



**CITY COUNCIL
MEETING MINUTES
April 7, 2020**

CALL TO ORDER/ROLL CALL

A virtual special meeting of Powell City Council was called to order by Mayor Frank Bertone on Tuesday, April 7, 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 Andy White, City Manager; Steve Lutz, City Manager; Eugene Hollins, Law Director; Dave Betz, Development Director; Rocky Kambo, Assistant Director of Development; Aaron Scott, Assistant City Engineer; Karen Sybert, Finance Director; Megan Canavan, Communications Director; Karen J. Mitchell, City Clerk; and interested parties.

PLEDGE OF ALLEGIANCE

MOTION TO CANCEL REGULAR MEETING

MOTION: Councilman Swartwout moved to cancel the regular meeting scheduled for April 7, 2020. Councilman Bennehoof seconded the motion. By unanimous consent of the remaining members, the regular meeting of April 7, 2020 was cancelled.

RESOLUTION 2020-11: A RESOLUTION TO ADOPT TEMPORARY RULES OF COUNCIL FOR THE DURATION OF THE EMERGENCY DECLARED MARCH 9, 2020 BY EXECUTIVE ORDER 2020-01D OF THE GOVERNOR OF THE STATE OF OHIO. ([EX. A](#))

On behalf of Council, Mayor Bertone welcomed Andy White to his first City Council meeting as City Manager.

Andy White, City Manager: I wanted to recognize the Law Director to review this Resolution which incorporates the modifications to state law that will allow us to have this type of meeting during the pandemic crisis we are dealing with so that we can continue to conduct City business.

Gene Hollins, Law Director: Thank you Andy and welcome onboard. As you know, the state legislature passed legislation to allow these meetings to occur electronically during the pandemic, either by video or telephone conference. Additionally, we went one step further and looked at the City's Rules of Council. Certain Rules of Council, like the one we just passed a motion on, placed some additional restrictions over and above state law on how we hold our meetings. For the duration of the time period where we are going to need to do video conference meetings, we have drafted some specific temporary rules with respect to those that would have conflicted with having something other than an in-person meeting. They are somewhat detailed but I would be happy to address any questions you may have.

Councilman Bennehoof: Should we consider amending the Rules of Council to allow for governmental oversight like the Governor's ruling proclamation so that we do not have to suspend our regular meetings and go through that process each time?

Mr. Hollins: Going forward, I think the way the [temporary] rules are drafted; you will not need to have a motion to cancel the regular meetings each time. These will be your regular meetings once these rules are adopted.

Councilman Bennehoof: That is fine.

Mayor Bertone: So these will stay in effect until we are through this pandemic.

Mr. Hollins: That is correct. They are drafted to terminate on their own accord when emergency declaration from the Governor actually expires and we would return to our normal set up.

Councilman Counts: Gene, these are not all our rules for Council. Are you suggesting that these rules supersede all of the rules or just the rules that relate to particular items?

Mr. Hollins: No just the specific rules that were effected or called out. In many cases, we just added some supplementary language that clarify how they would work during this temporary period. Some of the rules are totally unaffected and others are amended or modified or have additional language.

Mayor Bertone: Gene, in Section B(h), relating to suspension of rules and F.1 relating to Persons Addressing Council and F.2 Citizen Participation, in this construct, we are a little limited in terms of seating the residents and their engagement, but we certainly welcome their input. Is that ok?

Mr. Hollins: We struggled as we were trying to organize these electronic meetings on what platform to use. We actually tried to find a platform that would allow more citizen participation via video. It just got to be such a struggle to get all this organized. For the time being, that rule is drafted to allow and get the word to the public that we welcome citizen participation, and to please email anything you would like to have presented to Council before the meeting.

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

MOTION: Councilman Bennehoof moved to adopt Resolution 2020-11. Councilman Counts seconded the motion. By unanimous consent of the remaining members, Resolution 2020-11 was adopted.

APPROVAL OF MINUTES: [March 3, 2020](#)

MOTION: Councilman Bennehoof moved to approve the minutes of March 3, 2020. Councilman Counts seconded the motion. By unanimous consent of the remaining members, the minutes were adopted.

