



**City of Powell, Ohio**  
City Council

**MEETING MINUTES**  
**September 6, 2016**

**OPEN SESSION**

**CALL TO ORDER/ROLL CALL**

A regular meeting of Powell City Council was called to order by Mayor Brian Lorenz on Tuesday, September 6, 2016 at 7:30 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 Steve Lutz, City Manager; Eugene L. Hollins, Law Director; Dave Betz, Development Director; Chris Huber, City Engineer; Debra Miller, Finance Director; Megan Canavan, Communications Director; Karen J. Mitchell, City Clerk, and interested parties.

**PLEDGE OF ALLEGIANCE**

**PROCLAMATION – Hunger Action Month – Kelsey Fox, Delaware Hunger Alliance**

- There are 16,440 hungry individuals in Delaware County, 17% of that number are children.
- Delaware Hunger Alliance is in partnership with 30 different food pantries, cooking classes, backpack programs and other new and innovative situations/solutions to solve hunger.

**CITIZEN PARTICIPATION**

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

Steve Ussery, 195 W. Olentangy Street: I have lived at this address since 1977. I came to voice support for the Harper's Pointe project. I think it's a good addition to the neighborhood. It is a lot better than what is there now. I think it will be very positive for the downtown area, especially when it comes to density, traffic and things of that nature.

Brian Ebersole, 215 Squires Court: I wanted to talk a little bit about the planned commercial district in the City of Powell. I think there's been lots of misconceptions about the ability to build apartments on that type of property. It's come up a few times at the last zoning meeting. It seems that even our own zoning counsel was a little confused on how it worked. The developer here for the Powder Room is in planned commercial and he's telling people that he would build apartments as is. I just want to go over this real quick. I have a copy of the Planned Commercial Zoning Code. It lists apartment residencies as permitted use which is where I think the confusion starts. But we have to read the whole Zoning Code. It specifies that, 'Apartment uses in planned commercial district shall be located inside the old Powell through traffic-free zone.' So really what that's saying is in planned commercial some planned commercial can have apartments and some planned commercial can't. So you just need to figure out what's inside the old Powell through traffic-free zone. Now I have that map right here. Very clearly it goes along the west side of Grace Drive and kind of goes along Powell Road. North of Powell Road would be outside of the old through traffic-free zone. Just to clear that up because you hear this a number of times and, like I said, even in Planning & Zoning meetings from our own counsel, which is a little disheartening that they don't understand how that works. Just so that we don't hear that anymore from anyone. They do not have the ability to build apartments on planned commercial at the Powder Room site.

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

Mayor Lorenz: I want to lay some ground rules for the presentation. We are going to hear a presentation from the developer and owner of the land [for Harper's Pointe] on what he plans to do and what his options are for his property. Council is not voting on anything with respect to this property tonight. The developer would have to come back through our normal zoning process. This is informational only.

After the presentation, I'll let Council ask questions, as is customary, and then I will open it up to public comment. I know that many of you want to comment and voice your concerns or support. But due to the number of speakers, I'm going to limit everyone to 3 minutes each. I want to make sure that we're being fair, equitable and respectful to each other. Please direct your comments to Council when we get to that point. We will have other hearings on this, assuming this landowner moves forward on this project, and you will be able to provide comments at that point as well.

I know some of you may be streaming this meeting or doing a Facebook thing, and that's fine, just make sure you are doing it in a way that's not disruptive to others. Let's be courteous to one another.

**PRESENTATION – Harper's Pointe - Len Pivar, Len Pivar Builder, Inc.**

Joseph R. Miller, 52 E. Gay St., Columbus and Counsel for the Applicant: Mr. Pivar will give the presentation, I merely wanted to note for the record that on August 26, 2016, a detailed letter was submitted to Councilman Newcomb and counsel for the City. As set forth in that detailed letter, Councilman Newcomb has taken stands publically against development of this specific property online, in newspapers and campaign literature. We have the utmost respect for Councilman Newcomb and this body and did not make that request lightly. I understand that tonight is an informational presentation, I merely want to make a note of it for the record and that request may very well still be under consideration.

Len Pivar, Len Pivar Builder, Inc.: Before we get into tonight's presentation, I'd like to share something with you about my life and business philosophy: do no harm. Three simple words. There's an anti-growth group that mischaracterizes reality and fact, and attempts to create a public outrage against us by using terms like 'intimidation', 'traffic', 'density' while we present our legal and constitutional rights to utilize our property and develop [our property], which would be a major community improvement. When we analyze an investment, a land purchase, a development, we look at it from all sides - ours as well as the affected parties. This was the case in designing Harper's Pointe, a single family subdivision designed for empty nesters. When you objectively look at this, all the facts, there's no better use for this land and does no harm, but instead benefits the City, residents and seniors. A lot of these seniors that helped build Powell, for many years paid taxes to Powell as well as the Olentangy schools, wish to continue to live in this community. These seniors, in my opinion, are being victimized and discriminated against. Harper's Pointe would be a major community improvement, eliminating two ugly buildings - eyesores - and cleaning up an environmental mess. It reduces traffic and brings needed funds to Powell and the schools.

The purpose of tonight's meeting is to have an open and honest discussion to share accurate information and hopefully obtain real, non-emotional, productive feedback from both Council and residents. As I'm going to point out this evening, we have many options without rezoning to develop this property. We even have the option, without Council or Planning and Zoning's involvement, to re-rent the existing 8,800 square feet as well as utilize the rear acreage.

I'd like to introduce my partners in this endeavor: Chris Nesler, Kevin Likens, Brock Heller from Ferris Design, and our attorney Joe Miller from Vorys.

The lead issue was recognized after a Phase 1 environmental study. We then ran additional extensive tests, taking soil samples and drilling multiple bore holes to the water table. All of this material went to a lab for analysis. The result is a heavily contaminated area of unknown size, but presently within the limits of our property. The lead contamination is sometimes running 200 times greater than the EPA's residential acceptable level and 100 times greater than the acceptable commercial level. The environmental engineers told us that further testing was not worthwhile, that money would be better applied to actually cleaning up.

