ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE ex rel. BRIAN EBERSOLE, *et al.*,	:	
Relators,	:	
	:	Case No. 2014-1520
v.	:	
	:	ORIGINAL ACTION IN MANDAMUS
DELAWARE COUNTY BOARD OF ELECTIONS, *et al.*,	:	
Respondents.	:	

JOINT EVIDENCE OF
RESPONDENT DELAWARE COUNTY BOARD OF ELECTIONS AND
INTERVENING RESPONDENT THE CENTER AT POWELL CROSSING, LLC

VOLUME 3

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FILED
SEP 11 2014
CLERK OF COURT
SUPREME COURT OF OHIO

JOINT EVIDENCE OF RESPONDENTS AND INTERVENING RESPONDENT

Pursuant to Supreme Court Practice Rule 12.06, Respondent and Intervening Respondent submit the following evidence in this original action:

VOLUME 1

Exhibit 1: Affidavit of Josh Pedaline

Exhibit A: Protest filed with the Delaware County Board of Elections on August 21, 2014

Exhibit B: Petitioners' Memorandum in Response to the Developers' Notice of Protest, filed with the Board of Elections on August 25, 2014.

Exhibit C: Protest Hearing Exhibits submitted by The Center at Powell Crossing, LLC and Donald R. Kenney to the Delaware County Board of Elections on August 26, 2014

Exhibit 1. Affidavit of David M. Betz, with exhibits thereto.

Exhibit A. City of Powell's Zoning Map

Exhibit B. Powell Zoning Code Chapter 1143

Exhibit C. Planning and Zoning Commission Minutes

Exhibit D. City Council Minutes

Exhibit E. Ordinance 2014-10

Exhibit 2. Minutes from the June 17, 2014 Meeting of the City Council of Powell City Council

Exhibit 3. City Charter of the City of Powell, Ohio

Exhibit 4. Initiative to Repeal Part-Petition (8 of 12)

Exhibit 5. Initiative to Repeal Part-Petition (4 of 12)

Exhibit 6. Delaware County Board of Elections Powell Precinct Boundary Map.

Exhibit 7. Excerpts from the Delaware County Board of Elections 2013 General Election Canvass Report

Exhibit 8. Redacted depiction of a Delaware County Board of Elections electronic voter record.

Exhibit 9. Redacted state voter record as maintained by the Ohio Secretary of State

Exhibit 10. Ohio Secretary of State's Model Referendum Petition

Exhibit 11. Ohio Secretary of State's Model Initiative Petition

Exhibit 12. Final Development Plan for The Center at Powell Crossing, LLC

Exhibit 13. Ordinance 2005-20 – The Property's Rezoning

Exhibit 14. Powell City Resolution 2014-01

VOLUME 2

Exhibit 1: Affidavit of Josh Pedaline (Continued from Vol. I)

Exhibit D: Delaware County Board of Elections Exhibit 1

Exhibit E: Petition #140704 – Referendum[1]

Exhibit F: Petition #140706 – Repeal Initiative[1]

VOLUME 3

Exhibit 2: Affidavit of Joseph R. Miller

Exhibit A: Transcript of the August 26, 2014 Board of Elections Hearing

Exhibit B: Notice of Protest filed with the Delaware County Board of Elections on July 28, 2014, excluding exhibits thereto.

Exhibit C: Transcript of the August 1, 2014 Meeting of the Delaware County Board of Elections

Exhibit D: Transcript of the August 5, 2014 Meeting of the City Council of Powell

Exhibit E: Transcript of the August 19, 2014 Meeting of the City Council of Powell

[1] This exhibit excludes the voluminous complete copy of Ordinance 2014-10.

Exhibit F: Notice of Protest filed with Powell City Council on August 1, 2014.

Exhibit G: Reply in Support of Protest filed with Powell City Council on August 15, 2014.

Exhibit H: Minutes from the August 19, 2014 Meeting of the City Council of Powell City Council

Exhibit 3: Affidavit of Jackie Olexa White

Exhibit 4: Affidavit of Karla Herron

Respectfully submitted,

VORYS, SATER, SEYMOUR AND PEASE LLP

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EXHIBIT TWO OF RESPONDENT AND INTERVENING RESPONDENT
AFFIDAVIT OF JOSEPH R. MILLER

IN THE SUPREME COURT OF OHIO

STATE ex rel. BRIAN EBERSOLE, *et al.*,	:	
	:	
Relators,	:	
	:	Case No. 2014-1520
v.	:	
	:	ORIGINAL ACTION IN MANDAMUS
DELAWARE COUNTY BOARD OF ELECTIONS, *et al.*,	:	
	:	
Respondents.	:	

AFFIDAVIT OF JOSEPH R. MILLER

STATE OF OHIO :
: ss
COUNTY OF FRANKLIN :

I, Joseph R. Miller, having been first duly cautioned and sworn, hereby depose and state the following:

1. I am counsel for intervening respondent The Center at Powell Crossing, LLC ("Intervening Respondent") in Case No. 2014-1520 before the Ohio Supreme Court and served as counsel for the Intervening Respondent in the Protests before the City Council of Powell, Ohio and the Delaware County Board of Elections. I have personal knowledge of the facts set forth herein.

2. Attached as Exhibit A is a true and accurate copy of the Transcript of the August 26, 2014 Board of Elections Hearing and the Certificate of Jackie Olexa White, RPR, concerning the Transcript.

3. Attached as Exhibit B is a true and accurate copy of the Notice of Protest filed with the Delaware County Board of Elections on July 28, 2014, excluding exhibits thereto.

4. Attached as Exhibit C is a true and accurate copy of the Transcript of the August 1, 2014 Meeting of the Delaware County Board of Elections and the Certificate of Angela R. Starbuck, RPR, concerning the Transcript.

5. Attached as Exhibit D is a true and accurate copy of the Transcript of the August 5, 2014 Meeting of the City Council of Powell and the Certificate of Angela R. Starbuck, RPR, concerning the Transcript.

6. Attached as Exhibit E is a true and accurate copy of the Transcript of the August 19, 2014 Meeting of the City Council of Powell and the Certificate of Angela R. Starbuck, RPR, concerning the Transcript.

7. Attached as Exhibit F is a true and accurate copy of the Notice of Protest filed with Powell City Council on August 1, 2014.

8. Attached as Exhibit G is a true and accurate copy of the Reply in Support of Protest filed with Powell City Council on August 15, 2014.

9. Attached as Exhibit H is a true and accurate copy of the Minutes from the August 19, 2014 Meeting of the City Council of Powell City Council, authenticated by City Clerk, Sue Ross.

Further Affiant sayeth naught.

Joseph R. Miller

Subscribed and sworn to me this 10th day of September, 2014.

Notary Public

My commission expires on N/A.

NOTARIAL SEAL STATE OF OHIO

CHRISTOPHER L. INGRAM, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

Exhibit 2-A

In The Matter Of:

Referendum and Initiative Petitions Concerning v. City of Powell Ordinance 2014-10

BOARD OF ELECTIONS HEARING

August 26, 2014

Premium Reporting Services

Jackie Olexa White, RMR

438 Kingston Avenue

Powell, Ohio 43065

jow1214@gmail.com

Original File 082614BOE.txt

Min-U-Script® with Word Index

Page 1

1 BEFORE THE DELAWARE COUNTY BOARD OF ELECTIONS
2 -
3 IN RE:
4 REFERENDUM AND INITIATIVE) Protest Hearing
POWELL ORDINANCE 2014-10)
5 ADOPTED JUNE 17, 2014)
6 -
7 Tuesday, August 26, 2014
8 9:00 o'clock a.m.
9 Board of Elections
10 Delaware, Ohio 43015
11
12
- -
13
14 Jackie Olexa White
15 Registered Merit Reporter
- -
16
17
18
19
20
21 PREMIUM REPORTING SERVICES
22 438 Kingston Avenue
Powell, Ohio 43065
23 (740) 602-1082
24

Page 2

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BOARD OF ELECTIONS: STEVEN CUCKLER, Chairman of the
14 Board, ED HELVEY, Board Member, SHAWN STEVENS, Board
Member, BRUCE BURNWORTH, Board Member
15
DIRECTOR OF BOARD OF ELECTIONS: Josh Pedaline
16 DEPUTY DIRECTOR: Karla Herron
OFFICE MANAGER: Traci Shalosky
17 LAW DIRECTOR, City of Powell: Gene Hollins
DIRECT OF DEVELOPMENT, City of Powell, David Betz
18
ALSO PRESENT: Brian Ebersole, Chris Vince, Charles
19 Vince and Valerie Swiatek
20 - - - - -
21
22
23
24

Page 3

1 INDEX
2 Examination of David Betz Page
3 By Mr. Miller 28
4 By Mr. Burch 50, 139
5 By Mr. King 133
6 Exhibits moved into evidence 165
7 - - -
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Page 4

1 Tuesday Morning Session
2 August 26, 2014
3 9:00 a.m.
4 - - - - -
5 PROCEEDINGS
6 - - - - -
7 MR. CUCKLER: Now, let's go to what I
8 believe is why everybody is here today on our protest
9 hearing. Two protests were filed. And this is going
10 to be the only hearing on that protest.
11 And before we get into the specifics, I'm
12 going to go around and introduce the staff.
13 My name is Steve Cuckler. I'm the
14 chairman of the board. I didn't want it to come out
15 and sound like that, but I guess that is my title.
16 We'll go around here for the board
17 members.
18 MR. HELVEY: I'm Ed Helvey. I'm one of
19 the Democrat board members. He's a Republican board
20 member.
21 MR. STEVENS: I'm Shawn Stevens, the other
22 Republican.
23 MR. BURNWORTH: I'm Bruce Burnworth, the
24 other democratic member. I do have parity of this

Page 5

1 board.
2 MR. CUCKLER: Let's go around to the
3 staff.
4 MR. PEDALINE: Hi. Josh Pedaline,
5 Director of Board of Elections.
6 MS. HERRON: Karla Herron, deputy
7 director.
8 MS. SHALOSKY: Traci Shalosky, office
9 manager.
10 MR. BETTS: Christopher Betts, assistant
11 Delaware County prosecuting attorney here on behalf
12 of the Board of Elections.
13 MR. KING: Andrew King, assistant Delaware
14 County prosecuting attorney also here for the board.
15 MR. CUCKLER: All right. Thank you.
16 Everyone has been presented this agenda, right?
17 Counselors?
18 MR. MILLER: Yes, sir.
19 MR. CUCKLER: Everybody good with that.
20 Okay. The reasoning for that is to keep some order
21 and structure to the hearing process.
22 What we're going to do is we're going to
23 have Jackie swear in any potential witnesses or
24 interested parties who may testify. And then we'll

Page 6

1 get into the meet of this, and we'll open it up to
2 the board, the staff. And then I know that our
3 counsel has a few things to say. And then we'll open
4 it up to the statements.
5 But before we get into that, let's make
6 sure I got all your guys' names. Feel free to
7 introduce yourselves.
8 MR. MILLER: Sure. Joe Miller and
9 Bruce Ingram on behalf of the protesting parties.
10 MR. BURCH: I'm Chris Burch. I'm on
11 behalf of the petitioners.
12 MR. CUCKLER: Okay. Have you guys
13 presented and given your business cards to Jackie so
14 she has all your --
15 MR. MILLER: Yes.
16 MR. CUCKLER: I'm sorry, your name again?
17 MR. BURCH: Christopher Burch, B U R C H.
18 MR. CUCKLER: Okay. Thank you. All
19 right.
20 (Thereupon, the witnesses were sworn in.)
21 MR. CUCKLER: All right. Presented before
22 us is a protest regarding -- originally, it was three
23 issues in the City of Powell. Before us today are
24 two issues: The referendum and then the initiative.

Page 7

1 The issue regarding the charter that was not
2 certified to us by the City of Powell. And we
3 understand that that's the subject for some other
4 court action, but that is not in front of us today.
5 So that's what we're going to be hearing on the
6 protest, the pros and cons of.
7 With that said, you know, does the board
8 have any other comments before I turn it over to the
9 staff to give us a 30,000 foot view, and then turn it
10 over to Chris and Andrew. You guys have anything to
11 add before we start this?
12 MR. PEDALINE: The only thing I would ask
13 is if I could give a timeline of maybe what has
14 crossed our desk.
15 Chris, I don't know if you were going to
16 talk about that or Andrew.
17 So between July 25th and 28th, two
18 initiatives, a referendum were filed here at the
19 board of elections for signature validation. A
20 protest was then filed on July 28.
21 The board met for a regular meeting. And
22 at the meeting, they then were able to validate a
23 number of signatures for the initiatives and
24 referendum.

Page 8

1 On August 21st -- actually, on the 20th of
2 August is when the initiative and referendum order
3 was then filed back to the office. And then on the
4 21st, a protest was filed by the protestors. And on
5 the 25th yesterday, we received a memo in response to
6 the protest, all of which you should have in front of
7 you. And that's why we're here at this point.
8 Anything you want to add, Karla?
9 MS. HERRON: I don't.
10 MR. CUCKLER: Okay. Chris, you or Andrew,
11 anything you want to chime in?
12 MR. BETTS: I think there were just a
13 couple preliminary things to address. One of which I
14 think you've already addressed, which is the issue of
15 that there were two protests that were actually filed
16 in this case. One, as Josh has said, was filed on
17 July 28, 2014; the second of which was filed on
18 August 21st.
19 For purposes of this hearing, just so we
20 put this on the record and everybody is in agreement
21 of the same understanding, this will be the only
22 hearing that we're having on this protest,
23 consolidated of these two.
24 I've talked to both the counsel for the

Page 9

1 petitioners and the protestors, and they both agree
2 with that. And if they want to acknowledge that,
3 that would be great.
4 MR. MILLER: That is correct.
5 MR. BURCH: That's correct.
6 MR. BETTS: Secondly, what I wanted to do
7 is talk with the board just a little bit about what
8 the duty is here today. Obviously, a protest has
9 been filed in this case. It's a bit of an
10 intervening thing in terms of the normal process.
11 There are two things at play here. We have the
12 Powell's city charter, and we have the Ohio Revised
13 Code, which we have to balance together.
14 Under the charter, if circumstances did
15 not involve a protest, this issue would come back
16 that -- the initiative and referendum would come back
17 to the board, and at that point the board would
18 accept them, the validity and sufficiency having been
19 determined by city council. And, at this point, the
20 board could then accept those for the ballot.
21 However, in this case, we have a protest
22 that has been filed. And under Revised Code 3501.39
23 which intervenes at that point, this board is charged
24 with hearing that protest before they may accept the

Page 10

1 initiative and referendum to the ballot.
2 So under that language, particularly, it
3 states that the Secretary of State of board of
4 elections shall accept any petition described in
5 3501.3 of the Revised Code unless the following
6 occurs: In this case under A2, a written protest
7 against a position of candidacy naming specific
8 objections is filed, a hearing is held, and a
9 determination is made by the election officials with
10 whom the protest is filed when the petition violates
11 any requirement established by law.
12 So today before this board can certify --
13 or, excuse me, accept these for the ballot, the
14 protest needs to be heard, and that's the board's
15 duty here today, to hear the protest that has been
16 presented.
17 As Josh indicated, both the protest has
18 been filed and there has been a response filed by the
19 petitioners.
20 As a matter of housekeeping, I know we've
21 gotten the agenda that has been placed out there,
22 kind of as you indicated, everybody has been made
23 aware of the agenda. It might be just worth
24 discussing very quickly how the board intends to keep

Page 11

1 the times that have been set forth in this.
2 MR. CUCKLER: Just one -- just so I
3 understand clearly, Chris, is after the hearing of
4 the protest, do we need to make a determination on
5 the protest or can we move right in to accepting or
6 not accepting?
7 MR. BETTS: Yes, the board would need to
8 make a decision regarding the protest. There's
9 basically two decisions that would be available to
10 the board. One would be to accept the protest and
11 deny accepting the initiative and referendum for
12 placement on the ballot. Or the second option would
13 be deny the protest, and accept the initiative and
14 referendum for placement on the ballot.
15 I would suggest to the board, since there
16 are two items that are before the board, both the
17 initiative and referendum, that those decisions be
18 made separately.
19 MR. CUCKLER: Okay. When we get to that,
20 you'll have to clarify that.
21 MR. BETTS: Absolutely.
22 MR. CUCKLER: Great. Anybody else?
23 Okay. Counselor is right, historically,
24 we're a pretty informal group. We know there's some

Page 12

1 time allotted here, but just because -- I know this
2 is tough telling lawyers -- just because you got 30
3 minutes, doesn't mean you necessarily have to use 30
4 minutes. FYI.
5 But with that said, you do have this time
6 allotment. And if you feel you need to use that,
7 then we'll obviously honor that.
8 So we'll start with Joe.
9 MR. MILLER: Yes.
10 MR. CUCKLER: Do you want to go ahead and
11 do your opening statements from your side. And then,
12 Chris, you'll have a chance to counter that and give
13 your opening statements. And we have 10 minutes for
14 other -- for any questions that we may have, and then
15 get into the argument section.
16 MR. MILLER: Thank you, Chair. We will
17 present exhibits, testimony and argument today on the
18 two measures before you, that they cannot be put to
19 the ballot under Ohio law. And that it's your legal
20 duty as a board to ensure that they are not placed on
21 the ballot.
22 To pick up where Mr. Betts left off,
23 3501. 11A charges this board with determining the
24 sufficiency and validity of the petitions. 3501 says

Page 13

1 you cannot put a ballot -- you cannot put on the
2 ballot if it violates any requirement of law.
3 I'll save my more exhaustive argument of
4 law for the conclusion of this hearing. But I want
5 to stress up front that those responsibilities and
6 duties of this board are unaffected by the city's
7 charter. There has been some suggestion by the other
8 side that your duties are merely ministerial.
9 Nothing could be further from the truth.
10 As Mr. Betts said, you're under an
11 obligation under state law to determine the validity
12 of these petitions, whether they satisfy all
13 requirements of law. And, in fact, the charter of
14 the City of Powell mirrors the Ohio Revised Code both
15 in its description of this board's duties and
16 explicitly incorporates all things in the revised
17 code not otherwise dealt with in the charter.
18 The supreme court has said, the charter
19 doesn't affect this board's duties unless they are
20 expressly negated by the charter. But the charter
21 comes out and says the board of elections won't do
22 this or won't do that. So you have that duty today
23 incumbent upon you.
24 We filed our protest. I'm sure you've

Page 14

1 seen it. I want to stress up front what the evidence
2 and further argument will elicit today.
3 Administrative issues cannot be put by this board on
4 the ballot. Whether that's an initiative or a
5 referendum, they are simply not authorized under
6 Article 2, Section 1F of the Ohio Constitution. They
7 can't pass go because they are not authorized. It's
8 not a question of whether these are unconstitutional
9 or illegal should a court later determine. You're
10 not authorized to put on the ballot if it relates to
11 an administrative matter.
12 Zoning decisions, which we have here, are
13 administrative unless the property zoning
14 classification is amended or the zoning code is
15 legislatively changed by the decision.
16 We've cited you no less than four supreme
17 court cases and numerous courts of appeal on this
18 point. The evidence will show that's never happened.
19 Instead, the City of Powell approved a
20 development plan pursuant to the existing zoning
21 within a planned district, the downtown business
22 district. That zoning had existed since 2005. It's
23 still in place today. Nothing about this decision by
24 city council changed that fact.

Page 15

1 Legislative acts enact new laws, and those
2 could be subject to referendum or initiative.
3 Administrative acts administer existing laws.
4 You have before you an affidavit of
5 Dave Betz in our protest. And the evidence today
6 will show that's precisely what happened here. City
7 council was administering the law. And the Ohio
8 Supreme Court and the courts of appeal have
9 repeatedly held that a city council's approval of a
10 development plan in a planned district -- there's
11 case law directly on point -- states that this is
12 only administering an existing law.
13 Ohio law is equally clear both in our
14 protest and as I'll describe later in argument that
15 this board of elections must make that determination.
16 The Supreme Court has held both that this board is
17 equipped to do so and you're under a legal duty to do
18 so. To do otherwise is to abuse your discretion and
19 act contrary to law.
20 So based upon the evidence already before
21 you in our protest as well as testimony of Mr. Betz
22 that we'll present today, the facts are clear. The
23 pertinent facts are clear. There may be some
24 misdirection and some irrelevant facts brought before

Page 16

1 you today, but the pertinent facts are clear.
2 Powell city council grew the development
3 plan pursuant to the existing zoning, administering
4 the zoning laws already on the books. Petitioners
5 don't like that decision, we understand that, that's
6 very clear. But their remedy for such an
7 administrative decision is not here. It's not the
8 ballot box.
9 There is a remedy for administrative
10 decisions that persons don't like. It's
11 administrative appeal to the court under the Ohio
12 Revised Code 2506. That's where the issues are
13 thrashed out whether an administrative decision was
14 reasonable or arbitrary or contrary to law or all the
15 T's weren't crossed and I's weren't dotted. Not
16 here.
17 Instead, as set forth in our protest,
18 you're charged with looking at the nature of the
19 decision and deciding whether it's administrative or
20 legislative. If it's administrative, it needs to
21 stop here.
22 We'll also present evidence today on how
23 the part-petitions here don't satisfy the
24 requirements of law. Strict compliance with those

Page 17

1 requirements is necessary. And there are several
2 failings on that front. Namely, the insufficiency of
3 signatures, the failure to satisfy very clear
4 ward/precinct requirement in the charter, failing to
5 put the title of the ordinance for referendum on the
6 petitions, themselves, a strict requirement both
7 under the charter and Ohio Revised Code, and failing
8 to put the title and text of the proposed ordinance
9 on the petitions, themselves.
10 Again, each of these serve as a basis for
11 these petitions not to go forward. They do not
12 satisfy the requirements of law or the Ohio
13 constitution, and each of those provide a basis for
14 this court to accept the protest. Thank you.
15 MR. CUCKLER: Thank you, Counselor.
16 Appreciate that.
17 Chris?
18 MR. BURCH: Thank you, Mr. Chairman and
19 Members of the Board. I just want to make a few
20 quick points. First, I just want to quickly recap
21 our procedural history in this case. And then I just
22 wanted to make a few quick points that we'll dive
23 into more thoroughly when we get to our argument
24 section.

Page 18

1 Procedurally speaking, what we've seen is
2 that the developer has continually asked for this
3 board and city council to exceed their authority
4 under Ohio law, and they continue to do so here
5 today.
6 So we'll start at the beginning, as they
7 say. On August 1, the protestor appeared before this
8 body, and explicitly asked this board to consider
9 things that are outside of the scope of their
10 authority. The Powell charter is extremely clear
11 that the board of elections at that juncture was to
12 consider only the number of signatures, the number of
13 valid Powell electors who had signed the petitions
14 that had been submitted.
15 On the advice of counsel from what was
16 made clear to us in the record, the board of
17 elections chose to ignore the developer, because the
18 developer was asking the board to exceed its
19 statutory authority. The board then very
20 thoughtfully counted the number of valid Powell
21 electors only who signed the petitions, and then
22 referred that number pursuant to the Powell charter
23 to city council. That was August 1st.
24 Moving to August 19, before city council,

Page 19

1 the protestors once again begged city council to
2 exceed their statutory authority, to kick these
3 measures off of the ballot. And city council, again,
4 refused to entertain this invitation to exceed their
5 legal authority to do so.
6 In both of those cases, council's
7 authority was clear, and we were pleased to see that
8 both bodies have already taken steps to not exceed
9 their statutory authority under law.
10 Here we are again. We hear the same
11 arguments again. We hear the same protestors again.
12 They are asking this board to exceed its statutory
13 authority. Even if they are not asking this board at
14 this juncture to exceed their statutory authority,
15 they are still wrong. But we seem to be hearing the
16 same arguments over and over again.
17 So that being said, I just wanted to give
18 you a little bit of procedural posture given our
19 current juncture.
20 The second thing I want to address just
21 very briefly is the fact that we believe that this is
22 a legislative act, a legislative act, both our
23 legislative acts by city council. And the reason for
24 that is that an administrative act stays within the

Page 20

1 confines of established law. Administrative act
2 stays within the confines of established law.
3 What we see here is a submission by the
4 developer for a new development. That is not, in
5 multiple ways, not compliant with preexisting law.
6 We found numerous factual defects with the
7 protestor's development plan that we will elaborate
8 on. And for those reasons, when council acted to
9 approve this development, they've exceeded
10 pre-established law, and, therefore, their action was
11 legislative in nature, not administrative in nature.
12 And we'll dive into that a little bit more. Thank
13 you.
14 MR. CUCKLER: Thank you, Chris. Is your
15 client or any of the actual petitioners here today?
16 MR. BURCH: Mr. Ebersole, who is one of
17 the petitioners, will be here shortly. Today is his
18 son's first day of kindergarten, and he is making
19 sure that procedure goes smoothly.
20 MR. CUCKLER: Okay. Thank you. Bring it
21 back to the board. I don't think there is any need
22 for any comment. I think we can get right into
23 arguments. I wanted to see if anybody has any
24 specific point in question?

Page 21

1 MR. BURNWORTH: I probably have one.
2 MR. CUCKLER: Go ahead and ask it.
3 MR. BURNWORTH: Maybe you would be best.
4 Is it, Chris?
5 MR. MILLER: Joe Miller.
6 MR. BURNWORTH: If the city council heard
7 a lot of this preliminary arguments and so on, and
8 they went ahead and approved it to send to us, our
9 job is to merely, you know, accept. We're not here
10 to certify.
11 I would think that the council would have
12 gone through all of the legal pros and cons of every
13 situation, and yet they chose to forward that to us
14 to accept for the ballot.
15 Can you elaborate as to maybe why they
16 would do that?
17 MR. HOLLINS: Gene Hollins, law director
18 of the City of Powell, here on behalf of the City of
19 Powell with Jennifer Crogan. And I think the other
20 on the agenda was to provide the city the
21 opportunity, as the other here, and that leads to
22 whatever opening statement I was going to make.
23 MR. BURNWORTH: Oh, okay. Well, I will
24 just let you do that.

Page 22

1 MR. HOLLINS: Mr. Burnworth, let me go
2 ahead and address that directly. Mr. Chairman,
3 Members of the Board, the main, I think, point I
4 wanted to pass along to you from the City of Powell
5 is that -- well, first of all, let me repeat
6 something I said to the city residents and to the
7 attorneys. This was awfully well briefed. You know,
8 the presentations by both sides have been extremely
9 helpful. And I commend them for the help, the
10 assistance they've given in the entire process.
11 Working with Mr. Betts, again, has been a joy and has
12 made the process as easy as could possibly be.
13 Based on their research and the extensive
14 research that we then did as a follow-up, what we had
15 advised council was that they could only consider
16 things that were apparent on the face of the
17 petition. That's pretty clear from the case law.
18 So if the legislative and administrative
19 distinction was not clear on the face of the
20 petition, the case law indicated they are not the
21 appropriate forum. That's sort of what I'm hearing
22 as the attorney for -- I'm not sure if it would be a
23 tribunal as much or just a lower forum for this
24 matter.

Page 23

1 They did not consider the legislative
2 versus administrative distinction, because there
3 would have been other things, review of the code, and
4 potentially review of extrinsic evidence. And what
5 they wanted to communicate to this board is that they
6 are sort of officially neutral. And by passing it
7 back along to you, it was not an indication that they
8 thought it was an administrative matter or, for that
9 matter, a legislative matter. So that's the message
10 I wanted to send back to the board.
11 I think that's probably the main issue in
12 this morning's proceeding. The other issue,
13 obviously, is some of the issues about the signatures
14 and the sufficiency and validity of the petition.
15 And Mr. Helvey, at the last meeting,
16 wanted council to take a look at the sufficiency and
17 validity under our charter. We went through, and I
18 can pass along at the appropriate time, whenever the
19 board thinks it's appropriate, the Rules of
20 Engagement, the Rules of Interpretation that were
21 used to look over the signatures that led us to make
22 the determination that they had far more than valid
23 and sufficient signatures. They are very similar
24 to -- in essence, I think council wanted to

Page 24

1 communicate back to you -- they are very similar to
2 the rules that you would use. There's one or two
3 potential twists.
4 But I would be happy to pass those along
5 to you, because I know some of those are still at
6 issue in this hearing.
7 MR. CUCKLER: Thanks, Gene. There will be
8 some more opportunity then for you.
9 MR. HELVEY: Can I ask a question?
10 MR. CUCKLER: Yes, Ed.
11 MR. HELVEY: Gene, so you are you saying
12 that, in your opinion, that the City Council of
13 Powell just looked procedurally at the petition and
14 not -- did not consider the administrative versus
15 legislative question?
16 MR. HOLLINS: Exactly. They were really
17 looking at signatures. The only substantive matters
18 would have been only those -- what I advised them,
19 they had very limited discretion. It wouldn't be
20 used as abuse of discretion. I think that's what
21 case law would indicate. But unless it was a very
22 apparent facial defect, substantive defect,
23 unconstitutional on its face type of thing, that it
24 wasn't -- we weren't the appropriate forum for

Page 25

1 anything that wasn't apparent on its face.
2 Therefore, according to case law I read,
3 administrative versus legislative if not apparent on
4 the face of the petition, needs to be taken up by the
5 board of elections and the courts.
6 MR. HELVEY: I'm not sure we're the proper
7 forum either. I'm really going to have to be
8 convinced of that.
9 MR. CUCKLER: This body is used to getting
10 issues in front of it that have been kicked to us by
11 trustees and council when sometimes they didn't want
12 to make the hard decisions themselves.
13 Anything --
14 MR. BURNWORTH: That answered my question.
15 MR. CUCKLER: Okay. Anything, Chris,
16 before we get into arguments?
17 MR. BETTS: I would just indicate to the
18 board to listen carefully to the
19 administrative/legislative issues that are going to
20 be brought up. I do think in accordance with the
21 case law, it's an issue that this board is going to
22 be charged with making a decision on.
23 I realize it's not in the normal realm of
24 the issues that this board normally deals with in

Page 26

1 terms of election. However, it appears from the case
2 law that I have read that it is something that this
3 board is charged with making a decision on.
4 MR. CUCKLER: So you believe that this
5 body is the proper forum to determine?
6 MR. BETTS: In accordance with the case
7 law, I think this board making a decision on the
8 legislative/administrative issue is consistent with
9 the case law.
10 MR. CUCKLER: Thank you, Chris.
11 Joe, turn it back over to you.
12 MR. MILLER: Thank you.
13 MR. CUCKLER: Sorry, I know this is not
14 the, United States Supreme Court and all the
15 trappings, but, hopefully, we're sticking to our
16 process. Go ahead.
17 MR. MILLER: We would call David Betz.
18 MR. BURCH: I'm just going to register an
19 objection. We were not given any kind of advance
20 notice that the protestor would be calling any
21 witnesses.
22 MR. CUCKLER: Okay. Objection is noted.
23 Dave, good to see you here. Are you
24 comfortable there? You've been in the hot seat

Page 27

1 before. You've been in Powell. You're used to it.
2 MR. MILLER: Thank you, Chair Cuckler.
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Page 28

1 DAVID BETZ
2 being first duly sworn, as hereinafter certified,
3 testifies and says as follows:
4 EXAMINATION
5 BY MR. MILLER:
6 Q. Mr. Betz, please state your name and
7 professional position for the record.
8 A. My name is David Betz, B E T Z. I'm
9 director of development with the City of Powell.
10 Q. How long have you been the director of
11 development with the City of Powell?
12 A. Almost 22 and a half years.
13 Q. And as the development director of the
14 City of Powell do your duties include oversight of
15 Powell's planning, zoning and economic development
16 department?
17 A. Yes, they do.
18 Q. In that role, are you familiar with a
19 development proposed by the Center at Powell
20 Crossing, LLC?
21 A. Yes, I am.
22 Q. I'd like to hand you an exhibit book,
23 Mr. Betz, and ask if you would please refer to
24 Exhibit 1 within that binder. Do you recognize

Page 29

1 Exhibit 1?
2 A. Yes, I do.
3 Q. Is it affidavit that you reviewed and
4 executed on July 31, 2014?
5 A. Yes, it is.
6 Q. Does it accurately set forth facts of
7 which you have knowledge concerning that proposed
8 development?
9 A. Yes, it does.
10 Q. Generally speaking, Mr. Betz, what is the
11 development proposed by the Center at Powell
12 Crossing, LLC?
13 A. The development consists of two new
14 commercial buildings of 7,000 square feet each.
15 There's an existing building on the property. It's
16 an old house, historic house, that the city asked the
17 developer to retain, the Old Dr. Campbell house that
18 would be used for office or business use.
19 Then there's four buildings with a total
20 of 64 multi-family residential units. There's also
21 streetscape enhancements, bike path enhancements to
22 connect to neighborhoods to the south, other site
23 amenities included within the project including
24 benches and landscaping.

Page 30

1 Q. What is the location of the proposed
2 development, Mr. Betz?
3 A. It's on West Olentangy Street. The
4 address, I believe, is 147 West Olentangy Street.
5 It's just west of the CSX railroad crossing on
6 Olentangy Street right in downtown.
7 Q. Would you take a look at Exhibit A to your
8 affidavit, Mr. Betz; what is Exhibit A?
9 A. Exhibit A is the zoning map for the City
10 of Powell.
11 Q. What is the zoning of the location of the
12 proposed development at issue in this case?
13 A. The zoning of the property is in our
14 downtown business district.
15 Q. And is that a planned district?
16 A. Yes. The downtown business district is a
17 planned district. So it falls under the category of
18 having to go through our development plan process
19 within our zoning code.
20 Q. Could it also be considered a planned unit
21 development?
22 A. Yes, it's a type of planned unit
23 development. However, in Powell, we just call it our
24 districts, either planned -- planned districts.

Page 31

1 Q. And this downtown business district, when
2 was that zoning enacted?
3 A. That zoning was enacted in 2005.
4 Q. It was not enacted for this project?
5 A. No, it was not.
6 Q. Turn to Tab 13 in the binder, if you
7 would, please, sir. Do you recognize Tab -- or
8 Exhibit 13?
9 A. Yes. That is Ordinance 2005-20. This is
10 the ordinance that was adopted by city council
11 unanimously that created the downtown districts that
12 we worked on including the downtown business
13 district.
14 Q. Was the downtown business district changed
15 or amended for this proposed development?
16 A. No, it was not.
17 Q. Are there certain hallmarks of amendment
18 to the zoning code or zoning classifications that are
19 reflected in Exhibit 13?
20 A. What do you mean by that question?
21 Q. For instance, to change zoning
22 classification or the zoning classification, is
23 reference made in the ordinance to doing so?
24 A. Yes. Both the ordinance face, itself,

Page 32

1 references the zoning code amendment text that's
2 attached to it. The text changes the districts that
3 were established before this ordinance was adopted.
4 So as you could see, Powell residence
5 district changed to downtown residence district. And
6 then the proposed new zoning text -- all new zoning
7 text was based upon our study of the downtown and
8 what our community wanted at the time.
9 Q. Does an amendment to zoning
10 classifications by ordinance also have to attach an
11 amendment to the zoning map?
12 A. Whenever there's a change in zoning
13 districts, then we do change the zoning map. So at
14 this time with this district change, we did change
15 the zoning map to reflect the new zoning districts.
16 Q. And so is it true the development at issue
17 here was approved by Ordinance 2014-10?
18 A. I believe so, yes.
19 Q. Did 2014-10 include in its title or its
20 text an amendment to the zoning code or an
21 amendment -- attach an amendment to the zoning map?
22 A. No, it did not.
23 Q. Does this existing zoning classification,
24 the downtown business district, expressly permit each

Page 33

1 of the uses proposed for this development?
2 A. Yes. Each of the uses proposed for this
3 development is permitted use within the downtown
4 business district.
5 Q. Turn to Exhibit B of your affidavit, if
6 you would, please, sir. What is Exhibit B to your
7 affidavit?
8 A. Exhibit B is Chapter 1143 of our zoning
9 code.
10 Q. And does this set forth the regulations
11 and zoning for the zoning districts in Powell
12 including the downtown business district?
13 A. Yes. This establishes the regulations for
14 all the zoning districts within the city, actually,
15 and sets forth the procedure by which we review
16 planned district plans.
17 Q. Would you describe for the Board of
18 Elections that procedure you just mentioned?
19 A. Sure. When a proposed development comes
20 forth to our office, we receive initially a sketch
21 plan -- or a pre-application meeting it's called.
22 Sketch plan reviews in general without any guarantee
23 from both sides just the description of the plan,
24 what's going to be presented to us in the future, and

Page 34

1 what the uses are, and, basically, how possibly the
2 architecture at that time. Comments are made from
3 both the public and staff and the commission, and the
4 developer goes back and then submits what is called a
5 preliminary development plan.
6 A preliminary development plan has a lot
7 more detailed information, more detail on the
8 planning aspects and zoning requirements and details
9 on the architecture, details on public improvements
10 that are going to be necessary for the project.
11 So the preliminary planning goes to our
12 planning and zoning commission. Our planning and
13 zoning commission then takes action on that
14 preliminary development plan.
15 Once that plan is approved, the applicant
16 goes back, revises the plan based on the conditions
17 set forth by planning and zoning commission in the
18 preliminary development plan.
19 After that, they submit a final
20 development plan. They submit a final development
21 plan with requirements of what you see in a
22 development plan, all the details. A lot of
23 preliminary engineering then is done so we know that,
24 in fact, this plan meets zoning requirements, can

Page 35

1 meet all the engineering needs and the requirements,
2 and we know that that final development plan, that
3 project can happen. That final development plan then
4 goes on to city council for approval.
5 Q. Is that the procedure that was filed for
6 the proposed development in this case?
7 A. Yes, it was.
8 Q. Is that referred to as the administrative
9 review process?
10 A. That is our administrative review process
11 for development plans.
12 Q. And the proposed development here could be
13 approved under this existing zoning you've described?
14 A. Yes, it could.
15 Q. Did the review and approval of this
16 development plan simply administer the zoning already
17 in place?
18 A. I believe so, yes.
19 Q. Take a look at Exhibit C of your
20 affidavit. What is Exhibit C?
21 A. Exhibit C appears to be a copy of the
22 meeting minutes from November 13, 2013, of planning
23 and zoning.
24 Q. Did you attend the meetings of planning

Page 36

1 and zoning as it relates to this application and
2 development plan?
3 A. Yes.
4 Q. What was the recommendation of planning
5 and zoning? Let me ask you this, Mr. Betz. Did you
6 recommend approval?
7 A. On 13, yes, it did approve it with eight
8 conditions.
9 Q. And what was the vote?
10 A. 5-0, yes.
11 Q. Did city council, pursuant to the city's
12 administrative review procedures, then consider the
13 recommendation of planning and zoning?
14 A. Yes.
15 Q. And did you attend that meeting?
16 A. Yes, I did.
17 Q. And did you present to council that
18 evening?
19 A. Yes, I did.
20 Q. Did you explain to council that the
21 proposed development plan is consistent with the
22 zoning in the downtown business district and the
23 city's comprehensive plan?
24 A. Yes, I did.

Page 37

1 Q. Turn to Exhibit 2, if you would, please,
2 sir. Does Exhibit 2 appear to be the meeting minutes
3 of city council where they considered the
4 recommendation of planning and zoning on this
5 development plan?
6 A. Yeah, these are the meeting minutes of
7 June 17, where they had a second reading for that.
8 Q. Turn to Page 14 of Exhibit 2, if you
9 would, please, sir.
10 A. Yes.
11 Q. I want to refer you to the first full
12 paragraph on that page that begins: Councilman
13 Crites thanked?
14 A. Um-hum.
15 Q. And, specifically, it says on the middle
16 of the 4th line -- do you remember what
17 Councilman Crites said at that meeting? (Reading)
18 He is also an attorney. And as an attorney for at
19 least 15 years, he's also served as city law director
20 and village solicitor of a number of different
21 communities. And then Mr. Crites went on to say:
22 This is not a legislative action or a case of zoning,
23 whether they are debating whether or not apartments
24 should be included as part of the zoning; do you

Page 38

1 recall that statement by Mr. Crites?
2 A. I do recall that.
3 MR. CUCKLER: What exhibit are you reading
4 from again?
5 MR. MILLER: Page 14 of Exhibit 2.
6 Q. Do you recall that Mr. Crites also said at
7 that hearing, "The zoning is in place, and council is
8 acting in an administrative quasi-judicial capacity"?
9 A. Yes.
10 Q. He made that statement that evening?
11 A. Yes.
12 Q. Did Mr. Crites also say that Councilman
13 Cline is completely correct that the developer has
14 rights in this type of proceeding, and the council's
15 objective, goal and responsibility is to take a look
16 at the zoning code that has been in place for at
17 least 10 years to see whether or not the development
18 plan is consistent with that?
19 A. Yes, I do recall him saying that.
20 Q. Take a look at Exhibit E to your
21 affidavit, Tab 1E. What is Exhibit 1E?
22 A. This is the Ordinance 2014-10. This
23 ordinance approved the final development plan for the
24 Center at Powell Crossing.

Page 39

1 Q. Okay. It's approval of the application.
2 Did city council in any way change or alter the
3 property zoning?
4 A. No, it did not.
5 Q. Did it administer the zoning already in
6 place?
7 A. Yes, it did.
8 Q. Does the properly today remain zoned in
9 the downtown business district?
10 A. Yes, it does.
11 Q. If, in fact, the zoning had been changed,
12 Mr. Betz, would that be indicated in this ordinance?
13 A. Yes, it would. Whenever we have an
14 ordinance done on development plan, it might also
15 require a change of zoning from one district to
16 another, or an establishment of the zoning district
17 on property annexed to the city. Then the title of
18 the ordinance at the end it would say something to
19 the effect of in placing the property within whatever
20 zoning district that it would be going in. And it
21 would also be a section of the ordinance at the end
22 of the ordinance, so it would have a section that
23 would require us to go ahead and amend the zoning map
24 and place that property within the zoning that is

Page 40

1 approved by that ordinance.
2 Q. And those hallmarks are not in here?
3 A. They are not here.
4 Q. Finally, Mr. Betz, turn to Exhibit 12, if
5 you would, please. Does Exhibit 12 appear to be a
6 copy of the final approved development plan?
7 A. Yes, it is.
8 Q. Mr. Betz, certain issues have been raised
9 by petitioners concerning whether an application was
10 signed, the developer's ability to finance the
11 project, and whether a bond was required. Can you
12 speak to those issues?
13 A. When we get development plans, especially
14 in large format like this, we receive a couple boxes
15 at a time. And at that point in time, the person
16 creating the plan, which is this Faris Planning &
17 Design, submitted the application with a blank --
18 with a blank, unsigned application form.
19 Later, I think it was the next day,
20 Valerie Swiatek, who is one of the members of the
21 LLC, came in and paid for their application fee and
22 submitted the signed copy of the application.
23 Q. And I apologize for making you jump around
24 within the exhibit book -- well, let me just ask you

Page 41

1 generally: Was the administrative review process
2 established by the city followed in this case with
3 regards to this development plan?
4 A. Yes.
5 Q. Turn to Tab E of your affidavit. Tab 1E,
6 I apologize, Mr. Betz.
7 A. This one?
8 Q. Yes. E was the ordinance approving of the
9 development plan. Turn to the last page of that
10 exhibit, if you would, please.
11 A. Um-hum.
12 Q. Petitioners had mentioned to this board,
13 the significance of Miss Ross's stamp saying this
14 legislation has been passed in accordance with the
15 city charter on this date. Do you see that?
16 A. Yes.
17 Q. In your experience, your 22 years with the
18 city, and final development plan approval through the
19 city's administrative processes, does that stamp make
20 this action legislative?
21 MR. BURCH: I'll object here. Legislative
22 and administrative distinction is a legal conclusion
23 of the first rate. My understanding is Mr. Betz is
24 not a lawyer. I have no objection to Mr. Betz's

Page 42

1 testimony on the factual nature of this case. But to
2 ask Mr. Betz what is essentially one of the legal
3 questions before the board, I think exceeds the scope
4 of his testimony.
5 MR. CUCKLER: Thus noted, Counselor. I
6 appreciate that. I find that his experience in how
7 this actually works might be helpful actually to the
8 board. Proceed.
9 A. The stamp that Miss Ross uses, she uses
10 this on all the ordinances and resolutions.
11 Basically, it's a certification that the city
12 followed its charter in adopting both an ordinance
13 and/or resolution, and she dates and signs it.
14 Q. And to that point, would you turn,
15 finally, Mr. Betz, to Exhibit 14.
16 A. Yes.
17 Q. Is 14 a copy of a resolution of the City
18 of Powell rather than an ordinance?
19 A. Yes, it is. This is a resolution that
20 elected Jim Hrivnak mayor.
21 Q. Does it contain that same stamp of
22 Miss Ross?
23 A. Yes, it does.
24 Q. Finally, Mr. Betz, so I am clear, was this

Page 43

1 plan approved by city council as part of
2 administering the zoning already in place for this
3 property?
4 A. Yes, it was.
5 MR. MILLER: I don't have anything further
6 at this time.
7 MR. BURCH: Mr. Betz, if you could turn
8 to --
9 MR. CUCKLER: Hold on, Counselor. One
10 second. We're going to let the board just have a
11 couple questions, and then we'll proceed to you.
12 MR. HELVEY: I'm new to this zoning stuff,
13 I'll make no bones about that. And I'm looking at
14 Exhibit 13 that talks about overlay district. Can
15 you explain what an overlay district is?
16 And then in Section 1142.17, it says in
17 the event of conflict between the requirements of the
18 overlay zone and those of the zone over which it is
19 superimposed, as related to a location situated in
20 both districts, the more stringent requirement of the
21 two districts shall govern unless specified to the
22 contrary.
23 What is the district that the overlay
24 district is overlaying, and which one has more

Page 44

1 stringent requirements?
2 MR. BETZ: The downtown district overlay
3 is, basically, architectural review overlay district
4 that falls over our downtown business and downtown
5 residence district. So you have the base zoning of
6 the downtown business and downtown residence
7 districts. Overlaid on top of that is another layer
8 of regulations. That layer of regulations is
9 architectural review requirements that are followed
10 for planning and zoning commission that have -- gives
11 them the authority of architectural review on
12 specifics of building design.
13 So, for example, how many windows on a
14 building do you have to have, the types of building
15 design that would occur within our downtown district,
16 which is, to us, a very unique place in the
17 community. We want to keep the architecture in a
18 manner that fits within that whole village type of
19 look. So the overlay district sets forth those
20 requirements.
21 Now, if there's anything more stringent in
22 the downtown district overlay than the underlining
23 zoning, that would supersede it unless otherwise
24 governed under the planned district review process.

Page 45

1 MR. HELVEY: So which ruled in this
2 situation, the overlay or the downtown district?
3 MR. BETZ: Yeah, the downtown business
4 district sets forth a lot of the area requirements,
5 setbacks and everything else. The downtown district
6 overlay is purely architectural review.
7 MR. HELVEY: That's why they submitted
8 drawings of street lamps and everything else?
9 MR. BETZ: Yes.
10 MR. BURNWORTH: I have a question.
11 MR. CUCKLER: Go ahead.
12 MR. BURNWORTH: If any of this required a
13 variance or a change, is that something that your
14 commission would recommend for approval to council
15 and does council have to approve the variance?
16 MR. BETZ: Well, actually planning and
17 zoning commission has the authority of any changes
18 within the area requirements under one section of our
19 planned district review process. Planning and zoning
20 commission can make modifications to the guidelines
21 set forth in the underlying zoning district.
22 So, for example, if there is -- in this
23 case, there were a few modifications that the
24 planning and zoning commission accepted. One was the

Page 46

1 size of a sign. One was setbacks for one building of
2 the trash compactor, and another one was for a couple
3 parking spaces.
4 So planning and zoning commission is given
5 that authority in our zoning ordinance to make those
6 kind of modifications.
7 MR. BURNWORTH: Delegated by council?
8 MR. BETZ: Yes. And every time we have a
9 council meeting, of course, we review that with them.
10 MR. BURNWORTH: And they approve it or --
11 MR. BETZ: Well, planning and zoning
12 commission, again, has the authority for that.
13 Council can make changes if they would like. In this
14 case, council adopted the ordinance.
15 MR. BURNWORTH: The reason I mention it is
16 at the bottom of Exhibit C, they talk about -- it's
17 on Page 1, Setbacks and Variances, and continues at
18 the top of Page 2, so that would be a change of the
19 existing zoning plan. So I was curious if city
20 council approved the changes or if that was --
21 MR. BETZ: Yes, that's written in the
22 development plan. Those types of things are always
23 written into the texts or described within the zoning
24 plans. So if you would look at the development plan,

Page 47

1 it will be stated in there in the text that those
2 things are part of it.
3 MR. BURNWORTH: Okay.
4 MR. BETZ: That's part of our review that
5 we do as well as part of our staff reports that we
6 make. So it's quite clear that planning and zoning
7 commission is -- first of all, they -- the setbacks
8 and requirements within the downtown business
9 district and so forth are used as guidelines.
10 Planning and zoning commission has the authority in
11 the planned district review process to modify this.
12 MR. BURNWORTH: Okay.
13 MR. CUCKLER: One last question, and then
14 we'll turn it over to Chris.
15 MR. HELVEY: Something you said just kind
16 of made my ears perk up a little bit. You said that
17 it's within the purview of the planning and zoning
18 commission, but that city council has the right to
19 approve it or make changes?
20 MR. BETZ: Well, they could make changes
21 to it, yes.
22 MR. HELVEY: So the fact that they
23 routinely approve things just means that the plans
24 being submitted fit within the structure, but if

Page 48

1 there's something that they wanted to change, they
2 could?
3 MR. BETZ: They could make changes to it
4 that are not substantial to the plan. If there were
5 substantial changes, there's part of the code that
6 establishes four or five sets of criteria that are
7 substantial changes.
8 For example, if city council would somehow
9 want to increase the density that is recommended by P
10 and Z or change the roadway layout, something like
11 that, that's a substantial change that they want to
12 make, they send it back to P and Z because of that,
13 all right, planning and zoning commission to review
14 and then go back and forth. In this case, that did
15 not happen.
16 MR. HELVEY: Then the word substantial is
17 something that --
18 MR. BETZ: Is defined. There are four
19 criteria that establishes what a substantial change
20 is.
21 MR. HELVEY: Thank you.
22 MR. CUCKLER: Okay. Thank you.
23 MR. MILLER: If it's helpful, I could
24 direct the witness to what he just referred to.

Page 49

1 MR. CUCKLER: Dave, I'm not sure what
2 you're reading there. Just say what it is.
3 MR. BURCH: I'm not sure either.
4 MR. CUCKLER: Say what it is, and we can
5 make a copy for everyone.
6 MR. BETZ: Yeah, this is Section 1143.08
7 of our zoning code. This is planned districts in
8 setting up the general requirements of a planned
9 district. And Paragraph B establishes that wherever
10 development standards are specified herein or
11 elsewhere in this Zoning Ordinance, as in the
12 official schedules of permitted uses and dimensional
13 requirements, these standards shall apply except
14 where other such standards have previously been
15 established and approved by the planning and zoning
16 commission for areas located in planned districts.
17 The official schedules of dimensional requirements
18 shall provide a guide for approval of development
19 plans, but can be modified as approved by the
20 planning and zoning commission.
21 So this is where the ordinance that -- the
22 zoning ordinance that was adopted by council gives
23 the planning and zoning commission that authority to
24 make those modifications.

Page 50

1 MR. CUCKLER: Okay. Could we just get a
2 copy of that, counselor? We'll get a copy, so that
3 way everybody has a copy of that.
4 MR. MILLER: Sure. And for reference, it
5 is within the exhibit.
6 MR. BURCH: I think we got it on Page 136
7 in the Powell zoning code.
8 MR. MILLER: Yes.
9 MR. CUCKLER: Thank you.
10 Mr. Burch, feel free to ask any questions
11 of Mr. Betz.
12 MR. BURCH: Thank you, Mr. Chair.
13 - - -
14 CROSS-EXAMINATION
15 BY MR. BURCH:
16 Q. Mr. Betz, could you turn to Exhibit B of
17 your affidavit. Just let me know when you're there.
18 A. I am ready.
19 Q. And is it correct to say that this is a
20 current copy of the planning and zoning code for the
21 City of Powell?
22 A. It's a portion of it, Chapter 1143, yes.
23 Q. Okay. Thank you. So if I am
24 understanding your testimony, and interrupt me if I

Page 51

1 wrong, what you're saying is that when a planned
2 development in Powell wants approval for building the
3 development, they are supposed to comply with this
4 chapter, is that right?
5 A. They -- yes, they need to comply with this
6 chapter.
7 Q. Okay.
8 A. However, there's some things that may not
9 apply to it.
10 Q. Okay. Could you turn to Page 146 -- and I
11 see the page numbers are sort of on the top on the
12 inside there -- page 146 of the planning and zoning
13 code.
14 You'll see under Subdivision i, the title
15 there being Final Development Plan Application
16 Contents. Are we on the same spot?
17 A. Yes.
18 Q. Could you read the second sentence of that
19 subdivision starting with the word Each?
20 A. (Reading) Each application shall be signed
21 by the owner attesting to the truth and exactness of
22 all information supplied on the application for the
23 final development plan.
24 Q. Okay. And are you aware, Mr. Betz, of

Page 52

1 whether this requirement applies to this subdivision,
2 this development? In other words --
3 A. Sure.
4 Q. -- I'm asking you does -- this applies to
5 the issue before us today, right?
6 A. Certainly, yes.
7 Q. Are you aware of whether or not the
8 developer actually complied with this requirement?
9 A. I believe they do.
10 Q. Okay. Mr. Betz, could you turn to
11 Exhibit 12 in your binder.
12 A. Um-hum.
13 Q. Exhibit 12 in your binder is listed in the
14 Table of Contents as the Final Approved Development
15 Plan. Is that what we're looking at here?
16 A. I believe so, yes.
17 Q. Okay. So this would be where a developer
18 would be needed to comply with that section that we
19 just read, is that right?
20 A. Yes, sir.
21 Q. Okay. So on Page 3, I imagine this
22 signature by Valerie is what you're referencing when
23 you say they've complied with that subdivision?
24 A. Yes.

Page 53

1 Q. Okay. Could you read what she actually
2 signed, the statement that she actually signed? It
3 begins with: I agree.
4 A. Yeah. (Reading) I agree to grant the City
5 of Powell Staff and the Planning and Zoning
6 Commission members considering this application
7 access to the property subject of the application for
8 the purposes of reviewing this application and
9 posting public notice for this application.
10 Q. So could you summarize in your own words
11 what that statement says?
12 A. Basically, it gives us the authority to go
13 on to the property and make our assessments as staff
14 and the commission for examining the plan and
15 examining the property as we see fit.
16 Q. Okay. So it's basically allowing you on
17 to the property where the development will take
18 place, you and your staff, the planning and zoning
19 folks?
20 A. Sure does.
21 Q. Okay. But I'm going to have you turn back
22 to Page 146 in Exhibit B. Because I thought that the
23 sentence that you read said: Each application shall
24 be signed by the owner attesting to the truth and

Page 54

1 exactness of all information supplied on the
2 application for the final development plan, is that
3 right?
4 A. Yes, sir.
5 Q. So just in your own words, could you
6 summarize where that signature is that complies with
7 that sentence in Subdivision I?
8 A. I'm looking for it in the text. I think
9 somewhere in the text of the plan, it does relate
10 that they've stated that it's true and exact.
11 Usually, it's in the text of the plan.
12 Q. You're saying in the text of the final
13 development plan there's a signature page?
14 A. Not a signature page, but attesting to it,
15 and the signature on the application form attests to
16 that.
17 Q. Okay. Are you aware of where that would
18 be in the development plan?
19 A. That's what I am looking for. Page 6,
20 number 11.
21 Q. I'm not seeing a signature attached to it.
22 A. The signature on the application is
23 attesting -- is enough for us to know that this is
24 true and exact. This statement is all that's needed

Page 55

1 within this text. They make the statement and have
2 the application, so it's fine with us. We're the
3 ones that set up the application form, not the
4 applicant.
5 MR. BURCH: I see. To me that doesn't
6 look like compliance with the Powell zoning and --
7 planning and zoning code, but I think we'll have to
8 just agree to disagree to that point.
9 MR. MILLER: Objection, there will be
10 argument later.
11 MR. BURCH: No further questions for this
12 witness.
13 MR. CUCKLER: Okay. Anything for
14 Mr. Betz?
15 MR. MILLER: No.
16 MR. CUCKLER: Any questions? Any more
17 questions?
18 MR. BETZ: I'll be here.
19 MR. CUCKLER: Thanks, Dave. Appreciate
20 it.
21 Are you finished with your --
22 MR. MILLER: No. Very briefly, I would
23 present to you a few other exhibits and basis for
24 argument.

Page 56

1 MR. CUCKLER: Okay. You have a few
2 minutes.
3 MR. MILLER: Okay. As I mentioned in my
4 opening, there are additional reasons why these
5 petitions could not go forward to the ballot.
6 For the part-petitions, the standard under
7 the law is strict compliance. The Supreme Court has
8 been very clear on case after case. Substantial
9 compliance doesn't suffice. Close enough is not good
10 enough. Every requirement must be met precisely.
11 The insufficiency of the signatures, there
12 is a ward/precinct requirement. Those are meaningful
13 words in the Powell Charter. They wouldn't be there
14 otherwise. They can't be read out.
15 Exhibit 6, I'll go through this quickly.
16 They are in the books before you. Exhibit 6 are your
17 own precinct boundary maps. Each precinct is Powell
18 A, Powell B, Powell C through Powell J. That is the
19 name of the precinct.
20 So to Exhibit 7, your own canvas sheets
21 list the precincts as Powell A through J.
22 Exhibit 8, records of the board of
23 elections for voter registrations, again, precinct,
24 Powell A, Powell B. In this one it's in the top

Page 57

1 right-hand corner, Powell G.
2 Secretary of State voter forms and records
3 of registration, Exhibit 9. Powell J. Again, these
4 are strict requirements. If you look at Exhibits 4
5 and 5 -- and I'll just hold them up for you and
6 compare. Certain circulators, for instance, Exhibit
7 4, knew the requirements and required each signatory
8 to write Powell C, Powell A, Powell D.
9 Tab 5 would be an example of a failure to
10 strictly comply with the requirements of the city
11 charter in completing the forms. There is in
12 Delaware County no Precinct G or A or B. These
13 requirements matter. The Supreme Court has upheld
14 these ward/precinct requirements.
15 Defects in the petitions, themselves,
16 again, for the referendum, Section 605 in the charter
17 requires that the referendum petition shall contain a
18 number of full, correct copy of the title and dates
19 of passage of the ordinance.
20 For that purpose, the Secretary of State,
21 themselves, at Exhibit 10 put out form petitions for
22 referendum. And it says the following is a full and
23 correct copy of the title and text of the proposed
24 ordinance. Circulators for whatever reason chose not

Page 58

1 only not to use this form, but chose not to follow
2 this requirement. Instead saying, See Attached.
3 Well, the Supreme Court said that title and text
4 requirements are important so that the signers are
5 immediately alerted to what the subject of the
6 referendum or initiative is.
7 Tab 11 is the Secretary of State's form
8 initiative petition. Same thing, the following is a
9 full and correct copy of the title and text of the
10 proposed ordinance. Had they done that, they would
11 have been in full compliance with the charter. They
12 did not do that. There is no case law allowing for
13 incorporation by reference. Instead, strict
14 compliance is what is required.
15 So for all of these reasons, these
16 petitions are invalid. I will cover more
17 exhaustively in the argument of law each of the bases
18 for your authority and each of the bases for these
19 petitions for invalidity. Thank you.
20 MR. CUCKLER: Thank you, Mr. Miller.
21 MR. HELVEY: Mr. Miller, you said the
22 Supreme Court has ruled about the petition of the
23 ward. Do you have cases that you could provide to
24 us?

Page 59

1 MR. MILLER: I do. They are cited in our
2 protest, Mr. Helvey. And let me quickly give you a
3 page reference. On Page 18 and 19.
4 MR. HELVEY: Okay. Thank you.
5 MR. MILLER: We refer to the Pope case
6 from the Supreme Court, the Corigin case from the
7 Supreme Court and a court of appeals case from Marion
8 County, and all of them link such requirements.
9 MR. CUCKLER: Mr. Burch, you're ready with
10 your argument?
11 MR. BURCH: Yes, sir. Thank you.
12 MR. CUCKLER: Mr. Burch, this is your
13 opportunity to present your oral argument.
14 MR. BURCH: Thank you, Mr. Chair and
15 Members of the Board. Well, we've been down this
16 road with council before, but we'll go down this road
17 again for the sake of the order.
18 The protester is raising a number of quite
19 curious objections with respect to the sufficiency
20 and validity of the petitions. We are more than
21 happy to walk through all of those arguments because
22 we find all of them to be without merit. And so we
23 will spend a few minutes of our time today doing so.
24 Some of these arguments -- sometimes I

Page 60

1 don't know where to begin. In their original
2 protest, the developers stated in their document to
3 this board that the part-petitions at issue failed to
4 provide for any place for elector to provide his or
5 her ward.
6 I almost feel like we're grasping at
7 straws at this point. Obviously, there are no wards
8 in the City of Powell. The protester has since
9 dropped that argument. And I can only assume why
10 they would drop such an argument.
11 The next argument appears to be an
12 argument based on the precincts that 400 electors
13 have listed on their part-petitions. The first thing
14 I want to note to the Board of Elections is that the
15 part-petition circulators in this case absolutely
16 strictly complied with the actual rules.
17 They may or may not have strictly complied
18 with the rules as the developer sees them. But what
19 is more important for this body is what the rules
20 actually require. And so for that reason, I do want
21 to point out for starters that when we talk about the
22 precincts, each signature circulator carried with him
23 or her a precinct map for the area of the City of
24 Powell that that person was collecting signatures.

Page 61

1 And so in the part-petitions, which I
2 believe you have the originals, we would ask that you
3 freely review them for their sufficiency and
4 validity, because we have absolute confidence that
5 they are perfectly sound.
6 Now, when a person who lives in Powell is
7 asked to list his or her precinct and lives in
8 Precinct A, and lists under the column for Precinct
9 the letter A, it is difficult to imagine a
10 circumstance in which that person has not strictly
11 complied with the election laws. And the protestor
12 will show you no case law from any court in which
13 failing to list Powell A or city name and a
14 designation is sufficient to invalidate a signature
15 on a part-petition. No such case law exists, and I
16 think we all understand why that would be the case.
17 A. The second argument after we dealt with
18 precinct requirement has to do with the text and
19 title -- excuse me, the title and date of passage of
20 the referendum and the proposed ordinance. I'm not
21 sure if you have a copy of that in front of you. But
22 on that front page, the circulators' copy said the
23 required elements, the title and text, and the title
24 and date of passage are attached hereto and

Page 62

1 incorporated herein to this part-petition. And then
2 it was listed -- complete and certified copy of the
3 text and title were listed with each and every
4 part-petition. We obtained over 40 copies of those
5 certified copies from the city clerk, which is to say
6 that the petitioners crossed every I and -- excuse
7 me -- crossed every T and dotted every I when it came
8 to insuring strict compliance with the Powell
9 Charter.
10 One other thing I want to note is that the
11 Powell Charter does not say anything about whether
12 the text or title or any element must be contained on
13 the surface or front page of a part-petition. What
14 the Powell Charter says is that a circulator -- that
15 it must contain those required elements. It says
16 that they must contain those required elements.
17 There can be no serious doubt as to
18 whether each part-petition circulated by our
19 circulators have strictly met this requirement
20 because, as I said, each and every part-petition
21 contained all of the necessary elements. And not
22 only did we comply with that, we also put on the
23 front page that all of these necessary elements are
24 incorporated herein -- attached hereto and

Page 63

1 incorporated herein.
2 Again, there are no cases from any court
3 that allow for a protestor to kick something off of a
4 ballot on the basis of an argument of that nature,
5 shall we say.
6 So, again, with respect to the petitions,
7 themselves, city council -- first of all, this board
8 looked at the validity of those signatures first. I
9 mentioned that on August 1.
10 We were very satisfied to see that the
11 board stayed within their lane and only counted
12 basically the signatures necessary. They then
13 referred it to city council. City council's law
14 director and his staff, according to the record,
15 conducted their own investigation. And, again, they
16 also found -- remember we're looking from city
17 council's perspective, they are looking at the facial
18 validity of the petitions: Are there defects on the
19 petitions; did you leave out names of the
20 circulators; did you leave out the affidavit; did you
21 fail to include the felony text, the text about
22 committing election felony. All of those necessary
23 elements are perfectly sufficient on these
24 part-petitions.

Page 64

1 With respect to any of the other arguments
2 raised by the developer -- raised by the protestor
3 with respect to the part-petitions, you know, we
4 would only ask that council, if it has -- if any
5 members of this board has any doubt as to their
6 sufficiency, we implore you to look at them with your
7 own eyes.
8 What we've seen in this case is a
9 protestor raising a number of arguments that create a
10 lot of smoke and very little fire. And I think that
11 the best remedy for those sorts of arguments is for
12 the members of the board to inspect them, you know,
13 with your own eyes. That's really the strongest
14 argument we have is the original petitions,
15 themselves.
16 I do want to move on a little bit to the
17 distinction between administrative and legislative.
18 This, obviously, is an important question for this
19 board.
20 We acknowledge that where an action only
21 enacts prior existing law, and council were to stay
22 within the boundaries of prior existing law, that
23 such an action would be administrative in nature.
24 That isn't what we see here. What we see

Page 65

1 here is a failure by the developer to submit a final
2 development plan that strictly complies with the
3 requirements under the Powell zoning ordinances.
4 What we're saying then is that when Powell city
5 council took action to approve the plan anyway,
6 defects and all, they exceeded -- they transferred
7 from the administrative realm into the legislative
8 realm by approving a project that is inconsistent
9 with their own code. And in so doing, they have
10 essentially created new law in order to approve the
11 new plan.
12 One other argument I want to mention is
13 that -- and you'll see this in Exhibit 1 of the reply
14 brief that we filed with this body, Exhibit 1 of
15 the -- of our memorandum in response is a copy of the
16 document that we used because it was certified to us
17 by this Powell clerk, Sue Ross.
18 Opposing counsel already has a copy of
19 this, which was filed with them as well. You'll see
20 on the date that on the eighth day of July, Sue Ross
21 certified that this is a true and exact copy of the
22 original Powell City Ordinance 2014.10, which I keep
23 and maintain in the regular course of my regular
24 duties as the clerk.

Page 66

1 Now, the reason we included this is
2 because this is what the circulators used when they
3 were circulating the petitions. This is what was
4 included. Because this is what was provided to us by
5 the Powell clerk as a true and accurate copy.
6 What you might notice is not included in
7 this exhibit is any sort of signature page whatsoever
8 attesting to the validity of the final development
9 plan.
10 The petitioners are at somewhat of a loss
11 as to why when we ask for a certified copy of what we
12 need in order to get our job done in terms of
13 circulating the petitions, we are given a copy of
14 this ordinance, which approves the final development
15 plan, including a copy, which is attached as
16 Exhibit A, you'll see on the second page, the final
17 development plan, a copy of which is attached hereto
18 as Exhibit A and incorporated herein by reference.
19 We're given a copy of that. It doesn't
20 have a signature page that is required by the zoning
21 code.
22 Now, you may recall from Mr. Betz's
23 testimony that the zoning code requires that
24 signature to be in place. And there is no such

Page 67

1 signature on the copy, the certified copy that we
2 asked for from the Powell clerk. That puts the
3 petitioners in a difficult circumstance.
4 Now, later on you'll see in Exhibit 2 --
5 you'll see in Exhibit 2 on the third page that now
6 this application for a final development plan, which
7 includes a signature that apparently grants the City
8 of Powell Staff and Planning and Zoning Commission
9 Members access to the property is apparently a
10 substitute for a signature attesting to the
11 validity -- let me quote from it: Attesting to the
12 truth and exactness of all information supplied on
13 the application for the final development plan.
14 They don't seem identical to me. And not
15 only they do not seem identical, they were not even
16 provided to us when we requested a certified copy of
17 what city council approved.
18 So this is all to say that what we're
19 seeing here, other than the arguments about precincts
20 or wards, nonexistent wards, perhaps I should say,
21 what we're seeing here is extremely exquisite strict
22 compliance by the petitioners when it comes to a very
23 difficult task of collecting a minimum of 238, in
24 reality more like 400, perfectly valid signatures

Page 68

1 from the electors of the city of the Powell in order
2 to give this issue its chance at the ballot box.
3 The city council meetings are heavily
4 attended. This is obviously a very controversial
5 issue in the City of Powell. And what you saw --
6 what you see here is the petitioners strictly
7 complying with every requirement under the law.
8 And then at the same time what you're
9 seeing is the developer who submits the final
10 development plan where corners seem to be cut, things
11 seem to be a little out of place. Well, we kind of
12 just let that slide, if they put the signature on the
13 application, even though it doesn't attest to the
14 truthfulness of what is asserted, and really that
15 signature only grants us access to the property. We
16 kind of just, you know, one thing or the other, eh,
17 it's close enough.
18 Those are the kind of arguments that we're
19 seeing on the opposite side, while we make arguments
20 that are exquisite compliance with the law. So it's
21 with that that we will rest and reserve a little bit
22 more of our time for the arguments. Thank you.
23 MR. CUCKLER: Thank you, Mr. Burch.
24 Appreciate that.

Page 69

1 Any questions by the board before I ask
2 Gene -- do you have anything to add?
3 MR. HOLLINS: No.
4 MR. CUCKLER: Anything, Bruce --
5 Mr. Burnworth?
6 MR. BURNWORTH: I sort of have one, Chris.
7 The signature on the application, I think
8 it said in the council's code that that had to be the
9 owner. Was the signature on the application granting
10 access to this property, the owner?
11 MR. BURCH: From what it appears, the
12 signature page that was produced to us, of course
13 much later -- I mean, this was never produced to us
14 while we were actually circulating the petitions,
15 this true and accurate copy. But the application
16 page that has been later provided to us is signed by
17 a Valerie Swiatek, who lists herself as a member.
18 Member to us probably means a member of
19 the Center at Powell Crossing, LLC, which to our
20 understanding is the owner of that parcel. So we
21 would say that a member is a member of the LLC.
22 MR. BURNWORTH: Okay. I wanted to clarify
23 that a little bit.
24 MR. CUCKLER: Any other question?

Page 70

1 MR. MILLER: If I may be heard?
2 MR. CUCKLER: Yes. Just one second. Any
3 other --
4 MR. MILLER: Well, it was in response to
5 Mr. Burnworth's question. Yes, Mr. Burnworth, the
6 applicant is an LLC, so you have to have a member
7 sign it. That member was Valerie Swiatek, who is
8 here today, and owner in the Center at Powell
9 Crossing, LLC. As Mr. Betz testified, she signed the
10 form provided to her by the city and provided the
11 attestation that it was truthful and correct.
12 Exhibit 12 is a certified copy of that
13 signed application. Why there is an unsigned
14 application, I suspect petitioners, for whatever
15 reason, chose not to ask Mr. Betz that. But the fact
16 of the matter is the city has provided a certified
17 copy and signed application.
18 MR. BURNWORTH: I just noted during
19 Mr. Betz was doing his testimony, there was some talk
20 about the signature page and so on. And the
21 ordinance came up that he operates under. That's why
22 I asked the question, I wanted to clarify that.
23 Thank you.
24 MR. CUCKLER: All right. Next. Did you

Page 71

1 have anything, Shawn.
2 MR. STEVENS: I have two questions for
3 you, Mr. Burch. The first question is: Is there any
4 specific reason why you didn't use the Secretary of
5 State's prescribed form 6I and 6J?
6 MR. BURCH: Yes. So the first issue with
7 that form is that it doesn't provide enough room to
8 include what we were asking the proposed ordinance to
9 fit on that copy. It says -- the proposed ordinance,
10 and I'm paraphrasing it. But it basically says: The
11 proposed ordinance, see below, colon, and gives you
12 about a half a page.
13 So our options were either write up our
14 proposed ordinance, shrink it into size 2 font, and
15 put it in there as basically, for lack of a better
16 term, you know, fine print, and then have to
17 circulate to every person who we're saying, you know,
18 is able to read the entire text -- it puts us in a
19 bind where we have either the option of putting it in
20 fine print and trying to circulate that to 400
21 electors, who we would have to bring a magnifying
22 glass with us to every person who signed it in order
23 to read it.
24 Or to attach thereto, incorporate it

Page 72

1 herein, which is language used, to my knowledge, by
2 every -- by every lawyer in every -- in every facet
3 of the practice of law, is used by the developer in
4 their own application, and is perfectly sufficient
5 for these purposes into which we've never seen a case
6 say otherwise.
7 MR. STEVENS: I appreciate you saying that
8 for us non-lawyers who may have stayed at a Holiday
9 Inn Express last night.
10 My second question has to do with these
11 petitions. So something that's interesting to me as
12 petitions come in to our office, and I'll ask the
13 staff to comment on this also, is this whole notion
14 of affixed. Whether it's affixed or not affixed.
15 Your understanding when they came into our
16 office was that the petition signatures and the rest
17 of this document came together as affixed in one
18 document?
19 MR. BURCH: That is absolutely our
20 representation.
21 MR. STEVENS: Perhaps like this
22 (indicating)?
23 MR. BURCH: Either like that, or I don't
24 know if they used one massive staple to bind it.

Page 73

1 MR. CUCKLER: Who submitted those
2 petitions?
3 MR. BURCH: The circulator. The
4 circulators as well as members of the committee.
5 MR. STEVENS: I would like to know how
6 they came to our office, because that concept of
7 affixation or whatever that word is is of concern to
8 us.
9 MR. CUCKLER: State your name and we'll
10 need to swear you in.
11 (Thereupon, Brian Ebersole was sworn in.)
12 MR. EBERSOLE: I am Brian Ebersole. They
13 were submitted with those clips. What we did is we
14 stapled all the part-petitions together with all the
15 pieces, and then we used a clip, like that, to put
16 them altogether, all the part-petitions together.
17 MR. STEVENS: So as you were circulating
18 them, all of those documents of each part-petition
19 were together?
20 MR. EBERSOLE: Yes.
21 MR. STEVENS: But they are stapled
22 separately. That is why I am curious.
23 MR. CUCKLER: How did you circulate them
24 is his pointed question? How were they circulated?

Page 74

1 MR. EBERSOLE: I shouldn't speak to that.
2 I was not -- I was not an actual petitioner. I only
3 saw it when it was submitted.
4 MR. HELVEY: When they were submitted,
5 were all the documents stapled together or bound
6 together with a clip?
7 MR. EBERSOLE: Yes.
8 MR. HELVEY: Which?
9 MR. EBERSOLE: It was both.
10 Part-petitions were stapled, and then all the pieces
11 were together, stapled for each part-petition, and
12 each part-petition was together with a clip.
13 MR. BURCH: If it would be of value to the
14 board, after today's hearing we would be more than
15 happy to submit an affidavit from every circulator
16 testifying to the fact that the full text was
17 attached to the petition.
18 MR. STEVENS: Your understanding is that
19 the circulators had the full text with
20 part-petitions?
21 MR. BURCH: Absolutely.
22 MR. MILLER: And we would object. This is
23 the quasi-judicial hearing, and those witnesses could
24 have appeared here today, but for whatever reason

Page 75

1 chose not to.
2 MR. CUCKLER: So noted.
3 MR. STEVENS: Can I address that real
4 quick. As the board, we have to assume as they come
5 across our desk, unless we know otherwise, that the
6 petitions were circulated in the manner in which they
7 were presented to us.
8 MR. MILLER: I would point out that the
9 Powell Charter contains a presumption of sufficiency
10 of the signatures, but no presumption as how they
11 were circulated and how the signatures were obtained.
12 It goes directly to its validity.
13 Those clips could have come loose. The
14 circulator's statement, interestingly enough, talks
15 about the foregoing, attests to the foregoing. And
16 then the attachments come after that. There is no
17 attestation as to what came later and was attached.
18 MR. BURCH: If you attest to the
19 foregoing, the forgoing says: The full text is
20 attached hereto and incorporated herein, then you are
21 attesting to the fact that they are attached hereto
22 and incorporated therein.
23 And if I may just use the sentence from
24 the Powell Charter: The petition and signatures, the

Page 76

1 petition and signatures, upon such a petition shall
2 be prima fascia presumed to be in all respects
3 sufficient. So, again, we obviously have no evidence
4 otherwise, and we'll let it rest to that.
5 MR. CUCKLER: I have some questions for
6 Gene, the city attorney on the charter. Everybody is
7 kind of skirting around the charter a little bit. So
8 I am going to ask a little more pointed questions
9 just for clarification.
10 What does the city charter say about --
11 again we've got a referendum and we've got an
12 initiative. The arguments presented so far have kind
13 of blended both of those. Not necessarily arguments.
14 But for my purpose, I would like to see the arguments
15 a little bit more specifically on the referendum and
16 the initiative. Perhaps the arguments are the same.
17 But, Gene, a couple things, all right?
18 Can you explain in the charter what the difference is
19 between a referendum and an initiative?
20 MR. HOLLINS: The charter, the real -- the
21 only procedural difference, if you want me to go
22 back. A referendum, obviously, is something we pass
23 as a non-emergency ordinance. It's not effective for
24 a 30-day period. That 30-day period is specifically

Page 77

1 if the electors and municipality at that point wish
2 to sort of un-delegate the legislative authority that
3 they delegated to council. They have the opportunity
4 to do that through the submission of a proper
5 referendum petition signed by 10 percent of the
6 electors that voted at the last -- I think our
7 charter said -- municipal election.
8 And if it's submitted within that 30-day
9 period, that ordinance does not become effective
10 until approved by the voters on the ballot. There is
11 a process whereby we submit the signatures and the
12 petitions to the Board of Elections.
13 In the first instance, the Board of
14 Elections look at the signatures. I think this board
15 made clear to us at the earlier meeting that they had
16 some interest in how we interpreted our charter's
17 insufficiency and validity of those signatures. And,
18 again, we would be happy to address the protocols
19 that we employed in making that determination.
20 If we -- if council under our -- we
21 rewrote these referendum and initiative charter
22 provisions at the last charter commission go around
23 because they were too confusing. We wanted to sort
24 of make them a little bit more standardized and a

Page 78

1 little bit more user friendly, so to say.
2 If council determines, not our clerk, but
3 if council determines they are valid and sufficient,
4 they return them to this board. Frankly, they pass a
5 resolution to find that they are valid and
6 sufficient, and they vote on whether to forward the
7 matter to the Board of Elections or they fail to
8 repeal the ordinance under referendum. If they fail
9 to repeal, it comes up here, it's on the ballot.
10 With respect to the initiative petitions,
11 it's the same general procedure. We receive a valid
12 initiative petition, initiate an ordinance. The
13 petition is governed by our charter. We send it up
14 here for the validity and sufficiency in the first
15 instance of the signatures. It's returned by the
16 Board of Elections to us. If we do anything other
17 than adopt that initiated ordinance, per our charter,
18 is returned back to the Board of Elections for
19 placement on the ballot subject to, obviously, this
20 type of hearing where a protestor can raise,
21 essentially, legal issues about that.
22 MR. CUCKLER: Thank you. In the city's
23 charter, again, you're the charter expert, being the
24 city solicitor by default is -- let me rephrase and

Page 79

1 ask another question. Where in the charter does it
2 talk about the actual petitions, themselves?
3 One of the arguments in front of us is
4 that the process by which the signatures were
5 gathered lack the opposed measure, can you discuss a
6 little bit what the charter says on the petitions,
7 themselves, and is there a prescribed form? Is there
8 prescribed wording that has to be used?
9 MR. HOLLINS: I think the reference is
10 made that they are assumed to be prima fascia. The
11 form would be assumed to be in compliance. I would
12 have to dig up the exact wording.
13 Other than that, it's really within the
14 limited discretion. I think the case law gives
15 limited discretion to council to look at the
16 sufficiency and validity, determination in light of
17 the existing case law, and determine its own protocol
18 with respect to those.
19 MR. CUCKLER: Right. So the city
20 charter -- is the city charter silent? Does the
21 revised code -- can you --
22 MR. HOLLINS: Yes. If the city charter is
23 silent by default, there is a reference in here to
24 use of the Ohio Revised Code procedures with respect

Page 80

1 to initiative or referendum. And I think, again,
2 we're talking about initiative/referendum relating to
3 ordinances.
4 The charter amendment initiative is not
5 before this board. There is a separate process with
6 respect to it.
7 MR. CUCKLER: So just to be clear, the
8 charter is silent as to what the petitions need to
9 look like, act like, smell like?
10 MR. HOLLINS: That's correct.
11 MR. CUCKLER: Okay. We're just about
12 ready to take a ten minute break. Go ahead, Chris.
13 MR. BETTS: I just want to comment on
14 something that Mr. Hollins said. There is a section
15 in the Charter, Section 605, that I think has been
16 referenced a couple times, that that's where the
17 whole ward and precinct issue is coming up.
18 There are some vague requirements. I'm
19 not trying to contradict Mr. Hollins, but there are
20 some vague requirements of what has to be in the
21 petition, but it doesn't, per se, require a
22 particular form in that respect. But I just wanted
23 to add that. But it's also the Section 605 that
24 addresses the issue that you talked about where the

Page 81

1 charter is silent, then the Ohio Revised Code kicks
2 in.
3 MR. HOLLINS: I think it also says that
4 petitions and signatures shall be prima fascia.
5 MR. CUCKLER: Okay. We're going to take a
6 quick recess for ten minutes, allow everybody to use
7 the restroom, get some more coffee. We'll muster
8 back here at five till, and we'll get in to the
9 question and answer portion. Thank you.
10 (Recess taken.)
11 MR. CUCKLER: Okay. We've come back from
12 a recess. At this time, let's open it up for the
13 board to ask any questions to the protestors or
14 petitioners. Do the Members of the Board have any
15 questions they would like to ask?
16 MR. HELVEY: I have a couple.
17 MR. CUCKLER: Mr. Helvey.
18 MR. HELVEY: Thank you, Mr. Chairman.
19 Mr. Miller, in your protest, this goes to
20 the issue of ward and precinct. We are appointed by
21 the Secretary of State. We work at his or her
22 direction. And one of the directives that we
23 receive, and we consistently receive every year, is
24 how we review petitions per candidates or issues,

Page 82

1 state issues, specifically.
2 In the current election cycle, Directive
3 2014-2 gives us instruction on how to review
4 petitions. I'm trying to find the basis of this.
5 But it says very specifically under Section C,
6 Address of Signer, the second bullet is: The
7 electors' ward and precinct are not required.
8 And you cited some -- two supreme court
9 cases and a court of appeals case, the most recent
10 Supreme Court case was 69.1. Prior to that was 37.
11 Are you aware of any federal cases or
12 settlements that would be the basis of this directive
13 that says that we're not to consider the ward and
14 precinct?
15 MR. MILLER: No. And, in fact, in this
16 respect as alluded to earlier by Mr. Betts and
17 Mr. Hollins, you're controlled by the city's charter,
18 which has that specific requirement.
19 The Secretary of State there is referring
20 presumably to statewide elections, for instance,
21 because the Secretary of State is not going to tell
22 you ward and precinct doesn't matter when you're
23 talking about a local option, for instance, where
24 it's limited to certain precincts and certain wards.

Page 83

1 That requirement still applies. Those guidelines, I
2 believe, largely go to statewide elections in
3 requirements for petitions.
4 MR. HELVEY: I'm not sure that is correct.
5 MR. MILLER: Okay.
6 MR. HELVEY: I think on a liquor issue or
7 a local issue, are we allowed to disregard whether
8 they put on the petition the ward or precinct?
9 MS. HERRON: I didn't hear the full
10 comments, of course, as I came in. But that has been
11 a column that we've had guidance on that would not
12 disallow or matter in a petition.
13 MR. MILLER: Mr. Helvey, I will stand by
14 the specific language of the charter, which controls
15 here, ward and precinct. Again, I'm not taking issue
16 with whether that should be in the charter or
17 shouldn't be in the charter, whether the law should
18 demand strict compliance or shouldn't.
19 I'm just looking at what the charter
20 requires and what the law requires. And, for
21 instance, here it matters. You know, there's plenty
22 of people in Liberty Township who write their address
23 down as Powell, I live in Powell. Well, they don't.
24 They live in Liberty Township, and they don't live in

Page 84

1 Powell A, Powell B, Powell C, Powell E.
2 Everyone is entitled to know, not just the
3 Board of Elections or city council, who signed these
4 petitions and whether they are appropriate for the
5 right signature or not.
6 I presume that's why it's in the charter.
7 Regardless, it's a very clear requirement of the
8 charter.
9 MR. CUCKLER: Any questions? Bruce?
10 MR. BURNWORTH: A couple. Maybe one for
11 the law director, if you don't mind.
12 Is there anything in the charter, to
13 follow-up on what he said, that he finds the
14 corporate boundaries of Powell as a ward?
15 MR. HOLLINS: Mr. Burnworth, we discussed
16 that with council. We do not believe there has been
17 established a Powell ward. There's no ward system
18 for election of council folks as there would be in
19 the statutory city.
20 We believe the language was probably
21 lifted sometime ago in an earlier charter. We
22 drafted the charter from state law. And probably in
23 our next go around, the charter will be reviewed. We
24 do have precincts, but, to our knowledge, there has

Page 85

1 never been established a Powell ward.
2 MR. CUCKLER: Okay. Any other questions
3 of --
4 MR. BURNWORTH: I do. And this might be
5 directed towards counsel here. I'd appreciate any
6 thoughts that either of you -- any of you might have.
7 It seems to be some of the questions I
8 have is whether this whole thing is legislative or
9 administrative. And I go back to divergences that I
10 saw in the actual petition or actions by the council
11 that talked about variances.
12 I had asked earlier if council had to act
13 on that. And Mr. Betz testified that, no, they were
14 delegated authority to deal with divergences and
15 variances of that nature. In my mind, then, the
16 zoning council has legislative authority. If they've
17 been empowered, delegated authority by council --
18 because somebody has to make a decision to go outside
19 of the bounds of the zoning ordinances that were
20 passed. So you're leaving the ordinance to do
21 something different, sidewalks, whatever it is. I
22 read that in Exhibit C, I think, the second page.
23 MR. MILLER: Oh, thank you. Respectfully,
24 Mr. Burnworth, no, that does not rise to the level of

Page 86

1 a legislative act. Because as we heard, the one
2 thing we agree on, and the case law is vast, in the
3 zoning context, whether something is legislative is
4 whether it's enacting new zoning or administering the
5 zoning as it already exists.
6 The testimony and evidence is unrefuted,
7 there was no amendment to the zoning code or change
8 in the zoning classification. That's the test under
9 Ohio law of whether this was legislative or
10 administrative in the zoning context. It was a
11 downtown business district before, downtown business
12 district after.
13 Departure from the guidelines is
14 permissible and followed the code completely.
15 Respectfully, I would point out to you, for instance,
16 even if these were called area variances, even if
17 they were called that, Ohio law treats that as
18 administrative.
19 You pursue an area variance just as these
20 should have been approved through a 2506 appeal
21 saying that shouldn't have been granted. Area
22 variances do not rise to the level of legislative
23 activity.
24 MR. BURNWORTH: Do you concur with that or

Page 87

1 have any thoughts?
2 MR. BURCH: Yeah, we think they submitted
3 a plan that doesn't comply with their own zoning code
4 in numerous ways that are all in our brief.
5 MR. BURNWORTH: Well, specifically, does
6 the divergence from the adopted zoning ordinance in
7 2005, does that constitute a legislative change?
8 MR. BURCH: Yes, we believe that it does.
9 Again, you know, in an argument like this that's so
10 multi-faceted, it can be hard to give every argument
11 its necessary amount of time.
12 And so, yes, we do think that when -- any
13 time there's a divergence from established law, that
14 that new law would be legislative in nature.
15 MR. MILLER: Respectfully, Mr. Burnworth,
16 your question about a departure from the 2005 zoning
17 legislation, respectfully, I would submit to you
18 based on the sworn testimony, there was not. 1143.08
19 B specifically provides: The official schedules of
20 dimensional requirements shall provide a guide for
21 approval of development plans. There was no
22 departure from what is essentially not codified.
23 It's alive, and P and Z can approve conditions. You
24 want that flexibility within a planned district. And

Page 88

1 that keeps its character as administrative.
2 MR. BURNWORTH: I'm not a lawyer, unlike
3 some of the others up here. So I have to ask these
4 sort of questions, especially when it seems to
5 revolve around a key point in the whole case. Thank
6 you for that information.
7 MR. BURCH: The only thing I would want to
8 add is that in these kinds of cases, there's a
9 presumption that it should go on the ballot. So if
10 there's doubt, if the members of the board have doubt
11 with respect to these legal questions that are
12 difficult, we would say that the most appropriate way
13 for it to be handled then would be for, A, to let the
14 voters look at it, decide whether they approve of it,
15 and just as city council -- if city council were to
16 consider a proposed new law, and some people said,
17 I'm not sure this is constitutional, I'm not sure
18 this is legislative versus administrative, if there
19 were considerable legal doubts with respect to that
20 proposed law, the proper remedy would be, wait for it
21 to become a law, and challenge it in the courts.
22 We have zero objection to the developers
23 allowing this to go to the ballot, allowing the
24 voters to have their say on this development. And

Page 89

1 then that's what the courts are for. The courts have
2 the mechanisms in place. They have the legal
3 expertise in place to make a reasoned decision with
4 respect to some of these legal questions that could
5 be very difficult in front of this board.
6 MR. MILLER: And, respectfully, as your
7 counsel has already advised you, that's not the law
8 of Ohio. The Upper Arlington case, Telerico case
9 say: This board must make that
10 administrative/legislative decision. To do otherwise
11 is to disregard law. I'll cover that more
12 thoroughly.
13 MR. CUCKLER: Ed, do you have a question?
14 MR. HELVEY: I have a question.
15 Mr. Hollins, I have a question for you.
16 MR. HOLLINS: Sure.
17 MR. HELVEY: Under the charter, what are
18 the time lines for submitting an initiative or
19 referendum to this board, and at what election would
20 it then go on?
21 MR. HOLLINS: The charter states that it's
22 a 75-day deadline to get them submitted to you. And
23 we discussed this issue with Mr. Betts. I don't
24 believe they were formally submitted until they were

Page 90

1 returned to you after our council meeting here on --
2 what was the date?
3 MR. BURCH: Council meeting, the 19th.
4 MR. HOLLINS: The 19th. So they were
5 submitted on the 20th, which was the 76th day. There
6 was an earlier thought that the first time they came
7 to you for signatures was a submission. Mr. Betts
8 and I talked about that it wasn't a submission. It
9 turned out to be immaterial because we got them
10 returned to you on the 76th day. Both at this point
11 would be eligible for the November 4th ballot.
12 MR. HELVEY: But I think our deadlines are
13 different than that, is that correct?
14 MR. PEDALINE: From the Secretary of
15 State, per the calendar, is 90 days per revised code
16 for anything submitted.
17 MR. HELVEY: Anything submitted.
18 See, I think we have -- I'm working from
19 memory -- but I think your 75-day guideline was
20 enacted in '05 or '99. And since then our time
21 lines --
22 MR. HOLLINS: Right, your time lines have
23 changed. Your statute has changed. But I think the
24 case law indicates that if the charter sets forth a

Page 91

1 different deadline, then our charter deadline would
2 control.
3 MR. KING: If the board would like, when
4 Mr. Betts and I talked about this, the charter would
5 control because the Revised Code allows the charter
6 to control. Because 3 -- I'm sorry, 731.41 allows
7 the charter to exempt themselves out of certain
8 elections rules. So this would be one of them.
9 So the city can set a 75-day time line,
10 which is different than what the Secretary of State
11 would set for anything else, any other non-municipal
12 issue. So it's a charter -- it's a statutory grant
13 to cities, and then the charter took it and enacted
14 it.
15 MR. HOLLINS: That is my understanding.
16 MR. CUCKLER: Any other questions?
17 Anybody else want to weigh in on that issue?
18 MR. BURCH: We would agree with the
19 prosecutors on that.
20 MR. CUCKLER: Pardon me?
21 MR. BURCH: We would agree with the
22 prosecutors on that, which is to say that the 75-day
23 requirement controls over the Revised Code provision
24 when they are in conflict.

Page 92

1 MR. CUCKLER: Because the charter
2 controls?
3 MR. BURCH: Exactly.
4 MR. HELVEY: I just wanted to make sure
5 we're not going to take this over to the next general
6 election.
7 MR. BURCH: Yeah, we were very careful
8 about that. And we obtained a receipt from the Board
9 of Elections on the 20th to ensure that, because the
10 Powell charter says it has to be received by your
11 board prior to 75 days. We were sure to obtain a
12 time stamped receipt from your board certifying the
13 petitions were received by you prior to that 75th day
14 rule for that exact reason.
15 MR. CUCKLER: I have a few questions. I
16 need some clarity. Just so there's some order here,
17 I'm going to ask a question, Mr. Miller, you can
18 chime in, and then Mr. Burch, you can chime in.
19 Mr. Hollins, if you have any astute comments, you can
20 give some comments.
21 MR. HOLLINS: Well, that will really limit
22 me if I am limited to astute comments. I won't be
23 saying much.
24 MR. CUCKLER: I know, but you chime in as

Page 93

1 well.
2 So where the charter is silent, the
3 Revised Code controls, is that a correct assumption?
4 MR. MILLER: Absolutely. In fact, the
5 Supreme Court has held in the Lorain County case we
6 cited in our brief from 1999, that this board must
7 fulfill its duties under 3501.1138, 39 to review the
8 sufficiency and validity of the petitions of the
9 municipal charter expressly. I don't think there's
10 anything to that effect in the charter. Counsel has
11 advised you that you need to make certain rulings
12 today under Title 35.
13 And even when Mr. King referred to that
14 section of the Ohio Revised Code, all it does is
15 delegate to cities if they so choose to take over
16 certain requirements set forth in Title 7, also in
17 the capacity of your responsibilities under Title 35,
18 state law and the Ohio Constitution.
19 MR. BURCH: And I would just sharpen that
20 a little bit more, rather than to say when silent, I
21 would say that when they are -- when they provide
22 different things for one another, then the charter
23 controls over state law.
24 For instance, the charter does not

Page 94

1 explicitly say that the 75-day deadline railroads the
2 Revised Code deadline. But by providing the 75-day
3 deadline, we would see that that supplants, you could
4 say, supplants what is provided for in the Revised
5 Code.
6 MR. CUCKLER: Gene, anything to add on
7 that?
8 MR. HOLLINS: The charter provides, where
9 the charter is silent concerning issues of procedures
10 and laws, the State of Ohio shall be followed, accept
11 the statutory functions and duties of the city
12 auditor, which we don't have, shall be performed by
13 the clerk of council.
14 MR. CUCKLER: So my next question is:
15 Does the city charter prescribe the format by which
16 the petitions for referendum and initiative are to be
17 gathered?
18 MR. MILLER: You know, refrain from
19 popping back up if that's okay.
20 MR. CUCKLER: That is fine.
21 MR. MILLER: No, except in the manner
22 that was stressed earlier, that the ward and charter
23 requirement, for instance, is in there explicitly, it
24 must be part of the petitions.

