

CITY COUNCIL STANDING COMMITTEE  
**Planning & Development**  
Wednesday, November 17, 2010 – 6:30 p.m.  
Friend Room – Sawyer Free Public Library, 2 Dale Avenue

- MINUTES -

**Present:** Present: Chair, Councilor Joseph Ciolino; Vice Chair, Councilor Robert Whynott; Councilor Greg Verga

**Absent:** None.

**Also Present:** Councilor Hardy; Councilor McGeary; Mayor Kirk; Attorney Lisa Mead; Mac Bell; Timbah Bell; Attorney Suzanne Egan; Attorney Jonathan Witten; Nino Ciamartaro; Anthony Giacalone; Anthony Bertolino; Jeremy Goldberg; Dave Murray; Mike Murray; Rick Noonan; Joseph Gleason; Sandra Martyn; Richard Griffin; David McCarley

**The meeting was called to order at 6:31 p.m. There was a quorum of the City Council.**

**1. Continued Business:**

- A) COM2010-026: Request from 1907 LLC and Pavilion Mercato LLC re: BirdsEye Mixed Use Overlay District (“BMOD”) Zoning Proposal (Rezoning #2010-003) (Cont’d from 11/03/10)

**Councilor Ciolino** welcomed the Mayor and acknowledged there had been a lot of “behind the scenes action” since the last meeting; and he thanked the Mayor for respecting the integrity of this Committee; that when Mac Bell would consult her, she would send Mr. Bell to him as well.

**Councilor Whynott** clarified when Councilor Ciolino stated behind the scenes action that there were no meetings of this Committee or any other Committee. There was some communication between the applicant and Chairman of the Committee; and that was the sum of it.

**Councilor Ciolino** reviewed that in front of them was the Gloucester Zoning Ordinances (GZO) compendium, P&D’s “bible, and what they all reference to accomplish anything being built in the City. What they have before them was the first proposal, and referring to the index of the GZO, Special Regulations, Sec. 5, noted it stops at 5.24. This proposal by the applicant is to create a new section of the GZO, Sec. 5.25, the BirdsEye Mixed-Use Overlay District. The originally submitted document by the applicant was 14 pages. He recalled at their last meeting held at the Legion; this Committee charged Lisa Mead, the applicant’s attorney, to come back with a simplified version; but it came back with 16 pages, as Proposal #2. It removed the Planned Unit Development (PUD). Since then, the Committee worked on a proposal of its own; theirs coming in at 4 pages; cutting the applicant’s proposal back to make it clearer. “Zoning needs to be simple”. They had four lawyers and a certified City Planner with no agreement among them. They need to understand what they are going to vote for.

**Attorney Lisa Mead**, the applicant’s representative would address the 14 to the 16 page issue. She noted Mac Bell, the main proponent of the project, would go over the big picture of the project to understand why they’re proposing what they’ve proposed and then would explain their changes.

**Councilor Ciolino** announced that the Committee and the Councilors and the lawyers would be “rolling up their sleeves and working on this; and if there was time they would accept questions and comments from the audience. He also noted there would be time also at their next regularly scheduled Committee meeting to further express views.

**Mac Bell**, 33 Commercial Street, 1907 LLC stated they are introducing the final stages of their effort to win support of the City Council’s subcommittee on their zoning proposal. Their hope is if the schedule works, that the City Council will embrace the public hearing on December 7<sup>th</sup>, albeit if it comes out of Committee on December 1<sup>st</sup>. Mr. Bell then made a power point presentation to the Committee (on file). Of note is the significant reduction in the original height request by 40%. This would be now six stories

at a 76 ft. height which he contended was the “absolute minimum” that they believe to have the ability to provide them a resource to put together a viable architectural project. He spoke of the 40 ft. maximum that most projects are held to and pointed to various buildings that are edge-to-edge/block-to-block. They are mindful and sensitive to the aesthetic of the background of the area, and its perspective and consider it important. He expressed that the City embraces realistic height limitations that allow them to construct specific financial scenarios which could create significant investment for downtown Gloucester. One of the major considerations of square footage is the height; with varied, staggered heights allowing them to accomplish the volume. There are multiple uses. He expressed this project was about “jobs and more jobs”. They believe the integration of the project can add vitality to the neighborhood and downtown through industrial commercial and residential, which he further contended that the residential aspects were essential to attract investors, be it a hotel, apartments, live/work space.

**David McCarley**, Cape Ann Business Incubator noted that the BMOD is about jobs. He stated the commercial fishing industry has diminished and that the key to economic renewal was to support the marine industrial sector and to become economically diverse in the City. He believed that the BirdsEye project, being diversified in a mixed use environment, will survive “economic storms”, like the one being experienced. He was in support of the change in zoning to allow for the proposal to move forward.

**Sandra Martyn**, leasing and property management with 1907 LLC and employee of Mr. Bell, made note of the “valuable” input of the citizens of Gloucester. She stated the way for them to pay for this development is through the residential portion of the proposal. The solution, they believe, is to increase population numbers. “People bring business; business brings jobs”. She pointed out that the more people who live near the downtown, the more the downtown will benefit from their proximity.

**Timbah Bell** described the proposed envisioned plans are for the property by the developer and all the businesses that could be housed by the buildings when completed.

**Richard Griffin**, Architect for the applicant spoke of Mr. Bell “doesn’t settle for less than a stellar job” on his projects. They believe this site when developed should garner a handsome tax return to the City, this being a comprehensive mutli-use plan. In addition, they also intend on providing significant improvements to City infrastructure within the boundaries of their property such as utility upgrades including the removal of utility poles on the BirdsEye side of Commercial Street; provision of adequate off-site loading for shipping and receiving; and the development of an on-site parking structure sufficient for all BirdsEye parking; and roadway widening by setting new construction back 12 feet from the street. He pointed out that they are offering extensive public access corridors to the ocean which would remain open to the public permanently to Pavilion Beach. Two major reservations have come up: the residential use component and the complaint that they were asking for excessive height at 125 feet. In the course of eight meetings with the City, they’ve explained why excluding residential use from the scope of the proposal would be “financially infeasible”. If they could find a viable commercial, industrial, or education-based tenant to occupy 2/3 of the facility, they would accommodate them; but there are no interested parties to date. He stated the residential use “is not just a feasible use for this location but it is a very appropriate use for this location.” This property when joined with the 33 Commercial Street building separates the residential use of the Fort from the residential uses of Beach Court. This is a brief area that is MI that is not part of the DPA or with access to the working harbor. They’re asking for a return to its historic state of residential use. Because of the expressed sentiment, they are substantially reducing the height of the project from the originally proposed 125 ft. that covered 15% of the building footprint with the highest extensive height being 108 ft. covering 55 % of the building footprint. After consideration of the square footage implications, they reduced the height request by 49 feet to a top roof height of 76 feet allowing them to build six stories. They are reluctant to offer massing studies at this phase of the process. Once the program needs have thoroughly been developed, Mr. Griffin stated they will then be able to design the project inside and outside; “form follows function”.

**Councilor Ciolino** introduced Rick Noonan, Planning Board chairman. He noted Councilor Mulcahey was ill and not able to attend. Councilor Theken was unable to attend because she was representing the City Council at the Sawyer Medal awards ceremony.

