



**CITY COUNCIL
MEETING MINUTES
March 2, 2021**

CALL TO ORDER/ROLL CALL

A regular Zoom meeting of Powell City Council was called to order by Mayor Frank Bertone on Tuesday, March 2, 2021 at 7:30 p.m. City Council members present included Jon C. Bennehoof (via Zoom), Frank Bertone, Tom Counts, Heather Karr, Brian Lorenz, Melissa Riggins and Daniel Swartwout. Also present were Andy White, City Manager; Yazan Ashrawi, Law Director; Megan Canavan, Assistant City Manager; Stephen Hrytzik, Chief of Police; Karen Sybert, Finance Director; Jeffrey Tyler, Community Development Director; Elise Schellin, Development Planner; Karen J. Mitchell, City Clerk; and interested parties.

PLEDGE OF ALLEGIANCE

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: February 16, 2021

MOTION: Councilmember Lorenz moved to adopt the minutes of February 16, 2021. Councilmember Counts seconded the motion. Jon C. Bennehoof abstained. By unanimous consent of the remaining members, the minutes were adopted.

EXECUTIVE SESSION: Ohio Rev. Code §121.22(G)(1) Personnel Matters – Appointment of Board & Commission Members.

MOTION: Councilmember Lorenz moved at 7:35 p.m. to adjourn into Executive Session pursuant to Ohio Rev. Code §121.22(G)(1) Personnel Matters – Appointment of Board & Commission Members. Councilmember Karr seconded the motion.

VOTE: Y 7 N 0

Councilmember Bennehoof, who attended via Zoom, was not present during Executive Session.

MOTION: Councilmember Lorenz moved at 7:43 p.m. to adjourn from Executive Session into Open Session. Councilmember Counts seconded the motion.

VOTE: Y 7 N 0

OPEN SESSION

RESOLUTION 2021-04: A RESOLUTION APPOINTING BOARD AND COMMISSION MEMBERS. (MEMO)

Andy White, City Manager: This is a piece of legislation with a twist. We have added a new committee, the Community Diversity Advisory Committee, in addition to the Board of Zoning Appeals and Historical Downtown Advisory Commission who had vacant and/or expiring terms at the end of last year. The committee members have reached out to the individuals on the new Community Diversity Advisory Committee and some of them are in attendance tonight. We are excited to bring this to Council for adoption so that the new Community Diversity Advisory Committee can begin its work. Additionally, the members of the BZA and HDAC can continue their good work on behalf of the City with many exciting things to be considered over the next several months. This is properly before you and Staff is recommending adoption of the Resolution.

Councilmember Karr: I am excited to get started with the Community Diversity Advisory Committee. All of the applicants were incredibly talented and skilled so it was hard to choose. I think we are all pleased with the people that will be participating.

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

MOTION: Councilmember Counts moved to adopt Resolution 2021-04. Councilmember Lorenz seconded the motion.

VOTE: Y 6 N 0 AB 1 (Bennehoof)

COMMITTEE REPORTS

Development Committee: *Next Meeting: March 2, 2021, 6:30 p.m. We met tonight and discussed a number of items. We have a lot on our plate right now. Many of the things we are talking about are going to take a month or two to really develop and get going. Tonight's meeting really focused on right-of-way legislation and the small cell legislation which is in the right-of-way as well, and how we curtail those details to provide fees, management and a safety structure to those utilities and small cells that may be coming into the City. Chris Huber [City Engineer] gave us an excellent update on Sawmill Parkway and the traffic signals. He is beginning to put in place, perhaps, a synopsis for the Citizens' Academy and maybe some information in a newsletter. Jeff shared with us some discussions on fees for shared-use parking of some of our lots. More to come on that.*

Finance Committee: *Next Meeting: March 9, 2021, 7:00 p.m.*

Operations Committee: *Next Meeting: March 16, 2021, 6:30 p.m.*

Planning & Zoning Commission: *Next Meeting: March 24, 2021, 7:00 p.m. We met last Wednesday and had three items on our agenda. First was the 8 N. Liberty parking agreement. That did not pass so we anticipate they will come back with a new agreement in the future. Second was a review for some temporary fences at Carpenter's Mill for the model homes that was approved. Last was the Liberty Reserve preliminary development plan and rezoning which was approved.*

Powell CIC: *Next Meeting: March 23, 2021, 6:00 p.m.*

CITY MANAGER'S REPORT/CITY CALENDAR

Mr. White: There is a lot of activity going on at the City despite a very light agenda. We recently met with a smaller component of the Committee of the Whole between the City and the Township and covered several important subject matters that was, in my view, largely positive. I think Frank did a great job updating the group with what is going on and it was good to listen to some of the things the Township is working on. Obviously, a big component for us will be May 4. We spent some time on that and I felt our intentions were expressed well, and I thought it was well received. I was pleased with the reinforcement of positive support from the Township and the recognition of the importance of this issue to the community at large. Those were my takeaways.

