

From: [David Cerutti](#)
To: [Jon Bennehoof](#); [Daniel Swartwout](#); [Frank Bertone](#)
Cc: [Karen Mitchell](#)
Subject: RE: Retreat Dev Text Meeting 3/4
Date: Friday, May 1, 2020 3:26:29 PM

I have never received an acknowledgement or response to my previous suggestions (attached). Only three of us were involved in the meeting after the last council rejection of the Development Text. I appreciate the change to the grandfathering clauses as I suggested (no objections from anyone ???) but I do not see any accommodation of the other two resident's objections. And the second meeting could only be attended by one resident and I have heard nothing of that and I doubt that any residents even know that much. Furthermore, each one on council had objections to the text at last council meeting – but I do not see what has specifically changed since the last council meeting that has erased those concerns. How about some explanations ?

Furthermore City Council stated that a prime objective was to make a model process to serve all neighborhoods. The Chase (our neighbors) have the same issue as us as they had their deed restrictions expire on Jan 1. You have not communicated anything to them. But I did make their HOA President aware of our situation and a resident of the Chase is also on City Council. They have rejected the process and are going their own route. Shouldn't you understand why your own member and the HOA rejected the process and ask questions ? Olentangy Ridge also has expiring deed restrictions. Who is this process going to be a model for ?

Both Olentangy Ridge and The Chase are using a 75% signed approval rate. Have you asked each resident to sign on for this text and received a 75% approval rate ? Any official independent documented vote? The original development text was communicated as unchangeable by Dan. Yet it has been changed many times and each time the "reported" approval rate has gone up. But I never heard of a single vote that changed from yes to no because the text became too weak. Yet I know of past Retreat Association members that have canceled their membership this year – not a good sign. Both the Chase and Olentangy Ridge have kept the same exact covenants as before at that 75% approval rate. We have never been asked if we simply wanted to keep the rules the same – maybe everyone would agree ? I know at least one council member did not want to see another Powell Crossing embarrassment. Has that been satisfied with the amount of communication to Powell residents especially during what will certainly be a time that Powell will need to lower expenses ?

I do not think I would accomplish much by sending in new statements for the upcoming council meeting without any communication on what exactly has been corrected – especially the negative votes by council with the recorded reasons given. I do not think that the virtual meeting will allow for any new dialogue. And Dan sent out a note implying that we are now done anyway and waiting for approval without any communication on what has exactly changed.

I do appreciate the effort spent by all on this but it is hard to see how the goals I have seen stated have been accomplished.

David

From: David Cerutti [mailto:d.cerutti@earthlink.net]
Sent: Wednesday, March 4, 2020 1:43 PM
To: 'Jon Bennehoof'; 'Daniel Swartwout'; 'Frank Bertone'
Subject: Retreat Dev Text Meeting 3/4

Since I am dealing with an upcoming open heart surgery I am unable to attend. I know other homeowners are sometimes dealing with issues and when I talked to neighboring real HOA presidents –they all indicated that they are very hesitant and careful in applying deed restrictions as they also consider circumstances. I fear this is lost when authority is given to a city.

I understand that some of you live in subdivisions with very tight covenants that control the font on your mailbox. (Thanks for sharing.) The Retreat has existed with minimal common covenants and most of those have not been enforced through the last 45 years. These are facts. It is the fear of possible radical change that is the driver for this action.

I firmly believe that most residents want a status quo at most – maintaining home values, neighborhood character and enforcement that existed for the past 20 or more years. Some reasonably want the deed restrictions to expire as dictated by our deed restrictions to which we are agreed. Those not in favor of the development text fear a change in atmosphere with some residents complaining of issues and expecting action and facing neighbor retaliation - especially where no complaint and/or action existed in the past. Powell can help by stating that this is not the intent and will be monitored. Otherwise the neighborhood can be significantly negatively affected.

