

CITY COUNCIL STANDING COMMITTEE
Special Budget & Finance Meeting
Friday, April 16, 2010 – 11:00 a.m.
1st Fl. Council Conference Room – City Hall

Present: Vice-Chair, Paul McGeary, Councilor Jacqueline Hardy, Councilor Ann Mulcahey (Alternate)

Absent: Councilor Curcuru

Also Present: Councilor Tobey; Mayor Kirk; Jim Duggan; Jeff Towne; Michael Faherty; Richard Gains

The meeting was called to order at 11:02 a.m.

1. Loan Authorization for I4-C2

Councilor McGeary noted the presence of Councilor Mulcahey, as an alternate to the Committee due to Councilor Curcuru being absent, as well as Councilor Tobey. There is a one item agenda which is to vote on a motion for a loan order of \$1.5 million for the purchase of I4-C2.

Councilor Hardy clarified that the agenda item before the Committee is to approve the advertising of the language of the loan order. The actual motion to approve from B&F will be on the agenda this coming Thursday. She reviewed that at City Council previously, they approved the advertising of the loan order for \$700,000.00. It has now come to their attention that the \$800,000.00 grant may not be available to apply to this. So that they can go forward and meet the timeline that is set for a May 4th deadline for the Order of Taking, we need to put another motion on the floor that would allow up to \$1.5 million to be borrowed. In order to do that, we need to place a new advertisement in the paper which needs 7 days so we can get the public hearing in on April 27th. Monday is a holiday which is why a special meeting was called. Saturdays currently count, but as of the Open Meeting Law going into effect on July 1, 2010, they won't. She then moved that an advertisement for the \$1.5 million appropriation be placed in the Gloucester Daily Times for public hearing to be heard on April 27th, read as follows (seconded by Councilor Mulcahey):

That up to One Million Five Hundred Thousand Dollars (\$1,500,000.00) be appropriated to pay for the acquisition by eminent domain, of a parcel of land commonly known as I4-C2, with legal description as follows: a certain parcel of land situated at 65 Rogers Street in Gloucester, Essex County, Massachusetts, and being shown as Lot 1 on Gloucester Assessor's Map 9. For title reference, see Deed recorded at the Essex South District Registry of Deeds in Book 8419, Page 78. This land shall be used for downtown revitalization and economic development purposes. To meet this appropriation, the City Treasurer, with the approval of the Mayor, is authorized to borrow up to the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) under and pursuant to Chapter 44, Section 7(3) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the City therefore, which bonds or notes shall be general obligations of the City. That the Treasurer is authorized to file an application with the appropriate officials of The Commonwealth of Massachusetts (the "Commonwealth") to qualify under Chapter 44A of the General Laws any and all bonds of the City authorized by this Council as of the date of the final City Council vote and to provide such information and execute such documents as such officials of the Commonwealth may require in connection therewith.

Discussion:

Councilor Tobey noted the Administration was requested Tuesday night to consider making a safety net approach for the financing if possible ensuring if the matters do proceed; there is \$1.5 million available for the closing on or before May 4th. That's what this advertisement would push forward; and that's why it would a prudent measure to do so.

Mayor Kirk added in case the funding doesn't come through, that qualifier is 'in time'. They have to submit the documentation from the State that confirms the use of the funds with no strings which was the original question posed. (The Mayor submitted a document which she summarized below and is on file) A letter from the Sen. Tarr and Rep. Ferrante who raised some questions, and the response from the Seaport Advisory Council (SAC) to answer those questions which was broader than that original question of can the money can be used with or without strings. It is strictly a backup plan. They can't risk going into a closing without the State funds in hand. It is a timing issue which they are preparing themselves for. They're optimistic that the money will come in on time. They have confirmation that the money is not in jeopardy. But because of the questions raised, they don't want to run the risk of being hung up at the State level while they figure out more answers to more questions. She noted Exhibit A was the letter from Rick Manley. The only question posed to him was whether or not there were strings attached. Exhibit B is the General Counsel of the Commonwealth who read Mr. Manley's letter and concurred with the opinion. This was an open issue the other night because there was an email that was two or three sentences; and it seemed informal, and their preference is to obtain a formal letter. Exhibit C is from Sen. Tarr and Rep. Ferrante and the City of Gloucester submitted a letter in response to the delegation's questions, and that is Exhibit D. In addition, the Executive Director of SAC responded to Sen. Tarr and Rep. Ferrante which is Exhibit E. She noted when she was in Fall River yesterday; she met on this particular issue with the Executive Director who again affirmed the appropriateness of the transaction. The only question is a timing issue and felt it was prudent to have a back up plan at the ready so they can go into a closing with the full amount expressed in the MOU.

