

347-A-5

128 Pennell Ave.

St. Extension

Diversified Prop.

2001-0321

**CITY OF PORTLAND, MAINE  
DEVELOPMENT REVIEW APPLICATION  
PLANNING DEPARTMENT PROCESSING FORM  
Planning Copy**

2001-0321  
Application I. D. Number  
  
12/21/01  
Application Date

**Maggie Ln & Diversified Properties Inc**  
Applicant  
**PO Box 10127, Portland, ME 04104**  
Applicant's Mailing Address  
**James Wolf**  
Consultant/Agent  
**Applicant Ph: (207) 773-4988 Agent Fax: (207) 773-6875**  
Applicant or Agent Daytime Telephone, Fax

**Pennell Ave Extension**  
Project Name/Description  
**128 - 128 Pennell Ave, Portland, Maine**  
Address of Proposed Site  
**347 A005001**  
Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply):  New Building  Building Addition  Change Of Use  Residential  Office  Retail  
 Manufacturing  Warehouse/Distribution  Parking Lot  Other (specify) **Lots A & B**

Proposed Building square Feet or # of Units \_\_\_\_\_ **.34 acres** Acreage of Site \_\_\_\_\_ Zoning \_\_\_\_\_

**Check Review Required:**

- |   |  |  |   |
|---|--|--|---|
| <input checked="" type="checkbox"/> Site Plan (major/minor) | <input type="checkbox"/> Subdivision # of lots _____ | <input type="checkbox"/> PAD Review            | <input checked="" type="checkbox"/> 14-403 Streets Review |
| <input type="checkbox"/> Flood Hazard                       | <input type="checkbox"/> Shoreland                   | <input type="checkbox"/> Historic Preservation | <input type="checkbox"/> DEP Local Certification          |
| <input type="checkbox"/> Zoning Conditional Use (ZBA/PB)    | <input type="checkbox"/> Zoning Variance             |  | <input type="checkbox"/> Other _____                      |

Fees Paid: Site Plan **\$400.00** Subdivision \_\_\_\_\_ Engineer Review \_\_\_\_\_ Date **12/27/01**

**Planning Approval Status:**

Reviewer \_\_\_\_\_

- Approved**  **Approved w/Conditions** See Attached  **Denied**

Approval Date \_\_\_\_\_ Approval Expiration \_\_\_\_\_ Extension to \_\_\_\_\_  Additional Sheets Attached

OK to Issue Building Permit \_\_\_\_\_ signature \_\_\_\_\_ date \_\_\_\_\_

**Performance Guarantee**  **Required\***  **Not Required**

\* No building permit may be issued until a performance guarantee has been submitted as indicated below

- |   |                            |  |                             |
|---|----------------------------|--|-----------------------------|
| <input type="checkbox"/> Performance Guarantee Accepted     | _____ date _____           | _____ amount _____                                 | _____ expiration date _____ |
| <input type="checkbox"/> Inspection Fee Paid                | _____ date _____           | _____ amount _____                                 |                             |
| <input type="checkbox"/> Building Permit Issue              | _____ date _____           |  |                             |
| <input type="checkbox"/> Performance Guarantee Reduced      | _____ date _____           | _____ remaining balance _____                      | _____ signature _____       |
| <input type="checkbox"/> Temporary Certificate of Occupancy | _____ date _____           | <input type="checkbox"/> Conditions (See Attached) | _____ expiration date _____ |
| <input type="checkbox"/> Final Inspection                   | _____ date _____           | _____ signature _____                              |                             |
| <input type="checkbox"/> Certificate Of Occupancy           | _____ date _____           |  |                             |
| <input type="checkbox"/> Performance Guarantee Released     | _____ date _____           | _____ signature _____                              |                             |
| <input type="checkbox"/> Defect Guarantee Submitted         | _____ submitted date _____ | _____ amount _____                                 | _____ expiration date _____ |
| <input type="checkbox"/> Defect Guarantee Released          | _____ date _____           | _____ signature _____                              |                             |

# Diversified Properties, Inc.

*P.O. Box 10127, Portland, ME 04104  
Tel 207-773-4988 • Fax 207-773-6875*

December 21, 2001

TO: City of Portland Inspection Department  
And Planning Department

FROM: Jim Wolf

Pursuant to your request attached please find 9 packages that include the following:

1. Road Plans and Profile for the extension of Pennell Avenue which has been approved by Anthony Lombardo of the Public Works Department and built under his department's supervision and guidance. Remaining work for completion includes 2 monuments and final pavement only. The City is currently using and maintaining this portion of road which pursuant to section 14-403 and section 14-47 definition of a street; this alone allows for certificates of occupancy to be issued.
2. E-mail from Anthony Lombardo confirming Public works requested final pavement not be placed on Pennell Avenue until spring 2002. The road was scheduled for completion; however, A.H. Grover worked with the City and agreed to complete the road in 2002.
3. Survey Plan prepared by Titcomb Associates dated June 30, 2001. Said plan shows 7 separate parcels of property. Parcels A, E and G are owned by Diversified Properties, Inc. Parcels B & D are owned by Maggie Lane Development LLC. All remaining parcels have not changed hands.

At this time we ask that you:

1. Confirm that the Pennell Avenue Extension is a multiple lot 14-403 street.
2. Review Parcels A & B building permit applications and approve them without the condition that Pennell Avenue be built 100%. This would be consistent with past practice. The representations made by staff and the code.
3. Not penalize the lot owners for A.H. Grover working with Public Works.

City of Portland Inspection Department  
And Planning Department  
December 21, 2001  
Page 2

Furthermore, in support of our request we offer the following:

1. It has been the past practice of the City to issue C.O.'s on 14-403 streets when base pavement only has been installed. This occurred on Milton Street, Braintree Street, Saugus Street and Ninth Street and is consistent with current email and statements.
2. Section 14-508 of the subdivision code exempts subdivision in existence prior to June 6, 1979 that have been legally recorded in the Registry of Deeds. This subdivision was recorded in 1921 in Book 14, Page 70 and continued by the Portland City Council as recorded in the Cumberland County Registry of Deeds, Book 13326, Page 28.
3. Section 14-508 exempts a division of property in land to an abutting owner.
4. If the subdivision code is being used as a guide section 14-525(k) "occupancy prior to completion of certain improvement" allows for occupancy when a road constructed to the degree of Pennell Avenue.

In conclusion, we respectfully request that the City of Portland:

1. Comply with 14-403 and allow for a C.O. on a road maintained by the City.
2. Respect the decision of Public Works not to finish paving Pennell Avenue and not penalize lot owners on the road for the road contract's cooperation with the staff.
3. Consistently apply the 14-403 occupancy standard and issue a C.O. for the 2 lots on this 14-403 street.

Thank you for your review and prompt resolution to this matter.

**James Wolf**

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**From:** "Anthony Lombardo" <AWL@ci.portland.me.us>  
**To:** <MJN@ci.portland.me.us>;  
**Cc:** <JAYJR@ci.portland.me.us>  
**Sent:** Thursday, December 13, 2001 10:00 AM  
**Subject:** Re: Pennell Avenue

This does include a portion of the frontage for the Diversified Properties parcel. However, since I don't issue C of O's I can't respond to your second question.

>>> Mike Nugent 12/13 8:50 AM >>>

Does this include the area that is considered the "paper" portion that provides frontage for the James Wolf Lot, and also will we be able to give a C/O to Custom Built homes before the final coat of pavement is there?

>>> Anthony Lombardo 12/13 8:19 AM >>>

Pennell Ave., the section of roadway included in the CIP contract with A.H. Grover, has been completed to satisfaction for this construction season. It was discussed and agreed by both Grover and myself, as representative for Public Works, that this section of the roadway be reconstructed and only surfaced with binder pavement. This section of the street consisted of extremely saturated soils and Public Works would prefer that it be allowed to experience one season of freeze/thaw. As a result, Grover will return in 2002 to finish pave the street.

>>> "James Wolf" <jmw1@maine.rr.com> 12/11 10:42 AM >>>

Tony

AH Grover has informed me that Pennell Avenue construction is "complete." Jay has asked that you confirm this for he and Mike. Thank you.

Jim

James Wolf  
Diversified Properties, Inc  
1-207-773-4988  
Fax 1-207-773-6875

purpose of height measurement where more than one-half of its height is above the average level of the adjoining ground.

*Stream:* A free-flowing body of water from the outlet of the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland area, or any stream designated within a Stream Protection Zone.

*Stream, tributary:* A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland. This definition does not include the term "stream" as defined in this section, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

*Street:* A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.

*Street line:* The line of demarcation between a street and the abutting land.

*Structure:* Anything constructed or erected of more than one (1) member which requires a fixed location on the ground or attached to something having a fixed location on the ground.

*Studios for artists and craftspeople:* A facility for the production of arts and crafts products such as paintings, sculpture or other arts, or the practice of arts such as music or dance, or the production of custom handcrafted, or limited production of products such as furniture, wood, clay and metal products, publications and similar low impact arts and crafts activities.

*Theaters:* Any establishment devoted to showing motion pictures, or for dramatic, musical or live performances.

*Tourist home:* A building in which more than one (1) but not

and the original building or structure.  
(Code 1968, § 602.17.J)

**Sec. 14-391. Reserved.**

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\*Editor's note--Section 4 of Ord. No. 354-85, adopted Jan. 7, 1985, repealed § 14-391, relative to the board of appeals permitting temporary nonconforming uses, which derived from Code 1968, § 602.17.K.  
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**Sec. 14-392. Reserved.**  
**Sec. 14-393. Reserved.**  
**Sec. 14-394. Reserved.**  
**Sec. 14-395. Reserved.**  
**Sec. 14-396. Reserved.**  
**Sec. 14-397. Reserved.**  
**Sec. 14-398. Reserved.**  
**Sec. 14-399. Reserved.**  
**Sec. 14-400. Reserved.**

DIVISION 24. USE REGULATIONS AND EXCEPTIONS

**Sec. 14-401. Generally.**

The requirements of this article shall be subject to the use regulations and exceptions of this division.  
(Code 1968, § 602.18)

**Sec. 14-402. Relationship of buildings to lots.**

Every building hereafter erected shall be located on a lot as defined in section 14-47.  
(Code 1968, § 602.18.A)

**Sec. 14-403. Street access.**

(a) In general. No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than thirty-five (35) feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this section. For purposes of this section, street shall be as defined in section 14-47, except that a dedicated street which may no longer be accepted due to lapse of

tract when fully developed and populated, and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the land development plan.

(d) If at any time before or during the construction of the required improvements the subdivider demonstrates to the satisfaction of the project engineer and the public works authority that unforeseen conditions make it necessary or preferable to modify the design of the required improvements, the public works authority may authorize modifications provided that the modifications do not amount to a waiver or substantial alteration of the function of any improvements required by the planning board. (Code 1968, § 603.17; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 41-84, §§ 2, 3, 6-18-84)

**Sec. 14-507. Conditions.**

In granting variances and modifications, the planning board and city council may require such conditions as will, in their judgement, secure substantially the objectives of the standards or requirement so varied or modified.

(Code 1968, § 603.18; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79)

**Sec. 14-508. Exemptions.**

(a) This article does not apply to subdivisions approved prior to June 6, 1979, nor to subdivisions in existence prior to June 6, 1979, nor to subdivisions which have been legally recorded in the registry of deeds prior to June 6, 1979.

(b) A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, unless the intent of such gift is to avoid the objectives of this article, or by transfer of any interest in land to the owner abutting thereon shall not be considered to create a lot or lots for purposes of this article.

(Code 1968, § 603.19; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79)

**Sec. 14-509. Reserved.**

**Sec. 14-510. Reserved.**

**Sec. 14-511. Reserved.**

**Sec. 14-512. Reserved.**

**Sec. 14-513. Reserved.**

**Sec. 14-514. Reserved.**



Stamped Survey (Titans's Boundary)

No Survey DATA (on Road Plan)

Lot lines that Don't Exist (on Road Plan) (Lot Lines in  
Lanes)

Deeds for All lots

Public Works Approval

Additional 10' Needs to Be Deeded for Turnaround. (What?)

Do we want to Review this like A Subdivision?

A) Contours

B) Grading

C) Field Inlets?? (for lots)

Hydrant Needed/Required? (mac)

Sidewalk on one side only ok? Need waiver?



This Is A Subdivision!

**From:** Anthony Lombardo  
**To:** "jmw1@maine.rr.com"@Portland.gwgwia; Jay Reynolds  
**Date:** Wed, Oct 31, 2001 6:20 AM  
**Subject:** Re: Pennell Avenue

Looks good.

>>> "James Wolf" <jmw1@maine.rr.com> 10/30 1:32 PM >>>  
Jay

Attached is the cost estimate and escrow agreement for the 15 foot road extension at Pennell Avenue. By copy to Tony I am asking for approval of the estimate. Thank you both for your help.

Jim

James Wolf  
Diversified Properties, Inc  
1-207-773-4988  
Fax 1-207-773-6875

Department of Planning & Development  
Lee D. Urban, Director



CITY OF PORTLAND

Division Directors  
Mark B. Adelson  
Housing & Neighborhood Services

Alexander Q. Jaegerman, AICP  
Planning

John N. Lufkin  
Economic Development

September 24, 2002

Mr. James Wolf  
Diversified Properties, Inc.  
PO Box 10127  
Portland, Maine 04104

Subject: Fees

Dear Mr. Wolf:

In response to your most recent letter to Penny Littell, I have the following comments:

1. Pennell Ave. Inspection Fee: An inspection fee was paid twice. The original fee, \$88.32, is encompassed in the replacement fee of \$880.00. Please find an attached reimbursement check in the amount of \$88.32.
2. Pennell Ave. application fee: The 14-403 application fee was required by code when it was paid. Please see attached Code of Ordinance language.
3. Barclay Ave. Fees: The Developer and the Contractor (yourself and Ben Grover) were made aware of outstanding issues at the pre-construction meeting on April 16, 2002. At this meeting it was made clear that site work was not to commence until these items were resolved. Please see attached. Unfortunately, the City cannot reimburse you or your contractor for Public Works fees associated with this project.

Please contact me if you have any questions.

Sincerely,

  
Jay Reynolds

Development Review Coordinator

cc: Alexander Jaegerman, Planning Division Director  
Sarah Hopkins, Development Review Services Manager  
Todd Merkle, Public Works  
Penny Littell, Corporation Counsel  
file

DO NOT ACCEPT THIS CHECK UNLESS YOU CAN SEE A DUAL-TONE TRUE WATERMARK THAT APPEARS AS CONNECTING PENTAGONS WHEN HELD TO THE LIGHT AND "SAFE" APPEARS WHEN VIEWED AT AN ANGLE.

