

GLOUCESTER CITY COUNCIL MEETING

Tuesday, March 13, 2013 – 7:00 p.m.

Kyrouz Auditorium – City Hall

-MINUTES-

Present: Chair, Councilor Jacqueline Hardy; Vice Chair, Councilor Sefatia Theken; Councilor Joseph Ciolino; Councilor Melissa Cox; Councilor Steve LeBlanc, Jr.; Councilor Paul McGeary; Councilor Bruce Tobey; Councilor Greg Verga

Absent: Councilor Whynott

Also Present: Mayor Carolyn Kirk; Linda T. Lowe; Jim Duggan; Suzanne Egan; Jeffrey Towne

The meeting was called to order at 7:08 p.m. to continue Public Hearing 2012-073 of March 12, 2013.

Flag Salute & Moment of Silence.

Scheduled Public Hearings:

1. PH2012-073: SCP2012-010: Commercial Street #47-61, GZO Sec. 5.25 Hotel Overlay District, 5.7 Major Projects and Sec. 5.5.4 Lowlands

Council President Hardy advised that the previous evening the Council had closed the public hearing on the Beauport Gloucester LLC Special Council Permit application. The Council was now at the juncture of hearing the Planning & Development Committee recommendations on the Special Council Permits applications and Council discussion on those matters. The public input portion of the meeting expired with the close of the March 12th meeting.

MOTION 1. MAJOR PROJECT/HOTEL FOR BEAUPORT GLOUCESTER, LLC

MOTION: On motion by Councilor Hardy, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the granting of a Special Council Permit for Major Project/Hotel for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner) Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.3.2 (a) and (b) and section 5.7 (Major Project) with the following conditions:

1. *The emergency generator testing and maintenance, as required by the State Building Code and NFPA 110, shall only occur between the hours of 12:00 noon and 2:00 pm, except in cases of an emergency.*
2. *There shall be evergreen vegetation planted and maintained at the sound board wall on Fort Square. The vegetation shall be of a species that will withstand the salt air and other environmental considerations in the area. A landscaping plan reflecting the required vegetation shall be submitted to the building inspector prior to the issuance of a building permit.*
3. *The applicant shall purchase two (2) identical decibel meters (sound meters) one for the Gloucester Inspector of Buildings and the other for the Hotel Community Liaison.*
4. *As it relates to sound and odors, the Applicant shall provide a Hotel staff person to act as a Community Liaison to listen to and follow up on neighbors' concerns.*
5. *There shall be no lighting of Pavilion Beach at any time by the Hotel.*
6. *There shall be bollards placed around the project's on-site hydrant, said hydrant shall remain unobstructed at all times.*
7. *There shall be public access from Commercial Street to Pavilion Beach and a walkway across the beach side of the Hotel for public access as shown on the plans as a part of this application.*
8. *The Applicant shall urge National Grid to work with it in order to place the utilities underground.*
9. *The Beach and Development Agreement shall be incorporated herein as Appendix 4 and made a condition of this special permit.*
10. *That the City Council adopt as its own the Planning Board's recommended conditions which are incorporated herein by reference and attached hereto as Appendix 1, General Conditions 1-26 and Appendix 2 for Conditions 1-7 as relates to the parking plan.*

11. *Employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand. Employees will be encouraged not to park in the local neighborhood.*
12. *The Applicant shall be required pursuant to the Zoning Ordinance, Appendix A, Rule 25, Part II, 5 (i), to provide documentary evidence to the City Council proving that any and all conditions specified by the Council in the Special Council Permit have been met at which time the Council will issue a "Certificate of Conditions Complete". No occupancy permit shall be issued until said Certificate has been provided to the Council.*

DISCUSSION:

Councilor Tobey said as discussed by the Council last evening, this has been a process the Council has tried to conduct with strict adherence to the legally required standard that the Council behave as and engage in this process as a quasi-judicial body. When passing the HOD ordinance, the Council was behaving in a legislative mode with more give and take, more access to the Council and easier record to access by the public. This process was not done that way because the Council had to abide by a strict procedural standard. He believed the Council had; that it was an effective process. The Committee, he said, worked long and hard on this. He said he saluted Councilor Hardy, Councilor Verga and Councilor Ciolino who often sat in, for staying with it, and attending so many meetings.

Councilor Tobey noted this process didn't happen in a vacuum. It was a process, he pointed out, that was conducted using the measure of the HOD on the M/I district relating to the site of this proposal which laid the foundation by socializing to some degree, and providing legal framework that a hotel was a use that could occur on this site. He also pointed out his continued conviction, which he said was one shared by all Councilors who supported the HOD, that it is not spot zoning. **Councilor Tobey** expressed concern that spot zoning was raised yet again the previous evening. He said if it must be resolved by litigation, he was confident it would stand scrutiny. Saying that he hoped he spoke for the entire Council, he said that Legal Counsel that appeared before the Council and in the future would be well advised not to point out the threat of litigation.

Councilor Tobey said the Council did not operate in a vacuum when it came to the resources available to assist them in the review of this matter. He noted there were lots of able City staff, too many to be named here, whose fingerprints are on these conditions and plans; and their input was substantial and important. They were ably assisted, he pointed out, by the 3rd party peer consultants, saying that their input was extraordinarily valuable in making a meaningful review of the voluminous materials presented to the Council. There was the critical work by way of advice provided to the Council by the Planning Board and ConCom who did their jobs well, he said.

Councilor Tobey added this application was carefully reviewed and carefully vetted by the Council. It is captured, by and large, by the extensive review and nature of it in the wonderful work that Councilor Hardy did on behalf of the Committee in pulling together a comprehensive analysis of the six criteria that the Special Council Permit process is governed by in the zoning ordinance.

Councilor Tobey highlighted the Special Council Permit six criteria found in GZO Sec. 1.8.3 as also noted to be a part of the record contained in the March 7, 2013 Special Meeting minutes of the P&D Committee as follows:

- Social, economic, community needs: The Committee recommended a finding that the hotel serves the social, economic needs of the community.
- Traffic flow and safety: This project will not have negative impact on traffic flow and safety including parking and loading, that the project will not have a negative impact on traffic or parking concerns in the area. If concerns arise they will and must be managed by the applicants.
- Adequacy of utilities and other public services: Adequacy of utilities and other public services was addressed as a concern particularly based on the input by BETA Group that numerous issues were addressed as fact and that there are adequate utilities and other public services available to the project.
- Neighborhood Character and Social Structure: The conclusion is that the inclusion of a hotel in the neighborhood is not substantially detrimental or out of character with the neighborhood or its social structure.
- Impacts on the Natural Environmental: The finding is that the proposal will not have substantial or negative impact on environmental factors.
- Potential Fiscal Impact (including City tax base, services and employment): The finding is that adverse affects of the proposed use will not outweigh the beneficial impact to the City or the neighborhood in view of the particular characteristics of the site and of the proposal in relation to the site.

Councilor Tobey said many concerns worked themselves out. He said he saw what P&D was doing in working with all the resources he spoke to earlier, to hearing concerns and narrowing them; finding consensus; resolving issues so that anything that stood unresolved at the end would get resolved here. He said he believed very little stands unresolved.

There was, he said, the late arising issue of the Godfrey Report. He noted he gave it serious consideration, as he said he was sure the rest of the Council did as well. He said he was not sure what that report symbolized; but thought that it symbolized different things for different people. For some it was a way to stop the project at any cost and that it was better to give the site back to nature notwithstanding the M/I concerns that some hold dear if they couldn't have their way with the site. There were others who viewed it as what was seen in New Orleans wiped out by nature and man and are building back again and man continues to assert its dominion over the earth, he said. Then there were those folks who went for the middle ground to revise wall structures and take measures that would protect the beach. ConCom has made it a condition of the approval of the project if beach renourishment needs to happen it has to happen as it is required by law. If it does not happen, the permit holder is in violation of the permit. He said he believed the middle approach is a reasonable approach that has been crafted which is balanced. Gloucester's harbor has been reshaped by man for centuries, he pointed out. There may be occasion for the Council to be asked to approve grants to repair the Stacy Boulevard seawall, and he said he would not vote no. The City needs to preserve the manmade elements that have defined a great deal of the City's shoreline and the harbor which is consistent.

Councilor Tobey said he was very concerned was the matter of the applicant's Slide 21 submitted for the record on 3/12/13 which he showed the Council. He understood the arguments made on perception and scale and how one views thing. That photo was photo shopped, he said. Yet, in his value system, he said, while it was poorly done it is not fatal to this application in his opinion, he said, that a photo was altered; adding it is a representation and is what it is. What matters, pointing to the engineering plans, he said, where the scales and the measures and dimensions are laid out and made a part of the conditions; binding as a matter of law. He said he knew there were people in the room when another very sensitive marine industrial project, Cruiseport, was called before the Council on their Special Council Permit because the downstairs, in violation of the permit, was being turned into a restaurant. That, he said, got fixed. He was fully confident, the photo notwithstanding, that there were similar, defined, measureable yardsticks for this project that the Building Inspector will have to attest to; the community will be watching. If fouled up, the applicant will be made to come before the Council immediately. The representations are legally binding; and he said that they need to be upheld. That, he asserted, was the only thing that got him past Slide 21.

Councilor Tobey spoke of Ron Gilson, who spoke during the public comment period, who he said knows the glory days of the fishing industry in the City. Mr. Gilson, he said, referred to the contraction of the fishing industry. The question arises as to how much they need to land bank. There is the State Fish Pier, the land the City owns at the end of Commercial Street; other sites on the working waterfront that could be redeveloped or enhance their use. That which does not evolve in changing environment will die, he said, adding that Gloucester's history since 1623 has been one of constant change and evolution. If this hotel is approved, it is not going to be viewed as an end point, and hopefully, he said, will be the start for more change for the sort they want such as biomedical research, the blue economy by finally having the beginnings of the 21st century infrastructure the City has asked for for decades. He said he was sure this will be appealed and was sure this will take time; but he expressed his hoped this will be seen through because the City needs it. **Councilor Tobey** said that for the City to live, to have the evolution it requires to continue to be a multi-faceted economic engine and urged seeing it through. **Councilor Tobey** stated the Council has behaved responsibly although some think they did not. Reaching a decision someone doesn't like doesn't make one irresponsible, he noted. The Council, he said, has worked hard, paid attention and done their homework. He said the project, when they look back in 20 years, they will look back in pride. He reiterated this proposal has been well vetted; it has been well designed; had its hiccups which have been dealt with and urged the Council to support the proposal.

Councilor Verga said this is a good project for the City. He noted that the debate has devolved to liars versus obstructionists, which the two sides, he said, unfortunately have referred to each other as. He said it is not that simple in that both sides worked hard and made good points. In the end, he said, the Council is left with information from the third party peer reviewers, the City staff; and the Council has to make their decision based on that input. He said he stands by his support for this project. The Council has been accused of this being a done deal since the start. As recently as yesterday, the Council was accused of taking bribes, he noted. **Councilor Verga** pointed out had any Councilor said no to this from day one, they'd be a hero, but if a Councilor had expressed interest in supporting the project, they'd been bought. He said the project is something he can get behind. This project will be

watched closely to ensure that what is on paper gets built, as this is a great opportunity for the City to grow and evolve because the City needs to, he concluded.

Councilor Cox said she agreed with the collaboration in the process. It has been long process, she said. She had tried to make as many meetings as possible. **Councilor Cox** said it is a good plan. This proposal is in Gloucester's best interest to have a full service year round hotel, she said. She added that she did not misrepresent when she ran for Council and was elected, that she said she would keep an open mind and listen to everything and was prepared to do so this evening..

