

CITY COUNCIL

JULY 17, 2001

A regular meeting of the City of Powell Council was held on July 17, 2001, and called to order at 7:30 p.m. by Mayor Mark Klein. Other Council members present were Bill Nolan, Art Schultz, George Kaitsa, and Dave Chambers. Richard Cline was absent. Peggy Guzzo arrived at 8:00 p.m. Also present were David Betz, Director of Development, Nan Metz, Finance Director, Dawn Nauman, Clerk of Council, and Rob Rice, City Engineer.

CITIZEN PARTICIPATION

There was none.

APPROVAL OF MINUTES

The minutes of July 10, 2001 were approved as printed.

LIQUOR LICENSES

Scott Simon, Attorney, was present to provide Council with information regarding liquor licenses in the State of Ohio. He reviewed that he was formerly legal counsel and lobbyist for the Ohio Department of Liquor Control, and he is now an administrative attorney focusing on liquor licenses. Mr. Simon said he understands there are currently two permit applications pending in Powell. He outlined that the Ohio Liquor Control Act identifies the number of permits that can be issued in a political subdivision, and that number is based on population. He said that "C" class permits are issued per every 1,000 persons, and "D" class permits are issued per every 2,000. He said there are exceptions to this rule in that there are "exempt" liquor permits. He said that once Council is notified of a liquor license application, it has 30 days to determine whether they would like a hearing. Within that 30 day period, they also have the ability to ask for an additional 30-day extension. He said that the basic grounds by which to object to a liquor license are identified in the revised code, but they are not exhaustive or exclusive (Exhibit 1). Mr. Simon reviewed the Department of Liquor Control process for reviewing permits. He reviewed that there is a criminal background check and a site visit. Mr. Simon reviewed two types of "exempt" liquor permit (D-5A and D-5I). Mayor Klein noted that those examples are beyond the scope of what would occur in Powell.

Mr. Schultz asked what percentage of people apply for liquor licenses on a speculative basis, where they don't yet have a restaurant or bar. Mr. Simon said that it does happen, although he is unsure how often. Mr. Schultz asked how sensitive the approval process is to location of a restaurant. He asked about a small city where a number of liquor permits are located in the same area. Mr. Simon said that saturation can be considered, but it will probably not be enough in and of itself for the Liquor Control Department to sustain an objection.

Mr. Nolan asked if there is any room for a municipality and applicant to negotiate the terms that might go along with the license. Mr. Simon said that it is unusual, but possible. He said that the City of Cleveland often objects to a license, enters into a "cooperation agreement" with the applicant, and then withdraws their objections. Mr. Nolan asked if the Division of Liquor Control helps enforce that agreement. Mr. Simon said they do not.

Mayor Klein asked, if D-class permits are issued for every 2,000 residents, and the City has 6,200, would that mean three such permits would be permitted. Mr. Simon said that they could actually issue 4, because the statute allows for one for each 2,000 or "part thereof." Mayor Klein said that Your Financial Community is before Council with a license request while several of their tenants have liquor licenses already. He asked if those are considered separately. Mr. Simon said they are. Mayor Klein asked how licenses are issued if the quotas are already met. He noted that it may be desirable to have restaurants in the downtown area, but there are no licenses available. Mr. Simon said that applicants can transfer exempt permits from another city or township for the purpose of economic development. Once issued, that license cannot be transferred to another location.

Mr. Kaitsa said there is a control, then, in that Council can object to any license being transferred into the City. Mr. Simon said there is. Mr. Kaitsa reviewed the application for Your Financial Community. He asked if substantive reasons such as a criminal record, non-conforming location, or substantial impact on quiet enjoyment are needed to object to a permit that falls within the quota. Mr. Simon said that there should be some basis for objection. Mr. Kaitsa asked if 240 N. Liberty Street, the address on the application, is where this license will be operated. Mr. Simon said it is. He noted that they filed for this license in 1988, and there is now an open status because of the growth in the area. Discussion ensued.

Mr. Chambers asked if the quota is determined by census. Mr. Simon said that between censuses, the population is estimated through a variety of tools to determine quotas. Mr. Chambers asked, if population decreases, whether the licenses stay in effect. Mr. Simon said they do.

Ms. Guzzo said she has no major concern with Your Financial Community's application. She asked, if it were determined that there were too many liquor establishments in a certain area, if areas could be zoned dry. Mr. Simon said that an area couldn't be zoned dry, but a petitioner could place an option on the ballot to vote a precinct wet or dry.

