



**City of Powell, Ohio**  
City Council

**MEETING MINUTES**  
**December 15, 2015**

**CALL TO ORDER/ROLL CALL**

A regular meeting of the Powell City Council was called to order by Mayor Jim Hrivnak on Tuesday, December 15, 2015 at 7:30 p.m. City Council members present included Frank Bertone, Richard Cline, Tom Counts, Jim Hrivnak, Brian Lorenz, Jon Bennehoof and Mike Crites. Also present were David Betz, Development Director; Megan Canavan, Communications 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.

**CONSENT AGENDA**

<u>Item</u>	<u>Action Requested</u>
• <u>Reports</u> –November 2015	Receipt of Electronic Report
• <u>Ordinance 2015-61</u> : - AN ORDINANCE APPROVING THE SUBDIVISION PLAT FOR VERONA, PHASE 1, BY VERONA, LLC FOR THE PROPERTY NORTH OF POWELL ROAD (S.R. 750) AT 4419 W. POWELL ROAD.	Adoption

MOTION: Councilman Counts moved to adopt the Consent Agenda. Councilman Crites seconded the motion. By unanimous consent of the remaining members of Council, the Consent Agenda was approved.

**APPROVAL OF MINUTES – December 1, 2015**

Councilman Bennehoof requested a change to page 7 of the minutes.

MOTION: Councilman Counts moved to adopt the minutes of December 1, 2015 as amended. Councilman Lorenz seconded the motion. By unanimous consent of the remaining members of Council, the minutes were approved as amended.

**SECOND READING: ORDINANCE 2015-52: AN ORDINANCE APPROVING THE FINAL DEVELOPMENT PLAN FOR A PROPOSED 308 RESIDENTIAL UNIT ACTIVE ADULT COMMUNITY, AND 5 ACRES OF PLANNED COMMERCIAL DEVELOPMENT ON ROUGHLY 39 ACRES.** *Tabled from the December 1st Meeting.*

Don Hunter, Schottenstein Real Estate Group. We went back and refined some aspects of the proposed ordinance. I will highlight each of the points in Section 2:

- Occupancy limitation and control – limits the occupancy of each one of the rental homes to two persons per bedroom.
- Active adult community control:
  - Architectural elevations and interior floorplans (inside of the homes) are precise and specific to be tailored to the active adult community.
  - Community public amenity areas are also tailored to the active adult community.
  - Any changes to these items must come back through the City's final development plan amendment process. No changes to these items can occur without approval of Council.
- Maintenance and emergency services provided 24 hours a day, seven days a week.
- Sub-area B building restrictions. These are the ranch homes. No less than 80% of the units shall have at least one occupant aged 50 years or older.

- Sub-area A restrictions. These are the 3 story buildings. None will be occupied by persons under 18 years of age.
- Parking modification made to increase greenspace along Seldom Seen Road.
- Setbacks - This is clarification to any future plat subdivision.
- Pool hours for children will be restricted.
- Public Improvements which are in final discussions regarding a Tax Incremental Financing (TIF) and TIF Agreement. The terms will require developer to construct certain public improvements and to pay for a portion of them.

Mayor Hrivnak: I noticed that you also added the annual vinyl siding inspection and I appreciate that as well.

Councilman Bennehoof: In Section 2.1 where it talks about no more than two persons per bedroom, how many bedrooms per unit and what is the breakdown of those units?

Mr. Hunter: 65-70% are two bedroom units. The other 30% are split evenly between one and three bedrooms.

Councilman Bennehoof: In Section 2.4, Sub-area B Building Restrictions, there are 15 units in total, so 80 percent of that is 12% of those units will be at the 50 years or plus. Do I understand that that is going to be an annual report?

Mr. Hunter: There are 15 buildings with 4 rentals per building for a total of 60 units. 80 percent of 60 is 48. At all times during the operations of those particular rental homes, 48 out of 60 would have at least one occupant over age 50. We provide the City with an annual file or report.

Councilman Bennehoof: What is the percent of the total number of units that would be restricted or targeted for the 50 plus?

Mr. Hunter: There are 120 units that are restricted to no children. You can break it into two components. You can take 48 and divide it by 308. That would be a pure age restriction only. If you add 48 to 120, what we are saying is a 168 out of 308 are restricted (approximately 65%).

Councilman Bennehoof: What are the pool hours for children? What are the restrictions being considered for those children that may be living there or visiting?

Mr. Hunter: We haven't completely figured that out yet, but are making a commitment to having that in a reasonable fashion.

Mayor Hrivnak opened this item to public comment.

Beverly Hurst 278 Bear Woods Drive.

