

Issue of Illegal Zoning Amendment – Ordinance 2016-44

The Downtown Residence District is defined and described in City Code 1143.16.1.

1143.16.1 (a) – This district shall be reserved for property located within the Downtown District Overlay District.

1143.18 defines the Downtown District Overlay District (also known as the Downtown District per 1143.18 (a)). Subsection (g) defines that the “location and extent of the Downtown Overlay District shall be designated on the official Zoning Map of the Municipality of Powell and shall only include those properties zoned DR, Downtown Residence District and DB, Downtown Business District, both of which are planned districts.”

Clearly the properties in question was not part of the Downtown District Overlay District as required under Powell’s Zoning Code, thus creating a legal issue as to the use of Downtown Residence District for this property. This has implications on the Ordinance you have before you tonight, in what you will call an administrative act, to approve a Final Development Plan for Harpers’ Point.

While the Zoning Code does provide a mechanism/process for transferring property into the Downtown District Overlay District, the City did not initiate or follow the process spelled out in 1143.18 (g) (1) A and B to accomplish this change. This process requires....

1. Council to “initiate by resolution [1143.18 (g) (1) A 1.] with referral to the P&Z Commission” a proposal to expand or modify the Downtown District. Proposals to expand or modify “shall document” “evidence that the area is of architectural and historic significance,” and “a boundary description.” **No resolution was passed to expand or modify the Downtown District.**
2. A study and hearing [1143.18 (g) (2)] by the Planning and Zoning Commission on the subject of expanding or modifying the Downtown District Overlay District should be held. A Report to Council on the proposed change. **This was not done.** Report should have included:
 - a. A recommendation from the Historic Downtown Advisory Commission. According to City Development Director in both P&Z and Council meetings, **no contact was made.**
 - b. Whether the area or buildings are listed on the National Register of Historic Places.
 - c. Whether it provides significant examples of architectural styles of the past.
 - d. A description of the area and structures to serve as an informational resource.
3. Upon receipt of P&Z Commission Report, Council “shall hold public hearings [1143.18 (g) (3)] on proposal to expand or modify the Downtown District on the Zoning Map. Process should be the same manner as for any proposed change in Zoning Map. **Not done.**

I submit to you that Ordinance 2016-44 was passed illegally. This Ordinance to move the properties into the Downtown Residence District broke Powell City Code 1143.16.1 and 1143.18. The City made no attempt to follow the City Code process established in 1143.18 (g) to expand or modify the Downtown District. Further, the City Development Director has represented in two different meetings that the Zoning Amendment did not put the property in the Downtown District. This argument directly violates the City Zoning Code which states that the Downtown Residence District

“shall be reserved for” properties in the Downtown District Overlay District as displayed on the Zoning Map. The Code also defines the Downtown District as properties with Downtown Residence District and Downtown Commercial District zoning designations. The properties in Ordinance 2016-44 did not meet this definition at passage and still do not meet the City Code for Downtown Residence District. This cannot be ignored. To date, the City Development Director, City Attorney, City Administrator, the approving members of the Planning and Zoning Commission and approving members of City Council have breached their duties to uphold the City Charter and City Code of Ordinances. This by itself is a huge series of blunders and mistakes.

I also submit that tonight’s Ordinance cannot be passed given current the City Zoning Code violations. Any passage of Ordinance 2017-14 would put the development at odds with City Zoning Code. To act upon this measure tonight, would be an additional breach of your duties to uphold the City Charter and the City Code of Ordinances.

Tom Happensack
127 Kellys Ct.
Powell, OH 43065