

Planning & Development Committee
January 20, 2016 – 5:30 p.m.
1st Fl. Council Committee Room – City Hall
-Minutes-

Present: Vice Chair, Councilor Melissa Cox; Councilor Steven LeBlanc (Alternate)

Absent: Councilor Lundberg; Councilor Gilman

Also Present: Councilor Nolan; Linda T. Lowe, Chip Payson; Gregg Cademartori; James Pope

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

1. *CC2015-007 Request informal review under GZO 1.11.3 with City Staff for informal review of Sections 5.13 Personal Wireless Service Facility and to retain expert legal counsel in order to amend & update the Zoning Ordinance and that the P&D Committee or its designated member work together with city Planning Director and General Counsel with outside expert legal counsel to recommend to the City Council amendments to Sec. 5.13 of the Zoning Ordinance so that it is compliance with current applicable federal laws & regulations (Cont'd from 12/09/15)*

Chip Payson, General Counsel, reviewed for the Councilors that last summer there was a change to the federal regulations dealing with cell towers. At the time, former Councilor Verga had suggested an informal review of the Zoning Ordinance governing cell towers and related facilities in Gloucester to make sure that governing ordinance complies with the changes on the federal level. They brought in Jeff Roelofs, an attorney who has legal expertise in this area of zoning to assist the Planning Director and himself in order to draft language for a possible new Zoning Ordinance section. He advised that Councilor Lundberg sat informally with the staff, and has had some Council input to the draft Zoning Ordinance for Sec. 5.13. He noted that the iteration dated November 5 (on file) has had no updates beyond that date at this time.

Jeff Roelofs, city consultant charged with drafting new language for GZO Sec. 5.13 Personal Service Wireless Facilities, reviewed the on-file draft ordinance (previously reviewed with Committee on 11/10/15 – minutes on file). He outlined that the most important part of the changes to federal law were the provisions that require cities and towns to approve certain modifications and co-locations for personal wireless service facilities by right within a certain amount of time which is a very streamlined process imposed by federal law that Gloucester, nor any other no city or town in the state or throughout the country had in place. He then explained that: municipalities are trying to catch up with the federal law in place extend tower by 10 feet eligible by right and no process regardless what the ordinance says. The import thing to review is the question whether is eligible request does fall into allowed by right. An example was given that if a tower company wants to extend a tower height by 10 feet that is an, “eligible facilities request,” that the city has to approve within 60 days by right. There is no process regardless of what an ordinance says. It is important in such applications to review is whether the application is an eligible request -- does it really fall into the category allowed, “By right.” It is proposed as a part of the draft ordinance language under Sec. 5.13.8 gives a process for companies to submit information the city will need to see to make sure it is eligible facility request and what is proposed will be constructed properly pursuant to appropriate safety protocols. If it is determined the application is not an eligible request, then the city goes back to the rest of the ordinance and place the application into the new proceedings provided for in the draft.

This revamped Zoning Ordinance draft language as suggested is to simplify the ordinance by removing provisions that provided no real meaning to the process and to reorganize it in a way when reviewing type of installation it can be quickly determined what the requirements are procedurally and substantively. The current Section 5.13 is 20 pages long which have height restrictions scattered throughout the section of the ordinance making it difficult to understand for members of the public and what is required of applicants as well as the permitting authorities.

The other big change proposed in the draft is that some facilities that require less review, rather go to City Council for a Special Council Permit, it is proposed to send some installations to the Planning Board for a Special Permit and have them review it. If it is a simple enough installation such as a building mount in an industrial park, in theory with a complete application that meets the specified requirements, upon the Board’s review, they can potentially approve the Special Permit in one night. It was noted that for a facility requiring a Special Council permit that isn’t possible. **Mr. Payson** added said the Planning Board process is intended for non-controversial matters only -- simple pro forma matters. All new towers would go to the Council, Mr. Roelofs pointed out, regardless where they’re proposed to be sited, as well as modifications to facilities that involve towers.

Mr. Roelofs briefly highlighted GZO Sec. 5.13.4 Required Review and Approvals (on file) sets out the four categories – Facilities Allowed by Right (5.13.4.1); Facilities and Modifications Allowed by Planning Board Special Permit (5.13.4.2); Facilities or Modifications Allowed by City Council Special Permit (CCS) (5.13.4.3) and Eligible Facilities Requests Allowed by Administrative Review (5.13.4.4) which all require different types of permits depending on what category an application comes under. Mr. Roelofs said that there are general requirements that are for all facilities.

Mr. Roelofs said that where Committee and Council feedback would be extremely helpful is whether or not the categories make sense which is different than what is currently in GZO Sec. 5.13.

