

# East Providence Waterfront Special Development District Commission

## **Minutes of July 14, 2005**

Present were: Chairman Patrick Rogers, John Lynch, Terry Gray, John Gowell, Jay Gregory, Jacob Harpootian, Robin Main, John Pesce, Isadore Ramos, Laura McNamara, Lori Capaldi, Luis Torrado, Jeanne Boyle, Stephen Coutu, William Fazioli, and Renee Kinchla (staff).

### **1. Chairman's Opening Remarks**

#### **2. Approval of Minutes**

##### A. Minutes of March 21, 2005

It was noted the minutes of March 21, 2005 would be forthcoming.

##### B. Minutes of June 20, 2005

There were two items to be corrected on the minutes. It was noted that Mr. Gowell, not Mr. Harpootian, spoke about having some sort of phased fee. Also, on pg. 13 it was noted that it was Mr. Harpootian who asked about GeoNova development and if they would be grandfathered in.

Ms. McNamara also had a correction. She states that the minutes reflected that she did not recuse herself, but that in fact she did recuse herself from the vote regarding Advertising Adventures. It was noted that Ms. Camille will make those changes.

On a motion by Mr. Harpootian, seconded, Dr. Ramos, the Commission unanimously voted to accept the minutes of June 20, 2005 subject to the corrections noted above.

### **3. New Business**

#### **A. Discussion of Proposed Revisions to Waterfront District Enabling Legislation (Chairman Rogers)**

Chairman Rogers informed the Commission of the recent events up at the RI State House and some potential proposed changes to the Waterfront Enabling Law. He stated he received a call from some of the members of the House of Representatives regarding some changes to the law. At that point some changes were made legislative drafts and presented to the House and Senate. They were included in the overall Separations and Powers changes and laws that were progressing their way up to the Legislature. He distributed copies of the proposed changes to each of the commission members. It explained that it changed how the Commission would be constituted. Specifically it would have eliminated gubernatorial appointments to the Commission and replaced them with mayoral appoints. Under the current law the Commission is comprised of both City Council appointments. In addition, there were some changes to the quorum requirements. Furthermore, there were some changes to

some residency requirements. All of those changes were merely proposed, nothing has been adopted. Mr. Rogers informed the Commission that City Manager Fazioli attended a hearing on this Legislation along with Councilman Caine and they testified in opposition to that legislation. They are in draft form only and Senator DaPonte has spoken to members of the Commission and stated on the record that he does not anticipate any changes this calendar year. However, it is possible there will be some changes next calendar year. Mr. Rogers states he is very firmly committed to preserving the independence of this Commission and would personally resist any changes in the law that would undermine the independence of this Commission.

Dr. Ramos states he was also at that hearing when the City Manager spoke against the changes. He states that when he was there it was still on the agenda and got worried about it. He said he did speak with Representatives Savage, Dennigan and Melo. Mr. Savage told him that it was not going to be pushed through and it was taken off the floor at that time. Dr. Ramos said he checked again and one of the Representatives told him that that piece of legislation will be held up and nothing will move until representatives from East Providence have a chance to discuss the changes that we foresee, not what someone else sees for the Commission. Dr. Ramos said he agrees with Mr. Rogers and that this Commission has run in the most professional manner and we are all here for the same purpose; to get the best for East Providence. The Chair thanked Dr. Ramos for his comments.

#### B. Annual Report of Waterfront Commission – Chairman Rogers

Chairman Rogers thanked the Commission for their time and their interested in the betterment of the East Providence Waterfront. He notes that the Executive Director is doing a great job. The Commission is finishing its first year anniversary and it has done a great job. We have legal counsel, a traffic consultant, marketing company, and other experts that are helping us. The RossCommons project has been permitted and is near completion. The second one is also in the works. There are other projects that are submitting their applications shortly. We clearly have an apparatus now to deal with the developments that we anticipate coming in the future. We have been successful in securing about a quarter of a million dollars in financing from the State of Rhode Island that has allowed us to function. Overall, we have made great progress and are off to a good start.

#### C. Tax Increment Financing – Presentation by City Manager Fazioli

At this time, City Manager Fazioli gave his presentation. He distributed a copy of his presentation regarding Tax Increment Financing which he explained is a long term bond issue financing for a special assessment bond. He noted that the infrastructure is critical for us if we are going to entertain this type of large development. It can satisfy the demand for that and is critical that we have tax increment financing. He explained that it gives an overview and where East Providence is status wise. The infrastructure is critical right now if we are going to entertain this type of development. Mr. Fazioli noted that one of the main reasons we were chosen as a site for the Bank of America on Pawtucket Avenue was that the City was fully capable of having sewer and water at that site. That was one of the critical decisions because the city is so capable. We

also hear the same thing from Coastal Medical on Warren Avenue. Having that infrastructure puts the City at a huge advantage. He stated that Tax Increment Financing (TIF) is a development tool that allows City's to put infrastructure in place into areas that they would like to redevelop. It is a form of long-term financing. Since not many people have 15 or 20 million dollars to pay for this all at once, this is a good way to go about it. You also allow both current and future beneficiaries of the asset to pay their fair share. Doing the financing with the long term allows current and future generations to pay for their fair share of the assets. TIF's are used in California, Texas, Florida, Colorado; areas that have a lot of population growth. We are looking more to redevelop property and not in the business of annexing. He noted in Rhode Island there have been four TIFs issued in Providence; the Corliss Landing mixed use development, Manchester Street Power Plant, Providence Plan and Housing Programs and neighborhood improvements. We would get a lower interest rate because the government is issuing it rather than a private entity. There has been one taxable TIF that was issued in Tiverton. It is an old Brownsfield site that someone redeveloped and they are building very high-end condos.

He explained the current taxable value of property is in the waterfront district and part of the money will always go towards the City. As the tax base grows once the development takes place, at some point the City decides to forgo this revenue; we are not going to collect it for the general fund to pay Police, Fire, Schools, Public Works instead we will earmark a certain portion of that money to pay for the infrastructure improvements such as water, sewer, roads and things of that nature. There are strict guidelines and you must have everything in place. Once the projects are paid for, that revenue can then revert back to the City.

He also noted that a special obligation debt is issued by the City, which seeks to leverage and earmark the area's projected revenue stream. There has been some talk in other states to do a pool financing. Sometimes when you try to develop in an area that crosses city and town lines, an agency might be created to do a financing on behalf of both communities such as Providence and East Providence to leverage the tax base. It has been done in other states to spur development. The dept repaid is forgoing. You cannot pledge all the tax revenue. Base tax value must remain to support the City functions.

Through a TIF, Mr. Fazioli stated that you could acquire and/or improve deteriorated, blighted or under-developed land and buildings. Also you can acquire and/or construct public facilities, utilities, streets, etc. and provide grants, loans or other assistance to housing and other improvement programs. He noted the City has established a redevelopment area through resolutions passed by the legislative body. The Council in July of 2003 passed a resolution establishing the Waterfront District Plan. The base value works in the year prior to the authorization. Since it was passed in 2003, the base values are established at the calendar year of 2002 which is critically important for this City because of the values of the properties in 2002 meaning that our future increment is going to be high. In 2002 the aggravate values with the Waterfront District roughly is \$40 million. We know if we took the values today at the end of calendar year 2005 it is almost double that amount of money. This is the type of leverage that will support some of the financing improvements that Mr. Coutu had mentioned. The

taxable yield of those properties in 2002 is a million dollars. In 2005 it will be close to 2 million. A 2 million dollar annual stream will roughly bring in a 19 million dollar bond.

