



City of Powell, Ohio
City Council

MEETING MINUTES
SEPTEMBER 16, 2014

A regular meeting of the Powell City Council was called to order by Mayor Jim Hrivnak on Tuesday, September 16, 2014 at 7:00 p.m. City Council members present included Jon Bennehoof, Frank Bertone, Richard Cline, Tom Counts, Mike Crites and Brian Lorenz. Tom Counts arrived at 7:45 p.m. Also present were Steve Lutz, City Manager; David Betz, Development Director; Debra Miller, Finance Director; Megan Canavan, Communications Director; Police Chief Gary Vest; 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 Crites moved at 7:00 p.m. to adjourn into Executive Session in accordance with O.R.C. Section 121.22 (G) (1), Personnel, Board & Commission Interviews. Councilman Bennehoof seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Crites moved at 7:30 p.m. to adjourn from Executive Session. Councilman Lorenz seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Crites moved at 7:32 p.m. to reconvene in Regular Open Session. Councilman Bennehoof seconded the motion.

VOTE: Y 6 N 0

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION

Mayor Hrivnak opened the meeting to Citizen Participation for items not on the agenda.

Tom Happensack, 127 Kelly's Court, said he has been following things pretty closely and at the last meeting he spoke about how the Development web page was not updated and had the June 17th Council information posted. He said since June 17th that page has not changed so when people look to see what is happening they do not see the developments coming before Council. He reported that this week it has continued. He said this surrounds the question about what is proper notification and what is not. Mr. Happensack distributed some information to City Council (Exhibit 1) regarding the recent postings. He said he does this out of pure frustration in trying to follow what is going on. He said he spends a lot of time looking for things that should be at his fingertips and there is no reason they aren't. He pointed out several deficiencies: lack of posting of public notices on the website, today's late posting of the Council agenda, the incorrect link in the Twitter feed, and the lack of information on the Legislation and Development pages of the website. Mr. Happensack said the communications are extremely poor. He said it seems to happen on all of these projects and he finds it extremely frustrating and unprofessional. He said the problems are ongoing on the website. He asked what the residents are supposed to think when all of these things are incorrect. Mr. Happensack said these things need to be checked.

Hearing no other comments, Mayor Hrivnak closed the Citizen Participation session.

PROCLAMATIONS – Powell Police Detectives Ryan Pentz and Darren Smith

Mayor Hrivnak said Powell Police Detectives Ryan Pentz and Darren Smith were recently recognized by the Delaware County Prosecutor's Office for their work. He read a proclamation in recognition of the receipt of this award by the detectives. Detective Pentz was honored for his work on a significant identify theft investigation that brought the criminal to justice. Detective Smith was recognized for his role in the prosecution of two men in an aggravated robbery/felonious assault case and for his efforts in bringing a criminal to justice in a case regarding sexual assault on a teenager. Both detectives were present for this recognition of their dedication to

protecting the citizens of Powell. They each thanked the Powell Police Department and the Prosecutor's Office for their contributions and thanked City Council for their support because these crimes would not have been solved without the assistance from everyone involved. Mayor Hrivnak thanked the officers' families, Police Officers and Police Staff for being present to support the detectives.

APPROVAL OF MINUTES

MOTION: Councilman Cline moved to adopt the minutes of September 2, 2014. Councilman Crites seconded the motion. By unanimous consent, the minutes were approved.

Councilman Counts arrived at 7:45 p.m.

CONSENT AGENDA

Item

- Departmental Reports – August 2014
- Liquor Permit Request
- Eagle Entertainment LLP dba Prohibition, 21 W. Olentangy St.

Action Requested

Receipt of Electronic Report
Waive request for hearing

MOTION: Councilman Cline moved to adopt the Consent Agenda. Councilman Crites seconded the motion. By unanimous consent, the Consent Agenda was approved.

SECOND READING: ORDINANCE 2014-49: AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR SANTER COMMUNITIES FOR A PROPOSED FOR SALE TOWNHOME DEVELOPMENT OF 22 UNITS AND A COMMERCIAL BUILDING ON 3.688 ACRES AT 110 SOUTH LIBERTY STREET.

Public Hearing

Steve Lutz, City Manager, said this is the second reading of this proposed condominium development.

