



City of Powell, Ohio
City Council

MEETING MINUTES
AUGUST 19, 2014

A regular meeting of the Powell City Council was called to order by Mayor Jim Hrivnak on Tuesday, August 19, 2014 at 6:30 p.m. City Council members present included Jon Bennehoof, Frank Bertone, Richard Cline, Tom Counts, Mike Crites and Brian Lorenz. Also present were Steve Lutz, City Manager; David Betz, Development Director; Megan Canavan, Communications Director; Gene Hollins, Law Director; Susie Ross, City Clerk; interested parties and members of the Press.

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

MOTION: Councilman Cline moved at 6:30 p.m. to adjourn into Executive Session in accordance with O.R.C. Section 121.22 (G) (3), Potential Litigation. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Cline moved at 7:20 p.m. to adjourn from Executive Session. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved at 7:30 p.m. to reconvene in Regular Open Session. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION

Mayor Hrivnak opened the meeting to Citizen Participation for items not on the agenda. Hearing none he closed the Citizen Participation session.

APPROVAL OF MINUTES

MOTION: Councilman Cline moved to adopt the minutes of July 26, 2014 for the Council Committee of the Whole. Councilman Bennehoof seconded the motion. Mayor Hrivnak abstained from the vote. By unanimous consent, the minutes were approved by the remaining Council members.

MOTION: Councilman Cline moved to adopt the City Council minutes of August 5, 2014. Councilman Bennehoof seconded the motion. Councilmen Lorenz abstained from the vote. By unanimous consent, the minutes were approved by the remaining Council members.

CONSENT AGENDA

Item

- *Departmental Reports - July*

Action Requested

Accept Electronic Reports

MOTION: Councilman Lorenz moved to adopt the Consent Agenda. Councilman Bennehoof seconded the motion. By unanimous consent, the Consent agenda was adopted & the monthly reports were received.

Mayor Hrivnak asked that they receive the public comment for the next three items at one time. There was no objection. Councilman Lorenz asked if these items need to be removed from the table by a vote of Council. Gene Hollins, Law Director, said they were tabled to this date so they are on the agenda.

Mayor Hrivnak opened this item to public comment. He asked that the speakers keep their comments to the 3-5 minute limit, wait their turn to come forward to speak and be respectful of those who are speaking.

Christopher Burch, 1803 Quarry View, Columbus, Counsel for the petitioners, asked about the procedure for comments from Counsel.

Mayor Hrivnak invited both Counsels to speak during the public comment session. Mr. Hollins thanked all of those who participated at the last meeting. He said it may not have been the desire of everyone to deal with all of these items this evening but all seven Council members are now present. He said comments from the audience at the last meeting were captured in detail, made a part of the record and duly noted by Counsel. They do not need to repeat their comments unless they want to.

Mr. Burch said he was hired by the petitioners to see this process through to Election Day on November 4th. He said he realizes he has three minutes to speak so he will be brief and plain. Council's role tonight is very limited; the Ohio Supreme Court has on multiple occasions made it clear that when a City Council is reviewing the validity and sufficiency of petitions before it, it is not a preliminary or comprehensive review. It is a review that is to be based on the form of the petitions and not based upon their substance. Mr. Burch said he is aware this has been a contentious issue on the merits and for good reason. This is an issue that affects many of the people in Powell and all of the things they have been made aware of by the residents. At the last meeting many members of the public made themselves quite plain with respect to their position on the merits. He is not here to dive into the merits because they are outside of the scope of Council's duties this evening. Mr. Burch said he will spare them the case law but if summarized in one sentence it is that the Ohio Supreme Court has said that they should "stay in their lane" and this is supposed to be about form and not about substance. They have said that this is not the appropriate forum for hearings about the substance and merits of the material inside the petitions.

Mr. Burch said the developers have raised a small number of arguments that are appropriate at this juncture. There is some sort of defect in regard to ward or precinct requirements. There are no wards in Powell so it is an argument about precincts. The rules to get something on the ballot are quite delicate and the petitioners have been exceedingly careful to meet every requirement created by the State Constitution and Powell Charter. They followed the instructions to the "I" and they invite Council to review every signature. They are aware that there may be a defect with a handful of signatures and precincts but the overwhelming number of signatures on the petitions are correct. Mr. Burch said the Powell Charter explicitly says that signatures on petitions are to be presumed valid and sufficient and should be given to the Board of Elections to be placed on the ballot forthwith. They feel Powell City Council was under that duty at the last meeting to put these on the ballot forthwith as in "immediately" but they were promised at that meeting that they would be dealt with tonight. Any of the arguments that the protestors are raising with respect to the distinction between administrative and legislative ordinances are improper for this body because they are substantive arguments based on what is contained in the subject matter of the petitions. That is not what Council is here tonight to decide. Mr. Burch said he appreciates Council's diligence on this matter and he thanked them for their time.

Councilman Cline asked Mr. Burch if it is his position that the appropriate forum for the landowner to raise those concerns is the Board of Elections in the first instance. Mr. Burch said they think there is some lack of clarity with that; the appropriate forum to raise substantive issues and the merits of this would be the exact same procedure if Council were taking a resolution or ordinance under consideration. If Council were to pass an unconstitutional ordinance it would be challenged in the Courts and that would be the appropriate forum to decide if there was a defect or constitutional infirmity with that legislation. The Courts would provide the appropriate procedure to dive into the merits. Mr. Burch said this City Council does have attorneys on it but most City Councils are not privy to that. The Courts are specifically designed for that purpose.

Joseph R. Miller, 52 E. Gay St., Columbus, on behalf of The Center at Powell Crossing LLC, said he has Exhibits 1-13 to submit to City Council and the Petitioners' Counsel in support of their protest (Exhibit 1). He asked that they consider the issues raised. Council has been attentive to the briefings they provided and they are appreciative of that. He said Council is absolutely required by Powell Charter and Ohio law to review and examine sufficiency and validity of these petitions and they are not here merely as a rubber stamp. Their "lane" is to decide whether these petitions are authorized under Ohio law to be put to the electorate. He said they are very clearly not valid. Mr. Miller noted specific case law that upheld City Council's decisions to withhold petitions from the Board of Elections that are not validly able to be put to initiative or referendum. All three of these cannot be because they deal with an administrative matter. The law is very clear in their protest and it has not been refuted by the petitioners. Ordinance 2014-10 was an administrative matter so there is no authority under the Ohio Constitution which only allows legislative acts to go to referendum or initiative and there is no authority for this to go to the ballot; City Council is the "gatekeeper" under their own Charter which was revised last year to give them this power.

Mr. Miller said the cases cited by the Petitioners do not involve a City Council under its own Charter, determining not just the sufficiency of signatures, but the validity of the measures themselves. That falls to City Council. Case law was noted where the Supreme Court found the Board of Elections disregarded the law and abused its

discretion in refusing to make that administrative/legislative distinction. Council is well familiar with the process that took place here and they approved the Development Plan based on the unanimous recommendation of Planning & Zoning and that is an administrative act; if there was any doubt, Exh.1 (affidavit of David Betz) lays out the process that took place here and he concludes in pp 9 that "because the project conformed to the property zoning in that Planned District, the application did not require any change to the property zoning and the application could be approved under the property's existing zoning as part of the zoning process. Review and approval of the application administers the zoning already in place." Nowhere in the Petitioners' brief do they refute that fact. Council member Crites observed that as shown on page 14 of the meeting minutes. As such, Council cannot allow this to go forward to the Board of Elections; it is their job to only uphold their Charter and the Ohio Constitution because these petitions are invalid for that reason.

