



City of Powell, Ohio
City Council

MEETING MINUTES
OCTOBER 2, 2007

A regular meeting of the Powell City Council was called to order at 7:35 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; David Betz, Director of Development; Shea Allmont, Community Affairs/Special Events Coordinator; Gene Hollins, Law Director; Susie Ross, City Clerk; interested parties and members of the Press.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Emily and Jack Beer, Mayor's Kid Citizens of the Month.

CITIZEN PARTICIPATION

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

APPROVAL OF MINUTES

The minutes of September 18, 2007 were approved as submitted.

OCTOBER POWELL MAYOR'S KID CITIZENS OF THE MONTH - EMILY & JACK BEER

Mayor Grubbs presented the October Mayor's Kid Citizen Awards to Emily and Jack Beer. He noted they are being honored for their continued demonstration of the basic values of listening, behaving, and sharing with other kids. He said Emily is involved in Girl Scouts and they are both active in athletic and community programs.

CONSENT AGENDA

Item

Action Requested

ORDINANCE 2007-50:

Adoption

AN ORDINANCE TO GRANT FINAL ACCEPTANCE OF THE PUBLIC IMPROVEMENTS OF MURPHY PARK SECTION 5 SUBDIVISION AS THE SAME IS NUMBERED AND DELINEATED UPON THE AMENDED PLAT THEREOF RECORDED IN CABINET 3, SLIDES 552-552B, DELAWARE COUNTY, OHIO RECORDS.

ORDINANCE 2007-51:

Adoption

AN ORDINANCE TO GRANT FINAL ACCEPTANCE OF THE PUBLIC IMPROVEMENTS OF GOLF VILLAGE SECTION 1, PHASE A SUBDIVISION AS THE SAME IS NUMBERED AND DELINEATED UPON THE AMENDED PLAT THEREOF RECORDED IN CABINET 2, SLIDES 773-773A, DELAWARE COUNTY, OHIO RECORDS.

ORDINANCE 2007-52:

Adoption

AN ORDINANCE TO GRANT FINAL ACCEPTANCE OF THE PUBLIC IMPROVEMENTS OF GOLF VILLAGE SECTION 5, PHASE A SUBDIVISION AS THE SAME IS NUMBERED AND DELINEATED UPON THE AMENDED PLAT THEREOF RECORDED IN CABINET 3, SLIDES 387-387A, DELAWARE COUNTY, OHIO RECORDS.

ORDINANCE 2007-53:

Adoption

AN ORDINANCE TO GRANT FINAL ACCEPTANCE OF THE PUBLIC IMPROVEMENTS OF GOLF VILLAGE SECTION 9-2, PART A SUBDIVISION AS THE SAME IS NUMBERED AND DELINEATED UPON THE AMENDED PLAT THEREOF RECORDED IN CABINET 2, SLIDES 744-744A, DELAWARE COUNTY, OHIO RECORDS.

ORDINANCE 2007-54:

Adoption

AN ORDINANCE TO GRANT FINAL ACCEPTANCE OF THE PUBLIC IMPROVEMENTS OF GOLF VILLAGE SECTION 9-2, PART B SUBDIVISION AS THE SAME IS NUMBERED AND DELINEATED UPON THE AMENDED PLAT THEREOF RECORDED IN CABINET 3, SLIDES 22-22A-22B, DELAWARE COUNTY, OHIO RECORDS.

ORDINANCE 2007-55:

Adoption

AN ORDINANCE TO GRANT FINAL ACCEPTANCE OF THE PUBLIC IMPROVEMENTS OF THE WOODS OF POWELL SOUTH SUBDIVISION AS THE SAME IS NUMBERED AND DELINEATED UPON THE AMENDED PLAT THEREOF RECORDED IN CABINET 3, SLIDES 454-454B, DELAWARE COUNTY, OHIO RECORDS.

Mayor Grubbs asked if any items should be removed from the Consent Agenda. Steve Lutz, City Manager, asked that Ordinance 2007-52 be withdrawn as several items within the public improvements need to be completed before final acceptance is granted.

