

GLOUCESTER CITY COUNCIL MEETING

Tuesday, July 14, 2015 – 7:00 p.m.

Kyrouz Auditorium – City Hall

-MINUTES-

Present: Chair, Councilor Paul McGeary; Councilor Joseph Ciolino; Councilor Melissa Cox; Councilor Steven LeBlanc, Jr.; Councilor Robert Whynott; Councilor Paul Lundberg; Councilor William Fonvielle; Councilor Robert Stewart

Absent: Councilor Greg Verga

Also Present: Mayor Sefatia Romeo Theken; Linda T. Lowe; Kenny Costa; Jim Destino; John Dunn; Chip Payson; Bill Sanborn

The meeting was called to order at 7:05 p.m.

Flag Salute & Moment of Silence. Council President McGeary dedicated the Moment of Silence to the 58,195 people who died in the Vietnam War and whose names graced our city over the weekend. He paid particular tribute to Mark Nestor and the rest of the Veterans Council who helped arrange the visit of The Wall That Heals.

Council President McGeary announced that the meeting is being video recorded and noted that Councilor Verga is out of town.

Oral Communications: Debbie Liacos of 41 Woodward Avenue addressed the Council about the Witham Street parking spots at Good Harbor Beach. She believes that the condition of that end of Witham Street is a safety issue. She stated that rusty pipes are coming up out of the ground and she has seen several people fall there. She indicated that she has spoken to Councilor McGeary and Mark Cole about this issue over the last couple of years. However, she was told that the Conservation Commission did not want to do anything there. She suggested cutting the curb and putting some granite and a boardwalk there, which would look nice and address the safety issue. She also noted that the Witham Street parking spots have been taken by non-residents, who have been ticketed for parking there but not towed as was done in the past. She stated that the elderly and people with medical conditions enjoy using those spots to access the beach. She stated that the \$45 tickets do not deter non-residents from parking there and she would like the city to start towing again.

Presentations/Commendations: Commendation honoring the work of the late Mary Ray for her contributions to the Gloucester Municipal Archives. Council President McGeary stated that Mary and Alan Ray were instrumental in establishing and nurturing the Archives Committee and have left a great organization which helps the clerk do her job and preserves the city's history. He then read a certificate of recognition and presented it to Mr. Ray. Mr. Ray stated that it is great to see that the work of the Archives Committee is still recognized as important. He expressed his appreciation for the recognition tonight. Councilor Whynott thanked Mr. and Mrs. Ray for their work.

Confirmation of New Appointments

Community Preservation Committee

TTE 02/14/17

Henry McCarl

MOTION: On a motion by Councilor Whynott, seconded by Councilor Stewart, the City Council voted 8 in favor, 0 opposed, to appoint Henry McCarl to the Community Preservation Committee, term to expire 02/14/17.

Stage Fort Park Advisory Committee

TTE 02/14/18

Salvatore J. Frontiero (Little League Rep.)

MOTION: On a motion by Councilor Whynott, seconded by Councilor Fonvielle, the City Council voted 8 in favor, 0 opposed, to appoint Salvatore J. Frontiero to the Stage Fort Park Advisory Committee, term to expire 02/14/18.

Mr. Frontiero stated that through the Rotary Club, he was involved in upgrading the playground at the park and as president of the Rotary Club was able to secure funding for the upkeep of the park.

Consent Agenda:

- **CONFIRMATION OF REAPPOINTMENTS**
- **MAYOR'S REPORT**
- 1. Memorandum, Grant Application and Checklist from Harbormaster re: FY2016 Clean Vessel Act (CVA) Contract
- 2. Grant Application and Checklist from City Hall Restoration Commission re: acceptance of a grant in the amount of \$8,000 from the Bruce J. Anderson Foundation
- 3. Memorandum from Chief Financial Officer requesting City Council approval of a Loan Order in the amount of \$1,350,000 for Technology and Building Improvements
- 4. Memorandum from General Counsel re: grant of easement to National Grid for 10 Concord Street
- 5. Memorandum from General Counsel re: acceptance of an easement for 58-60 Commercial Street
- 6. New Appointments: Licensing Board (TTE 05/31/17) Meredith Fine (filling the unexpired term of Michele Harrison)
Downtown Development Commission (TTE 02/14/18) Patricia Gates
- 7. Addendum to Mayors Report: Memorandum from Chief Financial Officer requesting City Council approval of a Loan Order in the amount of \$1,500,000 for Water Main Rehabilitation Work
- **COMMUNICATIONS/INVITATIONS**
- **INFORMATION ONLY**
- **APPLICATIONS/PETITIONS**
- **COUNCILORS ORDERS**
- 1. CC2015-022 (Stewart) Amend GZO Sec. VI "Definitions," Sec. 2.3.1, "Residential Uses" and Sec. 2.4.4
- 2. CC2015-023 (Verga) City Council work together with Planning Board, Conservation Commission, ZBA, BOH and Administration to develop a new City permitting guide which will facilitate the land use permitting process for residents and local businesses
- **APPROVAL OF MINUTES FROM PREVIOUS COUNCIL AND STANDING COMMITTEE MEETINGS**
- 1. City Council Meeting: June 23, 2015
- 2. Standing Committee Meetings: B&F 07/09/15 (**under separate cover**), O&A 07/06/15, P&D 07/08/15 (**under separate cover**)

By unanimous consent, the Consent Agenda and Unanimous Consent Calendar were accepted as presented.

Committee Reports:**Budget & Finance: July 9, 2015**

- 1. Memorandum, Grant Application & Checklist from Public Health Director re: request City Council accept the third year of a three-year grant award of the Mass. Opioid Abuse Prevention Collaborative (MOAPC) in the amount of \$100,000**

COMMITTEE RECOMMENDATION: On a motion by Councilor Fonvielle, seconded by Councilor Cox, the Budget & Finance Committee voted 2 in favor, 1 absent, to accept a grant under MGL c. 44, §53A for \$100,000 representing the third year funding of a three-year federal grant award from the U.S. Department of Health and Human Services passed through the Massachusetts Opioid Abuse Prevention Collaborative for the purpose of addressing the issue of opioid misuse and abuse.

DISCUSSION: **Noreen Burke**, the Director of the Public Health Department, explained that this is the third year of a three-year award with two options to renew for two years. She stated that this grant primarily supports staff and subcontractors and is unrelated to the police program. **Council President McGeary** stated that Gloucester has been recognized and is being recognized again by the U.S. Department of Health and Human Services for the work that we have done in combatting substance abuse, including the Chief's recent initiative and a number of initiatives that have been in effect for several years and we will be the partner in two regional grants.

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 8 in favor, 0 opposed, to accept a grant under MGL c. 44, §53A for \$100,000 representing the third year funding of a three-year federal grant award from the U.S. Department of Health and Human Services passed through the Massachusetts Opioid Abuse Prevention Collaborative for the purpose of addressing the issue of opioid misuse and abuse.

