

CITY COUNCIL STANDING COMMITTEE  
**Planning & Development**  
Wednesday, January 5, 2011 – 6:00 p.m.  
1<sup>st</sup> Fl. Council Conference Room – City Hall

-- MINUTES --

**Present:** Chair, Councilor Joseph Ciolino; Vice Chair, Councilor Robert Whynott; Councilor Greg Verga  
**Absent:** None.  
**Also Present:** Councilor Tobey; Councilor Hardy; Suzanne Egan

**The meeting was called to order at 6:04 p.m. There was a quorum of the City Council.**

**1. Continued Business:**

- A) SCP2010-001: 79-99 Essex Avenue, Sec. 2.3.1(12) Hotel/Motel 30 or more guest units; Section 5.7.3 Major Project; Sec. 3.1.6(b) height excess; Sec. 5.5 lowlands; Sec. 3.2.6 lot area per two guests (Cont'd from 12/15/10)

**Councilor Ciolino** stated the applicant, Gloucester Hotel LLC through their attorney Ralph Pino has requested in writing today an extension of 30 days. This Committee asked that the applicant come forward at that time with approvals of all the utilities connecting the property. The sewer hook up [agreement] was not quite ready; and the applicant felt they would need this time to get the report to the Committee. Therefore the Committee is unable to take up the matter at this time and would do so at their first meeting in February.

**This matter is continued to February 2, 2011.**

- B) SCP2010-016: New Way Lane #50, GZO Sec. 5.13 PWSF (Cont'd from 12/01/10)

**Councilor Ciolino** informed the Committee that a letter (dated January 3, 2011) was received from the applicant's attorney, Jacqueline Slaga, requesting another continuance to the meeting of P&D on February 2, 2011. He had communication with the attorney informing her that P&D normally requests a radio frequency report (RFR) done for PWSF applications for collocating antennas on towers. It is preferred by the Committee to have an RFR done by a 3<sup>rd</sup> party, not by someone working for the applicant. He asked that report be made available to the Committee at their February 2nd meeting. At that time they will also look at the last time a collocated antenna was permitted there in order to review the conditions of that permitting. The applicant will be asked to present documentation that those conditions were also met.

**Councilor Whynott** asked who would pay for the RFR study feeling that it didn't seem to matter whether the person worked for the applicant or not.

**Councilor Ciolino** stated the applicant pays for the 3<sup>rd</sup> party RFR. The RFR is done by persons who are off of a preferred list of the City through Community Development. He noted that a 3<sup>rd</sup> party review is preferable because the list on file with the City is independent from the applicant. Stating that there had been additions to this tower, and because homes are close by the antenna tower, he felt they do need to find out the radio frequency affect of any additional collocated antennas, if any, to assure the safety of homeowners nearby.

**This matter is continued to February 2, 2011.**

**2. Open Meeting Law Complaint to P&D Committee re: Birdseye**

**Councilor Ciolino** made the following statement:

“The only item of business is to discuss the open meeting law complaint that was handed to me at my shop and dropped off for me at the City Clerk’s office by M. Sunny Robinson. The complaint alleges that sometime before November 17, 2010, I met in private with the City Solicitor and the Planning Director to rewrite the Birdseye Mixed Use Overlay District proposed zoning amendment. The complaint questions whether a meeting took place which constituted a violation of the open meeting law.

First of all I did not meet with the City Solicitor and the Planning Director to rewrite the zoning ordinance. And secondly, even if I did it would not have been a violation of the open meeting law. The open meeting law regulates meetings of public bodies. The City Solicitor and the Planning Director are City staff and not members of a public body. An individual City Councilor can meet with City staff outside of public meetings.

Further, members of the Planning & Development Committee did not meet outside of a public meeting to discuss the proposed zoning amendment. The open meeting law requires that any meeting of the P & D Committee must be properly noticed and open to the public. The Committee has not met to discuss the ordinance outside of any public meeting. Individual committee members may discuss the business of the City Council with City staff outside of a public meeting.

The complaint questions whether it is appropriate for me to work with the City Solicitor and the Planning Director on matters that are pending before the Committee. It is perfectly within the law and acceptable for me and other City Councilors to meet with City staff for technical support such as amending ordinances and discussing issues outside of a public meeting. There was no violation of the open meeting law.

The second issue raised in the complaint does not relate to the open meeting law but questions whether the P & D Committee has aligned itself with the developer prior to the public hearing. The P & D Committee has not aligned itself with the developer or the opponents of the ordinance. It has merely reviewed the proposed ordinance, considered the Planning Board’s recommendations and made recommendations to the full City Council.”

**Councilor Whynott** stated his agreement with the statement made by Councilor Ciolino. Further, that the only time he ever met with members of the Committee for anything [related to the rezoning matter] was to discuss procedures. He and **Councilor Verga** made a site visit together which they simply viewed the site but did not deliberate. He stated emphatically he never spoke about “the nuts and bolts” of the matter outside of a meeting.

**Councilor Verga** had no comment at that time.

**Councilor Hardy** added in her time as the previous Chair of P&D, she also met with legal counsel to discuss legal matters in order to determine if she was “going down the right path” in formulating motions, etc. From the previous legal counselor, she was taught to put it in a positive voice; to never put a motion in a negative voice. Legal counsel is there for their guidance, and are paid to do so.

**Councilor Tobey** also had no comment at that time.

**MOTION: On motion by Councilor, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to ask the City Solicitor to respond to the complaint.**

**Councilor Tobey** asked what happens procedurally next on this matter.

**Attorney Suzanne Egan**, City Solicitor stated she would file a written response to the Attorney General’s office into documentation filed by the person made the complaint. The Attorney General then

will determine whether or not they will investigate [the allegation]. They say within 90 days they make the determination “generally” for the response and also clarified for **Councilor Tobey** this was 90 days for the response.

**Councilor Verga** asked what the goal was to get the response out [to the AG].

**Attorney Egan** stated it has to go out 14 days from when the complaint was filed, and she would send it to the AG’s office the following day.

**A motion was made, seconded and voted unanimously to adjourn the meeting at 6:13 p.m.**

**Respectfully submitted,  
Dana C. Jorgensson  
Clerk of Committees**

**DOCUMENTATION/ITEMS RECEIVED AT MEETING: None.**