



City of Powell, Ohio
City Council

MEETING MINUTES

September 19, 2017

EXECUTIVE SESSION: O.R.C. SECTION 121.22(G)(3) PENDING OR IMMINENT LITIGATION.

MOTION: Councilman Hrivnak 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 Newcomb seconded the motion.

VOTE: Y 4 N 0

MOTION: Councilman Newcomb moved at 7:31 p.m. to adjourn from Executive Session into Open Session. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

CALL TO ORDER/ROLL CALL

A regular meeting of Powell City Council was called to order by Mayor Brian Lorenz on Tuesday, September 19, 2017 at 7:39 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; Debra Miller, Finance Director; Megan Canavan, Communications Director; Karen J. Mitchell, City Clerk and interested parties.

OPEN SESSION

PLEDGE OF ALLEGIANCE

PROCLAMATION – Declaring September 20, 2017 [Murray Ebner Day](#) by Brian Lorenz. The proclamation was received by Mark Ebner on behalf of his father.

PROCLAMATION – [Make A Difference Day](#) by Suzanne Pingry, Program Director of Connections Volunteer Center. Ms. Pingry introduced Susan Hanson, Executive Director. Ms. Pingry stated that Connections has been serving Delaware County for over 20 years and is funded by United Way of Delaware County, Source Point and in-kind donations. Connections will match groups, individuals of all ages, and corporations to volunteer opportunities in the community.

PROCLAMATION – [Hunger Action Month](#) by Brandon Feller, President of United Way of Delaware County. The United Way of Delaware County and Delaware General Health District founded the Delaware County Hunger Alliance in 2012, which is an association of all the food providers, pantries and meal providers in the community. In 2012 they distributed around 500,000 pounds of food through the Mid-Ohio Foodbank Network. Today, they distribute 1.7 million pounds of food. Although hunger is not as visible in Delaware County, there are pockets of high need. In fact, the new census data released last week indicates that Delaware County's level of poverty has increased.

PRESENTATION – Marsy's Law, Amendment to the Ohio Constitution by Corey Edwards, Field Director for Marsy's Law for Ohio. <https://marsyslaw.us/about-marsys-law/>. This will be Issue 1 on the ballot. It is a citizens' driven ballot initiative highlighting equal rights for victims of crime. Everything that Marsy's Law stands for is already a statute in Ohio, this group seeks to elevate it to a Constitutional amendment. ([Exhibit 1 – Proposed Summary](#))

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 – September 5, 2017

MOTION: Councilman Newcomb requested one change to the minutes on page 7: to add the vote count for adjourning from Executive Session into Open Session. Councilman Bennehoof moved to adopt the minutes of September 5, 2017 as amended. Councilman Bertone seconded the motion. By unanimous consent of the remaining members of Council, the minutes were approved as amended.

CONSENT AGENDA

- | <u>Item</u> | <u>Action Requested</u> |
|--|------------------------------|
| Departmental Reports – August 2017 | Receipt of Electronic Report |
| RESOLUTION 2017-23 : A RESOLUTION TO CONDITIONALLY ACCEPT AND BEGIN THE REQUIRED MINIMUM TWO-YEAR MAINTENANCE PERIOD FOR PUBLIC IMPROVEMENTS WITH REGARD TO THE SELDOM SEEN ROAD RIGHT TURN LANE IMPROVEMENTS AS A PART OF THE SAWMILL PARKWAY AND SELDOM SEEN ROAD WIDENING PLANS ASSOCIATED WITH THE POWELL GRAND DEVELOPMENT. | Adoption |
| RESOLUTION 2017-24 : A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR. (EX. A) | |
| RESOLUTION 2017-25 : A RESOLUTION TO CONDITIONALLY ACCEPT AND BEGIN THE REQUIRED MINIMUM TWO-YEAR MAINTENANCE PERIOD FOR PUBLIC IMPROVEMENTS WITH REGARD TO THE RESERVE AT SCIOTO GLENN, PHASE 3, AS THE SAME IS DELINEATED UPON THE PLATS THEREOF RECORDED IN O.R. 1474, PAGES 1443-1444, DELAWARE COUNTY, OHIO RECORDS. | |

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.

FIRST READING: [ORDINANCE 2017-46](#): AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2017.

Steve Lutz, City Manager: The purpose of this appropriation ordinance is to fund the City's financial portion of the litigation surrounding the Powell Crossing development.

In June 2014, the City approved the Powell Crossing development located on the south side of Olentangy Street, just west of the railroad tracks. It is a mixed-use development consisting of 14,000 square feet of retail and office space and 64 apartment units. In July 2014, a group of residents challenged the City's approval of the development plan through a charter amendment initiative. In November 2014, the charter amendment was approved by 56% of the Powell voters. A week after this vote, Powell Crossing representatives filed a complaint for preliminary and permanent injunctive relief, declaratory judgment and damages against the City and thus began a nearly 3 year legal battle over this issue.

