

CITY COUNCIL

AND CITY COUNCIL STANDING COMMITTEE

Planning & Development

Wednesday, March 24, 2010 – 6:30 p.m.

1st Fl. Council Conference Room -9 Dale Avenue, City Hall

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

Absent: None

Also Present: Councilor Jacqueline Hardy; Councilor Paul McGeary; Mayor Carolyn Kirk; Jim Duggan; Jeff Towne; Sarah Garcia; Suzanne Egan; Jim Caulkett; Nicole Bogin; Attorney Adam Costa; Mark McDonough; Cate Banks; Leslie Milne; Attorney Michael Faherty; Attorney Meredith Fine; Joanne Hart; Gregg Cademartori

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. *Old Business*

- A) Amendments of Sections 2.2.1, 2.3, 5.5, 5.8, 5.8.2 and 5.18 of the Gloucester Zoning Ordinance relating to the 43D Priority Development Site and 2009 Harbor Plan Recommendations

MOTION: On motion by Councilor Ciolino, seconded by Councilor Verga, the City Council voted 3 in favor, 0 opposed to amend the Gloucester Zoning Ordinances, Section 2.2.1 by adding the following sentence at the end of the section:

“New, or expansion of, commercial, industrial uses and other site alterations, may be subject to Site Plan Review. See Section 5.8 for applicability.”

MOTION: On motion by Councilor Ciolino, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to amend the Gloucester Zoning Ordinances, Section 2.3 Use Tables by changing the allowance of uses in the MI district as follows:

Section	Use	Current	Proposed
2.3.2(14)	Airport, heliport	CCS	N
2.3.3(1)	Agriculture, horticulture, floriculture on lots < 5 acres	Y	N
2.3.3(3)	Sale of products grown pursuant 3.2.3(1&2)	Y	N
2.3.4(10)	Motor vehicle sales or rental	Y	N
2.3.4(11)	Motor vehicle service, fueling, storage or repair	CC	N
2.3.4(13)	Marine related service, storage, or repair limited in the MI primarily commercial vessels and recreational vessels	CC	Y
2.3.4(26)	Facilities for water transportation loading and unloading	-	Y
2.3.7(2)	Parking or storage of agricultural machinery used on the premises	Y	N

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 amend the Gloucester Zoning Ordinances, amend Section 2.3 by replacing the existing text of footnote number one, applying to the MI district, with the following:

“(1) In the MI District, Supporting Designated Port Area (DPA) Uses, as defined in 310 CMR 9.02, shall not in the aggregate occupy more than 50% of the ground level area on filled tidelands and uplands of a lot within the DPA. Such uses shall also be subject to dimensional requirements of 310 CMR 9.0. Within the water-dependent use zone, as defined in 310 CMR 9.02, in the MI District no use shall be permitted unless it provides access to water-borne vessels.”

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 amend the Gloucester Zoning Ordinances, Section 5.5 Lowland Requirements replacing existing sections 5.5.1 and 5.5.4 with the following:

5.5.1

No person shall remove, fill, dredge or build upon any bank, marsh, swamp, or flat bordering on coastal or inland waters or any other land subject to tidal action or coastal storm flowage without a special permit from the City Council. Such permit shall be issued only upon determination that the requirements of the *Wetlands Protection Act* (G.L. Ch. 131, Sec. 40) and the Gloucester Wetlands Ordinance have been satisfied, and that such removal, filling, dredging or construction will not pose a hazard to health or safety and will be so executed as to conserve the shellfish and other wildlife resources of the City.

5.5.4

Sections 5.5.1 through 5.5.3 shall not apply to commercial or industrial projects bordering Gloucester Harbor north and east of a line from the mouth of the Blynman Canal to the intersection of Farrington Avenue and Eastern Point Boulevard.

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 amend the Gloucester Zoning Ordinances, Section 2.3.5 Use #5 by adding the following footnote to be numbered #3:

“No trailer truck park shall be located within 100 feet from the lot line of an established residence in a residential zone, and such potential development must be assessed in terms of its impact on the environment.”

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 amend the Gloucester Zoning Ordinances, Section 5.8 by replacing the existing text with the following Site Plan Review ordinance:

5.8 Site Plan Review

5.8.1 Purpose

The purpose of this section is to facilitate individual detailed review of development proposals which have an impact on the natural or built environment of the City in order to promote the health, safety and general welfare of the community; to ensure adequate parking, safe and accessible pedestrian and vehicular circulation; and to minimize traffic impact on city streets.

Councilor Ciolino, spoke on behalf of the Committee who felt these two sections, D) New multiple family residential construction of three (3) or more units or expansion of existing multi-family residential structures resulting in the creation of one or more additional units; and E) New two-family dwellings, with the exception of Cluster Developments; of the original proposal of 5. 8.2 were thought to be a separate issue on their own and did not belong with the Marine Industrial section, and so they were removed as was done the first time in Planning & Development when presented with this particular amendment.

5.8.2 Applicability

The following types of activities and uses require site plan review by the Planning Board:

- A) Any new industrial or commercial construction or expansion over two thousand (2,000) gross square feet, or any new or expanded industrial or commercial use which requires more than five (5) additional parking spaces;
- B) In the MI district and new industrial or commercial projects or additions, change of use, or project requiring a special permit or variance.
- C) The construction or creation of any new parking lot or the expansion, or redesign of any existing parking lot.
- D) New multiple family residential construction of three (3) or more units or expansion of existing multi-family residential structures resulting in the creation of one or more additional units.
- E) New two-family dwellings, with the exception of Cluster Developments.
- F) Driveways in residential districts, which propose more than one curb cut.