Your Financial Community Liquor License Request

Mike Costanza, Your Financial Community, said that their plaza was the first, and it was opened in Powell in 1987. He said that they have the right to cancel any lease due to any type of disturbance, and they would, if any liquor establishment became a problem. He said their offices are located at their shopping center, and they have "hands on" management. He said that the Department of Liquor Control has been out to review the location. He said that they want to address Council's concerns, but they are citizens and they have been waiting since 1988.

Mr. Schultz asked what they intend to do with this license. Mr. Costanza said that they anticipate an Italian Restaurant in the plaza. Mr. Schultz said his biggest concern is that the license be used. Mr. Costanza said that if they don't use their license within a "reasonable period of time," the next person in line can challenge it. He said they are working on using it.

Mr. Nolan said that he doesn't have any specific concerns about this applicant or location, but he has heard some concerns related to saturation and the speculative nature of this request. He said that he thinks that Council has reasonable grounds to object to this license because of "adverse effect" on the general public, which is very general and could include economic development. In addition, the saturation of the area would apply. He said he thinks a cooperation agreement is a great way to go, and it could address these kinds of concerns.

Mayor Klein said that his primary concern is that if the specifics of this use are unclear, and it could become a "semi-nude dance bar." David Betz, Director of Development, said that he doubts this land is zoned for that type of use. Mr. Costanza said that would not be permitted. Mayor Klein said the only leverage Council has is to request a hearing, and that brings the possibility of a cooperative agreement. Mr. Schultz said that Council could also ask for a 30 day extension.

Mr. Kaitsa asked Mr. Costanza if he or any of the principals have a criminal background. Mr. Costanza said he does not. Mr. Kaitsa asked if the location will conform to the building code. Mr. Costanza said it will. Mr. Kaitsa asked if it will cause any substantial interference with respect to the community. Mr. Costanza said it will be a plus to the community. Mr. Kaitsa said he sees no basis on which to object to this application, and that those are the substantive issues lined out. Mr. Kaitsa said that the saturation is a business decision, and it would be a waste of City resources to pursue legal action without a substantive basis on which to object. He said that it would interfere with Your Financial Community's right to make a business decision, and he is also opposed to imposing a standard on one liquor license holder where the same doesn't apply to others.

Mr. Chambers said he doesn't have a problem with the application, and he doesn't think a hearing is necessary. He said that if Council wants to pursue anything, they could object to the renewal.

Ms. Guzzo asked, if someone other than Your Financial Community were to utilize the license, would Council review that, also. Mr. Simpson said that Council would be notified of any transfer of ownership.

Mr. Simon noted that all licenses are renewed in Delaware County in February, and Council can review them at that time. He added that in six months, if this license hasn't been used, they can contact the Department of Liquor Control to find out the status on this license. Mr. Schultz reiterated his concern about a license remaining dormant, but said it appears there are steps Council can take regarding those concerns.

Mr. Nolan asked how the renewal notices are received. Dawn Nauman, Clerk of Council, said that she receives them. Mr. Nolan asked Mr. Simon to provide Council with a copy of a Cleveland cooperation agreement.

MOTION: Mayor Klein moved that the City of Powell request a hearing on the advisability of issuing this permit and request that the hearing be held in Columbus. Mr. Nolan seconded the motion.

VOTE: Y 2 N 4 (Chambers, Guzzo, Schultz, Kaitsa)

Mr. Costanza asked that Council members with question about this license contact him at any time.

Las Margaritas Liquor License

David Fasanelli, Las Margaritas, said that they have bought the business at this location, and the liquor license came with the purchase of the business. He said their restaurant is currently open, and they operate from 11:00 a.m. until 10:00 p.m.

Mr. Kaitsa asked Mr. Fasanelli if he or any of the principals have a criminal background. Mr. Fasanelli said he does not. Mr. Kaitsa asked if the location will conform to the building code. Mr. Fasanelli said it will. Mr. Kaitsa asked if it will cause any substantial interference with respect to the community. Mr. Fasanelli said it will not.

Ms. Guzzo welcomed Mr. Fasanelli to Powell, and said that she is glad to see a nice Mexican restaurant in the community. She said the food is good, and they have done a good job renovating.

