

Planning & Development Committee
Wednesday, April 2, 2014 – 5:30 p.m.
1st Fl. Council Committee Room – City Hall
-Minutes-

Present: Chair, Councilor Greg Verga; Vice Chair, Councilor Paul Lundberg; Councilor Steven LeBlanc
Absent: None.

Also Present: Councilor Paul McGeary (entered meeting at 5:40 p.m.); Suzanne Egan

The meeting was called to order at 5:30 p.m.

1. *Revisit of Free Petition in accordance with City Charter Sec. 9-1(b) re: Condition, Restoration and Preservation of Stage Fort Park (Cont'd from 03/05/14)*

This matter is continued to April 16, 2014.

2. *Memorandum and pertinent material from Planning Director re: Land Disposition Committee Recommendations on 6 Stanwood Street (Easement Request by Karen Elliot, 6 Stanwood Street (Cont'd from 03/19/14)*

Suzanne Egan, General Counsel, said she has not heard of any new information from either of the parties involved, but knew the attorneys for both parties were negotiating an agreement. **Karen Elliott**, 541 Washington Street, requestor for the easement, confirmed to the Committee that lawyers for each side were still working on an agreement.

This matter is continued to April 16, 2014.

3. *CC2014-007 (Verga) Request amendment to GZO under Sec. 1.11.2(e) to amend “sign ordinance” Sec. 4.3 by adding new definition to Sec. VI for “programmable scrolling sign” and amend Sections 4.3.2, 4.3.3 and 4.3.4 to include “outdoor programmable scrolling signs (Cont'd from 3/19/14)*

Councilor Verga said that the Planning Board held a public hearing regarding his Councilor Order request to amend the zoning ordinances under Sec. 2.11.2(e) “sign ordinance,” and Sec. 4.3 to add a new definition to Sec. VI for “programmable scrolling sign” and to amend Sections 4.3.2, 4.3.3 and 4.3.4 to include “outdoor programmable scrolling signs. He said that at the close of that public hearing, the Planning Board discussed the matter and voted to not recommend the zoning ordinance amendments (memo on file). As a result, he recommended that the P&D Committee not recommend the amendments to the zoning ordinance either. **Councilors LeBlanc** and **Lundberg** indicated their assent.

MOTION: On a motion by Councilor LeBlanc, seconded by Councilor Lundberg, the Planning & Development Committee voted 0 in favor, 3 opposed, to recommend that the City Council Amend GZO Sec. 1.11.2(e) “sign ordinance,” Sec. 4.3 by adding new definition to Sec. VI for “programmable scrolling sign,” and amend Sections 4.3.2, 4.3.3 and 4.3.4 to include “outdoor programmable scrolling signs.

4. *SCP2014-004: Commercial Street #47-61, Modification of Special Council Permit (SCP2012-010) under GZO Sec. 1.5.13 & Sec. 5.25 Hotel Overlay District (Cont'd from 03/19/14)*

Attorney John Cunningham, representing Beauport Gloucester LLC (Beauport), reviewed for the Committee matters taken up at the March 6, 2014 Special Joint Meeting of the Planning & Development Committee and the Planning Board by saying that:

Mr. Cunningham reviewed that on behalf of Beauport, he made a presentation of the applicant’s requests for modifications to the Special Council Permit on March 6. He noted that the plan modifications center on moving the portions of the hotel above the parking deck back from Commercial Street and moving the seawall further landward which results in additional beach space in front of the hotel. It was noted that at that time the applicant submitted a full set of plans and drawings as well as provided copies of the slides presented at that time (on file).

Mr. Cunningham explained that following that meeting, the Planning Board submitted its advisory report, along with responses by various city agencies (on file). The Planning Board recommended the approval of the proposed modifications to the Special Council Permit. He said that the Planning Board also approved modifications under the Site Plan Review portion of the zoning ordinance. Since that meeting, he noted, Beauport has submitted a proposed deed (on file) in connection with the request for modifications. As part of the settlement agreements, Beauport has agreed to propose a revision to the terms of the original deed, which is currently held in escrow, pursuant to the Beach and Development Agreement of April 30, 2013. He said that Beauport believes the changes to the deed are favorable to the city and the public. To show those changes to the Committee, **Mr. Cunningham** submitted a marked up copy of the Approval Not Required Plan (on file), referred to in the deed, to show the location of Parcel 2, which is being deeded to the city.

