

Special Planning & Development Committee

Wednesday, January 29, 2018 – 5:30 p.m.

Kyrouz Auditorium – City Hall

-Minutes-

Present: Chair, Councilor Valerie Gilman; Vice Chair, Councilor Jen Holmgren; Councilor Paul Lundberg
Absent: None.

Also Present: Councilor Nolan; Councilor Hecht; Councilor Memhard; Councilor Cox; Joanne M. Senos; Jim Destino; Chip Payson; Gregg Cademartori; John Dunn; Jill Cahill; Nancy Papows; Chris Sicuranza

The meeting was called to order at 5:34 p.m. There was a quorum of the City Council.

1. *Memo from Senior Engineering Aide re: Proposed Street Naming & Numbering Plan - To be referred to department heads per GCO Ch. 21, Sec. 21-3(3) – The matter will then be continued to Feb. 7, 2018 pending departmental review*

MOTION: On a motion by Councilor Lundberg, seconded by Councilor Holmgren, the Planning & Development Committee voted 3 in favor, 0 opposed, to refer the matter of the renaming and renumbering request, to Estuary Way, a common driveway off of Concord Street to access three lots, as per GCO Ch. 21, Sec. 21-3(3) from #10, #12 and #14 Causeway Street to #19 Estuary Way, #17 Estuary Way and #15 Estuary Way.

This matter is continued to February 7, 2018.

2. *SCP2017-012: School House Road #2, #3 and #4, Map 262, Lots 14 & 37 and Gloucester Crossing Road #7, Map 43, Lots 4 & 5 for a Special Permit under the Mixed Use Overlay District pursuant to GZO Sec. 5.29 (including Major Project under GZO Sec. 5.7) and Sec.'s 5.29.10 and 5.11.8 (Cont'd from 01/16/18) – Pursuant to a review of the city's consultant presenting findings related to the Affordable Housing hardship claim on the part of the Applicant only*

Councilor Gilman, Chair of the Planning & Development Committee read for the benefit of the audience the section of the Zoning Ordinance related to Affordable Housing and Payment in Lieu option under GZO Sec. 5.11. She then reviewed a brief timeline and history of the Major Project application to date, with its first opening in November 2017 before the P&D Committee. She highlighted that all members seated on the current P&D Committee are very familiar with all the up-to-date information on the Special Council Permit application. Both she and Councilor Lundberg were members of the Committee when this Special Council Permit review began, and Councilor Holmgren as a citizen and Councilor Elect had attended every P&D meeting when this matter was before them and is completely “up to speed.” She then reviewed the format of the remainder of the meeting. She noted that seven out of nine Councilors were present and that it should be taken as a reflection of how seriously the Council views this matter before the Committee.

CONSULTANT TO CITY ON QUESTION OF FINANCIAL HARDSHIP:

Lynne D. Sweet, Principal, LDS Consulting Group, LLC, provided an overview of her peer review and recommendations from her December 7, 2017 report (on file) related to the financial information submitted by the Fuller Mixed Use Venture LLC (“Developer”) on August 28, 2017 in response to the City of Gloucester’s Inclusionary housing requirements contained in the Gloucester Zoning Ordinance, Sec. 5.11. LDS, established 18 years ago, is a real estate advisory firm based in Newton, MA, and **Ms. Sweet** reviewed briefly some of the firm’s capabilities and services highlighting the firm’s work in housing development for private entities as well as municipalities. She expressed her recognition that this is an important development for the city and the developer and noted that her task was to review information provided by the developer (“Applicant” or “Developer”) in support of an August 28, 2017 request for a cash payment in lieu of building affordable units on site. She quoted the first paragraph of this letter, “...building units on site is not financially viable and would present an economic hardship.” She highlighted that in addition to the letter submitted by the Applicant she was given a one page set of numbers to review entitled, “Presentation of Economic Hardship, Comparison of Year One Stabilization Valuation,” and was the only document provided by the Applicant. She said she had quite a few requests back to the Applicant for additional information and held some conversations with them adding that a lot of her memo stems from the

additional information and the phone conversations. She said she had a great deal of agreement to much of the proffered numbers, but not all of them and this would be the crux of her presentation to the Committee.

The purchase price of the property: The purchase price of the property was low in comparison to fully affordable developments as well as mixed-income developments.

