



Planning & Zoning Commission

Donald Emerick, Chairman

Bill Little, Vice Chairman

Trent Hartranft

Joe Jester

Shawn Boysko

Ed Cooper

Shaun Simpson

MEETING MINUTES

December 11, 2019

A meeting of the Powell Planning & Zoning Commission was called to order by Chairman Emerick on Wednesday, December 11, 2019 at 7:00 p.m. Commissioners present included Donald Emerick, Shawn Boysko, Ed Cooper, Bill Little, Trent Hartranft, and Shaun Simpson. Joe Jester was absent. Also present were Dave Betz, Development Director; Rocky Kambo, Assistant Development Director; Eugene Hollins, Law Director; Karen J. Mitchell, City Clerk; and interested parties.

STAFF ITEMS

Mr. Kambo advised the Commission that there were no staff items.

HEARING OF VISITORS FOR ITEMS NOT ON THE AGENDA

Chairman Emerick opened the public comment session. Hearing no comments, he closed the public comment session.

APPROVAL OF MINUTES

MOTION: Commissioner Cooper moved to approve the minutes of October 23, 2019. Commissioner Little seconded the motion. By unanimous consent of all Commission members present, the minutes were approved as written.

MAJOR AMENDMENT TO DEVELOPMENT PLAN TEXT

Applicant: The Retreat Association, an HOA c/o Dan O'Brien, President

Location: The Retreat Subdivision

Existing Zoning: (PR) Planned Residence District

Proposed Zoning: (PR) Planned Residence District

Request: To rezone the Retreat Subdivision from (PR) Planned Residence District to (PR) Planned Residence District with a [new zoning text](#).

Tim Schenz, 485 Retreat Lane W: I am a member of the Board of Trustees of The Retreat Association. Our President, Dan O'Brien, had a death in his family and is out of town so he could not be with us tonight. I will be sharing Dan's comments.

Our first rezoning application reading before P&Z, several months ago, resulted in your unanimous recommendation that we attempt to bring more Retreat homeowners into agreement with the rezoning plan. To do this we took a number of steps. First, we significantly revised the development text based on input from that first P&Z meeting. Next, we asked for written comments from all residents, about 19 residents responded, and we then made further changes. Then we held a second open house for all homeowners to solicit comments on the revised document and made further suggestions for the development text. About 25 residents attended.

As you are aware from the reading of the revised text, we also incorporated significant sections of current Powell Zoning Code, particularly in sections dealing with appearance and maintenance of properties. We also met several times with Staff in the Development Department for advice and guidance, which was greatly appreciated. We reviewed all emails sent to Staff regarding this issue and made appropriate changes. Lastly, we discussed homeowners' objections in personal meetings, via email and telephone.

As a result of all these steps, the current development text is far different from the original document. Approximately 40% of the original text has been modified. If we just look at the redlined version of the development text posted on

the City's website, we see significant changes. All these modifications are due to suggestions and comments from Retreat homeowners, primarily from those that objected to the initial text. As we made adjustments to the document, we realized that homeowners' suggestions and concerns made for a better document. So we want to say thank you to all who contributed.

The primary areas of the development text, as modified from our last meeting, deal with outbuildings, fences, driveway parking, mailboxes, property maintenance, and how the proposed Architectural Review Committee would operate. We listened to concerned residents and made a conscientious effort to adjust the original text while still honoring those who approved that first document. That first document had been approved by a 2 to 1 ratio of homeowners. The modified text has been posted on the website and our homeowners' website. Letters were also sent to homeowners providing information regarding access to the modified development text document with details regarding tonight's meeting. Signs have been posted 10 days in advance of this meeting, providing information regarding the meeting as specified by Powell Code. We now have 88 Retreat homeowners approving the development text with 31 non-approval votes.

The Retreat is a beautiful neighborhood. The majority of Retreat homeowners want rules and restrictions to ensure the area retains its beauty, its stature and its property values. I urge the P&Z Commission to approve our rezoning application and development text as currently drafted.

Mr. Kambo reviewed the Staff Report ([Exhibit 1](#)).

Chairman Emerick opened this item to public comment.

H. Martin Westfall, 467 Retreat Lane N: I have lived in The Retreat for a number of years. I had two guests at my home several weeks ago. One lives in a very nice home in Bexley and the other lives in Upper Arlington. Both commented to me that they loved coming to The Retreat because of the serenity that it provides. It is a wonderful neighborhood and a major asset for Powell.

I believe strongly in most of the provisions that were in the original development text, but when we first voted and when Dan O'Brien asked for our comments, I abstained because I thought the text was very cumbersome. I looked at the current revised document, support it wholeheartedly, and hope that this Commission will view it in a very positive way.

Simon Russell, 510 Quails End: To some, aspects of this text appear to be questionable as to the authority, the overreaching in nature, and raise some legal questions. From the limited information we have been able to gather from The Retreat Association, it appears that no legal opinion has been sought by anyone and the document itself is clearly not drafted by a lawyer because the generalizations in its wording will make many parts difficult to enforce.

