



**City of Powell, Ohio**  
City Council

**MEETING MINUTES**  
**DECEMBER 16, 2014**

A regular meeting of the Powell City Council was called to order by Mayor Jim Hrivnak on Tuesday, December 16, 2014 at 7:45 p.m. City Council members present included Jon Bennehoof, Frank Bertone, Richard Cline and Tom Counts. Mike Crites and Brian Lorenz were absent. Also present were Steve Lutz, City Manager; Megan Canavan, Communications Director; David Betz, Development Director; Gene Hollins, Law Director; Susie Ross, City Clerk; and interested parties.

**PLEDGE OF ALLEGIANCE**

**CITIZEN PARTICIPATION**

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

Brian Ebersole, 215 Squires Court, said a month ago he asked about upholding the newly passed Charter Amendment and the Mayor said they would defend it and stand behind it. The City filed their reply brief on Friday and it is very clear that the City is not trying to uphold the Charter Amendment. They started the reply brief by admitting that the Charter Amendment is unconstitutional; they went on to say that their original position was it was unlawful delegation and they cannot flip flop on that decision. Mr. Ebersole said that is absolutely wrong because it is their job to defend the City's laws. It is very commonplace in this type of situation to flip a decision to defend this and that was the point of using a new lawyer. The brief made another argument, saying it is unconstitutional because it is illegal because it overturns an administrative law. Mr. Ebersole said the developers made that argument in Court and it was rejected by the Supreme Court. They are not flipping their decision to defend the amendment, they are calling it unconstitutional and they are making a further argument that has only been made by the developer. Mr. Ebersole said it is hard for him to believe the City is doing nothing more than laying down and hurting the amendment in court. He has been here to speak about the severance clause so any bad language in the Charter Amendment would be removed so the whole amendment would not be thrown out. That was not even mentioned in the brief.

Mr. Ebersole said in Section 3.085 the City Charter states that the "director may use assistance or special counsel with consent of Council" and he does not see that Council has approved the new attorney Dan Donnelly. It has not even been discussed, let alone vote to approve one. In correspondence, Ms. Ross said the attorney was appointed by the risk insurance company. If the City is in contract with a risk insurance company that forces a lawyer on the City that would be an illegal contract given this part of the Charter.

Councilman Counts said that is incorrect; every insurance contract has a provision for defense of the insured where the insured can provide counsel. That is not illegal and it does not require the vote of City Council. Mr. Ebersole said Council has to vote on it. Councilman Counts said Council approved the contract for the insurance company so it does not require a vote on the legal counsel the company provides. Mr. Ebersole said the insurance company picked Dan Donnelly who lives in Golf Village down the street from Jon Bennehoof, Brian Lorenz and Mike Crites. All of Council is clearly against the Charter Amendment so that is a little fishy as well. It is hard to believe that the lawyer is being an unbiased representative of this City. He said his main purpose for speaking is to let them know they are reading these briefs. They cannot say they will defend something and not expect him to show up and air it out. He asked that they defend the Charter Amendment although he feels that is at a loss.

Councilman Cline said an amicus brief was filed and he believes that petition is still outstanding. He respectfully disagreed with Mr. Ebersole's statement that the Ohio Supreme Court rejected the argument that this Charter Amendment was unconstitutional. That is not the way he read their opinion and eventually some Court will tell them which reading was correct. Mr. Ebersole said Council is not going to stand by the Charter Amendment. Councilman Cline said their lawyer will defend the Charter Amendment. Mr. Ebersole disagreed.

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

Councilman Bennehoof said most of the lawyers he knows are sitting in this room. He does not know the lawyer appointed by CORMA, whether he lives in his neighborhood or not. He imagines that Mr. Crites could know him because lawyers usually know other lawyers but he does not like any implication that there is some fishy business going on.

**CONSENT AGENDA**

Item

*Departmental Reports – November, 2014*

Action Requested

*Receipt of Electronic Reports*

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

**APPROVAL OF MINUTES**

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

**RESOLUTION 2014-27: A RESOLUTION TO ESTABLISH THE COMPENSATED ABSENCES FUND.**

Mr. Lutz said this item was discussed with the Finance Committee briefly during the budget discussions. In the budget they are adding a new fund called the Compensated Absences Reserve Fund. They will provide funding to this account that will be utilized when employees retire if there is any unused vacation leave that is compensated on their final paycheck. This will provide a funding mechanism for these expenses so there are not unanticipated expenses in any one year.

Councilman Bennehoof asked if Staff can articulate the scale of this issue. Mr. Lutz said they tried to project 4-5 years ahead and in 2015 they budgeted \$33k. Councilman Bennehoof asked if they have a policy about accumulation of leave. Mr. Lutz said a policy has been in place for over 15 years which addresses how much vacation accrual or sick leave can be carried forward. The policy limits the City's liability for issues like this.

