

CITY OF POWELL COUNCIL

DECEMBER 18, 2001

A regular meeting of the City of Powell Council was held on December 18, 2001, and called to order at 7:30 p.m. by Mayor Mark Klein. Other Council members present were Art Schultz, Richard Cline, David Chambers, Bill Nolan, Peggy Guzzo and George Kaitsa. Also present were David Betz, Director of Development, Steve Lutz, City Manager, Nan Metz, Finance Director, Sue Timmons, Interim Clerk of Council, Ken Molnar, Director of Law, Rob Rice, City Engineer, and Council Member Elect David Lackey.

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION

There was none.

APPROVAL OF MINUTES

The minutes of December 4, 2001 were approved as printed.

RESOLUTION 2001-18: A RESOLUTION RECOGNIZING DAVID CHAMBERS FOR SERVICE AND DEDICATION TO THE CITY OF POWELL 1994 – 2001.

Mayor Mark Klein recognized David Chambers for his accomplishments while a member of City Council, Chair of the Development Committee and founding member of the Olentangy Swim Association. He commended Mr. Chambers for his service as technology advisor for City staff and as an advocate of parks and recreation. Mr. Chambers spoke briefly about the eight years during which he served on City Council.

MOTION: Mr. Cline moved to adopt Resolution 2001-18. Mr. Kaitsa seconded the motion.

VOTE: Y 6 N 0 Abstain 1 (Chambers)

RESOLUTION 2001-19: A RESOLUTION RECOGNIZING PEGGY GUZZO FOR SERVICE AND DEDICATION TO THE CITY OF POWELL 1998 – 2001.

Mayor Mark Klein recognized Peggy Guzzo for her accomplishments while a member of City Council and Chair of the Administration Committee. He commended her for her service as an advocate for the Powell Historic District as well as the development of community events in Powell. Ms. Guzzo spoke briefly about the four years during which she served on City Council.

MOTION: Mr. Kaitsa moved to adopt Resolution 2001-19. Mr. Cline seconded the motion.

VOTE: Y 7 N 0

RESOLUTION 2001-20: A RESOLUTION RECOGNIZING BILL NOLAN FOR SERVICE AND DEDICATION TO THE CITY OF POWELL 1994 – 2001.

Mayor Mark Klein recognized Bill Nolan for his accomplishments while a member of City Council and service as the Mayor of Powell from 1996-1997. He commended him for his service in the development of the City Communication Plan, the Powell Employee Manual, Powell Newsletter and the Park and Recreation Bulletin. He also noted that Mr. Nolan's legal expertise was invaluable to the City, providing guidance and assistance to Council. Mr. Nolan spoke briefly about the eight years during which he served on City Council.

MOTION: Mr. Cline moved to adopt Resolution 2001-20. Mr. Kaitsa seconded the motion.

VOTE: Y 7 N 0

RESOLUTION 2001-21: A RESOLUTION TO CONDITIONALLY ACCEPT PORTIONS OF THE PUBLIC IMPROVEMENTS IN THE MURPHY PARK, SECTION 1 SUBDIVISION AS THE SAME IS NUMBERED AND DELINEATED UPON THE PLAT THEREOF RECORDED IN CABINET 2, SLIDES 647 A, B & C, DELAWARE COUNTY, OHIO RECORDS.

Stephen A. Lutz, City Manager, stated that this ordinance conditionally accepts public improvements prior to their use. He said that in the past this was done by an ordinance. Past discussion about this process in the Lakes of Powell noted that this may be better accomplished by resolution, as the improvements are ready to utilize, and an ordinance requires the three readings and then the thirty-day wait for the ordinance to take effect. He stated that it was identified in the Planning and Zoning code that this could be done by resolution.

