



## City of Powell, Ohio

### COUNCIL MINUTES

OCTOBER 3, 2006

A regular meeting of the Powell City Council was called to order at 7:34 p.m. by Mayor Don Grubbs. City Council members present included Richard Cline, Tom Counts, Elmer Meider, Bill Morton, and Dan Wiencek. Art Schultz arrived at 7:45 p.m. Also present were Steve Lutz, City Manager; Debra Miller, Finance Director; Shea Allmont, Community Affairs/Special Events Coordinator; Ken Molnar, Law Director; Susie Ross, City Clerk; interested parties and members of the press.

### PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Madelaine Wood, Powell Mayor's Kid Citizen of the month.

### CITIZEN PARTICIPATION

There was none.

### APPROVAL OF MINUTES

The minutes of September 19, 2006 were amended and approved.

### CONSENT AGENDA

*Item*

*Action Requested*

#### **ORDINANCE 2006-62**

**Adoption**

AN ORDINANCE TO GRANT FINAL ACCEPTANCE FOR THE WEST CASE AVENUE PUBLIC IMPROVEMENTS CONSTRUCTED BY CAPITAL CITY BUILDERS IN ASSOCIATION WITH POWELL INDUSTRIAL PLAZA. THE ROADWAY IS LOCATED WITHIN THE EXISTING RIGHT-OF-WAY, EAST OF INDUSTRIAL PARK PLACE AND WEST OF VILLAGE POINTE DRIVE.

**MOTION: Councilman Cline moved to adopt the Consent Agenda. Councilman Counts seconded the motion. By unanimous consent, the Consent Agenda was adopted as submitted.**

### OCTOBER 2006 MAYOR'S KID CITIZEN OF THE MONTH – MADELAINE WOOD

Mayor Grubbs presented Madelaine Wood with the October Powell Mayor's Kid Citizen of the Month award. He recognized her efforts of citizenship, dedication and service within the community.

### LIQUOR LICENSE REQUEST - KRISTIN C. VERRILL

Steve Lutz, City Manager, said this license request is for a business located in the Liberty Plaza. He said the applicant is attempting to start a business for small business meetings, luncheons and parties and will not have set hours. Councilman Cline asked if the liquor permit itself regulates the hours. Ken Molnar, Director of Law, stated each permit has associated time limits. Councilman Counts asked if the former restaurant in this space had a liquor license. Mr. Lutz said they did. He said when the first restaurant went into the space, Council requested a hearing because of the proximity to the daycare center, but the Liquor Control did issue the license. He said since that time, Council has not requested a hearing for applications at the site.

It was the consensus of Council to waive their right to a hearing on the application.

Councilman Schultz arrived.

### RESOLUTION 2006-31: A RESOLUTION TO ADOPT THE DELAWARE COUNTY ALL NATURAL HAZARD MITIGATION PLAN.

Mr. Lutz said this plan was provided for the entire County and each governmental entity is requested to act upon the plan. He said the plan helps the County secure grant funding in the future and outlines how they will respond to various emergencies if necessary. Mr. Lutz said the plan has been reviewed by Staff and there are no additional comments.

Councilman Counts asked who represented the City on this panel. Mr. Lutz stated the representative was Chief Gary Vest. Councilman Morton said there were two goals for the City of Powell which were noted: directional outdoor warning sirens and a protective shelter. He asked about the sirens heard within the area. Mr. Lutz said there are no warning sirens in the area and Powell and other government entities passed resolutions last year encouraging the County to look into implementing a county-wide siren warning system. He said since the City is building the Police Station, the walls have been reinforced to meet the requirements and it could be a location which would withstand high wind forces.

Mayor Grubbs said the County is looking at obtaining a smaller grant to pay for the study of proposed siren locations. He said there is also already a reverse 9-1-1 system in place, where the County will notify homes in the case of an emergency.

