

Planning & Development Committee
Wednesday, February 22, 2017 – 5:30 p.m.
1st Fl. Council Committee Room – City Hall
-Minutes-

Present: Chair, Councilor Paul Lundberg; Vice Chair, Councilor Cox (entered the meeting at 5:33 p.m.); Councilor Valerie Gilman
Absent: None.
Also Present: Matt Coogan

The meeting was called to order at 5:32 p.m.

1. *PP2017-001: Petition by Comcast to install a 17" x 30" flush mount vault over existing Comcast plant and underground conduit in sidewalk to provide service to Middle Street #86 (To be conducted as an advertised public hearing)*

This public hearing is opened at 5:32 p.m.

Those speaking in favor:

David R. Flewelling, Comcast Specialist 2, Construction, of the Woburn office, Comcast, recounted to the Committee that this petition from Comcast is very similar to the permitted petition from late last year (PP2016-011) on Atlantic Road, and conveyed the following on the current petition: Comcast is seeking permission for work associated with installation of new underground (UG) conduit (12 feet +/-) via an installation of a 17" x 30" flush mount vault over an existing Comcast plant in the sidewalk to enter on to private property to service a customer at 86 Middle Street to provide Comcast service.

Councilor Lundberg noted the schematic (on file) from the Comcast application and asked for its review. **Mr. Flewelling** pointed out the UG conduit that would carry Comcast cable in the sidewalk in front of 86 Middle Street. The vault will be located in front of the ADA access in the sidewalk via excavation and place the flush mount vault, come down the sidewalk into the driveway of 86 Middle Street and install the 12 feet +/- of UG conduit in the driveway and enter onto the private property (Temple Ahavat Achim).

Arley Pett, 12 Beach Road, Vice President of Temple Ahavat Achim at 86 Middle Street, said that the Temple is upgrading its internet service from a different provider to Comcast. The Temple had planned for this with conduit that had run underneath the Sawyer Free Library parking lot but when the library parking lot was rebuilt, the UG conduit was crushed necessitating this action to bring Comcast service to the Temple.

Those speaking in opposition: None.

Communications: None.

Councilor Questions: None.

This public hearing is closed at 5:37 p.m.

Councilor Lundberg noted that the Committee is in receipt of a memo dated 1 February 2017 from the Public Works Director (on file) with his approval and recommendation for the inclusion of six conditions to the permit.

MOTION: On a motion by Councilor Gilman, seconded by Councilor Cox, the Planning & Development Committee voted 3 in favor, 0 opposed, to permit Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Vermont LLC to install a 17 inch by 30 inch flush mount vault over the existing Comcast plant located in the sidewalk in front of 86 Middle Street and from that new vault placing one (1) 2 inch PVC conduit 12 feet +/- and will continue onto private property to service a customer at 86 Middle Street including the necessary sustaining and protecting fixtures as shown on, "Proposed Comcast Underground Conduit Plan to Service 86 Middle Street, Plan of Land in Gloucester, MA, dated January 23, 2017," with the following conditions:

- 1.) Notification to the Department of Public Works 72 hours in advance of the proposed work. A construction schedule will be prepared by the applicant for review and acceptance by the Department of Public Works;
- 2.) Proposed excavation may only occur during accepted road opening and construction season, 15 March – 15 November. No winter construction shall be permitted.

- 3.) **In the absence of a detailed construction plan, the Department of Public Works requests: all proposed conduits and appurtenances shall be placed so as to cause minimum conflict with existing underground utility services.**
 - 4.) **The existing sidewalks are cast in place concrete and the City of Gloucester will only accept full panel pours.**
 - 5.) **All excavated trenches shall be patched flush with the surrounding asphalt using hot mix asphalt binder at the end of each work day, to minimize pedestrian hazards. Asphalt shall be applied in two lifts of 2-inches, totaling 4-inches.**
 - 6.) **All final paving shall be done in consultation with the Department of Public works and an agreed upon final paving plan executed by the applicant.**
2. *Special Event Application: Request to hold St. Peter's Fiesta from June 21 through June 25, 2017 (Cont'd from 02/08/17)*

Joseph Novello, Chair of the St. Peter's Fiesta Committee joined by Anthony Cusumano, Treasurer, St. Peter's Fiesta Committee, and said that all plans for the Fiesta 2017, that all plans are the same using the same area as last year's Fiesta. This year's Fiesta will from June 21 to June 25.