527445  
X112

# CITY OF PORTLAND

PORTLAND, MAINE



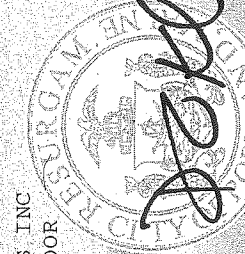
161687

VOID IF NOT PRESENTED  
NINETY DAYS FROM DATE

DATE 10-02-2002

TO THE ORDER OF

DIVERSIFIED PROPERTIES, INC  
449 FOREST AVE 2ND FLOOR  
PO BOX 10127  
PTLD ME 04104



*[Handwritten Signature]*

**PAY EXACTLY**

\$\*\*\*\*\*88.32

AUTHORIZED SIGNATURE

REGULAR ACCOUNT

PEOPLES HERITAGE BANK  
PORTLAND, MAINE

⑆ 161687⑆ ⑆ 21274450⑆ 0291 52692⑆

FACSIMILE SIGNATURE NOT AUTHORIZED  
OVER FIVE THOUSAND DOLLARS

SAFE

THE FACE OF THIS CHECK HAS A BLUE BACKGROUND - ANY OTHER COLORS MAY BE EVIDENCE OF CHEMICAL ALTERATION OR ERASURE - SEE REVERSE SIDE FOR MORE SAFETY FEATURES.

\$1,000.00 cost

- "D. Heating systems--All types . \$30.00
- "E. Oil and gas burner replacement \$30.00
- "F. Stop work order removal . . . \$100.00
- "G. Certificate of Occupancy . . \$75.00 for each inspection

"III. Fees in lieu of cost of work:

"A. Signs . . . . . \$30.00 + \$1.00/sq. ft.

"B. Tanks: propane gas, gasoline and fuel oil:

- Under 300 gals . . . . . \$30.00
- 300 gallons or more . . . . \$35.00
- Removal . . . . . \$25.00

"C. Tent use . . . . . \$35.00

"D. Parking lots . . . . . \$100.00

"E. Belated fee . . . . . \$50.00 additional

"F. Minor site plan review . . . \$400.00

After-the-fact minor  
site plan review . . . . . \$1,200.00

Plan Amendments . . . . . \$100.00

"G. Major site plan review . . . . \$500.00

After-the-fact major  
Site plan review . . . . . \$1,500.00

Plan Amendments:

- a. Planning Board review . . . \$200.00
- b. Planning Staff review . . . \$100.00

"H. Subdivision fee . . . . . \$500.00 base fee plus  
\$25.00 per lot or  
dwelling unit

"I. Section 14-403 reviews . . . \$400.00 base fee plus

~~\$25.00 per lot~~

- "J. Minor Single Family Site Review . \$300.00
- "K. Hoods, commercial cooking . . . . Cost of work
- "L. Commercial cooking appliances . . Cost of work
- "M. Fire alarm and sprinkler systems Cost of work
- "N. Moving building . . . . . Cost of work
- "O. Metalbestos chimney . . . . . Cost of work
- "P. Site Location of Development . . \$3,000.00 except for  
residential projects  
which shall be  
\$200.00 per lot
- "Q. Traffic Movement Permit . . . . . \$1,000.00
- "R. Stormwater Quality Permit . . . . \$250.00

"Except as otherwise provided herein, permit fees shall be based upon estimated or actual cost of work, whichever is greater, for which the permit is required, including towers, permanent swimming pools and any other structures altered, constructed or demolished. Ten (10) percent of any fee, or ten dollars (\$10.00), whichever is greater, shall be nonrefundable to cover the administrative costs."

Section 116.4 Violation penalties, is repealed and replaced with the following:

"116.4 Violation penalties: Any person, firm or corporation who violates any of the provisions of this code or fails to comply with the standards for performance set forth herein, or who violates or fails to comply with any lawful order made pursuant hereto, or who builds inconsistently with any statement of specifications or plans submitted and approved hereunder or in violation of any certificate or permit in force hereunder, shall be punished jointly and severally for each and every violation by a penalty as provided in section 6-1. The imposition of one (1) penalty for any violation shall not excuse the violation nor permit it to continue, and all such persons, firms, or corporations shall correct or remedy such violations within a reasonable time. When not otherwise specified, each day that prohibited conditions are



Monthly Focus: Values—  
Are the things you value  
most governing your  
decisions?

Every man is a fool for at least five minutes every  
day; wisdom consists of not exceeding the limit.  
— Elbert Hubbard

16

Tuesday  
April 2002

Daily Record of Events

106th Day 259 Left Week 16

① Chief Lane - Insurance Suite  
has been re-located to  
within the perimeter - All set  
\* SUBSTITUTION needs safety committee

② North Wall - still to not work  
on perimeter walls and  
insurance etc. basis.  
Particular Areas

③ [REDACTED] - [REDACTED] - [REDACTED]  
\* [REDACTED] - [REDACTED] - [REDACTED]

④ John Bony - DEP

⑤ Riverside - GIS Project - Constructed  
earth berm around the entire  
frontage of property?  
What's going on?

## STATUTORY WARRANTY DEED

DIVERSIFIED PROPERTIES, INC., a Maine corporation with a principal place of business in Portland, in the County of Cumberland and State of Maine

For Consideration Paid, GRANT with WARRANTY COVENANTS TO:

MAGGIE LANE DEVELOPMENT, LLC, a Maine Limited Liability Company with a principal place of business in Portland, in the County of Cumberland and State of Maine, whose mailing address of P.O. Box 10127, Portland, Maine 04104

A certain lot or parcel of land situated on the easterly sideline of Pennell Avenue in the City of Portland, County of Cumberland and State of Maine, being the southerly two-thirds (2/3) of Lot No. 90 shown on Plan entitled "The Holmsteads", dated September 1921, recorded in Plan Book 14, Page 70, bounded and described as follows:

BEGINNING at a point on the easterly sideline of Pennell Avenue, being the northwesterly corner of Lot 89 on said plan; thence along the northerly sideline of Lot 89 in a northeasterly direction one hundred (100) feet to the easterly sideline of the parcel herein conveyed; thence in a northwesterly direction along the easterly sideline of the parcel herein conveyed thirty (30) feet to a point; thence in a southwesterly direction parallel with the first call herein described and maintaining a distance of thirty (30) feet therefrom one hundred (100) feet to the easterly sideline of Pennell Avenue; thence in a southeasterly direction along the easterly sideline of Pennell Avenue thirty (30) feet to the point of beginning.

This conveyance is SUBJECT to rights and easements granted to Cumberland County Power & Light Company by instrument dated January 18, 1922 and recorded at the Cumberland County Registry of Deeds in Book 1094, Page 75.

Being a portion of the premises conveyed to the Grantor herein by deed from Dona G. Hanson dated September 19, 2001. Reference is further made to a deed from Frank C. Rodway to Grantor herein dated August 22, 2001 and recorded at said Registry of Deeds in Book 16659, Page 251.



This deed is a transfer of land to the owner of land abutting that land herein conveyed; specifically, other land of Grantee herein, being Lot 89 as shown on said plan conveyed to Grantee herein by deed from Thomas S. Pelosi and Ann Joyce Pelosi by deed dated September 10, 2001 and recorded at said Registry of Deeds in Book 16736, Page 304.

Subject to the provisions of Title 30-A, M.R.S.A. §4401.4.D-6, the within Grantee may not make a subsequent transfer of the premises within five (5) years from the date hereof without complying with the provisions of said statute.

IN WITNESS WHEREOF, said DIVERSIFIED PROPERTIES, INC. has caused this instrument to be signed in its corporate name and sealed with its corporate seal by JAMES M. WOLF, its VICE PRES. thereunto duly authorized this 19 day of DECEMBER, 2001.

DIVERSIFIED PROPERTIES, INC.

Joyce M. Yates

By: [Signature]  
Its Vice President

STATE OF MAINE  
CUMBERLAND, SS.

DECEMBER 19, 2001

Then personally appeared the above-named JAMES WOLF, V-P. of DIVERSIFIED PROPERTIES, INC. as aforesaid and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

RECEIVED  
RECORDED REGISTRY OF DEEDS  
2001 DEC 20 AM 9:42

Joyce M. Yates  
Attorney at Law/Notary Public

CUMBERLAND COUNTY  
John B O'Brien

CITY OF PORTLAND, MAINE  
DEVELOPMENT REVIEW APPLICATION  
PLANNING DEPARTMENT PROCESSING FORM

2001-0318

Application I. D. Number

12/20/01

Application Date

Pennell Ave Lot 34 & 35

Project Name/Description

Maggie Lane Development Lic

Applicant

Po Box 10127, Portland, ME 04104

Applicant's Mailing Address

Danny McCarthy

Consultant/Agent

Agent Ph: 892-3149

Agent Fax: 892-1383

Applicant or Agent Daytime Telephone, Fax

134 - 134 Pennell Ave, Portland, Maine

Address of Proposed Site

347 A007001

Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply):  New Building  Building Addition  Change Of Use  Residential  Office  Retail

Manufacturing  Warehouse/Distribution  Parking Lot  Other (specify) \_\_\_\_\_

960 sq ft

7500 sq ft

Proposed Building square Feet or # of Units

Acreage of Site

Zoning

Check Review Required:

Site Plan  
(major/minor)

Subdivision  
# of lots \_\_\_\_\_

PAD Review

14-403 Streets Review

Flood Hazard

Shoreland

Historic Preservation

DEP Local Certification

Zoning Conditional  
Use (ZBA/PB)

Zoning Variance

Other \_\_\_\_\_

Fees Paid: Site Plan \$50.00 Subdivision \_\_\_\_\_ Engineer Review \$250.00 Date 12/18/01

DRC Approval Status:

Reviewer \_\_\_\_\_

Approved

Approved w/Conditions  
See Attached

Denied

Approval Date \_\_\_\_\_

Approval Expiration \_\_\_\_\_

Extension to \_\_\_\_\_

Additional Sheets  
Attached

Condition Compliance

signature

date

Performance Guarantee

Required\*

Not Required

\* No building permit may be issued until a performance guarantee has been submitted as indicated below

Performance Guarantee Accepted

date

amount

expiration date

Inspection Fee Paid

date

amount

Building Permit Issue

date

Performance Guarantee Reduced

date

remaining balance

signature

Temporary Certificate of Occupancy

date

Conditions (See Attached)

expiration date

Final Inspection

date

signature

Certificate Of Occupancy

date

Performance Guarantee Released

date

signature

Defect Guarantee Submitted

submitted date

amount

expiration date

Defect Guarantee Released

date

signature

Hot Split? Right/Title/Interest?  
K-403  
Check Garage Against  
#108's  
Enc. Behind house

12-21

Visit

OSHA fence  
6' Diff. Between  
RR's

Corporation Counsel

Gary C. Wood



**CITY OF PORTLAND**

Associate Counsel

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

January 31, 2002

VIA FACSIMILE

Terry N. Snow, Esquire  
Terry N. Snow, PA  
PO Box 275  
Cumberland Center ME 04021-0275

Dear Terry:

Your clients are proposing to submit building permit applications for two house lots situated on the easterly side of Pennell Ave. The lots at issue are those identified on the original subdivision of this property as lots 89, 90, 92 and 93. These lots are owned (in some corporate configuration) by your clients. Lot 91 currently is owned by an unrelated individual, although, as I understand it, your clients have a purchase and sale agreement/or an option to buy the parcel.

In order to create buildable lots (lots with no less than 75 feet of frontage), your client has conveyed 30 feet of lot 90 to the abutting lot 89, leaving a 15 foot parcel remaining. In addition, it is your intention to divide original parcel 90, retaining 30 feet with parcel 91, (to create a lot with 75 feet of frontage), the remaining 15 feet to be separated out. It is expected that your clients will eventually purchase original lot 91 and add to it the two outstanding 15 foot sections of property to create an additional lot with 75 feet of frontage.

While the City carefully examines such conveyances for subdivision issues, it appears in this case, given the lack of ownership of original lot 91, no subdivision has occurred by the transfer of property to an abuttor.

It is understood, however, that Diversified Properties, in conjunction with the submission of the two building permit applications referenced herein, has agreed to and will be submitting a detailed drainage and erosion control plan, lot grading plans, and a draft of the easement and turnaround (On these plans, street lights and fire hydrants should be identified.) applicable to the area so that the City may comprehensively evaluate this area

as it would a subdivision. As you know, this area is very wet and has caused the city many drainage problems in the past. We hope to approve the submitted permit applications with the confidence that they otherwise meet the requirements expected of a "subdivision." In this way the City is protected and your clients can confidently sell the lots with the assurance of a high quality project.

The issuance of any certificate of occupancy permits will be conditioned upon the completion of Pennell Ave., with final pavement, unless the Ordinance is otherwise amended.

Thank you for your patience while the City worked through the many issues this project raised.

Sincerely,

A handwritten signature in cursive script that reads "Penny Littell". The signature is written in black ink and is positioned above the printed name.

Penny Littell

PL:hs

Cc: Mark Adelson  
Alex Jaegerman  
Sarah Hopkins  
Jay Reynolds  
Michael Nugent  
Marge Schmuckal

# Diversified Properties, Inc.

*P.O. Box 10127, Portland, ME 04104  
Tel 207-773-4988 • Fax 207-773-6875*

December 21, 2001

TO: City of Portland Inspection Department  
And Planning Department

FROM: Jim Wolf

Pursuant to your request attached please find 9 packages that include the following:

1. Road Plans and Profile for the extension of Pennell Avenue which has been approved by Anthony Lombardo of the Public Works Department and built under his department's supervision and guidance. Remaining work for completion includes 2 monuments and final pavement only. The City is currently using and maintaining this portion of road which pursuant to section 14-403 and section 14-47 definition of a street; this alone allows for certificates of occupancy to be issued.
2. E-mail from Anthony Lombardo confirming Public works requested final pavement not be placed on Pennell Avenue until spring 2002. The road was scheduled for completion; however, A.H. Grover worked with the City and agreed to complete the road in 2002.
3. Survey Plan prepared by Titcomb Associates dated June 30, 2001. Said plan shows 7 separate parcels of property. Parcels A, E and G are owned by Diversified Properties, Inc. Parcels B & D are owned by Maggie Lane Development LLC. All remaining parcels have not changed hands.

At this time we ask that you:

1. Confirm that the Pennell Avenue Extension is a multiple lot 14-403 street.
2. Review Parcels A & B building permit applications and approve them without the condition that Pennell Avenue be built 100%. This would be consistent with past practice. The representations made by staff and the code.
3. Not penalize the lot owners for A.H. Grover working with Public Works.

