

CITY OF POWELL COUNCIL

August 6, 2002

A regular meeting of the City of Powell Council was held on August 6, 2002, and called to order at 7:30 p.m. by Mayor Art Schultz. Other Council members present were George Kaitsa, Dave Lackey, Jim Seta, Mark Klein, and Richard Cline. Dan Wiencek was absent. Also present were Stephen A. Lutz, City Manager; Dawn Nauman, Clerk of Council; David Betz, Director of Development; Shawn Leininger, Development Planner; Ken Molnar, Director of Law; residents and representatives of the press.

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION

Denise Flint, 353 Rosewood Court, asked to speak at this time on the issue of motorized scooters. She said she feels these vehicles are dangerous, noisy, and they are not something she would like to see in her neighborhood, let alone in her backyard. She said she is hoping Council will take this into consideration.

There were no further citizen comments.

APPROVAL OF MINUTES

The minutes of July 23, 2002 were amended and approved.

FINANCIAL REPORTS

The Accounts Payable was received.

OTHER REPORTS

Mr. Betz updated Council on the process for forming a steering committee for the Comprehensive Plan.

Mayor Schultz asked for an update on the comments made at the last meeting by the owners of Amy's Designs.

Mr. Kaitsa asked what is the process for recommending citizens to serve on the CP steering committee.

Mr. Betz said it is an informal process. He said that 16 residents have expressed an interest in serving on this committee. Mr. Kaitsa said that he would like to support the candidacy of Don Grubbs.

CLERK OF COUNCIL CORRESPONDENCE

Liquor License Request – 3737 Village Club Drive

Stephen A. Lutz, City Manager, said that this liquor license is for the clubhouse for Golf Village. He noted that the procedure is for Council to review the request.

Mr. Seta asked if there was a petition circulated among residents in the area of this petition. Mr. Lutz said that there are no residents in this area, and he is unaware of this petition.

Jacob Evans, Craig Group, on behalf of the applicant, said that a petition has been circulated because this precinct is dry for Sunday sales, and they would like to put an issue on the ballot to allow Sunday sales. He said they have about 180 residents in the precinct that signed in favor of Sunday sales.

Council did not request a hearing on this liquor license. The Clerk of Council will return the correspondence to the Ohio Department of Liquor Control indicating as such.

THIRD 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.

David Betz, Director of Development, said that the public hearing for this project was held at the last meeting. He reviewed the site plan, adjoining properties, and the recommendation and conditions of the Planning and Zoning Commission.

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

Richard Cline arrived at 7:41.

Mayor Schultz asked where this property is in location to a road that goes all the way to Sawmill Parkway. Mr. Betz identified its location on the map. Mayor Schultz asked if one was driving their bike on that sidewalk if they would be at that intersection. Mr. Betz said that they would. Mayor Schultz said a break in the curb at that point would be desirable. Mr. Betz said that could be planned for.

No further council comments.

Mr. Kaitsa said that he thinks there was an intention to determine a date certain at which the developer would pay \$15,000 in lieu of constructing the path. He said that he thinks that was at the time of occupancy, but right now, the ordinance indicates that this will be determined at the discretion of the Development Director. Mr. Molnar said that the language in the ordinance allows the Development Director to require the donation earlier than date of occupancy. Samantha Shuler, attorney for the applicant, said that they are fine with a requirement that it be paid by the time of occupancy. Mr. Cline noted that it probably doesn't matter to the applicant whether that is the first or the last occupancy. Ms. Shuler said that is correct. Mr. Kaitsa suggested that it be required "no later than the date of the first certificate of occupancy."

MOTION: Mr. Cline moved to amend Ordinance 2002-28 so that section 9 reads: "If the easement is not provided by the owner of the Hwang parcel within a time frame deemed appropriate by the Development Director, but in any event no later than the date of the issuance of the first Certificate of Occupancy, the Development Director shall then at his discretion advise the developer that the easement cannot be obtained and the developer will deliver the sum of fifteen thousand dollars (\$15,000) to the City in lieu of completing the bike path improvement which sum shall be utilized for a bike path or a similar bike path improvement elsewhere in the City." Mr. Kaitsa seconded the motion.

VOTE: Y 6 N 0

Mr. Lackey said that he is not commenting on the quality of the development, as it looks to be high quality. He said speaking to the density, when the Council lowers its standards to enable a landowner to make a great profit, the community pays the price. He said that when the City has varied its standards, the benefits to the community outweigh the costs. He said that they do not in this instance.

Mr. Cline said he agrees with the concept of Mr. Lackey's comments, but he feels the facts don't fit this particular application. He said he thinks it is important to recognize that the Zoning that Council previously granted on adjacent properties has impacted this landowner's ability to develop economically.

MOTION: Mr. Kaitsa moved to adopt Ordinance 2002-28. Mr. Cline seconded the motion.

VOTE: Y 5 N 1 (Lackey)

Stephen A. Lutz, City Manager, recommended addressing item 12, the first reading of ordinance 2002-30 prior to the Zoning Map Amendment, as they both relate to the same land.

