



City of Powell, Ohio

Powell Planning & Zoning Commission

Kevin Futryk, Chairman

Richard Fusch

Brian Lorenz

Donald Emerick, Vice Chairman

Bill Little

Jim Hrivnak

Dan Wiencek

MEETING MINUTES

JULY 16, 2008

A regular meeting of the Powell Planning & Zoning Commission was called to order by Vice Chairman Donald Emerick on July 16, 2008 at 7:00 p.m. Commissioners present included Richard Fusch, Jim Hrivnak and Dan Wiencek. Brian Lorenz arrived at 7:02 p.m. Bill Little arrived at 7:06 p.m. Kevin Futryk was absent. Also present were David Betz, Director of Development; Eric Fischer, Development Planner; Susie Ross, City Clerk and interested parties.

HEARING OF VISITORS FOR ITEMS NOT ON THE AGENDA

Vice Chairman Emerick opened the public comment session. Hearing none, he closed the public comment session.

APPROVAL OF MINUTES

MOTION: Commissioner Hrivnak moved to adopt the minutes of June 11, 2008. Commissioner Fusch seconded the motion.

VOTE: Y 5 N 0

COMBINED PRELIMINARY/FINAL DEVELOPMENT PLAN

Applicant: KAD LLC (David Carmendy)

Location: 233 South Liberty Street

Zoning: DB, Downtown Business District

Request: Review of Combined Preliminary & Final Development Plan for a proposed Phase I of Carmendy Station Development - 2578 sq ft Office Warehouse Structure

David Carmendy, 233 S. Liberty Street, applicant, said some changes were recommended at the previous meeting and are reflected in the submitted plans.

David Betz, Development Director, presented the Staff Report. (Exhibit A) He said the applicant has made some minor changes to the plan and submitted landscape plans. He said the existing house and two outbuildings will be demolished once the first phase is completed as the applicant is running his business out of the house. He reviewed ingress and egress on the site. Mr. Betz said future phases will include retail buildings out front and the remainder of the back parking area will be completed.

Mr. Betz presented the various elevations and the building locations on the proposed site plan. He said preliminary engineering has been completed and the plan shows utility provisions for sanitary and water service. He said the applicant will complete a stormwater dry detention basin within the first phase. Mr. Betz said the future phase will include another dry detention basin to the north side. He said this plan has been reviewed by the City Engineer and from a preliminary standpoint they find this would work. He said there is probably not enough rain in the area to create a wet retention pond to handle stormwater and regular water levels in a dry period. Mr. Betz said there are some trees in the landscape plan but not enough to meet the tree replacement requirements. He said the requirement will have to be met in future phases. He said it might be desirable for the future phases to include a walkway which leads along Liberty Street into the back of the site. Mr. Betz indicated the location of the dumpster pad on the southwest corner of the site but no screen is shown. He said that information may be provided for review with the final engineering plans. He said there is overhead electric and cable provided to the existing home and service to the new building will need to be underground. He said that is not shown.

Chris Meyers, Architectural Advisor, said there were a couple of very small items discussed at the last review. He said they requested the trim profiles be increased in size to make them more proportionate and that has been included in the new submittal. He said they also incorporated the strap fittings. He said at the last review he cautioned the applicant that the grading on the site should hit the building at the

right height so it does not require a railing. Mr. Meyers said this should be a railing-less porch design. He suggested the Commission encourage the use of a bold agrarian color but not necessarily the standard "barn red." He said this will be a wonderful feature to the community and he thanked the applicant for incorporating review comments into the plan.

Commissioner Wiencek asked for Mr. Meyers' opinion regarding the shutter on the north elevation. Mr. Meyers said the two different window types are interesting and if they are using a shutter they should use a real hinge mechanism so it is authentic. He said attention to detail is important and he can see it either way.

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

Commissioner Fusch said this is the third review and he likes the plan very much. Commissioner Wiencek asked Mr. Betz how much of this building is seen by the Murphy side of the track and is a bold color appropriate if visible over the rail grade. Mr. Betz said he guesses the Murphy Parkway side is much lower and the roofline and top level will be the only part of this building that shows. Commissioner Wiencek asked if they should wait to deal with caliper replacement until the second phase when all of the trees to be removed are gone. Mr. Betz said it depends upon the other phases and they want to investigate the location of the one tree.