City of Portland Inspection Department  
And Planning Department  
December 21, 2001  
Page 2

Furthermore, in support of our request we offer the following:

1. It has been the past practice of the City to issue C.O.'s on 14-403 streets when base pavement only has been installed. This occurred on Milton Street, Braintree Street, Saugus Street and Ninth Street and is consistent with current email and statements.
2. Section 14-508 of the subdivision code exempts subdivision in existence prior to June 6, 1979 that have been legally recorded in the Registry of Deeds. This subdivision was recorded in 1921 in Book 14, Page 70 and continued by the Portland City Council as recorded in the Cumberland County Registry of Deeds, Book 13326, Page 28.
3. Section 14-508 exempts a division of property in land to an abutting owner.
4. If the subdivision code is being used as a guide section 14-525(k) "occupancy prior to completion of certain improvement" allows for occupancy when a road constructed to the degree of Pennell Avenue.

In conclusion, we respectfully request that the City of Portland:

1. Comply with 14-403 and allow for a C.O. on a road maintained by the City.
2. Respect the decision of Public Works not to finish paving Pennell Avenue and not penalize lot owners on the road for the road contract's cooperation with the staff.
3. Consistently apply the 14-403 occupancy standard and issue a C.O. for the 2 lots on this 14-403 street.

Thank you for your review and prompt resolution to this matter.

purpose of height measurement where more than one-half of its height is above the average level of the adjoining ground.

*Stream:* A free-flowing body of water from the outlet of the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland area, or any stream designated within a Stream Protection Zone.

*Stream, tributary:* A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland. This definition does not include the term "stream" as defined in this section, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

*Street:* A public way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.

*Street line:* The line of demarcation between a street and the abutting land.

*Structure:* Anything constructed or erected of more than one (1) member which requires a fixed location on the ground or attached to something having a fixed location on the ground.

*Studios for artists and craftspeople:* A facility for the production of arts and crafts products such as paintings, sculpture or other arts, or the practice of arts such as music or dance, or the production of custom handcrafted, or limited production of products such as furniture, wood, clay and metal products, publications and similar low impact arts and crafts activities.

*Theaters:* Any establishment devoted to showing motion pictures, or for dramatic, musical or live performances.

*Tourist home:* A building in which more than one (1) but not

and the original building or structure.  
(Code 1968, § 602.17.J)

**Sec. 14-391. Reserved.**

-----  
\*Editor's note--Section 4 of Ord. No. 354-85, adopted Jan. 7, 1985, repealed § 14-391, relative to the board of appeals permitting temporary nonconforming uses, which derived from Code 1968, § 602.17.K.  
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- Sec. 14-392. Reserved.
- Sec. 14-393. Reserved.
- Sec. 14-394. Reserved.
- Sec. 14-395. Reserved.
- Sec. 14-396. Reserved.
- Sec. 14-397. Reserved.
- Sec. 14-398. Reserved.
- Sec. 14-399. Reserved.
- Sec. 14-400. Reserved.

DIVISION 24. USE REGULATIONS AND EXCEPTIONS

**Sec. 14-401. Generally.**

The requirements of this article shall be subject to the use regulations and exceptions of this division.  
(Code 1968, § 602.18)

**Sec. 14-402. Relationship of buildings to lots.**

Every building hereafter erected shall be located on a lot as defined in section 14-47.  
(Code 1968, § 602.18.A)

**Sec. 14-403. Street access.**

(a) *In general.* No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than thirty-five (35) feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this section. For purposes of this section, street shall be as defined in section 14-47, except that a dedicated street which may no longer be accepted due to lapse of



tract when fully developed and populated, and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the land development plan.

(d) If at any time before or during the construction of the required improvements the subdivider demonstrates to the satisfaction of the project engineer and the public works authority that unforeseen conditions make it necessary or preferable to modify the design of the required improvements, the public works authority may authorize modifications provided that the modifications do not amount to a waiver or substantial alteration of the function of any improvements required by the planning board. (Code 1968, § 603.17; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79; Ord. No. 41-84, §§ 2, 3, 6-18-84)

**Sec. 14-507. Conditions.**

In granting variances and modifications, the planning board and city council may require such conditions as will, in their judgement, secure substantially the objectives of the standards or requirement so varied or modified.

(Code 1968, § 603.18; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79)

**Sec. 14-508. Exemptions.**

(a) This article does not apply to subdivisions approved prior to June 6, 1979, nor to subdivisions in existence prior to June 6, 1979, nor to subdivisions which have been legally recorded in the registry of deeds prior to June 6, 1979.

(b) A division accomplished by devise, condemnation, order of court, gift to a person related to the donor by blood, marriage or adoption, unless the intent of such gift is to avoid the objectives of this article, or by transfer of any interest in land to the owner abutting thereon shall not be considered to create a lot or lots for purposes of this article.

(Code 1968, § 603.19; Ord. No. 158-68, § 10, 5-6-68; Ord. No. 149-79, 6-6-79)

**Sec. 14-509. Reserved.**

**Sec. 14-510. Reserved.**

**Sec. 14-511. Reserved.**

**Sec. 14-512. Reserved.**

**Sec. 14-513. Reserved.**

**Sec. 14-514. Reserved.**

**James Wolf**

---

**From:** "Anthony Lombardo" <AWL@ci.portland.me.us>  
**To:** <MJN@ci.portland.me.us>;  
**Cc:** <JAYJR@ci.portland.me.us>  
**Sent:** Thursday, December 13, 2001 10:00 AM  
**Subject:** Re: Pennell Avenue

This does include a portion of the frontage for the Diversified Properties parcel. However, since I don't issue C of O's I can't respond to your second question.

>>> Mike Nugent 12/13 8:50 AM >>>

Does this include the area that is considered the "paper" portion that provides frontage for the James Wolf Lot, and also will we be able to give a C/O to Custom Built homes before the final coat of pavement is there?

>>> Anthony Lombardo 12/13 8:19 AM >>>

Pennell Ave., the section of roadway included in the CIP contract with A.H. Grover, has been completed to satisfaction for this construction season. It was discussed and agreed by both Grover and myself, as representative for Public Works, that this section of the roadway be reconstructed and only surfaced with binder pavement. This section of the street consisted of extremely saturated soils and Public Works would prefer that it be allowed to experience one season of freeze/thaw. As a result, Grover will return in 2002 to finish pave the street.

>>> "James Wolf" <jmw1@maine.rr.com> 12/11 10:42 AM >>>

Tony

AH Grover has informed me that Pennell Avenue construction is "complete." Jay has asked that you confirm this for he and Mike. Thank you.

Jim

James Wolf  
Diversified Properties, Inc  
1-207-773-4988  
Fax 1-207-773-6875

**From:** Sarah Hopkins  
**To:** JAEGERMAN, ALEX ; Jay Reynolds; LITTELL, PENNY; ...  
**Date:** Thu, Jan 17, 2002 2:30 PM  
**Subject:** The next chapter in Parcels A and B

Dearest Pennell Committee,

According to Penny, Parcels A and B on the left side of Pennell Ave are not part of a subdivision. They can proceed as 14-403 lots. Jay has reviewed the two lots comprehensively, looking in particular at drainage. A field inlet has been required and is reflected on the plans.

There are two right of way issues that came up during yesterday's staff meeting: fire hydrant and street lights. If the plans or profiles do not show these, they should.

Also, in going back through the past emails, it is unclear what was decided about the COs being issued. Can they be issued before final pavement or not? My understanding is that they cannot be issued before final pavement and sign-off by Public Works. Please let me know if I have this wrong.

Lastly, what do we do about a performance guarantee? The end of Pennell was built without one. Do we need an entire performance guarantee for the section of road which would then be reduced down to a 10% defect when the final pavement is completed and OK'd by PW?

In summary, these are my questions:

1. Do plans reflect required hydrants and street lights? *Not Required*
2. Can we sign off on Parcels A and B? *A, B requires PG...*
3. Can COs be issued for parcels A and B before final pavement is down and PW gives the OK? *No choice in this state... NO*
4. Don't we need a PG for Pennell? *→ Alex, Penny, Sarah.*

Once I have your responses, I propose that we act quickly on Parcels A and B, with the understanding that I will write Jim a letter describing all these points so we never have to discuss it again. (yeah, right.)

-sarah

**From:** Sarah Hopkins  
**To:** "jmw1@maine.rr.com"@Portland.gwgwia  
**Date:** Thu, Jan 17, 2002 3:25 PM  
**Subject:** Re: Fw: Pennell Avenue

Jim,  
The Planning Office, Inspections Division, and Legal Department have discussed the status of the building permit for Parcel A.

We agree that the issuance of a building permit for Parcel A is appropriate. We will not issue any stop work orders on construction at Parcel A related to subdivision or 14-403 issues.

As we discussed this afternoon, we are still working to resolve the Certificate of Occancy issues. I hope to have a decision for you documenting the timing of COs tomorrow.

-Sarah Hopkins

>>> "James Wolf" <jmw1@maine.rr.com> 01/17 3:01 PM >>>  
Sarah....did you mean to send anything with this?

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

From: "Sarah Hopkins " <SH@ci.portland.me.us>  
To: <jmw1@maine.rr.com>  
Sent: Thursday, January 17, 2002 2:30 PM  
Subject: Re: Fw: Pennell Avenue

>>> "James Wolf" <jmw1@maine.rr.com> 01/17 2:00 PM >>>  
Hello Mark

As I am sure you have heard Penny has determined that the first two lots on the left of Pennell Avenue do not constitute a subdivision and the road has been confirmed to be a 14-403. Would you please confirm for Penny, Sarah, myself and Custom Built Homes that pursuant to your email of December 14 Certificates of Occupancy can now be issued on those lots prior to the road being 100 percent.

Thank you for your cooperation and I am happy this situation is resolved.

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

From: "Mark Adelson " <MBA@ci.portland.me.us>  
To: <jmw1@maine.rr.com>  
Cc: <AQJ@ci.portland.me.us>; <AWL@ci.portland.me.us>;  
<JAYJR@ci.portland.me.us>; <MES@ci.portland.me.us>; <MJN@ci.portland.me.us>;  
<PL@ci.portland.me.us>; <SH@ci.portland.me.us>  
Sent: Friday, December 14, 2001 12:48 PM  
Subject: Re: Fw: Pennell Avenue

This is how the City will handle it. Sometime next week there will be an application process in place for you to drop off your plan for Pennell St.

**From:** Anthony Lombardo  
**To:** ALEX JAEGERMAN; Jay Reynolds; Marge Schmuckal; ...  
**Date:** Fri, Jan 18, 2002 8:06 AM  
**Subject:** Pennell Ave. 1/18/02

I witnessed the construction of the Pennell Ave. by virtue of being the construction manager of the City's CIP contract to reconstruct both Pennell Ave. and Cypress Street. I can attest to the following:

- The developer' Plan and Profile drawings conform to City standards and match appropriately with the CIP portion of Pennell Ave.
- Location of the snow-plow turnaround is in the best location possible since it is now contained within a 30 feet wide City drainage easement.
- Actual installation of the sanitary sewer and two (2) laterals was witnessed and found in conformance with Public Works requirements.
- Curb and underdrain installation was witnessed by me and found in conformance.
- Roadway, sidewalk and driveway apron construction are all appropriate and in conformance with City standards.

Although the interpretation of Section 14-403, as defined by Marge's comments, is that no building permit can be issued until a street is completely built, I firmly believe that the ordinance should be revised. Instead it should clearly read....."no building permit can be issued until a letter of credit has been submitted. No certificate of occupancy can be issued until the road is built to a completion status that is acceptable to the City review authority. Acceptable level of completion shall include:

- granite curb
- lighting
- all utilities (sewer, water, gas, electrical, telephone, cable)
- sidewalks (with surface pavement)
- driveway aprons (with binder pavement)
- storm drain and underdrain
- roadway (with binder pavement)
- The roadway shall be required to experience one "freeze/thaw" period and shall be completed with surface pavement one year after being issued a street opening permit."

**Note:** This e-mail must not be interpreted as Public Works approval of the roadway construction. Kathi Earley has taken on responsibility for issuing Public Works approval.

**CC:** Katherine Earley

**CITY OF PORTLAND, MAINE  
DEVELOPMENT REVIEW APPLICATION  
PLANNING DEPARTMENT PROCESSING FORM  
DRC Copy**

2001-0321  
Application I. D. Number  
  
12/21/01  
Application Date

Maggie Ln & Diversified Properties Inc  
Applicant

PO Box 10127, Portland, ME 04104  
Applicant's Mailing Address

James Wolf  
Consultant/Agent

Applicant Ph: (207) 773-4988 Agent Fax: (207) 773-6875  
Applicant or Agent Daytime Telephone, Fax

Pennell Ave Extension  
Project Name/Description

128 - 128 Pennell Ave, Portland, Maine  
Address of Proposed Site

347 A005001  
Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply):  New Building  Building Addition  Change Of Use  Residential  Office  Retail  
 Manufacturing  Warehouse/Distribution  Parking Lot  Other (specify) Lots A & B

Proposed Building square Feet or # of Units .34 acres Acreage of Site Zoning

**Check Review Required:**

- |   |  |  |   |
|---|--|--|---|
| <input checked="" type="checkbox"/> Site Plan (major/minor) | <input type="checkbox"/> Subdivision # of lots _____ | <input type="checkbox"/> PAD Review            | <input checked="" type="checkbox"/> 14-403 Streets Review |
| <input type="checkbox"/> Flood Hazard                       | <input type="checkbox"/> Shoreland                   | <input type="checkbox"/> Historic Preservation | <input type="checkbox"/> DEP Local Certification          |
| <input type="checkbox"/> Zoning Conditional Use (ZBA/PB)    | <input type="checkbox"/> Zoning Variance             |  | <input type="checkbox"/> Other _____                      |

Fees Paid: Site Plan \$400.00 Subdivision \_\_\_\_\_ Engineer Review \_\_\_\_\_ Date 12/27/01

**DRC Approval Status:**

Reviewer \_\_\_\_\_

- Approved  Approved w/Conditions See Attached  Denied

Approval Date \_\_\_\_\_ Approval Expiration \_\_\_\_\_ Extension to \_\_\_\_\_  Additional Sheets Attached

Condition Compliance \_\_\_\_\_ signature \_\_\_\_\_ date \_\_\_\_\_

Performance Guarantee  Required\*  Not Required

\* No building permit may be issued until a performance guarantee has been submitted as indicated below

- |   |                            |  |                             |
|---|----------------------------|--|-----------------------------|
| <input type="checkbox"/> Performance Guarantee Accepted     | _____ date _____           | _____ amount _____                                 | _____ expiration date _____ |
| <input type="checkbox"/> Inspection Fee Paid                | _____ date _____           | _____ amount _____                                 |                             |
| <input type="checkbox"/> Building Permit Issue              | _____ date _____           |  |                             |
| <input type="checkbox"/> Performance Guarantee Reduced      | _____ date _____           | _____ remaining balance _____                      | _____ signature _____       |
| <input type="checkbox"/> Temporary Certificate of Occupancy | _____ date _____           | <input type="checkbox"/> Conditions (See Attached) | _____ expiration date _____ |
| <input type="checkbox"/> Final Inspection                   | _____ date _____           | _____ signature _____                              |                             |
| <input type="checkbox"/> Certificate Of Occupancy           | _____ date _____           |  |                             |
| <input type="checkbox"/> Performance Guarantee Released     | _____ date _____           | _____ signature _____                              |                             |
| <input type="checkbox"/> Defect Guarantee Submitted         | _____ submitted date _____ | _____ amount _____                                 | _____ expiration date _____ |
| <input type="checkbox"/> Defect Guarantee Released          | _____ date _____           | _____ signature _____                              |                             |

