

CITY OF POWELL COUNCIL

April 9, 2002

A regular meeting of the City of Powell Council was held on April 9, 2002, and called to order at 7:30 p.m. by Mayor Art Schultz. Other Council members present were Dave Lackey, Jim Seta, George Kaitza, Mark Klein, and Dan Wiencek. Richard Cline arrived at 7:40. Also present were Stephen A. Lutz, City Manager; Dawn Nauman, Clerk of Council; Ken Molnar, Director of Law; David Betz, Director of Development; Rob Rice, City Engineer; and Nan Metz, Finance Director.

CITIZEN PARTICIPATION

John Brehm, 140 Squires Court, said that he appeared before Council five weeks ago to discuss Ordinance 2001-57 which relates to recreational structures. He said that at that time, Council indicated that they would have further discussion on this issue. Since that time, articles have appeared in the paper, and he has received numerous phone calls in support of his opinion. He said that when this issue was considered by Council, the concern was for liability, not for children playing on the street. He said he has contacted three insurance carriers; Farmers, State Farm, and Allstate, and they have all indicated that if a basketball hoop such as his fell into the street, any damages would be covered by homeowners' insurance. He asked for further debate on this issue and for the chance for Homeowners' Associations to have some input.

Mr. Lutz said that while Council held off making comments about this at the last meeting, they could comment now that they have had time to think about this issue. Mr. Klein asked if this was originally considered by a committee. David Betz, Director of Development, said it was reviewed by the Development Committee. Mr. Klein suggested that it be sent back to them and that Mr. Brehm and his supporters attend that meeting to formulate a policy.

Mr. Wiencek said that because a public hearing before the Planning and Zoning Commission will be required to amend this Ordinance, perhaps it should go back to that Commission. Mr. Lackey concurred. He suggested the Planning and Zoning Commission review this again with more community input to see if there is a change of heart.

Mr. Seta said that his only concern is that if someone is hurt in the public right of way, the City could be sued for negligence. He said these basketball courts are used everywhere, and it is a good idea to review them.

Mayor Schultz said that such structures falling down were not the only concern. He said he feels sending this item to the Planning and Zoning Commission is fine, but he still feels there may be another way around Mr. Brehm's particular problem, such as using a sand bag that allows the goal to be weighted but also moved in and out of the street. He thanked Mr. Brehm for coming before the Council and encouraged him to continue his involvement in this topic.

Mr. Wiencek noted that this is a single issue in a multi-faceted ordinance, and a minimal amount of meetings should be necessary. He asked that Staff address remaining issues, such as City liability, so that the commission can hear both sides. Mr. Betz said that Staff can schedule a public hearing for the May 8 Planning and Zoning Commission meeting. In the mean time, Staff can do a little more research on the issue. Mr. Wiencek asked that Mr. Brehm be furnished with minutes of the Planning and Zoning Commission and Council meetings during which this ordinance was considered.

OTHER COUNCIL MATTERS

Mayor Schultz noted that the City of Powell declared the week of April 1-7 Public Health Week in Delaware County.

CITIZEN PARTICIPATION

James Sloan, Scoutmaster, Boy Scout Troop 132, said that his group is affiliated with the Church of Jesus Christ of Latter Day Saints, and they are planning a 5K Run in Powell as a fundraiser. Mr. Sloan presented Council with samples of banners he would like to add to the street lights in downtown Powell from May 1 - June 3 to advertise their event. He said that the banner can be used for many years, and an additional piece will be added that indicates the dates.

Mayor Schultz said that there was discussion earlier in the year about Powell and its affiliation with other groups, and the idea was to make sure that the City is involved with events that they advertise. Mr. Lutz said that was for the use of the City logo. He said that after reviewing the minutes when VillageScape was approved, and

speaking with Mr. Betz about the downtown redevelopment, it appears the idea was to be able to hang banners downtown advertising events that occur throughout town. Mayor Schultz asked if the City is involved in this event. Mr. Lutz said that the Powell Police Department will direct traffic.

Mr. Kaitsa asked what is the City's policy on such banner use. Mr. Lutz said there is no banner policy.

Mr. Klein asked if this will be an on-street run. Mr. Sloan reviewed the route, most of it on the bikepath. Mr. Klein said that this could be a good thing, but he is concerned about raising banners to promote a private event which is not sponsored by the City. He said he thinks Mr. Krista's question about policy is a good one. He said that this is only the first request, of what could be many. Mr. Kaitsa questioned how Council makes a decision without a policy.

