

CITY COUNCIL STANDING COMMITTEE
Planning & Development
Wednesday, September 7, 2011 – 6:00 p.m.
1st Fl. Council Committee Rm. – City Hall
-MINUTES-

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

Also Present: Councilor Hardy, Mayor Carolyn Kirk; Councilor McGeary, Councilor Curcuru; Jim Duggan; Sarah Garcia; Gregg Cademartori; Gary Johnstone; Cate Banks; Jeff Towne; Suzanne Egan; Kenny Costa; Rick Noonan

The meeting was called to order at 6:05 p.m. Items were taken out of order. There was a quorum of the City Council.

1. Continued Business (all continued from 08/17/11):

A) Memorandum from Engineering Department re: proposed street naming for Pantry Way

This matter is tabled by the Committee until the City Engineer returns information to the Committee. At that time they would take the matter up again.

B) SCP2011-005: Dory Road #11, GZO §5.22 Commercial Land-Based Wind Energy Conversion Facilities

This matter is continued to September 21, 2011.

C) 2011-032 (Verga/Hardy) Charter §9-7 Advisory question for November ballot re: Reuse Fuller School

Councilor Verga explained the Council had a joint meeting with the School Committee on August 24th with a lot of push back from the School Committee and Council members that this is premature; which he wholeheartedly disagreed in particular because of the momentum of the Mayor's plan with Mass Development to reuse Fuller School for other purposes. While some felt the cart was being "put before the horse," the Councilor stated, "The horse has left the barn." There was a request made by Councilor Hardy at the joint meeting who had asked the Mayor about adding on to the Mass Development proposal the component about reusing Fuller as municipal office space. **Councilor Verga** then read the following email dated September 6, 2011 from Mayor Carolyn Kirk regarding the Mass Development Addendum with regard to the Fuller School as follows:

"Councilor: I did make the inquiry to the VP of Community Development at MassDev and spoke with her last week. Couple of takeaways:

- 1. The project is on schedule to be completed towards the end of Oct. / early Nov. with report for public release then on the scenarios. They would like to present to a joint meeting of the City Council and School Committee as well but this would be later in Nov. or early Dec. The wrap up to the project is an appraisal of the property, and they want to present when everything has been done. They cannot do an effective appraisal without the scenarios.*
- 2. It is too late to submit a change order. The project is tight as it is, and we have already reduced scope to cut out the re-use of Central Fire Station and the Police Station if ever they were to become vacant.*
- 3. As to the nature of the change order request - to look at the Fuller site as strictly a re-use for municipal purposes (and re-use of City Hall per Councilor Curcuru's request) - she explained that this is outside the mission of MassDev. They only engage when there is the potential for private re-development of a site.*

We'll keep the Council updated as to progress.

*Regards,
Carolyn Kirk
Mayor"*

Councilor Verga stated after reading the Mayor's email, he remained insistent they go forward with the question to find out from the public which direction they want to go. The decision has been made, and they are about to undertake, should they undertake it, the biggest project the City has seen with the largest scope whether it is the downtown campus or the combined Fuller School municipal site, done in decades. He then offered the following revised language for the Ballot Question which he felt was a work in progress. They have until September 27th which is a deadline imposed by the City Clerk but in actuality they have until October 5th:

“Summary: Currently City offices are located at City Hall, Pond Road, miscellaneous other locations, as well as the school administration at the Fuller School site. The Fuller site is currently under the control of the Gloucester School Department.

Discussions have begun about possibly consolidating these functions to one general area in downtown Gloucester or onto one location at the Fuller School site.

Cost estimates for both scenarios are similar and in the \$6 million to \$8 million range.

Question: If the Gloucester School Committee is to declare the Fuller School site surplus, which option should the Administration and the City Council focus its energy on? Please select one:

1. A downtown campus which may include renovation and expansion of City Hall, renovation of Central Fire Station into office space and potential leasing of additional space downtown?
2. An “under one roof” approach centered at the Fuller School site, and find an alternative public-related use for City Hall?”

Councilor Verga stated he thought it premature to take a vote. **Councilor Ciolino** had many concerns but noted the summary regarding the sentence regarding the cost estimates for both scenarios of \$6-\$8 million wanting to know where the numbers came from and what the actual number is to fix the City Hall alone. He felt this needed to be changed. He was also concerned about Item #1 with the “potential leasing of additional space downtown”. There will be potentially an empty courthouse and Central Station and felt that it was misleading. They're putting figures in this. **Councilor Verga** noted that everything he put into the ballot question came directly from the Facilities Report that took 18 months to put together by a committee comprised of the Mayor's staff. These are actual statements and cost estimates from that report, the \$6-\$8 million and the potential leasing of space all came from the report as well. **Councilor Verga** noted the Facilities Report was done by a committee which **Councilor Verga** was a part of and that the Development Director, the Planning Director, the DPW Operations Manager, the Building Inspector, Jason Grow, former City Councilor, and himself, then on the School Committee, and his brother, Nick Verga who was a court officer at the Gloucester District Court and members for the public. He noted the Facilities Report was distributed and he contended was apparently ignored. They were told they would not take a vote. They put together a report with two options presented to two poorly attended listening posts. This has been a year since they last met. This is something that the City has as two options. They both assume the Fire/Police Station is built and that Central Station is empty. **Councilor Ciolino** stated the Superintendent and the School Committee are not going to relinquish the school nor is the Administration. He didn't understand why they are pushing this forward. Maybe two years from now with the resolving of the charter school, etc., that is the time to do it. **Councilor Verga** expressed that regardless of what the School Committee says, the Mass Development report is for a use of Fuller School; he remained astounded by the push back on a non-binding question. **Councilor Ciolino** stated just because the report is being done by Mass Development doesn't mean they have to do anything with it. **Councilor Whynott** stated this question is not premature; it is to get it in front of the public. He didn't want to see the Fuller School become the “I4-C2 of the north”. Those numbers were put up by Sarah Garcia. It would cost more to convert the buildings downtown, exorbitant. Where would there be parking. It is very difficult to rehabilitate City Hall because it is historical. It is important and is a discussion. It is a non-binding question which opens up a dialog. There is a move to sell the Fuller School. The City has a history of losing money by selling schools. He would like to see everyone in one building that is handicapped accessible. There is much that can be done with City Hall, but it is not an office building. He would not change his mind. **Councilor McGeary** thought this is premature and understood his colleague's concern. If a vote were taken, he felt it is an expression of opinion. If the voters were to say Fuller should be City offices; and if they decided it was slightly more expensive to keep the campus downtown, now they have the burden of voters having expressed purely a hypothetical a direction. He was uncomfortable to make it

