

CITY COUNCIL AND  
CITY COUNCIL STANDING COMMITTEE

**Ordinances & Administration**

**Monday, March 22, 2010 – 6:30 p.m.**

**Council Conference Room – 1<sup>st</sup>. Fl., City Hall**

**Present: Chair, Sefatia Theken; Vice Chair, Ann Mulcahey; Councilor Bruce Tobey**

**Absent: None.**

**Also Present: Councilor Jacqueline Hardy; Councilor Steven Curcuru; Councilor Paul McGeary; Councilor Joseph Ciolino; Councilor Robert Whynott; Mayor Kirk; Jim Duggan; Linda T. Lowe, Suzanne Egan; Meredith Fine; Sarah Garcia; Attorney Michael Faherty; Kate Banks**

**The meeting was called to order at 6:30 p.m. A quorum of the City Council was present.**

**Items were taken out of order.**

**1. *Unfinished Business:***

- A) CC2010-009 (Verga/Whynott) City Council to investigate the possibility and procedure to consolidate polling locations (Continued from 03/15/2010)

**Ms. Lowe** showed the Committee the GIS map produced by Ellen Carney of the IT Department, whom she felt did an outstanding job, of the City broken into the five wards and then into precincts which were color-coded. Within those wards there are 10 precincts. The State's Election Division advised that if we're going to collapse them and combine them, they must be contiguous. The description of the streets in each precinct are described in a written document (on file) which the Councilors had received previously. She reiterated the wards will stay the same; the consolidation is being looked at for the purpose of efficiency, cost savings, getting some of the polling places out of the schools if possible, and also the safety at the voting sites. There are decisions having to be made as to how the community would like this to proceed. She suggested the Councilors consider an open forum to discuss the matter of the consolidation with their constituency and to assist their understanding through education as to the reasons for this consolidation. It will not change anything else about their wards, but it is just a different system for where they are going to go to cast their vote in an election.

**Councilor Theken** asked how to begin the process.

*(Councilor Tobey arrived at 6:37 p.m.)*

**Councilor Mulcahey** asked do all the precincts and the wards have to connect.

**Ms. Lowe** stated for any consolidation that you do, each of the parts the must touch, not necessarily connect.

**Councilors Theken** and Mulcahey examined the map and discussed the possibilities for consolidating precincts.

**Councilor Ciolino** stated that if the idea was to get the voting out of the schools, where would the polling places be.

**Councilor Theken** stated it was to consolidate, but not just to get it out of the schools which in some cases might not be possible. It is to make it easier for everyone. The State said there can't be just one polling place for the entire City, but they can be consolidated. The idea is to find a middle ground within the newly created polling areas.

**Ms. Lowe** noted there are equipment issues as well. The voting equipment is old; it breaks down. New equipment is costly. If you can consolidate the precincts, you can afford to upgrade the equipment.

**Councilor Theken** asked if this map could be reproduced for each Ward Councilor so that they can discuss the matter with their constituents at Ward meetings. They will also need to look at the best possible place to put the polling places.

**Councilor McGeary** asked which kind of institutions can be considered as polling places.

**Councilor Theken** stated there are very little limitations as to where a polling place can be.

**Councilor Whynott** noted that you have to have the regular voting machines, one for every precinct, regardless of how many polling places you have. Where the savings comes in is on the handicapped machines, which cost approximately \$1,000 apiece. You are required to have one per polling place.

**Councilor Curcuru** asked would it be simpler to combine precincts. He noted you could combine 3-1 and 3-2, and put 4-1 and 4-2 in the same spot.

**Ms. Lowe** stated you can do that, and that would be five voting places.

**Councilor Curcuru** noted that would save money, as it would cut the number of polling places in half.

**Councilor Whynott** stated that you have to be sure your polling places are totally handicapped accessible.

The matter was continued to May 17, 2010 by unanimous consent.

“Yield Intersections” re: Intersection of Hesperus Circle & Hesperus Avenue (Continued from 03/15/2010)

This matter was continued to April 5, 2010, awaiting Traffic Commission input.

C) CC2010-005 (McGeary) Amend GCO Sec. 22-287 re: one handicapped space in front of 12 Webster Street (Continued from 03/15/2010)

This matter was continued to April 5, 2010, awaiting Traffic Commission input.

