



City of Powell, Ohio
City Council

MEETING MINUTES
October 6, 2015

CALL TO ORDER/ROLL CALL

A regular meeting of the Powell City Council was called to order by Mayor Jim Hrivnak on Tuesday, October 6, 2015 at 7:30 p.m. City Council members present included Frank Bertone, Richard Cline, Tom Counts, Jon Bennehoof, Jim Hrivnak, Brian Lorenz, and Mike Crites. Also present were David Betz, Development Director; Rocky Kambo, GIS/Planner; Megan Canavan, Communications Director; Debra Miller, Finance Director, Eugene Hollins, Law Director; Steve Lutz, City Manager, Karen J. Mitchell, City Clerk, and interested parties.

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION

Mayor Hrivnak opened the citizen participation session for items not on the agenda. Hearing none, he closed the public comment session.

PROCLAMATION: Fire Prevention Week – Liberty Township Fire Department (Fire Chief Timothy R. Jensen and Lieutenant Tom Saunders)

APPROVAL OF MINUTES – September 15, 2015

MOTION: Councilman Bennehoof moved to adopt the minutes of September 15, 2015. Councilman Bertone seconded the motion. Councilman Crites abstained from voting. By unanimous consent of the remaining members of Council, the minutes were approved.

RESOLUTION 2015-11: A RESOLUTION ADOPTING THE COMPREHENSIVE PLAN FOR THE CITY OF POWELL AS RECOMMENDED BY THE PLANNING AND ZONING COMMISSION.

Mr. Lutz: Extensive discussion took place at the last council meeting regarding the Comprehensive Plan. We had a Steering Committee which was composed of residents and business owners who committed a year and half working on updating the City's Comprehensive Plan. In addition to this, we had a group of consultants, elected and appointed officials, and Staff who have prepared the updated Comprehensive Plan. This plan was approved by P&Z Commission. Messrs. Kambo and Betz will review and address some of the items identified at the last council meeting.

Mr. Kambo: At the 9/15/2015 council meeting, we did have some residents that came and gave us some additional input. In your packets there is a summary of the additional revisions that were done since the last council meeting. I will not go through all of them, but there were some tweaks to some language, charts and graphs. I will focus on the more substantial changes tonight.

At the last meeting we had some questions about the downtown internal linkages that were proposed. Additionally, Mr. Voss provided us with some language that we reviewed and ultimately incorporated into the final plan.

Pages 48-53 – Land Use Policy Recommendations – #4 has been added to "Maintain the Character of the Community and Its Historic Village District." Prior to this being added in, the whole Comprehensive Plan did make specific mention to the Downtown Historic core and preserving and enhancing it, but this was just another way to reinforce those statements. Coupled with that will be a note on the thoroughfare downtown detailed plan. All of our other conceptual maps within the Comprehensive Plan also have a similar note to them that they are conceptual. They are ideas or visions

for an opportunity in the future. This gives us a direction, but doesn't mean that this couldn't be changed or modified in the future. These are the two substantial changes added to the Comprehensive Plan.

Mr. Betz: I am excited about this plan because it moves the City forward in the next 5-10 years. One thing that is going to be helpful for Council is the Implementation Section at the end of the document. It shows key priorities and ten (10) guiding principles. There are thirty [30] menu items for council to consider. It will be helpful for you to utilize these for something like your annual meeting in January to set priorities in the upcoming years. It is meant to help you to guide Staff. This is not meant to sit on a shelf, but as a guide to move us forward to creating a very nice community.

Justin Goodwin, MKSK: Regarding the note added to the downtown thoroughfare network map, I will actually read a piece of that because I think it is very important. [Reads added Note] The note not only specifies that these linkages are conceptual in nature and require further study, but the design of any new street is very important. Some of the concerns we heard from residents that attended the last meeting were, with regard to the potential impact of additional traffic flowing through their neighborhoods, is a legitimate concern. We are also saying that new streets in downtown Powell should be designed in a manner that discourages speeding or unsafe traffic movement, enhances safe pedestrian and bicycle travel, and contributes to the visual character of downtown. Many things in this plan is a balance in terms of traffic mobility and community character and safety. I will make one minor clarification with regard to the additional policy statement regarding reserving the character of downtown Powell. We thought that this was a great idea to add to the plan. It is not word-for-word as recommended by Mr. Voss, but we borrowed heavily from it and we think we captured the intent.

