

191-B-3

Mitton and Lassell

Willow PRVD

Cottage Park

CITY OF PORTLAND, MAINE

PLANNING BOARD

Cyrus Hagge, Chair  
John H. Carroll, Vice Chair  
Joseph R. DeCoursey  
Kenneth M. Cole III  
Jaimey Caron  
Kevin McQuinn  
Deborah Krichels

October 31, 1996

Michael Scarks  
Neptune Properties  
120 Exchange Street  
Portland, ME 04101

RE: Willow P.R.U.D., Mitton and Lassell Streets

Dear Mr. Scarks:


On October 29, 1996 the Portland Planning Board voted unanimously (5-0; Krichels, Decourcey absent) on the following motions regarding the Willow P.R.U.D. subdivision and site plan:

1. That the plan was in conformance with the Subdivision Review Ordinance of the City Land Use Code with the following conditions:
  - ok i. That the roadway profile be revised to include 2" hot bituminous pavement (Grade B) and 1 1/2" hot bituminous pavement (Grade C) for the two final pavement layers of the Willow roadway.
  - ii. That prior to the recording of the subdivision plat, the applicant submit for Corporation counsel review and approval all executed easements as referred to on the plan.
  - iii. That a typical side lot line joint swale detail acceptable to the planning engineer be provided and included on the recording plat showing width, surface, and design slopes.
  - OK iv. That the applicant should revise the grading plan to include a specific grading design behind lots 2 and 3 that will ensure drainage to CB#1 and not ponding on the neighboring property.
  - v. That the applicant shall provide the information for review and approval as requested in Steve Bushey's memo of October 21, 1996.
2. That the plan was in conformance with the Site Plan Ordinance of the Land Use Code.

cc: Joseph E. Gray, Jr., Director of Planning and Urban Development  
Alexander Jaegerman, Chief Planner  
Sarah Hopkins, Senior Planner  
P. Samuel Hoffses, Chief of Building Inspections  
Marge Schmuckal, Zoning Administrator  
Kathi Staples PE, City Engineer  
Acting Development Review Coordinator  
William Bray, Deputy Director of Public Works  
Jeff Tarling, City Arborist  
Natalie Burns, Associate Corporation Counsel  
Lt. Gaylen McDougall, Fire Prevention  
Mary Gresik, Building Permit Secretary  
Kathleen Brown, Assistant Director of Economic Development  
Susan Doughty, Assessor's Office  
Approval Letter File

1

CITY OF PORTLAND, MAINE  
MEMORANDUM

**TO:** Sarah Hopkins, Senior Planner  
**FROM:** Steve Bushey, Development Review Coordinator   
**DATE:** October 21, 1996  
**RE:** Fore River Place Subdivision Review Letter #5

I have reviewed the following submission materials by Neptune Properties, Inc.

- Lot Configuration Plan - Last reviewed October 16, 1996
- Site Development Plan - Last reviewed October 16, 1996
- Drainage and Erosion Control - Last Revised October 16, 1996
- Profiles and Construction Detail - Last Revised October 16, 1996
- Neptune Properties, Inc. Letter to Alex Jaegerman dated 10/16/96 with attachments

Based on my review of these material the following comments are provided:

- ok 1. The lot configuration Plan should be signed by the licensed land surveyor who stamped the plan prior to signature by the planning if the plan is approved.
- ok 2. As discussed with Tony Lombardo of the Public Works Department, a snow plow easement should be provided along the lot 6 frontage in order to allow snowplows adequate area to turn around. Public Works should provide exact dimensions for the area.
- ok 3. It appears the plans have not been revised to reflect any comments of Katherine Staples, P.E., City Engineer provided in a memo dated October 8, 1996.
- 4. The applicant should provide dimensions for the proposed drainage easements and/or legal descriptions for the city's records.
- ok 5. The site development plan should be revised to include the note which was simply taped onto the review copy provided to me.
- ok 6. The plans should contain a detail for the installation of CB#5. The top of the existing 24" RCP entering the structure will be less than 6" below the rim elevation. How will this be constructed?
- ok 7. The CB#3 rim elevation is proposed as 38.0; this will be two feet lower than the surrounding proposed contours shown on the plan. The applicant should provide details for this area. Rip rap stabilization will be required for any area greater than a 3:1 slope.
- ok 8. The lot #6 grading has not been completed along its frontage. Specifically, the elevation 40.0 contour has not been shifted to reflect the new road construction.

- ? - 9. If construction is to commence this fall, the erosion and sediment control practices should be modified for winter time construction. All exposed areas shall be mulched within 7 days at twice the normal application rates. Permanent reseeded should take place in the spring.
- ? - 10. The stone inlets into the onsite pond areas should have a depth of stone equal to 8".
- ok 11. Two CB#5's are identified on the drainage plan. It is assumed that the CB at road sta 6+88 is actually CB#6. Haybale inlet protection should be identified on all CB's.
- ? - 12. The construction sequence on sheet 4 of 5 "Drainage and Erosion Control" plan states in Step 7 and Step 9 that base and surface pavement will be installed. This does not agree with the typical roadway section. The applicant should clarify.
- ok 13. The Maine Erosion and Sediment Control Handbook for construction BMP requires the rip rap swale minimum depth of rip rap to be 1.5 times the maximum stone size, therefore the depth shown in the detail on sheet 4 should be 24" instead of 18".
- OK 14. The plans should include a detail of D1#1 (Drainage inlet #1?) What type of structure is proposed?
- ok 15. The stone outlet on Lot #18 should be a depth of 14".
- ✓ 16. It is recommended that the development plan except the subdivision plat be stamped and signed by the registered professional engineer.
- 17. The applicant now proposes to discharge all stormwater runoff without detention directly to the existing ponded area next to the railroad. I have reviewed letters from the Portland Terminal Co. and Portland Water District which provide approval of the development plan contingent upon installation of a 27" culvert under the railroad tracks. It is my understanding that the railroad will install the culvert with the applicant providing financial support.

The only detail I have received for the proposed culvert construction is a facsimile of a cross section prepared by Neptune Properties for Alex Jaegerman. No supporting computations for the proposed pipe size have been provided by either the applicant or the railroad company. As observed on Monday, October 21, 1996 the ponded area was completely full and water over topped the railroad tracks at the Thompson's Point access road.

→ Prior to final sign-off of the proposed construction I feel it would be beneficial to review computations which support the culvert size selection and also data on the outlet side prior to discharge to the Fore River. Adequate stabilization measures including rip rap at the outlet should be required.

If you have any questions regarding these comments please call this office.

**CITY OF PORTLAND, MAINE  
CITY COUNCIL AGENDA REQUEST FORM**

**T0:** Nadeen Daniels, City Clerk/Assistant City Manager  
Elizabeth Boynton, Associate Corporation Counsel

**FROM:** Joseph E. Gray, Jr., Director of Planning and Urban Development

**DATE:** August 5, 1996

**SUBJECT:** Mitton and Lassell Streets Zone Change: I-2 to R-5

*Passed*  
*9-0*  

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*9/4/96*

- 1) Council Meeting at which action is requested: September 4, 1996
- 2) Can action be taken at a later date?  YES  NO

**I. SUMMARY OF ISSUE**

The Planning Board is forwarding a recommendation to the City Council for the rezoning of a parcel of land from the I-2 Industrial to the R-5 Residential zone. The parcel is approximately 2 acres and is part of a larger 5 acre parcel which the applicant, Neptune Properties, has proposed for development of a 19 lot Planned Residential Unit Development (PRUD).

The rezoning recommendation is part of the comprehensive review of industrial zones which the City Council will review later in September. The applicant requested that this one recommendation be reviewed separately in order to start construction in the fall.

**II. REASON FOR SUBMISSION (What issue/problem will this address?)**

The applicant has requested this zone change in order to begin construction in the fall of a proposed 19 lot Planned Residential Unit Development. A preliminary plan of this proposal is currently being reviewed by the Planning Board under the site plan and subdivision ordinance. The Planning Board may not grant approvals for this project until the zoning has been approved by the City Council.

**III. INTENDED RESULT (How does it resolve the issue/problem?)**

The zone change of a portion of the development parcel will allow the applicant to construct the P.R.U.D. at the end of Mitton and Lassell Streets according to R-5 zoning.

This change will also protect the residential neighboring properties from industrial development and its associated traffic.

**IV. FINANCIAL IMPACT**

N/A

**V. STAFF ANALYSIS & RECOMMENDATION**

On the basis of plans and materials submitted by the applicant, the Planning Board has found the rezoning of a parcel of land at the end of Mitton and Lassell Streets from the I-2 to the R-5 to be consistent with the Comprehensive Plan of the City of Portland.

Attachments:

Planning Report #42-96

**MITTON AND LASSELL STREETS ZONE CHANGE  
I-2 TO R-5  
NEPTUNE PROPERTIES, APPLICANT**

Submitted to:

Portland City Council  
Portland, Maine

September 4, 1996



## **I. INTRODUCTION**

The Planning Board is forwarding a recommendation to the City Council for the rezoning of a parcel of land from the I-2 Industrial to the R-5 Residential zone. The parcel is approximately 2 acres and is part of a larger 5 acre parcel which the applicant, Neptune Properties, has proposed for development of a 19 lot Planned Residential Unit Development (PRUD).

This rezoning recommendation is part of the comprehensive review of industrial zones which the City Council will review later in September. The applicant requested that this one recommendation be reviewed separately in order to start construction in the fall.

## **II. HISTORY OF THE PARCEL**

In 1989, the City Council approved a R-5A contract rezoning of the entire 5.7 acre development parcel for a proposed congregate care facility as proposed by Brown Construction. This development was never constructed and the zoning and the approvals lapsed. The zoning has since reverted back to the original R-5 and I-2 zones.

## **III. LAND USE CONSIDERATIONS**

During the review of this zone change proposal, the Planning Board questioned the likelihood and viability of industrial development in this area. The Board was also concerned that any industrial development in this area would require associated traffic to drive through a predominately residential neighborhood. It was determined, therefore, that removing the industrial classification of this parcel was appropriate and consistent with the comprehensive plan.

The Planning Board is currently reviewing a proposal by Neptune Properties for the development of a 19 lot Planned Residential Unit Development on this parcel. This project will be constructed in partnership with Ric Weinschenk Builders.

## **IV. NOTICING**

The applicant for this proposed development requested that the Planning Board review this zone change proposal as part of the comprehensive industrial zoning review. Due to the timing of this request, the Planning Office was not able to notice abutters two weeks prior to the Planning Board's public hearing, as required by State law. Therefore, the appropriate notices have been sent out and advertised informing the public of the City Council's review of this zone change.

## **V. RECOMMENDATION OF THE PLANNING BOARD**

On the basis of plans and materials submitted by the applicant, the Planning Board has found the rezoning of a parcel of land at the end of Mitton and Lassell streets from the I-2 to the R-5 to be consistent with the Comprehensive Plan of the City of Portland.

Attachments:

1. Letter from the Applicant
2. Previously Approved Contract for Rezoning
3. Notice/Legal Advertisement

**A & M PARTNERS, INC.**  
REAL ESTATE DEVELOPMENT/MANAGEMENT



120 EXCHANGE STREET PORTLAND, MAINE 04101

(207) 879-1358

July 22, 1996

Ms. Sarah Hopkins  
Planning Dept , City Hall  
389 Congress Street  
Portland, Maine. 04101

Dear Sarah:

As Per our previous conversation, we are requesting that our zone change request for the "Fore River Place" project be separated from the city wide re-zoning package and sent to the City Council as an individual item. This change has already been recommended by the planning board.

Based on the numerous changes being requested city wide, we believe it would not even reach the Council's agenda for the comprehensive review by the time we propose to break ground, shortly after labor day.

Thank you for your help in this matter.

Sincerely,

Michael Scarks

CL

Attachment 2  
(19)01 - 7/23/89

**City of Portland, Maine**  
IN THE CITY COUNCIL

AMENDMENT TO ZONING MAP  
RE: CONDITIONAL R-5A REZONING, MITTON AND LASSELL STREETS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE  
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

That the zoning map of the City of Portland, dated March 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the zoning ordinance by §14-49, be and hereby is amended by adopting the map change amendment shown on Attachment A.

Said rezoning shall be subject to the following conditions: ✓

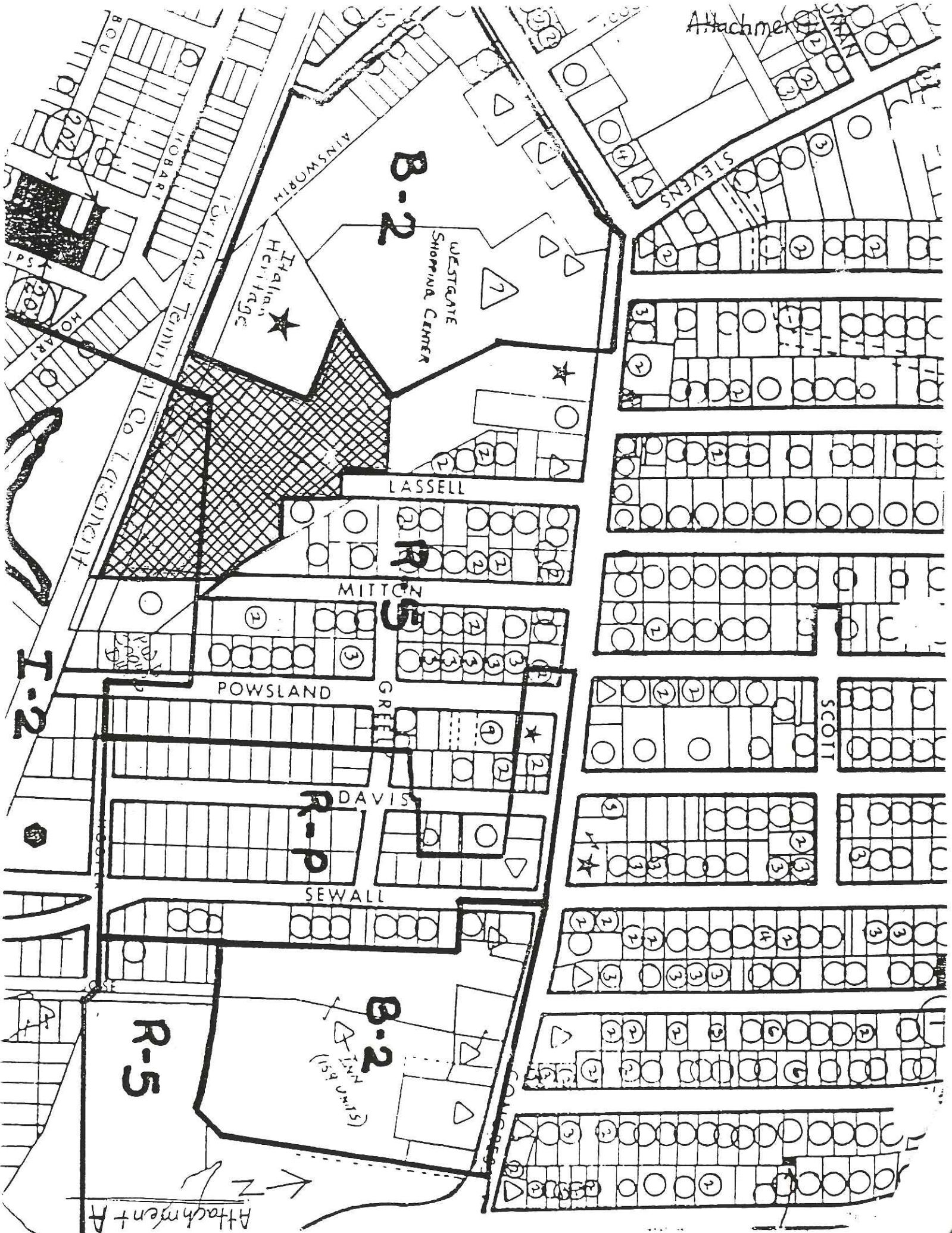
1. That the congregate care use be maintained for the life of the development. For purposes of this condition, the following services shall be made available to residents of the congregate care facility.
  - a. Transportation to and from needed services which is included in the base rent.
  - b. Provision of one meal a day.
  - c. Programmed social activities to be facilitated by staff which is included in the base rent.
  - d. Provision of a variety of personal care services such as housekeeping, laundry, and minimal health monitoring.
2. That the project will commence construction within 3 years of the effective date of the rezoning. An extension period of up to 2 years can be requested in writing from the planning authority. Written request for extension must be received prior to expiration of the initial approval.
3. That completion of the project occur within 2 years of commencement. An extension period may be requested in writing for up to 2 years from the planning authority.
4. That the project be substantially as proposed on the concept plans and documents, copies of which are on file in the Office of Planning and Urban Development.

ZONMAP2.R-5A.NLB.2  
05.30.89

5. That the developer provide all potential owners and residents with a written disclosure in a form approved by the planning authority, of the location and noise generated by the Portland International Jetport and the potential development of an east-west highway to the City of Portland prior to issuance of a building permit.
6. That the applicant connect the Lassell Street stormdrain into the site stormdrain system and that drainage easements for Lassell and Mitton Streets be provided to the City of Portland prior to issuance of a building permit.
7. That evidence of agreements with the Portland Water District, Central Maine Power Company, and the Maine Central Railroad be submitted which establish an ability to complete the project as proposed prior to issuance of any building permit.
8. That recreational amenities designed for the elderly and handicapped be incorporated into the development.
9. That the connector street between Powsland Street and Hooper Street be constructed by the applicant to City specifications.
10. That any necessary dedication of Hooper Street be accomplished by the applicant.
11. That 20% of the congregate units be reserved and priced for low to moderate-income residents, based on affordable rental income calculations, determined by the Maine State Housing Authority for households with incomes up to median income in the Portland SMSA (including all rent and fee packages) for those units, as long as this rezoning remains in effect.
12. That in the event the project becomes tax exempt, fees in lieu of taxes will be paid to the City of Portland for all municipal services other than schools. Such condition will run with the land so long as the congregate care use continues.
13. That on-site trash pick-up, snow removal, and maintenance of internal roads be the responsibility of the owner of the property.
14. That the developer utilize applicable noise reduction construction standards recommended in the Jetport Part 150 Noise Compatibility Planning Study.
15. That a landscaping buffer satisfactory to the Planning Board be provided between the development and the railroad tracks.

16. That the drainage plan for the site direct stormwater generated on and off-site to 2 existing basins and that this stormwater be released to the Fore River through a 54" culvert under the railroad tracks with appropriate erosion control measures.
17. That the privately owned hydrant on the site be maintained per the Portland Water District's public hydrants standards.
18. That in the event of a breach of any condition(s), the developer shall apply for a modification to the approved plan. The Planning Board will attempt to resolve the issues resulting in the breach, and that resolution may include a rezoning to R-5 recommendation to the City Council or other remedies. No grandfathered status shall accrue to the development from the R-5A zone.

Attachment C



B-2

WESTGATE SHOPPING CENTER

Italian Heritage

LASSELL

MITTON

POWLSLAND

GREEN

DAVIS

SEWALL

B-2

R-5

(SINGLE UNIT) 50'

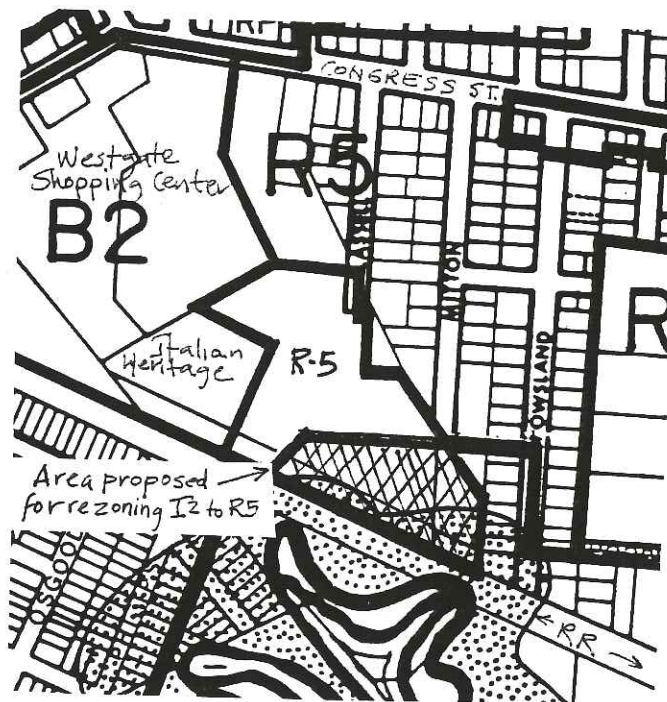
Attachment A

LEGAL NOTICE

LEGAL NOTICE

PORTLAND PLANNING BOARD  
PUBLIC NOTICE

Notice is hereby given that the Portland City Council will hold a public hearing Wednesday evening, September 4, 1996 at 7:30 p.m. in City Council Chambers, City Hall, Portland, Maine to consider the recommendation of the Planning Board to rezone a parcel of land located at the end of Mitton and Lassell Streets from the I-2 Industrial to the R-5 Residential zone as shown on the fragmentary map below.