**Attorney Mead** noted they wanted to increase the number of allowed uses in the district which was the “main driving force”; and to better define some of the uses so there wouldn’t be any question about whether or not they fell into some of the vaguer definitions or not definitions in the existing ordinance. Given the history of the planning and zoning attempts in the Fort, and the studies in the area generally and in the area and the uniqueness of the property, with residential on both sides, MI on one side, no deep water access and beachfront, that it is not similar to other properties in the district. They wanted to allow by special permit those diverse uses to allow the City to control for review but to also better allow the applicant to permit those uses in a more comprehensive way; and to allow those uses in a way so as to provide jobs and economic benefit to the City generally. They wanted a single proposal to encompass more than one lot; the area being made up of more than one lot. Instead of having to go to the Planning Board to do an A&R, or come in and propose different projects, they wanted to come up with a proposal to allow a project to come in to plan over lot lines, which was the Planned Unit Development (PUD). It creates a tool that would be a two step process. The City Council would review and permit a Master Plan and then the applicant could take that and get the project financed with the knowledge that in the end because of the City Council review, a special permit for the PUD would be more likely to be approved. They wanted to allow for flexibility in the retenuing of spaces to reduce the amount of the permitting process. They wanted to take care of all of the parking on site to address concerns about traffic and not to overload the City’s parking lots. They would require covenants on the residential uses on site acknowledging the adjacent industrial uses within the district, a tool used in other places in Gloucester. They went to the Planning Board process. At the last meeting of P&D, they had thought they addressed a number of issues of the recommendations of the Planning Board. But the P&D Committee didn’t think so. Between that last meeting [October 14, 2010] and this meeting, she and her client met with the City Solicitor and others to refine and address the issues that were in the P&D memo and clarify those things that were thought vague as well as address the height and use clusters. They reduced the special permit uses in their most recent draft by removing them and replacing them with use clusters more like those for the Gloucester Crossing special permit to allow changes in retenuing as long as it didn’t trigger certain events like reduction of open space; the removal of exterior walls, etc. They reduced the height and set limits on square footage so that the ordinance was clear on what the maximum square footage would be per floor and what the maximum height would be. They clearly defined, using the standards that existed in the zoning ordinance what the density would be. It would allow “X” number of units of residential housing per number of square feet of the lot itself. They removed the uses such as adult day care and assisted living facilities. They made the inclusionary housing requirements applicable to this site as they exist in the underlying zoning. They clarified what the live/work space requirements and design requirements would be. They removed the apparent, “but not intentional”, ambiguity in the review criteria such as defining view corridors; pedestrian access, setting standards for those. That’s the draft the Committee got back which they thought was clearer and more specific, again noting it was longer than that of the first draft based on the feedback from the Council. She spoke of the new draft that the Committee now had, a clear message to the applicant exactly what it is that this Committee wants to pass on to the City Council. She appreciated the clarity of the direction the Committee is providing to them. She expressed she had received a copy today. She had an extensive conversation with Suzanne Egan, City Solicitor regarding the draft; and appreciated a number of items they would like to look at and review the impact and that there might be clarifications that still need to occur.

**Councilor Ciolino** noted “there was a big pink elephant in the room”, the question of spot zoning. The City Solicitor, at the request of Council President Jacqueline Hardy, wrote an opinion on the matter with regard to this property.

**Attorney Suzanne Egan**, City Solicitor noted Councilor Hardy asked her to write this opinion regarding the spot zoning issue. She expressed there are two issues with regard to spot zoning on this project. One of the Council’s concerns has been, is changing the zoning in this particular parcel considered spot zoning. The City and this Council has experienced a lot of history looking at particular parcels of land in determining whether zoning should be changed on that parcel to a different district within the City; an existing zoning district to allow uses that are appropriate because of either the changing of the land use

trends in the area or for economic development for other purposes under the zoning act. In terms of the first threshold issue, can they do it; is it appropriate for a City Council to change the zoning of one particular parcel. Provided there are sound reasons under the zoning act that is an appropriate activity or action of the Council, that does not constitute spot zoning. The second question would be, does this particular zoning proposal constitute spot zoning; by looking at whether or not a small area or a lot is singled out and treated differently than any other parcel. This PUD as proposed is completely new zoning for the City. There is no other parcel in the City that has these zoning requirements. Because of that, she would say that the City Council has to have a very sound reason to enact, to single out one particular parcel of land that is a combination of a few lots owned by one property owner. There would have to be a sound basis under the zoning act to do that. One of the issues is what would be that sound basis. She believed the City Council was much better served by looking at the existing zoning that the City has, and their zoning scheme and the regulations in place and using those to address any issues regarding the change of use for this property because she thought they do run in to some issues with spot zoning in terms of creating a brand new zoning district for one parcel, in particular because it allows different dimensional; the height exceeds any other in the City; and it allow for changes of uses without any review from a permitting authority. She thought they would be better served to look at it differently to change the zoning in this area.

**Councilor Ciolino** stated this Committee is recommending the overlay to keep the property MI and expand some of the allowable uses. He asked Ms. Egan's opinion on that as opposed to spot zoning because it is not as much a drastic change.

**Attorney Egan** noted that the draft they are considering uses the CB district dimensional requirements in place that other parcels of land are subject to in the City. It is an overlay district that says that you can use those to do a mixed use. This is taking the regulatory scheme, the City's zoning ordinance, and saying it can be used for this particular parcel. It doesn't allow for completely different permitting and use and dimensional requirements of just one parcel in the City. In the zoning ordinances a legitimate reason can be found; that this parcel is similar to a CB district a block over. It relates to surrounding uses; that there is mixed use in the area and also residential use in the area. She did not see an issue with spot zoning using the newly drafted overlay.

**Councilor McGeary** asked if someone were to bring a charge of spot zoning would it be for the developers to defend.

**Attorney Egan** stated it would be the City's to defend; it would be the City Council enacting the zoning ordinance. They would be defending their ordinance and actions by acting within their authority and to assert that and be sure that it is upheld by the courts.

**Councilor McGeary** expressed by Ms. Egan's logic that by extending current zoning regulations and putting an overlay over the MI zone, it is different enough to deflect the spot zoning.

**Attorney Egan** stated "yes".

**Councilor Whynott** stated the latest document he had emailed to him from Ms. Egan [the new four-page draft proposal] was defensible against [spot zoning].

**Attorney Egan** again stated "yes".

**Councilor Ciolino**, noting Attorney Jonathan Witten, the City's consultant on the BMOD, asked him to speak about Planned Unit Development (PUD). They have determined the GZO does not recognize PUD's; there is no framework for a PUD; and there is no approval process in the GZO for PUD's. He asked Attorney Witten's opinion "to put the PUD to rest"; how this issue would proceed.

**Attorney Witten** suggested following the City Solicitors advice first in terms of whether you can place the PUD on this parcel. Attorney Egan doesn't preclude the City from the adoption of a PUD; but what Attorney Egan is saying is that if you were to adopt a PUD on this particular parcel, and only on this parcel that raises the specter of the spot zoning which he noted was consistent with past conversations on the matter. The PUD concept could fit the City through the Planning Director's and City Solicitor's recommendation; you could move forward with the PUD. The issue before them is whether that can adopt a PUD solely for this parcel, this project and only for this parcel and this project. He believed that question had already been answered. Whether they want to develop the PUD concept elsewhere in the

City on multiple parcels and develop it in a more comprehensive fashion he believed to be a different question. That is not what the petitioner has proposed. But it is a possibility for the Committee and the Council to consider in the future. There was nothing “inherently illegal or inappropriate with PUD’s”. He felt as Attorney Egan stated and her memo made clear, the issue is raised when narrowing that technique to one particular parcel. The issue isn’t the City Council determining spot zoning. The concept of spot zoning is an accusation used to invalidate an ordinance in court. He believed the Committee was appropriately bound by advice of their Counsel. If moving forward the PUD concept is something the City wants consider in a non-spot zoning fashion; multiple sites, multiple parcels, an extension of existing zoning; that is different but is not before them.

**Councilor Ciolino** noted another question that has come up, in Attorney Witten’s experience, what generally constitutes the acreage of PUD’s.