Councilor Theken pointed out she did not vote on the HOD; she recused herself. She said as part of the Fishermen's Wives Association it was difficult as no one likes to see change. Change can mean diversification. She ran for office to give everyone a voice. She said she could not have a personal voice, however. She said she was not fully happy with the process of the HOD as she was hobbled by the law. She attended the P&D meetings but said she felt like she heard only one side. She read the emails received through the appropriate channels. She noted she has never been afraid to speak her mind. **Councilor Theken** asserted the fishing industry was not gone. She appreciated the full room the previous evening but wished those same folks went to the meetings she went to over the years on the fishing industry to help preserve it.

When Cruiseport came in, she didn't care who Mr. Davis was, **Councilor Theken** said. When things were not going well at Cruiseport Mr. Davis hired someone to take care of the issues at hand, Sheree DeLorenzo. She noted Ms. DeLorenzo and she were friends even before the HOD and hotel project and pointed out the DeLorenzo family owned the Danversport Yacht Club. She pointed out not only was she invited to Ms. DeLorenzo's wedding, but she was also invited to James Tarrantino daughter's wedding also. If one is born and raised in Gloucester, it comes around; this is an island. Residents multi-exist and multi-congregate. Today, she said, they argue, tomorrow they are at peace and wanted to see more peace together.

Councilor Theken also expressed her concern regarding Slide 21 that Councilor Tobey pointed out. She noted the Council could argue about the walls on the beach, but she also went to a coastal barrier meeting recently and was concerned. However, she pointed out, no one can predict how the ocean can turn. She appreciated the ConCom conditions to protect the beach. She expressed the hope when there is an issue of the wall, the City can do something about it. No one wants the streets to flood. She said she was personally against many things but she said she was elected to represent the City as an At Large Councilor. Knowing the applicant it is not her fault, she said, if the Council did not ask the right questions. **Councilor Theken** said the applicant will work with the City. She said in talking to a lot of fishermen, they told her they were in favor of the project. If they all suffer, she pointed out, so will the hotel. In noting who was for and against the project the previous evening she touched upon growing up in the West End and the Fort and its vagaries. She pointed out Ms. DeLorenzo is a hard worker. Change has been in the Fort area. **Councilor Theken** said when everyone works together a great deal can be accomplished for the City. She pointed out the Council support for a hotel on Essex Avenue that now won't get built. She said she wants to have a working waterfront, but it is not happening. She asked that the area be made vibrant.

Councilor Theken ended her remarks by saying she is a Councilor At Large and her community wants a hotel and that will be the way she will vote this evening.

Councilor LeBlanc noted that, like Councilor Theken, his mother grew up in Fort Square before the freezer was built. His father worked in the Birdseye Building for 37 years. The Fort is in his veins, he said, noting he grew up there. **Councilor LeBlanc** said he would support anything that would have gone through the proper channels, a factory, an aquarium, for example. There is a need for a year round hotel – to create jobs; increase the tax base and increase revenues to Gloucester businesses. The majority of folks who spoke to him support the hotel, he said. If local businesses wanted to build something similar he said he wondered how much opposition there would have been.

Councilor Ciolino spoke to some of the concerns expressed about the process undertaken; one of which was the contention that the process was rushed and more time was needed to study the matter. The Council went through the first proposal for two years, and now the hotel proposal for about a year. Most Councilors, he said, could say that they know by now the Birdseye property better than their own. The Council has vetted and studied this, he said.

He said he was told about the Godfrey Report and its conclusions. He noted his bachelor's of science degree and is not a scientist nor did he make his living as one. However, one of the conclusions Dr. Godfrey said was there were phragmites in the parking lot which **Councilor Ciolino** pointed out is an invasive species. Phragmites, he pointed out, is choking Niles Pond. Phragmites doesn't signify dunes. It is an invasive weed and the Councilor likened it to bragging one had ragweed in a vegetable garden. He cited Page 18 of the Godfrey Report, stating that unless the City of Gloucester has no interest in protecting the fishing stocks or by extension the fishing community then, by all means build the seawall. He said that statement was troubling in that it says that if the seawall will destroy the fishing industry; that seawall if permitted that this City government doesn't care about the fishing

industry which concerned him greatly. **Councilor Ciolino** said the City does everything it can for the fishing industry and because the Council can permit the seawall to be built doesn't mean the City doesn't care. To him, he said, the Godfrey Report doesn't make any sense, and he would not rely on it in his decision process.

Councilor Ciolino noted many folks come into his place of business to complain about taxes, mostly residential. He said he always explains that the City needs to build its industrial/commercial tax base, which he noted has been shrinking, and hopes this brings a turnaround in that way. A commercial enterprise, like this hotel, is a cash cow for the City. Between the real estate taxes, excise taxes, room and meals taxes, water and sewer and for City services the hotel asks for nothing. These taxes gained, he pointed out, will fund the City's schools, the Fire Department - more commercial development like this.

He noted riding to the Fort over the last few weeks and saw Jeff Amero's property, the old Curcuru property empty as is Sam Parisi's; Cape Pond Ice property, he noted, is barely being used. North Atlantic Fish he said, is thinking of moving out. Intershell, Mortillaro's, Parco's have a thriving business but everyone else is sinking there. The hotel, he said, will create excitement. Noting the speaker from Gloucester Pharmaceutical, he reminded the Council that gentleman has to go to Boston because the City doesn't have a full service hotel. If the City has a full-service hotel, the bio-marine industries will go into these empty properties, he said. **Councilor Ciolino** added that the hotel will be an agent of change for the Fort which is greatly needed. People have talked to him, he said, about who the developers are. He was informed that the City is lucky to have a fellow like Jim Davis who wants to invest in the City who is first class. Not only do the applicants do things well, they live in the community, he noted. **Councilor Ciolino** said this City is lucky to have someone who lives here and wants to invest in the community. When he was first elected, John Bell was elected as Mayor. Mayor Bell said to him that whatever is good for the City of Gloucester will be good for the wards and neighborhoods. **Councilor Ciolino** said he thinks of those words, about Gloucester Crossing and the wind turbines which were good for the wards and neighborhoods and concluded by saying he would support this project tonight.

Councilor McGeary summarized a written statement to the Council but asked Council President Hardy the entire text of his statement on the matter of the Special Council Permit for Beauport Gloucester LLC may be placed in the record. **Council President Hardy** gave her assent. **Councilor McGeary** states:

"In weighing the proposal before us, we need to address the impact of the hotel in three areas:

- Its effect on the economic life of the neighborhood and the city.
- Its effect on the quality of life in the neighborhood and the city.
- And, finally and most importantly, its effect on the environment, especially in light of predictions of climate change and rising sea levels.

I would first like to discuss the impact of the hotel on the city's economy.

First, the hotel generates additional tax revenues for the city. If we want to maintain good schools and roads, sewer and water systems and adequate police and fire protection, we need to enlarge our tax base. Not only will the hotel pay real estate taxes, but it will also generate lodging and meals tax revenue as well, adding to the revenues and transferring some of the burden to the tourists who visit our city and use its services.

Second, there is the question of jobs. It is estimated that the hotel will bring 160 jobs to the city. Many will be good jobs that pay good salaries and allow people to buy homes and make their lives here. Others will be lower paying, service-sector jobs. But I do not denigrate such work. There is nothing unseemly in entry-level jobs. For newly arrived immigrants, for kids looking for summer employment, for parents who need to balance child-care and a job, such jobs can be a godsend. And the developers have agreed to give preference to local people in hiring.

Third there is the impact of the hotel on the city's economic infrastructure.

The argument is made that businesses considering relocation to Gloucester will want to know there was a "business class" hotel in the city. I believe this to be true. I don't believe in and of itself the presence or absence of a hotel would be a deal breaker for a business considering coming to or expanding in Gloucester, but I do believe it is a piece of the puzzle. As Mr. Verdine pointed out last night, to attract 21st Century businesses to our city we must develop the infrastructure that such enterprises require. A hotel is part of that infrastructure, just as much as reliable sewer and water, good schools and roads, and a trained workforce. It's a part of the picture and one that shouldn't be overlooked.

Fourth, there is the hotel proponents' donation of \$2 million to the Fort infrastructure project--nearly a third of the cost of those long-needed improvements.

What are the economic hazards of the proposed hotel? Frankly, they are hard to see. Businesses in the Fort are currently in the state Designated Port Area. As such they are protected from the pressures of real estate development. Those parcels can only be used for marine industrial work or supporting uses.

People worry that hotel guests will object to the smells, bustle and clamor of being in an industrial zone, and that this will inevitably cause pressure to remove or shut down the industries that are there and have been there for

generations. That has been dealt with at some length in the conditions attached to the permit. The proponents have been put on the clearest notice they undertake this project in the certain knowledge that they are building in an industrial area and that industry will continue. Frankly, if the hotel owners were to complain about noise and odor at some future date, our response will be simple: *"Too bad."*

I would like now to address the quality of life issues for the neighborhood.

Traffic concerns have been raised during the construction phase of the project and once the hotel is opened. I believe the traffic studies, which have not been substantially disputed, show that the traffic impact on the neighborhood will be minimal. Many of the conditions proposed in the special permit motion deal specifically with traffic issues. Allowing for off-site parking and encouraging the use of public transportation and shuttles will further mitigate the impact on traffic.

Another area of concern is the shadows cast by the hotel building. Unquestionably it is larger than the current structure and will therefore cast longer shadows, but having been there at sunset both in December and this week, I can say that, while it is true that, at sunset, the building casts long shadows on neighboring properties, the position of the sun the "fall" of the shadows is almost entirely on industrial properties. I didn't see any residential properties that would be directly affected by the shadows cast by the hotel. While it is true that, in particular, the Mortillaro property is more shaded by the hotel than the current building, shadows are present only for a portion of the day. The sun can still work on accumulated snow and ice during most of the midday hours. Even if one accepts the Mortillaro study at face value, Commercial Street is in substantial shade if the building were built to the 40-foot "as of right" height.

As to concerns about noise, I believe the only legitimate concern raised concerning noise was the sound to be made during the testing of the hotel's emergency generator. I believe this concern, too, is addressed in the recommended conditions.

Then there is the question of loss of view. Unquestionably there will be some loss of view, but I cannot believe that the hotel will be any worse to look at than the blank, rusting wall of an abandoned freezer building. The use of peaked rooflines will maximize view corridors from nearby homes.

Finally there is a great advantage to the neighborhood that the ownership of Pavilion Beach is settled once and for all. While I have always felt that the beach was public and should be preserved for our citizens--especially those who are residents of the neighborhood, to prove that in law would not have been assured and would no doubt have proved costly. The agreement built into the special permit assures the citizens of Gloucester and their descendants will be the owners of this important natural resource in perpetuity.

Most importantly we must consider the impact of the hotel on the natural environment.

I believe that rapid climate change is real and, unfortunately, I also believe that we have passed a tipping point. Even if we were to stop polluting now, the world will warm and sea level will rise. But because that is true doesn't mean we need to abandon all developed properties on shorelines. I don't believe, for example, that the Dutch have any plans to let the one-fifth of Holland that is below sea level revert to its aboriginal state. Seawalls and barriers can be an appropriate response to rising sea level in developed areas.