Mayor Hrivnak opened this item to public comment.

Tom Voss, 90 E. Case Street. We are very appreciative that the language I recommended has been added. I believe it gives us standing in arguments that will take place that are to come about different developments that are being looked at. I wish it had gone a little further and been more definitive about no through traffic through the neighborhood. The plan doesn't use the word 'limited density' that used to be in the plan, so that will continue to be a matter of discussion. But we are appreciative that some action was taken and we will work with each of the different developments that come up and state our case [at that time].

Kara Cappellano, 80 E. Case Street. I do want to thank everyone for their efforts in the Comprehensive Plan and I do think that it is a wonderful plan. My only concern is the extension of Depot Street and the additional traffic that it will create. We have already seen additional traffic with the temporary railroad closure on Olentangy Street, drivers that are violating the speed limit on our street [which has a speed limit] of 10 mph.

Liz Kellough, 90 E. Case Street. I would also like to state that we appreciate all the work that's been done [on the Comprehensive Plan] and sensitivity to our issue. We would like to continue visiting the issue of the extension of Depot Street.

Tom Happensack, 127 Kelleys Court. I believe it's a good document [Comprehensive Plan] – it's a bit of a mixed bag. It doesn't meet all the requirements. I'm really disappointed the Charter Amendment wasn't taken into consideration from a standpoint of how it was developed. With respect to p. 30 in the Land Use for Infill, we didn't put in the Charter Amendment the requirements of limiting high density housing. This map is the same as it was before and allows all the same types of developments that we are currently fighting. Even though p. 31 talks in-depth about the Charter Amendment, if it doesn't get turned over [in the pending lawsuit], this document will need to be updated. I would have preferred that the document been developed that way because currently that Charter Amendment is law, and the judge has put a stand still order in place that does not set aside the Charter Amendment that was voted on by over 2,300 people.

The traffic and economic studies were worth the money that we paid for them. In the traffic study, there is no significant, near term solutions to our problems, we understand that. But that traffic study shows that there is no change for the next 10-15 years. There are no projects, besides Murphys Parkway and Home Road, which is going to alleviate traffic. We need to take that into consideration as we start annexing

and approving developments. There are several residential developments going in that will add approximately 250 housing units that will add traffic. I think we need more of a regional type of thought process of what both the City and township are doing to the community. I think we've made great strides there, I do acknowledge that.

The economic study shows that the worst kind of development in the City is residential and almost all yields negative economic benefit after consideration of the cost of the city services provided to those units. Only after adding in commercial development, which comes later and may not come at all, can those developments be deemed as profitable to the City from a positive cash flow to our taxes. It further notes that senior housing results in even worse economic returns. However, the majority of the land use discussions in our sessions were around residential and how we developed residential housing. I believe the City needs to look closer at how commercial can be introduced because that is where the income tax profitability goes up. I think the plan is light on this direction.

Council has annexed housing developments the past few sessions, but I don't see any offsetting commercial development in that region. I am disturbed that there was no economic analysis done in that annexation process. We need to develop land to have a positive cash flow.

Schools are busting at the seams. We need to work with Liberty Township on development and the Plan was silent on that.

A 'Yes' vote [on the Comprehensive Plan] is a violation of the Charter Amendment portion of the City Charter and/or is in violation of the federal court's stand still order. I want Council to put forth a legal argument for why voting for this Comprehensive Plan is permissible.

Brian Ebersole, 215 Squires Court. As you all know, the Charter Amendment issue is pending in federal court. Where it was last left with the court was the court asking the developers why the case shouldn't be dismissed, which would lead someone to infer that this is going the way that the case may be dismissed. The Comprehensive Plan, on page 49, still continues to talk about high density housing in the downtown business district and states it is in conflict with the Charter Amendment. I believe that we shouldn't move forward on the assumption that the Charter Amendment won't remain the law.

On page 32, 'prohibiting the approval of high density housing in the downtown business district.' That is not what the Charter Amendment says. It says: 'Real property in the Powell downtown business district shall not be developed with high density housing.' I believe it is a way to go around the Liberty Green and Santer communities that are being built – that these were approved prior to the Comprehensive Plan being put together, so we can still build it. I believe going forward with approving the Comprehensive Plan violates the stand still order and the Charter Amendment is law until the court says otherwise. I want a ban on high density housing in the downtown business district to be included in the Comprehensive Plan.

