

CITY COUNCIL STANDING COMMITTEE  
**Planning & Development Committee**  
Wednesday, October 19, 2011 – 6:00 p.m.  
**1<sup>st</sup> Fl. Council Conference Room – City Hall**  
**-MINUTES-**

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

**Also Present:** No City Staff in attendance.

**The meeting was called to order at 6:00 p.m.**

**1. Continued Business – All continued from 10/05/11):**

- A) SCP2011-009: Main Street #186, GZO §1.8.3 and §5.13.7.2 (To be cont'd to 11/02/11)

**This matter is continued to November 2, 2011 pending receipt of the Radio Frequency Report from the City's consultant.**

- B) CC2011-044 (Verga) Amend GZO Sec. 1.5.3, Sec. 1.11 and 1.11.2(e) "Appendix A, Rule 25: Rules of Procedure: Special Permit procedures "Part I and Part II" (To be cont'd to 11/02/11)

**This matter is continued to November 2, 2011 pending receipt of the Planning Board's recommendation.**

**2. Letter from Gloucester Rotary Club and Gloucester Rotary Club Foundation re: gift to City's Stage Fort Park Playground 100<sup>th</sup> anniversary project**

**Councilor Ciolino** stated that he is a Rotarian and was also the Centennial President when this park rehabilitation was proposed to celebrate the 100<sup>th</sup> anniversary of Rotary International. He is neither an officer nor a board member of that organization currently. The Rotary Club had expressed their concern with liability issues. **Steve Kaity**, Gloucester Rotary Club, 5 Viking Street stated they've been planning and implementing this playground project for close to 10 years and are through with the major construction. At this point is only maintenance and is their pleasure to gift it to the City. On inquiry by **Councilor Ciolino**, **Mr. Kaity** stated the City has a responsibility. It is difficult to sue the City because of the way the law stands. Their concern was that they'd also be named; but through the [Rotary Club] Foundation they're capped at \$25,000. **Councilor Verga** stated every time volunteers built a playground when it was done it would be gifted to the School Department. It is the same concept that they would take the liability and ownership of it. He felt it made sense and thanked the Rotary Club for this donation to the City. Councilor Ciolino commented it is a beautiful playground and is rated in the top 10 of the children's parks in the State. Councilor Whynott commented he has utilized the playground with his grandchild and found it to be "great". **Mr. Kaity** stated the Rotary Club plans to continue partnering with the City for years to come with the playground project and any other projects they see fit. They are also working with the City Solicitor regarding the procedure for interaction with the City for that purpose.

**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 to accept the Rotary Club of Gloucester Foundation's gift of the Stage Fort Park Playground 100<sup>th</sup> Anniversary Project including all equipment, materials and services itemized on the Rotary Club of Gloucester's letter dated September 29, 2011, all of which constitute the Anniversary project.**

**3. SCP2011-012: Pearce Island/Durney's Island, GZO §5.5.4 (Lowlands)**

**Councilor Ciolino** noted the receipt of the completed lowlands permit application under GZO §5.5.4 by the City Clerk on September 28, 2011. He also noted the correct address is Pearce Island/Durney's Island, Map 244, Lot 2, and this application is SCP2011-012.

**David Williams**, applicant, stated he applied for a c. 91 license, and the Building Inspector wanted a Lowlands Permit which he has done. This is for his docks and floats and all else on the property. **Councilor Ciolino**

