



City of Powell, Ohio

COUNCIL MINUTES DECEMBER 5, 2006

A regular meeting of the Powell City Council was called to order at 7:33 p.m. by Mayor Don Grubbs. City Council members present included Richard Cline, Tom Counts, Elmer Meider, Bill Morton, and Art Schultz. Dan Wiencek arrived at 8:33 p.m. Also present were Steve Lutz, City Manager; David Betz, Director of Development; 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 Weston Tillett, November Mayor's Kid Citizen of the Month and Gracie Tillett, December Mayor's Kid Citizen of the Month.

CITIZEN PARTICIPATION

Jamie Reinbolt, JR Designs, South Liberty Street, introduced Susan and Norman Carmichael, the owners of a new restaurant which will be housed within their building. She asked that City Council approve the transfer of the D-5 liquor license from her name to the new restaurant owners. Mayor Grubbs asked Ms. Reinbolt to contact City Manager Steve Lutz to start the process.

Mayor Grubbs closed the Citizen Participation session.

APPROVAL OF MINUTES

The minutes of November 21, 2006 were approved as submitted.

CONSENT AGENDA

Item

Ordinance 2006-71:

AN ORDINANCE TO GRANT FINAL ACCEPTANCE OF THE PUBLIC IMPROVEMENTS OF GOLF VILLAGE, SECTION 2, PHASE B SUBDIVISION AS THE SAME IS NUMBERED AND DELINEATED UPON THE AMENDED PLAT THEREOF RECORDED IN CABINET 3, SLIDES 409, 409A AND 409B DELAWARE COUNTY, OHIO RECORDS.

Action Requested

Adoption

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

NOVEMBER MAYOR'S KID CITIZEN OF THE MONTH - WESTON TILLETT

DECEMBER MAYOR'S KID CITIZEN OF THE MONTH - GRACE TILLETT

Mayor Grubbs said at the beginning of November they were unable to secure their intended recipient and they found a very nice solution to the quandary. He said Weston and Grace Tillett were nominated by Julie Zandanowicz and chosen as the Kid Citizens for the months of November and December. Mayor Grubbs noted Grace's volunteer efforts at the Chamber of Commerce Tattoo Shop at the Powell Festival. He recognized Weston's volunteer activities with the Chamber of Commerce at the Powell Festival and at the Scioto Ridge Elementary Art Show.

LIQUOR LICENSE REQUESTS

LIBERTY TAVERN

Timothy Picciano and Chris Beardman, Liberty Tavern, 50 South Liberty, were present to address City Council. Mayor Grubbs asked if this restaurant will be in the structure which is under construction on Liberty Street. Mr. Beardman said they will. Mayor Grubbs asked the Law Director if there is any formal action required by the City. Ken Molnar, Law Director, said there is not, assuming Staff has contacted the law enforcement agency to confirm there are no problems. Mr. Beardman said they are requesting a D-5 liquor license for this site and they are very excited to be an addition to the City of Powell. He said the name of the restaurant was taken from its location on Liberty Street and they are going to use a colonial theme. He said they will be researching the history of City of Powell and have considered using a replica

of the Liberty Bell. He said the menu has not been set but they are looking to serve traditional hearty tavern fare. Mr. Beardman said they have a restaurant establishment in Dublin called the Dublin Village Tavern and they hope to have a great gathering spot within the City of Powell. He said they have become very involved with the City of Dublin and their community affairs. He said they hope to open mid-summer 2007 in the northwest end cap. Mayor Grubbs asked about the floor plan. Mr. Beardman said the proposed floor plan includes a separate room with approximately 12 seats which could be used for meeting space.

Councilman Schultz asked about the square footage of the restaurant. Mr. Beardman said it will be approximately 4100 sq. ft. which will seat 140-170, not including the patio. Councilman Cline suggested they speak with David Betz as a contact with the Powell/Liberty Historical Society.

ANNUAL RENEWAL OF LIQUOR LICENSES WITHIN CITY OF POWELL

Mr. Lutz said each year City Council has the opportunity to object to the renewal of any of the liquor licenses at existing establishments. He said they must object based on the standards set by the State of Ohio. He said the Police Chief is out of town this week but he reported that there have not been problems with the existing establishments within the past year.

There was no objection from City Council to the liquor license request for Liberty Tavern or the annual renewal of licenses.

RESOLUTION 2006-41: A RESOLUTION AMENDING AND RESTATING RESOLUTION 2006-17: A RESOLUTION AUTHORIZING THE VILLAGE OF POWELL TO PICK UP THE STATUTORILY REQUIRED CONTRIBUTION TO THE POLICE AND FIREMAN'S DISABILITY AND PENSION FUND FOR THE EMPLOYEES OF THE VILLAGE PURSUANT TO IRC SECTION 414 (H) (2).

