

## CITY OF POWELL COUNCIL

July 9, 2002

A regular meeting of the City of Powell Council was held on July 9, 2002, and called to order at 7:34 p.m. by Vice President George Kaisa. Other Council members present were Dave Lackey, Jim Seta, Dan Wienczek, and Richard Cline. Art Schultz and Mark Klein were absent. Also present were Stephen A. Lutz, City Manager; Dawn Nauman, Clerk of Council; Shawn Leininger, Development Planner; Ken Molnar, Director of Law; residents and representatives of the press.

### CITIZEN PARTICIPATION

There was none.

Mr. Kaisa welcomed Ben Baker, Scout Troop #843, who was present as part of his goal for a Citizenship Merit badge.

### APPROVAL OF MINUTES

The minutes of June 18, 2002 were amended and approved.

### FINANCIAL REPORTS

There were no Financial Reports

### OTHER REPORTS

There were none.

### CLERK OF COUNCIL CORRESPONDENCE

A brief discussion was held regarding Council's request for a hearing on the liquor license for Mike's BBQ, which was discussed at the last meeting. Mr. Kaisa noted a letter from the applicant asking for reconsideration. Mr. Wienczek asked if there are costs involved for the owner of Mike's BBQ attending the hearing. Mr. Lutz said that he would assume the applicant would hire legal counsel, but pay no additional fees. No members indicated a desire to reconsider this decision. Mr. Kaisa noted that the process will run its course.

### RESOLUTION 2002-14: A RESOLUTION SPECIFYING THE MUNICIPAL SERVICES TO BE FURNISHED TO 137.8 ACRES WHICH IS PENDING ANNEXATION TO THE MUNICIPALITY OF POWELL.

Stephen A. Lutz, City Manager, reviewed that four property owners of 137.8 acres have submitted an annexation petition to the County Commissioners. This Resolution before Council indicates that the City will provide services if this property is annexed to the City. Mr. Lutz said that this parcel is in the Northwest Area, the joint planning area between the City and Liberty Township, and the plan calls for this area to be developed at a density of 1.5 d.u./acre.

Mr. Kaisa opened this item to public comment.

Jack Reynolds, agent for the petitioners, said that he has been working with Mr. Betz and Mr. Lutz about this annexation. He said he is aware of the CP for that area as well as the Cooperative Economic Development Agreement (CEDA) between the City, Township, and developer of Golf Village. He said that this annexation is desired by 100% of the property owners, and this is an expedited annexation that, because of the CEDA, allows them to move forward not with the blessing of the Township, but at least without opposition.

Mr. Wienczek expressed concerns that this annexation would create "islands" of Township that are prohibited by the CEDA. Mr. Reynolds said that they made sure that such islands weren't created. He said there are avenues leading to the properties about which Mr. Wienczek is concerned. Mr. Wienczek asked if the owners of those parcels of concern have been contacted to be part of the annexation. Mr. Reynolds said that those owners are not interested at this point of time.

Mr. Cline asked what is the plan for developing this land. Mr. Reynolds said that it is zoned residentially, and they understand that the permitted density is 1.5 d.u./acre.

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

Mr. Seta said that he has concerns about the CEDA and whether this meets it. Mr. Lutz said that Staff feels this meets the CEDA. Mr. Seta asked if Liberty Township has been notified of this. Mr. Lutz said they are aware of the annexation. Mr. Seta asked what is the process if they object. Mr. Lutz said if it meets the CEDA, there is no objection. Mr. Seta asked what happens once Powell passes this Resolution. Mr. Lutz said that the next step is that the County Commissioners hold a hearing, and if they approve it, the annexation ordinance comes back to

the City and it is held and acted on 60 days after that. Mr. Lutz said that there are new rules to annexations now, and that is one reason why the City and the Township entered into the CEDA—so there are no disputes regarding annexations. He said that Staff will review each annexation petition to make sure it meets the CEDA requirements. Mr. Reynolds said that the Liberty Township Trustees have 25 days to pass a resolution informing the Commissioners of any concerns they have. He said that he filed with the Township Trustees the same documents that he filed with Powell.

Mr. Kaitsa asked if Mr. Reynolds feels this annexation meets the requirements of the CEDA. Mr. Reynolds said that Glenn Dugger, who is also with his firm, helped the City in drafting the CEDA, reviewed this petition.