Tonight I bring forward to you a proposed settlement to this lawsuit arising from an unconstitutional charter amendment with a payment of \$1.8 million dollars. This payment will be made through a combination of funds contributed by the City - \$950,000, and the City's insurer, Great American Insurance Company - \$850,000. This proposed settlement resolves any and all claims and compensates the Powell Crossing developers for legal damages and lost income from the delays in construction of the Powell Crossing development.

The U.S. Federal Court ruled in March 2016 that the charter amendment initiated by a citizen petition and approved in late 2014 by Powell voters was unconstitutional. The federal court stated the Powell charter amendment was an unlawful delegation of legislative power and invalidated the charter amendment in its entirety. The federal court also determined that Powell Crossing LLC was entitled to permanent injunctive relief, damages and attorney fees. It is recommended that the City settle this lawsuit now and not continue to run up additional costs and expenses which must be paid by the Powell taxpayers.

Councilman Counts: As many know, I am Chair of the Finance Committee. This settlement has a financial impact on the City. Not only is the City paying the plaintiffs \$950,000 from City funds, but also the City's insurance company, which is a consortium of Central Ohio communities, including Powell, who is paying \$850,000. Later tonight we will consider another appropriation to increase our insurance premium costs by \$34,000 to cover claims like this. Not included in this appropriation is the additional legal expense and Staff time that this matter involved. So the real cost to the City is much greater than \$950,000. This Council and its Finance Committee, together with the City Manager and its Staff, have worked very hard to ensure that every dollar we receive from our residents are well spent.

Even though Powell has one of the lowest income tax rates in Central Ohio, Powell has been able to maintain a triple A bond rating and an appropriated unencumbered general fund balance because of the very conservative spending that we have had over the years. This has required extreme financial discipline. It has also meant that for the last ten years or so, Powell has not had a dedicated resource of revenue to maintain our City's infrastructure and meet our infrastructure challenges like traffic and parking. This settlement payment represents a loss of approximately 17% of our unencumbered general fund balance that we have worked so very hard to build. Let me put this matter in terms that may be easier to understand. Let's say that you as a resident have worked hard to save to replace that 10 year old car, or replace a roof, or send a child to college, or fund your retirement, and now one of your children has made a big, costly mistake. You, not that child, are required to pay for it and it's coming out of your savings.

Words cannot express the feelings that come to mind. Approval of this settlement is one of the saddest days of my 12 years on City Council. It's not that I disapprove of the settlement, I do support it. But I am saddened when I think about almost a million of our taxpayer dollars which could otherwise be used to build up our community. It equals more than our annual budget to maintain our residential roads. It could have added miles of bike paths. It could have helped complete the funding of Seldom Seen Park and it could have helped to lessen the very traffic issues that have been the source of contentiousness and litigation.

So while we will work hard again to fund these items without a dedicated source of funds for our infrastructure needs, our residents will continue to wait, and wait, and wait some more and become frustrated. And while we wait, the maintenance and repair of our community will continue to grow and new infrastructure challenges will creep up. What was easy to write, what was easy to get signatures for, what was easy to mark on a ballot, was a lot more complicated and required a lot more consideration and thought. And that ended up involving a judge and lawyers and a decision against the City. This was a very expensive lesson to learn to the detriment of the City and our residents.

Mayor Lorenz: This is a very emotional issue. I will open public comment. The same rules will apply as before. I will give you three minutes [to speak]. When that three minutes is up, I will ask you to stop. I ask that you state your name and address for the record. I expect us to have decorum, to stick to facts and not finger point, and to direct your comments to Council. If you are not able to finish your comments, I will take your comments or you can hand them to Karen [for the record]. I ask you to be civil and if there are issues with that, I will ask you to leave. Thank you.

Mayor Lorenz opened this item to public comment.

Dave Ebersole, 287 Penny Lane. I am here in my individual capacity as a citizen of the City of Powell. I will be taking as much time as I need because as you just stated...[Mayor Lorenz: You'll take the 3

minutes...] Excuse me, I'm speaking. [Mayor Lorenz: You'll take your 3 minutes and you'll be done.] You are saddling us, in your own words, with a surprise that was not on the agenda - there was no amount - and I'll be taking as much time as I need. He just took as much time as he needs and I will take as much time as I...[Mayor Lorenz: You can have your 3 minutes and then you will be done.] Okay.