This process started with Powell Zoning suggesting a new development text could be used to re-impose the terms of the expiring deed restrictions of The Retreat and Cardinal Hill, seemingly a simple process. However, the Board of The Retreat Association took this opportunity to not only replace existing restrictions, but to broaden them by a substantial number with very detailed new rules and regulations which I think are way beyond what one would normally find in a development text. Many of them really have nothing to do with maintaining house values. For example, a rule on the removal of holiday decorations would be something for an HOA to include and enforce through its own rules, not be put in a development text. Powell should not want or need to be involved in such things. Under this proposal, they would be.

The Retreat Association has twice come to you in its application stating in writing that it is an HOA, I presume, to make it seem it had more authority. If it were indeed an HOA, then you could simply reject all wording that is more suitable for HOA regulations, and suggest that they add them to their HOA code. However, The Retreat Association is not an HOA under the terms of O.R.C. Section 5312, the Ohio Planned Community law. This fact is then compounded by law that says an HOA cannot be retrospectively imposed on homeowners without 100% approval, basically an impossible bar to cross. This statute was specifically designed to protect homeowners from having new rules and regulations, such as many in this text, placed on their property with even 90% approval. Given this, it is hard to believe that the new development text can so easily be used to get around these laws and place Powell into a position to have to act as a substitute HOA.

The fact that The Retreat Association is not an HOA raises additional legal questions. Can the text as written give The Retreat Association, an organization that does not represent 100% of homeowners it would effect, the legal authority to create and control an Architectural Review Committee (ARC) to govern them? Can the text as now written then give that ARC the power to decide to override certain aspects of the rules and text as and when it sees fit? Both are highly questionable from a legal perspective. The obvious conclusion of all this is that the text is full of

legal uncertainty and confusion and should be rewritten, substantially reduced in scope, and be subject to legal review.

Finally, whichever way this all ends, the new text should start with a clean sheet. Powell, as the enforcer, should not be expected to get involved in legal matters related to the enforcement of the expired restrictions to which it could not legally have been a party. Any issues with regards to the old deed restrictions should be highlighted and resolved prior to the text being implemented. Everything else should be grandfathered in as approved. Powell Zoning, as I am told, already knows of the lawsuit filed by The Retreat Association after it started this text process against a Cardinal Hill resident over an outbuilding. A trial is many months away and the outcome uncertain. The ongoing legal implications of this with respect to the text, and Powell's potential involvement, need to be considered.

Sally Van Meter, 530 Cardinal Hill Lane: I have lived at Cardinal Hill for the last 32 years. I have found guests over those last 32 years in wonderment and awe of the lovely landscape that we live in there, unencumbered, unbound by fences and outbuildings. They have marveled at how the houses are nestled in and around the landscape and just how beautiful it is.

I rise in support of the current proposal, even though personally, I feel it is a major step backwards in that I think we should keep what we have. There are always plenty of other places for people to live if they need all those fences. I like the loveliness of The Retreat as it is. But I know the work that has gone into this proposal and the amount of time spent reaching out to everyone to solicit ideas and opinions. It is a shame that Dan is not here but I know Tim & Anne Schenz, and they, as well as many others, worked very hard on this. So while it is not going to support the vision I have had over these past 32 years, I will support what they have come up with and I urge you to support this too. We have a 2:1 [ratio] in support of this. You will never get 100%. I fear that if you continue to push it, we will lose some of the current support we have for this vision. I urge you to approve this.

Umesh Vazirani, 951 Retreat Lane 1044 Deer Creek: I have two homes in The Retreat. I bought into The Retreat for all the things we have [and because of that], I bought a second home there. You heard me last time. I will not repeat the things I said last time, but I will add more. You are adding development text to something that is already developed. How crazy does that sound? You buy something knowing the precursor before you bought; including your own homes and purchases that you make. When The Retreat was created, you had your deed restrictions because Powell did not exist and I had deed restrictions on my land. So the developer made sure to put on certain restrictions to be what it is today. Unfortunately, they expire at the end of the year. In the meantime, Powell came out with, zoned itself, into The Retreat area as a planned district, and added their laws onto Powell and The Retreat has to obey those planned district items even though they were not in the deed restrictions. So you are already governing it. But that language is proper for the whole Powell, including The Retreat, Olentangy, Fox Run, Chase and other subdivisions that are under your planned district. They are common governing rules that are applied on top of, or within the deed restrictions that we already had. Now you come around and say, we are going to add additional rules. But those are for us only in The Retreat. The Retreat has multiple phases – seven or eight divisions. Each phase has different rules. Many are not interested in this text. The development has already occurred and the house is already built. Why are you adding more text to something I already bought into?