Councilor Lundberg noted that City Clerk, Joanne M. Senos, advised the P&D Committee by memorandum (on file) that Fiesta Committee had been before the Special Events Advisory Committee (SEAC) and said that all aspects of Fiesta 2017 were vetted by city department heads or their designees, and that the event received all the necessary departmental sign-offs.

Councilor Gilman asked how the introduction of the Beauport Hotel changed the Fiesta. **Mr. Novello** said it had no effect whatsoever. Traffic flow worked well, he noted, and advised that the associating sporting events are closer the Stacy Boulevard side of Pavillion Beach. The weather was good and there were good crowds, he noted.

Councilor Cox said things are running smoothly over the last few years. She asked that Ainsley Smith, Chair of the Clean City Commission be allowed to make a statement to the Committee through the Chair. **Councilor Lundberg** advised that since this wasn't a public hearing, he was allowing this at his discretion.

Ainsley Smith, Chair, Clean City Commission, 14 Pine Street, read a statement (placed on file) to the Committee from the Clean City Commission asking that the Fiesta Committee discontinue the release of balloons as they are a hazard to marine life. Her statement included attestations from such groups as the 7 Seas Whale Watch and the Blue Ocean Society for Marine Conservation, Captain Bill & Sons Whale Watch. She also noted that MGL c. 270, §16 "Disposal of rubbish etc. on or near highways and coastal or inland waters; penalties; enforcement..." was related to this issue and that there are large fines for such discharge of trash/debris. She advised that the Clean City Commission is offering to help the St. Peter's Fiesta Committee to find ways to celebrate without the release of balloons and gave a list of alternatives.

Mr. Novello said that they have heard comments about such issues and three or four years ago and looked into and purchased bio-degradable balloons, and has been using that type of balloon for the last several years. **Councilor Gilman** asked when balloons are released. **Mr. Cusumano** advised the release of balloons is at the end of procession on Sunday, and that there is a balloon arch. He said all balloons released have no attached strings which are held in a large net. **Mr. Novello** said the St. Peter's Fiesta Committee has tried to be sensitive to these environmental issues. **Councilor Cox** offered a suggestion of using machines that blow confetti that can be swept up as an alternative to balloon releases to which **Mr. Novello** indicated he would be amenable, but would have to bring such a matter to the St. Peter's Fiesta Committee. **Councilor Cox** said she is fine with approving this event after this brief discussion on the concerns raised by Ms. Smith, and expressed her confidence that **Mr. Novello** would discuss the matter with the St. Peter's Fiesta Committee.

Councilor Gilman expressed she appreciated this discussion, as did **Councilor Cox**.

Councilor Cox asked about the positioning of a particular food vendor and briefly discussed it with **Mr. Novello** and **Mr. Cusumano** and learned that the food vendor in question was independent of the Fiesta.