Permitted versus Unpermitted: Most developers have a purchase price that doesn't include permits; but they take on the financial burden of costs associated with permitting a property, but don't actually purchase the property until it is permitted which is the case with this project. It is the understanding of LDS that there is a Purchase & Sale Agreement (P&S) with a set price but the Developer is bearing the cost of bringing the project through permitting and will not purchase the property until it has been permitted which was noted as "typical."

Sample 40B development in Westford, MA used in the LDS Report: This development was cited as an example because it was a large project with a larger affordable housing component of 25% with a per unit cost of \$23,000. Not noted in the report was that the Westford project was also paying \$3 million in off-site infrastructure improvements, and that the project was reduced by another 20 units to 240 units, and was chosen for size, affordability, and similarities as it had a large infrastructure component. In taking into account the infrastructure component and the reduction in units, the purchase price was well below \$20,000 per unit. That project is in the process of being built. **Ms. Sweet** said this is why she stands by her conclusion that the purchase price she reviewed is relatively low for a project of this size with this level of affordability.

Residential and community building costs: This was noted as a "substantial" line item of \$32 million on the hardship presentation. **Ms. Sweet** said she had to understand what the General Conditions Overhead and Fees were. There are different ways that parties make money during the development of the project which was outlined as: A building or a contractor which may or may not be a developer have to pay staff, material costs but what isn't in those two categories goes into "General conditions and overhead and fee." That category can run 6% to 8% which is what they "put in their pocket" for doing a "good job." **Ms. Sweet** said she understood those numbers and are within the \$32 million which she deemed as appropriate. The second is the "Developer's fee and overhead." With projects that have affordable components or a 40B component, there is a Developer's fee and overhead which is typically based in the overall cost of the development of the project. She conveyed that based on conversation with Peter Gourdeau (Windover Construction and FMUV team member), he informed her that within the \$32 million there is \$3.2 million of developer's profit and overhead and is earmarked to the Dolben Company. She pointed out it wasn't written in the document but was part of one of the last conversations she had with Mr. Gourdeau prior to the completion of her memo. She said that it is not "a bad thing" but offered that there is additional money contained in the overall number that someone is entitled to with the project as currently presented.

Construction costs associated with site work: LDS received some detail of the \$7 million of the different line items which **Ms. Sweet** said were "high," more than what is typically seen for site costs in development. She noted that LDS never saw any back-up documentation for those numbers or engineering reports or contracts nor did they ask for them as it wasn't what they were tasked to do. LDS had to take what they were given at face value, **Ms. Sweet** pointed out.

She said she didn't know how the Council wants to value hardship. She explained that she looked at the cost, revenue and bottom line and compared it to other projects of this magnitude and the projects LDS has seen over time, she didn't see this as a project that was not viable. The numbers that she saw, she pointed out, indicated that the project was a viable real estate development here. The Developer pointed to a "measure of success" based on a case that she said, in her opinion, "isn't apples to apples." She added that the 40B case presented in the methodology didn't apply to this in her personal and professional opinion. There are many ways to measure success in a project, she said noting that the affordable component does limit income on the property. Her calculation which was market based, she said, didn't limit income that would limit the Developer borrowing debt. There may be other ways to cover those costs, she suggested, through grants other than moving units off site. She indicated that her analysis was market based whereas the Developer's analysis was based on indices.

Ms. Sweet said she didn't agree with the statement that, "building units on site is not financially viable and presents an economic hardship." She said that the affordable requirement isn't what's causing the economic hardship. She noted she'd taken a brief review of the Developer's presentation (on file) and advised she'd noted some inconsistencies with numbers presented on slides 4 and 6 with regards to purchase price. She said that won't change her conclusions that there is profit to be made with this project, and that it is a financeable project. She presented some details on how she calculated the economic hardship and reviewed briefly her financial analysis numbers through a hand out to the Committee (placed on file), that was untitled.

REBUTTAL BY APPLICANT:

