



**City of Powell, Ohio**  
City Council

**MEETING MINUTES**  
**OCTOBER 16, 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, Bill Morton, Art Schultz and Dan Wiencek. Also present were Steve Lutz, City Manager; Gene Hollins, Law Director; Anne Vogel, Secretary/Receptionist; interested parties and members of the Press.

**PLEDGE OF ALLEGIANCE**

**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 October 2, 2007 were approved as submitted.

**CONSENT AGENDA**

<b>Item</b>	<b>Action Requested</b>
Monthly Community Affairs/Special Events Report	<i>Receipt of Report</i>
Monthly Financial Report	<i>Receipt of Report</i>
Monthly Historic Downtown Powell, Inc. (HDPI) Report	<i>Receipt of Report</i>
Monthly Planning and Zoning Report	<i>Receipt of Report</i>
Monthly Police Report	<i>Receipt of Report</i>

**MOTION: Councilman Cline moved to approve the Consent Agenda. Councilman Counts seconded the motion. By unanimous approval, the Consent Agenda was approved. The Monthly Reports were received.**

**RESOLUTION 2007-19: A RESOLUTION FIXING THE TIME AND PLACE FOR A HEARING TO DETERMINE THE QUALIFICATIONS OF CANDIDATES FOR CITY COUNCIL.**

Mayor Grubbs excused himself from the discussion of this item. Vice Chairman Counts chaired this portion of the meeting.

Steve Lutz, City Manager, said at the last meeting Council requested Staff prepare a resolution which would determine the qualifications of candidates for City Council. He said this resolution permits City Council to establish a date and time for a special meeting where the Council Candidates will be required to submit proof they meet the residency requirement contained in Section 4.02 of the City Charter.

Vice Chairman Counts opened this item to public comment. Hearing none, he closed the public comment session.

Vice Chairman Counts asked the Law Director if there were any considerations regarding participation for those members of Council who are candidates in the upcoming election. Gene Hollins, Law Director, said they investigated possible authority on that issue and found that none exists so he does not believe there is a legal prohibition. Mr. Hollins said he is confident the Charter was set up so that the Council members could take off their "candidate" hats and put on their "Council" hats and do what is in the best interest of the City. He said if the members personally feel they would like to refrain from participating that is appropriate as well.

Councilman Cline asked what process would be advised if this resolution is approved. Mr. Hollins said it is similar to a due process hearing where they will need to interpret the Charter in regards to the start date of the one year residency period. He said it does not have to be a formal hearing. Councilman Cline

asked how many votes will be needed if Council approves this resolution and some of the candidates choose to reclude themselves. Mr. Hollins said they would need 4 positive votes to pass the resolution.

Councilman Meider said he is always trying to encourage neighbors and friends to involve themselves in City government and committees but there is considerable logic to have a residency requirement. He said that allows one to better understand the community. Councilman Meider said he served on several other committees before running for City Council and it gave him perspective on the community which is important. He said he is very supportive of a resolution which requires they hold to the one year minimum residency requirement included in the Charter.

Mayor Grubbs, Councilmen Cline and Schultz refrained from comment.

Councilman Wiencek said he has struggled with this issue since it came to light. He said the residency requirement as listed in the Charter is extremely clear. He said should Council have a vacancy mid-term, the Charter refers to Section 4.02 which only refers to a residency requirement when a person is declaring to run. He said because there is some gray area in how that is interpreted it speaks to the inadequacy of words to cover every situation. Councilman Wiencek said State Law has requirements but it also has a process in which a timeline is met. He said the City Charter is silent to that issue and a candidate should be able to check when they file for candidacy. He said he would like to hear from others on these points.

Councilman Morton said he feels the intent is to get good people to run for office. He said when he ran he looked to the Board of Elections and they never guided him to look to any other body in the process. Councilman Morton said they are four weeks away from the Election and he feels it is tragic they are now having this discussion. He said he is also concerned that if Council makes an exception it will set precedence. Councilman Morton said he would like to see action on Council's part to make sure there is a process in place that will prevent this from happening again. He said the application should come to City Council after it is reviewed and submitted to the Board of Elections. Councilman Morton said he would not be opposed to having an exception for this case if Council can make sure that the checks and balances are put in place.