more complex. The Mayor has hired the consultants. In the end until it is declared surplus, then they can start looking at highest and best use. [This ballot question] could cloud the discussion. He would not be able to support this non-binding question on the ballot. **Councilor Whynott** didn't understand why this ballot question would cloud the question any more than what the Mayor is doing now. He reiterated his believe it was not premature. **Councilor Hardy** stated it is just a report to come back from Mass Development. Why would it have more or less weight than the Facilities Report from their department heads? She believed City Hall is a sick building. They don't have room to archive records the City Clerk is mandated to do. She thought they were trying to get to everyone under one roof but not if it is to rent additional space downtown. She noted the Mayor's memo dated July 19th to the City Council where she announced site development alternatives for Fuller School: joint public safety building on the site, a YMCA moved to the location, a parking garage and revenue generating uses for the rest of the site. They all agree the highest and best use for the building is not a school. The symphony is a gem and needs to be there. What makes them think the public would not understand a question. It is narrow in scope and should be broadened. It will keep the door open. **Councilor Verga** noted the gist of the advisory question is to ask for guidance and which option should the City Council and the Mayor focus on. He felt they are already focusing a direction. He noted the YMCA move was never a part of the Facilities Report. He again reiterated his belief the Mayor is putting the cart before the horse feeling a decision has apparently been made. This is a non-binding question and would vote for it here, at Council and on the ballot. If the City says that it is the downtown campus he will support this. **Councilor Ciolino** noted many reports are written and gather dust. But an advisory question hangs and becomes the elephant in the room. Nobody has signed off on the school. What is the point of going through this then? The Mayor can do what she wants, and she has to come back to them and declare the school surplus. They spoke on I4-C2 about jobs and taxes. He didn't understand the logic to move the campus to Fuller and empty out a lot of the buildings and not have a plan as to how these buildings are to be used. They'll be helping Gloucester Crossing not the downtown. Downtown is the Fort, Flanagan Square, the Railroad Station, etc. When City Hall was declared unsafe, they saw the decrease of foot traffic downtown. He felt that discussion should be had but not at this point in time. He didn't feel the City should be driven by reports. **Councilor Verga** didn't know where they go from here. **Councilor Ciolino** reiterated that it was not the right time to do this ballot question. **Councilor Verga** stated if they do nothing it leans towards City Hall. **Councilor Hardy** noted that CPA is to fix the outside of the building, but not the inside of the building. Because of the chimney that came down they'll have to pull a building permit to rebuild them. Once they do that they have to be ADA compliant and access law. They'll need to make investments for some kind of ramps and thresholds in the building. The telephone system is not reliable. Things are happening to this building on a weekly basis, and there is no money to fix it. The CATA building has issues as well that they must fix. With a municipal campus on the Fuller property but to let that property go to a long term lease or sell it, the YMCA would want to put in a pool. What would they do with that? They need to have more conversation and wished to provide an opportunity. They can't tell the public they don't want to hear from them. **Councilor Whynott** stated the building built in 1874 is barely handicapped accessible. They should let the people have their opportunity to express their opinion. He and Councilor Verga have heard from approximately 80 people apiece expressing overwhelmingly that they would like to see everything in one place and why are they paying rent for a building on Pond Road. Let the people have their opinion. Referendums many times don't come to fruition. They need to open up a dialog. **Sandy Ronan** of Magnolia expressed that the public needs to have a conversation about this. She was concerned about the referendum with respect to the wording which she felt needs careful construction so it doesn't present a simple yes or no possibility. It is a complicated thing to word. Also, did the School Superintendent really have enough time to consider using Fuller as a school. City Hall is inadequate and a huge amount of work needs to be done; and money has to be spent either way. She felt City Hall represents the City itself. Fuller School will not become that. There has to be a way to move Pond Road here but there could be creative ideas to do that. She noted the many events and the need for a vibrant downtown. Moving the City Hall functions out of the downtown would damage the downtown area. However, she agreed a conversation needs to be had but that a referendum didn't necessarily need to be the way to do that. **Kathy Slifer**, 42 Pleasant Street noted the formation of the Gloucester Friends of City Hall, a newly formed group for consensus building. They hope the conservation of the building is taken seriously to bring the building up to date. Everyone they talk to thinks that this building is very important to keep the core of City government here. They feel it is up to the City Council to solve some of these problems, and that the public is very much involved in this conversation. This building is important to the spirit of Gloucester and the downtown. The one-stop shopping mall method, she felt, is not in the best interest of the City. **John Orlando**, 112 Western Avenue stated that there were meetings that the people in attendance did not want to move the municipal offices to Fuller School. Someone who lives in Lanesville who has never shopped Main Street and works in Boston, and has a question on the ballot would have no understanding of the repercussions of moving the offices away from the downtown. Many of the business owners and employees do not vote in

Gloucester. He felt they will not get a fair cross section that the offices should be moved to Fuller. They'll get some citizens who think it a logical use of the property, but they are not fully informed. At this point in time, a referendum for this ballot is too early. **Councilor Verga** wanted to have this motion go forward and vote it up or down at Council and to have that discussion at that level. If it doesn't pass, it is an educational discussion with the public as to why the Mayor's report should be put on ice. **Councilor Whynott** noted that when the city offices went to Pond Road people blamed the downturn in business downtown because of it; but it was a total economic downturn in the country at that time, and that this move also saw healthier employees. This question is non-binding and is a way to find out which one of the two options is the direction to go; to find out how the public feels. **Councilor Ciolino** will not support this; that it is premature; until the school Committee agrees what to do, once that is settled and the school department has a plan, if they relinquish the school then they should put this on the ballot. He disagreed with Councilor Whynott that during the repair of City Hall there was a depression of foot traffic downtown. This building draws people to great central campus. He hears it from visitors; it works and it should be built upon. He will vote against this tonight and when it comes up at Council.

MOTION: On motion by Councilor Verga, seconded by Councilor Whynott, the Planning & Development Committee voted 2 in favor, 1 (Ciolino) opposed to recommend to the City Council the following Non-binding Ballot Question for the November 8, 2011 elections:

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- D) **Memorandum & Request for Proposals for Lease and Development of 65 Rogers Street (I4-C2) - This matter will be taken up as a convened Joint P&D and B&F Committee Meeting**

At 6:06 p.m. Councilor Ciolino, Chair of the Planning & Development Committee called to order a Joint Meeting of P&D with the Budget & Finance Committee and Councilor Steven Curcuru of the Budget & Finance Committee called to order a joint meeting of B&F with P&D.

Mayor Carolyn Kirk stated they have the RFP before them pointing out the content of the RFP is consistent with the Harbor Economic Development Plan which suggests the future of the development of the harbor will be centered on the fishing industry, maritime economy, and the tourist-based economy. It assumes the zoning of the DPA, which protects the waterfront, remains intact; which is a requirement of the RFP. The document is consistent with the consensus that emerged as a result of the schematic design process, noting there were a number of designs brought forward as well as a number of community meetings. The consensus of what the community wanted to see was captured in this document and reflected in the development objectives of the RFP. And, the RFP strikes a balance of what the community wishes to see, but with enough flexibility to attract responders. They set forth the broad-based goals and requirements; and where they could, give flexibility to a developer (or the respondent) for a project that can achieve the goals that are laid out in the RFP. In terms of the Frequently Asked Questions (FAQ's) sheet (document on file), there was one question that came up today that is not in the form of the FAQ's document, raised by **Councilor Tobey** regarding the timing of the issuance of the RFP. He suggested the timing be delayed after the summit taking place in the City. A memo was circulated just prior to this meeting noted the two-day

summit will be a “drill down” of the maritime economy portion of the City’s economic objectives (fishing industry, visitor-based economy and fishing industry) in November. Should they delay the RFP until after the summit which the Mayor felt “no”, that there was nothing that would come out of the summit that would alter the contents of the RFP. The RFP is asking for uses consistent with the maritime economy as well as the other economic development objectives of the City and didn’t see any purpose in delaying the RFP for a parcel in need of development for decades. **Councilor Curcuro**, referring to the FAQ’s asked where the questions came from. The Mayor informed the Committees that after the RFP was released, they had questions from individual City Councilors; and had a meeting amongst the staff to determine what the Council might have on their minds. **Councilor Ciolino** stated they’re talking about a 50 year lease [in the RFP] and wondered if that had changed. The Mayor confirmed the RFP did state that length of time for the lease. They talked to various people with experience not only participating from the development standpoint but to other municipalities that had issued RFP’s. The consensus was that it should be 50 years or more. They thought 50 years was a good threshold. Developers don’t like to see it any less because of financing window is thirty years. Fifty to 99 year leases are common. Once the respondent enters into negotiations on the terms of the lease, that number can be “fine-tuned”, subject to Council approval. As a starting point they felt comfortable with 50 years. **Councilor Hardy** clarified this will end up coming back to the Council prior to the awarding of the disposition of the property which the Mayor confirmed. **Councilor Hardy** commented it was not just the terms of the lease that would be coming back to the Council but the use, etc. will also come back to them. **Suzanne Egan**, City Solicitor stated this is a request for the authorization to put the RFP out and to lease the property according to the terms and conditions of the RFP. Once the RFP is awarded, then the lease will come back to Council or approval. They don’t have the lease document before them now. GCO §2-3 requires it come back to the Council for authorization. **Councilor Hardy** noted in essence, if there is a vote this evening to recommend to the full Council by both of these bodies, and it’s agreed to at City Council, they’d be voting for the Administration to award a lease based on the RFP. **Attorney Egan** confirmed that to be the case according to the terms and conditions of the RFP. The lease will come back to the Council. **Councilor Hardy** also noted the winner of the selection of whatever the use is, that will be determined by the Administration; and the terms of the lease for the disposition of the property would come back to the Council. Would the vote at Council after this vote is take if taken, that is not the disposition of the property at Council this evening. **Attorney Egan** responded, “No”. They’re asking the City Council to authorize the RFP to be placed out for response for the leasing of the property. Once the responses come back in, a lease will be negotiated; and then it comes back to the Council. At that time the Council would authorize the disposition of the property through the lease. She noted the Council is familiar with this process, on a number of other properties the City owns, such as the Magnolia School House. In that instance the vote is on one combined RFP and lease. Whereas, this is a 50year lease, and an RFP for a development project and a pre-development agreement that will be entered into; it is a more complex project. **Councilor Hardy** noted this could be a speedy pre-approval of whatever is in the RFP, which **Attorney Egan** agreed with. The Councilor added, it would still have to go before the City Council for Special Council Permits, etc. **Attorney Egan** stated that is put forward in the RFP which specifically addresses all the permits that have to be obtained. There are two separate “hats” the Council wears on of which is that of a special permit granting authority under the zoning ordinance, and they are not wearing the hat of the permit granting authority tonight. **Councilor Hardy** stated all of the normal permit granting authorities needs to take a “peek” before the RFP is awarded and the lease is granted. They have to go through all the appropriate steps. **Attorney Egan** stated, “No”. She directed the Councilors to Page 19 section 9A of the RFP, showing the terms and conditions of the lease. The process is that the RFP is awarded; there is a pre-development agreement entered into. This is to protect the City to be sure the project goes forward to completion. Within that time period the developer has to fulfill the conditions listed on p. 19. These are what the developer has to do to obtain possession of the leased property; and one of those conditions is to obtain all the necessary permits. **Councilor Hardy** reminded the Councilors this is much more in depth. **Councilor Curcuro** stated, say, there are three developers that request the RFP. Where does the process go from there now that the City has three developers? Who is in control of that selection process? **Attorney Egan** answered that there is a selection committee who will review those proposals. Those evaluation criteria are also listed in the RFP as well similar to all the City’s RFP’s. They do a rating process and review it. **Councilor Curcuro** was seeking clarification of where the Council steps in from that point onward. **Mayor Kirk** stated that using the criteria laid out in the RFP, she noted this is a typical process the City would go through for any kind of selection and then a determination of award. The Committee appointed by the Mayor comprised by City staff and stakeholders. The composition of the Selection Committee would be: the Chair of the Waterways Board, someone representing Tourism Industry, the Fishing Industry (probably the Chair of the Fisheries Commission, a representative of the maritime economy, a real estate developer as a non-voting member to provide subject mater expertise. The City staff representatives would be: the CAO, the City Solicitor, Purchasing Agent, CFO and Community Development Director. **Councilor Curcuro**

