



**CITY COUNCIL
MEETING MINUTES
January 21, 2020**

CALL TO ORDER/ROLL CALL

A regular meeting of Powell City Council was called to order by Mayor Frank Bertone on Tuesday, January 21, 2020 at 7:30 p.m. City Council members present included Jon C. Bennehoof, Frank Bertone, Tom Counts, Heather Karr, Brian Lorenz, Melissa Riggins and Daniel Swartwout. Also present were Steve Lutz, City Manager; Eugene Hollins, Law Director; Dave Betz, Development Director; Rocky Kambo, Assistant Director of Development; Karen J. Mitchell, City Clerk; and interested parties.

EXECUTIVE SESSION: O.R.C. Section 121.22(G)(1) Personnel Matters – Appointment of Board & Commission Members, O.R.C. Section 121.22(G)(3) Pending or Imminent Litigation.

MOTION: Councilman Bennehoof moved at 7:30 p.m. to adjourn into Executive Session pursuant to O.R.C. Section 121.22(G)(1) Personnel Matters – Board & Commission Appointments and O.R.C. 121.22(G)(3) Pending or Imminent Litigation. Councilman Swartwout seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Lorenz moved at 8:01 p.m. to adjourn from Executive Session into Open Session. Councilman Swartwout seconded the motion.

VOTE: Y 7 N 0

OPEN SESSION

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION

Mayor Bertone opened the citizen participation session for items not included on the agenda.

Brittany Zoecklein, Delaware General Health District: I came to alert you to some upcoming events we are promoting, including Special Collections Events and Car & Booster Seat Inspection Events. ([EXHIBIT 1](#)). I also have a welcome packet for Councilwoman Karr.

This year our goal is working with all our subdivisions to figure out park policies, primarily tobacco. I believe your park policy is solid.

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

APPROVAL OF MINUTES – January 7, 2020

MOTION: Councilman Bennehoof moved to approve the minutes of January 7, 2020. Councilman Swartwout seconded the motion. By unanimous consent of the remaining members, the minutes were adopted.

CONSENT AGENDA

Item

- *Departmental Reports – [December 2019](#)*
- *[Ohio Div. of Liquor Control – Koble Greek Italian Grill](#)*

Action Requested

*Receipt of Electronic Reports
Waive Hearing*

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

RESOLUTION 2020-04: A RESOLUTION RECOGNIZING JON C. BENNEHOOF'S TENURE AS MAYOR OF THE CITY OF POWELL 2018-2019.

Mayor Bertone: Thank you Jon. We appreciate all your efforts.

Councilman Swartwout: I think the entire community, and our Council, owes Jon a tremendous debt of gratitude. The biggest issue that has faced our community within the last year or two has been the Liberty Township Fire/EMS Department. Jon was really on the forefront of that, both as a representative of the City and working with the many contacts he has in the township and county to move that in a positive direction and a positive result for our community as a whole. So on behalf of the entire Council and community, I would like to express my thanks and gratitude, Jon, for all the work you did on that particular issue. You really moved the ball forward and did a great job.

Councilman Bennehoof: It was an honor and privilege to serve the community in that role. I have had a variety of roles in my 8 years and 1 month so far on Council, and it was rewarding and challenging both. I appreciate the opportunity to have done so, and I thank the community for that opportunity.

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

MOTION: Councilman Counts moved to adopt Resolution 2020-04. Councilman Lorenz seconded the motion. By unanimous consent of the remaining members, Resolution 2020-04 was adopted.

RESOLUTION 2020-05: A RESOLUTION APPOINTING BOARD AND COMMISSION MEMBERS.

Steve Lutz, City Manager: Every other year City Council makes appointments and reappointments to Board and Commissions. I believe this matter has been discussed amongst you.

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

MOTION: Councilman Swartwout moved to amend Resolution 2020-05 to add John Robinson on the Personnel Board of Review and to add Brad Coomes to the Historical Downtown Advisory Commission. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Swartwout moved to adopt Resolution 2020-05. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Swartwout moved to amend the Agenda to hear Item No. 11 next, followed by Item 10. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2020-01: AN ORDINANCE APPROVING A MAJOR AMENDMENT TO A DEVELOPMENT TEXT IN A PR, PLANNED RESIDENCE DISTRICT, FOR THE RETREAT AND CARDINAL HILL SUBDIVISIONS. (EX. A)

Mr. Lutz: The citizens of The Retreat and Cardinal Hill subdivisions have initiated this proposed legislation. Their deed restrictions expired at the end of last year and they are proposing Council to consider replacing them with a planned district text. This matter was reviewed by the Planning & Zoning Commission. I would like to introduce Dan O'Brien, a representative from the subdivision, to give you a little more background information about what they are proposing to do.

Dan O'Brien, President of The Retreat Association, 560 Cardinal Hill Lane: I wanted to briefly bring you up to speed on what we have gone through for the last two years in this initiative. First, The Retreat Association is a registered legal entity, nonprofit corporation in the state of Ohio. Our Board of Trustees recognized two years ago our expiring deed restrictions needed to be replaced in order to preserve property values. We needed guidelines and restrictions regarding the use, modification, and maintenance of the neighborhood property. Further, these restrictions needed to be enforced. Our HOA could not legally enforce the continuation of the existing deed

restrictions. In order for that to occur, we needed 100% agreement among homeowners. That was extremely unlikely.

So in early 2018, we approached the City and asked about the best path forward to meet our goal of maintaining The Retreat neighborhood property values. Powell's Development Department, Dave Betz, Rocky Kambo, and Gene Hollins, Powell's Legal Director, recommended we rezone The Retreat as a planned district with a development text providing homeowners guidance in the use, modification, and maintenance of their properties. We retained the services of a local professional city planner to assist in preparation of this document. Our process included input from a group of dedicated Retreat homeowners, all volunteers, and The Retreat Board of Trustees. We had an open house for all Retreat homeowners and, from that, we prepared an initial development text that was mailed to all 162 homeowners in The Retreat. We asked homeowners to respond to the Board stating their approval or disapproval of the document as it was drafted. The vote was 2 to 1 in favor of approval.

