



**CITY COUNCIL
MEETING MINUTES
SEPTEMBER 6, 2022**

CALL TO ORDER/ROLL CALL

Mayor Daniel Swartwout called the September 6, 2022, City Council Meeting to order at 7:30 p.m. City Council Members present included: Jon Bennehoof, Tom Counts, Christina Drummond, Heather Karr and Brian Lorenz. City Staff present included: Andrew White, City Manager; Jeffrey Tyler, Assistant City Manager; Yazan Ashrawi, Law Director; Jason Nahvi, HR Business Partner; Claudia Husak, Planning Director; Steve Hrytzik, Police Chief; and Amy Deere, City Clerk.

PLEDGE OF ALLEGIANCE

PROCLAMATION

Recognizing September as Childhood Cancer Awareness Month

[Childhood Cancer Awareness Month.pdf](#)

Mayor Swartwout introduced the Read family, Ron, Julie, Maddy and Lucas and Ron Read gave a summary of Maddy's condition.

CITIZEN PARTICIPATION

Mayor Swartwout opened the floor for citizens to address City Council with items that are not on the current agenda.

Tracy Mayberry – 446 Briarbend Boulevard, Powell, Ohio. Mr. Mayberry spoke on the safety, health and welfare of Powell's citizens. He continued with discussing his concerns with the small cell towers installation. He added the residents nor the City had any say on the small cell towers installation (Mr. Mayberry's presentation has been attached to the end of the minutes).

Jean Fry – 7798 North Liberty Road, is the Executive Director of the YMCA on Liberty Road. She gave updates on the YMCA. Jean stated they are serving over 8,000 members. She spoke of programming and stated a lot have come back since the pandemic. She spoke about the overhaul of their swim team program, spoke of Y-Ball, Sports Camp and a Specialty Camp. Further, she spoke of Y-Club, their childcare program. She talked about their senior programming and the Group Fitness Program.

Mayor Swartwout closed the Citizen Participation portion of the meeting.

APPROVAL OF MINUTES

Approval of City Council Meeting Minutes of August 16, 2022.

[City Council Minutes 08162022.pdf](#)

MOTION: Jon Bennehoof moved to approve City Council Minutes of August 16, 2022. Tom Counts seconded the motion.

VOTE: Y 5 N 0 (None) AB 1 (Brian Lorenz)

Motion passed, minutes approved with a vote of 5-0-1.

CONSENT AGENDA

Notice to Legislative Authority

[1. Notice_To_Legislative_Authority_Memo.pdf](#)

[2. Notice_To_Legislative_Authority.pdf](#)

MOTION: Jon Bennehoof moved to approve the Consent Agenda of September 6, 2022. Brian Lorenz seconded the motion.

VOTE: Y 6 N 0 (None) AB 0 (None)

Motion passed, Consent Agenda approved with a vote of 6-0-0.

ORDINANCES: SECOND READING(S)

a. ORDINANCE 2022-23

AN ORDINANCE DECLARING THE NECESSITY OF, DETERMINING TO PROCEED WITH, AND LEVYING ASSESSMENTS FOR THE PURPOSE OF IMPROVEMENT, CONSTRUCTION, AND RECONSTRUCTION OF THE PUBLIC SEWER MAIN INFRASTRUCTURE ON THE NORTH SIDE OF POWELL ROAD AND ON PROPERTY OWNED BY VERONA LLC AND KNOWN AS THE VERONA SUBDIVISION, AND DECLARING AN EMERGENCY.

[1. Ord. 2022-23_and_2022-25_Memo.pdf](#)

[2. Ord. 2022-23_Ordinance.pdf](#)

[3. Ord. 2022-23_Exhibit_A.pdf](#)

Law Director Ashrawi stated Ordinance 2022-23 is an annual Ordinance the City passes every year required as a matter of law and as a matter of contract under the sewer assessment.

Mayor Swartwout opened public comment for Ordinance 2022-23.

Ben Biada – 9340 Wilbrook Dr., asked why the Ordinance changed from five years to seven years with no notification to the residents.

Law Director Ashrawi stated the original Ordinance was up to five years but the actual petition itself and the assessed agreement executed was seven years, it was fourteen annual payments up to seven years. One of the reasons it changed was there was a determination there would be a shortfall of paying off the debt issued to put in the public infrastructure. Therefore, five years, up to ten annual payments was changed to fourteen annual payments pursuant to the sewer assessment. Ordinance 2022-23 is going to add the extra payments to 2016, 2017, and 2019.

Mayor Swartwout closed public comment for Ordinance 2022-23.

MOTION: Tom Counts moved to approve Ordinance 2022-23. Jon Bennehoof seconded the motion.