CONSENT AGENDA

Item

- *Departmental Reports – [February 2020](#)*

Action Requested

Receipt of Electronic Reports

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

RESOLUTION 2020-09: A RESOLUTION TO CONDITIONALLY ACCEPT AND BEGIN THE REQUIRED MINIMUM TWO AND ONE-HALF YEAR MAINTENANCE PERIOD FOR PUBLIC IMPROVEMENTS WITH REGARD TO SHELLY'S RETREAT AT CARPENTERS MILL SUBDIVISION, SECTION 1, PART A, AS THE SAME IS DELINEATED UPON THE PLATS THEREOF RECORDED IN PLAT CABINET 4, SLIDE 55-55A, DELAWARE COUNTY, OHIO RECORDS. *Tabled from March 3, 2020.*

Mr. White: For the benefit of my own review as well as to make sure we are all on the same page, this matter is before you as having come off a Consent Agenda. It has had some communication issues and as I understand it from talking with some of you, concerns over the lack of the production of the fees for these first units. We have had discussions with the developer. I believe he is on the line tonight. We have been assured, through various correspondence, that the payment [audio lost]. The system that is in place right now with the pandemic is effecting their processing operations. It is a large company and it has been impossible for them route this payment to the City out of their Atlanta operation before Thursday.

In discussions with several on Council this afternoon, I reached out to Mr. Callahan and explained to him the issues that I saw moving forward. There are a couple of different routes that could be taken. I would like to note for the record the concern, as I understand it from Council, is that there have been numerous deadlines that have come and gone with an outstanding payment to be made. If Council authorizes this legislation before us tonight and there is no payment, which I do not believe is what the outcome will be, what authority does the City have to recoup that lost fee? I think there are a couple of different ways we can do that. We talked about the capacity to lift the current work-stop order, the possibility to issue an additional work-stop order, and a refusal to provide an occupancy permit for the development. I believe there needs to be some discussion as to what the policy directive Council would like to take. Additionally, in conversation with the developer, we had suggested the possibility that this Resolution be modified to allow a further condition that the authorization be provided with the stipulation that it is conditioned upon

the receipt of those funds by a certain date. Another option we talked about is the possibility of the developer to commit to payment and upon payment; the City would consider conducting a special meeting if this legislation [audio lost].

If Council has any questions for me, I would be happy to answer them now.

Councilman Bennehoof: Andy, thank you for the update; however, portions of your audio faded out so I am not sure I got the full story on all the different options. Could you summarize them in bullet form?

Mr. White: Of course. There are several options:

- (1) Administrative responsibility that the City possesses to continue the existing work-stop order;
- (2) An additional work-stoppage order moving forward;
- (3) A refusal by the City to furnish an occupancy permit;
- (4) Pending consideration of this legislation, Council could modify the language to allow for a conditional clause to be added that approval be given with the condition that payment must be received by a said date; and
- (5) [audio failed] in exchange for the City's consideration for a special meeting once those funds were available.

Mayor Bertone: To summarize because your audio did cut out on the last option – the consideration for the City to have a special meeting for this applicant. Would this item then be tabled until that special meeting?

Mr. White. That was one option we talked about. In exchange for a guarantee of funds in hand by the City and an expedited cycle tomorrow or Thursday, would City Council then consider a special meeting to proceed with the activity and, as you are aware, there is one tenant ready to move in. In consideration of those items, we wanted to provide Council with a slate of options.

Mayor Bertone: When we last left the conversation on March 3, some of the challenges we were having was the permitting process. Can anyone speak to where we are with the permitting process? Have we reconciled our process gaps there with a streamlined approach working as we have had architected for years?

Dave Betz, Development Director: We apologize for the mistake that was made on this, particularly the fees here. I sent a memo in your packets to give a full explanation of that.

Yes we now have put together [a process] to fulfill everything that is required when a subdivision plat comes through and recreation fees are due. That is the difference between this one and some other developments that in a planned residence district the fees are due at the plat stage whereas others are due when the permits are being issued. We have it set up now so that it is ready to go for the next plat sequence for this subdivision and then others that come in under a planned residence district. Those have been invoiced (i.e. Carriage Cove).

Councilman Bennehoof: Would it be appropriate, perhaps this was mentioned as Option 5, for us to approve it conditional upon receipt of all fees to date at the City Manager's direction? I want to be respectful of the fact that Covid-19 has interrupted a lot of things.

Mr. Hollins: That is absolutely an option. It would take a motion to amend the Resolution that is before you, but that is language that could be added. In addition, Matt Callahan and Molly Gwinn, Esq. are available on the line to participate in this meeting.

Matt Callahan, Pulte Homes: I understand there has been a lot of conversation and confusion related to this issue. For Pulte's part in that, we apologize for any confusion or misunderstandings that has caused consternation. We look forward to working with the community. As Mr. White mentioned, we do have our first closing scheduled pending resolution of this matter. The buyers have tentative plans to move in this weekend.

