



City of Powell, Ohio
City Council

MEETING MINUTES

OCTOBER 1, 2013

A regular meeting of the Powell City Council was called to order by Mayor Cline on Tuesday, October 1, 2013 at 7:30 p.m. City Council members present included Jon Bennehoof, Sara Marie Brenner, Tom Counts, Mike Crites, Jim Hrivnak and Brian Lorenz. Also present were Steve Lutz, City Manager; David Betz, Development Director; Debra Miller, Finance Director; Gene Hollins, Law Director; Susie Ross, City Clerk, interested parties and the Press.

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION

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

Tom Coffey, Jo Ann Beal, and Cindy Capizzi, representatives of Historic Downtown Powell Inc., were present to address City Council. Mr. Coffey said they provided a written proposal (Exhibit A) they would like to discuss regarding the replacement of the holiday decorations on the downtown light poles. He said they have used the same wreaths for many years and both HDPI and the downtown merchants believe it is time for them to be replaced. He said they are proposing a 50-50 split of the total amount where HDPI picks up half and the City picks up the other half of the expenses. Mr. Coffey said there are 18 light poles and they propose use of a larger 50" lighted wreath and red banners. He said once these are purchased the HDPI would own them and they ask that the City store and install the decorations as they do every year. Mr. Coffey said if the City approves this funding the HDPI will order the decorations by the end of October so they can be installed before Thanksgiving.

Councilman Counts asked about the age of the current decorations. Steve Lutz, City Manager, said they are over twenty years old and have well outlived their lifespan. Councilman Lorenz asked if the City share would be half of the total of \$10,456.67. Mr. Coffey said that is their request. Councilman Lorenz asked how Staff will proceed if Council agrees to this proposal. Mr. Lutz said there is money in the City contingency account and healthy carryovers so from a financial standpoint so paying 50 cents on the dollar for decorations would be of benefit to the City. Councilman Bennehoof asked if there are expedited methods so they can settle this tonight. Mr. Lutz said they would have to bring an appropriation ordinance before the Council at the next meeting and HDPI would then have the confidence to order the decorations.

Mayor Cline thanked HDPI for taking the initiative to get this project going. The members of Council indicated their approval of providing funding for the decorations. Mr. Lutz thanked HDPI for providing funding to the City so they could expand the flowers, baskets and landscaping in the downtown area this year. Mr. Coffey said much of their funding is from their events in Powell so they direct those funds to benefit the downtown.

Hearing no further comments, Mayor Cline closed the Citizen Participation session.

APPROVAL OF MINUTES

MOTION: Councilman Counts moved to adopt the minutes of September 17, 2013 as submitted. Councilman Crites seconded the motion.

VOTE: Y 6 N 0 Abstain - Brenner

MOTION: Councilman Counts moved to amend the agenda to add after Item 6 the Second Reading of Ordinance 2013-44. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

Mayor Cline said the agenda is amended and asked that the Clerk recreate it with the proper notations for the final record.

Mr. Lutz introduced Officer Jason Latiolais and his canine trainee, Axel. Officer Latiolais said Axel is about 14 months old and just finished six weeks of training and all of his commands are in check. He said he is dual purpose trained in narcotics and patrol work. He said they have already done several "deployments" and visited Wyandot Elementary & Big Hearts/Little Hands Daycare. Officer Latiolais said on his first night on duty in Powell Axel tracked a missing person. Mr. Lutz said the canine unit was made possible by donations that were headed up by the Police Alumni Association. He said the donations provide funding for Axel and his ongoing care and maintenance. Councilman Bennehoof asked if Axel goes home with the officer. Officer Latiolais said Axel stays with him and his normal duty hours are 10 pm to 6 am. He said he also will be here for special events. Councilman Hrivnak commended Officer Latiolais for his commitment to the unit.

RESOLUTION 2013-16: A RESOLUTION SUPPORTING THE "ONE COMMUNITY" CONCEPT AND AGREEING TO PARTICIPATE WITH LIBERTY TOWNSHIP.

Mr. Lutz said one of the City Council goals is the "One Community" concept. He asked Councilman Bennehoof to provide more information on this initiative.

Councilman Bennehoof said he has been working with the Township Trustees and citizens and he is pleased they reached a point where they can consider this resolution. He said the Township adopted a resolution which this legislation is modeled after and the objective of "One Community" is to try to have an even footing and collaboration between the Township and the City. Councilman Bennehoof said a lot of people do not realize they are co-mingled subdivisions and it is important that they take this first step toward a collaborative state. He said the second step would be to form a committee that will meet at least quarterly and discuss items of concern to both entities and report back to Council and the Trustees. He said he hopes they can put the past behind them and forge a new future for both communities.

