

**REGULAR MEETING OF THE PEABODY CITY COUNCIL**  
**MARCH 26, 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.

P330-09 COUNCILLOR GAMACHE - MOVE TO receive and approve the minutes from the last regular meeting of March 12, 2009. (Unanimous)

(COUNCIL PRESIDENT SINEWITZ WELCOMED STUDENT GOVERNMENT DAY REPRESENTATIVES: DANIELLE AUSTIN, WARD 1 COUNCILLOR; MEGAN BRADY, WARD 2 COUNCILLOR; ELIZABETH KING, COUNCILLOR AT LARGE (BETTENCOURT); AND KRUTI KANSARA, COUNCILLOR AT LARGE (GARABEDIAN)

**HEARINGS**

A public hearing was duly held on the application from Universal Auto Center, 36-42 Foster Street, Peabody, MA. Appearing to speak on behalf of said application was Mr. Juan Martinez, 4 Prince Street, Salem, MA. No one appeared to speak in favor. No one appeared to speak in opposition.

P331-09 COUNCILLOR ATHAS - MOVE TO approve the application from Universal Auto Center, 36-42 Foster Street, Peabody, MA adding the name of Juan S. Martinez, 4 Prince Street, Salem, MA to their Class 2 Motor Vehicle License, subject to all papers being in order. (Carried 11-0)

The City Council reconvened the recessed public hearing on the Zoning Map Amendment Re-designating several parcels of land located in the Brooksby Farm area from R-1B to R-1A. Appearing to speak on behalf of said amendment was Ms. Ana Ortins, 12 Felton Street, Peabody, MA and Ms. Marylinda Antoniello, 15 Mount Pleasant Drive, Peabody, MA. John Christopher, City Solicitor, appeared to speak on behalf of the City. Mr. William Power, Chairman, appeared to speak on behalf of the Peabody Historical Society. Mr. Matthew Antoniello, 15 Mount Pleasant Drive, Peabody, MA; Mr. John Esposito, 14 Mount Pleasant Drive, Peabody, MA; Mr. Stephen Mootafian, 12 Richartson Road, Peabody, MA; Ms. Rachel Antoniello, 15 Mount Pleasant Drive, Peabody, MA; Ms. Benedetta Esposito, 14 Mount Pleasant Street, Peabody, MA; and Ms. Carmela Henry, 2 Richartson Road, Peabody, MA appeared to speak in favor. No one appeared to speak in opposition.

P332-09 COUNCILLOR DRISCOLL - MOVE TO receive, under suspension of the rules, Item 8-A communication from Planning Board regarding Zoning recommendation, Brooksby Farm area. (Unanimous)

P333-09 COUNCILLOR DRISCOLL - MOVE TO receive, under suspension of the rules, late communication Item 3 from Attorney John R. Keilty on behalf of Peabody Center Limited Partnership, 300 Andover Street regarding Objection to rezoning request, Brooksby Farm area. (Unanimous)

P334-09 COUNCILLOR DRISCOLL - BE IT ORDERED by the City Council of the City of Peabody that an Ordinance Amending the Zoning Ordinance of the City of Peabody entitled "City of Peabody, Mass. Zoning Map, 1975, as heretofore amended, and which accompanies the Zoning Ordinance of the City of Peabody adopted June 27, 1978, as amended, is hereby further amended as follows and that said ordinance be adopted as amended and read by excluding those properties identified as Assessors Map 38, Parcels 8 and 8B:

**SECTION ONE:** BE IT ORDAINED by the City Council of the City of Peabody that the Zoning Map of the City of Peabody entitled, City of Peabody Zoning Map 1975, Scale 1"=800', as amended, is hereby further amended as follows:

By redesignating the following described area from R-1B to R-1A:

Including the entire northerly side of Felton Street beginning at Map 50, Parcel 122 and running in a westerly direction to and including those parcels bounded by Assessors Map 38, Parcel 13C;

All parcels bounded on both sides of Felton Terrace, Hog Hill Road, and Richartson Road;

All parcels bounded on both sides by Mount Pleasant Drive and including Map 29, Parcel 8B and ending at Map 29, Parcels 4 and 24;

And Willowdale Avenue designating only those parcels shown on Assessors Map 38, Parcel 54 and Assessors Map 39, Parcels 23, 24 and 25.

**SECTION TWO:** All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION THREE:** This ordinance shall take effect as provided by law.  
(Carried 11-0)

A public hearing was duly held on the application from Donald E. Kelley, care of Wayside Trailers, 58 Pulaski Street, Peabody, MA. Appearing to speak on behalf of said application was Mr. Donald E. Kelley. No one appeared to speak in favor. No one appeared to speak in opposition.