Mr. Fazioli states that we are working with the Council that the District Commission has engaged and has spoken to people within the past couple of weeks who have done financing in different parts of the country, specifically TIFs and he feels that this City is in very good shape. He states we continue to meet with developers and once we tell them about the TIF they are very happy that the City has the ability to do this and the financial leverage to support these finances.

Chairman Rogers thanked Mr. Fazioli for a great presentation. He asks if there are any comments or questions.

Mr. Rogers asks if you go out for a 20 million dollar bond, does that have to be actually targeted as to where that money would go and how does the process begin to prioritize. Mr. Fazioli states that it is dictated by where the developments are happening. You would want people there to support the residential units and would justify the borrowing to coincide to where the development is happening. You can also play with the dept service and amortize more in the back end and not the front end if a development is happening two or three years after the utilities are installed. This does not require taxpayer approval. The people benefiting from these improvements are largely paying for the improvements; it is not a considered an obligation of the City and therefore does not need voter approval.

Mr. Rogers asked about the time line as far as getting this to the Council. Mr. Fazioli states you can do it in about a year. Once the developer starts his development the financing can be very quick, about 60 to 90 days.

Mr. Gowell asks Mr. Fazioli if he envisions a phasing of the infrastructure improvements and would that result in a series of bonds being issued? Mr. Fazioli answered that in the past you would do a series of bonds again to coincide with the development. You could do a 5 million dollar piece and then another 5 million dollar piece depending on the development. One of the advantages of a TIF is that you can always refinance these as development maybe heightens its pass. You can actually refund these and have a lot of flexibility. Phasing is the way to go.

Mr. Gowell asked about credit enhancement. Usually everything comes with some sort of bond assurance. Mr. Gowell said if you are counting on increased tax revenues as a result of private development in order to repay bonds for infrastructure construction, in the event that the project is not completed as expected, the tax revenues are not going to come in and therefore there won't be sufficient revenues to pay the dept service. Mr. Fazioli said that in addition to the credit analysis on the district itself there would be an equally strong credit analysis of the developer to make sure they can finish the development.

### ***Public Comments***

Mr. Robert Manchester , a developer, states that he is looking at a certain shoreline along the waterfront to develop and propose sometime later this fall. Regarding the base rate, should we look at the five or ten parcels we are after and see what they are paying for taxes then compute what we think the construction costs will be? It that how we reach the ratio of what might be possible for financing. Mr. Fazioli stated yes, that would be one way. Mr. Manchester asks if it would be safe to use 2002 or 2004 calendar. Mr. Fazioli stated 2002 or 2004 depending on which side you are on. He said some developments may require TIFs and some may not. The northern half of the waterfront is largely serviced by the Narragansett Bay Commission. Your gross tax bills are not going to change one way or the other.

One of the commissioners asked if it would be fair to say, for example, that even though you are using the 2002 base year, the City of East Providence has become accustomed to collecting additional taxes on property and no project plan or finance plan has been put in place. Would you base it on the 2004 tax year for the purposes of Mr. Manchester's hypothetical calculation for an amount of money that would be available for dept service? A portion of the tax revenue going to the City of East Providence for Fire, Police and Schools is not going to go down. Even though we have this convenient 2002 base year, in reality , you are not going to reduce the revenues to the City. You will be dealing with the increment above that at the time that the project plan and financing plan is adopted, not necessarily at the time the redevelopment area has been established.

Mr. Manchester asked if the length of the bond is set by State statute. Mr. Fazioli answered no, it can be up to 20 years, or 10 or 5 years. Mr. Manchester asked if the ratio of capture vs. base sets the Statute. Mr. Fazioli answered no, it could be 90/10 or 50/50, whatever it needs to be.

D. CDM Waterfront Infrastructure Needs Assessment – Presentation by Stephen Coutu, Public Works Director;

Mr. Stephen Coutu reported that the City had an assessment done by Camp, Dresser and McKee. The project started last fall. CDM did an assessment of the City's sewer treatment plant in Riverside. The purpose of the study was to develop a 20-year Capital Improvement Plan for the District itself. One of their charges was to look at growth in the City which will be the area of the waterfront. He noted he met with the Planning Department and looked at the flow and loading analysis of what potentially could come out of the Waterfront District and what affect that would have on the plant. The plant would be able to handle the additional flow and water from the development. We looked at what would happen up stream at our pumping stations and pipelines because there is a significant loading coming out of that area. We then took a closer look at those parcels, fine tuned some of the flows coming out of those parcels, and did an analysis on the sewer systems, the pipelines and pumping stations. We also extended CDM's work to the City's water system.

Mr. Coutu described the significant utility challenges ahead as well starting from the Bullocks Point Area and Kettle Point area. The City has a 24" inch sewer main that goes across the Fort Hill interceptor line and down to Veterans Memorial Parkway. The size of that line is fine, but given its location where it bisects parcels, it significantly limits development in some of those areas and will need to be relocated in the area of Waterfront Drive. He noted that Tockwotton is dealing with that now and they are proposing to relocate that line which is that section where they are more towards the Waterfront Drive. Their challenge is to loop that around. Mr. Coutu said that to the north from the Washington Bridge will require additional sewer mains. There are some small pumping stations below the Washington Bridge which will also need to be upgraded. Further north and extending Waterfront Drive to the north additional sewer lines will be needed and if we get full build out at the Dexter Road area along Massasoit Avenue and North Broadway and Roger Williams Avenue would also require upgrades.

Mr. Fazioli asked about the NBC service and where the area begins. Mr. Coutu replied that it is the Henderson Bridge area and north. Heading south of that goes to the Riverside plant. Mr. Coutu states that the estimate came in at \$6.6 million. Mr. Coutu stated that on the waterside and looking at full build out a number of improvements will have to be made. At the southern area, currently the City has a 12-inch water main that goes down to Pier Road and dead ends at the Unocal Property. If south of Bold Point were to be developed, this 12 inch water main would need to be extended down to Waterfront Drive and eventually loop back in to meet those needs. The affect that this will have on existing lines is being looked at. The other developments such as the GeoNova property etc. and to have a full build out will require significant improvements to get water up into that area. Camp Dresser and McKee came up with some options. One was to upgrade a series of pipelines from the center of the City and moving up from North Broadway and Roger Williams Avenue to Pawtucket Avenue to the water storage tank which could be a very expensive project.

At this time, the Chair asked if there were any questions for Mr. Coutu. Ms. Boyle states that the City has already done an infrastructure analysis. For the most part is the conclusion that these types of improvements are only required because of the scope and intensity of the development that we are proposing. Without that development-taking place, these improvements would probably not be necessary. In terms of the timing of the improvements, Ms. Boyle asked Mr. Coutu if CDM give any sense of what the phasing would be over time. Mr. Coutu responded that they looked at five-year increments; it is based on a lot of assumptions with respect to current applications that are already in with the Commission. Ms. Boyle asked if these improvements are just attributable to waterfront development. Mr. Coutu answered yes. She asked if this analysis wouldn't take into consideration any other improvements that are going to be done to the City's sewage treatment plant and other things that are just going to be beneficial to the waterfront development, but only partially. Mr. Coutu responded that he had an infrastructure study done on the plant and are looking at a number of improvements to the plant just to meet current requirements and to bring the plant up to standards.

Ms. Boyle asked what the costs are of the other improvements that have been identified that are not specifically geared to the waterfront development. Mr. Coutu said that the Division of Wastewater improvements came to about \$35 to \$36 million.

Mr. Pesce asks if what we see here is what is required within the next five years. Mr. Coutu states that it attempts to recognize what is going to happen and what upgrades to the existing facilities that will be needed plus any new facilities. It gives a general idea and is a conceptual study for us to use.