MOTION: On motion by Councilor Whynott, seconded by Councilor Verga the Planning & Development Committee voted 3 in favor, 0 opposed to remove Sections D&E from 5.8.2 as originally proposed and insert the following amended language:

5.8.2 Applicability

The following types of activities and uses require site plan review by the Planning Board:

- A) Any new industrial or commercial construction or expansion over two thousand (2,000) gross square feet, or any new or expanded industrial or commercial use which requires more than five (5) additional parking spaces;
- G) In the MI district and new industrial or commercial projects or additions, change of use, or project requiring a special permit or variance.
- H) The construction or creation of any new parking lot or the expansion, or redesign of any existing parking lot.
- I) Driveways in residential districts, which propose more than one curb cut.

5.8.3 Pre-Application

Applicants are invited to submit a pre-application sketch of proposed projects to the Planning Division and are encouraged to schedule a pre-application meeting with the Planning Director and the Inspector of Buildings.

5.8.4 Procedures

Applicants for site plan approval shall submit five (5) copies of the site plan and a digital copy including any supporting materials, to the Planning Board. Application materials shall be distributed to City departments their review and comment. The Planning Board shall review and act upon the site plan at a regularly scheduled meeting within forty five (45) days of the meeting after a project appears on a Planning Board agenda. The Planning Board may impose such conditions as may be deemed appropriate. The decision of the Planning Board shall be a vote of a majority of a quorum of the Planning Board. A written decision reflecting the vote of the Planning Board shall be filed with the City Clerk within 14 days of the vote.

No building permit or occupancy permit, for activities requiring site plan approval, shall be issued by the Inspector of Buildings without the written approval of the site plan by the Planning Board. Any work done in deviation from an approved site plan shall be a violation of this Ordinance. Approval of a site plan pursuant to Section 5.8 et seq. shall be in addition to any required special permit or other forms of relief as required by the Zoning Ordinance.

5.8.4.1 Relation of Site Plan Approval to Applications for Special Permit or Variance

Applications for projects requiring special permit or variance which also requires site plan approval, shall be accompanied by an approved site plan. In the alternative, any special permit or variance granted also requiring site plan approval shall contain the following condition:

“The work described herein requires the approval of a site plan by the Gloucester Planning Board pursuant to Section 5.8 of the Zoning Ordinance. Any conditions imposed in such site plan approval shall be incorporated herein by reference.”

5.8.4.2 Where the Planning Board approves a site plan with conditions, and said approved site plan accompanies a special permit or variance application to the City Council or Zoning Board of Appeals, the conditions imposed by the Planning Board shall be incorporated into the issuance, if any, of a special permit or variance.

5.8.4.3 Where the Planning Board shall consolidate its site plan review with special permit procedures including but not limited to Major Project reviews.

5.8.4.4. The applicant may request, and the Planning Board may grant by majority vote, an extension of the time limits set forth herein.

5.8.4.5 No deviation from an approved site plan shall be permitted without approval of modifications by vote of the Planning Board.

5.8.4.6 Site plan approval does not constitute a certification that the proposed plan conforms to applicable zoning regulations, wetland regulations and/or any other City, State or Federal requirements that must be obtained prior to implementation of the elements of the site plan.

5.8.5 Preparation of Plans

Site Plans shall be submitted on 24-inch by 36-inch sheets. Plans shall be prepared by a Registered Professional Engineer, Registered Land Surveyor, Architect, or Landscape Architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1"= 40'.

5.8.5.1 Plan Contents. Plan sheets prepared at a scale of one (1) inch equals forty (40) feet or such other scale as may be approved by the Planning Board. Composite plans may be submitted provided details can be easily analyzed. In the case of change of use permits with limited site alterations, the required submission of one or more plans may be waived by the Planning Board upon recommendation by City department staff. Minimum plan requirements shall be outlined on the Site Plan Review Application. The plans to be submitted are as follows:

(A). Site layout plan, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, general circulation plan for vehicles and pedestrians, drive-thru windows, curb cut locations, parking, fences, walls, walkways, outdoor lighting including proposed fixtures, loading facilities, solid waste storage locations, and areas for snow storage after plowing. The plan shall contain an inset locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the Planning Board.

(B) Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling storm water runoff drainage.

(C) Utility plan, which shall include all facilities for refuse and sewerage disposal or storage of all these wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.

(D) Architectural plan, which shall include the ground floor plan, proposed exterior building materials, treatments and colors and architectural elevations of all proposed buildings and a color rendering where necessary to determine the proposal's affect on the visual environment. Such plan shall also include the design of any freestanding signs.

(E). Landscaping plan, showing the limits of work, existing tree lines as well as those tree lines to remain, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures during construction.

(F) Lighting plan, showing the location and orientation of all existing and proposed exterior lighting, including building and ground lighting. The plan shall note the height, initial foot-candle readings on the ground and the types of fixtures to be used.

5.8.5.2 The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.

5.8.5.3 A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land or provide public access, and any other evidence necessary to indicate compliance with this ordinance.

5.8.5.4 The site plan shall be accompanied by drainage calculations by a registered professional engineer as well as wetland delineations, if applicable. Water utilities, sewer infrastructure and stormwater drainage shall be design to conform to Gloucester Subdivision Rules and Regulations and standards of the Department of Public Works.

5.8.5.5 Certification that the proposal is in compliance with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board.

5.8.6 Waivers

The Planning Board may, upon written request of the applicant and recommendation by City department staff, waive any of the submittal or technical requirements of Section 5.8.5 where the project involves relatively simple development plans.

5.8.7 Review Guidelines and Approval

Site Plan approval shall be granted upon determination by the Planning Board that the plan meets the following objectives. The Planning Board may impose reasonable conditions at the expense of the applicant to promote these objectives. New building construction or other site alteration shall be designed in the Site Plan, after considering the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, so as follows:

A) A reasonable effort shall be made to conserve and protect natural features that are of some lasting benefit to the site, its environs and the community at large.

