

CALENDAR OF BUSINESS - GLOUCESTER CITY COUNCIL, TUESDAY, NOVEMBER 13, 2007
7:00 p.m. KYROUZ AUDITORIUM, CITY HALL

FLAG SALUTE & MOMENT OF SILENCE

ORAL COMMUNICATIONS

COUNCILLOR'S REQUESTS TO THE MAYOR

CONFIRMATION OF APPOINTMENTS

1. David Bell – City Hall Restoration –TTE 8/14/10

CONSENT AGENDA

• CHIEF ADMINISTRATIVE OFFICER PACKET

1. Memo from Fire Chief regarding Fire Department Overtime and Station Opening Status Report (Refer B&F)
2. Memo from Police Chief regarding a State Community Policing Grant Program (Refer B&F)
3. Report from City Auditor "Duty When Appropriations are Exhausted" (Refer B&F)
4. Loan order request fro Page Street and Way Road (Addendum) (Refer B&F)

• INFORMATION ONLY

1. 11th quarterly status report for the Municipal Software Upgrade Project from Director o f Informational Services.

• APPROVAL OF MINUTES

1. City Council Meeting 10/30/2007 (Approve/File)

• APPLICATIONS/PETITIONS

1. SCP #2007-25: 33 Emerson Avenue: 5.22 Wind Turbine (Refer P&D)

• ORDERS

1. #2007-46 Council to oppose development in Gloucester's Watershed McLeod, Foote, Tobey, Romeo (FCV 11/27/2007)
2. #2007-47 Personnel Director to conduct an employment search for applicants Tobey (FCV 11/27/2007)

FOR COUNCIL VOTE

1. #2007-43 Detailed Implementation Schedule for School Reconfiguration Destino

DECISIONS TO ADOPT

1. SCP# 2007-10 – 1Western Avenue: 2.3.1.4, Multi-Family
2. SCP #2007-14- 26 Railroad Avenue: 1.4.2.2 Drive Through Facility
3. SCP# 2007-15- 8 Norwood Court: 5.5.4; Construction in a Lowland
4. SCP# 2007-17- 39 River Road: 5.5.2 Lowlands Permit
5. SCP #2007-20: Unit A 85 Main Street: 3.2.1 Footnote 4 Height Special Permit

SCHEDULED PUBLIC HEARINGS

1. Personnel Upgrades: Appendix A to Appendix C of the Personnel Ordinance (Continued from 10/30/2007)
2. Rules and Regulations pertaining to the Acceptance of Private Sewers (Continued from 10/30/2007)
3. SCP #2007-21: 40 Woodward Avenue: 5.5 Lowlands Permit
4. SCP #2007-22: 16 Cunningham Road: 1.4.2.2, 2.3.1 Construct a 5 Family Dwelling
5. RZ #2007-01: 73 Concord Street- Map 234, lot 39: R-2 to EB (Continue Until 12/11/2007)
6. Council Order #2007-20- Amend 22-285 "Harbor Loop"
7. Council Order #2007-24- Amend 22-270 "Kondelin Road"
8. Council Order #2007-30- Amend 22-269 "Riggs Point Road"

COMMITTEE REPORTS

1. P&D: 11/07/2007
2. O&A: 11/08/2007 (Under Separate Cover)
3. B&F: 11/08/2007 (Under Separate Cover)

COUNCILLOR'S REQUESTS OTHER THAN TO THE MAYOR

ROLL CALL - Councillor Michael McLeod



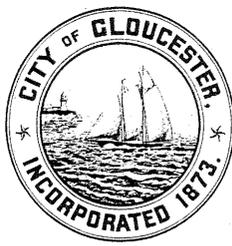
Robert D. Whynott, City Clerk

NEXT REGULAR CITY COUNCIL MEETING, TUESDAY, NOVEMBER 30, 2007

Sept. 12 to Nov. 6, 2007

Aging, Council on, 10/9, 11/13; Comm. Housing Coalition, 8/15; Conservation Cmsn, 4/4, 4/18, 5/2, 5/16, 6/6, 6/20, 7/18, 8/15, 9/5, 9/19; Downtown Dev. Cmsn, 9/12; Gl. Cultural Council, 9/8; Hist. Cmsn. 8/1, 9/10; Lic. Cmsn., 6/27, Shellfish Adv. Cmsn, 8/8, 8/28, 9/12; Tourism Cmsn, 2/22, 5/10, 9/13; Traffic Cmsn, 9/20, 10/18; Waterways Board, 9/5, 10/3; ZBA, 9/13, 9/27, 10/11.

City Hall
Nine Dale Avenue
Gloucester, MA 01930



TEL 978-281-9700
FAX 978-281-9738
jbell@ci.gloucester.ma.us

CITY OF GLOUCESTER
OFFICE OF THE MAYOR

TO: City Council
FROM: John Bell, Mayor 
DATE: November 5, 2007
RE: Mayor's Report for the November 13, 2007 City Council Meeting

1. Chief Administrative Officer Packet

Enclosure 1 is a memo from Fire Chief Barry McKay regarding Fire Department Overtime and Station Opening Status Report. This Status Report is in response to Council Tobey's request for an update every two weeks so that the Council can be kept up to date on the issues.

Enclosure 2 is a memo from Police Chief John Beaudette regarding a State Community Policing Grant Program. We are respectfully requesting that the City Council accept this grant. *Please refer this request to the Budget and Finance subcommittee for review and approval.* Chief Beaudette, or his designee, will be available to answer questions and provide further information as required.

Enclosure 3 is a memo from City Auditor Joseph Pratt regarding accounts having expenditures which exceed their appropriations. *Please refer this matter to the Budget and Finance subcommittee for review.*

2. For Information Only

Included as **Enclosure 4** for your information is the eleventh quarterly status report for the Municipal Software Upgrade Project as prepared by Mike Wells, Director of Information Services.

City of Gloucester, MA 01930

TO: Mayor John Bell
Steve Magoon, AA to the Mayor

DATE: November 1, 2007

FROM: Barry McKay, Fire Chief 

COPIES TO: City Council

SUBJECT: Fire department overtime and station opening status report

REFERENCE: Attached spreadsheet

The attached spreadsheet combines two of the three lists I passed out to the City Council at their 10/16/07 meeting as the overtime issues in the Fire Department were being discussed. Councilor Tobey requested an update on overtime use and manning every two weeks to keep the Council up to date on these issues.

The attached spreadsheet on the left continues the shift by shift reporting of the firefighter deployment and actual manning for each shift from Thursday 9/20/07 when I began closing stations to conserve overtime through Wednesday, 10/31/07. On the right side is the FY08 overtime total charges biweekly and the balance left for overtime use. In addition to the percentage of time the four stations have been open at the bottom of the sheet, I have also listed the fire fighter manning trip points at which stations close based on personnel reporting to duty.

We'd all like to have all stations open 24/7/365, While this remains a goal in search of funds, I feel the percentages of time that three of the four stations remain open has been a credit to the fire fighters reporting for duty at 86 on percent of the shifts. With a new member being assigned to duty on Sunday 11/11/07 the manning levels reporting for duty and thus station openings should improve a little more.

The reduction in overtime costs on the 10/12/07 and especially the 10/26/07 pay dates are directly attributable to the closing of stations needed to maintain overtime for manning to a minimum of 13, and EMT and paramedic training overtime obligations under the collective bargaining agreement with the Union as well as for emergencies. On Tuesday, 10/30/07, I used overtime to reopen Magnolia station during the water main break that lowered water pressure in the City. This overtime also allowed us to use our reserve ladder truck (Ladder 1 - 105 foot aerial) to assist an antenna contractor to replace the Magnolia Station base radio antenna and cable. This reduced the cost of the antenna work by as much as \$1,000 should the contractor have had to rent a boom truck to do the work.

The overtime for 11/9/07 needs further explanation. This overtime amount is based on my calculation prior to submittal and posting to the City's payroll and general ledger. Thus, this amount will be reconciled with the City's calculations next week. The overtime covers the two

week period of 10/14/07 through 10/27/07. The overtime for the week of Sunday 10/14/07 through Saturday 10/20/07 totaled \$1,517.37. The overtime for the week of Sunday 10/21/07 through Saturday 10/27/07 was \$20,384.36. I discussed at the budget and Finance Committee meeting on Thursday 10/25/07 that I was expecting a large EMT and paramedic mandatory refresher training overtime charge in this latter payroll. The refresher course cost \$17,550 and was done at Fire Headquarters. Another \$1,450 in overtime was EMT and paramedic continuing education hours needed for members to recertify as EMTs for the next two years. Some may ask is there a less expensive way to provide the refresher training. In fact the program done at Fire Headquarters is the least expensive way both because of the low fee charged \$35 (i.e., many private courses charge \$100 or more for the 24 hours of refresher training). Equally important is the fact the members on duty are not paid overtime but would be if they attended private courses on their off duty time.

With the refresher training done, overtime should drop in the next pay periods to the amount seen on 10/26/07. We will hit another peak leave period in the last several weeks of 2007 as fire fighters use vacation leave carried over that is "use it or lose it" if not taken by the end of the year. This should not have a dramatic impact on overtime as we continue to man down to 13 fire fighters on duty. The real impact will be on stations being closed more often.

This latter issue addresses how I intend to use the \$57,939.12 in funds transferred to the overtime account at the 10/30/07 Council meeting (i.e., under the B & F Committee report). I will continue to man down to 13 members on duty and authorize overtime for emergencies as done on 10/30 for the water break. With this practice continuing, I can project the remaining overtime will last until approximately April 25, 2008 again with stations closing as fire fighters reporting for duty drop below 17 per shift (i.e., as low as 13 per shift before overtime is utilized to back fill and keep manning at 13 per shift).

As a last note, the projection of overtime costs to maintain 17 fire fighters per shift on the left side of the attached spreadsheet is useful for projecting just the manning component of overtime. I added up the costs, that would have allowed all stations to remain open (i.e., 17 per shift), between Sunday 9/23/07 and Saturday 10/20/07, which was four complete weeks or two biweekly pay periods. The total was \$57,309.28 or \$28,654.64 biweekly needed to maintain 17 firefighters on duty using overtime. With this amount factored into the remaining 16.5 biweekly pay periods, manning to keep all station open projects to cost \$472,801.56. While more than projected on the lists handed out to the Council on 10/16/07 (i.e., projecting an additional \$400,000 in overtime needed), the number still verifies overtime based on real projections of manning to keep all stations open remains in a range between \$400,000 and \$472,800. While I appreciate the additional funds approved 10/30/07, I am continuing to request additional funding to open all stations in the range noted above.

ENCLOSURE 2

Memo

OCT 30 2007

To: Mr. Steve Magoon
From: Chief John Beaudette
CC: Mr
Date: 10/30/2007
Re: FY2008 Community Policing Grant

The Police Department has been awarded \$35,952 from the state Community Policing Grant Program for fiscal year 2008. The funds will be used to implement additional bike and foot patrols in the downtown area, special community events, alcohol and drug programs, special safety programs for elderly residents, and for the Citizens Police Academy.

Please ask the City Council to accept this grant.

**COMMUNITY POLICING GRANT APPLICATION
COVER PAGE
STATE FISCAL YEAR 2008**

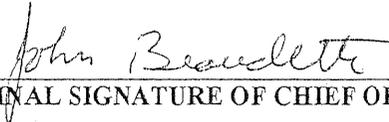
1. Name of Police Department GLOUCESTER POLICE DEPARTMENT
 Address of Police Department 197 MAIN STREET
GLOUCESTER, MA 01930
 Telephone Number 978-283-1212
 Fax Number 978-282-3026
 Website www.ci.gloucester.ma.us

2. Name of Police Chief JOHN BEAUDETTE
 Telephone Number of Police Chief 978-281-9775
 Email Address of Police Chief jbeaudette@ci.gloucester.ma.us

3. Fiscal Year 2008 State-funded Community Policing Grant Program funds requested. \$35,952.00

4. *Sign below to acknowledge having read and agreed to the grant conditions and reporting requirements listed in the application packet.*

Signed under the penalties of perjury this 5 day of Sept, 2007.


 ORIGINAL SIGNATURE OF CHIEF OF POLICE in blue ink

5. **Funding Summary-** For each year, please indicate whether your police department/municipality received an award under the State-Funded Community Policing Grant Program and list any unexpended funds from prior years as of September 10, 2007.

Fiscal Year	Did you receive funding?		Unexpended Funds
Fiscal Year 2007	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$ 0
Fiscal Year 2006	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$ 0
Fiscal Year 2005	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$ 0
Fiscal Year 2004	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$ 0
Fiscal Year 2003 and prior	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$ 0

6. **Budget Information Worksheet** - Use the worksheet provided to describe the amounts you plan to spend in each category and provide computation of how each item was derived and its purpose.

EXAMPLE:

CATEGORY	AMOUNT	COMPUTATION	PURPOSE
G. Equipment	\$1,000	2 bicycles at \$500 each = \$1,000	to be used for bike patrols

This form, to be used for New Contracts and Contract Amendments/Renewals, is jointly issued and published by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth Departments. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors should only complete sections marked with a "→". For Instructions and hyperlinks (italics), please view this form at: www.mass.gov/osc under Guidance For Vendors - Forms or at www.mass.gov/osd under OSD Forms.

→ City or Town Name	CITY OF GLOUCESTER	EPS
→ address	9 DALE AVENUE	10 Park Plaza Boston MA 02116
→ address	GLOUCESTER, MA 01930	Office of Grants and Research
→ Contract Manager Name	MICHAEL CRIPPEN	Cynthia L. Duggan, Executive Director - Office of Grants and Research
→ E-Mail Address	sgtcrip@COMCAST.NET	Phone: 978-375-6959
→ Fax	978-282-3026	TTY:
→ Government		MMARS Doc ID(s):
→ Vendor Code (to be determined by the Office of Grants and Research)		RFR/Procurement or Other ID Number (if applicable): Grant
Object Code: P01		Account(s) Funding Contract: 8000--0010

NEW CONTRACT

COMPENSATION (Check only one):
 Total Maximum Obligation of this Contract \$ 35,952.00
 Rate Contract (Attach details of rate(s) units and any calculations):

The following COMMONWEALTH TERMS AND CONDITIONS for this Contract has been executed and filed with CTR (Check only one):
 Commonwealth Terms And Conditions
 Commonwealth Terms And Conditions For Human And Social Services

PROCUREMENT OR EXCEPTION TYPE (Check one option only):
 Single Department Procurement/Single Department User Contract
 Single Department Procurement/Multiple Department User Contract
 Multiple Department Procurement/Limited Department User Contract
 Statewide Contract (OSD or an OSD-designated Department)
 Grant (as defined by 815 CMR 2.00)
 Emergency Contract (attach justification)
 Contract Employee (Complete Employment Status Form)
 Collective Purchase (attach OSD approval)
 Legislative/Legal Exemption (attach authorizing language)
 Other (Specify and attach documentation):

ANTICIPATED START DATE: 8/20/2007 (Enter the Date Contract Obligations may begin. Review Certification for Effective Date Below prior to entry.)
CONTRACT END DATE: 8/20/2012

CONTRACT AMENDMENT/RENEWAL

ENTER CURRENT CONTRACT START and END DATES (prior to amendment)
 Current Start Date: _____ Current End Date: _____

COMPENSATION: (Check Either, "No Compensation Change", "Maximum Obligation" or "Rate change". ATTACH Amended Scope and Budget to support Amendment)
 NO Compensation Change (Skip to "OTHER" section below and select change)
 Redistribute Budget Line Items (No Maximum Obligation Change)
 Maximum Obligation Change
 a) Current Total Contract Maximum Obligation: \$ _____
 (Total Contract Maximum Obligation, including all prior amendments)
 b) Amendment Amount ("+" or "-"): \$ _____
 c) NEW TOTAL CONTRACT MAXIMUM OBLIGATION: \$ _____
 Rate Changes to Rate Contract

OTHER: (Check option, explain under "Brief Description" below, and attach documentation)
 Amend Duration Only (No Compensation or Performance Change)
 Amend Scope of Services/Performance Only (no budget impact.)
 Interim Contract (Temporary Extension to complete new Procurement)
 Other: (Describe Details and Attach documentation)

ANTICIPATED START DATE: _____ (Enter the Date Amendment Obligations may begin. Review Certification for Effective Date Below prior to entry.)
NEW CONTRACT END DATE: _____

→ PROMPT PAYMENT DISCOUNTS Contractor has agreed to the following Prompt Pay Discounts for the listed Payment Issue Dates. See Prompt Payment Discount Policy
 % Within 10 Days % Within 15 Days % Within 20 Days % Within 30 Days OR, Check off the following if:
 Contractor either claims hardship, or chooses not to provide PPD, or compensation is not subject to prompt pay discounts (grants, non-commodity or non-service compensation)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE OR REASON FOR AMENDMENT (Reference to attachments is insufficient):
 For a Community Policing Grant administered by the Executive Office of Public Safety and Security

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, or an earlier Start date listed above, the "Effective Date" of this Contract or Amendment shall be the latest date this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, a later Contract or Amendment Start Date specified above, or the date of any required approvals. By executing this Contract/Amendment, the Contractor makes, under the pains and penalties of perjury, all certifications required under the attached Contractor Certifications, and has provided all required documentation noted with a "→", or shall provide any required documentation upon request, and the Contractor agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein, including the terms of the applicable Commonwealth Terms and Conditions available at www.mass.gov/osc under Guidance For Vendors - Forms or at www.mass.gov/osd under OSD Forms, the terms of the attached Instructions, the Request for Response (RFR), solicitation (if applicable) or other authorization, the Contractor's response to the RFR or solicitation (if applicable), and any additional negotiated performance or budget provisions. The terms of this Contract shall survive its termination for the purpose of resolving any claim, dispute or other Contract action, or for effectuating any negotiated representations and warranties. **THE PARTIES HEREBY ALSO CERTIFY THAT (Check one option only):**
 1. the Contractor has NOT incurred any obligations triggering a payment obligation for dates prior to the **Effective Date** of this Contract or Amendment, OR
 2. any obligations incurred by the Contractor prior to the **Effective Date** of this Contract or Amendment (for which a payment obligation has been triggered) are intended to be part of this Contract/Amendment and shall be considered a final **Settlement and Release** of these obligations which are incorporated herein, and upon payment of these obligations, the Contractor forever releases the Commonwealth from any further claims related to these obligations.

AUTHORIZING SIGNATURE FOR THE CONTRACTOR:
 → X: John Beaudette Date: 9/05/07
 (Signature and Date Must Be Handwritten At Time of Signature)
 → Print Name: John Beaudette
 → Print Title: Chief

AUTHORIZING SIGNATURE FOR THE DEPARTMENT:
 X: _____ Date: _____
 (Signature and Date Must Be Handwritten At Time of Signature)
 Print Name: Cynthia L. Duggan
 Print Title: Executive Director

COMMONWEALTH OF MASSACHUSETTS
CONTRACTOR AUTHORIZED SIGNATORY LISTING



CONTRACTOR LEGAL NAME: CITY OF GLOUCESTER
CONTRACTOR VENDOR/CUSTOMER CODE:

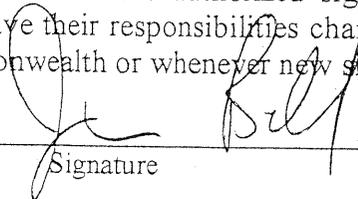
INSTRUCTIONS: Any Contractor (other than a sole-proprietor or an individual contractor) must provide a listing of individuals who are authorized as legal representatives of the Contractor who can sign contracts and other legally binding documents related to the contract on the Contractor's behalf. In addition to this listing, any state department may require additional proof of authority to sign contracts on behalf of the Contractor, or proof of authenticity of signature (a notarized signature that the Department can use to verify that the signature and date that appear on the Contract or other legal document was actually made by the Contractor's authorized signatory, and not by a representative, designee or other individual.)

NOTICE: *Acceptance of any payment under a Contract or Grant shall operate as a waiver of any defense by the Contractor challenging the existence of a valid Contract due to an alleged lack of actual authority to execute the document by the signatory.*

For privacy purposes **DO NOT ATTACH** any documentation containing personal information, such as bank account numbers, social security numbers, driver's licenses, home addresses, social security cards or any other personally identifiable information that you do not want released as part of a public record. The Commonwealth reserves the right to publish the names and titles of authorized signatories of contractors.

AUTHORIZED SIGNATORY NAME	TITLE
JOHN BEAUDETTE	POLICE CHIEF

I certify that I am the President, Chief Executive Officer, Chief Fiscal Officer, Corporate Clerk or Legal Counsel for the Contractor and as an authorized officer of the Contractor, I certify that the names of the individuals identified on this listing are current as of the date of execution below and that these individuals are authorized to sign contracts and other legally binding documents related to contracts with the Commonwealth of Massachusetts on behalf of the Contractor. I understand and agree that the Contractor has a duty to ensure that this listing is immediately updated and communicated to any state department with which the Contractor does business whenever the authorized signatories above retire, are otherwise terminated from the Contractor's employ, have their responsibilities changed resulting in their no longer being authorized to sign contracts with the Commonwealth or whenever new signatories are designated.



Signature

Date: 9/5/07

Title: MAYOR

Telephone: 978-281-9700

Fax: 978-281-9738

Email: jbelle@ci.glooucester.ma.us

[Listing can not be accepted without all of this information completed.]
A copy of this listing must be attached to the "record copy" of a contract filed with the department.

**COMMUNITY POLICING GRANT
2008 BUDGET WORKSHEET**

CATEGORY	AMOUNT	COMPUTATION	PURPOSE
A. Personnel	\$		
B. Training	\$		
C. Overtime – Training	\$		
D. Overtime - Replacement Costs	\$ 6,452.00	161.3 HOURS @ \$40.00 PER HOUR	TO REPLACE OFFICERS DOING COMMUNITY POLICING
E. Overtime - Beyond Tour of Duty	\$ 28,000.00	700 HOURS @ \$40.00 PER HOUR	OFFICERS INVOLVED IN COMMUNITY POLICING ACTIVITY
F. Supplies & Operating Expenses	\$		
G. Equipment	\$ 1,500.00	100 CELL PHONES @ 15.00	911 CELL PHONES FOR ELDERLY
H. Other	\$		
TOTAL	\$ 35,952.00		

Grant Amount Requested

Name of Police Department GLOUCESTER POLICE

ENCLOSURE 3

CITY OF GLOUCESTER AUDITOR'S OFFICE

FY2007

OCTOBER 26, 2007

TO: CITY COUNCIL

FROM: CITY AUDITOR

RE: CODE OF ORDINANCE CHAPTER 2, ADMINISTRATION, ARTICLE III,
OFFICERS AND EMPLOYEES, DIVISION 6, CITY AUDITOR, S 2-104
p. 161, EFFECTIVE MARCH 1, 1986

cc: MAYOR JOHN BELL; ADMINISTRATIVE ASSISTANT, STEVE MAGOON

S 2-104 DUTY WHEN APPROPRIATIONS ARE EXHAUSTED
WHENEVER THE APPROPRIATIONS FOR ANY DEPARTMENT FOR ANY OBJECTS HAVE
BEEN EXHAUSTED, THE CITY AUDITOR SHALL COMMUNICATE THE FACT TO THE
MAYOR AND THE CITY COUNCIL, AND ALL EXPENDITURES THEREFORE SHALL CEASE
UNTIL A FURTHER APPLICATION IS DULY MADE.

AS OF THE WEEK ENDING OCTOBER 26, 2007 THE FOLLOWING ACCOUNTS HAVE
EXPENDITURES THAT EXCEED THEIR APPROPRIATIONS: CITY DEPARTMENTS

<u>ACCOUNT #</u>	<u>ACCOUNT TITLE</u>	<u>AMOUNT OVER</u>
101000.10.121.51100.051	Mayor Sal/Wage Perm Pos	(\$1,240.71)
101000.10.152.51100.051	Personnel Sal/Wage Perm. Pos	(\$3,285.25)
101000.10.152.51970.051	Personnel/Retirement Sick Buy-Back	(\$34,367.96)
101000.10.155.51100.051	Mgn Infor Services Sal Wage Perm Pos	(\$342.11)
101000.10.161.51100.051	City Clerk Sal/Wage	(\$83.80)
101000.10.211.51100.051	Police Uniform/Salary wage Perm Pos	(\$80,519.72)
101000.10.211.51360.051	Police Uniform/Beach Over Time	(\$12,479.92)
101000.10.212.51100.051	Police Investigation Sal/wage perm	(\$9,662.25)
101000.10.220.51100.051	Fire Department/Sal/Wage Perm Pos	(\$26,591.04)
101000.10.220.51570.051	Fire Department Workers/Comp	(\$39,955.78)
101000.10.241.51250.051	Inspectional Services/Sal/Wage P.T.	(\$44.10)
101000.10.292.51100.051	Animal Control Sal/Wage Perm Pos	(\$165.52)

CITY OF GLOUCESTER

AUDITOR'S OFFICE

Page 2

101000.10.422.51570.051	DPW Highway/Workers Comp	(\$951.54)
101000.10.499.51100.051	DPW Sal/Wage	(\$1,652.44)
101000.10.499.51200.051	DPW Sal/Wage Temp	(\$7,344.60)
101000.10.499.51570.051	DPW Workers /Comp	(\$8,443.98)
101000.10.541.51250.051	Council on Aging/Sal Wage P.T.	(\$6,699.74)
600000.10.440.51570.051	SEWER Workers/Comp	(\$8,707.42)
61000.10.450.51100.051	Water Enterprise/Sal/Wage perm	(\$1,749.30)
610000.10.450.51570.051	Water Enterprise/Workers/Comp	(\$2,860.82)

OCTOBER 26, 2007

CITY OF GLOUCESTER AUDITOR'S OFFICE

TO: CITY COUNCIL

FROM: CITY AUDITOR

RE: CODE OF ORDINANCE CHAPTER 2, ADMINISTRATION, ARTICLE III,
OFFICERS AND EMPLOYEES, DIVISION 6, CITY AUDITOR, S 2-104
p. 161, EFFECTIVE MARCH 1, 1986

cc: MAYOR JOHN BELL; ADMINISTRATIVE ASSISTANT, STEVE MAGOON

S 2-104 DUTY WHEN APPROPRIATIONS ARE EXHAUSTED

WHENEVER THE APPROPRIATIONS FOR ANY DEPARTMENT FOR ANY OBJECTS HAVE BEEN EXHAUSTED, THE CITY AUDITOR SHALL COMMUNICATE THE FACT TO THE MAYOR AND THE CITY COUNCIL, AND ALL EXPENDITURES THEREFORE SHALL CEASE UNTIL A FURTHER APPLICATION IS DULY MADE.

AS OF THE WEEK ENDING OCTOBER 26, 2007, THE FOLLOWING ACCOUNTS HAVE EXPENDITURES THAT EXCEED THEIR APPROPRIATIONS: SCHOOL DEPARTMENT

<u>FUNCTION CODE</u>	<u>TITLE</u>	<u>AMOUNT OVER</u>
1220	Assistant Superintendent Office	(\$15,008.60)

* SCHOOL FUNCTION CODE REPORT

Fiscal Year: 2007-2008

From Date: 7/1/2007 To Date: 10/31/2007

Include pre encumbrance Print accounts with zero balance Filter Encumbrance Detail by Date Range

Account Number	Description	FY08 GL Budg	Adjustments	Adj. Budget	Current	YTD	Balance	Encumbrance	Budget Bal	% Rem
101000.29.370.51101.1220.00.170.00.051	Asst. Supt. Sal	\$100,000.00	\$0.00	\$100,000.00	\$34,615.35	\$34,615.35	\$65,384.65	\$65,384.65	\$0.00	0.00%
101000.29.370.51102.1220.00.170.00.051	Asst. Supt. Sec. Sal	\$28,985.00	\$0.00	\$28,985.00	\$16,472.40	\$16,472.40	\$12,512.60	\$28,281.20	(\$15,768.60)	-54.40%
101000.29.370.57300.1220.00.270.00.057	Asst. Supt. Exp Acct	\$1,600.00	\$0.00	\$1,600.00	\$840.00	\$840.00	\$760.00	\$0.00	\$760.00	47.50%
Func: Asst. Superintendents Office - 1220		\$130,585.00	\$0.00	\$130,585.00	\$51,927.75	\$51,927.75	\$78,657.25	\$93,665.85	(\$15,008.60)	
Grand Total:		\$130,585.00	\$0.00	\$130,585.00	\$51,927.75	\$51,927.75	\$78,657.25	\$93,665.85	(\$15,008.60)	

End of Report

ENCLOSURE 4

City Hall Annex
Three Pond Road
Gloucester, MA 01930



TEL 978-281-9706
FAX 978-281-8472
mwells@gloucester-ma.gov

CITY OF GLOUCESTER

INFORMATION SERVICES DEPARTMENT

October 29, 2007

Steve Magoon
Office of The Mayor

Re.: Municipal Software Update Project

Steve,

Here is the eleventh quarterly status report for the Municipal Software Upgrade project.

The bridge between RevenueSense and BudgetSense has been fully utilized since the beginning of FY2008 and seems to be operating well.

Since May/June, Utility Billing has been back in its scheduled pattern with billing dates being controlled by the DPW. The next bill is due in November.

Preliminary bills for Real Estate and Personal Property were produced in July and October as per MGL using the newly programmed method mentioned in the previous report. Initially bills were produced for exempt parcels but they were corrected and no further problems have been reported with them. The 'Actual' bills scheduled for January and April will be produced in the same way as they were in FY2007 so no problems are anticipated.

The partially completed subsequent tax title taking for 2005 was cleaned up and the new taking for 2005 executed. Training is now starting in the Treasurers Office so that payments can be entered for tax title properties. A series of reports for Tax Title processing have been received from Unifund and evaluated. Unifund will need to make changes to some of the reports.

Demand letters for Utility Billing, Real Estate (2006) and Personal Property (2006) have been done in preparation for liens and a new round of tax takings this winter.

Training has been done with both the Engineering and Health Department to allow them to enter their new 'Betterment' information directly into the system. This will save duplication of effort and eliminate paper trails and transcription errors.

We have begun to work on implementing the 'Tax Deferral' modules in RevenueSense. This will allow us to bring into the system records of citizens who have deferred their taxes due to their age. Previously these records have been managed manually and not put into the main systems.

Trials have been successfully completed of distributed timesheet entry for payroll. This process will eliminate a paper process and should improve cycle time.