As to the assertion that a seawall will somehow lead to greater flooding on Commercial Street, I don't believe that to be true. It is true that if there is a 15-foot storm surge properties in the Fort will be in trouble, but as my questions earlier ascertained, that's true regardless of whether there is a barrier beach or an artificial barrier in the way. Once the barrier is overtopped, the Commercial Street neighborhood will be a pond until the tide recedes.

What about the impact of the seawall on the beach and the shoreline? Dr. Godfrey's report posits that the longitudinal diversion of waves by the seawall will cause erosion of Pavilion Beach and damage the Stacy Boulevard seawall.

The first assertion seems to me to have been refuted by Dr. Smith's photos and plans which show the beach to have been stable for nearly a century, and perhaps longer. All the while there has been a seawall at its back edge. The proposed replacement seawall, being farther from the high tide line, actually puts more beach in place as a barrier.

Similarly, the suggestion that a new seawall will cause damage to the existing Stacy Boulevard seawall seems dubious. If that were true, one would expect that the part of the Stacy Boulevard seawall closest to the beach would show the most damage, but in fact the opposite is true. The most damaged and deteriorating sections are down by the cut, where the wall is exposed to the open sea, not at the end near the Tavern.

Finally, if the proponents' experts are wrong, and somehow the seawall does cause erosion of the beach, we have dealt with that in the proposed conditions for the permit The Conservation Commission's order no. 72 states: "The expanded beach area seaward of the seawall shall be monitored on an annual basis for the purposes of determining if there has been loss of sand over the course of natural beach cycles. In the event it is determined that

there has been a loss of sand due to reasons other than natural beach cycles, the applicant shall be allowed to perform beach nourishment programs." Further, the condition is in force "in perpetuity," for both the current owners and any future owners.

In the end, I return to the question with which I began my remarks. Do the benefits of the project outweigh the hazards?

We on this council are always weighing the consequences of actions and no action that we take is without consequences. We are looking into the future and our crystal ball is hazy at best, but in my judgment, the probable economic benefits of the proposed hotel outweigh its possible negative impacts on quality of life and the environment. Besides which, we have attached 110 conditions (and counting) required by various city bodies, including this Council, designed to ensure not only that no harm comes to the beach and the neighborhood during the construction of the hotel, but require that the impact of the development be monitored after construction is complete and the hotel is open for business to ensure that any unforeseen consequences are promptly dealt with.

It seems to me, Madame President, that we must diversify our economic portfolio, to cling to what was in the face of change is the surest path to exactly what the opponents say they don't want. With our traditional industries shrinking and nothing to replace them, we run the risk of becoming a museum of the past, a kind of Sturbridge Village by-the-Sea. A monument to what was. None of us want that. The hotel is a small but important step in creating that economic diversity that we will need to sustain our city and its citizens into the future.

Therefore, Madame President, I will be voting in favor of the special permit for the hotel this evening, and I urge my fellow Councilors to join me in taking this step towards ensuring Gloucester's economic and social vitality into the future."

Council President Hardy said the overwhelming support is in the community. Everybody has touched upon important issues. She expressed her pride in the Council for their work including Councilor Whynott who was unable to be with the Council this evening. She also thanked the Clerk of Committees, Dana Jorgensson for her efforts on behalf of the P&D Committee and the Council.

Council President Hardy added that the granting of the Special Council Permit is the best for the City and in its best interest to do so. Citing Mayor Kirk's presence she thanked her for following this project through to its end, noting the Mayor began the topic of change discussion. **Council President Hardy** asked the Council to embrace change and move forward.

- **Proposed Additional Council Conditions:**

Councilor McGeary offered an amendment to Motion #1 to add the following condition: "that Beauport Gloucester LLC shall provide pest control services for the duration of the construction, and for a period of one year after the hotel opens, to neighbors whose properties, as determined by the Board of Health, suffer rodent infestations as a result of the construction of the hotel," which was accepted by vote of the Council

Councilor LeBlanc offered an amendment to Motion #1 to add a condition that read: "The applicant shall agree to hold the City harmless for any claim of property damage or personal injury that may arise out of any of the applicant's work performed on the site or on Pavilion Beach." **General Counsel**, Suzanne Egan acknowledged she had worked with Councilor LeBlanc to draft the condition regarding the City's liability should there be any property damage or personal injury on City property and she agreed with the condition. **Councilor Ciolino** asked what an example of this was. **Ms. Egan** said this protects the City as during construction the public will be on the beach. If there is anything from the construction, that falls on them, on Pavilion Beach and should that individual file claim against the City, she would advise the applicant as she does in similar matters, that they must assume responsibility. The City does this on public contracts. The concern is that because the work will be taking place as close to the beach as possible and with the beach open to the public at the same time, it is public property and this is an appropriate protection.

Councilor McGeary asked if there should be legal language about fault and asked was there any requirement of proof that the applicant was at fault. **Ms. Egan** said this (condition) is saying that if someone makes a claim against the City, the City would turn to the applicant to defend this claim.

Councilor Tobey concurred with Ms. Egan's opinion that this is part of the standard provisions in contracting with private entities. There should be no burden of proof, he said.

Council President Hardy suggested the following additional wording: "...hold the City harmless of property damage or injury which may arise of the applicant's work performed during construction on the site or on Pavilion Beach." **Councilor Tobey** said assuming the deck with the pool has tables with an umbrella and an umbrella flies off in the wind and injures a private citizen on the beach, the City should be protected for that circumstance as much as with construction of the hotel. **Council President Hardy** then suggested perhaps the language should be

clarified to be more general. **Ms. Egan** said this is the typical language for a public construction contract. She suggested the condition could be amended to state, "...for any action or work performed during construction or during operation of the hotel which occurs on the site of Pavilion Beach." It says there is a concern during construction and during the operation of the hotel with the public using the beach and all the activities on-going there. This makes sure the City is protected.

Councilor LeBlanc's additional condition was then read by the Clerk of Committees: "The applicant shall agree to hold the City harmless for any claim of property damage or personal injury that may arise out of the applicant's business activities or during construction on the site."

Councilor LeBlanc, noting his discussion with General Counsel, his concern was that the beach deed was being handed over to the City before the construction was completed, and wanted assurances that the City was held harmless should, say, a construction worker fall from scaffolding and fall onto Pavilion Beach. **Council President Hardy** added this amendment is now more extensive. **Councilor Theken** offered that this version of the condition was a better one. **By unanimous consent Councilor LeBlanc's condition was accepted by the Council.**

Councilor Cox wished to add a condition to the already existing Condition #1 that the testing for the generator is done only Monday through Friday and not on a holiday and not on a State or Federal holiday.

Councilor Tobey noted as stated at the March 7, 2013 P&D meeting by the Fire Chief and Building Inspector, that reference was required by them both to the NFPA 110 standard does not allow the day of the week prohibition. **Councilor Cox** expressed her agreement with that conclusion and withdrew her amendment to Condition #1. **Councilor Cox** also asked regarding Condition #8 that instead of just National Grid, she would like it to state that all utilities be underground. **Councilor Tobey** said he believed that it was supposed to have been all utilities, and was in agreement with the change in Condition #8. **Councilor Cox** also noted Conditions #10 incorporates Appendix 1 and 2, and in those conditions it was changed. **Councilor Tobey** said he recalled that at the March 7th Committee meeting Madam President spoke specifically about Verizon which is a primary line owner in that area. **Councilor Tobey** restated the language for the Condition by saying, "The applicant shall urge any and all owners or operators of overhead utility lines to work with it in order to place the utilities underground." **Councilor Cox** stated her agreement with Councilor Tobey's language.

Councilor Cox said Condition #10 deal with parking. Condition #4 as to the community liaison hearing and working with the community with regard to sound and odors, she would like that to include as parking. While she understands that the hotel can not enforce parking off site, they can encourage, and if they should see people parking on site, or if there is neighborhood complaints about parking should add parking to discourage off site parking and if there is a complaint this person would be responsible for working with the neighborhood businesses and residents to help prevent off-site parking. **Council President Hardy** said that was a police matter; that if neighbors are aggrieved they should call the Police Department and that a hotel employee should not be patrolling the neighborhood regarding parking, nor should they be enforcing anything as a result of a complaint from the neighbors. **Councilor Cox** said when residents are inconvenienced by a parked car; they could go to the community liaison. **Councilor Ciolino** said he did not also agree with Councilor Cox. He said if people have a problem of this nature, they should call the police or a ward councilor. It is not appropriate to ask a hotel employee to take that responsibility.

Councilor Cox noted in Condition #11 employees are encouraged not to park in the local neighborhood but she said she would like to urge the applicant to make it a condition of employment. She said this is done in the industry when an employee is on shift. This is a request to make this a condition of employment. **Council President Hardy** and **Councilor Ciolino** expressed their disagreement with Councilor Cox's proposal of a condition of employment to the operator of the hotel. **Councilor Cox's** request for a condition regarding employee parking as a condition of employment by the hotel operator was withdrawn by her for consideration. **Councilor Verga** also agreed that the hotel could not be prohibiting parking at public parking.

The parking condition offered by Councilor Cox was voted down by the City Council with 7 against, 1 (Cox) in favor.

Councilor Theken said if there is erosion on the beach the renourishing of it is perpetual. **Ms. Egan** said there are a number of conditions about the beach, and the applicant will have to remedy the situation, pointing out there are six conditions that are related to that in the ConCom Order of Conditions. It would go back to the ConCom for enforcement and remediation by the applicant, she said.

Councilor Ciolino reminded the Council that these conditions stay with the property. If the property is sold, all these conditions stay on it.

MOTION: On motion by Councilor Tobey, seconded by Councilor Verga, the full City Council voted 8 in favor, 0 opposed, 1 (Whynott) absent, the granting of a Special Council Permit for Major Project/Hotel for

Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner) Map 1, Lot 33, Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.3.2 (a) and (b) and section 5.7 (Major Project) with the following conditions:

1. *The emergency generator testing and maintenance, as required by the State Building Code and NFPA 110, shall only occur between the hours of 12:00 noon and 2:00 pm, except in cases of an emergency.*
2. *There shall be evergreen vegetation planted and maintained at the sound board wall on Fort Square. The vegetation shall be of a species that will withstand the salt air and other environmental considerations in the area. A landscaping plan reflecting the required vegetation shall be submitted to the building inspector prior to the issuance of a building permit.*
3. *The applicant shall purchase two (2) identical decibel meters (sound meters) one for the Gloucester Inspector of Buildings and the other for the Hotel Community Liaison.*
4. *As it relates to sound and odors, the Applicant shall provide a Hotel staff person to act as a Community Liaison to listen to and follow up on neighbors' concerns.*
5. *There shall be no lighting of Pavilion Beach at any time by the Hotel.*
6. *There shall be bollards placed around the project's on-site hydrant, said hydrant shall remain unobstructed at all times.*
7. *There shall be public access from Commercial Street to Pavilion Beach and a walkway across the beach side of the Hotel for public access as shown on the plans as a part of this application.*
8. *The Applicant shall urge any and all owners or operators of overhead utility lines to work with it in order to place the utilities underground.*
9. *The Beach and Development Agreement shall be incorporated herein as Appendix 4 and made a condition of this special permit.*
10. *That the City Council adopt as its own the Planning Board's recommended conditions which are incorporated herein by reference and attached hereto as Appendix 1, General Conditions 1-26 and Appendix 2 for Conditions 1-7 as relates to the parking plan.*
11. *Employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand. Employees will be encouraged not to park in the local neighborhood.*
12. *The applicant shall agree to hold the City harmless for any claim of property damage or personal injury that may arise out of the applicant's businesses activities or during construction on the site.*
13. *That Beauport Gloucester LLC shall provide pest control services for the duration of the construction, and for a period of one year after the hotel opens, to neighbors whose properties, as determined by the Board of Health, suffer rodent infestations as a result of the construction of the hotel.*
14. *The Applicant shall be required pursuant to the Zoning Ordinance, Appendix A, Rule 25, Part II, 5 (i), to provide documentary evidence to the City Council proving that any and all conditions specified by the Council in the Special Council Permit have been met at which time the Council will issue a "Certificate of Conditions Complete". No occupancy permit shall be issued until said Certificate has been provided to the Council.*

MOTION 2. HEIGHT EXCEPTION

MOTION: On motion by Councilor Hardy, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner), Map 1, Lot 33 Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.4.1 footnote (h) by reference to Section 3.1.6 (b) for a height exception of 21 feet, height not to exceed 61 feet from average existing grade as shown on site plans dated September 21, 2012 revised February 27, 2013, drawing number A0-06.