- 2. Communication from the Chair of the Friends of the Gloucester Dog Park re: request City Council acceptance of donations totaling \$25,000**

COMMITTEE RECOMMENDATION: On a motion by Councilor Fonvielle, seconded by Councilor Cox, the Budget & Finance Committee voted 2 in favor, 1 absent, to accept under MGL Chapter 44, §53A-½ the donation by

the Friends of the Gloucester Dog Park to the City of Gloucester for the purchase and installation of solar lighting at the Gloucester Dog Park with a value of \$25,000.

DISCUSSION: Ms. Demick explained that a local dog owner approached them a couple of years ago before the park was even open and offered to give them solar lights and poles worth \$25,000 but the Friends would have to pay for the installation of the foundations. They have now raised the funds for the install. Ms. Demick said that there will be four lights and that the lumen field will only light the beginning and middle of the park so neighbors would not be affected. The lights will be on a timer, from dusk until the park closes at 9:00 p.m., which will be adjusted during the season as necessary.

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 8 in favor, 0 opposed, to accept under MGL Chapter 44, §53A-½ the donation by the Friends of the Gloucester Dog Park to the City of Gloucester for the purchase and installation of solar lighting at the Gloucester Dog Park with a value of \$25,000.

3. Memorandum from Harbormaster and Supplemental Appropriation-Budgetary Request: 2016-SA-1

COMMITTEE RECOMMENDATION: On a motion by Councilor Fonvielle, seconded by Councilor Cox, the Budget & Finance Committee voted 2 in favor, 1 absent, to recommend that the City Council approve Supplemental Appropriation 2016-SA-1 in the amount of \$8,500.00 (Eight Thousand Five Hundred Dollars) from Account #720000.10.996.59600.0000.00.000.00.059, Reserve for Appropriation Municipal Waterways Improvements & Maintenance – Transfer Out Enterprise Fund to Account #70000.10.492.58700.0000.00.000.00.058, Waterways Enterprise, Replacement of Equipment for the purpose of purchasing and installation of seven (7) new Transient Moorings and attendant mooring gear.

DISCUSSION: The Harbormaster explained that this is to create seven new transient moorings in the Ten Pound Island area. There are currently five off Stage Head, 15 between Ten Pound Island and the breakwater, and nine in the inner harbor. There are none in the Ten Pound Island area itself. He indicated that between Memorial Day and June 30, the number of boaters visiting Gloucester and using the transient moorings doubled from last year to this year.

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 8 in favor, 0 opposed, to approve Supplemental Appropriation 2016-SA-1 in the amount of \$8,500.00 (Eight Thousand Five Hundred Dollars) from Account #720000.10.996.59600.0000.00.000.00.059, Reserve for Appropriation Municipal Waterways Improvements & Maintenance – Transfer Out Enterprise Fund to Account #70000.10.492.58700.0000.00.000.00.058, Waterways Enterprise, Replacement of Equipment for the purpose of purchasing and installation of seven (7) new Transient Moorings and attendant mooring gear.

4. Memorandum from Harbormaster and Supplemental Appropriation-Budgetary Request: 2016-SA-2

COMMITTEE RECOMMENDATION: On a motion by Councilor Fonvielle, seconded by Councilor Cox, the Budget & Finance Committee voted 2 in favor, 1 absent, to recommend that the City Council approve Supplemental Appropriation 2016-SA-2 in the amount of \$6,800.00 (Six Thousand Eight Hundred Dollars) from Account #720000.10.996.59600.0000.00.000.00.059, Reserve for Appropriation Municipal Waterways Improvements & Maintenance – Transfer Out Enterprise Fund to Account #70000.10.492.58410.0000.00.000.00.058, Waterways Enterprise, Facility Improvement for the purpose of a piling survey to be conducted for the assessment of the Magnolia Pier.

DISCUSSION: The Harbormaster explained that this is to conduct a piling survey of the Magnolia Pier public landing in compliance with the previous city ordinance to make sure that our facilities are up-to-date and not in danger of collapsing. The contractor is ready to begin the work as soon as we are done here.

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 8 in favor, 0 opposed, to approve Supplemental Appropriation 2016-SA-2 in the amount of \$6,800.00 (Six Thousand Eight Hundred Dollars) from Account #720000.10.996.59600.0000.00.000.00.059, Reserve for Appropriation Municipal Waterways Improvements & Maintenance – Transfer Out Enterprise Fund to

Account #70000.10.492.58410.0000.00.000.00.058, Waterways Enterprise, Facility Improvement for the purpose of a piping survey to be conducted for the assessment of the Magnolia Pier.

5. Memorandum from Harbormaster and Supplemental Appropriation-Budgetary Request: 2016-SA-3

COMMITTEE RECOMMENDATION: On a motion by Councilor Fonvielle, seconded by Councilor Cox, the Budget & Finance Committee voted 2 in favor, 1 absent, to recommend that the City Council approve Supplemental Appropriation 2016-SA-3 in the amount of \$1,570.00 (One Thousand Five Hundred Seventy Dollars) from Account #750000.10.996.59600.0000.00.000.00.059, Waterways Stabilization Fund-Harbor Cove Marina-Transfer Out Enterprise Fund to Account #70000.10.492.52000.0000.00.000.00.052, Waterways Enterprise, Contractual Services for the purpose of repairs to lighting at the Harbor Cove Commercial Marina.

DISCUSSION: The Harbormaster explained that this is to repair the wharf lighting at Harbor Cove Marina, which will be updated with LED lighting.

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 8 in favor, 0 opposed, to approve Supplemental Appropriation 2016-SA-3 in the amount of \$1,570.00 (One Thousand Five Hundred Seventy Dollars) from Account #750000.10.996.59600.0000.00.000.00.059, Waterways Stabilization Fund-Harbor Cove Marina-Transfer Out Enterprise Fund to Account #70000.10.492.52000.0000.00.000.00.052, Waterways Enterprise, Contractual Services for the purpose of repairs to lighting at the Harbor Cove Commercial Marina.

6. CC2015-021 (McGeary) Acceptance under MGL c. 44, §53A ½ the gift of restoration of four bronze plaques on the Joan of Arc Statue and two bronze plaques on the Spanish American War Memorial

COMMITTEE RECOMMENDATION: On a motion by Councilor Fonvielle, seconded by Councilor Cox, the Budget & Finance Committee voted 2 in favor, 1 absent, to accept under MGL Chapter 44, §53A- ½ the donation of the restoration of four bronze plaques on the Joan of Arc Statue and two bronze plaques on the Spanish American War Memorial, the work to be managed by Roger Armstrong of 4 Wonson Street, Gloucester with a value of \$10,500.

DISCUSSION: It is Roger Armstrong's intent to raise the money necessary to restore the six major plaques as noted and two other smaller plaques at the base of the Joan of Arc statue and the Spanish American War Memorial. The work will be done by a conservator who was a principal in the Argos Foundry in Brewster, New York for 35 years. He also works in the White House and the Smithsonian. The plaques will not be removed during the restoration. All donations will be forwarded to Barry Pett at the Gloucester Fund for deposit. Any checks that come in after the \$10,500 is reached will be returned to the donors by Mr. Pett after being logged and tracked by Mr. Armstrong. When the project is finished, the contractor will receive a check in the amount of \$10,500 from the Gloucester Fund. There was a discussion about what would happen if the money was not in place by September. Mr. Armstrong stated that he would increase his efforts to raise the rest of the money and also noted that he had a few people committed to covering the balance if he were to fall short. **Mr. Armstrong** stated that the work will be done in September and the estimated time to do the work is 8-9 working days, subject to the weather. If the job is delayed because of weather, the contractor will not bill for extra days of lodging. It is our understanding that Rebecca Reynolds of the Committee for the Arts will be checking in as the work progresses.

