



City of Powell, Ohio
City Council

**SPECIAL MEETING of COUNCIL
MEETING MINUTES
OCTOBER 18, 2007**

A special meeting of the Powell City Council was called to order at 7:31 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; Shea Alltmont, Community Affairs/Special Events Coordinator; 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, Mayor Grubbs closed the citizen participation

HEARING TO DETERMINE THE QUALIFICATIONS OF THE CANDIDATES FOR CITY COUNCIL ON THE NOVEMBER 2007 GENERAL ELECTION BALLOT.

Mayor Grubbs excused himself from participation in this portion of the meeting.

Vice Chairman Counts explained the process as follows: each candidate will be considered individually, will come to the podium, and describe the evidence he has which indicates he has met the one year residency rule. He said there will then be a time when members of Council may pose questions to each candidate. He said the floor will be opened to public comment and there will be discussion among the members of Council to determine how they will proceed on the Resolution. He asked for input regarding comments or concerns about the process. Councilman Wiencek asked if the candidates will be submitting their evidence to the Clerk for the record. Gene Hollins, Law Director, said the originals of any written documentation presented will need to be presented to the Clerk. Councilman Wiencek asked if they should be swearing in those presenting testimony. Mr. Hollins administered the oath to all those present who intended to present testimony. All four candidates took the oath.

An unknown audience member said she did not hear when the public would have the option to speak other than to make a comment on specific candidates. She asked if the public would still get to address this issue. Vice Chairman Counts said each candidate will be qualified separately so after each candidate has an opportunity to speak and the Council poses their questions, he will open the floor to public comment in respect to each candidate. He said that would be the public's opportunity to speak in regard to any of the candidates. The audience member said that at the last meeting the public comment was given first and then Council went through their process. She asked if they are now changing that to alter their process. Vice Chairman Counts said their standard process for any proposed legislation was to have the issue identified by Staff or an applicant, have the opportunity to ask questions of that person, and then open it up to public comment. He said after the public comment session has been closed, City Council has the opportunity to deliberate the matter at hand. He said Council Rules do not allow the public to participate at that point in the meeting.

The unknown audience member asked if she would be able to comment without addressing someone specifically. Vice Chairman Counts said they are here to discuss the qualifications for each candidate so her comments should be germane to that topic. She said it is disappointing to her as a tax-paying citizen that the rules were not made clear to her before he closed public comment. She said once again she has been denied the opportunity to speak to City Council. Vice Chairman Counts said that is the way their meetings are run. The audience member said that is their choice to run the meeting in that way, but they waive the rules all of the time as they did at the last meeting. Vice Chairman Counts said he will not continue debate on the issue.

Mr. Hollins said four resolutions were prepared and they should be addressed in numerical order. He said

they were prepared in alphabetical order and in formal resolution form. He said four votes are necessary to take any action on each of the proposed resolutions.

Steve Lutz, City Manager, said in Section 2 of each resolution there is a section where Council will be required to determine whether the referenced candidate meets or does not meet the qualifications. He said that will need to be voiced within the motion. Councilman Wiencek asked about the effective date of resolutions. Mr. Hollins said, pursuant to City Charter, resolutions have one reading and take effect immediately.

RESOLUTION 2007-20: A RESOLUTION DETERMINING WHETHER SCOTT WILLIAM BEILHARZ MEETS THE QUALIFICATIONS TO SERVE AS A MEMBER OF CITY COUNCIL.

Scott Bielharz, 520 Stream Isle Drive, said he has lived at this address for 51 weeks.

Vice Chairman asked for the date of occupancy at his home. Mr. Bielharz stated it was October 27, 2006.

Councilman Wiencek asked if Mr. Bielharz had resided in Powell prior to this date in any other fashion. Mr. Bielharz said he did not. Councilman Schultz asked what date the candidate petition was filed. Mr. Bielharz said it was in late August 2007. Councilman Cline said the deadline was August 23. Mr. Bielharz said he filed it within a day or two of the deadline. Vice Chairman Counts asked for confirmation that when Mr. Bielharz took residency on October 27, 2006 he had the intention to retain that residence throughout this time period and had no other residence. Mr. Bielharz said that is true.

