Owen Haskell, Inc. Address: 390 U.S. Route One, Unit 10 City/State: Falmouth, ME Zip Code: 04105	Surveyor Contact Information Work # 207-774-0424 Cell # Fax# e-mail: jswan@owenhaske11.com
Architect/Landscape Name: John Mitchell Mitchell & Associates Address: 70 Center St. City/State: Portland, ME Zip Code: 04101	Architect Contact Information Work # 207-774-4427 Cell # 207-831-2091 Fax# e-mail: jmitchell@mitchellassociates.biz
Attorney Name: David Galgay, Esq. Verrill & Dana One Portland Square Address: City/State: Portland, ME Zip Code: 04101	Attorney Contact Information Work # 207-774-4000 Cell # Fax# e-mail: dgalgay@verrilldana.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Binding Purchase & Sale agreement with a closing date of no later than December 19, 2011, but Purchaser will likely close in November.

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.)

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.)

Existing Use: Describe the existing use of the subject property:

Vacant Land

Current Zoning Designation(s):

WPDZ, R-4

A.2

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.

Once suitable tenant(s) are secured, it is the Applicant's intention to develop the land consistent with uses allowed in the B-5b zone.

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'.) Contract and conditional rezoning applications may require inclusion of site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

A.3

APPLICATION FEE:

Check the type of zoning review that applies. Payment may be made in cash or check payable to the City of Portland.

<p>Zoning Map Amendment <input checked="" type="checkbox"/> \$2,000.00 (from WPDZ zone to B-5b zone)</p> <p>Zoning Text Amendment <input type="checkbox"/> \$2,000.00 (to Section 14- _____) (For a 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 as underline (example))</p> <p>Combination Zoning Text Amendment and Zoning Map Amendment <input type="checkbox"/> \$3,000.00</p> <p>Conditional or Contract Zone <input type="checkbox"/> \$3,000.00 (A conditional or contract rezoning map 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, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)</p>	<p>Fees Paid (office use)</p> <p>—</p> <p>—</p> <p>—</p> <p>—</p>	<p>The City invoices separately for the following:</p> <ul style="list-style-type: none"> • Notices (\$.75 each) (notices are sent to neighbors upon receipt of an application, workshop and public hearing meetings for Planning Board and public hearing meeting for City Council) • Legal Ad (% of total Ad) • Planning Review (\$40.00 hour) • Legal Review (\$75.00 hour) <p>Third party review is assessed separately.</p>
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<p>Signature of Applicant:</p>	<p>Date:</p>
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Further Information

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

AH.B

J. B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207
Phone 207-774-5908
Fax 207-774-0898

October 21, 2011

Barbara Barhydt
Development Review Services Manager
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Zone Change – 113-201 West Commercial Street

Dear Ms. Barhydt:

Enclosed please find a zone map amendment application and concept plan from J.B. Brown & Sons to rezone property located on the north side of West Commercial Street. The 11 acre parcel is currently under contract to purchase from the Railroad and is scheduled to close on November 21, 2011. The land is primarily zoned WPDZ with the exception of a strip behind the WPDZ zone that is currently zoned R-4. We are not seeking a zone change on the R-4 land fronting on Danforth Street.

J.B. Brown & Sons owns the abutting properties along West Commercial Street, which include the Star Match Buildings and the Graybar property. These properties are currently zoned B-5b and are well tenanted and have seen substantial investment by us over the past decade. It seems appropriate and consistent with the current land use in that area and with the Portland Code of Ordinances to pursue a zone change to B-5b on the property. Specifically, the Purpose statement for the WPDZ zone states "Waterfront land with direct deep water access..." This land does not have "direct deep water access" as West Commercial Street separates it from the Fore River. Alternately, the B-5b zone has a Purpose statement that seems more consistent with the potential, and most likely, land uses on this parcel when it states "to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged."

Although we do not have a specific user committed to the property, we have had several inquiries about developing an office building on the property. Based on these discussions, we have included some preliminary master plans to provide potential development schemes for the property that we believe are consistent with the B-5b zone.

B.1

Barbara Barhydt
City of Portland
October 21, 2011
Page 2

We are fully aware that these concept plans, or any other alternative plans, will need to come before the Planning Board for approval under a separate site plan application. That said, it is essentially impossible to obtain a serious commitment from a user on a development plan that is not allowed by the zoning ordinance. Therefore, we are seeking the zone change now so that we can market the parcel with zoning that is more likely to generate serious interest in developing the property.

I believe this zoning request is appropriate given the character of the area and I look forward to working with the Planning Department, Planning Board and City Council on this development.

Thank you for your efforts. Please do not hesitate to contact me with any questions or if you need additional information.

Sincerely,



Vincent P. Veroneau
President

B.2

J. B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207
Phone 207-774-5908
Fax 207-774-0898

October 24, 2011

Barbara Barhydt
Development Review Services Manager
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Zone Change – 113-201 West Commercial Street

Dear Ms. Barhydt:

Thank you for coordinating the meeting we had on Friday, October 21, 2011 with Bill Needleman and Alex Jaegerman to discuss J.B. Brown & Sons application to rezone a portion of the above captioned property.

Based on our discussion, I would like to clarify that we are not seeking a zone change on the R-4 zoned property identified as Portland Assessor's lots 60-A-1 and 60-A-2 on the Owen Haskell survey.

In addition, during the meeting I mentioned that I felt the zone change is not at odds with Portland's Comprehensive Plan as it relates to property on the upland side of West Commercial Street. This assertion is based on the following sections of the Plan that are cut and pasted below. I have underlined sections that are of particular note:

STATE GOAL G. To protect the State's marine resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public;

III. WATERFRONT ALLIANCE - April 14, 1992

Preserve the entire perimeter of the Harbor from Tukey's Bridge to Veteran's Memorial Bridge for berthing.

Recognize that property with direct water access is limited and should be reserved exclusively for marine use.

Port Development Zone

o Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep-water channel of the Fore River.

o Restrict waterfront land with direct deep-water access to uses, which contribute to port activity, to insure the continued viability of the Port of Portland, ME. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those, which are dependent upon access to deep water and contribute to port activity.

*o Allow non-marine industrial activity only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development.
Pringle Amendment:5*

The property along the shore west of the Million Dollar Bridge is an important resource as the largest remaining undeveloped parcel abutting deep water, with significant potential value for use by deep draft vessels in the future, including such uses dependent on the convergence of water, rail and highway

5 Editor's Note: During the City Council deliberations on Waterfront Zoning and Land Use Policy, a specific policy and zoning provision was moved by Councilor Anne Pringle. This provision has been commonly referred to as the "Pringle Amendment".

Future Land Use

9. B-5 and B-5b URBAN COMMERCIAL MIXED USE ZONE

Location: The B-5 zone is located in Bayside and along Marginal Way, a small area along Fore Street near the waterfront, and the Thompson's Point area. B-5b is located on the upland side of west Commercial Street.

Current and Proposed Zoning: *All land currently zoned B-5 and B-5b.*

Discussion: *The purpose of the B-5 and B-5b zones is to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. Larger underdeveloped lots characterize the B-5 and B-5b zones with great potential for denser, clustered, urban mixed-use development and more efficient reuse of existing land and buildings. It is anticipated that such denser, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation*

facilities, stormwater management, and driveways. The B-5 zones permit a wide array of business, low impact industrial, marine, residential, public, institutional, and other uses. Dimensional requirements are as follows: there is no minimum lot size requirement; it allows 100% maximum lot coverage; a maximum residential density of 60 units per acre is possible; and a maximum building height of 65 feet is allowed. B-5b requires that building be setback from the street no more than 10 feet. No changes to the zone are anticipated at this time.

2. WPDZ WATERFRONT PORT DEVELOPMENT ZONE

Location: The waterfront port development zone is located along the easterly and westerly ends of the waterfront. The zones are east of Commercial Street and encompass the Maine State Pier northerly to the WSUZ zone, and from roughly State Street to the Veteran's Bridge.

Current and Proposed Zoning: All land currently WPDZ

Discussion: Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep-water channel of the Fore River. Waterfront land with direct deep-water access shall be restricted to uses, which contribute to port activity. This zone exists, therefore, to ensure the continued viability of the Port of Portland. Uses in the port development zone, while governed by the same performance standards as other industrial zones, are limited to those uses which are dependent upon deep water and which contribute to port activity. Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water-dependent development.

The permitted uses include marine related uses, such as marine repair services, harbor and marine supplies, shipbuilding, cargo handling facilities, boat repair yards, marine construction and salvage, and marine pollution control facilities. The permitted commercial uses include intermodal transportation facilities principally serving vessels with regular scheduled destination service, warehousing of goods awaiting shipment by cargo carriers, and marine cargo container maintenance and repair. The only dimensional requirements are a 5-foot setback from the pier line and a 45-foot building height limit. No changes to the zone are anticipated at this time.

B.5

Barbara Barhydt
City of Portland
October 24, 2011
Page 4

The underlined sections above discuss land with deep water access. However, the land we are proposing to rezone does not have direct access to Fore River. The B-5b section above mentions that land on the upland of West Commercial Street is zoned B-5b. While this is true for the property we currently own on West Commercial Street, it is not true for the abutting land we now have under agreement. Therefore, it seems reasonable and consistent with Portland's Comprehensive Plan to rezone the parcel to B-5b.

Please do not hesitate to contact me with any additional questions or should you need further information.

Regards,



Vincent P. Veroneau

AH.C.1

MAINE REAL ESTATE TAX PAID

RELEASE DEED

MAINE CENTRAL RAILROAD COMPANY, a corporation duly organized and existing under the laws of the State of Maine, with offices at 1700 Iron Horse Park, North Billerica, Middlesex County, Massachusetts (the "Grantor") in consideration of Seven Hundred Ninety Three Thousand and 00/100 (\$793,000.00) Dollars paid to it by J.B. BROWN & SONS, with a mailing address of 36 Danforth Street, Portland, ME 04101 (the "Grantee") hereby grants to the Grantee all the Grantor's right, title and interest, without any warranties or covenants of title whatsoever, in a certain parcel of land, and the buildings, bridges, structures, crossings, fixtures and improvements thereon, if any, situated in Portland, County of Cumberland, State of Maine (the "Premises") described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE.

This conveyance is subject to the following reservations, conditions, covenants and agreements:

1. This conveyance is made without granting any right of way, either by necessity or otherwise, over any remaining land or location of the Grantor.
2. ~~The Grantor hereby reserves an exclusive, permanent right of way and easement in, on, over, under, across and through the Premises for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing a telecommunications system or other system for transmission of intelligence or information by any means, whether now existing or hereafter devised, including such poles, pipes, wires, fibers, fiberoptic cables, repeater stations, attachments, appurtenances, structures or other equipment and property of any description necessary or useful for the same (the "Telecommunications Easement"). The Grantor further reserves the right to freely lease, license, mortgage, assign, pledge and otherwise alienate the Telecommunications Easement. The Grantee hereby covenants with the Grantor to recognize the Telecommunications Easement and, without the payment of any further consideration, to execute, acknowledge and deliver such instruments suitable for recording with the registry of deeds as the Grantor may reasonably~~

~~require to acknowledge title to the Telecommunications Easement in the Grantor. The Grantor covenants to reasonably repair and restore the surface of the easement area after any work.~~

3. ~~The Grantor excepts from this conveyance any and all railroad tracks, railroad track materials (including, but not limited to, ties, connections, switches and ballast) and/or related equipment of any description located in whole or in part within the Premises (the "Trackage") and this conveyance is subject to the right of the Grantor to enter the Premises from time to time and at any and all times within the ninety (90) day period commencing with and subsequent to the date of delivery of this deed, with such men, equipment and materials as, in the reasonable opinion of the Principal Engineering Officer of the Grantor, are necessary for the removal of the Trackage. Days during the months of December, January, February and March shall not be included in the aforesaid ninety (90) day period. If the Trackage is not removed from the Premises by the expiration of said ninety (90) day period, the Trackage shall be deemed abandoned by the Grantor and shall then become the property of the Grantee.~~
4. ~~The Grantor excepts from this conveyance any and all advertising signs and/or billboards located upon the Premises which are not owned by the Grantor. Furthermore, this conveyance is subject to the right of the owners of said signs and/or billboards to go upon the Premises and remove them within ninety (90) days from the date of delivery of this deed.~~
5. By the acceptance of this deed and as part consideration therefor, the Grantee hereby assumes any and all agreements, covenants, obligations and liabilities of the Grantor in respect to any underground facilities, drainage culverts, walls, crossings and/or other structures of any nature and description located in whole or in part within the Premises.
6. By the acceptance of this deed and as part consideration therefor, the Grantee agrees to irrevocably waive, give up and renounce any and all claims or causes of action against the Grantor in respect of claims, suits and/or enforcement actions (including any administrative or judicial proceedings and any remedial, removal or response actions) ever asserted, threatened, instituted or requested by any person and/or governmental agency on account of: (a) any release of oil or hazardous materials or substances of any description on, upon or into the Premises in contravention of any ordinance, law or statute (including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq., as amended); and (b) any and all damage to real or personal property, natural resources and/or harm or injury to persons alleged to have resulted from such release of oil or hazardous materials or substances.

7. ~~By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to build and forever maintain fences (together with any necessary gates), suitable to the Principal Engineering Officer of the Grantor, along the boundaries of the Premises which are common to remaining land or location of the Grantor (the "Fences"), if Fences are ever required in the sole and reasonable opinion of said Principal Engineering Officer.~~
8. ~~This conveyance is subject to the following restriction for the benefit of other land or location of the Grantor, to wit: that from the date of delivery of this deed, the Grantor shall not be liable to the Grantee or any lessee or user of the Premises (or any part thereof) for any damage to any buildings or property upon them caused by fire, whether communicated directly or indirectly by or from locomotive engines of any description upon the railroad operated by the Grantor, or otherwise.~~
9. ~~By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to make no use of the Premises which, in the sole and reasonable opinion of the Principal Engineering Officer of the Grantor, adversely affects, increases or decreases drainage to, from, upon or in any remaining land or location of the Grantor. The Grantee agrees to indemnify and save the Grantor harmless from and against any and all loss, cost, damage or expense including, but not limited to, the cost of defending all claims and/or suits for property damage, personal injury or death arising out of or in any way attributable to any breach of the foregoing covenant.~~
10. ~~The Grantor excepts from this conveyance any and all overhead, surface or underground signal and communication line facilities of the Grantor located within the limits of the Premises and this conveyance is subject to the Grantor's use of any such facilities in their present locations and entry upon the Premises from time to time to maintain, repair, replace, renew, relay or remove such facilities.~~
11. The strikeout sections in this Deed are intentionally deleted.
12. Whenever used in this deed, the term "Grantor" shall not only refer to the **MAINE CENTRAL RAILROAD COMPANY**, but also its successors, assigns and affiliates and the term "Grantee" shall not only refer to the above-named Grantee, but also the Grantee's successors, assigns and grantees, as the case may be.

13. The several exceptions, reservations, conditions, covenants and agreements contained in this deed shall be deemed to run with the land and be binding upon the Grantee forever. In addition to the acceptance and recording of this deed, the Grantee hereby signifies assent to the said several exceptions, reservations, conditions, covenants and agreements, by joining in its execution.

IN WITNESS WHEREOF, the said **MAINE CENTRAL RAILROAD COMPANY** has caused this release deed to be executed in its name and its corporate seal to be hereto affixed by David A. Fink, its President, thereunto duly authorized this 21st day of November, 2011.

GRANTOR:
MAINE CENTRAL RAILROAD COMPANY

[Signature]
Witness

By: [Signature]
David A. Fink, President

SEAL

GRANTEE:
J.B. BROWN & SONS

[Signature]
Witness

By: [Signature]

Print Name: Vincent P. Veroneau

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

11/21, 2011

On this 21st day of November, 2011, before me, the undersigned notary public, personally appeared the above-named David A. Fink, the President of the MAINE CENTRAL RAILROAD COMPANY as aforesaid, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public: Roland L. Theriault
My Commission Expires: _____



ROLAND L. THERIAULT
Notary Public
Commonwealth of Massachusetts
My Commission Expires
August 5, 2016

STATE OF MAINE

Cumberland, ss.

11/23, 2011

On this 23rd day of November, 2011, before me, the undersigned notary public, personally appeared the above-named Vincent P. Veroneau, of J.B. Brown & Sons, as aforesaid, proved to me through satisfactory evidence of identification, which was ~~personally known to me~~ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public: David L. Galgay Jr
My Commission Expires: _____

Attorney at Law -
David L. Galgay Jr
BAR # 003643

Exhibit A

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

Beginning at a point on the northerly sideline of West Commercial Street, on the westerly sideline of the former Emery Street now land of J. B. Brown and Sons;

Thence, S 66°06'27" W along the northerly sideline of said West Commercial Street 784.47 feet;

Thence, S 71°39'57" W along the northerly sideline of said West Commercial Street 731.36 feet;

Thence, S 80°52'21" W along the northerly sideline of said West Commercial street 437.92 feet to the West Commercial Street off-ramp;

Thence, along said off-ramp, the following courses and distances:

Northwesterly, along a curve to the right having a radius of 1023.32 feet, a delta of 7°02'02", and whose chord bears N 88°49'29" W, a distance of 125.55 feet, an arc length of 125.63 feet;

N 66°06'38" W a distance of 93.96 feet;

Northwesterly, along a curve to the left, having a radius of 194.00 feet, a delta of 38°27'00", and whose chord bears N 85°20'08" W, a distance of 127.76 feet, an arc length of 130.19 feet;

S 75°26'22" W a distance of 33.57 feet;

Thence; N 81°44'16" W along land now or formerly of the State of Maine 171.41 feet;

Thence, N 08°15'44" E along land of said State of Maine 22.46 feet to the southerly sideline of Danforth Street;

Thence along said Danforth Street the following courses and distances:

N 83°43'02" E a distance of 96.39 feet;

Northeasterly, along a curve to the left, having a radius of 1042.16 feet, a delta of 12°51'52", and whose chord bears N 77°17'06" E, a distance of 233.50 feet, an arc length of 233.99 feet;

N 70°51'10" E a distance of 187.93 feet;

Northeasterly, along a curve to the right, having a radius of 800.00 feet, a delta of 2°21'41", and whose chord bears N 72°02'04" E, a distance of 32.97 feet, an arc length of 32.97 feet to land now or formerly of South Rise Condominiums;

Thence along said South Rise Condominium land the following courses and distances:

- S 11°41'22" E a distance of 168.00 feet;
- N 81°56'51" E a distance of 271.00 feet;
- N 77°01'13" E a distance of 96.62 feet;
- N 75°17'24" E a distance of 51.37 feet to land now or formerly of Shaw;

Thence, N 72°46'26" E along land of said Shaw 94.47 feet;

Thence, N 35°07'51" W along land of said Shaw 69.73 feet to the southerly terminus of "K" Street;

Thence, along said "K" Street, along the southerly side of a 40 foot passageway and the terminus of "E" Street the following courses and distances:

- N 55°46'28" E a distance of 17.74 feet;
- N 55°46'28" E a distance of 58.47 feet;
- N 54°19'46" E a distance of 397.81 feet to land now or formerly of the City of Portland;

Thence, S 35°05'23" E along land of said City of Portland 56.55 feet;

Thence, N 69°03'30" E along land of said City of Portland and land now or formerly of Noonan 85.21 feet;

Thence, N 34°36'51" W along land of said Noonan 92.60 feet to land now or formerly of McFarland;

Thence, N 54°37'05" E along land now or formerly of McFarland, Curtis, Dilworth, Moberg, McDonough and Robertson 367.27 feet to land now or formerly of Pollard & Lantos;

Thence, S 35°47'03" E along land of said Pollard & Lantos 119.22 feet;

Thence, N 54°52'09" E along land of said Pollard & Lantos, and land now or formerly of Bessire and Dyro 441.22 feet to the centerline of Emery Street;

Thence, S 35°05'32" E along the centerline of Emery Street, 153.86 feet;

Thence, N 55°14'50" E a distance of 30.00 feet to the easterly sideline of Emery Street;

Thence, S 35°05'32" E along said easterly sideline, 24.61 feet to the intersection of the easterly side of Emery Street at its intersection with the southerly sideline of Salem Street;

Thence, S 55°14'50" W along land now or formerly of J. B. Brown 60.00 feet;

Thence, S 35°05'22" E along land now or formerly of J. B. Brown 172.39 feet to West Commercial Street and the point of beginning, containing 10.65 acres, more or less. Also

conveying all right, title and interest of Maine Central Railroad Company in and to Emery Street lying within and adjacent to the land herein conveyed.

Reference, is made to a survey by Owen Haskell, Inc. dated October 13, 2011 Job # 2010-095P for a further description of the above described premises.

Reference is also made to the premises conveyed in that certain deed from the Portland Terminal Company to the Maine Central Railroad Company dated December 30, 1985 and recorded in the Cumberland County Registry of Deeds in Book 7026, Page 192.

3607968_1

Received
Recorded Register of Deeds
Nov 23, 2011 12:54:33P
Cumberland County
Pamela E. Lovley

A# 5.1

J.B. Brown & Sons
P.O. Box 207
Portland, ME 04112-0207
207-774-5908
207-774-5908 (fax)

Neighborhood Meeting Certification

I, Vincent Veroneau hereby certify that a neighborhood meeting was held on January 5, 2012 at Reiche School at 6:30pm regarding the West Commercial Street zone change application.

I also certify that on December 21, 2011, 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 or within 1000 feet of a proposed industrial subdivision or industrial zone change and the residents on the "interested parties" list.

Signed,


_____, January 6, 2012
Vincent P. Veroneau

Attached to this certification are:

1. Copy of the invitation sent
2. Sign-in sheet
3. Meeting minutes

Summary notes of meeting

West End Neighborhood Meeting

January 5, 2012

Reiche School

6:30 P.m.

Purpose: Discuss zone change at 113-201 W. Commercial Street, Portland

Attendance: 40 (Sign-up sheet attached)

Meeting opened at approximately 6:35pm with Vin Veroneau, President of J.B. Brown & Sons making a presentation on the current zoning and the requested change. He showed the map used in the Public Notice titled "Proposed Zoning Map Changes" to explain the process and changes made from the original zone change request. The changes include a lowering of the building height from 65' to 45' for the area west of the Fletcher Street line, eliminating any R-4 land from the re-zoning request, and the addition of a small area of the WPDZ that is now proposed to be R-4. The changes were made as a result of concerns raised in previous meetings with the Planning Board and abutting neighbors.

He also provided an outline of the process going forward, which would include the 3rd Planning Board Workshop on Tuesday, January 10th @ 3:30pm, a tentative Planning Board Public Hearing on Tuesday, January 24th @ 7:00pm, and a potential City Council Public Hearing sometime in the February/March timeframe.

Question: What are the differences in uses between the existing zone and the proposed zone?

Answer: A list of uses allowed in the two zones was read from City Ordinance.

Question: What is difference in building heights?

Answer: B5-b allows for buildings up to 65' in height. The WDPZ allows for 45' in height.

Question: How tall is Star Match building?

Answer (from one of the residents): 40' to the tallest gable with chimney at 60'.

Question: What would J.B. Brown anticipate for a building on the site?

Answer: No construction plans are in the works. The zone change is the first step. Once that occurs, we would undertake a development project only with a secured tenant. Should J.B. Brown move forward on a project after any zone change, there would be another series of public meetings/hearings to discuss the site plan application.

Question: What does J.B. Brown realistically envision for the development?

Answer: We think the highest and best use for the site is office, but we do not have specific plans at this time. The site plan presented with our application was meant to provide some sense of the site's development potential.

Multiple Comments: Generally the audience expressed appreciation for J.B. Brown's responses to their concerns to date, but there is still concern that the zone allows for potential structures of 65' (plus mechanical equipment), which makes the residents along the top of the slope concerned about impacts on view and reduced property values. Concerns were also expressed with respect to the scale of the project's potential height and the "gateway" nature of the property, so that care should be given in any future design.

Answer: Based on the on-site workshop and public comment, the height on western end of the property was reduced to 45'. We did not think the 65' height at the eastern end would impact views as much as the abutters have expressed, but based on comments tonight we will take another look at the 65' height. Cross-sections prepared by the Portland Planning Department showing potential view impacts were made available to the public for review.

Question: Why doesn't J.B. Brown develop a plan that shows a competed development?

Answer: It is virtually impossible to entice a user to seriously consider the site with the confidence that the zoning would allow for the use. To try to develop a fully articulated a development plan without a user is difficult to put forth, especially if the plan changes based on a user's unique requirements.

Question: Did J.B. Brown recently post the property? There are concerns with camping activity on the site.

Answer: Yes we posted it for No Camping, No Loitering, and No Dumping. We hired a company to clean up the old camp sites and dump area. There are currently no campers on the land and we have given the Portland Police the authorization to enter the property to monitor activity. We are not opposed to walker and hikers using the property in a respectful manner.

Consensus of group: If the zone/code requirement were to have a potential building to be no taller than 45', then the majority of the group would have no further objection.

Consensus of group: Based on a show of hands, a majority (90+%) of the audience said they would fully support the zone change is the heights were limited to 45' on the entire site.

The meeting adjourned at 7:45.

Neighborhood Meeting Sign-in Sheet.

West End Neighborhood Meeting

Date: January 5, 2012

Where: Reicke School

Time: 6:30 p.m.

