

CITY COUNCIL STANDING COMMITTEE
Planning & Development Committee
Wednesday, September 4, 2013 – 6:30 p.m.
Kyrouz Auditorium – City Hall
MINUTES

Present: Chair, Councilor Greg Verga; Vice Chair, Councilor Tobey; Councilor Jackie Hardy

Absent: None.

Also Present: Councilor Ciolino; Councilor Cox; Councilor McGeary; Councilor LeBlanc; Councilor Whynott; Jim Duggan; Linda T. Lowe; Tom Daniel; Jim Caulkett

The meeting was called to order with matters on the agenda taken out of order. A quorum of the City Council was present.

1. Memorandum from Mayor re: Request for Referendum Question on Designated Port Area (DPA) (Cont'd from 03/20/13) – Request for Withdrawal of same

Councilor Verga advised the Committee it is in receipt of an email dated August 22, 2013 from the Mayor which says: That the Administration wishes to withdraw the request for a ballot question regarding the Designated Port Area (DPA).

Jim Duggan, CAO spoke in support of the Mayor's request to withdraw her original request for a non-binding ballot question on whether the City should pursue removal from the Designated Port Area. Since the original request was made by the Mayor to the Council, two things have happened, he pointed out, the Harbor Planning Committee (HPC) is actively engaged in a full review of the harbor, and the Administration made a request to the Mass. Coastal Zone Management (CZM) to do a full boundary review of the City's DPA, he said. **Mr. Duggan** said the Administration would like to see those two processes finish before making a recommendation. He said while the Administration may support such a referendum on the DPA in the future, it would rather see these two processes move forward first.

Mr. Duggan confirmed for **Councilor Hardy** that the Mayor is asking the Council to withdraw the matter as a referendum. **Councilor Hardy** asked if there was no referendum/non-binding ballot question on the DPA, how the Administration and the Council truly gauges public sentiment on the issue. **Mr. Duggan** said that the HPC continues to hold public meetings. He pointed out this opinion is based on panel discussions from June 2012 consisting of Salem's Mayor Driscoll, Mr. Ashe, the Chelsea City Manager, Mayor Kirk, Scott Lange, former Mayor of New Bedford all articulated reasons why those cities don't agree with the DPA. Additionally, there were residents from those communities, in an open meeting, business owners, stakeholders, and local elected officials that were able to express their views as well, he noted.

Councilor Hardy asked when the Council can expect a report from the Harbor Committee. **Tom Daniel**, Community Development Director said that the draft Harbor Plan will be available in January 2014. **Councilor Hardy** pointed out it would be another two years for this matter to go before the voters if a non-binding referendum question did not make this year's municipal ballot because a report wasn't received from the HPC until January.

Councilor Hardy discussed with Councilor Verga the fact that draft ballot language was submitted by the Mayor in her original memo to the Council. **Mr. Duggan** confirmed that contained in the Mayor's original memo there were two simply stated draft questions put forward as a basis for a non-binding referendum question. He asked, however, that the matter of the ballot question be pushed aside in favor of the HPC process and the CZM review. **Councilor Hardy** said the HPC membership is narrow in comparison to the general electorate; and that it is better to have a ballot question in order to gauge public opinion. **Mr. Duggan** pointed out the DPA has been discussed openly for a number of years.

Councilor Tobey asked for a deadline by which the Council must firm up questions for the municipal ballot. **Councilor Hardy** said the City Clerk has given the School Committee until the end of the week of September 9th because that body doesn't meet until after the City Council meeting of the 10th which is the date the Council was given to decide on another non-binding ballot question. It was noted there was early ballot preparation this year because there are no primaries.

Councilor Tobey said whenever he puts forward the idea to take 65 Rogers Street (I4-C2) out of the DPA by Home Rule Petition, stakeholders vigorously object to the notion and property owners and folks in the street seek him out telling him that the entire DPA should be removed. He said that even though this is not governing by referendum, it is important that State bureaucrats who administer this program, that the sense of the people of

Gloucester should be recorded and shared. Councilor Tobey said he didn't see an issue with an advisory question: "Shall the City seek the removal of the Designated Port Area designation from its harbor." He asked why the Administration would object.

