

Special Planning & Development Committee & Gloucester Historical Commission Joint Meeting

Monday, November 26, 2018 – 6:30 p.m.

1st Fl. Council Conference Room – City Hall

-Minutes-

Planning & Development Committee:

Present: Chair, Councilor Valerie Gilman; Vice Chair, Councilor Jen Holmgren; Councilor Paul Lundberg

Absent: None.

Also Present: Jim Destino; Chip Payson

Gloucester Historical Commission:

Present: Co-Chair, Mary Ellen Lepionka; Co-Chair, Robert Whitmarsh; Jude Seminara; William C.S.

Remsen; Peter Lawrence; David Rhineland (Alternate); Sandy Barry (Alternate-arrived at 6:40 p.m.)

Absent: None.

1. Call to order of City Council Standing Committee, Planning & Development

Councilor Gilman called the Special Meeting of the Planning & Development Committee Meeting to order at 6:32 p.m.

2. Call to Order of the Gloucester Historical Commission

Mary Ellen Lepionka, Co-Chair of the Gloucester Historical Commission called the Special Meeting of the Gloucester Historical Commission Meeting to order at 6:33 p.m.

3. Introductions of Committee and Commission members

4. Review of Joint Planning & Development Committee & Gloucester Historical Commission Agenda by Planning & Development Committee Chair, Councilor Valerie Gilman

Councilor Gilman briefly reviewed the joint meeting agenda advising that this was a public meeting, not a public hearing, but that if time allowed it may be possible to entertain questions from the public.

5. Review of MGL Chapter 40, §8D

A review of MGL Chapter 40, §8D was touched on, with highlighting certain aspects of interest by **Chip Payson**, General Counsel:

- MGL Chapter 40, §8D is the enabling statute for the Historical Commissions (HC) across the Commonwealth to conduct research, gathering information, etc.;
- Highlighted was the third sentence of §8D where the Commission plays a role “where it’s the actor” as a recommending body to the City Council; and the Council gets an opportunity to approve, and impliedly, or disapprove, if it chooses of any recommendation that a place be certified as a historic or archeological landmark;
- Mass. Land Court Case: In Lowell vs. Marquis in 2008 -- before the Court was the question of whether or not a local Historical commission had enforcement power. The Court said, “No,” but in saying no they made clear that the local Historical Commission’s power is to make recommendations as it deems necessary. The court reiterated part of the statute that says that the local Historical Commission should recommend and the City Council approves or disapproves.

Responding to an inquiry by **David Rhineland**, Gloucester Historical Commission (GHC) member, **Councilor Gilman** indicated that the agenda stipulates they are gathered to learn about the MGL and talk in general on the nomination process and where in the process should the City Council approve nominations. She reiterated it is a general conversation in order to have a common understanding as to how to move forward. She added that the Council has a great deal of respect for the work of the Commission to date.

Councilor Gilman asked how an individual property would differ from a National Register Historic District procedurally. **Mr. Payson**, noting that he's read the federal regulations and state statute; he advised that state statute covers the Commission when the Commission is an "actor." He observed that an individual property owner is free to petition the state and the Mass. Historical Commission in order to get a property/home on the National Register. He noted that there is a state Historic Officer appointed. Private property owners can do that separately and apart from the GHC. However, when the GHC is an actor, they must follow the statute.

Ms. Lepionka asked if the GHC wanted to nominate individual properties to the National Register on behalf of their owners, they would need the permission of the city. She suggested that the Mass. Historical Commission (MHC) would contradict that statement -- property owners don't need the permission of the City Council to be on the National Register. **Mr. Payson** advised that when owners avail themselves of the municipal body, like the GHC, the GHC becomes the actor with the state, the statute controls. He expressed it was his opinion that property owners can do this process on their own. If the GHC is involved, and they are the actor, they make the recommendation to the City Council -- they are a body of the municipality. **Ms. Lepionka** noted that the City Council can't tell an owner that they're not allowed to have GHC assistance to get onto the National Register. **Mr. Payson** clarified that the City Council can't tell an owner that they can't get on the National Register, but the City Council can deny the GHC's nomination according to statute.