The Planning Board made this recommendation as part of a comprehensive review of industrial zoning throughout the City. The entire development parcel at the end of Mitton and Lassell was approved in 1989 by the City Council as an R-5A contract zone to permit the construction of a congregate care facility. Since then, the approvals have lapsed and the R-5A zoning classification no longer applies to this parcel.

The Planning Board is currently considering the development of a 19 lot Planned Residential Unit Development for this parcel for which this proposed zone change is needed.

Further information on this development can be obtained at the Planning Department office, City Hall, 4th Floor or by calling 874-8300, extension 8720.

Cyrus Y. Hagge, Chair  
Portland Planning Board



*Attachment 5***WILLOW HOMEOWNERS ASSOCIATION****16 Willow Lane  
Portland, Maine 04102**

November 8, 2000

Joseph E. Gray  
Director of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Dear Mr. Gray:

Thank you for providing the copy of your October 26 letter to Ric Weinschenk. We appreciate being kept informed.

I distributed copies to the homeowners, and invited any response or suggestions people chose to make. Those who responded would like the Planning Board to be informed that they have not changed their positions on the revision of the plan for the center area of the Willow neighborhood.

A discussion of issues surrounding the choice between pond and landscaping was conducted October 9, followed by the 16-2 vote to endorse the landscaping revision.

Homeowners have told me their decision remains the same: The potential cost, maintenance, aesthetics and liability of a pond make it a less desirable alternative, beyond the question of whether a pond could or should be installed.

Several Association members are quite concerned that the work now being performed on the common areas meet requirements, to avoid the Association's being obligated later to finance repair and rework.

Because of a schedule conflict, I will be unable to attend the November 14 Planning Board session to answer any questions the Board members might have. I am attempting to arrange for another member of the Association to attend.

If there is anything further the Planning Board or your office require from the Association before or after the session, we will be happy to oblige.

*Yours,*  
  
James M. Milliken  
*President*

Copies: Sarah Hopkins, Senior Planner  
Thomas Kane, City Councillor



## CITY OF PORTLAND

October 26, 2000

Ric Weinschenk  
Torrington Ave  
Peaks Island  
Portland, Maine 04108

Re: Willow Development

Dear Mr. Weinschenk:

At 3:30pm on October 25, 2000, a final inspection was conducted of the Willow development to determine compliance and completion according to the approved site plan and subsequent correspondence from the City of Portland. Our inspector has found that while progress has been made, there has been a failure to meet the October 25, 2000 deadline for the completion of all improvements. As we have made clear, because of your failure to complete these improvements, you are hereby ORDERED to cease any other projects in which you are involved in the City of Portland. In addition, the City shall not issue to you or to any of your companies new permits (including Certificates of Occupancy) of any kind, nor shall applications be accepted from you for any proposed subdivisions or site plans. Additionally, the City has commenced the calling of the defect guarantee for this project.

Our inspection of the site followed the items listed in the September 25, 2000 letter. The items as listed in the September 25, 2000 letter and the current status of the items as witnessed on October 25, 2000, are listed below.

9/25/00 letter:

1. *The berm behind lots 11 through 15 will be stabilized by the following measures:*
  - a. *mulching the backside of the berm by generously filling in and around the existing vegetation which is growing on the slope;*
  - b. *planting five (5) hemlocks along the property lines of lots 11 through 15. These hemlocks shall be no less than 5-6 feet in height; and*
  - c. *planting two hemlocks on the berm behind lot 16 to replace the two white pines, which did not survive there. The height of these two hemlocks shall match the hemlocks presently planted on the slope (no less than 3-4 feet in height).*
  - d. *The berm behind lots 7, 8 and 9 shall be landscaped according to the plan approved by the Planning Board, with additional landscaping materials, otherwise designated for the berm along the side of lot 7, to be planted along the berm behind lots 7, 8 and 9. The berm shall also be stabilized with netting, then loamed with 4 inches of loam and seeded.*
  - e. *In all other respects you shall adhere to the landscaping plans approved by the City of Portland on 10/22/96, including ensuring that all plantings are healthy and surviving.*

10/25/00 inspection:

- a. Mulching of the back side of the berm has not been completed. There are still bare, exposed areas along the berm.
- b. The planting of Hemlocks along the berm behind lots 11 through 15 is acceptable.
- c. The replacement plantings of Hemlocks behind lot 16 is acceptable.
- d. The berm behind lots 7, 8, and 9 has been mulched. The approved plan indicated that this area would be loamed and seeded. This berm must be loamed, seeded, and netting must be installed to stabilize the area. The mulch should be raked off and removed. The edges of the lots should also be cleaned up, graded, and mulched.

9/25/00 letter

2. *All forms, debris, trash, rubbish, tires, tables and the like shall be removed from lots 7, 8 and 9. You are required to remove the office trailer and commercial vehicles presently located on lot 7.*

*Lots 7, 8 and 9 shall be graded to a smooth condition, loamed with no less than 4 inches of loam, seeded with grass and addressed with appropriate erosion control measures.*

*The catch basin on lot 9 shall be fitted with a frame to fit the grate and shall be mortared appropriately.*

10/25/00 inspection

2. The forms, debris, trash, rubbish, tires, forms, tables, etc. have been removed from lots 7, 8, and 9. The lots have been graded to a smooth condition, loamed, seeded and mulched. There is a small stockpile of stones stored in this area which must be removed.

Some clean up work remains on lot 9; the area around the catchbasin should be smoothed and wood debris should be removed.

The office trailer has not yet been removed from lot 7. This continues to be a zoning violation.

The grate has been installed on the catchbasin on Lot 9.

9/25/00 letter

1. *All damage, four inches or greater, to the concrete sidewalk located throughout the site must be repaired with durable concrete patches that match the existing color and texture of the concrete sidewalks on site.*

10/25/00 inspection

1. The concrete sidewalks patches require further blending and smoothing to match existing texture. New patch work may be required to match color.

9/25/00 letter

2. *Streetlights as shown on the approved plan shall be erected and operating.*

10/25/00 inspection

3. **The streetlight poles have been installed but they are not operating. Conduit is not fully installed between the poles.**

**From our inspection, it appears that the conduit is being laid in a trench approximately 6-8 inches deep. The conduit shall be placed at a depth of 30 inches per City of Portland standards and the approved site plan.**

9/25/00 letter

4. *The gazebo shall be addressed in the following manner:*
  - a. *additional screws shall be placed in all railings to the respective master posts along the walkway leading to and the railings around the gazebo. These screws shall be placed so as to provide adequate support to the structure, rendering it safe. You shall notify building inspections upon the completion of this work so that an inspection may be made of this improvement. You have asserted that the center improvement is unable to hold water, as originally intended. Either you shall take measures to have this center area function as a pond as originally intended (capable of holding no less than one foot of water) or you shall seek approval from the City of Portland, to alter the design of this area. In any event, unless otherwise approved upon application to the City, all approved landscaping to the center of the site shall be completed.*
  - b. *rip rap shall be installed, per the original design, to prevent erosion of the center area.*
  - c. *inlets surrounding this center area shall be created so as to avoid ponding of water in the vicinity of this center area.*

10/25/00 inspection

3.
  - a. **The work to the gazebo has been done. However, the center island remains an issue.**
  - b. **and c. have been completed according to a revised plan**

9/25/00 letter

5. *You shall provide evidence of the private agreement to alter the design of the retaining wall servicing lot 14 .*

10/25/00 inspection

5. **The City has determined that this is a private issue between you and the owners of Lot 14.**

9/25/00 letter

6. *Attached hereto are two punchlists (November 15, 1999 and July 13, 2000) created by City Engineer Steve Bushey. They are incorporated into this Order. Unless otherwise specifically provided above, and with the exception of lowering the berm on lot 2 - which is not required by site plan or repairing the retaining wall on lot 14 - which is the subject of a private arrangement between you and the owners of lot 14, you are ORDERED to address all items on those lists no later than October 2, 2000.*

7. *Attached hereto is an August 1, 2000 punchlist. Unless otherwise specifically provided above, and with the exception of lowering the berm on lot 2 - which is not required by site plan and repairing the retaining wall on lot 14 - which is the subject of a private arrangement between you and the owners of lot 14, you are ORDERED to address all items on that list no later than October 2, 2000.*

**10/25/00 inspection**

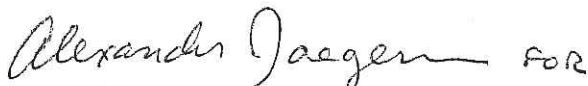
- 6 and 7** All items from these previous lists have been addressed in this letter except for the issue of roadway pavement repair and "bird baths". From today's inspection, roadway pavement repair has been addressed adequately but the "birdbath" in the street in the vicinity of Lot 15 remains unaddressed.

On October 11, 2000, the Planning Department approved the revision to the center island. The revision included a plan to grade and loam the area instead of the previously approved water feature. The work at the site appears to be constructed according to the approved plan: inlets have been cut into the concrete drainage structure to drain the area; rip rap has been installed; latticework has been installed around the base of the gazebo; the timber retaining walls have been removed.

The work that remains to be done in the center island area includes the basic clean up of debris. Also, the area should be rolled to ensure positive drainage to the inlets. However, since the approval by this office of the revision to the center island, a resident of the Willow development has filed an appeal to the Planning Board of the decision to allow the revision. We have scheduled this appeal to go before the Planning Board on November 14, 2000. As a result, until the planning Board approves the revisions, no further work should be done on this center island.

**You shall continue to expend all efforts to satisfactorily address the above issues at Willows. Work shall not resume, nor shall permits be issued, for any other jobs until Willows is completed to the City's satisfaction.**

Sincerely,

 for

Joseph Gray  
Director of Planning & Urban Development

cc: Thomas Kane, City Councilor  
Thomas Fortier, Island and Neighborhood Coordinator  
The Willows Condominium Association  
✓ Sarah Hopkins, Senior Planner  
Alex Jaegerman, Chief Planner  
Michael Nugent, Building Services Manager  
Penny Littell, Associate Corporation Counsel

CV 00-651-  
Attachment 7

STATE OF MAINE  
CUMBERLAND, ss.

STATE OF MAINE  
CUMBERLAND, SS.  
CLERK'S OFFICE

SUPERIOR COURT  
CIVIL ACTION  
Docket No. \_\_\_\_\_

NOV 7 2000

FREDERIC D. WEINSCHENK et al. )

Plaintiffs )

v. )

CITY OF PORTLAND )

Defendant )

ORDER OF  
STAY AND TEMPORARY  
RESTRAINING ORDER

Upon consideration of Plaintiffs' Emergency Motion for Stay and/or Temporary Restraining Order, and after hearing, the Court finds that the issuance of a stay and temporary restraining order is needed to preserve the status quo and to avoid irreparable injury to the Plaintiffs, Frederick D. Weinschenk, Cottage Park, Inc., and Ric Weinschenk Builders, Inc.

WHEREFORE, it is hereby ORDERED as follows:

1. The stop work order on Building Permit No. 000204 and the stop work order on Building Permit No. 991351 are both hereby stayed.
2. The order to cease any other projects in which Plaintiffs are involved in the City of Portland is hereby stayed.
3. Defendant City of Portland is hereby restrained from refusing to issue new permits to Plaintiffs on the basis of the alleged failure to comply with Defendant's September 25, 2000 letter, pending a hearing on a motion for a preliminary injunction.
4. Defendant City of Portland is restrained from rejecting applications by any of the Plaintiffs for any proposed subdivisions or site plans on the basis of the alleged failure to

comply with Defendant's September 25, 2000 letter, pending a hearing on a motion for a preliminary injunction.

5. This Order shall be binding on Defendant City of Portland, its agents, servants, employees, attorneys, successors and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise.

6. The giving of security is waived, because the Court is satisfied that to the extent Plaintiffs have enforceable obligations that Defendant is seeking to enforce, these would be covered by the bond in the form of a letter of credit which remains in force.

DATED: November 3, 2000.

TIME: 4:20 P.M.

  
Justice, Superior Court

F:\Home\DAVID\CURRENT\Weinschenk\CityPortland\OrderofStay 103100.doc

This order of stay and temporary restraining order will expire on November 15, 2000 at noon. Absent a further order of this Court, which may be issued by any Justice, the stop work orders and other enforcement actions of the City of Portland will become effective again at noon of November 15, 2000.

This order may be incorporated by reference on the Civil docket.

The conduit <sup>that is covered</sup> shall be tested at 10' intervals to ascertain that the depth <sub>2</sub> with the exception that driveway to not have be dug up.

Sec. 14-526. Standards.

(a) *Requirements for approval.* The planning board or planning authority shall not approve a site plan unless it meets the following criteria:

(1) The provisions for vehicular loading and unloading and parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways; and the incremental volume of traffic will not create or aggravate any significant hazard to safety at or to and including intersections in any direction where traffic could be expected to be impacted; and will not cause traffic congestion on any street which reduces the level of service below Level "D" as described in the 1985 Highway Capacity Manual published by the Transportation Research Board of the National Research Council, a copy of which manual is on file with the public works authority, or substantially increase congestion on any street which is already at a level of service below Level "D";

(2)a. Where construction is proposed of new structures having a total floor area in excess of ten thousand (10,000) square feet but less than fifty thousand (50,000) square feet, or building additions having a total floor area in excess of five thousand (5,000) square feet, and the provisions for off-street parking under article III (zoning) do not require off-street parking or are determined to be insufficient, the site plan shall provide sufficient parking to satisfy the reasonably foreseeable demand for parking which will be generated by the proposed development;

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



- (3) The bulk, location or height of proposed buildings and structures and the proposed uses thereof will not cause health or safety problems as to existing uses in the neighborhood, including without limitation health or safety problems resulting from any substantial reduction in light and air, any significant wind impact, and any significant snow loading on any neighboring structure, where setbacks from property lines are not required by article III;
- (4) The bulk, location or height of proposed buildings and structure minimizes, to the extent feasible, any substantial diminution in the value or utility to neighboring structures under different ownership and not subject to a legal servitude in favor of the site being developed;
- (5) The development will not overburden the sewers, sanitary and storm drains, water, solid waste disposal or similar public facilities and utilities;
- (6) The on-site landscaping provides adequate buffering between the development and neighboring properties so as to adequately protect each from any detrimental features of the other;
- (7) The site plan minimizes, to the extent feasible, any disturbance or destruction of significant existing vegetation;
- (8) The site plan does not create any significant soil and drainage problems, whether on- or off-site, and adequately provides for control of erosion and sedimentation during construction and afterward;
- (9) The provision for exterior lighting will not be hazardous to motorists traveling on adjacent public streets; is adequate for the safety of occupants or users of the site; and such lighting will not cause significant glare or direct spillover onto adjacent properties and complies with the applicable specifications of the City of Portland Technical and Design Standards and Guidelines;
- (10) The development will not create fire or other safety

- hazards and provides adequate access to the site and to the buildings on the site for emergency vehicles;
- (11) The proposed development is designed so as to be consistent with off-premises infrastructure, existing or planned by the city;
- (12) Any industrial development will prevent undue adverse environmental consequences, including without limitation any substantial diminution to the value or utility of neighboring structures or significant hazard to the health or safety of persons residing in the vicinity by controlling the odor levels, sound levels, particulates, and other emissions it generates:
- (13) For development within the R-P zone, where there is a consistent established architectural style or character to the existing structures in the immediate vicinity in which the development is proposed, that the concurrently visible architectural style or character of the proposed development would not be incongruous to that established style or character;
- (14) Planned residential unit developments in the R-3, R-5 or R-5A residential zones and manufactured housing parks shall meet the following standards:
- a. *Design relationship to site:* The layout and design of buildings, roadways, parking areas, open space, recreation amenities, landscaping, drainage facilities and control mechanisms and other site improvements are organized to complement and accentuate the natural topography, vegetation, streams, water features, and other existing features of the site, and the solar orientation provides natural light within dwelling units, in outdoor open space and in recreation areas.
- b. *Internal design character and relationship to surrounding neighborhood:* The design and layout of the development and buildings exhibit a cohesive design character and complement existing development in the surrounding neighborhood by virtue of such features as architectural style,

height, scale and massing, character of exterior facades and roofs, circulation, open space, landscaping, and the transition of scale and massing with the surrounding neighborhood. Buildings with more than two (2) dwelling units or greater than forty (40) feet in length shall provide variation in roof and facade character through changes in facade setback, roof configuration, and projecting or recessed building elements.

- c. *Recreation and open space:* All open spaces on the site shall be integrated into the development and designated on the site plan. Each development shall have the following features:
1. *External buffers:* An effective and permanent screening from neighboring properties and roadways;
  2. *Internal buffers:* Areas planted, maintained and located in such a manner as to provide privacy between units and buildings and paved areas and screening of parking, utilities, roadways, waste collection facilities and storage facilities;
  3. *Passive recreational open space:* Open spaces, designated and improved with such features as gardens, picnic areas, walking trails; benches and lawn and seating areas;
  4. *Active recreational open space:* Open spaces designated and improved for active recreational use with facilities such as tennis courts, basketball courts, multipurpose game fields, swimming pools, and children's playgrounds; and
  5. *Private open spaces:* Open spaces designated for the individualized use of unit owners such as yards, decks and patios;

(15) Two-family, special needs independent living unit, multiple-family development, lodging houses, bed and

breakfasts, and emergency shelters shall meet the following standards:

a. Proposed structures and related site improvements shall meet the following standards:

1. (a) The exterior design of the proposed two-family structures, lodging houses and emergency shelters, including architectural style, facade materials, roof pitch, building form and height, shall be designed to complement and enhance the nearest residential neighborhood;

(b) The exterior design of the proposed special needs independent living unit, bed and breakfast or multiple-family structures, including architectural style, facade materials, roof pitch, building form and height, window pattern and spacing, porches and entryways, cornerboard and trim details, and facade variation in projecting or recessed building elements, shall be designed to complement and enhance the nearest residential neighborhood. The design of exterior facades shall provide positive visual interest by incorporating appropriate architectural elements;

2. The proposed development shall respect the existing relationship of buildings to public streets. New development shall be integrated with the existing city fabric and streetscape including building placement, landscaping, lawn areas, porch and entrance areas, fencing, and other streetscape elements;

3. Open space on the site for all two-family, special needs independent living unit, bed and breakfast and multiple-family development shall be integrated into the development site. Such open space in a special needs independent living unit or a multiple-family development shall be designed to complement and enhance

the building form and development proposed on the site. Open space functions may include but are not limited to buffers and screening from streets and neighboring properties, yard space for residents, play areas, and planting strips along the perimeter of proposed buildings;

4. The design of proposed dwellings shall provide ample windows to enhance opportunities for sunlight and air in each dwelling in principal living areas and shall also provide sufficient storage areas;
  5. The scale and surface area of parking, driveways and paved areas are arranged and landscaped to properly screen vehicles from adjacent properties and streets;
- b. Two-family or multiple-family dwellings shall not be converted to lodging houses unless all units in the building have been vacant for at least one (1) year prior to the date conversion is sought or unless the individual multiple-family units are less than one thousand (1,000) square feet in size. In no event shall any single-family dwelling in the R-5 or R-6 zone be converted in whole or in part to a lodging house.
- (16) 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(3) 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;
  - g. *Building tops:* Buildings or structures which exceed one hundred fifty (150) feet in height shall be designed so as to provide a distinctive top to the building which visually conveys a sense of interest and vertical termination to the building, as described and illustrated in the Downtown Urban Design Guidelines;
- (17) The applicant has submitted all information required by this article and the development complies with all applicable provisions of this Code;

- (18) If any part of a proposed structure or object is within one hundred (100) feet of any landmark, historic district, or historic landscape district designated or otherwise subject to the protection of article IX and not separated from such landmark or district by any public street, or any portion of any such street, such structure or object shall be determined not to be incongruous to the architectural style or character of those portions of such designated landmark or district as are currently visible to the development when viewed from a street or public open space;
- (19) View corridors: The placement and massing of proposed development shall not substantially obstruct those public views to landmarks and natural features from those locations identified on the View Corridor Protection Plan, a copy of which is on file in the department of planning and urban development;
- (20) The proposed development shall have no adverse impact upon the existing natural resources including groundwater quantity and quality, surface water quantity and quality, wetlands, unusual natural areas, and wildlife and fisheries habitats. Stormwater runoff from paved areas shall be treated to the extent practicable to minimize contaminants;
- (21) The proposed development shall not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- (22) Signs: Signs shall meet the following requirements:
  - a. The size, scale, proportions, design, materials, placement, and source and intensity of illumination of all permanent freestanding and building signs shall be designed to complement and enhance the architectural attributes of the building(s) to which they are attached or visually related. In addition, such signs shall be appropriate to the scale and character of the neighborhood in which the sign is located, and shall be designed to suit the conditions from which it will be viewed, especially in relation to the distance, travel speed and mode of travel of the viewing public.

