

**GLOUCESTER CITY COUNCIL MEETING**

Tuesday, September 27, 2011 – 7:00 p.m.

Kyrouz Auditorium – City Hall

**-MINUTES-**

**Present:** Chair, Councilor Jacqueline Hardy; Vice Chair, Councilor Sefatia Theken; Councilor Bruce Tobey; Councilor Paul McGeary; Councilor Joseph Ciolino; Councilor Anne Mulcahey; Councilor Steven Curcuru; Councilor Greg Verga; Councilor Robert Whynott

**Absent:** None

**Also Present:** Linda T. Lowe; Kenny Costa; Jim Duggan; Max Schenk; Cate Banks; Joe Rosa; Maggie Rosa; Deputy Chief Miles Schlichte; Chief Phil Dench; Tony Gross

**The meeting was called to order at 7:00 p.m.**

**Flag Salute & Moment of Silence.**

**Oral Communications:**

**Sunny Robinson, 20 Harvard Street** was before them as the Co-Chair of the Coalition for the Prevention of Domestic Abuse; she brought to the Council the report of their activities of the Coalition's accomplishments of both the Coalition and the Gloucester Child Abuse Prevention Partnership which did not make it into the Mayor's packet and wished to submit even though they are from 2010. It is their practice to bring the report in September; at the same time the Coalition and the Mayor extends the invitation to join them in their annual Domestic Violence and Prevention activity every October on the steps of City Hall which will be on Tuesday, October 4<sup>th</sup> at 12 noon and would look forward to the City Council joining them at that activity. The letter of invitation is in their packet also. A copy for the record was submitted.

**Confirmation of New Appointments:**

**MOTION:** On motion by Councilor Mulcahey, seconded by Councilor Tobey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to appoint William "BG" Brown to the Fisheries Commission, TTE 02/14/14.

**Councilor Theken** explained that the O&A Committee questioned Mr. Brown, appointee to the Fisheries Commission at a regularly scheduled Fisheries Commission meeting by both herself and Councilor Tobey as Mr. Brown has been unable to attend Committee meetings due to time at sea which is the small exception they make for a fisherman. They are both pleased and impressed with Mr. Brown's willingness to step forward to serve on the Commission as well as his spirit of volunteerism. He had already taken his State Ethics Exam and was familiar with the Open Meeting Laws of the State and did not have a conflict with any other Board, Committee or Commission in the City. It is important to have the diversity of fisherman on this Commission.

**MOTION:** On motion by Councilor Theken, seconded by Councilor Mulcahey, the Ordinances & City Council voted 9 in favor, 0 opposed to appoint William "BG" Brown to the Fisheries Commission, TTE 02/14/14.

**MOTION:** On motion by Councilor Mulcahey, seconded by Councilor Tobey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to appoint Marion Goodwin to the Archives Committee, TTE 02/14/14.

**Councilor Theken** related Ms. Goodwin attended the most recent O&A meeting and expressed her reasons for wishing to be appointed to the Archives Committee, and touched upon her experience, background, and professional affiliations. She, too, expressed her familiarity with the Open Meeting Laws and filed proof of having taken the State Ethics Commission test and reviewed and signing the Open Meeting Law certificate. She did not have a conflict with any other Board, Committee or Commission. The Committee expressed their appreciation for her willingness to step forward and volunteer on behalf of their City. This City could not make it without the volunteers who step forward on its behalf. Ms. Goodwin was in attendance.

**MOTION: On motion by Councilor Mulcahey, seconded by Councilor Tobey, the City Council voted 9 in favor, 0 opposed to appoint Marion Goodwin to the Archives Committee, TTE 02/14/14.**

**Consent Agenda:**

• **MAYOR'S REPORT**

1. Memo from CFO re: Loan Authorization to replace & upgrade School Departments' telephone system (Refer B&F)
2. City of Gloucester Capital Improvement Advisory Board Annual Report for FY12 (Refer B&F)
3. Memo from CFO re: Loan Authorization Request for Capital Items for FY12 (Refer B&F)
4. Memo from Asst. DPW Director re: permission to pay invoices from FY11 with FY12 Funds (Refer B&F)
5. Memo from Comm. Dev. Director re: Affordable Housing Trust funding approvals (Refer B&F)
6. Memo from Comm. Dev. Director re: acceptance of grant funding extension in the amount of \$30,000 from Health Resources (Refer B&F)
7. Review & recommendations for the disposition of real property at 6 Stanwood Street (Refer P&D & B&F)
8. Invitation to attend City's Domestic Violence Awareness recommitment ceremony on Tuesday, October 4, 2011 (Info Only)
9. Annual Report of Activities for 2010 from the Coalition for the Prevention of Domestic Violence (Info Only)

• **COMMUNICATIONS/INVITATIONS**

1. Letter from City Clerk on behalf of City Council to Rep. Ferrante & Sen. Tarr re: House No. 01769 An Act Relative to Double Poles (Info Only)
2. Letter from City Clerk on behalf of City Council to Sen. Downing & Rep. Keenan re: Joint Committee on Telecommunications Utilities and Energy and House No. 01769 (Info Only)
3. Communication from MassDevelopment Finance Agency re: Bomco, Inc. (Info Only)

• **APPLICATIONS/PETITIONS**

1. SCP2011-011: Ferry Hill Road #21, GZO §5.5.4 Lowlands (Refer P&D)

• **COUNCILORS ORDERS**

1. CC2011-044 (Verga) Amend GZO §1.5.3, §1.11 and §1.11.2(e), "Appendix A, Rule 25: Rules of Procedure: Special Permit Procedures" – Part I and Part II (Refer PB, O&A & P&D)
2. CC2011-045 (Whynott) Installation & Dedication of bench at Stage Fort Park in honor of Ed Parks (Refer B&F)
3. CC2011-046 (Whynott) Adoption of Resolution re: H1972 – An Act Regulating Election Primaries (FCV 10/11/11)
4. CC2011-047 (Whynott) Commendation for GHS student Erin Pratt for her heroic rescue of several people caught in riptide (FCV 10/11/11)
5. CC2011-048 (Curcuro) Amend GCO §22-287 re: deleting Riggs Street #7A, one (1) handicapped parking space (No Referral Required)
6. CC2011-049 (Mulcahey) Set speed limit re: Taylor Street (Refer O&A)
7. CC2011-050 (Mulcahey) Set speed limit re: Friend Street (Refer O&A)

• **APPROVAL OF MINUTES FROM PREVIOUS COUNCIL AND STANDING COMMITTEE MEETINGS**

1. City Council Meeting: 09/13/11 (under separate cover) (Approve/File)
2. Standing Committee Meetings: B&F 09/22/11 (under separate cover) O&A 09/19/11, P&D 09/21/11 (Approve/File)

**Items to be added/deleted from the Consent Agenda and Unanimous Consent Calendar:**

**Councilor Hardy** asked to pull the approval of the minutes of the previous City Council meeting. The Council President explained the minutes are under separate cover as their production is delayed and will be available for the next Council meeting.

**By unanimous consent the Council agenda was accepted as amended.**

**Committee Reports:**

**Budget & Finance: September 22, 2011**

**MOTION:** On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council under M.G.L. Chapter 44 §53A to accept the Federal Emergency Management Agency 1959 DR January 2011 Snowstorm Grant that is passed through the Massachusetts Emergency Management Agency for a total of \$147,444.39. The purpose of this grant is to reimburse snowstorm related expenditures from the January 11-12, 2011 Snowstorm.

**Discussion:**

**Councilor Curcuro** stated the City had received reimbursement for expenses related to the January 11-12, 2011 snowstorm clean up efforts from the federal government. This came forward through the coordinating of the Emergency Management (EM) staff, Mr. Costa and Mr. Towne who was able to identify reimbursements and Carol McMahon, Administrative Assistant (EM) identified even more. This was for actual expenditures by the City for clean up efforts. The City received the maximum match of 75%.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor McGeary, the City Council voted BY ROLL CALL 9 in favor, 0 opposed under M.G.L. Chapter 44, §53A to accept the Federal Emergency Management Agency 1959 DR January 2011 Snowstorm Grant that is passed through the Massachusetts Emergency Management Agency for a total of \$147,444.39. The purpose of this grant is to reimburse snowstorm related expenditures from the January 11-12, 2011 Snowstorm.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council the transfer (#2012-SBT-3) for \$4,800 from Special Reserve, Contractual Services, Unifund Account #101000.10.900.52000.0000.00.000.00.052 to the Civil Defense, Contracted Services, Unifund Account #101000.10.291.52000.0000.00.000.00.052.

**DISCUSSION:**

**Councilor Curcuru stated that** the City has benefitted with Ms. McMahon handling the coordination of efforts with reimbursement requests and tracking the information for it; and the Administration wishes to continue her contractual services as the Assistant to the Emergency Management Director from October 1 to December 31, 2011. After December 31<sup>st</sup>, they will look to the new Chief to examine it from there. There is no grant money.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor McGeary, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to transfer (#2012-SBT-3) for \$4,800 from Special Reserve, Contractual Services, Unifund Account #101000.10.900.52000.0000.00.000.00.052 to the Civil Defense, Contracted Services, Unifund Account #101000.10.291.52000.0000.00.000.00.052.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council to accept a grant under MGL c. 44, §53A for \$5,000 (Five Thousand Dollars) from MIAA Loss Control. These funds are to be placed in the Sewer Enterprise Fund, #600000.

**DISCUSSION:**

**Councilor Curcuru explained that** through the offices of the CFO, last fall the City had an opportunity through their insurance provider (MIAA) for a grant not to exceed \$5,000 that could be used to develop and implement a sewer backup/overflow prevention program through inspection of aging sewer and storm drain lines in the City. At that time the City had planned to purchase a portable camera system. MIAA awarded the grant and funds have come in the form of a check to the City dated 7/25/11. The funds were spent out of the sewer fund; and therefore, the money from the grant, if accepted, will be deposited back into the sewer fund and drop to the bottom line at the end of FY12.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor Tobey, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to accept a grant under MGL c. 44, §53A for \$5,000 (Five Thousand Dollars) from MIAA Loss Control. These funds are to be placed in the Sewer Enterprise Fund, #600000.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council to pay Invoice #001 in the amount of \$290.00 dated 8/2/2011 to Carol McMahon for her contract work on the City's reimbursement from the Town of Hooksett, NH, from FY12 funds that were expended without a purchase order and to be paid from the Mayor, Contingency/Emergency, Unifund Account #101000.10.121.57800.0000.00.000.00.057.

**DISCUSSION:**

**Councilor Curcuru stated this request stems from the event of last spring when the town of Hookset, NH had a major issue with their treatment plant which affected a number of 'down stream' communities, Gloucester being one. The disks which showed up on the City's beaches had to be collected and related costs of that effort were reimbursed to the City by the Town of Hookset during FY11 In order to get that reimbursement, Carol McMahon,**

an independent contractor was hired to administer that process and submit for the reimbursement. It was about 14.5 hours of her time. No purchase order was created nor was a contract entered into in advance of the work being performed by her. **Councilor Whynott** asked if they got more money than they got back which **Councilor Curcuru** confirmed. Councilor Hardy expressed her concern at B&F that the folks in Emergency Management would be trained in the purchase order process so that this would not happen again.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor McGeary, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to pay Invoice #001 in the amount of \$290.00 dated 8/2/2011 to Carol McMahon for her contract work on the City's reimbursement from the Town of Hooksett, NH, from FY12 funds that were expended without a purchase order and to be paid from the Mayor, Contingency/Emergency, Unifund Account #101000.10.121.57800.0000.00.000.00.057.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council to allow the Community Development Department to apply for the Strategic Alliance For Healthy Mentoring Project grant in the amount of \$25,000.

**DISCUSSION:**

**Councilor Curcuru** explained that this grant of \$25,000 is available from the Boston Public Health Commission through the Center for Disease Control and there is no match.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor McGeary, the City Council voted by ROLL CALL 9 in favor, 0 opposed to allow the Community Development Department to apply for the Strategic Alliance For Healthy Mentoring Project grant in the amount of \$25,000.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council to allow the Police Department to apply for the 07-08 Organized Crime Drug Enforcement Task Force grant from the Drug Enforcement Administration for up to \$17,202.25.

