



City of Powell, Ohio
City Council

MEETING MINUTES

May 16, 2017

CALL TO ORDER/ROLL CALL

A regular meeting of Powell City Council was called to order by Mayor Brian Lorenz on Tuesday, May 16, 2017 at 7:40 p.m. City Council members present included Frank Bertone, Tom Counts, Jim Hrivnak, Mayor Brian Lorenz, Brendan Newcomb, Alaina Prall, Honorary Mayor, and Daniel Swartwout. Jon Bennehoof was absent. Also present were Steve Lutz, City Manager; Eugene L. Hollins, Law Director; Dave Betz, Development Director; Debra Miller, Finance Director; Megan Canavan, Communications Director; 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.

PROCLAMATION – LIONS CLUBS INTERNATIONAL, 100th BIRTHDAY – Bob Dotson, President of Olentangy Noon Lions Club

Mr. Dotson gave a brief history of the Lions Clubs International as well as the local chapter, Olentangy Noon Lions Club. The international organization is the largest service organization with over 1.4 million members and 46,000 clubs. The main goal is to put their talents to work to improve their local communities. The local chapter, Olentangy Noon Lions Club, was founded in 2012.

APPROVAL OF MINUTES – May 2, 2017

MOTION: Councilman Bertone moved to adopt the minutes of May 2, 2017. Councilman Hrivnak seconded the motion. Mayor Lorenz abstained. By unanimous consent of the remaining members of Council, the minutes were approved.

CONSENT AGENDA

Item

Departmental Reports – April 2017

Liquor Permit Request – Waldron Enterprises
- Annies Wine Cottage LLC

Action Requested

Receipt of Electronic Report

Waiver Request for Hearing

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

FIRST READING: ORDINANCE 2017-14: AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR HARPER'S POINTE FOR THE DEVELOPMENT OF 47 SINGLE-FAMILY FEE-SIMPLE PATIO HOMES ON 8.75 ACRES AT 2470 WEST POWELL ROAD. (EX. A)

Steve Lutz, City Manager: There is currently no outstanding litigation regarding this proposed final development plan. A resident had filed a petition for a Writ of Mandamus to the Ohio Supreme Court to force the City to put this on a ballot for a vote of the people and the Court denied that. This resident also went before the court, asked for reconsideration, and that request was denied by the Ohio Supreme Court as well.

Dave Betz will give you a review regarding the proposed development plan. The developers are here tonight to also give some information regarding this development.

Dave Betz, Development Director: We have recently rezoned the property to our Downtown Residence District. This went through the rezoning process. Applicant now comes before you with a final development plan. A preliminary plan was approved by Planning & Zoning.

The site is located as outlined in red (indicating). It has access off of Beech Ridge Drive and has some existing buildings that will be demolished and an existing pond that will be removed and relocated. There are some environmental issues on the property that will be cleaned up. The pond is an old cistern that is very shallow and is not fed by any spring. Our engineers reviewed the engineering and find that applicant can meet all the requirements of our engineering code.

You will recognize the plan (indicating) from the zoning map amendment. It is similar to what was presented at that time. This is the plan that was submitted showing 48 homes. P&Z has recommended this option to Council which includes the opportunity for a public road between Beech Ridge and Grace Drive; however, they will be building the part along their property only. It does include the entrance coming from there, developing fee simple homes, setting up a homeowners association with private roadways, with common areas to be maintained by the homeowners association. These will be individual platted lots. In the future you will see a subdivision plat come before you much like we see in a typical single-family subdivisions.

The Planning and Zoning Commission spent a lot of time discussing how the buffer landscaping is working. The landscape plans have been submitted in very good detail, showing existing trees and how they are supplementing it with new trees all around the site as well as interior street trees – typical landscape plans around the individual units.

The applicant is here and has their designer here as well to talk about architecture. That's one thing that the Planning & Zoning Commission spent a lot of time on – taking a look at the houses and how they could fit in with our downtown architectural guidelines. They are moving toward a high-end Cotswolds village look and utilizing detailing that's within our downtown district.

The way this development is being done, and because of the types of lots in some of the areas, many of these homes will be custom designed and built in a manner that can't really be established through this early process. The applicant is going to bring forward final plan elevations and material samples and color palettes to P&Z as they move forward with specific home designs in a series of several at a time. But here (indicating) you can see a depiction of the types of homes and detailing that they are looking for.

This gives you an idea of size and spacing of the homes (indicating) in relationship to the homes adjacent to them in Olentangy Ridge, how the yard spaces, landscaping, etc., will work in relationship with each other.

Planning and Zoning did recommend unanimously for approval of the plan as it has been submitted.

Len Pivar, Arlington Homes, 3964 N. Hampton Dr., Applicant. This evening I have with me Todd Faris, our land planner, Rod Arter, designer and illustrator, Keith Hake, residential designer, and Chris Schnetzler, my partner in this endeavor. We are all here to answer any questions you may have. When I'm finished addressing the items discussed at Planning & Zoning, I'll turn the floor over to Rod and he will present our home elevations and streetscapes. After seeing them, I believe you'll agree with me they are unique, elegant, upscale and will not be second to any other community. It is fantastic and I think you will be very impressed when you see it.