- b. In the case of freestanding signs, such signs shall relate to the architecture of the buildings they identify and shall be integrated with other site and landscape features.
  - c. Sign lighting shall be designed to avoid glare, unshielded light sources and light spillover toward the sky. All light sources shall be shielded or provided with a diffuser lens so that lamps and bulbs are not visible to pedestrians or drivers of vehicles.
- (23) An applicant for minor site plan review of a sign denied for failure to comply with the requirements of section 14-369.5 shall meet the following standards for approval of such a sign under this division:
- a. The size, scale, proportions, design, materials, placement, and source and intensity of illumination of any signage approved shall be designed to complement and enhance the architectural attributes of the building(s) to which they are attached or to which they are visually related. In addition, such signs shall be appropriate to the scale and character of the neighborhood in which the sign is located, and shall be designed to suit the conditions from which it will be viewed, especially in relation to the distance, travel speed, and mode of travel of the viewing public;
  - b. The signage shall either be of special design merit or shall respond to unique circumstances associated with the subject property;
  - c. The signage shall have no detrimental impact upon the neighborhood;
  - d. The provisions of this subsection shall be limited to commercial uses in business or industrial zones, industrial uses or institutional uses.
- (24) All major or minor businesses shall meet the following requirements:
- a. *Signs:* Signs shall not adversely affect visibility

at intersections or access drives. Such signs shall be constructed, installed and maintained so as to ensure the safety of the public. Such signs shall advertise only services or goods available on the premises.

- b. **Circulation:** No ingress or egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.
  - c. **Drive-up features:** Drive-up features, such as gasoline pumps, vacuum cleaners and menu/order boards, shall not extend nearer than twenty-five (25) feet to the street line. The site must have adequate stacking capacity for vehicles waiting to use these service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets.
  - d. **Car washes:** Car washes shall be designed to avoid the tracking of residual waters into the street.
- (25) Development in the industrial zones shall meet the following additional requirements:

a. **Landscaping and buffering:**

1. Buildings, parking areas and other paved or unvegetated areas shall be landscaped to screen and enhance the property and to buffer adjacent properties from the proposed use or uses.
2. The existing landscape shall be preserved in its natural state to the greatest extent practicable by minimizing tree removal and grade changes. Where preservation of the existing landscape is not possible, new planted materials will be required.

3. Where a building, parking lot or unvegetated area abuts a residential zone, a landscaped strip shall be established between abutting property and the structure, parking lot or unvegetated area. Such landscaping shall be maintained and replaced as necessary to continue the buffer.
  4. Front yards along arterial and collector streets, as delineated on the Maine Department of Transportation Map, a copy of which is on file in the department of planning and urban development, shall be landscaped. Landscaping shall also be required for the following:
    - (a) Rear yards.
    - (b) Side yards.
    - (c) Parking areas for more than fifteen (15) vehicles in the I-L and I-Lb zones, twenty-five (25) vehicles in the I-M and I-Mb zones, or thirty-five (35) vehicles in the I-H and I-Hb zones.
  5. Where pavement or gravel is proposed for vehicle or machinery parking or storage, a landscaped buffer shall be planted or a preserved buffer shall be maintained along the downward slope of the paved or graveled area to provide passive treatment of stormwater before it leaves the site.
- (26) 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.
- e. *Modifications to siting standards for the B-5 zone:* In the B-5 zone, the planning board may modify or waive standards a. through d. of this subsection as may be reasonably necessary to suit the operational or marketing needs of the user(s) of the property.

(27) Development located in the B-1, B-1b, B-2, and B-2b zones shall meet the following additional standards. Where noted below, the city encourages adherence to the guidelines contained within the City's Technical and Design Standards and Guidelines, but such adherence is not mandatory in order to meet the standards otherwise set forth herein.

- a. *Urban Street Wall. Standard:* In the B-1, B-1b, and B-2b zone it shall be required that buildings shall be located to create and preserve an urban street wall.

Buildings located in the B-2 zone are encouraged to adhere to guidelines contained within Section XIV of the City's Technical and Design Standards and Guidelines.

- b. Mixed Uses. Standard: In B-1b zone buildings shall be multi-storied with mixed uses.
- In the B-1, B-2 and B-2b zones building uses are encouraged to adhere to the guidelines contained within Section XIV of the City's Technical and Design Standards and Guidelines.
- c. Building Entrances. Standard: In the B-1 and B-2b zone building entrances shall be oriented toward, located adjacent to, and directly accessible from, a sidewalk in a public right-of-way.
- In the B-1b and B-2 zones building entrances are encouraged to adhere to the guidelines contained within Section XIV of the City's Technical and Design Standards and Guidelines.
- d. Windows. Standard: In the B-1, B-1b, B-2, and B-2b zones windows shall be required along the street frontage of a building. Windows shall be transparent and installed at a height to allow views into the building by passersby.
- e. Facade Character. Standard: In the B-1, B-1b, B-2, B-2b zones, active and public portions of buildings (e.g. doors, windows, entries, retail displays) shall be located adjacent to the public sidewalk to create an active presence along the sidewalk.
- Where building facades situated along a public way have no interactive use or function, such facades shall be designed to provide sufficient architectural and graphic amenities to provide visual interest along the street and relate the building, and its use, to passersby.
- f. Building Design. Standard: B-1, B-1b, B-2, and B-2b commercial buildings shall be designed to be compatible with their residential and commercial neighbors. In the B-1 and B-1b zones building scale, roof pitch, and fenestration shall be designed to complement surrounding residential structures.



City of Portland, Maine  
Code of Ordinances, revised 10/01/2000  
Sec. 14-526. Standards.

- g. Building Materials. Standard: Facade materials of buildings located in the B-1, B-1b, B-2, and B-2b zones shall be compatible with those materials of surrounding residential and commercial uses.
- h. Building Scale. Standard: In the B-1 and B-1b zones building scale must relate and be compatible with surrounding residential structures.
- i. Landscaping and buffers. Standard: In the B-1, B-1b, B-2 and B-2b zones buildings and associated parking areas must be screened to buffer abutting properties. A densely planted landscape buffer and/or fencing will be required to protect neighboring properties from the impacts associated with the development, including lighting, parking, traffic, noise, odor, smoke, or other incompatible uses. Where buildings are setback from the street, a landscaped area must be planted along the front yard street line.

(a), (b) Conditions. Notwithstanding the provisions of subsection (a), the planning authority or planning board may impose any condition upon its approval of any site plan: (1) to minimize or abate any adverse impact of the proposed development on the value or utility of other private property, or on public property or facilities, to the extent feasible; or (2) to bring the development into compliance with the requirements of subsection (a); or (3) to minimize any other adverse environmental effects of the proposed development. Such conditions may include, but are not limited to, enclosing of equipment or operations, imposing limitations upon the hours of operation, or requiring the employment of specific design technologies, modes of operation, or traffic patterns, and may also include the construction of, or financial contribution to the construction of, on- or off-premises public facilities including, without limitation, streets and sewers impacted by the development. All such conditions shall be consistent with the purposes set forth in section 14-521.

(c) Statement of findings. All findings and decisions by the planning board or by the planning authority, denying or conditionally approving any site plan, shall be made in writing or reduced to writing promptly thereafter and shall state the reason(s) therefor sufficiently to apprise the applicant and any

interested member of the public of the basis for the decision.

(Ord. No. 355-89, 7-17-89; Ord. No. 202-89, 12-18-89; Ord. No. 234-90, 2-21-90; Ord. No. 236-90, §§ 1, 2, 2-26-90; Ord. No. 33-91, § 16, 1-23-91; Ord. No. 244-91, § 1, 3-11-91; Ord. No. 33A-91, § 10, 4-17-91; Ord. No. 176-93, § 4, 1-4-93; Ord. No. 253-94, § 2, 4-4-94; Ord. No. 254-94, 4-4-94; Ord. No. 39-96, § 7, 10-7-96; Ord. No. 166-97, §§ 2, 3, 1-6-97; Ord. No. 125-97, 3-3-97; Ord. No. 164-97(Subst.), § 6, 5-19-97; Ord. No. 165-97, § 7, 12-1-97; Ord. No. 94-99, 11-15-99; Ord. No. 51-00, §7, 8-7-00)

#### Sec. 14-527. Appeals.

(a) When the planning authority has finally approved or disapproved a site plan, any person aggrieved may appeal the decision to the planning board within ten (10) days of the decision being rendered. Upon the taking of such an appeal, the application shall be reviewed as if referred by the planning authority, except that the planning board may not decline to accept the reference.

(b) When the planning board has finally approved or disapproved a site plan, any person aggrieved or the city may appeal the decision of the superior court, pursuant to Rule 80B of the Maine Rules of Civil Procedure, within thirty (30) day of the decision being rendered.

(Ord. No. 355-89, 7-17-89)

#### Sec. 14-528. Enforcement.

(a) All construction or alterations to the site performed under the authorization of building permits or certificates of occupancy issued for development within the scope of the article shall be in conformance with the approved final site plan or an amendment thereto under section 14-525(g) and (l). The building authority shall institute or cause to be instituted any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of this article. Where work is required pursuant to the terms of chapters 24 or 25 as part of an approval granted under this article, such work shall be accomplished in the sequence established by the public works authority. Where the public works authority determines that work has been completed

prior to the receipt of all approvals required by this article or which is out of sequence or is not in compliance with the standards of chapters 24 and 25, the director of parks and public works or an inspector from the public works authority may issue a stop-work order. Work shall recommence only after such order has been lifted by the director of parks and public works or an inspector from the public works authority. Violation of a stop-work order shall be considered an offense.

(b) No alterations shall be made to a site with a pending or approved site plan application until:

- (1) The performance guarantee has been posted and final site plans have been submitted to the planning authority; or
- (2) Written permission has been received from the director of planning and urban development or his designee. Such permission shall be granted only after submission of a written request setting forth the work proposed to be done on the site. All such work shall be done in compliance with information provided with the site plan application including, but not limited to, an erosion control plan. Such written permission shall not be required when the only work proposed is the digging of test pits.

(Ord. No. 355-89, 7-17-89)  
Secs. 14-529--14-540. Reserved.

#### ARTICLE VI. BOARD OF APPEALS\*

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\*Cross reference(s)--Administration, Ch. 2; boards generally, § 2-31 et seq.; jurisdiction of board of appeals for zoning, § 14-471 et seq.  
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Sec. 14-541. Creation; composition.

There shall be a board of appeals of seven (7) members. Members of the board shall be residents of the city and shall not be officers or employees of the city or any of its agencies or departments.

WARRANTY DEED  
Maine Statutory Short Form

KNOW ALL PERSONS BY THESE PRESENTS, That I, IRMA B. BLAKE, now of Settler's Rest, 37530 New Inn Lane, Zephyr Hills, Florida, 33541, for consideration paid, grant to Neptune Properties, Inc., of Portland, County of Cumberland, State of Maine, whose mailing address is 120 Exchange Street, Portland, Maine, 04101, with warranty covenants, the land in Portland, County of Cumberland, State of Maine, described as follows:

A certain lot or parcel of land, with any improvements thereon, situated at the end of Lassell Street and Mitton Street in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at the southwesterly end of the northwesterly sideline of Lassell Street, as accepted by the City of Portland;

Thence S 60° 25' 25" E across the end of Lassell Street sixty (60) feet to the land now or formerly of Mary K. Rogers (See Cumberland County Registry of Deeds, Book 3018, Page 318);

Thence S 29° 34' 35" W by the southwesterly extension of the southeasterly sideline of Lassell Street and by the land of Rogers one hundred sixty-two (162) feet to a 5/8" iron rod;

Thence S 60° 25' 25" E by the land of Rogers one hundred seven and thirty-nine hundredths (107.39) feet to a 5/8" iron rod at the land now or formerly of Leonard J. and Francis J. Regan (see Book 2754, Page 366);

Thence S 01° 12' 30" E by the land of Regan thirty-eight and forty-one hundredths (38.41) feet to a 5/8" iron rod;

Thence S 08° 15' 50" E by the land of Regan, across the end of Mitton Street and by the land now or formerly of Leonard J. and Francis J. Regan (see Book 3340, Page 318) three hundred eighty-six and forty hundredths (386.40) feet to the land now or formerly of Portland Water District (see Book 3069, Page 815);

Thence S 32° 07' 30" W by the land of Portland Water District one hundred thirty-five and sixty-seven hundredths (135.67) feet to the land now or formerly of Central Maine Power Company (see Book 812, Page 292 and Book 879, Page 194);

Thence N 40° 30' 40" W by the land of Central Maine Power Company seven hundred thirty-five and ninety-four hundredths (735.94) feet to a 5/8" iron rod at the land now or formerly of Italian-American Community Center (see Book 3124, Page 299);

Thence N 49° 29' 20" E by the land of Italian-American Community Center three hundred and seventy-two hundredths (300.72) feet to a 5/8" iron rod;

Thence N 49° 30' 40" W by the land of Italian American Community Center two hundred and sixty-four hundredths (200.64) feet to the land now or formerly of Bradley Realty Co. (see Book 2462, Page 498);

Thence N 85° 46' E by the land of Bradley Realty Co. two hundred seventeen and two hundredths (217.02) feet to a 5/8" iron rod at land now or formerly of the Roman Catholic Bishop of Portland (see Book 2338, Page 240);

Thence S 60° 26' 50" E by the land of the Roman Catholic Bishop of Portland fifty-four and eighty hundredths (54.80) feet to a 5/8" iron rod at the northerly corner of Lot 2 of the hereinafter mentioned plan;

Thence S 29° 34' 35" W by said Lot 2 one hundred ten (110) feet;

Thence S 60° 26' 50" E by Lot 2 a distance of one hundred twenty-five (125) feet to a point on the northwesterly sideline of Lassell Street extended southwesterly;

Thence N 29° 34' 35" E by Lot 2 and by the extension of the northwesterly sideline of Lassell Street twenty-three and fourteen hundredths (23.14) feet to the point of beginning.

Said parcel contains 5.75 acres and is shown as Lot 1 on "Plan of Land on Lassell Street, Portland, Maine, for Terry Brown" dated June 19, 1987, revised 11/8/95 by Owen Haskell, Inc., Job No. 87102P. All bearings are magnetic 1904.

Excepting and reserving to the Grantor, her heirs and assigns, a right of way, for vehicular and pedestrian passage and for the installation and maintenance of utilities, over the portion of said Lot 1 bounded and described as follows:

Beginning at the southwesterly end of the northwesterly sideline of Lassell Street, as accepted by the City of Portland; thence S 29° 34' 35" W by Lot 2 and by the extension southwesterly of the northwesterly sideline of Lassell Street twenty-three and fourteen hundredths (23.14) feet to the southerly corner of Lot 2; thence S 60° 26' 50" E to a point on the extension southwesterly of the southeasterly sideline of Lassell Street; thence northeasterly by the extension of the southeasterly sideline of Lassell Street to the southwesterly terminus of Lassell Street; thence N 60° 25' 25" W across said terminus to the point of beginning.

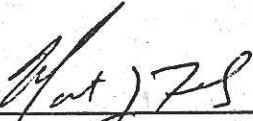
This conveyance is also made subject to a driveway easement to Mary K. Rogers recorded in Book 7339, Page 169, and to an easement to Central Maine Power Company recorded in Book 2380, Page 342.

Being a portion of the premises conveyed by M. Gwen Libby to


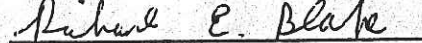
Norman E. Blake and Irma B. Blake by deed dated March 27, 1946, and recorded in Cumberland County Registry of Deeds in Book 1810, Page 492. Said Norman E. Blake died leaving grantor as the sole surviving joint tenant.

Witness my hand and seal this 27th day of the month of February, 1996.

Signed, Sealed and Delivered  
in presence of

  
\_\_\_\_\_  
(Martin J. Foley)

IRMA B. BLAKE

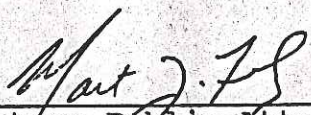
  
  
\_\_\_\_\_  
By Richard Blake,  
Her Attorney in Fact

State of Maine  
County of Cumberland, ss.

Feb. 27, 1996

Then personally appeared the above named Richard Blake in his capacity as Attorney in Fact and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Irma B. Blake.

Before me,

  
\_\_\_\_\_  
Notary Public-Attorney at Law  
Martin J. Foley

- recreational amenities

CITY OF PORTLAND, MAINE  
MEMORANDUM

TO: Chair Hagge and Members of the Planning Board  
FROM: Sarah Hopkins, Senior Planner  
DATE: August 13, 1996  
SUBJECT: Fore River Place

Issues  
- roadway connection  
- hydrant  
- dispersal of traffic  
- drainage issues  
- asked for a traffic study

1. Introduction

Neptune Properties has requested review by the Planning Board of a 19-lot Planned Residential Unit Development to be located at the end of Mitton and Lassell Streets, south of Congress Street. The site is 5.72 acres and zoned R-5 Residential and I-2 Industrial.

The applicant proposes to develop this PRUD in partnership with Ric Weinschenk Builders. The single-level cottage or bungalow style homes will be designed for a senior, "empty-nester" homeowner with total square footages ranging from 1,200 to 1,400.

As a detached PRUD, the development will consist of 19 individual lots served by a private roadway with common recreational space.

2. History of the Parcel

In 1989, this 5.7 acre parcel was approved for a R-5A contract zone to allow a congregate care facility. The approvals for this contract zone have since lapsed and the zoning has reverted to the original R-5 and I-2 zoning.



3. Zoning

As the Board may recall, the applicant requested a zone change of this parcel while the Board considered the industrial zoning amendments. The Board recommended that the I-2 portion of the site be rezoned to the R-5 residential zone.

The City Council is scheduled to begin its review of the industrial zoning recommendations in September. In order to proceed with the Planning Board process and meet a fall construction deadline, the applicant has requested that this rezoning be considered separately by the City Council during a public hearing on September 4th.



4. Development Site

The development site consists of 5.7 acres located at the end of Mitton and Lassell Streets, south of Congress Street. Portions of the area were previously filled and some wet areas result from this filling.

The site is located adjacent to a CMP power line and a Portland Terminal Railroad right-of-way. Other abutters include the Portland Water District to the east, the Italian-American Community Center to the west, and a number of private land owners to the north.

As a low area, the development parcel receives a large quantity of runoff from the surrounding watershed as it makes its way down to the Fore River.

A remnant of an access road still exists along the southern property line. The road was used previously to access a batch plant located along the Fore River. This roadway will be removed.

## 5. Site Plan/Subdivision Review

The applicant has submitted a preliminary set of drawings for review by City Staff and the Planning Board. Based on the plans, staff from the Planning, Public Works and Fire Departments have been able to respond to the applicant on potential issues. These issues are summarized below.

### a. Traffic/Access

Access to the development is located at the end of Mitton Street. A private drive will lead into the development and will circle around a common green area. A cul-de-sac is proposed for the west side of the access road.

The end of the cul-de-sac is approximately 60 ft. from the end of Lassell Street. Staff from Planning, Fire, and Public works have requested that the applicant connect the private road to Mitton and Lassell Streets. Neptune Properties is hesitant to make this connection. Reasons for keeping the cul-de-sac center mostly on privacy and security.