Ms. Capaldi asks if those figures include any costs associated with taking the old systems out and installing new systems. Mr. Coutu stated yes. She asked if anyone did an electrical analysis. He said no, just strictly sewer and water analysis.

There was no further discussion. Chairman Rogers thanked Mr. Fazioli and Mr. Coutu for their presentations.

#### E. Aspen Aerogel – Revised Building Façade – Request for Commission review and approval

Ms. Boyle reported that a week ago she met with representatives of Aspen Aerogel. There were a number of stipulations associated with the Commission's approval of their proposal last March and they are moving forward with putting together their development plans and are trying to address those conditions. We were meeting to talk about the Fire Department concerns. Another issue that did arise was that the Commission had a desire to review the architectural treatment of the building. Aspen is providing additional information to the Commission tonight and they are seeking direction and possibly approval on what is being proposed.

Mr. Boyle also stated that there were stipulations associated with the approval which were relative to noise impacts and they are hoping to have additional information in the beginning of August at some time. Possibly meeting with the Commission at their August meeting or with the Design Review Committee prior to that point. Tonight's agenda item is just to discuss improvements to the façade.

At this time, Peter Rogers, Spec Engineering, architects for Aspen Aerogels is present and spoke of the stipulation in the memorandum. He states they are complying with that stipulation. Chairman Rogers asks him to speak of the elements of the façade. Peter Rogers described the material that they will be using for the façade. It is a flat metal panel and below that is masonry, like a type of concrete. It is made with silica sand and baked in an oven; it resembles limestone. We will cut out the foundation wall where we need to. Adjacent to that is a screen in area that has some mechanical equipment that was on the original plans and we will carry that base material around the base of that and up above that is a split-faced type of concrete masonry above that.

Mr. Gregory states that when Aspen was his meeting of the Design Review Committee felt they were asking for the DRC's direction regarding the appearance of the building

and how it should go. At that meeting Aspen preferred one of the other options that the DRC did not agree with. They came back to the direction that the DRC wanted to go. At this time, Mr. Gregory defers to Mr. Torrado who can give more input since he has the architectural expertise.

Mr. Torrado asks what the dimension is of the colonnade below the window. There are some shadow lines there. Mr. Peter Rogers states that the colonnade actually steps out away from the line of the metal above. It is about 16 inches. That creates a shadow line where the glass is. Mr. Torrado asks what the functional difference is between the two entrances? Mr. Rogers states one is an employee entrance and the other is the lobby where visitors can go. Mr. Torrado states that in the earlier scheme they had the entrance at the center of that lobby space. Mr. Rogers states that was on a preliminary plan, and it turns out that the lobby is a small lobby and putting the entrance in the middle of the lobby would mean the reception desk would be on one side and the seating for two people would be on the other side. We wanted to keep those two together. On the original Scheme 4 we did have two entrances.

Mr. Torrado agrees that Aspen has done a lot of work in complying with the Commission's comments. He states that the expression of the difference between the two entrances might be done in somewhat of a different way between the employees' entrance and the main entrance to the building and that it bothers that they do not have the entrance located at the lobby space. Peter Rogers states that the reason why they kept the two entrance canopies the same was for cost reasons. Mr. Torrado says he likes the original scheme where the entrance is at the center of the lobby.

Mr. Pesce asks if the main entrance has a double door vs. a single door. Mr. Rogers answered yes. He described it.

Chairman Rogers wants to state for the record that the Commission should appropriately have different levels of scrutiny on buildings. A building that is largely a manufacturing site on Dexter Road that is primarily going to be utilized by employees and customers as opposed to residential buildings on the waterfront should have signature statements. In the future, when we have projects that have a greater aesthetic concern, the Commission will require that there will be a heightened level of presentation with respect to modeling, and specifics as to what the materials will look like, also texture as to depth in the windows. He states that Mr. Torrado's insight will be heavily leaned on and the Commission will give great weight to his expertise. At this time, the Commission voted so that this project can move ahead.

## **Motion**

On a motion by Mr. Gowell, seconded by Dr. Ramos, the Commission unanimously voted to approve the project.

## **4. Continued Business**

A. Public Hearing – Proposed Revisions to Application Fee Schedule

At this time, Ms. Boyle gave a brief introduction. She states that at the last meeting of the Waterfront Commission there was some discussion about whether we needed to revisit the fee schedule. There were some concerns that the application fees were too high. We spent some time during research. Renee Kinchla, the Commission's Intern did a great deal of research looking at development fees in other parts of the country to see how we compared. We also contacted the Urban Land Institute and they provided a number of different examples of fees in other parts of the country to do a comparison.

Ms. Boyle also stated that she met with Attorney Main and they looked at the different types of scenarios. Our feeling was that in terms of the actual amount that was being charged we agreed it was on the high side. We are recommending that it be reduced from a 1 percent fee to a .5 percent fee. It will put it within the comparable range of some of the other fees in other parts of the country. We did not find this as common practice in other parts of the country and we had concerns about the administrative mechanisms associated with the phasing of the fee.

She said that one concern is that many of these projects will have a very long timeframe. It will be difficult to calculate how that fee will be phased over time. As they go from one phase to another, they may change hands. The other issue is that because it is going to take several years this Commission will be foregoing those fees for probably five to 10 years before we actually see the amount in place. There is also concern that because the Commission does derive its revenues from the fee system, that there might be a perception from the outside that we have more of an inclination to approve a development if we were to have the fee phased in after approval. We did not want anyone to get the impression that approvals were for sale if you will. We are recommending a very simple approach. Keep the fee system that we have in place, cutting it in half to .5 percent. One other change that we recommending which came about from some of the Commission's discussions was verifying whatever the construction cost are. The fee system in place now is based upon a percentage of your construction costs. It excludes site development costs, site acquisition costs, and site remediation costs. We felt that it was important to have an opportunity to verify what the construction costs are so we have reserved the right for the Commission to actually refer those numbers to an outside consultant with construction estimation experience so that we are using the appropriate value.

There are also some minor changes that were made to allow for some of these outside consulting fees to be passed along to the applicant. We have expanded that to include the legal fees and the construction estimating fees.

Attorney Main states that they also did what-if scenarios; what if we charged a fee on a per square foot basis or on a phasing basis so it gave us a lot of the scenarios that we wanted to analyze and figure out what sounded best for the Commission to following. In two other scenarios that we discussed on a square foot or unit basis. We did not think that was as progressive because in certain circumstances if you have a more moderate cost of housing you do not want to charge things on a per square foot basis and then compare that to a higher cost of housing and that is why that was rejected. It was just too cumbersome to try to estimate costs on a per unit basis; how would you

allocate costs between commercial and residential because of the same kinds of infrastructure costs meaning from the ground up, would be used for commercial it sat on floors one and two and above that you had residential, how do you allocate the costs in that type of mixed use scenario. We went back to what we thought was the most basic fair and reasonable proposal to make tonight.

Ms. Boyle directs the Commission's attention to the memorandum which Planning Intern, Kinchla prepared. It gives a good breakdown of what the development fees could be for a hypothetical \$200 million dollar project. If you were to look at it as primarily multi-families because that seems to be mostly what we are getting, for the different fee structures, whether it is 1 percent down to .25 percent, she has provided a breakdown as to what the cost per unit would be essentially passed along to the purchaser. For the \$100 per \$10,000 which is the fee schedule that we have in place right now, that amounts to about \$3,500 per unit which is fairly substantial and going down to the end of the proposal to about \$1,700 per unit. If we were to go to .25 percent it works out to be less than \$1,000 per unit. Since most of these units will probably selling between \$250,000 to \$400,000, it is not a huge amount in terms of the incremental cost per unit basis.

Chairman Rogers thanked Ms. Boyle and Ms. Main for their input.