He explained further that the original deed reserved an easement to build coastal structures on Parcel 2. Under the modified plans in which the hotel and the seawall are being moved back 20 feet, there is sufficient room to construct any coastal structures without using Parcel 2, should it be needed in the future. He said that the easement reserving those rights is deleted from the new proposed deed. He also pointed out that the new deed allows public, in common with others, the use of the sandy portions of Parcel 1, which are not now, or in the future, used for the hotel building, seawall and other improvements, all as shown on the Special Council Permit plan or approved in the future, the sand in front of it will be available in general.

Councilor Verga confirmed with **Mr. Cunningham** that Parcel 2 continues to be part of the deed but no longer subject to easements for potential coastal structures. He noted that General Counsel had reviewed the documentation. **Ms. Egan** said that what Mr. Cunningham has conveyed to the Committee was accurate.

Mr. Cunningham noted a marked up the Seawall Location Plan dated March 6, 2014, (the tenth sheet in the package) illustrating the approximate area of the additional beach use easement area, after the construction of the proposed hotel and improvements. He said that in the event that in the future additional coastal structures are appropriate and permitted, the area to which the easement applies would be adjusted to reflect that.

He said that Beauport is requesting that the P&D Committee recommend to the City Council the approval of the revised deed as a replacement.

Mr. Cunningham pointed out that it was also discussed at the last meeting the opportunity to widen a portion of Commercial Street, as shown generally on the illustration at the joint meeting (on file). Beauport believes that this reduction of the front-yard setback meets all of the standards for a grant of a special permit, he said. He noted the six factors are believed by the applicant to be met under Section 1.8.3 as follows:

- 1) the modification serves the social, economic and community needs as the wider Commercial Street facilitates use by the neighborhood, commercial, and industrial businesses;
- 2) the wider Commercial Street enhances traffic flow and safety, allowing easier passage of large trucks that currently use Commercial Street;
- 3) utilities and other public services are scheduled to be upgraded through a collaboration among the city, state, and the applicant;
- 4) the area character and social structure are an example of a diverse neighborhood that contains residential, commercial, industrial, and hospitality uses which will benefit from the widening of the street and the construction of a new sidewalk;
- 5) the proposed street improvements will have no negative impact on the natural environment;
- 6) and the potential fiscal impacts from the development of the hotel and the concurrent widening of Commercial Street will be positive for the neighborhood, businesses and the City.

Attorney Cunningham requested on behalf of Beauport Gloucester, LLC that the Committee recommend to the Council the approval of the Special Council Permit for the reduction of the front-yard setback.

He concluded his remarks by saying that Building Inspector has submitted a letter (on file) following Beauport's acquisition of a property located at 99 Essex Avenue for off-site parking, indicating that it is his determination that the documentation supplied satisfies the Special Permit condition.

1. MODIFICATION OF SPECIAL COUNCIL PERMIT FOR A HOTEL ORIGINALLY GRANTED ON MARCH 13, 2013 AND DECISION DATED MAY 9, 2013:

Councilor Lundberg said that the Committee has carefully reviewed all material forwarded by the City Clerk relative to this application, has held two public meetings on March 6, 2014 and April 2, 2014, at which time a full and complete presentation of the application was made by the applicant, and has received and reviewed a detailed Advisory Report dated March 24, 2014, from the Planning Board. He noted that based on its review, the Planning and Development Committee Finds the following:

