

**ADDENDUM TO FEBRUARY 8, 2011
CITY COUNCIL AGENDA PACKET**

**INDEX OF
BIRDSEYE MIXED USE OVERLAY DISTRICT (BMOD)
ZONING AMENDMENT PROPOSAL: 06/03/2010**

- 1) June 3, 2010 Proponents proposed BMOD Zoning Amendment
- 2) June 16, 2010 Planning & Development (P&D) minutes
- 3) July 15, 2010 Joint P&D/Planning Board (PB) minutes
- 4) October 8, 2010 PB Recommendations to the City Council
- 5) October 14, 2010 P&D minutes
- 6) November 17, 2010 P&D minutes
- 7) December 6, 2010 P&D minutes

Note: Copies of the above compilation of documents may be found on the City Website as an addendum of the February 8, 2011 City Council packet.

Dated: February 4, 2011

BLATMAN, BOBROWSKI & MEAD, LLC

Attorneys At Law

30 Green Street • Newburyport, Massachusetts 01950

Phone (978) 463 7700

Fax (978) 463 7747

10 JUN -3 AM 10:05
CITY CLERK
GLOUCESTER, MA

TO: President Hardy and Members of the City Council
FR: Lisa L. Mead, Esq. on behalf of 1907 LLC and Pavilion Mercato LLC
RE: BirdsEye Mixed Use Overlay District ("BMOD") Zoning Amendment Proposal
DA: June 2, 2010

Reference is made to the above captioned matter and the attached proposed zoning amendment. In that connection, on behalf of the property owners of 33 and 55 Commercial Street, and pursuant to G.L. c. 40A §5 and section 1.11.2 of the City of Gloucester Zoning Ordinance I have attached a proposed amendment to the city's zoning ordinance. The property owners request that you refer this to the Planning Board for the prescribed hearing process.

In an effort to help to provide an overview of the proposed zoning I have set forth below an outline of same. Additionally, I have attached for your information a schematic map of the area of the BMOD as well as a narrative prepared by the project architect, Richard Griffin. It is the hope of the BirdsEye Project team that these documents provide a better understanding of the vision for the property and the practical application of the proposed zoning amendment.

After over a year of working with the public through various public meetings and working groups, we look forward to participating in the hearing process and working with the City to realize the potential of the BirdsEye Project and the City of Gloucester.

**BIRDSEYE MIXED-USE OVERLAY DISTRICT (BMOD)
SUMMARY OF ZONING PROPOSAL**

Procedures for Reviews/Approvals

Step One: Submittal and approval of a "PUD Master Plan." Such Plan must show the area of land proposed to be developed as a PUD and identify the uses therein and whether those uses require "PUD Special Permits." Following notice and a public hearing, the City Council shall approve a "PUD Master Plan" if consistent with the purposes of the BMOD, the uses within the PUD are compatible and the dimensional, parking and loading requirements and design standards of the BMOD are satisfied.

Step Two: Issuance of a "PUD Special Permit" for any use requiring the same. Again, the Council must provide notice and hold a public hearing on a request for a "PUD Special Permit." Such a Permit shall be granted if the desired use promotes a mix of uses within the

PUD, is of economic benefit to the community, provides Live/Work housing, shows consistency of building design, provides adequate parking and/or offers pedestrian connection(s) to other PUD uses, or a combination thereof. A "PUD Special Permit" may be applied for simultaneously with a request for "PUD Master Plan" approval, as per Step One, above, or subsequent to the Council's approval of such Plan. Further, a single, consolidated application may be submitted for multiple "PUD Special Permits" within a PUD, if required.

Step Three: As-of-right uses and those uses granted a "PUD Special Permit" may be developed. To facilitate "Retenancing" of Projects within a PUD, a use permitted by right and approved as part of a PUD Master Plan may be changed to any other use permitted by right within the same "Use Cluster," as described below, without further review or approval. Similarly, a use issued a "PUD Special Permit" may be changed to any use allowed by right or by "PUD Special Permit" within the same "Use Cluster" without further review or approval. Such changes in use, however, are permitted only where the gross square footage is not increased and no exterior changes to the building(s) will occur.

Principal Uses

The following uses are currently allowed **by right** in the underlying zoning, i.e. the Marine Industrial (MI) district:

<u>Uses Allowed By Right</u>
Public, religious or other non-profit school, building or use
Municipal use not elsewhere more specifically covered
Public utility facility exclusively serving a broad area
Animal hospital, animal shelter
Trade school, industrial training center
Agriculture, horticulture, floriculture, greenhouse & gardens on lots larger than 5 acres
Sale of products grown pursuant to the above
Outdoor recreation operated by a governmental agency or authority
Other commercial outdoor recreation activities
Seasonal sale of Christmas trees, wreaths
Office building of more than 2500 square feet but less than 6000 square feet of floor area
Office building of more than 6000 square feet of floor area
Marine related sales or rental
Contractor's yard

Fuel or ice establishment
Retail, consumer service or other non-industrial business use, unless otherwise specified in the Use Tables of the City's Zoning Ordinance
Manufacturing, processing or research
Processing or cooling not conforming to the performance criteria of Section 4.4 of the City's Zoning Ordinance
Bulk storage, warehousing
Parking of motor vehicles to service a use located in the Neighborhood Business (NB) district
Arts, crafts and sale of arts or crafts made on the premises
Noncommercial radio transmission with wire antenna or roof-mounted tower no higher than 10 feet

The following uses are allowed upon the issuance of a "PUD Special Permit" by the City Council:

<u>Uses Allowed by "PUD Special Permit"</u>	
<i>Existing Uses</i>	<i>New Uses</i>
Personal wireless service facility	Marine-Related Educational Facility
Public utility facility exclusively serving the immediate neighborhood	Commercial Recreation, Indoor
Philanthropic institution	Hotel, Motel or Motor Inn, with a maximum floor area of not more than 1/3 of the combined gross floor area of the buildings within the PUD or 125,000 square feet, whichever is greater
Docking and operation of casino ships	
Bank, automatic teller machines	Live/Work Residences, with a maximum floor area of not more than 40,000 gross square feet of floor area within the PUD, five percent (5%) of which shall be designated for low- to moderate-income persons
Restaurant	Conversion to or new multi-family or apartment dwelling, five percent (5%) of which shall be designated for low- to moderate-income persons
Motor vehicle rental	
Marine-related service, storage or repair	Assisted Living Residences, five percent (5%) of which shall be designated for low- to moderate-income persons

Shopping center	Adult Day Care Center
Trailer truck park, freight or transportation terminal facilities	Integrated Medical Center
Storage of toxic or hazardous materials or waste incidental to industrial operations on-site	Agriculture, Limited
Parking of motor vehicles to service a use permitted in the same district	
Temporary structures or temporary uses not conforming to the City's Zoning Ordinance	
Commercial radio transmission	
Noncommercial radio transmission with wire antenna or roof-mounted tower higher than 10 feet	

Accessory Uses

In addition to the accessory uses allowed by the City's Zoning Ordinance, the following, **new accessory** uses are allowed upon the issuance of a "PUD Special Permit" by the City Council:

<u>New Accessory Uses</u>
Structured Parking
Drive-through facility

Use Clusters

As explained above, once a "PUD Master Plan" is approved by the City Council, a use shown thereon and available **by right** may be changed to any other use available by right within the same "Use Cluster," below, without the need for further review or approval. Similarly, once a "PUD Special Permit" is issued for a use shown on the "PUD Master Plan," that use may be changed to (1) any use available by right within the same "Use Cluster," below, or (2) any use requiring a "PUD Special Permit" and within the same "Use Cluster," below, without the need for further review or approval. However, a change in use shall be permitted without further review or approval only where: (a) the gross square footage of the new use is no greater than the gross square footage of the approved use; and (b) the exterior of the building in which the new use is proposed will not change, other than change(s) to exterior signage that will not increase the size of such signage or significantly change its location on the building.

Any change of a use permitted by right and approved as part of a "PUD Master Plan" to a use requiring a PUD Special Permit is required to apply for the same.

The "Use Clusters" are as follows:

EDUCATION AND COMMUNITY SERVICE USE CLUSTER

- Marine-Related Business or Trade School
- Commercial Recreation, Indoor
- Adult Day Care Center
- Integrated Medical Center
- Public, religious or other non-profit school, building or use
- Municipal use
- Club or lodge, non-profit
- Nursery school; day care center
- Trade school; industrial training center
- Philanthropic institution

RESIDENTIAL USE CLUSTER

- Live/Work Residences
- Conversion to or new multi-family or apartment dwelling

RESIDENTIAL-COMMERCIAL USE CLUSTER

- Hotel, Motel or Motor Inn
- Assisted Living Residences
- Boarding house, rooming house, lodging house or hostel

RETAIL USE CLUSTER

- Bank; automatic teller machines
- Restaurant
- Retail, consumer service or other non-industrial business use

SALES AND SERVICE USE CLUSTER

- Motor vehicle sales or rental
- Motor vehicle service, fueling, storage or repair
- Marine-related sales or rental
- Marine-related service, storage or repair
- Building tradesman or contractor
- Contractor's yard
- Stone mason's yard
- Fuel or ice establishment
- Feed or building materials establishment

MARINE USE CLUSTER

- Boat launching, docking or docking structures
- Docking and operation of casino ships

INDUSTRIAL USE CLUSTER

- Manufacturing, processing or research
- Processing or cooling not conforming to the performance criteria of Section 4.4 of this Ordinance
- Bulk storage; warehousing

Dimensional Standards

The dimensional standards for any PUD within the BMOD, as proposed by the applicant therefor, are as follows:

Area of land shown on "PUD Master Plan," Minimum	80,000 sq. ft.
Width of land shown on "PUD Master Plan" (measured perpendicular to its frontage), Minimum	100 ft.
Frontage of land shown on "PUD Master Plan" (over which access is provided), Minimum	100 ft.
Building height, Maximum	125 ft., including tower(s) and roof structure(s) †
Gross floor area of Project, Maximum	For a Hotel, Motel or Motor Inn, not more than 1/3 of the combined gross floor area of the buildings within the PUD or 125,000 square feet, whichever is greater; for Live/Work Residences, not more than 40,000 gross square feet of floor area within the PUD
Building coverage on land shown on "PUD Master Plan," Maximum	100%, subject to compliance with the "Design Criteria" of the BMOD

These standards are to be substituted for the standards otherwise applicable under Section 3.2 of the City's Zoning Ordinance.

† Notwithstanding the 125-foot maximum building height, no more than fifteen percent (15%) of the "Building Area" within a PUD, as further defined in the Ordinance, shall exceed 125 feet in height, no more than fifty-five percent (55%) of the "Building Area" shall

6

exceed 108 feet in height and the remainder of the "Building Area" shall not exceed 40 feet in height. Further, building height is required to be tiered such that lower portions of the building(s) within a PUD are found closest to the boundaries of the land shown on the "PUD Master Plan" and higher portions of the building(s) within a PUD are found toward the interior portions of the site.

Parking

Off-street parking for any project within the BMOD shall comply with the minimum parking requirements of Section 4.1 of the City's Zoning Ordinance, which are as follows:

Dwelling units	1.5 spaces per dwelling unit
Hotels, motels, motor inns, boarding, lodging or tourist homes	1 space per guest unit plus 1 space per 3 employees
Places of assembly	1 space per 100 sq. ft. of floor area
Retail stores, professional offices, educational buildings	1 space per 200 sq. ft. of ground floor area plus 1 space per 400 sq. ft. of above-ground floor area
Industrial establishments	1 space per motor vehicle of the establishment plus 1 space for every 3 employees of the largest shift
Schools, hospitals, sanitarium, nursing homes	1 space for every 3 employees of the largest shift

The BMOD encourages, though it does not specifically require, shared parking – that is, providing fewer parking spaces where the uses within a PUD have significantly different peak parking characteristics that vary by time of day, day of the week and/or season of the year. As a consequence of these differences, parking may be shared by uses with opposite peak parking demands. The BMOD specifically prohibits the business or municipal uses to take advantage of the existing zoning ordinance exception related to nearby public parking areas.

Note that the BMOD allows for combined parking facilities, serving two (2) or more uses, and for parking to be provided on a separate lot from the use(s) it serves provided that such parking is located within a to-be-determined distance from the entrance to the building(s) containing such use(s).

Further, so as to provide an assurance that adequate parking will be available for Project(s) as they are developed; the BMOD requires that parking be phased in a manner consistent with the phasing of the Project of which it is a part.

5.25 BIRDSEYE MIXED-USE OVERLAY DISTRICT

5.25.1 Purpose

It is the purpose of the Birdseye Mixed-Use Overlay District (BMOD) to encourage the best use of properties within its bounds – physically, economically, environmentally and socially. The BMOD is designed to strengthen the area’s existing industrial uses and infrastructure by permitting the development of compatible businesses, a limited number of residences and other supporting uses which typically comprise a healthy urban environment, consistent with the goals of the City’s Community Development Plan, dated August 13, 2001, and its Harbor Plan, dated December 11, 2009. Among the objectives of the BMOD are:

- (a) to facilitate development of the BMOD with a mix of uses including manufacturing, research and development, retail, office, restaurant and “Live/Work” residences;
- (b) to provide more mixed-use investment opportunities, so as to maximize the development potential of the BMOD;
- (c) to stimulate the general economy of the City and that of Gloucester Harbor;
- (d) to promote the historic assets of the BMOD and the natural environment, while improving infrastructure and introducing high quality design and development;
- (e) to create view corridors and public access to the waterfront; and
- (f) to provide a range of housing choices for individuals and households of diverse incomes.

5.25.2 Definitions

For purposes of this Section 5.25, the definitions, below, shall apply, and shall be in addition to those definitions provided in Section 6 of this Ordinance. To the extent that there is a conflict between the definitions below and those in Section 6, the definitions below shall govern.

Adult Day Care Center: A non-residential facility offering social, recreational and health-related services to adult individuals who require general supervision due to health care and social needs, confusion or disability.

Agriculture, Limited: Agriculture, horticulture, floriculture and/or viticulture on a lot of any size, provided that at least fifty percent (50%) of the products produced are sold on-site.

Basement: Any floor of a building of which fifty percent (50%) or more is below grade.

Building Area: The aggregate footprint(s) of the building(s) within a "Planned Unit Development," exclusive of cornices, eaves, gutters, bay windows, unenclosed porches, balconies and terraces.

Commercial Recreation, Indoor: Recreational, social or amusement activities occurring principally indoors, potentially accompanied by the consumption of food and drink as an accessory use, including but not limited to a dance hall, skating rink, bowling alley, interactive children's center or waterpark.

Ground Floor(s): The first floor of a building that is not considered a Basement, and any other floor or floors the lowest point of which is less than ten (10) feet above grade.

Hotel, Motel or Motor Inn, 30 or More Guest Units: A Hotel, Motel or Motor Inn, as defined by this Ordinance but also including any facility offering floating overnight accommodations that docks for short periods of time, with thirty (30) or more guest units, located within a PUD in the BMOD. A Hotel, Motel or Motor Inn shall not exceed 1/3 of the combined gross floor area of the buildings within a PUD or 125,000 square feet, whichever is greater; provided, however, that the area of any facility offering floating overnight accommodations shall not be included in said calculation.

Integrated Medical Center: A health care establishment other than a Hospital, as defined in this Ordinance, principally engaged in providing services for health maintenance and treatment in two (2) or more disciplines, and including medical offices, laboratories or other facilities supporting the health care profession.

Live/Work Residences: A residential component of a "Planned Unit Development," Live/Work Residences offer convenient living quarters to individuals who work within the residence itself, in the same building or Planned Unit Development. Live/Work Residences shall not be located in the Basement or on the Ground Floor(s) of any building(s) and shall not comprise more than 40,000 gross square feet of floor area within a "Planned Unit Development."

Marine-Related Educational Facility: Any facility used for education or instruction in any Marine-Related business or trade.

Planned Unit Development (PUD): The development of an area of land so as to feature a mixture of uses and/or a variety of building types and designs, pursuant to a "PUD Master Plan." A PUD must be well integrated in terms of land and building uses, activities and major design elements. A PUD shall contain a minimum of two (2) uses identified in this Ordinance and/or herein, with at least twenty-five percent (25%) of the gross floor area of the Building Area in the PUD being dedicated to non-residential use(s) excluding any parking structure(s). A PUD may consist of only one (1) building if it satisfies the criteria provided in Section 5.25.8.3 hereof.

Project: A portion of a "Planned Unit Development" identified in a "PUD Master Plan" as a separate element of the development proposal.

PUD Master Plan: A comprehensive plan for an area of land proposed to be developed as a PUD, identifying the use(s) therein and whether said use(s) require(s) a "PUD Special Permit" hereunder. Where a PUD Master Plan is approved hereunder, Site Plan Review as per Section 5.8 of this Ordinance shall not be required.

PUD Special Permit: A special permit issued by the City Council for a Project, in accordance with Section 5.25.9 hereof. Where a PUD Special Permit is applied for hereunder and issued pursuant hereto, Major Project review, as per Section 5.7 of this Ordinance, and Site Plan Review, as per Section 5.8 of this Ordinance, shall not be required, to the extent the same are applicable to the Project.

Reconstruction: The removal of more than 50% of the exterior walls enclosing the "Ground Floor(s)" of an existing structure, including demolition thereof. Reconstruction shall qualify as a new Project for purposes of this Section 5.25.

Renovation: The removal of less than 50% of the exterior walls enclosing the Ground Floor(s) of an existing structure. Renovations shall not qualify as a new Project for purposes of this Section 5.25 and shall not require a new PUD Special Permit nor shall they require a modification to an existing PUD Special Permit.

Retenancing: A change in the use of a Project. Subject to Section 5.25.4.3, a use permitted by right and approved as part of a PUD Master Plan may be changed to any other use permitted by right within the same "Use Cluster" without the need for further review or approval. Also subject to said Section 5.25.4.3, a use issued a PUD Special Permit may be changed to any use allowed by right or by PUD Special Permit within the same "Use Cluster" without the need for further review or approval.

Structured Parking: An accessory structure having one (1) or more tiers of height, designed and used for parking.

Use Cluster: A grouping of related uses permitted in the BMOD either by right or upon the issuance of a PUD Special Permit, as identified in Section 5.25.4.3 hereof.

5.25.3 Overlay District

5.25.3.1 Map

The BMOD is an overlay district having a land area of approximately three (3) acres +/-, being Assessor's Map 1, Lot 33, Map 1, Lot 22, Map 92, Lot 11, as shown on the map entitled "_____," dated _____, 2010, incorporated herein by reference and hereby made a part of the City's official zoning map. A copy of said map is on file with the City Clerk's Office and the Community Development Department.

5.25.3.2 Establishment

The BMOD is an overlay district superimposed on the underlying zoning district(s). Except as limited herein, the underlying zoning shall remain in full force and effect.

5.25.3.3 Applicability

The City Council shall be authorized to grant approval of a PUD Master Plan and, subsequently, to grant PUD Special Permits for Project(s) therein. A PUD shall satisfy the criteria provided in Section 5.25.8.3 hereof, and shall be consistent with the purposes set forth in Section 5.25.1. Upon the issuance of a building permit for any Project approved in accordance with this Section 5.25, the provisions of the underlying zoning shall no longer be applicable to the land shown on the PUD Master Plan which was submitted and approved pursuant to Section 5.25.8.

5.25.4 Uses

5.25.4.1 Uses Allowed By Right

Uses allowed by right in the underlying zoning district(s) pursuant to Section 2.2 of this Ordinance, whether principal or accessory, shall be allowed by right within the BMOD.

5.25.4.2 Uses Authorized by PUD Special Permit

Uses requiring a special permit in the underlying zoning district(s) pursuant to Section 2.2 of this Ordinance shall be authorized upon the issuance of a PUD Special Permit by the City Council, in lieu thereof. In addition, the following, new uses shall be authorized upon the issuance of a PUD Special Permit by the City Council:

- (a) Marine-Related Educational Facility;
- (b) Commercial Recreation, Indoor;
- (c) Hotel, Motel or Motor Inn, subject to the maximum gross floor area provided for in Section 5.25.5 hereof;
- (d) Live/Work Residences, provided the same shall not be located in the Basement or on the Ground Floor(s) of any building(s) and shall be subject to the maximum gross floor area provided for in Section 5.25.5 hereof; †
- (e) Conversion to or new multi-family or apartment dwelling; †
- (f) Assisted Living Residences, as defined in Section 5.14 of this Ordinance but not subject to the provisions of said Section, five percent (5%) of which shall be designated for low- to moderate-income persons as defined by the most recent income guidelines established by the U.S. Department of Housing and Urban Development (HUD);

- (g) Adult Day Care Center;
- (h) Integrated Medical Center; and
- (i) Agriculture, Limited.

In addition to the accessory uses authorized by Section 2.2 of this Ordinance, the following uses shall be permitted as accessory to any use allowed by right or by a PUD Special Permit, upon the issuance of a PUD Special Permit by the City Council for the same:

- (a) Structured Parking; and
- (b) Drive-through facility, as defined in Section 5.17 of this Ordinance but which shall not be subject to the provisions of said Section 5.17.

† Where Live/Work Residences and/or multi-family or apartment dwellings are developed hereunder, five percent (5%) thereof shall be designated for low- to moderate-income persons as defined by the most recent income guidelines established by the U.S. Department of Housing and Urban Development (HUD); provided, however, that all other provisions of Section 5.11 shall apply to said development.

5.25.4.3 Use Clusters

So as to provide reasonable flexibility for allowed uses to change to related uses within a PUD, in part to facilitate Retenancing therein, the following Use Clusters are designated. A use permitted by right and approved as part of a PUD Master Plan may be changed to any other use permitted by right within the same Use Cluster without further review or approval. A use issued a PUD Special Permit may be changed to any use allowed by right or by PUD Special Permit within the same Use Cluster without further review or approval. Notwithstanding the foregoing, a change in use shall be permitted without further review or approval only where:

- (a) the gross square footage of the new use is no greater than the gross square footage of the approved use; and
- (b) the exterior of the building in which the new use is proposed will not change, other than change(s) to exterior signage that will not increase the size of such signage or significantly change its location on the building.

Any change of a use permitted by right to a use requiring a PUD Special Permit shall be subject to Section 5.25.4.2 hereof.

The following Use Clusters are hereby established:

EDUCATION, RECREATION AND COMMUNITY SERVICE USE CLUSTER

- Marine-Related Educational Facility
- Commercial Recreation, Indoor
- Adult Day Care Center
- Integrated Medical Center
- Public, religious or other non-profit school, building or use
- Municipal use
- Club or lodge, non-profit
- Nursery school; day care center
- Trade school; industrial training center
- Philanthropic institution

RESIDENTIAL USE CLUSTER

- Live/Work Residences
- Conversion to or new multi-family or apartment dwelling

RESIDENTIAL-COMMERCIAL USE CLUSTER

- Hotel, Motel or Motor Inn
- Assisted Living Residences
- Boarding house, rooming house, lodging house or hostel

RETAIL USE CLUSTER

- Bank; automatic teller machines
- Restaurant
- Retail, consumer service or other non-industrial business use

SALES AND SERVICE USE CLUSTER

- Motor vehicle sales or rental
- Motor vehicle service, fueling, storage or repair
- Marine-related sales or rental
- Marine-related service, storage or repair
- Building tradesman or contractor
- Contractor's yard
- Stone mason's yard
- Fuel or ice establishment
- Feed or building materials establishment

MARINE USE CLUSTER

- Boat launching, docking or docking structures
- Docking and operation of casino ships

INDUSTRIAL USE CLUSTER

- Manufacturing, processing or research
- Processing or cooling not conforming to the performance criteria of Section 4.4 of this Ordinance
- Bulk storage; warehousing

5.25.4.4 Covenant Required for Residential Uses

Where Live/Work Residences and/or Dwellings, Multi-Family or Apartment, are permitted in the BMOD, the occupants of the same, by accepting occupancy therein, acknowledge the industrial nature of the surrounding area and the conditions thereof, including but not limited to noise, dirt, odors, fumes and traffic, to the extent that the same are permitted by law, and shall be required to sign and record a covenant to that effect.

5.25.4.5 Prohibited Uses

Any use not specifically allowed by right or permitted upon the issuance of a PUD Special Permit within the BMOD, unless developed pursuant to the underlying zoning, is prohibited.

5.25.5 Dimensional Requirements

5.25.5.1 Dimensional Table

No new PUD shall be built nor shall any Reconstruction or Renovation occur to any Project therein, whether allowed by right or approved by PUD Special Permit, except in conformance with the following dimensional standards:

Area of land shown on PUD Master Plan, Minimum	80,000 sq. ft.
Width of land shown on PUD Master Plan (measured perpendicular to its frontage), Minimum	100 ft.
Frontage of land shown on PUD Master Plan (over which access is provided), Minimum	100 ft.
Building height, Maximum	125 ft., including tower(s) and roof structure(s) †

Gross floor area of Project, Maximum	For a Hotel, Motel or Motor Inn, not more than 1/3 of the combined gross floor area of the buildings within the PUD or 125,000 square feet, whichever is greater; for Live/Work Residences, not more than 40,000 gross square feet of floor area within the PUD
Building coverage on land shown on PUD Master Plan, Maximum	100%, provided the PUD and the Project(s) therein comply with Section 5.25.7 hereof

The aforesaid dimensional standards shall be substituted for the standards otherwise applicable under Section 3.2 of this Ordinance. Notwithstanding the foregoing, the height of any Commercial Land-Based Wind Energy Conversion Facility shall be governed by the dimensional requirements provided in Section 5.22.6 of this Ordinance.

