



City of Powell, Ohio
Powell Planning & Zoning Commission

Donald Emerick, Vice Chairman
Eric Ireland

Kevin Futryk, Chairman
Richard Fusch
Bill Little

Jim Hrivnak
Dan Wiencek

MEETING MINUTES
JUNE 28, 2006

A regular meeting of the Powell Planning & Zoning Commission was called to order on June 28, 2006 at 7:30 p.m. by Chairman Kevin Futryk. Commissioners present included Donald Emerick, Richard Fusch, Jim Hrivnak, Eric Ireland, Bill Little, and Dan Wiencek. Also present were David Betz, Director of Development; Eric Fischer, Development Planner, Ken Molnar, Law Director; Susie Ross, City Clerk; interested parties and members of the press.

HEARING OF VISITORS FOR ITEMS NOT ON THE AGENDA

There was none.

APPROVAL OF MINUTES

The minutes of May 10, 2006 were amended and approved.

Ken Molnar, Director of Law, administered an oath to all present who indicated they would be testifying regarding the continued public hearing for the McDonald's application.

PRELIMINARY DEVELOPMENT PLAN

Applicant:	McDonald's Corporation
Location:	Southwest corner of Murphy Parkway and West Olentangy Street
Zoning:	PC, Planned Commercial District
Request:	Approval of a Preliminary Development Plan for a new 4,300 sq. ft. restaurant with drive-thru.

Cathy Daily, McDonald's Corporation, introduced a review of the traffic study.

Todd Stanhope, Traffic Engineering Services, 742 Radio Drive, said after comments from the last meeting they met with Staff and reviewed the minutes to determine six items to be addressed in the revised traffic study. He outlined the items and provided comments:

1. Traffic Counts: Mr. Stanhope said the original counts were taken in January 2006 and additional counts were taken the first part of June. He said the volumes were slightly higher than the counts taken in January so the counts for the basis of the study were adjusted. Commissioner Wiencek asked about the weather during the count period.

Gary Wilcox, Traffic Engineering Services, said the weather was typical. He said they set the counts up for a week and there was a counter failure on Powell Road which only allowed for a couple of days of data. He said the other counters were in place from Tuesday, June 6 through Monday, June 12, 2006. He said in the other counts the daily variation was relatively minimal and he would expect that to be the same on Powell Road. He said on Powell Road there was not a weekend count. Commissioner Wiencek said the entire intent of this re-look at the traffic was to understand the impact on Powell Road with the expectation that the users of Powell Road in particular are higher in the summers due to the zoo, golf courses and the water park. He said he would have expected that the counts on Powell Road would have been significantly higher. He said he is not comfortable with the opinion that because they are slightly higher on the side streets that means they would be only slightly higher on Powell Road.

Mr. Wilcox said they did do a count on Powell Road but it was not a full week's worth. He said he believes their count is representative of the traffic. Commissioner Fusch asked how many days worth of count was obtained. Mr. Wilcox said they have other historical data outside of this study and a midweek count is representative. Chairman Futryk said one of the concerns stated by a number of the

Commissioners was the impact of the summer traffic on Powell Road on the weekends. He said they do not have that data. Mr. Wilcox said it was set out Monday at noon (6/5/06) and picked it up Wednesday at noon (6/8/06) so their full day count was on a Tuesday.

Mr. Stanhope presented information about the am/pm peak volumes and indicated the volumes are lower. He referenced pages 8 and 9 in the study.

2. Effect of the Murphy Parkway Extension: Mr. Stanhope said they found there would be a slight redistribution of site traffic coming from the east. He said the extension is anticipated to be connected within the next 5-10 years so they chose the year 2016 for basis of analysis. He said recent MORPC forecasts for Sawmill Parkway were used as the basis for projected traffic from there to this site. He said this allows for two case analyses, one from 2006 and one from 2016 when the parkway connection has been made. He said they found the proposed site will not affect the long term recommendations the City has received regarding the connection as spelled out in the Southwest Quadrant report from MS Consultants.
3. Projected Trips: Mr. Stanhope reviewed the findings of their report. He said they used the accepted method for projecting trips to a site and it is independent from the traffic on adjacent streets. He said the land use is very specific to a fast food restaurant with a drive-thru window so there is no issue whether the data is representative to this site.
4. Southwest Quadrant: Mr. Stanhope said the Murphy Parkway extension was anticipated and external traffic was anticipated on Grey Oaks Drive. He said that is why it was planned with no direct access to residents from the street. He said 2000 projections anticipated 2700 cars per day on Grey Oaks Drive and the existing count is approximately 800 cars per day. Mr. Stanhope said the existing plus this site would be about 900 cars per day which would represent about a third of the 2700 cars per day projected in 2000.

Commissioner Wiencek asked if there is a range in trip generation which accommodates this particular use in this particular setting. Mr. Stanhope said the trip generation is based on samples of a number of sites and adjustments are made for the size of the proposed restaurant. He said those types of variations are within the average of the data in the category. Mr. Wilcox said they use standards unless they have a very strong indication that the information in the IT Manual is not representative. He said they are trying to perform within accepted standards. Commissioner Fusch said they mentioned when they did the initial study for Murphy Parkway they projected 2700 cars per day and today it is 800 cars per day. He said if one assumes the extension is opened, do they stand by their initial projection of 2700 vehicles per day. Mr. Stanhope said they are stating that the traffic volume was planned for that street.

Commissioner Little asked if they are stating that the McDonald's would add 100 vehicles per day to present counts. Mr. Stanhope said that is correct. He said the residential street system is laid out so there is no advantage to cut through the neighborhood and Grey Oaks was designed to alleviate that. Commissioner Fusch said if he was trying to save time he would proceed north on Sawmill Parkway to Presidential Parkway to Sawmill Road and through the neighborhood to the McDonald's. He said this would avoid the traffic lights. Mr. Wilcox said cutting through the neighborhood would take more time because the speed limit is lower and the distance is further so what incentive would there be. He said if it was shorter, more direct or quicker that would be a concern. Chairman Futryk asked if there is a higher traffic volume on Powell Road wouldn't that make people want to cut through the neighborhoods. Commissioner Wiencek confirmed Mr. Wilcox is talking about using Grey Oaks to cut through. Mr. Wilcox said they are saying there will be a relatively small amount of cut-through traffic on Grey Oaks but there will not be any incentive to go through the other subdivisions south of there. Commissioner Fusch said in a scenario where you are coming out of McDonald's and want to go south on Sawmill Road, one can avoid two signals by going Grey Oaks to Presidential Parkway to Sawmill Parkway. Mr. Wilcox said the signal at Murphy Parkway works very well with little delay and if going down Sawmill Road, it is a non-signalized intersection and there is very little delay. He clarified that some of the other subdivision streets to the south will have essentially no cut-through traffic.

5. Pedestrian Access: Mr. Stanhope said their recommendation is that the pedestrian access from the park already exists today and is at an expected location. He said the site layout was adjusted to encourage pedestrians to utilize the existing facilities. Mr. Stanhope said as it is today, the park

driveway vehicles have a stop sign. He said relocating the crossing to the west creates a mid-block crossing and discontinuity with the existing bike path. Commissioner Wiencek said that the shortest distance from McDonald's to the park will be to cut across, regardless of what is done to direct them otherwise. He said human nature says they will take the shortest path, which is to cut across at the midway section.

6. Murphy Parkway/Olentangy Street: Mr. Stanhope said it was noted at the last meeting that the westbound left turn lane is deficient. He said when they looked at year 2016 with the redistribution of the site traffic, Murphy Parkway negates the problem. He said more traffic will arrive from the south and less from the east. Mr. Stanhope said that issue is also noted in the original Murphy Park traffic study. He said the pavement is there to extend the lane but it is used for a private driveway.

Mr. Stanhope stated the graph as shown on the overhead is more correct than the document in the report presented in Council packets. He explained the graph and projections shown. Commissioner Ireland asked if this shows that the volumes, am and pm, are under the volumes projected in 2000. Mr. Stanhope said that is true. Commissioner Ireland asked if the projection in 2000 was from actual data or from assumption. Mr. Stanhope said some of it is a combination of counts and projections and some uses trip generation. Chairman Futryk asked for verification of the am and pm peak statistics. Mr. Stanhope said the am equals 413 and the pm equals 470.

Mr. Stanhope summarized that the right in/right out from Olentangy Street will be beneficial and the site will not affect the City's long-term plans for the Murphy Parkway extension. Commissioner Wiencek asked if the benefit of the right in/right out will be to ease the burden on the park access. Mr. Stanhope said concerns have been voiced regarding the park driveway and access. Commissioner Wiencek said he understands the benefit because it limits access on a major street which will help the flow of traffic. He said he understands that the right in/right out significantly lowers the amount of people who use the rear drive but he asked about its impact on Olentangy Street. Mr. Stanhope said the turn lane allows deceleration before the turn, whether it is at the right in entrance or at Murphy Park. Commissioner Wiencek asked if they might anticipate failure to yield accidents as people exit the site. He also asked if it would improve the flow at Murphy Park and Olentangy Street as people do not have to wait for them to turn. Mr. Stanhope said that is true as it takes traffic out of the intersection.

Chairman Futryk asked that the Law Director swear in any persons intending to testify who were late arrivals. Mr. Molnar administered the oath to those persons.

Glen Dugger, attorney for the applicant, apologized for his late arrival. He said he hopes the information submitted regarding the traffic study answers the questions raised. He encouraged the Commission to voice any other questions or disagreement with the general principals of the traffic report. He said he understands the summary to say that what exists today is significantly better than what was anticipated in the 2000 traffic study, with or without the proposed use. He said from that standpoint the traffic issue can be removed from the table so some of the other issues may now be addressed. Mr. Dugger said he would like to address the Highway Business issue, the financial benefits of this proposal to the City and the evolution of the plan. He said this has been a highly customized plan but he will address those issues at the time of the Final Development Plan if that is the Commission's desire.

