



City of Powell, Ohio
City Council

MEETING MINUTES

July 17, 2018

CALL TO ORDER/ROLL CALL

A regular meeting of Powell City Council was called to order by Mayor Jon C. Bennehoof on Tuesday, July 17, 2018 at 7:29 p.m. City Council members present included Jon C. Bennehoof, Frank Bertone, Tom Counts, Brian Lorenz (came late), Brendan Newcomb, Melissa Riggins and Daniel Swartwout. Also present were Steve Lutz, City Manager; Eugene Hollins, Law Director; Rocky Kambo, Assistant Director of Development; Debra Miller, Finance Director; Jessica Marquez, Assistant Finance Director; Chris Huber, City Engineer; John Moorehead, Assistant City Engineer; Karen J. Mitchell, City Clerk; and interested parties.

OPEN SESSION

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION

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

PROCLAMATION – *In Memory of Pandel Savic*

Mayor Bennehoof read the proclamation and presented it to the family members of Pandel Savic.

Councilman Lorenz arrived.

APPROVAL OF MINUTES – July 5, 2018

MOTION: Councilman Counts moved to approve the minutes of July 5, 2018. Councilman Bertone seconded the motion. By unanimous consent of the remaining members, the minutes were approved.

CONSENT AGENDA

Item

- [Departmental Reports – June 2018](#)

Action Requested

Receipt of Electronic Reports

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

RESOLUTION 2018-10: A RESOLUTION CONSIDERING THE RECOMMENDATIONS OF THE POWELL CITIZEN FINANCIAL REVIEW TASK FORCE. ([EX. A](#))

Mayor Bennehoof: Council appointed a diverse group of 18 members of the community, some of them came in as pessimists or cynics, who worked long and hard on their analysis and final report. We had a presentation in Council and an open house last week. They unanimously approved the recommendation to Council, including those skeptics I mentioned. I think I speak for all of Council when I say thanks to those that contributed to that effort, including Staff that provided input for them. During the presentation, there was a comment about an aspirational or a uniform sample set for cities of comparison. I thought that was interesting but I understand that it was for the data that was available and I think that it is an important point to make. There were also a couple of slides added to the packet after the fact that were revealed at the Public Forum.

Steve Lutz, City Manager: This Resolution doesn't meet the desires of any of the Councilmembers up here. I received a lot of feedback and I think some of you were wondering why we even have legislation. Some

thought we should have the ballot language. So blame me for today's resolution and what we are discussing.

As the Mayor stated, on June 19th, the Citizen Financial Review Task Force gave their presentation to Council and that was followed up on July 10th by the Task Force Public Forum. Tonight City Council finally gets an opportunity to begin to discuss the findings and recommendations and to determine whether there is a desire to move forward with anything. If an item is going to be placed on the fall ballot, that deadline is Wednesday, August 8th. When Council created the Task Force back in December and January, I know you were looking at your calendars [toward that as a possible deadline]. We have a fifth Tuesday this month. If Council does want to bring forward legislation, we could do so at a special meeting on Tuesday, July 31st. That would provide a second meeting at your regular meeting on August 7th, and allow City to file something on August 8th.

I tried to put into this resolution the major recommendations of the Task Force and the items Council may want to focus on. These items include: submitting a ballot measure to Powell residents asking them to moderately raise the income tax rate from 0.75% to 1.15% and increase the credit from 0.25% to 0.50% for residents who pay taxes to the municipality in which they work. The Task Force also recommended language in the ordinance submitted in the ballot to mandate that City Council adhere to a 75/25 policy that would require no less than 25% of all income tax revenue collected by the City to be designated to infrastructure maintenance. The remaining 75% will go to the General Fund. The Task Force also recommended that a long-term Capital Improvement Plan be crafted that would create transparency and certainty around projects vital to the City and to prioritize the Capital Improvement Projects within this plan to insure that the most critical projects are addressed first.

Councilman Counts: After seeing this Resolution and knowing what we have before us, I think we need to come up with a plan or some direction for Staff. Primarily, my view is what is it that we want to start with in terms of a ballot ordinance? My suggestion is that since we have the Task Force recommendations before us, we use that as a basis for an Ordinance. We can modify that if we choose, but it seems to me that this is the way to start getting around this baseball field to an ultimate decision on what we want to do. I don't see that the direction we give to Staff is necessarily our view of what we want, but it is just a means for just discussion.

Councilman Bertone: I agree with Tom. Steve, thank you for articulating the highlights of the Task Force recommendation. We have been discussing these figures for a few weeks now and I think that's what's come about from the Citizen Review Task Force and their efforts. I keep telling folks that it's 18 people that walked in with disparate opinions and walked away with a unanimous point of view that this approach was in the betterment of the community. I now pivot to Tom's remarks about a planning point of view. The finite measures and how we want to see this executed can be discussed as we begin to frame ballot language. To me, that is where I believe we should spend our next efforts. I am perfectly content to tell you that what Steve has framed within here certainly gives me a decent working framework for what I would like to see addressed.

Councilman Swartwout: As I read this Resolution, it is not asking us to say yes or no or to otherwise put anything on the ballot. All it is asking us to do is whether we want to consider this and talk about it. As we talk about it, we can say yes, no or we can make modifications. I just want to be sure that everyone else is on the same page that all we are doing here, if we agree to this Resolution, is moving the discussion forward. This is not an indication of where we may stand. Then, with public input, deliberations over the merits, we would make our final determination.

Councilwoman Riggins: I agree with Dan. Now is the time for the public to come forward and make their comments. We had a fair turnout at the Public Forum last week, but we really need to hear more from the public and now is the time to do it before we do eventually vote. We need the input and the time is now.

Councilman Lorenz: I see it the same way all of you have said. I also see this as a recognition of the work that the Task Force did. I took a lot of criticism because I'm not in favor of a tax increase. I'm still trying to get my hands around that. I'm not sure that's the best thing for us to do right now but, nevertheless, I'm not going to stand in the way of not having a conversation. I would also like to say to those that served on the Task Force, I appreciate your efforts. What you did was very unique. It took a lot of time and effort. For us that sit up here

on a bi-weekly basis, we know what we got into, but I'm grateful for the efforts and the information that you brought forward.