‡ See Sections 5.25.5.2 and 5.25.5.3, below.

5.25.5.2 Building Height, Percentages

Notwithstanding the maximum building height provided in Section 5.25.5.1, no more than fifteen percent (15%) of the Building Area within a PUD shall exceed 125 feet in height, no more than fifty-five percent (55%) of the Building Area within a PUD shall exceed 108 feet in height and the remainder of the Building Area shall not exceed 40 feet in height.

5.25.5.3 Building Height, Tiered

Building height shall be tiered such that lower portions of the building(s) within a PUD are found closest to the boundaries of the land shown on the PUD Master Plan and higher portions of the building(s) within a PUD are found toward the interior portions of the site.

5.25.6 **Off-Street Parking and Loading Requirements**

5.25.6.1 Off-Street Parking Requirements

Any new Project or Reconstruction or Renovation of an existing Project within a PUD shall comply with the minimum parking requirements of Section 4.1 of this Ordinance, except as provided in Section 5.25.6.4 hereof. However, Section 4.1.1(c) shall not apply to business or municipal uses within a PUD. Required parking need only be provided within 400 feet of the entrance to the building(s) being served, even if located on a separate lot.

5.25.6.2 Off-Street Loading Requirements

Any new Project or Reconstruction or Renovation of an existing Project within a PUD shall comply with the minimum loading requirements of Section 4.2 of this Ordinance.

5.25.6.3 Combined Facilities

Where feasible, parking required for two (2) or more buildings or uses shall be provided in combined facilities on the same or adjacent lot(s).

5.25.6.4 Shared Parking

Shared parking may be appropriate and is encouraged where the uses within a PUD have different parking demand patterns and, as such, are able to use the same parking facility or facilities. Shared parking is most effective when said uses have significantly different peak parking characteristics that vary by time of day, day of the week and/or season of the year. In these scenarios, shared parking will yield fewer total parking spaces needed as compared to the number of parking spaces required for each use combined, reducing the area devoted to parking while providing the necessary number of spaces. When feasible, a shared parking analysis should be performed based on the uses being proposed within a PUD and, if the benefits of shared parking are significant, the same should be incorporated into the PUD. Shared parking shall be permitted by the City Council upon approval of a PUD Master Plan in lieu of application for and receipt of a special permit pursuant to Section 4.1.2 of this Ordinance.

5.25.6.5 Phasing

So as to provide an assurance that adequate parking will be available for Project(s) as they are developed, parking shall be phased in a manner consistent with the phasing of the Project of which it is a part, where applicable. Alternatively, upon approval by the City Council, temporary parking may be provided for phase(s) of a Project while permanent parking facilities are under construction.

5.25.7 **Design Criteria**

5.25.7.1 Buildings

Building(s) within a PUD shall be appropriately sited on the property in relation to each other and building(s) located on adjacent properties. To the extent feasible, a PUD shall:

- (a) preserve the historic character of existing building(s) or recreate historic elements thereof, including the Birdseye Tower located within the BMOD;
- (b) be in harmony with the character of the existing neighborhood, through selection of appropriate building materials, choice of styles and colors and overall design of building(s);

- (c) vertically-integrate uses, taking advantage of waterfront views by designing building(s) or portions thereof at varying heights;
- (d) maintain or establish multiple view corridors to the waterfront, and provide public access ways thereto;
- (e) provide windows, of an appropriate size and number, on the Ground Floor(s) of building(s) where retail uses are proposed, so as to create visual interest in and access to such uses as well as provide additional view corridors to the ocean; and
- (f) locate equipment and service areas away from the public view.

5.25.7.2 Parking Areas

The design and layout of off-street parking facilities shall be as required by Section 4.1.4 of this Ordinance; provided, however, that use(s) within a PUD will satisfy the parking requirements of Section 5.25.6 hereof if sufficient parking is provided within 400 feet of the entrance to the building(s) being served, even if located on a separate lot. Where a structured parking facility is proposed, adequate access shall be provided between such facility and the use(s) within the PUD which it is intended to serve. Parking areas shall not be gated or access thereto unreasonably restricted, but shall be available for use by the general public, either for remuneration or otherwise.

5.25.7.3 Landscaping

A PUD shall be appropriately landscaped in light of the use(s) being proposed therein. All equipment and service areas, loading docks and parking areas shall be adequately screened from the public view, using any or a combination of: natural vegetation (e.g. shrub(s) and/or tree(s) of a proper width and height); wall(s); and/or fence(s).

5.25.7.4 Open Space

Contiguous open space, whether useable or unusable, shall be provided within a PUD to the greatest extent possible.

5.25.7.5 Pedestrian Connections

Continuous pedestrian connections are required between all major points of pedestrian activity within a PUD, including but not limited to connections between non-residential uses and Live/Work Residences, between streets, ways and parking area(s) and the use(s) within the PUD and between said streets, ways, parking area(s) and use(s) and the waterfront.

5.25.7.6 View Corridors

Any PUD within the BMOD shall provide multiple view corridor(s) between Commercial Street and Gloucester Harbor.

5.25.7.7 Beach Access

Adequate access shall be provided year-round between a PUD and the waterfront, and the same shall be a condition of approval of a PUD Master Plan.

5.25.8 **PUD Master Plan**

5.25.8.1 Submittal

A PUD requires a two-stage review: (1) submittal of a PUD Master Plan, a comprehensive plan for the area of land proposed to be developed as a PUD and identifying the use(s) therein and whether said use(s) require(s) a PUD Special Permit hereunder; and (2) application for PUD Special Permit(s), if and as required by Section 5.25.4.2 hereof.

5.25.8.2 Contents

In addition to identifying land use(s) and whether the same require(s) PUD Special Permit(s) hereunder, a PUD Master Plan shall include or be accompanied by the following information:

- (a) the dimensions and area(s) of the lot(s) within the PUD, including the boundaries of all existing and proposed lot(s) within and immediately adjacent to the PUD, with their approximate areas and dimensions;
- (b) the dimensions and square footages of all existing and proposed building(s) and other significant structure(s) and parking area(s) within the PUD and on lot(s) immediately adjacent to the PUD;
- (c) identification of the natural features of the site, including topography, wetlands, floodplains and other relevant features;
- (d) identification of major landscaping elements, including screening where required by Section 5.25.7.3 hereof or otherwise appropriate;
- (e) designated open space area(s), as required by Section 5.25.6.4 hereof;
- (f) proposed pedestrian connections, view corridors and means of year-round beach access, as required by Sections 5.25.7.5, 5.25.7.6 and 5.25.7.7 hereof, respectively;
- (g) a utilities plan for the site;
- (h) a stormwater management plan for the site; and
- (i) any other supportive information that may be beneficial to the City Council's evaluation of the PUD Master Plan.

The City Council may reduce the level of information required in connection with the submittal of a PUD Master Plan, provided detailed, supportive documentation is provided with request(s) for PUD Special Permit(s) for one (1) or more Projects within the PUD.

5.25.8.3 Review of PUD Master Plan

The City Council shall review a PUD Master Plan submitted in accordance with this Section 5.25.8 and find that the following requirements are satisfied:

- (a) the request for approval of the PUD Master Plan is complete, in that the information required by this Section 5.25.8 is included therewith;
- (b) the PUD is consistent with the purposes and objectives of the BMOD, as provided in Section 5.25.1;
- (c) the use(s) proposed for the PUD consist of compatible business and supporting uses which typically comprise a healthy urban environment;
- (d) the dimensional and off-street parking and loading requirements of Sections 5.25.5 and 5.25.6, respectively, are satisfied; and
- (e) the PUD is designed in a manner consistent with the criteria set forth in Section 5.25.7 hereof.

Review of a PUD Master Plan shall comply with the procedural provisions of Section 1.5 of this Ordinance as applicable to special permits, including the requirements of notice and a public hearing and the deadlines for the same and for issuance of a decision thereon.

5.25.8.3 Effect of Approval

Approval of a PUD Master Plan by the City Council is deemed an approval of said plan with the specific types of uses shown, the dimensions, parking, loading and design details noted and the infrastructure systems represented thereon and in any and all supporting documentation provided. Such shall not be construed as authorization for the development of any Project requiring a PUD Special Permit.

5.25.8.4 Concurrent Applications

Notwithstanding the foregoing, an applicant for PUD Master Plan approval may submit, together with said PUD Master Plan and the additional information required by Section 5.25.8.2 hereof, request(s) for PUD Special Permit(s) for any Project within the PUD requiring the same. Subject to the procedural and substantive requirements of Section 5.25.9 hereof, the City Council shall review such PUD Special Permit application(s) concurrently with its review of the PUD Master Plan.

5.25.9 PUD Special Permit

5.25.9.1 Relationship to the PUD Master Plan

Where a PUD Special Permit is required for a Project in accordance with Section 5.25.4.2 hereof, application therefor shall be submitted concurrently with or within fifteen (15) years following the date of approval of a PUD Master Plan, as per Section 5.25.8 hereof.

5.25.9.2 Consolidated Applications

Where multiple PUD Special Permits are required for the development of a PUD hereunder, an applicant may, at its option, submit a single, consolidated application identifying the PUD Special Permits being applied for and, for each, submitting a plan in accordance with Section 5.25.9.3 and addressing the review criteria provided for in Section 5.25.9.4.

5.25.9.3 Contents

An application for a PUD Special Permit shall include a plan with the information required by Section 1.5.3(c) of this Ordinance, being the submittal requirements for "CCS" Special Permits.

5.25.9.4 Review of Applications

A PUD Special Permit shall be granted only upon findings by the City Council: (i) that the proposed Project is substantially consistent with the approved PUD Master Plan or, where a PUD Special Permit application is submitted concurrently with the PUD Master Plan, with said Plan as submitted; and (ii) that the use will be in harmony with the general purpose and intent of this Ordinance and that it will not adversely affect the neighborhood, the zoning district or the City to such an extent as to outweigh the beneficial effects of said use, upon consideration of the factors set forth in Section 1.8.3 of this Ordinance. Further, the City Council shall consider whether, and the extent to which, the PUD Special Permit application promotes the following objectives:

- (a) a mix of appropriate residential and/or nonresidential uses, as per the PUD Master Plan;
- (b) economic benefit(s) to the community or the City of Gloucester as a whole, including the creation of employment opportunities;
- (c) the need for Live/Work housing in the BMOD;
- (d) building design consistent with the criteria provided in Section 5.25.7.1 hereof;
- (e) adequate parking, utilizing shared parking where appropriate; and

- (f) pedestrian connections to other uses(s) within the PUD, including to parking area(s).

Review of an application for a PUD Special Permit shall comply with the procedural provisions of Section 1.5 of this Ordinance as applicable to special permits, including the requirements of notice and a public hearing and the deadlines for the same and for issuance of a decision thereon.

APPLICATION FOR REZONING

App. No. 2010-03
Date 6/3/2010

TO THE CITY COUNCIL OF THE CITY OF GLOUCESTER, MASSACHUSETTS:

I (We), the undersigned, do hereby respectfully make application and petition the City Council to amend the Zoning Ordinance of the City of Gloucester as herewith requested, and in support of this application of the following facts are submitted:

1. The Property sought to be rezoned is located at:

Street: 33 Commercial Street and 47 Commercial St

On the _____ side of the street, known as lot number Map 1 Lots 33 and 22

It has a depth of _____ and Frontage of _____

2. Present Zoning Classification MI

3. Proposed Zoning Classification Add an Overlay District - Birdseye Mixed Use Overlay District

4. The following are all of the individuals, firms, or corporations owning property adjacent to both sides and rear, and the property in front of (across the street from) the property to be rezoned:

NAME	STREET	CITY OR TOWN
<u>See attached abutters list</u>		

(Please attach extra sheets for more names, if needed)

5. It is proposed that the property will be put to this use:

6. It is proposed to construct the following buildings:

7. Attached is a copy of the required map which shows the property and surrounding area, with all abutters circled.

SIGNATURE AND ADDRESS OF OWNER: [Signature]

33 Commercial St.

Gloucester MA

SIGNATURE OF PETITIONER: [Signature]

22

City of Gloucester, Abutters List

Report Description

Abutters To Parcel... MAP 1 LOTS 22 & 33

Please be aware that the abutters list reflects mailing addresses for the real estate tax bills as requested by the property owners. Mortgage companies, banks and other financial institutions may be receiving the notification and not the homeowner as required. Please be sure you are complying with notification requirements.
Gloucester Board of Assessors

Abutter	Street Address	Parcel No.	Mailing Address
1 1 GLOUCESTER CITY OF	25 FORT SQ	1 1	9 DALE AV GLOUCESTER MA 01930
2 1 2 DOUCETTE VINCIE & THOMAS	29 FORT SQ	1 2	29 FORT SQ GLOUCESTER MA 01930
3 1 3 GLOUCESTER CITY OF	31 FORT SQ	1 3	9 DALE AV GLOUCESTER MA 01930 0000
4 1 11 CURURU ANTHONY TR ET AL	80 COMMERCIAL ST	1 11	C/O SCOLA GRACE 36 PROSPECT ST GLOUCESTER MA 01930
5 1 12 NICASTRO JOHN B TR NICASTRO FA	78 COMMERCIAL ST	1 12	78 COMMERCIAL ST GLOUCESTER MA 01930
6 1 13 FORT POINT LANDING LLC	60 COMMERCIAL ST	1 13	326 A ST BOSTON MA 02210
7 1 14 MY MANAGEMENT GROUP LLC	52 COMMERCIAL ST	1 14	27-29 HARBOR LP GLOUCESTER MA 01930
8 1 15 MY MANAGEMENT GROUP LLC	46 COMMERCIAL ST	1 15	27-29 HARBOR LP GLOUCESTER MA 01930
9 1 16 PALMISANO PASQUALE S. ET AL	29 COMMERCIAL ST	1 16	72 RIVERVIEW RD GLOUCESTER MA 01930
10 1 17 1 BEATON MICHAEL	27 COMMERCIAL ST	1 17 1	27 COMMERCIAL ST UNIT 1 GLOUCESTER MA 01930
11 1 17 2 BEATON MICHAEL	27 COMMERCIAL ST	1 17 2	27 COMMERCIAL ST UNIT 1 GLOUCESTER MA 01930

City of Gloucester, Abutters List

Parcel Description

Abutters To Parcel... MAP 1 LOTS 22 & 33

Please be aware that the abutters list reflects mailing addresses for the real estate tax bills as requested by the property owners. Mortgage companies, banks and other financial institutions may be receiving the notification and not the homeowner as required. Please be sure you are complying with notification requirements.
Gloucester Board of Assessors

Abutter	Street Address	Parcel No.	Mailing Address
12 GEORGE PAUL TR	27 COMMERCIAL ST	1 17 3	PO BOX 1105 GLOUCESTER MA 01931-1105
13 GEORGE PAUL TR	27 COMMERCIAL ST	1 17 4	P O BOX 1105 GLOUCESTER MA 01931
14 ST PETERS SQUARE CONDOMINIUM TRUST	27 COMMERCIAL ST	1 17 995	27 COMMERCIAL ST GLOUCESTER MA 01930
15 CIARAMITARO JOSEPHINE G	6 BEACH CT	1 18	12 WARNER ST GLOUCESTER MA 01930
16 LOVASCO SALVATORE & ROSE	1 PASCUCCI CT	1 19	1 PASCUCCI CT GLOUCESTER MA 01930 0000
17 DANISH DANIEL A	12 BEACH CT	1 20	12 BEACH CT GLOUCESTER MA 01930
18 1907 LLC	33 COMMERCIAL ST	1 22	33 COMMERCIAL ST GLOUCESTER MA 01930
19 PAVILION MERCATO LLC	47 COMMERCIAL ST	1 33	PO BOX 1637 GLOUCESTER MA 01930
20 MORTILLARO GINO 1/3 & VINCENT 2/3	65 COMMERCIAL ST	1 45	C/O MORTILLARO LOBSTER LLC 60 COMMERCIAL ST GLOUCESTER MA 01930
21 NEPTUNE'S SEVEN SEAS INC	73 COMMERCIAL ST	1 49	P O BOX 1183 GLOUCESTER MA 01930 0000
22 WHITE HAROLD J & LUCETTE D TRS	28R FORT SQ	1 50	C/O WHITE 24 BASS ROCKS RD GLOUCESTER MA 01930 0000

City of Gloucester, Abutters List

Parcel Description

Abutters To Parcel... MAP 1 LOTS 22 & 33

Please be aware that the abutters list reflects mailing addresses for the real estate tax bills as requested by the property owners. Mortgage companies, banks and other financial institutions may be receiving the notification and not the homeowner as required. Please be sure you are complying with notification requirements. Gloucester Board of Assessors

Abutter	Street Address	Parcel No.	Mailing Address
23 1 51	ORLANDO JOSEPHINE RES L/EST 67 COMMERCIAL ST	1 51	67 COMMERCIAL ST GLOUCESTER MA 01930
24 1 52	CIARAMITARO CHRISTINE E ET AL 2 FORT SQ	1 52	2 FORT SQ GLOUCESTER MA 01930
25 1 53	CIARAMETARO VINCENZA ET AL 6 FORT SQ	1 53	2 FORT SQ GLOUCESTER MA 01930
26 1 54	LUCIDO F & FAVAZZA J ET AL 10 FORT SQ	1 54	4 LIBERTY ST GLOUCESTER MA 01930
27 1 55	JOHNSON JENNIFER M 26R FORT SQ	1 55	26R FORT SQUARE GLOUCESTER MA 01930
28 1 56	LYNCH IRINA 16 FORT SQ	1 56	16 FORT SQ GLOUCESTER MA 01930
29 1 59	JOHNSON JENNIFER M 26A FORT SQ	1 59	26R FORT SQ GLOUCESTER MA 01930
30 1 68	REED LUCY & CILUFFO JOSEPH & PAUL 59 FORT SQ	1 68	57 FORT SQ GLOUCESTER MA 01930
31 2 1	PIAGGIO CONSTANCE 15 BEACH CT	2 1	7 LAKE CIR WOBURN MA 01801-5509
32 2 2	TARAMINO JOHN P & CINDY A 11 BEACH CT	2 2	11 BEACH CT GLOUCESTER MA 01930
33 2 3	LOJACANO ERIC J & LISA K TRS 9 BEACH CT	2 3	REIN REALTY TRUST 14 LAWDALE CR GLOUCESTER MA 01930

City of Gloucester, Abutters List

Report Description:

Abutters To Parcel... MAP 1 LOTS 22 & 33

Please be aware that the abutters list reflects mailing addresses for the real estate tax bills as requested by the property owners. Mortgage companies, banks and other financial institutions may be receiving the notification and not the homeowner as required. Please be sure you are complying with notification requirements.
Gloucester Board of Assessors

Abutter	Street Address	Parcel No.	Mailing Address
34	LOIACANO ERIC J & LISA K TRS 5 BEACH CT	2 4	RELN REALTY TRUST 14 LAWDALE CR GLOUCESTER, MA 01930
35	MARINO JENNIE JT & GRACE 3 BEACH CT	2 5	3 BEACH CT GLOUCESTER MA 01930 0000
36	DEMETRI VITO DEMETRI SANDRA TB 1 BEACH CT	2 6	1 BEACH CT GLOUCESTER MA 01930
37	ORLANDO GRACE & CURCIO FLORENCE 21 COMMERCIAL ST	2 7	21 COMMERCIAL ST GLOUCESTER MA 01930
38	PARISI THOMAS 19 COMMERCIAL ST	2 8	19 COMMERCIAL ST GLOUCESTER MA 01930
39	SANFILIPPO JOANN M 10 WESTERN AV	2 16	10 WESTERN AV GLOUCESTER MA 01930
40	LEE HOJAE & DARGON ROBERT M 18 WESTERN AV	2 18	18 WESTERN AV GLOUCESTER MA 01930
41	INTERRANTE SAMUEL B & JOANNE P 20 WESTERN AV	2 19	20 WESTERN AV GLOUCESTER MA 01930
42	PALLAZOLLA JEREMIAH & MARY E 22 WESTERN AV	2 20	22 WESTERN AV GLOUCESTER MA 01930
43	CONNORS MICHAEL & MARY ANN 24 WESTERN AV	2 21	24 WESTERN AV GLOUCESTER MA 01930
44	TALTY JOSEPH TR OCEAN VIEW TR 30 WESTERN AV	2 24	31 WOLF HILL RD GLOUCESTER MA 01930

City of Gloucester, Abutters List

Parcel Description:

Abutters To Parcel... MAP 1 LOTS 22 & 33

Please be aware that the abutters list reflects mailing addresses for the real estate tax bills as requested by the property owners. Mortgage companies, banks and other financial institutions may be receiving the notification and not the homeowner as required. Please be sure you are complying with notification requirements. Gloucester Board of Assessors

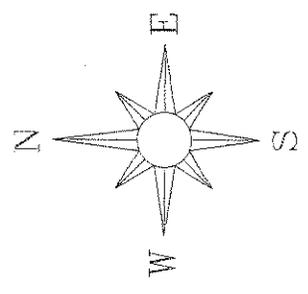
Abutter	Street Address	Parcel No.	Mailing Address
45 GLOUCESTER CITY OF	2 COMMERCIAL ST	7 16	2 COMMERCIAL ST GLOUCESTER MA 01930
46 COVE HARBOUR LLC	44 COMMERCIAL ST	7 17	PO BOX 1637 GLOUCESTER MA 01930

BOARD OF ASSESSORS
CITY HALL
9 DALE AVENUE
GLOUCESTER, MA 01930

JUN 30 2010

Madeira King

27



Commercial Street
Vehicular / Pedestrian Access

33 Commercial Street
(Existing)
2.5 Stories

Parking

Loading

Manufacturing

Connector

Freezer

BIRDS-EYE

3+ Acres

Beach Court Apartments
(Existing)
2.5 Stories

Pavillion Beach

Tide Range

Prevailing
Winter
Winds

Prevailing
Summer
Winds

CITY COUNCIL
AND CITY COUNCIL STANDING COMMITTEE
Planning & Development
Wednesday, June 16, 2010 – 6:30 p.m.
1st Fl. Council Conference Rm. – City Hall

Present: Chair, Councilor Joseph Ciolino; Vice Chair, Councilor Robert Whynott; Councilor Greg Verga

Absent: None

Also Present: Councilor Jacqueline Hardy; Councilor Paul McGeary; Al Kipp; David Tucker; Peter Williamson; Paul Rogers; John Linquata; Fire Chief Phil Dench; Police Chief Michael Lane; Anthony Giacalone; Anne Ziergiebel; Attorney Robert Coakley; Attorney Lisa Mead; Christina Passanisi; Lenny Linquata; Daniel Swimm; John McNiff, Jr.

The meeting was called to order at 6:30 p.m. Items were taken out of order. There was a quorum of the City Council.

Planning & Development

06/16/2010

Page 13 of 13

6. *COM2010-026: Request from 1907 LLC and Pavilion Mercato LLC re: BirdsEye Mixed Use Overlay District ("BMOD") Zoning Proposal (Rezoning #2010-003)*

Councilor Ciolino stated due to the complexity of the issue before them that the Planning & Development Committee will continue the matter and hold a joint meeting with the Planning Board on July 15, 2010, 7 p.m. in Kyrouz Auditorium at City Hall to explore the matter more fully, and to have a site visit on Saturday, July 17, 2010 at 8:30 a.m. again in conjunction with the Planning Board.

It was moved, seconded and voted unanimously to adjourn the meeting at 8:40 p.m.

Respectfully submitted,

Dana C. Jorgensson
Clerk of Committees

29

**SPECIAL JOINT MEETING OF THE
CITY COUNCIL STANDING COMMITTEE
Planning & Development
And**

Planning Board

Thursday, July 15, 2010 – 7:00 p.m.
Kyrouz Auditorium – City Hall

Present for Planning & Development: Chair, Councilor Joseph Ciolino, Vice Chair, Councilor Robert Whynott; Councilor Greg Verga

Absent: None

Present for the Planning Board: Chair, Rick Noonan; Mary Rudolph Black; Henry McCarl; Karen Gallagher; Marvin Kushner; Gregg Cademartori

Also present: Councilor Hardy; Councilor Curcuru; Councilor Theken; Councilor McGeary; Councilor Mulcahey; Linda T. Lowe; Jim Duggan; Attorney Lisa L. Mead; Mac S. Bell; Maggie Rosa; Joseph Rosa; Bob Hastings; Sunny Robinson; David Anderson; Richard W. Griffin; Sandra A. Martyn; Gregory Gibson; Erika Hansen; Timbah Bell; Ann Molloy;

The Planning Board called their portion of the meeting under the Joint Meeting to order at 7:10 p.m. reconvening from a recessed meeting started earlier at 6:30 p.m.

The Planning & Development Committee called their meeting at 7:10 p.m. Councilor Ciolino noted there was a quorum of the City Council present. He noted the presences of Councilors Hardy, Curcuru, Mulcahey, and McGeary. He also noted that the Planning Board is having a public hearing and they are having a public meeting.

NOTE: This meeting contains content of the Planning Board Hearing on the matter below in conjunction with the joint meeting between the Planning Board and the Planning & Development Committee. The Planning Board minutes of this meeting are separate from these minutes and will be made a part of the file as they become available. There is no public hearing on this matter by the Planning & Development Committee or the City Council at this time but will take place at another date.