Page 95

1 MR. CUCKLER: You would agree with that?
2 MR. BURCH: Yes.
3 MR. MILLER: Otherwise, state law would
4 control.
5 MR. CUCKLER: You would concur with that?
6 MR. BURCH: Yeah, we think the charter
7 basically says, this is what you need to have in your
8 petition when you submit your petition, obviously.
9 MR. CUCKLER: Does it prescribe a format
10 by which the petitions are to be gathered?
11 MR. BURCH: You mean like a specific
12 format, like name here, no, it does not.
13 MR. MILLER: And unrelated to Mr. Burch's
14 point, I just wanted to remind the board, there is
15 mention, obviously, for referendum, and it shall
16 include the title of the ordinance. And there is in
17 the initiative section reference that it should
18 include the title and text of the ordinance, but
19 those are with state law.
20 MR. CUCKLER: Gene, anything to add?
21 MR. HOLLINS: This is exactly what it
22 says: Any initiative or referendum petition may be
23 presented in separate parts, but each of any
24 initiative petition shall contain a full and correct

Page 96

1 copy of the title and text of the proposed ordinance
2 or other measure. Each part of any referendum
3 petition shall contain the number, full and correct
4 text and title and date of passage of the ordinance
5 and of the measures sought to be referred.
6 Each signer of any such petition must be
7 an elector of the city in which the election upon the
8 ordinance or other measure proposed by such
9 initiative petitioner or ordinance or measure
10 referred to by such referendum petition is to be
11 held, and shall place such a petition -- shall place
12 on such a petition after his name, the date of
13 signing, his place of residence, including street and
14 number, and the ward and precinct. That's about all
15 it says with regard to form.
16 MR. CUCKLER: In terms of formatting,
17 again, we would have to look at what the Revise Code
18 says?
19 MR. HOLLINS: Correct.
20 MR. CUCKLER: Okay. I'm looking here at
21 Form 6 I, indigo, for you military guys described by
22 the Secretary of State, 03-09. This is for an
23 initiative petition. It does prescribe a form. I
24 don't know if you have all seen this format. It also

Page 97

1 goes on to prescribe signature blocks, addresses, et
2 cetera.
3 Obviously, I think you guys probably
4 already knew that you need to also include those
5 provisions of the charter where the charter controls.
6 So my question then, does the format of
7 the initiative and the referendum that are before us
8 today, is it on this -- does it adhere to this state
9 format?
10 MR. MILLER: If I may.
11 MR. CUCKLER: Sure.
12 MR. MILLER: It does not, and it should.
13 It's important, and that requirement is in both state
14 law and the charter for a reason, title and text. I
15 think we've all been at the Giant Eagle or in our
16 homes where you're approached by someone with a
17 clipboard, and they say, here, can you sign this
18 petition, it's for X. And they tell you what it is.
19 The title and text requirements exist so
20 that the signer can look down and actually see, what
21 is it that I'm signing, what is it that I'm showing
22 my support for.
23 The Supreme Court in the Aesh case in our
24 brief said unequivocally that the title -- the title

Page 98

1 requirement is important because it immediately
2 alerts signers to the nature of the measure, that it
3 be contained in the petition. Not several pages back
4 behind something that you can't find easily. When
5 you look down and see the title of what you're
6 signing in support of. That never happened here.
7 And that's undisputed. It's required by the charter.
8 The Supreme Court has said, this is why it's
9 important, and it didn't happen here.
10 MR. BURCH: Our response to that would be
11 if you're looking at the form, 6I, you'll see the
12 following is a full and correct copy of the title and
13 text of the proposed ordinance, that appears roughly
14 50 percent down the page. To require the petitioner
15 to include it on the remaining part of the front page
16 would make it impossible to include the text in any
17 font size that would be legible to the person who is
18 supposed to be reading what you're proposing to them.
19 And as such, since the charter says it
20 must contain -- shall contain is the text from the
21 charter, the required elements, text and title, title
22 and date, we are adamant that we have followed the
23 prescriptions from the Secretary of State. The
24 Secretary of State does not require you to use 6J or

Page 99

1 6I. It just does not require that. What it requires
2 is that you follow the necessary elements that are
3 prescribed, and we have done so.
4 MR. CUCKLER: So you're saying -- I'll get
5 to you here in a second, Joe. So your argument is
6 that the format -- this is a copy of your initiative
7 petition -- that this although does not look exactly
8 like what is prescribed by the Secretary of State,
9 you're saying it adheres to the spirit of what the
10 Secretary of State -- is that what you're trying to
11 argue?
12 MR. BURCH: Well, the first problem is
13 there is actually conflict between this form and what
14 the Powell charter says.
15 MR. CUCKLER: I thought you agreed the
16 Powell charter is silent when it comes to format.
17 This is what I am trying to understand. Now, this
18 might sound obtuse to a lot of folks sitting around
19 here, but we deal in forms. That's our job. And so
20 formatting is important because you just can't have
21 Joe Blow sign something, and now he's candidate for
22 president of the United States. There is a format
23 and a process. So, obviously, adhering to the format
24 and process is important.

Page 100

1 So I'm trying to understand the interplay
2 between the charter and the process and the rules in
3 the form that is before us right now.
4 MR. BURCH: The form means that this page
5 must be used. I think that a petitioner is not
6 required to use this exact page, this exact form.
7 Because, again, like I said, to do so would just
8 create a requirement that would be impossible for any
9 proposed ordinance that is longer than half a page in
10 length. We don't think that the Secretary of State
11 or any branch of the Ohio government would require a
12 petitioner to jump through that many hoops in order
13 to satisfy a burden that would make it impossible for
14 the petitioner to actually read what is being
15 submitted to electors.
16 MR. MILLER: Nobody is talking about two
17 point font. Nobody is talking about onerous
18 requirements. We're talking about what does the
19 charter -- the charter, Ohio Revised Code and the
20 Supreme Court all speak with one voice. You need the
21 title and the text in the petition. And you cannot
22 say they are in the petition here. Take a look at
23 what is before you. There is a three to four page
24 petition. Then there are attachments that any signer

Page 101

1 would have to fumble through, and if the circulator
2 lets them, to try to find what is required to be on
3 the face of the petition. They could retype Form I
4 or Form J if they really didn't think there was
5 enough room to contain it.
6 They had an obligation under the charter,
7 state law, and the case law to provide that
8 information in the petition.
9 MR. CUCKLER: Thank you. Questions for
10 our counsel. Is this form prescribed by the
11 Secretary of State? Is it just decoration in this
12 manual, or is it supposed to be prescribed? I'm
13 hearing that it's necessary; I'm hearing that it's
14 not. So any counsel on that?
15 MR. BETTS: I think the best way to say it
16 is it's the recommended form. That's the Secretary
17 of State's form as prescribed by the Secretary of
18 State. If you choose to create some other form, I
19 think you're operating at your own risk at that
20 point.
21 So I don't believe there is -- I'm not
22 aware of a hard and fast rule that says you have to
23 use that Secretary of State's form; however, again,
24 it would be what is prescribed and what would be what

Page 102

1 is recommended.
2 MR. BURCH: If I may.
3 MR. CUCKLER: Yeah, go ahead.
4 MR. BURCH: For instance, the form
5 prescribed by the Secretary of State does not include
6 a blank to include ward and precinct, for instance.
7 MR. CUCKLER: The charter controls, so,
8 therefore, that would have to be added, correct?
9 MR. BURCH: That's what I mean. How could
10 we be required to use the Secretary of State's form
11 if it doesn't necessarily contain the elements that
12 the Powell charter requires that we need to collect
13 in the petitions.
14 MR. CUCKLER: Go ahead. Then I have some
15 more questions.
16 MR. STEVENS: I want to follow this just a
17 little bit. What would prevent you -- I'm just a
18 country boy, so if I was going to circulate these
19 petitions, what I would have done is used the
20 prescribed form and spell out, you know, the
21 ordinance, this is what we're voting on. And you
22 said you have to squeeze it in that half page. What
23 would stop you from having all that information that
24 you had that was attached on the back of it on the

Page 103

1 front of it with this language up top saying -- you
2 know, spelling it out exactly how the Secretary of
3 State -- we would typically see in petitions spelled
4 out.
5 MR. BURCH: Well, I think you would still
6 be hearing the same argument from the protestor that
7 it isn't in the petition. In other words, it's
8 attached to the petition. The only way to -- I'm
9 saying, you're either put in a position where you
10 have to put it actually on this piece of paper,
11 because this paper says Initiative Petition, or you
12 would have to entertain arguments that you attach it.
13 Right? Because if I put it on Page 2 --
14 MR. STEVENS: If you started on Page 1,
15 and continued it, I don't know that it's an
16 attachment.
17 MR. BURCH: Again, that's why we used the
18 words attached hereto and incorporated herein, to
19 make it clear that we're not just attaching it for
20 fun at the end of the petition. We were attaching it
21 and incorporating it into the front page of our
22 petition.
23 I think that's what -- the Ohio Supreme
24 Court has given us a little bit of clarity here just

Page 104

1 to say incorporate means to make something part of
2 something else. I think that's what we have here,
3 we've made the required elements, including the text,
4 title, date of passage, we've included those as
5 elements of our petition by incorporating them into
6 to face.
7 And let me make one other small objection.
8 There's a circulator statement on the third page of
9 the form 6I. You'll see that circulator's statement.
10 That actual circulator statement doesn't -- also does
11 not comply with the Powell charter. So because
12 there's a requirement in the Powell charter with
13 respect to the petition, with the circulator
14 attesting to the knowledge of the people who are
15 signing the petition.
16 This does not require that person to
17 certify that they have knowledge of what's included
18 in the petition. That's a specific requirement of
19 the Powell charter. So to say, um, you got to use
20 this form, but then the prescribed form doesn't have
21 an extra column for precincts, the circulator
22 statement is the wrong verbiage, it puts the
23 petitioners -- there's already a hundred rules for
24 the petitioner to follow -- it puts the petitioner in

Page 105

1 this rock and a hard place in terms of trying to
2 comply with the law.
3 MR. MILLER: If I may respond to
4 Mr. Stevens' question.
5 MR. CUCKLER: Then I have some more
6 questions. Go ahead.
7 MR. MILLER: You're absolutely right,
8 there's nothing to prevent a circulator from using
9 Form I or Form J, and where it says the following is
10 a complete copy of the title and text of the proposed
11 ordinance, or retyping the substance of Form I and
12 Form J, and then incorporating the ordinance, which
13 has a clear title in bold at the top of it, An
14 Ordinance Approving a Final Development Plan for The
15 Center at Powell Crossing, LLC, a development of
16 14,000 square feet of retail in two buildings
17 preserving the old house for commercial use and
18 development of 64 apartment residential units on
19 8.3 acres located at 147 West Olentangy Street.
20 I submit to you that's why the requirement
21 is in there in the first place, that there is the
22 description of the petition, there's the title of the
23 ordinance, there's the text of the ordinance, which
24 isn't particularly long, and only thereafter do

Page 106

1 persons sign, and knowingly thereafter does the
2 circulator attest. And that's what should have and
3 could have happened here, but did not. Instead, it's
4 left to the circulator to describe to the signer what
5 they are signing, or for the signer just, you know,
6 to say, I'm not going to fumble through all these
7 exhibits which aren't in the petition, but are
8 attached, and that's just not the law.
9 The case law that Mr. Burch references
10 about incorporation has nothing to do with election
11 law. Instead, the words are clear, is it contained
12 in the petition, it is not.
13 MR. CUCKLER: Ed.
14 MR. HELVEY: Mr. Miller, I have a
15 question. I want to direct you to Tab 13 of your
16 handout. Could you read Section 1, and tell me how
17 that is any different than what the petitioners have
18 done with the petition.
19 MR. MILLER: Any different than what the
20 petitioners have done with --
21 MR. HELVEY: Yeah. Section 1 says: The
22 zoning code amendments are hereby added to the
23 codified ordinances of the municipality of Powell as
24 set forth on the attachment hereto, which is

Page 107

1 incorporated herein by reference.
2 MR. MILLER: Sure, they are a lot of
3 different. Because state law and the charter and the
4 case law requires that a petition for initiative or
5 referendum have that information in the petition.
6 There's no corresponding legal requirement that city
7 council include in its ordinances amendments to the
8 zoning map, for instance, which is its own distinct
9 document on the wall of Powell city council chambers.
10 And, again, strict compliance is required by the law.
11 MR. CUCKLER: Any follow-up questions?
12 MR. HELVEY: I'm pretty well done.
13 MR. CUCKLER: This was a petition in front
14 of us last year. This is a township. Therefore,
15 there's no home rule, no charter, but Revised Code
16 holds. And I'm just going the use this. This is a
17 famous referendum that was in front of us on a zoning
18 regarding the outlet mall. Petition for a township
19 zoning referendum. I'll read it for the record.
20 Amended application for Zoning Amendment Number
21 13022, Joe Simanello, Tanger, DF & CCO, LLC and Simon
22 Management Associates, II, LLC.
23 In that case, the summary -- I'll pass
24 this around so everybody could see it -- they

Page 108

1 obviously had -- townships had to use 6 O prescribed
2 by the Secretary of State Form, which is a different
3 format than 6 I that I indicated before. But this
4 board and the petitioners were represented by
5 Don McTigh, who I believe you all recognize as former
6 election expert in central Ohio.
7 You could see the brief summary of the
8 proposed zoning amendment there that was on the form.
9 And this board, obviously, put it on the ballot, and
10 it was voted on, et cetera. So that's why I am just
11 trying to understand the interplay, just so I
12 understand the interplay of the charter and the
13 revised code. I have some questions on -- yeah, go
14 ahead, Chris.
15 MR. BETTS: I was just going to follow-up
16 on what you were saying with the petition that you
17 were just looking at. I believe it was Berkshire
18 Township.
19 MR. CUCKLER: Right.
20 MR. BETTS: The statute that governs that
21 is 51912 H of the Ohio Revised Code. And it has --
22 there's some specific requirements in there that
23 pertain to townships. And it allows in there for a
24 brief summary of the zoning amendment, which is a

Page 109

1 little bit different than what the situation is here,
2 where it requires the title and text to be in there.
3 So I just wanted to provide some clarification.
4 MR. CUCKLER: Right. But that in that
5 case the township had to follow what the Revised Code
6 said? Whatever it said, that is what they had to do.
7 MR. BETTS: Yes.
8 MR. CUCKLER: I have some questions on the
9 zoning or on the difference between -- there's this
10 whole discussion between administrative versus
11 legislative, was it zoned, was it really not zoned,
12 was it zoned, and then there was an overlay district.
13 So I think it would be helpful to this
14 board if each individual here, including you, Gene,
15 can discuss what is zoning, what is this overlay, and
16 how that interplays, and, therefore, what is -- I
17 know, obviously, you're going to argue it's
18 administrative. You're going to argue it's
19 legislative. But if you could just make some
20 clarifying arguments on that, that would be helpful
21 to this board.
22 MR. MILLER: Sure. Absolutely. Let me
23 point out what I heard in the cross-examination of
24 Mr. Betz and the argument of petitioners, so we can

Page 110

1 rule out kind of the areas on which we agree.
2 Mr. Burch at the beginning of his argument conceded
3 that if it's just administering existing laws on the
4 books, then it's administrative. And as I understood
5 his argument was this somehow transferred in his
6 words and became legislative when it didn't satisfy
7 all the criteria already existing under the law.
8 That the signature wasn't there, for instance.
9 Okay. There is no law to support that
10 premise. Instead the law is, are you administering
11 the existing zoning. It is undisputed -- a couple
12 things are undisputed. That the downtown business
13 district and its requirements were adopted in 2005.
14 The overlay requirements pre-existed this
15 application. This application only puts forth uses
16 permitted under that downtown business district. And
17 that it was approved by city council pursuant to
18 their administrative procedures for a planned
19 district such as this.
20 I don't want to delve into closing
21 arguments just yet. We've cited to you no less than
22 four Supreme Court cases where this is exactly what
23 took place. Existing zoning was in place, a plan or
24 submission was made in conformity with that zoning,

Page 111

1 and then it was approved administratively.
2 In each of those cases, the Supreme Court
3 has said that's administrative, not subject to
4 referendum/initiative. The Fifth District Court of
5 Appeals, which governs Delaware County, has found the
6 exact same thing in at least two different cases.
7 Final development and plan approval pursuant to a
8 preexisting planned development or planned district
9 is administrative, not legislative. We would submit
10 the law on these facts could not be more clear.
11 MR. HELVEY: Just for my clarification,
12 when was the overlay created?
13 MR. MILLER: I would have to ask Mr. Betz
14 that question.
15 MR. HELVEY: Was it a while back,
16 Mr. Betz?
17 MR. BETZ: There was an overlay district
18 prior to the current downtown overlay district. It
19 was changed as part of the 2005 amendments to the
20 current form that it is now.
21 MR. HELVEY: So relatively when was the
22 current form?
23 MR. BETZ: In 2005. And that's identified
24 in that tab in the ordinance.

Page 112

1 MR. HELVEY: Okay. So the current overlay
2 has been in place for nine years?
3 MR. BETZ: Yes.
4 MR. STEVENS: Can I just ask a real quick
5 follow-up? I apologize.
6 MR. CUCKLER: I know you like to
7 interfere.
8 MR. STEVENS: I apologize.
9 MR. CUCKLER: Go ahead. And then I want
10 to get back to Mr. Burch on my question.
11 MR. STEVENS: This isn't a fact pattern in
12 this case, but what if -- or I'm not saying that it
13 is. But what if the zoning commission purposefully
14 passed on to the city council an approval that was
15 out of bounds with the plan, what remedy would a
16 petitioner or an interested party have to fix
17 something that maybe city council just approved out
18 of the zoning commission.
19 MR. MILLER: They have a very clear
20 remedy, Mr. Stevens, and it's a 2506 Administrative
21 Appeal to the Court of Common Pleas here in Delaware.
22 What you're to decide today is what was the nature of
23 city council's decision, was it administrative or
24 legislative.

Page 113

1 Again, they said no law to support this
2 idea that something could be transferred from
3 administrative to legislative if it doesn't fulfill
4 the council's requirements. You do not sit as a
5 superseding council to determine whether the
6 signature was there correctly, whether the
7 attestation was there. City council does that in
8 administering the laws already on the books.
9 Respectfully, you would be the first BOE
10 in the history of the State of Ohio if you take
11 petitioners bait and act in that role. Instead, it
12 is the nature of the decision made, approval of it,
13 and that nature was approval of a development plan
14 pursuant to existing zoning. That makes the matter
15 administrative. And you're called upon to make that
16 call, not the propriety of the decision. Because,
17 for instance, this argument that the signature wasn't
18 there. If petitioners thought there was a flaw in
19 the application or administrative process they went
20 through, there is a remedy for that. 2506.04 allows
21 for persons to contest administrative decisions that
22 they believe are unlawful, unreasonable, arbitrary,
23 or otherwise supported by the evidence.
24 On those bases, the petitioners could have

Page 114

1 argued to a court that approval of the application
2 was unreasonable or contrary to law. They didn't do
3 that. And it shouldn't even be here before you.
4 Now that it is, you are to declare it
5 administrative because the city council was just
6 administering its laws. These actions have been
7 found by courts to be repeatedly, repeatedly to have
8 been administrative.
9 Mr. Helvey, to bring us full circle,
10 Mr. Helvey said at outset here, we don't see many
11 zoning issues here. That's why. Because they are
12 administrative decisions that go on to Court of
13 Common Pleas.
14 I submit to you if you let this one go to
15 the ballot, you will, because everybody and their
16 brother who doesn't like a zoning decision thinks,
17 well, I could just put it to the people. That's not
18 what the constitution allows. There is a clear
19 remedy here by the statute.
20 MR. CUCKLER: Mr. Burch, you've got two
21 questions here so take your time.
22 MR. BURCH: Well, petitioners will respond
23 to that by first saying that administrative means
24 you're staying within the boundaries of preexisting

Page 115

1 law. If you don't stay within the boundaries of
2 preexisting law, you're by default acting
3 legislatively as city council creating new law.
4 So the question here is: Did they stay
5 within preexisting law with respect to their
6 development plan, including their preliminary and
7 final development plan. The law creates certain
8 requirements that it is clear were not followed.
9 And, therefore, it's by default that city council has
10 acted legislatively. And it is therefore by default
11 that the voters have a say with respect to that
12 decision.
13 Now, if they had stayed in the box, if
14 they had stayed in the box, we would not be here, and
15 that is why you don't see a lot of zoning-type issues
16 before Boards of Elections.
17 The zoning code is extremely thorough and
18 quite clear as to its requirements. We are not going
19 to speculate why the protestor and the developer
20 failed to follow the rules.
21 All we're saying is that if you don't
22 follow the rules, then city council by rubber
23 stamping it, even though they didn't follow the
24 rules, has acted legislatively.

Page 116

1 Now, to respond to their point in 2506,
2 2506 is an administrative remedy. If you have an
3 administrative code and you ignore it, then we can't
4 ask for an administrative remedy to a legislative
5 act. We would be sitting before the Common Pleas
6 Court sitting on opposite sides, and then saying, no,
7 we acted legislatively, this isn't even appropriate
8 before the Common Pleas Court, because 2506 is only
9 an administrative remedy.
10 So it is by failing to comply, by failing
11 to stay in the box. That's why we're here today is
12 because if you don't stay in the box, city council
13 has to be acting legislatively. And that is the
14 difference with these prior Supreme Court cases, the
15 Upper Arlington case, the Telerico case. There was
16 no underlying dispute as to whether the action was
17 administrative or not.
18 And this body is not really capable of
19 grasping at all of the different elements of what
20 constitutes administrative versus legislative. What
21 they can say, what you can observe, is that at the
22 bottom of this, there is, obviously, some questions
23 as to whether they stayed within the boundaries of
24 the law or they didn't. And where that's a blurred

Page 117

1 line, we simply ask that you not cut it short and
2 prevent the voters from having their say first.
3 So what I'm saying is if the line is clear
4 and it's clearly within administrative, then it's
5 administrative. If the line is blurred, then it
6 should be interpreted to empower the voters to make
7 their decision, and then the remedy would be a
8 judicial remedy. We think it's as easy as that.
9 MR. CUCKLER: Sorry to interrupt. Does
10 the law that you're referring to -- I assume you're
11 referring to city code?
12 MR. BURCH: Yes.
13 MR. CUCKLER: So does the city code allow
14 for divergences and variances during the final
15 development process?
16 MR. BURCH: The city code allows for,
17 yeah, for some variances, yes. Not the variances
18 that they've done. Not the shortcuts that they've
19 taken. But it does allow for some variances. And
20 you'll see some of those variances in the final
21 development plan.
22 We consider those variances also to be
23 legislative. There is mixed case law from the courts
24 as to whether variances from preexisting government

Page 118

1 clients are administrative versus legislative.
2 Obviously, in a court of law, we would be more than
3 happy to present opposing arguments with the
4 developer on that point.
5 MR. CUCKLER: Your argument -- you made a
6 statement earlier that any divergence and/or any
7 variance is therefore legislative action, it's
8 outside the bounds of the law.
9 Now, I'm not the smartest guy in this
10 room, but there is hundreds of developments across
11 the county every day, and divergences and variances
12 are very, very, very common.
13 But, typically, that's why I am asking
14 you, and it might get to you, Gene, setting you up.
15 But you made this argument, which is a good argument,
16 about staying within the bounds of law. So that's my
17 question: Does the city code allow for divergences
18 and variances within its code?
19 MR. BURCH: Well, where it does allow for
20 variance within the code, then we would say that
21 those variances are not legislative. However, when
22 you -- there's a difference between a variance that
23 the code allows for, and a variance -- for instance,
24 ignoring a requirement that the owner of the property

Page 119

1 has to verify that everything in the -- that
2 everything contained in the application is true and
3 correct. There is no wiggle room, if you will, in
4 the zoning code for you to waive that, for instance,
5 for the zoning board to simply waive that
6 requirement.
7 So I guess what I am saying is that
8 there's two kinds of variances. There are variances
9 that the code allows for, and there are variances
10 that the code absolutely does not allow for. We're
11 seeing both here. We think both are legislative.
12 But even if you only consider half of them
13 to be legislative, then their actions are still
14 legislative. And as such, that line is blurred. If
15 the line is blurred, allow the voters their option.
16 If the voters have their chance and a court kicks it
17 out, the petitioners are more than willing to live
18 with that outcome. It's just that at this point
19 cutting it off before it even gets to the ballot is
20 not right.
21 MR. MILLER: If I may, Mr. Cuckler --
22 MR. CUCKLER: Yes, I'll get you there.
23 Gene, can you chime in and discuss what's
24 in the city's code? Does it allow for the planning

Page 120

1 commission to agree the -- what is it in Powell,
2 variances? Is that what you call them?
3 MR. HOLLINS: Sure. Once again -- first
4 of all, am I still limited to only astute comments?
5 MR. CUCKLER: You're an astute guy.
6 MR. HOLLINS: All right. First of all,
7 let me reiterate that council, based on my advice,
8 that we looked at case law as to whether we had a
9 chance to look at legislative versus administrative,
10 and they said, you're not the right forum. Council
11 took no position on any of these questions as to
12 whether it's legislative or administrative. So
13 anything I say is not my client's position.
14 MR. CUCKLER: I understand.
15 MR. HOLLINS: Okay. And Dave did a good
16 job of going through the process, Dave Betz, going
17 through the process in his testimony and his
18 understanding of the code as staff.
19 What I would state specifically on the
20 divergences the variances is there is a good process
21 set up in the code for determination as to whether
22 it's a major or minor modification. I think we
23 all -- even straight districts, much less planned
24 districts realize that you could have a preliminary

Page 121

1 plan and text that is in conformance with the
2 development standards set forth in the code. And
3 then final development plans come through, and we are
4 trying to -- that's the whole idea about planned
5 districts, we try to respond to cite specific things,
6 make trade-offs, which are beneficial both to the
7 land owner and the general public. You know, city
8 wide, go the cookie cutter approach, then when we can
9 have a planned district, it's a little more creative.
10 There may be some trade-offs that are necessary. So
11 there's going to be some potential departures from
12 the development's stand.
13 If they are major, they are probably
14 rising again to the level of, okay, this is
15 tantamount -- you'll see this in the case law --
16 tantamount to reasonability. Then you go back
17 through the legislative process.
18 If they are minor divergences, which seem
19 to be reasonable or a trade-off, they are really more
20 or less planning commission's purview in the first
21 instance, and then make recommendation to council.
22 All that being said, the Supreme Court has
23 done an awfully good job of completely making the
24 case law and the decisions on these planned

Page 122

1 districts, and whether they are legislative or
2 administrative completely incomprehensible. There is
3 no way to make them consistent. And it's awfully
4 frustrating for us and for you guys to try to make
5 those determinations. There's just no consistency in
6 a lot of these.
7 MR. CUCKLER: Tell your client we
8 appreciate them kicking the can. You can put that in
9 the record.
10 MR. HOLLINS: That's where Mr. Betts -- I
11 would rely on his advice.
12 MR. CUCKLER: Mr. Miller.
13 MR. MILLER: Yes, briefly, just because
14 reference has been made to shortcuts and rubber
15 stamping and cutting corners. I want to remind you
16 of the actual evidence in the record of this claiming
17 the line is blurred.
18 The actual evidence before you today, my
19 clients signed Powell's form. And, by the way,
20 attached to that form is their attestation of the
21 truthfulness of the application. That supposedly
22 blurred the lines? You're to consider the nature of
23 the dispute, and Mr. Hollins, I assume, wasn't
24 speaking in the election context. Because in the

Page 123

1 election context, it's crystal clear petitioners
2 haven't offered any case law to rebut it. Approval
3 of final development plan pursuant to existing zoning
4 is administrative. And I expect that your counsel
5 will so advise you.
6 MR. CUCKLER: Question, follow-up on
7 counsel, I think this -- after this question, I'll
8 take other questions from the board, and then we'll
9 get into closing argument.
10 Chris or Andrew -- Andrew, I think you
11 wanted to ask a few questions of Mr. Betz, and we'll
12 get to that in a second.
13 What does the case law say divergence is
14 and legislation, we've heard that -- I'm sorry,
15 divergences and variances -- we've heard the argument
16 that those are anything that isn't a divergence --
17 I'm sorry, anything that is a divergence or variance
18 is legislation. Do we have any idea what our state
19 law says?
20 MR. BETTS: I don't know if I can
21 specifically answer your question, because it's not
22 something that I particularly looked in to. But I
23 will say that there is a long litany of cases out
24 there. In regards to, you know, this board deciding

Page 124

1 administrative or legislative, which I mentioned
2 before, are not issues that normally come before this
3 board. Normally, you're dealing with
4 election-related sorts of matters rather than zoning
5 issues.
6 But under the circumstances, normally, the
7 actual zoning of the property, when you're talking
8 about a planned unit development type property,
9 whether it be township, whether it be city, the
10 normal process is that rezoning is actually the
11 legislative piece of that puzzle.
12 The administrative part comes in either at
13 the same time or later when there's a final
14 development plan that's approved. In this case, it
15 was later. Obviously, years later that the
16 development plan came through. That is the
17 administrative piece of the puzzle. That's what is
18 being talked about today.
19 The zoning in this case was done back in
20 2005, as I understand it. The administrative piece,
21 the development plan, the final development plan was
22 approved this year in Ordinance 2010.14, and that's
23 what the board has to consider. But I would submit
24 that the normal rule is that those final development

Page 125

1 plans -- the approval of those final development
2 plans, it may be common to include divergences in
3 those, but normally that is considered an
4 administrative task in the sense that you're carrying
5 out the law.
6 There is a specific case from the Supreme
7 Court that provides a test as far as determining what
8 is administrative/legislative. And this particular
9 case has been referenced in this litany of cases that
10 I was talking about where it becomes a duty of this
11 board to determine the legislative/administrative
12 issue and whether that goes on the ballot.
13 Obviously, something that is legislative
14 is subject to referendum/initiative, and can go on
15 the ballot. Something that is administrative is not.
16 It's subjective to an administrative appeal, such as
17 the 2506 appeal that was referenced earlier.
18 But the test that has been set out by the
19 Supreme Court and cited numerous times in this litany
20 of cases comes from Donnelly versus Fairview Park.
21 It's 13 Ohio State 2nd 1. And I'm not quoting
22 exactly here, but, generally, that test is whether
23 the action is one taken enacting the law or
24 administering the law. In other words, putting the

Page 126

1 law in place, which is the zoning that came back in
2 2005, or administering the law, which is executing,
3 carrying out the law, which is the zoning that was
4 passed in 2005, and in this case, the development
5 plan simply carries that forward, carries it out,
6 here's actually what is going to happen.
7 Unfortunately, what happens in a lot of
8 these cases, and I think may have happened in this
9 particular case, is that when that zoning takes
10 place, a lot of the general public -- that's
11 something that is more or less done on paper in terms
12 of a zoning map; in terms of, you know, documents
13 that are approved by whatever the legislative body
14 is.
15 A lot of people don't see that step
16 happening because there's no shovels going into the
17 ground at that point. They see it later on when you
18 get to this final development, and all of a sudden
19 it's coming to fruition, and there's actually shovels
20 going into the ground, things actually happening.
21 And that's when people tend to take it up, and I
22 think that's maybe the case here.
23 But, nevertheless, I think the court has
24 set out this test in this Donnelly case that they

Page 127

1 consistently referenced for determining legislative
2 versus administrative, making the law, or carrying
3 out the law.
4 As I say, a final development plan is
5 carrying out the law. Whether it may include
6 divergences or whether it may include variances is
7 not something specifically that I looked into, but I
8 think it's very common that they do include that sort
9 of thing as you referenced, Mr. Chairman, that that
10 frequently occurs at that stage.
11 MR. CUCKLER: Okay. Thank you.
12 Mr. Helvey has a question. And then after
13 that question and answer, we'll get into closing
14 arguments. Go ahead.
15 MR. HELVEY: Mr. Burch, you made reference
16 to when you believed the City of Powell acted outside
17 the box. And the one specific was whether they cited
18 and attested to the truthfulness of the application.
19 Are there other instances that you would like to
20 bring to our attention.
21 MR. BURCH: There are. There are two
22 instances that are also referenced in our memorandum
23 that we would like to bring to your attention. So
24 please forgive me while I get to the appropriate

Page 128

1 page.
2 See our first brief that there is
3 requirements that the submission of the development
4 plan must include certain information with respect to
5 financing, financing the project. And while they did
6 attest to that much later on in a document that we
7 were not privy to until we were already on the
8 ballot -- well, the thrust of it is this. You have
9 to submit a financing plan when you submit a
10 development plan. If you don't, that's one of the
11 requirements on the list.
12 We would say that if you write a list of
13 requirements for a development plan and one of them
14 includes financing, including how you're going to
15 insure that the project doesn't stall halfway
16 through, you need to include your financing
17 information.
18 From our understanding, the final
19 development plan states as follows: Verification --
20 this is the requirement -- verification by the owner
21 of the property that it's true and correct to their
22 best knowledge, and then evidence of the ability of
23 the applicant to carry forth -- it says evidence of
24 the ability of the applicant to carry forth its plan

Page 129

1 by control of the land and the engineering
2 feasibility of the plan, and that the applicant has
3 sufficient control of the land and financing to
4 initiate the proposed development plan phase within
5 two years. And the entirety of the response in the
6 final development plan from the developer is:
7 Applicant owns the property. We don't contest that.
8 Applicant is an established developer.
9 We think that similar to its quick blowoff
10 of the requirement of a signature attesting to the
11 verification that all information in the application
12 is true and correct to the best of your knowledge of
13 the owner of the property, again, we see, oh, let's
14 just kind of push these off the table. These are
15 kind of -- we can just meet these -- oh, were an
16 established developer, this should be fine.
17 Again, if we're staying -- we are more
18 than happy to concede that it's administrative if
19 they follow the rules. What we're seeing in front of
20 us is that they didn't follow the rules, and,
21 therefore, it's by -- it has to be legislative. It
22 has to be legislative action per the development
23 plan.
24 So in answering your question, Mr. Helvey,

Page 130

1 I would cite both number 9 and number 11 on Page 6 of
2 Exhibit 12 as answers that are insufficient under the
3 zoning code of the City of Powell.
4 MR. MILLER: They don't like our answers
5 on the application. That's what's being given to you
6 as evidence that a new law was created here. You
7 follow that, you are acting contrary to the laws of
8 Ohio.
9 MR. CUCKLER: I know I'm contradicting my
10 own counsel, me. What rules were violated? What
11 rules in the zoning code did they violate?
12 MR. BURCH: Oh, sure. This is on Page --
13 MR. CUCKLER: We got the signature, I got
14 that. I'm tracking on that, what you're saying.
15 What else was the other one?
16 MR. BURCH: Yes, it's the financing. The
17 failure to include sufficient -- again, it's evidence
18 of financing to initiate the proposed development
19 plan within two years.
20 MR. HELVEY: Tab number and page, please?
21 MR. BURCH: Sure. This is Page 6 of
22 Exhibit 12 that was submitted by the developers. See
23 there in bold text.
24 MR. CUCKLER: So the signature issue and

Page 131

1 then the financing, those are the two? Those are the
2 two?
3 MR. BURCH: Yes. And if you would like to
4 see a more elaborate argument on that, it's in there.
5 MR. CUCKLER: We looked at those.
6 Mr. Betz, a question for you. In these
7 types of developments that you get at Powell, what is
8 the common practice of showing proof of financial
9 ability to carry through the proposal?
10 MR. BETZ: Sir, I would like to explain to
11 the board what we do, what is our common practice.
12 The common practice, sometimes we receive
13 applications from people we don't even know. In
14 those cases, we want to vet the developer, the
15 associations with their companies.
16 A lot of times people will go into
17 contract with property, and have another contract
18 before they do their development plan. We want to
19 know whether or not this company has a good track
20 record of being able to follow through on the plan.
21 In this case, the City of Powell has
22 worked with the applicant for over 14 years in
23 different developments within Powell. Most would be
24 in Golf Village. Mr. Vince was a partner in that

Page 132

1 development.
2 Chris Vince is a resident and has a
3 business within the downtown area as well. So we
4 know who the applicants are. We know they can handle
5 a development of this type just based on past
6 practice. So we really didn't need to get any
7 written verification that they have financing.
8 They bought the property. And they paid
9 cash for the property. So we had every thought and
10 knowledge that they would go through with the all the
11 plans for development.
12 MR. CUCKLER: Okay. Thank you.
13 Anything else?
14 Andrew, I know you wanted to ask a few
15 questions of Mr. Betz. Mr. Betz, I'm sorry, you have
16 to come up here and cozy up to Mr. Burch there.
17 In fairness, Counsel, if you have
18 follow-up questions, keep them brief. We would like
19 to get to closing arguments so we could get everybody
20 out of here. Thank you.
21 - - -
22
23
24

Page 133

1 EXAMINATION OF DAVID BETZ
2 BY MR. KING:
3 Q. I want to go over something. I'm sorry, I
4 want to make sure I have everything factually
5 correct.
6 Part of your job is to review final
7 development plans?
8 A. Yes, it is.
9 Q. And you review those final development
10 plans for compliance with the zoning codes?
11 A. Yes, I do.
12 Q. And that zoning code is Chapter 1143 of
13 the Powell --
14 A. That's part of it. As you know, all the
15 zoning codes are expansive, but that is the main
16 section that deals with development.
17 Q. So you review it for compliance of this
18 chapter and other sections of relevant chapters?
19 A. Absolutely.
20 Q. And you have no authority to change
21 anything in the zoning code?
22 A. No, I do not.
23 Q. And how do you review it for compliance?
24 You told me you use check lists.

Page 134

1 A. Yes, I use check lists, and my experience
2 on knowing what to look for in terms of all the
3 requirements of the zoning code, and use our best
4 abilities and common practice for making sure that
5 the plan is compliant with the zoning. We create
6 staff reports that go to planning and zoning
7 commission and council explaining the development as
8 well as any divergences that we talked about.
9 And they receive a copy of the application
10 form, the application text, and the drawings, to be
11 able to analyze them, both the planning and zoning
12 commission and council, to be able to analyze them on
13 top of what I provide.
14 Q. And your staff also helps you with this?
15 A. Yes.
16 Q. And as part of your review do you review
17 it for verification that has been at issue here with
18 the signature?
19 A. Yes. If we have an issue, like, for
20 example, like I said, an unknown developer, we'll ask
21 for some previous projects they've worked on and sort
22 of vet them out. We actually will call other cities
23 we know where they've done work, and ask about their
24 experiences with them.

Page 135

1 Q. And then you prepare a report?
2 A. Yes, prepare staff reports for the
3 communities.
4 Q. And that report you'll note omissions of
5 the application with regard to what -- whether it
6 complies --
7 A. Whether it complies with the requirements
8 and including the divergences to the spatial
9 dimensions of the code.
10 Q. You note whether the application is
11 compliant or not compliant?
12 A. Yes, sir.
13 Q. And then as part of that report, you make
14 a recommendation to the planning and zoning
15 commission?
16 A. Based upon our best knowledge and what we
17 think is appropriate based on the application, based
18 on the materials submitted, based on the code
19 compliance, based on our comprehensive plan, and any
20 other planning documents that we utilize for review
21 of these things.
22 Q. And just to be absolutely clear, so, in
23 this case, you did review a final development plan
24 that is at issue here?

Page 136

1 A. Yes.
2 Q. And you reviewed it specifically for
3 compliance or noncompliance?
4 A. Yes, sir.
5 Q. And you prepared a report --
6 A. Yes, sir.
7 Q. -- after you reviewed it?
8 A. Yes.
9 Q. And you made a recommendation to the
10 zoning commission?
11 A. Yes.
12 Q. And if you briefly could state what was
13 your recommendation?
14 A. Our recommendation was that we felt that
15 this was a very unique site and unique position to
16 have the ability to provide for a mixed use
17 development that fit within the requirements and
18 recommendations of requirements of zoning code and
19 recommendations provided for in a comprehensive plan
20 with regard to revitalizing the downtown area, and
21 within our 2004 Downtown Revitalization Study that we
22 did, it was very specific to item -- this plan was
23 very specific to items within that plan. That plan
24 was also utilized to create downtown districts in

Page 137

1 2005. So we felt that this plan was very much in
2 compliance.
3 Q. Okay. That's what I was going to say.
4 You found that the plan was compliant?
5 A. Yes.
6 Q. And then the report goes to the planning
7 and zoning commission?
8 A. Yes, sir.
9 Q. Then they put it on an agenda for meeting?
10 A. Yes.
11 Q. They have a public hearing for this?
12 A. They have a public hearing on it. And
13 that public hearing is -- people are notified within
14 a 250 feet radius and advertised in the paper. We
15 put it on our website. We post the plans on our
16 website so everybody could have it.
17 Q. If you find an omission -- well, let me
18 ask. Can they independently find an application
19 noncompliant?
20 A. Oh, yes. Certainly, you know, we're
21 human, we'll miss something in the process.
22 Hopefully, we don't. But if the planning and zoning
23 commission finds that there's some area of deficiency
24 within the plan, they will tell the developer and

Page 138

1 say, look, we're not comfortable with this part of
2 the plan, go back and make some changes and bring
3 that back to us.
4 Q. And if they find that the application is
5 compliant with the zoning code, what do they do?
6 A. Generally, if they find it in compliance
7 with the zoning code and comprehensive plan, they'll
8 approve it. And they may place conditions upon the
9 approval if they so desire.
10 Q. And here did they review your report and
11 recommendation?
12 A. Yes.
13 Q. And what did they decide?
14 A. Yeah, planning and zoning commission
15 approved the plan.
16 Q. And then after it's approved it goes to?
17 A. Goes to city council.
18 Q. And that happened here?
19 A. Yes.
20 Q. And what did city council do with this?
21 A. City council held public hearing as
22 required, received comments from staff and public and
23 the developer, and they approved it.
24 Q. And, to your knowledge, was there any

Page 139

1 appeal, administrative appeal or any legal action
2 taken as a result of either your actions, the
3 planning and zoning commission's actions or city
4 council actions excluding the protest that we're
5 sitting here today?
6 A. Not that I am aware of.
7 Q. So no administrative appeal?
8 A. Not that I am aware of.
9 MR. KING: Okay. I have nothing further.
10 MR. CUCKLER: Thank you, Mr. King.
11 MR. MILLER: I have no further questions.
12 MR. CUCKLER: Do you have anything, Gene?
13 MR. HOLLINS: No, I do not.
14 MR. CUCKLER: Mr. Burch, we're waiting for
15 you to give you the opportunity if you had any
16 questions.
17 MR. BURCH: Sure.
18 - - -
19 FURTHER CROSS EXAMINATION
20 BY MR. BURCH:
21 Q. Mr. Betz, are you aware of anywhere in the
22 zoning code that allows the planning and zoning
23 commission or your office to substitute best practice
24 or prior practice for the requirements of the code?

Page 140

1 A. I'm not aware of any specific item within
2 our code that allows for us, except for the fact that
3 I am charged with the responsibility to administer
4 the code.
5 Q. Right. But I'm asking you about what's
6 actually in the code. Is there anywhere in the code
7 that says either you can follow these requirements, A
8 B, C and D or if you just do --
9 A. The planning and zoning commission does
10 have authority to diverge from requirements of the
11 zoning code.
12 Q. Okay. So these requirements that you're
13 talking about, you know, ability to -- evidence of
14 financing, evidence of the applicant's ability to
15 post a bond or verification by the owner in terms of
16 that everything is true and correct -- what I'm
17 saying is -- what I thought I heard you say is that
18 because we're working with an established developer
19 in the past, that we sort of waive those
20 requirements, is that accurate?
21 A. Well, I think under best practices, that
22 is a good thing to do, because you already know that
23 there is an established developer here, and they've
24 done good work in our community already. And we know

Page 141

1 that they have the financing capabilities based upon
2 their past record and everything else.
3 For me to require them even to post the
4 bond for a development plan that may not have any
5 public infrastructure improvements, I don't even know
6 that a bank would approve anything like that. So if
7 there is going to be a developer that we don't know
8 about, we will get some sort of letter that they have
9 financing or otherwise know that they have control of
10 the property.
11 Q. I see under Subpart 10 here it says these
12 are the final development plan. Applicant shall
13 provide evidence that it has the ability to post a
14 bond for the City of Powell Council prior to the
15 final development plan approval. Do you know if that
16 was complied with or not?
17 A. They have the ability to post a bond, I'm
18 pretty sure of it, but they've not shown us anything.
19 But, of course, a bond is not required until public
20 infrastructure improvements are going to be done
21 anyway, so...
22 Q. Okay. You know, I just want to reiterate
23 that the plan says: The applicant shall provide
24 evidence that it has the ability to produce a bond.

Page 142

1 I'm asking did they produce evidence or not?
2 A. By making that statement that it's true
3 and accurate to the best of their ability that they
4 can do it, yes. That's evidence enough for me.
5 That's evidence enough for the planning and zoning
6 commission because they reviewed this, too.
7 MR. BURCH: Okay. That is all I have.
8 MR. CUCKLER: Thank you, Mr. Betz. I
9 think that is it.
10 All right. Gentlemen, we'll go ahead and
11 do the closing arguments, then the board will discuss
12 amongst themselves, deliberate, make a decision on
13 this.
14 Mr. Miller, we'll give you the opportunity
15 to go first.
16 Mr. Burch, you'll have the last word.
17 MR. MILLER: Thank you, Chair Cuckler.
18 Thank you to the Members of the Board and counsel and
19 the petitioners for your time here this morning.
20 This is an important issue, obviously, to the
21 protesting parties.
22 I submit to you this is not a close call.
23 It's not a close call that you have the authority and
24 duty to strike these measures from the ballot. It's

Page 143

1 not a close call that these are administrative and
2 not permitted to go on to the ballot by way of the
3 Ohio Constitution and are in the case law that I will
4 cover.
5 First, your duty and your authority. In
6 their response to our protesting, petitioners claim
7 this board somehow lacks the power to hear this, to
8 make the call that it's administrative or
9 legislative. I'll just point out to you, that comes
10 after their argument that this board should reject
11 Supreme Court precedent because they claim it's
12 likely to be overturned. That's an argument they've
13 made for you at Page 15 of their response. And the
14 lack of authority they claim you have comes after
15 that. That may be an indication in how much they
16 really believe in that argument.
17 But I will tell you the fact of the matter
18 is the board's duties are set forth at 3501.11,
19 Division K, which requires the board to, quote,
20 review, examine and certify the sufficiency and
21 validity of petitions. Supreme Court has repeatedly
22 held that this board must fulfill that duty unless
23 the charter expressly negates it.
24 That doesn't exist here. The city charter

Page 144

1 here does nothing to remove the board's duty to
2 examine the petition. Instead, the charter only
3 mirrors verbatim the Revised Code's review provisions
4 for referendum and initiatives.
5 Compare the city charter procedures for
6 initiatives in 6.02 with Revised Code 731.28. They
7 are identical. The board shall examine all
8 signatures on the petitions to determine the number
9 of electors of the city who signed the petition.
10 Compare the city procedures for referendum
11 6.04, Revised Code 731.29. They are identical. And
12 I point this out to you to say the charter does
13 nothing different than Ohio law to effect your
14 authority here.
15 As your counsel has also correctly advised
16 you, it is your call whether this is administrative
17 or legislative for reasons I'll explain. In fact,
18 the charter goes further on your authority and says
19 where the charter is silent concerning initiative and
20 referendum petition procedures, the law of the State
21 of Ohio shall be followed. And that's Title 35,
22 setting forth your responsibilities. So under Ohio
23 law, this board must hear the protest and determine
24 the validity of these petitions.

Page 145

1 3501.39, the protest statute, prohibits
2 you from accepting any petition if instead not or any
3 requirement established by law is not met, any
4 requirement.
5 Counsel has correctly advised you that
6 otherwise Title 35 would be annulling. Any
7 petitioner in Powell could put anything they wanted
8 on the ballot if you had a ministerial role. That's
9 conflicted by the state law I just cited for you as
10 well as the case law we've mentioned already today.
11 And, again, I would just mention to you if
12 you took petitioners at their word Katie bar the
13 doors, you'll be flooded with administrative zoning
14 decisions to be sent to the ballot when that's
15 directly contrary to what the Supreme Court has
16 instructed you.
17 So we're here today pursuant to Title 35
18 to tell you the reasons why these petitions cannot go
19 forward, because they do, in fact, violate several
20 requirements of law.
21 Let's start with the most obvious one, the
22 one that we heard so much about. The law is very
23 clear on protesting. Administrative acts of city
24 council cannot be subject to referendum or repeal by

Page 146

1 initiative, either one. Article 2, Section 1F of the
2 Ohio Constitution states that only legislative acts
3 are subject to referendum or repeal by initiative.
4 Supreme Court of Ohio has repeatedly held
5 that city zoning decisions are administrative unless
6 the zoning code is amended or changed by the
7 decision.
8 We've cited you no less than four cases
9 from the Supreme Court, Buckeye Community Hope,
10 Marcela, Telerico, Norris at Pages 10 and 11 of our
11 protest, as well as the decisions of several Courts
12 of Appeal.
13 Those decisions are unrefuted by
14 petitioners. They don't cite to you one case in the
15 State of Ohio at any trial, at any court level,
16 trial, appeal or Supreme Court where approval of a
17 final development plan was found to be legislative
18 and allowed to go forward on the ballot, because it
19 doesn't exist.
20 Mr. Betz told each of you the proposed
21 uses here are fully permissible for a downtown
22 business district. They conform fully to the
23 existing zoning code. He told you in conformity with
24 the law that they followed the administrative process

Page 147

1 here and city council planning and zoning, and they
2 were administering existing zoning. That's exactly
3 the standard of what constitutes an administrative
4 act. Recited to you in our protest two Supreme Court
5 cases, again, Buckeye Community Hope and Norris, in
6 two Fifth District cases, Speedway and Village of
7 Granville, as well as several other cases from other
8 courts have made clear that city council's approval
9 of final development plan is administrative.
10 Mr. Crites even observed that at the time
11 in the minutes to everyone there in that room, well,
12 this is administrative. Everyone was on notice that
13 they had an administrative appeal of this decision
14 before them. A remedy existed for them, but instead
15 they are here before you in direct contravention of
16 Supreme Court authority.
17 Buckeye Community Hope in 1998, Supreme
18 Court held that a city council's approval of a site
19 plan for the development of land pursuant to existing
20 zoning was an administrative action. In that case it
21 was a site plan for 72 apartments in an area already
22 zoned to allow multi-family, just like here. Supreme
23 Court said it can't go on the ballot. Board of
24 Elections should have stopped it.

Page 148

1 In Norris, five years later, the Supreme
2 Court again affirmed that a referendum on an
3 administrative zoning decision could not be submitted
4 to the ballot. Again, as here, citizens sought to
5 have a referendum upon the city council's approval of
6 a development plan that was in conformity with
7 previously enacted standards for a planned district.
8 The Supreme Court held very clearly that,
9 quote, where specific property is already zoned as a
10 planned district, approval of subsequent development
11 as being in compliance with the existing planned
12 district standards is an administrative act. Exactly
13 what Mr. Betts told you earlier today.
14 Administrative approval simply couldn't be
15 put to a referendum or appeal in that case, and it
16 can't here.
17 Very quickly, the Fifth District, the
18 Speedway case, found consistent with that precedent
19 I've cited to you that enactment of a planned
20 district and its permitted uses, that's the
21 legislative act. That took place in 2005.
22 Subsequent approval for development plans of specific
23 pieces of property like took place here in 2014,
24 that's administrative, carrying out that prior

Page 149

1 legislative act.
2 Same with Village of Granville, Fifth
3 District found the same thing saying, quote, since
4 the specific property at issue was already zoned as a
5 planned commercial district, the approval of the
6 development as being in compliance with the existing
7 PCD standards is an administrative act.
8 And a fifth Supreme Court case in 2006,
9 the Supreme Court made clear that this call of
10 administrative versus legislative is yours.
11 Supreme Court held that the Franklin
12 County Board of Elections' failure to invalidate a
13 valid measure as administrative was both an abuse of
14 the board's discretion and shows clear disregard for
15 the law.
16 I know that Mr. Burch will have the last
17 word, and he's mentioned previously that perhaps
18 you're not qualified or capable of carrying this out.
19 The Supreme Court has charged you with doing so
20 pursuant to your duties under Title 35.
21 In this Upper Arlington case, an
22 initiative was sought to undue a city council's
23 administrative decision. And the Board of Elections
24 refused to invalidate the initiative on the basis of

Page 150

1 a protest filed. The court held that administrative
2 decisions cannot be subjected to an initiative or
3 referendum, and the Board of Elections abused its
4 discretion and disregarded the law in failing to
5 invalidate petitions and not uphold the protest.
6 Finally, on this point, Telerico, and even
7 more explicitly the Supreme Court again in 2005 said,
8 the Board of Elections is charged with making this
9 ruling. In that zoning case, it was a referendum and
10 an initiative sought to repeal an ordinance approving
11 a development agreement with Walmart.
12 And, again, in Upper Arlington and in this
13 case, it was the City of Oberlin, both charter
14 cities. The Supreme Court upheld the refusal to put
15 this matter on the ballot, saying it's clearly
16 administrative and not authorized by the Ohio
17 Constitution.
18 There were sufficient signatures in that
19 case. The Supreme Court was very clear. But in so
20 holding, it again affirmed what the court did, that
21 this was merely executing and administering existing
22 laws. And in its holding, the court emphasized that
23 Boards of Elections "are best equipped to gauge
24 compliance with election laws," including "whether

Page 151

1 ordinances are legislative or administrative for
2 purposes of determining whether they are subject to
3 initiative and referendum."
4 City council didn't make that call.
5 Mr. Hollins said under the law, it's your call to
6 make. It's in your lane. It's in your box under
7 Ohio Revised Code provisions of Title 35, under clear
8 Supreme Court control and authority.
9 And it doesn't matter that the city
10 council styled this as an ordinance. Buckeye
11 Community Hope addressed that directly and said,
12 look, it is the substance of the decision made that
13 determines whether this is legislative or
14 administrative, not the title. Not the stamp of the
15 clerk that called it legislation that she uses on any
16 resolution or any ordinance. And so you need to look
17 at the nature of the decision made by city council
18 under existing case law, is it administrative or
19 legislative.
20 Respectfully, petitioners talk about
21 certain facts to try to cause confusion here, to talk
22 about blurred lines and cutting corners. Their only
23 argument that this is legislative is not case law,
24 not anything under statute. It's that my client

Page 152

1 signed Powell's form. They don't like the answers my
2 client gave to questions about financing and bonding.
3 They answered them. There is no dispute there. They
4 provided the information required by the ordinance.
5 They don't like it. They don't like how they went
6 about it. That has nothing to do with whether this
7 decision is administrative.
8 Here's what the facts are that are
9 undisputed that matter for your determination. The
10 downtown business district zoning was enacted in
11 2005, as a legislative matter. The final development
12 plan of my client was submitted pursuant to that
13 existing zoning. The final development plan was
14 approved without the zoning code being amended.
15 That's administrative.
16 Again, and I know you know this, but
17 you're not the zoning inspector. You're not the city
18 council. You're not called upon to make those
19 decisions. The sole issue before you is whether the
20 decision made by city council involved matters of new
21 law or is simply carrying out the laws that clearly
22 exist.
23 And yet we provided to you that this is
24 not the only basis for validation of these petitions.

Page 153

1 Strict compliance, it's agreed, is the standard for
2 these petitions.
3 The insufficiency of the signatures. I
4 can't change what the charter says. The charter says
5 ward and precinct. We can't change what this board,
6 itself, tells everyone under their precinct boundary
7 maps the precincts are.
8 Whether the ward is Powell or the precinct
9 name is Powell A through J, it simply is a fact that
10 the precincts are not simply A, B, C, D, E, F, and G.
11 And putting that on, did not suffice under strict
12 compliance standard.
13 And, finally, I appreciate the clear
14 seriousness with which this board today has taken
15 this text and title requirement. It is of the utmost
16 importance as the Supreme Court said. A signer needs
17 to know what they are signing off on. And that's why
18 you shouldn't have to fumble through dozens of pages
19 attached to a petition.
20 A part-petition is a very clear thing. It
21 set forth the preamble. It's supposed to set forth
22 the title and text of the ordinance. Then people
23 sign after they've had a chance to review that, and
24 then the circulator attests to it. But he attests to

Page 154

1 the foregoing and not simply, yeah, I've incorporated
2 that stuff.
3 No, instead it's supposed to by charter
4 and state law -- they are in harmony on this -- it's
5 supposed to be in the petition. And when they are
6 attached and they are incorporated by reference, I
7 submit to you it's an easy call, they were not in the
8 petition as the Secretary of State's Forms I and J,
9 themselves, require.
10 I don't mean to be cavalier in saying
11 this. I don't take it lightly. But you have a
12 choice today to follow and apply the law as you are
13 charged to do under Title 35; or to disregard the
14 law, as you're being asked to do by petitioners.
15 This you cannot do. Thank you.
16 MR. HELVEY: I have a clarifying question
17 for you, Mr. Miller.
18 MR. MILLER: Yes, Mr. Helvey.
19 MR. HELVEY: I know we have the issue
20 about where people didn't fill in anything in the
21 blanks for ward and precinct. Was your statement
22 just then that if they put in A, B, C or whatever
23 under precinct that that's not sufficient either?
24 MR. MILLER: Correct. The precinct name

Page 155

1 as shown by your exhibits are Powell A -- or, excuse
2 me, by Board of Elections' records that were provided
3 today to are Powell A through J. And that should
4 have been placed on the petitions. It was on many,
5 but not on most. And they failed to fulfill both the
6 charter and state law in that regard.
7 And, again, I would just stress that
8 petitioners will not be reft of a remedy here. They
9 come to you and put this in your lap, and say it's
10 blurry, you've got to let it go to the people.
11 Well, that's irresponsibly asking you to
12 disregard your duties under Ohio law and disregarding
13 what is a clear remedy to them under the Ohio Revised
14 Code. If they thought that city council's decision
15 was unreasonable, if it was contrary to law or
16 arbitrary, there was a remedy for that. They chose
17 not to pursue it. I agree with your counsel's
18 advice, this is administrative, and they had recourse
19 from that.
20 MR. CUCKLER: Mr. Burch, you got about --
21 Mr. Miller went about 17 minutes. So you've got
22 about the same time. Go for it.
23 MR. BURCH: Thank you, Mr. Chair.
24 I think I opened today by recapping a

Page 156

1 little bit of the history in this case. The first
2 thing the protestor did is he came before this board
3 and asked you to kick this off the ballot.
4 I came before you and said that's not
5 proper. They said it would be abuse of discretion if
6 you didn't kick it off the ballot immediately, I said
7 follow the city charter. The charter makes it clear
8 that your job at that juncture was to count the
9 number of signatures of valid Powell electors.
10 I guess undeterred, the protestor then
11 filed another protest with city council where they
12 appeared and said, if you don't kick these off the
13 ballot, you will have abused your discretion. And I
14 said, no, read the Powell charter. The Powell
15 charter makes it clear that your duty as city council
16 is to approve sufficiency and validity. These
17 petitions are perfectly sufficient and valid. Please
18 refer them back to the Board of Elections to place
19 them on the ballot. City council did so.
20 So here we are for the third time with the
21 developer saying, you're abusing your discretion if
22 you don't kick these off the ballot. So here we are
23 standing here again before you having collected over
24 400 signatures from the electors of the City of

Page 157

1 Powell saying, your duty is to put this on the ballot
2 to allow the voters to decide if it's correct. Then
3 if the voters decide they want to pass this, there is
4 nothing stopping the developer from initiating a
5 lawsuit to invalidate them on any number of grounds
6 including the administrative versus legislative
7 distinction.
8 I want to share with you what the Ohio
9 Supreme Court instructed with respect to the Board of
10 Elections. The Board of Elections is not in any
11 sense a municipal functionary. It is strictly a
12 board and arm of the state government.
13 It would be anomalous indeed that an
14 agency of the state government could impose upon a
15 municipality a special election in a matter in which
16 the municipality alone is to say for the Board of
17 Elections to interfere with an issue on the ballot in
18 regards to zoning in a home municipality under
19 Article 18 of the Ohio Constitution. That's the
20 basis for our belief that it's not the board's role
21 to kick this off the ballot.
22 But even if the board decides that it is
23 their role to examine some of the more substantive
24 elements that were presented today, we still believe

Page 158

1 that there is a very strong case for putting this on
2 the ballot.
3 The basis of that case is that when you
4 stay within the lines, then you're acting
5 administratively. And when you don't stay within the
6 lines, you're creating new law. That is what the
7 Supreme Court decided. That is what their cases that
8 were cited by the protestor have stated. And it's
9 abundantly clear that if you stay within the box of
10 preexisting law, then you're acting administratively.
11 Here, we have a developer that has
12 submitted a final development plan that doesn't
13 conform with preexisting law. And, therefore, our
14 position is that it is by default an action that the
15 voters can decide for themselves in a referendum, or
16 a proposed initiative.
17 The difference between the cases that are
18 cited by the protestor is that, for instance, in the
19 Upper Arlington case or in the Oberlin case, there
20 was never any underlying question as to whether the
21 development plan was consistent with preexisting law.
22 They were clearly administrative.
23 What we're seeing here is a blurred line
24 between whether if you submit a final development

Page 159

1 plan, and you half complied with the rules, and you
2 half don't comply with the rules, then are you
3 administrative or are you legislative. We think that
4 that's unclear because when you ask for variances
5 from preexisting law, it's unclear as to whether
6 you're acting administratively or legislatively. We
7 think that those facts present themselves before this
8 board today.
9 So we aren't asking you to ignore the Ohio
10 Supreme Court. We are not asking you to ignore the
11 Powell charter. We're simply stating that under the
12 Powell charter, a legislative act is subject to a
13 referendum. And that by acting outside of
14 preexisting law, this board has the power to allow
15 the voters to decide ultimately an issue that affects
16 their own municipality.
17 Now, just briefly I want to briefly
18 mention some of the arguments raised by the protestor
19 with respect to the petitions, themselves. I raised
20 these arguments before this board on August 1st. I
21 raised them again on August 19th before city council.
22 They alleged first before this board that failure to
23 include a ward requirement, failure to abide by a
24 ward requirement somehow invalidates these petitions

Page 160

1 on their own.
2 I remain dumbstruck by that argument as
3 there are, obviously, no wards of Powell. Later,
4 then they raised a precinct argument with respect to
5 a failure of 400 petition signatures to properly list
6 the relevant precinct that we're dealing with here.
7 To that, I would just submit to you that
8 if you're signing -- if you're a voter in Powell, and
9 you're signing a petition, and the petition has a
10 blank on it for you as a Powell voter to list your
11 Powell precinct, and you put Powell Precinct A, that
12 meets the requirement of strict compliance with the
13 law.
14 I think what you're seeing is that there's
15 no valid reason to invalidate the petition so the
16 protestors have created a spaghetti against the wall
17 approach to throw a whole number of arguments at you
18 in the hopes that maybe one of them may stick and
19 invalidate these petitions.
20 Unfortunately, for the protestor, we were
21 extremely careful when circulating these petitions by
22 including a map with every circulator, including a
23 certified copy of the petition with every circulator,
24 with every petition. So what you're seeing here is

Page 161

1 an extremely close adherence, extremely close
2 adherence to the election laws that apply in this
3 case.
4 To the extent that we did not use the
5 Secretary of State's suggested form -- and I'm going
6 to reference your assistant prosecutor's
7 recommendation that those are a prescribed form, a
8 recommended form by the Secretary of State, but not a
9 required form from the Secretary of State. To the
10 extent that we basically made the exact same form and
11 then added the necessary requirements as needed by
12 the Powell charter, and then we made reference on the
13 front page to alert the voters that the full text and
14 title or in the other case title and date were
15 incorporated -- attached hereto and incorporated
16 herein.
17 I find it difficult to have been more
18 clear in our petitions, in our part-petitions than we
19 were than to include a certified copy with every
20 single part-petition including all of the necessary
21 elements.
22 So with that being said, we just ask that
23 the board, one, recognize the requirements of the
24 Powell charter in making its decision today, the

Page 162

1 Powell charter and the home municipality, and then to
2 review these positions and give the voters a shot at
3 the ballot box because the law underlying these facts
4 is unclear.
5 The courts are in a better position to
6 make these determinations, to hash out this unclear
7 line between what is an administrative act versus
8 what is a legislative act when the underlying issue
9 has some problems with the final development plan.
10 And we would just hope that you would leave it to the
11 courts to make that final decision. Thank you.
12 MR. CUCKLER: Thank you, Mr. Burch.
13 I'll bring it back to the board for any
14 discussion, deliberation.
15 MR. HELVEY: Question.
16 MR. CUCKLER: Go ahead.
17 MR. HELVEY: Gene, so the Powell city
18 council took a pass on whether this is administrative
19 or legislative?
20 MR. HOLLINS: And, again, that was going
21 to be my closing statement I was going to give. One,
22 I apologize to this board on behalf of the Powell
23 city council. They were not -- it's pretty clear
24 they were not sitting in a quasi-judicial capacity.

Page 163

1 And they did not have the opportunity you guys did to
2 take the testimony and hear the arguments, et cetera,
3 et cetera, and, therefore, did not take any position
4 on the administrative versus legislative.
5 I've kidded about being astute today. But
6 I would submit to the board, you guys have a very
7 firm grasp of the issues. You asked extremely astute
8 questions. There's not going to be another
9 evidentiary committee before the Supreme Court. I
10 think there is provision for it, but it's not going
11 to happen.
12 You guys are the forum to take the first
13 shot at this. And then there may be legal issues
14 that are going to be argued in an expedited
15 proceeding before the Supreme Court.
16 Thank you for your service. You've done
17 an excellent job, and we appreciate you taking the
18 time to do it.
19 MR. CUCKLER: Gene, follow-up. Do you
20 believe it's in the purview of this board to
21 determine administrative versus legislative?
22 MR. HOLLINS: Yes. I think case law does
23 indicate you take the first shot at it, and then
24 there's a court procedure to -- it's basically a

Page 164

1 mandated procedure. It's not really an appeal. If
2 you say it should not be on the ballot, it would be
3 up to the petitioners to ask a court to order us --
4 I'm sorry, order you to take a mandatory legal duty
5 of placing it on the ballot, and the attendant
6 standards of proof, et cetera.
7 MR. CUCKLER: Thank you.
8 Mr. Helvey, any thoughts? Anybody on the
9 board, any thoughts on hearing all this?
10 MR. HELVEY: Are we in the deliberation
11 stages?
12 MR. CUCKLER: I'm sorry, Mr. Betts, do you
13 want to chime in?
14 MR. BETTS: First of all, I have a
15 housekeeping issue just to take care of.
16 MR. CUCKLER: Sure.
17 MR. BETTS: Does anybody have any exhibits
18 that they want to admit? If there is anything, you
19 might want to admit them now.
20 MR. MILLER: Thank you, Mr. Betts. On
21 behalf of the protestors, we would offer the Exhibits
22 1 through 14 and the subparts provided to the board
23 and its court reporter here today, as well as ask the
24 board to take notice of both protest file, the

Page 165

1 exhibits attached to them as well as all other
2 argument and testimony presented here today.
3 MR. BURCH: No objection.
4 MR. CUCKLER: Okay. Very good. One thing
5 I would like to enter into the record, I'll let you,
6 counsel, determine the order. But just note
7 appearing for the protestors in which all parties
8 were noticed by their right to appear and testify and
9 call witnesses.
10 MR. BETTS: Why don't we make that Board
11 of Elections Exhibit 1 just for reference purposes.
12 MR. CUCKLER: Okay.
13 MR. BETTS: Was the agenda included on
14 that as well?
15 MR. CUCKLER: Yes.
16 MR. BETTS: I think what we should do is
17 just have a motion of the board to accept all of the
18 exhibits, including the board's and the protestors.
19 MR. HELVEY: Seconded.
20 MR. CUCKLER: So moved.
21 MR. BURNWORTH: Third.
22 MR. CUCKLER: It's been moved and
23 seconded, all the exhibits moved, say aye.
24 MR. HELVEY: Aye.

Page 166

1 MR. STEVENS: Aye.
2 MR. BURNWORTH: Aye.
3 MR. CUCKLER: Chris, I wanted to you give
4 you an opportunity, or Andrew, before we begin our
5 deliberations, any last thoughts?
6 MR. BETTS: You know, there's a lot of
7 things that have come out here today in the protest
8 and response that were submitted. But I think really
9 what it comes down to here as far as the crux of the
10 issue is the administrative/legislative issue. It's
11 within this board's purview to make that decision.
12 I think this board is charged with that
13 based on the litany of the Supreme Court. I
14 mentioned previously the Supreme Court has gone so
15 far as to set out a test that is pervasive in this
16 litany of cases in terms of determining what's
17 administrative and legislative. I can go through
18 that if the board has any questions, but, basically,
19 amounts to carrying out the law -- excuse me --
20 enacting a law, which is the zoning, and carrying out
21 that law, which is the administrative step, which
22 would be the approval of the developing plan.
23 In terms of other issues that have been
24 brought up, I think that those particular issues are

Page 167

1 subsequent to the administrative/legislative issue.
2 I think that those issues, you know, the board can
3 also look at. But, really, the deciding point is the
4 administrative/legislative issue, which, obviously,
5 legislative things, as you've heard, are subject to
6 referendum. Administrative are not. That's the
7 bottom line. And the board needs to make a
8 determination.
9 I would submit, as I've said previously,
10 that in the normal course, and I think as the Supreme
11 Court has also laid out in its series of cases, the
12 zoning, itself, is the legislative step. The
13 development plan, which is at issue here, is the
14 administrative step. And if it's administrative, I
15 think this board has an obligation to accept the task
16 and deny placing these issues on the ballot.
17 As far as a distinction between the
18 initiative and referendum are concerned, I think the
19 referendum speaks for itself. It's a referendum of a
20 legislative -- or, excuse me, an administrative act.
21 The initiative, on the other hand, might
22 be a little bit murkier. I think at its heart, when
23 you look -- not just looking at the terms that it's
24 been submitted on, the title on, it is, in fact, a

Page 168

1 measure to rescind the referendum in and of itself.
2 I think it has the same effect as the referendum
3 would be. In other words, it's, you know, looking to
4 the referendum as an administrative act.
5 With that being said, you know, I don't
6 think that the board is stepping into the purview of
7 or the territory of the city or invading its home
8 rule authority in looking at the
9 administrative/legislative issue.
10 Obviously, under the charter, the city
11 council is charged with discriminating validity and
12 sufficiency. They found it valid and sufficient, and
13 sent it back on both the referendum and initiative.
14 Of course, 3901.39 B specifically charges this board
15 with determining this protest.
16 Again, the crux of this issue is
17 determining the legislative/administrative issue.
18 Again, the bottom line, if it's legislative, then it
19 is subject to referendum. If it's administrative,
20 it's subject to administrative actions like
21 Administrative 2506 of the Ohio Revised Code.
22 I'm happy to answer any other questions
23 that the board might have in regards to this, or
24 review anything that I have said if that is helpful

Page 169

1 for the board.
2 MR. CUCKLER: Chris, real quick. Remind
3 me on 2506, what is the amount of time that that
4 appeal has to be filed?
5 MR. BETTS: I believe you have to file it
6 within 30 days.
7 MR. BURNWORTH: Small question,
8 non-lawyer. Do the courts look at anything that --
9 do the courts look at anything differently with the
10 initiative versus referendum? In other words, can
11 the people petition the government to make
12 administrative changes?
13 MR. BETTS: Yes. People can petition the
14 government to make administrative changes, obviously,
15 through initiative. But I think cutting through the
16 titles and getting down to the crux of things, the
17 effect of it is, I think, what actually counts.
18 In this case, the initiative is a
19 rescinding or a referendum of an administrative act.
20 But, again, you know, the court has
21 referenced that Donnelly test throughout all of the
22 cases that they've looked at, or this litany of cases
23 that have been referenced today.
24 MR. BURNWORTH: Was Donnelly a referendum

Page 170

1 or initiative, do you know?
2 MR. BETTS: I don't know off the top of my
3 head. I apologize.
4 MR. BURNWORTH: You know, I keep asking
5 that because if we're going to have two motions, one
6 dealing with the referendum and one dealing with the
7 initiative, the initiative may, in my mind, have
8 other thresholds of merits that murk the area between
9 administrative and legislative.
10 Here we're dealing with a petition asking
11 in this case Powell council to do something
12 administratively through an initiative as opposed to
13 trying to get them to, you know, through a referendum
14 to not enact the law that they supposedly passed or
15 didn't pass, because you say we can't deal with
16 administrative laws with referendums. Should we be
17 considering the distinction?
18 MR. BETTS: I think the bottom lines comes
19 down to the effect.
20 MR. BURNWORTH: Okay. I wanted to
21 clarify.
22 MR. MILLER: I don't mean to intrude on
23 deliberation, but may I be heard solely on that
24 point?

Page 171

1 MR. CUCKLER: Sure. But Mr. Burch is
2 going to have equal time.
3 MR. MILLER: It's helpful, Mr. Burnworth.
4 MR. BURNWORTH: Sure.
5 MR. MILLER: If I use the Buckeye
6 Community Hope, the site plan approval of apartments
7 was an initiative case as well as a referendum case.
8 Telerico, the Walmart case, was initiative and
9 referendum case, and neither could go on the ballot.
10 The Upper Arlington case where the Supreme
11 Court said you must decide is it administrative or
12 legislative, and if it's legislative -- or
13 administrative, it can't go on the ballot. Upper
14 Arlington was only an initiative case. They are
15 treated the same. Initiative or referendum, they
16 can't be use to appeal an administrative act.
17 MR. CUCKLER: Mr. Burch, we'll give you
18 equal time.
19 MR. BURCH: We would respond to that
20 primarily by saying the difference with these other
21 prior cases including Upper Arlington and Telerico,
22 Oberlin, is under the underlying factual problems
23 that have presented themselves in this case make it
24 different than those cases. In those cases, it's

Page 172

1 clearly coming from administrative. So the Board of
2 Elections had no choice but to knock it off the
3 ballot.
4 Here, we're seeing an underlying dispute
5 where some of the facts are just unclear. And that's
6 why we would ask the board to leave it on the ballot.
7 MR. CUCKLER: Okay. Anything else, Chris,
8 to add?
9 MR. BETTS: I don't have anything else
10 unless the board has questions.
11 MR. CUCKLER: Any other questions from the
12 staff? The cool thing about this, you're going to
13 get to see us deliberate, unlike a court, right,
14 where the judge can maybe play a round of golf, and
15 then come back and sit in his chambers, and then come
16 back. So excuse the deliberation process.
17 Ed, do you have some thoughts?
18 MR. HELVEY: Yeah. The way I see it,
19 there's two main issues. The issues kind of fall in
20 a couple of buckets. One is the duty and authority.
21 The protestors are saying that we have the duty and
22 the authority to determine whether this is an
23 administrative or legislative action. And if it's
24 administrative, then the protest is well taken, and

Page 173

1 the issues shouldn't go on the ballot.
2 The other argument that they put forward
3 is on the forum and content of the petitions,
4 themselves.
5 One of the issues brought up is whether
6 ward and precinct has to be listed. I was kind of
7 going along with you, Mr. Miller, except when you
8 said that just the letter of the precinct is not
9 enough. I disagree with that, because the overall
10 petition info, and what the people who are signing
11 the petitions say are that they are electors of
12 Powell. So when they say I'm in Precinct A, you
13 cannot be any other place than in the municipality of
14 Powell.
15 So if they say that they are residents of
16 Precinct G, it's clear to me, you know, what Precinct
17 G is and what its boundaries are.
18 Mr. Burch said that there are blurred
19 lines between whether it's administrative and
20 legislative. I got to tell you, this is the first
21 time I've ever contemplated that we would get so deep
22 into the weeds to determine what the legislative
23 intent and operations of municipalities are.
24 I don't feel overly qualified than any

Page 174

1 other lay person looking and hearing these issues for
2 the first time. We've not dealt with this before. I
3 don't feel comfortable one way or the other.
4 But the good news is, I believe that we're
5 merely a speed bump on the way down to Front Street.
6 And that this case will be decided, you know, well
7 above our heads.
8 I think we have seven Supreme Court cases
9 from this Board of Elections since '99. And I think
10 all of them deal with zoning issues. Although, we
11 may be the only evidentiary hearing on this, the
12 ultimate decision is not going to be made by us. And
13 I'm confident that all the parties involved have the
14 wherewithal to seek a higher ruling than what we have
15 to offer here.
16 So having said that, you know, unless my
17 colleagues are going to persuade me from their
18 deliberations, I think that the precinct letter is
19 enough, that there is a requirement in the charter
20 that they have that.
21 There is not, interestingly enough, when
22 we do consider candidate petitions, there is not a
23 requirement of precinct and ward in the statute, but
24 it is on the prescribed form. How that happened, I

Page 175

1 don't know. I think it was done as an aid back in
2 the registration heart era to help locate who the
3 different signatories were to different petitions.
4 But it's not in the statute.
5 So there is a legal distinction between
6 the directives that we get from the Secretary of
7 State and the reason for that.
8 So I think putting down on a petition to
9 repeal or initiate in the City of Powell that you're
10 in Precinct A, B, C, D, up through J, is sufficient
11 for me.
12 As far as the administrative and
13 legislative, you know, I think that -- I'm going to
14 rule on the side or my vote is going to be on the
15 side that these were ministerial functions of the
16 zoning code, and that it was administrative in
17 nature, and not legislative in nature.
18 You know, and that is against some of my
19 basic philosophies about democracies, and as far as
20 letting the citizens determine their fates rather
21 than permanently seeding away those rights. I'm not
22 happy that this issue is not going to be on the
23 ballot in that I really like to tend towards letting
24 the citizens decide these issues, but I don't see

Page 176

1 that that's the law in this case.
2 MR. CUCKLER: I appreciate that,
3 Mr. Helvey.
4 Before I make my comments, the motion --
5 wording of the motion will be what, Chris?
6 Obviously, I can't make the motion as the chair.
7 MR. BETTS: In this case, based on what
8 Mr. Helvey said, it would be to accept the protest
9 and deny accepting the initiative/referendum for
10 placement on the ballot.
11 MR. HELVEY: I would like to go a little
12 bit further than that, because I don't -- say the
13 Supreme Court rules against us on the
14 legislative/administrative issue, I don't want to
15 then come back and rule on the validity of the
16 petition.
17 I would like to take separate motions on
18 both of those so that the Supreme Court has to
19 consider both issues as well.
20 MR. BETTS: Absolutely. Absolutely. I'm
21 just saying this would be what the outcome language
22 would be. What other reasons you want to add in
23 doing them separately, I highly encourage that.
24 MR. HELVEY: Okay.

Page 177

1 MR. CUCKLER: I'm going to say a few
2 comments, then I think it's time to flip the egg.
3 MR. HELVEY: You've got two other board
4 members.
5 MR. CUCKLER: I'll give it to you guys if
6 you want to say something.
7 MR. STEVENS: Mr. Cuckler has got a lunch
8 date, I think, at 1:00.
9 MR. CUCKLER: I cancelled it.
10 MR. STEVENS: It's interesting after three
11 years, my notes lined up exactly with Mr. Helvey's,
12 which is a little scary, and so I won't add a lot to
13 what Mr. Helvey had to say. But some of the
14 questions I had, and it was very interesting to hear
15 the answers that -- one of my notes was does omission
16 equal legislative. And that's the answer that I was
17 seeking in the discussions today.
18 I'm confident that -- I'm not confident.
19 I believe that what I have heard today, I'm
20 comfortable in the decision I'm going to make, which
21 is that the protestor's arguments is more compelling
22 to me.
23 Some of the other questions that I have
24 concerns about is whether or not that Powell's

Page 178

1 prescribed form is adequate with regards to the
2 charter, I don't know the answer to that.
3 The petitions, I agree with Mr. Helvey,
4 that, in general, I like to see things go to the
5 ballot and let folks decide. In this case, I'm not
6 confident that the format is sufficient and
7 prescribes to the nature of what we would typically
8 see on petitions.
9 So, you know, in hindsight, I think I
10 would have advised folks to design it a little bit
11 differently so it's clear to the signers of the
12 petition what they are signing.
13 Mr. Burch, you made a comment that the
14 court decides legislative or administrative. And I
15 think that's probably the right place eventually that
16 that should have gone perhaps. I think Powell acted
17 in an administrative way, and I think that would have
18 been my recommendation to pursue. I think that is
19 it.
20 MR. CUCKLER: Bruce?
21 MR. BURNWORTH: I'll be brief, too. I'm a
22 little split between the two types of petitions we
23 have between -- presented to us.
24 First off, to address the precinct names,

Page 179

1 I agree with everything Ed said. It's sufficient A,
2 B, C and so on, because we also use numbers for
3 precincts and so does the Secretary of State. So had
4 they written Powell A, we could be very well arguing
5 that, no, it's 1138-1, you know, or .1, or whatever
6 it is. I'm not sure what the number for Powell A is.
7 But there are numbers assigned to the precinct in the
8 State of Ohio. Secretary of State reports returns by
9 number quite often and not A.
10 So I think voter intent, signer intent is
11 very clear. We were able to find the signatures when
12 we looked them up by using that designation. There
13 was no deception to the public.
14 We also heard testimony that Powell does
15 not have wards in its charter. It does not define
16 one ward or multiples. So that question, I think,
17 has been answered.
18 The curious piece of testimony, though,
19 that came up in the Powell charter was that there is
20 a process to deliver to Powell council initiative and
21 referendum dealing with legislative action and other
22 measures.
23 What could be another measure other than
24 legislative unless you get in to administrative, or

Page 180

1 perhaps that part of the charter that deals with
2 initiatives. That's why I asked our counsel is there
3 a distinguishment.
4 Our counsel has advised that its the
5 outcome of the initiative that makes the
6 distinguishment. I tend to decide with the voter,
7 the public, on initiatives. Even if the outcomes or
8 the result of the initiative is the same as the
9 referendum, which I think we all concur is probably
10 administrative in nature and not legislative.
11 The part of the charter that deals with
12 other measures becomes clear to me, that there is a
13 way to petition your government for action. And, you
14 know, if we separate these out, I'll probably split
15 my vote.
16 MR. CUCKLER: Okay. Appreciate it, Bruce.
17 Just a few thoughts on my end. I believe
18 the actions here are administrative and not
19 legislative. I think the legislative action was in
20 '05, with the zoning, and equally overlay that was
21 adopted in '05, those were legislative actions that
22 could have been subject to referendum. Obviously,
23 they were not, and, obviously, with passing time by
24 which those could be subject to a referendum.

Page 181

1 I'm not convinced that the final
2 development plan approval was done outside the box.
3 The Powell zoning code allows for the divergence
4 process, the variance process, gives discretion to
5 the zoning administrator to determine sufficiency.
6 I think the issue about the signature not
7 being provided, I think, as the record indicates,
8 ultimately that was provided for. And in terms of
9 the financing, Mr. Betz has been in development,
10 chairman there in Powell for 20 some odd years, has
11 worked with these specific developers. That, and his
12 experience working with them and combined with the
13 information provided was sufficient for him. So,
14 therefore, again, I believe it is administrative.
15 Again, the zoning and the overlay, back in '05, was
16 legislative and subject to referendum, but it's too
17 late.
18 And I think the rights of the voters is
19 important, obviously, and the citizens to petition
20 their government. The referendum process is to
21 protect the majority. That was the intent of the
22 referendum.
23 In this case, I think you also have to be
24 concerned about the property rights of the

Page 182

1 landowners. And that's why the initial zoning and
2 overlay process is legislative. Ultimately, to
3 protect the landowners' rights, that's why these
4 processes are administrative.
5 And on the legislative/administrative, I
6 turn somewhat to what was on the record by
7 Mike Crites, Powell City Councilman, former U.S.
8 attorney in the Sixth District, also '06 Jag Officer
9 in the United States Navy retired, indicates, along
10 with him and Councilman Cline, that this was an
11 administrative action during the council proceedings.
12 So to me it's clearly administrative, and,
13 therefore, does not -- should not be on the ballot
14 based upon that. We accept -- I would vote to accept
15 the protestor's argument on that.
16 As to the formats and the precincts and
17 the wards and all these things, on the form, itself,
18 I'm kind of a form stickler. I think where the
19 charter is silent, the Revised Code is in effect. I
20 think we all agree on that.
21 The Revised Code, if you look, the
22 Secretary of State prescribes the forms. And to the
23 extent that those forms, along with the specific
24 requirements in the charter, should have been

Page 183

1 followed. And so, therefore, I would throw out the
2 whole form, because I don't think it's in congruence
3 with the Secretary of State's directive.
4 In terms of getting into the weeds about
5 whether it should say Powell A or just A, I tend to
6 be a stickler on that. I think, although, anybody
7 who lives in Powell or in that area, this
8 neighborhood is in Powell, that neighborhood is in
9 Liberty, this neighborhood is in Powell, that
10 neighborhood is in Liberty. It's a checker board of
11 government territory.
12 And by indicating A, B, or C, I believe
13 there could be confusion as to are you in Powell A or
14 are you in Liberty A. If you just look at our
15 precinct maps down through there, there's a whole
16 checker board of territorial areas of the township
17 versus the precinct -- versus the City of Powell.
18 So I tend to take the line that not only
19 is the form not proper, but, yes, they should have
20 listed Powell on there, because there could be
21 confusion, because Powell is intertwined with
22 Liberty. All you have to do is drive through there
23 and you'll see it.
24 With that said, I guess we need a couple

Page 184

1 motions. Chris, right? Do you have any ideas on
2 that?
3 MR. HELVEY: Mr. Chairman, I'd like to
4 have several different votes on this, if we could.
5 As to the duty and authority of the
6 administrative versus legislative issue, I vote that
7 we accept the protest that the actions of the Powell
8 city council was administrative in nature, not
9 legislative in nature, and, therefore, the condition
10 of the referendum of petitions be denied.
11 MR. STEVENS: Second.
12 MR. CUCKLER: Does that cover it, Chris?
13 MR. BETTS: Did you want to do the
14 initiative and referendum separate?
15 MR. CUCKLER: He included both of them.
16 MR. HELVEY: I did them both together. Do
17 you want that separated out?
18 MR. BURNWORTH: I think probably we ought
19 to separate it. I'm not sure initiative --
20 MR. HELVEY: Let's start with referendum.
21 MR. CUCKLER: Let's separate them out, and
22 restate that, Ed.
23 MR. HELVEY: I move that we accept the
24 protest on the issue -- on the referendum on the

Page 185

1 issues as to whether this was administrative or
2 legislative action. And this board finds that the
3 actions of the Powell city council was administrative
4 in nature and, therefore, the referendum should not
5 be allowed on the ballot.
6 MR. CUCKLER: Is there a second?
7 MR. STEVENS: I'll second it.
8 MR. CUCKLER: It's been moved and
9 seconded. Any discussion on that? Okay. All in
10 favor of accepting the motion for the board by
11 Mr. Helvey say aye.
12 MR. HELVEY: Aye.
13 MR. STEVENS: Aye.
14 MR. BURNWORTH: Aye.
15 MR. CUCKLER: Aye.
16 MR. HELVEY: Do you want me to do the
17 other one, or do you want to do it?
18 MR. BURNWORTH: Let's have a bit of
19 discussion that might be appropriate.
20 On the initiatives, how does the
21 government -- its governing body determine whether an
22 initiative is appropriate? Do they distinguish
23 between administrative and legislative in nature? If
24 the people petition the government to do something,

Page 186

1 they are asking for legislative results.
2 MR. CUCKLER: Right. I think in this
3 case, we heard the arguments that the law is fairly
4 clear, that an initiative cannot be done on an
5 administrative platter. I think further on this, my
6 thought is that this initiative, the way it's written
7 and presented is merely a backdoor way of a
8 referendum. That's my thought process on this
9 initiative. But case law that has been presented to
10 us in the briefs that we've read over the past few
11 days indicates when it comes to the
12 administrative/legislative distinction, we should
13 look at the referendum and initiative, it's the same
14 test.
15 MR. BURNWORTH: So after all that, I'm
16 probably not going to split my vote, but I had to
17 make Ed work.
18 MR. CUCKLER: Well, thanks for making Ed
19 work.
20 MR. BURNWORTH: You want to read it?
21 MR. HELVEY: I'll do this one.
22 Mr. Chairman, I move that the board accept
23 the protest on the initiative in that the actions of
24 the Powell city council were administrative in

Page 187

1 nature, not legislative in nature, and that we do not
2 place the initiative on the ballot.
3 MR. STEVENS: Second it.
4 MR. CUCKLER: Okay. Thank you. It's been
5 moved and seconded. Regarding the motion as to the
6 initiative, you got that motion. All in favor of
7 accepting the motion as stated by Mr. Helvey say aye.
8 MR. STEVENS: Aye.
9 MR. BURNWORTH: Aye.
10 MR. CUCKLER: Aye.
11 MR. HELVEY: Aye.
12 MR. CUCKLER: Okay.
13 MR. HELVEY: Now, I want to throw in mine
14 about the letter, and then I assume there will be
15 another motion on the overall format.
16 MR. CUCKLER: Correct.
17 MR. HELVEY: I move that the protest
18 regarding the specific precinct is not well taken,
19 and that it is not a basis for rejecting the
20 initiative and referendum petition. With that said,
21 merely using the letter without Powell in front of it
22 is sufficient to guide us as to what precinct.
23 MR. CUCKLER: Chris, do you have some
24 thoughts on that?

Page 188

1 MR. BETTS: I appreciate what Mr. Helvey
2 is doing, but at this point, the board made a motion
3 as to the resolution and as to the initiative in
4 terms of accepting the protest, and denying placement
5 on the ballot.
6 I just don't want there to be any
7 confusion in terms of what ends up in the record in
8 terms of the actual motion. So if you want to
9 address the specific issues --
10 MR. CUCKLER: Mr. Helvey's concern is that
11 since everybody is in the business of kicking the can
12 to us, no one wants to make the hard decisions that
13 the Supreme Court could easily kick it back to us to
14 determine --
15 MR. HELVEY: If we don't take a position
16 on the format and the specifics of the petition, and
17 they rule that it is legislative, I don't want to be
18 back here two weeks from now or up on the cusp of the
19 ballots going out that we then have to react and then
20 they have to react again.
21 MR. BETTS: Understood, understood. I'm
22 just saying maybe we narrow it to the issues -- I
23 think you were getting -- one of the issues is the
24 format. The other one is the word ward and precinct,

Page 189

1 but address those issues narrowly rather than, you
2 know, I don't think there has to be a re-denial of
3 placing it on the ballot. I think you're wise to
4 address those issues.
5 MR. HELVEY: How would I do that?
6 MR. BETTS: What you probably would want
7 to do is address it as a motion for what the board's
8 finding is as to it, the board's finding.
9 MR. CUCKLER: Motion of findings.
10 MR. HELVEY: Okay. I will move that the
11 board finds that putting the letter precinct in the
12 precinct slot on the petition is sufficient.
13 MR. STEVENS: So we're not making a motion
14 on the sufficiency of the petitions?
15 MR. HELVEY: In that putting the letter
16 designation for the precinct is sufficient.
17 MR. BURNWORTH: I second, Ed.
18 MR. CUCKLER: Sufficient to comply with
19 city charter?
20 MR. HELVEY: Right.
21 MR. CUCKLER: That is your motion, Ed?
22 MR. HELVEY: Yes.
23 MR. CUCKLER: Any question as to what that
24 is? All in favor of adopting the motion findings,

Page 190

1 say aye.
2 MR. STEVENS: Aye.
3 MR. BURNWORTH: Aye.
4 MR. HELVEY: Aye.
5 MR. CUCKLER: Opposed? Nay.
6 Next motion. Anything else?
7 MR. HELVEY: For discussion purposes, do
8 you want me to make a motion?
9 MR. CUCKLER: That would be great.
10 MR. HELVEY: I move that the board has
11 found that the format of the petition does not comply
12 with the Powell city charter and the prescribed forms
13 of the Secretary of State.
14 MR. CUCKLER: Is there a second on that?
15 MR. STEVENS: I'll second.
16 MR. BURNWORTH: For point of discussion,
17 though, why do we want to have that as a matter of
18 record?
19 MR. CUCKLER: Because I got a problem with
20 the format.
21 MR. HELVEY: And he can't make the motion
22 because he's the chair.
23 MR. BURNWORTH: Well --
24 MR. HELVEY: I did it as a courtesy to get

Page 191

1 the discussion on the floor. We can vote it down.
2 MR. BURNWORTH: Well, I wanted to find out
3 why we wanted to go on record as to discovering --
4 MR. CUCKLER: So if we vote yes --
5 MR. BURNWORTH: I say that because
6 Secretary of State's form, if you look at it, doesn't
7 even have a column for precincts and wards. And so
8 you can't --
9 MR. STEVENS: That's not my hangup. My
10 hangup is the description.
11 MR. BURNWORTH: Descriptive page. I'll
12 ask them. Of the descriptive page of the forms for
13 petitioner initiatives and so on, the Secretary of
14 State provides, I think, an example, but it could be
15 a requirement. I think it's I, maybe, the title and
16 date and all that stuff. Can a petitioner bring to
17 us that information in juxtaposition, in a different
18 order and it's still acceptable? Does it have to
19 follow the Secretary of State's form?
20 MR. BETTS: I think the Secretary of
21 State's form is a good recommendation. I'm not
22 aware, as I mentioned earlier, that you have to
23 follow that form. There are requirements that needs
24 to be on the petition, yes.

Page 192

1 MR. BURNWORTH: All right.
2 MR. BETTS: But as far as that particular
3 form is concerned, I'm not sure that it's necessarily
4 required, but would be highly recommended to use the
5 Secretary of State's form.
6 MR. BURNWORTH: So I'm not sure we should
7 be in a position to require it if it's not required.
8 MR. CUCKLER: Just like we voted on the
9 findings that A versus Powell A is sufficient, we're
10 voting as to the findings by this board, what is our
11 thinking and beliefs as to the prescribed format
12 before us.
13 MR. BURNWORTH: Can we narrow the motion
14 to be to this case, to the City of Powell?
15 MR. HELVEY: Right. And it's an issue
16 because the protestors and the petitioners have made
17 it an issue, something that we discussed. And so my
18 thinking is the more clarity we can put on the record
19 as to how we came to this decision to not allow this
20 on the ballot, the better that the Supreme Court will
21 make a ruling on what we did here.
22 MR. BURNWORTH: So if we could reread the
23 motion, when you're ready, and then we can narrow it
24 to the case before us today. The reason is, there

Page 193

may be other cases in the future.
MR. CUCKLER: Jackie, can you read back the motion.
(Thereupon, the motion was read out loud.)
MR. CUCKLER: Moved by Ed, seconded by Shawn. So you're going to vote yes if you agree that it wasn't in congruence with what the form should be. You're going to vote no if you think it's cool, no problem.
Okay. So all in favor of the motion, say aye.
MR. BURNWORTH: Aye.
MR. STEVENS: Aye.
MR. CUCKLER: Aye.
All right. Opposed?
MR. HELVEY: Nay.
MR. CUCKLER: All right. Anything else?
MR. BETTS: Just as a point of summary for the record, at this point, as to both the initiative and the referendum, this board has agreed to accept the protest and deny placing both the initiative and the referendum on the ballot.
MR. CUCKLER: That is correct.
MR. HELVEY: That is correct.