**DISCUSSION:**

**Councilor Curcuru** explained that the Police Department has had an officer assigned to the Drug Enforcement Agency (DEA) for the past three years. As part of the agreement, the DEA agreed to reimburse the City for the overtime incurred by this officer. This is and has been the standard agreement between the DEA and all participating police departments that participate in this program. There is not match requirement of any kind for this grant. **Councilor Tobey** noted on a related matter that for some time there's been conversation with the Police Department of one day of coming into a substantial settlement based on a previous drug enforcement action. He asked the Administration provide a report from the Police Chief on the status of that matter. He wished this to be presented to the Council through the Mayor's Report.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor McGeary, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to allow the Police Department to apply for the 07-08 Organized Crime Drug Enforcement Task Force grant from the Drug Enforcement Administration for up to \$17,202.25.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council to accept under MGL c.44, 53A-1/2 the donation of a Livescan fingerprint scanner from the MA Bureau of Identification which has a value of approximately \$32,000.

**DISCUSSION:**

**Councilor Curcuru** explained that **this is to** accept the donation of a new Livescan fingerprint scanner from the MA Bureau of Identification; this was not an application. The machine was just installed several days ago and training has taken place; and there is no match; and has a value of approximately \$32,000.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor Ciolino, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to accept under MGL c.44, 53A-1/2 the donation of a Livescan fingerprint scanner from the MA Bureau of Identification which has a value of approximately \$32,000.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council to allow the Fire Department to apply for the FEMA Assistance to Firefighter's Grant for a total of \$503,500.

**DISCUSSION:**

**Councilor Curcuru** stated this is to allow the Fire Department to apply for the Firefighter's Assistance Grant from FEMA. If successful, it would allow the Fire Department to expand their training program for certification of safety officers and for HAZMAT, purchase more portable personal radios and use funds to purchase a new ambulance. There is a 10% cash match which the Administration represented proposing to use free cash for the purpose of the match.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor McGeary, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to allow the Fire Department to apply for the FEMA Assistance to Firefighter's Grant for a total of \$503,500.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council to accept a grant under MGL c. 44, §53A for \$184,066 (One Hundred-Eight-Four Thousand & Sixty-Six Dollars) from the MA Dept. of Public Health's Emergency Preparedness Bureau.

**DISCUSISON:**

**Councilor Curcuru** explained this is the acceptance of a grant for \$184,066 from the MA Dept. of Public Health (MDPH), Emergency Preparedness Bureau (EPB). This grant supplies funding for 15 different communities. They are the warehouse for this money. They have to come forward as if it were a new grant even though they are receiving it for the third year. Up to 15% of the awarded funds can be used for support and administrative overhead costs associated with the grant. There is no match. **Councilor Theken** stated since there is a continuing grant, she would appreciate a written update from Max Schenk, Interim Health Department Director which **Mr. Schenk** agreed to do.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor McGeary, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to accept a grant under MGL c. 44, §53A for \$184,066 (One Hundred-Eight-Four Thousand & Sixty-Six Dollars) from the MA Dept. of Public Health's Emergency Preparedness Bureau.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council to accept a grant under MGL c. 44, §53A for \$14,285 (Fourteen Thousand, Two-Hundred & Eighty-Five Dollars) from the MA Dept. of Public Health, Emergency Preparedness Bureau to provide funding for the North Shore/Cape Ann region Medical Reserve Corps.

**DISCUSSION:**

**Councilor Curcuru** stated part of the DPH EP grant they have requirement to have a Medical Reserve Corps (MRC) who can be activated in a public health emergency. They have a part-time program coordinator and receive funds specifically for the MRC. This grant for \$14,285 was awarded to provide funding to assist the North Shore/Cape Ann region in preparing for public health emergencies and enhance their MRC response capacity. The funds go through the Town of Westford. There is no match. **Councilor Theken** asked if this was overseen by Mr. Schenk which it was indicated that it was. She amended her request of Mr. Schenk to give an overview of all the grants coming to the City through his department and what they need from the Council in support, if anything.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor McGeary, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to accept a grant under MGL c. 44, §53A for \$14,285 (Fourteen Thousand, Two-Hundred & Eighty-Five Dollars) from the MA Dept. of Public Health, Emergency Preparedness Bureau to provide funding for the North Shore/Cape Ann region Medical Reserve Corps.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council to accept a grant under MGL c. 44, §53A for \$70,000 (Seventy Thousand Dollars) from the MA Dept. of Public Health, MA Collaborative for Action Leadership & Learning 2.

**DISCUSSION:**

**Councilor Curcuru** explained that the MassCALL2 Grant received by the City from the MA Dept. of Public Health, MA Collaborative for Action Leadership and Learning 2 is to provide funding to prevent and reduce fatal and non-fatal opioid overdoses within Gloucester. Given the most recent incidents, these funds are most timely. This is a contract amendment for \$70,000. Getting this grant is a big pat on the shoulder for the City. They gave out less than ever before; and it is highly competitive with Gloucester as only one of five communities in MA to get it, and is a tribute to the fine work of Joan Whitney of the Healthy Gloucester Collaborative. **Councilor Theken** stated her thanks to the Board of Health and the Health Department. Working at the hospital she's seen the work by Ms. Whitney. She clarified that her desire of the update of the Health Department grants was to give the Council a better idea of what these grants encompass because they are so crucial to the health of the community. **Councilor Hardy** was encouraged by what she heard today from Mr. Schenk; that they are reaching out to all children 18 and under in the community regardless of what school they go to.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor McGeary, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to accept a grant under MGL c. 44, §53A for \$70,000 (Seventy Thousand Dollars) from the MA Dept. of Public Health, MA Collaborative for Action Leadership & Learning 2.**

**Councilor Curcuru recused himself from the motioning, discussion and Council vote on the next Budget & Finance Committee matter.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 2 in favor, 0 opposed, 1 (Curcuru) recused, to recommend to the City Council the payment with FY12 funds for the mediation services provided for Loiacano Companies, Inc. v. Planning Board of the City of Gloucester Land Court Misc. Case from the Mediation Group submitted for services rendered in June 2011 for a total of \$308.15.

**DISCUSSION:**

**Councilor McGeary** stated this bill is for mediation services that rendered on the Loiacano case, a protracted mediation. After the fiscal year had closed they had not carried over the amount. The Legal Department wished to pay the mediator bill. They would have had the money to pay for it but they carried it over for another purchase order on another matter and those funds are already encumbered. **Councilor Hardy** asked for the invoice number for this in the Budget & Finance meeting, which she stated she'd not received. The Council President asked the Administration to include it for the Council's file.

**MOTION: On motion by Councilor McGeary, seconded by Councilor Ciolino, the City Council voted BY ROLL CALL 8 in favor, 0 opposed, 1 (Curcuru) recused, to recommend to the City Council the payment with FY12 funds for the mediation services provided for Loiacano Companies, Inc. v. Planning Board of the City of Gloucester Land Court Misc. Case from the Mediation Group submitted for services rendered in June 2011 for a total of \$308.15.**

MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council to accept a donation from the MA Executive Office of Public Safety and Security, Highway Safety Division under MGL c. 44, §53A-1/2 of a Preliminary Breath Machine with an estimated value of \$300.00 (Three Hundred Dollars).

**DISCUSSION:**

**Councilor Curcuru** stated that the Police Department had received a grant for the award of a preliminary breath test machine or PBT as commonly known and is the size of a walkie-talkie. The PBT assists in an officer making a decision in the field as to whether or not to make an arrest in a possible OUI situation. The machine has an estimated value of \$300.00. This donation came from the MA Executive Office of Public Safety and Security.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor Tobey, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to accept a donation from the MA Executive Office of Public Safety and Security, Highway Safety Division under MGL c. 44, §53A-1/2 of a Preliminary Breath Machine with an estimated value of \$300.00 (Three Hundred Dollars).**

**MOTION: On motion by Councilor Hardy, seconded by Councilor McGeary, the Budget & Finance Committee voted 3 in favor, 0 opposed to recommend to the City Council to accept a grant under MGL c. 44, §53A for \$61,795.00 (Sixty-One Thousand, Seven-Hundred, Ninety-Five Dollars) from the Executive Office of Public Safety & Security State 911 Department.**

**DISCUSSION:**

**Councilor Curcuru** stated this grant offers the Police Department Financial Assistance in paying salaries for those officers assigned to the E911 dispatch function on a full-time basis. This comes from the funds from the cell phone tax. The grant has no match requirements and runs through June 30, 2012. **Councilor Theken** thanked all the department heads for going after these grants. Not only are they doing their job but so are their teams. This is a phenomenal effort.

**MOTION: On motion by Councilor Curcuru, seconded by Councilor McGeary, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to accept a grant under MGL c. 44, §53A for \$61,795.00 (Sixty-One Thousand, Seven-Hundred, Ninety-Five Dollars) from the Executive Office of Public Safety & Security State 911 Department.**

**Ordinances & Administration: 09/19/11**

**MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council that it request the Administration, through Legal Counsel, initiate appropriate legal actions to establish the City's prescriptive easement rights in Pavillion (Pavilion) Beach.**

**DISCUSSION:**

**Councilor Theken** stated that after receipt of a letter from the Citizens for Gloucester Harbor and a discussion with their representatives at the O&A meeting, the Committee wishes to see appropriate legal actions taken to establish the City's prescriptive easement rights in Pavillion Beach once and for all. It was the will of citizens of the City. This way they can have rights to the beach. They have to take all the steps to do so.

**The Council recessed at 7:41 p.m. and reconvened at 7:46 p.m. due to technical difficulties.**

**Councilor Tobey** noted General Counsel has prepared a fine analysis as to why the community has legal rights to Pavillion Beach. For them to assert them the path is to go to court to have the court validate this. **Councilor Theken** felt it was about time to do something.

**MOTION: On motion by Councilor Theken, seconded by Councilor Tobey, the City Council voted 9 in favor, 0 opposed to request the Administration, through Legal Counsel, initiate appropriate legal actions to establish the City's prescriptive easement rights in Pavillion (Pavilion) Beach.**

**Planning & Development: 09/07/11**

**MOTION:** On motion by Councilor Ciolino, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council to authorize the lease of 65 Rogers Street (known as I4-C2) pursuant to the terms of the Request for Proposals entitled Request for Proposals #11204 Lease and Development of 65 Rogers Street with the following conditions:

1. Page 4, paragraph 2 remove the words “hotel, conference and”;
2. Pages 22 remove the word “sale” as the type of transaction, and just leave “lease”;
3. Page 24 change “disposition by sale: at the top of the page to “disposition by lease”.
4. Page 6, Number 2 Paragraph 2 Strengthening the Waterfront Economy: “Add a second sentence The intention of the economic development plan is to spur jobs and investment in the City.”

**Councilor Ciolino** then asked for a friendly amendment to remove the phrase “with the following conditions, as well as the four conditions listed in the motion on the table and replace it with the words, “received by the City Clerk’s office on September 27, 2011” which was then seconded by **Councilor Verga**.

#### **DISCUSSION:**

**Councilor Ciolino** explained to the Council President upon her inquiry of what was received into the City Clerk’s office on September 27<sup>th</sup> that what was discussed at the joint meeting between the P&D and B&F Committees, the final draft RFP was presented to the City Clerk on this date and that’s where all the changes were incorporated as requested by the Council. He would support the release of the RFP for bid. **Council President Hardy** stated the last copy sent out to the City Council was the one just received in the City Clerk’s office, she believed, and as Councilor Ciolino indicated which also reflects the change to the 99 year [term of the lease] rather than 50 years; it reflected the DPA use; including to but not limited to everything that was in the document. The **Council President** had also asked for some additional information related to the footnotes on the appraisal. She asked that Attorney Egan explain her request regarding the footnotes for some kind of connotation or note related to the appraisal that was done in 2010. **Suzanne Egan**, City Solicitor noted they had a discussion about the changes to the RFP with regards to the notes on the appraisal. What has been asked for and changed in the RFP is that there will be a footnote noting the request that the City had made to change the requirements of the DPA from the 75% water dependent use [75:25] to what is now 50% water dependent use [50:50] on pgs. 30 through 32 and the appraisals and executive summary that were done prior to the City purchasing the property will have the date of the appraisal to distinguish it from the date of the RFP. **Council President Hardy** noted many people reviewing this kind of document go directly to the summary page and would see the supporting use showing 75:25 when in fact the City allowed for 50:50 some time ago. So a footnote will be added to the appraisal itself simply to say that since the printing of the appraisal the City has approved the split to 50:50 on the use so that there is clarification that matches the front of the document on the 50:50 supporting use. **Councilor Theken** inquired when the use change occurred, which **Attorney Egan** confirmed it was in December of 2009. The appraisal was done prior to the City taking the parcel. They’re making the distinction that the appraisal notes the change may occur and they’re making the distinction that the change did occur, which is for the purposes of the RFP. People who are reading the RFP will know that change has occurred; and that is what they’re going to base their proposals on. **Council President Hardy** thanked the Attorney for that change. **Councilor Tobey** expressed his puzzlement at the wording of the motion which is to authorize the lease pursuant to the terms of the RFP. Looking to the future, the RFP is released; 120 days passes; proposals are received and evaluated; an entity is selected; a lease negotiated. What role will the then sitting City Council have, if any, in reviewing and approving the terms of the lease that has then been negotiated. **Attorney Egan** responded the RFP states the City Council will have the ultimate authority on the lease. The lease that is negotiated is subject to the approval of the City Council. She understood the Councilor’s concern about the way the motion is written. MGL Chapter 30B, Sec. 16 (State procurement law) provides that the City Council must authorize the disposition of the property prior to the RFP being released which is why it is written there. The motion also states it is subject to the terms and conditions of the RFP, which is also required by MGL Chapter 30B, Sec. 16 and also notes that everybody is on notice that it does have to come back to the Council for authorization. It will come back for a vote. **Councilor Tobey** clarified that the effect of this motion, if approved, is to authorize the release of the RFP and negotiation of the lease which must then come back to the then sitting Council for approval. That statement by the Councilor was confirmed by **Attorney Egan**. **Councilor Ciolino** stated at joint P&D and B&F meeting he requested on the appendix when it comes to the Waterways Board letter that it be dated should not be as submitted at that meeting but be as of that date; but now asked that the date on the final letter for the RFP be reflective of the date in the motion which **Attorney Egan** confirmed she could do. **Councilor Tobey** commented