- Has lived here for 10 years and has attended many zoning meetings regarding this land and its numerous development proposals.
- It is time for a reality check for the naysayers out there. The land will be developed at some time in the future.
- There was a lot of scrutiny, criticism and compromising going on during the zoning meeting. It is time to recognize that the developer has tried to compromise and work with the zoning board and Council.
- There is no perfect plan, but thinks it's a good use of this land and will be a good neighbor.
- It's time for Council to vote on this development.

Julie Meier, 305 Park Woods.

- I agree with Bev's comments.
- Would like to point out that at the zoning meetings that a lot of us attended, the City planner and City architect stated that on the north side of Seldom Seen, the City plans on putting in a gymnasium and a combined office building/salt hub. Those two buildings alone could be equal to or higher than the three story building that this developer is talking about.
- There is a corridor at Seldom Seen that could handle taller buildings.

Tom Gemperline, 290 Bear Woods Dr.

- The residents at The Woods of Big Bear Farms are the only people directly affected by your

decision. While it affects others, it is minimal.

- Four issues of concern: Traffic, schools, height of three story buildings and vinyl.
  - The first two have been taken care of – not as significant a problem as people have stated.
  - Height - doesn't think a progressive city like Powell can keep everything close to the ground – things have to go up. The township will surround it with big buildings if we are not careful.
  - Vinyl - the developer made a tremendous presentation in zoning about vinyl. Never heard so much about vinyl. The developer convinced some of the planning people to change their minds because only one has voted against it.
- Don't make the wrong decision by turning it down for the wrong reasons.

Dan Swartwout, 8818 Westward Way. With the additional sections added to the ordinance, he believes there are additional things to talk about:

- Project should be denied due to numerous divergences from Powell zoning ordinances.
  - Doesn't following zoning ordinance standards for apartment uses in a Planned Commercial District.
  - Majority of people don't want it as seen in the outcome of the last referendum.
- Concerned about age-restrictions if that is what Council needs to pass this.
  - Needs to be done correctly and to follow the law.
  - Age restrictions section is new as of yesterday, has Council and the Law Director had enough time to review/research the value of this so we are not subject to a lawsuit?
    - Lawsuit filed by the DOJ against the City of Santa Rosa, California [reads from a press release]. It talks about substance of the lawsuit [Not submitted to the Clerk as an Exhibit] relating to senior age restriction and lack of verification by the HOA or city.
    - Discrimination on the basis of familial status in housing is unlawful in state law and federal law. There are exemptions, including Housing Older Persons Act of 1995 (HOPA). He doesn't believe Council are in compliance of this exemption.
    - We are putting age restrictions in our City Code. What is the statutory basis for our age restrictions? What is the basis for enforcement?
- Believes the new additions are unlawful or unenforceable at best. Believes it violates federal law.
- Believes it should be researched for compliance.
- Believes it should not be voted on this evening.

E. Lynn Miller, 376 Park Woods Lane. [Exhibit 1]

- \* Doesn't see how Council can approve a plan without indicating what is going to happen to the two commercial lots (parcels E1 and E2).
- \* Divergences – Fire department should review the 8 unit layout.
- \* Storm water runoff – Believes the runoff will be enormous and affect adjacent areas.
- \* Concerned about the wetlands adjacent to the property. Site is a wet basin that will affect other areas quickly through storm water run-off. There is no grading plan.
- \* Does not believe a realistic traffic study has been done.
- \* Believes there is a possible negative impact to Beechwood Nature Preserve.
- \* Asks Council to table until the issues he raises are addressed.

Joseph Sansone, 368 Park Woods Lane. Is here to discuss one thing: the demand for new rental market housing in Delaware County. Housing Market Trends, Rental Market-Delaware County Submarket (*publication date unknown*) [Exhibit 2]. States the source of the article is the Columbus Ohio Comprehensive Housing Market and U.S. Department of Commerce.

- For a 2 bedroom rental for rents above \$1,500, units of demand is 40 units over four years and a demand of 160 units in the rental range of \$700-899 over four years.
- Believes there is no demand for the project.
- Asks Council to table this until the developer presents a market study that the project will be successful.

Terry Hoppman, 8500 Northbluff Lane. What is the cost of a free park?

- Generated income tax will not exceed the city services demanded by the parcel.

- City will sell 2.3 million in bonds to help the developer build this property.
- Believes the property will become more valuable as the connection to the city of Delaware is complete.
- Doesn't like the idea of taxpayers giving up any potential revenue for 27 years or more.
- Seven divergences in this Final Development Plan which allows this developer to do things others have not been permitted to do.
- Would like Council to vote 'no' as it currently stands with the TIF.
- Reads written statement by Brian Ebersole:
  - Does not support or oppose project.
  - He will make legal resources available to others to write a petition of referendum or to overturn.

Hearing nothing further, Mayor Hrivnak closed the public comment session.

Mr. Hunter: I would like to address a couple of points that were raised.