noted a City Councilor was not a member. The **Mayor** hoped they would make that suggestion this evening. Both she and the Councilor believed there was no conflict for a City Councilor to be on the Selection Committee and be able to vote on the matter as a member of the City Council when it comes before them. The make up of the Selection Committee is not in the RFP but the criteria are. They will add a City Councilor to that list to be appointed through the President of the Council. **Councilor Whynott** noted the process that the RFP goes out, three or four respondents come forward; the Committee picks one; and the Mayor approves it which all happens before it comes to the Council. All they have is a “bite of the apple” when the final lease comes before them. He had a concern about lease rather than sell, feeling the City hadn’t been a particularly good landlord. He expressed if it is awarded to a non-profit, the City may not get a financial return since they put the \$800,000 hoping to get it back. If the return isn’t enough, it will take a long time to recoup that money. The **Mayor** responded in terms of selling the property, the City does not control the water side portion of the property. They only control the upland. The Waterways Board controls the wharves and docks. **Councilor Whynott** pointed out the City does control the Waterways Board. The **Mayor** stated it wasn’t really the case; it is an independent board with its own statutory authority. If they were to sell the land, they would get into the problem the previous owner had with a divorced parcel of land and water in the Designated Port Area (DPA). She contended that way didn’t work. By having it in the public domain (municipally owned) it leaves the door open to continue to bring in public funding. As soon as that property becomes private, it doesn’t qualify for Seaport Advisory Council funding or very little other public money that might be available in the future. They wish to leave that door open. They are not looking at this time to change the DPA zoning; that is not part of the Administration’s thinking. On revenue, this parcel can realize lease and tax revenue. She believed there is a myth that if you lease a property it is not taxable which is not true. There can be a lease for revenue and generate tax revenue for the City (see Question #3 of FAQ’s) which is in accordance with MGL c. 59, Sec. 2B. **Councilor Whynott** understood that and the City could include what they think reasonable taxes would be in the lease; if they gave it to a non-profit organization they could place the amount it could generate in the lease so that the City gets the investment back eventually. He did not want to see it at \$100 a month. The **Mayor** pointed out page 6 Development Objectives, and the first priority listed is generating revenues for the City which is part of the criteria that the Committee will look at – how strong is the revenue picture which will be rated. A private developer versus a non-profit will be scored – it is not a foregone conclusion that it is going one way or the other. **Councilor Ciolino** stated a 50 year lease between taxes and the lease payments are around \$300,000 – getting the \$800,000 back in a few years is doable, he contended; and the City doesn’t have to maintain the property; whoever builds there is responsible for that. They don’t get into the same box the previous owner got bogged down in. **Councilor Verga** thought a land lease was the way to go. He assumed they could tax the improvements they do to the land. The state put up money too which is also money out of the taxpayer’s pockets. They do want to recoup the City’s investment and lean towards something that is for-profit to recoup monies sooner. **Gary Johnstone**, City Assessor stated the land the lease is taxable. **Councilor Verga** noting the statement that the City is not a good landlord stated it was different when they are providing the land and someone builds on top of it. He pointed to most McDonalds are build on leased land and the landlord doesn’t have anything to worry about. They get the money for the lease in hand; if the building has structural issues, it is up to the leaseholder to fix it without the DPW being called to fix it. He reiterated it was the way to go. The **Mayor** clarified the City’s contribution was \$700,000 and the State was \$800,000. The minimum lease recommended payment is to cover the debt payment; so worst case, they get someone the committee loves and wants to award to they pay the minimum on the lease payment and doesn’t do something for a year or two, they’re covering the debt payment. **Councilor Curcuro** asked about the division of the property, and the letter from the Waterways Board that was attached to the RFP (see pg. 36 of the RFP). The **Mayor** commented in the lease it is recognized that if a lease holder wants to be able to use the water portion that could be available because of the extension of the harbor line, that piece would have to be worked through with the Waterways Board. That is not terms of the lease that the Administration can negotiate and that there needs to be cooperation and participation by the Waterways Board. When they went through the development of the lease process they had some meetings with the Waterways Board asking for their input. The Board wanted to submit the letter which is attached to the RFP and their “blessing” on the language. The content in the RFP is approved language; then the Board wanted to submit an additional piece of correspondence which is attached to the RFP. **Councilor Curcuro** noted the division of the property was the problem that the previous owner had and wondered what is there to prevent them having the same problem with the Waterways Board this time. He expressed his concern that a developer was set up for failure. **Sarah Garcia**, Community Development Director stated it is a legitimately confusing issue because the Waterways Board works in the City’s interest; they are statutorily responsible for leasing that land. The RFP language is purposely open because they don’t know what kind of uses are coming on the upland portion of the property. They will wait to receive the proposal and look at the context of how it will affect other uses on the waterfront and is in the way and the

Waterways Board would want to do it together. She felt the Waterways Board would have the best interest of the City at heart as will the review committee. **Councilor Curcuru** responded that Ms. Garcia was at a meeting where they both were present with members of that Board and didn't take away any sense of encouragement with the Waterways Board and continues to concern him and expressed he didn't believe a level of cooperation is inherent. **Ms. Garcia** stated it was very important to the Waterways Board to be clear. When the property was purchased by the City, the Mayor went to the developer and stated that if they had water dependent industrial uses that need to use the dockage, which is a requirement of state zoning, they need to marry it to the upland property. The Waterway Board knows this. She expected they have a much better chance of having a City organizations working together than having a City organization work with a developer who has no stake in the outcome. **Councilor McGeary** made the following statement for the record: *"The City will shortly begin seeking proposals for an undeveloped property which it owns on the waterfront. As a private citizen, I have been trying to interest people in bringing and aquarium and research center to the site. I requested an oral opinion last winter from the State Ethics Commission on whether it would be proper for me to debate the issue and eventually participate in the council's selection process. I was told at that time that I could as long as:*

1) I was not an officer of any organization or entity attempting to develop the site.

2) Neither I nor any member of my family had any financial interest in any proposal or entity advocating a proposal for development of the site.

I state for the record that both of these conditions are true and I do not anticipate that I will need to recuse myself from any deliberations or votes on this issue now or in the future."

