

## **CITY COUNCIL**

**September 7, 2004**

A regular meeting of the City of Powell Council was held on September 7, 2004 and called to order at 7:36 p.m. by Vice President Jim Seta. Other Council members present were David Lackey, Art Schultz, and Don Grubbs. Dan Wiencek and George Kaitza were absent. Richard Cline arrived late. Also present were Stephen A. Lutz, City Manager; Ken Molnar, Director of Law; David Betz, Director of Development; Rob Rice, City Engineer; Nan Metz, Finance Director; and Dawn Nauman, Clerk of Council.

## **CITIZEN PARTICIPATION**

Jean Stoll, 1680 Carriage Road, said she represents the Westchester Homeowners' Association. She said the other six members are meeting with the Liberty Township Trustees to discuss traffic calming issues. Ms. Stoll said she is before Council this evening to express her concern regarding the approximately 5-acre parcel at the northwest corner of Liberty and Rutherford Roads. She said the property is currently in the Township and is zoned Farm Residential, but there is a for sale sign on the property that is marked commercial. She said representatives of her neighborhood are concerned. She said that she has discussed this with both Township and City representatives and that zoning is incorrect according to the Northwest Area Plan which was approved by Liberty Township and the City of Powell. She said in that plan, that parcel is designated for single family residence. She reviewed the adjacent residential developments and expressed concern about a spot zoning of commercial in this area. She said if the developer approaches the City and tries to annex with a commercial zoning, she would like to go on the record as being greatly opposed to that as it doesn't meet the civic corridor standards for that area.

Mr. Seta asked if anyone has contacted the land owner. Ms. Stoll said the realtor has indicated that it is the property owner's request that it be advertised as commercial.

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

## **APPROVAL OF MINUTES**

The minutes of August 17, 2004 were approved as printed.

## **FINANCIAL REPORTS**

Nan Metz, Finance Director, reviewed the Accounts Payable Report.

Mr. Seta asked if the payments to Edsall and Associates have been completed. Ms. Metz said that there are still payments due, but it is winding down and the City is at the tail end of the contract.

## **OTHER REPORTS**

Chief of Police Gary Vest reviewed the Lifelix program that the City Police Department is sponsoring on Saturday the 11<sup>th</sup>. He said that this technology provides a "key" which plugs into a computer and downloads instantly information that is programmed into it regarding the height, weight, photo, etc., of children within a family. This allows instant information retrieval and shortens the time in which the City may send notice and vital information in the event that such children become missing. Andrew Haag, Lifelix, reviewed the process and procedure and the cost to the average consumer.

Mr. Seta asked how much a safety key costs. Mr. Haag said that one key is \$35, and the software allows them to update the picture, age, and other information. It also allows for printing of a hard copy or identification card. Mr. Lackey asked how many children can be on one key. Mr. Haag said it can hold up to about 15.

Mr. Seta spoke favorably of this opportunity for the residents and said he can't wait to see it.

## **CLERK OF COUNCIL CORRESPONDENCE**

Dawn Nauman, Clerk of Council, reminded everyone that the November meeting scheduled for the 2<sup>nd</sup> will be moved to the 3<sup>rd</sup> to accommodate Election Day.

She reviewed that at the next meeting, the Charter Amendment notification will be available for Council's review as well as a reappropriation ordinance to provide funding for Charter Amendment costs. She asked Council to consider whether there is a desire to send notice regarding the other ballot issue this November, the S-

corporation issue. She said there will be a brief article in the fall Powell Quarterly regarding the S-corporation issue.

Mr. Schultz asked if it is permissible to include the S-corporation information sheet inside the Charter Amendment notification. He expressed a desire to put in a cover page identifying both issues. Ken Molnar, Director of Law, said that he will look into that.

Ms. Nauman said that the Charter Amendment will have to go out 30 days prior to the election, and she asked Council to be prepared to make these decisions at the last meeting so she can move forward with printing.

#### **PARK UPDATE**

Mr. Lutz reviewed the park update outlined in the Scanner this week. He said that the upcoming rain is likely to slow the process.