David Betz, Director of Development, said the proposed development is for 22 townhomes and a commercial building of about 6k sq. ft. located on the east side of S. Liberty. The surrounding land uses include single family residential to the east, office condos and commercial to the north, Pendleton Automotive and other offices and commercial uses to the west and a single family residential home on five acres that was converted to commercial to the south. He reviewed the proposal (Exhibit A), including the site plan, entrance, placement of the residences, green space and garages. Mr. Betz reviewed elevation drawings of the proposed commercial building and the two-unit townhome condominiums. The colors and porch detailed will be determined as they sell the units with particular versions as seen in the packet. The buildings have been designed to be compatible with the Historic District guidelines. He provided renderings of the backs of the buildings with garages and how they can access the garages from driveways throughout the site.

Mr. Betz said the Planning & Zoning Commission specifically focused on the ability to have a possible road connection shown to the north and south that could connect to Olentangy Street and Liberty Street to the south if something were to develop in those areas. That was a recommendation from the 2004 Downtown Revitalization Study as well as the 1995 Comprehensive Plan, making a north-south roadway with possible linkages to Liberty Street. The higher density townhome type of development was also recommended for this area in the downtown. Mr. Betz reviewed the portion of the Downtown Revitalization Plan which applies directly to this property; in 1995 the Zoning Code was changed to the Downtown Business District at this location to allow for density of 7 du/acre to 9 du/acre if streetscape improvements were provided. This project is a density of 5.67 du/acre; commercial land is about .75 acre and if that is deducted, there is a residual 3.14 acres with a net residential density of 7 du/acre. Mr. Betz said that density stays within the requirements of the Downtown Business District. He said the details within the plan include lighting, color palate and the details of the porches which may be chosen by potential buyers. The Planning & Zoning Commission worked extensively on a buffer area to the east for the single family subdivision. There is a specific condition in the Commission's approval that requires Staff to review those details as engineering plans are finalized.

Chip Santer, Santer and Associates, introduced John Eymann, Project Architect, and Steve Foxx, Project Engineer. They are present to answer questions.

Councilman Bertone asked if they are working closely with the residents about the buffering along the east side. He asked where they are in finalizing those plans. He wants to make sure Council knows clearly what is being done to work with the residents. Mr. Santer said what they have done over the past year is huge. They have bent over backwards to increase the setback from the 10' required to the current setback of 92' from the property line. They have a density of about 7 du/acre and they are installing sidewalk which would actually allow them to have up to 9 du/acre. There is a buffer area in the back and they are landscaping heavily in the one small area where headlights could intrude on occasion. They have been quite responsive to the neighbors.

Mr. Eymann said they tried to preserve as much green spaces to the east of the last residential properties as possible. They do have to use the very eastern area for stormwater retention but they have tripled the amount of trees and vegetation typically required in order to create as solid of a buffer as possible. They know it is now heavy vegetation as natural woods now but since they have to use that land for stormwater, they plan to add mounding and heavy plant materials to create as much of a reasonable buffer as possible. They have heard the residents' concerns and have worked hard; they understand right now it is a pasture for them and tried to listen to their concerns. They have maximized the buffer and reduced the project size, scale and shape to consistently respond to the concerns of the residents.

Councilman Counts said it is his understanding that this property is currently zoned for this type of development but there are some minor variances as a result of the planning that went on through the Planning & Zoning process. He asked the Law Director if this is an administrative decision by Council to approve this and what is the standard of review for this type of proposal. Gene Hollins, Law Director, said their standard of review is set forth in the zoning code for a final development plan and they must determine if the plan is consistent with the criteria with the plan that was established at the Final Development Plan stage. That is what Council must consider at the administrative review.

Mr. Betz said the code requires that they must determine:

- Is the proposal is consistent with the Comprehensive Plan and other planning documents?
- Does it take into account the zoning requirements that are set forth within that zoning district?
- Are there any detrimental effects to the public health, safety, and welfare due to the development of this property and if so, are there mediations to that?
- Are they meeting the expectations for landscaping?
- Can they handle the utilities and are they planning for that?
- Have they met the Development Plan process?
- Does the plan meet landscape requirements, the code for architectural review and density requirements?

Mr. Betz said they do meet all of the criteria:

- The proposal meets the zoning requirements because there are absolutely no variances required as a part of this plan.
- The applicant has planned the north-south road the City shows in its planning documents to make a connection and continuity of roadway to get people in this and other developments along S. Liberty to and from different routes.
- They have looked at many ways of handling the utilities on this site and the detention basin is located in the back because the elevation of the storm sewer to which they have to attach is at a high elevation underground; they could not get any lower to be able to achieve underground detention on the site.
- They handled the landscape needs, met the development plan process and met the requirements of the code for architectural review. The proposed density is within code.