With respect to the stop-work order, I believe that all the homes that are under the stop-work order have reached their stopping point and have stopped as ordered. As to the fees, we had to do a slight reconciliation of those numbers. I worked on that with Dave Betz and I have personally processed the check request. I know that it is forthcoming, most likely Thursday. On Pulte's behalf, I like the idea to approve the resolution conditioned upon receipt of the funds. It would also keep things moving as well as allow the seller to move in. I am happy to answer any questions you may have.

Mayor Bertone: Thank you Matt and Molly. This has been something of a difficult effort for you. We appreciate your patience while we address some of our internal concerns and issues. To that end, we appreciate the flexibility and the update on the receipt of funds.

Councilman Counts: If all we are talking about is money to be delivered, we can easily make the Resolution subject to receipt of the funds by the end of the week.

Councilman Swartwout: The fees we are looking to collect that would come in perhaps tomorrow, probably Thursday, these are fees that should have been paid quite some time back, is that correct Dave? About how far back should they have been paid?

Mr. Betz: That would have been done when the plats were approved. I would have to go back to find out when the plats came through the process, but several months ago.

Councilman Swartwout: I am also concerned about some work that continued on some of these houses after the stop-work order went into effect. It appears as though work continued on some of these houses.

Mr. Betz: We allowed work to continue on some of them to get them to a point where they were more secure for safety reasons and protection of the home that was already in process. I met with Kevin Moran, Chief Building Official, to discuss to what point each place needed to get to so that it was safe to stop-work. This is why the stop-work order was worded the way it was.

Councilman Swartwout: So all of the work that continued after the stop-work order was specifically done at the direction to get it to the point where it needed to be for those safety purposes, nothing beyond that?

Mr. Betz: Yes. Nothing beyond that as far as I understand as monitored by our Building Department.

Mr. Callahan: I would confirm that is my understanding as well. For clarification, there were four houses that were allowed to be permitted and started that were not part of the stop-work order so that may have been some of the confusion. There was construction that was proceeding on the site, but that was on houses that were not part of the stop-work order. As soon as those houses that were part of the stop-work order reached the point as outlined in the stop-work order, that work ceased.

Councilman Swartwout: I am looking at some of the information that was provided to us, and specifically on lot 3799, was that information provided to us on 3799, mistaken? In some of the communication provided to us it says that work happened that was specifically not allowed per the order. I am having some confusion as to what exactly happened, is happening, and continues to happen. Can you clarify that for me?

Mr. Callahan: I do not know on that specific lot if there was work that was preformed beyond the stop-work order inadvertently. I do know that it has all stopped at this point. If there was one lot where one of the contractors got further ahead than perhaps they should have, that was an error on our part and would have been unintentional.

Councilwoman Riggins: Can we see Mr. Callahan and Ms. Gwinn's videos? [Mr. Callahan and Ms. Gwinn's video was shown] I share Dan's concerns. I do not believe by any measure that all of these smart people involved in this made a mistake. I am having some problem with that and I wish we would have had the video when the other questions were asked.

Mr. Betz: I do not know what information you received on Lot 3799 that went beyond that which was outlined in the stop-work order.

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

Mayor Bertone: Andy outlined a number of options, but I do not want to disregard what other Council members have sought and asked. I want to come back to what we discussed on March 3rd, which is that we had a significant amount of process issues regarding permitting. We had permitting issues inside the City with us providing proper notice to the Building Department, etc. That has since been reconciled. That was a key issue for me on March 3rd. When we move forward from there, we obviously had financial issues in terms of have we collected the fees or not. We are now a month out from that last meeting and we are still having challenges with the fees, but I feel better about the explanation provided to me tonight.

We are in the middle of the Covid-19 pandemic and many people are at a disadvantage at getting things done in a timely fashion because of it. To that end, I would also say that the City just recently invoiced Mr. Callahan/Pulte on this property in early April. Therefore, they now have a full itinerary of what is due and when it is expected. Are there any disagreements with what I have shared so far? [No response.] From my view, I am open to considering Option 5 by coming back with some conditional language within the Resolution that it is conditioned upon receipt of fees due as confirmed by our City Manager. I am throwing out a suggestion and I want to hear what other Council members have to say about that.

Councilman Bennehoof: I was the one that made that suggestion earlier and I was probing, not suggesting. However, I would be amenable to that option if it were constructed appropriately.

Councilwoman Karr: I think I would be comfortable with that option, if we crafted that conditional language appropriately, just so this could move along.

Councilman Lorenz: How much money are we talking about, roughly?

Mayor Bertone: In your packet on the backside of the Powell memo, there is an invoice there. What is slated to be received would be in the neighborhood of \$415,000.