MOTION: Councilman Cline moved to adopt the Consent Agenda with the exception of Ordinance 2007-52. Councilman Counts seconded the motion. By unanimous consent, the Consent Agenda was approved. Ordinances 2007-50, 2007-51, 2007-53, 2007-54 and 2007-55 were adopted.

LIQUOR LICENSE NOTIFICATION

Request for transfer from Giv2Get Inc. dba Parkway Pub to Jon White

Mr. Lutz said the applicant is present to discuss the liquor license transfer for a proposed Irish Pub on the corner of Murphy Parkway and Olentangy Street. He said the City does have the option to object to the issuance of a liquor license permit and one of the reasons Council is permitted to object is proximity to a public playground. He said Staff has attached a map which identifies that the Murphy Park playground is within 500 feet of this proposed eating establishment.

Jon White, 4463 Village Club Drive, was present to answer questions regarding the proposed restaurant. Councilman Cline asked if this is a new build. Mr. White said it is a new build which is under construction at this time. Councilman Cline asked if the business plan is contingent on the ability to sell alcohol. Mr. White said it is. He said his plan is for a restaurant pub and it will not be promoted as a sports bar. He said it would be similar to the "Old Bag of Nails" restaurant. He said it will not be a bar.

Councilman Meider asked if the Parkway Pub will then lose their license totally. Mr. White said it is his understanding they have two licenses. Councilman Counts asked about the hours of operation. Mr. White said the hours would be Sunday - Thursday 11 a.m. - 11 p.m., Friday and Saturday 11 a.m. - Midnight. Councilman Wiencek asked how many seats the restaurant has proposed. Mr. White said they are estimating 100 inside with an additional 30-35 seats in the patio area. Mayor Grubbs asked if there would be entertainment such as pool tables or a dance floor. Mr. White said there would not. He said there will be divided sections within the restaurant for separated seating.

Councilman Counts said this type of license would allow liquor until 2:30 a.m. Mr. White said it is a D-5 which allows liquor to be served until 1:30 a.m. Councilman Counts asked about the mix of food to alcohol. Mr. White said they will be promoting this as a family-friendly restaurant with a 60-40 split of food to alcohol. Councilman Counts asked if the restaurant is on the front corner of the site and where the trash containers would be. Mr. White indicated the location of the restaurant and said the trash containers will be on the southwest corner of the facility. Councilman Counts asked if overflow parking from this site would park in the park lot. Mr. Betz said 100 seats may require overflow parking. Mr. White said he inquired and the property owner said the City agreed to allow parking if needed.

Councilman Counts asked about Mr. White's experience in the restaurant business. Mr. White said this is his first experience with alcohol but he has had several franchises within 11 years of experience. Councilman Schultz asked if only part of the building will be a pub. Mr. White said the building is an "L" shape and the pub will be located in the area furthest away from the park. Councilman Schultz asked about surrounding uses and adjacent parking.

Councilman Wiencek said Planning and Zoning does not discuss specific uses but it was discussed and anticipated this would house a restaurant. He said alcohol was not discussed. Mayor Grubbs asked if they have the ability to enforce different hours for businesses. He said they may still have people driving from the restaurant and using the access road to the park. Mr. Hollins said hour restrictions may be included in the zoning text for the entire building. Councilman Counts said their only authority is to request a hearing. Mr. Hollins said a hearing would be held before an Administrative Hearing Officer and the City would have to produce criteria why this business would be substantially detrimental to the park. He said often the proximity to a park would not be detrimental enough to disallow the license. Discussion continued. Mr. White said he is a "hands on" owner and he will be there every day. He said he has children and he does not want to promote a sports bar or one where he will be open until late hours. He has been researching this for six months and he wants a family-style Irish Pub environment that will draw business people and families. Mr. White said he will always keep in mind that he is located next to a City park.