Mr. Wiencek suggested that Council decide on this application based on its particular merit and then work on a policy for future requests. Mr. Seta agreed. He said that he feels the whole purpose of the banner supports is for this type of use, and he thinks it is a great event. Mr. Lackey said that while he was opposed to the use of the Powell logo for this event, he is not as opposed to this. He said that he thinks a policy is needed and immediately, but that this is the type of use that would be permitted under such a policy. Mr. Cline said that his understanding is that this is a charitable event. He said he agrees with Mr. Wiencek that this group should not be punished because the City has no policy. He said that a decision should be made on this on its own merits, and a policy should then be developed. Mayor Schultz agreed. He noted that this means a banner could be approved this year and no longer qualify once the rules are in place. Mr. Sloan indicated that that is a chance he is willing to take.

The majority of Council was in support of allowing the banners. Mr. Lutz said that he can also review the policy of neighboring communities and report back to Council. Mayor Schultz suggested it be considered at the next Service Committee meeting.

APPROVAL OF MINUTES

The minutes of March 19, 2002 were amended and approved.

FINANCIAL REPORTS

The Accounts Payable was received. Mr. Kaitsa asked who the vendor Walter Drane is. Mr. Lutz said that they are the City's codifier.

OTHER REPORTS

There were none.

CLERK OF COUNCIL CORRESPONDENCE

Dawn Nauman, Clerk of Council, noted that the first Council meeting in July conflicts with the Powell Cycling event. After a brief discussion, the meeting dates for July were tentatively shifted forward one week to the 9th and 23rd.

Ms. Nauman noted that the annual report is going to press Thursday morning. Mr. Lackey pointed out several typographical errors in the report. Mayor Schultz said he thought the report was very well done, and the layout is very professional.

RESOLUTION 2002-08: A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED AGREEMENT TO THE CONTRACT FOR UNION OF A CITY HEALTH DISTRICT WITH THE GENERAL HEALTH DISTRICT.

Stephen A. Lutz, City Manager, reviewed that the City is a member of the combined Health District with Delaware County. The board is currently made of eight members, with one from the City of Powell. This Resolution would add a member of the Health District from the retail licensing Council, as required by State Senate Bill 136, and amend the contract accordingly.

MOTION: Mr. Kaitsa moved to adopt Resolution 2002-08. Mr. Klein seconded the motion.

VOTE: Y 7 Y N

THIRD READING: ORDINANCE 2002-10: AN ORDINANCE APPROVING THE SUBDIVISION PLAT FOR POWELL PLACE SECTION 4.

Stephen A. Lutz, City Manager, reviewed that the developer of this property has sent a letter today asking to withdraw this item so that he may start over at the Planning and Zoning Commission with a new development plan. Mr. Klein asked if the plat can be approved as it is. Ken Molnar, Director of Law, said that Council can approve it as read, for seven houses. The developer then has six months to file the plat. If he doesn't, it lapses, and it must come back through the Commission and Council. Mr. Klein said that based on the applicant's indication that he plans to change this development, he doesn't see benefit in approving the plat.

Mr. Cline asked if it is possible to place the three additional lots the developer feels he is entitled to on this property without variances and with the originally planned open space intact. David Betz, Director of Development, said that he is unsure whether the applicant could meet every standard for lot sizes. He said that the zoning was pretty flexible in the plan, in that it didn't consider the development standards but rather the number of units. He said there are other caveats that may take precedence, such as the fact that this and another parcel were combined with interchangeable zoning. Mr. Cline asked how many dwelling units are proposed on the larger parcel. Mr. Betz said there are 78.

Mr. Cline referred to a memorandum from Mr. Betz regarding that the two parcels be developed contemporaneously (Exhibit). He asked Ken Molnar, Director of Law, if that is a legal impediment to the applicant's desire to go back to the Planning and Zoning Commission. Mr. Molnar said that he thinks that decision needs to be made by the Planning and Zoning Commission. He said he would assume if someone filed an application on one or two parcels, the Commission will consider the status of the other parcel.

Mr. Lackey asked who chose the number seven for lots on this parcel. Mr. Betz said that the applicant did. Mr. Lackey asked how many meetings were held where the applicant requested 7 houses. Mr. Betz said that one of the things that happened is through the process, the number of units on the larger parcel decreased because of engineering issues, and they never changed the number of lots on the smaller parcel. Mr. Lackey asked if those decreased during the zoning process. Mr. Betz said that they did. Mr. Lackey asked if it is correct that at any time, the developer could have noted that things have changed and increased the number of units. Mr. Betz said that it always came through as seven lots, and they never asked for a change. Mr. Lackey said that this is a tremendous waste of time and resources of the City by this developer, once again. Mr. Betz said that in order to do what he is asking, the developer will have to refile, pay all the fees, and go through the preliminary and final development plan process. Mr. Lackey said that he is amazed that this has gotten to this point, and the developer is now asking to increase the number of units.