**Attorney Witten** stated “you know it when you see it; it’s not the size of the spot.” It is the singling out for disparate treatment. He noted it could be a small parcel or parcels that can work very well with PUD’s. Historically it is larger tracts of land to integrate mixed uses, and as a result typically more acreage is needed not less. There is no statutory probation, other than the minimum of 50,000 square feet, on the size found in MGL, Chapter 40A, Section 9. It could be multiple small parcels; a two acre parcel; a 10 acre parcel. “That in and of itself does not make a PUD work.”

**Councilor Ciolino** stated if they go with a PUD first, they should enact one and put what the approval process is and what the framework is, clarifying that it was not for this particular project but “down the road”.

**Attorney Witten** responded “absolutely”. The purpose of a rezoning is not to necessarily benefit a particular project but to be compliant with the City’s comprehensive plan and to fulfill the plan’s objectives. Then if there are “takers” who speak for that rezoning, that’s the appropriate method for rezoning “as opposed to the tail wagging the dog”. There is nothing wrong with a petitioner making an application for a rezoning in the municipality; it happens all the time. But if there is to be a PUD concept scattered throughout the City, they would adopt that through the ordinance and then there are petitioners who fulfill the obligations and requirements of that ordinance.

**Councilor Ciolino** reiterated the two problems: 1) there is no framework for a PUD; and 2) in this situation there is the possibility of spot zoning.

**Attorney Witten** replied, “Correct”. Spot zoning is a determination by the court; with the advice of Attorney Egan, it is a determination that can only be made on a case-by-case basis. “It is very hard to generalize and say that would be spot zoning. You know it when you see it.” In response to the inquiry if he had seen Ms. Egan’s draft proposal, Mr. Witten stated he had seen Attorney Mead’s revision and Attorney Egan’s revision. He noted they are two very different approaches. To accomplish what the petitioner seeks, they need the kind of flexibility built into Ms. Mead’s proposal. To fulfill what Attorney Egan is suggesting to the Council in terms of protecting them and the “vitality of the ordinance”, he thought it was an extension of the MI/CB district and thought that was what they needed to do.

**Councilor Ciolino** asked Mr. Witten in his opinion if they extended the MI, would that give them all the benefits of the MI plus all the benefits of an expanded use.

**Attorney Witten** responded they could because they are extending the district which is already codified in the ordinance. You could provide additional uses by right and by special permitting by district. He felt they may be able to satisfy some of the objectives of the applicant; it was entirely possible.

**Gregg Cademartori**, Planning Director in response to the query to talk to the question of ‘overlays’, he spoke of his previous presentation of experience in the City to overlay districts with a previous rezoning proposal of this area. Overlays can be more restrictive or more permissive. There are three “on the books”. There is a Personal Wireless Service Facilities (PWSF) overlay district where there are certain accepted types of applications; there is a watershed protection overlay district, not based on any zoning district but encompasses an area surrounding all the surface water supplies in the City which is a more restrictive approach that eliminates certain uses that could otherwise be allowed in the underlying zoning by special permit or by right uses; an incentive zoning district in an overlay form was adopted in 2002 in the form of a Village Development Overlay District which runs on the Essex Avenue corridor

complimentary to the sewerage of West Gloucester and into Essex. With the underlying zoning there was a potential for a density bonus in the residential form only which is different than the underlying zoning. They do have experience with overlays; which was suggested for this area. He noted he had received Attorney Egan's draft proposal late that day. He stated if this was the direction the Committee wanted to go in, there are certain things they may wish to look to in the ordinance that was presented prior by the applicant in terms of some of the community benefits that were suggested that are "potentially absent" from this particular ordinance, unless it was the result of a special permitting process. He thought it was something that could be accomplished through an overlay. "Use is central to the discussion", which was discussed at the October 14<sup>th</sup> P&D meeting. There were 15 or so uses proposed in the first PUD concept proposed. He reiterated when they get to the three residential components that were identified, he believed that was where the discussion lies. They could figure out a process to permit that density, which was absent or at least defined in the PUD ordinance that was first submitted. The approach on the table now is grounded in standards already in the community.

**Councilor Ciolino** recapped that Mr. Cademartori was saying that the overlay is nothing new to the City. The definitions are there in the GZO unlike the PUD which is not. He felt combining the MI could be a workable solution.

**Mr. Cademartori** stated it was a more familiar process the community had used before for permitting additional uses and for restricting uses in areas.

**Attorney Mead** stated they wish to put several things on the record with the goal of moving forward. They disagree; that they do not believe what they proposed was spot zoning. The document proposed does have a mechanism to implement a PUD; which is very clearly laid out. It creates a Planned Unit Development process within the zoning itself. These are issues that are not up for debate which "was fine with them". She accepted the other professional's opinions and would move forward. They'd like to talk about how to work with what the Chair and the Committee and the City Solicitor have put forward "in order to try to accomplish something beneficial to the City". They hear them "loud and clear"; and the position of the City "loud and clear". They want to know how they can move forward to review the document put out that morning having not had a chance to fully examine it and welcome that opportunity.

**Councilor Ciolino** stated the Committee will charged Attorney Mead once again to have a meeting with the City Solicitor and the Planning Director and go through the framework presented to her; fine line it and present to the Committee for their December 1<sup>st</sup> meeting. They would like to have it prior to the next meeting so they can study it to put something on the table that if it goes through everyone could be comfortable with it. He had discussed with many people that have come to him to discuss the matter that they need to have something they can defend. When they recommend to the Council, this group is going to have to defend it to the Council and wants to have faith in that recommendation. He asked that Attorney Witten be kept in the loop.

**Councilor Whynott** expressed concern with the word "flexibility"; with that comes "uncertainty" and believed the people in that neighborhood are afraid of. The first designation was the 125 ft. height which he felt was completely out of character with the area; and saw the next one which to him appeared better [referring to the 76 ft. height]. He believed it appeared not to overshadow everything in the area. The third one talked about form and purpose driving the design. He wondered was the second one what they will have in the plan or will they be looking for flexibility to go back to the 125 ft. or bigger area.

**Attorney Mead** stated they were "nervous" to show a plan when they don't really have when it is for an example's sake. They presented examples, this evening, of a massing study under what the height and square footage restrictions were. With the new restrictions proposed, and expressing that they had not had the opportunity to review them carefully, they'll likely find something much more consistent with the second one. She contended like any proposal that comes before them, someone has to develop it and meet the dimensional requirements they have and then if it is a special permit, the City Council will review it. With the changes proposed there are a lot more controls and a lot less flexibility.

**Councilor Ciolino** stated right now they are dealing with zoning issues; the only thing in front of them is the existing building which has a tower that is up to 76 feet which is to be taken into consideration; and how do they deal with that 76 ft. If they go with MI, the maximum height is 40 ft. This is addressed in

the plan. They're only dealing with the zoning. He reiterated there is no plan in front of the Committee. The applicant would have to come back to City Council for a special permit under the overlay district.

**Councilor Whynott** wanted to be sure it is not a blank check for development.

**Attorney Mead** stated this is a special permit process through the City Council which she believed applied the Major Project review standards and the site plan review standards that exist in the current zoning.

**Councilor Ciolino** added they're not creating anything new (referring to the Egan draft). It was all contained in the zoning ordinances already, "which is the beauty of it". He reiterated they do have to consider that the building on the site is already 76 ft. tall and will have to be dealt with at some point.

**Councilor Whynott** stated it was a tower that reached the 76 ft. height.

**Attorney Mead** added the 75 foot mark is 25% of the building area or lot area by right.

**Councilor Ciolino** stated everything else has to be by special permit and noted it was a work in progress.

**Attorney Mead** stated it has to come to the City Council and the Planning Board.

**Attorney Egan** stated there is not a provision in the GZO where they would be creating a new building 76 ft. high by right through building permits.