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

Mr. Schultz asked how long it could take for the conditions to be met. Rob Rice, City Engineer, stated that Triangle Development has indicated that barricades can be put up within a day or two and pathways will be paved in suitable weather. Mr. Cline commended Staff on changing this procedure. Ms. Guzzo asked if this was the last time Council would see this. Mr. Lutz stated that final acceptance will continue to be handled through an ordinance format where it would go through multiple readings.

MOTION: Mr. Kaitsa moved to adopt Resolution 2001-21. Mr. Chambers seconded the motion.
VOTE: Y 7 N 0

RESOLUTION 2001-10: A RESOLUTION REDUCING THE DEVELOPMENT FEE RELATED TO THE CONSTRUCTION OF OLENTANGY LOCAL SCHOOL DISTRICT'S TYLER RUN ELEMENTARY.

Stephen A. Lutz, City Manager, noted that this was tabled from the last meeting because all of the Council members were not present. The City's Development fee for this school amounts to \$21,840.90 and discussions have taken place regarding reducing the fee to the City's actual out of pocket costs of \$20,395.45. Mr. Lutz said Council will determine whether they want to reduce the fees or charge the full amount.

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

Mr. Kaitsa stated that the original agreement with the schools was that they were to pay the actual out of pocket cost related to the development of Tyler Run. He said that he has a problem taking money away from educating students to put it into the City coffers, especially with a significant unencumbered and unappropriated balance of funds. He said he feels very strongly that Council should honor the original commitment. Mr. Cline said that he did not recall the City committing to the position that they would only charge out of pocket costs. He did remember that being discussed in regards to one of the other development fees, with the agreement that Council would revisit the issue. He also said that Council should keep in mind that although there is an unappropriated balance, that includes a reserve fund and the ability to meet unexpected expenses as well as funds that will be appropriated next year for many capital improvement projects which well exceed the balance. Mr. Nolan said that Council's obligation to the residents of Powell is to not subsidize entities that also tax them. He said that the amount is designed to approximate the costs and this time it has proved to be accurate. Mr. Chambers added that the residents of Powell donated the land for Tyler Run, showing a past history of helping to subsidize the school.

MOTION: Mr. Kaitsa moved to adopt Resolution 2001-10. Ms. Guzzo seconded the motion.
VOTE: Y 4 N 3 (Chambers, Cline, Nolan)

RESOLUTION 2001-16: A RESOLUTION SPECIFYING THE MUNICIPAL SERVICES TO BE FURNISHED TO 951.11± ACRES WHICH IS PENDING ANNEXATION TO THE MUNICIPALITY OF POWELL.

Stephen A. Lutz, City Manager stated that Powell is required to provide the County Commissioners with a resolution stating that we are willing to provide services to Golf Village if the property is annexed into the City. At the last meeting, Ken Molnar, Director of Law, suggested that Council add an item to Section 1 which states that municipal services and said services shall be provided under the same conditions and same costs as they are provided to other residents in the City of Powell. He said that the revision has been added to the amended resolution.

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

Ms. Guzzo said that she opposes this resolution. She stated that the proposed annexation should not be done in emergency format, so that the residents of Powell could have the opportunity to review the proposed annexation in three readings. Mr. Chambers stated that he is in full support of the resolution as the annexation makes sense for both City and Township residents. Mr. Kaitsa said he supports the resolution as it enables the annexation to go forward. Mayor Klein said he also supports the resolution. He said that the City has worked very hard with the Township to reach an agreement to further this process. Mr. Cline stated that he is in support of the resolution but wanted to clarify that Section 1 does not in any way impact on the taxes that are unique to this land. He viewed that language that all land in the City of Powell is subject to some taxes in one form or another, such as homeowners' association fees. He said that the fact that they are subject to a special tax or cost is not in any way inconsistent with the language in Section 1. Mr. Molnar stated that he sent a letter to Council which addresses the distinction between services and infrastructure. Mr. Nolan and Mr. Schultz supported the resolution.

