

SPECIAL GLOUCESTER CITY COUNCIL MEETING
Tuesday, February 24, 2020 – 6:30 p.m.
1st Fl. Council Conference Room – City Hall

EXECUTIVE SESSION

Present:

City Council: Council President Steven LeBlanc; Vice Chair, Councilor Valerie Gilman; Councilor Melissa Cox; Councilor Jen Holmgren; Councilor John McCarthy; Councilor Scott Memhard; Councilor Sean Nolan; Councilor Jamie O’Hara; Councilor Barry Pett

Absent: None.

City Council Staff: Joanne Senos, City Clerk; Dana Jorgenson, Clerk of Committees

Administration: Chip Payson, General Counsel; Krisna Basu, Assistant General Counsel

The Executive Session was convened at 6:33 p.m. under Open Meeting Law, Chapter 30A§21(3).

Update to the City Council on ongoing litigation regarding the Special Council Permit pursuant to 116 East Main Street

Council President LeBlanc stated as follows: “I call the Executive Session of the City Council to order at 6: p.m. on Tuesday, February 25, 2020. We are conducting this executive session to discuss the litigation regarding a Special Council Permit for 116 East Main Street. We have a full quorum present and for the record those in attendance include City Councilors Cox, Gilman, Holmgren, LeBlanc, McCarthy, Memhard, Nolan, O’Hara, and Pett. City Council staff present includes City Clerk, Joanne M. Senos and Clerk of Committees Dana Jorgenson; Chief Administrative Officer, Jim Destino; General Counsel, Chip Payson and Assistant CAO, Vanessa Krawczyk. I state for the record that this executive session was voted by roll call vote 9 in favor, 0 opposed, during an open session of the February 25, 2019 Special City Council meeting to enter into Executive Session. I declare the purpose of this convened executive session is to discuss an update regarding litigation as an open meeting may have a detrimental effect on the litigating position of the public body. As stated in the open session of the City Council, to discuss this in an open meeting may have a detrimental effect on the litigating position of the City with a third party. I further declare that it is the intent of the Council not to reconvene back into open session to adjourn the November 25, 2020 Special City Council meeting. Any and all motions made during executive session – including the motion to adjourn – both of which are by roll call vote and require a majority vote of the Council. Any documents and other exhibits, such as photographs, recordings or maps used during this executive session, shall, along with the minutes, be part of the official record of the session. The minutes of any executive session, the notes, recordings or other materials used in preparation of such minutes and all documents and exhibits used at this session may be withheld from disclosure to the public in their entirety as long as publication may defeat the lawful purposes of the executive session, but no longer; and unless and until such time as a litigating position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless a legal exemption or privilege applies.”

Chip Payson, General Counsel, recounted a brief history of the litigation in question and advised of the current situation of the litigation regarding Special Council Permit for 116 East Main Street concerning the last Council session. Councilor Pett & McCarthy will be part of the decision making.

Krisna Basu, Assistant General Counsel, noted the Special Council Permit (SCP) was recommended by P&D and was denied by the Council on a vote of 5 in favor, 3 opposed; and the Applicant contended the decision. She recounted that she spoke with Mr. Bevilacqua, the Applicant about settling by reducing the number of dwelling units from 8 to 7; and if that was the case, the Applicant conveyed he would take out the affordable housing unit. She asked the Councilors if there was anything they could offer to come to a middle ground other than as of right—it would be about three buildings with two units each. **Mr. Payson** added that the standards are higher for Special Council Permits approved. It is evidence based, and they’ll have to put on a case to a Land Court judge who is the finder of facts. The city will have to give reasons why the SCP was ultimately denied. **Ms. Basu** noted that she’s worked with the Principal Assessor to work to show what the neighborhood is like, which is mixed. There aren’t any properties developed there with eight units, perhaps one within 300 feet with five units, one with four and one that is less. She’s also working with the Planning Director to develop that it doesn’t fit.

Councilors discussed broad options. The final decision may be remanded with instructions to the Council, **Mr. Payson** advised, on an inquiry by **Councilor Pett**. **Ms. Basu** agreed it could be remanded and have to be relooked at because you didn’t do A, B and C.

Councilor Gilman mentioned her witnessed testimony based on her vote at Council versus her vote in P&D. On the motion to adopt on October 8, 2020 emphasizing “all documents and testimony” including documents that are held. She asked why the minutes can’t be transcribed from the recording of those who spoke in opposition. They abbreviated everyone’s comments from the minutes. **Mr. Payson** responded that it is his understanding that minutes have been created questioning whether the recording still is held. **Joanne Senos**, City Clerk, confirmed they had the recording because it is a Special Council Permit. **Mr. Payson** indicated they can look into transcribing the recording. As a matter of course they incorporate everything into the decision. **Councilor Gilman** urged they get a transcription. **Ms. Basu** advised they can look into the transcription. The court doesn’t just want to read or listen to the transcription of the meeting but wants to look at the facts of the neighborhood and what it consists of and to see if that the facts of the denial stand.

Councilor Memhard noted that it is difficult to evaluate an alternative proposal as it’s not a straightforward case. Without a specific proposal having been made there’s not an alternative proposal. **Mr. Payson** asked if the Applicant has met with the neighbors to come up with an alternative. **Councilor Memhard** advised that there is very little movement on any side, with the opponents very set on their opposition. He pointed out the Applicant could address a number of restrictions on the property by acquiring additional abutter space to eliminate certain Council Permit aspects and aren’t interested.

Councilor McCarthy put forward that they can’t really build six units in two buildings by right in discussion with **Council President LeBlanc**. **Councilor Memhard** put forward that without a specific settlement proposal the staff can’t make a determination.

Councilor Gilman asked how they set the bar as to how they receive all their Special Council Permits. She mentioned a comment by Councilor O’Hara, and herself that were specific (in the minutes). She urged that they don’t settle and get the transcriptions.

Councilor Cox expressed she hoped the Applicant wins as much of the Council was swayed by emotion. The fact that P&D changed their minds after public input, in her opinion, she highlighted. **Councilor Memhard** pointed out that the comments of Mr. Faherty about the mix in the one block radius were important. **Council President LeBlanc** advised he agreed they shouldn’t set precedent; they should let the chips fall where they may and go forward with the suit. **Councilor Pett** offered his agreement. By mutual assent the Council indicated they want the case to move forward.

MOTION: On motion by Councilor Cox, seconded by Councilor Holmgren, the City Council voted BY ROLL CALL 9 in favor, 0 opposed, to adjourn the Executive Session and close the Special City Council meeting of February 24, 2020 at 6:55 p.m.

Respectfully submitted,

Dana C. Jorgenson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED DURING EXECUTIVE SESSION: None.