- 1) The requested modifications meet the standards under Section 1.5.13, as the interests of the neighborhood and the City are not impaired by the proposed modifications. They are consistent with the original special council permit decision and they do not detract from the protection provided to the neighborhood and the City by the Council's original decision.
- 2) The original Record Plans shall be replaced by the plan set entitled "Plans to Accompany Permit Applications for Beauport Gloucester Hotel Commercial Street Gloucester, Massachusetts," prepared by Beals Associates and Olson Lewis + Architects, dated January 13, 2014 with revisions through March 17, 2014.
- 3) Condition 2 on page 8 of the May 9, 2013 Decision is deleted as the emergency generator has been relocated and is no longer at street level at Fort Square.
- 4) The reference to a walkway across the beach side of the Hotel in condition 8 is deleted and the following is substituted: There shall be public access from Commercial Street to Pavilion Beach as shown on the new Record Plan set.
- 5) The Special Permit issued under Section 5.5.4 is no longer necessary as Section 5.5 has been deleted in its entirety from the Gloucester Zoning Ordinance. This Special Council Permit is deleted from the Decision;
- 6) Special Permit Condition number 24 in Appendix 1 relating to the off-site, valet and tandem parking special permit granted under Section 5.25.5.1 is satisfied by the applicant's acquisition and proposed use of the property at 99A Essex Avenue, Assessors Map 218, Lots 126, 1 and 17. In addition, the Committee concurs in the Building Inspector's determination (dated March 26, 2014 that the Council's decision authorized off-site parking, and that 99A Essex Avenue complies with the provision of the Zoning Ordinance and the Special Condition.
- 7) The deed required under the Beach and Development Agreement dated April 30, 2013 by and between the City and Beauport Gloucester, LLC, which agreement was made a part of the Special Permit as Condition 9 on Page 8 and shown as Appendix 4 shall be replaced by a revised deed, a copy of which is annexed as Exhibit One. The revised deed deletes so much of the escrowed deed as reserved an easement to Beauport Gloucester, LLC for coastal structures on Parcel 2 and adds to the Deed an easement for public use for beach purposes of those portions of Parcel 1 seaward of structures, existing from time to time, all as stated in the revised deed.

Councilor LeBlanc noted that the applicant will have the right to construct something on Parcel 1 of the beach and asked what types of structures the applicant would anticipate building. **Mr. Cunningham** said if flood elevations rise, the purpose would be to adjust the height of the seawall, or perhaps a form of egress to the beach.

Lee Dellicker, Windover Construction, said in case of storm damage it would apply in order to replace structures.

Councilor LeBlanc said that some of the local businesses near 99 Essex Avenue have used that property for overflow parking, he asked that Beauport keep in touch with them regarding any opportunity for those businesses to make arrangements to use any underutilized spaces Beauport may have. **Mr. Cunningham** and **Mr. Delliker** assured the Councilor they had been in touch with the local businesses already.

MOTION: On a motion by Councilor Lundberg, seconded by Councilor LeBlanc, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council the approval of the requested modifications of the Special Council Permits (SCP2014-004) granted to Beauport Gloucester LLC for a Major Project/Hotel at 47-61 Commercial Street, Map 1, Lot 33, in the Hotel Overlay District pursuant to Sec. 1.5.13 and Section 5.25.

2. APPROVAL OF REPLACEMENT DEED:

MOTION: On a motion by Councilor Lundberg, seconded by Councilor LeBlanc, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council as part of the Modification, to approve the Replacement Deed under the Beach and Development Agreement dated April 30, 2013 which is annexed as Exhibit One and to recommend to the City Council a separate vote to approve the easement granted by the applicant in the Replacement Deed.

3. SPECIAL COUNCIL PERMIT FOR FRONT YARD SETBACK:

Councilor Lundberg related the following: That the Hotel Overlay District provides under Section 5.25.4.1 that all buildings and structures permitted pursuant to the HOD shall have a minimum front yard setback of ten (10) feet. The originally approved Hotel complied with this standard. Pursuant to Section 5.25.7, the City Council is

authorized to issue relief for setback non-compliance by the issuance of a special permit. In this instance, the infrastructure improvements planned by the City for the area, including the widening of Commercial Street, the existing truck traffic on Commercial Street, the current narrow layout of Commercial Street and important safety benefits of the proposed sidewalk on this side of Commercial Street warrant the finding that the reduction from 10 feet to 5 feet is in the public interest.