My suggestions:

1. There should be common guidelines/procedures that should be communicated, approved, and applied to all Powell subdivisions as we attempt to replace deed restrictions. Primary is an approval standard of at least 75% - the norm for deed restriction renewal even though the Retreat was 100%. Powell has repeatedly said they want us to really want this and to own this. How do you confirm you accomplished this without signatures from 75% of homeowners in a subdivision on a document that explains the action? And if the goal is to maintain the quality in the neighborhood and replace the deed restrictions – there should not be much deviation from past enforcement.
2. A lot of this involves homeowners trusting Powell to act fairly instead of us policing ourselves. Powell could help build that trust by issuing policy statements of trying to maintain what existed before – not change it. Any significant deviations from past enforcement history should be examined and modified.
3. Architectural Review is a difficult subject since we have never had a legal, sanctioned review in the past so how do you maintain it? We do not have an HOA but a voluntary organization. The new Committee should be completely open and filled without any regard to

membership in the Retreat Association. I have read several times in Powell meeting minutes that Powell will expect the homeowner to make a good faith effort to accommodate ARC concerns and if done so will likely issue the permit. How good faith is interpreted is the key. I just hope the decisions favor the homeowner and his rights.

4. Powell zoning covenants are ok in the document but they should be clearly separated from unique Retreat development text rules for clarity – especially for new or prospective buyers.
5. I appreciate the change to clauses on grandfathering. Many residents did not understand or pay attention to deed restriction details or this development text because they did not see any issues or actions in the past and expect a continuation.

I am available for clarification or additional details.

Thank you,

David Cerutti

Karen Mitchell

From: Bob Fisher <bf@columbus.rr.com>
Sent: Friday, May 1, 2020 10:18 AM
To: Karen Mitchell
Cc: 'Tina Fisher'
Subject: Retreat Development Text

My name is Bob Fisher and I have been a Retreat resident since 2001. I support the Retreat Development Text dated 1-1-2020 and urge the Council to approve our application for rezoning. I spoke at an earlier Council meeting on this topic.

Supporting statement:

Like most residents, my wife Tina and I greatly appreciate the splendor of our neighborhood. The spacious and flowing terrain is a source of continual joy and pride. Its natural beauty, either as greenspace or when blanketed by snow, rivals the best neighborhoods in central Ohio. I believe most home owners selected the Retreat at least in part because of this beauty. As such, most residents are rightly disturbed by signs of neglect or other behavior than threatens to impair the appearance or demeanor of our neighborhood.

At the same time, I believe many of us also enjoy a certain independent streak – perhaps most familiarly articulated as “You can’t tell me what to do with my house or property.” Oddly enough, these sometimes-conflicting feelings are often both present in many of us.

While I am not one of the authors of the Development Text, I have come to recognize these folks took on the Herculean task of attempting to balance these cross-currents. “Balance” is the key word here: trying to establish a standard which preserves what we most love about our neighborhood without attempting to micro-manage or second-guess the decisions of our fellow owners or their property rights.

A document like this is never perfect, but the Development Text has improved with each iteration and the final version represents a painstaking attempt to find the right balance which I believe has been successful. Refinements can be introduced over time as needs arise. The bigger picture is the value of establishing a baseline standard which will preserve what we most appreciate about where we live.

Thank you,

Bob Fisher, 416 Partridge Bend

Karen Mitchell

From: anneschenz@gmail.com
Sent: Thursday, April 30, 2020 12:55 PM
To: Karen Mitchell
Subject: City of Powell Ordinance 2020-01 Retreat Development Text

Dear Powell City Council,

I am very much in favor of The Retreat/Cardinal Hill Development Text.

I am part of the Board of Trustees. We have worked long and hard to produce a document that honors the neighborhood and provides guidance for stewardship of the essence of The Retreat for years to come. We received comments and suggestions of all kinds from many residents. Each one was carefully considered. As you might guess, some were diametrically opposed to each other (fences/no fences, for example).

We recognize it is not (nor can it ever be) a perfect document.

This has been a very good start to listening to each other, getting to know our neighbors better, working more together. It's not been easy, but we have truly become more of a neighborhood of friends.

Please vote yes on The Retreat/Cardinal Hill Development Text.

Thank you,

Anne Schenz
485 Retreat Lane West

April 30, 2020

Karen Mitchell

From: Timothy Schenz <timschenz@gmail.com>
Sent: Thursday, April 30, 2020 12:44 PM
To: Karen Mitchell
Subject: Ordinance 2020-01 - Retreat Development Text

Dear City Council,

I urge you to approve this ordinance at your May 5 meeting. The Retreat neighborhood needs the added requirements specified in the Text to maintain its ambience, appeal and property values.