Bill Remsen, GHC member, noting federal regulations Title 36, Chapter I, Part 60 pursuant to the National Register of Historic Places, and suggested that the MHC can do what it wants on its own -- they can nominate properties and historic districts. **Mr. Payson** cited that under MGL Ch. 9, Sec. 27, the state can be the actor and is a different statute. **Mr. Remsen** summarized that in one instance the GHC is the actor and in the other the MHC is the primary actor in conjunction with private owners. **Mr. Payson** 40 Sec. 8D if the GHC is an actor; the state can reach down and act under Ch. 9 Sec. 27 and people can start that process on their own. There is no bar to anyone deciding to act on their own directly with the MHC but that in the federal regulations there is procedure and notice requirements, he added.

Jude Seminara, GHC member, noted the purpose of protecting and preserving in the state law, specifically says that it is required to have Council approval. He pointed out that another statute section says that the local HC may hold hearings, enter into contracts with individuals, organizations or institutions, etc. He asked if those actions are "beholden" to the City Council. **Mr. Payson** conveyed that the enabling statute talks about the makeup of the local HC but empowers them to do its research and due diligence. The local HC can sign contracts with archeological firms to do the necessary research but before a recommendation is made the Council has to approve or disapprove. He spoke to process from the start to a nomination being made to the MHC, saying that throughout the process there are thresholds the GHC must pass through -- the need to gather information; money has to be spent to gather that information. This statute allows that to happen but it didn't mean that it cancels out the necessary part of the statute which is, then based on all that information or what has been compiled, it has to be taken to the Council for their approval of a recommendation. He touched on the balance to be struck between how much or how little funding is to be expended to gather enough information to make a "reasoned and rational" decision; and how much is too much if the Council denies the recommendation. This, he pointed out, is for the GHC to determine, understanding this has to be a step to take and where in the GHC process do they feel they have enough to gain a decision.

Ms. Lepionka advised their grants are "not to exceed" grants so there is no possibility to go over budget. She reviewed the process of grant application and acceptance through the Council process and asked that if the Council votes by majority to approve a grant acceptance for a particular purpose did it not constitute an approval. **Mr. Payson** said, "No." He clarified as follows: that the statute doesn't talk about grants, and expressed his opinion that a vote of the Council on a grant is a vote on a grant. The statute specifically says, "a recommendation." He advised he reviewed the grant votes on an issue related to Dogtown and cited that he had seen no vote on a recommendation. There are votes on grants and grants are, "information gathering tools." **Ms. Lepionka** pointed out that the motion language says that the purpose of the grant is to put Dogtown on the National Register. **Mr. Payson** reiterated that it was a grant to gain funding to get information on Dogtown. He expressed that the Council can't vote on "implication;" they have to vote on plain language. He highlighted that there was no plain language in the grant votes about recommendations. **Mr. Remsen** pointed out the grant in question was in essence a contract and that if the city accepted the grant, there were contractual obligations which included the creation of a nomination. He conveyed that if the city accepted the grant they were contractual obligations which included the creation of a National Register nomination. **Mr. Payson** advised that the contractual obligations don't circumvent the statute and didn't negate the Council's ability and power to make a determination based on whether or not to recommend. The GHC applies for a grant; the Council votes on a grant; the GHC uses the grant to do what they need to do, but before

the GHC can make a recommendation under the statute the Council needs to approve that recommendation. Then, the recommendation is put forward. He conveyed that Ms. Lepionka was implying that by the Council's acceptance of a grant is an abdication of the Council's statutory power to approve a recommendation. He clarified that the GHC can't do that; and it was up to the GHC as to how much money they want to spend before they bring a recommendation to the Council. If the GHC applies for a grant and the Council accepts it, and the GHC spend all the money it didn't mean that the Council had signed off and abdicated its power under the statute. **Ms. Lepionka** put forward that after all the work, time, and money, the Council could still say no. **Mr. Payson** said, "Absolutely." He suggested that the GHC needs to figure out where in the process it is appropriate to bring a matter before the Council for a vote on a recommendation.