Mr. Miller said the Charter Initiative suffers the same fate; it is a referendum on Ordinance 2014-10 disguised as an initiative. They cannot pick and choose among that Charter initiative what to submit to the Board of Elections. If there is any doubt, Article 4, Section 21 of the Charter Initiative says the Final Comprehensive Plan, legislatively adopted pursuant to Section 18 of Article 4, *shall not be compatible with Ordinance 2014-10 and/or the final development plan for The Center for Powell Crossing LLC*. It says that no party shall rely upon that ordinance so it retroactively restricts and repeals that ordinance; it is an initiative to repeal. Case law was noted where the Supreme Court affirmed a City Council's refusal to submit exactly what they have here: a final development plan approved and conforming to the district standards already in place. That Council would not submit it to the Board of Elections because it was administrative and the Supreme Court upheld that. Mr. Miller said again in 2006 the Supreme Court found that another City Council was not obligated to forward petitions to the Board of Elections where it was a referendum on an earlier decision by Council to grant a conditional use permit that was already provided for in the existing zoning. Mr. Miller said the Upper Arlington case is the most clear of them all; they would literally be disregarding applicable law and abusing the discretion the voters entrusted with them in the Charter by sending this on to the Board of Elections. In regard to the part petitions, strict compliance is the standard. The ward and precinct requirement is in the City Charter and it cannot be read out of the Charter. There are no precincts in Delaware County entitled "A" "B" or "C" as shown on part petitions. The precincts are named "Powell A" through "Powell J."

Mr. Miller presented Exhibits 6 through 9 in their protest that officially identify the precincts in this way. If they examine Exhibits 3 and 4 side-by-side, the circulators knew how to do this correctly; some did and some did not. All of those must be disqualified because strict compliance is the standard. That puts for each of these petitions, all of the signatures well below the 238 required. Mr. Miller said they chose not to use the Secretary of State's model petitions and in there they would have known that it is required both under the Charter and State Law, that for an initiative they must provide a full and correct copy of the title and text of the proposed ordinance as shown on Exhibit 11. In the referendum petition shown in Exhibit 10, they are to provide a copy of the title and text of the proposed ordinance. They did not do either of these things and all of the petitions are invalid on that basis. Beyond that, on the repeal initiative in addition to being impermissible, an initiative to repeal an administrative act is spot zoning, discriminatory, void for vagueness, impermissibly delegating their legislative authority to five Homeowner Associations and is a wholesale abdication of their legislative authority to only five of the 29 Homeowner Associations in Powell. Mr. Miller said City Council is charged with representing the entire City of Powell and that Charter Initiative cannot be passed on because it is unauthorized by Ohio law and that is the standard guiding them tonight.

Brian Ebersole, 215 Squires Court, said they are voting on the form of the petition and that is why they wanted to move forward with a decision on this two weeks ago. They are not basing this on any substance that is inside of the petition and that is important to understand since the developer's key argument is that it was an administrative decision. He said he wants to make it very clear that whether it is an administrative decision or not is a substance of the petition. If they are making a decision that way they are going the wrong way and obviously that is what not what they (the petitioners) are expecting. The ordinance itself says it is legislation right on it and they took a vote on it. It is legislation but if they are voting on substance of the petition, not the form, they are going beyond their duties. That is something that would be decided by judicial decision in a Court of Law. Mr. Ebersole said he would like to point out a timeline and establish the credibility of this developer: when they started with this and the Board of Elections to vote on the number of petitions, the developer attempted to illegally influence the Board of Elections with an entire protest stating false information as their Counsel just did, claiming there are wards in Powell. They even went as far to say that a third of the petitioners put a ward on the petitions and he does not know how that is possible because there are not wards in Powell and they did not put them on any of them. He said that is very confusing. Mr. Ebersole said the developer again filed another protest before their meeting and at the last meeting the petitioners were blamed for delaying the meeting based on the brief that they filed. They received the protest of the developers after 5 p.m. on Monday night, had their brief to counter it in Gene Hollins' in-box at 9:30 a.m. with a hard copy here by 11:30 a.m. He said

many of the members of Council pointed out that they did not see it until later in the day but it is very unfair to say that it was the petitioners who delayed the last meeting when they went above and beyond to put something in front of Council to counter the last protest. Mr. Ebersole said it seems there was a further game being played when another protest came out last Friday. The petitioners chose not to file an official brief because they thought they would be a chance here with their Counsel to make those objections. They did not want to cause further delay. They do not feel that with the few minutes their Counsel has gotten that they got that fair shake either. In regard to the administrative issue, he wants to point out that if indeed they do want to vote against their duties as an administrative issue, the Charter Amendment is very different than the initiative and referendum. That certainly has much broader scope and has nothing to do with any administrative duties. He said he would appreciate that if they are going to go beyond their duties that they consider that when they consider the three, as they are not all the same. Mr. Ebersole said that when the members of Council do speak he would appreciate it if they would explain their thinking no matter how they are going to vote. They would like to hear if they have a problem with the form and what that is or if they are going to go beyond their duties and vote based on substance. The petitioners have been through enough; they know their petition form is good. They know that if Council is going to vote on substance, they have a great case. This came back from the Board of Elections on the first, Council held a meeting and this is the second meeting so it has been 18 days. It says in the Charter that (1) they are supposed to make the decision at the first meeting; and (2) that they are supposed to decide "forthwith" which is immediately, instantly, right then. Eighteen days does not seem to be following what is going on with the petitions and what technically should have been acted upon. Mr. Ebersole asked that Council please consider these points as they are talking and he wants to hear their point of view.

Councilman Bennehoof said if anybody took his comment that he had just received the document as he walked in that evening as blaming anybody other than perhaps himself, he wants to set the record straight that there was no blame laid. He said he apologizes if anybody thought he or anyone on Council was saying that there was blame. That evening they did not have all seven members of Council present and this is a very serious matter. They felt they should have all of the members present for the decision. He said everyone is present tonight.

Mr. Ebersole said the Charter does say to act "forthwith" at the next meeting. It is unfortunate if one member would not make it but there is still the obligation to move forward "immediately/instantly."

Dave Hartline, 150 Glen Abbey Court, said he wants to bring a couple of things to attention that he heard mentioned. The main factor they have to deal with is they have never heard anyone on their side say anything bad about development as a whole. They are very open-minded about certain kinds of development. Much like when one purchases a product, they want to get what they paid for. Whether someone lives in Powell and desires a family style environment, or if a single person in the Arena District wants a more upscale lifestyle, if someone came in to change things up, they would have a right to be upset. They are simply asking to continue the community as it was when they moved in whether one, ten or twenty years ago. Mr. Hartline said they have heard arguments from a legal perspective and he knows a little bit about US History. When people feel like they are not listened to they get upset. That is the reason they have a nation and are not part of the British Empire anymore; they felt they did not have a say. The petitioners have "grassroots" appeal and do not have the highest priced law firm representing them. They are simply speaking their minds and want to do that and that is what a petition is. Mr. Hartline said if they do not have the votes, they do not have the votes. It is up to the people and that is Democracy 101: you don't have to be a political science geek or history geek to get it. If the people feel they are not being heard and they hear legal protests, people get a little suspicious. Voters seem to take it out on the only people they see fit and that is the people they elected. He asked that they use some common sense. He said they have heard about Council's "charge to the voters" and that this is "discriminatory" but discriminatory would be not letting the people have their say, whatever way that goes. Mr. Hartline said they should let the law apply, let the people vote and have their say and that is the simplest form of democracy. He said they have spent a lot of time on this and they are not here for the money. He said Council is not either and he knows the time they all spend and that is also the basic form of democracy: people who volunteer, do things, and put up with all kinds of things. He asked them to realize their charge that the voters gave them, listen to the voters and let them decide because that is the most obvious choice.