We have agreed to give up a home and move our entrance from Beech Ridge Drive to a new stub road and deeding the property to Powell so that Powell could construct a new public road. As requested, I have been in touch with the adjoining shopping center board of directors. They believe that the road is a good idea. They requested that Powell speak directly with them. As I suggested to

P&Z, I have no control over someone else's property, but if they stub the new road in and along our frontage, it would eventually be completed because I just think it makes a lot of sense for that whole area.

P&Z has requested that we come back to them with our initial home plans, which we will do, and in the meantime we continue to work with Powell's architectural advisor so that when we present the plans, they are in line with the spirit of Powell's architectural guidelines.

We will meet all environmental requirements, including the EPA guidelines for lead removal under the voluntary action program. A schedule for draining the cistern was requested and we plan on doing that sooner rather than later. Our engineer is considering draining it to the west of the property. This effort will be coordinated with Powell's engineer. At this point in time, I'd like to ask Rod Arter to present our product.

Rod Arter, 505 Coover Rd., Delaware, Ohio, Designer & Illustrator. I am part of the design team that Len has put together on this project. The challenge for this project was to come up with a strategy for design and style that would look into the future but not solve everything that we don't know in terms of market conditions and what the specific homes are going to look like as the development builds out. We needed to come up with a vocabulary design and a vocabulary of materials that allowed us flexibility but with some constraints. This is an empty-nester project so the homes are tending to be smaller but nicer, they are going to be high-end with elegant finishes. As we talked about this, we decided that the Cotswolds style really satisfied all the requirements within that style building – ranch houses, story and a half homes, two story homes – to have some consistent architectural detailing throughout - shallow overhangs, window patterns that fill the walls proportionally well - and that give us an opportunity to have variety as it's built out.

We felt that we needed to honor the architectural guidelines of Powell so we have the dormers and things that are consistent with that style: the higher roof pitches, window placement, building massing, scuppers and downspouts. We are in a transitional area here between Olentangy Ridge and the historic downtown. This is the crossing point. We felt like the style we have come up with is going to be driven by just a few floor plan models. We are not going to have 47 different floor plans. We are going to have an inventory of about 6 plans all together and, within those plans, a variety of elevations that give us a texture on the street. It allows us to compose the streetscape so that it doesn't look like the same unit built one after the other. The exterior finishes are on this board (indicating) and these are a really heavily textured shingle that looks very similar to a weathered shake. Two colors of roofing are planned in slate green and a pewter gray. There will be a lot of visual interest on this project. These stucco covers are authentic Cotswolds. In fact, Keith Hake has developed a nice file of authentic details from the Cotswolds design guidelines that they use today. We don't want to be enslaved to but want to be inspired by their design. These are lime washed finishes and we put this together just as a representation of the color pallet. The stone will be this natural cut profile (indicating) and has a little bit of an Old World look with two or three colors at most, but this gives us a pretty good representation. So when you blend those shingles, these stucco and trim colors and this stone, you have a really attractive finish. The windows will be an Andersen silver-lined beige or bronze window. Garage doors will be a carriage style door. We will have some accent pavers in the driveway entrance as well as the front walks to each home. In the entry we are planning to have an area of pavers making up a pervious surface that allows for some water runoff.

If you will allow me to read a couple of sentences from the description of the Cotswolds I ran across when doing my research, I think it's appropriate here. In the Cotswolds, a six or seven county area in the south center part of England, it looks like Powell geographically. It says, "And this area is well known for gentle hillsides" or wolds. And cots means a sheep enclosure. So Cotswolds means the sheep enclosure on a rolling hillside. It says, "Their outstanding countrysides with greater valley views, water meadows, beech woods, sleepy ancient limestone villages and historic market towns." That's us. It says, "Throughout the Cotswolds, stone features and buildings and stone walls act as a common thread in seamlessly blending the historic towns and villages with their surrounding landscape." It looks like we have a really strong, traditional design that we could work with there. As Dave mentioned, we will be presenting blocks of plans to P&Z for their approval.

And then there are the doors. We are planning on, and we would like to, offer a variety of bright accent doors. This is a very typical (indicating) sort of Cotswolds detail that we are looking for a way to create some personality by making things very individual and unique. We anticipate that these buyers will become friends and they will brag about their door color.

Councilman Newcomb: Is the Downtown Historical Commission going to be involved?

Mr. Betz: Yes. They will get involved with the final approval of each home. Because they are within the Downtown Residence District, a single family home does go to them. P&Z is going to look at back of the designs and then specific to each home we need to have HDAC...

Councilman Newcomb: Should they have been involved earlier?