Councilman Morton asked if there are any communities within Delaware County which have warning sirens. Mayor Grubbs said there are not. Councilman Morton asked if that is something that municipalities can approach independently. Mr. Lutz said the sirens are in the Capital Improvement Budget at this time as an unfunded item. He said they believe it makes more sense to approach sirens from a regional basis because if each entity does its own thing, there would not be uniform usage and standards.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

Councilman Cline commended the County and City Representative Chief Vest on the thoroughness of the plan. He said this resolution is an expression of will, not an appropriation, and they are simply indicating that these are needs that ought to be met at some time in the future.

**MOTION: Councilman Cline moved to adopt Resolution 2006-31. Councilman Counts seconded the motion. By unanimous consent, Resolution 2006-31 was adopted.**

**RESOLUTION 2006-32: A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR.**

Debra Miller, Finance Director, stated this resolution is a housekeeping issue which is necessary each year to provide the information to the County Auditor.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

**MOTION: Councilman Cline moved to adopt Resolution 2006-32. Councilman Counts seconded the motion. By unanimous consent, Resolution 2006-32 was adopted.**

**FIRST READING: ORDINANCE 2006-59: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2006.**

Ms. Miller reviewed the appropriations and transfers noted within the ordinance. Councilman Cline asked if transfers from the general fund are always unappropriated balance transfers. Ms. Miller said when she indicates an additional appropriation it is from the unappropriated balance. She said it is usually defined if it is out of the contingency balance.

Councilman Counts asked how the amount regarding the refunded fees and permits was estimated. Ms. Miller stated she estimated a high amount so she would not have to come before Council again at the end of the year.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

**MOTION: Councilman Cline moved to suspend the rules in regards to Ordinance 2006-59. Councilman Counts seconded the motion.**

**VOTE: Y 7 N 0**

**MOTION: Councilman Cline moved to adopt Ordinance 2006-59. Councilman Counts seconded the motion.**

**VOTE:            Y   7              N   0**

**FIRST READING: ORDINANCE 2006-60: AN ORDINANCE ESTABLISHING AND ENACTING TITLE 5 AND CHAPTER 1154 OF THE CODIFIED ORDINANCES OF THE CITY OF POWELL, OHIO, ENTITLED "CABLE SERVICE AND COMPETITIVE VIDEO SERVICE" TO FACILITATE A COMPETITIVE MARKETPLACE FOR BROADBAND SERVICES.**

Mr. Lutz said this is an item that the Operations Committee has reviewed and is being brought forward for Council consideration. He said AT&T is interested in providing competition to Time Warner for cable service. He said Greg Dunn, an attorney representing the City's interests, will briefly discuss the legislation after the presentation by AT&T. He said this change is proposed to the zoning code and Staff will consider moving the item out of the zoning code to some other section of the codified ordinances. Mr. Lutz said that will be done before the second reading and presented to Council at that time.

David Kandel, Director of External Affairs for AT&T Ohio, 150 East Gay Street, Columbus, made a presentation regarding the proposed services. He described this as a major infrastructure investment within Central Ohio called Project Lightspeed that will provide high-speed, high band width internet protocol-based connections to 19 million households in the SBC territory by 2008. He said this will be accomplished by pushing fiber within 3-5k feet of existing neighborhoods and to new developments. Mr. Kandel said this will bring a network which provides 15-39 mbps of internet protocol television which will compete directly with traditional cable TV systems. He said it also provides super high-speed internet access and digital protocol voice. Mr. Kandel said the product offered over the network is called U-Verse. He said this is a residential application which will allow choice to the residents within the area. He said it is not currently available to businesses. Mr. Kandel presented a 3-minute video regarding the project and services.

Councilman Wiencek asked when this service would be available. Mr. Kandel said they are looking to launch in Central Ohio in the first quarter of 2007. He said they are making this presentation because they now have this video component and would like to have a video competition agreement to ensure the City will not lose any revenue. He said by making the agreement they would be paying the same fees that are being received from the cable companies, so the City will not lose revenue. Councilman Meider asked if they are prioritizing to new housing developments first. Mr. Kandel said they will build the network in the existing neighborhoods and as new neighborhoods are built they will add this to the telephone service fiber. Councilman Wiencek asked how they will decide who will get this service. Mr. Kandel said it is a question of how the existing telephone network is configured but they will be able to provide service to the vast majority. Councilman Cline asked for clarification regarding the different streams. Mr. Kandel said they would allow three regular streams and one HD stream and it would max out at that number.