Councilor Fonvielle noted that this work is, in a sense, a companion piece to the restoration work that was done last year in City Hall, which was initiated and managed by Mr. Armstrong.

Councilor Ciolino acknowledged and expressed his thanks for the restoration work that Mr. Armstrong has done for the city.

Councilor Cox noted that they received the certificate of liability insurance and the bio of the gentleman doing the work and stated that Mr. Armstrong indicated that the Austin Connors Garden would not be harmed.

Council President McGeary thanked Mr. Armstrong for the generous donation of his time and efforts to accomplish this restoration.

MOTION: On a motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted 8 in favor, 0 opposed, to accept under MGL Chapter 44, §53A-½ the donation of the restoration of four bronze

plaques on the Joan of Arc Statue and two bronze plaques on the Spanish American War Memorial, the work to be managed by Roger Armstrong of 4 Wonson Street, Gloucester with a value of \$10,500.

7. *Memo from City Auditor regarding accounts having expenditures which exceed their authorization & Auditor's Report*

Councilor Cox reported that the Budget & Finance Committee took up several financial matters at its last meeting without them having been referred by the full Council. This was done in order to close out any deficits prior to the close of the fiscal year. She requested unanimous consent to suspend the rules and allow these matters to come before the Council tonight without having followed the usual procedures.

COMMITTEE RECOMMENDATION: On motion by Councilor Fonvielle, seconded by Councilor Cox, the Budget & Finance Committee voted 2 in favor, 1 absent, to recommend that the City Council approve Special Budgetary Transfer 2015-SBT-54 in the amount of \$17,500 from Account #101000.10.472.52000.0000.00.000.00.052, DPW Facilities, Contractual Services to Account #101000.10.470.51200.0000.00.000.00.051 DPW Public Property Maintenance, Salary-Wages, Temporary Positions for the purpose of funding temporary beach positions through June 30, 2015.

DISCUSSION: **Councilor Cox** stated that Mr. Costa explained to the committee that the transfer of \$17,500 is necessary to cover any shortfall in temporary beach positions at the end of the fiscal year.

MOTION: On motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted by ROLL CALL 8 in favor, 0 opposed, to recommend that the City Council approve Special Budgetary Transfer 2015-SBT-54 in the amount of \$17,500 from Account #101000.10.472.52000.0000.00.000.00.052, DPW Facilities, Contractual Services to Account #101000.10.470.51200.0000.00.000.00.051 DPW Public Property Maintenance, Salary-Wages, Temporary Positions for the purpose of funding temporary beach positions through June 30, 2015.

COMMITTEE RECOMMENDATION: On motion by Councilor Fonvielle, seconded by Councilor Cox, the Budget & Finance Committee voted 2 in favor, 1 absent, to recommend that the City Council approve Special Budgetary Transfer 2015-SBT-55 in the amount of \$95,000 from Account #101000.10.472.52410.0000.00.000.00.052, DPW Facilities, Building Maintenance to Account #101000.10.152.51710.0000.00.000.00.051 Personnel – Worker's Compensation and Settlements for the purpose of covering the Personnel Department account deficits as of June 30, 2015.

DISCUSSION: **Councilor Cox** stated that CFO, John Dunn informed the Committee that the deficits were in the FICA and Worker's Compensation accounts and needed to be filled.

MOTION: On motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted by ROLL CALL 8 in favor, 0 opposed, to recommend that the City Council approve Special Budgetary Transfer 2015-SBT-55 in the amount of \$95,000 from Account #101000.10.472.52410.0000.00.000.00.052, DPW Facilities, Building Maintenance to Account #101000.10.152.51710.0000.00.000.00.051 Personnel – Worker's Compensation and Settlements for the purpose of covering the Personnel Department account deficits as of June 30, 2015.

COMMITTEE RECOMMENDATION: On motion by Councilor Fonvielle, seconded by Councilor Cox, the Budget & Finance Committee voted 2 in favor, 1 absent, to recommend that the City Council approve Special Budgetary Transfer 2015-SBT-56 in the amount of \$55,000 from Account #101000.10.472.52000.0000.00.000.00.052, DPW Facilities, Contractual Services to Account #101000.10.820.56810.0000.00.000.00.056 Other State Assessments-School Choice Assessments for the purpose of covering the Cherry Sheet State Assessments as of June 30, 2015.

DISCUSSION: **Councilor Cox** stated that CFO Dunn explained to the committee that a school choice out assessment, a special education assessment and a charter school assessment all came in effective June 30th and that the total negative variance in those three lines is approximately \$55,000.

MOTION: On motion by Councilor Cox, seconded by Councilor Fonvielle, the City Council voted by ROLL CALL 8 in favor, 0 opposed, to approve Special Budgetary Transfer 2015-SBT-56 in the amount of \$55,000 from Account #101000.10.472.52000.0000.00.000.00.052, DPW Facilities, Contractual Services to Account #101000.10.820.56810.0000.00.000.00.056 Other State Assessments-School Choice Assessments for the purpose of covering the Cherry Sheet State Assessments as of June 30, 2015.

Ordinances & Administration: July 6, 2015

Councilor Whynott reported that the proposed ordinance for the creation of the Stage Fort Dog Park Commission was continued to August 3, 2015 and the amendment to GCO Sec. 5-19 regarding the inspection of buildings erected on pilings was continued to July 20, 2015. The proposed amendment to GCO Sec. 22-270, "Parking prohibited at all times re: Plum Street" was also continued to July 20, 2015. **Councilor Whynott** stated that the proposed amendment to GCO Sec. 220-270, "Parking prohibited at all times re: Atlantic Road" will be advertised for public hearing.

Planning & Development: July 8, 2015

1. *Special Events Application: request to hold the Gran Prix of Gloucester Cyclo-Cross Race on September 26 and 27, 2015 at Stage Fort Park*

COMMITTEE RECOMMENDATION: On a motion by Councilor Lundberg, seconded by Councilor LeBlanc, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council permit the Essex County Velo Gran Prix of Gloucester Cyclo-Cross Race event to be held at Stage Fort Park on Saturday, September 26 and Sunday, September 27, 2015, with the following conditions. (Without objection, the reading of the conditions was waived.)

DISCUSSION: Councilor Lundberg said that this is the annual cyclo-cross event that has been going on for several years. There have been issues over the years with the condition in which the park has been left, but they have worked through those issues with the sponsor of the race and this is a great event for Gloucester. In the last couple of years, the city and the organizers have perfected the restoration of the park after the race, which is outlined in the conditions of the permit.