We then presented the application to Powell's Planning & Zoning Commission for approval. After the first reading, P&Z recommended tabling the motion for additional input from Retreat homeowners. We ended up with a much different document after that initial foray. Thanks to input from a second open house, private and email discussions with many Retreat homeowners including both those that agreed or dissented with the initial document, we now have before you a document unanimously approved by P&Z and is before you for approval. Our current homeowner approval rate is 3 to 1 in favor of approval. There are still those that do not want restrictions or limits placed on property modifications for enforcement or required minimum maintenance standards for their property. A huge majority of Retreat homeowners think that position is unacceptable. We currently have evidence regarding negative effects on unkempt property on adjacent property values. We have two examples of this. Guidelines and restrictions are helpful and necessary.

We had heard many questions about our proposed Architectural Review Committee ("ARC"). This committee is specified in the development text as an entity that is going to be created and provides for a formal legal procedure for homeowners' action prior to submitting plans for modification of their property to the City. The ARC can only offer recommendations to a homeowner regarding any such modification. To clarify, The Retreat Association and ARC have no legal authority to stop any homeowner activity regarding use or modification of their property. The ARC will be staffed by volunteer Retreat homeowners. Powell will make all final decisions regarding approval or disapproval of any homeowner use, modification or maintenance issue that they have with their property.

We recognize that the development text is not a perfect document. Some believe it is too lenient, some too restrictive. Nevertheless, we have a document for which a substantial majority of Retreat homeowners has compromised their position and personal feelings and now approve the language. It should be emphasized that future changes can be made to the text. We must follow existing City guidelines concerning any variances, but this is not a final document and we understand that. We respectfully request that City Council approve our application for rezoning The Retreat neighborhood.

Mayor Bertone: Dave, can we get your feedback on your efforts in this process?

Dave Betz, Development Director: As Mr. O'Brien mentioned, we met many months ago to discuss what to do. We came up with a process of developing a text for their planned residence district, as it is currently zoned.

In the history of the zoning of The Retreat, it started back in the 70s and 80s, and was originally an R2 zoning district at that time. We do not have that zoning anymore. Over a period of time with Citywide zoning map changes, it became a planned residence district, the last of which happened in 1991 when the entire Zoning Code was changed to create what we currently have as a base for our planned residence district. We figured having a development plan text established for The Retreat might be one way, an avenue of creating the restrictions that people we met with in The Retreat asked for. We did this with guidance from our Law Director knowing that some sort of development plan text could be established.

It is creating new zoning text for the planned residence district, but it is not a zoning category, but it establishes zoning regulations beyond that which is in our Zoning Code. Some of the regulations are beyond what our Code requires. It is tantamount to a rezoning and a legislative act. We helped bring them through the process with Planning & Zoning Commission. We went through many provisions within the text. We suggested they have some open houses after the first P&Z meeting in order to get some better input from the community by themselves versus just with us. Therefore, we had one open house with staff and one open house without staff. Several changes were made since the first iteration came to P&Z.

Rocky Kambo, Assistant Director of Development: Between Dan and Dave's summary of what is being presented, I will be brief. Essentially this is a grass roots effort and something the residents of The Retreat and Cardinal Hill subdivisions brought to the City. This is something they were concerned about with their deed restrictions expiring. Throughout our review and process, we found out that there was about 7-8 phases of the subdivision over time. We found that not all deed restrictions were made equal. In some cases, it required 100% approval in order to update the deed restrictions. In some cases, there was no opportunity to update the existing deed restrictions and in other cases, it required 80% approval. After this issue was brought to us, we provided them with a possible option. From the process, we also looked at the deed restrictions that could have been much more restrictive than what existing code allows. Therefore, in conversations we had back and forth, we needed to determine what is appropriate or not appropriate for the City to take upon its shoulders.

The one takeaway is the Architectural Review. In the City's Zoning Code, we do not have architecture review outside of the historic downtown district. Not all other subdivisions have architectural review. In many cases, we have development plans that specify materials, designs, etc. In this particular case, the existing zoning text does not exist for Cardinal Hill or The Retreat. We have nothing to fall back on when it comes to architecture. Therefore, the main thing with this zoning text is the implementation of an ARC to provide some sort of architectural oversight.

Gene Hollins, Law Director: The Courts have said the initial zoning of the parcel to a planned district is a rezoning and then if later you make major significant material changes to the text that is a rezoning. Therefore, that is why Dave was in essence saying 'tantamount to a rezoning.'

It is sometimes hard to step back. You are going to have a particular neighborhood before you and there are some particular issues as to that neighborhood. We are in uncharted waters. We legally have the ability to look at a new text for any planned district. We are not usually looking at a completely new text after it has all been developed, but this is an issue that is the first of several subdivisions and we are looking to Council for the right process. Is this a tool in the toolbox that Council, from a policy standpoint, wants to consider and to what extent do you want Staff to be involved in the drafting, things like that. It may be little more difficult this first time through because we are in uncharted waters as to how you would like us to go about this. You have a lot of input from residents as well as Planning & Zoning Commission who had questions as well. We are doing our best to get through the process, but it is a very interesting phenomenon.

Councilman Counts: On the left-hand column of the chart you created, it says zoning text for The Retreat as proposed. I think I understand that. Then it says current Powell zoning regulations. So, as an example, hard surface paved driveways. There is something in the text that speaks to that for The Retreat. Then there is also a Powell zoning regulation on that.

Mr. Betz: With regard to subdivisions such as this.