FIRST READING: **ORDINANCE 2002-30: AN ORDINANCE ACCEPTING THE ANNEXATION OF A 935.52 ACRE TRACT, MORE OR LESS TO THE MUNICIPALITY OF POWELL AND DECLARING AN EMERGENCY.**

Stephen A. Lutz, City Manager, said that last fall, the City began discussions with the property owners of the development known as Golf Village, which is a 935-acre tract located northwest of the current City boundaries. In the past year, the City entered into a Cooperative Economic Development Agreement (CEDA) with Liberty Township, and into a pre-annexation agreement with the developer of this property. City Council passed a resolution saying that it would provide services to this area, and the County Commissioners have approved this annexation. Staff is recommending that this Ordinance be adopted by emergency this evening so that the bonds for the Golf Village development can be issued with the current favorable rates. Mr. Lutz noted that there have been several public hearings during the CEDA and pre-annexation agreement process.

David Betz, Director of Development, reviewed the area to be annexed.

Mr. Molnar noted a typographical error in the fifth Whereas clause, which should read "with the developer and the Liberty Township..." rather than with the developer in the Liberty Township..."

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

MOTION: Mr. Cline moved to amend Ordinance 2002-30 so that the final whereas paragraph reads: "WHEREAS, this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety, and welfare. The reason for such necessity is that it is necessary to borrow funds immediately at current favorable rates to finalize other agreements with the developer and the Liberty Township Community Infrastructure Financing Authority associated with this annexation. Therefore, this ordinance should go into immediate effect."

VOTE: Y 6 N 0

MOTION: Mr. Cline moved to suspend the rules on Ordinance 2002-30. Mr. Kaitsa seconded the motion.

VOTE: Y 6 N 0

MOTION: Mr. Cline moved to adopt Ordinance 2002-30. Mr. Kaitsa seconded the motion.

VOTE: Y 6 N 0

SECOND READING: ORDINANCE 2002-31: AN ORDINANCE ADOPTING A ZONING MAP AMENDMENT FOR TRIANGLE PROPERTIES INC., ET AL FROM LIBERTY TOWNSHIP PR, PLANNED RESIDENCE DISTRICT AND PC, PLANNED COMMERCIAL AND OFFICE DISTRICT TO CITY OF POWELL PR, PLANNED RESIDENCE DISTRICT, PC, PLANNED COMMERCIAL DISTRICT AND PI, PLANNED INDUSTRIAL DISTRICT FOR 935.92 ACRES, RECENTLY ANNEXED INTO THE CITY OF POWELL.

ADVERTISED PUBLIC HEARING

Mayor Schultz noted that this is the advertised public hearing of this Ordinance.

Stephen A. Lutz, City Manager, reviewed that as with any annexation, the City is required to change the zoning from the Liberty Township zoning to the City of Powell's zoning. He said that this Zoning Map Amendment has been reviewed and recommended by the Planning and Zoning Commission. He said that in many ways, this is administrative because of the CEDA and pre-annexation agreement that were adopted by the City and also address the zoning of this property.

David Betz, Director of Development, reviewed the zoning as identified on the map and corresponding to "Attachment C" of the CEDA.

Mr. Cline said that when this was considered earlier, there was some discussion as to whether there would be an amending to the zoning approved by Liberty Township. He asked if this incorporates those changes. Mr. Betz said there have been several administrative rules, and this takes into account all of those. He said that one thing that was discussed was an industrial piece that may come in for a change. He said that would be reviewed by City Council.

Mr. Kaitsa asked if there is a need to suspend the rules on this item. Mr. Molnar said that they can if they choose to.

MOTION: Mr. Cline moved to suspend the rules on Ordinance 2002-31. Mr. Kaitsa seconded the motion.

VOTE: Y 6 N 0

MOTION: Mr. Kaitsa moved to adopt Ordinance 2002-31. Mr. Cline seconded the motion.

VOTE: Y 6 N 0

SECOND READING: ORDINANCE 2002-32: AN ORDINANCE APPROVING THE COMBINED PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR THE GODDARD SCHOOL, FOR AN 8,000 SQ. FT. PRESCHOOL/DAYCARE BUILDING ON 1.23 ACRES AT 419 WEST OLENTANGY STREET.

ADVERTISED PUBLIC HEARING

Stephen A. Lutz, City Manager, said that David Betz will review this item. He noted that the applicant has asked for a suspension of the rules on this legislation and adoption this evening.

David Betz, Director of Development, reviewed the location of this property, at the western-most lot of the Murphy Property. He said that the Murphy park is to the south, Colonial Fireplace is to the west, and Rutherford Funeral Homes is across the street. He reviewed this proposal for a one-story, 8,000 sq. ft preschool. He reviewed the site plan. He noted that the access from W. Olentangy Street is right in and right out, and that there is additional access from Murphy Parkway. He said the plan includes parking spaces on the east side of the lot, playground to the west and south along a nice stand of trees. He said the proposal is for brick and stone materials with a

gabled extension. He noted that the mechanicals will be on the roof, sunken down in and with a decorative fence in front for screening. Mr. Betz reviewed the east and west elevations, with classrooms on both sides, and doors that exit onto the playground. He reviewed the proposal for a picket fence along the side of the building, the sidewalks, and the landscape area. He said that there was a great deal of discussion of the elevation and materials at the Planning and Zoning Commission phase. He said that the Planning and Zoning Commission recommends approval with the conditions listed in the ordinance.

Steve Moeberger, Applicant, said they worked very hard with the Planning and Zoning Commission, and the result is a Goddard school that is unique to the other 9-10 schools in the Columbus area. He said he thinks it turned out great.