B) Slopes, which exceed ten (10%) percent, shall be protected by appropriate measures against erosion, runoff, and unstable soil, trees and rocks. Measures shall be taken to stabilize the land surface from unnecessary disruption. Such stabilization measures shall be the responsibility of the property owner.

C) The placement of buildings, structures, fences, lighting, signs, and fixtures on each site shall not interfere with traffic circulation, safety, appropriate use and enjoyment of adjacent properties. Adequate illumination shall be provided to parking lots and other areas for vehicular and pedestrian circulation. All illumination shall be directed and/or shielded so as not to shine beyond the perimeter of the site or interfere with traffic.

D) All areas designed for vehicular use shall be paved with a minimum of either a three (3") inch bituminous asphalt concrete, a six (6") inch Portland cement concrete pavement, or other surface, such as brick, cobblestone or gravel, as approved by the Department of Public Works.

E) All parking spaces shall be arranged and clearly marked in accordance with the design and layout standards contained in Section 4.14 of the Zoning Ordinance.

F) All utility service transmission systems, including but not limited to water, sewer, natural gas, electrical and telephone lines, shall, whenever practicable, be placed underground.

G) All surface water runoff from structures and impervious surfaces shall be disposed of on site; but in no case shall surface water drainage be across sidewalks or public or private ways. In no case shall surface water runoff be drained directly into wetlands or water bodies. Drainage systems shall be designed to minimize the discharge of pollutants by providing appropriately designed vegetated drainage channels and sedimentation basins that allow for adequate settling of suspended solids and maximum infiltration. Dry wells, leaching pits and other similar drainage structures may be used only where other methods are not practicable. Oil, grease, and sediments traps to facilitate removal of contaminants shall precede all such drainage structures. All calculations shall be for a one hundred (100) year storm. Drainage design shall be in accordance with Department of Public Works regulations as amended.

H) In the MI district development proposals shall comply with the standards and requirements with regard to the placement and dimensions of structures as regulated by G.L. c.91 and 310 CMR 9.00 et seq.

I) Pedestrian safety and vehicular safety to and from the site shall be maximized provided it does not interfere with the proposed use.

J) Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.

K) Ensure compliance with the provisions of this Zoning Ordinance.

L) Promote orderly and reasonable internal circulation within the site so as to protect public safety and not unreasonably interfere with access to a public way or circulation of pedestrian or vehicular traffic on a public way.

5.8.8 Lapse

Site plan approval shall lapse after one year from the final approval if a substantial use in accordance with such approved plans has not commenced except for good cause. Such approval may, for good cause, be extended in writing by the Planning Board upon the written request of the applicant, within this one year period.

5.8.9 Regulations

The Planning Board may adopt, and from time to time amend, reasonable regulations for the administration of this Site Plan ordinance.

5.8.10 Fee

The Planning Board may, from time to time, adopt reasonable administrative fees and technical review fees for site plan review.

5.8.11 Appeal

Any person aggrieved by a decision of the Planning Board rendered pursuant to section 5.8 may appeal such decision to the Zoning Board of Appeals as provided in G.L. c. 40A section 8.”

There was a discussion regarding the concern of the Marine Industrial Use.

Mr. Cademartori stated anything that requires a special permit about supporting uses; most of those uses require a special council permit. It's only if someone comes in with 100% use; we are affording ourselves to look at things like public access. If it's a presumed MI use, their permitting process is with the State.

Councilor Whynott stated he is satisfied with our advertising process now. This is just taking one step that will have a domino effect.

Councilor Verga is not supporting this now.

Councilor Ciolino supports the motion.

MOTION: On motion by Councilor Verga, seconded by Councilor Ciolino, the Planning & Development Committee voted 1 in favor, 2 opposed (Verga, Whynott) to recommend to the City Council to amend the Gloucester Zoning Ordinances, Section 5.8 as adopted with the addition of the following sentence after the third sentence in Section 5.8.4 Procedures:

“The date and time of the first Planning Board meeting when said site plan is reviewed shall be noticed in a newspaper of general circulation at least seven (7) days prior to said meeting.”

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 amend the Gloucester Zoning Ordinances, Section 5.18 by replacing existing text of the section following the words Special Permit Granting Authority in the first sentence with the following revised language in bold:

5.18 Marine Industrial District

For all uses requiring a special permit in the Marine Industrial (MI) district, and located within (200) feet of the water's edge, in addition to the requirements for the issuance of special permits contained in Sections 1.5.3, 1.5.4, and 5.7 herein, the Special Permit Granting Authority **“in approving the project must find that:**

- 1. The proposed use will not displace an existing water-dependent use with a non water-dependent use;**
- 2. The proposed use will not, by virtue of its location, scale, duration, operation, or other aspects, pre-empt or interfere with existing or future development of water-dependent uses of the project site or surrounding property;**
- 3. The proposed use is compatible with the working waterfront character of the zone;**
- 4. The proposed project will not displace existing commercial fishing vessel berthing in Gloucester Harbor, without providing equivalent space and draft at a suitable alternative site not already used by commercial fishing vessels;**
- 5. The proposed use will not adversely affect the preservation of water-dependent uses on surrounding properties.**

In exercising its power under this section, the Special Permit Granting Authority may impose reasonable modifications, conditions, or limitations as are necessary or appropriate to ensure that the presence of the proposed development does not result in any of the above adverse impacts or otherwise adversely affect the primary character of the area as a working waterfront.”

2. Unfinished Business

- A) SCP2010-001: 79-99 Essex Avenue, Section 2.3.1(12) Hotel, motel motor inn under 30 guest units, Section 5.7 Major Projects, Section 3.1.6(b) height excess 35 feet, Section 5.5 Lowlands Section 3.2.6 lot area per two guests (Continued from 03/10/2010)

This matter is continued to April 7, 2010.