that he believed that this RFP as drafted captures clearly the community concerns and legal interests that are “absolute benchmarks” against which proposals must be measured; and the RFP captures both regulatory constraints of C. 91, the DPA and Marine/Industrial zoning; and also the fact that the water plane uses are subject to collaboration and approval by the Waterways Board. He thought this sets it out fairly and that they can all proceed confidently. He commended the staff for that; and hoped they can get something moving there on that basis, set upon a good foundation and a solid piece of work. **Councilor Ciolino** stated he’d been asked by many residents why the City has been considering a lease not an outright sale. He knew what the Administration and the Council is trying to do tonight is that they do not want history to repeat; they don’t want a developer to buy the property and not develop it but “sit on it”. They don’t have another 35 years to wait for something to be built there. This is to ensure something will be built here. If a developer makes promises and can’t deliver, they can revoke the lease and look to a developer who can. It is a good and novel approach, likening it to what many businesses do now; leasing instead of selling. If it all works well, that piece of property will be the gift that keeps giving to the City via taxes and a lease payment. He expressed his wholehearted support and would vote for it. **Councilor Theken** stated at the Committee level they do a lot of discussion and negotiating through teamwork. There were three letters from the Waterways Board. They want all the citizens of Gloucester to be able to enjoy this piece of property. And they wanted to make sure it is not forgotten that this is a working waterfront; to make sure they don’t continue to push fishermen away. This is the one time they can see fishermen and tourism working together. They have to be careful in looking at the use where originally the RFP had just whale watch [for possible uses of the possible expanded dockage], and they said why just one – open it to all [uses allowed]. This is a first step. They are working with a the Waterways Board who are coming up with ideas on the working waterfront to make sure they can have bring transient boats but not push fishermen and that working waterfront away. The Councilor stated that would not happen. The Board is putting the fishermen first in ways they can co-exist. She asked for numbers of how many people can’t get dockage not for leisure vessels but for fishermen. They have a wonderful State fish pier that can expand; they can have their incubators, etc. They have a Waterways Board that is working on many things, including grants. They can work together. She believed Gloucester was not going to be a Newburyport or a Newport, RI; rather the City will be a working waterfront port. She thanked the Mayor, the Council, and citizens for their input, and City staff. **Councilor McGeary** wanted to commend the staff and the community for working on this project together. It was a long process and thought is how few amendments to the RFP there were is a testament to how the final document was thorough and thoughtful and represented a collaborative approach by many concerned citizens. The people who drafted it; the people who worked on it; who gave their input into it are all to be commended. **Council President Hardy** called for the full-sized I4-C2 site plan brought forward for display before the Council. She noted that in the RFP this map is depicted but is small that they couldn’t see the easements. The **Council President** asked Mr. Duggan to identify on the plan which parcel was 65 Rogers Street which he indicated was defined as Lot #1, 79,248 +/- sq. ft. He identified 65R Rogers Street which was defined as 28,020 +/- sq. ft.; he noted 65 Rogers Street is the only parcel being offered for lease, not 65R Rogers Street which he confirmed at the **Council President’s** inquiry. On further inquiry from the **Council President, Mr. Duggan** confirmed that the City does not have a lot known as 65A Rogers Street, nor does such a parcel exist. **Council President Hardy** stated the appraisal done in 2010; the appraisers noted erroneously the parcel 65R Rogers Street as 65A Rogers Street. In checking with the Assessor’s office, Tim Goode, City Assessor in an email dated 9/27/11 (on file) he indicates that there is no such piece of property in the City identified as 65A Rogers Street. She asked that it be entered into the permanent record so that someone reading that appraisal who might think there is a third piece of property there, when in fact there is not.

**MOTION: On motion by Councilor Ciolino, seconded by Councilor Verga, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to authorize the lease of 65 Rogers Street (known as I4-C2) pursuant to the terms of the Request for Proposals entitled Request for Proposals #11204 Lease and Development of 65 Rogers Street received by the City Clerk’s office on September 27, 2011.**

**Councilor Hardy** noted the bids will be opened in Kyrour Auditorium which will be advertised later on.

#### **Planning & Development: 09/21/11**

**Councilor Ciolino** recused himself from the next motion.

**MOTION: On motion by Councilor Verga, seconded by Councilor Whynott, the Planning & Development Committee voted 2 in favor, 0 opposed to recommend to the City Council to permit the Downtown Gloucester**

Christmas Parade on Sunday, November 27, 2011. Sign offs from the Fire and Police Departments are on file as well as written documentation of the parade route. The Certificate of Insurance naming the City of Gloucester as the Certificate Holder is to be on file with the City Clerk by the close of business on Friday, November 18, 2011.

**DISCUSSION:**

**Councilor Whynott** explained that this is a wonderful event for the community.

**MOTION: On motion by Councilor Whynott, seconded by Councilor Verga, the City Council voted 8 in favor, 0 opposed, 1 (Ciolino) recused, to permit the Downtown Gloucester Christmas Parade on Sunday, November 27, 2011. Sign offs from the Fire and Police Departments are on file as well as written documentation of the parade route. The Certificate of Insurance naming the City of Gloucester as the Certificate Holder is to be on file with the City Clerk by the close of business on Friday, November 18, 2011.**

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 the Sunday, October 30, 2011 5K Road Race sponsored by the North Shore Habitat for Humanity. Race route documentation along with sign offs from the Fire, Police and Public Works Department are on file with the City Clerk's office. A Certificate of Insurance naming the City of Gloucester as the Certificate Holder is also on file. All inns, hotels and function halls along the race route are to be notified at least seven days in advance of the race date and times runners are anticipated to be on City streets.

**DISCUSSION:**

**Councilor Ciolino** explained that the North Shore Habitat for Humanity 5 K Road Race has all documentation on file. The event received a unanimous endorsement of the Committee for this worthy charity.

**MOTION: On motion by Councilor Ciolino, seconded by Councilor Verga, the City Council voted 9 in favor, 0 opposed to permit the Sunday, October 30, 2011 5K Road Race sponsored by the North Shore Habitat for Humanity. Race route documentation along with sign offs from the Fire, Police and Public Works Department are on file with the City Clerk's office. A Certificate of Insurance naming the City of Gloucester as the Certificate Holder is also on file. All inns, hotels and function halls along the race route are to be notified at least seven days in advance of the race date and times runners are anticipated to be on City streets.**

**Scheduled Public Hearings:**

1. PH2011-036: Decatur Street #14, GZO §5.2 Earth Fill and Removal Regulations (Cont'd from 08/23/11)

**This public hearing is opened.**

**Those speaking in favor:**

**Frederick Geisel, P.E.**, 15 Steep Hill Drive, Gloucester, representing the applicant Salvatore Baldassano on the matter of the special permit for Earth Fill & Removal, §5.2 of the Gloucester Zoning Ordinance for Decatur Street, #14, Map 56, Lot 11 stated this application came about because of a Cease and Desist Order (dated January 2011) of the Building Inspector for fill placed on the property last November and December. He was involved soon after the Cease and Desist order was received by the applicant. They've come up with a plan to rectify certain things which happened with the fill on the property. There was a history dating back to 2004 where approximately 250-300 cubic yards of fill was placed on the property; and an abutter who is here now in opposition to this application, objected to that fill placement. The Building Inspector, along with the DPW and the City Engineer reviewed the situation and decided not to do anything about it at that time and the matter was not pursued further to his knowledge. In June of last year, the new owners of the property, the applicant for this permit, leveled the fill that was on the site, which was left in piles, not graded neatly. That was done in June of last year. An aerial photograph of June 18<sup>th</sup> (on file) shows an area of recent disturbance of the soil, basically the graded out soil. Last November/December the applicant went to the Assistant Building Inspector requesting to put some fill on the site and was told that as long as it was less than 200 cubic yards he could fill on the site. The applicant made arrangements with a City contractor to acquire excess fill from the Essex Avenue/Western Avenue water main construction. He acquired (with delivery slips on file) 190 cubic yards of fill that was placed on the site. He also acquired at Mr. Geisel's approximation 100

cubic yards of boulders to create a boulder retaining wall surrounding this fill to stabilize it and keep it in place. This spring they developed a plan to improve the drainage on the site. Water was running off the site from Decatur Street towards the rear of the property and flowing over the fill onto the rear part of the applicant's property then flowing onto multiple neighbors' properties. A plan was devised to capture the water flow into the ground to infiltrators commonly used for stormwater management to contain the flow. At the request of the City Engineer, Paul Keane, they conducted a series of perc tests on the soil, as might be done with a percolation test for a septic system, to evaluate the soil which determines how quickly water would seep into the ground. They determined the material placed on the site last November and December had a lot of fine material in the soil which plugged it up and was not able to accept water (didn't percolate through the soil). They then tested, after getting dig safe permission, deeper into the soil that was on site prior, basically going down below the fill material on the site to the natural grade of materials in existence for 40-50 years. That soil did accept water (percolate) into the soil. They revised their system a couple of times to create a vehicle to get stormwater runoff into the ground. That vehicle is a graded driveway surfaced with stone; a parking area at the back of the site surfaced with stone. Below that they have larger stone and infiltrator galleries to accept stormwater. Below those systems they have proposed to remove an estimated 220 cubic yards of material which is mostly the material brought in last fall, and replace it with course gravel which has a high capacity to accept and store water; and also different grades of stone from 1.5 inches to ¾ inch stone to allow water to get into the soil underneath. They also proposed three catch basins tying in directly to the infiltrators to get water from the surface into the stone underneath to the infiltrators for storage and dispersal into the underlying soils. The catch basins do not show on the landscaping plan (before the Council for view and previously submitted in paper form) but do show on the plan that went to the P&D Committee that shows the utilities and all of the details which is dated August 17, 2011 and was the last plan that went to P&D Committee on September 7, 2011. Also their other plan concerns the landscaping which was before the Council for view. **Mr. Geisel** explained the landscape plan to the Council. The green area will be grassed including existing grassed areas around the house and fill area. They also show along the top of the boulder wall they have proposed a rail fence because this area will be driven upon as a driveway, and there is a graded gravel area. Inside of that they'll have a six ft. strip planted with arborvitae six ft. on center with a mulch area. All of this area will be graded towards the center, towards the roadway, the driveway that runs down from Decatur Street towards the rear of the property. From the rear part of the property the grade will be changed so that it is running off the back. The grade will be back towards the stone area in the rear of the property. The sides will grade down towards the middle so that all the grading will be towards inside and not off the property so that if there is any ponding of water from heavy rainstorms, it will give it a chance to bleed into the ground into the stone. The rear portion of property at the end of the driveway, they propose to be a stone surface. There is a trailer and boat they wish to park away from the house for storage off season. There is an area of ledge outcrop which extends to the east from the property line onto neighboring properties and also extends underground through the property and appears again onto a neighbor's property (Mr. Marcuse's property) below the west side of the stone retaining wall. They've done calculations run through a Hydro-Cad program and calculated that from the entire area of fill placed on the site, about 6,000 sq. ft., that this infiltrator system alone will accept 100% of the runoff for all storms up through and including a 100 year storm; contain it, store it and allow it to slowly percolate into the ground. With the system they have proposed they believe that the system not increase runoff, but will be a substantial decrease of runoff to neighboring properties from the fill area. The rear of the property away from Decatur Street has not been altered, and there are not plans to do so, which consists of trees, brush and grass. The existing retaining wall as illustrated on the plan he handed out to the Council (submitted and on file) has a fairly steep slope which they will be pulling back in to decrease the slope, leaving the top of the slope as it is but bringing the top further back in towards the center of the property to decrease the angle of the slope to add further stability to this area. **Mrs. Jacqueline Baldassano** stated she and her husband, Salvatore Baldassano, are the residents and owners of 14 Decatur Street. They purchased their home with the intention of raising their family in the City in which they both were born and raised. Residence at 14 Decatur Street was their dream home, an ideal location with almost a half acre of land; and the house had potential. Leveling their land was their first step to better utilizing their property for their future plans of starting a family. Her husband went to the [Building] Inspector's office asking about securing a permit. He was told that they did not need a permit to bring the amount of fill they planned onto the property. Thinking they did what they were supposed to, they began work. She testified they could honestly say that they never meant to go against any City regulations nor were they aware that abutters were upset with the work they were doing despite conversations that were had. The City had a 'stop work' on their property roughly in November 2010. It is almost a year later. She and her husband, she believed, had done everything in their power to provide the City with the documentation required to move forward spending most of their savings on tests and engineer fees. They've been willing to make the required improvements to their property to meet the concerns of their abutters from the beginning. They are asking for the permit so that

they can finish the work they started. **Mr. Geisel** then went over the standard by which the Council will judge the permit under the six criteria under zoning ordinance Sec. 1.8.3 for a Special Council Permit:

