

VILLAGE OF POWELL COUNCIL

MARCH 20, 2001

A regular meeting of the Village of Powell Council was held on March 20, 2001, and called to order at 7:30 p.m. by Mayor Mark Klein. Other Council members present were Dave Chambers, Bill Nolan, Richard Cline, George Kaitsa, and Peggy Guzzo. Art Schultz was absent. Also present were Stephen Lutz, Village Manager, Nan Metz, Finance Director, David Betz, Director of Development, and Dawn Nauman, Clerk of Council.

EXECUTIVE SESSION: FOR PERSONNEL MATTERS UNDER ORC SECTION 121.22 (G) (2): BOARD AND COMMISSION APPOINTMENTS.

MOTION: Mr. Cline moved to adjourn to Executive Session at 7:30 p.m. in accordance with ORC Section 121.22 (G) (1) to discuss personnel matters: Board and Commission Interviews. Mr. Nolan seconded the motion.

VOTE: Y 6 N 0

MOTION: Mr. Cline moved to adjourn from Executive Session at 8:30 p.m. Mr. Nolan seconded the motion.

VOTE: Y 6 N 0

MOTION: Mr. Cline moved to reconvene in regular open session at 8:30 p.m. Mr. Nolan seconded the motion.

VOTE: Y 6 N 0

APPROVAL OF MINUTES

The minutes of February 20, 2001 were amended and approved.

CITIZEN PARTICIPATION

There was no citizen participation on non-agenda items.

FIRST READING: ORDINANCE 2001-17: AN ORDINANCE DESIGNATING A FOUR WAY STOP AT THE INTERSECTION OF RETREAT LANE AND PARTRIDGE BEND AND REQUIRING THE VILLAGE ENGINEER TO PLACE TRAFFIC CONTROL DEVICES AT THE INTERSECTION.

Stephen A. Lutz, Village Manager, said that last fall, residents of the Retreat requested the temporary installation of a four way stop sign at this location. Rob Rice, Village Engineer, reviewed a memorandum outlining the study of this intersection (Exhibit). He said neither the pre-installation or post-installation study meet the multi-way stop sign warrants in the Uniform Traffic Manual.

Mayor Klein opened the hearing to public comment. Hearing none, he closed the public comment session.

Ms. Guzzo asked if the majority of the residents of the Retreat want stop signs for safety reasons.

Sandra O'Rourke, 780 Retreat Lane, said that Retreat homeowners do want the stop sign.

Ms. Guzzo noted that such stop sign requests are usually reviewed by the Development Committee and then go before Council. She said that Council has approved many stop signs that don't meet the warrants because it is a safety issue for residents. She asked Mr. Rice if this is the first study he has completed. Mr. Rice said it is, and that this study was completed at Council's request.

Mr. Kaitsa asked if it is the general consensus of households most immediately affected by this intersection that the stop sign should remain. Mrs. O'Rourke said there was a survey of residents, and that was the consensus. Mr. Kaitsa said he would be happy to support the sign.

Mayor Klein asked that residents in the area be properly notified of this issue. He said that when this came before Council previously, there were issues of cut-through traffic and safety, and he is curious to know the results of the study regarding those issues. A resident from Raccoon Run identified the need for additional signage in the Retreat. Mayor Klein suggested he contact Staff regarding his concerns about other intersections.

Gary Wilcox, Traffic Engineering Services, said that it is important to know how speed is profiled in such a study. He said that speed at this intersection is identified on a bell curve, with 15% on either side of the average over or under the speed limit. He said that the 85th percentile shown on this study as people obeying speed limits is a fairly regular occurrence in studies of other areas. He said that people become concerned about the 15-20% of

motorists that are going faster than the speed limit, and he admitted that some are "way over." He said in his experience, those 15-20% always exist, even with speed control. In the Retreat, the traffic counts before and after the installation of the stop sign show similar speeds. He said this is very common, and sometimes, stop signs even increase speed. Mr. Wilcox said that the installation of a multi-way stop is not effective on speed, and that he has never read a study where speed decreased as a result of such a device. He said there is sometimes an increase in the violation rate of people not stopping. He said that studies on the safety of intersections with such signage are inconclusive, partly because there aren't many accidents in residential areas. On an arterial street, there may be 60-100 accidents annually, while in a residential area, 1-2 accidents is significant.

