

REGULAR MEETING OF THE PEABODY CITY COUNCIL
APRIL 16, 2009

PRESENT: COUNCILLORS: BETTENCOURT, GRAVEL, DRISCOLL, MELLO, GAMACHE, OSBORNE, ATHAS, MANNING, GARABEDIAN, LIACOS AND SINEWITZ

ABSENT: NONE

Meeting of the Peabody City Council opened with a moment of silent prayer after being called to order by City Council President, Barry C. Sinewitz.

Salute to the American Flag.

P381-09 COUNCILLOR GAMACHE - MOVE TO receive and approve the minutes from the last regular meeting of March 26, 2009. (Unanimous)

P382-09 COUNCILLOR GAMACHE - MOVE TO receive, under suspension of the rules, Item 8-E communication from Attorney John Christopher, City Solicitor, regarding Legal opinion, 54 Russell Street. (Unanimous)

P383-09 COUNCILLOR GAMACHE - MOVE TO continue the public hearing on the application from Rochelle Agneta, 54 Russell Street, Peabody, MA until the next regularly scheduled City Council meeting on Thursday, April 30, 2009. (Unanimous)

P384-09 COUNCILLOR GAMACHE - MOVE TO receive, under suspension of the rules, Item 7-A communication from His Honor the Mayor regarding Appointment of Robert Langley as Director of Public Services. (Unanimous)

(MR. ROBERT LANGLEY APPEARED BEFORE THE CITY COUNCIL.)

P385-09 COUNCILLOR GAMACHE - MOVE TO approve the appointment of Robert J. Langley, 9 Norfolk Avenue, Peabody, MA as the Director of Public Services for a three-year term to expire 12/31/2011. (Carried 11-0)

HEARINGS

A public hearing was duly held on the application from Gold Rush, MA LLC, 1 Leighton Street, Cambridge, MA. Appearing to speak on behalf of said application was Ms. Gala Tressler. No one appeared to speak in favor. No one appeared to speak in opposition.

P386-09 COUNCILLOR ATHAS - MOVE TO approve the application from Gold Rush MA, LLC, 1 Leighton Street, Cambridge, MA for a Junk Dealers License at 210 Andover Street, Peabody, MA, subject to all papers being in order. (Carried 11-0)

(COUNCILLOR BETTENCOURT RECUSED HIMSELF FROM THE FOLLOWING TWO PUBLIC HEARINGS)

A public hearing was duly held on the Special Permit application from Robert Bettencourt, 2 Lincoln Road, Peabody, MA. Appearing to speak on behalf of said application was Mr. Robert Bettencourt. Mr. Blair Haney appeared to speak on behalf of the City. No one appeared to speak in favor. No one appeared to speak in opposition.

P387-09 COUNCILLOR MELLO - MOVE TO receive, under suspension of the rules, Item 8-O communication from Community Development Department regarding 2 Lincoln Road. (Unanimous)

P388-09 COUNCILLOR MELLO - BE IT ORDERED by the City Council of the City of Peabody that the application from Robert Bettencourt, 2 Lincoln Road, Peabody, MA for a Special Permit for the expansion of a nonconforming structure by allowing an addition to the existing family room at said 2 Lincoln Road, Peabody, MA, as filed in accordance with Section 1.5 of the Peabody Zoning Ordinance, be approved based on the following reasons and conditions:

REASON: Owing to the fact that the use as approved satisfies a desirable local need, that its design and appearance will not be injurious to the established or future character of the vicinity and the neighborhood, and that said approval is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Peabody.

CONDITIONS:

1. That the plan, as submitted to the City Council dated January 5, 2009, be the plan of record; and
2. That should there be a bedroom added to the dwelling that the requirements of the Fire Department are followed.

(Carried 10-0; Councillor Bettencourt absent)

A public hearing was duly held on the Special Permit application from JAM, LLC, 7 Ashley Court, Lynnfield, MA. Appearing to speak on behalf of said application was Attorney Donald Conn, Attorney Santo Ruma and Mr. Peter Ogren. Mr. Blair Haney appeared to speak on behalf of the City. No one appeared to speak in favor. No one appeared to speak in opposition.