Peter Gourdeau, Director of Project Development for Windover Construction representing the Fuller Mixed Use Ventures, LLC, introduced team members: Mark Bobrowski, Land Use Attorney; Edward Marchant, Independent Real Estate Financial Consultant; Andrew Dolben of The Dolben Companies; Attorney Deborah Eliason, local Counsel; Jack Meany of the North Shore YMCA, and Attorney Michelle Harrison representing Sam Park & Co. **Mr. Gourdeau** reviewed Mr. Bobrowski's and Mr. Marchant's pre-eminent qualifications in their respective business sectors saying that they're the foremost experts in the state. He then reviewed the presentation previously filed with the Committee. He cited that the FMUV financial estimates were found reasonable by Ms. Sweet. He recounted that the presentation to the P&D Committee on November 8, 2017 went through much of the information on the conditions found on the Fuller School site; the costs to remediate it, and the affordable housing hardship placed upon the project. He reviewed that the Committee asked for a financial consultant review of the FMUV numbers. He said that the Committee should be concerned if they were overinflating their numbers which he said they are not. He conveyed that in slide 3 showed that: the Acquisition Costs, the Builder's overhead and Builder's fees are not disputed. Their construction costs per unit "seem reasonable." Site work is site specific, and this site has an existing building filled with asbestos; there is a water main to be built around, and debris left from a previous project on this property. The land acquisition price with the site remediation costs is considered reasonable. LDS found General Development Costs, Capitalized Reserved as "reasonable" and that in general LDS agreed with the proposed residential affordable and market rate rents and income analysis provided by the developer for Projected Rents and Projected Operating Expenses. As to the Cap Rate and Valuation LDS agreed that that the Project Value was reasonable.

Mr. Gourdeau then reviewed the slides #4 and #5 which showed:

Allocation of Land & Extraordinary Site Prep Cost: The cost of the site development is being shared equitably amongst the partnership members. The \$30,000 per residential unit is what it costs to make a developed site. They have geotechnical conditions which includes unsuitable soils; a 200,000 Square Foot masonry building with asbestos and other hazardous materials; the site has extremely high ground water; much of the site has been determined to have been filled with broken ledge and boulders from another city project "generations ago." It was pointed out there is a 16 foot water main that runs through the site which has to be built around and protected. He expressed the FMUV contention that none of the other sites named in the LDS report had these extensive and extraordinary conditions. If the extraordinary site costs are removed from the analysis, the projected site work costs project reasonably with LDS's projection of \$20,000 per unit. LDS found soft costs and capitalized reserves to be reasonable and project value as well. He reminded that the purpose of the LDS review was to confirm their estimates behind the return on total costs was reasonable. By extension LDS also confirms that the return on total cost is reasonable which they calculated, he said.

Mr. Gourdeau said that the cost of the site development is shared equitably among the three members. He reiterated that the land cost is about \$30,000 per residential unit which is at the high end of what is the typical range offered by the consultant. He pointed out that the \$30,000 per unit is what it takes to create a developable site, not including water service, excavation for foundations but what it takes to get to that point to do those things. He touched upon the cost of the Geotechnical condition; Environmental Remediation Allocation division of expenses amongst the members and the Hard Cost Contingency (5%) which totals almost \$12,000 per unit. The residential member's share of the purchase cost of the city land is \$3.633 million which translates to a total Land Cost of \$5,995,500 or \$29,975 per residential unit. **Mr. Gourdeau** pointed out that this shows that the residential member pays less than half of the overall land acquisition and extraordinary costs. On page 3 of the LDS report it stated that they can reasonably assume that all site costs have been allocated to the residential portion of the project. He said, "It is clearly not the case." He noted that there's been no effort to disproportionately allocate any cost to any one member." He said the land cost was considered properly; is within the typical range offered by LDS, but is in the highest end of the range. He added that it's less likely a developer would have the financial flexibility to assume full burden without impacting the viability of the project. He pointed out that Slide #5 shows that the share of land cost is reasonable and "rational." The residential share is 49% of the total and will own and use approximately 46% of the land. Cost per acre is higher than the other members at \$961,339 and their FAR Square Foot cost (how many square feet they can build on their land) is lower. He pointed out that it is reflective of the fact that the residential project is able to use land efficiently by building vertically. He said that there has been no effort to disproportionately allocate any specific costs to any one member, and that the partnership is a result of a "prolonged and arm's length negotiation."

Reconciliation of Real Land Cost (compared to LDS page 3 table of the report), Slides #6 and #7: This table offered by the Applicant repudiates the assumption by LDS that the developer has a relatively low acquisition cost compared to market and applies that somehow the acquisition costs creates a windfall between \$600,000/\$700,000 and \$1,867,000. With the extraordinary site development costs this will put the partnership at the high end of the

range noted in the LDS Report. A point was made that the peer review stated that the FMUV's acquisition cost is below the \$20,000 per unit standard but fails to consider the extraordinary site preparation costs which will be incurred for this specific project (Slides #6 and #7).