Mr. Betz: Not necessarily. We could have had them involved earlier, but in most recent times, we have had them get involved when single family plans come in more specific than where we are at now. Certainly the architectural advisor advises both forums so he has been integral in working with the developer on how to attain a type and look like this to fit in as a transition between our old village and the new parts of Powell and Olentangy Ridge.

Councilman Newcomb: When I look at Section 1143.18 of our Code, it appears that they must be involved.

Mr. Betz: They will be involved, but they don't need to be involved right away at this stage.

Councilman Newcomb: Is there a gate with that change?

Mr. Arter: Yes.

Councilman Newcomb: Even with the change to the west side, the gate...

Mr. Arter: Yes. The design of the entry really remains the same, just the orientation is turned 90 degrees so it faces north instead of facing west as we go in. It would be gated to vehicular traffic. It would allow for pedestrian traffic to come and go and typically in a community like this, those gates may be open during the day and then 6-7 p.m. they would be closed and assessable by the residents with touchpads.

Mayor Lorenz opened this item to public comment.

Kathy Schnetzler, 3940 Blue Water Loop: I have spoken before in my support of this particular community and I am speaking again tonight in my support of this plan. I will be working with Arlington Homes in the sales process of this community. We reached out to a lot of local brokers, realtors and homeowners in the area and invited them to an advisory board committee. We introduced all of these issues and the support was nothing but positive about this empty-nester, walkable luxury community in downtown Powell. We ask for your support.

Brian Ebersole, 215 Squires Court: As you know, traffic is a big issue in downtown Powell. While this project will add to that problem, the bigger picture is all the condos and apartments that you're trying to approve in aggregate. It's not okay to carve out 50 here of a 180 and say it's not that big of an issue.

Further, we already voted to deny this specific project in November 2015. 2,242 Powell voters came out to strike down Ordinance 2015-18 and here you are trying to reenact it. Those voters don't come to meetings anymore because those people have busy lives and don't have time to come down here and be ignored as you have shown time and time again in the past. That being said, I live in America where my vote matters and if you won't respect that, I will continue to fight for it.

In our recent Supreme Court case, City Council lied in Law Director Hollins' merit brief. I said the rezoning of this land was for Harper's Pointe which everyone in this room knows is right. You said, and I quote, 'to be clear, the straight rezoning in 2016-44 is not specific to a particular development.' You

even removed the final development plan from Ordinance 2016-44 so you could lie. And not getting into the problem I have with City Council lying to break the law, you obviously lied because you know you're reenacting [Ordinance] 2015-18 from the November 2015 vote. Now the Supreme Court has said you have a duty to reject this identical project from 2015. You can only reenact by ballot initiative. They said the only way to achieve a reenactment after rejection at the ballot box is through a ballot initiative approved by the voters. Under this reading, a reenacted ordinance that was not approved by initiative is void. Not conditionally valid, but it is subject to referendum. Now it goes on to say my remedy here. It says, "Ebersole's proper course of action, therefore, is to challenge the validity of the ordinance by way of suit of declaratory judgment." So, if you pass this ordinance, it will be void and I will enforce that in court.

Tom Happensack, 127 Kellys Court: I'd like to start out with a question if I could and I'd like to have an answer before I go on. This is going back to the ordinance to rezone, just for clarity purposes, was the property added to the downtown district overlay district as part of that ordinance? Anyone have an answer to that? [Gene Hollins, Law Director: (In our meeting protocol) we don't typically do a dialog.] [Mayor Lorenz: No, we are not going to do a dialog.] Yeah. I didn't figure I'd get an answer on that.

Mayor Lorenz: Do you have anything else?

Mr. Happensack: Oh yeah. When added together, the ordinance before you tonight and the rezoning passed in November by this same Council looked virtually the same as the ordinance rejected by the voters in November 2015. The only differences to this ordinance that's in front of you now is that they're fee simple, not condominium. The homeowners association that was described by the applicant as being a do everything inside the development is much like a condominium association would do with the small exception that an owner could opt out of that.

Going back to the ordinance that you passed to rezone that you intentionally separated so that they would look different and not be the same, the only differences there is the use of a downtown district zoning verses a residential zoning. Both of these zonings when you look at them on their face allow the exact same thing. A downtown district is a little bit more restrictive in what can be done, but other than that, they are exactly the same. Some of the items that are the same is the layout. If he took the layout from the ordinance that was rejected by the voters, it looks exactly the same. If you took the tree plan that's included in this and you compared it to the ordinance that was rejected by the voters, it looks exactly the same. The square footage of the houses are exactly the same. The property sizes are exactly the same. And in this plan, as in the other plan, there are no development amenities at all. The place is so jammed full of houses that there's not a place for congregation that a normal place like this would be designed to have. There's not enough public land around the lake for people to really enjoy the lake.