Large amounts of time have continued to be spent helping the accounting staff complete their reporting of FY2006. This is tailing off now and as we complete some of the same tasks for FY2007 we are finally getting time to spend on completing the implementation.

We have a major release for both BudgetSense and RevenueSense that we need to test and implement. I am working with department managers to schedule the testing.

A comprehensive plan for training for basic and departmental training has been drawn up and we are working with Unifund to convert this into specific training events and then schedule the classes needed. Limitations on equipment resources and staff availability will mean that the program will probably take some time to complete.

Outstanding components of the Project:-

- Complete training for Tax Title module
- Execute training plan as prepared with Unifund
- Implement the web interface for citizen enquiries (and possibly payments)
- Implement permit processing in Building Insp. Dept and Health Department (and possibly others)
- Continue the handover of processing tasks to the Treasurer/Collector offices

I will send another update in approximately 3 months time.

Regards,

Mike Wells
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CITY OF GLOUCESTER
OFFICE OF THE MAYOR

TO: City Council

FROM: John Bell, Mayor 

DATE: November 9, 2007

RE: **Addendum to Mayor's Report
for the November 13, 2007 City Council Meeting**

Enclosure 1 is a Loan Order for the Page Street and Way Road water main and sewer project. *Please refer this matter to the Budget and Finance subcommittee for review and approval.* Steve Magoon, Anna Tenaglia and Michael Hale will be available to answer questions and provide further information as required.

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CITY OF GLOUCESTER
DEPARTMENT OF TREASURER-COLLECTOR

November 8, 2007

To: Steve Magoon

From: Anna M. Tenaglia

Re: Loan order – Page Street and Way Road water main and sewer project

Order- Sewer Construction, Drainage and Water Mains

Ordered: that \$2,055,510 is appropriated for the purpose of financing sewer construction, water main rehabilitation and drainage improvements on Moorland Road, Page Street and Way Road; that to meet this appropriation the Treasurer with the approval of the Mayor is authorized to borrow \$2,055,510 and issue bonds or notes therefor under G.L. c.44 or any other enabling authority; that the Mayor is authorized to take any other action necessary to carry out this project; and that the Treasurer is authorized to file an application with the Municipal Finance Oversight Board to qualify any or all of the bonds under G.L. c.44A and to provide such information and execute such documents as such board may require for those purposes.

City of Gloucester, Massachusetts
\$2,055,000 General Obligation Bonds
Dated: March 15, 2008
Water and Sewer 20 Years - E qual Principal

Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
03/15/2008	-	-	-	-	-
09/15/2008	-	-	51,375.00	51,375.00	-
03/15/2009	105,000.00	5.000%	51,375.00	156,375.00	-
06/30/2009	-	-	-	-	207,750.00
09/15/2009	-	-	48,750.00	48,750.00	-
03/15/2010	105,000.00	5.000%	48,750.00	153,750.00	-
06/30/2010	-	-	-	-	202,500.00
09/15/2010	-	-	46,125.00	46,125.00	-
03/15/2011	105,000.00	5.000%	46,125.00	151,125.00	-
06/30/2011	-	-	-	-	197,250.00
09/15/2011	-	-	43,500.00	43,500.00	-
03/15/2012	105,000.00	5.000%	43,500.00	148,500.00	-
06/30/2012	-	-	-	-	192,000.00
09/15/2012	-	-	40,875.00	40,875.00	-
03/15/2013	105,000.00	5.000%	40,875.00	145,875.00	-
06/30/2013	-	-	-	-	186,750.00
09/15/2013	-	-	38,250.00	38,250.00	-
03/15/2014	105,000.00	5.000%	38,250.00	143,250.00	-
06/30/2014	-	-	-	-	181,500.00
09/15/2014	-	-	35,625.00	35,625.00	-
03/15/2015	105,000.00	5.000%	35,625.00	140,625.00	-
06/30/2015	-	-	-	-	176,250.00
09/15/2015	-	-	33,000.00	33,000.00	-
03/15/2016	105,000.00	5.000%	33,000.00	138,000.00	-
06/30/2016	-	-	-	-	171,000.00
09/15/2016	-	-	30,375.00	30,375.00	-
03/15/2017	105,000.00	5.000%	30,375.00	135,375.00	-
06/30/2017	-	-	-	-	165,750.00
09/15/2017	-	-	27,750.00	27,750.00	-
03/15/2018	105,000.00	5.000%	27,750.00	132,750.00	-
06/30/2018	-	-	-	-	160,500.00
09/15/2018	-	-	25,125.00	25,125.00	-
03/15/2019	105,000.00	5.000%	25,125.00	130,125.00	-
06/30/2019	-	-	-	-	155,250.00
09/15/2019	-	-	22,500.00	22,500.00	-
03/15/2020	100,000.00	5.000%	22,500.00	122,500.00	-
06/30/2020	-	-	-	-	145,000.00
09/15/2020	-	-	20,000.00	20,000.00	-
03/15/2021	100,000.00	5.000%	20,000.00	120,000.00	-
06/30/2021	-	-	-	-	140,000.00
09/15/2021	-	-	17,500.00	17,500.00	-
03/15/2022	100,000.00	5.000%	17,500.00	117,500.00	-
06/30/2022	-	-	-	-	135,000.00
09/15/2022	-	-	15,000.00	15,000.00	-
03/15/2023	100,000.00	5.000%	15,000.00	115,000.00	-
06/30/2023	-	-	-	-	130,000.00
09/15/2023	-	-	12,500.00	12,500.00	-
03/15/2024	100,000.00	5.000%	12,500.00	112,500.00	-
06/30/2024	-	-	-	-	125,000.00
09/15/2024	-	-	10,000.00	10,000.00	-
03/15/2025	100,000.00	5.000%	10,000.00	110,000.00	-
06/30/2025	-	-	-	-	120,000.00
09/15/2025	-	-	7,500.00	7,500.00	-
03/15/2026	100,000.00	5.000%	7,500.00	107,500.00	-
06/30/2026	-	-	-	-	115,000.00
09/15/2026	-	-	5,000.00	5,000.00	-
03/15/2027	100,000.00	5.000%	5,000.00	105,000.00	-
06/30/2027	-	-	-	-	110,000.00
09/15/2027	-	-	2,500.00	2,500.00	-
03/15/2028	100,000.00	5.000%	2,500.00	102,500.00	-
06/30/2028	-	-	-	-	105,000.00
Total	\$2,055,000.00	-	\$1,066,500.00	\$3,121,500.00	-

Yield Statistics

Bond Year Dollars.....	\$21,330.00
Average Life.....	10.380 Years
Average Coupon.....	5.000000%
Net Interest Cost (NIC).....	5.000000%
True Interest Cost (TIC).....	5.000000%
Bond Yield for Arbitrage Purposes.....	5.000000%
All inclusive Cost (AIC).....	5.000000%
IRS Form 8038	
Net Interest Cost.....	5.000000%
Weighted Average Maturity.....	10.380 Years

Water and Sewer March 15, | SINGLE PURPOSE | 11/7/2007 | 11:21 AM

City Council
Tuesday, October 30, 2007 – 7 p.m.
Kyrouz Auditorium, City Hall

Attendance: James Destino, Council President; John “Gus” Foote, Council Vice President; Councilors Jason Grow, Jacqueline Hardy, Michael McLeod, Walter Peckham, Sefatia A. Romeo, Alphonse Swekla, Bruce Tobey

Also: Steve Magoon, Joseph Orange, David Bain, Barry McKay, Christie Millhouse, Mike Hale, Linda Lowe, Tom Murphy, Jim Santos, Stephanie Palazola, Michael Faherty, Jack Vondras, Sunny Robinson, Christine Rasmussen, Kathy Hurlburt, Stevan Goldin, Bob Ryan, Heidi Darling, Peter Perthou

Absent:

The meeting was called to order at 7:00 p.m.

FLAG SALUTE & MOMENT OF SILENCE

ORAL COMMUNICATIONS

Joseph Orange, 16 Taylor Street, Watershed Constable stated he was asked by the Mayor to represent the city at a recent meeting of the Rockport Bypass Road Committee who feel adamant that a bypass road would solve Rockport’s problems. He suggested the city take official action that the Rockport Road is off the table. This area is the last of our watershed and the impact on wildlife would be catastrophic.

COUNCILLOR’S REQUESTS TO THE MAYOR

07-254 (Grow) Urgent Request - Illegal dumping on and adjacent to property at the rear of 116 East Main Street (the Harbor House Restaurant) is creating a potentially life threatening hazard for children who access East Gloucester Elementary via the path through the woods. A refrigerator with its door attached as well as at least one propane bottle and several pieces of furniture have been dumped and need to be removed. If this isn’t public property, I would ask that in the interests of public safety, the owners of the property be advised of the need to clean up the area immediately. Please advise of progress.

07-255 (Destino) Request the Mayor instruct the DPW to determine the appropriate placement of a school zone sign for Pathways for Children on Emerson Avenue.

07-256 (Grow) Request that the Mayor and CAO Steve Magoon be provided a copy of any outstanding requests and that a response be made available to the council as to their status by the next Mayor’s report.

07-257 (Grow) Request the Mayor request the Fire Department for an analysis of the ambulance service as an enterprise account. (*from B&F 10/25*).

CONFIRMATION OF APPOINTMENTS

1. Personnel Director- TTE 02/14/2008- David Bain

MOTION: The Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend to the full City Council the appointment of David Bain as Personnel Director for a term to expire 2/14/08.

Discussion. Councilor Tobey spoke on behalf of the entire O&A committee; they were extremely impressed with Mr. Bain as a knowledgeable experienced attorney with a human resources background.

Councilor Grow asked Mr. Bain to speak to the issue of a comprehensive review policy.

Mr. Bain replied it needs to be a team effort with managers involved to provide honest evaluations that are done in an organized and timely fashion.

Councilor Grow asked about the possibility of consolidating the school's human resources with the city's human resources.

Mr. Bain always thought it was a good idea. There are statutes and regulations that govern the schools and their hiring practices and statutes and regulations that govern the city but he feels it is possible to find common ground and he would be pleased to explore this.

Councilor Grow asked if Mr. Bain is competent his department would be able to handle that.

Mr. Bain stated he has a wonderful department and wants the Council to know how lucky we are to have the people we have working for the city. He is impressed by all the people he has come into contact with in terms of their dedication and workmanship.

Councilor Grow asked Mr. Bain if he has a sense of where the city is with the concept of joining the GIC and asked is your office exploring that.

Mr. Bain replied they are exploring that but it would be at least another year as there are a lot of issues and we have to make sure this is a good fit. He is going to be meeting with the insurance consultant within the next couple of weeks. As a concept it makes sense, but we have to see how the details will affect the city.

Councilor Grow asked what Mr. Bain's priorities are.

Mr. Bain stated his priorities include getting the collective bargaining in order and computerization of the department records. We have a human resource module which we are starting to use and he feels it is a much safer way to keep our records and will allow us to work more efficiently.

Councilor Romeo stated there were comments made at O&A regarding evaluation and what good are those evaluations if you are not going to either enforce or reward.

Mr. Bain stated the purpose of the evaluation tool is to have the employees conform their conduct to what is expected and for the employee to inform the manager of what is bothering them. In government there is very little we can do to reward someone but the least we can do is tell them they are doing a good job.

Councilor Romeo asked will that help with contracts.

Mr. Bain replied sincerity and honesty are important and if raises are possible they need to be considered seriously. You have to invest in your employees. If raises are impossible because of economic reasons you have to be transparent about that.

Councilor Romeo asked to be involved when they talk about the GIC insurance.

Council President Destino asked Mr. Bain to speak about his collective bargaining experience.

Mr. Bain stated he was the Assistant City Attorney in Lawrence in charge of labor relations with 14 unions and he also worked in Methuen with 9 unions.

Council President Destino asked if he would you hire professional help during bargaining.

Mr. Bain would consult with the General Counsel and if outside counsel was deemed to be necessary that would be considered but a lot he feels can be handled in house.

Councilor Hardy was selected to be on the screening committee and was very impressed with Mr. Bain's experience and appreciates the fact that he is a straight shooter.

Councilor Grow asked if the personnel office is prepared to conduct a comprehensive salary evaluation in relation to other towns our size and relative to the private sector with regards to some of the management positions.

Mr. Bain replied his office does the comparatives as a matter of course. He agrees most of the people that work for cities are not well compensated and would look into researching comparatives in the private sector as well.

Councilor Grow stated the Department of Revenue (DOR) maintains an online databank for the three major departments and asked that we participate in that.

Mr. Bain agreed and noted the question on the private sector bares some study.

Councilor Tobey stated Mr. Bain understands how things work and it is important to note that salary consideration and professional advancement opportunities will be especially important with the new administration. The public sector professional management ranks are aging and thinning across the

board and we need to be mindful that if we don't keep a strong management team, things will look worse.

Councilor Foote agrees a pat on the back goes a long way and welcomed Mr. Bain.

MOTION: On motion of Councilor Tobey, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed the appointment of David Bain as Personnel Director for a term to expire 2/14/08.

CONSENT AGENDA

- **MAYOR'S REPORT**

1. **Appointment-** City Hall Restoration Committee: **Stephen Pardee** (*Refer O&A*)
2. **Appointment-** Mariner's Medal Committee: **Captain Paul Frontiero** (*Refer O&A*)
3. **Appointment-** Waterways Board: **Anthony Gross** (*Refer O&A*)
4. **Appointment-** Conservation Commission: **Brandon Frontiero** (*Refer O&A*)

- **CHIEF ADMINISTRATIVE OFFICER PACKET**

1. Memo from City Auditor "Duty When Appropriations Are Exhausted" (*Refer B&F*)

- **INFORMATION ONLY**

1. Copy of Independent Auditors Report: School Department
2. Responses to Various Council requests
3. Quarterly Report for the Assessor's Office
4. Quarterly Report for the DPW.

- **APPROVAL OF MINUTES**

1. City Council Meeting 10/16/2007 (*Approve/File*)

- **APPLICATIONS/PETITIONS**

1. SCP #2007-24: 91 Riverview Road: Lowlands permit 5.5.4 (*Refer P&D*)

- **ORDERS**

1. #2007-43 Detailed Implementation Schedule for School Reconfiguration *Destino* (*FCV 11/13/2007*)
2. #2007-44 Amend 22-284 "Rogers Street" *Foote* (*Refer O&A,TC*)
3. #2007-45 Repair Lawrence Parson Bridge under 2-11 (b)

ITEMS REMOVED FROM THE CONSENT AGENDA

Councilor President Destino added the Addendum to the Mayor's report to the consent agenda.

Councilor Hardy removed information only #1.

Councilor Peckham removed Emergency Order 07-45.

MOTION: The consent agenda was adopted by UNANIMOUS consent of the full City Council with the addition of the Addendum to the Mayor's Report and the exception of information only item #1 and Emergency Order 07-45.

Councilor Hardy asked that information only #1, copy of independent Auditor's Report: School Department is referred to Budget and Finance for review.

MOTION: On motion of Councilor Hardy, seconded by Councilor Grow the City Council voted 9 in favor, 0 opposed to refer the independent Auditor's Report on the School Department to Budget and Finance.

MOTION: Addendum to the Mayor's report (enclosures 1-3) response to Councilor Grow's request 07-252, School Department capital requests and seven transfer requests were referred to Budget and Finance by UNANIMOUS consent of the full City Council.

FOR COUNCIL VOTE

1. #2007-42: 2-11(b) Opening Fire Stations/Funding Request (*Tobey/Romeo/Hardy/Peckham*)

Councilor Tobey asked that Order 07-42 be put on the agenda to be considered after the B&F meeting minutes of 10/25th.

Order 07-42 was tabled without Council objection.

2. Appropriation of \$225,000.00 to the Stabilization fund from FY08 Chapter 70 Foundation Reserve.

MOTION: On motion of Councilor Grow, seconded by Councilor McLeod the City Council voted 9 in favor, 0 opposed the appropriation of \$225,000 to the Stabilization Fund from the FY08 Chapter 70 Foundation Reserve.

DECISIONS TO ADOPT

1. SCP# 2007-11 – 142 Wheeler Street: 5.5, Construction of a float

MOTION: On motion of Councilor Peckham, seconded by Councilor Hardy the City Council voted by ROLL CALL 9 in favor, 0 opposed to adopt the SCP decision for Stephen Kaloyanides, Jr., 142 Wheeler Street, pursuant to Sec. 5.5 of the Gloucester Zoning Ordinance.

EMERGENCY ORDER 07-45.

Councilor Peckham originally filed a couple of requests to have this addressed. The retaining wall is literally falling into the water and especially with winter coming the bridge will collapse.

MOTION: On motion of Councilor Peckham, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed, ordered that an Emergency, under Section 2-11b of the Gloucester City Charter be deemed to exist at the Lawrence Parson Bridge on Concord Street due to hazards to Public Safety and Well Being.

MOTION: On motion of Councilor Peckham, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed further ordered that the Mayor immediately direct the DPW Director to allocate all necessary resources for the repair of the Lawrence Parson Bridge.

SCHEDULED PUBLIC HEARINGS**Public Hearing #1**

SCP #2007-14- 26 Railroad Avenue: 5.17 Drive Through Facility (*Continued from 09/18/2007*)

The public hearing is opened.

Speaking in favor. Attorney Thomas Murphy with Dan Dulaski, Traffic Engineer, and Jim Santos also present. Attorney Murphy stated Jim Santos has been a member of the business community for over 20 years and is a good corporate citizen. His shop was located on Washington Street for most of those years until the sewer project which started two years ago which caused Mr. Santos to move to his current location on Railroad Avenue and which has had a significant financial impact. One potential amenity he has at this location is a drive through window which is fairly popular in the donut industry. For various reasons it does provide an advantage for that type of business and Mr. Santos is at a disadvantage without a drive through window. Prior to now they have appeared before the Zoning Board of Appeals (ZBA) for relief of parking on site and requirements of set backs for a drive through. They also appeared before the Planning Board who made a favorably recommendation as did Planning and Development. He then reviewed the six special council permit criteria.

The application meets the six special permit criteria under Sec. 1.4.2.2(e) as follows:

1. **Social, economic, or community needs** are served by the proposal, as consumers wish the convenience of a drive through facility for their coffee. The proposed drive through provides that convenience in a safe manner without cars stacking into a public street. In addition to convenience, a drive through facility helps drivers with children, disabled drivers, and others. Improvement to this area of downtown is a goal of the Community Development Plan 2001.
2. **Traffic flow and safety** are comprehensively addressed in the Traffic Impact Study prepared by a registered professional engineer as required under Section 5.17.5(a).
3. **Municipal utilities** are available and adequate for the proposal.
4. **The neighborhood character and social structure** are characterized by commercial uses as indicated by the uses at the proposed building, the abutting car wash, the new Station Place across the street, and Shaw's Marketplace.
5. **The natural environment** will be improved by the general improvement of this section of Railroad Avenue. New landscaping is proposed.
6. **The potential fiscal impact** is positive, as the re-use of a former auto parts store to the bakery and other new uses in the building will provide additional revenue. The new use will provide employment opportunities also.

Attorney Murphy submitted for the record that the proposed use will be in harmony with the intent and purpose of the Zoning Ordinance and will not have adverse effects with overbalance its beneficial effects on either the neighborhood or the city.

Dan Dulaski, Traffic Solutions presented copied of the refined site plan showing traffic circulation through the drive through. The revisions were made from conversations, site visits and committee reviews. He pointed out some of the differences and talked about overall traffic circulation, exiting via Pearl Street during the peak periods and always entering off of Pearl Street. Sign and pavement markings delineate the drive through lane with the window on left hand side. What is attractive about a tri purpose window is that it regulates traffic flow leaving the site. People will be metered effectively by the person at the window - Bollards will be installed to protect the gas meter and we have added curbing along the building - at the end it flares out to direct traffic to the one lane and to give pedestrians an opportunity to see the vehicle approaching from the right. We have narrowed the island and made this one way in response to comments made, so if someone gets frustrated or doesn't want to use the drive through they can exit through the parking lot. Pearl Street and Railroad Avenue have less traffic than Washington Street. The right hand turns onto and off of Washington Street are attractive based on the volume. The sight lines at the intersection are similar to pulling out of a street where there is parking on both sides. We witnessed it at the site visit and would be amenable to restricting parking on the left hand side to lose one space in order to increase the sight lines.

Robert Ryan, 3 Blake Court, Traffic Commission Chair spoke personally in favor and stated Jim Santos is an exemplary citizen. The Traffic Commission unanimously supports the plan as proposed and concurs with Traffic Solutions that there will be no significant impact to traffic and are also in favor of the bump out. He feels the city has both a moral and legal obligation to support Jim Santos as he has always supported this community for the last 20 years.

Heidi Darling, 18 Atlantic Road also spoke in support. She met Jim Santos during his first year in business and was struck by his business sense and work ethic. He had faith in this community and Gloucester was lucky to gain a smart business owner with a great commitment to the community as well. Through his donations non-profits have had the opportunity to expand and flourish and she hopes that Gloucester will give Jim Santos an opportunity now to expand his business.

Speaking in opposition. Peter Perthou, Lindow Avenue Rockport tends the garden at the intersection of Railroad Avenue and Washington Street and noted that traffic is very heavy there. There are high volume businesses on major arteries and there is a tremendous amount of traffic along Railroad Avenue. It is important to have good traffic flow for a successful business community and there are also safety considerations. He also noted that donuts are not a social need.

Communications. None

Rebuttal. Attorney Murphy asked the Council to keep the expertise of the Planning Board, Traffic Commission and the traffic study with respect to the traffic flow in mind.

There was no rebuttal from the opposition.

Questions. Councilor Peckham asked Mr. Dulaski what prevents pedestrians from walking out into traffic on the other side, the side of the street without the nubbin.

Mr. Dulaski stated a rectangle is painted on the other side and we could certainly put a curbing in that area as well.

Councilor Peckham feels having a single window for ordering, pick up and payment would slow down the queuing therefore hampering traffic more.

Mr. Dulaski replied there is queuing space available. In theory nothing is going to change before getting to the window and he feels the window operator will actually regulate the flow. You could possibly get a longer queue but we don't expect queuing longer than 8 cars. If the queuing becomes too long someone can pull into the parking lot, park and walk into the shop. Even if there was a speaker window you would be serviced in the same amount of time, just in two different areas.

Councilor Swekla asked what entrance pedestrians will use.

Mr. Dulaski replied most of the pedestrians will walk in the front door. The only conflict that exists is walking along Railroad Avenue and that is where we have put the bump out to allow pedestrians to see cars coming out of the drive through.

Councilor Grow asked Attorney Murphy how this coming before the Council by a tenant and not the owner.

Attorney Murphy replied the owner has been involved from the get go. The landlord was at the site visit and he supports this.

The owner is not present tonight.

Councilor Grow asked is there a term on the lease.

Attorney Murphy replied currently it is a five year lease with a five year option.

Councilor Hardy referred to the ZBA variance and read from the ZBA decision, (p. 2 Sec. c) as follows: "The Board notes it did not make any findings of whether or not this is an appropriate location for a Drive-Through Facility, nor did it make any findings with respect to any traffic issues that might, or might not, be created by a Drive-Through Facility. The Board only dealt with the issues before it, namely whether the Variances as requested would be appropriate in the event that the City Council ultimately decides to issue a Special Permit for a Drive-Through Facility on the site. Any issues regarding the Drive-Through Facility, including traffic, will be dealt with by the City Council and any other relevant Boards and Departments as part of the Special Permit process." She stated she has issues with the traffic. She doesn't feel the sight lines are to the benefit of either the vehicle or pedestrian as it relates to coming out of the drive through window. She feels this location is a serious issue and also noted that the plans being presented tonight were asked for at the City Clerks office.

Jim Santos stated he was asked to bring copies into the Clerks office but failed to do so.

Councilor Hardy stated these plans were asked to be left at the P&D meeting. She went down to the site today without the benefit of these plans. The parking within one foot of the curbing needs to be addressed. She asked how many parking places are there for Mr. Santos, the entire lot and others who lease.

Mr. Santos replied he has use of all but three spaces and there is only one other store occupying the building.

Councilor Hardy asked for an explanation on how people would get in and out of the three parking spaces that abut the property next door.

Mr. Dulaski envisions that spaces 11, 12, 13 would be employee parking. They would come through the drive through early in the morning and would park similar to parallel parking on the street.

Councilor Hardy stated at the P&D level we were told that legally employees and delivery trucks could back in from Railroad Avenue but she feels it is a safety issue and she requested more time to look over these plans and would like to hold another site visit.

Council President Destino asked if those three spots are those designated for Jim's or for someone else..

Mr. Dulaski replied those are Jim's designated spaces. From the corner of the building to the property line is 12-6' and is the constraint point allowing people through. The pinch point on the exit is to honor pedestrian safety.

Council President Destino asked what is the distance from the proposed drive through window location and the bump out.

Mr. Dulaski replied roughly 8 to 10'.

Council President Destino stated for clarification that there is no restriction on the size of a vehicle that could come through the drive through. He also asked who owns the fence that runs along the side of the property.

Mr. Dulaski replied that is correct and stated Mr. Swimm, the property owner also owns the fence. He stated the fence is in fair conditions and depends on which side of the lane the driver is favoring.

Council President Destino feels there should be some buffer along that fence for safety reasons. He asked what the ZBA decision was for.

Attorney Murphy stated a parking variance was granted in 11/06 and this summer a variance was granted for setbacks, for the dumpster and the emergency exit lane, which is a moot variance because the pinch point is not wide enough to have a stacking lane.

Council President Destino stated what concerns him most is when someone gets to the end of the drive through. He feels the removal of that one space will help improve sight lines.

Attorney Murphy stated we have no objection to that and feels it makes a lot of sense.

Mr. Dulaski stated that is probably the worst case scenario and we could remove the parking space or limit it to compact cars.

Council President Destino stated right now no parking is allowed 8' of a curb cut per ordinance.

Mr. Dulaski suggested pulling it back 8' from the corner of the building.

Bob Ryan read from the Traffic Commission's letter dated 10/4/07 to the Planning Department and Planning and Development regarding the site visit made on 9/18th. "...with the bump out it was suggested that a 10' wide cross walk be put on the westerly side of the exit lane to accommodate pedestrian traffic coming from the train platform. Further that the existing 15 minute parking sign on the westerly side of the drive be moved 10' from the crosswalk." So you would have 8', the 10' crosswalk and another 10' from the crosswalk would provide 20' visibility. The crosswalk would be placed before the door or right in front of it.

Councilor Hardy also had that discussion and noted as someone is exiting from the drive through there are so many things they have to pay attention to.

Attorney Murphy understands the concerns but noted that people coming to Jim's shop will get out of their car and go in and then drive out even without a window. In his opinion the drive through will enhance the issue from what it is now.

Mr. Santos stated right now traffic is two-way going in and out and with this it is only one way.

Councilor Grow asked what the hours of operation are.

Mr. Santos replied 5 a.m. to 7 p.m.

Councilor Grow requested amending Sec. 22 to have no parking in front of Jim's shop.

Councilor Romeo suggested a plastic web fence protection.

Attorney Murphy stated part of what the ZBA requested is a stockade fence is installed from Railroad Avenue back to the jaw and they are amendable to that.

Council President Destino asked if all deliveries are in back.

Mr. Santos replied they back in from the front. He gets most of his deliveries off of Pearl Street and they accommodate his time schedule. They will have room with the fence at Pearl Street to pull into the back lot.

Council President Destino asked if parking spots 11, 12 and 13 are parallel parking.

Mr. Santos replied yes.

The public hearing is closed.

MOTION: The Planning and Development Committee voted 2 in favor, 1 opposed (Hardy) to recommend to the full City Council the granting of a SCP for ERS Walsh, Inc., d/b/a Jim's Bagel and

Bake Shop, Donald Swimm, Trustee, Darin's Realty Trust and Swimm Peabody, LLC (owner), 26 Railroad Avenue, Map 125, Lot 11, zoning classification Neighborhood Business, pursuant to Sec. 5.17 of the Gloucester Zoning Ordinance, to include a condition so the emergency by-pass lane will always be in position. As it relates to Section 5.17.5(6)(c) "shall provide an emergency by-pass or exit, if said stacking land is curbed;" so that the lane will not be curbed now or in the future, so we will not need the variance to waive that lane.

Discussion. **Councilor Peckham** feels the six criteria have been addressed and that a professional traffic study was done. He supports the project.

Councilor Romeo asked for an amendment to the main motion that the permit run with Jim's Bagel rather than with the property at 26 Railroad Avenue.

Amendment to the Main Motion: **Councilor Romeo** moved to amend the main motion that the Council permit run with Jim's Bagel rather than the property at 26 RR Avenue.

Councilor Tobey asked Linda Lowe, General Counsel if this is an allowable limitation.

Linda Lowe, General Counsel stated it is allowable but also encourage it be more specific to the start and end dates of the lease and advised the motion from P&D be changed to specify the permit is for a restaurant.

Councilor Tobey is sympathetic to this matter moving forward tonight and suggested conversation to frame the motion so it is sustainable.

Councilor Grow asked if it is possible to condition on the lease holder.

Attorney Lowe replied yes, you would want to do both.

Councilor McLeod asked what if he wants to sell the business.

Attorney Lowe replied that person would have to apply to modify the permit.

Councilor Romeo stated the reason for her amendment is that this traffic study was done specifically for Jim's Bagel.

A 5 minute recess was called at 8:30 p.m.

The meeting reconvened at 8:38 p.m.

Councilor Romeo withdrew her amendment and **Councilor Peckham** withdrew and restated the main motion.

MOTION: On motion of **Councilor Peckham**, seconded by **Councilor Romeo** the City Council voted by ROLL CALL 8 in favor, 1 opposed (**Hardy**) the granting of a SCP for **ERS Walsh, Inc., d/b/a Jim's Bagel and Bake Shop, Donald Swimm, Trustee, Darin's Realty Trust and Swimm Peabody, LLC (owner), 26 Railroad Avenue, Map 125, Lot 11, zoning classification Neighborhood Business, pursuant to Sec. 5.17 of the Gloucester Zoning Ordinance for a drive through restaurant for the term of the lease of the applicant, Jim's Bagel and Bake Shop running through April 2012 and also for an additional five year period (this application is exercised for the additional five year option) and to include a condition so the emergency by-pass lane will always be in position. As it relates to Section 5.17.5(6)(c) "shall provide an emergency by-pass or exit, if said stacking land is curbed;" so that the lane will not be curbed now or in the future, so we will not need the variance to waive that lane.**

Discussion on the motion.

