

**REGULAR MEETING OF THE PEABODY CITY COUNCIL**  
**OCTOBER 2, 2014**

PRESENT: COUNCILLORS: MCGINN, MANNING-MARTIN, GOULD, WALSH, OSBORNE, SINEWITZ, SASLAW, GARABEDIAN, MOUTSOULAS, AND DRISCOLL

ABSENT: COUNCILLORS: GRAVEL

Meeting of the Peabody City Council opened with a moment of silent prayer after being called to order by City Council President, Robert E. Driscoll.

Salute to the American Flag.

P676-14 COUNCILLOR GOULD - MOVE TO receive and approve the minutes from the last regular meeting of September 11, 2014. (Unanimous)

COUNCILLOR DRISCOLL - 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.

**HEARINGS**

P677-14 COUNCILLOR MOUTSOULAS – MOVE TO receive and approve, under suspension of the rules, Item 8-B communication from Attorney Joseph C. Correnti on behalf of Pediatric Associates of Greater Salem, regarding Withdraw Special Permit application without prejudice; 151-155 Andover Street. (Unanimous)

A public hearing was duly held on the application from Redemption Antiques, LLC, 58 Pulaski Street, Peabody, MA. Appearing to speak on behalf of the application was Mr. John Belanger. No one appeared to speak in favor. No one appeared to speak in opposition.

P678-14 COUNCILLOR MOUTSOULAS - MOVE TO approve the application from Redemption Antiques, LLC, 58 Pulaski Street, Peabody, MA, for a Junk Dealers License at said 58 Pulaski Street, Peabody, MA, subject to all papers being in order. (Carried 10-0; Councillor Gravel absent)

A public hearing was duly held on the application from Ralph & Lisa Visconti c/o Studio 227 and Spa, Inc., 4 Antonio Drive, Peabody, MA. Appearing to speak on behalf of the application was Ms. Lisa Visconti. No one appeared to speak in favor. No one appeared to speak in opposition.

P679-14 COUNCILLOR OSBORNE – BE IT ORDERED by the City Council of the City of Peabody that the application from Ralph & Lisa Visconti c/o Studio 227 and Spa, Inc., 4 Antonio Drive, Peabody, MA, for a Special Permit to allow for a hair salon on premises locate at 4 First Avenue, Peabody, MA, as filed in accordance with Sections 4.2.5, 6.1, and 15.7 of the Peabody Zoning Ordinance be approved based on the following reasons:

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. (Carried 10-0; Councillor Gravel absent)

A public hearing was duly held on the application from Gary Sadler, 250 E. Main Street, Norton, MA, on behalf of Wendy's Old Fashioned Hamburgers of NY. Appearing to speak on behalf of the application was Mr. Gary Sadler. No one appeared to speak in favor. No one appeared to speak in opposition.

P680-14 COUNCILLOR SASLAW – BE IT ORDERED by the City Council of the City of Peabody that the application from Gary Sadler, 250 E. Main Street, Norton, MA, on behalf of Wendy's Old Fashioned Hamburgers of NY, for a Special Permit to allow for an outdoor dining area on premises located at 69 Newbury Street, Peabody, MA, as filed in accordance with Sections 4.2.5, 5.4.6, 11.6, 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) The outdoor patio hours shall be 7:00 a.m. to 9:00 p.m. seven days a week.
- 2) Wendy's Old Fashioned Hamburgers, Inc. shall pay the 1<sup>st</sup> quarter FY 2015 real estate tax bill.
- 3) The plan of record shall be a site detail plan dated May 1, 2014 entitled CG3480 T3 Remodel.  
(Carried 10-0; Councillor Gravel absent)

P681-14 COUNCILLOR OSBORNE - MOVE TO continue the public hearing on the application from Mark F. & Vanessa Cone, 2 Mount Pleasant Drive, Peabody, MA, until the regular meeting on Thursday, October 9, 2014. (Unanimous)

P682-14 COUNCILLOR MANNING-MARTIN – MOVE TO receive, under suspension of the rules, late communication Item 1 from Attorney John Keilty regarding Special Permit application of Laurie A. Nadeau, 8 Sutton Street, regarding Withdraw Special permit application without prejudice. (Unanimous)