Mr. Duggan reiterated that the HPC is still engaged in its review, and the CZM doing the boundary review; the Administration does not have that information yet. **Councilor Tobey** expressed his objection saying that the City has volumes of information and that this matter has been discussed for 15 years. He said he thought a ballot question has merit and was pleased that the Mayor had put the idea forward.

Councilor Verga said this is difficult as he is a member of the HPC. He said there is nothing that says that even if the HPC endorses keeping things the way they are now, that the Council wouldn't want to know what public opinion is on the DPA's possible removal. He noted there is a timing issue that the Council is up against of less than two weeks to decide or wait two years. **Councilor Hardy** suggested it was possible for the Council to make it happen as the Mayor had proposed simple language with two options presented. **Councilor Tobey** also suggested that this matter be forwarded to the Council for a determination at the next regularly scheduled Council meeting.

Councilor Verga added that for the purpose of forwarding this matter to the Council he would support this motion, but would reserve his final vote until the Council meeting of September 10, 2013 which will take place at the Lanesville Community Center at 7 p.m.

MOTION: On a motion by Councilor Hardy, seconded by Councilor Tobey, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to put forward to the City Council for a decision whether or not to place a non-binding ballot question on the November 2013 municipal election ballot on the matter of should the City should take steps to remove the City's harbor from the Designated Port Area.

Examples of draft language offered in Mayor Kirk's October 3, 2012 memo are:

1. *Shall the City of Gloucester seek to remove itself from the State Designated Port Area program and in doing so turn over control of its working waterfront to local officials?*
2. *Shall the City of Gloucester retain its status as a State Designated Port Area thereby assuring protection of the inner harbor for marine industrial use?*
2. **Memorandum from Mayor re: Market Readiness for I4-C2/65 Rogers Street (Cont'd from 06/05/13)**

Tom Daniel, Community Development Director said when he was last before the Committee in June he informed the Committee the City wanted to take time to work with Gulf of Maine Research Institute (GMRI) to look at the feasibility of private/public partnerships for development of 65 Rogers Street. He conveyed the following information:

- GMRI has a formalized scope and have talked with groups and individuals who have expressed interest in the property. GMRI are also talking to folks they know through their networks and contacts. The objective for them to talk to potential users to see if there is enough interest to put together parties A, B and C who each need "X" amount of square feet who will pay "Y" to put together that analysis to see if there is a feasible public/private development.
- In early October 2013, GMRI will meet with those people who have expressed interest in a public/private partnership, and then will create an assessment plan. That work will be refined further, and the final report and presentation on the set of deliverables will be completed in February 2014.
- If in October there isn't enough users who express interest, that process will stop because then it makes no sense to continue to spend time and money. If interest is expressed then GMRI will continue to work with these individuals and the final report will be in February. At that point, the HPC has retained a consultant to do an economic analysis and feasibility study which is not specific to I4-C2 and looks at the whole harbor. Part of that report would identify barriers, site size, regulatory, infrastructure constraints, etc., to development. That process wraps in January 2014 and that will inform the next steps on 65 Rogers Street.

Councilor Tobey said noted a reference to potential tenants and asked who the potential landlord is. **Mr. Daniel** said that has yet to be determined as GMRI is looking at the number of potential tenants/users of the site and the structure for which development would proceed would be determined later. **Councilor Tobey** said if a list of tenants was developed that could fill a building on the site, what the anticipated procedure to get the building built. **Mr. Daniel** said there are different models giving the examples of there could be a tenant cooperative development;

or the City could turn the tenants over to a developer and are looking to the GMRI process to inform this as well.