Commissioner Wiencek asked if the 25' right-of-way is sufficient to deal with future streetscape. Mr. Betz said there is already a 15' sidewalk and utility easement and it is wide enough. Commissioner Little asked if he is implying there will be future streetscape in this area. Commissioner Wiencek said since there is no formal policy regarding streetscape they can at least ensure the easement is available. Mr. Betz said this is within the TIF district and any improvement here will help fund the streetscape. Commissioner Wiencek said this will be appropriate for Phase II discussion. He said this is a great application and he is happy to see it moving forward.

Commissioner Little said this is a great look for the area and having a bold color is appropriate as he does not want this building to get lost on the site. He said barns are not typically heavily landscaped and something more "country" may be more appropriate even if it requires a variance. He suggested the use of an old wagon and natural grasses rather than boxwood plantings. Commissioner Lorenz said more rustic and unique landscaping will be fitting to the design. He encouraged the applicant to remove the signage from the building front. He said he appreciates the changes to the parking configuration. Commissioner Hrivnak said he thinks it is a great plan. He asked if there are any variances in the back of the site. Mr. Betz said there are none. Commissioner Hrivnak said traffic flow on this property is excellent. He asked if the parking for Phase II is enough for two restaurants and the back building. Mr. Betz said Staff will review it and they may have to add a few more spaces. Vice Chairman Emerick said he has no additional comments.

MOTION: Commissioner Little moved to approve the Combined Preliminary/Final Development Plan submitted by KAD LLC for the property at 233 South Liberty Street with the following conditions:

1. That subsequent development of the additional phases for this property including streetscape requirements shall be brought forth to the Planning and Zoning Commission for approval.
2. That the applicant shall meet the seven conditions brought forth in the Staff Report.
3. That the applicant shall gain approval of the Historic District Advisory Commission.
4. That the applicant shall incorporate the comments of the Architectural Advisor: watch the front elevation to accommodate a rail-free type porch, identify a suitable vibrant color selection, and make improvements to the north elevation referring to the hay mow/shutter combination.
5. That the landscaping plans shall be developed to incorporate more of a barn or rural feel even if that requires a variation from the City landscaping requirements and the applicant shall work with Staff for final approval.
6. That the applicant shall work with Staff regarding all pertinent engineering requirements.
7. That the applicant shall work with Staff and the Historic District Advisory Commission to develop appropriate signage.

Commissioner Fusch seconded the motion.

VOTE: Y 6 N 0

PRELIMINARY DEVELOPMENT PLAN

Applicant: Benita LLC (Ben Dougan, Jack Coppess)
Location: Southwest Corner of Seldom Seen Road and N. Liberty St.
Zoning: PC, Planned Commercial District
Request: Review of Preliminary Development Plan for a proposed office building and a day care building.

Jack Coppess, Benita LLC, 2679 West Land Court, Hilliard, applicant, reviewed the changes made since the last review. He said no parking is directly in front and they spread both buildings apart and added more green space in the parking lot. He said they will incorporate dry retainage in the center aisle of the parking area as well as on the side of Seldom Seen. Mr. Coppess indicated the location of the entrance and right turn only exit off of Liberty Street. He said it was not required in the traffic study but they are trying to address concerns in relation to the entrance at Ashmoore.

Mr. Coppess indicated the mounding and landscaping areas all around the site. He indicated the location of a second trash dumpster. He said they added an abundant amount of landscaping all around to hide as much parking lot and dry retention as possible. He said they met with Mr. Meyers and feel they have addressed his issues regarding the front entrance of the day care center.

Trina Ryan, 7315 Tullymore Drive, Dublin, operator of the proposed daycare center, said she met with Mr. Meyers and she appreciates the comments she has received so far. She said this design uses timber framing to compliment the entrance and exterior framing. She said they are proposing a large hanging sign and bronze tone lighting to bring a rustic feel to the entrance. Ms. Ryan said stone will be used from floor to ceiling in the entry area. She supplied a color board to the Commission. She said they plan to use Autumn Red on the board and batten across the front to bring in the look of an old red schoolhouse. Ms. Ryan said they chose a stone with highlights of red and gold. She said the timbers will match the dark brown clad windows and standing seam roof to bring forth a rich earthy feel. She said they plan to use unique decorative lighting so the exterior will have an attractive glow at night.

Mr. Coppess discussed the elevations for the proposed office building. He said they spoke a lot at the last meeting about the massing of the building and they tried to incorporate the suggestions of Mr. Meyers in this design. He said they broke up the scale so it looks like two separate buildings and incorporated a window feature on the northwest corner. He said they also used landscaping to break up the massing. Mr. Coppess said they tried their best to address all of the concerns voiced at the last meeting.