P335-09 COUNCILLOR MELLO - MOVE TO approve the application from Donald E. Kelly, care of Wayside Trailers, 58 Pulaski Street, Peabody, MA for an increase of 25,000 gallons (for a total of 33,000 gallons) of diesel #2 fuel oil to allow the storage/parking of fuel vehicles on site, subject to all papers being in order. (Carried 11-0)

P336-09 COUNCILLOR GAMACHE – NOTICE OF RECONSIDERATION filed in accordance with Section 11 fo the City Council’s Rules and Regulations regarding Motion P305-09 Portuguese American War Veterans building, 103 Tremont Street. (Reconsideration carried 9-2; Councillors Mello and Sinewitz opposed)

P337-09 COUNCILLOR GRAVEL - MOVE THE question. (Carried 8-3; Councillors Gamache, Athas and Garabedian opposed)

P338-09 COUNCILLOR MELLO - BE IT ORDERED by the City Council of the City of Peabody to authorize His Honor the Mayor, Michael J. Bonfanti, to enter into a Purchase & Sales Agreement and convey to the Portuguese American War Veterans of the United States and their affiliates, Post #1 for the premises located at 103 Tremont Street, Peabody, MA for the sum of \$1.00 with the following condition:

To strike the condition enumerated in Section 8.2 (2-D) of the RFP “that the property be deeded back to the City if the property is to be sold” and insert in place thereof a condition or deed restriction that “any proceeds from the any sale of the property not be derived for the benefit of any individual club member and that said proceeds must be donated to a non-profit or veterans organization.”

AMENDMENT BY COUNCILLOR GAMACHE - MOVE TO strike the language " To strike the condition enumerated in Section 8.2 (2-D) of the RFP “that the property be deeded back to the City if the property is to be sold” and insert in place thereof a condition or deed restriction that “any proceeds from the any sale of the property not be derived for the benefit of any individual club member and that said proceeds must be donated to a non-profit or veterans organization.” The amendment authorizes the Mayor to enter into a Purchase & Sales Agreement and convey to the Portuguese American War Veterans subject to the conditions enumerated in the RFP. (Carried 11-0)

## **REPORTS OF COMMITTEE**

### **Committee of the Whole March 26, 2009**

P339-09 COUNCILLOR SINEWITZ - Reporting for the Committee of the Whole - The Committee of the Whole met earlier on two items, one was to keep the salary the same for the mayor. (Report received)

P340-09 COUNCILLOR SINEWITZ - MOVE THAT the Mayor’s salary remain the same as outlined in Section 2-13 of the City Code (\$94,933.39). (Carried 11-0)

P341-09 COUNCILLOR SINEWITZ - Reporting for the Committee of the Whole - The second motion was to keep the council salary the same. (Report received)

P342-09 COUNCILLOR SINEWITZ - MOVE THAT the Council's salary remain the same as outlined in Section 2-14 of the City Code (\$7,466.39). (Carried 11-0)

P343-09 COUNCILLOR SINEWITZ - Reporting for the Committee of the Whole - Finally the Committee met in Executive Session to discuss some pending litigation and we advised the City Solicitor to settle. (Report received)

P344-09 COUNCILLOR SINEWITZ - MOVE TO authorize the City Solicitor to the sign the settlement documents in the MTBE litigation matter with Global Companies LLC, Montello Group Corp., Global Petroleum Corp., and Gulf Oil Limited Partnership/Cumberland Farms. (Carried 11-0)

### **Legal Affairs Committee**

#### **March 26, 2009**

P345-09 COUNCILLOR MANNING - Reporting for the Legal Affairs Committee - Legal Affairs Committee met this evening. In attendance were Councillors: Mello, Osborne, Athas and Councillor Liacos, shortly thereafter the start of the meeting. And we had several items on the agenda. The first item was a Class 2 Motor Vehicle License violation by European Car Haus of 218 Andover Street. In attendance representing that business was Mr. Afuzi, the manager, and Deputy Chief Cohan was also in attendance describing the violation. They were over, by a significant number of cars, on that lot. There was a lot of discussion regarding this matter and basically Mr. Afuzi admitted that they were over, however, he repeatedly emphasized that he's aware that he's over, but the cars have not been removed from the lot. And he was expressing that, although he's over the allowed number, which was 35, he was soon coming before the council to get an amendment to that motion. So that generated a lot of healthy debate, but the ultimate motion, which passed four to zero, was a motion by Councillor Osborne. (Report received)

