



**City of Powell, Ohio**  
City Council

**MEETING MINUTES**  
**October 18, 2016**

**CALL TO ORDER/ROLL CALL**

A regular meeting of Powell City Council was called to order by Mayor Brian Lorenz on Tuesday, October 18, 2016 at 7:15 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; Rocky Kambo, GIS/Planner; Megan Canavan, Communications Director; Karen J. Mitchell, City Clerk, and interested parties.

Councilman Newcomb recused himself from Executive Session.

**EXECUTIVE SESSION: EXECUTIVE SESSION IN ACCORDANCE WITH OHIO REV. CODE SECTION 121.22(G)(3), PENDING OR IMMINENT LITIGATION.**

MOTION: Councilman Bennehoof moved at 7:15 p.m. to adjourn into Executive Session in accordance with O.R.C. Section 121.22 (G)(3), Pending or Imminent Litigation. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Bennehoof moved at 8:06 p.m. to adjourn from Executive Session into Open Session. Councilman Bertone seconded the motion.

VOTE: Y 6 N 0

**OPEN SESSION**

**PLEDGE OF ALLEGIANCE**

**CITIZEN PARTICIPATION**

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

Janet Wartman, 130 S. Liberty Street: Just over a year ago, Steve Lutz told me that there would not be any eminent domain in Powell and yet now you are talking about eminent domain for the Powell Liberty Historical Society. All the old people in Old Powell are quaking in their feet because of you using eminent domain and I urge you not to.

There is a value to the historical society that I don't think you realize. It is a tourist attraction. It needs a bus access for senior citizens that come to visit and for school kids. Many towns support their historical society, but you have to attack ours. It's only because of our dedicated volunteer staff that we have maintained this historical society. There are an increased number of people attending the programs. As the mayor knows, there is not adequate parking for the programs right now. So you want to take away parking and many of those people that attend are handicapped or elderly and use canes or walkers. The parking requirements in this town have been very stringent and all of the sudden you're letting them go and I don't understand why. 55 S. Liberty Street used to be the doll museum. I can remember when Mrs. Masteller told me that you were against her parking lot being too small and you wouldn't let her have school buses in there. And now you're taking the parking lot that's even smaller and reducing it.

There's also going to be potential damage to the house and property by the people coming there on the road, as well as the building of the road. The house is fragile because of its age and we don't have any money to fix it. So I'm asking you not to do eminent domain and to maintain the property at the historical society.

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

**PRESENTATION – Mental Health & Recovery – Levy Renewal – Steve Nedge, Executive Director, Delaware-Morrow Mental Health & Recovery Services Board. (Brochure & Handout - Exhibit 1 to the minutes)**

- Public agency responsible for mental health/addiction service prevention treatment in this county
  - o Contracts with a network of eight nonprofit agencies based in Delaware County
  - o Provides a full range of prevention, early intervention, treatment and supports such things as housing and vocational services
  - o Partner with the local schools, police and fire
  - o Delaware County now has a shelter for victims of domestic violence
  - o Last year served over 4,000 individuals and 1,000 families
- Currently operating on a one mill, 5 year property tax levy. It is the only local revenue received or 84% of the budget. Over .91 cents of each dollar goes directly to services and support to citizens of this county.
- On November 8, we are asking the citizens to renew our 5 year, one mill levy. We have been operating on this one mill since 1986.

**PROCLAMATION – Fire Prevention Awareness – Tom Saunders, Fire Prevention Officer, Liberty Township Fire Department.**

**APPROVAL OF MINUTES – October 4, 2016**

MOTION: Councilman Bennehoof moved to adopt the minutes of October 4, 2016. Councilman Bertone seconded the motion. By unanimous consent of the remaining members of Council, the minutes were approved.

**CONSENT AGENDA:**

Item

Monthly Reports – September 2016

Action Requested

Receipt of Electronic Report

MOTION: Councilman Hrivnak moved to adopt the Consent Agenda. Councilman Bennehoof seconded the motion. By unanimous consent of the remaining members of Council, the Consent Agenda was adopted.

**SECOND READING: ORDINANCE 2016-44: AN ORDINANCE APPROVING A ZONING MAP AMENDMENT FOR 8.75 ACRES AT 2470 WEST POWELL ROAD, AMENDING THE ZONING MAP FROM R, RESIDENCE DISTRICT AND PC, PLANNED COMMERCIAL DISTRICT TO DR, DOWNTOWN RESIDENCE DISTRICT.**

Mayor Lorenz: We have already received Staff's presentation. We will allow the Applicant to speak and follow that with public comments.

Todd Faris, Faris Planning & Design: Last time we were here we presented a lot of different items and issues to you. We know you may still have additional questions and we are here to respond to those. With me tonight is Len Pivar and Joe Miller, Esq.

Len Pivar, Len Pivar Builder, Inc.: I've stood before you many times over the past 3 years as Harpers Pointe evolved from a concept to this viable plan. This subdivision caters to empty-nesters and senior citizens, creating a transitional buffer area between an existing neighborhood and commercial zoning.

I've lived in Powell since 1983 and have watched our community grow from a village to a city, the downtown area from a fairly viable retail area to an entertainment destination for families and adults. Yet there are a vocal few who want to change the direction of Powell, regardless of cost to taxpayers, Powell businesses, and the constitutional rights of land owners. They misled the uninformed public with threats of more traffic and high density when, in fact, our project would reduce traffic over the property's present zoning and is not high density. One member of this group has made disparaging public comments clearly discriminating against senior citizens. There are emails from this group that show other forms of discrimination - income and equality - class discrimination that were used to incite voters against another Powell development. There's nothing unique about this group. [They think] "I want to be the last one to move into Powell. I'm here, close the gates." This is the same group that demanded Powell update its Comprehensive Plan, which I assume cost the tax payers tens of thousands of dollars, which [this group] now choses to ignore because the results are not what they expected. Forty years ago when I first presented a subdivision in Pennsylvania I heard the same thing. Think about it, if this attitude had prevailed, none of us would be living here today. Powell would be farms and a downtown feed store.