LDS Report – Corrections and Clarifications: In slides #8 and #9 there was a review of statements made in the LDS report such as: "The Developers analysis is inappropriate because the proposed development is not being permitted under M.G.L. Chapter 40B which was repudiated by the statement of the FMUV as, "The 40B construct offers the basis for comparison of this project against a hardship measure that is generally accepted by the DHCD and the Housing Appeal Court (HAC)." Another highlighted statement made by the LDS Report was, "LDS believes it is fair to conclude that the Developer knew or should have known) about the affordability requirement when they bid on the property." The repudiating statement by the FMUV was, "FMUV was aware of the affordability requirement and clearly qualified its bid for the property accordingly. LDS should have been made aware that our land acquisition offer had been maximized through its 100% market rate assumption as this fact is central to the hardship consideration."

Mr. Gourdeau said the FMUV took issue with the LDS Report which indicated that they manipulated the data to misrepresent site development costs. He said despite "repeated explanations and assurances," that the costs presented were being shared equitably amongst the partners; LDS chose to assume they'd allocated 100% of the site development costs to the residential component. He cited that the residential component would bear less than half of the real site acquisition development and costs.

Mr. Gourdeau highlighted the letter submitted with the RFP bid that in order to maximize the purchase price to the city they have elected to include only market rate housing in their proposal. Therefore, they will require the support of the city 'to facilitate a rezoning for the site' to incorporate our retail/commercial used, and our assumption regarding Inclusionary Housing and any required dimensional relief. LDS was not made aware of the terms of the bid. To require a developer to pay twice for inclusionary housing is unfair, he pointed out. They will build the units on site but it will require an adjustment but one that the FMUV remain open to, he said. **Mr. Gourdeau** said that when the planner was asked to seek out a consultant it was to determine the reasonableness of their numbers not the issue of hardship. LDS found their numbers were reasonable, but suggested the FMUV renegotiate and that they place the units on site which they are not unwilling to do but that there is a financial aspect that is impactful to the FMUV, he said.

Addendum to the Rebuttal Presentation of Slides #10, #11 and #12 (submitted and placed on file): Slide #10 showed a letter that accompanied the FMUV response to the city's RFP in November 2015. Highlighted for the Committee was an excerpt from the original cover letter which said: "It is important to note that, in an effort to maximize the purchase price to the City, we have elected to include only market rate housing in our proposal. Therefore, we will require the support of the City 'to facilitate a rezoning of the site' to incorporate our retail/commercial use, our assumption regarding Inclusionary Housing, and any required dimensional relief." He said this shows that the FMUV was fully aware of the inclusionary requirement and that there were 30 potential bidders for this property. They made clear that the project would have to consist of 100% market rate housing and that they'd request the city to craft the necessary zoning. The Administration suggested the Payment in Lieu approach with the hardship finding, he said. He said to require a developer to pay twice for inclusionary housing qualifies as unreasonable. **Mr. Gourdeau** said the FMUV remains willing to building these units on site but it will require an adjustment to the consideration but are open to it.

Mr. Gourdeau reviewed in brief the ways the Payment in Lieu can be calculated and expressed no objection to the way LDS did the calculation. He pointed out that LDS was to assess the reasonableness of FMUV's projected income and expense, and almost without exception found the numbers to be reasonable. He said that it was outside of the scope of the peer review assignment to suggest a renegotiation; the FMUV has done that with the offer to place the units on site -- and while limited by financial constraints, there isn't by an unwillingness to build affordable units in the Fuller project.

Slide # 12 - Hardship as Defined by the Commonwealth of Massachusetts was reviewed which is: "A rental project with a return on total cost (RTOC) less than the sum of the applicable 10 year treasury interest rate and 4.50% would be considered Uneconomic" – Source: DHCD (Dept. of Housing & Community Development) Comprehensive Permit Guidelines, December 2014.

Mr. Gourdeau reviewed the DHCD Threshold based on 8/24/17, 1/2/18 and 1/26/18 numbers from the 10 Year Treasury Yield, Adding "Threshold Increment" (adjusted for risk) which added up to the Economic/Uneconomic Threshold. Today the threshold is 7.16% on January 26, 2018 (the slide showed 7.12%). The FMUV would be at 1.5% less than the threshold which is 26.12% less than the threshold, a large delta to the threshold limit. He said these numbers should be considered reasonable and realistic because the numbers are derived from the numbers deemed reasonable by the consultant.

