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Greg Mitchell - Acting Director of Planning and Urban Development

Marge Schmuckal, Zoning Administrator

March 13, 2012

Benchmark Residential & Investment Real Estate
100 Congress Street
Portland, Maine 04101
Attn: Tom Landry

RE: 417 Auburn Street, 12 Kenneth Street, 22 Kenneth Street – 382-A-5, 6, 7, 8, 9
R-3 Zone

Dear Mr. Landry,

I am in receipt of your request to determine whether the properties located at 417 Auburn Street, 12 Kenneth Street and 22 Kenneth Street are exempt from the City of Portland's subdivision regulations.

My determination is based upon an April, 1933 plan labeled, "Plan of Property in Portland, Maine made for Deering Loan & Building Association" prepared by E.C. Jordan & Company, civil engineers. This plan was accepted on June 5, 1933 by the municipal officers of the City of Portland who certified their approval of the plan as required by sec. 1 and 2 of chapter 161 of the public laws of the State of Maine 1929. This same plan was also recorded at the Cumberland County Registry of Deeds on June 9, 1933 in plan book 21 page 37. My determination is also based upon a hand drawn outline on the above-referenced 1933 plan outlining the intended sale and division of land.

Maine law specifies that the subdivision requirements do not apply to "previously existing subdivisions." See 30-A M.R.S.A. section 4402. Similarly, section 14-508 of the City Code provides that, "[t]his article does not apply to subdivisions approved prior to June 6, 1979, nor to subdivisions that have been legally recorded in the Registry of Deeds prior to June 6, 1979." The Law Court has held that "[w]here land had been divided into lots and lots have been surveyed, marked and numbered before September 23, 1971, [the] subdivision was [therefore] in existence on September 23, 1971, and thus not subject to municipal subdivision law which was not applicable to subdivisions in actual existence on September 23, 1971." Brennan v. R.D Realty Corp., 349 A. 2d 201 (Me 1975).

Therefore, based on the facts and evidence presented to me thus far, the property at 417 Auburn Street, 12 Kenneth Street and 22 Kenneth Street is not subject to subdivision review at this time.

Please note that there are other reviews and requirements that must be met prior to development on any of the vacant lots.

You have the right to appeal my decision concerning this matter. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. See City Code section 14-472. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal. If you have any questions regarding this matter, please do not hesitate to contact me at 874-8695.

Very truly yours,

A handwritten signature in black ink that reads "Marge Schmuckal". The signature is written in a cursive style with a large, sweeping initial "M".

Marge Schmuckal
Zoning Administrator

Cc: Danielle West-Chuta, Corporation Counsel
Barbara Barhydt, Development Review Services Manager