Councilor Lundberg made a motion, seconded by Councilor LeBlanc, to permit the Essex County Velo Gran Prix of Gloucester Cyclo-Cross Race event to be held at Stage Fort Park on Saturday, September 26 and Sunday, September 27, 2015, with the following conditions. (Without objection, the reading of the conditions was waived.)

MOTION: On a motion by Councilor LeBlanc, seconded by Councilor Lundberg, the City Council voted 8 in favor, 0 opposed, to continue this matter to July 28, 2015.

2. *Memorandum from General Counsel re: 302 Essex Avenue Easement (Little River Stream Habitat Restoration Project/Wellspring House*

COMMITTEE RECOMMENDATION: On a motion by Councilor LeBlanc, seconded by Councilor Lundberg, the Planning & Development Committee voted 3 in favor, 0 opposed, to recommend that the City Council accept a Conservation Restriction easement for the nominal consideration of \$1.00 on the property at 302 Essex Avenue to construct, maintain, repair, replace and access the Little River Stream Habitat Restoration project extending from the southwest property line to Essex Avenue as shown on a plan entitled, Easement Plan, 302 Essex Avenue, Gloucester, MA dated 8/7/14 and prepared by Gateway Consultants, from Wellspring House, Inc.

DISCUSSION: Councilor Lundberg stated that this easement from Wellspring House allows access to their property for the removal of the existing fish ladder that is between the water filtration plant and the Wellspring House property and to restore it to a more natural situation. He stated that the city has received grants from the state for the construction. **Councilor Lundberg** disclosed that he is on the Board of Trustees of Wellspring House but neither he nor the Trustees have any financial interest in this easement.

MOTION: On a motion by Councilor Lundberg, seconded by Councilor Fonville, the City Council voted by ROLL CALL 8 in favor, 0 opposed, to accept a Conservation Restriction easement for the nominal consideration of \$1.00 on the property at 302 Essex Avenue to construct, maintain, repair, replace and access the Little River Stream Habitat Restoration project extending from the southwest property line to Essex Avenue as shown on a plan entitled, Easement Plan, 302 Essex Avenue, Gloucester, MA dated 8/7/14 and prepared by Gateway Consultants, from Wellspring House, Inc.

Scheduled Public Hearings:

1. *PH2015-028: Amend GZO by adding a new definition to Section VI "Definitions for "Farmer's Markets"*

This public hearing was opened at 7:49 p.m.

This public hearing was closed at 7:49 p.m.

MOTION: On a motion by Councilor Stewart, seconded by Councilor Cox, the City Council voted 8 in favor, 0 opposed, to refer this matter back to the Planning & Development Committee for further discussion.

2. *PH2015-034: Amend GCO c. 21 "Streets, Sidewalks and Other Public Places" be amended by ADDING a new section entitled, "Sec. 21-13. Obstructions"*

This public hearing was opened at 7:50 p.m.

Those speaking in favor: None.

Those speaking in opposition: None.

Communications: None.

Councilor Questions: None.

This public hearing was closed at 7:50 p.m.

COMMITTEE RECOMMENDATION: On a motion by Councilor Stewart, seconded by Councilor Ciolino, the Ordinance & Administration Committee voted 3 in favor, 0 opposed, to recommend that the City Council amend GCO Chapter 21, "Streets, Sidewalks and Other Places" by DELETING "Section 21-9 Sale or display of goods" in its entirety and DELETING "Sec. 21-13 Obstructions" in its entirety and by ADDING a new Section 21-13 entitled, "Obstructions; Sale or Display of Goods" as follows. (The reading of the new section was unanimously waived.)

DISCUSSION:

Councilor Whynott explained that this issue was brought up with respect to the sidewalk bazaar and block parties and that the purpose of the amendment is to make sure that sidewalks are clear of any kind of obstructions. He noted that the federal Americans with Disabilities Act requires that four feet of the sidewalk be kept clear. He stated that there will be a parallel addition to these requirements by the licensing board.

Councilor Ciolino noted that the ADA supersedes anything that the city does. He stated that the council is not going after anybody in particular but is just clarifying the ordinance so that it is consistent with the ADA regulations.

Councilor Cox stated that the reason she brought this matter forward was because the ordinance was extremely outdated. She thanked the legal department for their help.

Councilor Stewart noted that there was a lot of input on this matter and he believes the Committee came up with something that satisfied everyone.

MOTION: On a motion by Councilor Whynott, seconded by Councilor Ciolino, the City Council voted by ROLL CALL 8 in favor, 0 opposed, to Amend GCO Chapter 21, "Streets, Sidewalks and Other Places" by DELETING "Section 21-9 Sale or display of goods" in its entirety and DELETING "Sec. 21-13 Obstructions" in its entirety and by ADDING a new Section 21-13 entitled, "Obstructions; Sale or Display of Goods" as follows:

Sec. 21-13. – Obstructions; Sale or Display of Goods.

- (a) *Generally.* No person, other than one employed directly or indirectly by the city and while in the performance of necessary duties, shall at any time erect or affix or cause to be erected or affixed in any public sidewalk or city street any fixture or structure or place or leave or cause to be placed or left in any public sidewalk or city street any article or material or merchandise or park a vehicle or a cart in any public sidewalk or city street for the purpose of displaying any article or material or merchandise or for customer seating until a permit therefor has first been obtained from the Building Inspector.
- (b) *Main Street.* Except as provided in chapter 11, no person shall place or keep any table, stall, booth, erection of any kind, package, bundle or anything upon any street, public place or sidewalk, for the sale or display of, or incidental to the sale or display of, any goods or articles whatever, except on Main Street, between Flannagan Square and Washington Street, where temporary displays of merchandise may be erected on sidewalks by retail merchants in front of their stores. For the purposes of this section, temporary shall mean not in excess of 30 consecutive days.
- (c) *Pedestrians.* Temporary displays authorized by subsection (b) of this section shall be only during regular business hours, and a four-foot wide portion of the sidewalk shall remain free and clear of obstructions to pedestrian movement.
- (d) *Removal; Fines.* Any such fixture, structure, article, material or merchandise in any city street or public sidewalk found to violate this section as determined by the Building Inspector or his office may be removed by or under the direction of a city police officer and at the owner's expense and such a violation may result in a fine of the cost of removal plus \$50.00.
3. *PH2015-035: SCP2015-003: 15 Western Avenue, Unit No. 2 ("Condominium"), Assessors Map 2, Lot 69, Modification of a Special City Council Permit granted on June 6, 2000 under GZO Sec. 2.3.1(4)(a) (GZO 2008 Sec. 2.3.1.6)*

This public hearing was opened at 7:57 p.m.

Councilor Stewart recused himself from this matter, stating that he was on the ZBA when this virtually identical matter was brought before it. It was a very heated series of hearings which led to litigation, of which he was a named defendant as a member of the Board of Appeals. He believes his participation in this matter would cause the appearance of bias.