Mr. Dugger said when he began working on this he met with Mr. Betz and was advised that they did have a permitted use. He said that continued through the preliminary discussions and earlier Sketch Plan hearings on this proposal. He said he was advised in April that there was some confusion which came about in the belief that this was not a restaurant but a Highway Business. Mr. Dugger said they believe that is not the case and it has come up as a fairly twisted interpretation of Ordinance 2000-41. He said they believe it also flies in the face of the interpretation or requirements of Ohio law and it does not make sense from a historical basis. He said they asked for a ruling from the Commission last month but they are not sure that has been resolved.

Mr. Dugger said that hopefully after hearing the traffic report the Commission will not see traffic as an issue. He said this particular use at this particular location, given the projections done in 2000 and the actual counts just completed, does not pose a traffic problem.

Mr. Dugger said that McDonald's is the largest food company in the world and what they are dealing with is the nature of the beast. He said they have 16,000 restaurants in the US and more around the world. He

said if it was called by a different name many of the people in opposition might go away. He said because it is a McDonald's it conjures up a particular type of vision. Mr. Dugger said McDonald's has thousands of different types of restaurants in arenas, convention centers, airports, and hospitals.

Commissioner Wiencek said from his personal point of view it is important to clarify that if McDonald's has 15,999 restaurants on the highway that does not make this use a Highway Business or not. He said it is where this particular business is located that determines that.

Mr. Dugger stated that he agrees with that and it is important to focus on this site. He said Ordinance 2000-41 permits all of the uses in the Planned Commercial District and then specifically lists the exceptions, including Highway Business. He said it lists as an exception Restaurants and Motels conjunctively together, but there is a question if that means restaurants separately or restaurants together. He said they believe a restaurant is clearly a permitted use on the property.

Commissioner Wiencek said the last half of the definition says "include but may not be limited to", so it is almost a moot point whether it is restaurants and motels in conjunction or not. He said that phrase allows the Commission to determine Highway Businesses as there is no limitation.

Mr. Dugger said the Commission received a memorandum from Mr. Molnar which generally characterizes the law in terms of interpreting code statutes. He said he has a great deal of respect for Mr. Molnar but he does not think that memorandum is accurate as it applies to the land use. He said in the land use world the general rule in Ohio since 1919 has been that because regulation is in derogation of the private property and the free use of property, there are a string of cases that say that municipal ordinances and regulations concerning zoning matters, which deprive private property owners certain uses of their property, must be strictly construed in favor of the property owner, and will not be extended to include limitations by implications. He said all doubts should be resolved in favor of the free use of private property rather than in favor of restricting the use of such property. He said if this is a "tie", the applicant gets to use the property for McDonald's unless it is really clear they cannot. He said the question of Highway Business is not a clear question and it is not a very well drafted statute. Mr. Dugger said he would like to consider that unless it is really clear, this a permitted use and should be allowed to move forward.

Commissioner Wiencek said if they conceded that the definition is not clear but they felt this application clearly fell into that definition, where is the ambiguity. He said as ambiguous as it is, a use can still clearly fall into that definition. He asked where the tie would be.

Mr. Dugger said he is not prepared to answer a hypothetical question. He said the term Highway Business is overwhelmingly vague and as a consequence there is nothing in that statute which prohibits this use on this particular property. He said the historic context of the term Highway Business should be discussed. Commissioner Wiencek said the key phrase is "which tend to serve the motoring public". He asked if this McDonald's does 100% of its business in a drive-thru, would it qualify as a Highway Business. Mr. Dugger said it does not do that and he doesn't think it ever would. He said he thinks the term is meaningless because "highway" is defined in the code as "any public street". He said every commercial enterprise has a parking lot, people drive to it to work and shop, and is located on a street or highway. He said they are all serving the motoring public.

Commissioner Ireland said the Commission works by taking in information, apply standards and ordinances, and they make a decision. He said the term Highway Business does not help him make a decision. He said he cannot find a definition for this term so this is almost a meaningless discussion. He said it should be removed from the table and other things should be addressed that are pertinent to the application. He said he cannot get a logical way to use this term to make a decision. Chairman Futryk said the problem is that one of the exceptions in the development plan is for highway uses. He said it is necessary to discuss this to determine the definition of a Highway Business.

Mr. Dugger said if there is a consensus, he would be happy to sit down. Chairman Futryk said he does not believe there is a consensus because there is a clear prohibition in Ordinance 2000-41 regarding Highway Business. Mr. Dugger said it is important to see how this term came into practice. He said after World War II there was the advent of the interstate highway system, which was a system of limited access freeways. He said as a consequence there was a land use response to that, where trucks would get off of the highway and couldn't get fuel. He said the large cities adopted and created a zoning district specifically for that purpose, with the idea that the motoring public would be able to get off of the limited

access highway or freeway, get fuel and food and get back on the highway. He said no one would classify this site as that type of site. He said if someone exited at Sawmill Road, they would have to drive by a McDonald's to get to this site. Mr. Dugger said this is not a highway oriented type of use the way those statutes were originally drafted. He said the term Highway Business has been in Powell's code as far back as the 1980's and at that time Powell did not have any frontage on a freeway interstate system. He said this definition would apply to the site at Sawmill and I-270.

Mr. Dugger said from their prospective this is a provision which was stuck in the code and came to Powell with everything else that came in the code at the time. He said it didn't necessarily apply to anything at the time and it should not be assumed that it has to. He said the provision really means Highway as what we know as a freeway, or limited access highway, Business. Mr. Dugger said the surrounding roads are two lane roads and this is not the type of "highway" this type of provision was intended to provide the use package for. Chairman Futryk asked if in going back 30-40 years, is it accurate to say the ORC does not just look at I-71, I-270, SR 750, SR 315, etc. as highway uses. He said if going back in time, Ohio looked at two lane roads which are east/west or north/south connectors. Mr. Dugger said his thought was it applied to I70, I-71, and I-270. He said it would apply to 33 where it was limited access or even to Sawmill Parkway where it is limited access. He said where they have purely designated State Route 750 as a two lane road as a public highway that is false in that term as the uses on SR 750 would not identify it as such. Chairman Futryk said when Powell's ordinances were adopted SR 750 was, and still is, the only major east/west road through the City. He said he cannot speak as to the intent of the Village fathers. Mr. Dugger said there was probably not any, that they just received a code and adopted it. He said in his experience, typically communities do not adopt a code by sitting down and starting from scratch and writing one. He said they take one from someplace else, revise and adopt it.

Commissioner Fusch said he agrees completely with this history but in the ordinance that defines Highway Business, the wording is "commercial uses which generally require locations on or near major thoroughfares". He said a thoroughfare is, by definition, not necessarily a freeway or interstate. He said Sawmill Road and its intersections are major thoroughfares. Mr. Dugger said he does not disagree with Sawmill Road. Commissioner Fusch said it could be argued that this location is very close to a major thoroughfare. Chairman Futryk asked if Mr. Dugger disagreed that Powell Road/Olentangy Street is a major thoroughfare as an east/west connector. Mr. Dugger said the City has adopted their classification requirements and he thought it was important to understand where the terminology came from. He said it can be debated which streets in Powell are or are not those things and if that debate is necessary that shows the difficulty of determining the term of Highway Business. He said there may not be agreement within the members of the Commission as to what is a major thoroughfare within Powell. He said this must be resolved in the applicant's favor.

Commissioner Emerick said the historical aspect is very good but there is also a cultural interpretation which they must deal with. He said he has looked at zoning codes from across the country regarding this issue and the term Highway Business crops up all across the country. He said zoning codes from almost every city include it and there is a cultural aspect to the interpretation not just a historical aspect. Mr. Dugger said the cultural problem is the one they are wrestling with today.

Commissioner Wiencek said if they all agreed that I-71 was a major thoroughfare and this business was located on an off ramp on I-71, according to the City's definition, he believed they would agree that would be a Highway Business. He said to him this definition works. He said there is disagreement as to where the dividing line is between the black and white areas. He said he is unsure if the definition is based on where the site is located or the percentage of drive-thru business or a combination. Commissioner Wiencek said Mr. Dugger feels this application is somewhere in between, where the area is gray. He said there are those in the audience and perhaps members of the Commission who would say this is clearly on the wrong side of that gradient, not on the right side.

Mr. Dugger said he agrees with what Ms. Tangeman said last month, that there are instances in the Powell code where there are very specific mechanisms for making that determination, but none of those are present in this particular statutory reference. Chairman Futryk said that is the nature of the beast and Mr. Dugger's predecessor Mr. Smith made his living for decades trying to clarify the ambiguities in the codified ordinances. He said there is constant litigation over land use planning because there is confusion and ambiguity between revised code and state statute and whether they are there today, he does not know. He said there is not any municipality anywhere that has zoning codes so clear cut, black and white, that they could answer this question if the City's code was theirs. Chairman Futryk said there is a grey area. Mr. Dugger said it took Columbus 20-25 years of litigation to sort out their C-5 zoning district, as to

what was permitted within that district and what was not. He said at the end of the day they concluded that restaurants like McDonald's that had drive-thrus were not specifically required to be included within that district, but could fit in their general commercial category. He said that is just one example. Mr. Dugger said the whole historical thing is that the term was originally understood to apply to a specific set of circumstances. He said as pointed out by Mr. Wiencek, a McDonald's at the intersection of the interstate highway and Sawmill Road, as they believe it, may be what this abstract term applied to in historical context.

Mr. Dugger said there was a provision in the eleven different standards that talked about benefit to the Community. He said Mr. Betz pointed out that this property would be within the TIF district and with a 30 year TIF, non-school payments in lieu of taxes, this site would generate \$125,000. He said it starts at \$3,000 annually and escalates up to \$5,400. He said collaterally that is what would accrue to the City and column five shows the improvement of the building a \$6,500 revenue stream which would go to the schools. He said this is financial community benefit as a consequence of this. He said neither of those two numbers talk about income tax. He said virtually any business going in on a one acre site would also have an income tax proponent. He said the conclusion is that this is a bit of a windfall by virtue of Powell being smart and having a TIF component. He said they would consent to that as a part of the application.

Commissioner Fusch asked if any other function that was built on that site would have the same effect. Mr. Dugger said that is true. Commissioner Fusch asked if the same amount of money, depending upon what was built there, would accrue to the City under the TIF whether it was a McDonald's or a vet clinic or an ice cream store. Mr. Dugger said that would be true if the square footage and building value is approximately the same. He said as long as it remains undeveloped it is not doing either one of those things.