Mr. Cline asked if there are any variances in this plan. Mr. Betz said that the number of parking spaces were removed to push the edge of the parking lot to preserve the trees in the back. He said the front setback had been reduced during the original zoning. Mayor Schultz asked if they are still showing the sign in the front. Mr. Betz said that should be removed from the plan, as it is an old transparency.

Mr. Seta asked if the site is being cleared right now. Mr. Betz said that Staff reviewed the tree removal with an arborist and the applicant and chose the correct ones to remove. Mr. Moeberger said that there was a miscommunication with the subcontractor who assumed that since the trees were marked they could be removed. He said that he stopped the work when he found out what was happening. Mr. Betz said that the correct trees were removed.

Mr. Kaitsa asked if something should be done to address the signage that Mayor Schultz mentioned. Mr. Betz said that Item 7 of the ordinance requires that the Planning and Zoning Commission review any sign proposals. He said a ground sign is allowable by code, however, not at this location. Mr. Moeberger said it is their intention to use such a sign.

Mayor Schultz opened this item to public comment.

John Wright, 137 North Liberty Street, expressed concern that the Village Academy, a school in Powell, started out with a small lot which in time became overbuilt. He said that any type of school should require more land than what this applicant has so that they can add on.

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

Mayor Schultz said there has been an instance in Powell where a school has had second thoughts and found that with a popular location, they were forced to expand. Mr. Lackey clarified that that school was K-12. Mr. Moeberger said that this is not. He said it goes up to six years old, and of the 125 Goddard Schools across the Country, there have been no expansions. Andy Martin, Goddard Schools, said that the need for additional playground space that an expansion would require makes it impossible to expand on this lot.

Mr. Cline said that he agrees with Mr. Wright's concern, but he feels this is different in their mission is to be a preschool. He said the Village Academy meant to be a full school. He agreed that this applicant needs to know that they have reached the maximum capacity on this land, and Council will not look favorably on a request for a variance to expand this school. If they should change their mission at a later date and decide that expansion is appropriate, they should also look for more land.

MOTION: Mr. Klein moved to suspend the rules on Ordinance 2002-32. Mr. Kaitsa seconded the motion.

VOTE: Y 6 N 0

MOTION: Mr. Klein moved to adopt Ordinance 2002-32. Mr. Kaitsa seconded the motion.

VOTE: Y 6 N 0

SECOND READING: ORDINANCE 2002-36: AN ORDINANCE AMENDING SECTIONS 301 AND 331.37 OF THE CODIFIED ORDINANCES OF THE CITY OF POWELL.

Stephen A. Lutz, City Manger, said that the City was recently made aware that current ordinances prohibit motorized vehicles on sidewalks but not on the bikepaths because those regulations indicated that such prohibition is valid on pathways posted as such. He said this Ordinance would prohibit motorized vehicles, except

for those assisting the handicapped on the City's bikepaths as well as the sidewalks. He said there has been quite a bit of discussion lately regarding motorized vehicles, and this ordinance would prohibit their use on bikepaths and require that they be used on private property only. He said that emergency language has been included so that if this ordinance is adopted this evening, it can take effect. Mr. Molnar noted that an amendment would be needed to include "AND DECLARING AN EMERGENCY" to the title.

Mr. Lackey questioned the need for the words "other than a bicycle" within this ordinance. Mr. Cline said that in the context of drunk driving citations, the courts have interpreted motor vehicles to include bicycles. Mr. Lackey said he feels that the language should be left as it is in that case. Mr. Klein expressed concern about how the ordinance indicates that bicycles are permitted: "any vehicle designed to assist the handicapped, other than a bicycle..." Mr. Lackey suggested changing it to read "...operate a motor vehicle, other than a bicycle..."

Mr. Cline asked about motorized vehicles being used by the City on bikepaths, such as for plowing snow.

MOTION: Mr. Cline moved to amend Section 2, subsections a and b as follows, and to add section c as follows:

- (a) **No person shall drive or operate any motor vehicle, other than a bicycle, including motorized scooters but excluding any vehicle designed to assist the handicapped, upon a sidewalk, sidewalk areas, or bike paths except upon a permanent or duly authorized temporary driveway.**
- (b) **No person shall drive or operate any motor vehicle, other than a bicycle including motorized scooters but excluding any vehicle designed to assist the handicapped, on a street lawn area or curb of a street except upon a permanent or duly authorized temporary driveway or when otherwise lawfully authorized.**
- (c) **Notwithstanding any other provisions of this Ordinance, City-authorized vehicles may operate on bikepaths in the performance of City duties.**

VOTE: Y 6 N 0

Mayor Schultz opened to this item to public comment.

Julia Bowman, Manderly Court, said that the bikepath goes behind her house. She said she is also a member of the Grandshire Homeowners' Association, and she has heard a lot a lot of complaints about motorized scooters. She expressed concern about the woody nature of the bikepath and the lack of visibility, and the fact that these are dangerous to children, pets, and the noise is horrible.

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

MOTION: Mr. Cline moved to amend Ordinance 2002-36 to add the phrase "AND DECLARING AN EMERGENCY" to the title. Mr. Kaitsa seconded the motion.