Councilman Counts: In the absence of a Retreat zoning text that has that language in there, does the Powell regulations on hard surface paved driveways apply to The Retreat?

Mr. Betz: Yes.

Councilman Counts: So for all items where it says the same, we can safely say that the City has some regulation and it is going to be uniformly applied to all homes in the City.

Mr. Betz: Yes. The differences are outlined on the right side as well. However, this staff report was written with the old proposal. Two things have changed with the last P&Z meeting where outbuildings are now. Part of the allowances within The Retreat with specifications of how they should be designed, and the holiday decorations was changed from 30 to 90 days.

Councilman Counts: Would it be correct for me to say that if there is heartburn among The Retreat residents, it really should only be those things where there is a difference because they are going to be subject to those items where it says the same anyway? That is really what I need to be focused on in my review?

Mr. Betz: Yes and this is about improvements to properties. Part of our Building Code, Property Maintenance Ordinance, which would also apply to everybody within the City. For example, peeling paint, holes in siding, broken windows, things like that. Those type of things would be enforced anyway.

Councilman Counts: Gene, Powell straddles this development of how you develop properties in the sense that The Retreat, Olentangy Ridge, where I live, are older subdivisions. If you were to look at the newer subdivisions, they have a completely different set of restrictions because they have learned. They have given HOAs rights and there are things that have come into play such as satellite dishes, etc. These older subdivisions have been stuck with deed restrictions that really need updating. We have other communities, like Worthington, older communities, where HOA and deed restrictions did not exist. Tell me how would Worthington deal with this – a desire to put a restriction on hard surface paved driveways if they wanted to?

Mr. Hollins: In those older areas without restrictions of a HOA, I think they would probably go through a subdivision code process. It would be applicable citywide. It may be to try to address a problem in a particular area as a part of the subdivision code. It is universally applied.

Councilman Counts: So like Worthington would have the ability to rezone properties, maybe on a universal basis, maybe in a special area depending on what is going on, without everybody in that area necessarily agreeing before the City were to vote on it, is that correct?

Mr. Hollins: Yes. We talked about this in P&Z. There are ways to start rezoning that apply to certain properties. We always send notices out, obviously, but let us say between 10 and 100 properties, P&Z, Council, or Staff can initiate those. We do not always have 100% of the landowners signing the application to change the zoning. The law says when you buy your piece of property; you buy it subject to certain things. Anything I own is subject to zoning and it is subject to that zoning potentially changing over time. That is what we told P&Z when they asked about who actually made the application here. Yes, you do take your property subject to zoning and that is why we have elected officials, due process rights, and an entire process, as we are going through here, so if it does change your zoning, you at least have a voice in it.

Mr. Betz: There will be issues that come up from time-to-time and it will be a property-by-property specific issue where the zoning text or zoning requirements would create a nonconforming usage or structure situation. The Zoning Administrator would determine on a case-by-case basis depending upon the subject matter that they are reviewing. That is possible with any kind of new zoning that is created on properties that exist, even with overlays.

Councilman Lorenz: Did you take in a rezoning application for this?

Mr. Betz: This was a major amendment to a development plan text. We created a new process, but it was tantamount to a rezoning based on the content of what the application and procedure that is outlined in the Zoning Code. Major amendments go through the same process as a zoning and it becomes the zoning of the property. It was not a rezoning application.

Councilman Lorenz: Did all the property owners that live in The Retreat sign the application?

Mr. Betz: No, just Dan O'Brien and The Retreat Association as a business entity. Under our Zoning Code, one person can apply for a rezoning of multiple properties if they so wish. I think that falls under Ohio law too.

Councilman Bennehoof: David, would you characterize this document as more restrictive than the expiring deed restrictions, less restrictive, or essentially equivalent?

Mr. Betz: Generally, I would say in some cases more restrictive. Looking at it from a Retreat Architectural Review Committee being formed as an entity, which was not outlined in their deed restrictions or covenants to begin with, then it is more restrictive.

Mayor Bertone opened this item to public comment.

Robert Fisher, 416 Partridge Bend: My wife and I have been in The Retreat for 20 years. We have known for a couple years about the expiring deed restrictions. Some of us fretted it for a while and then Dan, along with others, began to work on building this alternative development text. We love The Retreat, its character and green space. I have watched with great interest as this development text first came around and what amazed me was how much it improved over multiple iterations. There were some knockdown, drag outs in the process, but I think what was interesting was that most people in the subdivisions really do appreciate its character. At the end of the day, the development text in its current form strikes an excellent balance between preserving the character we all like so much and not attempting to micromanage the rights of the homeowners. I wholeheartedly support it now.

Sally VanMeter, 530 Cardinal Hill Lane: I have lived here for 32 years. My husband and I used to come up into this area, drive around before The Retreat was even finished and before the development of Cardinal Hill. Looking at how beautiful it was, the trees, ravines and open space and greenery, it was just breathtaking. We loved the area, and how the houses fit in. Nothing comes without a price. We have to have rules. I often think of German Village that probably has the most stringent development/zoning rules on the books. Their property values have only skyrocketed over time. To be fair, part of it is because it is so close to downtown Columbus. They maintain a very strict outlook on what is permitted there and it has benefitted them. We have very few rules in The Retreat. In fact, it allows most people to achieve their dream with one exception of one neighbor whose dream was to feed all the wild life. She put feed out every morning and for a while; it was fine until we began to be overrun with Canada geese and all the accompanying fecal mess. I was told there was not anything I could do except to try to interrupt the geese with noise. So I would go out every half hour screaming and banging two pots together trying to break them up. They eventually found their dream with 20 acres somewhere else. I am delighted for them that they did because now I can have my dream back. I would love to see The Retreat continue just the way it is. I urge your support of the document even though I personally think we have gone too far.