Councilwoman Brenner asked if this resolution actually binds the City in any way. Councilman Bennehoof said it just formalizes what they should already be doing and does not bind them to anything. He said he proposes that they have some representation from the public servants from both sides, the general citizenry, and Staff. Councilwoman Brenner asked what authority would be given to the Committee. Councilman Bennehoof said they would have no legal authority and serve as a vehicle for communication. Mayor Cline said the issue before them is whether the aspirational statements within Resolution 2013-16 are statements that City Council is willing to sign onto. He said this does not require or authorize the creation of the committee just discussed and they are too far afield to discuss these details. Councilman Lorenz complimented Councilman Bennehoof on his time and effort toward trying to rectify this situation.

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

MOTION: Councilman Lorenz moved to adopt Resolution 2013-16. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

SECOND READING: ORDINANCE 2013-35: AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR METRO DEVELOPMENT LLC FOR 119 SINGLE FAMILY HOMES ON 69.798 ACRES, LOCATED ON THE SOUTH SIDE OF HOME ROAD APPROXIMATELY 1,000 FEET WEST OF STEITZ ROAD. Tabled from September 17, 2013

Mr. Lutz said this ordinance has been tabled a couple of times because of Condition #6 within the body of the ordinance where it states "the property shall be added to the Liberty Community Infrastructure Finance Authority under such conditions established by that Authority." He said since July the developers have been trying to work with the Authority to identify the terms and conditions of this agreement and to date they have not had a great deal of luck receiving a response.

Jill Tangeman, Vorys, Sater, Seymour and Pease, representing Metro Development, said they have been trying in good faith to come to some sort of resolution with the Liberty Community Infrastructure Finance Authority (LCIFA). She said they have sent several proposals to them and they have received very little response. She said they have never really heard from Legal Counsel for the Authority but have received a couple of responses from one of the members of the Authority Board. Ms. Tangeman said a proposal that was somewhat acceptable to the developer had details that required more information; a request for clarification was sent and no response has been received. She said they are coming to the end of their contract for the property on October 15th and the owners are not inclined to extend this and do not want the zoning to go through if this developer does not close on the property. Ms. Tangeman said this is somewhat critical because this development is being asked to install a lot of offsite infrastructure that is above and beyond the typical subdivision. She said in order to provide sewer to this project they are being asked to make significant improvements to the sewer which will serve this property and be oversized to cover another service area. Ms. Tangeman said the offsite improvements benefit their development and the larger

community so they feel it is only fair that the LCIFA charge be divided appropriately or the residents in this development will pay it twice; the infrastructure costs will pass through the cost of the lots and they will have to pay the Authority charge as well. Ms. Tangeman asked that they amend the ordinance to give them a little more flexibility so they have the option of entering the LCIFA or the Powell Community Infrastructure Finance Authority (PCIFA). She said the City will reap the same benefit and neither Authority gains much of an advantage in regard to paying off their debt. She said they will join one of the authorities under terms that are mutually agreeable. She said it can be difficult to get a volunteer Board to make decisions so she does not want to berate anyone; they would like to have flexibility so they can close on their contract and move this project forward.

Councilman Crites asked how long they have been negotiating with the Authority. Ms. Tangeman said their first written communication to the LCIFA was July 18th where they tried to explain the offsite infrastructure costs, put dollar figures to them and propose conditions. She said they had a meeting with Counsel for the Board and one member of the Board that same day and that is the only communication they have had with Counsel for the Authority. Councilman Hrivnak asked if it was fair to say there was no answer to that proposal.

Caleb Bell, Bricker & Eckler, 100 S. Third Street, Counsel for the Developer, said it is fair to say they received what may be the makings of an appropriate deal but a lot of back-and-forth is required; having no communication with Counsel for two months is not workable. He said the other Authority is aware of this development and they have the capacity to take in property that is functionally part of the same community so there is no difference which Authority they join. He said the proposal to the LCIFA was for a 2 mill charge that would benefit directly the City's GO Bond Issue that these two Authorities support. Mr. Bell said that same proposal would be one they would submit to the PCIFA where the City would participate by way of a 2 mill charge and the balance of the millage of 8.25 would pay for the infrastructure development mentioned. He said when they met with the LCIFA Counsel and Mr. Hartranft on July 18th they presented a six-page, detailed Term of Finance sheet. Mr. Bell said he received an email back from the Board member that said to change the City participation fees from 1 mill to 2 mills and agree to a vague statement about first right of refusal. He said he did not really understand that statement so he tried to seek further clarification; he has not heard a response to that request. Councilman Bennehoof asked for the names of the Legal Counsel and the Board member. Mr. Bell said Trent Hartranft, Board Chair was in communication with them and the Legal Counsel is Greg Stipe with Vorys.