P389-09 COUNCILLOR GAMACHE - MOVE TO receive, under suspension of the rules, Item 8-P communication from Community Development Department regarding 55 Newbury Street. (Unanimous)

P390-09 COUNCILLOR GAMACHE - MOVE TO receive, under suspension of the rules, an amended site plan as submitted by Hayes Engineering dated March 23, 2009 regarding 55 Newbury Street. (Unanimous)

P391-09 COUNCILLOR GAMACHE – BE IT ORDERED by the City Council of the City of Peabody that the application from JAM, LLC, 7 Ashley Court, Lynnfield, MA for a Special Permit to allow for a restaurant without the sale of alcoholic beverages with some food consumed on the premises and some food for take out, and for the use of a drive through window at 55 Newbury Street, Peabody, MA as filed in accordance with Section 4.2.5 and 4.4 of the Peabody Zoning Ordinance be approved based on the following reasons and subject to the following conditions:

Reason: Owing to the fact that the use as approved satisfies a desirable local need, that its design and appearance will not be injurious to the established or future character of the vicinity and the neighborhood, and that said approval is in harmony with the general purpose and intent of the Zoning Ordinance of the City of Peabody.

1. Changes per recommendation from the Peabody Police Department and Community Development Department be adhered to.
2. The revised site layout plan for Sonic Drive-In dated March 23, 2009 from Hayes Engineering Inc. shall be the plan of record.
3. Hours of operation shall be 6:00 a.m. to 2:00 a.m. seven days a week.

(Carried 10-0, Councillor Bettencourt absent)

A public hearing was duly held on the Zoning Amendment - Map 35, Parcel 27 from R-1B to B-H2. Appearing to speak on behalf of said application was Attorney John Keilty. Mr. Blair Haney appeared to speak on behalf of the City. No one appeared to speak in favor. Mr. Russell Donovan, 12 Quail Road, Peabody, MA appeared to speak in opposition.

P392-09 COUNCILLOR GAMACHE - MOVE TO receive, under suspension of the rules, Item 8-M communication from Planning Board regarding Zoning recommendation - Map 35, Parcel 27. (Unanimous)

P393-09 COUNCILLOR GAMACHE - MOVE TO receive, under suspension of the rules, Item 8-Q communication from Community Development Department regarding Zoning memorandum, Portion of Beth El Congregation. (Unanimous)

P394-09 COUNCILLOR GAMACHE - MOVE TO recess the public hearing on the Zoning Amendment - Map 35, Parcel 27 from R-1B to B-H 2 until the next regularly scheduled City Council meeting on Thursday, April 30, 2009. (Unanimous)

REPORTS OF COMMITTEE

Finance Committee **April 16, 2009**

P395-09 COUNCILLOR BETTENCOURT - Reporting for the Finance Committee - There was a Finance Committee meeting prior to the regular meeting this evening. Present at the meeting was myself as chairman; Voting members of the Committee were Councillors: Athas, Gravel, Liacos and Driscoll. Also present, and taking part in the meeting, were Councillors Gamache and Manning. We had a number of items that we discussed. The first was a CPC transfer request from the unreserved fund balance to CPC historic fund balance in the amount of \$60,000. Additionally there was a transfer from CPC unreserved fund balance to CPC affordable housing in the amount of \$100,000. And those two transfer requests were related to Item C, which was a transfer from CPC historic fund balance of \$50,000 and CPC affordable housing fund balance in the amount of \$150,000 to ultimately support a CPC request of \$200,000 to go towards Habitat for Humanity, so the three items were all related. There was some concern because the Habitat for Humanity representatives were not here at the meeting. There were some questions about additional funding, where in the process they were of getting that funding. Because right now we voted -- the Council -- to transfer \$500,000 from the Inclusionary Zoning funds to fund a portion of this. With this \$200,000 from the CPC it would be \$700,000, leaving about \$800,000 remaining. And there was some concern about moving forward on these transfers without knowing where Habitat for Humanity stands with chasing the other funds. So the matter was continued to our next meeting on a motion made by Councillor Liacos and that was unanimously approved. (Report received)

P396-09 COUNCILLOR BETTENCOURT - MOVE TO continue various transfers of Items A, B and C until the next Finance Committee meeting. (Unanimous)

P397-09 COUNCILLOR BETTENCOURT - Reporting for the Finance Committee - Another Item that was discussed was a transfer of funds from the unreserved fund balance to capital projects, a fire truck, in the amount of \$438,000. We did have present at the meeting our director of finance Patti Schaffer, also representatives from the fire department: Captain Jeff Maguire and John Keon, who is the superintendent of the motor pool for the City of Peabody. A request was made to purchase a fire apparatus in the amount of \$438,000. There was a lengthy discussion and questions raised about the status of the fire trucks and it was voted by a four-one margin to fund the request. (Report received)