Sharon Valvona, 225 Squires Court, distributed a petition timeline (Exhibit 2). In realizing that she has a three minute time limit, a couple of folks in the back were asked to yield their three minutes to her and she expects to go over in time. She thanked those audience members who spoke at the last meeting to represent the point of view that the decision before Council is pretty straightforward. There is a lot of "stuff" in the developer's notice of protest and his lawyers said a lot more tonight. From her perspective as a non-lawyer, this is intended to scare, overwhelm, or mislead. The Powell Charter is pretty clear: the petitions are presumed valid and sufficient and the Supreme Court says for them to "stay in their lane." Ms. Valvona said from her perspective

she is really angry about the developer's false statements. As an example, they have heard about the timeline the petitioners had to prepare and they found out on Monday at the Board of Elections that there were no wards associated with the signatures but there were no wards anywhere on the petitions. They found out that the claim of the developer was that instead the precincts are wrong. Instead of preparing as she might have, she stayed up very late to look at the developer's exemplar and the precincts. Of course they were fine, correct and right. There was one out of 62 that was not. Ms. Valvona said since then she has looked at all of the other signatures and out of over 1,200 signatures there are maybe 15. This is smoke and mirrors and the idea that when people recorded their precinct they had to write "Powell" when they list their precinct is more of the same. She knows how hard the circulators tried to be accurate and what a good job they tried to do; this makes her mad.

Ms. Valvona provided details about the timeline she distributed:

- On July 9th they notified the City that they were planning to circulate the petition as they are required to do. They wanted to have the correct format and they asked the City to please review their petition for defects.
- Two days later they were told that they refused to review them. Council would want the citizens to be treated fairly and the rights of all residents to be respected. The petitioners really did due diligence to try to ask the question and they were told they would not be getting help from the City. She asked how Council feels about that; is this what they would have expected the citizens to receive.
- Only July 11th they started to circulate petitions and in less than a week over 400 people signed the petitions.

Ms. Valvona said she is outraged by the claims of the developer in terms of the circulation process. The developer started by claiming the petitions did not contain the text and title of the proposed measures. Now recently he is claiming that the circulators did not have the exhibits with them. She said she feels like this is watching a Jon Lovitz routine on Saturday Night Live. She said she is sorry if that sounds derisive but that is how it feels. She personally spoke with every circulator and made it clear how important it was that the exhibits be a part of the petitions and that they had to have them attached. The City has notarized statements from every circulator about their collection of signatures and on the front of the petition they passed it says "Any type of election falsification is a felony." On one hand they have the diligent hard work of their neighbors and their notarized documentation and on the other hand they have the developer accusing them of felony. This was documented by nothing.

Mayor Hrivnak asked Ms. Valvona to please bring her discussion to a close.

Ms. Valvona asked where she was on time. Mayor Hrivnak said she is twice as long as they allow. (Members of the audience spoke out to give their time.) Ms. Valvona said three people in the back agreed that she can use their time. Mayor Hrivnak said they will let her finish but they have set a time limit and they ask that she please try to draw her comments. Ms. Valvona said they gave the petitions to the City on August 17th and from that time until when they presented it to the Board of Elections and Council was the developer's prep time, as shown by the red line. Thanks to the Board of Elections they received some notification but they received no notification from the developer himself. On the timeline the blue dotted section arguably represents the petitioners' prep time but their time to prepare was actually on the small section shown as a solid blue line. She said she appreciates Mr. Bennehoof's comments but it was hard to hear that the reason that this important decision was being delayed was because they had not received the documentation; they know how little time they had to prepare. Related to that, it was mentioned that they heard nothing from the developer until late Friday afternoon, allowing the petitioners very little time to respond. Ms. Valvona said there is a lot more she could say but they asked her to bring it to a close. Her experience with this is that she feels outraged by this. She would want to feel that the City where she resides is on her side and that has not been the experience so far. She said she would have expected to at least receive fair treatment. She is concerned about some of the experiences the petitioners have had and she can tell them more about them. The issue here is more importantly that what the Council has before them is the rights of 400+ citizens who have taken the time to express their thoughts or feelings. Ultimately Council made a decision and the Charter says when they make a decision if enough of the citizens disagree with them there is a process to kick the decision up to the next level so it is decided by the voters. Ms. Valvona said they followed that process. The developer has generated a bunch of paper filled with misleading statements and the fact that they keep changing the form of their arguments with each new filing should let Council know how false those arguments are. She said they tried to do an end run around the Board of Elections process and frankly they treated Powell's citizens with contempt. They have wasted huge amounts of money at the taxpayer expense and are likely to waste a whole lot more. Ms. Valvona said enough is enough; they should move the petitions to the ballot.

Leslie Lopes, 207 Woodedge Circle West, said after their vote went through 4 to 3 she thought maybe it was just a small pool of them who object to this and out in the community they are hearing that people want this kind of housing. She asked herself how they can know if this is what citizens want. The notion is out there that they don't know and Council does not know until they put it to a vote. It was a close vote and there are a lot of unknowns. It is important they get this clarified because Powell is not going anywhere, the residents are not going anywhere and she hopes the Council is not going anywhere. They need to get a clear answer from the citizens. As for the developer, she can empathize that a lot is on the line for him. She said it is for them and they have smaller pools to deal with. Ms. Lopes said they are not saying not to develop in Powell, they are saying maybe develop something different. She understands his investment and that is a factor but there are lots of other things Powell can use, just not this. She said she hopes he reconsiders and the hostility she is hearing about can die down and there are other solutions out there for his sake. Ms. Lopes said she wants to know what her neighbors think and she hopes the members of Council wants to know that too.

Justin Flowers, 229 Briarbend Boulevard, said he is a ten year resident. He said he was not planning on speaking but he would like to express what a lot of people have said but in a slightly different way. He said he does not know a lot about politics and a lot of exhibits and folders have been mentioned. He said he is sure it is a lot more than Council cares to read. Mr. Flowers said as an American citizen in a representative government, he knows that when someone wants to throw a lot of bureaucratic tape out, they are probably afraid of what the citizens want. It is a lot easier to go through lawyers and talk to seven people than convince a whole community. Mr. Flowers said the lawyer said the petition only referred to a couple of neighborhoods and all of Powell needs to be aware and the only way for Powell to have their voice heard is through the vote.

Tom Happensack, 127 Kelly's Court, said he has a prepared statement to read (Exhibit 3). He said there are 170+ proposed units in the downtown right now and although they are talking about 64 tonight, the total is what they want Council to consider. It is not just about this one, it is just the one they have to deal with today. He said they are not against Council but have heard the voices of the people and they want them to be heard.