Councilor Foote hasn't had one complaint from anyone in the neighborhood. When Jim's Bagel was on Washington Street, the CSO came along and almost put him out of business.

Councilor Grow stated assuming this vote goes forward, he suggested amending the parking regulations to prohibit parking in that one space and that the Traffic Commission put forward a formal recommendation on the installation of the cross walk at that intersection as a counterpart to the amendment.

Council President Destino stated it is smart to condition this permit that this issue be satisfied so the sight lines on the left turn out are safe.

Refer to the Traffic Commission the condition that there either be a cross walk in front or one parking space deleted.

Councilor Grow stated his preference is for a crosswalk to create a traffic calming measure but doesn't want to hold up the permit if the Traffic Commission determines the same thing can be accomplished with the removal of that parking space.

Councilor Hardy stated if the 15 minute sign goes away, how many feet from the exit the sign will be, not counting for the nubbin.

Council President Destino stated our ordinance says 8', but it is up to the Traffic Commission to decide how long the parking spot will be and we should abide by their recommendation.

Councilor Hardy stated her main focus is on the safety right now.

Councilor McLeod will support this. He stated the neighbors he spoke with spoke highly of Jim Santos and his business. He commended the Traffic Commission for their service to the city and feels sending this up to them is the best way to go with the safety.

Councilor Romeo added without objection the condition of the protection for the fence.

Councilor Grow supports the project. He feels we are dealing with some of the major traffic points and there seems to be plenty of space in the general layout. This is the kind of business we need to encourage in Gloucester.

Councilor Tobey supports the project for three reasons; it meets the six criteria; it is a key component to the evolution of Railroad Avenue fueling economic growth for this community, and thirdly is the equitable consideration. Jim's took a beating from the CSO project and we owe it to such a mainstay of this community to allow this business to grow and better.

Councilor Romeo will support this for two reasons; one for all the concerns brought up being addressed and second because the traffic study and Traffic Commission recommendations were based specifically on this business. She thanked Mr. Santos for his service to the community but is not basing her vote on that. She looked at the traffic flow and put in the amendment because this is for a specific purpose.

MOTION: The SCP for Jim's Bagel and Bake Shop, 26 Railroad Ave., pursuant to Sec. 5.17 is referred to the Legal Department for a written decision by UNANIMOUS consent of the full City Council.

Public Hearing #2

SCP# 2007-19- 14 Cliff Avenue: Major Project pursuant to Section 5.7 (Continue until 11/27/2007)

The public hearing is opened and continued to 11/27/07.

Public Hearing #3

SCP #2007-20: Unit A 85 Main Street: 3.2.1 Footnote 4 Height Special Permit

The public hearing is opened.

Speaking in favor. Attorney Michael Faherty spoke in favor of this project. This building houses Palzaola's Sporting Goods and the applicants propose constructing a second story on their building. The proposal is for three, two bedroom apartments and one, one bedroom apartment; these will not be condos and are intended for the applicant's family use. As a matter of right, three residential units are allowed in the downtown Central Business (CB) district. This application is for a height exception under 3.2.1 (footnote 4). Reduced copies of the plans were provided with the packets. The site plan shows the footprint of the new second floor. There has been a deliberate attempt to set back the footprint to provide a visual effect. The square footage for the three units is approximately 4,800 sq. ft. There will be decks on the rooftops as allowed in the CB district. The Zoning Board of Appeals (ZBA) has granted the necessary relief. The Council passed this ordinance to allow residential uses above non-residential uses as a matter of right but by definition it is a multifamily and moves the

applicant into Section 3.1 instead of Section 3.2 of the use schedule. If any structural changes are made and there is a change of use the applicant needs a variance from the ZBA, which was granted. In addition to the second story, there are planned improvements to the façade of the building. The texture of the material will be coarse stucco material. There will be a fabric awning system on the windows. He referred to a presentation of the parking area and noted there is a mezzanine section to provide extra space. There are no proposed changes to the restaurant on the Rogers Street side of the building. With regards to the height, because Porter Street slopes and the average building height is measured by all four corners of the building – the existing height of building on Main Street is 18-11” but the average grade is over 26’. The penthouse with existing materials will stay but will be located behind the façade. The height of the proposed building will be 45’-8” above average grade at the Main Street location. The four specific requirements contained in the ordinance regarding height exception are as follows: The proposed addition must be consistent with the neighborhood character and will not be substantially detrimental to the neighborhood because of view obstructions or shadowing and there will be no effect on utilities created by the addition. This addition will be considerably lower than the buildings across the street and there will be no shadowing effect because of the set back of the addition and there are is no view impact and is in keeping with the neighborhood.

Speaking in opposition. No one spoke in opposition.

Communications. None

Questions. Councilor Romeo asked if there was any input from the Downtown Development Commission (DDC) or the Historic Commission.

Attorney Faherty stated the property is not in the historic district. He stated Stephanie Palazola has met with all the neighbors and there has been no opposition.

Councilor Grow asked about parking requirements.

Attorney Faherty stated there are no parking requirements; there are 33 existing parking spaces and these apartments are for family members.

The public hearing is closed.

MOTION: The Planning and Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the granting of a SPC for Joseph J. and Linda A. Palazola, Trustees of 73-93 Main Street Realty Trust, Unit A, 85 Main Street, Map 7, Lot 31-A, zoning classification Central Business (CB) for a 15-9” height exception pursuant to Section 3.2.1 (footnote 4) of the Gloucester Zoning Ordinance.

Discussion. Councilor Peckham supports the project.

Councilor Tobey supports the project.

Councilor Romeo also supports this.

Councilor Grow supports this project.

Councilor McLeod also spoke in support.

Councilor Foote will also support the project.

Councilor Hardy supports this. She stated she was assured during P&D that construction won’t get under way until after the Christmas holiday.

MOTION: On motion of Councilor Peckham, seconded by Councilor Hardy the City Council voted by ROLL CALL 9 in favor, 0 opposed the granting of a SPC for Joseph J. and Linda A. Palazola, Trustees of 73-93 Main Street Realty Trust, Unit A, 85 Main Street, Map 7, Lot 31-A, zoning classification Central Business (CB) for a 15-9” height exception pursuant to Section 3.2.1 (footnote 4) of the Gloucester Zoning Ordinance.

MOTION: The SCP for Joseph J. and Linda A. Palazola, Trustees of 73-93 Main Street Realty Trust, Unit A, 85 Main Street, pursuant to Sec. 3.2.1 (footnote 4) of the Gloucester Zoning

Ordinances be referred to the Legal Department for a written decision by UNANIMOUS consent of the full City Council.

MOTION: On motion of Councilor Grow, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed to refer Gloucester Zoning Ordinance, Sec. 3.2.1, use schedule on multi-families in the Central Business (CB) district to Planning and Development.

Public Hearing #4

Personnel Upgrades: Appendix A to Appendix C of the Personnel Ordinance

The public hearing is opened.

Speaking in favor. Steve Magoon, CAO has been working with the GMMA union reps with regards to these particular management positions. Over time there are a number of circumstances that can occur to change the nature of a job or the structure of government to warrant reclassification of some positions. He made three sets of recommendations: Two new positions that have already been classified and need to be put forward into the ordinances. Those positions have actually been created. Secondly, are five previously classified positions; all those were brought before the City for in depth review and third is the public health nurse and payroll supervisor proposed to be reclassified due to the increase in responsibilities of these positions. He asked the Council to support these reclassifications. The other aspect is the funding of the proposal. Most of these reclassifications were not put into the FY08 budget and assuming action were taken tonight to approve all the reclassifications and upgrades in terms of pay, the resulting cost of that is approximately \$24,000 for the FY08 budget. The funding proposal is not before the Council tonight but he does agree we need to make every effort to find the funds to do that.

Mr. Bain stated these materials have been compiled by his predecessor and he agrees with these recommended reclassifications.

Christine Millhouse, Environmental Engineer is the current President of the GMMA and spoke in favor of these most recent proposed reclassifications. The process is about the duty and the nature of the position and not about the individuals in the positions. The process involved a lengthy review – by the Personnel Department as well as an independent review board. The review process supported the need for reclassification of these positions and she hopes the Council will support these reclassifications and support the funding for these reclassifications.

Speaking in opposition. No one spoke in opposition.

Communications. None.

Questions. Councilor Hardy stated during Mr. Bain's review of previous Personnel Director's report – do you have comparable reports of other cities and towns. She also asked why the Veteran's Agent is still graded so low.

Mr. Bain feels that is one of the most independent offices and would like to know how we came to an M-4 and if we could go to an M-5.

Councilor Hardy asked about responsibilities, confidentiality and record handling.

Mr. Bain agreed to do further review on the Veteran's Agent position.

Councilor Grow agrees with the general process of the reevaluations and stated from the date we decide to reclassify we do need to consider funding these positions and asked would that be retroactive.

Mr. Bain believes that is the Council's decision.

Councilor Grow asked if there is a comparative evaluation with other communities.

Councilor McLeod stated his understanding is if we pass this ordinance tonight the funding can be done in house. He asked Mr. Magoon are there some managers below the minimum when we go to this new pay scale and if that is the case how can you hold up their monies.

Mr. Magoon replied if there is lag money within a personal services line item in a department you could reallocate that. If the funds are not available within that particular department's budget, we would need to come back to the Council for approval of the funding. If some of these positions were paid below the bottom grade of the position classified we would have to fund that – but he doesn't believe that is the case.

Councilor Tobey assumes we need the \$24,000 to take the folk who are below the minimum and put them at the minimum.

Mr. Magoon is referring to that number based on the current pay and proposed pay under that grade. He was assuming if you were at the middle of the pay grade at the current classification that this proposal would be putting you at the middle grade of the proposed level but agreed we need clarity on this.

Councilor Tobey stated at the O&A meeting of 9/24 the total expected to be needed was \$37,000 and it was asked expressly at O&A that we have an answer on what would be the minimal cost. He would assume Mr. Bain could compare the salaries with the new minimums to come back with the new number.

Mr. Magoon stated the number offered at O&A included other positions in AFSCME A and B and this number is a subset of that.

Councilor Tobey would like the minimum cost and is additionally confused as to what is our legal duty to bring people within this new range when this is enacted. He asked do we have discretion.

Mr. Magoon replied yes, in terms of funding this.

Councilor Tobey asked if the Administration plans on moving this forward so we do the right thing in a timely approach.

Mr. Magoon discussed two options with union reps today, making financing available to fund positions for the entire fiscal year and would put that proposal before the Council but to at least make it effective the second half of this fiscal year.

Councilor Tobey stated funding the entire year seems preferable.

Mr. Magoon feels the union reps have been very patient.

Councilor Tobey asked for clarification on the job title – Tourism Coordinator or Tourism Director.

Councilor Grow asked Linda Lowe if we approve a grade increase and the person is below that minimum salary does she agree that the right thing to do is to bring them up and if we don't have the funding in place are we opening ourselves up to a liability issue.

Attorney Lowe replied once you vote to reclassify a position, if you find an occupant of that position falls below the lowest dollar threshold for the new classification or grade you would have to begin paying that person the lowest grade amount. If not, most certainly the individual and the union would have a grievance that they would be able to move forward with. She also agrees this is not talking about a lot of positions, so information should be quickly discerned.

Council President Destino guarantees the Council will not move forward without that information.

Councilor Grow would like to see this taken care of, but also doesn't want to create an unfunded liability.

Council President Destino asked for clarification if the funding a separate issue.

Mr. Magoon asked that this be tabled.

The matter was tabled until after the next public hearing.

Public Hearing #5

Rules and Regulations pertaining to the Acceptance of Private Sewers

The public hearing is opened.

Speaking in favor. **Steve Magoon, CAO** stated there are three pieces pertaining to the acceptance of privately constructed sewers, the regulations, the ordinance and the city's contribution to the betterment which is not part of tonight's discussion. This document indicates that has been eliminated and will be taken up separately. This is specifically a series of amendments to the ordinance, specifically related to the private construction of sewers. He reviewed the specific amendments. (*copy in file*). The betterment section 23-24 will be brought back before O&A at their next meeting of 11-8. There has been a significant amount of discussion at both O&A and the Council level on what was appropriate to put into the ordinance and it was determined that more of the financial considerations were to be provided within the ordinance. There was a lot of discussion about the time frame and fees and assessments and the fact that if there were to be further extensions beyond what was approved that would be considered a separate application. The applicant would be able to recoup some of the cost of the project for up to 10 years by collecting fees from those who

want to connect in after the project is completed but the applicant cannot benefit beyond the cost they incurred for putting in the sewer. We are proposing a 25% performance bond. The only other change to the ordinance has to do with some of the definitions to make those consistent with our sewer regulations and state provisions.

Speaking in opposition. Stevan Goldin, 14 Hodgkins Street has followed discussions on this the last year or two and noted that Linda Lowe seems to be on top of this and made two particular significant comments; these are privately constructed sewers, not private sewers. After a few years of construction these are taken over by the city. This is the most public issue we have – yet this ordinance is the most dangerous thing he has seen gone before the Council. All we see in this ordinance is the details – not whether these sewers should be built or not and because of that the City Council is giving away control over this. There is no requirement for a public hearing; there is no transparency. Again, this will lead to tremendous financial inequity. He feels the quality of the city will be devoured everywhere the sewer goes. Another evasion is the prevailing wage. When you make it privately constructed all the union wage laws don't apply. There are five streets that are already built up and need the sewer system and these should be allowed to connect in, but don't give away all the Council powers. There is also no requirement for a public facilities study and the Daylor study has been assumed to be a proper land use study. Open space and provisions for preserving other areas in West Gloucester has been totally ignored and he asked this be sent back for provisions to include the important issues, not the details.

Christine Rasmussen, 82 Woodward Avenue is speaking in opposition to passing this tonight in its entirety as there is confusion on what this ordinance is and is not. She was unable to find this ordinance on line and thinks this is a critical issue for a number of areas. She knows there are people that need sewers but asked before the whole ordinance is adopted that discussion of the facilities plan take place. She would like the neighbors to have assurance of a land use study. At this point before we try to bring in another private sewer ordinance, there is enough concern that particularly in Ward V there needs to be a public discussion and she asked the Council to consider that.

Kathy Hurlburt, 6 Causeway Street spoke in opposition. She would too like to hold off until the people in Gloucester can be informed of this.

A five minute recess was called at 9:50 p.m.

The meeting reconvened at 9:55 p.m.

Rebuttal. Steve Magoon, CAO spoke to comments made about giving away control to private entities. The intent of the provision is about how the facility gets construction and will make sure the control of where sewers are placed in the ground is clearly within that. Also if the concern is that we need to make the facilities management plan more explicit within the regulations, he doesn't have a problem with that. These are the provisions for the privately constructed sewers – the proposal doesn't change the decision making role of where sewers are placed.

Mr. Goldin stated you can't avoid the fact that if you pass this ordinance without writing the authority of whether or not these things can be built - you can't put the cart before the horse – this needs to be sent back to retain the public authority and to decide whether or not a sewer gets built, otherwise people will have it by right.

Communications. None.

Questions. Councilor Tobey hopes this will be continued so the proposals will be on line and the expressed statutory changes are before us. He asked Linda Lowe to explain the general legal framework within which we are operating and how the rules and regulations and the ordinance will interact to protect the public process.

Attorney Lowe stated this has been a very lengthy review process and in her opinion, the matter has been exhaustively discussed. She referred to the statutory requirements under MGL, Ch. 83, Sec. 10 which gives rule making authority to the municipalities through sewer commissioners and in the city that is the DPW Director. We have had sewer regulations of one kind or another for decades. We have step regulations on how to install etc. and since 2000 we have had regulations relating to the construction of private sewers. A moratorium was placed on any more private extensions of sewers

and that brought us to where we are today. She referred to the amendments to Ch. 23 and noted a process already existed – this doesn't create something that hasn't been in place for a while but what it does is it scrutinizes this more and provides oversight by the Council. The betterments are completely separate from the privately constructed sewers, as they should be.

Councilor Grow referred to the section relating to the buy in of privately constructed sewers - abutting neighbors are allowed to buy into the project by paying an entrance fee and there is a provision in the privately constructed process to allow the applicant to recoup some of the costs of carrying the project for 10 years. If someone doesn't buy into it until the 10th year that has be factored in and he asked if there is an escalator built into that.

Mr. Magoon agreed and stated he believes there is an escalator based on the CPI.

Councilor Peckham stated this is such a huge issue for the people in Ward V and again the people need the information to know exactly what is in this, so that communication is completely clear.

MOTION: On motion of Councilor Peckham, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed to continue the public hearing to amend the Ordinance pertaining to the Acceptance of Privately Constructed Sewers to 11/13/07.

Councilor Tobey asked the Administration to promptly get the amendment language up on the website so the information does get out.

Councilor Peckham asked to be notified directly, so he can get all the information out to his constituents.

Councilor Hardy asked how the advertisement affects people waiting for applications.

Council President Destino replied they are not taking any applications.

The public hearing is continued to 11/13.

Public hearing on the management position reclassifications.

Councilor Hardy asked to change the job title Tourism Director to Tourism Coordinator, to provide job descriptions for each of these proposed reclassifications and to research the Veteran Agent's classification.

MOTION: On motion of Councilor Grow, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed to continue the public hearing on the reclassifications of management positions to 11/13/07.

COMMITTEE REPORTS

1. O&A: 10/15/2007

MOTION: The Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend to the full City Council that Chapter 22, Section 22-285 entitled, "Parking of trucks, trailer trucks and other commercial vehicles: subsection (d) "Permitted Parking of trailer trucks" of the Gloucester Code of Ordinances be amended by DELETING "Harbor Loop, easterly side, spaces shall be provided for the parking of 2 trailer trucks from a point beginning 340 feet from its intersection with Rogers Street in a southerly direction" AND DELETING "Harbor Loop westerly side, from a point 360 feet from its intersection with Rogers Street in a southerly direction for a distance of 420 feet at all times" AND BY ADDING "Harbor Loop easterly side, space shall be provided for the parking of ONE trailer truck from a point beginning 392 feet from its intersection with Rogers Street in a southerly direction for 142 feet" AND BY ADDING "Harbor Loop westerly side, from a point 265 feet from its intersection with Rogers Street in a southerly direction for a distance of 200 feet at all times." AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

MOTION: On motion of Councilor Tobey, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed that Chapter 22, Section 22-285 entitled, "Parking of trucks, trailer trucks and other commercial vehicles: subsection (d) "Permitted Parking of trailer trucks" of the Gloucester Code of Ordinances be amended by DELETING "Harbor Loop, easterly side, spaces shall be provided for the parking of 2 trailer trucks from a point beginning 340 feet from its intersection with Rogers Street in a southerly direction" AND DELETING "Harbor Loop westerly side, from a point 360 feet from its intersection with Rogers Street in a southerly direction for a distance of 420 feet at all times" AND BY ADDING "Harbor Loop easterly side, space shall be provided for the parking of ONE trailer truck from a point beginning 392 feet from its intersection with Rogers Street in a southerly direction for 142 feet" AND BY ADDING "Harbor Loop westerly side, from a point 265 feet from its intersection with Rogers Street in a southerly direction for a distance of 200 feet at all times." AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

MOTION: The Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend to the full City Council that Chapter 22, Section 22-270 entitled "Parking Prohibited at all times" and Chapter 22, Section 22-291 entitled "Tow Away Zone" of the Gloucester Code of Ordinances be amended by DELETING Kondelin Road, both sides from its intersection with Magnolia Avenue for its entire length from 7:00 P.M. to 6:00 A.M. and by ADDING Kondelin Road, both sides from its intersection with Magnolia Avenue for its entire length from 10:00 P.M. to 4:00 A.M. AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

MOTION: On motion of Councilor Tobey, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed that Chapter 22, Section 22-270 entitled "Parking Prohibited at all times" and Chapter 22, Section 22-291 entitled "Tow Away Zone" of the Gloucester Code of Ordinances be amended by DELETING Kondelin Road, both sides from its intersection with Magnolia Avenue for its entire length from 7:00 P.M. to 6:00 A.M. and by ADDING Kondelin Road, both sides from its intersection with Magnolia Avenue for its entire length from 10:00 P.M. to 4:00 A.M. AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

MOTION: The Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend to the full City Council that Chapter 22, Section 22-269, entitled "Stop Intersections", of the Gloucester Code of Ordinances by amended by ADDING "Riggs Point Road at its intersection with Vine Street", AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

MOTION: On motion of Councilor Tobey, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed that Chapter 22, Section 22-269, entitled "Stop Intersections", of the Gloucester Code of Ordinances by amended by ADDING "Riggs Point Road at its intersection with Vine Street", AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

MOTION: The Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend that the full City Council request the Mayor get back to the Council with a plan for O'Maley School before year end.

MOTION: On motion of Councilor Tobey, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed to request the Mayor get back to the Council with a plan for O'Maley School before year end.

2. O&A: 10/23/2007 – No Council action required.

Councilor Tobey highlighted that implementation of the DPW Audit review is a reality. The CMMS package can be brought in and by its application can realize a number of the objectives of the audit. Members of the workforce most immediately affected by this came forward and joined the process and O&A will continue this conversation on 11/19th.

3. P&D: 10/24/2007

MOTION: The Planning and Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the granting of a SCP to Priscilla D. and Robert G. Herdman, 16 Cunningham Road (26-28 Marsh Street), Map 87, Lot 1, 22, 23, zoning classification R-3 for a five-family multifamily dwelling pursuant to Section 2.3.1 of the Gloucester Zoning Ordinance with the condition that the dumpster will be screened by vegetation or fencing and FURTHER TO ADVERTISE FOR PUBLIC HEARING.

MOTION: On motion of Councilor Peckham, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed to grant a SCP to Priscilla D. and Robert G. Herdman, 16 Cunningham Road (26-28 Marsh Street), Map 87, Lot 1, 22, 23, zoning classification R-3 for a five-family multifamily dwelling pursuant to Section 2.3.1 of the Gloucester Zoning Ordinance with the condition that the dumpster will be screened by vegetation or fencing and FURTHER TO ADVERTISE FOR PUBLIC HEARING.

MOTION: The Planning and Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the acceptance of the layout of the way known as Carrigan Court, as shown on Assessors Map, 123 and as shown on the definitive plan and profile of Carrigan Court, Gloucester, Mass., prepared by Professional Registered Engineer, Peter Orgren, or Hayes Engineering, Inc. dated 12/7/01 and further to accept Carrigan Court as a public way for the common convenience and benefit of the inhabitants of the City of Gloucester as in accordance with Gloucester Code of Ordinances, Sec. 21-1 and 21-2 and M.G.L., Ch. 82 and further to ADVERTISE FOR PUBLIC HEARING.

MOTION: On motion of Councilor Peckham, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed the acceptance of the layout of the way known as Carrigan Court, as shown on Assessors Map, 123 and as shown on the definitive plan and profile of Carrigan Court, Gloucester, Mass., prepared by Professional Registered Engineer, Peter Orgren, or Hayes Engineering, Inc. dated 12/7/01 and further to accept Carrigan Court as a public way for the common convenience and benefit of the inhabitants of the City of Gloucester as in accordance with Gloucester Code of Ordinances, Sec. 21-1 and 21-2 and M.G.L., Ch. 82 and further to ADVERTISE FOR PUBLIC HEARING.

MOTION: The Planning and Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council that it hold a Council workshop on the ZORTF proposed amendments to the Zoning Ordinance Sections, I, II and III in January of 08 for the new Council.

MOTION: On motion of Councilor Peckham, seconded by Councilor Hardy the City Council voted 9 in favor, 0 opposed that it hold a Council workshop on the ZORTF proposed amendments to the Zoning Ordinance Sections, I, II and III in January of 08 for the new Council.

4. B&F: 10/25/2007 (Under Separate Cover)

MOTION: The Budget and Finance Committee voted 2 in favor, 0 opposed to recommend to the full City Council payment of an invoice without a purchase order in the amount of \$3,388.52 to Controlled Systems HVAC, Inc.

Discussion. Councilor Swekla noted this was for the O'Maley Rink.

MOTION: On motion of Councilor Swekla, seconded by Councilor Grow the City Council voted 8 in favor, 1 opposed (Hardy) payment of an invoice without a purchase order in the amount of \$3,388.52 to Controlled Systems HVAC, Inc.

MOTION: The Budget and Finance Committee voted 2 in favor, 0 opposed to recommend to the full City Council payment of an invoice without a purchase order in the amount of \$152.63 to Ipswich Ford.

Discussion. **Councilor Grow** stated there is a process in place and we are working with managers to try to insure these situations do not continue to occur.

MOTION: On motion of Councilor Swekla, seconded by Councilor Grow the City Council voted 8 in favor, 1 opposed (**Hardy**) payment of an invoice without a purchase order in the amount of \$152.63 to Ipswich Ford.

MOTION: The Budget and Finance Committee voted 2 in favor, 0 opposed to recommend to the full City Council payment of an invoice without a purchase order in the amount of \$664.83 to Chapman's Greenhouse & Floral.

Discussion. **Councilor Tobey** asked if Councilor Swekla was satisfied with the answer he received regarding the DDC going out of town to make this purchase.

Councilor Swekla never supports going out of town.

Councilor Hardy asked further why we went out of town for the flowers.

Mr. Magoon stated his response to the committee was that the organization providing the amenity downtown already had a relationship with this facility.

MOTION: On motion of Councilor Swekla, seconded by Councilor Romeo the City Council voted 6 in favor, 3 opposed (**Hardy, Romeo, Tobey**) payment of an invoice without a purchase order in the amount of \$664.83 to Chapman's Greenhouse & Floral.

MOTION: The Budget and Finance Committee voted 3 in favor, 0 opposed to recommend to the full City Council Supplemental Appropriation in the amount of \$17,439.12 from Various Special Reserve Funds to Fire Department Overtime.

Discussion. **Councilor Foote** asked about the various accounts.

Mr. Magoon replied these were related to several grants that had been from years past with small amounts left in them and all related to fire safety services.

Councilor Grow stated B&F had a very long and intense conversation about this issue with the Chief with regards to the overtime use. A lot of the reasons for this are bound up in contractual obligations. There are provisions in the contract that tie the city's hands and need to be honored but heighten use of overtime in certain periods.

Councilor Tobey stated at the last Council meeting he asked the Fire Chief if he would provide us an update on overtime spending in each Mayor's report for each Council meeting and asked is the Administration committed to that.

Mr. Magoon replied yes, he will forward it along in each Mayor's report.

Councilor Tobey asked how the \$57,000 left in overtime will be used and will you be looking for more money.

Mr. Magoon replied the ideal situation is to get the stations open as much as possible and at a minimum the Administration is committed to making sure we have the basic services. We want to make sure we will be able to provide emergency services in outlying stations and that we don't fall below the minimum manning levels of 13. The vast majority of the time all the stations have been open. The money before the Council tonight is much less than what he

hoped to have. Some of the sources need additional research from other city departments and that is taking longer than originally thought. This money will assure we can maintain the minimum manning levels for a number of months and we hope to have additional transfers to the Council for consideration as early as the next Mayor's report but it is too early to provide a definitive number.

Councilor Grow stated he misspoke when he stated that the issue is with the contract. There were flaws made in the estimates and there are also some management issues that need to be addressed. He believes there is a broader issue then just placing the responsibility on the unions.

MOTION: On motion of Councilor Swekla, seconded by Councilor Grow the City Council voted 8 in favor, 0 opposed, 1 abstention (Hardy) Supplemental Appropriation in the amount of \$17,439.12 from Various Special Reserve Funds to Fire Department Overtime.

MOTION: The Budget and Finance Committee voted 3 in favor, 0 opposed to recommend to the full City Council Supplemental Appropriation in the amount of \$40,500 from Planning Board Subdivision Fees to Fire Department Overtime.

MOTION: On motion of Councilor Swekla, seconded by Councilor the City Council voted 8 in favor, 0 opposed, 1 abstention (Hardy) Supplemental Appropriation in the amount of \$40,500 from Planning Board Subdivision Fees to Fire Department Overtime.

Council Order 07-42 - Ordered that an Emergency be deemed to exist under Section 2-11b of the Gloucester City Charter in numerous neighborhoods of the City of Gloucester due to the threat to the public safety from potential fires and medical emergencies for which adequate response cannot be provided inasmuch as the administration has not recommended the appropriation of sufficient funds to maintain mandated staffing levels necessary for keeping all outlying stations continuously open; and further ordered that the council requests, because it deems it necessary and because the Mayor has not included in the Annual Budget the funding to maintain mandated staffing levels necessary for keeping all outlying fire stations continuously open, that the Mayor recommend approval of an appropriation of \$225,000 from un-appropriated additional Chapter 70 Funds to the Fire Department Overtime Account.

Councilor Tobey requested a continuance to 11/13 based on the progress being made and asked that \$225,000 be reduced by \$57,000.

A friendly amendment was made to adjust the \$225,000 by \$57,000.

MOTION: On motion of Councilor Tobey, seconded by Councilor Romeo the City Council voted 9 in favor, 0 opposed to continue Order 07-42 to 11/13/07.

COUNCILLOR'S REQUESTS OTHER THAN TO THE MAYOR

Councilor Romeo thanked the Board of Health for the Health Expo. She spoke on Medicare D enrollment from 11/15 to 12/15. She also noted that a seminar will be conducted on 11/13 at 10 a.m. at the Senior Center about your Medicare insurance with another meeting on 11/20 at 10 a.m. to help individuals decide what is best for them.

Councilor Peckham informed residents of Magnolia that he will be going to the State House on 11/5 to get some results on the West Pond Dam and will set up a ward meeting to let people know what our options are.

Councilor Grow asked people to exercise their responsibility and right to vote.

Councilor Foote asked the people of his ward to come out and vote.

Councilor McLeod stated on 11/17 they will dedicate the Veteran's Center to Fred Ritvo.

It was moved and seconded to adjourn the meeting at 10:39 p.m.