Vice Chairman Counts opened this item to public comment.

Kelly Lilly, 510 Stream Isle Drive, asked to see a copy of the resolution. She asked Mr. Bielharz if he was asked by City Council to submit any record or statement which identified that he is not a convicted felon under the laws of this state. Mr. Hollins said public comment is usually in statement format. Ms. Lilly asked the members of Council why they only focused on the residency qualification and not other requirements determined by the Charter when they were reviewing the qualifications for candidates to be on the ballot for City Council. Ms. Lilly said she wholly agrees it is the duty of Council to verify the residency and the other requirements for candidates as spelled out in the City Charter. She said Councilman Counts argued that ignorance of the law is no excuse for not following it and she agrees. Ms. Lilly said she does not believe there was equal ignorance of the law in this case because City Council has the ultimate responsibility to the citizens of Powell to follow and enforce the rules of the Charter. Ms. Lilly noted the example used by Councilman Counts and made an analogy to the issue at hand. She said the biggest problem here is that none of the elected officials, with the exception of the abstention of Mayor Grubbs, mentioned the voters or the fact that absentee ballots have been printed, mailed and the votes have been returned. She said people are eligible to vote at the Board of Elections at this time and they are casting their votes. Ms. Lilly said to hold this meeting at this late date is far beyond inappropriate and unfair to the voters, residents, and taxpayers of Powell. She said Mr. Bielharz had to file his candidacy by August 23rd, has been listed as such publicly since that date, and City Council has had since that date to take action. Ms. Lilly said at this late date it would be a miscarriage of justice to now disqualify someone who has already taken the time to raise money, spend money, go door-to-door and gain supporters, and do the work required to serve on this prestigious Council. She said it is too late to tell the voters they may not consider this candidate.

Vice Chairman Counts closed the public comment session.

Councilman Wiencek asked Mr. Hollins why the resolution only speaks to the residency rather than all of the requirements of candidacy. Mr. Hollins said they are not aware of any issue in regards to the other criteria. He said they would have included it in the resolution if that were the case.

Mr. Bielharz asked how this question of his residency qualification came about and why his background was not checked as well. Vice Chairman Counts asked if Mr. Bielharz has been convicted of a felony. Mr. Bielharz said he has not. Vice Chairman Counts asked if Mr. Bielharz has ever been under court supervision for any offense including probation or parole or is under current court order. Mr. Bielharz said they have not asked for any proof of this. Vice Chairman Counts said the candidates have been sworn in. Mr. Bielharz said they wanted proof of residency even though they were sworn in. Mr. Lutz said the Police Department was able to verify some of the other information but they are not able to verify residency through state records. Vice Chairman Counts asked the members of Council if the language regarding the other qualifications should be added to the resolution. Councilman Wiencek asked if they know if the

Board of Elections checks any of these items when the petitions are filed for candidacy. He said there is no harm in asking those questions of each of the candidates. Councilman Morton said he believes they should be consistent with all of the candidates and if there is a concern that some of the other candidates could have these disqualifying items on their records, they should be asked those questions while they are under oath. Councilman Meider agreed.

Mr. Hollins said Section 2 is the operative section of the resolution and it determines if each candidate meets or does not meet the qualifications. He said the wording of the resolution satisfies that all of the criteria have been met. He said they should do what they need to do to satisfy the qualifications have been met. Councilman Wiencek suggested they verbally ask the questions and leave the wording of the resolution as it is.

Councilman Wiencek said should Council find that a candidate is not eligible tonight, that person still has the opportunity to appeal the decision and seek a stay. He said if a court feels they are in error that would be the appropriate venue. He said given the lateness of the questions, Council has moved forward as quickly as possible. He said he feels their actions are appropriate. Councilman Wiencek said the fact that this is late in the game is not relevant to their position.