The Planning and Development Committee finds the following: Any adverse effects of the proposed modification to the front yard setback standard do not outweigh the benefits to the City, the zoning district or the neighborhood, and the modification will be in harmony with the general purpose and intent of the Zoning Ordinance. As further grounds, the Committee finds the following:

- 1) the modification serves the social, economic and community needs as the wider Commercial Street facilitates use by the neighborhood, commercial, and industrial businesses;
- 2) the wider Commercial Street enhances traffic flow and safety, allowing easier passage of large trucks that currently use Commercial Street;
- 3) utilities and other public services are scheduled to be upgraded through a collaboration among the city, state and applicant;
- 4) the areas character and social structure are an example of a diverse neighborhood that contains residential, commercial industrial, and hospitality uses which will benefit from the widening of the street and the construction of a new sidewalk;
- 5) the proposed street improvements will have no negative impact on the natural environment; and
- 6) the potential fiscal impacts from the development of the hotel and the concurrent widening of Commercial Street will be positive for the neighborhood, businesses and the city.

MOTION: On a motion by Councilor Lundberg, seconded by Councilor LeBlanc, the Planning & Development Committee voted 3 in favor, 0 opposed, recommends that the City Council grant a Special Council Permit for a front yard setback of five (5) feet on a portion of Commercial Street, as shown on the Record Plans, for a Hotel to be located on Map 1, Lot 33, pursuant to Section 5.25.7 of the Hotel Overlay District of the Gloucester Zoning Ordinance.

These matters are advertised for public hearing.

The draft of the Beach Deed is found at the end of these minutes.

The Committee recessed at 5:52 p.m. and reconvened at 5:53 p.m.

5. SCP2014-005: Fort Hill Avenue #48, GZO Sec. 3.1.6(b) Building Height in Excess of 35 feet (Cont'd from 03/19/14)

Attorney Salvatore Frontiero, representing the applicant, Kathleen Stavis, Trustee and James Stavis, said that at the last meeting the P&D Committee recommended this matter be continued two weeks to give the Stavis' time to alleviate concern regarding this application from neighbors next door. He said in that the interim; there was a meeting at the Stavis' property where the neighbor, Eric Holdsworth, his attorney, Mark Glovsky, did a walkthrough showing where the home would be located approximately. There was a subsequent discussion for settlement of the matter, and he said that some progress was made in that it was agreed there should be plantings and screening on both sides of the properties where it abuts. He said there was a breakdown, however, when requests were made that were deemed unreasonable by the Stavis' regarding provisions for storage areas for personal property, the location of air-conditioning units and provisions for light screening. There is now an impasse between the parties, he said. He asked that despite the impasse as he described, that the Committee move forward the request for a height exception.

Attorney Mark Glovsky, representing Mr. and Mrs. Eric Holdsworth, direct abutters to 48 Fort Hill Road, said that in the absence of his clients, said he would wait to speak on the matter at the public hearing.

Councilor Verga said that the Committee had heard the review of the overall plan, but had wanted to give both parties time to forge a compromise. He said he did not see a need for another presentation.

MOTION: On a motion by Councilor LeBlanc, seconded by Councilor Lundberg, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council grant to Kathleen Stavis, Trustee of Fort Hill Avenue Realty Trust, a Special Council Permit (SCP2014-005) for the property

located at Fort Hill Avenue #48 (Assessor's Map 136, Lot 47), zoned RC-40 (Coastal Residential), pursuant to Gloucester Zoning Ordinance Sections 1.10.1 and 3.1.6(b) for a building height in excess of 35 feet, for a home to be 39 feet (for a total height increase of 4 feet over 35 feet). This permit is made on the basis of the plans and elevations dated November 19, 2013 and as revised 3/19/14 (revision: house location, reduced courtyard) by Castle Del Rio Architects, 15 Meyer Lane, South Hamilton, MA, submitted to the City Clerk on February 26, 2014.

6. Memorandum from General Counsel re: Gloucester/Rockport Intermunicipal Agreement (IMA) for sewer services

Ms. Egan said that the previous Gloucester/Rockport Waste Water Intermunicipal Agreement (IMA) for sewer has expired, entered into more than 10 years ago and has expired. The Committee would be voting to authorize the Mayor to enter into a new IMA agreement for a 10 year period. She pointed out there are only two changes in the agreement from the last one - if Rockport asks for any increase or any additional houses to use the waste water service, the City Council and the DPW Director are now permitted to make a determination whether it would be beneficial or detrimental to the city. She pointed out that the second change allows for the extension of the season for Long Beach properties that will pay the same rate as all the other users. The Rockport Board of Selectmen has reviewed the IMA and has voted to approve it.