Councilor Tobey suggested that an RFP could have been put out with the same data a few months ago which may have determined market interest. **Mr. Daniel** said this in June he had informed the Committee that time was going to be taken to examine the feasibility issues as the last time an RFP on 65 Rogers Street went out there was only one response to it. This time taken is to investigate a public/private partnership, he said, and GMRI is in the field, rather than putting this out to the developers now.

Councilor Tobey asked if the GMRI information could be transferred to another property in the DPA or M/I zone. **Mr. Daniel** said the data looks at potential users of that site. He reiterated that the number of potential tenants, the square footage, rights, capacity, etc., will determine the size of the development. If the analysis is conclusive that demand is for an, 8,000 square foot building that doesn't make sense for 65 Rogers Street, but that development could go to another property in the DPA, **Mr. Daniel** said, adding that this is on the path of disposal of 65 Rogers Street. Their attempt at direct marketing was not fruitful, he pointed out; and feedback from that process indicated that the most likely scenario was a public/private partnership that could be realized on that site within the existing regulatory framework.

Councilor Tobey expressed concern of backing into a decision saying it appeared that GMRI will be the landlord. **Mr. Daniel** responded that GMRI would be the developer or land owner is not a part of this process; rather, this is to use GMRI's expertise and connections to find potential tenants for this site. People over time have expressed interest but are not capable of doing the development on their own, he said, and that GMRI is to engage in that process to marry potential partners up for feasible partnerships. **Mr. Daniel** said this is looking to inform the City of the potential to have a solid list of users, and added that in October there will be clarity whether to continue on the path or stop.

This matter is continued to October 16, 2013.

3. Memorandum from General Counsel re: Medical Marijuana Treatment Centers

By unanimous consent the Planning & Development Committee accepted the Memorandum from General Counsel re: Medical Marijuana Treatment Centers dated August 22, 2013 for its files.

4. CC2013-039 (McGeary) Amend Gloucester Zoning Ordinance Use Table 2.3.2 (Community Service Uses and Sec. 5.27 re: Medical Marijuana Treatment Centers

This matter is continued to October 2, 2013.

5. RZ2013-001: Norman Avenue #18 Assessors Map 170, Lot 43 from R-20 (low-Medium Density Residential to VB (Village Business)

Attorney Robert Coakley, representing Jon von Tetzchner, Petitioner, Curry Properties LLC, 18 Norman Avenue, said that it is proposed the property at 18 Norman Avenue be put to use as a Bed and Breakfast Inn. He explained that Mr. von Tetzchner moved to Gloucester two years ago. He said he is a successful business owner having formed and operated a software company called Opera, in Norway. Mr. von Tetzchner, he said, has a vision of the future of the internet and internet connectivity between different software platforms and in the mobile application field. **Mr. Coakley** said Mr. von Tetzchner saw the Magnolia Inn as a unique opportunity to create an "innovation house", to bring into the City people he knows throughout the business worldwide, former employees, and bring them together to brainstorm, formulate new business and come up with new ideas in the U.S. market.

Mr. Coakley said Mr. von Tetzchner's vision is a compatible use in Magnolia as the existing inn is licensed for 40 guests, having 20 rooms, 2 small apartments and function rooms. The only difference is that Mr. Tetzchner envisions the inn would have more of a business atmosphere to the proposed use which is an office category and is not allowed in a residential district. He said the building goes back to the 1870's, it was noted, and is a large structure on the largest single lot in downtown Magnolia, directly across from Lexington Avenue which used to be the known as the White House. **Mr. Coakley** pointed out that the exiting R-20 zoning for low density residential makes 18 Norman Avenue a pre-existing non-conforming use, and is an anomaly setting across a major street right across from the Magnolia Village business district which has struggled commercially in recent years. By bringing in new innovation, **Mr. Coakley** said, Mr. von Tetzchner sees this as good future use for this building which would be seamless for the neighborhood.