B) Cape Ann Farmer's Market re: Permission to Close Section of Harbor Loop, Thursdays from
June 24, 2010 to October 7, 2010 (Continued from 03/10/2010)

Nicole Bogin, Joanne Hart and Mark McDonough representing the Cape Ann Farmer's Market stated that they wish to move the market to in front of the Heritage Center. They have cleared everything with most of the abutters, Peter Mullin and the Seafood Auction who gave a verbal OK but no paperwork has been turned in.

Councilor Ciolino noted the new portions of the conditions to the members of the Farmer's Market board present at the meeting.

Councilor Whycott stated he's never heard a complaint.

Councilor Hardy asked about the comfort stations being used, and the Farmer's Market members stated the comfort stations will be at the Heritage Center and at the Fitz Henry Lane House.

Councilor McGeary asked about the placement of sawhorses (see motion below).

MOTION: On motion of Councilor Ciolino, seconded by Councilor Verga, the Planning and Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to grant permission for the Cape Ann Farmer's Market to close a section of Harbor Loop from the Whale Center's driveway to the end of the Heritage Center's driveway each Thursday, starting June 24th and ending October 7, 2010, from 1:00 p.m. to 8:00 p.m. with a parking restriction beginning at 12 p.m. with the following conditions:

- 1. That the Building Center, TD Bank, the Harbormaster's Office, and Coast Guard Station driveway (the area from their driveway to the green buoy) and parking lots remain accessible;**
- 2. That the back part of Harbor Loop remains accessible to the businesses located there whether it be pedestrian or vehicular access;**
- 3. That all businesses affected be notified in advance of the street closure prior to prior to June 24, 2010.**
- 4. The organizers shall allow the Fire Department drive-through access with fire engine at**

the convenience of the Fire Department;

- 5. Any merchant/vendor set up of tables and chairs, tents or area enclosures should extend no further into the street than the lines painted on the street for vehicular parking;**
- 6. Vendor/merchants shall be responsible for their own trash removal;**
- 7. That all vendors obtain pushcart vendor licenses from the Board of Health;**
- 8. That adequate bathroom facilities be provided with proper directional signage to the comfort stations;**
- 9. The closures of Harbor Loop at either side of the Heritage Center, #21 Harbor Loop, shall be by means of sawhorses or the like, as directed by Lt. Joseph Aiello of the Gloucester Police Department;**
- 10. That the City Clerk's Office be provided a copy of the Farmer's Market By-laws and insurance policy indemnifying and holding the City harmless 14 days prior to the first Farmer's Market of June 24, 2010.**
- 11. It is the responsibility of the applicant to procure all other federal, state and local permits and approvals associated with this event.**

C) Gloucester School Committee's Request Use of City Land (for environmental studies – Curriculum – off of Dun Fugin ramp area) (Continued from 03/10/2010)

Councilor Ciolino stated the matter would be continued to April 7, 2010.

D) CC2010-006 (Hardy) Review Fee Structure under 5.7.3 of the Gloucester Zoning Ordinance on Major Projects and to review obligations of applicant to provide reproducible plan(s) and to review the application forms for all special permits (Continued from 02/24/2010)

This matter was continued to May 5, 2010.

E) COM2010-011: Second Extension of Special Council Permit 2006-15 201, 205 and 233 Main

Street (a.k.a. Main Street Plaza) (Continued from 03/10/2010)

Attorney Adam Costa, Blatman, Bobrowski & Mead, LLC, spoke on behalf of 1907, LLC (Mac S. Bell, Manager). He reviewed the history of the parcel's Special Council Permit, and that due to economic conditions nothing has occurred to date. It has largely been completed; the building is up and the Tyvac is on. There were loose materials on the site when this was last before the Council and other concerns about the condition of the immediate area surrounding the building. They were addressed immediately. He confirmed that by viewing the site personally. They sought an extension last year due to inability to find a tenant. They're waiting to make tenant specific improvements.

Councilor Verga understood that but the Tyvac is unsightly.

Attorney Costa stated that the location of the windows, as an example. The windows are sited high, and not at ground level. Mr. Bell found that one of the difficulties is that the windows are up high due to it previously being a photographic processing business. If a tenant required relocation of the windows, it would be expensive if there is a brick facing on the building, for example.

Councilor Ciolino stated he had a conversation with Mr. Bell to come to the meeting with an action plan to improve the appearance of the building.

Attorney Costa was unaware of that conversation.

Councilor Ciolino further stated it is a constant complaint of the building's unsightliness. He felt Mr. Bell needs to commit to something whether he's prettying it up with murals and window boxes; but it can't stay that way it is now.

Councilor Hardy noted she sat on the Committee the last time the property came up for an extension. Mr. Bell's idea and the Council's idea of immediate are different. She is not prepared to do anything with the City Council until the exterior is fixed. What is it going to cost to completely side the building? She offered suggestions as to how it could be; and stated that the outside of the building needs to be done and needs to be done this year.

This matter was continued unanimously to the April 7, 2010 meeting for Mr. Bell to submit an action plan for building with a timeline.

F) COM2010-012: Extension of Special Council Permit 2007-25: 33 Emerson Avenue (Continued

from 03/10/2010)

Attorney Costa, also representing the applicant, Mr. Bell, noted this is a first extension on this site noting this is another of Mr. Bell's property, owned by Dunfugin, LLC. It is the wind turbine site. The permit was approved on July 22, 2008, and they are coming in a bit early as it wouldn't expire until July 22, 1010. They are requesting a twelve (12) month extension of this Special Council Permit, taking it out to July 22, 2011. There are no additional reasons for this other than the same kind of economic hardship. There is a condition in this decision that a green building be constructed, because the wind turbine has to be an accessory to the green building. It doesn't have to anymore pursuant to State law, but it is a condition of this Special Council Permit. As the permit is still affecting the site, until Mr. Bell is able to complete the building as a green building, the turbine can't be built.