Councilman Wiencek said the Board of Elections does have a candidate's manual that directs the candidate back to the City's home rule. He read the section from page 2 of the manual. He said he is not prone to make an exception, but he would like to find a legal justification to allow the candidate to go forward. Councilman Wiencek directed the question to Mr. Hollins.

Mr. Hollins stated there is a gray area and there are different ways to interpret the qualification section of the Charter. He said there was no prior notice as to the correct interpretation of this before these petitions were due. He said the Charter gives City Council the ability to interpret. Mr. Hollins said this is important as it is the constitution for the City and Council has the control and absolute discretion of the residency issues. He said it is within their discretion to allow an exception and they may look at things on a case-by-case basis.

Councilman Cline said he intended to remain silent on this issue but he has an interest that is separate from his interest as a member of City Council. He said the candidate petition states that the undersigned is "certified to be eligible" as a candidate and the candidate receives a document which says the eligibility is governed in this case by a Charter. He said the question before Council is whether, at some date in the future, they will hold a hearing to determine if the four candidates on the ballot meet that standard. Councilman Cline said the issue at hand is whether Council will enforce the Charter. He said it is a miscarriage of justice if they do not enforce their constitution. He said Council may make a decision once they have a hearing but they cannot change the Charter just because it is unfair or inconvenient.

Councilman Schultz said he believes that if it was found that a Council member did not meet the candidacy requirements, the Council would be required to remove that person. He said it is in the petition when they run for Council and they swear to uphold the Charter when they take their oath to become a Council member. He said if they are trying to follow what they were sworn to do, they must apply it at this time. Councilman Schultz said he agrees it is unfortunate and that Council needs to address this so it cannot happen again. He said they cannot decide to not enforce rules.

Vice Chairman Counts said that when they took office they were sworn to uphold the Charter. He said the Charter is very limited in what it says but it does say that there is a one year residency requirement. He said as Council, they are permitted to "fill in the gaps" where the Charter is silent, but they are not

allowed to interpret something that is very clear. He said there is nothing in the Charter that allows Council to grant relief from the one year residency requirement. He said Council members are elected to be leaders and as leaders they should not be looking elsewhere for guidance. Vice Chairman Counts said ignorance of the law is no defense and candidates need to understand what the Charter provides. He said they have a duty to follow through with this process. He said he is somewhat concerned that the resolution does not provide the candidates with a requirement of what this body would be looking for and that is an essential part of due process. Mr. Hollins said that information was specified in a letter which was sent to the candidates.

Councilman Wiencek said the Charter is black and white as to this requirement and that the timing of this situation is unfortunate. He stated he will be supporting the resolution. Councilman Meider said the Charter is very definitive and for good reason.

Vice Chairman Counts said the proposed resolution requires the addition of a date for the hearing. An unknown audience member asked if there is a certain time necessary to allow for public notification of the hearing. Mr. Hollins said the only requirement for a Special Council Meeting is notification 24 hours prior to the meeting. The unknown audience member asked for a chance to speak regarding issues which were not addressed by Council. Vice Chairman Counts said the public comment session on this issue was closed. It was determined that the hearing would be scheduled on Thursday, October 18, 2007 at 7:30 p.m.

**MOTION: Councilman Wiencek moved to amend Resolution 2007-19 in the following manner: Section 1, add the date "Thursday, October 18, 2007 at 7:30" in the blanks provided; insert a new Section 2 followed by the wording "That the following documents shall serve as proof of residency to meet Charter requirements: Mortgage Statement; Lease or Rental Agreement; Property Tax Statement; Settlement Statement; Property Tax Bill; Warranty Deed; or any other evidence that reasonably shows a candidate was a resident of the City during the required time frame."; and renumbering Section 2 to Section 3 and Section 3 to Section 4. Councilman Meider seconded the motion.**

Councilman Cline asked if Councilman Wiencek would consider a friendly amendment to newly created Section 2 to include any information that is recognized under Ohio Revised Code 3503.02, entitled Residence Determination Rules. Councilman Wiencek agreed.