P683-14 COUNCILLOR MCGINN – MOVE THAT the Special Permit application of Laurie A. Nadeau, 8 Sutton Street, be withdrawn without prejudice. (Carried 10-0; Councillor Gravel absent)

A public hearing was duly held in accordance with a remand motion from the Superior Court of Essex County to the Peabody City Council as it pertains to Civil Action 2013-02088A; 47 Newbury Street Realty Trust, 47 Newbury Street, Peabody, MA, with instructions to draft a new Special Permit decision including sufficient findings to enable the court to conduct a meaningful judicial review, or to rehear the petition as new. Appearing to speak on behalf of the petitioner was Attorney John Keilty, Mr. Kerry Kearney and Mr. Peter Alfe. No one appeared to speak in favor. Attorney Mahmood Firouzbakht on behalf of Mr. Greg Monasteiro and Mr. Greg Monasteiro appeared to speak in opposition.

P684-14 COUNCILLOR SASLAW – MOVE TO receive, under suspension of the rules, late communication Item 2 from Attorney John Keilty; communication from Daktronics, Inc. regarding lighting information for proposed 14 x 48 digital billboard. (Unanimous)

P685-14 COUNCILLOR SASLAW – BE IT ORDERED by the City Council of the City of Peabody in accordance with a remand motion from the Superior Court of Essex County to the Peabody City Council as it pertains to Civil Action 2013-02088A; 47 Newbury Street Realty Trust, 47 Newbury Street, Peabody, MA with instructions to draft a new special permit decision including sufficient findings to enable the Court to conduct a meaningful judicial review, or to rehear the petition as new; the Peabody City Council, acting as the Special Permit Granting Authority, based on the record and proceedings of this remand hearing which has taken into account testimony presented at this public hearing moves **NOT TO APPROVE** the application from 47 Newbury World Realty Trust, 47 Newbury Street, Peabody, MA, for a Special Permit to construct a digital billboard sign on premises at said 47 Newbury Street, Peabody, MA, and that the following findings have been established as a basis for denial:

Based on the noncompliance of the following sections of the Peabody Zoning Ordinance:

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|-------------|--|
| 11.6.4 (1); | The applicant has not demonstrated compliance with the Outdoor Advertising Board Regulations (Commonwealth of Massachusetts).      |
| 11.6.4 (2); | The applicant has not demonstrated that the proposed location does not adversely interfere with the uses of adjacent properties;   |
| 11.6.4 (3); | The applicant has not demonstrated that the proposed Billboard does not cause an adverse shadow or flicker on adjacent properties; |

- 11.6.4 (5); The applicant has not demonstrated that the Billboard is in harmony with or suitable for the surrounding area and would not do significant damage to the visual environment. Specifically the proposed billboard is not suitable for the general welfare of the public; in that it is not a desirable local need. As a representative of the ward, I can clearly state from the feedback that I have received there is no desirable local need from residents that I have spoken to.  
(Carried 10-0; Councillor Gravel absent)

P686-14 COUNCILLOR SASLAW – MOVE TO receive, under suspension of the rules, late communication Item 3 from Attorney John Keilty, regarding request to continue Special Permit hearing on the application from Outdoor Ad Concepts, LLC, 41 Newbury Street, until the regular meeting of October 23, 2014. (Unanimous)

P687-14 COUNCILLOR SASLAW – MOVE TO receive, under suspension of the rules, late communication Item 4 from Attorney Athan Vontzalides, regarding request to continue Special Permit hearing on the application from Michael Weiss, 0 Forest Street, until the regular meeting of November 20, 2014. (Unanimous)

A public hearing was duly held on the application from Total Outdoor Corp., 100 Cummings Center, Beverly, MA. Appearing to speak on behalf of the application was Attorney John Keilty. No one appeared to speak in favor. No one appeared to speak in opposition.