I would submit to you that the voters in November 2015 rejected the ordinance for reasons other than the legal ownership and the type of zoning that allowed the project. I want to make clear that any legal action that come out of this vote to approve this project is going to be on you guys. We did what we were supposed to do and we took it to a referendum to the voters. The voters came out and voted and rejected this. This backhanded way of the City working with the developer to find a way to reintroduce this less than a year later is frankly...I don't have good words for it. It's frankly disturbing because you lose to the voters and you decide to overrule the voters and that's not the way democracy works. I realize you're elected to represent. As opposed to the lady that was up here before who has talked a lot to people who love this project, I have a vote, a registered vote with the county that says that the majority of people did not want this project. I ask you to take that into consideration as you vote.

Hearing nothing further, the mayor closed public comment and opened the floor for comments and questions from Council.

Mr. Pivar: Quite frankly I'm not even sure where to start. We have been fighting this battle for four years. The only thing I can agree with Mr. Ebersole on is that this is America and we also have land rights in America. We could have re-rented, and still can if we go back to the old zoning, those two buildings and produce anywhere from 2 to 3 times the traffic this current project going to produce. This is not the

most financially rewarding project for that piece of land. There are many things we could do. We presented to the public before that with this old zoning, we could do nursing homes in the back, up to 68,000 square foot of floor, 35 feet in height. We had all kinds of uses for the front with commercial. To keep going back to this tired argument on traffic. How many times do we have to prove it? We have traffic engineers. They have their eyes. That's what they're basing it on. And they upset the community with these lies. And, by the way, you can selectively take excerpts from the Supreme Court's findings, and I think Mr. Hollins can confirm this, one of the judges went to great length to explain that in his opinion, this is a different plan and they lost.

Ms. Schnetzler: I was listening to what Mr. Ebersole said. He has some misinformation that he was quoting. These are not apartments. These are single family homes. This is a walking community. This is for empty-nesters and this was greatly approved by a lot of the heavy hitters in the area that sell this type of product.

Secondly, I would note that there are two sides to this. There are a lot of facts that weren't given when the petitions for referendum were signed. We have had people that have come back and said they were told certain things and so they voted against this because they were told incorrect information. We're not here to go back and forth about that. This is what we are introducing. This is what we are asking approval for.

Councilman Newcomb: I agree that it is a walking community. Page 36 of the Comprehensive Plan states, "Streets should have sidewalks on both sides." Why are there no sidewalks?

Mr. Betz: There are sidewalks leading to and from the development; however not internal, and that is mainly due to the design of the streets.

Mr. Pivar: When this first started, we wanted to do a gated community. It is a gated community. It's going to be a 15 mph speed limit within the community. The streets are narrow. There's no need for sidewalks. Sidewalks are a waste of money. We discussed putting the money instead into high-end paver driveways and paver service walks. As Rod pointed out, at the entry feature, we are going to use permeable pavers and will be used to manage the storm water on the front leg.

By the way, it's a flag-shaped property. How many places can you put a road? No matter what you do it's going to look the same when you stand back here and look at it. There is only so much you can do with the property and that is one of the difficulties we have had is dealing with the shape of the property.

Councilman Newcomb: You mentioned gates. Page 80 of the Comprehensive Plan states, "Isolated and gated developments should be discouraged." So why do we have gates?

Mr. Pivar: It's a senior community. We're looking for empty-nesters. It gives them a sense of security. There's no reason for people to be driving through there because the roads go nowhere. It's a private community and that was part of our concept. We wanted people to feel very comfortable - older citizens that want to stay in Powell and that was all concept. As far as I know, no one has taken issue with that before.

The reason I originally wanted to do this as condos - they are not attached and never were - is that a condo can exercise more authority over the land than a homeowners association. But we were forced to go to a homeowners association, but it's still the same concept. Everything on the exterior of those homes, including snow removal, lawn maintenance, repairs and maintenance, are going to be done by the homeowners association.

Councilman Newcomb: Why are the streets private? And I'm thinking about a time where we had some folks come in from The Retreat and they had a problem with their streets and they were asking the City to take over maintenance or repairing something there. I'm looking ahead to the future... [Mr. Pivar: Because I wanted a gated, private community.] I guess for The Retreat we were told they had private streets too, yet off into the future 30 years down the line, they come to the City because the cost

of maintaining those streets are so expensive that they cannot afford it so they are asking the City to take over that maintenance.

Mr. Pivar: Councilman, you can come up with what-ifs all day long. I mean that's what we've been listening to for 3 years, what if they go bankrupt, what if it doesn't work? What if this happens? What if... We wouldn't be here today. We'd be living in a cave somewhere. This is a concept that I had from day one. I love Powell. I've lived here for 30 years. I want to do a really nice development before I'm done developing and this was the concept. The property was perfect for it because of its proximity to downtown Powell. There's nothing in there to entice someone with a family to move into one of those homes. The yards are small. This is totally designed and marketed toward empty-nesters and older and retired people and that's where we're getting all our feedback from. And what's wrong with it being gated? All gated communities don't have financial problems. There's a reserve set up with a homeowners association for road maintenance. The Retreat is a hybrid. It's mostly public streets.