Councilman Counts asked Mr. Hollins if they are obligated to identify generally or specifically where this plan did not meet these criteria if they chose to disapprove the plan. Mr. Hollins said he would not go as far as to put it as an obligation but if Council would like its decision to be upheld in Court, articulating their basis under the criteria makes it much more legally defensible if it was taken to Court.

Councilman Cline asked to see the second color rendering of the conceptual site plan. He said he is not clear if parking spaces are shown on the east side or is it just room for cars to turn in and out of the garages. Mr. Betz said they are parallel parking spaces to allow for visitor/resident parking. The plan is set up with parallel parking behind all of the units; it allows three parking spaces per unit. Councilman Cline asked to confirm that there are zero variance requests. Mr. Betz said no variances are being requested.

Councilman Bennehoof said in the last meeting minutes they discussed that there are quite a few conditions for approval and there are more than they usually see. The Mayor asked that at the next meeting, Staff or the applicant speak to any of those that may be worked out already. Councilman Bennehoof said it would be prudent if they went through all fifteen of the conditions on the face of the ordinance. He said in the line drawing with the retention pond and landscaping he sees that three deciduous trees are shown. If the neighbors are looking for light screening would those trees be prudent since most of the vegetation in that area and east to it is aged timber with no low screening. A resident at a previous meeting mentioned that the retention pond in a heavy rain could be an attractive nuisance that could be perceived by children as a

swimming pool. That is common for any pond but he would like to know if any study has been done to determine the projected drainage if the area filled up.

Mr. Eymann said engineering studies have been done. The code requires they retain water on-site and in a heavy deluge situation they are required to provide detention to hold water. They are also required to run it out of their property at certain runoff rate that does not surcharge the public system. Mr. Foxx said Powell is a little more challenging than most communities because they have to meet the 100 year post-development rate down to the 1 year pre-development rate of discharge. That means they must hold back a greater amount of water than is normal. In this case they have a dry detention basin and it will almost always be dry. In the worst case event (100 year event) it would fill up approximately four feet for about 25 minutes and dissipate to six to zero inches within 12 hours. Mr. Eymann said they understand there has been "flooding" or ponding and poor drainage in that area but the current basin is in the middle of the woods and has not been maintained and was clogged with leaves and debris. With the proposed detention in a maintained environment it will always be operable so they do not run into these issues. They tried to place the evergreens so they will be in the areas that need the most screening from lights; once they get taller and fuller that landscaping will fill in. It will become a solid buffer over time but they cannot do that immediately unless they start with 10' trees. They understand that screening is an issue and they have tried to address that. Whether they met it or not is subjective but they did try to meet the intent of the code.

Mr. Betz said one of the conditions requires that they make determinations as they review the final engineering plans as to location of the landscaping and especially when they get to the point where they are installing the landscaping. This will allow them to adjust the landscaping in the field to help fill the areas where there are openings. That is preferred to screening where there is already screening and this is common practice for Staff. Mr. Santer said with respect to all 15 items, it is not practical to address them until Council makes a decision and they begin the process with the City; many of these conditions cannot be met or reviewed until then. Councilman Cline said condition one is the only one they can absolutely report status on because it is the Memo of Understanding regarding the easement. That has been negotiated. Mr. Betz said the applicant has confirmed they will comply with all of these conditions and it is a matter of when they do the plans and they are reviewed by the City to make sure the items related to the conditions are included in the plans when they get started and inspected during site inspections. Staff will look at all of these provisions as they submit final engineering and landscaping plans and all of the other items required for review as a part of that process.

Councilman Lorenz said it is tough to review all of these conditions because they come at different stages. Many of them are engineering related and cost a significant amount of money. City Staff has stop-gap measures by holding the certificates of occupancy if these things are not done to satisfaction. He asked if the Board of Zoning Appeals would have to approve any variances requested. Mr. Betz said there are no variances requested for this proposal and if there were, they would fall within the review process by Planning & Zoning Commission and City Council. This is part of the Development Plan process. Councilman Lorenz said he knows the applicant has participated in numerous meetings and has heard from the residents. He asked if they would be willing to table this and come back to ensure all public notification is met. He is sure they advertised per the guidelines but many people may be curious to come and speak on this matter.