Mr. Betz thanked the applicant for the detailed plans provided. He said the applicant and Staff worked together to come up with this entrance scheme. He said this requires some widening of Liberty to incorporate turn lanes, including one into Ashmoore on the north. He said because of the turning movements and the proximity to Ashmoore Drive, the half "porkchop" is a very appropriate way to handle traffic flow at this entrance. Mr. Betz said the other entrance on Seldom Seen is a full access point and it is located 300' from the intersection at Liberty. He said the City Engineer feels a full access point is fine in this location. He said there is a common access easement at the property line which runs all the way to the west parking lot and future development can tie into this driveway. Mr. Betz said that will help limit the number of curb cuts on Seldom Seen. He said the engineer preliminarily looked at the stormwater plan and he thinks it will work fine because there is not too much impervious surface in relation to the overall stormwater plan. Mr. Betz said using dry detention versus wet detention ponds is very appropriate because of the location near the day care facility.

Mr. Betz identified the four variances necessary for this proposal:

1. Reduction in the front setback along Seldom Seen Road by 26'. Staff feels that is appropriate.
2. Reduction in perimeter foundation landscaping. The plan does not quite meet the 70% requirement but they have overly landscaped around the parking area and Staff feels that is appropriate.
3. Reduction of having an interior parking island every eight spaces. Staff considers this beneficial in order to provide a large center island.
4. Reduction of the required number of parking spaces from 114 to 108. Staff considers this reasonable due to the plan layout.

Mr. Betz said Staff recommends the applicant be permitted to move forward with a final development plan with the conditions they work with the City engineering department as well as incorporate any comments of the architectural advisor.

Mr. Meyers said last time they met they did not feel the design of the building matched up with the intent of the use of the building. He said they scheduled a side meeting and talked about the development and concept of the design and how it can incorporate into the architecture. He complimented the designer, Mr. Kaiser. He said the new design aligns with vision heard from applicant.

Mr. Meyers said the following changes were made to the office building design:

- Incorporated core lobby area to break up massing by allowing more exterior wall to tenants.
- Added a lot of attention to detail.
- Appropriately scaled to make it approachable.
- Used appropriate building materials. He encouraged them to look toward a bold, darker color palate (two complimentary colors) to help massing.
- Corner window on northeast corner allows visibility and adds a unique quality which makes the building more interesting.
- Suggested the applicant use low level condensing units and not place them behind fencing area on the roof. Mr. Coppess said they will be located on the ground level.

Mr. Meyers made the following comments regarding the design of the day care facility:

- Beauty of style is in all of the connections- encouraged low level and uplighting to bounce off of the exterior.
- Underside of roof at front door should be treated wood system so lighting will make entry glow.
- Color palate is excellent.
- Roof draping over building is appropriate for this building style. Approved of standing seam roof materials.
- East elevation wall segment on the left seems a little odd. They may want to revisit this elevation to balance the massing of the form with the front of the building. He said another solution is a grouping of trees in front of that area.
- Landscaping plan is cohesive and well done.

Mr. Meyers said this application is a great example of how the Planning & Zoning process should work. He complimented the Commission, Staff and the applicant. Commissioner Fusch asked where mechanicals should be located. Mr. Meyers said it is difficult to determine when he doesn't know where the mechanical room is located but an ideal location for the western units is dead center on west façade. He said they can alter the landscaping there to screen it better. Mr. Meyers said the eastern units could be located on the east elevation; they could move the paver fire easement out a little and use creative landscaping in this area.

Commissioner Hrivnak asked if the landscaping overpowers the northeast corner. He said the mounding out front may not allow the landscaping to be seen at all. Mr. Meyers said it is high enough to provide screening and low enough to let them see there is something going on. Commissioner Hrivnak said there is also a big tree at the corner of the fire access. Mr. Betz said there is room to move the access over a bit.

Commissioner Wiencek asked to see the elevation with the gabling. He said he doesn't want to drive the cost of trusses through the roof but the one in center could be moved out 4-5'. Mr. Meyers said it is moved forward but is very difficult to see on the elevations. Commissioner Wiencek asked if the widows walk seems overdone in relation to the huge stone columns on this big building. He said it adds another 3' of non-functional space on top of a tall building. Mr. Meyers said he likes the use of the large columns. He said the length of hip roof configuration is a sea of black without this addition. He said the palate of materials and configuration is complimentary to the daycare building.

Vice Chairman Emerick opened this item to public comment.

