





# PORTLAND MAINE

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Jeff Levine, AICP, Director

Marge Schmuckal, Zoning Administrator

TO: Chair and Zoning Board of Appeals

FROM: Marge Schmuckal, Zoning Administrator

SUBJECT: 372-374 Park Avenue - 067-C-003

DATE: April 26, 2013

This appeal is in regard my determination letter dated March 7, 2013 concerning the request to functionally divide a parcel in common ownership with two separate structures located thereon. In making my determination, I used the Law Court's ruling of Keith v. Saco River Corridor Commission.

In its ruling, the Law Court outlined criteria that was used for its decision making process. I believe that each of the three criteria outlined must be met in order to meet the concept of a "functional division" of land. Each of the three criteria is essential to determining compliance with a "functional division". My analysis revealed that the property met the first two *Keith* criteria, but not the third criteria which requires each structure to be served by its own utility and sewage disposal system. I do not agree that my analysis place undue emphasis on the failure to meet the third criteria. I believe that it is a major factor that the two structures be independent of each other and can operate separately. The applicant affirms that both structures on the property share water and sewer (two different utilities) lines. Part of the *Keith* decision states that the buildings or structures be "previously and continuously" functioning separately and to be "continuously functional" as such. The fact is that the two structures on the property do not and have not functioned separately and are dependent on both water and sewer services. This precludes the two structures from functioning separately from each other. Proposed easements would not rise to the level of meeting the *Keith* criteria and would not be acceptable as a substitute of such. The proposal does not meet the criteria for a "functional division" and cannot be divided using the *Keith* decision.

The underlying decision of my determination results in the proposed division of land to constitute a violation of the City of Portland Land Use Zoning Ordinance (section 14-422) which states: "No lot shall be so reduced that yards, lot width, lot frontage, lot area, area per dwelling unit, and space for off-street parking and/or off-street loading shall be less than the minimum required under this article." I believe that there is concurrently a violation of 38 M.R.S.A §957-B.3.E(3) and (5) or §958.

Therefore because this property cannot meet the criteria for a "functional division" and cannot meet section 14-422 of the Land Use Ordinance, it cannot be divided and must remain one property with two legally nonconforming structures.

**JEWELL & BULGER, P. A.**  
**Attorneys at Law**  
477 Congress Street  
Suite 1104  
Portland, ME 04101-3453

Thomas F. Jewell  
Paul S. Bulger

Email: [tjewell@jewellandbulger.com](mailto:tjewell@jewellandbulger.com)

Telephone: 207-774-6665  
Fax: 207-774-1626

May 2, 2013

City of Portland Zoning Board of Appeals  
Department of Planning & Urban Development  
357 Congress Street  
Portland, ME 04101

Re: 372-374 Park Avenue; Map 67-C-3; Functional Division request

Dear Sirs and Madams:

The gist of the dispute on this matter is the lack of separate water and sewer, and how that squares with the Keith case.

In the statement of facts, the Law Court stated:

- ...the structures thereon, together with appropriate curtilage, were separately occupied and used by tenants. The plot contained a duplex residence, and two detached single family houses with garage, each dwelling being served by its own utility and sewage disposal system. *Keith at Page 152.*

The Opinion does not thereafter mention anything about separate utilities, but several times does address what a functional division means:

- ...the three lots were treated as functionally divided and used as such under separate tenanted occupancies. *Keith at Page 152.*
- The proposed division and sale of the three functionally divided nonconforming lots and buildings thereon continuously rented to tenants as separate lots for dwelling purposes was not prohibited by the Act .... *Keith at Page 153.*
- Without clear language to the contrary, we cannot infer a legislative intendment .... which would prohibit the separate conveyance of parcels of land on which nonconforming buildings or structures have previously and continuously been factually treated separately .... *Keith at Page 154-155.*
- The issues is whether Keith's planned separate conveyances of her three separate nonconforming dwellings with suitable curtilages of land as continuously functionally used by tenants prior to and since the enactment of (the applicable zoning legislation) .... *Keith at Page 155.*

Yours truly,

  
Thomas F. Jewell, Esq.

## Marge Schmuckal - 372-374 Park Ave

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**From:** Marge Schmuckal  
**To:** Jennifer Thompson  
**Date:** 5/2/2013 11:58 AM  
**Subject:** 372-374 Park Ave

Hi Jen,

Just to follow up on yesterday's conversation. The proposed division of land under the R-6 zone requirements would violate minimum lot size requirements (4500 sf), minimum street frontage requirements (40'), minimum lot width (40'), and rear setback requirement of 20'.