A traffic fact: Powell residents and business are not the traffic problem. It's that Powell Road, Route 750, is an east-west corridor heavily trafficked by the zoo on the west and Polaris on the east, as well as other developments that we have no control over. If Powell's growth stopped today, traffic would still continue to increase and our taxes will go up as fewer people and businesses would be supporting the ever increasing cost of running our City and dealing with traffic.

Density: Our plan is designed to appeal to empty-nesters, people that do not want or need large yards. Density means nothing if it's not creating traffic, which in our case, we have proven that it reduces traffic. But again there are a few self-serving individuals that are hell bent on putting Powell back into the 1980s regardless of the consequences to the rest of the City. Do we really want to go back to a depressed downtown with businesses closing their doors?

We, as land owners, have a constitutional right to use our property just as everybody in this room has a right to occupy the residentially-zoned homes or to operate businesses on commercially-zoned properties. So there is no misunderstanding, going forward, we intend to exercise our right. If we are forced to use our property as is currently zoned, who's many uses were outlined three meetings ago, instead of residential, there will be nobody to blame but the organizers of this anti-development group.

I'll wrap up by going over the benefits of this plan:

- Cleans up the lead contamination before it migrates into the water table
- Turn a commercially-zoned parcel into residential
- Traffic reduced from 50-70%, compared to re-renting the existing buildings
- TIF funds for Powell of \$2.6 million dollars
- School income of over \$320,000 annually, without impact on enrollment
- The development/neighborhood is self-sufficient and will maintain its own roads
- Walkable to Powell's downtown businesses, providing housing to seniors that want to stay in Powell and enhances the value of surrounding residential property

Councilman Counts: One of the issues that I have that I would like either the proponents or those opposed to this development to answer is: can you tell me what case law supports your position that an ordinance rejected shall not be re-enacted, either in whole or in part? You can give me your opinion of that but it doesn't help me. I want to hear case law because that seems to me [to be] the crux of the issue I am trying to deal with.

Mayor Lorenz: We have had numerous hearings on this [subject]. If you are on record, thank you for doing so. You're not obligated to come back up since we have your comments on the record. We've also received numerous emails (emailed public comments - [Exhibit 2](#)), and these will also be considered; however, going forward, as in previous hearings on this matter, you will be given three minutes. Please state your name and address for the record. I will let you know when you have about 10 seconds remaining. Please direct your comments to Council. If there are any outbursts, unruly behavior, or disruptions, I will have you removed from the Chamber. Please be respectful of each other's viewpoints.

Mayor Lorenz opened this item to a continuation of public comment.

Pat Kliewski, 9030 Francine Lane: I am here on behalf of my mother, Gertrude Trowbridge, my husband and myself. My mother was the former owner of this property. She turned 92 last week, is one of the oldest living Powell residents, and has lived here nearly 50 years. She has been an asset and a value to this community for many years.

Len approached us 3 years ago about selling the property to him. My mother is bright, alert and knows exactly what she's doing. We thought what he was planning to do with what is clearly a weed-infested, overgrown, toxic shame for the City of Powell [was an improvement]. When my parents owned that property, they had flowers in front of the gun store and around the house and everything was kept the way it should be kept. Every time we drive past there now, she tears up, so I try to avoid that part of Powell Road.

The name [of the proposed development] comes because my mother's maiden name is Harper and she is the last surviving of eight children. My sister and I approached Mr. Pivar and asked if he would consider naming this in honor of my mother. He kindly agreed to do that. So about a year ago I stood here saying

what I think the value is to this City by this property, the people that will come in, and the people who invest in Powell. I drove through Powell last week and there are three pretty good-sized shops that had closed since the last time I drove through. I have been to the Parade of Homes. They are monster homes on lots maybe three times that size. I don't know who would pay \$1.3 million dollars for a home that you could look into the side window and see your neighbor's kitchen, but they did - and talk about traffic.

I think this is a clear asset for the community. I think that the opposition has fought dirty. They have told lies about the property, about my mother and someone told Len that they would sue the 'old lady' if he didn't stop this. That's the kind of people you are dealing with. I sincerely hope that you will consider this.

Charles Johnson, 283 Penny Lane: I've not had the pleasure of meeting all of you yet. For that reason, I'll give you a little background in hopes it will add some context to my comments. I'm a graduate of The Ohio State University, where I majored in real estate and urban land economics. I have close to thirty years' experience in commercial real estate development, construction, brokerage and management. I have had the distinct privilege to represent clients such as Dean Whitter, Morgan Stanley, Battelle Memorial Institute, Airborne Express, and others. I was recognized by my peers that served on both the Columbus Board of Realtors and the Ohio Association of Realtors Board of Directors.

With that being said, I've reviewed the Applicant's proposal. It seems a very well thought out design. It is not only compatible with the surrounding environs, but serves as an excellent buffer from the commercial activity to the west to the single family residential to the east. As we have witnessed on Seldom Seen Road, the patio home concept fills a tremendous void, attracting high income empty-nesters. This development is a demographic in close proximity to downtown and will greatly enhance the continued vitality and add economic success we all seek. It will increase the real estate tax and school revenues to the City while adding little expense. When looking at the current dilapidated structure or other plans that could have been presented, I am perplexed why anyone, other than those who want no growth at all, would be opposed to this?

In the last meeting, several citizens expressed their support for this development, most notably a resident in Olentangy Ridge whose home adjoins the property. Only two individuals expressed objection and what confounded me was neither one of them cited specifically what they disliked or objected to. And though I don't remember their names, I do recall the streets they live on: Kellys Court and Squires Court. Those two streets are named after my children. Yes, I'm the same Chuck Johnson who stood in a small room above the Powell Carryout 29 years ago and was told by the Powell Planning Commission that my 43 acre subdivision, now known as Bartholomew Run, was nice but the Commission, more specifically the people that lived in the Retreat, did not want any more growth in Powell. Ironically, should the same anti-growth policy I see now prevail, the homes these two individuals live in wouldn't be there today.

