



City of Powell, Ohio
City Council

MEETING MINUTES
SEPTEMBER 4, 2007

A regular meeting of the Powell City Council was called to order at 7:32 p.m. by Mayor Don Grubbs. City Council members present included Richard Cline, Tom Counts, Elmer Meider, Art Schultz and Dan Wiencek. Bill Morton was absent. Also present were Steve Lutz, City Manager; Debra Miller, Finance Director; Shea Alltmont, Community Affairs/Special Events Coordinator; Gene Hollins, Law Director; Susie Ross, City Clerk; interested parties and members of the Press.

PLEDGE OF ALLEGIANCE

Mayor Grubbs asked for a moment of respect and silence in honor of Patriot's Day on September 11th. The Pledge of Allegiance was led by Ben Hagman, the Kid Citizen of the Month for September.

CITIZEN PARTICIPATION

Mayor Grubbs opened the Citizen Participation session for items not listed on the agenda. Hearing none, Mayor Grubbs closed the Citizen Participation session.

SEPTEMBER 2007 POWELL MAYOR'S KID CITIZEN OF THE MONTH - BEN HAGMAN

Mayor Grubbs presented the September 2007 Powell Mayor's Kid Citizen of the Month Award to Ben Hagman. He recognized Ben for his assistance to neighbors in Olentangy Ridge. He was nominated for assisting with shoveling sidewalks and driveways to neighbors who needed help and picking up newspapers for neighbors who were out of town.

APPROVAL OF MINUTES

The minutes of August 21, 2007 were approved as submitted.

FIRST READING: ORDINANCE 2007-45: AN ORDINANCE AMENDING SECTION 505.11 "HUNTING PROHIBITED" OF THE CODIFIED ORDINANCES OF THE CITY OF POWELL AND REPEALING FORMER SECTION 505.11(b).

Steve Lutz, City Manager, said earlier in the summer the residents from the Ashmoore subdivision expressed concerns to Council about coyote sightings. He said as a result of that, the City formed a Wildlife Committee and held a public hearing to discuss the matter. He said the proposed ordinance amendment is a result of that hearing.

Mr. Lutz reviewed the exceptions clause proposed to Section 505.11 of the Codified Ordinances. He also reviewed the definition of "nuisance animals" and the requirements of the trapper in registering with the Police Department.

Mayor Grubbs opened this item to public comment.

Scott Lindsey, 244 Woodedge Circle East, commended City Council and the Wildlife Committee on their work on this issue in response to the coyote sightings in Ashmoore. He said he does not see a reason to amend Section 505 of the code and he opposes the draft amendment. He said the rural, rustic neighborhoods Council has tried to foster will include the occasional wild animal within the City limits. He said while the occasional animal carcass which results from that may be an unwelcome sight, he believes the wild animal sightings add to the character of the community. Mr. Lindsay said it also provides an opportunity to teach children about interacting with wild animals which are all around us. He asked if there is a penalty for trappers who do not notify the Chief of Police. He also asked if the listings of trapping sites will be a public record.

Mr. Lindsey said at the committee meeting there were concerns from residents and some good testimony from the wildlife expert. He said he would like to hear from trapping experts to learn more about the types of traps used. Mr. Lindsay said there have been zero coyote killings in Ohio and he questions the

necessity of trapping whatsoever. He said he applauds Council for trying to create a sensible solution that has no public cost. He said despite that effort, he is opposed to the amendment.

Michael Marchiando, 450 Keisel Court, President of Ashmoore HOA, said he is in support of the amendment. He said he was not aware he was in violation of the law when he was trapping moles in his yard. He said he does not want to have to notify the Police in that case, or to have a penalty for that type of trapping. He said he understands that situation when it comes to larger wildlife. Mr. Marchiando said he does not think they will see many people trapping because that is not exactly the solution they are looking for. He said part of the problem is that people don't want traps in their yards because most of them have children. Mr. Marchiando said he can see trapping used only in dire circumstances where their pet is constantly being attacked. He said trapping is a fairly expensive service but he feels homeowners should be given a choice.

William Canfield, 488 Wooten Court South, said he has not seen one coyote, even in the woods. He said he thinks the present ordinance is good and should be retained. He said he would not like to see people putting up traps, even on private property. He said the present ordinance has served the City well over the years and it should be continued.

Mayor Grubbs closed the public comment session.