Mr. Dugger said he has comments which can be addressed at the Final Development stage if the Commission so desires. He said he would like to spend a little time talking about the site so everyone understands that this site has received a very thorough customization and the site design, building design, and landscaping is essentially customized specifically to this location in an attempt to be not Highway Business. He said it is considered that by virtue of the type of construction and the type of façade treatment, roofline, and signage. Mr. Dugger said he appreciates Mr. Wiencek's comment about this being a site specific issue and he believes a lot of the initial reaction to this was as a consequence of the kind of frame of mind reference that originally occurred.

Cathy Daily introduced the Landscape Architect who commented on the revised landscaping plan.

Mark Schieber, Landscape Architect, said he would like to address an issue raised by Mr. Wiencek regarding the desire to have additional evergreen screen at the back entranceway by the drive-thru. He said that has been provided as they have added six additional upright evergreens which will get 8-10-12 feet in height. He said behind those is a combination of larger evergreen trees and the entire back portion of the drive-thru will not be visible as one looks at it from the street or entry. He said aside from that, all of the requirements of the Powell code have been met in every aspect. He said one issue that had come up at the last meeting was the quantity of landscaping requirement around the immediate perimeter of the building wall. He said they had 304 linear feet all the way around the building and they were slightly under (3 percent) the 70% requirement. He said they are now in compliance with that requirement and have added enough landscaping to be slightly over the 70% requirement. He said they did that by moving the walk away from the building and adding additional landscaping at the back of the building and between the doors that access on the west side of the property. He said they have tried to enhance the entrance as one comes in off of Murphy Parkway to give a sense of development or feature entranceway. He said they provided additional screening beyond the requirements along Olentangy Street and McDonald's has been very conscientious in wanting to preserve the natural existing plant materials that they could. Mr. Schieber said they saved three old existing trees on site, a 32" caliper pin oak, a 23" caliper pin oak and a 48" pin oak, all of which were viewed and reviewed by a certified arborist. He said recommendations were made in terms of care and development that they needed to provide within their root system area. He said in so doing, they have provided, even in the dumpster area to the south, placement of the dumpster brick wall on piers as opposed to standardized poured footing to provide the least amount of potential disturbance to the roots of the 48" pin oak tree. Mr. Schieber said the evergreen landscape buffer has been increased in the back, the pedestrian pathway has been delineated by striping it so it is visible to vehicular traffic and calls itself out appropriately for the bicycle traffic. He said that allows bicycle traffic to access bicycle parking and be easily noticed exiting on and off

this site. He said there is also a bike rack location area provided at the northwest restaurant entrance near the side doors.

Chairman Futryk asked if in respect to the painted crosswalks, was McDonald's ever for using stamped asphalt or textured asphalt as opposed to just painting the crosswalk every year. Mr. Schieber said they have used stamped concrete or bonite. Commissioner Wiencek said they are using that type of material for the drive-thru so he felt that should be a requirement here. Chairman Futryk agreed. Commissioner Wiencek asked for information about the landscape being at the southernmost island. He said he is looking at methodologies for the large island between the drives for minimizing foot traffic across the road. He asked for more information regarding the type and size of plants there, and if they are a solid hedge all year-round to prevent people from cutting through. Mr. Schieber indicated an area which will be evergreen plant material that will stay in the range of 4 to 4.5 feet in height. He said it functions as a hedge row. He said next to that, bulking it up and providing density are the thick grasses, Karl Forrester Grass, which will be there nine months out of the year. He said they will disappear for a month upon pruning in March/April and will quickly start to re-establish themselves. He said there is no passage through that entire mass. He said someone could forcibly pass themselves through there but it is not something they see frequently.

Commissioner Hrivnak asked if they are concerned someone may walk out the entrance/exit drive there. Commissioner Wiencek said he is anticipating foot traffic towards the park and eventually if they want to get to the park they will have to cross the road to get to the path on the other side of the access road. He said he wants to minimize that so he would like to extend that hedgerow all the way across the island or put something else on the other side of the island. He said his logic is not that the current landscaping is insufficient from a passing standpoint, but rather to discourage foot traffic crossing at a place they are not expected to cross. He said that is a Final Development Plan issue. Mr. Schieber said the hedgerow could be pulled down towards the break in the curb at the entranceway. Commissioner Wiencek said they also need to watch for visibility. Mr. Schieber said he will resist getting too close to it from a visibility triangle aspect as he does not want to cause a potential traffic accident problem. Commissioner Wiencek said the same effect could be created at a two foot level and not impact the line of eyesight. Commissioner Hrivnak asked if they should make other arrangements to cross people there if they are going to cross there anyway. Commissioner Wiencek said he thinks they should but it is not part of the landscaping plan so it will be addressed later. He complimented Mr. Schieber on the landscaping plan as it is without a doubt one of the better landscaping plans he has had the opportunity to review over the years. He said it accomplishes everything that they ever desire to get out of landscaping from the screening and aesthetic standpoint and they have done a tremendous job.

Ms. Daily asked if the Commission would like an update on the architectural review. Chairman Futryk asked that they present everything at this time and the Commission will ask questions later.

Frank Shepherd, architect, presented views of what he described as "not exactly your typical McDonald's". He said there are architectural features and they tried to give this building as much as they can based on the commercial aspects of its residential character and scale. He said they used the sloped roofs with a lower flat roof behind to hide the equipment. Mr. Shepherd said they have internal roof access in the building, eliminating the external ladder on the back outside wall. He said they have met many aspects of what is in the City code, including 300 lb. architectural shingles and cement-fiber hardi-plank siding. Commissioner Wiencek asked if that was cedar mill siding and Mr. Shepherd said it is smooth siding. Commissioner Wiencek asked Staff if that is an approved material and Mr. Betz said the residential requires cedar mill and commercial uses both. Mr. Shepherd said they will use brick wainscot where there is the most wear and tear. He asked Staff if they have the sample color board and the samples were presented to the Commission for their review. Mr. Shepherd said the preliminary sketches were given to the City's architectural consultant late last year and in response to some of his comments they made some small revisions such as 2 over 2 windows as opposed to smaller mullions. He said they added the panels on the service doors at his suggestion and the original submission had dormers on the front elevation and those have been eliminated. He said they added the additional gable as shown. He said the only other question or comment he had was that they were showing a simple flat roof over the two drive-thru windows and the architectural advisor suggested they look at a different type of bracket underneath with a sloped roof over it. He said they looked at those things and were afraid that some of the customers might take out the brackets. He said he thought the simplicity of the flat surface over the drive-thru would be the least objectionable approach to the cover over the transaction of cash. Commissioner Wiencek said he does not disagree with the determination that what they had was maybe the best solution. He said when they get to the Final Development Plan, the proposed free-standing

canopy/overhang over the ordering station won't fly in his opinion. He said it is diametrically opposed to everything they have done with the building so as they are discussing the other overhangs, something will have to be done about this one. He said as they get to that point, the solution here may lead to an alternative solution there, as the overhangs must match. Mr. Shepherd said they can certainly work on that before they get to the Final Development Plan.

Ms. Daily said on June 21st, Bill Brash, McDonald's Director of Operations, met with Jeff Snyder, City of Powell Director of Parks, Recreation, and Public Service. She said they came to an agreement to assist with City maintenance of the park and trash control. She said they offered one or two additional receptacles on McDonald's property in the walkway area for park patrons and that will be shown on the final plot plan. Ms. Daily said one or two trash receptacle will be at the parking lot of the park and the other offer was called the "policing" of litter along the Murphy Park access road and the park itself, the frequency is to be determined once they are opened and they see the need. She said two to three times a week is what they discussed. She said they talked about when they do that "policing" to pick up the litter, the paper products tend to take up a lot more volume because of the air space and they have what they call "mashers" that pushes down the trash to allow more paper to go in. She said they will do that for the trash receptacles in the park that are already there as well as the additional ones they provide. Ms. Daily said they had a good meeting and likely walked away with an agreement on that. She said she is not sure Jeff did a follow up with them or not.

David Betz, Director of Development, stated he and the City Engineer reviewed the traffic study and although they have a few comments on that, they do agree with most of the assumptions and the conclusions that came forth. He said a few of the interesting points that the traffic study made that were not brought out included that the traffic study did indicate a 100 trips per day increase which is a little under 5 percent of the total trip generation of the restaurant itself based on the assumptions that the traffic engineer made based on the land use summary in the report. He said regarding Murphy Parkway, the Olentangy Street westbound turn lane was determined to be too short at one time. He said it is interesting to note that with the Murphy Parkway extension, over the long term that turn lane is appropriate. He said Staff agrees with that assumption only because there will be traffic that will take Murphy Parkway instead of coming up Liberty and using Olentangy. He said one other item is a scan of a drawing done today which shows how the right turn lane could impact the site plan and how it does affect the access drive. He said basically the turn lane median of a 100 foot taper, with the possibility of a right turn lane were to be included as a part of this plan, it will end up having 30' to the entrance drive for Handel's. He said that isn't, from an operations standpoint, a problem, but he wanted to make them aware of how that might end up being designed. Mr. Betz said it also makes everything come so close to the oak tree that it will have to be removed to make it work.

Commissioner Wiencek asked if that is the tree that is half of a tree. Mr. Betz said it is, because of the power lines. Commissioner Wiencek asked if that impacts the tree replacement requirements for the site and would they typically allow the applicant to apply the tree overage elsewhere off of the site. Mr. Betz said that is correct and that can be determined at the Final Development Plan. He said it also addresses their change in how the bike path works and its functionality of it across the right in/right out. He said this may also be addressed at the Final Development Plan. Commissioner Wiencek said he has seen areas where the bike path actually bisects the pork chop. Mr. Betz said that is what they will end up with and it is not necessarily a bad thing as it provides a safe area in case there are a lot of vehicles moving around. He said the important thing of the traffic study they are interested in is effect of the additional 5% of what is generated by the site. Commissioner Ireland asked if with the McDonald's going in is there any benchmark of reasonableness in the traffic. He said in the report that was given and the study done in 2000 there were numbers given and now the new numbers are lower than the ones in 2000. He asked if the zoning and development plan for the party barn done within the understanding that these 2000 numbers would be the traffic that those roads were expected to handle. Mr. Betz said also the assumptions made in the 2000 traffic study included a lot more residential density than what is actually approved, as well, because the original application had a lot more condos that ended up being approved. He said in terms of intensity of the commercial uses were a little less overall as they developed over what was originally planned. He said the combination of the two plus the one issue with the traffic study assumed most of the Murphy Parkway development is already developed as there are still around 60 units that have not been developed yet. He said with the same trips a day being distributed about you are going to have a slightly higher number but it really wouldn't affect the conclusions made in the report.

