



## City of Peabody OFFICE OF THE CITY CLERK

◆ City Hall • 24 Lowell Street • Peabody, Massachusetts 01960 • 978-538-5900 • FAX 978-538-5985  
◆ CITY OF PEABODY WEB SITE [www.peabody-ma.gov](http://www.peabody-ma.gov)

Timothy E. Spanos  
City Clerk

Colleen Kolodziej  
Assistant City Clerk

April 23, 2014

### **AFFIDAVIT OF SPECIAL PERMIT DECISION** **TOTAL OUTDOOR CORPORATION, 1R NEWBURY STREET**

I, Timothy E. Spanos, being duly sworn in as the City Clerk of the City of Peabody, Commonwealth of Massachusetts, herein certifies that on January 9, 2014, the Peabody City Council issued its decision to deny a Special Permit identified as City Clerk #2-2014 as submitted by Total Outdoor Corp. as it applies to premises known as **1R Newbury Street, Assessors Map 88, Parcel 8C, Peabody, Massachusetts**. Said decision of the Peabody City Council was filed in the Office of the City Clerk on January 15, 2014.

An appeal was filed within the twenty days after said decision was filed in the Office of the City Clerk by Total Outdoor Corp. et al being Civil Action No. ESCV 2014-152-D in the Essex County Superior Court dated February 4, 2014 and filed with the Office of the City Clerk on February 4, 2014, to which an Agreement for Judgment to reverse the decision of the City Council was issued by the said Essex County Superior Court on March 31, 2014 and filed with the Peabody City Clerk on April 22, 2014.

**The Agreement for Judgment stipulates that Condition #1 be stricken and replaced with the following:**

***Condition #1: The billboard sign shall be restricted to a height of 75 feet.***

The parties agreed to waive all notice requirements under MRCP 77 (d).

\_\_\_\_\_  
Timothy E. Spanos, City Clerk  
City of Peabody

cc: Building Inspector  
Legal Department  
Peabody City Council  
Attorney John R. Keilty, 40 Lowell Street, Peabody, MA

**JOHN R. KEILTY, Counselor At Law**  
40 Lowell Street  
Peabody, MA 01960

Telephone (978) 531-7900  
Facsimile (978) 531-2479  
E-Mail KeiltyLaw@verizon.net

March 31, 2014

Civil Clerk's Office  
Essex Superior Court  
56 Federal Street  
Salem, MA 01970

**Re: Total Outdoor Corporation**  
**Vs: Michael V. Garabedian, et als as they are the Members of the City of**  
**Peabody City Council**  
**Essex Superior Court, C.A. No. 2014-152-D**

Dear Clerk:

Enclosed please find the Agreement for Judgment in the above-captioned matter.

Kindly docket and file the same. Thank you.

Very truly yours,

*John R. Keilty*

John R. Keilty, Esquire

JRK/emb  
Enclosure

cc: Michael Smerczynski, Esquire

COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT

ESSEX, ss.

Civil Action  
No. 2014-152-D

---

TOTAL OUTDOOR CORPORATION, Plaintiff

vs.

**AGREEMENT FOR  
JUDGMENT**

MICHAEL V. GARABEDIAN, THOMAS L.  
GOULD, DAVID C. GRAVEL, ANNE M.  
MANNING-MARTIN, THOMAS P. WALSH,  
BARRY P. OSBORNE, PETER M. MCGINN,  
JAMES MOUTSOULOS, ROBERT E. DRISCOLL,  
JOEL D. SASLAW and BARRY C. SINEWITZ,  
AS THEY ARE THE MEMBERS OF THE CITY  
OF PEABODY CITY COUNCIL, Defendants

---

Now come the parties to the above-captioned matter and they do respectfully state and agree that Judgment is entered for the Plaintiff, Total Outdoor Corporation.

The parties do hereby stipulate on a portion of this Judgment that "Condition" No. 1 of the Special Permit, being the subject of this litigation, is stricken and replaced with the following condition.

*Condition #1: The billboard sign shall be restricted to a height of 75 feet.*

The parties hereto do hereby agree to waive all notice requirements under MRCP 77(d).