The Fire Department has requested a connection between the two streets due to the travel distance between the hydrant on Lassell Street and the entrance on Mitton Street. Two access points into the project will also provide easier access for emergency vehicles to the lots within the development. A memo from Lt. McDougall is included as Attachment 3. Lt. McDougall will be present at the workshop.

The Public Works Department would also prefer a connected roadway in order to allow vehicles more choices on how to reach Congress Street. All Congress Street intersections in this vicinity are heavily used and would benefit from a dispersal of traffic.

The Transportation Plan also recommends against the creation of any dead end streets. Further, the plan promotes the connection of streets where possible. In this case, the connection of the roadways would not be difficult.

In order to make the transition between the existing Mitton Street pavement and the proposed private roadway, a portion of the unpaved Mitton Street will have to be constructed to City standards.



The portion of Mitton Street which exists south of the unimproved Greely Street has not been improved to City standards and does not have curbing or sidewalks. The applicant will be designing a transition area between the public and private road and will be requesting waivers from the City for the construction of that roadway.

A site visit has been scheduled with Bill Bray, Deputy Director of Public Works, prior to the Planning Board workshop in order to assess which waivers will be needed.

The private roadway, as currently designed has a pavement width of 22 ft. with 3 ft. concrete sidewalks on each side. The applicant has proposed a chipseal pavement layer for a roadway which the Public Works department is urging against.

The applicant has submitted a letter from Jack Murphy, Traffic Engineer, which discusses the observed traffic delays at the intersection of Mitton and Congress Street as well as the potential trip impact of the project. However, Bill Bray has requested a full traffic study for the project, due to the congestion at these intersections along Congress Street.

## 6. Utilities

Utilities, including water, sanitary sewer, and storm sewer, will be connected to existing lines in Lassell Street. Letters from the utilities attesting to sufficient capacity to service the development have been submitted. A letter of financial capability has also been submitted.

Due to the southward sloping of the site away from the Lassell Street sanitary sewer, the applicant will be installing sewer pumps in each house to reach the public sewer. Staff has suggested that the individual houses feed into a gravity line and that the sewerage then be pumped from a central location to the public line in Lassell. The applicant would prefer the individual pump stations for greater efficiency and economy.

## 7. Drainage

As previously mentioned, this site receives stormwater flows from surrounding areas. Most notable is the stormwater received from the Italian Heritage Center which has created a channel through the property. This channel and its associated wetlands will be rerouted around the perimeter of the site and directed via RCP and an open drainage swale to the existing drainage basin in the southernmost corner of the site.

The applicant has been working with the D.E.P. to resolve wetland issues associated with the proposed development.

Catchbasins and a stormdrain system has also been proposed to collect runoff from the roadway and detain this drainage in underground stormwater detention chambers located beneath the center circular common area.

The applicant proposes to create a raised berm around the north sides of the property to provide privacy to the site. Since a large amount of stormwater originating from north of the site works its way across the site currently, the method of collecting this stormwater on the "out side" of the berm is very important.

**CITY OF PORTLAND, MAINE  
MEMORANDUM**

**TO:** Chair Caron and Members of the Portland Planning Board

**FROM:** Sarah Hopkins, Development Review Services Manager

**DATE:** November 14, 2000

**RE:** Willow PRUD Center Island Revision Appeal

**Introduction**

An appeal has been filed by John Haley, a resident of the Willow PRUD, of a decision made by the Planning Authority to approve a revision to the Willow Site Plan. The proposed revision included a change to the center island feature at the site. The plan was originally approved with a detention basin/reflecting pool. A revision was approved administratively on October 11, 2000 for a regrading and draining of the area, as well as a loaming and seeding of the island for use as a sloped lawn area. This decision was made in part upon a 16-2 vote and resulting recommendation from the Willow Homeowners Association.

Due to the filing of the appeal, the Planning Board is required by ordinance to review the proposed pond revision. A motion for the Board's consideration is included with this memo.

**History**

The Willow PRUD was approved in September of 1996. As the Planning Board may be aware, the City has been involved in an enforcement action against Mr. Weinschenk for noncompletion of the improvements at Willow. On October 26, 2000, the City placed "stop work orders" on Mr. Weinschenk's other projects on Peaks Island in an effort to redirect his efforts to Willow. This action came as a result of several orders sent by the Planning Department and the final failure to comply (See attachment 6). The Stop Work orders were lifted by the court on November 3 until November 15 during which time Mr. Weinschenk has been ordered to complete the installation of conduit in order to have light poles functioning. (See Attachment 7.)

**The Pond**

In 1996, the Planning Board approved the Willow PRUD with a central island feature designed to hold stormwater to create a low reflecting pool. A gazebo and bridges were constructed over the pond area. Mr. Weinschenk constructed the pond but apparently, in spite of the installation of a liner, the pond failed to hold a substantial amount of water. Only during an especially heavy storm event, would water be contained in the pond. This water, however was the runoff from Lassell and/or Mitton Streets and would contain oils, grit and refuse.

The City of Portland notified Mr. Weinschenk on several occasions that the pond must be constructed to function in the manner approved by the Planning Board. Any change to the pond would have to be reviewed as a revision to the approved plan. The Planning Office also notified the Homeowner's Association about the requirements for the pond. (Note: There was an inconsistency in our discussion of the pond requirements: in our discussions with Mr. Weinschenk and members of the association, the Planning Office stated that if Mr. Weinschenk and the homeowners could come to an agreement with a formal vote of the association, the City would consider a revision. However, in one letter sent to the Association, we stated that the Planning Board would review any revisions to the pond.)

On October 9, 2000 the Association held a formal vote and determined that the "potential costs, maintenance, aesthetics, and liability of the pond made it a less desirable alternative, beyond the question of whether a pond could be constructed." A revision was agreed upon where the pond area would be regraded, retaining wall timbers would be removed, the area would be loamed and seeded, and inlets would be installed at grade in the existing concrete drainage structure to drain the area. The Association voted 16-2 to approve the plan. The revised plan was submitted to the Planning Office the next day by Mr. Weinschenk with a letter of support from the Association.

Given the strong (16-2) support of the Association and the review and recommendation by the reviewing engineer, the revision was approved by the Planning Authority.

The decision of the Planning Authority has been appealed by Mr. Haley and as a result, the administrative approval was repealed. Therefore, the revised pond construction is not in compliance with the approved site plan from 1996.

### **Planning Board Review of the Pond**

The center island pond feature was originally designed to meet two needs of the development: recreation and stormwater retention. The pond was designed to accept and hold and release stormwater collected from the roadway of the development. The pond was also designed as a passive recreation space as required of PRUDs in 1996, before the City instituted the requirement of a 6,000 sq ft level, graded area.

The Development Review Coordinator reviewed the revised island treatment proposal and recommended approval with the condition that four inlets, 6 inches in diameter, be bored into the center concrete structure. The inlets will guarantee that the pond will continue to drain.

The revised improvements to the pond have been completed and the area appears to be draining as it was designed. Our only comment during inspection was that the lawn area needs to be rolled and compacted to ensure positive drainage to the inlets.

The non-pond still appears to meet the recreational needs of the development, but may not meet individual homeowners' preferences for treatment.

The Site Plan standards are included as Attachment 8.

### **Motion for the Board to Consider**

On the basis of plans and materials contained in Planning Board memo dated November 14, 2000 regarding the Willow PRUD, the Planning Board finds:

- That the proposed revision to the center island feature to include a drained, sloped, grassy area instead of a detention/reflecting pond **(is/is not)** in conformance with the Site Plan Ordinance of the Land Use Code.

### Attachments:

1. Letter from Mr. Haley
2. Letter from Penny Littell dated November 8, 2000 to Mr. Weinschenk's attorney regarding appeal
3. Revision Approval Letter dated October 11, 2000
4. Letter from Willow Homeowners Association dated October 9, 2000
5. Letter from Willow Homeowners Association dated November 8, 2000
6. Letter from Joseph Gray dated October 26, 2000 ordering cessation of all work
7. Order of Stay and Temporary Restraining Order
8. Site Plan Standards
9. 1996 Approved Site Plan with center island pond
10. Revision proposal

Alex Jaegerman  
Planning & Urban Development  
City of Portland  
389 Congress Street  
Portland, ME 04101

October 16, 2000

Mr. Jaegerman:

Given the lack of response from you or anyone else at your department to my repeated phone requests for an answer as to why you instructed us of one thing in your September 25<sup>th</sup>, 2000, letter and then did something completely opposite last week, I am putting my request in writing. Your letter to me stated that "should he (Mr. Weinschenk) develop an alternative plan for this area, the Portland Planning Board would review and decide upon any alteration to the site plan. At the Planning Board public hearing anyone may attend and provide public comment regarding any proposal for this area. Until the Planning Board (note it doesn't say planning department) approves a revision to the site plan relative to the "center island" the developer is responsible for constructing the improvement which will hold water as intended."

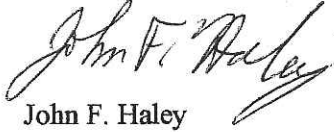
Unless I missed something at the last Planning Board Meeting on October 10<sup>th</sup>, this issue has not come before the Planning Board. You need to understand that the vote taken by the homeowner's association was predicated on there being a review by the Planning Board as was reported in your September 25<sup>th</sup> letter. I want an answer as to why we were told one thing (in writing) and then had something very different occur. Additionally, I have spoken with Chairman Caron of the Planning Board, who seemed rather surprised to hear that you had told us this matter would be heard before the board, and then reneged on that promise. He informed me that he was of the impression that there was an appeal process when the department ruled on a matter like this. If such a process exists, I hereby formally request an appeal of this decision and that a public hearing be held before the full planning board as was promised to myself and every other homeowner here at Willow. Given that the center pond was to have played a role

Further, I want to make you aware that I have spoken with the Maine Attorney General's Office regarding this matter. I have been informed that the Attorney General is filing suit against Mr. Weinschenk. I should think the people in your department may find it of interest that a state agency is now taking legal action on behalf of Portland residents who should have been protected by your department several years ago. You may also find it interesting to hear that Assistant Attorney General Conti stated to me that she doesn't get complaints like this from any other city but Portland. Given that assessment of the rather unique nature of this pattern of incomplete and defective work being allowed to continue, and the action taken by your staff to circumvent the public process which should occur in this matter, I have requested that the Attorney General's office begin an investigation of your department. There has to be some explanation for allowing this man to continue to get approval for one defective project after another in this city. It is clearly not the best interest of the citizens of Portland that are being acted upon.

I have also contacted all three network affiliates in Portland, and two of them have stories in the works. The Portland Press Herald should have already run their first story as you read this. I wish to make it explicitly clear to you that I have no intention of allowing this pattern of deceptive practices to continue. I was sold a home with the understanding that work would be completed on the common areas as intended. That was part of the basis for determining the

purchase price of this home. I have no intention of allowing this "change," which directly affects the value of my home, as well as all the other incomplete and defective work, to stand. You and your department will have to answer to the taxpayers who pay your salary as to why you've failed so egregiously to protect their interests. This is one taxpayer who still anxiously awaits a response.

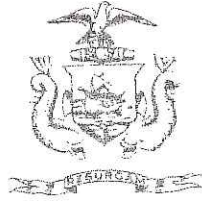
Sincerely,

A handwritten signature in cursive script, appearing to read "John F. Haley".

John F. Haley

Cc: Joseph Gray, Director of Planning & Urban Development  
Judith Wohl, Attorney at Law  
Linda Conti, Assistant Attorney General, State of Maine  
Tom Shanahan, City Hall Reporter, Portland Press Herald  
Susan Kimball, WCSH-TV  
Alicia Boxer, WMTW-TV

Corporation Counsel  
Gary C. Wood



Associate Counsel  
Charles A. Lane  
Elizabeth L. Boynton  
Donna M. Katsiaficas  
Penny Littell

**CITY OF PORTLAND**

November 8, 2000

David M. Hirshon  
Tompkins, Clough, Hirshon & Langer  
3 Canal Plaza  
P.O. Box 15060  
Portland, ME 04112-5060

Re: Willows

Dear David:

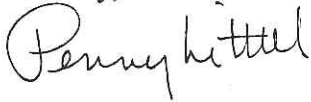
I received your letter of November 7, 2000 in which you inquired as to why the City included \$10,000.00 for the cost of improving the center island in its call on the Peoples' Bank financial guarantee. Please understand that at the present time, the only approval received by your client with regard to the center island is the approval granted by the Planning Board in October 1996, i.e. that being the installation of a "reflecting pond" amenity. This approval remains in effect unless and until the Planning Board alters this approval.

While the City administratively attempted to approve an amendment to the center island to allow a filling and landscaping plan to be substituted for the "reflecting pool" amenity, that decision was appealed to the Planning Board. As a result, the administrative approval, by Ordinance, was repealed (see section 14-527 of the Ordinance attached hereto). Thus, in calling the bond, the City is required to estimate what improvement still needs to be satisfactorily implemented at the site. That would include the cost of constructing the center island as originally approved.

Your reference to the City's acknowledgement that the center island "now comports with the approved plan" relates to the administratively approved plan which has been voided due to an appeal to the Planning Board. As a result, the City is required to insure that it has sufficient funds to bring the site into compliance with the presently approved plan. As you know, the issue of the center island is to be considered by the Planning Board on November 14. At that time your client will be presenting his alternative plan to the Board for approval. Certainly, if the Board approves an alteration to the plan (which alteration is satisfactorily completed in the field) the City will submit a revised cost estimate to the bank on November 16<sup>th</sup>. As a result, I would suggest that bringing this issue before Judge Fritzsche at this point is premature.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "Penny Littell". The signature is written in a cursive style with a large initial "P".

Penny Littell  
Associate Corporation Counsel

cc: Joseph Gray ✓  
Sarah Hopkins

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interested member of the public of the basis for the decision.

(Ord. No. 355-89, 7-17-89; Ord. No. 202-89, 12-18-89; Ord. No. 234-90, 2-21-90; Ord. No. 236-90, §§ 1, 2, 2-26-90; Ord. No. 33-91, § 16, 1-23-91; Ord. No. 244-91, § 1, 3-11-91; Ord. No. 33A-91, § 10, 4-17-91; Ord. No. 176-93, § 4, 1-4-93; Ord. No. 253-94, § 2, 4-4-94; Ord. No. 254-94, 4-4-94; Ord. No. 39-96, § 7, 10-7-96; Ord. No. 166-97, §§ 2, 3, 1-6-97; Ord. No. 125-97, 3-3-97; Ord. No. 164-97(Subst.), § 6, 5-19-97; Ord. No. 165-97, § 7, 12-1-97; Ord. No. 94-99, 11-15-99; Ord. No. 51-00, §7, 8-7-00)

**Sec. 14-527. Appeals.**

(a) When the planning authority has finally approved or disapproved a site plan, any person aggrieved may appeal the decision to the planning board within ten (10) days of the decision being rendered. Upon the taking of such an appeal, the application shall be reviewed as if referred by the planning authority, except that the planning board may not decline to accept the reference.

(b) When the planning board has finally approved or disapproved a site plan, any person aggrieved or the city may appeal the decision of the superior court, pursuant to Rule 80B of the Maine Rules of Civil Procedure, within thirty (30) day of the decision being rendered.

(Ord. No. 355-89, 7-17-89)

**Sec. 14-528. Enforcement.**

(a) All construction or alterations to the site performed under the authorization of building permits or certificates of occupancy issued for development within the scope of the article shall be in conformance with the approved final site plan or an amendment thereto under section 14-525(g) and (l). The building authority shall institute or cause to be instituted any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of this article. Where work is required pursuant to the terms of chapters 24 or 25 as part of an approval granted under this article, such work shall be accomplished in the sequence established by the public works authority. Where the public works authority determines that work has been completed

Attachment 3

Planning & Urban Development

Joseph E. Gray Jr.  
Director



**CITY OF PORTLAND**

October 11, 2000

Ric Weinschenk  
Torrington Ave.  
Peaks Island  
Portland, ME 04108

Jim Milliken, President  
Willow Homeowner's Association  
16 Willow Lane  
Portland, ME 04102

RE: Willow Central Island

Dear Mr. Weinschenk and Mr. Milliken:

This letter is to confirm the revision to the approved site plan of the Willow project located between Mitton and Lassell Streets. The approved revision includes a graded, grassy area in the center island instead of a pond as originally approved. The revised plan has been reviewed and approved by the project review staff including representatives of the Planning, Public Works, Building Inspections, Fire and Parks Departments.

If you have any questions regarding the revision please contact the planning staff at 874-8720.

Sincerely,

Joseph E. Gray, Jr.  
Director of Planning and Urban Development

- cc: Alexander Jaegerman, Chief Planner
- Sarah Hopkins, Senior Planner
- P. Samuel Hoffses, Building Inspector
- Jeff Tarling, City Arborist
- William Bray, Director of Public Works
- Tony Lombardo, Project Engineer
- Lt. Gaylen McDougall, Fire Prevention
- Penny Littell, Associate Corporation Counsel
- Inspection Department
- Development Review Coordinator
- Lee Urban, Director of Economic Development

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*Attachment 4***WILLOW HOMEOWNERS ASSOCIATION****16 Willow Lane  
Portland, Maine 04102**

October 9, 2000

Joseph L. Gray  
Director of Planning and Urban Development  
Thomas A. Fortier  
Island/Neighborhood Administrator  
City of Portland

Gentlemen:

In a secret ballot tonight, the 18 members of the Willow Homeowners Association voted 16 in favor, 2 against to the motion:

We approve the proposal prepared by Ric Weinschenk for a graded, grassy area in the neighborhood center to replace the pond in the original site plan, understanding that the work will be completed in two weeks and the city will enforce quality work.



James M. Milliken  
President

In order to collect this runoff, the applicant proposes the excavation of a swale which will collect the drainage and direct it towards the existing outlet in the south corner of the site.

The Acting Development Review Coordinator will be working closely with the applicant's engineer on the design of this swale to ensure that it has capacity to handle all the stormwater and that this drainage does not end up ponding in neighbors' yards.

Review staff has also requested lot grading plans for each house lot, indicating proposed sill elevations, driveway locations and drainage flow directions. Each lot will be reviewed as a "minor-minor" administrative review.

## **8. Condominium Documents**

As a PRUD, the future homeowners will be members of a condominium association which will assess fees for the maintenance and repair of common areas including roadways, utility connections, drainage infrastructure, landscaping and lighting.

The association will also include a design review for the approval of proposed building and landscape design for the individual lots. the condominium declaration, bylaws, and design review information is included as Attachment 7.

The applicant will be submitting building elevations prior to the workshop meeting.

### Attachments:

1. Stormwater Plan
2. Traffic Narratives
3. Memo from Lt. McDougall
4. Utility Capacity
  - a. Sewer
  - b. CMP
  - c. PWD
5. Letter of Financial Capability
6. Letter from Department of Environmental Protection
7. Condominium Documents/By-laws/Design Guidelines
8. Plans
  - a. Subdivision Plan
  - b. Site Plan
  - c. Soils Plan
  - d. Drainage/Erosion Plan
  - e. Profiles

PRELIMINARY STORMWATER  
MANAGEMENT PLAN

**FORE RIVER PLACE**

Project #96-444  
Portland, Maine

Prepared for:

Neptune Properties  
Owner/Developer

Revised 5 August 1996

Stormwater runoff conditions have been re-evaluated for the "Fore River Place" Planned Residential Unit Development proposed off Mitton Street in Portland, Maine. The analysis was performed to assess the influence of the proposed project on future runoff and to recommend measures to control or mitigate runoff increases due to development.

Culvert sizes are verified in the calculations as they are used to control runoff rates.

**METHODOLOGY:**

All runoff calculations were performed using methods based on USDA-SCS Technical Release No. 20 (also known as TR-20). The two, ten and twenty-five year, twenty-four hour storm events (Type III rainfall distribution) were used for the site specific analysis to determine pre- and post- development peak discharge rates. Runoff curve numbers (CN) and on-site times of concentration (Tc) were determined by the methods outlined in USDA-SCS Technical Release No. 55 (better known as TR-55). Watershed areas were determined from the topographic map prepared for the site and visits to the property to observe adjacent drainage patterns. The

Cumberland County Soil Survey was used to obtain the hydrologic characteristics of off-site contributions. A high intensity soil survey (HISS) map was used to obtain the hydrologic characteristics of the on-site soils.