Mr. Wilcox said that unfortunately, the after study was done during bad weather and was a little inconclusive. He said his opinion is that this stop sign had little impact on through-traffic, which he estimated as 25% of the total cars. He said he doesn't think one stop sign reduces through-traffic because it only reduces one's time by about 15 seconds. He said the Uniform Traffic Manual provides consistency, and that when devices are installed that don't make sense, people do not pay attention to them. He said data supports that unwarranted stop signs are frequently ignored by about 30% of people who come into contact with them. Mr. Wilcox said he knows that a lot of cities use stop signs for speed control, and there is some movement to reexamine this.

Mayor Klein asked how many cars travel this street daily. Mr. Rice said the before study indicated just under 1,000, and the after study around 800, but much of that is due to bad weather and problems with the data. Mr. Wilcox noted that the after study was completed between October 10 and December 9. Mayor Klein asked if that is after S.R. 270 reopened. Mr. Wilcox noted that weekend traffic was essentially unchanged.

Mr. Cline asked if Mr. Wilcox is comfortable that the data collected in December is a fair and accurate representation of the impact of the traffic control device. Mr. Wilcox said he is not comfortable with the traffic counts because of problems with weather, and he would like to recount. He said he is comfortable with the speeds identified in the study. Mr. Cline asked from what distance from the intersection speed is measured. Mr. Wilcox said they were about 500 feet on either side of the intersection. Mr. Cline asked if the data indicates a change in speed of 8/10ths of a mile was the greatest change. Mr. Wilcox said that is correct.

Mr. Nolan suggested that notices be sent to all residents of the Retreat for the next meeting, and he said he would like to see a copy of the survey done by the residents of the Retreat. He said that he has a hard time accepting that little can be done to solve the speed problem on the high ends of the bell curve. If a better job could be done eliminating speeding, Council would spend less time putting in unwarranted stop signs. He said that in Mt. Air, he slows to 40 mph, and he has a hard time believing that the high end of the bell curve exists similarly there. Mr. Wilcox spoke about a study completed in a neighborhood after the installation of speed humps. He said there was only a 5-mph decrease in speed. He said that speed humps are effective if properly done. He said because there are only 1,000 cars/day through this intersection, those speeding are much more noticeable.

Mayor Klein suggested that this Ordinance be taken to a second reading. Mr. Lutz said that next Tuesday, the Development Committee will continue their discussion and review of a Village-wide traffic calming policy for the Village. This study will be considered at that time.

Mr. Kaitsa asked how the regulations for warrants apply to residential streets. Mr. Wilcox said that streets with higher speed limits have lower thresholds for warranting signals. He said that the warrants are based on volume, and the residential streets don't have the volume.

Mr. Lutz said that it is anticipated that there may not be a quorum for the April 3 Council meeting.

OLENTANGY STREET COMPREHENSIVE STUDY

Todd Stanhope, Traffic Engineering Services, thoroughly reviewed the Olentangy Street Traffic Study (Exhibit).

Mayor Klein opened this item to public comment.

Ann Wiseman, Chambers Glen, said that the crosswalk at Thornbury Lane can take up to 20 minutes to flash for crossing. She said she is interested in how many cars travel from Bennett Parkway across Olentangy Street to Cressingham Lane, and how many attempt left turns. She said she has waited 7 minutes trying to cross Powell Road. She said it is also difficult to get out of the Chase or to exit Bennett Parkway east on Powell Road to turn left into the Chase. She said exiting is difficult from both the Chase and Chambers Glen.

Mr. Stanhope said at the peak period, there were 5 cars exiting Bennett Parkway to Powell Road, two went straight across to Cressingham, and three turned left. Ms. Wiseman said she is concerned that there are only 15 out of 35 homes in Chambers Glen completely built, and the traffic will increase from Bennett to Cressingham. Mr. Stanhope noted that the construction traffic will decrease, but he agreed this is an issue to watch. He said that many subdivisions have residential streets feeding into one collector that draw enough people to warrant a signal. That is not the case here. He said his counts show these intersections are inconvenient but they don't take an enormously long time, and there aren't 2- 3 vehicles waiting. Ms. Wiseman said it is difficult to turn left onto Powell Road from the Chase during rush hour. She asked how the Murphy property traffic study has been completed when it hasn't yet been developed. Mr. Stanhope said that the developer submitted a traffic impact study. Ms. Wiseman said that with the better weather last weekend, more people were out walking. She said that this could become a tragedy, and that it "only takes one child to get killed." She asked for safe crossing.

Jessica Koegel 135 Cressingham Lane, said she walks a lot, and she also experiences problems with the crossing at Thornbury Lane. She said it makes sense to move the crosswalk to a bigger intersection, such as Bennett Parkway and Olentangy Street, and to add full signalization. She said that southwest of the Bennett Parkway intersection, a park is proposed, and a crossing would make sense in that area. In addition, the speed limit is 35 mph in that location rather than 45 mph. Mr. Stanhope said he can't make recommendations against the Ohio Revised Code in a report. He said he thinks the safest crossing of Olentangy Street is an underpass.