**Councilor Whynott** felt that addressed his concern.

**Councilor McGeary** stated it seemed that Ms. Egan's language provides in "broad strokes" what the applicant was looking for. He inferred from the presentation it would make it easier to have a PUD process and a Master Plan approval to raise money for the project.

**Attorney Mead** stated that if you go to a financier with a Master Plan that is approved it will be easier to finance knowing there are a set of uses and dimensions that are already approved for the final approval. That is why they proposed it; and proposed it knowing that given the uniqueness of this area; they wanted to be sure they had several 'iterations' for reviewing it.

**Councilor McGeary** asked if Attorney Mead would agree that the substantial uses that they wanted to include in the PUD are in the [City] Solicitor's draft.

**Attorney Mead** responded she had "literally" not been able to read it; she had spoken to Attorney Egan about it; had spoken to her associate about it; but believed "yes"; that most of them are there.

**Councilor Ciolino** thought they would "get the best of both worlds"; they'll have the MI and the CB with this proposal.

**Ann Molloy**, Neptune's Harvest, Commercial Street asked about the National Amusements vs. The City of Boston case which was about spot zoning.

**Attorney Witten** thought it was addressed in Ms. Egan's memo of today and at the previous P&D meeting on the matter of the BMOD. He briefly summarized the facts again where the appellate court addressed the definition of spot zoning; and stated that was not relevant to the issue here. He termed it "a good spot zoning case" because it held the City of Boston accountable for rezoning without a plan or a study. It speaks to why cities and towns need to defend rezoning and can't be a "fig leaf for rationalization. You can't come up with the reason for rezoning after the fact." It was a small parcel that was singled out for disparate treatment. He agreed with Attorney Egan's memo which included an analysis of it; and agreed with her that the Council has to think about this.

**Ms. Molloy** thought that this was spot zoning that this parcel was being singled out. It was a brand new zone for one parcel and was a drastic change. She also thought if they change it to CB; that too, would be inappropriate. She contended the parcel could be sold to Marriott Corporation (an hotelier); and they can do what they want with it; most of the people who live in the Fort don't want this and 76 feet is too much in height and asked for impact studies before a vote by the Council.

**Councilor Ciolino** stated this is a zoning matter. He reiterated that the zoning protection is in the book.

**David Anderson**, 16 Middle Street noted the many vacancies for commercial and retail space in the City with zero growth in the last two years. Hardly any surrounding communities have had zero growth. The City has identified \$400 million of necessities to be taken care of which he enumerated. He noted the difficulties to encourage businesses to come to the City as it is out of the way. They can't continue with zero growth and continue to pay the bills for the City.

**Sunny Robinson**, 20 Harvard Street raised a question that the only thing is possible for financing is residential. She contended they have never seen the marketing plan that was tried and proposed. She suggested that the Committee, before their next meeting, get a detailed overview of what marketing was done and failed to keep this zoned MI. She noted seeing the four page proposal released that day and asked where it came from.

**Councilor Ciolino** stated it was a group effort from this Committee and Attorney Egan.

Ms. Robinson wondered if this took place in meetings of the P&D Committee for which there was not public notice.

**Councilor Ciolino** stated “no”; that what they had been trying to do was that the track between the PUD and the use clusters “weren’t legal and weren’t going to work.” So they did some research to find out about the overlay if it could be something that could work.

**Ms. Robinson** expressed her difficulty in understanding why an elected group officials charged with representing the “entire City” would redraft a zoning proposal that affects one person’s property; and before hearing the first issue, take a position that favors rezoning this proposal knowing there is opposition and believed this is what they have done. “This proposal puts the Committee on record before the hearing process...to take a position favoring zoning change.”

**Councilor Ciolino** noted Section 1.11.5 Vote of the City Council, on amendments to zoning ordinances, “that the City Council may adopt, reject or amend a proposal amendment to the ordinance.” He contended they were within their ‘power’ on anything that comes forward to them. The Planning Board doesn’t have this authority; the Planning Board had to assess the version that came to them only. When it comes to the approval process, P&D/Council has the charge that they can approve, adopt or amend. He stated flatly there was nothing done “behind closed doors; it was all open.” Nobody had made up their mind; and they’re still getting information.

**Ms. Robinson** stated while appreciating the complexity of this process, she felt it puts them on the record as appearing in trying to facilitate, not what is best for the City, but to facilitate the best way to provide a particular developer on one site with what that developer wants.

**Councilor Ciolino** responded that this Committee goes through this process “all the time”; and he believed, and thought his fellow Councilors also believed, that they’re public servants there to help the public whether one person with one property or another with a lot of property; they guide people through the process. He hoped if he came to the Committee and appeared to be on the wrong track, he would hope the Committee/Council would put them on the right track to navigate the process. He thought it was good government and is being a responsible public servant; as well as having the authority to do it.

**Councilor Verga** clarified that Ms. Robinson had a valid concern from her perception. The BirdsEye team’s draft was received by the Councilors via email the previous day and Ms. Egan’s proposal was emailed to them today and he expressed he had “nothing to do with what went on between any of them which was the first time he had seen it. If she perceived an Open Meeting Law violation, he urged her to look at his email as that is how he got it.

**Councilor Whynott** explained that he got the document that said BirdsEye Mixed Use Overlay District and that he went to Attorney Egan telling her he couldn’t defend anything that said BirdsEye Mixed Use Overlay District going into their zoning ordinances. He felt if they do put it in the GZO, it should be generic in scope and that was when Ms. Egan sent this back.

**Ms. Robinson** reiterated with due respect that because this Committee, by her understanding, be looking “at the breadth of concern across the entire community”, takes a position in favor of changing MI zoning to allow residential, thought they were taking a position of taking MI to allow residential believing it gave has a “very strong” appearance of their already having taken a position in favor of the applicant.

**Councilor Verga** stated his opinion was it came to this Committee from Attorney Egan’s office and that no one had taken a position on anything. He declared for the record he had not taken a position on anything.

**Councilor Ciolino** interjected this [document] came out of Councilor Whynott’s concerns.



**Councilor Whynott** also reiterated he had gone to the City Solicitor expressing his concerns telling her he had gotten the BirdEye team's second draft and didn't like having "the name of BirdsEye all over a document that may become a part of zoning ordinances."

**Ms. Robinson** then asked if the City's position is in favor of changing MI so it can be residential. She felt that is what [Ms. Egan's] document seemed to say

**Ms. Egan** noted the process through a zoning amendment provides for two public hearings that a proposed zoning amendment goes through. The Planning Board reviews it, which they have done and have put forward their recommendations regarding that zoning proposal. When it comes back to P&D they take the Planning Board's recommendations and try to mesh the two together to put it into a document, a zoning proposal to put before the City Council for them to deliberate on and to vote yes or no. Typically it comes to the Legal Department to look at the recommendations, the proposal; work it out to come up with some document at that the City Council can review. It doesn't mean anybody is taking a position one way or another. It is a response to the process, and is how the process works. It gives the opportunity for that document to go to the P&D Committee to have a public meeting on it; obtain input on it; and then go to City Council and have a public hearing on that document which incorporates the Planning Board's recommendations.

**Ms. Robinson** reiterated "that this document creates a strong appearance of both P&D and City resources supporting an individual developer's desire for zoning change in the face of widespread opposition" and felt it was very disappointing.