Mr. Bielharz said State law has a protest period of 61 days so it matters to them. He said it is troubling it does not matter to City Council. Ms. Lilly said it also matters to the Board of Zoning Appeals. Councilman Wiencek said it is not that it does not matter in a moral or ethical sense, it is that it does not matter to the process they are bound to follow. He said this is not a debate so he will not continue to respond. Councilman Wiencek said the Charter gives City Council the right to determination of adequacy. He said this is not open for debate. Vice Chairman Counts warned Mr. Bielharz he could be called out of order. He said this portion of the meeting is for Council discussion.

Councilman Schultz said he intends to vote on this because he does not want to set precedent that they must abstain. He said in the future City Council should always verify that the candidates are qualified. Councilman Cline responded to Ms. Lilly's comments about the timing of the action by saying that the residency requirement was brought to Mr. Bielharz much earlier than last week. He said the ballot each candidate signed said that they certified they are qualified and it was Mr. Bielharz's responsibility to know if he is qualified. Councilman Cline said he takes exception to the idea that it is somehow Council's fault that Mr. Bielharz was not aware of the residency requirement.

Councilman Morton said he has compassion for this situation. He said regardless of the timeliness of the matter, if Mr. Bielharz was elected and this issue was then raised, the process would still continue in the same manner. He said in that case Mr. Bielharz would be found to not meet the residency requirements and would be removed from the position. He said it is not really a matter of pre- or post-election as this is a part of the Charter and they must enforce it. Councilman Morton said Council will ask all of the other candidates questions regarding qualifications so they are consistent. He said if he had been a new resident when he became a candidate he probably would have inquired about residency requirements. He said he has compassion for Mr. Bielharz but the process is very clear. Mayor Grubbs said he agrees with Councilman Schultz that the candidates are not required to abstain from the vote. He stated although he is not required to do so, he will abstain.

MOTION: Councilman Wiencek moved to adopt Resolution 2007-20, striking the word "meets" and leaving "does not meet" in Section 2. Councilman Meider seconded the motion.

VOTE: Y 6 N 1 (Abstain: Grubbs)

RESOLUTION 2007-21: A RESOLUTION DETERMINING WHETHER RICHARD A. CLINE MEETS THE QUALIFICATIONS TO SERVE AS A MEMBER OF CITY COUNCIL.

Mr. Cline stepped down from the dias and spoke from the podium.

Richard Cline, 290 Weatherburn Court, said he has been a resident of Powell since May of 1994. He presented information regarding his residency, including: a letter indicating he has been registered to vote since moving to Powell in 1994, a copy of the general warranty deed for his home which is in the name of his wife, and a copy of the mortgage on that premises. He said he has lived at that address since May 1994 and has been a registered voter and voted in every general election since that date. Mr. Cline stated under oath that the property is his residence. He stated he is not a felon, he has not been adjudicated by a court to be mentally ill and he is not under any form of court supervision other than that applied to all lawyers.

Vice Chairman Counts asked for questions from the members of Council. There were none. Vice Chairman Counts asked if Mr. Cline, while living with his married spouse, has resided at the residence which he has identified and has had present intention then and now to continue to live at that residence. Mr. Cline said is true and he has lived there since May of 1994.

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

MOTION: Councilman Wiencek moved to adopt Resolution 2007-21, striking the word "does not meet" and leaving "meets" in Section 2. Councilman Meider seconded the motion.

VOTE: Y 5 N 2 (Abstain: Cline, Grubbs)

RESOLUTION 2007-22: A RESOLUTION DETERMINING WHETHER DON GRUBBS MEETS THE QUALIFICATIONS TO SERVE AS A MEMBER OF CITY COUNCIL.

Mr. Grubbs stepped down from the dias and spoke from the podium.

Don Grubbs, 340 Delaney's Circle, said he has submitted documentation that he has resided, along with his wife, at his home in Powell. He provided an affidavit from his neighbor, general warranty deed, real estate mortgage, bank statement and pay stub. He said his name does not show on the deed to his home but he is a signatory on the mortgage. Mr. Grubbs said he has been continuously a resident at 340 Delaney's Circle and he is also a qualified elector in Delaware County and has voted in all general elections since 2000. Mr. Grubbs stated he has not been convicted of a felony, he is not under court supervision, and he has never been adjudicated by a court to be mentally ill. He noted case law regarding Charter requirements.