VOTE: Y 6 N 0

MOTION: Mr. Kaitsa moved to suspend the rules on Ordinance 2002-36. Mayor Schultz seconded the motion.

VOTE: Y 6 N 0

MOTION: Mr. Kaitsa moved to adopt Ordinance 2002-36. Mayor Schultz seconded the motion.

VOTE: Y 6 N 0

FIRST READING: ORDINANCE 2002-38: AN ORDINANCE AMENDING THE ZONING CODE OF THE CITY OF POWELL, REVISING SECTION 1147.12: PRESERVATION AND ENHANCEMENT OF COMMUNITY RESIDENTIAL CHARACTER. (Cement Fiber Siding)

Stephen A. Lutz, City Manager, reviewed that the public hearing for this Ordinance will be held at the next meeting. He said that the Planning and Zoning Commission studied whether the City should permit cement-fiber siding materials within the City of Powell. He said the Zoning Code currently does not permit that. He said after study, the Planning and Zoning Commission voted to recommend that it not be permitted. He said there are siding-manufacturer representatives present this evening.

David Betz, Director of Development, said that the Planning and Zoning Commission took it upon themselves to study this issue. He said that Staff did a great deal of research on this item and provided that information to the

Commission. He said that installation requirements were also discussed and incorporated into the text language. He said that there was discussion about using this material in re-siding applications, as the community is growing older. He said that the Planning and Zoning Commission reviewed and determined the language that was finally voted on, and it failed with a vote against of 4-3 against. He said that Staff has had many requests from builders and homeowners to use this material. He said that the Zoning Code requires that significant change of the recommendation of the Planning and Zoning Commission be passed by a super majority, or 6 votes.

Mr. Cline asked that Council be provided with the same research materials that were provided to the Planning and Zoning Commission.

Rick Fisher, James Hardie products, gave a presentation on cement-fiber siding. He reviewed that it is made of sand, water, and cement, and that it has been around for about 100 years. He said it has the look of cedar. He said it replaces cedar, stucco, and T-111. He said that this material is resistant to insects, it holds paint very well. He said it has a 50-year transferable warranty. He said it won't warp or peel, and it is non-combustible. He reviewed the warranty for this product. He reviewed the durability of paint. He reviewed the installation procedure, and the exposures available.

Mr. Seta asked how this material is installed. Mr. Fisher said it is top-nailed, because unlike cedar it won't curl at the bottom. Mr. Seta asked if a barrier, such as Tyvek, is required. Mr. Fisher said it doesn't require anything more than a 1" penetration into a wood product, meaning it can be applied directly to a stud. Mr. Seta asked where this product is used. Mr. Fisher said it is used in Golf Village, in all M/I housing developments, Falcon Ridge, Ashmoore, and Murphy Park condominiums. He said that 8 out of 12 houses in last year's Dublin Parade of Homes used the material. Mr. Seta asked what is the cost comparison between this material and wood siding. Mr. Fisher said at this point, this is considered an upgrade to vinyl. Mayor Schultz asked about a comparison between this and cedar. Mr. Fisher said that in his experience builders have replaced cedar with this material, even though cement-fiber siding is more expensive.

Mr. Seta asked what were the Planning and Zoning Commission's concerns about this material. Mr. Betz said it is relatively new material and is untested. He said there can be problems with blowouts. He said that the language being considered requires a double-wall installation with OSB backing on studs. He said the Building Department is recommending this requirement with any kind of siding. He said it makes the application stronger, and takes the waviness out.

Mayor Schultz asked about the problem with blow-outs. Mr. Fisher said that may happen when they don't hit the studs, but they are working with the inspectors on the proper way to check this aspect of installation. Discussion ensued. Mr. Betz said that other problems discussed by the Planning and Zoning Commission include the fact that Hardiplank is not as thick as cedar, and it does look different aesthetically. He said that the installation instructions for Hardiplank are very particular in relation to the warranty. Mr. Fisher said that if there is a blow out, or some similar problem, the wind warranty can't be guaranteed. Mayor Schultz asked if such installation problems could result in the product taking on moisture. Mr. Fisher said the concern is for the wind warranty only.

Mayor Schultz asked what other installation details are key. Mr. Fisher said that they require a minimum of 1 ¼ inch overlap. He said the variety of exposures they offer make that easy to do. Mr. Fisher continued that coats of paint should be of the same product to ensure the paint-manufacturer's warranty. He told Council about a siding product that had been installed upside down.

Mayor Klein said that he recalls some issues of failure with some of the "earlier" product. Mr. Fisher said that when this first came to market, there was a "cedar mill look," with knots to simulate cedar. Since then, they have come out with a grained product without knots. Mayor Schultz said that the knots were exaggerated and did not look natural.

Mr. Klein asked if the first product installed in this market has the same warranty that is currently being offered. Mr. Fisher said the warranty has been in existence for more than 75 years. Mr. Klein asked how long this material has been installed in this market. Mr. Fisher said it has been about 6 years. Mr. Klein asked, other than mistakes in installation that were easily rectified, have there been any failures of this product in this market. Mr. Fisher said there have not. Mr. Klein asked if they have had claims against the warranty on siding installed in this area. Mr. Fisher said they have not. Mr. Klein asked who pays for problems due to installation. Mr. Fisher said that in the example of the siding that was hung upside down, they donated the material for re-installation because it was a matter of a good customer that simply made a mistake.