Mr. Coakley reiterated that the proposed zoning and proposed use are consistent with the existing use and would be appropriate to the area of downtown Magnolia. In terms of traffic and density, the proposed use will be essentially being the same as it now exists, and parking is secluded, not visible from the street. Visitors to this property are not vacationers but are there for a business purpose. Even though this operation fits in with the proposed uses so closely, Mr. von Tetzchner didn't want to start off with something with a business leaning that could be a zoning violation, he said. **Mr. Coakley** said the Petitioner is asking to take 18 Norman Avenue, Lot 23, Map 170 and move it the zoning classification as Village Business which is a good use for at large for the City because it is bringing in other business people, entrepreneurs who are looking to do business in the City and in the State There would be no change in the intensity of the use over what currently exists; and in addition to being consistent with the surrounding neighborhood, the proposed use will be an enhancement and asset to the area and the City, he concluded.

Councilor Tobey commented he liked this project and was pleased to see this innovation which recognizes that business is changing and that this captures a great opportunity to take an incubator site and blend it seamlessly into the nature of the neighborhood as it has been for some time and bringing with it that folks will come, be intellectually charged and want to build businesses in the City. While not committing to whether he would vote for this rezoning, **Councilor Tobey** said he was excited by the prospect this use was being put forward.

Councilor Hardy said she liked the idea of trying to expand the Village Business District, not unlike the business district in Lanesville. She said she had lived in Magnolia, and looked forward to seeing the City Council permit come forward on this property and asked if there was a timeframe. **Mr. Coakley** said there is no banking or financial concerns so that time frames were not urgent.

Councilor Verga said it is an exciting prospect having met with Mr. von Tetzchner several days ago. He said there was an informational meeting on this project at the Magnolia Library tentatively planned for Monday, September 16th at 6:30 p.m. which awaits the library's confirmation.

Councilor Hardy discussed with Tom Daniel what the Community Development Department is doing about assisting in the developing the Magnolia downtown business district and the various property issues surrounding it which has inhibited some development at this time as each building has different issues. Councilor Hardy concluded that she wished for Mr. Daniel to move forward expeditiously to facilitate not only Mr. von Tetzchner's business development, but that of the Magnolia business district. Mr. Daniel said there have been some potential property transactions that his department has tried to facilitate

This matter is continued to October 2, 2013.

6. CC2013-036 (Tobey) Request the City Council file a Home Rule Petition with State Legislators re: elimination of 65 Rogers Street from the DPA

Councilor Tobey explained that this matter is back before the Council because there is an election on November 5th saying he believes that the citizens of Gloucester have a right to know where candidates for City Council stand on the matter of 65 Rogers Street. He expressed his hope this matter comes to a vote before the Council. His second reason, he said was that it was incomprehensible to him that the 65 Rogers Street remains in the DPA; and added that it was time to recognize the reality. He said he was pleased to see a communication the Council received this day (on file) from a new Gloucester resident expressing his concern that the Council not take this step because there is a process in place and sees great value in the DPA. **Councilor Tobey** recounted that when he was in college and during law school in early 1970's almost without exception worked summers at the Dehydration Plant at the State Fish Pier. During those years he said he saw cargo vessels from around the world in the harbor, fishing boats in unimaginable numbers and fish landed in vast volume. There were thousands of residents who were employed by this sector and related sectors of the fishing industry. There was plenty of business. **Councilor Tobey** said then a toxic combination unfolded - containerization, big boats, deep draft harbors needed for them with big facilities and big cranes. A little port like Gloucester was incapable of competing, he said. So cargo ships were unable to utilize Gloucester harbor because the harbor would have to be dredged which ended the discussion on becoming a cargo port. There has been a whole series of events that led to the decline of the City's fishing industry where monied elements that view fishing as not a family business but fishing as a commodities exchange in tandem with bipartisan federal regulators have led the City's fishing port to this situation, **Councilor Tobey** pointed out. He said that what happened in the 1970's against that prosperous picture was that it made sense to accept the DPA. Thirty years later, he said, the City is taking the path of one property at a time.