Councilman Wiencek asked if the wording "other similar animals" should be added to the listing of animals in Section B3. He said an untethered dog or feral cat poses as much of a risk to human health as the other animals in the listing. He said their goal in giving people the right to trap was to help residents find a solution specific to their property. Councilman Wiencek said those issues may need some discussion. He said some version of this ordinance needs to go forward as this shows a gap in the existing code in regards to trapping mice and rats. He said he is not in support of the ordinance as it is currently worded.

Councilman Counts said he was at the Wildlife Committee meeting and it was obvious this is not an easy problem to solve. He said he believes the trapping of animals will happen in only dire circumstances and it is clear from the residents at the committee meeting that there is a need to control the nuisance on their property, especially when it was clear the City could not do anything on private property. Councilman Counts said this is an important service to have available but two other things are necessary but will not be in the ordinance: education and removal of animal carcasses. He said education is essential to remove fear and to remove the food source these animals come in for. He said those two aspects along with this ordinance put together a compromise for everyone. Councilman Counts said he has a concern regarding Section 1 because it is narrowly drafted regarding types of nuisance animals. He said he is in favor of the ordinance but it needs to be amended.

Councilman Schultz said it is difficult to categorize the animals which fit into the category of nuisance animals. He said professional help will be needed when trapping some of these kinds of animals. He said the ordinance needs to be clear regarding which animals are able to be trapped by residents without requiring notifying the police. He said it will have to include carefully balanced wording and they may initially want to keep it more restrictive so they reduce the risk to pets. Councilman Schultz said he is not sure how they can educate the public.

Councilman Cline said squirrel and bat infestations in attics are a problem in some communities but he is not sure the course of action calls for the killing of animals. He said that will be something to consider. He said there is a penalty section in this ordinance which says that anyone who violates the ordinance is guilty of a minor misdemeanor and that would apply to the trappers if they act without complying with the requirements. He said this ordinance is needed but it can be improved.

Councilman Meider said he is conceptually for this ordinance but a clear definition of nuisance animals will need to be added. He said he fears a trap could kill neighbor's cats or dogs. He said he likes the notion of moving forward but this ordinance is not ready for implementation.

Mr. Lutz clarified that all information regarding where traps are located would be public record. He said the proposed ordinance includes licensed and bonded wildlife removal control services because the state regulates what kinds of traps may or may not be used. He said traps are not allowed to injure the animal and the trapper is required to check the trap every 24 hours. He said that prevents pets from being confined in a trap for long periods of time. He said the state regulates, after an animal is captured in a

trap, whether the animal must be euthanized or may be relocated. Councilman Schultz clarified that City Council could not require something other than what is required by state law. Mr. Lutz said that is correct.

Mr. Lutz said residents could be educated through publications such as press releases, City website and Powell Quarterly newsletters. Councilman Schultz said background information could be distributed when residents contact the Police Department regarding trapping. Mr. Lutz said this legislation was suggested after the killing of fawns and injury to dogs in the Ashmoore subdivision. Mr. Marchiando said there have not been any issues since that time. Mr. Lutz said City collection of dead animals was suggested. He said currently the City policy is that carcasses are collected if they are on public property and they are taken to a rendering plant in Delaware for disposal. He said the cost is \$50 per carcass and there is currently \$1500 in the budget to pay for this type of service. Mr. Lutz said it is difficult for residents to properly dispose of carcasses on their own but if the City provides this service, additional monies will be needed in the budget.

Councilman Schultz said it may be helpful to add wording to the ordinance regarding state regulations. Councilman Counts said that would be a part of the education process. Mr. Lutz said he will send a draft of the revised ordinance to Councilmen Counts and Wiencek so they may make amendments prior to the next meeting.

This item was taken to a second reading.

FIRST READING: ORDINANCE 2007-46: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2007.

Debra Miller, Finance Director, described the proposed modifications. She said the Park and Recreation Program Fund has continued to raise its revenues this year and they are requesting an appropriation of their fund balance so they can continue expending the additional dollars that will come in.

Ms. Miller said the HDPI is ready to separate itself from the City and they are asking to have the remaining budget transferred to them as "start up" funds. She described the amounts to be transferred.

Councilman Wiencek asked if HDPI has replaced Ms. Steck. Ms. Miller said the advertisement has been published and they are in the process of interviewing candidates. Councilman Wiencek asked if the City's commitment to cover all or a portion of that salary reached beyond the first year. Ms. Miller said the second year and after will be funded on a "grant" basis where they would ask for a certain amount of money. She said there will be a line item in the budget based on the group's request for funding.