Mr. Chambers asked if the license is for bar and table top seating. Mr. Fasanelli said it is a D6 license. He said they are a family restaurant, with a seating occupancy of 116 and a 5-seat bar.

There was no request for a hearing on this license.

THIRD READING: ORDINANCE 2001-35: AN ORDINANCE APPROVING THE FINAL DEVELOPMENT PLAN FOR BROOKEHILL SENIOR COMMUNITY, 32 CONDOMINIUMS ON 10.4 ACRES LOCATED AT 9158 LIBERTY ROAD AND AMENDING THE ZONING MAP FROM PI, PLANNED INDUSTRIAL DISTRICT AND R, RESIDENCE DISTRICT TO PR, PLANNED RESIDENCE DISTRICT.

David Betz, Director of Development, said that Staff received a letter from the applicant's attorney outlining how they will use an exemption to the Unfair Housing Act to limit this development to senior citizens. Ken Molnar, Director of Law, said it appears they can avail themselves of an exemption in the statute. Mr. Betz said he thinks that was the only outstanding question.

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

Burt Crimmel, applicant, said he has nothing further to add other than they have reached an agreement with Crown Hill Properties to take over and manage and build the condominiums.

Mr. Chambers said he thinks this is a good plan, and a nice transition from a park area to the industrial area to the north. He said the land deeded to extend the park is a good addition.

Ms. Guzzo asked if the City needs to specify that these condominiums are age-restricted. Ross Wright, Crown Hill Development, said he would refer that to his legal counsel. Ken Molnar, Director of law, said that the only question from the last meeting was whether or not can they create an age-restricted community. Council asked for information on this, and information has been provided that they mean to avail themselves of an exemption of federal law. Ms. Guzzo said that she has read that an entity can't discriminate against age, race, or religion, and she questions how this applicant can get around the constitution. Mr. Molnar said that there is an exemption in the fair housing act for this type of community. Ms. Guzzo asked, if the applicant is challenged in their attempt to restrict this community, could they come back and ask Council to restrict the area to those of a certain age. Mr. Molnar said that the specific deed restrictions will come back for review, and that Council can approve this assuming they have the right to restrict sales to a certain age. He said that he believes they do.

MOTION: Mr. Kaitsa moved to adopt Ordinance 2001-35. Mr. Chambers seconded the motion.

VOTE: Y 6 N 0

SECOND READING: ORDINANCE 2001-40: AN ORDINANCE APPROVING THE VILLAGE GREEN MASTER PLAN.

David Betz, Director of Development, said that there was one public hearing on this item at the last meeting.

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

Mr. Kaitsa asked if Staff has heard any concerns about this plan. Mr. Betz said there was one phone call asking whether or not Council was concerned with the pond attracting Canadian Geese.

MOTION: Mr. Kaitsa moved to suspend the rules on Ordinance 2001-40. Mr. Nolan seconded the motion.

VOTE: Y 5 N 1 (Chambers)

MOTION: Mr. Kaitsa moved to adopt Ordinance 2001-40. Mr. Nolan seconded the motion.

VOTE: Y 6 N 0

SECOND READING: ORDINANCE 2001-41: AN ORDINANCE APPROVING AN ADMINISTRATIVE REVIEW OF THE LAKES OF POWELL SECTION 5 AND 6 DEVELOPMENT PLAN

David Betz, Director of Development, reviewed the diagram showing the original development plan for Lakes of Powell 5 and 6 and the new alignment of Murphy Parkway. He reviewed that the developer was asked during the development plan process to build the part of Murphy Parkway along their development, which would have become Liberty Road and diverted at the railroad. The developer is now asking to pay to the City what would have been the cost of that improvement now that the alignment has changed. He noted that the applicant has requested a rules suspension on this item.

Dave Tyndall, M/I Homes, said that there was discussion at the last meeting regarding the new alignment. He said the meeting minutes from that approval were going to be reviewed, and if they have, and there are no further questions, he would like a rules suspension.

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

Mr. Schultz asked where in the minutes this issue was discussed. Mr. Betz said it was in July of 1998, when Section 5 and 6 came in for a Master Plan addition. That is when Council reviewed the density and layout. He said that a condition of that ordinance stipulated that the developer would complete the portion of Murphy Property in front of their property. Mr. Kaitsa noted that the July 21, 1998 minutes address that issue. Mr. Schultz had no further questions.