1. COM2010-026: Request from 1907 LLC and Pavilion Mercato LLC re: Birdseye Mixed Use Overlay District (“BMOD”) Zoning Proposal (Rezoning #2010-003)

Councilor Ciolino and Rick Noonan welcomed all to their special joint meeting to hear the particulars of the Birdseye Mixed Use Overlay District (“BMOD) Zoning Proposal and the Planned Unit Development Master Plan (“PUD”). Mr. Noonan read the procedures of a public hearing to those gathered. Mr. Noonan opened the Planning Board public hearing. He reviewed the process of the public hearing under Massachusetts General Law for the benefit of those gathered. He reiterated they were gathered in the joint meeting to hear both sides of the matter. This hearing was to determine whether to amend the Gloucester Zoning Map and Ordinance as follows: Amend the Zoning Map by creating an overlay district consisting of 3 +/- acres in the Marine Industrial District located at 33 and 55 Commercial Street, Assessors Map 1, Lot 33 and 22 and to amend the Zoning Ordinance by adopting a corresponding new Section 25 entitled, the Birdseye Mixed Use Overlay District (BMOD) governing the permitting new uses by a Master Plan and Special Permit in the Overlay District.

Attorney Lisa Mead, of Blatman, Bobrowski & Mead, LLC, Newburyport representing the applicants 1907 LLC (Mac Bell, Manager) and Pavilion Mercato LLC for the properties at 33 and 55 Commercial

Street, gave the 'Developer's Presentation'. Pursuant to Section 1.11.12 of the Zoning Ordinances and M.G.L. Chapter 40A, Section 5, the property owners have submitted a request for a zoning change, which would be an overlay district under M.G.L. Chapter 40A, Sec. 9, Planned Unit Development. As the proponent of the change they would present their concept behind the plan, the intended results, the need for the adoption of additional zoning for this area and an overview of the actual proposed zoning.

Mac S. Bell of 1907 LLC stated he wished to proceed in a relationship of positive effort. He was proud to represent this opportunity for Gloucester; for their neighborhood; for his family; and, he believed, for many families. He quoted the saying in the auditorium, "to build not for today alone, but for tomorrow as well" which he noted was the highest priority.

Richard W. Griffin, Architect, 37 Turner Street, Salem; (full remarks made by Mr. Griffin, including power point slides are on file as part of these minutes) took the Committee and the Board through the vision of the 1907 LLC and Pavilion Mercato LLC for the Birdseye property. He reviewed the property's history, its dimensional description and the properties of the former manufacturing facility and freezer plant; the existing 33 Commercial Street building and property; and the 2-1/2 story building at 10 Beach Court, an area slightly over three acres. In order to alleviate traffic congestion, they propose:

1. Widen Commercial Street at their building by setting the building back 12' from the street to allow clearance for maximum vehicle heights;
2. Remove utility poles from the Birdseye side of the street;
3. Eliminate shipping/receiving intensive businesses from the project;
4. Provide adequate off-street loading for the shipping and receiving required;
5. Provide a parking structure sufficient for all Birdseye parking.

Adequate capital investment in the project, enabling them to make the property viable coupled with a significant residential component, they contend, will be another key to the project's viability, providing jobs, goods and services for the public domain. Another recommendation was the creation of a multi-use public function space. This is the "see through the building area". It is proposed to feature an open market place convertible to public uses. In summation of their mixed-use portfolio, they are targeting:

1. Artisan industries and start up businesses; which would include small and medium sized industries such as our local brewery and distillery; Ocean- and water-related technology such as free-flow power and Cape Ann Business Incubator (CABI) a business that helps new start-up businesses get started.
2. A retail marketplace, the Pavilion Mercato; shops that will sell fresh foods and specialty foods; and retail shops in an open marketplace environment;
3. Health, wellness and fitness services and water-related sports facility;
4. Dining and cafes and other drop in businesses
5. Residential uses to include combination live and work units, owner occupied and rental dwellings, and overnight lodging;
6. A public function hall or space, a parking garage, and extensive public beach access.

Parking is proposed to be in the middle of the property. The first two floors will be dedicated recreational industrial and commercial use. Explaining the first two floors usages, this would come to approximate height of the existing manufacturing parapet at 27 ft. above Commercial Street. The third level would be the start of residential use, owner-occupied and rental apartments, overnight accommodations, dining, and observation decks. The proposal included harvesting of natural energy and solar, wind energy by taking advantage of planted flat green roofs; and engineering the building(s) to take advantage of winds in cooling and to take advantage of rain water. "They are committed to do whatever it takes to partner with the City. They believe they can become a prototype for a green community development for business as well." The design of the upper levels of the building will be based on light penetration which can't be more than 60' to 70' in width. Their proposal asks for a peak height of 125 feet, covering about 15% of the built area; second highest height of 108 feet covering a maximum additional 40% of the built area. The remaining 45% of the built area would be 40 ft. He concluded that the guidelines to be presented that evening will be the most viable method for marketability and for the advantage to the community of their project.

Gregory Gibson, 76 Langsford Street, writer, antiquarian book dealer (full remarks of Mr. Gibson are on file and a part of these minutes) spoke of his efforts in preserving the history of Gloucester and training is a preservationist. He believed the Birdseye property development is inevitable. It is likely to be a complicated process between developer, neighbor and City. He noted the history of the City being one of constant change and ceaseless development. He believed the property would be developed and that Mr. Bell would be the one the City would want to work with for a better Gloucester.

Sandra Martyn, 33 Commercial Street, property manager for Mr. Bell (full remarks of Ms. Martyn are on file and a part of these minutes); since she has worked with him, Mr. Bell has wanted to develop the property. She spoke of 'island' economics and that it makes for a difficult business environment. Population density numbers are not high enough to be attractive to businesses. Rents that they can charge fall short of the cost to build the structure to house them. She stated no one wanted to put a strictly residential development on this location. She advocated for flexible zoning to provide the necessary ability to build it for live/work use with the residential development as an essential part of the development.

Erika Hansen, President of Cape Ann Business Incubator (CABI) (full remarks by Ms. Hansen are on file and a part of these minutes) spoke of how businesses are built and new job creation; 98% are created by small businesses. She advocated for the project stating it would be a good place for light industrial, lab facilities for marine research, and commercial and business space for offices, meeting space as well as a possible shared commercial kitchen to develop new projects for ocean products. She pointed to all the advantages that would be available to support new businesses.

Timbah Bell, 33 Dolliver's Neck (full remarks by Mr. Bell are on file and a part of these minutes) spoke of his family's five generations who came to Gloucester from Eastern Europe. They manufactured oilskins on their Commercial Street property. He spoke of the potential of Birdseye development, listing many reasons asking those present to imagine it's many uses: training at a gym at the property in the place where the GFAA Triathlon begins; the beach access and use of the function hall to be built. He spoke of the development of wellness centers; a mid-sized green grocer, markets. He spoke to the green building aspects. They believe in the 40-60 room hotel, a "boutique hotel" with choice restaurants; an artisan center. He spoke of the CABI being imbedded in the business area of the property. He noted the observation tower that would give a 360 degree vista from the Birdseye tower. He concluded that in challenging times for new construction; that this project has the potential for an innovative framework which will come under PUD.

Attorney Lisa Mead (full remarks by Ms. Mead that follow are on file and a part of these minutes) gave a general overview of a Proposed Mix use Overlay District and listed the uses of the BMOD:

- to facilitate development of a mix of uses including manufacturing, research/development, retail, office, restaurant and "Live/Work Residences" (all outlined uses in the zoning);
- to provide more mixed-use investment opportunities, to maximize the development potential of the BMOD;
- to stimulate the general economy of the City and Gloucester Harbor;
- to promote the historic assets of the BMOD and the natural environment, while improving infrastructure and introducing high-quality design and development;
- to create view corridors and to provide more and enhanced public access to the waterfront;
- to provide a range of housing choices for individuals and households of diverse incomes.

The site is approximately 3 acres and is listed on Assessors Map 1, Lot 22 and Map 1, Lot 33. The BMOD is an overlay district, and the underlying zoning would remain the same. This proposal was not spot zoning, according to Attorney Mead. It is an overlay district that the underlying zoning remains unchanged. This is called Planned Unit Development (PUD) and is specifically allowed (if locally adopted) under Paragraph 4 of Section 9 of Chapter 40A (Mass Zoning Law). Additionally, she noted the courts have found it is not spot zoning where a zoning amendment is "in accordance with a well considered plan for the public welfare" (Board of Appeals of Hanover v. Housing Appeals Committee, 363 Mass. 339, 362, (1973) and that you should not necessarily consider the "potential economic benefit

to the owner of the rezoned parcel, especially where the general public is benefited or where, due to changes in the character or use of the surroundings, the public health, morals, safety and welfare will be promoted", Leahy v. Inspector of Bldgs. of New Bedford, 308 Mass. 128, 132-33 (1941). It was very rare that spot zoning would occur where the rezoned parcel(s) exceeds an area over two acres. She noted 10 other communities who have adopted Planned Unit Development (PUD) zoning (see Power Point presentation on file), but there were many more; and that it was not an unusual tool. It is not a part of the Gloucester Ordinances now. The City Council would have "two bites of the apple"; and be able to participate in the forming of the overall design. The Master Plan is submitted for review showing:

- the area of land proposed to be developed as a PUD;
- the uses proposed and whether said uses require "PUD Special Permits"; the underlying uses would include some by-right uses; including the dimensions and infrastructure shown on the plan;
- notice and a public hearing by the City Council on whether to issue an approval or not;
- Approval of the PUD Master Plan, if:
 - it is consistent with the purposes of the BMOD
 - the uses are compatible within the plan being proposed
 - the dimensional standards, parking requirements and design standards are satisfied.

In this day and age it is important because there is an issue with financing major developments. The City Council wants to see what the concept is; but the developer needs to know something is going to be permitted in order to get financing for the development. This enables both the City Council to understand what the parameters are; but for the developer to at least have a concept to go out and say they have the overall permit; that if they build within this permit, they'd be OK to move forward which is much more attractive to investors. The second step is to permit the Special Permits. The special permits can be done overall or within sections in the PUD. Again, notice of public hearing for the City Council is provided. The PUD would be approved if it:

- is of economic benefit to the community;
- provides live/work housing;
- shows consistency of building design as outlined in the ordinance;
- provides adequate parking;
- offers pedestrian connections to other PUD uses

This was an overview and much more detail was provided in the prior submittal of the proposed ordinance (on file in the Agenda Packet). It would also have to comply with regular Special Permits, Sec. 1.8.3. She noted the Council could hear both the Master Plan and an application for PUD Special permit at the same time or combinations of it. The third portion of this process is what happens after a special permit is granted:

- by right uses and those granted PUD special permits may be developed;
- To facilitate retenanting and development, changes of use are permitted by right, without further review or approval, where gross square footage is not increased and no exterior changes to the building(s) occur;
 - from a use permitted by right and approved as part of a PUD Master Plan to any other use permitted by right within the same "Use Cluster" (like uses as presented in the ordinance);
 - from a use issued a PUD Special Permit to any used allowed by right or by PUD Special Permit within the same Use Cluster.

They did not propose any new by right uses in this district. These all exist in the Marine Industrial district. She listed by right uses (on file in presentation) which are allowed currently by ordinance. She also noted the by PUD Special Permit with existing special permit uses and added some new special permit uses (on file in presentation) which they felt would allow for the growth and flexibility to make the project work. In addition to the accessory uses authorized by Section 2.2 of the Zoning Ordinance, they added two uses: Structured Parking and Drive-through facility to also be permitted by PUD Special

Permit.. Retenancing is permitted within their proposed use clusters. (See documentation previously on file). They believe all those uses are compatible with each other and fall within the heading they've provided. Their full Master Plan Dimensional Standards were reviewed:

- Area of land shown on PUD Master Plan minimum of 80,000 sq. ft.
- Width of land shown on PUD Master Plan measured perpendicular to its frontage, minimum: 100 ft. Ms. Mead commented these were actually more restrictive than exists in the underlying zoning.
- Frontage of land shown on PUD Master Plan (over which access provided minimum: 100 ft.
- Building height, maximum: 125 ft., including tower(s) and roof structure(s), subject to limitations on maximum percentages and tiering requirements. Ms. Mead commented here that no more than 15% of the building structures can be 125 ft. No more than 40% can be 108 ft. Everything else can't be more than 40 ft. which is the standard height in the district currently.
- Gross floor area of Project maximum: For a Hotel, Motel or Motor Inn, not more than 1/3 of the combined gross floor area of the buildings within the PUD or 125,000 square feet, whichever is greater, for Live/Work Residences, not more than 40,000 gross square feet of floor area within the PUD. Ms. Mead commented this is to control the size of any hotel or unique housing facility and assures this would not be a "giant hotel"; it would be automatically limited by the ordinance.
- Building coverage on land shown on PUD Master Plan, maximum: 100%, subject to compliance with the "Design Criteria" of the BMOD. Ms. Mead expressed that there wouldn't really be 100% coverage because of access issues and view corridors.

She felt the most important part of this proposal was that in the design review of the City Council, the Special Permitting authority, the developer would have to show the Council that the building height has to be tiered; so that the lower portion of the buildings are found closest to the boundaries of the land on the Master Plan, and the higher portions would have to be found on the interior. That is a specific requirement in the dimensional table they provided for in the ordinance. The design would have to be tiered towards the middle of the site.

- Off street parking will comply with Sect. 4.1 of the Zoning Ordinance. PUD's must provide off-street parking. It is specifically limiting within the ordinance itself on the exemption for businesses.
- PUD's must provide off-street parking; the exemption for business and municipal uses within 400 ft. of a municipal parking area in Section 4.1.1 of the Zoning Ordinance is not applicable to uses within the PUD. Ms. Mead commented this development may not take advantage of that exemption. It must provide for its own parking.

She gave examples of combined facilities, shared parking and phasing:

- Where feasible, parking for two or more buildings or uses shall be provided in combined facilities;
- When uses within a PUD have significantly different parking demand patterns, (by time-of-day, by day of week, seasonal), shared parking is recommended.
- Parking shall be phased consistent with project phasing, or, alternatively temporary parking may be provided for phase(s) while permanent parking is under construction.

A PUD shall be designed in a manner consistent with the following design criteria:

- Buildings shall be sited and designed so as to:
 - preserve and/or recreate the historic character thereof;
 - be in harmony with the character of the neighborhood;
 - vertically integrate uses;
 - provide windows on the Ground Floor, where retail uses are proposed;
 - locate equipment and service areas away from public view
- Parking shall be located within 400 ft. of entrance to building(s) it serves; adequate access shall be provided to Structured Parking, where applicable;
- Appropriate landscaping, both natural and artificial shall be provided;

- Contiguous open space shall be provided within a PUD, to the extent feasible;
- Pedestrian connections shall be established between major points of pedestrian access, including between: residential and non-residential uses; streets, ways and parking area(s) and the uses within a PUD; streets, ways and parking area(s) and the waterfront;
- Multiple view corridors shall be provided between Commercial Street and Gloucester Harbor;
- Adequate access shall be provided, year-round, between a PUD and the waterfront.

She reiterated this was an overview of a very complicated zoning proposal but believed it "hit the high points", in particular with regard to controls that are important for the City Council.

Those speaking in favor:

Stacey Randell, 8 Haven Terrace, (full remarks by Ms. Randell are on file and a part of these minutes)

Director, Wellspring, believed the Birdseye property development was an important development for Gloucester.

David Bianchini, resident of Fort Square spoke of the derelict lot and how he would like to see thoughtful development feeling that Mr. Bell was trustworthy and that his development has been sensitive to the community, and supports the project.

Christopher Costello, President Timberline Enterprises, 4 Pond Road stated he believed the project will produce construction jobs in a hard hit industry and tax revenues. He spoke of Mr. Birdseye and felt he would appreciate the builder, the eco-friendly design and other aspects of the proposal.

Andrew Cardone, 156 Porter Street, East Boston who was in the process of moving back to Gloucester, an artisan, spoke in favor of the proposed development and its live/work artist spaces.

Peg Leeco, 21B Riggs Point Road, stated she was a third generation Gloucesterite and from a fishing family. She noted her son, Andrew Cardone spoke before her. She asked for an opening of minds to accept a mixed use project. She contended change was difficult. She felt the overlay zoning was a great thing for the City with a lot of opportunities for a lot of different residents.

Ruth Mordecai, 4 Terrace Lane spoke as an artist who was invited to help imagine the artisan space in the Birdseye property. Art is good for the community stating economic statistics that show art drives a community, and that the Ford Foundation supports it wholeheartedly. She noted many communities who have artists who have space in downtowns. She felt the potential to be great.

David Anderson, 16 Middle Street, business owner stated that Mr. Bell's proposal is the most exciting thing that has happened in 25 years and commended Mr. Bell for his vision and love of the City. He felt Mr. Bell was taking this step at a time when no developer would be willing to do so; and contended that without the overlay district financing would not come forward. He noted Salem and Beverly's development as well as New Bedford's effort to revitalize their cities because that was where the future lies. He felt the City needs growth and tax revenue in order to revitalize. He supported the project. "Change is the law of life. Those who only look to the past will not see the future."

Peter Van Ness, 11 Magnolia Avenue asked that the Board and Committee what would be the alternative. He felt this is a wonderful integrated project. He asked them to think about the alternative before you vote no.

Sydney Falghzik, 10 Beach Court stated his apartment will look over the Birdseye development. He's known Mr. Bell since 1978 and has the utmost respect for his vision. There are two key ingredients, 1) Community, 2) Communication. Change is inevitable. His life will be changed directly by what happens to the Birdseye property and was in support of the project.

Sebastian Mocerri, Gloucester resident completely supported the project. He grew up in a fishing family. He felt a site like this sitting with no development was a shame, and this would be a wonderful thing to have Mr. Bell develop the property and flow right into the rest of the community and a huge asset.

Those speaking in opposition:

Ann Molloy, 88 and 73 Commercial Street and 48 Fort Square, Neptune's Harvest/Ocean Crest Seafood, Inc. (full remarks by Ms. Molloy are on file and a part of these minutes) stated the Fort is thriving. She expressed surprise at being back so soon since the backing away of the rezoning of the Fort. She didn't understand why anyone thinks they can do whatever they want to the neighborhood because it

was completely rejected before by the neighborhood. A developer outbid an industrial business when they were looking to expand their fertilizer business. She felt there was plenty that could be done within the MI District without rezoning. She noted the difficult traffic situation and possible conflicting uses. She felt the height proposal is not appropriate. If they can go to 125 ft. in height, why not others. This doesn't fit together; doesn't fit the character and will not improve it. It's adding more residential in the MI district. She contended they were squeezing out true Marine/Industrial jobs. There was something already special there. She noted the odors, noise and vehicles every day at the Fort. They're loading fish, lobsters, fertilizer. The proposal doesn't fit in the neighborhood. She further questioned how to suppress a fire at 125 ft.

Leonard McCollum, 88 Commercial Street; Ocean Crest Seafoods spoke of his hope that Mr. Bell would not rezone and go for height exceptions. He would never support the BMOD, but would support what would co-exist with the current MI district. He spoke of other communities where condo owners who live in MI districts trying to restrict the businesses. He was against the proposal.

Bill Johnson, 26R Fort Square (full remarks by Mr. Johnson are on file and a part of these minutes) asked the Board and Committee to deny the BMOD request of Mr. Bell. His main concern is the development of residential units on the site. The Fort is a working class neighborhood. He noted a mix of luxury residences are in conflict with the neighborhood. They also need more opportunities for young people and noted all the defunct industrial businesses. He felt there was a need to maintain an industrial space within the community. Residences do not mix well with industry. The neighborhood has reached an understanding. The introduction of luxury condominiums will change that. He spoke of proposed deed restrictions on the condos. He was concerned about the live/work spaces. He questioned the overlay at all and wondered why Mr. Bell needed the Birdseye property when he had other properties. MI district is fairly flexible as it is. He pled not to gentrify the neighborhood. He supported the alternative energy proposal for the site, however. This is about money for the proposal.

Sunny Robinson, 20 Harvard Street believed this was spot zoning. Overlay districts have tighter requirements designed to protect sensitive resources and thought this is how it should be viewed. There should be tighter restrictions rather than looser. This was not a village center. If approved this would be destroying a viable MI district and ought not to happen. The City was awaiting final recommendations of the Mt. Auburn Group and their proposals for moving forward for development in the City. To move a project ahead such as this should not do so without a fully fleshed plan. The timing was out of "whack" for what they're trying to do with a more comprehensive, unified view for what they're trying to do for the City. MI districts are among the most flexible. It should remain so. No one opposes development or change. But appropriate MI and commercial development in a district allows a wide range of commercial uses and not an addition of all the housing development. There are many good proposals that would fit into the marine/industrial siting but not with the amount of the residential units proposed. It should have 50% MI uses built into it. It was seeking approval for everything so they can do whatever they want in a variety of categories. She urged not to give away power to such open ended proposals and that a final proposal was far more specific. She noted the variety of options that could be built and thought them inappropriate that there should be no residential at all. Any housing for that size ought to be a minimum of 50% affordable. You don't just build assisted living apartments. It was a very specific model with State and Federal regulatory requirements, and at least 20% must be affordable. This was a lack of awareness on the part of the developer. Birdseye is not downtown. We have the live/work opportunity elsewhere. She objected to the height issues as well. There are two adult day care/health centers already in the City; a third was unrealistic. She urged rejection of the proposal, and that it be in limited uses. She felt there were many that didn't want Gloucester to become Newburyport.

Suzanne Altenberger, 66 Washington Street spoke against the proposal. She felt there was no connection with the active Fort industries; there was always Marine/Industrial.

Valerie Nelson, 77 Sunset Point Road felt there were overarching elements of the project that was so open-ended and imprecise. It's a signature location and what gets done there can have significant impact on the City as a whole. She thought a lot sounded good but what had changed. She noted Lanessville became a lovely village after the granite industry died. She felt the City needs to spend a great deal of

time on whether this is the only and best use of the property, "or is it the seeds of a destruction of the working waterfront." Keep your working waterfront. Gloucester as a bedroom tourist community may happen but many believe that you can have a community with a working waterfront. There were many ideas in the community dialogs. Where are the financing plans for a vibrant research and jobs activities. Was a financing plan ever developed? The danger of residential and hotels in this spot, leads to a tipping, unraveling of the working waterfront. This was why you have zoning. MI districts do not operate on the highest and best use. What are the guarantees that this signature project will not lead to problems with the working waterfront and businesses already there. What were the financing plans assembled. She never heard any support for the residential uses. She asked for more review of alternatives.

Steven Goldin, 14 Hodgkins Street commended Mr. Bell's knowledge and enthusiasm. They'll need to go back to the drawing board and more consultation with the neighborhood. Something good can come out of it but will need the involvement of the Planning Board and City Council. There is nothing about numbers here. All they've heard is that they need incentives and flexibility. He suggested that they need to get business consultants to talk about the financials. He found that if this proposal was passed would increase the value of the property by \$2 million which will have vast implications for the whole neighborhood. This is an unfair proposal. The losers are the people of the Fort. It is gentrification. The Fort was a blue collar area with affordable housing. If this proposal was passed by the City Council you would have the immediate affect of raising rents, homeowners would be property rich but their taxes would go up and be forced out. Then you get the North End and Newburyport as it is now. For the neighborhood businesses in the MI, there is enormous pressure. There doesn't seem to be a will to protect it. He spoke of the previous MI district parameters. He then spoke to the new parameters. As the economic value goes up the MI will disappear. He spoke to the height. 30-40 feet in the downtown is on a human scale, pleasant and is what the downtown is now. You can get that horizontally. You don't have to put in high rises. You can do it with intelligent use of land. He asked they think this through. Why is this any different and why is it special. What was the need for mixed use? Keep the present height and by intelligent use of the land it can be developed fairly and appropriately. There are good elements to the proposal but the issues have to be faced such as gentrification. A higher percentage of the residences should be affordable. He spoke of linkage to a mitigation fund. The alternative energy is great and they need to contribute to the costs to the City for water and sewer.

Rebuttal:

Attorney Mead felt the use cluster was misunderstood. The City Council would approve a set of uses. The use clusters would not come into effect until later. Also, she believed the residential unit deed restrictions for anyone who bought a residence on this site, has been done successfully on another site developed by Mr. Bell and would be in place here and successful as well.

Mr. Bell stated there has been no water access to this property in its history. It was currently only accessible by truck. They went and offered Ocean Crest Neptune any portion of the property to rent or buy, that they required water access and that the property did not. He thought that they would put their money on adjacent properties on either side of them. They went to neighbors on the other side of the street and offered to work with them. They worked for a year and a half to facilitate a communication process and will continue to do so. The reality was the side of Commercial Street is landlocked. It's an incredible opportunity to link it directly to downtown. The real estate taxes are now \$20,000.00. As of this January it will drop by 15%. This property can produce taxes of somewhere about \$200,000.00 to \$400,000.00 per year, like the Gloucester Mill that he renovated. There was an opportunity that what they did in creating this zoning process would be an open checkbook to the City. They believe the property can produce significant income to the City; employment and creativity to think outside the "obsolete dysfunctional box." They're here to work with everyone.

Rebuttal:

Ann Molloy noted Mr. Bell outbid them (Neptune's Harvest/Oceancrest Seafood, Inc.) and then wanted to rent to them. They created jobs.

Bill Johnson spoke to the change issue. He was not against change. He wants to see the property productive. The City needs more jobs; they don't need luxury spas. He urged that kids have a chance to earn an income to pay rent.

Questions: Planning & Development

Councilor Ciolino asked about the expectation on the public beach and the infrastructure (water and sewer) that would be needed for this development.