DISCUSSION:

Councilor Tobey explained that the findings drafted and adopted by P&D warrant being read and put fully into the record and said as follows:

That the Council must find that such increase in the allowable height is consistent with neighborhood character and will not be substantially detrimental to the neighborhood because of obstruction of view, overshadowing of other properties, impairment of utilities or other adverse impacts.

The peaked roof design is consistent with other nearby buildings such as the Tavern Restaurant and the Chamber of Commerce building. Peaked roofs are often preferred as they are in keeping with the character of our community. The Hotel peaked roof hides the building mechanicals, and provides more architectural interest than a flat roof. Other downtown buildings have the similar height. (McPherson Park, Sheedy Park and the Armory, the Clark Building each are six stories in height.)

Due to the combination of the amenities of a full service Hotel, including the proposed 101 rooms, meeting and function rooms, restaurant, and underground parking, the proposed height is appropriate for the proposed use.

Public safety and flood protection mandate the elevation of the building as the public areas are not on the ground floor which justifies an increase over the zoning height maximum.

The Committee reviewed the matter of overshadowing, focusing on the shadowing studies which showed that the increased height of the building will not create further substantially detrimental overshadowing of the existing 40', by right, height allowance in the MI district.

Utilities will not be impaired by the height.

Councilor Tobey said there would be consistency of height in the Fort. As to the matter of the neighborhood coexisting, there is no other neighborhood like this in the City. The residences are non-conforming but are there; and this will be just as much a part of it. If Councilors have a willingness to work together, it can work. He stated that any plans for renewing the stormwater, drinking and waste water infrastructure need to include the industrial discharges in the fisheries discharges which they want the City to grow including the sale of the Curcuru property for industrial use.

Councilor Verga said this was one of the two more sensitive areas, but this is not substantially bigger than the existing building. Pointing out that the Council passed the Special Council Permit for a hotel in a small neighborhood on Essex Avenue, and there were also issues of height with that project. This is part of the package to make the hotel work and supports it.

Councilor Theken said she hoped that something is put in for waste water pre-treatment, adding if the City is to co-exist, then it should take responsibility to make the working waterfront continue to work. As to height she did not care for the penthouse, she said. But she couldn't say no to this as she voted yes to the Essex Avenue hotel. Views, she noted, will be lost. The community said the hotel is needed, and she would vote yes.

Councilor Cox noted Councilor Tobey's comments and expanded upon them that Councilor McGeary and she have been working with the Administration for a pre-treatment plant and there have been discussions.

Councilor LeBlanc said there are similarly heighted buildings in the City. There is shadowing all over the City as well, he pointed out. The P&D Committee, the Planning Board has done their due diligence with this process, and he would agree with their recommendation.

Councilor Ciolino said he would also support the height. Because of the 21 feet being given, a lot of the mechanicals will be under the roof which is an advantage to the residents of the Fort that they will not hear the noise or see the actual mechanicals on the roof. It is well deserved to give the height, he said. As to the shadowing, both studies came to similar conclusion. The height of 40 feet is by right.

Councilor McGeary also said he supported the height exception. The peaked roof minimizes the view obstruction and shadow and is aesthetically pleasing.

Council President Hardy said that she is in support of the height also.

Councilor LeBlanc asked about snow falling off the peaked roof of the hotel and had not heard anything about it. **Council President Hardy** suggested the state building code would have something in it about it and that the Building Inspector could be consulted.

On inquiry by **Councilor Theken**, **Councilor Tobey** said with the alignments of the roofs the snow will fall onto the property of the hotel and likely not on the street.

MOTION: On motion by Councilor Tobey, seconded by Councilor Verga, the full City Council voted 8 in favor, 0 opposed, 1 (Whynott) absent the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner), Map 1, Lot 33 Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.4.1 footnote (h) by reference to Section 3.1.6 (b) for a height exception of 21 feet, height not to exceed 61 feet from average existing grade as shown on site plans dated September 21, 2012 revised February 27, 2013, drawing number A0-06.

MOTION 3. OFF SITE, VALET AND TANDEM PARKING FOR THE PROPOSED HOTEL.

MOTION: On motion by Councilor Hardy, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council the granting of a Special Council Permit for

Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner), located at 47-61 Commercial Street as shown on Assessors Map 1, Lot 33 Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.5.1 for off site, valet and tandem parking for the proposed Hotel with the following conditions:

1. The off-site parking lot shall comply with the requirements of the Gloucester Zoning Ordinance.
2. The parking management plan submitted by the applicant dated December 12, 2012 as part of the response to peer review proposed seven conditions which shall be incorporated herein and will be attached to the final decision as Appendix #2.

DISCUSSION:

Councilor Tobey stated these are allowances authorized for the Council to enact by the HOD. It will help traffic flow and ease congestion and are goals. The P&D Committee is satisfied, he said.

MOTION: On motion by Councilor Tobey, seconded by Councilor Verga, the full City Council voted BY ROLL CALL 8 in favor, 0 opposed, 1 (Whynott) absent, the granting of a Special Council Permit for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner), located at 47-61 Commercial Street as shown on Assessors Map 1, Lot 33 Hotel Overlay District in the MI zoning classification, pursuant to section 5.25.5.1 for off site, valet and tandem parking for the proposed Hotel with the following conditions:

- 1. The off-site parking lot shall comply with the requirements of the Gloucester Zoning Ordinance.**
- 2. The parking management plan submitted by the applicant dated December 12, 2012 as part of the response to peer review proposed seven conditions which shall be incorporated herein and will be attached to the final decision as Appendix #2.**

MOTION #4 LOWLANDS PERMIT

MOTION: On motion by Councilor Hardy, seconded by Councilor Verga, the Planning & Development Committee voted 3 in favor, 0 opposed the granting of a Special City Council Permit for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner), Map 1, Lot 33 Hotel Overlay District in the MI zoning classification, for a lowlands permit under the Gloucester Zoning Ordinance Section 5.5.4 at 47-61 Commercial Street.

DISCUSSION:

Councilor Tobey said that the Council is authorized to make a finding that the requirements of the Wetlands Protection Act are met to issue this permit. They are relying on the ConCom Order of Conditions as well as the Shellfish Constable's letter saying that the project will have no adverse effect on shellfish resources of the City. As to the beach, he said it was important to note that the Council said there may be two points of view as to who owns the beach but there is only one acceptable resolution. The beach will be certified in public ownership and thanked the Council for their standing tall on it; when this process is done it will be another benefit to the City. He also noted that incorporated into these motions are several appendices, one related to the Planning Board general conditions and the ConCom Order of Conditions.

Council President Hardy added that for the same reasons as stated at P&D, she would support the Lowlands Permit as well.

MOTION: On motion by Councilor Tobey, seconded by Councilor Verga, the full City Council voted BY ROLL CALL 8 in favor, 0 opposed, 1 (Whynott) absent, the granting of a Special City Council Permit for Beauport Gloucester, LLC (applicant), Beauport Gloucester, LLC (owner), Map 1, Lot 33 Hotel Overlay District in the MI zoning classification, for a lowlands permit under the Gloucester Zoning Ordinance Section 5.5.4 at 47-61 Commercial Street.

The following are the Appendices as referenced to in Councilor Tobey's P&D Committee Report which shall be appendices to the Decision of the Special Council Permit:

Appendix 1 Planning Board General Conditions

The following conditions, as modified have been recommended by the Planning Board and are conditions to the special permit: These modified conditions are to be binding on the Applicant and are to become part of the Special City Council Permit Decision.

The Project shall be constructed in accordance with the following Record Plans, which are on file with the Planning Board and City Clerk's Office:

Plans to Accompany Permit Applications for Beauport Gloucester Hotel prepared by Beal's Associates Inc. bearing most current revision date.

1. All operations and maintenance system reports of the stormwater and wastewater shall be forwarded to the Community Development and Engineering Departments.
2. All site lighting shall be in compliance with the lighting provision of the Code of Ordinances.
3. That any action by the City Council includes specification of elements of the Project and responsibilities that will remain private. The City shall not have any legal responsibility for the operation, maintenance, repair or replacement of the same to the extent such features are located on the Site:
 - All driveways and parking areas within the Project
 - Stormwater management facilities within the Project
 - Snow plowing of driveways and parking areas and snow removal
 - Landscaping within the Project
 - Trash removal from the Project
 - Lighting within the Project
 - Water and sewer services within the Project.
5. In the event of any emergency, the Applicant shall allow the City of Gloucester DPW access to the sewer and water lines on the Site for repair purposes.
6. The Conservation Commission's Order of Conditions pursuant to 310 CMR 10.00, or any superseding order of the Department of Environmental Protection (DEP), if applicable, and an Order of Conditions issued under the Gloucester Wetland Ordinance regarding this property shall be made a part of the special permit. If there is any inconsistency between the Record Plans and the plans as may be approved by the Conservation Commission or by DEP, the Applicant shall submit an amended plan to City Council and the Planning Board for review and to the Conservation Commission and to DEP (if applicable) for approval before the City Council Decision to ensure all approvals are consistent with one another.
7. A preconstruction conference with City departments shall be held prior to the commencement of construction of the Project. The contractor shall request such conference at least fourteen business days prior to commencing construction by contacting the Planning Director and Engineering Department in writing. At the conference, the applicant and municipal officials shall agree upon a schedule of inspections. The applicant shall provide the City (including the following departments: Inspector of Buildings, Fire, Police, Engineering, DPW, Community Development and the Board of Health) with 24 hour emergency contact numbers as well as the name and telephone number of a designated owner's representative for all Project related communication.
8. During construction of the Project, the applicant shall conform to all local, state and federal laws

regarding noise and vibration. The applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Exterior construction of the Project shall not commence on any weekday before 7:00 a.m. and shall not continue beyond 6:00 p.m. except for certain operations such as concrete finishing and emergency repairs. Exterior construction shall not commence on Saturday before 8:00 a.m. and shall not continue beyond 5:00 p.m. with the same exceptions. The Building Inspector may allow longer hours of construction in special circumstances provided that such activity normally is requested in writing by the applicant except for emergency circumstances where oral communication shall be followed by written confirmation. There shall be no exterior construction on any Sunday or state or federal legal holiday. Hours of operation shall be enforced by the Gloucester Police Department.