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

Councilman Schultz asked for clarification. Mayor Grubbs said the separation from the City was planned for the end of 2007 but the Downtown Coordinator has resigned. He said with that change being made, it was decided to make the separation at this time. Councilman Schultz asked if the organization could spend this money on something other than a staff person. Councilman Counts said he is confident they will use this money for the remaining employment expenses of a staff person.

MOTION: Councilman Cline moved to suspend the rules in regards to Ordinance 2007-46. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Cline moved to adopt Ordinance 2007-46. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

FIRST READING: ORDINANCE 2007-47: AN ORDINANCE ACCEPTING A NEGOTIATED RECREATION FEE FOR THE ABBOTSGATE OF POWELL DEVELOPMENT.

Mr. Lutz said Abbotsgate is a proposed senior apartment complex which was approved by the City in 2006. He said in this situation, the development was approved during the time when the City was changing Recreation Fees. He said prior to November of 2006 the City had a Recreation Fee of \$31k per acre and it was changed to reflect the increases in property costs up to \$75k per acre. Mr. Lutz said because of the timing of the approval of the development, the developers were anticipating \$31k per

acre costs and when it was approved fees had increased to \$75k per acre. He said this ordinance proposes the developer be responsible for a payment of \$76,832.50 for Recreation Fees for this development. Ms. Miller said the public access easement given also increases the amount of Recreation Fees which the developer is giving to the City.

Dave Dye, attorney for the applicant, said their basis for requesting the modification to the Recreation Fee is due to the change in how the City looks at the calculation of the fee. He said the factors changed and it had an inequitable result on this particular project because of when it came through the process.

Mr. Dye said they propose that the developer use a \$50k per acre amount and apply it to the City's formula, resulting in a \$100k fee. He said they are also asking that the developer be given credit for the amount of open space in this site which is being allocated to the City for its use through an easement rather than a dedication. He said that includes the open space within the development, a fishable pond, and a gazebo area. Mr. Dye said the developer would be given the dollar-per-dollar credit for that amount of land and that would result in a cash contribution of \$76,832.50. He expressed his gratitude to the Finance Committee for their assistance.

Councilman Cline asked if the development plan requires the grant of the easement. Mr. Dye said it requires a storm sewer easement in favor of the adjacent property but not an easement of this open space.

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

Councilman Wiencek said he thinks this will be a great project but one of the arguments made was that the size of the fee was because of the density of the project. He said the developer asked for a variance for increased density so it seems incongruous to ask for more density and then say they are being penalized for the density. He said he is concerned about how the access easement will be used because the Brookehill Condo Association has indicated they are unwilling to provide easement across their land to get to the proposed easement. Councilman Wiencek said giving the City the right to get to the property without having a way to get to it does not provide a practical benefit. He said the purpose of the park fee is to provide a benefit to the greater populous and he does not see where this particular parcel will provide that benefit to anyone other than the Abbottsgate residents.

Councilman Counts said he is one of the members of the Finance Committee who recommends the waiving of this fee. He said this has been before the Committee before and the prior arguments were regarding density, credits, or the procedures of other communities. He said the Committee was unwilling to make a change when they received the first request. Councilman Counts said the applicant made an argument that made sense when they brought it before the Committee the second time. He said it was a timing issue and the fee schedule ordinance did not include wording regarding the time wherein the fee should be adjusted. He said there were not a lot of projects in the pipeline at the time of this project and the timing would have changed the dynamics. Councilman Counts said that is an appropriate basis for making a waiver in this instance and it would not serve as a precedent for other projects. He said the open space credit was debated rigorously and it was found to be similar to the credit at Rutherford Estates. Councilman Counts said he recommends they approve the waiver.

Councilman Schultz asked what the cash contribution would be if they simply went on the equation used before the Fee Schedule change. Councilman Counts said it would have been \$62k so they are now getting more than they would have prior to the fee change. Councilman Schultz said this project spanned this period of change and since there are no other developments coming in at the same time he is ok with this ordinance.

Councilman Cline said the ordinance should be amended to expressly state that the applicant will grant an easement. He said even though this is a small amount of open space, it is more likely to be used by the community than things they have approved in the past. He said in the past he served on the Parks and Rec Advisory Board and they started the process of being no longer interested in micro parks of 1/10 or 1/25 of an acre because they are not usable. He said this is a 1/2 acre and even though that falls in the category of a micro park, the design of this parcel is different with the stocked fishing pond. He said the dollar amounts involved represent an attempt to compromise between what the fee would have been had there been no change and what the rate would have been if the full change had been imposed. Councilman Cline said he is in favor of the ordinance but it needs to be amended to state the granting of

the easement.