Respectfully submitted,

June Budrow
Clerk of Committees



CITY OF GLOUCESTER
GLOUCESTER, MASSACHUSETTS - 01930

CITY CLERK
GLOUCESTER, MA

07 NOV -2 PM 1:24

City of Gloucester
Special Council Permit - Application

01/06/2008

(Public hearing to be held no later than above date)

In conformance with the requirements of the Zoning Ordinance of the City of Gloucester, the undersigned hereby applies for a Special Council Permit (CC or CCS) in accordance with Section 1.4.2.2 of the Ordinance and other Sections as listed below:

Type of Permit(Give specific section of Zoning Ordinance) Section 5.22

Applicant's Name: Dunfudgin, LLC

Owner's Name Dunfudgin, LLC
(if different from applicant)

Location 33 Emerson Ave. Map # 21 Lot # 8
(Street Address)

Zoning Classification: G-1, General Industrial

- Attached is a list of owners (with complete addresses) of land directly opposite on any public or private street or way, direct abutters, and abutters to the abutters of land within three hundred (300) feet of the property line, as they appear on the most recent City of Gloucester Assessor's Maps and Tax list.
- Attached is a listing of criteria set forth in Section 1.4.2.2.(e) of the Zoning Ordinance, including any supportive material or comments the applicant may wish to include (i.e. ZBA decisions, Order of Conditions, ect.) if necessary.
- Attached are the necessary plans as set forth in Section of 1.4.2.2 (b) of the Zoning Ordinance, which at a minimum consist of an accurate plot plan (to scale) showing existing and/or proposed building or structures.

City of Gloucester - Action

Fee: \$ 350.00
 City Clerk (received): 11/2/07
 City Council (received): 11/13/07
 Public Hearing (ordered) _____
 Public Hearing (opened) _____
 Public Hearing (closed) _____
 Final Decision _____
 Disposition _____
 (Approved, Denied, Approved w/conditions)

Applicant:

[Signature]
 Name (Signature)
PO Bx 1637
 Address
978 281 6063
 Telephone

#2007-25

Certified for completeness:
Building Inspector: _____ Date: _____

Planning Director: _____ Date: _____

Application For Special Permit

The undersigned applicant hereby applies for a special permit under M.G.G., Ch. 40A, § 9 as follows.

1. Applicant (includes equitable owner or purchaser on a purchase and sales agreement):

Name: Dunfudgin LLC

Address: P.O. Box 1637, Gloucester MA 01930

Tel. #: Days 978 281 6063 Evenings

Check here if you are the purchaser on a purchase and sales agreement.

2. Owner, if other than applicant:

Name: _____

Address: _____

Tel. #: Days _____ Evenings _____

3. Property:

Street address: 33 Emerson Avenue

Assessor's map: 21 Lot: 8

Registry of deeds where deed, plan, or both records:

Essex South

Deed recording: Book 26010 Page 196

Plan recording: Plan # _____

Property is location in the G-1 (general industrial) zoning district.

4. Nature of relief requested:

Special permit pursuant to Artical/Section 1.4.2.2 and 5.22 of the
Zoning Ordinance/By-Law which authorizes the City Council to permit
the installation of a wind energy conversion facility.

Detailed explanation of request:

Please see attached letter from

Lisa Mead, Esq., Blatman, Bobrowski & Mead, LLC.

5. Evidence to support grant of special permit:

Because of reasons set forth below, the special permit requested will be in harmony with the intent and purpose of the Zoning Ordinance/By-Law:

Please see attached letter from Lisa T. Mead, Esq.
and accompanying Exhibits

Because of reasons set forth below, the special permit requested will meet the additional requirements of the Zoning Ordinance/By-Law as follows:

Please see attached letter from Lisa L. MEad, Esq.

and accompanying Exhibits

If someone other than owner or equitable owner (purchaser on a purchase and sales agreement) is the Applicant or will represent the Applicant, owner or equitable owner must designate such representative below.

Name of Representative: Lisa L. Mead, Blatman, Bobrowski, & MEad, LLC

Address of Representative: 44 Merrimac Street, Newburyport, MA 01950

Tel. #: Days 978 463 7700 Evenings /Cell 978 973 3206

Relationship of representative to owner or equitable owner: Attorney

I hereby authorize Lisa L. Mead, Esq. to represent my interests before the Special Permit Granting Authority with respect to this Special Permit Application.

(Signed by owner/equitable owner) 

I hereby certify under the pains and penalties of perjury that the information contained in this Application is true and complete.

 10-29-07
Signature of Applicant Date

Signature of Owner, if other than Applicant Date

Signature of Equitable Owner Who is filing Application to satisfy condition of Purchase and sales agreement Date

BLATMAN, BOBROWSKI & MEAD, LLC

ATTORNEYS AT LAW
44 Merrimac Street
Newburyport, MA 01950
Phone: 978-463-7700
Fax: 978-463-7747

LISA L. MEAD
lisa@bbmatlaw.com

CONCORD OFFICE
9 Damonmill Square, Suite 4A4
Concord, MA 01742
Phone: 978-371-2226
Fax: 978-371-2296

November 1, 2007

President Destino
Members of the City Council
City of Gloucester
9 Dale Avenue
Gloucester MA

RE: Special Council Permit / 33 Emerson Avenue / Siting of a Wind Energy Conversion Facility (hereinafter "WECF")

Dear Pres. Destino and Members of the City Council;

Reference is made to the above captioned matter. In that connection, I have attached an application for a Special Council Permit including:

1. This supporting memorandum.
2. 33 Emerson Avenue Wind Tower Report dated October 26, 2007 by Richard W. Griffin Architect.
3. Site Plans dated October 18, 2007 by Gateway Consultants, Inc.
4. Acoustical Report by Tech Environmental dated September 6, 2007.

We look forward to reviewing all of this material with you at the upcoming public hearing.

**SPECIAL COUNCIL PERMIT CRITERIA 5.22 OF THE GLOUCESTER
ZONING ORDINANCE**

The proposal consists of siting a 250 kilowatt monopole Fuhrlander wind tower which is 131 feet tall to its hub and 180 feet tall to its blade tip. The location is on the

property known and numbered as 33 Emerson Avenue, Gloucester (hereinafter the "Property"). The Property is located in the General Industrial - 1 (GI) zoning district where WECF's are allowed with a Special Council Permit.

As required by section 5.22.4 Gloucester Zoning Ordinance (hereinafter "GZO") the Applicant controls the site as noted in the deed attached as Exhibit 1. Additionally, pursuant to 5.22.5 of the GZO the Applicant has provided a sample liability insurance policy binder which shows it will have liability insurance in an amount sufficient to cover the loss of damage to persons and structures occasioned by the failure or use of the facility covering the property n/f Keyspan and n/f Gloucester Transit Mix. Attached as Exhibit 2.

The Special Council Permit criteria for a WECF specifically can be found at section 5.22.6 of the GZO and are as follows:

5.22.6 Proposed wind energy conversion facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable electrical, construction, noise, safety, environmental and communications requirements.

The Applicant agrees that the construction and design of the proposed WECF will meet and be consistent with the aforementioned requirements.

- (a) *Height. Commercial wind energy conversion facilities shall be no higher than 500 feet above the existing average grade.*

The height of the proposed turbine is *180 feet* above the existing average grade.

- (b) *Setbacks.*

1. *Each wind energy conversion facility and its associated equipment shall comply with the building setback provisions of the zoning district in which the facility is located.*

The proposed set back is *48 feet 5 inches* from the side lot line which meets the requirements of the district which is *15 feet* from the side yard.

2. *In addition, the following setbacks shall be observed:*
- i. *The minimum distance from the base of any wind turbine tower to the nearest building on the lot, or on contiguous commonly owned lots, shall be 50 feet; the minimum distance from a public or private way shall be 100 feet; and the minimum distance from the property lines shared with abutting properties shall be 150 feet; and in no case shall be less than the length of an individual rotor blade measured from the hub of the wind turbine, which ever is greater.*

- Distance to nearest building on the lot: 72 feet 11 inches (min. 50 feet required).
- Distance to private way: 115 feet 4 inches (min. 100 feet required)
- Distance from shared property line: 48 feet 5 inches (150 feet required, but in any event no less than 48 feet 4 ¾ inches.)

WAIVER REQUEST: The Applicant requests a waiver from the minimum distance to the shared property line to allow for a distance of 48. feet 5 inches, which is the length of the rotor blade. In support hereof the Applicant provides the following:

The adjacent property to the north of the Property is owned now or formerly by Keyspan Gas Company. The property is ninety seven (97) feet wide and 340 feet long and includes 32,980 square feet to the access easement and pipeline easement. There are no buildings directly adjacent to the Applicant's Property and the likely hood of buildings ever being constructed thereon is minimal for several reasons. First and foremost ninety (90%) of the property at this location is located within the 200 foot Riverfront area as defined by 310 CMR 10.58(2), and one half of the property is located within the 100 foot riverfront buffer zone. Id. No building can occur within the 100 foot area, and if something new were proposed to be built between the 100 foot and 200 foot area, it would be subject to an alternatives analysis which would greatly limit the possibilities of construction. If one couples the wetlands regulations with the GZO requirements, the probability of construction of a building becomes even less. Certainly no residential structure could be built as none are allowed in the G1 zone under the GZO. Despite the wetlands regulations, the setback requirements of the GZO would still apply, which are 15 feet front and side yard setback. As a result, outside of the 200 foot setback and prior to the easement which could not be built upon, only 11,640 square feet become available to build upon and even between the 100 and 200 foot riverfront area there is only 21,340 square feet, if it would be permitted under the state Wetlands Act. Neither of the aforementioned calculations take into consideration the required dimensional setbacks of the Zoning Ordinance. Finally, essentially the entire area is granite outcropping and therefore significant site preparation would have to be completed prior to any construction. Therefore, even if it could be permitted the cost benefit analyses of constructing on such a small area makes such construction unlikely.

Therefore, because the likely hood of construction occurring on the adjacent property is remote, and under the current zoning no residential structure could be constructed on the lot, the Ordinance's intention of ensuring public safety, not posing a significant adverse impact to the

health or public safety of the neighborhood, and posing no serious hazard to pedestrians or vehicles from the use is met as the area is unoccupied and the possibility of it being occupied for residential purposes is remote at best. Nonetheless, the Applicant will provide liability insurance as required in 5.22.5 to protect the interests of the owners of the adjacent parcel in the unlikely event of an accident. As a result, the Applicant requests a waiver from this provision of side lot line setback.

ii. *Wetland resources and their buffer zones may be used for the purposes of providing setbacks*

All setbacks are met except as noted above. All setbacks are shown on the plan.

iii. *The setbacks should be kept free of all habitable structures so long as the facility is in place.*

There are no habitable structures within the setback areas.

(c) Visual Impact: The proponent shall demonstrate through project siting and proposed mitigation that the wind energy conversion facility minimizes impact on the visual character of surrounding neighborhoods and the community.

The Applicant has provided renderings and simulated photographs of the proposed turbine. The Plan indicates where the simulated photographs were taken by using a V-1, V-2, V-3 and V-4 symbol. These vantage points were established using a preliminary balloon test. Additionally, the Applicant will arrange for a balloon test at a time convenient to the Council. The zoning district generally is for industrial use and the location on the site is the most appropriate for the site given the surrounding uses and location on the site of the proposed building. The WECF is a monopole which will have the least detrimental impact visually and will be of a color which will blend with the sky and clouds.

(d) Color: Wind energy conversion facilities shall be painted a non-reflective color that blends with the sky and clouds.

As noted above, the color of the WECF will be one such that it blends with the color of the sky and clouds. The simulated photographs show an off-white / light blue color.

(e) Equipment shelters: All equipment necessary for monitoring and operation of the wind energy conversion facilities should preferably be contained within the turbine tower. If this is not feasible, ancillary equipment may be located outside the tower. Whenever reasonable, structures should be joined or clustered to avoid adverse visual

impacts, contained either within an underground vault, enclosed within a separate structure, or shielded from view either by year round landscaping or vegetated buffers

All equipment is located within the WECF.

(f) Lighting and Signage:

The WECF will not be lit by the Applicant. Whether or not it requires an aeronautic light is being review by the Massachusetts Aeronautic Commission at this time.

(g) Utility Connections: All utility connections from the commercial wind energy conversion facility site shall be underground to the nearest utility pole or transformer, unless the applicant demonstrates by substantial evidence that the construction of such underground facilities would be unreasonable owing to the circumstances to the soil conditions, shape or topography of such site or if the utility provider requires connections to be above ground.

All utility connections will be below ground.

(h) Support Towers: Monopole towers are the preferred type of support for commercial wind facilities.

This is a monopole facility.

5.22.7 ENVIRONMENTAL STANDARDS

- (a) *Wetlands:* The siting will comply with all local and state wetlands regulations.
- (b) *Land Clearing/Open Space:* The site is located on top of granite outcropping. Much of the site has been previously blasted as part of the location of a commercial business building. The area where the tower is to be located is not treed, but has overgrown brush. Minimal land clearing will have to occur as the base of the tower requires a hexagon shaped pad with outward dimensions of 25 feet at its greatest width.
- (c) *Stormwater:* All state and local stormwater regulations shall be met.
- (d) *Noise:* Please see attached report of Tech Environmental dated September 6, 2007, Acoustical engineers. Attached as Exhibit 3. The WECF is in compliance with 310 CMR 710 and the Gloucester Code of Ordnances Chapter 13: Noise.
- (e) *Shadowing/Flicker:* As further described in the attached report of Richard Griffen, Architect, Exhibit 4, there will be no significant shadowing or flicker form the wind tower. Any shadowing will be on the Property and/or adjacent unoccupied property.
- (f) *Safety Standards:* As noted in Exhibit 4, no hazardous materials or waste will be discharged on the site as a result of the WECF. Any hazardous materials which are needed to be stored will meet the required storage guidelines. Minimal amounts of lubricant will be stored within the tower base.

As noted above and within the Acoustical Engineer report and the Architectural Report, the proposed WECF for 33 Emerson Avenue is:

1. appropriate for the location on the site,
2. the use will not pose a significant adverse impact to the health or public safety of the neighborhood as all of the criteria of the GZO is met and the requested waiver is justified,
3. there will be no serious hazard to pedestrians or vehicles from the use as all of the criteria in the regulations are met and the applicant has provided sufficient information to substantiate the justification for same,
4. Adequate and appropriate facilities will be provided for the proper operation of the use as presented by the Applicant and its supporting documentation from qualified experts.

**GENERAL SPECIAL PERMIT CRITERIA PURSUANT TO SECTION 1.4.2.2(e)
OF THE GZO**

Additionally, the City Council shall review the proposed project in consideration of the general Special Permit criteria as set forth in section 1.4.2.2(e) of the GZO. Specifically they are:

1. Social, economic or community needs served by the proposal;
2. Traffic flow and safety;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structure;
5. Qualities of the natural environment;
6. Potential fiscal impact

The proposed WECF meets the above criteria as follows:

1. *Social, economic or community needs served by the proposal.*
 - a. Encouraging and then instituting the use of green or renewable energy sources in a commercial facility has broad positive social and community benefits. The Applicant has worked with the state Technology Collaborative to perform a feasibility study to evaluate the potential for the provision of renewable energy resources at the site, and energy efficiency measures in the building. The study concluded that the site was both favorable for wind energy and photovoltaic (solar) electrical energy production. The payback analysis of renewable technologies indicated that the building and site is best optimized with a 250KW wind generator located at the high point of the site, and 10-30 KW of photovoltaic cells building integrated into the uppermost roof area with additional planning for implementing photovoltaic cells on parking area canopies. Proposed energy efficiency measures for the building include a green, planted roof to promote a moderation of temperature variation, high insulation values throughout, natural day-lighting measures to save on electricity and

provide a better work and living environment, and permeable paving to lessen impact on the drainage system.

- b. The WECF is only one of a number of renewable energy designs being implemented in the proposed building.
 - i. The broader social value is that there are less users of the “grid” and therefore less reliance in the city overall.
 - ii. Additionally, the proposed WECF offers the opportunity for the City of Gloucester to use the facility itself for a location monitoring cameras and/or federally sponsored weather related gauges or instrumentation assuming such use does not adversely interfere with the operation of the WECF. The Applicant is willing to provide the space free of charge assuming the owner of the instrumentation pays for the equipment and installation and so long as the Applicant has access to the available technology.
 - iii. Given the close proximity to the City of Gloucester High School, the Applicant is willing to cooperate and coordinate with the School Department to provide information related to the science, economic and policy considerations surrounding the wind tower and its operation on site for inclusion in the school’s curricula. Additionally, to the extent feasible, the Applicant will allow the wind tower to be used as an on-site laboratory for school personnel and students.

2. *Traffic flow and safety:* There will be no impact on traffic flow. The issues of safety are addressed in the attached report at Exhibit 4. The report notes that the structural engineers for the tower foundation have designed the concrete foundation for the 250KW tower with a factor of safety (fs) of over two and a half times hurricane strength winds. This is a higher factor of safety than prescribed by the model building codes and the Massachusetts State Building Code for new building construction. The same company, which specializes in tower foundation design, is in the process of designing foundations for two wind turbines in Gloucester for the Varian Corporation that are four times the size (1,000,000 KW) of the Emerson Avenue turbines. A tower foundation similar in scope to the Emerson Avenue tower was installed at the IBEW headquarters adjacent to the Southeast expressway in Boston. This is a 100KW Fuhrländer turbine on a Morrison Berkshire cylindrical steel tower – the same component manufacturers to be used at Emerson Avenue. Overall, from a public safety perspective, there will be no detrimental impact from the installation of the WECF as proposed.

Additionally, the applicant is providing insurance for the abutting properties as noted in Exhibit 2.

3. *Adequacy of utilities and other public services:* There will be only a positive impact on public utilities, as noted before. There will be no need for additional public services to the site.
4. *Neighborhood character and social structure:* The site is in the general industrial zoning district. Simulated views from the surrounding areas have been provided in Exhibit 4. The WECF is located on a mono-pole with appropriate coloring to

provide a blending with the color of the sky. The location on the site was chosen as the best for wind production, as well as location away from the adjacent Pathways building. Certainly, the benefits of the WECF and potential services that it could provide the community and the school system outweigh any adverse impacts it may have on the adjacent neighborhood, the residential part of which is beyond the concrete facility, a property which is one property removed from the site. As a result there will not be a detrimental impact to the surrounding neighborhood or social structure.

5. *Qualities of the Natural Environment:* Again, the WECF is designed to blend in as much as possible with the sky and surrounding area. While there is no question that the pole will be seen, the benefits to the natural environment far outweigh any adverse impacts which could be concluded due to its necessary height.
6. *Potential Fiscal Impact:* The WECF will be providing power to the proposed commercial facility. Any additional energy generated will be sold back to National Grid. By removing this building from the grid, ultimately it is possible that other rates will be affected. Nonetheless, as noted above, the Applicant is willing to provide the use of the wind tower to the municipality and the school system for use. Both of these options could have a positive fiscal impact on the City. Finally, the WECF is just one portion of the renewable energy design of the site. As noted in Exhibit 4, the design of the building, among other benefits, will lessen the impact of stormwater on the municipal system as well as reduced water consumption. The wind tower is just one component of the green design of the building.

When applying the general criteria as outlined in section 1.4.2.2(e) of the GZO, the Council can determine that the proposed wind tower will not have adverse effects which overbalance its beneficial effects on either the neighborhood or the City in view of the particular characteristics of the site and the proposal in relation to the site.

Therefore, the Applicant requests that the Council grant a Special Council Permit for the siting of a 250 KW WECF at 33 Emerson Avenue as presented including waiving the side lot line set back to allow for a 48 feet 5 inch side lot line set back.

I thank you in advance for your time and consideration.

Respectfully submitted,



Lisa L. Mead

EXHIBIT 1

125/2

2006082300273 Bk:26010 Pg:196
08/23/2006 11:51:00 DEED Pg 1/2

(Confirmatory Quitclaim Deed by Individual)

Sandra A. Martyn, Trustee of M-M Realty Trust, under Declaration of Trust dated August 1, 1986, recorded with the Essex South Registry of Deeds in Book 8424, Page 091, and filed with the Essex South Registry District of the Land Court as Document Number 214459

of Gloucester, Essex County, Massachusetts

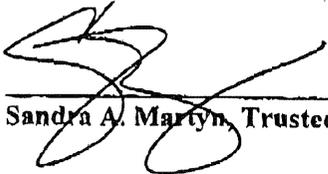
for consideration paid, and in full consideration of \$1.00 dollar
(\$1.00)

hereby confirms the grant to Dunfudgin LLC, an Alaska Limited Liability Company

with Quitclaim Covenants

Of a certain parcel of land, known and numbered 33 Emerson Ave., Gloucester, more completely described on Exhibit "A" annexed hereto, by deed dated November 16, 2005, and recorded with the Essex South Registry of Deeds in Book 25118, Page 185. This confirmatory deed is recorded to reflect the fact that the trustee of M-M Realty Trust is Sandra A. Martyn.

Witness my hand and seal this 28th day of July, 2006.


Sandra A. Martyn, Trustee

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this 28th day of July, 2006, personally appeared before me Sandra A. Martyn, proved to me through satisfactory evidence of identification to be the person whose name is signed on the foregoing document, which evidence consisted of Personal Knowledge and acknowledged that she signed said document voluntarily for its stated purpose.

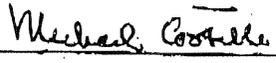

Notary Public
My commission expires: 11/1/07

Exhibit "A"

The land with the buildings and improvements thereon, situate in Gloucester, Essex County, Massachusetts, known and numbered 33 Emerson Ave., and shown as Lot B on a plan, entitled, "*Plan of Land in Gloucester, Ma (Essex County) dated June 29, 2001, Rev. August 6, 2001, by Rober Survey, Owner: M-M Realty Trust,*" recorded with the South Essex Registry of Deeds in Plan Book 354, Page 26.

Being a portion of the same premises conveyed to me by virtue of two Deeds Richard Bell and Mac Bell as Trustees of the Mighty-Mac Realty Trust recorded with said Registry of Deeds in Book 8487, Pages 97 and 99.

Subject to and with the benefit of a 24 foot wide shared access easement as set forth in a deed to Child Development Programs of Cape Ann, Inc., dated October 18, 2001 in Book 17795, Page 395.

The Premises have the benefit of certain rights and options as set forth in a Deed to Child Development Programs of Cape Ann, Inc., dated October 18, 2001 and recorded in Book 17795, Page 395.

Subject to the rights of all persons entitled in and to the Pond and the rights of all persons below mean high water in Blyman Canal, as shown on the plan above-mentioned.

Subject also to the matters set forth, or referred, to in two deeds from Richard Bell and Mac Bell as Trustees of the Mighty-Mac Realty Trust recorded with said Registry of Deeds in Book 8487, Pages 97 and 99.

EXHIBIT 2

ACORD CERTIFICATE OF LIABILITY INSURANCE

CSR AL
9NINE09

DATE (MM/DD/YYYY)
09/05/07

PRODUCER
John J Walsh Ins Agency, Inc.
21 Broadway
Rockport MA 01966
Phone: 978-546-6734 Fax: 978-546-9760

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Dunfuggin, LLC
Mac S. Bell
P O Box 1637
Gloucester MA 01930

INSURERS AFFORDING COVERAGE

INSURER A: Western World Insurance Company
INSURER B: Associated International Ins
INSURER C:
INSURER D:
INSURER E:

NAIC #

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADDL LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	NRP1054070	10/30/06	01/30/07	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (EA occurrence) \$ 50000 MED EXP (Any one person) \$ 1000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 2000000
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
B		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	NOBW1904906	10/30/06	10/30/07	EACH OCCURRENCE \$ 3000000 AGGREGATE \$ 3000000
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Gloucester Transit Mix is an additional insured under Dunfuggin, LLC for General Liability & Excess Liability coverage with respect to Bodily Injury & Property Damage resulting from the installation of the wind turbine on the property of Dunfuggin, LLC located at 33 Emerson Ave., Gloucester, MA

CERTIFICATE HOLDER
 Gloucester Transit Mix, Inc.
 45-51 Emerson Avenue
 Gloucester MA 01930

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE
 Arline F. Lafata *Arline F. Lafata*

ACORD CERTIFICATE OF LIABILITY INSURANCE

CSR AL
9NINE09

DATE (MM/DD/YYYY)
09/05/07

PRODUCER
John J Walsh Ins Agency, Inc.
21 Broadway
Rockport MA 01966
Phone: 978-546-6734 Fax: 978-546-9760

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Dunfuggin, LLC
Mac S. Bell
P O Box 1637
Gloucester MA 01930

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Western World Insurance Compa	
INSURER B:	Associated International Ins	
INSURER C:		
INSURER D:		
INSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY	NPP1054070	10/30/06	01/30/07	EACH OCCURRENCE	\$ 1000000
		<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 50000
		<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$ 1000
						PERSONAL & ADV INJURY	\$ 1000000
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	\$ 2000000
		<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC:				PRODUCTS - COM/OP AGG	\$ 2000000
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		<input type="checkbox"/> HIRED AUTOS				AUTO ONLY - EA ACCIDENT	\$
		<input type="checkbox"/> NON-OWNED AUTOS				OTHER THAN AUTO ONLY: EA ACC	\$
		GARAGE LIABILITY				AGG	\$
		<input type="checkbox"/> ANY AUTO				EACH OCCURRENCE	\$ 3000000
B		EXCESS/UMBRELLA LIABILITY	HOEW1904906	10/30/06	10/30/07	AGGREGATE	\$ 3000000
		<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE					
		<input type="checkbox"/> DEDUCTIBLE					\$
		RETENTION \$					\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTH. ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$
		OTHER				E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Boston Gas Company D/B/A Keyspan New England LLC is an additional insured under Dunfuggin LLC for General Liability and Excess Liability coverage with respect to Bodily Injury and Property Damage resulting from the installation of the wind turbine on Dunfuggin LLC property located at 33 Emerson Ave. Gloucester, MA

CERTIFICATE HOLDER

Boston Gas Company
DBA Keyspan New England LLC
41 Emerson Avenue
Gloucester MA 01930

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Arline F. Lafata

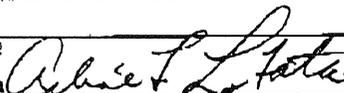


EXHIBIT 3

2007 GLOUCESTER CITY COUNCIL
COUNCIL ORDER

ORDER #:	2007-46
COUNCILLOR:	McLeod, Foote, Tobey, Romeo

DATE RECEIVED BY COUNCIL:	11/13/2007
REFERRED TO:	
COMMITTEE MEETING:	
FOR COUNCIL VOTE:	11/27/2007

That the City Council go on record as strongly opposing any development or roadways on or near Gloucester's watershed.

2007 GLOUCESTER CITY COUNCIL
COUNCIL ORDER

ORDER #:	2007-47
COUNCILLOR:	Bruce Tobey

DATE RECEIVED BY COUNCIL:	11/13/2007
REFERRED TO:	
COMMITTEE MEETING:	
FOR COUNCIL VOTE:	11/27/2007

Ordered, that the Personnel Director conduct a search for candidates for the position of City Auditor for the new City Council's consideration when it conducts the election called for by section 2-7(a) of the City Charter.

2007 GLOUCESTER CITY COUNCIL COUNCIL ORDER

ORDER #:	2007-43
COUNCILLOR:	Destino

DATE RECEIVED BY COUNCIL:	10/30/2007
REFERRED TO:	
COMMITTEE MEETING:	
FOR COUNCIL VOTE:	11/13/2007

Ordered that the Mayor, along with the Superintendent of Schools, the CFO, and Purchasing Agent, and any other pertinent personnel, provide a detailed implementation schedule for the school's reconfiguration.

The report shall include, but not be limited to: Debt service schedule, all costs associated with the transition, time-line on all purchasing, construction and implementation of moving the K-5 schools.

Also, an informational meeting be called to inform parents and to educate the community on all impacts of the proposed realignment.

COUNCILLOR	YES	NO
DESTINO		
FOOTE		
GROW		
HARDY		
MCLEOD		
PECKHAM		
ROMEO		
SWEKLA		
TOBEY		

LAW DEPARTMENT

MEMORANDUM

TO: Jeremy Gillis
Assistant City Clerk

FROM: Suzanne P. Egan *SPE*
Assistant General Counsel

DATE: November 1, 2007

RE: East Gloucester Marine, LLC & Stephen Pardee

Enclosed herewith, please find the City Council Decisions on the application of East Gloucester Marine.

Also enclosed is your file.

Enclosures

In Re:

Application of East Gloucester)
Marine, LLC and Stephen Pardee) **DECISION OF THE CITY**
for a Special Council Permit) **COUNCIL OF THE CITY**
pursuant to the City of Gloucester) **OF GLOUCESTER**
Zoning Ordinance Section 5.5.4)
(lowlands) 8 Norwood Court)

The City Council of the City of Gloucester, Massachusetts, constituting the Special Permit granting authority under the laws of the Commonwealth of Massachusetts and the Zoning Ordinance of the City of Gloucester, hereby adopts the following findings and decision with regard to the application of East Gloucester Marine, LLC and Stephen Pardee for a Special Council Permit pursuant to Section 5.5.4 of the City of Gloucester Zoning Ordinance for Lowlands Requirement.

The applicant for the Special Council Permit is East Gloucester Marine, LLC, and Stephen Pardee. The owner of the property is True World Foods, Inc. The property is located at 8 Norwood Court, Gloucester, and is shown on Assessor's Map 59, Lot 91. The zoning district is MI, marine industrial. The applicant seeks a Special Council Permit as required by Section 5.5.4 of the Zoning Ordinance to remove and rebuild a dilapidated pier.

On August 16, 2007, the application was filed with the City Clerk. The application for the Special Permit and plans entitled "Site Detail Plan of Land in Gloucester Property of True World Foods, Inc." by Hancock Survey Associates, Inc. dated July 16, 2001, and "8 Norwood Court Pier Condition Plan" sheet 2 of 2 by Bourne Consulting Engineering dated February 9, 2006 are incorporated herein by reference.

The City Council referred the application to its Planning and Development Standing Committee.

On September 26, 2007, the Planning and Development Committee held a hearing. At the hearing, the applicant, Steve Pardee, representing East Gloucester Marine, explained that the applicant wants to replace a finger pier and widen floats at 8 Norwood Court. He explained that the pier has not been used in 25 years and is in a state of complete disrepair. He has started the application process to revise his Chapter 91 license. The applicant stated that he received an Order of Conditions from the Conservation Commission. Within the Order are specific plans and details pertaining to the logistics of the demolition and rebuild. The Order of Conditions is a part of this application and incorporated herein. A dumpster will be on the landward side and a barge will be brought on the seaward side. He represented that the project will be complete before the new year.