Marge



## City of Portland Zoning Board of Appeals

April 24, 2013

Tom Jewell  
Jewell & Bulgar, PA  
477 Congress Street, Suite 1104  
Portland, ME 04101

Dear Mr. Jewell,

Your Interpretation Appeal has been scheduled to be heard before the Zoning Board of Appeals on **Thursday, May 2, 2013 at 6:30 p.m.** in room 209 located on the second floor of City Hall.

Please remember to bring a copy of your application packet with you to the meeting to answer any questions the Board may have.

I have included an agenda with your appeal highlighted, as well as a handout outlining the meeting process for the Zoning Board of Appeals.

I have also included the bill for the processing fee, legal ad and the notices for the appeal. The check should be written as follows:

MAKE CHECK OUT TO: City of Portland  
MAILING ADDRESS: Room 315, attn. Ann Machado  
389 Congress Street  
Portland, ME 04101

Please feel free to contact me at 207-874-8709 if you have any questions.

Sincerely,

Ann B. Machado  
Zoning Specialist

Cc: File

**CITY OF PORTLAND**  
**DEPARTMENT OF PLANNING & URBAN DEVELOPMENT**  
 389 Congress Street  
 Portland, Maine 04101

**RECEIPT OF FEES**

<b>Application No:</b> 0000-1678	<b>Applicant:</b> HILL STREET APARTMENTS LL
<b>Project Name:</b> 374 PARK AVE	<b>Location:</b> 374 PARK AVE
<b>CBL:</b> 067 C003001	<b>Application Type:</b> Interpretation
<b>Invoice Date:</b> 04/24/2013	

<b>Previous Balance</b>	-	<b>Payment Received</b>	+	<b>Current Fees</b>	-	<b>Current Payment</b>	=	<b>Total Due</b>		<b>Payment Due Date</b>
\$100.00		\$100.00		\$145.64		\$0.00		\$145.64		On Receipt

**First Billing**

<b>Previous Balance</b>	<b>\$100.00</b>
<b>Payment Received 4/1/2013 - Thank you</b>	<b>\$100.00</b>

Fee Description	Qty	Fee/Deposit Charge
Processing Fee	1	\$50.00
Notices - ZBA	31	\$23.25
Legal Advertisements - ZBA	1	\$72.39
		\$145.64

<b>Total Current Fees:</b>	+	<b>\$145.64</b>
<b>Total Current Payments:</b>	-	<b>\$0.00</b>
<b>Amount Due Now:</b>		<b>\$145.64</b>

Detach and remit with payment

**CBL** 067 C003001  
**Bill to:** JEWELL & BULGER, PA  
 477 CONGRESS ST., SUITE 1104  
 PORTLAND, ME 04101

**Application No:** 0000-1678  
**Invoice Date:** 04/24/2013  
**Invoice No:** 40865  
**Total Amt Due:** \$145.64  
**Payment Amount:**

Make checks payable to the *City of Portland*, ATTN: Inspections, 3rd Floor, 389 Congress Street, Portland, ME 04101.

**CITY OF PORTLAND**  
**DEPARTMENT OF PLANNING & URBAN DEVELOPMENT**  
 389 Congress Street  
 Portland, Maine 04101

**RECEIPT OF FEES**

<b>Application No:</b> 0000-1678	<b>Applicant:</b> HILL STREET APARTMENTS LL
<b>Project Name:</b> 374 PARK AVE	<b>Location:</b> 374 PARK AVE
<b>CBL:</b> 067 C003001	<b>Application Type:</b> Interpretation
<b>Invoice Date:</b> 04/01/2013	

<b>Previous Balance</b>	-	<b>Payment Received</b>	+	<b>Current Fees</b>	-	<b>Current Payment</b>	=	<b>Total Due</b>	.	<b>Payment Due Date</b>
\$0.00		\$0.00		\$100.00		\$100.00		\$0.00		On Receipt

<b>Previous Balance</b>	<b>\$0.00</b>
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Fee Description	Qty	Fee/Deposit Charge
Appeal Application Fee	1	\$100.00
		\$100.00
<b>Total Current Fees:</b>	+	<b>\$100.00</b>
<b>Total Current Payments:</b>	-	<b>\$100.00</b>
<b>Amount Due Now:</b>		<b>\$0.00</b>

**CBL** 067 C003001  
**Bill to:** JEWELL & BULGER, PA  
 477 CONGRESS ST., SUITE 1104  
 PORTLAND, ME 04101

**Application No:** 0000-1678  
**Invoice Date:** 04/01/2013  
**Invoice No:** 40607  
**Total Amt Due:** \$0.00  
**Payment Amount:** \$100.00

Make checks payable to the *City of Portland*, ATTN: Inspections, 3rd Floor, 389 Congress Street, Portland, ME 04101.

