



**City of Powell, Ohio**  
City Council

**MEETING MINUTES**  
February 21, 2017

**CALL TO ORDER/ROLL CALL**

A regular meeting of Powell City Council was called to order by Mayor Brian Lorenz on Tuesday, February 21, 2017 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; Leilani Napier, Deputy Clerk and Karen J. Mitchell, City Clerk, and interested parties.

**OPEN SESSION**

**PLEDGE OF ALLEGIANCE**

**CITIZEN PARTICIPATION**

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

**APPROVAL OF MINUTES – February 7, 2017**

MOTION: Councilman Bennehoof moved to adopt the minutes of February 7, 2017. Councilman Bertone seconded the motion. By unanimous consent of the remaining members of Council, the minutes were approved.

**CONSENT AGENDA**

Item

Monthly Reports – January, 2017

Action Requested

Receipt of Electronic Report

MOTION: Councilman Newcomb moved to put the Monthly Reports on the regular agenda for further discussion. Councilman Bennehoof seconded the motion. Councilmembers Bennehoof, Bertone, Hrivnak, Lorenz, Newcomb and Swartwout voted in favor of moving the Monthly Reports off the Consent Agenda. Councilman Counts opposed the motion.

**MONTHLY REPORTS – JANUARY, 2017**

Councilman Newcomb: On the police report it said that in the month of January there were 13 adult arrests and the month before there were 7, so it seems to be a spike there. I also noticed there was a spike in number of traffic stops which was 136 when the month before it was 93. So were the arrests the result of the traffic stops or do you know what was happening there?

Steve Lutz, City Manager: I can look into that question and report back to you at the next meeting.

MOTION: Councilman Bennehoof moved to approve the January 2017 Monthly Reports. Councilman Hrivnak seconded the motion. By unanimous consent of the remaining members of Council, the January 2017 Monthly Reports were approved.

**RESOLUTION 2017-02: A RESOLUTION DETERMINING THE PRIMARY INSPECTION AREA TO REPAIR OR REPLACE SIDEWALKS IN THE CITY OF POWELL.**

Chris Huber, City Engineer: This year we are combining last year with this year's sidewalk program so it will be slightly larger than in previous years. As you may recall, last year we did not get good bids so we

are rebidding last year's program and combining it with this year's program. The primary areas are largely in Grandshire, Powell Place, Falcon Ridge and Liberty Hills. Tonight we are identifying the primary inspection area. This is where we would find our vertical separations and the full array of deficiencies in our sidewalks that does include the 2 inches city-wide in that main area. In April we will do the resolution of necessity. Notices will be sent out to residents in late March or early April.

Councilman Swartwout: The citizens who were notified about sidewalk issues last year that we didn't eventually do because we didn't accept the bids, how were they notified about this process and what was the general response?

Mr. Huber: They were notified and given the opportunity to opt out before this year's program. I don't think anyone actually did opt out. I don't think there were any negative responses. In terms of people notified in the previous two years, if they did opt out, they won't get another letter. Only those that did not opt out will get letters.

Councilman Hrivnak: Will you be re-inspecting those that were...[Mr. Huber: We will re-inspect the new area, but not necessarily last year's area. We'll just continue with that bidding, but we won't issue letters to the folks that actually opted out of the program.] Do you see any issue with completing this work as you said now that you are down a man in your department?

Mr. Huber: We will evaluate that. If anything, it might delay things a week or two, but I'm hopeful that by the time the inspection is scheduled to happen, we will have another staff member on board. It will be a little more challenging, but we are trying to push forward with the schedule as it is.

Councilman Newcomb: When was the last time we inspected [the areas depicted in Exhibits] A, B and C?

Mr. Huber: These are all new areas that have not been inspected other than the annual city-wide inspection for the 2-inch separation.

Councilman Newcomb: A lot of times when you have the 2-inch it is because the trees are getting bigger so it lifts the whole sidewalk [Mr. Huber: Yes] and the sidewalk itself isn't cracked, it's just... [Mr. Huber: Right, it's just caused by the tree, yes.] Is there any way to resolve a tree root lifting the sidewalk without cracking?

