

REGULAR MEETING OF THE PEABODY CITY COUNCIL
MAY 8, 2008

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

ABSENT: COUNCILLOR DRISCOLL

Meeting of the Peabody City Council opened with a moment of silent prayer after being called to order by City Council President, Arthur W. Athas.

Salute to the American Flag.

P370-08 COUNCILLOR GAMACHE – MOVE TO receive and approve the minutes from the last regular meeting of April 29, 2008. (Unanimous)

P371-08 COUNCILLOR OSBORNE - MOVE, under suspension of the rules, to send a communication to Councillor Driscoll congratulating him on being inducted into the High School Coaches Hall of Fame. (Unanimous)

HEARINGS

The City Council reconvened the recessed public hearing on the Special Permit application from James & Lauri Rawls, 376 Hale Street, Beverly, MA. Appearing to speak on behalf of said application was James & Lauri Rawls. Kevin Goggin, Building Commissioner, appeared to speak on behalf of the City. Mr. Patrick O'Shea, 21 Swampscott Avenue, Peabody, MA appeared to speak in favor. Mr. Fred Howcroft, 24 Swampscott Avenue, Peabody, MA appeared to speak in opposition.

P372-08 COUNCILLOR OSBORNE - MOVE TO receive, under suspension of the rules, late communication Item 1 from Kevin Goggin, Building Commissioner, regarding Special Permit, 23 Swampscott Avenue. (Unanimous)

P373-08 COUNCILLOR ATHAS - BE IT ORDERED by the City Council of the City of Peabody that the application from James & Lauri Rawls, 376 Hale Street, Beverly, MA for a Special Permit for a family accessory living area at 23 Swampscott Avenue, Peabody, MA, as filed in accordance with Section 4.7 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) That the driveway to the left of the dwelling be removed.
- 2) That the exterior bulkhead enclosure be reduced to be in conformance with the minimum dimensional requirements.
- 3) Subject to final inspection by the Building Inspector regarding compliance to all city and State codes.
(Carried 9-0; Councillor Driscoll absent; Councillor Mello was absent for the previous hearing)

REPORTS OF COMMITTEE

Ad Hoc Committee on Aggregate Industries
April 29, 2008

P374-08 COUNCILLOR SINEWITZ - Reporting for the Ad Hoc Committee on Aggregate Industries - The closure committee met on April 29. Present at the meeting was myself; Councillors: Bettencourt, Garabedian, Manning and Gamache. We had asked Aggregate at a previous meeting to give us an organizational chart, which they did not provide at the meeting. We asked them to give us a list of all the permits, which they did not provide at the meeting, although yesterday I did receive it. (Report received)

P375-08 COUNCILLOR SINEWITZ - MOVE TO receive, under suspension of the rules, communication 8-A from Attorney Jerry Effren, 23 West Union Street, Ashland regarding Closure committee matters and to refer to the Committee of the Whole. (Unanimous)

P376-08 COUNCILLOR SINEWITZ - Reporting for the Ad Hoc Committee on Aggregate Industries - The meeting was very contentious and the neighbors are feeling a lot of frustration. Everything basically we talked about was stonewalled. So what we did was we decided to delay the next meeting till July 10 and hopefully we'll have some better things to report then. (Report received)

Legal Affairs Committee
May 8, 2008

P377-08 COUNCILLOR LIACOS - Reporting for the Legal Affairs Committee - Prior to the regular meeting at 6:30 in the Frank L. Wiggins Auditorium the Legal Affairs Committee met. Myself; Councillor Gamache; Councillor Bettencourt, substituting for Councillor Driscoll; Councillor Manning and Councillor Osborne were present. We had several items this evening. The first of which involved an acceptance of MGL Chapter 39, Section 23D, which is known as the Mullen Rule. We had some discussion on that and we also had a request from the zoning board to also be included in this as well, but it was felt by the committee that the zoning board's request had yet to come before the full council. So it was deemed that when it does, in a written form, it will then be referred to the Legal Affairs for action. So the item we took up was a request really that came from the Planning Board and the Planning Board had requested that they be allowed to use the Mullen Rule. And we had a motion by Councillor Gamache and the motion was to adopt Massachusetts General Law Chapter 39, Section 23D known as the Mullen Law or rule only for the Planning Board and for it to last one year and it would sunset in one year from today. That doesn't mean that they can't redo it, it just means that it comes back to the council for a review. And there was some thinking there that we want to make sure that it works, that there aren't any flaws in it and we don't end up running planning boards and zoning boards with no members showing up at all. So the recommendation from the subcommittee in Legal Affairs is to adopt the Mullen Rule to be in effect for one year and that the Planning Board notify the City Council of when the Mullen Rule has been used and how being used. (Report received)