Sarah Ebersole, 215 Squires Court, said they know that the form of the petitions is good. If Council votes against them they are going to either be voting on incorrect information on the form or they are going beyond their duty and they will be voting on substance. If this is voted down the petitioners will be forced to sue and this will end up costing the City a lot of money. They will have to pay the City Law Director's fees and will end up paying their attorney fees because they have a good case for it. Ms. Ebersole said she believes the cost is around \$10k to hold a Special Election. If this delay goes too long that is when it would end up going to a Special Election. No one in this room wants to use their tax monies to do any of that and City Council needs to protect the citizens' fundamental right to ballot access.

Jennifer Sweet, 235 O'Quinn Court, said it is unfortunate they are here at this time. The members of Council are their elected officials and she voted for some of them; they are here to represent them as a City and a community and they are not. Every meeting she has been to there has been large opposition and it is growing and growing as more time goes on and word is spread. They had 30 days to do the petitions but really only had two weeks to collect 400 signatures. They got people to sign it because so many people are against this. Ms. Sweet said the only people she has ever heard in favor of it are the developer and the four Council members that voted for it. She said she does not understand why, when the residents are here every meeting telling them they do not want this. She asked that they please think about that. She said they should think about all of the concerns they have raised about the schools, traffic and not wanting this kind of building here. Ms. Sweet said they will want something else and are not shutting out all builders; they just don't want this. She said they do not want the 200 extra units on the small plot of land they are planning on. It is too much and the traffic is already bad. The Council represents them and the people are telling them they don't want this. Ms. Sweet asked that they please represent them and support what they want.

Denise Wible, 226 Beech Trail Court, said she was one of the circulators of the petitions, not because she buys into every word of the petitions but she does buy into the idea that people should have the right to speak out. She said most of the people who live in the Powell community don't know what is going on in this room because they are all busy running their kids, trying to keep their businesses afloat, and trying to take care of their children, their parents and their lives. The members of Council give a lot of time here and there is absolutely no reason why their elected officials should be shutting them down when people have spoken and said they don't like this. They have come to meetings and said they don't want this. They have told them in letters and she has seen communications that have come through her neighborhood and honestly she feels ignored. She said she got roughly 100 signatures on each of the three petitions and in the process of doing that in four days she only had two people out of 102 tell her they did not want to sign her petition. Ms. Wible said that is two percent and

if that two percent of the people were standing here saying do what they want and not what the people want, and they represented more than two percent she would be shocked. She believes the people of the City of Powell would tell them what they think if they had the opportunity. She has not had a chance to talk to every single one of them but it is a rare occasion when she actually finds someone who says they would love to see apartments there, it would add to the downtown traffic situation and make this a lovely community. Ms. Wible said maybe twenty years ago that development would have been perfect but it is not perfect now and they have all communicated their concerns about the railroad crossing. With this it will be a problem with people turning into this site after work to get home or to go to any stores that end up there. Ms. Wible said a lot of problems are going to come out of this and the fact that they are concerned about one property owner's right and one developer's effort and investment in this proposal shows they are forgetting that there are thousands of people that live in the City and have invested in their homes, volunteered in the community and schools and have invested in the other things that make their city the beautiful place Council keeps raving about. Ms. Wible said this will not be a beautiful, wonderful place if they turn their eyes away from all of the negatives that will come from something stupid in the wrong place. She said they are giving the City Council the opportunity to let the voters tell them what they think because they are not all given the opportunity to get up here and talk and they are not all free to come here night after night to sit and listen to the same communication which is "Please listen to us." She said they are concerned, not because they don't want to see development but because they want to see smart development. They want to see Council give all of the property owners the chance to vote. Ms. Wible said she does not see why they would say "no" to that. It doesn't seem logical to her.

Lannie Gilliam III, 300 Ridge Side Drive, said he does not want apartments built in Powell. He said he is a hypocrite for saying that because he owns rental property. He has lived in Section 8 housing and rental property can be tough. It takes one drug dealer or one "gang banger" to flip that place upside down. He loves Powell and wants to stay in Ohio; he is originally from Tennessee. Mr. Gilliam said he has a fear that Powell could turn into Ferguson, Missouri. He asked that they please think about that.

Emilie Duncan, 301 Weatherburn Court, said she is a new face that they have not seen before. They just moved here in October. They moved from Worthington, in an area that has a lot of apartments and they specifically moved to Powell because they wanted to get away from the influence it was having on their neighborhood. She said in talking with the new owners of their old house, they have had problems with those apartments, much more than they had when they lived there less than a year ago. Ms. Duncan said it is wonderful that the developer wants to develop apartments and that is fine and they are going to be nice apartments. Ms. Duncan said that may be for now but she can tell them that the apartments they moved away from in Worthington were nice at one time too. They are not nice now. The developers have a habit of coming in, developing great places, and then they walk away from them or sell them. She said then they go downhill. Ms. Duncan said Worthington is a great area but where she came from it is not. She said she strongly opposes the apartments in this area simply because they have too much traffic. She has two little girls and over 18k students are already in the Olentangy Schools. She said they are saying it will be cars or kids but they can't have both; she disagrees because they are going to have both. Ms. Duncan asked City Council that if they truly believe in their hearts these apartments are in the best interest and they are representing the people of Powell, let the people vote on it. She said that is all they are asking; give the citizens a voice they have not gotten so far.

Hearing no further public comment, Mayor Hrivnak closed the public comment session.

TABLED FROM AUGUST 5, 2014: RESOLUTION 2014-16: A RESOLUTION DETERMINING SUFFICIENCY AND VALIDITY OF A REFERENDUM PETITION TO SUBJECT ORDINANCE 2014-10 TO REFERENDUM.

Steve Lutz, City Manager, deferred this matter to the Law Director. Mr. Hollins said this first resolution relates to the referendum petition. He thanked the citizens who participated this evening. This is an open democracy. He said they will be hearing a great deal about this evening: the legislative authority of the City really begins with the citizens and the citizens can choose sometimes to take that legislative authority back. That is why they have referendum and initiative type of petition procedures. The Courts have set forth for Council the right forms, procedures and those types of things and the Courts have determined that some types of things are not referendable. Mr. Hollins said that may be more for the Courts to decide than this Council but the Council operates within a set of rules that were set forth for them by the Courts when it comes to ceding that legislative authority back to the people. The precise issue before Council tonight on the referenda petition is the sufficiency and validity of the petition first and foremost; the Council will vote on that by resolution. At that point the City Charter says there could be a second vote. With respect to a referendum petition the opportunity is presented by the Charter for Council to just repeal the ordinance which is the relief sought by the referendum. Council may or not take that opportunity if it finds the petitions to be valid and sufficient. If it does anything other than repeal it, it is going forward to the Board of Elections. Mr. Hollins said that is what the petitioners and

signers of the petitions are seeking that through their process this evening. The Board of Elections has taken a vote on the number of signatures and they said the City may have Charter provisions that also impact the number of signatures and they would not apply their normal rules on some of those issues because they do not know if that is how the City would interpret their Charter. They didn't invalidate part petitions when the circulator said the number of signers was less than the actual number of signers; they turned that issue over to the City.