A large majority of those residents in The Retreat who voted on this issue have approved this Text and are looking to you put this Text into effect.

Sincerely,

Tim Schenz
485 Retreat Lane W, Powell

Karen Mitchell

From: Timothy Schenz <timschenz@gmail.com>
Sent: Thursday, April 30, 2020 11:20 AM
To: Karen Mitchell
Cc: Dan O'Brien; Rocky Kambo; David Betz
Subject: City of Powell Ordinance 2020-01 Retreat Development Text - Change to Article 1.3

On behalf of The Retreat Association's Board of Trustees, I am forwarding to City Council a change in Article 1.3.

This change is needed because the legal action described in the previous version has now ended and is no longer being pursued. Singling out a specific residence should not be included in the Text.

The corrected red-line version is:

1.3 Any structures existing on April 18, 2020 permitted by City of Powell zoning certificate/building permit shall be permitted to remain, provided it is maintained in good condition and not expanded ~~.; provided, however, the existing large storage shed at 424 Cardinal Hill Lane that is the subject of certain litigation in Delaware County Court of Common Pleas (Case No. 19-CVH-020062) shall be permitted to remain only in the event that the resolution of the court proceedings authorizes the shed to remain on this property.~~

Timothy Schenz
Trustee, The Retreat Association

Karen Mitchell

From: Tgirish84 <tgirish84@aol.com>
Sent: Wednesday, April 29, 2020 8:00 PM
To: Karen Mitchell
Subject: City of Powell Ordinance 2020-01 Retreat Development Text

Dear K Mitchell,

I attended the previous City of Powell Council meeting to support the proposed Retreat Development Text. Although I will not be attending the upcoming meeting, both my husband and I are in support of this document. We believe it is best to have structure in place to help preserve the character and property values of the Retreat Neighborhood. It also helps clarify some issues that have been unclear for residents and unifies our subdivision with consistency between all the sections of the Retreat development. I am disappointed that the original developer(s) of the Retreat did not take the time nor have the interest to put a Homeowners Association with Guidelines in place to avoid the situation we find ourselves in today. I am very grateful to Dan O'Brien and the other members of the committee who have worked tirelessly and invested an enormous amount of their time for the benefit of all of us who live in the Retreat. My husband and I have lived in the Retreat for the last six years (it will be seven years in July) and love the privacy and lot sizes the Retreat provides to its residents, as well as all the wonderful families that live in this neighborhood.

I would also like to "Thank YOU" so very much for all your time, and the City of Powell's Council's time to counsel us, encourage us, and assist us in developing this document.

God's Blessings to you and your family!

Teresa and Richard Hartzell
667 Eagle Ridge
The Retreat

Karen Mitchell

From: Kimberly Gray <kludwig35@gmail.com>
Sent: Wednesday, April 29, 2020 3:50 PM
To: Karen Mitchell
Subject: Application for rezoning

Dear Powell City Council Members:

My name is Kim Gray, and my family resides at 550 Thrush Rill Ct. in The Retreat. I would like to state my **support for approval** of our application for rezoning.

Many thanks,

Kimberly L. Gray
kludwig35@gmail.com

Karen Mitchell

From: tom gray <gray216@hotmail.com>
Sent: Wednesday, April 29, 2020 2:26 PM
To: Karen Mitchell
Cc: Dan O'Brien; Kimberly Gray
Subject: City of Powell Ordinance 2020-01 Retreat Development Text

Dear Powell City Council Members:

My name is Tom Gray, and my family resides at 550 Thrush Rill Ct. in The Retreat. I would like to state my **support for approval** of our application for rezoning.

Many thanks,

Tom Gray

Sent from Outlook

Karen Mitchell

From: Jerry Maddox <maddoxjerry27@gmail.com>
Sent: Friday, April 10, 2020 1:22 PM
To: Karen Mitchell
Subject: City Council/ Powell, Ohio Ordinance 2020-1

Honorable Council Members:

I am in favor of Ordinance 2020-1

in its entirety.

It is my belief that the passage of the associated Development Text to this Ordinance will insure that "The Retreat" will remain the special environment it has been over the past 40+ years & will continue to be for many more generations to come.