Kathy Schnetzler, 3940 Blue Water Loop: I originally moved to Powell in 2006. What attracted me was the ability to walk to the downtown area. At that time, I lived at Traditions of Powell. If you look at Dublin and downtown Columbus, the planned development is growing the city and attracting people that want to live downtown and have the ability to walk to most restaurants and shopping. This type of development and construction is creating new business for the City and becoming a major draw for empty-nesters, including myself. Why are we stopping this growth? It doesn't make sense to fight progress and development with the City. Powell was ranked 12<sup>th</sup> in the most desirable places to live by USA Today in 2015 and the 6<sup>th</sup> most desirable place to live in the state of Ohio. Everything about this zoning change is good. It seems the group fighting this proposed change is simply anti-all-growth-for-the-City.

The leadership of this opposition has only lived in the area for two and a half years, has been involved in four referendums, two of which are in Powell. If he had such a big problem with the growth of the City, why did he move to the area? The anti-development group and members have been very vocal about the outdoor entertainment in Powell as well. They are fighting against the downtown establishments and entertainment that are attracting businesses to this community and providing a great downtown environment for Powell families.

The actions of this group are costing the taxpayers a lot of money in legal fees. We can't afford to build parks or fund road improvements, but we may be forced to shell out millions of dollars because of their unconstitutional actions against the developer of Center at Powell Crossing. Our Constitution calls for representative government. You are the elected officials and need to take control of this situation and do what is right, not what is easy. We need this zoning change to continue to attract revenue and growth to Powell.

Larry Coolidge, 78 W. Olentangy Street: Last time I was here, I brought up three instances where these concerned citizens groups stepped in, had ideas, passed out information, got in there for an election and told people, information that may not have been correct. If any of those three [instances] would have happened, we would not have a fire department today. Their idea was that the Liberty Township Fire Department had excess money in the bank, they were hiding it from people, and once the levy passed, they'd just be giving themselves more money. The need for that fire department came up when a concerned citizen group stopped Bennett Parkway. When Bennett Parkway was voted down, the people in that subdivision demanded a second firehouse because they were not able to get a fire truck to their homes in a sufficient period of time. This same group that tried to stop Bennett Parkway then levied together to try to stop the fire department. A counter group was formed of other concerned citizens that got out all the correct information to the people. The levy passed by 80% because the voters had all the information.

We used to meet in the corner next to Kimberly's Diamond Center. Back then I was Chairman of Planning & Zoning. They were bringing in subdivisions. Everybody opposed Olentangy Ridge, they opposed Bartholomew Run, and prior to that, they opposed The Retreat. There was a Powell Civic Association where one guy stood up and said 'Let's just make it all 5 acre lots. We don't want all those city people moving up here.'

There are many events that have happened where concerned citizen groups are formed, they don't give all the information [to the residents] and the need for those projects have all been necessary and have passed. Again, we would not be in the building tonight, we'd still be meeting above the Country Carry Out or in the service garage [if we had listened to those citizen groups]. I support this project. It's a good project and he's a good developer. I know him. He didn't ask me to come here. I came here on my own, so please consider that.

Dave Minger, 3468 Timberside Drive: I have lived at this address for 12 years. I cannot give Councilman Counts a chapter and verse about case law. But I can note that the referendum that was presented before involved multiple parcels and it also involved what seemed to many people was a delegation of municipal power to an unelected group. I would argue that this materially sets it apart from this instance where the municipal authority is being retained by the City and the parcel in question is limited to one. So instead of multiple parcels with a suspect delegation of authority, you now have one parcel where municipal authority is retained over the decision to up zone or not, and, of course, municipal authority over whatever development plans are subsequently submitted to the Planning Commission. If that helps your conceptual or procedural analysis, I'm grateful.

Kevin Alexander, 10228 New Castle Place: I moved here about 12 years ago and brought my business here as well. [This development] is something you can be really proud of. The one thing I can interject, and I think most of these people have said, is the Powder Room is probably something we can't be really proud of in this community. Obviously I support this development. I think it's great for Powell. Like Patti, I'm somewhat embarrassed to drive by that property and I think this is a beautiful improvement that will definitely enhance that area.

Joe Miller, Esq., Attorney for Applicant: Just as Mr. Pivar and his partners have tried to listen to the community, gaining the support of many members of Olentangy Ridge and the surrounding area by putting together a community that's beautiful which this City can be proud of. We too want to be cognizant of Councilman Counts' question and try to address your concerns. I wasn't planning on speaking, but on that point, I offer to Council that Article 6, Section 6.06(B) of your Charter does not allow this Council to avoid its responsibility to pass on P&Z's recommendation to approve Ordinance 2015-44. In fact, your Code compels that you vote upon that recommendation. Section 6.06(B) of the Charter provides that "Ordinances rejected or appealed by an electoral vote shall not be reenacted, in whole or in part, except by an electoral vote." Ordinance 2015-44 is not an ordinance rejected or repealed by an electoral vote. It is, in fact, a new and different ordinance. It does involve the same piece of property because this property owner has private property rights that have to be respected, but that's where it ends.

Instead it is being rezoned to an entirely different zoning classification than Ordinance 2015-18. That alone makes it completely and wholly different, but it doesn't stop there. The ownership structure is different. There is a different layout to this development. There are different units. There is different access. This is a new and different ordinance. So far from falling within that Article of your Charter, it actually squarely falls within your Code, namely, Section 1131.12 "this court shall either adopt or deny the recommendation of the Planning & Zoning Commission or adopt some modification thereof." That is your affirmative duty with this legislation



before you tonight. I will leave with Council some case law from the common pleas courts up to the Supreme Court of Ohio that to abdicate your authority to make law is unconstitutional. That there can be no delegation of municipal legislative authority when it is vested in you, as it is here, by your Charter and your Code and likewise, as the Supreme Court found, when those powers are vested in the City Council, that body cannot delegate the exercise of those functions to any other authority. So it is not simply, "Is this similar in whole or in part." It is not, and instead you have an affirmative duty to act under your Code. We appreciate what we know to have been very careful consideration of this application and the positive aspects of your community's input tonight and in several prior meetings.