Mr. Kaitsa said that he is not willing to consider this parcel without considering the other. He said the only reason they granted the type of density they allowed on that property is in recognition of what was going to be done on the smaller parcel and the fact that the additional acreage would then be green space for that subdivision. He said that he thinks Council needs to communicate to BUS General Partnership that if they seek to withdraw this application, then they simultaneously must withdraw the other parcel. Mr. Lackey said he doesn't think they own the other parcel. Mr. Molnar said that may change his opinion on this, and he needs to review how to address the two parcels with two owners. Mr. Cline said that it is being developed by Fiori. Mr. Lutz said it is being built.

Mr. Seta asked, if the engineering adjusted the lots on the larger parcel, whether the engineering has been completed on the smaller parcel. Rob Rice, City Engineer, said that they have. Mr. Cline asked if Staff can envision a plan that the applicant could submit for 10 lots on the smaller parcel that would comply with everything except the contemporaneous filing requirement of these ordinances. Mr. Betz said that it could be possible, but there might be a reduction of the open space. Mr. Seta asked if Council should vote on this tonight. Mr. Lackey said it won't matter if they do. Mr. Cline said he would recommend voting to approve this because the ordinance requires that these be processed simultaneously, and they were. This application is 100% in compliance with the requirements of the ordinance, and it should be approved. If the applicant chooses not to develop it according to this plat, that's his choice, and he can file a request to modify it. He said that approving this doesn't prohibit the applicant from coming forward at a later date to modify the plan. However, it does lay to rest the minimum standards available for that parcel.

MOTION: Mr. Cline moved to approve Ordinance 2002-10. Mr. Kaitsa seconded the motion.
VOTE: Y 7 N 0

SECOND READING: ORDINANCE 2002-13: AN ORDINANCE APPROVING THE PLAT FOR THE RE-DEDICATION OF GRACE DRIVE.

Stephen A. Lutz, City Manager, said that this ordinance files the plat for the final right of way dedication for the Grace Drive extension project. During this project, the City obtained and traded various properties to create the right of way. Mr. Klein asked if there are any remaining issues with any of the land owners requiring property acquisition. Mr. Lutz said there are not, and that this is an administrative process to identify the changes since the development of this road.

MOTION: Mr. Klein moved to suspend the rules on Ordinance 2002-13. Mr. Kaitsa seconded the motion.

VOTE: Y 7 N 0

MOTION: Mr. Klein moved to adopt Ordinance 2002-13. Mr. Kaitsa seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2002-12: AN ORDINANCE APPROVING THE FINAL DEVELOPMENT PLAN FOR THE VILLAGE ACADEMY SCHOOL FOR A 10,882 SQ. FT. FINE ARTS FACILITY LOCATED AT 284 SOUTH LIBERTY STREET. (PUBLIC HEARING 4/23/02)

Stephen A. Lutz, City Manager, noted that the applicant has requested that the Council consider voting on this item after the April 23 public hearing so that the project can be finished as close to the start of school as possible.

Mr. Betz reviewed the site plan and the surrounding area. He said that the applicant has indicated that they are expanding their building to increase their fine arts teaching facilities. There will be the same number of individuals enrolled in the school. He said that the new building is proposed just to the west of the athletic facility. He reviewed surrounding properties. He showed photographs of the view of this development from South Liberty Street. He said the applicant will make a formal presentation at the next meeting. He said they basically went back to the drawing board after their original plan was not favorably received. He said the Planning and Zoning Commission unanimously approved this plan. He said they have added land to their original proposal.

Mr. Lackey asked how tall are the residential roof lines in the area. Mr. Betz said they are all two story homes, somewhere in the vicinity of 25 - 30 feet. Mr. Cline noted that the homes on Kelly's Court would back onto the athletic court, and he asked about the roof line of the proposed development in relation to the existing houses. Mr. Betz said he would have to look into that. He said if he recalls correctly, the houses to the east are set a little lower. He did note that there is a heavy tree line on the property line plus that provides buffering for the athletic fields.

Mr. Seta asked how tall the proposed roof is. Mr. Betz said it is 30 feet, as defined in the in zoning ordinance, which is the midpoint between the eave and the ridge.