The Councilor stated he believed the Community Development Director who sees the spirit of cooperation with the Waterways Board and the City but statutorily does the Waterways Board have a veto with what goes on with the docks. **Attorney Egan** responded the developer would have to have an agreement with the Waterways Board in order to use those docks. **Councilor McGeary** then stated, if the Board didn't like what the developer was proposing they could frustrate or foil it to which **Attorney Egan** responded, "Exactly". However, she noted there is a provision within the RFP for just such an instance. That is one of the conditions of entering into a lease. Within the pre-development agreement is where those issues would be worked out. The RFP would be awarded during the pre-development period where there is licensing and permitting occurring. That is when the developer would go to the Waterways Board and negotiate the use of the docks. If it doesn't work out with neither agreeing then there is no lease being entered into. **Councilor McGeary** stated the get a number of proposals and negotiate with one entity for a pre-development agreement. There is not an award of a lease then. If they can't get it done, then the RFP can be put out again. That is the difference as to when the former owner owned the property which is the difference.

Councilor McGeary clarified that what they are doing in their RFP is getting a number of proposals from developers. They will then choose one to, essentially, to negotiate with. They will not yet have named a developer, the person they're negotiating with. **Attorney Egan** stated it would be a pre-development agreement. At that point they're not awarding a lease because there will be conditions to it. **Councilor McGeary** added that this would be the person/group they want to work with. At that point the City would then negotiate with that entity to come up with a development plan that they all like including the Waterways Board to which **Attorney Egan** agreed. She also clarified that the development plan is the plan that is accepted through the RFP process. But it would be the terms and conditions of that development plan with the Councilor and Attorney agreeing there could be some emendation during that process. **Councilor McGeary** noted the dates are left vague once the RFP gets the blessing of the Council and is sent out to the development community how long after that did they anticipate to getting a response. **Ms. Garcia** thought 90 days – issued in mid-October ending mid-January. **Councilor Hardy** noted the City Council received an email from the CAO, Jim Duggan which was a revised letter of support for the I4-C2 RFP that has been submitted to the Chairman Gross of the Waterways Board for the Board's consideration. She wondered wasn't there already a letter of recommendation from the Waterways Board submitted to the Administration. **Mr. Duggan** stated there was. The Councilor wondered what prompted the need for the revised letter. **Mr. Duggan** stated at one of the sub-committee meetings P&D Chair, Councilor Ciolino had expressed dissatisfaction with the content of that letter along with other Councilors, and so in the spirit of cooperation, they are recommending to the Waterways Board an amended version of that original letter in the spirit of cooperation.

Councilor Hardy believed this had yet to be approved by the Waterways Board which **Mr. Duggan** agreed with stating it is in no way meant to say that this is something that has been approved. It has been proposed to them and has to go through the process which they feel is necessary. **Councilor Hardy** mentioned throughout this entire process the Waterways Board will remain autonomous in their decision-making also which **Mr. Duggan** confirmed. **Councilor Ciolino** confirmed he had a lot of problems with the first letter. He noted the presence of Cate Banks, member of the Waterways Board who would be leaving to attend their meeting beginning shortly, where they would take up the matter of the revised letter. He appreciated the first sentence of the revised letter "The Waterways Board

is excited about the possibility of the redevelopment of the I4-C2 parcel. The Board looks forward to a new mix of uses on this long-vacant parcel, especially to uses that relate to the maritime industries, and is willing to work with the City to get dynamic port activity in this area.” He was pleased by the positive statements and hoped the Waterways Board approves it. **Councilor Hardy** asked Ms. Banks if she had seen the letter yet, which she had not, but would at the meeting (**Councilor Hardy** gave Ms. Banks a copy of the letter). **Councilor Ciolino** noted corrections on the following pages of the RFP: Page 4, paragraph 2, remove the words “hotel, conference and”. **Ms. Garcia** addressed the statement by saying this was her error and it was in need of correction from a historical standpoint. Page 22 remove the word “sale” as the type of transaction, and just leave “lease”; Page 24 change “disposition by sale” at the top of the page to “disposition by lease”; Section IV, #2 remove the words “whale watch boats”. **Councilor Ciolino** asked the Councilors their opinion on the last point on the whale watch boats specifically. **Councilor McGeary** would speak to both sides of the question regarding the whale watch boat statement as he was also speaking to this matter on behalf of **Councilor Theken** who was unable to attend. For himself, he didn’t object to the specification of the whale watch boats are a permitted and thought they qualify as a maritime-industrial and want to give developers as many options as possible consistent with the preservation of the existing use and would be opposed to that. **The Councilor** then gave a summary of Councilor Theken’s comments on “Whale Watch Boats” in the RFP:

- Parking – 90 cars per trip, two trips per day is 180 cars plus additional party cruises at night are another 50-60 cars.
- Security and Safety – especially for the elderly and handicapped and children, a private landowner has insurance; however, the chance of having a problem multiplies when owned by the City. Party cruises will only mean increased likelihood of security problems and vandalism for the fishermen tenants that are there.
- Downtown: if another whale watch boat is added to I4-C2, where they already have three nearby, the other company would not bring any more people downtown that are not already going there now. It would only create traffic issues.
- RFP/excluding or including: Removing whale watch from the RFP means only that the developer can explore all possibilities and not be swayed by what has been listed.

Councilor Theken felt by including the term “whale watch boat” looks like an endorsement. There are many commercial ventures that are legal in a DPA. All of the large boat commercial businesses means large parking problems such as the shuttle boats like the kind used to bring passengers back and forth like in Salem, and commuter boats bringing people back and forth to work as those used in Salem and Hingham; and large passenger tour boats. All these types of large commercial boats have many passengers in areas on and off the docks, and many cars that create big traffic issues. For the Administration to say we are not pursuing a whale watch at I4-C2 is not the same as though a whale watch company has pursued us. The Administration, she contended, is playing with words so that they can put it in the RFP and was deceptive, in her opinion. **Councilor Whynott** agreed with Councilor McGeary and wanted to leave it as is and keep their options open. **Councilor Verga** agreed also. **Councilor Curcuru** agreed with Councilor McGeary wholeheartedly. He felt they were back to the negotiations with the Waterways Board and are “at their mercy” and that it didn’t really matter what it said in the RFP. He didn’t see where it is an issue downtown and didn’t understand where Councilor Theken was coming from. There are 90 parking spots there. It is in the hands of the Waterways Board and wished to see it left alone. **Councilor Hardy** agreed it should be left in also. They need not limit things right now and need to stress to the Waterways Board they would appreciate their cooperation and would like to see a joint meeting with them. **Councilor Ciolino** agreed with Councilor Theken that the RFP is to guide and steer and make the most efficient use of the parcel. He sees every day the amount of cars that are associated with the whale watch boats. The parking at I4-C2 will be gone. Those cars will have to find a place on the street. They need other facilities. He thought they should put their efforts to something other than whale watch boats. He also brought up jobs, having spoken to Mr. Duggan about it and asked if there are a minimum number of jobs that could be put into the RFP to be created. **Mayor Kirk** stated the jobs for the City really ride on the economic development plan based on the maritime economy fishing industry and visitor-based economy. To put in such a thing would burden the parcel and be a detriment to attracting responses. It is very difficult for a developer to promise jobs at this particular stage. The City is faring better than the state and country now with jobs. They’re doing something right with their economic development plan. If they don’t get any responses they’d have to unwind that which is hindering the success of an RFP. She felt tying this to job numbers, while the right motivation, but reiterated it rides on the economic development plan. **Councilor Ciolino** noted then that when it comes to the Council as a Special Council permit they can add that into the conditions as they did with Gloucester Crossing and would be the next step and need to start thinking about it. When they bought this property they told the public it would create taxes and jobs and keep steering towards that goal. **Mayor Kirk** noted on the development objectives, generating revenue and strengthening the waterfront economy, they could add language