Mayor Swartwout requested a roll call for passage: Christina Drummond, yes; Heather Karr, yes; Brian Lorenz, yes; Daniel Swartwout, yes; Jon Bennehoof, yes; and Tom Counts, yes.

VOTE: Y 6 N 0 (None) AB 0 (None)

Motion passed, Ordinance 2022-23 approved with a vote of 6-0-0.

b. ORDINANCE 2022-25

AN ORDINANCE DECLARING THE NECESSITY OF DETERMINING TO PROCEED WITH, AND LEVYING ASSESSMENTS FOR THE PURPOSE OF IMPROVEMENT, CONSTRUCTION, AND RECONSTRUCTION OF THE PUBLIC SEWER MAIN INFRASTRUCTURE ON THE NORTH SIDE OF POWELL ROAD AND ON PROPERTY OWNED BY VERONA LLC AND KNOWN AS THE VERONA SUBDIVISION, PROVIDING A REVISED ASSESSMENT SCHEDULE, AND DECLARING AN EMERGENCY.

1. [Ord. 2022-23_and_2022-25_Memo.pdf](#)
2. [Ord. 2022-25_Ordinance.pdf](#)
3. [Ord. 2022-25_Exhibit_A.pdf](#)

Law Director Ashrawi stated Ordinance 2022-25 references 2016-36, Ordinance 2017-41 and Ordinance 2018-35, each of which included a five-year assessment. This Ordinance insures for a special assessment over a period of up to seven years and up to fourteen semi-annual payments for the homes that were subject to those Ordinances.

Mayor Swartwout stated to clarify; this is more of a retroactive situation as opposed to the last Ordinance, which was just for the new homes that came on line last year.

Law Director Ashrawi stated he was correct.

Council Member Bennehoof said the City is not over collecting on the debt, as the City is only going to be collecting for the debt to pay it off.

Mayor Swartwout spoke about the term constructive knowledge in the law. He said he was curious about is a person who purchased a home that was subject to the five-year assessment, what

exactly constructive knowledge did they have of the assessment at the time because we had done five years after they purchased the property. Where would the constructive knowledge come from?

Law Director Ashrawi stated it would have come from the assessment agreement and pursuant to that agreement, an explicit note on the deed that conveyed the property was to reference that assessment agreement specifically. He stated he knows of one person that purchased the property; this was not on the deed. The requirement to reference the sewer assessment was within the sewer assessment agreement as opposed to any of the legislation.

Vice Mayor Counts stated in terms of the ability of the City to put any assessment on any property, the fact it was or was not on the deed is helpful but not necessarily determinative of the validity of that assessment.

Law Director Ashrawi affirmed. He stated there was no statutory requirement to include that notification and it certainly does not negate the assessment if the notification is not on the deed.

Law Director Ashrawi stated there are 32 lots effected by this Ordinance and there is 166 lots in the Verona Subdivision.

Mayor Swartwout said essentially, the City loaned the money to construct the sewer for the Verona Subdivision. If we do not do this, is the City in danger of a shortfall as it relates to the construction of the sewer.

Assistant City Manager Tyler agreed but was not aware of the extent.

Law Director Ashrawi stated he would estimate a couple hundred-thousand-dollar shortfall.

Vice Mayor Counts said there has been some discussion that if the payments were made on all of the properties, there may be some overage. That remains to be seen. He stated his position is, let us wait and see as we do not want to have an overage, and if there is any money left over it should go to all of the homeowners. We just do not know at this point. The problem here is what is fair. The City is a lender in this situation, and if the City did not lend the money, all of the homeowners would have paid for that sewer line as part of their land and building being built. The City is trying to treat everyone equally.

Council Member Drummond recognized the position the City has put some of the residents in as there was a disconnect at some point in time. City Council stands here today recognizes the problem and are trying to rectify that. This is an unfortunate situation.

Mayor Swartwout opened public comment for Ordinance 2022-25.

Ben Biada – 9340 Wilbrook Dr., Powell, and Suken Patel – 9327 Wilbrook Dr., Powell, addressed City Council.

Mr. Patel stated he wanted to understand what changed between the 2016 Ordinance to that caused the increase from ten payments to fourteen payments while the projected cost of the sewer was still \$1.2 million dollars. Therefore, that projected cost of \$1.2 million dollars has remained from 2016 to presumably, the most current estimate that we had last month. As he looks at the \$1.2 million dollars and assuming a seven-year amortization of 3% interest rate, that should be \$132,000 of interest cost so the total cost would be around \$1.33 million dollars. If you do

\$1.33 million dollars and you look at 166 lots at five years of the \$1,200 per lot for the front of the division and the \$1,800 for the single-family homes, the numbers add up. He would like to explore what is causing the shortfall.