Now if you update your Resident Planned District laws and make it available to us that is a different thing. You cannot allow a group of people that have so much time on their hands, who are saying they want to keep it the way it is, no. This is to put more restrictions and get what they have been getting away with for so long: discrimination. I can get a handful of people that will agree with what I am saying.

So I have a simple solution. Let the deed restrictions expire. If you buy land within The Retreat after 1/1/2020, you are condoned to this development text and will be part of the planned district Powell. If you bought before 1/1/2020, you did have deed restrictions that have expired, but are not bound by these new rules and laws because you did not buy into these. You are now up front what you are buying into.

Both of my properties will say no to these rules and regulations. I am in Phase 1 and Phase 1 requires 100% approval for any new rules or continuation of the old rules.

Bill Thomas, 930 Retreat Lane: I spoke at the last meeting in favor of the new proposal as stated. I think that in light of the recommendations and suggestions that you made, the HOA went back and did a tremendous job trying to get as much input as they possibly could to come up with what we have. We need to have some type of rules governing the subdivision because if we don't then we will have homes that will have repair needs that are not addressed or properties overrun with weeds or overgrown. We know that because that is what we have at 951 Retreat Lane, which is right across the street from me and the guy that just spoke that doesn't want the deed restrictions. It has been going on for a long time now. I would encourage you to go there and take a look at it because that is what you will continue to have. We need these restrictions. It is unfortunate that people do not have the pride to take care of their

home or the respect for their neighbors that we have to go through all of this. I hate to be negative, but it is hard to sit here and listen to this without responding. We have deed restrictions that are expiring, and while they shouldn't have had an expiration date, they did, and we do not want neighborhoods throughout Powell without deed restrictions because we will get a mess. Please implement these new changes because we really need them and we are counting on you as our representatives to do that.

Anne Schenz, 485 Retreat Lane W: I served as part of the board for a while. I was one of the original yes votes for this proposal and I am in favor of this planned district document as we have edited it multiple times. As we listened and read comments, I realized that many people had a different point of view than I did. I learned a lot. There were things I had not thought of or things that needed clarification. The challenge for me was to think what benefits the neighborhood the most. If I do this, what is the effect on my neighbor? I would guess that it is extremely rare for a dozen people to agree on every item. The fact that we have 88 households agreeing on this, I think, is wonderful. I believe that the final document we have includes many more points of view and insights than my own. I think this is a strength. I think it is better. I applaud you and the Development folks for tabling this, asking us to go back and get more input. It is a better document for that. Do I like everything in the final document? No. But does it serve our neighborhood and can I wholeheartedly endorse it. Yes. I urge you to also say yes.

Marc Cooperman, 250 Deer Creek: I hate to admit this, but I have lived there almost 40 years, and I have seen a lot of changes in The Retreat, many of them not good. I do not think our real estate values have kept pace with other neighborhoods nearby. I have seen houses sit on the market for months and sold at auction. I have seen changes where people do not keep up their homes the way they used to when I first moved in. My wife and I strongly supported the first proposal. I think tremendous compromises have been made from the input that was received at the last meeting. When you have 88 to 31 that is an overwhelming vote in favor of a proposal. What I fear is if we do nothing, what the path of The Retreat in the future will be. We need rules and restrictions to maintain our property values and to maintain the appearance of the neighborhood as it is.

Shawn Carol, 509 Retreat Lane N: I supported the first proposal, but I was probably one of those people who felt the first document was too strict. I made my voice known, but I can tell you that this is one of the least strict deed restrictions in Powell. I think if you have 'no' votes now it is because those people just do not want deed restrictions, not because of these deed restrictions. I have read Olentangy Ridge, Cardinal Hill – all of them – and most of them do not even allow sheds. This does. That was to address those that wanted sheds. Most do not allow fences, this does. I cannot see how this is too restrictive in any way for our neighborhood. I am very happy with this document now.

Greg Hollern, 400 Cardinal Hill Lane: I bought into Cardinal Hill about five years ago and there were restrictions then and I knew what those restrictions were. I am not ready to give up those restrictions totally at the first of the year. I think we should have something in place to continue what I bought into five years ago. I will let you decide what is legal and what can be done or what can be defended, if needed. My wife and I are wholly in favor of the proposed text as it is today.

Jerry Maddox, 580 Retreat Lane: I have been either favored or cursed all my life of being an architect and am now retired. I have lived in The Retreat for 17 years. I am not surprised that so many think The Retreat is a very special place. There are so many positive things to say about it. It is no surprise that families and neighbors come and go. Today, we are its stewards. We hope others will be stewards of The Retreat in the future. The special environment we are living in today didn't just happen. It started being developed over 40 years ago and the developer and his professional site planner got together and chose not to bulldoze the trees or fill in the ravines. They chose to plan a community that was not a maze to travel through like so many other communities across the country. It is a circle within a circle, has three accesses, and is so easy to get around, so well laid out, and sympathetic to the environment.