Mr. Santer said there have been public hearings at the Planning & Zoning Commission meetings and it has been a year since they started the process. He said they would prefer action tonight. Mr. Eymann said there has been a public process and consistently throughout the process there have been two or three people who have spoken up; two of those people are here this evening. Councilman Lorenz said he has heard concerns from the community and this is the last chance to come forward. Councilman Crites said at the last meeting they indicated that the Fire and Police Departments signed off on this plan. Mr. Betz said the Fire Department reviewed the plan at this stage and the final details/engineering are subject to their final sign-off. Councilman Crites said the Olentangy School District is not someone who has to sign off on this but obviously the citizens have always expressed concerns about adding students to the District. Mr. Betz said they have not heard from the school district. Councilman Crites asked about the formula used to determine the number of students per project. Mr. Betz said the school district has submitted their statistics for subdivisions and it varies depending on the size of the houses because the smaller the house, the fewer students. When they get to apartments there are even fewer kids per unit. He cannot guess how many students will come from this development but the statistics on a large home than these are in the 1.4 to 1.6 range per unit. Councilman Lorenz said he sits on the Facilities Committee for the school district and the number utilized for multi-family/condo developments is 1.7 per unit. Councilman Crites said this process started last October in the Planning & Zoning Commission and has been in the process for almost a year. He understands that the recommendation from the Planning & Zoning Commission was a unanimous decision for approval. Mr. Betz said that is correct.

Councilman Cline said he would like to follow up on the public notice for this particular meeting. This is the meeting that would generate the most public interest so he would like to receive clarification about the public notice. Susie Ross, City Clerk, said they are required to send notice to property owners within 250' of the site at least ten days before the meeting. There is also a requirement that they publish in a paper of general circulation with the same ten day notice and in this area that newspaper is the Delaware Gazette. That notice was published in the Gazette on September 5th and the post cards were mailed to 31 properties on that same day. The requirements are a part of the City's zoning code.

Councilman Cline asked if the 31 properties included people in Bartholomew Run. Mr. Betz said they used this property and drew a 250' circle from the border to determine the notification list. Councilman Cline asked about any web notification. Ms. Ross said she received information earlier this morning that the link to the agenda did not work and she found she had made an error in the HTML code. As soon as that error was found, she corrected the link so the agenda was accessible. The legislation is typically not posted until after it is adopted and executed; in this case she added the text in anticipation of Council action but did not connect the links. Megan Canavan, Communications Director, asked to speak about the Social Media notification. She said they typically post on Facebook, Linked-In and Twitter as an extra step for notices. She just pulled that information up and the correct information was available. Ms. Ross said the Planning & Zoning minutes are available on the website and all of the exhibits are there for the Final Development Plan that goes to Council. Mr. Santer said all of these same properties received notice during that process and the newspaper notice was posted. Mayor Hrivnak said the meeting agendas are posted on the outside of the municipal building as well.

Mayor Hrivnak asked Mr. Santer if there are any issues with any of the 15 conditions of approval. Mr. Santer said he signed a Memorandum of Understanding that Council approved that states they are in agreement with all of the items. Mr. Hollins clarified that the Memo of Understanding is approved as part of this plan and it includes a statement that the applicant agrees with all of the conditions.

Mayor Hrivnak opened this item to public comment.

Tom Happensack, 127 Kelly's Court, said he has heard some interesting questions tonight and what they just discussed reminds him of the US Congress in that they will pass it and then know what is in it. They bring stuff before Council, they vote on it and then they let the residents know what it is. They do not post and there is not any requirement to post until Council passes it. That is not keeping the public informed. He clarified that in some documentation the developer claimed he has made contact with the residents but he has only spoken with him and not any of his fellow residents. He never sent anything or made contact. Mr. Happensack said he has never made an effort in nine months to talk to all of them. He said Mr. Santer asked him to set up a meeting but that is not his job; it is the job of the developer. He said they need to understand that the reality is that only through the process did he try to work with the residents. They raised their concerns in front of the Commission and he tried to accommodate them but never by talking one-on-one. He said he has a copy of the Friday, September 5th Delaware Gazette and the legal notice is for the Ganzhorn ordinance and not the ordinance discussed this evening. He contends there was not public notice as needed and they can see what that does in regard to public attendance. In defense of the City he did receive information that they attempted notification and he does not know where the error lies but regardless, there was no public notification. Mr. Happensack said he went back to the last meeting where they approved Spectrum and he could not find public notice on it either. He said they cannot have a second reading at this time and he contends that it should be somebody's job to make sure this happens. Mr. Happensack said they must table this according to City Charter.