There being no further public comment, the public comment session was closed.

Mr. Nolan asked about Mr. Stanhope's statement that a service level "D" is acceptable in urban areas. He asked if the level of desired service could be a policy decision for the community. Mr. Stanhope said the level of service indicates the general expectations for delay. He said that if a service level of "C" is desired, the problem is that it is difficult to achieve with unsignalized intersections. He said the intersections in the study don't meet the volume warrants.

Mr. Nolan said that Mr. Stanhope identified driver compliance and driver anticipation as necessary for uniformity (Exhibit - 5). He said that people may ignore stop signs, but not stop lights. Mr. Stanhope said that light volume often creates disregard to the signal. People may not feel like they are posing a hazard by pushing a red light, and many times accidents occur at the change interval. Mr. Nolan said he would like to see a journal article supporting Mr. Stanhope's point that an unwarranted signal is undesirable because it will create driver compliance issues. He asked how many accidents are required for a signal to be warranted. Mr. Stanhope said he believes it is 5 accidents in a 12-month period that are correctable by installation of a signal. Mr. Nolan said that at some intersections, there are left turn lanes on Powell Road. He asked if they complicate matters for cross traffic. Mr. Stanhope said those lanes keep traffic from backing up behind drivers trying to turn, and they are a benefit. Mr. Nolan asked if they factor into the report. Mr. Stanhope said they may factor into the capacity analysis.

Mr. Nolan asked if, depending on how an engineer decides to exercise his discretion in counting the right turn movements, it would not be incorrect to say that the Bennett Parkway intersection meets the warrants. Mr. Stanhope said it is very close, and their feeling is if one is trying to correct another problem, then that is the place. He said all the right turns would be needed. Mr. Nolan asked, in the unsignalized traffic capacity, whether the level of service and delays was analyzed in a way that doesn't really reflect the difficulty of a left turn onto Olentangy Street. Mr. Stanhope said on that approach, most of the turns are to the right. The technical appendix contains specific level of service data, and he can provide that. Mr. Nolan expressed a desire to see the difference between a right and left turn.

Mr. Nolan asked, if Council made a policy decision that a pedestrian underpass is too expensive but they want to solve the pedestrian crossing problem, what would be Mr. Stanhope's second choice. Mr. Stanhope said he thinks that is up to Council, and he cannot recommend an unwarranted signal. He said he would like to say that a signal at Bennett Parkway would be the next choice based on what they know, but he will not make that recommendation because it is unwarranted. Mr. Kaitsa asked if there is a "professional code of ethics" for engineers that keep them from going against the Uniform Traffic Manual. Mr. Stanhope said that there is. Mr. Nolan asked what is the second best recommendation, with any disclaimer Mr. Stanhope chooses. Mr. Stanhope said if Council wants to install a signal at one location to "solve another problem," the intersection of Bennett Parkway closest meets the signal warrants. He said Council has the discretion to address that problem. He said that is not a recommendation. He said he thinks an underpass is the safest crossing, and the existing crossing is not.

Mr. Cline said he always understood the level of service A – F to relate to what people will tolerate in terms of delay. Mr. Stanhope said that is correct. Mr. Cline said that no matter how Powell defines itself as a premier community, there is, engineering-wise, only a certain level of service that an unsignalized intersection can achieve. Mr. Stanhope said that is correct. Mr. Cline said Powell can be the best city in the world and know they will never get better than a B rating on some intersections. Mr. Stanhope said that is correct. Mr. Cline said this is driven solely by the number of cars and the engineering of the roadway, so unless the Village is willing to throw lots of money into upgrading Olentangy Street, the service level will not improve on unsignalized intersections.

Mr. Cline asked if it is true that Powell Road/Sawmill Road is the only intersection that met the warrant. Mr. Stanhope said that is correct. Mr. Cline asked about the development of the Murphy property. Mr. Lutz said that light is warranted, and the developer will install it. Mr. Cline asked if the intersection of Bennett Parkway is third in line for meeting the warrant after the Murphy Property signal and the Powell Road and Sawmill Road signal. Mr. Stanhope said it is, by far, but if one removes right turns, it is not. Mr. Cline asked if it is really a question of discretion as to which intersection falls within this hierarchy. Mr. Stanhope said that Cressingham (across the street) has impacted the traffic on Bennett Parkway. Mr. Cline asked if the study will be complete once Sawmill Parkway connects to Seldom Seen. Mr. Rice said he is unsure when those will open as they are up to the County and Township, but it is anticipated it will occur this spring.