Councilor Hardy asked if this was solely for economic reasons could he do this.

Attorney Costa responded Mr. Bell expressed to him that he can't precede with the turbine until he has a building go up.

Attorney Costa stated this is an extension on the entire permit, not just the wind turbine.

Councilor Hardy stated that there is a provision in 5.22 that it can't be extended for economic hardship.

Attorney Costa responded that the permit and the extension is for the facility as a whole and that the term Wind Energy Conservation Facility (WECF) is the green building and the wind turbine.

Mr. Cademartori noted there is no special permanent use for the building.

Attorney Costa stated their claim is that they can't construct the building. The permit is "dependent upon the completion of a green building and if after two years no building application has come forward, the special permit shall be revisited for further action." So to be consistent with that statement, they filed their request for an extension.

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 grant the Applicant's request for an extension for a Special Council Permit for a Wind Energy Conservation Facility (WECF) to Dunfidgin, LLC (Mac S. Bell, Manager) according to sections 5.22 and 1.8.6 of the Gloucester Zoning Ordinance at 33 Emerson Avenue, Map 21, Lot #8; to a twelve (12) month extension of the terms of the Special Permit to expire July 22, 2011 to allow for the completion of the project with all the terms of condition of the original Special Permit to remain in effect.

3. *Lanesville Emergency Action Program (LEAP) 3rd Annual Whistleblowers 4K Road Race & 1 Mile*

Fun Run, July 3, 2010

Leslie Milne, representing LEAP, stated requesting for the LEAP 4K Road Race through Lanesville. She showed a map of the route to the Councilors. It starts and ends at the Community Center. The Fun Run is at the center of the course. There will be no road closures. From Andrews to Langsford ask that during the race it be made one way. There is a potential closure for the crossing of runners at High Street, but it is brief. Lt. Aiello has provided support in the past and has sent a cruiser. She reviewed the plans for ham radio operators and other volunteers along the route. They will provide the general liability insurance to the City.

Councilor Verga stated the supporting documentation shows no issues.

Councilor Hardy noted it's gone off without a hitch; and the Police Department has been there giving support. It is a wonderful cause. It's not a whole lot of traffic with signs up in advance of the path and fully supports.

Ms. Milne made mention that the previous year they had 190 runners, and expected the same number again this year.

MOTION: On motion of Councilor Ciolino, seconded by Councilor Whynott, the Planning and Development Committee voted 3 in favor, 0 opposed to recommend to the City Council a permit to Lanesville Emergency Action Program (LEAP) to host the 3rd Annual Whistleblowers 4 K Road Race and 1 Mile Fun Run, Saturday, July 3, 2010, 10:00 a.m. and 10:45 a.m. respectively ending at 11:15 a.m. from the Lanesville Community Center; requesting that Washington Street (from the Langsford Street intersection to the Andrews Street intersection) be turned into a one-way street for 1 hour.

4. *"Friendly Eminent Domain Taking" of Parcel Known as I4-C2 and Loan Authorization*

Councilor Ciolino stated the Planning & Development Committee would hear the Administration's presentation on the "Friendly Eminent Domain Taking". There would be no vote taken on the matter at this meeting. The Committee will conduct a Site Visit on Saturday, March 27, 2010 at 8:30 a.m. with a rain date of April 3, 2010 to view the property. They will probably vote on it at their next meeting.

Mayor Kirk opened by reviewing points from the O&A Committee meeting on 3/22/10. They affirmed the legality of the transaction and reported their understanding of the restrictions on the Seaport Bond money, of which there are none, and provided a history of I4-C2. The Committee took action to hold a public hearing for April 13th for community input only. There is a separate public hearing that will take place for the Loan Authorization. They will go over the environmental issues and permitted allowable uses and to speak to the development process going forward and to discuss the action they're requesting for P&D on the Order of Taking.

Mr. Duggan spoke to his memo on the I4-C2 Environmental Assessment (on file) which starts to answer the question of possible contamination on the parcel. According to Mass DEP Brownfields Coordinator, the site is not on their list and has not been reported to be contaminated from records going back over 25 years in their database. The partners (DEP) have also agreed to fund a Phase 1 assessment for the property. It will be completed by April 9th. A proposal to the DEP (the contracting authority) from Weston & Sampson is included in

this packet for a Phase 1 assessment. As soon as they have it, it will be shared with the Council. They are optimistic. It is a clean site.

Councilor Ciolino asked if to the best of Mr. Duggan's knowledge the site was clean.

Mr. Duggan responded yes, to the best of his knowledge. He believed the Phase 1 assessment will continue to support that belief.

Councilor Verga asked if they're doing more testing or are you just looking for documentation on past issues.

Mr. Duggan stated they will do reconnaissance on the site and look at vegetation growth or lack thereof; they'll look at what's been stored there; view historical aerial views, historical environmental reviews; they'll do a questionnaire and physically go out and interview neighbors, City officials, elected officials, etc..

Councilor Verga noted so in the end then no one will be able to dispute the findings

Mr. Duggan stated there are no signs to date. There's no indication of any findings.

Mayor Kirk spoke to the second piece of what can the site be used for. There are two categories: temporary uses and permanent uses.

Ms. Garcia spoke to the possible uses allowable in the DPA in the context of the Harbor Plan's vision to create a particularly "Gloucester" mix of waterfront water-dependent industry, supporting commercial use, and public access. She referred to her memo (on file) on the subject. There are three stages of action that may be chosen: immediate actions the City may take before it is ready to apply for its Chapter 91 license, Temporary Uses supported by a ten year Chapter 91 license, and a permanent development plan supported by a 30 year Chapter 91 license. (See memo)

Stage 1 – Immediate actions the City may take:

- Removal of blight
- Installation of signage along Rogers Street
- Temporary uses such as the Cape Ann Farmers Market (for summer months) which would not be considered incompatible

Stage 2 – Implementation of Temporary Uses supported by a Chapter 91 license:

- Parking for Whale watch boats
- Areas for gear repair and maintenance.