MOTION: Mr. Kaitsa moved to adopt Resolution 2001-16. Mr. Nolan seconded the motion.
VOTE: Y 6 N 1 (Guzzo)

EXECUTIVE SESSION: FOR THREATENED LITIGATION UNDER ORC SECTION 121.22 (C)(3).

MOTION: Mr. Cline moved to adjourn to Executive Session. Mr. Chambers seconded the motion.

VOTE: Y 7 N 0 (8:15 p.m.)

MOTION: Mr. Cline moved to adjourn from Executive Session. Mr. Kaitsa seconded the motion.

VOTE: Y 7 N 0 (8:35 p.m.)

MOTION: Mr. Cline moved to reconvene in Regular Open Session. Mr. Kaitsa seconded the motion.

VOTE: Y 7 N 0 (8:38 p.m.)

RESOLUTION 2001-17: A RESOLUTION AUTHORIZING THE MUNICIPAL MANAGER TO EXECUTE AN AGREEMENT BETWEEN LIBERTY TOWNSHIP AND THE CITY OF POWELL IN RESPECT TO THE PROPOSED ANNEXATION OF THE GOLF VILLAGE DEVELOPMENT.

Stephen A. Lutz, City Manager, said that when this resolution was written, it was called an agreement and to make it consistent with the Township's attachment, he would recommend some grammatical changes.

MOTION: Mayor Klein moved to amend the title from "an agreement" to "a letter of understanding". Mr. Kaitsa seconded the motion.

MOTION: Mr. Cline moved to amend, under the first Whereas, the wording of "an agreement" to "a letter of understanding". Mr. Kaitsa seconded the motion.

MOTION: Mr. Cline moved to amend, under Section 1, the wording of "an agreement" to "a letter of understanding". Mr. Kaitsa seconded the motion.

VOTE: Y 7 N 0

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

Mr. Cline stated that he is in full support of this resolution and it is time to move forward and negotiate in good faith. He stated that the letter of understanding captures the intent of both parties to move forward. Mr. Kaitsa said that he fully supports the annexation as it is good for the City and Township, but he cannot support this resolution. He stated that the terms contained in the letter of understanding are too onerous on the City of Powell. He said that the City should not accept those terms. Mr. Chambers said that he is in full support of the annexation and an agreement between the City and the Township but cannot support the agreement as currently written. He said that Item 3 addresses too long of a time period. He said that the City is giving up too many legal rights in this agreement. Mr. Schultz said that he is in full support of the resolution. He said that the terms are clear and that he sees the final agreement following closely to the resolution. He also said that this agreement is a relationship which depends on both parties to work together in the future. Ms. Guzzo said that she agrees with coming to a consensus with Liberty Township. She also said that in Section 1, Subsection 1 & 2 of the agreement, there is a proposed allowance for rezoning of 20 and 30 acres of property that is not in the best interest of the community. Ms. Guzzo said that she cannot support this based on those two conditions, as it only benefits the developer. Mayor Klein said that the City is at a crossroads with this agreement. He said that passing this resolution will take the positive, constructive path to hold the community together.

MOTION: Mr. Cline moved to adopt Resolution 2001-17 as now amended. Mr. Nolan seconded the motion.

VOTE: Y 4 N 3 (Chambers, Guzzo, Kaitsa)

THIRD READING: ORDINANCE 2001-68: AN ORDINANCE ADOPTING THE PROPOSED BUDGET FOR THE FISCAL YEAR ENDING DECEMBER 31, 2002 AND DECLARING AN EMERGENCY.

Stephen A. Lutz, City Manager, stated that this is the fourth meeting to discuss the budget.

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

Council commended the excellent budget report compiled by Staff.

MOTION: Mr. Kaitsa moved to adopt Ordinance 2001-68. Mr. Chambers seconded the motion.

VOTE: Y 7 N 0

THIRD READING: ORDINANCE 2001-69: AN ORDINANCE TO MAKE APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE MUNICIPALITY OF POWELL, DELAWARE COUNTY, OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31, 2002.