Councilor Tobey said he would argue that it is well past time to take a land locked piece of land out of the DPA. He tried, he said, as Mayor, to get the lobster marina (abutting 65 Rogers Street) reconfigured to gain water

front access unsuccessfully, and so it is a barrier that is insurmountable. The piers, he pointed out, aren't going to be moved, nor will access be created. It is done, he said. Even if not, how much land, he asked, does the City need to be land bank to meet future demand which he said was not as much as the City now has? This property, **Councilor Tobey** said, could be the critical launch pad for the downtown renaissance that has been dreamed of for year round activity. It is time to face facts, he said, and added that he hoped a majority of Councilors will be moved on this and that decades of history gets recognized as fact in order to take a critical step to move forward.

Councilor Tobey moved adoption whereby the City Council files a Home Rule Petition with the Massachusetts State Legislature to have 65 Rogers Street (I4-C2) removed from the Designated Port Area, and Councilor Hardy seconded.

Councilor Hardy said the time has come, and the City has to start somewhere. She aid Scott Memhard of Cape Pond Ice is on the edge of the DPA and is facing this issue squarely, and saw no harm in his property's removal from the DPA. I4-C2, 65 Rogers Street is in the middle of the harbor on the landward side of the pier; and that if the City doesn't start there, where would it start, she asked. Elimination of the DPA, **Councilor Hardy** said, makes a better RFP for development for I4-C2 and pointed out that the DPA has a stranglehold on the City. The M/I zoning would still be in place as are the underlying zoning, she said. The DPA blocks too much potential development and revenue which also has a stranglehold and stands in the way of property owners to make a living. She said the DPA is not the way to go now or into the future. She asked what the City is waiting for.

Councilor Verga confirmed with Councilor Tobey that the property to be removed from the DPA is specifically I4-C2 which the City purchased. Of the two lots adjacent to each other, the docks stay in the DPA. The two lots, the docks stay in the DPA. **Councilor Tobey** confirmed that the way the motion is drafted the point of reference is actually the Order of Taking whereby the title is vested in the City of Gloucester which is the transaction when the City acquired the two lots that are landlocked from the previous owner. **Councilor Verga** confirmed the process whereby P&D makes the recommendation and votes to support it; the Council should they choose, votes to support that P&D recommendation, and then the Mayor has to agree to it, and then the Home Rule Petition is forwarded to the State Legislature through the City's State legislators. **Councilor Tobey** agreed adding that there is no overriding a Mayoral veto on such a matter which was ruled on by the State Supreme Court in 1997 which from experience he knew when as Mayor he vetoed a Home Rule Petition.

Councilor Hardy noted the disparate parts of the DPA equation between the Mayor's original request on a ballot question, then asking for it to be removed from Council consideration, waiting for the HPC report, and the CZM boundary review on the DPA and asked what the Council was waiting for. The Committee confirmed that the time frame was 10 days with City Clerk, Linda T. Lowe.

Councilor Verga said again, this was difficult for him as a member of the HPC, but noted that there has never been anything on 65 Rogers Street in his entire lifetime.

MOTION: ON a motion of Councilor Tobey, seconded by Councilor Hardy, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommended to City Council to file a Home Rule Petition with the Massachusetts State Legislature to have 65 Rogers Street (I4-C2) removed from the Designated Port Area.

7. CC2013-037 (Tobey) Request the City Council review the matter of whether to vote to endorse and support efforts of the owners of the property located at 104 Commercial Street and 106A Commercial Street for removal from the DPA

At the request of **Councilor Tobey**, the Committee deferred to Scott Memhard and his legal counsel, Meredith Fine to lay out the set of circumstances surrounding his Council Order.

Meredith Fine, attorney at 38 Pleasant Street representing Cape Pond Ice, 104 and 106A Commercial Street introduced Scott Memhard.