Leif Carlson, 178 Beech Ridge Drive: After thoroughly researching and working with Rocky [Kambo] and a lot of good people from the City who have been talking to me constantly over the last three days because I have had a lot of questions. The last question I have is: if the developer voluntarily decides to withdraw his plan, where does the zoning go?

Dr. David Tolley, 193 Muladore Drive: I have been a homeowner in Olentangy Ridge for 12 years now. For the record, I'm not against the development or its developers. In fact, two of my brothers are in the business, as are two very good friends. I am sure Arlington Homes makes a very fine product and I wish them all the best. But I am opposed to this current proposed plan.

It appears to me that it's almost identical to the plan that we voted against as a City a year ago, but it is actually a little worse and more problematic. They've added an additional home and we lost a proposed road. Now all these extra families would be dumped onto Beech Ridge and Powell Road which are already very populated and dangerous. To keep it simple, I'm not against the product. I'm against the amount of products squeezed into nine acres of a historical downtown property land.

This land actually borders where the original Powell High School stood many years ago. This plan has a building-to-lot ratio of 2-3 times as many homes in the surrounding neighborhoods of Olentangy Ridge and Bartholomew Run which have both been here for decades. To me this density is aesthetically wrong for this downtown area of Powell. I welcome anyone here to come over to my house – I'm on sabbatical right now – and look out my backyard. The property is right behind my house. I know the Powder Room is an eyesore because those buildings, like any that have stood unattended for a number of years, would be. But if you stare out my back window, I see a beautiful, picture postcard view of a 2-acre lake lined with tall trees and wildflowers surrounded with many families of deer, geese, ducks, blue herons and even a pair of albino herons. If this development is approved, I'll be staring at almost 50 rooftops over my fence line.

I firmly believe there is a middle ground that hasn't been explored. The developer, along with the City, can develop a plan with the housing density like our surrounding communities and preserve some of the natural aesthetic beauty that presently exists. I know that the profit margin won't be as great for the parties involved, but Powell with a well-designed downtown would be much better off for years to come.

This leads me to my last point. I'm really torn because I care about my neighbors now and I care about my neighbors that would be here for generations to come. I feel as though neighbors are being pressured and somewhat bullied. For instance, when I talk to my neighbors, they all are scared and tell me, 'David, if we don't accept this, then the big boy on the block is going to stick it to us with a car lot or a retirement home, etc., etc.' I really wish there was a way where the neighbors could be honestly happy, the downtown of Powell would be well designed for generations to come, and the developer could make a good profit and move on to his next project that isn't so troublesome with downtown development issues. I honestly don't think this is the plan that meets these parameters.

Tom Happensack, 127 Kellys Court: I assure you that I am not anti-development. I'm anti-development in certain locations, but I am not anti-development. And I assure you that I have red blood and not blue blood or green blood, as I've been described to have by people in the audience. I did find it interesting that the landowner was given 5 plus minutes to basically come at all of us and didn't present his plan at all. I find that interesting. [Mayor Lorenz: He's the Applicant. He gets the floor]. Okay.

This proposed project is virtually the same: 48 units versus 47, housing styles are the same, the look and the size, everything [is the same]. There is no difference. Development layout is exact with the exception of replacing one road with one additional unit. The land tracts are approximately one-half the size of the land tracts in the proposed new zone. All the benefits that he's quoted are exactly the same as the benefits of the one he claims isn't the same.

We're not here necessarily to talk about this development being good or bad. Frankly, I'm not totally opposed to the project. I'm opposed to a Council who will override its community's vote, who voted on this project for the reasons that you know why they voted. It's not that they were houses versus condominiums, that it was 48 versus 47. It's because it's high density. And we can argue all day on what high density is, but that's what it is. On November last year, 2,290 people compared to 1,899 - 54.7% to 45.3% voted down the rezoning of this project. Seven of 10 precincts voted no on the ordinance. In precincts A-G, the closest to Four Corners, 55.6% of the people voted this project down.

You asked me to give you citations. I don't feel forced to do that. The Powell Charter that was adopted and voted on by someone at some time in the past in this City clearly states that a repealed ordinance in whole or in part needs to go back to the voters. So you have every right to vote on this tonight. Nobody's telling you shouldn't vote on it tonight. I would argue you should vote no because it is a legislative change for the same exact thing which you know the people voted down. However, if you vote yes, then I think you should take it to the people because that's what our Charter says. That's what the rule of our law says. And to do anything other than that is placing yourself in 2,290 people's places and saying, "I don't care what you think." I urge you to vote your conscious.

Erik Schmeler, 3722 Hickory Rock Drive: I was one of the 2,290 people that voted no last year. I voted no because I was misled by people and I was told that it was going to be apartments, not housing as far as a home or a cluster home. I'm one of those people that said I'm against it because I didn't want that in downtown Powell. But based on this, I don't see an apartment anywhere, so for that simple fact, my vote has changed.

Catharine Gray, 385 Hopewell: We moved here about 11 years ago. I also voted no last time. I was wrong to have voted no. I would very much like to see this development done. Sure there's flaws, but there's flaws with everything. But I really hope that you vote yes for this.

Joe Valvona, Jr., 225 Squires Court: Yes, I'm a member of that group on Squires Court. I'm a recent resident of Powell as well. I've lived here 20 years. Some comment has been made today about Constitutional rights. Believe it or not, the citizens have the Constitutional right to disagree with the decision of their government and, by petition, to take it to the voters for their decision and that was done twice over the last couple of years. In this latest issue, Tom [Happensack] already alluded to it, there were a few voices, 2,290 of them, that said they did not want this project. So I have two questions for Council and the developers and landowner. One is, if the lead issue has been known for several years, why has the landowner not been required to remove this dangerous element until now and why are they not being required to remove it as we speak? Secondly, are you willing to require or guarantee that if this proposal is approved, nothing about it, the number of units, the type of units, or any other material aspect of this project will change?