Councilman Newcomb: Well I think the Law Director would give us what we need to put in the ballot language. I'm curious about this memorandum that I have in front of me – this is the first time I am seeing it – and is this from you Steve or from Debra [Miller, Law Director]? [Mr. Lutz: The one that's from me?] Okay. I haven't read it yet. It looks like it's answering a lot of the questions we have had, so I will review that.

Mr. Lutz: Those are just answering the questions that Council members have asked me.

Mayor Bennehoof: I would like to thank the Task Force and Staff for their efforts. These were citizen volunteers that accepted the challenge, and I think it is important that they be recognized for their efforts. I think this Resolution is doing that. We are not deciding that there would be a tax increase, we are deciding through our conversation whether we would put something on the ballot for a tax increase. Some feel this is very important to address the capital infrastructure needs of the City and I am one of those people. Eight years ago, there was a 1.5% with no increase in the credit that was proposed on the ballot and while it got mixed press, it did not pass. Hopefully, people will realize the work that this Task Force did, the effort that was put into it, and the rationale that was used for determining what a capital improvements fund should look like. It's not going to solve all issues, but it is a great start.

Mayor Bennehoof opened this item to public comment.

Jim Hrivnak, 330 Delaney Circle: I would like to recognize the efforts of the Task Force. 18 people meeting for such a time and coming up with the recommendation. I think one thing that is agreed among the Task Force and Council is there is a need for capital improvement funding. I would encourage you to pass this Resolution and continue the conversation. I would also ask that you think about this for a moment: Council can't pass a tax increase. That has to be done by the citizens. I think it is your job to research the subject, now that we have identified the need, and present to the citizenry the best-thought proposal that can be put forward that they can vote on. It's your duty to put that to the citizens so that they can decide how the City will move forward from here. I would ask you to think about that and encourage you to continue the conversation.

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

Mayor Bennehoof: I couldn't have said it better Jim. I think it is our job to think this through and put the best laid plan in front of the public with the best information that we can. That's why we commissioned the Task Force, led by Rich Cline, who did a phenomenal job. We were lucky to have that group.

Councilman Counts: I would like to ask Steve and Gene if this Resolution gives you enough direction to do what needs to be done at the next meeting or do we need something else?

Eugene Hollins, Law Director: If this [Resolution] passes tonight, there are very standard pieces of legislation that you would consider to place the income tax increase on the ballot. The first is a Resolution just stating the date of election and the form of the ballot language. You attach the ordinance which would be passed if the electorate chose to approve the income tax increase.

Resolutions, as you know and by statute, are one reading. Our next regular meeting is August 7th, the day before the deadline. The Ordinance itself we will do one reading and we will table it until after the election. So, theoretically, this could be done in one meeting on August 7th. However, if you would like to have further discussion of it, we could set a special meeting and either pass it or table it then, but you wouldn't be pushing it until the very last minute. Me drafting the legislation is not hard, it's a very standard resolution and ordinance to implement this correctly. Questions for Council are more of the process questions.

Councilman Counts: But the ballot language has to have certain 'plug-in' numbers and we need to either provide that or amend the exhibit at the time we vote on it.

Mr. Hollins: What I could draft and circulate prior to the meeting is what reflects the citizens' recommendations at this point in time. That is always subject to Council's further amendments or modifications.

Councilman Counts: My opinion on one meeting versus two is while I don't like to attend any more meetings than I have to, especially a special meeting, I think this is an important issue and if no one shows up at one of those two meetings, I'm okay with that because it gives our residents an opportunity to speak multiple times. I would hate for the issue to come up that they didn't have an opportunity to weigh in on it. So if we have to have a special meeting, I'm more than happy to do that.

Councilman Bertone: I'm open to a special meeting. I agree with Tom that it's important, not only for us to continue to our conversation, but also for resident feedback. Melissa brought it up as well. The July 10th Public Forum was helpful, but I think to give more folks an opportunity to weight in, I'd certainly advocate a special meeting.

Councilman Swartwout: I would also want two meetings. This is a very important issue. We definitely need as much public feedback as possible on this, so two meetings in my mind, even if it may not be a statutory requirement, is required for me personally to move forward. If no one shows up to offer feedback, it still allows us additional time to deliberate and ponder the issue.

Councilwoman Riggins: For all the reasons already stated, I would be in favor of two meetings.

Councilman Lorenz: I think two meetings are great. It's hard to get people to come out. I always appreciate it when we do have people come out. I would encourage Council, if you haven't already, to engage neighbors and constituents and solicit feedback.

Councilman Newcomb: I have a question for Mr. Hollins: resolutions are one meeting, ordinances are two meetings, and you kind of mentioned there's a resolution and there's an ordinance so don't we need two meetings?

Mr. Hollins: The Resolution, by Charter, is by one meeting and we can vote on it. We can take two meetings if we want, we will just table it to the second. With the income tax legislation, it's a strange animal because you read the resolution and the ordinance at the same meeting. And the ordinance is also an attachment to the resolution. Typically, you can't pass that ordinance because it increases the income tax over 1%, which by state law requires voter approval. So, you read it once. In a two reading municipality like Powell, you just table it at that point until after the election, and then you know whether to pass it [based on the outcome of the election].

Councilman Swartwout: Mr. Hollins said that because this ordinance would be raising [the income tax] over 1%, it would have to go to the voters. I do believe that the City of Powell, to raise it at all, would still have to go to the voters based on precedent related specifically to the City of Powell. Is that not correct?

Mr. Hollins: There's an argument to that effect; however, I think the court's recent clarification of our Charter would weaken that argument.

Mr. Lutz: Judge Henry Shaw's ruling in the mid-90s.

Councilman Swartwout: But that has been the understanding of the City for decades.

Mr. Hollins: That is correct. When I came on board, that was one of the things that the prior Law Director had opined to and I have a copy of that somewhere.