Councilor Verga gave an example that if 10 houses were constructed in a development in Rockport's Long Beach, and asked what the process would be for adding the houses. **Ms. Egan** said that would be a modification to the agreement. She pointed out there is a set flow and set number of houses, and said that the agreement doesn't call for an increase of the flow; Rockport hasn't reached that maximum flow. She added that the agreement does say there can be additional users but that the flow can't be increased. Before more users are added, they have to come before the DPW who makes the determination whether there is a detrimental impact, she said.

Councilor Lundberg noted there is 35,000 gallons annually allowed. **Ms. Egan** confirmed Rockport is limited to that amount but also that the town is under that limit. **Councilor Verga** observed that if the addition of six houses keeps the flow under 35,000 gallons, the DPW can allow the additional houses to tie in. **Ms. Egan** agreed, saying that would be the case as long as it was determined to be reasonable.

Councilor Verga said he would support the IMA, but a former Ward 5 Councilor he observed that the IMA agreement with Rockport and Essex is insulting to some people in West Gloucester who have been told they cannot connect to the city sewer lines. He pointed out examples where homes were literally in front of the Essex Ave. sewer line and were told they couldn't tie in because of the issues with the lower Essex Ave. sewer line. He said the city needs to work on equity for its own citizens.

MOTION: On a motion by Councilor LeBlanc, seconded by Councilor Lundberg, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council authorize the Mayor to enter into the inter-municipal agreement entitled, " INTER-MUNICIPAL AGREEMENT FOR WASTEWATER COLLECTION, TREATMENT AND DISPOSAL BETWEEN CITY OF GLOUCESTER, MASSACHUSETTS AND TOWN OF ROCKPORT, MASSACHUSETTS."

7. Memorandum from Senior Engineering Aide re: Proposed Street Naming & Numbering Plans

Councilor Verga explained that the Committee is in receipt of a memo from Karen Andrews, Senior Engineering Aide which outlined that under the Code of Ordinances Sec. 21-3 that the P&D Committee needs to make a referral of the streets proposed to be renamed and renumbered to certain city departments for their review and recommendations. The departments have 14 days to respond. They are: Engineering, Fire, Police, Planning and Assessors.

Councilor McGeary, referring to the proposed street name change from Gilson Way to My Way, that he was contacted by Ron Gilson who said he has no issue with Gilson Way being renamed.

MOTION: On a motion by Councilor Lundberg, seconded by Councilor LeBlanc, the Planning & Development Committee voted 3 in favor, 0 opposed, to refer to the appropriate departments the proposed street naming and numbering plans from the Engineering Department prior to the April 16, 2014 regularly scheduled meeting.

This matter is continued to April 16, 2014.

8. *Application for License of Flammable and Combustible Liquids, Flammable Gasses and Solids re: 27 Maplewood Avenue*

The Committee determined, in the absence of the applicant, to move the matter forward to public hearing, noting that this was a transfer of the established license.

MOTION: On motion by Councilor LeBlanc, seconded by Councilor Lundberg, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council to grant Faye Holding LLC as owner, for Tony's Service Station Inc., a License of Flammable and Combustible Liquids, Flammable Gases and Solids for the property at 27 Maplewood Avenue for the storage of 16,000 gallons of Combustible Liquids—under M.G.L. Chapter 148, Sec. 13 and regulations thereunder as well as Gloucester Code of Ordinances, Chapter 8, Fire Prevention and Protection, Article I, In General and sections thereunder. Said applicant is responsible under GCO Sec. 8.1 requiring that the applicant shall be responsible for payment of fees for advertising for public hearing and postage for legal notices to all abutters.

This matter is to be advertised for public hearing.

A motion was made, seconded, and voted unanimously to adjourn the meeting at 6:10 p.m.