So you all ran for public office and when you did that, you raised your hand to uphold the public trust. You ran for office and you said you were going to do your best to do what's best for the City of Powell. Aside from Brendan Newcomb, the other six of you here are violating the public trust. We have had clear public mandates from the people through elections that they do not want downtown high density housing in the 2014 charter amendment. And we had a clear mandate from the people in 2015 that they did not want the Harper's Pointe project. Okay, that's been clear. What you have done is you have made every effort to reverse those clear public mandates. The litigation that you were just discussing - the reason that the court found it unconstitutional is because the City Council decided behind closed doors in Executive Session that they agreed with the developer that they wanted to overturn the public vote. They agreed that the charter amendment was unconstitutional. And let me tell you something: banning high-density housing in downtown Powell is not unconstitutional. Zoning laws are not controversial. It is because you agreed with the court that that law is unconstitutional. You have yourselves to blame. You should look in the mirror for that settlement that you just discussed and for which Mr. Counts said was one of his worst days in public office. And then in 2015, you reversed a clear public mandate again. The people voted down the Harper's Pointe project and you came right back with the exact same project and violated that public trust and you said, yes, build the same project.

Mr. Counts, your remarks could not be more suitable. They are paternalistic. You're taking a position that we serve you. The principle that makes America great is that the government serves the people. Your analogy, treating us like children, this paternalistic view that you have, is not going to fly in Powell anymore. The people of Powell are smarter than that. They know that you agreed with the developer in court. They know that you are reversing their vote. And under no theory of representative democracy is that okay. You have clear public mandates. There's no theory of representative democracy where we have clear representative mandates on a particular issue and the right thing to do is to reverse the vote. That's not a thing.

And then we look at the Powell Crossing project. The 1.8 million dollars. [Mayor Lorenz: Let's wrap it up, David.] I am speaking. [Mayor Lorenz: Let's wrap it up.] The damages. This...[Mayor Lorenz: Okay, I'm going to give you one more chance to wrap it up or I'm going to have the officer escort...] I'm going to explain...[Mayor Lorenz: Listen to me, sir. My job in this forum is to hold everyone to the rules. You got your three minutes. If you would like to sit and listen, I'd ask you to sit down. If not, I'm going to have you removed. I'm not playing games with this.] I didn't have an opportunity to prepare my remarks because this is a surprise. And you are trying to settle a case for political reasons. [Mayor Lorenz: Okay, you're done.] You're just trying to settle the case because I am on the ballot. [Mayor Lorenz: You're done.] You don't have to do this now. There is an appeal period open right now. You are trying to settle a case while there is still an appeal window on this case. [Mayor Lorenz: Officer, please escort Mr. Ebersole out.] You don't have the authority to do that. The court should not do this. I have a right to free speech. They are stifling me from political speech. [Mayor Lorenz: No one is stifling your free speech. This is a parliamentary procedure.] For political reasons, they are asking me to leave. What is your authority for rebuking me from this?

[Multiple speakers]

Mr. Ebersole was escorted from chambers.

[Multiple speakers] Mayor Lorenz called for order.

Mr. Ebersole: I would like to speak about them spending one million dollars. They are kicking me out of the meeting. [Multiple speakers]. I would like to speak. The majority of this City voted against what you

are doing. You're kicking me out of my right to free speech. The people will know about this. It's disgusting and it's insulting.

Mayor Lorenz: I'll take the next speaker.

Erik Schmelmer, 3722 Hickory Rock Dr. I have two questions. Does anyone know where Penny Lane is?

Councilman Bennehoof: It's an age restricted apartment complex in the industrial park.

Mr. Schmelmer: And it's considered high density, correct?

Councilman Bennehoof: Some would say so.

Mr. Schmelmer: So everything he just stated completely goes against where he lives. That's all I have to say.

Len Pivar, 165 Thornberry Lane. I'm a 34 year Powell resident. What a lot of us feared has come to fruition this evening and taxpayers must now bear the damages caused by an irresponsible group organized and fueled by four Powell residents, one of whom sits on this very Council. This group has shown no respect for the rule of law or the constitutional rights of others. They played on fear, greed, selfishness and the lack of awareness of others. These people feel now that [now that] they live in Powell, no one else has to live here.

In the Powell Crossing case they managed to get an unconstitutional charter amendment on the ballot. This misguided group has lost every single court case they have engaged in all the way to the [Ohio] Supreme Court, yet they still feel they know better and now want to accomplish what they could not do through the courts by taking over City Council. Greed and selfishness: there's a long history of previously proposed plans where existing residents of Powell tried to prevent future developments or set a much higher standard than they themselves could possibly live under. These people should be ashamed of themselves. This is not the American way.

And by the way, I'll add we have a representative government. Attempting to stop one from using their property as it is zoned is no different than trying to take away your rights to live in your own home. This group has cost Powell dearly and their goal of fallow land will further impact Powell's bank account and raise taxes for those already living or working here. We cannot afford to continue down this road. This group is a cancer on the City of Powell. Thank you.

Carol Reeves, 7442 Scioto Parkway. What is the name of the person who started this petition that caused our City to lose so much money? Was there just one person that started this?

Mayor Lorenz: I think so.

Ms. Reeves: What's their name? I think we have a right to know.

Gene Hollins, Law Director: It's a matter of public record. But it was the petitioner's group.

Mayor Lorenz: I'm not skirting the question. I'm not sure who the exact person is that precipitated this.