Mr. Huber: They saw the root off completely where the sidewalk is... [Councilman Newcomb: And that you really don't want to do because then...] We've had success with that depending on the tree. If we have stability issues with the tree, in rare cases, we'll have to remove the tree, but a lot of times it's just a single root and the tree will be fine. We have had a lot of success doing it that way.

Councilman Newcomb: So when they opt out, they are still required to repair the sidewalk [Mr. Huber: Correct.] but they just don't do it the way you would, but they have to get rid of that 2-inch separation? [Mr. Huber: Correct.]. And you can't just put asphalt down, it has to be concrete sidewalk?

Mr. Huber: It has to be concrete sidewalk and, on rare occasions, we will allow them to grind. They can level the concrete as another option. So if someone really likes a tree and they are afraid the tree is going to be wiped out if we replace the sidewalk that might be an opt-out option, but they will likely need to replace their sidewalk more often.

Councilman Newcomb: That isn't something the City would do?

Mr. Huber: The City does not keep the root there and continue to have the problem. We get rid of the problem. If the resident doesn't like the method we use, they are able to opt out, and repair the sidewalk using the method they prefer.

Councilman Hrivnak: We reviewed this in some detail in Development Committee and thought it was appropriate.

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

Councilman Newcomb: I'd like to make a comment. We publically fund our streets but then we privately fund our sidewalks. In my mind, we are favoring roads over sidewalks. We are favoring cars over pedestrians. What this ends up being, for me, is an additional tax upon that homeowner who happens to have a public sidewalk in front of his house which is owned by the City and is used by everyone. It looks like those blocks cost about \$300 each. Last time I think we even had someone who needed 5 blocks removed and that's a big hit - \$1,500. I know it's the way we fund our sidewalks, I just question how we do it.

Mr. Lutz: Under state law, sidewalks are the responsibility of the adjacent property owner to maintain. The history with the Sidewalk Repair Program goes back about 10-12 years. Back then individuals were not maintaining their sidewalks and there was a concern about the overall condition of sidewalks in the City. Because of this the Sidewalk Repair Program was started.

Councilman Bennehoof: My experience is by no way scientific, but I've lived in at least 12 different jurisdictions all over the country. One of them admittedly had no sidewalks. All the rest did and all the rest of them had a very similar program to this one.

MOTION: Councilman Hrivnak moved to adopt Resolution 2017-02. Councilman Bennehoof seconded the motion. By unanimous consent of the remaining members of Council, Resolution 2017-02 was adopted.

**FIRST READING: ORDINANCE 2017-05: AN ORDINANCE WAIVING SECTION 1115.05(e) RELATING TO THE ISSUANCE OF ZONING CERTIFICATES FOR BUILDING CONSTRUCTION WITH REGARD TO THE RESERVE AT SCIOTO GLENN, PHASE 3.**

Mr. Lutz: This was a matter which was discussed at the last Operations Committee. The Reserve at Scioto Glenn is a new subdivision being developed off the southwest corner of Home Road and Steitz Road. The developer requested that the City allow them to install the public road in Section 3 of the subdivision and, at the same time, permit owners who have bought lots – there are 10 of them – to pull building permits so they can begin construction before the road is complete. The developer would anticipate that the road will be completed in late spring regardless, but this permits the individuals to begin building their homes. The City still has the control not to issue the occupancy permits if the road is not complete.

Councilman Bertone: We did discuss the matter in Operations Committee. The certificate of occupancy is something we still maintain and have control of. I think that this a minor, benign request that helps expedite development of the project.

Mayor Lorenz: I would note that we have done this before and occupancy is the carrot-on-a-string for these developers, so I don't have a problem doing it with the market conditions being what they are. Anything that we can do to be proactive is helpful in itself.