Carolyn Hayes, 38 Featherstone Court, said her condo is located right across the street and will be facing the side of office building. She said the plans looked wonderful but the colors are a little bold compared to surrounding condos and stone used at Ashmoore. She asked for clarification regarding where the drive is located off of Seidom Seen in relation to Foxdale Court. Ms. Hayes said she came tonight to be

supportive but she is rather concerned about the bold color. She said it may also look better without the additions on top of the office building.

Vice Chairman closed the public comment session.

Commissioner Lorenz said he is concerned about the set up for the dumpster for the office building. He said it may be a tight turn for a truck to get in for access to the dumpster. Mr. Coppess said all of the turns were approved for fire department vehicles. Commissioner Lorenz asked if both buildings need dumpsters. Mr. Coppess said they will. Commissioner Lorenz asked for clarification regarding the swale and pedestrian crossing.

Ryan Eastwood, Civil and Environmental Consultants, said the crossing may be concrete or a stamped material. He said there will be decorative planting of red twig dogwood along the crossing. Commissioner Lorenz said his concern is there may be a grade in that location and he wants enough deterrent to keep children away. He asked if there should be a wood railing between the two swales along the path. Mr. Eastwood said they can keep the grade to a flat 4-to-1 slope.

Commissioner Lorenz echoed that the office building should be a different color scheme. He asked if there is any bike parking on site since there is a bike path on the other side of the street. Mr. Betz indicated the continuation of the sidewalk on Liberty, crosswalk and connection to bikepath on Seldom Seen. He said the master plan shows the bikepath only on the north side of Seldom Seen. He said the driveway at Seldom Seen would be directly across from the road coming out of the condos. Ms. Hayes asked for clarification. Mr. Betz said there should not be a lot of night traffic but any lights coming out of the driveway will shine into Foxdale.

Commissioner Hrivnak said the work on the buildings is fabulous. He said the day care design now matches the enthusiasm of the proprietors. He said the combined access drive is good. He asked if there is an existing right turn into Ashmoore Drive. Mr. Betz said there is but it will need to be changed a little to accommodate the width of three lanes. He said a left turn into Ashmoore will also be added.

Commissioner Fusch said Mr. Meyers addressed all of his concerns. He said this is a great project and he especially likes the design of the day care center.

Commissioner Wiencek asked if a warrant analysis was done for Seldom Seen and Liberty. Mr. Betz said it was done but a signal is not warranted, even with the addition of these businesses. Commissioner Wiencek asked if there are parking blocks or wheel stops in the center island of the lot. Mr. Coppess said there are. Commissioner Wiencek said there should be breaks or overlaps in the mounding so it is not continuous. He said the day care building will be a tremendous addition to the City and is very unique and the office building design has come a long way. He said the applicant should choose exterior colors and materials which make this as different as it can be from existing buildings.

Commissioner Little said he appreciates the applicant's responsiveness to the Commission's comments. He asked if the applicant has made any formal attempt to contact the Village of Powell Condo Association or the Ashmoore Homeowners' Association. Mr. Coppess said he would be happy to contact them now that they are getting close to approval. Commissioner Little said it helps to be proactive when dealing with the concerns and issues of residents.

Ms. Hayes asked if she may comment. She said she will tell her neighbors that this drive will now be at the front of their condos and porches. She said it is slightly west of hers but it will affect other condos. She said traffic flow will be disruptive to the condos and she was hoping the drive was farther back, closer to Powell Place. Commissioner Little said there will be one more review before the Commission. Ms. Hayes asked if the applicant will be around to speak to the condo owners because she thinks they will be upset. Commissioner Little asked if outbound traffic from Ashmoore or the church will be able to access this property immediately. Mr. Betz said it will not be a problem. Commissioner Little said there will be some child activity here and he asked if they should put the bikepath through the "porkchop." Mr. Betz said there will be a "safe harbor" area. Commissioner Little asked if there is an access point from the northbound bikepath to the parking lot without interrupting the mounding. Mr. Betz said he will need to think about that. Commissioner Little said signage should be discussed at the next meeting. Mr. Betz said they show three ground signs with one sign at the corner.

Vice Chairman Emerick said day care is exceptional and office building is very classy looking. He said he appreciates the hard work of everyone involved.

MOTION: Commissioner Little moved to allow submittal of a Final Development Plan as the next step for Benita, LLC for the property located at the southwest corner of Seldom Seen Road and North Liberty Street, incorporating the comments brought forth today by Staff, the Architectural Advisor, community representatives and the Commission. Commissioner Fusch seconded the motion.

