



**City of Powell, Ohio**  
City Council

**MEETING MINUTES**  
**OCTOBER 7, 2008**

A regular meeting of the Powell City Council was called to order on Tuesday, October 7, 2008 at 7:32 p.m. by Mayor Tom Counts. City Council members present included Richard Cline, Don Grubbs, Jim Hrivnak, Elmer Meider and Dan Wiencek. Art Schultz was absent. Also present were Steve Lutz, City Manager; Jeff Robinson, Public Information Officer; Debra Miller, Finance Director; David Betz, Director of Development; Gary Vest, Powell Police Chief; Gene Hollins, Law Director; Susie Ross, City Clerk; interested parties and members of the Press.

**PLEDGE OF ALLEGIANCE**

**CITIZEN PARTICIPATION**

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

**APPROVAL OF MINUTES**

**MOTION: Councilman Cline moved to approve the minutes of September 16, 2008. Councilman Grubbs seconded the motion. By unanimous consent, the minutes were approved as submitted.**

**CONSENT AGENDA**

**Item**

**Action Requested**

**ORDINANCE 2008-33:**

*Adoption*

AN ORDINANCE TO GRANT FINAL ACCEPTANCE OF THE PUBLIC IMPROVEMENTS OF GOLF VILLAGE SECTION 6, PHASE B, PART III SUBDIVISION AS THE SAME IS NUMBERED AND DELINEATED UPON THE AMENDED PLAT THEREOF RECORDED IN CABINET 3, SLIDES 645 AND 645B, DELAWARE COUNTY, OHIO RECORDS.

**ORDINANCE 2008-34:**

*Adoption*

AN ORDINANCE TO GRANT FINAL ACCEPTANCE OF THE PUBLIC IMPROVEMENTS OF WOODS OF POWELL NORTH PHASE I SUBDIVISION AS THE SAME IS NUMBERED AND DELINEATED UPON THE AMENDED PLAT THEREOF RECORDED IN CABINET 3, SLIDES 674 AND 674B, DELAWARE COUNTY, OHIO RECORDS.

**MOTION: Councilman Cline moved to adopt the Consent Agenda. Councilman Grubbs seconded the motion. By unanimous consent, the Consent Agenda was adopted. Ordinances 2008-33 and 2008-34 were adopted.**

**SECOND READING: ORDINANCE 2008-27: AN ORDINANCE TO REPEAL CITY CODE CHAPTER 721 REGARDING PEDDLERS AND SOLICITORS AND ADOPTING NEW CITY CODE CHAPTER 721 REGARDING REGULATION OF PEDDLERS, SOLICITORS AND CANVASSERS.**

**Tabled from September 16<sup>th</sup>**

Steve Lutz, City Manager, said they are proposing amendments to the ordinance in order to bring it into compliance with Federal Law. He said at the last meeting Council asked that Staff draft the ordinance so groups such as local girl scouts who go door-to-door would not be negatively impacted.

Gene Hollins, Law Director, said both clean and mark-up copies have been distributed. He said the ordinance was revised to remove the registration process. He said they investigated and found it was permissible to just have the licensing process for those who go door-to-door for financial gain or are receiving some sort of consideration for doing so. He said this ordinance should address the majority of the complaints by regulating, through a licensing program, those commercial solicitors and those who go door-to-door for profit or compensation. Mr. Hollins said there is also no longer a group application within the registration process.

Councilman Cline asked if Section 721.04 (A) (9) should include wording so it reads "if the applicant is being compensated and soliciting on behalf of a recognized religious or charitable not for profit organization, proof of tax exempt status" so it is not in conflict with the previous section. Mr. Hollins said it would be covered by Section 721.04. Councilman Cline noted that subsection (B) should read the

"Police Chief." Mr. Hollins agreed. Councilman Cline noted an error in Section 721.09 (a) where the word "penetrate" should be "perpetrate."