Mr. Biada said this is similar to buying a home or car, you have the terms set. A fixed cost has not changed \$1.2 million plus interest. The amount of payments of five years was set as well as the amount of homes. There should not be a need for additional capital on the building unless the construction cost changed, which should not happen. Once the terms were set, how has things changed on the City's end to cause a change in the assessment for five years to seven years.

Vice Mayor Counts responded by saying his analogy does not quite work because if it is just your house or your car, what you have said is absolutely true, but we have 160 lots that are being built and sold at different times. The times done run, likewise, you could potentially have lots that never are built and so the cost is paid down at different time. There clearly was an issue with the five years as it should have been seven years initially. That was the original plan.

Law Director Ashrawi stated the total cost was calculated as \$1.420 million, as the interest is calculated daily.

Vice Mayor Counts said the fairest way this should have been handled was that cost be assed to every lot whether it is built or not and you pay the cost up front, but since it was done in this "rolling" way, it has created this issue.

Mr. Patel wanted to close the loop on why it was extended from five years to seven years.

Law Director Ashrawi stated if we continue with the five-year assessment, there would be a deficit to the debt. Keep in mind, there are six lots that have not been built.

Mr. Patel asked if it was a seven-year amortization on the loan beginning 2016, so the last payment would be 2023 for the City.

Law Director Ashrawi advised the last payment would be in 2028. Further, he stated nothing has changed, there was just an error when the original Ordinance states five years. The Sewer Assessment Financing Agreement says seven years up to fourteen semi-annual installments. The cost has not changed. The agreement was written to allow up to fourteen semi-annual payments, not requiring fourteen semiannual payments. The goal is to pay off the debt and with the current schedule; our numbers indicate it would not be paid off. It was caught in 2019 and changed to seven years.

Vice Mayor Counts stated in 2016, this loan was not cash flowing. You had interest daily accruing. It was not until many more homes being built, suddenly it was cash flowing. The assessment was for seven years and the loan was longer than that.

Law Director Ashrawi stated for the record, assuming this mistakenly was assessed for three years; the Ohio Revised Code 727.38 authorizes the City to reassess in order to pay the debt.

Ajay Dugar – 9316 Wilbrook Dr., Powell, addressed City Council. He advised it is quite the financial burden to surprise someone of four additional payments of \$1,800. It is a fixed cost and we knew the number of lots. Further, he added as City Council pursues the citizens of Powell, Ohio, you could pursue Verona, LLC that own the lots and have held onto them. He would like to

look into the details of this situation. He said he is looking for a little more clarity and transparency as required.

Law Director Ashrawi advised the Finance Director has indicated the issue was not with any change of cost, it was the timing of the collections. The first collections were short of the accumulated interest and the projections are based on the actual collections.

Joe Heuer – 9247 Baytree Dr., Powell, asked for City Council to table this Ordinance since there is a lot of open issues and he feels that the City owes it to the residents.

Craig Wilkins – 9547 Fair Oaks Dr., Powell, stated he is part of the original five-year assessment, however, his thoughts of putting everyone on an equal payment program makes the most amount of sense. Further, he advised the Ordinance 2022-25 City Council is reviewing, it corrects an administrative error. It is almost as simple as that. There were three years of administrative errors and it is very appropriate the City Council has said something about an apology. It corrects this administrative error and puts all of the Verona lots on an equal number of semi-annual payments which is consistent with Ohio Revised Code 727.01, which clearly states the assessment be in proportion to the benefits received. He stated putting everyone on an equal program is important.

Dan Harmon – 9565 Fair Oaks Dr., Powell, stated he supports this Ordinance. He said he felt everyone pays the same number of payments, which follows the Ohio Revised Code. The key point is the assessment has to be in proportion to the benefit. He also stated he appreciated Council Member Drummond's apology.

Saakait Mathur – 9348 Wilbrook Dr., Powell, said there was too much confusion to agree to the Ordinance as it is stated currently, specifically related to the financing. As we look at the financing, five years of payments may be sufficient to the total, so why collect extra payments if it is not necessary. He feels this question should be answered before passing the Ordinance and encouraged City Council to wait.

Mayor Swartwout closed the public comment portion of Ordinance 2022-25.