# City of Portland Site Plan Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Location/Address of Construction: <u>128-132 Pennell Ave</u>		
Total Square Footage of Proposed Structure		Square Footage of Lot
Tax Assessor's Chart, Block & Lot Chart#                  Block#                  Lot#	Property owner, mailing address:	Telephone:
<u>347                  A                  005</u>	<u>Maggie Lane Dev Diversud Properties</u>	<u>773-4988</u>
Consultant/Agent, mailing address, phone & contact person	Applicant name, mailing address & telephone:	Project name:
<u>Jim Wolf P.O. Box 1027 Port. Me 04104</u>	<u>Maggie Lane Diversud Properties</u>	<u>Pennell Ave extension</u>
Proposed Development (check all that applies) <input type="checkbox"/> New Building <input type="checkbox"/> Building Addition <input type="checkbox"/> Change of Use <input type="checkbox"/> Residential <input type="checkbox"/> Office <input type="checkbox"/> Retail <input type="checkbox"/> Manufacturing <input type="checkbox"/> Warehouse/Distribution <input type="checkbox"/> Parking lot <input checked="" type="checkbox"/> Subdivision, amount of lots <u>50</u> <input type="checkbox"/> Other: _____		
Major Development _____ \$500.00                  Minor Development <input checked="" type="checkbox"/> \$400.00		
Who billing will be sent to: <u>Maggie Lane Diversud Properties</u> Mailing address: <u>P.O. Box 1027</u> State and Zip: <u>Port. Me 04104</u> Contact person: <u>Jim Wolf</u> Phone: <u>773-4988</u>		

Nine (9) separate packets must include the following:

- a. copy of application
- b. cover letter stating the nature of the project
- c. site plan containing the information found in the attached sample plans check list

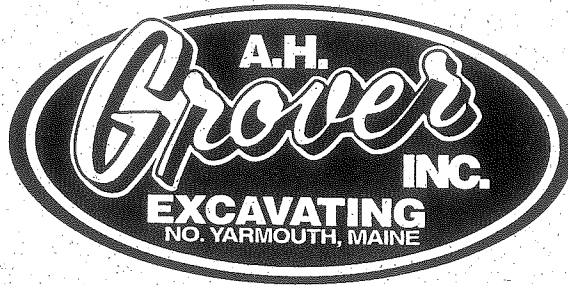
All plans must be folded neatly and in packet form

Section 14-522 of the Zoning Ordinance outlines the process, copies are available at the counter at .25 per page, you may also visit the web site: [ci.portland.me.us](http://ci.portland.me.us) chapter 14

*I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.*

Signature of applicant:	Date:
-------------------------	-------

This application is for site review ONLY, a building Permit application and associated fees will be required prior to construct



P.O. Box 307 • Cumberland Ctr., Maine 04021  
TEL. 829-3373 • FAX 829-5502

February 8, 2002

Katherine Earley, P.E., Engineering Manager  
City of Portland  
55 Portland Street  
Portland, Maine 04101

RE: PENNELL AVENUE EXTENSION

Dear Ms. Earley,

This letter is in response to the request by the City for a Performance Guarantee regarding the construction of Pennell Avenue Extension.

The original contract was for \$52,000.00. It is complete except for \$2,000.00 which is \$1200.00 for surface paving and \$800.00 for monumentation.

Given these facts, I feel that the Performance Guarantee should be based on the \$2,000.00 figure.

Please review and respond at your earliest convenience.

Sincerely,

*Benjamin C. Grover*

Benjamin C. Grover  
Vice President

cc: Terry Snow, P.A.

BCG/jc



*Law Office of Terry N. Snow, P.A.*  
294 Main Street, P.O. Box 275  
Cumberland, Maine 04021-0275  
E-Mail: TNSnowlaw@aol.com

Terry N. Snow, Esq.  
J. Gregory Lestage, Esq.

Telephone: (207) 829-6363  
Facsimile: (207) 829-4481

February 11, 2002

Katherine Earley, P.E.  
Engineering Manager  
City of Portland  
55 Portland Street  
Portland, ME 04101

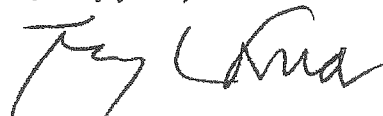
Re: Pennell Avenue Extension

Dear Ms. Earley:

This office represents Jim Wolf regarding the above project. I am in receipt of a letter to you from Ben Grover, Vice President of A.H. Grover regarding the Performance Guarantee. Once the amount has been determined by your office, would you please advise my office so that I may initiate a letter of credit for the City. This is necessary because my client is out of state for a couple of weeks, and we would like to obtain the necessary building permit for the contractor and buyer.

If you have any questions, comments or need further information or material, please give me a call.

Very truly yours,

  
Terry N. Snow

TNS/njp

cc James M. Wolf  
Penny Littell, Esq.

Corporation Counsel

Gary C. Wood



**CITY OF PORTLAND**

Associate Counsel

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

January 14, 2002

VIA FACSIMILE

Terry N. Snow, Esquire  
Terry N. Snow, PA  
PO Box 275  
Cumberland Center ME 04021-0275

Dear Terry:

I have had the opportunity to review the deeds you sent to me regarding the area along Pennell Avenue that your clients want to develop. From my review of the deeds, I understand that a number of property transfers occurred in 1986 by the property owners at that time, James Shackley and Paul Hutchinson. From my review it looks as if an illegal subdivision was created at that time. I am open to meeting with you, however, to review the transfers and discuss the matter further.

I also recall that you may have some additional information that may affect the way the City reviews this property. I know you mentioned Warren Turner and David Lourie as individuals who may have expressed an opinion on the subdivision issue. If you have additional information that may prove useful to the City, I would be happy to review it.

I have talked this matter over with my clients. We discussed several ways of proceeding with this matter, but I feel it may be beneficial to get together to discuss the extent of your clients' development plans for this area before any final decision is made. As you may imagine, the City is most interested in ensuring that public infrastructure (including drainage) is installed which meets the needs of this area. To that end, please contact me so that we may schedule a time to meet. I am relatively open Tuesday or Wednesday afternoon.

In the meantime, and given the uncertainty with regard to the subdivision issue, the Building Inspections Department will be placing a stop work order on the building permit issued for "Lot A" until this matter can be resolved. The recent application for "Lot B" must be denied for the time being.

Terry N. Snow, Esquire  
Page 2  
January 14, 2002

I look forward to talking with you further to resolve this issue in everyone's best interest in the short term.

Sincerely,



Penny Littell  
Associate Corporation Counsel

PL:hs

c: Alex Jaegerman  
Mark Adelson  
Sarah Hopkins  
Michael Nugent  
Marge Schmuckal  
Jay Reynolds ✓

*Will see you tomorrow.*

**GORRILL-PALMER  
CONSULTING ENGINEERS, INC.**  
P.O. Box 1237  
GRAY, MAINE 04039

**(207) 657-6910  
FAX (207) 657-6912**

**LETTER OF  
TRANSMITTAL**

494

TO City Of Portland  
389 Congress Street  
Portland ME 04101

JOB NUMBER/PHONE 425	DATE 2/9/2002
ATTENTION Jay Reynolds	
RE: Pennell Avenue Concept Grading Plans	

WE ARE SENDING YOU  Attached  Under separate cover via the following items.

Shop drawings  Prints  Plans  Specifications  Samples

Copy of letter  Change order  Other:

COPIES	DATE	NUMBER	DESCRIPTION
5	2/9/2002		Concept Grading Plans

THESE ARE TRANSMITTED as checked below:

- For your approval  Approved as submitted  Resubmit  \_\_\_\_\_ copies for approval
- For your use  Approved as noted  Submit  \_\_\_\_\_ copies for distribution
- As requested  Returned for corrections  Return  \_\_\_\_\_ corrected prints
- For review and comment  Other
- FOR BIDS DUE/DATE:  PRINTS RETURNED AFTER LOAN TO US

REMARKS

Additional Plans to go with the info Terry Snow submitted to you

COPY TO

*If enclosures are not as noted, please notify us at once.*

SIGNED *Doug Bullis*



P.O. Box 307 • Cumberland Ctr., Maine 04021  
TEL. 829-3373 • FAX 829-5502

February 25, 2002

Mr. Jay Reynolds  
City of Portland  
Planning Department  
389 Congress St.  
Portland, Maine

RE: Pennell Avenue Extension BOND

Dear Jay,


In your absence last week I spoke to Kathi Earley regarding the request for a performance bond and review/inspection fee for Pennell Avenue Extension.

Check and bond are enclosed. I have also enclosed a copy of Kathi's e-mail for your reference.

Thank you for your time and attention in this matter.

Sincerely,

A handwritten signature in black ink that reads "Benjamin C. Grover".

Benjamin C. Grover  
Vice President   
A. H. Grover, Inc.

encl.

BCG/jc

**CITY OF PORTLAND**

March 28, 2002

Diversified Properties, Inc.  
P.O. Box 10127  
Portland, ME 04104

Re: Escrow Account #710-0000-233-36-00  
Road Extension at 128 Pennell Avenue

As the Planning Department has authorized the release of the above-named performance guarantee, enclosed please find a check in the amount of \$4,416. The balance of your account is now \$0.

If you require any further information, please let me know.

Sincerely,



Duane G. Kline  
Finance Director

DGK,jlb

pc: Jay Reynolds, Development Review Coordinator

*Law Office of Terry N. Snow, P.A.*

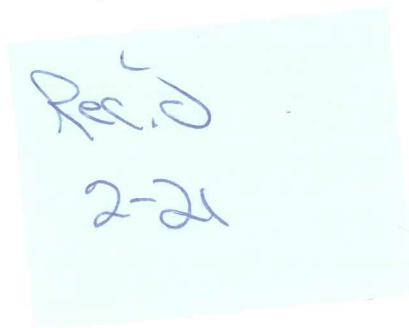
294 Main Street, P.O. Box 275  
Cumberland, Maine 04021-0275  
E-Mail: TNSnowlaw@aol.com

Terry N. Snow, Esq.  
J. Gregory Lestage, Esq.

Telephone: (207) 829-6363  
Facsimile: (207) 829-4481

February 12, 2002

Attention: Jay Reynolds  
Planning Department  
City of Portland  
389 Congress Street  
Portland, ME 04101



Re: Jim Wolf/Pennell Avenue

Dear Jay:

Enclosed find three additional site plans regarding Jim Wolf's project on Pennell Avenue. It is my understanding that Gorrill-Palmer Consulting Engineers, Inc. forwarded six copies with the understanding that I would have provided you a letter of instructions prior to receipt of the extra plans. I apologize for the oversight, but there was a miscommunication.

In any event, you should now have nine plans which I understand is required for this project to be reviewed.

Jim is out of town for a few days, and I would ask that you contact my office with any further information or material you may need for this purpose.

Very truly yours,

Handwritten signature of Terry N. Snow in blue ink.

Terry N. Snow

TNS/njp  
Enclosures

cc James M. Wolf (w/out enclosures)

FEB 8 2002

file  
Pennell

OFFICE OF TERRY N. SNOW, P.A.  
294 Main Street, P.O. Box 275  
Cumberland, Maine 04021-0275  
E-Mail: TNSnowlaw@aol.com

Terry N. Snow, Esq.  
J. Gregory Lestage, Esq.

Telephone (207) 829-6363  
Facsimile (207) 829-4481

February 7, 2002

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

Copy -  
Sarah Hopkins  
Jay Reynolds  
Mike Nugent  
Mark Nelson

Re: Pennell Avenue

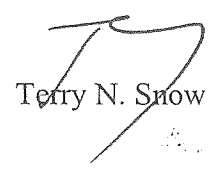
Dear Penny:

I have reviewed your letter of January 31, 2002 with my client. Needless to say he is disappointed. He is reviewing his options and will get back to you within a few days.

In the meantime, would you please advise me as to the amount of the performance guarantee so that we may process a letter of credit to satisfy this requirement. I would like to know this amount as soon as possible in order to avoid further delays.

If you have any questions or comments, give me a call.

Very truly yours,



Terry N. Snow

TNS: ecm  
cc: Diversified Properties, Inc.





## CITY OF PORTLAND

January 23, 2002

James Wolf  
Diversified Properties, Inc.  
449 Forest Avenue  
Portland, ME 04101

**Re: Pennell Avenue, Parcels A and B**  
CBL: 347-A-005-001  
CBL: 347-A-007-001

Dear Jim:

Based on previous telephone calls over the last two weeks, I thought it might be helpful to memorialize and document the City's position regarding the permitting for Parcels A and B on Pennell Avenue.

### Parcel A

A building permit has been issued for Lot A. You have also received assurances from the City that no Stop Work Orders will be placed on the construction on Parcel A, due to 14-403 or subdivision issues. As listed on the building permit for Parcel A, no permanent Certificate of Occupancy will be issued for Parcel A until the final coat of finish pavement has been applied along its street frontage, and such final pavement has been approved by the Public Works Department. However, due to the roadwork being done per approved CIP project, we will issue a temporary Certificate of Occupancy upon completion of construction, until the final pavement is completed.

### Parcel B

The building permit for Parcel B is currently under review. Prior to issuance of a building permit, a performance guarantee must be submitted for the roadway, the amount of which to be approved by Public Works. No temporary nor permanent Certificate of Occupancy will be issued for Parcel B until the finish coat for the roadway is approved by Public Works. Also, there will be no release of the performance guarantee until deeds are submitted and the street is accepted by the City. Finally, we will place notes on the building permit and Certificate of Occupancy stating that no City services will be provided until roadway has been accepted by the City.

LAW OFFICE OF TERRY N. SNOW, P.A.

294 Main Street, P.O. Box 275  
Cumberland, Maine 04021-0275  
E-Mail: TNSnowlaw@aol.com

Terry N. Snow, Esq.  
J. Gregory Lestage, Esq.

Telephone (207) 829-6363  
Facsimile (207) 829-4481

May 16, 2002

Via Fax: 874-8497

Penny Littell, Esq.  
City of Portland  
389 Congress Street  
Portland, ME 04101-3509

Re: Pennell Avenue

Dear Penny:

This letter follows your letter of April 23, 2002.