P398-09 COUNCILLOR BETTENCOURT - MOVE TO receive, under suspension of the rules, late communication Item 2 from Chief Steve Pasdon, Fire Department, regarding Request for a fire pumper. (Unanimous)

P399-09 COUNCILLOR BETTENOCOURT - MOVE TO approve the following appropriation, as submitted by His Honor the Mayor, under date of March 19, 2009:

FROM:
Unreserved Fund Balance
\$438,000.00

TO:
Capital Projects - Fire Truck
\$438,000.00

(Carried 9-2; Councillors Mello and Athas opposed)

P400-09 COUNCILLOR BETTENCOURT - Reporting for the Finance Committee - There was one other item. The transfer of funds from CPC unreserved fund balance to the open space account for the purchase of a parcel on Grandview Avenue for \$79,000. We began discussing that and we ran behind because there were some other meetings. There was some additional information requested and there was a motion made to continue that discussion until the next Finance Committee meeting. (Report received)

P401-09 COUNCILLOR BETTENCOURT - MOVE TO continue the transfer of funds from CPC Unreserved Fund Balance to Open Space - Grandview Avenue - \$79,000 until the next Finance Committee Meeting. (Unanimous)

Public Services Committee **April 16, 2009**

P402-09 COUNCILLOR ATHAS - Reporting for the Public Services Committee - Earlier this evening there was a meeting of the Public Services Committee. The item on the agenda was to discuss a request by the Rent Control Board the issue of aging oil tanks in mobile home parks. Apparently these are exposed to the weather and their

request was to have the Fire Department inspect these and determine if they are safe or not. There was a discussion back and forth. (Report received)

P403-09 COUNCILLOR ATHAS - MOVE TO receive, under suspension of the rules, late communication Item 1 from John Christopher, City Solicitor, regarding Above ground oil tanks. (Unanimous)

P404-09 COUNCILLOR ATHAS - Reporting for the Public Services Committee - The City Solicitor's recommendation is that if the Fire Department were to do that, they become therefore responsible and liable for any ultimate mishap, so it was his recommendation not to. Councillor Gamache came up with some proposals that were steps in the right direction. (Report received)

P405-09 COUNCILLOR ATHAS - MOVE TO request that the residents and park managers of the mobile home parks visually inspect the oil tanks to determine if there are any possible problems. (Unanimous)

P406-09 COUNCILLOR ATHAS - MOVE TO send a communication to all vendors of fuel oil to visually inspect to see if there's possible leaks or sweating of the oil tanks and for these vendors to notify the park managers who would then pursue it further. (Unanimous)

P407-09 COUNCILLOR ATHAS -MOVE TO request that the Community Development Department forward information regarding certain block grant programs for mobile home energy programs to the Rent Control Board for dissemination possibly to the tenants and park managers. (Unanimous)

MOTIONS, ORDERS & RESOLUTIONS

P408-09 COUNCILLOR MELLO - MOVE TO request that the Building Commissioner provide the City Council with an update regarding 12 Reynolds Road. There's a business being run out of there. I know he's had a couple of attempts to try to stop the storage of commercial vehicles and those types of things. (Unanimous)

P409-09 COUNCILLOR GAMACHE (Co-motion with Councillor Bettencourt) - MOVE TO send to the Public Services Committee the issue of how we can ordinance the bike path for hours of use. (Unanimous)

P410-09 COUNCILLOR GAMACHE - MOVE TO receive, under suspension of the rules, late communication Item 3 from Councillor David Gamache regarding Proposed zoning amendment to the B-H and B-H North zone. (Unanimous)

P411-09 COUNCILLOR GAMACHE - MOVE TO receive, under suspension of the rules, late communication Item 4 from Kevin Goggin, Building Commissioner, regarding Lahey Clinic; compliance to parking restrictions. (Unanimous)

P412-09 COUNCILLOR OSBORNE - MOVE TO request that the Public Services Director submit to the Public Services Committee the requirements for contractors to dig up our roadways and what procedures Public Services uses to ensure that these roadways are returned to their proper condition. (Unanimous)

(COUNCILLOR ATHAS CONGRATULATED ALL THE PARTICIPANTS FROM THE HIGH SCHOOL WHO WERE INVOLVED IN STUDENT GOVERNMENT DAY)