Purpose: Discuss zone change at 113-201 W. Commercial Street, Portland

Attendee:	Signature	Print
1	<i>[Handwritten Signature]</i>	CONSTANCE BLOOMFIELD
2	<i>[Handwritten Signature]</i>	Peter S. PLUMMER
3	<i>[Handwritten Signature]</i>	SOLIA B Robertson
4	<i>[Handwritten Signature]</i>	JOCK ROBERTSON
5	<i>[Handwritten Signature]</i>	
6	<i>[Handwritten Signature]</i>	Claire Kavanaugh
7	<i>[Handwritten Signature]</i>	MARJORIE SHAW
8	<i>[Handwritten Signature]</i>	SALLY OLDHAM
9	<i>[Handwritten Signature]</i>	Thomas MacMillan
10	<i>[Handwritten Signature]</i>	STEVE GRAEF
11	<i>[Handwritten Signature]</i>	Rosanne Graef
12	<i>[Handwritten Signature]</i>	Stephen S. Duro
13	<i>[Handwritten Signature]</i>	JACK HUMENTIUK
14	<i>[Handwritten Signature]</i>	ARMAND DEMERS
15	<i>[Handwritten Signature]</i>	TIM NELLI GRAN
16	<i>[Handwritten Signature]</i>	PETE FRYE
17	<i>[Handwritten Signature]</i>	ANNE PRINCE
18	<i>[Handwritten Signature]</i>	PETER LAWRENCE
19	<i>[Handwritten Signature]</i>	Jo Coune
20	<i>[Handwritten Signature]</i>	Dillon Bates
21	<i>[Handwritten Signature]</i>	Victoria A. Dylewski
22	<i>[Handwritten Signature]</i>	Forest Taber
23	<i>[Handwritten Signature]</i>	MICHAEL BELLEAU
24	<i>[Handwritten Signature]</i>	Holly Seeliger
25	<i>[Handwritten Signature]</i>	Michael Curtis
26	<i>[Handwritten Signature]</i>	WARDEN DILLWORTH
27	<i>[Handwritten Signature]</i>	bessmbessire@ps Mark Bessire
28	<i>[Handwritten Signature]</i>	
29	<i>[Handwritten Signature]</i>	
30	<i>[Handwritten Signature]</i>	
31	<i>[Handwritten Signature]</i>	Betty Duggan
32	<i>[Handwritten Signature]</i>	David L. Perry
33	<i>[Handwritten Signature]</i>	Susan Perry
34	<i>[Handwritten Signature]</i>	Debi Kruck
35	<i>[Handwritten Signature]</i>	CHESTER A. KRUCK
36	<i>[Handwritten Signature]</i>	<i>[Handwritten Signature]</i>
37	<i>[Handwritten Signature]</i>	<i>[Handwritten Signature]</i>

Att. 6.5

Attendee:	Signature	Print
38	Robert C. Haines	
39	Michelle Crowley	Michelle Crowley
40	Vincent Veroneau	Vin Veroneau
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A.H.G.6

J.B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, ME 04112-0207
207-774-5908 (phone) 207-774-0898 (fax)

Neighborhood Meeting Invitation

December 21, 2011

Dear Neighbor:


Please join us for a neighborhood meeting to discuss our plans for a zone change located at 113-201 West Commercial Street, Portland, Maine. Enclosed is a map showing the proposed area to be re-zoned.

Meeting Location: 2nd Floor, Community Room, Reiche School, 166 Bracket Street, Portland, (Entrance off 2nd floor outside deck)
Meeting Date: January 5, 2012
Meeting Time: 6:30 p.m.

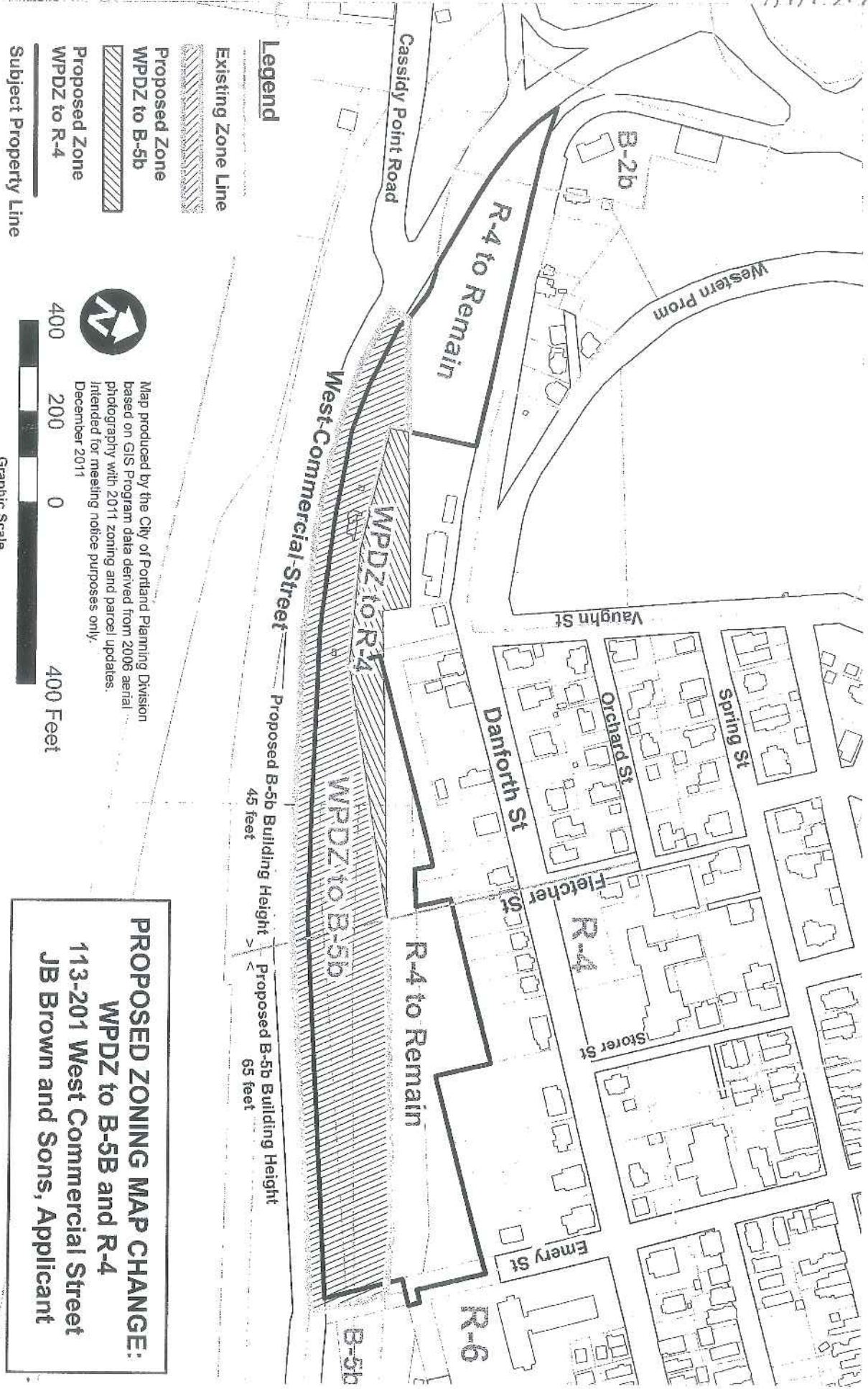
The City code requires that property owners within 500 feet of the proposed development and residents on an "interested parties list", be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and minutes of the meeting will be taken. Both the sign-in sheet and minutes will be submitted to the Planning Board.

If you have any questions, please call me at (207) 774-5908.

Sincerely,


Vincent P. Veroneau
J.B. Brown & Sons

Note:
Under Section 14-32(C) and 14-525 of the City Code of Ordinances, an applicant for a Level III development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting within three weeks of submitting a preliminary application or two weeks of submitting a final site plan application, if a preliminary plans was not submitted. The neighborhood meeting must be held at least seven days prior to the Planning Board public hearing on the proposal. Should you wish to offer additional comments on the proposed development, you may contact the Planning Division at 874-9832 or send written correspondence to the Planning and Urban Development Department, Planning Division 4th Floor, 389 Congress Street, Portland, ME 04101 or by e-mail: to bab@portlandmaine.gov



Legend

Existing Zone Line

Proposed Zone
WPDZ to B-5b

Proposed Zone
WPDZ to R-4

Subject Property Line



400

200

0

400 Feet

Graphic Scale

Map produced by the City of Portland Planning Division based on GIS Program data derived from 2008 aerial photography with 2011 zoning and parcel updates. Intended for meeting notice purposes only. December 2011

PROPOSED ZONING MAP CHANGE:
WPDZ to B-5B and R-4
113-201 West Commercial Street
JB Brown and Sons, Applicant

Proposed B-5b Building Height
45 feet

Proposed B-5b Building Height
>

Proposed B-5b Building Height
<

Proposed B-5b Building Height
65 feet

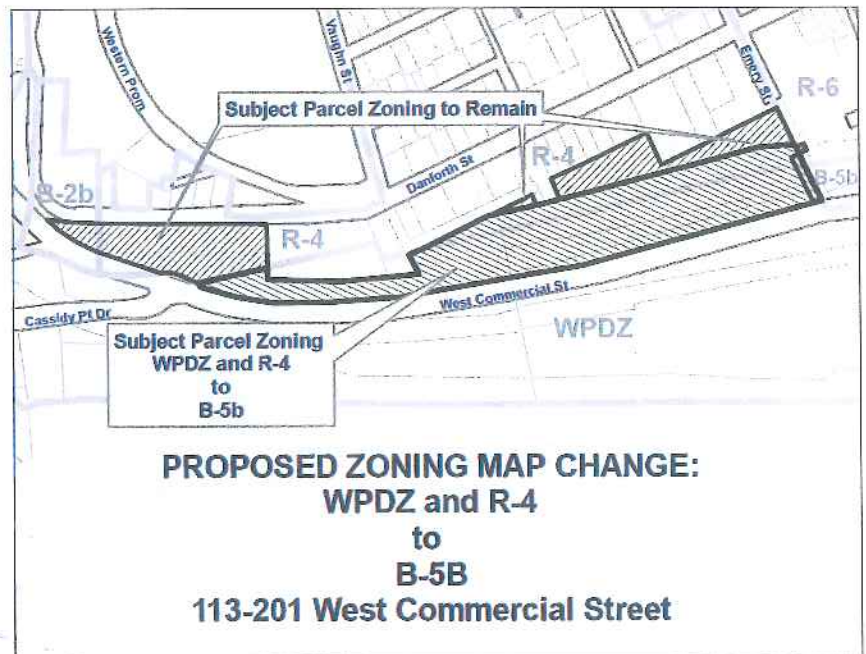
**Memorandum
Department of Planning and Urban Development
Planning Division**



To: Chair Lewis and Members of the Portland Planning Board
From: Bill Needelman, Senior Planner
Date: November 3, 2011
Re: **November 8, 2011 Workshop**
Zoning Map Amendment Proposal for 113-201 West Commercial Street
J.B. Brown and Sons, Applicant
WPDZ and R-4 to B-5b
CBL: 60-A-1 and 2, 60-B-1, 60-E-1 to 4, and 71-C-2
Application #: 2011-369

I. Introduction:

J.B. Brown & Sons, represented by Vincent Veroneau, request a workshop with the Planning Board to review a proposed zone map change in the area of 113 to 201 West Commercial Street. The site is a 10.65 acre former rail yard and is predominantly vacant. The applicants propose to change the zoning on the majority of the site (+/-8.5 acres) from Waterfront Port Development (WPDZ) and Residential R-4, to Mixed Use Commercial, B-5b. While no fixed plans are in place for a specific development, the applicant has provided conceptual master plans of the site showing commercial office buildings and surface parking along West Commercial Street.



II. Right Title and Interest:

The applicants have secured a purchase and sale agreement (Attachment C) from the current owners, the Portland Terminal Company (Pan Am, aka Guildford.)

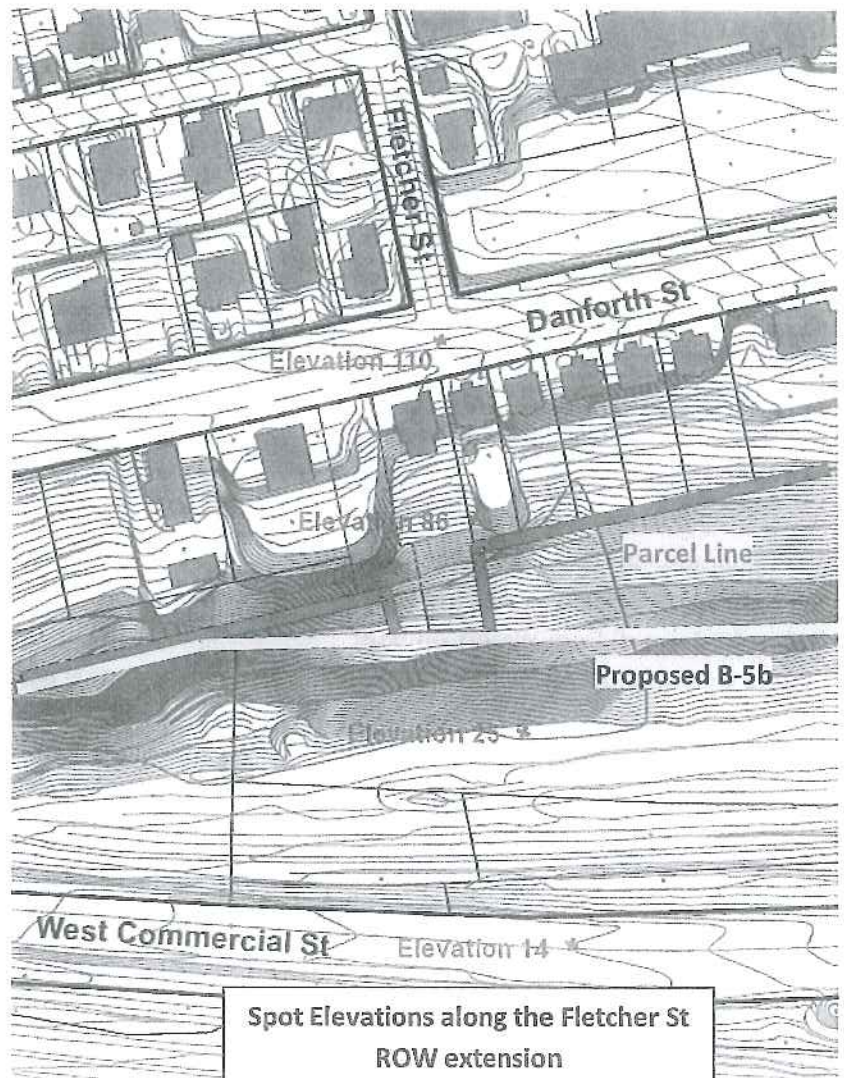
III. Site Description and History:

The subject parcel is an elongated collection of parcels extending west from the Danforth Street/West Commercial Street intersection approximately 2800 feet along West Commercial Street. The site is bound by West Commercial Street to the south, other lands of J.B. Brown to the east (the "Star Match Company" complex,) and residential properties along Danforth Street to the north.

The site is vacant and heavily wooded with Benny's Fried Clams being the only active use. Portions of the site along West Commercial Street to the east are frequently used as informal parking or vehicle staging.

The site exhibits extreme topographic variation. The street frontage portions of the site were historically crossed by multiple rail corridors and sidings and are correspondingly flat at an elevation of +/-22 feet to 30 feet above sea level. To the north, Danforth Street rises sharply from West Commercial Street reaching an elevation of 104 feet at the Vaughan Street intersection and +/-125 feet at Emery Street, which is located just to the east of the subject parcel. A steep slope rising between 50 feet to the west and 70 plus feet to the east occupies the rear of the site, while an expanse of relatively flat ground between 70 and 165 feet wide lies adjacent to West Commercial Street.

A sample of topography is provided in the diagram to the right showing the central portion of the site with approximate spot grades shown along a line extending from the Fletcher Street right of way.



Spot Elevations along the Fletcher St ROW extension

The historic rail use of the site is evident with former rail beds easily found along the lower portions of the site. The slopes exhibit periodic erosion and landfill sediments are not uncommon. Informal trails are found connecting to the Emery and Salem Street corridors and transient encampments are common

on flat wooded ground. Many Portlanders remember the site as the location of the 1976 "Freedom Train" exhibition.

IV. Current Zoning:

The site is currently covered by three zones: WPDZ, R-4, and B-2. The B-2 coverage is limited to a +/-0.25 acre triangle of land at the West Commercial Street/Danforth Street intersection. For the majority of the site, the WPDZ covers the West Commercial Street frontage to a depth of +/-150 to 170 feet and 6.5 acres. The R-4 zone covers the majority of the West End neighborhood and extends south from Danforth Street to the WPDZ boundary-occupying +/-3.75 acres of the subject site. Given the topography, the majority of readily developable land is located in the WPDZ.



The Star Match Company complex, located directly to the east along West Commercial Street, is located in the B-5b zone.

V. Proposed Zoning:

The applicant is asking for a change to the zone map that would extend the B-5b Zone along West Commercial Street to a point just west of and including Benny's Fried Clams. Benny's, a tenant of the subject parcel, is currently a non-conforming use in the WPDZ and would become a conforming use if the proposal is adopted. The proposed map change extends toward Danforth Street into the R-4 zone approximately 60-70 feet. The proposed zone line is drawn to align with an existing parcel line that is internal to the subject tract. The resulting B-5b area would extend approximately 235 feet from West Commercial Street at the easterly end of the site. At its westerly central portion, the subject parcel narrows near the Benny's site to approximately 70' in depth, with all of this area proposed for B-5b. The applicants are not proposing changes for the far westerly portion of the site, currently zoned R-4 and B-2. Maps of the proposed zone amendments are shown above in the introduction and in applicant's submissions, Attachment E.

over for the northeast portion the R-4

While the applicant is showing amendments only on land under their control, the proposed amendments leave a portion of WPDZ on abutting land (just south of the Danforth Street condominiums at the Danforth/Vaughan Street intersection.) The Board may want to advertise a broader map amendment that includes the remnant WPDZ in either the abutting R-4 or the new B-5b for further consideration at the public hearing.

VI. Zoning Policy and Comprehensive Plan Analysis:

The proposed zone map amendments represent a significant change for the West Commercial Street area. Board members are directed to the applicant's submittal, Attachment B-2, for their analysis of applicable policies. The policies informing the proposed amendments are found in the following documents:

- Purpose statements of the subject zones
- City's Comprehensive Plan, specifically the Future Land Use Plan, 2005
- Housing: Sustaining Portland's Future, Housing Plan for the City of Portland, 2002
- Waterfront Alliance Recommendations to the City of Portland, 1992

The three implicated zones are current zones, WPDZ and the R-4, and the proposed B-5b.

WPDZ Origins, Purpose and Place in the Future Land Use Plan

The Waterfront Port Development Zone originated with the *Waterfront Alliance Recommendations to the City of Portland, 1992* report. The Waterfront Alliance formed in the aftermath of the 1987 moratorium on non-marine use on Portland's waterfront. The Alliance was, and is, a diverse group of property owners, business owners and advocates working to establish policies protecting working waterfront uses, while promoting sufficient economic activity to support marine infrastructure and industries.

The policies of the report summarized in its preamble, excerpted below:

PREAMBLE

Our recommendations are based on the recognition that as a working waterfront, Portland Harbor should be a regional economic force that supports local economies through jobs and tax revenues.

Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long-term growth. Measures to promote diversity include zoning, as well as economic assistance and partnerships between private and public interests.

In order to maintain and expand the Port as a working waterfront for the enjoyment and economic benefit of all, the Waterfront Alliance recommends the following measures be taken:

1. Preserve the entire perimeter of the Harbor from Tukey's Bridge to the Veteran's Memorial Bridge for berthing.
2. Recognize that property with direct water access is limited and should be reserved exclusively for marine use.
3. Allow marine compatible use of other property that does not interfere in any way with the activities of water-dependent users.
4. Divide the waterfront into four zones that reflect the type of berthing or land use that each zone can accommodate.
5. The Alliance believes that the City should renew its commitment to promoting public access to the Port for the benefit and enjoyment of its citizens and continue to insure ecological safety through the promotion of environmentally sound practices.

The 1992 report established four sub-areas that became the basis for the current zones established along the waterfront. The report additionally established policies for each area that formed the basis of adopted zoning text. The 1992 policies and application map for the WPDZ are as follows:

PORT DEVELOPMENT ZONE

Port Development Zone Purpose Statement:

Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to insure the continued viability of the Port of Portland, ME. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those which are dependent upon access to deep water and contribute to port activity.

Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development.

(See the Pringle Amendment attached for clarification.)

PORT DEVELOPMENT WEST ZONE GEOGRAPHIC DESCRIPTION: Generally the land east of Veterans Memorial Bridge to the south side of State Street Wharf and all land west of the Million Dollar Bridge.



Key to Policy

NOT TRANSLATED INTO THE ZONE MAP

The Comprehensive Plan's Future Land Use Plan and the WPDZ purpose statement quote the Waterfront alliance text verbatim. The Future Land Use plan additionally adds the following zone summary:

"The (WPDZ) permitted uses include marine related uses, such as marine repair services, harbor and marine supplies, shipbuilding, cargo handling facilities, boat repair yards, marine construction and salvage, and marine pollution control facilities. The permitted commercial uses include intermodal transportation facilities principally serving vessels with regular scheduled destination service, warehousing of goods awaiting shipment by cargo carriers, and marine cargo container maintenance and repair. The only dimensional requirements are a 5 foot setback from the pier line and a 45 foot building height limit."

The Future Land Use Plan did not anticipate changes to the WPDZ as of its writing.

In Attachment B.2, the applicant notes that the focus of the WPDZ is directed to properties with direct access to deep water. Board members will note that the Waterfront Alliance sub area map (above) and adopted zone map both include the parcels on the land side of West Commercial Street despite their lack of water access. This apparent inconsistency likely reflects the historic ownership patterns for the area as rail entities held large parcels on both sides of the street. The inclusion of the subject parcels reflect a desire and policy direction promoting larger scale industry for these parcels where significant land-side support would be needed for marine enterprise. With the Portland Terminal Company now selling the landside portions of their holdings, the Planning Board and the City Council are asked to question the relationship between the water-centered language of the policies and the lack of water access on the subject parcel.

R-4, West End Residential Zone and Housing Policy

The Western Prom neighborhood exhibits a mature development pattern and the subject parcels are some of the largest vacant tracts existing within the R-4 zone. The R-4 zone is specifically drafted for application to the Western Promenade neighborhood as a means to promote compatible development and protection of its unique character. The Future Land Use Plan summarizes the zone's purpose and policies as follows:

"The intent of the zone is to preserve the unique character of the Western Promenade area of the city by controlling residential conversions and by allowing the continued mix of single-family, two-family, and low-rise multifamily dwellings and other compatible development at medium densities. Single and two-family dwellings are permitted along with single-family manufactured housing, except in National Register Historic Districts. The residential conditional uses listed under R-4 include sheltered care group homes, alteration of an existing structure to accommodate one or more units, and multiplex development (building with 3 or more units). Other conditional uses include schools, churches, and day care facilities. The minimum residential lot size in 6,000 square feet in the R-4 zone and a multiplex (3 or more units) requires a minimum of 9,000 square feet with 3,000 square feet

all but largely
inaccessible
developable
w/ difficulty

per unit. The minimum lot area per unit may be reduced by 20% for special needs independent living units. Potential text amendments will be considered to update the residential zones in conformance with the recommendations of Housing: Sustaining Portland's Future. Neighborhoods are encouraged to address the city's housing issues through the Neighborhood Based Planning Process. "

The practical implications of conversion of portions of the R-4 to B-5b in this area are difficult to determine due to the isolated nature of the site. The topography described above makes access to the R-4 sections of the site (proposed for amendment) practically impossible from West Commercial Street. Access from Danforth Street is limited by the fully developed nature of the street and access from Emery Street and Salem Street is also challenged by topography.

The City's Housing Plan, the 2002 Sustaining Portland's Future supports housing development opportunities on the Portland peninsula as a means to retain the City's position of a population center for the region. The R-4 is a relatively low density zone, with requirements for 3000 square feet of land per dwelling unit, suggesting that the 2002 housing plan's goals for increased density are supported by the B-5b zone, which allows a significantly higher density of dwellings (60 units per acre.) The Housing Plan, however, balances the call for density with the goal of maintaining and enhancing the livability of neighborhoods. Neighborhoods should be protected against inappropriate intrusion by commercial activity and development that is out of scale with the character and traditional development patterns of existing neighborhoods.

While the applicant's Conceptual Master Plan shows access from West Commercial Street only, the Board may want to explore with the applicant the rationale for rezoning the rear of the property and whether B-5b type development is anticipated toward the top of the slope.

B-5b, Urban Commercial Mixed Use Zone

As noted above, the B-5b currently exists on the directly abutting West Commercial Street property. The zone allows a wide variety of uses and is described in the Future Land Use Plan as follows:

"The purpose of the B-5 and B-5b zones is to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. The B-5 and B-5b zones are characterized by larger underdeveloped lots with great potential for denser, clustered, urban mixed use development and more efficient reuse of existing land and buildings.

It is anticipated that such denser, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management, and driveways. The B-5 zones permit a wide array of business, low impact industrial, marine, residential, public, institutional, and other uses. Dimensional requirements are as follows: there is no minimum lot size requirement; it allows 100% maximum lot coverage; a maximum residential density of 60 units per acre is possible; and a

maximum building height of 65 feet is allowed. B-5b requires that building be setback from the street no more than 10 feet. "

The B-5b is well suited to this area and the major policy implications appear to be more centered on the retreat from the existing zones than the application of the proposed zone. The Board and Council are asked to find that the existing zones are less supported by policy and realistic development expectations than the B-5b: the WPDZ due to lack of water access, and R-4 due to lack of developability caused by isolation and topography.

An important factor to consider in the B-5b zone is the requirement that buildings are located within 10 feet of the street right of way, which given the topography of the subject site, will encourage concentration of activity and development toward West Commercial Street and away from uphill neighbors.

VII. Development Considerations:

for future site plan review of zoning approval

While the applicant's development plans are not before the Planning Board at this time, the following issues will be important factors to consider should the proposal move forward. The comments below are informed by the Conceptual Master Plan (Attachment F) understanding that the applicant is not held to this plan and no approvals are granted or implied during the rezoning review.