understood the work had been done. The floats and deck exist. **Mr. Williams** stated the shed doesn't exist and part of the pier doesn't exist. It is a proposed shed in the northwest portion [of the property] and the proposed pier on the western side. **Councilor Ciolino** quoted page 3 of 13 of the ConCom Order of Conditions: "The existing dock is anchored to rocky intertidal habitat but does not disturb any vegetation and does not come in contact with the shellfish flat. This project will need a Chapter 91 license. The Commission finds that the following performance standards for the aforementioned resource areas will be met if the applicant proceeds with the mitigation measures mentioned in the Special Conditions ...This permit allows the applicant to maintain an existing after-the-fact deck, expand the existing deck, plant approved salt tolerant mitigation plantings; add an additional shed on lawn area..." Councilor Ciolino then indicated to the plan in the Special Council Permit as what is before them which Mr. Williams confirmed. He asked how much of the existing pier is there. **Mr. Williams** explained to the Committee that the ramp is already in. Everything is there except for the 4 ft. x 8 ft. shed and the 8 ft. x16 ft. pier. He also stated the docks have been there a long time and was there when he bought the property; and he added a few of them. Then he put the front porch/pier on. On inquiry by **Councilor Ciolino**, **Mr. Williams** stated this is a summer camp. It will not be a rental nor will he rent the dock area. Councilor Whynott asked if Mr. Williams had his c. 91 license which he stated the c. 91 license was in process. **Attorney Richard C. Nylén** of Lynch, DeSimone & Nylén, LLP stated he was before the Committee representing Richard C. Larson, Trustee of Merchants Island Trust II, the owner of Merchant's Island also known as Pearce Island. They are one of the few butters to this residence and have commented on the c. 91 license. Their concern with the extension of the floats they are worried about emergency vehicles for fire purposes for boats to get to Merchant's Island. They've reported that position with the department [Note: Mr. Nylén did not express which department he was referring to.]. They'd like to see this put off until the c. 91 license is issued. They felt in order to meet the requirements for a Lowlands Permit, it is clear, in his estimation, that they've met the performance for the Wetlands Act. But as far as c. 91 is concerned which is another requirement for the purposes of §5.5.4 that it meets the requirements, he believed they can't make that finding without the c. 91 license being issued. They are also concerned that what they see looks like the beginning of a commercial lobstering "enterprise". This property is R-20, for residential purposes, and with the shed and the lobster gear and everything that is showing on the property and the size of the dock, they believe it looks like something is going to take place there. It is in a fairly remote area, not close to any supervision, or noticed except for those on Merchant's Island. If and when the c. 91 licenses is issued they wished a condition to be put in place that the property is to only be used for R-20 purposes and not for commercial purposes. Mr. Williams did all this work without getting any permits which was brought to his attention and is now coming for an after-the-fact permit. If this had been done beforehand, Attorney Nylén surmised it may not have been permitted. **Councilor Whynott** stated they have given out several of these sorts of Lowlands Permits with pending c. 91 licenses. **Councilor Ciolino** expressed it is not the Committee's purview regarding a c. 91 license, and should not be reflected in their decision regarding the Special Council Permit. He agreed that they could put a condition on the Special Council Permit that the property would be strictly residential versus a commercial as Mr. Williams stated this evening. If Mr. Williams doesn't live up to that condition, what the City Council gives they can take back. That would be a violation of this permit; and that the Building Inspector would be notified and proper action would be taken. The c. 91 license is between the State and the applicant. **Attorney Nylén** added §5.5.4 requires a finding that it will not pose a hazard to health or safety. He didn't believe they can make that finding with respect to safety until the c. 91 permit has been issued. That is why he suggested that while in other instances it may be appropriate to issue permits with c. 91 licenses pending, that in this case with their issue about safety, they don't believe that is anything ConCom ever looked at because it is outside of their authority. He noted the presence of Mr. Larson who could speak of the relationship between the two areas as to why safety is a concern. **Councilor Ciolino** thought that was a concern for Attorney Nylén to bring up regarding the c. 91 license application now in process. **Councilor Verga** stated if they issue the lowlands permit nothing can officially happen until the applicant receives a c. 91 license. The applicant needs both those items in place. **Attorney Nylén** stated ordinarily the Councilor would be correct. **Attorney Nylén**, in response to a question from Councilor Verga stated you should apply for all those things, c. 91 license, ConCom approval, at the same time. In order to get a c. 91 license they should have an Order of Conditions which the applicant does have. After he got the Order of Conditions he applied for the c. 91 license. He didn't believe there was any requirement one had to have a Lowlands Permit in order to get the c. 91 license. The Building Inspector has to sign off that it is consistent with zoning in order to get the c. 91 license, however. **Councilor Verga** stated the permit has been applied for; and they've (the objecting party) have commented on it. **Attorney Nylén** stated they did provide comments to the State on the c. 91 license application. **Councilor Verga** stated their opinion would hopefully impact the permit. He felt they have made their point; it is the State that has the jurisdiction regarding the safety issue with regards to navigation. **Councilor Whynott** noted this is a narrow scope that the lowlands requirement has. **Councilor Verga** continued if they approve this [permit] and the State denies the c. 91