Vice Chairman Counts asked for questions from the members of Council. Councilman Morton asked Mr. Grubbs if he meets the residency requirement. Mr. Grubbs stated he does. There were no further questions. Vice Chairman Counts asked if Mr. Grubbs, in the year prior to filing his petition, had the present intention then and now to continue to live at that residence. Mr. Grubbs said he was a resident at the aforementioned address throughout 2006 and 2007 to date and it is his intention to stay there into the near future.

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

MOTION: Councilman Wiencek moved to adopt Resolution 2007-22, striking the word "does not meet" and leaving "meets" in Section 2. Councilman Meider seconded the motion.

VOTE: Y 6 N 1 (Abstain: Grubbs)

RESOLUTION 2007-23: A RESOLUTION DETERMINING WHETHER ARTHUR C. SCHULTZ MEETS THE QUALIFICATIONS TO SERVE AS A MEMBER OF CITY COUNCIL.

Mr. Schultz stepped down from the dias and spoke from the podium.

Art Schultz, 289 Bluff Ridge Court, said he is present to state under oath that he meets all of the qualifications to be a valid candidate for Powell City Council. He said he and his wife have resided at their current address for just over 16 years. He submitted a monthly mortgage statement as documentation.

Councilman Wiencek asked the Clerk to pass the documentation to the members of Council.

Vice Chairman Counts asked if Mr. Schultz, in the year prior to filing his petition, had the present intention then and now to continue to live at that residence. Mr. Schultz said that is true. Councilman Cline asked if Mr. Schultz has always voted since he has lived in Powell. Mr. Schultz said that is true. Councilman Cline asked if Mr. Schultz is currently registered to vote. Mr. Schultz said that is true. Councilman Cline asked Mr. Schultz if he is not a felon, not under any court supervision, or ever been declared mentally incompetent by a court. Mr. Schultz answered "no" to all of the questions.

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

MOTION: Councilman Wiencek moved to adopt Resolution 2007-23, striking the word "does not meet" and leaving "meets" in Section 2. Councilman Meider seconded the motion.

VOTE: Y 5 N 2 (Abstain: Grubbs, Schultz)

Vice Chairman Counts returned the chair to Mayor Grubbs.

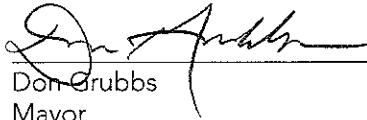
OTHER COUNCIL MATTERS

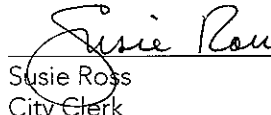
Mr. Lutz circulated a resignation letter to the Planning and Zoning Commission which was submitted by Eric Ireland. He said November 14th will be Eric's last Commission meeting. Mr. Lutz said discussion should take place in Executive Session to determine how to proceed to fill this opening.

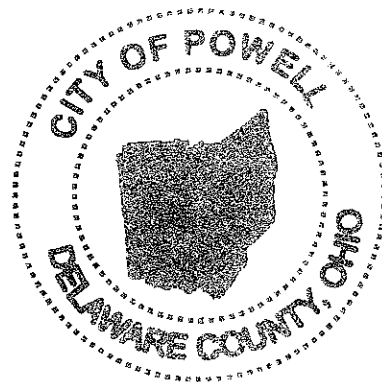
ADJOURNMENT

The meeting was adjourned at 8:23 p.m.

DATE MINUTES APPROVED: November 7, 2007

 11-19-07
Don Grubbs Date
Mayor

 11-20-07
Susie Ross Date
City Clerk



City Council

Don Grubbs, Mayor

Richard Cline

Tom Counts

Elmer Meider

Bill Morton

Art Schultz

Dan Wiencek