**Bill Johnson** 26R Fort Square expressed he didn't support residential uses on this lot and never has. He couldn't comment because he didn't see the new proposal yet. He stated these two of the City's liberal zones in terms of uses dimension, CB and MI being put together and was concerned. He also felt it was favoring the giving the potential of a lot of uses to one particular area.

**Mr. Cademartori** didn't think that was what had been suggested; the uses would follow the dimensional requirements of another district. It wasn't a broad increase in the number of uses. He felt it was very apparent of what is being suggested to be allowed. It is giving dimensions and requirements to those proposed uses in this area.

**Irene Fronterio** 28 Fort Square had major concern with regards to traffic already coming in and out of the immediate area. The bottleneck is already at 33 Commercial Street. She wondered if Mr. Bell was willing to give concessions to allow for the widening of the street at all for the added burden of the traffic that would be created by his proposed development. She asked it be taken into consideration while they are in the process of the rezoning.

**Councilor Ciolino** noted that matter would come up when it came up for a Special Council Permit which is a part of that process. Now is just zoning as to the possibility of what might be built there.

**Mr. Bell** responded that he appreciated the suggestion and offered that they are always willing to hear the concerns from any citizens to have a dialog. Their hope is to be able to accomplish the rezoning in this calendar year and a better part of another year to bring together the studies and architectural plans forward. They hope also to go through the Special Council Permit process in 2011. If they are successful, there will be the demolition of the building looking to 2012 for the beginning of this project. If all proceeds as hoped, their project would be realized in 2013.

**Damon Cummings**, 1063 Washington Street stated he had seen the new memos and that there are four residential uses proposed to be allowed on this property. Noting this is on one property in the middle of the MI zone, if it's coming from moving the Downtown business district onto this property, he contended it was a radical change of what is allowed in this zone and is for one property. He also expressed his continuing concern for Pavilion beach. He urged the City take every effort, and noted Attorney Egan's memo, that the City make every effort to get City control of the beach.

**Patti Page**, 3 Tidal Cove Way asked is it true that in a request in change for zoning that there is no right for appeal.

**Attorney Witten** responded there is no judicial right of appeal; there is internal right of appeal. That is correct.

**Ms. Page** asked if an overlay district is approved, there will be two levels of review; one at the Master Plan level and one at the Special Permit level.

**Ms. Egan** stated that is the proposal, the planned unit development that was originally put forward but not what has been put forward now, not the draft proposed for mixed use. That has no Master Plan. It would be a site plan review and a special permit review.

**Ms. Page** asked if a special permit review is denied is there a right of appeal.

**Ms. Egan, Mr. Witten and Mr. Cademartori** all responded “yes”.

**Ms. Page** continued, “They” could appeal and win that special permit.

**Attorney Witten** stated an applicant who is denied a special permit or approved with conditions that aren't favorable; they can always appeal to the superior court as can an abutter or a party of interest. There is always judicial review for an approval or denial of a special permit.

**Ms. Page** commented on traffic. Commercial Street for its entire length is within the DPA. It is that way “to provide access road for designated commercial vehicles to service industrial business to assure the transportation of commerce.” She felt a traffic impact [study] may need to be looked at (written statement from Ms. Page offered at meeting and on file).

**Marcia Hart**, 2 Freemont Street felt that this has taken to get to the PUD's and isn't confident of the City's knowledge of these issues. She noted the differences between communities have them. She enumerated some of the requirements of other communities. She thought this was the type of information that would prevent the accusation of being obstructionist. She noted people in the community feel strongly that the character of the neighborhoods be maintained and that the City should be proactive so that people will have a sense of security. She also felt the City should be developed with appropriate scale and design to protect the character of the City. She offered research she had conducted herself to the Committee (documentation received at meeting and on file).

**Vincent Montillaro**, 3 Tidal Cove Way expressed his concern for the Committee's ability to deliberate on this matter pointing out some of the previous matters taken up by the Committee that evening.

**Jim Tarantino** 26 Fort Square referring to a statement by Councilor Whynott that he didn't want to have the Fort receive a surprise, stated the surprise would be that the view of the harbor will be obstructed by this project affecting everybody in the City, not just the Fort area. He asked that the Committee keep that in mind as they deliberate. Further, he asked will they set a precedent if they rezone there without a specific plan. What happens when the Cape Pond Ice Company sells and they want to make condos there; once one is allowed will they be able to put residential all around the area if zoning changes are made. He asked Mr. Witten how often in his experience zoning changes are made without any specifics to the plans.

**Councilor Ciolino**, for Mr. Witten's benefit, noted that Cape Pond Ice is in the DPA and that the Parisi Building is in the MI. Cape Pond Ice could never have condos or anything of that nature.

**Attorney Witten** summed up does zoning have to be related to a plan; and can zoning be adopted and/or changed without a relationship to a plan. As to the first question, he stated “no”. He explained zoning changes are to protect health, safety and welfare linked to a public purpose on an actual basis. As planners, they tell their clients that they have to link rezoning to a plan or study or some other analytical report. Economic development can be one; affordable housing can be another; transportation movement(s) can be another. Zoning changes must be supported by some “rational reason otherwise it's arbitrary”. Massachusetts is one of the few states that do not require the preparation of a plan as a prerequisite to zoning. “In Massachusetts it is possible to rezone without adherence to a plan” and referred back to Attorney Egan's memo because the courts give great deference to the legislative body, the City Council in this case. He posed the question, was it good practice, “no”. He believed it would get overturned one day. Massachusetts still allows cities and towns to rezone without pointing to a particular plan. He further stated, “with absolute certainty, again it is up to the City Council and for their attorneys, there is not precedential value in zoning.” When the City Council zones something rightly or wrongly, it can't be used against them legally to get further rezoning.

**Jean Gallo**, 20 Harvard Street referred to the Marriott Hotel process a year previously in the Fort area and it was made clear that the people who lived in that area did not want the hotel and how they had stopped it from going through.

**Councilor Ciolino** stated it never went through the process because it was “so convoluted” it got to the point they where didn’t know what they were voting on; and ultimately it was not voted on at Council.

**Ms. Gallo** pointed out the neighborhood made clear they didn’t want that. When the applicant now, presenting that particular piece, why they would put a hotel back into that system. It is the same thing on the Special Permit; why would you keep a hotel/motel there when Mr. Bell says the only way he can develop that property is if they residential. The hotel question, she noted, was coming up on Essex Avenue and one into the Downtown and one in Gloucester Crossing, of which that one is permitted; and now another one. Her request is that the hotel be pulled from the list especially since the community didn’t want it and noted the residential piece is still a big question. In response to the contention of lack of economic growth in the City she pointed out that Neptune’s Harvest didn’t exist 10 years ago; Montillaro Lobster Company also exists now. She urged that they look at what they give away. She preferred the City protected them by keeping it MI and that the people who live there should be listened to as well as what citizens are saying to them for two years on the subject.

**Councilor Ciolino** stated there are other parts of the City that have been listened to as well. They have to listen to other parts of the City.

**Ms. Gallo** contended that at the listening posts there was not a preponderance of people saying they wanted hotels and residential especially in the harbor areas; that this was about people at a grassroots oriented level of consideration.

**Councilor Whynott** stated the whole process of the public hearings and Special Council Permits, a person can come and propose something but doesn’t have an absolute right to get it. But neither does the neighborhood have the right to veto it. The Council has to weigh all the factors and make a decision based on what is good for everyone cautioning it may not be 100% good for everybody. They try to do the best they can with what they have been given to work with. “The answer is not always yes.” There are rights on both sides, he contended.

**Ms. Gallo** added she agreed with the Councilor and that there are different ways of making a decision. She felt if they have an ethic of looking at the “greatest good and the greatest number” and make a decision a certain way; but it was not her view.