Simon Russell, 510 Quails End: I have lived here for 33 years. I have to say that I have never had any objection to this process as an original premise of renewing my property's expiring deed restrictions. It is where it is going that gives me concern. Given the original restrictions were primarily focused on how the lots would be developed, very few of these original restrictions have much bearing today and many others that do are covered by City Code. Most importantly, the original deed restrictions did not allow for the establishment of an HOA. I believe all other Powell subdivisions have HOAs, but The Retreat does not. This very application was filed in the name of The Retreat Association, an HOA. That is incorrect.

Under Ohio [Revised] Code, it is a civic association which means it has no legal authority, membership is by voluntary contribution, and responsibilities are primarily limited to social activities in common areas. An HOA, and thus its rules and regulations, cannot under the law be retrospectively created and imposed on homeowners. If you have read the full text, you will see many items, often set out in considerable detail, outlining HOA rules. An extreme example of which is how long you can have holiday decorations out. Why are such unusual things in development text? Because The Retreat Association is not an HOA and therefore cannot create and enforce such restrictions itself. If you approve this text, the City will become The Retreat's HOA and will be responsible for enforcing all elements. Is this what the City really wants and is it legal? A few of us tried to raise these concerns at the P&Z meetings, but there was little interest in the legal aspects. This is a legal document. The content of the text has never been subject to full legal review, and a reading of it shows a lawyer did not draft it. The Retreat Association team has said the development text route was the one recommended by the City and so if the City was okay with it, they did not feel any need to get legal advice. It may well be the appropriate way to replace deed restrictions, but is it for imposing new HOA tight regulations?

My questions therefore are:

- (1) If Ohio [Revised] Code says retrospective restrictions cannot be placed on the property without 100% of owners approving them, how much of this is legal? Can the creation of a text be such an easy way to get around the HOA issue? This is surely fertile ground for legal challenges;
- (2) The text sets out no mechanism for how any breach will be identified or how the process to resolve it would work. Does a Retreat resident just show up at City hall, complain about the need for a house to be painted, weeds removed, and expect the City to deal with it? What would the City actually do and how will it enforce it?;
- (3) Can the City legally impose more restrictive architectural and structural building rules, as set out in the text, than were in the original deeds or that would otherwise apply to any other resident of Powell under the City Code?;
- (4) Can the City legally set out in the text to give a civic association the power to create and manage an architectural review committee to approve or deny these restrictive property rules? Would they have authority over nonmembers? Approximately 20% of Retreat residents are not even in the civil association.

Finally, if the text is passed, are residents legally obligated to inform potential buyers of its existence? How would any potential buyer otherwise know about it as it would not be registered against the lot. Are sellers exposed to any legal liability if they fail to disclose it?

This text clearly needs to be critically reviewed by an experienced real estate lawyer to see what will or will not stand up and be revised where appropriate. If it is legally sound, the City needs to recognize its new obligations as an HOA, decide which of the rules and restrictions it would actually be prepared to enforce, and then remove or revise the others and formalize how the enforcement would work. Owners need to understand their legal obligations when selling their properties. Over the years, Powell has gotten itself into a number of legal disputes following resident-led initiatives on property matters. Is it unreasonable to ask that this new legal approach and its contents be confirmed to be legally sound and the wording appropriate? I hope that such a review will result in a document everyone could then live with happily ever after.

Mark Cooperman, 250 Deer Creek: I have lived in The Retreat for over 35 years. For the past 7 years, I have had the privilege of serving as the Chief of Staff at the Columbus VA. So as a federal employee, I am very well versed in the pros and cons of rules and regulations. Sometimes they are onerous. Unfortunately, in The Retreat, we have observed that not everyone has maintained his or her property the way it optimally should be. Initially, my wife and I were very much in favor of the first proposal that was more restrictive. Compromises have been made. The P&Z Commission unanimously approved it, and my wife and I are both strongly in favor of adoption of the current ordinance.

Jerry Maddox, 580 Retreat Lane: It would not be a surprise to me if The Retreat residents and others thought The Retreat was a special place. Today, we are its stewards, and I hope others will be stewards of The Retreat in the future. The special environment we are living in today did not just happen by accident. Over 40 years ago, we had a developer that had a vision. That vision included a professional site planner. Together they chose not to doze down the trees, fill in the ravines, or layout The Retreat in a maze of streets like thousands of residential neighborhoods are across the country. As stewards, we have had these restrictions and identified key elements in maintaining our properties and the environment in which we live. As you know, these have recently expired.

This evening we are seeking Council approval of a new document that replaces the previous deed restrictions. Through everyone's input and hard work, I believe the zoning map amendment, along with the new zoning text, meets those criteria. Is it a perfect document? No. It is not intended to be. It will need to be reviewed on a regular basis to remain current. As such, it is a living, breathing document 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, and I have chosen to do so over 18 years, and hope every resident of The Retreat will choose to do the same. I love The Retreat. It is my home. It is my hope that this special environment will remain for many generations to come. I believe approval of Ordinance 2020-01 will assure this and I support it 100% percent.

The Retreat had deed restrictions from day 1. These deed restrictions evolved over the completion of the phases as it was put together. The Retreat is not just an older subdivision. It is my understanding that it is *the* oldest and first subdivision in Powell. We have an image that people identify with when they drive into The Retreat. People want to be here. It has a history, character and environmental qualities that we want to ensure continue into the future.

Diane Beann, 998 Deer Creek East: I am a new resident and have only lived in the house since April, even though we bought it in November 2018. We purchased one of the houses that was falling apart for a bargain basement price and we have been working very hard to restore it. I think it is a shame the way that house was treated and what we have had to do to restore it. I do not want to see that happen again. I am very much in favor of these restrictions.