Mayor Schultz opened this item to public comment.

John Wright, 137 North Liberty Street said that in his opinion, cedar siding is kindling. He said it splits, and birds poke holes in it. He said that he currently has a job to replace 7 strips of plastic siding that have been damaged by the gravel below. He agreed that sometimes installers don't take the time to nail the siding properly. He said he has put siding on his own home and on 3-4 more, and his own house has never had a problem with siding blowing off. He said he thinks there should be an alternative to vinyl and cedar. He expressed a desire to learn more about this product.

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

Mr. Cline asked that Staff notify members of the Planning and Zoning Commission that this item will be discussed by Council. Mayor Schultz said that he would like to know what other communities have approved this "globally." Mr. Betz said pretty much all of the communities around Central Ohio have. Mr. Kaitsa asked if Hardiplank was used at Powell Place. Mr. Betz said it is approved now, but it is not the OSB board that previously failed in that subdivision.

CONTINUATION OF HEARING REGARDING PROPERTY MAINTENANCE VIOLATIONS PURSUANT TO CODIFIED ORDINANCE SECTION 1323.09 (c):

At the request of the Law Director, complete transcripts have been prepared for this hearing (Exhibit).

FIRST READING: ORDINANCE 2002-39: AN ORDINANCE MODIFYING APPROPRIATIONS FOR CALENDAR YEAR 2002.

Stephen A. Lutz, City Manager, reviewed that as we enter the third quarter of the year, Finance Director Nan Metz has proposed some reappropriations for this year's budget. Many of these are actually a result of additional funds being received by the City over and above what was estimated.

Nan Metz, Finance Director, reviewed that a portion of these costs are due to accidents such as damage to street lights and poles, and in one instance, a damaged police cruiser. She said that the City will receive reimbursement from its insurance carrier for all of those items. She said that the other items listed under "other charges" are in relation to an increase in the actual health insurance premiums for staff members. She said that some departments had vacancies for a period that will cover the cost. Two departments needed extra coverage due to "life changes" of the employees. She reviewed that the parks and recreation reappropriation is also in relation to increased health care costs as well as for contracted instructors. She said it is anticipated that will be offset by additional revenue.

Mr. Kaitsa asked if it is correct that the City has received revenues in the amount of \$16,000. Ms. Metz said that this is projecting that the City will continue to receive revenue from the fall programs. They have already received through the spring and summer programs almost all of what they have budgeted for the entire year.

Mr. Kaitsa asked how much is still available in the contingency fund. Ms. Metz said it is approximately \$70,000.

Mr. Seta asked about the contracted instructors for the recreation program. Mayor Schultz said that the drama instructor, for example, would be such an instructor. Mr. Kaitsa asked if a rules suspension is necessary. Ms. Metz said it would be helpful.

MOTION: Mr. Kaitsa moved to suspend the rules on Ordinance 2002-39. Mr. Cline seconded the motion.

VOTE: Y 6 N 0

MOTION: Mr. Kaitsa moved to adopt Ordinance 2002-39. Mr. Cline seconded the motion.

VOTE: Y 6 N 0

COMMITTEE REPORTS

Development Committee: No report.

Finance Committee: Mr. Kaitsa reported that the next meeting will be next Thursday.

Service Committee: Mr. Klein reported that there is nothing scheduled at this time. He said that the Parks and Rec. Board is having their third meeting on the parks issues this Saturday, and the Board will be discussing

that information on the following Monday. He said he intends to be at both of those meetings because of his past meetings when NBBJ was working on the design of the Village Green, and he wants to assist however he can.

Stephen A. Lutz, City Manager, said that he is working on a joint meeting of the Parks and Rec. Board and Council to discuss the parks issue before Parks and Rec. spends too much time putting together the final plans for the parks. Mayor Schultz said that he intends to be involved in the process.

Mr. Seta asked if it is anticipated that the Parks and Rec. Board would work with the Development Committee and bring any plan back to Council. Mayor Schultz said, having attended one of the planning meetings and spoken with some of the Parks and Rec. Board members, he thinks that the Board is anxious to begin getting Council's general feedback.

Mayor Schultz commended Mr. Klein and his family and friends for distributing the flyers for the first Powell family concert. He said there will be concerts the next two consecutive Sundays at Memorial Park at 7:00 p.m. Mayor Schultz said that Jeff Snyder's crew also did some distribution.

CITY MANAGERS REPORT

Stephen A. Lutz, City Manager, reviewed that next Tuesday and Wednesday, City Staff will be giving bond presentations to Moody and Standard and Poor's. The plan is to go out to market in mid-late September.

Mr. Lutz recognized Shawn Leininger for receiving his American Institute of Certified Planners designation.

Mr. Lutz noted that this evening was Chris Hogan's last Council meeting as reporter.

OTHER COUNCIL MATTERS

Mayor Schultz noted that several Council members have expressed a desire to have a mid-year goal-setting session, and he noted that with the many meetings lately, he doesn't know if that will happen in the next few weeks. He suggested that once some of those meetings are over, that Council revisit their goals of the year. He reviewed that he and Mr. Lutz are working to streamline the Activities Document that is included in the Council Packets.