Those speaking in favor:

Attorney Mark Nestor of 45 Middle Street, Gloucester, MA represents the applicant and handed out a packet of documents to the council. **Councilor Lundberg** raised a point of order, asking why the council was receiving these documents at this late date without having a chance to review them beforehand. He requested that Attorney Nestor give the documents to the Clerk only. Attorney Nestor requested that the council accept Exhibit 25 of his packet, which is a petition signed by residents in support of the modification of the special permit, including Frank Vinci who is the new owner of Unit No. 3.

Attorney Nestor requested that the City Council adopt the Agreement for Judgment that was executed by the City of Gloucester and his client approximately two months ago, which was incorporated into a judgment with the Essex Superior Court. He understands there has been a significant amount of litigation involved in this case since approximately 2004. He has not been present for the litigation but he is somewhat familiar with it. He stated that he is not before the council to re-litigate the case but to present some background.

Attorney Nestor indicated that prior to his client being involved, 15 Western Avenue was a single-family house that was abandoned for many years. In approximately 1999, Constellation Corporation bought the property and filed a special permit to put in four condominiums, which was approved in 2000. Unfortunately, Constellation ran out of money while the work was in progress and the half finished building was foreclosed on in 2001. His client, Daniel Gattineri, bought the property from Danvers Savings Bank and decided that he wanted to reduce it from four units to three units. He approached the building inspector at the time, Bill Normand, and the assistant building inspector, Dave Soucy, in early 2002 and requested that he be allowed to enclose the deck on the second unit to make it a third bedroom

without amending the special permit. He was told by both Mr. Normand and Mr. Soucy that that was fine. A written statement memorializing that agreement is included in Attorney Nestor's packet.

Attorney Nestor stated that Mr. Gattineri relied on those representations and went forward with the changes. However, the current building inspector, Bill Sanborn, came in in April of 2002 and raised issues with the project. By that time, the bulk of the work was done. In the interim, there was an attempt by the ZBA to issue a cease and desist order on the property. However, Attorney Nestor noted that the ZBA does not have authority to issue cease and desist orders, so that order was rescinded by Mr. Normand. Mr. Gattineri then had discussions with Mr. Sanborn and there were some issues raised. At that time, Unit 3 was essentially completed. It was stated that it would be rather simple to tear down what was there, but that was not the case. On May 30, 2002, the building was essentially complete and would require a significant tear-down with potential significant damage. After that, the 12 years of litigation began and thereafter the city and Mr. Gattineri entered into an agreement stating that Mr. Gattineri would agree to pay \$40,000 to the city.

Attorney Nestor stated that there were issues raised previously about parties and loud noise in Unit 2, which is now vacant. From his review of police reports, he only found one instance in January of 2015 where there was a complaint of a loud party. There was an instance in March of 2014 where one of the tenants of Unit 2 had a 12-year-old autistic child who was acting out and the mother asked the police to come and talk to him. Those are the only records he found about loud parties.

Attorney Nestor stated that there were issues raised about damage being caused that would require the owners of Units 1 and 3 to pay for. It is his understanding that any damages were paid for by his client and there were no special assessments to Units 1 and 3.

Attorney Nestor stated that there was an issue regarding the view being blocked by the third bedroom. He contended that merely having a view blocked is not a basis for denial of a special permit. He stressed that this is a three-unit seven-bedroom building and we are talking about one room within the building. He indicated that the changes his client is requesting do not violate any of the standards for a special permit and there are 104 signatures on petitions supporting Mr. Gattineri's efforts.

Attorney Nestor stated that there was an issue raised about creating a precedent. He noted that there was a case in 2007 with respect to 249 East Main Street where the builder exceeded the height requirement by 4.8 feet and continued on with construction despite cease and desist orders by the building inspector and the building inspector's order to tear down the encroachment. The owners went to the ZBA retroactively to request permission, were denied, went into litigation, and the city reached an agreement with the builder to reduce the roof by 22 inches. There was never any imposition of fines or penalties. In this case, his client is paying \$40,000 to the city in compensation, so his client is not getting a free ride. All he is seeking in return is the allowance to keep what is there. The impact on the other two units of tearing it down far exceeds what would occur if the council agrees to the request for the third bedroom. If the request is denied, lattice will probably be put on the deck, which was a source of dispute previously with the abutter. Trees would also go back up.

Attorney Nestor stated that this matter has been resolved to both the court's and the city's satisfaction and requested that the City Council, as the ZBA and others have done in the past, retroactively allow the third bedroom to stay.

Those speaking in opposition:

Attorney Michael Faherty of 111 Main Street, Gloucester, MA represents Brian Wall and his wife, who are direct abutters to the property. He challenged a few things in Mr. Nestor's presentation. First, the construction had started before the neighbor knew what was happening, he said. This project started when Constellation sought to rehab the building and approached the neighbors. There were two neighbors who were particularly concerned, Mr. Sweet and Mr. Wall. The project advanced with discussions between the parties, and there was an agreement as to what was going to be built by Constellation, which is the plan that was approved. Attorney Faherty finds it strange that no one is producing the original plan of what was there at the time and what was approved by the City Council and the Board of Appeals.

Attorney Faherty stated that this project required numerous variances from the Board of Appeals to even get started because it did not comply in any way with the zoning in the area. He noted that, in fact, Mr. Wall spoke in favor of the proposal that was presented by Constellation.

Attorney Faherty stated that he has the original plans that were approved and evidence of what was done. He noted that this is not the only situation in which this building has been changed without any authorization or any

additional permits from the building inspector, the Board of Appeals, or the City Council. He submitted to the council an existing conditions plan and the city's map showing what is on the site now.

Councilor Cox raised a point of order, stating that since Attorney Nestor's documents were not accepted, Attorney Faherty's documents should not be taken either. **Council President McGeary** noted for the record that some of the councilors did receive Attorney Nestor's documents and stated that it would be useful for the council to have Attorney Faherty's documents in front of it while he makes his presentation. **Councilor Cox** requested that Attorney Nestor's documents be distributed to all council members to make it fair.

Attorney Faherty stated that in the existing conditions, there were two porches on the back of the building. There were no other changes to the rear of the building other than the enclosure of one of the porches on the lower level. He presented a photograph of what was built instead, which was also submitted to the Planning & Development Committee. The picture shows the beginning of the construction of the third bedroom and the enclosure of the lower level which was authorized. In addition, there are two larger porches that have been constructed on the rear of the building that are not in the plans. There are a lot of other things that changed in that plan, including the fact that parking was going to be along the side, trees were going to be preserved, and there was not going to be any additional work on the front of the building.

Attorney Faherty stated that during the construction, Mr. Wall informed the building inspector's office that there was a change being made and asked what it was and who authorized it. Therefore, the notion that somehow the construction was complete before the alarm went off is not true.

Attorney Faherty stated that the case law is clear that if you seek to modify a special permit, there are two primary concerns. The first is whether there are any changed circumstances to warrant the modification, and he cited a case involving a Wendy's Restaurant. The only thing that has changed here is that Mr. Gattineri has finally recognized that he is at the end of the line some 13 years after he challenged every ruling of the Board of Appeals and all of the court rulings. He knew at all times that there were consequences to his action. The other point that is always raised is whether there were expectations created for the neighbors or people affected that would be eliminated by granting the modification, which is the case in this project.