D) Stormwater Utility Fee (Continued from 03/15/2010)

**Councilor Theken** stated they are meeting with the Mayor and her staff, DPW, with Budget & Finance on Tuesdays on this matter. They are looking at doing a one-time debt shift. Eventually there will be a stormwater utility fee. Something will need to be done quickly otherwise sewer will be going up quite a bit. She will update the Committee at their next meeting on April 5, 2010.

## ***2. “Friendly Eminent Domain Taking” of parcel known as I4-C2 and Loan Authorization***

**Councilor Tobey** assumed that one of the items this Committee had jurisdiction over are some legal considerations. He noted he has been having useful, good conversations with General Counsel over the phone and by email, and is finding her analysis very helpful and appreciates General Counsel’s cooperation. On his questions raised at City Council on Chapter 40, section 14, he was very reassured that they are being answered. Good work is being done in conjunction with the State to make sure on the bond monies to be used have no strings attached. He is finding these conversations to be positive.

**Councilor Theken** stated most of her concerns were also Councilor Tobey’s concerns. The City waited 20 years; and she didn’t want to rush the process; to see that it is done correctly. She reviewed some of the history of what had been tried to be done with the parcel. Her main concern was what was going to happen to the lot once taken. She will ask for a vote to go before the full council for a public hearing for public and expert input.

**Mayor Kirk** noted the Administration views this evening as the kick off of the City Council review of the I4-C2 proposals. They will be at P&D on Wednesday night, and they’ll be at B&F on Thursday night. They’re

compiling all of the questions to be answered for each Committee. Hopefully by the end of the week all of the questions will have been answered. The legal ground for the structure of the transaction which Councilor Tobey referred to (on file). The second question is what are the strings attached the State grant money. Ms. Garcia had prepared a document related to that issue (on file). And lastly they'll give an overview of the history of the site (on file).

**Ms. Egan** submitted to the Committee a memo responding to the questions raised at the City Council by Councilor Tobey and Hardy [received and distributed at the meeting] as to whether or not the City is authorized to take the property under General Law Chapter 40, section 14. This came up because part of that statute specifically lays out the City's authority to act which is an enabling statute, as opposed to restricting the City from doing things. So there's two powers in there, one is the power to purchase and also the power to take. The power to purchase is limited. The City can't pay any more than 25% in excess of the assessed value of the past three years. Then it gives the additional power to take property. Essentially what this statute is for when you're limited because of the purchase price, the City can exercise its eminent domain powers and take the property. Once that happens, then you have a different value for the parcel. It is no longer on the basis of the assessed value; it goes into the fair market value of the parcel. The value is, what is the highest price the owner could get to a hypothetical buyer willing to purchase the property. That's what you value your property at. You do your taking; you have your value determined by fair market value; and then there is an "award of damages" (instead of calling it a purchase price) to the property owner. That's when you get into valuation. If you're going on the fair market value, you can enter negotiations, which they have done prior to the taking, with the owner of the property to agree on the awarded damages, or the price for the property. A number of considerations go into this valuation. One of them is, what is a willing buyer able to pay; what are the special considerations of a parcel; is it unique in some way? If it is unique, there is added value to that parcel. If a city comes to an agreement with the land owner, there is the order of taking, the assessment of damages, and the price that's paid. The City takes the property and owns it. The City can offer that amount, and the owner can accept it or not accept it. If they don't agree to that award of damages then they file a suit in court against the City for their damages. Then you get into the whole valuation with the court and a jury; and that's when the City loses control over the amount of money they will pay for the parcel because you no longer control the situation.

**Councilor Whynott** asked when the court decides how much it's worth can the City withdraw.

**Ms. Egan** stated no, you do your order, your taking and you record it. When you record that order of taking, that's the right to the damages for the property owner. You can't then go if you think we're going to get hit with a huge jury award to change our mind; we don't want to take the property. You're stuck. You could always negotiate at that point and still come to an agreement. You can also be liable for a temporary taking. So as soon as you say we're going to take this property that person's property value goes down because there's a cloud on that title.