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

Councilwoman Brenner said she is concerned about this lack of communication. Mr. Bell said Mr. Hartranft was trying in good faith to respond but does not have the authority to do so; these are citizen boards and they have significant political subdivision and financing power behind them. He said it is appropriate to have the Board represented by Counsel and he does not fault Mr. Hartranft for not being able to respond to his questions. Councilwoman Brenner said her understanding is that this community coming in would be a benefit for Golf Village and everyone involved. Mayor Cline said Mr. Bell is the expert who should answer that question because many on Council have the same misunderstanding; they need to know how the 10.25 mill distribution impacts the residents of Powell at large and then the residents within an Infrastructure Authority.

Mr. Bell said the general rule is that in either of these Authorities the property within is subject to a 10.25 mill charge. He said until the City did a GO bond issue which refinanced a portion of the Authority debt, the full 10.25 mills went directly to service the debt (bonds). He said when the City bond issue occurred the City refinanced a portion of the LCIFA debt and all of the PCIFA debt. Mr. Bell said the result is that now as a resident pays their 10.25 mills into each Authority, a portion of that millage goes directly to pay off the City's bonds and then there is a priority of application of those funds on down to other Authority debt. Mr. Bell said with the PCIFA all of their debt was refinanced by the City so those residents pay 10.25 mills and all of it goes directly to the City to pay off the GO bonds. He said in either Authority there is more money that goes to the City than is necessary to pay off the debt service of one year, so each Authority has an account which accrues. He said the Finance Director will take those funds and accrue them for the benefit of the City, at large, so when the "call" date occurs those funds will be used to prepay the rest of the City's debt. Mr. Bell said if a resident is paying 10.25 mills, a portion of that in either Authority is going directly to pay the City's GO debt and to the extent there is more charge revenue and infrastructure debt and City debt, then that extra charge revenue will ultimately benefit the "call" that will happen on the City's GO bonds. Mayor Cline said when they talk about "calling" the debt it means they are paying it early.

Mr. Bell said in both of the Authorities there was original infrastructure debt that was necessary and the City bonds paid it off. He said if they analyze the proposal from Metro Development for either of the Authorities,

8.25 mills would be applied to pay toward the infrastructure that is necessary to develop that area and 2 mills would be available to pay off the City's GO bonds. He said of the 2 mill portion any excess would go to prepay the bonds. He said the 8.25 mill portion is a risk that the developer is taking by investing in this infrastructure and getting it paid back over time; there could be \$3 million in infrastructure costs and only \$2 million of bond availability because there is more infrastructure than there is capacity. He said to answer their question, there no difference whatsoever to the City whether they put this property in the LCIFA or PCIFA as long as it goes into an Authority that is receiving 2 mills of the overall charge. Mayor Cline asked if there is a difference in impact for a resident who currently lives in the LCIFA geographic region versus the PCIFA geographic region. Mr. Bell said it does matter and it is something that can be corrected quite easily.

Debra Miller, Finance Director, said the extra money goes into an account where it draws interest and that helps them with their cash flow. She said as of 2012 the PCIFA had about \$70k in their account after the first year and the LCIFA had about \$300k. Mr. Bell said since there is an account for each Authority, if they have 2 extra mills coming into the Authority that will ultimately find its way into their account and be used to pay the allocable portion of the City's GO debt. He said by agreement they can just send one of the two mills into the other Authority so that will "split the baby" and make it absolutely indifferent to any resident. Mr. Bell said it is the City's money so the Council can decide how to account for it and the Authority could agree to allow the City to make the governmental transfers and apply the money as appropriate so the residents would be held harmless. He said that is one way this could be worked out. Mr. Bell said they are fortunate to have two Authorities within the City and they both pay the same debt. He said he and Ms. Miller can find an appropriate way to make it resident-neutral.

Councilwoman Brenner said it sounds like the benefit to a resident of Golf Village, by splitting the 2 mills between the Authorities, would be half of what it would be if this development went into the PCIFA. She said this development is using the infrastructure that the LCIFA financed so she is looking at it from a location standpoint. Mr. Bell said Authorities do allow non-contiguous territory and in reality the City's good governance of the two Authorities is all that matters.

Gene Hollins, Law Director, said hypothetically if all 10.25 mills went to LCIFA, any impact to the residents will not occur for nine or ten years because the notes supported by the Authority charges are not prepaid until that date. He said if they do have a reserve and the bonds are called then and only then would a reduction in the community charge be possible. Mr. Bell said that is correct in both Community Authorities.

Mr. Lutz said he is glad they are having this policy discussion because it brings up the bigger issue of how they do this going forward. He said they recently had a new development immediately adjacent to the PCIFA, the Epcon development on Sawmill, and they did not discuss having them join that Authority; this will help put this on Staff's radar so there is consistency. He said it is probably not right to pick and choose what developments will be required to join.