Page 194

MR. CUCKLER: Is that your understanding, Bruce?
MR. BURNWORTH: Yes.
MR. CUCKLER: Shawn?
MR. STEVENS: Yes.
MR. CUCKLER: Okay. Thank you very much for all coming here. We're going to recess for five minutes, then we have two administrative things we have to do.
MR. STEVENS: Thank you, everybody.
MR. CUCKLER: Thank you everybody. Appreciate all your arguments. Thank you very much.
- - -
BOARD OF ELECTION HEARING CONCLUDED AT 1:20 P.M.
- - -

Page 195

CERTIFICATE

State of Ohio :
SS:
County of Franklin:

I, Jackie Olexa White, Notary Public in and for the State of Ohio, duly commissioned and qualified, certify that the Board of Elections Protest Hearing was taken down by me in stenotypy, afterwards transcribed upon a computer; that the foregoing is a true and correct transcript of the testimony and statements given, taken at the time and place in the foregoing caption specified.

I certify that I am not a relative, employee, or attorney of any of the parties hereto, or of any attorney or counsel employed by the parties, or financially interested in the action.

IN WITNESS WHEREOF, I have set my hand and affixed my seal of office at Columbus, Ohio, on this 29th day of August, 2014.

JACKIE OLEXA WHITE, Notary Public in and for the State of Ohio and RPR-CM.

My Commission Expires January 21, 2019.

A

A2 (1)
10:6
abide (1)
159:23
abilities (1)
134:4
ability (11)
40:10;128:22,24;131:9;136:16;140:13,14;141:13,17,24;142:3
able (6)
7:22;71:18;131:20;134:11,12;179:11
above (1)
174:7
absolute (1)
61:4
Absolutely (12)
11:21;60:15;72:19;74:21;93:4;105:7;109:22;119:10;133:19;135:22;176:20,20
abundantly (1)
158:9
abuse (4)
15:18;24:20;149:13;156:5
abused (2)
150:3;156:13
abusing (1)
156:21
accept (20)
9:18,20,24;10:4,13;11:10,13;17:14;21:9,14;94:10;165:17;167:15;176:8;182:14,14;184:7,23;186:22;193:20
acceptable (1)
191:18
accepted (1)
45:24
accepting (8)
11:5,6,11;145:2;176:9;185:10;187:7;188:4
access (4)
53:7;67:9;68:15;69:10
accordance (3)
25:20;26:6;41:14
according (2)
25:2;63:14
accurate (4)
66:5;69:15;140:20;142:3
accurately (1)
29:6
acknowledge (2)
9:2;64:20
acres (1)
105:19
across (2)
75:5;118:10
act (22)
15:19;19:22,22,24;20:1;80:9;85:12;86:1;113:11;116:5;147:4;148:12,21;149:1,7;159:12;162:7,8;167:20;168:4;169:19;171:16
acted (6)
20:8;115:10,24;116:7;127:16;178:16
acting (8)
38:8;115:2;116:13;130:7;158:4,10;159:6,13
action (21)
7:4;20:10;34:13;37:22;41:20;64:20,23;65:5;116:16;118:7;125:23;129:22;139:1;147:20;158:14;172:23;179:21;180:13,19;182:11;185:2
actions (12)
85:10;114:6;119:13;139:2,3,4;168:20;180:18,21;184:7;185:3;186:23
activity (1)
86:23
acts (5)
15:1,3;19:23;145:23;146:2
actual (10)
20:15;60:16;74:2;79:2;85:10;104:10;122:16,18;124:7;188:8
actually (22)
8:1,15;33:14;42:7,7;45:16;52:8;53:1,2;60:20;69:14;97:20;99:13;100:14;103:10;124:10;126:6,19,20;134:22;140:6;169:17
adamant (1)
98:22
add (10)
7:11;8:8;69:2;80:23;88:8;94:6;95:20;172:8;176:22;177:12
added (3)
102:8;106:22;161:11
additional (1)
56:4
address (13)
8:13;19:20;22:2;30:4;75:3;77:18;82:6;83:22;178:24;188:9;189:1,4,7
addressed (2)
8:14;151:11
addresses (2)
80:24;97:1
adequate (1)
178:1
adhere (1)
97:8
adherence (2)
161:1,2
adheres (1)
99:9
adhering (1)
99:23
administer (4)
15:3;35:16;39:5;140:3
administering (13)
15:7,12;16:3;43:2;86:4;110:3,10;113:8;114:6;125:24;126:2;147:2;150:21
Administrative (149)
14:3,11,13;15:3;16:7,9,11,13,19,20;19:24;20:1,11;22:18;23:2,8;24:14;25:3;35:8,10;36:12;38:8;41:1,19,22;64:17,23;65:7;85:9;86:10,18;88:1,18;109:10,18;110:4,18;111:3,9;112:20,23;113:3,15,19,21;114:5,8,12,23;116:2,3,4,9,17,20;117:4,5;118:1;120:9,12;122:2;123:4;124:1,12,17,20;125:4,15,16;127:2;129:18;139:1,7;143:1,8;144:16;145:13,23;146:5,24;147:3,9,12,13,20;148:3,12,14,24;149:7,10,13,23;150:1,16;151:1,14,18;152:7,15;155:18;157:6;158:22;159:3;162:7,18;163:4,21;166:17,21;167:6,14,14,20;168:4,19,20,21;169:12,14,19;170:9,16;171:11,13,16;172:1,23,24;173:19;175:12,16;178:14,17;179:24;180:10,18;181:14;182:4,11,12;184:6,8;185:1,3,23;186:5,24;194:8
administrative/legislative (8)
25:19;89:10;125:8;166:10;167:1,4;168:9;186:12
administratively (5)
111:1;158:5,10;159:6;170:12
administrator (1)
181:5
admit (2)
164:18,19
adopt (1)
78:17
adopted (7)
31:10;32:3;46:14;49:22;87:6;110:13;180:21
adopting (2)
42:12;189:24
advance (1)
26:19
advertised (1)
137:14
advice (4)
18:15;120:7;122:11;155:18
advise (1)
123:5
advised (8)
22:15;24:18;89:7;93:11;144:15;145:5;178:10;180:4
Aesh (1)
97:23
affect (1)
13:19
affects (1)
159:15
affidavit (11)
15:4;29:3;30:8;33:5,7;35:20;38:21;41:5;50:17;63:20;74:15
affirmed (2)
148:2;150:20
affixation (1)
73:7
affixed (4)
72:14,14,14,17
again (54)
6:16;17:10;19:1,3,10,11,11,16;22:11;38:4;46:12;56:23;57:3,16;59:17;63:2,6,15;76:3,11;77:18;78:23;80:1;83:15;87:9;96:17;100:7;101:23;103:17;107:10;113:1;120:3;121:14;129:13,17;130:17;145:11;147:5;148:2,4;150:7,12,20;152:16;155:7;156:23;159:21;162:20;168:16,18;169:20;181:14,15;188:20
against (4)
10:7;160:16;175:18;176:13
agency (1)
157:14
agenda (6)
5:16;10:21,23;21:20;137:9;165:13
ago (1)
84:21
agree (15)
9:1;53:3,4;55:8;86:2;91:18,21;95:1;110:1;120:1;155:17;178:3;179:1;182:20;193:6
agreed (3)
99:15;153:1;193:20
agreement (2)
8:20;150:11
ahead (16)
12:10;21:2,8;22:2;26:16;39:23;45:11;80:12;102:3,14;105:6;108:14;112:9;127:14;142:10;162:16
aid (1)
175:1
alert (1)
161:13
alerted (1)
58:5
alerts (1)
98:2
alive (1)
87:23
alleged (1)
159:22
allotment (1)
12:6
allotted (1)
12:1
allow (13)
63:3;81:6;117:13,19;118:17,19;119:10,15,24;147:22;157:2;159:14;192:19
allowed (3)
83:7;146:18;185:5
allowing (4)
53:16;58:12;88:23,23
allows (11)
91:5,6;108:23;113:20;114:18;117:16;118:23;119:9;139:22;140:2;181:3
alluded (1)
82:16
Almost (2)
28:12;60:6
alone (1)
157:16
along (7)
22:4;23:7,18;24:4;173:7;182:9,23
alter (1)
39:2

although (3)
99:7;174:10;183:6
altogether (1)
73:16
always (1)
46:22
amend (1)
39:23
amended (5)
14:14;31:15;107:20;146:6;152:14
amendment (12)
31:17;32:1,9,11,20,21,21;80:4;86:7;107:20;108:8,24
amendments (3)
106:22;107:7;111:19
amenities (1)
29:23
amongst (1)
142:12
amount (2)
87:11;169:3
amounts (1)
166:19
analyze (2)
134:11,12
and/or (2)
42:13;118:6
Andrew (8)
5:13;7:10,16;8:10;123:10,10;132:14;166:4
annexed (1)
39:17
annulling (1)
145:6
anomalous (1)
157:13
answered (3)
25:14;152:3;179:17
apartment (1)
105:18
apartments (3)
37:23;147:21;171:6
apologize (6)
40:23;41:6;112:5,8;162:22;170:3
apparent (4)
22:16;24:22;25:1,3
apparently (2)
67:7,9
appeal (17)
14:17;15:8;16:11;86:20;112:21;125:16,17;139:1,1,7;146:12,16;147:13;148:15;164:1;169:4;171:16
appeals (3)
59:7;82:9;111:5
appear (3)
37:2;40:5;165:8
appeared (3)
18:7;74:24;156:12
appearing (1)
165:7
appears (5)
26:1;35:21;60:11;69:11;98:13
applicant (11)
34:15;55:4;70:6;128:23,24;129:2,7,8;131:22;141:12,23
applicants (1)
132:4
applicant's (1)
140:14
application (47)
36:1;39:1;40:9,17,18,21,22;51:15,20,22;53:6,7,8,9,23;54:2,15,22;55:2,3;67:6,13;68:13;69:7,9,15;70:13,14,17;72:4;107:20;110:15,15;113:19;114:1;119:2;122:21;127:18;129:11;130:5;134:9,10;135:5,10,17;137:18;138:4
applications (1)
131:13
applies (3)
52:1,4;83:1
apply (4)
49:13;51:9;154:12;161:2
appointed (1)
81:20
Appreciate (13)
17:16;42:6;55:19;68:24;72:7;85:5;122:8;153:13;163:17;176:2;180:16;188:1;194:12
approach (2)
121:8;160:17
approached (1)
97:16
appropriate (11)
22:21;23:18,19;24:24;84:4;88:12;116:7;127:24;135:17;185:19,22
approval (30)
15:9;35:4,15;36:6;39:1;41:18;45:14;49:18;51:2;87:21;111:7;112:14;113:12,13;114:1;123:2;125:1;138:9;141:15;146:16;147:8,18;148:5,10,14,22;149:5;166:22;171:6;181:2
approve (13)
20:9;36:7;45:15;46:10;47:19,23;65:5,10;87:23;88:14;138:8;141:6;156:16
approved (26)
14:19;21:8;32:17;34:15;35:13;38:23;40:1,6;43:1;46:20;49:15,19;52:14;67:17;77:10;86:20;110:17;111:1;112:17;124:14,22;126:13;138:15,16,23;152:14
approves (1)
66:14
approving (4)
41:8;65:8;105:14;150:10
arbitrary (3)
16:14;113:22;155:16
architectural (4)
44:3,9,11;45:6
architecture (3)
34:2,9;44:17
area (12)
45:4,18;60:23;86:16,19,21;132:3;136:20;137:23;147:21;170:8;183:7
areas (3)
49:16;110:1;183:16
argue (3)
99:11;109:17,18
argued (2)
114:1;163:14
arguing (1)
179:4
argument (42)
12:15,17;13:3;14:2;15:14;17:23;55:10,24;58:17;59:10,13;60:9,10,11,12;61:17;63:4;64:14;65:12;87:9,10;99:5;103:6;109:24;110:2,5;113:17;118:5,15,15;123:9,15;131:4;143:10,12,16;151:23;160:2,4;165:2;173:2;182:15
arguments (33)
19:11,16;20:23;21:7;25:16;59:21,24;64:1,9,11;67:19;68:18,19,22;76:12,13,14,16;79:3;103:12;109:20;110:21;118:3;127:14;132:19;142:11;159:18,20;160:17;163:2;177:21;186:3;194:12
Arlington (8)
89:8;116:15;149:21;150:12;158:19;171:10,14,21
arm (1)
157:12
around (10)
4:12,16;5:2;40:23;76:7;77:22;84:23;88:5;99:18;107:24
Article (3)
14:6;146:1;157:19
aspects (1)
34:8
asserted (1)
68:14
assessments (1)
53:13
assigned (1)
179:7
assistance (1)
22:10
assistant (3)
5:10,13;161:6
Associates (1)
107:22
associations (1)
131:15
assume (5)
60:9;75:4;117:10;122:23;187:14
assumed (2)
79:10,11
assumption (1)
93:3
astute (6)
92:19,22;120:4,5;163:5,7
attach (4)
32:10,21;71:24;103:12
attached (20)
32:2;54:21;58:2;61:24;62:24;66:15,17;74:17;75:17,20,21;102:24;103:8,18;106:8;122:20;153:19;154:6;161:15;165:1
attaching (2)
103:19,20
attachment (2)
103:16;106:24
attachments (2)
75:16;100:24
attend (2)
35:24;36:15
attendant (1)
164:5
attended (1)
68:4
attention (2)
127:20,23
attest (4)
68:13;75:18;106:2;128:6
attestation (4)
70:11;75:17;113:7;122:20
attested (1)
127:18
attesting (10)
51:21;53:24;54:14,23;66:8;67:10,11;75:21;104:14;129:10
attests (4)
54:15;75:15;153:24,24
attorney (7)
5:11,14;22:22;37:18,18;76:6;182:8
attorneys (1)
22:7
auditor (1)
94:12
August (10)
4:2;8:1,2,18;18:7,23,24;63:9;159:20,21
authority (34)
18:3,10,19;19:2,5,7,9,13,14;44:11;45:17;46:5,12;47:10;49:23;53:12;58:18;77:2;85:14,16,17;133:20;140:10;142:23;143:5,14;144:14,18;147:16;151:8;168:8;172:20,22;184:5
authorized (4)
14:5,7,10;150:16
available (1)
11:9
aware (11)
10:23;51:24;52:7;54:17;82:11;101:22;139:6,8,21;140:1;191:22
away (1)
175:21
awfully (3)
22:7;121:23;122:3
aye (22)
165:23,24;166:1,2;185:11,12,13,14,15;187:7,8,9,10,11;190:1,2,3,4;193:11,12,13,14

B

back (39)
8:3;9:15,16;20:21;23:7,10;24:1;26:11;34:4,16;48:12,14;53:21;76:22;78:18;81:8,11;85:9;94:19;98:3;102:24;111:15;112:10;121:16;124:19;126:1;138:2,3;156:18;162:13;168:13;172:15,16;175:1;176:15;181:15;188:13,18;193:2
backdoor (1)
186:7

bait (1)
113:11
balance (1)
9:13
ballot (65)
9:20;10:1,13;11:12,14;12:19,21;13:1,2;14:4,10;16:8;19:3;21:14;56:5;63:4;68:2;77:10;78:9,19;88:9,23;90:11;108:9;114:15;119:19;125:12,15;128:8;142:24;143:2;145:8,14;146:18;147:23;148:4;150:15;156:3,6,13,19,22;157:1,17,21;158:2;162:3;164:2,5;167:16;171:9,13;172:3,6;173:1;175:23;176:10;178:5;182:13;185:5;187:2;188:5;189:3;192:20;193:22
ballots (1)
188:19
bank (1)
141:6
bar (1)
145:12
base (1)
44:5
based (17)
15:20;22:13;32:7;34:16;60:12;87:18;120:7;132:5;135:16,17,17,18,19;141:1;166:13;176:7;182:14
bases (3)
58:17,18;113:24
basic (1)
175:19
basically (13)
11:9;34:1;42:11;44:3;53:12,16;63:12;71:10,15;95:7;161:10;163:24;166:18
basis (11)
17:10,13;55:23;63:4;82:4,12;149:24;152:24;157:20;158:3;187:19
became (1)
110:6
become (2)
77:9;88:21
becomes (2)
125:10;180:12
begged (1)
19:1
begin (2)
60:1;166:4
beginning (2)
18:6;110:2
begins (2)
37:12;53:3
behalf (6)
5:11;6:9,11;21:18;162:22;164:21
behind (1)
98:4
belief (1)
157:20
beliefs (1)
192:11
below (1)
71:11
benches (1)
29:24
beneficial (1)
121:6
Berkshire (1)
108:17
best (11)
21:3;64:11;101:15;128:22;129:12;134:3;135:16;139:23;140:21;142:3;150:23
better (3)
71:15;162:5;192:20
Betts (45)
5:10,10;8:12;9:6;11:7,21;12:22;13:10;22:11;25:17;26:6;80:13;82:16;89:23;90:7;91:4;101:15;108:15,20;109:7;122:10;123:20;148:13;164:12,14,17,20;165:10,13,16;166:6;169:5,13;170:2,18;172:9;176:7,20;184:13;188:1,21;189:6;191:20;192:2;193:18
Betz (59)
15:5,21;26:17;28:1,6,8,23;29:10;30:2,8;36:5;39:12;40:4,8;41:6,23;42:2,15,24;43:7;44:2;45:3,9,16;46:8,11,21;47:4,20;48:3,18;49:6;50:11,16;51:24;52:10;55:14,18;70:9,15,19;85:13;109:24;111:13,16,17,23;112:3;120:16;123:11;131:6,10;132:15,15;133:1;139:21;142:8;146:20;181:9
Betz's (2)
41:24;66:22
bike (1)
29:21
bind (2)
71:19;72:24
binder (4)
28:24;31:6;52:11,13
bit (22)
9:7,9;19:18;20:12;47:16;64:16;68:21;69:23;76:7,15;77:24;78:1;79:6;93:20;102:17;103:24;109:1;156:1;167:22;176:12;178:10;185:18
blank (4)
40:17,18;102:6;160:10
blanks (1)
154:21
blended (1)
76:13
blocks (1)
97:1
Blow (1)
99:21
blowoff (1)
129:9
blurred (9)
116:24;117:5;119:14,15;122:17,22;151:22;158:23;173:18
blurry (1)
155:10
board (162)
4:14,16,19,19;5:1,5,12,14;6:2;7:7,19,21;9:7,17,17,20,23;10:3,12,24;11:7,10,15,16;12:20,23;13:6,21;14:3;15:15,16;17:19;18:3,8,11,16,18,19;19:12,13;20:21;22:3;23:5,10,19;25:5,18,21,24;26:3,7;33:17;41:12;42:3,8;43:10;56:22;59:15;60:3,14;63:7,11;64:5,12,19;69:1;74:14;75:4;77:12,13,14;78:4,7,16,18;80:5;81:13,14;84:3;88:10;89:5,9,19;91:3;92:8,11,12;93:6;95:14;108:4,9;109:14,21;119:5;123:8,24;124:3,23;125:11;131:11;142:11,18;143:7,10,19,22;144:7,23;147:23;149:12,23;150:3,8;153:5,14;155:2;156:2,18;157:9,10,12,16,22;159:8,14,20,22;161:23;162:13,22;163:6,20;164:9,22,24;165:10,17;166:12,18;167:2,7,15;168:6,14,23;169:1;172:1,6,10;174:9;177:3;183:10,16;185:2,10;186:22;188:2;189:11;190:10;192:10;193:20;194:14
Boards (2)
115:16;150:23
board's (11)
10:14;13:15,19;143:18;144:1;149:14;157:20;165:18;166:11;189:7,8
bodies (1)
19:8
body (8)
18:8;25:9;26:5;60:19;65:14;116:18;126:13;185:21
BOE (1)
113:9
bold (2)
105:13;130:23
bond (7)
40:11;140:15;141:4,14,17,19,24
bonding (1)
152:2
bones (1)
43:13
book (2)
28:22;40:24
books (4)
16:4;56:16;110:4;113:8
both (37)
8:24;9:1;10:17;11:16;13:14;15:13,16;17:6;19:6,8,22;22:8;31:24;33:23;34:3;42:12;43:20;74:9;76:13;90:10;97:13;119:11,11;121:6;130:1;134:11;149:13;150:13;155:5;164:24;168:13;176:18,19;184:15,16;193:19,21
bottom (5)
46:16;116:22;167:7;168:18;170:18
bought (1)
132:8
bound (1)
74:5
boundaries (6)
64:22;84:14;114:24;115:1;116:23;173:17
boundary (2)
56:17;153:6
bounds (4)
85:19;112:15;118:8,16
box (11)
16:8;68:2;115:13,14;116:11,12;127:17;151:6;158:9;162:3;181:2
boxes (1)
40:14
boy (1)
102:18
branch (1)
100:11
break (1)
80:12
Brian (2)
73:11,12
brief (9)
65:14;87:4;93:6;97:24;108:7,24;128:2;132:18;178:21
briefed (1)
22:7
briefly (6)
19:21;55:22;122:13;136:12;159:17,17
briefs (1)
186:10
Bring (8)
20:20;71:21;114:9;127:20,23;138:2;162:13;191:16
brother (1)
114:16
brought (4)
15:24;25:20;166:24;173:5
Bruce (7)
4:23;6:9;69:4;84:9;178:20;180:16;194:2
buckets (1)
172:20
Buckeye (5)
146:9;147:5,17;151:10;171:5
building (6)
29:15;44:12,14,14;46:1;51:2
buildings (3)
29:14,19;105:16
bullet (1)
82:6
bump (1)
174:5
Burch (82)
6:10,10,17,17;9:5;17:18;20:16;26:18;41:21;43:7;49:3;50:6,10,12,15;55:5,11;59:9,11,12,14;68:23;69:11;71:3,6;72:19,23;73:3;74:13,21;75:18;87:2,8;88:7;90:3;91:18,21;92:3,7,18;93:19;95:2,6,11;98:10;99:12;100:4;102:2,4,9;103:5,17;106:9;110:2;112:10;114:20,22;117:12,16;118:19;127:15,21;130:12,16,21;131:3;

132:16;139:14,17,20;142:7,16;149:16;155:20,23;162:12;165:3;171:1,17,19;173:18;178:13
Burch's (1)
95:13
burden (1)
100:13
Burnworth (56)
4:23,23;21:1,3,6,23;22:1;25:14;45:10,12;46:7,10,15;47:3,12;69:5,6,22;70:5,18;84:10,15;85:4,24;86:24;87:5,15;88:2;165:21;166:2;169:7,24;170:4,20;171:3,4;178:21;184:18;185:14,18;186:15,20;187:9;189:17;190:3,16,23;191:2,5,11;192:1,6,13,22;193:12;194:3
Burnworth's (1)
70:5
business (25)
6:13;14:21;29:18;30:14,16;31:1,12,14;32:24;33:4,12;36:22;39:9;44:4,6;45:3;47:8;86:11,11;110:12,16;132:3;146:22;152:10;188:11

C

calendar (1)
90:15
call (15)
26:17;30:23;113:16;120:2;134:22;142:22,23;143:1,8;144:16;149:9;151:4,5;154:7;165:9
called (7)
33:21;34:4;86:16,17;113:15;151:15;152:18
calling (1)
26:20
came (15)
40:21;62:7;70:21;72:15,17;73:6;75:17;83:10;90:6;124:16;126:1;156:2,4;179:19;192:19
Campbell (1)
29:17
can (58)
10:12;11:5;20:22;21:15;23:18;24:9;34:24;35:3;40:11;43:14;45:20;46:13;49:4,19;60:9;62:17;75:3;76:18;78:20;79:5,21;87:10,23;91:9;92:17,18,19;97:17,20;109:15,24;112:4;116:21,21;119:23;121:8;122:8,8;123:20;125:14;129:15;132:4;137:18;140:7;142:4;158:15;166:17;167:2;169:10,13;172:14;188:11;191:1,16;192:13,18,23;193:2
cancelled (1)
177:9
candidacy (1)
10:7
candidate (2)
99:21;174:22
candidates (1)
81:24
canvas (1)
56:20
capabilities (1)
141:1
capable (2)
116:18;149:18
capacity (3)
38:8;93:17;162:24
cards (1)
6:13
care (1)
164:15
careful (2)
92:7;160:21
carefully (1)
25:18
carried (1)
60:22
carries (2)
126:5,5
carry (3)
128:23,24;131:9
carrying (9)
125:4;126:3;127:2,5;148:24;149:18;152:21;166:19,20
case (108)
8:16;9:9,21;10:6;15:11;17:21;22:17,20;24:21;25:2,21;26:1,6,9;30:12;35:6;37:22;41:2;42:1;45:23;46:14;48:14;56:8,8;58:12;59:5,6,7;60:15;61:12,15,16;64:8;72:5;79:14,17;82:9,10;86:2;88:5;89:8,8;90:24;93:5;97:23;101:7;106:9;107:4,23;109:5;112:12;116:15,15;117:23;120:8;121:15,24;123:2,13;124:14,19;125:6,9;126:4,9,22,24;131:21;135:23;143:3;145:10;146:14;147:20;148:15,18;149:8,21;150:9,13,19;151:18,23;156:1;158:1,3,19,19;161:3,14;163:22;169:18;170:11;171:7,7,8,9,10,14,23;174:6;176:1,7;178:5;181:23;186:3,9;192:14,24
cases (31)
14:17;19:6;58:23;63:2;82:9,11;88:8;110:22;111:2,6;116:14;123:23;125:9,20;126:8;131:14;146:8;147:5,6,7;158:7,17;166:16;167:11;169:22,22;171:21,24,24;174:8;193:1
cash (1)
132:9
category (1)
30:17
cause (1)
151:21
cavalier (1)
154:10
CCO (1)
107:21
Center (6)
28:19;29:11;38:24;69:19;70:8;105:15
central (1)
108:6
certain (11)
31:17;40:8;57:6;82:24,24;91:7;93:11,16;115:7;128:4;151:21
Certainly (2)
52:6;137:20
certification (1)
42:11
certified (13)
7:2;28:2;62:2,5;65:16,21;66:11;67:1,16;70:12,16;160:23;161:19
certify (4)
10:12;21:10;104:17;143:20
certifying (1)
92:12
cetera (5)
97:2;108:10;163:2,3;164:6
Chair (8)
12:16;27:2;50:12;59:14;142:17;155:23;176:6;190:22
chairman (8)
4:14;17:18;22:2;81:18;127:9;181:10;184:3;186:22
challenge (1)
88:21
chambers (2)
107:9;172:15
chance (5)
12:12;68:2;119:16;120:9;153:23
change (18)
31:21;32:12,13,14,14;39:2,15;45:13;46:18;48:1,10,11,19;86:7;87:7;133:20;153:4,5
changed (9)
14:15,24;31:14;32:5;39:11;90:23,23;111:19;146:6
changes (12)
32:2;45:17;46:13,20;47:19,20;48:3,5,7;138:2;169:12,14
Chapter (6)
33:8;50:22;51:4,6;133:12,18
chapters (1)
133:18
character (1)
88:1
charged (10)
9:23;16:18;25:22;26:3;140:3;149:19;150:8;154:13;166:12;168:11
charges (2)
12:23;168:14
charter (130)
7:1;9:12,14;13:7,13,17,18,20,20;17:4,7;18:10,22;23:17;41:15;42:12;56:13;57:11,16;58:11;62:9,11,14;75:9,24;76:6,7,10,18,20;77:7,21,22;78:13,17,23,23;79:1,6,20,20,22;80:4,8,15;81:1;82:17;83:14,16,17,19;84:6,8,12,21,22,23;89:17,21;90:24;91:1,4,5,7,12,13;92:1,10;93:2,9,10,22,24;94:8,9,15,22;95:6;97:5,5,14;98:7,19,21;99:14,16;100:2,19,19;101:6;102:7,12;104:11,12,19;107:3,15;108:12;143:23,24;144:2,5,12,18,19;150:13;153:4,4;154:3;155:6;156:7,7,14,15;159:11,12;161:12,24;162:1;168:10;174:19;178:2;179:15,19;180:1,11;182:19,24;189:19;190:12
charter's (1)
77:16
check (2)
133:24;134:1
checker (2)
183:10,16
chime (6)
8:11;92:18,18,24;119:23;164:13
choice (2)
154:12;172:2
choose (2)
93:15;101:18
chose (7)
18:17;21:13;57:24;58:1;70:15;75:1;155:16
Chris (24)
6:10;7:10,15;8:10;11:3;12:12;17:17;20:14;21:4;25:15;26:10;47:14;69:6;80:12;108:14;123:10;132:2;166:3;169:2;172:7;176:5;184:1,12;187:23
Christopher (2)
5:10;6:17
circle (1)
114:9
circulate (4)
71:17,20;73:23;102:18
circulated (4)
62:18;73:24;75:6,11
circulating (5)
66:3,13;69:14;73:17;160:21
circulator (15)
60:22;62:14;73:3;74:15;101:1;104:8,10,13,21;105:8;106:2,4;153:24;160:22,23
circulators (8)
57:6,24;60:15;62:19;63:20;66:2;73:4;74:19
circulators' (1)
61:22
circulator's (2)
75:14;104:9
circumstance (2)
61:10;67:3
circumstances (2)
9:14;124:6
cite (3)
121:5;130:1;146:14
cited (12)
14:16;59:1;82:8;93:6;110:21;125:19;127:17;145:9;146:8;148:19;158:8,18

cities (4)
91:13;93:15;134:22;150:14
citizens (4)
148:4;175:20,24;181:19
City (142)
6:23;7:2;9:12,19;13:14;14:19,24;15:6,9;16:2;18:3,23,24;19:1,3,23;21:6,18,18,20;22:4,6;24:12;28:9,11,14;29:16;30:9;31:10;33:14;35:4;36:11;37:3,19;39:2,17;41:2,15,18;42:11,17;43:1;46:19;47:18;48:8;50:21;53:4;57:10;60:8,23;61:13;62:5;63:7,13,13,16;65:4,22;67:7,17;68:1,3,5;70:10,16;76:6,10;78:24;79:19,20,22;84:3,19;88:15,15;91:9;94:11,15;96:7;107:6,9;110:17;112:14,17,23;113:7;114:5;115:3,9,22;116:12;117:11,13,16;118:17;121:7;124:9;127:16;130:3;131:21;138:17,20,21;139:3;141:14;143:24;144:5,9,10;145:23;146:5;147:1,8,18;148:5;149:22;150:13;151:4,9,17;152:17,20;155:14;156:7,11,15,19,24;159:21;162:17,23;168:7,10;175:9;182:7;183:17;184:8;185:3;186:24;189:19;190:12;192:14
city's (7)
13:6;36:11,23;41:19;78:22;82:17;119:24
claim (3)
143:6,11,14
claiming (1)
122:16
clarification (3)
76:9;109:3;111:11
clarify (4)
11:20;69:22;70:22;170:21
clarifying (2)
109:20;154:16
clarity (3)
92:16;103:24;192:18
classification (5)
14:14;31:22,22;32:23;86:8
classifications (2)
31:18;32:10
clear (47)
15:13,22,23;16:1,6;17:3;18:10,16;19:7;22:17,19;42:24;47:6;56:8;77:15;80:7;84:7;103:19;105:13;106:11;111:10;112:19;114:18;115:8,18;117:3;123:1;135:22;145:23;147:8;149:9,14;150:19;151:7;153:13,20;155:13;156:7,15;158:9;161:18;162:23;173:16;178:11;179:11;180:12;186:4
clearly (8)
11:3;117:4;148:8;150:15;152:21;158:22;172:1;182:12
clerk (8)
62:5;65:17,24;66:5;67:2;78:2;94:13;151:15
client (5)
20:15;122:7;151:24;152:2,12
clients (2)
118:1;122:19
client's (1)
120:13
Cline (2)
38:13;182:10
clip (3)
73:15;74:6,12
clipboard (1)
97:17
clips (2)
73:13;75:13
Close (7)
56:9;68:17;142:22,23;143:1;161:1,1
closing (6)
110:20;123:9;127:13;132:19;142:11;162:21
Code (90)
9:13,22;10:5;13:14,17;14:14;16:12;17:7;23:3;30:19;31:18;32:1,20;33:9;38:16;48:5;49:7;50:7,20;51:13;55:7;65:9;66:21,23;69:8;79:21,24;81:1;86:7,14;87:3;90:15;91:5,23;93:3,14;94:2,5;96:17;100:19;106:22;107:15;108:13,21;109:5;115:17;116:3;117:11,13,16;118:17,18,20,23;119:4,9,10,24;120:18,21;121:2;130:3,11;133:12,21;134:3;135:9,18;136:18;138:5,7;139:22,24;140:2,4,6,6,11;144:6,11;146:6,23;151:7;152:14;155:14;168:21;175:16;181:3;182:19,21
codes (2)
133:10,15
Code's (1)
144:3
codified (2)
87:22;106:23
coffee (1)
81:7
colleagues (1)
174:17
collect (1)
102:12
collected (1)
156:23
collecting (2)
60:24;67:23
colon (1)
71:11
column (4)
61:8;83:11;104:21;191:7
combined (1)
181:12
comfortable (4)
26:24;138:1;174:3;177:20
coming (4)
80:17;126:19;172:1;194:7
commend (1)
22:9
comment (4)
20:22;72:13;80:13;178:13
comments (10)
7:8;34:2;83:10;92:19,20,22;120:4;138:22;176:4;177:2
commercial (3)
29:14;105:17;149:5
commission (35)
34:3,12,13,17;44:10;45:14,17,20,24;46:4,12;47:7,10,18;48:13;49:16,20,23;53:6,14;67:8;77:22;112:13,18;120:1;134:7,12;135:15;136:10;137:7,23;138:14;139:23;140:9;142:6
commission's (2)
121:20;139:3
committee (2)
73:4;163:9
committing (1)
63:22
Common (11)
112:21;114:13;116:5,8;118:12;125:2;127:8;131:8,11,12;134:4
communicate (2)
23:5;24:1
communities (2)
37:21;135:3
community (8)
32:8;44:17;140:24;146:9;147:5,17;151:11;171:6
compactor (1)
46:2
companies (1)
131:15
company (1)
131:19
compare (3)
57:6;144:5,10
compelling (1)
177:21
complete (2)
62:2;105:10
completely (4)
38:13;86:14;121:23;122:2
completing (1)
57:11
compliance (25)
16:24;55:6;56:7,9;58:11,14;62:8;67:22;68:20;79:11;83:18;107:10;133:10,17,23;135:19;136:3;137:2;138:6;148:11;149:6;150:24;153:1,12;160:12
compliant (6)
20:5;134:5;135:11,11;137:4;138:5
complied (7)
52:8,23;60:16,17;61:11;141:16;159:1
complies (4)
54:6;65:2;135:6,7
comply (12)
51:3,5;52:18;57:10;62:22;87:3;104:11;105:2;116:10;159:2;189:18;190:11
complying (1)
68:7
comprehensive (4)
36:23;135:19;136:19;138:7
concede (1)
129:18
conceded (1)
110:2
concept (1)
73:6
concern (2)
73:7;188:10
concerned (3)
167:18;181:24;192:3
concerning (4)
29:7;40:9;94:9;144:19
concerns (1)
177:24
CONCLUDED (1)
194:14
conclusion (2)
13:4;41:22
concur (3)
86:24;95:5;180:9
condition (1)
184:9
conditions (4)
34:16;36:8;87:23;138:8
conducted (1)
63:15
confidence (1)
61:4
confident (4)
174:13;177:18,18;178:6
confines (2)
20:1,2
conflict (3)
43:17;91:24;99:13
conflicted (1)
145:9
conform (2)
146:22;158:13
conformance (1)
121:1
conformity (3)
110:24;146:23;148:6
confusing (1)
77:23
confusion (4)
151:21;183:13,21;188:7
congruence (2)
183:2;193:7
connect (1)
29:22
cons (2)
7:6;21:12
consider (14)
18:8,12;22:15;23:1;24:14;36:12;82:13;88:16;117:22;119:12;122:22;124:23;174:22;176:19
considerable (1)
88:19
considered (3)
30:20;37:3;125:3
considering (2)
53:6;170:17
consistency (1)
122:5

consistent (6)
26:8;36:21;38:18;
122:3;148:18;158:21
consistently (2)
81:23;127:1
consists (1)
29:13
consolidated (1)
8:23
constitute (1)
87:7
constitutes (2)
116:20;147:3
Constitution (8)
14:6;17:13;93:18;
114:18;143:3;146:2;
150:17;157:19
constitutional (1)
88:17
contain (10)
42:21;57:17;62:15,
16;95:24;96:3;98:20,
20;101:5;102:11
contained (5)
62:12,21;98:3;
106:11;119:2
contains (1)
75:9
contemplated (1)
173:21
content (1)
173:3
Contents (2)
51:16;52:14
contest (2)
113:21;129:7
context (4)
86:3,10;122:24;
123:1
continually (1)
18:2
continue (1)
18:4
continued (1)
103:15
continues (1)
46:17
contract (2)
131:17,17
contradict (1)
80:19
contradicting (1)
130:9
contrary (7)
15:19;16:14;43:22;
114:2;130:7;145:15;
155:15
contravention (1)
147:15
control (8)
91:2,5,6;95:4;129:1,
3;141:9;151:8
controlled (1)
82:17
controls (7)
83:14;91:23;92:2;
93:3,23;97:5;102:7
controversial (1)
68:4
convinced (2)
25:8;181:1
cookie (1)
121:8
cool (2)
172:12;193:8
copies (2)
62:4,5
copy (38)
35:21;40:6,22;42:17;
49:5;50:2,2,3,20;57:18,
23;58:9;61:21,22;62:2;
65:15,18,21;66:5,11,
13,15,17,19;67:1,1,16;
69:15;70:12,17;71:9;
96:1;98:12;99:6;
105:10;134:9;160:23;
161:19
Corigin (1)
59:6
corner (1)
57:1
corners (3)
68:10;122:15;151:22
corporate (1)
84:14
correctly (3)
113:6;144:15;145:5
corresponding (1)
107:6
council (104)
9:19;14:24;15:7;
16:2;18:3,23,24;19:1,3,
23;20:8;21:6,11;22:15;
23:16,24;24:12;25:11;
31:10;35:4;36:11,17,
20;37:3;38:7;39:2;
43:1;45:14,15;46:7,9,
13,14,20;47:18;48:8;
49:22;59:16;63:7,13;
64:4,21;65:5;67:17;
68:3;77:3,20;78:2,3;
79:15;84:3,16,18;
85:10,12,16,17;88:15,
15;90:1,3;94:13;107:7,
9;110:17;112:14,17;
113:5,7;114:5;115:3,9,
22;116:12;120:7,10;
121:21;134:7,12;
138:17,20,21;139:4;
141:14;145:24;147:1;
151:4,10,17;152:18,20;
156:11,15,19;159:21;
162:18,23;168:11;
170:11;179:20;182:11;
184:8;185:3;186:24
Councilman (5)
37:12,17;38:12;
182:7,10
council's (13)
15:9;19:6;38:14;
63:13,17;69:8;112:23;
113:4;147:8,18;148:5;
149:22;155:14
counsel (19)
6:3;8:24;18:15;
65:18;85:5;89:7;93:10;
101:10,14;123:4,7;
130:10;132:17;142:18;
144:15;145:5;165:6;
180:2,4
Counselor (5)
11:23;17:15;42:5;
43:9;50:2
Counselors (1)
5:17
counsel's (1)
155:17
count (1)
156:8
counted (2)
18:20;63:11
counter (1)
12:12
country (1)
102:18
counts (1)
169:17
County (8)
5:11,14;57:12;59:8;
93:5;111:5;118:11;
149:12
couple (11)
8:13;40:14;43:11;
46:2;76:17;80:16;
81:16;84:10;110:11;
172:20;183:24
course (7)
46:9;65:23;69:12;
83:10;141:19;167:10;
168:14
court (86)
7:4;13:18;14:9,17;
15:8,16;16:11;17:14;
26:14;56:7;57:13;58:3,
22;59:6,7,7;61:12;
63:2;82:8,9,10;93:5;
97:23;98:8;100:20;
103:24;110:22;111:2,
4;112:21;114:1,12;
116:6,8,14;118:2;
119:16;121:22;125:7,
19;126:23;143:11,21;
145:15;146:4,9,15,16;
147:4,16,18,23;148:2,
8;149:8,9,11,19;150:1,
7,14,19,20,22;151:8;
153:16;157:9;158:7;
159:10;163:9,15,24;
164:3,23;166:13,14;
167:11;169:20;171:11;
172:13;174:8;176:13,
18;178:14;188:13;
192:20
courtesy (1)
190:24
courts (14)
14:17;15:8;25:5;
88:21;89:1,1;114:7;
117:23;146:11;147:8;
162:5,11;169:8,9
cover (4)
58:16;89:11;143:4;
184:12
cozy (1)
132:16
create (5)
64:9;100:8;101:18;
134:5;136:24
created (5)
31:11;65:10;111:12;
130:6;160:16
creates (1)
115:7
creating (3)
40:16;115:3;158:6
creative (1)
121:9
criteria (3)
48:6,19;110:7
Crites (8)
37:13,17,21;38:1,6,
12;147:10;182:7
Crogan (1)
21:19
CROSS (1)
139:19
crossed (4)
7:14;16:15;62:6,7
CROSS-EXAMINATION (2)
50:14;109:23
Crossing (7)
28:20;29:12;30:5;
38:24;69:19;70:9;
105:15
crux (3)
166:9;168:16;169:16
crystal (1)
123:1
CSX (1)
30:5
CUCKLER (174)
4:7,13;5:2,15,19;
6:12,16,18,21;8:10;
11:2,19,22;12:10;
17:15;20:14,20;21:2;
24:7,10;25:9,15;26:4,
10,13,22;27:2;38:3;
42:5;43:9;45:11;47:13;
48:22;49:1,4;50:1,9;
55:13,16,19;56:1;
58:20;59:9,12;68:23;
69:4,24;70:2,24;73:1,9,
23;75:2;76:5;78:22;
79:19;80:7,11;81:5,11,
17;84:9;85:2;89:13;
91:16,20;92:1,15,24;
94:6,14,20;95:1,5,9,20;
96:16,20;97:11;99:4,
15;101:9;102:3,7,14;
105:5;106:13;107:11,
13;108:19;109:4,8;
112:6,9;114:20;117:9,
13;118:5;119:21,22;
120:5,14;122:7,12;
123:6;127:11;130:9,
13,24;131:5;132:12;
139:10,12,14;142:8,17;
155:20;162:12,16;
163:19;164:7,12,16;
165:4,12,15,20,22;
166:3;169:2;171:1,17;
172:7,11;176:2;177:1,
5,7,9;178:20;180:16;
184:12,15,21;185:6,8,
15;186:2,18;187:4,10,
12,16,23;188:10;189:9,
18,21,23;190:5,9,14,
19;191:4;192:8;193:2,
5,14,17,23;194:1,4,6,
11
curious (4)
46:19;59:19;73:22;
179:18
current (7)
19:19;50:20;82:2;
111:18,20,22;112:1
cusp (1)
188:18
cut (2)
68:10;117:1
cutter (1)
121:8
cutting (4)
119:19;122:15;
151:22;169:15
cycle (1)
82:2

D

date (12)
41:15;61:19,24;
65:20;90:2;96:4,12;
98:22;104:4;161:14;
177:8;191:16
dates (2)
42:13;57:18
Dave (6)
15:5;26:23;49:1;
55:19;120:15,16
David (4)
26:17;28:1,8;133:1
day (7)
20:18;40:19;65:20;
90:5,10;92:13;118:11

days (4)
90:15;92:11;169:6;186:11
deadline (6)
89:22;91:1,1;94:1,2,3
deadlines (1)
90:12
deal (4)
85:14;99:19;170:15;174:10
dealing (6)
124:3;160:6;170:6,6,10;179:21
deals (4)
25:24;133:16;180:1,11
dealt (3)
13:17;61:17;174:2
debating (1)
37:23
deception (1)
179:13
decide (11)
88:14;112:22;138:13;157:2,3;158:15;159:15;171:11;175:24;178:5;180:6
decided (2)
158:7;174:6
decides (2)
157:22;178:14
deciding (3)
16:19;123:24;167:3
decision (35)
11:8;14:15,23;16:5,7,13,19;25:22;26:3,7;85:18;89:3,10;112:23;113:12,16;114:16;115:12;117:7;142:12;146:7;147:13;148:3;149:23;151:12,17;152:7,20;155:14;161:24;162:11;166:11;174:12;177:20;192:19
decisions (15)
11:9,17;14:12;16:10;25:12;113:21;114:12;121:24;145:14;146:5,11,13;150:2;152:19;188:12
declare (1)
114:4
decoration (1)
101:11
deep (1)
173:21
default (6)
78:24;79:23;115:2,9,10;158:14
defect (2)
24:22,22
defects (4)
20:6;57:15;63:18;65:6
deficiency (1)
137:23
define (1)
179:15
defined (1)
48:18
Delaware (5)
5:11,13;57:12;111:5;112:21
delegate (1)
93:15
Delegated (4)
46:7;77:3;85:14,17
deliberate (2)
142:12;172:13
deliberation (4)
162:14;164:10;170:23;172:16
deliberations (2)
166:5;174:18
deliver (1)
179:20
delve (1)
110:20
demand (1)
83:18
democracies (1)
175:19
Democrat (1)
4:19
democratic (1)
4:24
denied (1)
184:10
density (1)
48:9
deny (5)
11:11,13;167:16;176:9;193:21
denying (1)
188:4
department (1)
28:16
Departure (3)
86:13;87:16,22
departures (1)
121:11
deputy (1)
5:6
describe (3)
15:14;33:17;106:4
described (4)
10:4;35:13;46:23;96:21
description (4)
13:15;33:23;105:22;191:10
Descriptive (2)
191:11,12
Design (4)
40:17;44:12,15;178:10
designation (3)
61:14;179:12;189:16
desire (1)
138:9
desk (2)
7:14;75:5
detail (1)
34:7
detailed (1)
34:7
details (3)
34:8,9,22
determination (9)
10:9;11:4;15:15;23:22;77:19;79:16;120:21;152:9;167:8
determinations (2)
122:5;162:6
determine (16)
13:11;14:9;26:5;79:17;113:5;125:11;144:8,23;163:21;165:6;172:22;173:22;175:20;181:5;185:21;188:14
determined (1)
9:19
determines (3)
78:2,3;151:13
determining (7)
12:23;125:7;127:1;151:2;166:16;168:15,17
developer (29)
18:2,17,18;20:4;29:17;34:4;38:13;52:8,17;60:18;64:2;65:1;68:9;72:3;115:19;118:4;129:6,8,16;131:14;134:20;137:24;138:23;140:18,23;141:7;156:21;157:4;158:11
developers (4)
60:2;88:22;130:22;181:11
developer's (1)
40:10
developing (1)
166:22
development (132)
14:20;15:10;16:2;20:4,7,9;28:9,11,13,15,19;29:8,11,13;30:2,12,18,21,23;31:15;32:16;33:1,3,19;34:5,6,14,18,20,20,22;35:2,3,6,11,12,16;36:2,21;37:5;38:17,23;39:14;40:6,13;41:3,9,18;46:22,24;49:10,18;51:2,3,15,23;52:2,14;53:17;54:2,13,18;65:2;66:8,14,17;67:6,13;68:10;87:21;88:24;105:14,15,18;111:7,8;113:13;115:6,7;117:15,21;121:2,3;123:3;124:8,14,16,21,21,24;125:1;126:4,18;127:4;128:3,10,13,19;129:4,6,22;130:18;131:18;132:1,5,11;133:7,9,16;134:7;135:23;136:17;141:4,12,15;146:17;147:9,19;148:6,10,22;149:6;150:11;152:11,13;158:12,21,24;162:9;167:13;181:2,9
developments (3)
118:10;131:7,23
development's (1)
121:12
DF (1)
107:21
difference (7)
76:18,21;109:9;116:14;118:22;158:17;171:20
different (20)
37:20;85:21;90:13;91:1,10;93:22;106:17,19;107:3;108:2;109:1;111:6;116:19;131:23;144:13;171:24;175:3,3;184:4;191:17
differently (2)
169:9;178:11
difficult (6)
61:9;67:3,23;88:12;89:5;161:17
dig (1)
79:12
dimensional (3)
49:12,17;87:20
dimensions (1)
135:9
direct (3)
48:24;106:15;147:15
directed (1)
85:5
direction (1)
81:22
Directive (3)
82:2,12;183:3
directives (2)
81:22;175:6
directly (5)
15:11;22:2;75:12;145:15;151:11
Director (9)
5:5,7;21:17;28:9,10,13;37:19;63:14;84:11
disagree (2)
55:8;173:9
disallow (1)
83:12
discovering (1)
191:3
discretion (11)
15:18;24:19,20;79:14,15;149:14;150:4;156:5,13,21;181:4
discriminating (1)
168:11
discuss (4)
79:5;109:15;119:23;142:11
discussed (3)
84:15;89:23;192:17
discussing (1)
10:24
discussion (7)
109:10;162:14;185:9,19;190:7,16;191:1
discussions (1)
177:17
dispute (4)
116:16;122:23;152:3;172:4
disregard (5)
83:7;89:11;149:14;154:13;155:12
disregarded (1)
150:4
disregarding (1)
155:12
distinct (1)
107:8
distinction (9)
22:19;23:2;41:22;64:17;157:7;167:17;170:17;175:5;186:12
distinguish (1)
185:22
distinguishment (2)
180:3,6
district (64)
14:21,22;15:10;30:14,15,16,17;31:1,13,14;32:5,5,14,24;33:4,12,16;36:22;39:9,15,16,20;43:14,15,23,24;44:2,3,5,15,19,22,24;45:2,4,5,19,21;47:9,11;49:9;86:11,12;87:24;109:12;110:13,16,19;111:4,8,17,18;121:9;146:22;147:6;148:7,10,12,17,20;149:3,5;152:10;182:8
districts (18)
30:24,24;31:11;32:2,13,15;33:11,14;43:20,21;44:7;49:7,16;120:23,24;121:5;

122:1;136:24
dive (2)
17:22;20:12
diverge (1)
140:10
divergence (7)
87:6,13;118:6;
123:13,16,17;181:3
divergences (12)
85:9,14;117:14;
118:11,17;120:20;
121:18;123:15;125:2;
127:6;134:8;135:8
Division (1)
143:19
document (6)
60:2;65:16;72:17,18;
107:9;128:6
documents (4)
73:18;74:5;126:12;
135:20
Don (1)
108:5
done (20)
34:23;39:14;58:10;
66:12;99:3;102:19;
106:18,20;107:12;
117:18;121:23;124:19;
126:11;134:23;140:24;
141:20;163:16;175:1;
181:2;186:4
Donnelly (4)
125:20;126:24;
169:21,24
doors (1)
145:13
dotted (2)
16:15;62:7
doubt (4)
62:17;64:5;88:10,10
doubts (1)
88:19
down (13)
59:15,16;83:23;
97:20;98:5,14;166:9;
169:16;170:19;174:5;
175:8;183:15;191:1
downtown (37)
14:21;30:6,14,16;
31:1,11,12,14;32:5,7,
24;33:3,12;36:22;39:9;
44:2,4,4,6,6,15,22;
45:2,3,5;47:8;86:11,
11;110:12,16;111:18;
132:3;136:20,21,24;
146:21;152:10
dozens (1)
153:18
Dr (1)
29:17
drafted (1)
84:22
drawings (2)
45:8;134:10
drive (1)
183:22
drop (1)
60:10
dropped (1)
60:9
duly (1)
28:2
dumbstruck (1)
160:2
during (3)
70:18;117:14;182:11
duties (11)
13:6,8,15,19;28:14;
65:24;93:7;94:11;
143:18;149:20;155:12
duty (16)
9:8;10:15;12:20;
13:22;15:17;125:10;
142:24;143:5,22;
144:1;156:15;157:1;
164:4;172:20,21;184:5

E

Eagle (1)
97:15
earlier (10)
77:15;82:16;84:21;
85:12;90:6;94:22;
118:6;125:17;148:13;
191:22
ears (1)
47:16
easily (2)
98:4;188:13
easy (3)
22:12;117:8;154:7
Ebersole (8)
20:16;73:11,12,12,
20;74:1,7,9
economic (1)
28:15
Ed (12)
4:18;24:10;89:13;
106:13;172:17;179:1;
184:22;186:17,18;
189:17,21;193:5
effect (7)
39:19;93:10;144:13;
168:2;169:17;170:19;
182:19
effective (2)
76:23;77:9
egg (1)
177:2
eh (1)
68:16
eight (1)
36:7
eighth (1)
65:20
either (13)
25:7;30:24;49:3;
71:13,19;72:23;85:6;
103:9;124:12;139:2;
140:7;146:1;154:23
elaborate (3)
20:7;21:15;131:4
elected (1)
42:20
election (18)
10:9;26:1;61:11;
63:22;77:7;82:2;84:18;
89:19;92:6;96:7;
106:10;108:6;122:24;
123:1;150:24;157:15;
161:2;194:14
election-related (1)
124:4
Elections (35)
5:5,12;7:19;10:4;
13:21;15:15;18:11,17;
25:5;33:18;56:23;
60:14;77:12,14;78:7,
16,18;82:20;83:2;84:3;
91:8;92:9;115:16;
147:24;149:23;150:3,
8,23;156:18;157:10,10,
17;165:11;172:2;174:9
Elections' (2)
149:12;155:2
elector (2)
60:4;96:7
electors (12)
18:13,21;60:12;68:1;
71:21;77:1,6;100:15;
144:9;156:9,24;173:11
electors' (1)
82:7
element (1)
62:12
elements (14)
61:23;62:15,16,21,
23;63:23;98:21;99:2;
102:11;104:3,5;
116:19;157:24;161:21
elicit (1)
14:2
eligible (1)
90:11
else (13)
11:22;45:5,8;91:11,
17;104:2;130:15;
132:13;141:2;172:7,9;
190:6;193:17
elsewhere (1)
49:11
emphasized (1)
150:22
employed (1)
77:19
empower (1)
117:6
empowered (1)
85:17
enact (2)
15:1;170:14
enacted (7)
31:2,3,4;90:20;
91:13;148:7;152:10
enacting (3)
86:4;125:23;166:20
enactment (1)
148:19
enacts (1)
64:21
encourage (1)
176:23
end (4)
39:18,21;103:20;
180:17
ends (1)
188:7
Engagement (1)
23:20
engineering (3)
34:23;35:1;129:1
enhancements (2)
29:21,21
enough (12)
54:23;56:9,10;68:17;
71:7;75:14;101:5;
142:4,5;173:9;174:19,
21
ensure (2)
12:20;92:9
enter (1)
165:5
entertain (2)
19:4;103:12
entire (2)
22:10;71:18
entirety (1)
129:5
entitled (1)
84:2
equal (3)
171:2,18;177:16
equally (2)
15:13;180:20
equipped (2)
15:17;150:23
era (1)
175:2
especially (2)
40:13;88:4
essence (1)
23:24
essentially (4)
42:2;65:10;78:21;
87:22
established (14)
10:11;20:1,2;32:3;
41:2;49:15;84:17;85:1;
87:13;129:8,16;
140:18,23;145:3
establishes (4)
33:13;48:6,19;49:9
establishment (1)
39:16
et (5)
97:1;108:10;163:2,3;
164:6
Even (20)
19:13;67:15;68:13;
86:16,16;93:13;114:3;
115:23;116:7;119:12,
19;120:23;131:13;
141:3,5;147:10;150:6;
157:22;180:7;191:7
evening (2)
36:18;38:10
event (1)
43:17
eventually (1)
178:15
everybody (14)
4:8;5:19;8:20;10:22;
50:3;76:6;81:6;107:24;
114:15;132:19;137:16;
188:11;194:10,11
Everyone (6)
5:16;49:5;84:2;
147:11,12;153:6
evidence (22)
14:1,18;15:5,20;
16:22;23:4;76:3;86:6;
113:23;122:16,18;
128:22,23;130:6,17;
140:13,14;141:13,24;
142:1,4,5
evidentiary (2)
163:9;174:11
exact (9)
54:10,24;65:21;
79:12;92:14;100:6,6;
111:6;161:10
Exactly (10)
24:16;92:3;95:21;
99:7;103:2;110:22;
125:22;147:2;148:12;
177:11
exactness (3)
51:21;54:1;67:12
EXAMINATION (3)
28:4;133:1;139:19
examine (4)
143:20;144:2,7;
157:23
examining (2)
53:14,15
example (6)
44:13;45:22;48:8;
57:9;134:20;191:14
exceed (7)
18:3,18;19:2,4,8,12,
14
exceeded (2)
20:9;65:6
exceeds (1)

42:3
excellent (1)
163:17
except (4)
49:13;94:21;140:2;173:7
excluding (1)
139:4
excuse (7)
10:13;61:19;62:6;155:1;166:19;167:20;172:16
executed (1)
29:4
executing (2)
126:2;150:21
exempt (1)
91:7
exhaustive (1)
13:3
exhaustively (1)
58:17
exhibit (52)
28:22,24;29:1;30:7,8,9;31:8,19;33:5,6,8;35:19,20,21;37:1,2,8;38:3,5,20,21;40:4,5,24;41:10;42:15;43:14;46:16;50:5,16;52:11,13;53:22;56:15,16,20,22;57:3,6,21;65:13,14;66:7,16,18;67:4,5;70:12;85:22;130:2,22;165:11
exhibits (10)
12:17;55:23;57:4;106:7;155:1;164:17,21;165:1,18,23
exist (4)
97:19;143:24;146:19;152:22
existed (2)
14:22;147:14
existing (25)
14:20;15:3,12;16:3;29:15;32:23;35:13;46:19;64:21,22;79:17;110:3,7,11,23;113:14;123:3;146:23;147:2,19;148:11;149:6;150:21;151:18;152:13
exists (2)
61:15;86:5
expansive (1)
133:15
expect (1)
123:4
expedited (1)
163:14
experience (4)
41:17;42:6;134:1;181:12
experiences (1)
134:24
expert (2)
78:23;108:6
expertise (1)
89:3
explain (5)
36:20;43:15;76:18;131:10;144:17
explaining (1)
134:7
explicitly (5)
13:16;18:8;94:1,23;150:7
Express (1)
72:9
expressly (4)
13:20;32:24;93:9;143:23
exquisite (2)
67:21;68:20
extensive (1)
22:13
extent (3)
161:4,10;182:23
extra (1)
104:21
extremely (8)
18:10;22:8;67:21;115:17;160:21;161:1,1;163:7
extrinsic (1)
23:4
eyes (2)
64:7,13

F

face (8)
22:16,19;24:23;25:1,4;31:24;101:3;104:6
facet (1)
72:2
facial (2)
24:22;63:17
fact (18)
13:13;14:24;19:21;34:24;39:11;47:22;70:15;74:16;75:21;82:15;93:4;112:11;140:2;143:17;144:17;145:19;153:9;167:24
facts (11)
15:22,23,24;16:1;29:6;111:10;151:21;152:8;159:7;162:3;172:5
factual (3)
20:6;42:1;171:22
factually (1)
133:4
fail (3)
63:21;78:7,8
failed (3)
60:3;115:20;155:5
failing (6)
17:4,7;61:13;116:10,10;150:4
failings (1)
17:2
failure (8)
17:3;57:9;65:1;130:17;149:12;159:22,23;160:5
fairly (1)
186:3
fairness (1)
132:17
Fairview (1)
125:20
fall (1)
172:19
falls (2)
30:17;44:4
familiar (1)
28:18
famous (1)
107:17
far (9)
23:22;76:12;125:7;166:9,15;167:17;175:12,19;192:2
Faris (1)
40:16
fascia (3)
76:2;79:10;81:4
fast (1)
101:22
fates (1)
175:20
favor (4)
185:10;187:6;189:24;193:10
feasibility (1)
129:2
federal (1)
82:11
fee (1)
40:21
Feel (6)
6:6;12:6;50:10;60:6;173:24;174:3
feet (3)
29:14;105:16;137:14
felony (2)
63:21,22
felt (2)
136:14;137:1
few (13)
6:3;17:19,22;45:23;55:23;56:1;59:23;92:15;123:11;132:14;177:1;180:17;186:10
Fifth (5)
111:4;147:6;148:17;149:2,8
file (2)
164:24;169:5
filed (21)
4:9;7:18,20;8:3,4,15,16,17;9:9,22;10:8,10,18,18;13:24;35:5;65:14,19;150:1;156:11;169:4
fill (1)
154:20
final (48)
34:19,20;35:2,3;38:23;40:6;41:18;51:15,23;52:14;54:2,12;65:1;66:8,14,16;67:6,13;68:9;105:14;111:7;115:7;117:14,20;121:3;123:3;124:13,21,24;125:1;126:18;127:4;128:18;129:6;133:6,9;135:23;141:12,15;146:17;147:9;152:11,13;158:12,24;162:9,11;181:1
Finally (5)
40:4;42:15,24;150:6;153:13
finance (1)
40:10
financial (1)
131:8
financing (15)
128:5,5,9,14,16;129:3;130:16,18;131:1;132:7;140:14;141:1,9;152:2;181:9
find (13)
42:6;59:22;78:5;82:4;98:4;101:2;137:17,18;138:4,6;161:17;179:11;191:2
finding (2)
189:8,8
findings (4)
189:9,24;192:9,10
finds (4)
84:13;137:23;185:2;189:11
fine (5)
55:2;71:16,20;94:20;129:16
finished (1)
55:21
fire (1)
64:10
firm (1)
163:7
First (34)
17:20;20:18;22:5;28:2;37:11;41:23;47:7;60:13;63:7,8;71:3,6;77:13;78:14;90:6;99:12;105:21;113:9;114:23;117:2;120:3,6;121:20;128:2;142:15;143:5;156:1;159:22;163:12,23;164:14;173:20;174:2;178:24
fit (4)
47:24;53:15;71:9;136:17
fits (1)
44:18
five (4)
48:6;81:8;148:1;194:7
fix (1)
112:16
flaw (1)
113:18
flexibility (1)
87:24
flip (1)
177:2
flooded (1)
145:13
floor (1)
191:1
folks (5)
53:19;84:18;99:18;178:5,10
follow (17)
58:1;99:2;102:16;104:24;109:5;115:20,22,23;129:19,20;130:7;131:20;140:7;154:12;156:7;191:19,23
followed (10)
41:2;42:12;44:9;86:14;94:10;98:22;115:8;144:21;146:24;183:1
following (5)
10:5;57:22;58:8;98:12;105:9
follows (2)
28:3;128:19
follow-up (8)
22:14;84:13;107:11;108:15;112:5;123:6;132:18;163:19
font (3)
71:14;98:17;100:17
foot (1)
7:9
foregoing (4)
75:15,15,19;154:1
forgive (1)
127:24
forgoing (1)
75:19
form (63)
40:18;54:15;55:3;57:21;58:1,7;70:10;71:5,7;79:7,11;80:22;

96:15,21,23;98:11;99:13;100:3,4,6;101:3,4,10,16,17,18,23;102:4,10,20;104:9,20,20;105:9,9,11,12;108:2,8;111:20,22;122:19,20;134:10;152:1;161:5,7,8,9,10;174:24;178:1;182:17,18;183:2,19;191:6,19,21,23;192:3,5;193:7
formally (1) 89:24
format (19) 40:14;94:15;95:9,12;96:24;97:6,9;99:6,16,22,23;108:3;178:6;187:15;188:16,24;190:11,20;192:11
formats (1) 182:16
formatting (2) 96:16;99:20
former (2) 108:5;182:7
forms (8) 57:2,11;99:19;154:8;182:22,23;190:12;191:12
forth (23) 11:1;16:17;29:6;33:10,15,20;34:17;44:19;45:4,21;47:9;48:14;90:24;93:16;106:24;110:15;121:2;128:23,24;143:18;144:22;153:21,21
forum (8) 22:21,23;24:24;25:7;26:5;120:10;163:12;173:3
forward (8) 17:11;21:13;56:5;78:6;126:5;145:19;146:18;173:2
found (10) 20:6;63:16;111:5;114:7;137:4;146:17;148:18;149:3;168:12;190:11
four (7) 14:16;29:19;48:6,18;100:23;110:22;146:8
Franklin (1) 149:11
Frankly (1) 78:4
free (2) 6:6;50:10
freely (1) 61:3
frequently (1) 127:10
friendly (1) 78:1
front (21) 7:4;8:6;13:5;14:1;17:2;25:10;61:21,22;62:13,23;79:3;89:5;98:15;103:1,21;107:13,17;129:19;161:13;174:5;187:21
fruition (1) 126:19
frustrating (1) 122:4
fulfill (4) 93:7;113:3;143:22;155:5
full (14) 37:11;57:18,22;58:9,11;74:16,19;75:19;83:9;95:24;96:3;98:12;114:9;161:13
fully (2) 146:21,22
fumble (3) 101:1;106:6;153:18
fun (1) 103:20
functionary (1) 157:11
functions (2) 94:11;175:15
further (10) 13:9;14:2;43:5;55:11;139:9,11,19;144:18;176:12;186:5
future (2) 33:24;193:1
FYI (1) 12:4

G

gathered (3) 79:5;94:17;95:10
gauge (1) 150:23
gave (1) 152:2
Gene (14) 21:17;24:7,11;69:2;76:6,17;94:6;95:20;109:14;118:14;119:23;139:12;162:17;163:19
general (7) 33:22;49:8;78:11;92:5;121:7;126:10;178:4
Generally (4) 29:10;41:1;125:22;138:6
Gentlemen (1) 142:10
gets (1) 119:19
Giant (1) 97:15
given (9) 6:13;19:18;22:10;26:19;46:4;66:13,19;103:24;130:5
gives (7) 44:10;49:22;53:12;71:11;79:14;82:3;181:4
glass (1) 71:22
goal (1) 38:15
goes (13) 20:19;34:4,11,16;35:4;75:12;81:19;97:1;125:12;137:6;138:16,17;144:18
Golf (2) 131:24;172:14
good (13) 5:19;26:23;56:9;118:15;120:15,20;121:23;131:19;140:22,24;165:4;174:4;191:21
govern (1) 43:21
governed (2) 44:24;78:13
governing (1) 185:21
government (11) 100:11;117:24;157:12,14;169:11,14;180:13;181:20;183:11;185:21,24
governs (2) 108:20;111:5
grant (2) 53:4;91:12
granted (1) 86:21
granting (1) 69:9
grants (2) 67:7;68:15
Granville (2) 147:7;149:2
grasp (1) 163:7
grasping (2) 60:6;116:19
great (3) 9:3;11:22;190:9
grew (1) 16:2
ground (2) 126:17,20
grounds (1) 157:5
group (1) 11:24
guarantee (1) 33:22
guess (4) 4:15;119:7;156:10;183:24
guidance (1) 83:11
guide (3) 49:18;87:20;187:22
guideline (1) 90:19
guidelines (4) 45:20;47:9;83:1;86:13
guy (2) 118:9;120:5
guys (9) 6:12;7:10;96:21;97:3;122:4;163:1,6,12;177:5
guys' (1) 6:6

H

half (7) 28:12;71:12;100:9;102:22;119:12;159:1,2
halfway (1) 128:15
hallmarks (2) 31:17;40:2
hand (2) 28:22;167:21
handle (1) 132:4
handled (1) 88:13
handout (1) 106:16
hangup (2) 191:9,10
happen (5) 35:3;48:15;98:9;126:6;163:11
happened (7) 14:18;15:6;98:6;106:3;126:8;138:18;174:24
happening (2) 126:16,20
happens (1) 126:7
happy (8) 24:4;59:21;74:15;77:18;118:3;129:18;168:22;175:22
hard (5) 25:12;87:10;101:22;105:1;188:12
harmony (1) 154:4
hash (1) 162:6
head (1) 170:3
heads (1) 174:7
hear (8) 10:15;19:10,11;83:9;143:7;144:23;163:2;177:14
heard (14) 10:14;21:6;70:1;86:1;109:23;123:14,15;140:17;145:22;167:5;170:23;177:19;179:14;186:3
hearing (28) 4:9,10;5:21;7:5;8:19,22;9:24;10:8;11:3;13:4;19:15;22:21;24:6;38:7;74:14,23;78:20;101:13,13;103:6;137:11,12,13;138:21;164:9;174:1,11;194:14
heart (2) 167:22;175:2
heavily (1) 68:3
held (12) 10:8;15:9,16;93:5;96:11;138:21;143:22;146:4;147:18;148:8;149:11;150:1
help (2) 22:9;175:2
helpful (7) 22:9;42:7;48:23;109:13,20;168:24;171:3
helps (1) 134:14
Helvey (86) 4:18,18;23:15;24:9,11;25:6;43:12;45:1,7;47:15,22;48:16,21;58:21;59:2,4;74:4,8;81:16,17,18;83:4,6,13;89:14,17;90:12,17;92:4;106:14,21;107:12;111:11,15,21;112:1;114:9,10;127:12,15;129:24;130:20;154:16,18,19;162:15,17;164:8,10;165:19,24;172:18;176:3,8,11,24;177:3,13;178:3;184:3,16,20,23;185:11,12,16;186:21;187:7,11,13,17;188:1,15;189:5,10,15,20,22;190:4,7,10,21,24;192:15;193:16,24
Helvey's (2)

177:11;188:10
hereby (1)
106:22
herein (10)
49:10;62:1,24;63:1;66:18;72:1;75:20;103:18;107:1;161:16
hereinafter (1)
28:2
here's (2)
126:6;152:8
hereto (8)
61:24;62:24;66:17;75:20,21;103:18;106:24;161:15
HERRON (4)
5:6,6;8:9;83:9
herself (1)
69:17
Hi (1)
5:4
higher (1)
174:14
highly (2)
176:23;192:4
hindsight (1)
178:9
historic (1)
29:16
historically (1)
11:23
history (3)
17:21;113:10;156:1
Hold (2)
43:9;57:5
holding (2)
150:20,22
holds (1)
107:16
Holiday (1)
72:8
Hollins (34)
21:17,17;22:1;24:16;69:3;76:20;79:9,22;80:10,14,19;81:3;82:17;84:15;89:15,16,21;90:4,22;91:15;92:19,21;94:8;95:21;96:19;120:3,6,15;122:10,23;139:13;151:5;162:20;163:22
home (4)
107:15;157:18;162:1;168:7
homes (1)
97:16
honor (1)
12:7
hoops (1)
100:12
Hope (6)
146:9;147:5,17;151:11;162:10;171:6
hopefully (2)
26:15;137:22
hopes (1)
160:18
hot (1)
26:24
house (4)
29:16,16,17;105:17
housekeeping (2)
10:20;164:15
Hrivnak (1)
42:20
human (1)
137:21
hundred (1)
104:23
hundreds (1)
118:10

I

idea (3)
113:2;121:4;123:18
ideas (1)
184:1
identical (4)
67:14,15;144:7,11
identified (1)
111:23
ignore (4)
18:17;116:3;159:9,10
ignoring (1)
118:24
II (1)
107:22
illegal (1)
14:9
imagine (2)
52:21;61:9
immaterial (1)
90:9
immediately (3)
58:5;98:1;156:6
implore (1)
64:6
importance (1)
153:16
important (10)
58:4;60:19;64:18;97:13;98:1,9;99:20,24;142:20;181:19
impose (1)
157:14
impossible (3)
98:16;100:8,13
improvements (3)
34:9;141:5,20
include (21)
28:14;32:19;63:21;71:8;95:16,18;97:4;98:15,16;102:5,6;107:7;125:2;127:5,6,8;128:4,16;130:17;159:23;161:19
included (9)
29:23;37:24;66:1,4,6;104:4,17;165:13;184:15
includes (2)
67:7;128:14
including (17)
29:23;31:12;33:12;66:15;96:13;104:3;109:14;115:6;128:14;135:8;150:24;157:6;160:22,22;161:20;165:18;171:21
incomprehensible (1)
122:2
inconsistent (1)
65:8
incorporate (2)
71:24;104:1
incorporated (12)
62:1,24;63:1;66:18;75:20,22;103:18;107:1;154:1,6;161:15,15
incorporates (1)
13:16
incorporating (3)
103:21;104:5;105:12
incorporation (2)
58:13;106:10
increase (1)
48:9
incumbent (1)
13:23
indeed (1)
157:13
independently (1)
137:18
indicate (3)
24:21;25:17;163:23
indicated (5)
10:17,22;22:20;39:12;108:3
indicates (4)
90:24;181:7;182:9;186:11
indicating (2)
72:22;183:12
indication (2)
23:7;143:15
indigo (1)
96:21
individual (1)
109:14
info (1)
173:10
informal (1)
11:24
information (14)
34:7;51:22;54:1;67:12;88:6;101:8;102:23;107:5;128:4,17;129:11;152:4;181:13;191:17
infrastructure (2)
141:5,20
Ingram (1)
6:9
initial (1)
182:1
initially (1)
33:20
initiate (4)
78:12;129:4;130:18;175:9
initiated (1)
78:17
initiating (1)
157:4
initiative (70)
6:24;8:2;9:16;10:1;11:11,13,17;14:4;15:2;58:6,8;76:12,16,19;77:21;78:10,12;80:1,4;89:18;94:16;95:17,22,24;96:9,23;97:7;99:6;103:11;107:4;144:19;146:1,3;149:22,24;150:2,10;151:3;158:16;167:18,21;168:13;169:10,15,18;170:1,7,7,12;171:7,8,14,15;179:20;180:5,8;184:14,19;185:22;186:4,6,9,13,23;187:2,6,20;188:3;193:19,21
initiative/referendum (2)
80:2;176:9
initiatives (8)
7:18,23;144:4,6;180:2,7;185:20;191:13
Inn (1)
72:9
inside (1)
51:12
inspect (1)
64:12
inspector (1)
152:17
instance (19)
31:21;57:6;77:13;78:15;82:20,23;83:21;86:15;93:24;94:23;102:4,6;107:8;110:8;113:17;118:23;119:4;121:21;158:18
instances (2)
127:19,22
Instead (12)
14:19;16:17;58:2,13;106:3,11;110:10;113:11;144:2;145:2;147:14;154:3
instructed (2)
145:16;157:9
instruction (1)
82:3
insufficiency (4)
17:2;56:11;77:17;153:3
insufficient (1)
130:2
insure (1)
128:15
insuring (1)
62:8
intends (1)
10:24
intent (4)
173:23;179:10,10;181:21
interest (1)
77:16
interested (2)
5:24;112:16
interesting (3)
72:11;177:10,14
interestingly (2)
75:14;174:21
interfere (2)
112:7;157:17
interplay (3)
100:1;108:11,12
interplays (1)
109:16
Interpretation (1)
23:20
interpreted (2)
77:16;117:6
interrupt (2)
50:24;117:9
intertwined (1)
183:21
intervenes (1)
9:23
intervening (1)
9:10
into (26)
4:11;6:1,5;12:15;17:23;20:12,22;25:16;46:23;65:7;71:14;72:5,15;103:21;104:5;110:20;123:9;126:16,20;127:7,13;131:16;165:5;168:6;173:22;183:4
introduce (2)
4:12;6:7
intrude (1)
170:22
invading (1)
168:7
invalid (1)
58:16
invalidate (7)
61:14;149:12,24;150:5;157:5;160:15,19

invalidates (1)
159:24
invalidity (1)
58:19
investigation (1)
63:15
invitation (1)
19:4
involve (1)
9:15
involved (2)
152:20;174:13
irrelevant (1)
15:24
irresponsibly (1)
155:11
I's (1)
16:15
issue (52)
7:1;8:14;9:15;23:11,12;24:6;25:21;26:8;30:12;32:16;52:5;60:3;68:2,5;71:6;80:17,24;81:20;83:6,7,15;89:23;91:12,17;125:12;130:24;134:17,19;135:24;142:20;149:4;152:19;154:19;157:17;159:15;162:8;164:15;166:10,10;167:1,4,13;168:9,16,17;175:22;176:14;181:6;184:6,24;192:15,17
issues (38)
6:23,24;14:3;16:12;23:13;25:10,19,24;40:8,12;78:21;81:24;82:1;94:9;114:11;115:15;124:2,5;163:7,13;166:23,24;167:2,16;172:19,19;173:1,5;174:1,10;175:24;176:19;185:1;188:9,22,23;189:1,4
item (2)
136:22;140:1
items (2)
11:16;136:23

J

Jackie (3)
5:23;6:13;193:2
Jag (1)
182:8
Jennifer (1)
21:19
Jim (1)
42:20
job (8)
21:9;66:12;99:19;120:16;121:23;133:6;156:8;163:17
Joe (7)
6:8;12:8;21:5;26:11;99:5,21;107:21
Josh (3)
5:4;8:16;10:17
joy (1)
22:11
judge (1)
172:14
judicial (1)
117:8
July (5)
7:17,20;8:17;29:4;65:20
jump (2)
40:23;100:12
juncture (4)
18:11;19:14,19;156:8
June (1)
37:7
juxtaposition (1)
191:17

K

Karla (2)
5:6;8:8
Katie (1)
145:12
keep (6)
5:20;10:24;44:17;65:22;132:18;170:4
keeps (1)
88:1
key (1)
88:5
kick (8)
19:2;63:3;156:3,6,12,22;157:21;188:13
kicked (1)
25:10
kicking (2)
122:8;188:11
kicks (2)
81:1;119:16
kidded (1)
163:5
kind (15)
10:22;26:19;46:6;47:15;68:11,16,18;76:7,12;110:1;129:14,15;172:19;173:6;182:18
kindergarten (1)
20:18
kinds (2)
88:8;119:8
KING (7)
5:13,13;91:3;93:13;133:2;139:9,10
knew (2)
57:7;97:4
knock (1)
172:2
knowing (1)
134:2
knowingly (1)
106:1
knowledge (10)
29:7;72:1;84:24;104:14,17;128:22;129:12;132:10;135:16;138:24

L

lack (3)
71:15;79:5;143:14
lacks (1)
143:7
laid (1)
167:11
lamps (1)
45:8
land (4)
121:7;129:1,3;147:19
landowners (1)
182:1
landowners' (1)
182:3
landscaping (1)
29:24
lane (2)
63:11;151:6
language (6)
10:2;72:1;83:14;84:20;103:1;176:21
lap (1)
155:9
large (1)
40:14
largely (1)
83:2
last (10)
23:15;41:9;47:13;72:9;77:6,22;107:14;142:16;149:16;166:5
late (1)
181:17
later (15)
14:9;15:14;40:19;55:10;67:4;69:13,16;75:17;124:13,15,15;126:17;128:6;148:1;160:3
law (144)
10:11;12:19;13:2,4,11,13;15:7,11,12,13,19;16:14,24;17:12;18:4;19:9;20:1,2,5,10;21:17;22:17,20;24:21;25:2,21;26:2,7,9;37:19;56:7;58:12,17;61:12,15;63:13;64:21,22;65:10;68:7,20;72:3;79:14,17;83:17,20;84:11,22;86:2,9,17;87:13,14;88:16,20,21;89:7,11;90:24;93:18,23;95:3,19;97:14;101:7,7;105:2;106:8,9,11;107:3,4,10;110:7,9,10;111:10;113:1;114:2;115:1,2,3,5,7;116:24;117:10,23;118:2,8,16;120:8;121:15,24;123:2,13,19;125:5,23,24;126:1,2,3;127:2,3,5;130:6;143:3;144:13,20,23;145:3,9,10,20,22;146:24;149:15;150:4;151:5,18,23;152:21;154:4,12,14;155:6,12,15;158:6,10,13,21;159:5,14;160:13;162:3;163:22;166:19,20,21;170:14;176:1;186:3,9
laws (14)
15:1,3;16:4;61:11;94:10;110:3;113:8;114:6;130:7;150:22,24;152:21;161:2;170:16
lawsuit (1)
157:5
lawyer (3)
41:24;72:2;88:2
lawyers (1)
12:2
lay (1)
174:1
layer (2)
44:7,8
layout (1)
48:10
leads (1)
21:21
least (3)
37:19;38:17;111:6
leave (4)
63:19,20;162:10;172:6
leaving (1)
85:20
led (1)
23:21
left (2)
12:22;106:4
legal (16)
12:19;15:17;19:5;21:12;41:22;42:2;78:21;88:11,19;89:2,4;107:6;139:1;163:13;164:4;175:5
legible (1)
98:17
legislation (5)
41:14;87:17;123:14,18;151:15
Legislative (101)
15:1;16:20;19:22,22,23;20:11;22:18;23:1,9;24:15;25:3;37:22;41:20,21;64:17;65:7;77:2;85:8,16;86:1,3,9,22;87:7,14;88:18;109:11,19;110:6;111:9;112:24;113:3;116:4,20;117:23;118:1,7,21;119:11,13,14;120:9,12;121:17;122:1;124:1,11;125:13;126:13;127:1;129:21,22;143:9;144:17;146:2,17;148:21;149:1,10;151:1,13,19,23;152:11;157:6;159:3,12;162:8,19;163:4,21;166:17;167:5,12,20;168:18;170:9;171:12,12;172:23;173:20,22;175:13,17;177:16;178:14;179:21,24;180:10,19,19,21;181:16;182:2;184:6,9;185:2,23;186:1;187:1;188:17
legislative/administrative (5)
26:8;125:11;168:17;176:14;182:5
legislatively (7)
14:15;115:3,10,24;116:7,13;159:6
length (1)
100:10
less (6)
14:16;110:21;120:23;121:20;126:11;146:8
lets (1)
101:2
letter (8)
61:9;141:8;173:8;174:18;187:14,21;189:11,15
letting (2)
175:20,23
level (4)
85:24;86:22;121:14;146:15
Liberty (6)
83:22,24;183:9,10,14,22
lifted (1)
84:21
light (1)
79:16
lightly (1)

154:11
likely (1)
143:12
limit (1)
92:21
limited (6)
24:19;79:14,15;82:24;92:22;120:4
line (13)
37:16;91:9;117:1,3,5;119:14,15;122:17;158:23;162:7;167:7;168:18;183:18
lined (1)
177:11
lines (9)
89:18;90:21,22;122:22;151:22;158:4,6;170:18;173:19
link (1)
59:8
liquor (1)
83:6
list (7)
56:21;61:7,13;128:11,12;160:5,10
listed (6)
52:13;60:13;62:2,3;173:6;183:20
listen (1)
25:18
lists (4)
61:8;69:17;133:24;134:1
litany (6)
123:23;125:9,19;166:13,16;169:22
little (26)
9:7;19:18;20:12;47:16;64:10,16;68:11,21;69:23;76:7,8,15;77:24;78:1;79:6;93:20;102:17;103:24;109:1;121:9;156:1;167:22;176:11;177:12;178:10,22
live (4)
83:23,24,24;119:17
lives (3)
61:6,7;183:7
LLC (10)
28:20;29:12;40:21;69:19,21;70:6,9;105:15;107:21,22
local (2)
82:23;83:7
locate (1)
175:2
located (2)
49:16;105:19
location (3)
30:1,11;43:19
long (3)
28:10;105:24;123:23
longer (1)
100:9
look (33)
23:16,21;30:7;35:19;38:15,20;44:19;46:24;55:6;57:4;64:6;77:14;79:15;80:9;88:14;96:17;97:20;98:5;99:7;100:22;120:9;134:2;138:1;151:12,16;167:3,23;169:8,9;182:21;183:14;186:13;191:6
looked (8)
24:13;63:8;120:8;123:22;127:7;131:5;169:22;179:12
looking (16)
16:18;24:17;43:13;52:15;54:8,19;63:16,17;83:19;96:20;98:11;108:17;167:23;168:3,8;174:1
loose (1)
75:13
Lorain (1)
93:5
loss (1)
66:10
lot (15)
21:7;34:6,22;45:4;64:10;99:18;107:2;115:15;122:6;126:7,10,15;131:16;166:6;177:12
loud (1)
193:4
lower (1)
22:23
lunch (1)
177:7

M

magnifying (1)
71:21
main (4)
22:3;23:11;133:15;172:19
maintain (1)
65:23
major (2)
120:22;121:13
majority (1)
181:21
makes (4)
113:14;156:7,15;180:5
making (14)
20:18;25:22;26:3,7;40:23;77:19;121:23;127:2;134:4;142:2;150:8;161:24;186:18;189:13
mall (1)
107:18
Management (1)
107:22
manager (1)
5:9
mandated (1)
164:1
mandatory (1)
164:4
manner (3)
44:18;75:6;94:21
manual (1)
101:12
many (4)
44:13;100:12;114:10;155:4
map (10)
30:9;32:11,13,15,21;39:23;60:23;107:8;126:12;160:22
maps (3)
56:17;153:7;183:15
Marcela (1)
146:10
Marion (1)
59:7
massive (1)
72:24
materials (1)
135:18
matter (19)
10:20;14:11;22:24;23:8,9,9;57:13;70:16;78:7;82:22;83:12;113:14;143:17;150:15;151:9;152:9,11;157:15;190:17
matters (4)
24:17;83:21;124:4;152:20
may (30)
5:24;9:24;12:14;15:23;51:8;60:17,17;66:22;70:1;72:8;75:23;95:22;97:10;102:2;105:3;119:21;121:10;125:2;126:8;127:5,6;138:8;141:4;143:15;160:18;163:13;170:7,23;174:11;193:1
maybe (10)
7:13;21:3,15;84:10;112:17;126:22;160:18;172:14;188:22;191:15
mayor (1)
42:20
McTigh (1)
108:5
mean (7)
12:3;31:20;69:13;95:11;102:9;154:10;170:22
meaningful (1)
56:12
means (5)
47:23;69:18;100:4;104:1;114:23
measure (8)
79:5;96:2,8,9;98:2;149:13;168:1;179:23
measures (6)
12:18;19:3;96:5;142:24;179:22;180:12
mechanisms (1)
89:2
meet (3)
6:1;35:1;129:15
meeting (14)
7:21,22;23:15;33:21;35:22;36:15;37:2,6,17;46:9;77:15;90:1,3;137:9
meetings (2)
35:24;68:3
meets (2)
34:24;160:12
member (9)
4:20,24;69:17,18,18,21,21;70:6,7
members (15)
4:17,19;17:19;22:3;40:20;53:6;59:15;64:5,12;67:9;73:4;81:14;88:10;142:18;177:4
memo (1)
8:5
memorandum (2)
65:15;127:22
memory (1)
90:19
mention (5)
46:15;65:12;95:15;145:11;159:18
mentioned (9)
33:18;41:12;56:3;63:9;124:1;145:10;149:17;166:14;191:22
merely (6)
13:8;21:9;150:21;174:5;186:7;187:21
merit (1)
59:22
merits (1)
170:8
message (1)
23:9
met (4)
7:21;56:10;62:19;145:3
middle (1)
37:15
might (12)
10:23;39:14;42:7;66:6;85:4,6;99:18;118:14;164:19;167:21;168:23;185:19
Mike (1)
182:7
military (1)
96:21
MILLER (70)
5:18;6:8,8,15;9:4;12:9,16;21:5,5;26:12,17;27:2;28:5;38:5;43:5;48:23;50:4,8;55:9,15,22;56:3;58:20,21;59:1,5;70:1,4;74:22;75:8;81:19;82:15;83:5,13;85:23;87:15;89:6;92:17;93:4;94:18,21;95:3,13;97:10,12;100:16;105:3,7;106:14,19;107:2;109:22;111:13;112:19;119:21;122:12,13;130:4;139:11;142:14,17;154:17,18,24;155:21;164:20;170:22;171:3,5;173:7
mind (3)
84:11;85:15;170:7
mine (1)
187:13
minimum (1)
67:23
ministerial (3)
13:8;145:8;175:15
minor (2)
120:22;121:18
minute (1)
80:12
minutes (12)
12:3,4,13;35:22;37:2,6;56:2;59:23;81:6;147:11;155:21;194:8
mirrors (2)
13:14;144:3
misdirection (1)
15:24
Miss (4)
41:13;42:9,22;137:21
mixed (2)
117:23;136:16
modification (1)
120:22
modifications (4)
45:20,23;46:6;49:24
modified (1)
49:19
modify (1)
47:11
more (39)
13:3;17:23;20:12;23:22;24:8;34:7,7;

43:20,24;44:21;55:16;58:16;59:20;60:19;67:24;68:22;74:14;76:8,15;77:24;78:1;81:7;89:11;93:20;102:15;105:5;111:10;118:2;119:17;121:9,19;126:11;129:17;131:4;150:7;157:23;161:17;177:21;192:18
Morning (2) 4:1;142:19
morning's (1) 23:12
most (5) 82:9;88:12;131:23;145:21;155:5
motion (24) 165:17;176:4,5,6;185:10;187:5,6,7,15;188:2,8;189:7,9,13,21,24;190:6,8,21;192:13,23;193:3,4,10
motions (3) 170:5;176:17;184:1
move (7) 11:5;64:16;184:23;186:22;187:17;189:10;190:10
moved (6) 165:20,22,23;185:8;187:5;193:5
Moving (1) 18:24
much (10) 22:23;69:13;92:23;120:23;128:6;137:1;143:15;145:22;194:6,12
multi-faceted (1) 87:10
multi-family (2) 29:20;147:22
multiple (1) 20:5
multiples (1) 179:16
municipal (3) 77:7;93:9;157:11
municipalities (1) 173:23
municipality (8) 77:1;106:23;157:15,16,18;159:16;162:1;173:13
murk (1) 170:8
murkier (1) 167:22
must (15) 15:15;56:10;62:12,15,16;89:9;93:6;94:24;96:6;98:20;100:5;128:4;143:22;144:23;171:11
muster (1) 81:7

N

name (11) 4:13;6:16;28:6,8;56:19;61:13;73:9;95:12;96:12;153:9;154:24
Namely (1) 17:2
names (3) 6:6;63:19;178:24
naming (1) 10:7
narrow (3) 188:22;192:13,23
narrowly (1) 189:1
nature (24) 16:18;20:11,11;42:1;63:4;64:23;85:15;87:14;98:2;112:22;113:12,13;122:22;151:17;175:17,17;178:7;180:10;184:8,9;185:4,23;187:1,1
Navy (1) 182:9
Nay (2) 190:5;193:16
necessarily (4) 12:3;76:13;102:11;192:3
necessary (12) 17:1;34:10;62:21,23;63:12,22;87:11;99:2;101:13;121:10;161:11,20
need (18) 11:4,7;12:6;20:21;51:5;66:12;73:10;80:8;92:16;93:11;95:7;97:4;100:20;102:12;128:16;132:6;151:16;183:24
needed (3) 52:18;54:24;161:11
needs (7) 10:14;16:20;25:4;35:1;153:16;167:7;191:23
negated (1) 13:20
negates (1) 143:23
neighborhood (4) 183:8,8,9,10
neighborhoods (1) 29:22
neither (1) 171:9
neutral (1) 23:6
nevertheless (1) 126:23
new (16) 15:1;20:4;29:13;32:6,6,15;43:12;65:10,11;86:4;87:14;88:16;115:3;130:6;152:20;158:6
news (1) 174:4
next (7) 40:19;60:11;70:24;84:23;92:5;94:14;190:6
night (1) 72:9
nine (1) 112:2
Nobody (2) 100:16,17
noncompliance (1) 136:3
noncompliant (1) 137:19
non-emergency (1) 76:23
nonexistent (1) 67:20
non-lawyer (1) 169:8
non-lawyers (1) 72:8
non-municipal (1) 91:11
normal (5) 9:10;25:23;124:10,24;167:10
normally (5) 25:24;124:2,3,6;125:3
Norris (3) 146:10;147:5;148:1
note (5) 60:14;62:10;135:4,10;165:6
noted (4) 26:22;42:5;70:18;75:2
notes (2) 177:11,15
notice (5) 26:20;53:9;66:6;147:12;164:24
noticed (1) 165:8
notified (1) 137:13
notion (1) 72:13
November (2) 35:22;90:11
number (22) 7:23;18:12,12,20,22;37:20;54:20;57:18;59:18;64:9;96:3,14;107:20;130:1,1,20;144:8;156:9;157:5;160:17;179:6,9
numbers (3) 51:11;179:2,7
numerous (4) 14:17;20:6;87:4;125:19

O

Oberlin (3) 150:13;158:19;171:22
object (2) 41:21;74:22
objection (7) 26:19,22;41:24;55:9;88:22;104:7;165:3
objections (2) 10:8;59:19
objective (1) 38:15
obligation (3) 13:11;101:6;167:15
observe (1) 116:21
observed (1) 147:10
obtain (1) 92:11
obtained (3) 62:4;75:11;92:8
obtuse (1) 99:18
obvious (1) 145:21
Obviously (29) 9:8;12:7;23:13;60:7;64:18;68:4;76:3,22;78:19;95:8,15;97:3;99:23;108:1,9;109:17;116:22;118:2;124:15;125:13;142:20;160:3;167:4;168:10;169:14;176:6;180:22,23;181:19
occur (1) 44:15
occurs (2) 10:6;127:10
odd (1) 181:10
off (14) 12:22;19:3;63:3;119:19;129:14;153:17;156:3,6,12,22;157:21;170:2;172:2;178:24
offer (2) 164:21;174:15
offered (1) 123:2
office (8) 5:8;8:3;29:18;33:20;72:12,16;73:6;139:23
Officer (1) 182:8
official (3) 49:12,17;87:19
officially (1) 23:6
officials (1) 10:9
often (1) 179:9
Ohio (42) 9:12;12:19;13:14;14:6;15:7,13;16:11;17:7,12;18:4;79:24;81:1;86:9,17;89:8;93:14,18;94:10;100:11,19;103:23;108:6,21;113:10;125:21;130:8;143:3;144:13,21,22;146:2,4,15;150:16;151:7;155:12,13;157:8,19;159:9;168:21;179:8
old (3) 29:16,17;105:17
Olentangy (4) 30:3,4,6;105:19
omission (2) 137:17;177:15
omissions (1) 135:4
once (3) 19:1;34:15;120:3
one (62) 4:18;8:13,16;11:2,10;20:16;21:1;24:2;39:15;40:20;41:7;42:2;43:9,24;45:18,24;46:1,1,2;47:13;56:24;62:10;65:12;68:16;69:6;70:2;72:17,24;79:3;81:22;84:10;86:1;91:8;93:22;100:20;104:7;114:14;125:23;127:17;128:10,13;130:15;145:21,22;146:1,14;160:18;161:23;162:21;165:4;170:5,6;172:20;173:5;174:3;177:15;179:16;185:17;186:21;188:12,23,24
onerous (1) 100:17
ones (1) 55:3
only (33)