Jan Simonis, 335 Olenview Circle West: I am a federal regulatory environmental safety & health compliance person. I'm going to speak briefly to address one of the questions the gentlemen before me asked. Under commercial law, he [Mr. Pivar] doesn't have to address brown field, under residential he does. Therefore, my hope is that you will allow him to have the residential zoning so that he can clean up the brown field and remove the toxins that are there. Under commercial he doesn't have to.

Brian Ebersole, 215 Squires Court: As I already mentioned, the people have spoken. They've told you that they don't want this specific project built on this land or rezoned in the previous election. That's already been said twice. There was a survey that recently came out that the people of Powell are less satisfied with the City Council than they've been in recent years and that really shouldn't be surprising when we have a government that would even consider overturning our vote just from a few months ago.

As I've mentioned at two previous meetings and a letter last week to our Law Director, and copying all of you, still with no response, that because rezoning land is part of the ordinance that was rejected in November, this ordinance must go on a future ballot if passed by City Council as dictated by the Powell Charter. The Law Director or City Council should address why the election is not included on the ordinance and their intentions should this pass tonight. This community deserves to know where you stand. Megan Canavan promised in the media that it would be addressed. Further, if we approve this rezone and then later chose to approve the final development plan that is associated with it, this is two different parts of the same ordinance that we passed, so we're talking about an election over this rezoning and then later we're going to do another election over the final development plan? I mean this is crazy. Why are we doing all of this? I mean the Powell Charter, as has been said, in whole or in part. Part of the previous ordinance that was rejected was rezoning land. This is rezoning land. It's very clear what needs to happen here. But as I

said, we deserve to hear your thoughts.

To Tom Counts' point, case law. I don't have a copy of what Joe Miller handed you, but it would be hard to believe there's much case law for a law that is as clear and as obvious as this. You wouldn't normally take something like that to court. Of course, I guess if we really have to, we can make case law, but I think it's ridiculous that every time City Council doesn't get their way, that we have to go to court.

Wally Stamper, 225 Glen Village Court: I spoke to you once before in favor of this proposal and still stand in that regard. I think if it was to go to a vote again, the vote would be different. Many of my neighbors that voted no previously have changed their minds because the facts were misrepresented. They were misrepresented to me, so I know it was done, and I think if there was another vote, it would be totally different. I urge you to approve this project and let it move forward.

Leslie Lopes, 207 Woodedge Circle West: I'm up here because I've been on both sides of this where I felt like – wow, we're really developing fast and I'm not sure if these are the smart developments we should be making. And I've been on this side where I think – wow that looks pretty nice. That looks like what I'd hope for when I first started paying attention and saying well I don't want to just barrel down and say let's just put in everything because we should. I see this as a strong development, but I've been on both sides. I understand that what the sentiment might be, a little bit, is that there's been a sense that perhaps at times Council hasn't fully listened. But what I'm seeing now is a group of citizens that – they care – but they are not listening to their fellow citizens in the community. I think that it's important that they start considering that. So what I'm saying is that we can't just paint broad strokes. We have to fine tune and figure out developments that are intelligent and add value, not just now, but 30 years from now. And when you look at a piece of property and what it can be and how it's going to effect the community, you have ask that question: What is it going to look like in 30 years from now? A lot of our homes in downtown Powell are 30 plus years. Do they look good? We want it to match that kind of quality. I can't help but think as I look at the Powder Room that we've been locked into that because of zoning and grandfather clauses, and it was not good for our community. It is an example of something that doesn't last over time, and which is now causing pollution. I voted for this on the last one, but the one before that I voted down. But I think if you asked citizens if they want a car lot or apartments back there or do you want this development, put the vote out there – I'm pretty sure they're probably going to like this better.

Sharon Valvona, 225 Squires Court: A couple of points have been made during the course of the meeting that the development that we are talking about is really virtually the same as what was voted down. Again, I can't offer case law. I'm certainly not a lawyer, but I think the lawyer that did speak pointed out that basically, I think the answer was, that an ordinance that has been rejected cannot be reenacted. And as Tom [Happensack] pointed out, this is virtually the same. I am concerned for those people who feel that they voted on something that they didn't fully understand or they understand differently now. But I guess the question for you would be, if there are a number of people here who are citizens who are saying that they would vote differently, then it seems hard for me to believe, or I don't understand why you wouldn't follow the law and put it back on the ballot and give all of the residents the opportunity to vote on it.

Michael Barnhart, 212 McCreary Court: I am opposed to this new project and I have been all along. I think it looks great, like a lot of people pointed out, but it's too dense. I disagree with the point that there will be 50-70% less traffic because of this development. Even if it is geared toward retirees, myself and a lot of my friends, we go and visit our parents on the weekends and weekend traffic is horrendous on 750. I only see more traffic coming if it's truly for senior citizens or retirees to come visit their family. So that's surely going to increase traffic. Not to mention coming from Bartholomew Run, if we want to go downtown, we don't have sidewalk access because of the smoke shop, so we have to cross the street there. With this new development, that's going to add more to the hazard of getting to downtown with a family of four.

Michael McCuen, 214 N. Liberty Street: I am a small business owner in Powell. I am a father, army veteran, current soldier and devoted Buckeye. As a downtown business owner, I look forward to the growth and development of the City to keep all the businesses thriving. I think through taxes and the growth of the new development that it will improve the City. As a business owner, I depend not only on the City, but also City Council to support me. I know a lot of times I have to come to you guys and sometimes you tell me I can do this or sometimes you tell me I can't. I respect your decisions. We need to do the right thing to keep the local economy stimulated. I depend on you to make the proper decisions to keep our community growing and thriving. That's what's great about our country. We can vote one year turning it down and then the next year we can vote for it. I need you to vote yes on these high-end developments that directly effect in a positive manner all of downtown businesses. Otherwise there is a strong possibility that some or all of the



businesses will not flourish in Powell. And as someone said earlier, a few of the businesses have shut down.