Councilman Bennehoof said the magnitude of the CIFAs and when their debt can be resolved and the proximity can also come into play. He said this neighborhood is in proximity to the LCIFA and will be using the infrastructure that was built by the Golf Village residents and the intent is for them to help benefit the Authority that is much larger. He said if they put the development into either Authority it benefits an Authority that it does not have proximity. He said he does not know about "splitting the baby."

Ms. Tangeman said because the City refinanced both of the Authorities, what they are talking about would be an equal impact and any disparity can be adjusted for. She said they are just asking to move this project forward and need to be able to have some flexibility; it does not mean they will not approach the LCIFA again. She said at some point their contract expires and they will be done. She said the City will benefit in the long run as long as this development joins one of the Authorities.

Councilman Bennehoof asked the Law Director if he is in the position to bring any informal leverage to the Authority's Legal Counsel. Mr. Hollins said anything that would be negotiated that changes the terms of area or use of the Authority charge requires a number of approvals by a number of people and one of those is the City. He said at a later date an agreement will come to Council for their consideration and approval. He said Council thought hooking this as a condition of the zoning would be completed in a reasonable period of time and they found out through this process that the City's consent is required as is that of the developer and the Authority they join. Mr. Hollins said they have not lost that opportunity and if they pass the zoning tonight it may help the developer complete their transaction and everybody stands to gain some benefit by continuing the negotiations and entering into an agreement. Mayor Cline said they are saying to the applicant that they no longer must deal with a sole source and they have an alternative; a way to focus

someone's attention is for them to know that they are no longer the sole source and they have competition. Councilman Bennehoof said that is an excellent point.

Councilman Counts said a possibility of a sharing agreement was mentioned and he would like to know if that requires the agreement of both Authorities and the City. Mr. Bell said in his opinion it would not require the agreement of both Authorities; one could receive the benefit the City decides to allocate to them. He said if the property joins the PCIFA, 8.25 mills would support the infrastructure debt, 2 mills would go to the City and Ms. Miller, by agreement with the PCIFA, would allocate one of those mills to the PCIFA fund and one of the mills to the LCIFA fund. He said that does not require the agreement of the LCIFA at all and the residents of the City at large would have their GO debt paid off that much sooner. Councilman Counts asked about the magnitude of the 2 mills in comparison of the LCIFA debt versus the PCIFA debt. He said the LCIFA debt is so much larger that it seems that the impact of the two mills would be insignificant. Mr. Bell said an analysis of 119 homes at \$400k per home is approximately \$34k per year; \$15k of that would be applied to all of the residents of the PCIFA and the LCIFA and it will not result in a very significant dent in either of their worlds. He said there is a lot more LCIFA debt and a lot of it is developer debt; the City's debt is in priority over the developer's debt so those residents will be paying on debt for quite some time. He said the residents will benefit from collateral development because 2 mills is an appropriate amount of millage for the City to participate.

David Betz, Development Director, provided a brief review of the development because this has been discussed in detail in the past. He said the development contains 119 homes and a lot of green space with a park in the middle. He said the lots and roadway design is similar to that in Woods of Powell North and South, creating open space, preserving wooded areas, and keeping the fenceline buffers. Mr. Betz said they talked extensively with the developer's engineer and the City Engineer about stormwater control. He said the developer is making a bikepath connection along the frontage that connects to Scioto Reserve. He said this is the first time they have extended into Concord Township and the left side of the project within that township will be serviced by their Fire Department. He said they made sure the property lines do not cross township lines. Mr. Betz said there is a future street extension to property that is owned by a church and within the City. He said it could be developed as a single family subdivision in the future and the County Engineer wanted a stub road in that area. He said there is another way to access this development at complete build-out to the south off of Steitz Road. Mr. Betz said the developer made amendments to the original submittal to make the lots in the southeast corner larger and the Planning & Zoning Commission reviewed the plan extensively, unanimously recommending approval.

Councilman Lorenz asked about the assurances to the City that the negotiations will continue if they amend this ordinance. Mr. Hollins said the developer's self-interest will drive continuation of the negotiations and with the City's encouragement they will probably continue to talk to the LCIFA. He said if they are still unresponsive they can discuss it with the PCIFA. He said the City can somewhat guide those negotiations and nothing will happen for anyone without the consent of City Council. Councilman Hrivnak said the developer is proposing they would still have a requirement to join one of the two Authorities. Councilman Counts said if the developer makes a deal with the PCIFA the City Council cannot say that does not work for the City. He said it is not incumbent upon Council to amend and agree to this condition and then say they want them to join the other Authority. He said he understands it technically needs to come back to Council to authorize an agreement and that is fine but it cannot give Council a second bite of the apple. Mayor Cline said from his perspective the applicant told them tonight that they have tried in good faith to negotiate with the LCIFA and have been unsuccessful; they are asking for the ability to consider the PCIFA and will not give up the idea of talking with the LCIFA. He said if Council amends this as requested and the applicant, for their own internal business reasons, determines that the PCIFA is the appropriate place to go, he would not consider that a reason to disapprove a ministerial act of the approval of the Authority. Councilman Counts agreed. Mayor Cline said it is important they are all clear on that process tonight because he would not want this applicant to leave thinking that they have the freedom to negotiate with either Authority when in reality a majority of Council believes that is not what this amendment does.