9. The City Council's agents shall be allowed entrance onto and view and inspect the Site during regular business hours to ensure compliance subject to applicable safety requirements as established by the applicant or its contractor including signing in at the construction field office trailer prior to entering the site.
10. Construction monitoring shall occur as required under the Conservation Commission's Order of Conditions or any Final Order issued by DEP.
11. Dust from outside activities shall be controlled. The applicant and its contractors shall effectuate the following practices to minimize levels of dust:
 - Wetting soils that are excavated from unsaturated zones
 - Wetting equipment during excavation/loading activities
 - Minimizing dust generation from areas that have been excavated through the wetting of soils or by other means of stabilizing dust particles.
 - Stockpiles left more than 30 days shall be stabilized
 - Restricting vehicle speeds and travel routes on the Site
 - Covering truck beds transporting soils off-site/on-site to prevent dust generation
 - Regularly scheduled sweeping of paved areas to ensure a nuisance is not created by blowing soil, dust or debris.
12. Construction fencing shall be erected for the duration of construction, as shown on the Record Plans. Fencing shall be 6 foot wire fencing with fabric screen.
13. Staging of equipment and material shall be located within the Project. Good faith efforts shall be made to schedule material deliveries to avoid peak traffic hours.
14. Excavation shall be conducted according to all city and state regulations including 527 CMR. 13.00 And the Gloucester Code of Ordinances Section 13 Noise, and shall be conducted within the hours set forth in Condition #8.
15. Sedimentation and erosion controls, as shown on the Record Plans, shall be maintained and inspected by an independent erosion control monitor on a weekly basis, or as directed by the Conservation Agent or Engineering Department and said inspections shall be reported in writing to Conservation and Engineering Departments.
16. The applicant shall (at its own expense) be required to promptly repair any damage which applicant causes to sidewalks, street pavement, signs or other fixtures or features within the public right of way after obtaining permission from the City.
17. The Project shall be connected to the City of Gloucester utility system for domestic water and fire flow. Final fire flows in compliance with state and local regulations shall be certified by the Fire Department.

18. The Applicant shall follow the Operation and Maintenance Manual dated December 14, 2012, for the Project's stormwater management system. In the event that the Applicant fails to maintain the on-site stormwater management system in accordance with such Plan, the DPW shall give written notice of such failure and the Applicant shall have twenty (20) days to repair the cited failure. In the event of an emergency and an inability to contact the Applicant or its successor in interest, the DPW may conduct such emergency repair and the Applicant shall permit entry onto the Site to make such emergency repair. In the event the DPW conducts such emergency repair, the Applicant shall promptly reimburse the DPW for all reasonable expenses associated therewith. No entry by the DPW shall be made without prior written notice to the Applicant and without affording the Applicant a reasonable opportunity of not less than twenty (20) days as aforesaid to cure the maintenance or repair problem.
19. The Applicant shall be responsible for Site security during and following construction. The Applicant shall pay for public safety details when required during the construction period when site equipment and material deliveries affect public roadways adjacent to the Site, as directed by the Gloucester Police Department.
20. Following construction of the Project, the applicant shall provide an "as-built" site plan to the Engineering Department, Building Department and Community Development Department prior to the issuance of a certificate of occupancy for the Project in accordance with applicable regulations. The applicant shall provide a separate as-built plan depicting the water mains and services and sewer mains and facilities to the Engineering Department demonstrating compliance with the Record Plans and installation specifications. These plans shall also be submitted in electronic format.
21. The applicant shall actively recruit in Gloucester for all open staff positions including making such efforts as advertising jobs in the local Gloucester newspapers and having a job fair in Gloucester for Gloucester residents
22. Construction shall commence within 2 years of the granting of this special council permit, as affected by state law.
23. That the Agreement between Beauport Gloucester, LLC and the City of Gloucester that was presented to the City Council on February 25, relating to conveyance of the beach parcel and contribution for off-site improvements is incorporated into this special permit (see Appendix 4) and any violation of the Agreement would be grounds to revoke this permit.
24. Applicant shall enter into one or more legal agreements with owners of property in Gloucester and/or purchase property in Gloucester, which provide, in the aggregate, off-site parking for 50 or more vehicles, to be used for additional parking for the Hotel, as needed. Copies of such agreements (redacted as to financial terms) or copies of deed(s) for such parcel(s) shall be delivered to the Building Inspector, before a building permit is issued for the applicant's project. Use of such site(s) shall be in conformance with the Gloucester Zoning Ordinance. Any such agreement or deed may be replaced from time to time with others, so long as there is always parking for 50 or more vehicles in the aggregate. The Building Inspector's determination that this condition has been satisfied shall be conclusive.
25. If the Applicant wishes to modify the approved Record Plans, it shall submit proposed modifications in accordance with the provisions of GZO Section 1.5.13 and/or the provisions of the Permit. Where such modification is deemed substantial, the same standards and procedures applicable to an original application for a special permit approval shall apply to such modification and review, and recommendation by the Planning Board and public hearing by the City Council; provided, however, that the Building Inspector may determine that a proposed modification is insubstantial and approve the same.
26. The Building Inspector, in consultation with the Conservation Agent, Planning Director, and the Director of Public Works shall determine whether any modifications to the Project are substantial or

insubstantial. In making such determination, the following shall be presumed to constitute substantial modifications, subject to confirmation by the City Council by majority vote at a public meeting:

- Changes to the building or grading that increase the building's height beyond that shown on the Record Plans;
- Changes to the building that increase the total floor area of the Project beyond that shown on the Record Plans;
- Changes to the architectural character of the buildings shown in the Record Plans.

Authorization to modify the Record Plans shall be obtained prior to any substantial modification in the field.

Condition #6 above suggests that any Order of Conditions issued by the Gloucester Conservation Commission, or Final Order issued by DEP, be incorporated by reference. The Board understands the Conservation Commission review is ongoing and additional information is being developed to address construction related issues including but not limited to: demolition, seawall construction and coordination with the proposed city infrastructure improvements.

Appendix 2 Conditions 1-7

The City Council adopts as its own, the following conditions, as modified, that have been recommended by the Planning Board related to the parking management plan submitted by the applicant dated December 12, 2012 as part of the response to peer response proposed seven strategies. These modified conditions are to be binding on the Applicant and are to become part of the Special City Council Permit Decision:

1. As recommended by the Planning Board, Applicant shall enter into one or more legal agreements with owners of property in Gloucester and/or purchase property in Gloucester, which provide, in the aggregate, off-site parking for 50 or more vehicles, to be used for additional parking for the Hotel, as needed. Copies of such agreements, (redacted as to financial terms) or copy(s) of deeds for such parcels shall be delivered to the Building Inspector, before a building permit is issued for the Applicant's project. Use of such site(s) shall be in conformance with the Gloucester Zoning Ordinance. Any such agreement or deed may be replaced from time to time with others, so long as there is always parking for 50 or more vehicles in the aggregate. The Inspector of Buildings determination that this condition has been satisfied shall be conclusive
2. During busy periods, use of the garage spaces will be reserved primarily for Hotel guests, assisted and managed by the valet/parking manager. The surface parking spaces will be available for short term visitors and users of the restaurant and multi-use facilities.
3. During the peak busy season, on-site parking may be limited to one vehicle per room.
4. Employees will be encouraged to car-pool, use CATA bus service and existing public off-site parking. Employees will not be allowed to park on-site when there is significant Hotel demand.
5. At peak times, valet service will be used to efficiently park vehicles in the garage. Managed parking will be done so as not to block circulation lanes.
6. Off-site parking, when needed, will be made available for employee parking or for parking for Hotel guests who do not anticipate needing their cars on a daily basis. A van can be utilized to provide shuttle service for employees and guests when off-site parking is required.
7. Groups using the Hotel for meetings or functions, particularly during peak seasons will be encouraged to arrive and depart in limousines and small buses and trolleys.

Appendix 3 Order of Conditions

The City Council adopts as its own, the following Order of Conditions, as modified, that have been recommended by the Conservation Commission as their Attachment "A". These modified conditions are to be binding on the Applicant and are to become part of the Special City Council Permit Decision:

Attachment A
CITY OF GLOUCESTER, MA CONSERVATION COMMISSION
ORDER OF CONDITIONS
Applicant: Beauport Gloucester, LLC March 6, 2013
Location: 47-61 Commercial Street, Gloucester, MA DEP FILE #028-2232 and
City of Gloucester Wetlands Ordinance

The property site is defined as the property located at 47-61 Commercial Street in the City of Gloucester, Massachusetts, which is shown in part as Lot 33 on the City of Gloucester Assessor's Map 1. The upland parcel contains about 1.85 +/- acres of land. The property is described in a deed dated July 7, 2011 and recorded with Essex South District Registry of Deeds in Book 30521, Page 84, together with applicant's rights in the beach and flats thereto belonging.

The activity is defined as the construction of a 101-room hotel along with the construction of a seawall, walkway, utilities, construction of entrance and egress, parking areas and the construction of a stormwater management system, all as shown on the approved plans. Portions of the work lie within the 100' buffer of the coastal bank, 100' foot buffer to the coastal beach, and within land subject to coastal storm flowage.

After conducting public hearings, conducting a site visit and obtaining professional review the Gloucester Conservation Commission has found as fact that portions of this property are defined as Coastal Beach and Land Subject to Coastal Storm Flowage. There are also areas defined as Coastal Bank, Land Under the Ocean, Shellfish Beds and Eelgrass Beds located seaward of the Coastal Beach fronting the property. The locations of the Coastal Resource Areas on the property were the subject of an Order of Resource Area Delineation, DEP File #28-2211 issued by the City of Gloucester Conservation Commission on September 14, 2012., the Gloucester Conservation Commission has found as matter of fact that a portion of the proposed project is subject to the Wetlands Protection Act and the City of Gloucester Wetlands Ordinance, Chapter 12 as well as the 2008 Massachusetts Department of Environmental Protection Stormwater Regulations.

Special Conditions:

1. No work shall commence on the affected property until all appeal periods pertaining to this order have elapsed. After the expiration of all such appeal periods in accordance with General Condition 9 on page 3 of this Order of Conditions and prior to commencement of any work on the affected property, this Order of Conditions must be recorded at the Southern Registry District of the Essex County Registry of Deeds. Failure to record this Order of Conditions will result in automatic revocation of this Order as provided by General Condition 1 on page 7 of this Order of Conditions.
2. The Gloucester Conservation Commission shall be notified in writing within fifteen (15) days of all transfers of title of any portion of property that take place prior to the issuance of the Certificate of Compliance. In conjunction with the transfer of ownership, interest, or control of the property subject to this Order and/or transfer of contract to perform the work conditioned by this Order, the applicant shall submit to the Gloucester Conservation Commission a statement signed by the successor(s) in ownership, interest or control of the property or contract to perform the work that she/he is aware of an outstanding Order of Conditions on the site, has received a copy of this Order of Conditions and has accepted responsibility required by General Condition 17 on page 5 of this Order of Conditions.
3. This Order shall be made part of all construction contracts and subcontracts dealing with the work proposed, and the requirements of this Order of Conditions shall supersede any conflicting contract

requirements. The contractor or contractors responsible for the project's completion shall understand and be notified of the requirements of this Order of Conditions. Any person performing work on the activity that is the subject of this Order of Conditions is individually responsible for understanding and complying with the requirements of this Order of Conditions.