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

MOTION: Councilman Bennehoof moved to adopt Resolution 2014-27. Councilman Cline seconded the motion. By unanimous consent, Resolution 2014-27 was adopted.

**FIRST READING: ORDINANCE 2014-65: AN ORDINANCE AUTHORIZING THE DIRECTOR OF DEVELOPMENT TO ISSUE A ZONING CERTIFICATE TO GANZHORN REAL ESTATE OF POWELL LLC AND TO WAIVE THE REQUIREMENTS OF SECTION 1105.10 (H) OF THE CODIFIED ORDINANCES, AND DECLARING AN EMERGENCY.**

Mr. Lutz said this is very similar to the ordinance they recently passed for the Tide Dry Cleaners because of the current sanitary sewer limitations. The Spectrum Retirement Community approved earlier this year will fund \$1.2 million worth of sanitary sewer improvements that will open up the capacity in this area. The Ganzhorn development will benefit from those improvements but there is a timing issue. The sewer capacity is not there right now and typically they do not issue building permits unless the sewer is there.

David Betz, Development Director, indicated the location of the Ganzhorn site. It looks like everything will be ready to go to the County Commissioners in January regarding an agreement for the sewer improvements. The sewer will be done prior to these properties being occupied. Staff feels that allowing Ganzhorn to start their project will not require any special treatment later with regard to sewer capacities.

Mayor Hrivnak asked if there was an agreement with Ganzhorn that they are proceeding at their own risk. Gene Hollins, Law Director, said in the end of Section 2 of the ordinance the last clause clarifies that they will have to obtain this permit to start construction and when they are done in addition to the occupancy permit the Development Director will have to issue a zoning certificate of compliance. They are understanding that they can start construction but the City will withhold their right to occupy the building unless they have sewer by that time. Ganzhorn closed their multi-million dollar purchase knowing that they are building at their risk and are confident they will have sewer capacity and the building will stay on track.

Councilman Bennehoof said there is a lot of other undeveloped country in that area and it is his understanding that this regional solution will benefit that area as well. Mr. Betz said there is other undeveloped property nearby that could benefit from this. The capacity is being built for the second Spectrum property as well as others.

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 2014-65. Councilman Bennehoof seconded the motion.

VOTE: Y 5 N 0

Councilman Cline said he wants to make sure the applicant knows they are proceeding at their own peril and he will not be interested in hearing hardship arguments should that peril come to pass.

MOTION: Councilman Cline moved to adopt Ordinance 2014-65. Councilman Bennehoof seconded the motion.

VOTE: Y 5 N 0

**FIRST READING: ORDINANCE 2014-66: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A TAX INCREMENT FINANCING AGREEMENT WITH S-K POWELL, LLC AND S-K POWELL II, LLC, AND DECLARING AN EMERGENCY.**

Mr. Lutz said this TIF agreement is related to the Spectrum properties. Earlier this year the Council adopted Spectrum 1 on Sawmill Parkway for a 126-unit retirement community. Spectrum 2 is located on Sawmill Road between Heath Drive and Attucks Road for a 75-unit assisted living/memory care community. When they approved Spectrum 1 they discussed the TIF agreement and this is the legislation for that agreement.

Mr. Hollins said this agreement is very similar to the TIF agreement they did with David Ruma's group with respect to the improvements there. This is the original intent of TIF's: to take some of the property taxes from the new improvements and makes sure they are building the infrastructure necessary to support those. This takes the TIF proceeds that are generated in the future from Spectrum 1 and 2 as well as Ganzhorn and Tide Dry Cleaners and earmarks them to repay the financing source for the sewer line which in this case is Spectrum. They stepped up to pay for Phase 1 with the agreement that they would be reimbursed in the future through TIF funds.

Councilman Bennehoof said he asked about the excess capacity because this TIF will fund the infrastructure and then enable additional economic development that will generate an income source for the community. Mr. Hollins said this is the first piece of a two-part deal that will take care of the sewer needs of the entire Sawmill Corridor and enable future economic growth.

Mayor Hrivnak said the \$1.2 million is Phase 1 provides capacity for the aforementioned developments; has the future Phase 2 been identified? Mr. Lutz said that phase includes a different developer who is finalizing plans for future development and coordinating efforts with Spectrum. This is a unique situation because they have had developers working together on a common goal that does not just include their property. Mr. Betz said this is Phase 1 and Phase 2 runs through the Verona site to Seldom Seen Road.

Mayor Hrivnak opened this item to public comment.