Enclosed find a deed from Carolyn F. Doherty to Construction Aggregate, Inc. conveying lot 91, which enclosed deed copy contains the recording information, as noted thereon. I also enclose a deed from Diversified Properties, Inc. conveying the 15 foot strips on either side of lot 91, as set forth in your letter of April 23, 2002. In summary, Construction Aggregate, Inc. now owns what it is referred to as "the middle lot", which includes Reilly's interest and the two 15 foot strips.

It is my understanding that the Hanson lot and the Brackett lot, as described in your April 23<sup>rd</sup> 2002 letter, may receive building permits at this time. I further understand and agree that the Reilly lot, being now under the ownership of Construction Aggregate, Inc., may not receive a building permit until subsections a, b or c have been met, as outlined in your said letter of April 23, 2002. Dwight Brackett has been advised that he should withdraw the building permit application on the Reilly lot and upon such occurrence he may receive a building permit for the Brackett lot.

For your information, the principal and sole owner of Construction Aggregate, Inc. is Ben Grover. This was done for business reasons, relating to title, economics and liability and not because of issues with the City of Portland. Notwithstanding the fact that my client or one of his entities did not purchase the Reilly lot, my client and Ben Grover both acknowledge that no building permit will be issued on the Reilly lot until the conditions set forth in your April 23, 2002 letter have been met.

Penny Littell, Esq.


-2-

May 16, 2002

Would you kindly confirm the enclosed as soon as possible, as I am sure you are aware that Dwight Brackett is anxious to honor a current commitment on the Brackett lot.

If you have any questions or comments, please give me a call.

Very truly yours,



Terry N. Snow

TNS:ecm

Enclosures

cc: Jim Wolf, Diversified Properties, Inc., w/o encs.

0038382

BK 17629 PG 157

QUITCLAIM DEED WITH COVENANTS

KNOW ALL PERSONS BY THESE PRESENTS, That I, CAROLYN F. DOHERTY of Walpole, County of Norfolk and Commonwealth of Massachusetts, for consideration paid, grant to CONSTRUCTION AGGREGATE, INC., a Maine corporation with a place of business in Cumberland, County of Cumberland and State of Maine, with Quitclaim Covenant, the premises located in the City of Portland, County of Cumberland and State of Maine, being more particularly described as follows:

A certain parcel of land, with any improvements thereon, located at Pennell Avenue, Portland, Maine, and more particularly described as lot 91 as shown on a plan of "The Holmsteads" made by E.C. Jordan & Co., dated September, 1921, and recorded in the Cumberland County Registry of Deeds in Plan Book 14, Page 70.

Meaning and intending to convey the same premises conveyed to Joseph E.F. Connolly by the Portland Home Building Association, in a deed dated August 26, 1930, and recorded in the Cumberland County Registry of Deeds in Book 1377, Page 27.

The said Joseph E.F. Connolly died intestate on October 2, 1939, and his interest in the above-described premises passed to his widow, Margaret B. Connolly, upon her petition, Cumberland County Probate Court, Docket No. 31378.

The said Margaret B. Connolly died testate in 1947, having devised her interest in the above-described premises to Stephen H. Cady, Jr. by her last will and testament, Cumberland County Probate Court, Docket No. 40076.

The said Stephen H. Cady, Jr. died testate on February 15, 1948, having devised his interest in the above-described premises to Mary Nugent by his last will and testament, Cumberland County Probate Court, Docket No. 41239.

The said Mary Nugent died testate on October 8, 1949, having devised her interest in the above-described premises to James J. Reilly and Joanna D. Reilly by her last will and testament, Cumberland County Probate Court, Docket No. 43207.

The said James J. Reilly died testate on June 22, 1964, having devised his one-half interest in the above-described premises to Joanna D. Reilly by his last will and testament.

The said Joanna D. Reilly died testate on October 22, 1989, having devised her interest in the above-described premises to Carolyn F. Doherty by her last will and testament, Cumberland County Probate Court, Docket No. 2002-571.

BK 17629PG 158

WITNESS my hand and seal this 10 day of May, 2002.

Witness:

Christine Manning

Carolyn F. Doherty  
Carolyn F. Doherty

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF NORFOLK

May 10, 2002

Then personally appeared before me the above named Carolyn F. Doherty and acknowledged the foregoing instrument to be her free act and deed.

Christine Manning

Notary Public/Attorney at Law

Print:

Christine Manning  
NOTARY PUBLIC

My Commission expires May 31, 2002

RECEIVED  
RECORDED REGISTRY OF DEEDS

2002 MAY 14 AM 9: 58

CUMBERLAND COUNTY

John B. O'Brien

0038762 BK17634PG064

STATUTORY WARRANTY DEED

DIVERSIFIED PROPERTIES, INC., a Maine corporation with a principal place of business in Portland, in the County of Cumberland and State of Maine

For Consideration Paid, GRANT with WARRANTY COVENANTS TO:

CONSTRUCTION AGGREGATE, INC., a Maine corporation with a place of business in Cumberland, County of Cumberland and State of Maine, with a mailing address of P.O. Box 307, Cumberland, Maine 04021

A certain lot or parcel of land situated on the easterly sideline of Pennell Avenue in the City of Portland, County of Cumberland and State of Maine, being the northerly one-third (1/3) of Lot No. 90 as shown on Plan entitled "The Holmsteads", dated September 1921, recorded at the Cumberland County Registry of Deeds in Plan Book 14, Page 70, bounded and described as follows:

BEGINNING at a point on the easterly sideline of Pennell Avenue, being the southwesterly corner of Lot 91 on said plan; thence along the northerly sideline of Lot 91 in a northeasterly direction one hundred (100) feet to the easterly sideline of the parcel herein conveyed; thence in a southeasterly direction along the easterly sideline of the parcel herein conveyed fifteen (15) feet to a point, said point being at the northerly sideline of land conveyed from Grantor herein to Maggie Lane Development, LLC by deed dated December 19, 2001 and recorded at said Registry of Deeds in Book 17109, Page 296; thence in a southwesterly direction parallel with the first call herein described and maintaining a distance of fifteen (15) feet therefrom along said Maggie Lane Development, LLC land one hundred (100) feet to the easterly sideline of Pennell Avenue; thence in a northwesterly direction along the easterly sideline of Pennell Avenue fifteen (15) feet to the point of beginning.

Being a portion of the premises conveyed to the Grantor herein by deed from Dona G. Hanson dated September 19, 2001 and recorded at the Cumberland County Registry of Deeds in Book 16779, Page 98. Reference is further made to a deed from Frank C. Rodway to Grantor herein dated August 22, 2001 and recorded at said Registry of Deeds in Book 16659, Page 251.

MAINE REAL ESTATE TAX PAID

BKT 7634 PG 065

This deed is a transfer of land to the owner of land abutting that land herein conveyed; specifically, other land of Grantee herein, being Lot 91 as shown on said plan conveyed to Grantee herein by deed from Carolyn F. Doherty dated May 10, 2002 and recorded at said Registry of Deeds in Book 17629, Page 157.

Subject to the provisions of Title 30-A, M.R.S.A. §4401.4.D-6, the within Grantee may not make a subsequent transfer of the premises within five (5) years from the date hereof without complying with the provisions of said statute.

Also, a certain lot or parcel of land situated on the easterly sideline of Pennell Avenue in the City of Portland, County of Cumberland and State of Maine, being the southerly one-third (1/3) of Lot No. 92 as shown on Plan entitled "The Holmsteads", dated September 1921, recorded at the Cumberland County Registry of Deeds in Plan Book 14, Page 70, bounded and described as follows:

BEGINNING at a point on the easterly sideline of Pennell Avenue, being the northwesterly corner of Lot 91 on said plan; thence along the northerly sideline of Lot 91 in a northeasterly direction one hundred (100) feet to the easterly sideline of the parcel herein conveyed; thence in a northwesterly direction along the easterly sideline of the parcel herein conveyed fifteen (15) feet to a point; thence in a southwesterly direction parallel with the first call herein described and maintaining a distance of fifteen (15) feet therefrom one hundred (100) feet to the easterly sideline of Pennell Avenue; thence in a southeasterly direction along the easterly sideline of Pennell Avenue fifteen (15) feet to the point of beginning.

Being a portion of the premises conveyed to the Grantor herein by deed from Dona G. Hanson dated September 19, 2001 and recorded at the Cumberland County Registry of Deeds in Book 16779, Page 98.

This deed is a transfer of land to the owner of land abutting that land herein conveyed; specifically, other land of Grantee herein, being Lot 91 as shown on said plan conveyed to Grantee herein by deed from Carolyn F. Doherty dated May 10, 2002 and recorded at said Registry of Deeds in Book 17629, Page 157.

Subject to the provisions of Title 30-A, M.R.S.A. §4401.4.D-6, the within Grantee may not make a subsequent transfer of the premises within five (5) years from the date hereof without complying with the provisions of said statute.

BK 77634PG066

This conveyance is SUBJECT to rights and easements granted to Cumberland County Power & Light Company by instrument dated January 18, 1922 and recorded at the Cumberland County Registry of Deeds in Book 1094, Page 75.

This conveyance is made SUBJECT to the current real estate taxes to the City of Portland subject to proration at the closing, which the Grantee herein by its acceptance of this deed hereby assumes and agrees to pay.

IN WITNESS WHEREOF, said DIVERSIFIED PROPERTIES, INC. has caused this instrument to be signed in its corporate name and sealed with its corporate seal by James Wolf, its President thereunto duly authorized this 15<sup>th</sup> day of May, 2002.

DIVERSIFIED PROPERTIES, INC.

[Signature]

By:

[Signature]  
15 President

STATE OF MAINE  
CUMBERLAND, SS.

May 15, 2002

Then personally appeared the above-named James Wolf of DIVERSIFIED PROPERTIES, INC. as aforesaid and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

[Signature]

Attorney at Law/Notary Public

RECEIVED  
RECORDED REGISTRY OF DEEDS

2002 MAY 15 AM 11:06

CUMBERLAND COUNTY

John B O'Brien

DEBRA V. DOWD  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES OCTOBER 7, 2009



JUL 10 2002

*Law Office of Terry N. Snow, P.A.*  
294 Main Street, P.O. Box 275  
Cumberland, Maine 04021-0275  
E-Mail: TNSnowlaw@aol.com

*Terry N. Snow, Esq.*  
*J. Gregory Lestage, Esq.*

*Telephone: (207) 829-6363*  
*Facsimile: (207) 829-4481*

July 9, 2002

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

Re: Pennell Avenue

Dear Penny:

This letter follows your letter to my office of April 23, 2002 relating to the above-captioned Pennell Avenue. The lots being addressed are those located on the westerly side of Pennell Avenue, specifically Lots 89, 90, 91, 92 and 93. These lots have been purchased by my clients with the following history:

1. Lot 89 was purchased by Maggie Lane Development from Thomas and Ann Pelosi by deed dated December 19, 2001 and recorded at the Cumberland County Registry of Deeds in Book 17186, Page 357.
2. Lot 90 was purchased by Diversified Properties, Inc. from Dona Hanson by deed dated May 15, 2002 and recorded at said Registry of Deeds in Book 17634, Page 64.
3. Lot 91 was purchased by Construction Aggregate, Inc. from Carolyn F. Doherty by deed dated May 10, 2002 and recorded at said Registry of Deeds in Book 17629, Page 157.
4. Lots 92 and 93 were purchased by Diversified Properties, Inc. from Dona G. Hanson by deed described in Paragraph 2 above.

Penny Littell, Esq.  
Page 2  
July 9, 2002

Diversified Properties, Inc. conveyed the southerly two-thirds of Lot 90 to Maggie Lane Development, and Maggie Lane Development subsequently conveyed said lot to C.G.B. Properties (Dwight Brackett). A building permit has been issued on this lot.

Diversified Properties, Inc. conveyed the northerly one-third of Lot 90 and the southerly one-third portion of Lot 92 to Construction Aggregate, Inc. as a conveyance to abutters with statutory language mandating that the merged parcel must stay as one parcel for a period of five years pursuant to the statute.

Diversified Properties has conveyed or presently will convey Lot 93 with the northerly two-thirds of Lot 92 to C.G.B. Properties (Dwight Brackett) with the same statutory language regarding merged properties. I believe Dwight Brackett may have received a building permit for this parcel.

At all times for purposes of this letter, Burt Wolf and Jim Wolf were the sole members of Maggie Lane Development LLC and shareholders of Diversified Properties, Inc. At all times for purposes of this letter, Ben Grover was the sole shareholder of Construction Aggregate, Inc. Although Diversified Properties, Inc. signed a contract with Joanna D. Reilly, devisee of Lot 91, the contract was assigned to Construction Aggregate, Inc. prior to closing. I previously forwarded to your office the deed from Joanna D. Reilly to Construction Aggregate, Inc. Subsequently, on June 14, 2002, the Cumberland County Probate Judge signed the order establishing title in Joanna D. Reilly, which document was recorded at the Cumberland County Registry of Deeds on June 20, 2002 in Book 17759, Page 344, a copy of which I enclose for your records.

First of all, let me again assure you that the purchases by difference entities were not related to the issue of avoiding subdivision. Neither my client nor myself ever imagined this to be a subdivision issue. This clearly was done to avoid merger and tax reasons for the Wolfs' various entities. To my knowledge, there is no law against avoiding merger. I suspect you have counseled clients in your private practice and that many members of the Planning Board, both attorneys, brokers and others, have counseled potential buyers on the issue of merger. I also suspect that members of the Planning Board may have taken property in names of spouses or spouse to avoid mergers. This has been a common practice and is not a violation of any ordinance or statute. This is merely good planning.

I would therefore ask that you revisit the issue of a subdivision violation relating to Lot 91. If you still believe this violates the subdivision law, then I would ask that you have this matter scheduled at the next available Planning Board meeting for an interpretation.

Penny Littell, Esq.  
Page 3  
July 9, 2002

If you have any questions or comments or need further material or information, please give me a call.

Very truly yours,



Terry N. Snow

TNS/njp  
Enclosure

cc Diversified Properties, Inc., et al  
Construction Aggregate, Inc.

Recorded 6-10-02

AK 17759 09 344

STATE OF MAINE

PROBATE COURT  
CUMBERLAND, ss.

LOCATION: Portland  
Docket No.