**Councilor McGeary** asked if she was satisfied that this was a public purpose as defined in Chapter 79. If we were to turn this over to a private developer it would still be defined as a public purpose.

**Ms. Egan** stated yes. There is a case where the City of New London took a property for the purpose of economic development and revitalization. There was an issue because it was taken for private development. In that case, the City of New London prevailed. Right now the City is taking the property. We don't have a private developer. Economic development and revitalization is your valid public purpose under the law.

**Councilor Tobey** asked if that was good enough. The New London case was based on a well-developed, extensively vetted redevelopment plan with a capacity to readily act on it. We won't have that here. Does that matter in this case?

**Ms. Egan** stated not in this instance. If you look at the history of this parcel, there are numerous plans and discussions and attempts with the developer to acquire the property and what could be done with this parcel. She felt the City had the history and has the evidence to show of the attempts to development for the purpose of economic development. It is something the City has been working on for decades.

**Councilor Tobey** asked if there were any formal findings that have to be made; some form of documentation prepared that to speak to the public purpose in some greater level of detail.

**Ms. Egan** stated there certainly needs to have that laid out in the order of taking and a finding that it is for a public purpose. But we don't need to go through any process to come up with a plan for economic development with regard to that parcel. No, you do not.

**Councilor Mulcahey** asked a title search had been done.

**Ms. Egan** stated yes they had and was included in the packet to the Council. Once there is a taking there is no impediment. You take all rights to it.

**Councilor Tobey** asked is it the intention of the taking that we would extinguish the Gloucester House restaurant's ability to put a restaurant by them on that parcel.

**Ms. Egan** stated no, she didn't believe so. That restriction would only last for six more years [which was from a 30 year timeframe] with a restaurant that was primarily seafood.

**Councilor Mulcahey** asked about the driveway that goes to the Gloucester House property – is that a right of way or is it an easement.

**Ms. Garcia** stated it is an easement that runs next to the parcel but not on the parcel. It is an easement both to the Gloucester House and the land.

**Ms. Egan** commented that in the packet to the City Council the information was there on that particular aspect. Any easements that are attached to it would go along with the parcel. There has been some discussion of easements; and there were some questions raised earlier about whether or not the parcel was subject to so many easements that it was restricting use of it; but those easements are actually owned by the City and for the benefit of the City because they are attached to the waterfront parcel and are not restrictive.

**Councilor Theken** noted that Attorney Meredith Fine spoke at the City Council under Oral Communications on March 16<sup>th</sup> representing one of the partners in the Gloucester Landing Associates Limited Partnership.

**Attorney Fine** explained the entity who owns the property is Gloucester Landing Associates Limited Partnership. This partner she represents is one of the limited partners.

**Ms. Egan** stated that in terms of the City's interest, with all due respect to Attorney Fine, that is a dispute within the partnership. The agreement is with the Gloucester Landing Associates Limited Partnership that has been signed by the authorized representative. That is who the City's agreement is with. If there are partners, limited or general or otherwise within that partnership amongst them; that is for them to deal with on their own. That is not for us. They have no rights against us because we have an agreement with them. They signed it; they said we have all the interest in this parcel and if anybody else claims interest in this parcel, Gloucester Landing Associates Limited Partnership is going to go in and indemnify the City and hold us harmless. This is a line that's been drawn. Anybody else who wants to fight against that, they have to deal with the general partner within the

partnership, not with the City. She noted she worked very hard on the agreement, and had a number of other attorneys look at it to make sure that there is no way that that would happen. They waived their rights, and they agreed to indemnify us.

**Councilor Theken** asked if Mr. Cohen represents every single person in the Gloucester Landing Associates Limited Partnership and is entitled legally to sign and waive titles, everything.

**Ms. Egan** responded yes he is, absolutely. She noted that they had to make sure that he did have that right.

**Councilor Tobey** asked if he's found guilty of misconduct against his partners that is of no consequence to either our ability to close the deal, and to hold the property free and clear.

