



**City of Powell, Ohio**  
City Council

**MEETING MINUTES**

April 5, 2016

**CALL TO ORDER/ROLL CALL**

A regular meeting of the Powell City Council was called to order by Mayor Brian Lorenz on Tuesday, April 5, 2016 at 7:34 p.m. City Council members present included Jon Bennehoof, Frank Bertone, Tom Counts, Jim Hrivnak, Brian Lorenz, Brendan Newcomb and Daniel Swartwout. Also present were Eugene L. Hollins, Law Director; Steve Lutz, City Manager; Megan Canavan, Communications Director; David Betz, Development Director; Rocky Kambo, GIS/Planner; Chris Huber, City Engineer; Karen J. Mitchell, City Clerk, and interested parties.

**PLEDGE OF ALLEGIANCE**

**CITIZEN PARTICIPATION**

Mayor Lorenz opened the citizen participation session for items not on the agenda.

Len Pivar, 165 Thornbury Lane. I'm here to express my concern over the cost to taxpayers as a result of an illegal and unconstitutional attempt to change Powell's Charter. Our Constitution calls for a representative government. You're the elected representatives and have responsibility under the Charter, the Constitution and to 12,000 residents of the City. I request that Council make public the real cost of staff and legal fees incurred in defending this lawsuit and address the fact there could be hundreds of thousands of dollars in damages to the taxpayers. I do not believe the people of Powell fully understand the consequences of these actions or the cost to the City and ultimately to the taxpayers. There's a group of anti-growth activists in our community. They are behind forcing our City into the lawsuit. I ask Council to look into any legal recourse that can be taken by the City on behalf of its citizenry to hold these organizers financially responsible for the cost of their actions. This money, whatever it turns out to be, could have been better spent on parks and road improvements.

There is something morally wrong with trying to deprive somebody of their right to use their property. Property – real estate - is an asset just like a savings account, 401 (k) or stock investment. Taking these rights is un-American.

Tom Ewers 499 Thrush Rill Court. I echo Len's comments. We have just gone through an election that required a lot of taxes being increased – things of that nature – and I think that we are expending capital in this area (in Powell) that is not necessary to be expended. I think that something needs to be done and I think it is the responsibility of Council to take action.

Richard Cline, 290 Weatherburn Court. I too want to talk about the Powell Crossing litigation. In 2014, a group of Powell residents objected to this Council's approval of Ordinance 2014-10 of the Powell Crossing development. When that vote occurred, our city attorney stated in an open meeting that Council's vote on Ordinance 2014-10 was an administrative action. Several members of Council also noted that the vote was an administrative action, not a legislative action. The citizen group that opposed this ordinance argued that the city attorney was wrong, that Council was wrong, and the vote on the ordinance was in fact a legislative act. Now, the Ohio Supreme Court and the federal court has both confirmed that our city attorney was right. This was in fact an administrative action. In response to Council's approval of Ordinance 2014-10, a group of citizens proposed a referendum, an initiative, and a Charter amendment.

I'm only going to speak about the Charter amendment. Our city attorney advised Council that the proposed Charter amendment was an unconstitutional delegation of legislative power to a group of unelected and unaccountable private citizens, twenty percent of whom would not even be Powell

residents. The citizens group responded and assured Council, and ultimately assured the voters of the City of Powell, that our city attorney's legal analysis was flatly wrong. The Ohio Supreme Court and now the federal court hold that the city attorney was correct in his legal analysis. As a result of the flawed legal analysis asserted by this group of citizens, the residents of Powell are now at risk to pay hundreds of thousands of dollars to the owners of Powell Crossing. I read in the newspaper that the representative of this citizen group urges Council to appeal the federal court's ruling. A wise man once said 'the definition of insanity is doing the same thing over and over and expecting a different result.' It's time to stop the insanity. Our city attorney told us that the Charter amendment was unconstitutional. The Ohio Supreme Court told us that the Charter amendment was unconstitutional, and now the federal court has told us that the Charter amendment is unconstitutional. On behalf of myself, my family, Mike Crites who I met with today who would have liked to have been here but asked me to include his name in that list of people, and all the other residents of the City of Powell who will in fact pay the bill for this, I urge Council to stop the insanity.

I want Council to consider three things: Negotiate a settlement with Powell Crossing to put the litigation to an end and to put this sad story behind the City; stop wasting City resources defending the indefensible; and stop the hemorrhaging of money damages that are building every day. I urge Council not to appeal the federal court decision in the Powell Crossing litigation.

Brian Ebersole, 215 Squires Court. Unlike Messrs. Ewers and Pivar, I've been directly involved with this federal case with the Charter amendment. And to correct Mr. Cline, the Supreme Court did rule that you can overturn something like Powell Crossing with a charter amendment so, just to clear that up, that's a very clear thing. So, that being said, I'm the one that's been advocating for the people that you are supposed to be representing and so I'm really thinking that we should listen to what I have to say here. I mean the court has already said that the City is not defending the Charter amendment. They've asked me to reply to the developers in briefs. In fact the 53 page decision that we are all aware of was a response to my reply brief. So that being said, Judge Graham's decision is very wrong and that should be obvious. Everyone knows Powell voters banned high density housing in downtown Powell in the 2014 election. A non-elected judge should not be striking down popular vote, especially when it's premised on the outrageous position that Powell voters did not clearly want high density housing – or would not want the ban on high density housing. We all know the Charter amendment specifically passed in this town because everyone wanted to ban high density housing in the downtown Powell area. To say anything else is ludicrous. So that being said, the City should repeal this because it's so wrong. I mean you can't say you're seriously representing the city of Powell if you're not going to appeal this decision. And I mean striking it down is the right thing to do here. It's not the right thing to do from the judge's perspective. And there's no reason not to appeal just because you personally don't – wouldn't want high density housing in the downtown area.