David Alexander, 305 Partridge Bend: My wife and I have lived in The Retreat for 29 years. I want to thank the City for the process that it has been a part of and Dan O'Brien in particular for the hard work he has done. I also want to thank Simon Russell for contributing to the conversation and process. There were a lot of adjustments and compromises made and I think it is a good balance. I would not have chosen all the language, but that is inevitably part of the process and I think it was a fair, thorough, and careful process. I respect it and thank them for their work and I urge you to approve it as submitted. I am confident that Gene Hollins, the City's council, will address the issues that Mr. Russell raised and has the confidence and experience to do that.

John Fried, 9011 Olentangy River Road: My wife Mary and I have lived here 30 years. It is a good common sense document. I am not a lawyer, but I looked through it and the improvements make a lot of sense. I support Dan, Tim and Dave Betz. Thanks to all of you that put time and effort into it.

Tom Gray, 550 Thrush Rill Court: I am the gentleman that one of the earlier speakers was referencing. I have

been in The Retreat for about two and a half years. Having seen it some decades back, a neighborhood that made an impression as a special place. I would like to thank Dan and many others for the work put into the issue. I would like simply state my support for the rezoning application as it is proposed.

Mark Knueve, 440 Retreat Lane West: My wife and I support the deed restrictions. I echo the comments of our neighbors that The Retreat is a unique place. It is. I echo the comments of our neighbors that these restrictions are common sense and, frankly in our experience, clearly typical in neighborhoods like this. I echo the comments of our neighbors that thank Dan O'Brien and his committee for all the work and compromises they made from the beginning of the process until now.

Anne Schenz, 485 Retreat Lane West: I love the term that Mr. Maddox used, steward. I have lived here for 32 years and I agree with everybody else: it is special. I have served as part of the board and have been in favor of this planned district document from the beginning. The board had a unique opportunity to be a part of this. We attended all of the meetings, we saw all the comments from everyone, and we met every week to consider them. Some of us were also part of small group discussions with people who were either for or against the document.

I would like to give a large thanks to everyone that cared enough to comment, regardless of what your position is. It all helped and I want to assure you that each comment was carefully considered. My hope for this document is that it will serve and preserve the neighborhood. It is my prayer that we can continue to be good neighbors and friends no matter our position on this.

Annette Hoffman, 696 Eagle Ridge: We have lived in our home for about 10 years. We previously lived in Grandshire and we loved it there, but a job opportunity took us to Chicago and when it was time to move back, we decided to come back home. Home to us was The Retreat and that was because I have two cousins who live in the neighborhood.

In Chicago, we had a favorite saying that said, "I live in the city but I dream of living in the country." I really strongly feel that this is what we have in The Retreat. We are able to have very large lots, nice exteriors on our home, and lots of space, trees, and ravines. I am fortunate to say that we have just about all of that on our lot and we love just being home. But I also live in the City and living in the City requires that you do make some concessions for doing so.

I think the document is good. Many compromises have been made from the beginning and I am fully in support of the current document. I thank everyone for his or her input. It has been adjusted a lot but I am okay with that because I think compromise is important in everything we do.

Larry Williams, 411 Cardinal Hill: About 15 months ago, I was looking at purchasing a property in The Retreat. I had a unique requirement, however. My wife and I both enjoy classic cars, own a few of them, and needed to make sure that there was a capability of us building a home for our classic cars. Prior to putting in an offer for our home, we had our realtor contact Dan and asked him about any restrictions about putting on a garage. He went over the new restrictions that were going to be taking place. Because of that conversation with my realtor, I contacted Dan. I wanted to make sure that we were going to be doing something that fit in with the neighborhood. The last thing I wanted to do was to move into a neighborhood where I could throw up a couple of cement blocks, throw a rag over the top of it, and call it a garage. That is not what we were interested in doing. We wanted something that would enhance our property, not devalue it. Dan explained all of those requirements to us and we were impressed with that. This was on the first draft of this. To be honest with you, without those restrictions, we would not have purchased in the Retreat. We were not interested in getting into a development where anybody could do anything that he or she wanted to as long as he or she met some minimal construction requirements.

Someone earlier mentioned German Village. German Village is a nice place. I have owned property there for the last 25 years. Those of us that own property down in German Village who have been there for a long time know there is an unwritten rule: if you do not like the restrictions, you have the right to live somewhere else. We do not want to become so restrictive here that everything has to be approved and you have no independence at all, but we need to have some restrictions in here. At one of our meetings, somebody had mentioned that the last thing that people in The Retreat want is a development full of pink houses. I certainly do not want to live in a neighborhood full of them. Being a new person coming in to The Retreat, I know that when I come in I am going to look for ways to make this house unique to me, but do so within the confines of the development. Without these restrictions, you would end up with people doing whatever they want to and we have to have guidelines to improve the development and not allow it to go downhill. My wife and I wholeheartedly support the restrictions as written.

I hope that you will make a decision about this soon because as I said, I found out about these restrictions 15 months ago. I still do not have a home for my classic cars because we have not made a decision about this. It is time to us to get it taken care of here and not allow it to drag on.

Maryanne Beecher, 633 Eagle Ridge: I support the proposed text as well. I appreciate the neighborhood's efforts to solicit input and make decisions based on compromise. It is a pretty good set up. I think the speaker who preceded me makes my point, which is the quality. It is important to consider preservation and sustaining the beauty of our neighborhood. My concern is more about how our neighborhood will move forward in the future. I have lived in my home for several years, knew about restrictions when I purchased, and I was not deterred by the recently expired restrictions. I am also perfectly comfortable with the new version as well. If it attracts new families into our neighborhood, that will be a great thing.

Bill Thomas, 930 Retreat Lane: My wife and I have lived here for almost 15 years. My wife is on both the committee and HOA and worked very hard with the rest of the members. She is home with the flu so I am speaking on behalf of both of us.