**Ms. Egan** stated yes.

**Councilor Theken** asked for that in writing.

**Councilor Hardy** stated her main concern is do we have sufficient time as a City Council to do our due diligence in this. It is 60 days from the MOU was signed, and we get it a few days after that in order to cross our "T's", dot our I's to get all the information we need from the professionals on eminent domain from the State, the DEP or as to what we can legally use the property for. Do we know yet how much it would cost us to develop that lot of land that is still tidelands? Would it not cost a great deal of money to put in pilings? Do we have an estimate of that cost for that. Now you add the \$800,000.00 plus the money the City would have to chip in, plus the cost to develop and improve the land. Do we have a developer who has said they'll take it as is and will develop it and invest the extra money in it? Do we have to develop it to make it site ready. There are so many questions. We've waited 20 years, and now we have only 60 days which doesn't give us much time to do it. She is not against it; she just wants to be sure it's done right; and is happy she's on the City Council that may be able to make a change for this piece of property because it would marry the harbor to our main street. It would be a great injection into the City. She didn't want the Administration to set the City up for failure going in by this 60 day timeframe. And 15 of those days have already gone by. Is there a chance that Mr. Cohen would agree to extend the time so City Council can do its due diligence?

**Ms. Egan** stated she has had conversations with the Gloucester Landing's attorney who was frank and stated they were insisting on the 60 days because they are familiar with cities and towns who can sometimes drag their feet on these types of issues, so he wanted to be sure and 'hold the City's feet to the fire'. There is a 30 day extension. She was assured by their attorney that they would grant the City extra time should the City find it is running short on time and grant the extension. It is a huge consideration to be able to move that quickly. We do have the extra 30 days and can ask for an extension.

**Councilor Hardy** asked by law aren't we already allowed to take 30 days to record it once it is agreed to.

**Ms. Egan** responded that the City has to have the order of taking recorded within that time period which is when Mr. Cohen has a right to the damages.

**Councilor Hardy** noted it appears that the Administration is going to hold the property for two years while deciding what to do with the property. Can you please explain that two year period at \$12,500.00?

**Mayor Kirk** stated the time period was just an estimate as to how long they think it would take to put together a development package from a financial standpoint. The short-term interest borrowing is \$12,500.00 per year, so it is strictly an arbitrary number in terms of pinning the costs against time because if we took five years it would

increase. They would be taking up the financing piece on Thursday at B&F and the development and land based issues on Wednesday at P&D.

**Councilor Hardy** expressed concern that there was such limited time now that if they don't start getting those things out in the open now, there will be a problem. Every day counts.

**Councilor Ciolino** noted the concerns that Councilor Hardy had will be taken up at P&D.

**Councilor Theken** stated that each Committee will ask their own questions. Her wish is to have it brought back to City Council to have the experts before the entire City Council and work together on the matter. She now has all kinds of documentation before her and needs time to absorb it all.

**Ms. Egan** stated no. This would be litigated in front of a jury. She has been talking to a number of people and researched on the City's exposure.

**Councilor Tobey** will not be here on Thursday and asked to go into the financials just a bit in the context of how the Council might act on the taking. There is an agreement here that defines the way that the transaction should proceed and states an amount, all is agreed and goes through as negotiated. He assumes that the Council could hypothetically set a different compensation number, a lower compensation number if you view the appraisals differently. Ms. Egan agreed with Councilor Tobey. He continued that if the Council did that, all bets are off from the point of view of his releasing us from liability. He could proceed to sue. Again, Ms. Egan agreed. If the Council did feel the fair market value was something other than \$1.5 million, we have a record here that Mr. Cohen has spoken to what he thinks the value is, does that cap our exposure?

**Ms. Egan** responded no because this would be litigated in front of a jury, and he can put all the evidence he wants in front of the jury to claim that his value is higher.

**Councilor Tobey** noted that both the agreement and the appraisal we can put into evidence.

**Ms. Egan** stated that would be a consideration but that wouldn't limit the amount of exposure to the City. They did some research on the matter and spoke to a number of people on this subject and that the amounts of damages that private parties are awarded on eminent domain cases are pretty outstanding.

**Councilor Tobey** noted that the City doesn't have a good record on this and noted an example on a pump station construction.