VOTE: Y 6 N 0

SKETCH PLAN REVIEW

Applicant: Cohiba Properties, LLC (Jim Fallieras)
Location: 55 South Liberty Street
Zoning: DB, Downtown Business District
Request: Review of Sketch Plan for a proposed downstairs restaurant and second floor office.

Tom Coffey, 365 Shale Ridge Court, architect, said he represents Cohiba Properties. He said this is their second sketch plan review and they hope to submit a combined preliminary and final development plan as their next submission. He said they have incorporated the comments from the first review and the site plan reflects the addition of future streetscape improvements. He said they moved the building back from zero setback to 7' back from the property line. Mr. Coffey said this will allow room for a 5'6" sidewalk and three added parking spaces for valet drop off for the restaurant. He said a covered porch dining area was added to the design and landscaping was added in front of the building. He presented exterior elevations and said this will be presented to the HDAC the next evening.

Mr. Coffey said they want this building to look like a dining facility and have suggested building materials of stone, brick and cedar or other type of siding or shingle. He indicated important features such as the outdoor seating, useable balcony, outdoor freezer location and screening, door access to upstairs, bay window, stair tower, and landscaping.

Mr. Betz presented the Staff Report. He said the first sketch plan focused on the site plan with no architecture shown. He said this plan provides the design and architecture. He said they will have to look at how this sidewalk connects with the existing pathway and the adjacent property owner. He indicated the location of the existing pathway to the City park behind this site. Mr. Betz said the parking lot is as big as is possible and there is a provision for some on-street parking. He said the site will need valet parking but the property owner has other properties in the downtown area and there is the Village Green parking lot directly behind the site. He said the on-street parking should not have a bump out island as it will make parking easier. He said the sidewalk is 5.5' wide but there may be room to make the sidewalk 6' wide. Mr. Betz said the applicant is starting to talk to engineers about stormwater plans. He said Staff is very excited about the elevation drawings and they believe the applicant is ready to submit combined preliminary and final development plans.

Mr. Meyers said part of the beauty of this part of town is that the efforts toward redevelopment are really impressive. He made the following comments on the design of the building:

- The siting of the building where it is pushed to the street is the right choice.
- The street terrace and urban sidewalks show activity.
- The building has two front façades and the attention to detail on the west façade is commendable.
- The applicant was encouraged to develop a better pedestrian route or connection for people walking over from the park.
- The two chimneys are well placed but seem a bit narrow in proportion to the windows.
- Give consideration to brick detailing.
- Windows are well done but they may want to add a little more bulk in the supportive system in the front first floor windows. The shaping and placement of the bracket detail should match up to the windows.
- Identify the location of the mechanicals on next submission.
- Service entry should be a very durable door system with a pressed panel treatment so it fits the design of the building and does not show damage.
- He liked the variation in the three railings on the building and where they are placed.

- Look at incorporating the sidewalk paver sidewalk into the outdoor space. Try to encourage entrance onto the terrace.
- The railing on the west elevation should be an extended version of the railing on the front of the building. The wrought iron component is welcoming feature.
- Gutters and downspouts should be within Historic District guidelines. They should match the finish of the walls so they blend in.

Commissioner Wiencek left at 9:01 p.m.

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

Commissioner Fusch said in the past few years the developers, architects, advisor, planning staff and the Commission have started the process of creating a needed landscape within the City of Powell. He said a few months ago he mentioned that the Stavroff building was the best looking building in the downtown and it now has a big competitor in this plan. He said he is very impressed with this plan and Mr. Meyers' comments are very appropriate.

Commissioner Little reviewed notes provided from Commissioner Wiencek:

- Add some type of arbor in the area where the bikepath leaves the park and enters this property.
- Concern about the dumpster location in the northern part of site near 47 S. Liberty. It could be moved to the far southwest corner in the parking area. It could be combined with the arbor and the dumpster could be disguised in some old outbuilding.
- On the back line of property near existing landscaping buffer, work with Staff to add height so they can differentiate between the park and this site. Mr. Betz said the plantings are on City land and the amphitheatre is directly behind this site. He said there is no doubt as to where the park ends and the site begins. He said he does not feel there should be a dumpster at the entry to the park.
- The applicant should be aware of the new lighting and signage conditions, as well as how the interior lighting will look from the outside.
- The applicant should look into doing something to widen the sidewalk out front, even if it means allowing less than the required parking in the back. Mr. Fallieras said they are giving the City a bike path and other considerations.