Janet Wartman, 150 S. Liberty Street, asked if there will be three readings on this ordinance. Mayor Hrivnak said two readings are required and this is the second reading. Ms. Wartman said she also tried to find the agenda when she searches all she can find is old stuff. The only way she finds the agenda is if she clicks on the link in the e-newsletter they send out to the community. She cannot find it on the general website.

Ms. Wartman said the commercial building proposed is generic and when that is done it is not planned well. She said that happened with the 8 N. Liberty building and she thinks Jeni's would like more al-fresco dining and don't have it. If this commercial building ends up as a restaurant there would not be enough al-fresco dining and parking. Ms. Wartman said she thinks this building is ugly and with buildings that look like houses on either side of it this should look like a residence in architecture. She said Ms. Santer did write her a letter and that has been her communication with them; he told her to keep her remarks based on architecture only.

Ms. Wartman said the roads proposed are only 50' wide and have no sidewalks and she is worried that children that live here will go out the back door and down this road with no sidewalks and will have no school bus

pagoda when they get to the end of the street. If there are 20-some children they will need that. She said there are no driveways for these homes so there will be no parking for visitors. There is also no turnaround because this road dead ends; she is thinking that the only turnaround place is at her property. She had a similar problem with her property in Urbana but she had a fence to stop it; in that case she had a trash man who would back his truck across and into her property, hitting the fence. She had to put up a railroad tie to keep his tires off of her property and she sees this as a place where this could happen to her. Ms. Wartman said she will see the trash cans, the trash truck, and the people who visit this place because they will turn around there. She needs something there to stop their tires from coming onto her property. She asked for a fence but did not get one and she has not gotten many trees on her side even though she has the most property adjacent to this site. She was told she doesn't count because she has undeveloped land and she has a back yard and pond that are developed. The pond is the highlight of her property but they put homes right next to it. They have trees protecting homes 80' away but someone who is 10' away has no provision for any screening. Ms. Wartman said she is concerned about how a moving van will get in and out of the site. The Association will have to maintain the back area where there is detention but she wonders when they will do that. This development will be slow in developing so who will take care of it until it is handed over to the Association. She has always been against the TIF and having a private development like this allows Powell to collect a lot of taxes and not provide the services of maintaining the streets. The groups like MRDD and the Library do not get the tax money but they will be servicing all of these people. The private development is dividing the community and she feels she cannot walk in it because it is "private."

Ms. Wartman said she does not think the people who live in this development will want a road going through the middle of it. She provided photographs to Council that show what happened in Marysville, showing that the residents had people turning around in their driveways so they used signage to keep people from going on private property. When she went into the development she felt she was being watched because it was private. Councilman Lorenz asked for clarification. Ms. Wartman said she would like them to place similar signage on her lot line that would really make sure the back end of a turning vehicle goes over her property. Even though their tires may not go on her property, the back end of their vehicle may go over it. She said there is not place in the proposed development for people to turn around, especially since the homes do not have driveways.

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

Mr. Eymann said in regarding to where the road terminates into the southern property line, that was a request of the Fire Department. They wanted to make sure the road extended downward. They could add more landscaping. Councilman Cline said condition #10 seems to address that issue. Mr. Betz said the photos show what Staff usually recommends at stub roads to make sure there is no encroachment. The developer would maintain all of the grounds throughout the construction period. He said there are sidewalks coming out of each of the units, along the north-south roadway and leading to various locations. They also run along the frontage on S. Liberty to the north to connect to in front of the bakery. The sidewalks onsite are off the side of the north-south street and in the courtyard area in-between the units. Mr. Eymann said the pedestrian connectivity was also part of the master plan for this part of the downtown and each unit has three parking spaces, two of which are in the garage. Councilman Cline said his understanding is that with any condominium development, until the properties are all sold or occupied, the developer is the "Association" and discharges all of those duties and obligations. Mr. Hollins said it is set forth in the condominium declaration that must be recorded before any sales can take place. That declaration creates an Association that owns all of the common property including the private streets. It will set forth when the actual control transfers from the developer to the Association. Mr. Santer said under Ohio law, when 75% of the units are owned by the buyers, the Association must take control of the maintenance. Until that point all of those obligations lie with the developer.