This is a great plan that puts a lot of money into the schools in taxes, downtown businesses, the police department - I'm sure the officer in the back would like to get a raise - parks and the fire department. I urge you to stand up to those against the proposal. I think Powell's growing in the right direction.

Janet Wartman, 130 S. Liberty Street: I'm looking at this picture here [indicating] and I think we're losing something in the development of this area because as I have been looking at this, I think Grace Drive is just on the other side of that and we could be solving one of the problems of Grace Drive wanting to go across the street and having a traffic light. We could be solving that if we made, instead of this development, plan something and have the road go through this development as a City road that was a standard road. One of the things about these developments that I do not like is the substandard roads - private roads. I do not like private roads and little houses that all look alike. If we could somehow get the road to go through here and end up with [inaudible as speaker moved away from the microphone]. Ok, if we could end up with it somehow connecting, then we would have access with a traffic light for both Grace Drive, Birch Drive and Bartholomew Drive. All three of those would be solved with one traffic light and it would be further from downtown Powell, which would also enable us to move the back-up of traffic and the light further from downtown. I think we are missing a big opportunity here.

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

Mayor Lorenz: Thank you everyone for your comments. We had a couple of questions. Gene, can you address Mr. Carlson's question. If developer voluntarily withdraws his application after the zoning change, what would happen to the zoning?

Eugene Hollins, Law Director: That is why this application is so different than the other one. We are not voting on any plan at this point only the zoning district, that being the DR district. At that point any development plan would need to comply with our very detailed criteria, development standards and architectural standards that are included in the DR zoning district. The final development plan would be submitted to P&Z first, it would then come up to Council. Council would also pass on any development plan and if an interested party thought that we did not apply Code criteria correctly, they would still have legal rights. They could file an administrative appeal in common pleas court and that's the court that looks at our decisions. From every indication from this particular Applicant - they can speak for themselves obviously - their intention would be to go forward with the final development plan that is similar to what they submitted to P&Z. But you are right, there is no legal requirement for them to do so, but anything they bring back that follows the rezoning DR would have to meet our strict criteria for the DR zoning district. I hope that answers the question.

Mayor Lorenz: That was a good explanation of the next part of the process, but I think the question was, Gene, if this Council changes the zoning or approves this zoning change and at some point in time down the line after that change the Applicant withdraws his application, would the zoning revert back to what it is today?

Mr. Hollins: No. The development plan itself and the zoning change are not interrelated. The zoning would stay as DR, whether it's this Applicant or if he sold the property and it was a new applicant. I'd invite anyone on either side of this issue to look at our DR zoning code. You would have to comply with strict criteria to develop it.

Councilman Bennehoof: For clarification, DR is Downtown Residential and it is more restrictive than the current Planned Commercial District zoning that exists today.

Mr. Hollins: [Nods affirmatively] Because it's in close proximity to the downtown, we want it to build on that type of architecture, that type of development.

Mayor Lorenz: Then there was a question about the plan. Is this plan going to change? And that answer would be no or we're not examining the plan because we are only discussing the rezoning. This plan is conceptual in nature. Council is not acting on this plan. Like Gene explained, if the zoning is approved, the next step for this developer would be coming back with a plan that would have to meet the criteria of the zoning district.

There was another question about EPA lead removal that someone from the audience got up and spoke about that. I don't think we can answer that question today. None of us are civil engineers or versed in that.

Councilman Bennehoof: If I'm not mistaken, I believe she identified herself as with the federal government.

Mayor Lorenz opened the floor to Council.

Councilman Swartwout: I was initially on the fence last year about this plan. I was very noncommittal one way or the other all throughout the process. I could see both sides of the issue. I think based on what we've seen thus far, this plan is a solid use of that land based on the things we have seen otherwise – the potential other uses. However, I am also aware of the legal issues at stake and I think some of the legal issues that were brought up today during our public hearing by both sides have given me reasons to think about this issue further and I would like to have one more opportunity to confer with our Law Director before I vote on this one way or the other. I think there have been comments made here today that made me look at this from perhaps a slightly different perspective and I would appreciate at least one more meeting with our Law Director because there are legal issues at stake. The City has been involved in a lot of litigation recently about development and I think it is incumbent on us to make the proper choice with this issue and it's a tough issue.

Councilman Counts: It's been about 3 years since this was first brought up as a point of discussion and I was in favor of this. I won't go into all the details because they have already been brought up. This is the absolute best thing that could be used for this land. I've always been in favor of it, always will be in favor of it, but unfortunately, that's not what we're entirely here for right now because the last time we approved this there was a referendum.

And in that referendum, the residents of this City voted it down. Now I personally believe that a lot of people voted for it because they really didn't know what they were voting for, notwithstanding what the proponents suggested. I also know that most of the votes, the votes against it, came from Bartholomew Run. If Bartholomew Run had not been a part of that picture, it might have come out differently. I also know that in order to put a referendum on, you don't need that many people to do it and so it went to the voters. As we on Council know, each development is much more complex and involves a lot more reading, thinking and understanding of a particular project to see whether it is good for the City and I wouldn't expect the residents necessarily to know all of that stuff when they go into the voter's booth. And yet I am a fiduciary for the residents of this City and I am bound by a Charter which says that ordinances rejected by an electoral vote shall not be reenacted in whole or in part except by an electoral vote.

So the question that I asked and the response that I was hoping to get is if there is some case law that says that we look either to the form or the substance of the ordinance that was rejected and now brought before us again. If the court in some case has said we look to the form, the answer is easy. If it said that we look to the substance of it, the answer too would be easy. Unfortunately, neither side brought up any case. And so that is the thing that I have to ponder – are we considering the form or the substance of this new ordinance? I still believe this is a good project, but I have to now test it against what our Charter says and what the case law of Ohio says with respect to form or substance to these kind of things and I haven't heard anything on that.