Mr. Lutz said a very similar resolution was passed earlier in the year at the request of the Police and Fireman's Disability and Pension Fund. He said the retirement system recently reviewed the resolution and recommended several additions to the wording. Mr. Lutz outlined the proposed changes and said these are administrative in nature and do not change the meaning of the resolution.

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

MOTION: Councilman Cline moved to adopt Resolution 2006-41. Councilman Counts seconded the motion. By unanimous consent, Resolution 2006-41 was adopted.

RESOLUTION 2006-42: A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A COMPETITIVE VIDEO SERVICE AGREEMENT.

Mr. Lutz said approximately two months ago Council passed an ordinance establishing the Cable Service and Competitive Video Service. He said AT&T has submitted a proposal to bring their new cable television system to the City of Powell. He said under that ordinance it is required that an agreement be entered into between the City and any provider and this resolution authorizes such an agreement. Mr. Lutz said the biggest impact AT&T's cable service would have on the City from the aesthetics standpoint is the requirement of the location of 6-7 transformer-type boxes. He said the Development Department will work with AT&T to site the boxes in order to mitigate the aesthetic impact within the surrounding neighborhoods.

Gregg Dunn, Legal Counsel representing the City on this matter, was present to make a brief overview of the agreement. He said this is a straight forward agreement which effectuates the ordinance. He said they have requested only a three-year agreement because of the uncertainty regarding the regulatory framework. He said there is a section within the agreement where both parties reserve some rights if the law changes fundamentally. He said they are unsure what will happen at the State and Federal level over the next couple of years. He said this agreement will allow AT&T to build the system and bring competition to Powell.

Mayor Grubbs asked about the mutual termination section. Mr. Dunn described the section and how it impacts both parties. Councilman Cline asked if Section 1 on the first page of the agreement allows the City to regulate not only the placement of the transformers but also any sort of screening which may be required. Mr. Dunn said they referenced the sections which allow the City to regulate the placement of the boxes and any permits which would be conditioned upon the placement of appropriate screening. He said they will require AT&T meet with the City's current procedures. Councilman Schultz said it sounds

like the City has final say on this. Mr. Dunn said if they are arguing under this agreement, the City wins, but if AT&T says they have rights under the PUCO it is not under City regulation. He said they should avoid all of that. He said AT&T has received a lot of bad publicity because of the placement of their boxes in Westerville and they recognize that they made a mistake in placing them pursuant to engineering needs as opposed to aesthetic needs. Councilman Meider asked about the size of the boxes.

David Kandel, AT&T, addressed the placement and size of the cabinets. He said in this community where most of the residential areas are new, the cabinets will be placed in the areas designated for utilities which are typically behind or around homes. He said back in the 1970's the utilities placed connective boxes in residential front yards. He said their thought back then was that the technician would not have to walk through yards to work on the network. Mr. Kandel said in project Lightspeed the 52B Cabinet has to be within relatively close proximity to the connect box. He said that should not create any difficulty in Powell. Councilman Cline asked for the dimensions of the boxes. Mr. Kandel provided a photo of the box from the front and side views. He said this cabinet is 1/4 of the size of the cabinets they use for DSL service. Councilman Schultz asked if he has understood correctly that AT&T will work with the Development Department. Mr. Kandel said when they apply for permits they will work with the administration and if there are concerns they will work to do appropriate screening. Mayor Grubbs asked if everything will be completed on public easements. Mr. Kandel said it will be in utility easements and in some cases in road right-of-ways.

David Betz, Director of Development, said these are considered structures under the zoning ordinance so they will be required to have permits whether on public or private property. He said if they are on private property they will require a zoning certificate. He said generally within Powell most easements for utilities are at the rear of properties where at most the 4-5 houses adjacent may be affected. He said with that they will have to answer to those people. Councilman Meider asked if that implies they will work directly with the affected residents. Mr. Betz said it is their hope that they would. He said when they have a utility easement they can come in and have access to that piece of property and put in, on, or under it the utility that they have easement for. He said they can do what the easement says they can do with it. Councilman Meider asked if the affected residents will have any right of approval. Mr. Betz said not necessarily, dependent upon what the easement says they can do. He said residents should know about the easement before they buy their property.