The lead cleanup is much like a cancer surgery. An onsite engineer examines excavated soils until he finds clean margins. The contaminated soil is treated for stability and hauled offsite. The commercial uses we are going to outline this evening would be substantially less expensive to clean up. Its requirement is fifty percent that of residential and may qualify for state funding as, unlike residential, the commercial uses are long-term job creators.

## **[Exhibit 1 – Harper's Pointe Presentation Slides]**

Option 1: is re-renting the 8,800 square feet, which are the two buildings at the front. We've already had a number of inquiries from bars, restaurants, a pawn shop, used car sales and a nightclub. As I previously stated, it is within our right to re-rent these buildings. In hindsight, I would not have terminated the Powder Room lease, they would still be there doing business as usual, if I hadn't done that. But the reality of it is there are far better uses for the existing buildings and we have the right to use the back of the property as it is currently zoned.

Option 2: the residentially zoned area has a conditional use of elderly nursing up to 68,000 square feet on the footprint and 35 feet in height of flat roof, potentially 204,000 square feet of elderly housing which is in high demand today. The use of the rear of the property is an option in combination with all other uses I'm going to outline tonight for the front of the property, or planned commercial area. In this case, opening a bar in the former La Travola building and used car lot in the former Powder Room building as well as six rental units toward the back of the planned commercial site. At the rear of the property we would have the elderly care facility.

Option 3: would be to tear down the existing buildings and build about 21,000 square feet of flex office space with six apartments above in combination with elderly nursing at the back.

Option 4: tear down the existing buildings and build a 2-story motel/hotel in combination with elderly nursing.

Option 5: again, Options 1-5 require no zoning change. In this option, we would tear down the existing buildings, build 14 single family homes on the planned commercial and an elderly care facility in the back. It still caters to our target market, the retired and elderly, wanting to stay in Powell.

Option 6: is a plan approved by Planning & Zoning. This option changes all of our zoning to downtown residential. This plan becomes a transitional buffer area between Olentangy Ridge and the commercial property. The plan complies with the new Powell comprehensive plan. The plan addresses a very large market, the retired Baby Boomers wanting to stay in Powell in a high-end, smaller, fully maintained home. This plan cleans up lead contamination to a residential standard with EPA involvement. This plan is single family detached homes and a gated community. The plan's roads are maintained by the HOA, not taxpayers.

### **Facts:**

- Powell Finance Committee looked at the property and, using lower than actual projected sell prices, determined the plan would create \$2.6 million in TIF funds that would go to Powell's coffers.
- Per the auditor's office, using lower than projected sale prices, the finished subdivision will produce over \$320,000 in new annual school taxes. And this is without putting a burden on the schools because our target market is empty-nesters.
- Lowest traffic use of all proposals.
- Twice the traffic if property is re-rented.
- Impacts value of homes in a positive way.

Mr. Miller: You can see that this is a new and different project that's been recommended by your professional staff and ultimately approved by the Planning & Zoning Commission. Things are also different from a year ago in another respect: the applicant now owns the property. They won't walk away. They can't and won't abandon this investment. Currently it's a contaminated site - portions of it are an eyesore - and the applicant is proposing to clean up the ground to a residential standard and build a development that this community can be proud of. The applicant came here to make this presentation tonight in good faith, but the property will be developed. If forced to do so, the applicant would simply pursue only permitted or conditional uses not subject to referendum. Those uses would include convenient stores, auto service stations. I disagree respectfully with Mr. Ebersole, it absolutely includes apartments and multifamily residences, clinics, medical and other clinics of any kind are permitted uses. Youth group homes, mobile home sales, pawn shops such as the one Mr. Pivar was contacted about and even livestock and kennels can be kept on the property. He is proposing something much better than that which will be a great asset to this community. I think that Council understands this, but the community should as well. If a few citizens of Powell

are going to try to stop any development to this property, then it will only be at the expense of their fellow citizens in this community because one of these other uses will have to be pursued.

Councilman Bennehoof: Mr. Miller, what is your specialty in law?

Mr. Miller: Real estate litigation, land use and zoning.

Councilman Bennehoof: Mr. Pivar, the last time I recall us speaking in these chambers about this issue, you did not know the extent, you knew the scope and breathe of the contamination. Do you know, from your core samples, the depth of the lead pollution?

Mr. Pivar: When we go in and start cleaning it up, we don't know how far it's going to take us. All we can do is clean it until we have clean margins. We do know though it's not in the water table. We drilled a number of wells - in fact you can still see the metal wall caps on the site today - and the lead has not penetrated to the water table. We ran a core test around the perimeter of the property to make sure it was contained within our property and it is. But it is an unstable condition. Every time it rains or snow melts, the lead gets spread further and goes deeper. Part of the problem is we don't know if it's a \$300,000 clean up or a 3/4 million dollar clean-up. We will not know until we actually go in and do it. All of the contaminated soil ultimately has to be removed from the site.

Councilman Bennehoof: Last time you talked to us about the 'lake.' I think you stated that it was a cistern, it's not spring-fed. Can you expound on that?

Mr. Pivar: It is a cistern that was built explicitly to provide water to the old farm house that was back there. It serves no purpose. We had civil engineers look at it. They spoke publically at our meetings last year and indicated that we could fill it in tomorrow and it has zero impact on the surrounding area. So it's a cistern, not a lake.

Councilman Bennehoof: And it's not classified therefore then as a wetland or anything like that?

Mr. Pivar: No. We've already had the EPA come out and look at it and there's a very small area which isn't even in that water area - it's a fraction of an acre - that's considered a wetland.

Councilman Bertone: It's been almost a year since you came forward with this effort and there is obviously a lot of history. What have you heard from some of the residents now with your recent conversations with P&Z? Are you getting positive feedback, negative feedback?

Mr. Pivar: I had a half a dozen phone calls today. We are trying to encourage people to come to the meetings and talk publicly. The problem has been that it seems the 'no' people are highly motivated. The people that have no problem with it are not as motivated to come to the meetings. But we are getting a lot of positive feedback. People are starting to realize that this is a subdivision. It's really not high density. We are not creating more traffic. This thing was portrayed as multi-family apartments and the facts are starting to come out so now we are getting lots of support. We have met privately with some of the homeowners from Olentangy Homeowners Association, and we are more than happy to meet with anyone privately that has an interest in the plan.