**RESOLUTION 2004-21: A RESOLUTION TO CONDITIONALLY ACCEPT AND BEGIN THE REQUIRED, MINIMUM ONE-YEAR MAINTENANCE PERIOD FOR THE PUBLIC IMPROVEMENTS IN GOLF VILLAGE, SECTION 1, PHASE D SUBDIVISION AS THE SAME IS NUMBERED AND DELINEATED UPON THE PLAT THEREOF RECORDED IN CABINET 3, SLIDES 297-297A, DELAWARE COUNTY, OHIO RECORDS.**

Stephen A. Lutz, City Manager, said that the City Engineer has reviewed this Resolution and determined that this subdivision is ready for conditional acceptance. He reviewed that this subdivision is located on the north side of Seldom Seen Road and it is a Dominion Homes residential subdivision.

**MOTION: Mr. Schultz moved to adopt Resolution 2004-21. Mr. Lackey seconded the motion.**

**VOTE: Y 4 N 0**

**RESOLUTION 2004-22: A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR.**

Stephen A. Lutz, City Manager, said that each year, Council is asked to pass a similar Resolution as part of the County and City budget processes. Nan Metz, Finance Director, reviewed the two different rates that have been determined by the budget commission. She said the 1.2 inside millage is the amount that never changes. It was established in the 1930's and the 10 mils are split up amongst the various jurisdictions that collect a portion of it. The amount outside is the amount necessary to pay the voted outstanding debt issues the City has. She said the current rate is 3.75, while last year it was 4.1.

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

**MOTION: Mr. Schultz moved to adopt Resolution 2004-22. Mr. Lackey seconded the motion.**

**VOTE: Y 4 N 0**

The Executive Session scheduled for this hearing was cancelled.

**FIRST READING: ORDINANCE NO. 2004-51: AN ORDINANCE DECLARING CERTAIN MUNICIPAL PROPERTY TO BE SURPLUS AND AUTHORIZING THE SALE OF SUCH PROPERTY IN ACCORDANCE WITH THE AGREEMENT ATTACHED HERETO AS EXHIBIT A AND DECLARING AN EMERGENCY. (TABLED AT THE JULY 20 MEETING)**

**MOTION: Mr. Schultz moved to table Ordinance 2004-51 until September 21. Mr. Lackey seconded the motion.**

**VOTE: Y 4 N 0**

**SECOND READING: ORDINANCE 2004-57: AN ORDINANCE APPROVING A COMBINED PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR 3 PILLAR HOMES FOR A MIXED-USE DEVELOPMENT CONSISTING OF APPROXIMATELY 4,555 SQ. FT. RESTAURANT, 14,040 SQ. FT. RETAIL, AND 17,905 SQ. FT. OFFICE ON THE SECOND STORY IN THE FIRST PHASE FOR A PROPERTY LOCATED AT 50 S. LIBERTY STREET.**

David Betz, Director of Development, reviewed the location, adjacent uses and site plan. He reviewed access, parking, and the condition that is yet to be determined regarding this applicant paying their fair share of the improvements at the four corners related to this development's impact. He said that because it is unclear what the improvement is, it is hard to determine the fair share, so Staff is recommending a roadway agreement to be worked out at a later date.

Steve Martin, Attorney for the Applicant, said they have agreed to determine the fair and appropriate contribution. Mr. Grubbs asked if any details are available regarding that agreement. Mr. Martin said they are not. Mr. Betz said it is hard to determine what the project scope is going to be, and the condition allows for 5 years to make a determination.

Mr. Grubbs asked when the applicant will break ground. Mr. Martin said he believes as soon as possible.

Mr. Seta asked if the applicants portion of the improvement needed at the four corners is approximately 6-8%. Mr. Betz said is what the traffic study indicated.

Mr. Seta opened this item to public comment.

Vince Margello, 1900 W. Powell Road, said that he owns a lot of the property around this development and he is concerned that this is being built very close to an already stressful intersection. He said that this is a crossroads cut through between Dublin, Westerville, Columbus, and Delaware. He said this proposal is for a center, and it is 25 times larger than Village Pointe Center and 4 times larger than Saturdays' Sports Bar. He questioned how a developer could determine this is a good place for this size of building without new infrastructure. Liberty Road is very narrow and the intersection has turns limited between 4-7 p.m. He gave anecdotal information regarding the impact of Rumpke trash trucks on this roadway which became a nightmare and tied up the intersection. He said this development would mean delivery trucks, trash trucks, 150 more cars because there are 150 parking spaces, and new traffic competing with the traffic that is already there. He said that this intersection will cost "7 figures" to correct the downtown intersection. He said that Powell Road could have turn lanes but Liberty Road will be tricky. He questioned whether this development is inviting more traffic through the bypasses in the neighborhoods. He said the large problem downtown has to be corrected before this kind of development is allowed. He said there has been discussion about "big boxes," but this is a "big building" that would look far more massive than a Wal-mart would on Sawmill Parkway. He said the coffee shop adjacent is 1,000 sq. ft., and this is 44 times that size. Mr. Margello pointed to the smoking ban recently enacted by Council and questioned the pollution created at this intersection. He said that a representative during the DART visit said that this was a nice looking building but it doesn't fit. He said there are much better uses for this land. He said homes are needed downtown in order to create customers, walking traffic and fewer cars. He said that there is not the road system to handle this development.