Mr. Kaitsa said he is supportive of this agreement because it reduces the cost to the City of completing the Murphy Parkway. He said that Murphy Parkway needs to be completed before proceeding with the Village Green connector. He said he also supports waiving the third reading.

Mr. Chambers said that he supports the agreement. Ms. Guzzo agreed, and said that she trusts that the City engineers have reviewed and deemed the amount appropriate.

MOTION: Mr. Kaitsa moved to amend Ordinance 2001-41 to insert the amount of \$100,611.00. Mr. Chambers seconded the motion.

VOTE: Y 6 N 1 (Nolan)

MOTION: Mr. Kaitsa moved to suspend the rules on Ordinance 2001-41. Mayor Klein seconded the motion.

VOTE: Y 4 N 2 (Nolan, Schultz)

There being not enough votes for a rules suspension, this Ordinance was taken to a third reading.

FIRST READING: ORDINANCE 2001-42: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2001. Street and Bikepath Resurfacing

Nan Metz, Finance Director, reviewed that this is a supplemental appropriation for this annual program (Exhibit 2).

Mayor Klein asked about the timing on this issue. Ms. Metz said it is desirable to move forward. Robert Rice, City Engineer, said that the ordinance allowing Staff to go out to bid was passed as an emergency, and they would like to move forward with this project so it will be complete before school starts.

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

Ms. Guzzo asked if this is mostly for resurfacing bikepaths, sidewalks, and streetlights. Mr. Rice said there are some sidewalks and bikepaths, but it is mostly for maintenance of roadways. He noted that with city status, Powell has inherited the responsibility of state highways in its corporate limits. Ms. Guzzo expressed concern that this Ordinance may be a conflict of interest, and she should not vote. Mr. Rice said that the low bidder is Strawser Paving, and that is who they intend to contract with.

Mr. Nolan asked if he can make a motion to remove the emergency aspect of this ordinance after the rules suspension. Mr. Molnar said it could be. Mr. Kaitsa asked, if the rules are suspended, but the emergency clause is removed, what happens. Mr. Molnar said the ordinance would take effect in 30 days. Mr. Nolan said, as a practical matter, if Ms. Guzzo abstains, the rules suspension wouldn't pass with the emergency clause. Ms. Guzzo asked if Complete General Construction bid on this project. Mr. Rice said they did not. Ms. Guzzo indicated she would not abstain.

Mr. Kaitsa asked, if the emergency clause is deleted, can Staff enter into a contract. Ms. Metz said they would need to wait 30 days until the funds are available.

MOTION: Mr. Kaitsa moved to suspend the rules on Ordinance 2001-42. Mr. Chambers seconded the motion.

VOTE: Y 5 N 1 (Nolan)

MOTION: Mr. Kaitsa moved to adopt Ordinance 2001-42. Ms. Guzzo seconded the motion.

VOTE: Y 5 N 1 (Nolan)

Mr. Kaitsa asked what is Mr. Nolan's concern about passing ordinances as emergencies. Mr. Nolan said that he thinks Council should not call everything that is expedient an emergency. While it would be good to get this job done, it is not an emergency.

FIRST READING: ORDINANCE 2001-43: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2001.

FIRST READING: ORDINANCE 2001-44: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH M-E COMPANIES, INC. FOR THE PURPOSE OF PROVIDING RIGHT- OF-WAY ACQUISITION SERVICES.

Ordinances 2001-43 and 2001-44 were discussed together. Nan Metz, Finance Director, said that the first ordinance authorizes supplemental appropriation to enter into agreement for right of way acquisition. The second enters into a contract for those services.

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

Mr. Kaitsa asked, if this is not adopted as an emergency, would it take effect in 30 days. Ms. Metz said it will.

Ms. Guzzo asked if this company would issue the title insurance for this right of way. Mr. Molnar said that they will complete the closing, but he doesn't think title insurance is factored in. Ms. Guzzo asked if they could acquire the insurance if the City needs it. Mr. Molnar said that they are going to complete the title searches, closing, and the recordings. He said that he is unsure whether title insurance is necessary for land that will be built under a road, and for land where no building is located. He said that the issue of insurance can be addressed when it is clearer what the City is acquiring.

Mayor Klein asked about timing. David Betz, Director of Development, said it can go to three readings, or Council can proceed.

MOTION: Mr. Kaitsa moved to suspend the rules on Ordinance 2001-43. Mr. Chambers seconded the motion.