As stewards, we already have deed restrictions that identify key elements in maintaining our property and the environment in which we live. These restrictions are expiring. Tonight we are seeking approval of a new document to replace the expiring deed restrictions referenced as The Retreat Development text. Through everyone's input and hard work, I believe the development text meets this criteria. It is not a perfect document, but it is not intended to be. It will be need to be revised on a regular basis to remain current. As such, it is a living, breathing document that is intended to continue living through each one of us and the future residents of The Retreat. I chose to be a good steward of The Retreat over 17 years ago and hope others will do the same. Approval of this document will assure this and we ask for your support.

William Souder, 559 Cardinal Hill Lane: I would like to thank everyone who has contributed time and energy into this initiative and at no time should anyone conclude that my desire, or my wife's desire, is not to have rules or that we are not concerned about property values, we are. However, as we have stated all along, understanding our rights and

appropriate application of the law is paramount to this exercise being successful. I feel like we can all agree if we are doing things and they can't be held up, then that is an issue.

I do not currently approve this development text for the following three reasons:

1. I do not believe I was provided constructive notice upon the purchase of my property. It has long been the law of the state that all interest in land shall be transferred by written instrument and that such instrument shall be recorded pursuant to O.R.C. Section 5301.25. I have carefully reviewed my chain of deeds and recorded documents from the Delaware Recorder and found no reference to The Retreat subdivision, nor any reference to The Retreat Association or The Retreat Civic Association, or no reference to The Retreat Architecture Review Committee (ARC). Additionally, I have found no recorded documents from the Delaware County Recorder that show any of these entities have any rights associated with my lot.
2. We had asked in some of the open forums whether this had legal review. My wife and I went and sought our own legal review at our own expense. We were told that this has the potential of having an unlawful delegation of governmental powers. That is a concern.
3. The Retreat has been referred to as an HOA and given the authority to create an ARC. The text appears to require our lot to be included as a required member. The text appears to state that The Retreat has authority over our lot, and Staff has noted that The Retreat maintains common property associated with The Retreat subdivision, yet The Retreat has not recorded it with the Delaware County Recorder's Office as required by O.R.C. Section 5312. Everyone who bought a house in this area knew these covenants and deed restrictions were going to expire at the end of this year. It is not the City's job, in my opinion, to regulate private property owners' agreements with each other beyond the zoning that they have the authority to put in place. To my knowledge, it has never been done before, and the last thing the City needs is any other potential issues regarding zoning.

The rules are not what is fundamentally my issue or what concerns me. We disapprove of this development text and we ask that you deny this application under those concerns.

Christy Hoyt, 636 Cardinal Hill Lane: My family has lived here for 2 years and moved here from Arizona where, if you don't have an HOA, everything turns into the wild, Wild West. I am familiar with what happens when you do not have deed restrictions. I have seen the best and worst. We love the changes that the Board has made and we fully support the new document, and we need your support to get this done.

Susan Sinard, 548 Retreat Lane: My husband and I have been in the neighborhood for almost 28 years. This is actually our second house in The Retreat. We have always loved The Retreat and the fact that I hate public speaking, lets you know how much this means to me to come up here and offer my husband's and my support of the development text.

Fred Franco, 606 Retreat Lane N: My wife and I have lived in our home for 25 years. Back in those days, we thought we were moving out into the country, but things have changed. We would like to voice our support for the revised development text. We think that it is needed and is very important. It does require a certain amount of trust in the people that are working on the project. We know who they are and they are people we admire and respect very much, so it makes it easy for us to trust that they are doing all the things correctly.

Sherry Thomas, 930 Retreat Lane: My husband and I have lived here about 16 years and love living here. I am the secretary on the board. I wanted to let you know that I have been asked to participate in different committees, such as the ARC. It is not a small group of nosy neighbors that are trying to control the neighborhood. Our intentions are purely for the good of the neighborhood. Our initial document [was brought forward] out of fear of having no deed restrictions [once they expire at the end of the year]. I am a real estate agent with Remax and work throughout the Powell area and have for several years. As far as I know, all the neighborhoods have deed restrictions and for good reason. It is not meant to be a government controlling the neighbors, but to ensure we are maintaining a pleasant, well-kept neighborhood. I am in favor of the development text. I was in the beginning as well, but I think it has been greatly improved. We welcomed having the additional input. When we started it, we knew we had to have something to present so that we could get that input and have it transpire and grow. Not everything in it is my favorite, but as someone with a large family, I understand that it is difficult to get 100% agreement. We knew that it would not happen here. I urge you to accept the planned district as it stands so we can move forward and keep our neighborhood well kept and be proud that we are Old Powell. That shouldn't be a bad thing. There is no reason why our older neighborhoods and new Powell shouldn't be held and kept at that high regard.