Urban form: The applicant will be encouraged to explore minimizing the amount and appearance of surface parking on the site. The applicant will be asked to explore the extent to which the positive context of the Star Match Company can be enhanced through new building placement, scale and design.

Number of Curbcuts and Traffic Management: West Commercial Street is often congested during peak hours. The applicant will be asked to minimize entrances onto the street and may need to participate in off-site traffic improvements for intersections impacted by the development.

West Commercial Street Trail: The City has previously planned and approved concepts for a multiuse trail connecting the Fore River Parkway to the Harbor View Park at the Casco Bay Bridge. While one concept, the "off street alignment" is located on the subject parcel and is not depicted on the applicant's Conceptual Master Plan, the "on-street alignment" has been incorporated along West Commercial Street. The applicant has expressed an openness to consider additional secondary off-street trails depending on future development. Staff will continue to work with the applicant to formalize trail planning for the area.

Stormwater infrastructure plans: The City will in the future need to construct significant stormwater infrastructure in the West Commercial Street area. Staff will work with the applicant to ensure that the proposed development and the City's plans are complementary.

Attachments: Applicants Submittal Packet

- A. Rezone application
- B. Written Statements with Comprehensive Plan analysis
- C. Purchase and Sale Agreement
- D. Existing conditions and survey
- E. Applicant's re-zone map
- F. Conceptual Master Plans

Applicant's Submittal

Att. A

113-201 West Commercial Street

PROJECT ADDRESS: _____

CHART/BLOCK/LOT: 60-A-1, 60-B-1, 60-E 1, 60-E-4, 60-E-3 60-E-2, 60-A-2, 71-C-2

DESCRIPTION OF PROPOSED ZONE CHANGE AND PROJECT:

The applicant seeks a zone change from WPDZ/R-4 to B-5b which will

better reflect the Purpose Statement~~s~~ contained in the Code of

Ordinances for this particular parcel and increase the possibility of its future

CONTACT INFORMATION:

development

Applicant – must be owner, Lessee or Buyer Name: Vincent Veroneau Business Name, if applicable: J.B. Brown & Sons Address: 36 Danforth Street City/State: Portland, ME Zip Code: 04101	Applicant Contact Information Work # (207) 774-5908 Home# Cell # 207-838-3397 Fax# 207-774-0898 e-mail: veroneau@jbbrown.com
Owner – (if different from Applicant) Name: Portland Terminal Company Attn: Roland L. Theriault Address: 1700 Iron Horse Park City/State: No. Billerica, MA Zip Code: 01862	Owner Contact Information Work # 978-663-6952 Home# Cell # Fax# e-mail:
Agent/ Representative Name: N/A Address: City/State : Zip Code:	Agent/Representative Contact information Work # Cell # e-mail:
Billing Information Name: Applicant Address: City/State : Zip Code:	Billing Information Work # Cell # Fax# e-mail:
Engineer Name: Thomas Greer Address: Pinkham & Greer City/State: 380 US Route 1 Zip Code: Falmouth, ME 04105	Engineer Contact Information Work # 207-871-5242 Cell # Fax# e-mail: tgreer@pinkhamandgreer.com

- e-plan contact

A.1

Surveyor Name: John Swan Owen Haskell, Inc. Address: 390 U.S. Route One, Unit 10 City/State: Falmouth, ME Zip Code: 04105	Surveyor Contact Information Work # 207-774-0424 Cell # Fax# e-mail: jswan@owenhaskell.com
Architect/Landscape Name: John Mitchell Mitchell & Associates Address: 70 Center St. City/State: Portland, ME Zip Code: 04101	Architect Contact Information Work # 207-774-4427 Cell # 207-831-2091 Fax# e-mail: jmitchell@mitchellassociates.biz
Attorney Name: David Gálgay, Esq. Verrill & Dana One Portland Square Address: City/State: Portland, ME Zip Code: 04101	Attorney Contact Information Work # 207-774-4000 Cell # Fax# e-mail: dgalgay@verrilldana.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Binding Purchase & Sale agreement with a closing date of no later than December 19, 2011, but Purchaser will likely close in November.

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.)

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.)

Existing Use: Describe the existing use of the subject property:

Vacant Land

Current Zoning Designation(s):

WPDZ, R-4

A.2

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.

Once suitable tenant(s) are secured, it is the Applicant's intention to develop the land consistent with uses allowed in the B-5b zone.

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'.) Contract and conditional rezoning applications may require inclusion of site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

A.3

APPLICATION FEE:

Check the type of zoning review that applies. Payment may be made in cash or check payable to the City of Portland.

Zoning Map Amendment	Fees Paid (office use)	The City invoices separately for the following:
<input checked="" type="checkbox"/> \$2,000.00 (from <u>WPDZ zone</u> to <u>B-5bi zone</u>)	<input type="checkbox"/>	<ul style="list-style-type: none"> • Notices (\$.75 each)
Zoning Text Amendment <input type="checkbox"/> \$2,000.00 (to Section 14- _____) (For a 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 (<u>example</u>) and language to be added is depicted as underline (<u>example</u>))	<input type="checkbox"/>	<ul style="list-style-type: none"> (notices are sent to neighbors upon receipt of an application, workshop and public hearing meetings for Planning Board and public hearing meeting for City Council) • Legal Ad (% of total Ad) • Planning Review (\$40.00 hour) • Legal Review (\$75.00 hour) Third party review is assessed separately.
Combination Zoning Text Amendment and Zoning Map Amendment <input type="checkbox"/> \$3,000.00	<input type="checkbox"/>	
Conditional or Contract Zone <input type="checkbox"/> \$3,000.00 (A conditional or contract rezoning map 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, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)	<input type="checkbox"/>	

Signature of Applicant:	Date:
-------------------------	-------

Further Information

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

AH.B

J. B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207
Phone 207-774-5908
Fax 207-774-0898

October 21, 2011

Barbara Barhydt
Development Review Services Manager
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Zone Change – 113-201 West Commercial Street

Dear Ms. Barhydt:

Enclosed please find a zone map amendment application and concept plan from J.B. Brown & Sons to rezone property located on the north side of West Commercial Street. The 11 acre parcel is currently under contract to purchase from the Railroad and is scheduled to close on November 21, 2011. The land is primarily zoned WPDZ with the exception of a strip behind the WPDZ zone that is currently zoned R-4. We are not seeking a zone change on the R-4 land fronting on Danforth Street.

J.B. Brown & Sons owns the abutting properties along West Commercial Street, which include the Star Match Buildings and the Graybar property. These properties are currently zoned B-5b and are well tenanted and have seen substantial investment by us over the past decade. It seems appropriate and consistent with the current land use in that area and with the Portland Code of Ordinances to pursue a zone change to B-5b on the property. Specifically, the Purpose statement for the WPDZ zone states "Waterfront land with direct deep water access..." This land does not have "direct deep water access" as West Commercial Street separates it from the Fore River. Alternately, the B-5b zone has a Purpose statement that seems more consistent with the potential, and most likely, land uses on this parcel when it states "to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged."

Although we do not have a specific user committed to the property, we have had several inquiries about developing an office building on the property. Based on these discussions, we have included some preliminary master plans to provide potential development schemes for the property that we believe are consistent with the B-5b zone.

B.1

Barbara Barhydt
City of Portland
October 21, 2011
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We are fully aware that these concept plans, or any other alternative plans, will need to come before the Planning Board for approval under a separate site plan application. That said, it is essentially impossible to obtain a serious commitment from a user on a development plan that is not allowed by the zoning ordinance. Therefore, we are seeking the zone change now so that we can market the parcel with zoning that is more likely to generate serious interest in developing the property.

I believe this zoning request is appropriate given the character of the area and I look forward to working with the Planning Department, Planning Board and City Council on this development.

Thank you for your efforts. Please do not hesitate to contact me with any questions or if you need additional information.

Sincerely,



Vincent P. Veroneau
President

B.2

J. B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207
Phone 207-774-5908
Fax 207-774-0898

October 24, 2011

Barbara Barhydt
Development Review Services Manager
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Zone Change – 113-201 West Commercial Street

Dear Ms. Barhydt:

Thank you for coordinating the meeting we had on Friday, October 21, 2011 with Bill Needleman and Alex Jaegerman to discuss J.B. Brown & Sons application to rezone a portion of the above captioned property.

Based on our discussion, I would like to clarify that we are not seeking a zone change on the R-4 zoned property identified as Portland Assessor's lots 60-A-1 and 60-A-2 on the Owen Haskell survey.

In addition, during the meeting I mentioned that I felt the zone change is not at odds with Portland's Comprehensive Plan as it relates to property on the upland side of West Commercial Street. This assertion is based on the following sections of the Plan that are cut and pasted below. I have underlined sections that are of particular note:

STATE GOAL G. To protect the State's marine resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public;

III. WATERFRONT ALLIANCE - April 14, 1992

Preserve the entire perimeter of the Harbor from Tukey's Bridge to Veteran's Memorial Bridge for berthing.

Recognize that property with direct water access is limited and should be reserved exclusively for marine use.

Port Development Zone

o Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep-water channel of the Fore River.

o Restrict waterfront land with direct deep-water access to uses, which contribute to port activity, to insure the continued viability of the Port of Portland, ME. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those, which are dependent upon access to deep water and contribute to port activity.

*o Allow non-marine industrial activity only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development.
Pringle Amendment:5*

The property along the shore west of the Million Dollar Bridge is an important resource as the largest remaining undeveloped parcel abutting deep water, with significant potential value for use by deep draft vessels in the future, including such uses dependent on the convergence of water, rail and highway

5 Editor's Note: During the City Council deliberations on Waterfront Zoning and Land Use Policy, a specific policy and zoning provision was moved by Councilor Anne Pringle. This provision has been commonly referred to as the "Pringle Amendment".

Future Land Use

9. B-5 and B-5b URBAN COMMERCIAL MIXED USE ZONE

Location: *The B-5 zone is located in Bayside and along Marginal Way, a small area along Fore Street near the waterfront, and the Thompson's Point area. B-5b is located on the upland side of west Commercial Street.*

Current and Proposed Zoning: *All land currently zoned B-5 and B-5b.*

Discussion: *The purpose of the B-5 and B-5b zones is to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. Larger underdeveloped lots characterize the B-5 and B-5b zones with great potential for denser, clustered, urban mixed-use development and more efficient reuse of existing land and buildings. It is anticipated that such denser, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation*

facilities, stormwater management, and driveways. The B-5 zones permit a wide array of business, low impact industrial, marine, residential, public, institutional, and other uses. Dimensional requirements are as follows: there is no minimum lot size requirement; it allows 100% maximum lot coverage; a maximum residential density of 60 units per acre is possible; and a maximum building height of 65 feet is allowed. B-5b requires that building be setback from the street no more than 10 feet. No changes to the zone are anticipated at this time.

2. WPDZ WATERFRONT PORT DEVELOPMENT ZONE

Location: The waterfront port development zone is located along the easterly and westerly ends of the waterfront. The zones are east of Commercial Street and encompass the Maine State Pier northerly to the WSUZ zone, and from roughly State Street to the Veteran's Bridge.

Current and Proposed Zoning: All land currently WPDZ

Discussion: Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep-water channel of the Fore River. Waterfront land with direct deep-water access shall be restricted to uses, which contribute to port activity. This zone exists, therefore, to ensure the continued viability of the Port of Portland. Uses in the port development zone, while governed by the same performance standards as other industrial zones, are limited to those uses which are dependent upon deep water and which contribute to port activity. Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water-dependent development.

The permitted uses include marine related uses, such as marine repair services, harbor and marine supplies, shipbuilding, cargo handling facilities, boat repair yards, marine construction and salvage, and marine pollution control facilities. The permitted commercial uses include intermodal transportation facilities principally serving vessels with regular scheduled destination service, warehousing of goods awaiting shipment by cargo carriers, and marine cargo container maintenance and repair. The only dimensional requirements are a 5-foot setback from the pier line and a 45-foot building height limit. No changes to the zone are anticipated at this time.

B.5

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The underlined sections above discuss land with deep water access. However, the land we are proposing to rezone does not have direct access to Fore River. The B-5b section above mentions that land on the upland of West Commercial Street is zoned B-5b. While this is true for the property we currently own on West Commercial Street, it is not true for the abutting land we now have under agreement. Therefore, it seems reasonable and consistent with Portland's Comprehensive Plan to rezone the parcel to B-5b.

Please do not hesitate to contact me with any additional questions or should you need further information.

Regards,



Vincent P. Veroneau

Att - C

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT made as of this *19th* day of *August* 2011 by and between the **PORTLAND TERMINAL COMPANY**, a Delaware corporation with a place of business at 1700 Iron Horse Park, North Billerica, Massachusetts (the "Seller") and the party hereinafter identified in Paragraph 1(b) (the "Buyer").

WITNESSETH:

1. The following terms shall have the meanings specified whenever used in this Agreement:

(a) **SELLER:**

Portland Terminal Company
c/o Pan Am Systems
1700 Iron Horse Park
North Billerica, Massachusetts 01862
Attention: Darlene Ligor, Assistant to the Vice President - Real Estate

Send a copy of any notice to:

Portland Terminal Company
c/o Pan AM Systems
1700 Iron Horse Park
North Billerica, Massachusetts 01862
Attention: Roland L. Theriault, Vice President - Real Estate

(b) **BUYER:**

J.B. Brown & Sons
ATTN: Vincent Veroneau, President
36 Danforth Street
Portland, ME 04101

Send a copy of any notice to:

David L. Galgay, Jr., Esquire
Verrill Dana, LLP
One Portland Square
Portland, Maine 04112-0586

(c) **PREMISES:**

A certain parcel of land consisting of 10.50 acres of land located in Portland, County of Cumberland, State of Maine, as more particularly shown on a sketch attached to this agreement and marked "Exhibit A", together with all rights, privileges, easements and appurtenances thereto, including without limitation, all air rights, water rights, rights-of-way or other interests in, on, under or to any land, highway, alley, street or rights-of-way abutting or adjoining said parcel.

(d) **PURCHASE PRICE:**

The agreed purchase price is [REDACTED] and 00/100 [REDACTED] Dollars.

(e) **DEPOSIT:**

[REDACTED] 00/100 (\$ [REDACTED]) Dollars.

(f) **CLOSING DATE:**

Unless otherwise agreed in writing, the closing shall occur on December 19, 2011, or subsequent to Seller obtaining the Release from the State of Maine in accordance with 23 M.R.S.A. Section 7105, at such earlier date designated by Buyer upon five (5) days prior notice to Seller.

(g) **EXHIBITS:** The following exhibits are hereby incorporated by this reference into this Agreement:

- (i) Exhibit "A": A plan of the Premises entitled: Portland Terminal Company, Office of the Vice President- Engineering, Land Sale Plan, Portland, ME, Line Yard 8, V.S.1-D, Maps 1, 2, mile post., Scale 1"=300', Date 8/16/11.
- (ii) Exhibit "B": Deed.
- (iii) Exhibit "C": Plan Specifications.
- (iv) Exhibit "D" Additional Provisions

2. **PURCHASE AND SALE.** In consideration of the mutual covenants and promises contained in this Agreement, and other good and valuable consideration received by each party, the Seller hereby agrees to sell and the Buyer agrees to purchase the Premises, upon the terms and conditions hereinafter set forth.

3. **TITLE.** The Premises shall be conveyed by a release deed running to the Buyer in a form substantially identical to that annexed hereto and marked Exhibit "B" (the "Deed"). The Deed shall contain no warranties or covenants of title whatsoever and shall convey all of the Seller's right, title and interest in the Premises, subject to the following:

- (a) Provisions of existing building, land use, subdivision control and zoning laws;
- (b) Such real property taxes for the then current tax year as are not yet due and payable on the Closing Date;
- (c) Any liens for municipal betterments assessed after the date of this Agreement;
- (d) Such agreements, leases, licenses, easements, restrictions and encumbrances, if any, as may appear of record, or otherwise; and
- (e) The provisions, conditions and covenants set forth in the Deed and hereby expressly incorporated by reference. The Buyer agrees to signify acceptance of such provisions, conditions and covenants contained in the Deed by executing the Deed at closing.

4. **DEED PLAN.** The Seller's obligations under this Agreement are conditioned upon the Buyer furnishing the following items to the Seller no later than ten (10) days prior to the Closing Date:

- (a) A satisfactory linen or mylar deed plan of the Premises (the "Plan") which: (i) is prepared by a registered land surveyor, (ii) is suitable in all respects for recording at the local registry of deeds, (iii) contains a certification by said registered land surveyor as to the actual land area comprising the Premises, (iv) conforms to the requirements set forth in Exhibit "C", and (v) contains such other information as the Seller may reasonably require; and
- (b) A description of the Premises by metes and bounds, consistent with and referring to the Plan, which description shall be attached to and become the Exhibit "A" referred to in the Deed.

The Seller agrees to reasonably cooperate with the Buyer or the Buyer's agents to

furnish the information necessary for the Buyer to complete the Plan.

The Buyer agrees to indemnify the Seller for all loss, cost, damage and expense (including reasonable attorneys' fees and expenses) arising in any way out of the presence or activities upon the Premises by the Buyer, said registered land surveyor or the agents, servants, employees or contractors or any of them, whether such loss, cost, damage or expense is incurred by the Seller, the Buyer, said registered land surveyor, or the agents, servants, employees or contractors of the same, or by others.

5. **ADJUSTMENTS TO PURCHASE PRICE.** Water rates, rents, real estate and other property taxes and sewer charges (collectively, the "Taxes") shall be apportioned as of the Closing Date and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by the Buyer. If the amount of Taxes is not known at the Closing Date, they shall be apportioned on the basis of the Taxes for the applicable preceding period and reapportioned as soon as verified current information can be obtained. The latter provision shall survive the delivery of the Deed.

6. **FEES, COSTS, AND TRANSFER TAXES.** The Buyer agrees to pay all recording fees and real estate transfer taxes of any description imposed on either the Buyer or Seller on account of this transaction by any government or governmental authority.

7. **CLOSING.** The Deed shall be delivered and the Purchase Price less the Deposit shall be paid by certified or bank cashier's check (and not otherwise) at the offices of Verril Dana, One Portland Square, Portland, Maine, at 10 o'clock a.m. on the Closing Date, unless the parties otherwise agree beforehand in writing. It is agreed that time is of the essence in all respects to this transaction.

8. **POSSESSION.** The Seller shall deliver possession of the Premises to the Buyer on the Closing Date, subject only to the provisions of paragraph 3 hereof, the Premises then being in the same condition as they now are, reasonable wear and tear excepted.

9. **SELLER'S DEFAULT.** In the event that the Seller is unable to give title or make conveyance of the Premises to the Buyer in accordance with the terms of this Agreement for any reason, then any payments made by the Buyer shall be refunded, the obligations of the parties shall cease, this Agreement shall be void and neither party shall have further recourse against the other.

10. **REMOVAL OF ENCUMBRANCES.** The Seller may use the Purchase Price paid by the Buyer at the time of the delivery of the Deed, or any portion thereof, to clear the title of any mortgage or other title encumbrance not in accordance with the terms hereof, provided that any instrument so procured is recorded as soon as reasonably practical after the delivery of the Deed.

11. **ACCEPTANCE OF DEED.** The Buyer's acceptance of the Deed shall be deemed to be a full performance and discharge of every agreement or obligation of the Seller herein contained, except for such as are, by the terms hereof, to be performed after the delivery of the Deed.

12. **BROKER.** The parties represent and warrant to each other that neither has dealt with any broker in respect to this transaction or the Premises. The Buyer and Seller each agree to indemnify and hold harmless the other party from and against all other claims for brokerage or commission on account of this transaction.

13. **DEPOSIT.** The Deposit shall be held by the Seller subject to the terms of this Agreement and shall be duly accounted for at the time of delivery of the Deed. The parties agree that the Deposit shall not bear interest.

14. **WARRANTIES.** The Buyer acknowledges that the Buyer has not been induced to enter into this Agreement, and the transaction contemplated herein, in reliance upon any warranties or representations of any party not set forth herein. The Buyer hereby expressly waives any claims against the Seller for any matters of public record or matters which a physical inspection of the Premises would reveal. This paragraph shall survive the delivery of the Deed.

15. **BUYER'S DEFAULT.** In the event the Buyer fails to fulfill any one or more of the Buyer's performances under this Agreement, the Seller shall retain the Deposit as liquidated damages. The parties expressly acknowledge that the Seller's damages owing to the Buyer's default hereunder are difficult to ascertain and agree that the Deposit represents a reasonable estimate of the Seller's damages.

16. **APPROVALS, RELEASES.** The Seller's obligations under this Agreement are conditioned upon the Seller obtaining any necessary releases, approvals or permits relating to the sale of the Premises by the Seller from any state or federal government or governmental authority having jurisdiction over the Premises, including, but not limited to, 23 M.R.S.A. Section 7105. The Seller agrees to proceed with reasonable diligence to obtain any such approvals. In no event, however, shall the Seller be required to obtain subdivision approval from any governmental authority. If subdivision approval is required by applicable law, the Buyer shall obtain it or shall indemnify the Seller from all loss, cost, damage, and expense arising in any way out of the conveyance of the Premises without first having obtained the same. In the event that the State of Maine or its designee exercise the option to purchase pursuant to 23 M.R.S.A. Section 7105 by accepting in writing the offer tendered by the Railroad pursuant to 23 M.R.S.A. Section 7105 within "a reasonable amount of time" from the date the offer is made to the State, this Agreement becomes null and void, and all deposits paid by the Buyer shall be refunded, and the parties shall have no further recourse hereto.

17. **HAZARDOUS WASTE.** The Buyer hereby acknowledges that the Buyer is purchasing the Premises "as is", "with all faults" and subject to the possible existence of hazardous materials, petroleum products and/or other pollutants regulated by law. Notwithstanding the foregoing, the Buyer, for itself, its successors, assigns and grantees hereby irrevocably waives, gives up and renounces any and all claims or causes of action against the Seller in respect of any claims, suits, and/or enforcement actions, including any administrative or judicial proceedings and any remedial, removal, or response actions ever asserted, threatened, instituted, or requested by any person (including any government agency) on account of: (a) any release of oil or hazardous materials (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601, et seq.) or any applicable state law) on, upon, or into the Premises; and (b) any and all damage to real or personal property, natural resources, and/or harm to persons alleged to have resulted from such release of such oil hazardous materials upon the Premises. This provision shall survive the delivery of the deed.

18. **NOTICES.** Any notice or other communication in connection with this Agreement shall be deemed given when received (or upon attempted delivery if delivery is not accepted). Such notices shall be in writing and delivered by hand or sent either (a) by registered or certified mail (return receipt requested) with the United States Postal Service; or (b) by Federal Express or other similar overnight mail carrier furnishing evidence of receipt to the sender, at the address set forth in paragraph 1 of this Agreement. Either party may change the address at which notices are to be received by notice given as set forth above.

19. **CONFIDENTIALITY.** The Buyer agrees and acknowledges that Information (hereinafter defined) concerning the Premises obtained by the Buyer in connection with the transaction contemplated in this Agreement (the "Transaction") is unique and confidential to the Seller. If the Transaction does not take place, for any reason whatsoever (including; but not limited to, breach of this Agreement by either party), the Buyer agrees, in addition to the provisions of paragraph 15 hereof, to turn over to the Seller all (i) plans, (ii) surveys, (iii) reports, (iv) site assessment and environmental reports of any description, (v) soil, vegetation, water, air and other samplings collected at the Premises and the fruits of any research, testing, experimentation or study conducted with the same, and (vi) all plans or other information or documents furnished by the Seller to the Buyer (collectively, the "Information"). Furthermore, in the event the Transaction does not take place, the Buyer warrants to the Seller that all Information has been paid for and is free of any and all liens, and that the Buyer, its officers, agents, employees, directors, shareholders and affiliates shall not disclose the Information to any person, entity or government. The Buyer acknowledges and agrees that the Seller may, in addition to all other remedies available to it, obtain injunctive relief against the Buyer for any breach or threatened breach of the provisions of this paragraph.

20. **RECORDING.** The parties agree that neither this Agreement nor any memorandum thereof shall be recorded at the registry of deeds and that any such recording by the Buyer shall constitute a default by Buyer.

21. **AUTHORITY OF SIGNATORY.** If the Buyer executes this Agreement by agent or representative, such agent or representative hereby warrants and represents to the Seller that he is authorized to execute, acknowledge and deliver this Agreement on behalf of the Buyer and to thereby bind the Buyer to the same. This warranty shall survive the delivery of the Deed.

22. **ASSIGNMENT.** The Buyer may not assign this Agreement, or any interest herein, without the prior written consent of the Seller, which consent shall not be unreasonably withheld. Seller hereby consents to the Buyer assigning its interest hereunder to a single member limited liability company wholly owned by the Buyer.

23. **SEVERABILITY.** If any term of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent be deemed invalid or unenforceable, the remainder of this Agreement and the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected.

24. **NO WAIVER.** No delay or omission on the part of the Seller in exercising its rights under this Agreement shall constitute a waiver of such right or any other right under this Agreement. Also, no waiver of any such right on one occasion shall be construed as a waiver of it on any other occasion.

25. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the state wherein the Premises lie.

26. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, supersedes all prior oral or written offers, negotiations, agreements, understandings and courses of dealing between the parties relating to the subject matter hereof and is subject to no understandings, conditions, or representations other than those expressly stated herein. This Agreement may only be modified or amended by a writing which states that it modifies or amends this Agreement and which is signed by all parties.

27. **SECTION HEADINGS.** The section headings contained in the Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

28. **MISCELLANEOUS.** This Agreement shall take effect as a sealed instrument and be binding upon and inure to the benefit of the parties and their respective successors, heirs, administrators and assigns.

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

**SELLER:
PORTLAND TERMINAL COMPANY**

David A. Fink
Witness

By: *David A. Fink*
David A. Fink, President

Approved for execution
by the Portland Terminal Company.