Commissioner Little continued with his own comments. He said the architect has done an outstanding job of responding to the comments of the Commission. He said this type of transitional building is very appropriate. He said the front glass area could be made a little bolder as Mr. Meyers noted.

Vice Chairman Emerick said this reminds him of what might be seen in downtown Charleston or Savannah. He said a white pergola to enter the park area might be a great entry point. He said this is a very exciting project and he looks forward to the final plans. Commissioner Lorenz said most of his thoughts have been addressed. He said he is happy to see outdoor seating as it adds vibrancy to the downtown. He said he would not move the building more than 6" for wiggle room. He suggested they add "block off" time to the development plan and he is in support of the submission of a combined preliminary and final plan. Mr. Meyers asked for information about the restaurant. Mr. Fallieras said it will be the Due Amici Restaurant from downtown Columbus under a different name.

Commissioner Hrivnak said this is very good plan and they are ready to move forward with a combined submittal. He asked that they check to make sure there is not a sight line under the tables when one looks in from the street. He asked if any trees are being removed from the property. Mr. Betz said there are some to be removed from the front area near the street and there is one nice one in the middle of property that will have to be removed. He said they are up against the park in the back and they may have to add some sort of entry feature rather than tree placement. Mr. Betz suggested they do not move the dumpster from its site.

MOTION: Commissioner Little moved to allow submittal of a Combined Preliminary and Final Development Plan as the next submission for the property located at 55 South Liberty Street, presented by Cohiba Properties, LLC. Commissioner Lorenz seconded the motion.

VOTE: Y 5 N 0

OTHER COMMISSION BUSINESS

Motion to begin a City Initiated Zoning Map Change, as authorized by Section 1131.03 (a) of the Powell Zoning Code, for property owned by the City of Powell and located at 10168 Liberty Road, containing 4.909 acres, from Liberty Township FR-1, Farm Residence District to City of Powell R, Residence District; and to set the Public Hearing date for Wednesday, August 13, 2008.

Mr. Betz said last year Cingular came to the City to find a location for a cellular tower in the area around Jewett Road. He said looking at the telecommunications regulations within Chapter 1153 of the Codified Ordinances, the City did a study on where this tower could be located on City property and identified several sites. He said one of the sites is off of South Liberty on the Lechler property where the parks and rec/service building is located. He said the City bought this property and three others to the north, anticipating it would be used for the extension of Murphy Parkway. Mr. Betz said this was identified as the third City owned property where a cellular tower could be located. He said Cingular went to City Council for approval of a possible lease agreement. He said City Council asked them to go through the zoning process first. Mr. Betz said the City's Telecommunications Ordinance was adopted in 1997 in accordance with the requirements of the Federal Telecommunications Act of 1996. He said in the process of this property being purchased by the City of Powell it was annexed into the City and at that time the City had no thought of what this property would be used for except for the extension of Murphy Parkway or possible use of the existing building.

Mr. Betz said in the meantime they now have an application by T-Mobile for a Conditional Use Permit. He said upon review they found the property is still under the Liberty Township Farm Residence District as it was when it was annexed in 1998. He said under Ohio Law the City is required to enforce the Liberty Township Zoning Code as part of any building application which comes before the City. He said the 1998 Zoning Ordinance still has antiquated zoning requirements pertaining to telecommunications and is not in compliance with the Federal Telecommunications Act. Mr. Betz said the City could run into legal situations with federal government and any telecommunications company when trying to enforce the zoning. He said in order to become compliant with the Federal Telecommunications Act and go through the proper zoning process with telecommunication providers, a zoning map amendment would have to be made and the land brought into a Powell zoning category. Mr. Betz said once that is done they can apply the City telecommunications ordinance to this property. He said there are three ways of initiating zoning amendments under Chapter 1131 and one is proposed through this agenda item for the Planning & Zoning Commission to adopt a motion to begin a City initiated zoning map change, as authorized by Section 1131.03(a) of the Powell Zoning Code, for property owned by the City of Powell and located at 10168 Liberty Road, consisting 4.909 acres (all four properties on the west side of Liberty), from Liberty Township FR-1, Farm Residence District to City of Powell R, Residence District (a zoning category which would bring in general residence category); and to set the Public Hearing date for Wednesday, August 13, 2008.