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 2017-05. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2017-05. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

**FIRST READING: ORDINANCE 2017-06: AN ORDINANCE TO AMEND SECTION 1(4) OF ORDINANCES 2013-13 AND 2015-27 SETTING FORTH CERTAIN REQUIREMENTS FOR THE DESIGN OF THE MURPHY PARKWAY EXTENSION SOUTH PROJECT.**

Mr. Lutz: This matter was also discussed at Operations Committee. Prior to constructing Murphy Parkway, the City conducted a pre-traffic study in the area in June. Per the current ordinance, six months after the opening of Murphy Parkway, we are required to conduct a post-traffic study of the area. That would mean the study would take place at the end of March. We discussed with the Committee having some flexibility. Ideally, I think we'd like to conduct the post-traffic study in June so we are comparing two 'like' time periods. It would also give the City Engineer some discretion on that in case there's some major construction work taking place in the area which significantly deviates the normal traffic flow.

Councilman Bertone: I agree with Steve. Obviously this is something we want to get a feel for: what imposed implementation efforts are going to look like or what impact it has had. In terms of giving Chris [Huber] and the team latitude, I'm all for it. Also, S.R. 315, and its ongoing construction efforts, has obviously created some impediments for us and we could have skewed results.

Mayor Lorenz: I do believe we opened the parkway somewhere around September 29th. It was a little bit later. I would like to note giving the City Engineer the ability to have a better time frame to get an accurate description and study to really look at what needs to be fixed, if anything, will be helpful.

Councilman Swartwout: Will the study come back to Council?

Mr. Huber: We could do that at Council or in Committee.

Councilman Swartwout: I would appreciate that. I think the Murphy Parkway extension has been a success and I think most people would deem it a success. But I also realize it's not without controversy as the process was going through, and I'd like to keep it as transparent and open as possible so there isn't the possibility for anyone to say we are gaming the results of this study.

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

MOTION: Councilman Hrivnak moved to suspend the rules in regard to Ordinance 2017-06. Councilman Bertone seconded the motion.

VOTE: Y 6 N 1 (Newcomb)

MOTION: Councilman Bennehoof moved to adopt Ordinance 2017-06. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

**FIRST READING: ORDINANCE 2017-07: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A PRE-ANNEXATION AGREEMENT WITH ARC SAWMILL LLC, AND DECLARING AN EMERGENCY.**

Mr. Lutz: This is an item which was discussed at tonight's Finance Committee, and Dave will provide you and overview of it.

Mr. Betz: The property location is on the north side of Bunker Lane and Sawmill Parkway. The two lots, one to the south and one to the east are part of Powell Grand. These are the commercial lots to the south and the residential to the east. A Verizon store is being proposed to be built on that lot and there would be an access to Bunker Lane within the City of Powell. They would like to annex in to have that access point, and that would be the main way in. This property would be added to the Seldom Seen TIF once it's annexed in. As we discussed at the committee meeting tonight, what is before you is a Pre-Annexation Agreement that sets forth terms for their annexation into Powell under the development plan that was already approved by Liberty Township and the Delaware County engineer, minus what items Chris [Meyer] has for them to do along Bunker Lane, which are minor.

Councilman Counts: Finance Committee recommended that this come before Council.

Councilman Swartwout: So the engineering for this has already been approved. Whether we annex it or don't annex it, it's going to get built regardless.

Mr. Betz: Yes. And if it were to be built in Liberty Township, we would not want them to have access off of Bunker Lane because they are not participating in the TIF.

Gene Hollins, Law Director: On this one, I have to hand it to Staff. We put a no direct access without annexation because our businesses up there built that road and we felt if they were going to make access to it, they needed to annex and pay their fair share albeit through the TIF. The only way they could get any access on Bunker Lane was by working with us and they chose to do that.

Councilman Hrivnak: There's a shadow of forum-shopping here for the zoning. They saw that on the plat, they run to the township and get their development plan approved, and then come back to the City and say, hey we want to annex.

Mr. Lutz: It would be a Verizon facility whether it's in the City or the township on this one. The landscaping meets the City's requirements, is that correct Dave?