Councilor Tobey expressed that there will be formal communications between the City's bond council that can be used as exploration on the underlying statutory question.

Mayor Kirk replied yes; the City's bond counsel has written a letter in response as to whether or not there are strings attached to the question that originated at City Council. Since that time an additional question has been raised which is can those funds be used for the purpose of acquiring land. They have asked the City's bond counsel to write another opinion and make sure the appropriate State authorities review that letter and submit the same sort of communication either affirming or denying that opinion. They believe that's the last remaining question

Councilor Tobey stated that inquiry will answer this question. Can the grant money be used to by real estate?

Mayor Kirk responded yes.

Councilor Hardy asked if the money can be used to buy real estate, how long would the City have to hold on to it if at all.

Councilor Tobey stated he is satisfied that it was answered previously.

Mayor Kirk stated they are dealing with outside resources; but in a day or two they feel they'll be able to have a letter from the bond counsel and have confirmation from the State, whatever their opinion is.

Councilor Hardy stated that we're here to vote on the advertising; and she'll support that to go forward so they can have a public hearing on the matter. Outside of that, she has asked previously for additional information from Haley and Aldrich. She reserved the right to change her vote at Council, and wanted to reiterate she'll be looking for that information before the next Council meeting.

Councilor McGeary asked about the MOU allows for a 30 day extension for environmental findings; are there any other conditions that could account for a 30 day extension.

Ms. Egan stated the 30 day extension can be granted for any reason.

Councilor McGeary asked if they had not received a response from the State, and they were still unsure, would that be a condition that could cause an extension.

Mayor Kirk stated the Administration is satisfied they have confirmation from the State. They will ask the legislative delegation to weigh in on that as well. They don't anticipate asking for an extension.

Councilor Tobey asked if General Counsel would bring forward a copy of the MOU to be read to the Committee to clarify the language.

Councilor Mulcahey asked if you don't get the information you're looking for and plan to go ahead with the purchase without an extension; wouldn't it be better to do an extension if the State response hasn't come through yet. Would you be depending on that money rather than asking for the extension.

Mayor Kirk reiterated the Administration felt the State had legitimately and appropriately awarded the grant for this purpose. They're just being overly cautious to make sure that questions are answered to the satisfaction of constituents or others. There's been no indication whatsoever that this grant funding is in jeopardy, confirmed the day before this meeting. The Executive Director of the SAC is paying very close attention to what's going on in Gloucester; monitoring the Gloucester Daily Times stories, emails and the letters that have been exchanged. He sees no red flags.

Councilor Hardy hoped they were also monitoring the minutes of the meetings, as well as the documentation, for accuracy.

Councilor McGeary stated, out of an abundance of caution, if we didn't receive formal notification from the State that the \$800,000.00 could be used and decided to proceed with the purchase anyway, and then subsequently received notification from the State of their approval to use those monies, can we allocate that money having already spent \$1.5 million out of City funds, essentially back filling; to which the Mayor respond yes, they went through that with bond council just that morning.

Councilor Tobey took exception with Ms. Egan's belief that the 30 day extension could be granted for any reason and asked for General Counsel to bring forward the language describing under what circumstances an extension of the closing date may be.

Ms. Egan read from the Memorandum of Understanding Governing The Taking of 65 Rogers Street, Gloucester, MA (Parcel I4C2), terms and conditions #7: "Should the City proceed with the acquisition of the Property, the Order of Taking shall be recorded within sixty (60) days of receipt by the City of this Agreement signed by the Owner at least five (5) days prior to the date of scheduled taking, extend the date for recording the Order of Taking for thirty (30) days if a survey, title insurance commitment, or environmental hazard assessment, acceptable to the City in its sole discretion, have not been received by the City by such date..."

