



**CITY COUNCIL  
MEETING MINUTES  
February 4, 2020**

**CALL TO ORDER/ROLL CALL**

A regular meeting of Powell City Council was called to order by Mayor Frank Bertone on Tuesday, February 4, 2020 at 7:15 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; Megan Canavan, Communications Director; 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 and Hiring of Personnel, O.R.C. Section 121.22(G)(3) Pending or Imminent Litigation.

**MOTION:** Councilman Lorenz moved at 7:15 p.m. to adjourn into Executive Session pursuant to O.R.C. Section 121.22(G)(1) Personnel Matters – Board & Commission Appointments and Hiring of Personnel 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,** led by Troop 428 of the Boy Scouts & Steve Braun, Scout Master.

**PROCLAMATION – [Dementia Friendly Powell](#),** by Anne Farley, Ganzhorn Suites Specialized Memory Care. Ms. Farley thanked Council for its support of this initiative and presented a short video explaining the concept of being a Dementia Friendly community.

**CITIZEN PARTICIPATION**

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

**APPROVAL OF MINUTES – January 21, 2020**

**MOTION:** Councilman Bennehoof moved to approve the minutes of January 21, 2020. Councilman Counts seconded the motion. By unanimous consent of the remaining members, the minutes were adopted.

**SECOND 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](#))

Steve Lutz, City Manager: At the last Council meeting, we learned that The Retreat and Cardinal Hill's deed restrictions expired at the end of last year. They are proposing the City adopt a new planned district text that is very similar, but not identical, to the deed restrictions that expired at the end of December. At the last meeting, Council talked about how this may or may not serve as a prototype for other subdivisions within Powell whose deed restrictions will expire sometime in the future. This may or may not be an approach the City wishes to take in order to address expiring deed restrictions.

Since the last meeting, representatives from The Retreat have made some amendments to the proposed text amendment. I will let Mr. O'Brien talk about the most recent changes.

Dan O'Brien, President of The Retreat Association, 560 Cardinal Hill Lane: Based on what we heard after the last City Council meeting, we have made six or eight changes to the text in an attempt not to delegate the City authority to the Architectural Review Committee ("ARC"). That was done on your behest. We went back and found a few areas where we think we were a little bit in error. That was never the intention of the development text we created. We think the ARC is an advisory board only and only there to interact with homeowners with respect to what they want to do regarding [issues contained within] the development text. We also believe that this is going to make Powell's job easier because the homeowners that go to Powell to solicit building permits will have already gone through some of these possibly contentious areas [with the ARC].

Mayor Bertone: You bring up a good point in that you are just there to advise the homeowners. That is some of my conflict as well, so the document has had six to eight additional changes since our last conversation. Where would you say the document sits today in terms of completion?

Councilman Lorenz left the meeting.

Mr. O'Brien: Based on what we have heard from homeowners, the volunteer committee, Board of Trustees, Planning & Zoning, Powell's legal counsel, the Development Department, and Council, I think we are there. We have had some pushback from select owners that think we have gone too far, but my attitude is that we have to have some compromises. When we started this process several months ago, we had a far different document from what we have now. Approximately 40% of the text has been changed based on everyone's input. Many who were originally against it are now in favor of the text.

Mayor Bertone opened this item to public comment.

Greg Hollern, 400 Cardinal Hill Lane: Thanks again to Dan, the board, volunteers, and those here at the City that have worked so diligently in bringing us to this point. My wife, Ellie and I have loved this neighborhood from the first time we drove through this great community. As many people have already eloquently stated, there is support for this zoning document for The Retreat in recognizing it is integral to the future of this special neighborhood and the City of Powell, potentially as a test case or something to move into the future on. We both fully support the document and the City of Powell moving forward with this.

Jerry Maddox, 580 Retreat Lane: I am not sure how much more I can add from my past comments except to state I hope The Retreat will always remain that special place it is today. With the passage of Ordinance 2020-01, The Retreat will remain that special place. I unequivocally support the passage of this Ordinance.