Mayor Lorenz: I think The Retreat example – it's all public streets except that one street where they had their culvert wash out and they wanted us to pitch in for it. But that was always private. It's been like that since the 1970s.

Councilman Newcomb: Part of the Comprehensive Plan and Keep Powell Moving campaign is connectivity within Powell. Our Comprehensive Plan, page 80, says that cul-de-sacs should be avoided. In the northeast, northwest, southeast part of Powell, we're trying to get more roads, more connectivity, and here we're presented with two cul-de-sacs. How come we have no outlets going to Grace Drive?

Mr. Pivar: I'll bring you up to date on that. You were not a councilman at the time. We attempted to buy the property owned by Cochran Electric Company and put egress there. They had no interest in selling it. The fire department has looked at it, there's no need for egress out of that property. And, again, we are not looking for through traffic there. It's a destination location.

Councilman Newcomb: Could we get pedestrian access to the commercial center next door?

Mr. Pivar: No.

Mr. Betz: Actually there is. First, with regard to the Comprehensive Plan you brought up, this area is a part of an area in our Comprehensive Plan looking for more of a mixed use and looking at areas where we could include more residential in the downtown area.

Secondly, the fact is that the property is totally surrounded by already developed land minus two lots to the west. So there's nowhere to take roads anywhere. Grace Drive is set up as a commercial area. This is owned by known commercial property owner where he's expressed interest in developing commercially at that location (indicating). Again, with the Powell Center area, there's nowhere to connect with roadways. Hence the cul-de-sacs. Hence the gated nature of this residential community being transitioned from the commercial area downtown to the existing residences to the east and north.

The plan does have sidewalk connectivity in it with the new road – sidewalks leading from the development out to the east, stubbing to the commercial area there and connecting to the residential area to the east. Therefore, we are able to connect sidewalks. There's no other way to connect the bike path area here. There's no other pathways leading from Olentangy Ridge except through Beech Ridge Drive so that is an area where both sides of this road would have sidewalks and sidewalks leading from the community to the commercial area and future road connection here to the west. I think that the Comprehensive Plan is being achieved as much as possible here. Yes, there are items in there – resist cul-de-sacs, resist private, gated communities. This is one area, however, that we feel, and P&Z agrees, that doing these things in this location made sense.

Councilman Newcomb: So does that mean no pedestrian access on that entire western border?

Mr. Betz: Right now there is none here.

Councilman Newcomb: Can that be added?

Mr. Betz: No.

Mr. Pivar: But it goes to private property.

Councilman Newcomb: At some point all of this is going to get developed. I'm under the understanding that this strip mall is for sale and then we have vacant parcels to the west. So if you stub a bike trail or a pedestrian trail, can you pick it up on the next landowner?

Mr. Pivar: If there were a plan in that shopping center, if they redevelop it to a restaurant so there was something there that made sense, we could look at putting a sidewalk – a connector – in there. I'm sorry I misunderstood your question at first. I thought you were talking about opening it for the general public to be walking through the plan. We want it as a private plan for the people that live there. Again, it's about security.

Councilman Newcomb: Again, in our Comprehensive Plan, "Neighborhoods should include a variety of publically accessible parks and open spaces." Do we have that here?

Mr. Pivar: No. We don't have any children. We are not trying to appeal to children. But we do have some areas that are going to be put aside at the head of the lake. We're going to do something there with benches just to accommodate the people in that neighborhood.

Councilman Newcomb: On page 48 of the Comprehensive Plan it states, "Each development proposal should be considered for its potential impact on the transportation system and should be required to contribute to transportation system improvements to accommodate those impacts through infrastructure upgrades or fees in lieu of construction. Do we have any of that here?

Mr. Pivar: Yeah, actually we do. Our project is going to bring, by your own Finance Committee's estimate, \$2.6 million dollars – probably more than that because of the revised prices that we are working on in these homes. Also, we are giving up a \$400,000-\$450,000 unit. My development costs are going to be the same whether I'm 47 or 48 units. We are giving land and we are giving up a unit that would help amortize the cost of that infrastructure. So we are contributing so that this road can be built through there. That road will service all of Powell. We don't need the road. We have our own entrance onto Bartholomew Run.

Also, we are cleaning up a hazardous waste. There are engineering studies that Powell has that says that the contamination will eventually get into the water table as well as the other property [if it's not cleaned up] and that's a service to Powell.

Councilman Bertone: Len, thank you for coming back and sharing your plan. There are a lot of nice concepts that are being shared and some unique features associated with the community. I think the key question I have for you is associated with the lot clean up. It is 100% clean up, correct?

Mr. Pivar: Right. We're going to bring it to residential standards. The EPA has certain requirements. It's a voluntary action and there's a NFA with no further action. So basically what we're going to do is have an engineer onsite. They are going to excavate the dirt until they get clean margins. It's like surgery. After they get clean margins, the dirt they excavate is going to be stabilized and moved offsite. All this will be in compliance with the EPA. The problem is then gone. Again this cleanup is to a residential standard, not a commercial standard or no standard at all if we continue running the buildings there.