Ms. Reeves: Do you have a group of names? Was it the guy that just left here? [Multiple speakers from the audience] Because if he was involved, why are we even listening to him?

Pat Kijewski 9030 Francine Lane. I want to thank the Mayor and City Council for giving the residents of this community permission to speak about this. I think it's very important and I'll try to be brief.

As most of you know my family, and my 93 year old mother, have been deeply and drastically affected by the many, many outright lies and intentional misrepresentations by the very same people responsible

for this unimaginable \$1.8 million dollar settlement that our City has to pay. I most fervently hope that the names of Ebersole, Valvona, Happensack and Newcomb will go down in history as some of the most damaging, self-centered and evil people that they are because they have done damage to Powell that will take years to fix.

For example, Ebersole said to me that they were intending on teaching City Council a lesson – this was back when Harper's Pointe was up - and that my mother was collateral damage. How's that for the sense of community that Ebersole/Valvona both talk about on their website? Then two years later when things were not going the way they wanted, Ebersole said if our group didn't drop our concern, they would "sue the old lady." My mother has lived in Powell for almost 50 years now, so there's [another] instance of lack of sense of community. Ebersole proudly claims in his election website that in 2014, when he was not a Powell resident, he saw City Council leading the City down a wayward path and he had a vision and created referendums and a lawsuit that, in his words, are nothing short of inspirational. That's the man that just spoke. But, ironically, all of his work was found to be illegal. Ms. Valvona's website echoes much of the same, adding that they want to preserve Powell as a family community for years to come. In addition, on their site, they still show Harper's Ridge as not being able to go through and they're still calling it, three years later, a 64 unit apartment building. I don't know about anyone here, but I can't imagine personally paying \$400-\$600K for an apartment.

I urge my fellow citizens to pay attention, not only to this hefty price the City is now paying in dollars due to this group, but also to the unspoken costs: a family community where a senior citizen is called collateral damage or parks and other City arrangements will be delayed. I urge my fellow citizens to think about what you ask for. These people are not seeking public service. In their own words, they want Powell to be their vision.

Kathy Schnetzer, 8952 Stone Ridge Place. I'd like to ask a question and then make two comments. This was illegal then and is illegal now? We have jeopardized our bond rating and insurance will likely increase. Why can't we sue them back?

Mayor Lorenz: I don't think we are prepared to answer that today.

Councilman Bertone: Folks, as you're approaching, we are not going to engage openly in conversations back and forth. Certainly address your question and we will document it.

Ms. Schnetzer: Mr. Ebersole has proclaimed he prepared the charter amendment that was illegal and misled the residents of Powell to vote in favor of that amendment.

And to further these irresponsible actions, Mr. Ebersole should know that placing his [campaign] signs in the right-of-way all over town is not allowed. Why would we want someone like this in government that has shown a total disregard to government rules?

Janelle Grubbs, 340 Delaney Road. I'd like to thank City Council, excluding Mr. Newcomb, for putting a stop to these needless, unwanted lawsuits which has drained our City budget. Specifically, I'm concerned about the infrastructure. I've lived here since 1994 in the subdivision of Grandshire and every day I'm reminded about our crumbling infrastructure. As of now, I will call them the 'Ebersole speed bumps' where the roads have buckled to the point where I have to slow down to go through the streets in my neighborhood. I am very upset to know that our City budget has been drained for needless lawsuits that could have helped our infrastructure as a whole.

The charter amendment was held invalid and the City was liable for damages and I hold Mr. Ebersole and his cohorts – Councilman Newcomb, Happensack and Valvona, as the root cause for these damages. I'd like to propose for all of us in the audience to do what we can to stop Mr. Ebersole and Ms. Valvona from reeking more havoc on our City by defeating their election and also taking up that torch in two years when Mr. Newcomb is running for re-election. Thank you.

Tom Ewers, 499 Thrush Rill Court. I fully understand the kind of impact this money has on the City. Tom [Counts], you put it well. I own a business and I know what kind of an impact [it would have] if I took that hit. I have a couple of questions. Will we be notified of what kind of cuts [there will be] whether it be to the park or police or fire? What are we going to take the cuts for to make up the dollars that these individuals have cost us? Secondly, is there going to be a publication? What you talked about as far costs, obviously, there has to have been a very heavy legal cost. Will we be told what that is? Lastly, should Mr. Ebersole be elected to Council, do you all cover anger management?

Richard Cline, 290 Weatherburn. ([Exhibit 2 – written remarks](#)) Tonight, City Council will vote the funds necessary to settle the City's financial obligations caused by the reckless legal policies advocated by Mr. Ebersole and others because they believed that they understood the legal rights of Powell property owners better than the City Attorney, better than our special counsel, and better than the courts. I want to review the history of the legal policies that Mr. Ebersole advocated, and contrast his predictions with the facts, because the public needs to know why the City is now forced to pay a developer nearly a million dollars.