Respectfully submitted,

**Dana C. Jorgenson
Clerk of Committees**

DOCUMENTS/ITEMS SUBMITTED AT MEETING:

Draft of Beach Deed language submitted by Attorney John Cunningham on behalf of applicant, Beauport Gloucester LLC under SCP2014-004 as follows:

Exhibit One

DEED

Beauport Gloucester, LLC, a Massachusetts limited liability company ("Grantor"), for One Dollar (\$1.00) consideration paid, grants to the City of Gloucester, a municipality incorporated under the laws of the Commonwealth of Massachusetts ("Grantee"), all of its right, title and interest in and to that certain parcel of beach and flats in Gloucester, Essex County, Massachusetts (the "Premises") described in Exhibit A, attached hereto and incorporated herein by reference, for use, in common with others entitled thereto, for all purposes for which public beaches are now or hereafter used in the City of Gloucester.

Grantor reserves the perpetual right and easement, as appurtenant to Grantor's Remaining Land, as defined in Exhibit A, to utilize the Premises as a public beach and for all purposes which are not materially inconsistent with the rights of the general public to utilize the Premises as a public beach. No rights reserved by Grantor hereunder shall be exercised in a manner which is materially inconsistent with the general public's rights to utilize the Premises as a public beach, other than as provided herein.

Grantor grants to the Grantee the perpetual right and easement for use, in common with the Grantor and others entitled thereto, for all purposes which public beaches are now or hereafter used in the City of Gloucester, so much of Parcel 1, as lies southwesterly of the structures, improvements and seawalls constructed on Parcel 1 from time to time, subject to Grantor's continuing right to use, maintain, alter, repair, add to, remove, construct, install and replace coastal structures, including but not limited to, retaining walls, seawalls and revetments, as well as access and egress walkways on Grantor's Remaining Land. Grantor's reserved right to construct such coastal structures further southwesterly from the hotel and coastal structures and egress walkways shown on the plans previously approved by the City, pursuant to

which the improvements are to be built, shall be subject to any applicable permitting and approval requirements and be limited to circumstances in which such construction is directed by a governmental authority or flood insurance requirements or where such construction is necessary or appropriate to protect the beach or any structure(s) or part(s) thereof on Grantor’s Remaining Land.

Notwithstanding anything to the contrary herein contained, Grantor, subject to obtaining all required permits therefore, in exercising any of its rights hereunder, shall have the temporary right, from time to time, to bring onto the Premises and/or Grantor’s Remaining Land, such personnel, equipment and materials as may be reasonable necessary or appropriate for Grantor to so exercise its rights. In such instances, the general public’s right to utilize the Premises and/or Grantor’s Remaining Land, or portions thereof, may be temporarily interrupted. In addition, any improvements constructed or installed on the Premises by Grantor which are approved by the Commonwealth of Massachusetts or by the Grantor, or which are required by or mandated by any governmental agency or entity, shall be presumptively deemed not to be materially inconsistent with the general public’s rights to utilize the Premises and/or Grantor’s Remaining Land as a public beach.

For purpose of that Deed, Grantor shall include its employees, guests, invitees and licenses and its successors and assigns.

No other rights to use the Grantor’s Remaining Land are being granted or created, including, but not limited to, any rights by implication or necessity.

WITNESS the execution hereof under seal this day of , 2014.

Beauport Gloucester, LLC

By:

Name:
Title:

COMMONWEALTH OF MASSACHUSETTS

On this _ day of _____, 2014 before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were a _____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Manager for Beauport Gloucester, LLC.

Notary Public _____

Exhibit A to deed from Beauport Gloucester, LLC to the City of Gloucester

The “Premises” are that certain parcel of land located southwesterly of, but not on, Commercial Street in Gloucester, Essex County, Massachusetts consisting of beach and flats and shown as Parcel 2 on a plan (the “Plan”) entitled “Approval Not Required, Plan of Land, 47-61 Commercial Street, Gloucester, MA” by Coler & Colantino dated January 23, 2013, to be recorded herewith.

Parcel 1 on the Plan is referred to in the Deed to which this Exhibit is attached as “Grantor’s Remaining Land”.

For Grantor’s title to the Premises and Grantor’s Remaining Land, see Deed dated July 7, 2011, recorded with the Essex South District Registry of Deeds in Book 30521, Page 84 and Confirmatory Deed dated July 15, 2011, recorded with said Deeds in Book 30531, Page 311.