Council Member Bennehoof stated he would join Council Member Drummond in recognizing the mistake and took some responsibility for the mistake because he was on City Council at that time and did not catch the administrative mistake. City Council is bound by the Ohio Revised Code as well as the County Auditor's calendar and he thinks everyone here would argue everyone should be treated fairly and equally. He then spoke about the requirement that this Ordinance must be effective and certified by the County Auditor by the second Monday in September in order for the assessments to be placed on the tax duplicate for the current year; wherefore, this Ordinance shall take effect and be in force from and after its passage. He stated the reason for this is if we do not make it timely, paying will be delayed and payoff of the debt would be delayed, which the City is required by law to satisfy. He also recognizes there may be some overpayment, which will be rebated.

Council Member Drummond said she recognizes the deadline, and should the Ordinance be tabled City Council would have to have a special meeting and have enough representatives from Verona to meet with the Finance Director this week to have that conversation. This is a very tight timeline. She also stated she hated delaying payments, in that \$1,800 is one thing but doubling that payment is something else. She asked if Staff could speak to the possibility of having a meeting with the interested Verona parties.

Assistant City Manager Tyler stated Staff would certainly make that available as far as having the Finance Director meet with individuals. He spoke of the calendar deadline the City was up against and the City has to respect that moving forward.

Council Member Karr spoke of the legislative intent versus what was actually put into the Ordinance, in a Finance Committee meeting it was discussed the legislative intent that was included in all of the minutes. She asked Law Director Ashrawi to give some clarity.

Law Director Ashrawi stated in every meeting where this was discussed there was a confirmation that this was a seven-year, fourteen semi-annual payment assessment based on projections. The only time the five-year assessment ever showed up was on the actual legislation. The signed Sewer Assessment Agreement indicates up to fourteen semi-annual payments, and it used the words "up to", he thinks, purposely, because no one knew exactly when homes would be built, how long interest would accrue, etc.

Council Member Karr also stated in a Finance Committee meeting, it was discussed if it was a five-year assessment, and she knows those numbers are not in front of City Council this evening, but she knows it was a significant shortfall.

Mayor Swartwout stated this is one of the tougher situations he has faced since being on City Council, as no matter how this vote goes, it is not going to be fair for certain people. If the change is made from five to seven, it is not fair. However, if the change were not made from five to seven, it would not be fair to all of taxpayers of Powell who fronted the money to build that sewer. They would then experience a shortfall in the general fund that could be used for safety, parks or roads, and that would not be fair because of this administrative error. This has been a very tough decision.

Mr. Biada spoke of the administrative error and said City Council owes it to the Verona residents to speak to the Finance Director before City Council passes this to at least see what the terms are.

Mayor Swartwout advised the City specifically notice people for this meeting, but there have been multiple meetings that have been noticed to the public on this particular issue.

Mayor Swartwout asked for order as everyone has had his or her chance to speak during public comment.

MOTION: Christina Drummond moved to table Ordinance 2022-25. There was no second.

Vice Mayor Counts stated he will commit to the residents that the City to produce a detailed spread sheet of what has been paid thus far, what will be paid based on this proposed Ordinance City Council will be voting on and that the City will, at the time the debt is fully paid, if there are excess dollars, it will be repaid to the owners in the Verona community.

MOTION: Tom Counts moved to approve Ordinance 2022-25. Jon Bennehoof seconded the motion.

Mayor Swartwout requested a roll call for passage: Heather Karr, yes; Brian Lorenz, yes; Daniel Swartwout, yes; Jon Bennehoof, yes; Tom Counts, yes; and Christina Drummond, yes.

VOTE: Y 6 N 0 (None) AB 0 (None)

Motion passed, Ordinance 2022-25 approved with a vote of 6-0-0.

COMMITTEE REPORTS

Development Committee: Brian Lorenz said they met prior to the Council meeting and discussed the Comprehensive Plan and how that is to be addressed going forward. Also, a discussion with the Property Maintenance Code amendments which Assistant City Manager Tyler would be bringing to City Council soon for consideration. In addition, there was dialogue about traffic management in the northwest quadrant of the downtown.

Finance Committee: Tom Counts stated their next meeting is scheduled for September 13, 2022, at 7:00 p.m.

Operations Committee: Dan Swartwout stated he has stepped in as Interim Chair for the Operations Committee and a special meeting is scheduled for tomorrow evening at 6:30 p.m.

Community Diversity Advisory Committee: Heather Karr stated their next meeting is scheduled for September 15, 2022, at 6:00 p.m.

Planning and Zoning Committee: Planning Director Husak said their next meeting is scheduled for September 14, 2022, at 6:30 p.m. and there is one item to forward to City Council, which is a change to the Middlebury Crossing and the Library Development, that will impact some parking layout and paths. It will come to City Council following the meeting on September 14, 2022.

CIC – Brian Lorenz advised their next meeting is September 27, 2022, at 7:00 p.m.