Scott Memhard, 9 Graystone Road, President and General Manager of Cape Pond Ice, President and General Manager, 104 and 106A Commercial Street (statement submitted and on file) reviewed for the Committee the history of his company founded in 1848, run by his family with a staff of 30 employees who continue the tradition of icing down the City's fishing fleet. He said over the past 30 years, since 1983 Cape Pond Ice (CPI) has done everything possible for this business to survive under challenging circumstances by investing millions of dollars in specialized equipment, maintenance and improvements to the site and buildings, diversification of the product markets, and updating the ice making process to be as efficient as possible and to survive long-term. He noted as a vested stakeholder he has been deeply involved in the DPA and Harbor Planning process beginning in 1994 which

he also reviewed. He said it was clear that the modest future steps that may eventually be enacted under the 2013-2014 Harbor Planning/DPA boundary review process will not in any way help solve his company's urgent business and financial challenge at CPI.

Mr. Memhard said in February of this year the Cape Pond Ice property was put up for sale because of no other choice or option. The property, he said has been shown to a dozen qualified prospects from whom Cape Pond Ice might be able to lease back a small portion of the building to continue their ice operations. But none of the qualified potential buyers made any offer which he said they couldn't see a way to make the property work given DPA restrictions.

He pointed out that new federal fishing regulations implemented May 1st have slashed CPI's fishing industry ice sales by over half since last year. CPI can't make the DPA work nor can any of the potential prospects for their parcel's purchase do the same, he said and that his plant which can make up to 300 tons a day of ice, are now manufacturing barely 5 tons a day. The DPA regulations require CPI to use 50 percent of its real estate for fishing and M/I use which effectively places him in default. He said his company can't make the DPA formula work, and effectively none of the potential purchasers of CPI's property can make it work either. **Mr. Memhard** spoke of the high cost of doing business in the City and the declining state of the City's ground fishing fleet. In June 2013 he said he made his company's case to the HPC, the Mayor, CZM, and State legislators. Based on their case, the Mayor and the State legislative delegation agreed that the only real solution offered to continue Cape Pond operations was a legislative step to remove Cape Pond Ice real estate from the DPA and place it back under the Marine/Industrial (M/I) underlying zoning. He urged the Committee to endorse Councilor Tobey's motion to the City Council to support removing Cape Pond Ice from the DPA.

Ms. Fine said there is the boundary review where CZM looks that the whole DPA and has a process. That will not be ready soon enough for CPI. The only other way to get out of the DPA is going through the State legislator. It is the only option Mr. Memhard has. Part is the City to speak in one voice. The Mayor has written a letter endorsing this move to take the property out. They need the Council to support it; the legislators need to see the City speak in one voice.

She noted her handout (submitted and placed on file) showing a percentage of Cape Pond Ice Sales in a chart showing sales from 2010 to 2013 that she reviewed with the Committee as follows:

CPI produces five products. She noted there is packaged/retail ice which is the largest part of the business and growing. The ice sold for fishing in 2010 was 35 percent of the total ice business and in 2013 is at 14 percent of the business. Non-ice revenue, hats, shirts, tours continues to hold steady. Bulk ice, which is industrial ice, for large scale use has grown dramatically. Ice sculptures do not make money at all. Fourteen percent of the business is Marine/Industrial. Fishing ice has gone from 40 tons a year to fewer than 2 tons a year.

Ms. Fine said CPI's business is a seasonal, weather dependent business and goes in and out of profitability. This particular year at this time CPI is making a profit for 2013. She said there are five mortgages on the property. The mortgage that is in the first position is from the National Marine Fisheries Service, which can't be renegotiated because there isn't enough fishing business to qualify for that kind of accommodation from the NMFS, as well as having trouble refinancing loans because lenders don't understand the DPA, but do know that the fishing industry is sinking. **Ms. Fine** said Mr. Memhard's product mix is changing volatility and he is having reduced access to capital.