P688-14 COUNCILLOR SASLAW – BE IT ORDERED by the City Council of the City of Peabody, acting as the Special Permit Granting Authority; based on the record and proceedings of this public hearing moves **NOT TO APPROVE** the application from Total Outdoor Corp., 100 Cummings Center, Beverly, MA, for a Special Permit to construct a static billboard sign located in a DDD zoning district visible from Route I-95 on premises located at 252 Forest Street, Peabody, MA, and that the following findings have been established as a basis for denial:

Based on the noncompliance of the following sections of the Peabody Zoning Ordinance:

- 11.6.4 (1); The applicant has not demonstrated compliance with the Outdoor Advertising Board Regulations (Commonwealth of Massachusetts).
- 11.6.4 (2); The applicant has not demonstrated that the proposed location does not adversely interfere with the uses of adjacent properties.
- 11.6.4 (5) The application has not demonstrated that the Billboard is in harmony with or suitable for the surrounding area and would not do significant damage to the visual environment and general welfare of the public. In making this determination, the Special Permit Granting Authority finds the following:
- (i) Request for Determination of Applicability may be required from the Conservation Commission in that the City's GIS shows an intermittent stream or a drainage ditch approximately 130 feet from the proposed billboard. Under the City's local Wetland Ordinance, Chapter 32, land within 200 feet of "any river, stream, creek, brook, whether intermittent or continuous, natural or man-made" are protected.
  - (ii) the proposed billboard would have an adverse effect on residential housing values that are in close proximity to the proposed billboard.

(Carried 10-0; Councillor Gravel absent)

#### **REPORTS OF COMMITTEE**

None.

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

P689-14 COUNCILLOR MCGINN – MOVE TO receive, under suspension of the rules, Item 7-A communication from His Honor the Mayor regarding Appointments under date of September 23, 2014. (Unanimous)

P690-14 COUNCILLOR MCGINN – MOVE TO approve the appointment of John Olimpio, 7 Lone Pine Lane, Peabody, MA, to the Board of Appeals (Regular Position) for a two-year term to expire 12/31/2014 (Unexpired Term of Jason Panos). (Carried 10-0; Councillor Gravel absent)

P691-14 COUNCILLOR MCGINN – MOVE TO approve the appointment of Kevin McHugh, 4102 Woodbridge Road, Peabody, MA, to the Board of Appeals (Alternate Member) for a two-year term to expire 12/31/2014 (Unexpired Term of John Olimpio). (Carried 10-0; Councillor Gravel absent)

P692-14 COUNCILLOR MCGINN – MOVE TO approve the appointment of Jason A. Panos, 30 Reed Road, Peabody, MA, to the Rent Control Board (Alternate Member) for a one-year term to expire 12/31/2015. (Carried 10-0; Councillor Gravel absent)

P693-14 COUNCILLOR MCGINN – MOVE TO receive, under suspension of the rules, Item 9-A Junk Dealers License – The Vault Lifestyle Boutique, Consignment and Restoration, 88 Main Street, and set up a public hearing. (Unanimous)

P694-14 COUNCILLOR GOULD (Co-motion with Councillor Moutsoulas) - MOVE TO request that the Public Services Department look at the water shutoff at 38 Evans Road that has risen above the sidewalk. It's a safety hazard. (Unanimous)

P695-14 COUNCILLOR WALSH - MOVE TO request that the Finance Director provide an update to the City Council relative to the FY15 first quarter receipts and expenditures. (Unanimous)

P696-14 COUNCILLOR WALSH (Co-motion with Councillor Moutsoulas) - MOVE TO refer to the Municipal Safety Committee the issue of the intersection of Central Street and the entrance and exit to the Torigian Community Life Center and to further request that the Police Department attend said meeting. (Unanimous)

P697-14 COUNCILLOR OSBORNE (Co-motion with Councillor Moutsoulas) – MOVE TO request that the City Collector inform the City Council of all action taken to collect the unpaid taxes at 58 Pulaski Street, whether they have come to an agreement, or if they are on a payment plan. (Unanimous)

P698-14 COUNCILLOR SINEWITZ – MOVE TO receive, under suspension of the rules, Item 8-B communication from Attorney Michael T. Smerczynski, City Solicitor, regarding Legal opinion; 2 Mount Pleasant Drive. (Unanimous)

P699-14 COUNCILLOR SINEWITZ - MOVE TO refer to the Legal Affairs Committee the issue of why permits and licenses cannot be held back until landlords have paid all of their outstanding tax bills and to further request that the City Solicitor provide a legal opinion to the Committee. (Unanimous)