about jobs as part of economic development which will send a signal without pinning down a specific requirement and would put it on page 6, Number 2 Paragraph 2 Strengthening the Waterfront Economy and recommended adding a second sentence, "The intention of the economic development plan is to spur jobs and investment in the City." **Councilor Curcuru** spoke about covering the debt and asked if they were still out on short-term debt. **Jeff Towne**, CFO stated they went long term on the debt the fall of 2010. The payments average \$77,000 which is incorporated into the RFP. **Councilor Curcuru** clarified they're not looking to make more money but to cover the debt. **Mr. Towne** stated they are looking to make money; that is the minimum (\$77,000) and are also looking for tax revenue and lease revenue. Their goal was to at least cover the debt so that it didn't cost the taxpayers money to pay for the property. That also covered a portion of their short term cost and covered everything but the DPW clean up of the site. It depends what gets developed to determine taxes. He would only venture to say that it would cover the City's costs. The land and the buildings on it are taxable. **Councilor McGeary** thought the Mayor stated the minimum lease payment is a short term thing while the developer is getting ready to break ground and anticipates it would go up later even before they put "brick one" in the ground they'd be paying the bill enough to cover the City's debt payment. The **Mayor** stated that is not a specific requirement that the lease amount come in at that amount. It is guidance. They tried to make it flexible to generate responses. Part of the criteria is that people cover that minimum lease payment which covers the debt. The taxable revenue doesn't kick in until something is built and the assessments start taking place. As soon as the lease is signed they expect payment. **Councilor McGeary** asked did they expect a set of economic circumstances where a case could be made for a lease of \$1 a year if the economic impact would be such; was it hard and fast or was it negotiable. **Mayor Kirk** stated this is the benefit of the City owning the property; they'd come back with the City Council and discuss what is in the best interest of the City to have development that generates other spillover economic development with a \$1 per year lease. They can have that conversation. They want it all and will hold fast to at least the minimum on the lease payment and the economic development. It is conceivable that could be a project. **Councilor Whynott** noted with the purchase of I4-C2 it was out of the City's pocket. He hoped the Mayor weighed what the payments would be and could not envision voting in favor of \$1 per year. **Mayor Kirk** noted that was the number one consensus. **Councilor Curcuru** made note of the \$77,000 a year, stating if they take it as a lease option and put it up for sale. What could they get if they put it up for sale which he expressed he didn't necessarily agree with that premise. If they got \$1.5 million for the property, that money will be gone the following week – the City will put it towards roofs or some other project. It is nice to be able to have that income come in every year. **Mayor Kirk** noted it always came back separating the land from the waterfront. It automatically devalues the land and the reason why they were able to have a premium on it was because they could marry the land with the water. With a lease agreement with incentive she believed it can happen. **Councilor McGeary** asked for the record to go over the advantages of the City owning the parcel in terms of getting Seaport Bond money as opposed to it being privately owned. **Ms. Garcia** stated they've found in the past many times they've been unable to request Seaport Advisory Council money for privately owned wharves and land. To have a publicly-owned parcel on the waterfront is an advantage to the City as a DPA; that by accepting highly restrictive zoning regulations a trade-off is support of the City's infrastructure from the Seaport Advisory Council. **Councilor McGeary** believed that New Bedford, where much of the waterfront is public, is rebuilding the South Street pier creating something similar to the City's State Fish Pier with Seaport Advisory Council funds and contended that publicly owned tends to benefit, getting more of a share of Seaport Bond money because there is more public land available which **Ms. Garcia** confirmed. **Councilor Hardy** stated related to the Waterways Board who she believed them to be an important linchpin in the entire RFP process and would like to meet with them in a joint meeting to get over this hurdle, to all move forward together without wondering if they do all of this work only to be stopped by the Waterways Board and would like to hear them and what they don't agree with which she didn't see in the letter, nor did she see any hesitation in it. Are they going to be in favor or opposed to the whale watch boats and wondered if they knew their response to that question. **Councilor Ciolino** thought they felt it was too busy an area with the lobster boats to accommodate more whale watch boats. **Councilor Hardy** wished to know the answer to that question, and thought it important this body knew that before they go ahead and vote on it. **Councilor Curcuru** noted this matter was on their agenda at B&F the following night. He would reach out to them and ask them to come to their meeting. **Mayor Kirk** noted the RFP language pertaining to the sections related to the Waterways Board and their participation has been approved by them. They have submitted their letter which has generated some controversy which is why there is a revised letter being submitted to them asking them to be more positive. The only piece the Waterways Board is objecting to is the language on whale watch boats. While it is a bit controversial, the consensus of the City Council with this discussion tonight is that it should be left in. She felt it was a matter of good practice for the Council and Waterways Board to have joint meetings but was in her opinion completely unnecessary to insert that into the Council's decision-making process. **Councilor Hardy** respectfully disagreed with the Mayor. **Councilor Curcuru** stated it is all about when the

developer comes forward that the Waterways Board has to negotiate with them. He would like to express his opinion with the Waterways Board so they know the feeling of the Council; that if they speak for the whole City, they do not speak for the Council; and therefore, that is not the whole City. The **Mayor** responded at this time it is all speculation. They need to move the RFP along. **Councilor Ciolino** noted they're going to add two more members to the Waterways Board shortly and that ordinance change will come to public hearing before the Council soon. He also welcomed John Orlando, Chair of the DDC, Kathy Gilson also of the DDC, and Rick Noonan, Chair of the Planning Board. Susannah Altenburger, 66 Atlantic Street spoke about the opportunity for the property and to consider the rare opportunity to leave a footprint in support of the marine industry also through high school programs. She noted that the RFP was crafted similar to most RFP's. They may lose out on the chance to control this growth of the property by doing so. She encouraged marine scientific pursuit for the property and to consider a parallel option to be actively looking to drive the objectives of the Harbor Plan forward to engage in the future. She also encouraged green jobs as well for which there is a great deal of untapped funding. She urged the Council to help to keep Gloucester's children on Cape Ann. **Councilor Verga** was ready to move forward with a vote and was satisfied with the amendments. **Councilor Ciolino** felt they've waited so many years to go forward with this. The first use of the property is to "go fishing for developers" that will make the City proud and will generate money for the City and would support this tonight.

MOTION: On motion by Councilor Ciolino, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to authorize the lease of 65 Rogers Street (known as I4-C2) pursuant to the terms of the Request for Proposals entitled Request for Proposals #11204 Lease and Development of 65 Rogers Street with the following conditions:

1. Page 4, paragraph 2 remove the words "hotel, conference and";
2. Pages 22 remove the word "sale" as the type of transaction, and just leave "lease";
3. Page 24 change "disposition by sale: at the top of the page to "disposition by lease".
4. Page 6, Number 2 Paragraph 2 Strengthening the Waterfront Economy: "Add a second sentence the intention of the economic development plan is to spur jobs and investment in the City."

The Planning & Development Committee adjourned their portion of the joint meeting at 7:24 p.m.

A motion was made, seconded and voted unanimously to adjourn the Budget & Finance Meeting Joint Meeting with the Planning & Development Committee at 7:25 p.m.

The P&D Committee recessed at 7:26 p.m. The meeting was reconvened at 7:31 p.m. Councilor Curcuru left the meeting at that time. There remained a quorum of the Council throughout the rest of the meeting until its adjournment.

2. *SCP2011-001: Decatur Street #14, GZO Sec. 5.2 Earth Fill and Removal Regulations re: Review of new Plans submitted by applicant per memorandum from Paul Keane, City Engineer*

Frederick Geisel, P.E., representing the applicants on the matter of the special permit for Earth Fill & Removal, §5.2 of the Gloucester Zoning Ordinance for Decatur Street, #14, Map 56, Lot 11 brought forward to the Committee changes made on the advice of the City Engineer, Paul Keane, P.E. He explained since they last met in May, they have a basic design is relatively the same. There was a system of chambers designed to go beside a stone driveway. There were plastic infiltrators to contain stormwater and allow for capacity to hold the water and then allow it to percolate into the soil. That was before them in May and early June. Since that design went forward and got approval from P&D, the drainage report was sent to the City Engineer's office. Paul Keane and Melissa Miguel reviewed it and asked him to do additional soil testing on the site which had been previously been done by another engineer who had found the soil suitable as fill, in his opinion. They tested the fill material immediately and found by testing in a couple of different locations that the fill was pretty impermeable, that water did not flow through it as previously claimed by both the contractor who put the material there and the previous engineer that this material would percolate. They wanted to test the underlying soil; they could excavate material that had been filled because there were no utilities there but they couldn't excavate below the original ground without dig safe. They put a dig safe there and did additional testing. They found in the back of the property there and an area beyond where the fill was, was a shallow depth of soil before they got to ledge, anywhere from 8 inches to 1.5 ft. of soil cover over the ledge. They have a ledge line that continues through the applicant's property onto neighboring property. They also