Mr. Betz said the property was annexed into the City in 1998 with no Powell zoning category yet established. He said Staff feels it is necessary to go through this process because once a zoned category is established within Powell Zoning the telecommunications chapter 1153 would apply and they can then proceed with the required process. Mr. Betz said that process lets a telecommunications provider continue their application which would be a conditional use permit that would go before the Board of Zoning Appeals. Mr. Betz said the applicant would have to meet the requirements of the telecommunications chapter. He said after that it would require the review of City Council for approval of a lease agreement.

Vice Chairman Emerick opened this item to public comment.

Lisa Ingram, 111 Timber Oak Drive, Treasurer of Lake of Powell HOA, said she is here to discuss this zoning change. She said she sat through this meeting and she has great respect for this board for the decisions they have made this evening. She said they made decisions about color schemes, scale, size, historic requirements, all related to the aesthetics of the City of Powell. She said that is why she lives here; she loves the aesthetics and the attention to detail. Ms. Ingram said she is extremely concerned about this motion because it will then allow an extremely large cellular tower in her front yard. She said she is asking, on behalf of the homeowners' association and as a resident of the Lakes of Powell, that is motion be tabled to allow the residents to look into researching the implications of the tower to their neighborhood, children, property values and the aesthetics of their community.

Frank Bertone, 492 Bantry Street, said the proposed tower site abuts his property. He echoed Ms. Ingram's concerns and thanked the Commission for their decisions made earlier this evening. He said in the five years he has lived here he has seen the charm and uniqueness come through because of these types of unique discussions. He said he is excited about some of the changes which are forthcoming in the community but he cannot support this. He asked that they table this motion to allow time to further consider actions and impact upon their neighborhood as well as those people in Liberty Lakes and Grandshire. Mr. Bertone said he is sure they would have serious concerns about the size and scale of this tower.

Chris Meyers, 460 Wellwyn Drive, City resident, said he is also the Architectural Advisor who has worked with the City quite a while now. He said his residence is a little further to the east and they do have a view of this. He said when he is in meetings and hears residents say "Gosh, get this thing out of my back yard," he says shame on them if it was always zoned for that type of project in their back yard. He said in this case he is thinking beyond just the view from his house or adjacent property owners. Mr. Meyers said they have just discussed an amazing project which is less than a mile away from this site and it is only one of a series of many other efforts that have gone into creating a fantastic identity for this community. He said this will be visible from the east on Powell Road or from south on Liberty and it would be a tragedy if this is one of the first things seen as one enters the City. He said the efforts in the Historic District are starting to filter beyond the limitations of the main intersection. He said as a resident and as the Architectural Advisor, he encourages the Commission to be very considerate. He said the redevelopment of the City owned buildings on this site would also be a great opportunity for the City.

Vice Chairman Emerick closed the public comment session.

Commissioner Fusch said he needs a ruling on this as he is a resident of the same subdivision as Mr. Meyers and he will be able to see this from his house. He said he is very concerned about this and he does not know how he may address this. Mr. Betz said Staff has reviewed this at length with the City Law Director. He said the Law Director has indicated they should get the zoning to a point where it complies with the Federal Telecommunications Act. He said they must enforce the Liberty Township Zoning which is in force at this time and it must be changed to Powell zoning so they may enforce the City's telecommunications law, go through the process with the Board of Zoning Appeals and have the necessary public hearings and review.

Vice Chairman Emerick asked if it is accurate that the City's current regulations cannot stop cellular towers but they can regulate where they go. Mr. Betz said they can regulate where they go, how they are installed, and any details about them. He said the current Liberty Township zoning would make the City subject to possible legal action from any telecommunications provider or possibly the federal government. He said that is why putting it into a Powell category would make it less of a legal challenge and would allow the City to enforce regulations.

Mr. Betz said there are two controls in this case: zoning control through the telecommunications ordinance; and the authority of Powell Council to approve or reject a lease for this property. Vice Chairman Emerick asked if approving this zoning map change gives the City the legal authority to tell a provider they cannot put a tower here but they can put it somewhere else. Mr. Betz said that is true and without the change the provider could take court action to force the City to do something. He said they would rather work with the provider and local residents to come up with a solution than fight possible legal battles. He said that is the purpose of going through the process of this motion and a public hearing process. Commissioner Fusch asked if they hold a public hearing, change the zoning so it conforms to the Federal Telecommunications Act, then an application is made and it goes to the Board of Zoning Appeals, would the Board be unable to turn down the applicant's request to put in a cellular tower. Mr. Betz said that is not necessarily the case. He said it could be denied if the application does not meet the requirements or if they are unable to prove many of the conditions of the process. He said City Council also has to authorize the lease and under the Telecommunications Act they do not have to do so. He said City Council wants the applicant to go through the zoning process first before they make that determination.