Mayor Bennehoof: I am not generally in favor of special meetings, but in this circumstance, would be willing because of the importance of the subject matter. Our Public Forum was fairly well attended on July 10th. We

had an awful lot of members of the Task Force in attendance. I want us to have the two meetings if at all possible. I believe everyone here has said they would make themselves available.

With respect to the legislation that would be put on the ballot, I could support this as it stands. I have had positive feedback about a number of things on this issue, without any negative feedback. I am in favor of putting something on the ballot because I think it's important that we accommodate our capital needs and this is a good start. With some of the other activities that are happening in the City, I think we have a basis for a great economic future. All that being said, I think everybody can expect a special meeting coming up and we will have the two readings to get the extra input.

Councilman Counts: Are we going to decide on a time tonight? There is the special election on the 7th, the night of the meeting. We have changed that meeting time before, although it was done because City Hall used to be a voting precinct.

Mayor Bennehoof: Is there any objection to the regular August 7th meeting? [After some discussion, everyone agreed to keep the regular meeting as scheduled.] A special meeting will be scheduled for 7:30 p.m. on July 31st for continued discussions and public input on the results of the Powell Citizen's Financial Review Task Force.

MOTION: Councilman Bertone moved to adopt Resolution 2018-10. Councilman Counts seconded the motion. By unanimous consent of the remaining members, Resolution 2018-10 was adopted.

VOTE: Y 7 N 0

RESOLUTION 2018-11: A RESOLUTION SPECIFYING THE MUNICIPAL SERVICES TO BE FURNISHED TO 44.29 +/- ACRES, MORE OR LESS, LOCATED AT THE NORTHEAST CORNER OF SAWMILL PARKWAY AND HOME ROAD, WHICH IS PENDING ANNEXATION TO THE CITY OF POWELL.

Mr. Lutz: At our last Council meeting, we were introduced to the proposed Ohio State Wexner Medical Center Ambulatory Care Center. This is the first step in the annexation process where we adopt a resolution specifying that we will provide municipal services to this area if annexed. This resolution is then forwarded to the County Commissioners and they are required to have this before they start their annexation process. There is a representative for Ohio State here tonight if you have any questions.

Councilman Bertone: This is obviously a tremendous opportunity for the City as well as Ohio State. Thanks to Staff for all of their efforts on this matter with OSU. Great work to Mr. Underhill's office and all the other parties involved.

Mayor Bennehoof: I think this is a terrific opportunity for the City and the region. I think it's probably an opportunity for OSU as well and we are very much looking forward to this. Welcome to the community.

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

MOTION: Councilman Counts moved to adopt Resolution 2018-11. Councilman Lorenz seconded the motion.

VOTE: Y 7 N 0

SECOND READING: ORDINANCE 2018-27: AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO CONVEY A .034 +/- ACRE TRACT OF LAND AND A .151 +/- ACRE TRACT OF LAND ON DEPOT STREET TO THE POWELL COMMUNITY IMPROVEMENT CORPORATION TO PROVIDE FOR THEIR SUBSEQUENT CONVEYANCE TO McCLURG PROPERTIES LLC PURSUANT TO THE APPROVED AMENDED DEVELOPMENT PLAN BY THE PLANNING & ZONING COMMISSION, AND DECLARING AN EMERGENCY. (EX. A)

Mr. Lutz: This ground lease is in conjunction with a new development. When this first came before you, we talked about deeding some unused property to the landowner which will be used in conjunction with the development. During discussion, Council raised the issue that while that property is not needed today and we don't foresee it being needed in the future, there could be a time when the City will need to have that

property, so the discussion evolved into having a ground lease. I will have the Law Director talk about the ground lease. We also have the owner here tonight who can answer any questions you may have about the development.

Mr. Hollins: We have identified a fairly simple ground lease that was previously used in Dublin with respect to property that they are letting to the Miracle League, which is a baseball/softball league for those with physical handicaps. It is something we present to the CIC after the conveyance but the intention is to keep title. The title will technically be in the CIC which has the authority, if Mr. McClurg's tenants ever cease to use this for parking, to re-convey it to the City. We can hold onto it for any future needs, such as a crossing, if that were ever to be a necessity for the City.

We had an opportunity to meet with Mr. McClurg last week. He may want to make some comments about that approach and then we will customize the ground lease per your decision after discussion with Mr. McClurg.

Dan McClurg, 1682 Malabar Court: I'm fine with a ground lease on that. When I met with Gene and Steve last week I guess it was that Dave [Betz, Development Director] had come to me at P&Z and requested that the City hand the property over. My big thing was that I went out and spent \$2,500 on a survey and now they come and change their mind and they want to do the land lease. I would have done a land lease in the beginning, so I'm fine with the land lease the way it is. I don't have to pay taxes on it then. It doesn't benefit me to do this. I did it because the City asked me to do this.

Mr. Hollins: Our intention is to present the request for potential reimbursement to the CIC [for Mr. McClurg].

Councilman Swartwout: Reimbursement for the survey?

Mr. Hollins: [inaudible]

Councilman Lorenz: The CIC will meet tomorrow at 6:00 p.m.

Councilwoman Riggins: The taxes were mentioned. Is the Powell CIC going to be responsible for paying property tax on this?

Mr. Hollins: Yes, they are not tax exempt. My guess is that the valuation is fairly insubstantial, but yes.

Councilwoman Riggins: Assuming and hoping that this goes on for a long time, maintenance of this parking lot will be the responsibility of...?

Mr. Hollins: Improvement and improvement for their purposes and maintenance of those improvements will be the responsibility of the tenant, which would be part of the lease.

Councilwoman Riggins: Is there a term on this lease?

Mr. Hollins: The understanding I had from our prior discussion is that it would continue as long Mr. McClurg's ownership of the adjacent parcel and his involvement in the business as either a landlord or himself would the term. The expectation would be that the ground lease would terminate when he or his LLC is no longer involved.

Councilwoman Riggins: Has there been a price discussed, a lease amount?

Mr. Hollins: No – it would be nominal. One year, one dollar.