As part of a Chapter 91 application for Temporary Uses, public access provisions would be allowed.

Stage 3 – Permanent Uses supported by a Chapter 91 license):

50% Water-Dependent-use requirement:

- Fishing equipment and gear repair

- Boat building, manufacturing
- Commercial lobster or shell fishing processing
- Tidal turbine manufacturing
- Facilities for ferries
- Support facility for off-shore wind turbines
- Pre-treatment facility for fish processing

The wharves will be included in the MI use.

50% Supporting DPA Use allowance:

- Ocean Research
- Fisheries research
- Marine trade education
- Alternative energy research and development
- Marine biotech incubator
- Retail
- Arts gallery space with public function potential
- Satellite art School

Public Access is permitted in the Designated Port Area (DPA).

Councilor McGeary asked about 310 CMR 9.12(a) Water Dependent Industrial Uses – those are other permissible uses, just not industrial usage and are permitted in the DPA.

Ms. Garcia noted they are water dependent uses but not water dependent industrial uses. In (b) they give the water dependent industrial uses and do mention that in the above paragraph (a) 9 through 14 can be in a DPA but not the other ones. It is a common mistake. The water dependency is not enough. It has to be water dependent industrial.

Councilor Hardy asked about the range of allowed uses the Administration is anticipating for the I4-C2 parcel. She saw the range the DPA allows, but what is the Administration's intent.

Mayor Kirk noted that's really a policy question and stated that range should be consistent with the Harbor Plan 2009 which is consistent with the DPA. The Harbor Plan that was just passed by the State, affirmed the DPA, and this property falls under.

Councilor Hardy stated we're not looking to take this on to make this parking.

Mayor Kirk noted in terms of the specificity, there is no preconceived notion on the use. They've ruled nothing out. It needs to fall within the parameters of the Harbor Plan.

Councilor Hardy stated it will be for the public good as opposed to the private good of a non-profit organization that doesn't pay rent.

Mayor Kirk stated that the Administration wants to see the parcel generate revenue for the City. They don't want it to be a cost to the City. That would not be prudent at this point.

Councilor Whynott commented he would hate to spend the money on this to see it become a parking lot.

Councilor McGeary asked that under the temporary uses are you permitted to put in infrastructure like electricity, perhaps some kind of light duty shelter.

Ms. Garcia stated she'd have to go to the DEP because temporary uses at that point they're going to be looking at it as how it works with a working waterfront.

Councilor McGeary asked Ms. Garcia to please go ahead and check on this matter.

Mr. Caulkett showed the Councilors a map of the waterfront as it pertains to the I4-C2 parcel, a section of Harbor Cove and identified the federal channel to them which is maintained by the Corps of Engineers, 18 feet deep. He showed the new harbor line that was approved in 2004, as well as the previous harbor line created back in the 1800's. In the area noted as the Harbor Cove floats, that's the property line between the Gloucester House and the Building Center. The float system used to sit back 35 feet from the old harbor line on the Building Center side. We now have roughly 90 feet out to the harbor line. On the Gloucester House side there used to be only 15 feet between the float and the harbor line. There is now 50 feet. They could expand out that far with a new float system. The Corps of Engineers formula is three times the depth of the water, back from their line which equals 54 feet that they would have to sit back from that federal line with any fixed structure, floats, anything. The Waterways Board and Chairman Bent have looked to redraw the floats to increase the number of floats for commercial boats. They've had a preliminary talk with the State DEP because their footprint is for the Chapter 91 is this footprint before the Committee. Preliminary telephone conversations with the Corps of Engineers – they look at everything on a case by case basis. He felt the City had a good argument that Harbor Cove is a very wide channel; that they wouldn't be interfering with any safe navigation if they did creep out towards that federal channel, which is closer than what their general formula allows and the Board is moving towards that now.

Councilor Ciolino stated the end result is that we have picked up about 90 ft. on one end.

Mr. Caulkett confirmed that they've picked up about 55 feet overall.

Councilor Ciolino suggested that Mr. Caulkett would advise anyone who would develop the property that there is a lot more of a potential to expand what's there.

Mr. Caulkett noted in some of the preliminary drawings, Chairman Bent was doubling the number of boats. We have 12 boats there now. He was looking to go up to 30 slips for commercial boats to tie up to. The City doesn't own a lot of the waterfront. We have small, little parcels all over the City. Solomon Jacobs will be worked through with National Grid. There'll be a toe-hold there. This would just add to what the City has on the water.

Councilor Hardy stated she keeps hearing Farmer's market. Would that be this year.

Mayor Kirk noted it depends. The deed has to be recorded and the transaction complete before we can step foot on the property. The Farmers Market requires electricity and comfort stations. The timing would have to be worked out and make sure it was an acceptable use. Could it be pulled off? There's a lot of moving parts to it. They're trying to move forward on their alternative plans.

Councilor Hardy asked if they move to I4-C2 would they expect the City to pay for the electricity and comfort stations.

Mayor Kirk said none of this has been considered yet.

Councilor Hardy stated even if a non-profit comes in, we're still going forward with the development. The perception is if we put the Farmer's Market there the citizens would perhaps be unhappy we moved forward just for that use.

Councilor McGeary stated he'd been told if a pier or dock wasn't attached to shore we could do more dockage closer to the line, anchored but not attached to the shore.

Mr. Caulkett stated no, what you're thinking is with bottom anchored moorings you have more latitude in a DPA. That has nothing to do with the harbor line. In the DPA it's a more flexible system. They gain a lot of water sheath by moving that harbor line out. The comment from the Corps of Engineers was that they would look at it on a case by case basis. Old photos show boats rafted in Harbor Cove four or five deep. We don't have that now. If they were to build the system out close to the federal channel, it's still not going to interfere with the safe navigation of the channel because they don't have those numbers anymore.