**Ms. Egan** stated this is a huge risk, and she would not recommend it.

**Mayor Kirk** noted that Barry Pett of the Gloucester Redevelopment Authority was on the other end of a 17 and a half year law suit with Jeffrey Cohen. She didn't feel the City could underestimate Mr. Cohen's persistence if the City proceeded on a hostile tack. This is a property owner with whom we're trying to cooperate with who has unlimited financial resources to take the City back to court and can hold out for a high jury award. The jury doesn't have to look at the restrictions that are currently on the land. The jury when looking at the highest and best use of the land could say what if there was no Marine Industrial zoning, what could be the potential. That could be extraordinarily valuable property once you strip it of our limiting zoning we have on it today.

**Ms. Egan** noted that could be a consideration. What we have here is a good agreement. It is a good negotiated price. She thought it would be unwise to subject the City to way too much exposure in risk to go to trial.

**Councilor Tobey** is not advocating this but putting this out there for discussion and knowledge. The \$1.5 million is based on the combined value of the 3 parcels viewed as a whole reunited as opposed to the value of the two parcels and asked Ms. Egan to justify it legally.

**Ms. Egan** stated you justify it if you look at eminent domain taking and our exposure to jury trial, you say what is the highest price this owner could get from a willing buyer. Who is a willing buyer? A willing buyer is any of the abutters, anybody who owns that waterfront land. What is the value to the City as a willing buyer to those two parcels? Combining the two parcels, that is the value of the property. That is how the City valued it. Even one of the other abutters who have waterfront property/access who would want that.

**Councilor Tobey** asked for the case law on that.

**Attorney Faherty** that easement is owned by the City transferred it twice to the Redevelopment Authority, which went on the record immediately prior to the deed to Gloucester Landing. As he understood it, it is implicit in this case that it is the wiping out of the various easements on the property now simply because they benefit the City. Therefore, there'd be a merger of ownership so you could wipe out those easements. Are the people, who currently benefit from that dockage, have they been informed that their continuing rights in that parcel are now up for negotiation? He felt the logical argument that is being made, which he didn't agree with, was that if we have these parcels together then somehow the draconian problems with the DPA go away because we can have 50% supporting type businesses. That assumes that they're in one ownership. If you talking about a private developer from the land are you saying this whole parcel is going to be sold or negotiated with a private developer that the water rights that people have relied upon for that dockage may now be subject to negotiation or abridgement, which you're going to take the right to eliminate those.

**Ms. Egan** responded that legally when you have two parcels, one is subject to easements.

**Attorney Faherty** interjected that if there's a merger of ownership you can; but the bigger issue is, is it the intent of the City to strip away the existing easements which are very pervasive but necessary but let's renegotiate the deal for the waterfront parcel.

**Mayor Kirk** stated that will be taken up further at P&D. The thought is to construct with P&D, the Planning Board, and the City Council is a Request for a Proposal with requirements in it to solicit private developers to come forward; and that as part of the requirements they would restrict that which they want to restrict. The thinking right now is that they would protect the use of the docks for the fishermen that were there now; write that into the RFP and see what comes forward in terms of development proposals. That would be true for the DPA and the MI zoning there. We're not at the stage where we would craft an RFP that would radically change the zoning or the dockage in the area. That's why this process could take two years. We might not get any proposals if it is too restrictive. We'd then have to come back to the drawing board to look and see where we need to loosen this up to attract some development.

**Attorney Faherty** disagreed with the statement made that if someone is determining the value of the property today that they can ignore the restrictions on it now. The zoning is a critical issue in the appraisal. Everything about that lot is part of a mitigating factor against value. In reviewing the appraisal that Mr. Cohen had done they made an assumption that they had an appraisal of the value of this land with the residual interest in the waterfront parcel. They had none. It's completely wiped out in the deed. The underlying assumption to that appraisal is not value based on the written instrument of the deed. Those have to be clear. He appreciated litigation is expensive, but the point is he didn't know what were the negotiations with Mr. Cohen before he produced his appraisal. Did he specifically take an out that says that appraisal is without prejudice, that it can't be introduced in a trial? Some people trying to reach a settlement take that position that everything we exchange here is not invisible at trial. Did we take such an exception?



**Ms. Egan** stated no.

**Mayor Kirk** reiterated that there are multiple steps. Step #1 is to streamline the process which is to take the current property owner out of the picture. He has no interest in participating in development efforts. Once it is in City control, then we can answer and control all the permutations. The first thing the City will do is clean the property up and has a timetable to do that by Memorial Day. The blight removal alone will help the downtown; will help the image and pride of the City. Right now it's doing nothing.