Councilman Counts: Gene, as we go into the second reading of this, I want to understand exactly what my role is because I want to make sure that I'm only dealing with things that are on the table.

As I understand it, there was a plan that was enacted. There was a referendum. There was a rezoning that occurred and there was a Supreme Court decision that basically said that those were two different things and if any resident wanted to challenge that they had an appropriate remedy to do that. That has not happened. So basically the property has been rezoned and we're now here with a plan.

Gene, can you describe to me what kind of things that I should be looking at and what are the things that I can't look at?

Mr. Hollins: Thanks for raising that because obviously this particular piece of property has generated a good bit of court action and ballot activity. We need to make sure we define what we're doing with a fine point because of that, if nothing else.

This is a final development plan in the Downtown Residence District and, as such, it is processed under our planned district code procedures by code which states that the planned district procedures will be used. In Powell, the planned district process is the preliminary plan and rezoning which go hand-in-hand. The final development plan is prepared. Typically in the planned district zoning world you would see the rezoning with the planned district proposal and you are seeing it at this point in time. But when it comes back to you as a final development plan, you are acting in your administrative capacity. It's no longer enacting a legislative ordinance and you're as an administrative body, basically doing the same thing Planning & Zoning Commission does. You have to look at specific criteria of the code, our development standards for the Downtown Residence District, and make sure those are applied to a particular application.

The remedy if somebody disagrees with your ultimate decision, including the applicant, is to go to court. And they will do the same thing. The court will look at our code criteria, and only our code criteria, and apply it to a specific application. All other issues at this point in time are basically off the table. We are directed to look at your code criteria, apply it to a specific application, which is the final development plan.

Councilman Counts: And so we know that in that zoning district it allows a certain number of residences to be built. [Mr. Hollins: Correct.] So we simply can't say that we can have more than that and applicant is asking for a certain number that comes within that rezoning that was passed. [Mr. Hollins: Correct.] Also, if there were any variances from those code things, those would be part of this text that we currently have. [Mr. Hollins: Correct.] The variances that we are being asked to look at, a couple, a lot?

Mr. Betz: There's a couple of divergences from this. One are the lot sizes that will come in with this. Because it's a private community there's no public right-of-way. What they are asking for is a smaller lot size than 50 by 150 that is typical in our Downtown Residence District. These vary quite considerably because of the design of the road. Being a public road when you take into account the road frontage, the road width, being part of those lots, then those end up being bigger.

The second one is setbacks from the public streets are a 20 foot minimum and 25 foot maximum per code. The only public street that is a part of this project and setbacks are met with these lots. All the others are private streets and that setback doesn't apply. Rear yard setbacks and building separations are met with this which is what we would look at from the standpoint of setbacks to existing residences as well as fire code issues. The Fire Department has looked at the turning movement of the private road and the radiuses and they are okay with the roads the way they are.

Councilman Counts: The other thing, Gene, which I wanted to make sure that I'm clear on is: What is passed is passed in the sense that we have a rezoning in here, but we're not looking at that rezoning, we're looking at this plan. [Mr. Hollins: Right.] Are we free, as we look at this plan, to consider anything that this plan brings to us regardless of what may have shown in a prior ordinance which was rejected and now we have a new rezoning ordinance with a separate plan?

Mr. Hollins: For purposes of consideration of this ordinance, we take the Downtown Residence District as a given. The Supreme Court made it very clear that if somebody wished now to challenge the rezoning of that particular piece of property to this zone, there is a specific process for doing that involving litigation again, and nobody's filed that, but they are clear as to what rights those folks have and how to exercise those rights. That is not before us. Nothing's been filed in that regard. It will be a separate issue anyway. Put it aside. For this issue the zoning district is intact.

Councilman Counts: Lastly, more of a comment than question. The Comprehensive Plan is always thrown in our face as being this document of prohibition – that it needs to look like this. In my view, a Comprehensive Plan is very much like the budget in the sense that it is a guideline that should be honored, that you should try to fall into. But everyone knows that every expenditure or every plan is always a little different and there are may be circumstances for which it just doesn't fit, like an expenditure which we had no clue was going to need to be i.e. more salt for our roads. I guess the one thing I see about this parcel is that it's unique in nature in the sense that, yes, we encourage sidewalks. Yes, we encourage connectivity. Yes, we encourage a character, but the unique character of this lot, the way it really only has access causes us to think twice about some of these things, and I think appropriately so.

Councilman Swartwout: I have a couple of things. I know I may be stealing some of your thunder when talking about variances and divergences in a planned district, but I just wanted to let you know that I've been paying attention to that.

At our next reading, I would like to know some of the potential things that could happen. My reading of the Supreme Court opinion is that there was no opinion given by the majority decision as to the merits of the case. If we were to go [forward] and the threats of lawsuits continue, what could that potentially look like, say for example, this passes and then a lawsuit happens and then we're through the development process. I'd just like to have a little bit of an idea of what we can expect legally if the threatened lawsuits that were mentioned here again come to fruition.