Mr. Cline expressed a desire to consider changing the requirement for Development Related legislation to two readings rather than three. He said that applicants for such developments typically request a rules suspension. Mr. Klein concurred with Mr. Cline. He noted that three readings is a lengthy process. He said if Council goes in knowing that there are only 2 readings, they will be more efficient. The first reading will be more active, and Council should be more prepared. Mr. Kaitsa agreed. Mayor Schultz agreed. After further discussion, it was determined not to send this to the Development Committee, but rather address it at Council.

EXECUTIVE SECTION IN ACCORDANCE WITH SECTION 121.22 (G) (2): Land Acquisition.

MOTION: Mr. Cline moved to adjourn to Executive Session in Accordance with Section 121.22 (g) (2): Land Acquisition. Mr. Kaitsa seconded the motion.

VOTE: Y 6 N 0


MOTION: Mr. Cline moved to adjourn from Executive Session into regular open session at 10:30 p.m. Mayor Schultz seconded the motion.


VOTE: Y 6 N 0

MOTION: Mr. Cline moved to adjourn from regular open session at 10:30 p.m. Mr. Kaitsa seconded the motion.

VOTE: Y 6 N 0

DATE MINUTES APPROVED: August 20, 2002


Art Schultz
Mayor
Date 8/28/02


Dawn Nauman
Clerk of Council
Date 8/27/02

FULL TRANSCRIPTS

AUGUST 6, 2002

HEARING REGARDING PROPERTY MAINTENANCE VIOLATIONS PURSUANT TO THE CODIFIED ORDINANCE SECTION 1323.09 (c):

MAYOR SCHULTZ: Okay, at this point, I think Mr. Swackhamer's attorney is here, and so, we may go ahead and proceed.

KEN MOLNAR: If I may, uh, Mr. Mayor, before we resume the public hearing which was started on July 22, I uh, want to suggest that you may want to talk to Mr. Betz and Mr. Leininger. It's my understanding that they generated a memorandum with the proposed revised time table that is acceptable to both them and

MAYOR SCHULTZ Okay, this is item number fifteen, a continuation of a hearing regarding property maintenance violations pursuant to the codified ordinance section 1323.09 (c). Ken, you wanted Staff to...

KEN MOLNAR ...to outline the, as I understand, a proposed uh agreement basically between the property owner

MAYOR SCHULTZ Staff's recommendation. Okay. Go ahead, Shawn.

SHAWN LEININGER Okay, based on the last meeting Council wanted Staff to meet with Gary to discuss his timeline to be submitted in hopes that he could get some, uh, compromise for a reduction in the two-year time frame that is submitted. And also, to discuss items that really are property maintenance, needs to be approved by the Historical District Commission for the work to be done. We had a chance to do that on July 20, I'm sorry, July 29th, um, basically went and met with Garry, addressed what the property maintenance code states as far as when a timeline can be given from Staff's standpoint. Its outlined in this memorandum, which Dawn has a copy, I don't know if you (unintelligible). Um, essentially what this first letter goes out, property maintenance (unintelligible) can give up to 45 days for compliance. And then based on that time, past that time, up to three extensions of 30 days can be granted, so 90 day extensions for a total of 135 days. Knowing that Mr. Swackhamer addressed the, going through the property and addressed the various violations that exist on this point and began discussing timelines, what we agreed to, at least what's proposed in this timeline is that the violations on the residence and the garage be completed 135 days from the date of that letter, on July 2, which would give a deadline of November 14, 2002. Assuming that he completes the correction to the garage and the residence, by that time if we look at it as good faith, give him a break for the winter since obviously not much of the construction work gets done in the middle of winter. Resume a second deadline, the first day of spring, which is March 20, 2003, and would also give 135 days which would end on August 2, 2003. And within this Garry agreed to a second timeline, the 2003 timeline, go through and say here's what the violations are, here's my start date, I can have this done by this date and go through and give us a series of I guess self deadlines. He would be required to meet in order to assure that the work is getting done in a timely manner. If we get to a deadline and no work is being done, then City Council has the right to withdrawal their approval of this proposed timeline and then we can seek, uh, remedy in court. Uh, Garry did have, when I met with Garry, he did have some concern as far as the 135 days, he stated that he would need 180 days to complete the chicken coop and the barn, um, three months a piece, he feels that 135 days should be sufficient. He has some projects that are outside the realm of the property maintenance violation that, he could still get those projects done along with this with some good project planning. Um, I did receive, yesterday, actually, late today, uh, an application for Certificate of Appropriateness from the Historical District Commission. Garry will be at the, Mr. Swackhamer will be at the August 15 Historic District Commission Meeting, uh, to talk about uh, wanted to change some colors and some painting required, talked about replacing some windows on the garage and in two outbuildings in the back and also removing some of those windows, and then there was another thing not related to the property maintenance. Uh, basically, that's where we're at at this point, um, essentially, what Council can do is take and affirm this order proposed here or you can develop your own based on our comments and what Mr. Swackhamer has to say.

MR. KLEIN Or we can affirm the original order.

SHAWN LEININGER Well the original order was to submit a timeline, which he did, which was two years. So, essentially we're looking at this timeline, his timeline, or something that you develop.

MR. KAITSA And your Staff recommendation is 135 days for the first set of renovations.

SHAWN LEININGER Yeah, on the first page, the 135 days would be all these right here, which apply to the garage and the residence. And then on the second page, 135 days to correct those,

which are the chicken coop and the barn. So there's basically treating them as two separate issues.