Councilman Cline said he agrees with AT&T's representation that this is not a monstrosity but it is a lot bigger than what is present today. He said Council will hear about it if one of these is installed in an area where the residents believe the peace and serenity of their back yard has been disturbed. He said he is inquiring because he wants to know the process AT&T is envisioning so they may be good neighbors. Mr. Kandel said they intend to be good neighbors and they will work with the administration or with the administration and the resident to come up with a solution. He said they have been very successful in doing that. Councilman Morton asked if there are 6-7 of these needed within the City. Mr. Kandel said that is true and each cabinet serves between 300-500 homes. Councilman Cline said since they do not have to install so many of these cabinets they should invest in screening to make the immediate residents have a comfort level. Mr. Kandel said most of the utility easements are in inconspicuous areas. Mayor Grubbs asked when they may start to move into the Powell area. Mr. Kandel said they will be in the Central Ohio area in mid-2007. He said it is a rolling cutover so it will be ongoing over the next three years, expanding as they grow.

Mayor Grubbs opened this item for public comment.

Julie Atchison, Counsel for ATT, brought to Council's attention a minor typographical error in the agreement. She noted that on Page 1, Recitals, Section C, 7th line, the word "reverses" should be removed and the word "reserves" inserted.

Mayor Grubbs closed the public comment session.

MOTION: Councilman Cline moved to amend Resolution 2006-42 addendum thereto, Competitive Video Service Agreement, Recital, Subsection C, final sentence, to read "The Company, however, specifically reserves its right as a 'telephone' company," and thus, a "public utility" under Ohio law, etc." Councilman Counts seconded the motion. By unanimous consent, the amendment was approved.

MOTION: Councilman Cline moved to adopt Resolution 2006-42 as amended. Councilman Counts seconded the motion. By unanimous consent, Resolution 2006-42 was adopted.

(Tabled from 11-09-06) RESOLUTION 2006-39: A RESOLUTION DISAPPROVING THE SEPTEMBER 28, 2006 APPLICATION SEEKING DESIGNATION OF A COMMUNITY ENTERTAINMENT DISTRICT WITHIN THE CITY OF POWELL.

Mr. Lutz said in November, Council received a request to designate a Community Entertainment District within the City of Powell. He said per state statutes the Mayor did give a recommendation to deny this application for various reasons within his report. He said this item was tabled to this evening and attached is a written request to withdraw this application as the proposed restaurant did not receive its financing. Mr. Lutz said Mr. Molnar recommends Council pass this resolution formally disapproving this proposed Community Entertainment District.

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

Councilman Schultz said they discussed entertainment districts in general during the Development Committee earlier. He said they agreed that this application should be denied, but that a concept of a CED is a pretty good one. He said the concept seems like a reasonable approach which Council may want to consider as it encourages things like restaurants and commerce. Councilman Schultz said restaurants want liquor licenses, but small restaurants have a harder time receiving liquor licenses. Councilman Morton said this is a good concept as it fosters the growth of restaurants and places to go. He said the footprint on this particular application was too large but there should be a happy medium out there. Councilman Schultz said the proposed Olla Podrida would be a good candidate as a type of applicant for this district.

Mayor Grubbs asked if there are any types of zoning changes which should be made. Councilman Schultz said they would ideally want to encourage the restaurant/bar type establishment. He said they did discuss this question so the combination of CED and new zoning regulations would remove the concern about the obvious potential negatives. He said they could also dissolve the CED if there are too many issues. Mr. Betz said they should be able to make some Zoning Code changes which would control some of the undesirable uses within this type of district.

MOTION: Councilman Cline moved to adopt Resolution 2006-39. Councilman Counts seconded the motion. By unanimous consent, Resolution 2006-39 was adopted.

FIRST READING: ORDINANCE 2006-72: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2006 AND DECLARING AN EMERGENCY.

Mr. Lutz said this ordinance appropriates excess funds in the Park salary account and transfers them to the Police Department salary account to cover payroll expenses through the remainder of 2006. He said the Police Department is running ahead of what was anticipated due to some leaves of absences and the use of overtime to cover those shifts.

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

Councilman Morton asked if this will impact the Parks salary fund. Mr. Lutz said there will be no impact.

MOTION: Councilman Cline moved to suspend the rules in regards to Ordinance 2006-72. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Cline moved to adopt Ordinance 2006-72. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

(Tabled from 11-09-06) SECOND READING: ORDINANCE 2006-65: AN ORDINANCE RATIFYING THE MAINTENANCE AGREEMENT BETWEEN THE CITY OF POWELL AND LIBERTY TOWNSHIP REGARDING THE RUTHERFORD ROAD PEDESTRIAN TUNNEL.