Mr. Wiencek asked the City Engineer if he has any concerns regarding road maintenance on streets that are within the City and the unincorporated Township. Mr. Rice said he has no immediate reservations, as there are currently similar circumstances on Liberty and Sawmill Roads. Mr. Wiencek asked if there have been any times that county maintenance lags behind Powell standards. Mr. Rice said he recalls none at this time. Mr. Seta asked if there aren't flooding problems on the section of Rutherford Road included in this annexation. Mr. Rice said he has no detailed knowledge, but he would be happy to visit the site.

Mr. Lackey asked Mr. Molnar if he agrees that this meets the terms of the CEDA agreement. Mr. Molnar said he hasn't reviewed it yet, but he agrees with the City Manager that this is a proforma resolution required for any annexation, and the City doesn't have to accept the annexation. He said according to the CEDA, Liberty Township is probably under an obligation to support it. Mr. Lackey asked that the City contact the Liberty Township Trustees about this item. Mr. Lutz said he did discuss it with them at the Powell Festival.

Mr. Kaitsa said that his concern is whether this complies with the CEDA, and it sounds like it does. He asked if Staff is recommending that Council act on this Resolution. Mr. Lutz said it is, and as has been mentioned, this is the first of several steps involved in the annexation process.

**MOTION:** Mr. Cline moved to amend Resolution 2002-14 to change the second line of Section 1 to read "which dates estimated to be on or about January 5, 2003." Mr. Wiencek seconded the motion.

**VOTE:** Y 5 N 0

**MOTION:** Mr. Cline moved to adopt Resolution 2002-14. Mr. Wiencek seconded the motion.

**VOTE:** Y 5 N 0

**FIRST READING: ORDINANCE 2002-29: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH EDSALL & ASSOCIATES LLC FOR THE PURPOSE OF CONDUCTING PARK SITE RECONNAISSANCES, UPDATING PARK DEVELOPMENT MASTER PLANS AND UPDATING PARK CONSTRUCTION ESTIMATES.**

Karen Slavik, Chair, Parks and Rec. Advisory Board, reviewed the proposal for how to format the public input meetings for review of the park master plans (Exhibit 1). Emil Slavik reviewed the card display system that he has devised for facilitating such meetings.

Mr. Seta said that he thinks this is a great approach. He asked at what point do recommendations get weeded out during the planning process. Ms. Slavik noted that Mr. Edsall's proposal includes Charettes that Parks and Rec. and Council members would attend where the public comment can be considered and incorporated. She said that there are already master plans, and there are no plans to start over with the park planning process. She noted, however, that it is easier to make any changes now rather than later.

Mr. Kaitsa said this is a great approach and he likes the idea of someone from the City acting as the facilitator.

Ms. Slavik reviewed her concerns about Mr. Edsall's proposal (Exhibit).

Mr. Kaitsa opened this item to public comment. Hearing none, the public comment session was closed.

Mr. Wiencek said he is in agreement with the process as proposed. He said he thinks changing the dates and allowing for multiple parks to be discussed at each meeting addresses his previous concerns. He said he supports the Ordinance as it is before Council. He said he has dealt personally with Mr. Edsall in the past as a member of the Parks and Rec. Board, and he is very happy with the City's working relationship with him as well as the quality of the work. He said he thinks Ms. Slavik's points about minimizing costs whenever possible are

good ones, and he thinks the current proposal would allow the City to use Mr. Edsall for less time and therefore reduce the cost.

Mr. Cline noted that Mayor Schultz sent an email about this issue since he is unable to attend (Exhibit 3). He questioned how Mr. Schultz indicates the cost between the two proposals is similar, when Schmidt's proposal is much more than Edsall's. Mr. Lutz said that Schmidt Land Design gave a proposal for the entire process, including construction documents, where Edsall's proposal is to the first step. Mr. Cline agreed with Mayor Schultz's recommendation to first develop the plans, then go out to bid again to implement those plans. He agreed with the recommendation that the Development Committee review the item as proposed by the Mayor. Mr. Lackey asked what exactly the Committee is expected to determine. Mr. Cline said the goal is to determine 1.) whether one bid is more favorable than the other, and 2.) assuming that one bid is better than the other, are there changes that need to be made to that bid, and 3.) whether the conceptual process outlined by Mayor Schultz is endorsed by the Committee.