Mr. Bell spoke to the Beach issue which was part of their key design in the concept. They like the idea of Pavilion "piazza" and commit that the gravel area to the side of 33 Commercial Street would be public access to the beach. The beach was a key element and totally for the public; the beach is public. It would be a legitimate use for the community.

Councilor Ciolino stated they couldn't block access of the beach.

Mr. Bell stated they are committed to opening it up as much as possible.

Councilor Ciolino asked about the infrastructure.

Mr. Bell stated the resources are there, but there needs to be improvement. The CSO project was going down Rogers Street and Commercial Street. He has met with Mike Hale, DPW Director on that issue; and hopes to use grant resources to collaborate together with the City to improve the infrastructure. There was a plan in the works and asserted there was a lot of opportunity here.

Site Visit Announcement: There is a combined Planning & Development and Planning Board site visit for July 17, 2010, Saturday morning, 8:30 a.m. The public is invited but only the Councilors and the Planning Board will ask the questions. When they are done, the public can ask questions through the chair.

Recommendation by Planning & Development: They will take the matter up when the Planning Board makes their written recommendation to them.

A motion was made, seconded and voted unanimously to adjourn the Special Joint Planning & Development Meeting at 9:54 p.m.

The Planning Board continued their meeting on this subject to their July 29, 2010 and reopened their regular meeting agenda.

Respectfully submitted,

Dana C. Jorgenson
Clerk of Committees

LIST OF SUBMITTED DOCUMENTS/STATEMENTS:

Birdseye Project Presentation:

Mac Bell – Introduction
Richard Griffin – Architect
Gregory Gibson – History
Sandra Martyn – Property Manager
Erika Hanson – Cape Ann Business Incubator
Timbah Bell – Family and "Possibilities"
Attorney Lisa Mead – Presentation of BMOD Proposal

38

Members of the Public at Public Hearing:

Stacy Randell – 8 Haven Terrace

Ann Molloy, Neptune's Harvest Fertilizer/Ocean Crest Seafood, Inc., 88 and 73 Commercial Street and
48 Fort Square

Bill Anderson, 26R Fort Square

33 & 47 COMMERCIAL ST.,
GLOUCESTER

**LEGAL NOTICE
NOTICE OF PUBLIC HEARING**

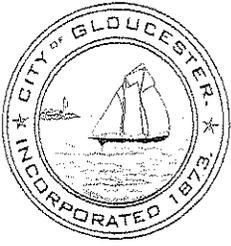
Pursant to MGL Ch. 40A, Section 5, and Section 1.11 of the Gloucester Zoning Ordinance, the Gloucester City Council will hold a public hearing on **Tuesday, August 3, 2010 at 7:00 p.m. in the Fred J. Kyrouz Auditorium**, City Hall, Dale Avenue, to consider the following petition to amend the Zoning Map and Zoning Ordinance as follows:

Amend the Gloucester Zoning Map by creating an overlay district zone consisting of 3 +/- acres in the Marine Industrial district located at 33 & 47 Commercial Street, Assessor's Map 1 Lots 33 & 22, respectively, and to amend the Zoning Ordinance by adopting a corresponding new Section 25 entitled "Birdseye Mixed Use Overlay District (BMOD) governing the permitting of new uses by master plan and special permit in the overlay district.

The complete application is available for review during regular business hours at the City Clerk's Office, City Hall, 9 Dale Avenue and at the Community Development Office, 3 Pond Road. At the public hearing, all interested persons will have the opportunity to be heard.

By Vote of the City Council
Linda M. Lowe, City Clerk

AD#12294027
Cape Ann Beacon 7/16, 7/23/10



CITY OF GLOUCESTER
Planning Board
3 Pond Road, Gloucester, MA 01930
Tel 978-281-9781
Fax 978-281-9779

CITY CLERK
GLOUCESTER, MA
OCT 12 PM 4:45

Date: October 8, 2010
To: City Council
From: Planning Board *JMC*

Planning Board Report and Recommendation
Proposed Zoning Amendment – Section 5.25 Birdseye Mixed Use Overlay District (BMOD)
Planned Unit Development (PUD)

As per Chapter 40A Section 5 and Section 1.11 of the Gloucester Zoning Ordinance, at a meeting of the Planning Board on October 7, 2010, the Board voted unanimously (5-0) to submit to the City Council the following Report and Recommendations on the referenced proposed zoning amendment.

The proposed amendment was forwarded to the Planning Board by the City Council on June 9, 2010 in the form of a fourteen page document defining a new overlay zoning district, use regulations, and master plan and special permit approval processes. The Planning Board held a properly noticed public hearing which opened on July 15, 2010. The hearing was continued and heard on the following subsequent dates: July 29, 2010, August 5, 2010, September 9, 2010, and September 16, 2010. The public hearing was closed at the September 16, 2010 meeting of the Planning Board. The Board developed its report and recommendation in two sessions on September 27, 2010 and October 7, 2010. The minutes of these meetings are available on at the City Clerks Office and on the web at www.gloucester-ma.gov/Archive.aspx?AMID=58.

The Planning Board offers the following recommendations which are presented in the order of proposed sections of the drafted amendment; Section 5.25 Birdseye Mixed-Use Overlay District (BMOD). Each section is summarized with a bulleted recommendation of the Board.

Section 5.25.1 Purpose

The Planning Board supports the general purposes of the ordinance, which are broad in nature, with the following exception. Section 5.25.1(b) states one of the purposes is “to provide more mixed-use investment opportunities, so as to maximize the development potential of the BMOD”. The Board acknowledges the testimony of the applicant that the property does not have deepwater access, and is not subject to the State’s Designated Port Area regulations and is flanked by existing residential and mixed uses. Therefore, from a planning perspective evaluation of the zoning in the area is appropriate, as some of the assets that the Marine Industrial (MI) district is based upon are not present. In accordance with the underlying MI district regulation the site may be utilized for marine industrial use and many commercial uses, however the proposal suggests in the alternate a mixed-use proposal including residential uses

Birdseye Mixed-use Overlay District (BMOD)

41

may be appropriate. The Board believes any such proposal must be “scaled” or “optimized” related to such demands and impacts as infrastructure and traffic, rather than being “maximized” as the ordinance suggests. Finally, Section 5.25.1(f) suggests that housing is a certain proposed use and that such use will be available to households of “diverse incomes”. If it is certain such use will be included in a future PUD application it may need to be more explicitly stated. Additionally, it is questioned whether the suggestion of housing available to diverse incomes (a laudable purpose) should be highlighted, given later the BMOD ordinance proposes exemption from the existing inclusionary housing requirements contained in the Zoning Ordinance Section 5.11.

- *The Board recommends refining the purposes of the ordinance and addressing the applicability of Section 5.11 Inclusionary Requirements to Potential Housing Components of a BMOD project. The Board suggests the City Council may wish to consider the addition of language to provide an option for a requiring a lower number of affordable housing units if some other public interest is served by a project proposal in a measured way.*

Section 5.25.2 Definitions

The Board does not have particular suggestions regarding the language which is used to define terms, or their actual definitions, with a few exceptions. The Board inquired whether several uses were truly prospective uses, such as Adult Day Care Center, Assisted Living Residences and Integrated Medical Centers. The applicant reiterated that they are. The Board also suggested that the monitoring of such a use as Live/Work Residences may be problematic. However, it is important to note that the Live/Work Residence definition includes gross square footage limitations, while other residential uses (i.e. townhouse/multifamily) do not. In the course of this discussion the Board also noted as of right uses that may be in conflict with other uses in potential mixed use scenarios. In general, the number and type of uses allowed are too broad.

One definition to consider very closely is the *Planned Unit Development* definition. It clearly states that no less than two (2) uses must be included and that at least 25% of the gross floor area shall be non-residential use. There is no requirement to have any uses in a project based in the underlying district, or of an industrial nature. This is mentioned to make it clear that this may result in an entirely new zoning for the area, rather than building upon the MI district regulations which the ordinance is purported to be founded upon.

As the Board discussed a common theme pertaining to the need to infuse predictability in the proposed ordinance, the defining of “Reconstruction” and “Renovation” for permitting purposes should be clarified. It is not clear what is implied or intended by including these definitions in the BMOD, other than in certain circumstances additional permitting may not be needed. These situations should be defined. The final definition “Use Cluster” will be discussed in the review of Section 5.25.4.3.

- *The Board recommends clarifying uses to be considered in BMOD master plan or project. Potential conflicting use combinations should be limited by refining potential special permitted or by-right uses in a BMOD project. New uses should be better defined with dimensional or density standards.*

Section 5.25.3 Overlay District

The petitioner has defined the applicability of the overlay to three lots in the MI district including and limited to Assessor's Map 1 Lots 33 and 22, and Map 92 Lot 11 (it is clear that this lot was inadvertently included as it is the location of a single family home at 8 Riverview Road). The Board, to a limited extent, discussed the potential applicability of the overlay district to areas elsewhere in the MI district, or the City. It is understood that the minimum threshold for a PUD is a 60,000 square foot lot, and there are few lots of this size in the MI district. Additionally, the majority of the uses permitted in the proposed BMOD are strictly prohibited in the Gloucester Designated Port Area. However, it is also recognized that lots meeting the 60,000 square foot threshold can change over time, if lots are combined. It is therefore a question as to whether this locus is unique and requires such a specific approach to zoning. At a minimum it appears that the lot on the corner of Commercial Street and Fort Square (Assessor's Map 1 Lot 45) may be important in future project scenarios, but there does not appear to be other areas in which the overlay should be more broadly applied.

Section 5.25.4 Uses

This section defines how the overlay is to operate; all of the uses that are permitted by right in the underlying MI district remain as options for the property in the BMOD, provided all other requirements of the Zoning Ordinance or other land use codes are satisfied. Special Permitted uses in the MI District would be subject to a consolidated PUD special permit rather than follow existing special permitting requirements or processes. This consolidation may result in a change of special permit granting authority for certain uses, as the City Council is identified as the sole special permit granting authority. Additionally, uses (a) through (i) may be permitted by special permit, some of which are exempted from other provisions of the Zoning Ordinance such as Assisted Living Residences. Two other Accessory Uses are also proposed to be permitted by PUD special permit which included "Structure Parking" and "Drive-through Facilities".

- *The Board recommends refining use allowance consistent with the purposes of the ordinance, and specifically recommends the elimination of drive-through facilities from the proposed BMOD.*

"Use Clusters"

This Section requires particular attention, given that it is a fairly new concept to be included in a Zoning Ordinance. One of the purposes of zoning, in general, is to define appropriate land uses for a given area, and typically such uses are subject to dimensional and other requirements resulting in a predictable outcome. The basis of the *Use Clusters* lies in the assumption that uses may be grouped by their similar impacts and benefits, and therefore if one were substituted for another, in the eyes of the permit granting authority no additional consideration or conditioning would be required. Provided it can be demonstrated that two uses are essentially equivalent, this may be a supported concept. However, little to no justification has been provided other than the groupings themselves. Given the desire to create an ordinance with intended purposes, and a means of satisfying the same, this approach may make it difficult to assert that a project satisfies intents and criteria. If the use cluster concept is not supported the definition of "Retenancing" may not be needed. The Board suggests the typical approach of petitioning the Special Permit Granting Authority with a project change may be more appropriate. The Special Permit

Granting Authority may go as far as identify thresholds, which if not surpassed could allow the petitioner to gain approval for modification without the necessity of a new public hearing.

- *The Board does not recommend the “use cluster” allowance as drafted. As suggested any substitution should be based on impacts from a proposed use. The Council may wish to consider conditioning substitutions in a special permit based on potential project impact thresholds.*

5.25.5 Dimensional Requirements

This is the section of the proposal that has received the most attention and discussion in the public hearing conducted by the Board. As was pointed out in the discussion of the definitions section, only a subset of the new uses permitted by the BMOD have been further defined by additional dimensional requirements. In particular the ordinance specifies the maximum size a Hotel or Live/Work Residence may occupy in a PUD project. However, all other uses proposed do not have any other limitation other than the dimensional requirements for the buildings in a PUD project. While it is helpful to provide these requirements for the uses that are clarified in this way, it is asked whether the same should be provided for other uses, to help define a predictable outcome. For example residential use in all other districts is defined by an allowed density.

- *The Board recommends residential uses should be defined by density standards rather than percentage of a project.*

Height

To ensure any future project considers site specific characteristics in design, the Board supports the “tiered” requirement as proposed. With a proposed allowance to increase the height over the current allowance in the MI district, the way in which this is applied in design must carefully be considered. As to the overall maximum height and “building height, percentages” the Board required more information to be submitted from the applicant to understand the proposal as written. A rendering was provided at the first session of the Board’s public hearing. As the only concept plan, the Board inquired how this design related to the proposed allowances. At the session held on September 9th, further information was submitted with a comparison of another conceptual design with the heights of other buildings in the community. The Board recognizes that as outlined in the purposes of the ordinance it is suggested that a certain portion of the property may be devoted to public use in form of “access” and “view corridors”. It has also been suggested that “public spaces” may be provided within building(s) on the site. The Board recommends that the added density that would be allowed by the increase in the height needs to be balanced by the public amenity to be provided. Once more what is to be provided needs to be specific and predictable.

Finally, given the one rendering provided and better estimates on its compliance with the proposal, the height and massing prescribed are out of context with the locale. It is recognized that a provision addressing height is necessary, as there is no mechanism other than a request for variance to permit height greater than 40’ in the MI district. It is recommended that the more appropriate way to review and condition a proposal for increased height is through the application of the current height exception ordinance extended to this proposed district.

- *The Board recommends that height be specifically addressed in the BMOD ordinance through the extension of the allowance of a Height Exception (Section 3.1.6) to the BMOD. Additional language may be appropriate to outline expectations on height.*

5.25.6 Off-Street Parking and Loading Requirements

Due to the proximity of the proposed BMOD to an existing public parking lot (St. Peters) it is important to carefully review what may be required to be provided by a future project. Given that the ordinance proposes increased density over the current allowance and new uses not allowed in the MI district, the proposal appropriately must provide required parking onsite without the benefit of the exemption of Section 4.1.1(c). However, the opportunity to refine required parking through an evaluation of shared parking opportunities is also provided and worthy of consideration.

5.25.7 Design Criteria

The Board is in general agreement with the design principles outlined in this section. Two general points were raised by the Board that are worthy of consideration by both the petitioner and the City Council. The language used to apply these design criteria, is to the "extent feasible". Without any further definition the Board suggests this may be too subjective for a permit granting authority to make a finding, or that such finding may be difficult to objectively defend. Additionally some of the criteria use terms as "appropriate" and "either/or" items in the same design criteria, such as "maintain or establish" multiple view corridors and access ways. It is recommended that the criteria be clarified with language that makes it clear when they are satisfied.

The final subsection in the *Design Criteria* section pertains to *Beach Access*. The Board is in receipt of opinions relating to the ownership of the beach (tidelands) associated with the proposed BMOD, and the applicability of the Chapter 91 jurisdiction. The Board recognizes this is a determination that is made by the state Department of Environmental Protection. This jurisdiction is not the subject of the zoning ordinance.

As outlined prior, several permitting processes in other sections of the zoning ordinance would not apply to the proposed PUD project; one such requirement is that of Section 5.5 Lowland Requirements. The entire site is within the Federal Emergency Management Agency's (FEMA) mapped 100-year floodplain; therefore a development in the BMOD would require a special permit from the City Council. The PUD is silent on this applicability; the Board recommends that this be addressed by the petitioner.

- *The Board recommends the applicability of the Lowlands Requirement (Section 5.5) be addressed in the draft ordinance, or understands that it otherwise applies.*

5.25.7 PUD Master Plan

This section outlines the type of information that needs to be provided for review and approval of a PUD Master Plan. The Board discussed submission standards with the petitioner at several of the sessions of the Planning Board public hearing. It was suggested that at a minimum a projects of this nature should follow the substantive requirements of some the sections of the zoning ordinance that at PUD project would otherwise be exempted, namely Section 5.7 Major Project. This section contains additional guidelines and criteria for approval which should also be considered. Another way in which this may be addressed is in the wording of the proposed 5.25.8.2 (i) which suggests that the applicant may submit "other supportive material". The Board recommends that the permit granting authority reviewing a project under a new zoning as proposed should be afforded the ability to "request of the applicant other supportive material it deems necessary in evaluating the PUD Master plan, such as traffic, engineering or financial studies".

The remainder of this section is procedural; the Board supports the utilization of the existing procedures contained in Section 1.5 of the zoning ordinance as the basis for the proposed review.

- *The Board recommends submission standards be clarified, as well as applicability of standards to uses otherwise addressed in the current Zoning Ordinance. At a minimum the draft Ordinance should incorporate the language outlined in the memorandum submitted to the Board from Attorney Mead, dated September 16, 2010.*

5.25.7 PUD Special Permit

The final Section of the ordinance outlines the actual land use permit review, approval and issuance. The petitioner has characterized this zoning as an incentive zoning providing flexibility to move forward on a development proposal. This section also defines how the PUD Special Permit process would be conducted. The Board understands the complexity of large development proposals may take additional time to assemble and finance. However, by reference to the interim of time between the approval of a Master Plan and the filing of a PUD Special Permit (15 years) is too liberal, the Board suggests a more reasonable time frame may be five years with allowance for extension. Further, the Board recommends that the final agreed upon timeframe for validity of a PUD Master Plan, be explicitly stated in Section 5.25.8.

Final note on this Section, the Board again recommends that the use of such words as "consider" and "extent to which" in evaluation of "objectives" may be problematic both for the permit granting authority and an applicant in finding and demonstrating that an objectives has been satisfied.

Conclusion

The Board supports the intentions of the Ordinance and believes mixed use zoning may be consistent for the area, but that the standards and processes in the ordinance need to be further clarified as outlined above. The introduction of residential use to the proposed district needs to be better defined as permitted elsewhere in the community, along with more specific density and dimensional standards.

CITY COUNCIL STANDING COMMITTEE
Special Planning & Development
Thursday, October 14, 2010 – 6:00 p.m.
American Legion, 2nd Floor – Middle Street

Present for P&D Committee: Chair, Councilor Ciolino; Vice Chair, Robert Whynott; Councilor Jacqueline Hardy (Alternate); Councilor Greg Verga

Absent: None.

Other City Councilors Also Present: Councilor Mulcahey; Councilor Theken; Councilor McGeary; Councilor Curcuru; Councilor Tobey

Also Present: Suzanne Egan, General Counsel; Gregg Cademartori, Planning Director; Rick Noonan, Chair, Planning Board; Sarah Garcia, Community Development Director; Attorney Lisa Mead; Mac Bell; Attorney Jonathan Witten, City land use consultant; Richard Griffin; Miles Schlichte; John Maney; Carol McMahan; Renata Greene; Damon Cummings; Patti Page; Susannah Altenburger; Sandra Martin; Bill & Jen Johnson; Erin Sherburne; Chris Campbell; Michael Rubin; Rose LoPiccolo; Ann Molloy; David Anderson; Valerie Nelson

The meeting was called to order at 6:02 p.m. A quorum of the City Council was present.

1. Citizens Corps FFY2007 and FFY2008 Grant Award

Kenny Costa, City Auditor stated these grant funds from FEMA passed through to MEMA for the Community Emergency Response Team for the CERT program and introduced John Maney, Gloucester's CERT coordinator.

John Maney thanked the City Council, Kenny Costa and Jeff Towne for their assistance in response to their quick turnaround needs. As a result of their response, Gloucester Citizens Emergency Response Team (CERT) received a \$4,000.00 award. CERT is now a reality in the City. Training will start November 1st. He explained CERT is national program through FEMA and MEMA, started in Los Angeles in the 1980's in response to a disaster. They trained the citizens of California in being better prepared to respond to disasters and taught them how to assist the city's responders during times of emergency. The program was so successful that it spread throughout California and then was accepted by FEMA and is now active in cities throughout the nation. CERT better prepares citizens for emergencies; and as a result, the demands on the emergency systems are lessened. The citizens are also prepared to assist emergency responders in times of need and during special events and done very successfully across the nation. This program makes the City and neighbors safer. Mr. Maney asked for City Council input as to the City leaders and neighborhood leaders who would be appropriate for the first training session so that they can go out and "preach" the advantages of the program after the training.

Councilor Hardy stated that there is no matching grant. Anyone that would like to join and take the training starts which starts November 1st and urged citizens to come out to participate believing the more people trained in the community the better. The City Council will vote on the matter at their special Joint Meeting with the School Committee on Tuesday, October 19, 2010.

MOTION: On motion by Councilor Hardy, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the acceptance of \$4,000.00 in Massachusetts Citizen Corps Grant Program Funds, to be expended by the City of Gloucester acting as host agent for the City of Gloucester Community Emergency Response Team (Gloucester CERT) as in accordance with M.G.L. Chapter 44, Section 53A; said grant funds are from the Federal Emergency Management Agency (FEMA) that are passed through the Massachusetts Emergency Management Agency (MEMA).

49

~~Councilor Verga entered the meeting at 6:11 p.m. and Councilor Hardy stepped away from the dais as a Committee alternate.~~

2. CC2010-026: Request from 1907 LLC and Pavilion Mercato LLC re: BirdsEye Mixed Use Overlay District ("BMOD") Zoning Proposal (Rezoning #2010-003)

Councilor Ciolino stated that he was opening the continued public meeting of the Planning & Development Committee for the "Request from 1907 LLC and Pavilion Mercato LLC regarding the BirdsEye Mixed Use Overlay District (BMOD) Zoning Proposal (Rezoning #2010-003). **Attorney Lisa Mead**, with Blatman, Bobrowski & Mead, LLC representing 1907 LLC and Pavilion Mercato LLC handed out more copies of the changes to the BMOD with the changes highlighted in color for the use of the Committee for the review this evening (documentation on file prior to the meeting) spoke about the definition of a Planned Unit Development (PUD) and what that process lays out. She would also go through her memorandum dated October 14, 2010 to the Planning & Development Committee (submitted prior to the meeting and on file) regarding their responses towards the recommendations and determinations to the City Council. The zoning ordinance changes they made as result of that are their interpretation of what the Planning Board recommended. What they did was issue a memorandum and recommendation without actual changes to the document. She didn't wish to imply that they are the Board's changes. She stated this is an overlay district. The underlying zoning and the MI district still apply to this property even after an overlay district has passed. Until such time, as an applicant who qualifies, receives both a Master Plan Permit and a PUD special permit and receives a building permit, then they can build under the overlay district. Until that time the property is subject to the underlying zoning. She felt this was a very important point to remember and a basis of this whole zoning. There were questions about the need to clarify it and would point out in the ordinance where they made it very clear. She reiterated they have to get a Master Plan permit and a PUD special permit before they can apply for a building permit. The process would be that this is a special permit to the special permit granting authority, in this instance the City Council. The applicant presents a master plan of their project to the Council and talks about the uses; and has to show how it was compatible with the area; that it meets the dimensional requirements; parking requirements and loading requirements; the design standards; how it integrates with traffic and services and infrastructure standards and is consistent with the ordinance. The City Council, as the special permitting authority, would approve it after their review in accordance with the standards set forth in the ordinance. Then, or at the same time, the applicant would apply for a PUD special permit which would be more of the specifics; the exact entity that is going to go in; for example, to an area, and any specific design criteria that wasn't addressed before. So it would be a more specific special permit with the specific uses listed in the ordinance. That is a special permit the Council would issue. Then the applicant would apply for a building permit. It is a two-step process. First they apply for a Master Plan permit, where you do a full review just like you would on any development. Then they apply for a PUD special permit which can be for the whole development or a portion of it; and has to be in the context of the master plan which had already been approved. Then, after that approval, a building permit application is made. There are two reviews by the City Council in accordance with what is set forth in the ordinance. Again referring to the memo and ordinance, she went through the Planning Board recommendations to the City Council and her comments in the order of the ordinance. The Board commented that the definition of PUD needed to be amended to reflect the suggestion that the project should build on the underlying zoning and not be separate from it. In section 5.25.2 of the ordinance in "Definitions" she clarified that in the middle of the definition of the PUD, that a PUD shall contain a minimum of two uses identified in this ordinance and/or herein, of which shall be a use by right or by special permit in the underlying zoning district. She believed the Planning Board's concern was that anyone could come in with a Master Plan or a PUD special permit request and not have any of the uses not allowed in the underlying district. She stated that was not the intent. This is to make sure it is required so there would be no question that you must have one of the required uses either by right or by special permit in the underlying zoning district. In section 5.25.3.3 Applicability, they