Mr. Lutz said this ordinance was tabled from the November 9th meeting and he recommends it be tabled

again to the December 19th meeting. He said Mr. Molnar is working with the Township's Legal Counsel to finalize the terms and conditions of the proposed agreement.

Ken Molnar said they are basically in agreement but need to put it in writing. He said the Township Trustees discussed it last evening and an agreement should be ready for consideration before the end of the month.

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

MOTION: Councilman Cline moved to table Ordinance 2006-65 to the next regularly scheduled City Council meeting on December 19, 2006. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

SECOND READING: ORDINANCE 2006-70: AN ORDINANCE TO ACCEPT THE PROPOSED BUDGET; TO MAKE APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE MUNICIPALITY OF POWELL, DELAWARE COUNTY, OHIO, FOR THE FISCAL YEAR ENDING DECEMBER 31, 2007. *Public Hearing*

Mr. Lutz said a comprehensive presentation was given regarding the proposed budget at the last Council meeting.

Councilman Meider asked if there are any changes from what was presented at the last meeting. Mr. Lutz said there are not.

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

MOTION: Councilman Cline moved to adopt Ordinance 2006-70. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

Mayor Grubbs thanked Mr. Lutz and Staff for their hard work on the Budget.

COMMITTEE REPORTS

Development Committee: No report. Next Meeting: January 2007

Finance Committee: No report. Next meeting: January 2007.

Operations Committee: Councilman Counts said they met on December 5th and discussed the Master Communication Plan. He said they decided a review of the plan will be appropriate so that will be brought to Council in 2007. Next Meeting: February 2007.

Downtown Committee: Mayor Grubbs said they are actively searching for Board Members for the new non-profit entity. He said they will be inviting everyone who has ever expressed an interest in the Downtown area to the next meeting. Next Meeting: December 13th, 6:30 p.m.

CITY MANAGER'S REPORT

Mr. Lutz said the members of the Powell Area Chamber of Commerce did not vote to merge with the Delaware Chamber of Commerce so they will remain two individual entities.

OTHER COUNCIL MATTERS

Mayor Grubbs said earlier this evening was the "preview" of the Giant Eagle store in Liberty Township. He said the General Manager said although they are in the township they will be involved with the City as well. Mayor Grubbs said there is a new press release before Council regarding "Can the Mayor" which will be a food drive for People in Need of Delaware County.

Mayor Grubbs said more information will be forthcoming regarding an event at the Columbus Zoo. Mr. Lutz said Staff is preparing a proclamation for that event which is in celebration of Colo's 50th Birthday.

EXECUTIVE SESSION IN ACCORDANCE WITH ORC SECTION 121.22 (G)(1), PERSONNEL MATTERS AND SECTION 121.22 (G)(2), LAND ACQUISITION.

MOTION: Councilman Cline moved to adjourn into Executive Session in accordance with ORC Section 121.22(G)(1), Personnel Matters, and Section 121.22 (G)(2), Land Acquisition, at 8:33 p.m. Councilman Counts seconded the motion. The motion carried.

Councilman Wiencek arrived at 8:33 p.m.

MOTION: Councilman Cline moved to adjourn from Executive Session at 10:04 p.m. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

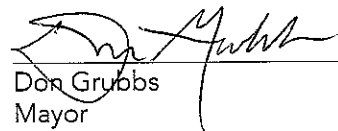
MOTION: Councilman Cline moved to reconvene in Regular Open Session at 10:04 p.m. Councilman Counts seconded the motion.

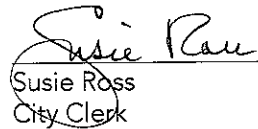
VOTE: Y 7 N 0

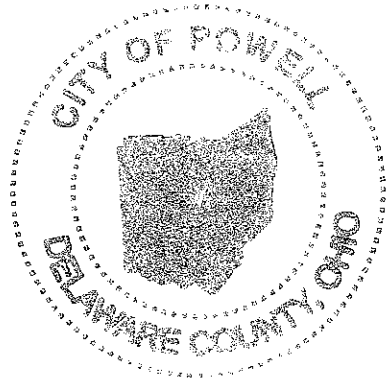
MOTION: Councilman Cline moved to adjourn from Regular Open Session 10:05 p.m. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

DATE MINUTES APPROVED: January 2, 2007


Don Grubbs
Mayor
1-15-07
Date


Susie Ross
City Clerk
1/18/07
Date



City Council

Don Grubbs, Mayor

Richard Cline

Tom Counts

Elmer Meider

Bill Morton

Art Schultz

Dan Wiencek