Mr. Betz said all of the other comments made at the previous meeting should be still available. He said the last thing is that this is a Preliminary Development Plan application and there are two options with this application. He said one is to approve the Preliminary Development Plan in principle as it stands if it meets the requirements of the zoning ordinance and approved Murphy Park zoning ordinance 2000-41. He said they also have an option that if the plan does not meet the requirements of the zoning code, the Commission should pass a motion that the plan does not meet the requirements, state the requirements that are not met, and list the items the Commission would like to see changed in order for it to meet the requirements of the zoning code and ask them to resubmit. He said Staff provided a possible way for verbiage.

Mr. Molnar said as he was listening to some of the applicant's information, he could have been in a Final Development Plan hearing, but they are not able to do that. He said he does not think the Commission should lose site of the fact of what their options are, in other words, on the assumption that someone here does not want this applicant to have this restaurant at this site, one of the options before the Commission tonight is not to just simply reject the application. He said, as mentioned by Mr. Betz, and accurately so, the Commission is charged under the code with either accepting the application in principle or in the alternative, telling them they don't comply and giving them guidelines on how they can comply. He said many of the issues about whether there should or should not be this use on this location, etc., really is a little bit premature other than in the overall context of the recommendations the Commission would make in being able to comply with the zoning. Mr. Molnar said eliminating from the table the option of rejecting the application period. He said they may want to spend some time considering those issues that will allow them to comply, including the issue of this Highway Business use which is not dispositive one way or the other on the use of this particular location. He said it is only one of the many considerations and whether or not this business at this location is a Highway Business may be totally irrelevant by the time the Commission has the opportunity to evaluate this and come up with an explanation. Commissioner Ireland asked for a definition of the term "dispositive". Mr. Molnar described dispositive as "does not terminate the discussion".

Mr. Molnar said it is only one of the considerations and there may be some significant input down the road once the commission has said to the applicant that this is how they think they can comply. He said right now the only issue before the Commission is to tell this applicant "Your application complies. Put together the Final Development Plan." Or "It doesn't comply." and the Commission gives them a list of the recommended changes and additions. He said our code contemplates that if they find this application does not comply, they will be back again with another submission at some future date. He said perhaps at that point in time the issue will be dispositive one way or another. Mr. Molnar complimented Mr. Dugger on trying to get the Commission to in fact determine whether his client's business is a permitted use at this location and he said he thinks the answer is as the Commission gave it at the last meeting, that depending upon how that particular application fits into the overall scheme of things, it may or may not be a permitted use. He said he again counsels the Commission not to get overly involved in Final Development Plan issues as it is easy to do, but they are a long way from that.

Commissioner Wiencek asked if procedurally, not necessarily endorsing going down this path, in anticipation of a significant amount of debate, the code does allow thirty days from the end of the hearing tonight to reach a decision. He said if the Commission feels they cannot reach a decision tonight or reach a decision but are unable to appropriately draft that decision, they can meet again to work on that. He said he does not want the Commission members to feel that tonight has to be the night. He said certainly the applicant and ourselves would like to get to that point but it is already 9:30 and there are several other items on the agenda for this evening so we do not need to sequester ourselves until a deal is done here. He said they do have an "out" if they feel that they need it.

Chairman Futryk opened the item for public comment. He said if anyone spoke at the last or original meeting and has the same comments to offer they really do not need to offer them again because this is a continuation of the previous hearing. He asked anyone to come forward if they want to address the Commission, state their name and address for the record, and if possible limit their comments to three minutes.

Dick Wolfram, 394 Charlescarn, Past President of the Village at Murphy Park Condo Association, said he attended the last meeting and he heard something said by the McDonald's attorney which really upset him. Mr. Wolfram said he would challenge the seven Commission members to listen to the people because the attorney stood up and said, after someone gave a report on the survey that the City of Powell had taken, that the Commission should not listen to the people, that they need to only listen to the eleven points in the zoning code and address those issues. He said that since McDonald's is using a

City park for their "playland", that the Commission should listen to the people on this because the people paid for that park. He said he is not saying they should or should not use it, that is not the point, but the fact is that he challenges the Commission members to listen to the people who speak this evening. He said he has a concern, as the entrance to their condo units is about 100 feet south of where the crosswalk is proposed. He said each year, each day, as a matter of fact, they have numerous times that they almost have collisions with people and bicycles going down that pathway with cars going out of their units. He said there is not much that traffic right now, but wait until they open up and there will be a lot of traffic. He said he cannot see that crosswalk being a good place for people to cross the street and they are going to have many, many accidents. He said as a matter of fact, about once a week he almost tangles with somebody coming down there because number one, people in Ohio don't pay any attention to crosswalks when they drive, and number two, the parents who use those facilities don't pay any attention to their youngsters going down there. He said they are usually 30-40 feet ahead of them so you really have to be on your toes when you drive down through there. He said he challenges the Commission to take that into consideration also.

Commissioner Wiencek said there are two of the eleven items which he thinks indirectly allow them to pay attention to what the residents are saying so he wanted him to rest assured that his comments are being heard. He said item number two said they are allowed to review the appropriateness of the proposed land uses with regard to the type, location, amount and intensity and the second one is the impacts of the development on the surrounding or adjacent areas. He said on the whole, the list of comments which they have received from the public fall into those two categories so even though it does not specifically say "listen to the public", those two items address those.

M Michela, 225 Winter Hill Place, said she would like to first address Mr. Dugger's comments about this being an off the cuff response to McDonald's being McDonald's. She said the idea of this plan came to her last year about October or so and actually thought "Ok, it's going to go there, there will be no problems with it and lets just go ahead and do it right". She said she started doing more homework about traffic, safety, those types of things, she started having a little bit of a problem with it and there was a member of City Council who told her, "M, traffic – remediable; garbage, smell, all remediable; get something black and white that will hold up in any court." She said she started reading and found the Highway Traffic definition. She said after reviewing the revised plans that McDonald's submitted she discovered a version of a bike path improvement plan along Olentangy Street and the Village Park Green. She said this is a \$200,000 project which has already been approved and will bring even more foot traffic and bike traffic where the area where the streets are already congested. She said further increasing vehicle traffic by the numbers McDonald's has suggested is just a plain, bad idea.

Ms. Michela said at the last meeting, McDonald's traffic engineer stated vehicles would be at possibly the lowest or slowest speeds due to a stop sign and turns and she does not want any child hit at any speed. She said the National Highway Traffic and Safety Administration reports that distracted drivers are the second highest cause of accidents with the highest food distractions being coffee and/or liquid and french fries. She said at the last meeting it was also clarified that there is a sidewalk south of the private drive and she has a hard time believing that no traffic will ever walk from south to north, whether the right paths are done or not, people are going to cross there. Ms. Michela said when the eastbound light does back up vehicles today already cut through the HER and Goddard lots to get over to the private drive and access at a controlled light at Murphy Parkway. She said she is as miffed as everyone is in the room at the traffic study saying that nobody cuts through because she thinks every resident in this room has cut through at some point from west to east from Presidential or Attucks as it backs up northbound on Sawmill Parkway and cuts over to get east. She said last week she sent all of the Board a quick note about some other residents' opinions. She said when she asked their thoughts about the plan, their answer was initially "I don't care.". She said when she asked "why don't you care?" the most common answer was some form of "Hey, I like McDonald's and at least it isn't going in my neighborhood." She said in sharing more of the info of the plan, most were confused at the location choice, suggesting the parkway a better fit, and the question, "Is the City going to rename the park 'McDonald's Park'?" Ms. Michela said most interestingly, residents said that they would not venture off the parkway just for McDonald's during what we all know as high traffic times. She said she would like to say that in the April meeting, Don Kenney stated that the park and the drive was a gift to the City – not true. She said developers are required per code that they need to have so much green space and/or park. She said she has given Cathy Daily and Dave Warren with McDonald's three other viable options, along the parkway with contact information and parcel information, and she has about 300 signatures opposing, for several reasons, the location of the McDonald's. She said everybody wants a McDonald's but not in that location.

Robert Mann, 3614 Bainbridge Mills Drive, attorney and legal chairman for the Community Oversight Foundation, formally known as Liberty Township/Powell Neighborhood Watch Foundation, said he would try to be as brief as possible. He said their foundation was formed in order to promote smart growth in this community and to preserve their rural characteristics that brought us all here to begin with. He said their foundation has the privilege of having some very knowledgeable people regarding development and traffic issues.

Mr. Mann said he has had the pleasure of coming before this Board before last year when he was working with the City and Liberty Township to put in square foot limits on commercial building size in order to keep out big box development. He said one of the things residents have constantly made clear is they don't want big box in this community, it is not conducive to why they all chose to live here. He said dealing with this application, he read through the minutes from the last meeting and there are a number of items in there he would like to address, arguments made by McDonald's as well as DRK. He said one of the arguments was that the original traffic study when this area was rezoned PC, back in 2000, included development plans that talked about restaurants or traffic studies that talked about restaurants, and those points are irrelevant. He said there was no vested right that was created by that rezoning to any particular development, that is why they have to come before the Commission for their requested development and in fact, given that after Council looked at the traffic studies and other information it specifically put in an exception or limitation saying they cannot have Highway Businesses. He said that indicates that after looking at the traffic and so forth they decided they don't in fact want restaurants in those types of uses. He said the bottom line is that there is no vested right for this application based on what was considered in prior traffic studies or anything else so it is nothing that is binding legally on this Board and it is nothing that creates a vested right for the applicant.