Councilman Newcomb: Gene, are you the attorney for the CIC?

Mr. Hollins: Yes.

Councilman Newcomb: So who is negotiating the contract, the CIC or the City Council?

Mr. Hollins: The way I look at it, Mr. Newcomb, is the CIC doesn't get any control of the property without Council taking action to convey the title to it so your questions about how to structure this is the first step. If it doesn't make it past this step, it's not going to happen. So technically the lease would be between the CIC and the landowner.

Councilman Newcomb: And then you're the one negotiating that contact on behalf of the CIC with Mr. McClurg? [Mr. Hollins: Right.] The property is 171 feet long and 43 feet wide and that's only worth a dollar a year in downtown Powell? Have we looked at that at all?

Mr. Hollins: We would draft it that way based on the prior precedent we have with the other brewery. It was thought of as being part of an economic development. But it is your decision on whether to place a value on this. The only reason I say nominal is that's, by default, what we would have drafted initially.

Mr. McClurg: I do give a lot back here in Powell. This is my development that was once in very bad shape. I came in and rehabbed all those, brought in good businesses, and intend to do a future development back here. [Indicating]. The other thing I'm trying to do is purchase the parcel at the southern portion from the railroad and put in the money to develop it. I have already offered to purchase it, we are working on it right now, and I intend to put additional City parking there. I've never asked for the parcel, so I'm not going to want to pay anything more than a nominal amount that was already proposed. The City is getting value by the tax dollars coming in and that is where you will make it up.

Councilman Swartwout: I'm somewhat confused why this has been such an issue that's taken so long and so much – what is this, our third or fourth meeting discussing it? The odds of us ever having a connection over or under the railroad is minimal. I was fine with the prior approach. If it pleases more people to do this approach, I'm okay with this too with the realization that the odds of us ever using this land to connect over that railroad are unlikely. Whereas, we have a development many people in Powell are looking forward to and have commented to me about positively. So I don't understand what the holdup is on the belief that something might happen that's not going to happen.

Councilman Bertone: I echo Dan's comments. I think we've dragged this thing out long enough. I appreciate the consideration of a trade-off from a purchase to a lease opportunity. This is a swath of land that will not be used by the City. Mr. McClurg, thank you for the consideration of a shared parking arrangement as well. I think it's a betterment for the community and I'm in favor of the lease arrangement.

Councilman Counts: This is a bit of form over substance, but ultimately it's to retain flexibility. That's the sole reason why we would be looking at a ground lease. We've done a ground lease before with the pool. I think the City's goal is to allow for parking on this parcel, the landowner is going to improve it, and that is what a ground lease is all about. As long as we have this flexibility – that if some opportunity in the future happens that we get to use it – then that's what we get out of the deal as well as parking. I don't believe we should have any other obligations with the land. As long as we own it, there is no real estate taxes to it because it is being used for a public purpose. If that somehow switches because of this, well in my view, that's not our problem. One dollar is fine, just enough consideration to make it a valid ground lease.

Councilman Lorenz: I concur. I think the pool is \$1.00 a year for a 100 years or something like that. This is an economic development opportunity that we've dragged out far for too long. I'm in favor of it obviously.

Mayor Bennehoof: I'm okay with it either way. It becomes a taxable entity if it's transferred. It's not taxable if we maintain it. I'm highly in favor of incentivizing businesses to be here in Powell. You're a repeat customer here in the City and we appreciate that. I'm looking forward to it. If we pass this tonight, we can move on and get everyone to the next step.

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

MOTION: Councilman Counts moved to adopt Ordinance 2018-27. Councilman Bertone seconded the motion.

VOTE: Y 6 N 1 (Newcomb)

SECOND READING: ORDINANCE 2018-28: AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR MEWS AT ZION TO CONSTRUCT FOUR, 2-UNIT RESIDENTIAL BUILDINGS ON 1.51854 ACRES AT 10331 SAWMILL ROAD. (EX. A)

Mayor Bennehoof: This is a second reading, but the motion last time was that we would take this beyond this second reading.

Mr. Lutz: Tonight is a continuation of the public hearing which was held two weeks ago. Rocky will provide a brief review regarding this proposed development.

Rocky Kambo, Assistant Director of Development: I will pass the microphone to the architects who have prepared something for tonight.

Dave Pontia, Pontia Architecture, 39 E. Main St., New Albany: On behalf of the ownership, there was a number of questions last time. We appreciate the opportunity to come back to clarify and answer those questions that came up.

As we already discussed, our [development consists of] four building, eight units total, two units in each building. There was a question on the number of bedrooms in the units. It was developed over time and initially developed as all three bedroom units. Three of the units had two story space overlooking a great room. Over time it was developed as an alternate to provide floor space in there to add the fourth bedroom. As that transitioned over time, that alternate became the standard. So if those are purchased before they are built, the option to make those a three or four bedroom unit would be in place.

Another question regarding the condominium association to the south of us, The Commons of Powell, there was a question regarding the landscaping at the end of the unit. It was determined that the majority of that landscaping is actually on their property. The trees and main significant items would be remaining. Only the scruff on the lower level crosses over where we are doing the underground detention and that would be cleaned up. I did speak with Mr. Dotson and that homeowner after the meeting. We assured them that if any damage happens to any of those trees or other significant landscaping, it would be taken care of and brought up to their approval.

We also continued the conversation after that regarding having a connection go through their end, going up this way [indicating] to connect over. They continue to remain steadfast that they do not want a connection to go through there. We followed up with Mr. Dotson also in a subsequent phone call to discuss the landscaping and road connection, but he was steadfast about not wanting the connection.

There was an additional question about whether we had talked to the Lakes of Powell. We reached out to them and had several email exchanges with Shaun Simpson who was familiar with the project because he is on the Planning & Zoning Commission. There was a tentative meeting set up toward the end of this week to discuss the fence. We found out the fence line through the majority of Zion is in the right-of-way. Only at the end does it cross over onto the property of The Mews at Zion, but it also is in the easement of the bike path. There's no issue with our ownership on that side, they're fine with that. As a result of the meeting, there doesn't seem to be any issues on either side, but once the meeting takes place, I think anything that does come up can be resolved amicably with all parties and we are happy to report back once that meeting does take place.