I heard some great stories about the neighborhood and how people came to like the neighborhood and it made me think back to when my wife and I first moved to Columbus. We lived near Upper Arlington just inside the City [of Columbus] and we had hoped to come out to Delaware County. We would drive around after church and look at different places, but we always found ourselves back in the Powell area. I can remember us coming off SR315 and onto Retreat Lane thinking how beautiful it was. We loved how nice it was and how it was laid out, as well as the trees and openness. We never thought we would be able to live there someday but we are fortunate enough that we are here.

Every neighborhood has deed restrictions. If you have not looked at the deed restrictions to The Retreat, they are done in phases. I live in phase 1 and the restrictions are horrible. These were done 40 years ago and they did not have any practice at it, so are very unrestrictive. There is really nothing that can be enforced in phase 1's restrictions. The question that was asked about whether the proposed plan is more restrictive or less restrictive, it depends on what set of restrictions you are looking at. The restrictions got better as you go along, but phase 1 is horrible and explains why you have some of the homes that you do now. Nobody wants homes that are not being taken care of.

I want to thank Dan and all who worked so hard on this, as well as Rocky, Dave and the City attorney, so there has been legal review. When you hear comments that people do not want this, I suggest that you are not hearing the whole story. There is a reason why someone does not want deed restrictions or zoning in place. If you look deeper, it is not just that they do not want it; they just want to do what they want to do to the detriment of other people. The neighborhoods in Powell are not the neighborhoods to do that. You have the right to live somewhere else. There is a certain amount of respect and give-and-take that you have when you live in a community. We just want to preserve that and maintain it going forward.

John Dotson, 595 Retreat Lane North: My wife and I moved here 5 years ago. As others have mentioned, it is a wonderful place to live. I think the two things that stick out to me are steward and balance. We brought this to P&Z for a first reading and it was not supported at all. They asked us to go back to our neighbors to get a better consensus. We spent hours on the phone and in discussions with the community to make some compromises based on what the City asked us to do.

In reference to a comment made by Councilman Counts earlier, just looking at things that are potentially more restrictive, such as driveways, we live on one-acre plots. We have a lot of equipment and do not have the garage space. I am not a proponent of sheds or outbuildings. Some people are. As a parent of two with a snow thrower and lawnmower, I do not have that space in my garage, so I understand their perspective. But I also do not want someone to go to a local hardware store and buy a \$1,200 shed made out of aluminum or wood that does not match the characteristics of our subdivision. I would ask you to consider that because it can be done with your restrictions. Sheds are allowed, but with our restrictions, it has to be done to match the characteristics of the homes in our area.

The other thing that was brought up before from a real estate agent that these deed restrictions may be more restrictive to a point, but they are also less restrictive in some ways, such as now being able to put up a fence. That was something that was not in the original document. That was hard for me as a homeowner to take into consideration because when I called about restrictions before moving into the neighborhood with our two dogs, I

was going to put up an aluminum fence, but we were told we could not have one. So respecting the regulations, we bought an invisible fence instead and it worked out great.

I am in favor of the document, but I would ask that you think about those type of things when you are making your decision on how to proceed forward. It was mentioned that this is uncharted waters and we are the first subdivision in Powell to go through this issue. We have spent a considerable amount of time, received a considerable amount of advice from the P&Z Commission, to make sure we were doing what they felt was best for our community but also best for the City, and now it is your job to make that decision based on the recommendations that we have been given.

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

Councilman Bennehoof: I am not a lawyer, but I have heard of a couple of potential legal concerns that we need to make sure we understand what those are. Is there any way for local control to manage this? Could that be considered as well?

Councilman Counts: The one thing that I glean from this is and from my own experience of living in Olentangy Ridge where our deed restrictions expired and there was an effort to actually attempt to renew them. But the deed restrictions are not very good, so I empathize with you. I try to keep my house nice, and I would be more than willing to subject my home to restrictions, but it is my neighbors that I am not sure about.

We created zoning in 1926 when it became legal. Before that, everyone thought he or she could do what he or she wanted to the property. What they found out was that with zoning, things were so much better. What I hear tonight is that there is a desire to keep things and make things better. What I want to be able to do over the next two weeks, because I assume this will go to a second reading, is to think about if this is the appropriate way to make it better or can we make this process better. I say that, and this is one of the things I want to think about, because you are the test case. If this works, I fully expect there will be other subdivision, like Olentangy Ridge, that will be back before us. I would like to get this right the first time. If there is any caution that I would want to give you, it is that I may want to slow this down a little bit and you will be very impatient with that. This is something that I think that the City will be faced with repeatedly with these older subdivisions and we have to get it right the first time.

Mayor Bertone: I will note that we have some emails from other neighbors ([Exhibit 2](#)) as well who have supplied comment. You are welcome to continue to send those emails along. I agree with Tom's comments. I do believe that we have to get this process right. We started this conversation with the word 'process' and from a community point of view this is something that will continue to come at us at large, and we will need to have a better answer than test cases in certain communities. I commend you as a community. This is by far one of the most amicable groups I have ever seen in terms of neighbors. This is truly indicative of the fact that you do have a special place. I can tell you that not all neighborhoods work this way. I encourage you to be patient with us in this process. We have a lot more questions than answers. This will go to a second reading and we will pick this back up at our next scheduled conversation.

Ordinance 2020-01 was taken to a second reading.

SECOND READING: [ORDINANCE 2019-60](#): AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A TAX INCREMENT FINANCING AGREEMENT WITH HARPERS POINTE LAND COMPANY, LLC, AND DECLARING AN EMERGENCY. ([EX. A](#)) – *tabled from January 7, 2020.*

Mr. Lutz: Harpers Point is 46-patio style single-family residential community under construction. Tonight is the second reading of the proposed TIF Ordinance to reimburse the developer for a portion of public infrastructure costs that will benefit the community. One of these infrastructure improvements is a 42-inch storm sewer being constructed as part of this project and will alleviate long-term storm water problems that have existed north of this subdivision.