Respectfully submitted,

TOTAL OUTDOOR

By its attorney,



---

John R. Kelly, Esquire

BBO #264360

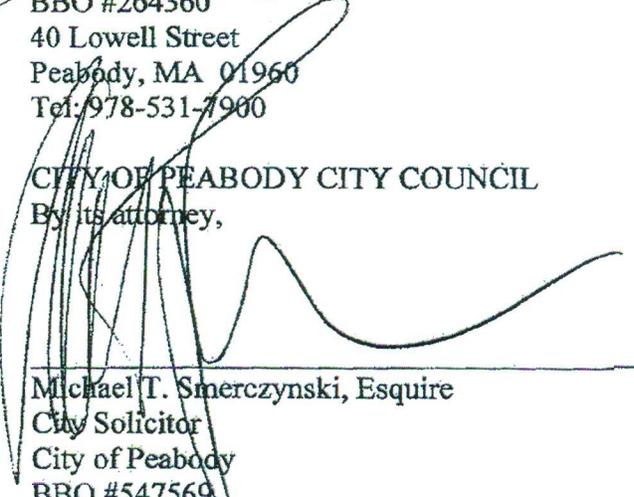
40 Lowell Street

Peabody, MA 01960

Tel: 978-531-7900

CITY OF PEABODY CITY COUNCIL

By its attorney,



---

Michael T. Smerczynski, Esquire

City Solicitor

City of Peabody

BBO #547569

34 Main Street

Peabody, MA 01960

Tel: 978-531-1710

Dated: March 31, 2014

APPEAL FILED 2/13/14  
AGREEMENT FOR JUDGMENT 3/31/14

# PEABODY CITY COUNCIL



### Ward Councillors

- Barry P. Osborne, Ward 1
- Peter M. McGinn, Ward 2
- James Moutsoulas, Ward 3
- Robert E. Driscoll, Ward 4
- Joel D. Saslaw, Ward 5
- Barry C. Sinewitz, Ward 6

### Councillors at Large

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- Thomas L. Gould
- David C. Gravel
- Anne M. Manning-Martin
- Thomas P. Walsh

### Clerk of Council

Timothy E. Spanos

### City Council Stenographer

Allyson Danforth, RPR

City Hall  
24 Lowell Street

978-538-5900  
FAX (978) 538-5985

Special Permit #2

Map 88 Lot 8C

January 15, 2014

Building Inspector  
City Hall  
Peabody, MA

Dear Sir:

At a Regular Meeting of the Peabody City Council held on Thursday evening, January 9, 2014, the following Special Permit was approved:

04-14 COUNCILLOR SASLAW - BE IT ORDERED by the City Council of the City of Peabody that the application from Total Outdoor Corp., 100 Cummings Center, Beverly, MA, for a Special Permit to construct a billboard sign on premises located at 1 Rear Newbury Street, Peabody, MA, as filed in accordance with Sections 4.1, 11.6 and 15.7 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. The height restriction of 60 feet per the Zoning Ordinance be adhered to; and
  2. The outstanding real estate taxes be paid in full within 60 days of approval of the Special Permit.
- (Carried 11-0)

**NOTICE OF DECISION:** IN ACCORDANCE WITH CHAPTER 40A, SECTION 17 OF THE MASSACHUSETTS GENERAL LAWS, AN APPEAL OF THIS DECISION MUST BE FILED WITHIN TWENTY (20) DAYS FROM THE DATE OF FILING OF SAID DECISION WITH THE APPROPRIATE COURT AND OFFICE OF THE CITY CLERK.

IF SAID SPECIAL PERMIT WAS APPROVED, YOU MUST OBTAIN A CERTIFIED COPY OF THE SPECIAL PERMIT FROM THE OFFICE OF THE CITY CLERK, AND A BUILDING PERMIT MUST BE APPLIED FOR AND ISSUED BY THE INSPECTOR OF BUILDINGS AFTER THE TWENTY DAY APPEAL PERIOD HAS EXPIRED. IF THE 20<sup>TH</sup> DAY FALLS ON A WEEKEND DAY (SATURDAY OR SUNDAY), THE NEXT BUSINESS DAY IS CONSTITUTED AS THE 20<sup>TH</sup> DAY. SAID SPECIAL PERMIT MUST BE EXERCISED WITHIN TWO YEARS FROM THE DATE OF TIME STAMP WITH THE OFFICE OF THE BUILDING INSPECTOR. IF NOT, SAID SPECIAL PERMIT SHALL EXPIRE.

CITY OF PEABODY  
2014 JAN 15 A 10:51  
CITY CLERK



# PEABODY CITY COUNCIL

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**Clerk of Council**  
Timothy E. Spanos

**City Council  
Stenographer**  
Allyson Danforth

**THERE SHALL BE NO TRANSFER OF THIS SPECIAL PERMIT UNTIL WRITTEN APPROVAL OF THE SAME IS OBTAINED FROM THE SPECIAL PERMIT GRANTING AUTHORITY, OR ITS DESIGNEE**

**A COPY OF YOUR SPECIAL PERMIT MUST BE POSTED UPON THE BUSINESS PREMISES IN A CONSPICUOUS PLACE VISIBLE TO THE PUBLIC AT ALL TIMES.**

**THE LAST DAY TO FILE AN APPEAL IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAWS, CHAPTER 40A, SECTION 17 IS FEBRUARY 4, 2014**

**IF THE SAID SPECIAL PERMIT WAS APPROVED, YOU CAN OBTAIN A BUILDING/OCCUPANCY PERMIT FROM THE BUILDING INSPECTOR ON FEBRUARY 5, 2014 IF NO APPEALS ARE FILED. IT IS REQUIRED THAT SAID PERMIT BE OBTAINED FROM THE BUILDING INSPECTOR, AND A CERTIFICATE OF BUSINESS BE OBTAINED FROM THE CITY CLERK IN ORDER TO COMPLETE THE SPECIAL PERMIT REQUIREMENTS.**

PEABODY CITY COUNCIL  
COUNCILLOR ROBERT E. DRISCOLL  
CITY COUNCIL PRESIDENT

Timothy E. Spanos  
City Clerk

cc: Planning Board, Community Development Department, Police Department,  
Human Services Department,

City Hall  
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**Map 88 Lot 8C**

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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.

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Allyson Danforth, RPR

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