Councilwoman Brenner said her concern is that she does not want their contract to come to the deadline without a solution. She said she would be okay with changing condition #6 to provide the flexibility it needs but she feels the more appropriate place for this development is in the LCIFA and they should steer it in that direction. She said she does not want this in the PCIFA because that is not the right place for it. She said it is not the applicant's fault that the LCIFA has not gotten back with them and she will follow up on that issue tomorrow. Councilman Lorenz said he agrees completely and that is why this condition was made. He asked if they can word the condition so they can negotiate to a date certain.

Mayor Cline said it seems that the applicants have heard clearly that several members of Council strongly believe that this appropriately fits within the LCIFA so he is sure the applicant will make all good faith efforts to make that work. He said his concern is for the applicant to not be handcuffed if they are not receiving cooperation from that Authority.

Trey Geller, Metro Development, said their concern is that they are running out of time; the LCIFA is not a good negotiating partner and he cannot fix that problem. He said the way this condition is worded is to the sole satisfaction of the Authority and he has no way to work through this issue. He said the LCIFA proposal contained a vague "first right of refusal" concept and they legally cannot give that away. Mr. Geller said they are asking for the option to work with either Authority so they have flexibility to push this forward. He said they can make it contingent and they will present the same proposal to each Authority and will take whoever accepts it. He said he personally modified the Scioto Reserve sewer plant documents with Delaware County in order to get this development in. Mr. Geller said he has put in 18 months toward the development of 119 units and they are at the end of their rope; they need help from Council to get direction. He said he does not get the sense that the City does not want their development so they just need either option so they can apply some pressure to get some answers. Councilwoman Brenner asked if Council gave them either option and the LCIFA is able to come to terms by a certain date can they require them to go with them even if the PCIFA has given them another type of proposal. Mr. Geller said if it is under the same terms and conditions that is not a problem because they have already agreed to most of the terms; they just do not understand or agree to the one condition. Councilman Crites asked Mr. Bell if he has made every effort to try to strike a deal. Mr. Bell said he assures them that he has tried to negotiate in good faith on multiple occasions. He said Mr. Hartranft is a citizen and he needs to have his Legal Counsel review this agreement. He said their Counsel is not responsive and he is concerned that if they do not change the condition they will just be back with the same issue in two weeks.

Councilman Bennehoof said he likes the development and appreciates their efforts. He said it is not their fault that they are here at the 11th hour and he is disappointed with the situation. Mayor Cline said he thinks it is very important that this body understand that if they amend Subsection 6 to give the applicant the authority to negotiate with either Infrastructure Authority and in good faith they do that and come back with an agreement with the PCIFA, City Council in good faith should approve that on its merits. He said if that is where they are headed they should state that on the record tonight. Councilman Bennehoof said he agrees. He said it should be the same offer to both Authorities, they should know there is competition, and they should have the same very tight deadline. Councilwoman Brenner said if both Authorities accept it the development should go into the LCIFA. Ms. Tangeman asked that condition #6 be amended to include the wording "mutually agreeable" or something similar because limiting it to the terms and conditions proposed by the Authority has been the struggle; it is something the developer cannot control.

MOTION: Councilman Counts moved to amend Ordinance 2013-35, Section 1, Item 6 to read: "That the property shall be added to the Liberty Community Infrastructure Finance Authority or the Powell Community Infrastructure Finance Authority upon such mutually agreeable terms and conditions between that Authority and Metro Development, LLC."

Councilwoman Brenner asked if they are all on the same page that if both Authorities come back they will go with the LCIFA. Councilman Counts said that is for those parties to determine and not something Council should figure out. Ms. Tangeman said they will commit to sending the same proposal to each Authority so they can respond equally. Councilman Bennehoof asked if they can give them a limited time frame. Mr. Bell said it depends upon the bylaws of each Authority. Mayor Cline said it is in the applicant's best interest to facilitate a swift resolution to this problem.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2013-35 as amended. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

SECOND READING: ORDINANCE 2013-44: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH SPECTRUM ACQUISITION POWELL, LLC AND HENDY ENTERPRISES, LTD. AND DECLARING AN EMERGENCY.

Mr. Lutz said this is the second reading of this ordinance regarding a pre-annexation agreement between the City and Spectrum. He said Spectrum manages retirement communities throughout the US and propose building a facility on Sawmill Parkway across from the Mt. Carmel Urgent Care site. He said at the last meeting Council asked Mr. Dugger to complete some research and report back at the second reading.