4:10;7:12;8:21;15:12;18:12,21;22:15;24:17,18;58:1;60:9;62:22;63:11;64:4,20;67:15;68:15;74:2;76:21;88:7;103:8;105:24;110:15;116:8;119:12;120:4;144:2;146:2;151:22;152:24;171:14;174:11;183:18
open (3) 6:1,3;81:12
opened (1) 155:24
opening (4) 12:11,13;21:22;56:4
operates (1) 70:21
operating (1) 101:19
operations (1) 173:23
opinion (1) 24:12
opportunity (8) 21:21;24:8;59:13;77:3;139:15;142:14;163:1;166:4
opposed (4) 79:5;170:12;190:5;193:15
Opposing (2) 65:18;118:3
opposite (2) 68:19;116:6
option (4) 11:12;71:19;82:23;119:15
options (1) 71:13
oral (1) 59:13
order (13) 5:20;8:2;59:17;65:10;66:12;68:1;71:22;92:16;100:12;164:3,4;165:6;191:18
ordinance (64) 17:5,8;31:9,10,23,24;32:3,10,17;38:22,23;39:12,14,18,21,22;40:1;41:8;42:12,18;46:5,14;49:11,21,22;57:19,24;58:10;61:20;65:22;66:14;70:21;71:8,9,11,14;76:23;77:9;78:8,12,17;85:20;87:6;95:16,18;96:1,4,8,9;98:13;100:9;102:21;105:11,12,14,23,23;111:24;124:22;150:10;151:10,16;152:4;153:22
ordinances (7) 42:10;65:3;80:3;85:19;106:23;107:7;151:1
original (3) 60:1;64:14;65:22
originally (1) 6:22
originals (1) 61:2
others (1) 88:3
otherwise (12) 13:17;15:18;44:23;56:14;72:6;75:5;76:4;89:10;95:3;113:23;141:9;145:6
ought (1) 184:18
out (50) 4:14;10:21;13:21;16:13;56:14;57:21;60:21;63:19,20;68:11;75:8;86:15;90:9;91:7;102:20;103:2,4;109:23;110:1;112:15,17;119:17;123:23;125:5,18;126:3,5,24;127:3,5;132:20;134:22;143:9;144:12;148:24;149:18;152:21;162:6;166:7,15,19,20;167:11;180:14;183:1;184:17,21;188:19;191:2;193:4
outcome (3) 119:18;176:21;180:5
outcomes (1) 180:7
outlet (1) 107:18
outset (1) 114:10
outside (6) 18:9;85:18;118:8;127:16;159:13;181:2
over (18) 7:8,10;19:16,16;23:21;26:11;43:18;44:4;47:14;62:4;91:23;92:5;93:15,23;131:22;133:3;156:23;186:10
overall (2) 173:9;187:15
Overlaid (1) 44:7
overlay (20) 43:14,15,18,23;44:2,3,19,22;45:2,6;109:12,15;110:14;111:12,17,18;112:1;180:20;181:15;182:2
overlaying (1) 43:24
overly (1) 173:24
oversight (1) 28:14
overturned (1) 143:12
own (16) 53:10;54:5;56:17,20;63:15;64:7,13;65:9;72:4;79:17;87:3;101:19;107:8;130:10;159:16;160:1
owner (11) 51:21;53:24;69:9,10,20;70:8;118:24;121:7;128:20;129:13;140:15
owns (1) 129:7

P

Page (49) 37:8,12;38:5;41:9;46:17,18;50:6;51:10,11,12;52:21;53:22;54:13,14,19;59:3,3;61:22;62:13,23;66:7,16,20;67:5;69:12,16;70:20;71:12;85:22;98:14,15;100:4,6,9,23;102:22;103:13,14,21;104:8;128:1;130:1,12,20,21;143:13;161:13;191:11,12
pages (3) 98:3;146:10;153:18
paid (2) 40:21;132:8
paper (4) 103:10,11;126:11;137:14
paragraph (2) 37:12;49:9
paraphrasing (1) 71:10
parcel (1) 69:20
Pardon (1) 91:20
parity (1) 4:24
Park (1) 125:20
parking (1) 46:3
part (19) 37:24;43:1;47:2,4,5;48:5;94:24;96:2;98:15;104:1;111:19;124:12;133:6,14;134:16;135:13;138:1;180:1,11
particular (5) 80:22;125:8;126:9;166:24;192:2
particularly (3) 10:2;105:24;123:22
parties (5) 5:24;6:9;142:21;165:7;174:13
partner (1) 131:24
part-petition (12) 60:15;61:15;62:1,4,13,18,20;73:18;74:11,12;153:20;161:20
part-petitions (12) 16:23;56:6;60:3,13;61:1;63:24;64:3;73:14,16;74:10,20;161:18
parts (1) 95:23
party (1) 112:16
pass (10) 14:7;22:4;23:18;24:4;76:22;78:4;107:23;157:3;162:18;170:15
passage (5) 57:19;61:19,24;96:4;104:4
passed (5) 41:14;85:20;112:14;126:4;170:14
passing (2) 23:6;180:23
past (4) 132:5;140:19;141:2;186:10
path (1) 29:21
pattern (1) 112:11
PCD (1) 149:7
Pedaline (4) 5:4,4;7:12;90:14
people (16) 83:22;88:16;104:14;114:17;126:15,21;131:13,16;137:13;153:22;154:20;155:10;169:11,13;173:10;185:24
per (6) 78:17;80:21;81:24;90:15,15;129:22
percent (2) 77:5;98:14
perfectly (5) 61:5;63:23;67:24;72:4;156:17
performed (1) 94:12
perhaps (6) 67:20;72:21;76:16;149:17;178:16;180:1
period (3) 76:24,24;77:9
perk (1) 47:16
permanently (1) 175:21
permissible (2) 86:14;146:21
permit (1) 32:24
permitted (5) 33:3;49:12;110:16;143:2;148:20
person (9) 40:15;60:24;61:6,10;71:17,22;98:17;104:16;174:1
persons (3) 16:10;106:1;113:21
perspective (1) 63:17
persuade (1) 174:17
pertain (1) 108:23
pertinent (2) 15:23;16:1
pervasive (1) 166:15
petition (86) 10:4,10;22:17,20;23:14;24:13;25:4;57:17;58:8,22;72:16;74:17;75:24;76:1,1;77:5;78:12,13;80:21;83:8,12;85:10;95:8,8,22,24;96:3,6,10,11,12,23;97:18;98:3;99:7;100:21,22,24;101:3,8;103:7,8,11,20,22;104:5,13,15,18;105:22;106:7,12,18;107:4,5,13,18;108:16;144:2,9,20;145:2;153:19;154:5,8;160:5,9,9,15,23,24;169:11,13;170:10;173:10;175:8;176:16;178:12;180:13;181:19;185:24;187:20;188:16;189:12;190:11;191:24
petitioner (12) 74:2;96:9;98:14;100:5,12,14;104:24,24;112:16;145:7;191:13,16
petitioners (35) 6:11;9:1;10:19;16:4;20:15,17;40:9;41:12;62:6;66:10;67:3,22;68:6;70:14;81:14;

104:23;106:17,20;108:4;109:24;113:11,18,24;114:22;119:17;123:1;142:19;143:6;145:12;146:14;151:20;154:14;155:8;164:3;192:16
petitions (65) 12:24;13:12;17:6,9,11;18:13,21;56:5;57:15,21;58:16,19;59:20;63:6,18,19;64:14;66:3,13;69:14;72:11,12;73:2;75:6;77:12;78:10;79:2,6;80:8;81:4,24;82:4;83:3;84:4;92:13;93:8;94:16,24;95:10;102:13,19;103:3;143:21;144:8,24;145:18;150:5;152:24;153:2;155:4;156:17;159:19,24;160:19,21;161:18;173:3,11;174:22;175:3;178:3,8,22;184:10;189:14
phase (1) 129:4
philosophies (1) 175:19
pick (1) 12:22
piece (5) 103:10;124:11,17,20;179:18
pieces (3) 73:15;74:10;148:23
place (31) 14:23;35:17;38:7,16;39:6,24;43:2;44:16;53:18;60:4;66:24;68:11;89:2,3;96:11,11,13;105:1,21;110:23,23;112:2;126:1,10;138:8;148:21,23;156:18;173:13;178:15;187:2
placed (3) 10:21;12:20;155:4
placement (5) 11:12,14;78:19;176:10;188:4
placing (5) 39:19;164:5;167:16;189:3;193:21
plan (118) 14:20;15:10;16:3;20:7;30:18;33:21,22,23;34:5,6,14,15,16,18,20,21,22,24;35:2,3,16;36:2,21,23;37:5;38:18,23;39:14;40:6,16;41:3,9,18;43:1;46:19,22,24;48:4;51:15,23;52:15;53:14;54:2,9,11,13,18;65:2,5,11;66:9,15,17;67:6,13;68:10;87:3;105:14;110:23;111:7;112:15;113:13;115:6,7;117:21;121:1;123:3;124:14,16,21,21;126:5;127:4;128:4,9,10,13,19,24;129:2,4,6,23;130:19;131:18,20;134:5;135:19,23;136:19,22,23,23;137:1,4,24;138:2,7,15;141:4,12,15,23;146:17;147:9,19,21;148:6;152:12,13;158:12,21;159:1;162:9;166:22;167:13;171:6;181:2
planned (30) 14:21;15:10;30:15,17,20,22,24,24;33:16;44:24;45:19;47:11;49:7,8,16;51:1;87:24;110:18;111:8,8;120:23;121:4,9,24;124:8;148:7,10,11,19;149:5
planning (45) 28:15;34:8,11,12,12,17;35:22,24;36:4,13;37:4;40:16;44:10;45:16,19,24;46:4,11;47:6,10,17;48:13;49:15,20,23;50:20;51:12;53:5,18;55:7;67:8;119:24;121:20;134:6,11;135:14,20;137:6,22;138:14;139:3,22;140:9;142:5;147:1
plans (15) 33:16;35:11;40:13;46:24;47:23;49:19;87:21;121:3;125:1,2;132:11;133:7,10;137:15;148:22
platter (1) 186:5
play (2) 9:11;172:14
Pleas (4) 112:21;114:13;116:5,8
please (11) 28:6,23;31:7;33:6;37:1,9;40:5;41:10;127:24;130:20;156:17
pleased (1) 19:7
plenty (1) 83:21
PM (1) 194:14
point (35) 8:7;9:17,19,23;14:18;15:11;20:24;22:3;40:15;42:14;55:8;60:7,21;75:8;77:1;86:15;88:5;90:10;95:14;100:17;101:20;109:23;116:1;118:4;119:18;126:17;143:9;144:12;150:6;167:3;170:24;188:2;190:16;193:18,19
pointed (2) 73:24;76:8
points (2) 17:20,22
Pope (1) 59:5
popping (1) 94:19
portion (2) 50:22;81:9
position (11) 10:7;28:7;103:9;120:11,13;136:15;158:14;162:5;163:3;188:15;192:7
positions (1) 162:2
possibly (2) 22:12;34:1
post (5) 137:15;140:15;141:3,13,17
posting (1) 53:9
posture (1) 19:18
potential (3) 5:23;24:3;121:11
potentially (1) 23:4
Powell (139) 6:23;7:2;13:14;14:19;16:2;18:10,13,20,22;21:18,19;22:4;24:13;27:1;28:9,11,14,19;29:11;30:10,23;32:4;33:11;38:24;42:18;50:7,21;51:2;53:5;55:6;56:13,17,18,18,18,21,24,24;57:1,3,8,8,8;60:8,24;61:6,13;62:8,11,14;65:3,4,17,22;66:5;67:2,8;68:1,5;69:19;70:8;75:9,24;83:23,23;84:1,1,1,1,14,17;85:1;92:10;99:14,16;102:12;104:11,12,19;105:15;106:23;107:9;120:1;127:16;130:3;131:7,21,23;133:13;141:14;145:7;153:8,9;155:1,3;156:9,14,14;157:1;159:11,12;160:3,8,10,11,11;161:12,24;162:1,17,22;170:11;173:12,14;175:9;178:16;179:4,6,14,19,20;181:3,10;182:7;183:5,7,8,9,13,17,20,21;184:7;185:3;186:24;187:21;190:12;192:9,14
Powell's (5) 9:12;28:15;122:19;152:1;177:24
power (2) 143:7;159:14
practice (8) 72:3;131:8,11,12;132:6;134:4;139:23,24
practices (1) 140:21
preamble (1) 153:21
pre-application (1) 33:21
precedent (2) 143:11;148:18
precinct (47) 56:17,17,19,23;57:12;60:23;61:7,8,8,18;80:17;81:20;82:7,14,22;83:8,15;96:14;102:6;153:5,6,8;154:21,23,24;160:4,6,11,11;173:6,8,12,16,16;174:18,23;175:10;178:24;179:7;183:15,17;187:18,22;188:24;189:11,12,16
precincts (12) 56:21;60:12,22;67:19;82:24;84:24;104:21;153:7,10;179:3;182:16;191:7
precisely (2) 15:6;56:10
pre-established (1) 20:10
pre-existed (1) 110:14
preexisting (11) 20:5;111:8;114:24;115:2,5;117:24;158:10,13,21;159:5,14
preliminary (10) 8:13;21:7;34:5,6,11,14,18,23;115:6;120:24
premise (1) 110:10
prepare (2) 135:1,2
prepared (1) 136:5
prescribe (4) 94:15;95:9;96:23;97:1
prescribed (18) 71:5;79:7,8;99:3,8;101:10,12,17,24;102:5,20;104:20;108:1;161:7;174:24;178:1;190:12;192:11
prescribes (2) 178:7;182:22
prescriptions (1) 98:23
present (8) 12:17;15:22;16:22;36:17;55:23;59:13;118:3;159:7
presentations (1) 22:8
presented (14) 5:16;6:13,21;10:16;33:24;75:7;76:12;95:23;157:24;165:2;171:23;178:23;186:7,9
preserving (1) 105:17
president (1) 99:22
presumably (1) 82:20
presume (1) 84:6
presumed (1) 76:2
presumption (3) 75:9,10;88:9
pretty (5) 11:24;22:17;107:12;141:18;162:23
prevent (3) 102:17;105:8;117:2
previous (1) 134:21
previously (5) 49:14;148:7;149:17;166:14;167:9
prima (3) 76:2;79:10;81:4
primarily (1) 171:20
print (2) 71:16,20
prior (11) 64:21,22;82:10;92:11,13;111:18;116:14;139:24;141:14;148:24;171:21
privy (1) 128:7
probably (13) 21:1;23:11;69:18;84:20,22;97:3;121:13;

178:15;180:9,14;184:18;186:16;189:6
problem (3) 99:12;190:19;193:9
problems (2) 162:9;171:22
procedural (3) 17:21;19:18;76:21
Procedurally (2) 18:1;24:13
procedure (7) 20:19;33:15,18;35:5;78:11;163:24;164:1
procedures (7) 36:12;79:24;94:9;110:18;144:5,10,20
Proceed (2) 42:8;43:11
proceeding (3) 23:12;38:14;163:15
PROCEEDINGS (2) 4:5;182:11
process (34) 5:21;9:10;22:10,12;26:16;30:18;35:9,10;41:1;44:24;45:19;47:11;77:11;79:4;80:5;99:23,24;100:2;113:19;117:15;120:16,17,20;121:17;124:10;137:21;146:24;172:16;179:20;181:4,4,20;182:2;186:8
processes (2) 41:19;182:4
produce (2) 141:24;142:1
produced (2) 69:12,13
professional (1) 28:7
prohibits (1) 145:1
project (8) 29:23;31:4;34:10;35:3;40:11;65:8;128:5,15
projects (1) 134:21
proof (2) 131:8;164:6
proper (6) 25:6;26:5;77:4;88:20;156:5;183:19
properly (2) 39:8;160:5
property (29) 14:13;29:15;30:13;39:3,17,19,24;43:3;53:7,13,15,17;67:9;68:15;69:10;118:24;124:7,8;128:21;129:7,13;131:17;132:8,9;141:10;148:9,23;149:4;181:24
proposal (1) 131:9
proposed (33) 17:8;28:19;29:7,11;30:1,12;31:15;32:6;33:1,2,19;35:6,12;36:21;57:23;58:10;61:20;71:8,9,11,14;88:16,20;96:1,8;98:13;100:9;105:10;108:8;129:4;130:18;146:20;158:16
proposing (1) 98:18
propriety (1) 113:16
pros (2) 7:6;21:12
prosecuting (2) 5:11,14
prosecutors (2) 91:19,22
prosecutor's (1) 161:6
protect (2) 181:21;182:3
protest (50) 4:8,10;6:22;7:6,20;8:4,6,22;9:8,15,21,24;10:6,10,14,15,17;11:4,5,8,10,13;13:24;15:5,14,21;16:17;17:14;59:2;60:2;81:19;139:4;144:23;145:1;146:11;147:4;150:1,5;156:11;164:24;166:7;168:15;172:24;176:8;184:7,24;186:23;187:17;188:4;193:21
protester (2) 59:18;60:8
protesting (4) 6:9;142:21;143:6;145:23
protestor (15) 18:7;26:20;61:11;63:3;64:2,9;78:20;103:6;115:19;156:2,10;158:8,18;159:18;160:20
protestors (11) 8:4;9:1;19:1,11;81:13;160:16;164:21;165:7,18;172:21;192:16
protestor's (3) 20:7;177:21;182:15
protests (2) 4:9;8:15
protocol (1) 79:17
protocols (1) 77:18
provide (15) 17:13;21:20;49:18;58:23;60:4,4;71:7;87:20;93:21;101:7;109:3;134:13;136:16;141:13,23
provided (15) 66:4;67:16;69:16;70:10,10,16;94:4;136:19;152:4,23;155:2;164:22;181:7,8,13
provides (4) 87:19;94:8;125:7;191:14
providing (1) 94:2
provision (2) 91:23;163:10
provisions (4) 77:22;97:5;144:3;151:7
public (14) 34:3,9;53:9;121:7;126:10;137:11,12,13;138:21,22;141:5,19;179:13;180:7
purely (1) 45:6
purpose (2) 57:20;76:14
purposefully (1) 112:13
purposes (6) 8:19;53:8;72:5;151:2;165:11;190:7
pursuant (12) 14:20;16:3;18:22;36:11;110:17;111:7;113:14;123:3;145:17;147:19;149:20;152:12
pursue (3) 86:19;155:17;178:18
purview (5) 47:17;121:20;163:20;166:11;168:6
push (1) 129:14
put (31) 8:20;12:18;13:1,1;14:3,10;17:5,8;57:21;62:22;68:12;71:15;73:15;83:8;103:9,10,13;108:9;114:17;122:8;137:9,15;145:7;148:15;150:14;154:22;155:9;157:1;160:11;173:2;192:18
puts (5) 67:2;71:18;104:22,24;110:15
putting (7) 71:19;125:24;153:11;158:1;175:8;189:11,15
puzzle (2) 124:11,17

Q

qualified (2) 149:18;173:24
quasi-judicial (3) 38:8;74:23;162:24
quick (7) 17:20,22;75:4;81:6;112:4;129:9;169:2
quickly (5) 10:24;17:20;56:15;59:2;148:17
quite (4) 47:6;59:18;115:18;179:9
quote (4) 67:11;143:19;148:9;149:3
quoting (1) 125:21

R

radius (1) 137:14
railroad (1) 30:5
railroads (1) 94:1
raise (1) 78:20
raised (7) 40:8;64:2,2;159:18,19,21;160:4
raising (2) 59:18;64:9
rate (1) 41:23
rather (5) 42:18;93:20;124:4;175:20;189:1
react (2) 188:19,20
read (18) 25:2;26:2;51:18;52:19;53:1,23;56:14;71:18,23;85:22;100:14;106:16;107:19;156:14;186:10,20;193:2,4
reading (7) 37:7,17;38:3;49:2;51:20;53:4;98:18
ready (4) 50:18;59:9;80:12;192:23
real (4) 75:3;76:20;112:4;169:2
reality (1) 67:24
realize (2) 25:23;120:24
really (16) 24:16;25:7;64:13;68:14;79:13;92:21;101:4;109:11;116:18;121:19;132:6;143:16;164:1;166:8;167:3;175:23
realm (3) 25:23;65:7,8
reason (13) 19:23;46:15;57:24;60:20;66:1;70:15;71:4;74:24;92:14;97:14;160:15;175:7;192:24
reasonability (1) 121:16
reasonable (2) 16:14;121:19
reasoned (1) 89:3
reasoning (1) 5:20
reasons (6) 20:8;56:4;58:15;144:17;145:18;176:22
rebut (1) 123:2
recall (5) 38:1,2,6,19;66:22
recap (1) 17:20
recapping (1) 155:24
receipt (2) 92:8,12
receive (7) 33:20;40:14;78:11;81:23,23;131:12;134:9
received (4) 8:5;92:10,13;138:22
recent (1) 82:9
recess (4) 81:6,10,12;194:7
Recited (1) 147:4
recognize (4) 28:24;31:7;108:5;161:23
recommend (2) 36:6;45:14
recommendation (12) 36:4,13;37:4;121:21;135:14;136:9,13,14;138:11;161:7;178:18;191:21

recommendations (2) 136:18,19
recommended (5) 48:9;101:16;102:1;161:8;192:4
record (17) 8:20;18:16;28:7;63:14;107:19;122:9,16;131:20;141:2;165:5;181:7;182:6;188:7;190:18;191:3;192:18;193:19
records (3) 56:22;57:2;155:2
recourse (1) 155:18
re-denial (1) 189:2
refer (4) 28:23;37:11;59:5;156:18
reference (15) 31:23;50:4;58:13;59:3;66:18;79:9,23;95:17;107:1;122:14;127:15;154:6;161:6,12;165:11
referenced (8) 80:16;125:9,17;127:1,9,22;169:21,23
references (2) 32:1;106:9
referencing (1) 52:22
referendum (82) 6:24;7:18,24;8:2;9:16;10:1;11:11,14,17;14:5;15:2;17:5;57:16,17,22;58:6;61:20;76:11,15,19,22;77:5,21;78:8;80:1;89:19;94:16;95:15,22;96:2,10;97:7;107:5,17,19;144:4,10,20;145:24;146:3;148:2,5,15;150:3,9;151:3;158:15;159:13;167:6,18,19,19;168:1,2,4,13,19;169:10,19,24;170:6,13;171:7,9,15;179:21;180:9,22,24;181:16,20,22;184:10,14,20,24;185:4;186:8,13;187:20;193:20,22
referendum/initiative (2) 111:4;125:14
referendums (1) 170:16
referred (7) 18:22;35:8;48:24;63:13;93:13;96:5,10
referring (3) 82:19;117:10,11
reflect (1) 32:15
reflected (1) 31:19
refrain (1) 94:18
reft (1) 155:8
refusal (1) 150:14
refused (2) 19:4;149:24
regard (4) 96:15;135:5;136:20;155:6
regarding (6) 6:22;7:1;11:8;107:18;187:5,18
Regardless (1) 84:7
regards (5) 41:3;123:24;157:18;168:23;178:1
register (1) 26:18
registration (2) 57:3;175:2
registrations (1) 56:23
regular (3) 7:21;65:23,23
regulations (4) 33:10,13;44:8,8
reiterate (2) 120:7;141:22
reject (1) 143:10
rejecting (1) 187:19
relate (1) 54:9
related (1) 43:19
relates (2) 14:10;36:1
relating (1) 80:2
relatively (1) 111:21
relevant (2) 133:18;160:6
rely (1) 122:11
remain (2) 39:8;160:2
remaining (1) 98:15
remedy (17) 16:6,9;64:11;88:20;112:15,20;113:20;114:19;116:2,4,9;117:7,8;147:14;155:8,13,16
remember (2) 37:16;63:16
remind (3) 95:14;122:15;169:2
remove (1) 144:1
repeal (6) 78:8,9;145:24;146:3;150:10;175:9
repeat (1) 22:5
repeatedly (5) 15:9;114:7,7;143:21;146:4
rephrase (1) 78:24
reply (1) 65:13
report (6) 135:1,4,13;136:5;137:6;138:10
reporter (1) 164:23
reports (4) 47:5;134:6;135:2;179:8
representation (1) 72:20
represented (1) 108:4
Republican (2) 4:19,22
requested (1) 67:16
require (12) 39:15,23;60:20;80:21;98:14,24;99:1;100:11;104:16;141:3;154:9;192:7
required (22) 40:11;45:12;57:7;58:14;61:23;62:15,16;66:20;82:7;98:7,21;100:6;101:2;102:10;104:3;107:10;138:22;141:19;152:4;161:9;192:4,7
requirement (38) 10:11;13:2;17:4,6;43:20;52:1,8;56:10,12;58:2;61:18;62:19;68:7;82:18;83:1;84:7;91:23;94:23;97:13;98:1;100:8;104:12,18;105:20;107:6;118:24;119:6;128:20;129:10;145:3,4;153:15;159:23,24;160:12;174:19,23;191:15
requirements (56) 13:13;16:24;17:1,12;34:8,21,24;35:1;43:17;44:1,9,20;45:4,18;47:8;49:8,13,17;57:4,7,10,13,14;58:4;59:8;65:3;80:18,20;83:3;87:20;93:16;97:19;100:18;108:22;110:13,14;113:4;115:8,18;128:3,11,13;134:3;135:7;136:17,18;139:24;140:7,10,12,20;145:20;161:11,23;182:24;191:23
requires (9) 57:17;66:23;83:20,20;99:1;102:12;107:4;109:2;143:19
reread (1) 192:22
rescind (1) 168:1
rescinding (1) 169:19
research (2) 22:13,14
reserve (1) 68:21
residence (5) 32:4,5;44:5,6;96:13
resident (1) 132:2
residential (2) 29:20;105:18
residents (2) 22:6;173:15
resolution (6) 42:13,17,19;78:5;151:16;188:3
resolutions (1) 42:10
respect (20) 59:19;63:6;64:1,3;78:10;79:18,24;80:6,22;82:16;88:11,19;89:4;104:13;115:5,11;128:4;157:9;159:19;160:4
Respectfully (7) 85:23;86:15;87:15,17;89:6;113:9;151:20
respects (1) 76:2
respond (5) 105:3;114:22;116:1;121:5;171:19
response (9) 8:5;10:18;65:15;70:4;98:10;129:5;143:6,13;166:8
responsibilities (3) 13:5;93:17;144:22
responsibility (2) 38:15;140:3
rest (3) 68:21;72:16;76:4
restate (1) 184:22
restroom (1) 81:7
result (2) 139:2;180:8
results (1) 186:1
retail (1) 105:16
retain (1) 29:17
retired (1) 182:9
return (1) 78:4
returned (4) 78:15,18;90:1,10
returns (1) 179:8
retype (1) 101:3
retyping (1) 105:11
review (36) 23:3,4;33:15;35:9,10,15;36:12;41:1;44:3,9,11,24;45:6,19;46:9;47:4,11;48:13;61:3;81:24;82:3;93:7;133:6,9,17,23;134:16,16;135:20,23;138:10;143:20;144:3;153:23;162:2;168:24
reviewed (5) 29:3;84:23;136:2,7;142:6
reviewing (1) 53:8
reviews (1) 33:22
Revise (1) 96:17
Revised (30) 9:12,22;10:5;13:14,16;16:12;17:7;79:21,24;81:1;90:15;91:5,23;93:3,14;94:2,4;100:19;107:15;108:13,21;109:5;144:3,6,11;151:7;155:13;168:21;182:19,21
revises (1) 34:16
Revitalization (1) 136:21
revitalizing (1) 136:20
revolve (1) 88:5
rewrote (1) 77:21
rezoning (1)

124:10
right (39)
5:15,16;6:19,21;11:5,23;20:22;30:6;47:18;48:13;51:4;52:5,19;54:3;70:24;76:17;79:19;84:5;90:22;100:3;103:13;105:7;108:19;109:4;119:20;120:6,10;140:5;142:10;165:8;172:13;178:15;184:1;186:2;189:20;192:1,15;193:15,17
right-hand (1)
57:1
rights (5)
38:14;175:21;181:18,24;182:3
rise (2)
85:24;86:22
rising (1)
121:14
risk (1)
101:19
road (2)
59:16,16
roadway (1)
48:10
rock (1)
105:1
role (5)
28:18;113:11;145:8;157:20,23
room (5)
71:7;101:5;118:10;119:3;147:11
Ross (4)
42:9,22;65:17,20
Ross's (1)
41:13
roughly (1)
98:13
round (1)
172:14
routinely (1)
47:23
rubber (2)
115:22;122:14
rule (9)
92:14;101:22;107:15;110:1;124:24;168:8;175:14;176:15;188:17
ruled (2)
45:1;58:22
Rules (19)
23:19,20;24:2;60:16,18,19;91:8;100:2;104:23;115:20,22,24;129:19,20;130:10,11;159:1,2;176:13
ruling (3)
150:9;174:14;192:21
rulings (1)
93:11

S

sake (1)
59:17
same (21)
8:21;19:10,11,16;42:21;51:16;58:8;68:8;76:16;78:11;103:6;111:6;124:13;149:2,3;155:22;161:10;168:2;171:15;180:8;186:13
satisfied (1)
63:10
satisfy (6)
13:12;16:23;17:3,12;100:13;110:6
save (1)
13:3
saw (3)
68:5;74:3;85:10
saying (33)
24:11;38:19;41:13;51:1;54:12;58:2;65:4;71:17;72:7;86:21;92:23;99:4,9;103:1,9;108:16;112:12;114:23;115:21;116:6;117:3;119:7;130:14;140:17;149:3;150:15;154:10;156:21;157:1;171:20;172:21;176:21;188:22
scary (1)
177:12
schedules (3)
49:12,17;87:19
scope (2)
18:9;42:3
se (1)
80:21
seat (1)
26:24
second (21)
8:17;11:12;19:20;37:7;43:10;51:18;61:17;66:16;70:2;72:10;82:6;85:22;99:5;123:12;184:11;185:6,7;187:3;189:17;190:14,15
Seconded (5)
165:19,23;185:9;187:5;193:5
Secondly (1)
9:6
Secretary (39)
10:3;57:2,20;58:7;71:4;81:21;82:19,21;90:14;91:10;96:22;98:23,24;99:8,10;100:10;101:11,16,17,23;102:5,10;103:2;108:2;154:8;161:5,8,9;175:6;179:3,8;182:22;183:3;190:13;191:6,13,19,20;192:5
section (20)
12:15;14:6;17:24;39:21,22;43:16;45:18;49:6;52:18;57:16;80:14,15,23;82:5;93:14;95:17;106:16,21;133:16;146:1
sections (1)
133:18
seeding (1)
175:21
seeing (11)
54:21;67:19,21;68:9,19;119:11;129:19;158:23;160:14,24;172:4
seek (1)
174:14
seeking (1)
177:17
seem (6)
19:15;67:14,15;68:10,11;121:18
seems (2)
85:7;88:4
sees (1)
60:18
send (4)
21:8;23:10;48:12;78:13
sense (2)
125:4;157:11
sent (2)
145:14;168:13
sentence (4)
51:18;53:23;54:7;75:23
separate (7)
80:5;95:23;176:17;180:14;184:14,19,21
separated (1)
184:17
separately (3)
11:18;73:22;176:23
series (1)
167:11
serious (1)
62:17
seriousness (1)
153:14
serve (1)
17:10
served (1)
37:19
service (1)
163:16
Session (1)
4:1
set (19)
11:1;16:17;29:6;33:10;34:17;45:21;55:3;91:9,11;93:16;106:24;120:21;121:2;125:18;126:24;143:18;153:21,21;166:15
setbacks (4)
45:5;46:1,17;47:7
sets (5)
33:15;44:19;45:4;48:6;90:24
setting (3)
49:8;118:14;144:22
settlements (1)
82:12
seven (1)
174:8
several (6)
17:1;98:3;145:19;146:11;147:7;184:4
shall (23)
10:4;43:21;49:13,18;51:20;53:23;57:17;63:5;76:1;81:4;87:20;94:10,12;95:15,24;96:3,11,11;98:20;141:12,23;144:7,21
SHALOSKY (2)
5:8,8
share (1)
157:8
sharpen (1)
93:19
Shawn (4)
4:21;71:1;193:6;194:4
sheets (1)
56:20
short (1)
117:1
shortcuts (2)
117:18;122:14
shortly (1)
20:17
shot (3)
162:2;163:13,23
shovels (2)
126:16,19
show (3)
14:18;15:6;61:12
showing (2)
97:21;131:8
shown (2)
141:18;155:1
shows (1)
149:14
shrink (1)
71:14
side (5)
12:11;13:8;68:19;175:14,15
sides (3)
22:8;33:23;116:6
sidewalks (1)
85:21
sign (6)
46:1;70:7;97:17;99:21;106:1;153:23
signatories (1)
175:3
signatory (1)
57:7
signature (32)
7:19;52:22;54:6,13,14,15,21,22;60:22;61:14;66:7,20,24;67:1,7,10;68:12,15;69:7,9,12;70:20;84:5;97:1;110:8;113:6,17;129:10;130:13,24;134:18;181:6
signatures (31)
7:23;17:3;18:12;23:13,21,23;24:17;56:11;60:24;63:8,12;67:24;72:16;75:10,11,24;76:1;77:11,14,17;78:15;79:4;81:4;90:7;144:8;150:18;153:3;156:9,24;160:5;179:11
signed (18)
18:13,21;40:10,22;51:20;53:2,2,24;69:16;70:9,13,17;71:22;77:5;84:3;122:19;144:9;152:1
Signer (8)
82:6;96:6;97:20;100:24;106:4,5;153:16;179:10
signers (3)
58:4;98:2;178:11
significance (1)
41:13
signing (10)
96:13;97:21;98:6;104:15;106:5;153:17;160:8,9;173:10;178:12
signs (1)
42:13
silent (10)
79:20,23;80:8;81:1;93:2,20;94:9;99:16;144:19;182:19
Simanello (1)
107:21
similar (3)
23:23;24:1;129:9
Simon (1)
107:21
simply (11)
14:5;35:16;117:1;119:5;126:5;148:14;152:21;153:9,10;

154:1;159:11
single (1)
161:20
sit (2)
113:4;172:15
site (5)
29:22;136:15;147:18,21;171:6
sitting (5)
99:18;116:5,6;139:5;162:24
situated (1)
43:19
situation (3)
21:13;45:2;109:1
Sixth (1)
182:8
size (3)
46:1;71:14;98:17
sketch (2)
33:20,22
skirting (1)
76:7
slide (1)
68:12
slot (1)
189:12
small (2)
104:7;169:7
smartest (1)
118:9
smell (1)
80:9
smoke (1)
64:10
smoothly (1)
20:19
sole (1)
152:19
solely (1)
170:23
solicitor (2)
37:20;78:24
somebody (1)
85:18
somehow (4)
48:8;110:5;143:7;159:24
someone (1)
97:16
sometime (1)
84:21
sometimes (3)
25:11;59:24;131:12
somewhat (2)
66:10;182:6
somewhere (1)
54:9
son's (1)
20:18
sorry (10)
6:16;26:13;91:6;117:9;123:14,17;132:15;133:3;164:4,12
sort (12)
22:21;23:6;51:11;66:7;69:6;77:2,23;88:4;127:8;134:21;140:19;141:8
sorts (2)
64:11;124:4
sought (4)
96:5;148:4;149:22;150:10
sound (3)
4:15;61:5;99:18
south (1)
29:22
spaces (1)
46:3
spaghetti (1)
160:16
spatial (1)
135:8
speak (3)
40:12;74:1;100:20
speaking (3)
18:1;29:10;122:24
speaks (1)
167:19
special (1)
157:15
specific (21)
10:7;20:24;71:4;82:18;83:14;95:11;104:18;108:22;121:5;125:6;127:17;136:22,23;140:1;148:9,22;149:4;181:11;182:23;187:18;188:9
specifically (12)
37:15;76:15,24;82:1,5;87:5,19;120:19;123:21;127:7;136:2;168:14
specifics (3)
4:11;44:12;188:16
specified (2)
43:21;49:10
speculate (1)
115:19
speed (1)
174:5
Speedway (2)
147:6;148:18
spell (1)
102:20
spelled (1)
103:3
spelling (1)
103:2
spend (1)
59:23
spirit (1)
99:9
split (3)
178:22;180:14;186:16
spot (1)
51:16
square (2)
29:14;105:16
squeeze (1)
102:22
staff (18)
4:12;5:3;6:2;7:9;34:3;47:5;53:5,13,18;63:14;67:8;72:13;120:18;134:6,14;135:2;138:22;172:12
stage (1)
127:10
stages (1)
164:11
stall (1)
128:15
stamp (5)
41:13,19;42:9,21;151:14
stamped (1)
92:12
stamping (2)
115:23;122:15
stand (2)
83:13;121:12
standard (4)
56:6;147:3;153:1,12
standardized (1)
77:24
standards (8)
49:10,13,14;121:2;148:7,12;149:7;164:6
standing (1)
156:23
staple (1)
72:24
stapled (5)
73:14,21;74:5,10,11
start (5)
7:11;12:8;18:6;145:21;184:20
started (1)
103:14
starters (1)
60:21
starting (1)
51:19
State (54)
10:3;13:11;28:6;57:2,20;73:9;81:21;82:1,19,21;84:22;90:15;91:10;93:18,23;94:10;95:3,19;96:22;97:8,13;98:23,24;99:8,10;100:10;101:7,11,18;102:5;103:3;107:3;108:2;113:10;120:19;123:18;125:21;136:12;144:20;145:9;146:15;154:4;155:6;157:12,14;161:8,9;175:7;179:3,8,8;182:22;190:13;191:14
stated (5)
47:1;54:10;60:2;158:8;187:7
statement (16)
21:22;38:1,10;53:2,11;54:24;55:1;75:14;104:8,9,10,22;118:6;142:2;154:21;162:21
statements (3)
6:4;12:11,13
states (8)
10:3;15:11;26:14;89:21;99:22;128:19;146:2;182:9
State's (12)
58:7;71:5;101:17,23;102:10;154:8;161:5;183:3;191:6,19,21;192:5
statewide (2)
82:20;83:2
stating (1)
159:11
statute (7)
90:23;108:20;114:19;145:1;151:24;174:23;175:4
statutory (8)
18:19;19:2,9,12,14;84:19;91:12;94:11
stay (8)
64:21;115:1,4;116:11,12;158:4,5,9
stayed (5)
63:11;72:8;115:13,14;116:23
staying (3)
114:24;118:16;129:17
stays (2)
19:24;20:2
step (4)
126:15;166:21;167:12,14
stepping (1)
168:6
steps (1)
19:8
Steve (1)
4:13
STEVENS (31)
4:21,21;71:2;72:7,21;73:5,17,21;74:18;75:3;102:16;103:14;112:4,8,11,20;166:1;177:7,10;184:11;185:7,13;187:3,8;189:13;190:2,15;191:9;193:13;194:5,10
Stevens' (1)
105:4
stick (1)
160:18
sticking (1)
26:15
stickler (2)
182:18;183:6
still (9)
14:23;19:15;24:5;83:1;103:5;119:13;120:4;157:24;191:18
stop (2)
16:21;102:23
stopped (1)
147:24
stopping (1)
157:4
straight (1)
120:23
straws (1)
60:7
Street (7)
30:3,4,6;45:8;96:13;105:19;174:5
streetscape (1)
29:21
stress (3)
13:5;14:1;155:7
stressed (1)
94:22
Strict (12)
16:24;17:6;56:7;57:4;58:13;62:8;67:21;83:18;107:10;153:1,11;160:12
strictly (8)
57:10;60:16,17;61:10;62:19;65:2;68:6;157:11
strike (1)
142:24
stringent (3)
43:20;44:1,21
strong (1)
158:1
strongest (1)
64:13
structure (2)
5:21;47:24
study (2)
32:7;136:21
stuff (3)
43:12;154:2;191:16
styled (1)
151:10
Subdivision (5)
51:14,19;52:1,23;54:7
subject (17)
7:3;15:2;53:7;58:5;78:19;111:3;125:14;145:24;146:3;151:2;

159:12;167:5;168:19, 20;180:22,24;181:16
subjected (1) 150:2
subjective (1) 125:16
submission (6) 20:3;77:4;90:7,8; 110:24;128:3
submit (19) 34:19,20;65:1;74:15; 77:11;87:17;95:8; 105:20;111:9;114:14; 124:23;128:9,9; 142:22;154:7;158:24; 160:7;163:6;167:9
submits (2) 34:4;68:9
submitted (24) 18:14;40:17,22;45:7; 47:24;73:1,13;74:3,4; 77:8;87:2;89:22,24; 90:5,16,17;100:15; 130:22;135:18;148:3; 152:12;158:12;166:8; 167:24
submitting (1) 89:18
Subpart (1) 141:11
subparts (1) 164:22
subsequent (3) 148:10,22;167:1
substance (2) 105:11;151:12
substantial (7) 48:4,5,7,11,16,19; 56:8
substantive (3) 24:17,22;157:23
substitute (2) 67:10;139:23
sudden (1) 126:18
Sue (2) 65:17,20
suffice (2) 56:9;153:11
sufficiency (16) 9:18;12:24;23:14,16; 59:19;61:3;64:6;75:9; 78:14;79:16;93:8; 143:20;156:16;168:12; 181:5;189:14
sufficient (22) 23:23;61:14;63:23; 72:4;76:3;78:3,6; 129:3;130:17;150:18; 154:23;156:17;168:12; 175:10;178:6;179:1; 181:13;187:22;189:12, 16,18;192:9
suggest (1) 11:15
suggested (1) 161:5
suggestion (1) 13:7
summarize (2) 53:10;54:6
summary (4) 107:23;108:7,24; 193:18
superimposed (1) 43:19
supersede (1) 44:23
superseding (1) 113:5
supplants (2) 94:3,4
supplied (3) 51:22;54:1;67:12
support (4) 97:22;98:6;110:9; 113:1
supported (1) 113:23
supposed (6) 51:3;98:18;101:12; 153:21;154:3,5
supposedly (2) 122:21;170:14
supreme (59) 13:18;14:16;15:8,16; 26:14;56:7;57:13;58:3, 22;59:6,7;82:8,10; 93:5;97:23;98:8; 100:20;103:23;110:22; 111:2;116:14;121:22; 125:6,19;143:11,21; 145:15;146:4,9,16; 147:4,16,17,22;148:1, 8;149:8,9,11,19;150:7, 14,19;151:8;153:16; 157:9;158:7;159:10; 163:9,15;166:13,14; 167:10;171:10;174:8; 176:13,18;188:13; 192:20
sure (36) 6:6,8;13:24;20:19; 22:22;25:6;33:19;49:1, 3;50:4;52:3;53:20; 61:21;83:4;88:17,17; 89:16;92:4,11;97:11; 107:2;109:22;120:3; 130:12,21;133:4; 134:4;139:17;141:18; 164:16;171:1,4;179:6; 184:19;192:3,6
surface (1) 62:13
suspect (1) 70:14
swear (2) 5:23;73:10
Swiatek (3) 40:20;69:17;70:7
sworn (4) 6:20;28:2;73:11; 87:18
system (1) 84:17

T

Tab (10) 31:6,7;38:21;41:5,5; 57:9;58:7;106:15; 111:24;130:20
Table (2) 52:14;129:14
talk (8) 7:16;9:7;46:16; 60:21;70:19;79:2; 151:20,21
talked (7) 8:24;80:24;85:11; 90:8;91:4;124:18; 134:8
talking (8) 80:2;82:23;100:16, 17,18;124:7;125:10; 140:13
talks (2) 43:14;75:14
Tanger (1) 107:21
tantamount (2) 121:15,16
task (3) 67:23;125:4;167:15
Telerico (6) 89:8;116:15;146:10; 150:6;171:8,21
telling (1) 12:2
tells (1) 153:6
ten (2) 80:12;81:6
tend (5) 126:21;175:23; 180:6;183:5,18
term (1) 71:16
terms (17) 9:10;26:1;66:12; 96:16;105:1;126:11, 12;134:2;140:15; 166:16,23;167:23; 181:8;183:4;188:4,7,8
territorial (1) 183:16
territory (2) 168:7;183:11
test (8) 86:8;125:7,18,22; 126:24;166:15;169:21; 186:14
testified (2) 70:9;85:13
testifies (1) 28:3
testify (2) 5:24;165:8
testifying (1) 74:16
testimony (14) 12:17;15:21;42:1,4; 50:24;66:23;70:19; 86:6;87:18;120:17; 163:2;165:2;179:14,18
texts (1) 46:23
thanked (1) 37:13
Thanks (3) 24:7;55:19;186:18
thereafter (2) 105:24;106:1
therefore (16) 20:10;25:2;102:8; 107:14;109:16;115:9, 10;118:7;129:21; 158:13;163:3;181:14; 182:13;183:1;184:9; 185:4
therein (1) 75:22
thereto (1) 71:24
Thereupon (3) 6:20;73:11;193:4
thinking (2) 192:11,18
third (4) 67:5;104:8;156:20; 165:21
thorough (1) 115:17
thoroughly (2) 17:23;89:12
though (4) 68:13;115:23; 179:18;190:17
thought (10) 23:8;53:22;90:6; 99:15;113:18;132:9; 140:17;155:14;186:6,8
thoughtfully (1) 18:20
thoughts (8) 85:6;87:1;164:8,9; 166:5;172:17;180:17; 187:24
thrashed (1) 16:13
three (3) 6:22;100:23;177:10
thresholds (1) 170:8
throughout (1) 169:21
throw (3) 160:17;183:1;187:13
thrust (1) 128:8
Thus (1) 42:5
till (1) 81:8
timeline (1) 7:13
times (4) 11:1;80:16;125:19; 131:16
title (50) 4:15;17:5,8;32:19; 39:17;51:14;57:18,23; 58:3,9;61:19,19,23,23; 62:3,12;93:12,16,17; 95:16,18;96:1,4;97:14, 19,24,24;98:5,12,21, 21;100:21;104:4; 105:10,13,22;109:2; 144:21;145:6,17; 149:20;151:7,14; 153:15,22;154:13; 161:14,14;167:24; 191:15
titles (1) 169:16
today (47) 4:8;6:23;7:4;9:8; 10:12,15;12:17;13:22; 14:2,23;15:5,22;16:1, 22;18:5;20:15,17;39:8; 52:5;59:23;70:8;74:24; 93:12;97:8;112:22; 116:11;122:18;124:18; 139:5;145:10,17; 148:13;153:14;154:12; 155:3,24;157:24; 159:8;161:24;163:5; 164:23;165:2;166:7; 169:23;177:17,19; 192:24
today's (1) 74:14
together (10) 9:13;72:17;73:14,16, 19;74:5,6,11,12;184:16
told (4) 133:24;146:20,23; 148:13
took (8) 65:5;91:13;110:23; 120:11;145:12;148:21, 23;162:18
top (8) 44:7;46:18;51:11; 56:24;103:1;105:13;

134:13;170:2
total (1)
29:19
tough (1)
12:2
towards (2)
85:5;175:23
Township (8)
83:22,24;107:14,18;108:18;109:5;124:9;183:16
townships (2)
108:1,23
Traci (1)
5:8
track (1)
131:19
tracking (1)
130:14
trade-off (1)
121:19
trade-offs (2)
121:6,10
transferred (3)
65:6;110:5;113:2
trappings (1)
26:15
trash (1)
46:2
treated (1)
171:15
treats (1)
86:17
trial (2)
146:15,16
tribunal (1)
22:23
true (11)
32:16;54:10,24;65:21;66:5;69:15;119:2;128:21;129:12;140:16;142:2
trustees (1)
25:11
truth (4)
13:9;51:21;53:24;67:12
truthful (1)
70:11
truthfulness (3)
68:14;122:21;127:18
try (4)
101:2;121:5;122:4;151:21
trying (10)
71:20;80:19;82:4;99:10,17;100:1;105:1;108:11;121:4;170:13
T's (1)
16:15
Tuesday (1)
4:1
turn (18)
7:8,9;26:11;31:6;33:5;37:1,8;40:4;41:5,9;42:14;43:7;47:14;50:16;51:10;52:10;53:21;182:6
turned (1)
90:9
twists (1)
24:3
Two (32)
4:9;6:24;7:17;8:15,23;9:11;11:9,16;12:18;24:2;29:13;43:21;71:2;82:8;100:16;105:16;111:6;114:20;119:8;127:21;129:5;130:19;131:1,2;147:4,6;170:5;172:19;177:3;178:22;188:18;194:8
type (7)
24:23;30:22;38:14;44:18;78:20;124:8;132:5
types (4)
44:14;46:22;131:7;178:22
typically (3)
103:3;118:13;178:7

U

ultimate (1)
174:12
ultimately (3)
159:15;181:8;182:2
um (1)
104:19
Um-hum (3)
37:14;41:11;52:12
unaffected (1)
13:6
unanimously (1)
31:11
unclear (5)
159:4,5;162:4,6;172:5
unconstitutional (2)
14:8;24:23
un-delegate (1)
77:2
Under (56)
9:14,22;10:2,6;12:19;13:10,11;14:5;15:17;16:11;17:7;18:4;19:9;23:17;30:17;35:13;44:24;45:18;51:14;56:6;61:8;65:3;68:7;70:21;77:20;78:8;82:5;86:8;89:17;93:7,12,17;101:6;110:7,16;124:6;130:2;140:21;141:11;144:22;149:20;151:5,6,7,18,24;153:6,11;154:13,23;155:12,13;157:18;159:11;168:10;171:22
underlining (1)
44:22
underlying (7)
45:21;116:16;158:20;162:3,8;171:22;172:4
understood (3)
110:4;188:21,21
undeterred (1)
156:10
undisputed (4)
98:7;110:11,12;152:9
undue (1)
149:22
unequivocally (1)
97:24
Unfortunately (2)
126:7;160:20
unique (3)
44:16;136:15,15
unit (3)
30:20,22;124:8
United (3)
26:14;99:22;182:9
units (2)
29:20;105:18
unknown (1)
134:20
unlawful (1)
113:22
unless (12)
10:5;13:19;14:13;24:21;43:21;44:23;75:5;143:22;146:5;172:10;174:16;179:24
unlike (2)
88:2;172:13
unreasonable (3)
113:22;114:2;155:15
unrefuted (2)
86:6;146:13
unrelated (1)
95:13
unsigned (2)
40:18;70:13
up (35)
6:1,4;12:22;13:5;14:1;25:4,20;47:16;49:8;55:3;57:5;70:21;71:13;78:9,13;79:12;80:17;81:12;88:3;94:19;103:1;118:14;120:21;126:21;132:16,16;164:3;166:24;173:5;175:10;177:11;179:12,19;188:7,18
upheld (2)
57:13;150:14
uphold (1)
150:5
upon (13)
13:23;15:20;32:7;76:1;96:7;113:15;135:16;138:8;141:1;148:5;152:18;157:14;182:14
Upper (8)
89:8;116:15;149:21;150:12;158:19;171:10,13,21
use (27)
12:3,6;24:2;29:18;33:3;58:1;71:4;75:23;79:24;81:6;98:24;100:6;101:23;102:10;104:19;105:17;107:16;108:1;133:24;134:1,3;136:16;161:4;171:5,16;179:2;192:4
used (16)
23:21;24:20;25:9;27:1;29:18;47:9;65:16;66:2;72:1,3,24;73:15;79:8;100:5;102:19;103:17
user (1)
78:1
uses (10)
33:1,2;34:1;42:9,9;49:12;110:15;146:21;148:20;151:15
using (3)
105:8;179:12;187:21
Usually (1)
54:11
utilize (1)
135:20
utilized (1)
136:24
utmost (1)
153:15

V

vague (2)
80:18,20
Valerie (4)
40:20;52:22;69:17;70:7
valid (12)
18:13,20;23:22;67:24;78:3,5,11;149:13;156:9,17;160:15;168:12
validate (1)
7:22
validation (2)
7:19;152:24
validity (21)
9:18;12:24;13:11;23:14,17;59:20;61:4;63:8,18;66:8;67:11;75:12;77:17;78:14;79:16;93:8;143:21;144:24;156:16;168:11;176:15
value (1)
74:13
variance (9)
45:13,15;86:19;118:7,20,22,23;123:17;181:4
Variances (23)
46:17;85:11,15;86:16,22;117:14,17,17,19,20,22,24;118:11,18,21;119:8,8,9;120:2,20;123:15;127:6;159:4
vast (1)
86:2
verbatim (1)
144:3
verbiage (1)
104:22
Verification (6)
128:19,20;129:11;132:7;134:17;140:15
verify (1)
119:1
versus (20)
23:2;24:14;25:3;88:18;109:10;116:20;118:1;120:9;125:20;127:2;149:10;157:6;162:7;163:4,21;169:10;183:17,17;184:6;192:9
vet (2)
131:14;134:22
view (1)
7:9
village (5)
37:20;44:18;131:24;147:6;149:2
Vince (2)
131:24;132:2
violate (2)
130:11;145:19
violated (1)
130:10
violates (2)
10:10;13:2
voice (1)
100:20
vote (11)
36:9;78:6;175:14;180:15;182:14;184:6;186:16;191:1,4;193:6,8
voted (3)
77:6;108:10;192:8
voter (6)
56:23;57:2;160:8,10;179:10;180:6
voters (15)

77:10;88:14,24;115:11;117:2,6;119:15,16;157:2,3;158:15;159:15;161:13;162:2;181:18
votes (1) 184:4
voting (2) 102:21;192:10

W

wait (1) 88:20
waiting (1) 139:14
waive (3) 119:4,5;140:19
walk (1) 59:21
wall (2) 107:9;160:16
Walmart (2) 150:11;171:8
wants (2) 51:2;188:12
ward (25) 58:23;60:5;80:17;81:20;82:7,13,22;83:8,15;84:14,17,17;85:1;94:22;96:14;102:6;153:5,8;154:21;159:23,24;173:6;174:23;179:16;188:24
ward/precinct (3) 17:4;56:12;57:14
wards (8) 60:7;67:20,20;82:24;160:3;179:15;182:17;191:7
way (15) 39:2;50:3;88:12;101:15;103:8;122:3,19;143:2;172:18;174:3,5;178:17;180:13;186:6,7
ways (2) 20:5;87:4
website (2) 137:15,16
weeds (2) 173:22;183:4
weeks (1) 188:18
weigh (1) 91:17
weren't (3) 16:15,15;24:24
West (4) 30:3,4,5;105:19
what's (6) 33:24;104:17;119:23;130:5;140:5;166:16
whatsoever (1) 66:7
whenever (3) 23:18;32:12;39:13
whereby (1) 77:11
wherever (1) 49:9
wherewithal (1) 174:14
whole (10) 44:18;72:13;80:17;85:8;88:5;109:10;121:4;160:17;183:2,15
wide (1) 121:8
wiggle (1) 119:3
willing (1) 119:17
windows (1) 44:13
wise (1) 189:3
wish (1) 77:1
within (48) 14:21;19:24;20:2;28:24;29:23;30:19;33:3,14;39:19,24;40:24;44:15,18;45:18;46:23;47:8,17,24;50:5;55:1;63:11;64:22;77:8;79:13;87:24;114:24;115:1,5;116:23;117:4;118:16,18,20;129:4;130:19;131:23;132:3;136:17,21,23;137:13,24;140:1;158:4,5,9;166:11;169:6
without (4) 33:22;59:22;152:14;187:21
witness (2) 48:24;55:12
witnesses (5) 5:23;6:20;26:21;74:23;165:9
word (7) 48:16;51:19;73:7;142:16;145:12;149:17;188:24
wording (3) 79:8,12;176:5
words (11) 52:2;53:10;54:5;56:13;103:7,18;106:11;110:6;125:24;168:3;169:10
work (5) 81:21;134:23;140:24;186:17,19
worked (4) 31:12;131:22;134:21;181:11
Working (4) 22:11;90:18;140:18;181:12
works (1) 42:7
worth (1) 10:23
write (4) 57:8;71:13;83:22;128:12
written (6) 10:6;46:21,23;132:7;179:4;186:6
wrong (3) 19:15;51:1;104:22

Y

year (3) 81:23;107:14;124:22
years (12) 28:12;37:19;38:17;41:17;112:2;124:15;129:5;130:19;131:22;148:1;177:11;181:10
yesterday (1) 8:5

Z

zero (1) 88:22
zone (2) 43:18,18
zoned (7) 39:8;109:11,11,12;147:22;148:9;149:4
Zoning (180) 14:12,13,14,20,22;16:3,4;28:15;30:9,11,13,19;31:2,3,18,18,21,22;32:1,6,6,9,11,12,13,15,15,20,21,23;33:8,11,11,14;34:8,12,13,17,24;35:13,16,23;36:1,5,13,22;37:4,22,24;38:7,16;39:3,5,11,15,16,20,23,24;43:2,12;44:5,10,23;45:17,19,21,24;46:4,5,11,19,23;47:6,10,17;48:13;49:7,11,15,20,22,23;50:7,20;51:12;53:5,18;55:6,7;65:3;66:20,23;67:8;85:16,19;86:3,4,5,7,8,10;87:3,6,16;106:22;107:8,17,19,20;108:8,24;109:9,15;110:11,23,24;112:13,18;113:14;114:11,16;115:17;119:4,5;123:3;124:4,7,19;126:1,3,9,12;130:3,11;133:10,12,15,21;134:3,5,6,11;135:14;136:10,18;137:7,22;138:5,7,14;139:3,22,22;140:9,11;142:5;145:13;146:5,6,23;147:1,2,20;148:3;150:9;152:10,13,14,17;157:18;166:20;167:12;174:10;175:16;180:20;181:3,5,15;182:1
zoning-type (1) 115:15

0

03-09 (1) 96:22
05 (4) 90:20;180:20,21;181:15
06 (1) 182:8

1

1 (14) 18:7;28:24;29:1;46:17;63:9;65:13,14;103:14;106:16,21;125:21;164:22;165:11;179:5
1:00 (1) 177:8
1:20 (1) 194:14
10 (6) 12:13;38:17;57:21;77:5;141:11;146:10
11 (4) 54:20;58:7;130:1;146:10
1138-1 (1) 179:5
1142.17 (1) 43:16
1143 (3) 33:8;50:22;133:12
1143.08 (2) 49:6;87:18
11A (1) 12:23
12 (7) 40:4,5;52:11,13;70:12;130:2,22
13 (8) 31:6,8,19;35:22;36:7;43:14;106:15;125:21
13022 (1) 107:21
136 (1) 50:6
14 (6) 37:8;38:5;42:15,17;131:22;164:22
14,000 (1) 105:16
146 (3) 51:10,12;53:22
147 (2) 30:4;105:19
15 (2) 37:19;143:13
17 (2) 37:7;155:21
18 (2) 59:3;157:19
19 (2) 18:24;59:3
1998 (1) 147:17
1999 (1) 93:6
19th (3) 90:3,4;159:21
1E (3) 38:21,21;41:5
1F (2) 14:6;146:1
1st (2) 18:23;159:20

2

2 (11) 14:6;37:1,2,8;38:5;46:18;67:4,5;71:14;103:13;146:1
20 (1) 181:10
2004 (1) 136:21
2005 (14) 14:22;31:3;87:7,16;110:13;111:19,23;124:20;126:2,4;137:1;148:21;150:7;152:11
2005-20 (1) 31:9
2006 (1) 149:8
2010.14 (1) 124:22
2013 (1) 35:22
2014 (4) 4:2;8:17;29:4;148:23
2014.10 (1) 65:22
2014-10 (3) 32:17,19;38:22
2014-2 (1)

82:3
20th (3)
8:1;90:5;92:9
21st (3)
8:1,4,18
22 (2)
28:12;41:17
238 (1)
67:23
250 (1)
137:14
2506 (9)
16:12;86:20;112:20;
116:1,2,8;125:17;
168:21;169:3
2506.04 (1)
113:20
25th (2)
7:17;8:5
26 (1)
4:2
28 (2)
7:20;8:17
28th (1)
7:17
2nd (1)
125:21

3

3 (2)
52:21;91:6
30 (3)
12:2,3;169:6
30,000 (1)
7:9
30-day (3)
76:24,24;77:8
31 (1)
29:4
35 (8)
93:12,17;144:21;
145:6,17;149:20;
151:7;154:13
3501 (2)
12:23,24
3501.11 (1)
143:18
3501.1138 (1)
93:7
3501.3 (1)
10:5
3501.39 (2)
9:22;145:1
37 (1)
82:10
39 (1)
93:7
3901.39 (1)
168:14

4

4 (2)
57:4,7
40 (1)
62:4
400 (5)
60:12;67:24;71:20;
156:24;160:5
4th (2)
37:16;90:11

5

5 (2)
57:5,9
50 (1)
98:14
5-0 (1)
36:10
51912 (1)
108:21

6

6 (8)
54:19;56:15,16;
96:21;108:1,3;130:1,
21
6.02 (1)
144:6
6.04 (1)
144:11
605 (3)
57:16;80:15,23
64 (2)
29:20;105:18
69.1 (1)
82:10
6I (4)
71:5;98:11;99:1;
104:9
6J (2)
71:5;98:24

7

7 (2)
56:20;93:16
7,000 (1)
29:14
72 (1)
147:21
731.28 (1)
144:6
731.29 (1)
144:11
731.41 (1)
91:6
75 (1)
92:11
75-day (6)
89:22;90:19;91:9,22;
94:1,2
75th (1)
92:13
76th (2)
90:5,10

8

8 (1)
56:22
8.3 (1)
105:19

9

9 (2)
57:3;130:1
9:00 (1)
4:3
90 (1)
90:15
99 (2)
90:20;174:9

1 CERTIFICATE

2 State of Ohio :
SS:
3 County of Franklin:

4 I, Jackie Olexa White, Notary Public in
5 and for the State of Ohio, duly commissioned and
6 qualified, certify that the Board of Elections
7 Protest Hearing was taken down by me in stenotypy,
8 afterwards transcribed upon a computer; that the
9 foregoing is a true and correct transcript of the
10 testimony and statements given, taken at the time and
11 place in the foregoing caption specified.

12 I certify that I am not a relative,
13 employee, or attorney of any of the parties hereto,
14 or of any attorney or counsel employed by the
15 parties, or financially interested in the action.

16 IN WITNESS WHEREOF, I have set my hand and
17 affixed my seal of office at Columbus, Ohio, on this
18 29th day of August, 2014.

19 JACKIE OLEXA WHITE, Notary Public
20 in and for the State of Ohio
and RPR-CM.

21 My Commission Expires January 21, 2019.

22

23

24

Exhibit 2-B

BEFORE THE BOARD OF ELECTIONS
DELAWARE COUNTY, OHIO

IN RE: REFERENDUM AND INITIATIVE PETITIONS CONCERNING CITY OF POWELL ORDINANCE 2014-10 ADOPTED JUNE 17, 2014	:	**Hearing Requested on or before August 4, 2014**

NOTICE OF PROTEST

Pursuant to Section 3501.39 of the Ohio Revised Code, The Center at Powell Crossing, LLC and Donald R. Kenney, Jr. (collectively, the "Protesting Party") gives notice of protest to the Delaware County Board of Elections concerning the referendum and initiative petitions (collectively, the "Petitions") transmitted to the Delaware County Board of Elections on July 25 and July 28, 2014 from the City of Powell. The Protesting Party specifically requests that the Board of Elections follow the City of Powell's Charter and Ohio law which require the Board to reject the facially invalid Petitions. The Protesting Party also requests a hearing on this protest before the full Board of Elections, as required by R.C. § 3501.39, at the earliest opportunity, but no later than August 4, 2014. A Memorandum in Support of this protest is attached.

Respectfully submitted,

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Counsel for the Protesting Party

BOARD OF ELECTIONS
DELAWARE COUNTY, OHIO
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TABLE OF CONTENTS

Page

MEMORANDUM IN SUPPORT 1

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 2

A. The Property at Issue 2

B. Powell Crossing's Proposed Development Project 3

C. The Administrative Approval of Powell Crossing's Development Project 4

D. The Invalid Petitions 4

III. LAW & ARGUMENT 6

A. Standard of Review – Strict Compliance with Election Laws Required Unless Expressly Stated Otherwise 6

B. On Their Face, the Petitions Fail To Satisfy the City Charter's Mandatory Requirements 7

1. The Petitions Fail to Satisfy the City Charter's Ward and Precinct Requirement 8

2. The Petitions Lack the Required Number of Signatures 9

a. Each Petition Must Contain 238 Valid Signatures of Powell Electors 9

b. Each Petition Fails to Include the Required Number of Valid Signatures 10

3. Every Part-Petition Fails to Notify Electors of the Requisite Title and Date or Title and Text as Required for Referenda and Initiatives By the City's Charter 11

4. The Repeal Initiative and Charter Initiative Are Invalid Because of their Misleading Captions and Content 14

a. Both Purported Initiatives Are Referenda on City Council's June 17, 2014 Administrative Decision

Concerning the Property, But Neither Is Captioned as a Referendum 14

b. The Charter Initiative Petition Is Also Invalid Because It Combines an Initiative and Referendum In the Same Petition Contrary to the City Charter's Petition Procedures 17

C. Ordinance 2014-10 Cannot Be Subject To Referenda Because It Was An Administrative Act 17

1. The Board Cannot Validate Petitions Seeking a Referendum of City Council's Administrative Acts 18

2. Ordinance 2014-10 Was an Administrative Act By City Council and Therefore Cannot Be Subject to Any Referendum 19

D. The Charter Initiative Is Unconstitutional and Therefore Invalid 22

1. The Charter Initiative Is Illegal "Spot Zoning" 23

2. The Charter Initiative Is Unconstitutionally Vague 24

3. The Charter Initiative Is An Unconstitutional Retroactive Law 24

4. The Charter Initiative Impermissibly Delegates City Council's Legislative Power to a Commission 25

IV. CONCLUSION 26

Exhibits

Exhibit 1 – Petition Review

Exhibit 2 – Exemplar Referendum Part-Petition

Exhibit 3 – Exemplar Repeal Initiative Part-Petition

Exhibit 4 – Exemplar Charter Initiative Part-Petition

Exhibit 5 – Powell City Charter

Exhibit 6 – 2014-07-10 Email from Sue Ross

TABLE OF AUTHORITIES

Page

CASES

Bliss v. Monagan, 9th Dist. No. 3080, 1980 Ohio App. LEXIS 14061 (Lorain County Dec. 3, 1980) 8

Buckeye Community Hope Found. v. City of Cuyahoga Falls, 82 Ohio St.3d 539 (1998) 18, 19, 21, 22

City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668 (1976) 23

Columbus v. Thompson, 25 Ohio St.2d 26 (1971) 24

Donnelly v. Fairview Park, 13 Ohio St.2d 1 (1968) 18

Gibson v. City of Oberlin, 167 N.E.2d 651 (1993) 24, 25

Grayned v. City of Rockford, 408 U.S. 104 (1972) 24

Gross Builders v. City of Tallmadge, 2005-Ohio-4268 (9th Dist.) 20

King v. Village of Granville, 1997 Ohio App. LEXIS 4941 22

Lofino's, Inc. v. City of Beavercreek, Ohio City Council, 2009-Ohio-4404 (2d Dist. 2009) 20

Mercer Dev. LP v. Mercer Cnty. Bd. of Elections, 3d Dist. Mercer No. 10-10-08, 2010-Ohio-4071 10

More v. Bd. of Twshp. Trustees of Batavia Twshp. (12th Dist. 2003), 2003-Ohio-1265 20

Morris v. City Council of Macedonia, 71 Ohio St.3d 52, 41 N.E.2d 1075 (1994) 23

Pilla v. City of Willowick, 11th Dist. Lake No. 8-243, 1982 Ohio App. LEXIS 13454 (December 23, 1982) 23

Rust v. Lucas Cty. Bd. of Elec. (2005), 108 Ohio St.3d 139 11

Save the Lake v. Schregardus, 141 Ohio App. 3d 530 (2001) 25

Shaheen v. Cuyahoga Falls City Council, 2010-Ohio-640 (9th Dist. 2010) 18

Speedway Super America, LLC v. Granville Village Council, 2003-Ohio-6951 (5th Dist. 2003) 20, 21, 22

State ex rel. Baker v. City of Brook Park, 8th Dist. Cuyahoga No. 98991, 2012-Ohio-5043 23

State ex rel. Becker v. City of Eastlake, 93 Ohio St. 3d 502 (2001) 12, 23

State ex rel. Burech v. Belmont Cnty. Bd. of Elections, 19 Ohio St.3d 154 (1985) 12

State ex rel. City of Upper Arlington v. Franklin Cty. Bd. of Elections, 119 Ohio St.3d 478 (2008) 18, 19

State ex rel. Cody v. Stahl, 8th Dist. No. 83037, 2003-Ohio-6180 ..... 14, 15, 17

State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections, 96 Ohio St.3d 308, 2002-Ohio-4194 ..... 6, 11, 17

State ex rel. Committee for Referendum of Ordinance No. 3844-02 v. Norris, 99 Ohio St.3d 336 (2003) 19, 20, 22

State ex rel. Corrigan v. Perk, 19 Ohio St. 2d 1 (1969) 8, 9

State ex rel. Crossman Communities of Ohio, Inc. v. Greene Cty. Bd. of Elections (1999), 87 Ohio St.3d 132 20

State ex rel. Esch v. Lake Cnty. Bd. of Elections, 61 Ohio St.3d 595 (1991) 12, 13

State ex rel. Marsalek v. Council of the City of South Euclid, 111 Ohio St.3d 163 (2006) 19

State ex rel. Oberlin Citizens for Responsible Development v. Talarico, 106 Ohio St.3d 481 (2005) 19

State ex rel. Phillips v. Lorain Cty. Bd. of Elections, 93 Ohio St.3d 535, 757 N.E.2d 319 (2001) 6

State ex rel. Poor v. Addison, 132 Ohio St. 477 (1937) 8

State ex rel. Selected Properties, Inc. v. Gottfried, 163 Ohio St. 469 (1955) 26

Supervalu Holdings, Inc. v. Jackson Center Assoc., 2004-Ohio-4314 (12th Dist. 2004) 20, 21, 22

Wedgewood Ltd. P'ship I v. Twp. of Liberty, 456 F. Supp. 2d 904 (S.D. Ohio 2006) 24

STATUTES

R.C. § 3501.011 10

R.C. § 3501.38 10

R.C. § 3501.38(B) 10

R.C. § 3501.38(C) 10

R.C. § 3501.38(D) 10

R.C. § 3501.38(E)(1) 10

R.C. § 3501.38(F) 11

R.C. § 731.31 ..... 10, 12, 13

R.C. § 731.36 16

CONSTITUTIONAL PROVISIONS

Ohio Constitution, Article II, Section 1(f) 7, 18

MEMORANDUM IN SUPPORT

I. INTRODUCTION

This matter concerns an illegal attempt to reverse an administrative decision made by Powell City Council on June 17, 2014 regarding the redevelopment of the City's Downtown Business District. Facing certain defeat in any court of an appeal of that administrative decision, Petitioners[1] now seek to block the redevelopment effort by submitting three petitions all seeking the same outcome – reversal of Council's June 17, 2014 administrative decision memorialized in Ordinance 2014-10. As set forth below, Petitioners' effort is facially invalid and contrary to law.

The Center at Powell Crossing, LLC ("Powell Crossing") seeks to redevelop approximately 8.3 acres of land located at 147 West Olentangy Street in the City of Powell's Downtown Business District (the "Property"). Consistent with the Property's current zoning, Powell Crossing will construct a new mixed-use development with 14,000 sq. ft. of retail space and sixty-four (64) residential units, all while preserving an old house for commercial use (the "Project"). Powell Crossing worked with local officials to ensure the Project realizes the maximum potential for this property consistent with its zoning and the City's Comprehensive Plan. Both the City's Planning and Zoning Commission and City Council approved the Project's final development plan pursuant to the Property's existing zoning classification. City Council approved the Project's final development plan on June 17, 2014 in Ordinance 2014-10. Council's decision was subject to appeal to the Delaware County Court of Common Pleas under R.C. § 2506.04. But, upon information and belief, no appeal of the decision has been filed.

---

[1] As herein referred, "Petitioners" include the "Committee for Referendum of Powell City Ordinance 2014-10"; the "Committee for Initiative for proposed Ordinance for Repeal Powell City Ordinance 2014-10"; and the "Committee for Initiative for Powell Comprehensive Plan Charter Amendment." Upon information and belief, all three Committees consist of three common members: Brian Ebersole, Thomas J. Happensack, and Sharon Valvona.

Instead, Petitioners now improperly seek to appeal City Council's administrative decision through this forum. Petitioners have filed three petitions that each single out Council's June 17, 2014 administrative decision for inclusion on this year's general election ballot, including a[n]:

(1) Referendum Petition for City Ordinance 2014-10, (the "Referendum");

(2) Initiative Petition to repeal City Ordinance 2014-10, (the "Repeal Initiative"); and

(3) Initiative Petition to amend Powell's Charter to effectively repeal Ordinance 2014-10 and spot zone the Property, (the "Charter Initiative").

As a matter of law and fact, the Delaware County Board of Elections cannot accept any of the Petitions. First, Petitioners failed to submit sufficient valid signatures for any of the Petitions. Second, the Petitions are an illegal attempt to circumvent the established process for appeals of administrative decisions under R.C. 2506. Finally, the Petitions themselves are facially misleading, incomplete, and illegal.

Accordingly, Powell Crossing and Donald R. Kenney, Jr.[2] respectfully request that the invalid Petitions be rejected.

II. FACTUAL BACKGROUND

A. The Property at Issue.

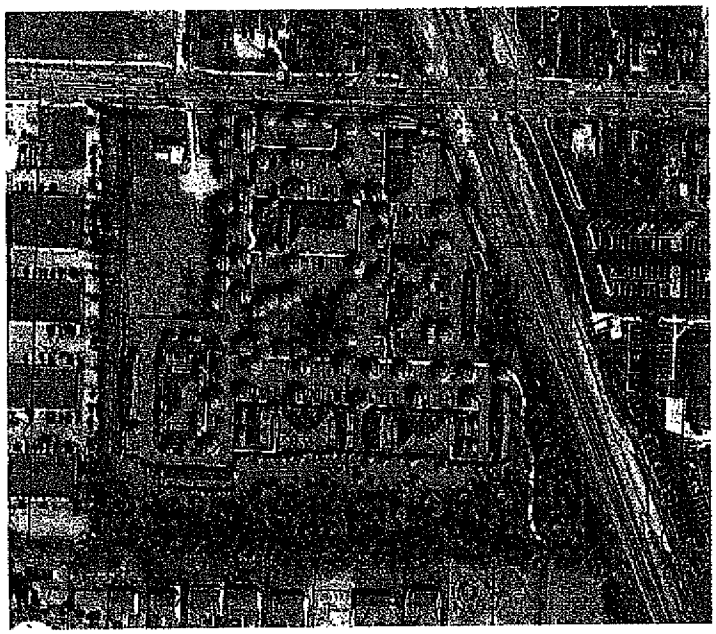
The property singled out in Petitioners' Petitions is an 8.3 acre tract of land located south of West Olentangy Street between Sawmill Parkway and Liberty Street that is owned by Powell Crossing. Currently, the Property is largely undeveloped other than an existing structure that serves as a combined dwelling and small, local business.

[2] Mr. Kenney is a registered elector of the City of Powell.

B. Powell Crossing's Proposed Development Project.

Located within the City's Downtown Business District, a planned district, the Property is expressly permitted to be used for retail and multi-family dwellings under the Powell Zoning Code ("PZC"). PZC §§ 1143.08, 1143.16.2(b). The Downtown Business District was created to promote "**mixed use** pursuits ... adaptive **reuse** of older commercial and office structures, and those constructed originally as residences ... [through] a fine-grained **intermixture** of small-scale residential, office, and retail uses..." PZC § 1143.16.2(b) (emphasis added). Powell Crossing's Project was designed specifically to realize this vision.

Specifically, the Project will transform a largely undeveloped property into a mixed use development that intermixes approximately 14,000 sq. ft. of retail space with sixty-four (64) multi-family dwelling units and preserves the historic Dr. Campbell House by reusing it for office and retail. The Project also adds several public amenities, including a park-like green square along the Property's frontage, improved streetscapes, and additional bike paths:



C. The Administrative Approval of Powell Crossing's Development Project.

The City of Powell's Planning and Zoning Commission applied the PZC to the Project's Final Development plan and unanimously recommended its approval. Pursuant to PZC § 1143.11, the Planning and Zoning Commission's recommendation approving the Final Development Plan was submitted to Powell's City Council for review.

City Council approved the Final Development Plan on June 17, 2014 pursuant to the Property's existing zoning in a planned district. City Council's final decision was memorialized as Ordinance 2014-10.

D. The Invalid Petitions.

Foregoing an administrative appeal of City Council's final decision, Petitioners have devised a misguided three-pronged petition plan to reverse Council's decision. On July 17, 2014, Petitioners submitted their Petitions to Ms. Sue D. Ross, Clerk of Council for the City of Powell. As set forth below, each Petition was required to be supported by 238 valid signatures. Notably, each Petition was sponsored by a committee of the same three individuals, circulated by the same circulators, and purportedly signed by nearly identical lists of people. Not surprisingly, and as summarized in the chart below, common defects and failures recur throughout the part-petitions,[3] rendering all three Petitions invalid:

[3] A true and accurate copy of the petition review conducted by the undersigned is attached as **Exhibit 1**. An exemplar of each Petition's part-petition is attached as follows: Referendum Part-Petition as **Exhibit 2**, Repeal Initiative Part-Petition as **Exhibit 3**, and Charter Initiative Part-Petition as **Exhibit 4**.

Summary of Powell Petitions' Shortfall			
Valid Signatures Required for Ballot:	238		
Petition	**Potentially Valid**	**Invalid**	**Shortfall**
Referendum Petition [to repeal Ord. 2014-10]	143	270	95
Initiative Petition [to repeal Ord. 2014-10]	143	268	95
Initiative Petition [to amend Powell's Charter to repeal Ord. 2014-10]	146	263	92

Moreover, despite the City Charter's requirement that each referendum petition "**shall** contain the number, a full and correct copy of the **title and date** of passage of the [subject] ordinance...," Charter § 6.05 (emphasis added),[4] not one of the Referendum Petition's part-petitions contains the title and date of passage of Ordinance 2014-10. *See, e.g.,* Ex. 2, Referendum Part-Petition (omitting the actual title of Ordinance 2014-10).

Likewise, the City Charter also requires that "each of any initiative petition **shall** contain a full and correct copy of the **title and text** of the proposed ordinance or other measure." Ex. 5, Charter § 6.05 (emphasis added). Yet, every one of the Repeal Initiative Petition's part-petitions fails to contain the actual title or text of the proposed ordinance. *See, e.g.,* Ex. 3, Repeal Initiative Petition Part-Petition (stating only that the Repeal Initiative concerned a "proposed Ordinance" without stating either the proposal's title or text). The defect is again repeated in the Charter Initiative, wherein not one of its part-petitions contain the title or text of the proposed measure. *See e.g.* Ex. 4, Charter Initiative Part-Petition (disclosing only that an "amendment to the City Charter of Powell, Ohio" was sought without stating either its title or text).

[4] A true and accurate copy of Article VI of Powell's City Charter is attached as **Exhibit 5.**

Additionally, both the Repeal Initiative Petition and Charter Initiative mislead the City's electorate as they purport to be new legislative measures when instead they are attempts to referendum an administrative decision Petitioners chose not to appeal.

Finally, the Charter Initiative is a futile and illegal attempt to spot zone one landowner's property and to deprive that landowner of its vested right to the Property's zoning.

As a result of these defects and flaws, the Protesting Party requests that the Referendum Petition submitted to the Delaware County Board of Elections on July 25, 2014 and that the Repeal Initiative and Charter Initiative submitted on July 28, 2014 be rejected.

III. LAW & ARGUMENT

A. Standard of Review – Strict Compliance with Election Laws Required Unless Expressly Stated Otherwise.

In its review of the Petitions, the Delaware County Board of Elections must require strict compliance with the relevant election procedure unless that procedure expressly states that a lower standard applies. Specifically, the Supreme Court of Ohio instructs that: "[t]he settled rule is that **election laws are mandatory and require <u>strict</u> compliance** and that substantial compliance is acceptable only when an election provision expressly states that it is." *State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, ¶ 49 (emphasis added), citing *State ex rel. Phillips v. Lorain Cty. Bd. of Elections*, 93 Ohio St.3d 535, 539, 757 N.E.2d 319 (2001). Thus, unless a requirement expressly states that some lower standard is necessary, the Board must require strict compliance with the mandate.

Additionally, because the Petitions are cast as both referenda and initiatives concerning the City of Powell, the City's prescribed Initiative and Referendum rules and requirements govern. The Ohio Constitution expressly vests each municipality with the authority to regulate

local initiatives and referenda. Ohio Constitution, Article II, Section 1(f) ("The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such **municipalities** may now or hereafter be authorized by law **to control by legislative action.**") (emphasis added). The City of Powell's legislated initiative and referenda procedures are set forth in Article VI of its Charter. The Charter establishes two things: (1) that the Charter's enumerated requirements and procedures are the default procedures, and (2) that Ohio law must be followed where the Charter is silent. Ex. 5, Charter § 6.05 ("Where the Charter is silent ... the laws of the State of Ohio shall be followed....").

Accordingly, unless a lower standard is expressly stated, the Petitions must strictly comply with the requirements set forth in the City Charter or with the requirements of Ohio law. Because the Petitions fail to strictly comply with these requirements, the Petitions must be ruled invalid.

B. On Their Face, the Petitions Fail To Satisfy the City Charter's Mandatory Requirements.

The Petitions fail to satisfy the minimum standards to qualify for the ballot. Petitioners failed to observe the City Charter's requirement that each signer of a petition state his or her ward and precinct. This and other defects cause the Petitions to fall far short of the number of valid signatures required. The Petitions also fail to comply with the City Charter's title and date and title and text requirements for referenda and initiatives. Worse, the Repeal Initiative and Charter Initiatives caption and content are intentionally misleading and conceal that both are referendums on Ordinance 2014-10. Additionally, the Charter Initiative improperly combines an Initiative and Referendum in the same petition. Any one of the foregoing defects warrant invalidation; taken together, there can be no dispute that the Board must invalidate the Petitions.

1. The Petitions Fail to Satisfy the City Charter's Ward and Precinct Requirement.

Among other defects, many of the part-petitions fail to comply with the City Charter's absolute requirement that each elector specify the elector's ward and precinct. Ex. 5, Charter § 6.05.

The City of Powell's Charter could not be more clear: "Each signer of any [initiative or referendum] petition . . . **shall** place on such a petition, after his name . . . his place of residence, including street and number, and **the ward and precinct**." *Id.* (emphasis added). Ward and precinct requirements like the one in the City's Charter, have been challenged and expressly upheld by the Ohio Supreme Court. Where "the law is clear that the ward and precinct, whether written in by the signer himself or by someone else under his direction, must follow the signature of the signer in a petition[,] . . . a signature not followed, amongst other requirements, by the ward and precinct of the signer does not comply with [the ward and precinct requirement], and, therefore, cannot be held to be a valid and sufficient signature." *State ex rel. Poor v. Addison*, 132 Ohio St. 477, 481-82 (1937) (agreeing with rejection of proposed amendment to Columbus City Charter on ward/precinct requirement); *see also State ex rel. Corrigan v. Perk*, 19 Ohio St. 2d 1, 3 (1969) ("We find no federal constitutional provision or principle which is offended [by a ward/precinct requirement]. . . ."); *Bliss v. Monagan*, 9th Dist. No. 3080, 1980 Ohio App. LEXIS 14061 (Lorain County Dec. 3, 1980) (rejecting a Constitutional challenge to a ward/precinct requirement).

The part-petitions at issue fail to provide any place for an elector to provide his or her ward. *See e.g.*, Ex. 4, Referendum Part-Partition. Nonetheless, more than one third of the electors provided their correct ward and precinct. *See* Ex. 1, Petition Review. Nearly two-thirds did not. *Id.* "Accordingly, those signatures of municipal residents which were filed ... without

[the] ward and precinct designation, are invalid." *State ex rel., Corrigan v. Perk*, 19 Ohio St.2d at 4.

2. The Petitions Lack the Required Number of Signatures.

a. Each Petition Must Contain 238 Valid Signatures of Powell Electors.

As a matter of law, each petition must contain at least 238 valid signatures by electors of the City of Powell. Pursuant to the Charter and the Ohio Constitution, the Board must rely upon the total votes cast by the City of Powell's electors during the 2013 general election to determine the amount of signatures that are necessary for each petition:

> (1) The Referendum Petition's signature requirement is set forth in Charter § 6.04. This provision requires every referendum petition to be "signed by electors of the City, not less in number than ten (10) percent of the total votes cast at **the last preceding general municipal election**, is filed with the Clerk of Council . . . ." Ex. 5, Charter § 6.04 (emphasis added).
>
> (2) The Repeal Initiative's signature requirement is stated in Charter § 6.02. Pursuant to this provision, an "initiative petition must be signed by electors of the City equal to ten (10) percent of the total number of votes cast at **the last preceding regular municipal election**." Charter § 6.02 (emphasis added). The Charter does not define a "regular municipal election." However, the Revised Code imputes that a "regular municipal election" means "the election held on the first Tuesday after the first Monday in November in each odd-numbered year." R.C. § 3501.01.
>
> (3) The Charter Initiative's signature requirement is enumerated in Article 18 of the Ohio Constitution. As required by the Constitution, Charter amendments petitions must be "signed by ten per centum of the electors of the municipality." Ohio Constitution, Article XVIII, Section 9. Further, "[t]he percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the **last preceding general municipal election**." Ohio Constitution, Article XVIII, Section 14 (emphasis added).

Thus, each of the Petitions is required to have signatures of an amount that reflects at least 10% of the total number of votes cast in the City's 2013 general election. 2,379 total votes were cast

in the 2013 General Election.[5] Accordingly, Petitioners were required to obtain 238 valid signatures from electors in the municipal corporation of Powell for each of their three Petitions. Petitioners failed to do so.

b. Each Petition Fails to Include the Required Number of Valid Signatures.

Pursuant to the City Charter's and Ohio law's petition requirements, the Petitions fail to contain sufficient valid signatures.

The Petitions must satisfy the requirements set forth in Charter § 6.05 and R.C. §§ 731.31 and 3501.38. *See supra* Sec. III.A. Accordingly, each part-petition and its contents must meet the following requirements:

- Each signer of a petition must be an elector of the City of Powell. Charter § 6.05.
- Each signer must place "after his name, the date of signing, his place of residence, including street and number, and the ward and precinct." *Id.*
- The signature must match the signature on file with the board of elections. Each signature which is found to be irregular must be rejected. R.C. §§ 731.31, 3501.011.
- Each signature must be in ink. R.C. § 3501.38(B).
- Each signer must state the date of signing of the petition. R.C. § 3501.38(C).
- Each signer's address must match the address appearing in the registration records at the board of elections. R.C. § 3501.38(C).
- If a petition contains the signature of an elector two or more times, only the first signature shall be counted. R.C. § 3501.38(D).
- A circulator must not sign his or her part petition. If done, the circulator's signature is invalid. *Mercer Dev. LP v. Mercer Cnty. Bd. of Elections*, 3d Dist. Mercer No. 10-10-08, 2010-Ohio-4071, ¶ 4.
- A circulator must accurately state the number of valid signatures contained on the part-petition. Charter § 6.05; R.C. § 3501.38(E)(1). If the circulator states the part-petition contains a fewer number of signatures than the actual number of signatures

[5] According to the Board's results, total ballots cast in the 2013 General Elections were as follows: Powell A – 232, Powell B – 233, Powell C – 326, Powell D – 236, Powell E – 327, Powell F – 253, Powell G – 234, Powell H – 167, Powell I – 130, and Powell J – 241.

on the part-petition, the entire part-petition is invalid. *Rust v. Lucas Cty. Bd. of Elec.* (2005), 108 Ohio St.3d 139, 141.

- If a circulator knowingly permits an unqualified person to sign a petition paper or permits a person to write a name other than the person's own on a petition paper, that petition paper is invalid. R.C. § 3501.38(F).

Applying the foregoing requirements (and the City Charter's express requirements), a review of the Petitions demonstrates that each falls well short of the requisite 238 signatures. Ex. 1, Petition Review (setting forth reason for disqualifying each signature). When the invalid signatures are removed from the Petitions, the Referendum Petition contains, at most, 143 potentially valid signatures; the Repeal Initiative Petition contains, at most, 143 potentially valid signatures; and the Charter Initiative Petition contains, at most, 146 potentially valid signatures. *Id.* Thus, Petitioners failed to obtain the sufficient number of valid signatures.

Because the "number of valid signatures is found to be less than the total number required" for each of the Petitions, the Board must invalidate all three. Ex. 5, Charter § 6.05.

3. Every Part-Petition Fails to Notify Electors of the Requisite Title and Date or Title and Text as Required for Referenda and Initiatives By the City's Charter.

The City's Charter also expressly requires all initiative and referendum petitions to identify the specific measure or ordinance that is the subject of the petition with specified particularity. Despite being cautioned in writing to consult the City's Charter requirements prior to circulation of the Petitions, Petitioners failed to adhere to the City Charter's strict requirements. *See* email from Clerk of Council to Petitioners dated July 10, 2014, a true and accurate copy is attached as **Exhibit 6**.

Regarding Referendum Petitions, the Charter expressly requires that "any referendum petition **shall** contain the number, a full and correct copy of the **title** and date of passage of the [subject] ordinance. . . ." Ex. 5, Charter § 6.05. Importantly, strict compliance is required. *State*

ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections, 96 Ohio St.3d 308, 2002-Ohio-4194, ¶ 49. As the Supreme Court has found, "[m]ore so than the text, **the title immediately alerts signers to the nature of [the measure]**." *State ex rel. Esch v. Lake Cnty. Bd. of Elections*, 61 Ohio St.3d 595, 597 (1991) (rejecting initiative petitions that lacked the relevant title) (emphasis added).

Yet, nowhere on the face of any of the Referendum part-petitions does the **title** of the subject ordinance appear. *See e.g.* Ex. 2, Referendum Part-Petition (omitting the full and correct title of Ordinance 2014-10 which should have read: "**AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR THE CENTER AT POWELL CROSSING LLC, A DEVELOPMENT OF 14,000 SQ. FT. OF RETAIL IN TWO BUILDINGS, PRESERVING THE OLD HOUSE FOR COMMERCIAL USE, AND DEVELOPMENT OF 64 RESIDENTIAL UNITS ON 8.3 ACRES, LOCATED AT 147 W. OLENTANGY STREET**" (emphasis in original)).

Likewise, the City Charter also requires that each part "of any initiative petition **shall** contain a full and correct copy of the **title and text** of the proposed ordinance or other measure." Ex. 5, Charter § 6.05. Efforts made to dismiss or overlook a verbatim title and text requirement in R.C. § 731.31 as overly technical, have been repeatedly rejected by the Supreme Court of Ohio. *See e.g., State ex rel. Esch v. Lake Cnty. Bd. of Elections*, 61 Ohio St.3d at 597 (citing cases); *State ex rel. Becker v. City of Eastlake*, 93 Ohio St. 3d 502, 507 (2001) ("Omitting the title of a proposed measure is a 'fatal defect because it interferes with the petition's ability to fairly and substantially present the issue and might mislead electors.'") (citations omitted); *State ex rel. Burech v. Belmont Cnty. Bd. of Elections*, 19 Ohio St.3d 154, 155 (1985) (holding that title and text requirement must be strictly enforced).

In *State ex rel. Esch,* the Board of Elections argued that "the lack of a title is a technical defect and that strict compliance with this R.C. § 731.31 requirement is not necessary." *Id.* The Supreme Court disagreed. The Court explained that strict compliance is required and that it is erroneous to hold a petition to a lesser standard. *Id.* at 597-598.

Nor can the Petitions here be held to some lesser standard. In both the Repeal Initiative and the Charter Initiative, neither the full and correct title, nor the text of the Ordinances appear on the face of any of the part-petitions. The Initiative part-petitions each merely refer to a "proposed Ordinance" rather than providing electors with the title that conveys the immediate nature of what the "proposed Ordinance" seeks to legislate or the actual text itself. Similarly, the Charter Initiative's part-petitions vaguely reference an "amendment to the City Charter of Powell, Ohio," rather than including the Initiative's title and text.

While Petitioners may argue they substantially complied with the Referendum's title and date and Initiatives' title and text requirements, the City Charter does not permit substantial compliance. Worse, there is no evidence that any of the purported exhibits mentioned in any of the Petitions' part-petitions were actually circulated with each part-petition. Not one circulator's statement covers any of the purported exhibits that *follow* his or her statement. Rather, each circulator only swore of the content *preceding* their statement. *See e.g.*, Ex. 4, Charter Initiative Part-Petition.

Accordingly because the Petitions all fail to strictly comply with the title and date and title and text requirements from the City's Charter, the Petitions are invalid on their face.

4. The Repeal Initiative and Charter Initiative Are Invalid Because of their Misleading Captions and Content.

a. Both Purported Initiatives Are Referenda on City Council's June 17, 2014 Administrative Decision Concerning the Property, But Neither Is Captioned as a Referendum.

Contrary to the Repeal Initiative and Charter Initiative's captioning as "Initiative Petition[s]," both initiatives are referenda on Ordinance 2014-10. As a result of this error, the electorate was misled and both initiatives fail to follow the City Charter's distinct referendum procedures.

As a matter of law, referenda initiatives and their concomitant procedures and timing cannot be circumvented by merely labeling a referendum an initiative – as Petitioners have done here. *State ex rel. Cody v. Stahl*, 8th Dist. No. 83037, 2003-Ohio-6180, ¶ 15 (explaining that an initiative petition is invalid if the petition is a referendum). In *Stahl*, the Eighth District Court of Appeals determined that where a petition is captioned as an "Initiative Petition," but "seeks repeal of an ordinance," the petition is a referendum petition. *Id.* Failure to properly caption such a petition as a "Referendum Petition" thus, "fails properly and immediately to alert signers as to its full nature." *Id.*

Here, within Petitioners captioned the Repeal Initiative as an "Initiative Petition" on the face of each part-petition and merely state that the Initiative is for a "proposed Ordinance." Perhaps most misleading of all, the face of each of the Repeal Initiative's part-petitions mentions Ordinance 2014-10, but fails to disclose that the entire point of the Initiative is to repeal that Ordinance. *See e.g.*, Ex. 3, Repeal Initiative Part-Petition ("Attached ... is a full and correct copy of ... Ordinance 2014-10, **which is referenced in the proposed Ordinance**. . . ." (emphasis added)). If anything, this reference insinuates that the proposed Ordinance expands upon or operates in tandem with Ordinance 2014-10 – not that the sole effect is to repeal that

Ordinance. Not until one is afforded the opportunity to actually read the Initiative's proposed title and text is there any hint that the initiative is actually a referendum on Ordinance 2014-10. Such gamesmanship fails to "properly and immediately to alert [petition] signers as to [the petition's] full nature." *State ex rel. Cody v. Stahl*, 2003-Ohio-6180 at ¶ 15. Such misleading petitions are invalid.