- Social, economic or community needs, the project will allow better utilization of an existing oversized (20,400 sq. ft.) lot which will improve the property value. Without filling, the rear half of the lot the lot is mostly unusable.
- Traffic Flow and Safety: The driveway improvement will allow the applicant's vehicles to be parked off of this narrow street.
- Adequacy of utilities and other public services: No additional utilities will be used for this project.
- Neighborhood character and social structure: The neighborhood consists mostly of single family houses on smaller lots with some condominiums. The social structure of the neighborhood is working families. The project will allow the applicants to raise their family and have a quality yard and play area for their children. The project will not alter the neighborhood character or social structure.
- Qualities of the natural environment: The natural environment in this neighborhood consists of steeply sloped lots, with many ledge outcrops and limited treed areas. This project is consistent with the existing natural environment.
- Potential fiscal impact: The project will enhance property values of this property.

**Those speaking in opposition:**

**Attorney Mark Nestor**, 45 Middle Street representing Mark and Josephine Houde, 9R Blake Court, abutters of Decatur Street #14 explained his clients are opposed to the application of Salvatore Baldassano, the owner of 14 Decatur Street for a Special Permit "after the fact". He also explained he retained Paul Fischer; P.E. who had reviewed all of the plans submitted by the applicant and is prepared to make comments on them. The Attorney continued that there has been a significant amount of fill that his clients have had to endure over the last 10 years. By the applicant's own count, somewhere between 500 to 600 cubic yards [of fill] have been dumped in the last five years; and counting the boulders that were put on the property by the current owner, the applicant, approximately 300 cubic yards of either fill or boulders were put on the property to the detriment of his clients. His clients have lived there for 35 years. For most of that time they have not had problems with water flow from the back property. In 2005 there was a problem they complained to the City, which they fixed themselves by doing a runoff on the right hand side of their property. They're now confronted with fill, being represented at one time or another by the applicant's engineer to be clean, but if they look at a picture of the fill (shown to the Council and on file) there is cinderblock and pieces of asphalt that has gone into that property allegedly taken from the fill taken out of Essex Avenue, but they're not sure about the other that was out there. It is one of the reasons they were told in the Cease and Desist order to stop. Showing another picture of the property (on file) of the fill that is brought up, **Attorney Nestor** stated one of the key issues is that these boulders, which what his clients sees, were put on the property by the applicants. They didn't have this large wall there until the current applicant moved in. The 100 cubic yards of boulders was not placed with permission of the City there as well as the 195 cubic yards of fill. There is no mention about removing those boulders. All they are talking about is reducing the size and potentially pushing them back. Those boulders are there solely because they brought in the fill and had to put the boulders in to keep the fill from spilling over to his clients'. He reiterated this is what his clients' have been confronted with since November 2010. Pointing to a photograph (on file) showing the back of the house, the Attorney stated as a result of all the fill going in, the water has come down and gone to the left of the rear of the house versus before they had channeled to the right, off the ledge and off the dirt and ledge that was pushed over the top and goes down (showing picture of the client's basement outside), and the water has been channeled down having to deal with that issue since November 2010. The ground has worn away from the water, and there is actually created a small channel there. It goes away from the drain system they put into the property to address the concerns they had in 2005; with essentially the drain system going through the right side of the house and going down the driveway in front of the house. He showed the Council another picture showing the house in wintertime (on file) and supposedly frozen there is enough water that goes down the property that it eats away at the snow. He noted when he was there today viewing the property, it hadn't rained for a couple of days, they have a catch basin on the right side of the property which takes the water that comes down from the hill and is continuously running with water. The water that comes down off the hill onto his client's property got so bad they had a flood into their basement. All the dry wall had to be replaced with new concrete floors and had to raise the concrete floors to ensure they wouldn't have any floods in the future because of the runoff. The water goes from the 10 ft. [inch] pipe on the right side of the house, down the front of the house across and gets reduced to an 8 inch pipe and that pipe reduces in size to a 6 inch pipe out through the neighbor's property to the street. The problem they're experiencing this year is too much water comes off the hill. The 10 inch

pipe can barely contain it. It backs up as the diameter [of the pipe] gets smaller; the water then comes back and it floods in the back. That is what they are experiencing right now. The concern they have is twofold. One is the issue is the soil whether it is contaminated or not it has been seepage into the ground and impacting their clients. There is a concern that the system design because of the way they have it sloped ends up having the water still puddle in the center of the property on top of the wall directly behind his client's property; and the infiltration system doesn't work they'll then be again subjected to flooding off the top of the wall down to his client's property. Mr. Nestor noted that a Councilor at P&D commented, "What do they do if they sign off on this special permit, and it doesn't work?" The Attorney felt the answer was then there is not much they can do. There was talk about revocation of the special permit. Even if they were forced to resolve it in court they are still speaking of a significant delay of his clients' being forced to endure and potentially have to repair again their property. It should not have been done in the first place, he contended; and he understood the applicant's best intention who talked to someone who apparently may have given them bad information. But they now have a wall of boulders; 195 cubic yards of new fill not put there with a permit on top of anywhere between 500 and 800 prior cubic yards of fill based on a letter by John Judd, PE, their prior engineer submitted to the Building Inspector (their exhibit #1 on file). He believed that engineer calculated 1,037 cubic yards of fill put there. There is not any special permit issued by the City for any of that fill. The height of the rock wall is too high, even if they push back the rock wall, it is still a rock wall at approximately 45 ft. in height; and there is a significant risk that their infiltration system in adverse weather does not hold the water then his clients bear the brunt of this runoff; and they are the ones who would stand damage. **Paul Fischer**, Civil Engineer, licensed engineer referencing a diagram he passed out to the Council (on file) shows a pencil line and some blue lines. The blue lines represent where the water goes down onto Mr. Houde's property. He noted if they take the perpendicular to the topographic map that is the direction the water will flow. The pencil line, if you take the perpendicular to the topographic lines that is what the engineer has shown to be the topographic maps, which is the elevation map that is equal height. Going perpendicular to that, that is the direction the water will flow. The pencil line is showing the flow of water from the properties above Mr. Baldassano's property and then is going past the first raised ridge behind Mr. Baldassano's house. The one concern is that area past the ledge has all been covered with fill. That is taking water flowing off of the property line between Mr. Baldassano and Mr. Houde on the right side of the property of Mr. Houde below the circles, (on a plan before the Council and on file) indicating the embankment, flows down also to the rear of the Baldassano property and comes down as they are facing the plan to the left of the property pin and goes down towards the left side of Mr. Houde's house parallel to the joint property line. The concern is not to have this fill at all but to go back to the natural flow so the only water going downhill in this area is natural runoff as it was before. Right now since this is raised facing the plan in front of the Council, it is the ledge which is shown as little rectangles indicating their location as centrally located on Mr. Baldassano's property. That is the east most ledge. To the rear of that on Mr. Baldassano's property is the area that is the preferred area not to be raised because it is changing the amount of water Mr. Houde gets on his property. Any water not taken up by the plan by the infiltrators proposed, that water would come down, going through the 10 inch pipe which reduces to 8 then 6 inches. For all this money that is being spent, if Mr. Baldassano were able to do some work on the Blake Court property which is difficult for Mr. Houde, it would alleviate a lot of the potential problem along with what they are doing up on the property. Regarding the depth of the ledge, the concern is that the work that was done on the infiltrator gallery closest to Mr. Baldassano's house (on the rear) there is no excavation for the depth of the ledge shown on the plan and was not addressed which he believed it should be because in a likelihood something will have to be done because there is a ledge at the surface. At the other end is the excavation of the infiltrators that is down deep. Somewhere in between that ledge will be there and interfere with the flow of the water into the ground. That needs to be taken care of. No matter whether there is ledge on the ground at whatever depth, ledge is impermeable in this case as far as he knew; and there needed to be a way to get into the ground and doesn't appear to be addressed. It is a matter of digging down and showing where the ledge is. Where the ledge was you can see ledge on the surface. At the opposite end going towards the Baldassano house there is an excavation and nothing in the middle and that should be there to show the system is going to work where it is located. He suspected it would have to be moved to the right, closer to the Baldassano house.

**Clarence Leveille**, 15 Blake Court, a resident at that address for almost 68 years expressed concern about the runoff water his neighbors' experience. In the spring he gets water and in heavy rain he gets water. Since the property has been filled in he is no longer having that happen. But his neighbor at 13 Blake Court does, as does his neighbor at #11, as does Mr. Houde. He felt the water is being diverted. He noted Mr. Geisel's submission of 9/27/11 stated it would enhance their property values. He used to look at trees before but now he looks onto a riprap wall and a "pile of rubbish". He found out a few weeks prior that the State says you're not allowed to build any wall higher than four feet without a variance. He claimed he cannot see over that wall, with his height being six ft. By Mr. Houde's house he thought it was 10 ft. tall; and how can they put all that fill in with a wall only 4 ft. tall. Noting there are a

lot of children in the neighborhood he expressed concern children may be hurt if the boulders let go as the wall consists boulders stacked on boulders.

**Communications:**

**Linda T. Lowe**, City Clerk stated she was in receipt today, 9/27/11, from Mr. Geisel, the applicant's representative, a statement which reviews the standards already recited into the record from the zoning ordinance by Mr. Geisel; and proceeds for several pages to rebut the materials received from Attorney Nestor point by point on the project.

**Council President Hardy** confirmed with Councilor Ciolino that no one on the P&D Committee nor the Council had seen this communication prior to the meeting and had it distributed at that time to the Council (on file with City Clerk).

**Rebuttal:**

**Mr. Geisel** stated that he agreed runoff has changed and has observed that. They're trying to alleviate and eliminate that problem. They agree and haven't disputed that. They need to change the character of the fill. They'll remove approximately 220 cubic yards of fill which is more than brought in last fall, and replace it with good quality coarse gravel and stone to absorb water. They'll change the slope so it is sloping in towards the property and to be able to accept this flow so it won't run onto neighboring properties. He's not saying what is here now is what they want to leave there. They're asking for the opportunity to correct the situation. The wall does not need a variance for building a wall more than 4 ft. tall. It needs to be designed by a professional engineer and constructed to that standard which is what is being done. Responding to a couple of points by Attorney Nestor and Mr. Fisher about the unclean fill, he agreed there are some pieces of asphalt. They dug 6 or 7 test holes and encountered one piece of asphalt in all those holes. There are some exposed pieces from fill that's been on the site for many years of concrete blocks, cinderblocks and pieces of asphalt, noting pieces scattered around from previously submitted photographs, The MA DEP "does not consider weathered asphalt, clay bricks, mortar or concrete to be a hazardous waste or even a solid waste. The recommended method of disposal of such materials is recycling in place. An example of this is on-site crushing which might be applied that arises in the case of replacing a road or a driveway. The old pavement would be dug up, crushed to less than 6 inch sized pieces (which he stated most of these are) and used as a new base for the new road or driveway." **Mr. Geisel** continued that they can't even put this into a solid waste landfill because it is not considered to be solid waste. They want it to be recycled to be used as fill because it doesn't leach into the ground or to neighboring properties. The City uses crushed asphalt to repave or put a base down on parking lots of Good Harbor Beach and Wingaersheek Beach. If this was a leaching material, he didn't believe the City would put it in a resource area. Excessive fill causing water runoff: They're claiming that the amount fill they're putting in causes excess runoff. Fill in and of itself does not cause runoff. The nature of the fill or the way it is construction can cause it. If there is a flat plane and build a steep embankment, when water hits it, it will run off much faster than if it was a flat area. They haven't done that. Water runs off of the rocks but most of it percolates right in where the rocks are. The cause now is the nature of the fill. The fill was found to have a lot of fine material which doesn't allow the water to percolate which is why they are replacing it. They've excavated near the ledge and found only the pre-existing conditions to the ledge; and there was only 6 to 8 inches of material on top of the ledge. That will not absorb very much water. The ledge won't absorb any water. They are replacing it with two to three feet of coarse gravel on top of the ledge on the side of the ledge to absorb the water that is falling there. It will significantly reduce the amount of runoff that all the neighbors see.