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

Mr. Schultz asked if there is room in front of this development for turn lanes. Mr. Betz said that a turn lane at the four corners would probably taper off before this point. He said the right of way is 50 feet on Liberty Road north and south. He said there would be room to start the turn lane in front of this development. Mr. Schultz said he tends to agree with Mr. Margello. He said that Mr. Margello returned to a strip center. He said that Council has required turn lanes in front of such developments. He said that he doesn't think that 6-7% is sufficient and that this development could have a much greater impact and a very noticeable reduction in flow through the four corners. He said that doesn't mean that streetscape, etc., should be included in that intersection but the applicant should be responsible for more road or turn lanes as deemed necessary. He asked about the roadway agreement. Mr. Betz said that ordinance requires an agreement but if those terms can't be met later, the applicant can come back before Council to request something else.

Mr. Martin said the traffic study assumed that there would be 169 trips during the evening peak hour and the impact would be approximately 7.6%. He said that compares to the growth in that intersection since 1998. Mr. Schultz asked, supposed due to the proximity of this development that a lot of turns are impacting the four corners intersection negatively, and similarly, turn lanes are required before developments on a regular basis to

allow traffic to flow. He said it isn't necessarily counting the number of cars against the current traffic. Mr. Betz agreed that turn lanes are typically required when they are warranted, however the traffic study for this development indicates that they are not warranted. Discussion ensued regarding the cost of improvements to the intersection.

Mr. Seta said he is concerned that there is only 150 feet between this development and the four corners. Mr. Lackey said he is concerned that the fair share improvement is based on "the identified impact this development has upon this intersection and agreed to by the developer." He thinks that will create future problems if it is determined later that it is a 12% impact but the development is built by them. Mr. Betz said he thinks the option at that point would be to come back to Council. Mr. Lackey said he would like to see objective criteria rather than leaving this to the subjective view of the developer.

Mr. Grubbs said his understanding is that the roadway agreement would be drafted and executed before development agrees. The cost may not be known but the parameters would be set. Mr. Martin said that the nature of the improvements aren't known. He questioned the plans for Liberty and Powell Roads, as well as Murphy Parkway, which the traffic study indicated would also impact the traffic in this development. He said their percentage of impact is said to increase if Murphy Parkway isn't developed.

Mr. Grubbs asked if roadway agreements such as these are typically done after the development. Mr. Betz said they are usually done before the work is begun. Mr. Schultz said he doesn't understand what the uncertainty is. Mr. Martin said that if Council tells the applicant what the improvement is, and what the cost is, and what the percentage is, and they will sign the agreement.

Mr. Grubbs said that he thinks that everyone that wants to develop in the downtown will also pay their fair share of any impacts on that four corners intersection. He said while he understands that there has been no recorded decision of what the four corners improvement is, he also understands that the fair share of this developer and all others is going to be keyed to whatever is done at the four corners. He said he thinks there can be additions to the traffic grid that will have additional impact and he is concerned about basing the fair share on future items. He said if this is built today, it will have an effect of approximately 7%. Mr. Martin said that is based on today's traffic. He asked what if something is approved next week that has 200 p.m. peak hours. He said that would change their percentage. Mr. Schultz said he thinks the point that Council is wrestling with is that it is desirable to lock in a number, and he thinks the applicant is of that same opinion. Mr. Martin said they would like a dollar amount. The percentage is problematic because of the unknown nature of future downtown development. He asked to identify the type of improvement to which they are being expected to provide funding for. Mr. Schultz summarized that the desire is to have an agreement in place before the development begins, and it should come back before Council for approval. He said he anticipates that the cost will be based on turn lanes being installed downtown.