Councilman Bertone: In terms of the clean-up, what do you estimate the time to clean up the site would be?

Mr. Pivar: As I recall, the engineers were talking around two months. Keep in mind that we have to clean it up and bring dirt back in too. There is a 100 yard underground range that has to be removed, so not only are we going to have to haul out the contaminated soil, but then we're going to have to bring new soil in and refill these areas.

Councilman Bertone: You own the entire parcel, correct?

Mr. Pivar: Yes.

Councilman Hrivnak: I'd like to delve into some of your alternative options. The first one in which you said you would rent out the existing buildings, would that require a clean up to commercial standards or could that be done with the site as it exists?

Mr. Pivar: There is nothing that compels us to clean up the site. I've already discussed this with the EPA. Technically, we could go there and re-rent the buildings and not clean the site. But, if we were to use the commercial and did clean it, we would only have to clean to a commercial standard. It's about 50% that of the residential standard.

Councilman Hrivnak: One of the options that confused me somewhat was the placement of single family residents in a planned commercial district. Is that something we are allowed to do Dave?

David Betz, Development Director: It is a permitted use as part of the planned commercial district.

Mr. Miller: Single family attached or detached are permitted.

Councilman Hrivnak: You mentioned something about the elderly care facility in the back – that being the residential district. Residential district affords the opportunity for a building of this size?

Mr. Miller: Yes. Everything you're seeing tonight as other options would not require a rezone.

Councilman Counts: Dave or Gene, can you go through the conditional permit process and how that would play out if one of these conditional uses would come before P&Z or us?

Mr. Betz: Actually it would go to the Board of Zoning Appeals for a conditional use permit. There would be a public hearing involved, notifications much like we do for our zoning changes, and there are certain requirements within that conditional use permit, guidance for approval, probably a checklist of items, that the Board of Zoning Appeals has to find that the conditional uses would not be contrary to public interest.

Councilman Counts: Can you give us just a couple of those kinds of things that BZA would look at for their findings?

Mr. Betz: What kind of impact does it have on the roads, the streets adjacent to the site coming into and from the site. We'd look at traffic issues related to the use that's proposed, much like we would under zoning, the size and extent of the building in relationship to the property size that's there, can they contain the required landscaping, greenspace that's required in our landscaping code – things like that. Can they meet all of the provisions of our zoning code, parking, etc. Those are just a few, probably not all. We don't have many of those.

Councilman Counts: So then the BZA makes a decision. What's the standard of review that BZA would be using?

Mr. Betz: They would be using the standard of review within that section of code regarding conditional use permits and it sets forth various items for them to consider to be assured that the project can meet those standards.

Councilman Counts: Gene, does the BZA simply have to have a rational basis for their decision or is it a higher standard for that decision?

Eugene Hollins, Law Director: It's like any of our administrative decisions. It's not a legislative decision that goes on the ballot. It has to be, in essence, not unreasonable, unlawful, or irrational. It's basically a preponderance. The court is not going to substitute its judgment for our BZA's as long as BZA's decision is one of the reasonable decisions - it would be upheld. Again, it doesn't go on the ballot. The property owner has to appeal it to court and then we have to abide by what the court says.

Councilman Counts: So City Council actually does not get involved in that decision-making process?

Mr. Hollins: BZA goes straight to the Court of Common Pleas for review regardless of who the appellants are.

Councilman Counts: Mr. Pivar, one thing that you did not mention as an option, and it may not be an option, but I would like you to discuss it. In this back area that is currently residence district, you didn't provide an option for using that as a residence district – building some houses there. Why didn't you list that as an option?

Mr. Pivar: It's not feasible. Who is going to buy a 1 acre lot at the developed cost of that land next to the



shopping center? It's not going to happen. There are much better options out there.

Councilman Counts: What is a parcel of land that is ready to have something built on it cost? In the Parade of Homes lot, what is a lot cost?

Mr. Pivar: In, for example, Woodland Glen where we had purchased quite a few lots, we were paying for 1 acre in the \$150-170,000 range. Today if there was an available lot, it would go for about \$200,000 and that's with all utilities.

Councilman Counts: The maximum number of lots for this particular parcel is 6?

Mr. Pivar: I believe it would be one per acre.

Councilman Swartwout: My question relates to the proposed development. There's been a lot of talk about connectivity in Powell lately. This plan differs from the previous plan as far as a connective road. Can you explain your thought process behind that and your thought process potentially going forward as far as the connective roads?

Mr. Pivar: We had to have a substantial change. Deleting the road was part of that substantial change. That road should go in, so we would hold out buildings in the event we were able to make a deal with the shopping center and put that road in. We would hold out buildings on the very west side of the plan where it joins into some other properties and we would keep our options of expanding and buying up property open until the very end of the subdivision and sell those units last.

Mayor Lorenz: Dave, in the other scenarios other than what's proposed here now, he would need conditional use permit and then, assuming he received that from BZA, he could walk in and file for the zoning permit – there would be no more hearings within the process, correct?

Mr. Betz: Yes, that is correct.

Mayor Lorenz: Len, how many units are we looking at here, I think last time you had 47, correct?

Mr. Pivar: When we were asked to put the road in last May, we originally had 48 units. We took one of the units out and rearranged the units. We went down to 47. It's back up to 48 units.

Mayor Lorenz: So knowing what I know about the International Traffic Engineers Uniform Traffic Manual and use like this a PM Peak would generate .5 trips. If my math's right, then basically I could expect 24 trips out of this development at the PM Peak, would that be correct?

Mr. Pivar: Well the traffic engineer's study indicated 333 trips per day... [Mayor Lorenz: Right, I mean at the PM Peak. That's the focal point where traffic really snarls in town, that 3 – 7 p.m. period] But also keep in mind this is an empty-nester community primarily of retired people, our target market. They're not going to go out during Peak times. [Mayor Lorenz: And that is why the ratio is so small. I don't know what a single family is off the top of my head]. We have made the complete report available to Mr. Betz.