Mr. Hollins said it is important to know that Staff has reviewed these signatures and petitions and have used the guidance promulgated by the Ohio Secretary of State's Directive 2010-01 which is how they have sent instructions down to the County Board of Elections about State referendum petitions. He said they reviewed the signatures using both that directive and any further requirements set forth in the City Charter that were not set forth in that directive, specifically the precinct/ward issue. They did invalidate on one basis and the Board of Elections did not. There were several petitions where the number of signatures that were certified by the circulator was crossed out and another number was put in; it was in different ink and Staff did not feel comfortable that the circulator had been given an opportunity to attest to that number of signatures before the notary. The notary signature was in the same blue ink as the circulator's signature so that was one basis. Mr. Hollins said this was put on record so the Board of Elections knows what process the City used under its Charter. With respect to the referendum petition, Staff has determined there were 321 valid signatures and the number required is 238. Beyond just the validity of the signatures he appreciates the extreme high quality of the Legal Counsel on both sides of this; the briefs submitted have kept him on his toes. Staff thinks the weight of authority on petitions related to ordinances is pretty clear and sets forth that this Council has limited discretionary authority and is not the appropriate forum for anything other than what would appear on the face of the petitions. Further, the Courts, when applying that type of standard, has said the legislative/administrative termination is not apparent on its face and that will take some further factual development and perhaps even fact-finding by a quasi-judicial body. Mr. Hollins said case law indicates this is not the appropriate forum for that determination of the legislative/administrative distinction. Counsel for both parties are very well versed in the future proceedings where those arguments can be made to that forum and they can get a determination and vindicate their rights.

Councilman Cline said he echoes what Mr. Hollins said about the briefings received from both the petitioners' and applicant's lawyers. He said he knows many of them were frustrated two weeks ago when he said he would like some time to digest the filing but found it was very well written and very helpful. He said it has now, in some respects, been confirmed by the Law Director as to his opinion about the role of City Council tonight. He said they may have been dismayed at a two-week delay but that delay was not a waste; it was helpful in the information it provided. In light of role that has been described for Council and the findings by Staff that there were more than 238 valid signatures and the limited nature of review that Council has regarding the validity of the petitions, he is prepared to vote in favor of Resolution 2014-16 to pass this on to the voters at the general election.

Councilman Crites agreed that after reading the briefs of both the petitioners and the applicant, and more importantly listening to the comments from the citizens over the last couple of months, Council is charged to look at the face of the document and determine the validity and sufficiency of the petition. He has done that and based on that review the petitions are valid and sufficient and he intends to vote in support of the resolution to pass this along to the ballot.

Councilman Lorenz said he agrees with Councilmen Cline and Crites. Regardless of how they feel about the proposed development that is not the decision at hand; what is at hand is the validity of the signatures. This has been a far different process than Council is used to. He said he goes to public hearings for a living and represents clients and he understands how tough it is to sit there and how difficult it is to arrange for babysitters, etc. He said he is appreciative of them coming and participating, whether they agree with what Council has to say or not. Councilman Lorenz said this type of participation invigorates the community and this is how the process should be. He asked that they be patient and they hope that no one here is talking "down" because they hear the residents and understand. He said he intends to vote in favor of Resolution 2014-16.

Councilman Bennehoof said he has been on Council 2½ years and this is the single most time investment he has spent on an issue. He said he appreciates everyone's patience with that deliberation and their delay to get to this point. He also will vote to pass this on to the ballot. Councilman Bennehoof said this is a complex matter and he won't go into a lesson on the rights of voters, citizens, landowners or developers. A lot of education needs to go on in those areas but this has been a good lesson in civics.

Councilman Bertone said he agrees that there were well thought out, articulated points of view from the Counsel for the petitioners as well as the landowner. He said he also has spent a lot of time trying to get an

understanding of the materials and this is a complicated matter. He applauds everyone for staying engaged and seeing this through. He said he is going to vote in favor of this resolution.

Councilman Counts said if this country was a pure democracy it would be easy; they would not be here because the residents would be making every one of the decisions. He said this is not a pure democracy and they have learned through the American government that they have rules and laws that guide them in how they do things. More importantly they have a Constitution that says in many instances that sometimes those individual rights, whatever they may be, trump what the people may want. He said they have learned in this whole process that sometimes it is good to listen to what the law and Constitution says because if he was to vote what his heart says, he might vote one way. Through all of the briefings and discussion he has learned and buys into the fact that they have certain rules by which this Council needs to make a decision. Councilman Counts said he is glad they have those rules and he wants to see them apply. He said based on what is before them, he must vote in favor of this resolution.

Mayor Hrivnak thanked those who came forward to speak this evening. He said he has read all of the briefs and he appreciates that his fellow Councilmembers thought enough to weigh all of that information. The petitioner this evening described how he seemed to be rushed and had very little time to prepare but yet the work prepared was read and understood by Council. Mayor Hrivnak said that is what the petitioner wanted. He said the members of Council also understand the feelings of the people present. Mr. Hollins has described well the task before Council with regard to Resolution 2014-16 and that is to determine if the petitions are sufficient and valid. Mayor Hrivnak said he finds they are and it is time to pass it on to the people through the election process and see where the majority is pointing for Council to go. He will vote for this resolution.

MOTION: Councilman Cline moved to adopt Resolution 2014-16. Councilman Counts seconded the motion.

Councilman Bennehoof requested a roll call vote on this resolution.

VOTE: Y 7 N 0

Mr. Hollins said this will be forwarded to the Board of Elections tomorrow morning.

TABLED FROM AUGUST 5, 2014: RESOLUTION 2014-17: A RESOLUTION DETERMINING SUFFICIENCY AND VALIDITY OF AN INITIATIVE PETITION TO PROPOSE AN ORDINANCE TO REPEAL ORDINANCE 2014-10.

Mr. Hollins said Staff used the same criteria they used with respect to other petition and determined there were 322 valid signatures on the initiative petition to repeal Ordinance 2014-10. The number of valid signatures required is 238. The appropriate motion to determine sufficiency and validity would be a motion to adopt the resolution. If adopted, the resolution will be forwarded to Board of Elections to be placed on the ballot.

Councilman Crites said asked if they have discretion limited to the face of the petition. Mr. Hollins said that is correct; they are limited from looking at anything beyond that, including the legislative versus administrative issue.

Councilman Bennehoof asked about the form of the ballot language and how that is derived. He finds confusion between these two initiatives and he is afraid the general public will possibly find them confusing, especially if the wording is not succinct and clear. Mr. Hollins said they received the indication from the Board of Elections that they will have some limited input on the actual ballot language, which is typical when they send any type of issue forward for the ballot. To some degree it will be governed by what the petitions say as they were drafted and submitted to the City. Staff will try to take his concern into account and try to make them as clear as possible so the voters will understand exactly what they are voting on. Mr. Hollins said ultimately the Board of Elections is the director of that language.

Councilman Crites said for the same reasons that he set forth in the record with respect to Resolution 2014-16, he finds this resolution to be sufficient and valid and he intends to vote to send it to the Board of Elections.

Councilman Cline said he shares Councilman Bennehoof's concern that the voters might be confused by parallel proposals but that is not a decision Council gets to make. That is a decision the voters get to make assuming this resolution is adopted. He said under the guidance they have been given about their task tonight, Resolution 2014-17 should be passed on to the voters.

Mayor Hrivnak stated for the record that the Clerk has passed out a revised copy of this resolution that corrects a typographical error.