Mayor Klein noted that this is for the area of South Murphy Parkway, which is a key component of the City roadway plan. He said that they cannot open the north portion of Murphy Parkway until the south part is completed, and it is important to move forward as quickly as possible.

VOTE: Y 5 N 0 (Abstain: Nolan)

Ms. Guzzo questioned whether the City wouldn't always want title insurance. Mr. Molnar said the City is different than any normal real estate owner. If an error was made in the title, the City can file an appropriation proceeding, and take the property from them, provided they give them just compensation. He said that he would not recommend the unnecessary expense for land under a roadway.

MOTION: Mr. Kaitsa moved to adopt Ordinance 2001-43. Mr. Chambers seconded the motion.

VOTE: Y 5 N 0 (Abstain: Nolan)

MOTION: Mr. Kaitsa moved to suspend the rules on Ordinance 2001-44. Mr. Klein seconded the motion.

VOTE: Y 5 N 0 (Abstain: Nolan)

MOTION: Mr. Chambers moved to adopt Ordinance 2001-44. Mr. Kaitsa seconded the motion.

VOTE: Y 5 N 0 (Abstain: Nolan)

COMMITTEE REPORTS

Development Committee: There was no report.

Finance Committee: Mr. Kaitsa reported that the next meeting is August 14. He reviewed the Monthly Financial Report. Mayor Klein asked if an update will be given on tax collection after the August 14 meeting. Mr. Kaitsa said it will.

Administration Committee: There was no report.

Service Committee: There was no report.

Wendy's Cycling: Mr. Schultz reviewed the new flyer that has been distributed that addresses concerns about access for this race. He reviewed the planned events for the race. Chief of Police Gary Vest and Lieutenant Steve Hrytzik gave a presentation on how residents will be directed to access points to their homes when Powell and Liberty Roads are closed for the race on July 24, 2001. A lengthy discussion was held.

MUNICIPAL MANAGERS REPORT

There was no report.

OTHER REPORTS

The Chief of Police reviewed the Monthly Police Report. He reviewed a proposal to begin to issue written warnings for traffic violations instead of verbal warning. Mr. Nolan asked if the police have a record of who has received such warnings. Chief Vest said not at this time. Mr. Nolan asked if they may in the future keep track of warnings in order to issue tickets. Chief Vest said they haven't made a decision to do that, and they will review that issue further.

The Monthly Planning and Zoning Report was received. Mr. Betz noted that it includes a quarterly update on Zoning Code violations. Mr. Kaitsa asked about the status on the request for outdoor dining at La Tavola. Mr. Betz said they have indicated they will attend the August meeting, but that no plans have been submitted. Mr. Kaitsa asked if the request will be for a patio on the southwest corner, behind the building. Mr. Betz said it is. Mr. Kaitsa said that should buffer any noise. Mr. Betz agreed.

The Monthly Parks and Recreation and Monthly Web Site Report were received.

FINANCIAL REPORTS

The Monthly Report was received. Nan Metz, Finance Director, noted that she included correspondence regarding the recent freeze on local government funding (Exhibit 3). Mr. Chambers asked by how much this will impact the budget. Ms. Metz said it is around \$60,000.

CLERK OF COUNCIL CORRESPONDENCE

Dawn Nauman, Clerk of Council, suggested that Council make an Action Item for January regarding the annual renewal of liquor permits, since they have expressed an interest to review such permits in the future.

OTHER COUNCIL MATTERS

Action Item 2001-0-1 regarding Bikepath Snow removal was moved to August 21.

Mr. Nolan asked about the Activities Document bullet point under engineering that addresses turn lanes at the 4 corners. He asked if that is to address right turn on red. Rob Rice, City Engineer, said that is regarding the Traffic Engineering Services contract to study such turns since Grace Drive has opened.

Mr. Kaitsa asked when Jewett Road will open. Mr. Rice said he believes it will open in the first part of August. Mr. Kaitsa asked about Seldom Seen. Mr. Rice said he is unsure at this point. Mr. Kaitsa asked that Staff contact the county engineer, because a lot of residents are concerned about access to the school. Mr. Kaitsa commended Traffic Engineering Services on the job well done striping Powell Road.

ADJOURNMENT

Council adjourned at 9:45 p.m.

DATE MINUTES APPROVED: August 7, 2001

Mark Klein 8/10/01
Date
Mark Klein
Mayor

Dawn Nauman 8/10/01
Date
Dawn Nauman
Clerk of Council