Sec. 5.13.4.1 Facilities Allowed by Right are facilities the Council doesn't think should be going to Special Permit Granting Authorities (SPGA).

Sec. 5.13.4.1(a) Concealed Facilities in All Zoning Districts was noted to be installations such as those hidden in a church steeple, e and that meet certain requirements and FCC standards.

Section 5.13.4.1(b) Camouflaged Facilities in the General Industrial, Business Park and Marine Industrial Zoning Districts are proposed to be allowed by right. **Mr. Roelofs** asked the Councilors if they wanted to include the Marine Industrial Zoning District as part of this category or to send those installations into the Special Permit category.

Councilor LeBlanc expressing his concern for the M/I District and its particular sensitivities said that installations in the M/I District may need to be a Special Permit. **Councilor Cox** pointed out the facilities would have to be camouflaged in order to fall into this category, and **Mr. Roelofs** pointed out that this section is specifically for camouflaged facilities which says that such a facility has to be, "disguised, shielded, hidden or made to appear as an architectural component of an existing or proposed building or structure the use of which is otherwise permitted under this Ordinance." He said the facility is not deemed camouflaged if it, "(a) extends vertically more than 10 feet above the height of the building or structure or horizontally more than 6 feet beyond the face of any exterior side wall or the exterior of any surface of a structure with no side walls, or (2) any visible antennas exceed 3' in diameter or 12' in height. He noted there are parameters, but the district is on the waterfront.

Mr. Cademartori recalled for the Committee the example of Gorton's of Gloucester who were looking at a point-to-point solution because they couldn't get the internet speed necessary for their business operations. Gorton's was getting a signal bounced from Boston to the Fuller School site. He said they got pulled into a co-application that took quite some time through the Special Council Permit process for a building-mounted facility unrecognizable to the public. He expressed his agreement that if an application is for something as significant as a tower it should be a Special Council Permit, but the small installations potentially impacting businesses in the M/I District and other business districts doesn't necessarily need that level of permitting. How that is accomplished for a cellular operation may not be feasible with smaller installations, and suggested it would be through a building permit rather than a Special Permit or Special Council Permit. Mr. Roelofs pointed out the Special Permit process for the Planning Board takes only two months from the date the application is submitted, and said he would place a question mark as to whether M/I zone to be included in this category.

Sec. 5.13.4.1(c) Facilities mounted on existing buildings (including roof- and side-mounted or on other existing Host Structures in the General Industrial and Business Park Zoning Districts as allowed by right.

Sec. 5.13.4.1(d) Eligible Facilities Requests.

Sec. 5.13.4.2 Facilities and Modifications Allowed by Planning Board Special Permit through the Planning Board were described as falling into three categories:

(a) Facilities mounted on buildings or Host Structures that do not qualify as Facilities allowed by right under Sec. 5.13.4.1.

(b) DAS or similar small-cell antenna systems.

(c) Collocations or modifications to Facilities or Base Stations other than Towers.

Sec. 5.13.4.3 Facilities or Modifications Allowed by City Council Special Permit (CCS) which covers all new towers or facilities mounted on new towers, co-locations or modifications to existing towers previously approved by Special Council Permit or any other wireless communication facility that doesn't fall into any of the other categories.

Sec. 5.13.4.4 Eligible Facilities Requests Allowed by Administrative Review. These applications that are federally mandated eligible requests.

Mr. Roelofs concluded his review of the four categories by saying that it is important for the Committee and Council to determine if they are comfortable with the way in which the categories are defined.

Sec. 5.13.5 Planning Board Special Permit Review. Mr. Roelofs noted he drafted the Planning Board provisions first and then based the Council provisions on that and added additional information and requirements relevant to new towers.

5.13.5.1 Application Requirements encompassed through 5.13.5.1.2 were drafted to cover all aspects that the Councilors would want to see put forward up front by applicants in every situation.

Section 5.13.5.2 Independent Pier Review. This provision is available to the Planning Board if they feel it is warranted and be undertaken at the applicant's expense. Design guidelines are also included.

Councilor Cox pointed out on Planning Board requirements there is no provision for balloon or crane tests for height but are included for the City Council requirements. **Mr. Roelofs** said the Board won't be dealing with towers generally; rather they'll be dealing with roof-mounted facilities, facilities hung on the side of a building. A balloon test wouldn't be used in those types of situations. The Board could ask for further visual aids and ask an applicant to erect a stand at the top of a building to indicate how the installation would look once approved. If the board doesn't think that's enough they can require additional information "as warranted" under subsection (j).

Section 5.13.5.4 Mandatory Findings. These are the Special Permit criteria that are in the form of mandatory findings that the Board must find these things and either have to address their lack or not issue a special permit.