Councilman Counts said his decision is the same on this resolution.

MOTION: Councilman Counts moved to adopt Resolution 2014-17. Councilman Crites seconded the motion.

Mayor Hrivnak asked for a roll call vote on the motion.

VOTE: Y 7 N 0

Mr. Hollins said this will be delivered to the Board of Election tomorrow morning.

SECOND READING: ORDINANCE 2014-41: AN ORDINANCE TO SUBMIT A PROPOSED CHARTER AMENDMENT, ENTITLED "AN AMENDMENT TO THE CITY CHARTER OF POWELL, OHIO TO SUBSTITUTE THE COMPREHENSIVE PLAN OF THE VILLAGE OF POWELL OF DECEMBER 1995 WITH A NEW COMPREHENSIVE PLAN FOR ZONING AND DEVELOPMENT IN THE CITY OF POWELL, OHIO" TO THE ELECTORS OF THE CITY OF POWELL.

Mr. Hollins said with respect to this ordinance for a Charter Amendment, going back to the same guidance from the Secretary of State office and any further requirements set forth in the Powell Charter, Staff reviewed the signatures on these petitions and their form as well. They determined that the petitions contain 254 valid signatures and the number required to send it to the ballot is 238. Even though this is a Charter Amendment petition and therefore involves a section of the Ohio Constitution, not just the Charter, Council's role is still limited. Mr. Hollins said they are vested with some level of discretion with respect to this and again it comes back to things that are evident on the face of the petition. He said this is a very detailed Charter Amendment and Staff looked at all aspects of the proposed amendment to see if there was anything on its face was unlawful or unconstitutional. Most aspects of the initiative Charter Amendment were things they have seen before on other amendments and those do pass Constitutional muster. Mr. Hollins said there is one aspect of this petition that he would like to explain to Council. If he goes back to a statement made earlier, the original legislative authority in a City and in the Federal system is vested originally with the people through the form of government and elections are vested in City Council. In a referendum the entire voting public takes that legislative authority back and chooses to exercise that authority through the ballot box.

Mr. Hollins said that is a core principal of our democracy and there is nothing wrong with that but the US Supreme Court has made it clear that if it is not a taking back of legislative authority to the whole of the people but an attempted delegation of that legislative authority from Council down to a very small private component of the community, whether private or individuals, it would not be the same as a referendum. They have reviewed the petition in detail and the legal arguments and the legal advice they would give to Council is that delegating the legislative authority to draft a Comprehensive Plan to five individuals in the community would not withstand a due process challenge and is therefore not lawful. Mr. Hollins said this was determined while only looking at the face of the petition, staying within the same bounds given to them by the Courts. He said if anyone in attendance is interested, the specific case they are looking at is the City of Eastlake US Supreme Court case dealing with a Charter Amendment that takes a zoning power and gives it to a small group of individuals. He said it was decided in 1976 but it is strikingly similar to this petition. There is a Court procedure to challenge any interpretation at this level so if the petitioners do not agree with the Law Director's office's opinion there is a Court procedure to sort that out.

Mayor Hrivnak said the former two petitions came in the form of resolutions. He asked why this one came to Council drafted as an ordinance. Mr. Hollins said they are required by the Ohio Constitution that when they receive a Charter Amendment petition, to put it in the form of an ordinance to vote to find it sufficient and valid and pass it on to the ballot.

Councilman Counts asked if it is correct that any unconstitutional provision within this proposed ordinance would be grounds for Council to look at. Mr. Hollins said they believe the Supreme Court indicated that is part of what Council is charged with this evening in their role of reviewing a Charter Amendment petition.

Councilman Bennehoof asked if Council is "staying in their lane." Mr. Hollins said that is correct. Councilman Bennehoof said at the last Council Goal Setting session they agreed to have a Comprehensive Plan review and it is well on its way. The review is being led by Councilman Crites with a large representation of the community. Councilman Bennehoof said last year Council recognized that it needs to be updated and they are doing the appropriate thing as they did with the Charter Amendments in the prior year.

Councilman Cline said he views this ordinance differently than he viewed the two resolutions for the reasons stated by the Law Director. It is apparent to him that on the face of this ordinance that it is an attempt to delegate the zoning authority of the City of Powell to 5 residents who apparently would represent 5 homeowner's associations out of 29 homeowner's associations and the areas where residents live that are not

part of a homeowner's association in the City of Powell. Councilman Cline said he may move to have a vote on this ordinance so they can make a decision and the residents are entitled to that vote, but he does not plan to support the passage of Ordinance 2014-41.

Councilman Crites asked if he is understanding correctly that the Law Director is saying that in his legal opinion, upon review of the face of the Charter provision, he finds it to constitute an unlawful delegation of legislative authority to a private group of 5 people and because he has been able to ascertain that from the face of the document, that can be a basis for rejection of this ordinance. Mr. Hollins said that is correct and the only thing he would add is that is based on existing US Supreme Court cases. Councilman Crites asked if Council will "remain in their lane" even though the standards are a little different for review of a Charter Amendment than that of initiative or referendum of an ordinance. Mr. Hollins said that is correct. Councilman Crites said based on that information he is inclined to oppose sending this ordinance to the ballot.

Councilman Counts said he wants to be on record that this is absolutely bad law. It puts in the hands of a certain segment of the community the plan for this community over at least the next ten years. It cuts out three-quarters of their community and to him that is absolutely the wrong thing to be doing, especially by a group of people who talk about inclusion and being involved. The City has a process to update the Comprehensive Plan and that process started at the City Council Goal Setting Session in February. Councilman Counts said they have started the process, and they have a broad group of people involved. He suggested to Council that after this vote, depending on how the vote goes, they should formally express what has been done already in the process. Councilman Counts said bad law is not what they are talking about here because that is not within the scope of their decision-making. This is unconstitutional, not only for the reasons expressed by the Law Director; it is also spot zoning which is unconstitutional and that is not something they can allow to happen. He stated he is not in favor of this ordinance.

Councilman Lorenz said he is a representative of all of the residents but he will not be supporting this ordinance tonight based on the face of the ordinance. He said it is not representative of their community and it sets apart a segment of the community. He lives in Golf Village and he represents the people in Falcon Ridge the same as he would his neighbors in Golf Village. Councilman Lorenz said the update of the plan is already in process. He said he gets why this has come forward to draw attention and get more people involved but he cannot support that it does not allow him to represent the community as a whole and that is how Council is put into place. Councilman Lorenz said he will not be voting in favor of this ordinance.

Councilman Bertone said he agrees with the comments already expressed by many of the members of Council this evening. He said this ordinance allows for a small representation by a small group of the community and is not a broad-based approach. He said there is an effort to amend the Comprehensive Plan by a group that has been working together since earlier in the year. That group is making significant progress and due to the content on the face of this he cannot support it.

Councilman Bennehoof said he is sure Councilman Crites would welcome additional attendants at the Comprehensive Plan meetings and they are public meetings. Councilman Crites said he would and the next meeting is Tuesday, August 26th at 6:30 in the Council Chambers.

Mayor Hrivnak said he agrees that they should not delegate their authority to a small group of individuals. In doing that it would be unlawful and unconstitutional, therefore he cannot support passage of this ordinance and that is how he will be voting this evening.