Hearing nothing further, Mayor Hrivnak closed the public comments portion.

Councilman Cline: Gene, have you considered the argument raised that somehow acting on this Charter is a violation of the district court's standstill order?

Mr. Hollins: While we don't like to comment on pending litigation. I wouldn't have let Council or P&Z consider this if it were a violation the stand still order. It related to the one property - Powell Crossing. Specifically it said take no further action to move that forward until the court had a chance to review it.

Councilman Crites: Gene, there's also a comment made that, in addition to violating the stand still order, there was some concern that it violated the Charter. Your thoughts on that?

Mr. Hollins: The last substantive legal ruling we had on that part of the Charter Amendment was the Ohio Supreme Court and they said it was not constitutional. They then said, well, we may have been premature in actually ruling on that. Since then, it's been in federal court rather than state court, but that is the last ruling from the court on that part of the Charter Amendment. If it is an unconstitutional provision, it can't really be violated.

Councilman Crites: Do you see any legal impediment to this Council acting this evening on this Resolution?

Mr. Hollins: Not that I am aware of.

Councilman Crites: Mr. Mayor, can I ask that at some later date there be a formal recognition of the 17 Comprehensive Plan Steering Committee members by this Council? It was quite an undertaking and commitment by these people and they should be recognized.

Mayor: Thanks Mike. I think that is a great idea and I will direct Staff to put that together for our next meeting.

MOTION: Councilman Cline moved to adopt Resolution 2015-11. Councilman Lorenz seconded the motion.

VOTE: Y 7 N 0

RESOLUTION 2015-13: A RESOLUTION IN SUPPORT OF PARTICIPATION IN THE FRANKLIN COUNTY POLICE CHIEF'S ASSOCIATION REGIONAL SHARED SERVICES SYSTEM LOCAL GOVERNMENT INNOVATION FUND APPLICATION WITH RESPECT TO THE JUSTICE EDUCATION PATHWAY.

Chief Vest, Powell Police Department: This participation agreement is an effort of the Franklin County Chiefs trying to do a program with Franklin University to capture the information that we currently keep within our personnel files, including training officers take throughout the year and so forth. They are looking at a collaborate system that would allow college credit and advancement toward degrees, as well as shared training. There is no money obligation on the City's behalf, but in order for them to apply for a grant to go down this process, study it and gather information, it has to be an acceptance by the participating governments that it's been accepted as a concept and they will participate. Our portion would be providing information and perhaps a couple of meetings as to what we are doing.

Councilman Cline: In a former life, I was a criminal justice major at Kent State University and many of my classmates were active law enforcement officers who received college credit for the kind of training you are talking about here. This is not an unheard of or an untested concept. It is a valuable and worthwhile concept and I am glad to see that we are trying to do this in the local community because we all benefit from it.

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

MOTION: Councilman Cline moved to adopt Resolution 2015-13. Councilman Bennehoof seconded the motion. By unanimous consent of the remaining members, Resolution 2015-13 was adopted.

FIRST READING: ORDINANCE 2015-46: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2015.

Mr. Lutz: The City has experienced numerous personnel/staffing changes throughout the year due to promotions, retirements, and maternity leaves. What we are recommending is to modify appropriations. No additional funds are being requested. It's just a realignment.

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

MOTION: Councilman Bertone moved to suspend the rules in regard to Ordinance 2015-46. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bertone moved to adopt Ordinance 2015-46. Councilman Lorenz seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2015-47: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2015.

Mr. Lutz: I'll defer this to Ms. Miller, Finance Director, because we are increasing expenditures; however, we have an offset because we have increased revenues.

Ms. Miller: The Building Department supplements the Staff with outside contractors because of the higher level of development. Revenues have come in and we need to increase our ability to hire contractors to assist us. We are looking at \$18,000 for the rest of the year and that includes plan reviews and inspections. The second part is for the programming for Parks and Rec programming class. They fund themselves and they are doing a banner year of collections and attendance and are looking at spending some of the revenues that they have brought in.