- In terms in time and energy spent on research on this - We researched age restriction matters extensively through legal counsel and our legal counsel advised that we are in compliance with the Fair Housing Act because we can provide a broad array of services and do so in a non-discriminatory manner.
- We have been through an extensive vetting process. If this project is not approved, we are obligated to return property to Liberty Township.

Councilman Bertone: I agree with Mr. Hunter that there has been an extensive vetting process on this project. I am a firm believer of controlling our own future and I think we should vote on this project tonight. This is something that concerns me that if it goes back to the township, we lose the economic benefit associated with that no matter what that may be. That parcel, within the township, is coded as commercial. What you see here today is a neighborhood opportunity. What you see down the road, I don't know what that may be. It is certainly a risk. I think that where we've been on the issue and where we are in the conversation today, I am far more comfortable with the project, age-restrictions included.

The park issue, the TIF aspect of this, the individual paying the TIF would be the owner.

Mr. Hollins: Yes. They will not get any break on their tax bill. The tax bill is just directed to specific causes.

Councilman Bertone: We are not voting on TIF tonight, but the final development plan. But in that TIF conversation that we've had, are the schools made whole? Fire/EMS?

Mr. Hollins: Yes. Millage is collected by us and distributed directly to the township.

Councilman Bertone: Again, I come back to where we are in terms of residents input, development input – I think it's time we vote on this and put this conversation to bed.

Councilman Cline: I think that this development belongs in the City and belongs in the control, both architecturally and from a planning perspective, within the city limits. I share Frank's concerns about what happens if the developer is in the position with a contractual obligation to return the land to the township. We have seen some proposals for this land in the past and those proposals caused great concern.

I think our first speaker tonight really hit the nail on the head for many when she said: 'there is no plan that's perfect.' That's true. I would be remiss if I said that this is a perfect plan because it's not. I think this project is appropriate for land that is bordering railroad tracks, a park, condominiums, and commercial developments. I think the developer has done a good job of addressing the concerns that have been aired over months and months of discussion of this project. I am prepared to vote in favor of it tonight.

Councilman Lorenz: I concur with what Rich and Frank said. Gene, with respect to deed restrictions, deed restrictions are not enforceable by the City, correct? [Mr. Hollins: Very rarely.] So I think that the key kicker here for all of us was what kind of mechanism do we have to insure that we will be able to control the zoning and linking these accommodations into the planning and zoning texts helps give the City the control and oversight so that these units will be enforced in the way they were intended to. There is a little hesitation on everyone's part -it was about fifty-fifty on this project. When we get into something new, it's natural to be nervous. Having the developer coming back towards the middle to put those types of requirements in the zoning code for this specific property helps me in my decision-making process.

Ms. Hurst, I put a star by your name. I thought you said it really well tonight. I know that a lot of people spent much time and effort coming to these meetings and I appreciate it. It is great to have the face-to-face public input. Dr. Miller, you have come up here many times and I appreciate your insight. My only comment with respect to hydrology is if this plan is approved, these guys will have to go through an extensive engineering review. They will have to apply for permits regarding storm water.

We have had comments on divergences. This is a planned unit development. There are no divergences to this. The applicant writes the development text. That is the zoning. If it doesn't fall according to what they write, it defaults back to the Zoning Code. Another point with respect to the comments, in Exhibit A, which will be attached to this ordinance, is another opportunity for enforcement. The building type has been reduced too. The last comment on not being able to study the Fair Housing Act, we've discussed age restrictions from the beginning of this process. So I'm comfortable that you and Staff have done the research on this and we are in compliance.

Mr. Hollins: I think we've tried to be pretty open and transparent of that discussion. I think we ran through it at one of the prior council meetings. I had an opportunity to check out that particular settlement agreement that was referenced in it. It was a pretty straight forward application of the FHA requirements as we had described them earlier. With that said, we've been through it. The applicant's attorneys have been through it. We are comfortable that we have a mechanism – that was the issue in that case, there was no mechanism in place - to double check this through the Zoning Code. As frequently as annually, we will check to be sure that the commitments are being met.

Councilman Crites: All the comments I had have already been touched upon. Gene, I wanted to ask you about whether the language of this Ordinance complied with the statutes. I have also done some research and reviewed this as well and agree with what you have said and with what Mr. Hunter said earlier.

This has been a great process. I think it's been important that we've had an opportunity to hear all the comments from people on both sides of the issue. I appreciate the efforts made by Staff and P&Z. Sometimes I think we overlook the efforts made by P&Z. They are citizens in this community just like us, they don't get paid and they put in a lot of hours and I appreciate all the work they did to get this development project to the point where we can vote on this tonight. I'd be remiss if I didn't acknowledge the work of the developers in this case. I think sometimes people that don't serve on this body feel that we immediately gravitate to the developer and always agree with what's brought forth. Mr. Margello knows that this is not the case as do the other developers that have come before this body in the last four years that I've been here. This developer has tried to accommodate the legitimate concerns raised by the members of this community and I appreciate that.