In July of 2014, Mr. Ebersole led a small band of citizens in a misguided effort to prevent a Powell landowner from developing his land according to the established zoning laws of Powell. Having failed to convince City Council to ignore its own Comprehensive Plan and existing law, these residents drafted a charter amendment that unlawfully delegated legislative power to an unelected body, some of whom were to be chosen by people who didn't even live in Powell. It sought to restrict the property rights of a Powell landowner without lawful authority and without paying that landowner just compensation, merely because the drafters didn't like the landowner's development plan.

City Council unanimously rejected that proposed charter amendment because it was unlawful, unconstitutional, and un-American. When the vote occurred, several Council members warned Mr. Ebersole and the City that, if adopted, the court would strike down this charter amendment as an unlawful government seizure of private property rights, and that the City of Powell would end up paying "hundreds of thousands of dollars" for this folly. Mr. Ebersole and his group scoffed at those statements, they assured City Council and the residents of Powell that the charter amendment was on solid legal ground, and they accused City Council members of being in the pocket of developers.

More than three years later, the courts have spoken. The charter amendment that this group drafted and foisted upon the residents of Powell is an unlawful and unconstitutional delegation of legislative power.

Mr. Ebersole and his group have lost every legal challenge to the constitutionality and legality of the charter amendment they championed - but they are not paying the price for their hubris. Instead, the residents of Powell are paying nearly one million dollars because Mr. Ebersole and his group believed that landowners should only be allowed to rely on zoning laws if Mr. Ebersole and his group approved of those laws.

I moved to Powell in 1995. I was first elected to City Council in 1996. I had the honor and privilege of serving as a Council member for 20 years. When I first joined Powell City Council, one of the things that most impressed me was that the people who came before me had established a "rainy-day" fund. I think in 1996 that fund had \$50,000.00. Strong leadership, financial responsibility, and a healthy respect for the legal rights of all Powell landowners and residents led the City to grow that rainy-day fund. When I left City Council in 2015, the fund balance was just over \$1.1 million dollars. Tonight, City Council will vote to expend \$950,000 - nearly all of the City's rainy-day fund - to pay for the failed policies that Mr. Ebersole and his group foisted on Powell residents.

I expected Mr. Ebersole to urge Council to reject this settlement and to continue his hopeless quest to vindicate a failed legal strategy. If Mr. Ebersole and his group wants to continue to gamble on their failed legal strategy, let them pay for it - not the residents of Powell.

Enough is enough. I urge Council to pay this settlement, put this lawsuit behind us, and get on with the business of providing Powell residents with the high-quality service they have come to expect from Powell. Thank you for hearing me out, and thank you for your service to the citizens of Powell.

Larry Coolidge, 78 Olentangy St. I don't like to get into politics anymore. I was one of the first members on the Powell Liberty Historical Society. We didn't have a zoning code book back then. Ben Hale gave us a zoning code book when Olentangy Ridge came and he charged us \$500. When I think of \$950,000 – we didn't have a budget that big for years – and to hear that tonight is just overwhelming. What kind of people would do this? I've heard people come into this meeting the last few months, talk about how they were misled by these people when they were told what the petition was about and signed the petition. To hear about the Trowbridge family being called collateral damage – that is not how you treat people. I think this is a win-win situation for the City. The taxes from this will bring \$350,000 to \$375,000 to the Olentangy Schools. I don't see a drain on it. They talk about traffic. The Ebersoles talked about it being air pollution. But when you start insulting old families of this town, you have a problem, and I think this guy has a problem.

Bill Eddy, 140 W. Olentangy St. Today I did some research and I went to the Ebersole/Valvona [campaign] website. There is information on that website that people need to understand. These are lies. [Holds up sign to audience] On this website, they describe the things that they have actually proposed that they have blocked or stopped. That's false. They've done nothing but cost us money. I'll give you an example. On their website, they show that they stopped a 40 unit development from being completed. The record shows it was Council that stopped it, not them. They had nothing to do with it. They also show on their website that 47, 28, 22 and 64 units were halted and stopped because of their actions. That's false. 47, 22 and 64 were all approved. They've done nothing. They claim that they've done everything and all they did was cost us money. We are against these candidates. We have published the truth at this website: www.Propowell.org. Support Powell.

Don Grubbs, 340 Delaney's Circle: I did not prepare any remarks for tonight. I wasn't sure I was going to do anything other than support my wife. I am moved to say a few things having heard the comments so far.

Thank you for your service and to thank prior Councils who have been dealing with this issue in a very deliberate, responsible and adult manner. I think there is sometimes a lack of appreciation of the responsibility that public office involves and with the professionalism and seriousness that this Council and other Councils have applied. We've heard some of that with fiscal responsibility. Specific to this, I did want to clear up a little bit since you probably won't defend yourselves, I do think it's important for the public to know that this Council did not cause this problem. The decisions of this Council and the votes taken by this Council did not cause this problem. The votes taken by this Council were to uphold the rule of law.