Councilman Hrivnak asked about those students who are selling items for their school and are earning credit toward a trip. He said that may be viewed as compensation. Mr. Hollins said they may need to live with this ordinance a little in its practical application. He said they may also advise the school that they may want to hold off on using prizes or trips for top sellers.

Police Chief Gary Vest said they get complaints from residents each spring. He said most complaints are generated by the behavior of the solicitor. He said every resident has the opportunity to post a "No Solicitation" sign and then if someone solicits they are subject to trespassing. He said they handle this from a complaint-driven process and if a solicitor comes into town and annoys no one he may slip by unnoticed. Chief Vest said he would not anticipate interpreting school trips as compensation.

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

**MOTION: Councilman Cline moved to amend Ordinance 2008-27 in the following particulars: in Section 721.04 (B), insert the word "Chief" after the word "Police"; Section 721.09 (A), strike the word "penetrate" and insert the word "perpetrate." Councilman Grubbs seconded the motion.**

**VOTE: Y 6 N 0**

**MOTION: Councilman Cline moved to adopt Ordinance 2008-27 as amended. Councilman Grubbs seconded the motion.**

**VOTE: Y 6 N 0**

**SECOND READING: ORDINANCE 2008-25: AN ORDINANCE AUTHORIZING AMENDMENT TO THE FEE SCHEDULE OF THE CITY OF POWELL.**

**Tabled from September 16<sup>th</sup>**

Mr. Lutz said this ordinance sets a fee for the Peddler License in the ordinance just adopted. He said Staff recommends a fee of \$75 to help offset the expenses incurred in issuing such a license.

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

**MOTION: Councilman Cline moved to adopt Ordinance 2008-25. Councilman Grubbs seconded the motion.**

**VOTE: Y 6 N 0**

**FIRST READING: ORDINANCE 2008-30: AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR BENITA LLC FOR A 14,148 SQ. FT. DAY CARE STRUCTURE AND 14,680 SQ. FT. OFFICE STRUCTURE IN THE PC, PLANNED COMMERCIAL DISTRICT, AT THE SOUTHWEST CORNER OF SELDOM SEEN ROAD AND NORTH LIBERTY STREET, BEING 8930 LIBERTY ROAD.**

David Betz, Director of Development, identified the location of this development within Wolfe Commerce Park. He said this particular property is proposed for an office building at the north and day care at the south side of the property. He said when the plat was approved several years ago there were common access drive points established. He said as this went through the planning process it was determined that a full service access point can be established on Seldom Seen Road. He said a controlled access point with additional turn lanes was established on Liberty Road. Mr. Betz said the access allows for a right turn lane into Ashmoore Drive, left turn into this site, and left turn into Ashmoore Drive. He said no northbound left turns will be allowed from this site onto Liberty Road. He said this entry was developed by the City engineering department, the traffic engineer, and the County Engineer. Mr. Betz said there is a central parking area to be shared by both users and the access point on Seldom Seen Road is set up for ingress/egress easement all the way to the first parking lot so access to the west can be completed with no additional curb cuts. He said the landscape plan is extensive and detailed, including irrigation and mounding as required by the Planning & Zoning Commission. Mr. Betz identified four variances which are part of the development:

- Reduction of the front setback along Seldom Seen Road by 26 feet. (for the office building)
- Reduction of perimeter foundation landscaping of the office building as there is extensive landscaping further out from the building.

- Reduction of having an interior parking island every 8 parking spaces. He said it is beneficial to this plan to have a large center island with a swale for stormwater.
- Reduction of parking spaces from 114 to 108. He said this minor reduction is reasonable.

Mr. Betz reviewed the building elevations for the day care and office buildings. He said the Planning & Zoning Commission extensively reviewed this plan and approved it with six conditions as stated within the ordinance. He said the applicant is not able to be present this evening but will attend for the second reading.