Councilor Gilman advised the Council isn't trying to be an impediment but rather to partner with the GHC in order to work collaboratively "for the good of the city."

Councilor Lundberg noted on April 6, 2017 the Council voted two motions to accept two grants of \$15,000 each -- one from the Dept. of Interior, National Park Service through the MHC for an archeological survey for the purpose of defining Dogtown in the City of Gloucester as part of the National Registry of Historic Places. The second grant was to accept a private grant from the Dusky Foundation for the same purpose. He advised what the Council approved the acceptances of those sums of money to do an archeological survey. He pointed out that the survey is now done by the consulting firm, "PAL." Mentioning that he had the opportunity to read the survey, he lauded the content, he advised now they move onto the next step. He indicated that now they have to determine if they're ready as a city to submit the application now that the archeological survey is completed.

Councilor Gilman pointed out that a lot of work was done, and it is helpful to the decision-making process. Putting forward a question from Councilor Sean Nolan, she asked how the GHC determines what nominations need an archeological survey at the onset of a nomination process. **Mr. Remsen** noted there were obvious known resources and the MHC had those criteria. **Councilor Gilman** asked if they don't have such a study does it impede the process. **Mr. Remsen** advised such a study is a major component of a nomination and is not only necessary but the right thing to do.

6. Review of Nomination Process for Mass. Historic Register Nomination

Councilor Gilman advised that this is now looking at where the Planning & Development Committee would enter the process.

The P&D Committee and the GHC reviewed a draft working document which was entitled, "National Register Nomination Process developed by Co-Chair Mary Ellen Lepionka with a member of the Mass. Historical Commission at the request of P&D Committee Chair, Councilor Gilman. Included in that document was the setting out of certain criteria under headings such as "Local Historical Commission," "City Council Standing Committee," "City Council" "State Historical Commission," "State Review Board," and "National Park Service."

1. Local Historical Commission

Highlighted was that if a District is being proposed the GHC, it seeks public opinion on the idea of having a National Register District, or invites the MHC to conduct an initial public informational meeting; and the seeking input from the City Planning Department and pre-approval by City Council Standing Committees.

Responding to an inquiry by **Ms. Lepionka** saying that she'd not known that the P&D Committee was involved in the process, **Councilor Gilman** explained as follows: when a matter such as a nomination is referred from a Council Consent Agenda it is sent to the Planning Board in addition to the Planning & Development Committee. The Planning Board would make their review and in turn makes a recommendation to the P&D Committee. The P&D Committee then forwards its recommendation to the Council which is a subset of the Council's responsibility because this is land disposition.

It was noted that a public information session held in 2017 which fell under this section where a public information session is conducted early in the nomination process. **Councilor Lundberg** pointed out there are matters the Council refers to the Planning Board in their statutory role and will then make a statutory recommendation to the P&D Committee. There are also matters that are advisory, and it depends on the nature of the matter, and confirmed Councilor Gilman's assessment of Council process.

2. City Council Standing Committees

Councilor Lundberg noted that in the instance of the Dogtown application, until they had the archeological survey completed the Council wouldn't have had involvement; it depends on the substance of a plan to be put

forward. As to a Letter of Intent, as for a grant acceptance, those matters would go to the Council for a vote. Mr. Remsen advised that one of the issues the GHC has is that they don't have enough information and need money to gain that information so they seek out grants to pay for that work. It was noted that the MHC grants have "strings attached" and in essence isn't a grant, he suggested. For historic districts, MHC makes the final decisions on the boundaries and can disapprove them also. **Ms. Lepionka** urged that their projects and plans need to be preapproved so that the time, talent and money isn't wasted. They need to come to the Council with a slate of projects and do they approve them so the GHC can continue to do their work.