MOTION: On motion by Councilor Cox, seconded by Councilor Gilman, the Planning & Development Committee voted 3 in favor, 0 opposed, to allow the 2017 annual St. Peter's Fiesta, commencing on Wednesday evening, June 21, 2017 through Sunday, June 25, 2017, the use and control of St. Peter's Park on Rogers Street; the streets and sidewalks of Rogers Street from Mansfield Way to the entrance of Commercial Street; Commercial Street up to Fort Square; and from the intersection of Main and Washington Streets to St. Peter's Park; and on Friday, June 23th, Saturday, June 24th and Sunday, June 25th on only the water side of Stacy Boulevard from "The Tavern" to the Fishermen's Memorial (to the extent allowable by law) and the

Ciaramitaro/Gemellaro Playground at Fort Square for the purpose of conducting the St. Peter's Fiesta on the days and dates mentioned herein. Further, vendors are not allowed on the southwesterly side of Commercial Street nor on the streets and sidewalks from Tally's to the Chamber of Commerce (33 Commercial Street). In addition, all hawkers, peddlers, or vendors, who conduct their business on June 23rd through June 25th in these areas, must have the express consent of the St. Peter's Fiesta Committee; and with the following conditions:

1. That the St. Peter's Fiesta Committee by May 19, 2017 file a Certificate of Insurance naming the City of Gloucester as the Certificate Holder with the City Clerk;
 2. That the kiddie rides (those restricted to children of a height of 42 inches or under) be kept at the St. Peter's Square Park;
 3. That the footprint of the Fiesta be drawn on a plan showing locations of, but not limited to, comfort stations and first aid stations to be placed on file with the City Clerk by May 19, 2017;
 4. That the music and rides closest to the altar area be shut down at the opening and closing ceremonies;
 5. That the St. Peter's Fiesta Committee has permission to use the area of St. Peter's Commercial Marina, a city-owned property, behind the Cape Ann Brewery (11 Commercial Street), for the duration of the 2017 St. Peter's Fiesta;
 6. And that the St. Peter's Fiesta Committee and Fiesta Shows, Inc., comply with all regulations of the Licensing Commission including that they appear before the opening of the 2017 Fiesta to obtain carnival ride permits.
3. **RZ2017-001: GZO Amendment Sec. 1.11(c) re: Creation of a Mixed Use Overlay District including properties at #2 and #4 School House Road and #7 Gloucester Crossing Road**

Councilor Lundberg advised that the Planning Board started their public hearing last week on the rezoning matter and that the P&D Committee hasn't yet received the Board's recommendation and as such this matter is continued to March 8.

This matter is continued to March 8, 2017

4. ***Application for Ward 5-2 Wastewater District Map amendment pursuant to GCO Sec. 23-42(H)(2) re: 650R Essex Avenue (Map 238, Lot 6) (Also referred to: Planning Board, CIAB, ConCom, Shellfish Advisory Commission & Board of Health) (TBC 02/22/17)***

Attorney Joel Favazza, Seaside Legal Solutions, 111 Main Street representing Rich Hersey, owner of 650R Essex Avenue who is petitioning to amend the Ward 5-2 Wastewater District Map pursuant to GCO Sec. 23-42 (H)(2), Map 238, Lot 6. He explained the following from a presentation submitted and placed on file:

This application is not seeking to add any "new" land to the Ward 5-2 Sewer District but to correct a mapping error for which there is any legislative mechanism for such a correction. This application meets the Code of Ordinances criteria it is contended to add land in. The applicant is not looking to avoid the subdivision processes or Planning Board review, avoid the Conservation Commission (ConCom) or any other city departmental processes. If the map amendment is recommended, all it will allow for is the applicant then can continue the conversation with the city about this property's development. This application is strictly to amend the sewer district map.

TIMELINE REVIEW (excerpted from submitted presentation placed on file):

- 2001: West Gloucester Land Use & Wastewater Plan ("Daylor Report") specifically states that properties on Essex Avenue should be in sewer service area, and specifically states that smaller "spur" streets off of Essex Avenue should also be included. Cited is ease of connection of new development; poor soil quality for septic systems; benefits of connecting existing homes with older systems, etc., as rationale.
- 2002: GCO c. 23, Sec. 42 ("Sewer District" Ordinance)
Statement of intent in part to implement recommendations of Daylor Report
Specifically states that "...every property [is] either in or out" of the sewer service area and doesn't allow for partial inclusion.
- 2002: Wastewater District Map
Specifically states, "...sewer connections are permissible on any street...that has a sewer constructed."