Mayor Klein said that left turn lanes are recommended at Sycamore and Valley Run, but Thornbury Lane has higher traffic counts, and he wonders why they aren't warranted there. Mr. Stanhope said the criteria changes quite a bit because of the lower speed limit at Thornbury. They aren't recommending turn lanes because the volume is light. Mayor Klein said the study also indicated that 45-mph speed is a factor for eastbound traffic approaching Bennett Parkway. Mr. Stanhope said the speed study took place on Olentangy Street east of Olentangy Ridge, where the 85th percentile speeds were 43 mph in one direction and 45 mph in the other, which is not out of the norm. Mayor Klein noted the speed limit is 35 mph in that area.

Mayor Klein said that Council supported a bond levy to fund Grace Drive with the intention to remove turning movements at the four corners, and he asked if that will create a stacking problem on eastbound Olentangy Street. Mr. Stanhope said that turn lane was shortened. Mr. Rice said the taper area was shortened due to lack of right of way, and the stacking lane is slightly shorter. However, the Sawmill Parkway to Seldom Seen connection will also take some of the northbound turning movement from the four corners. Mayor Klein asked if a signal at Grace Drive will eliminate the stacking. Mr. Stanhope said the signal is not yet warranted, and once the project is complete, they can make a determination on the stacking issue with further study.

Mr. Kaitsa said he understands that it is not a lack of traffic on Olentangy Street that doesn't meet the warrant but rather insufficient traffic on side streets. He asked if traffic on side streets was counted during peak hours, because he sees a critical problem in the morning and evenings. Mr. Stanhope said that to meet the volume warrants there must be eight hours of the necessary volume. This intersection doesn't even meet the peak-hour warrants. Mr. Kaitsa said that safety should be considered, and the number of accidents. He said that he feels coming out of Grace Drive onto Olentangy Street, and turning east, there is a problem with the line of vision. Mr. Stanhope said that the signal at the four corners should make gaps to make it a little easier to get out.

Mr. Kaitsa said he understands a light at Bennett Parkway is not justified, but, if there were a traffic light, would it make it difficult to exit Olentangy Ridge eastbound onto Powell Road. Mr. Stanhope said that such a signal wouldn't impact side streets much, and it wouldn't stack too far because the volumes are low. Mr. Kaitsa asked if the four corners meets warrants. Mr. Stanhope said it did two years ago, and he would assume it does today.

Mr. Chambers asked about the D service level. Mr. Rice said the criteria is a 25-35 second delay at an unsignalized intersection. At a signalized intersection, it is a 35-55- second delay.

Mr. Chambers asked if the future park at Bennett Parkway and Powell Road was considered during the study of Bennett Parkway and Olentangy Street. Mr. Stanhope said it has been discussed, but that parks don't typically generate a lot of vehicular traffic, and the warrants probably wouldn't be met with adding the estimation. Mr. Chambers asked if the Village has controlling jurisdiction of the Bennett/Olentangy intersection even though Powell Road is a state route. Mr. Rice said that once Powell is a city, ODOT approval wouldn't necessarily be required. However, as a city, Powell would have to meet the Ohio Revised Code standards (OMUTCD).

Mr. Chambers said that since State Route 270 has opened, there is a lot less queuing at Powell Road and S.R. 315. He said traffic has improved. Mr. Stanhope said he believes most of his counts were taken prior to reopening.

Ms. Guzzo said that she sees the Uniform Traffic Manual as a minimum standard, and that if signals are warranted, they must be installed. She said she doesn't see anything in the Ohio Revised Code that prohibits installation of unwarranted signalization to meet the demands for service of the residents. She said that Council's goal is to improve bikepaths and pedestrian access to enhance the quality of life in the Village. She said she is in favor of a tunnel, but that funding is an issue. If one can't be installed, there needs to be a way to cross Olentangy Street. She said she sees the intersections of Olentangy Street and Bartholomew Run, Beech Ridge Drive, and Bennett Parkway as appropriate places for a crossing. She said she would like the option of installing full signalization to provide pedestrian access. She said unless she is told that it can't be done, she would like it as an option.

Ms. Guzzo asked if a light at Grace Drive will impact the four corners. Mr. Stanhope said he thinks there is enough room that queuing will not be a problem, but that study of the intersection is needed. Ms. Guzzo said she hopes the Grace Drive signal isn't warranted, but she is concerned there isn't enough room between that intersection and the four corners if it is put in place. Mr. Rice said that would depend on the volumes at the intersection. Mr. Stanhope said that can be addressed better once Grace Drive is completed and studied. He said that turn lanes at the four corners would help tremendously.