Mayor Kirk noted the language before the Committee is the Order of Taking. For the City it is economic development as defined through our Harbor Plan, the visitor-based economy, the maritime economy, and the fishing industry. When you take the Harbor Plan and our economic development plan, this parcel has the potential to encapsulate each of those areas. She noted that the Harbor Walk could connect and move visitors around the area. DPA requirement around commercial supporting use and MI use is paving the way to put something there to the maritime economy and is consistent with being a model for what can be done in the future. We do need to have community meetings. This parcel has been here so long and many people have ideas for it. She would have a more formal process, a professionally facilitated one which is good practice. Whatever step we take we have something to evaluate. And then put it back out to the community and see what consensus is on the issues. Once they have that grasp on what would be supported by the community, then its step 4 – assemble the deal. What are the easements to protect the waterfront, etc. to construct the development package? It allows for a development that is consistent with the Harbor Plan, the economic development plan with the support of the community.

Councilor Ciolino has had community members ask him if the City is putting the cart before the horse. Why don't we have proposals first before we buy the property is the most persistently asked question.

Mayor Kirk noted that's what has been tried before and hasn't worked. If one of the parts falls out, the deal falls apart. She felt it was time to try a different approach. We don't have the cooperation of the property owner. To have community meetings about property we don't own would not be prudent.

Ms. Garcia stated the property is not going to move without dockage and the City owns that portion. There will be no interest to get someone on board without docks. The only way to move it is with City ownership with the docks. She felt it is a process of being really clear to the community and finding what's right for this specific parcel.

Councilor Ciolino wanted to speak on the right of ways, feeling the need to assure the fishermen that they can get to their docks regardless.

Ms. Egan stated once the City owns the property, there's no easements because we own it. In any future development we retain easements across it. We have that right and authority as owners to retain that.

Councilor Ciolino asked for clarification.

Ms. Egan noted the easements are across the property to access the back of the property. We will have that right to get to our parcel because it becomes one unit. We always retain the right and can make sure that it stays that way. If we own the waterfront parcel and have tenants, we can make sure that remains.

Councilor Ciolino asked about the driveway access to the Gloucester House which goes out to the docks.

Ms. Egan clarified that is the City's easement; whatever is contained in that lot. In theory, we would have the right to do that and assure the fishermen they can always get to their dockage. The City would benefit by supporting the fishermen.

Councilor McGeary noted the Gloucester House driveway is not a part of the parcel. The other easement is off that same driveway.

Ms. Egan stated when the City takes the property; the easement which goes across the parcel, that easement no longer has any purpose because it's benefiting us. Let's say we do something with the parcel that in some way hampers that particular part of the easement then we can redraw the easement to make decent access. It is no longer subject to someone else's property interest.

Councilor McGeary noted if you sell this to someone else, the easements would have to make that a part of the deal. They cease to exist and have to be re-created.

Ms. Egan stated if it were conveyed out, we would retain that right to access.

Mayor Kirk related that in Step 2 they would provide access to the wharves. They would negotiate the precise easements under Step #4 when the final deal is put together. We want to make sure the process supports the City's objectives and to have something there that meets all the conditions. We have affirmed a Harbor Plan and our economic development plan. There is a lot that's been invested and supports the future of the visitor-based economy, the maritime economy and fishing industry.

Councilor McGeary asked what fits the Mayor's optimistic timeline.

Mayor Kirk noted the next night they'd be before the B&F Committee for the financing portion. They have two years before the permanent financing requirements kicks in. So the cost to the City for the first two years is \$12,500.00 in year 1, \$12,500.00 in year 2 because short-term financing can be done. And in year 3 we have to make a 10% payment, and then in year five we have to get into the permanent financing arrangement. She would like to see Step 4 be in place by the second half of the second year, if not earlier.

Councilor McGeary noted the Mayor talked about revenue for the City; did she mean actual tax revenue or was she referring to soft revenue for economic growth and development that something put onto that site could spur.

Mayor Kirk stated the tax revenue would only come about if we sell the property and it became a commercial property. She would put land lease in that category. As they go through different scenarios that may be the only way under Step 4 to put a deal together. It would make no sense to assemble the parcel and then disassemble it two years from now.

Councilor McGeary asked if the Mayor could you envision a non-profit coming in but you might give them a "sweetheart" deal on the lease.

Mayor Kirk commented if the community comes out to support one particular idea, we have to think on that. Blight removal, harbor walk concept, which she believed is a must have will spur economic development.

Ms. Garcia noted marine research is a typical use. Immediate tax revenue is the spin-off development from all those universities who partner and bring in small businesses that support the research. The maritime sector is a part of a diversification. It might require subsidy but with community support could go forward.

Councilor Ciolino felt some of the property owners in the retail business and might see potential for their property. Years ago there was a plan for a driveway to get to the docks. That's still viable.

Councilor McGeary stated working on the assumption it will be a parking lot. How many cars could you put in there and how much revenue could you generate.

Mayor Kirk commented they've been very reluctant to do that sort of analysis. Other than the environmental assessment they haven't done anything.

Ms. Garcia spoke to Commonwealth tidelands and handed out a memo on the subject (on file). Tidelands are Commonwealth tidelands if they lie seaward of the historic low water mark. They are not Commonwealth tidelands if they lie landward of the historic low water mark. Yes its Commonwealth tidelands; and no, it doesn't make any difference to what we do there.

Councilor McGeary noted he has heard that in addition to being Commonwealth tidelands and that the fill that was used was Commonwealth dirt and asked Ms. Egan to research that fact.