Tim Schenz, 485 Retreat Lane W: I would like to reiterate and reinforce what Dan said about the ARC. It is an issue that keeps coming up. In the development text, in addition to specifying the property's appearance and maintenance, the development text does give guidance about architectural details for building projects that require a permit. Because of these architectural guidelines, some sort of architectural review would be needed by the City before they could issue a permit. That review would either be done by the City or by the neighborhood.

There are two main reasons why an architectural review by the neighborhood is a good thing. First, from The Retreat's perspective, we could just say if it is permitted in the development text, we do not have to do any kind of architectural review, let's just go ahead and let residents do it. But, we want our neighborhood to be good neighbors doing good for our neighbors. So we say in the development text that we want to help our neighbors who want to improve their property by assisting the homeowner and serving as a liaison to the City. We want to help residents get through what can be a very complicated process.

The second reason for having a neighborhood architectural review is that it will help the City. A neighborhood review will do a lot of the legwork for the project and will free up the Development Department for other tasks. These days with limited staffing and budgets, this is a big win for the City. A neighborhood architectural review really benefits the City.

In summary, I urge Council to approve the development text. It will not only preserve our neighborhood, but it is a good thing for the City too.

Anne Schenz, 485 Retreat Lane W: I have lived in my current home for 32 years, and I am in favor of this



planned district document. As Dan said, it is a very different document now than when we started. This [process] has helped us to listen to each other and to walk in each other's shoes. Each of us lives in a different style house, on a different shaped lot, and we all have similar, but not the same, concerns and goals. While some of the meetings have been a little bit enthusiastic, the highlight of this process for me is getting to know my neighbors better, talking more, working together. We have truly become more of a neighborhood. Please vote yes on this document.

William Souder, 559 Cardinal Hill Lane: You have seen some emails at the last meeting from my wife and I because we were not available to be in attendance. We have also submitted some additional emails. We want these things to exist and we are for rules; however, I do not think there is an appropriate balance yet. I think there is more discussion that should be had between all the parties involved. I believe that we can get to that balance, but we need to work harder at it. It sounds like some of the issues we highlighted in our email last week brought up some issues that prompted some changes, though I wasn't aware of those changes until tonight.

I would like to reiterate a few points. From the first moment we received the initial document, Maryann and I communicated our concerns across three primary areas. One, we asked a lot of questions about the organizations and the entities that are in the document: who are they, what gives them their power, what are their rights, what are their limitations, what rights do they have on our property, all of those things.

Area 2 was the actual document itself – what is in the body of the text. We were definitely concerned with a lot of the language we were reading and I continue to remain concerned about that.

Area 3 was the rules, standards and processes that have yet to be defined that are outside of that document. I think that is an important area that may be overlooked. I do not think that a body can be given power, in my opinion, without giving it the rules and standards to live by, no different than a lot of the court cases we offer to you tonight in the text that you have, and required of your own Staff. I do not understand how we cannot require the same rules if we are going to give some of that capability/authority [to a] recommending body without requiring the same rules and standards. The other issue I'm concerned about is that I have attempted to have a dialogue with Staff about processes, how the information is going to be received, and what process will be used to make sure that there is a uniform approach when it is received in one application versus another, etc. That still seems to be a little allusive, although I was directed to an existing Powell Code. That Code seems a bit allusive on that process.

We want this. We want these things to happen, but I think there is still a balance that needs to be sought here. I think that should be our goal, and I think we should continue to strive for it.

Bill Thomas, 930 Retreat Lane: I spoke at the last Council meeting and the P&Z meetings. This has been going on now for about 2 years. The neighborhood and Dan have been working on this. I cannot tell you the number of drafts that have gone around now for input. So to hear Mr. Souder come up here and say what he said causes me disbelief. I do not know the man, but I do not believe him for a second. There is no way that this has gotten to this point, [and opportunities for input], to have all these concerns. He does not want it. There are just a couple of people that do not want it. If you have a concern, have a lawyer look at it to get an opinion, and then give it to the City. They are never going to be happy.

As a lawyer, and I have looked at it, I believe it is a proper text. I do not think there is any legal trouble with the document. That is my view on the situation. If there is, I can tell you this as an attorney, if someone has a problem with it, they are going to challenge it, we will face it, and we will deal with it. As long as your legal counsel has reviewed it and they feel it is fine and the City feels fine with it, do not be afraid to approve it because of a possible lawsuit. We will deal with it if that happens. For someone to come up here now at this point and complain like he just did, he does not want it. There is just no doubt about it.