license because of that issue, it is the end of it. He agreed with Councilor Ciolino that they do take votes on what they're supposed to be looking at. The Order of Conditions was mentioned; and that this concern brought before them regarding the c. 91 license is not in their purview. He felt that their option is to make their point through the State. He didn't believe their vote would impact it one way or the other; unless Attorney Nylen was concerned that the State would perceive their vote as they're OK'ing it too. **Attorney Nylen** stated, "No"; that each of them has their independent authority. **Councilor Verga** felt that if the State was not going to look at how they vote, he did not believe they should put off their vote on this matter now before them. **Councilor Ciolino** added if there is a navigation problem, they also have the Harbormaster and the Shellfish Warden and plenty of people to turn to. **Councilor Verga** commented that if someone complains, say, a year from now, that there is a commercial lobster business going on, it would be hard to disguise and did not see that as a major concern. He was not saying it would happen, rather, it won't be hard to detect. **Attorney Nylen** reiterated that the property can't be used for a commercial business. **Mr. Williams** then read the six criteria as to why his application meets the criteria: 1. Social, Economic, or community needs: There is only one seasonal house on the island; and there is no community on the island; therefore, no needs are served by the proposal socially or economically; 2. Traffic flow and safety: There is boat traffic only in a 5 m.p.h. no wake zone; 3. Adequacy of utilities and other public services: There are no utilities or public services on the island. Water is brought out by boat. There is no trash removal or pick up by the City; 4. Neighborhood character and social structure: One house on an island; mud flats at low tide; boat traffic; 5. Qualities of the natural environment: Tidal marsh; no impact on natural environment. This has been approved by ConCom; 6. Potential fiscal impact: Since there are no services provided other than fire boat and police, there would be very little fiscal impact.

**Councilor Ciolino** stated on the basis of the application submitted, and the applicant's presentation, the Committee finds as required by §5.5.4 that the requirements of MGL c. 131, §40 have been met in that the applicant has obtained an Order of Conditions from the Conservation Commission issued June 10, 2010; and that the removal, filling, dredging or construction will not pose a hazard to health or safety and will be so executed as to conserve shellfish and other wildlife resources of the City.

**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 grant a Special Council Permit (SCP2011-012) to David Williams under GZO §5.5.4 (Lowlands) for the property located at Pearce Island, now known as Durney's Island as shown on Assessors Map 244, Lot 2, be granted for an eight by four foot shed and an eight by 16 foot pier and to maintain docks, all as shown on plans dated May 13, 2011 as prepared by Vernon LeBlanc, Professional Land Surveyor with the following condition:**

**1. That this property is not to be used for a commercial business; AND FURTHER TO ADVERTISE FOR PUBLIC HEARING.**

**The Committee took a brief recess at 6:22 p.m. and reconvened at 6:25 p.m.**

**4. SCP2011-013: Dale Avenue #10, Amendment of City Council Special Permit granted on May 23, 1974 Pursuant to GZO §1.10.1 and 3.2.2 (a)**