**Attorney Faherty** took issue saying the City has ordinances on their books already that say it's a violation of City ordinance to maintain litter on your property. There's been no enforcement on that. It's one thing to say we can enforce the ordinances uniformly, including Mr. Cohen, or we can spend \$1.5 million for the privilege of cleaning up this property.

**Mayor Kirk** noted that the City had the fence repaired in the last two years. Mr. Cohen did go ahead and had it fixed. There has been enforcement on that piece. They have not trespassed to clean up the litter. We have asked him to do that.

**Ms. Egan** stated they did have an enforcement letter on file for the litter.

**Councilor Tobey** stated there were efforts over 10 years ago and tried to go onto the property to do this, and this was not a cooperative property owner.

**Councilor Theken** asked about the Seaport Bond grant for \$800,000.00. Are we allowed to use it.

**Ms. Garcia** noted a memo from her to the Mayor (on file) regarding a Call Report, on conversations with Thomas Ryan, Capital Policy Analyst of the Executive Office for Administration and Finance of the Commonwealth of Massachusetts, dated March 18, 2010. This discussed the funding of the Bond bill and noted the process of how the money was awarded by the Seaport Advisory Council. She also noted Chapter 312 of the Acts of 2008. She pointed out on the last page which showed the uses that are approved, which are loosely stated. Mr. Ryan, on the telephone has given his assurance that this has no strings attached. He understood why it was so important to have it in writing. She expects she'll have that in writing during the City Council's deliberation on the matter.

**Councilor Tobey** noted it would not be prudent to close the deal without this.

**Mayor Kirk** believed that was a policy question. If there were restrictions on the money, it doesn't mean we still would not want to proceed with this transaction. It is not a foregone conclusion.

**Councilor Tobey** noted hypothetically that it would be better that the City would own it for 20 years and let this situation continue, and Mayor Kirk stated yes.

**Ms. Garcia** commented she didn't think there was any development proposal has ruled out the possibility of a long-term lease either.

**Councilor Tobey** noted in terms of a long-term lease, they're looking for relief on the DPA restrictions and leveraging off the maritime uses fully occupying waterfront parcel he assumes you can't work them together effectively so that the benefit flows to the I4-C2 parcels.

**Ms. Garcia** stated that the idea of the supporting commercial use, it can be financially or operationally supporting usage. The same owner is benefiting financially from a lease to a supporting commercial use that would be eligible.

**Councilor Tobey** continued that the City could then meld the 3 parcels to together even if the City owned it and were leasing it out even though the use of the waterfront parcel would be separately and reasonably managed by us.

**Ms. Garcia** stated she didn't see any obstacle to that.

**Ms. Egan** commented that if you look at any mixed use development on a parcel, you're not saying one owner has to operate and manage every single use of that parcel. You can have multiple owners and multiple tenants. It doesn't go to the ownership interest.

**Councilor Tobey** asked if the Administration would want us to buy this parcel even if it couldn't be developed; and the Mayor stated yes, it would be a land lease instead.

**Councilor Mulcahey** noted we can lease it out and then let it be developed by the leaser.

**Councilor Theken** asked P&D to look at this particular issue. You have to look at all options as who is going to want this parcel. This land was almost gone before. There was a group that was going to buy it. And it failed. We were talking with the Harbormaster to enlarge this dockage space. She wants to see things in writing. She is glad the Mayor is not rushing into immediate development. We have to protect who's there now. She believed the Mayor had the fisherman's issues at heart.

**Ms. Garcia** commented it is not subject to these restrictions.

**Councilor McGeary** stated that we can do this once we have the Bond Council's letter. The larger question is should we do this. What are the dollars, what are the plans? We may not have a clear and complete answer to that in 60 days, but we should try.

**Councilor Tobey** stated as far as he is concerned right now, he believed the City staff has done a really nice job and is very comfortable with the advice given. He thanked Ms. Garcia for the history she submitted which helped refresh his memory. He asked Ms. Egan on the valuation issue, what does it mean to her if it was worth \$1 million in 1999 to buy the two parcels; what does it say for the value that the Council should consider any awarding the damages when it does the taking if it does.