I will agree with one thing that the first speaker [David Ebersole] had to say. Elections are important. The will of the people is important. Fortunately we live in a country where the rule of law is also quite important and that the supremacy of the Constitution rules over all. This Council knows and understands, as with anyone that has served in a public capacity, the difficulty of the balance you are faced with in upholding the public trust, upholding the public will, but also respecting the rights of every single individual in this City. That is an awesome responsibility that I know this Council takes seriously, so I want to thank you for that. I hope you continue that responsible action by voting for this resolution.

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

Councilman Hrivnak read proposed Exhibit A into the record.

MOTION: Councilman Hrivnak moved to amend Ordinance 2017-46 to add an Exhibit A and on the face of the Ordinance 2017-46 to insert the amount of \$950,000 into the blank line in Section 1. Councilman Bennehoof seconded the motion.

VOTE: Y 7

N 0

Councilman Bennehoof: I want to thank our former Council members. I am honored that you are here and, having stood on that side of the podium in similar but different circumstances, I think I treated Council with a little bit of decorum and I hope that this example can be carried forward.

It is important to keep the rule of law in mind in all matters with regards to the City, its development, and its legislation and resolutions. The Constitution of the United States affords certain rights to a landowner that the state cannot, and will not, revoke.

The Ohio Revised Code and the Charter of the City of Powell cannot be amended to restrict or revoke those rights. If they are, the federal and state courts will eventually step in to correct this deprivation of Constitutional rights. Yet, unfortunately, the court system will permit an allegedly "aggrieved party" to bring forward a petition to the ballot, and the citizens of an area can vote on such an unlawful piece of legislation, regardless of the rule of law.

The resultant process is that the land owner has recourse, and of course he does. The U.S. Constitution provides for that recourse and everyone at this table has sworn to uphold the U.S. Constitution, as well as the state Constitution and the City's Charter; it goes like this:

"I solemnly swear that I will support the Constitution of the United States and the State of Ohio and will obey the laws thereof and I will, in all respects, observe the provisions of the Charter and Ordinances of this Municipality and will faithfully discharge the duties of Council Member for the City of Powell, Ohio."

That is for all of the citizens of Powell.

The end result is this: when the landowner pursues a remedy in the courts does he advance his case against the people that brought the harm to his project? Yes and no. The landowner seeks remedy from the City because the individual(s) that perpetrated this travesty of justice know full well what the recourse is and it is not against them individually. Therefore, in an effort to mitigate the City's losses and at the direction of the court, the City entered into arbitration with the developer.

So the City is saddled with the cost of litigating the suit, the loss of Staff time preparing for that litigation, the impact of that effort that takes away from the other essential work of the City, which gets deferred for the more pressing, more urgent matter in the court. In addition, the loss of image in the eyes of our creditors and our bond agents could increase the cost of money for the City, not to mention our potential developers and our insurers. All of it, "collateral damage" in the words of at least one of those that brought this on the City.

The end result of all this frivolous activity is that the City loses, the citizens lose, and the few citizens that brought this all upon the City and its residents have little more payment than the rest of the residents unless it is in social capital or image or their standing in the community.

I would urge all residents to remember that there is a reason we have representative government. A few dedicated individuals make the commitment mentioned earlier to represent all of the citizens of the City, and we take that charge seriously and thoughtfully. This board has acted in the best interest of the City and, regrettably, we end here with a \$1,800,000 settlement and all that other "collateral damage" that I mentioned earlier. That could have a very lasting effect on our City.

I, for one, will continue to work to repair that damage and hopefully restore the image of Powell as an attractive place to live, work and play, but it will not be easy.

It has been asserted by some that some have carried petitions for the "Protect Powell Pac." That's the group that its members have filed the petitions and lost each of the resultant court cases. I would think that anybody that supported that Pac, is supported by that Pac, or carried those petitions, should not have a voice in this matter or a vote.

Councilman Hrivnak: June 2014. Three plus years ago this started and all I can do is apologize. Council acted in the best interest of the City. Council acted in the best interest and according to the Constitution of the state of Ohio, and yet we find ourselves here. It's time to move on and the first step of moving on in this case is to approve the settlement and move forward as a City.

Councilman Counts: My only final comment is that a popular decision isn't necessarily the wisest decision.

Councilman Swartwout: The decision that found the charter amendment unconstitutional was 53 pages long. In that decision, a very well respected and honorable federal judge found it to be unconstitutional. It is an opinion with a tremendous amount of analysis. There wasn't any kind of "Oh, City Council agrees with this, therefore it's unconstitutional." That's not how it went down or how the decision is and anybody can look at the decision and see exactly why this was found to be unconstitutional. And since that time, this Council has done nothing but look for the best way to limit the liability for the City of Powell. That's why we have come to this agreement. To limit the liability for the City of Powell to the best of our ability to do so and the best that our power allows us to do so. Everything that this Council has done has been in that regard because the liability was potentially staggering. I would personally like to thank the members of this Council, Mr. Counts, the Finance Committee Director, our Mayor Brian Lorenz, for doing a tremendous job for leading the City through this tough time – as good a job as could possibly be done – for something that anyone can go out and see is unconstitutional, and the reasons why it is unconstitutional. There was no secret. This is a 53 page decision. It's a bitter pill to swallow for everybody to agree to this. Nobody wanted to give anyone a million dollars of taxpayers' money, but the potential liability was staggering and we made the decision to limit the liability as best we could to protect the taxpayers in Powell.