He explained that the project meets the requirements of the Hatch Act in that the removal will not pose a hazard to public health or safety. The work will be done to conserve the shellfish and wildlife resources of the City. A letter from the Shellfish Constable, Dave Sargent, has been submitted along with the application and is incorporated herein.

On motion of Councilor Hardy, seconded by Councilor McLeod, the Planning and Development Committee voted Three (3) in favor (Hardy, McLeod, Peckham), Zero (0) opposed to recommend to the full City Council the granting of a Special Council Permit for East Gloucester Marine, LLC, owner of True World Foods, Inc., 8 Norwood Court, Map 59 Lot 91, zoning classification Marine Industrial, pursuant to Section 5.5.4 for removal/construction in a lowland.

Following proper notice and advertisement, on October 16, 2007, the City Council held a public hearing.

The application was presented and review.

No one spoke in favor or opposition to the applications.

The public hearing closed.

The City Council, after considering the application, found that the project meets the special permit criteria pursuant to section 1.4.2.2(e) in the following manner:

- 1) Social, Economic, or community needs served by the proposal: this will establish a private marina providing boat dockage to commercial and recreational boats;
- 2) Traffic flow and safety will not be impacted;
- 3) Adequacy of utilities and other public services: There will be no additional demand on utilities or public services as this is an ongoing business;
- 4) Neighborhood character and social structure: there will be no impact o to the neighborhood or negative impact to the area;
- 5) Qualities of the natural environment: this is a Marine Industrial zone and the new piers and construction will enhance a working waterfront business on the Harbor; and
- 6) Potential fiscal impact: there is no fiscal impact on the community. This will enable the applicant to provide more dockage to the public and have a positive impact on their business.

The Planning and Development Committee reported that at its September 26, 2007 meeting, it voted Three (3) in favor, Zero (0) opposed to recommend to the full City Council the approval of the application of East Gloucester Marine, LLC, (owner True

World Foods, Inc), 8 Norwood Court, Map 59, Lot 91, zoning classification Marine Industrial, pursuant to Section 5.5.4 for removal construction in a lowland.

The City Council determined that the proposed project satisfies Section 5.5.4 of the Zoning Ordinance: 1) the proposal satisfies the Wetlands Act, Massachusetts General Laws chapter 131, §40, by the issuance of an Order of Conditions and Wetlands Permit from the City of Gloucester Conservation Commission; 2) there is no hazard to health or safety; and 3) that the proposal conserves the shellfish and other wildlife resource.

Upon motion of Councilor Peckham, seconded by Councilor Hardy, the Council voted by a roll call Nine in favor (Destino, Foote, Grow, Hardy, McLeod, Peckham, Romeo, Swekla, Tobey) Zero (0) opposed, to grant a Special Council Permit for East Gloucester Marine, LLC (owner True World Foods, Inc) 8 Norwood Courts, Map 59, lot 91, zoning Classification Marine Industrial, pursuant to sec. 5.5.4 for removal construction in a lowland.

The following general conditions shall apply:

In granting this Special Permit, the City Council has relied upon the oral and written representations made by the applicant in documents submitted in support of its application and in their appearances at the Committee meetings and the public hearing on the application and the final plan for the project. Any failure by the applicant to honor any material representation made to the City Council shall constitute just cause for revocation of this Special Permit in accordance with Section 1.4.2.2(f) of the Zoning Ordinance.

Each finding, term and condition of this Decision is intended to be severable. Any invalidity in any finding, term or condition of this Decision shall not be held to invalidate any other finding, term or condition of this Decision.

The Special Council Permit under Section 5.5.4 shall not take effect until notice is recorded by the owner with the Registry of Deeds for Essex County by the recording of a copy of the Decision. The fee for such notice shall be paid by the owner. Prior to the recording of the Decision with the Registry of Deeds, the Petitioner shall have the seal of the City affixed to same.

The applicant/owner is required to provide documentary evidence to the City Council proving that all conditions specified in the City Council permit have been complied with at which time the City Council will issue a "Certification of Conditions Complete".

The minutes of the Planning & Development Committee meeting of September 26, 2007, the City Council public hearing and all documents and testimony received during the hearing, the letter from Dave Sargent, Shellfish Constable, and the Order of Conditions from the Conservation Commission and the Plans dated July 27, 2001 and February 9, 2006 are incorporated into this Decision.

Accordingly, by said City Council Vote of October 16, 2007, the Section 5.5.4 Special Council Permit application is hereby granted for a demolition and construction in a lowland at 8 Norwood Court.

Decision adopted in City Council meeting of November 13, 2007.

Pursuant to Rule 25 of the City Council Rules of Procedure, in this instance, the President of the City Council and the City Clerk have signed this decision demonstrating that it is a true and accurate reflection of the October 16, 2007 vote of the City Council sitting as the special permit granting authority.

James M. Destino
President of Gloucester City Council

Robert D. Whynott, City Clerk

Dated: _____, 2007

LAW DEPARTMENT

MEMORANDUM

TO: Jeremy Gillis
Assistant City Clerk

FROM: Suzanne P. Egan *SPE*
Assistant General Counsel

DATE: November 8, 2007

RE: Campbell Edlund – 39 River Road

Enclosed herewith, please find the City Council Decisions on the application of Campbell Edlund.

Also enclosed is your file.

Enclosures

In Re:

Application of Campbell Edlund)
For a Special Council Permit) DECISION OF THE CITY
Pursuant to the City of Gloucester) COUNCIL OF THE CITY
Zoning Ordinance Section 5.5) OF GLOUCESTER
(Lowlands) 39 River Road)

The City Council of the City of Gloucester, Massachusetts, constituting the Special Permit granting authority under the laws of the Commonwealth of Massachusetts and the Zoning Ordinance of the City of Gloucester, hereby adopts the following findings and decision with regard to the application of Campbell Edlund for a Special Council Permit pursuant to Section 5.5 of the City of Gloucester Zoning Ordinance for Lowlands.

The applicant for the Special Council Permit and the owner of the property is Campbell Edlund. The property is located at 39 River Road, Gloucester, and is shown on Assessor's Map 118, Lots 5 and 6. The zoning district is R-2, Low/Medium density residential. The applicant seeks a Special Council Permit as required by Section 5.5 of the Zoning Ordinance to construct and install several pilings to support a rear walkway and pier to float system.

The application was filed with the City Clerk on August 29, 2007. The application for the Special Permit and plan entitled "Proposed Renovation/Addition Edlund Residence, 39 River Road, Gloucester, MA" prepared by Poore & Co., 315 Washington Street, Gloucester, MA dated June 21, 2007, are incorporated herein by reference.

The City Council referred the application to its Planning and Development Standing Committee.

The Planning and Development Standing Committee held a hearing on Wednesday, September 26, 2007 at 7:00 p.m. in the Kyrouz Auditorium at City Hall. At the hearing, the applicant's attorney, James M. McKenna, presented the proposed application. The applicant is requesting a Special Council Permit to install a pier and to install additional pier footings as necessary to support an elevated porch and ramp to extend to a float. Attorney McKenna discussed the applicant's filing with the Conservation Commission, her intent to obtain an extension of the existing Chapter 91 license, and the plan's overall compliance with the requirements under Sections 5.5 of the Gloucester Zoning Ordinance. Although numerous other improvements to the property were discussed and shown on the plans, Attorney McKenna acknowledged that the special permit only applied to the installation of the additional pilings to access the float.

A Planning and Development site visit was held on October 4, 2007.

The Shellfish Warden report and Conservation Commission Order of Conditions are a part of the record and incorporated herein by reference. Each condition ordered by the Conservation Commission shall also be a condition of this special council permit.

The Committee determined that the project meets the Section 5.5.2 and 5.5.4 criteria in that it complies with the requirements of MGL c. 131, sec. 40, and the removal, filling, dredging or construction will not pose a hazard to health or safety, and will be so executed to conserve the shellfish and other wildlife resources of the City.

The Committee also determined that the criteria of Section 1.4.2.2 (e) of the Zoning Ordinance had been met: 1) community needs are served by the proposal. The applicant is continuing a plan of restoration of this property that will make it more accessible for safety as well as for water access. The pier and walkway are consistent with other properties in the neighborhood; 2) traffic flow and safety may be improved since the parking will be moved off the street and will not impact the flow in front of the property. Safety will be improved as it will be fully accessible along the perimeter, and the family will not have to enter the street to access the yard; 3) municipal utilities are adequate; 4) the neighborhood character and social structure are appropriate as the walkway and pier are architecturally consistent with other properties in the neighborhood; 5) Qualities of the Natural Environment. The pier's location has been approved by the Shellfish Constable, the Harbormaster and the Conservation Commission Agent.; 6) Potential fiscal impact. The fiscal impact will be positive as the restoration of the property will raise its taxable base value.

On a motion of Councilor Hardy, seconded by Councilor McLeod, the Planning & Development Committee voted Three (3) in Favor, Zero (0) Opposed to recommend to the full City Council the granting of a SCP to Campbell Edlund, 39 River Road, Map 118, Lots 5 & 6, zoning R-2, pursuant to Section 5.5.2 of the Gloucester Zoning Ordinance.

Following proper notice and advertisement, a public hearing was held on Tuesday, October 16, 2007 before the City Council.

Attorney James McKenna presented the proposed application. He stated that the Shellfish Constable, Conservation Commission Agent and the Harbormaster have positively reviewed and recommended the project. He asserted that the proposal meets the requirements of the Hatch Act (M.G.L. Chapter 131, Section 40) in that the construction will not pose a hazard to health or safety and that it will be executed to conserve shellfish and other wildlife resources in the City.

No one spoke in opposition to the proposed project.

The public hearing was closed.

The Planning and Development Committee reported that at its meeting of October 4, 2007, the Planning and Development Committee voted Three (3) in favor, Zero (0) opposed to recommend to the full City Council the approval of the application of Campbell Edlund for a Special Council Permit under Section 5.5 to renovate the property as proposed and to construct a pier and float in the Annisquam River Marsh and Tidal Flats adjoining 39 River Road.

The City Council considered and determined that the criteria of Section 1.4.2.2 (e) had been met:

- 1) Community needs are served as a single family home on the river will be improved creating a dwelling that is more consistent with the neighborhood.
- 2) Traffic flow and safety will not be impacted as the house will remain a single family home for the owners. The Notice of Intent outlines the construction methods for the Conservation Commission. It was determined that the embankment will be adequately protected.
- 3) Municipal utilities are adequate. The property is connected to municipal sewer and water. There will be no additional demands on the municipal utilities as the dwelling will remain a single family home.
- 4) The neighborhood character and social structure are appropriate for this proposed pier. Many houses in the neighborhood have been improved with piers and floats.
- 5) Natural Environment. The pier design utilizes the best location available in the interest of not disturbing the shellfish at the recommendation of the City's Shellfish Constable. The project will protect the shellfish flats as the pier has been located over a stony area that does not serve as shellfish habitat; and
- 6) The Potential fiscal impact will be positive as the assessed value of the riverfront property will increase.

The City Council also determined that the criteria of Sections 5.5.2 and 5.5.4 had been met as the proposal satisfies the Wetlands Act, Massachusetts General Laws Chapter 131, Section 40, and that such removal, filling, dredging or construction will not pose a hazard to health or safety, and will be so executed as to conserve the shellfish and other wildlife resources of the City.

Upon motion of Councilor Peckham, seconded by Councilor Hardy, the Council voted by a roll call vote 9 in favor (Destino, Foote, Grow, Hardy, McLeod, Peckham, Romeo, Swekla and Tobey) 0 opposed to the granting of a SCP to Campbell Edlund, 39 River Road, Map 118, Lots 5 & 6, zoning classification R-2, pursuant to Sec. 5.5.2 of the Gloucester Zoning Ordinance.

The following general conditions shall apply:

In granting this Special Permit, the City Council has relied upon the oral and written representations made by the applicant in documents submitted in support of its application and in their appearances at the Committee meetings and the public hearing on the application and the final plan for the project. Any failure by the applicant to honor any material representation made to the City Council shall constitute just cause for revocation of this Special Permit in accordance with Section 1.4.2.2 (f) of the Zoning Ordinance.

Each finding, term and condition of this Decision is intended to be severable. Any invalidity in any finding, term or condition of this Decision shall not be held to invalidate any other finding, term or condition of this Decision.

The Special Council Permit under Section 5.5 shall not take effect until notice is recorded by the owner with the Registry of Deeds for Essex County by the recording of a copy of this Decision. The fee for such notice shall be paid by the owner. Prior to the recording of the Decision with the Registry of Deeds, the Petitioner shall have the seal of the City affixed to same.

The applicant/owner is required to provide documentary evidence to the City Council proving that all conditions specified in the City Council permit have been complied with at which time the City Council will issue a "Certificate of Conditions Complete."

The minutes of the Planning & Development Committee meeting of October 4, 2007 and October 11, 2007 and of the October 16, 2007 City Council public hearing and all documents and testimony received during the hearing and the Plan dated 6/21/07 are incorporated into this Decision.

Accordingly, by said City Council Vote of October 16, 2007, the Section 5.5 Special Council Permit application is hereby granted for renovation of the residence and construction of a pier at 39 River Road.

This Decision is adopted in the City Council meeting of November 13th, 2007.

Pursuant to Rule 25 of the City Council Rules of Procedure, in this instance, the President of the City Council and the City Clerk have signed this decision demonstrating that it is a true and accurate reflection of the November 13, 2007 vote of the City Council sitting as the special permit granting authority.

James M. Destino
President of Gloucester City Council

Robert D. Whynott, City Clerk

Dated: _____, 2007

LAW DEPARTMENT

MEMORANDUM

TO: Jeremy Gillis
Assistant City Clerk

FROM: Suzanne P. Egan *SPE*
Assistant General Counsel

DATE: November 8, 2007

RE: Joseph J. & Linda A. Palazola – Unit A, 85 Main Street

Enclosed herewith, please find the City Council Decisions on the application of Joseph J. and Linda A. Palazola.

Also enclosed is your file.

Enclosures

In Re:

Application of Joseph J. & Linda A. Palazola) DECISION
for a Special Council Permit Pursuant to) OF THE CITY COUNCIL
The City of Gloucester Zoning Ordinance) OF THE CITY OF GLOUCESTER
Section 2.3.1, footnote 4, and Section 1.4.2.)

The City Council of the City of Gloucester, Massachusetts, constituting the Special Permit granting authority under the laws of the Commonwealth of Massachusetts and the Zoning Ordinance of the City of Gloucester, hereby adopts the following findings and decision with regard to the application of Joseph and Linda Palazola, Trustees of 73-93 Main Street Realty Trust for a Special Council Permit pursuant to Section 2.3.1, footnote 4 and Section 1.4.2. of the City of Gloucester Zoning Ordinance.

1. Joseph J. and Linda A. Palazola, Trustees of the 73-93 Main Street Realty Trust, are the applicants for the Special Council Permit and the owners of the property. The property is located at Unit A, 85 Main Street, Gloucester. It is shown on Assessor's Map 7, Lot 31-A. The zoning district is Central Business (CB). The applicants seek a Special Permit as required by Section 2.3.1, footnote 4, and Section 1.4.2. of the Zoning Ordinance for a height exception special permit.
2. On September 18, 2007, the application was filed with the City Clerk's Office. The application and plans are incorporated herein by reference.
3. On October 24, 2007, the City Council Planning and Development Committee held a hearing to consider the application. Michael Faherty, attorney for the applicants, presented the proposed application. He explained that the applicants are requesting a height exception Special Council Permit to build a second story on the existing building to create three dwelling units. Attorney Faherty explained that the Zoning Board of Appeals granted all of the dimensional relief necessary to construct the addition. The applicants plan to renovate and rehabilitate the existing storefront. The addition on the building fronting Main Street will be set back from the street to eliminate any possibility of overshadowing or view obstruction.

The open space requirements will be met by using the roof for decks and gardens to meet the open space requirements. Attorney Faherty explained that the zoning ordinance requires a special permit for any building height over 35 feet. This project needs a special permit because the grade along Porter Street is very steep. The elevation of the building is determined by the average of the four corners. Porter Street slopes at severe grade.

The four criteria for a height exception under section 3.2.1, footnote 4, are met. There will be no view obstruction or overshadowing, no utilities considerations and no other detriment to the neighborhood characteristics. Moreover, the

application furthers the purpose and intent of the ordinance to allow residential uses above non-residential uses in the Central Business district.

4. In response to Councilors' questions, Attorney Faherty represented that all awnings will be within the zoning setback and nothing will extend out over the existing building. Attorney Faherty stated that the construction would comply with the State Building Code with regard to whether the existing building will support the additional weight. He stated that there will be a separate egress on Main Street.

No one spoke in favor or opposition to the application.

5. After discussion, the Planning and Development Committee found that the project meets the six special permit criteria for a height exception pursuant to Section 3.2.1, footnote 4, that the three (3) residential units will be consistent with existing neighborhood character on Main Street, and the proposed addition will not be substantially detrimental to the neighborhood because of view obstruction or overshadowing and the addition will not have a negative effect on utilities.
6. Based on the above criteria, the Planning and Development Committee determined that the criteria of Section 3.2.1, footnote 4, have been met. On motion of Councilor Hardy and seconded by Councilor McLeod, the Planning and Development Committee voted three (3) in favor, zero (0) opposed to recommend to the full City Council the granting of a Special Council permit for Joseph J. and Linda A. Palazola, Trustees of 73-93 Main Street Realty Trust, Unit A, 85 Main Street, Map 7, Lot 31-A, zoning classification Central Business (CB) for a 15'-9" height exception pursuant to Section 3.2.1, footnote 4, of the Gloucester Zoning Ordinance.
7. On October 30, 2007, following proper notice and advertisement, a public hearing was held before the City Council. Attorney Michael Faherty presented the application for the fifteen foot nine inch (15'-9") height exception special permit for Unit A, 85 Main Street. He explained that currently Palazola's Sporting Goods is located in the building. The applicants would like to construct a second story to add three apartments, two (2) two bedroom apartments and one (1) one bedroom apartment. The apartments will not be condominiums and will be used by family members. He explained that three apartments are allowed as a matter of right under the zoning ordinance. The Zoning Board of Appeals granted all of the dimensional relief necessary to construct the apartments except for the height exception, which the City Council is designated as the permit granting authority. He explained that the height of the building is measured by the average height from all four corners. Porter Street has a steep grade of over 26'. Thus, the height of the building is currently, 18'-11".

He stated that the four specific requirements contained in the ordinance regarding height exceptions are met as follows: the proposed addition is consistent with the

neighborhood character. It will not be substantially detrimental to the neighborhood. There is no view obstruction or shadowing and no effect on utilities. The building will be lower than the one directly across the street, there will be no overshadowing and no view impact. Attorney Faherty represented that Stephanie Palazola met with the neighbors and that there has been no opposition to the project.

No one spoke in opposition.

There were no communications.

The public hearing was closed.

8. Based on the plans and application submitted, the testimony received and all the documents on file in this matter, the City Council makes the following findings: the application meets the requirements of section 3.2.1(fn4) of the Zoning Ordinance. The addition will not cause any overshadowing to the neighboring properties. It will not obstruct any of the abutters' views and will not overburden the utilities. Additionally, the construction of the addition will not begin until after Christmas and therefore it will not inconvenience any holiday shopping.
9. All of the plans and documents submitted shall become a part of this decision. The Planning and Development Committee reported that the Committee voted 3 in favor, 0 opposed, to recommend to the full City Council the granting of a SCP for Joseph J. and Linda A. Palazola, Trustees of 73-93 Main Street Realty Trust, Unit A, 85 Main Street, Map 7, Lot 31-A, zoning classification Central Business (CB) for a 15'-9" height exception pursuant to Section 3.2.1 (footnote 4) of the Gloucester Zoning Ordinance.
10. On motion of Councilor Peckham and seconded by Councilor Hardy, the City Council voted by roll call vote nine (9) in favor, (Destino, Foote, Grow, Hardy, McLeod, Peckham, Romeo, Swekla and Tobey), zero (0) opposed to granting the Special Council Permit for Joseph J. and Linda A. Palazola, Trustees of 73-93 Main Street Realty Trust, Unit A, 85 Main Street, Map 7, Lot 31-A, zoning classification Central Business (CB) for a 15'-9" height exception pursuant to Section 3.2.1 (footnote 4) of the Gloucester Zoning Ordinance.
11. The following general conditions shall also apply:
 1. In granting this Special Permit, the City Council has relied upon the oral and written representations made by the applicants in documents submitted in support of their application and in their appearances at the Committee meetings and the public hearing on the application. Any failure by the applicants to honor any material representation made to the City Council shall constitute just cause for revocation of this Special Permit in accordance with Section 1.4.2.2(f) of the Zoning Ordinance.

2. All plans, documents and other submittals in furtherance of this application shall become a part of this decision. Any and all construction or use of this structure shall be in accordance with the plans, documents and submittals relied upon by the City Council in granting this Special Permit.
3. The applicant/owner is required to provide documentary evidence to the City Council proving that all conditions specified in the City Council permit have been complied with at which time the City Council will issue a "Certification of Conditions Complete" as required by Rule 25, Part II, 5(i) City Council Zoning Rules of Procedure. The term "applicant/owner" includes any condominium association created subsequent to this Decision.
4. Each finding, term and condition of this Decision is intended to be severable. Any invalidity in any finding, term or condition of this Decision shall not be held to invalidate any other finding, term or condition of this Decision.
5. This permit shall not take effect until notice is filed with the Registry of Deeds for Essex County by the recording of a copy of the Decision. The fee for such notice shall be paid by the owner. Prior to the recording of the Decision with the Registry of Deeds, the Petitioner shall have the seal of the City affixed to same.

The minutes of the October 30, 2007 City Council public hearing and all documents and testimony received during the hearings are incorporated in this Decision.

Accordingly, by said City Council Vote of October 30, 2007, the Section 2.3.1. (footnote 4) Special Council Permit is granted.

Decision adopted in City Council meeting of November 13, 2007.

Pursuant to Rule 25 of the City Council Rules of Procedure, the President of the City Council and the City Clerk have signed this decision demonstrating that it is a true and accurate reflection of the October 30, 2006 vote of the City Council sitting as the special permit granting authority.

James M. Destino
President of Gloucester City Council

Robert D. Whynott, City Clerk

Dated: _____, 2007

LAW DEPARTMENT

MEMORANDUM

TO: Jeremy Gillis
Assistant City Clerk

FROM: Suzanne P. Egan *SPE*
Assistant General Counsel

DATE: November 8, 2007

RE: Joseph M. Orlando, Trustee of Orlando & Associates Realty
Trust

Enclosed herewith, please find the City Council Decisions on the application of Joseph M. Orlando, Trustee of Orlando & Associates Realty Trust.

Also enclosed is your file.

Enclosures

In Re:

Application of Joseph M. Orlando,)
Trustee of Orlando & Associates Realty Trust) DECISION
for a Special Council Permit Pursuant to) OF THE CITY COUNCIL
The City of Gloucester Zoning Ordinance) OF THE CITY OF GLOUCESTER
Section 2.3.1 and Section 1.4.2.)

The City Council of the City of Gloucester, Massachusetts, constituting the Special Permit granting authority under the laws of the Commonwealth of Massachusetts and the Zoning Ordinance of the City of Gloucester, hereby adopts the following findings and decision with regard to the application of Joseph M. Orlando, Trustee of the Orlando & Associates Realty Trust, for a Special Council Permit pursuant to Section 2.3.1.4 and Section 1.4.2.2. of the City of Gloucester Zoning Ordinance.

1. Joseph M Orlando, Trustee of Orlando & Associates Realty Trust, is the applicant and owner of the property located at One Western Avenue, as shown on Assessor's Map 216, Lot 89. The zoning district is High Density Residential (R-4). The Applicant seeks a Special Permit as required by Section 2.3.1 and Section 1.4.2.2 of the Zoning Ordinance for a multi family special permit.
2. On July 17, 2007, the application was filed with the City Clerk's office. The application is incorporated herein by reference.
3. On August 1, 2007, the City Council Planning and Development Committee held a hearing to consider the application. Attorney Joseph Orlando, the applicant, presented the proposal. He explained that he has owned the building since 1981. In 2000, he applied for and received a building permit to convert the top floor into an apartment. As a part of an application for refinancing, he discovered that he should have applied for a multi-family special permit. In 2002, the City Council granted a height exception for a deck. The use of the building is considered a multi family dwelling up to six units under the ordinance because it is a mixed use building. Upon questioning, Attorney Orlando represented to the Committee that he does not intend to change the use but only bring the already existing use into compliance with the zoning ordinance
4. Based on the presentation and the application, the Planning and Development Committee determined that the criteria of Section 1.4.2.2 have been met. On motion of Councilor Peckham and seconded by Councilor McLeod, the Planning and Development Committee voted three (3) in favor, zero (0) opposed to recommend to the full City Council the granting of a Special Council permit for Joseph M. Orlando, Trustee of Orlando & Associates Realty Trust, One Western Avenue, Map 2, Lot 28, zoning classification R-4 (high density residential), pursuant to the Gloucester Zoning Ordinance Sections 14.2.2(e) and 2.3.1.4(a) of the Zoning Ordinance.

7. Following proper notice and advertisement, on September 4, 2007 the City Council held a public hearing. Attorney Joseph Orlando presented the application for the multi-family dwelling at One Western Avenue. He explained that he is trying to bring the building into compliance with the zoning ordinance. In 2000, he was granted a building permit to convert part of the building to an apartment. The downstairs of the building is used as an office. He recently was told that he should have obtained a special council permit for a multi family dwelling. He has no plans to change the building.

No one spoke in opposition.

Communication: Four letters of support by abutters were submitted.

The public hearing was closed.

8. Based on the plans and application submitted, the testimony received and all the documents on file in this matter, the City Council makes the following findings:

The application meets the six special council permit criteria as follows:

1. Social, economic, or community needs are served by the proposal. There will be no change to the existing use of the property. In addition, there is no change to the physical exterior of the building. The use furthers the municipal plan to encourage creating residences in the upper stories of downtown buildings.
 2. Traffic flow and safety. No change to the existing use of the property is proposed.
 3. Adequacy of utilities and other public services. The property is currently served by the public utilities; no change is proposed.
 4. The neighborhood character and social structure. The use of the building is consistent with the other mixed uses in the neighborhood.
 5. Qualities of the natural environment. There will be no change to the existing use or structure.
 6. The potential fiscal impact. No change.
9. All of the plans and documents submitted shall become a part of this decision. The Planning and Development Committee reported that the Committee voted three (3) in favor, zero (0) opposed, to recommend to the full City Council the granting of a SCP for Joseph Orlando, Trustee, Orlando & Associates Realty

Trust, One Western Avenue, Map 2, Lot 28, zoning classification R-4, pursuant to Section 1.4.2.2(e) and 2.3.1.4(a) of the Gloucester Zoning Ordinance.

10. On motion of Councilor Peckham and seconded by Councilor Romeo, the City Council voted by roll call vote nine (9) in favor, (Destino, Foote, Grow, Hardy, McLeod, Peckham, Romeo, Swekla and Tobey), zero (0) opposed to granting the Special Council Permit for Joseph M. Orlando, Trustee of Orlando & Associates Realty Trust, One Western Avenue, Map 2, Lot 28, zoning classification R-4, pursuant to Section 1.4.2.2(e) and 2.3.1.4(a) of the Gloucester Zoning Ordinance.
11. The following general conditions shall also apply:
 1. In granting this Special Permit, the City Council has relied upon the oral and written representations made by the applicants in documents submitted in support of their application and in their appearances at the Committee meetings and the public hearing on the application. Any failure by the applicants to honor any material representation made to the City Council shall constitute just cause for revocation of this Special Permit in accordance with Section 1.4.2.2(f) of the Zoning Ordinance.
 2. All plans, documents and other submittals in furtherance of this application shall become a part of this decision. Any and all construction or use of this structure shall be in accordance with the plans, documents and submittals relied upon by the City Council in granting this Special Permit.
 3. Each finding, term and condition of this Decision is intended to be severable. Any invalidity in any finding, term or condition of this Decision shall not be held to invalidate any other finding, term or condition of this Decision.
 4. This permit shall not take effect until notice is filed with the Registry of Deeds for Essex County by recording a copy of the Decision. The fee for such notice shall be paid by the owner. Prior to recording the Decision, the Petitioner shall have the seal of the City affixed to same.

The minutes of the August 1, 2007 Planning and Development Committee meeting and the September 4, 2007 City Council public hearing and all documents and testimony received during the hearings are incorporated in this Decision.

Accordingly, by said City Council Vote of September 4, 2007, the Section 2.3.1.4(a) Special Council Permit is granted.

Decision adopted in City Council meeting of November 13, 2007.

Pursuant to Rule 25 of the City Council Rules of Procedure, the President of the City Council and the City Clerk have signed this decision demonstrating that it is a true and

accurate reflection of the November 13, 2007 vote of the City Council sitting as the special permit granting authority.

James M. Destino
President of Gloucester City Council

Robert D. Whynott, City Clerk

Dated: _____, 2007

LAW DEPARTMENT

MEMORANDUM

TO: Jeremy Gillis
Assistant City Clerk

FROM: Linda T. Lowe *LT*
General Counsel

DATE: November 8, 2007

RE: ERS Wash., Inc., d/b/a Jim's Bagel and Bake Shop

Enclosed herewith, please find the City Council Decisions on the application of ERS Wash., Inc., d/b/a Jim's Bagel and Bake Shop.

Also enclosed is your file.

Enclosures

In Re:

Application of ERS Wash, Inc., d/b/a Jim's Bagel) DECISION
for a Special Council Permit at 26 Railroad Avenue) OF THE CITY COUNCIL
Pursuant to City of Gloucester Zoning Ordinance) OF THE CITY
Section 1.4.2.2 and) OF GLOUCESTER
Section 5.17 Drive Through Facility)

The City Council of the City of Gloucester, Massachusetts, constituting the Special Permit granting authority under the laws of the Commonwealth of Massachusetts and the Zoning Ordinance of the City of Gloucester, hereby adopts the following findings and conclusions with regard to the application of ERS Wash, Inc., d/b/a Jim's Bagel and Bake Shop, for a Special Council Permit pursuant to Section 1.4.2.2 and Section 5.17 of the City of Gloucester Zoning Ordinance to install and use a drive through facility in the bakery/restaurant that the applicant currently operates at 26 Railroad Avenue, Gloucester, which is located in the Neighborhood Business Zoning District..