IN RE: Estates of Joanna D. Reilly  
and James J. Reilly

ORDER

After considering the Petition to Establish Title filed in this matter and reviewing the original wills of James J. Reilly and Joanna D. Reilly, the Court makes the following findings:

1. James J. Reilly died, a resident of Portland, Maine, on June 22, 1964.
2. The Last Will and Testament of James J. Reilly was duly executed on November 4, 1952, and remained unrevoked at the time of his death.
3. Joanna D. Reilly died, a resident of Portland, Maine, on October 22, 1989.
4. The Last Will and Testament of Joanna D. Reilly was duly executed on February 13, 1980, and remained unrevoked at the time of her death.
5. No court proceeding has ever been brought concerning the succession or administration of the estate of either James J. Reilly or Joanna D. Reilly.
6. James J. Reilly and Joanna D. Reilly acquired title to certain real property located at Pennell Avenue in Portland, Maine, which is more particularly described as lot 91, as shown on a plan of "The Holmsteads" made by E.C. Jordan & Co., dated September, 1921, and recorded in the Cumberland County Registry of Deeds in Plan Book 14, Page 70 (hereinafter referred to as the "Land"), as tenants in common, by devise of Mary Nugent, who died testate on October 8, 1949, and whose estate was probated in the Cumberland County Probate Court, Docket No. 43207.
7. At the time of his death, James J. Reilly held a one-half undivided interest in the Land.
8. Pursuant to the Last Will and Testament of James J. Reilly, Joanna D. Reilly was devised all of his right and interest in the Land.
9. Following the death of James J. Reilly, Joanna D. Reilly possessed the Land for her natural life, in accordance with the provisions of James J. Reilly's will.

10. James J. Reilly's will is sufficient evidence to prove the Land was devised to Joanna D. Reilly.

11. At the time of her death, Joanna D. Reilly held fee simple title to the Land.

12. Pursuant to the Last Will and Testament of Joanna D. Reilly, Carolyn F. Doherty was devised all of Joanna's right and interest in the Land.

13. Following the death of Joanna D. Reilly, Carolyn F. Doherty possessed the Land for her natural life, in accordance with the provisions of Joanna D. Reilly's will.

14. Joanna D. Reilly's will is sufficient evidence to prove the Land was devised to Carolyn Doherty.


It is hereby ORDERED that:

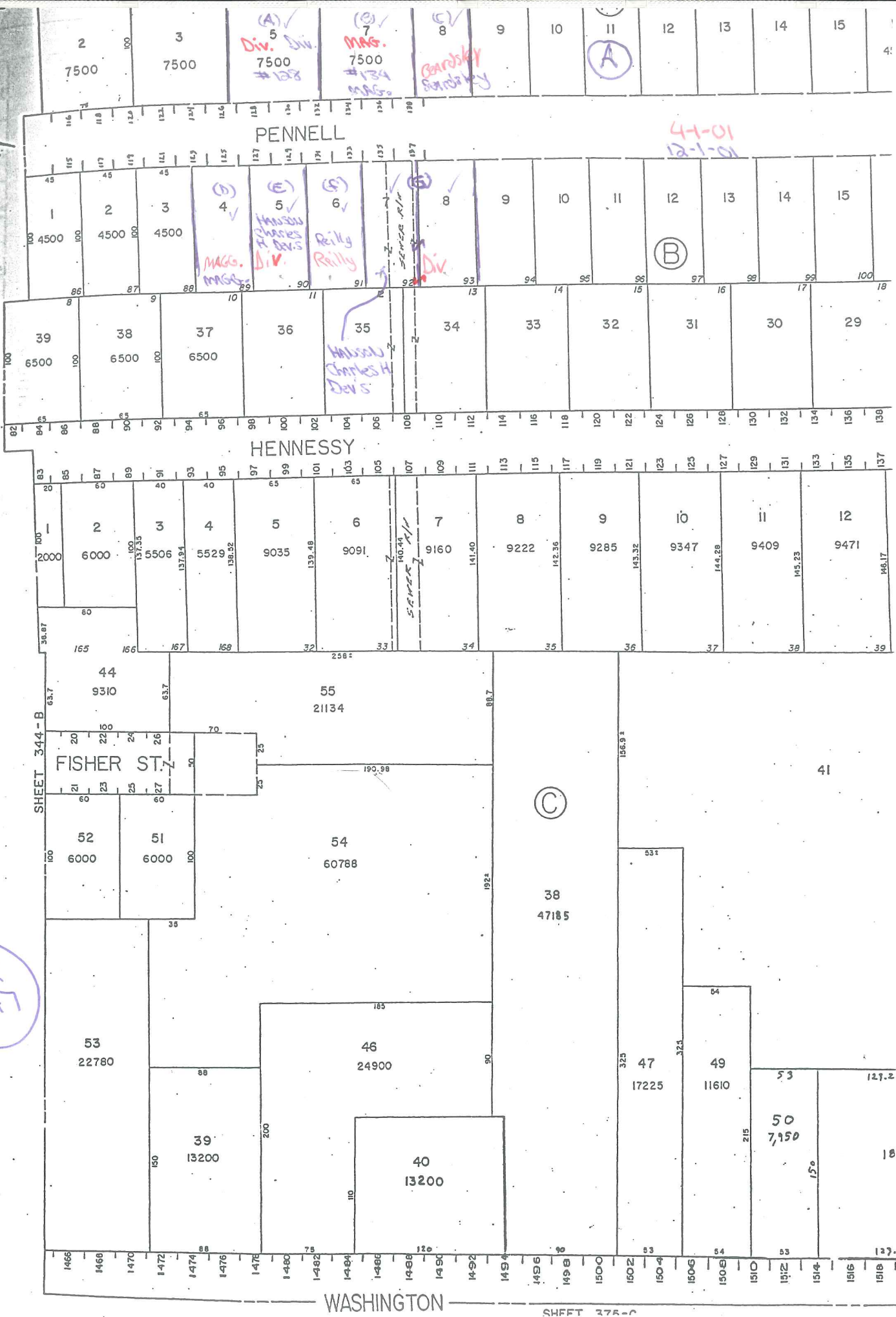
Carolyn F. Doherty is the sole owner of the real property located at Pennell Avenue, Portland, Maine, tax map 347-B, lot 6, which is more particularly described as lot 91, as shown on a plan of "Holmsteads" made by E.C. Jordan, dated September, 1921, and recorded in the Cumberland County Registry of Deeds in Plan Book 14, Page 70. Fee simple title to said property is hereby confirmed in Carolyn F. Doherty, and an attested copy of this Order shall be recorded in the Cumberland County Registry of Deeds.

Dated: 6/14/02

  
\_\_\_\_\_  
Judge of Probate

Rec: 6-20-02  
Book 17759  
Page 344

STATE OF MAINE  
Cumberland ss. Probate Court  
A TRUE COPY  
Attest:   
\_\_\_\_\_  
Register



2 7500  
3 7500  
5 7500 #138  
7 7500 #134 MAGS.  
8 Barovsky Barovsky  
11 (A)

PENNELL  
41-01  
12-1-01  
1 4500  
2 4500  
3 4500  
4 (D) MAGS. Div.  
5 (E) MAGS. Div.  
6 (F) Reilly  
8 (G) Div.  
39 6500  
38 6500  
37 6500  
36  
35 Charles H. Davis  
34  
33  
32  
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30  
29

HENNESSY  
1 2000  
2 6000  
3 5506  
4 5529  
5 9035  
6 9091  
7 9160  
8 9222  
9 9285  
10 9347  
11 9409  
12 9471

SHEET 344-B  
FISHER ST.  
44 9310  
55 21134  
52 6000  
51 6000  
54 60788  
38 47185  
53 22780  
46 24900  
39 13200  
40 13200  
47 17225  
49 11610  
50 7150  
41

CHART #344

WASHINGTON

SHEET 375-B

Corporation Counsel  
Gary C. Wood



**CITY OF PORTLAND**

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

July 12, 2002

Terry Snow  
Terry N. Snow, PA  
PO Box 275  
Cumberland Center ME 04021-0275

Re: Pennell Ave, Maggie Lane, Haskell Street

Dear Terry:

In response to your letter dated June 25, 2002 relating to your client's request for the City's acceptance of Pennell Ave, Maggie Lane and Haskell Street, please be advised that the City is ready to accept Pennell Ave. As for Haskell Street and Maggie Lane, our Public Works Department is waiting for several issues to be taken care of before placing these streets on the Council agenda for acceptance.

We will schedule Pennell Ave for acceptance on August 19, 2002.

Thank you for your attention.

Sincerely,  
  
Penny Littell  
Associate Corporation Counsel

PL:hs  
Cc: Todd Merkle  
Jay Reynolds

O:\OFFICE\PENNY\LTRS\2002\Snow071202.doc

January 3, 2002

To: Alex Jeagerman

From: Jim Wolf

Re: Pennell Avenue

Before any final decisions are made today between you and Marge, I wanted to be sure you had all of the facts, as I know you are new to this issue.

There are ~~two~~ issues with respect to Pennell Avenue.

Three  
3. Substant Prior to Approval

1. Can certificates of occupancy be issued on a 14-403 street prior to the road being built 100 percent and
2. Is subdivision being created on property located at Pennell Avenue?

I will address each issue individually.

In support of occupancy permits being issued on a 14-403, specifically Pennell Avenue, prior to 100 percent completion I offer the following:

1. Tony Lombardo of the Public Works Department specifically requested that A.H. Grover not finish pave Pennell Avenue until next spring. You have a copy of his email to staff confirming this. Why would anyone be punished for cooperating with a department's request?
2. Previous practice has always been to issue occupancy permits on 14-403 streets when the road was base paved only. This took place on Saugus Street, Milton Street between Lynn and Saugus Streets, Braintree Street between Saugus and Beverly Streets and Ninth Street.
3. Mark Adelson stated in an email that when a street is deemed to be a 14-403 (this has been stated in the building permit for 128 Pennell Avenue) with multiple lots occupancy permits would be issued prior to the street being built 100 percent once the proper guarantee is in place.
4. The performance guarantee standard allows occupancy permits to be issued.

With respect to the implication that we are creating subdivision and therefore should in front of the Planning Board I offer the following:

Plan Shows more than just "A + B"

1. Our review that was submitted to City Hall is for parcels A and B only as shown on the survey plan of Pennell Avenue.
2. Parcel A (128 Pennell Avenue) has been owned separately from abutting properties since 1987.
3. Parcel B (132 Pennell Avenue) has been owned separately from abutting properties since 1987.
4. Parcel A, also known as 128 Pennell Avenue applied for a building permit in September and received said permit in November with an amended permit being issued last week. This parcel began our discussion and was the subject of a November meeting.
5. At the November meeting, Marge stated she did not feel 128 Pennell Avenue had a subdivision issue, however, she did have concerns about the other side of the road. Terry Snow and Penny Littell agreed to address the questionable side of the road at another time. An amended permit for 128 Pennell Avenue was issued last week further enforcing the lot was not part of an illegal subdivision.

We didn't make everything in front of us when we reviewed 128 Pennell

NO!  
I don't think so

OVER



6. Cumberland Title Company as well as Terry N. Snow do not feel an illegal subdivision is being created or has been created in the past on any of the property we are involved in on Pennell Avenue.

Alex, in summary;

*No!*  
*If was not*  
*Approved Permit*  
*or Inspected*

1. The road was built under the supervision and degree requested by public works and that alone should allow occupancy permits to be issued not to mention the other facts surrounding a 14-403 street.
2. I request that the city allow occupancy permits for 128 and 132 Pennell Avenue on the existing street and that we further discuss the other side of the road at the appropriate time.

Thank you for your time and please contact me if you have any questions.

*They should receive Trespass Damages for*  
*Going Ahead with Building the Road.*

*Todd Morde is Refusing to have the Utilities*  
*and Power "Shut Up" Because of failure to*  
*have appropriate inspections.*

*V.R.*

**SIGHT DRAFT**

August 30, 2003

Diversified Properties, Inc./Construction Aggregate Inc.  
C/o James Wolf  
P.O. Box 10127  
Portland, Maine 04104

Pay to the Order of: The City of Portland \$1,600.00

The sum of : One Thousand Six Hundred and 00/100 Dollars,

That being the amount necessary to correct uncompleted improvements (Type F catch basin with piping and connection and grading/swale) at the Pennell Avenue Subdivision which were not satisfactorily completed as required under the terms of the Performance Guarantee posted with the City. By the terms of the Performance Guarantee, the City is drawing on this Guarantee thirty days prior to the expiration date of September 30, 2003. You have thirty days from the date of this notice to complete the noted improvements and receive a refund of the called monies. This is the only notice you will receive of the City's calling on the Guarantee.



Lee Urban  
Director of Planning and Development

City of Portland  
Department of Corporation Counsel  
389 Congress Street  
Portland, Maine 04101  
(207) 874-8480

# Diversified Properties, Inc.

*P.O. Box 10127, Portland, ME 04104  
Tel 207-773-4988 • Fax 207-773-6875*

December 12, 2002

Jay Reynolds  
Development Review Coordinator  
City of Portland  
389 Congress Street  
Portland, ME 04101

RE: Fees

Dear Jay:

Thank you for your letter that responded to my letter to Penny Littell.

In response:

1. Pennell Avenue Inspection Fee  
We thank you for determining a refund was warranted.
2. Pennell Avenue Application Fee  
Thank you for a copy of section 6-18 confirming the fee was required. At no time were we made aware of this section.
3. Barclay Avenue Fees  
Being the project is beginning shortly and the other issues are resolved we will let this issue lie.

Thank you for your cooperation and honest effort.

Very truly yours,



James M. Wolf

JMW/jmy

Email = [jmw1@maine.rr.com](mailto:jmw1@maine.rr.com)

cc. Alex Jaegerman, Planning Division Director  
Sarah Hopkins, Development Review Services Manager  
Todd Merkle, Public Works  
Penny Littell, Corporate Counsel

**PERFORMANCE GUARANTEE  
with the City of Portland**

Developer's Tax Identification Number: 01-0476397

Developer's Name and Mailing Address: Diversified Properties, Inc./Construction Aggregate  
Inc.

P.O. Box 10127  
Portland, Maine 04104

City Account Number: <sup>1</sup>

710-0000-233.45-00

Treasurer's Report of Receipts Number: <sup>1</sup>

42838

Project Job Number: <sup>1</sup>  
(from Site Plan Application form)

2002-0212

Application of Diversified Properties, Inc./Construction Aggregate for a 3-lot Pennell Avenue  
Subdivision at Pennell Avenue, Portland, Maine.

The City of Portland (hereinafter the "City") will hold the sum of \$2,100.00 on behalf of Diversified Properties, Inc./Construction Aggregate in a non-interest bearing account established with the City. This account shall represent the estimated cost of installing site improvements as depicted on the subdivision, approved on October 22, 2002 as required under Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §§46 through 65. It is intended to satisfy the Applicant's obligation, under Portland Code of Ordinances Chapter 14 §§501, 502 and 525, to post a performance guarantee for the above referenced development.

The City, through its Director of Planning and Urban Development and in his sole discretion, may draw against this Escrow Account in the event that:

1. the Developer has failed to satisfactorily complete by September 30, 200~~3~~<sup>2</sup> *Jan* the work on the improvements contained within the Pennell Avenue Subdivision approval dated October 22, 2002; or

2. the Developer has failed to deliver to the City a deed containing the metes and bounds description of any streets, easements or other improvements required to be deeded to the City; or
3. the Developer has failed to post the ten percent (10%) Defect Guarantee required by Portland Code of Ordinances Chapter 14 §§501 and 525; or
4. the Developer has failed to notify the City for inspections in conjunction with the installation of improvements noted in paragraph one.