Attorney Faherty stated that the case to which Mr. Nestor referred regarding the property on East Main Street was not as ironclad as he suggested. There was considerable discussion about what was there before and what was built. Most of the people who saw the house being constructed thought that it had been expanded in size, but the applicant and the builder said it was not.

Attorney Faherty suggested that the council would not be entertaining this application unless there was \$40,000 on the table. He stated that if there is a chart of how much you have to pay to get a permit, it should be published so that people know they can violate the rules, ignore the cases, ignore public officials, knowing that there is a body in the city that will say it can be forgiven for a certain amount of money. The City Council has an obligation to uphold the integrity of the zoning ordinance. There is not a single line in that ordinance that says, "Upon special circumstances, the permit granting authority is allowed to forgive violations in exchange for money." If the council is characterizing the \$40,000 as a penalty, the penalty for a zoning violation runs anywhere between \$50 to \$100 per day, which is a lot more than \$40,000 over 13 years.

Attorney Faherty asked that the council deny this application since there are no changed circumstances and there are people who accepted the proposal and relied upon it. He also stated that there is no precedent for collecting money in exchange for it.

Rebuttal:

Attorney Nestor stated that the special permit was issued in 2000. From 2000 until December of 2001, it was Constellation and not his client that was doing the construction. Nobody issued a cease and desist order and the building inspector did not find any violations. His client bought the property in December 2001, started construction in February of 2002, asked the city if he could do enclose the porch and was told twice that he could. In addition, the electrical inspector went to the property in May of 2002. Mr. Gattineri relied on the building inspector and the electrical inspector. You can't turn around and say, "We made a mistake." If that is the case, everyone who comes in for a permit is going to go to the law department and ask for an opinion. The only issue that is before the council is the issue of the third bedroom in Unit 2.

Attorney Nestor stated that the case involving 249 East Main Street is exactly the same. That was a five-foot increase in height, and the ZBA accepted the agreement for judgment from the Superior Court ordering them to reduce it by 22 inches and dismissed the case. Fines were imposed but nothing occurred. The message is, "We'll bounce it back and forth between the ZBA and the court and see who wins." His client agreed to pay \$40,000 and entered into an agreement with the city.

Rebuttal of the Rebuttal:

Attorney Faherty stated that the photograph of the construction in its preliminary stages was all on Mr. Gattineri's watch. None of that work was done by Constellation. Constellation made no changes to the rear of the building. There are more significant changes to the rear of the building shown in the picture.

Secondly, as Mr. Nestor knows well, the building inspector's decisions can be challenged and overturned. **Attorney Faherty** knows of several instances where people have appealed decisions of the building inspector and they have been overturned, requiring them to stop the project and remove things. That is why the statute is written the way it is and that is why there is a 30-day appeal period after the issuance of a building permit. The building inspector is not liable if he makes a mistake. In this instance, there were two temporary people who were acting as building inspector and assistant building inspector.

Council President McGeary requested a show of hands from the audience on how many people would favor the granting of the change in the special permit and how many people would oppose it. He counted 23 in favor and three opposed.

PUBLIC COMMENT:

Joseph Luna of 1 Mansfield Street was the former tenant of 15 Western Avenue, Unit 2. He moved into the unit in December of 2010 and shared it with a friend for roughly two years. There were no loud parties, he said. He then had another roommate for a year and then met a woman with three boys, one of whom has special needs and behavioral issues. They moved into the unit in the fall of 2013. Mr. Luna stated that there was one incident where they had to call the police because of the boy's behavior. He also inherited an 18-year-old boy who graduated from GHS in the summer of 2014, and there was one incident in January where the police were called. Mr. Luna does not excuse his behavior and noted that the boy was asked to leave the property. Mr. Luna vacated the unit on January 31, 2015. It is a four-level unit, and the level in question would consist of just a stairway and a bathroom if the bedroom was not constructed. Tearing it down does not make any sense because that would subject the rest of the building to snowdrift. Mr. Luna does not dispute any of the issues regarding the legalities of the project and how it was handled, but it is built and it is aesthetically complimentary to the building. Even though he does not live there anymore, he is requesting on behalf of the owners that the council use reasonable discretion in terms of what to do with the building. The Gattineri's are paying their fine for their erroneous assumptions on how this was to be handled. Mr. Luna is an architect and knows how the process works. There were mistakes made, but the building as a whole and the property values of the abutters will suffer if the special permit is not granted. There is nothing wrong with the construction of the building. The owners just didn't follow the proper protocols.

Linda Dalton of 15 Western Avenue, Unit 1, stated that this is not a single-family house or an apartment. They are individually owned condos. On December 3, 2014, there was a condo meeting and a 100 percent vote was taken to remove the addition at the sole expense of Mr. Gattineri. She was under the assumption that it was supposed to be removed by July 1st. Now the owner is renegeing on his vote for a fee of \$40,000. This is about breaking the law, and for \$40,000 anybody who owns a condo can do the same thing. They can throw out the master deed and break the law for \$40,000. Ms. Dalton stated that there are websites that condo owners can look at to find out if they have an issue in their association. She stated that this project will go on that website and will create a precedent. The state law for condo owners is referenced in the master deed. Right now, all a unit owner has to do if he wants to put up an illegal addition is pay \$40,000 and send the bill to the association. So, the master deed isn't worth the paper it's written on.

Steve Ludwick of 24 Clearview Avenue believes it is incumbent upon the city to have made any stoppage while the construction was going on. After so many years, there is no recourse at this point. There are people living there and it looks very nice now. He stated that the people who were unhappy with it could have made a call years ago.

Louis Linquata of 1A Plover Way stated that the project is at a point of no return. Somebody is going to take a hard knock no matter which way the Council votes. He thinks the building is beautiful and doesn't understand how the process takes this long. He does not believe there was any malice. He believes it was done because they thought they had the right to do it. He also believes they did it right and everything they have done in the city has been done to the letter of the law. He requested that the council take into consideration the amount of time that has gone by when making its decision.

Communications: None.

Councilor Questions:

Councilor Whynott asked whether the condo association owns the building. **Attorney Nestor** stated that each unit owner has a unit deed and the association controls the building and maintains the common areas.

Councilor Whynott asked if someone is living in the unit now. **Attorney Nestor** stated that there is no one living in Unit 2 right now because the occupancy certificate has not been issued and the Board of Health withdrew the certificate of rental dwelling. The agreement states that the unit will remain vacant until the council votes in favor of the special permit.

Councilor Cox asked when the occupancy permit was withdrawn by the Board of Health, and **Attorney Nestor** stated that it was never issued by the building inspector. The certificate of rental dwelling by the Board of Health was issued in 2008. He does not recall when it was withdrawn but the unit has been vacant since February 1, 2015.

Councilor Cox asked Attorney Nestor if there is anything in the packet he submitted to which he would like to draw the council's attention, since they will not have time to read the whole packet. **Attorney Nestor** stated that he would like the council to look at the statements from Mr. Soucy and Mr. Normand, the pictures of the construction before December 2001 showing that there was construction done by Constellation (Exhibit 5), the petition containing 104 signatures in favor of the project (Exhibit 25), and the documents with respect to the 249 East Main Street property (Exhibit 28).