**SITE INFORMATION:**

The proposed "Fore River Place" project is located at the end of Mitton and Lassell Streets adjacent to the Portland Terminal Company railroad lines. The site is approximately five and three quarters (5.75) acres in size. The subdivision will create nineteen (19) lots ranging in size from 7,100± - 17,300± sq.ft. in size.

There is one defined water worked channel across the site which originates at the discharge of a 24" RCP pipe exiting the Italian-American Community Center property. There are minor wetlands traversing the site (primarily associated with the drainage channel). DEP personnel have indicated that the wetlands can be filled and the drainage channel relocated.

Stormwater flows onto the site are from Mitton Street, Lassell Street, Land between Lassell Street and the Westgate Shopping Center and the Westgate Shopping Center itself.

All stormwater exiting the site flows southerly into two adjacent ponds on land of the Portland Water District.

**ANALYSIS:**

The existing site was broken into five (5) subareas for the purposes of determining pre-development flows. Three of these areas describe flows entering the site from Mitton Street, Lassell Street and the land between Lassell Street and the Westgate Shopping Center. The two on-site areas represent the two discharge points to the ponds previously mentioned. The water from the Westgate Shopping Center (entering via the 24" RCP crossing the Italian-American



Center parking lot) has been ignored as the channel is being rerouted and the flows will by-pass the developed portion of the site.

The area between Lassell and Mitton Streets flows southerly to the project site where it enters a shallow swale located parallel and adjacent to the property line and flowing toward Mitton Street. It is the intent of this stormwater plan that these flows continue in this manner. The shallow swale shall be better defined within a 5'-10' area along the said boundary line. A landscaped berm will be constructed on the project side of the swale to further contain flows within this area. The better defined swale will convey surface water flows to Mitton street where they will enter a catch basin and culvert under the proposed project drive and then discharge as they do under current conditions. Stormwater flows above the 25 year storm event would simply cross over the proposed drive (which will be the lowest point in the area) and flow overland to the Water District Ponds.

For purposes of determining the effect of development, the two discharge points have been combined as they combine naturally within 100' of leaving the subject site.

Seven (7) watersheds were identified for post-development analysis. These watersheds were selected primarily for the culvert design as well as comparison to pre-existing conditions.

#### RESULTS:

Pre- and post- development runoff rates were computed for the project as outlined above.

As expected, raw post-development flows are generally higher than pre-development flows. This is the result of having a higher runoff curve number (CN) for post-development.

The object of the storm drainage system is to reduce the impact of the post-development flows to a level at or below the pre-development levels if possible. To this end, culverts and structures within the project have been designed to constrict flow and cause detention by utilizing induced storage (in two structures within the island area). As the detention structures are not open and do not have berms, emergency spillways are not necessary. Should the structures become full, water entering the system would simply surcharge catch basins 2 & 3 and fill the street area (which is several feet below building level for all lots). It should be noted that the system is designed to accept the flows from both Lassell Street and Mitton Street as they currently discharge to the site.

The combined detention throughout the site results in extending the flow time which in turn reduces the peak discharge. The net result is a reduction in the total peak flow rate(s) leaving the site.

The detailed analysis for this project was performed by computer utilizing "HYDROCAD". The computer print-outs are attached. The following tables summarize the results of the analysis:

#### TWO YEAR EVENT -

Drainage Area Designations		Site Runoff	Rates* Held	Change
Pre (E)	Post (F)	Pre	Post	(+/-)
1	1	2.03	1.37	-0.66
7	7	2.25	2.02	-0.23
TOTAL SITE		3.72	3.15	-0.57

#### TEN YEAR EVENT -

Drainage Area Designations		Site Runoff	Rates* Held	Change
Pre (E)	Post (F)	Pre	Post	(+/-)
1	1	5.74	5.29	-0.45
7	7	5.74	5.07	-0.67
TOTAL SITE		10.46	8.69	-1.77



## TWENTY FIVE YEAR EVENT -

Drainage Area Designations		Site Runoff	Rates* Held	Change
Pre(E)	Post(F)	Pre	Post	(+/-)
1	1	8.42	9.77	1.35
7	7	7.50	6.62	-0.88
TOTAL SITE		15.43	15.04	-0.39

\* Figures are in CFS.

As seen in the tables, individual areas may experience an increase in peak flowrate. Due to the attenuation of flows through the detention areas, the peak flowrate for the total site is held equal to or less than pre-development levels. Specifically, the drainage system proposed results in lower total post-development flowrates for the two, ten and twenty-five year storm events.

## CONCLUSIONS:

The storm drainage network shown on the plans was designed to take advantage of the central island common space. A concerted effort was made to minimize activities near the steep slopes at the southerly end of the site leading to the existing ponds on the Water District Property. The calculations show that there should be a slight decrease in the peak flowrates into the ponds.

All outfalls will have rip-rap aprons and outlet swales. Stone linings will be used in areas of concern (i.e. steep grades).

Maintenance of the stormwater system will be minimal. The homeowners association will maintain the swales and culverts. Grass swales shall be mowed along with road side slopes. Debris should be collected and removed from culverts, swales and catch basins and detention structures on an annual basis. Channels shall be repaired/reseeded as needed annually (or sooner if the situation arises).

As previously stated, verification of the suitability of pipe sizes is included with

the pre- post- information (as part of pond data). Construction information is shown on the construction plans.

In our opinion, implementation of the facilities described herein and in the calculations will minimize the effects of run-off increases due to development. Based upon the analysis methods utilized, future flows onto abutting properties are expected to be essentially equal to or less than current flows.

The signature and seal affixed below apply to this report which consists of three pages of text and 37 pages of calculations.



E:\96444\64447316



JOHN L. MURPHY, P.E.

---

Civil Engineer  
Traffic Engineer

RR1, BOX 6300  
WEST BALDWIN, MAINE 04091-9745  
207-625-8222

June 19, 1996

Mike Scarks  
Neptune Properties  
120 Exchange Street  
Portland, Maine 04101

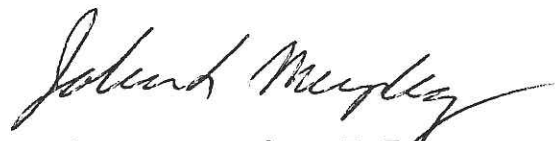
Re: Mitton Street at Congress Street.

Dear Mike:

As requested, we observed and documented some peak hour (4 PM to 5:30 PM) delays for traffic using Mitton Street on June 10, 1996. The left turn entering traffic had a maximum delay of 37 seconds, with most vehicles making the turn in 15 seconds or less. The left turn exit traffic had longer delays of 45 to 50 seconds while the longest delay for right turn exit traffic was 35 seconds. The sample size was 16 vehicles and thus limited, but seemed representative of what would be expected.

The delays are not much worse than those experienced on approaches to major signalized intersections in Portland such as Exit 8 and Riverside Street, Washington Avenue at Allen Avenue, Forest Avenue at Riverside Street, or Morrills Corner.

Sincerely,

  
John L. Murphy, P.E.



# JOHN L. MURPHY, P.E.

---

Civil Engineer  
Traffic Engineer

RR1, BOX 6300  
WEST BALDWIN, MAINE 04091-9745  
207-625-8222

May 4, 1996

Mike Scarks  
Neptune Properties  
120 Exchange Street  
Portland, Maine 04101

Re: Project to build 20 housing units with access to Mitton  
Street - trip impact.

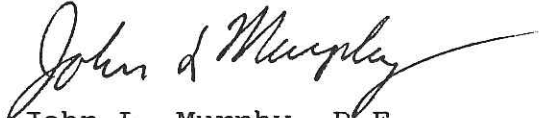
Dear Mike:

The PM peak hour is normally selected to determine impact from a proposed project. If this project resulted in 20 single family detached houses, the estimated PM peak hour impact would be 20 trips with 13 entering the project and 7 exiting. This small amount of traffic would not have a measurable impact on any existing road or intersection. A traffic study would not be required for such a low trip generator.

If, in fact, this project is occupied by elderly residents, the impact would be far less as the elderly do not usually travel during peak traffic periods. Volumes from a retirement community would be estimated at 7 trips from 20 units during the peak hour, with 4 entering and 3 exiting the project.

The source of all my trip estimates is the Institute of Transportation Engineers' report "Trip Generation" as amended to February 1995.

Sincerely,

  
John L. Murphy, P.E.

PORTLAND FIRE DEPARTMENT

MEMORANDUM

TO: Sara Hopkins

FROM: Lt. Mc Dougall

SUBJECT: La Salle Street project

DATE: July 22, 1996

This memo is to clarify the installation of a second access road for the above project.

The travel distance is too great for just one entrance. The connecting of the streets would allow us to better utilize the existing hydrants.

DMc

Attachment 4a

Department of Public Works



Nadeen M. Daniels  
Assistant City Manager  
Director

**CITY OF PORTLAND**

August 2, 1996

William J. Bray  
Deputy Director  
City Engineer

Mr. Louis Wood  
A & M Partners, Inc.  
120 Exchange Street  
Portland, Maine 04101

**RE: Sanitary Sewer Capacity to Handle Anticipated Wastewater Flows from the Proposed Planned Residential Unit Development (P.R.U.D.) to be called "Fore River Place," and to be located at the foot of Lassell & Mitton Streets.**

Dear Mr. Wood:

The existing eight-inch vitrified clay sanitary sewer pipe located in Lassell Street, and the sewage treatment facilities, in the City of Portland, have adequate capacity to transport and treat the anticipated wastewater flows of 5,700 , from your proposed P.R.U.D., to be located at 65 Mitton Street, City of Portland.

Proposed Wastewater Flows from the Proposed P.R.U.D.	
Proposed 19 two-bedroom units @ 300 G.P.D. =	5,700 GPD
Total Proposed Wastewater Flows for this Project	= 5,700 GPD

The City is requesting that you remove storm water at a five to one level of your anticipated wastewater flow (i.e. 5 X 5,700 GPD = 28,500 GPD) or obtain removal credits from the City. Stormwater inflow should be calculated on the basis of a three month recurrence interval storm.

If I can be of further assistance, please call me at 874-8832.

Sincerely,  
**CITY OF PORTLAND**  
*Frank Brancely*  
Frank J. Brancely, B.A., M.A.  
Senior Engineering Technician

FJB:jc

pc: ✓ Joseph E. Gray, Director, Department of Planning & Urban Development, City of Portland  
Katherine A. Staples, P.E., City Engineer  
William B. Goodwin, P.E., Environmental Projects Engineer, City of Portland  
Anthony Lombardo, Project Engineer, City of Portland  
desk file



Central Maine Power, Customer Service Center

162 Canco Road, Portland, Maine 04103

Attachment 4b

1-800-750-4000

Neptune Properties  
120 Echange Street  
Portland, Maine 04101

Att: Mike Scarks

Subject: Fore River Place, Portland

This letter is to advise that Central Maine Power Company has sufficient electrical capacity in the area to serve the proposed 19 lot subdivision to be located off Lasselle Street, Portland.

When site plans are available, please forward them to me so I can coordinate our utilities with your project.

Sincerely

Mark Kreider



# Portland Water District

Attachment 4c

225 Douglass St. • P.O. Box 3553 • Portland, ME 04104-3553

(207) 774-5961  
FAX (207) 761-8307

August 8, 1996

Mike Starks  
Neptune Properties  
120 Exchange St.  
Portland, Me. 04101

re:Fore River Place

Dear Mike:

Currently Lassell Street in Portland is serviced by a 8" water installed in 1988. This main extends approximately 50' beyond the intersecting street of Greely Street. The District's nearest hydrant is located at Lassell Street @ Greely Street(hyd. # 1786). If a hydrant is required within the project the main extention will have to be upgraded to a 8" water main.

Based on doing a 4"main extention into the project to serve a sub-division of 19 new home the District feels it will have adequate capacity of clean and heathful water to serve your project. Currently the static pressure from the nearest hydrant is 82PSI.

Enclosed is a sizing calculation sheet showing the demand to serve the project with allowing for two baths per house. The only losses not figured into the calculation is head loss due to metering and individual service sizing.

The District looks forward to serving your project and if further info is needed concerning the main extention please contact Dave Coffin @774-5961 ext 3041 at the District.

Sincerely,  
*Jim Pandiscio*  
Jim Pandiscio  
Customer Service



**KeyBank**  
One Canal Plaza  
Portland, ME 04101-9754

July 22, 1996

Tel: (800) 452-8762

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

RE: Fore River Place Project

Gentlemen:

This letter is to advise you that Michael Scarks and Arthur Girard have been customers of the bank for many years, during which time we have provided financing for various real estate projects. Over the years I would say that our relationship has been satisfactory.

Given the relatively limited scope of the proposed Fore River Place project off Mitton Street, I would think that these two individuals would be able to fund construction costs without outside financing. However, due to our long-standing relationship, we would certainly entertain a loan request from them should they alternatively prefer to use borrowed funds.

Sincerely,



Thomas N Lea  
Vice President

Attachment 6



STATE OF MAINE

# DEPARTMENT OF ENVIRONMENTAL PROTECTION

ANGUS S. KING, JR.  
GOVERNOR

EDWARD O. SULLIVAN  
COMMISSIONER

June 13, 1996

Albert Frick  
Albert Frick Associates, Inc.  
95A County Road  
Gorham, Maine 04038

Re: Property owned by A & M Partners, Inc. on Lasell Street in Portland,  
Maine

Dear Al:

Thank you for meeting with me at the above described parcel of land. Based on my field inspection the project will require impacts to the freshwater wetland system present on the parcel. If the parcel has been designated as a resource protection zone by the City of Portland than no filling or alteration of the wetlands can occur without DEP review. If the parcel is not in a resource protection zone than the project can impact up to 4,300 square feet of freshwater wetlands without any review by the DEP.

I have seperated the wetland system on the property into two distinct wetlands. The 4,300 square foot exemption does not apply to the wetland at the easterly end of the property due to the fact that it contains greater than 20,000 square feet of open water. Based on our conversation no development is planned for this area. The specific wetland of concern to the Department includes wetland swale that connects the open water wetland area to the drainage outfall near the Italian Heritage Center parking lot. Any isolated wetland pockets found on the filled area would not be included in calculating total wetland impacts.

If you have any questions give me a call at 822-6328.

Sincerely,

James D. Cassida  
Division of Land Resource Regulation  
Bureau of Land and Water Quality

cc: Joe Gray, CEO, Portland  
file

*Serving Maine People & Protecting Their Environment*

AUGUSTA  
17 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0017  
(207) 287-7688 FAX: (207) 287-7826  
OFFICE LOCATED AT: RAY BUILDING, HOSPITAL STREET

PORTLAND  
312 CANCO ROAD  
PORTLAND, ME 04103  
(207) 822-6300 FAX: (207) 822-6303

BANGOR  
106 HOGAN ROAD  
BANGOR, ME 04401  
(207) 941-4570 FAX: (207) 941-4584

PRESQUE ISLE  
1235 CENTRAL DRIVE, SKYWAY PARK  
PRESQUE ISLE, ME 04769  
(207) 764-0477 FAX: (207) 764-1507

**FORE RIVER PLACE**  
BYLAWS  
of  
FORE RIVER PLACE ASSOCIATION

**ARTICLE I. CREATION AND APPLICATION**

**Section 1.01 Creation.**

This corporation is organized under the Maine Nonprofit Corporation Act in connection with the submission of premises known as Fore River Place located on Mitton Street, Portland, Maine as shown on a Plan dated June 28, 1996 by Civil Consultants Inc., recorded in the Cumberland County Registry of Deeds in Plan Book \_\_, Page \_\_ including easements, rights and appurtenances belong thereto (the "Property") to the Declaration of Covenants and Restrictions dated \_\_\_\_\_ as recorded or to be recorded in the Cumberland County Registry of Deeds (the "Declaration"). The name of the corporation is "Fore River Place Association" (the "Association").

The term "Property" as used herein shall include lots 1 through 19 inclusive, together with common areas and road ways submitted to the declaration by Neptune Properties, Inc., a Maine corporation (the "Grantor") including easements, rights and appurtenances belonging thereto and all other property intended for use in connection therewith submitted to or governed by the Declaration. The term "Lot" or "Lots" shall mean the single family residential lots now or hereafter composing the Property. Owner shall mean the owner of a Lot on the Property.

**Section 1.02 Application.**

All present and future Lot owners, mortgagees, lessees, licensees and occupants of the Lots, their employees, agents and customers, and any other persons who may use the Property in any manner are subject to these Bylaws and to the Rules and Regulations, all as adopted, amended or altered from time to time by the Board of Directors of the Association (the "Board of Directors").

**Section 1.04 Office.**

The principal office of the Association shall be located at the Property.

**ARTICLE II. PURPOSES AND POWERS OF THE ASSOCIATION**

**Section 2.1 Purposes.**

The purposes of the Association are to establish an association of Lot owners for the government, operation and maintenance of the Property under the Declaration; and



**Section 2.2 Powers.**

In addition to all the powers, authority and responsibilities granted to or impose upon this Association by the laws of the State of Maine, specifically including those set forth or referred to in the Maine Non-Profit Corporation Act (the "Act") all of which the Association shall have to the extent permitted by law and by the Declaration, the Association shall have the specific powers to:

- A. Adopt and amend Bylaws and Rules and Regulations;
- B. Adopt and amend budgets for revenues, expenditures and reserves, and to collect assessments for common expenses and service charges from owners;
- C. Hire and terminate managers and other employees, agents, and independent contractors;
- D. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more owners on matters affecting the Property (including without limitation the power to enforce the Declaration, the Plan and these Bylaws) and the Association shall be deemed to be the attorney in fact of each owner for such purposes;
- E. Make contracts and incur liabilities;
- F. Regulate the use, maintenance, repair, replacement and modification of the Property under common use and/or control, including without limitation the roads, pathways, ponds, recreational area, drainage systems etc.;
- G. Cause additional improvements to be made as a part of the Property subject to the restrictions set forth herein;
- H. Acquire, hold, encumber and convey in its own name any right, title, or interest to real or personal property; Grant easements, leases and licenses for public utilities servicing or benefiting the Property through or over the premises owned by the Association or as provided by the Declaration or as now or hereafter duly granted to the Association by recorded instrument;
- J. Impose and receive payments, fees, or charges for the use, rental, or operation of common facilities and easements located on the Property, including without limitation those shown on the Plan and/or as established under the Declaration;
- K. Impose charges and interest for late payment of assessments and service charges and, after notice and an opportunity to be heard, impose reasonable

penalties for violations of the Declaration, Bylaws, and Rules and Regulations of the Association;

L. Impose reasonable charges for the preparation and recording of amendments to the Declaration or statements of unpaid common charges and assessments;

M. Provide for the indemnification of its officers and directors and maintain directors' and officers' liability insurance;

N. Exercise any other powers, rights and authority conferred by Declaration or Bylaws;

O. Exercise all other powers that may be exercised pursuant to the Maine Nonprofit Corporation Act. The Board of Directors of the Association shall manage the Property and exercise such powers on behalf of the Association, subject to the terms of these Bylaws and the Declaration.

#### **Section 2.3 Non-Profit Status.**

The Association is not organized for profit and no property or profit thereof shall inure to the benefit of any person except in furtherance of the nonprofit making purposes of the Association or in the course of acquiring, constructing or providing management, maintenance and care of the Property, or by virtue of a rebate of excess membership dues, fees, assessments, or common charges.

### **ARTICLE III. ASSOCIATION OF OWNERS.**

#### **Section 3.1 Membership.**

The members shall consist exclusively of all owners of Lots and Units in the Property now or hereafter created in accordance with the Declaration. Membership is transferable only as provided in the Declaration or these Bylaws. The membership of an owner shall terminate upon the conveyance, transfer or other disposition of his interest in the Lot accomplished in accordance with the Declaration, whereupon his membership and any interest in the assets of the Association shall automatically transfer to and be vested in the successor in ownership. Membership is otherwise non-transferable. A mortgage of a Lot or the grant of a security interest not therein as security for an obligation shall not operate to transfer membership until a foreclosure of the mortgage or security agreement.

#### **Section 3.2 Annual Meeting.**

Meetings of the members shall be held annually each successive year on the date set by the Directors of the Association. The annual meeting and any

special meetings shall be held at the principal office or such other place as may be designated in the Notice of Meeting.

**Section 3.3 Special Meetings.**

Special meetings of the members may be held at any time upon the call of the Board of Directors, or upon the call of Fifty percent (50%) or more in interest of the owners, which call shall state the purpose of the meeting. Upon receipt of such call, the Secretary shall promptly send out notices of the meeting to all members of the Association.