Councilor Holmgren asked why Council approval is needed; that if the GHC has a slate of ideas/projects why don't they bring projects forward to the Council. **Ms. Lepionka** pointed out there is a great deal of work and administration that goes into these grants and it would be better to focus on projects that everyone wants than do so speculatively.

3. Local Historical Commission

This section of the document was touched on and suggestions were made to improve it -- in particular the removal of the statement of the local Historical Commission operating as a Certified Local Government or CLG. **Ms. Lepionka** confirmed the GHC does not function as a CLG and so references to that function were to be removed from the draft document. **Mr. Remsen** noted that the Council needs to be informed at the earliest possible moment as to what the GHC is thinking about. The city doesn't want to sign off on a project unless they understand it. To get to that proposal they need to get a grant to create it, he added. **Ms. Lepionka** spoke to Assurance forms signed by the Mayor briefly. **Councilor Lundberg** noted that until the archeological survey was received, they didn't have a cohesive document that showed why Dogtown should be a nationally registered district.

Councilor Holmgren noted that when there is a subject matter she appreciates that in covering all their bases, she be more assured to have the information in hand and that the survey was critical in that understanding. It is situationally dependent. **Mr. Seminara** highlighted that Dogtown is a vast area of historical significance. For a nomination a historical survey is very important, but for say, City Hall, that would not be necessary saying that from a research perspective, an Eligibility Evaluation form from the MHC would be suitable. They don't have the assets for the time to come up with documents such as a research study.

Councilor Gilman suggested as per the City Charter that the P&D Committee and the GHC meet annually at the start of the city's fiscal year and learn of those projects that will require extra work and archeological surveys. **Messrs. Remsen and Rhineland** and **Ms. Lepionka** endorsed the concept of the annual joint meeting at the beginning of the new fiscal year, and it was suggested possibly needing to meet earlier if necessary if circumstances warranted.

4. City Council

After a discussion between the P&D Committee and GHC, the first item in this section was to be revised to say that "The City Council votes to bring forward a nomination". It was highlighted by **Councilor Lundberg** that not every project will require an archeological survey. By the P&D Committee and the GHC going through the list together, a determination can be made whether there is a need for a full blown archeological survey or not. During the discussion it was confirmed that the Committee wants to have an annual meeting with the GHC that reviews upcoming projects and be ready to book a "reservation" for June of 2019 for the MHC State Review Board to review the Dogtown nomination should the City Council approve the recommendation for the Dogtown nomination to the National Register.

7. Discussion on where in process City Council should approve National Register Nominations

See above. The Council wants to have an annual meeting with the GHC that reviews upcoming projects and be ready to book a "reservation" for June of 2019 for the MHC State Review Board to review the Dogtown nomination should the City Council approve the recommendation for the Dogtown nomination to the National Register.

8. Next step in review process for nominations currently in process

Question from the Public:

Zenas Seppala, 92 Granite Street, Rockport, asked about the availability of the surveys mentioned this evening. **Councilor Gilman** pointed out that the Rockport Board of Selectmen is going through a similar process at this time and should seek out the Town of Rockport's documentation. **Ms. Lepionka** advised that under the Gloucester

Historical Commission's area on the city's website there are documents available for public view and that some documentation is available at Rockport Town Hall.

9. Adjournment of the City Council Standing Committee, Planning & Development

A motion was made, seconded and voted unanimously to adjourn the Special Meeting of the Planning & Development Committee Meeting at 7:56 p.m.

10. Adjournment of the Gloucester Historical Commission

A motion was made, seconded and voted unanimously to convene the Special Meeting of the Gloucester Historical Commission Meeting at 7:56 p.m.

Respectfully submitted,

Dana C. Jorgenson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING: None.