Stephen A. Lutz, City Manager, stated that this is the fourth meeting to discuss this ordinance which identified the appropriations for the upcoming fiscal year.

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

MOTION: Mr. Kaitsa moved to adopt Ordinance 2001-69. Mr. Cline seconded the motion.
VOTE: Y 7 N 0

THIRD READING: ORDINANCE 2001-72: AN ORDINANCE APPROVING THE FINAL DEVELOPMENT PLAN FOR POWELL JUNCTION, A 15-BUILDING, MIXED USE, OFFICE RETAIL AND RESIDENTIAL DEVELOPMENT LOCATED ON 5.62 ACRES ON THE SOUTH SIDE OF WEST OLENTANGY STREET JUST WEST OF THE CSX RAILROAD.

Public Hearing

Stephen A. Lutz, City Manager, said that Council members would find at their desk an amended version of this ordinance, including a new condition (Item #11) which Council suggested at their last meeting.

David Betz, Director of Development, indicated the site location of the development. He noted that Item #11 on the ordinance allows for the City to require the developer to change the future main entrance to a right-in, right-out situation. This would be required if access to the site is provided from the property to the west and a new entrance in the development would happen. The street would then be re-stripped. The applicant has no objections to adding this to the ordinance. He said the Planning and Zoning Commission recommends approval of this as identified in the ordinance.

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

MOTION: Ms. Guzzo moved to adopt Ordinance 2001-72. Mr. Kaitsa seconded the motion.
VOTE: Y 7 N 0

SECOND READING: ORDINANCE 2001-74: AN ORDINANCE APPROVING THE COMBINED PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR ORIENTAL TRADING COMPANY FOR A 7,600 SQ. FT. OFFICE BUILDING LOCATED AT 40 CLAIRE DAN DRIVE.

Public Hearing

Stephen A. Lutz, City Manager, said that David Betz, Director of Development, will give an overview. He also noted that representatives of the project are present as well.

David Betz, Director of Development, reviewed the site plan and location. He identified access and parking. He noted that efforts were made at Planning and Zoning Commission to redesign the site to preserve a large maple tree. The building elevations were shown, and building products were discussed. Mr. Betz noted that the skylights have been removed from the plans, leaving just shingled roof. He noted that all requirements of the zoning code except that the building setback was moved to accommodate side and rear parking. Also, while redesigning the site to save the tree, two parking spaces were removed, making it below code. Staff recommends approval with the conditions set in the ordinance.

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

Several Council members asked why the skylight had been removed from the plan. The applicant said that when the Commission requested that windows be added, it made skylights unnecessary. Mr. Betz stated that it is basically office and warehouse area for the trans-shipping of items. The applicant stated that there would be 12 daytime employees. Mr. Betz said that there are 30 required parking spaces provided, 2 less than code. If the applicant changed use of this in the future, they could have need for more parking. He said that the nature of their business allows for this few parking spaces needed. He also said that this applicant brings in items and then ships them back out. They would not be storing them for a long period of time, with no loading dock and no overhead door. There would be no retail open to the public at this site. Mr. Betz stated that there were no public comments on this issue in Planning & Zoning meetings.

MOTION: Ms. Guzzo moved to suspend rules on Ordinance 2001-74. Mr. Kaitsa seconded the motion.

VOTE: Y 7 N 0

MOTION: Ms. Guzzo moved to adopt Ordinance 2001-74: Mr. Kaitsa seconded the motion.

VOTE: Y 7 N 0

SECOND READING: ORDINANCE 2001-75: AN ORDINANCE AMENDING SECTION 1337.02 OF THE BUILDING CODE OF THE MUNICIPALITY OF POWELL, ENTITLED "CONSTRUCTION OPERATIONS".