Councilman Swartwout: Just for the record and for everyone, can you explain the acronym PM Peak?

Mayor Lorenz: PM Peak is a planning and engineering term for number of trip generated from a business or a residence at that PM Peak, the highest traffic time. So here, it would be 3 pm to 6 pm.

Ok, so I'm going to open this up to public comment. I will give you three minutes if you would like to speak. When you get to about 15 seconds left, I'll give you a wave. At three minutes I will stop you. We have a lengthy agenda tonight and Council wants to hear from everyone regarding their thoughts on the project. You can also send us letters or emails or telephone us. I would ask that you keep your comments germane to what's been presented tonight. I'd like to try to stay out of referendums, finger pointing and things like that. When you come forward, please state your name and address for the record. Let's please be respectful on your comments and direct them to Council and keep it civil. If it gets out of line, then I will close the public comments portion.

Carol Reeves, 7442 Scioto Parkway: I'm a Remax agent in Powell and I've been a proponent of wanting this community to come in for a long time. I sold out the complex called Village at Murphy's Crossing and it was

a phenomenal project. A lot of people loved them, but a lot of people wanted something bigger. This plan that Mr. Pivar has is going to take all the people that live in Falcon Ridge, The Chase, The Retreat that have been calling me for 2-3 years and said they needed something bigger, nicer. They also want to walk to the post office. You want to talk about the traffic and I can tell you most of them will walk. They will walk to the corner to get ice cream at night. The people that bought in Murphy's Crossing were mostly single moms or had kids in college and most of them bought there so they could walk where they want to go. So I think one of the biggest bases you want to consider is that every 7 seconds, someone turns 55 in this world right now. It is going to be the largest buying population over the next 5 years and it's surpassing the 35 year olds. So while we are not all ready for senior centers, we would like to have a place to retire that doesn't mean we have to get rid of the big house and not have all the benefits of a custom built home that has similar square footage, maybe a little smaller, and brand new. And I think that's what all the buyers are calling me about. I'd like you not to let those people have to leave Powell just to find something. Let them stay in Powell. That's what they want.

Larry Coolidge, 78 W. Olentangy Street: I moved here in 1973 when I was one of the younger people in the community. Now I'm one of the older ones. As you get older, sometimes you get wiser. I've seen projects turned down because groups of people get together and say we don't want that. It's been for buildings, it's been for roadways and after time goes by, you find out it would have been better if that would have happened. I think this is another one of those projects.

This has nothing but pluses for it. Whenever you look at a project, you go down the list and put pluses and minuses. If you look at it, we get the contaminated soil out – that's a plus. The real estate taxes that is going to be received from that, even though we don't receive a majority of it, goes to Olentangy Schools which is building a new school \$300-\$350,000 - that is a plus. These people are not going into senior housing. Normally by the time you get into senior housing, your income taxes have all been minimized, your assets have been minimized, and you're not going to be paying any money if you're in a nursing home. These people are probably going to be empty nesters, they are probably going to have grandchildren up here. But they are still going to have income and bringing in income tax dollars.

As far as the traffic, a lot of these people will be retired. They're not going to get out in the 9:00 am or 5:00 pm rush hour traffic. They're going to go out at 10:00 am and I guarantee you they'll be home by 4:00 pm. I don't think there's any negatives for that site. I know Len Pivar and some of the partners. They haven't encouraged me to come up here. I came up here on my own. They are nice houses. I know Len's houses and I think they would be an asset to Powell.

Tom Kleven, 251 Hopewell Court: I am here to speak on behalf of Harper's Pointe. I think it's a great addition to the community and I would love to see it proceed forward.

Brian Ebersole, 215 Squires Court: Clearly we already voted not to do this a year ago. So this is, first of all I'll just say it, it's ridiculous that we are considering overturning a vote just because the developer keeps threatening us.

And just to give you a little background on that, last year as we went through the petition process to stop this almost identical project, he subpoenaed 53 not only petitioners but people that just signed the petition trying to intimidate future petitions and make people feel uncomfortable that if they sign a petition they'll have a sheriff at their door and they will have to show up to a hearing. In addition, after he lost the election he thought well we better really make sure that they don't try to do this kind of thing, or maybe my next project will get petitioned, so I'll sue them – a frivolous lawsuit for no reason. You mentioned this at the zoning meeting and I didn't bring it up, so now me and 10 other individuals are suing him because we can't set that precedent. I mean obviously in Powell we have to be able to feel comfortable signing a petition and certainly be able to circulate a petition. And the reason I brought that up, more importantly, is because what we are doing now is presenting things that at least the developer's hoping is less desirable than the thing that's up here right now that we already voted down. I hope we take it seriously that we already voted on this and that you're considering overturning that. I just want to make sure.

But, that being said, we can do a charter amendment. We did a charter amendment before and when Delaware County decided not to put it on the ballot, they lost to the Supreme Court who made it very clear that we can do a charter amendment to overturn something that is undesirable. I mean [turning toward the audience] we'd have to talk about it as a community, but don't let them scare you into thinking oh well they're just going to do whatever they want out there.' [Mayor Lorenz: Brian, please direct your comments to us. Do you have comments on the plan?]. Yeah, we already voted not to do it.

And so continuing on, he brought Joe Miller to threaten Brendan Newcomb on voting on this thing which I mean [turns to Mr. Miller], Joe, you're going to lose that. [Mayor Lorenz: Okay, Okay (bangs gavel), you're done.] And then finally, if you approve this, [Mayor Lorenz: You're done, you're done.] if you approve issue, you don't have... [Mayor Lorenz: You're done!] This will go on the ballot. This is the exact same project that was before the court and it will go on the ballot [Mr. Hollins: Brian, you're out of order.] [Mayor Lorenz: You're out of order]. Well, everyone so you know, this will go on the ballot should they approve this. [Mayor Lorenz: You're out of order. Please have a seat before I have you removed].