Additionally, as part of this development, a portion of a future public road will be built that will extend across Powell Center, connect to Grace Drive, and will be one of the parts of our Keep Powell Moving initiative. Between readings of this Ordinance, I would like to point out the major change that has been. It is located on page 3 regarding the developer TIF reimbursement amount. It was \$919,500 and was adjusted up to \$950,000, based on the discussion held at the first reading. This TIF is a **[inaudible]** school TIF that means that the school receives 100% of their property tax revenues. The TIF revenues that will be utilized to pay for these public

improvements are strictly revenues that are being generated by this 46 home development.

Mr. Hollins: I think Steve captured most of the substantive issues. The only other substantive change is the interest rate on the money they are borrowing to do the work, which is labor plus 2.75%. We were filling in some blanks, but there are no other substantive changes.

David LaRue, Developer, Rocky River, OH: I want to thank you for the long-term history of support for the project while moving forward with many challenges. We are at a point where we have started site work. We have submitted permits for a sale trailer and will soon start on our model home.

The public improvements are well underway. Susan Lane is basically complete at this point but for the top paving. The winter weather shut down that part of the job for us, but the main part of those improvements, the storm sewer that does alleviate the water problems for those north of the site, has reached its furthest northern point along Grace Drive, and we will be turning east. Part of the reason we had asked during discussions with committee and Council and the change that was mentioned as to the total cost is that there are a lot of utilities that go from west to east with many utility boxes that we want to ensure are not damaged when we are potholing. We are very close to schedule and expect to complete the construction of the storm sewer by mid-February, weather permitting.

As you look at the document and the interest rate, I would note that when we went to the bank, they were not interested in lending us money on public improvements. Their security really is in the land that we have the ability to put homes on. Those improvements would end as equity contributions from the partnership and we think that the interest rate that the bank charges has a different risk, but we are willing to accept that based on the support that the City has given us. We are aligned, as developers, with the City in terms of making sure this project as efficient as possible and at the lowest cost because those are really equity dollars. There is no incentive for us to inflate costs. It will be actual costs and done under the requirements of the Public Works and prevailing wage. Our contractors are doing that right now.

Len Pivar, Developer, 165 Thornbury Lane: Despite all the issues putting in the storm sewer, including AT&T lines running through there instead of running through the easement on one side, we had problems with properly locating telephone and electric lines. We resorted to bringing equipment in that literally sucks out the dirt to locate those lines so that we did not potentially destroy them while digging them up. As Dave pointed out, we are ready to go east. I expect that will be a tough section similar to how it was coming up off Powell Road. I believe once we go north again, we have pulled the easement into our property outside of this utility easement to try to stay out of the way of the utilities, and hope it will go a lot smoother. I think we are within a week of our schedule in spite of the rain.

We prepared a temporary road so we can start to build a model. We submitted plans today on the model. We are hoping to get permits to put our trailer up this week so we can start selling. Our webpage is about ready to go and I am anxious for you to see the houses. I think they have turned out outstanding, and am anxious to get them up with some façade so you can see what this place is going to look like.

Councilman Counts: We changed that number. Is that number agreeable? What extent have you gone into the contingency?

Mr. LaRue: We have not used any contingency yet. We do expect the contractor to come back to us with a change order for potholing. Right now, within that \$950,000, we had contingency, and so far, we are looking good that we would stay within that contingency. The risk that we had discussed, hitting Olentangy Caverns as we go east, was our concern about taking all that risk; however, we are taking that risk by limiting our reimbursement to the real estate taxes from the non-school real estate taxes that we generate from this. So there is a greater risk there than a Citywide TIF or district TIF that would just be able to benefit from other places.

Councilman Counts: Are you good with agreement as it is written?

Mr. LaRue: Yes. We worked with Staff, and understand how the existing agreement works.

Councilman Bennehoof: Thank you for your patience. It has been a long road to get to this point with all of the hurdles we both faced, both independently and together. It is going to be a great opportunity for the City.

Mayor Bertone opened this item to public comment. Hearing none, Mayor Bertone closed the public comment

session.

MOTION: Councilman Counts moved to adopt Ordinance 2019-60. Councilman Lorenz seconded the motion.
VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2020-02: AN ORDINANCE AMENDING SECTION 1331.01 OF THE CODIFIED ORDINANCES REGARDING REGISTRATION REQUIREMENTS. (EX. A)

Mr. Lutz: For 25 years, Liberty Township contracted with the City for us to serve as their commercial building department. Late last year, Liberty Township Trustees voted to terminate that agreement and instead take their commercial building to the County Building Department. Because of that, we are recommending we amend our registration requirement to delete Liberty Township from a body that requires registration and insurance for all electrical, mechanical, plumbing, hydronic, fire protection, etc.

Councilman Swartwout: Can you confirm that once Liberty Township decided to go to the County instead of us, they cannot come back to us, is that correct?

Mr. Hollins: That is correct. They have in essence dissolved their building department and now it is the county that has taken over. When they were with us, they had their own sub-department to our department, which was independent. However, once it is gone, it is gone. That is based on state law.

Councilman Lorenz: Do we know if the Ohio Board of Building Standards has authorized their disbanding or is that not a concern to us anymore?

Mr. Hollins: Our CBO was in contact with the Ohio Board of Building Standards who claimed they will receive that and enter it into their journal, but do not actually approve it, so it is, in effect, done.

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

MOTION: Councilman Lorenz moved to suspend the rules regarding Ordinance 2020-02. Councilman Bennehoof seconded the motion.
VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2020-02. Councilman Swartwout seconded the motion.
VOTE: Y 7 N 0

COMMITTEE REPORTS

Development Committee: Next Meeting: February 4, 2020, 6:30 p.m.