Mr. Betz: Yes. The biggest difference that was brought up is the building elevation design. We were looking at the opportunity to add some different color or material which, in effect, is the same size, the same effect of the building.

Mr. Lutz: What they needed to do on closing the land was to get a signature and they were moving quicker than the City would have been able to because of the annexation process. It would have put them back 60-90 days before they could have closed on the property.

Mr. Hollins: They had a zoning contingency or it would have run out. As I remember it, we may not be able to meet the timeline for their zoning contingency which is part of their real estate contract. We understand the concern and we will keep a lookout for it in the future to make sure that it's not used as a mechanism to avoid our standards.

Mr. Lutz: And it really hasn't happened that frequently. The City can turn down the annexation, but from a Staff standpoint, it does generate revenue which is good. The difference would be that they wouldn't have access off Bunker Lane unless Council authorized it. They would have access through the daycare to the north of them.

Councilman Bennehoof: So there's no significant bearings between what was approved and what we would approve?

Mr. Betz: No. The only difference is what might have changed in the building design and that is mainly just material. Verizon wants to use the darker color for their branding now for all their buildings that they are doing.

Mayor Lorenz: Do we get the development fees?

Mr. Betz: We get no other fees with this.

Mr. Lutz: We get the building fees, income tax fees, property taxes.

Mayor Lorenz: I think I know where you were going. That's one of the things that has become troublesome to me. We want these businesses. We need the tax revenue. But at what point do we draw line in the sand when we are compromising – not that this isn't a nice-looking building – but development standards and things like that. I know that with the Golf Village annexation we have to take in Liberty's zoning but some of the things, existing buildings, etc., when they go through remodels, we don't get a say in that and we just want to make sure we're enhancing the quality of the development that we have. But this makes sense and I applaud you guys for catching it.

Mr. Hollins: And on this particular case it may make sense, but we do appreciate the comments and we will keep those things in mind when we are negotiating these in the future to make sure that they are not trying to avoid our fees.

Councilman Swartwout: When we talk about incorporating this into the TIF and the allocation from this property, what would the time frame be before that comes before Council?

Mr. Betz: Once the annexation is filed it would be about 90 days. Once that comes in, we can bring ordinance to you.

Mr. Hollins: We'll have to prepare the petition, get their signature, and then it generally takes about a month to get it on County Commissioner's agenda. Once they approve it, there's a 60 day waiting period and then we bring it back before Council at that point. Because nothing existed on this property as of 1/1/2017, once officially accepted by the City and part of the City, we then need to add it to the TIF prior to 12/31/2017 and we will capture any interim, enhanced value that goes on the tax rolls 1/1/2018. I assume that it may be constructed by 1/1/2018.

Councilman Swartwout: If we choose not to add it to the TIF it's just like any other parcel in Powell?

Mr. Hollins: Yes, it would pay real taxes.

Councilman Newcomb: This is coming in as an emergency. What's the connection to the public peace, health and safety?

Mr. Hollins: Part of it is just that timing that we mentioned. We have traditionally handled these as an emergency. The necessity comes down to what is now a lengthy and somewhat archaic annexation process. It will take a series of months and with recognition that this always comes back to you for another ordinance – one that is to accept the annexation. So this is only the first bite at the apple and it gets the process moving. It's helpful to us, Brendan, in both this and other circumstances, in terms of negotiating with any landowner or potential developer or buyer of these properties because we can give them a predictable timeframe.

Mr. Lutz: And, quite frankly, financial. Often times we look how quickly we can begin collecting income tax from the business.

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 2017-07. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2017-07. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

#### **COMMITTEE REPORTS**

**Development Committee:** Next Meeting: March 7, 2017, 6:30 p.m.

**Finance Committee:** Next Meeting: February 21, 2017, 6:00 p.m.

**Operations Committee:** Next Meeting: March 21, 2017, 6:30 p.m.

**ONE Community:** Next Meeting: March 13, 2017, 4:30 p.m. We had a good overview presentation on beautification, and a nice report on the backdrop for the tent. We have additional sponsors which will help defray the cost of that. The tent's use is for any public event we intend to participate in to do outreach to the community, communication about the things we are doing, and the things we would like to do.