P378-08 COUNCILLOR LIACOS - MOVE TO adopt the provisions of Massachusetts General Laws Chapter 39, Section 23D entitled "**Adjudicatory hearings; attendance by municipal board, committee and commission members; voting disqualification**" for a period of one year for the Planning Board only, with the condition that they notify the City Council when the rule is being used (date and subject) and the reasons for said use. (Carried 10-0; Councillor Driscoll absent)

P379-08 COUNCILLOR LIACOS - Reporting for the Legal Affairs Committee - The next item that we had was a request by attorney Keilty representing Franklin Pierce, LLC, regarding a parcel of land known as Parcel 1, Lowell Street, Peabody Massachusetts and the number of those properties are 501, 503 and 505. Just to familiarize you with that, those are those new houses up by the high school. And I believe what occurred was, in order for them to build these properties with Conservation Commission permission, they had to agree to donate a piece of this property because of, I believe, a vernal pool as attorney Keilty explained to us. So this has already been, as I understand it, accepted by the Conservation Commission and it needs formal approval here this evening by the City Council and I will make that motion now. (Report received)

P380-08 COUNCILLOR LIACOS –BE IT ORDERED by the City Council of the City of Peabody in accordance and in compliance with the requirements of a certain order of conditions issued by the Peabody Conservation Commission recorded at the Essex South Registry of Deeds in Plan Book 402, Plan 32 and TO accept, for nominal consideration, the conveyance of a certain parcel of land to the Peabody Conservation Commission as shown as Parcel 1 containing 21,554± square feet on a plan of land entitled, "Subdivision Plan of Land in Peabody, Mass." Dated April 26, 2002, Prepared for Cyrus Construction" recorded with the Essex South Registry of Deeds in Plan Book 402, Plan 32. (Carried 10-0; Councillor Driscoll absent)

P381-08 COUNCILLOR LIACOS - Reporting for the Legal Affairs Committee - One last matter was before the Legal Affairs Committee this evening and that was the one regarding proposed fee increases from the sealer of weights and measures. It had been sometime since I believe 1984 and something done in 2003 regarding increases in weights and measuring devices and a request came by way of His Honor the Mayor. And there is a schedule before the council this evening and the following motion was made in subcommittee. (Report received)

P382-08 COUNCILLOR LIACOS - MOVE TO approve the fee increases for the Sealer of Weights and Measures, as submitted by His Honor the Mayor under date of March 18, 2008. (Unanimous)

P383-08 COUNCILLOR LIACOS – MOVE THAT the proper ordinance be drafted regarding the Sealer of Weights & Measure Fees and the ordinance on the same be advertise as read. (Unanimous)

(COUNCILLOR LIACOS INFORMED THE CITY COUNCIL OF A LEGAL AFFAIRS COMMITTEE MEETING SCHEDULED FOR JUNE 3, 2008 REGARDING THE BOULDERWOOD DEVELOPMENT)

MOTIONS, ORDERS & RESOLUTIONS

P384-08 COUNCILLOR SINEWITZ - MOVE TO request that the Public Services Department repair the sidewalk at 18 Glen Drive. A resident called me and the sidewalks were marked last fall and they are still not fixed and she's asking when those will be fixed. (Unanimous)

P385-08 COUNCILLOR SINEWITZ - MOVE TO request that the Public Services Department clean up the end of Antrim Road behind the West School. A resident has reported there's trash being dumped there. (Unanimous)

P386-08 COUNCILLOR SINEWITZ - MOVE TO request that the City Clerk supply to the City Council the attendance records of the Planning Board for the past year in relation to the Mullen Rule. (Unanimous)

(COUNCILLOR SINEWITZ NOTIFIED THE CITY COUNCIL OF A COMMITTEE OF THE WHOLE MEETING SCHEDULED FOR MAY 22, 2008 REGARDING THE 2008 ANNUAL REPORT SUBMITTED BY AGGREGATE INDUSTRIES)

P387-08 COUNCILLOR SINEWITZ – MOVE TO request that the Legal Department, Fire Chief, Conservation Commission and Human Services Director attend the meeting of the Committee of the Whole on May 22nd who will be discussing the 2008 Aggregate Industries annual report. (Unanimous)

P388-08 COUNCILLOR MELLO - MOVE TO respectfully request that the Public Services Department provide information regarding the brown water at North Central Street. The neighbors have been having some difficulty for two to three months now. The water's coming out brown and there's been no resolution really on what's going on over there; further request that a communication be sent to Public Services Department and the Water Department thanking them for being responsive to the neighbors around their concerns in that issue. (Unanimous)