Finance Committee: Next Meeting: February 11, 2020, 7:00 p.m. We met last week and had an organizational meeting and spent some time with Karen Sybert looking over our reports, getting some feedback on those, and talking about capital improvements plans and how we might tackle that over the next year.

Operations Committee: Next Meeting: February 18, 2020, 6:30 p.m.

Planning & Zoning Commission: Next Meeting: January 29, 2020, 7:00 p.m. It will be an organizational meeting and review of rules and other housecleaning issues.

Powell CIC: Next Meeting: January 29 or 30, 2020, 6:00 p.m.

CITY MANAGER'S REPORT/CITY CALENDAR

There was none.

OTHER COUNCIL MATTERS

Mayor Bertone: I want to talk about our City Manager search, my take on that, and open it up for conversation. This process started a few months ago with a search firm of Ralph Andersen & Associates who have helped facilitate a national search based on the criteria we set out, including experience, energy, enthusiasm around this process, etc. After receiving an initial list of candidates in early December, we have been working our way deliberately over the last several weeks regarding the candidates we have been interviewing. In my mind, one person stands out because of their energy and enthusiasm, and that person is Andrew White. Andrew is the current City Manager of the City of Huron. We recognize that this role is crucial to us as we move forward as a community.

To that end, I want to open up the conversation of this candidate, other candidates or anything else you might wish to add.

Councilman Counts: We had the opportunity to talk to Andrew and, from the very beginning, I was very impressed with him. That did not change over all the other interviews we undertook. Therefore, I would agree with you that he is my first choice and I look forward to the possibility of entering into an employment relationship with him.

Councilman Bennehoof: I agree with Tom that he is a standout candidate. I was very impressed. I had the opportunity to meet all of the candidates and, based on my background of hiring many people and making judgments on potential employees, I think this is a stellar candidate.

Councilwoman Riggins: I think Andy is a great candidate. I would like the opportunity to bring him in for another conversation. We have met him once and talked to him once on the phone. Not everyone has met him in person and I would like the opportunity to have him come down, have some further conversation, and go from there. This is a very big position to be filled and I think more conversation is needed with him now that we have narrowed the stance for this position.

Councilman Swartwout: I agree with both Tom and Frank in their comments. I am prepared to move to next step with Andrew White. He is an exceptionally impressive candidate and nothing has moved the needle during the interview process away from him as being an outstanding first choice candidate.

Councilwoman Karr: I would agree with that comment as well. From the very beginning, he is an exceptional candidate that stood out to me. All the candidates were very good and qualified, but he stood heads above everyone else.

Councilman Lorenz: I would add that the entire process was very enjoyable. I would like to thank Steve for helping facilitate everything there. It is bittersweet having to go through this process with Steve leaving, working with Heather Renschler's staff, and coming up with the best candidate, which is Andrew. Because he is such a good candidate, it is likely he is looking at other opportunities, so I think now, Council needs to act quickly and move forward. I would like to make a motion for the mayor and the vice mayor to negotiate the contract with Andrew White for the position of City Manager, subject to a background check and Council approval of the contract.

Councilwoman Riggins: I am not sure if this is the appropriate time as far as clarifying what the background check is and what the motion would be, that there would be a criminal background check. Also the reference checks that are part of our contract with Ralph Andersen & Associates that would include reference checks with former co-workers, supervisors, those being contacted, questioned, and that information being brought before us for a vote. I am not sure how to put that into the motion technically.

Councilman Swartwout: I am not sure there needs to be any amendment to the motion. If what the background check is, is defined in our contract...[Councilwoman Riggins: I do not know that it is. It is called a reference check, which does not include a criminal background check.] I do not think we are reinventing the wheel here with what a background check entails. I am very comfortable with whatever background check is conducted according to the parameters of what you just read, as well as any kind of criminal investigation, I am confident with our consultant to conduct that appropriately, and at enough of a level for us to render this decision.

Councilwoman Riggins: To be clear, I am not asking for a criminal investigation of this candidate. I am asking for a criminal background check and a reference check, pursuant to our contract that are to be conducted. It is two different things.

Mayor Bertone: If I may, I do not disagree with what you are saying. I think those are all agreeable items that we can adopt within this conversation and this motion this evening. So if I were to restate what Brian had said, we can revisit your motion, doing a background check, council approval of the contract, as well as any other ancillary background checks associated with our contract with Ralph Andersen, which could include a criminal background, etc.

Councilwoman Riggins: Reference checks pursuant to our agreement, yes.

MOTION: Councilman Lorenz moved to allow the mayor and the vice mayor to negotiate the contract with Andrew White for the position of City Manager, subject to a reference and background check, and Council approval of the contract. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

ADJOURNMENT


MOTION: Councilman Counts moved to adjourn the meeting at 9:51 p.m. Councilman Swartwout seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned.

MINUTES APPROVED: February 4, 2020

 2/17/2020

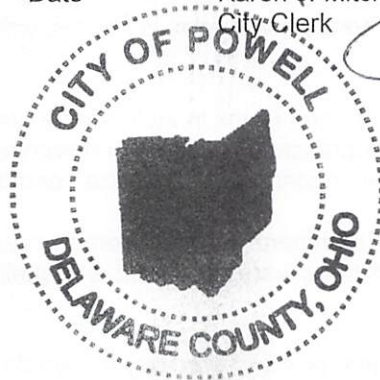
Frank Bertone
Mayor

Date

 2/18/2020

Karen J. Mitchell
City Clerk

Date



City Council

Frank Bertone, Mayor

Jon C. Bennehoof

Tom Counts

Heather Karr

Brian Lorenz

Melissa Riggins

Daniel Swartwout