**Rebuttal to the Rebuttal:**

**Attorney Nestor** noted Mr. Geisel spoke about removing 200 cubic yards but they would replace it which keeps a significant amount of fill there on top of the fill that was there before. The DEP regulations Mr. Geisel spoke of deals with asphalt 20 years older or more. By his own admission, he acknowledged there have been at least 300 cubic yards of fill put in there by someone else since 2005. They don't know the source of that fill. If they look at the first photograph (on file) the asphalt and cinderblocks are on top of the fill the applicant brought in. This, he stated, is not clean fill that is just impervious on top. This is what was brought in by the applicant. Talking about putting in crushed rock on a parking lot versus putting in this kind of fill on an 8 ft. high wall or 10 ft. high wall overlooking his client's property is "two different things". He submitted to the Council that they have now created a man-made mountain that is approximately 10 ft. tall because that is when the boulders went in. The boulders went in to keep the wall from falling over put in after the fact by the applicant. Addressed in his memo and before the Council is their concern about freezing if the system fails and freezes on those rocks water will come over. The plan has it running from the road to the center and back of the yard into the center; so now the primary concern of this client there will be a bowl in the center of his backyard, which is right behind his clients' property because that is where it is going. That is a major concern.

**Questions:**

**Councilor Curcuru** asked with regard to City professionals, what departments has this been in front of. **Councilor Ciolino** stated they heard at P&D as they did this evening that of “dueling” engineers. The P&D Committee requested Paul Keane, PE, City Engineer look into it. His letter dated August 18, 2011 is in the record and was before the Committee. His suggestions and requirements are in the motion. What P&D did is to take the advice and counsel of the City’s own engineer. **Councilor Curcuru** asked about the reference to the fill’s origin and the Attorney had mentioned Essex Avenue and wanted to know where it came from. **Attorney Nestor** understood the applicant purchased the fill which he thought was from when they were redoing Essex Avenue which was the 195 yards but believed it was represented he believed was purchased from an Essex Avenue excavation, but he thought he could be wrong. **Councilor Curcuru** noted Mr. Geisel brought forward a plan to rectify this problem, which **Attorney Nestor** agreed with, which the Councilor expressed; the Attorney is not in agreement with. The City Engineer is agreeing with Mr. Geisel’s plan which **Attorney Nestor** stated was correct; that the City Engineer wrote a letter and Mr. Nestor has a copy of it, but disagrees with. **Councilor Mulcahey** noted the pictures submitted (on file) looks like a septic system. It’s been perced. No one knows if it will work except the engineers and our engineer says yes. They had 20 ft. of snow this winter, and a lot of it has to do with flooding. Many residents who never had water before this winter got it. She thought that the work being done here seems to be correct and as long as the ground holds the water she didn’t see why it shouldn’t happen. **Councilor Theken** wondered how long have the Baldassano’s owned the property and then had a conversation with Mr. and Mrs. Baldassano where **Mrs. Baldassano** noted it’s been since June 2009 and started work in June 2010. **Salvatore Baldassano** explained he was told by Greg Cefalo, Assistant Building Inspector that no permit was necessary; opened the code book in front of him and told him and read to him that under 200 yards there was no permit necessary. If there were any problems, he should come see him. They put in 190 cubic yards. **Councilor Theken** reiterated they have a person who purchased a house two years ago. They heard from one neighbor who stated he’s had flooding for years who’s been there for 68 years. They saw diagrams. Before the applicants bought the house there was flooding - a neighbor had flooding in the back; it’s going to flood even more; they had to elevate floors; and nothing has been done. They have a project in front of them filled with complex drainage details and excavation, landscaping. She felt that this project would improve the neighborhood. This has been going on for quite some time before P&D. There is still argument on the quality and how it will be done. The City Engineer looked at both sides of what needed to be done and gave his opinion. The Baldassano’s agreed to do the work that was recommended. The Councilor expressing her concern that there was not a compromise amongst the neighbors asked what generated the Cease and Desist Order because the code stated it was under 200 cubic yards and the applicant did only 190 cubic yards. **Mr. Baldassano** stated Bill Sanborn, Building Inspector received calls from the applicant’s neighbors, and told him in fact, that after 50 yards they needed a permit. He stated he was misled by the Assistant Building Inspector who read out of the “City Code Book” [zoning ordinances]. **Councilor Theken** was sure the Building Inspector addressed these questions with P&D. **Councilor Ciolino** stated in a discussion with Mr. Sanborn, they underestimated the amount of fill that existed. He stated there were errors made, and the applicant was set off incorrectly. It was not the fault of the applicants. **Councilor Tobey** understood the wall does need to be designed by engineers which both Mr. Geisel and Attorney Nestor assented. **Councilor Tobey** continued that the City Engineer has to approve the plan for that wall which Mr. Geisel also confirmed and that the City Engineer had agreed with the design for the change in the slope of the wall by his approval of the plan submitted in August by Mr. Geisel in writing. The Councilor asked if **Attorney Nestor** agreed; and he expressed he wasn’t sure he did. The Attorney then read from Mr. Keane’s letter, “No work on this property, subject to the conditions of the above referenced permit, shall begin without providing the Gloucester DPW Engineering Division no less than two (2) business days’ notice of the commencement of such work so that a proper inspection protocol might be developed with the supervising engineer.” The Attorney submitted that Mr. Keane will want to look at the plans of the wall to make sure they’ll conform before it is approved. **Councilor Tobey** noted that language was captured in condition #3 of the motion they’ll be entertaining and asked what the intent was of P&D by that language specifically as it relates to the engineered wall. **Councilor Ciolino** stated the plan they’re working from is as revised on August 17, 2011, and the proposed work; and pointed out Item #2 in the conditions that the proposed work on the plan of August 17<sup>th</sup> and quoting “...shall be prepared under the direct supervision of a Professional Land Surveyor and a Professional civil/site Engineer licensed to practice in the Commonwealth.” As they saw this evening, the plan shows the wall being re-graded and being shallower than the steepness it is now. P&D felt that it was covered and confirmed to Councilor Tobey that P&D believes the City Engineer has approved that design in writing. **Councilor Hardy** asked if the letter contained conditions. **Councilor Ciolino** stated, “Yes”; that all the conditions came from Mr. Keane the City Engineer. They had the dueling engineers and needed a third party review. Mr. Keane was the reviewing party. The City Clerk read the letter of Paul Keane, City Engineer to the Gloucester City Council dated August 18, 2011 in reference to 14 Decatur Street into the record (letter on file). **Councilor Tobey** construed that document to

mean that they do have an engineering approval; that the project, the wall and work associated with it and future work are covered by provisions 2, 3 and 4, which the Chair of P&D agreed. Councilor Tobey brought up condition #1 of the motion to be put forward that the property located at Map 56 lot 11 will not divert that water from that property onto the property of any other. He took that it happened for ever. Won't there be a continued discharge regardless. **Mr. Geisel** believed the condition was put in there to prevent the diversion of water to a different direction than it had in the past. **Attorney Nestor** noted the problem he had with that is the current flooding his client is having is only since the wall went in. If any future water comes down he is violating that condition. The water that came on the right was there for years. That is fixed. It is the brand new water he has an issue with and is their concern and considers it new water. If it continues to come down they would be in violation of a special permit. **Councilor Tobey** asked what the liability is of a property owner who diverts water to another property and damage incurred. **Attorney Nestor** stated they could file suit for damages caused and to seek that in order for the applicant alleviate the problem. He can't get a judge to say stop the water coming over the ledge, but they have a cause of action. The Councilor asked if any negotiations had taken place between his client and the applicant. **Attorney Nestor** stated "No". They only got his expert's opinion the night before the P&D meeting. **Mr. Geisel** noted the revised plan was given to Attorney Nestor less than two hours after it was approved by the City Engineer. They made every attempt to iron things out. He didn't believe that his clients would spend the money to remove and replace the drain pipe on Mr. Houde's property. They have not sat down with the Houdes and Attorney Nestor. **Councilor Tobey** advised that there was still time to do so. **Councilor Ciolino** noted there was a compromise talked of at P&D which would involve the applicants going onto private property, over two different properties and a City street to do a drainage system which the Committee felt was an impossible condition to require of the applicants. The City does have an ordinance that no one can divert water. The reason they put Condition #1 in was that the landscape is changing, and they were assured by Mr. Geisel that any water on the property will stay on the property. They're talking about ledge and a big hill with water following gravity. He felt it would probably not be by 100%, but most of it will be contained. The City doesn't place such complex drainage systems in their own parking lots. **Councilor McGeary** asked if Mr. Geisel took into the worst case scenario; have they done water flow studies to see where the water would end up if the system were not able to handle it. **Mr. Geisel** stated the infiltrators and the immediate stone that surrounds it; it would take a 100 year storm. What they have not added onto it is not taking into account all the stone they'll be replacing in the back of the property adjacent to Mr. Houde's property, adding additional capacity and coarse gravel material which also has additional capacity. Adding all that in he believed they're looking at a 200 year storm capacity easily. He referenced Attorney Nestor's letter of September 23<sup>rd</sup> (on file) which mentioned freezing conditions with ice clogging thing up. Ice will occur if you have soil saturated and can't get into the ground. This is surfaced with stone. If it falls as rain it goes onto the stone into the ground. It will not form ice. The ground freezes because it is saturated with water. This water will go through stone underneath so it won't be a saturated surface. Freezing rain, an extreme condition, and then rain after will thaw the ice and the water will go into the ground. If it ponds a bit, this is designed for it to be pooled in the middle and get to the catch basins. The key is to get to the water from the surface into the ground which this system will. **Councilor Hardy** explained that Exhibit #9, a photograph showing a pipe coming out of a stone wall, and wanted to know if water flowed through that pipe. **Mark Houde**, 9R Blake Court stated that is a vent pipe from his drainage system approved by the City in 2005 and installed then also. It is on his property, about 18 inches off the ground and leads north/south towards his house and hooks into his gutter drainage system on the back of his house, and goes down to the drainage pipe. **Councilor Hardy** asked if there was any photographs showing piping coming from the Baldassano property onto Mr. Houde's property. **Attorney Nestor** stated there is no piping coming from the Baldassano property to the Houde's property. His client created a catch basin on the right hand side of his property which he did not have a picture of there, to address the 2005 issue which they channeled it on the right side into a catch basin in the pipes and eventually makes it out to the street down the driveway which is seen on Exhibit first picture on #9 (on file) showing Mr. Houde's property in the back where the cars are and the wall is over to the left of that. **Councilor Hardy** expressed she was trying to determine how they can ascertain how water is being diverted from one property to the property of another. She wondered if it was because of the pitch and the landscaping that is now occurring. Attorney Nestor explained because of the wall the water that used to go to the right down to Mr. Houde's property where there is a catch basin, the water now goes to the left and onto the left hand side of this property where there is a ledge that runs down the center of his property from Baldassanos to his client's house. Water ends up streaming down that back wall, which is pictured in Exhibit 5 (on file), goes from there around and into the house and down out to the front yard. There was no system set up to drain the system out of the left side of the house because that was not an issue until recently. This is brand new, and he'd have to put in a new system if this continues. **Councilor Hardy** asked what the future use of the improved filled yard would be. **Mrs. Baldassano** stated they're planning a family and would like to put a play set to utilize the property and to put a