Cecelia Weinkauff, 494 Retreat Lane N: I moved here about 33 years ago. This was the fifth house we built in three states in five different locations. I would not live in an area that did not have deed restrictions. Been there, done that, and saw problems. When we moved here I was on architectural review for 15 years. I was on The Retreat Board for 18 years. I supervised the landscaping at the entrance for all those years. I put in a lot of hours. While on architectural review, I did not really have any problems. No one challenged it, but it was an approval process and saved a lot of headaches. In my years doing that, I think I only ever had a problem with one person who gave me his plans on a napkin. I think we should go ahead and approve this [development text] and I agree that people that do not want it have their own agenda of some kind.



Fred Franco, 606 Retreat Lane N: My wife and I have lived here 25 years. This whole process has taken a long time. I know there has been a lot of reading and writing, compromises and discussion. I think most people realize that guidelines are needed to maintain the beauty of the community and to protect people's real estate. My wife and I are here to show our support for the new development plan and to thank Dan and his team for all of their hard work and dedication to the project.

Mary Beecher, 633 Eagle Ridge: I appreciate the work being done by my neighbors on behalf of all of us to convey a well thought through development text based on many compromises. I think it will do a lot to help maintain property values. What some of my neighbors might not know is that I am the Chairperson of the Design Department at Ohio State. If anybody is going to be worried about architectural review, I suppose it would be me. But I am not because I think this is a document that leaves room for individuals to accomplish their personal goals. I encourage you to support it.

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

Councilman Bennehoof: I appreciate everyone's time and attention and work on this process. Two years is a long time and I get that. The gears of government take a while. P&Z had a shot at this and this is our second time looking at this. I am concerned about a process. It sounds like there is a lot of good collaboration and compromise that has gone on. I put a star by a couple of peoples' names that I think our Staff should reach out to for further discussion. I really believe that the City has to get this right because if we are going to step into this arena, we need to make sure that the process is right for the cascading texts of other deed restrictions that are expiring in the future. I am not positive that the City is there yet. My position is that we ought to take a breath, not act today, and come back and revisit it after a bit more revision on the document to satisfy the one or two that have concerns to allow them to express their concerns to see if there are any further compromises. But there is still a process on the City side that needs to be nailed down.

Councilwoman Karr: I would also like to express my appreciation for all of the work the folks at The Retreat and Staff have done. I still have some larger policy concerns that are not just applicable to The Retreat, but to the City as a whole. Those concerns have to be addressed from our perspective before any decisions can be made. In addition, I think we need to tighten up some of the language, especially as to process.

Councilman Swartwout: Before commenting, can we explain for the record the process for the changes in this text that happened from our last meeting to what we have in front of us now?

Dave Betz, Development Director: Based on what was discussed at the last meeting, especially with respect to indications where there were places in the text where the ARC still had approval versus recommendation and the issue of the Chief Building Official and zoning, we talked to the representatives of The Retreat, identified where those places were in the development text, and those changes were made. That was the redlined text that was part of your packet.

Councilman Counts: If you were here at the last meeting, I voiced my support for what was being done here. I want to reiterate that tonight. Everything that you have done is the right thing to do. The provisions that you put in there are good provisions and I have absolutely no problem with that.

The concern I expressed was this being the prototype for other subdivisions [with deed restrictions that will expire]. While that is not your problem, it is our problem. If this does become the prototype, then I want to make sure that there is uniformity and consistency. It sounds as if our Staff has not taken initiative, probably because they have gotten no direction from us, to look at this document. I would really like Staff to do that. I know the last thing that you want is another delay. But as I said at the last meeting, I would like to slow this down a little bit, so this can be the prototype for the other subdivisions that have the exact same problem and want to do the exact same thing that you are trying to do by creating some standards for your community. I do not want to give the impression that what I am saying tonight is delay is for delay's sake because we just want to get rid of it. That is not the case. This is something that needs to be done and I think this is something the City needs to do for its residents. Likewise, we need to do this for other residents too, I want to get this right and make sure our Staff and legal counsel says it is squeaky clean. That is my view on this and I would suggest that we consider tabling this for a time certain so the residents know that we will come back and make a decision on this rather than delay indefinitely.