One of the bigger questions that came up was how the overall HOA is structured. Attorney Schmitt, who drew

up the documents, is here to address questions related to that.

Tom Schmitt, 33 E. Schrock, Westerville: I was brought in late in the process, but I've gone ahead and drafted a base set of Declarations and Code of Regulations which I am providing to you. (Exhibit 1 and Exhibit 2). These are two basic documents for setting up a Homeowners' Association. The declaration is what establishes the property as a Homeowners' Association. The second document is a Code of Regulations which is also known as by-laws. It is a corporate procedural manual. I believe Council would be more interested in the declarations as those are the base set of restrictions, but I was asked to establish a formal Homeowners' Association for these. There will be an association with a 3-member board that's there to govern the common property that will include the common driveway, common utility lines that run down the driveway, the retainage area on the storm water retainage and the ground above that as well. Some other things that are flexible in the documents concern maintenance and landscaping. It is a standard HOA with architectural control so that the association, if it chooses to implement a whole architectural review committee, can do so. If not, the board will serve for maintaining architectural consistency. Nothing can be built without the HOA's approval, which cannot supersede any City laws. Nuisance disputes between the residents will be handled there. There is the ability to impose assessments and process liens as well.

Councilman Counts: At the last meeting there was some discussion about maintenance and replacement of the roof. Is that something that is part of the deed between the two half ownerships rather than in this document?

Mr. Schmitt: I was advised that the way these are being constructed, each individual owner can maintain their own half of the roof. The documents do give the association the power to self-help if the roof is not maintained in accordance with general standards. The association can give a notice, impose a lien, can go in and replace the roof or exterior and assess that back as a lien. The association, as drafted, has the power to borrow money to take out a loan ahead of performing construction therefore enabling it to get in there and take advantage of resources to make sure that those kinds of things are taking care of.

Mr. Kambo: I'd like to add a couple of Staff items. Gene was asked at the last meeting whether or not a stop sign could be added in. You received a memo from Gene in your packets that the City's not prohibited from erecting or enforcing multi-way stop signs that do not conform with the Ohio Manual Uniform Traffic Control devices, so as a City we have the ability to put that stop sign in. Secondly, I believe Dan asked for the fiscal analysis on this development and that was also provided in packets. This was a model put together by Dr. Bill Lafayette. We were able to put in different metrics in the development itself, and this is a net positive development in terms of the amount of services we would be providing and how much it would be taking. Lastly, this is a good example of what we did at P&Z Commission. Anytime we asked this applicant or the developer to provide us with any information, whether it was Staff, residents, or Planning & Zoning Commission, they delivered it.

Mayor Bennehoof: This is a small Homeowners' Association. Large Homeowners' Associations that are self-run have difficulty finding [board] members. I anticipate this could be a very big problem for this Homeowners' Association. Is there a professional Homeowners' Association consideration?

Mr. Schmitt: The declarations do provide the mechanisms to hire a professional manager. So while you would need three residents to show up and impose a basic assessment, they do have the power to then go out and hire a professional manager who can do the day-to-day operations. Once a year you would need to get three residents to show up to retain that manager for the next year. They do provide that option to have professional management. In terms of having the three, if the three do not come together, then there is the option for either one member, the City, or anybody else, to come forward and take the entire association to court and have a receiver appointed. That would be the mechanism under state law to force the association to run itself. I have seen that done in Ohio.

Mr. Hollins: There are definitely legal mechanisms. Tom's covered them well. I think with these smaller developments, it turns out that you know all your neighbors. You need to meet once or twice a year, and it

can work. It is much more costly to do professional management.

Mayor Bennehoof: This conceptual drawing does not have the firetruck turnaround in it. That piece of property looks pretty conflicted to squeeze eight units on it. It fits, but it's tight. I understand the economics of it. When you spoke about connecting with the other condo association, it sounded like you were talking about cutting through to Zion Road. [Mr. Pontia: That was discussed at the last meeting as an option in not having a dead-end cul-de-sac]. I think the suggestion was to have the entrance into that not cut onto Sawmill Road nor cut onto Zion, but to come in through the other condo association.

Density is a problem for me as well when I compare it to the density that it's surrounded by. Access is a problem for me. The safety of the road is a problem for me. I understand if this does not go forward, it becomes yet another vacant lot. It's an infill. We are putting four bedroom units in there and those are family homes. I wonder if there's an economic opportunity here at six units that might feel like it fits in. There other problems I have, one of which is developmental. You are a fine architect, but you have a lot of moving parts. I don't know that everyone shares all my concerns, but I think we need to take this forward to another reading.

Councilwoman Riggins: On the Ordinance, Section 1(2), "the path along the Mews at Zion property shall be repaired/replaced to the City's satisfaction." In the preliminary part of that Section, these things are to be done, they're contingent of the development plan being accepted and approved. Going back over the minutes from the last meeting, on page 6, at the end of paragraph 2, "this part of the approval process they asked Staff to make sure that if in Staff's opinion that this pathway requires upkeep, this development would help to improve that public pathway." Is this supposed to be for all time that The Mews property is going to be responsible for keeping up this pathway or is it as long as it's repaired/replaced prior to this development plan being accepted and approved?

Mr. Hollins: We wrap these ordinances specifically on how P&Z intended those conditions to read, so they were just incorporated from their minutes. I don't know what the intent was and Steve or Rocky can weigh in on that. It would be very unusual if it was a continuing obligation in the public right-of-way [inaudible]. It's not to say the planned district and the developer would get to state for the record that he could redraft that condition and it will permanently be responsible for it. They could offer to do that right now. Typically, the way it's written right now, [inaudible].

Mr. Kambo: It was the intent of P&Z to ask the developer, as part of their development, to take care of the pathway during their construction. The maintenance would stay with the City. It was only during construction that, if in Staff's opinion there were parts that need to be repaired, we would have the developer repair them.