Mr. Seta agreed with Ms. Slavik's comments. He expressed concern that Mr. Edsall's proposal includes parks that have not been identified as a priority, such as the Black Oak and Powell Place. He said that review of new park areas should also not be included in this proposal. He said he also has a problem with Mr. Edsall attending the public planning meetings, as those should be a very open "public Powell input session" where information is gathered and then provided to Mr. Edsall. He asked Mr. Rice about the documents he is requiring from the City. Mr. Rice said he hasn't reviewed it yet. Mr. Seta expressed concern that much of Schmidt's proposal focuses on construction documents, which is not necessary at this time. He said he has problem with the clause in the proposal regarding ownership of documents, as he thinks the City should own the resulting plans.

Mr. Kaitsa said he also appreciates Mayor Schultz's email. He said both firms are quality firms. He said he likes the process outlined by Ms. Slavik. He said he likes that Powell is taking a leadership role in this development. He expressed concern that the two proposals received are not "apples to apples." He said he would like similar proposals for the scope of work so a better comparison can be made. He said he likes the idea of first developing a concept plan, and then a construction plan. Mr. Seta asked if the same Request for Proposal was received by both firms. Mr. Lutz said that Staff asked three consultants to provide a proposal of how they would recommend going from where the City is today to constructing the parks. Edsall and Schmidt Land Design responded.

The Development Committee scheduled a meeting for Wednesday, July 17 at 5:00 p.m. to review the proposals. There being no further comment, this item was taken to a second reading.

**FIRST READING:      ORDINANCE 2002-34:              AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2002.**

Stephen A. Lutz, City Manager, said that this Ordinance is related to funding the previous ordinance. He recommended taking to second reading. There being no further comment, this item was taken to a second reading.

**FIRST READING:      ORDINANCE 2002-28: AN ORDINANCE APPROVING THE FINAL DEVELOPMENT PLAN FOR NEWBURY HOMES, FOR 16.454 ACRES LOCATED ON THE EAST SIDE OF SAWMILL ROAD AND WEST OF LAKES OF POWELL FOR 15 TWO UNIT CONDOMINIUM BUILDINGS (30 UNITS) ON 10.4 ACRES AND AN EXISTING CHURCH ON 6.25 ACRES.**

Shawn Leininger, Development Planner, reviewed this development plan. He noted that a portion of this 17-unit development will be located on one acre of land the applicants have petitioned to annex to the City, but this Ordinance is for the portion currently in Powell. Mr. Leininger said that the two units south of Zion Drive will come forward for review once the annexation is complete.

Mr. Leininger reviewed the setback divergences in the plan. He noted that the setback along the church site should be 30 feet, and they are showing 22-29 feet on one side and 14 feet on another. Mr. Leininger reviewed the elevation for the 2 and 3 bedroom units and identified that they are planning to use stucco stone and Hardiplank. He noted that the attorney for the applicant has requested that Council vote on this ordinance at the next meeting. Mr. Cline asked if it is correct that the only variance is the setback variance on the eastern edge of the church site. Mr. Leininger said there is also a variance on the northern edge. Mr. Wiencek said that the density is technically a variance which would allow 1.7 d.u./acre.

Mr. Leininger said the density is 2.88 for this portion, and it will be 2.98 with the annexation. He said there has been a great deal of discussion about the density with the Planning and Zoning Commission, Staff, and Lakes of Powell residents. He noted that there are single family homes to the east and commercial development to the west. He said the condominiums make a good transition, and with the retention pond moved to along Zion Drive,

the bikepath was tied in with the bikepath at the Lakes of Powell to provide the public benefit necessary for the increase in density. He said in addition, Staff is working with the applicant and the adjacent property owner to try to arrange an easement to extend the bikepath (at the cost of the developer) down Zion Drive to Sawmill Road and further south.