I urge City Council to give its most favorable consideration for the passage of Ordinance 2020-1.

Respectfully submitted,

Jerry & Marilyn Maddox

580 Retreat Lane

Powell, Ohio 43065

614-425-2827 (C)

Sent from my iPhone

Karen Mitchell

From: Robert R. Perry <robertrperry@gmail.com>
Sent: Tuesday, March 17, 2020 9:29 AM
To: Karen Mitchell
Subject: Retreat Development Text - Powell OH

Dear Ms. Mitchell,

Last year we voted against the original Retreat Development text. After reviewing the new development text, downloaded from the Powell city site, we are withdrawing our opposition and fully support the new text draft.

Thank you,
-Rob

Robert & Donna Perry
476 Partridge Bend
Powell, OH 43065
robertrperry@gmail.com
[LinkedIn](#)

From: [Rocky Kambo](#)
To: ["Dan O'Brien"](#); ["Timothy Schenz"](#)
Cc: [David Betz](#); [Karen Mitchell](#)
Subject: RE: Retreat/Cardinal Hill Development Text
Date: Monday, May 4, 2020 10:13:40 AM

Hi Dan,

Thanks for pointing that out.

Karen will add your email to Council packets for review. It can be included in the amendment - if Council chooses to make amendments.

Rocky

From: Dan O'Brien <daobrien@harropusa.com>
Sent: Sunday, May 03, 2020 3:19 PM
To: David Betz <DBetz@cityofpowell.us>; Rocky Kambo <RKambo@cityofpowell.us>
Cc: 'Timothy Schenz' <timschenz@gmail.com>
Subject: Retreat/Cardinal Hill Development Text

Gentlemen,

It has been brought to my attention that the current Retreat/Cardinal Hill Development Text shown on Powell's website (2020-1), has multiple locations mentioning 4/18/2020 as a date for initiation/deadline, etc. Specifically Articles 1.3, 2.3, 2.4, 4.8, 4.10, 4.13, 4.16, 4.17, and 6.3 are listed with this date. Article 1.3 has been addressed in a subsequent email request from our Tim Schenz to Powell. I believe Rocky mentioned several weeks/months ago that the date would be updated once the legislation passes. We just don't want the detractors to have any ammunition against getting this important work instituted.

Please let us know if there is anything we can assist with getting the language correct for the May 5 City Council meeting.

Thanks.

Dan O'Brien

From: [Simon Russell](#)
To: [Karen Mitchell](#)
Subject: Retreat Development Text
Date: Monday, May 4, 2020 12:16:52 PM
Attachments: [Powell Council Table.docx](#)

Ladies and Gentlemen,

Tomorrow you will be giving a second reading to this text. I have spoken to both yourselves and the Zoning Board on this before. Dan O'Brien has written to us all asking us, apparently at your specific request which I find surprising, not to send additional comments to you if we have already done so as you know our thoughts. However to me this seems a little undemocratic so I am sending this email in a final attempt to bring a little practical thinking to this whole process.

If after reading the attached and listening to others, you chose to go ahead with approving the Text as written, I must accept your decision. As a Retreat resident for 34 years who has very much enjoyed living here, I just hope that your approval does not result in a change to what living in the Retreat means. We have lived happily without a watch dog body overseeing us but the only conclusion one can logically reach is that this will end with passage of this Text. Whoever drafted these rules would only have done so if they intended to actually enforce them. I, personally, am unlikely to run up against the new restrictions imposed on my property. I don't intend to build on my property or install swing sets etc but I do worry for those that will. People should have the right to use their property as they like and Ohio law says a much. Why a committee should decide where you can put a swing set in your own back yard is beyond me. If you have any doubt on my thinking, please read the original draft to see just how extensive and restrictive the writers wanted to be.

Beyond the original deed restrictions, this document adds a bunch of new regulations that we have lived without for 40 years during which time Powell Code has added rules to cover use and maintenance. I remain very surprised that the City wants to get into the HOA business which it very much will be with passage of this document and that it wishes to impose additional restrictions on what residents can now do with their property which are more restrictive than any other area of Powell.

As always, thanks for listening.