**Councilor Ciolino** noted that this application for a special permit was submitted on October 4, 2011 to the City Clerk's office and that the public hearing is to be held by December 8, 2011 for Dale Avenue #10, Amendment of City Council Special Permit granted on May 23, 1974 Pursuant to GZO §1.10.1 and 3.2.2 (a), for New Central Grammar Manager LLC. **Mark Sandler**, President of Gloucester Development Team, stated that this was the original organization that converted Central Grammar for elderly apartments in 1974. In 1985-86, Gloucester Development Team, Inc. re-syndicated the project; creating a new entity to rehabilitate the building to improve it. Now the project has essentially been re-syndicated again; and there's been a technical change of the owner; but it is still controlled by Gloucester Development Team and is the entity which owns the building and is the successor to Central Grammar LLC. They have a new loan from MA Housing, CPA funds, courtesy of the City; and they're in the middle of the renovation which is supposed to be finished by the end of this year. They're before the Council to amend the permit granted in 1974. The zoning was different at that time but still required the Special Council Permit. The application (on file) shows the permit and series of letters when looked at as a whole is what constituted a Special Council Permit at that time. In order to amend that permit they have to use the zoning regulations that are in effect now. It is required to have both variances and special permits; and also requires a Special Permit at the City Council level. The amendment consists of the addition of a combination garden shed/tool

shed and the building of an auxiliary generator which were not present when the original permit was granted. **Kirk Noyes**, 1 Woodbury Street stated they'd like to erect a tool shed for snow blowers and such; and have an auxiliary generator for electricity. Because those two components take up more open space per dwelling unit, they need a Special Council Permit for that component. The ZBA had to approve the fact that even though both structures were allowed and on Mason Street, they couldn't be closer to the street than the façade which made them have to be in the parking lot; and they need council approval for the two. On inquiry by **Councilor Verga**, **Mr. Noyes** stated the generator is powered by diesel. They looked at sending it back for a gas one, but their engineer felt the gas could be interrupted by seismic events and that it is not preferred. **Councilor Ciolino** asked if they can see through the fence. **Mr. Noyes** stated it is galvanized in a blue color. The idea is that it is a lattice with greenery growing up around through it. Once the greenery grows it will be covered. It is not a chain link fence, but is a mesh the size of small chain link. **Councilor Ciolino** stated they would appreciate their bringing an example of the mesh fence to the public hearing. **Mr. Noyes** appreciated the aesthetic concern, but assured the Committee that the vegetation will grow and cover the mesh. **Mr. Sandler** noted at the ZBA, a couple of the members suggested the shed enclose the diesel generator. but the ZBA was concerned about the massive size of it. After they were granted the variances to do that, they re-thought the matter and decided to release whatever rights they had under the decision. They did it over again so that the tool shed would be a separate structure away from the generator. They would not build a structure to house the generator because it would appear larger than an enclosure that is to be vine covered. This led to the resubmission of their application to the ZBA; and a week later they were granted the variance and formally released the previous decision from the ZBA. **Councilor Whynott** asked how loud the generator ran. **Mr. Noyes** stated the management company has stated they've run this kind of generator in other residential neighborhoods that that they've never had a complaint. It will be fired up once a week to keep it running well. This led to the question of a gas generator which had more fumes and was louder. He was assured by his management company this was appropriate. **Mr. Sandler** stated the reason they are going with this kind of structure is to have vegetation grow on it. **Councilor Ciolino** noted they have the library is doing their renovations next door and wished to see these two projects connecting visually. **Mr. Noyes** stated he is meeting with the library weekly so that they can do just that; to have designs coincide. It would be a \$30,000 investment for their portion of the fence. **Councilor Ciolino** asked about the parking lot. **Mr. Noyes** stated they've put in new drainage and that the parking lot will be repaved the first week of November. **Mr. Sandler** then read the six criteria for a Special Council Permit as how their project complies as follows: 1. Social, Economic, or community needs: There will be no change in the use of the property for multi-family elderly housing. Rather the proposed structures will enhance the efficiency, safety and ability of the property to serve as an important asset of the City's elderly housing inventory in the future; 2. Traffic flow and safety: The two proposed structures to be erected within the Mason Street yard of the property will not interfere with traffic flow and safety; 3. Adequacy of utilities and other public services: The auxiliary generator will provide emergency power for lighting and the elevator. The shed will enable the daily maintenance equipment to be readily accessible for use; 4. Neighborhood character and social structure: The property will continue to be in harmony with the surrounding neighborhood, and any potential adverse effect of these structures will not outweigh their beneficial effects; 5. Qualities of the natural environment: There will be no change in the quality of the natural environment; 6. Potential fiscal impact: There will be no change in the fiscal impact of these improvements. The Committee discussed making a condition about vegetation. **Councilors Whynott** and **Verga** felt the assurances of **Mr. Sandler** and **Mr. Noyes**, which is on record, will create proper screening and were satisfied that would be adequate, rather than making it a condition of the Special Council Permit. **Councilor Ciolino** then stated that on the basis of the application and the presentation of the applicant the committee finds as required by §3.2.2(a) that the lesser lot area and open space requested is in keeping with the neighborhood character and structural density as the improvements will allow the building and grounds to be maintained in a more efficient manner and provide for the safety of the residents by providing power to the complex in the event of loss of electricity. The committee also finds that as required by §1.10.2 this application is in harmony with the general purpose and intent of the zoning ordinance.