Councilor Questions for the Building Inspector:

Councilor Cox asked what efforts were made to stop the construction when it was brought to the attention of the city. **Mr. Sanborn** stated that he started his position in April of 2002. During the first week, he met with Mr. Gattineri and his attorneys and architect. They presented the problem that had already been created, and his ruling on it was that he would need to amend the special permit for both the ZBA and City Council. Mr. Gattineri disagreed with that and informed Mr. Sanborn that he would appeal his decision. **Mr. Sanborn** stated that the Gattineri's had a right, at their own risk, to continue with the construction. Given the fact that the addition was not enclosed and was exposed to the weather, they elected to continue with the project and hope for a favorable outcome from the appeal, which did not happen. The work that was done after Mr. Sanborn started as building inspector was done at their own risk, and they were aware of that.

Councilor Questions for General Counsel:

Council President McGeary asked whether the council is essentially being asked to ratify an agreement made between the city and Mr. Gattineri. **Attorney Payson** said that the agreement between the city and Mr. Gattineri states that Mr. Gattineri will come back before the council to get a special permit. If the council grants the special permit, Mr. Gattineri will turn over the \$40,000, which is a settlement of back penalties. If the council does not grant the special permit, Mr. Gattineri will remove the enclosure on the deck.

Council President McGeary asked Mr. Payson in his opinion as an attorney what recourse Mr. Gattineri would have if the council does not grant the special permit. **Attorney Payson** stated that Mr. Gattineri is locked into the agreement. However, given the way the case has gone, it is hard to predict how it will end up. He does not want to make a prediction but stated that there is a possibility that Mr. Gattineri will find some way to appeal it.

Attorney Payson reviewed the pertinent sections of the agreement, as follows: If the City Council approves the amended special permit, upon issuance of a certificate of occupancy, Waterfront (Mr. Gattineri's company) will pay the city \$40,000 currently held in escrow in lieu of actual fines and representing an amount agreed upon after an appraisal which represents the increased value of the premises with a properly permitted third bedroom. If the council fails to approve the special permit, Waterfront will file an application necessary to obtain all the necessary permits to demolish the third bedroom. Waterfront will then demolish the third bedroom and reconstruct the former deck to bring the premises into compliance with the plans submitted to the ZBA on May 28, 2002 within 90 days of the issuance of the demolition permit, weather permitting. If Waterfront fails to file an application necessary to obtain the required demolition permits within 30 days, it will be fined \$300 per day for every day it fails to obtain the permits. If Waterfront fails to demolish and reconstruct, fines will continue to be assessed for every day that the construction goes unfinished. If Waterfront completes demolition and reconstruction within the time frame stated, the \$40,000 will be returned to Waterfront.

Councilor Questions for the Chief Administrative Officer:

Council President McGeary stated that he is loath to condone bad behavior but, on the other hand, there is an agreement entered into by the administration and the applicant. He reported that he suggested to Mr. Destino earlier that day that what might make it more palatable to him personally was if the council grants the special permit and accepts the \$40,000 fine, if that \$40,000 were put in the affordable housing trust so that the affordable housing base

is increased. **Mr. Destino** stated that he had a brief conversation with the Mayor about that and she said she would certainly entertain that suggestion very strongly.

Attorney Faherty stated that the agreement is only signed by Mr. Payson on behalf of the Board of Appeals. There is no separate agreement with the city, so there is no obligation on behalf of the city. In addition, the court case was closed when the agreement for judgment was filed and there is no way to open that case again. Attorney Faherty stated that the City Council is sitting in a quasi-judicial capacity as a permit-granting authority and there should not be discussions by anyone on the council with the administration about what is going to be done with the money. The council has to decide the matter on the information that is presented to it.

Further Councilor Questions for General Counsel:

Councilor Cox asked Mr. Payson to enlighten the rest of the Council as to his estimate for legal fees paid by the city out of the taxpayers' money for litigation of this matter. **Attorney Payson** stated that it is difficult to estimate because the case has been going on since 2002. However, he stated that a conservative estimate of legal fees for ongoing work in connection with the litigation is approximately \$200,000 over the past 13 years.

Councilor Whynott asked whether Mr. Payson was including his time and the city clerk's time in that estimate. **Attorney Payson** stated that he is making presumptions in the calculation of one attorney's time at an average in-house counsel's billing rate and then being conservative in the amount of time over 13 years that one would probably have worked on the matter. That does not take into account other variables. **Councilor Whynott** pointed out that that is not necessarily out-of-pocket money because the city has to pay him anyway. **Attorney Payson** agreed but stated that it is time that he could not work on other things.

Councilor Ciolino asked whether it is possible that there will be an appeal and then the matter will come back to the council and require more legal fees. **Attorney Payson** reiterated that it is difficult to make a prediction. Right now, there is an agreement that lays out a path based on the council's determination tonight. **Councilor Ciolino** asked whether there have ever been any injunctions that have come from the neighbors to stop work on the project. **Attorney Payson** did not know the answer to that question.

Further Councilor Questions for the Building Inspector:

Councilor Ciolino asked whether the city has ever gone through with a teardown in situations like this. **Mr. Sanborn** stated that there has never been a complete teardown, but there was one that was mentioned earlier where the resident had to lower the roofline. In situations where there are zoning and building code violations, quite often they come to a settlement.

Council President McGeary asked Mr. Sanborn to review the timeline from when either Constellation or Mr. Gattineri was first informed that they were in violation and told to cease and desist and what state the project was in at the time and who was in control of the project at the time. **Mr. Sanborn** stated that he is not sure what the timeline was with Constellation. He believes he was the assistant building inspector at that time. They got approval for four units, and there were very minimal changes to the exterior of the building with those plans. Bill Normand authorized them to go ahead with the project. Mr. Sanborn came on in 2002 as the building inspector and reviewed the project and met with Mr. Gattineri and his attorneys and architect. He determined that it was a substantial change and needed to go back through the permitting process for relief. The Gattineri's disagreed with him, and at that time the building was open to the weather. He told them if they wanted to continue on, they could do so at their own risk while they sought to appeal the decision.

This public hearing was closed at 9:11 p.m.

COMMITTEE RECOMMENDATION: On a motion by Councilor LeBlanc, seconded by Councilor Ciolino, the Planning and Development Committee voted 1 in favor, 2 opposed to recommend to the City Council to grant the application to modify the special council permit for 15 Western Avenue, Unit 2, Map 2, Lot 49 granted June 6, 2000, GZO Sec. 2.3.1(4)(a).