P700-14 COUNCILLOR SINEWITZ - MOVE TO request that the City Solicitor inform the City Council why there is residential housing in the flower shop building across the street from 2 Mount Pleasant Street, which is also in the BR zone. (Unanimous)

P701-14 COUNCILLOR MOUTSOULAS – MOVE TO receive and approve, under suspension of the rules, the following Item 8-D regarding Banner, subject to all papers being in order:

St. Vasilios Church, 5-7 Paleologos Street  
West Memorial School 15 Bow Street  
(Unanimous)

P702-14 COUNCILLOR MOUTSOULAS – MOVE TO request that the Public Services Department install a handicapped parking sign at 20 Fulton Street, which has been previously approved. (Unanimous)

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

Previously received.

**COMMUNICATIONS FROM CITY OFFICERS AND OTHERS**

P703-14 COUNCILLOR WALSH – MOVE TO receive a communication from Superintendent Joseph Mastrocola, School Department, regarding Ad Hoc City Council/School Committee joint board. (Unanimous)

(COUNCIL PRESIDENT DRISCOLL APPOINTED COUNCILLOR OBSORNE AND COUNCILLOR WALSH TO SERVE AS MEMBERS OF THE AD HOC CITY COUNCIL/SCHOOL COMMITTEE JOINT BOARD.)

P704-14 COUNCILLOR SASLAW – MOVE TO receive a communication from Chief Thomas Griffin, Police Department, regarding Letters of thanks. (Unanimous)

P705-14 COUNCILLOR WALSH – MOVE TO receive a communication from Conservation Commission regarding Agenda for October 8, 2014. (Unanimous)

P706-14 COUNCILLOR SINEWITZ – MOVE TO receive a communication from Perfect Hit Vapors, 649 Lowell Street, regarding Special Permit application and set up a public hearing. (Unanimous)

P707-14 COUNCILLOR SASLAW – MOVE TO receive a communication from Attorney Mahmood Firouzbakht, Nixon Peabody, on behalf of JAM Enterprises, LLC, 55 Newbury Street, regarding Remand hearing on 47 Newbury World Realty Trust and hearing on 41 Newbury Street. (Unanimous)

P708-14 COUNCILLOR WALSH – MOVE TO receive a communication from Brendan Callahan, Senior Planner, regarding Draft recreation and open space plan. (Unanimous)

**PRESENTATION OF PETITIONS, MEMORIALS AND REMONSTRANCES**

**UNFINISHED BUSINESS FROM THE PRECEDING MATTER**

MOVED: MOVE TO adjourn. Regular meeting of the Peabody City Council adjourned at 9:40 p.m.

SUBMITTED TO HIS HONOR THE MAYOR, OCTOBER 8, 2014  
RETURNED BY HIS HONOR THE MAYOR, OCTOBER 8, 2014



ATTEST

(Timothy E. Spanos, City Clerk)

His Honor the Mayor, Appointments under date of September 23, 2014  
John Olimpio, 7 Long Pine Lane; Board of Appeals  
Kevin McHugh, 4102 Woodbridge Road; Board of Appeals Alt. Member  
Jason A. Panos, 30 Reed Road; Rent Control Board Alt. Member  
Attorney Joseph C. Correnti on behalf of Pediatric Associates of Greater Salem re: Withdraw special permit application without prejudice; 151-155 Andover Street  
Attorney Michael T. Smerczynski, City Solicitor, re: Legal opinion; 2 Mount Pleasant Drive  
Superintendent Joseph Mastrocola, School Department, re: Ad Hoc City Council/School Committee joint board  
St. Vasilios Church, 5-7 Paleologos Street, re: Banner  
West Memorial School, 15 Bow Street, re: Banner  
Chief Thomas Griffin, Police Department, re: Letters of thanks  
Conservation Commission re: Agenda for October 8, 2014  
Perfect Hit Vapors, 649 Lowell Street, re: Special Permit application  
Attorney Mahmood Firouzbakht, Nixon Peabody on behalf of 47 Newbury World Realty Trust and hearing on 41 Newbury Street  
Brendan Callahan, Senior Planner, re: Draft recreation and open space plan  
The Vault Lifestyle Boutique, Consignment and Restoration, 88 Main Street