Councilman Bertone: I thank everyone, other councilmembers and the public, for their comments. I appreciate Staff for all the work that you have put into this. We've diverted your attention many of time and there's been a lot of communication that's been needed as well. My dad used to always tell me not to continue throwing good money after bad. That's exactly what's going on with this situation. As a councilmember, we have an obligation, be it a fiduciary or civil obligation, to represent all members of this community, what their concerns may be. Whether you fall on one side of this issue or the other, we hear you. We understand and appreciate your perspective. But there are only certain things that we can do in this conversation before you realize that this is a loss [and you have to ask yourself] how do you stop the bleeding, how do you stop the hemorrhaging associated with this conversation? Mr. Counts did a fantastic job of summarizing for you folks the financial implications tonight.

Today we got a number. We have another ordinance yet this evening to consider for an appropriation. In the past couple years, we have also had additional measures that have gone through, additional funds for legal fees, to not only facilitate this litigation, but others. The number is greater than this in my opinion. If anyone really wanted to sit down and put pen to paper, it is staggering and concerns me greatly. I share Councilman Counts' comments. It is a sad day for this entire community. But I'd advocate that we end this tonight and move forward with this. Stretching this out another two weeks concerns me. I think we need to get on and move this community forward in this conversation. Spending your good money on this is not a wise decision and I thank you all for your patience as we've collectively endured it all.

Councilman Newcomb declined to comment.

Mayor Lorenz: First of all, my role as mayor is to facilitate the meetings. I am very embarrassed for what happen tonight. I strive to have decorum like the other mayors before me have. It's disappointing that things have to come to that. I hope that, as some of you who come to the meetings on a regular basis know, I try to run my proceedings fairly and justly, and I expect everyone to follow the same rules. We want to hear from everybody and allow everyone an opportunity to speak, to be respectful, and I take that very seriously. So for the things that happened earlier this evening, I apologize.

I agree with Frank with moving along. Quite frankly, I am heartbroken over this. I'm heartbroken because of comments like Rich Cline made and all the work that he did, and Tom [Counts] did, and Finance Committee, Debra [Miller] who is our Finance Director and Steve [Lutz, City Manager] for scrimping and saving money and trying to hold on to funds. I'm heartbroken for people like Dave Betz who, as a planner, I share a professional relationship and enjoy going into his office and talking shop and often have to catch myself from trying to overstep and telling him we need to do this or that. He's got some great projects in the pipeline. There are so many great things that we could do but they will all go on the backburner, and have been on the back burner for quite some time as we've suffered through this litigation. I can't quantify a time or valuation of what has happened to our town center, but this court case and this decision has put us back so far. Like Frank said, you could pen to paper, it's going to be so much greater. The Staff time that was put into this going to court and defending our judgments is insurmountable. These guys could have been working on projects, applying for grants, looking for solutions for traffic. We are doing our surveys. We know that you tell us that traffic is an issue. We could have been putting some of these dollars into our Keep Powell Moving initiative. Those are the things that really, really upset me and I think they should be brought up. Not to mention the inherent, economic loss from development opportunities in contributing to our vibrant downtown which everyone enjoys to come to. Or parking lots, who knows? I'm speculating, but I do have a general idea. So for that, I apologize to our Staff and our residents and to those that are directly involved in this. And I want to thank you on behalf of Council for spending the countless hours preparing documents and helping this Council move forward and getting to this point, albeit unfortunate. I see it in your faces. I know how exhausted you are, and for that it's disappointing. But I think today offers us a time for healing and I'd like us to move forward.

The other unfortunate incident is that these individuals have come before us. I've always offered them a seat at the table, and those before me have as well, and it's always a one way conversation. And we are never going to get anywhere with that. It's really difficult on us too. I'm not asking for sympathy for us. We signed up for this job and we know what we are getting into. I'm just disappointed that it all had to come to this. I look forward to settling this. I look forward to moving ahead. I look forward to new opportunities and I look forward to essentially rebuilding what we've had in the past and making Powell a better place.

MOTION: Councilman Bennehoof moved to suspend the rules in regards to Ordinance 2017-46. Councilman Bertone seconded the motion.