Councilman Cline asked if this development falls within the area restricted by Ordinance 2008-23. Mr. Betz said it does not. Councilman Grubbs asked if the exit from Ashmoore is still able to turn southbound onto Liberty. Mr. Betz said it can. He said they tried to design this to reduce the conflicts coming out of the site. He said having the access as far south as possible and making left turns prohibited prevents conflicts with Ashmoore Drive. Councilman Wiencek said this applicant came in with a very good plan and was extremely amenable to every request from the Commission and Staff. He said the finished product was not only unanimously praised but the members thanked the applicant for the quality of the application. Councilman Hrivnak said the Planning & Zoning process went very well for this application. He said the final renderings are much improved from the initial plan.

Mayor Counts asked if there was discussion about adding bike path on the south side of Seldom Seen. Mr. Betz said there is a sidewalk continuation on the west side of Liberty creating a crosswalk at Seldom Seen and connecting to the path on the north side. He said because there is a protected rail crossing only on the north side of Seldom Seen there was never a plan to make a pathway on the south side. Mayor Counts asked if they would need to go south on Liberty on the sidewalk to get to the park. He said pedestrians from Ashmoore would have to go across Seldom Seen, up that path and back across Seldom Seen to proceed south. Mr. Betz said that is correct. He said there is one break in the path along the west side of Liberty in front of Judge Hill's property. He said once that is completed there will be full connection on Liberty to Adventure Park. Mayor Counts asked if the path on the south side should be done while they are building. Mr. Betz said further to the west there is undeveloped land and there is no path in front of the church on Seldom Seen as completion of the path was not required. He said it was always planned to have bike path on only one side of Seldom Seen. Mayor Counts asked if this development is a phased plan. Mr. Betz said due to market conditions the day care will be the first phase and it will be built for a particular owner/operator. Councilman Cline said he is pleased to see spruce trees substituted for white pines in the landscaping plan.

Mayor Counts opened this item to public comment.

Michael Marchiando, 450 Keisel Court, Ashmoore HOA President, commended Mr. Betz and the Planning & Zoning Commission for this development. He said in general the Ashmoore community thinks this is a very good use for the property across the street and many of their residents will make use of the day care center. He said the only issue and concern is one of traffic. He said with more development comes more traffic so they know to expect some of that. He said the biggest concern is that back-ups in the turn lanes will make it difficult to turn out of the Ashmoore subdivision. He said traffic is typically accelerating and it is difficult to get into the traffic flow from Ashmoore Drive. Mr. Marchiando said they think it may be helpful to extend the 25 mph down to beyond the day care. He said he understands there is an issue because one side of the street is the City of Powell and the other side is Liberty Township. He said even if they could extend it to the end of Ashmoore Drive it may slow traffic enough to allow an opening for traffic to enter the flow. He said his only other suggestion is to put the 35 mph sign far enough away that people do not see it from in front of the day care so traffic does not speed up. Mr. Marchiando said the Ashmoore residents have discussed the development and there have been no negative comments other than a concern about how to exit during rush hour traffic.

Mayor Counts closed the public comment session.

Councilman Hrivnak asked where the 25 mph speed limit starts. Mr. Betz said when travelling northbound it ends just past Olentangy Ridge. He said they would have to do a speed study on Liberty Road to see where they stand now to see if a speed reduction is warranted. He said they would have to include the County Engineer for anything north of Ashmoore Drive. This item was taken to a second reading.

**FIRST READING: ORDINANCE 2008-31: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2008.**

Mr. Lutz said many of these items were reviewed at the last Finance Committee meeting.

Debra Miller, Finance Director, said this was brought to the Finance Committee first to determine if they should proceed on some of these projects now or wait until the 2009 budget. She reviewed the items within the appropriation ordinance:

- Internet connectivity to the Adventure Park Recreation Building is not consistent and they do not have regular effective internet service. Staff and the consultant recommend the addition of wireless equipment on top of the Delco water tower, allowing connectivity between the municipal building and the recreation building. The cost would be \$2,000.
- Municipal building has an overload of electrical service in the work area. \$6,000 would be needed to run adequate electric to this area.
- Two large estate tax settlements totaling almost \$800,000 were received by the City. The County Auditor charges the City a processing fee and that fee totals \$12,500.