48

amended the ordinance to clarify that under the BMOD a proposed project must receive a PUD special permit. She recalled at the second to the last Planning Board meeting, it was suggested by Mr. Witten (City land use consultant), stating she disagreed, that someone could come in and apply for a Master Plan permit with all by right uses; and therefore, not ever go to City Council for a special permit. She didn't think you could do it under the original draft of the ordinance because of the mixed use requirement. To clarify, what they changed in the applicability section was "to be very clear about it, no building permit may be issued without the approval of a PUD permit hereunder." There is no question now there you must have a Master Plan and PUD special permit before you can apply for a building permit. Uses were discussed both from the Planning Board as well as the public. One of the comments from the Planning Board was they couldn't tell, given the breadth of the list of uses, what would really be there as they need to be able to understand what it is we are allowing under the ordinance. Under section 5.25.4, which she felt was important, that they originally said that all uses allowed by right in the underlying district would be allowed by right in a Master Plan or PUD. There was concern that they weren't all consistent with what was happening "down there". They have suggested that those uses that are listed there not be allowed at all in a PUD (animal hospital, animal shelter, agricultural, horticultural, fuel and ice establishment, etc.). The other concern was there were some uses allowed in the underlying district that would be OK in and of themselves; but mixed with a group of uses in a PUD would really require a bit more review by the Council and shouldn't be allowed by right. They respectfully suggested that those uses allowed by right in the underlying district listed here may be allowed only by special permit in a PUD (trade school industrial training center, office building more than 2,500 sq. ft. but less than 6,000 sq. ft. of floor area, marine related sales or rental; retail consumer services, etc.; manufacturing processing or research over 3,000 sq. ft.). All of those uses are now allowed by right in the MI, and hearing the concerns of the Planning Board and public, that given the group of uses in a potential PUD, that the City Council should have the review under a special permit and suggested they should be approved by special permit and not by right. There were some uses they suggested that should be allowed by a special permit that weren't previously allowed in the MI district. Again, they listened to what the Planning Board had to say as well as the public; and they are suggesting the following uses be stricken and not allowed at all in a PUD: assisted living residences, adult daycare and the accessory use of drive through. Use clusters are a new concept in Gloucester but not new tool in Massachusetts, and can be used to help encourage switching off of uses once a project is permitted. You only take advantage of it unless your project is already permitted. For example, if you are permitted for a retail store of a certain size, say, 8,000 sq. ft., and you got that permitted as part of the PUD special permit. If after five years that store leaves and you want a restaurant under this scheme to go there, and the restaurant has the same parking requirements and doesn't change the exterior of the building at all, you could do it without coming back to the City Council. The suggestion on use clusters is to allow for some flexibility for an applicant or property owner to retenant without the need for coming back to the Council for a new special permit but by making sure there are no external impacts from a building and parking point of view. The changes they have made are reflective of the changes they made in the use table. For example, in the residential/commercial use cluster, they omitted Assisted Living residences because it is no longer an allowed use in the district. The dimensional requirements have been built in this ordinance to allow full use of this property to be able to accommodate for the obligations that an applicant has to provide on site that other similarly situated projects would have in the area. This applicant is required under this ordinance to provide all parking on site. They may not take advantage of the exception in the ordinance generally to use a public parking lot to satisfy their parking needs. They must provide all parking on site, which she contended was "a big obligation". They must provide certain view corridors and public access corridors through the site to the water. Again, she reiterated, that is not necessarily an obligation that other similarly situated developments have. Those are two examples. There are other limitations that are also placed on the property dimensionally. In an effort to use the property for its highest and best use, there was a need to reflect general architectural styles to have some more height on the property. The Planning Board understood there is a need to have additional height over and above the 40 ft. allowed by the ordinance. They weren't willing to say that 125 ft. that was suggested in this draft was appropriate. They have

49

reduced the bulk of the height. They've kept it at 125 ft. Before you could have 15% of that, now it is only 5% of it and is truly a tower as opposed to a full floor or two small towers. They said it is required to be a peaked roof. In the underlying ordinance the height is measured from a flat or peaked roof. They're saying you have to have a peaked roof that is the measurement at 125 ft., losing a floor. It's the roof line, not a flat roof or a parapet. It is reduced more by requiring the peaked roof. They would like to add solar panels on the sloped roof to help make this project green as discussed previously. No more than 50% of the area shall exceed 94 ft., and no more than 65% shall exceed 60 ft. in height. So the areas that were taller and broader before have been narrowed. Including the relief for height special permit that the Council currently gives, they're suggesting that, notwithstanding the height requirements they've put in, the special permit granting authority may grant a special permit to increase the height in excess of the percentages of the maximum building height allowed similar to that which is allowed in the rest of the ordinance. They have kept the tiered requirement. She felt one of the concerns everyone had, and they actually suggested in their ordinance to begin with, was that the building has to be tiered. All the height can't be on one side of the building. That's a design review for the permit granting authority and is a requirement of the ordinance. Section 5.25.7.8 Infrastructure Design; one of the concerns of the Planning Board was that they were not submitting their project for the same review that major projects would receive in the City. There was no intent to do that. They made it clear by taking the applicable sections out of the Major Project Review section and putting that into the ordinance, on recommendation of the Planning Board. Now they're all in a section: infrastructure design, building codes, special residential requirements. When a PUD Master Plan is submitted, the Planning Board thought it important to specifically list out impact analysis which would be part of the review project anyway; so they listed that out. They left in the catch-all of any other supporting information that may be beneficial to the City Council in evaluating the Master Plan. Those were the major changes that they made from the ordinance the Council originally saw; both to clarify and be responsive to the Planning Board comments as well as the comments by the public. She noted there had been a lot of discussion about spot zoning. She respected the Council's desire to make sure they don't pass something construed as spot zoning. She assured them that her client would not be happy if they came this far, and they thought it was the case. She provided the Council with copies of two opinions (on file) about spot zoning; one was her original opinion and another was in response of Mr. Witten's comments as a result of some questions about spot zoning. She stated emphatically that this ordinance is not spot zoning for all of the reasons she cited in the support she gave the Council. It is designed to strengthening areas existing with industrial uses and infrastructure by permitting compatible businesses with a limited number of residences which she stated is consistent with good zoning practices; and it is consistent with the goals of the Community Development Plan and the Harbor plan where they talk about re-using underutilized areas of the waterfront; encouraging additional housing units and finding highest and best use of the property. Those are the plans and studies to name a few of the things the plans and studies in this entire area have covered. It's designed to stimulate and generate the economy for the City in general, increase the tax base, and create jobs. It is created to provide a range of housing choices. It requires compliance with stringent site design criteria. It requires public access. It is an overlay district and builds on the underlying district with certain requirements allowing for different uses with dimensional controls. The parcels are unique; there is no with deep water access unlike other parcels in the MI district, nor is there commercial access for industrial water purposes. It is surrounded on two sides by residential uses. It is not necessarily appropriate to be more broadly applied to other areas of the City given the unique nature of this site. So for the legal reasons she provided them, this is not a spot zoning matter. The National Amusement v. Boston case that was provided was a reversed spot zoning case, and not necessarily applicable here; even if you apply it here, it meets the criteria which she explained in her memo of today. It is not a size issue. Under Chapter 48, Section 9, it is allowed to have PUD's at 50,000 sq. ft. or five times the smallest zoned lot area requirement, whichever is less; and this exceeds it. Size is not the only factor when you are looking at spot zoning. She was confident that if ever challenged they would be fine. She felt the Planning Board memo sets out why this area is a unique area and appropriate and deserving of its own zoning.

David Anderson, 16 Middle Street stated from the beginning he has been in favor of this project. When he sat through the last budget hearings for FY11 and saw the overview of the City's financial needs, particularly the infrastructure issues and the school issues, he commented this City had zero growth last year yet had a budget increase of almost 2%. Surrounding communities have had growth of 15% to 30% and that no community can exist without growth; everything that costs the taxpayers continues to grow. He believed Mac Bell has put a lot of time and effort in this. However, he believed no one should be given carte blanche. But developers are not running in to develop properties in Gloucester. We're at the end of a highway. Gloucester is 17 miles off of a major throughway. He contended this is not an area conducive to major manufacturing which stimulates growth; and more importantly stimulates tax dollars which are essential to continue to running a city. He pointed out that Gloucester Crossing was three years ago, stating much was given away for the sake of that growth. What was promised, referring to a proposed hotel, assisted living facility, more stores than are there now, never materialized. He noted there would be no (federal) stimulus funds next year, or any additional State money for this City next year; yet costs continue to escalate. He declared the City needs good development to survive. Salem had \$26 million and Beverly \$13 million in development last year; Gloucester had none. Mr. Bell had five meetings explaining what he wants to do. He is a resident and "has done good things for the community". He felt this is a development essential for the growth and well-being for the City.

Attorney Jonathan Witten, City land use consultant started with Attorney Mead's discussion of spot zoning. He made clear in both of the two Planning Board public hearings; again this evening and in all the correspondence with the Planning Director and himself and to the Council members, he had never said this was spot zoning. He clarified that he had said, and repeated this evening, is that the Council needs to be aware through the City Solicitor, to be aware as to whether any rezoning is spot zoning. Any time there is a singling out of any parcel it raises the specter of spot zoning. The City Solicitor, he felt, is more than able to respond to Attorney Mead's comments about whether or not this is or not spot zoning. He raised the issue that under the National Amusements v. Boston case (on file) there has always been a concern in the Commonwealth since 1990 that the singling out of any parcel raises that question. The question is a judicial question and not one for the legislative body (meaning the Council). What the City Council needs to do, using the City Solicitor's guidance, is to determine whether this comports with the City's plan; all of the comments from the Planning Board and their suggestions; the Comprehensive Harbor Plan; that's the purpose of a rezoning before the City Council, not whether or not this is spot zoning. He reiterated that he has never said this rezoning proposal by Attorney Mead's client is spot zoning. What he suggested is it is "part and parcel" of what P&D and the Council needs to deliberate which he said before the Planning Board. He went back to the core comment that he made at the first Planning Board public hearing that he attended which went to Attorney Mead's response on the use clusters. That remains an issue to be brought to the table for P&D and the Council to consider whether the transformation from one approved use to another use in the use cluster listing without any additional City Council review is an appropriate way to proceed. He was not commenting whether this is good or bad but simply what the Council should look at and has been his work with the Planning Board and Planning Director to date. The transfer of an approved use by special permit to another use by special permit without any further City Council review raises the question of whether you can predict what those other uses will be. He raised that concern at the Planning Board public hearings and is one that he believed was still on the table. It is within the City Council's power in an amendment to the proposal to allow the City Council as a special permit granting authority, to put a condition of approval of a special permit use that it can't be transferred to another special permit use without coming back to the City Council. As it was currently written, it was his opinion, and would defer to General Counsel; you could not do that; that you would have to amend the current ordinance to allow the special permit granting authority to restrict the approved special permit use from becoming another special permit use without subsequent City Council approval. As it is written now, free translation or free transfer from any use cluster to any other use within that use cluster so long as it doesn't expand the volumetric, parking or size triggers. That, he believed, was a principal issue and was an easy fix from a drafting perspective and a regulatory perspective. Secondary to that one issue is that zoning is all about predictability. If the public

and the Council and the Planning Board can't predict the outcome of a proposal or a potential proposal then it raises questions of the purpose of zoning. The purpose of zoning is to provide public health, public welfare, protection, and noted as the speaker before him suggested, economic development and stimulus; but only if it is a predictable measure. If it is unpredictable, then zoning doesn't work as it is supposed to. He didn't see it as a drafting hurdle and saw it as a potential compromise in order to support this ordinance to at least allow the applicant get a special permit for the use that he or she or it down the road seeks and allows the City Council to impose a restriction that it can't be transferred freely without subsequent review by City Council.

Ann Molloy, a member of the family who owns and operates Ocean Crest Seafood and Neptune's Harvest Organic Fertilizer Company at 88 Commercial Street read a statement by Ambie Scola, a UPS delivery truck driver who was against the rezoning proposal (submitted and on file). She then read her own statement (submitted and on file) asking what has changed with the rezoning of the Fort. She reiterated they made a reasonable offer for the Birdseye property. They made another offer for the freezer part of the building. They are looking to buy property to expand their business. Their offer was serious. Had they been able to buy it they would have been there working to expand their business now, employing many more people. She contended this opens up serious questions of spot zoning and that it was unfair to give rights to one person and not to another area. She didn't understand why so many elected officials were willing to spend the time and money on this matter. She wondered about the existing businesses in the Fort who would suffer. She felt the project wouldn't be viable or feasible without the rezoning. She contended that if you have to make that many changes to rezone, that it didn't belong in that area. The residents in the Fort are grandfathered in, and this rezoning would put the residents in the middle of it all. She noted the congestion already in place for the area, stating additional traffic will make the situation worse. If the height restriction is lifted it will overshadow the area. She believed quality of life become will become worse. She didn't feel the City owed Mr. Bell anything.

Damon Cummings, 1063 Washington Street stated Pavilion beach is private tidelands. What is allowed by right on private tidelands are fishing, fowling and navigation; you can swim, but you can't wade. Mr. Bell has let that beach be used at a public beach. However, if you put up to 140 residential units there, he believed that was either a condo association or a hotel. They're not going to allow the public to use the beach. He urged the City Council to think deeply about future owners, future condo associations, feeling sure the local people would not kick them off the beach and to consider this carefully. He didn't want to see a new owner come along and prevent public access and use of the beach.

Valerie Nelson, 7 Sunset Point Road, a member of Citizens for Gloucester Harbor, corrected a previous statement that there is money that continues to come into Gloucester; next year \$750,000 is coming in from a Congressional appropriation for waste water treatment and many other communities are receiving millions of dollars for R&D, business development. She contended Gloucester has a lot of business prospects, when it is good solid economic development. They do have a Mt. Auburn Plan that will come out with some direction. She recounted that Ocean Crest was prepared to buy this property and put a serious business in place to bring more jobs for skilled workers on the waterfront and remained prepared to do this. She believed this was the kind of healthy economic development consistent with a marine economy. She agreed with the earlier presentation that the MI zoning is consistent with the plan. The City should be looking for developments that encourages a healthy working waterfront; that is what they should be doing, not introducing residential and hotel uses on the working waterfront. Reminding the Committee that she was on the City Council for two terms serving on the P&D Committee, she was struck by the notion that this project is spot zoning. Because of the particular wording of Mr. Witten's comments, that an individual property that is singled out for such special preference, must be consistent with prior city studies or plans. She stated this project is not consistent with any study or plan that she was aware of. Over the last year there's been intense discussion of the waterfront uses. This is Marine Industrial, and emphasized no residential. The Mayor came in talking about lifting the DPA and Marine Industrial in the Fort. There were extensive listening posts around the City. Very few suggested in those listening posts that residential use of the working waterfront was acceptable. The Marriott proposal came in; and the City Council extensively reviewed the question of this particular site whether to rezone the

Fort. There were many meetings that went on about the businesses in the DPA being inconsistent with a healthy maritime economy; all the use conflicts, tipping point issues of gentrification, etc. That rezoning of the Fort was rejected about 1-1/2 years ago. She explained she had been to almost all of Mr. Bell's community input sessions. There were records kept of what the community wanted at this site. A number of people who mentioned residential uses in his own public meetings, but did not describe residential use of these properties. At the time, Mr. Bell made known that the only financial viability (of the project) was to make it residential. She contended it was an open and shut case of spot zoning. There was nothing indicating that the community wants this, nor is there anything in writing on it either. Mayor Kirk went to Portland, Maine; and in her letter to the citizens Mayor Kirk noted that Portland, Maine had gone to residential on their waterfront and were now backtracking. She urged the Council to put an operating business in place, and recognize this as spot zoning.

Susannah Altenburger, 6 Atlantic Court believed this was a test case for how the City Council defines its control over the community, its role; not just the community at large, but in these times of economic distress. She also believed they are dealing on one hand with a "good business and good corporate citizen" such as Ocean Crest since 1965 who have been meeting payroll creating an evolution towards sustainable products. On the other side is a real estate driven exercise in hopes and projections and "lofty promises". She thought the City Council was on the spot to say what the political and economical priorities on this harbor. Mr. Bell has been approached "over and over" on various opportunities for Marine Industrial opportunities, as she believed Ocean Crest has done; and Mr. Bell is "tone deaf on the subject by choice". She felt they were being asked by the developer for something that is alien to the City, as it is to most communities in Massachusetts. As Mr. Witten stated in meetings prior to this, [overlay districts] usually gets applied to areas ten times the size of Mr. Bell's property. Mr. Bell is proposing to use a tool on such a small piece of property, which she believed was why the issue of spot zoning was being raised; and the Council is being asked to do this on a basis of a promises of what it could be as opposed to the certainty of a Marine Industrial "good corporate citizen" that has a track record. She lives near the Village at West Gloucester and spoke of a developer who was to build 17 homes. The neighborhood was concerned with infrastructure issues; and felt the neighborhood was rode roughshod over. Ultimately, the developer went bankrupt with six buildings finished out of 17 planned. She expressed her leeriness of promises and the absence of a no-flip vow on the local faces of this development. They have not heard that it will absolutely stay local and that the Council will have control over the very steps of permitting it through. Someone asked what will be the controls of the Council, and as Attorney Mead stated during one of her presentations that most of the conventional controls will not be within the Council's reach; they'll be just a few left. As Mr. Witten again pointed out this evening, "in toning down the aggressive language of this particular zoning proposition" leaves the Council on the spot. She reminded the Council members that Mr. Bell had started by asking for a 15 year permit for the project and is down to, she understood, seven years. She believed there was an "aggressiveness and entitlement...that is quite stunning" versus "a job creation machine", Ocean Crest, as a viable economic force now. She cautioned against breezy promises that end up turning sour.

Bill Johnson, 26R Fort Square stated he and his wife own their property at 26R Fort Square and was raising their family there. He stated for the record he has never and continues not to support residential uses on this parcel. He was in favor of any type of development that provides jobs which provide ladders for young people trying to go up in the community; places where they can learn a trade, learn marketable skills and build themselves. He spoke to Mr. Cummings point about the beach. He believed if you grant residential uses to this property, Mr. Cummings was right; (the City) will lose the beach. He believed Mr. Bell when he says that 'he will guard that beach'. He stated they don't know what happens after Mr. Bell and expressed his great concern. He contended if a developer bought a parcel in Blackburn Industrial Park; and there was a stunning view of the ocean over Good Harbor Beach off of Great Republic Drive and brought this type of proposal, he wondered how far the project would get.

Clayton Sove, 28 Fort Square stated they're being told this project will be "a boon to the City", of \$300,000 to \$400,000 to the City; and wondered what happens when 50 school-age children move into

the project. Now the City is paying \$750,000 in tuitions. He thought that sounded like a loss to the City of \$300,000 to \$400,000.

Councilor Ciolino asked Attorney Mead to speak in rebuttal and also to some refinements.

Attorney Mead pointed out in the definition of hotel/motel/motor inn that there is a limitation on the amount of space that could be used for such a use in the project which is in the definition. It can't be more than 125,000 sq. ft. or a third of the combined gross area. The requirement that it be a mixed use project is in the definition of PUD. There is a requirement that it must be a mixed use project and can't be solely residential. In Sec. 5.25.4.4 goes to the concern of having residential uses in the MI area, and that is the covenant that has worked in other areas of Gloucester; that anyone purchasing a unit or living in the unit in this development would have a covenant on their property which makes them recognize and acknowledge the industrial nature of the surrounding area; and that is written into the ordinance as a requirement. She then addressed the ongoing public use of the beach that Mr. Bell has allowed freely for people to use the beach. She discussed at the Planning Board the Commonwealth tidelands and fishing and fowling, things of that nature. It is a private beach subject to the rights of the Commonwealth. Mr. Bell is willing to have either in the ordinance or when a special permit is issued, to require a deed restriction be placed on the property to assure no matter the owner of the property, the beach is for public use. As to the comment regarding the controls for the City Council, she felt she had never represented to the Planning Board that the controls would not be within reach to the City Council. She stated, to the contrary, she has said there are two processes, at least, that an applicant must go through; and they include the regular Special Permit review process, a control that a City Council or any special permit granting authority would have. Specifically, those criteria are outlined in the ordinance twice under the Master Plan permit and under the PUD special permit. Section 5.25.8.3 goes through the criteria the City Council can apply for each of the applications for Master Plan and similarly in 5.25.9.4 under the review of PUD special permits; it includes those review criteria the City Council would apply. Those are similar, and/or same in some instances as any special permit currently in place. With regard to "latitude" in Mr. Witten's comments, it is to the use clusters which she believed is an issue that is new and different and does allow latitude to the applicant, believing there was no question about it. She agreed with Mr. Witten in respect that it does allow the use clusters for the transfer of uses by right or by special permit within the use cluster once a special permit is issued within that use cluster. You can't have uses permitted in one use cluster and "hop" without review to another one. You're not allowed to do that. However, you could go within similar uses within that same use cluster. They're open to have this discussion with the City Council that those uses are within the same realm of impact; and they've taken care to accommodate the controls and constraints that you couldn't have increased parking requirement or changes to the facade of the building. She believed the answer was "yes"; it does allow flexibility within the use clusters. She agreed that is the way it is drafted. Could it be changed or reduced? She believed it could by drafting and was not insurmountable. It would change, however, the flexibility of the ordinance. Could you allow uses by right to be changed? You can change a use by right in the district, anyway. Could you eliminate the special permit aspect of it and only allow uses by right, like eliminate the use clusters altogether? She stated, "Yes"; by drafting, but it is different than what is presented. They would prefer a discussion of the refinement of the uses within the cluster rather than the elimination of the uses. She contended it is a valid tool; it has been used in other areas. She provided the Planning Board, and was more than happy to provide the Council with the actual examples of use clusters and explanations of use clusters such as in Union Square in Somerville. It is not foreign to Massachusetts; and drafting some refinement could occur.

Suzanne Egan, General Counsel stated she looked at Attorney Witten's email and reviewed Attorney Mead's letters regarding the spot zoning issues. She believed that Attorney Witten is correct; it is a decision that the courts make. When somebody objects to a zoning amendment that's when you get into the spot zoning issue. What the City Council does, it has the authority to enact zoning amendments and as long as those amendments are consistent with the purposes of the zoning act and that's the prevailing reason for the enactment of the zoning, then the court will defer to the legislative authority of the City. The court will say, City, you know your circumstances, your area and the zoning act; and if you decided

as the legislative authority that is appropriate on the basis of legitimate reasons, then the court will typically uphold that decision. That's an exercise that the City Council has to go through to look at the purpose of this ordinance; to look at the purposes under our zoning ordinance and our zoning act; and whether or not this is a legitimate reason to enact a zoning amendment.

Councilor Ciolino asked regarding the determination if studies have been done by the City.

Councilor McGeary entered the meeting at 7:21 p.m.

Gregg Cademartori, Planning Director stated in the letter drafted on October 8th worked on by the Planning Board, they walked through over three meetings section by section of the ordinance amendment and made recommendations on the text that was provided. What the Board approved in their draft was to boil it down to the italicized sections in the draft (both documents on file). In reviewing the recommendations that Ms. Mead suggested, he stated they are certainly interpretations of the Board's recommendations and acknowledged the presence of the Planning Board's chairman (Rick Noonan). He felt as the Council is going through their discussions and deliberating over this ordinance, it is specific in terms of breaking it down to, do you support purposes of the ordinance; the uses that are proposed. There are only several new uses that they felt were the bulk of the discussion: the hotel and multi family. The rest of them are allowed in the MI district or are permutations of commercial uses that probably would be consistent with any fairly broadly defined commercial/industrial district like the GI, the MI or even the business park district. One of the recommendations was specifically related to the housing which they felt was the crux of the proposal and how that would be treated. If the Council rejects the inclusion of housing in this proposed overlay, that is the bulk of what is added in this ordinance, or built upon, over the current allowed uses. One of the things the Board had suggested was if you're entertaining housing in this proposal, how are you going to treat it. There was reference to the inclusionary requirements in the zoning ordinance and how housing, wherever it is in the community, is required given certain threshold size of providing affordable housing or using one of the mechanisms in the current zoning ordinance to either make a contribution or produce off site. It wasn't felt that had been addressed in the revisions that have been provided. The text stands that 5% of affordability will be provided for a housing component in a potential project. One of the other recommendations, again trying to define if you move from the use discussion to the density discussion, the height and some of these new uses regarding the housing components are defined by the shell of the building, whatever that the maximum building size is proposed then defines the amount of the use which is a fairly untypical approach. Elsewhere in the zoning they define density standards by the size of a property. It is appropriate in a project that there is additional use "X" there is a process for that discussion, usually in a special permitting process. One of the strong recommendations was, in particular the housing component identified as one of the uses has no density standard assigned to it other than some potential shell of a building and a percentage of it. That is the way many of the uses are treated, a kind of either or, a maximum or 1/3; whatever that might be. He believed it pointed back to the predictability of what is going on in this potential project. There have been uses that have been eliminated that are consistent with the discussion of the Planning Board. That list is annotated A through G and one accessory use of structured parking. The difference is the multi-family or apartment residential use as well as hotel. The Planning Board suggested that rather than going through the exercise of further defines use clusters to something everyone was comfortable with, that perhaps a better approach, as Mr. Witten has suggested, is to do that in the special permit process. If you don't eliminate the potential of the use cluster, essentially they are permitting that use cluster. He conjectured what is to say if someone comes in and they choose Use A in a cluster and give a presentation and tell about all the background of why it's going to be a good use and why it will be synergistic and fit with this project, then they don't have to return here to do B or C. It is a concept; and believed there were examples where it has been used. It could be potentially used; but he cautioned for the Council to realize they are permitting an umbrella over those uses if that is an acceptable practice to them. They have an example of another project special permit where they define thresholds of potential impacts and examine those when projects changes came in rather than saying the uses are interchangeable. Ms. Mead

55

referenced, that he didn't see in the text, was it would have to be the same square footage. The building wouldn't change; it would have the same traffic impact. He didn't see the parking impact in the ordinance as it was drafted or revised. Finally, on the height exception, the Planning Board suggestion was to utilize the mechanism the Council already uses for consideration of anything over what's allowed in a district through the height exception itself. He thought there had been a suggestion of defining a new conceptualized box. The Board wasn't willing to go through all the permutations and felt it was more appropriate to look at a potential project and make a determination rather than try to deal with heights that are difficult to imagine on that location or are potentially too large for the site.

Councilor Ciolino asked if Attorney Egan had to go to court, and had to defend this, could they give her a study that said this is recommended for this site, what we are proposing tonight.