Marcy Freed, 97 Beech Ridge Drive: My home abuts this property. I don't really care so much about the legal ins and outs of this. I don't know enough to talk intelligently about it, so I will leave that to the rest of you. But what I do want you to know is that I've lived there 19 years. When I look at the options of what can be in my backyard, this is the most desirable to me. In the years I've lived there, I've thought about it over and over about what I'd like to be there. If I could have a park that would be awesome. I like this project. It works for me and I can live by it. I think many of my neighbors feel the same way whether or not they want to get up and talk, I'm not sure, but they are here and most of us are in favor of it and hope that we will have an opportunity to see it developed. I am glad that I have had another opportunity to revisit it after it was turned down the first time.

Mr. Miller: At the risk of making the point too many times, we are not here to cast aspersions. We are not here to talk about litigation. I think it is fair, at times, to mention the property rights because they do matter. I appreciate this kind woman who just spoke in favor of the development, but it can't be a park. It is a private property. And the feedback that Mr. Pivar has received has been overwhelmingly in support of this new and different project. Talk of litigation and charter amendments that can lead to just more taxpayers' funds being wasted on attorneys and damages is not productive. Mr. Pivar came in good faith to give this presentation to begin a conversation with the community in moving with this development forward.

Jeremy Cole, 89 Beech Ridge Drive: I am one of the neighbors [of this development] and live next door to Ms. Freed. When this initiative began a year and a half ago, I was one of the opponents for two reasons: I thought the plan had holes, and I am against the perceived intent to develop every inch of green grass – the green grass being what attracted so many to Powell in the first place. But I also recognize that in the last year and half since the plan that was voted down, Len Pivar and his staff have put in a lot of changes and have fixed the gaps in the original plan. As he has indicated, the alternatives that he has the right to build without approval, based as how it is zoned now, are not alternatives that I wish to live next door to. This is my backyard. When I look at all the plans, to me this is the most desirable and I support his right – this is still America – capitalism still exists. He has the right to make this whatever he wants since he owns the property. To me, I chose this plan and it is the best plan for the community.

Kevin Alexander, 10728 New Castle Place: I have five kids. I'm the busy Powell guy that had no clue about what was going on with the Powder Room a year ago. Hearing about this a few months back, I think I speak for a lot of different people. I've only heard overwhelming support from people asking 'We can knock over the Powder Room, put new homes in?' I don't know what happened a year ago. I don't know the legal process, or what the zoning is or isn't, but I do know there's a huge segment of Powell residents that are just waking up to the fact that this is a good thing for the City.

Brian Creek, 126 Kellys Court: My only comment is that I have a concern about a plan that the only outlet is onto Liberty Road where there is a lot of concerns currently about traffic. I think it would be preferable if there were a second outlet onto Grace Drive so people who wanted to go north out of the City could utilize that bi-pass without going on to Liberty Road.

Shaun Simpson, 510 Bantry: Everyone, we have a second chance here. I drove this site last week. It's not blue water. This is an overgrown site that is contaminated. It's a green cistern with a film on it. It is not a pretty site. What we are really looking at is a very clean, very nice plan. It's going to reduce traffic over the alternatives. It's going to provide a surplus to the schools. It's going to get rid of the contamination and it's going to add money to the coffers that's going to help contribute to parks or other things we've been hearing about with the Keep Powell Moving initiative. It's money we need and it's money that we can get with a plan that will most likely improve property values and business around it as well.

We hear people say it's already been voted down. I bet most of those people didn't know what they were voting for. We have residents here tonight who are talking as if they are lawyers telling us about zoning when last time that happened, we got beat in a lawsuit that's probably going to cost the City millions of dollars.



These developers have the right to use the land as zoned. If we try to fight that, we could end up with discriminatory housing laws similar to what is happening in Baltimore right now. Do we really want HUD to come in and tell us what to build? It's the best possible use of the land. If we make it hard for the good developers what we are going to end up with is not less development, we'll end up with worse development and I don't think that's what anyone wants. We have an opportunity here to put a good product in ground. The low maintenance products we had were the Epcon products on Seldom Seen. We see them in Grandshire. We have a second chance here. Let's do it for the schools. Let's do it for the City. Let's do it for the tax fund.

Jennifer Sweet, 234 O'Quinn Court: Thank you to the developers for coming here and bringing us this plan. I'm just a simple homeowner. I'm not an anti-growth group. I'm not a lawyer. I'm just using my common sense. The only thing about this plan that bothers me is the number of units. I think it's great that they want to clean up the site. I was a little discouraged that he [Mr. Pivar] said 'do no harm' but if they do commercial, they don't have to clean it up. I would think they would want to clean it up if they really don't want to do any harm.

I don't like some of the people that have come here and they are big business owners – people that don't live here in Powell – or realtors that want to sell these homes. Of course their interest is more, more, more. There is 167 acres where this year's Parade of Homes is located and the lots are 1 ½ acres. It's desirable. People want that. That's what Powell is about. This is not that. This is almost 5 homes per acre. That's a lot and a lot for the people that are backing up to it. It's too many. Just reduce the number of units. It's a great plan but just reduce the number of units.

I also don't like that they bought this property for \$700,000. If they sell these condos for \$400,000 each, that's \$19 million dollars. That's four million dollars an acre. And they just talked about acreage selling in Powell for \$150-\$200. That's ridiculous. It's too much this close to downtown. I'm not on this gang that wants to ruin the City or wants bad plans, I just want something that's smart and really fits well with what we already have. And what we have around downtown now are nice homes on a half acres, a third acre.

Wally Stamper, 225 Glenvillage Court: Many of my neighbors are here. My husband and I moved here a year and a half ago. We love the City. This development is very positive for our property value and from where we see it. People have mentioned high density, but it could be much higher density in many other ways. We want what's best for Powell. Many of the things that could be developed here would be detrimental to our property values and where we stand living so close to this. We are definitely in favor of moving forward with this property and development of Harper's Pointe.