Simon Russell - 510 Quails End - Resident since 1986

How did this process originate?	Concern from the Retreat Association about the expiration of deed restrictions on 1/1/2020
Why is the document so voluminous?	Because beyond the expiring restrictions, it now creates new ones and adds a host of HOA type rules that were not possible to create or enforce before.
Who created all these proposed new rules?	No one outside of the RA Board knows. They were written in secret without asking residents for input and only as they were going to Zoning was an open meeting called at the insistence of the City.
What is the Retreat Association?	For years, it has acted as an HOA, even calls itself one in this application but legally isn't. Membership is voluntary and under Ohio law, the civic association that it really is, has no real power over homeowners. This Text will not change its legal status.
Given the RA's lack of authority, how will any parts of this text be enforced?	Any enforcement will have to be done by the City which effectively means Powell becomes the Retreat's HOA.
Does Powell want to get into the HOA business?	If it passes this document as written, it will be
If Powell becomes the Retreat HOA, can they stop any other subdivision from going through this Text process and thus passing their HOA enforcement responsibilities onto the City?	A question that council should give thought to.
How much of this document is really needed?	The RA has used scare tactics to worry residents about the dire consequences of the deed restrictions expiring and how everything could go to ruin if new rules were not imposed. The reality is of course very different. Most of the Deed restrictions covered rules during the original build out 40 years ago or covered use of properties that are now covered by City code. Deed restrictions can only be enforced by one resident suing another and I'm not aware of any incident in the 40+ years. The two matters that remain relevant are the indivisibility of the lots and limited to single family dwellings. Both matters which now will in all reality be dealt with through Powell Zoning
What are the risks for Retreat residents?	By this text, Powell is giving the Retreat Association more power to involve itself in residents' rights.

	<p>Rights allowed in the original deeds are to be restricted by these rules written by the RA – for instance outbuildings.</p> <p>Whereas previously all residents needed to do was comply with City code, they are now limited in size, location and must spend much more on expensive building specifications that go way beyond City code.</p>
Why does the Retreat Association want this text?	<p>Since its foundation, there has always been a frustration that they didn't have the powers of an HOA. Its leaders are believers in the need for an area like the Retreat to have a governing body. They ignore the idea that some people may have chosen the Retreat because it didn't have an HOA.</p> <p>There are instances, in the past, of the RA denying residents their lawful rights by telling them that certain structures were not permitted when in fact they were. Reflecting what the RA thinks the Retreat should be and ignoring what it was legally allowed to be.</p> <p>Over the years, the vast majority of Retreat residents have shown very little interest in the workings of the Association. Annual meetings are poorly attended and the same people have held leadership positions for years without challenge. This may be fair, in its existing format, as people are busy and are happy to let those willing to volunteer to decide on matters like entrance way landscaping, road signs and family parties. But questionable once they are given direct authority over all residents – many of whom aren't even members of the association.</p>
Do current Retreat residents want this text?	<p>The Association will tell you that they have a huge number of yes votes. The problem with that is that the vast majority of those won't have any idea what's in the text. They never saw it before it was being sent to zoning and were asked for an immediate yes or no vote. They have been told that it reimposes the current deed restrictions and adds a few new rules needed to maintain the standards and thus they voted yes. Would they accept a less restrictive version – almost certainly.</p>

<p>Is all of this legal?</p>	<p>According to City legal council it is. However under Ohio Code, an HOA cannot be retrospectively created without 100% of residents it affects voting for it. Clearly this not the case here.</p> <p>Getting round this problem by creating a new Development Text seems far too easy and thus a rather questionable solution. Development texts were never intended for this purpose and the fact the City agreed to cut the fee by more than 90% shows, this version is way different from regular ones.</p> <p>How does it all work from an enforcement perspective – nothing has been said about that.</p> <p>Can residents now use the shield of Powell to complain about other residents regardless of whether they are neighbors?</p> <p>Can the Retreat Association make complaints as requested by residents or set up its own enforcement committee?</p> <p>How does the City enforce any breaches?</p> <p>Can they decline to enforce for example the new Holiday decoration rule?</p> <p>Does the City fine residents for failure to act – adding a new dimension to the enforcement of HOA rules.</p>
<p>Does the document discriminate?</p>	<p>Almost certainly. Why, for example, should Retreat residents, who all have lots larger than an acre, be unable to build a pool house larger than 200 sq ft when all other residents of Powell on similar sized lots, subject to zoning, can.</p> <p>The only reason this rule is there, is because those on the secret rule writing group want the Retreat to look the way they want it.</p> <p>There is no way a majority of residents would vote to impose such a restriction on a resident willing to invest a substantial sum in his property and thus raising the impression of the whole neighborhood.</p>