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

Mr. Wiencek said that this plan was very well-received by the Planning and Zoning Commission, and that there were no modifications to speak of. He said the Commission was very pleased with the change in direction on the architectural style and the willingness to look for the solution of adding land. He said the Commission felt the original application was "too much building." He noted that the Commission's architectural advisor, Emil Slavik, felt that the artistic renderings of the view from Liberty Street were very accurate. He said the applicant has also agreed to work with Staff to address existing problems with the lighting of the parking lot and its effect into neighboring backyards.

Mr. Klein had no questions. Mr. Kaitsa asked if residents on Kelly's Court had any concerns about this development. Mr. Betz said there were a couple residents from Liberty Hills that came and complained about the lights. There have been no complaints about the structure. Mr. Kaitsa asked if the property owners listed on "Exhibit A" in the application were notified of the hearing. Mr. Betz said they were.

Mr. Betz reviewed the land that was added to this development for this proposal.

Mayor Schultz asked if an accurate record of attendance at the Village Academy has been provided. Mr. Wiencek said the permitted enrollment is 500 students, and they currently have 430. He said they could increase their enrollment to 500 with the current zoning and development plan.

Mayor Schultz asked if the proposal is for office space. Mr. Betz said that the tenants are ready to move in, some are from existing downtown buildings, and some are new. He said there will be multiple tenants. Mr. Kaisa asked what kind of tenants. Mr. Betz said that one is a title company.

Mr. Cline asked if the second floor is similar in layout to the first. Mr. Betz said the layout is not exactly the same, but it is similar in terms of size.

There being no further comment, this item was taken to a second reading.

FIRST READING: ORDINANCE 2002-15: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2002 AND DECLARING AN EMERGENCY.

Stephen A. Lutz, City Manager, reviewed that this ordinance would increase the budget amount for dues to the Chamber of Commerce and appropriate funds for computer maintenance.

Mr. Kaisa said the Finance Committee reviewed this and were supportive of it.

Mr. Klein noted that because the City pays for a gold membership to the Chamber of Commerce, he would like for members of Council to be able to attend events as members.

Mr. Lackey asked how many computers the City has. Dawn Nauman, Clerk of Council, reviewed that there are 14 computers. She reviewed that the service agreement will cover complete support. Where the City once was billed hourly, this would be a flat fee for computer support services so that the Network administrator can work on an as-needed basis as well as complete preventative maintenance, etc.

MOTION: Mr. Kaisa moved to suspend the rules on Ordinance 2002-15. Mr. Cline seconded the motion.

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

VOTE: Y 7 N 0

MOTION: Mr. Kaisa moved to adopt Ordinance 2002-15. Mr. Cline seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2002-16: AN ORDINANCE AUTHORIZING COMPLETION OF THE SELDOM SEEN ROAD RECONSTRUCTION CAPITAL IMPROVEMENT PROJECT, FURTHER AUTHORIZING THE CITY MANAGER TO SOLICIT BIDS, ACCEPT THE LOWEST AND BEST BIDS FOR THE ABOVE-REFERENCED PROJECT, AND CONTRACT THE PROJECT IN AN AMOUNT NOT TO EXCEED THE ESTIMATES, IN ACCORDANCE WITH APPROPRIATIONS FOR THE CALENDAR YEAR 2002 AND DECLARING AN EMERGENCY.

Stephen A. Lutz, City Manager, reviewed that the City of Powell has received a grant from the State and County to complete this project. The City Engineer has prepared bid packets and is ready to advertise, and this Ordinance authorizes the City Manager to go to bid, and award the contract to the lowest most responsive bidder. He said the sooner Staff can proceed with this, the better.

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

Mr. Cline suggested that Section 2 note the lowest responsible *responsive* bidder.

MOTION: Mr. Cline moved to amend Section 2 of Ordinance 2002-16 to read as follows: "Section 2: The City Manager may reject any and all bids or accept a bid with the lowest responsible responsive bidder or bidders and contract with the bidder or bidders. Mr. Kaisa seconded the motion.

VOTE: Y 7 N 0

MOTION: Mr. Cline moved to suspend the rules on Ordinance 2002-16. Mr. Kaisa seconded the motion.

Mr. Seta asked if the right of way has been acquired for this project. Mr. Lutz said that later this evening, Council will vote on a Resolution to allow the purchase of right of way. Mr. Klein said that this issue has been before Council for a long time. He said the road has severely deteriorated and had to be substantially patched to be driveable. Staff secured grants to support paying for this, and Council needs to move forward.