Mr. Lutz suggested that Staff propose a recommendation based on this evening's discussion, and that it include projects that can be completed now as well as those that can wait until the study is completed.

THIRD READING: ORDINANCE 2001-04: AN ORDINANCE AMENDING SECTION 1143.25 OF THE PLANNING AND ZONING CODE OF THE VILLAGE OF POWELL REGARDING APPEALS OF THE HISTORIC DISTRICT COMMISSION.

Stephen A. Lutz, Village Manager, said that the Historic District Commission (HDC) has reviewed this ordinance, and members are present to discuss this issue.

Mayor Klein opened the hearing to public comment.

Jerry Keyser, Chairman, HDC, said that the HDC is unanimously in favor of this change. He said the HDC processes are established by the Zoning Code, and appeals of that Code go to the BZA, so this would be more consistent. In addition, the BZA is quasi-judicial and the Planning and Zoning Commission more administrative. He said that the Planning and Zoning Commission has made decisions that the HDC felt were not based on the HDC guidelines. He said he feels appeals will get a "fair shake" at BZA, where there is a more objective consideration of guidelines.

Larry Coolidge, HDC, said that he was at the Planning and Zoning meeting where an appellant complained about the type of door the HDC requested. Mr. Coolidge said he felt the HDC did not get proper consideration because it was at the end of a very long meeting where there was a lot of heated debate. He said that if the BZA reviewed these appeals, it would not be at the end of a lengthy agenda. He said this is important, as the HDC guidelines are the "deed restrictions" for the whole Village.

John Wright, 127 N. Liberty Street, said that the decisions made by volunteers on various Boards and Committees should be followed. He said that many places around town aren't abiding by the restrictions.

There being no further comment, the public comment session was closed.

Mr. Nolan asked if this isn't really just an issue of personalities on particular boards. He asked if this issue could be solved perhaps by requiring appeals as the first thing on the Planning and Zoning Commission agenda. He said that this is an issue of the fundamental structure of government, and the complaints he is hearing do not apply to that. Mr. Coolidge said that people before the HDC and on appeal before the Planning and Zoning Commission always want compromise, but the question is about pride in the community. People claim they have a hardship just because they don't want to meet the HDC regulations. Mr. Nolan asked if changing the appeals system will really change that problem. Mr. Coolidge said at the end of a heated meeting, the Planning and Zoning Commission may not see the appropriateness of a door as a very important issue. The BZA will have a fresh take on the issue.

Mr. Cline said he supports this because the BZA is accustomed to making decisions based on hardships. He said there currently is a structure that does not work, and this could fix it. He said that HDC's decision is a policy-level decision on par with the Planning and Zoning Commission, and the existing circumstance shifts that decision-making process laterally rather than to a more structured and quasi-judicial decision-making body. Mayor Klein agreed. He said that the BZA is the right place for these types of reviews, which should be more judicial in nature.

Mr. Kaitsa asked if this ordinance was precipitated by the Planning and Zoning Commission. David Betz, Director of Development, said the HDC proposed it, and the Planning and Zoning Commission agreed with their recommendation. Mr. Kaitsa agreed this is a more consistent procedure.

Mr. Chambers agreed with Mr. Coolidge and Mr. Keyser and added that if appeals of the Planning and Zoning Commission go to the BZA, so should those of the HDC.

Ms. Guzzo said she is opposed to this change because it could prohibit an applicant from going before the Planning and Zoning Commission to change Zoning policy. She asked if this would change everything from "the type of doors", or also "situations where something is in the historic district and they have to give their recommendations of not only the architectural review board but they may make a comment as to this building's too large, or too awkward, or whatever, even though that isn't necessarily their jurisdiction." She asked if architectural issues will go to BZA and size will still go to Planning and Zoning Commission. Mr. Betz said that the HDC makes recommendations to the Planning and Zoning Commission on land use matters, site plans, etc. This Ordinance would change the HDC appeal process regarding architectural guidelines by having those appeals go before the BZA. A lengthy discussion ensued. Ms. Guzzo said that the HDC is a branch of the Planning and Zoning Commission, and they should work very closely. She said she doesn't understand why there would be a need to have issues of appeal not go to the Planning and Zoning Commission.

MOTION: Mr. Cline moved to adopt Ordinance 2001-04. Mr. Kaitsa seconded the motion.