tested in the rear portion of the property and also tested in the middle of the property where they propose to put the drainage system, where the recent fill begins. They went down 8-10 ft and didn't find any ledge, but they did find boulders which could be handled by one or two men, gravel fill and other sub-soil materials. They did a percolation test on that soil and found while not rapidly draining, it was reasonable drainage in the middle of the property and at the rear of the property that abuts the property of Mark Houde. **Councilor McGeary** asked to the easterly side of the driveway they found sufficient soil to drain which **Mr. Geisel** confirmed. Councilor McGeary clarified that to the north the natural occurring soil was very shallow with ledge which Mr. Geisel also confirmed. There are places where there are six, seven feet of fill on top of the ledge. The ledge is a ridge that bisects the property from the southeast to the northwest running through the property. They revised their plan as shown on the revised plan (locus plan used as an example to the Committee submitted and on file) to remove the existing fill material, or natural material, depending on what they found, at least two feet below the bottom of the infiltrator and stone surround, a minimum of 2.5 feet below the infiltrator, six inches of stone and 2 ft. of gravel fill underneath that, at least that far or to the natural material sub-soil. Then they would refill with infiltrators and stone surround, and filling on top of that with a coarse gravel material, then topping it off with stone which will give a depth of material up to eight feet to allow absorption from water coming down Decatur Street on the southern portion of the property (with the slope of the land). It would provide tremendous capacity to hold the water within this area and the infiltrators and stone surround will hold the flow of a hundred years storm. With the surrounding coarse gravel and gravel underneath will allow it to slowly percolate into the ground. The existing fill material which they found to be fairly impermeable will remain along the edge of the boulder wall which prevents the water flowing through there. If they remove everything there and placed stone or coarse gravel the water could flow right through there and bleed through the wall. This way it will be contained in this area and allow for slow percolation into the ground. In the rear of the property they did a similar thing; they don't have infiltrators there. They will take existing fill out and removing most of it and leaving the existing fill by the edge by the stone wall to hold the water back, and replace it with coarse gravel topped with stone to allow the water to flow through the surface, maintain within that area which will be sloped off, and not run over the wall and to slowly percolate into the ground. The only water that is going to get there is the water coming down from Decatur Street will not be crossing over the ledge – it will be contained in that area with the infiltrators. The only water they'll see there is water that naturally falls on that area and flows from the neighboring properties over the ledge what has been coming down there for "a million years". That is the only flow that will be in that area. He was confident this system will improve the situation that existed prior to any filling on this property. Paul Keane, City Engineer and Melissa Miguel, Public Works Inspector have both reviewed these plans and have recommended certain conditions that if there are any additions to the property they would have to revisit the calculations and to have a professional engineer monitor construction to see that everything is done as specified on these plans and take responsibility.

Attorney Mark Nestor, 45 Middle Street representing Mark and Josephine Houde, 9R Blake Court, abutters of Decatur Street #14 introduced Paul Fischer, P.E., Fischer Engineering, a consultant the attorney who had reviewed the original and revised plan submitted by Mr. Geisel on behalf of the applicant. Mr. Fisher handed out an aerial photograph of the properties in question (placed on file). He stated Mr. Houde's property has a ledge line that goes diagonally from the center of the two parcels of land to the northeast of the property. There is a concern that this land that the plans show that the land slopes so that the water flows down towards Mr. Houde's house and to the west which a photograph in the letter with attached exhibits submitted by Attorney Nestor dated September 7, 2011 (and on file). He stated the aerial photograph shows how it was previously. The land is filled to the edge of the ledge. The area that was filled later is at the end of the property as previously depicted by Attorney Nestor as the rear side of the property. The area is above the right parcel of the Houde properties. There are two parcels, one towards the back of the property (Decatur St. #14) and one closer to the dwelling shown on the plans of the property behind the Houde's. Directly above that is a fill area; the area of concern is from the east side of the ledge area and extends to the back of the west parcel of the Houde's. When this was being filled, Mr. Houde told the property owner not to fill any further than the east side of the ledge. He did not want a change in the flow pattern redirecting the water to another area. His concern was to be sure that no water in this area of ledge going west toward the back of the property, being filed. He did not want it to go eastward to a drain, a 10 inch pipe, which goes down to an 8 inch pipe to a 6 inch pipe out to the roadway. Currently the plan in the upper left hand corner of the locus map, that is the Baldasano plan by Geisel dated April 15th revised August 17, 2011. There is concern with filling the land in from the east side of the ledge and would redirect water to where it was not previously going. This area of fill would take the natural flow of water to the left side of the left parcel and down around the side of Mr. Houde's house which he could live with and is what he would like to have established. This is supposed to be existing. The diagram in the upper left hand corner of the locus map shows a slope coming down with a raised area on the south side of the fill area. He did not see that when he was "out" that is consistent with that. The water flow across this

area down towards the Houde's property has seen a substantial increase in flow over the Houde's property. He showed Exhibit 5 from Attorney Nestor's letter which was a picture facing towards the rear end of the property. It showed the slope to the left towards the Houde property. He stated from his own experience visually it is going towards the rear of the property, not, he contended, as shown in the cross section of the existing fill on the locus map. **Mr. Fischer** did not have a date of the photograph, answering a question from Councilor **Hardy**, but thought it to be taken about July 2011. Pointing to the locus map, he stated the particular cross section there is consistent with the view in the photograph, the last one in Exhibit 5. The rise to prevent the water from going down to the Houde property was not there when he visited it. **Councilor Verga** noted at the time of the photo, the last time Mr. Fischer was there, it wasn't there when he was there but according to the plan it will be there. Mr. Fischer clarified that the plan says existing which means it is there, and he didn't see it. He didn't see it in the photograph, and he had checked that. What is shown in this plan is essentially proposed to be a small gravel-filled dam; he then made statements of 'water flowing down here' but did not specify where that was to the Committee. This concerns that it will change the flow that is currently happening. Mr. Houde was happy where it was before. He then passed out two other documents a letter dated September 7th authored by him and the water ban which talks about asphalt, pavement, and brick ban dated July 1, 2006. He noted the question of unclean fill; asphalt after 20 years the solids are mostly gone. Some is there. The question is: are there any other contaminants. He felt Mr. Geisel needs to address this. The plan does not show the removal of this area. He referred to the drain pipe that Mr. Houde has near his property; that the plan does not show the area to the west of the ledge; and in that area of the ledge that all the fill be removed and returned to the way it was before. There is vertical ledge that is visible, and that is from the area from the left property of the Houde's going diagonally. There are hills of ledge, and the idea is to keep the normal amount of rainfall flowing and not have it fill any further than the ledge. The area is the east side of the ledge on Mr. Geisel's plan dated July 23, 2011 and to the west to the rear of the abutters' property. He noted Point Two of his document about the 100 year design. The area from MINI CB#3, to Test Pit-4 is near the edge of the ledge at the right side of the infiltrators there is plenty of depth. The concern is the depth of the left side of the infiltrators. To try to move the infiltrators to the right, when testing they'll find this area will not have the depth and act more as a retention basin and needs to be checked for adequate material feeling that would be a wise decision. The infiltrators are proposed. Point Three stated that they should relocate the base of the fill area away from the Houde's property line so a proper fence can be erected between the base of the 'wall' on the applicant's side of the property to keep kids away from climbing over onto the abutters property. Point 4 would be to consider increasing the side of the 6-inch pipeline that leads from Mr. Houde's property through John Sutton's property to the City's drainage system on Blake Court cleaned (or increased if possible). Point 5 is a restatement to check for contaminants in the fill on the property. During freezing weather it is important that water also be able to get into the infiltrators. **Councilor Hardy** asked if the catch basins and infiltrators are not enough. **Mr. Fischer** stated they want to be sure the grates are there to allow the water to go into the infiltrator system. They are shown in the plans at this time. **Attorney Nestor** stated his client's biggest concern is the talk of removing 200 cubic yards but if they look at the history that was provided by the owners' prior engineer that it is over approximately 1,300 cubic yards of fill put on that property. Referencing Exhibit 4 pictures shows the composition of the fill. Potentially removing 1,300 cubic yards of fill vs. 200 cubic yards of fill, especially if now characterizing it as dirty fill, it becomes a significant issue. He pointed where in the picture there are specks of asphalt, concrete blocks that have to be disposed of somehow. One of the provisions of §5.2 is the impact of putting in or removing fill. If you have to remove 1,300 cubic yards of fill vs. 200 cubic yards of fill, it is a major proposition. In Exhibit 5 the last two pictures show what his client has to deal with, showing the wall that the water comes down from. Exhibit 6 shows the water Mr. Houde has had to endure since at least since this fill has gone in. He included a letter in Exhibit 2 in which Mr. Houde complained to the Mayor in 2005 that they were putting fill in and he was having problems then. Six years later he is still dealing with the same issue. The biggest concern his client has is a 10 inch pipe, to an 8 inch pipe to a 6 inch pipe on the left hand side of the Houde's property line. Now it is backing up already where the overflow is coming down. If this system fails, he pointed out the elevation up here is 88 feet, and the elevation "down here" is 78 ft., the concern is that if it not constructed right, there is a down hole that is coming over the wall down to the 10 inch pipe and if can't be absorbed in the six inch pipe his client's entire backyard will be a "swimming pool" in the fall and winter. He noted that Gloucester has suffered significant freezes over the past few winters. If this "thing" has a sheet of ice on top of it, what happens when the snow on top melts; where does it go. If the infiltrators are covered, it comes over the wall towards the reduced wall and the water goes to his clients' property. They suggested pushing the wall back if necessary to try and alleviate that problem. The only reason they're here, the Attorney stated, is because the Building Inspector "caught them putting in illegal fill". They are asking the Committee to come forward with a mea culpa and say this place has a history of putting in fill illegally. They were putting in 200 cubic yards of fill in "illegally" and the only reason they are in front of the Committee is because the Building Inspector got a complaint,