I would like to briefly say that I agree with my colleagues that have already spoken that there is no such thing as a perfect project. This is great a project, but not perfect. I have been on this Council long enough to have seen some of the projects previously proposed for this site. This is far superior to those. If this property is returned to Liberty Township, I fear that the development that could come from that arrangement could be something less than desirable. I believe that there is a need for this. I'm touched that the people that are most affected by this project in the Big Bear community are in favor of it and that weighs heavily in my decision. With that and all other comments that have been made by the rest of Council, I certainly intend to vote in favor of this.

Councilman Counts: I have been in favor of this project for some time now and I applaud the work that has been done to add additional language that helps tether my fellow councilmembers along in this process. We have an opportunity here to make the City better. We have a park that currently has about \$1.5 million dollars available from the bond proceeds that we can use, but it will not end up being a park that any of our residents will can use. We've seen other situations – Murphy Parkway – where 15 years went by because there was insufficient funds available to make that connection, and our residents have suffered as a result. I don't want to wait 15 years to see Seldom Seen Park built. That park is important to this community.

In 2010, our voters voted down an income tax increase and that income tax increase was intended for capital improvements. It was intended to keep our City moving forward and being the great place to live that it is. When the residents vote that down or vote down a particular development, they don't consider the ramifications of what that means. We on Council have a city to run. So if we want to build a park, if we want to have some place that we want our kids to use, we have to consider other options. This particular project allows us to build a park through the TIF, which we will hear more about later, with the bond proceeds that we have. It provides a project that in my view limits people, limits cars more so than any other type of potential



development that could be had in the City and in the township. So for that reason I have always been supportive of this and I will vote yes.

Councilman Bennehoof: I've been tortured by this project. I've tortured the developers about this project. I hope they took it in the spirit it was intended. I've discussed and counseled with numerous people – other developers, others that have some knowledge in this area, others with no knowledge in the area and constituents, neighbors, etc. I have been very adamant about the age restrictions and appreciate, Gene, the education about the Fair Housing Act and my misguided attempt for an age-related deed restriction. I think the accommodations recently made and vetted by numerous lawyers helped me get over the age restriction problem. I don't believe we are in violation of HOPA.

Someone made mention about fire and the concern about density. There are far more compact buildings in the area than these and the Liberty Township Fire Department has weighed in on that.

I too want to see the park move forward. I am not a big fan of TIFs for various reasons, however they do have their place. When we can get infrastructure improvements that are paid solely by the development, the development will pay off those bonds. It does decrease the denominator, but Fire and EMS are kept whole and that is my biggest concern. I'm satisfied there.

I don't know if the age restriction things are appropriate, but they are a far cry better than when they weren't [in there], and I appreciate that.

Regarding the comment about waiting for Murphy Parkway – our City, out of 800 plus municipalities in the state, has one of the lowest tax rates in the state. We are fortunate that we have a tax rate at  $\frac{3}{4}$  of a percent, but we can't pay for everything with nothing.

All that being said, I appreciate the input from the developers and the movement from the developers. I appreciate the input from each and every citizen. I am prepared to vote.

Mayor Hrivnak: I recall the fact that someone in the audience said that development will happen and I am convinced of that on this property. When we look at the location of this property, it is between railroad tracks and a commercial area. Planners would say the perfect development here is probably apartments.

I had a lot of concerns when this first came about. I have talked to these gentlemen for many hours and my concerns have been addressed for the most part. We've pounded on this for many meetings. P&Z did a fabulous job before we saw the planning, taking it from its infancy to what is before us. Then when you talk about things like the effect on the school, the traffic, and the age restrictions - how we could do that to help guarantee that what we see today is what we will see in the future.

I would like to thank the developers for their continued work with Council, and to the Staff and P&Z. This is something that I initially struggled with to now when I think it is the best thing for this property. I have seen many other plans for this property and I think this is by far the best fit for the City.

MOTION: Councilman Counts moved to adopt Ordinance 2015-52. Councilman Crites seconded the motion.  
VOTE: Y 7 N 0