Ms. Fine noted going forward there is a plan. In terms of the fishing, the plan is to hang on to the boats he has now and bring back other boats to stay true to provide ice service to the Gloucester fleet. As for the other product lines, Mr. Memhard is working on marketing and needs to invest in equipment in the retail ice and efficiencies he could do, she said. The trucks go all over eastern New England and come back empty and there are ways CPI could fill those trucks both ways. **Ms. Fine** also pointed out Mr. Memhard needs new tenants. One third of the building is empty, 10,000 square feet on the third floor; and that if Mr. Memhard is allowed to come out of the DPA, he would hire an industrial architect to learn what he could do with the building.

She said this property is at the boundary of the DPA and not surrounded by other properties in the DPA. **Ms. Fine** said the DPA formula does not work for a company that only has 14 percent of its business connected to M/I water dependent use which turns the DPA formula on its head. She noted that the parcel is fully utilized, and there no room to build another building to change the percentages, and is the only ice house on the harbor. If CPI went away it is unlikely someone else would start an ice house, she said. If the property comes out DPA it would be still zoned M/I, and be under a Mass. Department of Environmental Protection's Chapter 91 license but the rigid percentage of the DPA would be removed.

Ms. Fine said there is not a plan for the building. Cape Pond Ice has to go through the process for removal from the DPA, and then figure how to repurpose the building. Mr. Memhard, she said, is committed to the fishing industry and has stayed the course. She noted Mr. Memhard has served on the Fisheries Commission for 20 years

and served in many other water related industry committees, commissions and boards. She said he spent whole adult life serving the fishing industry and asked for the P&D Committee for their support to remove Cape Pond Ice from the DPA.

Councilor Tobey said assuming federal regulators realize their dream of tying up every Gloucester Fishing boat so that Mr. Memhard is unable to sell even that less than 2 tons of fishing ice, what will CZM say then about his compliance with the DPA regulation. **Ms. Fine** said she didn't know the difference between zero and 14 percent. **Councilor Tobey** suggested Mr. Memhard's business was no longer in compliance with the DPA formula. **Ms. Fine** reiterated she is not sure of the difference of zero to 14 percent from the DPA point of view but said it didn't matter until Mr. Memhard tries to change the use.

Councilor Verga said it has been suggested that by removing Cape Pond Ice from the DPA it could be construed as spot zoning, but he added if the M/I underlying zoning is in place, the City zoning is intact. **Ms. Fine** confirmed that was the case and said this is not a local zoning question at all. **Councilor Tobey** agreed with Ms. Fine's assessment adding that of equal importance, that the M/I zoning still remains should the property be removed from the DPA and also that the Chapter 91 still remains, but the straight jacket restriction of the DPA is gone.

Councilor Tobey moved, and Councilor Hardy seconded that the Planning & Development Committee recommend to the City Council that it file with the Massachusetts State Legislature an Coastal Zone Management a letter stating the City Council endorsement and support for the efforts of the owners of the property located at 104 Commercial Street, Map #1, Lot 9, and 106 Commercial Street, Map #1, Lot 8, and operated as Cape Pond Ice from the Designated Port Area.

Councilor Hardy said she believed that DPA is interfering with the right of others to make a living and elimination of the DPA, those who wish to make a sufficient living can do so.

Councilor Verga said while the City is waiting for a DPA boundary review and a Harbor Plan, in the meantime there is a real face to this matter. The Fisheries Commission, on which he is a member, has heard how the fishermen invested so much money in boats and permits and are now worth nothing and have no lifeline, he said, adding that the removal from the DPA of 104 and 106 Commercial Street would be a lifeline for Cape Pond Ice. He made note of the fact that the Council had received a letter accusing it of being "corrupt" and "evil" (on file) which he said was patently untrue; that if the Council were to say to someone hang on, that would be corrupt and evil. He said he would take a stand and would support this and do what is right.

MOTION: On a motion by Councilor Tobey, seconded by Councilor Hardy, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council that it file with the Massachusetts State Legislature an Coastal Zone Management a letter stating the City Council endorsement and support for the efforts of the owners of the property located at 104 Commercial Street, Map #1, Lot 9, and 106 Commercial Street, Map #1, Lot 8, and operated as Cape Pond Ice from the Designated Port Area.