Moving forward, we have a lot of ongoing work with our communication strategy. It is going to start to show up in a tangible format that you will be able to appreciate. They are working diligently. Megan, can you provide Council with an update of this important ongoing work?

Megan Canavan, Assistant City Manager: As Andy mentioned we have had a very busy and active past several days working on the communications strategy. I will provide a brief update on where things stand. We do have an ongoing action plan that is being developed with Frazierhelby and they provided an update on that on Friday in their flash briefing. We will be sending those out weekly to Council so everyone can stay up-to-date on where things stand. We are expected to receive an insight summary that is a high-level overview of the research that they have conducted. They did a SWOT analysis, they have met with our Staff, they met with the Mayor and Councilman Counts when we held our kick off meeting to go over some of the details for the strategy and that will be finalized this week. They also sent over key messages and a draft FAQ page. We have already had a couple of media inquiries so we have been able to lean on that. We will also be sending out a Save the Date on social media two months from Election Day, which is Thursday this week. We will be sending an email out to all our HOAs to see whether the City can send a representative to one of their upcoming meetings to talk about the updates that are going on in the City, including the income tax restructuring proposal.

One key update that we have discussed this week is hosting a virtual town hall meeting at 7:00 p.m. on Tuesday, March 23. We would like to check with Council on your availability to attend that. The recommendation is that this will be held on Zoom and then streamed live to our Facebook page. I will be taking comments that come through Facebook and giving those out to the Councilmembers and Staff. We will hold a second virtual Town Hall meeting as a follow up in late April.

We are designing the landing page for our website so that will include an income tax calculator. If you have neighbors that are trying figure out how this ballot issue will affect them that will be a great tool for them to utilize. There will also be

an extensive amount of information on that page as well.

The final item is a direct mail piece that we are working on, as well as a door hanger. We would like to go door-to-door the last few weekends in April to distribute these. We will be sending more information out to Council and Staff on that. These will be informational only, but will also allow residents to ask us questions while we are there.

Mr. White, continued: There is a vaccination update. Eligibility is expanding so there are two groups, Phase 1c is going to roll out for individuals working in childcare services, funeral services, and law enforcement and correction officers, as well as people with certain types of medical conditions. Phase 2 includes any Ohioans age 60 or over. That is going to impact things and we hope we continue to see a positive trend. While hospitalizations are down, I believe the numbers are spiking a little bit. I hope that as we move into this implementation of the vaccination we will see some positive trends getting into the warmer weather as we did last year.

I am going to provide more of a written report update on some of the parking element discussions that we have had with Development Committee tonight. I did want to alert Council that a measure to allow a business change at Jeni's Ice Cream failed because of an even split vote that was cast 3-3, which is a failure. Therefore, the applicant is going to be working with Staff and coming back with an updated parking alternative, as they are limited right now because of an agreement that expired. We will be working on that. I think there is a different conversation we are going to have to start looking at from that concept moving forward, but I wanted to make you aware of that.

I believe I communicated with everyone, but we received a surprise earlier today. By coincidence, I was meeting with Megan when we were contacted by a member of the press concerning an inquiry that was provided to the Board of Elections. The Board of Elections had a meeting this morning at 9:00 a.m. that we were not prepared for because we were not aware that it was happening. Thankfully, with some quick thinking of Staff and Yaz's availability, we were able to gain entry to the meeting and express the City's position, which Yaz can address. I included that to you in my communication. I wanted to state to you that I am extremely confident in the measures that were undertaken by Council, the Administrative Staff, and Yaz to adhere to the regulatory policies which we are bound by in order to properly present a case that is this important. I believe that May 4 will come and ultimately the citizens of the city of Powell will decide what the tax policy of the City is going to be after May 4. I believe that question was proposed correctly and I wanted to assure you of that. I also thank Megan and Yaz for today's work so that we could at least present the City's perspective as it relates to the entire proceedings.

OTHER COUNCIL MATTERS

Councilman Lorenz: Based on Andy's last item of his report, I have a question. I understand there will be challenges, but I am a little confused. This measure was certified by the Board of Elections on February 8. I believe we followed the same format for putting something on the ballot several times in the past. I also thought we received guidance and assistance from the state office as well. Do we know anything else about this? Is this from a resident or business owner? What I am concerned about is the manner of which we did not receive any notification [of today's meeting]. Yaz, can you address that for the record?