**FIRST READING: FIRST READING: ORDINANCE 2015-64: AN ORDINANCE DECLARING THE IMPROVEMENT OF CERTAIN PARCELS OF REAL PROPERTY TO BE A PUBLIC PURPOSE AND EXEMPT FROM TAXATION; PROVIDING FOR THE COLLECTION OF SERVICE PAYMENTS; PROVIDING FOR THE DISTRIBUTION OF THE APPLICABLE PORTION OF THOSE SERVICE PAYMENTS DIRECTLY TO THE OLENTANGY LOCAL SCHOOL DISTRICT AND DELAWARE AREA CAREER CENTER; CREATING AND PROVIDING FOR THE DEPOSIT OF THE REMAINDER OF THOSE SERVICE PAYMENTS INTO A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND; PROVIDING FOR PAYMENT OF A PORTION OF THOSE SERVICE PAYMENTS RECEIVED BY THE CITY TO THE LIBERTY TOWNSHIP FIRE DEPARTMENT; SPECIFYING THE PUBLIC INFRASTRUCTURE IMPROVEMENTS AND COSTS TO BE PAID FROM THAT FUND; APPROVING AND AUTHORIZING THE EXECUTION OF AGREEMENTS TO IMPLEMENT THIS ORDINANCE; AND DECLARING AN EMERGENCY.**

Mr. Lutz: This is the first reading of a proposed tax increment finance district for Powell Grand. This item has been discussed in Finance Committee for three meetings. Instead of a formal staff report, we will have the developer's legal counsel, Greg Stype, walk us through the proposed TIF.

Greg Stype, Squire Patton Boggs, for the developer on the matter of the TIF: I will briefly summarize the high points of the ordinance. It is important to always approach TIFs from the standpoint that this is not a tax abatement or a tax break. It is not something that affects existing taxes in the City of Powell or on this site. Rather, it is capturing a portion of the increase in real property taxes that will result from the proposed development and channeling those towards the particular public improvements that you've identified when you passed this Ordinance. Those improvements are identified on Exhibit B of Ordinance 2015-64.

The memo that was distributed to you indicates that the amount that was allocated to Seldom Seen Park is one million dollars. The developer has committed that the first \$279K of the cost of these public improvements will be absorbed by the developer and then there is an anticipation, based on projections that were prepared by the City's financial advisor, that there will be a bond issued comfortably supportable of projected TIF revenues that should generate a net of about \$2,225,000 in the City's bond fund to fund a portion of these improvements. So we have improvements that total north of three million dollars, one million of which is going to Seldom Seen Park, two million which goes toward the road improvements and the other improvements on the list.

The other highlights that have been touched upon this evening but are worth reiterating is that the schools are receiving their full share of the real property tax revenues from this project. Based on the City's financial advisor's projections, the amounts that will go to the schools is approximately \$800K a year. In addition, Fire and EMS will be fully protected. That amount which will pass through the City on the way to Fire and EMS so you will see that on your books, is going to total somewhere around \$80K a year.

The first \$279K is being absorbed by the developer. To get to three million, there's another \$775K that will be advanced by the developer and repaid to the developer out of the proceeds of the TIF that are available only after the debt service on the City's bond issue has been paid from TIF proceeds and only after these distributions are made to the schools and fire department. So if for any reason the TIF falls short, the developer is at risk for the \$775K of reimbursement.

Mr. Hollin: We have asked that this be passed as an emergency and the reason for that is that by passing it any time in 2015 we would lock in the January 1, 2015 tax value and the TIF would pick up any increase in land value. We anticipate a large increase in the land value once this transaction closes. We would recommend Council consider passing it this year – there's likely to be north of the \$3 million dollar increment that could be captured this year. If you pass it any time in 2016, then your starting point is going to be January 1, 2016 tax value, and that's likely to be affected by this transaction itself. This would effect it for all thirty years it is in effect. This is talking about the base value for the starting point for the TIF for the life of the TIF.

Mr. Stype: Based on the assumptions of the City's financial advisor, this could be approximately half a million dollars over the thirty year period so it is a meaningful figure to get the books balanced in terms of the full array of public improvements that could be funded.

Councilman Cline: The 1.7 million value in 2015 versus whatever it turns out to be in 2016, is that important because it establishes the basis from which increase value is measured? [Mr. Stypes: That is correct.] And the increased value of taxation that flows into this TIF? [Mr. Stypes: That is correct.] And the change of valuation between 2015 and 2016 was it could have a half million dollars' worth of impact on the total revenue generated by this TIF over the life of the TIF. [Mr. Stypes: That is correct.] We talked for a minute about who's at risk. The revenue from the TIF is dedicated to paying off debt service on the bonds that the City would issue. [Mr. Stypes: That is correct.] If the revenue from that TIF exceeds what is necessary for debt service payment, the developer who has already spent their own money (\$775K), would have an opportunity to recoup that money. [Mr. Stypes: That is correct. That is only after the payment of debt services.] So in terms of priority of debt, we have the City, then we have the developer, and then we have the City again, right? [Mr. Stypes: That is correct.] Because if there is more than that – if that half million turns out to be available at the end of this, that money is available to the City for any capital improvement needs, am I understanding that correctly?

Mr. Stypes: Yes. The developer is at risk if it falls short and the City is to benefit if it exceeds.

Councilman Counts: If we enact a TIF on this parcel, those dollars that are generated from the TIF, they can only be used for public improvements near or surrounding the area.