Councilman Grubbs asked about the Finance Committee recommendation for the wireless connection. He asked if the City will be its own internet provider. Mr. Lutz said the contract expires at the end of 2008 and they are not pleased with the service they have been provided or cost paid. He said they will have improved wireless service at a lower cost. Ms. Miller said they will be using TW Telecom which is Time Warner but a different company. She said inflows and outflows from the recreation building cannot be handled by the current Time Warner service so there is little reliability. She said TW Telecom will be able to provide service to the City building and the recreation building will be fed from that service. Mr. Lutz said there will be a piece of equipment affixed to the top of the Delco water tower and that will transfer the service.

Councilman Grubbs asked what will happen with the wireless service in the downtown which is provided by Celerity. Mr. Lutz said the wi-fi to the businesses will still be provided to those who choose to subscribe. He said the City will be providing wi-fi to the public areas. Councilman Grubbs asked if the City will pull back from both Celerity and Time Warner and go with TW Telecom. Mr. Lutz said that is correct. He said there was a technical person to explain this at the Finance Committee. Councilman Grubbs asked if the addition of this equipment allows the City to have the flexibility to add future sites such as north of Seldom Seen and other City parks. Councilman Cline said that is the case and they would even be able to bounce the signal to other City facilities. He said although there is an initial investment it would make this a more efficient use of monies. Councilman Grubbs said the investment makes sense. Mayor Counts said a significant portion of the cost is merely getting the electrical connection to the equipment on the water tower. Ms. Miller said they have a tentative contract with Delco and they have asked the City to not pay rent but to instead pay the part of the electric the City uses.

Mayor Counts asked about the fund where the estate taxes go. Ms. Miller said it goes into the General Fund and so in theory they made the City whole for the Street Maintenance project done last month.

Mayor Counts 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 2008-31. Councilman Grubbs seconded the motion.**

**VOTE: Y 6 N 0**

**MOTION: Councilman Cline moved to adopt Ordinance 2008-31. Councilman Grubbs seconded the motion.**

**VOTE: Y 6 N 0**

**FIRST READING: ORDINANCE 2008-32: AN ORDINANCE APPROVING FUND TRANSFERS FOR THE CALENDAR YEAR 2008.**

Ms. Miller said the 2007 audit contained a comment stating that the City needs to use a separate ordinance for fund transfers because the ORC requires a different vote count than that for an appropriation ordinance. She said a super majority approval is necessary for these types of fund transfers. Ms. Miller said this ordinance will correct all of the transfers which have been completed in 2008. She said she has been working with the Law Director and in the future they will handle this on an ongoing basis. Mayor Counts asked if they had a super majority on these votes. Ms. Miller said they always had a super

majority of 100% but the Auditor said they must have a separate count. Councilman Grubbs asked if they will see a separate ordinance for fund transfers in the future. Mr. Hollins said for these types of fund transfers the ordinance will include a "Therefore" clause stating that two-thirds of the members of City Council are concurring. He said General Fund transfers do not require a super majority. Councilman Cline asked if this is a statutory ORC requirement. Mr. Hollins said it is. He said they want some indication that there was a conscious thought process. Councilman Grubbs asked if there is a reason the Charter does not supersede this requirement. Ms. Miller said the Charter does not address this. She said she will inquire if they may add a policy so they may add their own direction on these types of things. Mr. Hollins said he will look into it.

Mayor Counts 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 2008-32. Councilman Grubbs seconded the motion.**

**VOTE: Y 6 N 0**

**MOTION: Councilman Cline moved to adopt Ordinance 2008-32. Councilman Grubbs seconded the motion.**

**VOTE: Y 6 N 0**

#### **COMMITTEE REPORTS**

**Development Committee:** No report. Next Meeting: October 21st, 6:30 p.m.

**Finance Committee:** Councilman Cline said they discussed the items before Council this evening at the last Committee meeting. He said they will discuss the budget at their next meeting. Next Meeting: October 28th, 7:30 p.m.