**BUYER:
J.B. BROWN & SONS**

Michelle Crowley
Witness

By: *Vincent P. Veroneau*
Vincent P. Veroneau
Print Name

DRAFT

Exhibit "B"

RELEASE DEED

PORTLAND TERMINAL COMPANY, a corporation duly organized and existing under the laws of the State of Maine, with offices at 1700 Iron Horse Park, North Billerica, Middlesex County, Massachusetts (the "Grantor") in consideration of (\$) Dollars paid to it by with a mailing address of (the "Grantee") hereby grants to the Grantee all the Grantor's right, title and interest, without any warranties or covenants of title whatsoever, in a certain parcel of land, and the buildings, bridges, structures, crossings, fixtures and improvements thereon, if any, situated in (the "Premises") described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND
MADE A PART HEREOF BY THIS REFERENCE.

This conveyance is subject to the following reservations, conditions, covenants and agreements:

1. This conveyance is made without granting any right of way, either by necessity or otherwise, over any remaining land or location of the Grantor.
2. ~~The Grantor hereby reserves an exclusive, permanent right of way and easement in, on, over, under, across and through the Premises for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing a telecommunications system or other system for transmission of intelligence or information by any means, whether now existing or hereafter devised, including such poles, pipes, wires, fibers, fiberoptic cables, repeater stations, attachments, appurtenances, structures or other equipment and property of any description necessary or useful for the same (the "Telecommunications Easement"). The Grantor further reserves the right to freely lease, license, mortgage, assign, pledge and otherwise alienate the Telecommunications Easement. The Grantee hereby covenants with the Grantor to recognize the Telecommunications Easement and, without the payment of any further consideration, to execute, acknowledge and deliver such instruments suitable for recording with the registry of deeds as the Grantor may reasonably require to acknowledge title to the Telecommunications Easement in the Grantor. The Grantor covenants to reasonably repair and restore the surface of the easement area after any work.~~

3. ~~The Grantor excepts from this conveyance any and all railroad tracks, railroad track materials (including, but not limited to, ties, connections, switches and ballast) and/or related equipment of any description located in whole or in part within the Premises (the "Trackage") and this conveyance is subject to the right of the Grantor to enter the Premises from time to time and at any and all times within the ninety (90) day period commencing with and subsequent to the date of delivery of this deed, with such men, equipment and materials as, in the reasonable opinion of the Principal Engineering Officer of the Grantor, are necessary for the removal of the Trackage. Days during the months of December, January, February and March shall not be included in the aforesaid ninety (90) day period. If the Trackage is not removed from the Premises by the expiration of said ninety (90) day period, the Trackage shall be deemed abandoned by the Grantor and shall then become the property of the Grantee.~~
4. ~~The Grantor excepts from this conveyance any and all advertising signs and/or billboards located upon the Premises which are not owned by the Grantor. Furthermore, this conveyance is subject to the right of the owners of said signs and/or billboards to go upon the Premises and remove them within ninety (90) days from the date of delivery of this deed.~~
5. By the acceptance of this deed and as part consideration therefor, the Grantee hereby assumes any and all agreements, covenants, obligations and liabilities of the Grantor in respect to any underground facilities, drainage culverts, walls, crossings and/or other structures of any nature and description located in whole or in part within the Premises.
6. By the acceptance of this deed and as part consideration therefor, the Grantee agrees to irrevocably waive, give up and renounce any and all claims or causes of action against the Grantor in respect of claims, suits and/or enforcement actions (including any administrative or judicial proceedings and any remedial, removal or response actions) ever asserted, threatened, instituted or requested by any person and/or governmental agency on account of: (a) any release of oil or hazardous materials or substances of any description on, upon or into the Premises in contravention of any ordinance, law or statute (including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, *et seq.*, as amended); and (b) any and all damage to real or personal property, natural resources and/or harm or injury to persons alleged to have resulted from such release of oil or hazardous materials or substances.

7. ~~By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to build and forever maintain fences (together with any necessary gates), suitable to the Principal Engineering Officer of the Grantor, along the boundaries of the Premises which are common to remaining land or location of the Grantor (the "Fences"), if Fences are ever required in the sole and reasonable opinion of said Principal Engineering Officer.~~
8. ~~This conveyance is subject to the following restriction for the benefit of other land or location of the Grantor, to wit: that from the date of delivery of this deed, the Grantor shall not be liable to the Grantee or any lessee or user of the Premises (or any part thereof) for any damage to any buildings or property upon them caused by fire, whether communicated directly or indirectly by or from locomotive engines of any description upon the railroad operated by the Grantor, or otherwise.~~
9. ~~By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to make no use of the Premises which, in the sole and reasonable opinion of the Principal Engineering Officer of the Grantor, adversely affects, increases or decreases drainage to, from, upon or in any remaining land or location of the Grantor. The Grantee agrees to indemnify and save the Grantor harmless from and against any and all loss, cost, damage or expense including, but not limited to, the cost of defending all claims and/or suits for property damage, personal injury or death arising out of or in any way attributable to any breach of the foregoing covenant.~~
10. ~~The Grantor excepts from this conveyance any and all overhead, surface or underground signal and communication line facilities of the Grantor located within the limits of the Premises and this conveyance is subject to the Grantor's use of any such facilities in their present locations and entry upon the Premises from time to time to maintain, repair, replace, renew, relay or remove such facilities.~~
11. The strikeout sections in this Deed are intentionally deleted.
12. Whenever used in this deed, the term "Grantor" shall not only refer to the **PORTLAND TERMINAL COMPANY**, but also its successors, assigns and affiliates and the term "Grantee" shall not only refer to the above-named Grantee, but also the Grantee's successors, assigns and grantees, as the case may be.

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C.11

- 13. The several exceptions, reservations, conditions, covenants and agreements contained in this deed shall be deemed to run with the land and be binding upon the Grantee forever. In addition to the acceptance and recording of this deed, the Grantee hereby signifies assent to the said several exceptions, reservations, conditions, covenants and agreements, by joining in its execution.

IN WITNESS WHEREOF, the said **PORTLAND TERMINAL COMPANY** has caused this release deed to be executed in its name and its corporate seal to be hereto affixed by David A. Fink, its President, thereunto duly authorized this ____ day of _____, 2011.

GRANTOR:
PORTLAND TERMINAL COMPANY

DRAFT

By: _____
 David A. Fink, President

 Witness

GRANTEE:

DRAFT

By: _____

 Witness

DRAFT

C.12

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

_____, 2011

On this ____ day of _____, 2011, before me, the undersigned notary public, personally appeared the above-named David A. Fink, the President of the **PORTLAND TERMINAL COMPANY** as aforesaid, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public **DRAFT**
My Commission Expires: _____

STATE OF MAINE

_____, ss.

_____, 2011

On this ____ day of _____, 2011, before me, the undersigned notary public, personally appeared the above-named _____, of **J.B. Brown & Sons**, as aforesaid, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public **DRAFT**
My Commission Expires: _____

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EXHIBIT "C"

Two Pages

Engineering Department
Minimum Requirements for Deed Plans

1. Title Block shall be similar to the attached sample and located in the bottom right corner of plan.
2. Plan is to include metes and bounds, physical features, Railroad baseline and engineering stations for the extremities of the parcel to be conveyed, culverts and street locations.
3. Railroad file numbers (to be assigned) are to appear in the top right and bottom left corners of plan.
4. Registered Land Surveyor's seal and signature must appear on plan.
5. Plan is to meet all requirements of and be acceptable for recording by the appropriate Registry of Deeds.
6. Parcel distance from centerline of location of track must be indicated.
7. No reference to "Railroad" shall appear on plan. The term Portland Terminal Company shall be used.
8. Plan to include the map and parcel number of area to be conveyed.
9. Two (2) copies of proposed plans shall be submitted for review prior to sending original.
10. Recordable original tracing and linen or mylar duplicate thereof are to be furnished this office. The original tracing will be forwarded to the Real Estate Department at the time of Closing. The duplicate will be retained in the Railroad's permanent files.

All correspondence regarding the particulars of the plan should be addressed to:

Vernon C. MacPhee, Jr.
Land and Clearance Engineer
Portland Terminal Company
Iron Horse Park
North Billerica, MA 01862-1681
(978) 663-1144
FAX: (978) 663-1199

SAMPLE TITLE BLOCK

**LAND IN
WHEREVER, ME
PORTLAND TERMINAL COMPANY
TO
WHATTEVER CORPORATION CO. INC.
SCALE: 1" = 40'
DATE: January 2, 2008**

EXHIBIT "D"
Additional Provisions

29. The Buyer's performance hereunder is subject to the Premises being free of hazardous materials and/or other pollutants regulated by law ("Pollutants"). The Buyer may, at its own expense, promptly conduct a Phase I environmental assessment ("Report") concerning the presence of Pollutants on the Premises from a duly qualified, certified engineer currently engaged in the business of rendering such reports ("Consultants"). The Report shall be completed within Sixty (60) days from the date hereof. The Buyer may terminate this Agreement and receive a refund of the Deposit by causing the Consultant to certify to the Seller in writing within Sixty (60) days from the date hereof that the Premises are contaminated by Pollutants and included therewith a description of the nature, quantity and location thereof on the Premises. If Buyer does not so terminate this Agreement, Buyer shall be deemed to have waived all objections to the condition of the Premises, including hazardous waste, oil or other contaminated material existing on the date of completion of Buyer's inspection. Upon certification from the Consultant as hereinabove provided, and in reliance thereupon, the Seller shall refund the Deposit and this Agreement shall be null and void.

30. The Buyer's performance hereunder is subject to the title to the Premises being good, clear record and marketable and subject only to those easements, encumbrances and restrictions which are described in this Agreement. The Buyer shall have a period of sixty (60) days from the date first written above to examine the title to the Premises and determine whether or not it complies with the provisions hereof. If the Buyer discovers any defect in the title to the Premises, the Buyer shall notify the Seller thereof in writing by said sixty fifth (65th) day whereupon all Deposits shall be refunded and this Agreement shall be of no further effect between the parties. In the event any title defect exists on such sixtieth (60th) day and the Buyer fails to so notify the Seller, the Buyer shall be conclusively deemed to have waived any objection to the title based upon said defect.

31. The Seller agrees to provide to the Buyer at the time of closing a Clerk's Certificate or Corporate Vote indicating that the person executing the Release Deed is duly authorized to sign the Deed.

32. If the Seller executes this Agreement by agent or representative, such agent or representative hereby warrants and represents to the Buyer that he is authorized to execute, acknowledge and deliver this Agreement on behalf of the Seller and to thereby bind the Seller to the same.

33. The Buyer's performance hereunder is subject to the Buyer meeting with the City of Portland Planning Department to determine to Buyer's satisfaction whether the city will support a zoning district change on the Premises from WPDZ to B-5(b). Buyer's zone change evaluation shall be completed within sixty (60) days from the date hereof. The Buyer may terminate this Agreement and receive a refund of the Deposit by notifying the Seller in writing within sixty five (65) days from the date hereof that

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the Buyer has determined that the City of Portland is unlikely to support the requested zone change on the Premises. If Buyer does not so terminate this Agreement, Buyer shall be deemed to have waived this condition of the Agreement. Upon notification by Buyer as hereinabove provided, the Seller shall promptly refund the Deposit to Buyer and this Agreement shall be null and void.

**Memorandum
Department of Planning and Urban Development
Planning Division**



To: Chair Lewis and Members of the Portland Planning Board
From: Bill Needelman, Senior Planner
Date: November 18, 2011
Re: **November 22, 2011 Site Walk and Workshop**
Zoning Map Amendment Proposal for 113-201 West Commercial Street
J.B. Brown and Sons, Applicant
WPDZ and R-4 to B-5b
CBL: 60-A-1 and 2, 60-B-1, 60-E-1 to 4, and 71-C-2
Application #: 2011-369

NOTE: The Site Walk will convene on the subject property at 3:30 pm at the gravel parking area to the west of the Star Match Company complex. Please park in the gravel area on the north side of West Commercial Street. The parking area is noted on the aerial photo included as Attachment 1.

The walk includes climbing up a steep path from West Commercial Street to higher portions of the site to observe topography, a building height mock up (a lift truck elevated to 65 feet), and proximity to residential abutters. Participants will need sturdy footwear and be comfortable on uneven terrain.

Introduction:

J.B. Brown & Sons, represented by Vincent Veroneau, request a second workshop and site walk with the Planning Board to review a proposed zone map change in the area of 113 to 201 West Commercial Street. The site is a 10.65 acre former rail yard and is predominantly vacant. The applicants propose to change the zoning on the majority of the site (+/-8.5 acres) from Waterfront Port Development (WPDZ) and Residential R-4, to Mixed Use Commercial, B-5b. While no fixed plans are in place for a specific development, the applicant has provided conceptual master plans of the site showing commercial office buildings and surface parking along West Commercial Street.

Previous Workshop Discussion:

At the November 8 workshop, the board reflected on the policies implicated by the proposal and comments by members of the public. The major issues discussed included:

- The relationship between topography and the proposed rezoning and how the current R-4 zone acts as a buffer to Danforth Street neighbors;
- The relationship between the proposed rezoning and the West End Historic District;
- The potential view impacts of 65 foot buildings to Danforth Street neighbors and the potential for B-5b 100% lot coverage to allow new development to move up the slope and use "average grade" to build even larger buildings;
- The structural stability of the slope and its suitability for development;

- The loss of significant mature forest;
- The wide use allowances in the B-5b; and,
- The potential loss of waterfront land supporting marine industry.

The supporting materials included with this memo and the site walk itself intend to address several issues listed above. Attachment 1 is an aerial photo showing the area to be covered by the site walk, the surrounding neighborhood, and existing and proposed zone lines. The applicant will stake the existing zone boundary between the WPDZ and the R-4 zone for reference. The applicant will additionally have positioned on-site a lift truck elevated to 65 feet, the maximum building height in the proposed B-5b, to simulate potential development impacts. Attachment 2 is a map showing topography, existing and proposed zone lines and the historic district boundaries. Board members should note that the historic district abuts but does not include northerly portions of the subject parcel.

The text of the previous work shop memo is incorporated below for the Board's reference. Public comments that have been received after the writing of the November 8 memo are included herein as Attachment 3.

The applicant's submittals are also attached, including a revised version of the potential master plan drawing that shows the existing R-4/WPDZ zone line (Attachment F.4.)

Potential Zone Line Proposal Amendments:

Following the feedback generated by the public and Planning Board at the last meeting, the applicant has expressed a willingness to revisit the request to rezone the R-4 portions of the site. Prior to formally requesting a revised amendment, the applicant wants to explore with the Planning Board the potential to locate some parking for future development on the R-4 portions of the site. The off-street parking regulations of the Land Use Code allow for commercial parking in certain residential zones, subject to an appeal to the Zoning Board of Appeals or to the Planning Board. Such parking needs to be within 300 feet of the primary building and the review board may impose conditions to ensure compatibility with residential neighbors. If some degree of commercial parking is allowed in the R-4, the applicant has indicated to staff that their request may be limited to the WPDZ portions of the site. Section 14-344, the off-street parking regulations regulating commercial parking in residential zones, is included in Attachment 4.

Based on the Board's site walk, conversation with the applicant, and public comment, staff will look to the Board for guidance for how to map and advertise the notice for the next public meeting – potentially the public hearing.

Waterfront Zoning:

In addition to the physical features and topographic relationships observable on-site, the site walk will provide Board members an opportunity to see how the property relates to the shoreline and other vacant waterfront parcels. The Board is encouraged to use the workshop to continue their policy

discussion regarding the potential reduction of marine industrial land verses opportunities for commercial development.

Site Walk Agenda and Guidelines:

The site walk will convene at the gravel parking area on the north side of West Commercial Street and west of the Star Match Company. The parking area for site walk participants has been identified on the attached site walk map. The site walk is open to members of the public. The applicant and staff will present related information and field questions from Planning Board members at each observation point identified on the attached site walk map. At the conclusion of the site walk, the workshop will reconvene at room 209 in City Hall. Public comment will be taken at that time. Because Planning Board site walks are an extension of the public process during which the board is gathering information to make its final decision on the application, no private project-related discussion between the applicants, members of the Planning Board, City staff and/or members of the public shall take place on the walk between observation points.

Attachments:

Applicants Submittal Packet

- A. Rezone application
- B. Written Statements with Comprehensive Plan analysis
- C. Purchase and Sale Agreement
- D. Existing conditions and survey
- E. Applicant's re-zone map
- F. Conceptual Master Plans – revised with R-4 zone line shown

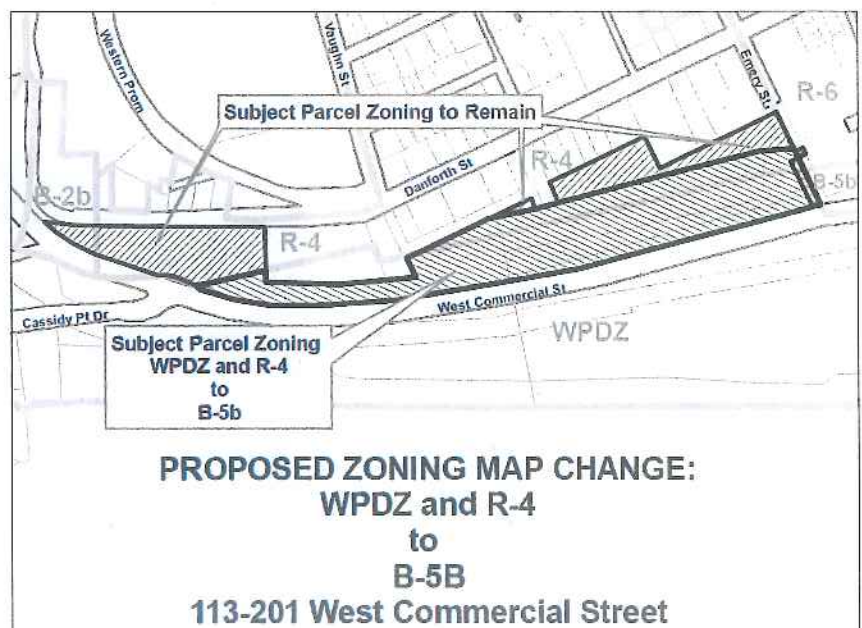
City Review Material

1. Aerial Photo and Orientation Map
2. Proposed zone line map with topography and Historic Districts
3. Public Comment
4. Off Street Parking in Residential Zones: Sec. 14-344

Text of the November 8, 2011 Planning Board Workshop Memo:

I. Introduction:

J.B. Brown & Sons, represented by Vincent Veroneau, request a workshop with the Planning Board to review a proposed zone map change in the area of 113 to 201 West Commercial Street. The site is a 10.65 acre former rail yard and is predominantly vacant. The applicants propose to change the



zoning on the majority of the site (+/-8.5 acres) from Waterfront Port Development (WPDZ) and Residential R-4, to Mixed Use Commercial, B-5b. While no fixed plans are in place for a specific development, the applicant has provided conceptual master plans of the site showing commercial office buildings and surface parking along West Commercial Street.

II. Right Title and Interest:

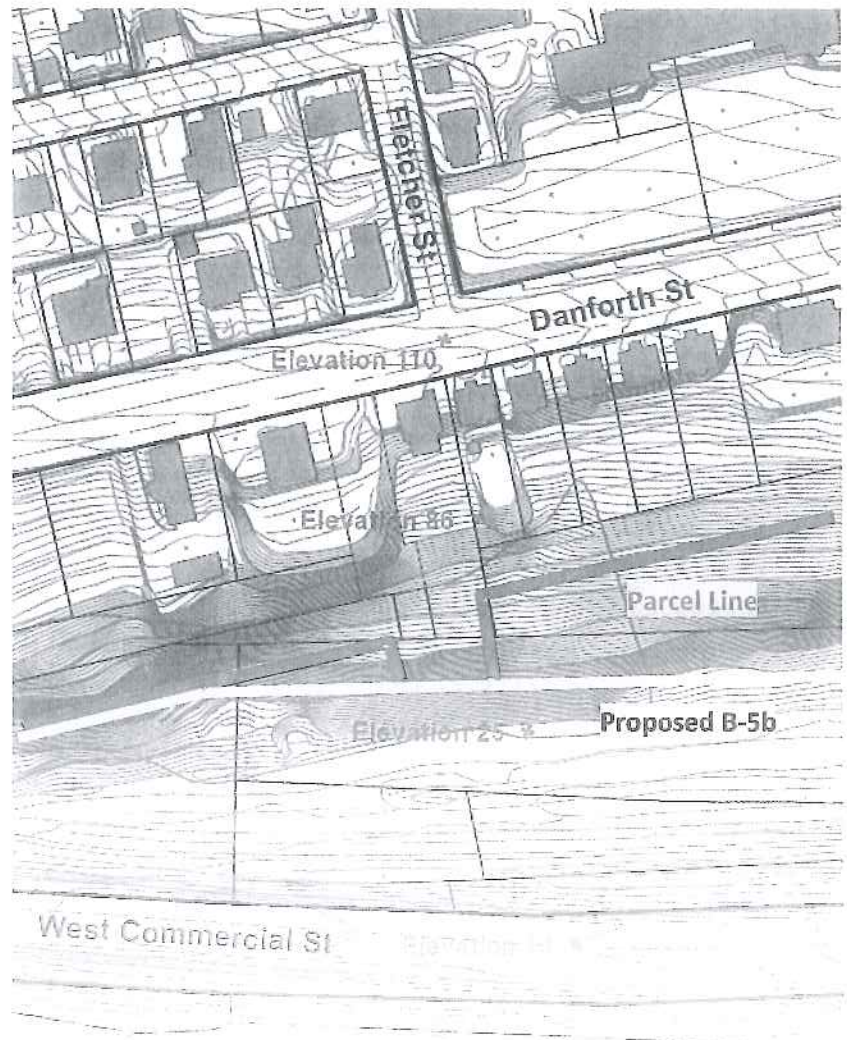
The applicants have secured a purchase and sale agreement (Attachment C) from the current owners, the Portland Terminal Company (Pan Am, aka Guildford.)

III. Site Description and History:

The subject parcel is an elongated collection of parcels extending west from the Danforth Street/West Commercial Street intersection approximately 2800 feet along West Commercial Street. The site is bound by West Commercial Street to the south, other lands of J.B. Brown to the east (the "Star Match Company" complex,) and residential properties along Danforth Street to the north.

The site is vacant and heavily wooded with Benny's Fried Clams being the only active use. Portions of the site along West Commercial Street to the east are frequently used as informal parking or vehicle staging.

The site exhibits extreme topographic variation. The street frontage portions of the site were historically crossed by multiple rail corridors and sidings and are correspondingly flat at an elevation of +/-22 feet to 30 feet above sea level. To the north, Danforth Street rises sharply from West Commercial Street reaching an elevation of 104 feet at the Vaughan Street intersection and +/-125 feet at Emery Street, which is located just to the east of the subject parcel. A steep slope rising between 50 feet to the west and 70 plus feet to the east occupies the rear of the site, while an expanse of relatively flat ground



between 70 and 165 feet wide lies adjacent to West Commercial Street.

A sample of topography is provided in the diagram to the right showing the central portion of the site with approximate spot grades shown along a line extending from the Fletcher Street right of way.

The historic rail use of the site is evident with former rail tracks and the site. The slopes exhibit periodic erosion and landfill sites are found connecting to the Emery and Salem Street corridors on flat wooded ground. Many Portlanders remember the site as the location of the 1976 "Freedom Train" exhibition.

Spot Elevations along the Fletcher St ROW extension

IV. Current Zoning:

The site is currently covered by three zones: WPDZ, R-4, and B-2. The B-2 coverage is limited to a +/-0.25 acre triangle of land at the West Commercial Street/Danforth Street intersection. For the majority of the site, the WPDZ covers the West Commercial Street frontage to a depth of +/-150 to 170 feet and 6.5 acres. The R-4 zone covers the majority of the West End neighborhood and extends south from Danforth Street to the WPDZ boundary occupying +/-3.75 acres of the subject site. Given the topography, the majority of readily developable land is located in the WPDZ.



Current Zoning

The Star Match Company complex, located directly to the east along West Commercial Street, is located in the B-5b zone.

V. Proposed Zoning:

The applicant is asking for a change to the zone map that would extend the B-5b Zone along West Commercial Street to a point just west of and including Benny's Fried Clams. Benny's, a tenant of the subject parcel, is currently a non-conforming use in the WPDZ and would become a conforming use if the proposal is adopted. The proposed map change extends toward Danforth Street into the R-4 zone approximately 60-70 feet. The proposed zone line is drawn to align with an existing parcel line that is internal to the subject tract. The resulting B-5b area would extend approximately 235 feet from West Commercial Street at the easterly end of the site. At its westerly central portion, the subject parcel narrows near the Benny's site to approximately 70' in depth, with all of this area proposed for B-5b. The applicants are not proposing changes for the far westerly portion of the site, currently zoned R-4 and B-2. Maps of the proposed zone amendments are shown above in the introduction and in applicant's submissions, Attachment E.

While the applicant is showing amendments only on land under their control, the proposed amendments leave a portion of WPDZ on abutting land (just south of the Danforth Street condominiums

at the Danforth/Vaughan Street intersection.) The Board may want to advertise a broader map amendment that includes the remnant WPDZ in either the abutting R-4 or the new B-5b for further consideration at the public hearing.

VI. Zoning Policy and Comprehensive Plan Analysis:

The proposed zone map amendments represent a significant change for the West Commercial Street area. Board members are directed to the applicant's submittal, Attachment B-2, for their analysis of applicable policies. The policies informing the proposed amendments are found in the following documents:

- Purpose statements of the subject zones
- City's Comprehensive Plan, specifically the Future Land Use Plan, 2005
- Housing: Sustaining Portland's Future, Housing Plan for the City of Portland, 2002
- Waterfront Alliance Recommendations to the City of Portland, 1992

The three implicated zones are current zones, WPDZ and the R-4, and the proposed B-5b.