P389-08 COUNCILLOR MELLO - MOVE TO respectfully request that the Public Services Department erect an "Entering Peabody," sign on Sylvan Street at the boundary between Peabody and Danvers. I have been getting some call from businesses on Sylvan Street because customers are having problems realizing they are driving from Peabody into Danvers. (Unanimous)

P390-08 COUNCILLOR MELLO - MOVE TO respectfully request that representatives from the Peabody Police Department and the Peabody Fire Department meet before the next City Council meeting for an informal meeting to discuss the emergency access needs for the proposed gate at the end of North Central Street. (Unanimous)

P391-08 COUNCILLOR MELLO - MOVE TO respectfully request that the Public Services Department add Wiseman Drive to the list of streets that need paving. (Unanimous)

P392-08 COUNCILLOR MELLO - MOVE TO receive, under suspension of the rules, Item 7-A communication from His Honor the Mayor regarding Self Help Grant application regarding Acquisition of 45 Walnut Street for park land and to refer to the Industrial & Community Development Committee. (Unanimous)

P393-08 COUNCILLOR MELLO - MOVE TO receive, under suspension of the rules, Item 8-C communication from Community Development Department regarding Detailed plan for pilot project for the use of IZ buyout funds and to refer to the Industrial & Community Development Committee. (Unanimous)

P394-08 COUNCILLOR OSBORNE - MOVE THAT the Public Services Department remove the bags of trash behind the concession stand at MacArthur Park and further request that a letter be sent to the Peabody Little League requesting that they please take better care of the trash at MacArthur Park. (Unanimous)

P395-08 COUNCILLOR OSBORNE - MOVE TO send a communication to the Police Department and the Fire Department notifying those departments that there is a 47 Bay State Road and a 47A Bay State Road and to request that there are precautions in place in case of an emergency situation that requires emergency response. (Unanimous)

P396-08 COUNCILLOR GARABEDIAN - MOVE TO request that the Peabody Electric Light Plant investigate a telephone pole on 11 Northend Street. People are asking it to be moved. (Unanimous)

P397-08 COUNCILLOR ATHAS - MOVE TO request that the Public Services Department inspect and repair a street depression at the Little Depot Diner on Railroad Avenue by the front entrance. (Unanimous)

P398-08 COUNCILLOR ATHAS - MOVE TO request that the subject of eliminating the IZ buyout option, the cash contribution paragraph in our ordinance Section 411.7, paragraph 2, which allows builders to pay a cash contribution in lieu of providing affordable housing units, be referred to the Industrial & Community Development Committee. (Unanimous)

COMMUNICATIONS FROM HIS HONOR THE MAYOR

Previously received.

COMMUNICATIONS FROM CITY OFFICERS AND OTHERS

P399-08 COUNCILLOR GRAVEL - MOVE TO receive a communication from MassDevelopment, 160 Federal Street, Boston regarding Greater Lynn YMCA, 259 Lynnfield Street. (Unanimous)

PRESENTATION OF PETITIONS, MEMORIALS AND REMONSTRANCES

P400-08 COUNCILLOR GAMACHE - MOVE TO receive and approve the following Junk Dealer Licenses (Renewal for 2008), subject to all papers being in order:

- A-1 Restaurant Trader, 119 Foster Street
 - Long's Jewelers, 35 Cross Street
 - GameStop, Inc., 300 Andover Street
- (Unanimous)

P401-08 COUNCILLOR GAMACHE - MOVE TO receive Class 3 Motor Vehicle License (Transfer) C & M Autobody, 9-B Rear Caller Street and to set up a public hearing. (Unanimous)

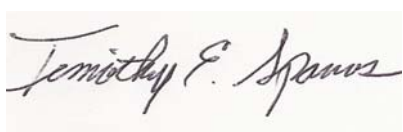
P402-08 COUNCILLOR GAMACHE - MOVE TO receive Class 2 Motor Vehicle License (Transfer) Justinjanice, LLC from 243-245 Newbury Street to 3 Bourbon Street and to set up a public hearing. (Unanimous)

UNFINISHED BUSINESS FROM THE PRECEDING MATTER

None.

(MOVED: MOVE TO adjourn. Regular meeting of the Peabody City Council adjourned at 8:50 p.m.)

SUBMITTED TO HIS HONOR THE MAYOR, MAY 14, 2008
RETURNED BY HIS HONOR THE MAYOR, MAY 14, 2008

ATTEST 
 (Timothy E. Spanos, City Clerk)