<p>What would the consequences be if no Text was legalized?</p>	<p>The Retreat association has been promoting the theory that the whole neighborhood will fall into a state of disrepair without the creation of rules that were never needed in the past.</p> <p>This is clearly nonsense. Serious breaches of home maintenance are already covered by City Code. There are no plastic Home Depot sheds dotted all over the place – though there was nothing to prohibit them in the past. So are Retreat residents likely to start that now.</p>
<p>What should happen now?</p>	<p>Is the City convinced that without this text, there is a real danger of the Retreat declining as a popular place to live?</p> <p>Does the City really want to get into the HOA business? What is stopping every other neighborhood joining? What are the costs of doing this (time and money) and who is going to pay?</p> <p>If it does, the City needs to clearly inform residents of how this would all work from an enforcement perspective</p> <p>Are sellers required to inform buyers of the Text and are they legally liable if they don't?</p> <p>Is the City okay with paying for legally defending any or all of this if challenged?</p>

From: [William Souder](#)
To: [Frank Bertone](#); [Daniel Swartwout](#); [Jon Bennehoof](#); [Tom Counts](#); [Heather Karr](#); [Brian Lorenz](#); [Melissa Riggins](#); [Karen Mitchell](#)
Cc: [Mary Anne Souder](#)
Subject: IMPORTANT - Please add to the record - The Retreat Zoning Text - 2020-05-05 Meeting
Date: Monday, May 4, 2020 4:36:18 PM
Attachments: [Ohio Court Cases.pdf](#)

Good day all, we ask that this email as well as the attachments be added to the record for the coming City Council meeting.

Reference:

Title: The Retreat Zoning Text

Type of Review: Major Amendment to a Final Development Plan Text

Location: The Retreat & Cardinal Hill

Dear Powell City Council Members,

My name is William Souder. My wife and I, Mary Anne Souder, live at 559 Cardinal Hill Lane, Powell Ohio 43065. According to our deed, the property is lot number 462 of Cardinal Hill Subdivision.

We ask that you **deny** this application.

Please know that we are for rules. **We remain concerned and convinced that the Text/document before you still does not balance property rights and the public interest. We are also greatly concerned at the use of City Police Power via Zoning to give this private group any power and force it upon lot owners.**

After the last City Council meeting where this was discussed, I attended a meeting to help move the text forward. There were some positive steps however the underlying issues with the Text remain the same. The Development Text is fundamentally flawed. It is unfair, it deprives lot owners of equal protection and due process by giving power to a non-profit corporation that goes unchecked with no required transparency or oversight. There continues to be too great a possibility that the outcome can be exercised in an arbitrary, capricious, and unreasonable manner.

Simply put, this application is asking you to give a private group new powers, powers they never had over any subdivision, prior to this Text. It gives them the ability to self govern with no oversight by the City and no requirements for transparency to lot owners. Further, by the City allowing this to proceed, the self governed group appears to have asked Powell to help it elude the compliance with ORC 5312, notably this is something other subdivisions in Powell have complied.

We have been told that the rules for the ARC to make recommendations are written in this Text. If this is a true statement then why is there a need for The Retreat Association or the ARC in the Text at all? Simply remove any reference to The Retreat Association and the ARC and allow the rules to speak for themselves when a permit is requested (again if the rules are clear and not arbitrary).

Fundamentally, this Text makes this much more confusing and difficult than it needs to be while exposing risk to the City and frustrations to the lot owners. A potential solution would be to remove sections in the Text that give away power or authority, and just pass the "rules" portion. Then communicate to the civic association or anyone else in the city they can file a violation with the city (as they can do now). Additionally, lot owners would and should be free to enter into private agreements and form HOA's (example: The Chase) without being forced into one by the City. Why would Powell force one subdivision into development text but not another in the same situation?

We resubmit for your review and consideration the sections and further Ohio Court Case decisions that are relevant to our concerns.