Mr. Cademartori thought what Attorney Mead had pointed to in the petition, that they do have the Community Development plan that has very broad purposes. They also have a Harbor Plan, that's very specific; dealing very much with a DPA Master Plan. Two years ago they went through a lengthy process of discussing the potential, that things weren't necessarily defined as they should be in this particular area. There have been many attempts, of which he believed this to be the fifth. He stated it was a valid area to have this discussion; as uses change, as they're not a homogenous district. There is a lot of information out there, that's been studied on this particular location. This is the process to define whether this is the appropriate zoning for this area. He didn't believe they would see one document that said this is what you should do that is specific to this site.

Councilor Ciolino asked for a yes or no answer.

Mr. Cademartori didn't think there would be one single document to take to court. He stated he was not an attorney and felt it was a different discussion as to whether it is based on principals the Council supports; the uses are permitted in close proximity to this area, and it could in some ways bring some consistencies to some uses. There are some that are included in this potential mix that have been debated before, and believed they would be debated again.

Attorney Mead stated Ms. Egan would have no single document but would have a multitude of documents.

Mr. Cademartori stated that would be correct. He added that there are very broad purposes; that there was not something so specific that there is one thing that someone can turn to and say this is what should be done there.

Councilor Tobey and Councilor Curcuru entered the meeting at 7:30 p.m.

Councilor Mulcahey asked when a shadow study is going to be done or if one is going to be done [regarding height].

Ms. Mead stated there is not one to be done for the zoning ordinance. Like a traffic impact analysis, a stormwater analysis, a sewer and water public services analysis, that can be required as part of any submission to, and suggested that it be required, the special permit granting authority, just like when they permit any other project. You wouldn't do that as part of a zoning ordinance review, but it would part of any actual proposal the City Council could require.

Councilor Mulcahey stated when she pictured the building; she saw the parking below, living structures above, Mercato to the side and wondered where the industrial [space] would be and how much space would be left for that [purpose].

Attorney Mead stated when they went to the Planning Board they had some footprints and a building design that they couldn't guarantee because the Planning Board wanted to see bulk – what would be the biggest under the ordinance that could be done so they understood what that meant. There is no specific location for anything except that which is required in the ordinance. When a plan came in, when a proposal came in to the City Council under this ordinance, the applicant would have to show how the proposed uses meet the purposes of this ordinance to facilitate development with the mix of uses within this district to provide more mixed use, investment opportunities to stimulate the general economy. Any applicant would have to show that to the Council with a list of potential uses to occur. This Council, or

whoever the special permit granting authority is, would have to determine whether or not that application met those purposes and criteria in the Master Plan. She added there are those allowed uses right now.

Mac Bell, of 1907 LLC, stated he had a conversation the previous week with Lenny Parco, President and owner, whom he believed the appropriate person to represent Ocean Crest. They've "always offered him the opportunity" to buy a section, a condominium, a 10,000, 15,000, 20,000 sq. ft. industrial space as part of the project because in building a parking garage, he saw no reason they couldn't incorporate one section that could be their industrial resource. They have offered to lease the warehouse for five years in the interim, which Mr. Parco has declined at this juncture, telling him that he intends to buy other property with water access. The program as to what can be done here has no guarantees and an "incredible series of challenges"; and felt a meeting like this represents an "incredible expense", and the process was just starting. They've been through half dozen meetings with the Planning Board; and their hope is to get through this subcommittee and go to the Council. That begins the process. Then they have two other major permits to be obtained. They need to get to the position so that they can entertain what it is they can do at the site. In the meantime, they would very much like to make a five year lease, and would do so immediately, with any viable industrial player to be there if they were interested; but he stated flatly that there weren't any players.

Councilor Mulcahey noted she sent emails to Mr. Bell regarding industrial possibilities.

Mr. Bell stated that he has looked at them, but people are not interested coming here.

Councilor Mulcahey stated 10 years ago there was a traffic impact study of the hot spots of the City; when they did the Fort area there were 600 vehicles in and out per day coming in and out of Commercial Street. His project would bring it to 1,250 in and out per day, excluding all the special events that take place in the Fort. She also pointed out that the access to the Fort area is very narrow. Would he be widening the street, or "shortening" the building.

Mr. Bell stated for anyone who has attempted to run a business in Gloucester, employed people and paid taxes, when it is busy in Gloucester "we have our hands full"; but seven months a year that is not the case. He felt there was business and "busyness" and that there are other times when they need to improve the business atmosphere.

Attorney Mead stated any proposed development will have to be reviewed by the Council. The applicant will have to present a traffic impact analysis in order for the Council to determine whether or not the appropriate controls are put in place, roads are necessary, parking is met to work in a public safety point of view and satisfy the health, safety and welfare of the citizens of Gloucester. That, she contended, is the job of the special permit granting authority. This does nothing to limit it. They have that review "twice over".

Mr. Bell stated if they could have it as an industrial property with 200 employees, there is "X" amount of traffic for that. They would do that tomorrow to get that going and would welcome it, and welcome the traffic.

Councilor Hardy felt she had a lot of studying to do, and after a brief review, saw contradictions between what was said at the Planning Board and what was received in writing, appreciating Attorney Mead's documentation. She was starting to compile her questions but believed she had additional research to do on the matter first.

Attorney Mead didn't think the revisions they provided were contradictions to the Planning Board; and suggested they perhaps didn't address all of the things the Planning Board wanted them to address or in the way they wanted. They interpreted that based upon what their goal was with the zoning and provided the Councilors with something. It was a document to be discussed, but didn't feel they were contradictions.

Councilor Hardy reiterated she was seeing this documentation for the first time that evening which required further review, and may have misspoken.

Councilor Theken stated she also was seeing the documentation for the first time and hoped for a continuation to P&D's next regularly scheduled meeting on October 20th.

Councilor Ciolino expressed there was still a great deal of work to be done and would continue the matter to the next regularly scheduled meeting of P&D.

Attorney Mead and **Councilor Ciolino** briefly discussed scheduling the next discussion at P&D on the BMOD as she had a conflict with the next meeting date of P&D and talked of continuing the matter to the following date of November 3rd.

Councilor Ciolino continued as to how much of the matter they would take up at that time remained to be seen. He also wondered why come to a proposal so complicated with BMOD and PUD's; why could it not be simpler. He felt the issue for the City and for many citizens of Gloucester was how do they know what will go there, and what controls will "they have over there". Why, if it's not spot zoning, and they go forward, can they do an overlay for those three acres and have some allowable uses (residential, mixed use, hotel/motel); and would come to City Council for a special permit instead of going through the re-zoning. He expressed that the problem he had with this project from the beginning, what they are being asked to permit here and if they go with the request of 15 years or seven years, or whatever, they're all going to change. He wondered who will be around to remember all these percentages they're speaking of; all these different buildings; whether the property gets flipped; what happens to the beach. All these issues need to be considered. He reiterated his question of "why does it have to be so complicated". His charge to them (Attorney Mead, representing the applicants) at their next meeting was to come back with what they can simplify to make it much more understandable and much more controllable from the City's point of view.

A motion was made, seconded and voted unanimously to adjourn the meeting at 7:45 p.m.

Respectfully submitted,

Dana C. Jorgensson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING:

- Statement of Ambie Scola, UPS Truck Driver
- Statement of Ann Molloy, Ocean Crest Seafood
- CD: Down the Fort: A documentary & Archive Project, September 2010

CITY COUNCIL STANDING COMMITTEE
Planning & Development
Wednesday, November 17, 2010 – 6:30 p.m.
Friend Room – Sawyer Free Public Library, 2 Dale Avenue

- MINUTES -

Present: Present: Chair, Councilor Joseph Ciolino; Vice Chair, Councilor Robert Whynott; Councilor Greg Verga

Absent: None.

Also Present: Councilor Hardy; Councilor McGeary; Mayor Kirk; Attorney Lisa Mead; Mac Bell; Timbah Bell; Attorney Suzanne Egan; Attorney Jonathan Witten; Nino Ciamartaro; Anthony Giacalone; Anthony Bertolino; Jeremy Goldberg; Dave Murray; Mike Murray; Rick Noonan; Joseph Gleason; Sandra Martyn; Richard Griffin; David McCarley

The meeting was called to order at 6:31 p.m. There was a quorum of the City Council.

1. *Continued Business:*

- A) COM2010-026: Request from 1907 LLC and Pavilion Mercato LLC re: BirdsEye Mixed Use Overlay District (“BMOD”) Zoning Proposal (Rezoning #2010-003) (Cont’d from 11/03/10)

Councilor Ciolino welcomed the Mayor and acknowledged there had been a lot of “behind the scenes action” since the last meeting; and he thanked the Mayor for respecting the integrity of this Committee; that when Mac Bell would consult her, she would send Mr. Bell to him as well.

Councilor Whynott clarified when Councilor Ciolino stated behind the scenes action that there were no meetings of this Committee or any other Committee. There was some communication between the applicant and Chairman of the Committee; and that was the sum of it.

Councilor Ciolino reviewed that in front of them was the Gloucester Zoning Ordinances (GZO) compendium, P&D’s “bible, and what they all reference to accomplish anything being built in the City. What they have before them was the first proposal, and referring to the index of the GZO, Special Regulations, Sec. 5, noted it stops at 5.24. This proposal by the applicant is to create a new section of the GZO, Sec. 5.25, the BirdsEye Mixed-Use Overlay District. The originally submitted document by the applicant was 14 pages. He recalled at their last meeting held at the Legion; this Committee charged Lisa Mead, the applicant’s attorney, to come back with a simplified version; but it came back with 16 pages, as Proposal #2. It removed the Planned Unit Development (PUD). Since then, the Committee worked on a proposal of its own; theirs coming in at 4 pages; cutting the applicant’s proposal back to make it clearer. “Zoning needs to be simple”. They had four lawyers and a certified City Planner with no agreement among them. They need to understand what they are going to vote for.

Attorney Lisa Mead, the applicant’s representative would address the 14 to the 16 page issue. She noted Mac Bell, the main proponent of the project, would go over the big picture of the project to understand why they’re proposing what they’ve proposed and then would explain their changes.

Councilor Ciolino announced that the Committee and the Councilors and the lawyers would be “rolling up their sleeves and working on this; and if there was time they would accept questions and comments from the audience. He also noted there would be time also at their next regularly scheduled Committee meeting to further express views.

Mac Bell, 33 Commercial Street, 1907 LLC stated they are introducing the final stages of their effort to win support of the City Council’s subcommittee on their zoning proposal. Their hope is if the schedule works, that the City Council will embrace the public hearing on December 7th, albeit if it comes out of Committee on December 1st. Mr. Bell then made a power point presentation to the Committee (on file). Of note is the significant reduction in the original height request by 40%. This would be now six stories

at a 76 ft. height which he contended was the "absolute minimum" that they believe to have the ability to provide them a resource to put together a viable architectural project. He spoke of the 40 ft. maximum that most projects are held to and pointed to various buildings that are edge-to-edge/block-to-block. They are mindful and sensitive to the aesthetic of the background of the area, and its perspective and consider it important. He expressed that the City embraces realistic height limitations that allow them to construct specific financial scenarios which could create significant investment for downtown Gloucester. One of the major considerations of square footage is the height; with varied, staggered heights allowing them to accomplish the volume. There are multiple uses. He expressed this project was about "jobs and more jobs". They believe the integration of the project can add vitality to the neighborhood and downtown through industrial commercial and residential, which he further contended that the residential aspects were essential to attract investors, be it a hotel, apartments, live/work space.

David McCarley, Cape Ann Business Incubator noted that the BMOD is about jobs. He stated the commercial fishing industry has diminished and that the key to economic renewal was to support the marine industrial sector and to become economically diverse in the City. He believed that the BirdsEye project, being diversified in a mixed use environment, will survive "economic storms", like the one being experienced. He was in support of the change in zoning to allow for the proposal to move forward.

Sandra Martyn, leasing and property management with 1907 LLC and employee of Mr. Bell, made note of the "valuable" input of the citizens of Gloucester. She stated the way for them to pay for this development is through the residential portion of the proposal. The solution, they believe, is to increase population numbers. "People bring business; business brings jobs". She pointed out that the more people who live near the downtown, the more the downtown will benefit from their proximity.

Timbah Bell described the proposed envisioned plans are for the property by the developer and all the businesses that could be housed by the buildings when completed.

Richard Griffin, Architect for the applicant spoke of Mr. Bell "doesn't settle for less than a stellar job" on his projects. They believe this site when developed should garner a handsome tax return to the City, this being a comprehensive multi-use plan. In addition, they also intend on providing significant improvements to City infrastructure within the boundaries of their property such as utility upgrades including the removal of utility poles on the BirdsEye side of Commercial Street; provision of adequate off-site loading for shipping and receiving; and the development of an on-site parking structure sufficient for all BirdsEye parking; and roadway widening by setting new construction back 12 feet from the street. He pointed out that they are offering extensive public access corridors to the ocean which would remain open to the public permanently to Pavilion Beach. Two major reservations have come up: the residential use component and the complaint that they were asking for excessive height at 125 feet. In the course of eight meetings with the City, they've explained why excluding residential use from the scope of the proposal would be "financially infeasible". If they could find a viable commercial, industrial, or education-based tenant to occupy 2/3 of the facility, they would accommodate them; but there are no interested parties to date. He stated the residential use "is not just a feasible use for this location but it is a very appropriate use for this location." This property when joined with the 33 Commercial Street building separates the residential use of the Fort from the residential uses of Beach Court. This is a brief area that is MI that is not part of the DPA or with access to the working harbor. They're asking for a return to its historic state of residential use. Because of the expressed sentiment, they are substantially reducing the height of the project from the originally proposed 125 ft. that covered 15% of the building footprint with the highest extensive height being 108 ft. covering 55 % of the building footprint. After consideration of the square footage implications, they reduced the height request by 49 feet to a top roof height of 76 feet allowing them to build six stories. They are reluctant to offer massing studies at this phase of the process. Once the program needs have thoroughly been developed, Mr. Griffin stated they will then be able to design the project inside and outside; "form follows function".

Councilor Ciolino introduced Rick Noonan, Planning Board chairman. He noted Councilor Mulcahey was ill and not able to attend. Councilor Theken was unable to attend because she was representing the City Council at the Sawyer Medal awards ceremony.

Attorney Mead noted they wanted to increase the number of allowed uses in the district which was the "main driving force"; and to better define some of the uses so there wouldn't be any question about whether or not they fell into some of the vaguer definitions or not definitions in the existing ordinance. Given the history of the planning and zoning attempts in the Fort, and the studies in the area generally and in the area and the uniqueness of the property, with residential on both sides, MI on one side, no deep water access and beachfront, that it is not similar to other properties in the district. They wanted to allow by special permit those diverse uses to allow the City to control for review but to also better allow the applicant to permit those uses in a more comprehensive way; and to allow those uses in a way so as to provide jobs and economic benefit to the City generally. They wanted a single proposal to encompass more than one lot; the area being made up of more than one lot. Instead of having to go to the Planning Board to do an A&R, or come in and propose different projects, they wanted to come up with a proposal to allow a project to come in to plan over lot lines, which was the Planned Unit Development (PUD). It creates a tool that would be a two step process. The City Council would review and permit a Master Plan and then the applicant could take that and get the project financed with the knowledge that in the end because of the City Council review, a special permit for the PUD would be more likely to be approved. They wanted to allow for flexibility in the retenuing of spaces to reduce the amount of the permitting process. They wanted to take care of all of the parking on site to address concerns about traffic and not to overload the City's parking lots. They would require covenants on the residential uses on site acknowledging the adjacent industrial uses within the district, a tool used in other places in Gloucester. They went to the Planning Board process. At the last meeting of P&D, they had thought they addressed a number of issues of the recommendations of the Planning Board. But the P&D Committee didn't think so. Between that last meeting [October 14, 2010] and this meeting, she and her client met with the City Solicitor and others to refine and address the issues that were in the P&D memo and clarify those things that were thought vague as well as address the height and use clusters. They reduced the special permit uses in their most recent draft by removing them and replacing them with use clusters more like those for the Gloucester Crossing special permit to allow changes in retenuing as long as it didn't trigger certain events like reduction of open space; the removal of exterior walls, etc. They reduced the height and set limits on square footage so that the ordinance was clear on what the maximum square footage would be per floor and what the maximum height would be. They clearly defined, using the standards that existed in the zoning ordinance what the density would be. It would allow "X" number of units of residential housing per number of square feet of the lot itself. They removed the uses such as adult day care and assisted living facilities. They made the inclusionary housing requirements applicable to this site as they exist in the underlying zoning. They clarified what the live/work space requirements and design requirements would be. They removed the apparent, "but not intentional", ambiguity in the review criteria such as defining view corridors; pedestrian access, setting standards for those. That's the draft the Committee got back which they thought was clearer and more specific, again noting it was longer than that of the first draft based on the feedback from the Council. She spoke of the new draft that the Committee now had, a clear message to the applicant exactly what it is that this Committee wants to pass on to the City Council. She appreciated the clarity of the direction the Committee is providing to them. She expressed she had received a copy today. She had an extensive conversation with Suzanne Egan, City Solicitor regarding the draft; and appreciated a number of items they would like to look at and review the impact and that there might be clarifications that still need to occur.

Councilor Ciolino noted "there was a big pink elephant in the room", the question of spot zoning. The City Solicitor, at the request of Council President Jacqueline Hardy, wrote an opinion on the matter with regard to this property.

Attorney Suzanne Egan, City Solicitor noted Councilor Hardy asked her to write this opinion regarding the spot zoning issue. She expressed there are two issues with regard to spot zoning on this project. One of the Council's concerns has been, is changing the zoning in this particular parcel considered spot zoning. The City and this Council has experienced a lot of history looking at particular parcels of land in determining whether zoning should be changed on that parcel to a different district within the City; an existing zoning district to allow uses that are appropriate because of either the changing of the land use

trends in the area or for economic development for other purposes under the zoning act. In terms of the first threshold issue, can they do it; is it appropriate for a City Council to change the zoning of one particular parcel. Provided there are sound reasons under the zoning act that is an appropriate activity or action of the Council, that does not constitute spot zoning. The second question would be, does this particular zoning proposal constitute spot zoning; by looking at whether or not a small area or a lot is singled out and treated differently than any other parcel. This PUD as proposed is completely new zoning for the City. There is no other parcel in the City that has these zoning requirements. Because of that, she would say that the City Council has to have a very sound reason to enact, to single out one particular parcel of land that is a combination of a few lots owned by one property owner. There would have to be a sound basis under the zoning act to do that. One of the issues is what would be that sound basis. She believed the City Council was much better served by looking at the existing zoning that the City has, and their zoning scheme and the regulations in place and using those to address any issues regarding the change of use for this property because she thought they do run in to some issues with spot zoning in terms of creating a brand new zoning district for one parcel, in particular because it allows different dimensional; the height exceeds any other in the City; and it allow for changes of uses without any review from a permitting authority. She thought they would be better served to look at it differently to change the zoning in this area.

Councilor Ciolino stated this Committee is recommending the overlay to keep the property MI and expand some of the allowable uses. He asked Ms. Egan's opinion on that as opposed to spot zoning because it is not as much a drastic change.

Attorney Egan noted that the draft they are considering uses the CB district dimensional requirements in place that other parcels of land are subject to in the City. It is an overlay district that says that you can use those to do a mixed use. This is taking the regulatory scheme, the City's zoning ordinance, and saying it can be used for this particular parcel. It doesn't allow for completely different permitting and use and dimensional requirements of just one parcel in the City. In the zoning ordinances a legitimate reason can be found; that this parcel is similar to a CB district a block over. It relates to surrounding uses; that there is mixed use in the area and also residential use in the area. She did not see an issue with spot zoning using the newly drafted overlay.

Councilor McGeary asked if someone were to bring a charge of spot zoning would it be for the developers to defend.

Attorney Egan stated it would be the City's to defend; it would be the City Council enacting the zoning ordinance. They would be defending their ordinance and actions by acting within their authority and to assert that and be sure that it is upheld by the courts.

Councilor McGeary expressed by Ms. Egan's logic that by extending current zoning regulations and putting an overlay over the MI zone, it is different enough to deflect the spot zoning.

Attorney Egan stated "yes".

Councilor Whynott stated the latest document he had emailed to him from Ms. Egan [the new four-page draft proposal] was defensible against [spot zoning].

Attorney Egan again stated "yes".

Councilor Ciolino, noting Attorney Jonathan Witten, the City's consultant on the BMOD, asked him to speak about Planned Unit Development (PUD). They have determined the GZO does not recognize PUD's; there is no framework for a PUD; and there is no approval process in the GZO for PUD's. He asked Attorney Witten's opinion "to put the PUD to rest"; how this issue would proceed.

Attorney Witten suggested following the City Solicitors advice first in terms of whether you can place the PUD on this parcel. Attorney Egan doesn't preclude the City from the adoption of a PUD; but what Attorney Egan is saying is that if you were to adopt a PUD on this particular parcel, and only on this parcel that raises the specter of the spot zoning which he noted was consistent with past conversations on the matter. The PUD concept could fit the City through the Planning Director's and City Solicitor's recommendation; you could move forward with the PUD. The issue before them is whether that can adopt a PUD solely for this parcel, this project and only for this parcel and this project. He believed that question had already been answered. Whether they want to develop the PUD concept elsewhere in the

City on multiple parcels and develop it in a more comprehensive fashion he believed to be a different question. That is not what the petitioner has proposed. But it is a possibility for the Committee and the Council to consider in the future. There was nothing "inherently illegal or inappropriate with PUD's". He felt as Attorney Egan stated and her memo made clear, the issue is raised when narrowing that technique to one particular parcel. The issue isn't the City Council determining spot zoning. The concept of spot zoning is an accusation used to invalidate an ordinance in court. He believed the Committee was appropriately bound by advice of their Counsel. If moving forward the PUD concept is something the City wants consider in a non-spot zoning fashion; multiple sites, multiple parcels, an extension of existing zoning; that is different but is not before them.

Councilor Ciolino noted another question that has come up, in Attorney Witten's experience, what generally constitutes the acreage of PUD's.

Attorney Witten stated "you know it when you see it; it's not the size of the spot." It is the singling out for disparate treatment. He noted it could be a small parcel or parcels that can work very well with PUD's. Historically it is larger tracts of land to integrate mixed uses, and as a result typically more acreage is needed not less. There is no statutory probation, other than the minimum of 50,000 square feet, on the size found in MGL, Chapter 40A, Section 9. It could be multiple small parcels; a two acre parcel; a 10 acre parcel. "That in and of itself does not make a PUD work."

Councilor Ciolino stated if they go with a PUD first, they should enact one and put what the approval process is and what the framework is, clarifying that it was not for this particular project but "down the road".

Attorney Witten responded "absolutely". The purpose of a rezoning is not to necessarily benefit a particular project but to be compliant with the City's comprehensive plan and to fulfill the plan's objectives. Then if there are "takers" who speak for that rezoning, that's the appropriate method for rezoning "as opposed to the tail wagging the dog". There is nothing wrong with a petitioner making an application for a rezoning in the municipality; it happens all the time. But if there is to be a PUD concept scattered throughout the City, they would adopt that through the ordinance and then there are petitioners who fulfill the obligations and requirements of that ordinance.

Councilor Ciolino reiterated the two problems: 1) there is no framework for a PUD; and 2) in this situation there is the possibility of spot zoning.

Attorney Witten replied, "Correct". Spot zoning is a determination by the court; with the advice of Attorney Egan, it is a determination that can only be made on a case-by-case basis. "It is very hard to generalize and say that would be spot zoning. You know it when you see it." In response to the inquiry if he had seen Ms. Egan's draft proposal, Mr. Witten stated he had seen Attorney Mead's revision and Attorney Egan's revision. He noted they are two very different approaches. To accomplish what the petitioner seeks, they need the kind of flexibility built into Ms. Mead's proposal. To fulfill what Attorney Egan is suggesting to the Council in terms of protecting them and the "vitality of the ordinance", he thought it was an extension of the MI/CB district and thought that was what they needed to do.

Councilor Ciolino asked Mr. Witten in his opinion if they extended the MI, would that give them all the benefits of the MI plus all the benefits of an expanded use.

Attorney Witten responded they could because they are extending the district which is already codified in the ordinance. You could provide additional uses by right and by special permitting by district. He felt they may be able to satisfy some of the objectives of the applicant; it was entirely possible.

Gregg Cademartori, Planning Director in response to the query to talk to the question of 'overlays', he spoke of his previous presentation of experience in the City to overlay districts with a previous rezoning proposal of this area. Overlays can be more restrictive or more permissive. There are three "on the books". There is a Personal Wireless Service Facilities (PWSF) overlay district where there are certain accepted types of applications; there is a watershed protection overlay district, not based on any zoning district but encompasses an area surrounding all the surface water supplies in the City which is a more restrictive approach that eliminates certain uses that could otherwise be allowed in the underlying zoning by special permit or by right uses; an incentive zoning district in an overlay form was adopted in 2002 in the form of a Village Development Overlay District which runs on the Essex Avenue corridor

complimentary to the sewerage of West Gloucester and into Essex. With the underlying zoning there was a potential for a density bonus in the residential form only which is different than the underlying zoning. They do have experience with overlays; which was suggested for this area. He noted he had received Attorney Egan's draft proposal late that day. He stated if this was the direction the Committee wanted to go in, there are certain things they may wish to look to in the ordinance that was presented prior by the applicant in terms of some of the community benefits that were suggested that are "potentially absent" from this particular ordinance, unless it was the result of a special permitting process. He thought it was something that could be accomplished through an overlay. "Use is central to the discussion", which was discussed at the October 14th P&D meeting. There were 15 or so uses proposed in the first PUD concept proposed. He reiterated when they get to the three residential components that were identified, he believed that was where the discussion lies. They could figure out a process to permit that density, which was absent or at least defined in the PUD ordinance that was first submitted. The approach on the table now is grounded in standards already in the community.