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 2015-47. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Cline moved to adopt Ordinance 2015-47. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2015-48: AN ORDINANCE REPEALING SECTION 181.02(b)(6) OF THE POWELL CITY ORDINANCES REGARDING AN EXEMPTION FOR INCOME TAX ON INDIVIDUALS UNDER EIGHTEEN.

Mr. Lutz: This Ordinance and the next Ordinance [2015-49] is a result of H.B. 5 which was enacted by state legislators in December. This legislation mandates that municipal income tax codes be amended by January 1, 2016. Included in your packet was Ohio Municipal League City & Village edition and one of the articles was written by Mr. Hollins about House Bill 5. This matter has been discussed in great detail over several finance committee meetings. For everyone's benefit, Ms. Miller will give a brief review of this legislation and how it will impact the City of Powell.

Ms. Miller: I have a Powerpoint presentation (Exhibit 1) for this Ordinance and the next one [Ordinance 2015-49]. 2015-49 deals with all the new changes that we are going to have to deal with; however, they made an exception for the under 18 that, going forward, you had to repeal it if you were exempting them before.

Mr. Hollins: It is a grandfathering provision. You can grandfather something prior to 1/1/2016 with regard to minors and stock options, but you had to do it in anticipation of our Code adoption ordinance because we are changing our approach to minors.

Ms. Miller: At the time the Village/City enacted an income tax beginning in 1/1/1990, we have made a few changes over the years but only when it was required by the federal or state legislature to keep us in compliance. A form of H.B. 5 started in 2011 and we have had several discussions over the years in the Finance Committee on what it was going to do. Centralized collections were originally part of the proposed legislation but are not part of this current bill, and I anticipate a fight in the future because it will affect us greatly. H.B. 5 requires municipalities to adopt the Revised Code conforming to this new chapter 718. It was very emphatic that we follow these provisions exactly. As we go forward, you will see there are some things in here that we don't quite agree with and there are some things that we also think are illegal, but we still have to follow what's in the Code.

Our existing municipal tax code, Section 181 will continue to apply for tax years 2015 and all tax years prior which is why there's a new tax section. The new tax code section, Section 182, will apply to tax years 2016 forward. This is why we need two separate sections as these tax codes battle out through the years until all of the collections through 2015 (Chapter 181) are done, then we can remove it [Chapter 181].

There are certain provisions of H.B. 5 that we feel are unlawful, but our cover ordinance makes a statement to the effect that recent decisions of the Ohio Supreme Court may have rendered such provisions unconstitutional.

Mr. Hollins: Since the adoption of HB 5, we have had several court cases and decisions that put in question the validity some provisions of H.B. 5. One has to do with the taxation of professional athletes. There are different ways to interpret the language that we have been asked to adopt. We don't feel some of the interpretations are valid. We also feel that we've been dictated to by the legislature to adopt stuff consistent with their 718 and we can't clarify it or change it at this point.

Ms. Miller: What we are trying to do here is comply with the federal and state laws and match them as closely as possible. These are some of the changes you will see in the Code, some which will affect the City and some that will not [reads Changes and Changes That Won't Be Noticed at Powell from presentation, Exhibit 1].

Mr. Hollins: What you heard is the General Assembly simplifying the tax code to make everything consistent. I do think it may have achieved the goal of making the income tax code more generic state wide, but it certainly didn't simplify anything and ended up making it a lot more complex. The reason we've taken a strong stand while adopting this is we are concerned that they will come back next time and do state collection, local income tax collection, for which we have no control over auditing or enforcement. Secondly, Senator Jordan has introduced a bill about changing how we tax from a municipal standpoint where we can only tax residents, we couldn't tax those who work in our community. We need to make sure the General Assembly understands that we are cooperating to make sure we are getting a good basic Code in place.

Councilman Counts: One of the slides said that both the state and feds do not have an exemption for under 18. Do I remember correctly that most of the surrounding communities also do not have an exemption for under 18?

Ms. Miller: That is correct. It is the minority position across the state to have the exception. It's one of the things we are changing to make sure that we are complying with the majority.

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

Ordinance 2015-48 was taken to a second reading.

FIRST READING: ORDINANCE 2015-49: AN ORDINANCE TO ADD CHAPTER 182 OF THE CODIFIED ORDINANCES OF THE CITY OF POWELL REGARDING MUNICIPAL INCOME TAX.