VOTE: Y 7 N 0

MOTION: Mr. Kaitsa moved to adopt Ordinance 2002-15. Mr. Cline seconded the motion.

VOTE: Y 7 N 0

COMMITTEE REPORTS

Development Committee: Mr. Lackey said that tonight marked the first meeting of the full committee with the Parks and Rec. and Planning and Zoning Commission members. They reviewed the signage and sidewalk repair policies for the City.

Mayor Schultz asked about the progress on materials for the bond levy issue. Mr. Lutz said that a P.A.C. has been formed and is being chaired by Dave Chambers. They are working on literature to distribute to Powell residents for the bond issue.

There were no reports for the Finance or Service Committees. There was no report from the Planning and Zoning Commission.

CITY MANAGERS REPORT

Stephen A. Lutz, City Manager, reviewed the following issues:

- The CEDA agreement for the proposed Golf Village development has been distributed to Council, and a joint hearing for the Liberty Township Trustees and City Council has been scheduled for April 23, at 7:30 p.m. at Wyandotte Run elementary school. He added that there will be a joint Council/Planning and Zoning Commission meeting to review the plan for Golf Village on April 16 at 7:30 p.m. Mr. Kaitsa asked for a summary of the development standards for Golf Village, as he is unable to attend the hearing. Mr. Wiencek said that Mr. Betz will not be at the meeting on April 16, and he suggested Council members contact him directly if they have questions before that time.
- A memo has been provided to Council regarding the Home Road Bridge closing (Exhibit).
- The accreditation ceremony for the Police Department will be held at one of the May Council meetings.

OTHER COUNCIL MATTERS

Mr. Lackey reviewed that he attended the Ashmoore's Homeowner's Association meeting last night and was asked questions about emergency and disaster planning for events such as train derailments, fires, and tornados. He said that he downloaded a policy from another City for such events, and said that it may be desirable to consider putting such a policy on the City's web site. Mr. Lutz said that the Police Department meets with other county agencies on a regular basis. Mr. Seta said that there are often joint agreements for such services between municipalities. Mr. Lutz said that such agreements exist throughout Delaware County. Mr. Cline said that the Emergency Management Agency is the lead agency for fire, toxic spills, etc., and the Fire Chief typically leads the cause. Mr. Seta said that the first responders will be the City, and that should be considered. Mr. Schultz agreed. Discussion ensued.

Mr. Kaitsa asked about the house on Hopewell Drive that is not in compliance with the natural landscaping ordinance. Mr. Betz said they have met all of the requirements of the ordinance with the exception of laying the sod. Mr. Kaitsa said that it appears there is a home on Ridgeside Drive that may also be out of compliance. Mr. Betz said he will look into it.

Action Item: Board and Commission Appointments

Mr. Lutz said that he can provide information on expiring terms at the next Council meeting.

EXECUTIVE SESSION UNDER ORC SECTION 121.22 (G) (2), POSSIBLE LAND ACQUISITION, AND PENDING LITIGATION (G) (1).

MOTION: Mr. Cline moved to adjourn to Executive Session at 9:20 p.m. to discuss possible land acquisition under ORC Section 121.22 (G) (3). Mr. Klein seconded the motion.

VOTE: Y 7 N 0

MOTION: Mr. Cline moved to adjourn from Executive Session at 10:12 p.m. Mr. Kaitsa seconded the motion.

VOTE: Y 7 N 0

MOTION: Mr. Cline moved to reconvene in regular open session at 10:13 p.m. Mr. Kaitsa seconded the motion.

VOTE: Y 7 N 0

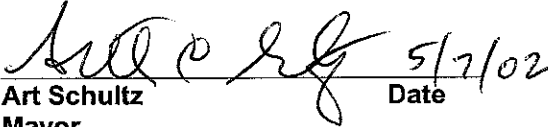
RESOLUTION 2002-07: A RESOLUTION OF INTENT TO APPROPRIATE A FEE SIMPLE INTEREST IN 0.608 ACRES, MORE OR LESS FOR ROADWAY PURPOSES, SUCH PREMISES BEING SITUATED IN THE CITY OF POWELL, COUNTY OF DELAWARE AND STATE OF OHIO DESCRIBED ON THE ATTACHMENT HERETO.

MOTION: Mr. Kaitsa moved to adopt Resolution 2002-07. Mr. Cline seconded the motion.
VOTE: Y 7 N 0


ADJOURNMENT

The Council adjourned at 10:15 p.m.

DATE MINUTES APPROVED: April 23, 2002



Art Schultz Date
Mayor



Dawn Nauman Date
Clerk of Council