**Ms. Egan** felt this is a good deal. The value of the land has gone up. We have a set price. We've got an agreement with an ability to go forward. Any taking that would be litigated would be so risky that it would not be fiscally responsible for the City. Right now you have an agreement with a good price with the negotiations which the Administration worked hard on. You have a good price, and it is a good value for it.

**Councilor Theken** asked the Mayor what makes the City good landlords. There are so many examples of the City not being a good landlord, giving the example of the Maplewood School, the Legion, and Magnolia. We're taking this, but we were getting taxes on it. She wanted to be convinced as to why now. This is going to cost something. The City is purchasing it. It will cost all of us.

**Mayor Kirk** stated they have to look at who the owner of the property is. She noted her first conversations with Jeffrey Cohen. He has no interest in participating in any development efforts. He'll let it sit there as long as he

wants. It means nothing in his portfolio. The only way to have development there is for the wharf and land be married back together. He said that. She noted that meant one thing that the City has to have the land because the City is never going to give up the docks. So they went to the Seaport Advisory Council about the money. We got the Harbor Plan. We went to the State and asked for their help in identifying a developer. So the City needs to step up and be a part of it and put dollars into our own future. We don't want another property to maintain. DPW has the resources to clean it up for this summer. We have a little bit of time to put together a development package the community can live with, generate some revenue and spill over economic development. We talked to both abutters, and they can't see it developed. Perhaps they'll make an investment in their own properties, or across the street or on Main Street.

**Councilor Theken** noted the \$800,000.00 came to repair the harbor. If we need repairing, concerning the moorings, does the Waterways Commission have money to do that

**Mayor Kirk** noted that the funding the Seaport Advisory has is extremely well funded. She isn't worried that if they go back that they will take up that question again. That project is at least two to three years behind schedule. We can reprogram that money and put it to good use.

**Councilor Ciolino** stated P&D will come up with a recommendation and vote as will the other two Committees. When that comes together we can combine all the motions and do one hearing. Hopefully by the time we get to Council all the questions will be answered. With \$800,000.00 financed by the State and \$700,000.00 financed by the City. The Empire building is selling for \$750,000.00 on Main Street. Once you do the math, it's a fantastic deal for the City. Demoulas has a lease on the land from Sam Parks. That is done that there are investors that want to lease a property for 50 to 99 years. We need to do the final goal to get our hands on this property. There are so many things we can do once we get our hands on it. We shouldn't let what to do afterwards cloud the issue.

**Councilor Theken** made note of Kate Banks from the Waterways Board who was present at the meeting. She continued that it's not clouding the issues; it is making sure there are no issues on the matter. We waited 20 years, let's make sure about this and work together. Let's start out correctly.

**Councilor Ciolino** noted the City has no opportunities until we have it. Mr. Cohen will hold it forever if we don't take advantage of this now.

**Councilor McGeary** noted Ms. Egan mentioned that if the Council played with the numbers it would leave us open to litigation, but if the Council were to vote it absolutely down that is a condition of the order. He would have no recourse. We would not be open to litigation.

**Ms. Egan** stated yes that's right. The 60 days is over May 4<sup>th</sup>.

**Councilor Tobey** noted that P&D and B&F are going to feed off of our ideas, and then we'll get together again as a Committee. Then the Committee Chairs can agree can agree to convene as a committee as a whole. There doesn't need to be a public hearing on this, just on the loan authorization. He doesn't think they need a motion for a public hearing through O&A; which Councilor Hardy confirmed the motion to advertise for the Loan Authorization would come out of B&F.

**Councilor Theken** noted O&A's next meeting is April 5<sup>th</sup>.

**Councilor Hardy** asked if she wanted the public to respond at the public hearing, and Councilor Theken stated she would.

**Mayor Kirk** noted it is a piecemeal process. If on April 13<sup>th</sup> the Administration did a brief overview to the full Committee it gets it up on the Public Access television, and the team would be here to answer all the questions. If that is helpful they would be happy to do that.

**Councilor Hardy** asked how far in advance we would have to advertise.

**Ms. Lowe** noted that there is a matter of the loan authorization requirement for a public hearing which has statutory issues. We have put ads in that are not properly done, so the loan authorization is critical in its timing.