DISCUSSION:

Councilor Ciolino stated that he looked back at the decision of the city dated June 22, 2002 in which Councilor Giacalone stated that he felt the plans were incomplete and needed more detail. Councilor Destino also expressed concerns regarding the plans, stating that they needed to be larger and include more detail. **Councilor Ciolino** believes the city did not do its due diligence back then. He noted that the plan submitted by Attorney Faherty is a plot plan, not a building plan. **Councilor Ciolino** stated that when Waterfront wanted to enclose the porch, Bill

Normand indicated that it was not a significant change and they did not need to go back to City Council to change it. With respect to the view, he stated that no one owns a view. Even if it was a deck, they could put lattice on it and put an awning up and the view would be blocked anyway. Therefore, the council cannot take the view into consideration when making a decision. **Councilor Ciolino** stated that he sympathizes with the condo owners but the council does not get involved with disputes between them. He stated that if the council does not approve the special permit, the matter will come back to the council again and more time and money will need to be spent. He believes Waterfront did a tremendous service to the city by beautifying the property and maintaining it well. He will vote for the settlement because he does not want to get involved in having them tear down the enclosure, which the city does not have a history of doing.

Councilor Whynott stated that he is familiar with the property on East Main Street and others and he has never seen a teardown. We have always settled because the people claimed hardship. He agreed with Councilor Ciolino that the City Council does not enforce condo agreements. He does not understand why the condo association would want Mr. Gattineri to tear down the enclosure, other than to punish him. **Councilor Whynott** is loath to have it torn down. He would like to postpone the vote on the matter because Councilor Stewart had to recuse himself and Councilor Verga is not present. The applicant would have to get 6 out of 7 in favor of the special permit, which is hard to do.

Councilor Lundberg stated that he was on the Planning Board for six years and they dealt with these issues all the time. Their role was to adjudicate between the applicants and the people who were against the projects. At the end of the day, they were supposed to be representing the thousands of property owners who were not before them. He appreciates the fact that there are several dozen people here who seem to be in favor of the special permit, but he is thinking about the thousands of property owners who are not here. If the council votes in favor of the special permit, that is going to infringe on their rights. He reminded the people in the audience who were applauding that they have property rights that may be affected by this, too. There was a special City Council permit, the building inspector advised the applicant that he was proceeding at his own risk, and he chose to proceed. Those are the ground rules that the council is acting upon right now, and he is going to vote against amending the permit.

Councilor Fonvielle stated that it strikes him that at the time of the change in the decision of the building department, the applicant was faced with something of a Hobson's choice because the building was open to the elements. By stopping construction at that time, he believes the applicant would also be assuming a large measure of risk. In all fairness, if he had been the applicant, he probably would have continued, as well, given the circumstances.

Councilor LeBlanc stated that the council should have time to review Attorney Nestor's packet before it takes a vote on the matter.

Councilor Cox also supported the postponement of the vote because this matter was introduced during budget season and she was not privy to the P&D discussions. She has read the P&D minutes but she does not believe she has the full story. She would like to take her time and review all of the materials because this is going to have a huge impact on the city one way or the other.

Further Councilor Questions to General Counsel:

Council President McGeary stated that it is his understanding that July 16th is the 65th day since the filing of the request for the permit. He asked Attorney Payson what action the council must take by that date. **Attorney Payson** indicated that he does not know the answer to that question. **Mr. Destino** stated that the council simply has to open the public hearing and take up the issue. **Councilor Whynott** indicated that as long as the council has opened the public hearing within the 65 days, it can be closed and then they have 90 days to vote. There is no legal impediment to continuing the matter. **Ms. Lowe** stated that if the council is going to do that, at the very least the applicant should state in writing that he is agreeing to extend the time to take the vote. **Attorney Nestor** agreed to that and assented to the continuance to August 11, 2015.

MOTION: On a motion by Councilor Whynott, seconded by Councilor LeBlanc, the City Council voted 8 in favor, 0 opposed to continue the vote on the application to modify the Special Council Permit for 15 Western Avenue, Unit 2, Map 2, Lot 49 granted June 6, 2000, GZO Sec. 2.3.1(4)(a) to August 11, 2015.

The Council recessed at 9:35 p.m. and reconvened at 9:40 p.m.

For Council Vote:

1. **Budget & Finance Committee Report from June 18: Memorandum from CFO re: Norseman Ave. Extension Road repairs & an Order related to repurposing the remaining funds of a completed capital project to Norseman Avenue Extension Road (Cont'd from 06/23/15)**

Council President McGeary stated that he has been informed by the administration that there is some paperwork that is incomplete on this matter and asked that it be continued to July 28, 2015.

This matter is continued to July 28, 2015.

2. **Decision to Adopt: SCP2015-002: Eastern Avenue #210, Map 264, Lot 23, GZO Sec. 2.3.4(7) Animal boarding, kennel – 24 hour operations**

MOTION: On a motion by Councilor Stewart, seconded by Councilor LeBlanc, the City Council voted by ROLL CALL 8 in favor, 0 opposed, to adopt the Special Council Permit (SCP2015-002) decision for Eastern Avenue #210 pursuant to Gloucester Zoning Ordinance Section 2.3.4(7).

Unfinished Business: None.

Individual Councilors' Discussion including Reports by Appointed Councilors to Committees:

Councilor Lundberg stated that there is a fundraising cruise on Thursday night on the Beauport Princess to benefit the new cardiology suite at Addison Gilbert Hospital. The suite has been built but the hospital is trying to raise funds to pay for the cost.

Councilor Cox invited everyone to her ward meeting on Thursday at 6:00 p.m. at City Hall to discuss the proposal for the Cameron's building at 206 Main Street. The follow-up meetings will be on July 30th and August 27th.

Councilor Ciolino reminded everyone that this Saturday night is the second block party and that it will be a Mardi Gras. Also, the Class of 1965 is celebrating their 50th class reunion at the Gloucester House on Saturday night.

Councilor Fonvielle stated that there will be an informational meeting at the Magnolia Library on Thursday, July 23rd at 7:00 p.m. on solar energy. Bass Energy will explain some financing and leasing options for those who wish to purchase solar panels. There will also be information about how others can get a reduction in their electric bills by supporting Gloucester's wind turbines.

Councilor Whynott stated that Gus Foote is still recuperating and he hopes he gets better soon. He also stated that The Wall That Heals was a great thing for the city, and the service for Dick and Winnie Bell was great, as well.

Councilor Cox requested that the administration ask the Waterways Board to come before the council within the next 30 days to inform them on what the process and procedure is going to be for the shutdown for the National Grid remediation and where everyone is going to be housed, etc.

Council President McGeary stated that there will be a meeting at City Hall on Wednesday, July 22nd at 6:00 p.m. in the third floor conference room for the residents of the Starknought Heights area to take a formal vote on whether to petition the city to allow a betterment of the roads in that neighborhood. Also, the official launch party for the Snotbot project will take place on Thursday at 6:00 p.m.

A motion was made, seconded and voted unanimously to adjourn the meeting at 9:48 p.m.

Respectfully submitted,

**Maria C. Puglisi
Substitute Recorder**

DOCUMENTS/ITEMS SUBMITTED AT MEETING:

- **Steve Roy – Bio**
- **Packet of documents submitted by Attorney Mark Nestor in support of modification of the special council permit granted on June 6, 2000 with respect to 15 Western Avenue**
- **Site Plan, Existing Conditions Site Plan, and aerial photograph of 15 Western Avenue submitted by Attorney Michael Faherty**