We thank you again for your time and appreciate the opportunity to participate in the process. Again we ask that you **deny** this application and allow us, lot owners, to engage in our own private agreements without being forced into one by the Police Power of the City.

Thank you,

Will & Mary Anne Souder

Below you will find Ohio Court Case decisions that are relevant to our concerns with this development text.

DEVELOPMENT TEXT – “good faith effort to accommodate”

iii. The ARC has acted in recommending a denial of such application and listed the reasons behind such recommendation, but the Zoning Administrator finds the homeowner has made a good faith effort to accommodate the concerns of the ARC.

PROBLEMS / CONCERNS

What is a good faith effort to accommodate? If it is only a recommending body why is there a duty to accommodate?

The Zoning Administrator is being asked to decide if the homeowner accommodated the concerns of the ARC. Isn't that an arbitrary decision given there are no guidelines for the ARC or the City Staff?

STATE, EX REL. SELECTED PROPERTIES, INC. V. GOTTFRIED

"Administrative power and discretion may be and usually are vested in designated departments, boards or officials or in the municipal legislative body itself to grant, deny or revoke building permits. However, the authority vested in them can not be a power of arbitrary decision in each case, uncontrolled by any general rule. In other words, the discretion must be made subject to a standard or rule to operate uniformly in all cases. An ordinance conferring upon officials unrestricted discretion in the granting or refusal of building permits is a denial both of equal protection and due process of law. Certainly, an ordinance conferring arbitrary and despotic power in this respect is void. Indeed, an ordinance can not commit to the municipal legislative body itself, any more than to administrative officials, uncontrolled discretion as to permits for the erection of buildings and structures. Nor does charter power to regulate the granting of permits authorize the delegation to an officer or committee of power to make restrictions and regulations."

"In accordance with settled principles that no American legislative body can constitutionally and validly delegate to administrative officers an exercise of discretionary power which is arbitrary, it is established that any municipal ordinance which vests an arbitrary discretion in public administrative officials with reference to the rights, property, or business of individuals, without prescribing a uniform rule of action, making the enjoyment of such rights depend upon arbitrary choice of the officers without reference to all persons of the class to which the ordinance is intended to be applicable, and without furnishing any definite standard for the control of the officers, is unconstitutional, void, and beyond the powers of a municipality. With specific reference to property, the courts have often stated that if an ordinance upon its face restricts the right of dominion, which the owner might otherwise exercise without question, not according to any uniform rule, but so as to make the absolute enjoyment of his own property depend upon the arbitrary will of the municipal authorities, it is invalid, because it fails to furnish a uniform rule of action and leaves the right of property subject to the will of such authorities, who may exercise it so as to give exclusive profits or privileges to particular persons."

DEVELOPMENT TEXT

1.2 (A) Where the (ARC) is hereby created to
2. make recommendations to ensure the modifications are consistent with the standards of the subdivision - promoting the maintenance of beauty, environmental harmony, and integrity of the neighborhood

PROBLEM / CONCERN

There are no specific written guidelines as to what the ARC will accept or object. There is too great a possibility that the outcome can be exercised in an arbitrary, capricious, and unreasonable manner.

PESTWICK LANDOWNERS' ASSOCIATION v. UNDERHILL

Here, there are no written or de facto guidelines to give notice to a lot owner as to the kind of fence which will qualify for the Architectural Committee's consent. The minutes of the Architectural Committee reflect this: " * * the Board's policy * * * to consider each and every request for a fence by it's [sic] individual merits. * * *" In fact, there were no two fences alike in the entire development. Thus, the Underhills had no guidelines at all in submitting their plans, and the Architectural Committee had no guidelines at all as to accepting or rejecting them. In other words, there is too great a possibility here that the consent restriction can be exercised in an arbitrary, capricious, and unreasonable manner. Dixon v. Van Sweringen Co., supra, at 69; Bailey Development Corp. v. MacKinnon-Parker, Inc., supra, at 316.*

*In one respect the association was not unreasonable. It rejected the Underhills' plans in part because they failed to meet the policy requirements of specificity as to "kind, shape, height, [and] materials" (paragraph 11[b] of the Declaration, supra). **However, the implication is clear that the Architectural Committee rejected the plans primarily because they were not "pleasing" enough. "Pleasing" alone, like "harmonious," is not enough of a guideline to insure that consent be given or withheld in a reasonable manner.***