The Director of Planning and Urban Development may draw on this guarantee, at his option, either thirty days prior to the expiration date contained herein, or s/he may draw against this escrow for a period not to exceed ninety (90) days after the expiration of this commitment; provided that the Applicant will give the City written notice, by certified mail (restricted delivery to Duane Kline, Director of Finance, City of Portland, 389 Congress Street, Room 110, Portland, Maine) of the expiration of this escrow within sixty (60) days prior thereto. Otherwise, drafts may be submitted by the City of Portland no later than ninety (90) days following such notice, whenever given. Provided, however, that the City shall notify the Applicant of its intention to call on the guarantee and to retain the monies posted as guarantee. The City shall provide the Applicant thirty (30) days from the date of such notice in which to complete the noted improvements.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Works and Planning, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban Development or its Director of Finance as provided in Chapter 14 §501 of the Portland Code of Ordinances, may authorize the City to reduce the available amount of the escrowed money by a specified amount.

This Esrow will automatically expire upon the earlier of:

1. the written notification from Portland's Director of Planning and Urban Development that said work contained within the Pennell Avenue Subdivision approval and as required by Portland Code of Ordinances Chapter 14 §§499, 499.5, 525 and Chapter 25 §46 through 65 has been completed in accordance with the City of Portland's specifications; or
2. the expiration date of September 30, 200~~7~~<sup>3</sup> *Jan* or any automatically extended date as specified herein..

Seen and Agreed to: Diversified Properties, Inc.

By

  
James M. Wolf

Reviewed pursuant to Portland Code of Ordinances, Chapter 14 §§501, 525:

By: Lee A. Wilson  
Director of Planning and ~~Urban~~ Development

Date: 11/26/02

By: \_\_\_\_\_  
Director of Finance

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Corporation Counsel

Date: \_\_\_\_\_

**Attach Letter of Approval and Estimated Cost of Improvements to this form.**

Distribution

1. This information will be completed by Planning Staff.
2. The account number can be obtained by calling Paul Colpitts, ext. 8665.
3. The Agreement will be executed with one original and one copy.
4. The original and copy, each signed by the Developer, will be delivered to the Finance Office, together with a copy of the Report of Receipts form.
5. The Director of Finance will sign the copies, retain the original for their files and deliver the other signed copy to the Planning Office.
6. The Planning Office will keep one copy for their files and the original signed copy will be mailed to the Developer.

  
Duane G. Kline  
Finance Director

*Ray Reynolds*  
ARC - 11-26-02

Department of Planning and Urban Development  
SUBDIVISION/SITE DEVELOPMENT

COST ESTIMATE OF IMPROVEMENTS TO BE COVERED BY PERFORMANCE GUARANTEE

Date: October 24, 2002

Name of Project: Pennell Avenue Subdivision \_\_\_\_\_  
 Address/Location: \_\_\_\_\_  
 Developer: Diversified Properties, Inc./Construction Aggregate \_\_\_\_\_  
 Form of Performance Guarantee: Escrow \_\_\_\_\_  
 Type of Development: Subdivision  Site Plan (Major/Minor) \_\_\_\_\_

**TO BE FILLED OUT BY THE APPLICANT:**

Item	PUBLIC			PRIVATE		
	Quantity	Unit Cost	Subtotal	Quantity	Unit Cost	Subtotal
1. STREET/SIDEWALK						
Road	_____	_____	_____	_____	_____	_____
Granite Curbing	_____	_____	_____	_____	_____	_____
Sidewalks	_____	_____	_____	_____	_____	_____
Esplanades	_____	_____	_____	_____	_____	_____
Monuments	_____	_____	_____	_____	_____	_____
Street Lighting	_____	_____	_____	_____	_____	_____
Street Opening Repairs	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
2. EARTH WORK						
Cut	_____	_____	_____	_____	_____	_____
Fill	_____	_____	_____	_____	_____	_____
3. SANITARY SEWER						
Manholes	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Connections	_____	_____	_____	_____	_____	_____
Main Line Piping	_____	_____	_____	_____	_____	_____
House Sewer Service Piping	_____	_____	_____	_____	_____	_____
Pump Stations	_____	_____	_____	_____	_____	_____
Other	_____	_____	_____	_____	_____	_____
4. WATER MAINS	_____	_____	_____	_____	_____	_____
5. STORM DRAINAGE						
Manholes	_____	_____	_____	_____	_____	_____
Catchbasins	_____	_____	_____	_____	_____	_____
Piping	_____	_____	_____	_____	_____	_____
Detention Basin	_____	_____	_____	_____	_____	_____
Stormwater Quality Units	_____	_____	_____	_____	_____	_____
Other-Type F Catch Basin	_____	_____	_____	1	1,200	1,200
With piping & connection						

SITE LIGHTING	_____	_____	_____	_____	_____	_____
EROSION CONTROL						
Silt Fence	_____	_____	_____	_____	_____	_____
Check Dams	_____	_____	_____	_____	_____	_____
Ripe Inlet/Outlet Protection	_____	_____	_____	_____	_____	_____
Level Lip Spreader	_____	_____	_____	_____	_____	_____
Slope Stabilization	_____	_____	_____	_____	_____	_____
Geotextile	_____	_____	_____	_____	_____	_____
Hay Bale Barriers	_____	_____	_____	_____	_____	_____
Catch Basin Inlet Protection	_____	_____	_____	_____	_____	_____

RECREATION AND OPEN SPACE AMENITIES \_\_\_\_\_

LANDSCAPING \_\_\_\_\_ 2 \_\_\_\_\_ 250 \_\_\_\_\_ 500 \_\_\_\_\_  
 (Attach breakdown of plant materials, quantities, and unit costs) 2 street trees

0. MISCELLANEOUS- Grading/Swale \_\_\_\_\_ 400 \_\_\_\_\_

TOTAL: \_\_\_\_\_ 2,100 \_\_\_\_\_

GRAND TOTAL: \_\_\_\_\_ 2,100 \_\_\_\_\_

*OK 11-26-02  
J.R.*

**INSPECTION FEE (to be filled out by the City)**

	<u>PUBLIC</u>	<u>PRIVATE</u>	<u>TOTAL</u>
1: 2.0% of totals:	_____	<u>300.00</u>	<u>300.00</u>
or			
3: Alternative Assessment:	_____	_____	_____
Assessed by:	_____	_____	_____
(name)	(name)	(name)	(name)



**CITY OF PORTLAND, MAINE**  
**PLANNING BOARD**

---

Jaimey Caron, Chair  
Deborah Krichels, Vice Chair  
Mark Malone  
Orlando E. Delogu  
Sarah Luck  
Kevin Beal  
Lee Lowry III

October 23, 2002

Mr. Jim Wolf  
Diversified Properties  
P.O. Box 10127  
Portland, ME 04104

RE: Pennell Avenue 3-lot single family subdivision  
ID #2002-0212, CBL #347-B-004

Dear Mr. Wolf:

On October 22, 2002 the Portland Planning Board voted 6-0 (Luck absent) on the following motions regarding the Pennell Avenue 3-lot single family subdivision:

1. That the plan was in conformance with the Subdivision Review Ordinance of the City Land Use Code with the following conditions:
  - i. That the language for the 20 ft. drainage easement over Lot 2 and 3 for the benefit of Lot 1, and over lot 3 for the benefit of lot 2, be reviewed and approved by Corporation Counsel.
  - ii. That the applicant revise the plans to reflect the Development Review Coordinator's memo dated October 22, 2002 regarding approval by Public Works to connect into the 18" storm drain and BMP details.
  - iii. That the applicant revise the subdivision plat by deleting the last two (2) sentences from Note 4 on the plat. The applicant shall also submit an escrow account to the City in the amount determined by the City and the Developer to cover drainage and landscaping improvements prior to release of the plat.

The Planning Board also voted 4-2 (Caron, Beal opposed, Luck absent) to waive sidewalks along the frontage of the 3-lot subdivision on Pennell Avenue.

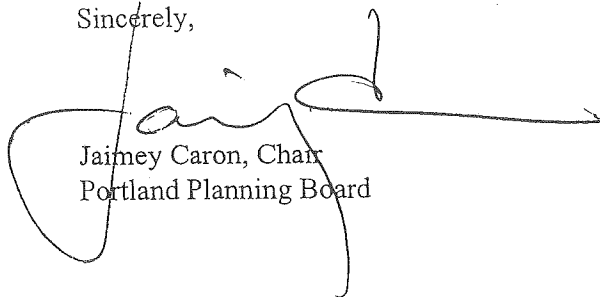
The approval is based on the submitted plan and the findings related to site plan review standards as contained in Planning Board #61-02, which is attached.

Please note the following provisions and requirements for all subdivision approvals:

1. Mylar copies of the construction drawing for the subdivision must be submitted to the Public Works Department prior to the release of the plat.
2. A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount must be submitted to and approved by the Planning Division and Public works prior to the recording of the subdivision plat. The subdivision approval is valid for three (3) years.
3. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
4. Prior to construction, a preconstruction meeting shall be held at the project site with the contractor, development review coordinator, Public Work's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the preconstruction meeting.
6. If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
7. The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Department at 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions regarding the Board's actions, please contact Kandice Talbot at 874-8901.

Sincerely,



Jaimey Caron, Chair  
Portland Planning Board

cc: Lee D. Urban, Planning and Development Department Director  
Alexander Jaegerman, Planning Division Director  
Sarah Hopkins, Development Review Program Manager  
Kandice Talbot, Planner  
Jay Reynolds, Development Review Coordinator  
Marge Schmuckal, Zoning Administrator  
Jodine Adams, Inspections  
Larry Ash, Traffic Engineer  
Tony Lombardo, Project Engineer  
Eric Labelle, City Engineer  
Jeff Tarling, City Arborist  
Penny Littell, Associate Corporation Counsel  
Lt. Gaylen McDougall, Fire Prevention  
Don Hall, Appraiser, Assessor's Office  
Approval Letter File  
Correspondence File

# Diversified Properties, Inc.

SEP 11 2002

P.O. Box 10127, Portland, ME 04104  
Tel 207-773-4988 • Fax 207-773-6875

City of Portland Legal Cor  
389 Congress Street  
Portland, Maine 04101

TO: Peggy Littell

FROM: James M. Wolf

RE: Fees

*Peggy ?!*

① This is True.  
He Refused this  
with a \$888.00  
Dep. fee.  
✓ Refund 88.32?

In response to your letter to Terry Snow dated August 9, 2002, I

1. Pennell Avenue:

- A. Original Escrow: \$4416.00
- B. Original Inspection Fee: \$88.32 – see cancelled
- C. Amended Escrow Replacing \$4416.00: \$44,000
- D. Amended Inspection Fee: \$880.00 - see cancelled

② No Refund.  
See Attached.

③ Developer and Contractor  
were never aware of  
Occupancy Issues  
At Re-Construction  
started on April 16, 2002.  
See Attached.

The 2% inspection fee paid with the original escrow of \$44,000 was credited when the amended escrow was given and inspection fee was due. Please refund the \$88.32.

2. Pennell Avenue 14-403

The cost of a 14-403 street application review was being added to Mark Adelson's email dated 12/14/01. A category was being added reflecting the emails content (see enclosed). In good faith the emails content: specifically occupancy permits on 14-403 streets. Please provide documentation that the application fee paid was required by code when paid. If documentation is not available and because the city did not comply with how occupancy permits would be issued, we again request a refund of the \$450 paid.

3. Barclay Avenue –

Fees were paid on and before April 16, 2002. City approval deeming the roads construction did not violate subdivision was not given until May 24, 2002. The city did not review or ask for a performance guarantee reflecting an additional streetlight until our permit expired. The city was given a performance guarantee on April 16, 2002 for an amount approved by Public Works. The city did not review the guarantee or request an

# Diversified Properties, Inc.

*P.O. Box 10127, Portland, ME 04104  
Tel 207-773-4988 • Fax 207-773-6875*

amendment until May 24, 2002. The expiration of the Public Works permits resulted from the city's untimely review of the guarantee, subdivision determination and change of amount. Again, we request the city refund the cost of the lost permits.

Penny, we do not feel a refund of the above is unreasonable. If the city still disagrees, I purpose we utilize binding arbitration to resolve this matter.

I look forward to hearing from you.

August 5, 2002

Terry N. Snow, Esquire  
Terry N. Snow, PA  
PO Box 275  
Cumberland Center ME 04021-0275

RE: Fees

Dear Terry:

I am responding to your client's letter to the City, dated July 17, 2002 (see enclosed), in which he articulates his belief that the City owes him a refund on money paid for various inspections, application fees, etc. Please be advised that I have contacted all relevant departments and conclude that no refund is owing to Diversified Properties. Below I will summarize the reasons for this conclusion.

- 1) Pennell Ave – The \$88.32 inspection fee originally paid with the first performance guarantee submission was applied toward new application 2001-0277 (128 Pennell Ave). No refund is due.
- 2) Pennell Ave 14-403 – The cost for an application to build on a 14-403 street is \$400.00 plus \$25.00 per house lot. You had applied for two house lots on the 14-403 section of Pennell. No refund is due.
- 3) Barclay Ave – The City did not delay your construction project. The City was waiting for a performance guarantee that reflected an additional light and the correct amount to cover the required improvements. The responsibility to get a corrected guarantee to the City was yours. No refund is due.

Because I was unsure whether to respond to Mr. Wolf directly about this matter I am writing to you in response.

Sincerely,

Penny Littell  
Associate Corporation Counsel

Cc: Mark Adelson

Jay Reynolds

DIVERSIFIED PROPERTIES, INC.  
 P.O. BOX 10127  
 PORTLAND, MAINE 04104

DATE	INVOICE	AMOUNT
	Pennell Ave	

52-7445  
2112

2995

PAY Forty four hundred sixteen dollars DOLLARS

CHECK  
AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.	AMOUNT
11/2/01	City of Portland	escrow	2995	\$ 4,416

Peoples Heritage Bank  
 PEOPLES HERITAGE BANK  
 PORTLAND, MAINE

⑈002995⑈ ⑆211274450⑆ 0290 00669⑈

SECURITY FEATURES: MICRO PRINT BORDERS - COLORED BRICK PATTERN - WATERMARK & CARBON STRIP ON REVERSE SIDE - MISSING FEATURE INDICATES A COPY

DIVERSIFIED PROPERTIES, INC.  
 P.O. BOX 10127  
 PORTLAND, MAINE 04104

DATE	INVOICE	AMOUNT

52-7445  
2112

2996

PAY Eighty eight dollars And  $\frac{32}{100}$  DOLLARS

CHECK  
AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.	AMOUNT
11/2/01	City of Portland	Pennell insp. fee	2996	\$ 88.32

Peoples Heritage Bank  
 PEOPLES HERITAGE BANK  
 PORTLAND, MAINE

⑈002996⑈ ⑆211274450⑆ 0290 00669⑈

SECURITY FEATURES: MICRO PRINT BORDERS - COLORED BRICK PATTERN - WATERMARK & CARBON STRIP ON REVERSE SIDE - MISSING FEATURE INDICATES A COPY

Send by TRAX  
11/2/01



CITY OF PORTLAND, MAINE  
KEEP THIS EARNINGS STATEMENT

150571

Pennell Ave.