Councilman Lorenz: That is a lot of money and it has been a lot of money that has been out there for some time that we could use to spend on projects. What kind of assurances do we have? I am not opposed to putting a condition on the Resolution that allows them to proceed until we get the check; I am just concerned that we need to get that money deposited. It is not alarming, but I want to make sure that our City is going to be paid because we need that money. I think we want assurance of a date certain, perhaps Friday, and I would be okay with that.

Councilman Counts: I am still comfortable with the condition and making it a date certain, assuming that Matt is fine with the day that we choose.

Councilwoman Riggins: I am fine with the conditional approval. I think this was addressed, but I think Andy would be the one that would make the final determination that the money was actually in, that the check cleared, everything was good, and he would be the final determination of that. Am I correct on that? [Mayor Bertone: That is correct.] Then I am fine with that.

Councilman Swartwout: I would prefer to come back and do this again at another meeting. These fees are months and months past due. There seems to be continued mistakes made, such as on Lot 3799 where it appears as though work continued past the point of the specifications of the stop-work order. I feel comfortable coming back knowing that it is there and doing it again [at another meeting].

Mayor Bertone: Matt, if we were to progress with a date certain approach and we have been talking about Thursday, April 9th, and then Friday, April 10th, is that too aggressive as a date certain, or should we go with Monday, April 13th?

Mr. Callahan: No, that is not too aggressive from our standpoint. It is in process and we fully expect it to be there Thursday at the latest.

Councilwoman Riggins: In the event that the money is not there for whatever, unforeseeable reason on Friday, it will still be conditioned on that money being paid, there just will not be a date. I do not want to leave this hanging if the monies are not there by Friday. Where do we go from there? I do not know why we need a date certain if it is conditioned on their performance, which Andy would determine whether they have fully and appropriately performed.

Mr. Hollins: If a date was inserted and the date was missed, that passed resolution would be legally ineffective and we would have to draft a new resolution for your consideration at the next meeting.

Mr. White: Gene, I think one of Council's concerns is the fact that there is a moving target in terms of assurances that have been made and, for whatever reason, were not happening. In the event that the order was not followed, could you outline the City's authority to go beyond the issuance of a stop-work and then noncompliance in terms of our Ordinances?

Mr. Hollins: Between now and assuming that the resolution is passed tonight with the additional condition, status

quo is being maintained. In other words, I believe Pulte has pushed construction of each of the three houses that are effected to the limit and they have terminated any further construction on those. That status quo would be maintained with respect to those additional houses. We do have other mechanisms at our disposal. This is a Council step in the process. Per Code, we do have to bring the acceptance of the site improvements to Council and that is what we are doing tonight. That is one point of control over this process. We have several others at our disposal. Dave's stop-work order is in effect until it is lifted and it will not be lifted until this legislation is passed and any conditions are fulfilled. That is an administrative level of control. We also have a certificate of occupancy. We have them from the Building Department but we also have them from Engineering and Zoning, so it is not legal to occupy a residence until you have the occupancy signed off from all of those departments. I believe what Andy is alluding to is we have several other bites at the apple at the administrative level and will continue to have additional bites at the apple to ensure in the unlikely event that Pulte was to go belly-up tomorrow; we would have ways to have continued control over the process.

Mr. White: To assure the community, anything beyond the administrative step, there are additional penalties that, while unlikely to occur, could occur.

MOTION: Councilman Bennehoof moved to amend Resolution 2020-09 to amend Section 2 by inserting subsection "C. Receipt of recreation fees due per Powell City Code, Section 1105.06 as set forth in Invoice 2020-0002 and confirmed by the City Manager." Councilman Counts seconded the motion.

VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Resolution 2020-09 as amended. Councilman Counts seconded the motion.

VOTE: Y 7 N 0

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) - *Tabled from February 4, 2020.*

Mayor Bertone: The applicant has requested to table this Ordinance to a date certain of May 5, 2020 because of the current pandemic and the digital technology we are currently using. This will allow their residents to get queued into the process and technology so they can participate in a future conversation.

Councilman Bennehoof: I would only comment that I am not sure we will be out of the Brady Bunch mode of meeting by that date. I do not know how easily the public will be able to participate. Nevertheless, we cannot punt this forever either. I suppose we could table it again if we cannot get coordinated by May 5th.

Mayor Bertone: As noted, we are doing the best we can with the Brady Bunch technology and affording the opportunity for the residents to supply feedback. Karen [Mitchell, City Clerk] is gathering that input and will continue to supply it within the packet.