VOTE: Y 5 N 1 (Guzzo)

THIRD READING: ORDINANCE 2001-10: AN ORDINANCE AUTHORIZING THE VILLAGE MANAGER TO ENTER A CONTRACT FOR UNION OF THE CITY HEALTH DISTRICT WITH THE GENERAL HEALTH DISTRICT.

Stephen A. Lutz, Village Manager, said at the last meeting, there was discussion regarding the 8-month period needed to begin this contract. That time period is included because of the funding situation that would occur if the Village or Health department terminated this agreement. There would be time needed for both bodies to determine how to provide their own health services. Mr. Lutz recommended that this ordinance be tabled until city status is achieved.

MOTION: Mr. Cline moved to table Ordinance 2001-10 until the first meeting in May or until the Village becomes a city, whichever occurs sooner. Mr. Cline seconded the motion.

VOTE: Y 6 N 0

MOTION: Mr. Cline moved to amend the agenda to next address the Barton Appeal. Mayor Klein seconded the motion. The motion was unanimously approved.

BARTON APPEAL

Stephen A. Lutz, Village Manager, said that last July, Council heard an appeal by John Barton, 119 N. Liberty Street, regarding the grading of his property and an addition. He said that Council gave Mr. Barton a 90-day permit to finish his work, but 45 days into that permit, the Village issued a stop work order because the addition didn't follow the approved plans.

David Betz, Director of Development, reviewed photographs of Mr. Barton's property and noted how what has been constructed differs from that originally approved. He said that Mr. Barton's proposed changes were reviewed by the Historic District Commission (HDC), where they were denied and appealed to the Planning and Zoning Commission. He said the HDC ruling was upheld by the Planning and Zoning Commission with the exception of a basement door which was allowed due to the "extreme structural changes" the HDC recommendation would require. He noted the proposed language to amend the earlier ruling by Council on this issue (Exhibit).

Mayor Klein opened the hearing to public comment.

Jerry Keyser, HDC, said that Mr. Barton is a lawbreaker, and appeasing him has not worked in the past. He said Mr. Barton has no intention of doing what he is told to do. He urged Council to uphold their oath and pursue legal enforcement of the lawful proceedings of the HDC. He said if they do not, it could set a precedent and render zoning laws unenforceable. It could also make a mockery of the HDC and Planning and Zoning Commission's decisions and deliberations on this issue.

Bill Nolan left at 10:50 p.m.

John Wright, 137 N. Liberty Street, said that he has lived directly north of Mr. Barton ever since he has lived there, and his property has never been presentable. He said that Mr. Barton's property is infested with groundhogs. He said that the law should be followed so the HDC is not wasting their time. He said a point needs to be made here, and it needs to stick. He said that he would be happy to see Mr. Barton finish any project. He said Mr. Barton has more junk and plastic up against the north side of his home, and it is a continual eyesore. He said he thinks Mr. Barton needs to go to jail for 2-3 days.

Larry Coolidge, HDC, said that the HDC tried to work with Mr. Barton. He said this addition was supposed to be a screened porch. He said the HDC reviewed and approved plans for the number and spacing of windows on this addition, and it was not built accordingly. He said that the change the HDC is requesting regarding his windows would cost Mr. Barton \$20 bucks and an afternoon of work. He said this house will not be finished in 45 days, months, or years. It will never be completed. He said that Mr. Barton has had three attorneys who have all quit. He said that Mr. Barton doesn't hold a job, and has plenty of time to work to complete his projects. He said that the tax dollars and time spent by Village Staff on Mr. Barton is substantial. He asked that the HDC be supported in this issue.

Ms. Guzzo said that Council is trying to solve a disagreement with Mr. Barton. They were in a legal battle with Mr. Barton, and they came to an agreement to try to accomplish something that is in the best interest of the community. She asked if Mr. Barton was granted the opportunity to finish the project if Mr. Wright would be satisfied. She asked if he just wants the project done. Mr. Wright said that he would like to see anything completed. Ms. Guzzo asked if the HDC's concern about the windows on this addition is that they weren't matched to the north. Mr. Coolidge said the problem is that he asked for a porch and he's building a room. Ms. Guzzo asked if it is really important to the HDC whether he uses the room in spring and summer or all year round. Mr. Coolidge said he doesn't care how he uses the room. Ms. Guzzo questioned the HDC's ruling on Mr. Barton's windows. Discussion ensued. Ms. Guzzo said ethically, she doesn't see "that big of a difference" between the HDC's ruling and what Mr. Barton is building.