Glen Dugger, 37 W. Broad Street, attorney representing Spectrum Acquisitions, clarified several questions presented at the last meeting:

- Number of employees: 45 full-time equivalent employees with an estimated payroll of \$1.2 million, which can vary significantly based on staffing level and the competency level of staff.
- Safety services demand: within the number of projects Spectrum has through the US, they average 0.8 calls per week, 3.2 per month. The vast majority of those are EMS runs.
- Comparison to the Abbington of Powell assisted living center: Spectrum builds, develops and operates facilities that typically have three components of independent living, assisted living and memory care units. Their market research tells them this site will probably be all independent living, different from the Abbington facility.
- Building height: the actual building (elevation shown) is all three-story.
- Clarification: the project is not assisted living but instead independent living and they anticipate 130 units rather than the 140 units listed in the newspaper.

Mr. Dugger said his understanding of the exact details of this project has been evolving and he apologizes if he misled or did not provide completely accurate information to Staff. He said as they work through the process they will sort out those details and determine programming based on their understanding of the market. He said he looks forward to filing the annexation and completing the process.

Councilman Lorenz asked if this can end up with just apartments if it is constantly evolving. He said he is concerned that they do not know exactly what they plan for this proposal. Mr. Dugger said this is simply a senior living facility. Councilman Lorenz asked if they will have age restrictions. Mr. Dugger said Federal law typically does not allow age restrictions but in this case they can because they provide special programming. Councilwoman Brenner asked if there are any other projects in Powell that have received a variance to allow three stories. Mr. Betz said they have not yet looked at details such as the height; the height maximum in the code is 35 feet to the midline between the eave and ridge. He said two stories typically gets one to that height. He said parts of Wedgewood Commerce Center and the Mt. Carmel property have a maximum height of six stories within the current Township zoning. Mr. Betz said as Planning & Zoning Commission eventually looks at development plans they will have to consider if this is an appropriate use for this site. He said on all of Sawmill Parkway there are commercial uses and this is a permitted use within a commercial district. Mr. Betz said they have not done a lot of analysis yet but Staff feels this is a pretty good use for this site. Councilwoman Brenner asked if the applicant ever does two-story buildings or are they set on three stories. Mr. Dugger said what they propose this evening is a three-story building and they would be required to go back to the drawing board if they want two stories. He said reducing building mass from three stories to two stories may change the economics of the project. Councilwoman Brenner asked if he knows where he may have misled City Staff. Mr. Dugger said initially the applicant thought this development would have all three types of units and that is how it was discussed with Staff; it is now all independent living.

Councilwoman Brenner said she is also concerned about what can go on this site. Mr. Dugger said he can take that concern off of the table because he can commit to the City that this will be a senior living facility. Councilwoman Brenner asked what services or programs they have that are specific to being a senior facility. Mr. Dugger said as a general rule they cannot discriminate on the basis on age, sex or race but they can provide special benefit for people who are elderly but they have to provide special and specific programming as a part of that housing option. He said this will have a full dining facility, social programming, occupational therapies and other programs. He said there is an entire body of Federal law that defines what a "senior" program is. He said this is not a nursing home and that requires a certification/license from the State of Ohio. He said their residents will have virtually all of the same abilities as everyone else but they are older and desire community dining and programming that is not available in normal housing situations. Councilwoman Brenner asked if they will be units to buy or rent. Mr. Dugger said he will have to look into that.

Councilman Crites asked if they are suggesting they will have 130 units that they believe will be 100% independent living. Mr. Dugger said as of today they believe the market will support a 100% independent living facility. Councilman Hrivnak asked about the zoning of this property. Mr. Betz said this is envisioned to come into the Planned Commercial district, will come through Planning & Zoning for extensive review and then to Council for approval. He said senior living is evolving as the population is aging, specifically in our area. He said these facilities are proposed and sometimes they change over time as they adapt to the population aging; people are becoming older but are more fit and they want to get away from property maintenance and move into communal living with meals and outside activities provided. He said Mr. Dugger is saying they are still evolving as they determine the right market for this community as there are parents coming of age that need this type of use. He said as it goes through the Planning & Zoning review process

they will look at all of those things to see if this is an appropriate use for this site. He said they need to go through the process before they say that certain aspects are not wanted in the City.