Jessica Nixon, 50 S. Liberty Street: I'm the Vice President of the Greater Powell Chamber of Commerce and am here to speak on behalf of the Powell Chamber. I am here to support local businesses and Powell Chamber supports the economic development and growth of the City of Powell and the residents. I believe that this development will stick with the historic downtown Powell, it will continue to grow the downtown market. People will eat at those restaurants. They will shop at the downtown Powell shops. They will go to the park and the Powell Festival. We will collect the tax money. It is a beneficial project for the City and for the township. I'm here to want to show our support.

Erik Schmelmer, 3722 Hickory Rock Drive; 4160 Rutherford Road: I've been in the Dublin-Powell area for 32 years and remember when there was nothing past Powell Road. I've seen it all, I've watched it all, and I'm also a local business owner here in Powell. For eleven years I've had my business here. My family's growing up here. We enjoy the country club community that we live in.

In regards to what she [Ms. Nixon] was saying, the houses per acre are close together. Unfortunately nowadays, that's normal, especially when builders come in, they are going to try to get the biggest bang for the buck. But when you bring in a high quality product such as what they are trying to do, you have to look at it and say, okay what they're doing is bringing value and quality; yes, a little bit of quantity, but 48 homes compared to apartments that is going bring a lot more traffic, 48 homes is nothing.

One of the gentlemen in the back [Mr. Ebersole] brought up fear and how the developers are making us fear everything. I've never felt that from these guys and I've spoken with them. The only fear that I felt was when we were voting and I was being told HUD homes, high density housing, and that was coming from the people that filed the referendum. They were the only ones making me feel that something was going on that we probably shouldn't approve. Never once was it brought to my attention from them that it was single family

homes. Everything I had crammed down my throat from them was apartments, apartments, apartments. I don't see any apartments. [Mayor Lorenz: Can I just ask you to comment on the plan?]. I oversee a Facebook page called The Powell Bubble and we are almost 4,000 strong of Powell residents. The overwhelming sense from this group is this is a great plan. This is adding to the community something that we can be proud of and, in my opinion, it's not too big.

Christine Barnhart, 212 McCreary Court: I have two points. The first is my concern that we did vote on this, and the prior plan that was voted on was close to this. I did vote on that and I was willing to accept whatever the outcome was. The citizens of Powell decided that they did not want this and that it is being ignored is disturbing to me. Ordinances that are rejected or repealed by an electoral shall not be reenacted in whole or in part except by an electoral vote, so if you are going to do this plan again, then we need to vote on this again and we already said that we don't want it.

My second concern is that my parents, who are both retired Baby Boomers and wanted to move closer to their grandchildren, looked at living near downtown Powell at Murphy's Park. They decided that the area was too congested and there was too much traffic and it was not the right spot for them. So if this is an area that people are saying that empty nesters and Baby Boomers are going to want to reside in, I disagree with that.

Tobin McCuen, 214 N. Liberty Street: I'm a small business owner here and my business is right down the street. I just recently heard about this and this is the first time I've attended a meeting. I'm sitting in the back listening and I find that the negativity looked at is one thing: traffic. The traffic is going to continue to get worse and worse regardless of 48 homes being there or not. The positive things I'm hearing is your taxes: it's going to bring money to downtown. What's going to happen with that property: beautification. What's it going to do to the local homes or neighbors around it: it's going to increase the value of those homes. Older people, they're not going to be traveling across town to go shopping, they are going to want to spend their time and money near their homes. Police department, schools, fire department, taxes: all the money will help all those situations and it's where money is needed. There's vendors that live in town and have businesses that perhaps will be able to help in building these new homes. So based on what I'm hearing, it seems like a no-brainer. If you're just going to continue to say it's only based on traffic, traffic will get worse no matter what because our population is growing.

Leif Carlson, 187 Beech Ridge Drive: The plan that will come before Council is not as good as the original plan. The reason I feel that way is that one of the biggest agreements we got with the builder when we originally met with him was the addition of the road. Many residents don't want the only entrance to be on Beech Ridge Dr. I would encourage Council, before this comes to a vote, to encourage the builder to put the road back into the plans so that it will be legally allowed to continue. I feel there's a lot of wink-wink, oh we'll get the road in if it passes, but this is being legally defined as one of the differences of the plan, but there are only a couple and that's one of them. I don't see who you can come back and get the road back in if you vote for it as this is one of the biggest changes to it. So I would encourage you to go back to the developer and have him put the road back in and find some different legal way to make this a different plan.

I've met with City Councilmembers. I've met with the vote-against people. I've met with the vote-for people and there is a stalemate. I think what you guys need to understand is that even if you vote yes or no, I think that there's more legal action coming because the people are dug in. I like the plan. Most of you know where I stood. Len hasn't made this easy. He added a house, he took away the best part which was the road, and it's a difficult pill for me to swallow. That doesn't mean I have ill-will against the project, I just feel that meeting common ground and trying to find something to come to you guys with is difficult. I feel like it's a poison pill because it's not as good as the original plan. It's the plan he submitted to us before he made all the great changes.

Tim Freed, 97 Beech Ridge Drive: There was a reference to the TIF district. I was just wondering if I could get some elaboration of where the TIF funds are going. Is it for business district?

Mr. Betz: Downtown area TIF, for which this property is in, was established and approved by the voters in 2005. Any increase in incremental tax base that this provides from the property tax goes into that fund. That fund is used for infrastructure improvements that have a benefit to the TIF area. So anything in the downtown area, 300 acre area, we have to have a benefit to that area in order to utilize those funds.

Mr. Freed: Beyond those TIF funds, is there still dollars going towards the police department and the others?



MOTION: Councilman Counts moved to adopt Ordinance 2016-29. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

**SECOND READING: ORDINANCE 2016-30:** AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A SEWER ASSESSMENT AND FINANCING AGREEMENT WITH VERONA LLC, AND DECLARING AN EMERGENCY.

Mr. Lutz: This and other legislation appearing before you tonight we discussed in some degree over the past six weeks or so. This is the ordinance authorizing us to enter into a special assessment at Verona, which is the old Shamrock property that is being developed with 166 units. The sewer cost there is \$1.208 million. To pay for this we would levy a special assessment on those properties. The single family homes would be \$1,800 per year and the patio homes would pay \$1,200 per year. The City would collect 3% interest on the money which we would be advancing in this case, and the payback period is anticipated to be approximately 7 years.