Mr. Mann said another point is that under 1143.11(g), that talks about the development criteria, the applicant continuously referred the Commission back to their original 2000 rezoning as opposed to specifically addressing items that are dealing with this application. He said the section specifically says they are to consider whether the proposed development is consistent with the intent and requirements of this zoning ordinance, not the prior application, not the original rezoning approval, but this ordinance. Mr. Mann said their code specifically defines what its intended purpose is, those include that your zoning code, the purpose for its enactment is for promoting the public health, safety, comfort and welfare of the residents of Powell, to assure orderly development – read that reasonable, rational development, appropriate development, conserve and protect natural and scenic resources of the community, such as parks, protect and promote those environmental qualities that contribute to the enhancement of the community life - again that is open space, green space, park space, facilitate the provision of recreational and scenic areas, integrated pedestrian and equestrian path systems – again facilitate a provision of recreational and scenic areas he does not believe that includes putting a fast food restaurant in front of your parks. He said he does not believe anyone would believe that is appropriate or wise, it is certainly that underscores the way most people look as trying to put a McDonald's in front of this park. He said another right and purpose of the code is to lessen congestion of public streets, road and highways. He said again this does not accomplish any of those and when they look at section 1143, subsection g, it talks about the items that this Board is supposed to consider regarding the application in front of them, not what was rezoned back in 2000. He said there is no reasonable way to conclude this is an appropriate use for this site. He said again that they are not against McDonald's; they are a fine restaurant, they have a very good history of charitable donations but this is not the appropriate location.

Mr. Mann said another issue that has come up is the definition of Highway Uses in fact this Board does have to consider that zoning restriction because it is part of their approved zoning and the Board is required to consider the applicable zoning as part of the application. He said he does want to call their attention to a legal case that just came out this year in 2006, its citation for the City attorney can be found at 165 Ohio Appellate Third 732 and that case dealt with a zoning ordinance challenge that said that the ordinance regarding Highway and General Businesses was unconstitutionally vague and the Court ruled that no, it's not. He said in that case it dealt with Highway or General Businesses and defined them as highway or general businesses which are areas along major highways or thoroughfares which provide sales and services oriented to highway travelers or general businesses including sale and service for automotive, farm, machinery, building trades, etc. He said that is very close to the language that is contained in Powell's code. He said in addressing a challenge that said it is unconstitutional, the Court noted that it starts with the presumption that the ordinance is Constitutional and then goes on to say the Constitutionally vague argument is usually applicable only to criminal ordinances, which failed to put persons on notice as to what conduct is prohibited. Mr. Mann said such an argument is inherently deficient in a zoning case where the zoning resolution, by its very nature, puts a property owner on notice

that use of the property is subject to regulation. He said that is exactly what we have here and this developer is clearly on notice, agreed to the rezoning, accepted the conditions of that rezoning in order to get it and this decision virtually takes the same term as the City has in their code and says it is not unconstitutionally vague and you can enforce it.

Mr. Mann said as far as some of the issues raised tonight, they are troubled by the traffic study. He said this Board is obviously very concerned about the traffic on Powell Road and the traffic engineer saw the need to do a study for six days, yet when their machine broke, they only did one day. He said they did not give the Commission any information that is even slightly more helpful than what was presented last time based on the traffic study. He said in addition there are some conclusions in the study that seemed hard to reconcile with common sense and reality, for example, comparing present counts shows a reduction in the level of traffic after the McDonald's is built. He said that defies common sense. He said in looking further that the build-out figure assumes the traffic in 2016 will only have increased by about 40 vehicles per day over the next ten years and that also defies common sense. He said they know from a close affiliation with Friends of Delaware, that traffic projections from when the Sawmill Parkway Extension is completed will take the average daily vehicles from 10,000 to 30,000 per day. He said given that type of increase per day on Sawmill Parkway, how could Powell Road counts only increase 40 vehicles per day? Mr. Mann said this traffic study does not meet common sense tests or provide any use to this Board.

Mr. Mann said regarding the discussions between Mr. Betz and the developer, all developers are on notice that any discussions they have with a City official are only preliminary and we do not know what questions were asked. He said he also added that he uses Grey Oaks Drive on a regular basis to cut-through and it is very convenient for people who do not want to go to Powell Road and Sawmill Parkway and for those who live in that subdivision. He said the traffic which would be generated from a McDonald's should be considered. He said a crosswalk location in front of the drive-thru does not make sense. He stated in conclusion, the obligations of this Board are to make a recommendation and they cannot outright reject the application. He said they can, and should give the recommendation that this development is not appropriate for this location and they need to return with something that meets the City code.

Max Holzer, 4885 Paddington Way, said he is the Executive Director of the Community Oversight Foundation. He said they met on June 15th and they represent 1500 homes and approximately 3000 residents. He said at their meeting the issue of McDonald's on this site was discussed and everyone said they are not against McDonald's but not one on this site. He said it was felt this is an inappropriate site for intense retail. Mr. Holzer said their own projection of peak hour traffic is 100 cars per hour so that would introduce 12,000 cars per week, 50,000 cars in a month, 650,000 annually. He said that is intense and is being considered at the north entrance to one of the communities finest parks. He said it is inconceivable to the trustees of the Foundation that this is an appropriate consideration for this site. Mr. Holzer said the fundamental responsibility of all of our elected and appointed officials is to simply protect the health, welfare and safety of the residents in their political jurisdiction and they do not think this proposal is appropriate and should be denied.

Tim Spencer, DRK, 470 Old Worthington Road, said as far as the park is concerned, he wanted to remind the Commission that up until six months ago, the park was titled in their name and was conveyed mid-January 2006 and up until that time they maintained ownership of it. He said there were no monies exchanged and it was a donation and the Auditor's website at the time had a value of about \$500,000 which they recognized on the tax transfer. He said he wants that on the record as a part of the history of that property.

Jill Tangeman, Vorys, Sater, Seymour, and Pease, Attorney for Triangle Real Estate/DRK, responded to the comments of Mr. Mann about a recent case. She said this matter is now pending in front of court, but doesn't want the Commission to believe there has been a court decision that is exactly on their issue and they have decided exactly that Highway Business is an appropriate definition and drive-thrus are always Highway Businesses, therefore McDonald's is always a Highway Business. She said she is certain that was what Mr. Mann's intentions were, however this case is not relevant to the particular decision before them tonight and it really relates back to the issue that zoning is in derogation of the common law and when asked to make a decision, a court will always decide to give the property owner the use of its property and allow them a permitted use. Ms. Tangeman said that is exactly what happened in the case that Mr. Mann discussed. She said the Court had an ambiguous definition in front of it and the owner said they should be allowed to operate a drive-thru in a district that permits Highway and general businesses and the Court said in absence of something which is specifically prohibiting you, we are going to permit it.

She said when the definition is vague the Court said the property owner gets to use the property the way they would like to.

Commissioner Wiencek said the Commission has now heard dueling opinions from obviously non-objective lawyers and he would like to have the City Law Director's opinion of the bearing of this case on this particular situation. Mr. Molnar said he has read the case and is familiar with it, but had not thought a lot about it because they are not even to the point where they have a Final Development Plan proposal, which is a necessary step. He said that must be done before that case may be considered as an issue. Mr. Molnar said the facts and circumstances of each and every one of these cases is different. He said assuming they have a Final Development Plan, the Commission has various considerations to evaluate before they approve or disapprove an application. He said some of these are significantly different from the noted case and to some extent you are considering apples to oranges, at least until they have a Final Development Plan submission. He said at that time he will tell the Commission his opinion.

Gary Wilcox, 742 Radio Drive, registered traffic engineer, said he would like to respond to a couple of comments. He said the 2000 traffic study is relevant because it was his understanding that the underlying zoning that occurred after that study was done was based on numbers developed in that. He said that study took into account the numbers their firm had developed regarding the Murphy Parkway extension and some other things and the fact is that when they have the McDonald's development the evidence shows that they will have less traffic on this site as a whole as than was in 2000. He said the facts do not support the argument that they are making things more intense. Mr. Wilcox said they have done far in excess of 1000 traffic counts, all over the state of Ohio and other places and they understand when a traffic count is representative of what is out there and when it isn't and he has no reason to believe the traffic count done was not representative of what was out there. He said traffic studies are becoming very, very complex and the local entities hire outside consultants who are capable of reviewing the studies in a professional way. He said they have no objection to that and if the City would like to engage another consultant to review their work they have no problem with that.

Commissioner Ireland said Mr. Mann mentioned the projected tripling of traffic on Sawmill Parkway. He asked Mr. Wilcox to address that. Mr. Wilcox said he believes Mr. Mann is in error. He said he does not want to debate the specifics. He said they work in a professional way and if the City Staff does not feel they have the capability to review the studies and render an opinion on them, he believes they should engage someone who can.

Chairman Futryk said he does not believe anyone is questioning Mr. Wilcox's professional integrity. He said the concern is that one of the primary questions raised by the Commission at the original hearing was regarding the weekend count of traffic on Powell Road and the impact of the zoo, water park and golf courses. He said they wanted to get an accurate study of Powell Road traffic on the weekends. Mr. Wilcox said they did meet with the City, have a memorandum of understanding, and his recollection was that no one indicated to them that they wanted a weekend traffic study. He said that when they met with the City they did not even suggest they do a traffic study, take additional counts, they just said they needed to account for numbers. Mr. Wilcox said they decided since they had the time, they would go out and get new data that would be representative so they would not be arguing about the data. Chairman Futryk said he remembers discussing it and Mr. Betz's reference to the opening attendance at the zoo, so he knows the weekend count was something he had asked for. He said they were looking for accurate weekend counts. Mr. Wilcox said he was not aware of that.

Commissioner Wiencek said they did have accurate counts on the adjacent roads on the weekend. He asked if they could correctly assume that the increases noted on the adjacent streets and the increases on Powell Road would have risen proportionally. Mr. Wilcox said in this particular case that may not be applicable simply because Murphy Parkway and the park are residential and the traffic on Murphy Parkway is not representative of the traffic on Powell Road.

Mr. Holzer stated that common sense says you try not to mix children, family, with cars. He said this is an entrance to a park and they are introducing a lot of south turn, east turn traffic coming in and out of the site.