Councilman Cline said if he reviewed the criteria correctly, the park proximity is the only potential basis for objection. He said given this location on Olentangy Street, this is an appropriate location for a business of this type and he requested Council not ask for a hearing. Councilman Wiencek asked about objections at the time of renewal. Mr. Hollins said the City does have the opportunity to object to annual permit renewals. Mayor Grubbs said the consensus is that Council will take no action to request a

hearing.

RESOLUTION 2007-17: A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE DELAWARE, OHIO CITY PROSECUTOR'S OFFICE.

Mr. Lutz said the City uses the services of the Delaware City Prosecutor's Office to prosecute all cases coming before the Delaware Municipal Court. He said the Police Chief is very satisfied with the services received and the proposed contract is for the same amount as the last contract. He said this is much less than any other method they could use to prosecute cases and Staff recommends entering into this agreement.

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

MOTION: Councilman Cline moved to adopt Resolution 2007-17. Councilman Counts seconded the motion. By unanimous consent, Resolution 2007-17 was adopted.

RESOLUTION 2007-18: A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN ACCESS AGREEMENT WITH THE GREATER POWELL VETERANS MEMORIAL FOUNDATION, INC. REGARDING THE POWELL VETERAN'S MEMORIAL PROJECT.

Mr. Lutz said the Greater Powell Veterans Memorial Foundation has notified the City they will soon start construction of the memorial. He said the City needs to enter into an access agreement which will legally allow the group to enter City property for construction purposes. He said the Foundation would love to have the memorial completed by Veteran's Day this year but it will depend upon when they start construction.

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

MOTION: Councilman Cline moved to adopt Resolution 2007-18. Councilman Counts seconded the motion. By unanimous consent, Resolution 2007-18 was adopted.

SECOND READING: ORDINANCE 2007-49: AN ORDINANCE ACCEPTING THE ANNEXATION OF A 1.618 ACRE TRACT, MORE OR LESS TO THE CITY OF POWELL AND AMENDING THE ZONING MAP, REZONING FROM LIBERTY TOWNSHIP FR-1, FARM RESIDENCE DISTRICT TO CITY OF POWELL PC, PLANNED COMMERCIAL DISTRICT.

Public Hearing

David Betz, Director of Development, indicated the location of the subject property and surrounding uses and zoning. He said the plan as submitted in text form proposes the same zoning as Golf Village Sub Area F which surrounds the subject property on three sides. He said that area is planned commercial. Mr. Betz said the applicant is in contract to purchase the adjacent property and once the annexation has been approved a cohesive plan will be brought forward. He indicated the site plan for the proposed Target and its location in relation to this site. Mr. Betz said all Sub Area F requirements will be in effect with this site with the exception of City landscaping and signage requirements. He said the Planning & Zoning Commission reviewed the application and recommends its approval subject to the conditions listed within the ordinance.

Mayor Grubbs opened this item to public comment.

John Bennehoof, 3974 Village Club Drive, asked if this annexation is to make the Sub Area F whole for the plan of the highly contested Target. He also asked about the impact on infrastructure and the associated costs and who they will be conveyed to.

Mayor Grubbs asked for clarification regarding Mr. Bennehoof's questions. Councilman Schultz asked if he is wondering how the acceptance of this annexation will affect the Target plan. Mr. Bennehoof said that is correct.

Mr. Betz said the Target plan is totally independent of this annexation, takes into account where this property is located, and is self-sufficient on its own property. He said this applicant has property to the west under contract and it will be a part of the overall development plan. He said there is no public infrastructure as a part of this development. He said this application is not proposing any public

infrastructure which would be charged to the City or the Infrastructure Finance Authority. He said there would be right-of-way designation. Councilman Schultz asked if the applicant would join into the Authority but would not add to the debt. Mr. Betz said they would be contributing payments to the Infrastructure Finance Authority.