**Planning & Zoning Commission:** Next Meeting: March 8, 2017, 7:00 p.m. We have a couple of applications, one of which is Pulte Homes.

**Powell CIC:** Next Meeting: March 1, 2017, 6:00 p.m.

**Zoning & Building Code Update Diagnostic:** Next Meeting: February 28, 2017, 6:00 p.m.

**CITY MANAGER'S REPORT**

- 1. Last year when we took a tour of capital improvements projects, we were in Adventure Park and we have an underpass underneath the railroad which goes east-west of the railroad. Last week that crossing posed a dangerous condition. Concrete is falling down and so we did close that crossing and it will remain closed for the foreseeable future. This morning we met with a structural engineer who is going to be inspecting that area and recommending a course of action for repairs.

Councilman Hrivnak: Is that closure that we have secure enough that people won't run under there? Do we need to board it up as opposed to caution tape?

Mayor Lorenz: It's taped up pretty good. You'd have to go around the tape.

Mr. Huber: I think the plan is also to have some detour signs for people who normally use that tunnel to get around it.

- 2. Last week we received a grant from the state for \$9,000 to be used for our in-squad police cameras.
- 3. Yesterday was a long day for many of our residents and businesses because of the zoo traffic. It was on the news and they had 64,000 visitors versus their previous high attendance record of 37,500. The zoo was not able to handle that crowd. By noon, the parking lots were full and everything was just flowing out like tentacles into the subdivisions. It was not a good site and unfortunately, we were not able to help the people contacting us. There was nothing we could do to facilitate the issue.

Mayor Lorenz: I would just echo that Chief Vest called me and let me know that he was working to help resolve the situation; however, he had indicated there was no parking plan or plan of action implemented by zoo personnel. The City of Powell was not contacted of this event and neither was the Delaware County Sheriff, so there was no way our officers could have responded on that. Hopefully in the future we'll be able to mitigate some of those issues and it may take some dialogue.

Mr. Lutz: With an event like yesterday and with those attendance numbers, there is no mitigation.

Councilman Bennehoof: I would comment that I was alerted to the fact that social media was exploding and Powell was taking it on the chin. People are not aware that it's multi-jurisdictional, so I think that point needs to be made.

**OTHER COUNCIL MATTERS**

There were none.

**EXECUTIVE SESSION: EXECUTIVE SESSION IN ACCORDANCE WITH OHIO REV. CODE SECTION 121.22(G)(1), PERSONNEL MATTERS.**

MOTION: Councilman Bennehoof moved at 8:10 p.m. to adjourn into Executive Session in accordance with O.R.C. Section 121.22 (G)(3), Pending or Imminent Litigation. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Hrivnak moved at 8:53 p.m. to adjourn from Executive Session into Open Session. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

**ADJOURNMENT**

MOTION: Councilman Bennehoof moved to adjourn the meeting at 8:54 p.m. Councilman Bertone seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned.

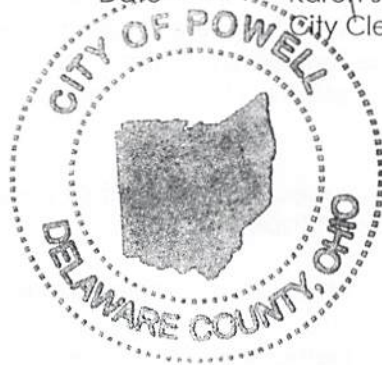
MINUTES APPROVED: March 7, 2017

  
Brian Lorenz  
Mayor

3/17/17  
Date

  
Karen J. Mitchell  
City Clerk

3/17/2017  
Date



**City Council**

Brian Lorenz, Mayor

Jon Bennehoof

Frank Bertone

Tom Counts

Jim Hrivnak

Brendan Newcomb

Daniel Swartwout