Councilwoman Riggins: At this point, we do not have one single document in front of us. We are hearing pieces and parts. Some people are aware of what is in the newest version. We are not there. We cannot vote on



something today when we do not have the single document that is being put before us. As an attorney, I do have some Constitutional concerns with this. I would agree with everyone else up here that we have to do it the right way. One of the reasons I ran for City Council was because of the \$1.8 million dollar settlement from a few years back. I want to make sure we are in a position to protect the City to ensure that we do not end up in a situation like that again. We need time to see the final document that we would be voting on and have discussion from there.

What I would suggest is that once that final document has been drawn up among the property owners, to include Mr. Souder. I do not know how many others are not in agreement or are not in support of the document that we have not seen yet, but it is going to be a much simpler process if you can get all the landowners in agreement. I recognize that this has been an ongoing process for years in trying to put this together, but looking at the big picture, if there is a way to reach out to Mr. Souder and anybody else with concerns, to see if you can make a final effort to pull together to see if you can agree. Bottom line is we do not have a document in front of us right now that is the document, so I think voting at this point is premature and I would not approve it. Therefore, I think we should put it off to a date certain until we can have that final draft and after legal counsel has reviewed and advised us on it.

Councilman Bennehoof: I want to make a clarification. When I said we need to have the right process, I do believe this is the right thing to do. I want you to leave tonight knowing that I do believe this is the right thing to do. I am asking that we get to the point of process for the City as well as these two communities.

Councilman Swartwout: I think the number one concern that some members of Council have is that this is your document that you have created, but once it is passed, it becomes the City of Powell's law. If there were a lawsuit that would come, it is not just the members of The Retreat who would be paying for the lawsuit or consequences that might come from a lawsuit. It is also the people of Golf Village or Olentangy Ridge or Rutherford Estates or The Chase, etc. So I think it is important for us to make sure that what we have is airtight. What we are hearing from most of our Council is that we are not certain it is there yet. I personally met with a lot of folks on all sides of this issue. I did that in an effort to take in as much knowledge as I can. I believe what we have here is the basis for what is something that is good and workable. The answers I have received to my questions make me believe that what we are trying to create here works and I am good with it. I just want to make sure that the language used adequately conveys what it is we are attempting to convey because once the law is passed, it is the language of the law that speaks for itself. It is not the intentions or what we might be hoping to do, but it is what is stated. For that reason, it is important for us to make sure that we get that right.

Mayor Bertone: As I said at our last meeting, process is important. I think what you folks started is a tremendous document and it is well on its way. I think how you feel about it is how I want to feel about it, but I am not there yet. The reason for that is just based upon what does it mean for the City in terms of its application? Dave, are you prepared to execute any of these functions? Rocky, are you? What is the process for us to go through reviews, etc.? There was also mention in the last meeting about this being a living document. It is no longer a living document once it is voted on. It is going to be applicable, a law. From our vantage point we need to be certain what is being architected here is going to be the right things for us, by working together, to be certain that it is done right.

I think you are well on your way. You have an incredible community. Where I live, I doubt that I would see this type of consensus and I commend you for it. I feel like we are trailing you here a little bit from a process point of view and the City side and we have to get that corrected or resolved. Dave, what would be the best approach, in your opinion, to bring this to a closure in terms of what resources do you need from Council? Are you looking for a subset of us to participate?

Mr. Betz: It might be helpful for at least one [Councilmember] to participate. We would like to sit down with the committee we worked with, have a couple of the people that are opposed to this, and sit down as a group and knock out the concerns, draft a text that is more comfortable for you, and bring it back. Perhaps in 4 to 6 weeks.

Mayor Bertone: And it is not because I am not happy, I want to make that clear. It is about getting 162 homes...[multiple speakers] [Mr. Betz: We would love for one or two of you to participate if that is something you want to do]. I would be happy to volunteer. I think you just saw three hands come up. How do we get others who are not familiar with the document...[Mr. Betz: Just so everybody knows, it is posted on our website under current proposals before Council on the Development Department tab].