CITY MANAGER'S REPORT/CITY CALENDAR

FIRE PEVENTION CODE UPDATE

1. [Fire Prevention Code Update Memo.pdf](#)
2. [Fireworks Overview.pdf](#)
3. [Fireworks Rules.pdf](#)
4. [Veto Message SB 113.pdf](#)
5. [Standards Development Document.pdf](#)
6. [2021 Fireworks Annual Report.pdf](#)

Assistant City Manager Tyler spoke about the Fire Prevention Code Update. He stated this update was presented to the Development Committee at its July 5, 2022 meeting. He stated the update was initiated for two reasons: (1) to address issues identified by the City as it relates to fireworks and specifically the changes in state law related to the same; and (2) due to the current fire prevention code being outdated and referencing a model code whose agency ceases to be in existence.

He also discussed the Moratorium that was passed in March with Resolution 2022-17, which gave a six-month time period for research and then come back to City Council with findings. He referenced the memo, which outlines H.B. 172.

He advised it was the recommendation of Staff to prohibit the language regarding “show rooms”. He also spoke of the ability of people being able to set off fireworks during specified times without a commercial license. The City of Powell prohibits the discharging of fireworks throughout the year, and recommends keeping that in place.

Assistant City Manager Tyler said Staff would like to do is bring the Ordinance before City Council with those two provisions being a part of it.

Assistant City Manager Tyler then spoke of the parking situation within the City and the three agreements with the carryout, Dan McClurg’s property and the property owned by Bill Eddy. Staff has run into some roadblocks with all three of the agreements. Dan McClurg is potentially developing his lot. Should it not go through in the development, we can readdress a temporary lot. At Bill Eddy’s lot, a preliminary estimate was obtained and the amount was \$300,000 for 30 parking spaces. This did not make sense based upon the parameters set forth. However, they spoke about a consolidated lot with Bill Eddy and his neighbor, which would spread out the parking. Another estimate is being sought. There are some issues with the carryout propter regarding turn around traffic coming onto the lot, and that is a concern.

OTHER COUNCIL MATTERS

Council Member Karr thanked Staff for all of their hard work with Passport to Powell and appreciates all of their efforts.

Mayor Swartwout said he has had multiple people inquire as to remote participation in City Council and committee meetings. Obviously, remote participation was allowed due to the pandemic and asked Law Director Ashrawi to give an update on what is allowed and no longer allowed.

Law Director Ashrawi stated during the pandemic there was the ability to participate, fully engage, and fully meet virtually, either by phone or through some audio/visual connection. That temporary law is now over and have reverted to pre-pandemic Ohio Laws, which allow you to join a public meeting virtually or by phone as a matter of law, but you are not counted towards the quorum, you cannot participate and you cannot vote.

EXECUTIVE SESSION

Mayor Swartwout stated he believed there was an addition to the already issued request for Executive Session.

Law Director Ashrawi stated yes, and referenced Ohio Revised Code Section 121.22 (G)(8) – to consider negotiations with other political subdivisions regarding economic development.

Mayor Swartwout added the other requests involve Ohio Revised Code Section 121.22 (G)(1) – to consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, as well as Ohio Revised Code Section 121.22 (G)(2) – to consider the purchase of property for public purposes.

MOTION: Jon Bennehoof moved to enter into Executive Session. Heather Karr seconded the motion.

VOTE: Y 6 N 0 (None) AB 0 (None)

Motion passed with a vote of 6-0-0.

Entered Executive Session at 9:15 p.m.

MOTION: Jon Bennehoof moved to close Executive Session and enter back into Regular Session. Brian Lorenz seconded the motion.

VOTE: Y 6 N 0 (None) AB 0 (None)

Motion passed with a vote of 6-0-0.

ADJOURNMENT

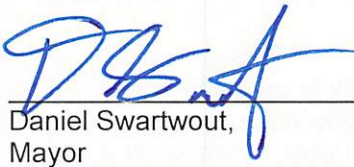
MOTION: Jon Bennehoof moved to adjourn. Tom Counts seconded the motion.

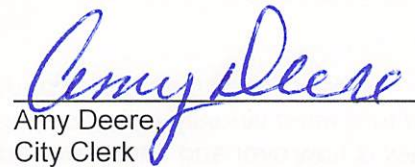
VOTE: Y 6 N 0 (None) AB 0 (None)

Motion passed with a vote of 6-0-0.

Meeting adjourned at 9:45 p.m.

MINUTES APPROVED: September 20, 2022

 9-20-22
Daniel Swartwout, Date
Mayor

 9-20-22
Amy Deere, Date
City Clerk