Gary Swackhamer, 76 Scioto Street, said he has seen this go from a sleepy little village to today and progress has been made. He said we should be looking for quality for the residents here and for the most part they have that. He said he has nothing against McDonald's and would like to see one closer than the one on Route 23. He said this area is not appropriate for a McDonald's. He said the traffic in this area is

bad and he avoids it. He said it concerns him that this is setting a precedent for things in the future. He said this is a high volume business that is open seven days a week, opens early and closes late. He said the residents in that area will have to put up with pollution from french fry grease and noise. Mr. Swackhamer said the traffic will be unable to enter on Powell Road, especially when there is a train, and they will look for ways to cut through. He said it is not fair to put that type of traffic on the people who live back there and he is hoping that McDonald's will not try to force themselves in an area where they really aren't wanted. He said knowing how compassionate they are with charities he would hope they would be compassionate to the people who have purchased homes in this area. He said he hopes they will find a compromise and find someplace else but stay in this area and be good neighbors. He said he does not care about traffic studies because there will be no penalty for the business when the traffic increases by three times in the future.

Mr. Dugger said last month he raised the issue of opinion testimony provided by the neighborhood opponents. He said he did so for preserving that objection and he would like to renew that objection tonight. He said there was a number of opinion testimony provided by people who do not have standing, and for the purposes of continuing this, he objected last month and he objects tonight. He said it is his obligation as an attorney to preserve the rights of his client and make those objections. He said there were also some questions he would have liked to ask those who testified. Mr. Molnar said he has the right to cross examine.

Mr. Dugger asked Ms. Michela and Mr. Mann if they are traffic engineers or in any way certified to provide opinion testimony on traffic issues. Ms. Michela said she has never been called a traffic engineer. Mr. Mann said he is not a licensed traffic engineer but he has looked at traffic studies before as a part of his practice. Chairman Futryk asked if the applicant would like to have the opportunity to rebut any other testimony offered. There was no comment from the applicant.

Jan Mankovecky, 366 Shyanne Drive, said he used to live in Worthington and he had to make the decision whether to move to Dublin or Powell and he chose Powell because he believed the community is going to protect the people. He said there was an article in a local newspaper from February 23, 2006 which says the City of Powell Parks and Recreation Department had received a Superior award from the OPRA. He said he is disgusted that they are discussing placing a McDonald's next to a public park. He said maybe six months ago Powell was determined to be the 18th Best Place in America to live in, and that was most likely because most people believe in Powell they will have some sort of security. He said the Commission makes decisions for the residents as well as the corporations. He asked how the delivery trucks will come into and exit this site and what time will they make their deliveries.

Gus Mucera, Regional Construction Manager for McDonald's, said there are two deliveries scheduled per week and they are scheduled appropriately with the restaurant so they may accept a truck onsite. He said they are sometimes late at night or early in the morning depending upon the conditions of the restaurant. He said it is a very controlled, orderly process. Mr. Mucera said once the restaurant is open, they will see when it would work best. He said it is during the hours of operation and it is typically on the site for 2-3 hours. Commissioner Hrivnak asked about the routing to get the truck on site. Mr. Mucera said that is something that is worked out by the distribution center and they look at the site plan to see what is ideal for them and what truck they are going to use. He said they use a variety of trucks based on the site configuration. He said he could give his opinion but he cannot say for certain.

Commissioner Wiencek asked if Staff had reviewed turning radius and whether a semi truck can enter and exit the site without running over the landscaping. Mr. Betz said that is generally a Final Development Plan issue and at this point in time they have not looked at that. Mr. Mucera said the radius is designed with the site engineers. Commissioner Emerick asked if there is a still a weight restriction on Powell Road hill from 315. Mr. Betz said the County Engineer established weight restrictions in the winter time but in all likelihood the trucks will enter from I-270 and Sawmill Parkway.

Chairman Futryk called a five minute recess. The meeting was called back to order at 10:10 p.m.

Commissioner Fusch did not have questions for the applicant. Commissioner Wiencek said traditionally at their public hearings for the City of Powell, anybody and everybody stands up and speaks their mind and Mr. Dugger has been at many hearing where this same kind of response has been made, but he has never made that objection in the past. He asked why it is that at this particular hearing, Mr. Dugger has an objection.

Mr. Dugger said there are two types of land use hearings, legislative decision making process and administrative decision making process. He said most of the time when he appears before the Commission they are in a legislative process, and in those public hearings anybody can speak their mind. He said in an administrative hearing, which is what this is, the Commission is sitting in a quasi-judiciary capacity, more in the role of a judge than anything else, and as such the people on whom they are to base their opinion are those who should have standing or special qualifications. He said for example, the only traffic engineers in the room tonight are Mr. Stanhope and Mr. Wilcox, so their opinion about traffic is to be given more weight than others. He said when the Commission, or a Court upon review, takes that into consideration, the fact that someone is not a traffic engineer is important when weighing their testimony. He said the reason for the objection is an objection to their standing in terms of carrying on any discussion beyond this court and to preserve the ability to do so as he moves forward.

Commissioner Wiencek asked Mr. Molnar for his opinion on the validity of that objection. Mr. Molnar if it were in fact an Administrative Hearing, which has not been determined, and if the Commission were a "Judge", one of their tasks would be to evaluate the various people who testify and he believes the Commission is capable of doing that. He said that is one of the functions of the Commission.

Commissioner Wiencek said the traffic study assumes that sixty percent of the traffic is pass-by traffic, or traffic already on the road. He asked what percent of the business they expect to service through the drive-thru as opposed to walk-in and sit-down. Ms. Daily said right now the average drive-thru business for this region is in the range of 35% to 75% in her personal knowledge. Commissioner Emerick said previously the McDonald's Director of Operations reported it as 60%. Ms. Daily said that would be an average and this analysis is part of what she does as the Regional Real Estate Manager for McDonald's. Chairman Futryk asked if there is a difference in the volume of drive-thru traffic between the different meal times. Ms. Daily said she does not have an expert answer for that and she would have to observe that no, it is pretty much the same.

Commissioner Little asked if when they are doing their due diligence in choosing a site, do they consider monthly transactions which must be done in order to be successful and if so, do they have those projections of transactions. Ms. Daily said some of her competitors start with "What can I afford?" but that is not where their analysis starts. She said they start asking "Is this a market where it is appropriate for us to be in?" so she does not "target" something, she does her study to see what bears out. She said for her analysis for this site she did come up with a transaction estimate based on what she felt her sales were going to be. Commissioner Little asked if she could estimate volume. Ms. Daily said her projections for this location were below the US average, that industry publications show McDonald's post US averages around \$1,900,000 - \$2 million and she projected this location would be lower than the US average. She said she is not at liberty to disclose any proprietary information.

Commissioner Hrivnak asked if there was an executive summary to the traffic study. Mr. Betz said it basically has the introduction and the data presentation but the conclusion is in the text under "Analysis" on pages 28-34. Commissioner Hrivnak asked if it is true that from the traffic study in 2000 they forecasted the counts for the future and the present counts are less than what was predicted. Mr. Wilcox said there are some computations involved in that because there are two parcels within the site which are not developed. He said the 2000 projections were totally estimated to account for road and site traffic as Murphy Parkway was not constructed at the time. Mr. Betz said the issues are with the intensity of the residential development, the commercial is a little dense and Murphy Parkway is not connected yet into traffic and directly into Grandsire on the south. He said those homes cannot access Murphy Parkway directly so they have to choose another route to take instead of Murphy Parkway. He said in all, their projections are going to be less than the projections in the 2000 study but when you compare today without McDonald's to future with McDonald's, there is going to be more traffic and that is a fair assumption. Mr. Betz said any use would create more traffic than today.

Commissioner Wiencek asked if because the 2000 traffic study made assumptions and this development was approved based on those assumptions, does that mean that in essence as long as they stay under those assumptions the Commission has no basis to object to traffic impacts. Mr. Betz said no, basically the roadway issues show the improvements made: Murphy Parkway was built, the turn lanes were installed, the traffic signal was installed, the access drive from the commercial properties was installed and the drive was installed as part of the development. He said the roadway network as anticipated in the 2000 traffic study and required as a part of the overall development plan is in, so they must look now at the impact of this proposal on the workings of the roadways and access ways based upon the development plan as well as the new right in/right out access point. Mr. Betz said the Commission can

still review the traffic study as it relates to the development, as always. He said the 2000 study anticipated and told the City what kind of improvements were necessary to be installed as part of the overall development of Murphy Park. He said those things have been installed. Commissioner Wiencek said because the 2000 study anticipated those improvements and the improvements have gone in, and that study anticipated whatever level of traffic on all of those roads, if the expected impact of all of the development as built out can be anticipated as less than that study, is there really anything for this Commission to review in regards to traffic. He said he personally thinks the access road is a different issue than the main road. Mr. Betz said the access road, the access points and the right in/right out were never determined in the original zoning so the Commission does have those items to deal with. He said they may use the traffic study report to make a decision upon the impact this proposal has on the surrounding areas.

Commissioner Emerick had no additional questions. Chairman Futryk said he is trying to understand, based on the revised traffic study they have, how McDonald's envisions the traffic flow on the site. He asked if Mr. Wiencek believes they need both ingress and egress or do they only need one. He said the figures say there will be 120 cars per hour on the site and he is trying to understand how 120 cars will move through that site. Mr. Mucera indicated the primary traffic movements on the site plan. He described their choices once on the site and how they could exit the site. Chairman Futryk asked if they had any way of anticipating, based on the traffic counts, if the majority of the traffic will be coming from the eastbound area and using the right in/right out as opposed to westbound. Mr. Mucera said he does not believe there is a big disparity but he does not know. Chairman Futryk said if assuming they have westbound traffic coming in Olentangy Street to the service drive to the first entrance, will they have to circle all the way around the building to get to the drive-thru. Mr. Mucera said there are very wide aisles to allow vehicles to proceed.

Chairman Futryk said it has been said this is a unique site for Powell and he asked how this layout compares to other McDonald's in terms of internal traffic flow. Mr. Mucera said McDonald's preference would be to have the building a little more centered on the site but to preserve the trees and work within the limitations of the City they adjusted this site. He said it is still totally acceptable service-wise for them but they went through at least three or four versions of the site plan to get to this one.