**MOTION: On motion by Councilor Verga, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend that the City Council approve the amendment of New Central Grammar Management LLC, City Council Special Permit granted on May 23, 1974 for the construction of a multi-family structure, for 10 Dale Avenue, Assessors Map 14, Lot 29, pursuant to §1.10.1 and 3.2.2(a) of the Gloucester zoning ordinance to decrease the lot area per dwelling unit as required by §1.10.1 of the zoning ordinance from 39.3% to 38.8% and to decrease the open space per dwelling unit under §3.2.2 of the zoning ordinance from 186 square feet to 182 square feet for a total reduction of 1,086 square feet, to place an auxiliary generator covered by wire mesh on the Mason Street yard in the location as**

depicted on the site plan entitled “Subsurface Drainage Plan” prepared by Mastue Associates, December 14, 2010, and construct a ten foot by ten foot garden/tool shed at the location depicted on the Mastue site plan AND TO ADVERTISE FOR PUBLIC HEARING.

**5. SCP2011-014: Dory Road #34, GZO §5.13.7.2 (PWSF Modifications) (To be cont'd to 11/02/11)**

**This matter is continued to the November 2, 2011 P&D Committee meeting.**

**Councilor Ciolino** mentioned they need to have a site visit for the Special Council Permit for 186 Main Street, noting the Committee may have to continue it again until that site visit is completed. They would ask that the Building Inspector accompany them. The motion passed at City Council on 10/11/11 at City Council related to SCP2011-005, Dory Road #11, will a need to be amended to have a more specific Condition #1 to make it clearer as to when the Turbine A and Turbine B are to be shut down to prevent shadow/flicker. **Councilor Whynott** commented on the letter to the editor in the Gloucester Daily Times by Dr. and Mrs. John Wolfe regarding the use and noise. **Councilor Verga**, who attended the October 17, 2011 meeting of the O&A Committee, summarized the discussion on the noise ordinance for the Councilor.

**A motion was made, seconded and voted unanimously to adjourn the meeting at 6:51 p.m.**

**Respectfully submitted,**

**Dana C. Jorgensson**  
**Clerk of Committees**

**DOCUMENTS/ITEMS SUBMITTED AT MEETING:**

- **Letter to the Committee from Attorney Richard A. Nylén, Jr. of Lynch, DeSimone & Nylén, LLP, Boston, MA on behalf of Richard C. Larson, Trustee of Merchants Island Trust II related to SCP2011-012, Pearce Island/Durney’s Island**