Mr. Chambers asked if it is correct that the HDC is asking Mr. Barton to remove the two center windows on the south side of the building. Mr. Betz said it is, and that they originally asked that he install a different type of basement door on the west elevation. Mr. Chambers asked what is improper about the door. Mr. Coolidge said that there is a section in the architectural guidelines regarding appropriate doors, and he reminded Council that Mr. Barton is one of the authors of those guidelines. He said that the HDC asked that he replace double doors with a single door. He expressed frustration that Mr. Barton continually does what he wants to do, and then appeals decisions against him. Mr. Betz noted that the Planning and Zoning Commission allowed him to keep the outside staircase. Mr. Chambers asked if it is correct that the stop work order will not be lifted until the HDC's requirements have been met. Mr. Betz said that is what Council is deciding tonight. Mr. Chambers said he agrees with the draft that was presented this evening, but he feels Mr. Barton should meet the HDC and Planning and Zoning Commission requirements. He said he is familiar with construction, and he feels what the HDC is requesting "is nothing," particularly because this is not even close to Mr. Barton's original proposal.

Mr. Kaitsa said he shares Mr. Chambers' observations. He said he has a problem rewarding Mr. Barton's conduct by approving something not approved by the HDC. He said it is his understanding that this addition was never approved. Mr. Coolidge said that he asked for a screened-in porch, and he built an addition and changed the doors and windows. He said the HDC tried to work with him, and Mr. Barton spent a great deal of time with the HDC architectural advisor. After that, he still came back with something different than they discussed. Discussion ensued. Mr. Kaitsa said he would only support this decision if the HDC requirements are met.

Mayor Klein said he is not in support of amending this appeal. He said he built a deck at home and he had to meet the guidelines. He said that Mr. Barton came in the last time with an attorney that promised this would be a

solution to this problem, and Council gave him 90 days stating it was the last time he would be granted this type of extension. He said that Council is now reviewing this again because he is using completely different construction than that which was approved. He said there are many other issues associated with this property such as trash, grading, outbuildings, etc., and he believes that passing this amended decision would delay the inevitable. He said he feels Powell should pursue Mr. Barton with the full force of the law.

Mr. Cline asked, if Council chooses to reject the appeal and enforce the existing zoning laws, what are the options. Mr. Molnar said that the Village has the option to enact fines through the municipal court for the period of 45 days since the original appeal date. He said there is also a deposit that Mr. Barton had placed that could be kept. He said that he would like to work with Mr. Wright on this issue, because he also has a court order regarding Mr. Barton's property and an unfinished project.

Mr. Cline asked, since Mr. Barton was given approval for a porch and built an addition, whether the Village can require that the porch be removed. Mr. Molnar said the Village may have the authority to require Mr. Barton to remove the non-conforming structure and construct one that is conforming. Mr. Cline asked, what if Mr. Barton refuses. Mr. Molnar said the Village can ask a common pleas judge to issue an affirmative injunction. Mr. Cline said while his original intention was to vote on the amended decision as written, now that he has listened to Mr. Keyser, Wright, Coolidge, and Chambers, he feels the issues of the HDC should be addressed in this compromise. He said he also agrees with Mayor Klein that it may be difficult to "appease a Hitler." He suggested that the decision be amended so that the stop work order is removed and Mr. Barton is required to comply with the original construction plans within 45 days. If Mr. Barton does not, he would like to move forward with injunctive relief, and if necessary obtain court authority to remove or condemn the non-conforming structure.

Mr. Kaitsa said last July, he felt the Council and Mr. Barton had received a "full and final compromise." He agreed with Mr. Cline. Mayor Klein asked, if the stop work order is removed, is that the same as allowing Mr. Barton to proceed without complying with the law. Mr. Molnar said it is not. Mayor Klein said he supports Mr. Cline's suggestion.

Ms. Guzzo asked how strong is the Village's case on the issue that the building permit was issued for a year-round building that was not approved by the HDC. Mr. Molnar said he feels that is the least of the Village's problems, and the real question is that there were time frames determined in July that Mr. Barton didn't comply with. He could argue that he was stopped 45-days into it. He said the proposal here is to lift that stop so he can finish as he was supposed to in 45 days. Mr. Cline said he understands that the building permit was issued for a screened-in porch. Mr. Betz said that is correct. Mr. Cline said there were any plans ever approved by the Village for a year-round structure, or that remotely resemble what he has actually constructed. Rather, the drawing plans that Mr. Betz has identified this evening are those which were approved. Mr. Betz said that is correct.