Hardship Expressed as Value (Slide #11) “Presentation of Economic Hardship – Comparison of Year 1 Stabilization Value: This slide showed valuation, at 100% Market Project and 85% Market Rate Project showing a Net Operating Income (NOI) under both scenarios, the Market Cap Rate shown as a percentage and the Project Value (NOI/Market Cap Rate). The valuation differential at Year 1 Stabilization was at 85% Market Rate shown as “(2,072,000).” **Mr. Gourdeau** said that comes directly “out of the pocket” of the Developer who is taking the risk. He added that when considered with their November 2015 statement of how they were bidding, it is an important consideration.

He concluded his remarks by saying the numbers are correct as a whole and reasonable; and that the impact of inclusionary housing to value, therefore, is also correct. The inclusionary housing would have an approximately \$2.1 million impact on value to the Developer. Because the peer reviewer was not informed of the bid qualification on affordable housing, LDS couldn't assess their hardship claim in the appropriate context, he pointed out. FMUV suggested an objective widely accepted standard to measure economic hardship; the peer reviewer offered no alternative standard. He highlighted that even the peer reviewer agreed that the return on total cost is below the HAC standard. He said that a finding of hardship presents an opportunity to create more affordable housing serving lower-income households and at lower rent levels in Gloucester by utilizing the cash contribution option. The hardship finding will “unlock” more affordable housing in Gloucester at 71 Middle Street funded in part by the Payment in Lieu and presents the “best public policy and meets the affordable housing needs of Gloucester.” **Mr. Goudreau** said that the FMUV has been working on this project for more than two years and hope for a definitive recommendation of Affordable Housing Hardship so they can have an answer to put to rest whether this project can go forward as planned.

Attorney Mark Bobrowski, of Blatman, Bobrowski & Haverty, LLC, discussed why he and real estate consultant Edward Marchant chose the Housing Appeals Committee standard for a definition economic hardship as used in GZO Sec. 5.11.8(a). He described statutory construction in brief and allows substituting like terms from other statutory contexts so that if it doesn't exist in the local Zoning Ordinance you would use definitions from the state Building Code where it is undefined in local ordinance. He described his options as a definition of hardship from MGL Chapter 40A, Sec. 10 which he read but isn't appropriate in this case. The ultimate test, he said, for economic hardship is if a bank would finance the project which depends on the equity that is “brought to the table.” He said the most appropriate standard for “uneconomic” conditions was by the DHCD and the HAC. When a developer makes a rental proposal under Chapter 40B there is now benchmark establishing whether the project is economic or uneconomic. Citing his letter dated January 29, 2018 (placed on file) is a ten year treasury rate which today opened at 2.66% and 450 basis points which yields a 7.16% threshold for an economic renter project. The return on total costs of the FMUV project will be 5.66%. The Affordable Housing inclusion would drive that number lower and is nowhere near the benchmark that the HAC has established as an objective measure of economic conditions for a rental project. The HAC did this to make an objective codification of the standard for uneconomic. The bottom line, he said, is that the rental component without affordable units starts off below the economic threshold and requiring affordable units puts the rental component in even worse financial shape. That's economic hardship by any definition, he said, when the benchmark is 7.16% and the project is coming in at 5.66%.

COMMENTS FROM THE ADMINISTRATION:

Jim Destino, CAO, recounting briefly the previous Administration's policies in maintaining the Fuller School property saying that when this Administration came in, the decision had already been made by the School Committee and former Administration in letting the building go. He reviewed the city's determination through various sources that the Fuller building was unable to be reused; that an RFP was then issued for the development and sale of the Fuller property; that there had been a ballot question put to city voters which resulted in the citizens' opinion that a mixed-use facility was preferred on the Fuller property. Forty firms took out the RFP proposal, and with only one respondent it still gave the Administration the ability to negotiate. There was far more housing units in this proposed project originally thought could be used, he said, but the Housing Production Plan came out and said that the city needed 600 new units in the upcoming six to eight years, and raised the Administration's comfort level with the number of proposed units. He said there was a provision for a PILOT (Payment in Lieu of Taxes) for non-profits in the RFP which the Administration did discuss with the North Shore YMCA, an organization that benefits the city through its programs. It was decided to waive that provision in the Purchase & Sale Agreement. There was a hockey stick shaped piece of land the city had rights to behind the Fuller School and was included in the entire property package under the P&S Agreement.