Councilor Ciolino recapped that Mr. Cademartori was saying that the overlay is nothing new to the City. The definitions are there in the GZO unlike the PUD which is not. He felt combining the MI could be a workable solution.

Mr. Cademartori stated it was a more familiar process the community had used before for permitting additional uses and for restricting uses in areas.

Attorney Mead stated they wish to put several things on the record with the goal of moving forward. They disagree; that they do not believe what they proposed was spot zoning. The document proposed does have a mechanism to implement a PUD; which is very clearly laid out. It creates a Planned Unit Development process within the zoning itself. These are issues that are not up for debate which "was fine with them". She accepted the other professional's opinions and would move forward. They'd like to talk about how to work with what the Chair and the Committee and the City Solicitor have put forward "in order to try to accomplish something beneficial to the City". They hear them "loud and clear"; and the position of the City "loud and clear". They want to know how they can move forward to review the document put out that morning having not had a chance to fully examine it and welcome that opportunity.

Councilor Ciolino stated the Committee will charged Attorney Mead once again to have a meeting with the City Solicitor and the Planning Director and go through the framework presented to her; fine line it and present to the Committee for their December 1st meeting. They would like to have it prior to the next meeting so they can study it to put something on the table that if it goes through everyone could be comfortable with it. He had discussed with many people that have come to him to discuss the matter that they need to have something they can defend. When they recommend to the Council, this group is going to have to defend it to the Council and wants to have faith in that recommendation. He asked that Attorney Witten be kept in the loop.

Councilor Whynott expressed concern with the word "flexibility"; with that comes "uncertainty" and believed the people in that neighborhood are afraid of. The first designation was the 125 ft. height which he felt was completely out of character with the area; and saw the next one which to him appeared better [referring to the 76 ft. height]. He believed it appeared not to overshadow everything in the area. The third one talked about form and purpose driving the design. He wondered was the second one what they will have in the plan or will they be looking for flexibility to go back to the 125 ft. or bigger area.

Attorney Mead stated they were "nervous" to show a plan when they don't really have when it is for an example's sake. They presented examples, this evening, of a massing study under what the height and square footage restrictions were. With the new restrictions proposed, and expressing that they had not had the opportunity to review them carefully, they'll likely find something much more consistent with the second one. She contended like any proposal that comes before them, someone has to develop it and meet the dimensional requirements they have and then if it is a special permit, the City Council will review it. With the changes proposed there are a lot more controls and a lot less flexibility.

Councilor Ciolino stated right now they are dealing with zoning issues; the only thing in front of them is the existing building which has a tower that is up to 76 feet which is to be taken into consideration; and how do they deal with that 76 ft. If they go with MI, the maximum height is 40 ft. This is addressed in

the plan. They're only dealing with the zoning. He reiterated there is no plan in front of the Committee. The applicant would have to come back to City Council for a special permit under the overlay district.

Councilor Whynott wanted to be sure it is not a blank check for development.

Attorney Mead stated this is a special permit process through the City Council which she believed applied the Major Project review standards and the site plan review standards that exist in the current zoning.

Councilor Ciolino added they're not creating anything new (referring to the Egan draft). It was all contained in the zoning ordinances already, "which is the beauty of it". He reiterated they do have to consider that the building on the site is already 76 ft. tall and will have to be dealt with at some point.

Councilor Whynott stated it was a tower that reached the 76 ft. height.

Attorney Mead added the 75 foot mark is 25% of the building area or lot area by right.

Councilor Ciolino stated everything else has to be by special permit and noted it was a work in progress.

Attorney Mead stated it has to come to the City Council and the Planning Board.

Attorney Egan stated there is not a provision in the GZO where they would be creating a new building 76 ft. high by right through building permits.

Councilor Whynott felt that addressed his concern.

Councilor McGeary stated it seemed that Ms. Egan's language provides in "broad strokes" what the applicant was looking for. He inferred from the presentation it would make it easier to have a PUD process and a Master Plan approval to raise money for the project.

Attorney Mead stated that if you go to a financier with a Master Plan that is approved it will be easier to finance knowing there are a set of uses and dimensions that are already approved for the final approval. That is why they proposed it; and proposed it knowing that given the uniqueness of this area; they wanted to be sure they had several 'iterations' for reviewing it.

Councilor McGeary asked if Attorney Mead would agree that the substantial uses that they wanted to include in the PUD are in the [City] Solicitor's draft.

Attorney Mead responded she had "literally" not been able to read it; she had spoken to Attorney Egan about it; had spoken to her associate about it; but believed "yes"; that most of them are there.

Councilor Ciolino thought they would "get the best of both worlds"; they'll have the MI and the CB with this proposal.

Ann Molloy, Neptune's Harvest, Commercial Street asked about the National Amusements vs. The City of Boston case which was about spot zoning.

Attorney Witten thought it was addressed in Ms. Egan's memo of today and at the previous P&D meeting on the matter of the BMOD. He briefly summarized the facts again where the appellate court addressed the definition of spot zoning; and stated that was not relevant to the issue here. He termed it "a good spot zoning case" because it held the City of Boston accountable for rezoning without a plan or a study. It speaks to why cities and towns need to defend rezoning and can't be a "fig leaf for rationalization. You can't come up with the reason for rezoning after the fact." It was a small parcel that was singled out for disparate treatment. He agreed with Attorney Egan's memo which included an analysis of it; and agreed with her that the Council has to think about this.

Ms. Molloy thought that this was spot zoning that this parcel was being singled out. It was a brand new zone for one parcel and was a drastic change. She also thought if they change it to CB; that too, would be inappropriate. She contended the parcel could be sold to Marriott Corporation (an hotelier); and they can do what they want with it; most of the people who live in the Fort don't want this and 76 feet is too much in height and asked for impact studies before a vote by the Council.

Councilor Ciolino stated this is a zoning matter. He reiterated that the zoning protection is in the book.

David Anderson, 16 Middle Street noted the many vacancies for commercial and retail space in the City with zero growth in the last two years. Hardly any surrounding communities have had zero growth. The City has identified \$400 million of necessities to be taken care of which he enumerated. He noted the difficulties to encourage businesses to come to the City as it is out of the way. They can't continue with zero growth and continue to pay the bills for the City.

Sunny Robinson, 20 Harvard Street raised a question that the only thing is possible for financing is residential. She contended they have never seen the marketing plan that was tried and proposed. She suggested that the Committee, before their next meeting, get a detailed overview of what marketing was done and failed to keep this zoned MI. She noted seeing the four page proposal released that day and asked where it came from.

Councilor Ciolino stated it was a group effort from this Committee and Attorney Egan.

Ms. Robinson wondered if this took place in meetings of the P&D Committee for which there was not public notice.

Councilor Ciolino stated "no"; that what they had been trying to do was that the track between the PUD and the use clusters "weren't legal and weren't going to work." So they did some research to find out about the overlay if it could be something that could work.

Ms. Robinson expressed her difficulty in understanding why an elected group officials charged with representing the "entire City" would redraft a zoning proposal that affects one person's property; and before hearing the first issue, take a position that favors rezoning this proposal knowing there is opposition and believed this is what they have done. "This proposal puts the Committee on record before the hearing process...to take a position favoring zoning change."

Councilor Ciolino noted Section 1.11.5 Vote of the City Council, on amendments to zoning ordinances, "that the City Council may adopt, reject or amend a proposal amendment to the ordinance." He contended they were within their 'power' on anything that comes forward to them. The Planning Board doesn't have this authority; the Planning Board had to assess the version that came to them only. When it comes to the approval process, P&D/Council has the charge that they can approve, adopt or amend. He stated flatly there was nothing done "behind closed doors; it was all open." Nobody had made up their mind; and they're still getting information.

Ms. Robinson stated while appreciating the complexity of this process, she felt it puts them on the record as appearing in trying to facilitate, not what is best for the City, but to facilitate the best way to provide a particular developer on one site with what that developer wants.

Councilor Ciolino responded that this Committee goes through this process "all the time"; and he believed, and thought his fellow Councilors also believed, that they're public servants there to help the public whether one person with one property or another with a lot of property; they guide people through the process. He hoped if he came to the Committee and appeared to be on the wrong track, he would hope the Committee/Council would put them on the right track to navigate the process. He thought it was good government and is being a responsible public servant; as well as having the authority to do it.

Councilor Verga clarified that Ms. Robinson had a valid concern from her perception. The BirdsEye team's draft was received by the Councilors via email the previous day and Ms. Egan's proposal was emailed to them today and he expressed he had "nothing to do with what went on between any of them which was the first time he had seen it. If she perceived an Open Meeting Law violation, he urged her to look at his email as that is how he got it.

Councilor Whynott explained that he got the document that said BirdsEye Mixed Use Overlay District and that he went to Attorney Egan telling her he couldn't defend anything that said BirdsEye Mixed Use Overlay District going into their zoning ordinances. He felt if they do put it in the GZO, it should be generic in scope and that was when Ms. Egan sent this back.

Ms. Robinson reiterated with due respect that because this Committee, by her understanding, be looking "at the breadth of concern across the entire community", takes a position in favor of changing MI zoning to allow residential, thought they were taking a position of taking MI to allow residential believing it gave has a "very strong" appearance of their already having taken a position in favor of the applicant.

Councilor Verga stated his opinion was it came to this Committee from Attorney Egan's office and that no one had taken a position on anything. He declared for the record he had not taken a position on anything.

Councilor Ciolino interjected this [document] came out of Councilor Whynott's concerns.

66

Councilor Whynott also reiterated he had gone to the City Solicitor expressing his concerns telling her he had gotten the BirdEye team's second draft and didn't like having "the name of BirdsEye all over a document that may become a part of zoning ordinances."

Ms. Robinson then asked if the City's position is in favor of changing MI so it can be residential. She felt that is what [Ms. Egan's] document seemed to say

Ms. Egan noted the process through a zoning amendment provides for two public hearings that a proposed zoning amendment goes through. The Planning Board reviews it, which they have done and have put forward their recommendations regarding that zoning proposal. When it comes back to P&D they take the Planning Board's recommendations and try to mesh the two together to put it into a document, a zoning proposal to put before the City Council for them to deliberate on and to vote yes or no. Typically it comes to the Legal Department to look at the recommendations, the proposal; work it out to come up with some document at that the City Council can review. It doesn't mean anybody is taking a position one way or another. It is a response to the process, and is how the process works. It gives the opportunity for that document to go to the P&D Committee to have a public meeting on it; obtain input on it; and then go to City Council and have a public hearing on that document which incorporates the Planning Board's recommendations.

Ms. Robinson reiterated "that this document creates a strong appearance of both P&D and City resources supporting an individual developer's desire for zoning change in the face of widespread opposition" and felt it was very disappointing.

Bill Johnson 26R Fort Square expressed he didn't support residential uses on this lot and never has. He couldn't comment because he didn't see the new proposal yet. He stated these two of the City's liberal zones in terms of uses dimension, CB and MI being put together and was concerned. He also felt it was favoring the giving the potential of a lot of uses to one particular area.

Mr. Cademartori didn't think that was what had been suggested; the uses would follow the dimensional requirements of another district. It wasn't a broad increase in the number of uses. He felt it was very apparent of what is being suggested to be allowed. It is giving dimensions and requirements to those proposed uses in this area.

Irene Fronterio 28 Fort Square had major concern with regards to traffic already coming in and out of the immediate area. The bottleneck is already at 33 Commercial Street. She wondered if Mr. Bell was willing to give concessions to allow for the widening of the street at all for the added burden of the traffic that would be created by his proposed development. She asked it be taken into consideration while they are in the process of the rezoning.

Councilor Ciolino noted that matter would come up when it came up for a Special Council Permit which is a part of that process. Now is just zoning as to the possibility of what might be built there.

Mr. Bell responded that he appreciated the suggestion and offered that they are always willing to hear the concerns from any citizens to have a dialog. Their hope is to be able to accomplish the rezoning in this calendar year and a better part of another year to bring together the studies and architectural plans forward. They hope also to go through the Special Council Permit process in 2011. If they are successful, there will be the demolition of the building looking to 2012 for the beginning of this project. If all proceeds as hoped, their project would be realized in 2013.

Damon Cummings, 1063 Washington Street stated he had seen the new memos and that there are four residential uses proposed to be allowed on this property. Noting this is on one property in the middle of the MI zone, if it's coming from moving the Downtown business district onto this property, he contended it was a radical change of what is allowed in this zone and is for one property. He also expressed his continuing concern for Pavilion beach. He urged the City take every effort, and noted Attorney Egan's memo, that the City make every effort to get City control of the beach.

Patti Page, 3 Tidal Cove Way asked is it true that in a request in change for zoning that there is no right for appeal.

Attorney Witten responded there is no judicial right of appeal; there is internal right of appeal. That is correct.

67

Ms. Page asked if an overlay district is approved, there will be two levels of review; one at the Master Plan level and one at the Special Permit level.

Ms. Egan stated that is the proposal, the planned unit development that was originally put forward but not what has been put forward now, not the draft proposed for mixed use. That has no Master Plan. It would be a site plan review and a special permit review.

Ms. Page asked if a special permit review is denied is there a right of appeal.

Ms. Egan, Mr. Witten and Mr. Cademartori all responded "yes".

Ms. Page continued, "They" could appeal and win that special permit.

Attorney Witten stated an applicant who is denied a special permit or approved with conditions that aren't favorable; they can always appeal to the superior court as can an abutter or a party of interest. There is always judicial review for an approval or denial of a special permit.

Ms. Page commented on traffic. Commercial Street for its entire length is within the DPA. It is that way "to provide access road for designated commercial vehicles to service industrial business to assure the transportation of commerce." She felt a traffic impact [study] may need to be looked at (written statement from Ms. Page offered at meeting and on file).

Marcia Hart, 2 Freemont Street felt that this has taken to get to the PUD's and isn't confident of the City's knowledge of these issues. She noted the differences between communities have them. She enumerated some of the requirements of other communities. She thought this was the type of information that would prevent the accusation of being obstructionist. She noted people in the community feel strongly that the character of the neighborhoods be maintained and that the City should be proactive so that people will have a sense of security. She also felt the City should be developed with appropriate scale and design to protect the character of the City. She offered research she had conducted herself to the Committee (documentation received at meeting and on file).

Vincent Montillaro, 3 Tidal Cove Way expressed his concern for the Committee's ability to deliberate on this matter pointing out some of the previous matters taken up by the Committee that evening.

Jim Tarantino 26 Fort Square referring to a statement by Councilor Whynott that he didn't want to have the Fort receive a surprise, stated the surprise would be that the view of the harbor will be obstructed by this project affecting everybody in the City, not just the Fort area. He asked that the Committee keep that in mind as they deliberate. Further, he asked will they set a precedent if they rezone there without a specific plan. What happens when the Cape Pond Ice Company sells and they want to make condos there; once one is allowed will they be able to put residential all around the area if zoning changes are made. He asked Mr. Witten how often in his experience zoning changes are made without any specifics to the plans.

Councilor Ciolino, for Mr. Witten's benefit, noted that Cape Pond Ice is in the DPA and that the Parisi Building is in the MI. Cape Pond Ice could never have condos or anything of that nature.

Attorney Witten summed up does zoning have to be related to a plan; and can zoning be adopted and/or changed without a relationship to a plan. As to the first question, he stated "no". He explained zoning changes are to protect health, safety and welfare linked to a public purpose on an actual basis. As planners, they tell their clients that they have to link rezoning to a plan or study or some other analytical report. Economic development can be one; affordable housing can be another; transportation movement(s) can be another. Zoning changes must be supported by some "rational reason otherwise it's arbitrary". Massachusetts is one of the few states that do not require the preparation of a plan as a prerequisite to zoning. "In Massachusetts it is possible to rezone without adherence to a plan" and referred back to Attorney Egan's memo because the courts give great deference to the legislative body, the City Council in this case. He posed the question, was it good practice, "no". He believed it would get overturned one day. Massachusetts still allows cities and towns to rezone without pointing to a particular plan. He further stated, "with absolute certainty, again it is up to the City Council and for their attorneys, there is not precedential value in zoning." When the City Council zones something rightly or wrongly, it can't be used against them legally to get further rezoning.

68

Jean Gallo, 20 Harvard Street referred to the Marriott Hotel process a year previously in the Fort area and it was made clear that the people who lived in that area did not want the hotel and how they had stopped it from going through.

Councilor Ciolino stated it never went through the process because it was "so convoluted" it got to the point they where didn't know what they were voting on; and ultimately it was not voted on at Council.

Ms. Gallo pointed out the neighborhood made clear they didn't want that. When the applicant now, presenting that particular piece, why they would put a hotel back into that system. It is the same thing on the Special Permit; why would you keep a hotel/motel there when Mr. Bell says the only way he can develop that property is if they residential. The hotel question, she noted, was coming up on Essex Avenue and one into the Downtown and one in Gloucester Crossing, of which that one is permitted; and now another one. Her request is that the hotel be pulled from the list especially since the community didn't want it and noted the residential piece is still a big question. In response to the contention of lack of economic growth in the City she pointed out that Neptune's Harvest didn't exist 10 years ago; Montillaro Lobster Company also exists now. She urged that they look at what they give away. She preferred the City protected them by keeping it MI and that the people who live there should be listened to as well as what citizens are saying to them for two years on the subject.

Councilor Ciolino stated there are other parts of the City that have been listened to as well. They have to listen to other parts of the City.

Ms. Gallo contended that at the listening posts there was not a preponderance of people saying they wanted hotels and residential especially in the harbor areas; that this was about people at a grassroots oriented level of consideration.

Councilor Whynott stated the whole process of the public hearings and Special Council Permits, a person can come and propose something but doesn't have an absolute right to get it. But neither does the neighborhood have the right to veto it. The Council has to weigh all the factors and make a decision based on what is good for everyone cautioning it may not be 100% good for everybody. They try to do the best they can with what they have been given to work with. "The answer is not always yes." There are rights on both sides, he contended.

Ms. Gallo added she agreed with the Councilor and that there are different ways of making a decision. She felt if they have an ethic of looking at the "greatest good and the greatest number" and make a decision a certain way; but it was not her view.

Gregory Doe, 7 White Mountain Road posed the following questions: Is this about fish? Is it about gentrification? Is it about aesthetics? Is it about the beach? What does the City, the neighborhood and Mr. Bell have to gain from a project there? What do they have to gain from a vacant lot? Did they want another I4-C2? He pointed out it is about jobs, taxes, neighborhoods; it is about improvement. He asked if they wanted a "stagnant Gloucester." He felt Mr. Bell's group has a good track record in property development and that the Fort and Beach Court could be brought back together through this rezoning process is correctly brought forward. He noted that everyone in Gloucester wanted the zoning change to allow for the Marketbasket Supermarket in his neighborhood, but they didn't want it in their neighborhood.

This matter is continued to the December 1, 2010 meeting.

~~B) Modification to Special Council Permit granted to Nino Ciaramitaro on December 14, 2004
Re: 85-89 Bass Avenue (Cont'd from 11/03/10)~~

~~**Anthony Giacalone**, son-in-law of Nino Ciaramitaro spoke for Star of the Sea Corporation to the Committee regarding the proposal to amend the Special Council permit as relates to the landscaping plan for the property at 85-89 Bass Avenue. They are now proposing to put in 8 trees on the Bass Avenue line, the easterly side of the property in lieu of the original landscaping plan on the original permit for the wall. The trees are purchased which are arborvitae to be planted six to seven feet on center and will be 25-26 ft. in height upon maturity, and approximately 6 ft. in width. They are ready upon approval of the~~

69

CITY COUNCIL STANDING COMMITTEE

Planning & Development

Monday, December 6, 2010 – 7:00 p.m.

Kyrouz Auditorium – City Hall

Present: Chair, Councilor Joseph Ciolino; Vice Chair, Robert Whynott; Councilor Greg Verga
Absent: None.

Also Present: Councilor Paul McGeary; Councilor Ann Mulcahey; Councilor Bruce Tobey;
Attorney Suzanne Egan; Gregg Cademartori; Rick Noonan; Attorney Lisa Mead; Mac Bell

The meeting was called to order at 7:03 p.m. There was a quorum of the City Council.

[NOTE: The 12/01/10 P&D Meeting was postponed until 12/06/10 due to a City-wide power outage.]

1. *Continued Business:*

- A) COM2010-026: Request from 1907 LLC and Pavilion Mercato LLC re: BirdsEye Mixed Use Overlay District ("BMOD") Zoning Proposal (Rezoning #2010-003) (Cont'd from 11/17/2010)

Councilor Ciolino stated there will be a review of the [zoning] process [before the Committee] and tie it all together this evening; with no public comment but offered that there would be an opportunity for comment at the City Council public hearing on this matter. For the record, he clarified a statement he made at the last regularly scheduled P&D Committee meeting that at no time were there any closed door meetings with the P&D Committee taken place amongst them or with the applicant. The overlay amendment to be discussed this evening was a result of a request he made to Suzanne Egan, General Counsel, to write an amendment that allows for mixed uses through a special permit. Tonight they would discuss and compare the Birdseye Planned Unit Development (PUD) overlay, the Planning Board recommendations and the mixed use overlay district and then make recommendations to the City Council. **Attorney Lisa Mead**, representing the applicant, Pavilion Mercato LLC stated at the last P&D Committee meeting they had received a copy of the revisions as proposed by the P&D Committee and asked for time to review it as to how it related to the original proposal from the proponent and the Planning Board recommendations. Upon the Birdseye team review they made a direct (a five-page comparison submitted and on file), side-by-side comparison of what was submitted by the proponent in its last draft form presented at the last P&D meeting of 11/12/10; and the City Council draft. She expressed her concern from a zoning amendment perspective was that she believed that what was being proposed by P&D is so different in "fundamental" character, identity that it was a new zoning amendment and not a change in what was proposed by the applicant. Their hope was to go through what the City Council proposed and what the proponent had last provided and speak to those parts that are the same and those that are different and try to work on those differences.

She made note of the purposes Section 5.25.1 was in keeping with what they proposed and reflects changes suggested by the Planning Board. The 5.25.2, the Overlay District itself, map establishment and applicability are the same or similar, and she felt in "conformance" with the Planning Board recommendation. In 5.25.3, the Uses, she felt there was a significant difference "in some respects". The Committee allows in their zoning in the P&D proposal all uses allowed by right to be allowed in the overlay district. Based upon the Planning Board recommendation, there were some uses allowed in the underlying district which wouldn't be appropriate for an overlay district because they were "incongruent" uses proposed. They omitted and disallowed certain uses that would be allowed by right. They also made other uses, given the density being requested, allowed by special permit and in addition those allowed by right that would be "congruent" to be continued.

The new special permit uses are the same except for the omission of the live/work concept, which she contended was at the "heart" of what their proposal is; the idea that there can be different kinds of housing allowed in this district is "significantly important" as they are trying to use space differently,

"You can't just say everybody is going to live in something that might be 1500 sq. ft. or 1000 sq. ft. when in fact you may have a live/work space where the live space is 500 sq. ft. or 700 sq. ft." The idea was to allow some flexibility, feeling that was a "significant difference". The requirements for residential uses, Section 5.25.3.3 is "essentially the same" as proposed by the proponent, the covenant and affordability; the prohibited uses were the same except for what she had previously commented on, those things incongruent with the proposed overlay district. She gave the example of a contractor's yard would not be allowed because it would not be congruent with the mixed use approach that was provided. She believed that those kinds of uses, a drive-through facility as an example, the Planning Board also recommended be "culled out" of the by right uses.

The dimensional requirements, she added, the draft of the P&D Committee proposal dated 11/22/2010, the P&D Committee "strives to adopt" the dimensional requirements of the Central Business (CB) district for residential uses which in a mixed use project would apply the most restrictive of those dimensional requirements namely multi-family housing according to the zoning ordinance. It would require significantly increased setbacks, given the height, "even under the P&D requirement". The density as expressed in the multi-family dimensional table requirement in the CB district would "drastically" change what was proposed on the project before. Her comparison table shows the height in the recent draft of the proponent's proposal was 76 feet at the ground level which was measured in accordance with the zoning ordinance. The proposal was 69 feet from P&D which significantly reduces the floor area issue.

The proponent provides for tiered development of the site with the setbacks as required in a Marine/Industrial (MI) district which would be limited by the requirements in the design that there are pedestrian access, view corridors, and "things of that nature". P&D Committee requirements would apply the setbacks of the CB district and maximum height in the CB district on a multi-family project is 30 ft. There is an exception, which she felt the language needed work in Section 5.25.4.1 that says, "The dimensional requirements of the Central Business district (CB) shall be applicable, except for the reconstruction of preexisting buildings may be reconstructed to the same form as previously existed.

Provided the new structure is within the same footprint, does not exceed the size of the existing footprint of the preexisting building or conforms to the dimensional requirements, whichever is greater, twenty five percent of the structure may have the same building height not to exceed 69 feet, unless otherwise permitted by the special permit granting authority." She thought based on their prior conversation, you can rebuild on the same footprint to a height of 69 ft. for 25% of the building. There was conversation that it was not really the intent of P&D Committee was but that you could move the footprint around the site so long as it didn't exceed the existing footprint. She didn't feel it was clear in this.