1. The applicant for the Special Council Permit is ERS Wash, Inc., d/b/a Jim's Bagel and Bake Shop. The owner of the property is Donald Swimm, Trustee, Darin's Realty Trust and Swimm Peabody, LLC. The property is located at 26 Railroad Avenue, Gloucester and is shown on Assessor's Map 25, Lots 11 and 12. The zoning district is Neighborhood Business. The applicant seeks a Special Council Permit as required by Section 1.4.2.2 to install a drive through facility to be used in its existing bakery/restaurant business per Section 5.17 of the Gloucester Zoning Ordinance.
2. The application was filed with the City Clerk on or about August 7, 2007. It is incorporated herein by reference.
3. The Special Permit application is accompanied by and augmented by a set of plans entitled "Proposed Parking Layout, Jim's Bagel and Bake Shop" prepared by Traffic Solutions, LLC, revised July 23, 2007 and October 9, 2007.
4. On September 10, 2007, the City Council Planning and Development Committee opened a meeting to consider the application. Thomas F. Murphy, Jr., attorney for the applicant, described the proposal to add the drive through facility to the existing bakery shop. It was also pointed out that the Zoning Board of Appeals, by its July 6, 2007 Decision, had previously granted several variances with respect to some of the requirements set forth in Section 5.17 of the Zoning Ordinance. The applicant's engineer, Dan Dulaski of Traffic Solutions, LLC, also appeared to discuss any effects and/or issues that the drive through window might create with respect to traffic flow in the area. The Planning and Development Committee meeting was continued until October 11, 2007 for further discussion and to allow the Planning Board to have an opportunity to review the proposal. A joint site visit with the Planning Board was held on September 18, 2007 at 26 Railroad Avenue.

5. As a result of the site visit and the Planning Board review, the site plan was revised to incorporate a “bump out” at the egress of the drive through lane onto Railroad Avenue as a means to increase the sight lines of exiting traffic and also to provide protection to pedestrians walking along Railroad Avenue.
6. On October 11, 2007 at the continued public meeting, the Planning and Development Committee, on the basis of the plans and testimony before it, found that the application meets the six special permit criteria under Section 1.4.2.2(e):
 1. Social, economic, or community needs are served by the proposal as consumers wish the convenience of a drive through facility for their coffee. The proposed drive through provides that convenience in a safe manner without cars stacking into a public street. In addition to convenience, a drive through facility helps drivers with children, disabled drivers and others. Improvement to this area of downtown is a goal of the Community Development Plan 2001.
 2. Traffic flow and safety are comprehensively addressed in the Traffic Impact Study prepared by Dan Dulaski of Traffic Solutions, who is a registered professional engineer as required under Section 5.17(a). The drive through design complies with the requirements under Section 5.17.5, as modified by variances granted by the Zoning Board of Appeals’ July 6, 2007 Decision, with respect to some dimensional requirements that could not be met due to site limitations and the location of the existing building on the lot.
 3. Municipal utilities are adequate as the property is served by municipal water, sewer and electricity and the current project will not negatively affect those services.
 4. The neighborhood character and social structure are appropriate as this neighborhood is a mixed residential/commercial area with many small businesses, retail and restaurant establishments. This use will fit without negatively affecting the character and social structure of the neighborhood as the planned exterior work will serve to enhance the exterior appearance of the site.
 5. The natural environment will be improved by the general improvement of this section of Railroad Avenue.
 6. The potential fiscal impact is positive as the drive through window will make the bakery business more viable, thus increasing the value of the building and increasing the real estate tax base. In addition, the applicant employs a number of Gloucester residents, a portion of whose income will be reinvested in the Gloucester community to provide additional positive financial impact.
7. On the basis of the testimony at the initial meeting and the continued public meeting before the Planning and Development Committee, the documents submitted and the

representations of the applicant, at the conclusion of the public meeting on October 11, 2007, upon Motion of Councilor McLeod, seconded by Councilor Peckham:

VOTE: The Planning and Development Committee voted two (2) in favor (Councilor Peckham and Councilor McLeod), one (1) opposed (Councilor Hardy), as follows:

To recommend to the full City Council that the City Council grant the Special Permit for the installation of a Drive Through Facility to ERS Wash, Inc., d/b/a Jim's Bagel and Bake Shop, 26 Railroad Avenue, Gloucester, Donald Swimm, Trustee, Darin's Realty Trust and Swimm Peabody, LLC (owner), zoning classification Neighborhood Business, pursuant to the Gloucester Zoning Ordinance Section 5.17 upon the findings cited above subject to the following condition: The stacking lane on the site shall not be curbed, but shall always be delineated by painting as set forth in the plan. The Committee voted also to advertise for a public hearing.

8. On October 30, 2007 the City Council held a properly advertised and duly noticed public hearing on the application of ERS Wash, Inc., d/b/a Jim's Bagel and Bake Shop, for a Special Council Permit to install a drive through facility in its bakery/restaurant and shop located at 26 Railroad Avenue, Gloucester, MA.
9. Thomas F. Murphy, Jr., attorney for the applicant, presented the proposed project. The applicant is requesting a Special Council Permit to add a drive through window to the existing bakery shop and restaurant located at 26 Railroad Avenue, Gloucester. The details of the site improvements and the traffic flow were presented by Dan Dulaski of Traffic Solutions, LLC, all as shown on the traffic plan prepared by Traffic Solutions as revised 10/11/07. Jim Santo, the proprietor of Jim's Bagel and Bake Shop, was present to discuss the proposed use, as well as answer questions from the Council.
10. In addition, the applicant's representatives addressed the reasons behind the applicant's request for a drive through window, including the fact that the sewer (C.S.O.) project on Washington Street had virtually forced the applicant out of his location on Washington Street from which he had operated for about 18 years and caused him financial hardship. Adding a drive through window will make him more competitive with his competitors, some of which have drive through windows, and will enable him to remain financially viable. It was also pointed out that a drive through window does provide a convenience for parents with young children in car seats, the disabled, the elderly and for customers visiting the shop during inclement weather. It was further pointed out and discussed with the Council that the applicant had received several variances from the Zoning Board of Appeals in its Decision of July 6, 2007 with respect to some of the requirements of Section 5.17 including building setbacks and lot area size as set forth in Section 5.17.2(b); landscaped buffer as set forth in Section 5.17.5(g)(3); dumpster setback as set forth in Section 5.17.5(e)(2)(b); and emergency bypass lane as set forth in section 5.17.5(d)(6)(c). Attorney Murphy specifically addressed the criteria set forth in Section 1.4.2.2 (e) of the Zoning Ordinance and established that the proposal meets all of the criteria.

11. The City Council received the recommendations of the Planning Board in a memorandum dated October 8, 2007 recommending the approval of the requested Special Permit, and a memorandum from the Traffic Commission dated October 4, 2007 accepting the traffic plan as presented. Both of said groups recommended taking steps to prohibit parking on Railroad Avenue immediately to the west of where the drive through window exits onto Railroad Avenue to alleviate any concerns about site lines and safety of exiting traffic.
12. The following individuals spoke in favor of the application: James Santo, president of ERS Wash, Inc. and proprietor of Jim's Bagel and Bake Shop, Robert Ryan, chairman of the Gloucester Traffic Commission, and Heidi Darling of 18 Atlantic Road, Gloucester, MA, on behalf of Gloucester Stage Company.
13. Peter Perthou of Lindow Avenue, Rockport, MA spoke in opposition to the application due to traffic concerns in the area of the Washington Street/Railroad Avenue intersection.
14. The public hearing closed.
15. Whereupon, having considered the entire record herein, including all documents included with the application, minutes of the September 10, 2007 and October 11, 2007 Planning and Development Committee meetings and all testimony and documents received at the Council hearing, including the Zoning Board of Appeals' July 6, 2007 Decision granting relief under Sec. 5.17, the Council considered and determined that the criteria of Section 1.4.2.2(e) and Section 5.17 had been met. The City Council found that the proposed drive through window will not have adverse effects which overbalance its beneficial effects on either the neighborhood or the City, in view of the particular characteristics of the site and the proposal in relation to the site.

Considering the criteria under Section 1.4.2.2(e), the Council found:

A. Social, economic, or community needs are served by the proposal as consumers wish the convenience of a drive through facility for their coffee. The proposed drive through provides that convenience in a safe manner without cars stacking into a public street. In addition to convenience, a drive through facility helps drivers with children, disabled drivers and others. Improvement to this area of downtown is a goal of the Community Development Plan 2001.

B. Traffic flow and safety are comprehensively addressed in the Traffic Impact Study prepared by Dan Dulaski of Traffic Solutions, as revised October 11, 2007, who is a registered professional engineer as required under Section 5.17(a). The drive through design complies with the requirements under Section 5.17.5, as modified by variances granted by the Zoning Board of Appeals' July 6, 2007 Decision with respect to some dimensional requirements that could not be met due to site limitations and the location of the existing building on the lot.

C. Municipal utilities are adequate as the property is served by municipal water, sewer and electricity and the current project will not negatively affect those services.

D. The neighborhood character and social structure are appropriate as this neighborhood is a mixed residential/commercial area with many small businesses, retail and restaurant establishments. This use will fit without negatively affecting the character and social structure of the neighborhood as the planned exterior work will serve to enhance the exterior appearance of the site.

E. The natural environment will be improved by the general improvement of this section of Railroad Avenue.

F. The potential fiscal impact is positive as the drive through window will make the bakery business more viable, thus increasing the value of the building and increasing the real estate tax base. In addition, the applicant employs a number of Gloucester residents, thus improving the applicant's ability to be competitive and to be profitable and will provide a positive financial impact by increasing the income of its employees, and some of that income will be reinvested in the Gloucester community which will provide additional positive financial impact.

16. Upon motion of Councilor Peckham, seconded by Councilor Romeo, the Council voted by a roll call eight (8) in favor (Destino, Foote, Grow, McLeod, Peckham, Romeo, Swekla and Tobey), one (1) opposed (Hardy), to grant a Special Council Permit for applicant, ERS Wash, Inc., d/b/a Jim's Bagel and Bake Shop; Donald Swimm, Trustee Darin's Realty Trust and Swimm Peabody LLC (owner), at 26 Railroad Avenue, Map 125, Lots 11 and 12, zoning classification Neighborhood Business, pursuant to Section 5.17 of the Gloucester Zoning Ordinance for a drive through facility at the applicant's bakery restaurant for the term of the lease of the applicant, Jim's Bagel and Bake Shop, running through April 2012 and also for an additional five year period (if this applicant exercises its option to renew for the additional five years), the intent being that this Special Permit does not run with the property but rather runs with the applicant and his current business operation for the duration of the operation of his business at the site. The applicant shall provide a copy of his lease to the City Clerk and shall also provide copies of any future lease extensions to the Clerk. Also with the condition that the parking restrictions comply with the October 4, 2007 recommendation of the Traffic Commission, either a parking space shall be relocated and a crosswalk shall be added by City Council. Additionally, the stacking lane shall not be curbed. The following General Conditions shall apply:

1. In granting this Special Permit, the City Council has relied upon the oral and written representations made by the applicants in documents submitted in support of their application and in their appearances at the Committee

meetings and the public hearing on the application. Any failure by the applicants to honor any material representation made to the City Council shall constitute just cause for revocation of this Special Permit in accordance with Section 1.4.2.2(f) of the Zoning Ordinance.

2. All plans, documents and other submittals in furtherance of this application shall become a part of this decision. Any and all construction or use of this structure shall be in accordance with the plans, documents and submittals relied upon by the City Council in granting this Special Permit.
3. The applicant/owner is required to provide documentary evidence to the City Council proving that all conditions specified in the City Council permit have been complied with at which time the City Council will issue a "Certification of Conditions Complete" as required by Rule 25, Part II, 5(i) City Council Zoning Rules of Procedure. The term "applicant/owner" includes any condominium association created subsequent to this Decision.
4. Each finding, term and condition of this Decision is intended to be severable. Any invalidity in any finding, term or condition of this Decision shall not be held to invalidate any other finding, term or condition of this Decision.
5. This permit shall not take effect until notice is filed with the Registry of Deeds for Essex County by the recording of a copy of the Decision. The fee for such notice shall be paid by the owner. Prior to the recording of the Decision with the Registry of Deeds, the Petitioner shall have the seal of the City affixed to same.

The minutes of the Planning & Development Committee September 6, 2007 and October 11, 2007 meetings and the minutes of the October 30, 2007 City Council public hearing and all documents and testimony received during the hearing are incorporated in this Decision, together with the July 6, 2007 Zoning Board of Appeals Decision.

Accordingly, by said City Council Vote of October 30, 2007, the Section 5.17 Special Council Permit are hereby granted.

Decision adopted in City Council meeting of November 13, 2007.

Pursuant to Rule 25 of the City Council Rules of Procedure, the President of the City Council and the City Clerk have signed this decision demonstrating that it is a true and accurate reflection of the October 30, 2006 vote of the City Council sitting as the special permit granting authority.

James M. Destino
President of Gloucester City Council
Dated: _____, 2007

Robert D. Whycott, City Clerk

PUBLIC HEARING #1 11/13/2007
Personnel Upgrades: Appendix A to Appendix C of the
Personnel Ordinance

Legal Notice

NOTICE OF PUBLIC HEARING

The Gloucester City Council will hold a public hearing on **TUESDAY, October 30, 2007** at 7:00 p.m. in the Fred J. Kyrouz Auditorium, City Hall relative to the following amendments to the Gloucester Code of Ordinances:

• **Appendix A, the Position Classification Plan to Appendix C of the City of Gloucester's Personnel Ordinance as follows: Assistant General Counsel M7 to M8, General Counsel M9 to M10, Building Inspector M7 to M8, Veterans Agent M3 to M4, Payroll Supervisor M3 to M4, Public Health Nurse M4 to M5, Tourism Director M2 to M3, Civil Engineer M6, Computer Technician M6 and CSO Financial Manager M6**

At the Public Hearing, all interested persons will have the opportunity to be heard.

By Vote of the City Council
Robert D. Whynott, City Clerk

GT - 10/22/07

O&A 09/24/2007

MOTION: On motion of Councilor Romeo, seconded by Councilor Foote the Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend to the full City Council **AMEND Appendix A, the Position Classification Plan to Appendix C of the City of Gloucester's Personnel Ordinance as follows: Assistant General Counsel M7 to M8, General Counsel M9 to M10, Building Inspector M7 to M8, Veterans Agent M3 to M4, Payroll Supervisor M3 to M4, Public Health Nurse M4 to M5, Tourism Director M2 to M3, Civil Engineer M6, Computer Technician M6 and CSO Financial Manager M6, and FURTHER TO ADVERTISE FOR PUBLIC HEARING.**

Mr. Bain stated yes and you may not want to tie the city's hands too much with salary schedules etc.

Councilor Tobey asked when we will be seeing the fruits of that process.

Mr. Bain replied recommendations for amendments to the personnel ordinance will take some time with the help from both the Administration and the City Council.

Councilor Tobey stated another of the ongoing conversations and concerns is ensuring accountability and that is through the evaluation process. He asked how you view the role of the evaluation process.

Mr. Bain replied all evaluation processes are what you make of them. If you have an employee who is doing stellar work they should be compensated. If they are doing substandard work they should be informed and allowed to correct that with the help of management.

Councilor Tobey stated it is difficult to do anything with merit pay within the Gloucester model and asked if Mr. Bain has had any experience with public sector merit models.

Mr. Bain replied that is one of the problems we run into in municipal government. What is interesting here is people are requesting reevaluations of their positions. Unless it is funded it is very difficult and usually it is not funded and therefore you can't offer much.

Councilor Tobey stated there are reports received that the IT system has been experiencing difficulties handling pension deductions and that some employees are owing money.

Mr. Bain replied errors were made, partially human and partially computer and they are now resolved. They have extended people time to repay the retirement system. We are not happy about it but we are doing that over time and as painlessly as possible. Some people are receiving a check. He met with the unions last week and was able to come to an agreement on this. We have to sort the bugs out of the system. He thinks it is a good system, we have paid for it and we need to hold their feet to the fire to get what we need out of it and once up and running it will be a real benefit.

MOTION: On motion of Councilor Romeo, seconded by Councilor Foote the Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend to the full City Council the appointment of David Bain as Personnel Director for a term to expire 2/14/08.

2. Miscellaneous

a. Request from Personnel for new management positions and reclassifications
Steve Magoon stated these are reclassification requests forwarded from Donna Leete to the full Council for consideration. The list represents 10 management positions, eight of which are in the GMAA. There are three new positions, Civil Engineer, CSO Financial Manager and Computer Technician that warrant classification as M6. Five previously classified positions, Assistant General Counsel, General Counsel, Building Inspector, Veteran's Agent and Tourism Director reclassified after an in-depth review of position classifications established in 2000. Two positions, Public Health Nurse and Payroll Supervisor are reclassified due to a significant increase in level of responsibility. There are no funds budgeted, this is simply recognition of a change in grade of position and not an increase in pay for these individuals; that would have to come back before the Council. This was also discussed with the GMAA and the chart shows each position, present and proposed grade and comments.

Councilor Romeo stated we have to stop rewarding people with nothing; it brings down morale.

Mr. Magoon stated an upgrade in pay for an individual would have to be a separate discussion. Recognizing where these positions should be graded is the first step in the process.

Councilor Foote asked will money be available for this.

Mr. Magoon doesn't have an answer for that.

Councilor Tobey asked if all are approved how many at their current pay level will be below the minimum with the new classification. Will these folks be below grade if re-classified.

Mr. Bain doesn't know the answer but can find out.

Linda Lowe, General Counsel stated this is upgrading the position, not the individual. It is based on the nature of the duties and responsibilities of the job.

Councilor Romeo stated her biggest concern the city's liability if we don't move on this within a certain time.

Councilor Tobey agreed to advertise for public hearing and asked for an examination of the city's obligation regarding this.

Ms. Lowe spoke as someone affected by the system. A merit system already exists in our personnel ordinance and there are supposed to be regular reviews. If people are doing a real good job they receive a merit increase and that hasn't happened for years. Personally, she feels that is an issue that people at some point would be able to take action on that.

Sunny Robinson, Public Health Nurse asked what the increase in amount of salary would be. She has those figures for the Nurse, Payroll Supervisor and Tourism Director and those three came to less than \$9,000.

Mr. Magoon stated the total for all positions was approximately \$37,000.

Councilor Romeo stated these job requirements are based on what these individuals have already.

Ms. Robinson replied yes.

Mr. Bain stated it is a valid first step.

Councilor Foote stated we had the merit system before and it didn't work. The Council has an opportunity to review their performance during the reappointments.

Ms. Lowe stated the purpose of the merit review is that the direct supervisor is supposed to review the person.

Councilor Foote stated all the reclassifications should be advertised individually.

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b. Private Sewer Extension Regulations and Ordinances

Steve Magoon summarized the changes made to the two documents since the last meeting. Mike Hale has made general clarifications and language changes that made the document read much better. The bonding requirements and how that related to when the city would take ownership of the facility was the primary issue. He referred to page 6 bonding requirements and noted the following changes: Bond of 100% was changed to "...25% of final audited project cost for project maintenance, to be supervised by the City Treasurer for a period of 18 months." They also provided some amendments to provide flexibility for the City Engineer to lessen that requirement on smaller projects if need be.

Councilor Tobey asked if there is a comfortable level that this is a bond that can be had.

Mike Hale, City Engineer replied this still allows the flexibility of a simple escrow account or passbook to be put in the city's name. He is comfortable with the 18 months; it more mirrors what the city does itself and with proper inspection there shouldn't be a significant failure rate.

J. Kermit Birchfield, 33 Way Road asked Linda Lowe if she had a chance to review this.

Ms. Lowe replied yes, we all discussed the changes and she feels it is improved. It is still a difficult area to regulate but hopes it is workable.

Councilor Romeo asked what Ms. Lowe finds not workable.

PUBLIC HEARING #2 11/13/2007

Rules and Regulations pertaining to the Acceptance of Private
Sewers

Legal Notice

NOTICE OF PUBLIC HEARING

The Gloucester City Council will hold a public hearing on **TUESDAY, October 30, 2007** at 7:00 p.m. in the Fred J. Kyrouz Auditorium, City Hall relative to the following amendments to the Gloucester Code of Ordinances:

- **AMEND the Rules and Regulations Pertaining to the Acceptance of Private Sewers and Gloucester Code of Ordinances, Chapter 23, entitled "Utilities" as written**

At the Public Hearing, all interested persons will have the opportunity to be heard.

By Vote of the City Council
Robert D. Whynott, City Clerk

GT - 10/22/07

O&A 09/24/2007

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J. Kermit Birchfield, 33 Way Road asked Linda Lowe if she had a chance to review this.

Ms. Lowe replied yes, we all discussed the changes and she feels it is improved. It is still a difficult area to regulate but hopes it is workable.

Councilor Romeo asked what Ms. Lowe finds not workable.

Ms. Lowe replied just from past experience it has been difficult. She would like to see it carried out to see whether or not it is going to be feasible for projects. It is creative but is fraught with obstacles. We have a good engineering department but they are very overworked. If we keep that department adequately staffed to carry out this oversight it should work.

Mr. Magoon stated a concern is that this ordinance allows private citizens to construct a portion of the city's infrastructure.

Ms. Lowe agreed that is the larger issue. There is no easy model to follow; we are trying to create our own and have improved.

Councilor Romeo stated the key is to have an adequate staff.

Councilor Tobey would like to see this go to public hearing to get this up and running.

Mr. Magoon referred to the other aspect of the betterments. In Chapter 23, Utilities we talked about the 25% or up to \$6,000 reimbursement of betterment expenditure. This version of the ordinance on the table tonight takes that out.

Councilor Tobey suggested moving the private sewer piece forward, leaving the betterment proposal unchanged.

MOTION: On motion of Councilor Romeo, seconded by Councilor Foote the Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend to the full City Council to AMEND the Rules and Regulations Pertaining to the Acceptance of Private Sewers and Gloucester Code of Ordinances, Chapter 23, entitled "Utilities" as written and further TO ADVERTISE FOR PUBLIC HEARING.

c. Betterment proposal

Linda Lowe, General Counsel stated she read all the pertinent state law on betterments and noted that is area in Massachusetts that is strictly governed by state law; unless you petition for a special act you must go by state law. Regarding the assessment of betterments, (MGL Ch. 83), the statute sets out two or three particular methods. The unit method is in our ordinance and follows state law. No where in there does it suggest you can have flexibility. Early on we only had a sewer policy until the early 90's when it went in as an ordinance. It is better to have it in the ordinances to have it standardized and formalized, but we did it for a long time by sewer betterment policies.

Councilor Tobey spoke to doing projects on an ad hoc basis.

Ms. Lowe replied one project at a time is what we use to do back in the late 80's before we had an ordinance.

Councilor Tobey referred to the Sam Park project and noted large users that tie in with new flows be required to make some sort of acquisition of equity and money could be put into a reserve for future projects. He asked the Administration and General Counsel to draft a compensatory sewer ordinance and maybe then we could craft a linkage using the betterment policy and a new funding source.

Ms. Lowe replied it doesn't take into account the size of a project – that is where the betterment confusion comes in. You can't better a development when it abuts an existing sewer. You have to define what you are looking for; an equitable system or a case by case basis. There are models to look at in other communities.

Councilor Tobey asked if the committee could get the first review of a draft this calendar year.

The discussion on Betterments was continued to 11/19/07.

Other business. Way and Page Roads

J. Kermit Birchfield, 33 Way Road thought he read that was to be discussed tonight.

Councilor Tobey stated the discussion was on getting pricing on the cost of the project.

Chapter 23 UTILITIES*

*Cross reference(s)--Buildings and building regulations, Ch. 5.

ARTICLE I. IN GENERAL

Secs. 23-1--23-14. Reserved.

ARTICLE II. SEWERS*

*Cross reference(s)--Buildings and building regulations, Ch. 5; discharge of water or other liquid on sidewalks, § 21-10.

State law reference(s)--Municipal authority to regulate sewers, M.C.L.A. c. 40, §§ 5, 6; sewers generally, M.G.L.A. c. 83.

DIVISION 1. GENERALLY

Sec. 23-15. Assessments.

(a) Every person owning land abutting upon any way in which a main or common sewer has been laid out, and who enters or has entered his particular drain into such main drain or common sewer, or who by more remote means receives benefit thereby for draining his land or buildings, shall be assessed under the provisions of M.G.L.A. c. 83, § 14. The director of public works or the designee or designees of the director shall have the power as set forth in M.G.L.A. c. 83, § 15, when ascertaining assessments as a betterment for construction, to apply a rate based upon a uniform unit method. A uniform unit method shall be based upon sewerage construction costs divided among the total number of existing and potential sewer units to be served after having proportioned the cost of special and general benefit facilities as provided in section 23-24(a).

(b) Assessments under this section shall be ascertained, assessed, certified and committed to the city treasurer by the director of public works or the designee or designees of the director. Such assessments may be made for all sewers, lateral sewers, pump stations and appurtenant works. Sewer betterment assessments and any sewer betterment policies which are adopted by the city council under M.G.L. c. 80 and M.G.L. c. 83 for particular public sewer construction projects shall follow the procedures set out in section 23-24.

(Code 1970, § 18-1; Ord. No. 9-1992, 3-3-92; Ord. No. 42-1997, 6-10-97; Ord. No. 20-1999, § I, 8-10-99)

Sec. 23-16. Laying out and payment for particular sewers connecting with common sewer or main drain and sewer privilege fee.

(a) Whenever, in the course of a sewer extension *installed* by the city, any land is connected with a common sewer or main drain laid out by the department of public works in a public or private way, the department shall, at the expense of the city, lay and maintain the particular sewer providing such connection from the common sewer or main drain to the boundary of the way, except in certain cases where a pump is necessary to tie in the property. If, at the time of construction by the city of a sewer extension, it is determined that a grinder pump or other such device will be required, pursuant to M.G.L. c. 83, § 15, in order to connect any existing building to the sewer, the city shall install and maintain the pump, force main and appurtenances *upon obtaining the necessary private property construction and maintenance easements from the property owner*. If the city sewer construction involves Septic Tank Effluent Pump (S.T.E.P.) sewers, the department shall, at the expense of the city, install and maintain the S.T.E.P. sewer components on the private properties which have habitable dwellings. The property owner may elect to install and/or maintain the grinder pump or other pump and the S.T.E.P. components by means of a private contractor as provided in the city sewer regulations. The city will not provide pumping systems or S.T.E.P. components for properties that are vacant or have structures which are uninhabitable at the time of the construction by the city of the sewer extension. Installation and maintenance of any pumps, tanks, and appurtenances as may be necessary for tying in residential, commercial or industrial properties developed subsequent to the construction by the city of a sewer extension will be the responsibility, of the private property owner.

(b) The owner of any land benefited by the layout out of a particular sewer from the common sewer to the boundary of the way shall pay to the city for the permanent privilege of using the same, such reasonable amount as the director of public works may determine, under the provisions of M.G.L. A. c. 83, § 24, and the amount so determined shall be assessed, certified and committed to the city treasurer by the director of public works.

(c) Notwithstanding the provisions of section 23-15 and 23-16(a) and (b), the owner(s) of a subdivision which pursuant to the regulations of the planning board sections 4.4.2(c) or 4.4. 1 (b) who has/have been required to construct a sanitary sewer, shall not be assessed a sewer betterment fee but shall be assessed a sewer privilege fee on a per lot basis in lieu of a betterment. Such fee shall be assessed at the time of the subdivision dry sewer is connected to the main sewer and may be subject to apportionment. In addition, regardless of whether or not a subdivision is involved, any applicant for a *privately constructed* sewer extension permit, shall, at the time such sewer extension is completed pay such privilege fee. The fee shall be determined by the director or the director's designee(s) and shall not exceed forty (40) percent of betterment for the most recent city sewer project.

(Code 1970, § 18-2; Ord. No. 9-1992, 3-3-92; Ord. No. 28-1992, § 3, 10-13-92; Ord. No. 42-1997, 6-10-97; Ord. No. 20-1999, § 1, 8-10-99)

Sec. 23-17. Disposition of receipts from assessments.

(a) The receipts from assessments for particular sewers shall be applied to the payment of the cost of particular sewers.

(b) The receipts from assessments and charges under section 23-15 shall be applied to the payment of interest upon bonds or notes issued for sewer purposes and to the payment or redemption of such bonds or notes.

(Code 1970, § 18-3)

Sec. 23-18. Plans of sewerage system

The location of all sewers and drains and other structures and works used in connection therewith, which constitute part of the system or systems of sewerage or sewage disposal laid out or constructed by the department of public works *or as privately constructed under the private sewer extension rules and regulations*, shall be shown on plans on file at all times with the department of public works, and a duplicate of the plans shall be filed by the department with the city engineer. Both sets of plans shall be open to inspection by the citizens of the city.

(Code 1970, § 18-4)

State law reference(s)--Similar provisions, M.G.L.A. c. 83, § 2.

Sec. 23-19. Charges for use of common sewers.

(a) Every person who enters his particular sewer, directly or indirectly, into a common sewer laid out by the department of public works shall pay an annual charge for the use of the common sewers, under the provisions of M.G.L.A. c. 83, § 16. Such charges shall be based on rates established by the director of public works, and the charges on each person in accordance with the rate so established shall be ascertained, assessed, certified and committed to the city treasurer by the director of public works.

(b) Commercial users of the city sewer system using in excess of one million (1,000,000) gallons of water annually are assessed in addition to the charges under subsection (a) the sum of one hundred dollars (\$100.00) for each million gallons of water used annually.

(Code 1970, § 18-5; Ord. of 5-17-77, § 1)

Sec. 23-20. Acceptance of out of town septage prohibited.

Acceptance of septage from out of town in the city's sewer system is prohibited.

(Ord. of 2-7-84, § 1)

Sec. 23-21. Form of required notice.

Whenever notice is required of a party to this article, it shall be by certified mail, unless otherwise specified.

(Ord. of 12-7-82, Art. VIII)

Sec. 23-22. Land not built upon; extension of time for assessment.

