

ORDINANCE 2004-57
Passed December 21, 2004

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.

WHEREAS, the Planning and Zoning Commission of the Municipality of Powell having recommended approval of the Combined Preliminary and Final Development Plan for 3 Pillar Homes at their July 14, 2004 meeting, and

WHEREAS, the Final Development Plan having been submitted to Council by the Planning and Zoning Commission pursuant to the provisions of Section 1143.11 of the Codified Ordinances of Powell, and

WHEREAS, Council having determined the implementation and approval of the Final Development Plan which is attached hereto and incorporated herein by reference is in the best interest of the residents of the Municipality of Powell.

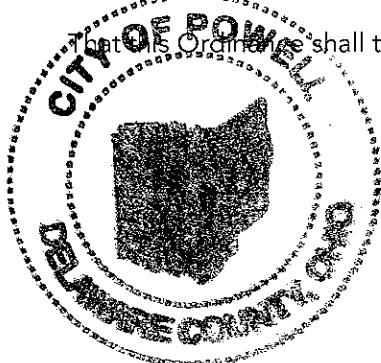
NOW THEREFORE BE IT ORDAINED BY THE MUNICIPALITY OF POWELL, DELAWARE COUNTY, OHIO AS FOLLOWS:

Section 1: That the Final Development Plan for 3 Pillar Homes which is attached hereto and incorporated herein by reference is accepted and approved by the Council of the Municipality of Powell, subject to the following conditions as recommended by the Planning and Zoning Commission and amended by the City of Powell Council:

1. That the developer enter into a Roadway agreement which requires the developer's fair share of 7.6% based on a \$350,000 improvement to the Olentangy/Liberty Street intersection, that amount to be paid up front at the time the building permit is issued. Additionally, the developer will agree to pay the difference between the \$350,000 amount and a \$500,000 amount should the City, within a period of 7 years, proceed with the construction and it exceed \$350,000 with a limit on the developer's contribution of 7.6% of \$500,000.
2. That the applicant work with City Staff and the appropriate utility companies to provide a solution to the utility pole locations that are currently along the frontage. The intent is to move the utilities to a less visually intrusive location.
3. That the "streetscape" improvements be altered to reflect as near a design compatibility with existing streetscape improvements downtown, including on street parking, street lighting, street trees and street furniture.
4. That the parking lot design meet zoning code standard for parking stall size (9' X 19') and drive aisle width (22').
5. That a walkway be provided on the easternmost parking lot island to provide access from future residential uses.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings so open to the public in compliance with all legal requirements of the Municipality of Powell, Delaware County, Ohio.

Section 3: That this Ordinance shall take effect on the earliest possible date permitted by law.



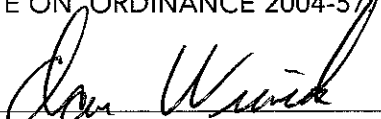
This legislation has been posted in accordance with
the City Charter on this date 4/11/05
Swaiman
Clerk of Council

VOTE ON ORDINANCE 2004-57

Y 5

N 2

(Lackey, Seta)



1/04/05



1/4/05

Dan Wiencek
Mayor

Date

Dawn Nauman
Clerk of Council

Date

OFF-SITE ROADWAY IMPROVEMENT AGREEMENT

This Off-Site Roadway Improvement Agreement (the "Agreement") is made by and between **3 Pillar Homes, LLC**, an Ohio limited liability company (hereinafter referred to as the "Developer") and the **City of Powell**, an Ohio municipal corporation (hereinafter referred to as the "City"):

Recitals

The Developer is the owner of two tracts, being 1.920 acres and 1.210 acres, more or less, known as 50 South Liberty Street, Powell, Ohio, being also known as Outlots Number 14 and 12, Parcels 319-431-03-014-080 and 319-431-03-015-000, respectively, and are the premises which are the subject of Developer's proposed commercial project in the City of Powell. These properties (the "Properties") are more particularly described in the attached exhibit marked Exhibit "A."

Developer submitted a combined preliminary and final development plan (the "Plan") to City for the construction of Developer's commercial project at 50 South Liberty Street, which Plan was conditionally approved by City Council on December 21, 2004 in Ordinance 2004-57 (the "Project"). A traffic study has been performed and Developer and City agree that the Project will impact the traffic at the intersection of Liberty Street and Olentangy Street (the "Intersection") by increasing traffic by approximately 7.6%. Subject to certain terms and conditions herein, Developer and City are entering into this Agreement whereby Developer agrees to pay its "fair share" of the cost of the traffic impact to the Intersection as its contribution to the City's improvements to the Intersection.

Agreement

City and Developer agree as follows:

SECTION 1: CONDITIONS PRECEDENT

The obligations in Sections 2 and 3 herein are conditioned upon:

1. Ordinance 2004-57 becoming not subject to referendum petition or, if a referendum petition is filed and the issue is placed on the ballot, the referendum against Ordinance 2004-57 being disapproved by the electorate of the City of Powell.
2. Developer being issued a building permit for the Project in accordance with the Plan within five (5) years from the execution of this Agreement.