Mr. Destino said that the Mayor believes that the city doesn't have an affordable housing problem, it has a low-income housing problem. This gave rise to the Administration negotiating with the Developer to put a proposal before the Council to decide on the matter of hardship relief under the Zoning Ordinance and only the Council can

vote to give that relief. There are a number of issues still outstanding before the Planning Board, he reported. He said that the Administration wants to offer the Council the opportunity to move forward that if the Council feels there is a hardship, there are other options possible -- such as the 71 Middle Street site for low-income housing. The 71 Middle Street units, being removed from the Fuller site would, therefore, have a lower AMI (Average Median Income) of 60% rather than the 80% AMI on the units that would be built at Fuller. The 80% AMI units would not be affordable to the low-income individuals and families of Gloucester. He suggested that if they can work out something that could connect 71 Middle Street with 60% AMI for 50 units with more local control, that is something that would be beneficial to the city. This proposal for 71 Middle Street came forward after the P&S was negotiated and has come to the forefront in the last couple of months, he said. He pointed out that the Administration is not going to negotiate with the Developer while the permitting is in front of the Council. The Council, he noted, has the ability to make that happen at 71 Middle Street through conditioning the Major Project under a Special Permit. He said if it is the will of the Council they can remand that particular issue back to the Administration to negotiate, and they would be pleased to do so. He suggested they can make it work with the help of the Council and the Developer as it is a good project that will benefit the city. He said the Administration stands behind the proposal they put forward and that if the Council and Administration works together they can move forward in whichever direction the Council wants to go. He said the Mayor thinks the right way is to build off-site low-income units that will gain more affordable units with more local control.

COUNCILOR QUESTIONS:

Councilor Holmgren asked for clarification for LDS's inclusionary housing – the FMUV representatives spoke about a MGL Ch. 40B construct they used and that LDS didn't use that particular construct. **Ms. Sweet** said she didn't agree the use of the HAC standards to a particular case which are different to the facts surrounding the Fuller development. She said that the city has an inclusionary Zoning Ordinance that requires a developer to cap at 15% of an affordable component. Under the MGL Ch. 40B case, the developer is asking to set aside the Zoning Ordinance and asking to do something in a zone that they're not allowed to do something in. In this particular case cited, the town asked the developer to change their site plan, and the change was perceived to increase the developer's infrastructure costs by moving a swale. The developers were asking to set aside the Zoning, and the town said this is the condition that you that will change your plan and incur a cost to you. She said there is no new condition being imposed on this Developer, and that is the case that was quoted -- it was a new condition being imposed. That is, she pointed out, a different set of facts to what is transpiring with the FMUV project and isn't relevant. She suggested that the Council should seek its General Counsel's opinion as to what is and isn't applicable. This project is economically viable, she said. She commended the FMUV finding a case that looks at numbers but expressed her disagreement that the set of facts surrounding that case isn't at all similar to what is before the Council.

Councilor Lundberg noted the last time this matter taken up by the P&D Committee, he quoted the Zoning Ordinance then and repeated it that: "...a project such as this shall have affordable housing on site... "...If applicant can show economic hardship that there are two alternatives to be considered, 1) the construction of the same amount of units or more off site or a cash contribution to the city's Affordable Housing Trust (AHT) Fund." He pointed out those are the two routes to establishing economic hardship. He recounted he'd said at that time in the Developer's application, the FMUV stated they had an economic hardship and the choice was to make a contribution to the AHT Fund. He had, he said, asked at that time if they could explain why they chose that rather than building units off site. **Councilor Lundberg** said that the FMUV never really promulgated an answer other than what is found in the application it was said it was a more certain situation rather than constructing at another site. He said he heard from the Administration and from the FMUV and other members of the FMUV team that the project of developing 71 Middle Street for affordable housing will achieve greater impact to the city's affordable housing needs than including 30 units at the Fuller School site which many would say it makes sense, so why not explore that as an option. He pointed out that the Administration is saying that perhaps it is an option the FMUV would want to discuss in a negotiation with them, and come to the Council with that option with whatever that negotiated agreement looks like.