Mr. Dye said the applicant agrees to the addition of the expressed language.

MOTION: Councilman Cline moved to amend Ordinance 2007-47 in the following manner: Section 2, strike the period after the phrase "Discovery Land, Ltd" and in its place insert ", in addition, the applicant shall grant an access easement for 0.46335 acres; as described on page 2 of the letter from applicant's attorney dated 7/11/07, and in the attachments thereto, for a total recreational fee of \$100,000." Councilman Counts seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Cline moved to suspend the rules in regards to Ordinance 2007-47. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Cline moved to adopt Ordinance 2007-47. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

FIRST READING: ORDINANCE 2007-48: AN ORDINANCE TO VACATE A 10-FOOT PERMANENT PUBLIC PATHWAY EASEMENT, LOCATED ON LOTS 27 AND 28, SECTION 4, TOWNSHIP 3, RANGE 19 OF RECORD IN PLAT BOOK VOLUME 0532, PAGES 2059, 2060, AND 2061, AS RECORDED IN THE DELAWARE COUNTY RECORDER'S OFFICE.

Mr. Lutz said this easement was for the property located at 285 South Liberty Street. He said the bike path constructed by the developer did not exactly coincide with this easement so Staff recommends they vacate this recorded easement. He said a new easement has already been executed and recorded at the County Recorder's office.

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

MOTION: Councilman Cline moved to suspend the rules in regards to Ordinance 2007-48. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Cline moved to adopt Ordinance 2007-48. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

COMMITTEE REPORTS

Development Committee: Councilman Schultz said the meeting this evening was postponed. He said the primary topic was discussion regarding a proposed new stop sign in Powell Place. He said it was suggested the resident bringing forth the request take some extra time to get a petition together to see if they have a majority of residents that support the stop sign. Next Meeting: TBD

Finance Committee: No report. Next Meeting: September 11th, 7:30 p.m.

Operations Committee: No report. Next Meeting: September 18th, 6:30 p.m.

CITY MANAGER'S REPORT

Mr. Lutz introduced Carey Boyle of Wiles, Boyle, & Burkholder. He said Mr. Hollins had a meeting conflict so Mr. Boyle is sitting in until Mr. Hollins arrives.

OTHER COUNCIL MATTERS

There were none.

BOARD APPOINTMENTS/REAPPOINTMENTS

Mayor Grubbs said a sheet has been provided regarding appointments and reappointments to Boards and Commissions. Mr. Lutz said everyone whose terms are expiring or have expired have indicated they are willing to continue to serve if Council so desires. Councilman Wiencek asked that they discuss the appointments and/or reappointments in Executive Session.

Mayor Grubbs asked if anyone has indicated interest in filling the open positions on the Personnel Board of Review and the Arbor Advisory Subcommittee. Mr. Lutz said they have advertised and have received no response. He said he would be happy to contact anyone recommended to fill one of the openings. Councilman Schultz said they typically look for candidates with a Human Resources background to serve on the Personnel Board of Review. Mayor Grubbs said there is a new Tax Incentive Review Council which will have to be formed according to State Law. He asked for volunteers to take the one position appointed from the members of Council.

MOTION: Councilman Cline moved at 8:43 p.m. to adjourn to Executive Session in accordance with ORC Section 121.22 (G) (3) to discuss pending litigation and to discuss Personnel Matters under the appropriate ORC Section. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Cline moved to adjourn from Executive Session at 10:11 p.m. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

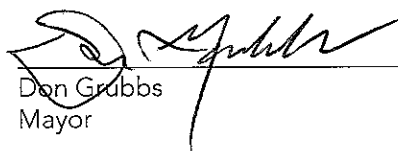
MOTION: Councilman Cline moved to reconvene in Regular Open Session at 10:11 p.m. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Cline moved to adjourn from Regular Open Session at 10:11 p.m. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

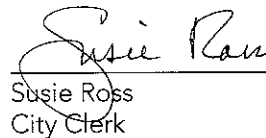
DATE MINUTES APPROVED: September 18, 2007



Don Grubbs
Mayor

9-25-07

Date



Susie Ross
City Clerk

9/24/07

Date