Mr. Rogers asks the Commission at this time if they have any comments.

Mr. Rogers asks if the cost structure for the Commission's consideration is it inclusive or exclusive of any professional costs that this Commission may incur, for instance legal costs, traffic, engineering costs. Are they included within this proposed fee or is that an additional cost? Ms. Boyle answered it is an additional cost. Mr. Rogers asks that this cost is the base cost and that any costs that are incurred by the Commission in connection with the review of a proposal, for instance, a traffic engineering study that would verify that might cost \$5,000 that would be on top of that. Ms. Boyle answered yes.

At this time, Mr. Rogers asks if the Commission has any comments or questions.

Mr. Gowell asks at what stage are these fees assessed. Ms. Boyle answered, at the application stage. He states his concern is that at the application stage, the plans are going to be conceptual at best and it will be very difficult to get any real estimation of actual construction costs until you get to some level of design and completion. The cost of the development could change from the application stage to the actual development stage say from 15 million to a \$30 million development. Have we kept ourselves from increasing the fee based on the increased cost if the development turns out to be larger. Should the fee be recalculated or reassessed?

Mr. Harpootian asks that if they are going to increase or decrease the development, does that not come before this Commission. Ms. Boyle answered yes. Mr. Harpootian said then they cannot go ahead with anything until they come back before the Commission. That would take care of the increase or decrease in the fee.

Mr. Gowell states you do not know what the real cost will be at the application stage.

Ms. Capaldi states the Commission should reserve the right to revisit the fee if they see it necessary.

Mr. Gregory states there is a distinct difference of what Mr. Gowell is describing and the cost of increase in product and materials on the job. If the cost goes up, we should not go back after them for an increase that they have incurred over time, whether it be a change in the economy and such. If they come in with a major change to the development, or radical change in the number of units, I think that is very different. A good faith presentation by the developer in a dollar range would be accurate, if the costs then increase, I do not feel that the developer should have to come back before the Commission for a fee structure increase.

Ms. Boyle states that in terms of a major modification that would appear before this Commission, you may want to add language that in the event of a major modification, the Commission has the ability to revisit the application fee. Also, If someone wanted to downsize their development that may be the applicant's risk.

It was asked if the developer were to submit a cost estimate of \$15 million and then they engage in an outside construction consultant to review and that person comes back and says no it will cost more, what happens then. Ms. Boyle answered that the language states that the Commission reserves the right to review and approve. The application would not be deemed complete until they decide on the cost of the project and the fee. Mr. Gregory states that if there is a conflict, his concern is that it looks like we would have to bring in outside review of every presented project this way at the Commission discretion. Where do we draw the line? From a design review aspect I would like to know that what I am reviewing is accurate, but I do not want to spend money on consultants every time something comes up. He suggests building something into the regulations, where if they exceeded the presented plan price to us by a reasonable percentage. Afterall, we do have time frame to get these projects approved.

Ms. Boyle states that she anticipates it would work if they perform a review of the application before we deem it complete, we get their fee estimate, I would send it off to the construction estimator, then they would either verify or if there was a dispute, then that would go before the full Commission. It would be a one time analysis and very brief. We are not looking at construction plans at this point, but looking at plans where you are basing it on land use. Based on Class A office space or retail office space it's going to be x amount per square foot. We are not going to have those details and we don't need that level of detail at this point. This discussion is for the establishment of the fee, not for the establishment of financing for the development.

Mr. Harpootian asks if it is possible to have a two stage process where when the CO is issued on the building the Commission can revisit it in terms of the valuation. If it is higher they pay the balance; if it is lower they get a credit. Ms. Boyle answered that you could ask for a certain amount of the fee up front and then another portion of the fee when the CO issued. We did not really think about revisiting the original fee. It

could be several years before portions even get to the CO stage. For a condo development, they could be issuing multiple CO's over the course of the construction. Administratively it could get very cumbersome. Attorney Main agreed.

Mr. Gray states he can appreciate all the comments made this evening about the fee, but says these are large scale developments and anyone that is going to undertake any type of project of this dimension are honorable people; they are not going to come in with figures that embarrass anyone.

Chairman Rogers states that it is not question of good faith or bad faith. Sometimes there are changes on the project. The cost of the Bank of America project was thought to be 25 million dollars and in fact, due to changes in the project it is closer to a 50 million dollar project. The goal here is to provide predictability to the development community, certainty, and to project business friendly. We don't want these fees to be a deterrent for people to develop in East Providence.

Chairman Rogers asks if .5 percent is the correct number. On a \$200 million project the fee would be a half million dollars. Attorney Main states that these fees apply to construction costs. It does not include infrastructure or remediation costs. Chairman Rogers thinks the half a million dollar fee on a \$200 million dollar project is also an extraordinarily large fee and does not agree with it. It does not even include our lawyer's costs, design review costs. Mr. Rogers states that would be a deterrent to a potential developer. He asks for the Commissions comments at this time. Ms. Boyle informed the Board that the Commission's original fee was based on the Capital Center except we had a \$50,000 cap. Their fee is 1 percent with a \$40,000 cap.

Mr. Gregory states he agrees to have an outside cap that is reasonable and acceptable to promote development. He is concerned about having the lower fee rate that we will be having discounting the target market of our developments by getting down to the \$25, \$20, and \$15 million projects and getting low on a fee structure again. He agrees with the .05 with a cap, but is concerned about the .25 at the lower end. On a \$20 million dollar project it would be a \$100,000 fee. It does not seem like a lot.

Mr. Gregory asked Ms. Boyle which one of the fee structures would be closer to the fees that have already been assessed for the two condo developments. Ms. Boyle answered previously the Commission removed the cap and the existing fee structure right now is just one percent with no cap. Chairman Rogers states that maybe we should stay with the same dollar threshold, but with a cap. What is a reasonable cap? For a million dollar project you have a \$10,000 fee.

Mr. Pesce asks where the monies are going. Chairman Roger's answers they would be going into the Commission's account. He asks, in conjunction with the TIF funding, could some of these funds be used to finance the infrastructure? The Chair states this is more the Commission administration review on-going compliance of the project. Mr. Pesce also states that some of the developments in other municipalities, if they require a certain amount of infrastructure sometimes that fee is part of the requirement of that developer. Chairman Rogers states that is a very significant comment, and it is important that if this Commission is approval many commercial projects that are

going to be generating a lot of revenues and taking very few services, that is terrific, maybe the concern isn't as great as an impact fee, but if the trend is residential which tends to have a greater burden on the overall tax arrangements than commercial, then some type of impact assessment is appropriate for discussion down the road.

Mr. Gregory stated that on the .1 vs. the .5 percent he feels that on a million dollar project, the \$10,000 fee may impact their decision to come to the City more than \$150,000 fee on a \$30 million dollar project. It is very difficult for the person developing in the smaller range to secure the financing. That could be a deterrent. He would rather use the 1 then the .5. The impact of the 1 percent on those smaller projects could be worse than the impacts on the larger projects. I like the idea of the cap, but I don't want to lock up a small development.

Ms. Boyle stated that we do give relief for the very small projects; projects below one million. She states keep in mind that the small projects do not have the ability to spread it out over the cost of the project. They don't have the ability to add that cost in over 300 units. If the Commission considers a cap, I suggest that you reduce the fee itself. We don't want to hit the smaller developers harder than the larger developers. Maybe something like the .5 with a reasonable cap to \$50,000.

Chairman Rogers suggests a waterfall approach where you have the .25 percent up to something, then it steps up to .50 for something with a cap. As Mr. Gregory mentioned, you give the project the benefit of the smaller amount and as it gets bigger it kicks up with a cap.