P346-09 COUNCILLOR MANNING - MOVE THAT a \$150 violation be imposed to European Car Haus, 218 Andover Street, as a first offense. If there are any further violations, the City Council shall hold a Show Cause Hearing and suspend or revoke said Class 2 Motor Vehicle License. Further request that the Police Department conduct periodic inspections for compliance. All additional vehicles over the 35 vehicle limit to be removed immediately. (Unanimous)

P347-09 COUNCILLOR MANNING - Reporting for the Legal Affairs Committee - The second item was brought forward by Deputy Chief Cohan regarding CORI reports on license applications. His concern was that when he receives CORI information that he feels that the Council should be privy to, in order to make an informed decision prior to approving any license application and/or renewal, that a process be in place where he can share the information. Due to CORI laws he's not able to do that as it now stands. What we decided in a motion to that affect was that we would put in a waiver portion into the license applications that would allow the Council to go into Executive Session and share information that the Deputy Chief feels that we need in advance of approving the license. Councillor Athas made the motion, which passed five to zero. (Report received)

P348-09 COUNCILLOR MANNING - MOVE TO add a CORI release form, as part of the application process on all licenses. (Unanimous)

P349-09 COUNCILLOR MANNING - Reporting for the Legal Affairs Committee - The request to purchase city-owned land by Mr. Stanley Tusinski of Lynnfield Street resulted in a motion by Councillor Osborne. (Report received)

P350-09 COUNCILLOR MANNING - MOVE TO recommend not selling three parcels of land as petitioned by Stanley Tusinski, 252 Lynnfield Street and to transfer parcels 25, 25A, 25B, and 28 on Map 99 to the Conservation Commission to be legally protected as open space. (Unanimous)

P351-09 COUNCILLOR MANNING - Reporting for the Legal Affairs Committee - A final issue that was brought up by Councillor Athas resulted in a motion, which passed five to zero. (Report received)

P352-09 COUNCILLOR MANNING - MOVE THAT the Conservation Commission memo dated September 21, 2005 be forwarded to the Conservation Commission to transfer those parcels as conservation land, excluding Map 108, Parcel 190. (Unanimous)

P353-09 COUNCILLOR MANNING - MOVE TO continue the request of Noreen Garland, 41 Beacon Boulevard requesting to purchase land shown on Assessors Map 108, Parcel 190. (Unanimous)

### **MOTIONS, ORDERS & RESOLUTIONS**

P354-09 COUNCILLOR BETTENCOURT - MOVE TO receive, under suspension of the rules, Item 7-A communication from His Honor the Mayor regarding Transfer of funds - CPC funds to open space Grandview Avenue \$79,000.00 and to refer to the Finance Committee. (Unanimous)

P355-09 COUNCILLOR BETTENCOURT - MOVE TO receive, under suspension of the rules, Item 7-B communication from His Honor the Mayor regarding Transfer of funds - Various CPC transfers and to refer to the Finance Committee. (Unanimous)

P356-09 COUNCILLOR BETTENCOURT - MOVE TO receive, under suspension of the rules, Item 7-C communication from His Honor the Mayor regarding Transfer of funds - Unreserved fund balance to capital projects - fire truck \$438,000.00 and to refer to the Finance Committee. (Unanimous)

P357-09 COUNCILLOR BETTENCOURT - MOVE TO receive, under suspension of the rules, Item 8-J communication from Patricia Davis Schaffer, Director of Finance, regarding Status of appropriations City and to refer to the Finance Committee. (Unanimous)

P358-09 COUNCILLOR BETTENCOURT - MOVE TO receive, under suspension of the rules, Item 8-K communication from Patricia Davis Schaffer, Director of Finance, regarding General fund summary and to refer to the Finance Committee. (Unanimous)

P359-09 COUNCILLOR BETTENCOURT - MOVE TO receive, under suspension of the rules, Item 8-L communication from Patricia Davis Schaffer, Director of Finance, regarding Status of appropriations schools and to refer to the Finance Committee. (Unanimous)

P360-09 COUNCILLOR BETTENCOURT - MOVE TO receive, under suspension of the rules, Item 8-G communication from Blair Haney, Community Development Department, regarding Bikeway matters. (Unanimous)

P361-09 COUNCILLOR BETTENCOURT - MOVE TO request that the Public Services Director submit an update to the City Council regarding the cleanup at Spring Pond. (Unanimous)

P362-09 COUNCILLOR DRISCOLL - MOVE TO request that the Police Department place the speed control sign on Mount Pleasant Drive. (Unanimous)

P363-09 COUNCILLOR GAMACHE - MOVE TO receive, under suspension of the rules, late communication Item 1 from Salem Country Club, 133 Forest Street, regarding Site plan/renovations to tennis facility. (Unanimous)

P364-09 COUNCILLOR GAMACHE - MOVE TO receive, under suspension of the rules, late communication Item 2 from Robert Bettencourt, 2 Lincoln Road, regarding Special Permit application (addition) and to set up a public hearing. (Carried 10-0, 1 absent – Councillor Bettencourt recused himself from said matter)

P365-09 COUNCILLOR GAMACHE - MOVE TO receive, under suspension of the rules, late communication Item 4 from JAM, LLC, c/o 55 Newbury Street, regarding Special Permit application; Restaurant use (no alcohol) in the DDD District with drive-through window and to set up a public hearing. (Unanimous)

P366-09 COUNCILLOR OSBORNE - MOVE TO receive, under suspension of the rules, Item 8-B communication from Attorney Brian Barrett, Assistant City Solicitor, regarding Ordinance revisions, placement of snow on sidewalks and to refer to the Legal Affairs Committee. (Unanimous)

P367-09 COUNCILLOR OSBORNE - MOVE TO receive, under suspension of the rules, Item 8-D communication from William Waters, Manager, PMLP, regarding Condition of pole, Laurel and Lynnfield Street and to thank Mr. Waters for his response. (Unanimous)

P368-09 COUNCILLOR SINEWITZ - MOVE TO request a letter be sent to the City Solicitor seeking a legal opinion regarding an addition at 54 Russell Street and the legality of the applicant applying to the City Council (special permit) under a non-conforming use for said addition, the original use (the garage) being allowed to be constructed by a variance. (Unanimous)

P369-09 COUNCILLOR SINEWITZ - MOVE TO request that the Public Services Department repair the sidewalk at 18 Glen Drive. (Unanimous)

P370-09 COUNCILLOR SINEWITZ - MOVE TO request that the Forestry Department remove a tree at 20 Lisburn Road. The tree is lifting the sidewalk, sprinkler lines and it's interfering with the electrical wires. (Unanimous)

P371-09 COUNCILLOR SINEWITZ - MOVE TO request that the Public Services Department fix the grass at 47 Perley Avenue. The plows did a number on the grass. (Unanimous)

P372-09 COUNCILLOR SINEWITZ - MOVE TO request that the Director of Community Development provide the City Council with an updated on the Endicott Street cleanup, and the Public Services Director provide an update on the water tower at Dearborn Road.

#### **COMMUNICATIONS FROM HIS HONOR THE MAYOR**

Previously received.

#### **COMMUNICATIONS FROM CITY OFFICERS AND OTHERS**

P373-09 COUNCILLOR GRAVEL - MOVE TO receive a communication from Deputy Chief Martin Cohan, Police Department, regarding CORI-licensing issues. (Unanimous)

P374-09 COUNCILLOR GRAVEL - MOVE TO receive a communication from Massachusetts Highway Department regarding Intersection improvements Route 1 at Jughandle. (Unanimous)

P375-09 COUNCILLOR GRAVEL - MOVE TO receive a communication from Chief Robert L. Champagne, Police Department, regarding Update regarding exclusion of trucks over 2.5 tons Paleologos Street area. (Unanimous)

P376-09 COUNCILLOR GRAVEL - MOVE TO receive a communication from Blair Haney, Community Development Department, regarding Crystal Lake update and to refer to the Ad Hoc Committee on Crystal Lake. (Unanimous)

P377-09 COUNCILLOR GRAVEL - MOVE TO receive a communication from John Christopher, City Solicitor, regarding a legal opinion, Portuguese American War Veterans Post, 103 Tremont Street. (Unanimous)

#### **PRESENTATION OF PETITIONS, MEMORIALS AND REMONSTRANCES**

P378-09 COUNCILLOR BETTENCOURT - MOVE TO receive a Junk Dealer License (New) - Gold Rush, Northshore Mall and to set up a public hearing. (Unanimous)

P379-09 COUNCILLOR BETTENCOURT - MOVE TO approve a Class 3 Motor Vehicle License (Renewal) – C & M Auto Body, Inc., 9B Caller Street, subject to all papers being in order. (Unanimous)


P380-09 COUNCILLOR BETTENCOURT - MOVE TO approve a Utility Contractor License - Rodenhiser Excavating, 70 Bartzak Drive, Holliston, MA, subject to all papers being in order. (Unanimous)

**UNFINISHED BUSINESS FROM THE PRECEDING MATTER**

None.

MOVED: MOVE TO adjourn. Regular meeting of the Peabody City Council adjourned at 9:20 p.m.

SUBMITTED TO HIS HONOR THE MAYOR, APRIL 1, 2009  
RETURNED BY HIS HONOR THE MAYOR, APRIL 1, 2009

ATTEST   
(Timothy E. Spanos, City Clerk)