Glen Dugger, attorney for Spectrum, said it is important that Council understands the work that City Staff has done to get them to this point. This is as integral an operation between the developers and staff to solve a problem that should not be any of their problem. This first phase of sanitary sewer delivers \$80 million in property development that will not add one child to the schools, will pay City income tax and property taxes that will largely benefit the Olentangy Schools. Mr. Dugger said Council should be proud of Staff and this team effort that delivers a very significant regional development improvement that benefits the larger community. This is the first part and assuming the County approves an agreement on January 12<sup>th</sup> they will start building the first phase. There is no reason the second phase will not be completed as well. Councilman Bennehoof said the Fire/EMS will benefit from those taxes as well.

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

MOTION: Councilman Cline moved to suspend the rules in regard to Ordinance 2014-66. Councilman Bennehoof seconded the motion.

VOTE: Y 5 N 0

MOTION: Councilman Cline moved to adopt Ordinance 2014-66. Councilman Bertone seconded the motion.

VOTE: Y 5 N 0



**COMMITTEE REPORTS**

**Development Committee:** No report. Mr. Betz said they will not meet in January. *Next Meeting: Tuesday, February 2<sup>nd</sup>, 6:30 p.m.*

**Finance Committee:** No report. *Next Meeting: Tuesday, January 27<sup>th</sup>, 7:00 p.m.*

**Operations Committee:** No report. *Next Meeting: Tuesday, January 20<sup>th</sup>, 6:30 p.m.*

**ONE Community:** Councilman Bennehoof said the First Responders met. They have engaged Maria Tiberi's Foundation and they will visit with Sertoma this week. They will work together with Maria's Message, the Schools, and the Fire and Police on a fundraiser to acquire distracted driver simulators. This will be an opportunity to allow them to provide service to the community without taxpayer impact. *Next Meeting: February 9<sup>th</sup>, 7:00 p.m.*

**Planning & Zoning Commission:** Mr. Betz said they will be discussing sign regulations. *Next Meeting: Wednesday, January 14<sup>th</sup>, 7:00 p.m.*

**Comprehensive Plan Steering Committee:** Mr. Lutz said they met last month and received and discussed preliminary work from the planning consultants. *Next Meeting: Tuesday, January 27<sup>th</sup>, 6:30 p.m.*

**Powell Community Improvement Corporation:** No report. *Next Meeting: Thursday night at 6:00 p.m.*

**CITY MANAGER'S REPORT**

Every year at this time Ohio Division of Liquor Control allows the City Council to request a hearing if they would like to have any liquor permits revoked within the City. Police Chief Vest has had no problems with any of the establishments this year so Staff does not recommend the request of any such hearing. There are no agenda items for the January 6<sup>th</sup> City Council Meeting so that meeting will be cancelled. The first Council meeting in 2015 will be held on Tuesday, January 20<sup>th</sup>.

**OTHER COUNCIL MATTERS**

There were none.

**EXECUTIVE SESSION: EXECUTIVE SESSION IN ACCORDANCE WITH O.R.C. SECTION 121.22 (G) (1), PERSONNEL (BOARD & COMMISSION APPOINTMENTS) AND O.R.C. SECTION 121.22 (G) (3), PENDING LITIGATION.**

MOTION: Councilman Cline moved at 8:15 p.m. to adjourn into Executive Session in accordance with O.R.C. Section 121.22 (G) (1), Personnel (Board & Commission Appointments) and Section 121.22 (G) (3) Pending Litigation. Councilman Counts seconded the motion.

VOTE: Y 5 N 0

MOTION: Councilman Cline moved at 8:45 p.m. to adjourn from Executive Session. Councilman Counts seconded the motion.

VOTE: Y 5 N 0

MOTION: Councilman Cline moved at 8:45 p.m. to reconvene in Regular Open Session. Councilman Bertone seconded the motion.

VOTE: Y 5 N 0

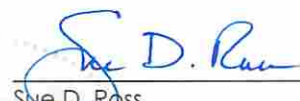
MOTION: Councilman Cline moved at 8:45 p.m. to adjourn from Regular Open Session. Councilman Bennehoof seconded the motion.

VOTE: Y 5 N 0

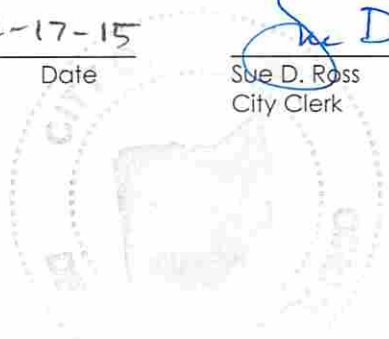
**MINUTES APPROVED: January 20, 2015**

  
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Jim Hrivnak  
Mayor

2-17-15  
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Date

  
\_\_\_\_\_  
Sue D. Ross  
City Clerk

2/17/2015  
\_\_\_\_\_  
Date



**City Council**  
Jim Hrivnak, Mayor

Jon Bennehoof      Frank Bertone      Tom Counts      Mike Crites      Richard Cline      Brian Lorenz