went out there, asked a question; was not given a “straight answer” and put a ‘Cease and Desist Order in. If there is 1,300 cubic yards of contaminated soil there, not the 200 cubic yards, and he was not convinced based on the tests he had seen that it covers the entire thing, his client is going to be dealing with 900 cubic yards of contaminated soil that water is flowing through potentially down onto his property through his lines and down to Blake Court and potentially the property owners below him who would not be happy also. The system as designed doesn’t contain all the water; there is a risk of run off and it doesn’t address the issue of contaminated soil. He is not convinced nor is his engineer that this is the entire ledge there is; and what happens when they run the line down the side and hit ledge. His client needs to stop “swimming” in someone else’s run off. He noted in his letter suggestions how they could resolve it. They’re not convinced, especially with the elevation that it will be mitigated enough; that it will still come down onto the Houde’s property. While he understood that while not on the applicant’s property, if the pipe is widened at the applicant’s expense, and becomes a 10 inch pipe all the way down, so they can increase the flow of water so if this thing doesn’t work or there is a problem because it is a very bad winter, that the pipe will take the water out off of Blake Court and away from his client’s property. **Councilor Verga** asked for clarification that the Attorney had mentioned they’re here because the Building Inspector received a complaint and the Attorney also used the phrase, ‘he was also using illegal fill, was the applicant caught illegally dumping fill or was it illegal fill. And if it was illegal fill do they have something from ConCom or the Board of Health that says that is the case. **Attorney Nestor** stated the issue is that they’re going to pull it out; that at least the last 190 yards has to come back out. One document showed they apparently put in 190 cubic yards of fill in January/February timeframe; it was during that time they were caught putting the fill in without a permit. He felt it was obvious due to the fact they were pulling the fill out, and while he hadn’t seen the test results, that they found some contamination. The presumption is that it is dirty. He had no idea what is going on with the 190 cubic yards. He didn’t know how long it had been there. It’s their own engineer who volunteered the information that over the last 40 years that 1,300 cubic yards of illegal fill has been dumped. His client and his position is that it has to stop here. This system has to ensure that his client stops suffering from run offs. If it does it so much in the winter that it cuts through the snow, they’re back in the same situation. Eventually it will get to his client’s foundation. They’re asking this Committee to ensure this plan makes his client safe which is one of the requirements of Sec. 5.2; it has to make a safe environment. Their opinion is that this doesn’t adequately ensure automatically his client is safe. **Councilor Ciolino** noted that the Committee did a site visit and are familiar with the property. His client has had a water problem for long before any of this happened. He is on the bottom end of a piece of ledge. The day they visited the water from there went down to Fleming Drive and was flowing down there at the end of Blake Court. He disagreed with the Attorney that all the problems of Blake Court are from this property. That property is wet. The six inches of pipe is beyond their purview. **Attorney Nestor** clarified that Mr. Geisel was correct that this plan was revised latest of August 17, 2011. They understand there is a natural flow always coming down and that it has been there and is no problem. It is the flow that comes down on the right side, the eastern part of the property which was created as the fill was put in and with the raising of the wall that his client is having the problem with. The one on the western side doesn’t impact. It is the one on the eastern side is where the pipe overflows where it can’t take the flow, and is the one that he’s concerned about that this plan does not address. If this doesn’t work it can increase the flow down his property. **Councilor McGeary** noted the fill to be removed is on the western end of the property which the Attorney confirmed but is being replaced. **Mr. Geisel** stated that it is not being removed completely. He reiterated the date of the plan on display to the Committee is dated as revised on August 17th and is the plan approved by Paul Keane. The aerial photographs were taken on June 18, 2010. That shows the fill that had been on the site since 2005 and was spread out before his client bought the property. His client spread the fill to level it out as it was on his property in piles. He went to the Building Inspector last September/October and the Assistant Building Inspector told him he could bring up to 200 cubic yards, and so bought 190 cubic yards from Cardillo Construction which he was told it was good clean gravel fill. By appearances it looks that way. It does have pieces of asphalt in it, pieces of bricks. It was from construction of the water main on Western Avenue last fall. He also brought in 100 cubic yards of boulders which he didn’t consider fill. There was about 600 cubic yards brought in since 2005 and today; about half by the previous owner and half by Mr. Baldasano. The 1,031 cubic yards estimated by the previous engineer, and felt Attorney Nestor misspoke stating it was 1,300 cubic yards, is in comparison to the last years survey to a 1957 topo map of the City before this property was ever developed. The development of this property, not illegally filled, the grading of the property when it was built including construction of a septic system which was originally on the site of which the tank is still there, changed the contours from what they were in 1957. They’re talking about less than half of the 1,300 cubic yards mentioned brought onto the site. Agreeing with Mr. Fischer, asphalt which has been in place for 20 years or more is innocuous. Anything which leaches out of it, the majority of the oils leech out very quickly. Something that has been in the ground for 20 years, there is nothing else leaching out of it. There are pieces of asphalt in there. Pieces break off, some are hauled away. The DPW yard has

tons of it. There are bricks in the soil on the property; but bricks are made of soil. There are small pieces of concrete in there. If they find them they remove them. They will not clean the entire site of innocuous pieces of debris. The asphalt is old from these excavations. Any materials will be properly disposed of. Right now the water does not flow off the west side of the fill towards Mr. Houde's property. It flows lengthwise through the property and goes over the wall on the north side during a heavy rain storm. Before the wall was constructed it came down the border between Mr. Houde and Mr. Unis' property the west side of the applicant's property. Oh the rear of the property it flowed diagonally to Mr. Houde's property and has always done so. They're trying to trap the water and give it every opportunity to flow down through the ground. Mr. Houde would like to have all the water to fall down materially. What falls down towards the Decatur Street side will be caught by the drains on the property. With ice on the frozen ground, it will run off, and they provide two different means for the water to get under the soil in that condition. With the gravel and stone they'll put in it will provide drainage during that time period. There won't be a cake of ice on top. There are three catch basins which will allow the water to be caught and then drain. He has been doing this type of design for three decades, and it is the best they can do and make the situation better. It will improve the situation, and they're asking for a Special Council Permit. If they get a permit, they have to make this right. Right now they're running late in the year. If they get City Council approval they will roll as soon as they have a permit so that they don't repeat the situation of last winter. **Councilor Verga** noted that on paper they have Mr. Geisel's ideas and that the City Engineer has approved the design, they have to make it right. **Councilor Ciolino** stated if that there is a violation of the permit, they have the building inspector and the City Engineer they would make a recommendation for one reason or another they can revisit it. The City Council can give and can take away. **Councilor Whynott** noted they can always reopen it up and rescind it. What if there is no violation of the permit, but what if it doesn't work. **Mr. Geisel** noted Council President Hardy had brought up that that there shall be no redirections of flow of water off the property and that she pointed out it is the law. **Attorney Nestor** commented in response what happens if it doesn't work what they can do. If he puts it in and it doesn't work, or if it is a violation, once the City Council puts the special permit in place, they tell him to rip out the system? Then it goes to court. The damage will be done, and whatever would have to be designed to fix the problem while that is happening then more damage takes place. He pointed out that when the engineer was here with the first go around the representation was the fill was clean. Now they're pulling up "clean fill" – he contended it wasn't clean. The fall out is that it would be months if it doesn't work. **Councilor Ciolino** noted that his client had a water problem long before this matter came forward. **Attorney Nestor** stated they leveled the fill, and put boulders onto the wall. They increased the problem.. Changes have been made by this property owner that is significant. Maybe 250 yards are there. It made it far worse. **Councilor Hardy** had a question of the 10 ft. drop in the elevation for the water to flow from going from a 10 inch pipe to an 8 inch pipe to a 6 inch pipe. **Mr. Geisel** stated it is 6 to 7 ft. drop in elevation along the wall for about 80 ft. **Councilor Hardy** asked what it creates in velocity. **Mr. Geisel** stated the pipe is away from this area. **Councilor Hardy** asked if the pipe could handle the six or seven ft. drop. **Mr. Geisel** stated the pipes are from the catch basins to the infiltrators. The pipe on Mr. Houde's property is what he put in. He stated the pipe should start small and go bigger; but they could increase their pipe size. However, that drain pipe is not on his client's property. They're going to remove over 220 cubic yards of material and will remove any material they encounter of concrete, asphalt and bricks. These areas of fill they did test holes on almost 10 ft. down and hit no ledge at all. The ground slopes further. The land and ledge is sloping way. Mini-catch basin #3 will be shallow. They'll likely hit ledge at 6 ft and put a catch basin in and keeping it within the property. They'll adjust it if they need to. **Councilor McGeary** noted the top left of the diagram shows they're creating a swale closest to Mr. Houde's property. **Mr. Geisel** stated they'll drop the level about 1.5 ft and put down gravel and that is their plan. Most of the water will be trapped and slope away from the wall and run towards the middle of the property and be contained. Anything on the wall will be run off. **Councilor McGeary** asked how different the wall will be now. **Mr. Geisel** stated they'll shorten it by 1.5 ft. and will bow it closer in by two or three feet. They will make it shallower. No boulders have had settlement in the last nine months. **Councilor McGeary** stated that fill they're removing in the back area includes the rear area of the northern end and where the infiltrators are going and the driveway. He estimated 200 cubic yards. Between gravel and stone fill it would be about 120 cubic yards.