Councilman Lorenz: Will these be rented or for purchase? [Dave Pontia, Pontia Architecture, 39 E. Main Street, New Albany: These are intended to be sold and owner-occupied.] What is the estimated value these will be sold for?

Mr. Pontia: The construction budget is coming in, but it is anticipated to be in approximately the \$420,000-\$450,000 range.

Councilman Newcomb: I had a question on the financials. There are eight units and you estimate that each unit there's household taxable income of \$155,000 per unit. This is geared toward empty-nesters, which I would assume have retirement income that is not taxable, so would you say that your estimation is very optimistic?

Mr. Kambo: No. Dr. Lafayette, when he built this model, took into consideration the type of person who would be buying or renting these homes in Powell. So this model actually takes into consideration those incomes of individuals even if they are retired. Generally speaking, I would say that even our retired or empty-nester community in Powell does still have a very high income.

Councilman Newcomb: I realize they may have a high income, but untaxable income. Retirement income isn't taxable.

Mr. Kambo: That's the thing about empty-nester retirees, they're likely to still be working and that is taken into consideration in the model itself. Nowadays we generally see individuals are not just fully retiring and are working much longer than before.

Councilman Newcomb: The residential trips in and out. Is that averaging 10 per unit?

Mr. Kambo: We didn't do a traffic analysis. For a development this size, we didn't think it was necessary to do a traffic analysis. In general, it is known or believed that empty-nesters/retiree homes generate less trips than single family residential.

Councilman Lorenz: It would be from our development with Len Pivar, a PM peak would be .05 trips per unit. The Uniform Traffic Manual would say that. I'm not a traffic engineer, but I just recall that from the previous one.

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

Councilman Counts: This is a small development. I really don't care what the result is tonight. This is not going to make or break the community or area. So I'm not here to try to persuade my fellow Councilmembers on what I'm about to say. I view this as an infill piece. I look at that lot and I see what's surrounding it and it's this transitional, residential ownership from single family, which is closer to Liberty St. and over to Sawmill Road which is commercial, so this denser kind of living is what you would expect. I'm also not the kind of person that believes in looking at anecdotal evidence because I hear so many things about this community and what's going on in this community and the facts don't support it.

I will tell you about my anecdotal experience is. I have a good friend that lives in Linworth Village and Linworth Village is an empty-nester community. Honestly, it is a lot larger than what this is. These are homes, doubles, and my friend lives in a double. They are able to handle the roofs and common areas. They live in a double that is actually almost as large as my house. In fact my friends see me so much because I use their basement for my girls' stuff that their neighbors think I live there too. There is so much room that they could actually have four bedrooms in this place if they wanted to. Their neighbors, for the most part, are people that work. Some of them are retired or getting close to retirement age, but most of them work. They are proud to live in the area. They are quiet people. They want a different kind of living. That's what I see here.

If there's any particular issue that I have with what's going on here, it's Sawmill Road. On Monday night with that cement truck that closed I-71, I was told by Google maps to go all the way around I-270 west and come up Sawmill Road. Once I got to Sawmill Parkway, it then said for me to take Sawmill Road instead of the Parkway, which I did not do for fear that some of my fellow Councilmembers would be looking for me trying speed.

I think the problem has nothing to do with this development, or the people who live in this development in terms of Sawmill Road, but it is a fact that this road is disjointed in its ownership by the City, township and county. If these [entities] could get together and come up with some solution, we could solve the traffic problem. We can't do that. I'm in favor of putting a stop sign at corner of Zion and Sawmill Roads. If that would help the situation, I'm in favor of that.

One of the other things that has been bantered about is the fact that we can probably annex the entire road. Well, yeah, we could do that, but that's really taking a liability on in order to control all of Sawmill Road. Do we want to do that at this point in our economic health? I'm not sure. Bottom line is: this development isn't going to make any difference (detrimentally or beneficially) to the community. What P&Z did is entirely appropriate and I am wholeheartedly able to support it on that basis and based on all the antidotal information I have about places and units that are like this.

Councilman Lorenz: Tom did a great job summing that up. One of the things that bothers me about Council is we like to play Planning Commission and that's not our role. P&Z brought forward a plan to us in its best form

and I think there's a lot of ancillary things that are going around this development as well. I think Tom made the comment that it's not going to be a detriment or a huge benefit. No disrespect in his comments in saying that, but when you look at the analysis and bottom line, it comes out clear. I would love to put a stop sign there now that we have this information because I am tired of hearing from people in the township asking what the City is going to do about it. Frank, Staff and I have been working on it with the county engineer and some of our township trustees for a year and a half now just trying to get all parties together to come up with some solutions to stop so many accidents on that street. If we have the opportunity to put a sign in there, I would wholeheartedly support that. That's probably a different item. I know it's sort of tied into where this development is, but it's probably a conversation for another day.

Mr. Hollins: If a three-way stop sign at Zion Road is a critical factor, the map shows [inaudible]. The intersection itself is all within Powell. The geometry [inaudible] is how you set the location of the actual stop sign. There's a lot more to designing and geometry and where you locate that stop sign may put it in the township. I don't want to leave you with the impression that we can go out tomorrow and have complete control. We would have to provide you a much more detailed geometric drawing [inaudible]. We now think we have the legal basis for approving that, but there is an engineering aspect to that stop sign that may or may not place it 100% in the City [inaudible].

Councilman Lorenz: I understand that. For me, it would be a standalone item. I think the property owner to the west would want to be notified that we were contemplating that as well with this development.

Mayor Bennehoof: I think a 3-way stop would help. I think we could probably get away with finding the right answer to putting that third stop sign in because we own a little bit beyond the...Do we need an agreement if we own the entire intersection to place a stop sign in the township? Maybe. But I think there's probably a way to make that happen.

The other comment I would make is that we've spent a lot of time discussing this. We will have another reading on this. It is important that we vet these issues that the developer and all the parties involved are aware of the concerns and have a chance to address them. Otherwise, we would just go forward and never get things resolved.