Commissioner Hrivnak asked if the Commission should consult the Law Director before making this motion. Mr. Betz said they may do that.

Commissioner Lorenz said the zoning is a regulatory function and they should keep that in mind. Vice Chairman Emerick said a zoning map change would put them in a better place to not accept this cellular

tower. Mr. Betz said that is correct. Commissioner Lorenz said talking about this more and soliciting more opinions is fine but they are only being asked to set a public hearing. Commissioner Little said he views this as an opportunity for the Commission and the community to become more knowledgeable and know how the different regulations work so they will be better equipped to address this issue. He said he is not saying he is a proponent of having a tower, but there are technological things occurring and tradeoffs and if it is not on this site it will probably have to be somewhere else. Commissioner Little said they will need to understand how to go through that process effectively so that the entire community is in some type of winning situation.

Mr. Bertone said within a four mile radius of this area there are 29 cell towers already in place. Vice Chairman Emerick said that is something that will be discussed at the time of the actual application. Mr. Betz said Staff would be happy to meet with residents at any time to discuss the siting for cell tower. Vice Chairman Emerick said if they get it under the control of City code they can then require the cellular companies to locate the towers where they think they should go or to have them share towers. He said he does not want to have it forced upon them under the Township code. Commissioner Little said it is usually typical that the companies look for municipal or school property or on top of water towers. Mr. Betz said it is a revenue generator for the property owner where the tower is located but that should not be the primary reason for its location. Commissioner Little asked if the fact that this is publicly owned property makes it more important that this is zoned up to current standards. Mr. Betz said it is. He said there is a separate provision which allows municipalities, through their codified ordinances, to give priority to municipally-owned land so it can be regulated and reviewed. Commissioner Little asked if it is Mr. Betz's professional opinion that whether for or against the tower, the community is in a better position to deal with this if this property is rezoned into a Powell classification. Mr. Betz said that is true and he is very concerned about any legal ramifications if it is not under City authority. Commissioner Fusch said he has argued in the past that if Powell does not control its own destiny, someone else will. He said even though he is not happy about this cell tower he feels it is much better to hold this public hearing. Mr. Betz said on this specific property City Council can control it by the authorization of a lease agreement.

Commissioner Little asked if the Commission members feel they need more time. Commissioner Lorenz asked for clarification and Mr. Betz reviewed the process: a motion would be made, a public hearing would be held and the Commission would then have 30 days to make a decision on the zoning map change. He said if their decision was in the positive, it would go to City Council as a recommendation to make the zoning map change. He said, assuming everything was then approved, the telecommunications company could continue with their application for a Conditional Use Permit before the Board of Zoning Appeals. He said once the BZA takes action, assuming it would be positive action, it would then go to City Council for approval of the lease agreement. He said if the application is denied by the BZA, there is a 30 day period within which the telecommunications company could appeal it to court. He said the City Council has every authority under the City's telecommunication ordinance to either approve or disapprove the lease agreement. Commissioner Fusch asked if, assuming all of this is approved and this goes before Council for the lease agreement, do they have the authority to say the tower is in the wrong place and they will not approve the lease agreement. Mr. Betz said they do not have to give a reason, they may just say they do not want to approve the lease. Commissioner Lorenz asked if an actual application has been filed. Mr. Betz said they filed an application and when Staff was reviewing the zoning history they found this parcel had not been rezoned into a City classification. Commissioner Lorenz said he feels they are obligated to have the public hearing but he is not against giving everyone more time to get a better understanding. Mr. Betz said this is just one application and it would be smart to have this land under City zoning authority even if this application goes away. Commissioner Little said they should look at this as two separate issues: first as a zoning issue and second as an issue of this tower on this location. Commissioner Hrivnak asked if there is no zoning change, does that make the cell tower more or less likely. Mr. Betz said he would not want to have to go to court and have a judge decide for them. Commissioner Hrivnak said he would like to have Legal Counsel present to discuss this with the Commission.

Commissioner Little asked the residents in the audience if setting a public hearing in September would work from their perspective. They agreed it would.

MOTION: Commissioner Little moved to set a Public Hearing on September 10, 2008 to begin discussion of a City initiated zoning map change for the property located at 10168 South Liberty Road, with the discussion regarding changing it from the existing zoning inherited from Liberty