Yazan Ashrawi, Law Director: Absolutely. The Board of Elections certified the ballot measure in a 3-1 vote on February 9. I attended at that meeting. The Board of Elections adopted the ballot language that will be on the ballot and the actual ballot.

I was informed sometime around 9:30 am today that there was what I will call a challenge at that time that was ongoing in a meeting at the Board of Elections that started at 9:00 a.m. I immediately jumped out of the Zoom meeting I was in and got on this Zoom meeting to appear on behalf of the City to find out what is going on.

I learned that there was a piece of correspondence sent to the Executive Director of the Board of Elections late Sunday night. That was provided to the County Prosecutor's office the following day at some point and discussed preliminarily, we think, early on at this morning's meeting. I was able to address the issue. My first question was what was provided to whom, by whom, and what did it say? I advised the Board of Elections and everyone in attendance that we were notified of this moments ago by a member of the press who stated that he received that information from someone associated with the Board of Elections without providing any names. I stated that for the record, I objected to the lack of notice. The chair of Board of Elections offered to read the correspondence into the record and for my benefit since I had not seen it. I do not recall the writer's name, but she represented herself as a small business owner within the City and made a passing reference to due process concerns without any further specificity. I objected on the record for multiple reasons to this even being discussed without us present.

I have been involved in Board of Election's challenges, protests and hearings that follow those. This is not a ballot measure that can be challenged or protested at this time or in this manner. I let the Board of Elections and their counsel know that. They noted my position and City's position. They penciled in a hearing for March 17, but the Assistant County Prosecutor made it clear that his office was determining whether this was even a valid challenge and will get back to me, the City and the Board of Elections as soon as possible. I followed up with the Assistant City Prosecutor, reiterated the City's position in writing via email, and contacted him by phone.

I will continue to be in touch and provide any information that we can. At the end of the day, I reiterate Andy's confidence in the process. I do not see anything that epitomizes due process more than an election and a vote by the citizens of this community.

Councilmember Lorenz: I appreciate it. I am sure that all of us are concerned to some degree of what happened. We are grateful for Staff to be able to jump on the situation. I think it is super important that we have transparency no matter how you feel as a resident; you get your opportunity to weigh in on that. That is why we are putting this measure on the ballot. I am glad to hear that we are moving forward. It is a very important aspect for our future, infrastructure needs, and capacity to serve our residents. Thank you Yaz for jumping in.

Councilmember Karr: Can we request the minutes from Board of Elections meeting today? I am curious about what went on before you jumped on the call.

Mr. Ashrawi: Of course. Andy and I had actually discussed that as well as requesting the recording, if it was recorded, to get a better idea of what transpired prior to our appearance at the meeting.

Councilmember Counts: Yaz, can you expand on the whole challenge process? You said there was certain situations where you can be challenged and this was not one of them.

Mr. Ashrawi: Yes, under the general elections law procedures, which are codified in §3501 of the Ohio Rev. Code, there is a formal protest process. That protest process, however, is limited to petitions and candidacy. The process to put an income tax restructuring on the ballot as a municipal corporation is grounded in the Ohio Constitution and in the municipal corporation, Title 7, of the Ohio Rev. Code.

As we went through the process, it requires a resolution requesting the Board of Elections to put this measure on the ballot and a certification by the Board of Elections. It does not go through the same petitioning process or candidacy process as many other ballots that may appear on the ballot. That challenge or protest process is limited only to initiative positions, referendum petitions, petitions to put other types of things on the ballot that require signatures of the electorates. That process only allows challenges to a very limited number of items, one of which being the sufficiency of signatures, the authenticity of the signatures, the manner in which the actual petition was presented, the information on the petition. Because none of those processes are here, this is not a measure that is subject to that protester challenge.

Councilmember Riggins: Was this a regular meeting of the Board of Elections or was it specially called for this issue?

Mr. Ashrawi: I am not sure, but I believe it was a regular meeting. We do not have a copy of the agenda. That will be another request we will make. The agenda was not available online.

Mr. White: I think that should be clarified as well.

Councilmember Riggins: Was the complainant present at the hearing?

Mr. Ashrawi: During the time I was there, no one appeared on the screen that appeared to be the individual that sent the correspondence.

Councilmember Riggins: Was there any explanation given by the Board of Elections as to why we were not notified?