Mayor Grubbs asked if there will still be a gap of service within Powell. Mr. Kandel said when they deploy the infrastructure it will greatly expand the capacity to get high speed internet and in addition the video product shown. He said it will provide overlap so that all areas are able to get at least DSL service. Mr. Kandel said he cannot tell him it will be 100% in the first phase, but in this community it will be substantially more than 50%. Councilman Morton asked about the ability to receive content which is blocked. Mr. Kandel said they would have to come to an agreement with all of the content providers in order to carry them on their system.

Discussion continued regarding the speed and services which would be included in the proposed service. Councilman Morton asked what the economic incentive is to customers to get rid of other services and go to this technology. Mr. Kandel said they will have to deliver a compelling product and bundle it with other products at a compelling price to market this product.

Mayor Grubbs said the ordinance has been prepared to foster competition.

Greg Dunn, Schottenstein Zox & Dunn, addressed the structure and legality of the proposal. He said AT&T believes this is a new product which is different from Cable TV. He said that issue has been litigated in Federal Court, discussed at the FCC in Administrative Hearings, and is in front of Congress. He said he advises that Council should not care what this service is called, but what they will provide for the citizens within the community. He said they drafted this piece of legislation to take care of community needs and to make sure they collect the correct amount of franchise fee. He said AT&T has agreed that they will abide by whatever right-of-way laws and regulations the City of Powell has or enacts in the future. Mr.

Dunn said rather than waiting until litigation is completed on this issue, it is his advice to get an early investment into the product and reap the benefits of competition. He said competition will allow the product to be 10-15% cheaper, foster better customer service and will allow roll-out of better product. He said this proposal was devised to be fair to the current cable provider as they may elect to come under this scheme and get out of their franchise if they choose to do so. Mr. Dunn said there are some federal prohibitions which will allow lock out of certain services but there may be variations as they compete vigorously in the marketplace. Councilman Schultz asked about public access channels and unlimited channels. Mr. Dunn said they have required the vendor to designate capacity of both public education and governmental channels. He said items can be placed on servers on the internet where the public can access them and the whole public access movement will likely move to the internet in the future.

Councilman Wiencek said the world is moving to being internet based and he questions signing an agreement that is dealing with the old technology. He said as the new technology is coming on board and fewer people use cable there will be a diminishing return for the City and increasing returns for the providers. He asked why they are not talking about a flat percentage. Mr. Dunn said this was legislated vigorously and they said it is not video service because it uses IP protocol. He said the provider is not sure how this will turn out so they are asking for permission to get the right-of-way to provide video services. He said there is an argument to collect this revenue stream and hopefully federal legislation will allow municipalities to collect 5%. Councilman Schultz asked if the agreement protects the City from a change in federal law. Mr. Dunn said the agreement has taken into consideration that the federal law could change. He said the federal law preempts the local authorities but the language included in this ordinance was taken out of the bill which is perceived to be the most likely to pass. He said the agreement is proposed for 3 years.

Andy Emerson, Porter Wright, representing AT&T, was also present to answer questions. He said AT&T's position is that they will pay the franchise fee under video service not because they are under the City's authority to impose it, but because they realize there is a revenue stream from the cable operators and to make sure the municipalities are made whole. He said there is a provision for renewal which would keep the percentage the same. He said this proposal allows for a low cost way to provide information to all of the City residents through public internet. Mr. Dunn said the cable companies will react to this addition of service with better service.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

This item was taken to a second reading.

**FIRST READING: ORDINANCE 2006-61: AN ORDINANCE ADOPTING THE AMENDED PERSONNEL MANUAL FOR EMPLOYEES OF THE CITY OF POWELL AND REPEALING ORDINANCE 2005-63.**

Mr. Lutz said each year the personnel manual is updated and the proposed changes are administrative in nature and do not affect employee benefits. He summarized the major updates within the manual.

Councilman Wiencek asked for clarification regarding prohibited activities. Councilman Counts said these are prohibited by State Law and the changes bring the City into compliance. Mr. Lutz said he will receive clarification on this issue before the second reading. Councilman Counts noted an amendment on page 4, first paragraph, adding the word "period."