Mr. Gregory states that he feels the .25 percent is too low. Start it at .50 which gives \$5,000 for a million dollar and above, and then step up to the .75 to \$37,500 and again to what we are currently at.

Mr. Gowell states that it might make sense and be reasonable to have it if it is over a certain level to acquire half of the application stage and half of the approval stage. Ms. Main states that her concern is the perception issues of approvals for sale. Maybe their merits justify approval, but that would box us in on perception issue. If we accept half a fee on applications and then set up our regulations where the other half comes in at construction, it basically gives the perception that if we approve your project do we get the other half of our fee. Ms. Boyle states that the general public may see this as the Commission basically selling their approvals.

Mr. Gray states that the Commission could put in a lot of work and then if doesn't go, you could lose half the fee in that type of situation. Chairman Rogers states that even if the project fails, I don't think the Commission will be in the red as a result of its review. Mr. Gray stated that it is more pro-development for a developer to say if we have the fee, but I don't get the approval, at least I won't have to pay the rest of it. He is looking at it from the developer's side as well as the Commission's.

Chairman Rogers asks if that compromises the integrity of the Commission's review as a matter of policy before any of these projects are in the door. I'm not sure it necessarily does and agrees with Mr. Gowell that it is a huge investment upfront for the

developer who may get rejected and have everything at risk as opposed to paying the fee, your paying the costs and if it is approved at maybe a quarter of construction. I am sensitive to cash flow issues for a developer. Our job is that we are pro developer and that we are encouraging responsible development. We are proposing a tiering because it strikes that balance and staging of the fees is another way to strike that balance.

Mr. Pesce suggests that the Commission might need to discuss as to how much money the Commission actually needs to operate. Costs for the engineers, legal counsel etc. Is there a reasonable amount of money we can foresee and maybe work backwards and then adjust the fees. Chairman Rogers states that is an excellent business comment, but the problem is some of the costs are unanticipated. There is always a risk that the Commission might have as to what we could get into. There are administrative costs and the Commission has talked about at some point in the future maybe having a full-time Executive Director. We'll need staff to support the Director and we have a finite amount of assets that we are dealing with here. We have 300 acres. At some point, we will maximize the amount of development that we are going to be able to get income from, but yet we will have an on-going multiple of years in reviewing, assessing, and monitoring.

Ms. Boyle raised the point that given that these are substantial application fees, perhaps the Commission wants to consider expecting the developer to pay for the peer review, traffic study which is generally a small number, maybe it would be appropriate to have that as part of the application fee, not in addition to it. Chairman Rogers states he likes the idea of pass those costs because it takes the burden off of the Commission and keeps the developer honest by having them share some of the burden of the review. If the developer is not that organized, then the Commission will have some kind of mechanism to handle that burden.

Mr. Gregory states he is not in support of absorbing the fees out of the applicant fee and states he does not want to be put in the position of whether or not we get a peer review. We cannot afford it. He states the DRC probably sees those fees first and does not want to be put in a position on the Design Review Committee of having a project where we have to look at our budget balance before we properly review it. Possibly in a position like that maybe the developer would be willing to absorb that cost to prove his point. Everyone agreed on that point.

At this time, Mr. Rogers asks the Commission as to what an appropriate cap would be on the fee. He knows of multi-billion dollar corporations merging with other companies and those are capped at \$250,000 dollars. More typically in the \$45,000 to \$125,000 range; sometimes higher. Mr. Gregory says \$125,000 as a cap may be appropriate. Mr. Gowell thinks that is too low. He suggests \$150,000 based on the size of the project. He states he is much more concerned about the timing from a developer point of view to have to come up with any of these fees all at once. I believe it is a deterrent to the application. The ultimate size of the fee based on improved project is a little bit less important than having to pay all at once. It is a cash flow issue.

Mr. Pesce agrees with those comments and said that having to pay it all up front could be a deterrent. On a \$200 million dollar project, if it is a million dollar fee over time is not unreasonable, but asking for that upfront on a project of that magnitude is unreasonable.

Chairman Rogers asks a policy question in that why should the Commission get a portion of that. I am not in favor of a particular cap, but why should it be unlimited. If we are not partners, why should we get the upside of a substantially successful development that is in a very good market. What is the basis for us in achieving such significant revenues in such a project? Mr. Gregory answers it is interesting in that it goes to the fundamentals of our tax system which is based on the amount of money that is at stake whether it be the value of the property; property taxes go up and if it is income, then income taxes go up. On a \$200 million dollar project that is going to have a life of five to eight years, over a long period of time with a lot of work and effort you are trying to establish a fair and rationale basis for a fee for the Commission to function and to provide resources and revenue for the Commission to function.

Ms. Capaldi stated that recently she saw a budget article that was just passed which imposed a 2.25 percent fee on historic properties and the application fee. She sat in on the meeting with several other people and heard some of the largest developers that are currently developing in Rhode Island complaining about the application fee and wondering how they were going to come up with that money upfront at the inception of a project when we have other costs that are associated with it. There was some discussion at that meeting and the RI Historic Preservation Commission is faced with the collection with that and some of the discussion that Ted Sanderson, the Executive Director was expressing was that there is no way it can be determined how that fee should be collected; whether it is a one payment or paid on installments. I agree that is difficult when you get into some of the larger projects to pay a fee upfront at the inception of the project, but at the same time you don't want to impose a fee that is unreasonable. You might want to consider is taking a look at what they impose now on the historic properties since there are several historic buildings in the area. How they are paying a 2.25 percent fee plus another percentage fee on top of that.

Mr. Gray states that a lot of these large projects that generate the largest potential fees are phased and if there is a way to link the fees with the phases, then we could spread it out without actually linking it to the Commission.

Mr. Harpootian states we are not a for profit commission. We need revenue to keep us afloat. Our basis purpose is for development to raise a tax base for the City of East Providence. We should be encouraging development, not discouraging it. Chairman Rogers agreed. The Commission should have the flexibility to allow payment phasing. The Commission agreed.

Ms. Boyle asks whether or not to have a portion of the fee as a cash payment and another portion as a line of credit or some kind of mechanism. You would have it there upfront, but would not actually draw it down unless the development proceeds in phases. Chairman Rogers worries about the burden on the development and does not think it will be administratively difficult. If you get a fee upfront, get a fee to follow, and

yet a third fee at a major mile stone, it would not be so unmanageable. Dr. Ramos agreed. Ms. Boyle states it will be very difficult to track the fee system. They are not going to be two-phased developments. It could take 10 years before they are completed.

Mr. Gowell states it will be better for all of us if a developer came with a master plan for a site, a full build out of a site that might be a \$200 million dollar project. We look at the whole thing all at once, but the plan would be phased. If we were to not allow phasing of the fee, then you are going to encourage the developer to just come in with just a piece of the project. It is all about cash flow. If they can present one tenth of the project and pay a smaller fee upfront and get that going and as they generate cash, then come back in to the Commission.

At this time, Chairman Rogers states that it seems that the Commission is in agreement to phase. The other question is whether there should be a cap or not?

Mr. Gregory states that that cap was predicated on that one time fee. I'm not opposed to looking at another development. The \$125,000 number that I suggested was something he feels could be acceptable with many project. If we are going to phase, I think we should entertain a different cap.

Chairman Rogers doesn't think there should be an unlimited amount. Although there may be multiple years of analysis and review there should be an upper end that the developer is going to know what the application fee would be. I believe a cap is appropriate and suggested \$250,000.

Mr. Rogers is saying that the developer for the 28 or 50 acre parcel comes in with a project, you would follow the schedule, but it would be capped at that \$250,000 amount even if you have a \$200 million dollar project.