**Section 3.4 Notice of Meetings.**

A written notice of each meeting of the Association, stating whether it is an annual meeting or special meeting, the authority for the call of the meeting, the place and time of the meeting, and the items on the agenda (including the general nature of a proposed declaration or bylaw amendment, any budget charges and any proposal to remove an officer or director) shall be sent by the President or Secretary or Assistant Secretary, if any, at least Ten (10) days, but not more than Sixty (60) days, before the date set for the meeting. Such notice shall be given to each member listed with the records of the Association as set forth below and to each Eligible Mortgage Holders if and as required by the Declaration:

A. By hand delivering it to him, or

B. By mailing it, postage prepaid, addressed to the member at the address of the Lot/Unit or any other address designated in writing by that member with the records of the Association. The notice of any meeting shall state the time and place of the meeting, and the items on the agenda, including the general nature of any proposed Declaration or Bylaw amendments, any budget changes and any proposal to remove an officer or director. If notice is given pursuant to the provisions of this section, the failure of any member to receive actual notice of the meeting shall not invalidate the meeting.

**Section 3.5 Waiver of Notice.**

The presence of all the members in person or by proxy, at any meeting shall conclusively establish the meeting's validity, unless any member shall object at the meeting to the noncompliance with this Article. Any meeting so held without objection shall be valid for all purposes, and at any annual meeting any general business may be transacted and any action may be taken.

**Section 3.6 Order of Business.** The order of business at all meetings of the members shall be generally as follows, if applicable:

A. Roll call.

- B. Proof of notice of meeting or waiver of notice.
- C. Reading of minutes of preceding meeting.
- D. Reports of Officers.
- E. Report of Board of Directors.
- F. Report of committees.
- G. Election of the Board of Directors.
- H. Unfinished business.
- I. New business.
- J. Adjournment.

**Section 3.7 Parliamentary Procedure.**

At all meetings of the members or of the Board of Directors, Roberts' Rules of Order as then amended shall be followed, except in the event of conflict these Bylaws or Declaration as the case may be shall prevail.

**Section 3.8 Quorum.**

The presence at the beginning of any meeting of the Association, in person or by proxy of owners whose aggregate voting interest constitutes more than Forty percent (40%) of the total interest therein shall constitute a quorum for the transaction of all

**Section 3.9 Voting.**

A. Any person, partnership, corporation, trust, or other legal entity or a combination thereof, owning any Lot (other than an interest held as security for an obligation) duly recorded in his or its name, which ownership shall be determined from the records of the Cumberland County Registry of Deeds, shall be a member of the Association, and either, in person or by proxy.

B. Multiple owners of a Lot shall be deemed one owner. If only one of the multiple owners of a Lot is present in person or by proxy at a meeting of the Association, he is entitled to cast all the vote allocated to that Lot. If more than one of the multiple owners are present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the owners. There is presumed to be a majority agreement if any one of the multiple owners present casts the votes allocated to that Lot unless any of the other owners of the Lot promptly protests to the person presiding over the meeting.

C. Each Lot shall have one vote in the Association.

D. Votes may be cast pursuant to a proxy duly executed by an owner. If a Lot is owned by more than one person, each owner may vote or register protest to the casting of votes by the other owners of the Lot through a duly executed proxy. An owner may not revoke a proxy given pursuant to this section except

by actual notice of revocation to the person residing over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall automatically terminate Eleven (11) months after its date, unless it specifies a shorter term.

E. An executor, administrator, personal representative, guardian, or trustee may vote in person or by proxy at any meeting of the Association with respect to any Lot owned or held by him in such a capacity, whether or not the same shall have been transferred of record by a duly recorded conveyance. If the Lot has not been so transferred, he shall satisfy the secretary that he so holds the Lot.

E. The Grantor may exercise the voting rights pertaining to any Lot to which it retains title. No vote pertaining to a Lot owned by the Association may be cast, and the voting interest of such a Lot shall not be deemed to be outstanding in determining the presence of a quorum or the percentage of approval needed to act.

F. Each Lot and each Unit shall have a single vote. Any specified percentage vote refers to the aggregate percentage of such votes.

G. At any meeting at which a quorum is present, the affirmative vote of a majority of the voting interest of those present shall determine any question except the election of Directors, unless a greater percentage vote is required by law, by the Declaration or by these Bylaws. In the election of Directors, those receiving the greatest number of votes, though less than a majority, shall be elected.

### **Section 3.10 Adjournment.**

Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by majority vote of the members present, whether a quorum be present or not, without further notice of the time and place of adjournment beyond that given at the meeting. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

### **Section 3.11 Unanimous Action by Members Without a Meeting.**

Any action required or permitted to be taken at a meeting of the members (to the extent not otherwise precluded by law) may be taken without a meeting if written consents, setting forth the action so taken, are signed by all the members entitled to vote on such action and are filed with the Secretary of the Association as part of the corporate records. Such written consents shall have the same effect as a unanimous vote of the members.

## ARTICLE IV. BOARD OF DIRECTORS.

### Section 4.1 Number and Qualifications.

The affairs of the Association shall be governed by a Board of Directors initially composed of three (3) directors appointed by the Grantor. Upon the sale of 14 of the 19 Lots (being all the Lots which Grantor may create) the Lot owner members shall elect three (3) directors, all of which one shall have a term of one (1) year; such directors shall be the owner of a lot, or if a Lot owner is a corporation, partnership, trust or estate, then a designated agent thereof. The number of directors may be changed by amendment to the Bylaws with the consent of 75% of the Lot owner members, each voting as a class,

### Section 4.2 Election and Term of Office.

All directors shall be elected for a term of one year each. At the expiration of the initial term of office of each director, his successor shall be elected to serve a term of One (1) year; provided, however, that a director shall hold office until his successor has been elected.

### Section 4.3 Powers and Duties.

The Board of Directors shall generally act on behalf of the Association, shall have all powers and duties necessary or appropriate for the administration of the affairs of the Association, and shall have all powers referred to in the Declaration, the Bylaws or otherwise provided under the Maine Nonprofit Corporation Act, as either may be amended from time to time, except those matters which by law, by the Declaration or by these Bylaws specifically reserved to the members.

Section 4.4 Other Duties. In addition to other duties imposed by these Bylaws or by duly adopted resolutions of the members of the Association, the Board of Directors shall be responsible for the following:

- A. Election of the officers of the Association;
- B. Management and administration of the Property, the Association's property and the common facilities, including the maintenance, repair and replacement thereof;
- C. Determination and collection of assessments, and service charges from the owners and the regulation of its fiscal affairs;
- D. Establishment of reserves for the maintenance, repair and replacement of common areas and facilities and for contingencies, including without limitation those reserves required by the Declaration.

E. Appointment and dismissal of the personnel and agents for the maintenance and operation of the Property, including without limitation the common areas, and to fix the terms of their engagement and their compensation and authority; and

F. Designation of executive and other committees.

**Section 4.5 Manager or Management Agent, Employees, Generally.**

The Board of Directors may employ on behalf of the Association a management agent or manager at a compensation established by the Board to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in Sections 4.4 and 6.2 of these Bylaws.

**Section 4.6 Appointment and Vacancies.**

A vacancy caused by the expiration of a Director's term, the removal of a Director by a vote of the members, or by the expiration of the Grantor Control Period shall be filled by vote of the members. Vacancies in the Board of Directors prior to the expiration of the term of a director caused by any other reason shall be filled by vote of the other directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

**Section 4.7 Removal of Directors.** At any regular meeting or special meeting duly called, any one or more of the Directors may be removed with or without cause by the members who elected the director with or without cause. Any director whose removal has been proposed shall be given an opportunity to be heard at the meeting, but the members' decision shall be final. Any director elected by the Grantor may be removed by the Grantor at any time, with or without cause.

**Section 4.8 Compensation.**

No compensation shall be paid to Directors for their services as Directors or in any other capacity, unless a resolution authorizing such remuneration shall have been adopted by the members before or after the services are undertaken.

**Section 4.9 Annual Meeting.**

The annual meeting of the Board of Directors shall be held immediately following the annual meeting of the Association and at the same place; no further notice shall be necessary in order legally to constitute such meeting.

**Section 4.10 Regular Meetings.**

Regular meetings of the Board of Directors (other than the annual meeting) may be held at such time and place as shall be determined, from time to time, by the Board. Notice of regular meetings of the Board of Directors shall be given

to each Director, personally or by delivery to his Lot or Unit, or by telephone, at least Ten(10) days prior to the day named for such meeting.

**Section 4.11 Special Meetings.**

Special meetings of the Board of Directors may be called by the President on Ten (10) days' notice to each Director, given personally or by delivery to his Lot or Unit, or by telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice upon the written request of Two (2) or more Directors.

**Section 4.12 Waiver of Notice.** Before or after any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 4.13 Board of Directors' Quorum.**

At all meetings of the Board of Directors, at the presence of at least three directors, at the beginning of a meeting shall constitute a quorum for the transaction of business. The acts of the majority of the Directors present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, a quorum is not present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 4.14 Unanimous Action.**

Unless otherwise expressly provided by law, any action which maybe taken at a meeting of the Directors may be taken without a meeting if all of the Directors sign written consents, setting forth the action taken or to be taken, at any time before or after the intended effective date of such action. Such consents shall be filed with the minutes of Directors' meetings and shall have the same effect as a unanimous vote.

**ARTICLE V. OFFICERS.**

**Section 5.1 Designation.**

The principal officers of the Association shall be a President, a Secretary and a Treasurer, of whom only the President need be elected from among the Directors. The Directors may in their discretion appoint a Vice President,



Assistant Treasurer, and an Assistant Secretary, and such other officers, none of whom need be Directors, as in their judgment may be necessary.

**Section 5.2 Election of Officers.**

The principal officers of the Association shall be elected annually by the Board of Directors at the annual meeting and shall hold office at the pleasure of the Board.

**Section 5.3 Removal of Officers.** Upon a majority vote of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose. Any officer whose removal has been proposed, shall be given an opportunity to be heard at the meeting, but the Board's decision shall be final.

**Section 5.4 President.**

The President shall be the chief executive officer of the Association and shall be a Director. He shall preside at all meetings of the Association and of the Board of Directors.

**Section 5.5 Treasurer.**

The Treasurer shall be responsible for keeping financial records and accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall also, in the absence of the President, exercise the powers and perform the duties of the President. He shall be responsible, subject to the direction of the Board of Directors, for the preparation and dissemination to the members of all financial reports, budgets and notices required, and for the preparation and signing, if necessary, of all financial reports or tax returns required to be filed by the Association.

**Section 5.6 Secretary.**

The Secretary shall keep and certify the minutes of all meetings of the Board of Directors or of the Association, shall give all notices as provided by these Bylaws, and shall have other powers and duties as may be incidental to the offices of Secretary, given him by these Bylaws or assigned to him from time to time by the Directors. If the Secretary or any assistant secretary shall not be present at any meeting, the presiding officer shall appoint a secretary pro tempore who shall keep the minutes of such meeting and record them in the books provided for that purpose. The Secretary shall be responsible for the filing of all reports and documents required to be filed by the Association with any governmental agency.

**Section 5.7 Auditor.**

The members may at any meeting appoint some person, firm or corporation engaged in the business of auditing to act as auditor of the Association and to perform such audits and fiscal duties as may be requested by the Association.

**Section 5.8 Amendments to Declaration.**

The Secretary shall prepare amendments to the Declaration and the President and Secretary shall execute the certificate for recording on behalf of the Association.

**ARTICLE VI. FISCAL AFFAIRS AND ADMINISTRATION.**

**Section 6.1 Accounting.**

Books and accounts of the Association shall be kept under the direction of the Treasurer and in accordance with customary accounting principles and practices. Within Ninety (90) days after the close of each fiscal year, the Association shall furnish its members with a statement of the income and disbursements for such prior fiscal year and a balance sheet as of the close of that year. All financial records shall be available for examination by owners, mortgagees and their duly authorized agents and accountants at reasonable times.

**Section 6.2 Budget and Common Charges.**

A. The Board shall cause a proposed annual budget to be prepared based on its estimate of annual income and expenses. Within Thirty (30) days of the adoption of the proposed budget, the Board shall send a summary of such budget to each member.

B. The budget shall include the amount required by the Association to meet its expenses for each fiscal year or such other fiscal period as it deems appropriate, including but not limited to the following items:

- 1) Management and administration expenses;
- 2) The cost of operation, repairs, maintenance, replacement, and improvements of common areas and facilities benefiting the Property;
- 3) The cost of such insurance, bonds, services and utilities as may be furnished by the Association, other than such items for which a service charge is assessed;
- 4) The establishment and maintenance of adequate working capital and reserves including general operating reserves, reserves for contingencies, for losses not covered due to insurance deductibles, and reserves for periodic maintenance, repair and replacement of the common areas and facilities the Association maintains, all to be held in a segregated fund in a Maine financial institution; and

5) Such other expenses of the Association as may approved by the Board of Directors including operating deficiencies, if any, for prior periods.

C. Until an annual budget is adopted, the members shall continue to pay that monthly amount which had been previously established; any delay or failure to estimate, to deliver or to adopt such budget shall not waive or release such obligation. The Association may send periodic statements to members showing the amount of assessments due, but each member shall pay his assessment promptly when due regardless of whether such a statement is sent.

D. Each member shall pay his share of assessments without setoff or deduction in an amount equal to the total Association budget, net of other income and service charges as defined herein, times a fraction equal to one divided by the number of all Lots subject to the Declaration which are members of the Association. Each member shall become liable to the Association, and a lien shall arise against his Lot and/or Unit for his entire fractional share of the assessments at the commencement of the pertinent fiscal period. Each member may pay his share of the common charges in monthly installments on or before the first day of each and every month during such period, provided, however, that if any such installment is not paid when due, then if not paid upon Twenty (20) days written notice of default, the entire remaining balance thereof shall immediately become due and payable in full.

**Section 6.3 Revised and Special Assessments.**

If at any time the Board shall determine the amount of the common charges to be inadequate, whether by reason of a revision in its estimate of expenses or income, the Board may adopt and deliver to the members at least thirty days prior to the date on which it becomes effective, a revised estimated annual budget for the balance of such fiscal year and thereafter monthly common charges shall be determined and paid on the basis of such revision.

The Board may, upon determining that circumstances exist which requires immediate assessment of the members, make special assessments, not to exceed an amount equal to one current monthly assessment for each Lot and Unit unless approved by the members, which shall be due and payable when delivered to the members.

**Section 6.4 Fiscal Year.**

The fiscal year of the Association shall be such as may from time to time be established by the Board of Directors.

**Section 6.5 Capital Improvements.**

The approval of 2/3 of the members collectively, either directly or through the approval of the Board of Directors may determine, shall be required to make a

capital improvement to the common facilities in an amount in excess of Thirty Five (35%) of the aggregate assessments against all the members over the prior fiscal year, exclusive of service charges and user fees, and in such event the cost thereof shall be assessed to all owners as an assessment.

**Section 6.6 Use.** All Lots shall be utilized in accordance with the provisions of the Bylaws, Declaration, and Rules and Regulations.

**Section 6.7 Enforcement of Declaration and Bylaws.** Every owner shall pay to the Association promptly on demand all costs and expenses, including reasonable attorneys' fees and expenses incurred by or on behalf of the Association, in collecting any delinquent assessments, service charges or fees due from such Lot, foreclosing its lien for assessments, collecting any penalties imposed hereunder, or enforcing any provisions of the Declaration, these Bylaws, or the Rules and Regulations against such owner or any occupant of such Lot.

**Section 6.8 Rules and Regulations.**

In order to assist the peaceful and orderly use and enjoyment of the buildings and common facilities of the Property, the Board of Directors may from time to time adopt, modify, and revoke, in whole or in part, such further reasonable rules and regulations governing the Property as it may deem necessary, including, but not limited to methods and procedures for enforcing compliance with the Declaration and Bylaws. Such Rules and Regulations upon adoption, and every amendment, modification, and revocation thereof, shall be sent promptly to each Lot and shall be binding upon all members of the Association and all persons present on the Property.

**Section 6.9 Restrictions.**

As an amendment to these Bylaws and subject to the Declaration(which shall control in event of any conflict), the members may from time to time adopt, modify and amend such further restrictions on and requirements respecting the use and maintenance of Lots and the use of common facilities designed to prevent unreasonable interference with the use and enjoyment of the Property.

**Section 6.10 Title.**

Every owner shall promptly record in the Cumberland County Registry of Deeds the deed, assignment, or other conveyance to him of his Lot or other evidence of his title thereto and file such evidence of his title with the Association, and the Secretary shall maintain such information in the records of the Association.

**Section 6.11 Insurance.**

A. The Association shall maintain, to the extent reasonably available:

1) Property insurance on the common areas and facilities insuring against fire, extended coverage perils and all other risks customarily covered for similar types of properties, including those covered by the standard "all risk" endorsement. The total amount of insurance after application of any deductibles shall as near as is practicable to 100% of the replacement cost (unless the Board of Directors elect a higher level of coverage), exclusive of land, excavations, foundations and other items normally excluded from property policies, but with such deductible as determined by the Board of Directors but not to exceed the lesser of \$10,000 or 1% of the policy face amount;

2) Comprehensive general liability insurance including bodily injury, property damage and medical payments insurance and for claims related to employment contracts to which the Association is a party, in an amount determined by the Board of Directors but at least \$1,000,000.00 for any single occurrence covering all occurrences commonly insured against arising out of or in connection with the use, ownership, or maintenance of the common facilities and all other areas under the supervision or control of the Association;

3) Such other insurance as the Board of Directors of the Association may determine is appropriate. The Board of Directors shall require all officers and employees of the Association handling or responsible for corporate funds to furnish adequate fidelity bonds in the amount of the maximum funds that will be in the custody of the Association or any management agent at any time but not less than 3 months common charges plus the amount of the Association's reserve account balance. The premiums on such bonds shall be paid by the Association.

B. Insurance policies carried pursuant to Subsection (A) shall provide:

1) An owner is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the common facilities or membership in the Association;

2) The insurer waives its right to subrogation under the policy against any owner or members of his household;

3) No act or omission by any insured will be a defense to recovery under the policy; and

4) If, at the time of a loss under the policy, there is other insurance in the name of an owner covering the same property covered by the Association's policy, the Association's policy is primary insurance not contributing with the other insurance.

C. All insurance policies shall provide that the named insured is "Association of the Owners of Summer Place Association, for the use and benefit of the individual owners." Any loss covered by the property policy under subsection (A) shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to the Association in trust for Lot owners, mortgagees and lien holders.

D. Lot owners shall not be prohibited from obtaining insurance for their own benefit; provided nonetheless that all such insurance shall contain waivers of subrogation and further provide that the insurance obtained by the Board of Directors shall not be affected or diminished by such additional insurance obtained by any owner.

F. Any portion of the Property damaged or destroyed shall be repaired or replaced promptly by the Association unless:

(i) Repair or replacement would be illegal under any state or local health or safety statute or ordinance; or

(ii) Eighty (80%) of the members vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense; funds to cover the deductible amount shall be included in the Association's reserve account budget.

In the event of a claim under any insurance maintained by the Association, the Board of Directors shall designate one or more persons to adjust the loss or otherwise negotiate with the insurer. It shall be the responsibility of each Lot owner to procure adequate insurance covering the buildings and improvements on his Lot.

## **ARTICLE VII. SALE OR OTHER TRANSFERS**

### **Section 7.1 Binding Effect.**

All subsequent sales, leases or other transfers of a Lot by an owner shall be subject in all respects to the Declaration, Bylaws, and Rules and Regulations of the Association.

### **Section 7.2 Liability for Assessments, Etc.**

In the transfer of a Lot, the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid assessments and service charges, interest and costs of collection outstanding at the time of the grantor's transfer, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee or proposed purchaser under a purchase and sale contract upon written request and upon payment of such fee as may be set by the Directors may obtain a statement

from the Board of Directors setting forth the amount of unpaid, assessments, and service charges against the Lot, and the grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for any, assessments, and service charges arising before the statement date in excess of the amount therein set forth.

## **ARTICLE VIII. EXECUTION OF INSTRUMENTS.**

### **Section 8.1 Instruments Generally.**

All checks, drafts, notes, vouchers, bonds, acceptances, contracts, deeds, lien notices, certificates, and all other instruments shall be signed or approved by the President or the Secretary or Treasurer, and in addition by any one or more officer(s), agent(s) or employee(s), all as the Board of Directors may designate, unless otherwise unanimously voted by the Board of Directors.