**Gregory Doe**, 7 White Mountain Road posed the following questions: Is this about fish? Is it about gentrification? Is it about aesthetics? Is it about the beach? What does the City, the neighborhood and Mr. Bell have to gain from a project there? What do they have to gain from a vacant lot? Did they want another I4-C2? He pointed out it is about jobs, taxes, neighborhoods; it is about improvement. He asked if they wanted a “stagnant Gloucester.” He felt Mr. Bell’s group has a good track record in property development and that the Fort and Beach Court could be brought back together through this rezoning process is correctly brought forward. He noted that everyone in Gloucester wanted the zoning change to allow for the Marketbasket Supermarket in his neighborhood, but they didn’t want it in their neighborhood.

**This matter is continued to the December 1, 2010 meeting.**

- B) Modification to Special Council Permit granted to Nino Ciaramitaro on December 14, 2004  
Re: 85-89 Bass Avenue (Cont’d from 11/03/10)

**Anthony Giacalone**, son-in-law of Nino Ciaramitaro spoke for Star of the Sea Corporation to the Committee regarding the proposal to amend the Special Council permit as relates to the landscaping plan for the property at 85-89 Bass Avenue. They are now proposing to put in 8 trees on the Bass Avenue line, the easterly side of the property in lieu of the original landscaping plan on the original permit for the wall. The trees are purchased which are arborvitaes to be planted six to seven feet on center and will be 25-26 ft. in height upon maturity, and approximately 6 ft. in width. They are ready upon approval of the

amended permit to raise the Cape Cod berm and install the trees. They agreed that they will pay for the advertisements for the public hearing. He expressed they were ready to move forward

**Anthony Bertolino**, 132 Bass Avenue, representing himself and neighbors in the area of 85-89 Bass Avenue noted a letter from him dated October 21, 2010 regarding the matter (on file) and also the letter from Anthony Giacalone requesting the modification of the Special Council Permit. He requested the letters, his and Mr. Giacalone's, as well as the plan presented by Mr. Giacalone be used together as to define the work to be done at the site. He believed according to his calculations there would be 16 arborvitae trees in order to screen the area in question. He was aware that the proposed plan called for 8 trees. He contended the distance is approximately 100 feet and divided by 6 to 7 feet brings the number of trees to sixteen not eight trees.

**Councilor Ciolino** noted that the plan was done by a landscape architect, Doug Cook.

**Councilor Verga** asked if the plan was to scale; and that Mr. Giacalone and Mr. Bertolino are in agreement that the area in question is 100 ft.; which they indicated they did. The Councilor felt someone's math was incorrect.

**Councilor Ciolino** stated [with 16 trees] each parking space would have a tree. He expressed his familiarity with these types of trees which get quite big and felt even eight was a lot. Sixteen trees, unless they're tiny, will be choked at the formula between the trees proposed.

**Mr. Bertolino** respectfully offered that in order to do what they can to obliterate the "unsightly wall" it would take 16 trees. He was told that the trees would be 10 ft. high going in and 20 ft. at maturity. He observed several groups of trees in the area of 85-89 Bass Avenue, those of near abutters; and it was a "lot of years" before they will get to 20 ft. and contented 16 trees were not untoward.

**Councilor Ciolino** expressed disagreement with Mr. Bertolino, commenting the trees won't grow if they are crowded as they need room to grow; too many trees trunk-to-trunk will not grow.

**Mr. Bertolino** stated that he and Mr. Giacalone spoke and that he expressed that they would do their best to fill in the space. But that they had agreed on a different species of tree. Mr. Giacalone came to him and asked that they amend that to arborvitae. He contended that planting them 12 feet apart would leave a "tremendous" space between the trees. The issue was to do their best to fill in that space. He felt his letter defined Mr. Giacalone's letter. Mr. Giacalone's letter, he contended, amends the landscaping plan now presented.

**Mr. Giacalone** stated his plan came before the letter. He showed the plan to Mr. Bertolino; they discussed it. Mr. Bertolino is representing the neighborhood; that they were both in agreement before this meeting and was concerned that now he is presenting another view; that they should be moving forward on this matter now. The plan was done by a professional landscape architect. He stated arborvitae, as planted on the perimeter of his personal property at 8 Edgewood Road; do grow rather quickly which he knew from experience. They were planted 6 to 7 feet on center apart and are now 23 ft. in height. He believed it took 11 or 12 years for the trees to reach that height. As to the Bass Avenue property, he noted the electrical wires overhead. If they did anything other than they were proposing, they would have problems with clearing wires and chopping trees down for the clear easement of their electrical service to the property. He reiterated professionals have looked at the situation; and they have purchased the trees. He contended he was hearing things not heard before going from 8 to 16 trees. He asked that the Committee to assist them in going forward [with their proposal].

**Mr. Bertolino** called the Committee's attention to the 'bottom paragraph' of Mr. Giacalone's letter that "The modification requested includes the emplacement of sufficient arborvitae trees, six (6) to seven (7) feet on center..." What they agreed to was 6 to 7 feet on center and that if you take 100 feet and divide it by six to seven feet on center; it comes to about 16 trees. He contended they had spoken of this in his office together.

**Mr. Giacalone** disagreed with Mr. Bertolino's statement.

**Councilor Hardy** hoped they worked something out. She recalled they shook hands months ago on 9 trees, scotch pines.

**Mr. Giacalone** agreed with Councilor Hardy. The existing sign is approximately 30 feet beyond the entrance. They couldn't put arborvitae and block the sign as this is a commercial property. He

contended that if he was asked to cover his entire frontage to Bass Avenue, business signage would be covered.

**Mr. Bertolino** reviewed the history of the failed plantings according to previous plans as well as the agreement to the 9 scotch pines. He claimed Mr. Giacalone knew that the plan shown now as having an inadequate number of trees and that they had discussed it; it was not something new; not heard before.

**Councilor Verga** expressed he was still confused regarding the math; that if they both agree that there is approximately 100 feet to cover, and there are 8 trees 6 feet on center, he believed it came to 48 feet.

**Mr. Giacalone** noted there is an existing sign that they're moving. The scale drawing shows the trees at maturity appropriately. These trees are made for screening. They'll be six feet in diameter upon maturity, sometimes seven ft. Planted too close, the trees grow thinner and taller, thereby not filling in the space as intended. He offered that if it ended up nine trees, six or seven feet on center, he wanted to be sure it stayed away from business signage on the property he would be "OK" [with it].

**Councilor Ciolino** stated "they've been going around on this for years and years"; they finally have a professional landscape plan, a professional's recommendation. He reiterated the trees need room to grow to get them sited; and that he believed the eight trees solve the problem; that they have to move forward on the matter.

**Councilor Whynott** stated he heard "all kinds of numbers" and none seemed right to him. A tree that grows 6 feet in diameter, if it's 6 feet on center there's almost no space between each tree.

Councilor Verga went back to what Mr. Giacalone had said that after they get the 8 [trees] in, maybe a 9<sup>th</sup> tree.

**Mr. Giacalone** stated if they stay with 6 feet on center once they relocate the sign, that's where they came up with the on center [figure]. The trees, when they grow to full maturity, they will be touching at 6 ft. in diameter. Arborvitae are made for screening, for vertical growth. He pointed out also that another important feature is these types of trees stay green all year long and do not shed leaves seasonally.

**Mr. Bertolino** offered that the abutters are not the "bad guys". They have gone from one amendment [to the Special Council Permit] to a third or maybe a fourth amendment. If you take the distance and divide it you're confronted with the trees growing together. The view of the wall is to be blocked off. They started with Boston ivy and now it is Arborvitae. It is seven or 8 – 11 feet apart from one another. That leaves a lot of space.