Ms. Boyle stated it would be at the 1 percent fee with a cap of \$250,000 which would mean that the \$25 million dollar project will be paying the same as the \$200 million dollar project. Chairman Rogers states, under his proposal, that is correct.

It was asked if the Commission would have a steady flow of money over a 10 year time span or are we going to get a lot of application fees for the first five years and have another 15 years worth of work and no more application fees coming in. The whole timing of this and the scope of task, revenue stream, I am not sure we are prepared enough to understand what we are deciding and what the impact will be.

The Chair states there a lot of issues that are still open. We need a decision this evening because we have some applications pending.

Mr. Harpootian feels they need to table this and discuss it more. I would like to see an itinerary made of our discussion, so we can intelligently vote on this issue. Everyone has a cross feeling on this. Ms. Boyle states that if the Commission chooses to defer, I would also suggest that we don't hold the other applications up. There is one

application that is waiting for some decision on this and I expect another application to be submitted next week.

Mr. Lynch asks Ms. Boyle if an application is submitted to your office tomorrow, we are under the existing fee structure. They understanding the ramifications of submitting and application. They may only get relief of that if we decide to lessen the impact of that fee structure. I don't see where deferring this jeopardizes, with the exception that it may cost them a week or two of time, but it may save them a sufficient amount of money and that is the inclination of the Board. Ms. Boyle states she would need direction from the Commission. Regarding this issue of deferring, Ms. Boyle states that she cannot deem an application complete until I have the application fee. If the Commission wants us to pursue completeness review in the absence of the fee since this is in flux, or whether you want me to put them aside and say we are not really reviewing these until this fee issue is addressed, otherwise you submit it under the current fee structure. Certainly the Commission can take however long it needs, but it does affect pending applications. Chairman Rogers states he feels the Commission has made substantial progress on these fees, and tends to agree with Mr. Lynch that an applicant would recognize that there is some benefit.

Mr. Lynch states it is virtually certain that the fee is going to be reduced from where it is now and it may even be reduced to the point that we allow some sort of phasing of the fee. I concur with the Chairman's assessment. Whether the Commission in order to allow the projects that are moving forward with some certainty wishes to consider for example reducing the fee at the moment to the \$50 per \$10,000 level, which is .5 percent of construction costs with no cap pending further discussion both on the cap and as well as on phasing, is that something we could do and just consider that in order to initially become more development friendly and allow these projects to go forward with some fee being paid. I'm offering this as an interim step before we make a full assessment of what it should be. Chairman Rogers agrees and states we could include the phasing because that is at our discretion.

Chairman Rogers states he would like a meeting within the next two weeks and this way we can give developers certainty and figure out schedules. Mr. Rogers said to Ms. Boyle we have achieved consensus on several of the other items including the tiering, not the staging of the payments but the tiering of how that works. Mr. Rogers states he thought the Commission agreed that the \$50 per \$10,000 for projects under 1 million, stepping up to .75 for projects up to \$5 million and thereafter we are back to the \$100 per \$10,000.

It was agreed to continue the decision on the fees and have the Commission meet in three weeks. The next meeting is August 15<sup>th</sup>.

Chairman Rogers, at this time, invites anyone who would like to speak.

Mr. Robert Manchester states his impression is that the developers always think in terms of their project. I have a project size of \$200 million dollars or larger. To do the kind of project it requires a certain amount of federal funding. Paul Lemont and I have

been engaging people in Washington to raise money at the federal level and things like that. If we come to you with a project size of \$2 or \$3 million, and have to pay a formal fee based upon our highest expectancy, which is what we think the City wants, that is a lot of risk money. Some of these waterfront projects are going to require some type of TIF, particularly since it is a huge greenbelt. Maybe where the TIF is required, maybe the first down payment should be whatever you need to tackle the project and whether that project merit and value, or needs to be modified, and fully realizing that as it works at the skill you allow, thereafter the fees will come in on some objective criteria set forth over the construction side of it. I don't think it has to be the sales side in order for it to work.

Mr. Richard Sherman, Esquire states he is not here tonight representing any client. I have appeared before the Commission before representing Aspen Aerogel. I represent Tockwotton also who currently has an application filed with the Commission. He commented that from his experience he thinks it is important to remember that much of the land within the waterfront district is former commercial land. In addition to much of the land it is coastal or approximate to the coast. In contrast to an inland parcel development is much more complicated and much more expensive in terms of dealing with things such as flood plain requirements and is much more expensive to permit. Any change to a former commercial property to a residential or mixed use involves significant changes in infrastructure which is very expensive. It is much more expensive and much more complicated with the risks involved. It is counterproductive to charge applicants significant application fees with the risks and costs of develop coastal properties which are much higher.

Regarding the tier two fees and the professional fees that have been discussed tonight, Mr. Sherman states his opinion is that the entire fee should be based on the costs incurred by the Commission and its staff to do its job. He said he is talking about the application fees and associated fees along with it. The job of the Commission is to review and process applications and monitor projects during construction to make sure they comply with the regulations. The fees are based upon project costs per se. Many development applicants are not as big as Bank of America; they are small to medium size companies that set forth budgets to try to predict their development costs and so forth. These applicants are also required to pay real estate taxes, subdivision fees and other fees for permitting application processes. An application fee that is based on anything other than actual incurred costs that the Commission has to bear represents a significant burden to a developer and may act as a major disincentive for a responsible developer to come in and present projects to the Commission. Mr. Sherman states he does not get the sense that the Commission has a budget for going forward over the next year or two that might reflect what their predicted and expected costs will be. Mr. Sherman suggests that that budget should be used to try to set the fee structure since it is a non-profit organization. A cap is very important, because it provides certainty to an applicant. A cap in the range of \$100,000 to \$150,000 is probably more than enough for most projects, even a \$200 million project and that should include the other costs if the Commission needs to hire an engineer or any other consultants.

Mr. Sherman states if you look at the Coastal Resource Management Council for some precedent it may be useful in terms of how you make your decision on setting your

schedule. He reads from the CRMC procedures at this time about the application fees for commercial and residential properties. It states ***that the reduced fee shall be no less than the estimated processing time of the Council's staff at a rate per hour set by the Planning and subcommittee of the Council.*** The minimum application fee is \$5,000. Mr. Sherman states that he feels very strongly that the Commission should have in its regulations some mechanism to allow payments by the applicant to be spread out over a period of time.

As a matter of full disclosure, and for the record, Chairman Rogers states that Attorney Sherman is a partner of his at the law firm of Edwards and Angell in Providence, RI.

Mr. Rogers puts out his proposal of components that he wants the Commission to consider below and asks for a motion for purposes of discussion.

Component #1 is that there would be a stepping system as we have discussed tonight. \$50 per \$10,000 of up to one million dollars, above that it steps up to \$75 per \$10,000 for projects 5 million dollars and below. Anything above that is subject to \$100 per \$10,000.

Component #2 is authorizing the Commission in its discretion to permit payment in installments over such periods or with such milestones as a Commission at the particular point it decides in its discretion is appropriate for the project.

Component #3 is that professional costs are excluded; that whatever fee results does not include costs that are past on. Legal costs, engineering costs etc. are in addition to and are past on to the developer notwithstanding whatever the base fee may be; and lastly, with a cap of \$250,000.

#### Motion

On a motion by Dr. Ramos, seconded by Mr. Gowell, to discuss or modify these components.

Mr. Torrado finds this to be a reasonable approach and addresses all the critical items that were previously discussed. I also believe that the more time we are given to think about it, it is not going to add any clarity to this issue.

Mr. Harpootian states his personal opinion is that he is not comfortable with it. It is very in-depth and needs to be digested before there is a formal vote on it.