The Charter Initiative suffers the same fatal flaw. It too is captioned as an "Initiative Petition" and merely claims on the face of each part-petition that "[a]ttached ... is City of Powell, Ohio Ordinance 2014-10, **which is referenced in the proposed charter amendment**. . . ." *See e.g.* Ex. 4, Charter Initiative Part-Petition. Only after reading the text of the purported "Initiative" is it revealed that it operates as a repeal of Ordinance 2014-10:

> **WHEREAS**, on June 17, 2014, City Council of the City of Powell, Ohio passed **Ordinance 2014-10** approving a Final Development Plan for the Center at Powell Crossing LLC, a development of 14,000 Sq. Ft. of retail in two buildings, preserving the Old House for commercial use, and development of 64 apartment residential units on 8.3 acres, located at 147 W. Olentangy Street;
>
> **WHEREAS**, the people of the City of Powell, Ohio have determined that the approval of the Final Development Plan pursuant to City of Powell, Ohio **Ordinance 2014-10 is not in the best interests of the people** of the City of Powell, Ohio.
>
> ***
>
> **Article 4, Section 20**: **All Ordinances** of the City of Powell must comply with the Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV.
>
> **Article 4, Section 21**: The Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV **shall not be compatible with Ordinance 2014-10 and/or the Final Development Plan for the Center at Powell Crossing LLC**, a development of 14,000 sq. ft. of retail in two buildings, preserving the old house for commercial use, and development of 64 apartment residential units on 8.3 acres, **located at 147 W. Olentangy Street.**

> **Uncodified: No party, public or private, shall take any actions,** including but not limited to construction activity, **in reliance upon Ordinance 2014-10 and the Final Development Plan for the Center at Powell Crossing LLC,** a development of 14,000 sq. ft. of retail in two buildings, preserving the old house for commercial use, and development of 64 apartment residential units on 8.3 acres, **located at 147 W. Olentangy Street**. The subject property for the Ordinance 2014-10 Final Development Plan shall remain economically viable for other uses, including residential and non-residential uses, notwithstanding this amendment to the City Charter of Powell, Ohio.

Id. In sum, the Charter Initiative singles out Ordinance 2014-10 to render it dead letter. Under the proposed Charter Initiative, Powell Crossing is expressly prohibited from taking further action to effectuate its property rights memorialized in Ordinance 2014-10 now and would never be able to finish the Final Development Plan in the future despite its prior administrative approval. Thus, the Charter Initiative is invalid for the same reason the Repeal Initiative is invalid – both are a referendum disguised as an initiative.

The Charter Initiative is even more misleading for the additional reason that even if its title were included on the face of each part-petition, the title is misleading and incomplete. R.C. § 731.36. The Charter Initiative's title utterly fails to acknowledge or in any way mention that it is repealing Ordinance 2014-10 or otherwise subjecting that Ordinance to a referendum.[6] Nor does the title accurately state that Ordinance 2014-10 is declared "incompatible" to some non-existent, future comprehensive plan. Such omissions are patently misleading and should invalidate the Charter Initiative Petition on their own accord.

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[6] Instead, the full title of the Charter Initiative only discloses that it is: **"AN AMENDMENT TO THE CITY CHARTER OF POWELL, OHIO ESTABLISHING A DUTY FOR THE CITY COUNCIL OF POWELL, OHIO TO SUBSTITUTE THE COMPREHENSIVE PLAN OF THE VILLAGE OF POWELL OF DECEMBER 1995 WITH A NEW COMPREHENSIVE PLAN FOR ZONING AND DEVELOPMENT IN THE CITY OF POWELL, OHIO."** Ex. 4, Charter Initiative Part-Petition (emphasis in original).

b. The Charter Initiative Petition Is Also Invalid Because It Combines an Initiative and Referendum In the Same Petition Contrary to the City Charter's Petition Procedures.

The Charter Initiative Petition is also invalid on its face for the additional reason that it improperly combines both an initiative to amend the City's Charter and a referendum into a single petition. However, the City's Charter does not permit this incompatible effort. *See* Ex. 5, Charter §§ 6.01, *et seq.*

There is simply no provision that permits the combination of a referendum and initiative into a common initiative under Powell's City Charter. Combined multi-subject initiative and referendum petitions that are not permitted by a municipality's charter are invalid. *State ex rel. Cody v. Stahl,* 8th Dist. No. 83037, 2003-Ohio-6180, ¶ 8 (discussing Law Director's conclusion that the petition improperly joined an initiative petition with a referendum petition under the City's Charter). Indeed, the City of Powell's initiative and referendum procedures are mutually exclusive and subject to differing procedures. *Compare* Ex. 5, Charter § 6.02 *with* Charter § 6.04. Moreover, no provision within the Charter permits the consolidation or combination of an initiative and referendum or addresses how the differing procedures for each should be reconciled. Strict compliance with the Charter's provisions is required. *State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections,* 96 Ohio St.3d 308, 2002-Ohio-4194, ¶ 49. Accordingly, the Charter Initiative is procedurally invalid.

C. Ordinance 2014-10 Cannot Be Subject To Referenda Because It Was An Administrative Act.

Ordinance 2014-10 cannot be subject to the Petitions' referendum because City Council's approval of the Powell Crossing's Final Development Plan was an administrative act. Because the Petitions are an illegal referendum on an administrative action, the Board of Elections must invalidate the Petitions.

1. The Board Cannot Validate Petitions Seeking a Referendum of City Council's Administrative Acts.

A Board of Elections is not only authorized to determine whether a referendum is invalid because it improperly seeks to impose a referendum on an administrative action, it is the legal duty of this Board to do so. *State ex rel. City of Upper Arlington v. Franklin Cty. Bd. of Elections*, 119 Ohio St.3d 478, 484 (2008) (holding that a board of elections abused its discretion by failing to invalidate a referendum on an administrative act). Based on well-settled law, there can be no dispute that Ordinance 2014-10 was an administrative act and therefore, cannot be the subject of Petitioners' three referendum Petitions.

Article II, Section 1(f) of the Ohio Constitution provides that only municipalities' *legislative* acts are subject to referendum. *State ex rel. City of Upper Arlington,* 119 Ohio St.3d at 481-82. "The test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting a law, ordinance or regulation [which is legislative], or executing or administering a law, ordinance or regulation already in existence [which is administrative]." *Id.* quoting *Donnelly v. Fairview Park,* 13 Ohio St.2d 1 (1968), paragraph two of the syllabus. Thus, legislative acts have general, prospective application, prescribing what the law shall be in future cases arising under its provisions. *Buckeye Community Hope Found. v. City of Cuyahoga Falls*, 82 Ohio St.3d 539, 545 (1998). *See also Shaheen v. Cuyahoga Falls City Council,* 2010-Ohio-640 at ¶ 23 (9th Dist. 2010) ("Legislative [acts] are normally generalizations concerning a policy or state of affairs: they 'do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law, policy, and discretion.'"). Whereas actions which merely carry out a policy or apply an existing law to a set of circumstances is an administrative action. *See City of Upper Arlington,*

119 Ohio St.3d at 482; *State ex rel. Oberlin Citizens for Responsible Development v. Talarico*, 106 Ohio St.3d 481, 486 (2005).

Importantly, simply because a city council memorializes an administrative decision as an ordinance, does not somehow convert its administrative action into a legislative one. *City of Upper Arlington*, 119 Ohio St.3d at 483; *Buckeye Community*, 82 Ohio St.3d at 544 ("the city's position that the approval of the site plan was a legislative action because the council took action via an ordinance (rather than by resolution or other means) is in error"). Thus, just because City Council's approval of Powell Crossing's Final Development Plan was embodied in a City Ordinance does not transform Council's approval of the plan from an administrative act to some general legislative enactment.

2. Ordinance 2014-10 Was an Administrative Act By City Council and Therefore Cannot Be Subject to Any Referendum.

Council's action approving Powell Crossing's Final Development Plan that was consistent with the Property's existing Downtown Business District zoning was an administrative act. As set forth in its approval, Council merely administered existing laws, including the Property's existing zoning. Indeed, Council's action did not change the zoning classification of the Property nor did it alter the City's Zoning Code.

Ohio courts have consistently held that municipal zoning decisions remain administrative unless a property's zoning classification is amended or the zoning code is altered by the decision. *See State ex rel. Marsalek v. Council of the City of South Euclid*, 111 Ohio St.3d 163, 165-66 (2006) (explaining that an action is legislative where it effects "a zoning change to the propert[y]"); *Talarico*, 106 Ohio St.3d at 486 (holding an ordinance was an administrative act because it did not "constitute an amendment of the zoning of the property"); *State ex rel. Committee for Referendum of Ordinance No. 3844-02 v. Norris*, 99 Ohio St.3d 336, 343 (2003)

(holding an ordinance that adopted a final development plan in a planned commercial district ("PCD") was an administrative act because it did not cause a "zoning change" to the property); *Gross Builders v. City of Tallmadge*, 2005-Ohio-4268, at ¶ 18 (9th Dist.) (holding city council's denial of a conditional zoning certificate was administrative because it did not alter "the zoning classification for the property [or] the zoning code"); *Supervalu Holdings, Inc. v. Jackson Center Assoc.*, 2004-Ohio-4314, at ¶ 16 (12th Dist. 2004) (holding a township's approval of an amendment to a site plan was administrative because it "did not amount to a legislative rezoning of the property").

"Where specific property is already zoned as a [planned development district ("PDD")] area, approval of subsequent development as being in compliance with the existing [PDD] standards is an administrative act."[7] *Norris*, 99 Ohio St.3d at 342; *Supervalu*, 2004-Ohio-4314, at ¶ 16; *Speedway Super America, LLC v. Granville Village Council*, 2003-Ohio-6951, at ¶ 10 (5th Dist. 2003). *See also More v. Bd. of Twshp. Trustees of Batavia Twshp.* (12th Dist. 2003), 2003-Ohio-1265, at ¶ 3 (holding a modification to an existing development plan in a PUD was an administrative act); *Lofino's, Inc. v. City of Beavercreek, Ohio City Council*, 2009-Ohio-4404 (2d Dist. 2009) (treating city council's approval of a major modification to a PUD – a 60,000 square foot expansion – as an administrative act).

In *Norris*, property already zoned PCD was permitted to be developed pursuant to a new development plan. 99 Ohio St.3d at 342. The Supreme Court of Ohio found a city council's adoption of the final development plans and final plats in a PCD was an administrative act. *Id.* at 342. The Court reasoned that the legislative act occurred when the zoning on the property

[7] In *State ex rel. Crossman Communities of Ohio, Inc. v. Greene Cty. Bd. of Elections*, it was held that a city council's resolution adopting a final development plan for a PUD constituted a legislative act. (1999), 87 Ohio St.3d 132, 136-37. That holding, however, was later reversed by the Supreme Court of Ohio in *Norris*. 99 Ohio St.3d at 343-44.

changed from residential to PCD. *Id.* at 342-43. The ordinances passed by city council adopting the development plans – as here – merely applied the preexisting PUD regulations to the property and were therefore administrative. *Id.*

Likewise, in *Buckeye Community*, the Supreme Court of Ohio found a city council's approval of a site plan for an apartment complex on land that was already zoned for multifamily use was an administrative action. 82 Ohio St.3d at 545. The Court explained that – as here – the ordinance passed by city council merely approved the planning commission's application of existing zoning regulations to the plan submitted by the developer. *Id.* The Court concluded that "[t]he passage by a city council of an ordinance approving a site plan for the development of land, pursuant to existing and other applicable regulations, constitutes administrative action and is not subject to referendum proceedings." *Id.*

In *Supervalu*, the Twelfth District Court of Appeal also found a township's approval of a major amendment to a site plan to construct a Wal-Mart store in a PDD was an administrative act. 2004-Ohio-4314, at ¶ 16. The Court of Appeals reasoned that the property had already been zoned as a PDD and the site plan had already been approved. *Id.* at ¶ 15. As such, the township's action – as here – was administrative because "the township was not legislating, but was regulating the 'subsequent use or development of the property' within the already established [PDD]." *Id.* at ¶ 16. In other words, "[t]he township's decision to approve the amendment did not amount to a legislative rezoning of the property." *Id.*

Finally, in *Speedway*, the Fifth District Court of Appeals found the village's denial of a developer's application for approval of development plan for a Speedway gas station in a PCD was an administrative act. 2003-Ohio-6951, at ¶ 17. The Court of Appeals explained that the enactment of the PCD to allow this use was a legislative act, but that approval of a specific

development plan in the existing PCD was an administrative act. *Id.* at ¶ 17. The court rejected the village's argument that its decision was a legislative act because the developer submitted a development plan in connection with its application that created use restrictions and development regulations that would apply to the property. *Id.* at ¶ 13. The court explained that the developer was required to submit the development plan in connection with its application and that, contrary to the village's suggestion, the development plan "was not an attempt to rezone the property." *Id.* at ¶¶ 16-17. Thus, the village's denial of the development plan was an administrative act. *Id.* at ¶ 17. *See also King v. Village of Granville*, 1997 Ohio App. LEXIS 4941, at *7-8 (holding the village's approval of development plans in a PCD was an administrative act).

In this case, the actions taken by Powell's City Council mirror those taken in *Supervalu*, *Speedway*, *Norris*, and *Buckeye Community*. The Property was previously zoned for all uses permitted within a planned commercial district, the Downtown Business District. As set forth in Ordinance 2014-10, Council's approval of the Final Development Plan was consistent with this existing zoning classification and did not require altering the Zoning Code. Thus, approval of Ordinance 2014-10 was an administrative act and cannot be the subject of a referendum. Accordingly, the Referendum Initiative and both the Repeal Initiative and Charter Initiative are illegal attempts to subject Ordinance 2014-10 to a referendum.

D. The Charter Initiative Is Unconstitutional and Therefore Invalid.

In addition, proposed Charter amendments that are facially defective should not be placed on the ballot as such measures waste time and local resources. Indeed, all Charter and statutory requirements must be fairly met before such petitions can be advanced to the ballot. "City council is not required to submit a proposed charter amendment to the electorate unless it is satisfied with the sufficiency of the initiative petition and that all statutory requirements are fairly

met." *State ex rel. Baker v. City of Brook Park*, 8th Dist. Cuyahoga No. 98991, 2012-Ohio-5043, ¶ 8 (citing *State ex rel. Becker v. Eastlake*, 93 Ohio St.3d 502, 506 (2001)). Such scrutiny includes inquiry into questions apparent on the fact of the petitions themselves. *Id.* (citing *Morris v. City Council of Macedonia*, 71 Ohio St.3d 52, 56, 641 N.E.2d 1075 (1994)). Because the Charter Initiative contains numerous patent violations of law, the Initiative should be invalidated.

1. The Charter Initiative Is Illegal "Spot Zoning."

As evidenced from its face, the Charter Initiative seeks to illegally "spot zone" Powell Crossing's Property. *See Pilla v. City of Willowick*, 11th Dist. Lake No. 8-243, 1982 Ohio App. LEXIS 13454 (December 23, 1982). "Spot zoning" occurs when a property or its owner(s) are singled out through discriminatory zoning practices. *See id.* at *11. Inquiring into whether discriminatory zoning is at work in election initiatives, including referendums, has been held to be specifically appropriate. See id. ("[W]hether the result achieved by [an] ordinance [is] discriminatory ... may be made even in the case of a referendum is specifically provided for in *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668 (1976).").

Here, the Charter Initiative singles out and discriminates against Powell Crossing and its Property. Article 4, Section 21 and "uncodified" provisions target Powell Crossing and its Property specifically to limit its current zoning. These provisions do not affect other similarly situated properties that share the same zoning classification. As a result, unlike its identically zoned Downtown Business District neighbors, Powell Crossing will no longer be able to make full use of its vested property right in the Final Development Plan and the full reach of uses permitted by the Property's current zoning. Such discriminate deprivation violates Powell Crossing's right to equal protection under the law.

2. The Charter Initiative Is Unconstitutionally Vague.

As evident from the face of the Charter Initiative, the Initiative fails to provide any standard or regulation that articulates what zoning applies to the Property if the current permitted uses under for the Property's Downtown Business District zoning are curtailed without also providing which uses are still permissible. Article 4, Section 21 and "uncodified" provisions. "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Wedgewood Ltd. P'ship I v. Twp. of Liberty*, 456 F. Supp. 2d 904, 937 (S.D. Ohio 2006) (citation omitted); *Columbus v. Thompson*, 25 Ohio St.2d 26, 30 (1971). Stated differently, a regulation that gives unfettered discretion to governmental officials is unconstitutionally vague because it allows arbitrary and discriminatory enforcement. *See Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972) ("A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.")

By failing to specify which uses remain permissible, the Initiative leaves enforcement of the Property to arbitrary and discriminatory enforcement of a standard-less regulation. Such vague delegation violates the Due Process clause of the United States and Ohio Constitutions.

3. The Charter Initiative Is An Unconstitutional Retroactive Law.

Because Powell Crossing's right to the Property's current zoning has already vested, the Initiative cannot now retroactively deprive Powell Crossing of its vested property right. Powell Crossing's right vested in its current zoning the instant it submitted the Final Development Plan to City Officials for their consideration. *See Gibson v. City of Oberlin*, 167 N.E.2d 651 (1993). Once an application is submitted, the applicant is protected from future attempts to impose

legislative changes on the Property's zoning because such changes would constitute retroactive zoning. *See id.* Yet, that retroactive zoning is precisely the Charter Initiative's aim.

The "uncodified" provision purports to now prohibit any activity or reliance on uses consistent with Powell Crossing's right to use the Property under its current zoning – a fundamental property right that has already vested. It is an elementary principal of law that a municipality cannot give retroactive effect to its laws. *See, e.g., Save the Lake v. Schregardus*, 141 Ohio App. 3d 530, 539 (2001) ("[T]he Supreme Court of Ohio reaffirmed the notion that a municipality may not give retroactive effect to an ordinance in order to deprive a property owner of a substantial right."). Thus, the Initiative simply cannot retroactively deprive Powell Crossing of its right to develop the Property. Accordingly, the Initiative suffers from yet another obvious Constitutional infirmity. Petitioners had the opportunity to dispute Council's approval of the Final Development Plan through an administrative appeal. Foregoing that opportunity, Petitioners cannot retroactively undo that decision here.

4. The Charter Initiative Impermissibly Delegates City Council's Legislative Power to a Commission.

Finally, the Charter Initiative's requirement that "all ordinances of Powell must comply with the final comprehensive plan adopted pursuant to Section 18 of this article IV," constitutes an unconstitutional and impermissible delegation of legislative power to an administrative commission. City Council's legislative authority cannot be diminished by an administrative commission:

> 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.**

State ex rel. Selected Properties, Inc. v. Gottfried, 163 Ohio St. 469, 473 (1955) (quotations omitted) (emphasis added). Thus, the Charter Initiative's attempt to circumscribe all future Powell ordinances, that particularly concern citizens' property rights, cannot be delegated to some administrative commission. Such attempts are facially unconstitutional and void. *Id.*

For this and the reasons previously stated, the Charter Initiative is invalid on its face and should be rejected by the Board of Elections.

IV. CONCLUSION

For the foregoing reasons, the Petitioners' three separate attempts to subject City Council's final administrative decision set forth in Ordinance 2014-10 to a referendum must fail. The Referendum Initiative, Repeal Initiative and Charter Initiative are invalid and must be rejected by the Delaware County Board of Elections.

Respectfully submitted,

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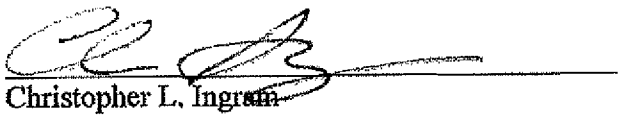
Counsel for the Protesting Party

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was served via hand delivery upon the Delaware County Board of Elections and via electronic mail to the City of Powell's Clerk of City Council, Sue D. Ross, sross@cityofpowell.us, this 28th day of July, 2014.



Christopher L. Ingram

Exhibit 2-C

PETITIONS FOR REFERENDUM, CHARTER AMENDMENT,

AND INITIATIVE TO REPEAL POWELL ORDINANCE 2014-10

PROCEEDINGS

August 01, 2014

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1 DELAWARE COUNTY BOARD OF ELECTIONS

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5 MEETING RE: PETITIONS FOR REFERENDUM, CHARTER
AMENDMENT, AND INITIATIVE TO REPEAL POWELL
6 ORDINANCE 2014-10

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12

13 PROCEEDINGS

14 TAKEN BEFORE ME, ANGELA R. STARBUCK, RPR, CRR,

15 CCP, A NOTARY PUBLIC IN AND FOR THE STATE OF

16 OHIO, AT DELAWARE COUNTY BOARD OF ELECTIONS,

17 2079 U.S. HIGHWAY 23N, DELAWARE, OHIO 43015, ON

18 AUGUST 1, 2014, AT 9:01 A.M.

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1 BOARD MEMBERS IN ATTENDANCE:
2 SHAWN STEVENS
3 ED HELVEY
4 BRUCE BURNWORTH
5 JOSH PEDALINE, DIRECTOR
6 KARLA HERRON, DEPUTY DIRECTOR
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1 MR. STEVENS: I WOULD LIKE TO CALL THE
2 DELAWARE COUNTY BOARD OF ELECTIONS MEETING TO
3 ORDER. TODAY'S FRIDAY, AUGUST 1ST -- WOW --
4 9:00, A.M., AND IT'S A MEETING OF THE SPECIAL --
5 IT'S A SPECIAL MEETING OF THE BOARD OF
6 ELECTIONS. I GUESS SINCE WE HAVE AN AUDIENCE
7 TODAY, I'D LIKE TO DO SOME INTRODUCTIONS.
8 MY NAME IS SHAWN STEVENS. I'M THE
9 VICE-CHAIRMAN OF THE BOARD. OUR CHAIRMAN,
10 MR. CUCKLER, IS SERVING HIS COUNTRY IN THE
11 UNITED STATES ARMY TODAY, SO I WILL BE ACTING
12 CHAIRMAN.
13 TO MY LEFT IS ED HELVEY, BOARD MEMBER;
14 BRUCE BURNWORTH --
15 MR. BURNWORTH: ANY OLD NAME WILL WORK.
16 MR. STEVENS: -- BOARD MEMBERS; CHRIS
17 BETTS FROM THE COUNTY PROSECUTOR'S OFFICE, AND,
18 I'M SORRY --
19 MR. KING: ANDREW.
20 MR. STEVENS: ANDREW FROM THE
21 PROSECUTOR'S OFFICE. TRACI SHALOSKY FROM OUR
22 OFFICE, DON'T ASK ME TO SPELL IT; KARLA HERRON,
23 WHO'S THE DEPUTY DIRECTOR; AND JOSH PEDALINE,
24 WHO IS OUR DIRECTOR OF THE BOARD OF ELECTIONS.

1 SO WELCOME. SO THE FIRST ITEM ON THE
2 AGENDA IS TO DETERMINE THE NUMBER OF ELECTORS,
3 CITY OF POWELL, WHO SIGNED THE REFERENDUM AND
4 INITIATIVE PETITIONS.
5 BEFORE WE GET INTO THAT, MR. BETTS, IS
6 THERE ANY ADVICE FOR THIS BOARD?
7 MR. BETTS: YES, THANK YOU,
8 MR. CHAIRMAN. AS WE SAID, MY NAME'S CHRIS
9 BETTS. I'M WITH THE DELAWARE COUNTY
10 PROSECUTOR'S OFFICE. I'M AN ASSISTANT
11 PROSECUTING ATTORNEY. AND THIS IS ANDREW KING,
12 WHO'S ALSO AN ASSISTANT PROSECUTING ATTORNEY.
13 YOU HAVE ESSENTIALLY TWO THINGS IN FRONT
14 OF YOU TODAY THAT FIT IN TWO BROAD CATEGORIES.
15 ONE ARE THE PETITIONS THAT WERE RECEIVED
16 CONSISTING OF A REFERENDUM PETITION AND TWO
17 PETITIONS THAT WERE FILED WITH THE CITY OF
18 POWELL.
19 SECONDLY, YOU HAVE BEFORE YOU A PROTEST
20 THAT WAS FILED. THAT WAS FILED ON BEHALF OF THE
21 CENTER AT POWELL CROSSING, LLC, AND DONALD R.
22 KENNEY, JUNIOR.
23 I WANTED TO KIND OF LAY OUT KIND OF
24 PROCEDURALLY WHERE THIS -- WHERE THIS WOULD GO,

1 BUT BEFORE I GET TO THAT, THERE ARE TWO THINGS
2 AT PLAY HERE IN TERMS OF THE LAW AND IN TERMS OF
3 WHAT THE BOARD'S CONSIDERING AND THE PROCEDURE.
4 FIRST OF ALL WOULD BE THE CITY OF
5 POWELL'S CHARTER. THAT ACTS AS THE PRIMARY
6 GUIDE FOR US TODAY, AND WHERE THAT IS SILENT OR
7 THAT DOES NOT SPEAK TO AN ISSUE, THEN OHIO LAW,
8 THROUGH THE OHIO REVISED CODE, PICKS UP THAT
9 GAP.
10 IN FOLLOWING THE GUIDELINES THAT ARE SET
11 OUT BY THOSE TWO PARTICULAR SOURCES OF LAW, THIS
12 IS THE -- THIS IS THE WAY THAT THE PROCEDURE
13 SHOULD GO: INITIALLY THE PETITIONS WERE
14 PROVIDED TO OR FILED WITH THE CITY OF POWELL.
15 THE CLERK OF CITY COUNCIL THEN TRANSMITTED THOSE
16 TO THE BOARD OF ELECTIONS.
17 BOARD OF ELECTIONS IS THEN CHARGED WITH
18 DETERMINING THE VALIDITY OF THE SIGNATURES THAT
19 ARE ON THOSE PETITIONS. LET ME READ
20 SPECIFICALLY WHAT THAT SAYS BECAUSE THAT'S THE
21 STAGE THAT WE'RE AT TODAY. THAT'S WHY WE'RE
22 HERE TODAY FOR THIS MEETING.
23 THE CHARTER SPECIFICALLY SAYS, THE BOARD
24 SHALL EXAMINE ALL SIGNATURES ON THE PETITION TO

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1 DETERMINE THE NUMBER OF ELECTORS OF THE CITY OF
2 POWELL WHO SIGNED THE PETITION. THAT'S THE
3 STATEMENT. ASSUMING THAT, YOU KNOW, THE BOARD
4 MAKES THAT DETERMINATION, THEN THE CHARTER SAYS
5 THAT THE BOARD OF ELECTIONS SHALL RETURN THE
6 PETITION TO THE CLERK OF COUNCIL WITHIN TEN DAYS
7 AFTER RECEIVING IT TOGETHER WITH A STATEMENT
8 ATTESTING TO THE NUMBER OF SUCH ELECTORS WHO
9 SIGNED THE PETITION. AND THEN IT GOES ON FROM
10 THERE.
11 BUT THAT'S GENERALLY THE PROCEDURE AND
12 THE PLACE THAT WE ARE AT TODAY. THE BOARD IS
13 HERE FOR A VERY LIMITED PURPOSE. THAT IS TO
14 DETERMINE THE VALIDITY OF SIGNATURES THAT ARE ON
15 THESE PETITIONS THAT HAVE BEEN FILED, THE THREE
16 THAT I MENTIONED PREVIOUSLY. THE VALIDITY WOULD
17 BE DETERMINED IN ACCORDANCE WITH STATE LAW.
18 AND I BELIEVE AT THIS POINT THAT THE
19 STAFF HAS HAD A CHANCE TO REVIEW THE PETITIONS
20 AND MAKE THAT DETERMINATION, SO THEY'LL BE
21 PROVIDING THAT TO YOU HERE IN A LITTLE BIT.
22 WE ARE ALSO WITHIN THAT TEN-DAY TIME
23 FRAME. THAT'S WHY WE ARE HERE SO QUICKLY, IS
24 THE REFERENDUM WAS FILED A WEEK AGO, WHICH I

1 BELIEVE WAS THE 25TH OF JULY, AND THE TWO
2 INITIATIVES WERE FILED ON THIS MONDAY, WHICH
3 WOULD HAVE BEEN THE 28TH, IF MY DATES ARE
4 CORRECT. SO WE ARE WITHIN THAT TEN-DAY TIME
5 FRAME THAT WOULD HAVE EXPIRED ON THE 4TH, WHICH
6 IS THIS COMING MONDAY.
7 SO ONCE THE BOARD MAKES THE
8 DETERMINATION ABOUT THE SIGNATURES, AGAIN, THEY
9 PROVIDE A STATEMENT TO THE CLERK OF CITY COUNCIL
10 FOR THE CITY OF POWELL, AND AT THAT POINT, IT
11 GOES TO CITY COUNCIL OR IS PUT ON THE AGENDA FOR
12 THE NEXT MEETING FOR CITY COUNCIL TO TAKE THE
13 FIRST PASS AT THE SUFFICIENCY AND VALIDITY OF
14 THOSE PETITIONS.
15 THE CHARTER PROVIDES THE CITY COUNCIL
16 WITH A COUPLE DIFFERENT CHOICES. THEY CAN
17 EITHER ACT ON THOSE PETITIONS, WHICH WOULD BE TO
18 SAY THAT THEY COULD SAY EITHER -- IF IT'S A
19 REFERENDUM, TO REFEREND THAT LAW, OR IF IT'S IN
20 THE CASE OF AN INITIATIVE, ENACT A LAW. THEY
21 CAN ALSO LOOK AT THE VALIDITY AND SUFFICIENCY OF
22 THE PETITIONS AND RETURN THOSE TO THE BOARD OF
23 ELECTIONS. AND I SUPPOSE THE FINAL OPTION COULD
24 BE TO DO NOTHING AND RETURN THEM.

1 BUT IN ANY EVENT, THE CITY COUNCIL HAS
2 THE FIRST PASS AT LOOKING AT THE VALIDITY AND
3 SUFFICIENCY, WHICH WOULD BE THE FORM OF THE
4 PETITION, IN TERMS OF THE REQUIREMENTS THAT THEY
5 HAVE TO MEET IN TERMS OF THE CITY CHARTER AND
6 STATE LAW, BUT IN PARTICULAR, THE CITY CHARTER.
7 CITY CHARTER DOES HAVE SOME SPECIFIC ITEMS IN IT
8 THAT ARE REQUIRED OF PETITIONS BUT, AGAIN, THOSE
9 ARE NOT THE THINGS THAT YOU'RE LOOKING AT TODAY.
10 THEY MAY BE RAISED TODAY, BUT THEY'RE NOT WHAT
11 THE BOARD IS HERE FOR.
12 AGAIN, TODAY, ONLY DECIDING ON THE
13 SIGNATURES. THE BOARD IS NOT GOING TO BE
14 DECIDING WHETHER OR NOT TO ACCEPT THESE
15 PETITIONS OR NOT ACCEPT THESE PETITIONS, CERTIFY
16 THESE PETITIONS OR NOT CERTIFY THESE PETITIONS.
17 IT'S NOT A QUESTION OF WHETHER IT'S GOING ON THE
18 BALLOT OR NOT GOING ON THE BALLOT, IT'S SIMPLY A
19 QUESTION OF DETERMINING THE VALIDITY OF
20 SIGNATURES AND PASSING THAT TO CITY COUNCIL SO
21 THEY CAN DETERMINE THE VALIDITY AND SUFFICIENCY
22 OF THE PETITIONS.
23 IF AND WHEN THEY ARE RETURNED TO THE
24 BOARD OF ELECTIONS, DEPENDING ON WHAT THE CITY

1 COUNCIL DOES, AT THAT POINT, THIS BOARD WOULD
2 THEN ACCEPT THOSE PETITIONS. AT THAT POINT,
3 THEN THE PROTESTS THAT HAVE BEEN FILED WOULD BE
4 RIPE FOR CONSIDERATION BY THE BOARD. I DON'T
5 THINK THE PROTEST IS RIPE TODAY IN ACCORDANCE
6 WITH THE SCHEME THAT'S SET OUT OR THE PROCEDURE
7 THAT'S SET OUT THROUGH THE CHARTER.
8 SO IF IT COMES BACK, THEN IT WOULD BE A
9 POINT OF ACCEPTANCE, THEN WE WOULD ENTERTAIN THE
10 PROTESTS AND THERE WOULD BE THE OPPORTUNITY TO
11 PRESENT TESTIMONY AND EVIDENCE AT THAT POINT AS
12 TO WHETHER THOSE PETITIONS SHOULD BE ACCEPTED
13 FOR THE BALLOT. THE BOARD WOULD HAVE TO EXAMINE
14 EVERYTHING THAT'S PRESENTED TO IT AND MAKE THE
15 DETERMINATION AT THAT POINT.
16 MR. HELVEY: I DON'T AGREE WITH THAT.
17 MR. BETTS: OKAY.
18 MR. HELVEY: I DON'T AGREE THAT WE HAVE
19 THAT AUTHORITY TO DETERMINE WHETHER THE
20 PETITIONS ARE VALID OR NOT, BUT THAT IT RESTS
21 WITH THE CITY CHARTER WITH THE CITY OF POWELL.
22 MR. BETTS: I THINK THE CITY OF POWELL
23 HAS THE FIRST BLUSH AT IT. LET ME EXPLAIN WHY I
24 THINK THAT THIS BOARD THEN HAS TO COME BACK AND

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1 TAKE A LOOK AT IT IN TERMS OF ACCEPTANCE. I
2 THINK THAT GOES ALONG WITH STATE LAW.
3 IF YOU RECALL, WHEN I FIRST STARTED
4 TALKING ABOUT THAT, THERE'S AN INTERPLAY HERE
5 BETWEEN STATE LAW AND THE CITY OF POWELL'S
6 CHARTER. UNDER THE CITY OF POWELL'S CHARTER, IT
7 DOES NOT SAY ANYTHING ABOUT WHAT THE BOARD OF
8 ELECTIONS REALLY DOES WHEN IT COMES BACK TO THE
9 BOARD. IT SAYS THAT IT COMES BACK TO THE BOARD
10 AND THE CLERK IS TO MAKE SURE THAT IT IS
11 PRESENTED TO THE BOARD OF ELECTIONS FOR
12 PLACEMENT ON THE BALLOT.
13 HOWEVER, STATE LAW, WHEN YOU INTERMESH
14 THAT AND TRY AND BLEND THOSE TWO THINGS TOGETHER
15 SO THAT IT MAKES SENSE OF BOTH, IT SAYS UNDER
16 THERE -- AND I BELIEVE IT'S UNDER -- LET ME
17 CHECK THE NUMBER OF THE STATUTE HERE. GIVE ME
18 ONE SECOND.
19 IT'S UNDER --
20 MR. HELVEY: REGARDLESS, WE'RE NOT GOING
21 TO DEAL WITH THAT TODAY.
22 MR. BETTS: NO.
23 MR. HELVEY: BUT I DON'T AGREE WITH YOUR
24 SUMMATIVE STATEMENT THAT IT DOES REFLECT THE

1 WHOLE BOARD'S POSITION.
2 MR. BURNWORTH: WHAT PART?
3 MR. HELVEY: THE PART THAT WE THEN COME
4 BACK AND HAVE A SECOND PASS AT RULING AT THE
5 SUFFICIENCY OF THE PETITION. I THINK THAT THE
6 CITY CHARTER RESERVES TO THE CITY THE RIGHT TO
7 DEEM WHETHER A PETITION IS SUFFICIENT.
8 MR. BURNWORTH: SO IF IT COMES BACK TO
9 US, THEN WE'RE JUST GOING TO ACCEPT IT?
10 MR. HELVEY: WE ACCEPT IT FOR THE BALLOT
11 LIKE WE DO A LOT OF THE OTHER --
12 MR. BURNWORTH: I SEE.
13 MR. BETTS: I APPRECIATE YOUR POSITION.
14 LET ME JUST FINISH ON WHAT I WAS GOING TO SAY,
15 WHICH IS THAT REVISED CODE 3501.39 SPECIFICALLY
16 SAYS THAT WHERE A PROTEST IS FILED, THAT THIS
17 BOARD HAS TO CONVENE A HEARING ON THAT PROTEST.
18 THAT'S WHERE I'M COMING AT IN DETERMINING
19 VALIDITY AND SUFFICIENCY.
20 IF IT WERE JUST PRESENTED BACK TO YOU
21 AND YOU DIDN'T HAVE A PROTEST, I WOULD AGREE
22 WITH YOUR STATEMENT.
23 MR. BURNWORTH: WHICH BRINGS TO MIND
24 ANOTHER QUESTION I HAVE. REMEMBER HOW IT WAS

1 ALWAYS TIMELINES FOR THE PROTESTS? NOT ONLY TO
2 BE FILED, BUT TO BE HEARD. SINCE THEY'VE
3 ALREADY FILED A PROTEST, AND ASSUMING POWELL
4 TAKES A WHILE TO MEET AND DO WHATEVER THEY HAVE
5 TO DO, WILL THE PROTESTORS, WILL THEY NEED TO
6 REFILE, OR CAN WE NULL AND VOID THIS -- I THINK
7 WE'LL BE BEYOND THE TIMELINE OF THIS PARTICULAR
8 PROTEST BY THE TIME POWELL GETS DONE.
9 MR. BETTS: I THINK -- I THINK THAT THE
10 PROTEST IN THIS PARTICULAR CASE IS -- I THINK IT
11 WAS FILED PREMATURELY, BUT I THINK IT CAN BE PUT
12 ON HOLD BECAUSE YOU DO HAVE TO CONDUCT A HEARING
13 WITH IT AT SOME POINT.
14 MR. BURNWORTH: I WOULDN'T WANT TO
15 CONDUCT A HEARING FOR THAT IF POWELL HASN'T
16 EVEN --
17 MR. BETTS: CORRECT. I THINK AT THIS
18 POINT ALL YOU'RE DOING IS REVIEWING THE
19 SUFFICIENCY -- I SHOULDN'T SAY -- DETERMINING
20 THE VALIDITY OF THE SIGNATURES.
21 MR. BURNWORTH: OKAY.
22 MR. BETTS: AND I THINK THAT THE PROTEST
23 ACTUALLY COMES LATER AFTER THE CITY OF POWELL
24 HAS HAD THAT FIRST BLUSH. I AGREE WITH

1 MR. HELVEY'S STATEMENT TO SAY THAT ABSENT A
2 PROTEST BEING FILED THAT IT WOULD JUST BE SIMPLY
3 ACCEPTED. BUT WITH THE PROTEST, I THINK STATE
4 LAW REQUIRES THAT THERE BE A HEARING.
5 MR. BURNWORTH: OKAY.
6 MR. BETTS: AND I THINK THAT THAT
7 HEARING IS MORE APPROPRIATELY HELD AFTER THE
8 CITY OF POWELL HAS HAD THEIR OPPORTUNITY TO
9 REVIEW THE VALIDITY AND SUFFICIENCY. SO I'M
10 SAYING THAT RESPECTFULLY, JUST TO EXPOUND UPON
11 WHAT YOU SAID, MR. HELVEY.
12 BUT I THINK THAT THAT IS KIND OF THE
13 PERSPECTIVE AT THIS POINT IN TERMS OF PROCEDURE
14 AND WHERE THIS SHOULD GO.
15 SO IN SUM, TODAY'S HEARING WOULD BE VERY
16 LIMITED JUST TO LOOK AT THE SUFFICIENCY AND
17 VALIDITY OF THE SIGNATURES, MAKE THAT
18 DETERMINATION IN ACCORDANCE WITH THE STATE LAW,
19 AND PROVIDE A STATEMENT TO THE CLERK OF CITY
20 COUNCIL THAT INDICATES THE NUMBER OF THOSE
21 SIGNATURES THAT THIS BOARD DETERMINES TO BE
22 VALID AND LET THE CITY PROCEED TO DETERMINE
23 VALIDITY AND SUFFICIENCY.
24 MR. STEVENS: THANK YOU, MR. BETTS.

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Page 14

1 I WOULD LIKE OUR STAFF MAYBE TO GIVE US
2 THEIR RECOMMENDATIONS BASED ON THE PETITIONS
3 THAT YOU REVIEWED.
4 MR. PEDALINE: WHY DON'T WE START OUT
5 WITH THE REFERENDUM.
6 MR. STEVENS: BEFORE YOU DO THAT, JUST
7 SO YOU FOLKS KNOW, WHAT I WOULD LIKE TO DO IS
8 HEAR STAFF RECOMMENDATIONS ABOUT THE PETITIONS,
9 AND THEN SINCE YOU GUYS -- I ASSUME YOU DIDN'T
10 COME UP HERE TO HAVE A SWEET BUN AT THE
11 HAMBURGER INN THIS MORNING, SO I'M GOING TO
12 ALLOW A FEW BRIEF COMMENTS WITH THE
13 UNDERSTANDING THAT WE ARE GOING TO VOTE ON THE
14 VALIDITY OF SIGNATURES THIS MORNING AND THAT'S
15 ALL WE'RE GOING TO BE VOTING ON.
16 AND THEN I'LL TAKE A -- I'LL TAKE A
17 MOTION AND WE'LL VOTE ON IT. GOOD? SORRY.
18 MR. PEDALINE: NO, NO. LOOK AT YOUR
19 HANDOUT THAT WE HAVE GIVEN YOU HERE. I GUESS
20 JUST TO GIVE YOU SOME OF THE HIGHLIGHTS, THE
21 TOTAL NUMBER OF REQUIRED SIGNATURES IS 238. AS
22 FAR AS THE REFERENDUM, THE TOTAL NUMBER WAS 376.
23 DO YOU WANT TO ADD TO THAT, KARLA?
24 MR. HELVEY: JOSH, MAYBE IT WOULD BE

Page 15

1 HELPFUL IF YOU COULD REVIEW MECHANICALLY WHAT
2 HAPPENS IN -- WHEN THE PAPER HITS THE FRONT DESK
3 AND HOW THE SIGNATURES ARE VALIDATED AND WHO
4 REVIEWS AND ALL THAT KIND OF STUFF.
5 MR. PEDALINE: ABSOLUTELY. IT'S A VERY
6 EXHAUSTIVE PROCESS FOR OUR BOARD, AND WE REALLY
7 TAKE A LOT OF PRIDE IN WHAT WE DO. IT COMES
8 ACROSS THE COUNTER AND TRACI, OUR OFFICE
9 MANAGER, ENTERS THIS INTO OUR SYSTEM, AND THEN
10 WE HAVE THE BIPARTISAN TEAM THAT REVIEWS EACH
11 SIGNATURE. AND WE ACTUALLY HAVE ALL --
12 EVERYONE'S SIGNATURES ON FILE IN OUR VOTER
13 REGISTRATION DATABASE. AND IT'S REVIEWED NO
14 LESS THAN TWO TIMES, AND IF THERE'S EVER ANY
15 QUESTION, IT'S ALWAYS REVIEWED BY KARLA AND
16 MYSELF, AND WE GO THROUGH GREAT PAINS TO MAKE
17 SURE WE'RE VERY THOROUGH.
18 DO YOU HAVE ANYTHING YOU WANT TO ADD TO
19 THAT?
20 MS. HERRON: THE ONLY THING I WOULD ADD
21 IS OUR SYSTEM, WE DO PUT IN THE PARAMETERS
22 THAT'S BEEN LAID OUT. IN THIS CASE, THEY HAVE
23 TO LIVE WITHIN THE CITY OF POWELL, AND IF
24 SOMEONE WOULD SIGN IT THAT LIVES OUTSIDE THE

Page 16

1 CITY, OUR SYSTEM WOULD AUTOMATICALLY TRIGGER AN
2 INVALID LINE.
3 MR. STEVENS: SO THE NUMBER OF VALID
4 SIGNATURES THAT YOU'VE INDICATED FOR THIS FIRST
5 REFERENDUM PETITION ARE CITY OF POWELL
6 RESIDENTS' SIGNATURES MATCH THE SIGNATURES ON
7 FILE?
8 MR. PEDALINE: CORRECT.
9 MR. STEVENS: AND THEN THAT TOTAL NUMBER
10 IS --
11 MR. PEDALINE: 376.
12 MS. HERRON: AND CHAIRMAN, JUST TO NOTE,
13 THERE WERE ZERO INVALID PETITIONS. ALL 12 WERE
14 VALID.
15 MR. BURNWORTH: POINT OF QUERY, I GUESS,
16 ON A COUPLE OF THEM. WHERE THE SIGNATURE
17 DOESN'T MATCH, IF -- AND MAYBE FOR THE
18 AUDIENCE'S BENEFIT, THAT IF IT WERE A CLOSE
19 COUNT, AND WE'VE HAD CASES WHERE PETITIONERS
20 HAVE COME IN AND RECTIFIED THEIR SIGNATURE;
21 THEY'RE ALLOWED A HEARING TO CLARIFY THEIR
22 SIGNATURES. THIS ISN'T ONE OF THOSE CASES; IT'S
23 NOT VERY CLOSE. BUT THERE ARE TIMES WHEN WE
24 HAVE UPDATED OUR SIGNATURES PAGES.

Page 17

1 THE LAST ONE WHERE THE ADDRESS DOESN'T
2 AGREE, THERE'S ONLY THREE IN THIS CASE, BUT
3 THAT'S CONSIDERING THE RECENT MERGE WITH THE
4 MOTOR VEHICLE DATABASE AND THE STATEWIDES.
5 MR. STEVENS: IF ANYBODY'S INTERESTED IN
6 THE NUMBERS THAT WE'RE LOOKING AT, I'M GOING TO
7 HAVE JOSH GIVE YOU A COPY SO --
8 MR. BURNWORTH: OH, GOOD POINT.
9 MR. STEVENS: IT SPELLS OUT ON THE
10 BOTTOM -- IT SPELLS OUT ON THE BOTTOM THE
11 RESULTS OF THE SIGNATURES, THE ONES THAT WERE
12 INVALID.
13 MR. BURNWORTH: OKAY. TO CONTINUE, JUST
14 TO QUESTION -- MAKE SURE THAT I THINK IT'S CLEAR
15 IN EVERYBODY'S MIND HERE, IS THAT AN ELECTOR CAN
16 COME IN AND VOTE WITH A STATE-ISSUED ID CARD OR
17 SOMETHING THAT DOES NOT MATCH OUR RECORDS, BUT
18 THEY HAVE OTHER DOCUMENTATION TO SHOW THAT THEY
19 CURRENTLY LIVE WITHIN THE GOVERNMENTAL UNIT OR
20 THE PRECINCT. IN OTHER WORDS, YOU DON'T HAVE TO
21 CHANGE YOUR DRIVER'S LICENSE EVERY TIME YOU
22 MOVE; YOU CAN STILL VOTE.
23 SO THESE THREE ADDRESSES DO NOT AGREE,
24 WE GET THAT FROM MERGING OUR OLD INFORMATION

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Page 18

1 THAT THE VOTER GAVE US WITH THE BUREAU OF MOTOR
2 VEHICLE'S INFORMATION, STATEWIDE DATABASES, AND
3 IT STILL DIDN'T MATCH, SO THAT'S WHY WE TARGET
4 THOSE.
5 MR. STEVENS: IF YOU GUYS WANT TO FOLLOW
6 ALONG, WE'RE GOING TO MOVE TO PAGE 2. JOSH, CAN
7 YOU GIVE US A SYNOPSIS OF THIS INITIATIVE?
8 MR. PEDALINE: AND JUST SO YOU'LL NOTE,
9 AT THE TOP LEFT, WE HAVE OUR OWN INTERNAL
10 CLASSIFICATION, BUT THIS ONE IS FOR THE
11 INITIATIVE FOR THE NEW COMMENTS OF PLANNED
12 ZONING DEVELOPMENT, PAGE 2. AGAIN, SAME
13 REQUIREMENT, 238 VALID SIGNATURES WERE REQUIRED
14 AND THE NUMBER WAS 350.
15 YOU'LL NOTE, MR. CHAIRMAN ON THIS ONE,
16 THERE WAS ONE INVALID PART PETITION WITH 16
17 SIGNATURES THAT WERE NOT COUNTED. AND ONE VALID
18 PART PETITION, YES.
19 MR. STEVENS: SO THAT'S ASSUMING THAT WE
20 USED THE SAME GUIDELINES WE WOULD USE ON A
21 SECRETARY OF STATE FORM?
22 MR. PEDALINE: CORRECT, YES.
23 MR. HELVEY: LET ME ASK --
24 MR. STEVENS: I'M SORRY, GO AHEAD.

Page 19

1 MR. HELVEY: WHY WAS THAT -- WHY WAS THE
2 PART PETITION FOUND INVALID?
3 MR. PEDALINE: TRACI, CAN YOU FILL IN ON
4 THAT?
5 MS. SHALOSKY: ON THESE PETITIONS,
6 SOMETIME, SINCE SOMEBODY MADE THEM UP, THEY HAD
7 **A LINE THAT DIDN'T HAVE A NUMBER ON IT, AND SO**
8 **SOMEBODY SIGNS IN THAT LINE, WHICH THREW THE**
9 **NUMBERS OFF. SO THE CIRCULATOR WOULD WRITE DOWN**
10 **THE BOTTOM NUMBER THAT THEY SAW, BUT ACTUALLY**
11 **THERE WAS AN EXTRA SIGNATURE IN PLACE, SO WE HAD**
12 **TO DISQUALIFY THE WHOLE THING BECAUSE YOU SAID**
13 **YOU ONLY VALID -- OR SAW 16 SIGNATURES AND THERE**
14 **WERE 17, SO WE HAVE TO INVALIDATE THE WHOLE PART**
15 **BECAUSE THERE'S SOME SIGNATURE ON THERE THAT YOU**
16 **SAID, YOU KNOW, YOU DIDN'T SEE.**
17 MR. HELVEY: BUT THAT GOES TO THE ISSUE
18 OF WHETHER WE HAVE -- WHETHER WE HAVE THE
19 AUTHORITY TO VALIDATE A PETITION WHEN OUR TASK
20 TODAY IS JUST TO REPORT TO THE CITY OF POWELL
21 THE NUMBER OF VALID SIGNATURES.
22 DO WE KNOW HOW MANY VALID SIGNATURES
23 WERE ON THAT PART PETITION?
24 MS. HERRON: NO, THAT'S EXACTLY RIGHT.

Page 20

1 IT IS THE 350. IT'S JUST THE REASON ALL OF THE
2 SIGNERS -- THE REASON TO NOTE THERE WAS ONE THAT
3 WOULD INVALIDATE IT IS BECAUSE NONE OF THE
4 SIGNATURES ARE ACTUALLY CONSIDERED VALID WHEN
5 THAT HAPPENS. A NUMBER DOESN'T REALLY MATTER ON
6 **A PETITION. IT CAN BE NUMBERED, IT DOESN'T HAVE**
7 **TO BE NUMBERED. IN STATUTE, IT'S JUST HOW MANY**
8 **SIGNATURES ARE PUT ON THOSE PIECES OF PAPER. WE**
9 **COUNT THEM IN.**
10 MR. HELVEY: IF WE'RE IN THE VALIDATING
11 PROCESS FOR A PETITION AS FAR AS FORM AND
12 SUBSTANCE --
13 MS. HERRON: CORRECT.
14 MR. HELVEY: -- AND NOT MERELY COUNTING
15 SIGNATURES.
16 MS. HERRON: CORRECT. IN THIS CASE,
17 THOUGH, IT INVALIDATES ALL SIGNATURES ON THAT
18 PART PETITION.
19 MR. HELVEY: IF WE'RE IN THAT PARADIGM.
20 IF WE'RE NOT IN THAT PARADIGM, HOW MANY
21 SIGNATURES OF THAT PART PETITION WERE THERE?
22 MS. HERRON: I'M NOT SURE HOW TO ANSWER
23 THAT BECAUSE ALL OF OUR GUIDANCE IS IF THERE'S
24 MORE THAN WHAT THEY ATTESTED TO FOR IT TO BE

Page 21

1 VALID, THE CIRCULATOR HAS TO ATTEST TO THE FACT
2 THAT THEY SAW THAT AND WITNESSED IT FOR THAT
3 LINE TO BE VALID OR THAT SIGNATURE TO BE VALID.
4 I DO HEAR WHAT YOU'RE SAYING, AND WE CAN
5 TELL YOU HOW MANY WAS ON THERE. IF THAT
6 WOULD -- IF THAT'S WHAT YOU WOULD LIKE FOR US TO
7 NOTE.
8 MR. STEVENS: JUST SO I UNDERSTAND, THE
9 350 VALID SIGNATURES ARE -- ARE NET OF THAT PART
10 PETITION THAT YOU SAY IS INVALID?
11 MS. HERRON: UH-HUH.
12 MR. STEVENS: THEY WERE NOT COUNTED?
13 MS. HERRON: THEY WERE NOT COUNTED.
14 MR. STEVENS: I BELIEVE THAT NUMBER'S
15 WRONG THEN.
16 MS. SHALOSKY: IT IS. IT DOES NOT
17 INCLUDE THE ONES ON THE INVALID PART.
18 MR. STEVENS: I AGREE WITH MR. HELVEY
19 THAT IF WE WERE ONLY TO LOOK AT THE VALIDITY OF
20 SIGNATURES TODAY, THEN WHETHER OR NOT THE --
21 MS. SHALOSKY: THIS ONE --
22 MR. STEVENS: YOU CAN CHIME IN,
23 MR. BETTS, IF YOU HAVE DIFFERENT --
24 MS. SHALOSKY: THIS IS NOT THE INVALID

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1 ONE. WE ARE LOOKING AT THE ONE THAT'S YELLOW,
2 RIGHT?
3 MR. PEDALINE: YES.
4 MR. STEVENS: THANK YOU.
5 MR. HELVEY: IT'S 705.
6 MS. SHALOSKY: WELL, THAT 705 HAS 12
7 PARTS TO IT.
8 MR. STEVENS: WHILE SHE'S DOING THAT, DO
9 YOU WANT TO MOVE MAYBE TO THE THIRD ONE. SO IF
10 YOU'RE FOLLOWING ALONG, PAGE 3 --
11 MS. HERRON: I DON'T THINK -- IT'S THE
12 SAME --
13 MR. STEVENS: OH, YOU HAVE ANOTHER --
14 MS. HERRON: THERE WAS TWO AND THEY HAVE
15 ONE SIGNATURE THAT WAS ATTESTED TO.
16 MS. SHALOSKY: HERE'S THE INVALID PART,
17 AND IT ACTUALLY HAD 16 VALID SIGNATURES ON IT.
18 MR. STEVENS: SO LET'S BACK UP, THEN. I
19 APOLOGIZE, FOLKS. WE'LL STAY ON THE FIRST
20 INITIATIVE, WHICH IS ON PAGE 2 IN YOUR HANDOUT.
21 SO I JUST WANT TO MAKE SURE BEFORE WE --
22 TRACI?
23 MS. SHALOSKY: YES.
24 MR. STEVENS: CAN YOU COME HERE. SO

1 THERE'S 16 ON THIS THAT YOU INITIALLY COUNTED AS
2 INVALID?
3 MS. SHALOSKY: AS VALID. OH, THEY'RE
4 INVALID RIGHT NOW, YES.
5 MR. STEVENS: OKAY.
6 MS. SHALOSKY: BECAUSE THEY HAVE THIS
7 LINE RIGHT HERE.
8 MR. BURNWORTH: OR IS THERE 17?
9 MS. SHALOSKY: THERE'S 17 SIGNATURES,
10 RIGHT, BUT THE CIRCULATOR SAID THERE WAS 16
11 BECAUSE SOMEBODY WROTE OFF THE LINE.
12 MR. STEVENS: OKAY.
13 MS. HERRON: IN ORDER FOR US -- JUST TO
14 NOTE, BY OHIO LAW, IN ORDER FOR US TO BEGIN
15 CHECKING SIGNATURES, THAT IS ONE OF THE
16 REQUIREMENTS IS WE LOOK AT THAT TIME -- I
17 KNOW --
18 MR. HELVEY: I UNDERSTAND.
19 MS. HERRON: I KNOW YOU DO.
20 MR. BETTS: MR. VICE-CHAIRMAN, IF I
21 MIGHT, FOR JUST A MOMENT, I KNOW THAT AS THE
22 DIRECTOR AND DEPUTY DIRECTOR INDICATED, THEY
23 CHECKED THE SIGNATURES IN ACCORDANCE WITH THE
24 NORMAL WAY THAT THEY WOULD IN ACCORDANCE WITH

1 STATE LAW.
2 I THINK, YOU KNOW, WHERE THE NUMBER
3 IS -- OF SIGNATURES ON THE PETITION IS LESS THAN
4 THE NUMBER THAT'S WRITTEN IN THE CIRCULATOR'S
5 STATEMENT, IT DOES INVALIDATE ALL OF THE
6 SIGNATURES ON THAT PETITION BECAUSE
7 THEORETICALLY THERE WAS ONE THAT WAS NOT
8 WITNESSED.
9 SO IN TERMS OF DETERMINING NOT THE
10 PETITION BUT THE VALIDITY OF THOSE SIGNATURES, I
11 THINK THAT THE DIRECTOR AND THE DEPUTY DIRECTOR
12 AND THE STAFF MADE THE DETERMINATION IN
13 ACCORDANCE WITH STATE LAW IN DETERMINING THE
14 VALIDITY OF THOSE SIGNATURES BASED ON HOW THEY
15 WERE PLACED ON THE PETITION BUT NOT -- NOT ON
16 THE PETITION ITSELF.
17 MR. HELVEY: I THINK THAT'S THE PURVIEW
18 OF THE POWELL CITY COUNCIL TO STEP UP AND SAY
19 THIS PART OF THE PETITION IS INVALID BECAUSE THE
20 CIRCULATOR STATED IT WAS INVALID. WHEN YOU READ
21 THE CHARTER, OUR JOB IS MERELY TO LOOK AT
22 SIGNATURES AND VERIFY THAT THEY ARE ELECTORS OF
23 THE CITY OF POWELL.
24 MR. BETTS: THE CHARTER IS VERY LIMITED.

1 I WILL AGREE WITH YOU ON THAT.
2 MR. STEVENS: I TEND TO AGREE WITH
3 MR. HELVEY.
4 MS. HERRON: THERE'S NO PROBLEM TO JUST
5 VALIDATING IT AND RERUNNING THE REPORTS. IT'S
6 AS EASY AS THAT. I WILL NOTE, EITHER WAY, THEY
7 HAD ENOUGH, COUNTING THE --
8 MR. STEVENS: RIGHT. CORRECT.
9 MS. HERRON: BUT WE CAN REDO THAT.
10 MR. BURNWORTH: SO WHY DON'T YOU ADD 17
11 TO 350 AND RUN A NEW --
12 MR. PEDALINE: 16.
13 MR. BURNWORTH: THERE'S 17.
14 MR. HELVEY: THE CIRCULATOR SAID THERE
15 WAS 16, BUT THERE'S ACTUALLY 17.
16 MR. STEVENS: WE'LL BE ADDRESSING THAT
17 AGAIN, I BELIEVE, IN THE FUTURE.
18 MS. HERRON: YOU WILL.
19 MR. STEVENS: OKAY. LET'S MOVE TO THE
20 THIRD PAGE.
21 MR. PEDALINE: YES. IN THIS NEXT ONE,
22 THE NEXT ONE IS THE INITIATIVE TO THE PROJECTED
23 DEVELOPMENT PLAN FOR THE CENTER AT POWELL
24 CROSSING. AGAIN, SAME REQUIREMENT, 238 REQUIRED

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1 SIGNATURES. AGAIN, USING OUR PREVIOUS STANDARD,
2 THAT WAS AT 326 SIGNATURES. AGAIN, EXCEEDING
3 THE REQUIRED NUMBER. HOWEVER, THERE WERE TWO
4 PART PETITIONS THAT WERE INVALIDATED FOR SIMILAR
5 REASONS, AND THAT COUNTS -- IT'S 55 ADDITIONAL
6 SIGNATURES.
7 MR. HELVEY: OR IS IT 57?
8 MR. PEDALINE: IT WOULD BE 57, BASED ON
9 THAT STANDARD.
10 MR. BURNWORTH: FOR THE SAME REASON,
11 YEAH. WHY ARE WE -- WHY IS THERE A BLANK LINE
12 WITHOUT A NUMBER? IS THAT A STATE ISSUE OR
13 FORM?
14 MR. HELVEY: NO.
15 MR. HELVEY: SEE, THEY WROTE UP HERE --
16 MR. BURNWORTH: OKAY. GOT IT.
17 MR. HELVEY: THEY STARTED BEFORE THE
18 ACTUAL NUMBER.
19 MR. BURNWORTH: OKAY. GOT IT.
20 MS. HERRON: AND WE'LL RERUN THE NUMBERS
21 AND GIVE THEM TO YOU.
22 MR. STEVENS: DO YOU NEED THE NUMBERS TO
23 MAKE A MOTION?
24 MR. HELVEY: I DON'T THINK SO.

1 MS. HERRON: WE'LL JUST GET THEM FOR THE
2 REPORT.
3 MR. HELVEY: RIGHT. WE KNOW HOW MANY
4 THERE ARE.
5 MS. HERRON: WE DO.
6 MR. HELVEY: IT'S JUST NOT ON THIS PIECE
7 OF PAPER RIGHT NOW.
8 MS. HERRON: CORRECT. THEN IT WILL
9 READJUST THE REASON WHY SOME ARE INVALIDATED,
10 WHETHER THEY'RE NOT REGISTERED --
11 MR. HELVEY: RIGHT.
12 MR. STEVENS: OKAY. SO NOW I UNDERSTAND
13 THE THREE PETITIONS. I GUESS I WOULD LIKE TO
14 OPEN IT UP FOR VERY BRIEF DISCUSSION FROM FOLKS
15 WHO WOULD LIKE TO.
16 MR. MILLER: THANK YOU, MR. CHAIRMAN.
17 I'M JOE MILLER, VORYS SATER SEYMOUR & PEASE, ON
18 BEHALF OF THE PROTESTING PARTY. I AGREE WITH
19 YOUR COUNSEL THAT THIS BOARD IS STILL REQUIRED
20 TO REVIEW, EXAMINE, AND CERTIFY THE SUFFICIENCY,
21 VALIDITY OF THE PETITIONS. THE CITY CHARTER
22 DOES NOT TAKE AWAY THE DUTY UNDER 3501.11(K) TO
23 DO THAT.
24 AND I'D JUST AMPLIFY OR REITERATE WHAT I

1 BELIEVE MR. BETTS SAID EARLIER, THAT UNDER
2 3501.39(A), THIS BOARD IS PROHIBITED FROM
3 ACCEPTING ANY PETITIONS ONCE A WRITTEN PROTEST
4 IS FILED. WE HAVE DONE THAT. MY UNDERSTANDING
5 IS THIS BOARD IS NOT ACTING TO ACCEPT OR CERTIFY
6 ANY OF THESE PETITIONS TODAY.
7 AM I UNDERSTANDING THAT CORRECTLY,
8 MR. CHAIR?
9 MR. HELVEY: THAT'S CORRECT.
10 MR. STEVENS: THAT'S OUR INTENTION.
11 MR. MILLER: BECAUSE WHEN THESE PART
12 PETITIONS ARE PRESENTED AGAIN, WE WOULD ASK AND
13 STATE OBVIOUSLY THAT BY STATE LAW, WE'RE
14 ENTITLED TO A HEARING ON ALL THE GROUNDS WITHIN
15 THE PROTEST BY A STRICT COMPLIANCE STANDARD. I
16 WOULD STATE THIS MORNING THAT ARGUMENTS WE'VE
17 MADE IN THAT PROTEST RELATED TO THE INCORRECT
18 PRECINCTS PLACED ON PETITIONS, THE FORM OF THE
19 PETITION, AND THE LACK OF TITLE AND TEXT COULD
20 BE CONSIDERED BY YOU TODAY. I'M UNDERSTANDING,
21 HOWEVER, THAT YOU ARE MERELY LOOKING AT
22 SIGNATURES; IS THAT CORRECT?
23 MR. HELVEY: THAT'S CORRECT.
24 MR. BURNWORTH: CORRECT.

1 MR. MILLER: AND THAT WE WILL BE ABLE TO
2 RENEW AND MAKE ALL THOSE ARGUMENTS AT A TIME
3 WHEN THE PART PETITIONS, IF THEY ARE, ARE
4 PRESENTED TO YOU?
5 MR. STEVENS: YEP.
6 MR. HELVEY: AND I WOULD SUGGEST THAT
7 THE FIRST OPPORTUNITY YOU HAVE TO ATTACK THAT
8 WOULD BE AT THE POWELL CITY COUNCIL. THEY GET
9 FIRST BLUSH AT THIS.
10 MR. MILLER: OKAY. WITH THOSE
11 ASSURANCES, THEN, THAT OUR PROTEST WILL BE
12 INDEED HEARD ON ALL THOSE GROUNDS, IF NECESSARY,
13 WE LOOK FORWARD TO APPEARING BEFORE YOU AGAIN.
14 MR. STEVENS: THANK YOU. IS THERE
15 ANYBODY ELSE?
16 MR. BURCH: I'M CHRISTOPHER BURCH. I'M
17 COUNSEL FOR THE PETITIONERS. IT'S ALWAYS
18 HELPFUL WHEN THE COUNTY PROSECUTOR IS MAKING
19 WHAT YOU THINK IS A HELPFUL ARGUMENT ON YOUR
20 BEHALF AND YOU DON'T HAVE A CHANCE TO SPEAK MUCH
21 OR PREPARE MUCH FOR A HEARING. PETITIONERS
22 OBVIOUSLY FOUND OUT YESTERDAY --
23 MR. STEVENS: THIS ISN'T A HEARING.
24 MR. BURCH: MEETING. PETITIONERS ARE

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1 COMFORTABLE SAVING THEIR ARGUMENTS FOR THE
2 APPROPRIATE FORUM. PETITIONERS DON'T THINK THIS
3 IS THE APPROPRIATE FORUM AT THIS TIME AND WILL
4 RESERVE THOSE FOR THE CITY COUNCIL.
5 HOWEVER, HAVING REVIEWED THE
6 DEVELOPER/PROTESTOR'S BRIEF, WE WOULD ASK ONLY
7 FOR THE BOARD TO MAKE SOME SORT OF STATEMENT ON
8 THE RECORD WITH RESPECT TO WHETHER OR NOT THERE
9 ARE WARDS IN THE CITY OF POWELL.
10 THIS IS AN ISSUE THAT WE BELIEVE CAN BE
11 CLARIFIED BY THE BOARD PRIOR TO THE HEARING BY
12 THE CITY IN ORDER TO -- TO REVIEW BRIEF, TO
13 REVIEW LEGAL ARGUMENTS, AND SO I KNOW THAT THAT
14 IS NOT DIRECTLY BEFORE THE BOARD AT THIS TIME;
15 HOWEVER, IT'S NOT -- IT'S NOT TOO FAR OF A
16 STRETCH TO SEE WHERE IT'S GOING, AND WE WOULD
17 LIKE TO JUST SEE THAT ON THE RECORD.
18 MR. HELVEY: IT'S MY UNDERSTANDING,
19 COUNSEL, THAT WE DON'T SET WARD LINES. FOR
20 INSTANCE, THE CITY OF DELAWARE DETERMINES WHAT
21 THE WARD LINES IS BY CONGLOMERATING PRECINCTS
22 TOGETHER, SO THAT'S NOT OUR DETERMINATION
23 EITHER. WE ARE NOTIFIED WHEN A WARD IS
24 ESTABLISHED.

1 MR. MILLER: AND JUST FOR CLARITY'S SAKE
2 FOR THE BOARD, I UNDERSTAND YOU'RE NOT TAKING --
3 OUR POSITION IS OBVIOUSLY THAT ON THOSE
4 PETITIONS, THE PRECINCTS ARE INCORRECT AND THAT
5 CAN INVALIDATE THE SIGNATURES. THE PRECINCTS
6 WERE INCORRECTLY IDENTIFIED.
7 MR. HELVEY: WE'LL LEAVE THAT FOR
8 ANOTHER DAY.
9 MR. MILLER: UNDERSTOOD.
10 MR. STEVENS: ARE THERE ANY OTHER --
11 MR. HOLLINS: MR. VICE-CHAIRMAN, MEMBERS
12 OF THE BOARD, THANK YOU FOR YOUR TIME THIS
13 MORNING. GENE HOLLINS, THE LAW DIRECTOR OF
14 POWELL, AND JENNIFER CROGHAN FROM MY OFFICE
15 HERE. A, HERE TO ANSWER ANY QUESTIONS. B, LET
16 ME STATE THE ASSISTANCE WE'VE RECEIVED FROM YOUR
17 STAFF HAS BEEN EXCELLENT, AND IT ALWAYS IS. SO
18 THANK YOU FOR THE HELP.
19 THANK YOU, MR. BETTS, FOR HELPING US
20 THROUGH THIS PROCESS, AND THANK YOU FOR THE
21 CLARIFICATION AS TO THE FUTURE HEARING MORE OR
22 LESS ON THE MERITS OF SOME OF THESE ARGUMENTS.
23 WE WILL TAKE THIS UP ON TUESDAY TO LET
24 THE BOARD KNOW, BY OUR CHARTER, WE HAVE TWO OF

1 THESE THAT HAVE TO BE HANDLED BY RESOLUTION, ONE
2 THAT HAS TO BE HANDLED BY ORDINANCE. ORDINANCES
3 GO FOR TWO READINGS UNLESS SUSPENSION OF THE
4 RULES OCCURS. THAT PROBABLY WON'T OCCUR BECAUSE
5 WE ONLY HAVE SIX MEMBERS ON TUESDAY.
6 I DON'T KNOW IF WE'LL HAVE -- I HAVEN'T
7 HAD A CHANCE TO MEET WITH MY CLIENT YET ABOUT
8 THIS, THIS HAPPENED SO FAST. MY CLIENT BEING
9 COUNCIL. I DON'T KNOW IF WE'LL HAVE A CLEAR
10 MAJORITY ON ANY OF THESE PETITIONS NEXT TUESDAY
11 TO SEND THEM BACK TO YOU AT THAT POINT. SO
12 WE'LL HAVE THEM ON THE AGENDA.
13 WITH THAT IN MIND, IF THE ATTESTATIONS
14 OF THE SIGNATURES COULD BE DONE EITHER TODAY OR
15 MONDAY, IT WOULD BE VERY HELPFUL. IF WE RECEIVE
16 THEM TUESDAY, I THINK IT'S NOT CLEAR WHETHER
17 THEY GO ON THAT AGENDA OR AN AGENDA TWO WEEKS
18 FROM NOW, ET CETERA, ET CETERA.
19 SO IF THERE'S A POSSIBILITY OF GETTING
20 THEM TODAY OR MONDAY, THAT WOULD BE HELPFUL AND
21 WE KEEP THE TIMELINE...
22 MR. BURNWORTH: QUESTION FOR YOU, IF YOU
23 DON'T MIND, HOW OFTEN DOES THE COUNCIL MEET?
24 MAYBE THEY DO SPECIALS, BUT --

1 MR. HOLLINS: IT MEETS EVERY TWO WEEKS,
2 BUT IT HAS TO BE -- PER OUR CHARTER, IT HAS TO
3 BE PRESENTED TO THEM AT A REGULAR MEETING.
4 MR. BURNWORTH: OKAY. WHICH TIES TO THE
5 QUESTION FOR JOSH AND KARLA, IS THAT WE'RE FACED
6 WITH A DEADLINE TO AFFIRM THE BALLOT IF
7 SOMETHING WERE TO GO ON THE BALLOT. WHAT'S OUR
8 TARGET DATE THERE FOR THE AUDIENCE TO KNOW?
9 MS. HERRON: PER OHIO REVISED CODE, IT'S
10 90 DAYS BEFORE AN ELECTION, WHICH IS NEXT
11 WEDNESDAY, WHICH IS AUGUST THE 6TH. AND WE HAVE
12 ASKED FOR GUIDANCE FROM THE PROSECUTOR'S OFFICE
13 AS FAR -- AS I BELIEVE THE CHARTER SAYS 75 DAYS.
14 MR. BETTS: I WOULD JUST CLARIFY THAT
15 THE AUGUST 6TH DATE IS THE DATE THAT IT HAS TO
16 BE FILED WITH THE BOARD OF ELECTIONS. THERE'S A
17 LATER DATE, I THINK MAYBE YOU TOLD ME IT WAS THE
18 18TH OF AUGUST, IS ACTUALLY WHEN EVERYTHING
19 WOULD HAVE TO BE -- THE CERTIFICATION WOULD HAVE
20 TO BE COMPLETE AS FAR AS WHAT'S GOING ON.
21 MS. HERRON: OUR BOARD DOES, YEAH.
22 MR. BURNWORTH: THE REASON THAT'S
23 IMPORTANT, YOU'RE FAMILIAR WITH UOCAVA, THE
24 UNIFORMED AND OVERSEAS MILITARY VOTING ACT, WE

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Page 34

1 HAVE TO SEND THOSE OUT, I THINK IT'S 45 DAYS
2 PRIOR. THEY GET AN EXTRA 15 DAYS OR SO TO VOTE
3 THAN THE GENERAL PUBLIC HAS.
4 MR. HOLLINS: I UNDERSTAND.
5 MR. BURNWORTH: SO IF YOU'VE GOT POWELL
6 RESIDENTS THAT ARE OUT, YET REQUEST A BALLOT AND
7 WE HAVEN'T RESOLVED THIS, IF SOMETHING GOES TO
8 THE BALLOT, THEY'RE NOT GOING TO GET THAT
9 OPPORTUNITY.
10 MR. HOLLINS: PRACTICALLY SPEAKING, OUR
11 PRIOR EXPERIENCE WITH THE BOARD OF ELECTIONS,
12 THERE'S A DATE YOU HAVE TO SEND STUFF TO THE
13 PRINTER. NOT ONLY US, BUT THE COURTS ARE ALWAYS
14 WORKING AROUND TRYING TO GET THESE THINGS
15 RESOLVED BEFORE YOU HAVE TO SEND STUFF OUT TO
16 THE PRINTERS.
17 WE WILL CONTINUE TO WORK WITH YOU ON
18 WHAT DAY THAT IS, BUT IT WILL PROBABLY BE --
19 WELL, WHO KNOWS WHAT WILL HAPPEN IN TERMS OF
20 GETTING OUT OF OUR COURT, BACK TO YOUR COURT,
21 POTENTIALLY BACK TO THE COURTS, AND THEN TRY AND
22 MEET YOUR DEADLINE FOR GETTING BALLOTS PRINTED.
23 MR. BURNWORTH: JUST THOUGHT I'D MENTION
24 ALL THAT.

Page 35

1 MR. HOLLINS: YEAH, IT'S A PRACTICAL
2 DIFFICULTY, BUT MY GUESS IS THIS ONE'S GOING TO
3 BE RESOLVED WITH THE COURTS EVENTUALLY.
4 MR. BETTS: THE VERY FIRST THING THAT
5 YOU SAID -- MAY NOT HAVE BEEN THE VERY FIRST,
6 BUT CLOSE -- WAS IN TERMS OF GETTING A STATEMENT
7 BACK FROM THIS BOARD IN TERMS OF THE NUMBER OF
8 VALID SIGNATURES, AND I KNOW THAT KARLA AND JOSH
9 WERE DOWN THERE SHAKING THEIR HEAD, BUT THERE
10 WASN'T A VERBAL ANSWER TO THAT.
11 FOR THE SAKE OF THE RECORD, I KNOW IN
12 SPEAKING WITH THE DIRECTOR AND DEPUTY DIRECTOR
13 PREVIOUSLY -- AND THEY'RE SHAKING THEIR HEADS
14 OVER THERE -- PREVIOUSLY THAT I THINK THEIR
15 INTENT IS GETTING THAT STATEMENT OUT LATER
16 TODAY.
17 MR. PEDALINE: YES.
18 MR. BETTS: AM I RIGHT IN SAYING THAT?
19 I DON'T WANT TO SPEAK FOR YOU, BUT I THINK WE
20 HAD THAT DISCUSSION.
21 MR. PEDALINE: YES.
22 MS. HERRON: THAT'S CORRECT.
23 MR. HOLLINS: WILL IT BE HAND-DELIVERED
24 OR SHOULD I SEND SOMEBODY TO PICK IT UP?

Page 36

1 MS. HERRON: WE WOULD LOVE TO WORK THAT
2 OUT WITH YOU TO SEE WHAT WOULD WORK BEST FOR
3 YOU.
4 MR. HOLLINS: I KNOW MRS. CROGHAN IS ON
5 VACATION AND PROBABLY HAS NOTHING ELSE PLANNED
6 FOR THE REST OF THE --
7 MS. HERRON: WE WOULD APPRECIATE THAT
8 VERY MUCH.
9 MR. HOLLINS: THANK YOU FOR YOUR TIME
10 THIS MORNING.
11 MR. STEVENS: IS THERE ANY OTHER
12 COMMENTS? I'D LIKE TO ENTER --
13 MR. HELVEY: YEAH, I'D LIKE TO MAKE
14 THREE DIFFERENT MOTIONS. WE'LL SEPARATE ALL
15 THREE ISSUES. WE WILL START WITH THE REFERENDUM
16 ON THE REPEAL OF 2014-10 IDENTIFIED BY OUR
17 RECORDS AS PETITION ID 140704, AND THE MOTION
18 WILL BE THAT THE BOARD HAS VALIDATED THAT 376 OF
19 THE SIGNATURES PRESENTED ARE OF ELECTORS WITHIN
20 THE CITY OF POWELL, AND THAT THE STAFF BE
21 DIRECTED TO NOTIFY THE CITY OF POWELL THAT 376
22 SIGNATURES ARE VALID ELECTORS.
23 MR. BURNWORTH: DO YOU WANT TO INCLUDE
24 THE NUMBER REQUIRED?

Page 37

1 MR. HELVEY: NO.
2 MR. STEVENS: MOTION'S BEEN MADE BY
3 MR. HELVEY.
4 IS THERE A SECOND?
5 MR. BURNWORTH: SECOND.
6 MR. STEVENS: IS THERE ANY DISCUSSION?
7 (NO RESPONSE.)
8 MR. STEVENS: ALL IN FAVOR, SAY AYE.
9 (ALL SAID AYE.)
10 MR. STEVENS: OPPOSED?
11 (NO RESPONSE.)
12 MR. STEVENS: THANK YOU.
13 MR. HELVEY: MR. CHAIRMAN, IN REGARDS TO
14 PETITION ID 140705, WHICH IS THE INITIATIVE OF
15 THE NEW COMPREHENSIVE PLAN FOR ZONING AND
16 DEVELOPMENT AND REPEAL OF 2014-10, THAT THE
17 BOARD HAS VALIDATED 367 SIGNATURES AS BEING
18 ELECTORS OF THE CITY OF POWELL AND THAT THE
19 STAFF BE DIRECTED TO NOTIFY THE CITY OF POWELL
20 THAT 367 SIGNATURES ARE VALID.
21 MR. BURNWORTH: SECOND.
22 MR. STEVENS: MOTION'S BEEN SECONDED BY
23 MR. BURNWORTH. IS THERE ANY DISCUSSION?
24 MR. BURNWORTH: UNLESS YOU WANT TO

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1 SECOND SOME OF THIS STUFF.
2 MR. STEVENS: ALL IN FAVOR, SAY AYE.
3 (ALL SAID AYE.)
4 MR. HELVEY: WE'LL STEP DOWN FOR A
5 SECOND.
6 MS. SHALOSKY: KARLA, IN ORDER TO PUT
7 THOSE NUMBERS BACK IN, THOSE PETITIONS ARE GOING
8 TO HAVE TO BE RE-ENTERED BECAUSE THEY -- WHEN
9 YOU -- WHEN I INVALIDATE THEM, IT TOOK ALL THE
10 WORK WE HAD DONE OUT OF THE COMPUTER.
11 MS. HERRON: OKAY. SO COULD YOU RUN THE
12 NEW NUMBERS THEN?
13 MS. SHALOSKY: WE CAN'T JUST RUN THEM
14 QUICKLY, THE NUMBERS HAVE TO BE RE-ENTERED --
15 OH, I CAN ADD THEM UP, YES. GOTCHA.
16 MS. HERRON: THANK YOU.
17 MR. BURNWORTH: I DON'T KNOW ABOUT THIS
18 ONE. THE LAST ONE THEY SAID THEY WERE, BUT
19 NOBODY SPOKE TO THIS ONE.
20 (PAUSE IN PROCEEDINGS.)
21 MR. HELVEY: MR. CHAIRMAN, I HAVE A
22 MOTION IN REGARDS TO PETITION ID 140706, WHICH
23 IS TO AMEND THE POWELL CHARTER, AND IT'S AN
24 INITIATIVE TO AMEND THE POWELL CHARTER. I MOVE

1 THAT WE HAVE VALIDATED 378 SIGNATURES AS
2 ELECTORS OF THE CITY OF POWELL AND THAT STAFF
3 NOTIFY THE CITY OF POWELL THAT WE HAVE VALIDATED
4 378 SIGNATURES.
5 MR. STEVENS: IS THERE A SECOND?
6 MR. MILLER: CHRIS, I'M WITH YOU.
7 MR. BETTS: IT'S NOT ON THE REPEAL.
8 MR. HELVEY: I'M ON PAGE 3, THE
9 INITIATIVE.
10 MR. BETTS: ONE OF THEM IS THE CHARTER,
11 WHICH IS THE ONE YOU DID, YOUR SECOND MOTION.
12 THE OTHER ONE'S THE REPEAL.
13 MR. HELVEY: FIRST ONE'S REPEAL.
14 MR. BETTS: CORRECT.
15 MR. HELVEY: SECOND ONE IS THE
16 INITIATIVE ON THE ZONING PLAN, AND THE THIRD ONE
17 IS AN INITIATIVE, AS WELL; IS THAT CORRECT?
18 MR. BETTS: YES, BUT IT'S AN INITIATIVE
19 WITH A REPEAL IN IT. THAT'S -- I'M READING UP
20 HERE.
21 MR. PEDALINE: TO CLARIFY, MR. HELVEY
22 AND MR. CHAIRMAN, IT'S TO REJECT THE DEVELOPMENT
23 PLAN FOR THE CENTER AT POWELL CROSSING, LLC.
24 MR. HELVEY: I WAS USING THE NOTATION

1 THAT MR. MILLER USED, THAT IT'S AN INITIATIVE --
2 I WAS USING THE SHORTHAND THAT MR. MILLER USED,
3 THAT IT'S AN INITIATIVE PETITION, AND IN PARENS,
4 TO AMEND POWELL'S CHARTER TO EFFECTIVELY REPEAL
5 ORDINANCE 2014-10.
6 IS THAT CORRECT, MR. MILLER?
7 MR. MILLER: YES. WHAT I HAVE BEFORE ME
8 FOR THE POWELL CHARTER, THOUGH, INDICATES 367
9 SIGNATURES. I THINK THAT WAS THE POINT
10 MR. BETTS WAS TRYING TO MAKE.
11 MR. BURNWORTH: OH, THAT'S THE SECOND
12 ONE.
13 MR. HELVEY: ON PAGE 3 --
14 MR. BURNWORTH: 14706.
15 MR. HELVEY: ON PAGE 3 THERE WERE TWO
16 PART PETITIONS THAT WERE NOT COUNTED. WE ARE
17 NOW ADDING IN THOSE VALID SIGNATURES BECAUSE
18 WE'RE NOT INVALIDATING THE PART PETITIONS, AND
19 THAT THE TOTAL NUMBER IS 378.
20 MR. MILLER: AGREED. UNDERSTOOD.
21 MR. HELVEY: OKAY. IS EVERYBODY CLEAR
22 ON THE MOTION?
23 MR. STEVENS: IS THERE A SECOND?
24 MR. BURNWORTH: I'LL SECOND.