Councilman Lorenz asked if there is a drive or space between the four eastern units in the middle that allows trash trucks to pull in, back up north or south and then pull out to Liberty. Mr. Betz said that is correct. Councilman Lorenz asked if they would anticipate a truck coming all the way down to Mrs. Wartman's property line. Mr. Santer said he does not know why they would. Councilman Lorenz said the intent of the plan is to not have something like that occur. Mr. Betz said each unit will have its own trash container that will need to be rolled to an area for pick up. Councilman Lorenz said condition #11 covers the intent of what Ms. Wartman is trying to accomplish. He asked the developer is opposed to adding signage to provide some sort of solution to give this resident some peace of mind. Mr. Santer said he is not opposed to that.

Councilman Bennehoof said the 15 conditions are well articulated and they state in the Memo of Understanding that Mr. Santer will work to meet all conditions of the City. He said in respect to Mr. Happensack's comment, Council does understand what is in this plan and the Memo of Understanding states the developer

will comply with the code and these 15 conditions will be addressed to the City's satisfaction. They do not have to pass it to know what is in it.

Mayor Hrivnak asked Mr. Hollins if it is his opinion that the City's public notice has been met. Mr. Hollins said Staff does get proof of publication from the newspaper saying the notice was done. He has not looked at the particular file on this to know for sure. If Council as a whole has issues about that, they should table it for two weeks and he will personally make sure all public notices are given. The City is an open book and anyone who would like information and asks for it, the City gives freely and willingly. Mr. Hollins said he does not have the notification file in front of him that shows the actual publication tonight. Councilman Cline asked if he maintains those files. Mr. Hollins said the Clerk maintains those files for each application. Councilman Cline said as he reviews this administrative action they are asked to make tonight with no variances requested, he is inclined to vote in favor of this ordinance but he is not inclined to vote on it tonight if there is a legitimate concern that they have not given proper notice of this hearing. He does not doubt the information from Staff but if there was a glitch on any part, he is happy to continue it for two weeks and vote on it then. If they did notice it properly, he does not want the applicant to sit through another delay for no legitimate purpose. If there is a way to get a definitive answer tonight, he would prefer to do that.

Councilman Lorenz asked if they can table this right now and have someone go look and then bring it back to the table later in the meeting. Mr. Lutz said Ms. Wartman brought up a couple of issues last week and this week and they may want to address those with her. He said she raised the concern about the TIF district and so everyone is aware, that district was placed on the ballot and the voters of Powell approved it. He said she also expressed concerns about a roadway going through her property and the only thing he can say is that in Powell's history, the City has never used eminent domain to construct a road. Most likely, if past history is followed, the only way a road would go through her property would be if she decides to develop her property with a road or if someone else purchased her property and decides to put a road in.

Councilman Bennehoof said he knows they have had issues with the website on occasion and he does not know about the particular media issues but he cannot disprove or prove them. He looked at the documentation from Mr. Happensack and he also knows the Delaware Gazette is not a widely read publication but is the publication of record that is required to use for notice. If they cannot prove or disprove the public notice and the applicant is not opposed, he suggests they entertain a motion to table this to the next meeting and ensure they have additional, appropriate and maybe redundant publication. This would be for the sake of public scrutiny.

Councilman Crites agreed. He said if there is any question as to whether or not notice has complied with the requirements they should table it and bring it back for a vote. Mr. Lutz clarified that the next Council meeting will be held on October 7th because there is a fifth Tuesday next month. Mr. Hollins said Ms. Ross indicated there is a time lag between when the public notice and when they return the certification to the City. They will have to do their own independent research. The clerk did provide to Mr. Happensack today written verification of the receipt of the ad from the Gazette and has done everything within her power. Ms. Ross said she just looked in her files and the affidavit has not been received; it typically takes 4-6 weeks before it is received. Councilman Lorenz said he sends out public notices for special hearings and there is a lag in getting the affidavits. There are so many more options for notice and this process is archaic but those are the statutory requirements they have to meet. If they don't have proof that it was published he thinks they need to table this.

Councilman Counts said he must raise the question that from now on out, do they ever want to vote on anything until they receive the verification that it was published. If that is the standard they will be pushing a lot of things out. Councilman Bennehoof said they may have to watch the papers and save the clipping to prove it was published.

MOTION: Councilman Bennehoof moved to table Ordinance 2014-49 to the next regularly scheduled Council meeting on Tuesday, October 7th. Councilman Lorenz seconded the motion.