Mary Ann Beecher, 633 Eagle Ridge: I am here to voice my support for the revisions of the restrictions. I think neighborhoods are organic. We cannot expect everything to stay the same. I bought my home in 2013 knowing that

restrictions existed and I am actually pleased to see some of the changes that are being included here because I believe they will be attractive to future neighbors. We want our neighborhood to remain dynamic and not be stuck in time. I hope that you will approve them tonight.

Annette Hoffman, 494 Eagle Ridge: We moved to The Retreat ten years ago from Illinois largely because I had two cousins living in the neighborhood. There is a quote I heard one time, I'm paraphrasing, but it is something like this: I live in the city but I dream of living in the country. I feel like that is what we have in The Retreat. I feel it so strongly that I love that we can hop on our bikes and ride into town, but at the end of the day when we pull into our bigger lots, it is a nice feel.

I was originally in support of the first text. They have made many compromises. I continue to be in support of the revised text and I agree with a lot of the things that were changed. I also agree that it is better. I ask that you approve this tonight.

Mrs. Schenz summarized three emails by Cecilia Weinkauff, Bob Fisher, and Mark Knueve, all in support of the proposed deed restrictions. ([Exhibit A2](#))

[The Commissioners acknowledged having already received emails from residents, see Exhibit A2 and [Exhibit A3](#)].

Connie O'Brien, 560 Cardinal Hill: My husband and I have lived here for 22 years. Like others that spoke of trying to find a house that was desirable, it took a long time to find our house and we really love it here. It is a difficult task that the Board has undertaken. They do not seek to have authority or make decisions based on their wants. They are just volunteering their time. I used to be part of the Board for three years and now my husband is on the Board. I urge people to come and talk to the Board when they have concerns, come to the annual meeting, volunteer, and be part of the community. Express your concerns at the beginning of the process when it can make an impact, not at the end when there is little time. I support my husband in this matter, I am in favor of this, and I urge you to support it as well.

Rebecca Kenneweg, 442 Partridge Bend: I have lived here for 26 years, but bought our lot 10 years prior to that. I did not vote at all the first time, just out of pure laziness. I am not included in the 88, but I did send a late text, so there is one more in favor.

Ellie Hollern, 400 Cardinal Hill Lane: I want to urge you [to support this measure]. We need these restrictions. We love the neighborhood, community and large lots. I feel that people who do not want these things should go find five acres somewhere else. I am in full support of the restrictions as presented.

Jonathan Dotson, 595 Retreat Lane N: As I sit and listen to comments, I am reminded that this all lies in your hands. One thing that I reflect on is we had an open house. I was not present but I understand it got a little testy. We had a meeting with you and presented a proposed plan. People shared their concerns. You asked us, as a community, to listen, take your comments as well as the residents' comments, and come back before you to present something that would benefit everyone based on what you suggested and the comments that were received. I feel the Board has spent numerous hours through multiple meetings trying to make this work. We can talk about legal codes, you can sign a waiver and go zip lining and fall, and you can still sue the company. There will always be something that will be overlooked.

I have only been a part of the community for five years. I moved here because there were good restrictions. We wanted a fence for our two dogs. I called and talked to the Architectural Review Committee and they said no fences are allowed. That was put to rest. We got an invisible fence. My dogs are still there but I love the openness of the community. I am not necessarily in favor of everything myself. I do take pride in my home. We have listened to what people have asked for. Sheds were a huge concern last time. You will notice that there is now a provision in there to allow that to take place. We do have large lots. We took into consideration what people wanted.

I was talking to a neighbor who was not originally in favor of the document text. He told me that after multiple revisions, he is now in support of it. While I do not intend to speak on his behalf, part of that conversation came about because I asked. It takes people to listen and communicate. It takes partnership and people working together. This board is designed to do that, which is how our community operates. We want to keep this community upstanding and take pride in it. These guidelines will help support that initiative. Ask yourself, have we made the changes that the majority have asked for? Yes. Have we taken into consideration the information and suggestions you made to make this document work? Yes. We did what you asked. The community has participated in that initiative as well. Therefore I ask and encourage your support. I hope you will make the right decision for our community.

Hearing no further public comments, Chairman Emerick closed the public comment session and opened the floor for comments and questions from the Commission, but first asked Mr. Hollins to address questions raised about legal issues first.

Gene Hollins, Law Director: It has been a joy to participate in this process. There are bright minds on many sides of this. I would like to commend all that participated in the process.

My understanding is if there is a legal issue is the participation of the HOA as the Architectural Review Committee under the text. I want to make it clear that this is a recommendation to Staff. The City would actually make any final determination so it is not a delegation of the City's authority to the HOA. If there is a concern about whether the HOA has been properly constituted, we did have that conversation with a resident. This body could consider alternative language as to how to constitute that ARC that makes the recommendations and to bring that for your consideration. I reviewed what has been submitted. There is room for interpretation, I suppose, but I am satisfied it is a proper application and would be upheld under our Ordinances as a development standards text in a planned district.