Councilman Cline said it is his understanding of the rules of Parliamentary Procedure that all motions are to be in the affirmative. With that understanding and having already expressed his dissatisfaction with the ordinance, he posed the following motion:

MOTION: Councilman Cline moved to adopt Ordinance 2014-41. Councilman Counts seconded the motion.

VOTE: Y 0 N 7

TABLED FROM AUGUST 5, 2014: SECOND READING: ORDINANCE 2014-35: AN ORDINANCE TO VACATE A PORTION OF A STORM SEWER DRAINAGE EASEMENT, LOCATED ON REAL PROPERTY OF RECORD IN PLAT BOOK 2, PAGE 648, IN THE RECORDER'S OFFICE, DELAWARE COUNTY, BEING LOT 2571 MURPHY'S PARK SECTION 3, AND DECLARING AN EMERGENCY.

Steve Lutz, City Manager, said this item was brought to their attention due to the potential sale of property and apparently that sale is no longer being pursued. He said the appropriate motion from Council would be a motion to withdraw this ordinance from the agenda.

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

Councilman Bennehoof said he assumes that if someone were to revisit that sale, this item would come back to Council. Mr. Lutz said that is correct. Mr. Hollins said Staff was informed by the County Engineer that he wants Council to attach a "meets and bounds" legal description and a surveyor has to accomplish that. He said if there is another sale pending the owner knows now to get that description ahead of time and then request that the storm sewer drainage easement be vacated.

MOTION: Councilman Cline moved to withdraw 2014-35 from the agenda. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

Ordinance 2014-35 was withdrawn from the agenda.

FIRST READING: ORDINANCE 2014-44: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2014.

Mr. Lutz said they have a \$200k proposed expenditure for the updating of the Comprehensive Plan and this ordinance would appropriate a portion of that total in the amount of \$164,300.00 from the unappropriated fund balance. There is a group that meets on the fourth Tuesday of each month in public session to work on the update. As part of that Comprehensive Plan they will be utilizing various experts and consultants, a land use planner, a traffic engineer and an individual to help with financial analysis. Mr. Lutz said this ordinance, along with the next ordinance will appropriate the total funds necessary to contract with those consultants as they update the Comprehensive Plan.

Councilman Crites said they did a series of interviews and discussions and this is as close to an accurate number as they can determine at this point in time. The Comprehensive Plan Executive Committee endorses this expenditure and recommends that Council pass this funding. Councilman Cline said the Finance Committee looked at this ordinance and the one that follows and they reflect the recommendations of the Finance Director with the approval of the Finance Committee on how to allocate the funds to get to the total amount. Councilman Cline said the Committee recommends approval of both of the ordinances.

Councilman Bennehoof asked if there is a sense of urgency to suspend the rules on this ordinance. Councilman Crites said time is of the essence. Initially they estimated an 18 month time frame and they are trying to stay on track and stick with their timeline. He asked that they waive the second reading.

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

MOTION: Councilman Bennehoof moved to suspend the rules in regard to Ordinance 2014-44. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Lorenz moved to adopt Ordinance 2014-44. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2014-45: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2014.

Mr. Lutz said this was reviewed with the last ordinance and as Councilman Cline commented, the Finance Committee reviewed this matter and recommended splitting up the \$200k with the remainder of \$35,700.00 coming from the City Council Contingency account.

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

MOTION: Councilman Bennehoof moved to suspend the rules in regard to Ordinance 2014-45. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2014-45. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2014-46: AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR GANZHORN REAL ESTATE OF POWELL, LLC FOR A 64 SUITE ALZHEIMER'S/DEMENTIA CARE FACILITY ON PROPERTY BEING ANNEXED INTO THE CITY OF POWELL, BEING ON 5.147 ACRES ON THE WEST SIDE OF SAWMILL PARKWAY AT PRESIDENTIAL PARKWAY, AND TO CHANGE THE ZONING MAP TO REFLECT THIS PROPERTY TO BE PC, PLANNED COMMERCIAL DISTRICT.

Mr. Lutz said Staff recommends that Council take this ordinance to a second reading. The advertised public hearing for this ordinance is scheduled for September 2nd. This proposed memory care unit is on property which is proposed to be annexed into the City.

David Betz, Development Director, reviewed the proposal within the ordinance (Exhibit B). He said the property is on the west side of Sawmill Parkway across from Presidential Parkway. This property was once approved for an office condo development that is similar to the one to the one north of this. The property ownership has changed over time due to financial issues with the previous developers and now they have a proposal from Ganzhorn Real Estate to build a memory care facility. The property is currently zoned Planned Commercial District in Liberty Township and as it comes into Powell it will remain in a Planned Commercial district within Powell. Mr. Betz said the site plan shows a building that has four home suites with parking along the front and back with access off of a common access driveway for the adjacent office condominiums. The applicant is working with that condominium association for access and stormwater going into a stormwater system already sized for this property. The elevation drawings show a one-story structure in brick and stone with copper trim above windows. The building has 64 units within it. Mr. Betz said the building is very well designed and in keeping with the residential single-family and two-family condos to the west of the site. He said the Planning & Zoning Commission reviewed this and found that this is a very important use to have in a community to help with aging in place as well as those in the community who have loved ones who need this type of facility that provides eldercare, and care for people with Alzheimer's and other cognitive problems.

Tom Hart, attorney for the applicant, introduced himself and Mr. Akbar and said they will save their full presentation until the public hearing at the second reading. He said they are available tonight to answer questions.

Barmi Akbar, CFO, Ganzhorn, reviewed the presentation provided to the Planning & Zoning Commission (Exhibit C). This is classified as assisted living and they are dedicating this product to memory care; they specialize in mid- to late-stage Alzheimer's and other forms of dementia. The national statistics about the disease show that the demand for Alzheimer's care is not being met and more people are being afflicted than they have areas to care for them properly. Their main offices are in Liberty Township and their owner and CEO, Eleanor Alvarez, is a central Ohio resident and has been in the health care industry for forty years. Mr. Akbar said this brings state-of-the-art health care to this area that includes best practices along with their own experience as operators. He said he has been in the industry 15 years and they are bringing some of the best components of memory care together for the Ganzhorn Suites. They are working with physicians and care-givers in the community to put together the "best of class" product. Mr. Akbar said their product is differentiated because of its private suites in a household model. Each of the four areas of the facility is a household that has its own living room and kitchen. Each individual resident will have their own suite with a full bath and amenities. They will use state of the art technology to provide the best care and security, which is very important. High staffing levels will allow them to be able to care for people through the end of their lives because as people progress through the disease, their need for care increases. Mr. Akbar said one of the values for Powell and the northern Columbus area is that it means they do not go somewhere else once they are afflicted with this disease.

Councilman Cline asked how many full time equivalent employees they anticipate would be working at this facility and their salary range. Mr. Akbar said they typically have three shifts with 16 employees on the first and second shifts and eight employees on the third shift. There are about ten administrative individuals who typically work an 8-5 shift. They will employ approximately 50-60 individuals and the average wage is around \$16/hour. That average is based on the wages of the individuals in the administrative area, the nursing staff and a large number of their caregivers are State-certified nursing aides.