WPDZ Origins, Purpose and Place in the Future Land Use Plan

The Waterfront Port Development Zone originated with the *Waterfront Alliance Recommendations to the City of Portland, 1992* report. The Waterfront Alliance formed in the aftermath of the 1987 moratorium on non-marine use on Portland's waterfront. The Alliance was, and is, a diverse group of property owners, business owners and advocates working to establish policies protecting working waterfront uses, while promoting sufficient economic activity to support marine infrastructure and industries.

The policies of the report summarized in its preamble, excerpted below:

PREAMBLE

Our recommendations are based on the recognition that as a working waterfront, Portland Harbor should be a regional economic force that supports local economies through jobs and tax revenues.

Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long-term growth. Measures to promote diversity include zoning, as well as economic assistance and partnerships between private and public interests.

In order to maintain and expand the Port as a working waterfront for the enjoyment and economic benefit of all, the Waterfront Alliance recommends the following measures be taken:

1. Preserve the entire perimeter of the Harbor from Tukey's Bridge to the Veteran's Memorial Bridge for berthing.
2. Recognize that property with direct water access is limited and should be reserved exclusively for marine use.
3. Allow marine compatible use of other property that does not interfere in any way with the activities of water-dependent users.
4. Divide the waterfront into four zones that reflect the type of berthing or land use that each zone can accommodate.
5. The Alliance believes that the City should renew its commitment to promoting public access to the Port for the benefit and enjoyment of its citizens and continue to insure ecological safety through the promotion of environmentally sound practices.

The 1992 report established four sub-areas that became the basis for the current zones established along the waterfront. The report additionally established policies for each area that formed the basis of adopted zoning text. The 1992 policies and application map for the WPDZ are as follows:

PORT DEVELOPMENT ZONE

Port Development Zone Purpose Statement:

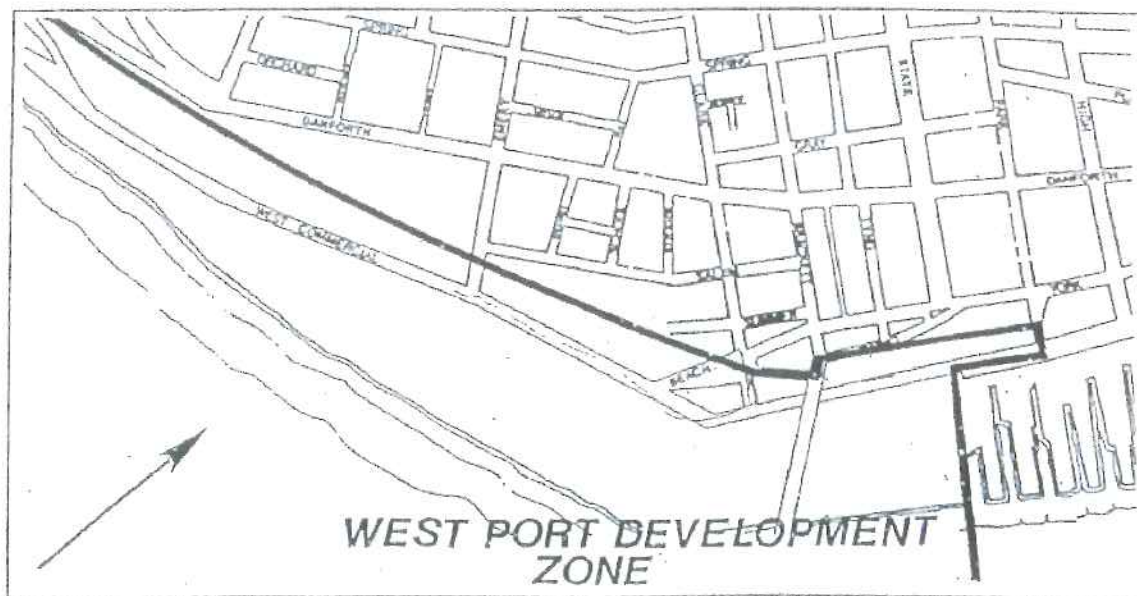
Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to insure the continued viability of the Port of Portland, ME. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those which are dependent upon access to deep water and contribute to port activity.

Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development.

(See the Pringle Amendment attached for clarification.)

PORT DEVELOPMENT WEST ZONE GEOGRAPHIC DESCRIPTION: Generally the land east of Veterans Memorial Bridge to the south side of State Street Wharf and all land west of the Million Dollar Bridge.



The Comprehensive Plan's Future Land Use Plan and the WPDZ purpose statement quote the Waterfront alliance text verbatim. The Future Land Use plan additionally adds the following zone summary:

"The (WPDZ) permitted uses include marine related uses, such as marine repair services, harbor and marine supplies, shipbuilding, cargo handling facilities, boat repair yards, marine construction and salvage, and marine pollution control facilities. The permitted commercial uses include intermodal transportation facilities principally serving vessels with regular scheduled destination service, warehousing of goods awaiting shipment by cargo carriers, and marine cargo container maintenance and repair. The only dimensional requirements are a 5 foot setback from the pier line and a 45 foot building height limit."

The Future Land Use Plan did not anticipate changes to the WPDZ as of its writing.

In Attachment B.2, the applicant notes that the focus of the WPDZ is directed to properties with direct access to deep water. Board members will note that the Waterfront Alliance sub area map (above) and adopted zone map both include the parcels on the land side of West Commercial Street despite their lack of water access. This apparent inconsistency likely reflects the historic ownership patterns for the area as rail entities held large parcels on both sides of the street. The inclusion of the subject parcels reflect a desire and policy direction promoting larger scale industry for these parcels where significant land-side support would be needed for marine enterprise. With the Portland Terminal Company now selling the landside portions of their holdings, the Planning Board and the City Council are asked to question the relationship between the water-centered language of the policies and the lack of water access on the subject parcel.

R-4, West End Residential Zone and Housing Policy

The Western Prom neighborhood exhibits a mature development pattern and the subject parcels are some of the largest vacant tracts existing within the R-4 zone. The R-4 zone is specifically drafted for application to the Western Promenade neighborhood as a means to promote compatible development and protection of its unique character. The Future Land Use Plan summarizes the zone's purpose and policies as follows:

"The intent of the zone is to preserve the unique character of the Western Promenade area of the city by controlling residential conversions and by allowing the continued mix of single-family, two-family, and low-rise multifamily dwellings and other compatible development at medium densities. Single and two-family dwellings are permitted along with single-family manufactured housing, except in National Register Historic Districts. The residential conditional uses listed under R-4 include sheltered care group homes, alteration of an existing structure to accommodate one or more units, and multiplex development (building with 3 or more units). Other conditional uses include schools, churches, and day care facilities. The minimum residential lot size is 6,000 square feet in the R-4 zone and a multiplex (3 or more units) requires a minimum of 9,000 square feet with 3,000 square feet

per unit. The minimum lot area per unit may be reduced by 20% for special needs independent living units. Potential text amendments will be considered to update the residential zones in conformance with the recommendations of Housing: Sustaining Portland's Future. Neighborhoods are encouraged to address the city's housing issues through the Neighborhood Based Planning Process. "

The practical implications of conversion of portions of the R-4 to B-5b in this area are difficult to determine due to the isolated nature of the site. The topography described above makes access to the R-4 sections of the site (proposed for amendment) practically impossible from West Commercial Street. Access from Danforth Street is limited by the fully developed nature of the street and access from Emery Street and Salem Street is also challenged by topography.

The City's Housing Plan, the 2002 Sustaining Portland's Future supports housing development opportunities on the Portland peninsula as a means to retain the City's position of a population center for the region. The R-4 is a relatively low density zone, with requirements for 3000 square feet of land per dwelling unit, suggesting that the 2002 housing plan's goals for increased density are supported by the B-5b zone, which allows a significantly higher density of dwellings (60 units per acre.) The Housing Plan, however, balances the call for density with the goal of maintaining and enhancing the livability of neighborhoods. Neighborhoods should be protected against inappropriate intrusion by commercial activity and development that is out of scale with the character and traditional development patterns of existing neighborhoods.

While the applicant's Conceptual Master Plan shows access from West Commercial Street only, the Board may want to explore with the applicant the rationale for rezoning the rear of the property and whether B-5b type development is anticipated toward the top of the slope.

B-5b, Urban Commercial Mixed Use Zone

As noted above, the B-5b currently exists on the directly abutting West Commercial Street property. The zone allows a wide variety of uses and is described in the Future Land Use Plan as follows:

"The purpose of the B-5 and B-5b zones is to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. The B-5 and B-5b zones are characterized by larger underdeveloped lots with great potential for denser, clustered, urban mixed use development and more efficient reuse of existing land and buildings.

It is anticipated that such denser, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management, and driveways. The B-5 zones permit a wide array of business, low impact industrial, marine, residential, public, institutional, and other uses. Dimensional requirements are as follows: there is no minimum lot size requirement; it allows 100% maximum lot coverage; a maximum residential density of 60 units per acre is possible; and a maximum building height of 65 feet is allowed. B-5b requires that building be setback from the street no more than 10 feet. "

The B-5b is well suited to this area and the major policy implications appear to be more centered on the retreat from the existing zones than the application of the proposed zone. The Board and Council are asked to find that the existing zones are less supported by policy and realistic development expectations than the B-5b: the WPDZ due to lack of water access, and R-4 due to lack of developability caused by isolation and topography.

An important factor to consider in the B-5b zone is the requirement that buildings are located within 10 feet of the street right of way, which given the topography of the subject site, will encourage concentration of activity and development toward West Commercial Street and away from uphill neighbors.

VII. Development Considerations:

While the applicant's development plans are not before the Planning Board at this time, the following issues will be important factors to consider should the proposal move forward. The comments below are informed by the Conceptual Master Plan (Attachment F) understanding that the applicant is not held to this plan and no approvals are granted or implied during the rezoning review.

Urban form: The applicant will be encouraged to explore minimizing the amount and appearance of surface parking on the site. The applicant will be asked to explore the extent to which the positive context of the Star Match Company can be enhanced through new building placement, scale and design.

Number of Curbcuts and Traffic Management: West Commercial Street is often congested during peak hours. The applicant will be asked to minimize entrances onto the street and may need to participate in off-site traffic improvements for intersections impacted by the development.

West Commercial Street Trail: The City has previously planned and approved concepts for a multiuse trail connecting the Fore River Parkway to the Harbor View Park at the Casco Bay Bridge. While one concept, the "off street alignment" is located on the subject parcel and is not depicted on the applicant's Conceptual Master Plan, the "on-street alignment" has been incorporated along West Commercial Street. The applicant has expressed an openness to consider additional secondary off-street trails depending on future development. Staff will continue to work with the applicant to formalize trail planning for the area.

Stormwater infrastructure plans: The City will in the future need to construct significant stormwater infrastructure in the West Commercial Street area. Staff will work with the applicant to ensure that the proposed development and the City's plans are complementary.

November 8, 2011

**Planning Board Workshop
Public Comment on the JB Brown and Sons West Commercial Street Proposal
Provided after the writing of the Planning Board Memo**

November 5, 2011
Mr. Needleman

Please accept these written comments Re. 113-201 West Commercial Street Zone Change Application submitted by JB Brown and Sons. We have work obligations which will preclude us from attending the meeting.

The proposed change would permit the property to go from almost 100% forest and field to 100% impermeable coverage. The application indicates that the likely proposed use for the lot would be "developing an office building on the property."

Would perhaps rezoning the lot as "OP" be more appropriate which would permit 60% of the development be impermeable rather than the 100% impermeable if rezoned as "B-5b?"

The topography of the lot requested for rezoning includes level ground and then a very steep incline. As presently proposed, there would be potentially substantial disturbance to the existing topography. We suggest that a reasonable lot to be rezoned for office development would more closely follow the natural topography.

We understand that because of the proximity to the historic district this development will require a written analysis from the staff of Historic Preservation.

Thank you for considering these concerns.

Michael and Margaret Curtis
354 Danforth Street
Portland, ME, 04102
699-4074

Mr Needelman,

I am in receipt of the notice regarding the proposed zoning change of the 113-201 West Commercial Street property. Some of my neighbors are also in receipt of the notice (or perhaps not) and we are all quite interested in this proposal and the impact it will have on our neighborhood.

My reason for contacting you is regarding the date and time of the meeting. As I'm sure you are aware, November 8th is election day. Also, it is a work day for many of the property owners who received (or even did not receive) this notice. That said, the 3:30 p.m. time of the meeting will very likely not allow many to attend.

A meeting such as this warrants the opportunity for adequate representation on both sides of the table. To this end, I *strongly encourage* you to reschedule the meeting to a date and time that will allow more property owners the opportunity to attend.

I look forward to hearing from you.

Thank you.

Mike Stone
116 Salem Street
Portland, ME
mstone11@maine.rr.com

11-6-2011

From Brad Cleaves

Bill—I totally concur with Michael Stone..please reschedule this meeting.....Bradford Cleaves (122 Salem Street)

From: Michael Stone [mstone11@maine.rr.com]

Sent: Saturday, November 05, 2011 6:05 PM

To: Bill Needelman

Cc: Bill Burbine; Brad Cleaves; Laura Burbine; Jo Coyne; damarshall@portlandmaine.gov; Jeannie Home; Ellen Grant

Subject: Proposed Commercial Street Zoning Change

11-6-2011

From Jo Coyne

Thanks for making this request, Mike. As you know, I'm quite distressed that this workshop would be scheduled for Election Day. I'm also disturbed that the nature of JBB's proposal seems to keep changing, at least in what I read and hear about it. The initial talk of a 3-story office building quickly changed to 3- or 4-story, then to an admission that no specific plans have been made. Rather, JBB apparently needs a quick zoning change in order to close on the property in December, then at some later date a firm proposal for development will be presented but that could be for something very different. I think we all expect West Commercial to be developed eventually but development that requires a major zoning change ought to be clearly spelled out from the start. Residents deserve to receive public notice well in advance, with plenty of time for proposal review and discussion. In this instance, the developer appears to setting the agenda and timetable. Jo

11-6-2011

From Rosanne Graef

WENA Board

In the interest of accuracy, I think it should be noted that Vincent Veroneau from JB Brown did come to the West End Neighborhood Association

meeting on September 14 and presented their proposal to us at that time. The agendas for our meetings are posted on the WENA website at www.wenamaine.org and our meetings are open to all those interested in the West End. Increased involvement in the neighborhood associations by local residents would be a good way to prevent these scheduling and sharing issues from unnecessarily becoming a bone of contention. If any of you would like to be put on the WENA mailing list, please let us know at wendneighborhood@yahoo.com.

Sincerely,

Rosanne Gracf
WENA Board

.....
Presented at the November 8, 2011 Planning Board Workshop
Constance Bloomfield – homeowner – 380 Danforth St.
In reference to West Commercial St. re-zoning proposal.

SEVERAL OTHER WAYS OF LOOKING AT RE-ZONING THIS LAND

THE B5b - It's a very nice zone for the kind of mixed use development that is intended to make Portland a more urbane and sustainable city. (It is important to note that there is nothing in the ordinance that requires mixed use or shared parking or transit options – it just doesn't make them illegal.) In fact it doesn't make any use specifically illegal. It allows anything from homes to ship building to civic centers.

The developer is showing us an office use plan with large parking areas on the flats. They are totally candid in stating that they don't actually know what they'll do with the land. Because of JB Brown's deep pockets and favorable reputation, many people seem to be fairly confident that they'll aim for something that is not too horrendous. But as you know, zoning does not rely on the good will of present owners, nor the common sense of public officials. It addresses to the land – not the quality of the succession of people who own it. We do not have a clue what the future will bring in terms of booms and busts, or changing technologies.

So imagine for the moment that the next generation of JB Brown's leadership is a different cast of characters; or that for one reason or another the land is sold – in 5, 10 or 50 years. UNUM was a reputable old Maine – owned company – it's now based in Tennessee; one person meets an untimely death and Maine Bank and Trust ends up being part of a Delaware-based financial behemoth. Whoever owns this land on West Commercial St., as it is proposed to be re-zoned, can rip out the vegetation, build virtually anything they want on 100% of the land and to a height of 65 feet.

We regret some of the past decisions that were made about Portland's built environment; decisions by people no dumber than us and with equally good intentions for the city, but with only a slightly different set of ideas. You have no idea what the future holds; the people who built the houses along Danforth St. would never have imagined that live-in help would disappear – that people wouldn't heat with coal – or that owners would share their house with tenants!

This planning board has temporary guardianship of the city's built environment. If you support this proposal, the next planning board and all the subsequent ones after you will be unable to stop this site from being developed or re-developed for the next generation of Lowe's or SuperWalmart -- maybe even a casino. This is NOT a proposal to build some office buildings -- it is a proposal to cover 8 to 10 acres of wooded hillside with a block of impervious material 65' high. That kind of development here is only inconceivable if it is illegal. And that is up to you.

Look at the other B5's: first of all, none of them abut an historic district. The one incorporating the Shipyard Brewery is small, and is not relevant to this situation (although a really big brewery would be a permitted use here). The B-5 that adjoins a portion of this land, is also owned by JB Brown, and has been developed for years - with the historic Star Match buildings - that should be land marked, but aren't. (There is no reason whatsoever that common ownership leads to a common zone.) Further east is the Rufus Deering B-5 site - also already developed and not abutting a residential area. In fact, the only other comparable B5 on the Peninsula is along outer Marginal Way; it abuts a light industrial area and a B7 zone. Even though re-zoning this West Commercial St. site is inevitable and probably makes sense, the B-5, as it is currently written, is not a very nice zone for this particular parcel.

Actually I think a variation on the OP (office park) zone is more appropriate to this site - strange as that seems. The OP was created to deal with a forested leftover piece of land with significant terrain challenges and neighborhood issues.. It requires a clustered site plan that retains vegetation and landscape. It allows a 55' height. The only way it is a mis-match for this area is its requirement for a significant front set-back. But as you know, the ordinance can be altered to require minor changes for specific locations - as the B-5 does for parking issues in certain locations. So please consider an OP -b or x,y,z. It makes a huge amount of sense.

But, if you are inclined to permit the B-5 with its 100% lot coverage of a large wooded parcel abutting an historic district, I hope you consider a height reduction to 50' - which as you know, accommodates 3-story office buildings and all the other uses contemplated by this zone - including the next version of Bed, Bath and Beyond.

Now I'd like to address the R-4 on this site, much of which this proposal eliminates. (One has to wonder why this developer says its intention is to build on the flats - but then wants permission to build on the hillside). At the western end of the site, the narrow strip of R-4 is proposed to be entirely eliminated. This is truly unfortunate as the abutting houses are among the oldest in the historic district and are already doubly compromised by the curving of Commercial St. and the gradual reduction in elevation of Danforth St. as it goes west.)

There is only one solid argument that the developer can make for destroying the R-4 district and that is that this portion of the property is too steep and inaccessible -- undevelopable as R-4. I believe that that is no longer entirely true. Originally there were two, maybe three active rail lines below it in the WDZ - definitely not the right side of the tracks for the type of houses that were built along Danforth St. back then. As an undeveloped remnant of R-4 it buffered the substantial houses along Danforth St. from the once-noxious uses that lined the waterfront. But the rail lines have been gone for decades. And this parcel has been in the hands of a group that has had no interest in any form of development on the land.

As you know, in the last boom, vacant lots all over the West End were snapped up as building sites; so it is not so weird to imagine houses here. I'm asking you to deny the developer the opportunity to grab this long strip of R-4.

If the steep and presently inaccessible R-4 is not developable as an R-4, why is it suddenly developable as B-5? This doesn't make sense. If it is actually truly undevelopable, then why not make it a dedicated habitat area? The only reason to allow JB Brown to grab the R-4 is because it permits 100% lot coverage, offers no vegetation protection and allows the 65' high rear end of buildings to face an historic district. Why might that be a good thing? Only because it makes the land potentially more valuable to them.

That is not a reason for a zoning change. Zoning "is enacted for the purpose of decreasing congestion in streets; securing safety from fire, panic and other dangers; providing adequate light and air; preventing the over-crowding of land; avoiding undue concentration of population; facilitating the adequate provision of transportation, sewerage, schools, parks and other community facilities and utilities; thus promoting the health, safety, convenience and general welfare of the citizens of the city. This article is made with reasonable consideration, among other things, to the character of each zone and its peculiar suitability for particular uses and with a view to conserving and stabilizing the value of property and encouraging the most appropriate use of land throughout the community."

Now in what way does allowing a wooded hillside to be entirely plastered with a shopping center, brewery or yet another office complex meet these standards?

The Code doesn't say anything about making more money for property owners, but it does speak of conserving and stabilizing the value of property. The value of this West Commercial Street property is what JBBrown is willing to pay for it; that value is going to increase no matter how you re-zone the land. I believe you need to focus on conserving the character and value of the perimeter of the West End Historic District.

If it were up to me, which it is not, I would keep the R-4 where it is reasonable; establish a habitat zone or deed restriction covering the woods and go for B-5 on the flats.

I hope you will take a field trip as you consider the proposal. I hope you will also require a complete assessment of the land – including the actual zone boundaries and topography which vary among these maps. Please visit my house and lot. I will show you our back line and you can marvel at the damaging effect of this proposal on the stability of the hillside as well as on the value and character of the historic district.

Thank you.

Constance Bloomfield, presented at Planning Board Workshop, 11-8-11

City of Portland
 Code of Ordinances
 Sec. 14-343

Land Use
 Chapter 14
 Rev. 9-2-10

3. Parties involved in the joint use of parking shall provide evidence of a binding agreement for the joint use of parking. Any subsequent modifications to the structure or change in the tenant occupancy of the commercial use(s) shall require review by the Zoning Administrator for conformance with this section.

Any decision by the Zoning Administrator on shared parking requests may be appealed to the Zoning Board of Appeals as an interpretive appeal pursuant to 14-471(a).

(Code 1968, § 602.14.L; Ord. No. 243-91, § 2, 3-11-91; Ord. No. 94-99, 11-15-99; Ord. No. 36-09/10, 8-17-09)

Sec. 14-344. Either the Board of appeals or the Planning Board may authorize parking in certain residence zones.

In R-3 through R-5 zones, the Board of Appeals may permit off-street parking for passenger cars only accessory to a use located in and conforming with the provisions of a nearby business or industrial zone (except B-1 zones) if the lot on which the use is proposed is located wholly within three hundred (300) feet, measured along lines of public access, of the principal building of the use to which the proposed use would be accessory and provided further that:

- (a) The lot where the parking use is proposed shall be under the control of the owner of the use to which the parking use would be accessory. Evidence of such control by deed or lease shall be required before the certificate of occupancy is issued. If such control should be abrogated, the parking use thus allowed shall automatically revert to a nonconforming use in violation of this article and shall be terminated forthwith.
- (b) The Board of Appeals may impose such conditions as deemed necessary to insure development compatible with that of the immediate neighborhood notwithstanding the provisions of any other section of this article and may at its discretion limit the period of such use.
- (c) The Planning Board may be substituted for the Board of Appeals only where an applicant is otherwise before the Planning Board for site plan approval.

Whenever any exception to the parking requirements under this

Applicant's Submittal

113-201 West Commercial Street

PROJECT ADDRESS: _____

CHART/BLOCK/LOT: 60-A-1, 60-B-1, 60-E 1, 60-E-4, 60-E-3 60-E-2, 60-A-2, 71-C-2

DESCRIPTION OF PROPOSED ZONE CHANGE AND PROJECT:

The applicant seeks a zone change from WPDZ/R-4 to B-5b, which will

better reflect the Purpose Statement(s) contained in the Code of

Ordinances for this particular parcel and increase the possibility of its future

CONTACT INFORMATION: _____ development

Applicant – must be owner, Lessee or Buyer Name: Vincent Veroneau Business Name, if applicable: J.B. Brown & Sons Address: 36 Danforth Street City/State: Portland, ME Zip Code: 04101	Applicant Contact Information Work # (207) 774-5908 Home# Cell # 207-838-3397 Fax# 207-774-0898 e-mail: veroneau@jbbrown.com
Owner – (if different from Applicant) Name: Portland Terminal Company Attn: Roland L. Theriault Address: 1700 Iron Horse Park City/State: No. Billerica, MA Zip Code: 01862	Owner Contact Information Work # 978-663-6952 Home# Cell # Fax# e-mail:
Agent/ Representative Name: N/A Address: City/State : Zip Code:	Agent/Representative Contact information Work # Cell # e-mail:
Billing Information Name: Applicant Address: City/State : Zip Code:	Billing Information Work # Cell # Fax# e-mail:
Engineer Name: Thomas Greer Address: Pinkham & Greer City/State: 380 US Route 1 Zip Code: Falmouth, ME 04105	Engineer Contact Information Work # 207-871-5242 Cell # Fax# e-mail: tgreer@pinkhamandgreer.com

e-plan Contact

A.1

Surveyor Name: John Swan Owen Haskell, Inc. Address: 390 U.S. Route One, Unit 10 City/State: Falmouth, ME Zip Code: 04105	Surveyor Contact Information Work # 207-774-0424 Cell # Fax# e-mail: jswan@owenhaske11.com
Architect/Landscape Name: John Mitchell Mitchell & Associates Address: 70 Center St. City/State: Portland, ME Zip Code: 04101	Architect Contact Information Work # 207-774-4427 Cell # 207-831-2091 Fax# e-mail: jmittchell@mittchellassociates.biz
Attorney Name: David Galgay, Esq. Verrill & Dana One Portland Square Address: City/State: Portland, ME Zip Code: 04101	Attorney Contact Information Work # 207-774-4000 Cell # Fax# e-mail: dgalgay@verrilldana.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Binding Purchase & Sale agreement with a closing date of no later than December 19, 2011, but Purchaser will likely close in November.

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.)

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.)

Existing Use: Describe the existing use of the subject property:

Vacant Land

Current Zoning Designation(s):

WPDZ, R-4

A.2

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.