GENERAL LAW

Chapter 5312: OHIO PLANNED COMMUNITY LAW

(M) "Planned community" means a community comprised of individual lots for which a deed, common plan, or declaration requires any of the following:

- (1) That owners **become members of an owners association** that governs the community;
- (2) That owners or the owners association holds or leases property or facilities for the benefit of the owners;
- (3) That owners **support by membership or fees, property or facilities for all owners to use.**

(A) **Any planned community in this state is subject to this chapter.** No person shall establish a planned community unless that person files and records a declaration and bylaws for that planned community in the office of the recorder of the county or counties in which the planned community is located.

PROBLEMS / CONCERNS

The city is giving power to the Retreat Association to create the ARC. In order for homeowners to join the ARC they must pay dues and become a member of the Retreat Association. The Retreat Association supports by membership or fees, property within the Retreat. Isn't this a Planned Community according to ORC 5312?

Shouldn't the Retreat Association be governed by the same rules as all other HOA's in Powell?

According to the following case HOA's must prove they have standing to enforce claims against property owners. Attached to this email is a document written by the Retreat Association's own lawyer explaining to them why they have never and will never be able to make claims against property owners in the Retreat.

LAKE MILTON ESTATE PROPERTY OWNERS ASSOCIATION, INC. v. WILLIAM HUFFORD

<http://www.supremecourt.ohio.gov/rod/docs/PDF/7/2018/2018-Ohio-4784.pdf>

The Ohio General Assembly introduced Senate Bill 187 to establish requirements governing the formation and operation of a homeowners association, or what was termed "planned communities." SB 187 became Chapter 5312 of the Ohio – 8 – Case No. 17 MA 0163 Revised Code when enacted. Known also as the "Ohio Planned Community Law," it became effective on September 10, 2010. R.C. 5312.01.

The legal formation of a homeowner's association requires more than drafting documentation never registered with the secretary of state or filed with the recorder.

From: [William Swoager](#)
To: [Karen Mitchell](#)
Subject: Fw: Ordinance 2020-01, Retreat Development Text
Date: Sunday, May 3, 2020 4:23:04 PM

----- Forwarded Message -----

From: William Swoager <swoager.1@att.net>
To: "council@cityofpowell.us" <council@cityofpowell.us>
Sent: Tuesday, March 17, 2020, 08:04:50 PM UTC
Subject: Ordinance 2020-01, Retreat Development Text

Powell Council,

We built our house on Retreat Lane in 1983 and intend to age in place. We have followed the deed restriction replacement project from the beginning, have attended most of the meetings and have responded to requests for input. We voted to approve the first draft and continue to approve of the many changes. We understand that our neighbors have expressed 2 areas of disagreement.

Our original deed restrictions prohibited sheds and many residents expressed a desire to have sheds. Our last draft allows sheds but there are restrictions and a 200 square foot limit. Some people think that the size limit should be greater. We feel that if anything, the size limit should be smaller. A 200 square foot shed could be a one car garage or a tiny house. We cautiously support the 200 square foot limit.

Some neighbors think that the Architectural Review Committee has too much power. If you observe the monstrosity at 1140 Retreat Lane, commonly referred to as the Osama Bin Laden house, you will have evidence that if that house can be built, the ARC doesn't have enough power. During our building process, the ARC had several problems with our plans. We thought they were all valid and complied with them all. It was a way for us to fit in to our new neighborhood.

We support the Retreat Development Text and encourage you to approve it.

Bill and Becky Swoager
505 Retreat Lane
614-888-2805

From: [Cecelia Weinkauf](#)
To: [Karen Mitchell](#)
Subject: City of Powell Ordinance 2020-01 Retreat Development Text
Date: Monday, May 4, 2020 2:13:23 PM

The revised Development text for The Retreat/Cardinal Hill has my full support. Please vote yes on this very important issue. The Retreat/Cardinal Hill residents want to maintain the integrity of their neighborhood and continue to have fabulous place to live. We need the additional layer of guidelines to insure that outcome.

Thank you!
Cecelia Weinkauf
494 Retreat Lane North
Sent from my iPhone