boat and work trailer. **Councilor Hardy** inquired if they will put plantings there. **Mrs. Baldassano** stated they would put in arborvitaes along the border of the rock wall and in response to an inquiry by **Councilor Hardy**, **Mrs. Baldassano** stated they are not planning a garage. **Councilor Hardy** asked if there were any conditions out of his Committee about the future use can be of the filled property. **Councilor Ciolino** cited condition #2, "Any future proposed construction on this site, be it an addition to the existing house, construction of an outbuilding, or any other significant site work that involves excavation, filling or re-grading not shown on the plan noted above, may only be done upon approval of a new site and drainage plan developed subject to any ordinances and practices and procedures then in effect. Any such new site or drainage plan must be based on a then current on-the-ground survey conducted in accordance with the Survey Standards developed by the City of Gloucester DPW Engineering Division, appropriate soil and groundwater testing, and any required design calculations, all of which shall be prepared under the direct supervision of a Professional Land Surveyor and a Professional civil/site Engineer licensed to practice in the Commonwealth." He stated this goes back to the process. **Councilor Hardy** stated no matter which way the Council votes on this application, she requested a copy of this application and decision go into the permanent file of the Building Inspector and Engineer's office. **Councilor Theken** noted that before they started Mr. Houde had trouble on his side and asked what the Houde's did before the Baldassano's owned the property. **Attorney Nestor** noted his client did the work. He cut a trench to channel the water. **Councilor Theken** noted he had to do a basin. This wall is causing more problems and a cease order was put in place but the work is not completed which is why she believed they have a problem now. They (the client of Attorney Nestor) don't know if it would work. But the applicant, she reiterated, didn't complete the project. They started a project and because there is no drainage it would overflow. The applicant wants to repair it. They're mandating all these things. She believed the plans proposed are going to relieve a lot of the rainfall and piping issues. There were problems on the street before. They need to solve their problems. **Councilor Tobey** noted if this Council grants this permit did Mr. Nestor and his Engineer feel Mr. Houde would be worse or better off than he is in now. **Attorney Nestor** stated he would be in the same situation to fix something that is not his fault. Based on the comments of Mr. Fischer the plans will not give the relief and still be overflow onto his client's property. **Councilor Tobey** asked if Mr. Fischer saw a middle ground that could be struck. **Mr. Fischer** responded it was the filling past the ledge, the fourth line of ledge and the water flowing across that to the rear of the Baldassano property to the Houde's is the main problem. It can be reduced; and a plan to go through the pipe that exists now can be changed which would go a long way to alleviate the problem. **Councilor Tobey** asked had they discussed it with Mr. Geisel to try to find a way to fix this. **Mr. Fischer** emphasized the depth of the ledge to look for a plan to do this. **Councilor Tobey** saw this being approved and being appealed. He thought they'd be well served to find a middle ground from engineering and neighborhood points of view. **Council President Hardy** noted they're about to close the public hearing. She asked **Councilor Ciolino** asked if there was any room for compromise at P&D, to see if they could come to compromise there. **Councilor Ciolino** stated they've heard it twice. Water flows downhill. The compromise is the plan that is in effect. They can't do more than what Mr. Baldassano is going to do. He felt Mr. Houde wouldn't be happy until the entire fill is removed. **Councilor Whynott** believed they could close the public hearing and still receive more information. He thought there will be compromise; that there is room for it; but he didn't think there would be. **Councilor Verga** agreed there is always room for compromise. It came down to dueling experts. **Councilor Tobey** didn't think this Council or any subcommittee meeting was where people get to negotiate and compromise. He thought everyone would be well served, the Houdes and Baldassanos, to try to talk this through in a different venue. **This public hearing is closed.**

MOTION: On motion by Councilor Verga, seconded by Councilor Whynott, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the City Council grant to Salvatore Baldassano a Special Council Permit (SPC2011-001) pursuant to section 5.2 of the Gloucester Zoning Ordinances for earth removal and fill for Decatur Street #14, Gloucester, Massachusetts, Assessors Map 56, Lot 11, to fill the rear yard to make a useable yard, construct a retaining wall and to construct a crushed stone driveway extension, stone infiltration trenches, with landscaping and a fence around the retaining wall as shown on the site plan dated April 15, 2011 by Frederick J. Geisel, P.E., 15 Steep Hill Drive, Gloucester, revised 6/01/11, revised 7/23/11, and final revision of 8/17/11 with the following conditions:

1. That the property located Assessors Map 56, Lot 11 will not divert water from that property onto the property of any other;
2. All proposed work shown on the plan and described in a letter dated April 17, 2011 shall be done under the direct supervision of a civil/site engineer properly licensed to practice in the Commonwealth of Massachusetts;

3. Any future proposed construction on this site, be it an addition to the existing house, construction of an outbuilding, or any other significant site work that involves excavation, filling or re-grading not shown on the plan noted above, may only be done upon approval of a new site and drainage plan developed subject to any ordinances and practices and procedures then in effect. Any such new site or drainage plan must be based on a then current on-the-ground survey conducted in accordance with the Survey Standards developed by the City of Gloucester DPW Engineering Division, appropriate soil and groundwater testing, and any required design calculations, all of which shall be prepared under the direct supervision of a Professional Land Surveyor and a Professional civil/site Engineer licensed to practice in the Commonwealth;
4. No work on this property, subject to the conditions of the above referenced permit, shall begin without providing the Gloucester DPW Engineering Division no less than two (2) business day's notice of the commencement of such work so that a proper inspection protocol might be developed with the supervising engineer.

#### **DISCUSSION:**

**Councilor Ciolino** stated that subsequent to the vote taken by the P&D Committee on May 18, 2011; this matter came under further review by the Engineering Department due to more in-depth issues put forward by the City Engineer. The Committee re-voted this matter to reflect those changes, and a new locus map as submitted by Fred Geisel, P.E. on behalf of the applicants, and further to incorporate additional recommendations made by the City Engineer, Paul Keane, P.E.

Therefore, on the basis of the application and plans submitted to this Committee in August of 2011 and reviewed at the P&D meeting of September 7, 2011, along with a revised locus plan submitted and now on file, the representations of the applicant and their agent, the Planning & Development Committee found that the requirements of Sec. 1.8.3 for the granting of a special permit have been met, in that the six criteria are satisfied. As required by Sec. 5.2 of the zoning ordinance, the Planning & Development Committee has considered the location of the proposed fill activities and its effects on the general character of the neighborhood. The applicant and abutters have represented that the drainage in the neighborhood will improve as a result of the fill activities. The fill and creation of a useable yard is consistent with the neighborhood. There will be no adverse affect on the general safety to the public on the public ways in the vicinity. For those reasons, the Planning & Development Committee voted to recommend to the City Council it vote in favor of this Special Council Permit with the modifications now in place. He endorsed the Special Council Permit as it stands before the City Council. **Councilor McGeary** expressed as the Ward Councilor he will vote in favor of this special permit. Supposing hypothetically they required the Baldassanos to remove the 190 cubic yards of fill and the exact boulders put in place. Mr. Houde could end up with a worse situation. There have been good faith efforts made and costly efforts to ameliorate the problem. The concern is not a fact. Mr. Fischer and Mr. Geisel can only allude to a concern. The better approach is to proceed with this thoughtfully and carefully with a crafted proposal to ameliorate this situation from which he hoped Mr. Houde and the neighbors would benefit. **Councilor Curcuru** noted they have two professionals who disagree. The City Engineer agrees with one. He will support this application. That's why they have the City professionals. They have to rely on them. **Councilor Tobey** thought that Councilor McGeary's analysis is on point and yet he understood a neighbor who may want to act on his concerns. He urged the Baldassanos that this might not be the end of it, and the conversations should continue, neighbor-to-neighbor, to come to a middle ground. Working together with engineers with divergent views, he hoped they will cobble together something they can agree on, otherwise he expressed concern they would be facing a judge on the matter in the future. **Councilor Theken** would support this because neighbors need to be neighbors. She lives on a hill and deals with runoff issues and so understands this. If the neighbors don't work together it will continue to be uncomfortable. She hoped for compromise; that the Baldassano's get the Special Council permit, and that it goes well. **Councilor Hardy** stated she could find no intentional diversion of water [on the part of the applicant]. She represents a ward with huge drainage problems (Lanesville). She could not find "a scintilla" of intent. Based on the engineering studies and with the conditions and the placement of this decision in the permanent record of the Building Inspector's office and the Engineering Office, she would vote for this.

**MOTION: On motion by Councilor Ciolino, seconded by Councilor Theken, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to grant to Salvatore Baldassano a Special Council Permit (SPC2011-001) pursuant to section 5.2 of the Gloucester Zoning Ordinances for earth removal and fill for Decatur Street #14, Gloucester, Massachusetts, Assessors Map 56, Lot 11, to fill the rear yard to make a useable yard, construct a retaining wall and to construct a crushed stone driveway extension, stone infiltration trenches, with landscaping and a fence around the retaining wall as shown on the site plan dated April 15, 2011 by**

**Frederick J. Geisel, P.E., 15 Steep Hill Drive, Gloucester, revised 6/01/11, revised 7/23/11, and final revision of 8/17/11 with the following conditions:**

- 1. That the property located Assessors Map 56, Lot 11 will not divert water from that property onto the property of any other;**
- 2. All proposed work shown on the plan and described in a letter dated April 17, 2011 shall be done under the direct supervision of a civil/site engineer properly licensed to practice in the Commonwealth of Massachusetts;**
- 3. Any future proposed construction on this site, be it an addition to the existing house, construction of an outbuilding, or any other significant site work that involves excavation, filling or re-grading not shown on the plan noted above, may only be done upon approval of a new site and drainage plan developed subject to any ordinances and practices and procedures then in effect. Any such new site or drainage plan must be based on a then current on-the-ground survey conducted in accordance with the Survey Standards developed by the City of Gloucester DPW Engineering Division, appropriate soil and groundwater testing, and any required design calculations, all of which shall be prepared under the direct supervision of a Professional Land Surveyor and a Professional civil/site Engineer licensed to practice in the Commonwealth;**
- 4. No work on this property, subject to the conditions of the above referenced permit, shall begin without providing the Gloucester DPW Engineering Division no less than two (2) business day's notice of the commencement of such work so that a proper inspection protocol might be developed with the supervising engineer.**

**The Council recessed at 9:51 p.m. and reconvened at 10:01 p.m.**

- 2. PH2011-048: SCP2011-005: Dory Road #11, GZO Sec. 5.22 Commercial Land-Based Wind Energy Conversion Facilities (Cont'd to 10/11/11)**

**Councilor Hardy** declared this public hearing open and continued per the written agreement by the applicant to the next regularly scheduled meeting of the City Council.

**This public hearing is continued to October 11, 2011.**

- 3. PH2011-058: Amend GCO Chapter 10 "Waterways Administration" Sec. 10-2(a) Composition**
- 4. PH2011-059: Amend GCO Chapter 10 "Waterways Administration" Article 1, Sec. 10-4(b) formerly Sec. 10-4(c) "Public Facilities Committee"**
- 5. PH2011-060: Amend GCO Chapter 10 "Waterways Administration" Article I, Sec. 10-4(c) formerly Sec. 10-4(d) "Operations and Finance/Safety Committee"**

**These public hearings are opened.**

**Those speaking in favor:**

**Jim Duggan, CAO** stated that the Administration is in support of all three amendments and specifically referenced the first public hearing with regards to the composition of the Board. He felt the amendment to be important on several levels. It does not reduce the voice of the fishermen which the Administration recognizes as very important. It will strengthen the relationship between the City and the Waterways Board when it comes to economic development initiatives, especially as relates to the success of the proposed I4-C2 RFP that was before the Council this evening. They believed the additional members focused on the economic development issues will benefit the City greatly as it relates to the RFP and the success of that project.