Lastly, there was a "significant difference from what was proposed by the proponent". With the design criteria proposed, the P&D Committee and City Council have "significant control" over design of any structure. The building height limitation is different. The density differences, if applying the CB district depending on how many square feet a proposal is gets 40-64 housing or hotel units under the P&D proposal "as opposed to" getting 150,000 sq. ft. - 180,000 sq. ft. of residential development in the project of either hotel or multi-family under the proponent's proposal. The building height limitation, she thought the P&D proposal was not consistent with the Planning Board recommendations. Those recommendations said that it can apply the special permit to exceed the height; but they understood the need for additional height and should be some guidance provided in the zoning. The off street loading and parking requirements are the same except the proponent's proposal was more limiting than P&D's proposal. The proponent's proposal requires all parking to be on site; and the P&D proposal allows them to take advantage of the exception to use the municipal lots. The design criteria and the use requirements, the proponent proposed that there needed to be a 25%/75% mix on site; that there needs to be at least 25% commercial and couldn't exceed 75% residential. "You could go less than that;" but that it required a mix of uses on site. That same requirement "doesn't exist in the P&D proposal." There could be either all residential or all commercial. In the design criteria there are none in P&D proposal; and in the proponent's proposal there are "significant design criteria". She explained the purpose was to provide guidance to a developer as well as the City Council so that everyone knows what they would be judged on when they submit a proposal, "so there is direction before a significant amount of money is spent." The

design criteria speaks about building design and location, landscaping, open space, pedestrian connection, view corridors, and beach access. In all of those, the Planning Board's recommendation thought the language in the proponent's first proposal was "too loose" and didn't require enough "clear" direction to any applicant; so that was changed to include "shall" and "will" as opposed to "if possible". She felt the biggest difference was the application process, the permitting process. P&D proposal used the existing Major Project Special Permit by the City Council, site plan review by the Planning Board, and any special permits from the City Council for waivers for the height and setbacks and density provisions in the event the applicant requests for those to be waived. She again pointed out this was "significantly different from the Master Plan and the PUD process; and "provides for a lot of questions on behalf of an applicant" when they go before the City Council "not knowing whether or not" there are criteria that would allow them to have greater height, less setbacks and more density. While those special permit provisions in the City's zoning ordinance and dimensional tables, an overlay district of this size, "it doesn't provide any guidance prior to an investment." The permitting process presented was a PUD, which has a Master Plan review process and then the special permit review process. She contended these were the proponent's issues; feeling they were significantly far apart in some aspects and others that are not. She further contended there are two major areas that need work which she hoped they could work on them as it is referred back to the City Council and the Planning Board to try and address the concerns of the P&D Committee as well as the proponent of the zoning amendment.

Councilor Ciolino stated, "From the City's point of view, what makes those three acres...the Birdseye property, any more special than any other three acres in the CB or MI district that all this special treatment needs to be applied;" and asked Attorney Mead for an explanation.

Attorney Mead responded she didn't feel this was special treatment; that it was an adoption of a new form of zoning. She suggested they only need to look at the Planning Board recommendations to "justify" why one could look at an overlay district for this area. For the MI area, these particular parcels are bordered on both sides by residential which is not the same in the rest of the district. There is no deep water port from this parcel as opposed to most all of the rest of the MI district; as well as the "significance" of the connections to the beach area also. It was pointed out in Fort rezoning studies and other studies in the City that this is a unique area. She believed it was "not about this property but about using the zoning to benefit the City to allow some development in a different way" than had been done in the past. She didn't know if that meant it was special treatment. She thought it meant they were using "the tools that the statute" provided them.

Mac Bell, the proponent, showed pictures of the property at 33 Commercial Street from 1985 and listed statistics on jobs from that time to present. He felt the Birdseye proposal was suggesting that they have the opportunity to work together to create an "economic engine." Their objective from the beginning was to create a zoning consideration as allowed under the zoning laws by the Commonwealth for any parcel two acres or greater to create vitality for commerce for downtown; to replenish the population downtown. Their approach has been an open dialog towards scale. They proposed that they have clear cut boundaries in order to invest significant amounts of money in reapplying to the special council permit process. They hope to then talk about density, aesthetics and variety of opportunity or liability as the Council sees it.

Attorney Mead noted in the October 8th Planning Board memo to the Council, "The Board acknowledges the testimony of the applicant that the property does not have deep water access, and is not subject to the State's Designated Port Area regulations and is flanked by existing residential and mixed uses. Therefore, from a planning perspective evaluation of the zoning in the area is appropriate..." and contended that was why they [the proponent] were appropriate to be there.

Councilor Ciolino asked that the area is going to be zoned MI with the overlay of the CB.

Mr. Cademartori stated, "That is not what was proposed. It would remain MI with some of the dimensional tables for certain uses to be applied as overlay for that area as it is written."

Councilor Ciolino then asked were those dimensional uses from the CB district and was CB the most liberal.

Mr. Cademartori confirmed that; and CB was the highest density district, believing that was why it was chosen, unless a new dimensional table was generated which he believed was included in the draft that

wasn't discussed that the applicant submitted at the second P&D meeting. There weren't any dimensional density standards in the PUD ordinance as proposed by the applicant. Not having one, what has been proposed by the P&D Committee was to use the CB district.

Councilor Ciolino asked whether through the Special Council Permit a great deal of this could be done through that permitting process.

Mr. Cademartori thought to be consistent with Planning Board recommendation which he felt sounded a bit like it was being used both ways, their response was to a specific proposal that was in front of them. However, at the same time what was impressed back to the applicant was additional specificity as to what those design standards would mean. The Planning Board was supportive of being very specific about what needs to be included in the proposal to gain a special permit. The special permitting process that the City has allows the exploration of a lot of aspects of a project. Because of "the uniqueness of this area" they were looking at and the density proposed, the applicant was very specific in what the community benefits might be from a project. He thought some could be lost if left to a special permit process. He further thought if they were going to introduce areas in an overlay form, there are usually some additional standard of applicability. He clarified that he "wasn't saying that either necessarily hits the mark", but that there was a lot of focus in the PUD ordinance on very specific attributes a project "might have to be held to" or include that wasn't necessarily stated in the general special permit process.

Attorney Suzanne Egan, City Solicitor, clarified one of the recommendations of the Planning Board was that the zoning ordinance provides that any special permit application in this district go through the major project review and also the site plan review. "Although the applicant states that there are no specific requirements or view within this mixed use overlay district, what it does do is refer it back to the major project review of the City Council under Section 5.8 and down to the site plan review." One of the issues the Planning Board had with the design criteria proposed was that it was vague. It said, "To the extent that is feasible." That was the criterion that was used. She explained instead of taking that language out, she sent it back to the major project review and the site plan review that all other projects within the City to this extent have to comply with. "It is in there."

Councilor Ciolino asked for further clarification on the 69 ft. height and 25%

Mr. Cademartori thought it had been "accurately pointed out" that the PUD ordinance required a percentage of commercial or industrial with some use that came from the underlying district, although he noted there are some uses that are allowed in a CB district as well. That specific language is not in the current ordinance. "It at least defined the maximum allowance of residential use. What was also missing was a density standard. Seventy-Five percent couldn't be equated to what that would mean in a project given the density was defined by maximum building height and maximum lot coverage rather than what was more typically done to standard of a quantity of "X" use based on lot area or percentage of lot area." The 69 ft. was a number that he wasn't sure of the genesis; there has also been reaction whether that is appropriate height. He noted there was a recommendation from the Planning Board that height needed to be addressed "in any permutation" of an ordinance and that it probably wouldn't be a project that would be proposed to 40 ft. If they were considering different allowed uses in the area like hotel and residential, how are they treated elsewhere in the community. In most areas, those uses are allowed. They're also in districts that are "complimented" by the allowance of height exception. That was a recommendation of the Planning Board that it may be extended in "whatever form" of an ordinance at the time of the PUD rather than dealing with a maximum height of 125 ft. The 69 ft. was something that came from the "generation of this ordinance" as a way to be responsive that there needed to be some additional guidance to be provided which came in the form of an allowance for the existing height of the building.

Councilor Ciolino stated the existing building has height of 69 feet at the tower.

Attorney Mead added "above sea level". She clarified that the major projects review process and submission process is similar to site plan review and talks about what has to be submitted and talks about the information required as part of that submittal. Then there are the special permit criteria that are general to the rest of the ordinance as opposed to design criteria which was what the proposal went through; how the design happens; view corridors and pedestrian access. She contended that kind of specificity was not in the current zoning ordinance and why there were significant differences between

the design criteria and what was in the ordinance itself. In response to the Planning Board comments and the document the P&D received at their last meeting, they went through and provided that specificity and "removed the more general language and very clearly requires certain things that were by choice before." She thought it important to look at what was submitted; some the Planning Board concerns with not enough specificity had been addressed in the review. She thought it was a matter of making sure it was addressed in the ordinance.

Attorney Egan noted the Mixed Use Overlay District (MUOD). She noted the first change is the purpose. In the Planning Board recommendation, it was noted that the purpose to provide investment opportunities for the PUD overlay district was not necessarily appropriate for the zoning under the zoning act. It was removed from the MUOD. It was also noted by the Planning Board that the purpose it states is to provide a range of housing choices "for individuals and households of diverse incomes". Within the PUD overlay district are requirements for inclusionary zoning which was not applicable and put it back into the overlay district to make sure they kept that purpose in and put in the inclusionary zoning provision. There were a couple of issues the Planning Board had with definitions that were provided in the PUD overlay district. The first was an issue with the live/work residences. The Board was concerned about monitoring with regards to the definition of a live/work residence in order to meet that qualification; there was a question as to how that would be enforced. She clarified that part of the definition was to live within the PUD district but that would require somebody in the City to enforce it "to knock on doors to ask people if they were working in order to make sure they complied with that." It was deleted. Within the City's zoning ordinance there is a provision for home occupation; and that is applicable to this overlay district, "if there was an interest or if one of the uses within the district is your work place and your home". One could get the occupation permit as opposed to a live/work residence which was "essentially unenforceable provision." The second issue was with regard to the definition of retenuating and reconstruction or renovation. The Planning Board found it difficult to also provide permitting on that because those were terms that were not very well defined and was also deleted. If there is a provision in the MUOD which provides for the special permit process within the zoning ordinance that is applicable to this district as well as to others. There is also the dimension table, Section 5.25.4.1, which provides for that. The ability, which was one of the sentences Attorney Mead questioned, it is the ability for a new structure to be reconstructed within the same footprint as it existed provided it doesn't exceed the footprint (the size). That allows for making sure the building could be reconstructed but not requiring it to be in the same position on the site; there is the ability to reconstruct a building that the design may be more beneficial for the site. They require everything now to be within the same footprint; to "maybe switch it out" and face the ocean. As long as it is the same size it can be reconstructed which is different from the "vague provisions" of the PUD ordinance. The Planning Board also recommended that any new uses should have dimensional and density requirements standards as all other uses in the zoning ordinances. Which was why, she felt, the CB, the City's most dense district allowed in the City, instead of creating a new district, she went to the density requirements in the CB in an attempt to meet the Planning Board's concerns. The Board's concern as to whether or not the overlay district was applicable to other areas, they did not recommend it should be applicable to other areas. The Planning Board also looked at the use clusters and the notion of retenuating which allowed for uses to be changed within the PUD without any review of any special permitting authority; they recommended against those mixed use clusters. In the MUOD, all the mixed use clusters were removed and the ability to change a use without review was also removed. The MUOD brings it back to the existing zoning rate that they have that all other properties within the City must comply with. The Planning Board had an issue with regard to the design criteria and recommended that site plan review and the major project review be applicable to this district which she stated was in there. With regard to height, the Board recommended that the height exception language be included in the overlay district and is in the proposed ordinance; there was some issue and acknowledging that the existing building has a 69 ft. tower and 25% of the building to go up to 69 ft. There is a provision in this ordinance that states that provided the preexisting building went up to 69 ft.; if another building on the lot was reconstructed, they would not also be allowed to go up to 69 ft. The off street parking didn't have a

recommendation except to note that the proposed PUD did not allow them to comply with Section 4.1 and was taken out. The proposed PUD allowed for a 15 year time period from when the Master Plan was approved and the filing of a special permit. The Board felt it was too long. That was changed by having the same criteria as they have for all special permits which must be exercised within two years. There is no special provision for this district; the special permitting provisions apply. She noted the site design criteria in the PUD, and was not in the MUOD proposal such as the view corridors. One of the issues with the site design criteria was the Board found it needed to be stronger. She thought the purposes of the MUOD still say to provide view corridors. She questioned the definition of a "view corridor". It was never defined and stated it "essentially defined a window from the street to the ocean." Within the City's site plan review process, they can look at it then which is part of the ordinance, and didn't feel anything further needed to be added in a zoning ordinance on it. She tried to simplify it as asked by the P&D Committee and to look at the Planning Board's recommendation and "pull out pieces" that seemed relevant and consistent with the Planning Board recommendation.

Attorney Mead expressed concern of skipping "a whole step." They received the initial response from P&D and understood that despite their asking for a simpler document they got a longer document; but within their document there were a number of items that were addressed that Attorney Egan raised, which, following a long meeting that she had with the City Solicitor prior to the last P&D Committee meeting, she made "a number" of changes. She gave the example that the document they received on November 12th eliminated use clusters; redefined the retenuing and reconstruction; it defined view corridors and what was required; it defined what pedestrian corridors were and what was required. It applied the inclusionary zoning requirements. It made reference to lowlands requirements as the Planning Board recommendation required. As the Board recommended and acknowledged the criteria they wanted included from the major site plan review, she contended they had already agreed to and submitted in the prior draft. While they didn't include the site plan review, in concept, it is part of the master plan and PUD review process. They included the major project review criteria and submission requirements. She went back to a number of items Attorney Egan pointed out, which she stated had been included in their last draft in much greater detail, making for a longer document, than had been required previously. She didn't think they were very far apart. She reiterated that the two major areas of concern have to do with the dimension table which she thought if they included it within the overlay district; it will make clearer to all. She explained they are looking for in this zoning, they think that would be a good tool to have a "clear expectation" of what can be reviewed and what should be submitted, "as opposed to saying the general requirements of view corridor and this is what you should submit which flies in the face of the argument of the Planning Board and Attorney Egan's saying it is too general." She felt they defined it, making it very clear and didn't think they're that far apart; that dimensional table should be in there, an item to be discussed; and then similarly on the review process whether it is a PUD process or the site plan review or the major project review. "They are significant and do provide major changes to the zoning." She didn't think that they're "that far off" on the rest because the last draft they submitted addressed all of those items.

Attorney Egan stated the P&D Committee asked for a more simplified version; and the Planning Board also recommended any zoning district have a special permit criterion in it. Although this property is unique to a certain extent, she believed it was not so unique that having a completely different set of zoning criteria of any other property in the City. They have had mixed use projects, noting the shopping plaza, Gloucester Crossing, and development in the City often, under the City's zoning ordinances. They have major project review, site plan review, a special permit granting authority. She explained what she did, taking elements from P&D and the Planning Board recommendations, was to come up with a proposal that can go forward consistent with the City's zoning ordinances. She found the PUD drafts to be lengthy and "very unique" to that parcel which raised some concerns for her.

Councilor Ciolino asked with the proposal in front of P&D did she think she could defend it if it went to court.

Attorney Egan stated "yes". She also addressed Attorney Mead's statement that the applicant thinks that what is before P&D was so different from what was proposed originally and advertised originally and was

not the same zoning. She didn't think that was correct. She felt the process that a zoning amendment goes through "is a fluid process". There is a review by the Planning Board with recommendations; a review by the City Council by way of public hearing with public input and with the applicant's input. Within that process a zoning amendment changes. That process is set forth in the statute. In the case law, it provides that abutters or property owners have notice of what the zoning could change to; then that notice is sufficient from the original submittal. As example, say there is a proposal to change something to residential and that is what is noticed. In the process instead of allowing residential use, a gas station is allowed. The court in that instance says it is so different from what is originally proposed, it would have to start [the process] over. What is before P&D that evening is nothing different here; it "just changes" the permitting process and the uses allowed and also restricts to a large degree the dimensional requirements and review process. "What is before the Committee is consistent with what was originally proposed and noticed" and thought they were fine with that.

Councilor Whynott asked if the document that they have before them from Attorney Egan could be voted as is by the City Council and is defensible.

Attorney Egan stated "yes".

Councilor Verga confirmed the document they were referring to was "Mixed Use overlay District" dated stamped 1:21 p.m. November 17, 2010, four pages.

Attorney Egan stated that there was a version that was dated November 22, 2010 (distributed to the Committee just prior to their arrival). She noted after the last P&D meeting, the Committee requested she and Mr. Cademartori and Attorney Mead meet to discuss the proposed ordinance. The 11/22/10 four page document was [produced] after that discussion. There were some issues regarding the rebuilding of buildings to preexisting structures. That language was changed; noting the height changing from 76 Ft. to 69 ft.

Councilor Whynott understood the issue regarding the 69 ft. with 25% but noted other heights; and asked if it was 40 ft. and then 25% at 69 ft. They would have to come back if they wished to do anything "other than that".

Attorney Egan stated the Councilor was correct. They have to comply with existing height requirements of the MI or CB district. There is a provision for this, special exception for the height; within that special permitting process if there is a project put forward requiring additional height and the criteria is met, then the special permit granting authority can allow that. Anything different they want to change later on that doesn't conform to that has to come back to the special permit granting authority, the City Council, in order to change it.

Councilor Ciolino stated there is a building that exists now with "a bit of grandfathering going on"; and the tower is 69 ft.

Attorney Mead stated she "totally disagrees with Attorney Egan" that this document presented to P&D was a "natural outcome, a progression, of what is submitted." She thought, quoting a zoning case, "it alters the fundamental character, identity of the original amendment" of what it was in the following areas than what was originally proposed: It doesn't require a percentage or mixed use on the site even though it is called Mixed Use Overlay District. The density and number of units that can be put on a site are significantly different. The dimensional controls are significantly different. She suggested that Section 5.5.25.4.1 was "incredibly vague and needs to be worked on". She didn't think "it said if you were a person off the street picking this document up so long as you build the same footprint you can move it around the site. It doesn't say that; it is not clear." She noted the height requirement because they have to apply the MI district is 30 ft., not 40 ft. with the addition because they apply the most restrictive height which is in the multi-family in the CB which is 30 ft. and then you have to come in for a special permit." It is the height of 69 ft., 25% is "significantly different" than what was proposed. The process to get to that point, and the design criteria and requirements, "are fundamentally different" than what is in the P&D proposal. She urged the Committee to have this be reviewed by the Planning Board to see that it relates to the Planning Board recommendations.

Mr. Bell stated in these this economic times when banks are shut down for commercial loans, or residential/commercial loans, they know that location is like no other, and of significance; if they were

speaking from a place that Portland, ME; Portsmouth, NH; Newburyport, MA came from that success. The City process was a "huge consideration". He felt this site was valuable and had great potential to be a catalyst for development downtown and urged the Committee to embrace change; otherwise they are looking at an "obsolete pile of concrete" to be limited in its future potential.

Councilor Ciolino stated, in answer to Attorney Mead regarding what they were talking about that evening, "This Committee is going to listen to our Counsel" as her client would listen to her. He differed with Attorney Mead and would "side with our Counsel." He understood Attorney Mead had to work for her client.

Councilor Mulcahey noted two years ago the residents of the Fort had proposed the "MI Plus" Overlay [District]; to relieve them of the restrictions on the MI when they put the MI on the Fort area they included the residences, "not that a boat could get to us or a truck could get to us for unloading" but because of the noise decibels that went up by 10 decibels and that "they had to live with it without complaining". They asked when the Marriott was looking at the Birdseye building, they asked for an overlay, the aforementioned "MI Plus" which the Council rejected. If they have mixed use, they should be mixed use also. She claimed if it wasn't, then it would be spot zoning.

Councilor Ciolino stated that was part of the process the last time the Fort was going to be rezoned; the whole Fort, including the "Hill" or the "apron" as opposed to this parcel here. The Fort is special, he explained in that it the entire Fort is non-conforming; it is MI and DPA. This proposal is for the property that is empty now "that is in play." He clarified that if the residents of the Fort want to come back to the Council and ask for a rezoning or the people that own the apron can come back also. There are other issues with two-family; three-family, who is grandfathered, who is not, on the hill that it is "very complex." He didn't know if it would all be sorted out. He espoused as one Councilor to "leave the Hill the way it is."

Councilor McGeary asked Attorney Egan that he understood the concern of the specter of spot zoning; but wondered if by applying CB as an overlay to this district, was really appropriate to that specific site or was there something "that qualifies the site as truly unique".

Attorney Egan responded that in terms of whether a completely new dimensional table should be adopted for the parcel, she wasn't sure what would be "unique" about the project that requires a new dimensional table. There was enough within the ordinance; and what it allowed an applicant of a project to come to the City Council and ask for specific waivers or considerations within that site plan review that are applicable to a "certain" project. "What is necessary for a zoning ordinance is predictability"; for instance, what is the lot area per unit; what are the height requirements; what is the lot coverage. The City's most dense district is CB. The applicant's proposal, the PUD did not have those specific requirements which the Planning Board recommended they should have. They didn't have anything else to go on because there was nothing else proposed, except for the version the applicant had put forward, that had such a height. One of the issues was the height of 125 ft., which gets reduced. She viewed it as what other parcel exists in the City; do they get anything special in their dimensional requirements. "No; each property owner has the ability to ask for, essentially, a map amendment which is to apply different dimensional requirements to their property from this district to this district," which, she stated, they do often. They "don't typically create entirely new zoning and new dimensional requirements for just one parcel."

Attorney Mead stated the last draft included a dimensional table and included an area of land frontage building height maximum which was 76 ft. at that time; minimum lot area per mutli-family dwelling unit; minimum lot area per two guest unit for a hotel. Those mirrored what was in the dimensional table, except for the size. The dimensions and how they are applied, which she believed was what the Planning Board was seeking, was what they used as a model. The building coverage, minimum open space, on the lot - in the draft of 11/12 was in there.

Councilor McGeary noted Mr. Bell's developments in the City, 33 Commercial Street, and the "old Mill" and did them under existing rules, under the special permit process. He asked Mr. Bell to respond to what it was about this that makes it extremely difficult to move forward with Pavilion Mercato or "whatever else goes in there".

Mr. Bell stated it had gotten considerably more difficult; it is not benefitting anyone and sense of why should this get something "special" because they came together to follow the laws of the Commonwealth. They are given this opportunity [under the law] as it is over two acres which they feel is necessary in this economy. He explained it was the zoning as to the reason why they put the PUD together with boundaries and specific details so they could possibly succeed. What is being proposed "was a roadmap for failure". He didn't see why they would jeopardize the project which "would be beneficial with limitations".

Attorney Mead thought the biggest difference was specificity; the difference between the Special Permit criteria and site plan review versus the PUD concept where there was very specific requirements, very specific review criteria so that before a lot of money is spent, everyone knows the rules and has very specific requirements.

Mr. Bell noted that they still have to go to a special council permit which is still there and a difficult stage "which is challenging", and was the next step.

Councilor Verga thought it was a good idea to send the proposal back to the Planning Board and thought they had a lot of diverse documents. "No matter what we vote, what the Council votes in the end is not going to make a lot of people happy." He believed sending this back to get a final document that everyone agrees on, "at least the Board that is voting on it knows what they're voting on," and was a good idea. He would support it going back to the Planning Board.

Councilor Whynott agreed, that he would like to see one single document that contains everything that the City Solicitor and what the Planning Board recommended, and what was said in Committee that use to go forward with.

Councilor Ciolino explained after their vote that evening, it will go to the City Council for referral to the Planning Board. They will wait for their review before they take it up at Council again. If the Planning Board has an in-depth review, it may have to go back to P&D. "If the changes are minute, they can be handled at the City Council level." On this motion, they have been trying to do something "down there" in the spirit of compromise and thought this was a compromise. "A good compromise makes nobody happy; everybody feels the pain equally". There are many different people with many different ideas. This ordinance, zoning change does for that particular parcel "in the tool box", the developer will have all the tools for MI and if something comes back or someone wants to use it for MI; they have the opportunity to go forward. They are adding to that "tool box" a lot of the features that go with CB which is a large portion of the downtown area. He noted this Council has permitted five windmills; but he stated "just because this Council gives permits or changes in ordinances doesn't mean it will happen." They are in process of permitting a hotel on Essex Avenue for 93 rooms and also for another at Gloucester Crossing already permitted. He asked, "How many hotels can the City maintain? Just because the developer has the opportunity to put in a hotel doesn't mean it will happen." He noted the Fort is mixed residential. He believed one of the things with this plan was it would give the neighbors the opportunity to voice their concerns about traffic noise, height, view corridors and all the rest once they have a specific plan in place. They will have special permit process and "have all the tools" for them to participate and assured it will be process that they will all work together.

Councilor Whynott asked that when they get the final document, before it gets to the City Council that it be put on the website so that it is also available at the City Clerk's office.

MOTION: On motion by Councilor Ciolino, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council that the Gloucester Zoning Ordinance be amended by adding Section 5.25 Mixed Use Overlay District and that Section 5.25 Mixed Use Overlay District be referred to the Planning Board for their review.

A motion was made, seconded and voted unanimously to adjourn the meeting at 8:25 p.m.

Respectfully submitted,

78

Dana C. Jorgenson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING:

- **From Attorney Lisa Mead, a summary of a side-by-side comparison of the City Council draft ordinance proposal and proponent's proposal based on the Planning Board recommendations**

79