**MOTION: On motion by Councilor Tobey, seconded by Councilor Theken, the Ordinances and Administration Committee voted 3 in favor, 0 opposed to recommend that a separate public hearing from the Loan Authorization be noticed and held for the regularly scheduled City Council meeting of meeting on April 13<sup>th</sup> for public input on the matter of the “Friendly Eminent Domain Taking” of the parcel known as I4-C2.**

**Ms. Egan** and Ms. Fine, an interested who represents a Gloucester Landing Associates partner continued to discuss whether there could be litigation against the City if Ms. Fine’s client is dissatisfied with the “friendly taking” agreement.

**Councilor Theken** asked if the partners sued each other is the City allowed to purchase the property.

**Ms. Egan** reiterated yes; the City will not be liable because of their litigation.

**Ms. Fine** stated she disagreed.

**Councilor Tobey** noted it’s about money, not about land.

**Ms. Fine** stated they’re excited about the sale.

**3. CC2010-011 (Hardy) Order that the City Council review the current council Rules of Procedure in order to bring them up to date**

The Committee and Councilor Hardy had a discussion regarding ways in which to improve the City Council’s Rules of Procedure. One of the issues was pointed out by Councilor Tobey who noted Rule 4 on public hearings, subsection F which reads, “before the hearing is closed, questions by the City Councilors and the audience to either side.” The ruling he made while Council President was that none of those questions would be culled from the testimony. He felt they should delete the “and the audience” as it could be taken advantage of. Those who want to make a proposal can, the two sides can rebut each other. He suggested they delete the words “and the audience”. There was agreement that it would be an improvement. Ms. Lowe offered that the rules are for the opportunity for people to be heard which is a general right. It is up to the Council as to the manner that they move

forward with it. It is unnecessary and does allow people to take over a hearing, not in a productive way. Other questions were posed such as on the start time, the frequency of the meetings, the nature of the format of the meeting itself. There was a discussion on the matter of extending meetings past 11:00 p.m. For instance, on Rule 3A, all matters to be presented at a regular City Council Meeting are to be received no later than 4 p.m. on Wednesday preceding regular Tuesday Council meetings and did the Council wish to enforce this matter, noting more and more, items were coming into the City Clerk's office up to late in the day of Council meetings; were they going to hold to that. The Committee assented. As to the order of business, the Committee noted there was the ability to vote to waive the Rules in order to take things at a meeting in a different order if need be. There was arcane language referring to "blue slips" noted and that it should be eliminated. There was also a note in the change of ordinance numbers on the section referring to Special Council permits and the need to update that as well. There was a brief discussion as to whether the agenda should include on the Consent Agenda a report from the City Clerk to tell the Council who has filed minutes from the Boards and Commissions. It was noted the Councilors wished to see the Rule pertaining to Robert's Rules of Order, after Rule 5, C, shall prevail to go at the beginning of the rules. The usage of cell phones in the City Council meetings was also discussed and perhaps to make an announcement at the start of the City Council meeting for folks to turn off their cell phones, or refrain from texting or to remove themselves from the room to use their cell phones and/or other electronic devices.

**Councilor Hardy** stated this is just a start of a consideration of these rules.

This matter was continued to the April 5, 2010 meeting of the O&A Committee.

**4. CC2010-012 (Hardy) Order in accordance with Sec. 2.7 (a) of the City Charter that the City**

***Council review reappointment of the City Clerk***

**Councilor Theken** asked Councilor Whynott for a copy of a form for the purpose of review. She has asked Ms. Lowe to check with Mr. Bain, Personnel Director to obtain such a form for the Committee. It would be useful to do the review. She would like a copy sent to all the City Councilors, receive their input and to look at the whole picture. The matter would need to be wrapped up by the end of April.

There was a discussion on the process of the review.

This matter is continued to the next meeting of O&A of April 5, 2010.

**5. Other Business**

**None.**

**It was moved, seconded, and voted UNANIMOUSLY to adjourn the meeting at 8:55 p.m.**

**Respectfully submitted,**

**Dana C. Jorgenson**

**Clerk of the Committees**