MOTION: On motion by Councilor Ciolino, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to RESCIND a vote by the Planning & Development Committee taken on May 18, 2011 on the matter of SCP2011-001 Decatur Street #14, GZO §5.2 Earth Fill and Removal Regulations.

Councilor Ciolino stated that subsequent to the vote taken by the P&D Committee on May 18, 2011 in order to make a recommendation to the City Council, the advertising for public hearing and the re-advertising for the public

hearing, this matter came under further review by the Engineering Department due to more in-depth issues put forward this evening. The Committee will revote this matter to reflect those changes, the new locus map as submitted by Frank Geisel, P.E. on behalf of the applicant, and for the addition of recommendations made by the City Engineer, P.E. Therefore, on the basis of the application and plans submitted to this Committee in August of 2011 and reviewed now at this meeting of September 7th, along with a revised locus plan submitted, the representations of the applicant and their agent, the Planning & Development Committee finds that the requirements of §1.8.3 for granting of a Special Council Permit have been met, in that the six criteria are satisfied. As required by §5.2 of the zoning ordinance, the Planning & Development Committee has considered the location of the proposed fill activities and its effects on the general character of the neighborhood. The applicant and the abutters have represented that the drainage in the neighborhood will improve as a result of the fill activities. The fill and creation of a useable yard is consistent with the neighborhood. There will be no adverse affect on the general safety to the public on public ways in the vicinity. For those reasons, the Councilor expressed he would vote in favor of this Special Councilor Permit again with the modifications now in place. **Councilor Verga** expressed he still had concerns but would vote to take this matter forward. **Councilor Hardy** remarked at the City Council meeting she would ask about the landscaping of the area once the project is completed, and what the intended use is at the public hearing.

MOTION: On motion by Councilor Verga, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council grant to Salvatore Baldassano a Special Council Permit (SPC2011-001) pursuant to section 5.2 of the Gloucester Zoning Ordinances for earth removal and fill for Decatur Street #14, Gloucester, Massachusetts, Assessors Map 56, Lot 11, to fill the rear yard to make a useable yard, construct a retaining wall and to construct a crushed stone driveway extension, stone infiltration trenches, with landscaping and a fence around the retaining wall as shown on the site plan dated April 15, 2011 by Frederick J. Geisel, P.E., 15 Steep Hill Drive, Gloucester, revised 6/01/11, revised 7/23/11, and final revision of 8/17/11 with the following conditions:

- 1. That the property located Assessors Map 56, Lot 11 will not divert water from that property onto the property of any other;**
- 2. All proposed work shown on the plan and described in a letter dated April 17, 2011 shall be done under the direct supervision of a civil/site engineer properly licensed to practice in the Commonwealth of Massachusetts;**
- 3. Any future proposed construction on this site, be it an addition to the existing house, construction of an outbuilding, or any other significant site work that involves excavation, filling or re-grading not shown on the plan noted above, may only be done upon approval of a new site and drainage plan developed subject to any ordinances and practices and procedures then in effect. Any such new site or drainage plan must be based on a then current on-the-ground survey conducted in accordance with the Survey Standards developed by the City of Gloucester DPW Engineering Division, appropriate soil and groundwater testing, and any required design calculations, all of which shall be prepared under the direct supervision of a Professional Land Surveyor and a Professional civil/site Engineer licensed to practice in the Commonwealth;**
- 4. No work on this property, subject to the conditions of the above referenced permit, shall begin without providing the Gloucester DPW Engineering Division no less than two (2) business day's notice of the commencement of such work so that a proper inspection protocol might be developed with the supervising engineer.**

3. *Request from Fish Box Derby Committee to hold Fish Box Derby on September 19, 2011*

Greg Bover, 108 Magnolia Avenue, Clerk of the Fish Box Derby Committee explained to the Committee that this event has run successfully for many years with total cooperation from City departments and Gorton's, Inc. who are great supporters of the event. They had submitted all their documentation previous to this meeting as required by the Committee. Their next derby is Sunday September 19th. They have all required documentation submitted to the Committee. It is a great day for the kids, which is their intent and goal. Councilor Ciolino asked where the revenue goes for this race. Mr. Bover stated they sell advertising signs on the bales of hay which is used for the insurance and to defray other costs. Any leftover funds goes to a pool to fund two \$1,000 scholarships for any former racer is eligible to apply when they reach college age. He didn't know the exact number of how many had given out. He thought between 15 and 20 scholarships to former racers. Councilor Whynott was in support of their event.

Councilor Hardy noted next year they'll need them to come much sooner before the Council and an application form will need to be filled out.

MOTION: On motion by Councilor Whynott, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to permit the Fish Box Soap Box Derby, Inc., to conduct their annual Fish Box Derby on Sunday, September 19, 2011 from 8:30 a.m. 4:00 p.m. in an area from Flanagan Square on Rogers Street to Manual Lewis Street. At 8:30 a.m. Rogers Street will be made one way with appropriate signage in that immediate area and at 10:45 a.m. Rogers Street from Flanagan Square to Manual Lewis Street will be blocked completely to vehicular traffic according to the procedures put in place by the Gloucester Police Department. At that time Main Street will be made two-way from Manual Lewis Street to Flanagan Square. The roadways will re-open to vehicular traffic cleared of all lane markers and other race signage and trash at the expense of the Fish Box Derby Committee by 5:00 p.m. that same day. Police and Fire Department approvals for all plans are on file with the P&D Committee as is a copy of the Derby Race Route and a Certificate of Insurance naming the City of Gloucester as the Certificate holder.

4. Request to permit to hold 31st annual Downtown Gloucester Christmas Parade on November 27, 2011

This matter is continued to September 21, 2011.

5. Request from Gloucester Downtown Association for street closure on December 10, 2011 for 2nd Annual Winter Carnival/Gloucester Downtown Shopping Spree Drawing

This matter is continued to September 21, 2011.

A motion was made, seconded and voted unanimously to adjourn the P&D regularly scheduled meeting at 9:53 p.m.

Respectfully submitted,

Dana C. Jorgensson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING:

- Memo from Mayor Kirk to City Council re: Summit - Building the New Maritime Port Economy: Focus on Gloucester dated September 7, 2011 (circulated via email to the Council prior to the commencement of the meeting)
- Letter with exhibits from Attorney Mark Nestor dated September 7, 2011 re: Decatur St. #14, SCP2011-001
- Letter from Paul Fischer, P.E., consultant to Attorney Mark Nestor dated September 7, 2011 re: Decatur St. #14, SCP2011-001
- Aerial Photograph of the area of Decatur St. #14 and Blake Court #9R taken in June 2011 given to the Committee by Paul Fischer, P.E.
- Full Scale Map of plans for Decatur St. #14 used as an exhibit by Fredrick Geisel, P.E., representing applicant for SCP2011-001