Councilor Lundberg reminded that there was some resistance early on to connecting the two (Fuller development and 71 Middle Street); but if there is a connection somehow acceptable to the city, and could assist in the city's achieving its housing goals, he suggested it may make the acceptance of the economic hardship more palatable. He asked if the suggestion of Mr. Destino would be of interest to the Applicant rather than continue this Special Council Permit process with the contention of the Payment in Lieu – and asked if the FMUV wants to request to go back to the Administration with a negotiation phase. He said whether they hold the application in abeyance or have the FMUV to amend the application. He expressed his concern to place the Council in a position of negotiating terms for a connection between the Fuller development and 71 Middle Street. He asked if that is

something the applicant is interested in doing at this time. **Mr. Gourdeau** said, “Yes,” that the Applicant is more than willing to sit with the Administration and/or a member of the Council to discuss how 71 Middle Street takes shape and how they offer the city assurances that they will do everything they can to help make that happen. Whether 71 Middle Street gets connected still has to apply for hardship is the same standard and is a two track process, he pointed out. **Councilor Lundberg** pointed out as the Special Council Permit application currently exists, the FMUV is only making a \$1.5 million contribution to the AHT Fund is different than a proposal to somehow linking the development of off-site housing. **Lee Delliker**, President of Windover Construction offered that they’ve been before the Council for two years and made a good faith proposal to the city. He said he understands the dilemma related to the “hardship thing.” He said they would be pleased to sit down with the Administration again to find the best solution that’s in the best interest of the city. He noted that if they can find a way to do the 71 Middle Street project and is better for the city and solve this issue, they “absolutely” will do that. He pointed out that affordable housing is important to the city, and to the FMUV partners, so if they can find that solution, he asked they be allowed to do so.

Councilor Lundberg said there is no doubt for the Council that they believe in the good intentions of the YMCA and the good reputation of Windover in the community and are looking to turn this into a proposal to get them to the Special Council Permit.

Deborah Ellison, Eliason Law Office, 61 Middle Street, local attorney for the FMU, pointed out that Mr. Gourdeau had said was correct that the Council will have to make an Affordable Housing Hardship determination whether it is a Payment In Lieu or whether it’s off-site housing. She added that the off-site housing will rely on the \$1.5 million Payment In Lieu going towards that housing project because the city will have to use those funds to make a local contribution. **Councilor Lundberg** highlighted that the way the (Zoning) Ordinance is constructed; the hardship determination is not made in a vacuum but is made with the idea of alternatives in order to establish hardship. He said if they want the Council to simply make a determination on hardship without any consideration of what comes next, he suggested they probably won’t do that and will want to see what comes next.

Edward Marchant, Affordable Housing Advisor to FMUV, clarified that the \$1.5 million could be leveraged in order to provide housing at a lower income rate used most often through the low income housing tax credit as maintained in the latest federal tax act which can be used for leveraging purposes to gain more funding through federal and state entities for such a project -- a tax credit is a dollar-for-dollar tax credit of a tax liability. He explained that the state awards credits, which is very competitive, he said. He described briefly a 69 unit low income affordable housing project financing in Yarmouth that in its second round of (grant) funding with the state was successful which is typical of that source of low income housing project funding. He described the numeric formula for tax credits briefly to the Committee. He said there are various state and federal sources which can fund affordable housing developments such as the state’s low-income housing tax credit program as well as the state’s Affordable Housing Trust. The other benefit of the low-income tax credit program is that in order to get an allocation a 10% of the units that would be affordable must be provided for extremely low income households defined as 30% of Median Family Income.

Councilor Holmgren said confirmed that at 30 units at the Fuller Site would serve people 80% AMI, and at 71 Middle Street would serve those with a 60% AMI. She asked what the AMI percentage is for Gloucester. **Gregg Cademartori**, Planning Director said it is a number adjusted each year dependent on the size of the unit: a studio, a one-bedroom or two-bedroom unit. **Ms. Sweet** added that 80% AMI rent for a one-bedroom unit is \$1,466; a two-bedroom unit is \$1,758 both inclusive of all utilities. The 60% AMI rent for a one-bedroom unit is \$1,164 and a two-bedroom unit is \$1,396.