**Councilman Wiencek further amended Resolution 2007-19, newly created Section 2, to insert the wording "documentation as provided under Ohio Revised Code 3503.02, captioned Residence Determination Rules" after the wording "Warranty Deed." Councilman Meider seconded the amendment to the motion. By unanimous consent, Resolution 2007-19 was amended.**

**MOTION: Councilman Wiencek moved to adopt Resolution 2007-19 as amended. Councilman Meider seconded the motion.**

**VOTE:            Y   6              N   1   (Abstain: Grubbs)**

Vice Chairman Counts returned the Chair to Mayor Grubbs.

**FIRST READING: ORDINANCE 2007-56: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2007.**

Mr. Lutz said last month there was an auto accident which damaged the Murphy Park playground. He said the City has been reimbursed the cost to repair the equipment through the insurance company. He said this ordinance appropriates the funds necessary so they can purchase the replacement parts and make repairs.

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 2007-56. Councilman Counts seconded the motion.**

**VOTE:            Y   7              N   0**

**MOTION: Councilman Cline moved to adopt Ordinance 2007-56. Councilman Counts seconded the motion.**

**VOTE: Y 7 N 0**

**COMMITTEE REPORTS**

**Development Committee:** No report. Next Meeting: November 7th, 6:30 p.m.

**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 reported the Roast and Toast was held Saturday evening and was very successful.

**OTHER COUNCIL MATTERS**

Councilman Schultz said a teleconference was held with the ODOT Representative who is in charge of the traffic signal at SR315 and Powell Road. He said there have been major backups at times and they have received complaints from residents. He said ODOT acknowledges they are having problems with the newly installed left turn signals. He said they should activate based on triggers that activate at 300 feet. Councilman Schultz said the triggers are not operating correctly and ODOT has promised to monitor the situation and keep in touch with City officials. Mr. Lutz said the Police Department is keeping track of the backups of eastbound traffic for the next two weeks and ODOT is taking traffic counts. He said they will work together to help ODOT resolve the problem.

Mayor Grubbs commented on the following subjects:

- The Recreation Roundtable meeting was held earlier that day. He said they focused on the need for indoor pool space.
- The City is a member of MORPC and an annual letter is available for review.
- He had the honor of speaking to two Second Grade classes at Wyandot Run and the children wanted to thank every member of Council for the Parks.

**MOTION: Councilman Cline moved at 8:24 p.m. to adjourn to Executive Session under ORC Section 121.22 (G) (1) to discuss personnel matters and under the appropriate ORC sections to discuss potential litigation. Councilman Counts seconded the motion.**

**VOTE: Y 7 N 0**

**MOTION: Councilman Counts moved to adjourn from Executive Session at 9:20 p.m. Councilman Cline seconded the motion.**

**VOTE: Y 7 N 0**

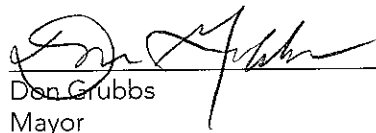
**MOTION: Councilman Counts moved to reconvene in Regular Open Session at 9:20 p.m. Councilman Cline seconded the motion.**

**VOTE: Y 7 N 0**

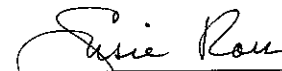
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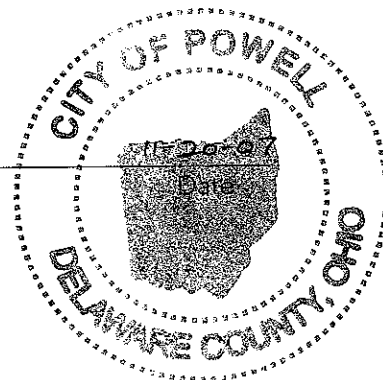
**VOTE: Y 7 N 0**

**DATE MINUTES APPROVED: November 7, 2007**

  
Don Grubbs  
Mayor

11-19-07  
Date

  
Susie Ross  
City Clerk



**City Council**

Don Grubbs, Mayor

Richard Cline

Tom Counts

Elmer Meider

Bill Morton

Art Schultz

Dan Wiencek