Mr. Hollins: Per the statute, public improvements must benefit the TIF area for this particular parcel.

Councilman Counts: With respect to the increment we have talked about, we've excluded the schools, fire and EMS, but the Powell portion that we would get if there had not been a TIF is really a small portion of property taxes, is that correct? It's not as if we did not have this TIF, that suddenly there would be this pool of dollars coming into the City, it would theoretically be going to other county...

Mr. Lutz: We do not rely heavily on property taxes for our operations.

Councilman Crites: With respect to the emergency provision, if this Council decides that the mathematics make sense and they want to use the 2015 assessed evaluation, that has to be passed and it has to be effective in 2015? [Mr. Hollins: That is absolutely correct] By passing it as an emergency, that would ensure that it become effective immediately in 2015. Otherwise, if it is not passed as an emergency, then it is effective 30 days after passage, which would take us into 2016, is that correct? [Mr. Hollins: Yes].

Councilman Cline: Gene, you've done the research and is it permissible for the City and this Council to conclude the change in valuation that occurs in less than a month constitutes an emergency?

Mr. Hollins: Yes. The legal standard that applies to that is the courts generally defer to the legislative determination of what is an emergency.

Councilman Bennehoof: I believe I understand from those that did attend the Finance Committee meeting that our bond rating will not be affected by this TIF bond flow. [Mr. Hollins: That is correct.] I only want to summarize this for the benefit of the community. It's the tax increment that we're capturing and it's significant. It's a tax increment capture that gets directed to the infrastructure that benefits the community. The other point I want to clarify, if there is a surplus from this bond after the debt service and all the other things, does the City get to use that at its discretion?

Mr. Hollins: It would use that for the purposes that are set forth on Exhibit B. If there is excess funds, there is an opportunity to revisit those and potentially add to them, but they would have to directly benefit this area.

Councilman Lorenz: Since this TIF item has made its way up to the public level, there has been dialogue or a conception out there that City taxpayers are being fleeced or 'it is costing me money, what are they doing?' Can you speak to that? Specifically how this individual parcel is the only one involved in this TIF and the only ones paying the fees?

Mr. Stype: As we discussed, it's the incremental increase in value from this development. It is the development that pays additional real property taxes by virtue of the fact that you've gone from land to land with structures on it. That always results in additional real property taxes. What the TIF does is take those additional payments from that site, and only that site, distributes per your ordinance, first to keep the schools whole, then to Fire and EMS, and then the balance is in a tax increment fund that is held by the City and allocated per your direction. It is only the revenue from this site that is flowing to those purposes.

Councilman Lorenz: Under a TIF district, through the Ohio Revised Code, this is a tool we have in our economic toolbox which is legal and done in other jurisdictions. This particular one is unique within Powell because we are not capturing that increment that's going to the schools. In this case, those monies are being funneled right to the schools, is that correct?

Mr. Stype: That is correct. In fact, it's a feature of the Ohio Tax Increment Financing statutes that you can have a TIF that takes no money from the school district, so unlike what happens with Fire and EMS,



where that share is going to come to the City, and the City would turn around and pay them. With the school district, the dollars are collected by the county treasurer and paid directly by the county treasurer to the schools. Those dollars don't even pass through the City.

People think of TIFs as economic development tools, but in this case, I would also think of TIFs as public infrastructure funding tools.

Mayor Hrivnak opened this item to public comment.

Tom Happensack, 127 Kellys Court. Has several questions:

- How many improvements would be made if the TIF were not in place?
- How much in service payments will the developer pay on a TIF?
- What services that we currently pay property tax on will not be funded?
  - The community will pay for the increase public services offered to the units on the parcel, not them. City property owners will pick up the cost of those services for those 30 years.
- Assumes if there was no TIF money, the City would require the developers to pay for these things [public infrastructure improvements].
- Wants to address the emergency clause. [Reads 5.06 of the Charter]. Doesn't believe the tax valuation would constitute an emergency.
  - Believes the public doesn't have a chance to review or talk about it.
  - Believes that Council suspends the rules too often.

Councilman Counts: I would recommend that we have a special meeting.

Mr. Hollins: We cannot suspend the rules on this. We do have notice requirements to the school district and the DACC. Those were done per the statute and were during the 14 day waiting period right now. Staff would request that Council consider whether to pass this yet this year to pick up the increment, the first day to be able to consider the increment is the 23<sup>rd</sup> of December. So staff is requesting Council consider a special meeting for that date.

Hearing nothing further, Mayor Hrivnak closed the public comment session.

Councilman Cline: The Finance Committee did consider the tax increment financing and the consensus of the committee was if the City is going to approve this TIF it should be approved in 2015. It wasn't unanimous on approval of the TIF, but there was no dissent about whether to do it in 2015.