Ms. McNamara states that she would like to talk with some of the developers she knows and the business community and get an idea of how they feel. She says she is not comfortable with the levels and needs more information on the tier fee schedule

Mr. Lynch states this is a very worthwhile attempt to articulate the consensus that has emerged in this discussion. I would like to have a better handle on not just the questions that Mr. Sherman asked about our budget, which is a legitimate comment.

What our needs are going to be over the next 10 to 15 years is what we should be focused on. We are not funded as CRMC is funded by the General Assembly. What the Commission is going to need to function after the application fees have been paid, but the work continues is a big question in my mind. I am very concerned about locking ourselves into some sort of a fee schedule that could result in the Commission running short in future years. We have no idea right now what our budget is going to be or the time of payments are going to be. In some respects we are defaulting to the next best methodology, which is to base the fee on as percentage of construction costs. Without overburdening the developer and without cutting short the needs of the Commission over time. We need more time to assess this.

Mr. Torrado asks the Chair how often is the Commission able to revisit the cap. Chairman Rogers states anytime we want, but as a practical matter we want to limit it as much as possible for the certainty purposes, maybe every other year. Once we agree upon a number, we would want to keep in place for some reasonable period of time.

Ms. Boyle states that on Component #2 regarding the phasing suggests that if we are going to do a phase-in that it be a little more specific in terms of how that would take place; whether the Commission would allow 50 percent of the fee paid upfront and the remainder at either the CO or the building permit so that for the developer you have a little more certainty. At least they know what the parameters of that discussion are going to be.

Mr. Torrado states he feels there are two issues regarding the phasing. Are we talking about phasing of or a payment schedule that is done at the issuance of the application or the issuance of the building permit, or occupancy permit or are we talking about phasing in a four-phase condominium project. Those two things are separate.

Ms. Main states that to that point, she thinks some discretion is helpful at the outset so that you can evaluate a phased condominium project like a Rosscommons as against an Aspen or perhaps something elsewhere that may have 10 or 20 phases to it.

Chairman Rogers decides to withdraw his proposal, and will defer this discussion to the next meeting in August. The current fee schedule will be adhered to until altered by the Commission.

Mr. Pesce states he would like to try to define a budget within the next 10 to 15 years, maybe get a consultant to try and come up with a number that we could use. Ms. Boyle states we have had a build-out analysis done as part of the Waterfront Commission Development. As part of the CDM study, they based their projections on infrastructure needs on that budget analysis. We will share that analysis with the Commission at the next meeting. From that you make estimates and approximations based upon staffing needs.

Ms. Boyle asks if she has the permission of this Commission to begin the completeness review on these projects absent a fee and basically tell them to hold off on submitting a

check until we get a decision from the Commission as to what that fee will be. Mr. Rogers states that the applicant should sign some kind of consent or acknowledgement that the fee will be reduced in their favor. It won't be increased and if they agree to pay whatever fee will be adopted by the Commission. Chairman Rogers suggests that Ms. Boyle to with Legal Counsel to get whatever disclosure is appropriate for these developers who are applying so that they are ultimately bound by the current fee structure in place right now.

Ms. Boyle asks the Chair what he wants from her and Ms. Main for the next meeting. Mr. Rogers says to look at the build-out report that Mr. Coutu mentioned and put together an approximation of a budget to Mr. Sherman's and Mr. Gowell's point that we should not be picking a number out of thin air and timeframe. Ms. Boyle asks what fee is going to be considered or contemplated? Do you want an analysis that was just recently suggested? Explore the tiers and the cap and projection. Those are the general parameters we would like you to explore. Mr. Gregory states that the projection over some reasonable time horizon with the number of projects that are likely to be presented and what would the fee be. The annual contribution to the capital of the Commission; a revenue projection and then we can compare that to an expense projection.

Ms. Main asked Mr. Gregory to clarify his statement about revenue projects. He states how many developments per year, what average dollar volume of the development. What is the application fee. Ms. Main states she is more concerned about that than the budget. She said Kettle Point might have one type of upper end development which would justify one type of fee compared to another type of development which may be moderate.

Chairman Rogers states this will be a continuation of this meeting and we will not have to advertise again.

**B. Request of GeoNova Development Co., LLC for waiver of application fee  
(Copy of letter dated 6/22/05 from Edwards & Angell Re: GeoNova Development Company, LLC)**

Chairman Rogers states he is recusing himself from this part of the agenda because it is specific to a particular development.

Acting Chairman, John Lynch will chair on this in place of Mr. Rogers who recused himself.

Attorney Richard Sherman states he is representing GeoNova development in the grandfather status with respect to the application fee. At this time he gave the history of the development. He states this was a former steel manufacturing facility which contained heavy metals. The site was remediated. The City acquired title of the site, but did not acquire any of the obligations under the Purchase and Sales agreement that GeoNova had which include among other things the obligation to indemnify the owner from any environmental liability or existing conditions at the site. The City will retain

title until the completion of the remediation and the approval of the Waterfront District of the project at which time title will then transfer to GeoNova.

Mr. Sherman stated that GeoNova has remediated a heavily contaminated site to construct a major mixed-use project and to create a market where one does not now exist to assume all the risks associated therewith. GeoNova's involvement with this project and with the City predates the creation of this Commission by at least two years. It was GeoNova's clear expectation at that time of what expenses it would have for environmental remediation, development and planned its cash requirements accordingly. The agreement that GeoNova entered into in the City in 2003 established a loan and grant mechanism in order to enable GeoNova to undertake the significant and environmental remediation at the site and development of the project and ease the otherwise cash requirements that would have been placed on GeoNova to do this project. GeoNova still has expenses for engineers, architects and lawyers just to complete the permitting process as well as before other federal and state agencies.

Aspen and Rossccommons projects were proposed after the GeoNova project was originally conceived and agreed to with the City and who are entitled to a fee cap I believe. Under these very unique circumstances, GeoNova is clearly entitled as a matter of equity, fairness, grandfather status, and should not be subject to the application fee. Three years ago, GeoNova agreed that it would pay for the actual costs of the actual professional services required to process and review its application and it will agree to do so with respect to its application for approval before the Commission. We are asking for grandfather status on the application fee, not the professional fees that will be incurred by the Commission and staff in their review and approval of the application.

Vice Chairman Lynch asks if there are any questions.

Mr. Torrado asks what the estimated construction cost is of the project. Mr. Sherman states that no construction drawings have been prepared because we are in the permitting process. He cannot give an exact number, but the estimated construction cost of both phases of the project, eastern and western sides is approximately \$200 million. That is based on 495 units.

Someone asked about the remediation costs that Mr. Sherman stated had doubled. Mr. Sherman said that the phase II site investigation two years ago, estimated for both portions of the property was \$1.7 million. To date, after remediation is complete it is around 3.2 and 3.4 million dollars.

Mr. Fazioli asked how much of the \$3.4 million is actually being paid. Mr. Sherman answered 1.7 million dollars. Geonova entered into a contract to perform the remediation. As part of that contract they agreed that the maximum amount that GeoNova would be required to pay to completion of the remediation was not more than 1.7 million dollars. If the actual costs of the remediation exceeded that amount up to a cap of 3.2 million dollars, the contractor would agree to defer payment of that until revenues were generated from the construction of the project to pay the difference.

GeoNova's liability to pay for the remediation is 3.2 million dollars. It has always been required under its contract to pay 1.7 million dollars and the general contractor who conducted the remediation has made the other payments and taken the risk of making those payments until such time they are paid with the provisions of the contract.