Mr. Chambers asked if there are minor modifications approved by the HDC and Planning and Zoning Commission. Mr. Betz said none of these changes were approved. Mr. Cline said that is important, because if the HDC had said they would approve something different based on certain requirements, he would feel Council should uphold that decision. He said however, the HDC said that they expected a screened-in porch, and since that is not what is being built, they don't approve a request to revise the plans. He said that appeal then went to Planning and Zoning Commission, and the Planning and Zoning Commission upheld the decision of the HDC, however, the doorway can be placed where Mr. Barton has requested.

MOTION: Mr. Cline moved to amend the Decision and Determination, so that Paragraph 2 Reads:
"That the property owner is required to build this project in accordance with the attached plans as originally approved by the Historic District Commission and with the modification to the basement doorway, which the Planning and Zoning Commission approved in its review of the Historic District Commission Appeal. That the stop work order previously issued is lifted to enable the applicant to comply with the earlier Order, consistent with the building plans properly submitted and approved."
Mr. Kaitsa seconded the motion.

Mr. Cline said that this amendment would require that within 45 days, Mr. Barton will be required to complete the originally proposed screened-in porch with the addition of the doorway being permitted as approved by the Planning and Zoning Commission. If he hasn't completed that project within that 45-day period, the Village would be free to take any enforcement action it is legally entitled to take. Staff is instructed to take vigorous enforcement action upon the 46th day.

Ms. Guzzo asked if any Staff members have told Mr. Barton that Council was going to make a decision based on the draft language. She expressed concern that he may have a verbal commitment to allow him to proceed. Mr. Lutz said he and Mr. Barton are both aware that this is a decision that needs to be made by Council.

VOTE: Y 4 N 1 (Guzzo) (Absent: Nolan)

MOTION: Mr. Cline moved to adopt the Decision and Determination as amended. Mr. Kaitsa seconded the motion.

VOTE: Y 4 N 1 (Guzzo) (Absent: Nolan)

Mr. Coolidge asked if landscaping is also included in this determination. Mr. Cline said it is. Mr. Molnar said he would still like to pursue any claim Mr. Wright might have on this subject.

FIRST READING: **ORDINANCE 2001-13: AN ORDINANCE APPROVING THE SUBDIVISION PLAT FOR LAKES OF POWELL SECTION 6 SUBDIVISION, PART 1.**

David Betz, Director of Development, reviewed the plat as proposed and the impact of Murphy Development.

Mr. Kaitsa asked if there are any deviations from bikeway or parkway standards. Mr. Betz said there are not. This Ordinance was taken to a second reading.

FIRST READING: **ORDINANCE 2001-16: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2001.**

Stephen A. Lutz, Village Manager, said that this Ordinance would provide funding for consulting services on publications within the Village. This Ordinance was taken to a second reading.

FIRST READING: **ORDINANCE 2001-18: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2001. (Offices)**

Stephen A. Lutz, Village Manager, said that Council has discussed the need to provide another office for administrative Staff. The lobby area was designed to accommodate additional office space. He said that Staff is recommending a \$3,000 appropriation to prepare construction and bid plans for a proposed office along the west wall. If the police department is relocated to the Village Green, the lobby area would become the main entrance to the municipal building and provide a reception area for the receptionist and police clerk.

MOTION: Mr. Chambers moved to suspend the rules on Ordinance 2001-18. Mr. Kaitsa seconded the motion.

Ms. Guzzo noted that this is not an emergency ordinance, and questioned the rules suspension. Mr. Lutz said that. Mr. Lutz said the ordinance could be passed tonight with a rules suspension, and the funding will be available in 30 days.

VOTE: Y 5 N 0

MOTION: Mr. Kaitsa moved to adopt Ordinance 2001-18. Mr. Chambers seconded the motion.

VOTE: Y 5 N 0

COMMITTEE REPORTS

Development Committee: (Next Meeting: March 27)

Finance Committee: (Next Meeting: April 10) Mr. Kaitsa said that at the last meeting, the Finance Committee and members of the Olentangy School Board discussed the development fees for the Lakes of Powell Elementary and Olentangy Middle School. At this point, the general consensus was that Council would consider waiving fees that are not out of pocket in exchange for some agreement for use of those school facilities to benefit the community. Staff is going to finalize that recommendation for Council consideration.

The Parks and Recreation Advisory Board came before Council with recommendations for the various parks, totaling \$2.4 million. The Finance Committee feels Council needs to evaluate those improvements in line with other Capital needs. There was a presentation on Capital Improvement Financing at the meeting, and the Committee is working on an overall Capital Plan.

Mr. Kaitsa said the Village is currently tracking about \$43,000 below the Village's projected amount. He said he feels that will resolve itself. He said the Committee also discussed income tax compliance.