Mr. Favazza said as in his presentation documentation that the map, “*erroneously displays only portion of 650R Essex Avenue as “in” the district.*”

Mr. Favazza reviewed a Wastewater District Map which had two portions of the map that were enlarged. He pointed out that throughout the wastewater district with few exceptions every parcel on Essex Ave. follows rear property lines and at times follows wetlands and water features. Every property that fronts Essex Avenue, with the exception of city-owned and Essex Greenbelt owned land, is in the sewer district, following rear property lines. He indicated that a red line he drew highlights what he said is the error that was made in producing this map (of which there is only one hard copy held with the city) where the city they cut across his client’s lot rather than following what he termed as a, “real green line” which would follow the rear of the applicant’s property like it does throughout the rest of the district on Essex Ave. He pointed out that the Code clearly says that a property is either “in” or “out.”

- 2003: the installation of sewer main in Essex Avenue.
Lots with single- and two-family homes provided 6” stubs to tie in. Roads such as Keystone and Lincoln Ave. receive 8” lines. The two inch difference is important from the ability to carry sewer volume per foot. Letters (submitted at meeting and placed on the record) from 2003 by the City Engineer to the Town of Essex instructing the change from a 6” sewer service to an 8” sewer stub with end cap and bordering properties connecting through 650R Essex Ave.. The second letter is to the property owner of 650R Essex Avenue that the Town of Essex has been requested to increase the stub to 8” from 6” due to anticipated development of the property.
- 2005: Betterment assessed against 650R Essex Avenue
Betterment has been paid by the current and prior owner with real estate taxes each year.
- 2008: Gloucester Zoning Ordinance and Map revised
Entirety of 650R Essex Avenue was zoned R-10 (Medium-High Density Residential District).
- 2016: Current owner begins to explore development options
Notices error on map and seeks clarification. Original reach out was to Public Works Director and questioned if issue tying into the sewer system on the back portion of the lot, and Mr. Hale said it wasn’t his decision but that Mr. Hale expressed his belief the map was the controlling factor. City Solicitor then provides legal opinion dated 11/8/16 (on file) that all properties are either in or out; because not all of 650R is shown as “in” on the map, the entire parcel is “out;” can’t be allowed in without following map amendment process set out in code.
- 2016: Application submitted.
Neighboring property needing connection to tie-in provides written support
- 2017: Recommendations Solicited

Mr. Favazza conveyed his opinion that this process isn’t geared towards correcting such a situation, but is geared towards assessing new land that wasn’t part of the district to be added. He then reviewed the Boards, Committees and Commissions that met to review the application under the ordinance:

- The Shellfish Advisory Commission met with applicant not invited to meeting. The Commission didn’t recommend the map amendment.
- The Board of Health had the option of making a finding that tying in would get rid of a risk of a public health issue. The Board stated it had no prejudicial opinion as to the property being included in the wastewater district map.
- ConCom didn’t oppose the application but specifically stated they were not in a position to make a specific recommendation but have a general policy of favoring sewer connections that affect soil and ground water quality. **Mr. Favazza** reiterated one of the issues with 650R Essex Ave. is that a small stream runs through it and wetland resource buffer zone.
- The Planning Board met last week on the application. **Mr. Favazza** acknowledged he wasn’t present at the meeting due to his error. He advised that the Board voted not to recommend. He said that he requested to go back before the Board, to have a full discourse on the application but his request was not granted. He indicated that the Board was two days outside of the response period and by the Code the Board would be deemed as not opposing the application for failure to provide written opposition.
- STANDARDS TO BE MET:
 - Code doesn’t contemplate correcting errors
 - Criteria geared towards adding new parcels
 - Must meet following criteria:
 - (a) The proposed sewer extension serves an area that could not be feasibly served by either on-site or community wastewater treatment systems; approximately 25,000 SF of 650R Essex Ave. is wetland or buffer zone

to a wetland and that ostensibly that is two lots that can't be served by on-site septic systems due to ConCom regulations and Board of Health regulations. There are two neighboring properties with older systems that would be able to tie in through 650R Essex Ave. if the pipe is brought up – these properties are also entirely within wetland resource areas or buffer zone.