MR. MOLNAR: Are you asking Council to amend, you're amending your notices with new timelines and so forth?

MAYOR SCHULTZ: Yes, yes

MR. MOLNAR: Okay, we need to mark this as Exhibit A, Dawn. Mr. Mayor, Mr. Swackhamer's here with his attorney, Mr. Fergus. Mr. Fergus may wish to address Council.

MAYOR SCHULTZ Okay, this is a continuation, so we are, uh, we do need to hear again from the applicant, is that...

MR. MOLNAR: uh, I think Mr. Fergus simply wants to address the content of the memorandum.

MAYOR SCHULTZ Okay that would be great. Can you come forward please, and for the record, state your name and uh, elaborate on this if you will?

MR. FERGUS My name is William Fergus, I'm Mr. Swackhamer's attorney. I don't have a great deal to elaborate on here. I know I've come to this late, and the City's initial demands and my client's initial time request appears to me that both sides have moved significantly from their original positions. Uh, I know that on the last page there, you'll see some discussion of work that my client has already commenced, and this project, good faith effort to work with you, and comply with the City code. He can live financially with Staff's recommendation, and on that basis, we ask for your approval.

MAYOR SCHULTZ: Questions either for Mr. Swackhamer or Mr. Fergus. Rich.

MR. CLINE: Uh, Mr. Fergus, if I may, did you get a chance to review the transcript of the proceeding that happened two weeks ago?

MR. FERGUS No, I did not sir.

MR. CLINE I wasn't here, so I, uh, read it with interest, and in that transcript, there are a couple of points that are made that I think are minor points but are important from a procedural standpoint. And the first point is that Mr. Swackhamer indicated that he was not raising any objection on a procedural basis to whether the notices were accurate, or they were communicated on a timely manner in a proper format, and those sorts of things. Is that still your client's position, that those procedural steps have been met?

MR. FERGUS To the best of my knowledge, he has not raised any objections to procedural defects.

MR. CLINE And in fact, I think that the trust of Mr. Swackhamer's comment was that he is here to work with the City to try to get this done thoroughly and safely, but he felt he needed a little more time than what the City was giving. Is that a fair summary of your client's position?

MR. FERGUS Yes. I'll look now at my client.

MR. CLINE Lastly, just so the record is clear, are you on behalf of your client, authorized to state your client's willingness to abide by the times set forth in the August 2 memo.

MR. FERGUS Yes, I am.

MR. CLINE That's all, thanks.

MR. FERGUS Any other questions for Mr. Swackhamer or Mr. Fergus.

MR. CLINE Um, I would just like to hear from Garry on this time line issue. We have had situations in the past where we have heard from the client's attorney, and the client's attorney left, and the client felt differently, so, you know, Garry, how do you feel about this?

MR. MOLNAR: Uh, Mr. Swackhamer, (unintelligible) you were sworn in at the last, uh, hearing, you remain under oath.

MR. SWACKHAMER: That's correct. Um, basically, as Shawn indicated, we sat down last week and worked out a schedule, next year's going to be tight for me, but I'm already partly ahead of the schedule for this year, so I'm very optimistic that I can probably pick up some of the stuff later on this year and start next year, so that will help. And I've had a lot of people offer their assistance (unintelligible), so its not something I would normally do, but in this instance, its greatly appreciated. So, I'm very confident I can do this, and was very insistent with Shawn, periodically check on the work, make sure that it was done accordingly, that I would be willing to do the work on contingency if it wasn't done in the timeframe and indicated that I would have no problem (unintelligible).

MR. KLEIN And also, it sounds like your timeframe has taken into account that you are planning at least one visit to the Historic District Committee and possibly others.

MR. SWACKHAMER: Unless something comes up, I was trying to cover all bases at this next meeting.

MR. KLEIN: Okay, thanks, Garry, you answered my questions.

MR. SETA: I've got one. Okay, Mr. Swackhamer, I just want to elaborate, the gentlemen back here, your neighbors, have my keen interest. This is one of those issues that is not going to go away. I just want you to know that we're going to hold you to this schedule. We will assure you that we will act. Because the reality of the council here is that you're affecting your neighbors. (unintelligible) just clearly understand, you know, I think its wonderful that you're taking the approach of trying to work through these issues, because that's what the City is all about. But I think there's a point where enough is enough and I think these gentlemen need to be taken care of. Have you been down Scioto street?

MR. SWACKHAMER: Yes, I have.

MR. SETA: Look at both sides.

MR. SWACKHAMER: Okay, I know. Just understand where I'm coming from.

MR. SETA: Okay, because I think there's a lot of people that throw stones.

MR. SWACKHAMER: Okay, let me ask you a question, here. Mr. Swackhamer, your visit with the Historic District Commission, is any of the schedule that we're discussing here contingent upon any approvals by them.

Mayor Schultz: Yes.

MR. SWACKHAMER: Okay, yes, should they not, for instance, accept your request, uh, does that mean that you may not be able to achieve these goals, these deadlines.

MAYOR SCHULTZ: The only one that would affect me greatly would be the windows.

MR. SWACKHAMER: And that would affect...is that garage and residence, or is it the,

MAYOR SCHULTZ: No it would not.