Mayor Bertone: So from a working group perspective, my ask of you is to spend some time with us collectively.

Engage Mr. O'Brien and members of group. We can articulate clearly what our concerns are from a process point of view. Staffing is one concern, but it is the methodology, the process, etc. This is not the only neighborhood that is going to come down the line with this concern.

Mr. Betz: We can meet with all the parties you identified and clarify your concerns.

Gene Hollins, Law Director: To the attorneys in the room, I want to make sure [you understand] I have been involved in the process at a higher level, but I have always considered the text as the key application. The applicant is the master of the ship, so we have not tried to draft stuff for them. On the process, the legal language issues, with counsel's okay because this impacts more than The Retreat and because we have had at least one threat of litigation. I just want to let you know I have not signed off on it as being an enforceable legal document. If we go forward, I probably will take the opportunity to suggest some language to the applicant to incorporate to satisfy any concerns about the enforceability process.

Mayor Bertone: So you are speaking to the piece Dan brought up. We need to resolve this. Dave, you have a small sub-set of us and have a working charge to that effect. Two years is an awful long time to be going through this and I empathize. I want to make certain that you understand from our standpoint that we hate to be the one bringing up the rear end in the process, we are just trying to understand what this means to us. It is your document, your process, etc., but where we part with that is that we need to understand what our role is going to be and what we can and cannot do going forward.

MOTION: Councilman Bennehoof moved to table this matter to a date certain of March 18, 2020. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

#### COMMITTEE REPORTS

**Development Committee:** *Next Meeting: February 4, 2020, 6:15 p.m. We will see two pre-annexation agreements in the future for Redwood Development, 360 multi-family, assisted living facility and a commercial parcel as well as and Carriage Farms, 25 single family homes.*

**Finance Committee:** *Next Meeting: TBD. We will not meet next week but will reschedule another night.*

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

**Planning & Zoning Commission:** *Next Meeting: February 12, 2020, 7:00 p.m. We have Carriage Farms.*

**Powell CIC:** *Next Meeting: TBD*

#### CITY MANAGER'S REPORT/CITY CALENDAR

There was none.

#### OTHER COUNCIL MATTERS

There was none.

**EXECUTIVE SESSION:** O.R.C. Section 121.22(G)(1) Personnel Matters – Appointment of Board & Commission Members and hiring of Personnel, and SIU results.

MOTION: Councilman Swartwout moved at 8:58 p.m. to adjourn into Executive Session pursuant to O.R.C. Section 121.22(G)(1) Personnel Matters – Board & Commission Appointments and hiring of Personnel and SIU results. Councilman Bennehoof seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Bennehoof moved at 10:10 p.m. to adjourn from Executive Session into Open Session. Councilman Counts seconded the motion.

VOTE: Y 6 N 0

MOTION: Councilman Swartwout moved to appoint Elizabeth Bailik to the Planning & Zoning Commission. Councilman Bennehoof seconded the motion.

VOTE: Y 6 N 0

#### ADJOURNMENT

MOTION: Councilman Counts moved to adjourn the meeting at 10:12 p.m. Councilman Swartwout seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned.



MINUTES APPROVED:

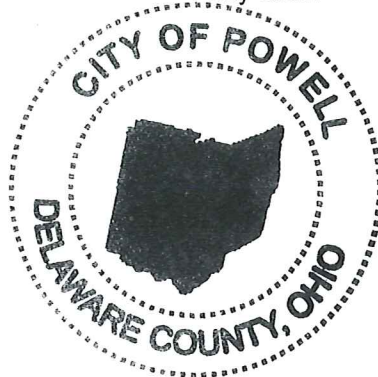
February 18, 2020

Frank Bertone 2/28/2020  
Frank Bertone  
Mayor

Date

Karen J. Mitchell 3/2/2020  
Karen J. Mitchell  
City Clerk

Date



City Council

Frank Bertone, Mayor

Jon C. Bennehoof

Tom Counts

Heather Karr

Brian Lorenz

Melissa Riggins

Daniel Swartwout