Commissioner Simpson: I still have concerns from a legal and enforcement standpoint. Are we able to just go ahead and put restrictions on a property owner that did not have the restrictions when they purchased the property? We are now taking away the ability to split home sites and we are making restrictions to property owners that do not currently have those restrictions.

Mr. Hollins: In a planned district, usually it is the original developer. The text can set forth whatever restrictions they believe or whatever use standards, development standards, that the original landowner thought would be appropriate. Those are incorporated into a text and then that text is enforceable. They are separate than deed restrictions. We have a different situation here. I don't know how typical a situation it is, but we have expiring deed restrictions in a planned district that really didn't have an original development text. Our Planned District Code, at this point, isn't applicable without being incorporated into a text. So, they have to come forward with what is in essence a rezoning, which is what we are doing this evening, a major amendment to a development text, and go through the legislative process. If they do that and you approve it and Council approves it, yes it is then enforceable. What is in their text is enforceable in that planned district. So we don't have any problems there.

Comm'r Simpson: On the enforcement side, this is not an HOA where the HOA is liening a property without following the restrictions. Our Zoning would be enforcing things like cars on driveways, Christmas decorations. It seems like, not a full time job, but I know that in my community we hire a company to make it a full time job. What kind of cost is associated and what kind of enforcement are we actually doing on this?

Mr. Kambo: No more than what we are doing now. We, as a City, will do our drive a rounds. We do rely on our residents and our public service and police to get in touch with us in the Zoning Department to go out and take care of issues. In this particular case, we would rely on this HOA, just as we rely on all the other HOAs to bring it to our attention. In addition, anytime someone is trying to do something on their own, i.e. a pool or garage addition, etc., we ask those residents when they are putting in their building permit to get a letter of approval from their HOA. Ultimately, it is no more than we normally do.

Comm'r Simpson: I love the changes that were made to this. I had a lot of problems with some of the things in the first draft. The only thing I would hate to see is something that has been allowed for 30 years and now they come back and say that wasn't allowed for the last 30 years, so we want you to take that down, we want you to change that. So my only question is the previous relationship to the deed restrictions and enforcement and how Section 1.4 relates to that.

Mr. Kambo: I believe there is something written here that if it was existing, but in conformance and even if this development text is different, it would then become legal nonconformance going forward. But if it was not conforming before, it is not just going to become conforming going forward. It doesn't require them to get rid of what was there. There is a provision in here to that effect.

Commissioner Hartranft: I would just like to say thanks for all that came out tonight. It is always good to hear from our citizens. I can tell you guys are passionate about The Retreat, so it is good to hear the stories.

Gene, let's play this out a little bit with this scenario: The rules expire at the end of this year, what does that do? At that point, January 1st, where are we at?

Mr. Hollins: It wouldn't be our Planned District Code, but the generally applicable standards will still apply and we could enforce those. Absent the deed restrictions, no there is no zoning code that applies specifically to The Retreat.

Some of those are reflected in the standards that are drafted that maybe not everything that we would consider a nuisance ordinance. They attempted to do that.

Comm'r Hartranft: How is the enforcement currently done? If someone is in violation, it seems like there has been some violations for years and nothing has been done, it obviously is not working. So what is the process for remedying the situation besides lawsuits?

Mr. Kambo: Come January 1, 2020, some things in the proposed development text are already parallel with what the City already has. The big takeaway is that there is now an architectural review. Our City Code does not have architectural review outside our historic downtown core. If someone was to do an addition, different colors, materials, etc., we, as a City or an ARC, have no authority on what someone could do with their home. It falls back on our City Code. We rely on other residents to bring to light zoning issues. When speaking about enforcement, we rely in many cases on other residents, our Police Department, our Public Service Department to bring zoning issues to our attention. We then go out and explore if that issue exists and we try to remedy it as best we can with the resident. That is not to say things will not fall through the cracks, or we may never know. We have a part time inspection officer, but we rely on our residents.

Comm'r Hartranft: They currently do not have someone how putting liens on property or assessing fines for residents in this neighborhood?

Mr. Kambo: I cannot answer that. I do not know if their HOA does that or not.

Comm'r Hartranft: Gene, when we are changing the deed restrictions or text of the development after people have purchased the property, what kind of legal standing are we running into with that?

Mr. Hollins: From a zoning perspective, what common law says in Ohio is everybody takes their property subject to a number of different things and one of those things is deed restrictions. One of those things may be our nuisance ordinances that we were referring to earlier. Beyond that, you also take your property subject to zoning, and then zoning can change. So the process we are doing this evening is we are looking at an application from a group of property owners that may change the zoning. Zoning changes can be initiated in several different manners and this is one of them. Any concern about whether zoning changes are applicable or enforceable, yes, you may have bought your property, but it is always subject to the potential that the zoning standards may change. We have protections. There are protections written into this text. We have protections in our own Code about nonconforming uses and we can't just force you to change because we changed the zoning. There is grandfathering type of provisions.