Mayor Cline said this is a pre-annexation agreement and his expectation is that the client is in the business of providing the three types of care and they should expect the flexibility to address the needs of the market in those three areas. He said their projection today is that the market need is independent living but if it ends up that the market need is both independent and assisted living, he would not expect that this project will change dramatically to meet that market need. Mr. Dugger said they are proceeding with this project on the basis that is 100% independent but they would be naïve if they do not think some conditions change over time. He said from a community standpoint, whether a unit is identified as an independent and assisted unit does not change that much. Mayor Cline said as a society they want people to be able to age in place so if they go into this facility as an independent living resident and the population within the facility ages, the need for assisted living may become more apparent and the operators of the facility may consider changes. Mr. Dugger said this clearly is not and will never be a nursing home. Mayor Cline said the issue in front of Council is to grant the City Manager the Authority to enter into this pre-annexation agreement which includes the standard language that this must meet all of the Planning & Zoning requirements. Mr. Dugger said as soon as they file the annexation petition, they can file the Preliminary Development Plans and begin the process. He said it is important to the City, his client, and the property owner that in the annexation process the City and the developer are in concurrence on the ultimate zoning. (Councilman Lorenz and Councilman Bennehoof left the meeting at 9:07 p.m.)

Mayor Cline opened this item to public comment.

John Haemmerle, 1449 Picardae Court, Liberty Township, said he is the owner of Abbington Assisted Living. He said they provide what the applicant is proposing except they are doing this in single rooms. He said they provide services from independent living up to memory care. Mr. Haemmerle said they do meals, medication assistance and administration, social activities and they assist with the chores of daily living. He said when they planned this facility ten years ago they had a rough time justifying it with their lenders because there was not a large population over 80 years of age. Mr. Haemmerle said the other facilities around were in elderly communities but they saw that there were lots of residents in the age range of 50-60 so they may have parents they could market to. He said they have not always been full because not everyone is ready to go into assisted living. Mr. Haemmerle said Council should look very closely at the market study because he is not convinced this will work. He said he is concerned that if they get into assisted living they will come in and undercut them. He said this may not be the right time or place. He said the City is not giving any money to this project but aside from doing something for the elderly in the community this business is not providing an economic benefit to the community. He said the income tax is not significant and staffing is not high pay. Mr. Haemmerle said he is not happy to see this type of competition coming in and he would like Council to consider this carefully.

Al Vrable, 10208 Wellington Blvd., Liberty Township, said he has been a resident since 1995 and he also owns the Bridgewater Banquet Center. He said he is pretty well versed in long term care and senior living. He said as a resident he went through the LTFD levy and they laid off five to six firemen, placing a burden on the EMS services. He said they should expect at least 3-5 runs per week if not 3-5 days per day from this facility. Mr. Vrable said those daily averages will kill them and be a burden to an already overburdened department. He said this type of use will put a higher demand on water and sewage and he understands there is currently no infrastructure in place. Mr. Vrable said putting this area in a TIF district to add infrastructure favors a new provider and Mr. Haemmerle did not get these conditions when he developed Abbington. He said he admires him for sticking with it when the census is very low at this time. Mr. Vrable said this could end up as low income housing if they are not careful. He said the average wage, taking \$1.2 million in payroll and dividing it by 45 employees equals about \$12.82 per hour in wages. He said if they remove the administrators it will take the average wage to less than \$10 and in a nursing home it is about \$16 per hour. Mr. Vrable said they are going into this with a lesser quality of service and there are already superior products in the community. He said at the Commissioner hearing for closing North Hampton they discussed a theme of "increasing public welfare" and he does not see that a three-story building will accomplish that. Mr. Vrable said he is opposed to the annexation.

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

Councilman Counts said one of his concerns about the City is that its housing stock is of one type and if they don't want to live in a single family detached dwelling they have to go elsewhere. He said as someone who wants to live in Powell until the day he dies and who would like to have his parent live close to him at some

point in the future, this development is something they should consider and allow to go through the process. He said as a community they need to be able to offer options to their residents so he will vote for this ordinance. Councilwoman Brenner said she realizes they have not worked through everything but she would like to know if there are any variances necessary. Mr. Betz said he cannot give her any details such as variances because they still have to work through the whole plan. He said they are only at this level of detail and this ordinance is only for the pre-annexation agreement. Councilwoman Brenner asked if they have thought about the traffic impact this will have on top of the traffic if the Target is built. Mr. Betz said Sawmill Parkway is a four-lane, divided highway designed to carry up to 50k cars per day and right now it carries 26k. He said a traffic study will be completed as part of the process to see what kind of impact this has on Sawmill Parkway and surrounding streets. He said in situations similar to this the residents do not have a lot of cars and they wish they received more visitors. Councilman Crites said he will vote to start this process but he wants it understood that he has a lot of questions that need to be answered before he will be in favor of this development. He said the concept is good and he hopes those questions will be answered as it goes through the process. Councilman Hrivnak said this is an idea that deserves further study and this ordinance will allow the first step. He said they have seen the process work many times in the past and is sure it will work in this case so their questions will be answered.