**Councilor Ciolino** again reiterated the trees have to have space to grow. They can't be planted close together. They have to make a decision and need to move on.

**Mr. Bertolino** asked they make some reasonable estimation between one tree and another so that they don't find one tree at a different distance.

**Councilor Ciolino** stated the landscaping plan will be signed and is to scale, which they will go by.

**Mr. Bertolino** contended that the plan to be amended. He believed the letter was separated from the plan and describes a different scheme than the plan offers.

**Councilor Verga** confirmed it is 6 to 7 feet on center which he asked to be a part of the motion.

**Mr. Bertolino** asked that the Committee have the petitioners be responsible for the maintenance of the trees and that they can return in the case of any violations.

**MOTION: On motion by Councilor Whynott, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the approval of the modification of the Special Council Permit issued to Nino Ciaramitaro for 85-89 Bass Avenue, Gloucester, MA on December 14, 2004 to permit the application to implement the landscaping plan dated September 21, 2010 and submitted with the application and that the trees depicted on said plan shall be 6 to 7 feet on center; upon notification by the neighborhood that maintenance is not being properly performed that the Building Inspector shall investigate the matter and make a determination.**

**MOTION: On motion by Councilor Ciolino, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to ADVERTISE FOR PUBLIC HEARING the**

**modification to the Special Council Permit for 85-89 Bass Avenue; applicant has agreed to pay for the publishing of the two advertisements for public hearing.**

- C) Modification to Special Council Permit granted to Cape Ann Brewing Company on July 20, 2010  
Re: 9-11 Rogers Street (Cont'd from 11/03/2010)

**Jeremy Goldberg**, owner of the Cape Ann Brewery discussed with the Committee his proposal to modify the recently granted Special Council permit to add an installation of a stainless steel grain silo, 23 ft. high, with a 9 foot circumference along the Rogers Street side of the building to house their grain at 9-11 Rogers Street. He noted this was originally planned as a future addition; but that an opportunity to purchase a silo came sooner than expected. He believed it would be aesthetically pleasing addition to the site as well as provide them with a great deal of financial relief to their brewing operations as it would decrease the number of grain deliveries required by the brewery. He offered that the silo would be well maintained and that an artist's rendering of the Cape Ann Brewery logo would be the only signage on the silo itself which features the Man at the Wheel landmark. Therefore, he asked that the Committee approve the silo as an appropriate modification to the Special Council permit issued to his company in July of 2010.

**Councilor Ciolino** was concerned that they are on the "front door of Gloucester"; and that the Committee wants to be sure the property will be kept looking good.

**Mr. Goldberg** stated it is their job to keep the property looking good. It is a stainless steel tank. They have pressure washers; and their employees work hard to keep their brewery spotless.

**Councilor Whynott** asked about the color of the silo.

**Mr. Goldberg** stated it is stainless steel.

**Councilor Whynott** expressed concern about reflectivity.

**Councilor Ciolino** stated he would vote for it. However, he expressed that if a year from now it is not well kept and is not aesthetically pleasing, the Council amendment could be taken away. The Brewery has a responsibility to keep it looking well. They are giving "a lot of slack" in order for them to have this silo.

**MOTION: On motion by Councilor Whynott, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to the modification of the Cape Ann Viewing Company Special Council Permit SCP2010-004 for 9-11 Rogers Street, Gloucester, MA to operate a restaurant in a Marine Industrial Zone, to permit the applicant to install a 23 foot high 9 foot in circumference grain silo along the Rogers Street side of the building in accordance with the plans dated August 17, 2010 and submitted with the application.**

**MOTION: On motion by Councilor Whynott, seconded by Councilor , the Planning & Development Committee voted 3 in favor, 0 opposed to ADVERTISE FOR PUBLIC HEARING the modification to the Special Council Permit granted to Cape Ann Brewing Company on July 20, 2010 Re: 9-11 Rogers Street; applicant has agreed to pay for the publishing of the two advertisements for public hearing.**

**2. SCP2010-016: New Way Lane #50, GZO Sec. 5.13 PWSF (To be continued to 12/01/10)**

**Councilor Ciolino** announced this matter would be continued to December 1, 2010.

**3. Request from Pursuit Racing, LLC for use of City Land for half-marathon May 15, 2011**

**David Murray**, a representative of Pursuit Racing, LLC asked the Committee to permit their race on May 15, 2011, a half marathon that will begin and end at the Good Harbor Beach Parking Lot and proceed

minimally on Gloucester streets, that being out of the lot right onto Thatcher Road to the Rockport Gloucester line, crossing over into Rockport, where the majority of the race will be run, and then returning to Thatcher Road to end the race at the Good Harbor Beach Parking Lot. They have a sign off (on file) from Lt. Joseph Aiello of the Gloucester Police Department already filed in the City Clerk's office. They also spoke with Fire Chief Dench to give them authorization from the Fire Department as well. They have also been to the DPW for permission to use the parking lot. Medical personnel will be on hand.

**Councilor Ciolino** reminded Mr. Murray of the two-part process, that of the DPW having charge of the parking lot; but that once they cross out into the street it is the purview of this Committee. He confirmed with Mr. Murray that they had a Certificate of Insurance and that medical personnel will be on hand.

**Fire Chief Dench** stated he has spoken with Mr. Murray and received a race plan, and he would review it. The one thing he was missing in the race plan was "more of a plan itself". The Fire Department is working towards being NIMS compliant to be NIMS (National Incident Management System under the Federal Emergency Management Agency]. With all of these types of events they are trying to get Incident Command involved. They will work with the Race Committee to have some meetings in order to have an action plan in place so they each know their roles; to know where medical people will be, etc. This is part of the process of the last two years since the introduction of the Triathlon to Gloucester and now utilized with all the major events in the City, like Run Gloucester, like the Fiesta. Everyone will be involved in the planning. They have to have an emergency action plan in place. It is about coordination with all parties involved so that the day of the event everything runs smoothly; in this case also coordinating with the Town of Rockport's emergency services, their DPW as well as the City's DPW also. He saw no problem with giving this race permit but asked it be made a condition of the race to work within the Incident Command system. This is a smaller race, and they wish to have the action plan in place for this race and for all subsequent races.

**Councilor Ciolino** requested that the Chief give a write up of what the expectations are for the Fire Department Requirements.

**Chief Dench** thought they needed to meet a in a few weeks to do some basic planning, then a couple of months ahead of time to meet all the parties involved; and then closer towards the race, about three or four weeks before to reconfirm everything is in place. He noted it is not an everyday event to have this many people running on the streets of Gloucester; and that there is a need to have action plans already in place to be sure all contingencies are covered. He was comfortable to see the race move forward.

**Mr. Murray** added they have already spoken with Rockport Town Clerk's office and their Police Department and had given them their general OK.