Mr. Seta said he feels like this development is being put in before the four corners is being addressed. He said the Development Committee wants to commission a study to determine how to make traffic flow better through that intersection. He expressed concern about putting something this large next to the intersection with so many remaining questions about what the applicant will do to help the intersection. He said he thinks Mr. Margello's point is a good one. Mr. Martin requested that the applicant be tabled. Mr. Lackey agreed that tabling is a good idea, specifically with only 4 people present. He agreed with Mr. Seta. He said that Kinzelman Kline was hired to help determine ways to revitalize downtown, and this is the type of development that was contemplated. If he were to vote tonight, however, he might vote no because of these unknown details.

Mr. Grubbs said he would like to see "more meat on the bones" in terms of the agreement. He said that he is still confident that an agreement can be created that will still allow this to go forward. He asked to clarify for the record that the person who spoke at the DART meeting clearly said that this development was a good plan, and she made a comment that it was in the wrong space, but what she clearly said was that it should be *on the corners*. He said that her point was that this is exactly the type of development that is seen in other communities for revitalizing downtown because it creates a sense of downtown, and commercial business. He said that her comment was based upon the fact that it is located 100 or so feet away from the intersection. It will be the only building so far with this appearance or scale. He thinks it is the type of development that is desirable, but

Council hasn't yet characterized what needs to be done at the four corners whether or not this development occurs.

**MOTION:** Mr. Schultz moved to table this item until September 21, 2004. Mr. Cline seconded the motion.

**VOTE:** Y 4 N 0

**THIRD READING: ORDINANCE 2004-58: AN ORDINANCE APPROVING A COMBINED PRELIMINARY AND FINAL DEVELOPMENT PLAN FOR TRAN, LLC FOR A PROPOSED 6,513 SQUARE FEET VETERINARY CLINIC (WITHOUT BOARDING) WITH FUTURE 4,000 SQUARE FEET OFFICE EXPANSION ON 1.41 ACRES LOCATED ON THE SOUTH SIDE OF WEST OLENTANGY STREET APPROXIMATELY 225 FEET EAST OF THE INTERSECTION OF MURPHY PARKWAY AND WEST OLENTANGY STREET.**

***PUBLIC HEARING***

David Betz, Director of Development, noted that this plan has been previously reviewed. He outlined the location, adjacent uses and site plan. He reviewed access, landscaping, bikepath and fencing.

Mr. Lackey asked about the pet exercise area. Mr. Betz identified that is currently on the east side of the building, and it will move to west if an addition built on.

Mr. Seta asked if there is a bikepath proposed across the front. Mr. Betz said it will, and he reviewed the access to the site.

Mr. Grubbs asked if the alignment will allow traffic from Village Pointe to cross into this development. Mr. Betz said it will not, but they will be located across from each other for safety. He noted that cars exiting Village Pointe Drive can always go around and exit at the light.

Mr. Cline asked if the future expansion is already approved in the platting of this development. Mr. Betz said it wouldn't, as a new development would be required.

Mr. Seta opened this item for public comment.

Rhonda Worcester, asked if kenneling is ever an anticipated use for the future development. Mr. Betz said it would not be permitted according to the zoning. Dr. Ritchie said that they never intend to have kennel services. He added that the purpose of the exercise area would be to walk dogs on leashes in that area and take them back in, not to leave them out there for extended periods.

Vince Margello, 1900 W. Powell Road, asked for clarification of where this exit drive is. Mr. Betz identified that the exit lanes are exiting opposite each other so as not to create conflict. Mr. Margello asked if you could make a right turn out and run into the turn lane at Village Pointe. Mr. Betz said there is not enough room for that.

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

**MOTION:** Mr. Schultz moved to adopt Ordinance 2004-58. Mr. Cline seconded the motion.

**VOTE:** Y 4 N 0

**FIRST READING: AUTHORIZING THE ISSUANCE OF NOTES IN THE AMOUNT OF NOT TO EXCEED \$6,250,000 IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF ACQUIRING STREETS, UTILITY LINES, DRAINAGE FACILITIES AND OTHER PUBLIC INFRASTRUCTURE IMPROVEMENTS FROM THE LIBERTY COMMUNITY INFRASTRUCTURE FINANCING AUTHORITY, RETIRING NOTES PREVIOUSLY ISSUED FOR SUCH PURPOSE, AND APPROVING A NOTE PURCHASE AGREEMENT APPROPRIATE FOR THE SALE OF THE NOTES.**

Stephen A. Lutz, said this Ordinance is in conjunction with the Golf Village financing. When that was arranged, it was anticipated that these notes will be rolled over. A portion of Golf Village's financing is financed with bonds and a portion with notes. Tonight's ordinance includes a schedule and necessary deadlines and asked that Council act on this at the second hearing on September 21.