## **ARTICLE IX. GENERAL ADMINISTRATION.**

### **Section 9.1 Easements, Etc.**

The Association is authorized and empowered to grant such easements, rights-of-way, leases and licenses for sewer lines, water lines, electrical cables, telephone cables, television cables and antennas, gas lines, storm drains, underground conduits, fire escapes and alarms and such other purposes related to the provision of public services and utilities to the Property owned by the Association and under the roads and reserved easements as shown on the Plans pursuant to the Declaration as may be considered desirable, necessary or appropriate by the Board of Directors for the orderly maintenance, improvement and preservation and enjoyment of the common facilities, the Lots or for the preservation of the health, safety, convenience and welfare of the owners of the individual Lots upon at least Thirty (30) days' notice to the members unless a special meeting of the members is called within such period and the members vote to reject such grant. No such rights may be created through any Lot without the written consent of the owners thereof except as provided in the Declaration or reserved in the deed for such Lot and that no such easement shall materially impair the use and enjoyment of the Property.

### **Section 9.2 Utility Services.**

The Association shall not be liable for the failure of electricity, telephone, water supply, sewage disposal systems, or other services to be obtained by the Association or paid for out of the common expense or service charge funds, or for injury or damages to persons or property caused by the elements or by the owner of any Lot or by any other person, or resulting from electricity, water, snow or ice which may leak, fall or flow from or settle on any portion of the common facilities or from any sewer, drain, ditch, pond, stream, wire, pipe, drain, conduit, appliance or equipment. The Association shall not be liable to the owner of any Lot for loss or damage, by theft, or otherwise, of property which may be

stored upon or in any individual Lot or in any of the common facilities. No set-off, diminution or abatement of assessments for common expenses or service charges, shall be claimed or allowed for the expense, damage or discomfort arising from the making of repairs or improvements to the common facilities or to any Lot, or from any action taken by the Association to comply with any law, ordinance, or order of any other governmental authority.

## **ARTICLE X. LIABILITY OF DIRECTORS AND OFFICERS.**

### **Section 10.1 Exculpation.**

No director or officer of the Association shall be liable for acts or defaults of himself or any other officer or member, or for any loss sustained by the Association or any member thereof, unless the same has resulted from his own willful misconduct or gross negligence.

### **Section 10.2 Indemnification.**

The Association shall indemnify any person who was or is threatened to be made a party against any actual, threatened, or completed action, or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact he is or was an officer, director, agent or employee of the Association against all expenses including reasonable counsel fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection therewith, excepting, however, such matters in which such person is finally adjudged to have acted with willful misconduct or gross negligence towards the Association or absent a final adjudication thereof, excepting such matters in which the Board of Directors (excluding any interested Director) determines any such person acted with willful misconduct or gross negligence. This right to indemnification shall be in addition to any other power of the Association to indemnify as permitted by law. The Association may also maintain insurance on behalf of any person who is or was a director, officer, agent or employee of the Association against any liability asserted against him and incurred by him in such capacity or arising out of his status as such, whether or not the Association would otherwise have the power or duty to indemnify him.

## **ARTICLE XI. BYLAWS.**

### **Section 11.1 Amendment.**

These Bylaws may be amended, modified, or revoked in any respect from time to time by vote of Seventy Five percent (75%) or more of the members of the Association at a meeting duly called for the purpose, PROVIDED, HOWEVER, that these Bylaws shall always contain those particulars which are required by the Declaration.



**Section 11.2 Conflict.**

In the event of any conflict between these Bylaws and the provisions of the Declaration, the latter shall govern and apply.

DECLARATION OF COVENANTS AND RESTRICTIONS

FORE RIVER PLACE

PORTLAND, MAINE

**KNOW ALL MEN BY THESE PRESENTS**, that It, Neptune Properties, Inc., a Maine corporation with a place of business in Portland, Maine (hereinafter called "Grantor"), is the owner of certain real estate located in Portland, Maine and known as "Fore River Place" as shown on a Plan dated June 28, 1996 by Civil Consultants, Inc. recorded in the Cumberland County Registry of Deeds in Plan Book \_\_\_\_, Page \_\_\_\_ (the "Property");

**WHEREAS**, the Grantor desires to create and maintain a residential area consisting of house lots and detached residential dwellings preserving the natural and residential features of the Property which are of unusual value;

**WHEREAS**, Grantor proposes to establish Fore River Place Association, a Maine nonstock corporation (the "Association") the members of which will consist of the owners of lots in Fore River Place;

**WHEREAS**, Grantor desires to ensure the use and enjoyment of the Property as a residential community;

**WHEREAS**, Grantor desires to bind the purchasers of Lots and their successors and assigns to properly maintain and operate the common amenities consisting of private roadways, sidewalks, arbor and garden and other facilities useful or essential to the residential use and enjoyment of the Property; and

**WHEREAS**, the Grantor desires to assist its Grantees in providing the necessary means to enable them and their Grantees to accomplish these purposes;

**NOW THEREFORE**, in consideration of the premises, the Grantor for itself and its successors and assigns, hereby subject the Property including all the Lots on said Plan numbered 1 through 19 inclusive, (collectively the "Property") to the following restrictions, covenants, agreements and liens as covenants running with the land which shall be binding upon and enforceable by the Grantor, its successors and assigns, the association, its successors and assigns, or by the then owner of any parcel or lot subject to this Declaration to wit:

### **1. Residence.**

The Property shall be used for single family residences only.

#### **A. Lots.**

The Lots shall be occupied by not more than one single family residential unit per lot, a residential unit shall include no buildings or structures of any nature other than the following, viz:

- i. one detached dwelling house designed as a residence for one family;
- ii. one garage for private use constructed either as an integral part of the dwelling or as a detached building and adapted for storage of not more than three automobiles; and,
- iii. suitable garden structures ordinarily appurtenant to single-family dwelling houses.

B. All structures shall be subject to to Design Reveiw pursuant to the provisions of Exhibit B attached hereto.

### **1B. Design Reveiw Board**

The Design Reveiw Board shall consist of solely the Grantor until the transfer of the responsibility of Design Reveiw is made to the Association by the Grantor or pursuant to article 10 of this declaration.

### **2. Business and Trade.**

No business or trade of any kind shall be operated on the property, provided, nonetheless, that:

(i) a residence may be used for personal or professional work by a resident but may be used neither for meeting clients or patients nor held out as an office to such persons or the public; and,

(ii) a lot or unit may be used for the construction of the residential structures permitted thereunder. Grantor may maintain sales, leasing and management office (s), may use unsold lots and the improvements thereon for display and marketing purposes, and a Lot Owner may use the Property for the construction of buildings and improvements as provided in this Declaration. The Grantor and the Association may upon request and upon the payment of a reasonable fee issue a certificate indicating whether any apparent violation(s) of this Section or known violation(s) of this Declaration exist, which shall be conclusive and binding with respect to the matters stated therein. Neither the Grantor, the Association nor any officer, director, employee or agent of the foregoing shall be liable to any person for any action in connection with the administration, enforcement or nonenforcement of this Section, including without limitation, mistakes in judgment, negligence or misfeasance.

### **3. Pets and Animals.**

Nothing shall be done which may be or become an annoyance or nuisance; the keeping of poultry, swine, or livestock other than personal household pets housed in a residence shall not be permitted. No boarding or breeding kennels shall kept or maintained on the property. The Association shall have the power

to regulate the keeping of pets under the bylaws or rules and regulations of the Association as promulgated or amended from time to time. In any event, all animals shall be restrained so as not to become noisome or offensive to the occupants of any units; pets shall not be permitted off the owner's Lot except on a leash attended by a responsible person.

#### **4. Motor Vehicles.**

Outside parking areas, roads and driveways may be used for the parking of private passenger motor vehicles only. The Lots shall not be used for outside parking of camping trailers, recreational vehicles, motor homes, trucks rated for a gross vehicle weight of over 10,000 pounds or unlicensed or inoperable vehicles except with the prior written approval of the Association's Board of Directors or within a fully enclosed garage. No person shall park or leave any motor vehicle or other personal property overnight on any of the private roads; breach of this restriction shall subject the vehicle or property to removal at the risk and expense of the owner thereof. The Board of Directors of the Association shall have the power to adopt such reasonable rules and regulations as it deems appropriate regulating the use of motor vehicles on the Property. Snowmobiles, all-terrain vehicles, trail bikes and any similar vehicles shall not be operated on the Property.

#### **5. Signs.**

Lot owners shall have the right to install a sign of not more than two (2) square feet showing the name of the owner or occupant and the name(s) or number of the premises. All signs shall be compatible with the environment, approved by the Design Review Board and under no circumstances shall projecting signs, be brightly lighted or internally lighted signs be permitted on any parcel.

#### **6. Completion of Construction.**

Within twelve (12) months from the start of any construction (or upon the partial or complete destruction of any residence), a Lot owner shall erect, build and have the exterior of the building completely finished in a manner consistent with the conditions set forth herein including the revegetation of all disturbed areas and approved driveway surfacing.

#### **7A. Association maintenance of Common Areas and Facilities.**

The Association and its Board of Directors and their designees shall also have and are hereby granted the right and obligation to maintain, repair, replace, add to and alter the common roads, utility and service lines, drainage system, recreational facilities and other common facilities, and make excavations for said purposes. No owner shall do any of the foregoing without the prior permission of said Board of Directors in each instance. The Association shall inspect and maintain the surface water systems on the Property at least annually or more frequently if required as follows:

- A. Inspection of all/any septic tanks, chambers, and pumps.
- B. Inspection of all sanitary manholes and clean as necessary or more frequently if required.
- C. Inspection of all/any pumps, pump controls, and pump station alarm systems
- D. Removal of any accumulated silt or debris from culverts and ponds;
- E. Inspection of the rip-rap at the outlet end of the culverts and reset any dislocated stones, to be performed by Lot owners as part of their land maintenance;
- F. Other maintenance as it becomes necessary to enable storm drain systems and any/ all other systems installed to function as designed.

The expense thereof, except as otherwise indicated herein, shall be charged as a common expense, provided however that the Association may charge the responsible owners for the replacement and repair of damage due to the negligence or misuse of such facilities. The Association shall also establish a reserve account for the replacement and repair of the common roads and other facilities based on regular assessments determined by calculating the estimated life expectancy of each such amenity. The reserve account need not be established for a facility until one year after the facility is actually constructed. The charge shall be based on the replacement cost divided by three-quarters of the life expectancy as determined by the design engineer, which assessment reserves shall be charged until 125% of the then replacement cost of the facilities is accumulated and maintained. Such reserves shall be deposited in a separate escrow account in the name of the Association in a bank or other financial institution insured by the United States of America, and shall only be used for the purposes specified in this Section unless specifically otherwise approved by 80% of all members of the Association.

**7B. Lot Owners Maintenance Responsibilities.**

- A. Periodic mowing of grass on the road right of ways to be performed by Lot owners in conjunction with lawn work on their own grass areas.
- B. Removal of debris that may collect in the grass swales, culverts and dam(s), to be performed by Lot owners as part of their land maintenance.
- C. Each Lot owner shall avoid interfering with the natural course of surface water across a neighbor's parcel or any land abutting the Property or altering its intended flow to the storm drainage, streams and ponds.

**8. Membership.**

For the purpose of maintaining roads, utility and other easements, traffic control, maintaining the common storm water drainage system, general planting and landscaping, and all common services of every kind and nature required or desired within or adjoining the Property, for the general use and benefit of all owners, each and every owner, in accepting a deed or contract for

any Lot of the Property, agrees to and shall automatically become a member of and be subject to and comply with this Declaration, the Bylaws and rules of the Association, as amended from time to time. The members shall consist of all the owners of Lots of the Property. The membership of each such lot owner shall terminate upon the sale, transfer or other disposition of their ownership interest in the lot, whereupon membership shall automatically transfer to and be vested in the successor in ownership. The mortgage of a lot shall not operate to transfer membership until foreclosure of the mortgage. Each Lot shall have one vote in the Association. Until 14 of the 19 Lots have been sold, there shall be three (3) directors of the Association and only the Grantor, as the initial member shall be entitled to vote for the election of directors; provided however, that Grantor may assign such rights to any successive developer of the lots, may waive such rights in whole or in part or may exercise its rights under the articles of incorporation or bylaws of the Association.

### 9. Assessments.

Commencing with the sale of a lot to a purchaser (other than a successor Grantor), each owner shall pay the Association or its authorized representative, monthly or as otherwise required by the association, their (its) share of the expenses of and reserves of the Association in carrying out its function, all as determined by the Association's Board of Directors, allocated equally among all such Lots and such Units. Such obligation (including such interest as may be established by the Association and costs of collection and reasonable attorney's fees) shall be the personal responsibility of the owner of each Lot and shall constitute a lien on a Lot, SUBJECT HOWEVER, to any mortgage held by an institutional lender, to which mortgage the lien shall be subordinate. The recording of this Declaration constitutes record notice of the lien, which may be foreclosed in the same manner as a mortgage on real estate or by any other method now or hereafter permitted by law. Until the later of one (1) year from the sale of the first Lot or until the owners of Lots, subject to this Declaration have assumed self-government of the Association, the Grantor may charge owners for their proportionate share of the assessments and may pay the expenses of the Association directly.

A. The Association shall notify the owners at the addresses maintained by the Association within thirty (30) days after said assessment has been fixed and levied, notifying such owners of the amount of the charge or assessment for such year, when the same shall be due and payable, and the amount due on each lot, owned by each such owner, and the interest rate on past due assessments provided that failure to send such notice shall not relieve the Owner of their obligation hereunder. Unless otherwise provided by the directors of the Association, the interest rate on all past due assessments shall be Eighteen percent (18%) per annum. It shall be the duty of each owner to list their address with the Association, failing which the Association may send such notices to such address as reasonably appears to be a permanent

address of such owner. Failure of the Association to levy the assessment or charge for any one year or send such notice or to charge interest shall not affect the right of said Association to do so for any subsequent year or for such prior year(s) in arrears. A written or printed notice thereof deposited in the United State mails, with postage prepaid, and addressed to the respective owners as aforesaid shall be deemed to be sufficient and proper notice for this purpose or for any other purpose of this Declaration, wherever notice may be required.

B. The Association shall have all legally permissible powers of collection of assessments made on said real estate including, without limitation, those powers set forth in Maine Revised Statutes Annotated, Title 13, Chapter 91 and shall generally have all powers established under Title 13-B M.R.S.A.

C. Such charges of assessments shall be applied by said Association in its discretion toward payment of the following costs:

(1) To enforce, either in its own name or in the name of the owners of the property above described any or all covenants which may have been heretofore, or may hereinafter be, imposed upon any of the Property, either in the form as originally placed thereon or as subsequently modified; provided, however, that this right of enforcement shall not serve to prevent the right of any owner or owners of any Lot, to enforce said restrictive covenants in the event they or any one of them elects to do so. The expenses and costs of any such proceedings instituted by the Association shall be paid out of the general fund of the Association.

(2) To preserve the natural beauty of the Property and pick up and remove therefrom trash and rubbish of all kinds; and to do any and all other things necessary and desirable in the judgment of the Board of Directors of said Association to keep the Property clean and in good order.

(3) To provide for the maintenance, snowplowing, sanding, repair and replacement of all common area roads and ways within or adjoining the Property, including the roads leading through the Property, and for the creation of reserves for the foregoing purposes.

(4) To provide for the maintenance, repair, and replacement of the recreational and all other facilities and for the creation of reserves for the foregoing purposes.

(5) To provide for the removal of solid waste from each lot and all/ any accumulated solid waste from other Association property for the creation of reserves for the foregoing purposes.

(6) To pay real estate and other taxes, to establish reserves, to administer the Association and enforce this Declaration.

(7) To administer, observe and perform the Bylaws and exercise the powers of the Association thereunder.

(8) Such other items as the Board of Directors of the Association may determine in their discretion.

D. To provide any other neighborhood services not provided by local governmental authorities.

E. To carry hazard, and general liability insurance coverage on any premises owned, maintained or repaired by the Association to provide directors and officers insurance and to indemnify the Association's officers and directors.

**10. Association Administration.**

The Grantor shall control and manage the Association until transfer of this responsibility to the Association membership by the Grantor or pursuant to provisions below and consistent with the Bylaws attached hereto.

A. The initial Bylaws of the Association are attached hereto as Exhibit A.

B. The Association shall notify by mail all owners at the address listed with the Association, of the time and place of regular or special meetings of the Association. Such notices shall be mailed at least ten (10) days to advance of such meetings.

C. By written consent of four fifths (4/5) of all members, the Association may be given additional powers and this Declaration may otherwise be amended or modified, provided however that any amendments affecting the maintenance and repair of the common shall, at all times, observe all the laws of the State of Maine and the United States of America, and if at any time any of the provisions of this Declaration shall be in conflict therewith, then such parts of this Declaration as are in conflict with such laws shall become null and void, but no other part of this Declaration shall be affected thereby. So long as Grantor owns any portion of the Property, any amendment or modification of this Declaration shall require the written approval of Grantor duly recorded.

D. The Association shall, at all times, observe all the laws of the State of Maine and the United States of America, and if at any time any of the provisions of this Declaration shall be in conflict therewith, then such parts of this Declaration as are in conflict with such laws shall become null and void, but no other part of this Declaration shall be affected thereby.

E. The Association shall have the right to make such reasonable rules and regulations and provide such means and employ such agents as will enable it adequately and properly to carry out the purposes and provisions of this Declaration, subject to the limitations hereinabove and hereinabove set forth; provided that so long as Grantor owns any portion of the Property, the adoption of such rules and regulations or any amendments thereof shall require the written approval of the Grantor duly recorded.

F. This Declaration may be terminated and all the land now or hereafter affected may be released from all of the terms and provisions thereof by the owners of four-fifths (4/5) of the members subject thereto at the time it is proposed to terminate this said Declaration.



**11. Compliance with Laws.**

All siting, construction, excavation, water supply, and storm water drainage, shall be in accordance with all applicable local and state laws, codes, ordinances and regulations.

**12. Nuisance.**

Noxious, dangerous, offensive or unduly noisy activities of any nature shall not be carried on upon any Lot.

**13. Refuse Disposal.**

Trash, garbage and other waste shall be kept in sanitary containers within the residential structures where they are not visible from any road or from any other Lot parcel.

**14. Subdivision.**

The lots as shown on the plan may not be subdivided, except with the consent of the Grantor and with the approval of the City of Portland if required.

**15. Access To Amenities.**

The Association or its authorized Designates shall have the irrevocable right, to have access to each parcel from time to time during reasonable hours, as may be necessary for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible therefrom, including pedestrian, utility and drainage easements, to prevent damage to the common areas and facilities, or to any other parcel(s).

**16. Enforcement.**

The provisions of the Declaration have been adopted for the benefit of the owners of the Property and shall run with the Land. Therefore, the violation or attempted violations of any covenant or restriction in this Declaration is hereby declared a nuisance which may be remedied by any appropriate legal proceeding. If any owner shall attempt, violate or permit any violation of any of the covenants, restrictions or reservations described in this Declaration or in the Bylaws and the rules and regulations of the Association, the Grantor, the Association or any Lot owner may commence proceedings at law or in equity to recover damages or other awards for such attempts, violations or permitting of the same, or to enjoin the furtherance or continuation of such attempts or violations, or both.

The violator shall pay all reasonable costs, including attorney's fees, incurred in the enforcement of this Declaration the Bylaws and the rules and regulations of the Association which shall constitute a lien on the Lot or Unit in the same manner as Association assessments. Proceedings may be maintained irrespective of the waiver of any prior violation or attempt by the same or

other owners, and the failure to enforce any one (1) occasion shall in no event be deemed to be a waiver of the right to do so thereafter as to the original breach or a breach subsequent thereto.

**17. Termination of Restrictions.**

At a meeting duly held not earlier than January 1, 2018, the then current Members of the Association may terminate the provisions set forth in this Declaration by a 80% vote, which amendment or termination shall become effective upon the recording therefore. If no such amendment or termination is recorded by February 1, 2018, this Declaration shall automatically renew for another 25-year period, and in like manner for each 25-year period thereafter.