Mr. Ashrawi: No, there was not. There was no response when issue was posed at the meeting or my correspondence thereafter to the Assistant County Prosecutor. He indicated that his office received the correspondence very late on Monday and the 9:00 a.m. Board of Elections meeting was the following day, and they were not going to take any action on it, simply discuss it and therefore, the notification was forthcoming thereafter.

Councilmember Riggins: The Board of Elections was represented by an Assistant County Prosecutor?

Mr. Ashrawi: Yes, when I first appeared on the call, the actual elected County Prosecutor was there as well as two Assistant County Prosecutors on the call. By the end of the call, it was just one Assistant County Prosecutor whom I have been communicating with since.

Councilmember Riggins: When you said this was penciled in March 17 for a follow up meeting, no action was taken on this today but it will be revisited on the 17 with proper notice to the City?

Mr. Ashrawi: Yes, that is my understanding.

Mr. White: They referenced to us that you are noticed that on March 17 at 9:00 A.M. this is tentatively scheduled. I do think that it is important to recognize again that the physical ballot and the language on the ballot was there. I saw it. So they moved on those items, the language and placement. I think we need to stay on top of what legal advisement they will have relevant to the question you are asking about March 17 and if it even needs to happens. In talking with Yaz, I do not find any substantive reason to have a hearing on the inquiry.

Councilmember Riggins: Did you receive a copy of this complaint from this woman so you know what we are dealing with or what she even brought up?

Mr. Ashrawi: I have now received a copy of what was sent to the Executive Director. With respect to the second part of your question, I still do not know what we would be defending against, if anything.

Mayor Bertone: We are obviously anticipating receiving an estimate for the cost. Has that come in yet?

Mr. Ashrawi: It has not. I reached out to the Executive Director two weeks ago and was advised that we would get a final estimate within the next few days. We did not receive it during that time. I followed up with the Executive Director Friday or yesterday about it but have not heard back. We will follow up again.

EXECUTIVE SESSION: Ohio Rev. Code §121.22(G)(8) Economic Development

MOTION: Councilmember Lorenz moved at 8:15 p.m. to adjourn into Executive Session pursuant to Ohio Rev. Code §121.22(G)(8) Economic Development. Councilmember Counts seconded the motion.

Councilmember Bennehoof: I will call Andy's phone so I can be included in this.

Mr. Ashrawi: It is not preferable given the compromising technology.

Mayor Bertone: Jon we are going to have to ask you for this one to sit out since you are not physically here due to the technology issues. A call-in is not going to be permitted.

Councilmember Bennehoof: I do not understand why. I know we are in a middle of a vote. I will let you finish that up, but I would like to ask a question or two at the end of it.

Mayor Bertone: I am limited in terms of responding to you in including you because of the technology. With that, you can attend at our next meeting, if you are in person that would be preferable. However, with the current predicament, we cannot extend the technology option to you.

Councilmember Bennehoof: What has changed in the technology...[Mayor Bertone: We are not going to solve this at this moment. I want you to understand that...] All right, all right. I am done.

VOTE: Y 7 N 0

Councilmember Jon C. Bennehoof was not present during Executive Session.

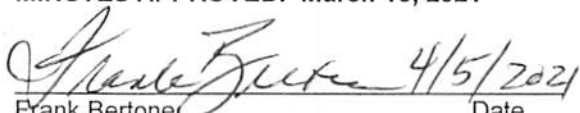
MOTION: Councilmember Lorenz moved at 8:57 p.m. to adjourn from Executive Session into Open Session. Councilmember Counts seconded the motion.

VOTE: Y 6 N 0


ADJOURNMENT

MOTION: Councilmember Counts moved to adjourn the meeting at 8:57 p.m. Councilmember Lorenz seconded the motion. By unanimous consent of the remaining members, the meeting was adjourned.

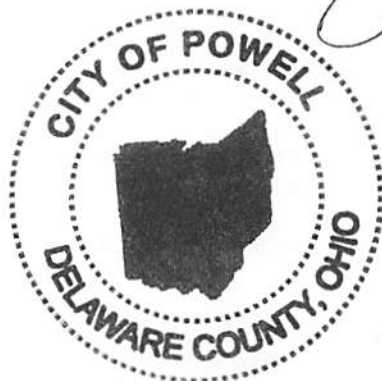
MINUTES APPROVED: March 16, 2021


Frank Bertone
Mayor

Date


Karen J. Mitchell
City Clerk

Date



Jon C. Bennehoof

Tom Counts

Heather Karr

City Council
Frank Bertone, Mayor

Brian Lorenz

Melissa Riggins

Daniel Swartwout