Councilman Bennehoof: Just to render it explicit, we're making money on the advancement rather than the .000% that we make at the bank.

Mr. Lutz: Correct. Right now Star Ohio pays about a quarter percent. This would be a decent return on the money we are funding.

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

MOTION: Councilman Counts moved to adopt Ordinance 2016-30. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

**SECOND READING: ORDINANCE 2016-31:** AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2016.

Mr. Lutz: Council has also seen this ordinance at a few previous meetings and Debra will refresh your memories regarding this.

Ms. Miller: This ordinance goes along with the one just passed. The cost of the sewer is the \$1.2 million dollars that we would be advancing from the general fund, which is what it's doing. We would be putting that into the Sanitary Sewer Agreement Fund for Verona. Since we already have approximately \$300,000 appropriation, we only needed to add a \$980,000 appropriation.

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

MOTION: Councilman Bennehoof moved to adopt Ordinance 2016-31. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

**SECOND READING: ORDINANCE 2016-36:** AN ORDINANCE DECLARING THE NECESSITY OF, DETERMINING TO PROCEED WITH, AND LEVYING ASSESSMENTS FOR THE PURPOSE OF IMPROVEMENT, CONSTRUCTION, AND RECONSTRUCTION OF THE PUBLIC SEWER MAIN INFRASTRUCTURE ON THE NORTH SIDE OF POWELL ROAD AND ON PROPERTY OWNED BY VERONA LLC AND KNOWN AS THE VERONA SUBDIVISION, AND DECLARING AN EMERGENCY.

Mr. Lutz: This piece of legislation is the legal instrument which permits us to levy the amounts on the properties and I'll have the Law Director give a brief review regarding the second reading of this one.

Mr. Hollins: The last step in the proceedings here now that we have the agreement and have done the appropriation is to put in place the requested sanitary sewer assessments that are being voluntarily requested by the developer as the creative means of financing this sewer. As you are well aware, this is a critical piece of our sewer infrastructure that actually opens up the entire Sawmill corridor to being served with sanitary sewer for those parcels that are not currently developed. The developer here, instead of using a TIF – things that would impact other agencies, tax revenue - worked with us on an assessment deal. It does requires 75%

of the owners to sign. We did receive a signed petition earlier today therefore we are in a position to adopt the ordinance which levies those voluntary sanitary sewer assessments and we will work with the county in the next few days to start the process. We only impose these once those lots are built upon and start discharging to the sewer. [Ms. Miller: There were 17 for the Parade of Homes]. So we will start with 17. We'll actually start getting in some of this revenue per our projections in January or February for our first distribution next year.

Councilman Hrivnak: Gene, on the exhibit we have there are no signatures. Can you stipulate that you've seen the document with the signatures?

Mr. Hollins: I can absolutely state for the record I have received just this afternoon a copy with appropriate signatures and [multiple speakers] we met the 75% requirement.

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

MOTION: Councilman Bennehoof moved to adopt Ordinance 2016-36. Councilman Bertone seconded the motion.

VOTE:           Y   7                                 N   0  

**SECOND READING: ORDINANCE 2016-39: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2016.**

Mr. Lutz: We recently issued notes in the amount of \$1.4 million. At the last Council meeting, we needed some additional funds to cover the cost of issuance related to the underwriter's discount. There were a couple questions regarding this ordinance and Debra was not at the last meeting but is here tonight to give a summary of this ordinance.

Ms. Miller: The original appropriation we had estimated the cost of issuance at \$14,000. What we didn't know at the time is that was the net number. The total costs were \$15,805, but we had a discount which someone paid for us of \$2,653.50 which brought it under the \$14,000. However on our books we book everything at the gross number so we have to have the ability to book the \$15,805 and then we book the credit. That is why we are coming back for the additional appropriation. The total cost was \$13,400.

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

MOTION: Councilman Bennehoof moved to adopt Ordinance 2016-39. Councilman Bertone seconded the motion.

VOTE:    Y   7                                 N   0  

**FIRST READING: ORDINANCE 2016-40: AN ORDINANCE ADOPTING THE UPDATED PERSONNEL MANUAL FOR EMPLOYEES OF THE CITY OF POWELL.**

Mr. Lutz: This matter was reviewed with Operations two weeks ago. This ordinance includes marijuana, even with a valid prescription which is legal under state law, to be prohibited by City employees. It falls under our zero policy and businesses are permitted to include this if they so desire. We recommend that you do so.

Councilman Bennehoof: It's sort of a tangent, isn't it only medical marijuana that's being passed or was passed recently?

Mr. Lutz: That is correct.

Councilman Swartwout: Could you please explain for the record where the language we are adding to the manual came from?

Mr. Lutz: Sure. This language was added to p. 52 of our manual. We used our Labor Council in drafting this language so it meets the criteria required under state law.

Councilman Bertone: We did discuss this in Operations Committee and it was the advice of the committee to advance this to Council this evening with its full support.



Mayor Lorenz opened this item to public comment.

Mr. Carlson: I would think if someone had a prescription for legal marijuana they would be able to use it.

Mr. Hollins: This is not my expertise. I asked the same question of my labor attorneys and they said it was the disconnect between the state law and the federal law because the under the federal law it's a schedule one drug.

Mr. Lutz: This is an item that the state's BWC has recently come out and reminded employers that if this is the policy that you so desire, just make sure you include the language in the employee manual.

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

MOTION: Councilman Bennehoof moved to suspend the rules in regard to Ordinance 2016-40. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2016-40. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

**FIRST READING: ORDINANCE 2016-41: AN ORDINANCE AUTHORIZING AMENDMENT TO THE FEE SCHEDULE OF THE CITY OF POWELL AND DECLARING AN EMERGENCY.**

Mr. Lutz: Each year we take a look at our fee schedule and recommend proposed changes if we feel they are necessary. This matter was reviewed by the Finance Committee and we are recommending one change to the fee schedule which would be the contractor registration fee. Right now we have one fee for an initial registration and a different fee annually thereafter and we are recommending that this be modified to just have one fee of \$60 for annual registration.