Ordinance 2017-14 was taken to a second reading.

FIRST READING: ORDINANCE 2017-15: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2017. (EX. A)

Mr. Lutz: These and the other appropriation ordinances were discussed with the Finance Committee last week. This proposed appropriation of an additional \$50,000 in our legal budget is to cover expenses associated with legal costs facing the City.

Mayor Lorenz opened this item to public comment. Hearing none, he closed public comment and opened the floor for comments and questions from Council.

MOTION: Councilman Hrivnak moved to suspend the rules in regard to Ordinance 2017-15. Councilman Bertone seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Hrivnak moved to adopt Ordinance 2017-15. Councilman Bertone seconded the motion.

VOTE: Y 6 N 0

FIRST READING: ORDINANCE 2017-16: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2017. (EX. A)

Mr. Lutz: The City CIC has an incentive agreement with HealthEdge to partially offset income taxes paid. This appropriation of \$1,508.71 additional money for that offset agreement because their income tax payments were actually higher than projected.

Councilman Swartwout: It says here in the exhibit that previous expired CIC agreements had a cap. Why did this one not have a cap as well?

Mr. Betz: This was both a retention and growth arrangement so that the company not only stayed in Powell, but were intending to grow. They grew more than what had originally been projected, which is good for us.

Mr. Lutz: And this might be our largest income tax payer, or one of the largest.

[Multiple speakers – undecipherable]

Mayor Lorenz opened this item to public comment. Hearing none, he closed public comment and opened the floor for comments and questions from Council.

MOTION: Councilman Bertone moved to suspend the rules in regard to Ordinance 2017-16. Councilman Hrivnak seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Bertone moved to adopt Ordinance 2017-16. Councilman Hrivnak seconded the motion.

VOTE: Y 6 N 0

FIRST READING: ORDINANCE 2017-17: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2017. (EX. A)

Mr. Lutz: We budget our insurance benefits each year based on the employees who are in each department. We have a new engineering department employee now. The former employee was single. Our new engineer is married and thus, their benefits are higher and the additional \$5,100 will cover the additional cost associated with those expenses.

Mayor Lorenz opened this item to public comment. Hearing none, he closed public comment and opened the floor for comments and questions from Council.

MOTION: Councilman Counts moved to suspend the rules in regard to Ordinance 2017-17. Councilman Bertone seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2017-17. Councilman Bertone seconded the motion.

VOTE: Y 6 N 0

FIRST READING: ORDINANCE 2017-18: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2017. (EX. A)

Mr. Lutz: We have a long time employee, our Chief Building Official, who will be retiring later this summer. Upon retirement that employee is eligible for unused vacation leave and a portion of unused sick leave. This amount covers those expenses associated with the retirement.

Mayor Lorenz opened this item to public comment. Hearing none, he closed public comment and opened the floor for comments and questions from Council.

MOTION: Councilman Counts moved to suspend the rules in regard to Ordinance 2017-18. Councilman Bertone seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2017-18. Councilman Hrivnak seconded the motion.

VOTE: Y 6 N 0

FIRST READING: ORDINANCE 2017-19: AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOTES IN THE AMOUNT OF NOT TO EXCEED \$2,270,000 IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF (I) DESIGNING, ENGINEERING, CONSTRUCTING AND RECONSTRUCTING VARIOUS ROAD IMPROVEMENTS, WITH RELATED SITE IMPROVEMENTS AND APPURTENANCES THERETO; (II) DESIGNING, ENGINEERING, CONSTRUCTING AND RECONSTRUCTING VARIOUS WATER IMPROVEMENTS, WITH RELATED SITE IMPROVEMENTS AND APPURTENANCES THERETO; (III) DESIGNING, ENGINEERING, CONSTRUCTING AND RECONSTRUCTING VARIOUS SEWER IMPROVEMENTS, WITH RELATED SITE IMPROVEMENTS AND APPURTENANCES THERETO; AND (IV) CONSTRUCTING, IMPROVING AND RECONSTRUCTING VARIOUS

IMPROVEMENTS TO PARKS AND RECREATION FACILITIES AND LANDS, WITH RELATED SITE IMPROVEMENTS AND APPURTENANCES THERETO; AND RETIRING NOTES PREVIOUSLY ISSUED FOR SUCH PURPOSE, AND APPROVING RELATED MATTERS IN CONNECTION WITH THE ISSUANCE OF THE NOTES.

Mr. Lutz: This is related to the Seldom Seen Road tax increment finance district and Debra will go into a brief analysis regarding it. This TIF will generate revenues beginning next year and hence the reason we are going to be rolling notes one more year.