Mr. Mayor: Mr. Lutz and Ms. Miller have explained this to us with the presentation [under 2015-48]. Is there a discussion on this?

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

Councilman Bertone: As you read through all of these provisions for 182, are you concerned, from a staffing point of view, what it may mean for you. I see notice requirements and reaching out to the landlords. Any concerns on your end as to staffing?

Ms. Miller: Not now, but in the future I can see that there may be a staffing issue. I see this increasing the work, but I don't see it increasing it enough to need a whole person. I know in the future I will need someone for Human Resources for the ACA requirements. So I foresee giving some of my HR duties to someone else so this could be added to my duties. This is actually in the proposed budget in future years.

Ordinance 2015-49 was taken to a second reading.

SECOND READING: ORDINANCE 2015-04: AN ORDINANCE APPROVING A ZONING MAP AMENDMENT FOR 5.37 ACRES AT 185 N. LIBERTY STREET FROM CITY OF POWELL R, RESIDENCE DISTRICT TO CITY OF POWELL DR, DOWNTOWN RESIDENCE DISTRICT.

Mr. Mayor: This was tabled from the September 1, 2015 meeting. The developer has sent a request indicating that he would like to have this item tabled again. He's giving consideration to single family development instead of the attached unit development and he would like a little more time to prepare his plans.

Mr. Lutz: The developer would like this tabled to the November 17th meeting.

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

MOTION: Councilman Cline moved to table Ordinance 2015-04 to a date certain of November 17, 2015. Councilman Lorenz seconded the motion.

VOTE: Y 7 N 0

COMMITTEE REPORTS

Development Committee: Next Meeting: November 3, 2015 at 6:00 p.m. We will continue to discuss the downtown traffic solution. Both Development and Operations have been partnering since August on how to make improvements. We've received a list from Staff on projects and we had a discussion on those with proposed timelines at our next meeting on these projects. We will continue these discussions with Operations at their next meeting in two weeks from tonight. Ms. Canavan, Communications Director, will begin to develop a communication plan to spread the word to the community.

Finance Committee: Next Meeting: Tuesday, October 13, 2015, 7:00 p.m. We did not meet last month as scheduled. Councilman Cline cannot attend on the October 13th meeting, but recommends going forward with the meeting without him since we are coming up on budget.

Operations Committee: Next Meeting: Tuesday, October 20, 2015, 6:00 p.m. Continuation of the traffic issues.

ONE Community: Next Meeting: Monday, November 9, 2015, 7:00 p.m. There was a ride a-long on Sunday for the OPAL bike paths. Next meeting will be November 9th, not October 12, due to holiday.

Planning & Zoning Commisssion: Next Meeting: Wednesday, October 14, 2015, 7:00 p.m. We will be discussing the Powell Grand preliminary plan and the subject matter of Ordinance 2015-04 with a sketch plan and some feedback for input for next time.

Comprehensive Plan Steering Committee: Next Meeting: Tuesday, October 27, 2015, 7:00 p.m.

Powell Community Improvement Corporation: Next Meeting: TBA

CITY MANAGER'S REPORT

We received notification from the Ohio Division of Liquor Control that Gallos Tap Room is interested in a liquor permit. Gallos is a new restaurant on North Liberty where the Hickory House used to be. We have a right to request a hearing if there is an objection to the license. I just need a thumbs-up, thumbs-down from Council regarding that. The police chief has no problems with this establishment. [thumbs-up to no hearing necessary].

Ms. Canavan has distributed a draft of the Powell quarterly newsletter (Exhibit 2). Please review and get back to her tomorrow if there are any changes or revisions. The City's Law Director has reviewed the Harper's Point ballot issue article and has approved it.

The Community Bonfire this Saturday evening from 7-9 p.m. at the Village Green.

We will be going out to bid for the Murphy Parkway project. We anticipate that Council will be asked to award the bid for that project at your November 17th meeting.

OTHER COUNCIL MATTERS

There were none.

ADJOURNMENT

MOTION: Councilman Cline moved at 8:58 p.m. to adjourn the meeting. Councilman Lorenz seconded the motion. By unanimous consent of the remaining members, meeting was adjourned.

MINUTES APPROVED: October 20, 2015

 11-2-15  11-5-2015
Jim Hrivnak Date Karen J. Mitchell Date
Mayor City Clerk