1 MR. STEVENS: ANY DISCUSSION?
2 (NO RESPONSE.)
3 MR. STEVENS: ALL IN FAVOR, SAY AYE.
4 (ALL SAID AYE.)
5 MR. STEVENS: OPPOSED?
6 (NO RESPONSE.)
7 MR. STEVENS: OH, I'M SORRY, AYE. I
8 VOTED AYE. IS THERE ANY OTHER --
9 MR. HELVEY: I MOVE WE ADJOURN,
10 MR. CHAIRMAN.
11 MR. BURNWORTH: SECOND.
12 MR. STEVENS: ALL IN FAVOR, SAY AYE.
13 (ALL SAID AYE.)
14 MR. STEVENS: MEETING IS ADJOURNED.
15 THANK YOU SO MUCH, EVERYBODY, FOR COMING.
16 -=O=-
17 THEREUPON, THE PROCEEDINGS OF AUGUST
18 1, 2014, WERE CONCLUDED AT 9:52 A.M.
19 -=O=-
20
21
22
23
24

1 CERTIFICATE
2 I, ANGELA R. STARBUCK, RPR, CRR, CCP,
3 A NOTARY PUBLIC IN AND FOR THE STATE OF OHIO, DO
4 HEREBY CERTIFY THAT I REPORTED THE FOREGOING
5 PROCEEDINGS AND THAT THE FOREGOING TRANSCRIPT OF
6 SUCH PROCEEDINGS IS A FULL, TRUE AND CORRECT
7 TRANSCRIPT OF MY STENOTYPY NOTES AS SO TAKEN.
8 I DO FURTHER CERTIFY THAT I WAS CALLED
9 THERE IN THE CAPACITY OF A COURT REPORTER AND AM
10 NOT OTHERWISE INTERESTED IN THIS PROCEEDING.
11 IN WITNESS WHEREOF, I HAVE HEREUNTO
12 SET MY HAND AND AFFIXED MY SEAL OF OFFICE AT
13 COLUMBUS, OHIO, ON THIS 7TH DAY OF AUGUST, 2014.
14
15
16
17
18
19
20 *Angela R. Starbuck*
21 ANGELA R. STARBUCK, RPR, CRR, CCP
NOTARY PUBLIC, STATE OF OHIO.
22
23 MY COMMISSION EXPIRES: DECEMBER 10, 2014
24

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-=O=- 41:16,19

1

1 41:18
12 16:13 22:6
140704 36:17
140705 37:14
140706 38:22
14706 40:14
15 34:2
16 18:16 19:13 22:17 23:1, 10 25:12,15
17 19:14 23:8,9 25:10,13, 15
18TH 33:18
1ST 3:3

2

2 18:6,12 22:20
2014 41:18
2014-10 37:16 40:5
238 14:21 18:13 25:24
25TH 7:1
28TH 7:3

3

3 22:10 39:8 40:13,15
326 26:2
350 18:14 20:1 21:9 25:11
3501.11(K) 27:22
3501.39 11:15
3501.39(A) 28:2
367 37:17,20 40:8
376 14:22 16:11 36:18,21
378 39:1,4 40:19

4

45 34:1
4TH 7:5

5

55 26:5
57 26:7,8

6

6TH 33:11,15

7

705 22:5,6
75 33:13

9

90 33:10
9:00 3:4
9:52 41:18

A

A.M. 3:4 41:18
ABSENT 13:1
ABSOLUTELY 15:5
ACCEPT 8:14,15 9:2 11:9,10 28:5
ACCEPTANCE 9:9 10:1
ACCEPTED 9:12 13:3
ACCEPTING 28:3
ACCORDANCE 6:17 9:5 13:18 23:23,24 24:13
ACT 7:17 33:24
ACTING 3:11 28:5
ACTS 5:5
ACTUAL 26:18
ADD 14:23 15:18,20 25:10 38:15
ADDING 40:17
ADDITIONAL 26:5
ADDRESS 17:1
ADDRESSES 17:23
ADDRESSING 25:16
ADJOURN 41:9
ADJOURNED 41:14
ADVICE 4:6
AFFIRM 33:6
AGENDA 4:2 7:11 32:12, 17
AGREE 9:16,18 10:23 11:21 12:24 17:2,23 21:18 25:1,2 27:18
AGREED 40:20
AHEAD 18:24
ALLOWED 16:21
AMEND 38:23,24 40:4
AMPLIFY 27:24
ANDREW 3:19,20 4:11
ANYBODY'S 17:5
APOLOGIZE 22:19
APPEARING 29:13
APPROPRIATELY 13:7
ARGUMENT 29:19
ARGUMENTS 28:16 29:2 30:1,13 31:22
ARMY 3:11
ASSISTANCE 31:16
ASSISTANT 4:10,12
ASSUME 14:9
ASSUMING 12:3 18:19
ASSURANCES 29:11
ATTACK 29:7
ATTEST 21:1
ATTESTATIONS 32:13
ATTESTED 20:24 22:15
ATTESTING 6:8
ATTORNEY 4:11,12
AUDIENCE 3:6 33:8
AUDIENCE'S 16:18
AUGUST 3:3 33:11,15,18 41:17
AUTHORITY 19:19
AUTOMATICALLY 16:1
AYE 37:8,9 38:2, 41:3,4,7, 8,12,13

B

BACK 9:8,24 10:8,9 11:4, 8,20 22:18 32:11 34:20,21 38:7
BALLOT 8:18 9:13 10:12 11:10 33:6,7 34:6,8
BALLOTS 34:22
BASED 14:2 24:14 26:8
BEGIN 23:14
BEHALF 4:20 27:18 29:20
BENEFIT 16:18
BETTS 3:17 4:5,7,9 9:17, 10:22 11:13 12:9,17,22 13:6,24 21:23 23:20 24:24 28:1 31:19 33:14 35:4,18 39:7,10,14,18 40:10
BIPARTISAN 15:10
BIT 6:21
BLANK 26:11
BLEND 10:14
BLUSH 9:23 12:24 29:9
BOARD 3:2,5,9,13,16,24 4:6 5:16,17,23 6:3,5,12 7:7,22 8:11,13,24 9:1,4, 13,24 10:7,9,11 11:17 13:21 15:6 27:19 28:2,5 30:7,11,14 31:2,12,24 33:16,21 34:11 35:7 36:18 37:17
BOARD'S 5:3 11:1
BOTTOM 19:10
BRINGS 11:23
BROAD 4:14
BRUCE 3:14

BUN 14:10
BURCH 29:16,24
BUREAU 18:1
BURNWORTH 3:14,15 11:2,8,12,23 12:14,21 13:5 16:15 17:8,13 23:8 25:10,13 26:10,16,19 28:24 32:22 33:4,22 34:5, 36:23 37:5,21,23,24 38:17 40:11,14,24 41:11

C

CALL 3:1
CARD 17:16
CASE 7:20 12:10 15:22 17:2 20:16
CASES 16:19,22
CATEGORIES 4:14
CENTER 4:21 39:23
CERTIFICATION 33:19
CERTIFY 8:15,16 27:20 28:5
CETERA 32:18
CHAIR 28:8
CHAIRMAN 3:9,12 4:8 16:12 18:15 27:16 37:13 38:21 39:22 41:10
CHANCE 6:19 29:20 32:7
CHANGE 17:21
CHARGED 5:17
CHARTER 5:5,23 6:4 7:15 8:5,6, 9:7,21 11:6 24:21,24 27:21 31:24 33:2,13 38:23,24 39:10 40:4,8
CHECK 10:17
CHECKED 23:23
CHECKING 23:15
CHIME 21:22
CHOICES 7:16
CHRIS 3:16 4:8 39:6
CHRISTOPHER 29:16
CIRCULATOR 19:9 21:1 23:10 24:20 25:14
CIRCULATOR'S 24:4
CITY 4:3,17 5:4,14,15 6:1 7:9,10,11,12,15 8:1,5,6,7, 20,24 9:21,22 10:5, 11:6 12:23 13:8,19,22 15:23 16:1,5 19:20 24:18,23 27:21 29:8 30:4,9,12, 36:20,21 37:18,19 39:2,3
CLARIFICATION 31:21
CLARIFIED 30:11
CLARIFY 16:21 33:14 39:21
CLARITY'S 31:1
CLASSIFICATION 18:10
CLEAR 17:14 32:9,16 40:21
CLERK 5:15 6:6 7:9 10:10 13:19
CLIENT 32:7,8
CLOSE 16:18,23 35:6
CODE 5:8 11:15 33:9
COMFORTABLE 30:1
COMMENTS 14:12 18:11 36:12
COMPLETE 33:20
COMPLIANCE 28:15
COMPREHENSIVE 37:15
COMPUTER 38:10
CONCLUDED 41:18
CONDUCT 12:12,15
CONGLOMERATING 30:21
CONSIDERATION 9:4
CONSIDERED 20:4 28:20
CONSISTING 4:16
CONTINUE 17:13 34:17
CONVENE 11:17
COPY 17:7
CORRECT 7:4 12:17 16:8 18:22 20:13,16 27:8 28:9, 22,23,24 35:22 39:14,17 40:6
CORRECTLY 28:7
COUNCIL 5:15 6:6 7:9,11, 12,15 8:1,20 9:1 13:20 24:18 29:8 30:4 32:9,23
COUNSEL 27:19 29:17 30:19
COUNT 16:19 20:9
COUNTED 18:17 21:12, 13 23:1 40:16
COUNTER 15:8
COUNTING 20:14 25:7
COUNTRY 3:10
COUNTS 26:5
COUNTY 3:2,17 4:9 29:18
COUPLE 16:16
COURT 34:20
COURTS 34:13,21 35:3
CROGHAN 31:14 36:4
CROSSING 4:21 25:24 39:23
CUCKLER 3:10

D

DATABASE 15:13 17:4
DATABASES 18:2
DATE 33:8,15,17 34:12
DATES 7:3
DAY 31:8 34:18
DAYS 6:6 33:10,13 34:1,2
DEADLINE 33:6 34:22
DEAL 10:21
DECIDING 8:12,14
DEEM 11:7
DELAWARE 3:2 4:9 30:20
DEPENDING 8:24
DEPUTY 3:23 23:22 24:11 35:12
DESK 15:2
DETERMINATION 6:4, 20 7:8 9:15 13:18 24:12 30:22
DETERMINE 4:2 6:1,14 8:21 9:19 13:22
DETERMINED 6:17
DETERMINES 13:21 30:20
DETERMINING 5:18 8:19 11:18 12:19 24:9,13
DEVELOPER/ PROTESTOR'S 30:6
DEVELOPMENT 18:12 25:23 37:16 39:22
DIFFICULTY 35:2
DIRECTED 36:21 37:19
DIRECTLY 30:14
DIRECTOR 3:23,24 23:22 24:11 31:13 35:12
DISCUSSION 27:14 35:20 37:6,23 41:1
DISQUALIFY 19:12
DOCUMENTATION 17:18
DONALD 4:21
DRIVER'S 17:21
DUTY 27:22

E

EARLIER 28:1
EASY 25:6
ED 3:13
EFFECTIVELY 40:4
ELECTION 33:10
ELECTIONS 3:2,6,24 5:16,17 6:5 7:23 8:24 10:8,11 33:16 34:11
ELECTOR 17:15
ELECTORS 4:2 6:1,8 24:22 36:19,22 37:18 39:2
ENACT 7:20

ENTER 36:12
ENTERS 15:9
ENTERTAIN 9:9
ENTITLED 28:14
ESSENTIALLY 4:13
ESTABLISHED 30:24
EVENT 8:1
EVENTUALLY 35:3
EVERYBODY'S 17:15
EVERYONE'S 15:12
EVIDENCE 9:11
EXAMINE 5:24 9:13 27:20
EXCEEDING 26:2
EXCELLENT 31:17
EXHAUSTIVE 15:6
EXPERIENCE 34:11
EXPIRED 7:5
EXPLAIN 9:23
EXPOUND 13:10
EXTRA 19:11 34:2

F

FACED 33:5
FACT 21:1
FAMILIAR 33:23
FAST 32:8
FAVOR 37:8 38:2 41:3,12
FILE 15:12 16:7
FILED 4:17,20 5:14 6:15, 24 7:2 9:3 11:16 12:2,3,11 13:2 28:4 33:16
FILL 19:3
FINAL 7:23
FINISH 11:14
FIT 4:14
FOLKS 14:7 22:19 27:14
FOLLOW 18:5
FORM 8:3 18:21 20:11 26:13 28:18
FORUM 30:2,3
FORWARD 29:13
FOUND 19:2 29:22
FRAME 6:23 7:5
FRIDAY 3:3
FRONT 4:13 15:2
FUTURE 25:17 31:21

G

GAP 5:9
GAVE 18:1
GENE 31:13
GENERAL 34:3
GENERALLY 6:11
GIVE 10:17 14:1,20 18:7 26:21
GOOD 14:17 17:8
GOTCHA 38:15
GOVERNMENTAL 17:19
GREAT 15:16
GROUNDS 28:14 29:12
GUESS 3:6 14:19 16:15 27:13 35:2
GUIDANCE 20:23 33:12
GUIDE 5:6
GUIDELINES 5:10 18:20
GUYS 14:9 18:5

H

HAMBURGER 14:11
HAND-DELIVERED 35:23
HANDLED 32:1,2
HANDOUT 14:19 22:20
HAPPEN 34:19
HAPPENED 32:8
HEAD 35:9
HEADS 35:13
HEAR 14:8 21:4
HEARD 12:2 29:12
HEARING 11:17 12:12,15 13:4,7,15 16:21 28:14 29:21,23 30:11 31:21
HELD 13:7
HELPFUL 15:1 29:18,19 32:15,20
HELPING 31:19
HELVEY 3:13 9:16,18 10:20,23 11:3,10 13:11 14:24 18:23 19:1,17 20:10,14,19 21:18 22:5 23:18 24:17 25:3,14 26:7, 14,15,17,24 27:3,6,11 28:9,23 29:6 30:18 31:7 36:13 37:1,3,13 38:4,21 39:8,13,15,21,24 40:13, 15,21 41:9
HELVEY'S 13:1
HERRON 3:22 15:20 16:12 19:24 20:13,16,22 21:11,13 22:11,14 23:13, 19 25:4,9,18 26:20 27:1,5, 8 33:9,21 35:22 36:1,7 38:11,16
HIGHLIGHTS 14:20
HITS 15:2
HOLD 12:12
HOLLINS 31:11,13 33:1 34:4,10 35:1,23 36:4,9

I

ID 17:16 36:17 37:14 38:22
IDENTIFIED 31:6 36:16
IMPORTANT 33:23
INCLUDE 21:17 36:23
INCORRECT 28:17 31:4
INCORRECTLY 31:6
INFORMATION 17:24 18:2
INITIALLY 5:13 23:1
INITIATIVE 4:4 7:20 18:7, 11 22:20 25:22 37:14 38:24 39:9,16,17,18 40:1, 3
INITIATIVES 7:2
INN 14:11
INSTANCE 30:20
INTENT 35:15
INTENTION 28:10
INTERESTED 17:5
INTERMESH 10:13
INTERNAL 18:9
INTERPLAY 10:4
INTRODUCTIONS 3:7
INVALID 16:2,13 17:12 18:16 19:2 21:10,17,24 22:16 23:2,4 24:19,20
INVALIDATE 19:14 20:3 31:5 38:9
INVALIDATED 26:4 27:9
INVALIDATES 20:17
INVALIDATING 40:18
ISSUE 5:7 19:17 26:12 30:10
ISSUES 36:15
ITEM 4:1
ITEMS 8:7

J

JENNIFER 31:14
JOB 24:21
JOE 27:17
JOSH 3:23 14:24 17:7 18:6 33:5 35:8
JULY 7:1
JUNIOR 4:22

K

KARLA 3:22 14:23 15:15 33:5 35:8 38:6
KENNEY 4:22
KIND 4:23 13:12 15:4
KING 3:19 4:11

L

LACK 28:19

LAID 15:22

LAW 5:2,7,11 6:17 7:19,20 8:6 10:2,5,13 13:4,18 23:14 24:1, 31:13

LAY 4:23

LEAVE 31:7

LEFT 3:13 18:9

LEGAL 30:13

LICENSE 17:21

LIMITED 6:13 13:16 24:24

LINES 30:19,21

LIVE 15:23 17:19

LIVES 15:24

LLC 4:21 39:23

LOT 11:11 15:7

LOVE 36:1

M

MADE 19:6 24:12 28:17 37:2

MAJORITY 32:10

MAKE 6:20 9:14 10:10 13:17 15:16 17:14 22:21 26:23 29:2 30:7 36:13 40:10

MAKES 6:4 7:7 10:15

MAKING 29:18

MANAGER 15:9

MATCH 16:6, 17:17 18:3

MATTER 20:5

MECHANICALLY 15:1

MEET 8:5 12:4 32:7,23 34:22

MEETING 3:2,4,5 5:22 7:12 29:24 33:3 41:14

MEETS 33:1

MEMBER 3:13

MEMBERS 3:16 31:11 32:5

MENTION 34:23

MENTIONED 6:16

MERGE 17:3

MERGING 17:24

MERITS 31:22

MILITARY 33:24

MILLER 27:16,17 28:11 29:1,10 31:1,9 39:6 40:1, 2,6,7,20

MIND 11:23 17:15 32:13, 23

MOMENT 23:21

MONDAY 7:2,6 32:15,20

MORNING 14:11,14 28:16 31:13 36:10

MOTION 14:17 26:23 36:17 38:22 39:11 40:22

MOTION'S 37:2,22

MOTIONS 36:14

MOTOR 17:4 18:1

MOVE 17:22 18:6 22:9 25:19 38:24 41:9

N

NAME'S 4:8

NET 21:9

NORMAL 23:24

NOTATION 39:24

NOTE 16:12 18:8,15 20:2 21:7 23:14 25:6

NOTIFIED 30:23

NOTIFY 36:21 37:19 39:3

NULL 12:6

NUMBER 4:2 6:1,8 10:17 13:20 14:21,22 16:3,9 18:14 19:7,10,21 20:5 24:2,4 26:3,12,18 35:7 36:24 40:19

NUMBER'S 21:14

NUMBERED 20:6,7

NUMBERS 17:6 19:9 26:20,22 38:7,12,14

O

OCCUR 32:4

OCCURS 32:4

OFFICE 3:17,21,22 4:10 15:8 31:14 33:12

OHIO 5:7,8 23:14 33:9

ONE'S 35:2 39:12,13

OPEN 27:14

OPPORTUNITY 9:10 13:8 29:7 34:9

OPPOSED 37:10 41:5

OPTION 7:23

ORDER 3:3 23:13,14 30:12 38:6

ORDINANCE 32:2 40:5

ORDINANCES 32:2

OVERSEAS 33:24

P

PAGES 16:24

PAINS 15:16

PAPER 15:2 20:8 27:7

PARADIGM 20:19,20

PARAMETERS 15:21

PARENS 40:3

PART 11:2,3 18:16,18 19:2,14,23 20:18,21 21:9, 17 22:16 24:19 26:4 28:11 29:3 40:16,18

PARTS 22:7

PARTY 27:18

PASS 7:13 8:2 11:4

PASSING 8:20

PAUSE 38:20

PEASE 27:17

PEDALINE 3:23 14:4,18 15:5 16:8,11 18:8,22 22:3 25:12,21 26:8 35:17, 39:21

PERSPECTIVE 13:13

PETITION 4:16 5:24 6:2, 6,9 8:4 11:5,7 16:5 18:16, 18 19:2,19,23 20:6,11,18, 21 21:10 24:3,6,10,15,16, 28:19 36:17 37:14 38:22 40:3

PETITIONERS 16:19 29:17,21,24 30:2

PETITIONS 4:4,15,17 5:13,19 6:15,19 7:14,17, 22 8:8,15,16,22 9:2,12,20 14:2,8 16:13 19:5 26:4 27:13,21 28:3,6,12,18 29:3 31:4 32:10 38:7 40:16,18

PICK 35:24

PICKS 5:8

PIECE 27:6

PIECES 20:8

PLACE 6:12 19:11

PLACEMENT 10:12

PLAN 25:23 37:15 39:16, 23

PLANNED 18:11 36:5

PLAY 5:2

POINT 6:18 7:10 9:1,2,9, 11,15 12:13,18 13:13 16:15 17:8 32:11 40:9

POSITION 11:1,13 31:3

POSSIBILITY 32:19

POTENTIALLY 34:21

POWELL 4:3,18,21 5:14 6:2 7:10 9:21,22 12:3,8, 15,23 13:8 15:23 16:5 19:20 24:18, 25:23 29:8 30:9 31:14 34:5 36:20,21 37:18,19 38:23,24 39:2,3, 23 40:8

POWELL'S 10:5,6 40:4

PRACTICAL 35:1

PRACTICALLY 34:10

PRECINCT 17:20

PRECINCTS 28:18 30:21 31:4,5

PREMATURELY 12:11
PREPARE 29:21
PRESENT 9:11
PRESENTED 9:14 10:11 11:20 28:12 29:4 33:3 36:19
PREVIOUS 26:1
PREVIOUSLY 6:16 35:13,14
PRIDE 15:7
PRIMARY 5:5
PRINTED 34:22
PRINTER 34:13
PRINTERS 34:16
PRIOR 30:11 34:2,11
PROBLEM 25:4
PROCEDURALLY 4:24
PROCEDURE 5:3,12 6:11 9:6 13:13
PROCEED 13:22
PROCEEDINGS 38:20 41:17
PROCESS 15:6 20:11 31:20
PROHIBITED 28:2
PROJECTED 25:22
PROSECUTING 4:11,12
PROSECUTOR 29:18
PROSECUTOR'S 3:17, 21 4:10 33:12
PROTEST 4:19 9:5 11:16, 17,21 12:3,8,10,22 13:2, 28:3,15,17 29:11
PROTESTING 27:18
PROTESTORS 12:5
PROTESTS 9:3,10 12:1
PROVIDE 7:9 13:19
PROVIDED 5:14
PROVIDING 6:21
PUBLIC 34:3
PURPOSE 6:13
PURVIEW 24:17
PUT 12:11 15:21 20:8 38:6

Q

QUERY 16:15
QUESTION 8:17,19 11:24 15:15 17:14 32:22 33:5
QUESTIONS 31:15
QUICKLY 6:23 38:14

R

RAISED 8:10
RE-ENTERED 38:8,14
READ 5:19 24:20
READING 39:19
READINGS 32:3
READJUST 27:9
REASON 20:1,2 26:10 27:9 33:22
REASONS 26:5
RECALL 10:3
RECEIVE 32:15
RECEIVED 4:15 31:16
RECEIVING 6:7
RECENT 17:3
RECOMMENDATIONS 14:2,8
RECORD 30:8,17 35:11
RECORDS 36:17
RECTIFIED 16:20
REDO 25:9
REFEREND 7:19
REFERENDUM 4:3,16 6:24 7:19 14:5,22 16:5 36:15
REFILE 12:6
REFLECT 10:24
REGISTERED 27:10
REGISTRATION 15:13
REGULAR 33:3
REITERATE 27:24
REJECT 39:22
RELATED 28:17
REMEMBER 11:24
RENEW 29:2
REPEAL 37:16 39:7,12, 13,19 40:4
REPORT 19:20 27:2
REPORTS 25:5
REQUEST 34:6
REQUIRED 8:8 14:21 18:13 25:24 26:3 27:19 36:24
REQUIREMENT 18:13 25:24
REQUIREMENTS 8:4 23:16
REQUIRES 13:4
RERUN 26:20
RERUNNING 25:5
RESERVE 30:4
RESERVES 11:6
RESIDENTS 34:6
RESIDENTS' 16:6
RESOLUTION 32:1
RESOLVED 34:7,15 35:3
RESPECT 30:8
RESPECTFULLY 13:10
RESPONSE 37:7,11 41:2, 6
REST 36:6
RESTS 9:20
RESULTS 17:11
RETURN 6:5 7:22,24
RETURNED 8:23
REVIEW 6:19 13:9 15:1 27:20 30:12,13
REVIEWED 14:3 15:13, 15 30:5
REVIEWING 12:18
REVIEWS 15:4,10
REVISED 5:8 11:15 33:9
RIPE 9:4,5
RULES 32:4
RULING 11:4
RUN 38:11,13

S

SAKE 31:1 35:11
SATER 27:17
SAVING 30:1
SCHEME 9:6
SECONDED 37:22
SECRETARY 18:21
SEND 32:11 34:1,12,15 35:24
SENSE 10:15
SEPARATE 36:14
SERVING 3:10
SET 5:10 9:6,7 30:19
SEYMOUR 27:17
SHAKING 35:9,13
SHALOSKY 3:21 19:5 21:16,21,24 22:6,16,23 23:3,6,9 38:6,13
SHAWN 3:8
SHORTHAND 40:2
SHOW 17:18
SIGN 15:24
SIGNATURE 15:11 16:16,20 19:11,15 21:3 22:15
SIGNATURES 5:18,24 6:14 7:8 8:13, 12:20 13:17,21 14:14,21 15:3,12 16:4,6,22,24 17:11 18:13, 17 19:13,21,22 20:4,8,15, 17,21 21:9,20 22:17 23:9, 15,23 24:3,6,10,14,22 26:1,2,6 28:22 31:5 32:14 35:8 36:19,22 37:17,20 39:1,4 40:9,17
SIGNED 4:3 6:2,9

SIGNERS 20:2
SIGNS 19:8
SILENT 5:6
SIMILAR 26:4
SIMPLY 8:18 13:2
SORT 30:7
SOURCES 5:11
SPEAK 5:7 29:20 35:19
SPEAKING 34:10 35:12
SPECIAL 3:4,5
SPECIALS 32:24
SPECIFIC 8:7
SPECIFICALLY 5:20,23 11:15
SPELL 3:22
SPELLS 17:9,10
SPOKE 38:19
STAFF 6:19 14:1,8 24:12 31:17 36:20 37:19 39:2
STAGE 5:21
STANDARD 26:1,9 28:15
START 14:4 36:15
STARTED 10:3 26:17
STATE 6:17 8:6 10:2,5,13 13:3,18 18:21 24:1,13 26:12 28:13, 31:16
STATE-ISSUED 17:16
STATED 24:20
STATEMENT 6:3,7 7:9 10:24 11:22 13:1,19 24:5 30:7 35:6,15
STATES 3:11
STATEWIDE 18:2
STATEWIDES 17:4
STATUTE 10:17 20:7
STAY 22:19
STEP 24:18 38:4
STEVENS 3:1,8,16,20 13:24 14:6 16:3,9 17:5,9 18:5,19,24 21:8,12,14,18, 22 22:4,8,13,18,24 23:5, 12 25:2,8,16,19 26:22 27:12 28:10 29:5,14,23 31:10 36:11 37:2,6,8,10, 12,22 38:2 39:5 40:23 41:1,3,5,7,12,14
STRETCH 30:16
STRICT 28:15
STUFF 15:4 34:12,15 38:1
SUBSTANCE 20:12
SUFFICIENCY 7:13,21 8:3,21 11:5, 12:19 13:9, 16,23 27:20
SUFFICIENT 11:7
SUGGEST 29:6
SUM 13:15
SUMMATIVE 10:24
SUPPOSE 7:23
SUSPENSION 32:3
SWEET 14:10
SYNOPSIS 18:7
SYSTEM 15:9,21 16:1

T

TAKES 12:4
TAKING 31:2
TALKING 10:4
TARGET 18:3 33:8
TASK 19:19
TEAM 15:10
TEN 6:6
TEN-DAY 6:22 7:4
TEND 25:2
TERMS 5:2 8:4,5 10:1 13:13 24:9 34:19 35:6,7
TESTIMONY 9:11
TEXT 28:19
THEORETICALLY 24:7
THING 15:20 19:12 35:4
THINGS 4:13 5:1 8:9 34:14
THOUGHT 34:23
THREW 19:8
TIES 33:4
TIME 6:22 7:4 12:8 17:21 23:16 29:2 30:3,14 31:12 36:9
TIMELINE 12:7 32:21
TIMELINES 12:1
TIMES 15:14 16:23
TITLE 28:19
TODAY 3:7,11 4:14 5:6, 21,22 6:12 8:9,10,12 9:5 10:21 21:20 28:6,20 32:14,20 35:16
TODAY'S 3:3 13:15
TOLD 33:17
TOP 18:9
TOTAL 14:21,22 16:9 40:19
TRACI 3:21 15:8 19:3 22:22
TRANSMITTED 5:15
TRIGGER 16:1
TUESDAY 31:23 32:5,10, 16

U

UH-HUH 21:11
UNDERSTAND 21:8 23:18 27:12 31:2 34:4
UNDERSTANDING 14:13 28:4,7,20 30:18
UNDERSTOOD 31:9 40:20
UNIFORMED 33:24
UNIT 17:19
UNITED 3:11
UOCAVA 33:23
UPDATED 16:24

V

VACATION 36:5
VALID 9:20 13:22 16:3,14 18:13,17 19:13,21,22 20:4 21:1,3,9 22:17 23:3 35:8 36:22 37:20 40:17
VALIDATE 19:19
VALIDATED 15:3 36:18 37:17 39:1,3
VALIDATING 20:10 25:5
VALIDITY 5:18 6:14,16 7:13,21 8:2,19,21 11:19 12:20 13:9,17,23 14:14 21:19 24:10,14 27:21
VEHICLE 17:4
VEHICLE'S 18:2
VERBAL 35:10
VERIFY 24:22
VICE-CHAIRMAN 3:9 23:20 31:11
VOID 12:6
VORYS 27:17
VOTE 14:13,17 17:16,22 34:2
VOTED 41:8
VOTER 15:12 18:1
VOTING 14:15 33:24

W

WANTED 4:23
WARD 30:19,21,23
WARDS 30:9
WEDNESDAY 33:11
WEEK 6:24
WEEKS 32:17 33:1
WITNESSED 21:2 24:8
WORDS 17:20
WORK 3:15 34:17 36:1,2 38:10
WORKING 34:14
WOW 3:3
WRITE 19:9
WRITTEN 24:4 28:3

WRONG 21:15
WROTE 23:11 26:15

Y

YELLOW 22:1
YESTERDAY 29:22

Z

ZONING 18:12 37:15 39:16

Exhibit 2-D

CITY COUNCIL MEETING, CITY OF POWELL, OHIO

RESOLUTION 2014-16, 2014-17, AND ORDINANCE 2014-41

PROCEEDINGS

August 05, 2014

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6 CITY COUNCIL MEETING
CITY OF POWELL, OHIO
7
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16
17 EXCERPT OF PROCEEDINGS
18 TAKEN BEFORE ME, ANGELA R. STARBUCK, RPR, CRR,
19 CCP, A NOTARY PUBLIC IN AND FOR THE STATE OF
20 OHIO, AT VILLAGE GREEN MUNICIPAL BUILDING, 47
21 HALL STREET, POWELL, OHIO 43065, ON AUGUST 5,
22 2014, AT 7:39 P.M.
23
24

1 CITY COUNCIL MEMBERS IN ATTENDANCE:
2 BRIAN LORENZ, VICE MAYOR
3 FRANK BERTONE
4 MIKE CRITES
5 TOM COUNTS
6 RICHARD CLINE
7 JON BENNEHOOF
8
9
10 GENE HOLLINS, CITY DIRECTOR
11 STEPHEN LUTZ, CITY MANAGER
12 SUSIE ROSS, CITY CLERK
13
14
15
16
17
18
19
20
21
22
23
24

1 * * * *
2 MR. LORENZ: AT THIS TIME, WE'LL MOVE TO
3 ITEM 6, WHICH IS EXECUTIVE SESSION IN ACCORDANCE
4 WITH OHIO REVISED CODE SECTION 121.22(G)(3),
5 PENDING LITIGATION.
6 SO THE AUDIENCE IS AWARE, AT THIS TIME
7 COUNCIL WILL MOVE INTO OUR CONFERENCE ROOM TO
8 DISCUSS PENDING LEGAL MATTERS. WE'LL COME BACK
9 OUT WHEN WE'RE FINISHED WITH OUR DISCUSSION AND
10 PICK UP ON THE AGENDA WITH ITEM 7.
11 MR. BENNEHOOF: MR. VICE MAYOR, FOR
12 PURPOSES OF THE RECORD, I WOULD MOVE TO ADJOURN
13 INTO EXECUTIVE SESSION IN ACCORDANCE WITH OHIO
14 REVISED CODE TO DISCUSS PENDING LITIGATION.
15 MR. CURTIS: SECOND.
16 MR. LORENZ: I HAVE A MOTION AND SECOND.
17 PLEASE CALL THE ROLE, SUSIE.
18 MS. ROSS: BRIAN LORENZ?
19 MR. LORENZ: YES.
20 MS. ROSS: JON BENNEHOOF?
21 MR. BENNEHOOF: YES.
22 MS. ROSS: FRANK BERTONE?
23 MR. BERTONE: YES.
24 MS. ROSS: RICHARD CLINE?

1 MR. CLINE: YES.
2 MS. ROSS: TOM COUNTS?
3 MR. COUNTS: YES.
4 MS. ROSS: MIKE CRITES?
5 MR. CRITES: YES.
6 MR. LORENZ: WE'RE ADJOURNED INTO
7 EXECUTIVE SESSION. THANK YOU FOR YOUR PATIENCE.
8 (THEREUPON, THE COUNCIL WAS IN EXECUTIVE
9 SESSION FROM 7:40 P.M. TO 8:30 P.M.)
10 MR. HOLLINS: WHILE COUNSEL'S
11 RECONVENING, WE APOLOGIZE, FIRST OFF, FOR THE
12 LENGTH OF OUR EXECUTIVE. THAT'S LITERALLY,
13 SINCE THE PETITION HAVE BEEN FILED, THAT'S THE
14 FIRST TIME I'VE HAD AN OPPORTUNITY TO SPEAK WITH
15 COUNCIL ABOUT ANYTHING RELATING TO THE
16 PETITIONS. WE HAVEN'T BEEN TOGETHER SINCE THEN.
17 SO, AGAIN, PLEASE ACCEPT OUR APOLOGIES FOR THE
18 LENGTH OF THE EXECUTIVE SESSION.
19 I THINK WE'RE WAITING FOR ONE MORE
20 COUNCIL MEMBER AND WE'LL GET ROLLING HERE AGAIN.
21 SO THANKS FOR YOUR PATIENCE.
22 (PAUSE IN PROCEEDINGS.)
23 MR. LORENZ: OKAY. THANKS AGAIN. WE'RE
24 BACK IN OUR REGULAR AGENDA. LET US NOW MOVE TO

1 ITEM 7.
2 MR. LUTZ: BEFORE YOU DO THAT, CAN WE
3 GET A MOTION TO RECONVENE IN REGULAR SESSION.
4 MR. CLINE: SO MOVED.
5 MR. BENNEHOOF: SECOND.
6 MR. LORENZ: PLEASE CALL THE ROLE.
7 MS. ROSS: BRIAN LORENZ?
8 MR. LORENZ: YES.
9 MS. ROSS: JON BENNEHOOF?
10 MR. BENNEHOOF: YES.
11 MS. ROSS: FRANK BERTONE?
12 MR. BERTONE: HERE.
13 MS. ROSS: RICHARD CLINE?
14 MR. CLINE: YES.
15 MS. ROSS: TOM COUNTS?
16 MR. COUNTS: YES.
17 MS. ROSS: MIKE CRITES?
18 MR. CRITES: YES.
19 MR. LORENZ: OKAY. THANK YOU. ITEM 7
20 IS RESOLUTION 2014-16, A RESOLUTION DETERMINING
21 SUFFICIENCY AND VALIDITY OF A REFERENDUM
22 PETITION TO SUBJECT ORDINANCE 2014-10 TO
23 REFERENDUM.
24 GENE, DO YOU WANT TO GIVE US ANY INFO ON

http://www.yeslaw.net/help

1 THIS?
2 MR. HOLLINS: YEAH, THANK YOU,
3 MR. CHAIRMAN -- OR VICE-CHAIRMAN -- MEMBERS OF
4 COUNCIL.
5 WHAT YOU HAVE BEFORE YOU, THE NEXT TWO
6 ITEMS ARE RESOLUTIONS PURSUANT TO YOUR CHARTER.
7 YOUR CHARTER PROCESSES FOR REFERENDUM AND
8 INITIATIVE PETITIONS WITH RESPECT TO ORDINANCES
9 ARE SET FORTH IN PART 6, AND WITH RESPECT TO
10 EACH FOR THE REFERENDUM PETITION AND AN
11 INITIATIVE PETITION, PURSUANT TO THE CHARTER,
12 THE FIRST THING YOU DO IS RECEIVE THE REPORT
13 FROM THE BOARD OF ELECTIONS AS TO THE NUMBER OF
14 SIGNATURES THAT THEY FOUND TO BE VALID, AND MAKE
15 A DETERMINATION -- AND YOUR CHARTER SAYS BY
16 RESOLUTION -- WHETHER EACH PETITION IS VALID AND
17 SUFFICIENT.
18 THE CHARTER THEN SAYS IF THE PETITION --
19 AND IN THE CASE OF THE INITIATIVE -- THE
20 PROPOSED ORDINANCE ARE DETERMINED BY COUNCIL TO
21 BE SUFFICIENT AND VALID, COUNCIL THEN IS
22 BASICALLY -- STEP 2 READS, AND ACTS UPON THE
23 SAME. AND YOU CAN EITHER REPEAL THE EARLIER
24 ORDINANCE OR CHOOSE NOT TO REPEAL IT OR FAIL TO

1 TAKE ANY ACTION WHATSOEVER. BUT THAT IS STEP 2.
2 THE FIRST THING YOU DO IS LOOK AT THESE
3 RESOLUTIONS AS TO WHETHER IT'S SUFFICIENT AND
4 VALID.
5 THE OTHER THING BEFORE YOU THIS EVENING
6 RELATED IS THE ORDINANCE -- THE ORDINANCE IS
7 WITH RESPECT TO THE CHARTER AMENDMENT. YOUR --
8 ACTUALLY, I'M SORRY, THE OHIO CONSTITUTION SAYS
9 THAT WHEN THE CITIZENS INITIATED THE CHARTER
10 AMENDMENT, WE HAVE TO PASS AN ORDINANCE TO PLACE
11 THAT BEFORE THE VOTERS. SO YOU DO HAVE AN
12 ORDINANCE IN YOUR PACKET FOR THAT PURPOSE.
13 UNDER OUR CHARTER, ORDINANCES DO GO TO
14 TWO READINGS, NOT THREE READINGS, BUT TWO
15 READINGS AT DIFFERENT MEETINGS, SO WE'LL HAVE
16 THE FIRST READING OF THAT ORDINANCE THIS
17 MEETING. IT'LL BE UP FOR SECOND READING ON THE
18 19TH AT YOUR NEXT MEETING.
19 I DID SPEAK -- HAVE THE OPPORTUNITY TO
20 SPEAK WITH COUNSEL FOR BOTH THE PETITIONERS AND
21 FOR THE LANDOWNER AND INDICATED TO THEM THAT
22 BECAUSE THE ORDINANCE WAS GOING TO A SECOND
23 READING AND BECAUSE WE ONLY HAVE SIX MEMBERS
24 THIS EVENING AND WE NEED FOUR POSITIVE VOTES ON

1 EACH RESOLUTION TO FIND THEM SUFFICIENT AND
2 VALID, THAT ONE THING WE MAY WANT TO CONSIDER AS
3 COUNCIL THIS EVENING IS TABLING THE RESOLUTIONS
4 AND TAKING ALL THREE PIECES OF LEGISLATION UP ON
5 THE 19TH.
6 IT WOULD ALSO GIVE US AN OPPORTUNITY --
7 BY THE WAY, WE JUST RECEIVED THE POSITION
8 STATEMENT ON BEHALF OF THE PETITIONERS WHO HAVE
9 NOT HAD MUCH OF AN OPPORTUNITY TO DO ANY REVIEW
10 OR ANALYSIS OF THE ARGUMENTS. WE'VE HAD THE
11 FILING BY THE LANDOWNER FOR A LITTLE BIT LONGER,
12 AND WE DISTRIBUTED WHAT WE RECEIVED TO YOU, BUT
13 I KNOW IT'S BEEN A STRUGGLE TO GET ALL THIS
14 FILED AND OUT TO YOU GUYS IN A TIMELY MANNER.
15 SO ONE OPTION OBVIOUSLY THAT'S BEEN
16 DISCUSSED WITH COUNSEL FOR EVERYONE CONCERNED
17 WOULD BE TO TABLE THE RESOLUTIONS THIS EVENING
18 AND TAKE ALL THIS MATTER UP ON THE 19TH. THE
19 TWO RESOLUTIONS AND ORDINANCE WOULD BE RIPE FOR
20 YOUR CONSIDERATION AT THAT POINT, AND IF THERE
21 WAS ANY FURTHER RESEARCH YOU WOULD LIKE TO
22 DIRECT MY OFFICE TO DO, WE CERTAINLY COULD DO
23 THAT IN THE NEXT TWO WEEKS, AS WELL.
24 DOES THAT HELP?

1 MR. BENNEHOOF: GENE, ARE THERE ANY
2 TIMELINE CONSIDERATIONS THAT POTENTIALLY
3 DELAYING THIS UNTIL THE NEXT SESSION WOULD CAUSE
4 A PROBLEM WITH ANY OF THE FILINGS OR ANY OF
5 THAT?
6 MR. HOLLINS: THANK YOU FOR ASKING THAT
7 QUESTION, MR. BENNEHOOF. I SHOULD HAVE COVERED
8 THAT. WE WERE ALL UP AT THE BOARD OF ELECTIONS
9 WHEN THEY WERE ACTING ON -- AT THEIR MEETING
10 WHERE THEY SENT US THE NUMBER OF VALID
11 SIGNATURES -- WHAT THEY FOUND TO BE VALID
12 SIGNATURES -- AND I DID HAVE AN OPPORTUNITY TO
13 MEET WITH THE BOARD OF ELECTIONS STAFF AND
14 COUNSEL AND WENT OVER THE TIMELINES WITH THEM
15 AND TOLD THEM THERE WAS A POSSIBILITY THAT AT
16 LEAST ONE OF THESE MEASURES WE COULDN'T ACT ON
17 UNTIL THE 19TH AND THE EARLIEST WE COULD GET THE
18 WHOLE BUNDLE OF STUFF BACK TO THEM WOULD BE
19 AUGUST 20TH, WOULD THAT LEAVE THEM ENOUGH TIME.
20 AND THEY SAID THEY DON'T PUBLISH A
21 DROP-DEAD DATE OR A PRINT DATE -- THEY DON'T
22 REALLY PRINT BALLOTS ANYMORE, THEY'RE ALL
23 ELECTRONIC, BUT THEY SAID IT WOULD LEAVE
24 ESSENTIALLY AN ENTIRE MONTH, WHICH IS SUFFICIENT

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1 TIME FOR THEM TO HAVE THEIR BOARD OF ELECTIONS
2 HEARING ON THE PROTEST, OR WHAT WE ASSUME WOULD
3 BE A PROTEST HEARING, AND AS WELL RUN IT THROUGH
4 THE SUPREME COURT, WHICH HAS AN EXPEDITED
5 ELECTIONS HEARING PROCESS FOR THINGS LIKE THIS,
6 AND GET IT BACK TO THEM BY THEIR DEADLINE.
7 SO IT WOULD NOT CAUSE A TIMING ISSUE
8 SUCH THAT IF IT ULTIMATELY IS ON THE NOVEMBER
9 BALLOT FOR SOME REASON IT WOULDN'T MAKE THE
10 DEADLINE FOR THE NOVEMBER BALLOT.
11 BUT THANKS FOR THE QUESTION.
12 MR. BENNEHOOF: THANK YOU.
13 MR. CLINE: MR. VICE MAYOR, IF I MIGHT,
14 I RECEIVED THE PETITIONERS' LEGAL BRIEF, FOR
15 LACK OF A BETTER WAY TO DESCRIBE IT, BY E-MAIL
16 ON MY PHONE ABOUT 6:00 THIS AFTERNOON. I WAS IN
17 COURT UNTIL 6:00. SO I WOULD BE VERY
18 UNCOMFORTABLE RULING ON THE MERITS WITHOUT
19 HAVING READ THAT SUBMISSION IN DETAIL. I THINK
20 IT'S INHERENTLY UNFAIR TO THE PETITIONERS FOR ME
21 TO MAKE A DECISION WHEN I HAVEN'T EVEN READ
22 THEIR PETITION PAPER YET.
23 MR. EBERSOLE: IT JUST SAYS YOU NEED TO
24 VOTE ON THE FORM OF THE PETITION.

1 MR. CLINE: CAN YOU HOLD ON A SECOND.
2 HAVING SAID THAT, WE HAVE A ROOM FULL OF
3 PEOPLE HERE THAT I'M SURE ARE NOT INTERESTED IN
4 THE LATER ITEMS ON THE AGENDA, HERE FOR THESE
5 ITEMS, AND IF WE ARE GOING TO DELAY UNTIL TWO
6 WEEKS, WHICH I PERSONALLY WOULD ASK THAT WE DO,
7 I WOULD ASK THE CHAIR TO ALLOW ANYONE WHO'S HERE
8 TONIGHT WHO DOES NOT INTEND TO BE HERE IN TWO
9 WEEKS AN OPPORTUNITY TO ADDRESS COUNCIL SO WE
10 CAN HEAR WHAT THEY SAY.
11 BECAUSE I THINK IT'S ALSO UNFAIR TO
12 THESE PEOPLE TO INVITE THEM TO COME OUT TO TALK
13 TO US TONIGHT AND SAY, OH, WE DIDN'T REALLY MEAN
14 IT, COME BACK IN A COUPLE WEEKS.
15 MR. LORENZ: NO, I'D AGREE WITH THAT A
16 HUNDRED PERCENT, AND I WAS THINKING ALONG THE
17 SAME LINES. AND GENE MADE THE PARTICULAR POINT
18 THAT WE ARE MISSING ANOTHER MEMBER, TOO, SO I
19 WOULD ENCOURAGE -- WE'LL OPEN IT UP TO PUBLIC
20 COMMENT, BUT ANYONE THAT CAN BE HERE IN TWO
21 WEEKS -- AND I KNOW HOW HARD IT IS, I HAD TO GET
22 **A BABY-SITTER TO COME TO THE MEETING MYSELF --**
23 **IF YOU WANT TO COME UP AND COMMENT WHEN WE CALL**
24 **FOR IT, I ENCOURAGE YOU TO DO SO IF YOU'RE NOT**

1 **GOING TO BE HERE.**
2 **WE'RE GOING TO TRY AND LIMIT THE**
3 **COMMENTS TO THREE MINUTES PER PERSON BECAUSE**
4 **THERE'S A LOT OF PEOPLE THAT WANT TO COMMUNICATE**
5 **THEIR THOUGHTS AND FEELINGS. AND IF YOU CAN**
6 **ATTEND AGAIN -- BECAUSE IT SOUNDS LIKE COUNCIL**
7 **PROBABLY WILL TABLE THIS BASED ON THE -- YOU**
8 **KNOW, THE LATE COMING OF ALL THE INFORMATION,**
9 **AND TO HAVE AN EXTRA VOTING MEMBER HERE, SO JUST**
10 **KEEP THAT IN MIND. SO UNLESS THERE'S ANY OTHER**
11 **QUESTIONS -- TOM?**
12 MR. COUNTS: I JUST WANT TO MAKE CLEAR
13 THAT FOR THE PETITIONERS' COUNSEL AND
14 LANDOWNER'S COUNSEL, WE WOULD NOT BE LOOKING FOR
15 THEM TO BE MAKING ANY STATEMENTS TONIGHT BUT
16 THOSE STATEMENTS WOULD BE MADE AT THE NEXT
17 MEETING AND WE WOULD JUST BE TAKING PUBLIC
18 COMMENT.
19 MR. LORENZ: THAT'S CORRECT. YES.
20 MR. COUNTS: AND SO IT SEEMS TO ME THAT
21 WE SORT OF NEED TO HAVE A THUMB'S UP, THUMB'S
22 DOWN, BECAUSE I WOULD HATE TO HAVE A VOTE TO
23 TABLE AND THEN ALL OF A SUDDEN THERE BE A CHANGE
24 OF HEART AND NOT NECESSARILY HAVE A FULL

1 DISCUSSION.
2 MR. LORENZ: FAIR ENOUGH. SO LET'S
3 MAYBE A THUMB'S UP, THUMB'S DOWN IF WE'RE IN
4 FAVOR --
5 MR. CLINE: I GUESS PROCEDURALLY I'LL
6 MOVE TO TABLE RESOLUTION 2014-16 FOR OUR NEXT
7 REGULARLY SCHEDULED MEETING, AND THEN IN THE
8 DISCUSSION OF THAT -- IF THERE'S A SECOND --
9 MR. BERTONE: SECOND.
10 MR. CLINE: -- THEN WE COULD TAKE PUBLIC
11 COMMENT AND --
12 MR. COUNTS: OKAY. THAT'S FINE. YEAH.
13 MR. LORENZ: SO WE HAVE A MOTION TO
14 TABLE AND A SECOND. ANY DISCUSSION ON THE
15 MOTION?
16 MR. CLINE: I'D ASK THAT YOU OPEN IT TO
17 PUBLIC COMMENT.
18 MR. LORENZ: SO, SUSIE, BEFORE WE CALL
19 THE ROLE, I'D INVITE ANYONE WHO HAS COMMENTS
20 ON -- ON THIS PARTICULAR RESOLUTION TO COME UP
21 AND ADDRESS COUNCIL DIRECTLY. PLEASE STATE YOUR
22 NAME AND YOUR ADDRESS FOR THE RECORD. PLEASE --
23 IF YOU CANNOT BE HERE OR DON'T PLAN TO BE HERE
24 AT THE MEETING, I'D ENCOURAGE YOU TO COME UP.

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1 OTHERWISE, I WOULD ENCOURAGE YOU TO HOLD YOUR
2 THOUGHTS. AND WE DO TAKE WRITTEN COMMENT, AS
3 WELL, THROUGH E-MAIL.
4 SO ANYONE WHO IS INTERESTED IN
5 COMMENTING TONIGHT, PLEASE APPROACH THE PODIUM.
6 THANK YOU.
7 MR. EBERSOLE: IN THE CHARTER
8 AMENDMENTS --
9 MR. LORENZ: YOUR NAME AND ADDRESS, SIR?
10 MR. EBERSOLE: I'M SORRY. I'M BRIAN
11 EBERSOLE, 215 SQUIRES COURT. IN THE CHARTER
12 AMENDMENT, 6002 AND 6004, IT SAYS THAT COUNCIL
13 WILL ACT FORTHWITH, MEANING THE NEXT COUNCIL
14 MEETING. THE REASON THAT YOU ACT SO QUICKLY IS
15 BECAUSE YOU'RE JUST LOOKING AT THE FORM OF THE
16 PETITION. IS IT -- IS THERE ANY ISSUE --
17 TECHNICAL ISSUE WITH THE FORM? THERE'S NO
18 DISCUSSION THAT NEEDS TO BE WITH ANY SUBSTANCE
19 OR -- THERE'S NO REASON TO TABLE IT. IT'S
20 EITHER WE FILLED OUT THIS PETITION CORRECTLY OR
21 WE DIDN'T. SO I MEAN, THEREFORE, WE'RE LOOKING
22 FOR COUNCIL TO ACT TODAY OR WE'RE LOOKING TO
23 TALK ABOUT IT IN COURT NEXT WEEK.
24 MR. LORENZ: OKAY. THANK YOU.

1 AUDIENCE MEMBER: I AGREE.
2 AUDIENCE MEMBER: I AGREE.
3 (APPLAUSE.)
4 MR. LORENZ: ANY OTHER COMMENTS? SIR?
5 MR. HARTLY: HI, IT'S DAVID HARTLY, 150
6 GLEN ABBY COURT, AND I THINK WHAT WE WOULD --
7 WHAT WE'VE ALL BEEN TALKING ABOUT IS FULL
8 DISCLOSURE AND I THINK WE'VE ALL BEEN OPEN ABOUT
9 WHAT WE THOUGHT SHOULD BE DONE. WE'VE SPOKEN
10 OUR VIEWS, WE'VE COME TO THE MEETINGS. THE FACT
11 THAT THESE PETITIONS WERE GATHERED IN SUCH A
12 SHORT PERIOD OF TIME -- AND YOU DIDN'T HAVE TO
13 PULL ANY TEETH, BELIEVE ME. PEOPLE EAGERLY
14 SIGNED UP.
15 I DON'T UNDERSTAND WHY THERE SHOULD BE
16 ANY DELAY. I BELIEVE BY THE WILL OF THE PEOPLE,
17 THE VOTE OF THE PEOPLE, THIS IS QUITE OBVIOUS
18 WHAT WE'VE BEEN DEALING WITH. WE'VE HAD A LOT
19 OF PATIENCE, I THINK, WHEN YOU THINK ABOUT IT.
20 FOLKS -- I MEAN, IN FULL DISCLOSURE, I
21 GREW UP IN MARION, OHIO, UP THE ROAD, WORKING
22 CLASS TOWN. I CAN GUARANTEE YOU IF THIS HAD
23 HAPPENED IN MARION, THE CHIEF MIGHT HAVE HAD TO
24 BRING IN EXTRA SECURITY BECAUSE IT WOULD NOT GO

1 DOWN WELL TO TRY AND SAY YOU'RE GOING TO PULL
2 SOME SORT OF ROUTINE WHERE SOMEHOW OR ANOTHER WE
3 HAVE THE PETITIONS AND WE'RE NOT SURE THAT
4 THEY'RE REALLY CORRECT. I DON'T KNOW WHAT --
5 HOW MORE CORRECT THEY COULD BE.
6 THIS WAS DONE VERY -- IN A SHORT PERIOD
7 OF TIME. WE HAVE -- NO ONE HERE THAT I'VE
8 HEARD, AND THE MEETINGS THAT I'VE BEEN TO, IS
9 AGAINST DEVELOPMENT. WE'RE ALL REASONABLE
10 PEOPLE, WE BELIEVE IN REASONABLE DEVELOPMENT.
11 WE JUST DON'T WANT DEVELOPMENT THAT WILL CHANGE
12 THE COURSE OF OUR COMMUNITY. JUST LIKE IF
13 SOMEBODY TRIED TO PROPOSE A DIFFERENT FAMILY
14 STYLE HOME OR QUIET ZONES IN THE ARENA DISTRICT,
15 PEOPLE WOULD SAY, IT'S NOT WHAT WE WANT.
16 AND I BELIEVE I STATED IN FRONT OF THIS
17 GROUP OR THE PLANNING GROUP THAT, YOU KNOW, THIS
18 COMMUNITY TENDS TO BE A LITTLE MORE CONSERVATIVE
19 THAN MOST, BUT YOU HAVE A COMMUNITY LIKE MALIBU,
20 CALIFORNIA, WHICH IS A VERY LIBERAL COMMUNITY,
21 AND THEY HAVE THE MOST CONSERVATIVE ZONING
22 RECORDS. THAT'S WHAT THE CITIZENS OF THAT
23 COMMUNITY WANT. THERE IS NO DEVELOPMENT.
24 THAT'S WHAT THEY'VE STATED THROUGH PETITIONS AND

1 SO FORTH.
2 AND THAT'S WHAT WE STATE. THIS IS WHAT
3 WE WOULD LIKE TO HAVE, A COMMUNITY AS WE'VE
4 KNOWN IT. I WALKED TO THIS MEETING SIMPLY
5 BECAUSE IT'S EASIER THAN TO DEAL WITH THE
6 TRAFFIC.
7 A COUPLE OTHER THINGS THAT HAVE COME TO
8 MIND IN THAT WE'VE BEEN SORT OF LECTURED TO
9 ABOUT DEMOGRAPHICS AND SO FORTH, WHEN I THINK
10 WE'RE ALL PRETTY FAMILIAR WITH WHAT'S GOING ON
11 IN THE WORLD AND WHAT OUR COMMUNITY'S ABOUT AND
12 WHAT IT WILL BE ABOUT. AND WE'VE EVEN HEARD
13 FROM PEOPLE ON COUNCIL THAT THIS PLAN IS 20
14 YEARS OLD. OKAY, 20 YEARS OLD AND IT HASN'T
15 BEEN UPDATED. AND NOW WE'RE TRYING TO THROW
16 STUFF IN AT THE LAST MINUTE TO -- I'M NOT SURE
17 WHAT.
18 BUT 20 YEARS AGO, I ACTUALLY WORKED IN
19 WASHINGTON, D.C. AND WE DIDN'T HAVE CELL PHONES
20 AND WE DIDN'T HAVE E-MAIL. NOW, 20 YEARS AGO,
21 WHEN YOU THINK ABOUT IT, IF YOU HAD A BUSINESS
22 PLAN THAT WASN'T UPDATED IN 20 YEARS, HOW
23 BACKWARDS WOULD THAT BE? AND YET FOR SOME
24 REASON OR ANOTHER, WE'RE TOLD THAT WE HAVE TO

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1 **REACT TO A PLAN THAT WAS MADE A LONG TIME AGO.**
2 MR. LORENZ: OKAY. I'M GOING TO HAVE
3 TO --
4 MR. HARTLY: OKAY.
5 MR. LORENZ: -- ASK YOU TO WRAP IT UP.
6 MR. HARTLY: I'M WRAPPING IT UP. SO
7 WHAT I'M JUST TRYING TO SAY IS WE HERE HAVE
8 VOICED OUR OPINIONS VERY QUICKLY, HONESTLY,
9 OPENLY, POLITELY, AND WE THINK THAT WE'VE DONE
10 WHAT A DEMOCRATIC MOVEMENT DOES; WE'VE PRESENTED
11 PETITIONS IN A LEGAL FASHION AND A TIMELY
12 FASHION AND WE WOULD LIKE THAT VOTED UPON FOR
13 THE WILL OF THE CITIZENS. BECAUSE I THINK IT'S
14 VERY CLEAR WHAT THE VOTE WOULD BE. THANK YOU.
15 MR. LORENZ: THANK YOU, SIR. ANY OTHER
16 COMMENTS?
17 (APPLAUSE.)
18 MR. LORENZ: AND, AGAIN, THIS IS
19 RESOLUTION 2014-16, OKAY, THIS IS THE REFERENDUM
20 PETITION. WE'RE NOT TALKING ABOUT THE
21 COMPREHENSIVE PLAN.
22 MR. HAPPENSACK: OKAY. TOM HAPPENSACK,
23 I'M ONE OF THE PETITIONERS. FRANKLY, THE CITY
24 HAS HAD OUR PETITIONS FOR 19 DAYS. THAT'S BEEN

1 PLENTY OF TIME TO LOOK AT THE FORM OF THEM,
2 WHICH IS WHAT YOU'RE DOING TONIGHT IS TO LOOK AT
3 FORM. SUBSTANTIVE ARGUMENTS ARE FOR COURT AND
4 THOSE CAN BE -- THOSE CAN BE DONE AFTER THE
5 ELECTION.
6 ANY DELAYS IN YOUR VOTE PUTS THE
7 CITIZENS, THE PETITIONERS, AT RISK OF RUNNING
8 OUT OF TIME. THAT'S PATENTLY UNFAIR TO US.
9 WE'VE DONE WHAT WE -- WE'VE INTERPRETED THE
10 GUIDELINES, WE'VE COMPLIED WITH THE GUIDELINES.
11 WE'RE ASKING TONIGHT THAT CITY COUNCIL LOOK AT
12 THE FORM ONLY, BECAUSE THAT'S WHAT YOUR --
13 THAT'S WHAT YOUR JOB IS, AND DETERMINE EITHER WE
14 DID THE RIGHT THING OR WE DIDN'T DO THE RIGHT
15 THING. THAT'S REALLY IT.
16 OUR -- OUR INFORMATION THAT WE SENT YOU
17 TODAY WAS REALLY TALKING ABOUT THE PROTEST. WE
18 FEEL WE HAVE THE RIGHT TO -- TO ANSWER THEIR
19 PROTEST.
20 THE BOARD OF ELECTIONS CAME BACK AND
21 TOLD YOU 360-PLUS SIGNATURES ARE AUTHENTICATED.
22 THOSE ARE VOTING CITIZENS. WE NEEDED 238. IT'S
23 QUITE APPARENT THAT WE'VE DONE WHAT WE NEEDED TO
24 DO. SO UNLESS THERE'S A FORM ISSUE, WE BELIEVE

1 THAT COUNCIL HAS TO PUT THIS ON THE BALLOT.
2 THANK YOU.
3 (APPLAUSE.)
4 MR. LORENZ: YES, MA'AM?
5 MS. EBERSOLE: HI, I'M SARAH EBERSOLE,
6 215 SQUIRES COURT. I DON'T WANT TO WASTE YOUR
7 TIME EVEN THOUGH, CLEARLY, OUR TIME'S NOT
8 VALUABLE.
9 I WOULD JUST LIKE TO STATE THAT AS OUR
10 ELECTED REPRESENTATIVES, I FEEL THAT YOU'RE UP
11 HERE TO REPRESENT US, AND WHEN WE'RE TABLING
12 THINGS AND TALKING WITH LAWYERS AND HAVING SIDE
13 MEETINGS OUTSIDE OF A PUBLIC MEETING WHERE WE
14 CAN VOICE OUR OPINIONS, IT'S JUST KIND OF PUBLIC
15 PERCEPTION THAT YOU'RE DOING THINGS THAT ARE
16 MAYBE BEST SERVING TO WHAT YOUR AGENDA IS OR
17 WHAT THE DEVELOPER'S AGENDAS ARE, AND RATHER
18 THAN LISTENING TO THE PEOPLE WHO CLEARLY MADE
19 POINTS BEFORE IT EVEN GOT PASSED THAT THEY
20 DIDN'T WANT THESE DEVELOPMENTS AND THAT CLEARLY
21 NOW FEEL THAT THESE ISSUES SHOULD BE, YOU KNOW,
22 VOTED UPON BY THE PEOPLE WHO ELECTED YOU.
23 FOR YOU GUYS TO SAY YOU'RE NOT EVEN
24 GOING TO CONSIDER THIS IS, ONCE AGAIN, JUST

1 SHOWING US THAT YOU'RE NOT REALLY LOOKING AT THE
2 PUBLIC'S BEST PERCEPTION.
3 AND ONE OF THE ORDINANCES DOES STATE, I
4 THINK IT'S 624 OR SOMETHING -- I CAN'T
5 REMEMBER -- THAT IF THIS ISN'T VOTED ON TONIGHT,
6 YOU HAVE TO SEND IT TO THE BOARD OF ELECTIONS
7 TOMORROW AND THEY WILL BE HANDLING IT. SO TAKE
8 THAT INTO CONSIDERATION.
9 BUT PUBLIC PERCEPTION, BASICALLY JUST
10 FROM EVEN TALKING TO PEOPLE WHO DON'T REALLY
11 KNOW MUCH ABOUT IT, IS THAT THE PUBLIC'S OPINION
12 DOESN'T MATTER AND YOU'RE NOT HERE TO REPRESENT
13 US, YOU'RE HERE TO DO WHAT YOU GUYS THINK YOU
14 SHOULD DO AND LISTEN TO YOUR DEVELOPER FRIENDS.
15 THANKS.
16 (APPLAUSE.)
17 MR. LORENZ: YES, MA'AM?
18 MS. VALVONA: I'M SHARON VALVONA. I
19 LIVE AT 225 SQUIRES COURT. IN ADDITION TO THE
20 COMMENTS THAT TOM HAPPENSACK MADE, IN TERMS OF
21 THE AMOUNT OF TIME YOU'VE HAD THE PETITION AND
22 THE OPPORTUNITY THAT YOU'VE ALREADY HAD TO
23 REVIEW IT, I GUESS I'D LIKE TO POINT OUT IN
24 TERMS OF THE IDEA THAT TWO MEETINGS ARE NEEDED

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1 FOR AN ORDINANCE, THAT ACCORDING TO THE CITY
2 CHARTER, TWO MEETINGS ARE NOT REQUIRED SINCE TWO
3 MEETINGS MAY BE WAIVED BY A COUNCIL VOTE, AND,
4 ALSO, THAT YOU COULD PASS AN EMERGENCY
5 ORDINANCE.
6 SO PER THE CITY CHARTER, YOU DON'T HAVE
7 TO WAIT. YOU COULD NOT ONLY DO THE TWO
8 RESOLUTIONS, BUT YOU COULD ALSO DO THE ORDINANCE
9 THIS EVENING.
10 (APPLAUSE.)
11 MR. DOLCIATO: EVENING, COUNCIL. TONY
12 DOLCIATO, 142 BRIARBEND BOULEVARD IN BARTHOLOMEW
13 RUN ESTATES. I WANT TO ECHO THE THOUGHTS THAT
14 EVERYONE ELSE HAS IN THIS ROOM, AND IF THEY'RE
15 WITH ME, MY FELLOW MEMBERS IN THE HOUSING GROUP,
16 I'D ASK THEM TO STAND SO YOU DON'T JUST HEAR
17 APPLAUSE, YOU SEE HOW MANY PEOPLE ARE IN THIS
18 ROOM RIGHT NOW THAT COULD TAKE THEIR THREE
19 MINUTES TO EXPRESS THEIR CONCERN THAT WE SHOULD
20 MOVE FORWARD ON THIS. IT'S A SIMPLE MATTER: IS
21 THE PAPERWORK LEGAL? SO IF YOU'RE INTERESTED,
22 SHOW --
23 (APPLAUSE.)
24 MR. DOLCIATO: THANK YOU.

1 MR. LORENZ: OTHER COMMENTS?
2 MS. ZIEBARTH: I KNOW MANY OF YOU. I'M
3 PAULA ZIEBARTH, IT'S 242 HOPEWELL COURT. I WAS
4 JUST CURIOUS, I'M NOT -- I'M KIND OF A LITTLE
5 BIT NEW TO THIS STUFF, BUT -- RICHARD, THE
6 BRIEFING THAT YOU REFERRED TO, WAS THAT FROM THE
7 DEVELOPER THAT YOU DIDN'T HAVE TIME TO LOOK AT
8 AND THE REASON YOU'RE CONSIDERING TABLING THIS
9 TONIGHT?
10 MR. CLINE: NO, IT CAME FROM THE
11 PETITIONERS.
12 MS. ZIEBARTH: IT CAME FROM THE
13 PETITIONERS, OKAY. AND, AGAIN, I DON'T KNOW
14 WHAT WAS IN THAT BRIEFING OR IF IT'S A GOOD
15 REASON TO TABLE IT TONIGHT, BUT IF YOU ALL
16 HAVEN'T HAD A CHANCE TO READ IT OR SOME OF YOU
17 HAVE, THERE'S DEFINITELY A MAJORITY HERE THIS
18 EVENING, AND IF THAT PETITION IS INDEED IN
19 ORDER, THEN I THINK THAT IS YOUR RIGHT AS PEOPLE
20 REPRESENTING THE CITY OF POWELL TO GO AHEAD AND
21 PASS THAT THIS EVENING. THANK YOU.
22 (APPLAUSE.)
23 MR. HADRA: GOOD EVENING. MY NAME IS
24 MIKE HADRA, 168 MEADOW RIDGE COURT. I JUST HAVE

1 **A QUESTION. THE BOARD OF ELECTIONS SAID THAT**
2 **THERE'S PLENTY OF TIME. IS THAT IN WRITING? I**
3 **MEAN, NOT TOO LONG AGO, ORANGE TOWNSHIP HAD A**
4 **BIG PROBLEM BETWEEN SOMETHING THAT GOT E-MAILED,**
5 **DIDN'T GET THERE IN TIME. SO WHAT ASSURANCE DO**
6 **WE HAVE THAT IF THIS GETS TABLED, IT'S GOING TO**
7 **BE TAKEN INTO ACCOUNT? THAT'S MY QUESTION. DO**
8 **YOU HAVE AN ANSWER?**
9 MR. HOLLINS: SIR, I NEED --
10 MR. HADRA: DO YOU HAVE AN ANSWER?
11 MR. HOLLINS: THEY NEED TO DIRECT ME. I
12 JUST DON'T DIALOGUE.
13 MR. HADRA: OKAY. THAT'S A QUESTION.
14 MR. LORENZ: SURE, I'LL DEFER THAT TO
15 OUR LAW DIRECTOR.
16 MR. HADRA: THAT'S THERE.
17 MR. HOLLINS: COUNCIL, WE DID ACTUALLY
18 HAVE AN OPPORTUNITY TO DISCUSS THE TWO TOWNSHIP
19 ISSUES. THEY WERE RUNNING LIKE 4:59 TO GET THEM
20 TO THE BALLOT, AND I WAS DISCUSSING THAT WITH
21 STAFF.
22 WHAT HAPPENED IS, THEY CHANGED THE STATE
23 LAW TO REQUIRE 90 DAYS AHEAD OF TIME TO GET IT
24 ON THE BALLOT. AND IF YOU RUN THE NUMBERS, THE

1 ACTUAL ELECTIONS WHERE THOSE FAILED AND THEY HAD
2 TO GET THEM BACK ON THE BALLOT LIKE THE 91ST
3 DAY, SO THE DAY AFTER THE ELECTION, THEY HAD TO
4 PASS THEIR RESOLUTIONS ABSOLUTELY THE NEXT DAY,
5 THEY WERE SCRAMBLING TO GET A MEETING TOGETHER.
6 THERE'S ACTUALLY SOMETHING IN -- IF YOU
7 LOOK ON THE SECRETARY OF STATE'S WEB SITE, IT
8 DOES GIVE ALL THE ELECTION --
9 MR. HADRA: I'M NOT GOING TO DO THAT.
10 I'M ASKING YOU A QUESTION.
11 MR. HOLLINS: YOU ASKED ME IF THERE WAS
12 ANYTHING IN WRITING.
13 MR. HADRA: YES.
14 MR. HOLLINS: OKAY. ON THE SECRETARY OF
15 STATE'S WEB SITE, THERE IS A SEPTEMBER 20 DATE
16 ON THEIR LONG CALENDAR OF ANNUAL DATES. THAT'S
17 WHAT I WAS GOING TO TELL YOU. YOU DON'T HAVE TO
18 GO DO RESEARCH. BUT IT IS PRETTY MUCH IN
19 WRITING WHEN THEY HAVE TO SEND THE BALLOTS OUT
20 TO THE MILITARY FOLKS, IT'S SEPTEMBER 20TH.
21 MR. HADRA: I'M STILL PUZZLED BY THE
22 FACT THAT YOU HAVE TO ASK A QUESTION, THEN. IF
23 THEY HAD ENOUGH TIME, IF THAT WAS IN WRITING,
24 WHY DID YOU HAVE TO ASK THE QUESTION?

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1 MR. HOLLINS: OUT OF A SENSE OF DECENCY
2 TO THE BOARD OF ELECTIONS TO MAKE SURE THEY HAD
3 TIME TO DO THEIR JOB.
4 MR. HADRA: OKAY.
5 MR. HOLLINS: WE JUST WANT TO KEEP
6 THINGS ORDERLY AND MOVING ALONG AND NOT MISS ANY
7 DEADLINES SO WE'RE NOT -- WE'RE NOT GOING TO PUT
8 YOU GUYS IN A POSITION, AFTER GOING THROUGH ALL
9 THIS WORK, THAT WE MISS THE NOVEMBER ELECTION.
10 MR. LORENZ: OKAY. IF THERE'S NO OTHER
11 PUBLIC COMMENT, COUNCIL, WE HAVE A MOTION AND A
12 SECOND TO TABLE. IS THERE ANY FURTHER
13 DISCUSSION?
14 YES, TOM?
15 MR. COUNTS: BRIAN, I GUESS I JUST WANT
16 TO MAKE REAL CLEAR TO THE PEOPLE THAT ARE IN
17 THIS GROUP THAT EVERYBODY ON THIS COUNCIL REALLY
18 WANTS TO MAKE A DECISION ON THIS. WE WANT TO
19 MAKE A DECISION ON THIS. BUT --
20 AUDIENCE MEMBER: THEN DO IT. DO IT
21 NOW.
22 MR. COUNTS: LET ME FINISH.
23 AUDIENCE MEMBER: WHAT ARE YOU DOING?
24 MR. COUNTS: LET ME FINISH, OKAY? THE

1 PROBLEM IS, IS THAT WE HAVE TO BE FAIR TO ALL
2 PARTIES INVOLVED. TODAY WE GET A BRIEF FROM THE
3 PETITIONER, AND I THINK WE OWE IT TO THE
4 PETITIONER TO READ THAT, READ THE CASE LAW. IF
5 WE DIDN'T HAVE THE OPPORTUNITY TO DO THAT --
6 WE'VE GOT SOME PRETTY COMPLEX ISSUES, LEGAL
7 ISSUES IN THIS, AND THAT BOTH PARTIES HAVE
8 BRIEFED, AND I THINK THAT WE HAVE --
9 MR. EBERSOLE: HAVE YOU NEVER REVIEWED A
10 PETITION BEFORE?
11 MR. LORENZ: SIR --
12 MR. HOLLINS: YOU'RE OUT OF ORDER.
13 MR. LORENZ: -- PUBLIC COMMENT'S
14 COMPLETE. THANKS.
15 MR. COUNTS: I THINK WE OWE IT TO THE
16 CITY, WE OWE IT TO OURSELVES, TO DO THE KIND OF
17 UNDERSTANDING OF THE ISSUES INVOLVED TO REALLY
18 HANDLE THE MATTER, AND THAT'S THE REASON WHY I
19 THINK THAT IT IS APPROPRIATE TO HEAR THIS AT OUR
20 NEXT MEETING AFTER WE HAVE HAD THE OPPORTUNITY
21 TO READ EVERYTHING THAT'S BEEN GIVEN TO US.
22 MR. LORENZ: ANYONE ELSE? JON?
23 MR. BENNEHOOF: I WANT TO BE SURE THAT
24 WE DO THE RIGHT THING. I'VE REVIEWED THE THREE

1 RESOLUTIONS AND ORDINANCES, WHATEVER THE MIX IS.
2 I GOT THIS TONIGHT. I WAS TRAVELING --
3 I WAS ON THE ROAD MOST OF THE DAY. I GOT THIS
4 AS I WALKED IN. I HAVE NOT EVEN READ THE FIRST
5 PAGE OF IT. THIS WAS FROM THE PETITIONERS. I
6 HAVE READ THE PREVIOUS INFORMATION THAT WE'VE
7 RECEIVED, BUT WHEN YOU PUT THE THREE OF THESE
8 THINGS TOGETHER, IT IS NOT A SIMPLE ISSUE.
9 AND I BEG OF YOU TO HAVE THE PATIENCE
10 FOR US TO DO AN APPROPRIATE REVIEW AND MAKE SURE
11 THAT WE'RE DOING THE THINGS THAT ARE LEGAL --
12 I'M NOT A LAWYER, SO WE HAVE TO MAKE SURE THAT
13 WE'RE DOING THINGS BY THE LAW, BY OHIO REVISED
14 CODE, BY OUR CITY CHARTER. THERE ARE A LOT OF
15 RULING ENTITIES. AND WE DIDN'T HAVE AN
16 OPPORTUNITY TO TALK TO THE LAW DIRECTOR UNTIL
17 THIS EVENING. AND WE DIDN'T HAVE -- I DIDN'T
18 HAVE THIS -- WE DIDN'T HAVE THIS UNTIL TODAY,
19 AND I DIDN'T HAVE IT UNTIL 6:30.
20 I WILL READ THIS. I WILL PUT IT IN
21 CONTEXT OF THE OTHER DOCUMENTATION. AND WE'LL
22 MAKE A DECISION, I HOPE, A PRUDENT DECISION, AND
23 I UNDERSTAND THAT THE TIMELINES WILL ALLOW FOR
24 US TO TAKE THIS TO A SECOND READING. WE WANTED

1 YOU TO HAVE THE OPPORTUNITY TO SPEAK. I
2 RESPECTFULLY THANK YOU FOR YOUR COMMENTS. I
3 WILL TAKE EVERYTHING INTO CONSIDERATION, AND I
4 APPRECIATE YOUR PATIENCE WITH US.
5 MR. LORENZ: OKAY. WITH THAT, I THINK
6 THAT ENDS ALL THE COMMENTS. SO WE HAVE A MOTION
7 AND A SECOND ON -- TO TABLE THE MATTER. SO,
8 SUSIE, CAN YOU PLEASE CALL THE ROLE.
9 MS. ROSS: JON BENNEHOOF?
10 MR. BENNEHOOF: YES.
11 MS. ROSS: FRANK BERTONE?
12 MR. BERTONE: YES.
13 MS. ROSS: RICHARD CLINE?
14 MR. CLINE: YES.
15 MS. ROSS: TOM COUNTS?
16 MR. COUNTS: YES.
17 MS. ROSS: MIKE CRITES?
18 MR. CRITES: YES.
19 MS. ROSS: BRIAN LORENZ?
20 MR. LORENZ: YES.
21 WE WILL HEAR THE RESOLUTION AT OUR
22 AUGUST 19TH MEETING.
23 WE NOW HAVE RESOLUTION 2014-17, A
24 RESOLUTION DETERMINING SUFFICIENCY AND VALIDITY

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1 OF AN INITIAT -- I'M SORRY, OF AN INITIATIVE
2 PETITION TO PROPOSE AN ORDINANCE TO REPEAL
3 ORDINANCE 2014 -- DID I READ THAT WRONG? I READ
4 THESE OUT OF ORDER.
5 MR. HOLLINS: NO, YOU'RE CORRECT.
6 MR. LORENZ: SORRY. ORDINANCE 2014-10.
7 GENE, DO YOU WANT TO ADD ANY COMMENTS
8 OTHER THAN THIS?
9 MR. HOLLINS: IT'S JUST THE SECOND OF
10 THE TWO INITIAT -- OR TWO PETITIONS RELATED
11 TO -- THIS ONE IS AN ORDINANCE. INSTEAD OF TO
12 SUBJECT 2014-10 TO A REFERENDUM, TO ACTUALLY
13 INITIATE A NEW ORDINANCE, THAT BEING AN
14 ORDINANCE TO REPEAL ORDINANCE 2014-10.
15 MR. LORENZ: COUNCIL, ANY COMMENTS?
16 MR. COUNTS: MR. VICE MAYOR, I WOULD
17 MOVE TO TABLE RESOLUTION 2014-17 TO OUR NEXT
18 REGULARLY SCHEDULED MEETING.
19 MR. COUNTS: SECOND.
20 MR. LORENZ: OKAY. WE HAVE A MOTION AND
21 **A SECOND. AGAIN, IF THERE'S ANY COMMENTS ON**
22 **THIS PARTICULAR ORDINANCE AND YOU'RE NOT**
23 **AVAILABLE -- WE PRETTY MUCH COVERED IT ALL ON**
24 **THE LAST ORDINANCE -- FEEL FREE TO COME UP AND**

1 **GIVE US SOME FEEDBACK. SEEING NONE, I'LL CLOSE**
2 **THE PUBLIC COMMENT.**
3 **SUSIE, WE HAVE A MOTION AND A SECOND ON**
4 **THE TABLE. WOULD YOU PLEASE CALL THE ROLE.**
5 MS. ROSS: FRANK BERTONE?
6 MR. BERTONE: YES.
7 MS. ROSS: RICHARD CLINE?
8 MR. CLINE: YES.
9 MS. ROSS: TOM COUNTS?
10 MR. COUNTS: YES.
11 MS. ROSS: MIKE CRITES?
12 MR. CRITES: YES.
13 MS. ROSS: BRIAN LORENZ?
14 MR. LORENZ: YES.
15 MS. ROSS: JON BENNEHOOF?
16 MR. BENNEHOOF: YES.
17 MR. LORENZ: MOTION IS TABLED. WE'LL
18 DISCUSS THE MATTER AT OUR AUGUST 19TH MEETING.
19 ITEM 9 IS TABLED FROM JULY 14TH --
20 MR. LUTZ: MR. LORENZ, MAY I SUGGEST YOU
21 JUST MAYBE MOVE THE ORDER SLIGHTLY --
22 MR. LORENZ: YEAH, GOOD IDEA. LET ME DO
23 THAT. I'M GOING TO GO AHEAD AND BUMP UP ITEM
24 10, WHICH IS THE FIRST READING OF ORDINANCE

1 2014-41, AN ORDINANCE TO SUBMIT A PROPOSED
2 CHARTER AMENDMENT ENTITLED, "AN AMENDMENT TO THE
3 CITY CHARTER OF POWELL, OHIO, TO SUBSTITUTE THE
4 COMPREHENSIVE PLAN OF THE VILLAGE OF POWELL OF
5 DECEMBER 1995 WITH A NEW COMPREHENSIVE PLAN FOR
6 ZONING AND DEVELOPMENT IN THE CITY OF POWELL,
7 OHIO" TO THE ELECTORS OF THE CITY OF POWELL.
8 THIS IS A FIRST READING.
9 GENE?
10 MR. HOLLINS: AND THIS IS THE THIRD OF
11 THE PETITIONS. IT IS A PETITION TO SUBMIT A
12 CHARTER AMENDMENT TO THE BALLOT, AND THOSE ARE
13 MOSTLY GOVERNED BY THE OHIO CONSTITUTION. WE DO
14 HAVE A SHORT CHARTER AMENDMENT SECTION IN OUR --
15 IN OUR CHARTER, BUT IT BASICALLY REFERS YOU TO
16 THE OHIO CONSTITUTION, AND THE OHIO CONSTITUTION
17 REQUESTS THAT WHEN INITIATED BY THE CITIZENS
18 THAT THIS COUNCIL CONSIDER AN ORDINANCE, TO
19 SUBMIT THAT TO THE BALLOT -- THAT ORDINANCE.
20 MR. LORENZ: COUNCIL, QUESTIONS FOR
21 STAFF, COMMENTS?
22 MR. COUNTS: I ASSUME BECAUSE THIS IS A
23 FIRST READING, WE WOULDN'T HAVE TO TABLE
24 ANYTHING BECAUSE IT WOULD ORDINARILY BE HEARD AT

1 THE SECOND?
2 MR. HOLLINS: ABSOLUTELY. IT WILL GO TO
3 **A SECOND READING UNLESS -- THE ONE RESIDENT**
4 **POINTED OUT INCORRECTLY. IT TAKES A**
5 **SUPERMAJORITY TO PASS ANYTHING ON THE FIRST**
6 **READING. BUT, OTHERWISE, NORMAL COURSE WOULD BE**
7 **IT WOULD GO TO A SECOND READING AGAIN ON THE**
8 **19TH.**
9 MR. LORENZ: OKAY. WITH THAT, THEN, I
10 WILL OPEN ORDINANCE 2014-41 TO PUBLIC COMMENT.
11 MR. HAPPENSACK: TOM HAPPENSACK, 127
12 KELLYS COURT, PETITIONER.
13 GENTLEMEN, THE SUPREME COURT SAYS YOU
14 MUST DO THESE FORTHWITH. THAT HAS BEEN DEFINED
15 BY THE SUPREME COURT AS IMMEDIATELY. TABLING IT
16 FOR TWO WEEKS IS NOT IMMEDIATELY. SO YOU'VE
17 ALREADY ACTED ON -- PUT YOURSELF IN THIS
18 POSITION HERE THAT I DON'T THINK IS A SMART
19 THING. I WOULD ASK, AS A PETITIONER, THAT THE
20 FIRST GROUP -- THAT THE RULES BE SUSPENDED AND
21 THIS BE DEALT WITH TONIGHT.
22 (APPLAUSE.)
23 MR. EBERSOLE: I'D ALSO LIKE TO POINT
24 OUT BY CHOOSING NOT TO ACT IN THIS MEETING --

http://www.pbdew.com/help

1 MR. LORENZ: WHAT'S YOUR NAME AGAIN,
2 SIR?
3 MR. EBERSOLE: I'M SORRY. BRIAN
4 EBERSOLE, 215 SQUIRES COURT.
5 BY CHOOSING NOT TO ACT TODAY, AT THE
6 NEXT COUNCIL MEETING, I ASSUME THAT YOU WILL BE
7 SENDING OUR PETITION TO THE CHARTER AMENDMENT TO
8 THE BOARD OF ELECTIONS TOMORROW, AS STATED IN
9 THE CHARTER. I JUST WANT TO MAKE SURE THAT WAS
10 CLEAR THAT YOU'RE MAKING THAT DECISION. THANK
11 YOU.
12 MR. LORENZ: ANY OTHER COMMENTS?
13 SEEING NONE, I'LL CLOSE THE PUBLIC
14 HEARING ON ORDINANCE 2014-41 AND THE MATTER WILL
15 BE REMANDED TO ITS SECOND READING ON AUGUST
16 19TH.
17 OKAY. LET ME FIND MY SPOT HERE. NOW WE
18 WILL HEAR ITEM 9, WHICH IS AN ITEM TABLED FROM
19 JULY 15, 2014. THIS IS THE SECOND READING OF
20 ORDINANCE 2014-35, AN ORDINANCE TO VACATE A
21 PORTION OF A STORM SEWER DRAINAGE EASEMENT
22 LOCATED ON REAL PROPERTY OF RECORD.
23 * * * *
24 (END OF REQUESTED TRANSCRIPT.)

1 CERTIFICATE
2 I, ANGELA R. STARBUCK, RPR, CRR, CCP,
3 **A NOTARY PUBLIC IN AND FOR THE STATE OF OHIO, DO**
4 **HEREBY CERTIFY THAT I REPORTED THE FOREGOING**
5 **PROCEEDINGS AND THAT THE FOREGOING TRANSCRIPT OF**
6 **SUCH PROCEEDINGS IS A TRUE AND CORRECT**
7 **TRANSCRIPT OF MY STENOTYPY NOTES AS SO TAKEN.**
8 **I DO FURTHER CERTIFY THAT I WAS CALLED**
9 **THERE IN THE CAPACITY OF A COURT REPORTER AND AM**
10 **NOT OTHERWISE INTERESTED IN THIS PROCEEDING.**
11 **IN WITNESS WHEREOF, I HAVE HEREUNTO**
12 **SET MY HAND AND AFFIXED MY SEAL OF OFFICE AT**
13 **COLUMBUS, OHIO, ON THIS 12TH DAY OF AUGUST,**
14 **2014.**
15
16
17
18
19
20
21
22 *Angela R. Starbuck*
ANGELA R. STARBUCK, RPR, CRR, CCP
23 **NOTARY PUBLIC, STATE OF OHIO.**
24 MY COMMISSION EXPIRES: DECEMBER 10, 2016

1

10 35:24
127 33:11
12TH 35:13
142 22:12
14TH 31:19
15 34:19
150 15:5
168 23:24
19 18:24
1995 32:5
19TH 7:18 8:5,18 9:17 29:22 31:18 33:8 34:16

2

2 6:22 7:1
20 17:13,14,18,20,22 25:15
2014 30:3 34:19 35:14
2014-10 5:22 30:6,12,14
2014-16 5:20 13:6 18:19
2014-17 29:23 30:17
2014-35 34:20
2014-41 32:1 33:10 34:14
2016 35:24
20TH 9:19 25:20
215 14:11 20:6 34:4
225 21:19
238 19:22
242 23:3

3

360-PLUS 19:21

4

4:59 24:19

6

6 6:9
6002 14:12
6004 14:12
624 21:4
6:00 10:16,17
6:30 28:19

7

7 5:1,19
7:40 4:9

8

8:30 4:9

9

9 31:19 34:18
90 24:23
91ST 25:2

A

ABBY 15:6
ABSOLUTELY 25:4 33:2
ACCEPT 4:17
ACCOUNT 24:7
ACT 9:16 14:13,14,22 33:24 34:5
ACTED 33:17
ACTING 9:9
ACTION 7:1
ACTS 6:22
ACTUAL 25:1
ADD 30:7
ADDITION 21:19
ADDRESS 11:9 13:21,22 14:9
ADJOURNED 4:6
AFFIXED 35:12
AFTERNOON 10:16
AGENDA 4:24 11:4 20:16
AGENDAS 20:17
AGREE 11:15 15:1,2
AHEAD 23:20 31:23
AMENDMENT 7:7,10 14:12 32:2,12,14 34:7
AMENDMENTS 14:8
AMOUNT 21:21
ANALYSIS 8:10
ANGELA 35:2,22
ANNUAL 25:16
ANYMORE 9:22
APOLOGIES 4:17
APOLOGIZE 4:11
APPARENT 19:23
APPLAUSE 15:3 18:17 20:3 21:16 22:10,17,23 33:22
APPROACH 14:5
ARENA 16:14
ARGUMENTS 8:10 19:3
ASSUME 10:2 32:22 34:6
ASSURANCE 24:5
ATTEND 12:6
AUDIENCE 15:1,2 26:20, 23
AUGUST 9:19 29:22 31:18 34:15 35:13
AUTHENTICATED 19:21

B

BABY-SITTER 11:22
BACK 4:24 9:18 10:6 11:14 19:20 25:2
BACKWARDS 17:23
BALLOT 10:9,10 20:1 24:20,24 25:2 32:12,19
BALLOTS 9:22 25:19
BARTHOLOMEW 22:12
BASED 12:7
BASICALLY 6:22 21:9 32:15
BEG 28:9
BEHALF 8:8
BENNEHOOF 5:5,9,10 9:1,7 10:12 27:23 29:9,10 31:15,16
BERTONE 5:11,12 13:9 29:11,12 31:5,6
BIG 24:4
BIT 8:11 23:5
BOARD 6:13 9:8,13 10:1 19:20 21:6 24:1 26:2 34:8
BOULEVARD 22:12
BRIAN 5:7 14:10 26:15 29:19 31:13 34:3
BRIARBEND 22:12
BRIEFED 27:8
BRIEFING 23:6,14
BRING 15:24
BUMP 31:23
BUNDLE 9:18
BUSINESS 17:21

C

CALENDAR 25:16
CALIFORNIA 16:20
CALL 5:6 11:23 13:18 29:8 31:4
CALLED 35:8
CAPACITY 35:9
CASE 6:19 27:4
CCP 35:2,22
CELL 17:19
CERTIFICATE 35:1
CERTIFY 35:4,8
CHAIR 11:7
CHAIRMAN 6:3

CHANCE 23:16
CHANGE 12:23 16:11
CHANGED 24:22
CHARTER 6:6,7,11,15,18 7:7,9,13 14:7,11 22:2,6 28:14 32:2,3,12,14,15 34:7,9
CHIEF 15:23
CHOOSE 6:24
CHOOSING 33:24 34:5
CITIZENS 7:9 16:22 18:13 19:7,22 32:17
CITY 18:23 19:11 22:1,6 23:20 27:16 28:14 32:3,6, 7
CLASS 15:22
CLEAR 12:12 18:14 26:16 34:10
CLINE 4:1 5:4,13,14 10:13 11:1 13:5,10,16 23:10 29:13,14 31:7,8
CLOSE 31:1 34:13
CODE 28:14
COLUMBUS 35:13
COMMENT 11:20,23 12:18 13:11,17 14:2 26:11 31:2 33:10
COMMENT'S 27:13
COMMENTING 14:5
COMMENTS 12:3 13:19 15:4 18:16 21:20 23:1 29:2,6 30:7,15, 32:21 34:12
COMMISSION 35:24
COMMUNICATE 12:4
COMMUNITY 16:12,18, 19,20,23 17:3
COMMUNITY'S 17:11
COMPLETE 27:14
COMPLEX 27:6
COMPLIED 19:10
COMPREHENSIVE 18:21 32:4,5
CONCERN 22:19
CONCERNED 8:16
CONSERVATIVE 16:18, 21
CONSIDERATION 8:20 21:8 29:3
CONSIDERATIONS 9:2
CONSTITUTION 7:8 32:13,16
CONTEXT 28:21
CORRECT 12:19 16:4, 30:5 35:6
CORRECTLY 14:20
COUNCIL 4:8,15,20 6:4, 20,21 8:3 11:9 12:6 13:21 14:12,13,22 17:13 19:11 20:1 22:3,11 24:17 26:11, 17 30:15 32:18,20 34:6
COUNSEL 7:20 8:16 9:14 12:13,14
COUNSEL'S 4:10
COUNTS 4:2,3 5:15,16 12:12,20 13:12 26:15,22, 24 29:15, 30:16,19 31:9, 10 32:22
COUPLE 11:14 17:7
COURT 10:4,17 14:11,23 15:6 19:3 20:6 21:19 23:3, 24 33:12,13,15 34:4 35:9
COVERED 9:7 30:23
CRITES 4:4,5 5:17,18 29:17,18 31:11,12
CRR 35:2,22
CURIOUS 23:4

D

D.C. 17:19
DATE 9:21 25:15
DATES 25:16
DAVID 15:5
DAY 25:3,4 28:3 35:13
DAYS 18:24 24:23
DEADLINE 10:6,10
DEADLINES 26:7
DEAL 17:5
DEALING 15:18
DEALT 33:21
DECEMBER 32:5 35:24
DECENCY 26:1
DECISION 10:21 26:18, 19 28:22 34:10
DEFER 24:14
DEFINED 33:14
DELAY 11:5 15:16
DELAYING 9:3
DELAYS 19:6
DEMOCRATIC 18:10
DEMOGRAPHICS 17:9
DESCRIBE 10:15
DETAIL 10:19
DETERMINATION 6:15
DETERMINE 19:13
DETERMINED 6:20
DETERMINING 5:20 29:24
DEVELOPER 21:14 23:7
DEVELOPER'S 20:17
DEVELOPMENT 16:9, 10,11,23 32:6
DEVELOPMENTS 20:20
DIALOGUE 24:12
DIRECT 8:22 24:11
DIRECTLY 13:21
DIRECTOR 24:15 28:16
DISCLOSURE 15:8,20
DISCUSS 31:18
DISCUSSED 8:16
DISCUSSING 24:20
DISCUSSION 13:1,8,14 14:18 26:13
DISTRIBUTED 8:12
DISTRICT 16:14
DOCUMENTATION 28:21
DOLCIATO 22:11,12,24
DRAINAGE 34:21
DROP-DEAD 9:21

E

E-mail 10:15 14:3 17:20
E-mailed 24:4
EAGERLY 15:13
EARLIER 6:23
EARLIEST 9:17
EASEMENT 34:21
EASIER 17:5
EBERSOLE 10:23 14:7, 10,11 20:5 27:9 33:23 34:3,4
ECHO 22:13
ELECTED 20:10,22
ELECTION 19:5 25:3,8 26:9
ELECTIONS 6:13 9:8,13 10:1,5 19:20 21:6 25:1 26:2 34:8
ELECTORS 32:7
ELECTRONIC 9:23
EMERGENCY 22:4
ENCOURAGE 11:19, 13:24 14:1
END 34:24
ENDS 29:6
ENTIRE 9:24
ENTITIES 28:15
ENTITLED 32:2
ESSENTIALLY 9:24
ESTATES 22:13
EVENING 7:5,24 8:3,17 22:9,11 23:18,21,23 28:17
EXECUTIVE 4:7,8,12,18
EXPEDITED 10:4

EXPIRES 35:24
EXPRESS 22:19
EXTRA 12:9 15:24

F

FACT 15:10 25:22
FAIL 6:24
FAILED 25:1
FAIR 13:2 27:1
FAMILIAR 17:10
FAMILY 16:13
FASHION 18:11,12
FAVOR 13:4
FEEDBACK 31:1
FEEL 19:18 20:10,21 30:24
FEELINGS 12:5
FELLOW 22:15
FILED 4:13 8:14
FILING 8:11
FILINGS 9:4
FILLED 14:20
FIND 8:1 34:17
FINE 13:12
FINISH 26:22,24
FOLKS 25:20
FOREGOING 35:4,5
FORM 10:24 14:15,17 19:1,3,12,24
FORTHWITH 14:13 33:14
FORWARD 22:20
FOUND 6:14 9:11
FRANK 29:11 31:5
FRANKLY 18:23
FREE 30:24
FRIENDS 21:14
FRONT 16:16
FULL 11:2 12:24 15:7,20

G

GATHERED 15:11
GENE 5:24 9:1 11:17 30:7 32:9
GENTLEMEN 33:13
GIVE 5:24 8:6 25:8 31:1
GLEN 15:6
GOOD 23:14,23 31:22
GOVERNED 32:13
GREW 15:21
GROUP 16:17 22:15 26:17 33:20
GUARANTEE 15:22
GUESS 13:5 21:23 26:15
GUIDELINES 19:10
GUYS 8:14 20:23 21:13 26:8

H

HADRA 23:23,24 24:10, 13,16 25:9,13,21 26:4
HAND 35:12
HANDLE 27:18
HANDLING 21:7
HAPPENED 15:23 24:22
HAPPENSACK 18:22 21:20 33:11
HARD 11:21
HARTLY 15:5 18:4,6
HATE 12:22
HEAR 11:10 22:16 27:19 29:21 34:18
HEARD 16:8 17:12 32:24
HEARING 10:2,3,5 34:14
HEART 12:24
HEREUNTO 35:11
HOLD 14:1
HOLLINS 4:10 6:2 9:6 24:9,11,17 25:11,14 26:1, 5 27:12 30:5,9 32:10 33:2
HOME 16:14
HONESTLY 18:8
HOPE 28:22
HOPEWELL 23:3
HOUSING 22:15
HUNDRED 11:16

I

IDEA 21:24 31:22
IMMEDIATELY 33:15,16
INCORRECTLY 33:4
INFO 5:24
INFORMATION 12:8 19:16 28:6
INHERENTLY 10:20
INITIAT 30:1,10
INITIATE 30:13
INITIATED 7:9 32:17
INITIATIVE 6:8,11,19 30:1
INTEND 11:8
INTERESTED 11:3 14:4 22:21 35:10
INTERPRETED 19:9
INVITE 11:12 13:19
INVOLVED 27:2,17
ISSUE 10:7 14:16,17 19:24 28:8
ISSUES 20:21 24:19 27:6, 7,17
ITEM 5:1, 31:19,23 34:18
ITEMS 6:6 11:4,5

J

JOB 19:13 26:3
JON 5:9 27:22 29:9 31:15
JULY 34:19

K

KELLYS 33:12
KIND 20:14 23:4 27:16

L

LACK 10:15
LANDOWNER 7:21 8:11
LANDOWNER'S 12:14
LATE 12:8
LAW 24:15,23 27:4 28:13, 16
LAWYER 28:12
LAWYERS 20:12
LEAVE 9:19,23
LECTURED 17:8
LEGAL 10:14 18:11 22:21 27:6 28:11
LEGISLATION 8:4
LENGTH 4:12,18
LIBERAL 16:20
LIMIT 12:2
LINES 11:17
LISTEN 21:14
LISTENING 20:18
LITERALLY 4:12
LIVE 21:19
LOCATED 34:22
LONG 18:1 24:3 25:16
LONGER 8:11
LORENZ 4:6,23 5:6,7,8, 19 11:15 12:19 13:2,13,18 14:9,24 15:4 18:2,5,15,18 20:4 21:17 23:1 24:14 26:10 27:11,13,22 29:5, 19,20 30:6,15,20 31:13, 14,17,20,22 32:20 33:9 34:1,12
LOT 12:4 15:18 28:14
LUTZ 5:2 31:20

M

MADE 11:17 12:16 18:1 20:18 21:20

MAJORITY 23:17
MAKE 6:14 10:9,21 12:12 26:2,16,18,19 28:10,12,22 34:9
MAKING 12:15 34:10
MALIBU 16:19
MANNER 8:14
MARION 15:21,23
MATTER 8:18 21:12 22:20 27:18 29:7 31:18 34:14
MAYOR 10:13 30:16
MEADOW 23:24
MEANING 14:13
MEASURES 9:16
MEET 9:13
MEETING 7:17,18 9:9 11:22 12:17 13:7,24 14:14 17:4 20:13 25:5 27:20 29:22 31:18 33:24 34:6
MEETINGS 7:15 15:10 16:8 20:13 21:24 22:2,3
MEMBER 4:20 11:18 12:9 15:1,2 26:20,23
MEMBERS 6:3 7:23 22:15
MERITS 10:18
MIKE 4:4 5:17 23:24 29:17 31:11
MILITARY 25:20
MIND 12:10 17:8
MINUTE 17:16
MINUTES 12:3 22:19
MISSING 11:18
MIX 28:1
MONTH 9:24
MOTION 5:3 13:13,15 26:11 29:6 30:20 31:3,17
MOVE 4:24 13:6 22:20 30:17 31:21
MOVED 5:4
MOVEMENT 18:10
MOVING 26:6

N

NECESSARILY 12:24
NEEDED 19:22,23 21:24
NORMAL 33:6
NOTARY 35:3,23
NOTES 35:7
NOVEMBER 10:8,10 26:9
NUMBER 6:13 9:10
NUMBERS 24:24

O

OBVIOUS 15:17
OFFICE 8:22 35:12
OHIO 7:8 15:21 28:13 32:3,7,13,16 35:3,13,23
OPEN 11:19 13:16 15:8 33:10
OPENLY 18:9
OPINION 21:11
OPINIONS 18:8 20:14
OPPORTUNITY 4:14 7:19 8:6,9 9:12 11:9 21:22 24:18 27:5,20 28:16 29:1
OPTION 8:15
ORANGE 24:3
ORDER 23:19 27:12 30:4 31:21
ORDERLY 26:6
ORDINANCE 5:22 6:20, 24 7:6,10,12,16,22 8:19 22:1,5,8 30:2,3,6,11,13, 14,22, 31:24 32:1,18,19 33:10 34:14,20
ORDINANCES 6:8 7:13 21:3 28:1
ORDINARILY 32:24
OWE 27:3,15,16

P

P.M. 4:9
PACKET 7:12
PAPER 10:22
PAPERWORK 22:21
PART 6:9
PARTIES 27:2,7
PASS 7:10 22:4 23:21 25:4 33:5
PASSED 20:19
PATENTLY 19:8
PATIENCE 4:7,21 15:19 28:9 29:4
PAULA 23:3
PAUSE 4:22
PEOPLE 11:3,12 12:4 15:13,16,17 16:10,15 17:13 20:18,22 21:10 22:17 23:19 26:16
PERCENT 11:16
PERCEPTION 20:15 21:2,9
PERIOD 15:12 16:6
PERSON 12:3
PERSONALLY 11:6
PETITION 4:13 5:22 6:10, 11,16,18 10:22,24 14:16, 18:20 21:21 23:18 27:10 30:2 32:11 34:7
PETITIONER 27:3,4 33:12,19
PETITIONERS 7:20 8:8 10:20 18:23 19:7 23:11,13 28:5
PETITIONERS' 10:14 12:13
PETITIONS 4:16 6:8 15:11 16:3,24 18:11,24 30:10 32:11
PHONE 10:16
PHONES 17:19
PIECES 8:4
PLACE 7:10
PLAN 13:23 17:13,22 18:1,21 32:4,5
PLANNING 16:17
PLENTY 19:1 24:2
PODIUM 14:5
POINT 8:20 11:17 33:23
POINTED 33:4
POINTS 20:19
POLITELY 18:9
PORTION 34:21
POSITION 8:7 26:8 33:18
POSITIVE 7:24
POSSIBILITY 9:15
POTENTIALLY 9:2
POWELL 23:20 32:3,4,6,7
PRESENTED 18:10
PRETTY 17:10 25:18 27:6 30:23
PREVIOUS 28:6
PRINT 9:21,22
PROBLEM 24:4 27:1
PROCEDURALLY 13:5
PROCEEDING 35:10
PROCEEDINGS 4:22 35:5,6
PROCESS 10:5
PROCESSES 6:7
PROPERTY 34:22
PROPOSE 16:13 30:2
PROPOSED 6:20 32:1
PROTEST 10:2,3 19:17, 19
PRUDENT 28:22
PUBLIC 11:19 12:17 13:10,17 20:13,14 21:9 26:11 27:13 31:2 33:10 34:13 35:3,23
PUBLIC'S 21:2,11
PUBLISH 9:20

PULL 15:13 16:1
PURPOSE 7:12
PURSUANT 6:6,11
PUT 20:1 28:7,20 33:17
PUTS 19:6
PUZZLED 25:21

Q

QUESTION 9:7 10:11 24:1,7,13 25:10,22,24
QUESTIONS 12:11 32:20
QUICKLY 14:14 18:8
QUIET 16:14

R

REACT 18:1
READ 10:19,21 23:16 27:4,21 28:4,6,20 30:3
READING 7:16,17,23 31:24 32:8,23 33:3,6,7 34:15,19
READINGS 7:14,15
READS 6:22
REAL 26:16 34:22
REASON 10:9 14:14,19 17:24 23:8,15 27:18
REASONABLE 16:9,10
RECEIVE 6:12
RECEIVED 8:7,12 10:14 28:7
RECONVENE 5:3
RECONVENING 4:11
RECORD 34:22
RECORDS 16:22
REFERENDUM 5:21,23 6:7,10 18:19 30:12
REFERRED 23:6
REFERS 32:15
REGULAR 4:24 5:3
REGULARLY 13:7 30:18
RELATED 7:6 30:10
RELATING 4:15
REMANDED 34:15
REMEMBER 21:5
REPEAL 6:23,24 30:2,14
REPORT 6:12
REPORTED 35:4
REPORTER 35:9
REPRESENT 20:11 21:12
REPRESENTATIVES 20:10
REPRESENTING 23:20
REQUESTED 34:24
REQUESTS 32:17
REQUIRE 24:23
REQUIRED 22:2
RESEARCH 8:21 25:18
RESIDENT 33:3
RESOLUTION 5:20 6:16 8:1 13:6,20 18:19 29:21, 23,24 30:17
RESOLUTIONS 6:6 8:3, 17,19 22:8 25:4 28:1
RESPECT 6:8,9 7:7
RESPECTFULLY 29:2
REVIEW 8:9 21:23 28:10
REVIEWED 27:9,24
REVISED 28:13
RICHARD 5:13 23:5 29:13 31:7
RIDGE 23:24
RIPE 8:19
RISK 19:7
ROAD 15:21 28:3
ROLE 5:6 13:19 29:8 31:4
ROLLING 4:20
ROOM 11:2 22:14,18
ROSS 4:2,4 5:7,9,11,13, 15,17 29:9,11,13,15,17,19 31:5,7,9,11,13,15
ROUTINE 16:2
RPR 35:2,22
RULES 33:20
RULING 10:18 28:15
RUN 10:3 22:13 24:24
RUNNING 19:7 24:19

S

SARAH 20:5
SCHEDULED 13:7 30:18
SCRAMBLING 25:5
SEAL 35:12
SECRETARY 25:7,14
SECTION 32:14
SECURITY 15:24
SEND 21:6 25:19
SENDING 34:7
SENSE 26:1
SEPTEMBER 25:15,20
SERVING 20:16
SESSION 4:7,9,18 9:3
SET 6:9 35:12
SEWER 34:21
SHARON 21:18
SHORT 15:12 16:6 32:14
SHOW 22:22
SHOWING 21:1
SIDE 20:12
SIGNATURES 6:14 9:11, 12 19:21
SIGNED 15:14
SIMPLE 22:20 28:8
SIMPLY 17:4
SIR 14:9 15:4 18:15 24:9 27:11 34:2
SITE 25:7,15
SLIGHTLY 31:21
SMART 33:18
SORT 12:21 16:2 17:8
SOUNDS 12:6
SPEAK 4:14 7:19,20 29:1
SPOKEN 15:9
SPOT 34:17
SQUIRES 14:11 20:6 21:19 34:4
STAFF 9:13 32:21
STAND 22:16
STARBUCK 35:2,22
STATE 13:21 17:2 20:9 21:3 24:22 35:3,23
STATE'S 25:7,15
STATED 16:16,24 34:8
STATEMENT 8:8
STATEMENTS 12:15,16
STENOTYPY 35:7
STEP 6:22 7:1
STORM 34:21
STRUGGLE 8:13
STUFF 9:18 17:16 23:5
STYLE 16:14
SUBJECT 5:22 30:12
SUBMISSION 10:19
SUBMIT 32:1,11,19
SUBSTANCE 14:18
SUBSTANTIVE 19:3
SUBSTITUTE 32:3
SUDDEN 12:23
SUFFICIENCY 5:21 29:24
SUFFICIENT 6:17,21 7:3 8:1 9:24
SUGGEST 31:20
SUPERMAJORITY 33:5
SUPREME 10:4 33:13,15
SUSIE 13:18 29:8 31:3
SUSPENDED 33:20

T

TABLE 8:17 12:7,23 13:6, 14 14:19 23:15 26:12 29:7 30:17 31:4 32:23

TABLED 24:6 31:17,19 34:18

TABLING 8:3 20:11 23:8 33:15

TAKES 33:4

TAKING 8:4 12:17

TALK 11:12 14:23 28:16

TALKING 15:7 18:20 19:17 20:12 21:10

TECHNICAL 14:17

TEETH 15:13

TERMS 21:20,24

THING 6:12 7:2,5 8:2 19:14,15 27:24 33:19

THINGS 10:5 17:7 20:12, 15 26:6 28:8,11,13

THINKING 11:16

THOUGHT 15:9

THOUGHTS 12:5 14:2 22:13

THROW 17:15

THUMB'S 12:21 13:3

TIME 4:14 9:19 10:1 15:12 16:7 19:1,8 20:7 21:21 23:7 24:2,5, 25:23 26:3

TIME'S 20:7

TIMELINE 9:2

TIMELINES 9:14 28:23

TIMELY 8:14 18:11

TIMING 10:7

TODAY 14:22 19:17 27:2 28:18 34:5

TOLD 9:15 17:24 19:21

TOM 4:2 5:15 12:11 18:22 21:20 26:14 29:15 31:9 33:11

TOMORROW 21:7 34:8

TONIGHT 11:8,13 12:15 14:5 19:2,11 21:5 23:9,15 28:2 33:21

TONY 22:11

TOWN 15:22

TOWNSHIP 24:3,18

TRAFFIC 17:6

TRANSCRIPT 34:24 35:5,7

TRAVELING 28:2

TRUE 35:6

U

ULTIMATELY 10:8

UNCOMFORTABLE 10:18

UNDERSTAND 15:15 28:23

UNDERSTANDING 27:17

UNFAIR 10:20 11:11 19:8

UPDATED 17:15,22

V

VACATE 34:20

VALID 6:14,16,21 7:4 8:2 9:10,11

VALIDITY 5:21 29:24

VALUABLE 20:8

VALVONA 21:18

VICE 10:13 30:16

VICE-CHAIRMAN 6:3

VIEWS 15:10

VILLAGE 32:4

VOICE 20:14

VOICED 18:8

VOTE 10:24 12:22 15:17 18:14 19:6 22:3

VOTED 18:12 20:22 21:5

VOTERS 7:11

VOTES 7:24

VOTING 12:9 19:22

W

WAIT 22:7

WAITING 4:19

WAIVED 22:3

WALKED 28:4

WANTED 28:24

WASHINGTON 17:19

WASTE 20:6

WEB 25:7,15

WEEK 14:23

WEEKS 8:23 11:6,9,14,21 33:16

WHATSOEVER 7:1

WHEREOF 35:11

WORK 26:9

WORKED 17:18

WORKING 15:21

WORLD 17:11

WRAP 18:5

WRAPPING 18:6

WRITING 24:2 25:12,19, 23

WRITTEN 14:2

WRONG 30:3

Y

YEARS 17:14,18,20,22

Z

ZIEBARTH 23:2,3,12

ZONES 16:14

ZONING 16:21 32:6

Exhibit 2-E

CITY COUNCIL MEETING, CITY OF POWELL, OHIO

RESOLUTION 2014-16, 2014-17, AND ORDINANCE 2014-41

PROCEEDINGS

August 19, 2014

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CITY COUNCIL MEETING
CITY OF POWELL, OHIO

EXCERPT OF PROCEEDINGS

Taken before me, Angela R. Starbuck, RPR, CRR, CCP, a Notary Public in and for the State of Ohio, at Village Green Municipal Building, 47 Hall Street, Powell, Ohio 43065, on August 19, 2014, at 7:30 p.m.