4. The contractor, contractors, or other individual(s) in charge of work on the site shall have a copy of this Order of Conditions, as well as all approved plans and documents referenced in Section A 8 of this Order available at the on-site office upon commencement of any site work and shall make the plans and documents available to any person doing work on the site at all times.
5. Prior to any work being done on the project site, the applicant shall inform the Gloucester Conservation Commission in writing of the names, addresses, business, mobile and home telephone numbers of both the project supervisor who will be responsible for ensuring on-site compliance with this Order and his/her alternate. The notification shall occur at least 48 hours prior to commencement of any work on the site. The 48 hours shall not be over weekends or holidays. The applicant shall also notify the Commission in writing of any changes in this information.
6. All work shall be conducted in strict accordance with the Notice of Intent and approved plans and supporting documentation unless otherwise specified in this Order of Conditions, which shall be the controlling document. Any other or additional activity in areas within the jurisdiction of the Gloucester Conservation Commission will require separate review and approval by the Conservation Commission.
7. If the Gloucester Conservation Commission finds, by majority vote, any changes as referenced in General Condition 14 on page 4 of this Order of Conditions, by significant and/or to deviate from the original plans, the Notice of Intent, or this Order of Conditions, the applicant shall provide written notice to the Gloucester Conservation Commission for approval prior to implementing the change in the field. The Commission shall determine whether the change is significant enough to require a new Public Hearing and/or the filing of a new Notice of Intent within 21 days. If a new public hearing is required or a new Notice of Intent is required these shall all be conducted and advertised and noticed to the abutters at the expense of the applicant, in order to take testimony from all interested parties. Within 21 days of the close of said hearing, the Commission shall issue an amended or new Order of Conditions.
8. Any material errors found in the plans or information submitted by the applicant shall be considered as changes, and the procedures outlined in General Condition 14 and Special Condition 7 above shall be followed.
9. No on-site wells for irrigation shall be constructed within 100 feet of any Coastal Resource Area without the filing of a new Notice of Intent with the Gloucester Conservation Commission.
10. Issuance of these conditions does not in any way imply or certify that the site or adjacent areas will not be subject to flooding, storm damage, or any other form of water damage.
11. The applicant agrees with the Gloucester Conservation Commission's position that the Order of Conditions as written, individually or as a group, protects the Interests of the Act. In the event that an Enforcement Order is issued to the applicant and/or the property owner and the applicant and/or the property owner fails to act after five (5) business days from the receipt of said Enforcement Order, the Gloucester Conservation Commission may satisfy the requirements of the Enforcement Order and the applicant agrees to reimburse the Gloucester Conservation Commission for all administrative costs and other expenses required to satisfy the Enforcement Order including but not limited to all costs incurred by the City due to the use of its own resources or the use of outside resources including the employment of experts, specialized contractors or any other individual or organization it deems necessary to satisfy the requirements of the Enforcement Order.
12. By accepting this Order of Conditions the Applicant, the Owner and any successors in ownership agree that the Agent or members of the Gloucester Conservation Commission or their designees and consultants

may enter and inspect the property and the project pursuant to Condition 15, with or without probable cause or prior notice, and until a Certificate of Compliance is issued. After a Certificate of Compliance is issued the Owner and any successors in ownership agree that the Agent or members of the Gloucester Conservation Commission or their designees and consultants may enter and inspect the property and the project, with or without probable cause or prior notice for the purpose of monitoring compliance with those Conditions of this Order of Conditions which remain in effect in perpetuity. The Agent or members of the Gloucester Conservation Commission or their designees and consultants will follow the Owner's on-site check-in and safety procedures.

13. It is the responsibility of the applicant to satisfy all procedural requirements of all agencies which may have jurisdiction over the activity that is the subject of this Order of Conditions, and to obtain all required licenses, permits, or authorizations. These may include but are not limited to the following: a) Massachusetts Department of Environmental Protection Waterways License and other approvals, if required, b) NPDES Stormwater Pollution Prevention Permit, c) Massachusetts Highway Department Access Permit, if required, d) City of Gloucester City Council, e) Permits from the City of Gloucester Building Department including building, wiring and plumbing permits. Copies of all such licenses, permits and authorizations shall be provided to the Gloucester Conservation Commission immediately upon receipt.

Prior to Construction

14. At least 30 days prior to any construction or activity on the site the Applicant shall submit the following revised or supplemental final engineering drawings and information to the Gloucester Conservation Commission for their Approval. As appropriate the revised or supplemental plans and information shall be signed and sealed by a Massachusetts Registered Professional Engineer, Registered Professional Land Surveyor, Massachusetts Registered Landscape Architect, Massachusetts Licensed Site Professional or Massachusetts Licensed Soil Evaluator.
15. At least 30 days prior to the commencement of any activity on this site, the applicant shall pay for the services of the Gloucester Conservation Commission's consultant for the project to perform the following services:
 - Review and make recommendations to the Gloucester Conservation Commission on the applicant's revised plans, information and submittals as required by this Order of Conditions;
 - Attend the pre-construction meeting with the Gloucester Conservation Agent;
 - Inspect the installed erosion controls with the Gloucester Conservation Agent;
 - Conduct inspections of the site with the Gloucester Conservation Agent on a monthly basis while the work is being performed;
 - Conduct inspections of the site with the Gloucester Conservation Agent on a regular basis
16. The Gloucester Conservation Commission's consultant shall provide the Conservation Commission and the Applicant with a Scope of Services and proposed budget for the inspectional and consulting services required by this order. Upon acceptance of the proposal by the Conservation Commission, the Applicant shall fund an account administered by the City of Gloucester in the full amount of the estimated cost for the environmental monitoring at least 7 days prior to the commencement of any of the consultant's work. The consultant shall submit monthly invoices for services rendered to the Conservation Commission for approval and payment.
17. The Applicant shall submit the final SWPPP which includes all of the appendices, forms and attachments required by the 2008 NPDES General Permit for Stormwater Discharges From Construction Activities and which identifies the responsible parties. The construction period checklist should be revised to meet all of

the requirements of the 2008 NPDES General Permit for Stormwater Discharges from Construction Activities. A sample inspection report form is available from the US EPA at http://www.epa.gov/npdes/pubs/exampleswppp_residential_appe.pdf. The SWPPP shall include a spill control and response plan.

18. The Applicant shall submit a detailed vibration monitoring plan to monitor vibrations near the Coastal Bank during the pile driving phase of the project. The plan shall be prepared by a Massachusetts Registered Professional Engineer experienced in pile driving operations and monitoring vibrations. Results of the monitoring shall be reported to the Gloucester Conservation Commission on a weekly basis. At no time shall the peak particle velocity adjacent to the coastal bank exceed 0.75 in/sec.
19. Design calculations supporting the final seawall construction plans and certification of the structure by a Massachusetts Licensed Engineer responsible for the design of the wall shall be submitted to the Conservation Agent for the City files prior to construction. Final Construction Plans depicting the Seawall and associated details shall be submitted by the design engineer noted above. Said plans shall incorporate any and all revisions requested by the Conservation Commission and agreed to by the applicant.
20. The ramps and stairway to the beach shall be ADA compliant and shall be designed to account for normal fluctuations of the level of sand.
21. The applicant shall coordinate with the City DPW and their engineers on the details of the connection at the east end of the seawall.
22. All of the above items shall receive Approval from the Gloucester Conservation Commission prior to any work on the site. The applicant shall pay for the Conservation Commission's NOI consultant, who will review and make recommendations to the Conservation Commission on the applicant's revised plans, information and submittals.
23. At least 7 days prior to the commencement of any construction or activity on the project site, an on-site Preconstruction Meeting must be held with the contractor, designated agent and the Conservation Agent and the selected environmental monitor to review this Order of Conditions to ensure that all conditions of this Order are understood and review the construction sequencing.
24. At the Preconstruction Meeting, the Applicant shall submit the documents listed below. These documents shall be updated regularly until construction on the project is complete. Documents shall include the following:
 - Photographs depicting the project site along the Coastal Resource Areas.
 - Results of sand density testing and grain size analysis. This shall form the basis of the sand specification required below.
 - Sand specifications shall be prepared by the applicant's engineer and submitted at the preconstruction meeting
 - Construction sequencing plan.
 - Construction schedule.
25. At least 7 days prior to the commencement of any activity on the project site the applicant shall notify the Gloucester Conservation Commission in writing that activity is commencing on a date certain. The 7 calendar days shall not include holidays.

26. No clearing of vegetation, including trees, or disturbance of soil on any areas within 100 feet of any wetland resource area shall occur prior to the Preconstruction Meeting, except such minimal disturbance required in order to stake the required erosion control lines.
27. After the Preconstruction Meeting and prior to any construction at the site, all erosion controls shall be installed along the approved staked line. The erosion controls shall consist of devices as located and detailed on the approved plans.
28. The construction and associated protective measures for the installation of the sheet pile wall, demolition of the existing building, placement of armor stone and the construction of ramps and stairways, shall be monitored and inspected by an independent engineering/environmental monitor as chosen by the Conservation Agent on a schedule determined and directed by the Conservation Agent. Periodic reports by the Monitor shall be filed with the Conservation Agent.
29. During demolition, and during construction of the seawall, the Applicant's consultant shall submit weekly monitoring reports with photos of the work and site, a description of work that took place that week and a description of work planned for the following week.
30. Prior to pouring the concrete for the seawall cap, the condition of the protective coating shall be inspected and any deterioration of the steel sheet piles shall be addressed.
31. Sand brought to the site for placement on the beach shall be compatible in color, shape and grain size with existing sand on the beach. A material specification shall be filed with the Conservation Agent prior to construction.
32. Construction safety fencing shall be installed prior to construction as outlined on the project plans and shall be modified as directed by the City Staff. The limits of the fencing adjacent to Coastal Resource Areas may be phased to maximize protection to the Coastal Resource Areas during the demolition of the existing building. Temporary protective fencing may be placed on the beach portion of the site at the Conservation Agent's direction if it is determined that further beach protection is necessary during demolition or during seawall construction.
33. No construction activities or alterations shall occur to the westerly end of Pavilion Beach on the seaward side of the upland parcel. This area shall be left in a "natural" state.
34. The designated inspector under the NPDES Permit and the SWPPP shall provide the Gloucester Conservation Commission with copies of all SWPPP Inspection Reports. Inspections shall be conducted at the intervals required under the NPDES. The inspection reports shall address the current condition of erosion and sedimentation controls; describe any erosion or sedimentation problems and mitigation measures implemented. Reports shall be sent to the Gloucester Conservation Commission by email within two days of the inspection followed by hard copy in the mail.
35. The Applicant's Engineer shall provide the Gloucester Conservation Commission with a minimum of two (2) progress reports per month or at intervals as agreed with the Conservation Agent when work is ongoing directly adjacent to the Coastal Beach or work on the stormwater management system is ongoing. Progress reports shall indicate what work has been completed and what work is anticipated to be done over the next reporting period. The report shall also address the current condition of erosion and sedimentation controls and shall describe any erosion or sedimentation problems and mitigation measures implemented. Reports shall be sent to the Gloucester Conservation Commission by email within two days of the inspection followed by hard copy in the mail. Failure to provide these reports within two days of the Applicant's Engineer's inspection of the site shall constitute a violation of this Order of Conditions and the Commission may issue an Enforcement Order requiring that all work be ceased until the reports are provided and the site is inspected by the Gloucester Conservation Commission, the Commission's Agent and/or the Commission's consultant.