**Operations Committee:** Councilman Grubbs said the Committee heard an informational presentation about neighborhood electric vehicles (golf carts). He said they heard proposals from Staff on revisions to the Sidewalk Ordinance. He said they had good comments and discussion and will propose amendments to the ordinance soon. Councilman Grubbs said they will meet sometime in November.

#### **CITY MANAGER'S REPORT**

Mr. Lutz said Operations Committee discussed the sidewalk which Liberty Township is constructing along the western side of Salisbury Drive from Manchester Drive north to the City boundaries. He said this is to facilitate students walking to Tyler Run Elementary. He said that leaves a 190' section of sidewalk which would have to be completed by the City because it is within the corporate limits. Mr. Lutz said they have the funding necessary to complete that segment and the Operations Committee gave their approval. He said the hope to construct that portion of the sidewalk this fall.

#### **OTHER COUNCIL MATTERS**

Mayor Counts said Kevin Knight has served on the HDAC as the Architectural Advisor for many years. He said as part of their discussion and review of appointments, Council has decided to consolidate the role of architectural advisor for the Planning and Zoning Commission with that of the HDAC. He said Kevin will be leaving that group and they want to show appreciation for his years of dedicated service as the Architectural Advisor. He said a plaque will be given to Mr. Knight.

Mayor Counts said it is time again for the annual evaluation of the City Manager. He distributed the evaluation forms to the members of Council and asked that they return them to him by the first meeting in November.

Councilman Grubbs reminded everyone of the Community Bonfire on October 18<sup>th</sup>. Mayor Counts said this is an opportunity for the Council members to be "public" with their constituents. He said if they are available he would encourage them to be present at the bonfire and/or offer volunteer service.

**EXECUTIVE SESSION IN ACCORDANCE WITH O.R.C. SECTION 121.22 (g) (3), PENDING LITIGATION.**

**MOTION: Councilman Cline moved at 8:20 p.m. to adjourn to Executive Session in accordance with ORC Section 121.22 (G) (3) to discuss pending litigation. Councilman Grubbs seconded the motion.**

**VOTE: Y 6 N 0**

MOTION: Councilman Cline moved to adjourn from Executive Session at 8:43 p.m. Councilman Grubbs seconded the motion.

VOTE: Y 6 N 0


MOTION: Councilman Cline moved to reconvene in Regular Open Session at 8:44 p.m. Councilman Grubbs seconded the motion.

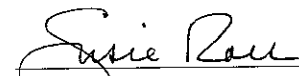
VOTE: Y 6 N 0

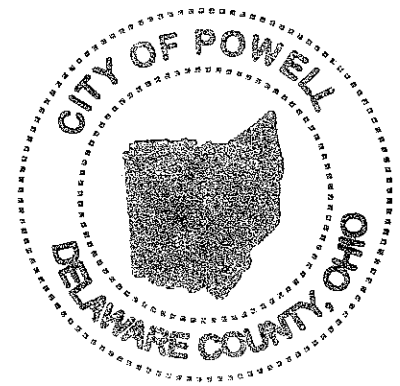
MOTION: Councilman Cline moved to adjourn from Regular Open Session at 8:45 p.m. Councilman Grubbs seconded the motion.

VOTE: Y 6 N 0

DATE MINUTES APPROVED: October 21, 2008

  
\_\_\_\_\_  
Tom Counts  
Mayor  
11/1/08  
Date

  
\_\_\_\_\_  
Susie Ross  
City Clerk  
11/6/08  
Date



**City Council**

Tom Counts, Mayor

Richard Cline

Don Grubbs

Jim Hrivnak

Elmer Meider

Art Schultz

Dan Wiencek