Chairman Futryk said he believes he speaks for the Commission in addressing Mr. Dugger regarding a statement he made. He said many of the members are on record that they are not objecting to a McDonalds in Powell, but their concern is this particular setting.

MOTION: Commissioner Wiencek moved to adjourn to Executive Session in accordance with ORC Section 121.22(G)(3) to discuss pending litigation at 10:42 p.m. Commissioner Hrivnak seconded the motion.

VOTE: Y 7 N 0

Mr. Molnar asked, if for purposes of the record, the Commission had been threatened with litigation in this issue. Mr. Dugger said they have been threatened with the applicant's likeliness of an Appeal based on an adverse outcome.

The Commission reconvened at 11:25 p.m. Chairman Futryk closed the public hearing session. He asked if there was any further discussion by members of the Commission.

Commissioner Fusch said as a result of Mr. Dugger's argument about this not being a Highway Business and the definition in the City zoning code about major thoroughfares, about a month ago he was pretty sure McDonald's didn't constitute a Highway Business and now he is not so sure and in fact he does think it constitutes a Highway Business. He said he has some major concerns in that regard.

Commissioner Wiencek thanked the applicant for efforts they have made to comply with the requirements of the City of Powell and he thinks that this is, by all normal respects, an excellent application. He said he commented earlier on the quality of the landscaping and the quality of the building also generally meets or exceeds the requirements of Powell. He said he too is of the opinion that McDonald's meets the definition of a Highway Business as defined in the Powell code and he expects that he will not be able to support this recommendation. He said he also has additional concerns about traffic safety at the rear of this along the access drive, and access to the park and he is not sure yet how to overcome those issues and they need to work on that.

Commissioner Little said he agrees with the two comments he has heard. He said his biggest concern is the safety issue, primarily in the access drive/Murphy Parkway intersection, in the relationship to the park. He said he is in favor of McDonald's in Powell however the way this particular site is currently configured raises safety concerns for him.

Commissioner Ireland thanked McDonald's for being the kind of applicant the Commission likes to come before them as they have listened to them, been very thorough, and very considerate. He said his deepest concern about this is the site intensity as he believes the intensity of this site is not conducive with safety or what is in the best interests of Powell or the area. He said at this point in time he does not think this application meets the requirements it needs to meet.

Commissioner Hrivnak said he has a concern about the close proximity to the park and the amount of children that will be crossing the street with bicycles or so forth. He said the adjacent use, adjacent to Murphy Park is not the best place to put this McDonald's.

Commissioner Emerick said he too has to say this is in this instance a Highway Business and he is concerned about the safety of the close proximity to the park with the kids going back and forth.

Chairman Futryk said he concurs with everything he has heard from the Commission members relative to the Highway Business and the safety of the people using the park, the concerns of traffic flow with the service drive, and he echoes Mr. Little's comments that he is not opposed to McDonald's in the City of Powell, he is just concerned with this particular location.

Commissioner Wiencek added that several members of the Commission commented on the impact on the park itself is an issue that needs to be addressed and that will need to be considered as well as they move forward.

Chairman Futryk issued the following statement:

"Based on the comments of the Commission it would appear at this time that a majority is finding this application does not comply with the Zoning Ordinances of the City of Powell and the Commission will render its decision in writing within 30 days. Staff will notify the applicant and the residents that are interested in attending that hearing of the date of the hearing, tentatively could be as early as July 12th.

Mr. Betz indicated the meeting will be July 12th.

CERTIFICATE OF APPROPRIATENESS

Applicant:	Stavroff Interests LTD
Location:	8 N. Liberty St.
Zoning:	Downtown Business District (DB), Historic District Overlay (HD)
Request:	Renovation of existing structure along with 1,336 sq ft addition.

Matt Stavroff, Stavroff Interests, 565 Metro Place South, Dublin, stated he is the owner of 8 North Liberty Street and the developer. He said they propose to redevelop the existing building which is over 100 years old and a very important structure in the history of downtown Powell. He said as Phase 1 they will remove the appendage to the east which has little architectural value or structural integrity and will add another 1500 square feet going east. He said Phase 2 is the addition of a covered enclosed porch to the north which is about 500 +/- square feet. He said they are excited about coming to the community and see great potential.

Mark Ford, Architect, Ford and Associates, 1500 West First Avenue, Columbus, said the proposal before the Commission is a result of comments from their review by the Historic Downtown Advisory Commission. He said they have changed the application to incorporate the comments they heard from the board members.

Eric Fischer, Development Planner, presented the Staff Report (exhibit). He said this application includes the new requirements within the Zoning Code for downtown district proposals. He said the HDAC recently reviewed the project and provided the Commission with recommendations. He said since the meeting the applicant has tried to address the comments of the HDAC and Staff. Mr. Fischer indicated the renovations to be made to the building and the location of proposed parking spaces. He said the proposal meets with the HDAC recommendation but there are still some details to be solved:

1. It is recommended the new foundation be a stone-faced foundation with buttered joints, the stucco covering be removed from the existing foundation.
2. It is recommended the proposed banners that are shown on the south wall be removed from the proposal.
3. It is recommended the existing railing be removed from the front and all railings will match. Staff feels a wood railing with a simple square spindle will be more appropriate.
4. The applicant has asked for relief in the number of parking spaces requirement. He said 9-10 parking spaces would normally be required based on the square footage. The applicant is working jointly with the adjoining property owner to achieve an arrangement.
5. The site plan works well if the access is restricted to be only from Liberty Street and the Olentangy Street access be exit only. This will also deter cut-through traffic which constantly occurs.

Mr. Fischer said Staff is encouraged greatly about the prospects of this corner finally being renovated and recommend approval with the above recommendations.

Chairman Futryk opened the item for public comment.

Chris Freiheit, landowner, 22 and 18 North Liberty and 24 Olentangy Street, said he is excited to see this corner get renovated and it will be good for the village and good for the businesses around it. He said he was not aware that for a building that size only required five parking spaces. He said 9-10-12 is more what he expected. He said he understands the economic motivation to maximize the rentable and retail space but the property is sacrificing some of the existing parking in order to achieve the level of space they think would be economic. Mr. Freiheit said he compliments Mr. Stavroff on taking on this project but he doesn't want to be the recipient of a lack of parking. He said they will require a significant amount of parking for employees and visitors and he does not think four spaces will handle that.

Mr. Freiheit said it is very important to him to keep the viability of the Antique Mall business and it is rented to various dealers with the understanding there will be adequate parking for the patrons. He said that has worked out that way so far. He said he is concerned about the parking for a building which possibly lacks appropriate parking and is directly adjacent to his parking lot. He said he feels there is a solution as he has available space behind his building and he is willing to negotiate a shared parking agreement which works for both buildings. He said they have not come to an agreement but they are talking along those directions.

Mr. Betz indicated the location of the properties in question. Mr. Freiheit said he would be leery of attaching any parking to his front lot as it serves as the main entrance to the mall and they have just enough to provide comfortable parking for the patrons. He said they are often recipients of parking for people who will shop at a few other shops as well. He said they have a design for the back lot which would achieve a 23 space parking area including a new building to replace the house which is currently there.

Larry Coolidge, 78 W. Olentangy Street, said as a member of the Powell/Liberty Historical Society, he thanks the Commission for their consideration. He said a member of the DART visit team last year said they should guard this building with their life as it is their history. She said this is the "flagship of Powell". He said he always remembered that and this will help the downtown change a little bit. He said they fully support it.

Chairman Futryk closed the public comment session.

Commissioner Emerick asked about the proposed use of the building. Mr. Stavroff said it will be retail and office.

Commissioner Wiencek asked if only half of the 9-10 spaces would be required because it is located in the historic district. Mr. Betz said for 3600 square feet it would be about 9, so the actual requirement is going to be 5 and they have four. He said that is assuming all retail use and office use will be greater, so they are looking at a possibility of 6 to 7 spaces required.

Commissioner Emerick said this is an exciting development and he agrees with Staff's comments. He said his only concern would be the parking situation.

Commissioner Hrivnak asked how many parking spaces are there today. Mr. Betz said right now there is the ability to put 6-9 parking spaces there. He said the applicant and the adjacent parking owner have begun talks. Commissioner Hrivnak said he hope they will continue to work with Staff to work this out. He asked if they would have another exit to a potential back parking lot. Mr. Betz indicated the plan for ingress and egress.

Commissioner Wiencek said one concern is eliminating the cut-through traffic and that will continue to occur if the entrance to the proposed rear parking is off of Liberty. He said he supports the right out only and will deal with the occasional car conflict.

Commissioner Emerick had no comment. Commissioner Fusch said he sits on the HDAC and they strongly support this renovation and the addition and urge the approval of this application. He said they want the applicant to work with Staff on solving the parking problems that exist for this site. He asked about the removal of the banners from the side of the building. Mr. Fischer said they are banners that hang away from the building and they do not know what their use is. Mr. Ford said they would be a narrow canvas banner supported between brackets, which would be changeable and could promote activities in Powell. He said they want to activate the sidewalk. Mr. Betz said perhaps the applicant would not mind a façade easement where the City could control the banners for public use signage instead of the big A-frames on the 4-corners.

Commissioner Wiencek asked about the sewer and water. Mr. Ford said they will have a restroom tapped into the County sewer. Commissioner Wiencek asked about Streetscape and asked how that has been addressed. Mr. Betz said that is one of the items in the TIF so it has not been addressed. Commissioner Wiencek asked if they can approve this with the parking issue. Mr. Betz said it can be a condition of the approval. Mr. Stavroff said there are valid concerns but other areas are vibrant places with these same issues. He said he typically does not have a problem parking in Powell.

Mr. Stavroff asked that the Commission make a decision on this application tonight. He said he thinks it is in the best interests of both property owners to get together and work out this parking.

Mr. Freiheit said a mutual arrangement between them is probably the solution but a remote site or off-site parking may work on paper but in actuality we all understand that the cars are going to park in the lot next to the building they are going to visit, which is his front parking lot. He said he is seriously concerned that overloading his lot would damage the viability of the antique mall. He said if the lot is always full the customers are not going to come in like they do now. He said they need the rear additional parking for a building of this size. He said if they overlook the parking issue they are compromising his position by not considering the total effect of what they are approving. He said they will find parking that works.