1 CITY COUNCIL MEMBERS IN ATTENDANCE:
2 Jim Hrivnak, Mayor
3 Brian Lorenz, Vice Mayor
4 Frank Bertone
5 Mike Crites
6 Tom Counts
7 Richard Cline
8 Jon Bennehoof
9
10
11 Gene Hollins, City Director
12 Stephen Lutz, City Manager
13 Susie Ross, City Clerk
14
15
16
17
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1 * * * *
2 MAYOR HRIVNAK: I'd like to again call
3 the meeting to order. I'll look for a motion to
4 go back to regular session, please.
5 MR. BENNEHOOF: So moved.
6 MR. CRITES: Second.
7 MAYOR HRIVNAK: We have a motion and
8 second to return to open session. All those in
9 favor say Aye.
10 (All members said aye.)
11 MAYOR HRIVNAK: Any opposed?
12 (No response.)
13 MAYOR HRIVNAK: We are again in open
14 session. For the record, we have done the role
15 call. Next item on our agenda is the pledge of
16 allegiance. If you'll stand with me, we'll do
17 our first item.
18 (Pledge of allegiance was recited.)
19 MAYOR HRIVNAK: Good evening and welcome
20 to the August 19, 2014, session of the Powell
21 City Council.
22 * * * *
23 (Portion of meeting not transcribed.)
24 * * * *

1 MAYOR HRIVNAK: The next three
2 ordinances, Ordinance -- Resolution 2014-16,
3 2014-17, and Ordinance 2014-41, if it's okay
4 with council, I'd like to take public comment on
5 all three of those at once, that way everyone
6 can present their position at one time and we
7 can consider all the testimony at the same time.
8 Is that agreeable to council?
9 MR. LORENZ: Mr. Mayor, I think it's
10 agreeable, but I would have a question. Since
11 2014-16 and 2014-17 are on the table, do we have
12 to remove those from the table before taking
13 public comment?
14 MR. HOLLINS: No, we tabled them to a
15 date specific, so without a motion to remove
16 them from the table.
17 MR. LORENZ: Okay. Very good.
18 MAYOR HRIVNAK: Okay. Thank you, Brian.
19 So at this time, I'd like to open public
20 comment regarding Resolution 16, Resolution 17
21 and Ordinance 41. I would ask that you come
22 forward and state your name and address for the
23 record. I would ask that you keep your comments
24 to the three- to five-minute range. And if you

1 see me doing this (indicating), then that means
2 that you've probably been here long enough.
3 Please respect those that are speaking, and if
4 you'd like to speak, please wait your turn to
5 come forward.
6 With that, are those here that would
7 like to speak on any or all of those ordinances?
8 MAN PRESENT: Mr. Mayor, would you
9 mind -- could you clarify how you want to
10 handle, in terms of -- I'm here as counsel for
11 the petitioners, they're obviously here as
12 counsel for the developer. I mean, is there any
13 kind of special procedure for this?
14 MAYOR HRIVNAK: I would invite your
15 comments during the open session. We will not
16 have any specific comment period for yourselves.
17 Yes, in the back. Is there someone that
18 would like to come forward?
19 MR. HOLLINS: And we might -- by the
20 way, thank you to everyone that participated at
21 the last council meeting. And I know that it
22 may not have been the desire of everyone to deal
23 with them all this evening but we do have all
24 seven council members and we've got all three

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1 agenda items here to be dealt with and we will
2 deal with them this evening.
3 One thing I did want to say, if -- if
4 you did comment at the last meeting, we did make
5 detailed record of those proceedings and it has
6 been distributed to all members of council.
7 Please feel free to continue to participate, but
8 I wanted you to know that, in fact, it is
9 already part of the record and has been duly
10 noted and recorded by council. So you don't
11 absolutely need to, unless you want to, repeat
12 any comments that you made at the last meeting.
13 MAYOR HRIVNAK: Okay. Thank you, Gene.
14 Anyone that would like to speak?
15 MR. BURCH: May I go first? Evening,
16 council. I'm Chris Burch and I'm the attorney
17 that's been hired by the petitioners to see this
18 process through to completion on election day on
19 November 4th. I realize I have three minutes to
20 speak, so I'll try to make this brief and plain.
21 Council's role tonight is very limited.
22 The Ohio Supreme Court has, on multiple
23 occasions, made clear that when a city council
24 is reviewing the validity and sufficiencies of

1 petitions that are before it, it is not a
2 plenary review, it is not a comprehensive
3 review, it is a review that is to be based on
4 the form of the petitions and not based on their
5 substance.
6 I'm aware that this has been a
7 contentious issue on the merits for Powell, and
8 for good reason. This is a -- an issue that
9 affects many of the people here in Powell. It
10 affects all of the things that you guys have
11 already been made aware of, like traffic and
12 those sorts of things. And at your last
13 meeting, obviously many of the members of the
14 public made themselves quite plain with respect
15 to their position on the merits. I'm not here
16 tonight to dive into the merits because the
17 merits are outside of the scope of council's
18 duties here this evening.
19 I won't -- I will spare you the case
20 law, but the case law summarized in one sentence
21 is that the Ohio Supreme Court has said stay in
22 your lane. They have said that this is supposed
23 to be about form and not about substance and
24 they have said that the substantive merits of

1 the -- of the material that is inside the
2 petitions is not -- this is not the appropriate
3 forum for hearings of that kind.
4 So that being said, we do think that the
5 developers have raised a small number of
6 arguments that are actually appropriate at this
7 juncture and I do want to just briefly address
8 those with council.
9 The first argument that the developer
10 has made is that there's some sort of defect
11 with respect to the precincts or warded
12 precincts requirement on these petitions.
13 Obviously there are no wards in the City of
14 Powell, so this is really an argument about the
15 precincts that have been listed on the part
16 petitions collected by the electorates of
17 Powell.
18 We have very carefully followed the
19 rules. The rules for getting something on the
20 ballot, as you are all are, I'm sure, aware of
21 now, is quite -- quite delicate and the
22 petitioners have been exceedingly careful to
23 follow every requirement that is created by the
24 state constitution and that is created by the

1 Powell charter and they have followed those
2 instructions absolutely to the tee.
3 We would invite you to review each and
4 every signature. We are aware that there may be
5 a defect with a handful of signatures with
6 respect to, you know, a person's precinct here
7 or there that may not be -- that may not be
8 correct. However, the overwhelming number of
9 signatures on these petitions is correct. And
10 your Powell charter explicitly says that
11 signatures and petitions are to be presumed
12 valid, are to be presumed sufficient, and should
13 be given to the Board of Elections to be placed
14 on the ballot forthwith.
15 Now, we do have an objection, we do
16 think that Powell -- that the Powell City
17 Council was under a clear legal duty at the last
18 meeting to put these on the ballots forthwith,
19 meaning immediately, but we were promised at
20 that meeting that it would be taken under
21 consideration tonight, and it appears to be
22 taken under consideration tonight.
23 So with that being said, any of the
24 arguments that the protestors are raising with

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1 respect to the distinction between an
2 administrative ordinance and a legislative
3 ordinance are improper for this body. Those are
4 substantive arguments based on what is contained
5 in the subject matter of the petitions and that
6 is not what council is here tonight to decide.
7 And so I'm sure that I've slightly
8 exceeded my three-minute allocation. I
9 appreciate council's diligence on this matter.
10 I know that meeting after work for hours and
11 hours with legal counsel is not anyone's idea of
12 a fun evening after a long day of work, but I do
13 want to just thank council for their time.
14 Thank you.
15 MR. CLINE: Mr. Mayor, if I might ask
16 Mr. Burch one question?
17 MAYOR HRIVNAK: Yes.
18 MR. CLINE: Mr. Burch, is it your
19 position that the appropriate forum for the
20 landowners to raise those concerns is the Board
21 of Elections in the first instance?
22 MR. BURCH: We think there's some
23 unclarity with that. I would say I think the
24 appropriate forum to raise substantive issues

1 with the merits of this would be the exact same
2 procedure if you were -- if city council were
3 taking a residential ordinance under
4 consideration, which is to say that if council
5 were to pass, say, an unconstitutional
6 ordinance, it would be challenged in the courts.
7 That would be the appropriate forum to decide
8 whether there was a defect with that ordinance,
9 whether there was a institutional infirmity with
10 that ordinance, and then the courts provide the
11 appropriate procedure to -- to dive into the
12 merits.
13 City council -- I mean, this city
14 council, from my knowledge, does have attorneys
15 that are on it, but you have to think that most
16 city councils are not privy to that and the
17 courts are specifically designed for that
18 purpose.
19 MR. CLINE: Thank you.
20 MAYOR HRIVNAK: Okay. Thank you,
21 Mr. Burch.
22 MR. CRITES: Thank you.
23 MAYOR HRIVNAK: Anyone else?
24 MR. MILLER: If I may? Council members,

1 good evening. Joseph R. Miller, 52 East Gay, on
2 behalf of the Center at Powell Crossing, LLC,
3 and Donald Kenney, Junior.
4 I do have, for the record and for each
5 council member, Exhibits 1 through 13 to submit
6 in support of our protest that I would ask you
7 to consider in light of the issues raised. I
8 will try to be brief and move through the issues
9 quickly.
10 I know you've been attentive to the
11 briefing that we've provided. We're
12 appreciative of that.
13 MAN PRESENT: Mr. Mayor, we can't hear
14 back here. We can't hear him at all.
15 MAYOR HRIVNAK: Very good. Let me see
16 what I can do about that.
17 (Pause in proceedings.)
18 MR. EBERSOLE: Excuse me, what was just
19 passed out? I didn't hear that.
20 MAYOR HRIVNAK: Could you repeat what
21 you handed to the council, please.
22 MR. MILLER: Certainly. Exhibits 1
23 through 13 for council's consideration, and a
24 copy has been provided to petitioner's counsel

1 as well.
2 MR. BURCH: 30 seconds before.
3 MR. MILLER: Members of council, you are
4 absolutely required by your charter and Ohio law
5 to review and examine the sufficiency and
6 validity of these petitions. You are not here,
7 as it's been suggested, merely as a rubber
8 stamp. Your lane is to decide whether these
9 petitions are authorized under Ohio law to be
10 put to the electorate. I submit to you they are
11 very clearly not.
12 Both the Norris and Marsalek cases out
13 of the Supreme Court upheld city councils'
14 decisions to uphold petitions from the Board of
15 Elections that are not validly able to be put to
16 initiative or referendum. All three of these
17 cannot be because they deal with an
18 administrative matter.
19 And, in fact, the law is very clear in
20 our protest, it's not been refuted in any way by
21 petitioners, this was an administrative matter,
22 Ordinance 2014-10. Therefore, there is no
23 authority under the Ohio Constitution which only
24 allows legislative acts to go to referenda or

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1 initiative. There is no authority for this to
2 go to the ballot. And you are the gatekeeper
3 under your own charter, revised last year to
4 give you this power.
5 The cases cited to you by petitioners do
6 not involve a city council under its own charter
7 determining not just the sufficiency of
8 signatures but the validity of the measures
9 themselves. That falls to you.
10 Petitioners themselves at Page 9 -- they
11 weren't really willing to commit to it here
12 tonight -- but at Page 9 of the brief say, you
13 sit just as the Board of Elections did in the
14 Upper Arlington Supreme Court case where the
15 Supreme Court found that the Board of Elections
16 disregarded the law and abused its discretion in
17 refusing to make that administrative/legislative
18 distinction.
19 You're well familiar with the process
20 that took place here. You approved the
21 development plan based on the unanimous
22 recommendation of P & Z. That's an
23 administrative act. But if there were any
24 doubt, Exhibit 1, the affidavit of David Betts,

1 lays out the process that took place here and he
2 concludes at Paragraph 9, because the project
3 conformed to the property zoning in that planned
4 district, the application did not require any
5 change to the property zoning and the
6 application could be approved under the
7 property's existing zoning as part of the zoning
8 process. Review and approval of the application
9 administers the zoning already in place.
10 Nowhere in petitioner's brief do they
11 refute that fact. Approval of the development
12 plan was administering the current zoning. It
13 changed no law here. Member Crites observed
14 that that evening. That's at Page 14 of the
15 minutes, Exhibit 2. And as such, you cannot
16 allow this to go forward to the Board of
17 Elections. It is your job to only uphold your
18 charter and the Ohio Constitution. These
19 petitions are invalid for that reason.
20 The charter initiative suffers the same
21 fate. It is a referendum on 2014-10 disguised
22 as an initiative. And you cannot pick and
23 choose amongst that charter initiative what to
24 submit to the Board of Elections. If there were

1 ever any doubt, Article 4, Section 21 of the
2 charter initiative says, the final comprehensive
3 plan legislatively adopted pursuant to
4 Section 18 of this Article 4 shall not be
5 compatible with Ordinance 2014-10 and/or the
6 final development plan for the Center at Powell
7 Crossing, LLC. And it says that no party may
8 rely upon that ordinance. It retroactively
9 restricts and repeals that ordinance. It is an
10 initiative to repeal.
11 In Norris in 2003, the Supreme Court
12 affirmed North Ridgeville City Council's refusal
13 to submit exactly what we have here, a final
14 development plan approved in conformity with the
15 planned district standards already in place.
16 That city council would not submit it to the
17 Board of Elections but it was administrative.
18 Supreme Court upheld that.
19 Again, 2006, the Supreme Court found
20 that South Euclid City Council was not obligated
21 to forward petitions to the Board of Elections
22 where it was a referendum on an earlier decision
23 by council to grant a conditional use permit
24 that already was provided for in the existing

1 zoning.
2 And finally, I mentioned Upper
3 Arlington. That is the most clear of them all,
4 that you would literally be disregarding
5 applicable law and abusing the discretion that
6 the voters entrusted with you in your charter by
7 sending this on to the Board of Elections.
8 Very briefly on the part petitions,
9 because strict compliance is the standard and we
10 argued this thoroughly in the briefing, the ward
11 and precinct requirement is in your charter. It
12 matters. It can't be read out of the charter.
13 There are no precincts in Delaware County
14 entitled A, B, C. It is Powell A, Powell B,
15 Powell C, Powell A through J.
16 Exhibit 6 in your book is the official
17 maps of the Board of Elections identifying
18 Powell A through J. Exhibit 7 is a canvass
19 sheet from the Board of Elections identifying
20 the precincts as Powell A through J. Likewise,
21 Exhibit 8 is a record from the Board of
22 Elections where they identify the precinct as
23 Powell G or Powell A through J. Secretary of
24 State's records, Exhibit 9, voter registration.

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1 Same thing, Powell J.
2 And if you look just at Exhibits 3 and
3 4, compare them side by side, the circulators
4 knew how to do this correctly. Some did. And
5 it says Powell C for some and others it just
6 says G. All of those must be disqualified
7 because strict compliance is the standard and
8 you are the gatekeepers. That puts, for each of
9 these petitions, all the signatures well below
10 the 238 required.
11 I would also say they chose not to use
12 the Secretary of State's model petitions which
13 exist, and there they would have known that it's
14 required, both under your charter and state law,
15 that for initiative, you provide a full and
16 correct copy of the title and text of the
17 proposed ordinance. Again, this is Exhibit 11
18 in our book. And Exhibit 10, the referendum
19 petition, you are to provide a copy of the title
20 and text of the proposed ordinance. They did
21 not do either of those things here. All of the
22 petitions are invalid on that basis.
23 I would also tell you beyond just text
24 title, very briefly, sir, on the repeal

1 initiative, in addition to being impermissible,
2 initiative to repeal an administrative act, it's
3 spot zoning, it's discriminatory, it's void for
4 vagueness, it's impermissibly -- I wouldn't just
5 say delegating your legislative authority to
6 five homeowners' associations, it is a wholesale
7 abdication of your authority. To only five HOAs
8 among the 29 here in Powell. You are charged
9 with representing the entire City of Powell and
10 that cannot not -- charter initiative cannot be
11 passed on because it is unauthorized by Ohio law
12 and that's the standard guiding you tonight.
13 MAYOR HRIVNAK: Okay. Thank you.
14 Questions?
15 (No response.)
16 MAYOR HRIVNAK: Thank you very much.
17 MR. EBERSOLE: Hi, I'm Brian Ebersole.
18 I'm at 215 Squires Court. I'd like to point out
19 again after what was just said that we're voting
20 here on the form of the petition, which is
21 actually why two weeks ago we wanted to move
22 forward with making a decision. We're not
23 basing this on any substance that's inside that
24 petition.

1 And I think that's important to
2 understand because it seemed that the
3 developer's key argument was that it was an
4 administrative decision. I want to make that
5 very clear, that an administrative decision,
6 whether it is or not, I'll talk about that in a
7 minute, is substance of this petition. So if
8 you're making that decision that way, you're
9 going the wrong way. Obviously that's not what
10 we're expecting here.
11 That being said, the ordinance itself
12 says it's legislation right on it and you
13 obviously took a vote to that nature. I mean --
14 I mean, so I guess, you know, it is -- it is
15 legislation but like I said, if we're standing
16 up there voting on substance of the petition,
17 not the form, you're going beyond your duties
18 here. This is some -- that would be something
19 that would be decided in a court of law. A
20 judicial decision.
21 I further want to point out kind of a
22 little timeline and also to establish the
23 credibility of this developer is that when we
24 started with this in the Board of Elections to

1 vote on the number of petitions, they attempted
2 to illegally influence the Board of Elections
3 with an entire protest stating false information
4 like he just did just now and claiming there are
5 wards in Powell. Even went as far as to say
6 that a third of our petitioners put a ward. I
7 don't know how that would be possible when there
8 are no wards in Powell. We didn't put them on
9 any of them. Again, that's just being very
10 confusing.
11 But we did point at the Board of
12 Elections and they filed a -- again, another
13 protest before our meeting -- and I'd also like
14 to point out that at the last meeting, the
15 petitioners were blamed for delaying this
16 meeting based on the brief that we filed.
17 We received the protest of the
18 developers on -- after 5:00 on Monday night. We
19 had our brief to counter it in Gene Hollis's
20 inbox at 9:30 in the morning, had a hard copy
21 here by 11:30. I understand many of you pointed
22 out you didn't see that until later in the day,
23 but I think it's very unfair to say that it was
24 the petitioners who delayed this last meeting

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Page 22

1 when we went above and beyond to put something
2 in front of you to counter that last protest.
3 It seems like there was a further game
4 being played when another petition or another
5 protest came out last Friday. We chose not to
6 file an official brief because we thought that
7 we would get our chance here with our counsel to
8 object, make those objections. We didn't want
9 to cause, you know, further delay here. And we
10 really, at this point, don't feel, with the few
11 minutes that he's gotten, that we didn't get
12 that fair shake either.
13 Again, back to the administrative issue,
14 I also wanted to point out that if indeed you do
15 want to point -- vote against your duties and
16 it's an administrative issue, that the charter
17 amendment is very different than the initiative
18 and the referendum, and that certainly has much
19 broader scope and has nothing to do with any
20 type of administrative duties. So I would
21 really appreciate it, if you are going to go
22 beyond your duties, to consider that when you're
23 considering the three, is that they're not all
24 the same.

Page 23

1 When you do speak, I would appreciate it
2 if you please -- if you're going to vote --
3 however you're going to vote -- please explain
4 your thinking. We'd really like to hear if you
5 have a problem with the form, what that is, or
6 if you are going to go beyond your duties and
7 vote based on substance.
8 I think that we've been through enough,
9 we know that our petition -- the form is good.
10 We know that if you're going to vote on
11 substance, that we have a great case. We know
12 that this has gone beyond -- you know, this came
13 back from the Board of Elections on the 1st, you
14 had a meeting, now this is the second meeting.
15 It's been 18 days. It says in the charter, one,
16 you're supposed to make the decision at the
17 first meeting. Second, that you were supposed
18 to be forthwith, which is immediately,
19 instantly, right then. So 18 days later doesn't
20 seem to be following what is going on here with
21 the petitions and, technically, should have
22 already been acted upon.
23 So as I said, please consider these
24 points as you're talking and we really want to

Page 24

1 hear all of this from your point of view. Thank
2 you.
3 MAYOR HRIVNAK: Thank you, sir.
4 MR. BENNEHOOF: Mr. Mayor?
5 MAYOR HRIVNAK: Yes.
6 MR. BENNEHOOF: Mr. Ebersole --
7 MR. EBERSOLE: Yes.
8 MR. BENNEHOOF: -- if anybody took my
9 comment that I had just received the
10 documentation as I walked in that evening as
11 blaming anybody, other than perhaps myself, I
12 want to set the record straight. There was no
13 blame laid. Secondly -- well, that being said,
14 my apologies if anybody felt that -- or any of
15 us was saying that there was blame.
16 Secondly, we didn't have all seven
17 members, and this is a very serious matter and
18 we felt that we should have seven members, so we
19 now have seven members and we are looking at the
20 issues. Thank you.
21 MR. EBERSOLE: Well, as I said, the
22 charter does say to act forthwith at the next
23 meeting. It's unfortunate if Jim couldn't make
24 it, but, you know, there's still the obligation

Page 25

1 to move forward. Like I said, immediately,
2 instantly.
3 MR. BENNEHOOF: Thank you.
4 MAYOR HRIVNAK: Okay. Thank you.
5 Yes, in the back.
6 MR. HARTLY: Hi, Dave Hartly, 150 Glen
7 Abby Court. There's a couple of things I just
8 wanted to bring to everyone's attention that
9 we've heard mentioned, and I won't go into all
10 the arguments about demographics and all that
11 stuff, which interests me, but the main factor
12 is, what we have to deal with is that we've
13 never heard anyone on the -- our side here say
14 anything bad about development as a whole.
15 We're very open-minded for certain kinds of
16 development.
17 But much like when you purchase a
18 product, you want to get what you pay for, and
19 whether somebody lives in Powell and has an idea
20 of this is what they desired, a family style
21 environment, that sort of thing, or somebody --
22 a single person, let's say in the Arena
23 District, they wanted a more upscale lifestyle,
24 and then somebody came in and said we're going

1 to change things up here, we're going to have
2 homes, we're going to have family quiet zones,
3 we're going to change things up, they would have
4 a -- a right to be upset, as well.
5 We're simply asking to continue the
6 community as -- as we moved in, whether it was
7 last year, 10 years, 20 years ago.
8 We've heard arguments from a legal
9 perspective, and I'm afraid my political science
10 background doesn't afford me a -- a law degree,
11 but I did take some prelaw classes and I do know
12 a little bit about U.S. history, having taught
13 it. And when people feel like they're not
14 listened to and people feel like they're not
15 heard, people get upset. That's the reason we
16 have a nation and that we're not part of the
17 British Empire anymore. We felt like we didn't
18 have a say.
19 And we have grassroots appeal. We don't
20 have the highest priced law firm representing
21 us. We're simply speaking our minds, and we
22 just simply want to do that, which is what a
23 petition is. If we don't have the votes, we
24 don't have the votes. It's up to the people.

1 That is democracy 101. You don't have to be a
2 political science geek or history geek like me
3 to get that. You get it. It's up to the
4 people. And the people feel like they're not
5 being heard.
6 And then we hear words like, well,
7 this -- this sort of phrase, this letter, this
8 was omitted and we don't think this meets the
9 criteria, people get a little suspicious and
10 voters tend to take out their anger on the only
11 people that they see fit, and that's the people
12 that they elected. It's not litigants, it's not
13 whoever.
14 So all I'm asking is that -- use some
15 common sense. We've heard words like listen to
16 the -- your charge to the voters. We've heard
17 words like discriminatory. Discriminatory would
18 be, in my sense, not letting the people have
19 their say, whichever way that goes. Whichever
20 way that runs its source. That, in my
21 determination, would be discriminatory.
22 So I think we should just simply let the
23 law apply, let the people vote, have their say.
24 And that, to me, is the simplest form of

1 democracy.
2 I realize we all spend a lot of time on
3 these things and we're not here for the money.
4 I know you're not. I know the time you all
5 spend. That, to me, is also the basic form of
6 democracy. People that volunteer, people that
7 do things, that put up with all kinds of things.
8 Having taught, coached, believe me, I
9 understand. I've dealt with all that myself.
10 I'm simply asking you to realize your
11 charge that the voters gave you, listen to the
12 voters, let them decide. That's, to me, the
13 most obvious choice.
14 Thank you, gentlemen, for your time.
15 MAYOR HRIVNAK: Thank you, sir.
16 Yes, ma'am.
17 MS. VALVONA: Hi there. I'm Sharon
18 Valvona. I live at 225 Squires Court. And I
19 have to admit I was nervous about passing out my
20 little meager timeline to you, whether that
21 would be appropriate, but since you just got a
22 gigantic volume, I will feel less (inaudible).
23 Also, just -- we're passing out copies
24 of this to the audience for the participants,

1 the residents. I'm sorry, I thought I had
2 enough copies.
3 MR. CLINE: We can share.
4 MS. VALVONA: I'm sure my assistant
5 would be glad to bring up a couple other copies.
6 MR. LORENZ: Sharon, do you want to give
7 this one to Susie for the record.
8 MS. VALVONA: Absolutely. Are you guys
9 okay?
10 MR. BENNEHOOF: We're sharing.
11 MS. VALVONA: Okay. Thank you. All
12 right. So I wish I had the confidence and the
13 aplomb of the last speaker, but I'm going to do
14 my best. If you notice my hands shaking you'll,
15 of course, forgive me. I guess the other thing
16 that I would say is in realizing that I had a
17 three-minute time limit, I actually had little
18 forms and I asked the folks -- a couple of folks
19 in the back to yield their three minutes to me,
20 so I sort of expect to go over three minutes. I
21 hope you'll bear with me, and I'll try to be
22 conscious of your time.
23 So I guess one thing I'd like to do is
24 thank the other residents from Powell who did a

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Page 30

1 great job last night -- last time at the last
2 meeting of representing the point of view that
3 the decision before council is pretty
4 straightforward, and I'd like to thank them. I
5 wish I'd done as good a job in kind of helping
6 you understand what I think your decision is,
7 which is pretty straightforward.
8 You know, speaking as a nonlawyer,
9 there's a lot of stuff in the developer's notice
10 of protest and his lawyer said a lot of stuff
11 tonight, although not as much as I expected.
12 But then again, we have the gigantic volume in
13 front of you.
14 From my perspective as a nonlawyer, it's
15 intended to scare or overwhelm or mislead, and,
16 again, I think the -- I think Chris said it,
17 that the Powell charter is pretty clear, the
18 petitions are presumed valid and presumed
19 sufficient and the Supreme Court says stay in
20 your lane. I can't say it better than that.
21 From my perspective, I'm really angry
22 about the misstatements, the developer's false
23 statements, so as an example -- you know, you've
24 heard and will review here in a second kind of

Page 31

1 the timeline of times that we had to prepare,
2 but we found out on Monday that, as it was
3 pointed out to you, we heard in the Board of
4 Elections that there were wards associated with
5 the signatures. Well, of course you know if you
6 looked at the -- and they claimed 163 had them.
7 If you looked at the petitions yourselves, of
8 course there were no wards anywhere because
9 there are -- we were, you know, a -- we don't
10 vote that way and there are no wards.
11 So on Monday we found out that the claim
12 of the developer was, instead, that the
13 precincts were wrong. So instead of preparing
14 as I might have, I stayed up after work very
15 late, 2:00 in the morning, to look at the -- the
16 developer's exemplar and look at all of those
17 precincts. And, of course, they were fine.
18 They were right. They were correct. I think
19 there was one out of 62. And since then, I've
20 looked at all of the other signatures and out of
21 over 1200 signatures, there's maybe 15. Again,
22 I have the documents with me. I can count them
23 for you exactly. But, again, it's -- it's smoke
24 and mirrors. I'm sorry.

Page 32

1 And the idea that when people recorded
2 their precinct that they had to write Powell,
3 when they wrote their Powell -- the fact that
4 they lived in Powell next to their signature
5 line, again, is more smoke and mirrors.
6 It makes me -- it just -- I guess I'll
7 talk a little bit about that. I know how hard
8 the circulators tried to be accurate and what a
9 good job they tried to do. And, again, it makes
10 me mad.
11 So kind of talking about the timeline,
12 I'm starting out here at July 9th. We notified
13 the city, as we're required to do, that we were
14 planning on circulating the petition. And we
15 asked -- we wanted to have the correct format
16 and we asked the city -- we told the city, we're
17 doing this and please review our petition for
18 defects. Two days later we were told that they
19 refused to review.
20 I mean, I think you would want the
21 citizens to be treated fairly and the rights of
22 all citizens -- all residents to be respected.
23 I think we really tried -- whatever your thought
24 is about our form, I think we really did due

Page 33

1 diligence to try to ask the question, you know,
2 it's in the city charter to do this, what's the
3 process? We asked the question and we were told
4 that we wouldn't get any help by the city.
5 I mean, I guess I would have to ask you,
6 how do you feel about that? Would you have --
7 is this what you would have expected? The
8 answer that you would have expected citizens to
9 receive?
10 So we started to circulate our petition
11 on the 11th and, amazingly, in less than a week,
12 over 400 people had signed the petitions. And,
13 again, I'm outraged by the claims of the -- the
14 developer in terms of how that -- you know, the
15 circulation process.
16 So, again, the developer started by
17 claiming that the petitions did not contain the
18 text and the title of the proposed measures.
19 Now in recent filings, he's claiming that the
20 circulators did not have the exhibits with them.
21 I'm sorry, it's sort of like watching a Jon
22 Lovitz routine on Saturday Night Live. It was
23 the text in the title. No, no, wait, it was the
24 missing -- it was the missing exhibits. Oh,

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1 yeah, that's the ticket, it was the missing
2 exhibits. And I'm sorry if I seem derisive, but
3 that's how it feels.
4 I personally spoke to every circulator
5 and made it clear how important it was that the
6 exhibits be part of the petitions and that they
7 had to have them with them and attached. You
8 have notarized statements from every circulator
9 about their collection of signatures, and on the
10 front of the petition they had in their hands it
11 says, on the first page, any type of election
12 falsification is a felony.
13 So on one hand you have the diligent
14 hard work of your neighbors and their notarized
15 documentation, and on the other hand you have
16 the developer accusing them of a felony.
17 Documented by what? Nothing.
18 MAYOR HRIVNAK: I'll ask if you try to
19 bring your discussion to a close, please.
20 MS. VALVONA: Where am I, just out of
21 curiosity?
22 MAYOR HRIVNAK: You're twice as long as
23 what we've allowed.
24 WOMAN PRESENT: She has my time.

1 WOMAN PRESENT: The developers talked
2 for ten minutes.
3 MAN PRESENT: Me, too.
4 MS. VALVONA: And I have people in the
5 back who have agreed that I can use their time.
6 MAYOR HRIVNAK: We set a time limit.
7 We'd ask you to try to draw your discussions to
8 a close. We'll let you finish.
9 MS. VALVONA: Okay. So let's focus then
10 on the timeline that you have in front of you.
11 The red -- the red portion represents the period
12 of time that the developer -- the developer's
13 prep time. We understand the developer was --
14 the dotted line represents the period of time
15 that the developer was, we understand, looking
16 for copies of the petition, but we gave you the
17 petitions on the 17th. And so from the 17th
18 until when they presented it to the Board of
19 Elections and then to you on August 1st was
20 certainly absolutely their prep time. Thank
21 you -- thanks to the Board of Elections, we
22 received some notification, but we received no
23 notification from the developer himself.
24 So, again, the blue line -- the blue

1 dotted section represents what you could argue
2 was our -- our prep time. But, in fact, the
3 solid blue line from the day before your
4 previous meeting and that meeting is the time
5 that we truly had to prepare.
6 So, again, I appreciate Mr. Bennehoof's
7 comments. It was hard to hear -- realizing how
8 little time that we had to prepare -- it was
9 hard to hear that the reason that this important
10 decision was being delayed was because, again,
11 the fact that you all had not received the
12 documentation.
13 I guess -- so you -- I think that the
14 other key points -- I guess related to that,
15 what I should also point out is, again, as Brian
16 mentioned, we heard nothing until Friday, late
17 Friday afternoon. Again, a present -- something
18 was presented to you and, again, with very
19 limited time for us to really respond.
20 I guess my final comments would be --
21 there's a lot more that I could say. Obviously
22 you've asked me to kind of bring it to a close.
23 My experience of this is I feel outraged by it.
24 I would want to feel that the city of which I'm

1 a resident is on my side and that hasn't been
2 the experience so far. I would expect at least
3 to receive fair treatment. And I'm concerned
4 about some of the experiences that we've had,
5 again, which I could tell you more about.
6 But I think the -- I think the issue
7 here is more importantly that what you have
8 before you is the rights of 400-plus citizens
9 who've taken the time to express their thoughts
10 or their feelings. I think given the experience
11 of a nonlawyer -- well, ultimately you made a
12 decision. Powell's charter says that when you
13 make a decision, if enough of us disagree with
14 you, there's a process to kick the decision up
15 to the next level and to be decided by the
16 voters. And we followed that process.
17 The developers generated a bunch of
18 paper filled with misleading statements and the
19 fact that they keep changing their -- the form
20 of their arguments with each new -- excuse me,
21 with each new filing should let you know how
22 false those arguments are.
23 They tried to do an end run around the
24 Board of Election process and, frankly, they've

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1 treated your citizens with contempt and they've
2 wasted huge amounts of money at the taxpayer
3 expense and are likely to waste a whole lot
4 more.
5 Enough is enough. You should move the
6 petitions to the ballot. Thank you.
7 (Applause.)
8 MS. LOPES: Hi, my name's Leslie Lopes,
9 207 Woodedge Circle West, Powell, Ohio. I'm not
10 a lawyer. I'm not going to pretend to even know
11 where to begin. But I have to say after your
12 vote went through, I'm like, well, maybe it's
13 just a small pool of us who object to this.
14 Maybe out in the community you guys are hearing
15 people want this kind of housing. And I'm like,
16 how can we know? How can we know if this is
17 what citizens want? Maybe I'm wrong, it's just
18 a little bit of us and we're all up in arms.
19 So I think the notion, you know, is out
20 there that, you know, we don't know, you don't
21 know, until we put it to a vote. It's just at
22 that point. It was a close vote and there's a
23 lot of unknowns here. And I think it's
24 important that we get this clarified because

1 Powell's not going anywhere. We're not going
2 anywhere. I hope that, you know, you guys
3 aren't going anywhere. But we need to get a
4 clear answer from the citizens.
5 And as for the developer, I can
6 empathize that a lot is on the line for him. It
7 is for us. We have smaller pools to deal with,
8 but it's still on the line for our future as
9 well. And we're not saying don't develop in
10 Powell, we're saying maybe develop something
11 different. You know, I understand he's
12 invested, and that's a factor, but there's lots
13 of other things that Powell can use, just not
14 this.
15 So I hope you reconsider and I hope the
16 hostility that I'm hearing about can die down,
17 and maybe there's other solutions out there for
18 his sake, because I don't think this is going
19 anywhere. And I just want to know. I want to
20 know what my neighbors think, and I would hope
21 that you guys would want to know that, too.
22 Thank you.
23 MAYOR HRIVNAK: Thank you.
24 (Applause.)

1 MR. FLOWERS: Hello.
2 MAYOR HRIVNAK: Yes, sir. Good evening.
3 MR. FLOWERS: My name's Justin Flowers,
4 ten-year resident at 229 Briarbend Boulevard.
5 Was not planning on speaking, I'm not very good
6 at public speaking, but I would like to express
7 what a lot of people have already said but
8 sightly different.
9 Don't know a lot about politics.
10 There's a lot of exhibits being mentioned.
11 There's a lot of folders. I'm sure you guys
12 have a lot more than you care to read, but what
13 I know as an American citizen, in a
14 representative government, is that when somebody
15 wants to throw a lot of bureaucratic tape out,
16 they're probably afraid of what the citizen
17 wants. Because it's a lot easier to go through
18 lawyers and talk to seven people than convince a
19 whole community.
20 I would just like to mention one thing
21 the lawyer said, is that the petition only
22 referred to a couple neighborhoods, and all of
23 Powell needs to be aware. And the only way for
24 all of Powell to have their voice said is

1 through a vote. I appreciate your time.
2 (Applause.)
3 MR. HAPPENSACK: Do I have to? Tom
4 Happensack, 127 Kellys Court.
5 MR. LORENZ: Yes, every time.
6 MR. HAPPENSACK: Levity is always good.
7 **A little bit of levity.**
8 **I have a prepared -- I'm going to --**
9 **because a lot of times I get up here and I've**
10 **just kind of got notes down.**
11 **First I'd like to say this: There's**
12 **170-plus proposed units in the downtown area**
13 **right now. We're talking about 64 tonight. But**
14 **those are what we want you to consider.**
15 **That's -- the will of the people is that we**
16 **don't have these. It's not necessarily just**
17 **about this one. This is the one we have to deal**
18 **with today. But 172. And the land, the green**
19 **space, is still there. And according to the**
20 **comprehensive plan, it will be developed in**
21 **these ways and you guys in zoning have proven**
22 **you can't stop it.**
23 **So that's why we're acting tonight.**
24 **That's why we're doing this. I'm not against**

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1 you guys. But I've heard the voices of the
2 people and I want -- and so we went to the step
3 because we want them to be heard.
4 For better or worse, this is a historic
5 night in Powell. You have in front of you three
6 petitions signed by 360 Powell voters asking for
7 the people's voices to be heard at the ballot
8 box in November. This is 120 signatures above
9 the required 238.
10 Those 360 of 400 that were gathered were
11 determined by the Board of Elections to be
12 vote -- registered voters of Powell. They put
13 their City of Powell and they put their precinct
14 of C or Powell C, it doesn't matter. They were
15 citizens of Powell. They couldn't vote in
16 Delaware.
17 What you have witnessed over the past
18 few months is a ground swell of popular
19 disagreement with the direction the city
20 government wants to take in the development of
21 the downtown Powell area. For many of us, this
22 started early last fall in the planning and
23 zoning committees as these proposals started to
24 roll in.

1 For its part, the city, the city
2 employees, the P & Z, and the council has
3 responded to its citizens by ignoring their
4 voices, telling the voices they were out of
5 touch. And in a few cases, actually acting and
6 taking an antagonistic position to -- to the
7 citizens.
8 Tonight you have a choice between your
9 citizens' voices and outside, big money
10 developers who will build, sell, and take their
11 profits to the bank regardless of the long-term
12 impact on Powell.
13 We have pursued this course of action
14 out of service to the voice of the community
15 residents we have heard over the last nine
16 months.
17 In the public hearings, the planning and
18 zoning commission and council heard significant
19 opposition to the development in question and
20 other developments that you've yet to hear in
21 front of you. The citizens who spoke clearly do
22 not think these developments are in the best
23 interests of the City of Powell and the
24 residents that call it home.

1 Significant concerns with traffic,
2 impact on schools, high-density housing near
3 single residential housing, and the potential
4 change of the nature of Powell has -- of the
5 nature of Powell as it has developed over the
6 last 10 to 15 years were raised by a multitude
7 of residents throughout the process.
8 By their votes, both bodies, zoning and
9 council, have chosen to ignore the citizens,
10 even though there was no community support for
11 these developments. Instead we believe the
12 majority of the members of the bodies took it
13 upon themselves to go against the will of the
14 people, actually using each other as a reason
15 they had to vote the way they did.
16 Zoning said it's about zoning in our
17 area. It's not about the best interests. We're
18 going to build with zoning, council will deal
19 with the best interest. When it got here, we
20 heard you say zoning passed it. We don't have a
21 choice, we have to pass it. So where does the
22 buck stop? Who's the leader and who's not the
23 leader of the city?
24 In the end, the city's government as a

1 whole has failed its citizens who we believe in
2 large numbers do not support the current
3 comprehensive and downtown revitalization plans.
4 These plans are 20 and 10 years old respectively
5 and have been outdated by the tripling and
6 doubling, respectively, of the city in that time
7 period -- in those time periods.
8 However, through this tremendous growth,
9 the city has failed to monitor what the city has
10 become, why the people came to live here, what
11 the residents want the city to be, and revisit
12 the plans accordingly.
13 Just now, after nine months this
14 started, now we're going to start talking about
15 the comprehensive plan. Little late. There's
16 772 things that come across your desk before
17 that happens.
18 Our expectations as the citizens of
19 Powell is that our elected council will do and
20 only do what the charter has empowered them to
21 do. Look at the form of the petition and leave
22 substance for another venue.
23 There's only three lawyers on there.
24 You can't be the judges. The other four can't

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1 **judge. You can't understand the law completely.**
2 **So to do so, to vote so, would not be what**
3 **you're here to do. Supreme Court says that**
4 **that's the reason why that rule's in place.**
5 **Because judges judge, council looks at the form.**
6 **We hope you have seen through**
7 **developer's counsel's attempt to manipulate and**
8 **taint the process. Protestor's counsel has**
9 **resorted to flooded with briefs at every step in**
10 **an effort to manipulate and taint the process.**
11 **In each instance, they have waited until the**
12 **last minute to file and on the first two, didn't**
13 **even provide copies to us, which is legal**
14 **etiquette, at best -- at worst.**
15 **They have changed their arguments on**
16 **some briefs -- on some things in each brief and**
17 **now resort to false and base -- a false and**
18 **baseless allegation that we did not present the**
19 **petitions to the signers in the appropriate**
20 **manner and thereby, by our signing them,**
21 **committed a felony. I take great, great angst**
22 **at that. They have no proof, but they threw it.**
23 **The petitioners and supporters have done**
24 **everything in our power to comply with the**

1 **charters in our submission. In 30 days, we**
2 **researched our options, drafted our petition**
3 **language, presented it to the city which refused**
4 **to review it, organized and carried out a**
5 **petition drive yielding over 400 signatures, 360**
6 **of which have been approved by the board of**
7 **directors -- I mean the Board of Elections. And**
8 **we filed our completed petitions to the city in**
9 **the 30 days we were given. I'm not sure the**
10 **city could have acted that quick.**
11 **As noted in the timeline discussed**
12 **previously, we, the petitioners, and many of our**
13 **supporters felt like we are on trial by both the**
14 **protestors and the city government.**
15 **Thank you, gentlemen.**
16 (Applause.)
17 MS. EBERSOLE: Sara Ebersole, 215
18 Squires Court. We know that the form of the
19 petitions is good. If you vote against us,
20 you're either going to be voting on incorrect
21 info on the form or you're going beyond your
22 duty and you're going to be voting on substance.
23 But like I said, we know that the form is good.
24 If this is voted down, the petitioners

1 will be forced to sue. This is going to end up
2 costing the city a lot of money. You're going
3 to have to pay Gene Hollins's fees, you're going
4 to end up paying our attorney fees because we
5 have a good case for it, and I believe that the
6 cost is going to be around $10,000 to end up
7 holding a special election. I think that if
8 this delay goes too long, that's when it would
9 end up going to a special election.
10 So I know no one in this room wants to
11 use their tax monies to do any of that. And
12 basically you need to protect our fundamental
13 right to ballot access, which is just
14 reiterating what everybody else has said.
15 (Applause.)
16 MAYOR HRIVNAK: Good evening.
17 MS. SWEET: Jennifer Sweet, 235 O'Quinn
18 Court. I've been up here a couple of times,
19 been to a couple meetings. I just want to say
20 that I think it's unfortunate we're here at this
21 time. You guys are our elected officials,
22 right? We voted for you -- some of you -- and
23 you're here to represent us as a city and a
24 community, and you're not.

1 Because every meeting I've been to,
2 there's been large opposition and it's growing
3 and growing as more time goes on and as the word
4 gets spread, but the fact in -- and I know we
5 had 30 days to do that petition, but the fact
6 that 400 signatures -- that was really two
7 weeks, because by the time they drafted
8 everything, figured out what we had to do -- you
9 know, it was fast. But we got people to sign it
10 because so many people are so against it. And
11 the only person I've ever heard in favor of it
12 is the developer and the four people who keep
13 voting for it. And I don't understand why, when
14 we're here every meeting telling you that we
15 don't want this.
16 Please, please think about that. Think
17 about all of the -- all the concerns that we've
18 raised about the schools, about the traffic,
19 about we don't want this kind of building here.
20 We want something else, and we're not shutting
21 down all builders, we just don't want this. And
22 we don't want the 200 extra units on the small
23 plot of land that they're planning on. It's
24 just too much. And if traffic's already bad --

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1 I know we've always talked about these things
2 but, really, you guys are representing us. We
3 are here telling you we don't want this. Please
4 represent us and support what we want. Thanks.
5 (Applause.)
6 MAYOR HRIVNAK: Anyone else? I see one
7 in the back. Yes, ma'am.
8 MS. WIBLE: Hi, I'm Denise Wible, 226
9 Beech Trail Court. I know I'm a familiar face,
10 too. I wasn't going to talk tonight. I know
11 you've seen the petition so it's not a surprise
12 that I was one of the circulators. It's not
13 because I buy into every word of the petitions
14 that were circulated, it's because I buy into
15 the idea that people should have a right to
16 speak out. And, frankly, most of the people
17 that live in the community of Powell don't know
18 what's going on in this room because they're all
19 busy running their kids, trying to keep their
20 businesses afloat, trying to take care of their
21 children, their parents, their lives.
22 And I know that you give a lot of time
23 here, and as the woman before me said, and folks
24 before her said, there's absolutely no reason

1 why our elected officials should be shutting us
2 down when people have spoken and said we don't
3 like this. They come to meetings and said we
4 don't want this. They have told you in letters.
5 I've seen the communications that have come
6 through our neighborhood and, quite honestly, I
7 feel ignored.
8 I was one of the circulators and I got
9 roughly 100 signatures on each of the petitions.
10 In the process of doing that and in the course
11 of four days, I had two people -- two people --
12 out of 102 say, no, thank you, I don't want to
13 sign your petition. That's two percent. If
14 those two percent of the people were standing
15 here saying, you know, don't -- don't do what
16 you want -- or do what you want, don't do what
17 the people want, if they represented more than
18 two percent, I'd be shocked.
19 I do believe that the people of the city
20 of Powell, if they had an opportunity, would
21 tell you what they think. I haven't had a
22 chance to talk to every single one of them, but
23 it is a rare occasion when I actually find
24 somebody who says, I would love to see

1 apartments there. I think that would add to our
2 downtown traffic situation and make this a
3 lovely community.
4 I mean, maybe 20 years ago when I moved
5 here -- or roughly 20 years ago -- that
6 development would have been perfect, but it's
7 not perfect right now, and I think we've all
8 communicated our concerns about safety on the
9 railroad crossing which now going west is going
10 to be a problem when we have a bunch of people
11 trying to turn in to get home at night and go to
12 whatever stores end up there.
13 You've got a lot of problems that are
14 going to come out of this and I think the fact
15 that you're concerned about one property owner's
16 rights and one developer's effort and investment
17 in this proposal, you're forgetting that there
18 are thousands of people that live in this city
19 that have invested in their homes and their
20 community as volunteers, in their schools, and
21 all of the other things that make our city the
22 beautiful place that you keep raving about that
23 gets awards. It's not going to be a beautiful,
24 wonderful place if we turn our eyes away from

1 all the negatives that are going to come from
2 something stupid in the wrong place.
3 And we are giving you this opportunity
4 to let the voters tell you what they think,
5 because they're not all given the opportunity to
6 get up here and talk and they're not all free to
7 come here night after night and sit and listen
8 to the same communication which is, please
9 listen to us. Please understand that we're
10 concerned, not because we don't want to see
11 development but we want to see smart
12 development, and we want to see you give all of
13 those property owners a chance to vote, and I
14 don't see why you would say no to that. Doesn't
15 seem logical to me.
16 (Applause.)
17 MR. GILLIAM: My name's Lannie Gilliam,
18 III. I live at 300 Ridge Side Drive, Powell. I
19 don't want apartments built in Powell, and I'm a
20 hypocrite for saying that because I own rental
21 property. I lived in Section 8 housing. And
22 rental property can be tough. It takes one drug
23 dealer, one gang dealer -- or gangbanger they
24 used to call them -- to flip that place upside

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1 down. I love Powell. I want to live here, I
2 want to be buried in Ohio. I'm from Tennessee
3 originally. I have a fear that Powell could
4 turn into Ferguson, Missouri. Please think
5 about that. Thank you.
6 MAYOR HRIVNAK: Thank you. Yes, ma'am.
7 MS. DUNCAN: Hi. My name's Emily
8 Duncan. I live at 301 Weatherburn Court. I'm a
9 new face. You haven't seen me before, because
10 we just moved here in October. We moved from
11 Worthington, in an area that has a lot of
12 apartments, and we specifically moved to Powell
13 because we wanted to get away from the influence
14 that it was having on our neighborhood.
15 In talking with the old owner -- or the
16 new owners of our old house, they've actually
17 had problems with those apartments, much more
18 than we had less than a year ago.
19 It's wonderful that the developer wants
20 to develop apartments there. That's great.
21 That's fine. And they're going to be nice
22 apartments. That's fine. For now. But I can
23 tell you that the apartments we moved away from
24 in Worthington, they were nice at one time, too,

1 and they're not nice now.
2 The developers have a habit of coming
3 in, they develop great places, and then they
4 walk away from them, or they sell them and they
5 go down -- and they go downhill.
6 Worthington's a great area. Where I
7 came from, it's not. I strongly oppose the
8 apartments in this area, simply because we've
9 got too much traffic. I have two little girls.
10 Over 18,000 students are already in Olentangy.
11 They're saying it's either going to be cars or
12 it's going to be kids. You can't have both. I
13 disagree. We're going to have both.
14 So I would ask the council that if you
15 truly believe these apartments are in the best
16 interest -- if you truly believe in your heart
17 that it's in the best interest and you are
18 representing the people of Powell, let us vote
19 on it. That's all we're asking for. Give the
20 citizens a voice which we haven't gotten so far.
21 Thank you.
22 (Applause.)
23 MAYOR HRIVNAK: Anyone else? Last call.
24 (No response.)

1 MAYOR HRIVNAK: Okay. Thank you
2 everyone. We'll bring the public comment
3 portion to a close.
4 Council discussion regarding the
5 Resolution 2014-16, a resolution determining
6 sufficiency and validity of a referendum
7 petition to subject Ordinance 2014-10 to
8 referendum.
9 Gene or Steve?
10 MR. LUTZ: I'll defer to the law
11 director.
12 MR. HOLLINS: Mr. Mayor, members of city
13 council, this first resolution relates to the
14 referendum petition. Number one, I want to
15 thank all the citizens that participated in this
16 this evening. This is an open democracy. I
17 want to thank -- well, let me step back for a
18 second.
19 You'll be hearing a good bit about this
20 this evening, but the legislative authority of
21 the city really begins with the citizens, and
22 the citizens can choose sometimes to take that
23 legislative authority back, and that's why we
24 have referendum and initiative type of petition

1 procedures.
2 Now, the courts have set forth for us
3 the right, you know, forms, the right
4 procedures, that type of thing, and they've told
5 us that some things aren't referendable. That
6 may be more for the courts to decide than this
7 council, but please understand we operate within
8 a set of rules that were set forth for us by the
9 courts when it comes to ceding that legislative
10 authority back to you, the people.
11 The status -- I guess the precise issue
12 before us this evening on the referendum
13 petition is the sufficiency and validity of the
14 petition first and foremost. That we will vote
15 on by resolution. At that point, our charter
16 says there could be a second vote. There may or
17 may not be.
18 With respect to a referendum petition,
19 the oper -- opportunity, I guess, is presented
20 by the charter for us just to repeal the
21 ordinance, which is the relief sought by the
22 referendum, and council may or may not take that
23 opportunity if it finds the petitions to be
24 valid and sufficient.

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1 If it does anything other than repeal
2 it, it is going forward to the Board of
3 Elections and -- and I believe that's what
4 this -- what the petitioners and the signers of
5 those petitions -- what they're seeking through
6 their process this evening.
7 The Board of Elections has taken a vote
8 on the number of signatures. The Board of
9 Elections did an interesting thing, something
10 I've never seen them do before, which is say,
11 well, you may have charter provisions that also
12 impact the number of signatures, and we're not
13 going to apply our normal rules on some of those
14 issues because we don't know if that's what you
15 do -- if that's how you'd interpret your
16 charter.
17 So, for instance, they didn't invalidate
18 part petitions when the circulator's statement
19 and the number of signers was actually less than
20 the actual number of signers; they turned that
21 issue over to us, and Chris and the attorneys
22 for the developer will remember that part of the
23 meeting.
24 I want you to know staff -- and I want

1 council to know -- staff has reviewed these
2 signatures and the petitions. We have used the
3 guidance promulgated by the Ohio Secretary of
4 State, specifically Directive 2010-01, which is
5 how they have sent instructions down to the
6 county board of elections about state referendum
7 petitions and we have reviewed the signatures
8 using both that directive and any further
9 requirements set forth in our charter that were
10 not set forth in that directive, specifically
11 the precinct/ward issue.
12 We did invalidate on one basis -- the
13 Board of Elections didn't -- there were several
14 petitions where the number of signatures that
15 were certified by the circulator was crossed out
16 and another number was put in there. It was in
17 different ink.
18 We didn't feel comfortable that the
19 circulator had been given an opportunity to --
20 to attest to that number of signatures before
21 the notary. The notary signature was in the
22 same blue ink as the circulator's signature. So
23 that was one basis we wanted -- and this is
24 being put on record, by the way, so the Board of

1 Elections knows what process we used under our
2 charter.
3 That being said, with respect to the
4 referendum petition, members of council, staff
5 has determined that there were 321 valid
6 signatures. The number of valid signatures
7 required for the ballot is 238.
8 Beyond just the validity of the
9 signatures, I do appreciate the extreme high
10 quality of the legal representation on both
11 sides of this. The briefs that have been
12 submitted has kept me on my toes. You would
13 think working with a council with three
14 attorneys keeps me on my toes. Thanks, you guys
15 added to that. I had to be really on my toes on
16 this one.
17 But honestly, we think the weight of
18 authority on petitions related to ordinances, be
19 they referenda petitions or initiative
20 petitions, is pretty clear and it sets forth
21 that this council has limited discretionary
22 authority reviewed by a court using an abuse of
23 discretion standard, but that this council
24 really isn't the appropriate forum for anything

1 other than what would appear on the face of the
2 petition.
3 And, further, the courts, when applying
4 that type of standard, has said the
5 legislative/administrative determination is not
6 apparent on its face. That's going to take some
7 further factual development and maybe even some
8 fact finding by, you know, a body that's ramped
9 up to do that, a quasi-judicial body. This is
10 not a quasi-judicial body for this type of
11 determination.
12 And so we -- we think that the case law
13 indicates that this is not the appropriate forum
14 for a determination of the legislative versus
15 administrative distinction, but that there are
16 other appropriate forums, and both -- counsel
17 for both parties are very well aware, very well
18 versed in those future proceedings where those
19 arguments can be made to that forum and they can
20 get a determination and vindicate their rights.
21 So with that, I don't know if -- I'm
22 going to turn it over to council, if you have
23 any questions, but that would be our staff input
24 on Resolution 2014-16.

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1 MAYOR HRIVNAK: Thank you, Gene. Are
2 there questions for Gene regarding what he's
3 said this evening?
4 (No response.)
5 MAYOR HRIVNAK: If not, comments from
6 council, is there someone who would like to
7 start us off? Rich?
8 MR. CLINE: I'd like to echo what
9 Mr. Hollins said about the briefing that was
10 received by both the petitioners and the
11 applicant's lawyers. I know many of you were
12 frustrated two weeks ago when I said I'd like to
13 hear -- take some time to digest what the
14 petitioners presented, but I found that it was
15 very well written, it was very helpful, and it's
16 now, in some respects, at least been confirmed
17 by the city attorney as to his opinion as to
18 what is the role of the city council tonight.
19 So while you may have been dismayed at a
20 two-week delay, you should understand that that
21 delay was not a waste. It was helpful and the
22 information that was provided was helpful.
23 In light of the role that's been
24 described for us and the findings by staff that

1 there were more than 238 signatures -- valid
2 signatures and the limited nature of review that
3 council has regarding the validity of the
4 petition, I'm prepared to vote in favor of the
5 ordinance -- I'm sorry, the Resolution 2014-16
6 to pass this matter on to the voters -- or for
7 the general election.
8 MAYOR HRIVNAK: Thank you.
9 MR. CRITES: I would join in that,
10 Mr. Mayor. I would agree, after having read the
11 briefs of both the petitioners and the
12 applicant. Probably more importantly, listening
13 to the comments that have been made by the
14 citizens of our community over the last couple
15 months that, you know, we are, in fact, charged
16 to look at the face of the document, determine
17 the validity and sufficiency of the petition.
18 I've done that. And I believe, based upon that
19 review, that the petitions are valid and they're
20 sufficient and I intend to vote in support of
21 the resolution to pass along to the ballot, as
22 well. Thank you, sir.
23 MAYOR HRIVNAK: Thank you. Brian?
24 MR. LORENZ: Sure. You know, I'm going

1 to echo the same thing the two other council
2 members said previously, so there's no reason
3 for me to rehash it.
4 Regardless how we feel about the
5 proposed development, that's not really what's
6 at hand. What's at hand is the validity of the
7 signatures. And I just wanted to say to the
8 general public, this has been a really, really
9 strange, I guess, and different process than
10 what we've been used to.
11 And so as someone who goes to public
12 hearings for a living and represents clients, I
13 really understand how tough it is to sit there,
14 how difficult it is to make arrangements for
15 kids and things like that, and I really
16 appreciate you coming and participating.
17 And a lot of times when I sit in public
18 hearings and wait for my turn to present, I -- I
19 often wonder and think -- and now I'm glad to
20 see this kind of participation, because I see --
21 it invigorates the community, and this is how
22 the public process should be. So I applaud all
23 of you for coming, whether you agree with what
24 we have to say or not what we have to say.

1 And I would just ask you, beg your
2 patience -- you know, I understand, I listen to
3 you, I think you've given me another shot on
4 council and, you know, I just kind of go by my
5 record, so I appreciate that. I hope that you
6 feel that no one up here is talking down. We
7 hear you, we understand, and I think that all of
8 us would have the same sentiment.
9 So at the request of Mr. Ebersole, yes,
10 I intend to vote in favor of the Resolution
11 2014-16. Thank you.
12 MAYOR HRIVNAK: Jon?
13 MR. BENNEHOOF: I've only been on
14 council for a couple years, two and a half
15 years, or whatever. This is probably the single
16 most investment in my time that I've spent on an
17 issue. I've been involved in civics a lot
18 longer than that. There's an old term. Rich
19 knows what that means.
20 MR. CLINE: Yes.
21 MR. BENNEHOOF: But I've been involved
22 civically a lot longer than that. This doesn't
23 exceed the time that I've spent on other
24 matters, but this matter, since I've been on

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1 council, has consumed a lot of my time. I
2 appreciate everybody's patience with that
3 deliberation and our delay to get to this point.
4 And I, too, will be voting to pass this on.
5 But it's a complex matter, and I could
6 wax a lot longer than that, but out of respect
7 to everybody in this room and those that were
8 here in the room last time and that have been in
9 the room for the P & Z meetings, I won't go into
10 a lesson on rights and voter rights or citizen
11 rights or developer rights or landowner rights.
12 I suggest that there's a lot of education that
13 needs to go on in those areas. But certainly as
14 an exercise in civics, this is certainly right
15 up there. So best of luck.
16 MAYOR HRIVNAK: Thank you, Jon. Frank?
17 MR. BERTONE: At the risk of being
18 redundant, as other council (inaudible) have
19 suggested (inaudible) obviously well thought out
20 articulated points of view by the petitioner and
21 the developer's counsel. Obviously it's time
22 spent over the last few weeks of trying to get
23 an understanding of all the various materials.
24 This is a complicated matter. This is something

1 that (inaudible). I am going to vote in favor
2 of this, also. I appreciate your time.
3 MAYOR HRIVNAK: Tom?
4 MR. COUNTS: If this country were a pure
5 democracy, it would be easy. We wouldn't be
6 here. You'd be doing -- making all the
7 decisions, every one of them, whether to have
8 somebody provide gas and trash pickup or
9 whatever. But this is not a pure democracy.
10 And, you know, we have learned through American
11 government that we've got rules, we've got laws,
12 and our laws guide us in how we do things.
13 But even more importantly, we've got a
14 constitution, and our constitution says in many
15 instances that sometimes those individual
16 rights, whatever those rights may be, trump what
17 the people may want.
18 What I think we've learned in this whole
19 process is that sometimes it is good to listen
20 to what the law is. It's good to listen to what
21 the constitution says. Because if I were to
22 vote what my heart says, I might vote one way,
23 but through all of the briefing, all of the
24 discussion, I have learned and I buy into the

1 fact that we have certain rules by which this
2 council needs to make a decision. And I'm glad
3 we've got those rules and I want to see those
4 rules apply, and so I, too, based on what the --
5 the -- what's before us, I'm going to have to
6 vote in favor of this resolution.
7 MAYOR HRIVNAK: Thank you, Tom. I want
8 to thank each one of you for speaking this
9 evening. I had 13 people that came forward, and
10 thank each and every one of you for your
11 thoughts. I have read the briefs, these
12 (indicating). We've already seen these and I've
13 read them all. And I've read the petitioner's
14 briefs, as well. I'm not sure why they call
15 them briefs but that's probably why I'm not a
16 lawyer.
17 But, anyway, I did read all those, and I
18 appreciate the fact that my fellow members
19 thought enough to -- to weigh all that
20 information. You know, the petitioner this
21 evening described how he seemed to be rushed and
22 he had very little time to prepare, but yet the
23 work that you did prepare was read and
24 understood by the people up here, and I think

1 that's what you really wanted, so I appreciate
2 you providing those to us and I appreciate the
3 members of council taking the time to understand
4 each of the briefs that came.
5 We also understand what the feeling of
6 the people are. And Gene has described to us
7 this evening what our task is with regard to
8 Resolution 2014-16, and that is to determine
9 whether it's sufficient and valid. And I think
10 that as far as I'm concerned, I do find it to be
11 sufficient and valid and, therefore, I think
12 it's time to pass this on to the people through
13 the election process and see where that -- where
14 the people are pointing us to go as the
15 majority. So I, too, will be in favor of this
16 ordinance.
17 MR. CLINE: Mr. Mayor, I'd move to adopt
18 Resolution 2014-16.
19 MR. COUNTS: Second.
20 MR. BENNEHOOF: Mr. Mayor, I would like
21 to make a friendly amendment that we have a roll
22 call vote.
23 MAYOR HRIVNAK: Yes, indeed we will.
24 Typically we take a voice vote on resolutions

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1 but Jon has requested a roll call vote. We do
2 have a motion and a second to adopt Resolution
3 2014-16. Was there any other comment?
4 (No response.)
5 MAYOR HRIVNAK: No, we're good. Okay.
6 Resolution 2014-16. Susie, if you would call
7 the roll, please.
8 MS. ROSS: Tom Counts?
9 MR. COUNTS: Yes.
10 MS. ROSS: Mike Crites?
11 MR. CRITES: Yes.
12 MS. ROSS: Jim Hrivnak?
13 MAYOR HRIVNAK: Yes.
14 MS. ROSS: Brian Lorenz?
15 MR. LORENZ: Yes.
16 MS. ROSS: Jon Bennehoof?
17 MR. BENNEHOOF: Yes.
18 MS. ROSS: Frank Bertone?
19 MR. BERTONE: Yes.
20 MS. ROSS: Richard Cline?
21 MR. CLINE: Yes.
22 MAYOR HRIVNAK: Resolution 2014-16 is
23 adopted.
24 (Applause.)

1 MAYOR HRIVNAK: Gene, if you will
2 forward that to the Board of Elections.
3 MR. HOLLINS: Yes, procedurally, hearing
4 no further motions with regard to that
5 resolution, that petition will be forwarded
6 tomorrow to the Board of Elections.
7 MAYOR HRIVNAK: Thank you, sir. All
8 right. The next item on our agenda is
9 Resolution 2014-17, a resolution determining
10 sufficiency and validity of an initiative
11 petition to propose an ordinance to repeal
12 Ordinance 2014-10.
13 Steve, if you would brief us on this,
14 please.
15 MR. LUTZ: Once again, I'll defer to
16 your law director on this matter.
17 MAYOR HRIVNAK: Thank you.
18 MR. HOLLINS: And I won't go all the way
19 back through all the interpretive guidance and
20 the rules that we used. We used the same
21 criteria we used with respect to the other
22 petition, and utilizing those conventions, we --
23 staff determined that there were 322 valid
24 signatures on the initiative petition to repeal

1 Ordinance 2014-10. Again, the number of valid
2 signatures required is 238.
3 Procedurally, again, it's a resolution
4 to determine sufficiency and validity and the
5 appropriate motion would be a motion to adopt
6 the resolution that would find it sufficient and
7 valid. And unless somebody had any further
8 motions, our charter says, unless, in essence,
9 this initiated ordinance to repeal was then
10 adopted by council. Barring that, if this
11 resolution is passed, it will be forwarded to
12 the Board of Elections to be placed on the
13 ballot, as well.
14 MAYOR HRIVNAK: Thank you.
15 MR. HOLLINS: Happy to answer any
16 questions.
17 MAYOR HRIVNAK: Questions for Gene?
18 MR. CRITES: Gene, same legal guidance
19 with respect to the initiative as it was with
20 respect to the referendum, look at the face of
21 the petition?
22 MR. HOLLINS: The face of the petition,
23 the limited discretion to look at anything
24 beyond what is apparent on the face of the

1 petition, including the legislative versus
2 administrative determination.
3 MR. CRITES: So same guidance as the
4 referendum?
5 MR. HOLLINS: That's correct.
6 MR. CRITES: Thank you.
7 MAYOR HRIVNAK: Rich, you had a
8 question?
9 MR. CLINE: That was the same question I
10 had. So thank you, Mr. Crites.
11 MR. CRITES: You're quite welcome.
12 MAYOR HRIVNAK: Mr. Bennehoof?
13 MR. BENNEHOOF: Gene, I have a question
14 about the form of the ballot language. Where --
15 where is that -- how is that derived?
16 MR. HOLLINS: Absolutely.
17 MR. BENNEHOOF: Because there -- quite
18 frankly, I find confusion between these two, for
19 one thing, and I'm afraid that the general
20 public will possibly find confusion, especially
21 if the wording is not succinct and clear.
22 MR. HOLLINS: Thank you, Mr. Bennehoof.
23 **A very good question. We received the**
24 **indication from the Board of Elections that we**

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1 **will have some limited input on the actual**
2 **ballot language. That would be typical when we**
3 **send any type of issue forward to the Board of**
4 **Elections for the ballot, but it's going to**
5 **be -- to some degree, it's going to be governed**
6 **by the petitions as they were drafted and**
7 **submitted to us.**
8 **We will take your comments into account**
9 **and try and make them as clear as possible so**
10 **that the voters will understand exactly what**
11 **they're voting on. But ultimately the Board of**
12 **Elections is the drafter of that.**
13 MR. BENNEHOOF: Kind of like the editor
14 of the paper.
15 MAYOR HRIVNAK: Other questions for
16 Gene?
17 (No response.)
18 MAYOR HRIVNAK: Council discussion
19 regarding Resolution 17?
20 MR. CRITES: For the same reasons,
21 Mr. Mayor, that I set forth on the record with
22 respect to Resolution 2014-16, I've again looked
23 at the face of the petition, I find it to be
24 sufficient and valid, and I intend to vote in

1 support of it and passing it along to the Board
2 of Elections.
3 MAYOR HRIVNAK: Thank you. Anyone else
4 care to comment?
5 MR. CLINE: The only comment I would
6 make is I share my colleague, Mr. Bennehoof's
7 concern that the voters might be confused by
8 parallel proposals, but that's not a decision we
9 get to make, that's a decision the voters get to
10 make, assuming that this resolution passes.
11 And I think that under the guidance that
12 we've been given as to what our cast is tonight,
13 that Resolution 14-17 should be passed on to the
14 voters.
15 MAYOR HRIVNAK: Okay. Very good. I
16 might state for the record that the clerk has
17 passed out a revised copy of the resolution that
18 was at one time drafted and has been corrected
19 and I believe everyone is looking at the revised
20 copy.
21 MR. CLINE: Yes.
22 MAYOR HRIVNAK: Okay. Very good. Any
23 other comments?
24 MR. COUNTS: I would just say my

1 analysis is the same, my decision's the same.
2 MAYOR HRIVNAK: If no further comments,
3 I'll entertain a motion.
4 MR. COUNTS: I'll move to adopt
5 Resolution 2014-17.
6 MR. CRITES: Second.
7 MAYOR HRIVNAK: We do have a motion and
8 a second to adopt Resolution 2014-17. Clerk, I
9 would ask for a roll call on this if you would,
10 please.
11 MS. ROSS: Mike Crites?
12 MR. CRITES: Yes.
13 MS. ROSS: Jim Hrivnak?
14 MAYOR HRIVNAK: Yes.
15 MS. ROSS: Brian Lorenz?
16 MR. LORENZ: Yes.
17 MS. ROSS: John Bennehoof?
18 MR. BENNEHOOF: Yes.
19 MS. ROSS: Frank Bertone?
20 MR. BERTONE: Yes.
21 MS. ROSS: Richard Cline?
22 MR. CLINE: Yes.
23 MS. ROSS: Tom Counts?
24 MR. COUNTS: Yes.

1 MAYOR HRIVNAK: Resolution 2014-17 is
2 adopted.
3 (Applause.)
4 MR. HOLLINS: And, Mr. Mayor, members of
5 council not hearing any further motions, we will
6 deliver this petition -- the initiative petition
7 to the Board of Elections tomorrow.
8 MAYOR HRIVNAK: Okay. Very good. Thank
9 you. Item 8 on the agenda is a second
10 reading -- a second reading of Ordinance
11 2014-41, an ordinance to submit a proposed
12 charter amendment entitled, "An amendment to the
13 city charter of Powell, Ohio to substitute the
14 comprehensive plan of the Village of Powell of
15 December 1995 with a new comprehensive plan for
16 zoning and development in the city of Powell,
17 Ohio" to the electors of the city of Powell.
18 Steve, would you remind us what was
19 discussed last time and --
20 MR. LUTZ: And for a third time tonight,
21 I'll defer to the city's law director on this.
22 MAYOR HRIVNAK: You know the first time
23 I ask him, he's going to send it back to you.
24 MR. LUTZ: I'll discuss the next item on

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1 the agenda.
2 MAYOR HRIVNAK: Okay. I'll be ready.
3 MR. HOLLINS: Mr. Mayor, I do appreciate
4 your effort to try and get Mr. Lutz to handle
5 one of these which, despite your efforts, has
6 been unsuccessful.
7 A couple of things with respect to the
8 charter ordinance. Members of council, going
9 back to the same guidance from the Secretary of
10 State's office and the -- any further
11 requirements set forth in our charter, we did
12 review these petitions as well. The signatures
13 on these petitions as well, as well as their
14 form, and staff has determined that the
15 initiative petition to amend the charter does
16 have 254 valid signatures. Again, the valid
17 signatures required for the ballot, that number
18 is 238.
19 And, again, even though it's a charter
20 amendment petition and it, therefore, involves a
21 section of the Ohio Constitution, not just our
22 charter referendum and initiative process,
23 council's role is still a limited role, and you
24 do have -- you are vested with some level of

1 discretion with respect to this. And, again, it
2 comes back to things that are evident on the
3 face of the petition.
4 This is a very detailed charter
5 amendment. We looked at all aspects of the
6 charter amendment that was proposed and whether
7 there was anything that on its face was unlawful
8 or unconstitutional. Most aspects of the
9 initiated charter amendment were things that we
10 have seen before in other charter amendments,
11 asking council to pass a specific type of
12 ordinance, et cetera, and those do pass
13 constitutional muster.
14 Council, there's one aspect of this
15 petition -- and I'm going to go back to a
16 statement I made earlier -- the original
17 legislative authority in the -- in the city as
18 well as, frankly, as in our federal system, is
19 vested originally with the people. It typically
20 then, through an election -- through the form of
21 government and through election, is vested in
22 city council.
23 In a referendum, in essence, the people,
24 the general public, the entire voting public,

1 takes that legislative authority back and
2 chooses to exercise that legislative authority
3 through the ballot box, and there is absolutely
4 nothing wrong with -- matter of fact, that's a
5 core principle of our democracy.
6 However, the courts, and specifically
7 the U.S. Supreme Court, has made it clear that
8 if it's not a taking back of legislative
9 authority to the whole of the people but an
10 attempted delegation of that legislative
11 authority from council down to a very small,
12 private component of -- of the community, a very
13 small gathering of private either businesses or
14 individuals, that that would -- that would not
15 be the same as a referendum, you know, taking
16 back the legislative authority, that would be a
17 private delegation of authority.
18 We have reviewed the petition in detail.
19 The argument -- legal arguments, again, and the
20 legal advice we would give you is that we
21 believe that delegating the legislative
22 authority to draft a comprehensive plan to five
23 individuals in the community would not withstand
24 the due process challenge and is therefore not

1 lawful. And I'd be happy to address any
2 questions on that.
3 Again, this is only looking at the face
4 of the petition. We're staying within the same
5 bounds that have been given to us by the courts.
6 And if anybody in the -- in attendance
7 were interested, the case specifically we're
8 looking at is a City of Eastlake U.S. Supreme
9 Court case dealing with the charter amendment
10 and sort of foretelling this type of charter
11 amendment that might take a zoning power and
12 give it to a small group of individuals. And
13 that's the -- it's a settled law, it's been --
14 1976 I think that was decided. But it was
15 strikingly similar to the petition, and there is
16 a court procedure to challenge the
17 interpretation at this level, so if -- if the
18 petitioners continue to appreciate but not
19 necessarily agree with the law director's
20 office's opinion on this, there certainly is a
21 court procedure to sort that out if we are
22 incorrect on that.
23 But with that, I'll turn it back over to
24 council if you have any questions or comments.

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1 MAYOR HRIVNAK: I do have one question
2 and quite possibly might have answered this at
3 the last meeting, so I apologize.
4 The former two petitions came in the
5 form of a resolution. Can you describe to
6 council why this one was forwarded to us drafted
7 as a ordinance.
8 MR. HOLLINS: Yes. Thank you,
9 Mr. Mayor. I should have brought that up. We
10 are required by the Ohio Constitution, when we
11 receive a charter amendment petition, to pass an
12 ordinance, to put it in the form of an ordinance
13 to vote on whether to -- to find it valid and
14 sufficient and pass it on to the ballot. That
15 is why this is an ordinance and the other two
16 were resolutions. This one's governed by the
17 Ohio Constitution.
18 MAYOR HRIVNAK: Okay. Very good. Thank
19 you. Are there other questions for Gene? Yes,
20 Tom.
21 MR. COUNTS: Gene, would I be correct
22 that -- that any unconstitutional provision
23 within this proposed ordinance, that would be
24 grounds for -- for us to look at?

1 MR. HOLLINS: Yes. We believe the
2 Supreme Court indicated to us that is part of
3 what you're doing this evening in your role in
4 reviewing the charter amendment petition.
5 MR. BENNEHOOF: So we're staying in our
6 lane?
7 MR. HOLLINS: Correct.
8 MR. BENNEHOOF: I have a follow-up to
9 that comment.
10 MAYOR HRIVNAK: Yes, sir.
11 MR. BENNEHOOF: Given that at our last
12 strategy session, of which we are wanting to do
13 every year, we agreed that we would have a
14 comprehensive plan review and have, in fact --
15 not well into it, but are down the road on it,
16 and it's being led by Mr. Crites with a large
17 representation of the community. I'm -- I'm
18 conflicted by this ordinance and I -- I just
19 need to put on the record that we have a
20 comprehensive plan process in place, we
21 recognize that it's dated, we recognized once
22 upon a time last year that our -- our charter
23 needed updating and we took action on that, and
24 I think that we're doing the appropriate thing

1 in this study. So that said, I'll end my
2 comment.
3 MAYOR HRIVNAK: Okay. Any other
4 questions for Gene for clarity purpose?
5 If not, we'll open for council comments.
6 MR. COUNTS: I'm sorry, what did you
7 say?
8 MAYOR HRIVNAK: We're open for council
9 comments regarding this ordinance.
10 MR. CLINE: Mr. Mayor -- Tom, go ahead.
11 MR. COUNTS: No.
12 MR. CLINE: I was just going to say, I
13 do view Ordinance 2014-41 differently than I do
14 the two resolutions for the reasons stated by
15 our counsel. I think it is apparent to me, at
16 least, on the face of this ordinance, that it is
17 an attempt to delegate the zoning authority of
18 the City of Powell to five residents who
19 apparently would represent five homeowners
20 associations out of 29 homeowners associations
21 and the areas where residents live that are not
22 part of the homeowners associations of the City
23 of Powell.
24 And for that reason, although I may move

1 to adopt this ordinance so that we can have a
2 vote on it, because I think the citizens are
3 entitled to have a vote on it, I do not plan to
4 support the passage of Ordinance 14-41.
5 MR. CRITES: Mr. Mayor?
6 MAYOR HRIVNAK: Other comments? Yes,
7 Mike.
8 MR. CRITES: Gene, I just want to
9 confirm my understanding of what you said. In
10 your legal opinion, upon review of the face
11 of -- of the charter provision, you find it to
12 constitute unlawful delegation of legislative
13 authority to a private group of five people,
14 and -- and because you've been able to ascertain
15 that from the face of the document, that that
16 can be a basis for the rejection of this
17 ordinance; is that a correct statement?
18 MR. HOLLINS: That is correct. And the
19 only thing I would add is based on existing U.S.
20 Supreme Court case law.
21 MR. CRITES: Okay. So to use the
22 expression of the evening, we do remain in our
23 lane, even though the standard's a little bit
24 different for a review of a charter amendment

1 than it is for an initiative or referendum of an
2 ordinance?
3 MR. HOLLINS: (Indicates affirmatively.)
4 MR. CRITES: Thank you. Based upon
5 that, Mr. Mayor, I would be inclined to oppose
6 sending that to ballot.
7 MAYOR HRIVNAK: Any other council
8 members like to weigh in?
9 MR. COUNTS: Yeah, I would.
10 MAYOR HRIVNAK: Tom?
11 MR. COUNTS: First of all, I want to be
12 on record that this is bad law. Absolutely bad
13 law. Because it -- it truly puts in the hands
14 of a certain segment of our community a -- the
15 plan for this community over the next ten years
16 at least. Cuts out three-quarters of our
17 community. To me, that is absolutely the wrong
18 thing to be doing for -- especially by a group
19 of people who talk about inclusion, of being
20 involved.
21 We have a process to do that. That
22 process started at our goal setting session in
23 January. We've got a committee formed. We've
24 got a broad group of people as part of that.

1 And I will suggest to council that after this
2 vote, depending on how the vote goes, that we
3 formally express what has been done in the past.
4 But that law doesn't -- isn't what we're
5 talking about here, because that's not really
6 within the scope of our decision making.
7 This is unconstitutional. Not only from
8 the things that our law director (inaudible),
9 but in my view, it's just purely -- it's spot
10 zoning, which is unconstitutional. This is not
11 something that we can -- we can allow to happen.
12 So I am not in favor of this.
13 MAYOR HRIVNAK: Thank you, Tom.
14 Anybody else? Brian?
15 MR. LORENZ: Sure. Just as you all
16 heard me speak earlier about representing all
17 the residents, I feel the same way on this
18 particular ordinance and I have to tell you I
19 will not be supporting this ordinance tonight,
20 based on the face of the ordinance. And it's
21 not representative of our community. Tom said
22 it, it takes a segment of our community. I live
23 in Golf Village. I represent the young lady --
24 Miss Duncan I think your name was -- who lives

1 at Falcon Ridge, the same as I would my neighbor
2 who lives in Golf Village.
3 And so just to encapsulate it and put
4 the plan that's already being worked on and in
5 process -- and I get why -- why it came forward,
6 to try and draw attention and get more people
7 involved. But I can't -- I can't support
8 something that doesn't allow me to represent the
9 community as a whole, and that's how we're put
10 into place here. So, you know, having said
11 that, I won't be voting in favor of the
12 ordinance. Thank you.
13 MAYOR HRIVNAK: Frank, your comments?
14 MR. BERTONE: Well, again, I agree with
15 many members of council already this evening,
16 stating that the initiative -- excuse me, this
17 ordinance is certainly a small representative --
18 representative of a small group of our
19 community. It's not a broad-based approach.
20 There's an effort afoot for us to amend our
21 comprehensive master plan (inaudible). It's
22 early in the year (inaudible) we've made
23 significant progress, and on that merit alone, I
24 think (inaudible) on the face of this and I

1 would have to say that I'm not in favor of this.
2 MAYOR HRIVNAK: Thank you. Jon, I think
3 you've weighed in already.
4 MR. BENNEHOOF: I have, but I would ask,
5 Mr. Crites, I'm sure would welcome additional
6 attendance at his comprehensive plan meetings
7 which are publicly announced.
8 MR. CRITES: Sure. And the next
9 meeting, Jon, is next Tuesday evening at 6:30
10 here.
11 MAYOR HRIVNAK: When I look at Ordinance
12 41, I would tend to agree that we should not
13 delegate our authority to a small group of
14 individuals, and in doing that, that would be
15 unlawful and unconstitutional and, therefore, I
16 can't support the passage of this ordinance, and
17 that's how I'll be voting this evening.
18 MR. CLINE: Mr. Mayor, as I understand
19 the rules of parliamentary procedure, all
20 motions are to be in the affirmative, so with
21 that understanding, and having already expressed
22 my dissatisfaction with the ordinance, I'll move
23 to adopt Ordinance 2014-41.
24 MR. COUNTS: Second.