Comm'r Hartranft: Someone brought up an issue about illegal seizure of land or common area.

Mr. Hollins: Whether it was an appropriate body as a landowner or as a non-landowner to make the application this evening - because I think the application may have been in the name of the HOA as well, that may be an additional applicant. However, we do have at least one, if not more than one, individual landowner that is a proper applicant.

Mr. Kambo: Yes, I agree with Gene. I think the issue the resident brought up was an issue of a shed being there. I think they were contesting the HOA's existence. Gene already made mention that the HOA can call out whoever they want to set up the ARC.

Comm'r Hartranft: I guess my overall concern is what kind of legal exposure there is for the City by taking this on? It seems like you have quelled that a bit and put me at ease.

Mr. Hollins: We have tried to work with and through the process to make sure that the application follows our guidelines and follows the right processes. Planned districts are just that. You sort of write your own code for your own subdivision and it is a tool to be used. It is a bit different this time introducing it after deed restrictions have expired, but that is exactly what planned districts are for: your own site specific and customized list of zoning standards.

Comm'r Hartranft: Is there any expiration on this at all?

Mr. Hollins: No.

Commissioner Little: I would like to thank everyone for being passionately involved in this. I am an HOA President. I appreciate your efforts to gain consensus. I am by nature a process guy so that is what is important to me. It is not easy but I do think what you are doing is a key step to maintaining the unique characteristics of The Retreat. The other thing to keep in mind as I mentioned before is that it ensures that your neighborhood remains competitive with

other neighborhoods in the area. It is important that you have these so it doesn't become the Wild, Wild West. I do not think it is our role to decide what you want to have in your deed restrictions. It is up to us to make sure that there has been a fair and reasonable process that ensures everyone had a say and everybody has chance to provide input. In the end, you ultimately decide what your neighborhood is and what it will become. It is critical to respect those opinions of both long-term residents and newer residents. How you chose to utilize this tool as neighbors is critical. In my opinion, this is a guideline and that is how we use it in our neighborhood. I would also encourage you to consider others opinions and what they may be dealing with before going forward; that you seek to understand those before rushing to judgment with how you are going to apply your deed restrictions. Ultimately, you can control what you do with your vote. As a member of the HOA, you have a vote and a say. You can change this if you want to.

I will briefly talk about the Architectural Review Committee. In my opinion and from my experience, I think what you have should have more authority and fewer members. We have a hard time getting consensus with seven and we just follow the City Code. I can't imagine you trying to get 15 people to try to decide what a homeowner should do. I think you will struggle with that. So, as I stated, I am the one that fields the call from that neighbor in my neighborhood that wants to do something. You either get the call from the neighbor that is very nervous about dealing with the ARC or the one that's going to tell the ARC what it is going to do no matter what the ARC thinks it should do. But what I always say to that person is we are just strictly here to make sure you don't put a fuchsia igloo in your backyard. I can guarantee you that most of your neighbors are not going to agree with that and you will just have contention as a result. Our restrictions [in my community] require the Board to issue a letter to the City of Powell that we agree with what the homeowner wants to do and we typically handle that within 3-5 days. As I mentioned in the last meeting, we have only had one neighbor in my 20 years that wasn't happy with the decision and appealed it to the City. So you can make it work.

Finally, I didn't see it in here and you don't seem to give it a whole lot of authority, you have that avenue with the Board of Zoning Appeals. Have you included a clear process for future changes going forward?

Mr. Schenz: We did not include that specifically. We relied on Rocky and Gene to say that we would follow City procedures to modify this.

Mr. Hollins: You would have to follow the modification of an approved development text under our own Code. There is a process for doing that. But I agree with you Bill. I think it is something you live with, get some practical application to see if it is achieving the goals and if it is still reflecting what the majority of the residents' desire. If it doesn't, it is a living document; it can be brought back through this or a similar process.

Comm'r Little: The way ours is written, each lot gets a vote. It requires 67% of the neighborhood to agree to any change and we file it with the Delaware County Recorder's Office.

Mr. Hollins: If it were deed restrictions that would be the process. With the vacuum without the deed restrictions here, the only tool we have in the toolbox is a development text in a planned district. That substitutes for deed restrictions, but that also means the process is no longer a private process. You would have to come back through P&Z to get it amended.

Comm'r Little: Regardless, they have an avenue that if it doesn't work, it can be changed. I would encourage you to go with the majority because I don't think you will ever get 100% agreement. It is your neighborhood; it is up to you as neighbors to choose how you want to make things work. I am comfortable that reasonable process has been followed and I am good with what is being proposed.