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

This item was taken to a second reading.

**FIRST READING: ORDINANCE 2006-63: AN ORDINANCE TO ESTABLISH THE POLICE FACILITY DEBT SERVICE FUND.**

Ms. Miller said she has been working on the 2007 Budget and has found that they will need to establish this debt service fund to receive the appropriations.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

**OTHER COUNCIL MATTERS**

Councilman Schultz said they have been working with Liberty Township about a possible Joint Economic Development District (JEDD) concerning a specific piece of property which is being developed by a Liberty Township resident. He said this property is not considering annexation but the developer believes it would be a reasonable deal for himself and the community to create a JEDD. Mr. Lutz said under a JEDD, the City's income tax would be collected on those working in the district and a portion of that income tax would go to the City and a portion of the income tax would go to the Township. Councilman Schultz said for this initial JEDD the revenues are proposed to be split 50/50.

Councilman Schultz said that would provide a revenue stream to the Township for things like the Sawmill Beautification Plan and/or Bikepaths. He said the goal is to set this up and then look for other opportunities where this would work. He said they are currently in the process of putting together a draft agreement for review.

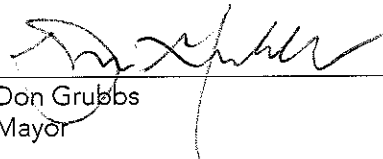
Councilman Morton asked if the revenue stream would cover the cost of services provided. Councilman Schultz said the services would be a fraction of the expected income as this is a commercial project with several hundred employees. Councilman Counts asked who determines the cost of services. Mr. Lutz said in the proposed draft agreement it states that the cost of service would be identified in year one and there is an escalation clause for each year thereafter. Councilman Schultz said the City would police it as if it was any other part of the City. Councilman Counts asked if it is possible to expand an existing JEDD to include adjacent property. Councilman Schultz said it is his understanding that it may be extended and made completely unique to each piece of property. Mayor Grubbs said it may also be expanded to non-contiguous property. Councilman Meider asked about time frame attached. Mr. Lutz said they are trying to make the terms and conditions of this JEDD coincide with the CEDA agreement. Mayor Grubbs said a JEDD is relatively easy to terminate for any party. Councilman Morton asked about the value proposition for the developer. Councilman Schultz said when they approached the developer they did not go in trying to sell him on annexation. He said they tried to impress on him that this does not compete with the tax revenue stream for the schools. Mr. Lutz said the big benefit is police protection. Councilman Schultz said he views this as a great opportunity which is relatively non-contentious.

Mayor Grubbs said he and Mr. Lutz have spoken with Shyra Eichhorn and Staff about the Parks and Recreation Advisory Board. He said they have considered reformulating the Board into a Recreation and Parks Board with three standing members. He said any interested persons would be able to come and participate and the Board would provide coordination of volunteers for staffing of events, provide feedback for participants and Staff, and recommend program improvements based on feedback provided. He said they intend to shift the focus from parks to recreation and a smaller focus would provide better meeting attendance and better satisfaction. Mayor Grubbs said they are recommending the reformulation to Council. Mr. Lutz said Staff will draft an ordinance which creates this change in the Board.

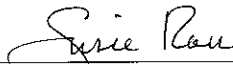
**ADJOURNMENT**

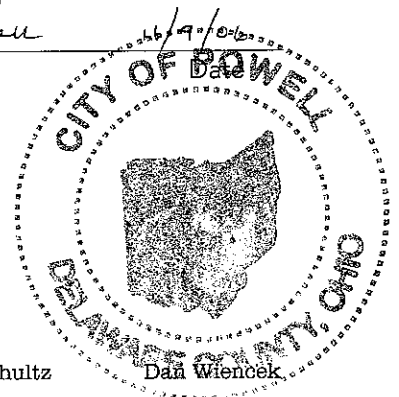
**MOTION: Councilman Cline moved to adjourn from Regular Open Session at 9:35 p.m. Councilman Counts seconded the motion. By unanimous consent, the motion was approved.**