Once suitable tenant(s) are secured, it is the Applicant's intention to develop the land consistent with uses allowed in the B-5b zone.

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'.) Contract and conditional rezoning applications may require inclusion of site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

APPLICATION FEE:

Check the type of zoning review that applies. Payment may be made in cash or check payable to the City of Portland.

<p>Zoning Map Amendment <input checked="" type="checkbox"/> \$2,000.00 (from WPDZ zone to B-5b zone)</p> <p>Zoning Text Amendment <input type="checkbox"/> \$2,000.00 (to Section 14- _____) (For a 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 as underline (example))</p> <p>Combination Zoning Text Amendment and Zoning Map Amendment <input type="checkbox"/> \$3,000.00</p> <p>Conditional or Contract Zone <input type="checkbox"/> \$3,000.00 (A conditional or contract rezoning map 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, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)</p>	<p>Fees Paid (office use) _____ _____ _____ _____</p>	<p>The City invoices separately for the following:</p> <ul style="list-style-type: none"> • Notices (\$.75 each) (notices are sent to neighbors upon receipt of an application, workshop and public hearing meetings for Planning Board and public hearing meeting for City Council) • Legal Ad (% of total Ad) • Planning Review (\$40.00 hour) • Legal Review (\$75.00 hour) <p>Third party review is assessed separately.</p>
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Signature of Applicant:	Date:
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Further Information

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

AH.B

J. B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207
Phone 207-774-5908
Fax 207-774-0898

October 21, 2011

Barbara Barhydt
Development Review Services Manager
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Zone Change – 113-201 West Commercial Street

Dear Ms. Barhydt:

Enclosed please find a zone map amendment application and concept plan from J.B. Brown & Sons to rezone property located on the north side of West Commercial Street. The 11 acre parcel is currently under contract to purchase from the Railroad and is scheduled to close on November 21, 2011. The land is primarily zoned WPDZ with the exception of a strip behind the WPDZ zone that is currently zoned R-4. We are not seeking a zone change on the R-4 land fronting on Danforth Street.

J.B. Brown & Sons owns the abutting properties along West Commercial Street, which include the Star Match Buildings and the Graybar property. These properties are currently zoned B-5b and are well tenanted and have seen substantial investment by us over the past decade. It seems appropriate and consistent with the current land use in that area and with the Portland Code of Ordinances to pursue a zone change to B-5b on the property. Specifically, the Purpose statement for the WPDZ zone states "Waterfront land with direct deep water access..." This land does not have "direct deep water access" as West Commercial Street separates it from the Fore River. Alternately, the B-5b zone has a Purpose statement that seems more consistent with the potential, and most likely, land uses on this parcel when it states "to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged."

Although we do not have a specific user committed to the property, we have had several inquiries about developing an office building on the property. Based on these discussions, we have included some preliminary master plans to provide potential development schemes for the property that we believe are consistent with the B-5b zone.

B.1

Barbara Barhydt
City of Portland
October 21, 2011
Page 2

We are fully aware that these concept plans, or any other alternative plans, will need to come before the Planning Board for approval under a separate site plan application. That said, it is essentially impossible to obtain a serious commitment from a user on a development plan that is not allowed by the zoning ordinance. Therefore, we are seeking the zone change now so that we can market the parcel with zoning that is more likely to generate serious interest in developing the property.

I believe this zoning request is appropriate given the character of the area and I look forward to working with the Planning Department, Planning Board and City Council on this development.

Thank you for your efforts. Please do not hesitate to contact me with any questions or if you need additional information.

Sincerely,



Vincent P. Veroneau
President

B.2

J. B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207
Phone 207-774-5908
Fax 207-774-0898

October 24, 2011

Barbara Barhydt
Development Review Services Manager
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Zone Change – 113-201 West Commercial Street

Dear Ms. Barhydt:

Thank you for coordinating the meeting we had on Friday, October 21, 2011 with Bill Needleman and Alex Jaegerman to discuss J.B. Brown & Sons application to rezone a portion of the above captioned property.

Based on our discussion, I would like to clarify that we are not seeking a zone change on the R-4 zoned property identified as Portland Assessor's lots 60-A-1 and 60-A-2 on the Owen Haskell survey.

In addition, during the meeting I mentioned that I felt the zone change is not at odds with Portland's Comprehensive Plan as it relates to property on the upland side of West Commercial Street. This assertion is based on the following sections of the Plan that are cut and pasted below. I have underlined sections that are of particular note:

STATE GOAL G. To protect the State's marine resources industry, ports and harbors from incompatible development and to promote access to the shore for commercial fishermen and the public;

III. WATERFRONT ALLIANCE - April 14, 1992

Preserve the entire perimeter of the Harbor from Tukey's Bridge to Veteran's Memorial Bridge for berthing.

Recognize that property with direct water access is limited and should be reserved exclusively for marine use.

Port Development Zone

o Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep-water channel of the Fore River.

o Restrict waterfront land with direct deep-water access to uses, which contribute to port activity, to insure the continued viability of the Port of Portland, ME. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those, which are dependent upon access to deep water and contribute to port activity.

*o Allow non-marine industrial activity only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development.
Pringle Amendment:5*

*The property along the shore west of the Million Dollar Bridge is an important resource as the largest remaining undeveloped parcel abutting deep water, with significant potential value for use by deep draft vessels in the future, including such uses dependent on the convergence of water, rail and highway
5 Editor's Note: During the City Council deliberations on Waterfront Zoning and Land Use Policy, a specific policy and zoning provision was moved by Councilor Anne Pringle. This provision has been commonly referred to as the "Pringle Amendment".*

Future Land Use

9. B-5 and B-5b URBAN COMMERCIAL MIXED USE ZONE

Location: The B-5 zone is located in Bayside and along Marginal Way, a small area along Fore Street near the waterfront, and the Thompson's Point area. B-5b is located on the upland side of west Commercial Street.

Current and Proposed Zoning: All land currently zoned B-5 and B-5b.

Discussion: The purpose of the B-5 and B-5b zones is to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. Larger underdeveloped lots characterize the B-5 and B-5b zones with great potential for denser, clustered, urban mixed-use development and more efficient reuse of existing land and buildings. It is anticipated that such denser, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation

facilities, stormwater management, and driveways. The B-5 zones permit a wide array of business, low impact industrial, marine, residential, public, institutional, and other uses. Dimensional requirements are as follows: there is no minimum lot size requirement; it allows 100% maximum lot coverage; a maximum residential density of 60 units per acre is possible; and a maximum building height of 65 feet is allowed. B-5b requires that building be setback from the street no more than 10 feet. No changes to the zone are anticipated at this time.

2. WPDZ WATERFRONT PORT DEVELOPMENT ZONE

Location: The waterfront port development zone is located along the easterly and westerly ends of the waterfront. The zones are east of Commercial Street and encompass the Maine State Pier northerly to the WSUZ zone, and from roughly State Street to the Veteran's Bridge.

Current and Proposed Zoning: All land currently WPDZ

Discussion: Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep-water channel of the Fore River. Waterfront land with direct deep-water access shall be restricted to uses, which contribute to port activity. This zone exists, therefore, to ensure the continued viability of the Port of Portland. Uses in the port development zone, while governed by the same performance standards as other industrial zones, are limited to those uses which are dependent upon deep water and which contribute to port activity. Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water-dependent development.

The permitted uses include marine related uses, such as marine repair services, harbor and marine supplies, shipbuilding, cargo handling facilities, boat repair yards, marine construction and salvage, and marine pollution control facilities. The permitted commercial uses include intermodal transportation facilities principally serving vessels with regular scheduled destination service, warehousing of goods awaiting shipment by cargo carriers, and marine cargo container maintenance and repair. The only dimensional requirements are a 5-foot setback from the pier line and a 45-foot building height limit. No changes to the zone are anticipated at this time.

B.5

Barbara Barhydt
City of Portland
October 24, 2011
Page 4

The underlined sections above discuss land with deep water access. However, the land we are proposing to rezone does not have direct access to Fore River. The B-5b section above mentions that land on the upland of West Commercial Street is zoned B-5b. While this is true for the property we currently own on West Commercial Street, it is not true for the abutting land we now have under agreement. Therefore, it seems reasonable and consistent with Portland's Comprehensive Plan to rezone the parcel to B-5b.

Please do not hesitate to contact me with any additional questions or should you need further information.

Regards,



Vincent P. Veroneau

Att. C

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT made as of this *19th* day of *August* 2011 by and between the **PORTLAND TERMINAL COMPANY**, a Delaware corporation with a place of business at 1700 Iron Horse Park, North Billerica, Massachusetts (the "Seller") and the party hereinafter identified in Paragraph 1(b) (the "Buyer").

WITNESSETH:

1. The following terms shall have the meanings specified whenever used in this Agreement:

(a) **SELLER:**

Portland Terminal Company
c/o Pan Am Systems
1700 Iron Horse Park
North Billerica, Massachusetts 01862
Attention: Darlene Ligor, Assistant to the Vice President - Real Estate

Send a copy of any notice to:

Portland Terminal Company
c/o Pan AM Systems
1700 Iron Horse Park
North Billerica, Massachusetts 01862
Attention: Roland L. Theriault, Vice President - Real Estate

(b) **BUYER:**

J.B. Brown & Sons
ATTN: Vincent Veroneau, President
36 Danforth Street
Portland, ME 04101

Send a copy of any notice to:

David L. Galgay, Jr., Esquire
Verrill Dana, LLP
One Portland Square
Portland, Maine 04112-0586

(c) **PREMISES:**

A certain parcel of land consisting of 10.50 acres of land located in Portland, County of Cumberland, State of Maine, as more particularly shown on a sketch attached to this agreement and marked "Exhibit A", together with all rights, privileges, easements and appurtenances thereto, including without limitation, all air rights, water rights, rights-of-way or other interests in, on, under or to any land, highway, alley, street or rights-of-way abutting or adjoining said parcel.

(d) **PURCHASE PRICE:**

The agreed purchase price is [REDACTED] and 00/100 ([REDACTED] Dollars.

(e) **DEPOSIT:**

[REDACTED] 00/100 (\$ [REDACTED]) Dollars.

(f) **CLOSING DATE:**

Unless otherwise agreed in writing, the closing shall occur on December 19, 2011, or subsequent to Seller obtaining the Release from the State of Maine in accordance with 23 M.R.S.A. Section 7105, at such earlier date designated by Buyer upon five (5) days prior notice to Seller.

(g) **EXHIBITS:** The following exhibits are hereby incorporated by this reference into this Agreement:

- (i) Exhibit "A": A plan of the Premises entitled: Portland Terminal Company, Office of the Vice President- Engineering, Land Sale Plan, Portland, ME, Line Yard 8, V.S.1-D, Maps 1, 2, mile post:, Scale 1"=300', Date 8/16/11.
- (ii) Exhibit "B": Deed.
- (iii) Exhibit "C": Plan Specifications.
- (iv) Exhibit "D" Additional Provisions

2. **PURCHASE AND SALE.** In consideration of the mutual covenants and promises contained in this Agreement, and other good and valuable consideration received by each party, the Seller hereby agrees to sell and the Buyer agrees to purchase the Premises, upon the terms and conditions hereinafter set forth.

3. **TITLE.** The Premises shall be conveyed by a release deed running to the Buyer in a form substantially identical to that annexed hereto and marked Exhibit "B" (the "Deed"). The Deed shall contain no warranties or covenants of title whatsoever and shall convey all of the Seller's right, title and interest in the Premises, subject to the following:

- (a) Provisions of existing building, land use, subdivision control and zoning laws;
- (b) Such real property taxes for the then current tax year as are not yet due and payable on the Closing Date;
- (c) Any liens for municipal betterments assessed after the date of this Agreement;
- (d) Such agreements, leases, licenses, easements, restrictions and encumbrances, if any, as may appear of record, or otherwise; and
- (e) The provisions, conditions and covenants set forth in the Deed and hereby expressly incorporated by reference. The Buyer agrees to signify acceptance of such provisions, conditions and covenants contained in the Deed by executing the Deed at closing.

4. **DEED PLAN.** The Seller's obligations under this Agreement are conditioned upon the Buyer furnishing the following items to the Seller no later than ten (10) days prior to the Closing Date:

- (a) A satisfactory linen or mylar deed plan of the Premises (the "Plan") which: (i) is prepared by a registered land surveyor, (ii) is suitable in all respects for recording at the local registry of deeds, (iii) contains a certification by said registered land surveyor as to the actual land area comprising the Premises, (iv) conforms to the requirements set forth in Exhibit "C", and (v) contains such other information as the Seller may reasonably require; and
- (b) A description of the Premises by metes and bounds, consistent with and referring to the Plan, which description shall be attached to and become the Exhibit "A" referred to in the Deed.

The Seller agrees to reasonably cooperate with the Buyer or the Buyer's agents to

furnish the information necessary for the Buyer to complete the Plan.

The Buyer agrees to indemnify the Seller for all loss, cost, damage and expense (including reasonable attorneys' fees and expenses) arising in any way out of the presence or activities upon the Premises by the Buyer, said registered land surveyor or the agents, servants, employees or contractors or any of them, whether such loss, cost, damage or expense is incurred by the Seller, the Buyer, said registered land surveyor, or the agents, servants, employees or contractors of the same, or by others.

5. **ADJUSTMENTS TO PURCHASE PRICE.** Water rates, rents, real estate and other property taxes and sewer charges (collectively, the "Taxes") shall be apportioned as of the Closing Date and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price payable by the Buyer. If the amount of Taxes is not known at the Closing Date, they shall be apportioned on the basis of the Taxes for the applicable preceding period and reapportioned as soon as verified current information can be obtained. The latter provision shall survive the delivery of the Deed.

6. **FEES, COSTS, AND TRANSFER TAXES.** The Buyer agrees to pay all recording fees and real estate transfer taxes of any description imposed on either the Buyer or Seller on account of this transaction by any government or governmental authority.

7. **CLOSING.** The Deed shall be delivered and the Purchase Price less the Deposit shall be paid by certified or bank cashier's check (and not otherwise) at the offices of Verril Dana, One Portland Square, Portland, Maine, at 10 o'clock a.m. on the Closing Date, unless the parties otherwise agree beforehand in writing. It is agreed that time is of the essence in all respects to this transaction.

8. **POSSESSION.** The Seller shall deliver possession of the Premises to the Buyer on the Closing Date, subject only to the provisions of paragraph 3 hereof, the Premises then being in the same condition as they now are, reasonable wear and tear excepted.

9. **SELLER'S DEFAULT.** In the event that the Seller is unable to give title or make conveyance of the Premises to the Buyer in accordance with the terms of this Agreement for any reason, then any payments made by the Buyer shall be refunded, the obligations of the parties shall cease, this Agreement shall be void and neither party shall have further recourse against the other.

10. **REMOVAL OF ENCUMBRANCES.** The Seller may use the Purchase Price paid by the Buyer at the time of the delivery of the Deed, or any portion thereof, to clear the title of any mortgage or other title encumbrance not in accordance with the terms hereof, provided that any instrument so procured is recorded as soon as reasonably practical after the delivery of the Deed.

11. **ACCEPTANCE OF DEED.** The Buyer's acceptance of the Deed shall be deemed to be a full performance and discharge of every agreement or obligation of the Seller herein contained, except for such as are, by the terms hereof, to be performed after the delivery of the Deed.

12. **BROKER.** The parties represent and warrant to each other that neither has dealt with any broker in respect to this transaction or the Premises. The Buyer and Seller each agree to indemnify and hold harmless the other party from and against all other claims for brokerage or commission on account of this transaction.

13. **DEPOSIT.** The Deposit shall be held by the Seller subject to the terms of this Agreement and shall be duly accounted for at the time of delivery of the Deed. The parties agree that the Deposit shall not bear interest.

14. **WARRANTIES.** The Buyer acknowledges that the Buyer has not been induced to enter into this Agreement, and the transaction contemplated herein, in reliance upon any warranties or representations of any party not set forth herein. The Buyer hereby expressly waives any claims against the Seller for any matters of public record or matters which a physical inspection of the Premises would reveal. This paragraph shall survive the delivery of the Deed.

15. **BUYER'S DEFAULT.** In the event the Buyer fails to fulfill any one or more of the Buyer's performances under this Agreement, the Seller shall retain the Deposit as liquidated damages. The parties expressly acknowledge that the Seller's damages owing to the Buyer's default hereunder are difficult to ascertain and agree that the Deposit represents a reasonable estimate of the Seller's damages.

16. **APPROVALS, RELEASES.** The Seller's obligations under this Agreement are conditioned upon the Seller obtaining any necessary releases, approvals or permits relating to the sale of the Premises by the Seller from any state or federal government or governmental authority having jurisdiction over the Premises, including, but not limited to, 23 M.R.S.A. Section 7105. The Seller agrees to proceed with reasonable diligence to obtain any such approvals. In no event, however, shall the Seller be required to obtain subdivision approval from any governmental authority. If subdivision approval is required by applicable law, the Buyer shall obtain it or shall indemnify the Seller from all loss, cost, damage, and expense arising in any way out of the conveyance of the Premises without first having obtained the same. In the event that the State of Maine or its designee exercise the option to purchase pursuant to 23 M.R.S.A. Section 7105 by accepting in writing the offer tendered by the Railroad pursuant to 23 M.R.S.A. Section 7105 within "a reasonable amount of time" from the date the offer is made to the State, this Agreement becomes null and void, and all deposits paid by the Buyer shall be refunded, and the parties shall have no further recourse hereto.

17. **HAZARDOUS WASTE.** The Buyer hereby acknowledges that the Buyer is purchasing the Premises "as is", "with all faults" and subject to the possible existence of hazardous materials, petroleum products and/or other pollutants regulated by law. Notwithstanding the foregoing, the Buyer, for itself, its successors, assigns and grantees hereby irrevocably waives, gives up and renounces any and all claims or causes of action against the Seller in respect of any claims, suits, and/or enforcement actions, including any administrative or judicial proceedings and any remedial, removal, or response actions ever asserted, threatened, instituted, or requested by any person (including any government agency) on account of: (a) any release of oil or hazardous materials (as those terms are defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601, et seq.) or any applicable state law) on, upon, or into the Premises; and (b) any and all damage to real or personal property, natural resources, and/or harm to persons alleged to have resulted from such release of such oil hazardous materials upon the Premises. This provision shall survive the delivery of the deed.

18. **NOTICES.** Any notice or other communication in connection with this Agreement shall be deemed given when received (or upon attempted delivery if delivery is not accepted). Such notices shall be in writing and delivered by hand or sent either (a) by registered or certified mail (return receipt requested) with the United States Postal Service; or (b) by Federal Express or other similar overnight mail carrier furnishing evidence of receipt to the sender, at the address set forth in paragraph 1 of this Agreement. Either party may change the address at which notices are to be received by notice given as set forth above.

19. **CONFIDENTIALITY.** The Buyer agrees and acknowledges that Information (hereinafter defined) concerning the Premises obtained by the Buyer in connection with the transaction contemplated in this Agreement (the "Transaction") is unique and confidential to the Seller. If the Transaction does not take place, for any reason whatsoever (including; but not limited to, breach of this Agreement by either party), the Buyer agrees, in addition to the provisions of paragraph 15 hereof, to turn over to the Seller all (i) plans, (ii) surveys, (iii) reports, (iv) site assessment and environmental reports of any description, (v) soil, vegetation, water, air and other samplings collected at the Premises and the fruits of any research, testing, experimentation or study conducted with the same, and (vi) all plans or other information or documents furnished by the Seller to the Buyer (collectively, the "Information"). Furthermore, in the event the Transaction does not take place, the Buyer warrants to the Seller that all Information has been paid for and is free of any and all liens, and that the Buyer, its officers, agents, employees, directors, shareholders and affiliates shall not disclose the Information to any person, entity or government. The Buyer acknowledges and agrees that the Seller may, in addition to all other remedies available to it, obtain injunctive relief against the Buyer for any breach or threatened breach of the provisions of this paragraph.

20. **RECORDING.** The parties agree that neither this Agreement nor any memorandum thereof shall be recorded at the registry of deeds and that any such recording by the Buyer shall constitute a default by Buyer.

21. **AUTHORITY OF SIGNATORY.** If the Buyer executes this Agreement by agent or representative, such agent or representative hereby warrants and represents to the Seller that he is authorized to execute, acknowledge and deliver this Agreement on behalf of the Buyer and to thereby bind the Buyer to the same. This warranty shall survive the delivery of the Deed.

22. **ASSIGNMENT.** The Buyer may not assign this Agreement, or any interest herein, without the prior written consent of the Seller, which consent shall not be unreasonably withheld. Seller hereby consents to the Buyer assigning its interest hereunder to a single member limited liability company wholly owned by the Buyer.

23. **SEVERABILITY.** If any term of this Agreement or the application thereof to any person or circumstance shall at any time or to any extent be deemed invalid or unenforceable, the remainder of this Agreement and the application of such term to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected.

24. **NO WAIVER.** No delay or omission on the part of the Seller in exercising its rights under this Agreement shall constitute a waiver of such right or any other right under this Agreement. Also, no waiver of any such right on one occasion shall be construed as a waiver of it on any other occasion.

25. **APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the state wherein the Premises lie.

26. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, supersedes all prior oral or written offers, negotiations, agreements, understandings and courses of dealing between the parties relating to the subject matter hereof and is subject to no understandings, conditions, or representations other than those expressly stated herein. This Agreement may only be modified or amended by a writing which states that it modifies or amends this Agreement and which is signed by all parties.

27. **SECTION HEADINGS.** The section headings contained in the Agreement are for reference and convenience only and in no way define or limit the scope and contents of this Agreement or in any way affect its provisions.

28. **MISCELLANEOUS.** This Agreement shall take effect as a sealed instrument and be binding upon and inure to the benefit of the parties and their respective successors, heirs, administrators and assigns.

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

SELLER:
PORTLAND TERMINAL COMPANY

Arundel Anwarth
Witness

By: David A. Fink
David A. Fink, President

Approved for execution
by the Portland Terminal Company.

BUYER:
J.B. BROWN & SONS

Michelle Crowley
Witness

By: Vincent P. Veroneau
Vincent P. Veroneau
Print Name

DRAFT

Exhibit "B"

RELEASE DEED

PORTLAND TERMINAL COMPANY, a corporation duly organized and existing under the laws of the State of Maine, with offices at 1700 Iron Horse Park, North Billerica, Middlesex County, Massachusetts (the "Grantor") in consideration of (\$) Dollars paid to it by with a mailing address of (the "Grantee") hereby grants to the Grantee all the Grantor's right, title and interest, without any warranties or covenants of title whatsoever, in a certain parcel of land, and the buildings, bridges, structures, crossings, fixtures and improvements thereon, if any, situated in (the "Premises") described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND
MADE A PART HEREOF BY THIS REFERENCE.

This conveyance is subject to the following reservations, conditions, covenants and agreements:

1. This conveyance is made without granting any right of way, either by necessity or otherwise, over any remaining land or location of the Grantor.
2. ~~The Grantor hereby reserves an exclusive, permanent right of way and easement in, on, over, under, across and through the Premises for the purpose of accessing, constructing, installing, operating, maintaining, modifying, repairing, replacing, relocating and removing a telecommunications system or other system for transmission of intelligence or information by any means, whether now existing or hereafter devised, including such poles, pipes, wires, fibers, fiberoptic cables, repeater stations, attachments, appurtenances, structures or other equipment and property of any description necessary or useful for the same (the "Telecommunications Easement"). The Grantor further reserves the right to freely lease, license, mortgage, assign, pledge and otherwise alienate the Telecommunications Easement. The Grantee hereby covenants with the Grantor to recognize the Telecommunications Easement and, without the payment of any further consideration, to execute, acknowledge and deliver such instruments suitable for recording with the registry of deeds as the Grantor may reasonably require to acknowledge title to the Telecommunications Easement in the Grantor. The Grantor covenants to reasonably repair and restore the surface of the easement area after any work.~~

3. ~~The Grantor excepts from this conveyance any and all railroad tracks, railroad track materials (including, but not limited to, ties, connections, switches and ballast) and/or related equipment of any description located in whole or in part within the Premises (the "Trackage") and this conveyance is subject to the right of the Grantor to enter the Premises from time to time and at any and all times within the ninety (90) day period commencing with and subsequent to the date of delivery of this deed, with such men, equipment and materials as, in the reasonable opinion of the Principal Engineering Officer of the Grantor, are necessary for the removal of the Trackage. Days during the months of December, January, February and March shall not be included in the aforesaid ninety (90) day period. If the Trackage is not removed from the Premises by the expiration of said ninety (90) day period, the Trackage shall be deemed abandoned by the Grantor and shall then become the property of the Grantee.~~
4. ~~The Grantor excepts from this conveyance any and all advertising signs and/or billboards located upon the Premises which are not owned by the Grantor. Furthermore, this conveyance is subject to the right of the owners of said signs and/or billboards to go upon the Premises and remove them within ninety (90) days from the date of delivery of this deed.~~
5. By the acceptance of this deed and as part consideration therefor, the Grantee hereby assumes any and all agreements, covenants, obligations and liabilities of the Grantor in respect to any underground facilities, drainage culverts, walls, crossings and/or other structures of any nature and description located in whole or in part within the Premises.
6. By the acceptance of this deed and as part consideration therefor, the Grantee agrees to irrevocably waive, give up and renounce any and all claims or causes of action against the Grantor in respect of claims, suits and/or enforcement actions (including any administrative or judicial proceedings and any remedial, removal or response actions) ever asserted, threatened, instituted or requested by any person and/or governmental agency on account of: (a) any release of oil or hazardous materials or substances of any description on, upon or into the Premises in contravention of any ordinance, law or statute (including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq., as amended); and (b) any and all damage to real or personal property, natural resources and/or harm or injury to persons alleged to have resulted from such release of oil or hazardous materials or substances.