Any land not built upon at the time of a sewer betterment assessment may upon application of the land owner receive an extension of time for the payment of the assessment until the land is built upon. Interest at the rate of four (4) percent per year shall be paid annually upon the assessment from the time it was made. The assessment shall be paid within three (3) months after such land is built upon.

(Ord. No. 9-1992, 3-3-92; Ord. No. 42-1997, 6-10-97)

Sec. 23-23. Compensatory sewer privileges fee; increase in use of land.

Notwithstanding the other provisions of Chapter 23, Article II, Sewers, if a betterment has: (i) been assessed to a property based upon the estimated number of developable sewer units as required by this article or a sewer betterment policy adopted by the city council and said property is ultimately developed to accommodate a number of sewer units in excess of the number estimated for determining the betterment assessment, and/or (ii) been assessed to a developed and later in time the use of that parcel is increased to accommodate a number of sewer units in excess of the number estimated for determining the betterment assessment, then the city shall assess a compensatory sewer privilege fee to reflect the increased use. This fee shall be equivalent to the amount which would have been charged as a betterment assessment upon the additional uses or units at the time of the original assessment. Apportionment of this fee shall be permitted only if specifically requested at the time of assessment and only for a period of ten (10) years or less. Apportioned sewer privilege fees shall bear interest at the same rate charged for the most recent city sewer project betterments.

(Ord. No. 9-1992, 3-3-92; Ord. No. 42-1997, 6-19-97; Ord. No. 20-1999, § 1, 8-10-99)

Sec. 23-24. Sewer betterment assessments.

(a) General.

(1) The city, acting through the city council, shall assess the owners of land abutting a sewer line installed by the city, at a rate based upon a uniform unit method as defined by M.G.L. c. 83, § 15. Revenue generated by said betterment assessments shall cover the total project costs as defined herein in section 23-24(b)(1) less a city share equal to twenty-five (25) percent of said total costs up to and not to exceed an amount equal to the value of six thousand dollars (\$6,000.00) per residential dwelling unit. When the sewer construction includes both sewer construction in the street and sewer construction on a private lot (such as S.T.E.P. sewer construction) for purposes of determining the city share:

a. To determine the unsubsidized cost of street work of per residential dwelling unit: divide the total costs for street construction by the number of street units.

b. To determine the unsubsidized cost per unit of on-lot work: divide the total cost of on-lot work by the number of on-lot installation units and the average costs of such on-lot construction for all similarly situated properties in the project to be assessed.

c. Add the unsubsidized costs per residential dwelling unit of street work to the unsubsidized cost per unit of on-lot installation and multiply the sum by twenty-five (25) percent.

d. The city's share of a residential unit will be either the figure resulting from above calculation or six thousand dollars (\$6,000.00) on that individual property whichever is the lesser amount.

(2) On-lot betterments will be assessed:

a. For properties with S.T.E.P. sewers in accordance with the number and size of step tanks installed on the lot with one on-lot betterment assessed for each standard size tank installed on the parcel. On-lot betterments for oversized step tanks will be assessed with an increased betterment in an amount equal to the percentage increase in the size required for the lot; and

b. For grinder pumps or pressure sewer pumps in accordance with the actual project costs of the pumps.

(b) Method of assessment: uniform unit.

(1) The City of Gloucester shall assess sewer betterments based upon a uniform unit method. Each unit shall be equal to a single-family residence. Multiple-family buildings and nonresidential buildings as described herein shall be converted into units on the basis of residential equivalents. The total assessment for a particular sewerage construction project shall not be based on or limited by an estimated betterment. Revenue generated by said betterment assessment shall be equal to or shall cover the total project costs associated with design and construction of the sewers and pumping station, and appurtenant work of both the on-street and on-lot sewer components, less the city share.

(2) The city shall levy assessments against all properties abutting a sewer street after acceptance of the entire pertinent construction contract including finalization of all pertinent contractual documents. The date of acceptance shall be determined by the DPW director. In the order of assessment, the city shall designate the owner of each parcel on the preceding January first as liable for assessment under the provisions of the General Laws.

(3) For assessment purposes, all properties receiving direct benefit from the sewerage system shall be converted into sewer units. Properties receiving direct benefit, either developed or undeveloped, shall be designated a number of sewer units under the following guidelines:

a. Single-family dwellings shall comprise one (1) sewer unit.

b. Two-family dwellings shall comprise two (2) sewer units.

c. Three-family dwellings shall comprise three (3) sewer units.

d. Four-family dwellings shall comprise four (4) sewer units.

(4) Multiple-family dwellings in excess of four units shall comprise a number of sewer units based on the following methodology:

a. Rental residential properties such as apartments shall be assessed one sewer unit for each apartment with more than one bedroom. Rental properties shall be assessed one-half (1/2) of one (1) sewer unit for each one-bedroom or studio apartment.

b. Residential condominium complexes shall be assessed one (1) sewer unit for each dwelling unit.

(5) Subdivisions shall be assessed one (1) sewer unit for each buildable lot except that a subdivision which pursuant to subdivision regulations of the city agreed in the course of subdivision approval to install and by the appropriate assessment date for betterments for a particular public sewer construction project has actually installed a dry system in said subdivision shall not be assessed a sewer betterment fee per lot but shall be assessed a sewer privilege fee as set by the sewer ordinance (section 23-16(c)). Certain lots not involving actual subdivision shall also be assessed as provided in the sewer ordinance (section 23-16(c)).

(6) Non-residential buildings, which shall include all industrial, commercial and municipal properties, shall comprise a number of sewer units based upon water consumption as follows: Non-residential water usage (gpd) = sewer units three hundred (300) gpd (rounded up to the next whole number).

Non-residential buildings not metered for water use shall be assigned a water consumption volume based on Title 5 (Part 2, Section 13) of the State Environment Code of the Commonwealth of Massachusetts, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage.

(7) When a single structure or building contains a nonresidential use and a residential use and neither use is accessory to the other and the non-residential use does not receive city water service, such mixed use structure shall be charged a betterment only for the residential unit or use. This provision shall not apply in the following zoning districts as defined in the city zoning ordinance: BP, Business Park; GI, General Industrial; MI, Marine Industrial; EB, Extensive Business; and S, Service District.

(8) Undeveloped residential lots shall be converted into dwelling units on the basis of maximum number frontage and area requirements as directed in the zoning ordinance in effect at the time of assessment. Each potential dwelling unit shall then comprise one (1) sewer unit; however, undeveloped lots shall be assessed for only in-street sewer costs and shall not be assessed any on-lot costs. At the time that the lot is built upon, the property owner shall bear the complete costs of installing any necessary on-lot public and private sewer components on their private property pursuant to city sewer regulations.

The owner of an undeveloped lot may apply pursuant to M.C.G.L. c. 83, § 19, to extend the time for payment as provided in the sewer ordinance (section 22-23). In addition, land classified as agricultural, horticultural, recreations, or forest land, upon the application of the owner, may have

the betterment assessment suspended for so long as the land is devoted to that use pursuant to M.G.L. c. 61A, § 18, M.G.L. c. 61B, § 13, and M.G.L. c. 61, § 5.

(9) Undeveloped non-residential lots shall be converted into a maximum anticipated water consumption on the basis of the zoning ordinance. An equivalent number of sewer units shall then be determined utilizing the formula described for nonresidential. developed properties (rounded up to the next whole number).

(10) Nothing in this section shall supersede the language of city ordinance section 23-23 concerning a compensatory fee for increase in the use of the land.

(c) Betterment payment.

(1) Except as provided herein, the provisions of the General Laws relative to the assessment, apportionment, division reassessment, abatement and collection of sewer assessments shall apply. The tax collector of the City of Gloucester shall have all of the powers conveyed by the General Laws. In accordance with M.G.L. c. 80, § 12, assessments made shall constitute a lien upon the land assessed until the full balance is paid.

(2) At the time of assessment, a property owner may select a payment schedule over a period of ten (10) years or twenty (20) years or another term of years less than twenty (20) if they so specifically request. Once a selection has been made, the payment method may not be changed at a later date; however, the balance of the principal due on any lien may be paid in full any time.

(3) Upon the transfer of title to a new owner, the seller/transferor shall immediately notify the city treasurer/collector and city assessor. After transfer of title, the betterment lien may be transferred. The betterments may be paid in full to the collector's office without interest or charges within thirty (30) days of the date of assessment.

(4) With regard to apportionment, the interest rate charged by the city shall be the project bond rate paid by the city for the sewer project plus a flat fee of two hundred dollars (\$200.00) as allowed by Acts and Resolves of 1993, Commonwealth of Massachusetts, Chapter 433.

(d) Abatements and deferrals.

(1) Unbuildable lot.

a. A property owner may request of the building inspector a formal written opinion which declares that under the then current city zoning ordinance, the lot(s) which have been assessed a sewer betterment is not buildable without issuance of one (1) or more variances under the applicable zoning ordinance provisions. This letter must be filed permanently with the building inspector and with the zoning board of appeals. Upon issuance of the opinion, the property owner may then file an application for abatement with the assessing board which shall include a certified copy of the building inspector's opinion and which shall require a notarized statement that the owner and any subsequent purchaser or their assigns or agents shall not apply for a variance to make the lot buildable.

b. A property owner may file a notice of intent to construct a dwelling with the conservation commission for one (1) or more lots which have been assessed a sewer betterment. Following the regular hearing procedures of the conservation commission for any such notice, if the commission issues a formal denial of the notice of intent to construct a dwelling, and if all such documents which are otherwise required by law to be filed with the registry of deeds have been so filed, then the property owner may file with the assessing board an appeal action for abatement so long as the owner did not appeal the denial. The appeal action shall include a certified copy of the denial of the notice of intent to construct a dwelling.

c. All such abatements which are issued by the assessing board under this section 23-24(d)(1) shall also be permanently filed with the offices of the building inspector and the conservation commission. All applications and orders or opinions issued under this section shall state that the property owner has voluntarily requested that the property be found unbuildable and that the property owner fully understands all consequences stemming from such determination.

(2) Age and income.

A property owner may defer the betterment assessment as provided in M.G.L., c. 80, § 13B, which has been accepted by the city, if they are sixty-five (65) years of age or older and qualify under M.G.L., c. 59, § 4, clause 41A. However, the transfer of lien provision, section 23-24(c), betterment payments, shall not apply to deferrals as provided for in this section, in compliance with c. 80, § 13B.

(Ord. No. 42-1999, 6-10-97; Ord. No. 20-1999, § 1, 8-10-99)

Sec. 23-25. Fees and Bonds

A. General. The Applicant of a privately constructed sewer extension shall pay all fees and provide all bonds associated with the private sewer extension.

B. City Administrative Fees. The Applicant of a privately constructed sewer extension shall pay all City administrative fees associated with the privately constructed sewer extension's design review and construction inspection, in accordance with the City of Gloucester Rules and Regulations and Ordinances. Fees shall be approved by the City Council.

C. 25% Performance Bond. The Applicant of a privately constructed sewer extension shall provide the City with an appropriate performance bond or equivalent escrow account, equal to 100% of the estimated construction cost, prior to starting construction of the sewer extension. Said bond shall only be used by the City if the City determines the Applicant failed to complete the construction of the extension or failures or defects in construction. In the event the bond is used to either discontinue the project in a safe and secure manner or complete the project, the Applicant shall be deemed by the City to have abandoned the project and all Applicant rights to the project shall be waived by the Applicant. Any modifications to the extension during construction may require an increase on the performance bond's value. The City shall retain the 25% Bond for a period of three years after completion of the project for the purpose of

applying towards failures or defects in construction. Such bonding will not be invalidated by any subsequent contiguous extensions or connections.

D. Fees or Assessments to other Extensions. It is prohibited for a privately constructed sewer extension to charge any fees to another contiguous privately constructed sewer extension. Each application for an additional sewer extension shall be considered as a separated sewer extension. An existing Applicant may not charge any fees or assessments to a new Applicant.

E. Fees or Costs collected by Applicant from properties connecting. Applicant shall be allowed to charge an Entrance Fee to each property owner that desires to connect to the sewer constructed pursuant to these regulations, for the privilege of entering the Sewer Extension. The amount of any Entrance Fee payable to Applicant shall be a single fee, and shall not be a continuing fee. In connection with the granting of such Entrance Fee, the following provisions shall apply. The amount of any Entrance Fee payable to Applicant shall be in the amount set forth below:

- 1. The Entrance Fee shall be calculated based on project costs and the number of potential connections. This calculation shall be performed and agreed to prior to project approval and issuance of the necessary permits to construct the sewer extension and shall incorporate an annual growth factor, based on the Consumer Price Index, calculated and added on an annual basis upon project completion.*
- 2. The City shall not approve any application for a connection, nor shall it issue any connection permit to the Sewer Extension until the City has received written confirmation from Applicant indicating that the property owner has paid an Entrance Fee to Applicant. After Applicant provides such written confirmation to the City, the City shall approve any connection permit necessary for the access to the sewer, subject to proper engineering of the connection.*
- 3. Unless and until the Entrance Fee has been paid, no person shall be entitled to connect to the Sewer Extension based upon claim that the Sewer Extension based upon claim that the Sewer Extension lies within a public way, or in an easement in favor of the City, as the case may be.*
- 4. Applicant shall not profit from the collection of Entrance Fees. Applicant represents and guarantees that the cost of the Project will be reasonable and not exceed the estimated project cost as approved by the City, which sum is referred to as "maximum guaranteed cost". If the actual cost of the Project exceeds the maximum guaranteed cost, Applicant agrees to pay from its own funds all amounts in excess of the maximum guaranteed cost. Said maximum guaranteed cost shall be supported by written proposal(s) from Applicant and/or any subcontractors of Applicant thirty (30) days prior to the commencement of construction under this Agreement. The right of Applicant to charge and collect Entrance Fees shall terminate upon the expiration of ten (10) years from the date the construction of the Project is substantially completed. Under this Agreement, Substantial Completion shall constitute approval for use by the City and its engineering consultants, or, at that point in time when Applicant has recouped 100% of the Project Costs, whichever is sooner.*

5. *The payment of Entrance Fees to Applicant except as stated in paragraph F.6. below, shall be in addition to, and not in lieu of, any fee or connection charged by the City to any new user. The connection fee to the City shall be assessed to any new user in the same manner and in the same amount as if the Sewer Extension were already part of the System and not subject to a privately funded extension.*

6. *The City hereby waives any connection fee from Applicant and any property owner or operator who participates with Applicant within one (1) year of the execution of this Agreement. As a condition precedent to waiving such fees, a "capital contributor" (property owner or operator) who participates as such shall be required to pay to Applicant the applicable Entrance Fee provided for in Paragraph F above and provided the City receives a copy of the executed Agreement. The waiver of such connection fee shall only apply to the specific property of a property owner or operator which directly abuts the sewer line or the extension thereof and not Applicant. Applicant shall identify any and all such participants, in writing, to the City prior to the commencement of construction.*

F. Sewer Use Charges. Upon connection to the privately constructed sewer extension, every user shall pay annual sewer use charges as per Gloucester Code of Ordinances Sec. 23-19.

Secs. 23-26--23-34. Reserved.

DIVISION 2. USE REGULATIONS

Sec. 23-35. Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

Act shall mean Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

Average daily flow shall mean the total volume of sewage in gallons measured or estimated at a metering station or other point during a continuous period of thirty (30) days divided by thirty (30) days.

BOD (denoting biochemical oxygen demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at twenty (20) degrees centigrade, expressed in milligrams per liter.

Building drain shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

Building sewer shall mean the extension from the building drain to the public sewer or other place of disposal.

Categorical pretreatment standards means discharge limitations for specific industrial user categories promulgated by the United States Environmental Protection Agency (E.P.A.) under federal law.

Combined sewer shall mean a sewer receiving both surface runoff and sewage.

Director shall mean the director of public works, or his authorized deputy, agent, or representative.

Garbage shall mean solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Indirect discharge (or discharge) shall mean the introduction of pollutants into the wastewater treatment facility from any nondomestic source regulated under section 307(b), (c) or (d) of the Act.

Industrial user shall mean a source of indirect discharge.

(1) Significant industrial user shall mean:

- a. All industrial users subject to categorical pretreatment standards; and
- b. Any other industrial user that: discharges an average of twenty-five thousand (25,000) gallons per day or more of process wastewater to the wastewater treatment facility (excluding sanitary, noncontact cooling water and boiler blowdown wastewater); contributes a process wastewater that makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the wastewater treatment plant; or is designated as such by the city on the basis that the industrial user has a reasonable potential for adversely affecting the operation of the wastewater treatment facility, either through pass through of pollutants, sludge contamination or endangerment to workers in the sewers or wastewater treatment facility.

(2) Major industrial user shall mean:

- a. Industries not subject to categorical pretreatment standards that discharge between five thousand (5,000) and twenty-five thousand (25,000) gallons per day of process wastewater, with some potential for violation of pretreatment standards or requirements; and
- b. Any industrial user not subject to categorical pretreatment standards that discharge less than five thousand (5,000) gallons per day and have a history of noncompliance with pretreatment standards and requirements.

(3) Other industrial user shall mean:

- a. An industrial user not subject to categorical pretreatment standards that discharges less than five thousand (5,000) gallons per day of process wastewater; and

b. An industrial user not subject to categorical pretreatment standards that discharges process wastewater that has no reasonable potential for violation of pretreatment standards or requirements.

The city may at any time, on its own initiative, or in response to a petition received from an industrial user not subject to categorical pretreatment standards, reclassify the industrial user based on changes in the quantity or characteristics of their wastewater discharge and/or their history of compliance with pretreatment requirements.

Industrial wastes shall mean the liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

Interference shall mean an inhibition or disruption of the operation of the sewage work or of the final use or disposal of sludge. Such inhibition or disruption may result in violation of federal laws or more stringent state or local regulations, which protect air, land or water resources. Such laws or regulations may include, but not be limited to the requirements of the National Pollutant Discharge Elimination System (NPDES) permit issued to the city for the operation of the sewage works.

Maximum daily flow shall mean the highest volume in gallons measured at a metering station or other point during any continuous twenty-four (24) hour period.

National pretreatment standard or pretreatment standard or standard means any regulation containing pollutant discharge limits promulgated by EPA under Sections 307(b) and (c) of the Clean Water Act applicable to industrial users including the general and specific prohibitions found in 40 CFR 403.5 and the National categorical pretreatment standards promulgated by EPA that are set out in 40 CFR Chapter I, Subchapter N, Parts 405--471.

Natural outlet shall mean any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

New Source shall mean:

(1) Any building structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under section 307(c) of the Act which will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

a. The building, structure, facility or installation is constructed at a site at which no other source is located; or

b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is

integrated into the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of (1) above, but otherwise alters, replaces or adds to existing process or production equipment.

(3) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous onsite construction program:

1. Any placement, assembly, or installation of facilities or equipment; or
2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment; or

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

NPDES permit shall mean a permit issued to the city's wastewater treatment facility pursuant to section 402 of the Act.

Pass through shall mean a discharge which exits the city's wastewater treatment facility into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the City's NPDES permit (including an increase in the magnitude or duration of a violation).

pH shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

Pretreatment requirement is any substantive or procedural requirement, other than a national pretreatment standard, applicable to industrial users.

Private Sewer Connections to remain private refers to sewer connections constructed under the subdivision process, that connect a series of buildings to remain under common ownership through a homeowners association and are not subject to privately constructed sewer extension regulations.

Privately constructed sewer extension is a sewer extension, including pipe, pump stations and appurtenant works, constructed by an Applicant, other than the City of Gloucester, that shall be owned by the City of Gloucester at the completion of construction.

Privately Constructed Sewer Extension Applicant is a person or entity seeking a permit to construct a sewer extension for the City of Gloucester.

Privately Constructed Sewer Extensions, City Assumption of Ownership. A privately constructed sewer extension is accepted when the DPW Director or his/her designee declares in writing that the construction is complete and the extension is suitable for use and able to receive wastewater from users. This notice of acceptance shall be signed, dated and kept on file in the City Engineering Department and sent by Certified Mail to the Applicant.

Properly shredded garbage shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

Public sewer shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

Sanitary sewer shall mean a sewer which carries sewage and to which storm, surface and groundwaters are not intentionally admitted.

Sewage shall mean a combination of water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

Sewage treatment plant or wastewater treatment facility shall mean any arrangement of devices and structures used for treating sewage.

Sewerage works shall mean all facilities for collecting, pumping, treating and disposing of sewage.

Sewer shall mean a pipe or conduit for carrying sewage.

Sewer extension is an extension, including pipe and appurtenant works, of a previous sewer extension that is typically installed parallel with, and typically within, public or private rights-of-way, to which sewer connections from abutting properties are made. All sewer extensions are part of, and owned by, the City of Gloucester.

Sewer service connection shall mean the extension of the piped *connection, including pipe and appurtenant works*, used only for discharge of sewage, from a point of four (4) feet outside the foundation wall of the building *or a series of buildings under common ownership through a homeowners association or other similar instrument*, served to its junction with the sanitary or combined sewer *extension*. The term shall have the same meaning as the term, "particular sewer" in M.G.L.A. c. 83.

Significant noncompliance (SNC). An industrial user is in significant noncompliance if its violations meet one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined as those in which sixty-six (66) percent or more of all the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

(2) Technical Review Criteria (TRC) violations, defined as those in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit times the applicable TRC (TRC=1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH), or in the case of pH, when at least one-third (1/3) of all measurements taken during a six-month period are either:

a. At least one (1) standard unit greater than any applicable upper limit on pH; or

b. At least one (1) standard unit less than any applicable lower limit on pH. (For industrial users required to continuously monitor pH as a condition of their industrial user discharge permit, significant noncompliance for pH exists if the total of all excursions outside the permitted range with a duration equal to or exceeding thirty (30) minutes, totals seven (7) hours, twenty-six (26) minutes or more in any month.)

(3) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the director determines has caused, alone or in combination with other discharges, interference or pass through;

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or the environment or has resulted in the director's exercise of emergency authority to halt or prevent such a discharge;

(5) Failure to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in an enforcement order, for starting construction, completing construction or attaining final compliance;

(6) Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation or group of violations that the director determines will adversely affect the operation or implementation of the pretreatment program.

Sludge shall mean any discharge of untreated or inadequately pretreated process wastewater, industrial waste, chemicals or other liquids, resulting from the breakdown of equipment, spills, process upset, accidental or intentional discharge or emergency bypass.

Storm drain, sometimes termed "storm sewer" shall mean a sewer which carries storm and surface waters and drainage, but exclude sewage and industrial wastes, other than unpolluted cooling water.

Suspended solids shall mean solids that either float on the surface of, or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

Water course shall mean a channel in which a flow of water occurs, either continuously or intermittently.

(Ord. of 12-7-82, Art. 1; Ord. No. 28-1992, § 1, 10-13-92; Ord. No. 26-1995, § 1, 4-18-95)

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

PUBLIC HEARING #3 11/13/2007
SCP #2007-21: 40 Woodward Avenue: 5.5
Lowlands Permit

Legal Notice

CITY OF GLOUCESTER
NOTICE OF A PUBLIC HEARING

In accordance with the provisions of MGL Chapter 40A, section 11, the Gloucester City Council will hold a public hearing on **November 13, 2007** at 7PM in the Kyrouz Auditorium, City Hall relative to the following Special Council Permit Application:

APPLICANT: Scotadam Chernov

LOCATION: 40 Woodland Avenue

TYPE OF PERMIT: Lowlands - Section 5.5

PRESENTLY ZONED: R-2

Plans of the above are on file in the City Clerk's Office and may be seen any business day prior to the Public Hearing. At the Public hearing all interested persons will have the opportunity to be heard.

By Vote of the City Council
Robert D. Whynott, City Clerk

GT - 10/29, 11/5/07

**See P&D Minutes from 11/07/2007 for
report**

CITY COUNCIL
AND
CITY COUNCIL STANDING COMMITTEE
Planning & Development
Wednesday, November 7, 2007 - 7 p.m.
City Hall – Kyrouz Auditorium

Attendance: Councilor Jackie Hardy, Vice Chairperson, Councilor Michael McLeod
Also: Dan Ottenheimer, Debbie Liacos
Absent: Councilor Walter Peckham

The meeting was called to order at 7:00 p.m.

1. SCP 2007-21 – Scotadam Chernov, 40 Woodward Ave., Sec. 5.5 Lowlands
(cont from 10/24/07).

Daniel Ottenheimer, Mill River Consulting represents the applicant and stated that all abutters have been notified and that an affidavit of notification will be provided for file. Mr. Chernov lives on the upland side and bought a thin strip 35' wide of land that goes down to the river. He is proposing a wooden pier on posts with a ramp and seasonal float. It is not for intensive use. The Conservation Commission approved this with an order of conditions (*a copy will be provided for the file*).

Debbie Liacos, 41 Woodward Avenue asked how they plan to handle runoff.

Mr. Ottenheimer stated they will be installing timbers across the area to prevent erosion.

Ms. Liacos would suggest that to protect the marsh they install a gravel walkway to the pier to help with erosion and for safety reasons.

Mr. Ottenheimer agreed and would accept that as a condition.

Councilor McLeod asked if this would be constructed by hand.

Mr. Ottenheimer replied yes, it all has to be done by hand with something put in place to make sure the gravel doesn't erode.

Councilor Hardy asked about the underpinnings and will there be access from one side to the other.

Mr. Ottenheimer replied it has to be compliance with Ch. 91 requirements.

Ms. Liacos asked if there will be lighting.

Mr. Ottenheimer replied no.

Councilor Hardy stated for clarification that there will be no utilities and/or buildings on this pier and asked if boats will be moored continuously.

Ms. Liacos stated they are within 100' and would be walking to their boats.

Mr. Ottenheimer added Ch. 91 is the next step.

Ms. Liacos asked about clearance and if there are any navigational problems.

Mr. Ottenheimer stated they met with the Harbormaster who agreed this was a good location; there is a 40-50' on the other side.

Councilor McLeod asked about the study the applicant is involved with.

Mr. Ottenheimer explained that the Conservation Commission wanted removal of all the phragmites but settled for a study of the neighborhood and a mapping out of the location of all the phragmites paid for by the applicant.

Councilor Hardy asked about the time frame for construction.

Mr. Ottenheimer replied spring of 2008.

Councilor Hardy noted there was a communication from Ms. Levine, a direct abutter filed with City Clerk's office.

No one spoke in opposition.

The application meets the six special permit criteria pursuant to Sec. 1.4.2.2 as follows:

1. Social, economic, or community needs served by the proposal.

The proposed pier, ramp and float to serve the needs of the applicant who lives across Woodward Avenue at #39.

2. Traffic flow and safety.

The proposed pier, ramp and float would be accessed by foot traffic only and would pose no traffic increase.

3. Adequacy of utilities and other public services.

The proposed pier, ramp and float are not intended to be served by water, sewer or other utilities.

4. Neighborhood character and social structure.

The proposed pier, ramp and float will be constructed between two existing decks and would only be used seasonally.

5. Qualities of the natural environment.

The area of the proposed pier is currently vegetated with the invasive species phragmites; the project has received an order of conditions from the Conservation Commission.

6. Potential fiscal impact.

The project would not impose any negative fiscal impact to the neighborhood or to the City of Gloucester.

Councilor Hardy asked that the certification of notice of abutters and the order of conditions be provided for the public hearing.

Also entered into the record is the letter in support from the Shellfish Constable. (*copy of file*). She believes that the requirements under the Hatch Act has been satisfied and that the removal, filling, dredging or construction will not pose a hazard to the health or safety of the neighborhood, and will be executed so as to conserve the shellfish and other wildlife resources of the City as in accordance with section 5.5.4 or the Gloucester Zoning Ordinance. Further I believe that this proposed use is appropriate in the zone and will not have adverse effects which overbalance its beneficial effects on either the neighborhood or the City.

MOTION: On motion of Councilor Hardy, seconded by Councilor McLeod the Planning and Development Committee voted 2 in favor, 0 opposed to recommend to the full City Council the granting of a Special Council Permit to Scotadam Chernov of 40 Woodward Ave., Map 219, Lot 102, zoning classification R-2, pursuant to Sections 5.5 (Lowlands) of the Gloucester Zoning Ordinance. This recommendation carries the following conditions:

1. That the Order of Conditions issued by the Conservation Commission and dated July 23, 2007 be incorporated into this permit.
2. That the recommendations by the Shellfish Warden to the Gloucester City Council in a letter dated August 30, 2007 become conditions of this permit namely:
 - A. The floating dock must be equipped with spud poles or similar anchoring device in order to prevent scouring of the shellfish flat.
 - B. The floating dock must be equipped with stand-offs or other similar method in order to maintain the minimum 18" separation between the bottom of the floating dock and the surface of the flat as mentioned in MA DEP "A Guide to Permitting Small, Pile Supported Docks and Piers" on page #15. It should be noted that this flat has a mud substrate.

- C. Pilings for the fixed pier must be located no closer than 3' (three feet) from the upper limit of *Spartina alterniflora* (salt marsh smooth cord-grass) in order to minimize the potential for tidal scouring of the salt marsh.
 - D. The floating dock and gangway must be removed seasonally from October 15th to May 15th and stored in an upland location.
 - E. Construction materials must be non-toxic and specified to the Conservation Commission before the commencement of work.
3. That an erosion control device be placed and maintained in the general area of the gravel walkway leading to the pier.
2. GZO, Sec. 3.2.1 Use Schedule on multi-families in the Central Business District (CCM 10/30/07).

MOTION: On motion of Councilor Hardy, seconded by Councilor McLeod the Planning and Development Committee voted 2 in favor, 0 opposed to refer the GZO, Sec. 3.2.1 Use Schedule on multi-families in the Central Business District to the Zoning Ordinance Review Task Force (ZORTF) for further review as to the intent of the ordinance.

3. Other Business:

- a. Status report on a condition of the SCP for CES Design.

This matter was continued to 11/14/07.

It was moved and seconded to adjourn the meeting at 7:30 p.m.

Respectfully submitted,

June Budrow
Clerk of Committees

PUBLIC HEARING #4 11/13/2007
SCP #2007-22: 16 Cunningham Road: 1.4.2.2,
2.3.1 Construct a 5 Family Dwelling

Legal Notice

CITY OF GLOUCESTER
NOTICE OF A PUBLIC HEARING

In accordance with the provisions of MGL Chapter 40A, section 11, the Gloucester City Council will hold a public hearing on **November 13, 2007** at 7PM in the Kyrouz Auditorium, City Hall relative to the following Special Council Permit Application:

APPLICANT: Priscilla D. and Robert G. Herdman

LOCATION: 16 Cunningham Road (26-28 Marsh Street)

TYPE OF PERMIT: Multi Family Dwelling under Section 1.4.2.2 and 2.3.1

PRESENTLY ZONED: R-3

Plans of the above are on file in the City Clerk's Office and may be seen any business day prior to the Public Hearing. At the Public hearing all interested persons will have the opportunity to be heard.