Councilor Tobey noted it is very narrow language in a way that we would have to have voted the taking. It would only be the filing that is extended. The Council's deadline doesn't move, which Ms. Egan agreed with.

Councilor McGeary noted that the City Council would have to vote on April 27th, and then if an environmental issue, or title issues arose, you can ask for a 30 day extension for the recording of the taking but essentially the City would have already taken the parcel.

Councilor Tobey stated the taking is protected by the recording.

Ms. Egan stated once you record the taking, that's when the damages become due. The taking is adopted and then you record it. Once adopted, you can ask for an extension of the recording for 30 days for one of those three reasons. It is the Council action must occur in a timely fashion.

Councilor McGeary stated it sounds like there is some wiggle room if we found a significant environmental problem. We could not record it, and therefore effectively rescind the taking. If we don't record it, it doesn't happen.

Ms. Egan stated the City can walk away if notice was given properly under the terms of the agreement.

Councilor Tobey noted they are running out of time to give that notice because there's been no environmental follow up assessment ordered by the City. They would have to do that by April 29th to have something that we've requested. Realistically speaking, that door has been closed.

Ms. Egan stated she believed so. The Phase I assessment was determined sufficient.

Councilor McGeary noted that the Phase I assessment recommended a Phase II assessment.

Ms. Egan stated that was true. She noted she had a conversation with Mr. Duggan and the two Licensed Site Professionals who wrote the report. Really what they're saying is that you do the second step but that's not what they were making the recommendation for. They have to make that recommendation for professional responsibility. They can't say it's clean completely, and then found to be otherwise, that would be actionable. They're looking at the cost of construction. Is it going to cost \$20/ton to remove it or \$50 or \$60/ton? That's what the second step is for.

Mayor Kirk added the Administration has been clear with the Council that if the Phase I assessment came back with findings that they would proceed. They have no intention of exposing the City to that kind of liability. The finding that came back was there was no direct evidence of contamination. They have concluded their environmental assessment with that Phase I report.

Councilor Hardy reiterated that this motion is to advertise the matter, not to recommend to the City Council the actual appropriation of the funds at this point.

MOTION: On motion by Councilor Hardy, seconded by Councilor Mulcahey, the Budget & Finance Committee voted 3 in favor, 0 opposed, to recommend the ADVERTISEMENT for the following Loan Order:

That up to One Million Five Hundred Thousand Dollars (\$1,500,000.00) be appropriated to pay for the acquisition by eminent domain, of a parcel of land commonly known as I4-C2, with legal description as follows: a certain parcel of land situated at 65 Rogers Street in Gloucester, Essex County, Massachusetts, and being shown as Lot 1 on Gloucester Assessor's Map 9. For title reference, see Deed recorded at the Essex South District Registry of Deeds in Book 8419, Page 78. This land shall be used for downtown revitalization and economic development purposes. To meet this appropriation, the City Treasurer, with the approval of the Mayor, is authorized to borrow up to the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) under and pursuant to Chapter 44, Section 7(3) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the City therefore, which bonds or notes shall be general obligations of the City. That the Treasurer is authorized to file an application with the appropriate officials of The Commonwealth of Massachusetts (the "Commonwealth") to qualify under Chapter 44A of the General Laws any and all bonds of the City authorized by this Council as of the date of the final City Council vote and to provide such information and execute such documents as such officials of the Commonwealth may require in connection therewith.

2. Other Business

Councilor Hardy stepped away from the table as Councilor Tobey began to ask the question of the Budget & Finance Committee, as follows:

Councilor Tobey asked the B&F Committee, to which the City Council assented, to take a look at the question on the grant administration of the Firefighter's Grant both for its own sake as well as related to whether the previous City Council ought to have had a chance to review the firefighting contract because additional monies were needed for its fulfillment. He asked B&F to have a special meeting earlier in the week, due to his having to travel on business, so that he may

be present. Realizing that it was on the agenda for this coming Thursday, April 22nd, he asked the matter be continued and scheduled for a Monday or Tuesday evening.

Councilor Hardy returned to the table.

A motion was made, seconded and voted unanimously to adjourn the meeting at 11:28 a.m.

Respectfully submitted,

**Dana C. Jorgenson
Clerk of Committees**