Mr. Leininger said the applicant has amended their original proposal from 36 units to 30, and added public amenities, resulting in a good compromise. Mr. Wiencek said that given the configuration and size, it would be difficult if not impossible to develop this site at 1.7 d.u./acre. The Commission felt there would not be a market for half acre lots. He said that the Commission also required the vinyl siding be upgraded to Hardiplank. He said that these units have stricter architectural requirements than the Lakes of Powell, which did allow vinyl. He said this plan initially faced a high degree of opposition from Lakes of Powell and Woods of Sawmill residents, and as a result the developer has set the condominiums back from adjoining developments to allow the stand of trees to remain. The landscaping between the developments was enhanced. The buildings were shifted to keep the units from backing up exactly with the houses adjacent. Three bedroom units were required in highly visible areas because they are the most interesting elevation. He said the Commission asked the developer to try to obtain the one acre parcel to improve the plan. He said at the final public hearing, most, if not all of the opposition was dealt with. He said that the applicant did a fairly good job meeting the residents' concerns.

Mr. Cline asked if this development will change the density of the church site. Mr. Leininger said it will take 10.4 acres away from that site and leave a 6-acre parcel. He said that only 5 acres are required for the church to comply with the Zoning Code.

Mr. Kaitsa asked for a comparison between the density for this condo development and other similar developments in the City. Mr. Leininger reviewed a chart identifying such densities (Exhibit 4) and identified the public improvements that resulted in the density bonuses. Mr. Kaitsa said that this development, with a net density of 2.88 and a gross density of 1.88 "is on the low end" of the densities. Mr. Leininger said that is correct. Mr. Kaitsa asked what is the position of the property owner only 14 feet away from this development. Mr. Leininger said that that property owner was on the notification list, and he has received no objections.

Mr. Kaitsa opened to public comment. Hearing none, he closed the public comment section.

Samantha Shuler, attorney for the applicant, said that they did go through four public hearings on this plan, and there was a lot of input and a lot of changes. She said that this is a great plan for everyone involved for this particular piece, which is unique in that it has Sawmill Road and Zion Drive with a church and commercial development across the street. Mr. Wiencek asked if the applicant also met privately with area residents. Ms. Shuler said that Lakes of Powell, Woods of Sawmill, and Wedgewood residents were invited to the church to review their original proposal. Mr. Cline asked about the property to the north of this development. Ms. Shuler said it is a single-family home. Mr. Newcomb said that they inquired about purchasing that property and were not successful. Mr. Cline asked that there be specific language regarding how the treed preserve in this development should be maintained.

Mr. Seta said that the ordinance includes information regarding wetland delineation. Mr. Newcomb said that there are three very small areas that need to be addressed, and they total under an acre. Mr. Seta noted that the process of wetland delineation is very cumbersome and can be drawn out for a number of years. He said he understands the applicant wants to push forward, but that is a lengthy process. Mr. Cline said that sounds like one of the reasons that the applicant would like it to be approved at the next reading. Mr. Kaitsa asked if the ordinance needs to be approved to proceed with that. Ms. Shuler said that the purchase of the land is contingent on the ordinance being approved, and you wouldn't begin delineation until you knew that the purchase would go through. Mr. Kaitsa asked again about the property owner in Liberty Township. He asked if they are aware that this development will be close to their property line. Ms. Shuler said they have been invited to all of the meetings, but she is unaware of any time they have spoken at the meetings.

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

Mr. Seta said his concerns have been met. He asked if Staff is making sure that notice is going out for public meetings. He said he is not convinced that everyone has had the opportunity to speak. Dawn Nauman, Clerk of Council, noted that the list got larger as the process went along because of interested parties beyond the 250-foot requirement for notification. While the list got larger, the attendance got smaller. Mr. Kaitsa asked if the property owner in Liberty Township about which he previously asked was notified of the hearings. Ms. Nauman reiterated that property owners within 250 feet of the development plan were notified of the public hearing regardless of whether they are Liberty Township or Powell residents.

Mr. Lackey said that he thinks it is too easy to fall into the trap of comparing the next development plan with its prior versions rather than with the City's standards. He said he doesn't think it is Council's job to make land more developable by reducing those standards. He said the standards are for .7 d.u./acre, with a .5 credit for parks, and another for roadways, totaling 1.7 d.u./acre. He said this development is more than four times the base density. He said while some say that density is just numbers, he disagrees, because density effects green space, emergency services, traffic, and schools. He said while condos have traditionally been inhabited by empty nesters and young couples, this type may lead to more families, which would create a larger impact on roads and public services. He said the Murphy property is different because it provided a critical portion of the roadway plan in Murphy Parkway as well as significant public lands. He said comparing this to the "assisted living" south of Judge Hill's property is comparing apples to oranges.