➤ Must meet one additional criteria:

(b) The proposed sewer extension promotes the efficiency and effectiveness of the Gloucester sewer system. This allows land-locked properties that are in the district and trapped and can't get a pipe out to Essex Avenue to happen. The plan was for this property to have the sewer access (referring back to the 8" stub) and promotes the sewer system's goals of ensuring public and environmental health by reducing number of existing and potential septic systems near wetland resource areas. **Mr. Favazza** explained that if 650R Essex Ave. was developed, and forced onto septic systems in an area of environmental sensitivity it condemns two other properties that were assessed a betterment but can't tie into Essex Avenue. This serves that purpose, he reiterated, adding that it is correcting an error. He cited the property at 618R Essex Avenue (now known as 11 Golden Lane) where the line cuts through the property but follows the dividing line between R-10 and R-80 and keeps the R-10 in. He pointed out that the sewer district follows the R-10 Zoning District.

Councilor Lundberg said the application before the Council is an application to amend the map under GCO Sec. 23-42(H)(2) and that in order for P&D to recommend that the map be amended the application has to meet the criteria as set forth in the ordinance. The discussion about the error is interesting but he said didn't have bearing on what the Committee has to do as they have to follow subsection (H)(2) and the criteria listed in (3), to which **Mr. Favazza** said, "Correct," but expressed his disagreement saying that this is a constituent paying a betterment on sewer access he has been denied by City Hall and that this is where the Council can step in and amend the map and correct an error. **Councilor Lundberg** said there is a process by which the Council can amend the map to correct issues the applicant may have. **Mr. Favazza** said Criteria (a) and (b) have been met. **Councilor Lundberg** pointed out the other reviewing bodies commentary which indicates there is no evidence in the record that 650R Essex Avenue is not feasibly served by an on-site system, nor did he see anything in the presentation that would lead the Committee to that conclusion. **Mr. Favazza** responded by saying that ConCom looked at the streams and wetlands, and that rather than bringing machinery to the property and digging near the wetland to prove a septic system can't be sited, the state wetland ordinance, the city's wetland ordinances, and the Board of Health regulations won't allow it. The perk rate down by the stream is not an allowed connection. He noted the landlocked properties adjacent to his client's property that otherwise can't get to Essex Ave. without coming through the backyard of other properties who don't have to allow access, and other such related issues. He contended that the only feasible way is to come across his client's property and this was the manner in which those properties would connect. **Councilor Lundberg** said ConCom said it was, "lacking information on future plans for development in the subject area parcel the Commission is not in any position to make a specific recommendation regarding this wastewater district amendment request." They're saying they can't comment on criteria (a) he added. **Mr. Favazza** said the discussion at ConCom was about was there a project in front of them, and the answer was no, and that any proposed project would have to come back before that body. He recounted that ConCom said that without a project in front of them they couldn't say whether from a conservation perspective any harm to tying this property in but will say they prefer sewer over septic near wetlands. **Councilor Lundberg** said ConCom didn't say that in the report to the Committee. He pointed out that the Board of Health cited Criteria (a) and said that, "To date the Health Department has no information on file indicating whether soil evaluations have been performed. This information would be used to perform a determination as to the ability of the property's support of an on-site septic system. He said the Board of Health is saying that they have no information to make a judgement on Criteria (a). **Mr. Favazza** pointed out that Board's own regulations prohibit it and expressed concern why his client would be forced to bring in tractors to dig on the property to prove a septic system can't be sited. **Councilor Lundberg** said the Committee has a specific job under the ordinance in that this is an amendment to the map and is all the Committee is speaking to, and that they have to look at what the other Boards, Commissions and Committees have given P&D as their recommendations on the matter.