During Construction

36. Accepted engineering and construction standards shall be followed in the completion of this project. This includes proper installation and maintenance of Erosion & Sediment Control (E&SC) Best Management Practices (BMPs) per applicable DEP, US Department of Agriculture Natural Resource Conservation Service (NRCS), and/or manufacturers' guidelines.
37. The erosion controls shall be maintained per General Condition 18 on page 8 of this Order of Conditions until the referenced stabilization efforts are inspected and approved in writing by the Commission. Upon completion of the project, the applicant shall remove and discard all E&SC materials determined to be detrimental to the resource areas and restore the soil and vegetation beneath the barriers to pre-disturbance condition.
38. The applicant shall have on hand at the start of any soil disturbance, removal or stockpiling, an emergency supply of erosion control materials consisting of a minimum of 200 feet of filter mitts in good condition and sufficient stakes for securing the filter mitts. The additional supply of filter mitts and stakes shall be used only for the control of emergency erosion, and shall be installed in accordance with the details shown on the approved plans. An emergency-use only reserve of products for other methods of E&SC, if previously approved in writing by the Commission, may be substituted. (See Standard Condition 17.)
39. The Owner must maintain erosion control devices and check on a weekly basis and after any rain event totaling more than 0.5" of precipitation over any 24-hour period. Filter mitts shall be maintained and replaced on an as-needed basis, unless the Gloucester Conservation Commission determines otherwise, to prevent the passage of accumulated sediments to resource areas downgradient of the site and the work areas. Accumulated sediment upgradient of erosion control devices shall be removed immediately if its depth exceeds 6 inches or every two weeks during construction.
40. The erosion control specifications provided in the Notice of Intent and the erosion control provision in the Order of Conditions will be the minimum standards for this project. Erosion control devices may be modified based upon experience at the site. Additional or modified erosion control measures may be required by the Gloucester Conservation Commission at any time before, during and after construction. These will be maintained until the Applicant's Engineer and a member or agent of the Gloucester Conservation Commission agree that they are no longer needed, at which time they will be removed, using mutually satisfactory removal procedures.
41. All existing catch basins and stormwater inlets and all new catch basins and stormwater inlets (immediately upon their installation) on and immediately adjacent to the site shall be protected by Silt Sacks to prevent sediment from entering the stormwater drainage system. Silt Sacks shall be maintained and regularly cleaned of sediments until all areas associated with the work permitted by this Order of Conditions have been permanently stabilized and the Gloucester Conservation Commission and/or Staff has formally approved their removal. Filter fabric placed under the inlet rim is not an acceptable substitute for silt sacks.
42. The contractor shall install temporary erosion controls on all stormwater drainage system and stormwater management system inlet and outlet pipes until the construction of the systems and their tributary pre-treatment measures has been completed and all surfaces on the site have been stabilized.
43. Until the proposed impervious surfaces and travel ways within the site have been paved, a temporary stabilized construction entrance for the site shall be maintained.
44. Street sweeping to eliminate any siltation and deposited material on paved surfaces on and immediately adjacent to the project site (on Commercial Street and Fort Square) during construction will be provided by the Owner and/or his Contractor as necessary until all affected surfaces of the site have been stabilized.

45. All equipment shall be operated and maintained to prohibit alterations of Coastal Resource Areas not allowed by this Order of Conditions and to minimize disturbance in buffer zones to those areas clearly identified on the plans, demarcated in the field, and permitted by this Order of Conditions. No equipment is to enter or cross any Coastal Resource Area (other Land Subject to Coastal Storm Flowage) at any time. At the end of each work day all equipment shall be parked outside of the 100 foot resource area buffer zone as shown on the plans.
46. Immediately upon the completion of the foundation for the proposed building, the applicant shall engage a Registered Professional Engineer or Land Surveyor to prepare an as-built plan accurately depicting the foundation location and its proximity to wetland resource areas and certifying that the completed foundation is located as shown on the approved plans. This plan shall be submitted to the Gloucester Conservation Commission Agent for approval prior to proceeding with any further work on the building.
47. Grading shall be performed in accordance with the approved plans for the project and shall not direct runoff to the property of others, unless such conditions already exist. This project shall not increase runoff, nor cause flood or storm damage to abutters or the property of others.
48. If any dewatering activities are necessary for the project, water shall not be directly released into any Coastal Resource Area or stormwater drainage system. Water from dewatering activities shall first be deposited into and filtered by a Dirt Bag® or similar device such as a sediment sump surrounded by a crushed stone and filter fabric dike or a stilling basin to remove sediment before the water is released. This requirement also applies to discharge of any and all construction-generated runoff, whether released by gravity or pumped.
49. The area of construction shall remain in an environmentally stable condition at the close of each construction day.
50. If any of the stormwater management structures or stormwater treatment systems are to be used as sedimentation control during construction, all accumulated silt and debris shall be thoroughly removed to the naturally occurring soil and cleaned prior to final construction and final stabilization. If fill is required to bring the basin to proposed subgrade the fill shall be clean gravel fill. The stormwater management and treatment structures and/or infiltration areas shall be inspected by the Gloucester Conservation Commission and/or its agent and consultant when they have been cleaned and prior to adding any fill or surfacing materials.
51. Prior to final installation of the subsurface infiltration structures, any fill and accumulated silt and debris shall be removed to the naturally occurring soil. If fill is required to bring the infiltration area to proposed subgrade, the fill shall be Title 5 fill. The installation of the subsurface infiltration structures shall be inspected by the Gloucester Conservation Commission and/or its agent when they have been cleaned down to the natural soil and prior to adding any fill or surfacing materials.
52. Prior to the creation of any impervious surfaces for any building or structure (roof), parking areas, roadways, walkways within a particular phase of the project, all stormwater drainage collection, treatment and control systems including infiltration and detention structures serving that phase shall be fully constructed and functional.
53. Beach profile monitoring shall be required immediately after the seawall is constructed and annually for three years post-construction to determine if the seawall is causing any adverse impacts to the coastal beach. Beach profile monitoring shall consist of elevation profiles taken from the face of the seawall across the coastal beach to approximately the low tide line. Profiles should be taken approximately every 100 feet along the coastal beach starting at the southeasterly edge of the property to just beyond the westerly property line. Adverse impact to the coastal beach will be deemed to be changes that cannot be attributed to normal seasonal fluctuations to the coastal beach.

54. The applicant will be required to submit an annual report by a qualified coastal geologist or coastal engineer along with these surveys. This report will summarize the surveys with a discussion of any profile changes and whether the coastal geologist/ coastal engineer deems that these are natural changes or whether changes have occurred that are deemed to be adverse impacts resulting from the seawall construction. If it has been determined based on these surveys that the seawall has caused adverse impacts to the coastal beach, the applicant will be required to perform beach nourishment with compatible sediment to remedy the impacts.
55. The applicant shall provide the Commission with an illicit discharge statement prior to discharging any stormwater to post-construction Best Management Practices (BMPs).
56. All plantings on the site must be regionally native and shall not be non-native invasive plants.
57. If the work undertaken for this project results in the introduction of or growth of invasive species, it shall be the Applicant's responsibility to remove the invasive species (including the roots) and re-establish native vegetation within the affected areas.
58. All debris, fill and excavated material shall be stockpiled as far away from Coastal Resource Areas as possible and surrounded by a double row of staked filter mitts to prevent sediment from surface runoff entering the resource areas. At no time shall any debris or other waste material be buried or disposed of within a Coastal Resource Area or Coastal Resource Buffer Zone.
59. No unsuitable material of any kind (stumps, roots, trash, debris, etc.) may be buried, placed or dispersed on the property.
60. All construction debris that is not recycled for appropriate on-site use shall be removed from the site. All void areas shall be brought to grade and any imported backfill material shall be tested for contaminants prior to being imported to the site. The results of the testing of all imported soil testing shall be submitted to the Gloucester Conservation Commission along with a certified statement by a Massachusetts Licensed Site Professional that all soil materials imported to the site are clean and free from contamination.
61. Concrete trucks and other vehicles shall not be washed out in any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), Buffer Zone, or into any stormwater drainage system components. Any deposit of cement or concrete products into a Buffer Zone, or Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage) shall be immediately removed and the area shall be restored.
62. During and after work on this project, there shall be no discharge or spillage of fuel, oil, or other pollutants into any Coastal Resource Area or Buffer Zone. Also, there shall be no refueling of mechanical equipment within a Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone, Equipment for fuel storage and refueling operations shall be located outside all areas within the jurisdiction of the Gloucester Conservation Commission (excepting Land Subject to Coastal Storm Flowage). The applicant shall take all reasonable precautions to prevent the release of pollutants by ignorance, accident, or vandalism.
63. There shall be no above ground or underground storage of fuel oils, gasoline or other hazardous substances or pollutants allowed within any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone, except for such substances stored within the original manufacturer's tank for power generation equipment or within a building.
64. Any future work, excluding routine landscape maintenance, within any Coastal Resource Area (excepting Land Subject to Coastal Storm Flowage), or Buffer Zone other than that permitted under this Order of Conditions, must be reviewed and approved by the Gloucester Conservation Commission. In the event sand replenishment is required in the area in front of the seawall, such replenishment shall be permitted on an as needed basis under this order with notice to the Conservation Agent of the time, amount, and need for such replenishment.

CERTIFICATE OF COMPLIANCE

65. Upon completion of the work on the project, the applicant shall request in writing a Certificate of Compliance from the Gloucester Conservation Commission and shall submit the following information with the request:
66. A certification from a Massachusetts Registered Professional (Civil) Engineer stating that construction complies in all respects with this Order of Conditions and setting forth deviations, if any exist.
67. Two sets of field surveyed as-built site plans prepared, signed and stamped by a Massachusetts Registered Professional Land Surveyor or a Massachusetts Registered Professional (Civil) Engineer. The as-built plan shall include, at a minimum, and as applicable to the project, elevations of all pipe inverts and outlets, pipe sizes, materials, and slopes; all other drainage structures, limits of clearing, grading and fill; all structures, pavement and spot elevations and 2 foot contour elevations within 100 feet of Coastal Resource boundaries; locations of wetlands boundaries; all alterations within Coastal Resource areas; and all dates of fieldwork. The as-built survey shall include a statement that the survey was made on the ground under the direct supervision of the Surveyor/Engineer and that the survey conforms to all of the requirements of 250 CMR 6.02.
68. A CD containing the electronic drawing file for the As-Built Survey in .pdf and AutoCAD 2004 formats.
69. The as-built plans shall locate at least three control points and at least three benchmarks.
70. Post-construction photographs demonstrating compliance with this Order of Conditions, including established vegetation where required.
71. All fees for the Gloucester Conservation Commission's Consultant required by this Order of Conditions shall be paid in full by the Applicant prior to any request for a Certificate of Compliance.

PERPETUAL CONDITIONS

Conditions 72 through 77 shall survive the expiration of this Order of Conditions and shall be included as continuing requirements in perpetuity on the Certificate of Compliance and the property owner shall be the party responsible for compliance with these conditions. These conditions shall survive the Order of Conditions and shall run with the title of the property in Perpetuity. The Gloucester Conservation Commission or its agent shall have permanent rights of entry onto the property to check on compliance with these Conditions.

GENERAL

72. There shall be no above ground or underground storage of fuel oils, gasoline or other hazardous substances or pollutants allowed within any Wetland Resource Area, or within the 100-foot Coastal Buffer Zone except for such substances stored within the original manufacturer's tank for power generation equipment or within a building.
 - The expanded beach area seaward of the seawall shall be monitored on an annual basis for the purposes of determining if there has been loss of sand over the course of natural beach cycles. In the event it is determined that there has been a loss of sand due to reasons other than natural beach cycles, the applicant shall be allowed to perform beach nourishment programs upon written notification to the Gloucester Conservation Commission. Such nourishment shall result in a sand condition similar in nature to the condition prior to sand loss with respect to color, grain size and density of material.
73. Any new owner or successor in title shall, within 30 days of assuming ownership, provide a letter to the Gloucester Conservation Commission acknowledging that they understand their obligations under this

Order of Conditions. This requirement shall be recorded in the deed and on subsequent deeds for the property.