Invoice Date	Vendor no.	Department no.	Purchase Order	Invoice	Gross amount	Discount/Credit	Net Amount
03-29-2002				NI 03/28/02	****4,416.00		****4,416.00
	3590	DIVERSIFIED PROPERTIES, I			\$*****4,416.00		\$*****4,416.00

DIVERSIFIED PROPERTIES, INC.  
PO BOX 10127  
PORTLAND ME 04104

DO NOT ACCEPT THIS CHECK UNLESS YOU CAN SEE A DUAL-TONE TRUE WATERMARK THAT APPEARS AS CONNECTING PENTAGONS WHEN HELD TO THE LIGHT AND "SAFE" APPEARS WHEN VIEWED AT AN ANGLE.

**CITY OF PORTLAND**  
PORTLAND, MAINE

52-7445  
2112

150571

VOID IF NOT PRESENTED  
NINETY DAYS FROM DATE

TO THE ORDER OF:

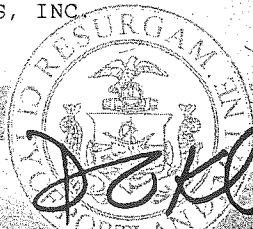
DATE

04-02-2002

DIVERSIFIED PROPERTIES, INC  
PO BOX 10127  
PORTLAND ME 04104

**PAY EXACTLY**

\$\*\*\*\*\*4,416.00



AUTHORIZED SIGNATURE  
REGULAR ACCOUNT

FACSIMILE SIGNATURE NOT AUTHORIZED  
OVER FIVE THOUSAND DOLLARS

PEOPLES HERITAGE BANK  
PORTLAND, MAINE

⑈ 1 5 0 5 7 1 ⑈ ⑈ 2 1 1 2 7 1 1 5 0 ⑈ ⑈ 3 9 1 5 2 0 9 2 ⑈

Finance Department



Duane G. Kline  
Director

**CITY OF PORTLAND**

March 28, 2002

Diversified Properties, Inc.  
P.O. Box 10127  
Portland, ME 04104

Re: Escrow Account #710-0000-233-36-00  
Road Extension at 128 Pennell Avenue

As the Planning Department has authorized the release of the above-named performance guarantee, enclosed please find a check in the amount of \$4,416. The balance of your account is now \$0.

If you require any further information, please let me know.

Sincerely,

Duane G. Kline  
Finance Director

DGK,jlb

pc: Jay Reynolds, Development Review Coordinator

DIVERSIFIED PROPERTIES, INC.  
P.O. BOX 10127  
PORTLAND, MAINE 04104

DATE	INVOICE	AMOUNT

52-7445  
2112

2996

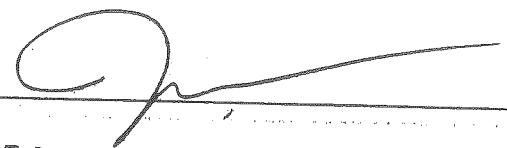
PAY Eighty eight dollars And  $\frac{32}{100}$  DOLLARS

CHECK  
AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	CHECK NO.
11/2/01	City of Portland	Permit insp. fee	2996

\$ 88.32

Peoples Heritage Bank  
PEOPLES HERITAGE BANK  
PORTLAND, MAINE



⑈002996⑈ ⑆211274450⑆ 0290 00669⑈ ⑆0000008832⑈

SECURITY FEATURES: MICRO PRINT BORDERS - COLORED BRICK PATTERN - WATERMARK & CARBON STRIP ON REVERSE SIDE - MISSING FEATURE INDICATES A COPY

ENDORSE HERE

FOR DEPOSIT ONLY  
CITY OF PORTLAND  
PEOPLES HERITAGE BANK  
PLANNING DEPARTMENT



311400729 110601 13 0029152692  
311400729 110601 13 0029152692

FOR DEPOSIT ONLY  
CITY OF PORTLAND  
PEOPLES HERITAGE BANK  
PLANNING DEPARTMENT

Cancelled check for inspection fees  
paid when 4,416 escrow was given

DIVERSIFIED PROPERTIES, INC.  
P.O. BOX 10127  
PORTLAND, MAINE 04104

DATE	INVOICE	AMOUNT

52-7445  
2112

3014

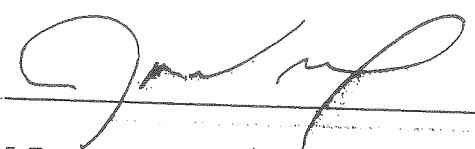
PAY

CHECK  
AMOUNT

DATE	TO THE ORDER OF	DESCRIPTION	DOLLARS	CHECK NO.
202582	City of Portland	Pennell		

\$ 880.-

Peoples Heritage Bank  
PEOPLES HERITAGE BANK  
PORTLAND, MAINE



⑈003014⑈ ⑆211274450⑆ 0290 00669⑈ ⑆0000088000⑆

SECURITY FEATURES: MICRO PRINT BORDERS · COLORED BRICK PATTERN · WATERMARK & CARBON STRIP ON REVERSE SIDE · MISSING FEATURE INDICATES A COPY

Bank check

2112-74450  
PEOPLES HERITAGE BANK  
FEB 25 2002  
OPERATIONS  
LEWISTON, MAINE  
TELLER 0294 19

PEOPLES HERITAGE >211274450<

Cancelled check for fees paid  
w/ 44,000 bond



ALLMERICA FINANCIAL\* 100 North Parkway  
HANOVER INSURANCE Worcester MA 01605

Portland Subdivision Bond

The Hanover Insurance Company

Massachusetts Bay Insurance Company

Bond No. BCP 1705668

KNOW ALL MEN BY THESE PRESENTS, That we A. H. Grover Inc., as Principal, and The Hanover Insurance Company, a corporation organized under the laws of the State of New Hampshire and duly authorized to transact business in the State of Maine, as Surety, are held and firmly bound unto

THE CITY OF PORTLAND MAINE

As obligee, in the sum of Forty Four Thousand Dollars and 00/100 Dollars (\$ 44,000) for the payment whereof well and truly made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, in conjunction with the development of Pennell Avenue Extention - (110 feet Full Depth Road Construction), Principal shall make, and ensure the fulfillment of, all road improvements required by Section 14-499 as well as requirements of Article III of Chapter 25 of the City or Portland Land Use Code.

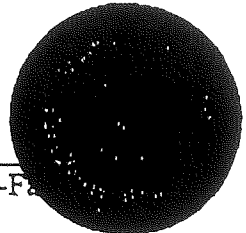
NOW, THEREFORE, the condition of the foregoing obligation is such that if the Principal shall indemnify the Obligee for all loss that the obligee may sustain by reason of the Principal's failure to fulfill all improvements as required by Section 14-499 and Article III of Chapter 25 of the City of Portland Land Use code, Then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this 22nd day of February, 2002.

By: Benjamin C. Grover  
Benjamin C. Grover, Vice President  
A. H. Grover, Inc.

The Hanover Insurance Company

By: Quentin C. McConnell  
Quentin C. McConnell, Attorney-in-Fa



**A.H. Grover Internet**

---

**From:** Katherine Earley <KAS@ci.portland.me.us>  
**To:** <TNSnowlaw@aol.com>; <groverex@quixnet.net>  
**Cc:** <JAYJR@ci.portland.me.us>; <PL@ci.portland.me.us>; <SH@ci.portland.me.us>  
**Sent:** Friday, February 15, 2002 2:20 PM  
**Subject:** Pennell Ave. performance bond

I understand thru speaking with Ben Grover today that he will be addressing the bond and review / inspection fee. He correctly pointed out that a \$4000 bond still exists for the first fifteen (15) feet of extended road. After speaking with Jay Reynolds on the matter, here's the process that will work most smoothly.

Once the \$44,000 bond is in place the City will immediately release the entire \$4000 bond. Then the bond in place will reflect the entire length of street extension yet to be approved and surface paved. Once the City approves the street the entire performance bond can be reduced to the 10% defect bond.

Since no fee was collected when the \$4000 bond was put in place the entire \$880 review / inspection fee is due now.

And just to clarify, I have accepted Tony Lombardo's mid-october 2001 e-mail to Diversified Properties as Department of Public Works approval of the planned 14-403 road construction. Therefore no additional 14-403 right-of-way plan review is necessary. Let me know if you have questions.

Kathi Earley

A Fee was collected. See canceled check

**James Wolf**

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**From:** "Mike Nugent " <MJN@ci.portland.me.us>  
**To:** <MBA@ci.portland.me.us>; <jmw1@maine.rr.com>  
**Cc:** <AQJ@ci.portland.me.us>; <AWL@ci.portland.me.us>; <JAYJR@ci.portland.me.us>; <MES@ci.portland.me.us>; <PL@ci.portland.me.us>; <SH@ci.portland.me.us>  
**Sent:** Friday, December 14, 2001 1:51 PM  
**Subject:** Re: Fw: Pennell Avenue

Jodine & I have discussed the procedural end. She's going to review the ordinance and have Michele add a category to Urban Insight. sounds like a plan!

>>> Mark Adelson 12/14 12:48 PM >>>

This is how the City will handle it. Sometime next week there will be an application process in place for you to drop off your plan for Pennell St.-It is called the 14.403 Multi-lot Review. You will make application to the Inspections Office and submit plans similar to the subdivision requirements (9 copies, survey, road profiles, etc), and pay a fee of \$400 plus \$25 for every lot (currently in the code). First, the staff will review the plan determine if it is a 14.403 or a subdivision. If it is determined that it is a 14.403 plan than the review will proceed administratively. If it is a subdivision, we will given you the option of withdrawing the plan, or paying the additional fee and proceeding with the Subdivision process to the Planning Board. Once the 14.403 is approved, you will submit the performance guarantee for the road. The approved 14.403 review will be similar to the subdivision, where you can receive your C of O's prior to completing the street, with the performacen guarantee in place. More information will be forthcoming.

Have a nice weekend. Mark A.

>>> "James Wolf" <jmw1@maine.rr.com> 12/14 11:11 AM >>>

Mark.....I will stay out of this email response chain until I hear from you. Thinking things through would it resolve the multiple lot issue on a road if a minimum of two permits were initially applied for? That would show that more than a single house was being built. Would we than be able to get occupancy permits on that particular 14-403 road with base pavement down. I'll wait to hear from you.

Thank you for the help.

Jim

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

**From:** "Marge Schmuckal" <MES@ci.portland.me.us>  
**To:** <AWL@ci.portland.me.us>; <JAYJR@ci.portland.me.us>; <MJN@ci.portland.me.us>; <jmw1@maine.rr.com>  
**Cc:** <MBA@ci.portland.me.us>; <PL@ci.portland.me.us>; <SH@ci.portland.me.us>  
**Sent:** Friday, December 14, 2001 8:56 AM  
**Subject:** Re: Pennell Avenue

Yes, that is my recollection of the meeting too. I believe that is one of the conditions that I put on the permit also. It still stands.

Marge

>>> Jay Reynolds 12/14 8:46 AM >>>

We had a meeting on this, which included attorney's from both sides. The final outcome, as I recall, and after referring to Penny Littell, is that "no occupancy permit (temporary or permanent) shall be issued unless and until said street has been completed to City standards."

Marge conditioned a Haskell street 14-403 building permit this way, and Pennell falls under the same guidelines.

Nothing has changed since this meeting.

Jim, can you pass this information along?

Jay

>>> Mike Nugent 12/13 10:53 AM >>>

Jay, Glen Gervais is interested in getting the answer to the C/O question before he commences construction.

>>> Anthony Lombardo 12/13 10:00 AM >>>

This does include a portion of the frontage for the Diversified Properties parcel. However, since I don't issue C of O's I can't respond to your second question.

>>> Mike Nugent 12/13 8:50 AM >>>

Does this include the area that is considered the "paper" portion that provides frontage for the James Wolf Lot, and also will we be able to give a C/O to Custom Built homes before the final coat of pavement is there?

>>> Anthony Lombardo 12/13 8:19 AM >>>

~~Pennell Ave.~~, the section of roadway included in the CIP contract with A.H. Grover, has been completed to satisfaction for this construction season. It was discussed and agreed by both Grover and myself, as representative for Public Works, that this section of the roadway be reconstructed and **only surfaced with binder pavement**. This section of the street consisted of extremely saturated soils and Public Works would prefer that it be allowed to experience one season of freeze/thaw. As a result, Grover will return in 2002 to finish pave the street.

>>> "James Wolf" <[jmw1@maine.rr.com](mailto:jmw1@maine.rr.com)> 12/11 10:42 AM >>>

Tony

AH Grover has informed me that Pennell Avenue construction is "complete." Jay has asked that you confirm this for he and Mike. Thank you.

Jim

James Wolf  
Diversified Properties, Inc  
1-207-773-4988



**James Wolf**

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**From:** "James Wolf" <jmw1@maine.rr.com>  
**To:** "Penny Littell" <PL@ci.portland.me.us>  
**Sent:** Thursday, April 18, 2002 11:34 AM  
**Subject:** Barclay Avenue Letter of Credit

Penny

Peoples Heritage has inquired about the letter of credit they issued and if any further changes are necessary. Would it be possible to obtain comments today so they can either close their file or make the changes necessary? I apologize for pushing, however, they do not like having these letters floating around for obvious reasons.

Thank you for your help. In Terry's absence please feel free to contact me if I can answer any questions or be of any help. If I am not in the office I can be reached at 831-4988.

Jim  
James Wolf  
Diversified Properties, Inc  
1-207-773-4988  
Fax 1-207-773-6875

8/26/02

Rev.	Date	Revision
-	-	-

Design:	DER	Date:	FEB 2002
Draft:	GJL	Job No.:	425
Checked:		Scale:	1"=20'
File Name: 425-Concept-grade.dwg			

**GP**  
Gorrill-Palmer Consulting Engineers, Inc.  
Traffic and Civil Engineering Services

PO Box 1237  
26 Main Street  
Gray, ME 04039  
207-657-6910  
FAX: 207-657-6912  
E-Mail: gpcel@maine.rr.com

Drawing Name: **Concept Grading Lot 3, 4 & 5**  
Project: **Pennell Ave. - Portland, Maine**

Figure No. **1**