Councilman Counts: My understanding is that the public hearing was continued, and that's what we are doing here. We've now met the requirement for a second reading on this, so we could vote on this.

Mr. Hollins: It's the pleasure of Council.

MOTION: Councilman Counts moved to adopt Ordinance 2018-28. Councilman Lorenz seconded the motion.

Councilwoman Riggins: What is the difference between a no vote and an abstention? Does abstaining have to do with wanting this to go to another reading or is the abstain that we are not ready to vote at this time?

Mayor Bennehoof: I'm not convinced that we have all the issues resolved. That is the reason for my abstention. I believe that if somebody could say they were going to put a 3-way stop sign [there], I'd probably be more inclined. I still have all the other issues and concerns that I've delineated, but there's the will of the law, the will of the Code, and the will of owner. There are a lot of issues there that I would not stand in front of, but I don't think the safety of the community is enhanced by adding this density. I don't believe it's going to be empty-nesters. I have a lot of circumstantial and referenced information about that. They are being built with four bedrooms on purpose and I have a concern about the density that will be there. That's why I abstained.

Councilman Swartwout: My abstention has nothing to do with the issues of taking it to another reading. My abstention is that it is proper for me to do so.

Mr. Hollins: Our Charter and Ordinances require four affirmative votes or, in this circumstance, as long as you're not making any modifications to the recommendations, which you are not, a simple majority of four will adopt

the Ordinance. But it takes four affirmative votes. So the abstention will not count. In this situation, the abstentions don't count toward the total affirmative four votes needed to pass this Ordinance.
Councilwoman Riggins: Okay, I abstain.

VOTE: Y 3 N 1 (Newcomb) AB 3 (Bennehoof, Riggins, Swartwout)

Mayor Bennehoof: Is there a way for us to force the issue of a 3-way stop?

Mr. Hollins: At this point, a piece of information we need would basically be a drawing from Engineering to show us how that would be laid out [inaudible].

Councilman Bertone: I'm not sure you can tie those two together. I think they are two disparate conversations [Mayor Bennehoof: Yes they are]. Sawmill Road has been one giant steak that a number of developers have been feeding on for a number of years. In some respects, this parcel has is a dinner roll. And now we're arguing over that portion of it. It's a tough parcel in and of itself. It's a remnant and in a difficult location. There's no one person that's screaming about Sawmill Road except me. And to be honest with you, other than Brian and Dan to some extent, the fact that we have latitude to at least have a conversation with our township partners is far greater than it was last week. To that extent, I'm feeling that I don't want to hold this development hostage for that reason. I think we can have that conversation and carry that on with the township and ultimately get it where we need it to be. I think the township would welcome that conversation about how we can cost-effectively create some measure of a safety control there. As Mr. Dotson raised as well, a lot of folks to the south are concerned. So to that extent, I feel they are two disparate issues and we understand they are related, but I do believe they have to be decoupled.

Mayor Bennehoof: I agree. I think we are setting a precedent here.

Councilman Lorenz: I would add that I don't think it's fair for us to hold the developer hostage because we want a stop sign there. We all have safety in mind and these two are tied together. I know you have other issues, and I appreciate that, but for the record we shouldn't be holding them up if that's the only thing that's going on here.

Mayor Bennehoof: I will be very plain here. How many four bedrooms are there? [Mr. Pontia: There is a potential for 3, 4-bedroom homes]. My fear, which is based on very good evidence, is that these are going to be multi-generational, family homes and not just empty-nesters. That is a very real concern as it puts more load in here.

Councilwoman Riggins: I would like the opportunity to look over the materials we received tonight and have another reading of this at our next Council meeting.

Councilman Lorenz: Gene, essentially this motion failed, so this ordinance should be....

Mr. Hollins: (inaudible)

Councilman Counts: Can we do a motion for reconsideration at our next meeting?

Mr. Hollins: (inaudible) It will not take another motion tonight and we've walked away and that motion (inaudible). Your Code does say Council shall be (inaudible) to object to the recommendation (inaudible). This is the same thing with the Motion for Reconsideration. If you are still in session, it is appropriate to make another motion, but if we leave the chambers tonight without making any further motion, then we're through.

Mayor Bennehoof: Let's at least have that because I don't want to kill this and I don't want to hold anyone hostage. What's your recommendation?

Mr. Hollins: My recommendation is consider one of two motions: a motion to table, or another attempt, after

further discussion.

Mayor Bennehoof: I abstained because I did not want to kill it. I will entertain the pleasure of Council.

Councilman Counts: I'm hearing from Melissa that she needs more time.

Councilman Lorenz: Before we vote, can we ask the Applicant how this may affect his timeline?

Rajneesh Katarapu, Developer, 6684 Cooperstone, Dublin: This project started three years ago. It was supposed to be a six unit building and we tried to make it work, but from an economic perspective, it doesn't work. So we are supposed to be a more luxury-type house. We have more upgrades in planning these and there are only 3 units slated to have 4 bedrooms. Most of them have 3 bedrooms, but three of units have an option to go to a 4th bedroom. Already the project is delayed. We are hoping we can get an approval today. If you feel it needs to go another two weeks, it is what it is. But I would express the concern from a finance perspective and we are really anxious for this to kick off.

MOTION: Councilman Counts moved to table Ordinance 2018-28 to a date certain of August 7, 2018. Councilman Lorenz seconded the motion. Councilman Swartwout abstained. By unanimous consent of the remaining members of Council, the motion was adopted.

FIRST READING: ORDINANCE 2018-30: AN ORDINANCE AUTHORIZING THE FINANCE DIRECTOR TO MAKE A PAYMENT ON AN INVOICE FROM MUNICODE FOR CODIFICATION SERVICES, AND DECLARING AN EMERGENCY. (EX. A)

Mr. Lutz: This and the next few ordinances will be reviewed by Debra and were discussed at the Finance Committee meeting.