7. ~~By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to build and forever maintain fences (together with any necessary gates), suitable to the Principal Engineering Officer of the Grantor, along the boundaries of the Premises which are common to remaining land or location of the Grantor (the "Fences"), if Fences are ever required in the sole and reasonable opinion of said Principal Engineering Officer.~~
8. ~~This conveyance is subject to the following restriction for the benefit of other land or location of the Grantor, to wit: that from the date of delivery of this deed, the Grantor shall not be liable to the Grantee or any lessee or user of the Premises (or any part thereof) for any damage to any buildings or property upon them caused by fire, whether communicated directly or indirectly by or from locomotive engines of any description upon the railroad operated by the Grantor, or otherwise.~~
9. ~~By the acceptance of this deed and as part consideration therefor, the Grantee hereby agrees to make no use of the Premises which, in the sole and reasonable opinion of the Principal Engineering Officer of the Grantor, adversely affects, increases or decreases drainage to, from, upon or in any remaining land or location of the Grantor. The Grantee agrees to indemnify and save the Grantor harmless from and against any and all loss, cost, damage or expense including, but not limited to, the cost of defending all claims and/or suits for property damage, personal injury or death arising out of or in any way attributable to any breach of the foregoing covenant.~~
10. ~~The Grantor excepts from this conveyance any and all overhead, surface or underground signal and communication line facilities of the Grantor located within the limits of the Premises and this conveyance is subject to the Grantor's use of any such facilities in their present locations and entry upon the Premises from time to time to maintain, repair, replace, renew, relay or remove such facilities.~~
11. The ~~strikeout~~ sections in this Deed are intentionally deleted.
12. Whenever used in this deed, the term "Grantor" shall not only refer to the **PORTLAND TERMINAL COMPANY**, but also its successors, assigns and affiliates and the term "Grantee" shall not only refer to the above-named Grantee, but also the Grantee's successors, assigns and grantees, as the case may be.

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C.11

- 13. The several exceptions, reservations, conditions, covenants and agreements contained in this deed shall be deemed to run with the land and be binding upon the Grantee forever. In addition to the acceptance and recording of this deed, the Grantee hereby signifies assent to the said several exceptions, reservations, conditions, covenants and agreements, by joining in its execution.

IN WITNESS WHEREOF, the said **PORTLAND TERMINAL COMPANY** has caused this release deed to be executed in its name and its corporate seal to be hereto affixed by David A. Fink, its President, thereunto duly authorized this ____ day of _____, 2011.

GRANTOR:
PORTLAND TERMINAL COMPANY

DRAFT

By: _____
 David A. Fink, President

 Witness

GRANTEE:

DRAFT

By: _____

 Witness

DRAFT

C.12

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

_____, 2011

On this ____ day of _____, 2011, before me, the undersigned notary public, personally appeared the above-named David A. Fink, the President of the **PORTLAND TERMINAL COMPANY** as aforesaid, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public: DRAFT
My Commission Expires: _____

STATE OF MAINE

_____, ss.

_____, 2011

On this ____ day of _____, 2011, before me, the undersigned notary public, personally appeared the above-named _____, of **J.B. Brown & Sons**, as aforesaid, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public: DRAFT
My Commission Expires: _____

EXHIBIT "C"

Two Pages

Engineering Department
Minimum Requirements for Deed Plans

1. Title Block shall be similar to the attached sample and located in the bottom right corner of plan.
2. Plan is to include metes and bounds, physical features, Railroad baseline and engineering stations for the extremities of the parcel to be conveyed, culverts and street locations.
3. Railroad file numbers (to be assigned) are to appear in the top right and bottom left corners of plan.
4. Registered Land Surveyor's seal and signature must appear on plan.
5. Plan is to meet all requirements of and be acceptable for recording by the appropriate Registry of Deeds.
6. Parcel distance from centerline of location of track must be indicated.
7. No reference to "Railroad" shall appear on plan. The term Portland Terminal Company shall be used.
8. Plan to include the map and parcel number of area to be conveyed.
9. Two (2) copies of proposed plans shall be submitted for review prior to sending original.
10. Recordable original tracing and linen or mylar duplicate thereof are to be furnished this office. The original tracing will be forwarded to the Real Estate Department at the time of Closing. The duplicate will be retained in the Railroad's permanent files.

All correspondence regarding the particulars of the plan should be addressed to:

Vernon C. MacPhee, Jr.
Land and Clearance Engineer
Portland Terminal Company
Iron Horse Park
North Billerica, MA 01862-1681
(978) 663-1144
FAX: (978) 663-1199

C.14

SAMPLE TITLE BLOCK

LAND IN

WHEREVER, ME

PORTLAND TERMINAL COMPANY

TO

WHATEVER CORPORATION CO. INC.

SCALE: 1" = 40'

DATE: January 2, 2008

EXHIBIT "D"
Additional Provisions

29. The Buyer's performance hereunder is subject to the Premises being free of hazardous materials and/or other pollutants regulated by law ("Pollutants"). The Buyer may, at its own expense, promptly conduct a Phase I environmental assessment ("Report") concerning the presence of Pollutants on the Premises from a duly qualified, certified engineer currently engaged in the business of rendering such reports ("Consultants"). The Report shall be completed within Sixty (60) days from the date hereof. The Buyer may terminate this Agreement and receive a refund of the Deposit by causing the Consultant to certify to the Seller in writing within Sixty (60) days from the date hereof that the Premises are contaminated by Pollutants and included therewith a description of the nature, quantity and location thereof on the Premises. If Buyer does not so terminate this Agreement, Buyer shall be deemed to have waived all objections to the condition of the Premises, including hazardous waste, oil or other contaminated material existing on the date of completion of Buyer's inspection. Upon certification from the Consultant as hereinabove provided, and in reliance thereupon, the Seller shall refund the Deposit and this Agreement shall be null and void.

30. The Buyer's performance hereunder is subject to the title to the Premises being good, clear record and marketable and subject only to those easements, encumbrances and restrictions which are described in this Agreement. The Buyer shall have a period of sixty (60) days from the date first written above to examine the title to the Premises and determine whether or not it complies with the provisions hereof. If the Buyer discovers any defect in the title to the Premises, the Buyer shall notify the Seller thereof in writing by said sixty fifth (65th) day whereupon all Deposits shall be refunded and this Agreement shall be of no further effect between the parties. In the event any title defect exists on such sixtieth (60th) day and the Buyer fails to so notify the Seller, the Buyer shall be conclusively deemed to have waived any objection to the title based upon said defect.

31. The Seller agrees to provide to the Buyer at the time of closing a Clerk's Certificate or Corporate Vote indicating that the person executing the Release Deed is duly authorized to sign the Deed.

32. If the Seller executes this Agreement by agent or representative, such agent or representative hereby warrants and represents to the Buyer that he is authorized to execute, acknowledge and deliver this Agreement on behalf of the Seller and to thereby bind the Seller to the same.

33. The Buyer's performance hereunder is subject to the Buyer meeting with the City of Portland Planning Department to determine to Buyer's satisfaction whether the city will support a zoning district change on the Premises from WPDZ to B-5(b). Buyer's zone change evaluation shall be completed within sixty (60) days from the date hereof. The Buyer may terminate this Agreement and receive a refund of the Deposit by notifying the Seller in writing within sixty five (65) days from the date hereof that

C:16

the Buyer has determined that the City of Portland is unlikely to support the requested zone change on the Premises. If Buyer does not so terminate this Agreement, Buyer shall be deemed to have waived this condition of the Agreement. Upon notification by Buyer as hereinabove provided, the Seller shall promptly refund the Deposit to Buyer and this Agreement shall be null and void.

West Commercial Street Zone Change; Topographic Profiles and Relative Building Heights

Notes:

- Profiles are produced by City of Portland Planning Division for use by the Planning Board in evaluating existing topography and proposed building height regulations.
- Profiles are hand drafted from City of Portland GIS topo data at 1"=40' for both horizontal and vertical scale.
- Proposed building heights and locations are speculative and used for reference only. Representative roof top appurtenances are shown as an example of what could be constructed above building height maximums but do not represent designs proposed by the applicant.
- Existing building profiles on Danforth Street are approximations of representative building forms to show relative elevations between Danforth Street, West Commercial Street and potential development. The Danforth Street building profiles do not represent specific or individual buildings as existing building heights are not known.

Memorandum
Department of Planning and Urban Development
Planning Division



To: Chair Morrissette and Members of the Portland Planning Board
From: Bill Needelman, Senior Planner
Date: January 5, 2012
Re: January 10, 2012 Workshop
 Zoning Map Amendment Proposal and B-5B Text amendment for 113-201 West Commercial Street
 J.B. Brown and Sons, Applicant
 WPDZ to B-5b and R-4
 CBL: 60-A-1 and 2, 60-B-1, 60-E-1 to 4, and 71-C-2
 Application #: 2011-369

Introduction:

J.B. Brown & Sons, represented by Vincent Veroneau, request a third workshop with the Planning Board to review a proposed zone map change in the area of 113 to 201 West Commercial Street. The site is a 10.65 acre former rail yard and is predominantly vacant. The applicant proposes to change the zoning on the majority of the site (+/-5.8 acres) from Waterfront Port Development (WPDZ) to Mixed Use Commercial, B-5b. While no fixed plans are in place for a specific development, the applicant has provided conceptual master plans of the site showing commercial office buildings and surface parking along West Commercial Street.

Previously, the applicant had proposed changing the zoning for a larger portion of the site (+/-8.5 acres) to B-5b, including land currently zoned R-4 located at the rear the site toward Danforth Street residential abutters. Responding to neighborhood requests and Planning Board comments, the applicant has amended the application to only those portions of the site currently zoned WPDZ. Furthermore, the amended application includes changing +/- .5 acres of J.B. Brown land that is currently zoned WPDZ to R-4 to increase the residential buffer at the westerly-central portion of the site. The application also now includes a text amendment to the B-5b zone to modify the maximum building height from 65 to 45 feet for the westerly portions of the site.

The advertised zone change map additionally includes a proposed change on portions of two abutting residential properties that are currently zoned WPDZ. The revised notice map proposes that these properties change to R-4, consistent with their use and to avoid an isolated remnant of WPDZ if the applicant's proposal is approved.

The revised and advertised zone change map showing the proposed zoning on both J.B. Brown and abutting parcels is provided in Attachment 3.

This workshop was advertised in the Portland Press Herald on January 2 and 3, 2012 and notices were mailed to 175 neighbors and interested parties.

negotiation over building height
 Text amendment

Previous Workshop Discussion:

At the November 8 workshop, the board reflected on the policies implicated by the proposal and comments by members of the public. The major issues discussed included:

- The relationship between topography and the proposed rezoning and how the current R-4 zone acts as a buffer to Danforth Street neighbors;
- The relationship between the proposed rezoning and the West End Historic District;
- The potential view impacts of 65 foot buildings to Danforth Street neighbors and the potential for B-5b 100% lot coverage to allow new development to move up the slope and use "average grade" to build even larger buildings;
- The structural stability of the slope and its suitability for development;
- The loss of significant mature forest;
- The wide use allowances in the B-5b; and,
- The potential loss of waterfront land supporting marine industry.

Following the November 22 site walk, the Board held a workshop where public testimony and Board discussion included a number of additional issues:

- The "gateway" nature of the site and the desire for quality architecture should be addressed.
- The R-4 should not change to B-5b and R-4/B-5b line could be amended follow the toe of slope to buffer abutters and protect potentially unstable soils.
- Explore varied building height requirements within the site as the impacts to Danforth Street differ from west to east. There was a difference of opinion as to whether 65 feet was too high anywhere on the site.
- Traffic impacts.
- Additional visual material is needed to assess massing and view impacts of potential development.

Responding to the issues raised at both workshops, the applicant revised the application to reduce the amount of land proposed for B-5b and to increase the land dedicated to R-4. The applicant has additionally agreed to propose a varied building height regulation with 65 foot maximums at the easterly side of the site and 45 foot maximums to the west.

The background and Comprehensive Plan analysis from the November 8 workshop is provided below for the Board's use. Note that the maps have changed with the current proposal.

Proposed Zone Map Amendments:

Attachments 3 and 4 show the revised zone lines as currently proposed. Compared to the original proposal, the revised zone map amendment includes nearly 3 fewer acres of subject parcel land proposed to change to B-5b and +/-0.5 acres more of R-4 land on site (in addition to off-site parcels proposed for R-4 on abutting residential properties.)

Starting at the east moving west, the proposed B-5b/R-4 line follows the existing WPDZ line until intersecting with an imaginary extension of the Fletcher Street right of way from Danforth Street. Continuing west, the proposed zone line angles southward toward West Commercial Street until intersecting with an internal corner of the subject property located +/- 300 easterly from Benny's Fried Clams. The line continues westerly along the subject property line, behind Benny's, until it meets the existing WDDZ line eventually terminating at the center line of West Commercial Street. The line returns to the point of beginning along the centerline of West Commercial Street to the existing B-5b zone at the Star Match Company site.

The above described R-4/B-5b line generally follows the toe of slope leaving the steep portions of the site in the R-4.

Proposed building height text amendment:

The neighborhood abutters and certain members of the Planning Board expressed discomfort with the potential for 65 foot buildings over the entirety of the site. Board members also requested additional graphic material to help visualize the massing and view impacts of potential development allowed under the proposed zoning.

The applicant agreed to amend the application to limit building heights on the westerly side of the site to 45 feet to respond to these concerns. Again, the Fletcher Street right of way appeared to be a logical dividing point to differentiate the easterly and westerly portions of the site. Planning staff drafted the text change below to implement the applicant's response to Board concerns.

- (f) Maximum building height: Sixty-five (65) feet, except for parcels of land in the B-5b located along West Commercial Street south of Danforth Street and west of the projection of the centerline of the Fletcher Street right of way between its intersections with Orchard Street and Danforth Street, the maximum building height shall be forty-five (45) feet.

For purposes of this section, a projection of the centerline of a street shall consist of an extension of the centerline of the street to the centerline of West Commercial Street.

The text above follows the WPDZ text which likewise varies structure height maximums by location as determined by street right of way projections.

Topographic and Building Profiles:

Responding to Board requests to better visualize the relationship between potential development and existing topography and buildings, Planning Staff has produced a series of section profile drawings. The

drawings show grade profiles at four locations from Danforth Street to West Commercial Street. A key map is provided in Attachment 5.1 and profiles are Attachments 5.2 to 5.5.

At Danforth Street, representative building forms are shown (in blue) that approximate existing residential development. As existing building heights are not known, the drawings do not depict individual buildings specifically, but intend to reflect the pattern of Danforth Street development.

On the subject site, speculative building forms are shown (in red) at the proposed building height maximums. The "buildings" are abstractions used to show relative size and elevations of potential development, and do not reflect specific proposals by the applicant. These building forms are placed within 10 feet of the street right of way as required by B-5b zoning and are drawn 100 feet deep, as shown on the applicants conceptual master plans. Dashed-line roof top shapes are shown above the building height maximums representing mechanical parapets and apparatus as may typically be found on a modern office structure.

The profile drawings also show the intersection of existing and proposed zone lines. Existing forest cover is not depicted but should be considered when using this material.

Gateway Architecture:

One of the outcomes of the previous workshops is the general agreement regarding the importance of the subject parcel as a gateway to the city. Members of the public expressed desire to see some type of design guidance and these comments were reflected by some members of the Board.

The B-5b zone, as proposed, will help to ensure an urban presence by requiring building placement near the street. Additionally, development in the B-5 zones is subject to the following standards from the City's Design Manual:

Development located in the B-5 and B-5b zones shall meet the following additional standards:

- a. *Shared infrastructure: Shared circulation, parking, and transportation infrastructure shall be provided to the extent practicable, with utilization of joint curb cuts, walkways, service alleys, bus pull-out areas, and related infrastructure shared with abutting lots and roadways. Easements for access for abutting properties and shared internal access points at property lines shall be provided where possible to facilitate present or future sharing of access and infrastructure.*
- b. *Buildings and uses shall be located close to the street where practicable. Corner lots shall fill into the corner and shall provide an architectural presence and focus to mark the corner.*
- c. *Buildings shall be oriented toward the street and shall include prominent facades with windows and entrances oriented toward the street. Uses that include public access to a building or commercial/office uses in mixed-use developments shall be oriented toward major streets whenever possible.*

- d. *Parking lots shall be located to the maximum extent practicable toward the rear of the property and shall be located along property lines where joint use or combined parking areas with abutting properties are proposed or anticipated.*

Source: City of Portland, Maine Design Manual, adopted May 11, 2010

The Board did not express clear direction that additional design review was warranted, but there was a significant discussion regarding the importance of the site and the desire for enhancing the gateway experience entering the city.

Through the Site Plan Ordinance, other zones within the city require more detailed design standards and guidelines. If the Board supports subjecting the subject parcel to more detailed design review than provided above, a text amendment to the "zone specific" standards of the Site Plan Ordinance would follow the City's current practice.

During the development of the B-7 zone in Bayside, which had previously been B-5, the B-3 Downtown Business Zone Design Standards were used as interim standards while new standards were developed for Bayside. The B-3 design standards that are further informed by the Urban Design Guidelines developed as part of the 1990 Downtown Vision Plan. If design standards are proposed for the subject re-zoning, the B-3 standards would likely be the most compatible for West Commercial Street, understanding that issue such as "pedestrian activities districts" would not apply. The B-3 standards are included at the end of this memo for the Board's reference.

Staff will look to the Board for direction on design standards and is prepared to draft text amendment to the Site Plan Ordinance for advertisement and review at the public hearing

Next Steps:

Based on Board input, staff will finalize the map and text amendments for advertisement. The applicant has requested January 24th for a Public Hearing date.

Attachments:

November 8, 2011 Planning Board Memo Excerpts

B-3 Downtown Design Standards

1. Current Zone Text Excerpts: R-4 Purpose Statement; WPDZ Purpose Statement and "No Adverse Impact" clause; and, B-5 complete current text.
2. Public Comment: Letters and Emails. Pringle, Curtis, Stone, Coyne, Greaf (WENA), Bloomfield, Curtis
3. Amended Zone Map Change
4. Site Topography Map
5. Building Height Sections

Applicant's Submittal:

- A. Rezone application
- B. Written Statements with Comprehensive Plan analysis

- C. Purchase and Sale Agreement
- D. Existing conditions and survey
- E. Applicant's re-zone map
- F. Conceptual Master Plans
- G. Subject Parcel Deed

Text Excerpts from the November 8, 2011 Planning Board Workshop Memo:

Right Title and Interest: (updated, January 5, 2012)

The applicants purchased the subject parcel from the current owners, the Portland Terminal Company (Pan Am, aka Guildford.) The property deed is provided at the end of the applicant's material

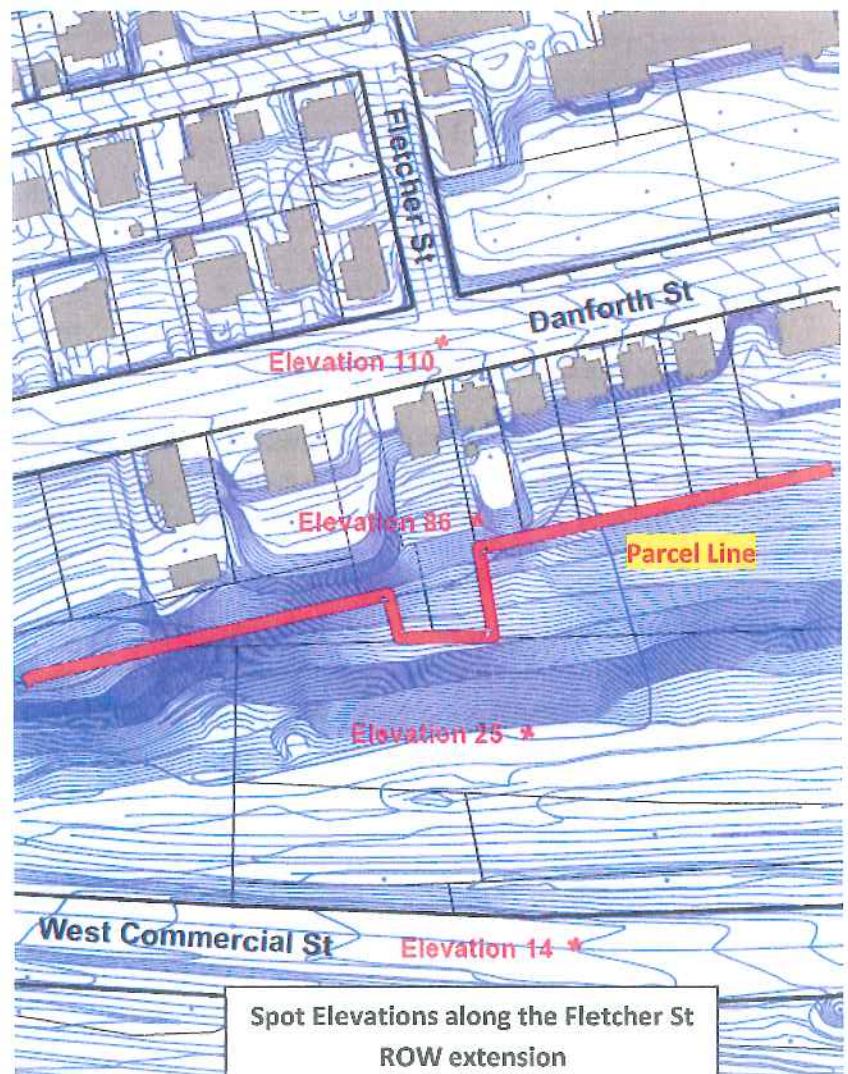
Site Description and History:

The subject parcel is an elongated collection of parcels extending west from the Danforth Street/West Commercial Street intersection approximately 2800 feet along West Commercial Street. The site is bound by West Commercial Street to the south, other lands of J.B. Brown to the east (the "Star Match Company" complex,) and residential properties along Danforth Street to the north.

The site is vacant and heavily wooded with Benny's Fried Clams being the only active use. Portions of the site along West Commercial Street to the east are frequently used as informal parking or vehicle staging.

The site exhibits extreme topographic variation. The street frontage portions of the site were historically crossed by multiple rail corridors and sidings and are correspondingly flat at an elevation of +/-22 feet to 30 feet above sea level. To the north, Danforth Street rises sharply from West Commercial Street reaching an elevation of 104 feet at the Vaughan Street intersection and +/-125 feet at Emery Street, which is located just to the east of the subject parcel. A steep slope rising between 50 feet to the west and 70 plus feet to the east occupies the rear of the site, while an expanse of relatively flat ground between 70 and 165 feet wide lies adjacent to West Commercial Street.

A sample of topography is provided in the diagram to the right showing the central portion of the site with

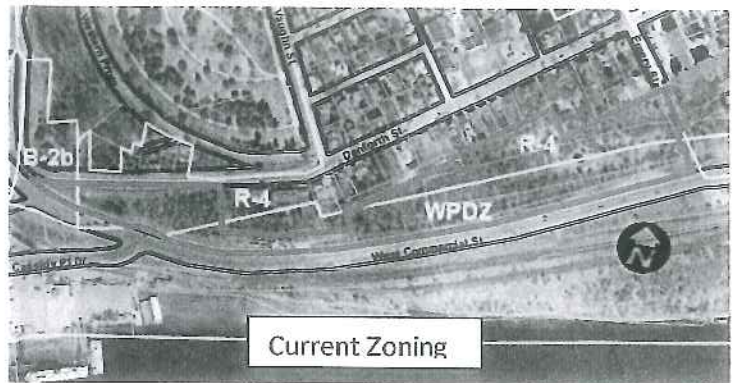


approximate spot grades shown along a line extending from the Fletcher Street right of way.

The historic rail use of the site is evident with former rail beds easily found along the lower portions of the site. The slopes exhibit periodic erosion and landfill sediments are not uncommon. Informal trails are found connecting to the Emery and Salem Street corridors and transient encampments are common on flat wooded ground. Many Portlanders remember the site as the location of the 1976 "Freedom Train" exhibition.

Current Zoning:

The site is currently covered by three zones: WPDZ, R-4, and B-2. The B-2 coverage is limited to a +/-0.25 acre triangle of land at the West Commercial Street/Danforth Street intersection. For the majority of the site, the WPDZ covers the West Commercial Street frontage to a depth of +/-150 to 170 feet and 6.5 acres. The R-4 zone covers the majority of the West End neighborhood and extends south from Danforth Street to the WPDZ boundary occupying +/-3.75 acres of the subject site. Given the topography, the majority of readily developable land is located in the WPDZ.



The Star Match Company complex, located directly to the east along West Commercial Street, is located in the B-5b zone.

Proposed Zoning: See above

Zoning Policy and Comprehensive Plan Analysis:

The proposed zone map amendments represent a significant change for the West Commercial Street area. Board members are directed to the applicant's submittal, Attachment B-2, for their analysis of applicable policies. The policies informing the proposed amendments are found in the following documents:

- Purpose statements of the subject zones
- City's Comprehensive Plan, specifically the Future Land Use Plan, 2005
- Housing: Sustaining Portland's Future , Housing Plan for the City of Portland, 2002
- Waterfront Alliance Recommendations to the City of Portland, 1992

The three implicated zones are current zones, WPDZ and the R-4, and the proposed B-5b.

WPDZ Origins, Purpose and Place in the Future Land Use Plan

The Waterfront Port Development Zone originated with the *Waterfront Alliance Recommendations to the City of Portland*, 1992 report. The Waterfront Alliance formed in the aftermath of the 1987 moratorium on non-marine use on Portland's waterfront. The Alliance was, and is, a diverse group of property owners, business owners and advocates working to establish policies protecting working waterfront uses, while promoting sufficient economic activity to support marine infrastructure and industries.

The policies of the report summarized in its preamble, excerpted below:

PREAMBLE

Our recommendations are based on the recognition that as a working waterfront, Portland Harbor should be a regional economic force that supports local economies through jobs and tax revenues.

Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long-term growth. Measures to promote diversity include zoning, as well as economic assistance and partnerships between private and public interests.