Councilor Gilman said that the GZO doesn’t have a very specific definition of hardship and yet they seem to be talking about 40B and if that definition applies, she asked what the formula for hardship is. She asked if they should be looking at the cost of the site and everything else which has been brought into this conversation. **Mr. Cademartori** said they’ve been given several different approaches. He said lacking definition the FMUV team came up with an approach to “ground it” with what was out there. He noted that the P&D Committee asked that Ms. Sweet ground what was provided to the Committee in the market “reality” which she did by also making comparisons to other projects. He suggested that they also have to look at the specific language of the Zoning Ordinance says economic hardship associated with the cost of building the units on site and is what they’re limited to. He said it is about having units on site or not having them on site and how to break the cost out -- what is the site cost, land acquisition cost. It is up to the Committee to interpret it and to continue to ask for information as they see fit, he pointed out, in order to make their determination. He said the importance of the project; values of the project are recognized and observed that the Committee appears to be troubled by the language of the Ordinance. The current language has only been in place since 2008 which changed the threshold of projects that have to comply with the inclusionary ordinance and it changed the way Payments in Lieu are considered and accomplished. It is

frustrating, he said, as they are bound by the language as counsel for the applicant pointed out, he explained. He said it is a critical issue for them that somehow there has to be an understanding of what an economic hardship is -- the Committee has been presented with a definition based on market rate and one that is based on an index based.

Councilor Gilman asked for a review of what is in front of the Planning Board. **Mr. Cademartori** said the Planning Board received a more in-depth presentation from the Applicant, and a peer review of the technical aspects which saw a contract signed in November and an overview received in December; one staff review was done with the Applicant, and that the matter is back on the Planning Board agenda this Thursday. He said that the Board wants to handle their response in a comprehensive way to the peer reviews. He said he assumed at the next two Planning Board meetings there will be a more comprehensive response forthcoming.

Councilor Lundberg noted the matter of the application for a Special Council Permit is referred to P&D and waiting to hear from the Planning Board. He reviewed alternatives to the Committee as to process of what they could do at this juncture -- to hold their deliberations in abeyance pending the completion of the Planning Board review and recommendation to the Council in conjunction with Administration's desire to have a further negotiation on the matter of linking the off-site housing with the Applicant. He said he would like to give the applicant the opportunity to come back to the Administration so that it's not just making the Payment In Lieu -- which it is also somehow creating affordable housing at another location, like 71 Middle Street, and how it links with the \$1.5 million. He said how that would work in a timely manner and what form that negotiation would take is better handled by the Administration, and that would result in a possibly amended project application. **Mr. Destino** said because this is an important issue and he has heard that the Committee wants to refer back to the Administration the Affordable Housing Hardship matter, the Committee could offer a motion to recommend to the City Council do just that and at the same time the Major Project application stays in Committee and the Planning Board continues their work on that application.

Councilor Lundberg asked his fellow Committee members for their opinion. **Councilor Holmgren** said she was "intrigued" by the development of 71 Middle Street having heard from many people that Gloucester has a greater need for the lower AMI range for affordable housing. She expressed her appreciation for the patience of the FMUV. She noted that they want to get this right and agreed sending this part (Affordable Housing Hardship) of the Special Council Permit application back to the Council in order to forward it to the Administration (for further negotiation) was appropriate. **Councilor Gilman** offered her agreement this needed to go to the Council saying that in talking to so many people in the community this is a good path to take. It is the linking they need for the proposed venture at 71 Middle Street. She indicated she had read the city's Affordable Housing Trust minutes of Oct. 11 which she said spoke to how affordable this would be, and "was compelling." She agreed that they want to make this work for the city.

COMMITTEE RECOMMENDATION: On a motion by Councilor Lundberg, seconded by Councilor Holmgren, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend that the City Council refer the matter of the Affordable Housing Hardship Claim made by the Fuller Mixed Use Ventures, LLC under GZO Sec. 5.11.8 to the Administration of Mayor Theken for the purpose of renegotiation for that part of the Application submitted that addresses GZO Sec. 5.11.

Attorney Eliason confirmed with the Committee that the voted matter would be taken up under Committee Report at the next regularly scheduled meeting of the City Council on Tuesday, February 13, 2018.

This Special Council Permit application is continued to February 7, 2018 for a discussion on the vote of the Committee with city staff and the Applicant.

A motion was made, seconded and voted unanimously to adjourn the meeting at 7:25 p.m.

Respectfully submitted,

Dana C. Jorgensson

Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING:

- Letter to City Council from Mark Bobrowski, Blatman, Bobrowski & Haverty, LLC, Attorneys at Law, Concord MA dated January 29, 2018 re: LDS Peer Review of Fuller Mixed Use Project

- **Addendum to FMUV Rebuttal Presentation (previously placed on file) in rebuttal to LDS Report from Peter Gourdeau, Windover Construction for Fuller Mixed Use Ventures, LLC**
- **Addendum to Financial Peer Review Report by Lynne Sweet, LDS, city consultant submitted by Lynne Sweet**