VOTE: Y 6 N 1 (Newcomb)

MOTION: Councilman Bennehoof moved to adopt Ordinance 2017-46. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

SECOND READING: ORDINANCE 2017-45: AN ORDINANCE AMENDING CHAPTER 13 OF THE CODIFIED ORDINANCES REGARDING THE BUILDING CODE OF THE CITY OF POWELL. ([EX. A, redline version](#))

Mr. Lutz: This was an undertaking of the City Zoning Code Diagnostic Committee. The City's Building Code had not been reviewed or updated in some time. Dave gave a lengthy presentation at the last Council meeting so we will give a brief overview tonight.

Dave Betz, Development Director: The Building Code changes that are being made are recommended by our Acting Chief Building Official. We took a look at the Building Code and references to International Codes are now made rather than old, out-of-date codes [references]. We also updated a few things within our own jurisdiction. We have reviewed this. The Law Director has reviewed the changes, and tonight we do recommend approval.

Councilman Swartwout: I had question about Section 1331.01 – Registration Required. The first wording is the City of Powell/Liberty Township Department of Building Regulations. That is the only time that this language formation appears in the ordinance/code. Should that be defined somewhere else in a definition section?

Mr. Lutz: Gene will have to look at that from a legal standpoint. What Dan is referring to is the City of Powell is the Liberty Township's commercial building department. We've received permission through the state building department and have entered into agreement with Liberty Township.

Mr. Hollins: We don't really have jurisdiction to require contractors performing services in Liberty Township to...The Township itself would have to require registration. I don't have any heartburn if you would like to delete that reference to Liberty Township. We do function under contract, but our code has no impact whatsoever on whether contractors of Liberty Township need to register. They would have to enact that code.

Mayor Lorenz: Would it be accurate that the City of Powell does not register or license contractors within the township?

Mr. Hollins: We do but we do it pursuant to their resolutions.

Mr. Betz: And we don't license, we just register.

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 Swartwout moved to amend Section 1331.01 of Exhibit A to Ordinance 2017-45 to remove the '/Liberty Township.' Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2017-45. Councilman Hrivnak seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2017-47: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2017.

Mr. Lutz: Finance Director Debra Miller will review this proposed increase.

Debra Miller, Finance Director: We have already discussed most of that earlier this evening, but the City belongs to the Central Ohio Risk Management Association, which is an association of nine different communities. We pool our resources for our risk liability insurance. Last year the CORMA bill had a cap of 20% because the first year the consortium caps the increase at 20% knowing that that this litigation was going on, as well as other litigation. This year there is no cap because we have already used our 1 year cap which is why it is in the 34% range. To pay the October 1st renewal bill, I will need another \$34,000 to pay it.

Councilman Bennehoof: Will we recover from this over time?

Ms. Miller: No.

Councilman Hrivnak: You mentioned in Exhibit A that our estimate already included an increase of \$5,000, so really didn't our premium go up by \$39,000?

Ms. Miller: That is correct. This is just for what we need now. As Jon alluded to, I anticipate we will have several very high rate increases in the coming years.

Mayor Lorenz: This is in relationship to the settlement that we addressed in Ordinance 2017-46, correct?

Ms. Miller: It is in relationship, but not exclusive to.

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 Bennehoof moved to suspend the rules in regards to Ordinance 2017-47. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2017-47. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2017-48: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2017.

Mr. Lutz: And Debra can maybe end the meeting on a bit of a positive note.

Ms. Miller: This is actually good news. If you recall, this year the City implemented body cameras. The police department applied for a grant for remaining body cameras because we budgeted for 12 and we were looking at adding a few each year after that. But they were able to fund all the remaining cameras with the \$9,000 grant so we need permission to spend it.

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 Bennehoof moved to suspend the rules in regards to Ordinance 2017-48. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2017-48. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

COMMITTEE REPORTS

Development Committee: Next Meeting: October 3, 2017, 6:30 p.m.

Finance Committee: Next Meeting: October 10, 2017, 7:00 p.m. We need your names for the citizen-led capital improvements committee tonight.

Operations Committee: Next Meeting: October 17, 2017, 6:30 p.m.

Planning & Zoning Commission: Next Meeting: October 11, 2017, 7:00 p.m. We will have an application for mixed use project on Grace Drive, just west of Powell Center to include commercial retail, office and flat apartments.

Powell CIC: Next Meeting: Next Meeting: TBD

Zoning & Building Code Update Diagnostic: Next Meeting: September 26, 2017, 6:00 p.m.

CITY MANAGER'S REPORT

There was none.

OTHER COUNCIL MATTERS

Mayor Lorenz: If anyone is interested in sitting on a board for the Ohio Public Works, District 17, Natural Resources Assistance Council for a three year term, let me know. I have the paperwork.

Mayor Lorenz stated that he had a thumbs up from Council to cancel the Executive Session.

ADJOURNMENT

MOTION: Councilman Counts moved to adjourn the meeting at 9:16 p.m. Councilman Bertone seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned.

MINUTES APPROVED: October 3, 2017

Brian Lorenz 10/5/17
Mayor Date

Karen J. Mitchell 10/6/2017
City Clerk Date