Mr. Cline asked what is the density of the Lakes of Powell subdivision. Mr. Leininger said it is 3.56 d.u./acre for sections 1-4. Mr. Cline said that while he agrees with Mr. Lackey's comments, he feels that the standards need to be evaluated in the context of the surrounding area. He said that Lakes of Powell was given a higher density because of the school property and other tradeoffs. However, the City has created a situation where there is a net density of 3.5 d.u./acre adjacent, and they need to recognize the impact of that development on the marketability of adjoining property. He said his initial concerns of 2.98 d.u./acre being more than 50% above the maximum standard have been mitigated somewhat. He said that the pond feature, bikepath, and treed preserve are community assets that should be considered. He reiterated his concern that expressed language be created regarding the maintenance of the treed preserve to save the City from the trouble that has come up in other subdivisions. He said that consideration should be given to an alternative if an easement is not granted for the bikepath. Mr. Wiencek said that this developer is being given a density credit for a bikepath, so if the easement isn't possible, the City should consider funds for a similar improvement elsewhere. After a brief discussion amongst the Council and the City Engineer, Mr. Newcomb agreed that if installation isn't possible, they will pay \$15,000.

Mr. Kaitsa said that while he agrees with Mr. Lackey's comments about holding to standards, he feels that when Council acts, it sets a precedent, and that is why he was interested in comparable densities. He said that the gross density is 1.8 d.u./acre, and he doesn't think that is unreasonable. He said that it should be recognized that this is a transition property between several different uses, and that makes it different to develop than a straight residential parcel. He said given that and the fact that the applicant has worked very well with the Planning and Zoning Commission to address the neighbors concerns, he would be willing to support this ordinance with the conditions Mr. Cline indicated as well as requiring payment if the bikepath can't be installed.

Mr. Kaitsa polled Council on waiving the third reading. Mr. Seta said he is opposed to waiving it. Mr. Lackey said he is against the plan, and also against waiving the third reading. Mr. Cline said he is not opposed, but he may be out of town on military duty for the next reading which would keep him from voting. Mr. Wiencek said he would support it lacking significant public opposition. Mr. Kaitsa told the applicant to be prepared that this may go to a third reading.

#### **PLANNING AND ZONING COMMISSION RECOMMENDATION:**

##### **ZONING TEXT AMENDMENT (Reconsideration)**

##### **Section 1147.14 Recreational Structures**

Kevin Coady, 241 Shalebrook Drive, read a statement into the record (Exhibit 5) requesting revision to the Zoning Code requirements for Recreational Structures. He referred to a case in the City of Dublin that supports this section of the Code.

Mr. Lackey asked what was Mr. Coady's violation. Mr. Coady said that his trampoline was within 10 feet of the property line. Mr. Lackey asked if it is not easy to move. Mr. Coady said that is not the point. Mr. Lackey said that Council is not a judicial body, and that the Law Director can comment on the enforceability of the City statutes. He asked what Mr. Coady is requesting. Mr. Coady said that he wants the ordinance to be reasonable. Mr. Lackey noted that there is a variance procedure in the City of Powell. Mr. Leininger they could apply for a variance to the BZA, but that he thinks that Mr. Coady's question is regarding the effective date. Mr. Lackey said that ordinances such as this typically apply to existing uses. He said the natural landscaping ordinance is a prime example. Mr. Coady said that while it is obviously very easy to move a trampoline, swing sets anchored with footers are a substantial burden.

Steve Hizak, 265 Shalebrook Drive, said that he is also in violation. He said he has a 1,300 pound swing set that is 4 ½ feet too close to the property line. Mr. Lackey said that he recently helped his neighbor move his swing set to comply, and agreed it isn't easy, but it is possible. Mr. Hizak said that while his neighbors would help him

move it, he has had it since 1997 and never had a complaint. He said that of the 14 houses in his development between Shalebrook and Glenworth, there is a 50% non-compliance rate. He said that its pretty safe to say the entire City would have a similar non-compliance rate. He said if one of his adjoining neighbors had a problem, he would move it in a heartbeat.