SECTION 2: CITY'S RESPONSIBILITIES

Upon acceptance by City of a bid (or bids) for the improvements/reconstruction of the Intersection, City shall notify Developer, within thirty (30) days via certified mail, return receipt requested, to the address listed herein below, of the acceptance of bid and of the cost of Intersection improvements/reconstruction (the "Notice").

SECTION 3: DEVELOPER'S RESPONSIBILITIES

Upon the occurrence of the Conditions Precedent of Section 1, Developer shall:

1. Pay to City the sum of Twenty-six Thousand Six Hundred and 00/100 Dollars (\$26,600.00) as Developer's "fair share" of 7.6% of the first \$350,000.00 of Intersection improvements/reconstruction (the "First Payment"). The First Payment shall be made simultaneous with the payment to City of the building permit fee.
2. If the Notice is received within seven (7) years of the date of issuance of the building permit for the Project, pay to City 7.6% of the amount, up to \$500,000, by which the cost of the Intersection improvements/reconstruction as set forth in the Notice exceeds \$350,000 (the "Second Payment"). Developer, within thirty (30) days of receipt of the Notice, shall make the Second Payment.

SECTION 4: TERM OF AGREEMENT

The term of this Agreement shall be seven (7) years from the date of the First Payment; however, in the event Developer is not issued a building permit for the Project within five (5) years from the date of execution of this Agreement, then this Agreement, and the Plan if not earlier terminated, shall terminate, and neither party shall have any further obligations hereunder.

SECTION 5: MISCELLANEOUS

A. All of the benefits, obligations, and covenants contained herein are intended to run with the title to the Properties and shall be assigned to, and assumed by, any successor title holder to the Properties without the necessity of legislative or administrative action by City.

B. During the term of this Agreement, Developer agrees to obtain the written acknowledgment of this Agreement by any purchaser from Developer of the Properties or any part thereof, and to provide a copy thereof to City within thirty (30) days of Developer's conveyance of part or all of the Properties. However, the failure

to obtain written acknowledgment by such a purchaser, or to provide a copy thereof to the City, shall not relieve any subsequent title holder of the Properties from the obligations of this Agreement.

C. Either party, at its own expense, may cause a copy of this Agreement to be recorded in the Recorder’s Office of Delaware County, Ohio.

D. The City Manager shall have the responsibility to administer the terms of this Agreement on behalf of City.

E. This Agreement may be executed in separate counterparts and facsimile or other electronic signatures, on an original or on a facsimile copy, may be used, and, if used, shall be deemed executed originals.

F. This Agreement shall be governed by the laws of the State of Ohio.

G. Any notice required to be sent pursuant to this Agreement shall be sent, via certified mail, return receipt requested, to the parties at the following specified addresses, or to such other address as may be specifically designated by a party in writing and sent to the opposing party:

- To Developer: Zenios Michael Zenios, President
3 Pillar Homes, LLC
P.O. Box 278
Lewis Center, OH 43035-0278

- Copy to: Stephen D. Martin, Esq.
Manos, Martin, Pergram & Dietz Co., LPA
50 North Sandusky Street
Delaware, OH 43015-1926

- To City: City of Powell
ATTN: City Manager
47 Hall Street
Powell, OH 43065

- Copy to: Kenneth J. Molnar, Esq.
Kenneth J. Molnar Co., LPA
21 Middle Street
P.O. Box 248
Galena, OH 43021-0248

IN WITNESS WHEREOF the parties have affixed their signatures on the date(s) below written.

DEVELOPER:
3 PILLAR HOMES, LLC

3/17/05
Date

By [Signature]
Zenios Michael Zenios, Managing Member

CITY:
CITY OF POWELL

4/15/05
Date

By [Signature]
Stephen Lutz, City Manager
Pursuant to Ordinance 2004-57

STATE OF OHIO, COUNTY OF DELAWARE, ss.:

Before me, a notary public in and for said county and state, on the 17 day of March, 2005 personally appeared Zenios Michael Zenios, the Managing Member of 3 Pillar Homes, LLC, the Developer in the foregoing Off-Site Roadway Improvement Agreement, who, under penalty of perjury in violation of Section 2921.11 of the Revised Code, represented to me to be said person.

[Signature]
Notary Public
Emily Chapin
Notary Public-State of Ohio
My Commission Expires
October 4, 2009

STATE OF OHIO, COUNTY OF DELAWARE, ss.:

Before me, a notary public in and for said county and state, on the 5th day of April, 2005 personally appeared Stephen Lutz, the City Manager of the City of Powell, the City in the foregoing Off-Site Roadway Improvement Agreement, who, under penalty of perjury in violation of Section 2921.11 of the Revised Code, represented to me to be said person.

[Signature]
Notary Public