MOTION: Councilman Counts moved to adopt Ordinance 2013-44. Councilman Crites seconded the motion.
VOTE: Y 5 N 0

FIRST READING: ORDINANCE 2013-46: AN ORDINANCE TO VACATE A SANITARY SEWER EASEMENT, LOCATED ON REAL PROPERTY FORMERLY OWNED BY FIORI VILLAGE COMMUNITIES, LLC OF RECORD IN VOLUME 126, PAGE 2161, IN THE RECORDER'S OFFICE, DELAWARE COUNTY, AND DECLARING AN EMERGENCY.

Mr. Lutz said many years ago a developer placed sanitary easements on his land which is where the Epcon development will be built on the north side of Seldom Seen Road next to the existing condos. He said those easements were never utilized and are not necessary. Mr. Lutz said they have been vacated by the County and the City was also identified on record so it requires legislative approval to vacate the easement.

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

MOTION: Councilman Counts moved to suspend the rules in regard to Ordinance 2013-46. Councilman Hrivnak seconded the motion.
VOTE: Y 5 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2013-46. Councilman Hrivnak seconded the motion.
VOTE: Y 5 N 0

FIRST READING: ORDINANCE 2013-47: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2013.

Ms. Miller said she is requesting that they appropriate \$60k in the Voted Capital Projects Fund. She said they will be getting the funding later this month and this appropriation will be used for the expenses for the bond issuance.

Councilman Hrivnak said the explanation with the appropriation says this is saving money. Ms. Miller said last year they went through an Underwriter to do the processing, go out and get the bids and sell the bonds. She said they also paid Standard and Poor's, Moody's, the Financial Advisor and Legal Counsel in the printing of the POS. Ms. Miller said this time because it is a very simple, smaller issue they are going through the open market which is completed online. She said they already have notice from four different bidders that they will bid on the bonds on Thursday. She said they and other bidders will put in their bids, principal and interest payments, and the software program checks everything to make sure it complies with the City's limits. Ms. Miller said at 10:30 it stops and all of the bids are shown. She said they can choose the bidder without the Underwriter costs of approximately \$10k to \$20k. Councilman Counts said they are basically cutting out the middle man. Ms. Miller said that is correct and they can only do that if they are well-known, have good ratings and it is a simple issue.

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

MOTION: Councilman Counts moved to suspend the rules in regard to Ordinance 2013-47. Councilman Crites seconded the motion.
VOTE: Y 5 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2013-47. Councilman Crites seconded the motion.
VOTE: Y 5 N 0

COMMITTEE REPORTS

Development Committee: Councilman Hrivnak said the Committee met earlier this evening and discussed bikepath connectivity, using the impact diagram to identify the areas to estimate. He said they should have priorities at the next meeting. *Next Meeting:* November 6th, 6:30 p.m.

Finance Committee: No report. *Next Meeting:* October 22nd, 7:00 p.m.

Operations Committee: No report. *Next Meeting:* October 15th, 6:30 p.m.

Planning & Zoning Commission: Mr. Betz said they will review the Final Development Plan for a small subdivision on Liberty Road near Powell Place. *Next Meeting:* October 9th, 7:00 p.m.

CITY MANAGER'S REPORT

Mr. Lutz said yesterday the Delaware County Commissioners heard the request to vacate a portion of North Hampton Drive, which was submitted because of possible cut-through traffic from the Target store. He said the great majority of people who spoke at the hearing spoke against the proposed vacation of that land and the Commissioners voted to reject the petition to vacate.

Mr. Lutz said Staff received the traffic study for Wildflower Drive to determine if it is eligible for traffic calming. He said under the City's policy if the 85th percentile speed is less than 28 mph the street shall not be considered for traffic calming but the study came back with the 85th percentile speed at 28 mph so it meets the criteria for traffic calming. Mr. Lutz said Council will receive the report in their next Council packet and will also have an appropriation ordinance to consider. He said the next step is to study different traffic calming measures that may be appropriate for that street.

Mr. Lutz said packets included the great news from Standard and Poor's that the City of Powell received the AAA rating. He said last fall there were ten Ohio municipalities with that rating and the City is now one of them. He congratulated current and past City Councils and Finance Committees. He said 17 years ago the City did not have a bond rating and they have steadily worked to acquire that. Mr. Lutz also wished Mayor Cline a very happy birthday today.

OTHER COUNCIL MATTERS

There were none.


ADJOURNMENT

MOTION: Councilman Counts moved at 9:31 p.m. to adjourn the meeting. Councilman Hrivnak seconded the motion. By unanimous consent, the meeting was adjourned.

MINUTES APPROVED: October 15, 2013


Richard Cline
Mayor

11/6/13
Date


Sue D. Ross
City Clerk

11/6/2013
Date



City Council

Jon Bennehoof

Sara Marie Brenner

Richard Cline, Mayor
Tom Counts

Mike Crites

Jim Hrivnak

Brian Lorenz