**Ann Machado - RE: Zoning Board of Appeals Legal Ad**

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**From:** Joan Jensen <jjensen@mainetoday.com>  
**To:** Ann Machado <AMACHADO@portlandmaine.gov>  
**Date:** 4/23/2013 11:44 AM  
**Subject:** RE: Zoning Board of Appeals Legal Ad  
**Attachments:** agenda apr 26.pdf

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Hi Ann,

All set to publish your ad on Friday, April 26.  
The cost is \$144.78 includes \$2.00 online charge. I included a proof.  
Thank you,  
Joan

Joan Jensen  
Legal Advertising  
Portland Press Herald/Maine Sunday Telegram  
295 Gannett Drive  
South Portland, ME 04106  
Tel. 207-791-6157  
Fax: 207-791-6910  
Email: [jjensen@mainetoday.com](mailto:jjensen@mainetoday.com)

**Portland Press Herald**  
**Maine Sunday Telegram**  
[www.pressherald.com](http://www.pressherald.com)

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**From:** Ann Machado [mailto:[AMACHADO@portlandmaine.gov](mailto:AMACHADO@portlandmaine.gov)]  
**Sent:** Tuesday, April 23, 2013 8:21 AM  
**To:** [classified@mainetoday.com](mailto:classified@mainetoday.com)  
**Subject:** Zoning Board of Appeals Legal Ad

Joan -

Attached is the Zoning Board of Appeals legal ad for Friday, April 26, 2013.

Thanks.



**IMPORTANT NOTICE FROM CITY OF PORTLAND  
ZONING BOARD OF APPEALS**

**IN THE VICINITY OF 374 PARK AVE**

The Zoning Board of Appeals will hold a public hearing on Thursday, May 2, 2013 at 6:30 p.m. on the second floor in room 209 at Portland City Hall, 389 Congress Street, Portland, Maine to hear the following appeal.

**Interpretation Appeal:**

372-374 Park Avenue, Hill Street Apartments, LLC, owner, Tax Map 067, Block C, Lot 003, R-6 Residential Zone: The appellant is challenging the Zoning Administrator's determination dated March 7, 2013 that the property does not meet the criteria outlined in the case Keith v. Saco River Corridor Commission and therefore cannot be functionally divided into two separate lots. Representing the appeal is Thomas Jewell, Esq.

For more information you may contact Marge Schmuckal, Zoning Administrator, at 207-874-8695.