Councilor Cox said this is an unfortunate oversight where the city has been billing the previous owner and the current owner for a betterment and suggested it is unknown if the current owner would have even purchased the property had he known of this issue. She pointed out that there are letters indicating that the intent was there to connect the property to the sewer district; it abuts Essex Avenue. There are properties behind properties that are in the sewer map, all R-10, and the map follows the R-10 District line. The intent was to have 650R Essex Avenue in the district because it abuts Essex Avenue, and the map has part of the property in and the ordinance says a property is either in or out and part of the property is in, she reiterated. **Councilor Lundberg** said the remedy this is to

amend the map and that they have to look at the criteria (a) and (b) and has the applicant shown they've fulfilled (a) and one other criteria. **Councilors Lundberg and Cox** discussed meeting those criteria briefly and to the process.

Mr. Favazza said that when the amendment process was put in it wasn't anticipated the map would have errors and that people would want to add additional properties. It is like every property on Essex Avenue that got pulled into Essex Avenue, he said, and reiterated that the applicant meets Criteria (a). Criteria (b) can be met he said, in that by connecting to the sewer district it helps the efficiency again recounting that a stub was installed for that purpose and that the property owner has been billed by the city for this but not allowed to connect to the stub, he added.

Mr. Favazza confirmed for **Councilor Gilman** that the two 2003 letters were viewed by the Planning Board, ConCom, and Board of Health but not the Shellfish Advisory Committee. **Councilor Cox** recounted that Mr. Favazza wasn't at the Planning Board meeting and wasn't approved to go back before them.

Councilor Lundberg and **Councilor Cox** again expressed their opinions as to what the request to amend the sewer map process was and the purview of the Committee and as to what the ordinance requires. **Councilor Cox** expressed that not all situations fall into lockstep with an ordinance as written and there were exceptions.

Councilor Gilman reviewed with **Mr. Favazza** briefly the findings of the various Boards who are required to submit an opinion on the application to amend the map. **Councilor Lundberg** said the Committee is confined by the ordinance, but that the Councilors can vote as they wish and said he would vote against this application. **Mr. Favazza** reiterated that the 8" stub was installed to be hooked into and that they are asking for that opportunity. **Councilor Lundberg** said it doesn't say that it promotes efficiency.

Councilor Cox said there was intent all along. She said the ordinance isn't written to help in this matter.

Councilor Gilman asked for and received time to review a letter of opposition from Joel Swan, 648 Essex Avenue (on file). She asked what the applicant's remedy was should the Council voted this matter down.

Councilor Lundberg said that then the applicant would have to determine if they could then possibly install a septic system on the property.

COMMITTEE RECOMMENDATION: On a motion by Councilor Cox, seconded by Councilor Gilman, the Planning & Development Committee voted 2 in favor, 1 (Lundberg) opposed, to recommend that the City Council Amend the Ward 5-2 Wastewater District Map pursuant to GCO Sec. 23-42(H)(2) to include the property at 650R Essex Avenue, Assessors Map 238, Lot 6.

This matter will be advertised for public hearing

A motion was made, seconded and voted unanimously to adjourn the meeting at 6:35 p.m.

Respectfully submitted,

Dana C. Jorgenson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING:

- **Written statement by Ainsley Smith, Chair, Clean City Commission asking that the Fiesta Planning Committee replace balloon release(s) with a new, environmentally friendly celebration to replace the balloons.**
- **Two Letters dated April 10 and April 17, 2003 respectively from the City Engineer, David H. Knowlton, P.E. pursuant to application to amend Ward 5-2 Sewer District Map**
- **A written presentation by Attorney Joel Favazza on behalf of applicant requesting an amendment to the Ward 5-2 Sewer District Map to include 650R Essex Avenue**