**Those speaking in opposition:**

**Cate Banks, Waterways Board** stated that she wished there was a "maybe" category, as she is not opposed to economic development. She noted on the Consent Agenda there was an item related to Bomco. Her father-in-law helped to bring that company up to what it is now. He was a member of the EDIC in the 1970's. As a member of the Waterways Board she felt she is continuing a history of family service. She felt the EDIC has done a good job with developing industrial parks; they have the Downtown Development Committee is another entity doing good work. When she agreed to come back on the Waterways Board two years ago it was because Chapter 10 has good intentions and is specific. She read Sec. 10-1: "The purposes of the waterways board is to provide a broad-based citizen management organization that guides the use and development of Gloucester's waterways and public waterfront facilities. The waterways board shall be the city body which establishes polices and regulations for

Gloucester's waterways. It is intended that the board adopt clear, concise and fair policies and regulations that promote improved access to the water for all citizens, including commercial fishermen, business owners and recreational boaters. In cooperation with the harbor master and other city staff, the board is intended to ensure that our waterways are well planned and maintained, utilized to the maximum extent possible, safe and reflect positively upon the City of Gloucester." Ms. Banks interpreted that this section talks about the Waterways Board having to deal with many things that all relate to economic development. They deal with the river, and harbor, up to the waters edge. In her view, this is written that the proposed change to add two persons directly involved in economic development is to do what they're already doing. She speculated the intent of the two additional Board members may have to do with helping to promote economic development of waterfront property along the water's edge. If that is the case, speaking as an individual, taking these two persons, she felt it would be better to create a separate entity to deal with the economic development around the harbor because it is mostly private property. They have Harbor Cove, St. Peter's and they have some public landings; and are the only City owned-properties that can create any economic development, she claimed. As to the first public hearing, she would like if they could go back to the table as the Waterways Board for the language of the Board's letter for the [I4-C2] RFP which she found a step in the right direction. Since she has studied this and knew there is a lot that could use tweaking she asked they look at it again. As to the second and third public hearing, the wording, she pointed out; they have deleted a sentence that the City Council, at the recommendation of the Waterways Board at a public hearing on March 22<sup>nd</sup>, voted to make that exact language. This public hearing removes what they already voted for and put it back in. They already asked to have three subcommittees reduced to two and make their composition each three. They already voted that. They're taking a seven member board, have two subcommittees with three people, and wondered how these two people would be helpful. She pointed out when it was being debated in the '90s; she stood up as a recreational boater and stated that this was a good idea. Contrary to Mr. Duggan's statement, by adding two members to the Board they have three fishing industry representatives, and six others. To her it doesn't help the fishing industry, and it makes an imbalance. She asked that they let them all work together to figure out if this makes sense or if it make more sense to create another entity for economic development. **Peter Bent**, 1 Leonard Street and member of the Waterways Board noted his copy of the harbor plan now two years old (2009) which talks of harbor administration referring to harbor economic development. It says a port and harbor committee appointed by the Mayor should be created to serve in an advisory capacity to the Community Development Department and monitor and promote implementation of the Harbor Plan and Master Plan. This has not been formed. He thought they should sit down in light of what's coming forward and rethink this. Two specific economic people on their Board would be much less effective than having an entity having a specific focus. **Damon Cummings**, 1063 Washington Street served on the Harbor Planning Committee for both harbor plans. They discussed economic development a lot. It never occurred to put an economic development function into the Waterways Board. Waterways Board is required to discuss things that he believed that an economic development person would not be interested in. They discuss moorings and their placement, for instance, at great length. They have no connection to economic development on the shore. Their only connection is concerning the City properties on the water. He couldn't imagine the sense of this. It is clear that there is a precedent for this happening mentioning in 1936 when FDR tried to expand the Supreme Court. He hoped this was dropped, as FDR did on that expansion. **Marcia Hart**, 2 Fremont Street came to this issue because of her concern that there this very functional group which she felt broadly represents the concerns of the City. She didn't see the two economic development people doing anything but reducing the voice of the fishermen. She felt it should be left alone. **Sunny Robinson**, 20 Harvard Street agreed with the prior speakers that this addition to the Waterways Board is not needed. She noted her attendance at a number of the Waterways Board meetings on I4-C2 when they were looking at the docking language where there was a great deal of concern already expressed from that body about how to preserve all the commercial fishing dockage but find a way to consider whomever new tenants might be. Adding two people to the Waterways Board with undefined economic development criteria when that knowledge is already there seems unnecessary. She, too, felt this reduces the impact the commercial fisherman already there. She thought they should put those economic development people on an advisory board instead.

**Rebuttal:**

**Mr. Duggan** gave an example; it is the administration's perspective on the Waterways Board need to be broadened. They went through a discussion on the letter to support the parcel. By having the two economic people on the board to craft the message within the RFP would only have been a benefit to the entire City. They need to bridge the gap that has drifted the City from the Waterways Board to bring both entities back together.

**Rebuttal of Rebuttal:**

**Cate Banks** stated since her return to the Board they've tried to work as a team with the City. The I4-C2 experience, in her opinion, the Board wasn't brought to the table until the very end from her perspective. They are more than willing and excited to work with the City as a team.

**Communications: None.**

**Questions: None.**

**This public hearing is closed.**

**Additional Discussion:**

The Council discussed the procedure for voting on the three motions determining, with input from Tony Gross, Waterways Board Chair, that while the Council had previously taken a vote regarding subcommittees for the Board, if the motion for the first public hearing did not pass, the motions for the second and third public hearings regarding subcommittee composition may stand alone and still amend the GCO regardless.

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to AMEND c. 10 of the Code of Ordinances entitled Waterways Administration, §10-2(a) "Composition" by DELETING §10-2(a) in its entirety and by ADDING:

"The Gloucester Waterways Board shall consist of nine (9) citizens of Gloucester appointed by the Mayor and confirmed by the City Council. The appointees shall include three (3) persons who are directly involved with the fishing industry, two (2) persons who are recreational boaters, two (2) persons who are directly involved with economic development of the City, and two (2) persons at large who need not be involved with any marine-related activity."

**DISCUSSION:**

**Councilor Theken** stated this has been going back and forth quite some time. When it first came before the O&A, it was leaving the same amount of members and taking out two fishermen and putting in two economic development people. She asked the Mayor instead of eliminating; put two more on the Board. She is not afraid of putting economic development people on the Board. Major concerns can come in front of the Council from the Board. She pointed out they have a State fish pier that can be enlarged as a part of economic development. The Councilor was not fearful of putting economic development people on the Board. The fishermen she talked to want economic development. With more economic development and tourism, perhaps State and Federal government will realize they're an open waterfront. They have three fishermen on the Board now, and she also pointed to the fact that fishermen are a part of economic development even though they're not on shore every day. She'd rather see two more board members and not lose a commercial fisherman on this board. **Councilor Tobey** thought the most important words were from Mr. Duggan about bridging the gap. He spoke of a book by Alfred Mansfield Brooks who described the harbor that was many things in the 1700 and 1800's but a vibrant trade to the West Indies, South American and the harbor also being used for transportation and pleasure boating. Circumstances over the years have narrowed the harbor's use. He wants to see this expand and grow, to bring forward uses that are complimentary but hold on to those they have now. He wanted to make clear the language of Sec.10-1 and Sec. 10-3 of the ordinance, states the Waterways Board does have a role in economic development. Sec. 10-1 talks about business access to the water. Sec. 10-3(f) "waterways development projects" and Sec. 10-3(g) "Review all waterfront development projects or zoning changes...", which is economic development. Sec. 10-3(j) states "... well-equipped port and hospitable port-of-call;", which he believed indicated tourism and economic development as well. Sec. 10-3 (m) "Investigate new sources of revenue for waters management and development;" which the Councilor contended is growing waterfront activity which will generate revenue equaling economic development. He cited Councilor Theken's remarks as accurate in that the initial focus was on diminishing the fisheries presence on the Board; and O&A pushed back on that. He saw two main issues; one concern regards whether and how this Board will collaborate with a development plan on I4-C2 because they own the piece of property between the landlocked piece of land and the water which historically has always been the problem. He posed the question how do you get marine dependent uses that has no access to the water. He expressed the Waterways Board is the key. The second issue of which he knew the Fisheries Commission is having increasing concerns about is the ability of the Waterways Board being able to sustain, maintain and grow the supply of dockage because they see the Board as a partner. The Board has an account with \$500,000, which is attractive to those who want to see change; and the Board needs to be

mindful of that. **Councilor Theken** spoke of economic development people. They know who they aren't. They're not City staff; they could be people in Real Estate, bankers. The two At Large people could be persons put in to affect change. Referencing a point brought up earlier on amount of time they've spent on moorings to the exclusion of other matters, there is a perception that the rigidity [of the Board] has to ease. Whether this passes or not, it is up to the Board to look to change and evolve. He asked they recapture the depth, history and breadth of economic activity. Whether the Board goes to a membership of 9 or 7, he asked they recognize that the Board needs to be the agent of change. **Councilor Ciolino** would support this tonight. They're changing the Board from 7 to 9 members. He didn't understand the pushback by the Board for new members, feeling they'd likely have better quorums. He believed the harbor is an economic engine. He has heard from the public, the Waterways Board as it stands now doesn't seem to be in tune with what the Administration and the residents of Gloucester want, and pointed out it took the Board three tries to create a positive letter for the I4-C2 RFP. **Councilor Mulcahey** expressed she thought as Councilor Ciolino, it is another view of things. However, she was also leery about economic development people on the Board because she felt the Board has done an excellent job through the years. She would reluctantly vote for this. **Councilor Theken** stated no one is saying the Waterways Board is not doing economic development. They are targeting what has been asked of them. In reference to the letter, the Councilor felt the Board was defending the working waterfront and was fair for all. Her concern, also, was that they had to write a letter three times. She didn't want anyone lost on the Board either; they are a good Board. She didn't want to lose a fisherman on that Board and felt this is a compromise and a bridge they have to make. These two economic development positions are a two year term. If it doesn't work out, things can change again. This is about economic development for the City, and she wanted to see them use the money wisely. **Councilor McGeary** expressed his concern that there is a strong voice for economic development; that the harbor plan says that the future on the waterfront is based on the three legs – the fishing industry, maritime/industrial and the City's tourism-based economy. He believed the intent of the ordinance was to give the fishing industry a strong voice. The net effect of the proposed ordinance change would dilute the influence of the fishing industry. "Three out of nine is less than two out of seven as a percentage." He further believed they should honor the thrust and the direction of the original ordinance. However, as they move forward with harbor development, he hoped the Board would recognize that development does stand on three legs and the Board must, as it has recently, be able to compromise and not be "absolutist" in its approach to the utilization of the harborfront. He felt the current Board is more open to that approach. The upcoming debate, conversation and negotiations over I4-C2 will be an "acid test". He would be ready to reconsider his opposition if he found the Board using its power to obstruct rather than to guide. But for now he will remain in support of the seven member Board as currently constituted. **Councilor Curcuru** noted that a couple of the Waterways Board members are still opposing this [membership expansion] which he felt shows there is a gap. He would support this and hoped they could come to a common ground. The Board represents the entire City of Gloucester; and that is where the Councilor believed the divide is. He would support these motions. **Councilor Verga** expressed his concern of making this type of change. The argument is that the Board needs to cooperate more. He agreed with Councilor McGeary; they could reconsider it later. He would not support it. **Councilor Whycott** would like to try something new to see if it helps out in the long run. He would support it.

**MOTION: On motion by Councilor Theken, seconded by Councilor Ciolino, the City Council voted BY ROLL CALL 5 in favor, 4 (Tobey, Verga, McGeary, Mulcahey) opposed to AMEND c. 10 of the Code of Ordinances entitled Waterways Administration, §10-2(a) "Composition" by DELETING §10-2(a) in its entirety and by ADDING:**

**"The Gloucester Waterways Board shall consist of nine (9) citizens of Gloucester appointed by the Mayor and confirmed by the City Council. The appointees shall include three (3) persons who are directly involved with the fishing industry, two (2) persons who are recreational boaters, two (2) persons who are directly involved with economic development of the City, and two (2) persons at large who need not be involved with any marine-related activity."**

**MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to AMEND c. 10 of the Code of Ordinances entitled Waterways Administration, Art. 1, §10-4(b) formerly §10-4(c) "Public Facilities Committee" by DELETING the second sentence and by ADDING:**

**"This Committee shall consist of three (3) members of the board; an advocate of public landings appointed by the Mayor; the Director of Public Works or his designee; and a member of the Tourism Commission as needed."**

**DISCUSSION:**

**Councilor Tobey** quoting Sec. 10-1 “The purposes of the waterways board is to provide a broad-based citizen management organization that guides the use and development of Gloucester’s waterways and public waterfront facilities. The waterways board shall be the city body which establishes polices and regulations for Gloucester’s waterways. It is intended that the board adopt clear, concise and fair policies and regulations that promote improved access to the water for all citizens, including commercial fishermen, business owners and recreational boaters. In cooperation with the harbor master and other city staff, the board is intended to ensure that our waterways are well planned and maintained, utilized to the maximum extent possible, safe and reflect positively upon the City of Gloucester.” He would vote this and likened it to an “acid test” of the Waterways Board. “...a Tourism Commission member as needed”, he contended, should always be needed. He pointed out this Board has worked in the past without ever needing that Commission member. He believed they have to broaden and be more flexible to build that bridge.

**MOTION: On motion by Councilor Theken, seconded by Councilor Ciolino, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to AMEND c. 10 of the Code of Ordinances entitled Waterways Administration, Art. 1, §10-4(b) formerly §10-4(c) “Public Facilities Committee” by DELETING the second sentence and by ADDING:**

**“This Committee shall consist of three (3) members of the board; an advocate of public landings appointed by the Mayor; the Director of Public Works or his designee; and a member of the Tourism Commission as needed.”**

MOTION: On motion by Councilor Tobey, seconded by Councilor Mulcahey, the Ordinances & Administration Committee voted 3 in favor, 0 opposed to recommend to the City Council to AMEND c. 10 of the Code of Ordinances entitled Waterways Administration, Art. 1, §10-4(c) formerly §10-4(d) “Operations and Finance/Safety Committee” by DELETING the third sentence and ADDING:

“This Committee shall consist of three (3) members of the Board; a member of the Fisheries Commission; and a member of the City Council.”