Kevin McCauly, Stavroff Interests, said this issue came up with every member of the HDAC. He said seeing what is happening here they were whole-heartedly behind them. He said to say it is a condition does not put either party in the driver seat. He asked that they be allowed to work that out as a group.

Larry Coolidge said the City owns the Old Firehouse and there is adequate parking there for employees and it is only three buildings away. Commissioner Fusch said it is understood that downtown these are walking landscapes and people should be encouraged to walk.

Commissioner Little said this is an exciting opportunity and it is important that the community embraces the new ideas coming to town but it is also important to respect the existing businesses. He said with the unknown plan for the 4-corners there has been some discussion about moving this building. He asked what happens to the sidewalk. He said they may want to consider planters to keep someone from wandering into the busy intersection. He said just don't assume you may use someone else's parking.

Discussion continued regarding adding the required spaces rather than continuing with Phase 2.

MOTION: Commissioner Wiencek moved to approve the Certificate of Appropriateness for Stavroff Interests LTD with the following conditions:

- 1. The new addition shall consist of a stone faced foundation with buttered joints and the stucco shall be removed from the existing foundation and that shall be restored to the stone foundation.**

2. The applicant is to work with Staff to develop an appropriate arrangement for the proposed banners if they are to stay.
3. The existing railing shall be removed in the front and all railings that are proposed will match and be wood railing with simple square spindles. If the railing can be utilized without any spindles then that is preferred.
4. The applicant is seeking relief in the number of parking spaces required. They show the ability to provide or four spaces. They have shown a willingness to work with the adjoining property owner for the creation of additional parking spaces that both can utilize and that will be an idea situation. Staff will continue to work with the property owner to achieve an appropriate parking arrangement prior to issuing the zoning certificate.
5. Access shall be restricted to be only from Liberty Street and the Olentangy Street access shall be exit only.

Commissioner Hrivnak seconded the motion.

VOTE: Y 7 N 0

CERTIFICATE OF APPROPRIATENESS

Applicant: Dr. Mike Mayers
 Location: 212 S. Liberty St.
 Zoning: Downtown Business District (DB), Historic District Overlay (HD)
 Request: Construction of New Office Building

Len _____, Arlington Homes, said he will be the builder and will occupy the second floor and will be a partner in the building. He said Dr. Mike Mayers is an optometrist who will be the other partner and occupy the first floor of the building. He said they have provided samples of building materials and new drawings which address comments from the HDAC.

Mr. Betz reviewed the Staff report (exhibit). He reviewed the location of the proposed site and surrounding uses. He said the HDAC had an issue with the massing of the roof and the detailing of the garage, all of which were accomplished in the redrawn plans. He said a gable was added on the rear portion of the north wall and the scale of the garage was reduced and windows and cupola were added. Mr. Betz said the garage door was also changed to a carriage-type door. He said Staff recommends approval.

Chairman Futryk opened the item for public comment. Hearing none, Chairman Futryk closed the public comment session.

Commissioner Fusch said the HDAC worked closely with the applicant and Staff to redesign some of the building and garage and they are very pleased with what is going on in this area of South Liberty Street. He said he likes very much how these changes have come about in relation to the comments of the HDAC.

The other Commissioners had no comment.

Dr. Mike Mayers, applicant, said the parking has always been his issue with the project from the start. He asked if it would be possible to add one more parking space closer to the door. He said he proposed it to the HDAC and they added another space but he would like yet another. He said he understands if the Commission does not want parking closer to the road. Mr. Betz indicated the parking area and said they are concerned about cars backing in and out of that area. He said access coming in could back up onto the street. He said this application has the closest parking to the street of any in this area.

Members of the Commission did not support adding any other parking spaces to the proposal.

MOTION: Commissioner Hrivnak moved to grant the Certificate of Appropriateness for Dr. Mike Mayers. Commissioner Wienczek seconded the motion.

VOTE: Y 7 N 0

SKETCH PLAN

Applicant: Discovery Land LTD
Location: 4.148 acres on the east side of Village Park Drive just north of Brookehill Condominiums
Existing Zoning: PI, Planned Industrial District
Request: Review of Sketch Plan for a proposed 40 unit senior (age restricted) apartment Complex.

Dan Dillon, 983 Riverpoint Court, applicant, stated he is a long-time resident of Powell and they are proposing something that is a real passion for them. He said they have a development company, and he is a principle with P & D Builders. He said they are proposing a 40-unit senior adult rental community. He said this is a needed housing option in this area and other areas such as Worthington and Upper Arlington have such communities. He said he has spoken with Mr. Betz about the Staff recommendations and he knows that a concern is whether there could be a better piece of property in Powell. He said this property sits in a location which is in walking or biking distance to the library and eating establishments. He said the topography would be lost if it is developed as planned commercial. He said it is a transition piece between light commercial and residential. He said another major issue for them is to make the numbers work so they can create a community where people can rent these units for around \$1200 per month. He said this piece of property is well priced and works with their economic numbers. Mr. Dillon said this is an ideal location for what they want to do.

Mr. Betz presented the Staff report and indicated location of the proposed site and surrounding uses. He said the apartments would be two-level and access would be off of Village Park Drive and Brookehill Drive if that approval is gained from that Condo Association. He indicated the location of the units on the site and noted that the upstairs middle unit would have to go down and around the end of the building to access their garage. He said that is a design flaw in the building.

Mr. Betz said this is currently zoned Planned Industrial and it makes sense that this land be preserved for the continuation of office and office/warehouse type development rather than apartments. He said the surrounding uses make this site inappropriate for this use. He said they should ask if they want to lose an economically viable piece of property within the TIF district. He said they may be able to get better valuation increase with an office or office/warehouse from a revenue and income generation standpoint.

Mr. Betz said there may be a benefit to having this but it is a Staff concern that they may be able to be overcome, that this use of this area may be detrimental to the City from an economic standpoint and from an adjoining land use standpoint in the future.

Commissioner Ireland asked how that may be determined. Commissioner Wiencek said they can investigate the surrounding commercial and light industrial areas to determine valuation and compare that to the proposed application. He said service costs can be applied as well. Mr. Betz said it will be even more difficult to determine because it is age restricted.

Mr. Dillon said there are child care facilities and other uses adjacent to this that will be conducive to this type of use. He said this is a significant site in environmental appeal. He said it is a business project for them but they see this as a real need in the community.

Commissioner Wiencek asked Staff to describe why having Industrial siding up to Brookehill Condos is different than Industrial siding up to this proposal. Mr. Betz said that was discussed when the condos were proposed and it was decided they were a good transition beside the park. He said more appropriately is how much residential does the City want to continue north and how much office potential do they want to lose. He said there are other properties and undeveloped land which offer more opportunities for the target occupant for access to services that they would use day to day.

Commissioner Wiencek said he has a concern about the viability from the standpoint of location, not concept. He said he would want to see the economics information. He said he loves the concept and feels there is a need in the City.

Mr. Dillon said the other pieces of property mentioned by Mr. Betz would not be affordable enough to make the project viable.

Chairman Futryk opened the item for public comment.

Dwacka Dillon, applicant, said this is different because the community is embracing the concept but it doesn't work in terms of the Staff. She said it is a perfect location and she is very excited. She described the community they hope to create. She said just because someone is over 50 and renting doesn't mean they don't have money. She said sometimes people get to that point in life where there is the desire for simplicity in life. She said they need to preserve the preciousness of this community. Ms. Dillon said what they could add to the community would be far greater than what someone else has in mind.

Chairman Futryk closed the public comment session.

Commissioner Ireland said he would like to see the revenue numbers as well but beyond that, if the numbers work out he is supportive of this development at this location.

Commissioner Hrivnak said he likes the concept and rental properties are usually a good buffer between condominiums and industrial.

Commissioner Emerick said he is interested in seeing the number and will go from there.

Commissioner Little said his priorities for Powell are to balance residential and some other type of revenue generation, be it commercial or industrial. He said the community has eliminated things such as big box retail so they are squeezing themselves and that ultimately translates into some other way of improving revenue. He said to be true to his values the revenue stream is important. He said Staff's recommendation is important regarding getting residents from upstairs to their garages. He said if there is a way to keep them from having to go outside that would be better.

Mr. Dillon said they have tried to create a streetscape and there was some thought to design. He said the benefits of the design outweighed the issues. Mr. Betz said the garage can be made longer and an interior stairwell can be built. Mr. Dillon said that would add \$10-15k per unit.

Commissioner Fusch said he likes the general idea but he shares his colleagues concerns about the garage locations and the revenue stream. He said he will visit the site but thinks the community needs to address the revenue concern.

Chairman Futryk said there is definitely a need for this but security of the outside access to the garage would be a concern. He said he is somewhat familiar with the site but he would like to see economic information.

Commissioner Wiencek said if the applicant would like to provide the numbers to the Commission before their next submission he may email them to Mr. Betz and he will forward them to the members.

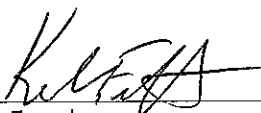
OTHER COMMISSION BUSINESS

There was none.

ADJOURNMENT

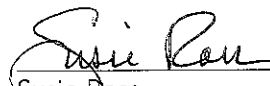
The meeting was adjourned at 1:05 a.m.

DATE MINUTES APPROVED: JULY 12, 2006

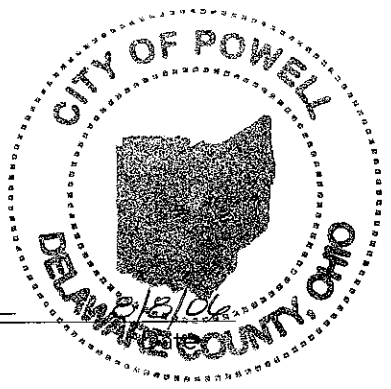


Kevin Futryk
Chairman

8/8/06
Date



Susie Ross
City Clerk



The seal is circular with a dotted border. The outer ring contains the text "CITY OF POWELL" at the top and "DELAWARE COUNTY, OHIO" at the bottom. In the center is a silhouette of the state of Ohio.