Dr. Ramos states he has a problem deferring anyone's payments. Where does it stop. The very first time I heard about GeoNova was when I was on the East Providence City Council. I would have to acknowledge that at that time Mr. Lemont did a lot of work in that area. Who's to say that other developers are not going to ask for the same thing. Somewhere we have to make a stand and I do not agree with grandfathering someone in and not charging them a fee. A developer would have to pay the fee. Everyone should pay it.

Mr. Harpootian asked Mr. Sherman how long he thought the remediation would take when he took on the project? About six months.

Mr. George Lee, President of GeoNova spoke and stated we had to take out 35 thousand tons of materials on the site and we had estimated only two thousand tons when we first started the project. This is contaminated land that has been underutilized with the remediation in place it now can be utilized. Mr. Lee commented that there is no other waterfront development going on except for Rossccommons and Aspen Aerogels.

Mr. Harpootian states that if it took you six months to a year to begin construction of your project, you would not even be here tonight.

Ms. McNamara asks if the \$1.7 million that GeoNova has paid out come from the HUD loan that they got when they became partners with the City. It was answered yes, some of it did. She asked if the City has the title on the property until it the land is totally remediated. Has it been turned over yet to the City. It was answered no because we do not have the closure report yet from DEM. What was your agreement with the City after the remediation work was completed. Did you have an agreement to go forward with the development. Mr. Sherman stated that the development agreement signed in 2003 has two components; remediation and to development and create 140 jobs.

In answer to Mr. Fazioli's question, Ms. Boyle said the purchase price of the property was 1.8 million. She explained that the City applied for a Brownfield Economic Development Initiative Grant to HUD and we were also using a Section 108 loan. The City gave the two million dollar grant to GeoNova which they are not obligated to repay; that is part of the grant from HUD. The City is also not obligated to repay it to HUD either. The 3 million dollars has been loaned that to GeoNova and we used a mix of both the grant and loan to actually purchase the property. When the property is permitted and remediated, the City will sell it back to GeoNova at the cost that we purchased it. The appraisal of the land (the post permitting value) about three years ago was approximately 10 million dollars for the entire property.

Mr. Lynch states that the City has been a partner with GeoNova and feels it is somewhat disingenuous to say that there is not other development going on in our waterfront district because of problems that GeoNova has had and people are seeing that. You got a pretty good deal and a good partner with the City to date and you will be benefiting from that. He asks that the Commission keep this in mind.

Mr. Sherman states that \$2 million is what GeoNova has invested in soft costs in addition to the 5 million. Ms. Boyle stated there was a licensing fee for the technology which was one million dollars paid for by GeoNova.

Mr. Lee stated that the site had been abandoned for eight years. No one else was coming around or interested in it. Because we undertook it, that is why you have Rossccommons and other developers coming in. We took the initiative and it will give the City a long-term tax base.

Mr. Torrado states he is much more sympathetic to the argument that the project began prior to the onset of this Commission. At one point we had a \$50,000 cap, then to the argument that this Commission should consider waiving the fee for developers unforeseen conditions and additional costs. I think if we set this as a precedent, we will have to entertain every project will run into some unforeseen condition. We will be asked to visit this over and over again. The best argument is that the project did start prior to the creation of the Commission and at one point we had a cap. I think having a phasing of the fees for this project is appropriate.

Ms. Main advised the Commission that they need to be mindful also of what our regulations actually allow us to do. Right now we have a certain percentage fee. There is no language that allows you to have the discretion on a waiver of a fee on a certain amount. We need to be careful here about establishing precedent with this project and going outside the bounds of either our Enabling Act or our regulations which go hand and hand on this. She said if the Commission is interested in entertaining the ability to waive or computer this type of information into your phasing analysis for the next meeting, that is appropriate. You may not want to vote on this particular request tonight and just review this information and take action at the next meeting.

Motion

On a motion by Mr. Gregory, seconded by Mr. Torrado, the Commission unanimously voted to table GeoNova's request to waive the fee and reconsider it at their next meeting.

This concludes the public hearing.

### **C. Selection of Waterfront Commission Logo and Tagline**

Chairman Rogers states that Advertising Adventures came up with two alternatives for both the logo and the tagline.

There was a discussion at the previous meeting that they needed to convey life and activity on the waterfront. The logo conveys this. Mr. Rogers described the logo and tagline.

Some of the members liked having a tagline, some did not. It was suggested that they could always have a tagline at a later date. After discussion on the logo and tagline, the Commission decided on the blue and green logo with the lighthouse with the tagline that reads: "Waterfront Renewed, City Revitalized".

### **Motion**

On a motion by Mr. Gowell, seconded by Mr. Lynch, the Board unanimously voted to adopt the blue and green logo with the lighthouse with the tagline that reads "Waterfront Renewed, City Revitalized".

## **5. Reports of Commission's Subcommittees**

### **A. Design Review Committee**

There were no reports from the DRC.

### **B. Hearing Panel**

There were no reports of the Hearing Panel

## **6. Miscellaneous Other Business**

### **A. Keyspan LNG Facility/FERC Decision by City Manager Fazioli**

Mr. Fazioli informed the Commission that Federal Regulatory Energy Commission has rejected the proposal for the LNG terminal at Fields Point. It is the first time in Providence that a proposal has been rejected outright by this Commission. The Chair asks Mr. Fazioli to pass on the congratulations of the Commission to the City Council and to your legal advisors.

## **7. Staff Report**

### **A. Report of Counsel**

#### **1. Kelo vs. New London Decision**

Chairman Rogers states he will defer this because there may be a new Supreme Court Justice in the works and that decision maybe revolving.

### **B. Executive Director's Report**

#### **1. Status of Pending Applications/Projects**

Ms. Boyle reported that the Tockwotton proposal appears to be complete. I got the Peer Review back from Gordon Archibald Inc. and expect to be issuing a Certificate of Completeness for that application within the next couple of weeks in which the 45 day

clock starts ticking. They got their application in when the fee was \$50,000. The project was initially \$40 million. She said this proposal will be a combination of assisted living, nursing home and four acres where they will be doing a commercial development.

Ms. Boyle reported that FRE Co. and the City officials have had some preliminary meetings. This is a multi-family development on the end of Waterman Avenue. They are proposing 147 condo units and have already gotten their preliminary determination permit from the CRMC. They have requested an informal meeting with the Design Review Committee sometime in the beginning of August. She noted that this property is a Brownfield property and they are working with DEM on the capping and other issues. Stephanie will be polling the members to see what the availability is for the DRC meeting.

Ms. Boyle reported that the GeoNova development has been submitted. Even though we have not established a fee, we are doing a general completeness review. She said she had a meeting with the developer and they need to send more information before we can commence a completeness review.

Ms. Boyle reported that Aspen Aerogels will be coming back before the Commission with more information on the noise modeling. They are also talking about a relatively substantial change to the development where they are proposing to do a cooling tower instead of the chiller units.

## **8. Communications**

The Commission accepted the communications below as part of their official record.

- A. Expenditure Report for Waterfront Commission
- B. Copy of Design Review Comm. Minutes of May 10, 2005
- C. Copy of letter dated 6/28/05 from Gordon Archibald Assoc. (GRA) to J. Boyle, Re: Proposal for a Traffic Impact Study Peer Review, East Pointe
- D. Copy of letter dated 7/5/05 from GRA to J. Boyle, Re: Sub-consultant Services for Engineering Peer Reviews, Waterfront Special Development District, East Providence.
- E. Copy of letter dated 6/28/05 from J. Capaldi, RIDOT to City Manager, William J. Fazioli, Re: Directory Sign on State Property at Dexter Rd. and Massasoit Ave., East Providence, RI

## **9. Adjournment**

The meeting adjourned at 10:30 p.m.

Respectfully submitted,

Jeanne M. Boyle, Interim Executive

Director

JMB/sac