I know there are other people that will have comments on Council, but I just want you to know that at the end of discussions what I intend to do is move that we continue the public hearing and that we hear this again at our next regularly scheduled meeting on November 1<sup>st</sup>. I would like our Law Director to prepare an alternative ordinance which has language about putting this to the ballot for the residents to decide – not that this is where I'm going right now – but I'd like to have something in front of me that I can then, with my fellow councilmembers, discuss.

Councilman Hrivnak: I think that this is probably, without a doubt in my mind, the best use for this parcel. We have looked at a lot of different things over the years that have been considered there, but I think by far this is the best use of this property. I think the zoning change is a good move. I think that taking things from residential with commercial right next door to Downtown Residential is a good move. I think it is in line with our Comprehensive Plan. So everything that I see up on the board there [indicating] leads me to believe that we should move in that direction.

The pause that I have is this the same or different? That's what we are struggling with. The voters told us that they didn't want this. What we have to decide is if this is the same as what it was before or is this different than what it was before? I too would be interested in seeing an alternate ordinance that would allow us to consider what needs to be done to act to put it on the ballot and I'd be interested to see that at our next

meeting.

Councilman Bennehoof: I want to resist being preachy, so I'll try my best. There are reasons we have representative government and there are a lot of people on P&Z, BZA and all the other Staff and groups that support Council. I know that I, and I trust that my colleagues, do a lot of research on these things. The lead clean-up is a huge thing for me. The fact that this request for a rezoning is in compliance with our Comprehensive Plan – it's not dictated by our Comprehensive Plan, but it's certainly directed or encouraged by our Comprehensive Plan - I don't see any reason not to support that, this part of it. With respect to the possible future development, I'm in favor of that as well because of all the positive that it brings.

People talk about density. I've done the math and the density on this property is less dense than that which exists just north of us across Olentangy. Those are .17 acre lots. You can look it up on the Delaware County Auditor's webpage and find the size of those lots. This approaches or might even exceed .2 per acre. So this is less dense than the northwest quadrant. We're taking it from a liberal toward a more restricted use, being DR, Downtown Residential.

I'm not a lawyer. I look at things from what's good for the community. I can't imagine that rational people can't get on two sides of the table and talk about this. I'm not talking about mediation, but I wish that all of this litigation could stop. I think we are holding our City, our citizens and our community-at-large hostage here and we need to stop it. Landowners have rights under the Constitution of the United States, under Ohio Revised Code and under our Charter. If you want something to happen, you should come in and influence what the zoning looks like, influence what the Comprehensive Plan looks like, or buy the property.

Councilman Bertone: I'll be brief. Obviously a lot of you have covered some of the highlights and comments and the good folks have been here for a long period of time. I'm an advocate for this effort and I have been since we discussed this last year. We are strictly here for the zoning conversation tonight. That's it. We're not discussing that plan, it's not part of this whole effort tonight.

I agree with Jon. This whole effort is in alignment with our Comprehensive Plan and use. The lead clean-up: we have heard about residential versus commercial issues and what that means to the community and I think that is something we need to take into consideration. I'm also in agreement with Tom: I'm open to an additional conversation. I have some concerns about the 'in whole or in part' and I want to hear some additional research on that. It's been architected as well what's been requested of our Law Director. I do greatly appreciate everyone's opinion here this evening, positive or negative. We all have a side and it's important for us to hear it and I thank you for that.

Councilman Newcomb: I have a question for Mr. Kambo. How many units are allowed per acre in the Downtown Residence District?

Rocky Kambo, GIS/Planner: In the Downtown Residence District, you can go up to seven units an acre.

Mayor Lorenz: I think you guys have pretty much said it all, so I will also try to be brief. I'm not an attorney. I am an urban planner. In planning school this project represents Planning 101. It makes perfect sense. The one before it did as well. This is a rezoning. In Ohio we have to rezone following the Comprehensive Plan, as Frank and Jon have indicated, and that is exactly what we are doing here tonight. I take a lot of pride in contributing to the discussion on some of these development plans that are in the town center and looking at them on a case-by-case basis. You can tell that because you can look at the record on some of the votes. I'm saying that to let you know the sincerity of how we look at each one of these.

I will support this plan. I am ready to move forward on this plan and I'd like to see this happen. I'd also like to see some healing within the City. I appreciate all the time and effort and comments you have made. I've seen some of you in here 3-4 times and some of you at every meeting, so your passion is much appreciated, and helps us in making our determination. That's what we are here for. I received probably 25 emails this afternoon on this issue.

Having said all of that, I am willing to sit back and listen and move forward in the manner that my other Councilmembers have suggested. I want to be 100% sure we are doing the right thing here. I feel pretty good about it, but waiting another few weeks is going to be okay as well.

MOTION: Councilman Counts moved to continue the public hearing and table the vote on Ordinance 2016-44 to a date certain of November 1, 2016. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

**SECOND READING: ORDINANCE 2016-48: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2016.**

Mr. Lutz: This is an appropriation for engineering the intersection at North Liberty Street and Seldom Seen Road. We are working on this project with the County. We recommend that this be once again be tabled to the November 1<sup>st</sup> Council Meeting. The City and County have not yet concluded with selecting an engineer for this project and [inaudible].

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

Councilman Bertone: Are we confident that we will have an engineering selection completed by the next meeting if we table this until then?

Mr. Lutz: I can't say.

MOTION: Councilman Counts moved to table Ordinance 2016-48 to a date certain of November 1, 2016. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

**FIRST READING: ORDINANCE 2016-49: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2016.**

Debra Miller, Finance Director: The Development Department has the architecture advisor that works with Planning and Zoning and the Board of Zoning Appeals. We have had a lot of development so the cost of the architectural advisor has met its annual budget and we need to have an additional appropriation to get us through the rest of the year. If you recall, when we had a budget meeting for fiscal year 2017, we discussed this and we even increased this a little bit for 2017.