Councilman Bennehoof: What were those reasons for the passing? I understand the reasons, but I'd like it for the record.

Councilman Cline:

- The most compelling reason is the change in the base value from approximately 1.7 million to approximately 4 million plus. A 2.3 plus change in the base valuation from which the increment taxes flow has a significant impact over the 30 year life of this TIF. We heard conservative projections are half million dollars.
- Unlike a commonly stated perception, all of the money that pays the taxes going into the tax increment finance district fund are paid from this land. Only the people that own this land this land are paying this tax. I think Mr. Happensack made a good point when he said that other tax entities besides the school districts and fire/EMS are affected by a TIF. That is true of every TIF that's done in Delaware County. But I think Mr. Happensack was slightly misstating who is impacted by that. It is not the residents of Powell that are solely affected by that, but the residents of Delaware County. All of the assessed value of the entire county pays for that tax and we are freezing the valuation of this parcel for the next 30 years. But it's not this parcel compared to the geographic area of the City of Powell but this parcel compared to the geographic area of Delaware County.
- How would these improvements occur if there were no TIF? The answer is the developer could make a business decision that says I can develop this land and could front the expense myself or we can have what has happened here and in many other developments across Ohio, is the developer says when you tell me I have to put in a traffic light or build a road, etc. that serves all of the residents of the greater community, you've now changed the business discussion to the point where I cannot make a profit and it's not

a reasonable allocation of my resources, so the project simply never goes forward and improvements never happen either. That is where we are with this development. The public improvements that this TIF is designed to accomplish are the types of public improvements that benefit the broader area, rather than just this parcel. Particularly the park.

Those were the factors that were most persuasive in committee to recommend that this be done as an emergency.

Councilman Counts: Many of the improvements that have been talked about are Delaware County requirements. If this were to be developed within the township, it would be required, as well as in the City. There is no benefit in that regard to being in the City. But if this were in the township there would be no TIF because townships can't do TIFs. There would also be no park improvements because there would be no dollars to go toward that. Steve, when we were talking about the Sawmill TIF, we had all sorts of county agencies coming in and complaining about what they were losing. If I remember right, we had a spreadsheet that showed that of all the dollars that these agencies get from the county, our piece of it was very small. So while it affects them, it doesn't affect them very much.

Mr. Lutz: When we had some opposition, that was for the downtown residential TIF. This is a commercial TIF, so it's comparing apples to oranges. It did go on the ballot here in Powell and the residents did approve it. But you are right, it is a very small TIF. Polaris is a much bigger TIF and Sawmill Parkway is not reimbursing the schools.

Councilman Counts: There are a lot of TIFs out in Delaware County and ours is pretty small. I recognize the pain that it creates for some of these agencies, but it's a legitimate tool. We have been very deliberate in how we've chosen to use them and we've been very deliberate in not causing the schools and Fire to lose anything. The bottom line is there would be no park. We have money to do some improvements, but that's moving ground around. We will not have a usable park without the TIF. Or we go to the voters [for the money].

The other thing that Tom [Happensack] talked about is the emergency clause. The US Supreme Court has defined the term 'general welfare' very liberally.

The other thing that Tom [Happensack] mentioned was the payments over the thirty years. Does anyone know what those are?

[Multiple speakers]

Councilman Cine: I think from Finance Committee, and it's a rough estimate, but in the neighborhood of \$200K per year.

Mr. Hollins: That is after deducting the school and fire.

Mr. Stype: In round numbers, it's about 1 million dollars a year. \$800K comes off the top for the schools per year. Another \$80K per year for EMS.

Mayor Hrivnak: One thing I wanted to clear up. Suspension of the rules has to do with number of readings of an ordinance. By suspending the rules, it allows us to act at the first reading. Without a suspension of the rules, we would have to take it to a second reading. An emergency has to do with when the ordinance becomes effective. Under an emergency, that ordinance becomes effective immediately upon approval. Otherwise, it becomes effective in thirty days. Whether it is an emergency is under the sole discretion of Council.

Councilman Bennehoof: For the community at large, our real estate tax pot is dominated by the schools. Its second biggest bite is Fire/EMS, leaving somewhere less than 20 percent of the rest of that dollar to all the rest of the stuff. Our real estate taxes for all the rest of those services are collected from the entire county. Taking this one parcel out of Delaware County's contribution is a much smaller impact than taking it out of Powell's contribution.

Councilman Cline: Tom [Counts] suggested that we hold a special meeting to address this in the calendar year 2015. I favor that. My suggestion is that we call the special meeting on December 23<sup>rd</sup> for sole purpose of addressing Ordinance 2015-64.

Mayor Hrivnak called for a special meeting to be held at 7:00 p.m. on December 23, 2015 for the purpose of

addressing Ordinance 2015-64 and any other business that may confront us at that time.