Mr. Akbar said this is a private pay only facility and they will not be taking government subsidized dollars. Their facility and care are focused on the households. The courtyards are a major amenity because they are an outdoor space and in Ohio it is important to maximize the outdoor space. It is about mobility and freedom and the courtyards with wonderful tranquility gardens are a signature item. They met with the Wedgewood residents that align this property and surrounding business owners to hear their concerns. Having worked with many municipalities around the country, he wants City Council to know that the Architectural Advisor and the Planning & Zoning Commission are very detail-oriented and their comments were incorporated into the Final Development Plan. Mr. Akbar said they felt like they had a very good product but now that also incorporates

the community's input as well. Market studies show there are not a lot of available beds in Columbus that provide memory care to assisted living residents; they feel they will be a successful part of the community and the market is very supportive. He provided further background information about Ms. Alvarez and her company, LeaderStat, a national health care company that specializes in interim management for senior care services across the country. He said Ganzhorn is a business but they are also very dependent upon the community because they are providing care for people's loved ones. They are developers and operators.

Mayor Hrivnak thanked Mr. Akbar for his presentation and for taking such a pro-active approach with the neighbors.

Councilman Cline said on page 15 of the materials there is a summary of the four divergences requested:

- Two percent building area divergence
- Zero setback on the side (a five foot difference)
- Zero setback for parking
- Eight foot high fence to be allowed for privacy and security purposes as opposed to a standard six foot fence

Mr. Betz said those are the only variances. Councilman Cline said he is asking because he doubts he will be present in September; he is impressed with this presentation and the divergences/variances are minor and they enhance the overall proposal. Councilman Cline said if he were able to be here he would be inclined to vote for this.

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

Councilman Bennehoof asked if this proposal is for 64 units with each housing one person. Mr. Akbar said there are 64 suites and four households. Their license will say that one unit can hold two individuals. Councilman Bennehoof asked if a wife would be able to accompany her husband who would be a resident. Mr. Akbar said unfortunately the reality is that they typically do not use dual occupancy because if a wife is not afflicted with the disease in the mid- to late stage as her husband is, they would not need the specialized care Ganzhorn provides. When one has to make the difficult choice to put their spouse in a setting like this it is a point where it has become difficult and caused some complexities in the relationship. They do have dual occupancy for sisters and brothers who have the disease or in those situations where both the husband and wife have it or one is admitted and the spouse eventually needs the services. Some assisted living communities have the opportunity where spouses of different ailments/acuity can live together but this is not one of those settings.

There were no further questions or comments from Council. Ordinance 2014-46 was taken to a second reading.

FIRST READING: ORDINANCE 2014-47: AN ORDINANCE ACCEPTING THE ANNEXATION OF A 5.147-ACRE TRACT, MORE OR LESS, TO THE CITY OF POWELL.

Mr. Lutz said this is a companion legislation to the proposed Ganzhorn development in the prior ordinance. This ordinance accepts the property into the City of Powell; a few months ago Council passed the Resolution of Services stating that if they annexed the property, the City would provide services.

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

Councilman Bennehoof said he supports this development and thinks it is a good use of the space and a needed service in the community. He wants to make sure they are sensitive to the density question. He said he has no problem but would like Staff to prepare information on density for the next meeting.

Ordinance 2014-47 was taken to a second reading.

FIRST READING: ORDINANCE 2014-48: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2014.

Mr. Lutz said this appropriation of \$5,000 would be utilized for the City to develop the community garden in Arbor Ridge Park. They have received donations from Ohio Mulch for dirt and \$5,000.00 from the Powell Kiwanis Club from a grant they received to help the City fund this project. Staff will need this appropriation to supplement those donations and funding and they recommend it is taken from the Parks and Rec Development Fund. The plan is to have the community garden constructed this fall so they are ready for the spring planting season next year.

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

MOTION: Councilman Cline moved to suspend the rules in regard to Ordinance 2014-48. Councilman Counts seconded the motion.

VOTE: Y 6 N 0 Abstain: Bennehoof

MOTION: Councilman Cline moved to adopt Ordinance 2014-48. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

COMMITTEE REPORTS

Development Committee: Councilman Lorenz said at their next meeting they will discuss parking agreements and a potential moratorium on multi-family development. He sees that discussion take place in phases to determine if a moratorium is appropriate for Council to enact and if so, what would be the timing and stage when it could be enacted. *Next Meeting: Tuesday, September 2nd, 6:30 p.m.*

Finance Committee: Councilman Cline said they met and the fruits of their labor were seen in several ordinances presented this evening. *Next Meeting: Tuesday, September 9th, 7:00 p.m.*

Operations Committee: No report. *Next Meeting: Thursday, August 28th, 7:00 p.m.*

ONE Community: Councilman Bennehoof said he will meet with John Bernans before the next meeting. *Next Meeting: Monday, September 8th, 7:00 p.m.*

Planning & Zoning Commission: Mr. Betz said they will meet next week if the pending plan is submitted tomorrow. *Next Meeting: Wednesday, August 27th, 7:00 p.m.*

Comprehensive Plan Committee: Councilman Crites said they will meet the fourth Tuesday of each month. Councilman Counts said it is appropriate that Council do something by ordinance to recognize what the Committee is doing. He asked Staff to work on this for the next Council meeting. *Next Meeting: Tuesday, August 26th, 6:30 p.m.*

Powell Community Improvement Corporation: Mayor Hrivnak said the group met this evening and have a draft retention and cooperation agreement with a corporation in town. It will be discussed further and signed at the next meeting. Councilman Cline asked about the status of the tenant in the 44 Center. Mayor Hrivnak said it is a real estate company that is still looking for property but is content to stay there for the moment. At the next meeting they will restructure their agreements for the 44 and try to move temporarily away from the Incubator and have more of a commercial rent established. He said they will renegotiate their agreement with the HDPI regarding their role as manager. Councilman Bennehoof said he has become familiar with a local businessman who is using TechColumbus but they are in this area and the PCIC may want to encourage local business people to relocate to Powell. Mr. Betz said he will speak with them. *Next Meeting: September 18th, 6:00 p.m.*

CITY MANAGER'S REPORT

Mr. Lutz said there was none.

OTHER COUNCIL MATTERS

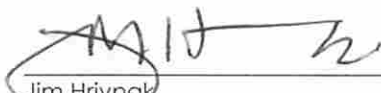
Councilman Crites thanked Council for allowing him to serve as their representative to the Opioid/Heroin Task Force. He said their next meeting will be September 15th.

ADJOURNMENT

MOTION: Councilman Bennehoof moved at 9:56 p.m. to adjourn the meeting. Councilman Cline seconded the motion.

VOTE: Y 7 N 0

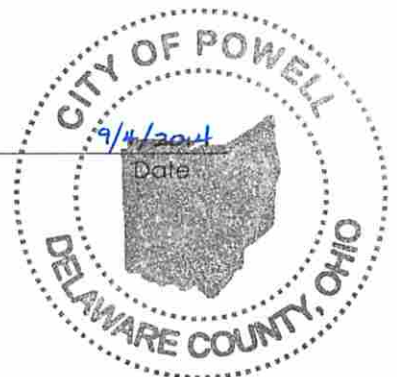
MINUTES APPROVED:

 9-15-14

Jim Hrivnak
Mayor

Date

_____
Sue D. Ross
City Clerk



City Council

Jim Hrivnak, Mayor

Jon Bennehoof

Frank Bertone

Tom Counts

Mike Crites

Richard Cline

Brian Lorenz