Section 5.13.5.5 Special Permit Conditions. This gives the Board a list of the types of conditions they should be thinking about that they may impose or not depending on appropriateness to the situation.

Sec. 5.13.6 City Council Special Permit Review. These criteria are expanded from those of the Planning Board which references the City Council Special Permit Sec. 1.5 of the Zoning Ordinance because those provisions require more details in the plan and off-site information. Included is the environmental assessment, fall zone boundaries along with additional details that are specific to cell towers. It contains the provision that if the City Council has all this information and feels it needs more based on public input or by its own determination it has the ability to ask for that information. The balloon or crane test currently is that has to be done before the public hearing process and is mandatory. He said in his experience there should be a discussion of what the balloon test should consist of to make sure all aspects are covered – those of the Committee, neighbors etc. that defines the scope of the test which is why the Council has control over it. **Councilor Cox** said that the matter of a balloon or crane test would be determined at the Planning & Development Committee level which is not a public hearing. **Mr. Roelofs** said certain minimum standards are imposed, there has to be some flexibility to account for particular circumstances to balance how much coverage should be gotten from a tower facility. There are those who would say you want more carriers on a single tower than less if it requires two or three towers to provide the same coverage. The Special Council Permit section was drafted in a way that the Council can make some judgment calls on some of those issues rather than saying can't be more than 10 feet above tree height or more than more than 150 feet unless you're in a certain area. There is a waiver section as well especially if something has to be approved that needs to have the minimum standards waived in order to comply with federal law. General Requirements Applicable to All Facilities were briefly touched on briefly.

Councilor Cox commented that the draft looked to be well constructed. Mr. Roelofs said he hoped that the Councilors read through the draft, and provide comments through Mr. Cademartori with questions or issues. There is editing to do and also to go back through rest of the Zoning Ordinance overall to ensure there is no conflict with other sections of it. **Councilor Cox** asked that the Council be sent the draft asking for their comments, suggestions directly to Mr. Cademartori, and should they have any questions to convey them to him as well. She asked that those comments be submitted by the end of February so Mr. Roelofs can take them into consideration for the next iteration of the draft.

This matter is continued to March 2, 2016.

2. *Request from National Grid for approval of electric easement for an Underground Electric Distribution System re: Stage Fort Park*

Councilor Cox said in speaking to Mike Hale, Director of Public Works, she learned that this is an after-the-fact housekeeping matter with an installation already in place and is just the easement to accompany it.

COMMITTEE RECOMMENDATION: On a motion by Councilor LeBlanc, seconded by Councilor Cox, the Planning & Development Committee voted 2 in favor, 0 opposed, to recommend that the City Council grant a perpetual easement for consideration of one (\$1.00) Dollar to Massachusetts Electric Company the right to install, construct, reconstruct, repair, replace, add to, maintain and operate for the transmission of high and low voltage electric current for the transmission of intelligence, an UNDERGROUND ELECTRIC

DISTRIBUTION SYSTEM located through, under, over across and upon a parcel of land situated on the southerly side of Western Avenue, being more particularly shown on a Plan of Land dated February 5, 1989 by Winslow L. Webster, City Engineer recorded with the Essex South Registry of Deeds and known as portion of Stage Fort Park and as shown on a sketch entitled, “national grid WR#18176220,” being 50+/- feet of 2” – 3” conduit from MH123-1 near 119 Western Avenue, and 30 +/- feet from the edge of Western Avenue into Stage Fort Park to a transformer with padmount for a total distance of 80 +/- feet. The installation shall consist of lines of buried wires and cables and lines of wires and cables installed in underground conduits together with all equipment and appurtenances thereto for the transmission of intelligence and the furnishing of electric service to the described premises and to service others, and without limiting the generality of the foregoing but specifically including the following equipment: namely, manholes, manhole openings, bollards, handholes, junction boxes, transformers, transformer vaults, padmounts, padamount transformers and all housings, connectors, switches, conduits, cables and wires all located within the easement area of the property described herein, and also including the right to pass and repass over, across and upon said land in order to renew, replace, repair, remove, add to, maintain operate, patrol and otherwise change said “underground system” and to make such other excavations as may be necessary and to clear the portions of the areas where the underground system is located of such trees and bushes as may interfere with safe and efficient operation. Grantee will properly backfill said excavations and restore surfaces of the land. It is the responsibility of Massachusetts Electric Company to file the granted easement at their expense with the Essex South Registry of Deeds.

A motion was made, seconded and voted unanimously to adjourn the meeting at 6:00 p.m.

Respectfully submitted,

Dana C. Jorgenson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING: None.