Mr. Bennehoof asked if this annexation is independent of, and will remain independent of, the Target proposal. He said the plan is not yet developed. Mr. Betz said there is no site plan yet developed for this because this ordinance is the annexation and placing of the zoning on the property. He said it would place the surrounding Golf Village Sub Area F standards on this property. He said they are independent of each other. Mr. Bennehoof asked if it, after annexed, would ever be a part of the Target plan. Mr. Betz said it is not going to be a part of the Target plan but there may be some adjustments made in the future for site planning which would benefit surrounding properties. Mr. Bennehoof said although he likes Target, he is not in favor of the proposed Target as it is not well placed. He said as long as this is not contingent and never will be subjugated upon the Target, he does not have any issue with it. Councilman Schultz said the point is whether this does or does not become accepted it will not influence whether the Target does or does not become accepted. Mr. Bennehoof said that is part of his question.

Councilman Wiencek said there was significant discussion about that issue at Planning and Zoning. He said the City generally requires most annexations come concurrently with the development plan. He said in this particular case the Commission recommended an exception to that rule because the applicant is attempting to purchase the adjacent parcel and wants to come in with a comprehensive plan. He said any attempt to co-mingle this annexation and parcel with the Target site will still require development plan approval by the Planning & Zoning Commission. He said that is not anticipated. He said they discussed that this might make sense to allow this parcel to have access from the common access drive to the north of the Target site. He said he speaks for the Zoning Commission when he says they prefer there not be additional access off of Home Road except for right-in/right-out access. He said this annexation will not affect the Target proposal but there may be a change in the way the common access drive flows to improve access to this site.

Mr. Bennehoof said he understands this is not to make Target whole but he takes exception to the acceptance of an annexation without the submission of a fully developed plan. He said he leaves that to their discretion.

Councilman Wiencek said this is clearly an out-parcel and they felt comfortable because they know it will be a commercial establishment. Mr. Bennehoof said he would prefer that type of establishment on the proposed Target parcel.

Gary Gitlitz, Attorney for the Developer, said he appreciates the assistance of Mr. Betz throughout the development stage of this project. He said they realize they will need to go through the Development process and approval in the future. He introduced Mr. Hicks, one of the principals in the development.

Mayor Grubbs closed the public comment session.

Councilman Meider said it has been discussed thoroughly and he is comfortable with this proposal. Councilman Wiencek asked if the developer has moved along further in the development plan process and if they know what they will anticipate on this location. Mr. Gitlitz said it will be a typical outlot retail development type of project which is similar to the situation as is along Sawmill Parkway.

MOTION: Councilman Cline moved to adopt Ordinance 2007-49. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

COMMITTEE REPORTS

Development Committee: Councilman Schultz said they met earlier and discussed two stop sign requests within Powell Place. He said there were no stop signs to the north and with the addition of Woods of Powell there is a more direct flow of traffic. He said some of that was anticipated by zoning as there are some stop signs posted. He said the residents completed a petition and Staff will review them before proceeding to Council. Councilman Schultz said most of the meeting discussion was about the proposed bike path connections in the Golf Village area. He said the developer has agreed to complete short areas of path to make it even more useful and to connect into the infrastructure crossings. He said they discussed the sharing of paths versus completing short portions of dedicated pathway independent

of the cart paths. He said the comments were not always positive but there was constructive discussion and some of the concerns were reduced. Councilman Schultz said the discussion will continue next month and it is headed in the right direction.

Finance Committee: No report. Next Meeting: October 23rd, 7:30 p.m.

Operations Committee: No report. Next Meeting: TBD

CITY MANAGER'S REPORT

Mr. Lutz said the first Council meeting in November falls on Election Day and he recommends they consider moving the meeting to Wednesday, November 7th. The members of Council agreed.

Mr. Lutz distributed a memo from the Delaware County Board of Elections. He said the Board was asked to make a ruling regarding the qualifications of one of the City Council candidates for the November Election. He said as a result of this issue being raised, the City may wish to confirm that all of the Council candidates on the November ballot will meet the City Charter requirements. He said the Charter stipulates that the City Council shall be the judge of the election and qualifications of its own members. Mr. Lutz said this issue should be decided in a timely manner so the campaign and election process may move forward.