In order to maintain and expand the Port as a working waterfront for the enjoyment and economic benefit of all, the Waterfront Alliance recommends the following measures be taken:

1. Preserve the entire perimeter of the Harbor from Tukey's Bridge to the Veteran's Memorial Bridge for berthing.
2. Recognize that property with direct water access is limited and should be reserved exclusively for marine use.
3. Allow marine compatible use of other property that does not interfere in any way with the activities of water-dependent users.
4. Divide the waterfront into four zones that reflect the type of berthing or land use that each zone can accommodate.
5. The Alliance believes that the City should renew its commitment to promoting public access to the Port for the benefit and enjoyment of its citizens and continue to insure ecological safety through the promotion of environmentally sound practices.

The 1992 report established four sub-areas that became the basis for the current zones established along the waterfront. The report additionally established policies for each area that formed the basis of adopted zoning text. The 1992 policies and application map for the WPDZ are as follows:

PORT DEVELOPMENT ZONE

Port Development Zone Purpose Statement:

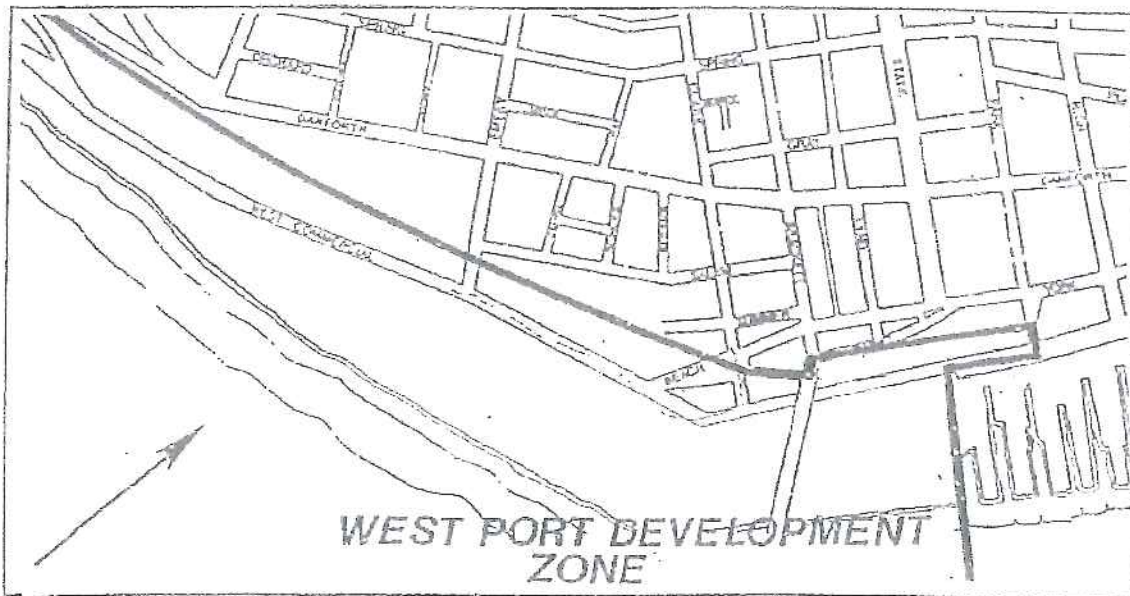
Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to insure the continued viability of the Port of Portland, ME. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those which are dependent upon access to deep water and contribute to port activity.

Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development.

(See the Pringle Amendment attached for clarification.)

PORT DEVELOPMENT WEST ZONE GEOGRAPHIC DESCRIPTION: Generally the land east of Veterans Memorial Bridge to the south side of State Street Wharf and all land west of the Million Dollar Bridge.



The Comprehensive Plan's Future Land Use Plan and the WPDZ purpose statement quote the Waterfront alliance text verbatim. The Future Land Use plan additionally adds the following zone summary:

"The (WPDZ) permitted uses include marine related uses, such as marine repair services, harbor and marine supplies, shipbuilding, cargo handling facilities, boat repair yards, marine construction and salvage, and marine pollution control facilities. The permitted commercial uses include intermodal transportation facilities principally serving vessels with regular scheduled destination service, warehousing of goods awaiting shipment by cargo carriers,

and marine cargo container maintenance and repair. The only dimensional requirements are a 5 foot setback from the pier line and a 45 foot building height limit."

The Future Land Use Plan did not anticipate changes to the WPDZ as of its writing.

In Attachment B.2, the applicant notes that the focus of the WPDZ is directed to properties with direct access to deep water. Board members will note that the Waterfront Alliance sub area map (above) and adopted zone map both include the parcels on the land side of West Commercial Street despite their lack of water access. This apparent inconsistency likely reflects the historic ownership patterns for the area as rail entities held large parcels on both sides of the street. The inclusion of the subject parcels reflect a desire and policy direction promoting larger scale industry for these parcels where significant land-side support would be needed for marine enterprise. With the Portland Terminal Company now selling the landside portions of their holdings, the Planning Board and the City Council are asked to question the relationship between the water-centered language of the policies and the lack of water access on the subject parcel.

R-4, West End Residential Zone and Housing Policy

The Western Prom neighborhood exhibits a mature development pattern and the subject parcels are some of the largest vacant tracts existing within the R-4 zone. The R-4 zone is specifically drafted for application to the Western Promenade neighborhood as a means to promote compatible development and protection of its unique character. The Future Land Use Plan summarizes the zone's purpose and policies as follows:

"The intent of the zone is to preserve the unique character of the Western Promenade area of the city by controlling residential conversions and by allowing the continued mix of single-family, two-family, and low-rise multifamily dwellings and other compatible development at medium densities. Single and two-family dwellings are permitted along with single-family manufactured housing, except in National Register Historic Districts. The residential conditional uses listed under R-4 include sheltered care group homes, alteration of an existing structure to accommodate one or more units, and multiplex development (building with 3 or more units). Other conditional uses include schools, churches, and day care facilities. The minimum residential lot size in 6,000 square feet in the R-4 zone and a multiplex (3 or more units) requires a minimum of 9,000 square feet with 3,000 square feet per unit. The minimum lot area per unit may be reduced by 20% for special needs independent living units. Potential text amendments will be considered to update the residential zones in conformance with the recommendations of Housing: Sustaining Portland's Future. Neighborhoods are encouraged to address the city's housing issues through the Neighborhood Based Planning Process. "

The practical implications of conversion of portions of the R-4 to B-5b in this area are difficult to determine due to the isolated nature of the site. The topography described above makes access to the R-4 sections of the site (proposed for amendment) practically impossible from West

Commercial Street. Access from Danforth Street is limited by the fully developed nature of the street and access from Emery Street and Salem Street is also challenged by topography.

The City's Housing Plan, the 2002 Sustaining Portland's Future supports housing development opportunities on the Portland peninsula as a means to retain the City's position of a population center for the region. The R-4 is a relatively low density zone, with requirements for 3000 square feet of land per dwelling unit, suggesting that the 2002 housing plan's goals for increased density are supported by the B-5b zone, which allows a significantly higher density of dwellings (60 units per acre.) The Housing Plan, however, balances the call for density with the goal of maintaining and enhancing the livability of neighborhoods. Neighborhoods should be protected against inappropriate intrusion by commercial activity and development that is out of scale with the character and traditional development patterns of existing neighborhoods.

While the applicant's Conceptual Master Plan shows access from West Commercial Street only, the Board may want to explore with the applicant the rationale for rezoning the rear of the property and whether B-5b type development is anticipated toward the top of the slope.

B-5b, Urban Commercial Mixed Use Zone

As noted above, the B-5b currently exists on the directly abutting West Commercial Street property. The zone allows a wide variety of uses and is described in the Future Land Use Plan as follows:

"The purpose of the B-5 and B-5b zones is to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. The B-5 and B-5b zones are characterized by larger underdeveloped lots with great potential for denser, clustered, urban mixed use development and more efficient reuse of existing land and buildings.

It is anticipated that such denser, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management, and driveways. The B-5 zones permit a wide array of business, low impact industrial, marine, residential, public, institutional, and other uses. Dimensional requirements are as follows: there is no minimum lot size requirement; it allows 100% maximum lot coverage; a maximum residential density of 60 units per acre is possible; and a maximum building height of 65 feet is allowed. B-5b requires that building be setback from the street no more than 10 feet. "

The B-5b is well suited to this area and the major policy implications appear to be more centered on the retreat from the existing zones than the application of the proposed zone. The Board and Council are asked to find that the existing zones are less supported by policy and realistic development expectations than the B-5b: the WPDZ due to lack of water access, and R-4 due to lack of developability caused by isolation and topography.

An important factor to consider in the B-5b zone is the requirement that buildings are located within 10 feet of the street right of way, which given the topography of the subject site, will

encourage concentration of activity and development toward West Commercial Street and away from uphill neighbors.

Development Considerations:

While the applicant's development plans are not before the Planning Board at this time, the following issues will be important factors to consider should the proposal move forward. The comments below are informed by the Conceptual Master Plan (Attachment F) understanding that the applicant is not held to this plan and no approvals are granted or implied during the rezoning review.

Urban form: The applicant will be encouraged to explore minimizing the amount and appearance of surface parking on the site. The applicant will be asked to explore the extent to which the positive context of the Star Match Company can be enhanced through new building placement, scale and design.

Number of Curb cuts and Traffic Management: West Commercial Street is often congested during peak hours. The applicant will be asked to minimize entrances onto the street and may need to participate in off-site traffic improvements for intersections impacted by the development.

West Commercial Street Trail: The City has previously planned and approved concepts for a multiuse trail connecting the Fore River Parkway to the Harbor View Park at the Casco Bay Bridge. While one concept, the "off street alignment" is located on the subject parcel and is not depicted on the applicant's Conceptual Master Plan, the "on-street alignment" has been incorporated along West Commercial Street. The applicant has expressed an openness to consider additional secondary off-street trails depending on future development. Staff will continue to work with the applicant to formalize trail planning for the area.

Stormwater infrastructure plans: The City will in the future need to construct significant stormwater infrastructure in the West Commercial Street area. Staff will work with the applicant to ensure that the proposed development and the City's plans are complementary.

B3 Design Standards, Excerpted from the City of Portland Design Manual

Development located within the B-3 zone shall also meet the following standards. Adequacy in meeting these standards will be evaluated on the basis of descriptions and illustrations in the Downtown Urban Design Guidelines. Nothing in this section is intended to discourage creative and responsive design or to mandate similarity or mimicry of design in order to achieve the standards herein:

a. *Relationship to the pedestrian environment:*

1. *General:* The exterior design of portions of buildings within the first thirty-five (35) feet of height shall enhance the character, attractiveness, comfort, security, and usability of the street level pedestrian environment. Factors to be considered include the design, placement, character and quality of the following:
 - (a) Storefronts and building facades, including such factors as relationship to adjacent or nearby structures or open space, pedestrian character, materials and detailing, transparency and contemporary design;
 - (b) Building entrances, including such factors as compatibility with the building's façade, prominence along the street, access to the street, and accessibility for physically handicapped or for those with special needs;
 - (c) Blank facades; and
 - (d) Special features, such as selective use of such features as building arcades and skywalks or elevated walkways.
2. *Pedestrian activities district (PAD):* In addition to subsection 1 of this section, proposed development located within the pedestrian activities district (PAD) overlay zone, as shown on the pedestrian activities district map, a copy of which is on file in the department of planning and urban development shall be designed and constructed to accommodate pedestrian-oriented uses at the street level. In determining such design, the following factors should be considered:
 - (a) The exterior design of the street level building facade, including the placement of entrances, potential entrances, and window openings;
 - (b) The design and placement of impenetrable exterior building features such as columns, piers, bearing walls and retaining walls;
 - (c) The orientation of proposed street level uses to the street and the accessibility of floor area to the street by virtue of grade elevations and access;
 - (d) The adequacy of the interior layout of the first twenty (20) feet in depth of the building along specified streets to accommodate viable pedestrian-oriented uses;
 - (e) The continuity of street level uses as impacted by service entrances to parking structures or lots, drive-through facilities or other interruptions.

3. *Pedestrian activities district (PAD) encouragement areas:* In addition to subsection 1 of this section, proposed development located within the pedestrian activities district (PAD) encouragement areas, as shown on the pedestrian activities district map, a copy of which is on file in the department of planning and urban development, shall be designed and constructed to be reasonably capable of being converted to accommodate uses permitted in the PAD overlay zone in accordance with the factors set forth in subsection 2 of this section.
 4. *Sidewalk areas and open space:* The design of publicly accessible sidewalk areas and open space shall complement the general pattern of the downtown pedestrian environment, conform with special City of Portland streetscape programs described in the Technical and Design Standards and Guidelines, and enhance the attractiveness, comfort, security, and usability of the pedestrian environment. Factors to be considered include the design, placement, character, durability, and quality of the following:
 - (a) Sidewalk, crosswalk, and street paving materials;
 - (b) Landscaping, planters, irrigation, and tree guards and grates;
 - (c) Lighting;
 - (d) Pedestrian amenities such as benches and other seating, trash receptacles, kiosks, bus shelters, artwork, directional and informational signage, fountains, and other special features; and
 - (e) Sidewalk vendors and sidewalk cafes.
- b. *Relationship to existing development:*
1. *General:* Proposed development shall respect, enhance, and be integrated with the existing character of the general pattern of development in the downtown, surrounding building environment and streetscape, as described and illustrated in the Downtown Urban Design Guidelines. Factors to be considered include the relationship to the following existing patterns:
 - (a) Street walls and building setbacks;
 - (b) Open space;
 - (c) Building form, scale and massing;
 - (d) Facade proportion and composition;
 - (e) Pedestrian circulation and building entrances;
 - (f) Parking.
 2. *Standards for increasing setback beyond street build-to line:* A proposed development may exceed maximum setbacks as required in section 14-220(c) only where the applicant demonstrates to the Planning Board that the introduction of increased building setbacks at the street level:

- (a) Provides substantial and viable publicly accessible open space or other amenity at the street level that supports and reinforces pedestrian activity and interest. Such amenities may include without limitation plazas, outdoor eating spaces and cafes, or wider sidewalk circulation areas in locations of substantial pedestrian congestion;
 - (b) Does not substantially detract from the prevailing street wall character by introducing such additional setback at critical building locations such as prominent form-defining corners, or create a sense of discontinuity in particularly consistent or continuous settings;
 - (c) Does not detract from existing publicly accessible open space by creating an excessive amount of open space in one (1) area or by diminishing the viability or liveliness of that existing open space; and
 - (d) The area of setback is of high quality and character of design and of acceptable orientation to solar access and wind impacts as to be attractive to pedestrian activity.
- c. *Roof top appurtenances:* All mechanical equipment, ventilating and air conditioning and other building systems, elevators, stairways, radio or television masts or equipment, or other rooftop elements not intended for human occupancy shall be fully enclosed in a manner consistent with the character, shape and materials of the principal building, as described and illustrated in the Downtown Urban Design Guidelines;
 - d. *Shadow impact on open space:* The location, massing and orientation of portions of buildings in excess of sixty-five (65) feet in height shall be such that substantial shadow impacts on public plazas, parks, and other publicly accessible open space are avoided. In determining the impact of shadows, the following factors shall be taken into account: the amount of area shadowed, the time and duration of the shadow, and the importance of sunlight to the utility of the type of open space being shadowed, as described and illustrated in the Downtown Urban Design Guidelines;
 - e. *Wind impacts:* The location, massing, orientation and architectural design of a new building or a building addition shall be such that no significant adverse wind impacts are created. In determining the impact of winds, the following factors shall be taken into account: the pre-development and projected post-development wind speeds and their impact on pedestrian movement, comfort and safety; and the impact of projected wind speed on the use of and comfort within existing and proposed pedestrian seating areas and other adverse impacts upon the surrounding area;
 - f. *Setbacks from existing structures:* The location and design of proposed structures shall not create a detrimental impact on the structural integrity or the safety of adjacent structures or the occupants thereof;

DIVISION 5. R-4 RESIDENTIAL ZONE*

*Editor's note--Ord. No. 535-84, adopted May 7, 1984, repealed former Div. 5, §§ 14-101--14-104, and enacted a new Div. 6, §§ 14-101--14-106. The result of this action was that this Art. III contained no division designated 5. The editor has, therefore, in agreement with the city, retained the division designation 5. Formerly §§ 14-101--14-104 were derived from Code 1968, § 602.5.A--D; Ord. No. 499-74, § 2, adopted Aug. 19, 1974; and Ord. No. 91-83, §§ 1, 2, adopted Aug. 3, 1983.

Sec. 14-101. Purpose.

The purpose of the R-4 residential zone is:

- (a) To preserve the unique character of the Western Promenade area of the city by controlling residential conversions and by allowing the continued mix of single-family, two-family, and low-rise multifamily dwellings and other compatible development at medium densities.

(Ord. No. 535-84, 5-7-84)

DIVISION 18.5. WATERFRONT PORT DEVELOPMENT ZONE*

*Editor's Note--See the editor's note to division 18 of this article.

Sec. 14-318. Purpose.

Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to ensure the continued viability of the Port of Portland. Uses in the port development zone, while governed by the same performance standards as other industrial zones, are limited to those uses which are dependent upon deep water and which contribute to port activity.

Nonmarine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water-dependent development.

(Ord. No. 168-93, § 2, 1-4-93)

Sec. 14-318.5. No adverse impact on marine uses.

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (b) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

(Ord. No. 168-93, § 2, 1-4-93)

DIVISION 12.6. B-5 URBAN COMMERCIAL MIXED USE ZONE

Sec. 14-230. Purpose.

The purpose of the B-5 and B-5b zones is to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. The B-5 and B-5b zones are characterized by larger underdeveloped lots with great potential for denser, clustered, urban mixed use development and more efficient reuse of existing land and buildings.

It is anticipated that such denser, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management, and driveways.

Sec. 14-230.1. Permitted uses.

The following uses are permitted in the B-5 and B-5b urban commercial mixed use zones:

(a) *Commercial:*

1. Professional, business and general offices;
2. Restaurants and other eating and drinking establishments;
3. Meeting and convention halls;
4. Hotels and motels;
5. Craft and specialty shops, including the on-premises production of handcrafted goods;
6. Retail and service establishments except convenience stores with gas pumps;
7. Theaters and places of public assembly;
8. Banking services, except that any drive-up banking service shall be a conditional use;
9. Laundry and dry cleaning services;
10. Cabinet and carpentry shops;
11. Indoor recreation and family amusement establishments;
12. Intermodal transportation facilities;
13. Off-street parking lots and garages except in the B-5 zoning district between Forest Avenue and Franklin Street surface parking lots shall be considered a conditional use;
14. Cold storage facilities;
15. Lumber and building materials dealers (in existence on date of passage);

16. Major and minor gasoline service stations, as defined in section 14-47. Major and minor gasoline service stations shall be located at least two thousand (2,000) feet from each other;
17. Personal services;
18. Business services;
19. Billiard parlors;
20. Offices of business tradespeople;
21. Miscellaneous repair services;
22. Communication studios, broadcast and receiving facilities;
23. Theaters;
24. Exhibition halls;
25. Indoor amusement and recreation centers.
26. Hostels, provided the applicant submits a site plan and operations plan demonstrating compliance with the following conditions:
 - a. All applicable provisions of Article V of this chapter shall be met.
 - b. Parking shall be provided in compliance with Division 20 of this Article.
 - c. No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
 - d. The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty-day period.
 - e. The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the city.

(b) *Industrial:*

1. Warehousing and wholesaling;
2. Low impact industrial uses with total floor area of less than ten thousand (10,000) square feet and which meet the performance standards of the I-L zone;
3. Breweries, including associated bottling activities.

(c) *Marine:*

1. Marine products wholesaling and retailing;
2. Marine repair services and machine shops;
3. Harbor and marine supplies and services and ship supply;
4. Reserved;
5. Shipbuilding and facilities for construction, maintenance and repair of vessels;
6. Marine museums and aquariums;
7. Reserved;
8. Boat repair yards;
9. Boat storage facilities;
10. Seafood processing for human consumption;
11. Seafood packing and packaging;
12. Seafood distribution;

(d) *Residential:*

1. Attached single-family, two-family and multifamily dwellings;

2. Handicapped family units;
3. Lodging houses;
4. Combined living/working spaces, including but not limited to artist residences with studio space.

(e) *Public:*

1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures;
2. Museums and art galleries;
3. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces.

(f) *Institutional:*

1. Public or private schools of any type;
2. Clinics;
3. Places of religious assembly;
4. Private clubs or fraternal organizations;
5. Colleges, universities or trade schools;
6. Governmental buildings and uses;
7. Nursery schools, kindergartens, and day care facilities or home babysitting services.

(g) *Other:*

1. Studios for artists and craftspeople including but not limited to, carpenters, cabinetmakers, and silk screeners;
2. Printing and publishing establishments;
3. Accessory uses customarily incidental and subordinate to the location, function and

operation of permitted uses, excluding in the B-5b all drive-up services for retail, banking, or automotive repair uses. In the B-5 zoning district between Forest Avenue and Franklin Street, all drive-up services for all retail or drive-up automotive repair uses are prohibited. In the B-5 zone between Forest Avenue and Franklin Street, surface parking lots shall be considered a conditional use subject to the conditional use section of the B-5 zone.

(Ord. No. 168-93, § 3, 1-4-93; Ord. No. 39-96, § 4, 10-7-96; Substitute Ord. No. 164-97, § 2, 5-19-97; Ord. No. 164-97, § 5, 12-1-97; Ord. No. 80, 12-8-04; Ord. No. 215-04/05, 5-2-05; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 279-09/10, 6-6-11)

*Editor's Note: The text changes adopted in Ord. No. 215-04/05 Section 14-230.1 (a)8 and 13 and (g) 3 shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.2. Conditional uses.

(a) The following uses shall be permitted as conditional uses in the B-5 and B-5b urban commercial mixed use zones, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority, and further provided that, in addition to the provisions of section 14-474(c)(2), they shall also meet the requirements set forth below:

(1) *Commercial:*

a. Reserved.

(2) *Industrial:*

a. Low impact industrial uses over ten thousand (10,000) square feet provided that they meet the following requirements:

i. Truck loading and access and vehicle parking shall be located in the rear or side yard of

the site where possible.

- ii. Street frontage shall be designed for pedestrian scale or interest.
- iii. Shared infrastructure to the extent practicable, including, but not limited to, service alleys, parking areas, stormwater treatment, public transportation facilities and driveways, shall be utilized.

(3) *Surface Parking:*

- a. In the B-5 zoning district located between Forest Avenue and Franklin Street, surface parking lot provided the following requirements are met.
 - i. No new surface parking lot shall be developed within thirty-five (35) feet of any street except in the case of a property in which eighty percent (80%) of the property frontage has a building within ten (10) feet of the street.
 - ii. No surface parking lot shall be encumbered by lease or other use commitment to an off-site use exceeding a twenty-four month term.
 - iii. For surface parking lots of 20,000 sq. ft or greater in area, lease or other use agreements for surface parking shall not preclude the relocation of such parking for more than a twenty-four (24) month term.
 - iv. Any such parking shall in its lease stipulate that developer/owner reserves the right to relocate said parking or convert surface parking to structured parking as long as the relocated parking is located within a reasonable distance from the use.
 - v. Surface parking shall be laid out in a manner conducive to development of future buildings and/or structured parking.

(4) *Drive Up Banking Services:*

- a. In the B-5 zoning district located between Forest Avenue and Franklin Street, drive up banking services provided the following requirements are met:
 - i. The drive up banking services are attached to a building which houses banking services other than, or in addition to, automated banking machines; and
 - ii. The drive up banking services are attached to a building with a minimum floor area of 20,000 square feet; and
 - iii. Any service window or automated teller machine shall not extend nearer than twenty-five (25) feet to the street; and the site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular or pedestrian circulation or creating hazards to vehicles or pedestrians on adjoining streets; and
 - iv. There shall be no more than a total of two (2) vehicle lanes for both the service window and automated teller machine.

(b) The following use shall be permitted only upon the issuance of a conditional use permit by the Board of Appeals, subject to the provisions of section 14-474 (conditional uses), and any special provisions, standards or requirements specified below:

- (1) Temporary wind anemometer towers, as defined in sec. 14-47, are permitted provided the following standards are met in addition to sec. 14-430:
 - a. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and

- b. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and
- c. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and
- d. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and
- e. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and
- f. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and
- g. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and
- h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to

the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

(Ord. No. 168-93, § 3, 1-4-93; Ord. No. 39-96, § 5, 10-7-96; Substitute Ord. No. 164-97, § 3, 5-19-97; Ord. No. 215-04/05, 5-2-05; Ord. No. 29-09/10, 8-3-09, emergency passage)

*Editor's Note: The text changes adopted in Ord. 215-04/05 Section 14-230.2 (c) and (d) shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.3. Prohibited uses.

Uses which are not enumerated in either section 14-230.1 as permitted uses or in section 14-230.2 as conditional uses are prohibited.

(Ord. No. 168-93, § 3, 1-4-93)

*Editor's Note: The text changes adopted in Ord. 215-04/05 Section 14-230.2 (c) and (d) shall remain in effect for six (6) months from the effective date (6-2-05) of the changes. By Council Order No. 94-05/06 passed on 11/7/05 the effective date of the amendments were extended through and including March 2, 2006. By Council Order No. 170-05/06 passed as an emergency on 2/22/06 the effective date of the amendments were extended through and including September 30, 2006 and thereafter shall cease to exist unless the Portland City Council takes action to extend the applicability of such changes.

Sec. 14-230.4. Dimensional requirements.

In addition to the provisions of article III, division 25 of this Code, lots in the B-5 and B-5b urban commercial mixed use zones shall meet the following requirements:

(a) *Minimum lot size:* None.

(b) *Minimum frontage:* None.

(c) *Yard dimensions:*

1. Minimum yards in the B-5 and B-5b zones: