

REGULAR MEETING OF THE PEABODY CITY COUNCIL
MARCH 13, 2012

PRESENT: COUNCILLORS: ATHAS, GOULD, SINEWITZ, GARABEDIAN, MANNING-MARTIN, MELLO, GRAVEL, OSBORNE, GAMACHE, DRISCOLL, AND LIACOS

ABSENT: NONE

Meeting of the Peabody City Council opened with a moment of silent prayer after being called to order by City Council President, James K. Liacos.

Salute to the American Flag.

P133-12 COUNCILLOR GAMACHE - MOVE TO receive and approve the minutes from the last regular meeting of February 28, 2012. (Unanimous)

COUNCILLOR LIACOS - OPEN MEETING LAW STATEMENT: THIS MEETING IS BEING TELEVISED LIVE ON CABLE CHANNEL 9 AND BEING TAPED BY PEABODY ACCESS TV, AND ALSO BEING RECORDED BY OUR CITY COUNCIL STENOGRAPHER.

(COUNCIL PRESIDENT LIACOS WELCOMED STUDENT GOVERNMENT DAY REPRESENTATIVES: COLIN MAHONEY, CITY CLERK (SPANOS); EVAN GILMAN, COUNCILLOR AT LARGE (GARABEDIAN); COURTNEY KLAPMAN, COUNCILLOR AT LARGE (LIACOS); CARLY ROSEN, WARD 5 COUNCILLOR (GAMACHE); TAYLOR PROVOST, COUNCILLOR AT LARGE (GOULD); AIMEE SINEWITZ, WARD 6 COUNCILLOR (SINEWITZ); ANDREW ARNOTIS, WARD 1 COUNCILLOR (OSBORNE); MARCIA GOMES, COUNCILLOR AT LARGE (MANNING-MARTIN); CARL ANNESE, WARD 4 COUNCILLOR (DRISCOLL); SARAH BRENNAN-ATHAS, WARD 2 COUNCILLOR (ATHAS); AND KIMBERLY JONES, WARD 3 COUNCILLOR (MELLO).)

HEARINGS

P134-12 COUNCILLOR OSBORNE – MOVE TO receive and approve, under suspension of the rules, late communication Item 1 from Pinto Recycling, Inc., 147 Summit Street, Building #3, regarding request to withdraw Junk Dealers License without prejudice. (Unanimous)

A public hearing was duly held on the application from Fox Run Limousine, 134 Newbury Street, Peabody, MA. Appearing to speak on behalf of the application was Mr. William Rasmussen. No one appeared to speak in favor. No one appeared to speak in opposition.

P135-12 COUNCILLOR GAMACHE – MOVE TO approve the application from Fox Run Limousine, 134 Newbury Street, Peabody, MA, for a Limousine License transfer to 484 Lowell Street, Peabody, MA, subject to all papers being in order. (Carried 11-0)

A public hearing was duly held on the application from Linear Retail Peabody #1, LLC, 5 Burlington Woods Drive, Burlington, MA. Appearing to speak on behalf of the application was Attorney John Keilty and Mr. Ron Mueller. Mr. Howard Squires, 8 Valley Circle, Peabody, MA; Mr. Mark Padulsky, 17 Donner Street, Peabody, MA; Mr. Richard Cullen, 61 Lynnfield Street, Peabody, MA; Ms. Taylor Sparkas, 74 Lynnfield Street, Peabody, MA; Ms. Susan Rambis, 18 Sarah's Way, Peabody, MA; Mr. Ken Gagnon, 8 Sander Road, Peabody, MA; and Ms. Lois Jepson, 1 Willis Road, Peabody, MA, appeared to speak in favor. Mr. Roy Hitchman, 55R Lynnfield Street, Peabody, MA; Mr. Richard Medina, 1-B Laurel Street, Peabody, MA; Mr. Russell Donovan, 12 Quail Road, Peabody, MA; and Mr. Bryan Croad, 44 County Street, Peabody, MA, appeared to speak in opposition.

P136-12 COUNCILLOR GRAVEL – MOVE TO receive, under suspension of the rules late communication Item 2 from David & Darlene Gness, 70 Lynnfield Street, regarding In support of the Special Permit for Linear Retail Peabody #1, 79 Lynnfield Street. (Unanimous)

P137-12 COUNCILLOR GRAVEL – MOVE TO receive, under suspension of the rules late communication Item 3 from Donna M. DiNapoli, 26 Glendale Avenue, regarding In support of the Special Permit for Linear Retail Peabody #1, 79 Lynnfield Street. (Unanimous)

P138-12 COUNCILLOR ATHAS – MOVE TO receive, under suspension of the rules, Item 8-D communication from Chief Robert Champagne, Police Department, regarding Updated traffic report, 79 Lynnfield Street. (Unanimous)

P139-12 COUNCILLOR ATHAS – MOVE TO receive, under suspension of the rules, Item 8-E communication from Attorney Brian Barrett, Assistant City Solicitor, regarding Legal opinion; police department report constitutes a traffic study. (Unanimous)

P140-12 COUNCILLOR ATHAS – MOVE TO receive, under suspension of the rules, Item 8-N communication from Karen Sawyer, Director, Community Development Department, regarding Special Permit memo – 79 Lynnfield Street. (Unanimous)

P141-12 COUNCILLOR ATHAS - BE IT ORDERED by the City Council of the City of Peabody that the application from Linear Retail Peabody #1, LLC, 5 Burlington Woods Drive, Burlington, MA, for a Special Permit to amend use and hours set forth in Special Permit #21 of 1998 so as to allow retail sale of bakery goods, coffee and other nonalcoholic beverages within a portion of the premises formerly occupied by video store and to amend the original opening hour of 8:00 a.m. to allow 5:00 a.m. opening and to issue Special Permit for a fast foods facility in a B-N zoning district at 79 Lynnfield Street, Peabody, MA, as filed in accordance with Section 4.2.5, 6.1 and 15.7 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.

CONDITIONS:

1. This Special Permit as issued to Linear Retail Peabody #1 LLC, 79 Lynnfield Street for the use as a Dunkin Donuts restaurant as described in the special permit application under items 6 and 12 shall terminate upon the change of use other than a fast food facility and/or coffee shop.
2. The inclusion of Attachment C, which is the area improvement plan.
3. The creation of an ADA-compliant pedestrian crosswalk using thermoplastic markings across Lynnfield Street from the corner of Land & Sea and Norfolk Avenue with bright yellow signage and arrows.
4. Establish one single travel lane with fog lines striping Lynnfield Street from Land & Sea through the driveway entrance and exit then striping the two lanes through to the traffic light at County Street and Summit Street.
5. Create a median at the Lynnfield Street driveway entrance and exit with rumble strip material known as channelizing island to clearly delineate turning movements.
6. Create a more clearly defined "Right turn only," exit from the Summit Street entrance/exit with bright yellow signage, arrows, and fog line striping.
7. Establish employee only parking spaces with appropriate signage immediately adjacent to the Summit Street entrance/exit.
8. Erect associated directional signage as needed. Install "Do not block driveway" signs at the Lynnfield Street driveway.
9. A contribution of \$2,500 towards a pedestrian signal and upgrade, for example, LED countdown lights at the Lynnfield Street/Summit Street intersection.
10. The applicant agrees that there be no more than the two presently located drive-through windows: The CVS pharmacy and the bank at said plaza and that Linear continues the right for use of said two drive through windows as specified in Special Permit transfer 31-2007 issued to Linear Retail Peabody #1, LLC
11. The applicant pledges that all deliveries will enter the store through the front door.
12. Further with regard to truck traffic and deliveries the applicant will post "No idling" signs at the rear of the property.
13. The applicant will stripe the travel lane within the plaza along the Summit Street side to keep cars going on the proper side.
14. The applicant will reduce the Summit Street interior buffer to accommodate a better turning angle for traffic entering onto Summit Street.

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

RECONSIDERATION BY COUNCILLOR GRAVEL – Immediate reconsideration hoping same shall not prevail.
(Failed 9-2; Councillors Athas and Mello in favor)

REPORTS OF COMMITTEE

LEGAL AFFAIRS COMMITTEE

MARCH 13, 2012

P142-12 COUNCILLOR MANNING-MARTIN – Reporting for the Legal Affairs Committee – The Legal Affairs Committee met this evening prior to this meeting. Voting members in attendance were Councillor Gamache, Councillor Gould, Councillor Mello, Councillor Driscoll and myself. A few motions did come out of committee. One issue that was discussed was the encroachment of land on the end of Tremont Place and the following motion was made by Councillor Gamache. (Report received).

P143-12 COUNCILLOR MANNING-MARTIN - MOVE TO send a communication to the Public Services Department requesting that Tremont Place be brought back to its original condition as shown on the map presented by the Public Services Department and to report back their findings to the Legal Affairs Committee. (Unanimous)

P144-12 COUNCILLOR MANNING-MARTIN – Reporting for the Legal Affairs Committee - Another item on the agenda was ponding in front of 23 Sheffield Drive with a motion by Councillor Gamache. (Report received)

P145-12 COUNCILLOR MANNING-MARTIN - MOVE TO send a letter to Mr. Robert Langley, Public Services Department, regarding drainage issues at 23 Sheffield Drive and to request that the Public Services Department notify Custom Paving to rectify the problem in front of Mr. Menovich's property within 14 days or direct the city to repair the problem and bill Custom Paving and to inform the City Council of their progress. A copy of this motion shall be sent to the owner of 25 Sheffield Drive. (Unanimous)

P146-12 COUNCILLOR MANNING-MARTIN (Reporting for the Legal Affairs Committee) - Another item was presented regarding fast food restaurants in the B-C zone. We received a report of progress from Ms. Karen Sawyer, director of Community Development. I want to thank her for her attendance and assistance this evening. This is a report of progress on the item regarding fast food restaurants in the B-C zone. Ms. Sawyer reported she is working on addressing the need for additional definitions for food uses as part of the technical corrections to the Zoning Ordinance. This was a report of progress. (Report received)

MOTIONS, ORDERS & RESOLUTIONS

P147-12 COUNCILLOR SINEWITZ – MOVE TO receive, under suspension of the rules, Item 8-C communication from Representative Theodore Speliotis regarding Letter of thanks, Council's support of Stephanie's Law. (Unanimous)

P148-12 COUNCILLOR SINEWITZ – MOVE TO receive, under suspension of the rules, Item 8-A communication from Aggregate Industries, 55 Russell Street, regarding 2011 annual report and to refer to the Ad Hoc Committee on Aggregate Industries. (Unanimous)

P149-12 COUNCILLOR SINEWITZ – MOVE TO receive, under suspension of the rules, late communication Item 4 from Aggregate Industries, 55 Russell Street, regarding Sound testing report and to refer to the Ad Hoc Committee on Aggregate Industries. (Unanimous)

P150-12 COUNCILLOR SINEWITZ – MOVE TO receive and approve, under suspension of the rules, Item 8-J communication from Kevin Goggin, Building Inspector, regarding Special Permit transfer 37-1992, 4 Lake Street, deleting conditions #2 and #3, subject to all papers being in order. (Carried 11-0)

P151-12 COUNCILLOR MANNING-MARTIN - MOVE TO respectfully request that His Honor the Mayor consider directing department heads that should they be unable to attend a hearing or a meeting where they have been requested to be present by the City Council that they send a representative to said hearing or meeting; and if they are unable to do that, they should contact the City Clerk and advise that they will not be attendance so that the City Council, through the City Clerk, can reschedule with neighbors or interested parties, if needed. (Unanimous)

P152-12 COUNCILLOR MELLO - MOVE THAT the City Council send a letter of recognition to the Gatorade Massachusetts Player of the Year winners Catarina Rocha (cross-country) and Hayley Dowd (soccer). (Unanimous)

P153-12 COUNCILLOR GRAVEL – MOVE TO receive, under suspension of the rules, Item 8-B communication from Karen Sawyer, Director, Community Development, regarding Zoning ordinance adopted April 28, 2011 – pending lawsuits and to refer to the Industrial & Community Development Committee. (Unanimous)

P154-12 COUNCILLOR GRAVEL – MOVE TO receive, under suspension of the rules, Item 8-M communication from Nate Jones, Community Development Department, regarding Main Street Corridor Traffic Control Agreement and to refer to the Industrial & Community Development Committee. (Unanimous)

P155-12 COUNCILLOR OSBORNE – MOVE TO receive, under suspension of the rules, Item 8-H communication from Jennifer Pitrowski, 3 First Avenue, regarding Special Permit application and to set up a public hearing. (Unanimous)

P156-12 COUNCILLOR OSBORNE – MOVE TO receive, under suspension of the rules, Item 8-I communication from Robert Langley, Public Services Director, regarding List of areas in City that do not receive sewer benefit (Farm Avenue sewer request) and to refer to the Industrial & Community Development Committee. (Unanimous)

P157-12 COUNCILLOR DRISCOLL – MOVE TO receive Item 9-B communication Entertainment License (New) – Cheesecake Factory, 210 Andover Street, and to set up a public hearing. (Unanimous)

P158-12 COUNCILLOR DRISCOLL - MOVE TO receive Item 9-C communication Junk Dealers License (New) – Van Edwards, 532 Lowell Street, and to set up a public hearing. (Unanimous)

P159-12 COUNCILLOR DRISCOLL – MOVE TO receive and approve, under suspension of the rules, Item 9-A, application for Use of the Wiggin Auditorium – Peabody Recreation Department regarding Father/Daughter Ball on Friday, June 15, 2012, subject to all papers being in order. (Unanimous)

P160-12 COUNCILLOR ATHAS - MOVE TO request that the Peabody Municipal Light Plant repair the following adjacent streetlights at the corner 90 Lynnfield Street and County Street: Poles 20 and 33-21 at 72 and 74 County Street (randomly turn on and off) and Pole NX 795 at 90 Lynnfield Street (flicker). (Unanimous)

COMMUNICATIONS FROM HIS HONOR THE MAYOR

P161-12 COUNCILLOR GAMACHE – MOVE TO receive a communication from His Honor the Mayor regarding Transfer of funds – CPA Affordable Housing RF to Housing Rehabilitation - \$250,000.00 and to refer to the Finance Committee. (Unanimous)

P162-12 COUNCILLOR GAMACHE – MOVE TO receive a communication from His Honor the Mayor regarding Transfer of funds – Operating reserve fund to Outside Services – \$17,000.00 and to refer to the Finance Committee. (Unanimous)

P163-12 COUNCILLOR GAMACHE – MOVE TO receive a communication from His Honor the Mayor regarding Purchase & Sales Agreement with MBTA, corner of Mill & Wallis Street and to refer to the Finance Committee. (Unanimous)

P164-12 COUNCILLOR GAMACHE – MOVE TO receive a communication from His Honor the Mayor regarding Reaffirmation of City bond rating by Moody's Investors Service, Inc. and to refer to the Finance Committee. (Unanimous)

COMMUNICATIONS FROM CITY OFFICERS AND OTHERS

P165-12 COUNCILLOR GAMACHE – MOVE TO receive a communication from Mass Development, Boston, MA, regarding Harvard Vanguard. (Unanimous)

P166-12 COUNCILLOR GAMACHE – MOVE TO receive a communication from Altair De Oliveira, 9 Caller Street, regarding Special Permit application and to set up a public hearing. (Unanimous)

P167-12 COUNCILLOR GAMACHE – MOVE TO receive and approve a communication from Hospice of North Shore, 75 Sylvan Street, Danvers, regarding Banner request, subject to all papers being in order. (Unanimous)

P168-12 COUNCILLOR GAMACHE – MOVE TO receive and approve a communication from Northeast ARC, 64 Holten Street, Danvers, regarding Banner request, subject to all papers being in order. (Unanimous)

PRESENTATION OF PETITIONS, MEMORIALS AND REMONSTRANCES

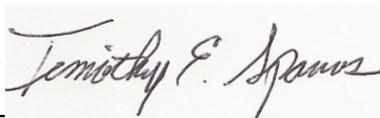
Previously received.

UNFINISHED BUSINESS FROM THE PRECEDING MATTER

None.

MOVED: MOVE TO adjourn. Regular meeting of the Peabody City Council adjourned at 9:45 p.m.

SUBMITTED TO HIS HONOR THE MAYOR, MARCH 20, 2012
RETURNED BY HIS HONOR THE MAYOR, MARCH 20, 2012



ATTEST

(Timothy E. Spanos, City Clerk)

COMMUNICATIONS:

His Honor the Mayor re: Transfer of funds – CPA Affordable Housing RF to Housing Rehabilitation - \$250,000.00

His Honor the Mayor re: Transfer of funds – Operating reserve fund to Outside Services - \$17,000.00

His Honor the Mayor re: Purchase & Sales Agreement with MBTA, corner of Mill & Wallis Street

His Honor the Mayor re: Reaffirmation of City bond rating by Moody's Investors Service, Inc.

Aggregate Industries, 55 Russell Street re: 2011 annual report

Karen Sawyer, Director, Community Development re: Zoning ordinance adopted April 28, 2011 pending law suits

Representative Theodore Speliotis re: Letter of thanks, Council's support of Stephanie's Law

Chief Robert Champagne, Police Department re: Updated traffic report, 79 Lynnfield Street

Attorney Brian Barrett, Assistant City Solicitor re: Legal opinion; police department report constitutes a traffic study

Mass Development, Boston, MA re: Harvard Vanguard

Altair De Oliveira, 9 Caller Street re: Special permit application

Jennifer Pitrowski, 3 First Avenue re: Special permit application

Robert Langley, Public Services Director re: List of areas in City that do not receive sewer benefit (Farm Avenue sewer request)

Kevin Goggin, Building Inspector re: Special permit transfer 37-1992, 4 Lake Street

Hospice of North Shore, 75 Sylvan Street, Danvers re: Banner request

Northeast ARC, 64 Holten Street, Danvers re: Banner request

Nate Jones, Community Development Department re: Main Street Corridor Traffic Control Agreement

Karen Sawyer, Director, Community Development Department re: Special permit memo – 79 Lynnfield Street

USE OF THE WIGGIN AUDITORIUM

Peabody Recreation Department re: Father/daughter Ball on Friday, June 15, 2012

ENTERTAINMENT LICENSE (New)

Cheesecake Factory, 210 Andover Street

JUNK DEALERS LICENSE (New)

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Van Edwards, 532 Lowell Street

LATE COMMUNICATIONS

Pinto Recycling, Inc., 147 Summit Street, Building #3 re: Request to withdraw without prejudice

David & Darlene Gness, 70 Lynnfield Street, re: In support of the Special Permit for Linear Retail Peabody #1, 79 Lynnfield Street

Donna MN. DiNapoli, 26 Glendale Avenue, re: In support of the Special Permit for Linear Retail Peabody #1, 79 Lynnfield Street

Aggregate Industries, 55 Russell Street, re: Sound testing report