Councilman Swartwout: How does this fee compare to other municipalities in the area? Is it comparable?

Mr. Lutz: It's not very much. I don't know how high some others charge, but this is for the administrative work involved. It's not a large fee. We don't use it to collect revenue, but its more for staff time involved and to cover our costs.

Councilman Hrivnak: Doesn't the police department do a background check of the contractors and this offsets some of those costs as well?

Mr. Lutz: At times we do. It's following up with the subcontractors involved and just making sure that they are paying the taxes that are required.

Mr. Hollins: Dublin's is \$65.

Mr. Lutz: You don't want to make it so high that then contractors will try to skirt the fee and not register.

Mayor Lorenz: It's pretty comparable to other cities in the areas. It may even be a little bit lower.

Mayor Lorenz opened this item to public comment.

Mr. Carlson: As many of you know, I hate the Powell position that we don't enforce deed restrictions and some neighbors are supported by the City of Powell because they have HOA headings and other neighborhoods are not supported in their fights to maintain their deed restrictions. Hopefully with this fee increase, we can unify the rules across the City.

Mr. Lutz: Regarding the legality of enforcing deed restrictions, the City did try to enforce deed restrictions on the Retreat about 8 or 10 years ago and the courts ruled at that time that the City did not have standing and that was a private matter.

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



MOTION: Councilman Bennehoof moved to suspend the rules in regard to Ordinance 2016-41. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2016-41. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

**FIRST READING: ORDINANCE 2016-42:** AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE LIBERTY TOWNSHIP TRUSTEES FOR THE PURPOSE OF ENTERING INTO A JOINT MULTI-USE PATHWAY IMPROVEMENT PROJECT IN AN UNINCORPORATED AREA OF LIBERTY TOWNSHIP ALONG NORTH LIBERTY ROAD KNOWN AS THE RUTHERFORD ROAD TRAIL SECTION.

Mr. Lutz: We will recommend that we take this to a second meeting. This matter was briefly discussed at the Development Committee before tonight's Council meeting. The City and Liberty Township are both going out to bid for construction of some bike paths. The City and township are working jointly on this project and the City was going to take the lead on bidding the project and administering the construction of the project. We have received comments back from the Delaware County prosecutor's office who serves as legal counsel for the township and Gene will review them and report back to you at next Council meeting.

Councilman Hrivnak: I think it's worthwhile to have our legal counsel look at this and give us his feedback and we can discuss this at our next meeting.

Mr. Hollins: It shouldn't be anything insurmountable. There were numerous comments though. One thing for tonight that has nothing to do with the terms of the agreement. Look at the map. What we wanted to make sure is that it is clear in this agreement which portion we may be performing the work for the township. We will actually be building some other pieces of our bikeway system across a few township properties but that was always our intention to build those at our cost. The reason it gets wordy in this ordinance and the agreement is we tried to distinguish this stretch of it which they are responsible for.

Councilman Bennehoof: Are there limitations on multi-use?

Mr. Lutz: The City does have laws on our bike paths about what is permitted and what is not permitted such as motorized vehicles are prohibited.

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

Ordinance 2016-42 was taken to a second reading.

#### COMMITTEE REPORTS

**Development Committee:** Next Meeting: September 6th, 6:30 p.m. We met tonight. We spent the majority of time talking about Murphy's Parkway, some landscaping changes and the latest updates on the pedestrian rail crossing. We also learned a little bit about the bike path and Grace Drive signal update.

**Finance Committee:** Next Meeting: September 13th, 7:00 p.m.

**Operations Committee:** Next Meeting: September 20th, 6:30 p.m. On the agenda is the community attitude survey so in advance of that conversation, please take an opportunity to review the survey, identify your key findings so we can all discuss those openly.

**ONE Community:** Next Meeting: September 20th, 6:30 p.m. We have received our finalized logo and we are trying to move forward on the tent.

**Planning & Zoning Commission:** Next Meeting: September 14th, 7:00 p.m.

**Powell CIC:** Next Meeting: September 19, 2016, 6:00 p.m.

#### CITY MANAGER'S REPORT

Mr. Lutz: The Ohio Division of Liquor Control has notified us that one of our new businesses located just south of the red barn building, Brush Creative Studios, has a business where you go in and do artwork. They have applied for a beer and wine permit. As you are preparing your art, you can have a cocktail. If Council wants to have a hearing on that you can do so. If not, then no action needs to be taken.

Unanimous agreement by Council that no hearing would be requested.

#### OTHER COUNCIL MATTERS

Mayor Lorenz: We will be holding a 9/11 ceremony with Liberty Township Fire Department and the Powell Police Department on Sunday at 1:30 p.m. at Village Green Park. There will be an ice cream social at its conclusion.

Councilman Bennehoof: It was the First Responder's Committee, a subcommittee of ONE Community that are putting this together. They have additionally discussed putting together, for some time in the future, a color guard made up of the City police and township fire combined.

Also, I am really eager to move forward with the electronic packet.

Mr. Lutz: All that information has been put together since mid-August. The August Finance Committee ran long due to the tour, so it will appear on the agenda at the next committee meeting.

Councilman Swartwout: We had another very successful Keep Powell Moving public workshop last week. I just wanted to say that I thought it was a fantastic event and would like thank everyone involved with putting that together and making it such a success.

Mr. Lutz: That final report will be coming before Council in the next couple of months and then we can begin taking a look at prioritizing projects and figuring out about financing tools.

#### ADJOURNMENT

MOTION: Councilman Bennehoof moved to adjourn the meeting. Councilman Hrivnak seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned at 9:23 p.m.

**MINUTES APPROVED: September 20, 2016**

  
\_\_\_\_\_  
Brian Lorenz  
Mayor

9/29/16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Karen J. Mitchell  
City Clerk

9/29/2016  
\_\_\_\_\_  
Date



#### City Council

Brian Lorenz, Mayor

Jon Bennehoof

Frank Bertone

Tom Counts

Jim Hrivnak

Brendan Newcomb

Daniel Swartwout