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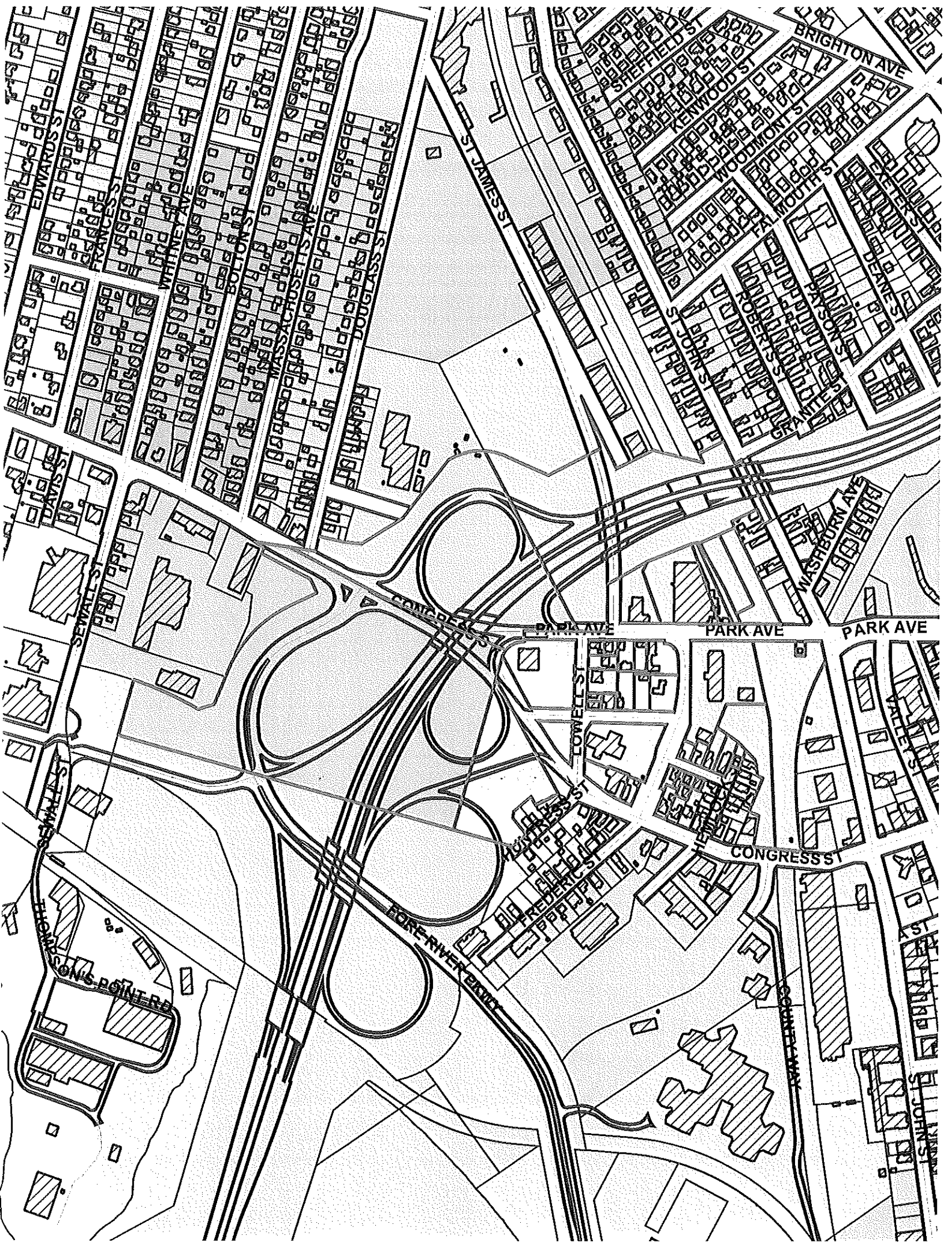
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CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
065 A001001	MAINE MEDICAL CENTER	22 BRAMHALL ST PORTLAND, ME 04102	987 CONGRESS ST	1
065 A003001	LQ PORTFOLIO EAST LLC	909 HIDDEN RIDGE STE 600 IRVING, TX 75038	340 PARK AVE	105
065 A004001	BLACK BARBARA	15 CHERRY ST PORTLAND, ME 04101	15 CHERRY ST	1
065 A005001	MORGAN WILMA L WID KW VET	11 CHERRY ST PORTLAND, ME 04102	9 CHERRY ST	2
065 A006001	KOMI ANDRAUS L	62 NORTH ST # 1 WESTBROOK, ME 04092	7 CHERRY ST	3
065 A007001	POSTOLACHE IONEL	3 CHERRY ST PORTLAND, ME 04102	3 CHERRY ST	1
065 B001001	KEV BUNTHANN & KEV VORN & LOY SAY JTS	16 CHERRY ST PORTLAND, ME 04102	16 CHERRY ST	1
065 B002001	RASMUSSEN TIMOTHY A & MARILYN R M RASMUSSEN JTS	14 CHERRY ST PORTLAND, ME 04102	14 CHERRY ST	1
065 B003001	HALL JAMES P	10 CHERRY ST PORTLAND, ME 04102	10 CHERRY ST	1
065 B004001	COOMBS BLAINE L & JEANNE JTS	8 CHERRY ST PORTLAND, ME 04102	8 CHERRY ST	1
065 B012001	CONLEY KAREN A & ROBERT M JTS	PO BOX 2706 SOUTH PORTLAND, ME 04106	1029 CONGRESS ST	5
066 D008001	PORTLAND TERMINAL CO	IRON HORSE PARK NORTH BILLERICA, MA 01862	PARK AVE	1
066 AA010001	H P HOOD INC	SIX KIMBALL LN STE 400 LYNNFIELD, MA 01940	365 PARK AVE	1
066 DD001001	HP HOOD INC	SIX KIMBALL LN STE 400 LYNNFIELD, MA 01940	349 PARK AVE	2
067 B006001	MBD REATLY LLC	15 KELLY LN SCARBOROUGH, ME 04074	1091 CONGRESS ST	1
067 C001001	ALVAREZ SAUL & ANA V ALVAREZ JTS	378 PARK AVE PORTLAND, ME 04102	380 PARK AVE	1
067 C002001	ALVAREZ SAUL & ANA V ALVAREZ JTS	378 PARK AVE PORTLAND, ME 04102	378 PARK AVE	1
067 C003001	HILL STREET APARTMENTS LLC	374 PARK AVE PORTLAND, ME 04102	374 PARK AVE	5
067 C004001	LELANSKY EVAN N & LINDA K LELANSKY JTS	42 HEATHER LN WINDHAM, ME 04062	368 PARK AVE	3
067 C005001	REGAN MARY M WID WWII VET	366 PARK AVE PORTLAND, ME 04102	366 PARK AVE	2
067 C007001	BURNHAM STREET ASSOCIATES	51-A BURNHAM ST PORTLAND, ME 04102	51 BURNHAM ST	2
067 C008001	33-35 LOWELL STREET LLC	PO BOX 7225 PORTLAND, ME 04112	33 LOWELL ST	9
067 C009001	DIBIASE RICHARD D	29 LOWELL ST PORTLAND, ME 04102	29 LOWELL ST	1
067 C010001	BUTTS EVELYN T	45 GLEN HAVEN RD E PORTLAND, ME 04102	27 LOWELL ST	2
067 C012001	BAYE AYESHA	45 BURNHAM ST PORTLAND, ME 04102	45 BURNHAM ST	1
067 C013001	KELLY BURNHAM LLC	PO BOX 8418 PORTLAND, ME 04104	39 BURNHAM ST	1
067 C014001	KELLY BURNHAM LLC	PO BOX 8418 PORTLAND, ME 04104	35 BURNHAM ST	7
067 C015001	BROUNTAS PETER G	41 LOWELL ST PORTLAND, ME 04102	37 LOWELL ST	2