This item has been heard at least two times already, so we have some latitude in that conversation. We certainly want residents' input, but we will need to be flexible with the applicant as well. They may still have questions as a group. We are hoping that they continue to work together to resolve those questions. Compliments to Jon, Dan and Gene for helping us move this process along, as well as Rocky [Kambo, Assistant Director of Development] and Dave.

MOTION: Councilman Lorenz moved to table Ordinance 2020-01 to a date certain of May 5, 2020. Councilman Bennehoof seconded the motion.

VOTE: Y 7 N 0

COMMITTEE REPORTS

Development Committee: *Next Meeting: May 5, 2020, 6:30 p.m. We did not meet tonight but I intend to meet on May 5th either via video or council chambers.*

Finance Committee: *Next Meeting: April 14, 2020, 7:00 p.m. Our meeting for next week will be cancelled, but the financial reports will be coming out. If you have any questions on those, please direct those to Karen [Sybert, Finance Director] and she will get answers for you.*

Operations Committee: *Next Meeting: April 21, 2020, 6:30 p.m. I will coordinate with Rocky and Meg to do a meeting arranged via video and get the members up-to-speed on the technology as needed.*

Planning & Zoning Commission: *Next Meeting: May 13, 2020, 7:00 p.m. Nothing has been submitted so far*

and we have not taken in any applications because of the pandemic.

Powell CIC: Next Meeting: TBD

CITY MANAGER'S REPORT/CITY CALENDAR

Mr. White: Thank you Council and Staff. It has been a busy few days. The feedback I have gotten from everyone has been overwhelmingly positive. There is a lot of energy within the organization and a lot of excitement about some of the things we are going to do. I appreciate Council's flexibility and discussion on Resolution 2020-09. We did not talk about it as it laid on the docket, but one of the things I have talked about with Staff is an effort to try to coordinate communications from the administration to Council so we can do our best to avoid this type of upset to the flow of development within the community.

I wanted to thank Steve for taking a lot of time to take me around to physically inspect some of these projects within the community. It is very helpful to me as a new person in the community to understand this not only on paper, but to get out and see it in the field. I am extremely impressed with the level of quality of development that is going on throughout the City.

A couple of quick updates: In general, I like to utilize this portion of the agenda to give Council an overview of what's going on since we last met. [audio lost]. On the Covid-19 pandemic, we have been meeting with the County EMA and our Police Department has been great. They are on top of many things. I will keep you updated through written correspondence.

Megan [Canavan, Communications Director] and I have been working on a short and mid long-term communication strategy. This is a very awkward way to introduce oneself to the community, but the technology that is there and the capacity that our Staff has to coordinate and connect with the community at large will be a good thing long-term. Out of this experience, I would expect to be able to reach more people within the community that may not always be able to come to a Council meeting.

I wanted to recognize Mr. Scott. We received four competitive bids this morning for the Sawmill Parkway resurfacing project. The engineer's bid estimate was \$1.4 million. We came in just north of a million, so that is an additional resource we will have available for our residential resurfacing program. I believe it goes to Operations Committee, Aaron, relative to the prime inspect component of that project. I think that was something we talked about coming back to Council for on the inspection component. We have received a qualified bid that we want to go forward with.

Aaron Scott, Assistant City Engineer: As far as component prime goes for inspection, it will not likely go to a committee for any decision-making at this point. We are tied into a process as far as negotiation goes. [audio garbled]. When we get through the negotiation phase and we come up with an actual proposal and cost to the City, that contract would go to Council for a decision. I believe we will have a contract with both ODOT and the consultant. The committee that Andrew and I were discussing earlier was the selection committee that we formed to do this.

Mr. White: The only other item I wanted to address regarding that resurfacing project is that the lowest qualified bid included the work scope to be conducted in the evening. It is my understanding that Council prefers to eliminate that type of obstruction to the flow of traffic during the day. It was about a \$7,000 differential, but that is good for us. We are happy to save \$7,000. If Council is okay with that, we are going to move ahead with the award with the alternate for the work to be done in the evenings.

Finally, I wanted to echo some of the sentiments to Staff's effort. I think the first meeting I participated in with regard to our teleconference meeting tonight was Friday, my second or third day on the job. To be able to turn around and have a couple of dry runs, it is impressive to pull that off. I think that this is an interesting medium moving forward. I hope that we can make use of it.

OTHER COUNCIL MATTERS

Councilman Bennehoof: It is inappropriate that we would meet with the township during this current Covid-19 pandemic, but we ought to make some expression or acknowledgement of their letter and I do not know if we have done that. Perhaps it would be a good way for Andy to introduce himself to the township by responding to their letter.

Mayor Bertone: I believe we did send a correspondence back to them. Steve? I think that happened in late February or early March.