Stephen A. Lutz, City Manager, distributed a revised draft of the ordinance. The revised draft would limit construction hours on Memorial Day, July 4th, and Labor Day to the Sunday hours of Noon - 9 p.m. It also states that no construction activity would be permitted on Thanksgiving, Christmas and New Years.

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

Mr. Cline said that he supports suspending the rules tonight so that this would be in effect during this holiday season. Mr. Kaitsa agreed but asked how this would deal with homeowner projects. Mr. Lutz said that would depend upon the complaints that it generated. Mr. Cline said that it doesn't matter who it is causing the disturbance of the peace of the existing residents. He said there is not a good basis to make a distinction. Ms. Guzzo said that Council can add language that excludes homeowners' regular maintenance and repair. Mr. Schultz said that as a practical matter, that if it is objectionable enough for a neighbor to call in, then all should be subject to the same rules.

MOTION: Mr. Cline moved to suspend rules on Ordinance 2001-75. Mr. Kaitsa seconded the motion.

VOTE: Y_6_ N_1_ (Guzzo)

MOTION: Mr. Nolan moved to suspend rules on Ordinance 2001-75. Mr. Schultz seconded the motion.

VOTE: Y_6_ N_1_ (Guzzo)

SECOND READING: ORDINANCE 2001-76: AN ORDINANCE MODIFYING SECTION 549.08(b) OF THE GENERAL OFFENSE CODE OF THE MUNICIPALITY OF POWELL, ENTITLED "DISCHARGE OF DANGEROUS WEAPONS."

Chief Gary Vest, Powell Police Department, said that the purpose of this ordinance is to simply include firearms with other prohibited munitions. He said this is intended to add firearms to the category where it had been omitted. Mayor Klein asked how the pistol range was addressed. Chief Vest said that it would fall under "Other Lawful Uses" in the ordinance because the Powder Room is already classified under City zoning ordinances. It would be considered a lawful use.

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

Discussion ensued in regards to the proper wording about lawful uses. Mr. Kaitsa stated that the ordinance should be amended to specifically exempt a facility properly authorized to operate, such as a firing range.

MOTION: Mr. Cline moved to amend Section 1 of Ordinance 2001-76 to read: "549.08 (b) No person shall knowingly discharge any firearm, air gun, spring-operated gun, or bow and arrow within the Municipality. This section shall not apply to the discharge of firearms within a firing range properly established pursuant to the Powell Zoning Code, law enforcement officials in the proper enforcement of the law or to any person in the proper exercise of the right of self-defense, or when otherwise lawfully authorized." Mr. Kaitsa seconded the motion.

VOTE: Y_7_ N_0_

MOTION: Ms. Guzzo moved to amend the title of Ordinance 2001-76 to "AN ORDINANCE MODIFYING SECTION 549.08(b) OF THE GENERAL OFFENSE CODE OF THE MUNICIPALITY OF POWELL, ENTITLED "DISCHARGE OF DANGEROUS WEAPONS, AND DECLARING AN EMERGENCY TO ADDRESS THE HEALTH, SAFETY AND WELFARE OF THE CITIZENS THAT IS NOT CURRENTLY ADDRESSED BY ANY ORDINANCES." Mr. Cline seconded the motion.

VOTE: Y_6_ N_1_ (Nolan)

MOTION: Mr. Kaitsa moved to suspend the rules on Ordinance 2001-76. Ms. Guzzo seconded the motion.

VOTE: Y_7_ N_0_

MOTION: Ms. Guzzo moved to adopt Ordinance 2001-76. Mr. Chambers seconded the motion.

VOTE: Y_7_ N_0_

FIRST READING: ORDINANCE 2001-78: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2001 AND DECLARING AN EMERGENCY.

Stephen A. Lutz, City Manager, said that this is a typical ordinance at end of year where Staff moves funds around. He said that these are noted on Finance Exhibit A.

Nan Metz, Finance Director, discussed several different items and commented on their purpose.