Mayor Grubbs excused himself from the discussion and asked Mr. Counts to lead this portion of the meeting. Vice Chairman Counts said Council has never qualified candidates for Council and as seen throughout the surrounding counties, there have been challenges. He said it is appropriate they seek some sort of verification that candidates do have the necessary qualifications for Council. He said verifying residency is not uncommon when dealing with enrolling children in public school. He asked for discussion as to whether there should be some procedure for qualifying Council candidates. Councilman Wiencek said Council will have to discuss their authority and responsibility to deal with this issue. He said the three candidates facing re-election this fall should reclus themselves from this discussion. Councilman Wiencek said residency is the only requirement for them to review. He said Mr. Hollins included information about election contests and he is unclear if Council has the authority or a process to deal with this issue.

Mr. Hollins said research has indicated a distinction between an election "contest" after the votes have been cast and an election "protest" which is made prior to the election. He said it is unclear the Charter is broad enough to indicate that Council is the judge of the pre-vote election qualifications. He said the law is clear that issues in regard to qualification should be raised prior to an election. He said if Council finds Section 4.09 is not broad enough to allow Council to judge the pre-election qualifications, there is not another section in the Charter which addresses it and it will be a matter for the Ohio law through the Board of Elections.

Councilman Counts said there are notations in Ohio law that Subject Headings should not limit the provisions within them. Mr. Hollins said the Charter was most likely drafted without a distinction between Election contest and Election protest. He said that distinction is not that well understood. Councilman Wiencek said it is not stretching the imagination to say that "contest" was meant to be generally descriptive and that would allow Council to have the broader ability and right to deal with both pre- and post-election issues. Mr. Hollins said he will always argue on the side of broader home rule authority being vested to this body rather than to fall to somewhere else. Councilman Wiencek asked what process they should use if they attempt to validate the residency of potential candidates.

Councilman Meider said the Charter clearly reads there is a one year residency requirement and it makes sense that one must know the community to be qualified to serve. He said it would be unfair to any candidate to allow him to complete the process if he does not meet the qualification. Councilman Wiencek said the Board of Elections process does not require the Council to certify a candidate prior to candidacy. Vice Chairman Counts said they may be behind in the process but they should start it now rather than wait until after the election. Councilman Wiencek said they should quickly attempt to validate the qualifications of all candidates on the ballot. He said they would need to have a public hearing with a resolution before them which requires all candidates to submit proof of residency. Councilman Meider agreed.

Mr. Lutz asked if Staff should contact all four Council candidates and obtain information validating their residency per the Charter requirement. Vice Chairman Counts asked for clarification. Councilman Wiencek said they should require candidates to submit proof of residency, however that is defined. He said that should be on the agenda at a meeting in the near future. Vice Chairman Counts suggested

items which could define residency. Councilman Wiencek said they should check the residency requirements of the Board of Elections. He said this could be discussed at the meeting on October 16th. Mr. Hollins said he will check to see if there is a need to further research the issue.

OTHER COUNCIL MATTERS

Mayor Grubbs said the Autumn Roast and Toast is October 13th. He also reported that CSX railroad did clean up their right-of-way off of Olentangy Street.

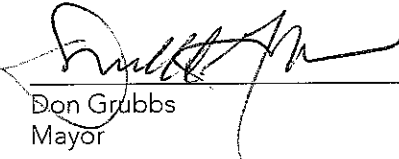
Mr. Hollins asked that a Councilman make a motion to clarify the regular meeting date in November since it was just rescheduled due to Election Day.

MOTION: Councilman Cline moved to have Council by resolution designate November 7, 2007 as the regularly scheduled first meeting date for the month of November in order to avoid a conflict with the voting which will occur in this building on November 6, 2007. Councilman Counts seconded the motion. By unanimous consent, the motion carried.

ADJOURNMENT

The meeting was adjourned at 8:48 p.m.

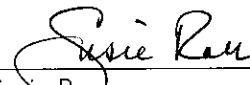
DATE MINUTES APPROVED: October 16, 2007



Don Grubbs
Mayor

11-3-07

Date



Susie Ross
City Clerk

11-7-07

Date