P413-09 COUNCILLOR ATHAS - MOVE TO request that Chief Champagne submit to the City Council a plan for better traffic flow on Lowell Street at the high school entrance in the mornings. (Unanimous)

P414-09 COUNCILLOR ATHAS - MOVE TO request that the Public Services Department repair the hole along the street at 7 Granite Street with asphalt. (Unanimous)

P415-09 COUNCILLOR ATHAS - MOVE TO request that the Public Services Department repair the sidewalk at the Sawyer Road entrance to the Red Cross building. There are a number of elderly people living at the Crowninshield and this definitely needs a repair job quickly. (Unanimous)

P416-09 COUNCILLOR ATHAS - MOVE TO request that the Public Services Department unclog the storm drain at the corner of Sawyer Road and Lowell Street. (Unanimous)

P417-09 COUNCILLOR ATHAS - MOVE TO refer to the Legal Affairs Committee meet with the City Solicitor to discuss the most recent issue of Special Permit applications being required to come before the City Council regarding single family structures and how it relates to non-conforming uses under Section 1.5.1, paragraph 4. (Unanimous)

P418-09 COUNCILLOR ATHAS - MOVE TO receive, under suspension of the rules, Item 8-J communication from Marc Marrocco c/o Stop & Shop, 19 Howley Street, regarding Special Permit application and to set up a public hearing. (Unanimous)

P419-09 COUNCILLOR ATHAS - MOVE TO receive, under suspension of the rules, Item 8-H communication from EMCO Realty Trust, 682 Lowell Street, regarding Special Permit application; to refer to the Legal Affairs Committee; and to further request that the City Solicitor provide the City Council with a legal opinion as to whether said Special Permit application is properly before the City Council. (Carried 6-4; Councillors Gamache, Osborne, Garabedian and Liacos in opposition; Councillor Gravel voting present)

P420-09 COUNCILLOR MANNING - MOVE TO request that the School Department provide the City Council with their current student parking policy. (Unanimous)

P421-09 COUNCILLOR GARABEDIAN – WHEREAS AN EMERGENCY CONDITION EXISTS AFFECTING THE HEALTH, SAFETY AND WELFARE OF RESIDENTS OF THE CITY OF PEABODY, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEABODY TO request that the Building Commissioner and Human Services Department investigate the property at 23A Winter Street that appears to be housed by Gibely Construction to determine if the condition of the structure is safe and that there are no health hazards to abutting property owners. I have received complaints that the building is in a dilapidated state, windows are broken, there are holes in the roof, debris is falling onto neighbors properties, and there have been instances of rodents. Request that both parties report their findings to the City Council.

PREAMBLE – Carried 11-0

MOTION – Carried 11-0

P422-09 COUNCILLOR LIACOS - MOVE TO receive, under suspension of the rules, Item 8-N communication from Community Development Department regarding Zoning amendment request; reader board signs; to refer to the Planning Board for their recommendation; to place said issue in the Industrial & Community Development Committee for discussion; and to further request that the Building Commissioner send out notices to those using reader board signs that they're in violation of the original ordinance. (Unanimous)

P423-09 COUNCILLOR SINEWITZ (Matter of the Record) - First I'd like to commend Peabody police officers William Swaczyk and Mark Bettencourt for their actions last week. It was an amazing act of bravery what they did. They saved lives, prevented a real tragedy. I wish Officer William Swaczyk and all the victims a speedy recovery.

P424-09 COUNCILLOR SINEWITZ - MOVE TO request that the Public Services Department repaint the crosswalk at the Russell Street entrance to the bikeway. (Unanimous)

P425-09 COUNCILLOR SINEWITZ - MOVE TO request that the Park Department remove a tree in front of 19 Styles Drive. It's starting to tilt destroying the sidewalk. (Unanimous)

P426-09 COUNCILLOR SINEWITZ - MOVE TO request that the Public Services Department inform the City Council of who's responsible for the easement at 7 Glen Drive, and to further request that if the City is responsible for the property, that said area be cleaned. (Unanimous)

P427-09 COUNCILLOR SINEWITZ - MOVE TO request that the Peabody Municipal Light Plant check the light in front of 15 Clinton Road. The lights are flickering on and off intermittently during the night. (Unanimous)