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

Mr. Kaitsa asked if this Ordinance needed to be passed as an emergency and Ms. Metz said that it would in order to pass by the end of the year. Ms. Metz said that the Restricted Reserve Fund was set up by Council several years ago and in the last auditor's report, they felt it was set up incorrectly. She said that the way in which it was set up did not meet the covered purposes in the ORC. The Auditor recommended to close out the fund and transfer it into the general fund. Ms. Metz is investigating a way to set up this type of fund appropriately.

MOTION: Mr. Kaitsa moved to adopt Ordinance 2001-78. Mr. Cline seconded the motion.
VOTE: Y 7 N 0

HISTORIC DISTRICT COMMISSION APPROVAL REVIEW
Change of Use and Addition for new office at 74 E. Olentangy Street

Stephen A. Lutz, City Manager, stated that the Historic District Commission has reviewed a change of use and an addition at a residence at this address. He asked that Council review this issue and determine if they wish to adopt a resolution requiring a hearing at the next regularly scheduled Council meeting. He also noted that if Council chooses not to do this, the decision of the HDC will stand.

David Betz, Director of Development reviewed the site, which had previously been used as a residence. He noted that this site has received a variance from BZA to allow parking in front of the building setback. There will be fencing and heavy landscaping along the frontage which will provide screening. He said that because of the topography of the site, there was no other way to place a building and have parking in the back. Mr. Betz reviewed the use of the property as well as site elevations. He said that this project follows the guidelines of the HDC. Mr. Betz recommended that no hearing take place. Discussion ensued. It was determined that no action would be taken by Council.

COMMITTEE REPORTS

- Development Committee:** (Next Meeting: To be determined)
- Finance Committee:** (Next Meeting: To be determined)
- Administration Committee:** (Next Meeting: To be determined)
- Service Committee:** (Next Meeting: To be determined)

MUNICIPAL MANAGERS REPORT

Stephen A. Lutz, City Manager received a letter from the Village Academy asking that the City waive fees for their use of the Community Meeting Room based on the City's past use of their facility. Under the City fee structure, the charge would be \$200 per day. Discussion ensued. It was agreed that the City would waive the fees for this usage.

MOTION: Mr. Cline moved to authorize the City Manager to communicate to the Village Academy that the City of Powell will allow them to use the Community Meeting Rooms at no charge on the dates indicated in their letter to Mr. Lutz. Mayor Klein seconded the motion.

VOTE: Y 4 N 3 (Nolan, Schultz, Chambers)

CLERK OF COUNCIL CORRESPONDENCE

It was noted that the 2002 City Meeting Schedule was included in Council packets.

OTHER REPORTS

- Planning and Zoning: Report included in Council packets.
- Police Department: Chief Vest gave a brief summary of the Police report. He discussed the accreditation process and stated that there will not be a final report until March. At that time, Chief Vest will go to Jacksonville, Florida to attend the full commission. Mayor Klein commended Chief Vest for the paper which he had published and the media recognition for that achievement. Council also commended the Department for the results of the Survey, stating that 97% of those responding said that the Police Department Staff is friendly, helpful, courteous, and competent.
- Parks and Recreation Department: Report included in Council packets.

FINANCIAL REPORTS

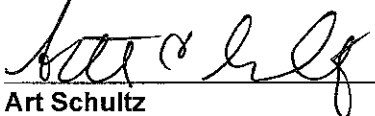
The Monthly Financial and Accounts Payable Reports were included in Council packets. Stephen A. Lutz, City Manager, commented that the City ended the year in very healthy financial condition.


OTHER COUNCIL MATTERS

ADJOURNMENT

MOTION: Mr. Cline moved to adjourn from regular open session at 9:51 p.m. Mr. Kaitza seconded the motion.

VOTE: Y 7 N 0

 1/15/02
Art Schultz Date
Mayor

 1/15/02
Sue Timmons Date
Interim Clerk of Council