Ms. Egan asked what the Committee needs to recommend to the City Council the order of taking which is in the packet at tab 8, which is very specific that has to be included in the order of taking. We put the public purpose, etc. by the statute. Then the B&F is looking at the Loan Authorization. We've covered the uses and the legal issues were covered in O&A and everyone appeared satisfied with that.

Councilor McGeary asked about the letter from the Bond Council.

Ms. Egan stated we have a contract with the state and we know where those funds are coming from. Mr. Ryan stated it is coming from the Department of Business Development and can look at it ourselves if the Bond Council can't provide it to us themselves. We have to do the research ourselves, to do our due diligence.

Councilor Hardy commented that on Tab 7 on the memo dated March 11, 2010 from Jeff Towne, there is a different page. The book should be 8419.

Ms. Egan stated that will be at B&F tomorrow.

Mayor Kirk wanted to extend P&D to flesh out this outline in greater detail to whatever extent of participation and guide the Administration as well.

Councilor Ciolino asked the Mayor to keep the DDC involved and keep them in the loop. They should be considered a partner in all this as things progress.

Attorney Faherty noted last evening at O&A the original grant of the loan and bond issue, does it say about acquisition of land.

Ms. Garcia stated they have the right to use it to acquire land.

Attorney Faherty felt there is no one in the City who would not like to see this parcel become productive. There are not quite so many who want the City to run into this transaction at over a million dollars. As you heard earlier from Mr. Caulkett, the City's right to put out floats in front of the parcel has improved and the Chair of the Waterways Committee is looking for an expansion of 50% more vessels. If that goes forward, the acquisition of this parcel has nothing to do with the Chapter 91 application to increase this dockage. They can make that application for that additional dockage space. Certainly diverting some of this money would go further to make additional dockage on land which we already know. He showed a plan of record, just prior to a plan that was in place that signed by the Planning Board prior to Mr. Cohen's ownership and shows the limits of the parcel. Looking at the easements on this parcel, the reason this was done is that the original noted elevation was on two levels. The easement and subsequent easements are for parking. He suggested that if you pursue the course of increasing the dockage in this area by 50%, you are increasing the number of vehicles by 50% who need to park. You are curtailing the use of these easements onto this parcel now. There's nothing to prevent you from doing this now without the cost associated with it. To the environmental issue, that initial screening is just a computer search. That was the Davis fisheries building; partially pile supported and partially filled land. There were oil tanks on this land. In addition to that, this is unconsolidated fill. The entire fill is contained in the specifications in the embankment. Unconsolidated fill, not compacted to any standards; tidal action for 43 years; there are some sink holes in there. Why would we buy a piece of land without finding out just what is underneath the surface? What has it done to the quality of the fill? The plans on file; all that fill is contract #1. All of this material was in place. We don't know its current state. The Cohen plan called for piles supporting everything. Do you think a developer is going to absorb this cost? The answer is no. That's without knowing what the condition of the soil is today. At a minimum we should put some probes the ground where the old oil tanks were. He wouldn't buy a property where the majority of fill was placed before environmental testing was done. All are potential costs the City will have to absorb later. DPA requirements of the supporting use are very specific and have to provide a direct or operational support to the MI use. The legitimate activity is the dockage activity. What are the operational activities that could go on that site – gear storage; placement of lockers. These are the activities you will be supporting. These are not going to provide a financial activity. The new maritime industry is not going to support the debt you are going to have nor encourage anyone to want that parcel and make a go. There's been nothing that's been successful before. You can't do anything with the site that makes economic sense. Do every bit of due diligence before you own. We're going to end up owning it, but we don't need to own it. We've backed ourselves into this position with expectancy; and it is an all or nothing deal with no room to go. To buy this to just own it is not sensible. You haven't done your homework yet.

Ms. Garcia stated she walked the property with Attorney Faherty; and yes, there are holes in the bulkhead and we need to fix them. We agreed to disagree on this matter. Any building will be built on piles. She agrees with the need for due diligence. People have made offers on this property. Their issues were about access to the water. For a community to leave a property without economic value is irresponsible. It is extremely responsible to buy this property. We should work forward as opposed to just letting it be.

Councilor Ciolino noted he worked for the Building Center. They sold oil; even long ago, they were on top of us. There are records on how those tanks were removed. The Cohen plan is not an example of what should go there. Most of the people who were respectable contractors would tell you that an underground parking lot would be underwater. He sees Attorney Faherty's concern. He's seen the bulkhead buckle before.

Councilor Verga stated Attorney Faherty made good points; the environmental study needs to include testing of the soil.

Mr. Duggan stated 25 years ago there was testing and the DEP stated there has been nothing on this site. As they go forward they will do any type of assessments.

Councilor McGeary asked about the memo of understanding - does it allow for a 30 day extension for environmental studies.

Mayor Kirk noted if Phase 1 comes back with a finding they will go to that 30 day extension. They will not go to the Phase 2 borings if there are no findings.

Councilor Verga spoke of the urban renewal.

Mayor Kirk believed that Attorney Faherty is not the expert on this. They will look to the DEP and what their findings might be. There is a report that shows the clean site that it is. Mr. Linqata stated he has access to that report and would provide it.

Councilor Hardy noted that we are already under Phase 1 and is the report on Phase 1 based on data that will be updated.

Mr. Duggan stated it's all going to be renewed information and will look at it as if it is the first time. If there is a finding there will be a more thorough review.

Mayor Kirk reiterated that the report comes back April 9th and will be shared with the Council as soon as it comes in.

The matter was continued by unanimous consent to April 7, 2010.

5. SCP2010-003: 5 Reef Knot Way, Section 5.5, R10

The matter was continued to April 7, 2010.

6. Other Business

None.

MOTION: It was moved, seconded and voted UNANIMOUSLY to adjourn Planning & Development meeting at 8:52 p.m.

Respectfully submitted,

Dana C. Jorgenson

Clerk of the Committees