Mayor Lorenz 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 2016-49. Councilman Bertone seconded the motion.

VOTE: Y 6 N 0 (Bennehoof was absent during the vote)

MOTION: Councilman Counts moved to adopt Ordinance 2016-49. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

**FIRST READING: ORDINANCE 2016-50: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2016.**

Ms. Miller: This is one of those housekeeping items. The state auditor doesn't want to rely on your Finance Director and they have to have the same rules in every community. Where I wouldn't allow you to spend this money, I have to, by state procedures, have you unappropriate funds. On the spreadsheet on page 2 [of the Exhibit], it shows where Jessica [Marquez, Ass't Finance Director] keeps track of our beginning balance, our actual revenues and what was actually appropriated. If it comes into the negative, we have to come back and appropriate it. We wait to do this at the end of the year as a sort of clean-up.

Councilman Newcomb: There's a lot of negatives there, but you are only taking care of four of them.

Ms. Miller: Yes. Some of them we know of revenue that's coming in after our meeting in November. An example is the Liberty and Powell CIFA. They send the money at the end of November for their December 1<sup>st</sup> payments.

Mayor Lorenz 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 2016-50. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2016-50. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

**FIRST READING: ORDINANCE 2016-51: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2016.**

Ms. Miller: As I mentioned before, we have certain things we monitor through the end of the year in case there's some corrections [needed] and this is a perfect example. We had some FMLA leave earlier in the year and we had to hire some additional assistance. We try to see throughout the year if additional monies come up in the budget to cover it. In this budget, we did not have sufficient funding, insurance lines and all those other personnel lines to cover this. So the \$13,000 is to finish up the year to pay the personnel expenses in the Administrative Department.

Councilman Hrivnak: Has this money already been spent or is this an allocation for the future?

Ms. Miller: This is money that is allocated to get us through December 31<sup>st</sup> because we had to hire an extra person to fill in so we spent more money in the prior months than what was budgeted.

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

MOTION: Councilman Bennehoof moved to suspend the rules in regard to Ordinance 2016-51. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2016-51. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

#### **COMMITTEE REPORTS**

**Development Committee:** Next Meeting: November 8th, 6:30 p.m. We are switching dates with Finance Committee because they need to meet prior to the next Council meeting.

**Finance Committee:** Next Meeting: November 1st, 6:30 p.m.

**Operations Committee:** Next Meeting: October 18th, 6:30 p.m. We met this evening. We discussed large-money topics including police body cameras, and other money expenditures such as phones, etc.

**ONE Community:** Next Meeting: October 18th, 6:30 p.m. We also met tonight. We talked about the ribbon-cutting. I will not be able to be there due to other commitments. This is for the bike path from the zoo to downtown. It's a great development for the entire community. Art has worked very hard to get all the right people there. Additionally, we talked about the beautification program and we are positioning to launch with the Delaware Career Center and Columbus Community College to perhaps help us with some beautification projects. We hope to launch something in early Spring. The only other issue we touched on briefly was the tent. We appreciate your support for the tent.

**Planning & Zoning Commission:** Next Meeting: October 26th, 7:00 p.m. Our next P&Z will be a public hearing on Keep Powell Moving.

**Powell CIC:** Next Meeting: October 26, 2016, 6:00 p.m.

**Zoning & Building Code Update Diagnostic:** Next Meeting: October 25, 2016, 6:00 p.m. The first item coming before Council will be the chicken ordinance.

#### **CITY MANAGER'S REPORT**

At our next Council meeting, we will have Executive Session at 7:30 pm to 8:00 pm and we will start the regular session at 8:00 pm as we have the last two meetings.

Also, I want to report that this past Saturday we had a wonderful evening for the community bonfire and a record turnout. Everybody had a good time.

## OTHER COUNCIL MATTERS

Councilman Bennehoof: I participated in supporting the Cruise-In Pig-out. Larry did a nice job. They had quite a few cars. I made a choice, in honor of my late father and because my wife said 'that's a cool car', for Mayor's Choice. I figured I should let you know why I made that choice.

Candy by the Carload is Saturday from 4 on to 6 pm and I am looking forward to bringing my grandchildren.

A member of the audience asked Council if the City owned the crosswalk on the new development in front of the golf course. There's a crosswalk across five lanes of 750. I don't know if that's Liberty Township or Powell Road.

Councilman Bennehoof: I think the answer is yes it's Powell on one side and Liberty Township on the other. You are talking about near the entrance to the Parade of Homes [Verona]?

From the audience: Yes [Partially inaudible because speaker was talking from the back of the room] ...see someone trying to cross the road.

Mayor Lorenz: It is an ODOT [Ohio Department of Transportation] thing. We can talk about it after I close the meeting.

## ADJOURNMENT

MOTION: Councilman Counts moved to adjourn the meeting. Councilman Bertone seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned at 9:51 p.m.

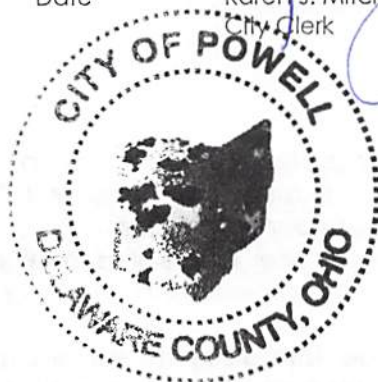
MINUTES APPROVED: November 1, 2016

  
Brian Lorenz  
Mayor

11/4/16  
Date

  
Karen J. Mitchell  
City Clerk

11-7-2016  
Date



## City Council

Brian Lorenz, Mayor

Jon Bennehoof

Frank Bertone

Tom Counts

Jim Hrivnak

Brendan Newcomb

Daniel Swartwout