Mr. Lackey said that some people want to be neighborly, and while they won't complain, they still may not appreciate the noise generated from such a playset. He noted that this went through several public hearings. He asked if there was debate regarding the side yard setback issue. Mr. Wiencek said the concern raised at the Planning and Zoning Commission was that there was potential for one person to have neighbors on both sides with play structures immediately adjacent so they have a view of two, or three if they have their own. Mr. Lackey said he understands that the residents probably didn't know about this until they got the letter, and that is how the City heard comments and objections to the portion of the Code regarding basketball hoops.

Bryan Cole, 299 Shalebrook, said that he doesn't think they are asking for the law to be changed, but rather not applied retroactively. He said that because this was based on a complaint, there is a whole neighborhood of residents looking through the ordinances to see who is in violation. He said he doesn't think that is desirable in a neighborhood, and he asked Council to reconsider a grandfather situation so that this doesn't end up in a battle.

Mr. Kaitza asked if there was there some reason when this came before the Planning and Zoning Commission that it would apply to preexisting structures. Mr. Lackey questioned how else it would be enforced. He said he doesn't have the receipt for his play set. He said that the justification for the statute was so that people could enjoy their own properties. Play sets, because they are a focal point for noise, would be centered on the property of the person who owns it. Mr. Wiencek agreed that enforcement would be an issue. He said questions could arise for people who take their sets down in the winter and put them back up. Mr. Coady said that the ORC provides guidelines that indicate if a structure is moved for 6 months or more, then the homeowner must conform to the new Zoning Code.

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

Ken Molnar, Director of Law, agreed that whenever there is a change in zoning, there is a concept of nonconforming uses, and generally speaking, if they are in place before the change is enacted, they are permissible. He said there are however, safety regulations that can be retroactive, such as basketball hoops in the road. He said that if this ordinance is intended for safety purposes, it can be retroactive. If it is for aesthetic purposes, the issue about nonconforming uses applies. He said this ordinance includes "a little of both" purposes, and it is probably a good idea to separate the aesthetic purposes from the safety purposes so that the pre-existing structures can be handled accordingly.

Mr. Cline thanked Mr. Coady for bringing this item to his attention as referred to in his previous email (Exhibit 6). He said that when Council voted on this ordinance, his recollection was that the entire discussion centered around the basketball courts in the front of driveways and the inherent risk to public safety that they create. He said that if he had been aware of the circumstances of these residents, it is likely that Council would have determined that a 5 foot sideyard setback is sufficient in the rear yard. He said that it is unfortunate that Staff has been put in the position where they must enforce this ordinance, because it is the law. Yet, if given the choice, they might let it go. He said he thinks the ordinance should be changed, with the safety issues separated out and made retroactive. The aesthetic concerns can be identified as such and the pre-existing conditions can be allowed to stay as they are. He said he would also be in favor of changing the requirement to 5 feet instead of 10.

Mr. Kaitza agreed with Mr. Cline. He thanked the residents for their comments, and said two ordinances are needed as described by Mr. Cline.

Mr. Lackey said that he agrees that the play structure issue was one of aesthetics. He said he still thinks 10 feet is still a reasonable setback. He said he has no problem separating them as described, however, he would want enforceability from the day of the original adoption rather than from this point. Mr. Molnar said he doesn't see any reason why that can't be done.

Discussion ensued regarding Mr. Coady's earlier concern that if the complaining party is not identified, the City is in violation of the Public Records Act. Mr. Molnar noted that there is an exception to the act regarding law-enforcement officials in the midst of investigations that was recently broadened protection to someone such as a zoning inspector. Mr. Molnar said that in addition, when the Zoning Inspector receives complaint calls, he typically doesn't make a written record of that call, and he is not obligated to create one as response to a request

for records. He said that if someone would call to complain, and a record would be made, and the caller would not be guaranteed confidentiality, then that would be a public record as defined by the act.