Debra Miller, Finance Director: As mentioned in the ordinance, we are paying off a note that we issued in August 2016 of \$1,450,000 and we are reissuing it at \$2.29 million. The difference is in 2016 we knew we would not need all the cash at that time because we would not be ready to spend money on the Seldom Seen Park so we did not issue it for the entire amount. At this time, in August, we will be issuing for our entire amount. It also includes a little bit of premiums so that we could get more than the actual bond, which is why you have the amendment that came through changing it from \$2.27 million to the \$2.29 million. There is a breakout in those pages in the document. Steve had previously sent it to you from the Finance Committee. We are looking at \$570,000 for the road improvements \$560,000 for the sewer system, \$215,000 for the Park & Rec improvements; water system improvements is \$150,000 and the second part of the park improvements, which is new, is \$775,000. The last time we had a note it was at a 1.093% interest. We're basically a year later, and we're looking at an all-in cost somewhere in the 2% range, but that's subject to change as we get closer to the sale.

Mr. Lutz: And this ordinance would be taken to a second reading.

Mayor Lorenz opened this item to public comment. Hearing none, he closed public comment and opened the floor for comments and questions from Council.

Ordinance 2017-19 was taken to a second reading.

COMMITTEE REPORTS

Development Committee: Next Meeting: June 6, 2017, 6:30 p.m.

Finance Committee: Next Meeting: June 13, 2017, 7:00 p.m. At our meeting last week we heard the report from the auditors. I am pleased that our audit was as squeaky clean as it possibly could be. We have our Finance Department to thank for that. I think it's a tribute and our residents should know that we run a very tight and fiscally responsible ship here. We really try to do our best in keeping our taxpayers' money for best use.

Operations Committee: Next Meeting: May 16, 2017, 6:30 p.m. We met this evening. We talked about our age 21 tobacco restrictions, nicotine restrictions as well. We also discussed in brief the marijuana ban and/or a moratorium.

ONE Community: Next Meeting: TBD

Planning & Zoning Commission: Next Meeting: June 14, 2017, 7:00 p.m. There will be no special meeting in May.

Powell CIC: Next Meeting: TBD

Zoning & Building Code Update Diagnostic: Next Meeting: May 23, 2017, 6:00 p.m.

CITY MANAGER'S REPORT

1. The next time I see all of you will be at our annual Memorial Day parade which will be on Monday, May 29th. We will be doing things slightly different than in the past. City Council is going to meet at the post office on Grace Drive. At 9:45 a.m., 15 minutes before the parade, we're going to take off and start to hand out flags along the parade route. We will be able to go a little slower than we have in the past and if you want to carry on conversations, you'll be able to do so. I'll follow up with each you a week prior to that to remind you.
2. Megan has a brief announcement about the PRISM award which was awarded to the City in conjunction with our Keep Powell Moving initiative.

Megan Canavan, Communications Director: We briefly discussed this in Operations Committee tonight, but the City of Powell received the PRISM award with the Central Ohio Public Relations Society of America Chapter. That's the highest award you can receive and we received that in the multi-faceted community relations category, so it was a great compliment to City Council, Staff and our community. MurphyEpson put together the award submission and it was really incredible to see all the articles that have gone out, all of the communication efforts that have been out in the community, and just the general tone towards traffic and pedestrian safety and so forth. It was a great night for us. I don't have

the actual PRISM. We are ordering another one. We let MurphyEpson have the one from the ceremony.

OTHER COUNCIL MATTERS

Mayor Lorenz: Alaina, I would like to thank you for coming and sitting through a somewhat lengthy meeting and getting exposed to kind of what we talked about in the hallway about how some people like some plans and some people don't like plans and it's our job to listen to both sides of the story. I think this was a very good meeting for you to come to. You did a great job and it was fun to have you. I'd like to give you this certificate of recognition, as well as a few small gifts.

Councilman Swartwout: If we move into executive session, I'd like it known for the record that I will not be participating with respect to those items relating to O.R.C. 121.22(G)(1) Personnel Matters.

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

MOTION: Councilman Hrivnak moved at 8:54 p.m. to adjourn into Executive Session in accordance with O.R.C. Section 121.22(G)(1), Personnel Matters, and Section 121.22(G)(3) Imminent or Pending Litigation. Councilman Bertone seconded the motion.

VOTE: Y 6 N 0

Councilman Swartwout withdrew from Executive Session *after* discussion of O.R.C. Section 121.22(G)(3), Imminent or Pending Litigation, and *prior* to discussion on O.R.C. Section 121.22(G)(1), Personnel Matters.



MOTION: Councilman Hrivnak moved at 9:25 p.m. to adjourn from Executive Session into Open Session. Councilman Bertone seconded the motion.

VOTE: Y 5 N 0

ADJOURNMENT

MOTION: Councilman Bertone moved to adjourn the meeting at 9:25 p.m. Councilman Counts seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned.

MINUTES APPROVED: June 6, 2017

	6/9/17		6/12/2017
Brian Lorenz Mayor	Date	Karen J. Mitchell Clerk	Date



City Council
Brian Lorenz, Mayor

Jon Bennehoof

Frank Bertone

Tom Counts

Jim Hrivnak

Brendan Newcomb

Daniel Swartwout