Commissioner Cooper: I don't know how much more I can add to that. I will piggy back on Bill a bit. I think that the Architectural Review Committee having that many people on it, meeting every other Saturday at 10:00 a.m. is going to be unwieldy. We also have an ARC Board in my subdivision, it is much smaller, and things do move quickly. I think you might want to relook at that just a little bit on how that works. Otherwise, I can't believe the amount of hours you have put into this and I think you have done a good job.

Commissioner Boysko: I would agree with many of the comments that have already been stated. From my perspective, I agree that there needs to be some level of control. I see the value and need to have some restrictions in place to protect the quality of The Retreat, but also balance that with the owners' right to make improvements to their properties. It sounds like you struck that balance. I would be concerned about any more modifications. It sounds like you have gone to great lengths to try to get that majority to buy into this. I'd be concerned about any additional modifications because it will start to water this down where it doesn't have much value or teeth. The HOA I belong to doesn't have a lot of these things included in it. It is much more restrictive. I think the restrictions that you have could be improved over time but that is up to you to decide. As others said, this is a living, breathing, organic document for you to manage and control. There is a mechanism in place for you to do that. It sounds like you had

great community participation already, so as this grows and evolves, perhaps you will want more restrictions or maybe less. I am definitely in favor of this. I've been in Powell for 16 years. I moved into Grandshire and we are happy with that neighborhood, with the HOA, and the restrictions we have in place. Two years from now, we will be empty nesters, and perhaps I should consider The Retreat as an opportunity to move into.

Comm'r Simpson: This is an internal document and not part of the zoning text, correct? The Architectural Review Committee? So they can make changes to that at any time.

Mr. Kambo: Yes. Their development text, when you look at the top of Page 3, it is comprised of three to seven members appointed by The Retreat.

Mr. Schenz: It is three to seven and we must meet within 30 days after application otherwise City Code takes over. That was an internal document.

Comm'r Boysko: The only other comments I have is that I am in agreement of the restrictions. I think you have a great start, great buy-in and committee to own and manage this. I am still concerned about the legality of this – understanding that what we are trying to do is get the property rezoned to include this development text. I understand the process for a normal development, but this is unique in that we are applying this rezoning to the entire development and it sounds like there is not a 100% buy-in. Is there some concern or legality of imposing the development text on people that are not in favor of it?

Mr. Hollins: Legally, our Code says that one landowner among many can make the application and put it before you. Could Staff have done it or Council on its own? We do not know, but there are other mechanisms to trigger a potential "rezoning." In essence, this is tantamount to a rezoning. We have steadfastly communicated that one landowner could sign the application, but to make it appropriate for this body to consider it and for Council to consider it, from a policy standpoint, not from a legal standpoint, we wanted them to bring something that was a super-majority support for it. But that is more a policy issue than a legal issue. Our Code does provide that one person can make this application.

Comm'r Boysko: If I would apply this to a commercial development, as a commercial developer, I can't rezone a property I don't own. Applying that same thing to an HOA where there is 160 people in this community, if not 100% of them buy into that, that is my [concern].

Mr. Hollins: It is an interesting issue. It really goes back to how the application was initiated, but it is the same process whether it was initiated by a landowner, the entire group of landowners, Staff, council, this body, etc. It's pretty much the same application. Cities, counties, townships rezone parcels all the time without every landowner signing that application. From a legal standpoint, it is an appropriate procedure.

Chairman Emerick: I too want to thank you for your participation and I think you did a marvelous job of going through the process and getting the input from your residents. To me that was what was important. It is your neighborhood, so it was important to go through this process.

Comm'r Little: I had one procedural question. Rocky, if I heard you correctly, there may be a need to look at the language as it relates to the Architectural Review Committee proposal that they have in order to effectively interact with the City? Did I hear you say that?

Mr. Hollins: There was concern about how the folks were appointed to that. From a legal standpoint, this is a viable way to constitute that ARC, but if there was a concern amongst certain residents, we encourage them to bring you potential other language which might generate the members of the ARC differently. But I don't think anyone has brought anything for your consideration.

Comm'r Little: So at this point we can approve this as is [Mr. Hollins: Sure.] and then if they want to do that they can come back?

Mr. Hollins: Absolutely. Or bring it to Council and Council can consider it.

Commissioner Little moved to approve the Major Amendment to the Development Plan Text for the property located at The Retreat Subdivision as represented by The Retreat Association, an HOA, c/o Dan O'Brien, President, essentially rezoning The Retreat subdivision from Planned Residential to Planned Residential with a new zoning text, subject to no conditions. Commissioner Cooper seconded the motion.

Vote: Y – 6 N – 0

(Jester absent)

OTHER COMMISSION BUSINESS

There was none.

ADJOURNMENT

MOTION: Chairman Emerick moved at 8:39 p.m. to adjourn the meeting. By unanimous consent, the meeting was adjourned.

DATE MINUTES APPROVED:

 1/29/2020
Donald Emerick
Chairman

Date

 1/30/2020
Karen J. Mitchell
City Clerk

Date