Councilman Lorenz said they should consider updating the notification process to eliminate the legal notice in the newspaper. Mr. Hollins said it is in our Charter and Staff can look to see if there is a better practice. Councilman Crites said the Gazette and Dispatch are the only papers of general circulation in this area; what is the cost difference. Mr. Lutz said there is a tremendous difference. Councilman Crites said that is the problem with archaic laws like this and all municipalities should look toward using websites and other means for public notice.

Mr. Santer asked if a new public hearing will be scheduled and notice sent. Mr. Hollins said they should set it for public hearing and they will have time to either determine this notice was correct or republish and make sure the notification is complete. Councilman Cline said if there has been an error in this notification they owe it to their citizens to give them an opportunity to be heard; he apologized to the applicant because it delays his project unnecessarily.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2014:51: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2014.

Mr. Lutz said this year's street maintenance budget was increased by approximately \$250k and they were going to use General Fund monies. This appropriation will use \$246,500.00 from the Voted Bond Issue instead of dipping into the General Fund. They stated that they would use approximately \$1 million of the Voted Bond Issue for road maintenance so this appropriation will be a portion of that amount.

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 2014-51. Councilman Counts seconded the motion.

VOTE: Y 6 N 1 (Bennehoof)

MOTION: Councilman Cline moved to adopt Ordinance 2014-51. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2014-52: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH SPECTRUM ACQUISITION POWELL, LLC AND LIBERTY C, LLC AND DECLARING AN EMERGENCY.

Mr. Lutz said this pre-annexation agreement is proposed for what they refer to as Spectrum II. Earlier this year Council approved a Spectrum Independent Living facility on Sawmill Parkway. During those discussions they stated that Spectrum was also interested in developing an assisted living facility off of Sawmill Road and Attucks Drive. This pre-annexation agreement is identical to the one that was passed for Spectrum I. Mr. Lutz said Spectrum intends to file an annexation petition and begin going through the Planning & Zoning process in the City.

Mr. Betz identified the location of the proposed development and indicated where this property is contiguous to the City. The development would consist of a two story assisted living and memory care facility to partner with the Spectrum Communities independent living facility.

Councilman Bennehoof asked if the 7.226 acres includes the retention pond. Mr. Betz said the annexation will include the retention pond. It is part of the 7.226 acres; Councilman Bennehoof said the County Auditor's description does not include the retention pond and he thinks the acreage is closer to 9-10 acres counting the pond. He brings that up because of density and if the site does not include the pond he would like clarification that they are counting all of the land. Mr. Betz said they will do that when they review the development plan. According to this survey map they are annexing 7.226 acres including the site for the development and the pond. Councilman Bennehoof said the site needs to include the retention pond for contiguity to the City. Mayor Hrivnak said the entire shaded area on the map is being considered for annexation.

Glen Dugger, Attorney for the applicant, 37 W. Broad Street, said to clarify, the annexation is 7.226 acres and it includes two parcels: the property lot 5125 owned by Liberty C, LLC (development parcel) of 4.372 acres and the other parcel is owned by Liberty Center Property Owner's Association (retention pond area). Those 12 owners have a collective undivided interest in that property. His client is not purchasing the detention basin but because it could use an aesthetic upgrade, the quid pro quo for annexing it into the City and allowing contiguity will allow his client to have the right and obligation to go on the property and make upgrades. While their building will only be on the 4.372 acres, they will be landscaping the entire 7.226 acres. Mr. Dugger said they don't own all of the acreage so he is not sure how they technically answer the density question. Spectrum loves the detention basin because will be a nice backdrop for the residents on the east side of this building.

Mr. Dugger said he has every confidence that they will meet all of the items in the pre-annexation agreement and he appreciates Council's support. This plan was taken to the Planning & Zoning Commission last week and there was fairly universal support for this proposal. They have some work to do on the architecture because the building suggests the look of a Ramada Inn; the City does not want to see and that is not what Spectrum expects as well. Much of that look was due to the computer elevations within the Sketch Plan. Mr. Dugger said

their architect, Mike Longfellow and City Architectural Advisor Chris Meyers had a really good exchange about how to "fix" the architecture so there is a very high likelihood they will get to a proper design. They will continue through the development plan process as the annexation is going forward. Spectrum plans to file for annexation in the near future and they are very excited to bring this project to Powell.