So that being said, even further for an appeal, if there is serious worry about damages, which I don't know why there would be, you would want to appeal this decision even further. I mean based on that type of information. So, that being said, this is the question I want to ask and I hope it's answered here and an offer as well: Is there some sort of gag order on Council discussing this matter with citizens – myself – because it seems like there is. It seems like there's something like that going on here. I mean Council members should be able to meet with me to discuss and represent me for me to tell you why this decision is so wrong. There is a lot to talk about. There is a 100 reasons here, way more than we can talk about in 3 minutes, and what I'm asking is one-on-one private conversations. I'm not seeking privileged communication. I'm not asking what happened in your executive sessions. I'm just trying to help advocate on this issue. As I just stated, the court has been dealing with my reply briefs, our amicus briefs in this issue. I have a lot to offer as to why the City should appeal and to not discuss it would be ludicrous. So really just to end, the question I really want to get answered is: would City Council be open to these kinds of discussions?

Mayor Lorenz: I would make a comment to you Mr. Ebersole. This Council has not had the opportunity to discuss this with the Law Director. Upon having that discussion, some of your questions or arrangements or whatever you'd want to seek may happen. But it wouldn't be appropriate for us to talk about it as it's still pending litigation. We will be meeting in executive session tonight to discuss this matter and, based on the outcome of that, you can follow up with any number of us.

Chris Shear, 8262 Wildflower Dr. I wanted to talk again about the referendums in general. When I was going around and talking to people and when I talk to people now in our neighborhoods and who live in the City of Powell, what I've noticed is that the referendums that were in question here – there have been two of them - but I believe that people have been misrepresented by these referendums. In my opinion, referendums should be used if there is an egregious abuse of power by Council. This is a representative government, so we elect you all to represent us in our best interest. When you look at the potential legal fees, which I'm asking tonight for Council to give us one thing: How much we have incurred in legal costs to date pertaining to these two referendums which have been deemed unconstitutional? But I really think the residents of this community need to be aware of how much these referendums have cost us and what has come of it? Where are we? What good have these referendums done to any of us? I ask Council, at some point in the near future, to tell the taxpayers what the total cost of these two referendums have been. And yes, I realize that insurance may pay for a lot of these damages, but we will have to settle these lawsuits with these developers.

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

**APPROVAL OF MINUTES – March 15, 2016**

Councilman Swartwout requested that a change be made to the minutes on page 7, last paragraph from 'readings or a dispensation' to 'readings without a dispensation.'

MOTION: Councilman Counts moved to adopt the minutes of March 15, 2016 as amended. Councilman Bennehoof seconded the motion. By unanimous consent of the remaining members of Council, the minutes were approved as amended.

**2016 POWELL CITIZEN ATTITUDE SURVEY – Marty Saperstein, President of Saperstein & Associates**

*Council had a general discussion regarding the bi-annual community attitude survey and reviewed the questions posed in the 2014 Community Attitudes Survey as well as the results of the all the surveys from 2008 to date. Comments were solicited from Council for additional questions or topics to be added to the survey, deletion of irrelevant questions and review of baseline questions, with an eye toward drafting an updated survey to be taken later this year. The purpose of the survey is to help Council make decisions on behalf of the voters.*

Mr. Saperstein indicated that he would draft a survey for Council's review and approval based on the discussions tonight.

**COMMITTEE REPORTS**

**Development Committee:** Next Meeting: Tuesday, April 5, 2016, 6:30 p.m. We met this evening. We started with an update on a lot of our projects that are underway. We also talked about our goals. Three goals are well underway and another two are under discussion and those two are parts of what we're working on already.

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

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

**ONE Community:** Next Meeting: Tuesday, April 19, 2016, 6:30 p.m.

**Planning & Zoning Commission:** Next Meeting: Wednesday, April 13, 2016, 7:00 p.m. Current agenda items are on the Current Proposals page on the City's website.

**Powell CIC:** Next Meeting: TBD

**Zoning & Building Code Update Diagnostic Committee:** Next Meeting: Tuesday, April 26, 2016, 6:00 p.m.

**CITY MANAGER'S REPORT**

Steve Lutz, City Manager: Just a reminder to all our citizens. It was very helpful recently with our police department on a case, if you see something, if you suspect something, say something. That is the way many crimes are identified and resolved.

**OTHER COUNCIL MATTERS**

There was none.

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

Councilman Counts moved at 8:55 p.m. to adjourn into Executive Session in accordance with O.R. C. Section (G) (3) Pending or Imminent Litigation. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bertone moved at 9:55 p.m. to adjourn from Executive Session. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved at 9:55 p.m. to reconvene in Regular Open Session. Councilman Swartwout seconded the motion.

(Did not discuss Personnel Board & Committee Appointments as indicated on the agenda.)

VOTE: Y 7 N 0

MOTION: Councilman Counts moved at 9:55 p.m. to adjourn from Regular Session. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

**MINUTES APPROVED: April 19, 2016**

  
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Brian Lorenz  
Mayor

4/21/16



  
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Karen Mitchell  
City Clerk

4/21/2016

Date

**City Council**

Brian Lorenz, Mayor

Jon Bennehoof

Frank Bertone

Tom Counts

Jim Hrivnak

Brendan Newcomb

Daniel Swartwout