**FIRST READING: ORDINANCE 2015-62: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2015.**

Mr. Lutz: As we talked about in Finance and City Council we did refinance one of our bonds to take advantage of the low interest rate. It was advantageous because of the imminent rate hike. As a result of the refinancing, we received a net interest rate of 2.3%. The City has a Triple A bond rating which assures that we get the lowest rate possible. The net savings was \$606,114.16 and that savings goes back to residents of the City of Powell. What this appropriation does is allow us to pay off the old bonds and replace them with the new lower interest rate.

Mayor Hrivnak 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 2015-62. Councilman Cline seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2015-62. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

**FIRST READING: ORDINANCE 2015-63: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO GRANT AN EASEMENT & RIGHT OF WAY TO AMERICAN ELECTRIC POWER ("AEP") OVER A PORTION OF LAND ADJACENT TO LIBERTY STREET SOUTH OF THE CSX RAILROAD, IN CONJUNCTION WITH AEP'S RELOCATION ASSOCIATED WITH MURPHY PARKWAY WITHIN THE CITY OF POWELL AND DECLARING AN EMERGENCY.**

Mr. Lutz: This ordinance relates to our extension and construction of Murphy Parkway. It will allow AEP to abandon and/or raise their utility lines primarily in the location where Murphy Parkway will key into S. Liberty Street.

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

Councilman Bennehoof: Are there any other surrounding impacts such as a potential cross walk that would be affected by this? And the easement is just for the movement of water, so that is all above ground, right?

Mr. Hollins: Correct.

MOTION: Councilman Cline moved to suspend the rules in regard to Ordinance 2015-63. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2015-63. Councilman Crites seconded the motion.

VOTE: Y 7 N 0

**RESOLUTION 2015-17: A RESOLUTION RE-APPOINTING EUGENE L. HOLLINS, ATTORNEY WITH THE LAW FIRM OF FROST, BROWN, TODD, L.L.C., TO SERVE AS THE CITY'S CONTRACTED LAW DIRECTOR.**

Mr. Lutz: We have a unique and informal process for appointing a law director. In 2006, an ordinance was created where every 3 years the City formally advertises proposals for a law director services for City Council to consider. We advertised last month in the Daily Reporter and I received two phone inquiries and one formal proposal from Mr. Hollins' law firm. We recommend that we appoint Eugene Lattimore Hollins for that three year Law Director position.

Mr. Hollins: It has been my honor and privilege to serve and I'd love to continue to do so.

Mayor Hrivnak opened this item to public comment.

Brian Ebersole, 215 Squires Court. Voices his objection to the re-appointment of Attorney Hollins as the City's Law Director because he feels that Mr. Hollins has given the City bad advice in the past on various matters.

Hearing nothing further, Mayor Hrivnak closed the public comment session.



Councilman Cline: I essentially disagree with everything Brian said. I think Gene has done a fantastic job representing the City. I think that the courts will decide the merits of the various court cases that Brian [Mr. Ebersole interrupts from audience] I was one of the architects of the ordinance and charter amendment that requires the City to seek applicants every three years. That was because prior to that date, we had a long standing relationship with an attorney who served the City well. But over time the City's needs outgrew that person's capacity to perform. Gene and his firm have done an outstanding job for the City and, for that reason, I am proud to vote to adopt Resolution 2015-17.

MOTION: Councilman Cline moved to adopt Resolution 2015-17. Councilman Crites seconded the motion. By unanimous consent of the remaining members of Council, Resolution 2015-17 was adopted.

VOTE: Y 7 N 0

#### COMMITTEE REPORTS

**Development Committee:** Next Meeting: TBD.

**Finance Committee:** Next Meeting: Tuesday, January 12, 2016, 7:00 p.m.

**Operations Committee:** Next Meeting: Tuesday, January 19, 2016, 6:30 p.m.

**ONE Community:** Next Meeting: TBD.

**Planning & Zoning Commission:** Next Meeting: Wednesday, January 13, 2016, 7:00 p.m.

**Powell Community Improvement Corporation:** Next Meeting: TBD.

#### CITY MANAGER'S REPORT

1. I have notified the 2016-2017 councilmembers that we will have a council full second session at our second council meeting on January 19<sup>th</sup>. More details to follow.

#### OTHER COUNCIL MATTERS


There were none.

#### ADJOURNMENT.

MOTION: Councilman Counts moved at 9:51 p.m. to adjourn. Councilman Cline seconded the motion.

VOTE: Y 7 N 0

**MINUTES APPROVED: December 23, 2015**

  
Jim Hrivnak  
Mayor

12-31-15  
Date

  
Karen J. Mitchell  
City Clerk

12-31-2015  
Date



#### City Council

Jim Hrivnak, Mayor

Jon Bennehoof

Frank Bertone

Tom Counts

Mike Crites

Richard Cline

Brian Lorenz