8. *Special Events Application request from Fishbox Derby to hold the Fishbox Derby on September 15, 2013*

Barry Pett, representing the Fishbox Derby organization said that this is an annual event in its 20th year working in conjunction with Gorton's, Inc. and Flanagan's Gas Station. Rogers Street is closed for the duration of the event he said. The DPW, the Police and Fire Departments have all filed their endorsement of the plans and event with the City Clerk's office. A certificate of insurance is also on file with the Special Event Application. The event went before the Special Events Advisory Committee on May 2, 2013. It was noted that all staging and parking is on the Gorton's property, and additionally added neighbor parking will be provided in the Gorton's lower parking lot. Upper Main Street will have two-way traffic from 8 a.m. to 3 p.m., and Rogers Street will be closed for the race from 9 a.m. to 3 p.m. Access will be made for the National Grid and Americold properties on Rogers Street. A portion of the course is eliminated due to safety issues. The harbor side from Flanagan's Square to Manual F. Lewis will have no parking to make it easier for traffic flow, **Mr. Pett** pointed out.

MOTION: On a motion by Councilor Hardy, seconded by Councilor Tobey, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to permit Fishbox Derby, Inc. on Sunday, September 15, 2013 to hold the Fishbox Derby ("Soapbox Car" Race) closing part of Rogers Street from 9:00 a.m. that day to 3:00 p.m. with the following conditions:

1. Certificate of Insurance:

A Certificate of Insurance naming the City of Gloucester as an additional insured party is to be filed with the City Clerk's Office on or before September 6, 2013.

2. Road Closure Plans:

Memoranda from the Police Department and Fire Department giving approval of the plans for the Fishbox Derby to be on file with the City Clerks office on or before September 6, 2013. Roads to be closed are to be marked with signage directing the public as to the duration of the closure and alternate routes. Any substantial changes, as determined by either the Police or Fire Chief or their designees to the route or related to safety issues will require Council approval.

3. Refuse and Comfort Stations:

All refuse and recycling due to this event must be removed by the organizer. Any portable toilets (with two handicap accessible) are to be provided and maintained by the organizer, placed the evening before the event or early in the morning of the day of the event and removed by 5:00 PM, September 15, 2013.

4. Emergency Services:

Emergency services shall be as determined by Emergency Medical Services Director, Sander Schultz.

5. Staffing:

Event staff is to have cell phones and be identified by the public with distinct shirts. A list of event staff and their cell phone numbers to be submitted to the Police, Fire or DPW Departments.

6. Notification of Immediate Abutters and Businesses to Race Course:

Notice shall be made by the event organizer by hand or by mail no later than 7 days in advance of the event to any businesses along the race route.

7. Responsibility of the Fishbox Derby, Inc.:

The applicant is also required to obtain any necessary approvals from the Licensing Board, the Board of Health and the Licensing Commission. It is the sole responsibility of Fishbox Derby, Inc. to ensure that all required documentation is timely filed with the appropriate City departments as indicated. Failure to comply with any conditions precedent may result in permit revocation.

Councilor Hardy inquired as to how the request for an easement by Karen Elliot re: 6 Stanwood Street was placed on P&D agenda to be continued to October 2, 2013. Councilor Verga said that request which must first go to the Land Disposition Committee by ordinance was party to the 6 Stanwood Street RFP #31338 and so was placed on the agenda. Councilor Hardy requested that the matter of the 6 Stanwood Street easement be returned to the Mayor's office and come back to the Council via the Mayor's Report to the Council for referral. She noted even by doing so the matter would still be able to be heard on October 2nd by the Committee.

A motion was made, seconded and voted unanimously to adjourn the meeting at 7:50 p.m.

Respectfully submitted,

Dana C. Jorgenson
Clerk of Committees

ITEMS/DOCUMENTS SUBMITTED AT MEETING:

- Statement by Scott Memhard, President & General Manager, Cape Pond Ice
- Chart of Cape Pond Ice percentage of sales 2010 through 2013