**18. Grantors Right to Assign.**

All references in the Declaration to the Grantor shall mean and include the Grantor's successors and assigns. The Grantor shall have the power to assign its rights under this Declaration to any successor Grantor by instrument duly recorded which has been executed by Grantor and Grantor's successor.

**19. Severability.**

If any provisions of this Declaration, or its application to any persons or circumstances, is invalid or unenforceable, then the remainder of this Declaration, or the application of such provisions to other persons or circumstances, shall not be affected thereby.

**IN WITNESS WHEREOF.** Neptune Properties, Inc has caused the corporate seal to be affixed hereto and these presents to be signed, acknowledged and delivered as of \_\_\_\_\_, 1996.

Neptune Properties, Inc. (a corporation)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: \_\_\_\_\_ its President

STATE OF MAINE  
CUMBERLAND, SS.

Personally appeared \_\_\_\_\_ in his said capacity and acknowledged the foregoing instrument as his free act and deed and the free act and deed of said corporation,

Notary public/Attorney at Law

name: \_\_\_\_\_  
forrpdec.sam

# FORE RIVER PLACE

Exhibit B

## DESIGN REVIEW

### I. STATEMENT OF INTENT

The design review approval process for Fore River Place is intended to among other things:

A. Preserve the beauty, integrity and value of the Fore River Place home site including improvements thereon and the Fore River Place neighborhood;

B. Assure the City of Portland, and members of the Fore River Place Association that each home and accessory structure shall be constructed according to the guidelines, standards and intention of Fore River Place as set forth herein ;

C. Require any dwelling or accessory, erected, placed, improved, or altered on any lot to obtain the prior written approval of the Fore River Place Design Review Board before any construction is commenced. The Board shall consider such factors as the location of a structure, the style of architecture, the type of materials, the quality of materials and any other factor necessary to effectuate the intent of the Design Review Process .

### II. PROCESS FOR REVIEW

#### A Submission Requirements

1. A written statement attached to a copy of this document signed by the designer of the project for which approval is requested stating; said designer has read, understood and is in compliance with the standards set forth herein and that said designer has visited and is familiar with the site in at least the winter and one other season of the year;

2. Plans shall be prepared by an individual having previous experience in the preparation of plans for the construction of single family residences including specifically in the Shingle, Cottage, or Bungalow styles.

3. Site plan or plans :scale = 1"=10', 20', 30' or 40' with the following at minimum :

a. Locations and/or footprints of all buildings, driveways, walks, utilities, fencing, walls for retaining soil any other "hardscaping" or site amenities ;

b. Limits of clearing, thinning and areas to be disturbed from their existing condition.

c. Landscape plan with description or legend of materials including sizes.

d. Exterior lighting plan showing the direction and range of lighting.

4. Floor plans : scale 1/8" or 1/4" = 1'-0'

5. Elevations: Scale 1/8" or 1/4" = 1'-0" including a minimum of all materials and three dimensional effects not apparent.

6. Submit color samples for all materials except clear glass and wood materials left natural or treated with a clear finish.

7. Complete specifications listing all materials, products, performance standards, and process, including time tables for the start to completion of the proposed project.

B. The decision by the Design Review Board shall be made within 14 days of receipt of a complete application.

C. Waiver Process:

If for reason of hardships as defined by the Zoning Ordinance of the City of Portland, as amended, the applicant is unable to comply with one or more of the submission standards; the applicant may request a waiver of the specific submission standard(s). The Design Review Board will consider the request and determine in its sole discretion if the waiver will be granted.

### III. SITE STANDARDS

A. The street orientation within Fore River Place should not be the predominate issue when siting the main structure. The designer must demonstrate the siting rational by at least one of the following criteria:

1. Solar gain

2. View of:

a. Open space between other homes on or off site; or

b. On site features such as trees or water; or

c. On site planned features such as garden areas.

3. Avoidance of:

a. Other homes; or

b. Off site features developed or undeveloped that may require screening now or later if developed.

B. Fencing - Other than the fencing provided by the Grantor, the following shall be strictly followed;

1. No fencing shall be taller than six feet.

2. No fencing taller than four feet shall be permitted in continuous or joined sections longer than thirty feet unless on Fore River Place boundaries.

3. All fencing must be wood or wooden in appearance. Chainlink, woven or wire fences shall not be permitted, white painted picket is preferred.

4. Fencing of any type shall not delineate property bounds but, rather, should be designed to provide privacy and/or interest to the land or home.

5. All fencing must be installed "good-side out" when within twenty feet of any property line.

E. Landscaping and Exterior Lighting

1. All areas disturbed by construction shall be either replanted to their natural state or landscaped.

2. Planting for screens is preferred to fencing.

3. Exterior lighting shall be designed to be primarily contained within the site, directed up or down in a vertical or near vertical direction. No fixture shall be located more than 5' above grade unless attached to the structure it is intended to light.

4. Christmas or other seasonal lights shall be unrestricted provided they are not in place longer than 90 consecutive days.

IV. ARCHITECTURAL STANDARDS

A. Size: The dwelling unit shall be at least 800 ft<sup>2</sup> of enclosed heated living space exclusive of garages, porches. No dwelling unit larger than 2500 ft<sup>2</sup> shall be permitted including all enclosed, habitable heated living space completely above grade.

B. Height: In general the height limitation shall conform to the standards established by the City of Portland as amended and no single wall of any structure shall be taller than 20' except if the wall is broken by a design detail or element including but not limited to bays, bows, balconies, bumps, bands, recesses, roofs, overhangs whether angular, arched or curved.

C. Setbacks: The setback standards for all structures except landscaping shall be not less than the following;

Internal setbacks (within the P.R.U.D.).....16' between buildings  
External setbacks(to Project boundaries).....25'

D. Paving and Driveways: The street entrance to garage(s) shall be oriented in such a way that hard surfaces are minimized. Driveways shall be paved. The use of stonedust, loose stones (1-1/2" max) and/or chipseal are encouraged, but not required. Black top areas shall not extend from the garage door to the street uninterrupted. Black top walks are prohibited except as a base for brick or some other cover surface.

E. Recreational Items: Recreational items including without limitation, boats, pools, outside games, swing sets, permitted trailers, etc., shall not be visually prominent from the road or from the interior of adjacent homes. Mature plant screening may be required to minimize visual impact.

F. Foundation Walls: Foundation walls should be covered if more than 18" above finish grade.

G. Siding: Exterior siding shall be wood, brick or stone or a combination thereof. Painting and staining of siding shall be limited to white, light shades of off white, gray, gray-blue, or gray-green or as may be approved by the Design Review Board. Exterior doors, windows, and trim shall be solid colors only, in harmony with the siding and only as may be approved by the Design Review Board.

H. Roofs: Roofs shall be predominantly sloped. Main roofs shall be at least 8:12 pitch, minor roofs and porches shall be at least 4:12 or flat pitch. Roofing materials shall be darker in color than the siding unless natural slate, cedar or copper is used.

I. Fenestration Ratio: Building openings shall be in scale with the wall in which such opening is located or slightly larger than scale and well proportioned with the building. The dwelling unit, including all attached unheated areas shall have an average fenestration (all openings) to vertical wall ratio of at least 15% and not more than 25%.

J. Chimneys: Each building shall have at least one chimney or chimney like structure above the roof. Said structure need not be masonry.

K. Porches and Verandas: Each building except garages must have at least one covered porch or veranda providing shelter to a door. The porch and cover must be at least 2-1/2 times the width of the door and not less than 6' wide and 4' deep. Covers and porches are encouraged at most doors. Garage doors need not be covered. Arched openings for all garage doors are required toward the street its driveway meets. Radii for single or multiple arch openings shall be equal to or less than 1-1/2 times the width of the door.

L. Overview: These guidelines, standards and restrictions are intended to assure unity of form, and quality of design and construction for cottage, bungalow or shingle style buildings. Although these standards may be employed in other building types, (such as Garrison, Colonial, or Cape) only cottage, bungalow, or shingle type will be permitted in their classic, neoclassic, and in very innovative examples, post modern forms.

M. Building Permits. Applications presented to the City for building permits must include:

- 1. This exhibit;
  - 2. The site plan; with
  - 3. Approval and signatures by the Design Review Board of the Fore River Place Association and Neptune Properties, Inc. (or their assignee as approved by the Fore River Place Association board of directors and the planning board of the City of Portland.)
- Seen, understood and agreed,

\_\_\_\_\_  
Lot owner

\_\_\_\_\_  
date

\_\_\_\_\_  
Designer  
forrpdes..sam

\_\_\_\_\_  
date

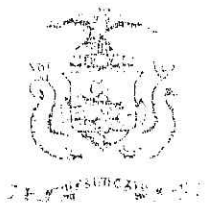
**Trial Exhibit List – AP-00-100**  
**Cottage Park, Inc.**

- \_\_\_\_\_ November 17, 1999 Defect LOC provided #63829-761 (\$6,539.20)
- \_\_\_\_\_ November 17, 1999 Defect LOC provided #63803-762 (\$10,279.40)
- \_\_\_\_\_ August 17, 2000 Hirshon letter to Joe Gray
- \_\_\_\_\_ August 17, 2000 Hirshon letter to Peoples re: LOC
- \_\_\_\_\_ September 8, 2000 PL letter to homeowners re licenses
- \_\_\_\_\_ October 12, 2000 Gray letter to RW extension of deadline
- \_\_\_\_\_ October 24, 2000 Gray letter to Peoples re activation of LOC
- \_\_\_\_\_ October 26, 2000 PL letter to Peoples re docs for collection of defect bond
- \_\_\_\_\_ October 26, 2000 City stop-work letter from Jaegerman
- \_\_\_\_\_ October 26, 2000 Hirshon letter to Peoples re: LOC
- \_\_\_\_\_ October 27, 2000 Hirshon letter re development status
- \_\_\_\_\_ November 9, 2000 Hirschon letter to PL re: Lighting test holes
- \_\_\_\_\_ November 14, 2000 RW letter to Gray re Punchlist completion
- \_\_\_\_\_ November 15, 2000 Bushey Memo with cost estimates
- \_\_\_\_\_ November 16, 2000 Sight Draft signed by Joe Gray (\$4,125.00)
- \_\_\_\_\_ November 16, 2000 Joe Gray letter activation of LOC
- \_\_\_\_\_ November 16, 2000 PL letter to Peoples re docs for collection of defect bond
- \_\_\_\_\_ November 17, 2000 Hirshon Letter re: LOC's
- \_\_\_\_\_ November 17, 2000 PL Letter to Peoples Call LOC
- \_\_\_\_\_ November 17, 2000 Hirshon letter re: lights
- \_\_\_\_\_ November 20, 2000 Campbell letter re: drafts against LOC



\_\_\_\_\_ November 30, 2000 PL letter re: corrections

\_\_\_\_\_ December 15, 2000 Sarah Memo to Bray and Rigue re cost estimates



Corporation Counsel  
Gary C. Wood

Associate Counsel  
Charles A. Lane  
Elizabeth L. Boynton  
Donna M. Katsiaficas  
Penny Littell

**CITY OF PORTLAND**

November 17, 2000

Jonathan M. Campbell  
Commercial Loan Officer  
Peoples Heritage Bank  
One Portland Square  
P.O. Box 9540  
Portland, ME 04112

RE: Willow - Letter of Credit No: 63830-762

Dear Mr. Campbell:

Please consider this the written statement required by the City to call its defect guarantee referenced above. The following items at Willow remain defective. The City herein provides an estimate of costs to complete these defective items in accordance with City Ordinance and site plan approval.

Berm work (lots 7,8,9)	\$4500.00
Concrete sidewalk	\$ 500.00
Gazebo area	\$5,000.00
Lighting (1 fixture and Light pole wiring)	\$1,130.00
 Total:	 \$11,130.00

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions.

Sincerely,  
  
Penny Littell  
Associate Corporation Counsel

PL:ses  
Enclosures  
Cc: Joseph E. Gray, Dir. of Planning and Urban Development  
David M. Hirshon, Esquire  
Sarah Hopkins, Planner  
Gary C. Wood, Corporation Counsel  
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Tompkins, Clough, Hirshon & Langer, P.A.

COUNSELORS AT LAW  
Three Canal Plaza  
Post Office Box 15060  
Portland, Maine 04112-5060

BRUCE M. TOMPKINS  
LAWRENCE R. CLOUGH  
DAVID M. HIRSHON  
LEONARD W. LANGER  
MARSHALL J. TINKLE

TELEPHONE: 207-874-6700  
FAX: 207-874-6705

November 17, 2000

Via facsimile (207) 874-8497

Penny Littell  
Associate Corporation Counsel  
City of Portland  
389 Congress Street  
Portland, ME 04101-3509

Re: Redlon/Willow

Dear Penny:

It is my understanding the street lights are working at the Willow. As you know, the developer strongly disagrees with the City's efforts to draw against the bond given the absence of defects and the recent action by the Planning Board for the City of Portland. With respect to the berms, the City is or should be well aware that the site plan is non-specific with respect to loaming and seeding. In this regard, my client met with the City several times, and it was agreed the berms should be mulched, particularly given the potential risk if an individual operated a lawn mower to maintain the berms. Although it is a small item, it is absolutely incredible the City insists the repairs to the sidewalk are the responsibility of my client when everyone acknowledges the damage was done by an individual retained by the Association to plow the private roads.

With respect to Redlon, it is my understanding that other than the lights (which I will discuss hereafter) all the items have been remediated. It is unfortunate, for example, that the City is requesting my client remove the logs on Lot 4, which would either be excellent firewood or an excellent filler. Nevertheless, my client has retained a logger who is cutting the wood and hauling it off for use as firewood. With respect to the street lighting, it is my understanding a 40-foot section of conduit which had been installed long ago and approved by the City of Portland was damaged by a homeowner who removed tree trunks and re-seeded. Consequently, the conduit must be replaced and certainly, it is not the responsibility of my client to repair damage to the conduit approved by the City of Portland and damaged by a homeowner. Under these circumstances, I urge that the monies be released directly to the developer.

Penny Littell, Esq.  
November 27, 2000  
Page 2

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Hirshon", with a long, sweeping horizontal stroke extending to the right.

David M. Hirshon

DMH/tja  
cc: Ric Weinschenk

**Corporation Counsel**

Gary C. Wood



**CITY OF PORTLAND**

**Associate Counsel**

Charles A. Lane  
Elizabeth L. Boynton  
Donna M. Katsiaficas  
Penny Littell

November 16, 2000

Jonathan M. Campbell  
Commercial Loan Officer  
Peoples Heritage Bank  
One Portland Square  
P.O. Box 9540  
Portland, ME 04112

RE: Redlon Park - Letter of Credit No: 63829-761

Dear Mr. Campbell:

Enclosed are the following documents relative to the City's collection against the letter of credit posted by Ric Weinschenk with respect to the Redlon Park:

- ◆ Letter from Joseph E. Gray, Director of Planning and Urban Development, dated 11/16/00, calling the letter of credit.
- ◆ The 11/16/00 sight draft.
- ◆ The original letter of credit dated 11/17/99.
- ◆ An itemized statement showing the cost of work to be completed.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions.

Sincerely,

Penny Littell  
Associate Corporation Counsel

PL:ses

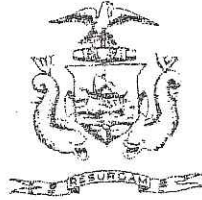
**Enclosures**

Cc: Joseph E. Gray, Dir. of Planning and Urban Development  
David M. Hirshon, Esquire  
Sarah Hopkins, Planner  
Gary C. Wood, Corporation Counsel

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Corporation Counsel

Gary C. Wood



**CITY OF PORTLAND**

Associate Counsel

Charles A. Lane  
Elizabeth L. Boynton  
Donna M. Katsiaficas  
Penny Littell

November 16, 2000

Jonathan M. Campbell  
Commercial Loan Officer  
Peoples Heritage Bank  
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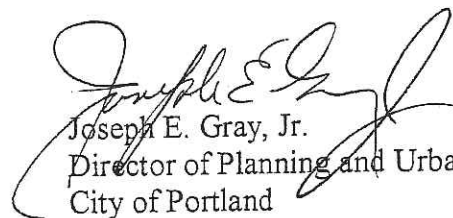
**Re: Redlon Park**  
**Letter of Credit No: 63829-761**

Dear Mr. Campbell:

Please be advised that the City of Portland is activating the above-referenced Letter of Credit as a result of the Developer's failure to complete, and his completion in a defective manner, the improvements set forth in a certain Cost Estimate of Improvements relative to Redlon Park. Attached please find the the itemized statement showing to cost of work to be completed.

Thank you for your attention to this matter. Feel free to contact Penny Littell, Associate Corporation Counsel, should you have any questions.

Sincerely,



Joseph E. Gray, Jr.  
Director of Planning and Urban Development  
City of Portland

Enc.

C: Penny Littell, Associate Corporation Counsel

**From:** "Steve Bushey" <srbushey@maine.rr.com>  
**To:** "Sarah Hopkins" <SH@ci.portland.me.us>  
**Date:** Wed, Nov 15, 2000 3:46 PM  
**Subject:** Redlon Park Punchlist Completion Status

Sarah,

Chris Earle and I have reviewed the status of the defects outlined in the October 30, 2000 letter by Joe Gray to Ric Weinschenk and offer the following observations:

1. The street lighting remains incomplete as the light fixtures have not been installed. Assuming the proper conduit and wiring has already been installed, a reasonable opinion of cost to complete this work would be \$1,000. If the conduit and wiring has not been installed this could be increased to \$2,500.
2. The retaining wall has not been satisfactorily reestablished and made stable. An opinion of cost for this work would be \$500
3. Lot 4 has not been cleaned up and the silt fence taken down. An opinion of cost for this would be \$250.
4. The debris has not been removed. an opinion of cost would be \$750.
5. The retaining wall adjacent house #43 has not been rebuilt. the opinion of cost would be \$500
6. The ditch has not been reconstructed. The opinion of cost would be \$750.
7. The headstone has not been reset. The opinion of cost is \$375.
8. The plywood has been removed.
9. We are unaware if a sewage grinder pump has been provided to the association.

If you have any questions regarding these comments please call.

**CC:** "penny littell" <pl@ci.portland.me.us>

\$750.00  
500.00  
750.00  
375.00  
-----

Sarah - has the grinder pump  
been provided

Department of Planning and Urban Development  
SUBDIVISION/SITE DEVELOPMENT

COST ESTIMATE OF IMPROVEMENTS TO BE COVERED BY PERFORMANCE GUARANTEE

Date 11/10/97

Name of Project Redlon Park Subdivision  
 Address/Location Redlon Road, Portland, Maine  
 Developer Cottage Park, Inc.  
 Form of Performance Guarantee Letter of Credit  
 Type of Development: X Subdivision \_\_\_\_\_ Site Plan (Major/Minor)

TO BE FILLED OUT BY APPLICANT:

Item	PUBLIC			PRIVATE		
	Quantity	Unit Cost	Subtotal	Quantity	Unit Cost	(rounded) Subtotal
<b>1. STREET/SIDEWALK</b>						
Road				625 ft.	\$ 14.67/ft	9,166.00
Granite Curbing				801 ft.	\$ 3.00/ft	2,403.00
Sidewalks				430 ft.	5.56/ft.	2,390.00
Esplanades						
Monuments/survey				1.5		1,220.00
Street Lighting				3	250.00	750.00
Other	65 yd <sup>2</sup>	\$30/yd <sup>2</sup>	\$1,950.00	625 ft.	14.88/ft	9,300.00
<i>Other Ledge removal Street + trench total</i>						
<b>2. SANITARY SEWER</b>						
Manholes	1	\$1,750.00	1,750.00			
Piping	50 ft.	\$ 11.28/ft.	564.00	25 ft.	\$ 11.28/ft.	282.00
Connections	1	150.00	150.00			
Other F.M.				547 ft.	10.53 ft.	5,760.00
<b>3. STORM DRAINAGE</b>						
Manholes						
Catchbasins				3	1400.00	4,200.00
Piping 15" x 12" culvert				15' 25'	16.90/ft	423.00
Detention Basin				12' 192'	15.60 ft.	2,995.00
Other Rip rap				15 yd <sup>3</sup>	28.00/yd <sup>3</sup>	420.00
<b>4. SITE LIGHTING</b>						
<b>5. EROSION CONTROL</b>						
				1560 ft.	1.25/ft.	\$ 1,950
<b>6. RECREATION AND COURT OPEN SPACE AMENITIES</b>						
				1.5.		\$ 1,955