By Vote of the City Council
Robert D. Whyntott, City Clerk

GT - 10/29, 11/5/07

P&D 10/25/2007

MOTION: On motion of Councilor Hardy, seconded by Councilor McLeod the Planning and Development Committee voted 3 in favor, 0 opposed to grant a SCP to Priscilla D. and Robert G. Herdman, 16 Cunningham Road (26-28 Marsh Street), Map 87, Lot 1, 22, 23, zoning classification R-3 for a five-family multifamily dwelling pursuant to Section 2.3.1 of the Gloucester Zoning Ordinance with the condition that the dumpster will be screened by vegetation or fencing and **FURTHER TO ADVERTISE FOR PUBLIC HEARING.**

3. SCP 2007-21 – Scotadam Chernov, 40 Woodward Ave, Sec. 5.5 Lowlands

MOTION: On motion of Councilor Hardy, seconded by Councilor McLeod the Planning and Development Committee voted 3 in favor, 0 opposed to continue the SCP for Scotadam Chernov, 40 Woodward Avenue to 11/7/07 per request of the applicant.

4. SCP 2007-22 – Priscilla and Robert Herdman, 16 Cunningham Rd. (26-28 Marsh St.), Sec. 2.31. (construct 5 family dwelling)

Attorney Robert Coakley, representing the applicants stated the property is located on Cunningham Road with frontage on Marsh Street and is located at the end of the intersection of both streets adjacent to 128. The property consists of three lots where two families can be constructed as a matter of right for a total of six units, but that wasn't found to be the best use of the site. The Herdman's wanted a better use for the site so they referred to Chris McCarthy who has done a lot of development in the city and came up with a townhouse type housing to preserve open space. In order to be granted relief from the ZBA for setbacks the applicant must prove a hardship, which they claimed to be the configuration of the lot. The ZBA felt this could fit on the site if it was reduced in scope. The applicant heeded that suggestion and withdrew the plan. We reduced the scope of the project to 5 units that fit within the criteria and didn't require a variance. Hence, we are before the City Council for 5 units. This is an older neighborhood and we are proposing modest sized units of 1,000 to 1,100 sq. ft. with a slight crawlspace. Where we don't have the cellar space, the third floor is designed as a storage area. We are 65' from Marsh Street and 45' back from Cunningham, so are not close to any of the property lines. Parking is proposed in front of the building and we are proposing to screen and fence that area to provide a buffer zone between that and Marsh Street. The applicant has gone to the Conservation Commission because there is a buffer zone and a tidal zone involved. This doesn't require a lowlands permit because the building is approximately at the 12' point. The road will be improved to the standards delineated by Conservation Commission as stated in the order of conditions, along with a storm water management plan approved by Engineering. The applicant will be installing a new type of detention basin which the Conservation Commission is anxious to study. These will be a condo form of ownership, modestly priced at \$245,000 to \$295,000.

The application meets the six special permit criteria pursuant to Sec. 1.4.2.2(e) of the Gloucester Zoning Ordinance as follows:

1. Social, Economic, or Community needs served by the proposal: Applicants propose five (5) residential dwelling units in a "mixed" neighborhood consisting of older residential homes on small lots, retail, a cemetery, and a marina. The proposal cleans up a tire, dis- and mis-used lot and is a "smart growth" proposal. The proposal will provide housing to a niche group of people who want to be near their boats.
2. Traffic flow and safety: The roadway between Marsh Street and the paved portion of Cunningham Road will be paved. Applicants retained a traffic consultant who has concluded, "...it is expected the project will have minimal impact on the local roadway system..." Applicants will perform recommended trim work to clear vegetation that could affect site lines and will install low-growth type of vegetation in accordance with the Study's recommendations.
3. Adequacy of utilities and other public services: Utilities for the proposed units are adequate. There is established water and sewer to the property.
4. Neighborhood character and social structure: Applicants propose a townhouse-style five-unit development which will compliment the existing mixed-use neighborhood. The proposed structure will be visually pleasing and proportioned to the lot and will enhance

and improve a degraded, mis-used lot adjacent to the highway. With permission from the City, applicant will install plantings along Marsh Street. Proposed parking will be located in an area largely hidden from view.

5. Qualities of the natural environment: Applicant has worked extensively with the Gloucester Conservation Commission on this proposal to preserve and enhance the natural environment of the area. See schedule of attachments. *(copy in file)*
6. Potential fiscal impact: Five brand new residential dwellings will provide residential tax income to the City. Units are proposed to be 1,000 sq. ft. range appealing to a niche market of folks who wish to live near their boats. It is unlikely that young families with school-age children would be inclined to live in this development; thus there would be no impact upon public schools.

Speaking in opposition. No one spoke in opposition.

Questions. Councilor Hardy asked for a copy of the traffic study.

Attorney Coakley provided copies for the committee members and stated it was formally submitted to the Clerk's office on October 7th. He also included an aerial photograph showing the site and noted the site was used in the 1990's as a staging area for the North Gloucester sewer project.

Councilor Hardy asked if they plan on making improvements to Cunningham Rd.

Chris McCarthy – 80 Dennison Street replied yes, from the end of Cunningham all the way to Marsh where it will be flared out to catch some of the water.

Councilor Hardy asked if they plan on cantering the road to address road erosion.

Mr. McCarthy replied yes, it will pick up drainage on the east side of Marsh Street and carry the water onto Cunningham Road, where it will enter the stone swale on the southeast side of Cunningham which will slow down the force of the water before it enters the wetland area.

Councilor Hardy asked who owns the 40' right of way.

Mr. McCarthy replied the Herdmans.

Councilor Hardy noted for the record a letter in opposition from William Ellis *(copy in file)*.

She also noted there is a bit of trash accumulated on the corner and suggested the applicant work with the neighbor to get that cleaned up. She also stated that the traffic noise from 128 is unbelievable and asked if they will be leaving the tall trees.

Mr. McCarthy stated they would work to get that area cleaned up. He stated most of those trees are owned by the state; some are 40' tall and screen out some of the sounds from the highway.

We also have restrictions from the Conservation Commission on where we can work.

Councilor Hardy asked if it will be one-way traffic.

Mr. McCarthy replied yes, it will be one-way traffic with two parking spots per unit on the Marsh Street side.

Councilor Hardy asked if there would be any parking of boats allowed.

Mr. McCarthy stated there is a limited amount of parking so there won't be room to park boats and that will probably be part of the legal documents of the condo association.

Councilor Hardy noted that Mr. Ellis questioned the cutting back of vegetation in his letter to the committee.

Mr. McCarthy stated Mr. Ellis is referring to the vegetation between his property and this.

There are some trees in there – a willow tree and other scrub trees and stated only the part of the trees that come over the right of way will be trimmed up. There will be no excessive cutting back of vegetation on that side.

Councilor Hardy asked how they plan on addressing the overage of parking when that happens.

Attorney Coakley presented the Assessor's plan showing the results of the 128 taking. The parking referred to is actually on City of Gloucester property.

Councilor Hardy asked if the waste water plan has been filed plan with Engineering.

Attorney Coakley stated that was filed prior to going to Conservation Commission and there is a letter in the packet from Mike Hale addressing that.

Mr. McCarthy stated with regards to the storm water management, we could have used a more traditional drywell on this site but that would have taken up most of the area for plantings. In a meeting with John Judd, Nancy Ryder and Mike Hale we talked about building a man made wetland area using a few treatment devices to treat the water and disperse it into the tidal area after being cleaned. The Conservation Commission liked this because they can monitor it to see how it works and see if it can be used on future projects, mixing rain water with tidal flow.

Councilor Hardy asked how deep the detention basin will be.

Mr. McCarthy stated the bottom of the basin is at elevation 6. It would be a man made wetland that goes down to the tidal area. There will be a fence between the project and the wetland area and he doesn't feel it will be a hazard.

Councilor Hardy asked if the utilities will be above or underground.

Mr. McCarthy feels underground is the best way to go.

Councilor Peckham asked if the applicant is agreeable with all the conditions recommended in the letter from the City Engineer and Conservation Commission Agent.

Mr. McCarthy replied yes.

Councilor McLeod asked if the structure will be a pre-fab.

Mr. McCarthy replied yes, it will be modular in order to keep them affordable.

Councilor McLeod asked what the siding will be.

Mr. McCarthy replied Cedar Impressions, an upscale in vinyl with texture.

Councilor McLeod asked if there was a building on this property in the 1930's.

Mr. McCarthy replied yes, it was taken by tax title years ago.

Councilor McLeod asked if the strip of land shown on the plan is the Hopkin's property.

Attorney Coakley replied yes, they own the last house on the right side, so they own two lots there.

Councilor McLeod asked is the crawl space the best way to keep within the height.

Mr. McCarthy replied yes, due to the water table in the area.

Councilor Hardy asked if they plan on having a dumpster on the property and if they do she would like to condition that it be blocked by either a fence or by vegetation.

Mr. McCarthy stated that can be a condition proposed.

Councilor Hardy asked for a list of plantings.

Mr. McCarthy stated we have to review the detention area prior to the issuance of a building permit.

Councilor Peckham stated the proposed parking will be in an area potentially hidden from view and asked is that an area where the dumpsters can go too.

Mr. McCarthy stated we will be looking at some other options besides a dumpster, but if we do have a dumpster we could put it closest to the highway.

Councilor Hardy asked if there a plan for snow removal.

Mr. McCarthy anticipates it going to the west end of the building.

Councilor McLeod stated there is no fence shown on the state side of the street.

Mr. McCarthy stated there is a small fence on the other side but not on the state side of the street.

Councilor Peckham asked when they plan to start construction.

Mr. McCarthy replied next summer or fall but they still have to go through the Ch. 91 process.

Councilor Hardy asked if there would be sufficient parking for visitors to the 5 units.

Mr. McCarthy stated we left two spaces per unit and if there is an overflow, they will probably park on the side of Cunningham Road.

Councilor Hardy would hope people living here would use Cunningham Road and not Marsh Street.

MOTION: On motion of Councilor Hardy, seconded by Councilor Peckham the Planning and Development Committee voted 2 in favor, 1 opposed (McLeod) to request the Traffic Commission conduct a traffic study of the intersection of Washington and Marsh Streets with the possibility of placing a "No parking sign" in front of the Variety Store at the intersection within 20' of that intersection. MOTION CARRIES.

Mr. McCarthy is hoping when this is hot topped people will want to use it.

Councilor Hardy is concerned with the view coming into and leaving the city and is hoping that the architecture and the placement of this will be pleasing to the eye both coming and going. She is concerned about placement of the dumpster so that will always be part of a restriction on the home owner's association and she be making that part of any motion forthcoming.

Attorney Coakley stated it will be a condo association with the requirement of an as built site plan showing a designated area for placement of a dumpster and the Council can impose a condition within the association documents to address the association's responsibility to hire a private trash remover and keep the site clean.

Councilor McLeod realizes this was property that was taken and feels this will be a welcomed addition and will be supporting this tonight.

Councilor Hardy spoke in support of the application and feels the six special permit criteria has been met.

Councilor Peckham also spoke in support and agrees this will be a good project for the neighborhood.

MOTION: On motion of Councilor Hardy, seconded by Councilor McLeod the Planning and Development Committee voted 3 in favor, 0 opposed to grant a SCP to Priscilla D. and Robert G. Herdman, 16 Cunningham Road (26-28 Marsh Street), Map 87, Lot 1, 22, 23, zoning classification R-3 for a five-family multifamily dwelling pursuant to Section 2.3.1 of the Gloucester Zoning Ordinance with the condition that the dumpster will be screened by vegetation or fencing and FURTHER TO ADVERTISE FOR PUBLIC HEARING.

5. Carrigan Court – Petition to accept as a public way.

Barry Clifford, 3 Carrigan Court spoke in support of accepting Carrigan Court as a public way. The association represents all six homes on Carrigan Court and a petition was signed and submitted to the city. Carrigan Ct is a small cul-de-sac estimated less than 150 yards long, off of Holly Street. It was established in 2001 and completed in 2003. The street is in pristine condition and is finished asphalt paving with no pot holes or patches; no repair work has been done on the road itself and there is appropriate drainage, paved sidewalks etc. The landscape circle in the middle of the cul-de-sac is immaculately maintained by the residents and they would like to continue to maintain that. He feels Carrigan Court would serve as a fine model for future acceptances of private roads as public ways.

Joe Parisi, DPW Director submitted a memo pursuant to Ch. 21-1 requiring that the committee order for acceptance is accompanied by a statement signed by the Mayor and Auditor stating there are sufficient funds. The letter states that Carrigan Court as a public way has been inspected and reviewed by the DPW Director, Fire Chief McKay and Mike Hale of Engineering who found no adverse impacts. The letter submitted by Mr. Parisi does describe the utilities that are there and that the sewer line is a gravity sewer line. Sewer flows down towards Autumn Lane and down towards Washington Street which is preferably to a pressure system. There are some easements for the water line and the drainage line. There is one catch basin at end of the cul-de-sac that runs through private property and ties into an open swale with a drain pipe leading out towards Autumn Lane that then connects into an existing drain line. We can keep that line clear of clogs but we don't want to be responsible for the maintenance of that detention basin which is on private property. We can maintain the lines underground and water and sewer utilities. Another

PUBLIC HEARING #5 11/13/2007
RZ #2007-01: 73 Concord Street- Map 234, lot 39: R-2
to EB

Legal Notice

CITY OF GLOUCESTER
NOTICE OF PUBLIC HEARING

In accordance with MGL Chapter 40A, Section 5, and the Gloucester Zoning Ordinance, Section 1.5, the Gloucester City Council will hold a public hearing on Tuesday, November 13, 2007 at 7:00 p.m. in the Kyrouz Auditorium, City Hall, Dale Avenue to consider the following application to rezone a parcel of land:

Amend the Gloucester Zoning Map and corresponding zoning districts in the Zoning Ordinance by rezoning one parcel in the R-2 Low/Medium Density Residential District at 73 Concord Street, shown on Assessors Map 234, Lot 39 to EB Extensive Business

A copy of the proposed rezoning plan is available for viewing at the **Community Development Office**, 3 Pond Road, and at the **City Clerk's Office**, 9 Dale Avenue.

At the Public Hearing, all interested persons will have the opportunity to be heard.

By Vote of the City Council
Robert D. Whynott, City Clerk
GT - 10/29, 11/5/07

Legal Notice

NOTICE OF PUBLIC HEARING

The Gloucester City Council will hold a public hearing on **TUESDAY, November 13, 2007** at 7:00 p.m. in the Fred J. Kyrouz Auditorium, City Hall relative to the following amendments to Gloucester Code of Ordinances:

• **Chapter 22, Section 22-285** entitled, "Parking of trucks, trailer trucks and other commercial vehicles: subsection (d) "Permitted Parking of trailer trucks" of the Gloucester Code of Ordinances be amended by **DELETING** "Harbor Loop, easterly side, spaces shall be provided for the parking of 2 trailer trucks from a point beginning 340 feet from its intersection with Rogers Street in a southerly direction" **AND DELETING** "Harbor Loop westerly side, from a point 360 feet from its intersection with Rogers Street in a southerly direction for a distance of 420 feet at all times" **AND BY ADDING** "Harbor Loop easterly side, space shall be provided for the parking of ONE trailer truck from a point beginning 392 feet from its intersection with Rogers Street in a southerly direction for 142 feet" **AND BY ADDING** "Harbor Loop westerly side, from a point 265 feet from its intersection with Rogers Street in a southerly direction for a distance of 200 feet at all times."

O&A 10/15/2007

a. Order 07-20 – Sec. 22-285 – Harbor Loop

The Traffic Commission made a positive recommendation at its Site Visit meeting of 7/24/07 with the appropriate measurements so noted.

NOTE: Traffic Commission considers the easterly side to be towards the fish auction and the westerly side to be towards the Building Center. The southerly side is towards the harbor and the north is towards the FHL House. All measurements were taken on the curb of the sidewalk closest to the Fitz H. Lane side of Harbor Loop.

MOTION: On motion of Councilor Tobey, seconded by Councilor Foote the Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend to the full City Council that Chapter 22, Section 22-285 entitled, "Parking of trucks, trailer trucks and other commercial vehicles: subsection (d) "Permitted Parking of trailer trucks" of the Gloucester Code of Ordinances be amended by **DELETING** "Harbor Loop, easterly side, spaces shall be provided for the parking of 2 trailer trucks from a point beginning 340 feet from its intersection with Rogers Street in a southerly direction" **AND DELETING** "Harbor Loop westerly side, from a point 360 feet from its intersection with Rogers Street in a southerly direction for a distance of 420 feet at all times" **AND BY ADDING** "Harbor Loop easterly side, space shall be provided for the parking of ONE trailer truck from a point beginning 392 feet from its intersection with Rogers Street in a southerly direction for 142 feet" **AND BY ADDING** "Harbor Loop westerly side, from a point 265 feet from its intersection with Rogers Street in a southerly direction for a distance of 200 feet at all times." **AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.**

PUBLIC HEARING #7 11/13/2007
Council Order #2007-24- Amend 22-270 "Kondelin Road"

Legal Notice

NOTICE OF PUBLIC HEARING

The Gloucester City Council will hold a public hearing on **TUESDAY, November 13, 2007** at 7:00 p.m. in the Fred J. Kyrouz Auditorium, City Hall relative to the following amendments to Gloucester Code of Ordinances:

1. **Chapter 22, Section 22-270**

• **Chapter 22, Section 22-270** entitled "Parking Prohibited at all times" and **Chapter 22, Section 22-291** entitled "Tow Away Zone" of the Gloucester Code of Ordinances be amended by **DELETING** Kondelin Road, both sides from its intersection with Magnolia Avenue for its entire length from 7:00 P.M. to 6:00 A.M. and by **ADDING** Kondelin Road, both sides from its intersection with Magnolia Avenue for its entire length from 10:00 P.M. to 4:00 A.M.

O&A 10/15/2007

a. Order 07-24 – Sec. 22-270 - Kondelin Road

The Traffic Commission made a positive recommendation at its meeting of September 20, 2007.

MOTION: On motion of Councilor Foote, seconded by Councilor Hardy the Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend to the full City Council that Chapter 22, Section 22-270 entitled "Parking Prohibited at all times" and Chapter 22, Section 22-291 entitled "Tow Away Zone" of the Gloucester Code of Ordinances be amended by **DELETING** Kondelin Road, both sides from its intersection with Magnolia Avenue for its entire length from 7:00 P.M. to 6:00 A.M. and by **ADDING** Kondelin Road, both sides from its intersection with Magnolia Avenue for its entire length from 10:00 P.M. to 4:00 A.M. **AND FURTHER TO ADVERTISE FOR PUBLIC HEARING**

PUBLIC HEARING #8 11/13/2007
Council Order #2007-30- Amend 22-269 "Riggs Point Road"

Legal Notice

NOTICE OF PUBLIC HEARING

The Gloucester City Council will hold a public hearing on **TUESDAY, November 13, 2007** at 7:00 p.m. in the Fred J. Kyrouz Auditorium, City Hall relative to the following amendments to Gloucester Code of Ordinances:

- **Chapter 22, Section 22-269, entitled "Stop Intersections", of the Gloucester Code of Ordinances by amended by ADDING "Riggs Point Road at its intersection with Vine Street"**

O&A 10/15/2007

a. Order 07-30 – Sec. 22-269 – Riggs Point Road
Councilor Hardy noted this order resulted from a request of the neighbors.

The Traffic Commission made a positive recommendation at its meeting of July 19, 2007.

MOTION: On motion of Councilor Foote, seconded by Councilor Hardy the Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend to the full City Council that Chapter 22, Section 22-269, entitled "Stop Intersections", of the Gloucester Code of Ordinances by amended by ADDING "Riggs Point Road at its intersection with Vine Street", AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.

CITY COUNCIL
AND
CITY COUNCIL STANDING COMMITTEE
Planning & Development
Wednesday, November 7, 2007 - 7 p.m.
City Hall – Kyrouz Auditorium

Attendance: Councilor Jackie Hardy, Vice Chairperson, Councilor Michael McLeod
Also: Dan Ottenheimer, Debbie Liacos
Absent: Councilor Walter Peckham

The meeting was called to order at 7:00 p.m.

1. SCP 2007-21 – Scotadam Chernov, 40 Woodward Ave., Sec. 5.5 Lowlands
(cont from 10/24/07).

Daniel Ottenheimer, Mill River Consulting represents the applicant and stated that all abutters have been notified and that an affidavit of notification will be provided for file. Mr. Chernov lives on the upland side and bought a thin strip 35' wide of land that goes down to the river. He is proposing a wooden pier on posts with a ramp and seasonal float. It is not for intensive use. The Conservation Commission approved this with an order of conditions (*a copy will be provided for the file*).

Debbie Liacos, 41 Woodward Avenue asked how they plan to handle runoff.

Mr. Ottenheimer stated they will be installing timbers across the area to prevent erosion.

Ms. Liacos would suggest that to protect the marsh they install a gravel walkway to the pier to help with erosion and for safety reasons.

Mr. Ottenheimer agreed and would accept that as a condition.

Councilor McLeod asked if this would be constructed by hand.

Mr. Ottenheimer replied yes, it all has to be done by hand with something put in place to make sure the gravel doesn't erode.

Councilor Hardy asked about the underpinnings and will there be access from one side to the other.

Mr. Ottenheimer replied it has to be compliance with Ch. 91 requirements.

Ms. Liacos asked if there will be lighting.

Mr. Ottenheimer replied no.

Councilor Hardy stated for clarification that there will be no utilities and/or buildings on this pier and asked if boats will be moored continuously.

Ms. Liacos stated they are within 100' and would be walking to their boats.

Mr. Ottenheimer added Ch. 91 is the next step.

Ms. Liacos asked about clearance and if there are any navigational problems.

Mr. Ottenheimer stated they met with the Harbormaster who agreed this was a good location; there is a 40-50' on the other side.

Councilor McLeod asked about the study the applicant is involved with.

Mr. Ottenheimer explained that the Conservation Commission wanted removal of all the phragmites but settled for a study of the neighborhood and a mapping out of the location of all the phragmites paid for by the applicant.

Councilor Hardy asked about the time frame for construction.

Mr. Ottenheimer replied spring of 2008.

Councilor Hardy noted there was a communication from Ms. Levine, a direct abutter filed with City Clerk's office.

No one spoke in opposition.

The application meets the six special permit criteria pursuant to Sec. 1.4.2.2 as follows:

1. Social, economic, or community needs served by the proposal.

The proposed pier, ramp and float to serve the needs of the applicant who lives across Woodward Avenue at #39.

2. Traffic flow and safety.

The proposed pier, ramp and float would be accessed by foot traffic only and would pose no traffic increase.

3. Adequacy of utilities and other public services.

The proposed pier, ramp and float are not intended to be served by water, sewer or other utilities.

4. Neighborhood character and social structure.

The proposed pier, ramp and float will be constructed between two existing decks and would only be used seasonally.

5. Qualities of the natural environment.

The area of the proposed pier is currently vegetated with the invasive species phragmites; the project has received an order of conditions from the Conservation Commission.

6. Potential fiscal impact.

The project would not impose any negative fiscal impact to the neighborhood or to the City of Gloucester.

Councilor Hardy asked that the certification of notice of abutters and the order of conditions be provided for the public hearing.

Also entered into the record is the letter in support from the Shellfish Constable. (*copy of file*). She believes that the requirements under the Hatch Act has been satisfied and that the removal, filling, dredging or construction will not pose a hazard to the health or safety of the neighborhood, and will be executed so as to conserve the shellfish and other wildlife resources of the City as in accordance with section 5.5.4 or the Gloucester Zoning Ordinance. Further I believe that this proposed use is appropriate in the zone and will not have adverse effects which overbalance its beneficial effects on either the neighborhood or the City.

MOTION: On motion of Councilor Hardy, seconded by Councilor McLeod the Planning and Development Committee voted 2 in favor, 0 opposed to recommend to the full City Council the granting of a Special Council Permit to Scotadam Chernov of 40 Woodward Ave., Map 219, Lot 102, zoning classification R-2, pursuant to Sections 5.5 (Lowlands) of the Gloucester Zoning Ordinance. This recommendation carries the following conditions:

1. That the Order of Conditions issued by the Conservation Commission and dated July 23, 2007 be incorporated into this permit.
2. That the recommendations by the Shellfish Warden to the Gloucester City Council in a letter dated August 30, 2007 become conditions of this permit namely:
 - A. The floating dock must be equipped with spud poles or similar anchoring device in order to prevent scouring of the shellfish flat.
 - B. The floating dock must be equipped with stand-offs or other similar method in order to maintain the minimum 18" separation between the bottom of the floating dock and the surface of the flat as mentioned in MA DEP "A Guide to Permitting Small, Pile Supported Docks and Piers" on page #15. It should be noted that this flat has a mud substrate.

- C. Pilings for the fixed pier must be located no closer than 3' (three feet) from the upper limit of *Spartina alterniflora* (salt marsh smooth cord-grass) in order to minimize the potential for tidal scouring of the salt marsh.
 - D. The floating dock and gangway must be removed seasonally from October 15th to May 15th and stored in an upland location.
 - E. Construction materials must be non-toxic and specified to the Conservation Commission before the commencement of work.
3. That an erosion control device be placed and maintained in the general area of the gravel walkway leading to the pier.
2. GZO, Sec. 3.2.1 Use Schedule on multi-families in the Central Business District (CCM 10/30/07).

MOTION: On motion of Councilor Hardy, seconded by Councilor McLeod the Planning and Development Committee voted 2 in favor, 0 opposed to refer the GZO, Sec. 3.2.1 Use Schedule on multi-families in the Central Business District to the Zoning Ordinance Review Task Force (ZORTF) for further review as to the intent of the ordinance.

3. Other Business:

- a. Status report on a condition of the SCP for CES Design.
This matter was continued to 11/14/07.

It was moved and seconded to adjourn the meeting at 7:30 p.m.

Respectfully submitted,

June Budrow
Clerk of Committees

CITY COUNCIL
AND
CITY COUNCIL STANDING COMMITTEE
Special Ordinance & Administration
Thursday, November 8, 2007 – 6:00 p.m.
Third Floor Conference Room – City Hall

Attendance: Councilor Bruce Tobey, Chairperson, Councilor Sefatia A. Romeo, Vice Chairperson

Also: Steve Magoon, Joe Parisi, Linda Lowe, Mary Ann McCormick, Councilor Elect Devlin, Mary Jo Montagnino

Absent: Councilor Gus Foote

The meeting was called to order at 6:15 p.m.

1. **Way Road/ Page Street Infrastructure Issues** (*cont from 10/23/07*)
Way Road/Page Street infrastructure issues continued to 11/29/07.

2. **Betterment proposal.** (*cont. from 9/24/07*)

Steve Magoon, CAO stated in order for the city to be able to provide a contribution, the city should be in a situation to afford it; that it is a project not being put forward as optional as opposed to a real sewer issue; that it is consistent with the facilities master plan; and is mandated by the state of federal government.

Councilor Romeo asked what we are doing with West Gloucester.

Mr. Magoon stated it is not a federal or state mandate that we provide sewer to West Gloucester. Unless we got to a position where we were under all four of those conditions we wouldn't be providing the city contribution.

Councilor Romeo asked for an explanation of why and how a city would make a contribution.

Linda Lowe, General Counsel stated A-D is treated as a check list and all must be true.

Councilor Romeo asked that be restated under D.

Mr. Magoon agreed to amend the language in the last paragraph to insert "if A through D are met then..."

Councilor Tobey asked for the current percentage of the general fund dedicated to debt service.

Mr. Magoon replied currently it is about 10% (\$9 million). In talking to bond rating agencies that is a concern and this provides a good objective measure.

Councilor Tobey stated it has been suggested that under C. "...environmental benefits..." is redundant because it is assumed by D and would be subsumed by D. It would have to be prefaced on a finding that there was a clear environmental problem that could only be remedied by sewer.

Mr. Magoon would assume if D were in effect that C would have been part and parcel of that. He noted that Attorney Lowe raised the issued that there may be some situations where that may not be the case.

Attorney Lowe feels C should stay in there. Assuming when you have state and federal orders it won't always be because it is resolving neighborhood septic systems; there may be broader environmental concerns.

Councilor Tobey stated it catches the concept that sewers are not a right but a remedy.

Mary Jo Montagnino, Way Road stated in terms of A the percentage is now around 10%. She asked how long it has been since we have been beyond 8% and is that a foreseeable goal.

Mr. Magoon replied he feels it is foreseeable but since he has been dealing with the budget it hasn't been at 8%. It is a good objective measure and he noted that within local governments' debt service and the ability to borrow for capital projects can vary substantially.

MOTION: On motion of Councilor Tobey, seconded by Councilor Romeo the Ordinances and Administration Committee voted 2 in favor, 0 opposed to recommend to the full City Council to AMEND Chapter 23, "Utilities", Section 23-24(a)(1), entitled "Sewer Betterment assessments" of the Gloucester Code of Ordinances by DELETING existing language (full text in Clerks office) and ADDING the following language:

The City Council shall only approve sewer betterments with a City contribution if all the following conditions have been met:

- A. The City's debt service expenditures, as documented to the City Council by the City Treasurer, do not exceed 8% of its general fund revenue as indicated in the currently adopted budget.**
- B. The project is consistent with the City's Facilities Master Plan as adopted by the City Council.**
- C. The project provides a clear environmental benefit and resolves existing neighborhood-wide failed septic systems which have no other feasible resolution.**
- D. The project is required under a State or Federal Mandate through administrative or court action.**

If A through D are met a City contribution is to be made, pursuant to MGL c. 83, §18 and §23, the City share shall not exceed 25% of the total project costs up to and not to exceed the value of \$6,000 per residential dwelling unit and FURTHER TO ADVERTISE FOR PUBLIC HEARING.

It was moved and seconded to adjourn the meeting at 6:35 p.m.

Respectfully submitted,

June Budrow
Clerk of Committees