**DISCUSSION: None.**

**MOTION: On motion by Councilor Theken, seconded by Councilor Ciolino, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to AMEND c. 10 of the Code of Ordinances entitled Waterways Administration, Art. 1, §10-4(c) formerly §10-4(d) “Operations and Finance/Safety Committee” by DELETING the third sentence and ADDING:**

**“This Committee shall consist of three (3) members of the Board; a member of the Fisheries Commission; and a member of the City Council.”**

**For Council Vote:**

**1. City Charter Sec. 2-11 (c) re: Advisory Question on November on Ballot Question from 9/13/11 (check this on agenda)**

**Council President Hardy** stated when this matter was last before the City Council; there was a vote to continue the matter. The main motion was on the floor by Councilor Ciolino, seconded by Councilor Verga. Councilor Tobey proposed a motion to continue which failed at which time Councilor Tobey immediately invoked City Charter Section 2-11(c) which put the main motion back on this agenda. **Linda T. Lowe**, City Clerk at the request of the Council President then read the main motion now on the floor as follows:

MOTION: On motion by Councilor Verga, seconded by Councilor Whynott, the Planning & Development Committee voted 2 in favor, 1 (Ciolino) opposed to recommend to the City Council the following Non-binding Ballot Question for the November 8, 2011 elections:

“Summary: Currently City offices are located at City Hall, Pond Road, miscellaneous other locations, as well as the school administration at the Fuller School site. The Fuller site is currently under the control of the Gloucester School Department.

Discussions have begun about possibly consolidating these functions to one general area in downtown Gloucester or onto one location at the Fuller School site.

Cost estimates for both scenarios are similar and in the \$6 million to \$8 million range.

Question: If the Gloucester School Committee is to declare the Fuller School site surplus, which option should the Administration and the City Council focus its energy on? Please select one:

1. A downtown campus which may include renovation and expansion of City Hall, renovation of Central Fire Station into office space and potential leasing of additional space downtown?
2. An “under one roof” approach centered at the Fuller School site, and find an alternative public-related use for City Hall?”

#### **DISCUSSION:**

**Councilor Ciolino** felt that it all had been said; that it is not the right time. They received the School Committee’s vote that they are not in favor of this ballot question either. Not much will happen unless they declare the school as surplus, and they’re not ready to do so; it is premature. When the decision to make the Fuller School surplus is imminent, he felt then they should go forward. He asked his fellow Councilors to vote no on this. **Councilor Verga** stated that he met with the Mayor last week to talk about a “Plan B”. He felt it was a reactionary move on his part after the MassDevelopment proposal became public. At the lease, this has brought to the forefront this topic of conversation is now out there; and that it is not a done deal. They have a long way to go between now and the point of a new City Hall complex is at Fuller. He hoped the conversation continues; and that they’re able to come up with a survey plan. He asked they entertain a friendly amendment or a revised motion to adopt the motion the School Committee voted at their 9/26/11 special meeting, their second motion on this matter as the first one they passed was to just say no to the ballot question. **Council President Hardy** prefaced this offering by Councilor Verga by stating that the School Committee motion is not binding on the City Council. If the Councilor wished to offer it as his own amendment he could then do so.

**Councilor Verga** moved to amend the main motion as follows: “The City Council supports seeking input from the public via a comprehensive survey, and at the time the Administration wishes to proceed, the City Council would like to participate in the process.” The amendment to the main motion was seconded by **Councilor Tobey**.

**Councilor Tobey** thanked Councilor Verga, Mayor Kirk, members of the School Committee for walking through the door that was opened by this matter being delayed from the last City Council meeting and seeing that there was a way to find consensus which he felt they were close to having. He thought it important that the maker of the order is the party making the amendment along the path of the consensus approach. It captures the timing of the decision having to be made and the notion that the community should decide when the building may become available. He felt the seat of government should always be in this building [at 9 Dale Avenue]. However, there was a lot of support for a building for a lot of things that can’t fit in there that need to be accommodated. He felt this was a good and sound approach they could all engage. **Councilor Whynott** would have liked to have the original motion come to a vote. He believed the vote is not just for the School Department or any department but for the whole City. His opinion was what is best for the City is to have all the City offices at Fuller School under one roof; and he would have liked to have voted for that. He would support this other motion because there is no chance the original motion will pass. He believed this would cause this matter to sit on the “back burner” for a long time. **Councilor McGeary** would support the amended language of the motion. He commended Councilor Verga for opening the discussion. He also wished to see City Hall remain the seat of City government. They need to realistically consider the options if and when they become available. He thought the public should have input and at the appropriate time they should solicit it. **Councilor Theken** expressed she wasn’t going to support the original motion because she felt they hadn’t given the School Committee a chance; but she would support that they do have communications that are open. She



appreciated over the last two years that the Council and the School Committee have had joint meetings to open the lines of communication between the two bodies. She had asked the Chair of the School Committee to go out to the PTO's, send home in students' backpacks, through emails, to solicit opinions. There was much confusion to a simple question as to what people wanted for the Fuller School she posed on a social network online. She had asked for a better question, a simpler question. The School Committee came back by saying they hadn't had enough time and didn't feel that they're ready to act. Communication is the key, she believed. This last two years have been hard working on the Council's part making difficult decisions. The School Committee asked for time. They need to make sure they have the support of everyone and build a bridge. To place a question on the ballot without unanimous support, she felt was wrong. She would support the School Committee and the amendment.

**A motion was made at 11:05 p.m., seconded and voted 8 in favor, 1 (Theken) opposed to extend the City Council meeting by a half hour.**

**Councilor Ciolino** recalled he had suggested at the joint meeting of the Council and the School Committee that they do a survey perhaps putting them in with the tax bills, water and sewer bills. Survey language can be worded more clearly than that of a ballot question. He expressed concern as to who would compose and administer this survey and also what would be the timing. **Councilor Mulcahey** stated when they put the wording as they did, people got the impression the Fire Department was going into the Fuller School, which it would not it would be in its own building. The way things are worded can change the outlook of what someone is thinking. She would vote for the amendment. **Councilor Verga** noted the discussion with the Mayor was that they can do an extensive survey such as, 'if this happens, then this happens' type of statement. It would not be a simple yes or no which seemed to be the problem with the language previously. The survey would be created by a third party. The Mayor had mentioned a group that the School Committee uses that handles educational issues, which he didn't know if they did handle others. He felt it was a good approach. He pointed out that the next opportunity to get something on the ballot is 2013; and for the sake of the City, he hoped that they won't be waiting, by that time seven years since Fuller closed, that they reach a decision before then. He reminded the Council that the field at Fuller has already been declared surplus by the School Committee so the City should look at moving Police and Fire up there immediately since there will be no opposition to that idea. He hoped the amendment is supported and to push the issue to the 'front burner'.

**MOTION: On motion by Councilor Verga, seconded by Councilor Tobey, the City Council voted 8 in favor, 1 (Ciolino) opposed TO AMEND the main motion as follows: "The City Council supports seeking input from the public via a comprehensive survey, and at the time the Administration wishes to proceed, the City Council would like to participate in the process."**

**Council President Hardy** then declared that the amended motion is now the main motion. **Councilor Ciolino** expressed he would support the main motion even though they don't know who would craft the survey at this time. This is what the School Committee suggested, and he would support them also. He also hoped the survey passes through City Council before it goes out. **Councilor McGeary** offered a friendly amendment to the main motion to insert after the word survey "regarding the future use of the Fuller School site," Council President Hardy announced the friendly amendment had been accepted by the mover of the main motion and was now a part of it. He asked if the motion to put it on the ballot "is dead" which **Council President Hardy** affirmed. **Councilor Verga** agreed with Councilor Ciolino in hoping the survey comes back to the Council and that they are involved in the process. **Council President Hardy** clarified also that the table motion of the ballot question was moot. The Council had voted on the amended motion and now it is the main motion.

**MOTION: On motion by Councilor Verga, seconded by Councilor Whynott, the City Council voted BY ROLL CALL 9 in favor, 0 opposed the City Council supports the idea of seeking input from the public via a comprehensive survey regarding the future use of the Fuller School site, and at the time the Administration wishes to proceed, the City Council would like to participate in the process.**

**2. SCP2010-012: Kondelin Road #16, GZO Sec. 5.13 PWSF review permit granted to USAi.net (P&D Minutes of 8/17/11)**

**Councilor Ciolino** regretted to inform the Council that SPC2010-12 and 2010-13 are in violation of certain conditions as set forth in the special permits. **Council President Hardy** clarified that when someone is in violation of a Special Council Permit, the Council sends it back to the Building Inspector who then sends a report back to the

P&D Committee. P&D then will make a recommendation to the City Council and the Council President will send it to the Building Inspector.

**MOTION: On motion by Councilor Ciolino, seconded by Councilor Whynott, the City Council voted BY ROLL CALL 9 in favor, 0 opposed that on the matter of SCP2010-012: Kondelin Road #16, GZO Sec. 5.13 PWSF it be forwarded to the Building Inspector in order to report to the Planning & Development Committee his determination of violation of the conditions of this Special Council Permit.**

**MOTION: On motion by Councilor Ciolino, seconded by Councilor Whynott, the City Council voted BY ROLL CALL 9 in favor, 0 opposed that on the matter of SCP2010-013: Rogers Street, #127, GZO Sec. 5.13 PWSF it be forwarded to the Building Inspector in order to report to the Planning & Development Committee his determination of violation of the conditions of this Special Council Permit.**

**4. Adoption of Re-Codification of Gloucester Code of Ordinances 4<sup>th</sup> Replacement Volume Published by Order of the City Council 2011**

Ms. Lowe stated this was a housekeeping matter and that there is a necessity that the Council must verify the adoption of the 4<sup>th</sup> Replacement (Re-codification) by voting on it.

**MOTION: On motion by Councilor Tobey, seconded by Councilor McGeary, the City Council voted BY ROLL CALL 9 in favor, 0 opposed to adopt the Re-codification of the Gloucester Code of Ordinances 4<sup>th</sup> Replacement Volume Published by Order of the City Council 2011.**

**Unfinished Business: None.**

**Individual Councilors' Discussion including Reports by Appointed Councilors to Committees: None.**

**Councilors' Requests to the Mayor:**

**Councilor Tobey** stated congratulations to Sandy Ronan for being recognized for her work on CPA by the Commonwealth. **Councilor McGeary** noted the Open Door is having their autumn Breakfast Thursday October 27<sup>th</sup>. **Councilor Ciolino** stated the next day another luxury liner will be arriving and for citizens to take a moment to help these visitors out. **Councilor Mulcahey** thanked Community Development, the Mayor and the DPW for all the work they did on Ledgemont Avenue. **Councilor Theken** reminded that there is a meeting at the Rose Banker Senior Center regarding open enrollment. There is only 45 days to change their prescription coverage. She discussed Medicare coverage for seniors. Please see her for more information. **Councilor Curcuru** conveyed this weekend is the ECB Bicycle Cyclo-cross Race with over 1,500 racers, reminding that they bring revenue to the City of Gloucester. He thought it a great organization and great show at Stage Fort Park. **Councilor Hardy** thanked Councilors Tobey and Theken for coming to the Lanesville Community Center for the Lanes Cove Fish Shack Committee's update to the community. She received comments that folks were pleased that other Councilors were coming out to learn about the issues from other wards. The Charter Task Force has done a lot of work over the last few months. The O&A Committee has recently recommended the charter amendments. She called for a special meeting on October 11<sup>th</sup> at 6 p.m. to address that special one item agenda which is prior to the next Council meeting. **Councilor Whynott** stated he had put forth a resolution going to O&A at their next meeting; and Bill Campbell, City Clerk for the City of Woburn, and the sponsor of the legislation, would attend. **Councilor Curcuru** announced that on October 4<sup>th</sup> at 6 p.m. in Kyrouz Auditorium there would be a meeting to discuss Maplewood School possibly being converted for elderly housing.

**A motion was made, seconded and voted unanimously to adjourn the meeting at 11:32 p.m.**

**Respectfully submitted,**

**Dana C. Jorgenson  
Clerk of Committees**

**DOCUMENTS/ITEMS SUBMITTED AT MEETING:**

- Annual Report of Activities: January 2010 – December 2010 – Coalition for the Prevention of Domestic Abuse by Sunny Robinson
- Site Plan for 14 Decatur Street with last revision date of 7/23/11 with pencil arrow pointing to Mini CB #3 from Paul Fischer, P.E.
- Section from the 2009 Harbor Master Plan submitted by Peter Bent