Debra Miller, Finance Director: This is an appropriation Ordinance but it is also a Now & Then Ordinance. A Now & Then is part of the legal requirements for the State of Ohio where a governmental entity cannot pay an invoice that's before the purchase order. The purchase order is similar to a contract or 'permission' to purchase something for the City. As the Finance Director, I have the authority to override that up to \$3,000 on any one invoice and that happens once or twice a month. An example would be where there is a purchase order for \$100 and the invoice comes in at \$105 or so, and I have to do another purchase order for the \$5. This [invoice] is above that \$3,000 amount, so my only option is to come to City Council to get permission to pay that invoice.

This invoice is from Municode, our codifier. The City Clerk goes out to Municode and sends them your modifications. When we did that at the beginning of this year, it included all of the zoning code updates. There was substantially more changes and edits than we had anticipated. Neither Municode nor the City was aware of how much that was going to cost. When it came in, the bill was well over \$10,000 and we normally spend \$5,000 in the entire year. So we have implemented two things: One, Municode has put on their records that if an invoice is ever going to be over \$5,000, they would notify the City Clerk; and Two, they reduced their invoice slightly because they felt complicit in that they felt they should have told us that it was running so much above our normal amount. What we are doing with this appropriation for \$10,000 is it gives us enough money to pay the invoice to Municode that we have existing, but it also leaves enough for our fall update to finish off the year.

Councilman Swartwout: So essentially, the City undertook a Zoning Code Diagnostic process in 2016-2017 which resulted in many, many changes to many, many pages of our Code and each page that had a change on it also had a charge and, because of undertaking that process which we don't do very often, that is the cause for this larger than normal bill?

Ms. Miller: You are correct.

Mayor Bennehoof: Do we have this similar alert in place for any other possible large vendor/expenses?

Ms. Miller: We do not. This is one of those unusual type vendors because many times you can get quotes [ahead of time] so you can get a bit of a feel or you have a cap on the number of hours and you can get a ballpark amount. Unless the City Clerk went and counted every single change, there really isn't a way for her to get a feel. We budget for the average amount we spend.

Councilman Counts: If I could just add, in this particular situation, once we made these changes, there wasn't anything we could do about it. We were stuck. It is what it is.

Karen J. Mitchell, City Clerk: I would also like to add that I was able to negotiate a rate decrease [with Municode] from \$18 per page to \$16 per page. Additionally, if we had been with Walter Drane, who was our prior codifier, they are currently charging \$22 per page.

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

MOTION: Councilman Counts moved to suspend the rules regarding Ordinance 2018-30. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2018-30. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2018-31: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2018. (EX. A)

Ms. Miller: Each year the Delaware County Auditor collects our property taxes for us and they take a small fee based on the collection and their processing of our bills. Their fee is going to be higher than what we have budgeted for all these small funds, like the debt service, commercial TIF and sanitary sewer agreement, so we need an additional appropriation. It's a two pronged reason: a little bit more taxes and less delinquency or they collected more delinquent taxes and their rate went up slightly.

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

MOTION: Councilman Counts moved to suspend the rules regarding Ordinance 2018-31. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2018-31. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2018-32: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2018. (EX. A)

Ms. Miller: This is for the Village Development Fund to give a refund to a developer. The reason why this is an appropriation is we very rarely have refunds in anything other than the General Fund. We have a budget in the General Fund for refunds. Since this is one of those odd funds to be giving a refund, I actually come to you when that occurs. If I recall correctly, I think I've only done this once in my tenure with the City. Both the Building Department and the Development Department charged the developer for some processing - development fees for Liberty Green. We need to return one of those fees since they are duplicative. The fee is based on building count and that's why it's higher than normal.

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

MOTION: Councilman Counts moved to suspend the rules regarding Ordinance 2018-32. Councilman Bertone

seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Counts moved to adopt Ordinance 2018-32. Councilman Bertone seconded the motion.

VOTE: Y 7 N 0

COMMITTEE REPORTS

Development Committee: Next Meeting: August 7, 2018, 6:30 p.m.

Finance Committee: Next Meeting: August 14, 2018, 7:00 p.m.

Operations Committee: Next Meeting: August 21, 2018, 6:30 p.m.

Planning & Zoning Commission: Next Meeting: July 25, 2018, 7:00 p.m. On the agenda is a Certificate of Appropriateness for Dustin Sun who is redoing a building across the street. He has made modifications to the structure and, as he has gotten to do construction, they found out they can go back to the original approved roof line. Gallos will be before P&Z amending their patio plans to go with a trellis roof instead of two canopies; and there is a sketch plan for a proposed 21 residential units on south side of Adventure Park.

Powell CIC: Next Meeting: Next Meeting, July 18, 2018 at 6:30 p.m.

CITY MANAGER'S REPORT

There was none.

OTHER COUNCIL MATTERS

Mayor Bennehoof: I would like to thank Megan [Canavan, Communications Director] and Steve for their support for the Manager & Mayor's meeting the other day. We will have another one on the 23rd. It was fairly well attended. We weren't overwhelmed – that was a good thing – it was a friendly crowd, and I am looking forward to another productive meeting.

ADJOURNMENT

MOTION: Councilman Counts moved to adjourn the meeting at 9:30 p.m. Councilman Bertone seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned.

MINUTES APPROVED: August 7, 2018

Jon C. Bennehoof 8/21/2018

Jon C. Bennehoof
Mayor

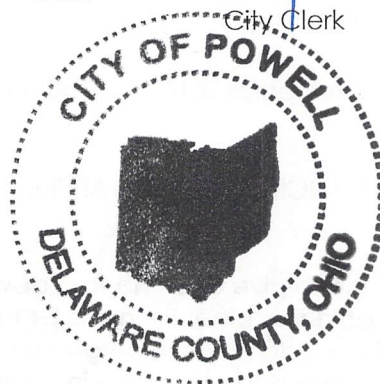
Date

Karen J. Mitchell

Karen J. Mitchell
City Clerk

8/22/2018

Date



City Council

Frank Bertone

Tom Counts

Jon C. Bennehoof, Mayor

Brian Lorenz

Brendan Newcomb

Melissa Riggins

Daniel Swartwout