MR. SWACKHAMER: So you would have until sometime next spring to get to reach agreement with them prior to starting with them next spring on the

MAYOR SCHULTZ: Yes, if I put back like for like, I don't even have to go to the HDC, but I'm trying to slightly change the style of the window that goes in the two back buildings, the barn and the chicken coop.

MR. SWACKHAMER: Okay. I guess I, my point is, when we've got tangled up in the past, sometimes we found that really, we had a schedule, but the person we were talking to made some assumptions that were going to happen and in this case I think echoing what Mr. Seta said, we are tracking on this schedule, and for some reason, if things get tied up in the Historic District Commission, which I have no reason to believe they would, I would hope that you still understand that we expect to try to have you track on this schedule if all of a sudden they don't accept the new windows that you propose, I think you'll need to find a way somehow to still stay with this schedule. Because I again, appreciate. I'm encouraged by your positive response to this, and I'm encouraged that you're going to work through this and you're going to meet those deadlines, but I wouldn't want something suddenly to get in the way of you being able to meet these deadlines.

MR. SWACKHAMER: I think on that issue, if I don't have to resume til march, I could make another visit or two to the HDC. (unintelligible)

MAYOR SCHULTZ: Oher comments or questions.

MR. KAITSA: Just one. On the paint, I guess it's the color of the stain, do you anticipate any problems (unintelligible)

MR. SWACKHAMER: I am currently, I took the Mayor's suggestion. I am putting white stain over the top of bare wood to match the white that is currently there so that when I do change the colors down the road I shouldn't have a problem.

MAYOR SCHULTZ: Okay, any other comments by council, questions, for either Mr. Swackhamer, or...Okay, thank you. Ken, where are we next.

MR. MOLNAR: What I would suggest, Mr. Mayor, that what you have before you is a modified request by both your Staff and your (unintelligible) notice and the property owner, and you may want to consider that modified notice as set forth in this memorandum. Should you choose to adopt it, then that's the order. Should you choose not to, however, I would suggest that we continue the public hearing (unintelligible).

MAYOR SCHULTZ: ...Should we decide to modify it. Is that what you said?

MR. MOLNAR: Should you decide to abide by the modified terms of this memorandum. (unintelligible) In agreement, we're concluded. Should you not, however, you should then allow the property owner (unintelligible)

MR. KAITSA: Question. Do we need to adopt this memorandum. Is that what you're?

MR. MOLNAR: Yes. Just by motion. (unintelligible)

MAYOR SCHULTZ: Thank you, can we hear from the public at this point and see if they have any other. Thank you, Mr. Swackhamer, Mr. Fergus, at this point if there's anyone from the public who has something to say regarding um, this continuation of the hearing,

now would be the time to do that. Have anyone here, have anything additional you'd like to add? Yes sir. Please give your name and address for the record.
John Wright, 137 N. Liberty Street, Powell, Ohio

MR. WRIGHT: Excuse me. Do we need to swear him in? He was not at the last one.
MR. LACKEY: John, were you not at the last meeting?
MR. MOLNAR: (unintelligible)
MR. WRIGHT: Step up to the microphone here and we'll get you sworn in. Raise your right hand.
MR. MOLNAR: Do you swear and affirm the testimony you are about to give to this body to be the whole truth and nothing but the truth.

MR. WRIGHT: I do. I guess my only comment on the deal is I've lived right next door to this for years, and I'm not in favor of given him what he's asked for. You'll have to run it by me again, what is the finish date for doing this.

MAYOR SCHULTZ: To answer your question, Mr. Wright, the, what Staff has suggested is that he has up until November 14 of this year to do 5 major items on the garage and the residence, and then starting in the spring, he has another 135 days which takes him til August 2nd of 2003, that next year is to do improvements on the what is it, chicken coop and the barn, so the idea that Staff has proposed here is that we focus on the residence and garage this year, he has until November, and then next year, he has til August, from spring til August to try to complete the other items and there's a list of some specific things. I believe this addresses all of the primary concerns that were raised.

MR. WRIGHT: Okay, you know, its my feeling you've got a gentleman here that works like my neighbor, okay, and so I think you're gonna have another deal you've gotta keep a closed eye on to get past the point of what he gave you. Cause I went through it and I hate to see neighbor going through the same thing.

MAYOR SCHULTZ: Thank you. Any other public comment at this point? If not, I guess we'll close the public hearing, uh, Ken, we're now in the position where we can either except Staff's recommendation, or modify it. Is that correct?

MR. MOLNAR: Should you not accept Staff...
MAYOR SCHULTZ: You would want to allow time for the...
MR. CLINE: Mr. Mayor, I'd make a motion that the Council find that the violations alleged is sustained and that a time table for repairs will be that set forth in the August 1, 2002 memorandum from Shawn Leininger, the Development Planner.

MR. KAITSA: Second.
DAWN NAUMAN: Mark Klein?
MS. NAUMAN: Mark Klein
MR. KLEIN: Yes
MS. NAUMAN: Dave Lackey
MR. LACKEY: Yes
MS. NAUMAN: Art Schultz
MAYOR SCHULTZ: Yes
MS. NAUMAN: Jim Seta
MR. SETA: Yes
MS. NAUMAN: Richard Cline
MR. CLINE: Yes
MS. NAUMAN: George Kaitza
MR. KAITSA: Yes
MAYOR SCHULTZ: This concludes our hearing.