Nan Metz, Finance Director, reviewed this Ordinance, and said that according to the Charter this Ordinance can't be passed as emergency, and requires 30 days to go into effect. She said the anticipation is that the notes will be issued at the end of October. It can be adopted this evening or the next meeting.

Mr. Cline said this concept has been discussed in detail by the Finance Committee who endorsed the concept of rolling over the notes. He said that since this was drafted by Bond Counsel, he would assume they would have strong objections to tinkering with this document because it meets the requirements for the issuance of securities.

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

**MOTION:** Mr. Cline moved to suspend the rules on Ordinance 2004-60. Mr. Schultz seconded the motion.

Mr. Schultz asked if Mr. Cline is saying that even though this could be delayed until after the Finance Committee meeting, Mr. Cline wouldn't recommend it. Mr. Cline said that he is comfortable that this is the right thing to do and the sooner it is passed, the easier it is for bond counsel and the Finance Director to have more breathing room.

**VOTE:** Y 4 N 0

**MOTION:** Mr. Cline moved to adopt Ordinance 2004-60. Mr. Schultz seconded the motion.

**VOTE:** Y 4 N 0

#### COMMITTEE REPORTS

**Development Committee:** Mr. Seta said there was a meeting today and said that the Committee is recommending that Staff put a scope of work together for a comprehensive traffic study that takes into consideration the entire community, including the four corners.

**Finance Committee:** Mr. Cline said they are scheduled to meet on September 16. He asked if there have been any changes to the status of income tax collections that was identified in the Scanner. Ms. Metz said the report in the Scanner is through August. She said she has received the first half of September's collection which is "in very good shape."

**Operations Committee:** No report.

**Downtown Committee** Mr. Grubbs said he is working with Staff and the Committee members to schedule a meeting.

#### CITY MANAGERS REPORT

Stephen A. Lutz, City Manager, said that Staff is working on a transfer of the Olentangy Swim Association, and Ken Molnar, Director of Law, is currently looking into the potential conflict of interest that may be associated with Council members who are members of the pool. Mr. Molnar said that he would consider this as buying this entity from strangers, but he thinks the interest of Council members needs to be considered in the contract. He said he understands that multiple members of Council are members of the pool, and it is enough that if everyone abstained there would be less than a majority of Council able to vote. He said the only financial benefit currently indicated in the contract is a discounted membership, and he would like to know how Council members stand on that and whether they have a desire to waive their discounted membership. Mr. Schultz noted that members of the pool will lose their original \$1,000 bond investment with the pool transfer, and that should be considered as well.

Mr. Cline said he thinks study of this issue should consider three things: That even over time, the discounted membership would not make up for the amount lost in the original bond. Second, whether keeping the option of a discounted membership would result in disqualification of voting by Council, and third, if they disclaim the right to receive the discount, if that eliminates the prohibition of Council from participating in this issue, assuming that there is a prohibition. He said because he is not a member of the swim association, it doesn't

matter to him, but he would not be opposed to Mr. Molnar's suggestion that outside Council review this issue and provide an opinion.

Mr. Lackey said he has a variety of other concerns regarding this transfer, specifically the City's ability to renegotiate with a lender. Mr. Grubbs said because there are four members of the pool on Council, the concern is that if someone else has a problem, it could get struck down. He suggested getting an opinion from the Ohio Ethics Commission. Mr. Molnar said they can look into that.

**OTHER COUNCIL MATTERS**

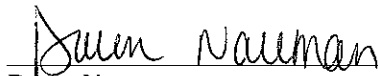
*Committee Report & Department Document*

**ADJOURNMENT**

Council adjourned at 9:05 p.m.

**DATE MINUTES APPROVED: September 21, 2004**

 10/3/04  
Jim Seta Date  
Vice President of Council

 10/5/04  
Dawn Nauman Date  
Clerk of Council