COMMUNICATIONS FROM HIS HONOR THE MAYOR

P428-09 COUNCILLOR GAMACHE - MOVE TO receive a communication from His Honor the Mayor regarding Proclamation - Public Service Recognition Week. (Unanimous)

COMMUNICATIONS FROM CITY OFFICERS AND OTHERS

P429-09 COUNCILLOR GAMACHE - MOVE TO receive a communication from Kenneth McCue, Social Studies Department Head, regarding Student Government Day. (Unanimous)

P430-09 COUNCILLOR GAMACHE - MOVE TO receive a communication from Scott Colby, Aggregate Industries, regarding Closure committee meetings. (Unanimous)

P431-09 COUNCILLOR GAMACHE - MOVE TO receive a communication from William Power, Chairman, Community Preservation Committee, regarding Additional information; Grandview Avenue park and to refer to the Finance Committee. (Unanimous)

P432-09 COUNCILLOR GAMACHE - MOVE TO receive a communication from Philip McCarthy, 14 Maverick Court, Marblehead, regarding Request to purchase city-owned land and to refer to the Legal Affairs Committee. (Unanimous)

P433-09 COUNCILLOR GAMACHE - MOVE TO receive and approve a communication from Hospice of the North Shore regarding Banner request, subject to all papers being in order. (Unanimous)

P434-09 COUNCILLOR GAMACHE - MOVE TO receive a communication from Chief Robert Champagne, Police Department, regarding 2008 annual report and to send a communication to Chief Champagne thanking him for the report. (Unanimous)

P435-09 COUNCILLOR GAMACHE - MOVE TO receive a communication from Manuel & Amybeth Polhares, 1 Carol Ann Road regarding Special Permit application and to set up a public hearing. (Unanimous)

P436-09 COUNCILLOR GAMACHE - MOVE TO receive and approve a communication from Kevin Goggin, Building Inspector, regarding Transfer of Special Permit 4-1981 to Better Built Construction, 484 Lowell Street, subject to all papers being in order. (Unanimous)

P437-09 COUNCILLOR GAMACHE - MOVE TO receive a communication from Frank Leonard, Peabody Little League, regarding Opening Day ceremony. (Unanimous)

PRESENTATION OF PETITIONS, MEMORIALS AND REMONSTRANCES

P438-09 COUNCILLOR GAMACHE - MOVE TO receive and approve Use of Wiggin Auditorium - Ferrin Group, May 17th, subject to all papers being in order. (Unanimous)

P439-09 COUNCILLOR GAMACHE - MOVE TO receive Class 2 Motor Vehicle License (amendment) - Walnut Street Auto Sales, 55-57 Walnut Street and to set up a public hearing. (Unanimous)

P440-09 COUNCILLOR GAMACHE - MOVE TO receive and approve the following Taxi Cab Transfers, subject to all papers being in order:

Tri City Services, 55-R Walnut Street - Licenses 1, 7, 9 and 10
Community Taxi, 27R Caller Street - License 14
(Unanimous)

P441-09 COUNCILLOR GAMACHE - MOVE TO receive and approve the following Limousine License Transfers, subject to all papers being in order:

Tri City Services, 55-R Walnut Street - Licenses #160
Sir Charles Limousine, 108 Newbury Street - Licenses 161-165
(Unanimous)

P442-09 COUNCILLOR GAMACHE - MOVE TO receive and approve the following Junk Dealer Licenses (Renewals for 2009), subject to all papers being in order:

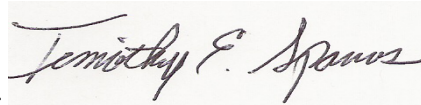
Martoni & James, Ltd., 215 Newbury Street Newbury Comics, Inc., 240 Andover Street
A-1 Restaurant Trader, LLC, 119 Foster Street Jewelers Workbench, 210 Andover Street
(Unanimous)

UNFINISHED BUSINESS FROM THE PRECEDING MATTER

P443-09 COUNCILLOR SINEWITZ - MOVE TO request that the Park Department remove a tree at 20 Lisburn Street. It's ripping up the sidewalk. (Unanimous)

MOVED: MOVE TO adjourn. Regular meeting of the Peabody City Council adjourned at 10:20 p.m.

SUBMITTED TO HIS HONOR THE MAYOR, APRIL 23, 2009
RETURNED BY HIS HONOR THE MAYOR, APRIL 23, 2009



ATTEST

(Timothy E. Spanos, City Clerk)