STORMWATER MANAGEMENT

74. The applicant shall provide the Gloucester Conservation Commission with a copy of any Ownership documentation along with the contact name and telephone number for the agent or property manager. The property owner(s) are responsible for the Operation and Maintenance Plan, of the stormwater collection, treatment and management systems on the property.
75. The applicant shall comply with all requirements of the Operation and Maintenance Plan filed with the Order of Conditions. The applicant shall maintain and repair the stormdrain collection system and appurtenances in order to ensure that the design capacity, the storm water treatment and pollution abatement capacity, and structural integrity of these facilities are maintained. The applicant shall maintain all stabilized surfaces as designed including maintenance and repair of pavement and maintenance of landscaped areas maintaining a vigorous growth of all plant materials. Catch basins and stormwater treatment units shall be inspected and cleaned and roadways, driveways and sidewalks shall be swept at intervals specified in the O&M Plan. Accumulated sediments shall be removed from sumps and floatable wastes shall be removed from the surface of every catch basin at intervals specified in the O&M Plan. All drain pipes shall be inspected and sediment and debris removed at intervals specified in the O&M Plan. Sediments and wastes shall be disposed of in accordance with all applicable federal, state, and local laws.
76. Snow shall not be stockpiled on the property. Snow shall be removed from the site upon completion of plowing activities and disposed of in accordance with proper procedures.
77. The applicant and his successors in ownership shall file written reports of the inspections, cleaning and stormwater maintenance along with an up to date certified illicit discharge statement with the Gloucester Conservation Commission on an annual basis, by November 1st beginning the year the binder course of pavement is first installed.
78. Any issues which arise at any time affecting the function of any components of the Stormwater Management system on the site, including the underground infiltration system, the biofiltration swales or the constructed stormwater wetlands must be addressed immediately by the property owner at his sole expense.

APPENDIX # 4 Beach and Development Agreements

The following Agreements have been recommended to the City Council by the Planning and Development Committee. These Agreements are to be binding on the Applicant and are to become part of the Special City Council Permit Decision.

Exhibit One

DEED

Beauport Gloucester, LLC, a Massachusetts limited liability company (“Grantor”), for One Dollar (\$1.00) consideration paid, grants to the City of Gloucester, a municipality incorporated under the laws of the Commonwealth of Massachusetts (“Grantee”), all of its right, title and interest in and to that certain parcel of beach and flats in Gloucester, Essex County, Massachusetts (the “Premises”) described in Exhibit A,

attached hereto and incorporated herein by reference, for use, in common with others entitled thereto, for all purposes for which public beaches are now or hereafter used in the City of Gloucester.

Grantor reserves the perpetual right and easement, as appurtenant to Grantor’s Remaining Land, as defined in Exhibit A, to utilize the Premises as a public beach and for all purposes which are not materially inconsistent with the rights of the general public to utilize the Premises as a public beach. No rights reserved by Grantor hereunder shall be exercised in a manner which is materially inconsistent with the general public’s rights to utilize the Premises as a public beach, other than as provided herein.

Subject to obtaining all required permits therefor, the Grantor reserves the perpetual right and easement, from time to time, as appurtenant to Grantor’s Remaining Land, to use, maintain, alter, repair, add to, remove, construct, install and replace the following improvements, which now exist or which Grantor, or its successors and assigns may hereafter locate in whole or in part on the Premises and/or on Grantor’s Remaining Land:

- (1) Revetments, seawalls, and/or retaining walls including any already in existence;
- (2) Walkways, including stairways and ramps, providing access to the Premises from Grantor’s Remaining Land and/or Fort Square, including any already in existence;
- (3) Any other coastal structures which are reasonably necessary to protect Grantor’s Remaining Land and any improvements now and hereafter thereon, or to enable occupants of Grantor’s Remaining Land to have reasonable access to and from the Premises; and
- (4) Any other improvements which are required or mandated by any governmental agency or entity having jurisdiction.

Notwithstanding anything to the contrary herein contained, Grantor, subject to obtaining all required permits therefore, in exercising any of its rights hereunder, shall have the temporary right, from time to time, to bring onto the Premises, such personnel, equipment and materials as may be reasonably necessary or appropriate for Grantor to so exercise its rights. In such instances, the general public’s right to utilize the Premises, or portions thereof, may be temporarily interrupted. In addition, any improvements constructed or installed on the Premises by Grantor which are approved by the Commonwealth of Massachusetts or by the Grantor, or which are required by or mandated by any governmental agency or entity, shall be presumptively deemed not to be materially inconsistent with the general public’s rights to utilize the Premises as a public beach.

Grantor shall include its employees, guests, invitees and licensees and its successors and assigns.

No rights to use the Grantor’s Remaining Land are being granted or created, including, but not limited to, any rights by implication or necessity.

WITNESS the execution hereof under seal this ____ day of _____, 2013.

Beauport Gloucester, LLC

By: _____

Name:

Title: Manager

COMMONWEALTH OF MASSACHUSETTS

On this _ day of _____, 2013 before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were a _____ to be the person whose name is signed on the preceding or attached

document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Manager for Beauport Gloucester, LLC.

Notary Public

Commission expires:

Exhibit A to Deed from Beauport Gloucester, LLC to the City of Gloucester

The "Premises" are that certain parcel of land located southwesterly of, but not on, Commercial Street in Gloucester, Essex County, Massachusetts consisting of beach and flats and shown as Parcel 2 on a plan (the "Plan") entitled " _____ " by _____, dated _____, to be recorded herewith.

Parcel 1 on the Plan is referred to in the Deed to which this Exhibit is attached as "Grantor's Remaining Land".

For Grantor's title to the Premises and Grantor's Remaining Land, see Deed dated July 7, 2011, recorded with the Essex South District Registry of Deeds in Book 30521, Page 84 and Confirmatory Deed dated July 15, 2011, recorded with said Deeds in Book 30531, Page 311.

These documents will be included upon signature and receipt. Further, Exhibit A: Plan as rendered by Beals Associates, Inc., dated January 24, 2013 is hereby incorporated by reference herein.

- **Beach & Development Agreement/Deed re: Pavilion Beach pursuant to Application of Beauport Gloucester LLC under Sec. 5.25 Hotel Overlay District; GZO Sec. 5.5.4 Lowlands; Sec. 5.7 Major Project**

MOTION: On motion by Councilor Verga, seconded by Councilor Hardy, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council to accept the terms and conditions of the Agreement between Beauport, LLC and The City of Gloucester regarding Beauport's contribution of 1,400,000 (one million four hundred thousand dollars) and the conveyance of Beauport LLC's right, title and interest in the portion of Pavilion Beach and to authorize the Mayor to execute it on behalf of the City.

DISCUSSION OF EXHIBIT A TO DEED:

On inquiry by **Councilor Theken, Councilor Tobey** said that the deed is an attachment to the agreement which will be executed and placed in escrow to be released at a certain determined point, with the money being released to the City in a phased way.

MOTION: On motion by Councilor Tobey, seconded by Councilor Verga, the full City Council voted BY ROLL CALL 8 in favor, 0 opposed, 1 (Whynott) absent, to accept the terms and conditions of the Agreement between Beauport, LLC and The City of Gloucester regarding Beauport's contribution of one million four hundred thousand dollars and the conveyance of Beauport LLC's right, title and interest in the portion of Pavilion Beach and to authorize the Mayor to execute it on behalf of the City.

MOTION: On motion by Councilor Verga, seconded by Councilor Hardy, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council to accept a one million four hundred thousand dollars (\$1,400,000.00) contribution to the City of Gloucester for certain improvements to the sewer, water, storm drainage and roadways in the Commercial Street and Fort Square area and improvements to the West End Intersection in three installments, in equal parts, one within ten (10) days or the issuance of a building permit for the construction of a hotel located on 47-61 Commercial Street, the second within six (6) months thereafter and the final within ten (10) days of the issuance of a final certificate of occupancy for the Hotel.

DISCUSSION:

Councilor Tobey said that this acknowledges the process by which in the phasing for the release of the contribution to the City. This project is going forward, and the sooner it is, the sooner the funds are released and reduce an added burden that would otherwise fall on sewer use rate payers and water use rate payers which would be an unfortunate consequence of appeal, he said.

Councilor Verga noted this will assist in correcting the infrastructure in the Fort which was long overdue. This will help the City to get far on the project.

Councilor Theken added her support saying this is for the whole community. She stated the Council was not bought. P&D worked to make sure the infrastructure would be improved and extended her thanks to the Committee for obtaining this for the community.

Councilor Ciolino said a better infrastructure would encourage more businesses to move to the Fort and make it easier to market the properties there.

Council President Hardy stated her appreciation of the private contribution to a public project.

MOTION: On motion by Councilor Tobey, seconded by Councilor , the full City Council voted BY ROLL CALL in favor, 0 opposed, 1 (Whynott) absent, to accept a one million four hundred thousand dollars (\$1,400,000.00) contribution to the City of Gloucester for certain improvements to the sewer, water, storm drainage and roadways in the Commercial Street and Fort Square area and improvements to the West End Intersection in three installments, in equal parts, one within ten (10) days or the issuance of a building permit for the construction of a hotel located on 47-61 Commercial Street, the second within six (6) months thereafter and the final within ten (10) days of the issuance of a final certificate of occupancy for the Hotel.

MOTION: On motion by Councilor Verga, seconded by Councilor Hardy, the Planning & Development Committee voted 3 in favor, 0 opposed to recommend to the full City Council to accept the deed from Beauport LLC conveying all of its right, title and interest in and to a certain parcel of beach and flats in Gloucester, described as Parcel 2 and shown on a plan of land entitled 47-61 Commercial Street, Map 1, Lot 33, Book 30524, Page 84, Book 30531, Page 311, prepared for Beauport Gloucester, LLC, 6 Rowe Square, Gloucester, MA, by Beals Associates, Inc. dated January 24, 2013.

DISCUSSION:

Councilor Tobey explained that this preserves the people's title on Pavilion Beach.

Councilor Ciolino stated his support of the motion and added he urged the hotel owners to install a weathervane on the tower but **Councilor Tobey** noted the applicant needed be cautious of the height of the weathervane.

MOTION: On motion by Councilor Tobey, seconded by Councilor Verga, the full City Council voted BY ROLL CALL 8 in favor, 0 opposed, 1 (Whynott) to accept the deed from Beauport LLC conveying all of its right, title and interest in and to a certain parcel of beach and flats in Gloucester, described as Parcel 2 and shown on a plan of land entitled 47-61 Commercial Street, Map 1, Lot 33, Book 30524, Page 84, Book 30531, Page 311, prepared for Beauport Gloucester, LLC, 6 Rowe Square, Gloucester, MA, by Beals Associates, Inc. dated January 24, 2013.

Council President Hardy thanked all those residents who came to the public hearing on the hotel permitting.

A motion was made, seconded and voted unanimously to adjourn the meeting at 8:52 p.m.

Respectfully submitted,

Dana C. Jorgenson
Clerk of Committees

DOCUMENTS/ITEMS SUBMITTED AT MEETING:

- **Slide 21 of the Perkins & Wills view comparisons of the Beauport Gloucester LLC Hotel of the March 12, 2013 Presentation as removed from the content by Councilor Tobey**