**DATE MINUTES APPROVED: October 17, 2006**

  
\_\_\_\_\_  
Don Grubbs  
Mayor

11-9-06  
Date

  
\_\_\_\_\_  
Susie Ross  
City Clerk



**City Council**  
Don Grubbs, Mayor

Richard Cline      Tom Counts      Elmer Meider      Bill Morton      Art Schultz      Dan Wienczek

**MOTION: Councilman Cline moved to suspend the rules in regards to Ordinance 2006-63. Councilman Counts seconded the motion.**

**VOTE: Y 7 N 0**

**MOTION: Councilman Cline moved to adopt Ordinance 2006-63. Councilman Counts seconded the motion.**

**VOTE: Y 7 N 0**

**FIRST READING: ORDINANCE 2006-64: AN ORDINANCE ACCEPTING EASEMENTS FROM DELAWARE REALTY AND PROPERTIES LIMITED AND DELAWARE LAND AND CATTLE COMPANY, LLC REGARDING THE PREMISES AT 37 SOUTH LIBERTY STREET, POWELL, OHIO AND VERIFYING ZONING COMPLIANCE.**

Mr. Lutz said at the last meeting Council appropriated \$10k for the easement running across 37 South Liberty Street. He said the line was installed as part of the park construction in the late 1990's. Mr. Molnar stated the reason for accepting the easements is that there are some affirmative covenants in them. He said the body of the ordinance refers to a waiver and release. He said they have been at this project for at least 8 years and the case almost ended up in litigation. Mr. Molnar said the property owner was concerned about the status of the number of parking spaces and Mr. Betz assured him that they have the appropriate number of parking spaces. Mr. Molnar said the easements are acceptable to the property owner and to the City. He advised that Council suspend the rules and adopt the ordinance at this meeting.

Mayor Grubbs opened this item for public comment. Hearing none, he closed the public comment session.

**MOTION: Councilman Cline moved to suspend the rules in regards to Ordinance 2006-64. Councilman Counts seconded the motion.**

**VOTE: Y 7 N 0**

**MOTION: Councilman Cline moved to adopt Ordinance 2006-64. Councilman Counts seconded the motion.**

**VOTE: Y 6 N 1 (Wienczek)**

#### **COMMITTEE REPORTS**

**Development Committee:** No Report. (Next Meeting: TBD)

**Finance Committee:** Councilman Cline said he will send out the list of Capital Improvement priorities by email in the next few days. (Next Meeting: October 24<sup>th</sup>, 7:30 p.m.)

**Operations Committee:** Councilman Counts said they will be spending more time on the Building Permit process. (Next Meeting: November 6, 7:30 a.m.)

**Downtown Committee:** Councilman Meider provided information about the parking signs within the City. Mr. Lutz said the committee reviewing candidates for the Downtown Coordinator conducted interviews today and will provide their recommendation at the next Council meeting. Mayor Grubbs said the new Downtown Coordinator will be introduced to the Downtown Committee at the next meeting. (Next Meeting: October 11<sup>th</sup>, 6:30 p.m.)

#### **CITY MANAGER'S REPORT**

Mr. Lutz reminded Council that the Powell Quarterly draft was included in packets and comments are due the next day. He said a memo is included in packets regarding Vince Pulles' resignation as Chairman of the Personnel Board of Review. He said Mr. Pulles was transferred out of town.

Mr. Lutz said the Autumn Roast and Toast will be held on October 14<sup>th</sup> and all are welcome. He said packets include materials from the Olentangy Commerce and from other groups opposing the proposed merger. He said a meeting is scheduled for this Friday where the Olentangy Commerce Board will speak to this matter. Mayor Grubbs said Mr. Lutz holds the proxy for the City and he would appreciate the views of Council on how he should vote, but a vote has not yet been scheduled or announced. He said they sent a letter to the Chamber Board and to this date have not received a response in writing. Mayor Grubbs said it is not clear how they will conduct the election but it will ultimately be up to the Chamber Board. Mr. Lutz said tomorrow night the Sawmill Parkway Beautification Meeting will be held and representatives of the City and Township will be in attendance.