**MOTION: On motion by Councilor Whynott, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to permit Pursuit Racing, LLC to run a half marathon on May 15, 2011 starting at 9:00 a.m. from the Good Harbor Beach parking lot, turning right on Thatcher Road (Rt. 127A); continue on over the Gloucester City line and return to Gloucester via Thatcher Road; entering left at Good Harbor Beach with the following CONDITIONS:**

- 1) A memorandum from Lt. Joseph Aiello be on file with this approval in the City Clerk's office 14 business days prior to the race delineating the role of the Gloucester Police Department before, during and after the race on file;
- 2) A memorandum from Fire Chief Phil Dench be on file with this approval in the City Clerk's office 14 business days prior to the race delineating the role of the Gloucester Fire Department, during and after the race;
- 3) Signs indicating "Runners in the Road" shall be placed at key locations along the race course for safety purposes. They are to be posted the morning of May 15, 2010 and removed by 2:00 p.m. the same day;
- 4) A Certificate of Insurance naming the City of Gloucester as the Certificate Holder;

- 5) **All memorandums of approval shall be obtained by Pursuit Racing LLC and be delivered to the office of the City Clerk 14 days prior to May 15, 2011.**
4. *PP2010-006: Installation of approximately 17 feet of Underground Conduit re: School Street (As referred out from City Council 09/28/10; information packet completed a/o 11/08/09)*
5. *PP2010-007: Installation of approximately 65 feet of Underground Conduit re: Middle Street (As referred out from City Council 09/28/10; information packet completed a/o 11/08/09)*

**These public hearings are open.**

**Those speaking in favor:**

**Joseph Gleason**, Right of Way Agent for Verizon New England Inc. at 28 Diana Lane, Dracut stated there are two petitions, to lay and construct approximately 17 feet of UG (underground) conduit along School Street; and the second petition is to lay UG conduit of 65 feet along Middle Street. At the intersection of School and Middle Streets there is on-going construction; at 86 Middle Street a renovation of an existing Temple and at 80 Middle Street a construction of a 25 unit apartment building. In order to serve 80 Middle Street, they are proposing conduit of 17 feet to run from a northerly to westerly direction from an existing pole #141/1 which is the pole right at the corner of School and Middle Streets. It will run 17 feet northwesterly along School to a conduit demark in front of the new construction at 80 Middle Street. Between the existing pole and the conduit demark (as indicated in an email to Councilor Ciolino on file) is a City-owned manhole; and they have received permission from the City to run their conduit through the manhole with the condition that it be placed in a steel tubing to prevent any damage. The Middle Street petition is unremarkable for running approximately 65 feet of UG conduit along the westerly side of Middle Street to the demark at 86 Middle Street. This conduit run, like the School Street run, will be placed within the sidewalk. There is already an existing conduit run along Middle Street; and his engineer informed him the proposal is to place the new conduit to piggyback the existing conduit run along the run in Middle Street. This will be all done in the sidewalk; no street cuts are required. He has observed that the Middle Street sidewalk is already "torn up". There will be some concrete removal along Middle Street. They are aware, regardless, remedial measures will be to make the sidewalks ADA compliant.

**Those speaking in opposition:**

**Communications: None.**

**Questions:**

**Councilor Whynott** asked how they will place the conduit.

**Mr. Gleason** stated there was existing conduit with fiber underneath the surface of the sidewalk on Middle Street. Those ducts are pretty much full. They will be "piggybacking" by placing another tube above the other conduit encased in concrete which in turn will be encased also in concrete to run it to 86 Middle Street.

**Councilor Ciolino** stated another concern at the corner of School and Middle Streets that the sidewalk is not ADA compliant; he asked they check with the DPW as that remediation to ADA compliancy will need to be done for the sidewalk and is the policy of this Committee that when a sidewalk is torn up it, as it is remediated it be made ADA compliant. He also asked that they notify the Fire Department 24 hours in advance of the work to be done. That is a run for the GFD, as it is a busy corner. Both will be conditions of the permit.

**Mr. Gleason** stated he will remind the project engineer these are the requirements.

The Clerk of Committees was instructed to inform the DPW Director that they ask he observe the work as it is being done and to confirm that the sidewalks are made ADA compliant when the project is done.

**These public hearings are closed.**

**MOTION: On motion by Councilor Whynott, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to permit Verizon New England Inc. (formerly**



New England Telephone & Telegraph Co.) to lay and maintain underground conduits and manholes with the wires and cables to be placed therein, under and upon the surface of the following public way or ways: SCHOOL STREET to place approximately 17 feet of underground conduit to provide telecommunications facilities to #80 Middle Street; also for permission to lay and maintain underground conduits, cables and wires in the above or intersecting ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes as noted on Plan marked Verizon N.E. Inc., No. 2 dated September 15, 2010 showing location of conduit to be constructed and filed herewith; and the following CONDITIONS:

1. The conduits and manholes shall be of such material and construction and all work done in such a manner as to be satisfactory to such municipal officers as may be appointed to the supervision of the work; and a plan showing the location of conduit constructed shall be filed with the City when the work is completed;
2. In every underground main line conduit constructed by said Company hereunder one duct not less than three inches in diameter shall be reserved and maintained free of charge for use of fire and police telephone and telegraph signal wires belonging to the City and used by it exclusively for municipal purposes;
3. Said Company shall indemnify and save the City harmless against all damages, costs and expense whatsoever to which the City may be subjected in consequence of the acts or neglect of said Company, its agents or servants, or in any manner arising from the rights and privileges granted it by the City.
4. In addition, said Company shall, before a public way is disturbed for the laying of its wires or conduits, execute its bond in a penal sum of Thirty Thousand Dollars (\$30,000.00) (reference being had to the bond already on file with said City) conditioned for the faithful performance of its duties under this permit;
5. Sidewalks to be returned to a condition so as to be ADA compliant;
6. The Gloucester Fire Department is to be notified 24 hours in advance prior to the beginning of any construction by Verizon New England;
7. Said Company shall comply with the requirements of existing ordinances and such as may hereafter be adopted governing the construction and maintenance of conduits and wires, so far as the same are not inconsistent with the laws of the Commonwealth.

**MOTION:** On motion by Councilor Whynott, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to permit Verizon New England Inc. (formerly New England Telephone & Telegraph Co.) to lay and maintain underground conduits and manholes with the wires and cables to be placed therein, under and upon the surface of the following public way or ways: MIDDLE STREET to place approximately 65 feet of underground conduit to provide telecommunications facilities to #86 Middle Street; also for permission to lay and maintain underground conduits, cables and wires in the above or intersecting ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes as noted on Plan marked Verizon N.E. Inc., No. 2 dated September 15, 2010 showing location of conduit to be constructed and filed herewith with the following CONDITIONS:

1. The conduits and manholes shall be of such material and construction and all work done in such a manner as to be satisfactory to such municipal officers as may be appointed to the supervision of the work; and a plan showing the location of conduit constructed shall be filed with the City when the work is completed;
2. In every underground main line conduit constructed by said Company hereunder one duct not less than three inches in diameter shall be reserved and maintained free of charge for use of fire and police telephone and telegraph signal wires belonging to the City and used by it exclusively for municipal purposes;

3. **Said Company shall indemnify and save the City harmless against all damages, costs and expense whatsoever to which the City may be subjected in consequence of the acts or neglect of Said Company, its agents or servants, or in any manner arising from the rights and privileges granted it by the City.**
4. **In addition, said Company shall, before a public way is disturbed for the laying of its wires or Conduits, execute its bond in a penal sum of Thirty Thousand Dollars (\$30,000.00) (reference being had to the bond already on file with said City) conditioned for the faithful performance of its duties under this permit;**
5. **Sidewalks to be returned to a condition so as to be ADA compliant;**
6. **The Gloucester Fire Department is to be notified 24 hours in advance prior to the beginning of any construction by Verizon New England;**
7. **Said Company shall comply with the requirements of existing ordinances and such as may hereafter be adopted governing the construction and maintenance of conduits and wires, so far as the same are not inconsistent with the laws of the Commonwealth.**

A motion was made, seconded and voted unanimously to adjourn the meeting at 9:22 p.m.

**Respectfully,**

**Dana C. Jorgenson  
Clerk of Committees**

**DOCUMENTS/ITEMS SUBMITTED AT MEETING:**

- **Power Point Presentation by applicant, Mac Bell; Timbah Bell, Sandra Martyn; David McCarley along with written statements**
- **Written statement by Patti Page, 3 Tidal Cove Way on zoning issues as related to the BMOD proposal**
- **PUD Research from Marcia Hart, 2 Fremont Street**