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
067 J00101A	TUNDRA ASSOCIATES C/O MAINE EYE CENTER	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J00101B	TUNDRA ASSOCIATES C/O MAINE EYE CENTER	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J00101C	TUNDRA ASSOCIATES C/O MAINE EYE CENTER	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J00102A	TUNDRA ASSOCIATES C/O MAINE EYE CENTER	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J00102B	TUNDRA ASSOCIATES C/O MAINE EYE CENTER	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J00102C	TUNDRA ASSOCIATES C/O MAINE EYE CENTER	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J00102D	TUNDRA ASSOCIATES C/O MAINE EYE CENTER	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J00103A	TUNDRA ASSOCIATES	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J00103B	TUNDRA ASSOCIATES C/O MAINE EYE CENTER	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J00103C	TUNDRA ASSOCIATES % MAINE EYE CENTER	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J00104A	TUNDRA ASSOCIATES	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J00104B	TUNDRA ASSOCIATES	15 LOWELL ST PORTLAND, ME 04102	15 LOWELL ST	1
067 J007001	CHARISMATIC EPISCOPAL OF THE HOLY SPIRT	1047 CONGRESS ST PORTLAND, ME 04102	1045 CONGRESS ST	1
067 J009001	WOODHEAD MARK A	1043 CONGRESS ST PORTLAND, ME 04102	1043 CONGRESS ST	2

CBL	OWNER	OWNER MAILING ADDRESS	PROPERTY LOCATION	UNITS
Total Listed	42 UNITS	179		



BRIGHTON AVE

ST JAMES ST

EDWARDS ST  
FRANCIS ST  
WYTHAM AVE  
BOLTON ST  
MASSACHUSETTS AVE  
DOUGLASS ST

TENWOOD ST  
WOODMONT ST  
MOUTH ST  
DEAN ST  
PAYSON ST  
ROBERTS ST  
ST JOHN ST  
ST JAMES ST  
ST JAMES ST

DAVIS ST  
SEVALL ST  
ST JAMES ST

WASHBURN AVE  
PARK AVE  
PARK AVE  
PARK AVE

CONGRESS ST  
LOWELL ST  
CONGRESS ST  
CONGRESS ST

CONGRESS POINTERS

FORE RIVER BLVD  
CONGRESS ST  
ST JOHN'S