Mr. Wiencek asked if there is any information in any of the ORC sections or court cases discussed tonight regarding temporary structures being treated differently than those that are permanent. Mr. Molnar said that most of the discussion centers around the use rather than the structure. Mr. Wiencek said that he is not opposed to restructuring the ordinance, but that grandfathering items may be more appropriate for something that it is costly to move rather than a trampoline which needs to be moved 5-10 feet. He said that he feels the aesthetic concerns are valid. Mr. Cline said it seems to him that the most important issue is not how difficult it would be to come into compliance, but rather how regular the use has been. Mr. Wiencek said that he would like to balance these concerns with the "silent majority" of residents who may be bothered by their neighbors recreational structure and do not say anything. Mr. Kaitsa agreed with Mr. Cline that any grandfathered structures should be applied uniformly, not based on how difficult it is to move.

Mr. Seta asked how many violations are currently pending for these items. Mr. Leininger said there are five. Mr. Seta expressed concern that the law could be changed and the people that want it would come back and complain. He suggested that the Planning and Zoning Commission look at this and break out the aesthetic concerns from the safety concerns. He said when he looks at this ordinance, his concern is for safety issues.

Mr. Leininger expressed concerns about how to apply the grandfather clause. Mr. Kaitsa said he feels the burden of proof is on the residents. Mr. Lackey said that they may have to rely on an affidavit. After further discussion, Mr. Kaitsa noted that this item will be sent back to the Planning and Zoning Commission where two separate ordinances can be prepared, one for safety and use of structures in the right of way, and the second for aesthetic concerns. Mr. Lutz said that those residents who are currently in violation will be contacted and told that they do not need to comply as the ordinance is being reconsidered.

**FIRST READING: ORDINANCE 2002-33: AN ORDINANCE AUTHORIZING COMPLETION OF THE DEL 750-0289 CULVERT REPLACEMENT CAPITAL IMPROVEMENT PROJECT, FURTHER AUTHORIZING THE CITY MANAGER TO SOLICIT BIDS, ACCEPT THE LOWEST RESPONSIBLE RESPONSIVE 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 received an Ohio Public Works Commission grant to repair a failing culvert along State Route 750, between Beech Ridge and Olentangy Ridge Place. This Ordinance allows the Engineer to go out to bid and to accept the lowest bid and to enter into contract to repair the culvert.

Rob Rice, City Engineer, reviewed that they are planning to complete the majority of this project at night or in non-peak daytime hours. Mr. Seta asked if this culvert is collapsing. Mr. Rice said that the original limestone culvert is cracked, and they will be replacing it with concrete.

Mr. Kaitsa opened this item to public comment. Hearing none, he closed the public comment session.

**MOTION: Mr. Cline moved to suspend the rules on Ordinance 2002-33. Mr. Wiencek seconded the motion.**

**VOTE: Y 5 N 0**

**MOTION: Mr. Cline moved to adopt Ordinance 2002-33. Mr. Wiencek seconded the motion.**

**VOTE: Y 5 N 0**

**FIRST READING: ORDINANCE 2002-35: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2002.**

Stephen A. Lutz, City Manager, reviewed that last year's second half tax bills have come due, and the City is \$4,000 short in its tax account. He said that the City must pay taxes for property that came on line last year, as it cannot file for an exemption until the following year. Mr. Seta asked if the City will get reimbursed. Mr. Molnar said they won't, because the City has to pay taxes during the year it acquires property.

Mr. Kaitsa opened this item to public comment. Hearing none, he closed the public comment session.

**MOTION: Mr. Cline moved to suspend the rules on Ordinance 2002-35. Mr. Wiencek seconded the motion.**

**VOTE: Y 5 N 0**

**MOTION:** Mr. Cline moved to adopt Ordinance 2002-35. Mr. Wiencek seconded the motion.

**VOTE:** Y 5 N 0

**COMMITTEE REPORTS**

**Development Committee:** No report.

**Finance Committee:** No report.

**Service Committee:** No report.

**CITY MANAGERS REPORT**

Stephen A. Lutz, City Manager, reviewed that Council will be interviewing two individuals who has expressed a desire to fill one of the open spaces on the Parks and Rec. Advisory Board.

Mr. Lutz asked Council members to notify him if they know if anyone who would like to serve on the Delaware County Transit Board.

**OTHER COUNCIL MATTERS**

There were none.

**ADJOURNMENT**

Council adjourned at 9:40 p.m.

**DATE MINUTES APPROVED:** July 23, 2002

Art Schultz 8/6/02  
Art Schultz Date  
Mayor

Dawn Nauman 7/31/02  
Dawn Nauman Date  
Clerk of Council