Mr. Lutz asked that Mr. Dugger address the sewer issue. Mr. Dugger said this property is also tributary to the Leatherlips pump station and has the same problem as the other Spectrum property. It is a residential development on fairly small acreage and the sewers adjacent to the property, by calculation, do not have adequate capacity to support the use. They are trying to provide additional relief capacity to the Leatherlips Treatment Plant by building alternative sewers along Seldom Seen Road that would take property south of that road out of the Leatherlips Treatment Plant. The sewer is very close by but does not have capacity so they will have to go 1.5 miles north to take some of the capacity so Leatherlips will have the capacity to provide service to the Spectrum I property and about a dozen other developable properties in this area that have exactly the same problem. Mr. Dugger said it also includes cooperation with the developer of the old Shamrock Golf Course. He has every confidence that this solution will work because everyone involved wants to make it work. Mr. Lutz said Spectrum and some others are trying to address the sewer problem on a regional basis instead of for their own development. Mr. Dugger said they were working on a small solution that would have provided some relief to Spectrum only but City Staff encouraged them to work on a more regional solution. They hope to have it all sorted out before late November.

Councilman Bennehoof said all of those who are collaborating on this regional solution should be applauded. He asked if the sewer capacity and the Leatherlips station utilize a calculation or has it been measured. Mr. Dugger said he is unsure about that.

Mr. Hollins said they worked on the wording in the pre-annexation agreement to make it clear that Council is interested conceptually but there are certain processes to complete. The Planning & Zoning Commission will give it the appropriate review through that process and it will come back to Council for consideration. At the end of the process the applicant and the City have the right to walk away. The annexation process takes about four months to complete and the design of this process allows the applicant to move forward with the development plan before Planning & Zoning. That way Council can look at the annexation and development plan at the same time. If zoning takes longer it is okay because they have a number of months to act on the annexation.

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

Councilman Bennehoof said he brought up density but he wants to make it clear that this is a different use with residents who will not be going in and out of the facility often. That eases his mind.

Councilman Bertone said the intersection at Sawmill Road and Attucks Drive is dangerous already and has a fair number of accidents. There is no traffic signal at that intersection and the residents are concerned. He said they should take that into consideration during this process. Mr. Betz said that will be discussed with the County Engineer as part of the traffic study for that area.

Ordinance 2014-52 was taken to a second reading.

COMMITTEE REPORTS

Development Committee: No Report. Next Meeting: Tuesday, October 7th, 6:30 p.m.

Finance Committee: No Report. Next Meeting: Tuesday, October 14th, 7:00 p.m.

Operations Committee: No Report. Next Meeting: Tuesday, September 30th, 6:30 p.m.

ONE Community: Councilman Bennehoof said at their last meeting they introduced former Fire Chief Bernans to fill Mr. Seibert's seat. They discussed the First Responder Recognition and the possibility of placing something or naming something at Seldom Seen Park. Next Meeting: Monday, October 13th, 7:00 p.m.

Planning & Zoning Commission: No Report. Next Meeting: Wednesday, October 8th, 7:00 p.m.

Comprehensive Plan Steering Committee: No Report. Next Meeting: Tuesday, September 23rd, 6:30 p.m.

Powell Community Improvement Corporation: No Report. Next Meeting: September 18th, 6:00 p.m.

CITY MANAGER'S REPORT

Mr. Lutz said HDPI is going to present an Oktoberfest event at the Village Green on Saturday, October 11; they will focus on traditional food and music. They also plan to have beer sales and they will fence off the area according to State Law.

OTHER COUNCIL MATTERS

Councilman Crites said in the current *Cities and Villages* magazine they will note that Mr. Hollins is the co-author of a great article on traffic cameras.

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

MOTION: Councilman Bennehoof moved at 9:28 p.m. to adjourn into Executive Session in accordance with O.R.C. Section 121.22 (G) (1), Personnel, Board & Commission Appointments. Councilman Cline seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Cline moved at 9:45 p.m. to adjourn from Executive Session. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bertone moved at 9:45 p.m. to reconvene in Regular Open Session. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Cline moved to appoint Shaun Simpson and Dan Wiencek to the Board of Zoning Appeals for terms expiring 12/31/2016 and Jeffrey Gardiner to the Personnel Board of Review for a term expiring 12/31/2016. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Lorenz moved to adjourn at 9:47 p.m. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

MINUTES APPROVED: October 7, 2014


Jim Hrivnak
Mayor

10-21-14
Date


Sue D. Ross
City Clerk

10/22/2014
Date



City Council

Jon Bennehoof

Frank Bertone

Tom Counts

Jim Hrivnak, Mayor

Mike Crites

Richard Cline

Brian Lorenz