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1 MAYOR HRIVNAK: Okay. We have a motion
2 and a second to adopt Ordinance 2014-41. Susie,
3 if you'd call the role, please.
4 MS. ROSS: Jim Hrivnak?
5 MAYOR HRIVNAK: No.
6 MS. ROSS: Brian Lorenz?
7 MR. LORENZ: No.
8 MS. ROSS: Jon Bennehoof?
9 MR. BENNEHOOF: No.
10 MS. ROSS: Frank Bertone?
11 MR. BERTONE: No.
12 MS. ROSS: Richard Cline?
13 MR. CLINE: No.
14 MS. ROSS: Tom Counts?
15 MR. COUNTS: No.
16 MS. ROSS: Mike Crites?
17 MR. CRITES: No.
18 MAYOR HRIVNAK: Ordinance 2014-41 has
19 been defeated.
20 * * * *
21 (End of requested transcript.)
22
23
24

1 CERTIFICATE
2 I, Angela R. Starbuck, RPR, CRR, CCP,
3 a Notary Public in and for the State of Ohio, do
4 hereby certify that I reported the foregoing
5 proceedings and that the foregoing transcript of
6 such proceedings is a true and correct
7 transcript of my stenotypy notes as so taken.
8 I do further certify that I was called
9 there in the capacity of a court reporter and am
10 not otherwise interested in this proceeding.
11 In witness whereof, I have hereunto
12 set my hand and affixed my seal of office at
13 Columbus, Ohio, on this 20th day of August,
14 2014.
15
16
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21
22 *Angela R. Starbuck*
Angela R. Starbuck, RPR, CRR, CCP
23 Notary Public, State of Ohio.
24 My commission expires: December 10, 2016

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$10,000 48:6

1

1 12:5,22 14:24
10 18:18 26:7 44:6 45:4 91:24
100 51:9
101 27:1
102 51:12
11 18:17
11:30 21:21
11th 33:11
120 42:8
1200 31:21
127 41:4
13 12:5,23 68:9
14 15:14
14-17 75:13
14-41 85:4
15 31:21 44:6
150 25:6
16 4:20
163 31:6
17 4:20 74:19
170-plus 41:12
172 41:18
17th 35:17
18 16:4 23:15,19
18,000 55:10
19 3:20
1976 81:14
1995 77:15
1st 23:13 35:19

2

2 15:15
20 26:7 52:4,5
200 49:22
2003 16:11
2006 16:19
2010-01 59:4
2014 3:20 91:14
2014-10 13:22 15:21 16:5 56:7 71:12 72:1
2014-16 4:2,11 56:5 61:24 63:5 65:11 69:8,18 70:3,6, 74:22
2014-17 4:3,11 71:9 76:5, 8 77:1
2014-41 4:3 77:11 84:13 89:23 90:2,18
2016 91:24
207 38:9
20th 91:13
21 16:1
215 19:18 47:17
225 28:18
226 50:8
229 40:4
235 48:17
238 18:10 42:9 60:7 63:1 72:2 78:18
254 78:16
29 19:8 84:20
2:00 31:15

3

3 18:2
30 13:2 47:1,9 49:5
300 53:18
301 54:8
321 60:5
322 71:23
360 42:6,10 47:5

4

4 16:1,4 18:3
400 33:12 42:10 47:5 49:6
400-plus 37:8
41 4:21 89:12
4th 6:19

5

52 12:1
5:00 21:18

6

6 17:16
62 31:19
64 41:13
6:30 89:9

7

7 17:18
772 45:16

8

8 53:21 77:9

9

9 14:10,12 15:2 17:24
9:30 21:20
9th 32:12

A

Abby 25:7
abdication 19:7
absolutely 6:11 9:2 13:4 29:8 35:20 50:24 73:16 80:3 86:12,17
abuse 60:22
abused 14:16
abusing 17:5
access 48:13
account 74:8
accurate 32:8
accusing 34:16
act 14:23 19:2 24:22
acted 23:22 47:10
acting 41:23 43:5
action 43:13 83:23
acts 13:24
actual 58:20 74:1
add 52:1 85:19
added 60:15
addition 19:1
additional 89:5
address 4:22 8:7 81:1
administering 15:12
administers 15:9
administrative 10:2 13:18,21 14:23 16:17 19:2 20:4,5 22:13,16,20 61:15 73:2
administrative/ legislative 14:17
admit 28:19
adopt 69:17 70:2 72:5 76:4,8 85:1 89:23 90:2
adopted 16:3 70:23 72:10 77:2
advice 80:20
affects 7:9,10
affidavit 14:24
affirmative 89:20
affirmatively 86:3
affirmed 16:12
affixed 91:12
afford 26:10
afloat 50:20
afoot 88:20
afraid 26:9 40:16 73:19

afternoon 36:17

agenda 3:15 6:1 71:8 77:9 78:1

agree 63:10 64:23 81:19 88:14 89:12

agreeable 4:8,10

agreed 35:5 83:13

ahead 84:10

allegation 46:18

allegiance 3:16,18

allocation 10:8

allowed 34:23

amazingly 33:11

amend 78:15 88:20

amendment 22:17 69:21 77:12 78:20 79:5,6, 81:9, 82:11 83:4 85:24

amendments 79:10

American 40:13 67:10

amounts 38:2

analysis 76:1

and/or 16:5

Angela 91:2,22

anger 27:10

angry 30:21

angst 46:21

announced 89:7

antagonistic 43:6

anymore 26:17

anyone's 10:11

apartments 52:1 53:19 54:12,17,20,22,23 55:8,15

aplomb 29:13

apologies 24:14

apologize 82:3

apparent 61:6 72:24 84:15

apparently 84:19

appeal 26:19

appears 9:21

applaud 64:22

Applause 38:7 39:24 41:2 47:16 48:15 50:5 53:16 55:22 70:24 77:3

applicable 17:5

applicant 63:12

applicant's 62:11

application 15:4,6,8

apply 27:23 58:13 68:4

applying 61:3

appreciative 12:12

approach 88:19

approval 15:8,11

approved 14:20 15:6 16:14 47:6

area 41:12 42:21 44:17 54:11 55:6,8

areas 66:13 84:21

Arena 25:22

argue 36:1

argued 17:10

argument 8:9,14 20:3 80:19

arguments 8:6 9:24 10:4 25:10 26:8 37:20,22 46:15 80:19

Arlington 14:14 17:3

arms 38:18

arrangements 64:14

Article 16:1,4

articulated 66:20

ascertain 85:14

aspect 79:14

aspects 79:5,8

assistant 29:4

associations 19:6 84:20, 22

assuming 75:10

attached 34:7

attempt 46:7 84:17

attempted 21:1 80:10

attendance 89:6

attention 25:8 88:6

attentive 12:10

attest 59:20

attorney 6:16 48:4 62:17

attorneys 11:14 58:21 60:14

audience 28:24

August 3:20 35:19 91:13

authority 13:23 14:1 19:5, 7 56:20,23 57:10 60:18,22 79:17 80:1,2,9,11,16,17, 22 84:17 89:13

authorized 13:9

awards 52:23

aware 7:6,11 8:20 9:4 40:23 61:17

aye 3:9,10

B

back 3:4 5:17 12:14 23:13 25:5 29:19 35:5 50:7 56:17,23 57:10 71:19 77:23 78:9 79:2,15 80:1,8, 16 81:23

background 26:10

bad 25:14 49:24 86:12

ballot 8:20 9:14 14:2 38:6 42:7 48:13 60:7 63:21 72:13 73:14 74:2,4 78:17 80:3 82:14 86:6

ballots 9:18

bank 43:11

Barring 72:10

base 46:17

based 7:3, 10:4 14:21 21:16 23:7 63:18 68:4 85:19 86:4 87:20

baseless 46:18

basic 28:5

basically 48:12

basing 19:23

basis 18:22 59:12,23 85:16

bear 29:21

beautiful 52:22,23

Beech 50:9

beg 65:1

begin 38:11

begins 56:21

behalf 12:2

Bennehoof 3:5 24:4,6,8 25:3 29:10 65:13,21 69:20 70:16,17 73:12,13,17,22 74:13 76:17,18 83:5,8,11 89:4 90:8,9

Bennehoof's 75:6

Bertone 66:17 70:18, 76:19,20 88:14 90:10,11

Betts 14:24

big 43:9

bit 26:12 32:7 38:18 41:7 56:19 85:23

blame 24:13,15

blamed 21:15

blaming 24:11

blue 35:24 36:3 59:22

board 9:13 10:20 13:14 14:13,15 15:16,24 16:17, 21 17:7,17,19,21 20:24 21:2,11 23:13 31:3 35:18, 21 37:24 42:11 47:6,7 58:2,7,8 59:6,13,24 71:2,6 72:12 73:24 74:3,11 75:1 77:7

bodies 44:8,12

body 10:3 61:8,9,10

book 17:16 18:18

Boulevard 40:4

bounds 81:5

box 42:8 80:3

Brian 4:18 19:17 36:15 63:23 70:14 76:15 87:14 90:6

Briarbend 40:4

briefing 12:11 17:10 62:9 67:23

briefly 8:7 17:8 18:24
briefs 46:9,16 68:11,14,15 69:4
bring 25:8 29:5 34:19 36:22 56:2
British 26:17
broad 86:24
broad-based 88:19
broader 22:19
brought 82:9
buck 44:22
build 43:10 44:18
builders 49:21
building 49:19
built 53:19
bunch 37:17 52:10
Burch 6:15, 10:16,18,22 11:21 13:2
bureaucratic 40:15
buried 54:2
businesses 50:20 80:13
busy 50:19
buy 50:13,14 67:24

C

call 3:2,15 53:24 55:23 68:14 69:22 70:1,6 76:9 90:3
called 91:8
canvass 17:18
capacity 91:9
care 40:12 50:20 75:4
careful 8:22
carefully 8:18
carried 47:4
cars 55:11
case 7:19,20 14:14 23:11 48:5 61:12 81:7,9 85:20
cases 13:12 43:5
cast 75:12
CCP 91:2,22
ceding 57:9
Center 12:2 16:6
CERTIFICATE 91:1
certified 59:15
certify 91:4,8
cetera 79:12
challenge 80:24 81:16
challenged 11:6
chance 22:7 51:22 53:13
change 15:5 26:1,3 44:4
changed 15:13 46:15
changing 37:19
charge 27:16 28:11
charged 19:8 63:15
charter 9:1,10 13:4 14:3,6 15:18,20,23 16:2 17:6,11, 12 18:14 19:10 22:16 23:15 24:22 30:17 33:2 37:12 45:20 57:15,20 58:11,16 59:9 60:2 72:8 77:12,13 78:8,11,15,19,22 79:4,6,9,10 81:9,10 82:11 83:4,22 85:11,24
charters 47:1
children 50:21
choice 28:13 43:8 44:21
choose 15:23 56:22
chooses 80:2
chose 18:11 22:5
chosen 44:9
Chris 30:16 58:21
Circle 38:9
circulate 33:10
circulated 50:14
circulating 32:14
circulation 33:15
circulator 34:4,8 59:15, 19
circulator's 58:18 59:22
circulators 18:3 32:8 33:20 50:12 51:8
cited 14:5
citizen 40:13,16 66:10
citizens 32:21,22 37:8 38:1,17 39:4 42:15 43:3,7, 21 44:9 45:1,18 55:20 56:15,21,22 63:14 85:2
citizens' 43:9
city 3:21 6:23 8:13 9:16 11:2,13,16 13:13 14:6 16:12,16,20 19:9 32:13,16 33:2,4 36:24 42:13,19 43:1, 44:23 45:6,9,11 47:3,8,10,14 48:2,23 51:19 52:18,21 56:12,21 62:17,18 77:13,16, 79:17, 22 81:8 84:18,22
city's 44:24 77:21
civically 65:22
civics 65:17 66:14
claim 31:11
claimed 31:6
claiming 21:4 33:17,19
claims 33:13
clarified 38:24
clarify 5:9
clarity 84:4
classes 26:11
clear 6:23 9:17 13:19 17:3 20:5 30:17 34:5 39:4 60:20 73:21 74:9 80:7
clerk 75:16 76:8
clients 64:12
Cline 10:15,18 11:19 29:3 62:8 65:20 69:17 70:20,21 73:9 75:5, 76:21,22 84:10, 12 89:18 90:12,13
close 34:19 35:8 38:22 56:3
coached 28:8
colleague 75:6
collected 8:16
collection 34:9
Columbus 91:13
comfortable 59:18
comment 4:4,13,20 5:16 6:4 24:9 56:2 70:3 75:4,5 83:9 84:2
comments 4:23 5:15 6:12 36:7,20 62:5 63:13 74:8 75:23 76:2 81:24 84:5,9 85:6 88:13
commission 43:18 91:24
commit 14:11
committed 46:21
committee 86:23
committees 42:23
common 27:15
communicated 52:8
communication 53:8
communications 51:5
community 26:6 38:14 40:19 43:14 44:10 48:24 50:17 52:3,20 63:14 64:21 80:12,23 83:17 86:14,15, 17 87:21,22 88:9,19
compare 18:3
compatible 16:5
completed 47:8
completely 46:1
completion 6:18
complex 66:5
compliance 17:9 18:7
complicated 66:24
comply 46:24
component 80:12
comprehensive 16:2 41:20 45:3,15 77:14,15 80:22 83:14,20 88:21 89:6
concern 75:7
concerned 37:3 52:15 69:10
concerns 10:20 44:1 49:17 52:8
concludes 15:2
conditional 16:23
confidence 29:12

confirm 85:9
confirmed 62:16
conflicted 83:18
conformed 15:3
conformity 16:14
confused 75:7
confusing 21:10
confusion 73:18,20
conscious 29:22
consideration 9:21,22 11:4 12:23
constitute 85:12
constitution 8:24 13:23 15:18 67:14, 78:21 82:10, 17
constitutional 79:13
consumed 66:1
contained 10:4
contempt 38:1
contentious 7:7
continue 6:7 26:5 81:18
conventions 71:22
convince 40:18
copies 28:23 29:2,5 35:16 46:13
copy 12:24 18:16,19 21:20 75:17,20
core 80:5
correct 9:8,9 18:16 31:18 32:15 73:5 82:21 83:7 85:17,18 91:6
corrected 75:18
correctly 18:4
cost 48:6
costing 48:2
council 3:21 4:4,8 5:21,24 6:6,10,16,23 8:8 9:17 10:6,13 11:2,4,13,14,24 12:5,21 13:3 14:6 16:16, 20,23 30:3 43:2,18 44:9, 18 45:19 46:5 55:14 56:4, 13 57:7,22 59:1 60:4,13, 21,23 61:22 62:6,18 63:3 64:1 65:4,14 66:1,18 68:2 69:3 72:10 74:18 77:5 78:8 79:11,14,22 80:11 81:24 82:6 84:5,8 86:7 87:1 88:15
council's 6:21 7:17 10:9 12:23 16:12 78:23
councils 11:16
councils' 13:13
counsel 5:10,12 10:11 12:24 22:7 46:8 61:16 66:21 84:15
counsel's 46:7
count 31:22
counter 21:19 22:2
country 67:4
Counts 67:4 69:19 70:8,9 75:24 76:4,23,24 82:21 84:6,11 86:9,11 89:24 90:14,15
county 17:13 59:6
couple 25:7 29:5,18 40:22 48:18,19 65:14 78:7
court 6:22 7:21 13:13 14:14,15 16:11,18,19 19:18 20:19 25:7 28:18 30:19 41:4 46:3 48:18 50:9 54:8 60:22 80:7 81:9, 16,21 83:2 85:20 91:9
courts 11:6,10,17 57:2,6, 9 61:3 80:6 81:5
created 8:23,24
credibility 20:23
criteria 27:9 71:21
Crites 3:6 11:22 15:13 63:9 70:10,11 72:18 73:3, 6,10,11 74:20 76:6,11,12 83:16 85:5,8,21 86:4 89:5, 8 90:16,17
crossed 59:15
crossing 12:2 16:7 52:9
CRR 91:2,22
curiosity 34:21
current 15:12 45:2
Cuts 86:16

D

date 4:15
dated 83:21
Dave 25:6
David 14:24
day 6:18 10:12 21:22 36:3 91:13
days 23:15,19 32:18 47:1, 9 49:5 51:11
deal 5:22 6:2 13:17 25:12 39:7 41:17 44:18
dealer 53:23
dealing 81:9
dealt 6:1 28:9
December 77:15 91:24
decide 10:6 11:7 13:8 28:12 57:6
decided 20:19 37:15 81:14
decision 19:22 20:4,5,8, 20 23:16 30:3,6 36:10 37:12,13,14 68:2 75:8,9 87:6
decision's 76:1
decisions 13:14 67:7
defeated 90:19
defect 8:10 9:5 11:8
defects 32:18
defer 56:10 71:15 77:21
degree 26:10 74:5
Delaware 17:13 42:16
delay 22:9 48:8 62:20,21 66:3
delayed 21:24 36:10
delaying 21:15
delegate 84:17 89:13
delegating 19:5 80:21
delegation 80:10,17 85:12
deliberation 66:3
delicate 8:21
deliver 77:6
democracy 28:1,6 56:16 67:5,9 80:5
demographics 25:10
Denise 50:8
depending 87:2
derisive 34:2
derived 73:15
describe 82:5
designed 11:17
desire 5:22
desired 25:20
desk 45:16
detail 80:18
detailed 6:5 79:4
determination 27:21 61:5,11,14,20 73:2
determine 63:16 69:8 72:4
determined 42:11 60:5 71:23 78:14
determining 14:7 56:5 71:9
develop 39:9,10 54:20 55:3
developed 41:20 44:5
developer 5:12 8:9 20:23 31:12 33:14, 34:16 35:12, 13,15,23 39:5 49:12 54:19 58:22 66:11
developer's 20:3 30:9,22 31:16 35:12 46:7 52:16 66:21
developers 8:5 21:18 35:1 37:17 43:10 55:2
development 14:21 15:11 16:6, 25:14,16 42:20 43:19 52:6 53:11,12 61:7 64:5 77:16
developments 43:20,22 44:11
die 39:16

differently 84:13
difficult 64:14
digest 62:13
diligence 10:9 33:1
diligent 34:13
direction 42:19
directive 59:4,8,10
director 56:11 71:16 77:21 87:8
director's 81:19
directors 47:7
disagree 55:13
disagreement 42:19
discretion 14:16 17:5 72:23 79:1
discretionary 60:21
discriminatory 19:3 27:17,21
discuss 77:24
discussed 47:11 77:19
discussion 34:19 56:4 67:24 74:18
discussions 35:7
disguised 15:21
dismayed 62:19
disqualified 18:6
disregarded 14:16
disregarding 17:4
dissatisfaction 89:22
distinction 10:1 14:18 61:15
distributed 6:6
district 15:4 16:15 25:23
dive 7:16 11:11
document 63:16 85:15
documentation 24:10 34:15 36:12
Documented 34:17
documents 31:22
Donald 12:3
dotted 35:14 36:1
doubling 45:6
doubt 14:24 16:1
downhill 55:5
downtown 41:12 42:21 45:3 52:2
draft 80:22
drafted 47:2 49:7 74:6 75:18 82:6
drafter 74:12
draw 35:7 88:6
drive 47:5 53:18
drug 53:22
due 80:24
duly 6:9
Duncan 54:7,8 87:24
duties 7:18 20:17 22:15, 20,22 23:6
duty 9:17 47:22

E

earlier 16:22 87:16
early 88:22
easier 40:17
East 12:1
Eastlake 81:8
easy 67:5
Ebersole 12:18 19:17 24:6,7,21 47:17 65:9
echo 62:8 64:1
editor 74:13
education 66:12
effort 46:10 52:16 78:4 88:20
efforts 78:5
elected 27:12 45:19 48:21 51:1
election 6:18 34:11 37:24 48:7,9 63:7 69:13 79:20, 21
elections 9:13 10:21 13:15 14:13,15 15:17,24 16:17,21 17:7,17,19,22 20:24 21:2,12 23:13 31:4 35:19,21 42:11 47:7 58:3, 7,9 59:6,13 60:1 71:2,6 72:12 73:24 74:4,12 75:2 77:7
electorate 13:10
electorates 8:16
electors 77:17
Emily 54:7
empathize 39:6
Empire 26:17
employees 43:2
empowered 45:20
encapsulate 88:3
end 37:23 44:24 48:1,4,6,9 52:12 84:1 90:21
entertain 76:3
entire 19:9 21:3 79:24
entitled 17:14 77:12 85:3
entrusted 17:6
environment 25:21
essence 72:8 79:23
establish 20:22
etiquette 46:14
Euclid 16:20
evening 3:19 5:23 6:2,15 7:18 10:12 12:1 15:14 24:10 40:2 56:16,20 57:12 58:6 62:3 68:9,21 69:7 83:3 85:22 88:15 89:9,17
everybody's 66:2
everyone's 25:8
evident 79:2
exact 11:1
examine 13:5
exceed 65:23
exceeded 10:8
exceedingly 8:22
excuse 12:18 37:20 88:16
exemplar 31:16
exercise 66:14 80:2
Exhibit 14:24 15:15 17:16,18,21,24 18:17,18
exhibits 12:5,22 18:2 33:20,24 34:2,6 40:10
exist 18:13
existing 15:7 16:24 85:19
expect 29:20 37:2
expectations 45:18
expected 30:11 33:7,8
expecting 20:10
expense 38:3
experience 36:23 37:2,10
experiences 37:4
expires 91:24
explain 23:3
explicitly 9:10
express 37:9 40:6 87:3
expressed 89:21
expression 85:22
extra 49:22
extreme 60:9
eyes 52:24

F

face 54:9 61:1,6 63:16 72:20,22,24 74:23 79:3,7 81:3 84:16 85:10,15 87:20 88:24
fact 6:8 13:19 15:11 32:3 36:2,11 37:19 49:4,5 52:14 61:8 63:15 68:1,18 80:4 83:14
factor 25:11 39:12
factual 61:7
failed 45:1,9
fair 22:12 37:3
fairly 32:21
Falcon 88:1

fall 42:22
falls 14:9
false 21:3 37:22 46:17
falsification 34:12
familiar 14:19 50:9
family 25:20 26:2
fast 49:9
fate 15:21
favor 3:9 49:11 63:4 65:10 67:1 68:6 69:15 87:12 88:11 89:1
fear 54:3
federal 79:18
feel 6:7 22:10 26:13,14 27:4 28:22 33:6 36:23,24 51:7 59:18 64:4 65:6 87:17
feeling 69:5
feelings 37:10
feels 34:3
fees 48:3,4
fellow 68:18
felony 34:12,16 46:21
felt 24:14,18 26:17 47:13
Ferguson 54:4
figured 49:8
file 22:6 46:12
filed 21:12,16 47:8
filing 37:21
filings 33:19
filled 37:18
final 16:2,6,13 36:20
finally 17:2
find 51:23 69:10 72:6 73:18,20 74:23 82:13 85:11
finding 61:8
findings 62:24
finds 57:23
fine 31:17 54:21,22
finish 35:8
firm 26:20
fit 27:11
five-minute 4:24
flip 53:24
flooded 46:9
Flowers 40:1,3
focus 35:9
folders 40:11
folks 29:18 50:23
follow 8:23
follow-up 83:8
forced 48:1
foregoing 91:4,5
foremost 57:14
foretelling 81:10
forgetting 52:17
forgive 29:15
form 7:4,23 19:20 20:17 23:5,9 27:24 28:5 32:24 37:19 45:21 46:5 47:18, 21,23 78:14 79:20 82:5,12
formally 87:3
format 32:15
formed 86:23
forms 29:18 57:3
forthwith 9:14, 23:18 24:22
forum 8:3 10:19,24 11:7 60:24 61:13,19
forums 61:16
forward 4:22 5:5,18 15:16 16:21 19:22 25:1 58:2 68:9 71:2 74:3 88:5
forwarded 71:5 72:11 82:6
found 14:15 16:19 31:2,11 62:14
Frank 66:16 70:18 76:19 88:13 90:10
frankly 37:24 50:16 79:18
free 6:7 53:6
Friday 22:5 36:16,17
friendly 69:21
front 22:2 30:13 35:10 42:5 43:21
frustrated 62:12
full 18:15
fun 10:12
fundamental 48:12
future 39:8 61:18

G

game 22:3
gang 53:23
gangbanger 53:23
gas 67:8
gatekeeper 14:2
gatekeepers 18:8
gathered 42:10
gathering 80:13
gave 28:11 35:16
Gay 12:1
geek 27:2
Gene 6:13 21:19 48:3 56:9 62:1,2 69:6 71:1 72:17,18 73:13 74:16 82:19,21 84:4 85:8
general 63:7 64:8 73:19 79:24
generated 37:17
gentlemen 28:14 47:15
gigantic 28:22 30:12
Gilliam 53:17
girls 55:9
give 14:4 29:6 50:22 53:12 55:19 80:20 81:12
giving 53:3
glad 29:5 64:19 68:2
Glen 25:6
goal 86:22
Golf 87:23 88:2
good 3:19 4:17 7:8 12:1, 15 23:9 30:5 32:9 40:2,5 41:6 47:19,23 48:5,16 67:19,20 70:5 73:23 75:15,22 77:8 82:18
governed 74:5 82:16
government 40:14 42:20 44:24 47:14 67:11 79:21
grant 16:23
grassroots 26:19
great 23:11 30:1 46:21 54:20 55:3,6
green 41:18
ground 42:18
grounds 82:24
group 81:12 85:13 86:18, 24 88:18 89:13
growing 49:2,3
growth 45:8
guess 20:14 29:15,23 32:6 33:5 36:13,14,20 57:11,19 64:9
guidance 59:3 71:19 72:18 73:3 75:11 78:9
guide 67:12
guiding 19:12
guys 7:10 29:8 38:14 39:2,21 40:11 41:21 42:1 48:21 50:2 60:14

H

habit 55:2
half 65:14
hand 34:13,15 64:6 91:12
handed 12:21
handful 9:5
handle 5:10 78:4
hands 29:14 34:10 86:13
happen 87:11
Happensack 41:3,4,6
happy 72:15 81:1

hard 21:20 32:7 34:14 36:7,9
Hartly 25:6
hear 12:13,14,19 23:4 24:1 27:6 36:7,9 43:20 62:13 65:7
heard 25:9,13 26:8,15 27:5,15,16 30:24 31:3 36:16 42:1,3,7 43:15,18 44:20 49:11 87:16
hearing 38:14 39:16 56:19 71:3 77:5
hearings 8:3 43:17 64:12, 18
heart 55:16 67:22
helpful 62:15,21,22
helping 30:5
hereunto 91:11
high 60:9
high-density 44:2
highest 26:20
hired 6:17
historic 42:4
history 26:12 27:2
HOAS 19:7
holding 48:7
Hollins 4:14 5:19 56:12 62:9 71:3,18 72:15,22 73:5,16,22 77:4 78:3 82:8 83:1,7 85:18 86:3
Hollins's 48:3
Hollis's 21:19
home 43:24 52:11
homeowners 84:19,20, 22
homeowners' 19:6
homes 26:2 52:19
honestly 51:6 60:17
hope 29:21 39:2,15,20 46:6 65:5
hostility 39:16
hours 10:10,11
house 54:16
housing 38:15 44:2,3 53:21
Hrivnak 3:2,7,11,13,19 4:1,18 5:14 6:13 10:17 11:20,23 12:15,20 19:13, 16 24:3,5 25:4 28:15 34:18,22 35:6 39:23 40:2 48:16 54:6 55:23 62:1,5 63:8,23 65:12 66:16 67:3 68:7 69:23 70:5,12,13,22 71:1,7,17 72:14,17 73:7, 12 74:15,18 75:3,15,22 76:2,7,13,14 77:1,8,22 78:2 82:1,18 83:10 84:3,8 85:6 86:7,10 88:13 89:2, 11 90:1,4,5,18
huge 38:2
hypocrite 53:20

I

idea 10:11 25:19 32:1 50:15
identify 17:22
identifying 17:17,19
ignore 44:9
ignoring 43:3
Ill 53:18
illegally 21:2
immediately 9:19 23:18 25:1
impact 43:12 44:2 58:12
impermissible 19:1
impermissibly 19:4
important 20:1 34:5 36:9 38:24
importantly 37:7 63:12 67:13
improper 10:3
inaudible 28:22 66:18,19 67:1 87:8 88:21,22,24
inbox 21:20
inclined 86:5
including 73:1
inclusion 86:19
incorrect 47:20 81:22
indicating 5:1 68:12
indication 73:24
individual 67:15
individuals 80:14,23 81:12 89:14
infirmity 11:9
influence 21:2 54:13
info 47:21
information 21:3 62:22 68:20
initiated 79:9
initiative 13:16 14:1 15:20,22,23 16:2,10 18:15 19:1,2,10 22:17 56:24 60:19 71:10,24 72:19 77:6 78:15,22 86:1 88:16
ink 59:17,22
input 61:23 74:1
inside 8:1 19:23
instance 10:21 46:11 58:17
instances 67:15
instantly 23:19 25:2
institutional 11:9
instructions 9:2 59:5
intend 63:20 65:10 74:24
intended 30:15
interest 44:19 55:16,17
interested 81:7 91:10
interesting 58:9
interests 25:11 43:23 44:17
interpret 58:15
interpretation 81:17
interpretive 71:19
invalid 15:19 18:22
invalidate 58:17 59:12
invested 39:12 52:19
investment 65:16
invigorates 64:21
invite 5:14 9:3
involve 14:6
involved 65:17,21 86:20 88:7
involves 78:20
issue 7:7,8 22:13,16 37:6 57:11 58:21 59:11 65:17 74:3
issues 10:24 12:7,8 24:20 58:14
item 3:15,17 71:8 77:9,24
items 6:1

J

January 86:23
Jennifer 48:17
Jim 24:23 70:12 76:13 90:4
job 15:17 30:1,5 32:9
John 76:17
join 63:9
Jon 33:21 65:12 66:16 70:1,16 89:2,9 90:8
Joseph 12:1
judge 46:1,5
judges 45:24 46:5
judicial 20:20
July 32:12
juncture 8:7
Junior 12:3
Justin 40:3

K

Kellys 41:4
Kenney 12:3
key 20:3 36:14
kick 37:14
kids 50:19 55:12 64:15
kind 5:13 8:3 20:21 30:5,

24 32:11 36:22 38:15 41:10 49:19 64:20 65:4 74:13

kinds 25:15 28:7

knew 18:4

knowledge 11:14

L

lady 87:23

laid 24:13

land 41:18 49:23

landowner 66:11

landowners 10:20

lane 7:22 13:8 30:20 83:6 85:23

language 47:3 73:14 74:2

Lannie 53:17

large 49:2 83:16

late 31:15 36:16 45:15

law 7:20 13:4,9,19 14:16 15:13 17:5 18:14 19:11 20:19 26:10,20 27:23 46:1 56:10 61:12 67:20 71:16 77:21 81:13,19 85:20 86:12,13 87:4,8

lawful 81:1

laws 67:11,12

lawyer 38:10 40:21 68:16

lawyers 40:18 45:23 62:11

lays 15:1

leader 44:22,23

learned 67:10,18,24

leave 45:21

led 83:16

legal 9:17 10:11 26:8 46:13 60:10 72:18 80:19, 20 85:10

legislation 20:12,15

legislative 10:2 13:24 19:5 56:20,23 57:9 61:14 73:1 79:17 80:1,2,8,10,16, 21 85:12

legislative/ administrative 61:5

legislatively 16:3

Leslie 38:8

lesson 66:10

letter 27:7

letters 51:4

letting 27:18

level 37:15 78:24 81:17

levity 41:6,7

lifestyle 25:23

light 12:7 62:23

Likewise 17:20

limit 29:17 35:6

limited 6:21 36:19 60:21 63:2 72:23 74:1 78:23

listed 8:15

listen 27:15 28:11 53:7,9 65:2 67:19,20

listened 26:14

listening 63:12

literally 17:4

litigants 27:12

live 28:18 33:22 45:10 50:17 53:18 54:1,8 84:21 87:22

lived 32:4 53:21

lives 25:19 50:21 87:24 88:2

living 64:12

LLC 12:2 16:7

logical 53:15

long 5:2 10:12 34:22 48:8

long-term 43:11

longer 65:18,22 66:6

looked 31:6,7,20 74:22 79:5

Lopes 38:8

Lorenz 4:9,17 29:6 41:5 63:24 70:14, 76:15,16 87:15 90:6,7

lot 28:2 30:9,10 36:21 38:3,23 39:6 40:7,9,10,11, 12,15,17 41:9 48:2 50:22 52:13 54:11 65:17,22 66:1,6,12

lots 39:12

love 51:24 54:1

lovely 52:3

Lovitz 33:22

luck 66:15

Lutz 56:10 71:15 77:20,24 78:4

M

mad 32:10

made 6:12,23 7:11,14 8:10 34:5 37:11 61:19 63:13 79:16 80:7 88:22

main 25:11

majority 44:12 69:15

make 6:4,20 14:17 20:4 22:8 23:16 24:23 37:13 52:2,21 64:14 68:2 69:21 74:9 75:6,9,10

makes 32:6,9

making 19:22 20:8 87:6

MAN 5:8 12:13 35:3

manipulate 46:7,10

manner 46:20

maps 17:17

Marsalek 13:12

master 88:21

material 8:1

materials 66:23

matter 10:5,9 13:18,21 24:17 42:14 63:6 65:24 66:5,24 71:16 80:4

matters 17:12 65:24

Mayor 3:2,7,11,13,19 4:1, 9,18 5:8,14 6:13 10:15,17 11:20,23 12:13,15,20 19:13,16 24:3,4,5 25:4 28:15 34:18,22 35:6 39:23 40:2 48:16 54:6 55:23 56:1,12 62:1,5 63:8,10,23 65:12 66:16 67:3 68:7 69:17,20,23 70:5,13,22 71:1,7,17 72:14,17 73:7, 12 74:15,18,21 75:3,15,22 76:2,7,14 77:1,4,8,22 78:2,3 82:1,9,18 83:10 84:3,8,10 85:5,6 86:5,7,10 88:13 89:2,11,18 90:1,5, 18

meager 28:20

meaning 9:19

means 5:1 65:19

measures 14:8 33:18

meeting 3:3,23 5:21 6:4, 12 7:13 9:18,20 10:10 21:13,14,16,24 23:14,17 24:23 30:2 36:4 49:1,14 58:23 82:3 89:9

meetings 48:19 51:3 66:9 89:6

meets 27:8

member 12:5 15:13

members 3:10 5:24 6:6 7:13 11:24 13:3 24:17,18, 19 56:12 60:4 64:2 68:18 69:3 77:4 86:8 88:15

mention 40:20

mentioned 17:2 25:9 36:16 40:10

merit 88:23

merits 7:7,15,16,17,24 11:1,12

Mike 70:10 76:11 85:7 90:16

Miller 11:24 12:1,22 13:3

mind 5:9

minds 26:21

minute 20:7 46:12

minutes 6:19 15:15 22:11 29:19,20 35:2

mirrors 31:24 32:5

mislead 30:15

misleading 37:18

missing 33:24 34:1

Missouri 54:4
misstatements 30:22
model 18:12
Monday 21:18 31:2,11
money 28:3 38:2 43:9 48:2
monies 48:11
monitor 45:9
months 42:18 43:16 45:13 63:15
morning 21:20 31:15
motion 3:3,7 4:15 70:2 72:5 76:3,7 90:1
motions 71:4 72:8 77:5 89:20
move 12:8 19:21 25:1 38:5 69:17 76:4 84:24 89:22
moved 3:5 26:6 52:4 54:10,12,23
multiple 6:22
multitude 44:6
muster 79:13

N

name's 38:8 40:3 53:17 54:7
nation 26:16
nature 20:13 44:4,5 63:2
necessarily 41:16 81:19
needed 83:23
negatives 53:1
neighbor 88:1
neighborhood 51:6 54:14
neighborhoods 40:22
neighbors 34:14 39:20
nervous 28:19
nice 54:21,24 55:1
night 21:18 30:1 33:22 42:5 52:11 53:7
nonlawyer 30:8,14 37:11
normal 58:13
Norris 13:12 16:11
North 16:12
notarized 34:8,14
notary 59:21 91:3,23
noted 6:10 47:11
notes 41:10 91:7
notice 29:14 30:9
notification 35:22,23
notified 32:12
notion 38:19
November 6:19 42:8
number 8:5 9:8 21:1 56:14 58:8,12,19,20 59:14,16,20 60:6 72:1 78:17
numbers 45:2

O

O'quinn 48:17
object 22:8 38:13
objection 9:15
objections 22:8
obligated 16:20
obligation 24:24
observed 15:13
obvious 28:13
occasion 51:23
occasions 6:23
October 54:10
office 78:10 91:12
office's 81:20
official 17:16 22:6
officials 48:21 51:1
Ohio 6:22 7:21 13:4,9,23 15:18 19:11 38:9 54:2 59:3 77:13,17 78:21 82:10,17 91:3,13,23
Olentangy 55:10
omitted 27:8
one's 82:16
open 3:8,13 4:19 5:15 56:16 84:5,8
open-minded 25:15
oper 57:19
operate 57:7
opinion 62:17 81:20 85:10
opportunity 51:20 53:3,5 57:19,23 59:19
oppose 55:7 86:5
opposed 3:11
opposition 43:19 49:2
options 47:2
order 3:3
ordinance 4:2,3,21 10:2, 11:3,6,8,10 13:22 16:5,8,9 18:17,20 20:11 56:7 57:21 63:5 69:16 71:11,12 72:1, 9 77:10,11 78:8 79:12 82:7,12,15,23 83:18 84:9, 13,16 85:1,4,17 86:2 87:18,19,20 88:12,17 89:11,16,22,23 90:2,18
ordinances 4:2 5:7 60:18
organized 47:4
original 79:16
originally 54:3 79:19
outdated 45:5
outraged 33:13 36:23
overwhelm 30:15
overwhelming 9:8
owner 54:15
owner's 52:15
owners 53:13 54:16

P

paper 37:18 74:14
Paragraph 15:2
parallel 75:8
parents 50:21
parliamentary 89:19
part 6:9 8:15 15:7 17:8 26:16 34:6 43:1 58:18,22 83:2 84:22 86:24
participants 28:24
participate 6:7
participated 5:20 56:15
participating 64:16
participation 64:20
parties 61:17
party 16:7
pass 11:5 44:21 63:6,21 66:4 69:12 79:11,12 82:11,14
passage 85:4 89:16
passed 12:19 19:11 44:20 72:11 75:13,17
passes 75:10
passing 28:19,23 75:1
past 42:17 87:3
patience 66:2
pause 12:17
pay 25:18 48:3
paying 48:4
people 7:9 26:13,14,15,24 27:4,9,11,18,23 28:6 32:1 33:12 35:4 38:15 40:7,18 41:15 42:2 44:14 45:10 49:9,10,12 50:15,16 51:2, 11,14,17,19 52:10, 55:18 57:10 67:17 68:9,24 69:6, 12,14 79:19,23 80:9 85:13 86:19,24 88:6
people's 42:7
percent 51:13,14,18
perfect 52:6,7
period 5:16 35:11,14 45:7
periods 45:7
permit 16:23
person 25:22 49:11
person's 9:6
personally 34:4

perspective 26:9 30:14, 21

petition 18:19 19:20,24 20:7,16 22:4 23:9 26:23 32:14,17 34:10 35:16 45:21 47:2, 49:5 50:11 51:13 56:7,14,24 57:13, 14,18 60:4 61:2 63:4,17 71:5,11,22,24 72:21,22 73:1 74:23 77:6 78:15,20 79:3,15 80:18 81:4,15 82:11 83:4

petitioner 68:20

petitioner's 12:24 15:10 68:13

petitioners 5:11 6:17 8:22 13:21 14:5,10 21:6, 15,24 46:23 47:12,24 58:4 62:10,14 63:11 81:18

petitions 7:1,4 8:2,12,16 9:9,11 10:5 13:6,9,14 15:19 16:21 17:8 18:9,12, 22 21:1 23:21 30:18 31:7 33:12,17 34:6 35:17 42:6 46:19 47:8,19 50:13 51:9 57:23 58:5,18 59:2,7,14 60:18,19,20 63:19 74:6 78:12,13 82:4

phrase 27:7

pick 15:22

pickup 67:8

place 14:20 15:1,9 16:15 46:4 52:22,24 53:2,24 83:20 88:10

places 55:3

plain 6:20 7:14

plan 14:21 15:12 16:3,6, 14 41:20 45:15 77:14,15 80:22 83:14,20 85:3 86:15 88:4,21 89:6

planned 15:3 16:15

planning 32:14 40:5 42:22 43:17 49:23

plans 45:3,4,12

played 22:4

pledge 3:15,18

plenary 7:2

plot 49:23

point 19:18 20:21 21:11, 14 22:10,14,15 24:1 30:2 36:15 38:22 57:15 66:3

pointed 21:21 31:3

pointing 69:14

points 23:24 36:14 66:20

political 26:9 27:2

politics 40:9

pool 38:13

pools 39:7

popular 42:18

portion 3:23 35:11 56:3

position 4:6 7:15 10:19 43:6

possibly 73:20 82:2

potential 44:3

Powell 3:20 7:7,9 8:14,17 9:1,10,16 12:2 16:6 17:14, 15,18,20,23 18:1,5 19:8,9 21:5,8 25:19 29:24 30:17 32:2,3,4 38:9 39:10,13 40:23,24 42:5,6,12,13,14, 15,21 43:12,23 44:4,5 45:19 50:17 51:20 53:18, 19 54:1,3,12 55:18 77:13, 14,16,17 84:18,23

Powell's 37:12 39:1

power 14:4 46:24 81:11

precinct 9:6 17:11,22 32:2 42:13

precinct/ward 59:11

precincts 8:11,12,15 17:13,20 31:13,17

precise 57:11

prelaw 26:11

prep 35:13,20 36:2

prepare 31:1 36:5,8 68:22,23

prepared 41:8 63:4

preparing 31:13

present 4:6 5:8 12:13 34:24 35:1,3 36:17 64:18

presented 36:18 47:3 57:19 62:14

presumed 9:11,12 30:18

pretend 38:10

pretty 30:3,7,17 60:20

previous 36:4

previously 47:12 64:2

priced 26:20

principle 80:5

private 80:12,13,17 85:13

privy 11:16

problem 23:5 52:10

problems 52:13 54:17

procedurally 72:3

procedure 5:13 11:2,11 81:16,21 89:19

procedures 57:1,4

proceeding 91:10

proceedings 6:5 12:17 61:18 91:5,6

process 6:18 14:19 15:1, 8 33:3,15 37:14,16,24 44:7 46:8, 51:10 58:6 60:1 64:9,22 67:19 69:13 78:22 80:24 83:20 86:21,22 88:5

product 25:18

profits 43:11

progress 88:23

project 15:2

promised 9:19

promulgated 59:3

proof 46:22

property 15:3,5 52:15 53:13,21,22

property's 15:7

proposal 52:17

proposals 42:23 75:8

propose 71:11

proposed 18:17,20 33:18 41:12 64:5 77:11 79:6 82:23

protect 48:12

protest 12:6 13:20 21:3, 13,17 22:2,5 30:10

Protestor's 46:8

protestors 9:24 47:14

proven 41:21

provide 11:10 18:15,19 46:13 67:8

provided 12:11, 16:24 62:22

providing 69:2

provision 82:22 85:11

provisions 58:11

public 4:4,13,19 7:14 40:6 43:17 56:2 64:8,11,17,22 73:20 79:24 91:3,23

publicly 89:7

purchase 25:17

pure 67:4,9

purely 87:9

purpose 11:18 84:4

pursuant 16:3

pursued 43:13

put 9:18 13:10,15 21:6,8 22:1 28:7 38:21 42:12,13 59:16,24 82:12 83:19 88:3,9

puts 18:8 86:13

Q

quality 60:10

quasi-judicial 61:9,10

question 4:10 10:16 33:1, 3 43:19 73:8,9,13,23 82:1

questions 19:14 61:23 62:2 72:16,17 74:15 81:2, 24 82:19 84:4

quick 47:10

quickly 12:9

quiet 26:2

R

railroad 52:9
raise 10:20,24
raised 8:5 12:7 44:6 49:18
raising 9:24
ramped 61:8
range 4:24
rare 51:23
raving 52:22
read 40:12 63:10 68:11, 13,17,23
reading 77:10
ready 78:2
realize 6:19 28:2,10
realizing 29:16 36:7
reason 7:8 15:19 26:15 36:9 44:14 46:4 50:24 64:2 84:24
reasons 74:20 84:14
receive 33:9 37:3 82:11
received 21:17 24:9 35:22 36:11 62:10 73:23
recent 33:19
recited 3:18
recognize 83:21
recognized 83:21
recommendation 14:22
reconsider 39:15
record 3:14 4:23 6:5,9 12:4 17:21 24:12 29:7 59:24 65:5 74:21 75:16 83:19 86:12
recorded 6:10 32:1
records 17:24
red 35:11
redundant 66:18
referenda 13:24 60:19
referendable 57:5
referendum 13:16 15:21 16:22 22:18 56:6,8,14,24 57:12,18,22 59:6 60:4 72:20 73:4 78:22 79:23 80:15 86:1
referred 40:22
refusal 16:12
refused 32:19 47:3
refusing 14:17
refute 15:11
refuted 13:20
regard 69:7 71:4
registered 42:12
registration 17:24
regular 3:4
rehash 64:3
reiterating 48:14
rejection 85:16
related 36:14 60:18
relates 56:13
relief 57:21
rely 16:8
remain 85:22
remember 58:22
remind 77:18
remove 4:12,15
rental 53:20,22
repeal 16:10 18:24 19:2 57:20 58:1 71:11,24 72:9
repeals 16:9
repeat 6:11 12:20
reported 91:4
reporter 91:9
represent 48:23 50:4 84:19 87:23 88:8
representation 60:10 83:17
representative 40:14 87:21 88:17,18
represented 51:17
representing 19:9 26:20 50:2 55:18 87:16
represents 35:11,14 36:1 64:12
request 65:9
requested 70:1 90:21
require 15:4
required 13:4 18:10,14 32:13 42:9 60:7 72:2 78:17 82:10
requirement 8:12,23 17:11
requirements 59:9 78:11
researched 47:2
resident 37:1 40:4
residential 44:3
residents 29:1,24 32:22 43:15,24 44:7 45:11 84:18,21 87:17
resolution 4:2,20 56:5,13 57:15 61:24 63:5,21 65:10 68:6 69:8,18 70:2,6,22 71:5,9 72:3,6,11 74:19,22 75:10,13,17 76:5,8 77:1 82:5
resolutions 69:24 82:16 84:14
resort 46:17
resorted 46:9
respect 5:3 7:14 8:11 9:6 10:1 57:18 60:3 66:6 71:21 72:19,20 74:22 78:7 79:1
respected 32:22
respects 62:16
respond 36:19
responded 43:3
response 3:12 19:15 55:24 70:4 74:17
restricts 16:9
retroactively 16:8
return 3:8
review 7:2, 9:3 13:5 15:8 30:24 32:17,19 47:4 63:2, 19 78:12 83:14 85:10,24
reviewed 59:1,7 60:22 80:18
reviewing 6:24 83:4
revised 14:3 75:17,19
revisit 45:11
revitalization 45:3
Rich 62:7 65:18 73:7
Richard 70:20 76:21 90:12
Ridge 53:18 88:1
Ridgeville 16:12
rights 32:21 37:8 52:16 61:20 66:10,11 67:16
risk 66:17
road 83:15
role 3:14 6:21 62:18, 78:23 90:3
roll 42:24 69:21 70:1,7 76:9
room 48:10 50:18 66:7,8,9
ROSS 70:8,10,12,14,16, 18,20 76:11,13,15,17,19, 21,23 90:4,6,8,10,12,14, 16
roughly 51:9 52:5
routine 33:22
RPR 91:2,22
rubber 13:7
rule's 46:4
rules 8:19 57:8 58:13 67:11 68:1,3,4 71:20 89:19
run 37:23
running 50:19
runs 27:20
rushed 68:21

S

safety 52:8
sake 39:18
Sara 47:17
Saturday 33:22
scare 30:15

schools 44:2 49:18 52:20
science 26:9 27:2
scope 7:17 22:19 87:6
seal 91:12
seconds 13:2
Secretary 17:23 18:12 59:3 78:9
section 16:1,4 36:1 78:21
seeking 58:5
segment 86:14 87:22
sell 43:10 55:4
send 74:3 77:23
sending 17:7 86:6
sense 27:15,18
sentence 7:20
sentiment 65:8
service 43:14
session 3:4,8,14,20 5:15 83:12 86:22
set 24:12 35:6 57:2,8 59:9, 10 74:21 78:11 91:12
sets 60:20
setting 86:22
settled 81:13
shake 22:12
shaking 29:14
share 29:3 75:6
sharing 29:10
Sharon 28:17 29:6
sheet 17:19
shocked 51:18
shot 65:3
shutting 49:20 51:1
side 18:3 25:13 37:1 53:18
sides 60:11
sightly 40:8
sign 49:9 51:13
signature 32:4 59:21,22
signatures 9:5,9,11 14:8 18:9 31:5,20,21 34:9 42:8 47:5 49:6 51:9 58:8,12 59:2,7,14,20 60:6,9 63:1,2 64:7 71:24 72:2 78:12,16, 17
signed 33:12 42:6
signers 46:19 58:4,19,20
significant 43:18 44:1 88:23
signing 46:20
similar 81:15
simplest 27:24
simply 26:5,21, 27:22 28:10 55:8
single 25:22 44:3 51:22 65:15
sir 18:24 24:3 28:15 40:2 63:22 71:7 83:10
sit 14:13 53:7 64:13,17
situation 52:2
slightly 10:7
small 8:5 38:13 49:22 80:11,13 81:12 88:17,18 89:13
smaller 39:7
smart 53:11
smoke 31:23 32:5
solid 36:3
solutions 39:17
sort 8:10 25:21 27:7 29:20 33:21 81:10,21
sorts 7:12
sought 57:21
source 27:20
South 16:20
space 41:19
spare 7:19
speak 5:4,7 6:14,20 23:1 87:16
speaker 29:13
speaking 5:3 26:21 30:8 40:5,6 68:8
special 5:13 48:7,9
specific 4:15 5:16 79:11
specifically 11:17 54:12 59:4,10 80:6 81:7
spend 28:2,5
spent 65:16,23 66:22
spoke 34:4 43:21
spoken 51:2
spot 19:3 87:9
spread 49:4
Squires 47:18
staff 58:24 59:1 60:4 61:23 62:24 71:23 78:14
stamp 13:8
stand 3:16
standard 17:9 18:7 19:12 60:23 61:4
standard's 85:23
standards 16:15
standing 20:15 51:14
Starbuck 91:2,22
start 45:14 62:7
started 20:24 33:10,16 42:22,23 45:14 86:22
starting 32:12
state 4:22 8:24 18:14 59:4,6 75:16 91:3,23
State's 17:24 18:12 78:10
stated 84:14
statement 58:18 79:16 85:17
statements 30:23 34:8 37:18
stating 21:3 88:16
status 57:11
stay 7:21 30:19
stayed 31:14
staying 81:4 83:5
stenotypy 91:7
step 42:2 46:9 56:17
Steve 56:9 71:13 77:18
stop 44:22
stores 52:12
straight 24:12
straightforward 30:4,7
strange 64:9
strategy 83:12
strict 17:9 18:7
strikingly 81:15
strongly 55:7
students 55:10
study 84:1
stuff 25:11 30:9,10
stupid 53:2
style 25:20
subject 10:5 56:7
submission 47:1
submit 12:5 13:10 15:24 16:13,16 77:11
submitted 60:12 74:7
substance 7:5, 19:23 20:7,16 23:7,11 47:22
substantive 7:24 10:4,24
substitute 77:13
succinct 73:21
sue 48:1
suffers 15:20
sufficiencies 6:24
sufficiency 13:5 14:7 56:6 57:13 63:17 71:10 72:4
sufficient 9:12 30:19 57:24 63:20 69:9,11 72:6 74:24 82:14
suggest 66:12 87:1
suggested 13:7 66:19
summarized 7:20
support 12:6 44:10 45:2 50:4 63:20 75:1 85:4 88:7 89:16
supporters 46:23 47:13
supporting 87:19

supposed 7:22 23:16,17
Supreme 6:22 7:21 13:13 14:14,15 16:11,18, 30:19 46:3 80:7 81:8 83:2 85:20
surprise 50:11
Susie 29:7 70:6 90:2
suspicious 27:9
Sweet 48:17
swell 42:18
system 79:18

T

table 4:11,12,16
tabled 4:14
taint 46:8,10
takes 53:22 80:1 87:22
taking 4:12 11:3 43:6 69:3 80:8,15
talk 20:6 32:7 40:18 50:10 51:22 53:6 86:19
talked 50:1
talking 23:24 32:11 41:13 45:14 54:15 65:6 87:5
tape 40:15
task 69:7
taught 26:12 28:8
tax 48:11
taxpayer 38:2
technically 23:21
tee 9:2
telling 43:4 49:14 50:3
ten 35:2 86:15
ten-year 40:4
tend 27:10 89:12
Tennessee 54:2
term 65:18
terms 5:10 33:14
testimony 4:7
text 18:16,20,23 33:18,23
thing 6:3 18:1 25:21 29:15,23 40:20 57:4 58:9 64:1 73:19 83:24 85:19 86:18
things 7:10,12 18:21 25:7 26:1, 28:3,7 39:13 46:16 50:1 52:21 57:5 64:15 67:12 78:7 79:2,9 87:8
thinking 23:4
thought 22:6 29:1 32:23 68:19
thoughts 37:9 68:11
thousands 52:18
three- 4:24
three-minute 10:8 29:17
three-quarters 86:16
threw 46:22
throw 40:15
ticket 34:1
time 4:6,7,19 10:13 28:2, 4,14 29:17,22 30:1 34:24 35:5,6,12,13,14,20 36:2,4, 8,19 37:9 41:1,5 45:6,7 48:21 49:3,7 50:22 54:24 62:13 65:16,23 66:1,8,21 67:2 68:22 69:3,12 75:18 77:19,20, 83:22
timeline 20:22 28:20 31:1 32:11 35:10 47:11
times 31:1 41:9 48:18 64:17
title 18:16,19,24 33:18,23
today 41:18
toes 60:12,14,15
told 32:16,18 33:3 57:4
Tom 67:3 68:7 70:8 76:23 82:20 86:10 87:13,21 90:14
tomorrow 71:6 77:7
tonight 6:21 7:16 9:21,22 10:6 19:12 30:11 41:13,23 43:8 50:10 62:18 75:12 77:20 87:19
touch 43:5
tough 53:22 64:13
traffic 7:11 44:1 49:18 52:2 55:9
traffic's 49:24
Trail 50:9
transcribed 3:23
transcript 90:21 91:5,7
trash 67:8
treated 32:21 38:1
treatment 37:3
tremendous 45:8
trial 47:13
tripling 45:5
true 91:6
trump 67:16
Tuesday 89:9
turn 5:4 52:11,24 54:4 61:22 64:18 81:23
turned 58:20
two-week 62:20
type 22:20 34:11 56:24 61:4,10 74:3 79:11 81:10
typical 74:2
typically 69:24 79:19

U

U.S. 26:12 80:7 81:8 85:19
ultimately 74:11
unanimous 14:21
unauthorized 19:11
unclarity 10:23
unconstitutional 11:5 79:8 82:22 87:7,10 89:15
understand 20:2 21:21 28:9 30:6 35:13,15 39:11 46:1 49:13 53:9 57:7 62:20 64:13 65:2,7 69:3,5 74:10 89:18
understanding 66:23 85:9 89:21
understood 68:24
unfair 21:23
unfortunate 24:23 48:20
units 41:12 49:22
unknowns 38:23
unlawful 79:7 85:12 89:15
unsuccessful 78:6
updating 83:23
upheld 13:13 16:18
uphold 13:14 15:17
Upper 14:14 17:2
upscale 25:23
upset 26:4,15
upside 53:24
utilizing 71:22

V

vagueness 19:4
valid 9:12 30:18 57:24 60:5,6 63:1,19 69:9,11 71:23 72:1,7 74:24 78:16 82:13
validity 6:24 13:6 14:8 56:6 57:13 60:8 63:3,17 64:6 71:10 72:4
validly 13:15
Valvona 28:17,18 29:4,8, 11 34:20 35:4,9
venue 45:22
versed 61:18
versus 61:14 73:1
vested 78:24 79:19,21
view 24:1 30:2 66:20 84:13 87:9
Village 77:14 87:23 88:2
vindicate 61:20
voice 40:24 43:14 55:20 69:24
voices 42:1,7 43:4,9
void 19:3
volume 28:22 30:12
volunteer 28:6

volunteers 52:20

vote 20:13 21:1 22:15 23:2,3,7,10 27:23 31:10 38:12,21,22 41:1 42:12, 44:15 46:2 47:19 53:13 55:18 57:14,16 58:7 63:4, 20 65:10 67:1,22 68:6 69:22,24 70:1 74:24 82:13 85:2,3 87:2

voted 47:24 48:22

voter 17:24 66:10

voters 17:6 27:10,16 28:11,12 37:16 42:6,12 53:4 63:6 74:10 75:7,9,14

votes 26:23,24 44:8

voting 19:19 20:16 47:20, 22 49:13 66:4 74:11 79:24 88:11 89:17

W

wait 5:4 33:23 64:18

waited 46:11

walk 55:4

walked 24:10

wanted 6:8 19:21 22:14 25:8,23 32:15 54:13 59:23 64:7 69:1

wanting 83:12

ward 17:10 21:6

warded 8:11

wards 8:13 21:5,8 31:4,8, 10

waste 38:3 62:21

wasted 38:2

watching 33:21

wax 66:6

ways 41:21

Weatherburn 54:8

week 33:11

weeks 19:21 49:7 62:12 66:22

weigh 68:19 86:8

weighed 89:3

weight 60:17

west 52:9

whereof 91:11

whichever 27:19

who've 37:9

wholesale 19:6

Wible 50:8

withstand 80:23

witnessed 42:17

woman 34:24 35:1 50:23

wonderful 52:24 54:19

Woodedge 38:9

word 49:3 50:13

wording 73:21

words 27:6,15,17

work 10:10,12 34:14 68:23

worked 88:4

working 60:13

worse 42:4

worst 46:14

Worthington 54:11,24

Worthington's 55:6

write 32:2

written 62:15

wrong 20:9 31:13 38:17 53:2 80:4 86:17

wrote 32:3

Y

year 14:3 26:7 54:18 83:13, 88:22

years 26:7 44:6 52:4,5 65:14, 86:15

yield 29:19

yielding 47:5

young 87:23

Z

zones 26:2

zoning 15:3,5,7,9,12 17:1 19:3 41:21 42:23 43:18 44:8,16,18,20 77:16 81:11 84:17 87:10

Exhibit 2-F

BEFORE THE CITY COUNCIL OF
POWELL, OHIO

IN RE: REFERENDUM AND	:
INITIATIVE PETITIONS	:
CONCERNING CITY OF	:
POWELL ORDINANCE 2014-10	:
ADOPTED JUNE 17, 2014	:

NOTICE OF PROTEST

The Center at Powell Crossing, LLC and Donald R. Kenney, Jr. (collectively, the "Protesting Party") gives notice of protest to the City Council of Powell, Ohio concerning the referendum and initiative petitions (collectively, the "Petitions") filed with the City Clerk on July 17, 2014. The Petitions are insufficient and invalid on their face. Among other defects, the Petitions violate Ohio law by attempting to subject an administrative decision by City Council to a three-pronged referendum. Moreover, the Petitions fail to strictly comply with the governing election law requirements and contain obvious unconstitutional violations. Accordingly, the Petitions must be rejected from further consideration. A Memorandum in Support of this protest is attached.

Respectfully submitted,

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TABLE OF CONTENTS

Page

MEMORANDUM IN SUPPORT 1

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 2

A. The Property at Issue 2

B. Powell Crossing's Proposed Development Project 2

C. The Administrative Approval of Powell Crossing's Development Project 3

D. The Invalid Petitions 4

E. Delaware County Board of Elections Refuses to Consider Protest 5

III. LAW & ARGUMENT 6

A. Ordinance 2014-10 Cannot Be Subject To Referendum or Initiative Because It Was An Administrative Act 6

1. City Council Cannot Validate Petitions Seeking a Referendum or Initiative of Administrative Acts 6

2. Ordinance 2014-10 Was an Administrative Act By City Council and Therefore Cannot Be Subject to Any Referendum or Initiative 8

B. The Petitions Fail to Strictly Comply with the Governing Election Law 11

1. Standard of Review – Strict Compliance with Election Laws Required Unless Expressly Stated Otherwise 11

2. The Repeal Initiative and Charter Initiative Are Invalid Because of their Misleading Captions and Content 12

a. Both Purported Initiatives Are Referenda on City Council's June 17, 2014 Administrative Decision Concerning the Property, But Neither Is Captioned as a Referendum 12

b. The Charter Initiative Petition Is Also Invalid Because It Combines an Initiative and Referendum In the Same Petition Contrary to the City Charter's Petition Procedures 15

5. Every Part-Petition Fails to Notify Electors of the Requisite Title and Date or Title and Text as Required for Referenda and Initiatives By the City's Charter 16

3. The Petitions Fail to Satisfy the City Charter's Precinct Requirement 18

4. The Petitions Lack the Required Number of Signatures 19

a. Each Petition Must Contain 238 Valid Signatures of Powell Electors 19

b. Each Petition Fails to Include the Required Number of Valid Signatures 20

C. The Charter Initiative Is Unconstitutional and Therefore Invalid 21

1. The Charter Initiative Is Illegal "Spot Zoning" 22

2. The Charter Initiative Is Unconstitutionally Vague 23

3. The Charter Initiative Is An Unconstitutional Retroactive Law 23

4. The Charter Initiative Impermissibly Delegates City Council's Legislative Power to a Commission 24

IV. CONCLUSION 25

Exhibits

Exhibit 1 – Minutes from Powell City Council's Meeting on June 17, 2014

Exhibit 2 – Powell City Charter

Exhibit 3 – Petition Review

Exhibit 4 – Exemplar Referendum Part-Petition

Exhibit 5 – Exemplar Repeal Initiative Part-Petition

Exhibit 6 – Exemplar Charter Initiative Part-Petition

Exhibit 7 – 2014-07-10 Email from Sue Ross

TABLE OF AUTHORITIES

Page

Cases

Bliss v. Monagan, 9th Dist. No. 3080, 1980 Ohio App. LEXIS 14061 (Lorain County Dec. 3, 1980) 19

Buckeye Community Hope Found. v. City of Cuyahoga Falls, 82 Ohio St.3d 539 (1998)7, 9, 10, 11

City of Eastlake v. Forest City Enterprises, Inc., 426 U.S. 668 (1976) 22

Columbus v. Thompson, 25 Ohio St.2d 26 (1971) 23

Donnelly v. Fairview Park, 13 Ohio St.2d 1 (1968) 7

Gibson v. City of Oberlin, 167 N.E.2d 651 (1993) 24

Grayned v. City of Rockford, 408 U.S. 104 (1972) 23

Gross Builders v. City of Tallmadge, 2005-Ohio-4268 (9th Dist.) 8

King v. Village of Granville, 1997 Ohio App. LEXIS 4941 11

Lofino's, Inc. v. City of Beavercreek, Ohio City Council, 2009-Ohio-4404 (2d Dist. 2009) 9

Mercer Dev. LP v. Mercer Cnty. Bd. of Elections, 3d Dist. Mercer No. 10-10-08, 2010-Ohio-4071 21

More v. Bd. of Twshp. Trustees of Batavia Twshp. (12th Dist. 2003), 2003-Ohio-1265 9

Morris v. City Council of Macedonia, 71 Ohio St.3d 52, 41 N.E.2d 1075 (1994) 22

Pilla v. City of Willowick, 11th Dist. Lake No. 8-243, 1982 Ohio App. LEXIS 13454 (December 23, 1982) 22

Rust v. Lucas Cty. Bd. of Elec. (2005), 108 Ohio St.3d 139 21

Save the Lake v. Schregardus, 141 Ohio App. 3d 530 (2001) 24

Shaheen v. Cuyahoga Falls City Council, 2010-Ohio-640 (9th Dist. 2010) 7

Speedway Super America, LLC v. Granville Village Council, 2003-Ohio-6951 (5th Dist. 2003) 9, 10, 11

State ex rel. Baker v. City of Brook Park, 8th Dist. Cuyahoga No. 98991, 2012-Ohio-5043 22

State ex rel. Becker v. City of Eastlake, 93 Ohio St. 3d 502 (2001) 17, 22

State ex rel. Burech v. Belmont Cnty. Bd. of Elections, 19 Ohio St.3d 154 (1985) 17

State ex rel. City of Upper Arlington v. Franklin Cty. Bd. of Elections, 119 Ohio St.3d 478 (2008) 6, 7

State ex rel. Cody v. Stahl, 8th Dist. No. 83037, 2003-Ohio-6180 ..... 12, 13, 15

State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections, 96 Ohio St.3d 308, 2002-Ohio-4194 ..... 11, 16

State ex rel. Committee for Referendum of Ordinance No. 3844-02 v. Norris, 99 Ohio St.3d 336 (2003) 8, 9, 11

State ex rel. Corrigan v. Perk, 19 Ohio St. 2d 1 (1969) 19

State ex rel. Crossman Communities of Ohio, Inc. v. Greene Cty. Bd. of Elections (1999), 87 Ohio St.3d 132 9

State ex rel. Esch v. Lake Cnty. Bd. of Elections, 61 Ohio St.3d 595 (1991) 16, 17

State ex rel. Marsalek v. Council of the City of South Euclid, 111 Ohio St.3d 163 (2006) 8

State ex rel. Oberlin Citizens for Responsible Development v. Talarico, 106 Ohio St.3d 481 (2005) 7, 8

State ex rel. Phillips v. Lorain Cty. Bd. of Elections, 93 Ohio St.3d 535, 757 N.E.2d 319 (2001) 11

State ex rel. Poor v. Addison, 132 Ohio St. 477 (1937) 19

State ex rel. Selected Properties, Inc. v. Gottfried, 163 Ohio St. 469 (1955) 25

Supervalu Holdings, Inc. v. Jackson Center Assoc., 2004-Ohio-4314 (12th Dist. 2004)8, 9, 10, 11

Wedgewood Ltd. P'ship I v. Twp. of Liberty, 456 F. Supp. 2d 904 (S.D. Ohio 2006) 23

Statutes

PZC § 1143.11 3

PZC § 1143.16.2(b) 2, 3

PZC §§ 1143.08 2

R.C. § 3501.011 20

R.C. § 3501.38 ..... 5, 20

R.C. § 3501.38(B) 20

R.C. § 3501.38(C) 21

R.C. § 3501.38(D) 21

R.C. § 3501.38(E)(1) 21

R.C. § 3501.38(F) 21

R.C. § 731.31 20

R.C. § 731.36 15

Constitutional Provisions

Ohio Constitution, Article II, Section 1(f) 12

MEMORANDUM IN SUPPORT

I. INTRODUCTION

A segment of the Powell electorate, unhappy with City Council's approval by administrative action of a final development plan in the City's Downtown Business District, seeks to nullify Council's action with three illegitimate ballot measures. Not only are each of the three ballot measures an unlawful usurpation of the City's right to regulate its established zoning scheme, but they fail to comply with the requirements of applicable election laws.

The Center at Powell Crossing, LLC ("Powell Crossing") purchased 8.3 acres of land at 147 West Olentangy Street within the City's Downtown Business District (the "Property"). Consistent with the Property's zoning classification, Powell Crossing will construct a mixed-use development consisting of 14,000 sq. ft. of retail space and sixty-four (64) residential units. This project, developed as a result of close cooperation with local officials, is fully compliant with the Property's zoning and the City's Comprehensive Plan. The City's Planning and Zoning Commission unanimously approved the development plan and City Council passed Ord. No. 2014-10 on June 17, 2014 to finally approve the plan. As an administrative decision enforcing the existing zoning, Council's decision was subject to appeal to court pursuant to R.C. 2506.04. However, upon information and belief, none of the electors seeking to challenge that decision chose to appeal it to court and instead have circulated ballot measures to overturn the decision. Petitioners[1] have filed three (3) petitions (collectively, the "Petitions"), that seek to repeal Council's June 17, 2014 administrative decision:

(1) Referendum Petition for City Ordinance 2014-10, (the "Referendum");

[1] As herein referred, "Petitioners" include the "Committee for Referendum of Powell City Ordinance 2014-10"; the "Committee for Initiative for proposed Ordinance for Repeal Powell City Ordinance 2014-10"; and the "Committee for Initiative for Powell Comprehensive Plan Charter Amendment." Upon information and belief, all three Committees consist of three common members: Brian Ebersole, Thomas J. Happensack, and Sharon Valvona.

(2) Initiative Petition to repeal City Ordinance 2014-10, (the "Repeal Initiative"); and

(3) Initiative Petition to amend Powell's Charter to effectively repeal Ordinance 2014-10 and spot zone the Property, (the "Charter Initiative").

Each of these ballot measures are invalid and insufficient. First, the Petitions are an illegal attempt to referend an administrative decision and circumvent the required appeal procedures. Second, the Petitions fail to comply with requirements of the City Charter and Ohio Revised Code. Finally, the Petitions are misleading, incomplete, and non-compliant with legal requirements for ballot measures.

Accordingly, Powell Crossing and Donald R. Kenney, Jr.[2] respectfully request that these ballot measures be rejected by council as invalid and illegal.

II. FACTUAL BACKGROUND

A. The Property at Issue.

The property which is the subject of the Petitioners' Petitions is an 8.3 acre tract of land located south of West Olentangy Street between Sawmill Parkway and Liberty Street that is owned by Powell Crossing. Currently, the Property is vacant other than for an existing structure that serves as a dwelling and a small business location.

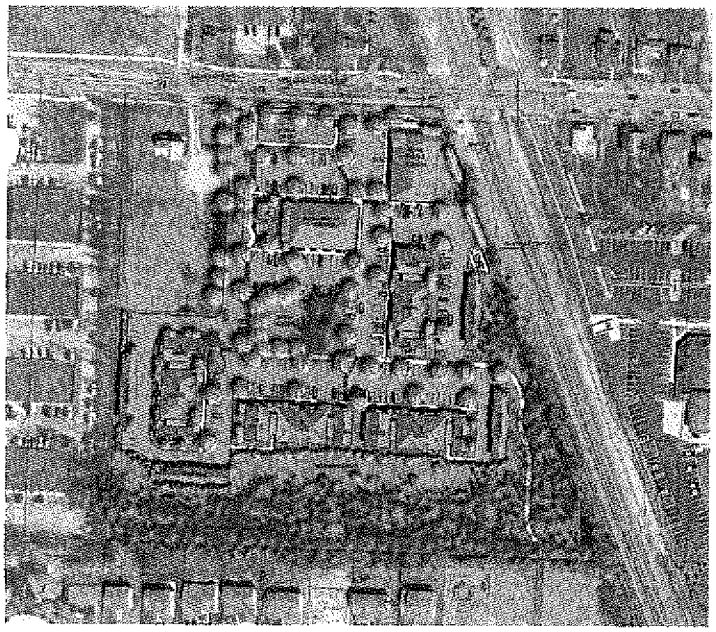
B. Powell Crossing's Proposed Development Project.

The City's Downtown Business District is a planned district which specifically permits retail and multi-family uses pursuant to the Powell Zoning Code ("PZC"). PZC §§ 1143.08, 1143.16.2(b). As stated in the PZC, the Downtown Business District was created to promote "**mixed use** pursuits ... adaptive **reuse** of older commercial and office structures, and those constructed originally as residences ... [through] a fine-grained **intermixture** of small-scale

[2] Mr. Kenney is a registered elector of the City of Powell.

residential, office, and retail uses…" PZC § 1143.16.2(b) (emphasis added). Powell Crossing's project was designed to promote this purpose.

The project will transform a largely vacant tract into a mixed use development that intermixes approximately 14,000 sq. ft. of retail space with sixty-four (64) multi-family dwelling units. It also preserves the historic Dr. Campbell House by repurposing it for office and retail. Several new public amenities will be created, including a park-like green square along the Property's frontage, improved streetscapes, and additional bike paths as shown in this rendering:



C. The Administrative Approval of Powell Crossing's Development Project.

The City of Powell's Planning and Zoning Commission unanimously recommended approval of the Final Development plan in accordance with the Downtown District Zoning. Pursuant to PZC § 1143.11, that recommendation was submitted to Powell's City Council for consideration.

City Council approved the Final Development Plan on June 17, 2014. During that hearing, Councilman Michael Crites correctly pointed out that Council's consideration of the

final development plan was an administrative – and not a legislative – act. *See* Minutes of City Council's June 17, 2014 Meeting at p.14, a true and accurate copy of the Minutes are attached as **Exhibit 1**. City Council's final decision approving the plan was memorialized as Ordinance 2014-10.

D. The Invalid Petitions.

Petitioners have chosen to circulate and file three ballot measures to reverse Council's administrative decision. On July 17, 2014, Petitioners filed three petitions with the Clerk of Council.

As set forth below, all three petitions have the illegal purpose of reversing Council's administrative act in approving the Final Development Plan. Moreover, both initiative petitions mislead the public by masquerading as legislative measures, when they are in fact attempts to repeal Ord. No. 2014-10. Moreover, all three petitions are defective by failing to comply with the requirement in City Charter Sec. 6.05[3] that the title and date (referendum) or title and text (initiatives) be contained in the part-petition.

Additionally, none of the petitions contain sufficient signatures as each part-petition has common, fatal defects,[4] rendering all three invalid:

Summary of Powell Petitions' Shortfall			
Valid Signatures Required for Ballot:	238		
Petition	**Potentially Valid**	**Invalid**	**Shortfall**
Referendum Petition [to repeal Ord. 2014-10]	143	270	**95**
Initiative Petition [to repeal Ord. 2014-10]	143	268	**95**
Initiative Petition [to amend Powell's Charter to repeal Ord. 2014-10]	146	263	**92**

[3] A true and accurate copy of Article VI of Powell's City Charter is attached as **Exhibit 2**.

[4] A true and accurate copy of the petition review conducted by the undersigned is attached as **Exhibit 3**. An exemplar of each Petition's part-petition is attached as follows: Referendum Part-Petition as **Exhibit 4**, Repeal Initiative Part-Petition as **Exhibit 5**, and Charter Initiative Part-Petition as **Exhibit 6**.

Finally, the Charter Initiative is an illegal and unconstitutional attempt to single out one property owner's land for different treatment than similarly situated property owners and deprives that landowner of its vested right in the property's zoning. This illegal charter amendment also seeks to wrest control of the City's zoning power from its duly elected officials and vest it in a cabal of homowners' associations. This illegal delegation of power would be a disaster for future development of Powell.

E. Delaware County Board of Elections Refuses to Consider Protest.

Given the Petitions' defects and irregularities, the Protesting Party filed a Notice of Protest with the Delaware County Board of Elections on July 28, 2014. However, in its meeting held on August 1, 2014, the Board of Elections refused to consider the merits of the Protest. According to the Board, Powell's City Charter confined the Board's initial review of the Petitions to a lone determination of the number of registered electors who signed the Petitions. The Board did not reach whether the Petitions contained any inherent defects, including violations of the City Charter and Ohio Revised Code's requirements. According to the Board of Elections, such deficiencies are not ripe for the Board's review unless and until City Council determines that the Petitions are otherwise valid and sufficient.

However, as set forth below, the Petitions are insufficient and invalid. Petitioners cannot subject an administrative decision of Council to their proposed three-pronged referenda. Moreover, the Petitions contain facial defects and flaws which require their invalidation. Accordingly, City Council must invalidate the Petitions.

III. LAW & ARGUMENT

A. Ordinance 2014-10 Cannot Be Subject To Referendum or Initiative Because It Was An Administrative Act.

As a threshold matter, Ordinance 2014-10 cannot be subject to the Petitions' combined referenda because City Council's approval of the Powell Crossing's Final Development Plan was an administrative act. As Councilman Crites correctly observed during City Council's June 17, meeting, Council merely administered the Property's existing zoning and acted in its administrative capacity when it approved the Final Development Plan. Ex. 1 at p. 14. Because the Petitions are an illegal referendum on an administrative action, City Council must invalidate all three Petitions.

1. City Council Cannot Validate Petitions Seeking a Referendum or Initiative of Administrative Acts.

Based on well-settled law, there can be no dispute that Ordinance 2014-10 was an administrative act and therefore, cannot be the subject of Petitioners' three referendum Petitions. It is not only proper to determine whether a referendum is invalid because it seeks to impose a referendum on an administrative action, Council has a legal duty to do so. *See, State ex rel. City of Upper Arlington v. Franklin Cty. Bd. of Elections*, 119 Ohio St.3d 478, 484 (2008) (holding that a board of elections abused its discretion by failing to invalidate a referendum on an administrative act).

Article II, Section 1(f) of the Ohio Constitution provides that only municipalities' *legislative* acts are subject to referendum and initiatives. *State ex rel. City of Upper Arlington,* 119 Ohio St.3d at 481-82 ("'[P]ursuant to Section 1f, Article II of the Ohio Constitution, actions taken by a municipal legislative body, whether by ordinance, resolution, or other means, that constitute *administrative* action, **are <u>not</u> subject to [initiative or] referendum proceedings**.'" (alterations and italics in original) (citations omitted)); *Buckeye Community Hope Found. v. City*

of Cuyahoga Falls, 82 Ohio St.3d 539, 543 (1998) ("Section 1f, Article II clearly limits referendum and initiative powers to questions that are legislative in nature.").

"The test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting a law, ordinance or regulation [which is legislative], or executing or administering a law, ordinance or regulation already in existence [which is administrative]." *State ex rel. City of Upper Arlington,* 119 Ohio St.3d at 481-82, quoting *Donnelly v. Fairview Park,* 13 Ohio St.2d 1 (1968), paragraph two of the syllabus. Thus, legislative acts have general, prospective application, prescribing what the law shall be in future cases arising under its provisions. *Buckeye Community Hope Found. v. City of Cuyahoga Falls*, 82 Ohio St.3d 539, 545 (1998). *See also Shaheen v. Cuyahoga Falls City Council*, 2010-Ohio-640 at ¶ 23 (9th Dist. 2010) ("Legislative [acts] are normally generalizations concerning a policy or state of affairs: they 'do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law, policy, and discretion.'"). Whereas actions which merely carry out a policy or apply an existing law to a set of circumstances is an administrative action. *See City of Upper Arlington*, 119 Ohio St.3d at 482; *State ex rel. Oberlin Citizens for Responsible Development v. Talarico*, 106 Ohio St.3d 481, 486 (2005).

Importantly, simply because a city council memorializes an administrative decision as an ordinance, does not somehow convert its administrative action into a legislative one. *City of Upper Arlington*, 119 Ohio St.3d at 483; *Buckeye Community*, 82 Ohio St.3d at 544 ("the city's position that the approval of the site plan was a legislative action because the council took action via an ordinance (rather than by resolution or other means) is in error"). Thus, just because City Council's approval of Powell Crossing's Final Development Plan was embodied in an ordinance

does not transform Council's approval of the plan from an administrative act to some general legislative enactment.

2. Ordinance 2014-10 Was an Administrative Act By City Council and Therefore Cannot Be Subject to Any Referendum or Initiative.

Council's action approving Powell Crossing's Final Development Plan that was consistent with the Property's existing Downtown Business District zoning was an administrative act. As set forth in its approval, Council merely administered existing laws, including the Property's existing zoning. Indeed, Council's action did not change the zoning classification of the Property nor did it alter the City's Zoning Code.

Ohio courts have consistently held that municipal zoning decisions remain administrative unless a property's zoning classification is amended or the zoning code is altered by the decision. *See State ex rel. Marsalek v. Council of the City of South Euclid*, 111 Ohio St.3d 163, 165-66 (2006) (explaining that an action is legislative where it effects "a zoning change to the propert[y]"); *Talarico*, 106 Ohio St.3d at 486 (holding an ordinance was an administrative act because it did not "constitute an amendment of the zoning of the property"); *State ex rel. Committee for Referendum of Ordinance No. 3844-02 v. Norris*, 99 Ohio St.3d 336, 343 (2003) (holding an ordinance that adopted a final development plan in a planned commercial district ("PCD") was an administrative act because it did not cause a "zoning change" to the property); *Gross Builders v. City of Tallmadge*, 2005-Ohio-4268, at ¶ 18 (9th Dist.) (holding city council's denial of a conditional zoning certificate was administrative because it did not alter "the zoning classification for the property [or] the zoning code"); *Supervalu Holdings, Inc. v. Jackson Center Assoc.*, 2004-Ohio-4314, at ¶ 16 (12th Dist. 2004) (holding a township's approval of an amendment to a site plan was administrative because it "did not amount to a legislative rezoning of the property").

"Where specific property is already zoned as a [planned development district ("PDD")] area, approval of subsequent development as being in compliance with the existing [PDD] standards is an administrative act."[5] *Norris*, 99 Ohio St.3d at 342; *Supervalu*, 2004-Ohio-4314, at ¶ 16; *Speedway Super America, LLC v. Granville Village Council*, 2003-Ohio-6951, at ¶ 10 (5th Dist. 2003). *See also More v. Bd. of Twshp. Trustees of Batavia Twshp.* (12th Dist. 2003), 2003-Ohio-1265, at ¶ 3 (holding a modification to an existing development plan in a PUD was an administrative act); *Lofino's, Inc. v. City of Beavercreek, Ohio City Council*, 2009-Ohio-4404 (2d Dist. 2009) (treating city council's approval of a major modification to a PUD – a 60,000 square foot expansion – as an administrative act).

In *Norris*, property already zoned PCD was permitted to be developed pursuant to a new development plan. 99 Ohio St.3d at 342. The Supreme Court of Ohio found a city council's adoption of the final development plans and final plats in a PCD was an administrative act. *Id.* at 342. The Court reasoned that the legislative act occurred when the zoning on the property changed from residential to PCD. *Id.* at 342-43. The ordinances passed by city council adopting the development plans – as here – merely applied the preexisting PUD regulations to the property and were therefore administrative. *Id.*

Likewise, in *Buckeye Community*, the Supreme Court of Ohio found a city council's approval of a site plan for an apartment complex on land that was already zoned for multifamily use was an administrative action. 82 Ohio St.3d at 545. The Court explained that – as here – the ordinance passed by city council merely approved the planning commission's application of existing zoning regulations to the plan submitted by the developer. *Id.* The Court concluded that

[5] In *State ex rel. Crossman Communities of Ohio, Inc. v. Greene Cty. Bd. of Elections*, it was held that a city council's resolution adopting a final development plan for a PUD constituted a legislative act. (1999), 87 Ohio St.3d 132, 136-37. That holding, however, was later reversed by the Supreme Court of Ohio in *Norris*. 99 Ohio St.3d at 343-44.

"[t]he passage by a city council of an ordinance approving a site plan for the development of land, pursuant to existing and other applicable regulations, constitutes administrative action and is not subject to referendum proceedings." *Id.*

In *Supervalu*, the Twelfth District Court of Appeal also found a township's approval of a major amendment to a site plan to construct a Wal-Mart store in a PDD was an administrative act. 2004-Ohio-4314, at ¶ 16. The Court of Appeals reasoned that the property had already been zoned as a PDD and the site plan had already been approved. *Id.* at ¶ 15. As such, the township's action – as here – was administrative because "the township was not legislating, but was regulating the 'subsequent use or development of the property' within the already established [PDD]." *Id.* at ¶ 16. In other words, "[t]he township's decision to approve the amendment did not amount to a legislative rezoning of the property." *Id.*

Finally, in *Speedway*, the Fifth District Court of Appeals found the village's denial of a developer's application for approval of development plan for a Speedway gas station in a PCD was an administrative act. 2003-Ohio-6951, at ¶ 17. The Court of Appeals explained that the enactment of the PCD to allow this use was a legislative act, but that approval of a specific development plan in the existing PCD was an administrative act. *Id.* at ¶ 17. The court rejected the village's argument that its decision was a legislative act because the developer submitted a development plan in connection with its application that created use restrictions and development regulations that would apply to the property. *Id.* at ¶ 13. The court explained that the developer was required to submit the development plan in connection with its application and that, contrary to the village's suggestion, the development plan "was not an attempt to rezone the property." *Id.* at ¶¶ 16-17. Thus, the village's denial of the development plan was an administrative act. *Id.*

at ¶ 17. *See also King v. Village of Granville*, 1997 Ohio App. LEXIS 4941, at *7-8 (holding the village's approval of development plans in a PCD was an administrative act).

In this case, the actions taken by Powell's City Council mirror those taken in *Supervalu*, *Speedway*, *Norris*, and *Buckeye Community*. The Property was previously zoned for all uses permitted within a planned commercial district, the Downtown Business District. As set forth in Ordinance 2014-10, Council's approval of the Final Development Plan was consistent with this existing zoning classification and did not require altering the Zoning Code. Thus, approval of Ordinance 2014-10 was an administrative act and cannot be the subject of a referendum. Accordingly, the Referendum Initiative and both the Repeal Initiative and Charter Initiative are illegal attempts to subject Ordinance 2014-10 to a referendum and must be rejected.

B. The Petitions Fail to Strictly Comply with the Governing Election Law.

1. Standard of Review – Strict Compliance with Election Laws Required Unless Expressly Stated Otherwise.

The Petitions must strictly comply with the relevant procedures and requirements unless that procedure or requirement expressly states that a lesser standard applies. Specifically, the Supreme Court of Ohio instructs that: "[t]he settled rule is that **election laws are mandatory and require <u>strict</u> compliance** and that substantial compliance is acceptable only when an election provision expressly states that it is." *State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, ¶ 49 (emphasis added), citing *State ex rel. Phillips v. Lorain Cty. Bd. of Elections*, 93 Ohio St.3d 535, 539, 757 N.E.2d 319 (2001). Thus, unless a requirement expressly states that some lesser standard applies, Council must require strict compliance with the mandate.

Additionally, because the Petitions are cast as both referenda and initiatives concerning the City of Powell, the City's prescribed Initiative and Referendum rules and requirements

govern. The Ohio Constitution expressly vests each municipality with the authority to regulate local initiatives and referenda. Ohio Constitution, Article II, Section 1(f) ("The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such **municipalities** may now or hereafter be authorized by law **to control by legislative action**.") (emphasis added). The City of Powell's legislated initiative and referenda procedures are set forth in Article VI of its Charter. The Charter establishes two things: (1) that the Charter's enumerated requirements and procedures are the default procedures, and (2) that Ohio law must be followed where the Charter is silent. Ex. 2, Charter § 6.05 ("Where the Charter is silent … the laws of the State of Ohio shall be followed….").

Accordingly, unless a lesser standard is expressly stated, the Petitions must strictly comply with the requirements set forth in the City Charter or with the requirements of Ohio law. Because the Petitions fail to strictly comply with these requirements, the Petitions must be ruled invalid.

2. The Repeal Initiative and Charter Initiative Are Invalid Because of Their Misleading Captions and Content.

a. Both Purported Initiatives Are Referenda on City Council's June 17, 2014 Administrative Decision Concerning the Property, But Neither Is Captioned as a Referendum.

Contrary to the Repeal Initiative and Charter Initiative's captioning as "Initiative Petition[s]," both initiatives are referenda on Ordinance 2014-10. As a result of this error, the electorate was misled and both initiatives fail to follow the City Charter's distinct referendum procedures.

As a matter of law, referenda initiatives and their concomitant procedures and timing cannot be circumvented by merely labeling a referendum an initiative – as Petitioners have done here. *State ex rel. Cody v. Stahl*, 8th Dist. No. 83037, 2003-Ohio-6180, ¶ 15 (explaining that an

initiative petition is invalid if the petition is a referendum). In *Stahl*, the Eighth District Court of Appeals determined that where a petition is captioned as an "Initiative Petition," but "seeks repeal of an ordinance," the petition is a referendum petition. *Id.* Failure to properly caption such a petition as a "Referendum Petition" thus, "fails properly and immediately to alert signers as to its full nature." *Id.*

Here, Petitioners captioned the Repeal Initiative as an "Initiative Petition" on the face of each part-petition and merely state that the Initiative is for a "proposed Ordinance." Perhaps most misleading of all, the face of each of the Repeal Initiative's part-petitions mentions Ordinance 2014-10, but fails to disclose that the entire purpose of the Initiative is to repeal that Ordinance. *See e.g.*, Ex. 5, Repeal Initiative Part-Petition ("Attached ... is a full and correct copy of ... Ordinance 2014-10, **which is referenced in the proposed Ordinance**. . . ." (emphasis added)). If anything, this reference insinuates that the proposed Ordinance expands upon or operates in tandem with Ordinance 2014-10 – not that the sole effect is to repeal that Ordinance. Not until one is afforded the opportunity to actually read the Initiative's proposed title and text is there any hint that the initiative is actually a referendum on Ordinance 2014-10. Such gamesmanship fails "properly and immediately to alert [petition] signers as to [the petition's] full nature." *State ex rel. Cody v. Stahl*, 2003-Ohio-6180 at ¶ 15. Such misleading petitions are invalid.

The Charter Initiative suffers the same fatal flaw. It too is captioned as an "Initiative Petition" and merely claims on the face of each part-petition that "[a]ttached ... is City of Powell, Ohio Ordinance 2014-10, **which is referenced in the proposed charter amendment**. . . ." *See e.g.* Ex. 6, Charter Initiative Part-Petition. Only after reading the text of the purported "Initiative" is it revealed that it operates as a repeal of Ordinance 2014-10:

> **WHEREAS**, on June 17, 2014, City Council of the City of Powell, Ohio passed **Ordinance 2014-10** approving a Final Development Plan for the Center at Powell Crossing LLC, a development of 14,000 Sq. Ft. of retail in two buildings, preserving the Old House for commercial use, and development of 64 apartment residential units on 8.3 acres, located at 147 W. Olentangy Street;
>
> **WHEREAS**, the people of the City of Powell, Ohio have determined that the approval of the Final Development Plan pursuant to City of Powell, Ohio **Ordinance 2014-10 is not in the best interests of the people** of the City of Powell, Ohio.
>
> ***
>
> **Article 4, Section 20**: **All Ordinances** of the City of Powell must comply with the Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV.
>
> **Article 4, Section 21**: The Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV **shall not be compatible with Ordinance 2014-10 and/or the Final Development Plan for the Center at Powell Crossing LLC**, a development of 14,000 sq. ft. of retail in two buildings, preserving the old house for commercial use, and development of 64 apartment residential units on 8.3 acres, **located at 147 W. Olentangy Street**.
>
> **Uncodified**: **No party, public or private, shall take any actions**, including but not limited to construction activity, **in reliance upon Ordinance 2014-10 and the Final Development Plan for the Center at Powell Crossing LLC**, a development of 14,000 sq. ft. of retail in two buildings, preserving the old house for commercial use, and development of 64 apartment residential units on 8.3 acres, **located at 147 W. Olentangy Street**. The subject property for the Ordinance 2014-10 Final Development Plan shall remain economically viable for other uses, including residential and non-residential uses, notwithstanding this amendment to the City Charter of Powell, Ohio.

Id. In sum, the Charter Initiative singles out Ordinance 2014-10 to render it dead letter. Under the proposed Charter Initiative, Powell Crossing is expressly prohibited from taking further action to effectuate its property rights memorialized in Ordinance 2014-10 now and would never be able to finish the Final Development Plan in the future, despite Council's prior administrative

approval. Thus, the Charter Initiative is invalid for the same reason the Repeal Initiative is invalid – both are a referendum disguised as an initiative.

The Charter Initiative is even more misleading for the additional reason that even if its title were included on the face of each part-petition, the title is misleading and incomplete. R.C. § 731.36. The Charter Initiative's title utterly fails to acknowledge or in any way mention that it is repealing Ordinance 2014-10 or otherwise subjecting that Ordinance to a referendum.[6] Nor does the title accurately state that Ordinance 2014-10 is declared "incompatible" to some non-existent, future comprehensive plan. Such omissions are patently misleading and should invalidate the Charter Initiative Petition on their own accord.

b. The Charter Initiative Petition Is Also Invalid Because It Combines an Initiative and Referendum In the Same Petition Contrary to the City Charter's Petition Procedures.

The Charter Initiative Petition is also invalid on its face for the additional reason that it improperly combines both an initiative to amend the City's Charter and a referendum into a single petition. However, the City's Charter does not permit this incompatible effort. *See* Ex. 2, Charter §§ 6.01, *et seq.*

There is simply no provision that permits the combination of a referendum and initiative into a common initiative under Powell's City Charter. Combined multi-subject initiative and referendum petitions that are not permitted by a municipality's charter are invalid. *State ex rel. Cody v. Stahl*, 8th Dist. No. 83037, 2003-Ohio-6180, ¶ 8 (discussing Law Director's conclusion that the petition improperly joined an initiative petition with a referendum petition under the City's Charter). Indeed, the City of Powell's initiative and referendum procedures are mutually

[6] Instead, the full title of the Charter Initiative only discloses that it is: "**AN AMENDMENT TO THE CITY CHARTER OF POWELL, OHIO ESTABLISHING A DUTY FOR THE CITY COUNCIL OF POWELL, OHIO TO SUBSTITUTE THE COMPREHENSIVE PLAN OF THE VILLAGE OF POWELL OF DECEMBER 1995 WITH A NEW COMPREHENSIVE PLAN FOR ZONING AND DEVELOPMENT IN THE CITY OF POWELL, OHIO.**" Ex. 6, Charter Initiative Part-Petition (emphasis in original).

exclusive and subject to differing procedures. *Compare* Ex. 2, Charter § 6.02 *with* Charter § 6.04. Moreover, no provision within the Charter permits the consolidation or combination of an initiative and referendum or addresses how the differing procedures for each should be reconciled. Strict compliance with the Charter's provisions is required. *State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, ¶ 49. Accordingly, the Charter Initiative is procedurally invalid.

3. Every Part-Petition Fails to Notify Electors of the Requisite Title and Date or Title and Text as Required for Referenda and Initiatives By the City's Charter.

The City's Charter expressly requires all initiative and referendum petitions to identify the specific measure or ordinance that is the subject of the petition with specified particularity. Despite being cautioned in writing to consult the City's Charter requirements prior to circulation of the Petitions, Petitioners failed to adhere to the City Charter's strict requirements. *See* email from Clerk of Council to Petitioners dated July 10, 2014, a true and accurate copy is attached as **Exhibit 7**.

Regarding Referendum Petitions, the Charter expressly requires that "any referendum petition **shall** contain the number, a full and correct copy of the **title** and date of passage of the [subject] ordinance. . . ." Ex. 2, Charter § 6.05. Importantly, strict compliance is required. *State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, ¶ 49. As the Supreme Court has found, "[m]ore so than the text, **the title immediately alerts signers to the nature of [the measure]**." *State ex rel. Esch v. Lake Cnty. Bd. of Elections*, 61 Ohio St.3d 595, 597 (1991) (rejecting initiative petitions that lacked the relevant title) (emphasis added).

Yet, nowhere on the face of any of the Referendum part-petitions does the **title** of the subject ordinance appear. *See e.g.* Ex. 4, Referendum Part-Petition (omitting the full and correct

title of Ordinance 2014-10 which should have read: "**AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR THE CENTER AT POWELL CROSSING LLC, A DEVELOPMENT OF 14,000 SQ. FT. OF RETAIL IN TWO BUILDINGS, PRESERVING THE OLD HOUSE FOR COMMERCIAL USE, AND DEVELOPMENT OF 64 RESIDENTIAL UNITS ON 8.3 ACRES, LOCATED AT 147 W. OLENTANGY STREET**" (emphasis in original)).

Likewise, the City Charter also requires that each part "of any initiative petition **shall** contain a full and correct copy of the **title and text** of the proposed ordinance or other measure." Ex. 2, Charter § 6.05. Efforts made to dismiss or overlook a verbatim title and text requirement in R.C. § 731.31 as overly technical, have been repeatedly rejected by the Supreme Court of Ohio. *See e.g., State ex rel. Esch v. Lake Cnty. Bd. of Elections*, 61 Ohio St.3d at 597 (citing cases); *State ex rel. Becker v. City of Eastlake*, 93 Ohio St. 3d 502, 507 (2001) ("Omitting the title of a proposed measure is a 'fatal defect because it interferes with the petition's ability to fairly and substantially present the issue and might mislead electors.'") (citations omitted); *State ex rel. Burech v. Belmont Cnty. Bd. of Elections*, 19 Ohio St.3d 154, 155 (1985) (holding that title and text requirement must be strictly enforced).

In *State ex rel. Esch*, the Board of Elections argued that "the lack of a title is a technical defect and that strict compliance with this R.C. § 731.31 requirement is not necessary." *Id.* The Supreme Court disagreed. The Court explained that strict compliance is required and that it is erroneous to hold a petition to a lesser standard. *Id.* at 597-598.

Nor can the Petitions here be held to some lesser standard. In both the Repeal Initiative and the Charter Initiative, neither the full and correct title, nor the text of the Ordinances appear on the face of any of the part-petitions. The Initiative part-petitions each merely refer to a

"proposed Ordinance" rather than providing electors with the title that conveys the immediate nature of what the "proposed Ordinance" seeks to legislate or the actual text itself. Similarly, the Charter Initiative's part-petitions vaguely reference an "amendment to the City Charter of Powell, Ohio," rather than including the Initiative's title and text.

While Petitioners may argue they substantially complied with the Referendum's title and date and Initiatives' title and text requirements, the City Charter does not permit substantial compliance. Worse, there is no evidence that any of the purported exhibits mentioned in any of the Petitions' part-petitions were actually circulated with each part-petition. Not one circulator's statement covers any of the purported exhibits that *follow* his or her statement. Rather, each circulator only swore of the content *preceding* their statement. *See e.g.*, Ex. 6, Charter Initiative Part-Petition.

Accordingly because the Petitions all fail to strictly comply with the title and date and title and text requirements from the City's Charter, the Petitions are invalid on their face.

4. The Petitions Fail to Satisfy the City Charter's Precinct Requirement.

An insufficient number of the part-petitions comply with the City Charter's absolute requirement that each elector specify the elector's precinct. Ex. 2, Charter § 6.05.

The City of Powell's Charter could not be more clear: "Each signer of any [initiative or referendum] petition . . . **shall** place on such a petition, after his name . . . his place of residence, including street and number, and the ward and **precinct**." *Id.* (emphasis added).

Ward and precinct requirements like the one in the City's Charter, have been challenged and expressly upheld by the Ohio Supreme Court. Where "the law is clear that the ward and precinct, whether written in by the signer himself or by someone else under his direction, must follow the signature of the signer in a petition[,] . . . a signature not followed, amongst other requirements, by the ward and precinct of the signer does not comply with [the ward and precinct

requirement], and, therefore, cannot be held to be a valid and sufficient signature." *State ex rel. Poor v. Addison*, 132 Ohio St. 477, 481-82 (1937) (agreeing with rejection of proposed amendment to Columbus City Charter on ward/precinct requirement); *see also State ex rel. Corrigan v. Perk*, 19 Ohio St. 2d 1, 3 (1969) ("We find no federal constitutional provision or principle which is offended [by a ward/precinct requirement]. . . .");) *Bliss v. Monagan*, 9th Dist. No. 3080, 1980 Ohio App. LEXIS 14061 (Lorain County Dec. 3, 1980 (rejecting a Constitutional challenge to a ward/precinct requirement).

While more than one third of the electors provided their correct precinct, nearly two-thirds did not. Ex. 3, Petition Review. "Accordingly, those signatures of municipal residents which were filed ... without [the] ward and precinct designation, are invalid." *State ex rel., Corrigan v. Perk*, 19 Ohio St.2d at 4.

5. The Petitions Lack the Required Number of Signatures.

a. Each Petition Must Contain 238 Valid Signatures of Powell Electors.

As a matter of law, each petition must contain at least 238 valid signatures by electors of the City of Powell. Pursuant to the Charter and the Ohio Constitution, the total votes cast by the City of Powell's electors during the 2013 general election must be used to determine the amount of signatures that are necessary for each petition:

> (1) The Referendum Petition's signature requirement is set forth in Charter § 6.04. This provision requires every referendum petition to be "signed by electors of the City, not less in number than ten (10) percent of the total votes cast at **the last preceding general municipal election**, is filed with the Clerk of Council . . . ." Ex. 2, Charter § 6.04 (emphasis added).
>
> (2) The Repeal Initiative's signature requirement is stated in Charter § 6.02. Pursuant to this provision, an "initiative petition must be signed by electors of the City equal to ten (10) percent of the total number of votes cast at **the last preceding regular municipal election**." Charter § 6.02 (emphasis added). The Charter does not define a "regular municipal election." However, the Revised Code imputes that a "regular municipal

election" means "the election held on the first Tuesday after the first Monday in November in each odd-numbered year." R.C. § 3501.01.

(3) The Charter Initiative's signature requirement is enumerated in Article 18 of the Ohio Constitution. As required by the Constitution, Charter amendments petitions must be "signed by ten per centum of the electors of the municipality." Ohio Constitution, Article XVIII, Section 9. Further, "[t]he percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the **last preceding general municipal election**." Ohio Constitution, Article XVIII, Section 14 (emphasis added).

Thus, each of the Petitions is required to have signatures of an amount that reflects at least 10% of the total number of votes cast in the City's 2013 general election. 2,379 total votes were cast in the 2013 General Election.[7] Accordingly, Petitioners were required to obtain 238 valid signatures from electors in the municipal corporation of Powell for each of their three Petitions. Petitioners failed to do so.

b. Each Petition Fails to Include the Required Number of Valid Signatures.

Pursuant to the City Charter's and Ohio law's petition requirements, the Petitions fail to contain sufficient valid signatures.

The Petitions must satisfy the requirements set forth in Charter § 6.05 and R.C. §§ 731.31 and 3501.38. *See supra* Sec. III.A. Accordingly, each part-petition and its contents must meet the following requirements:

- Each signer of a petition must be an elector of the City of Powell. Charter § 6.05.
- Each signer must place "after his name, the date of signing, his place of residence, including street and number, and the ward and precinct." *Id.*
- The signature must match the signature on file with the board of elections. Each signature which is found to be irregular must be rejected. R.C. §§ 731.31, 3501.011.
- Each signature must be in ink. R.C. § 3501.38(B).

[7] According to the Board's results, total ballots cast in the 2013 General Elections were as follows: Powell A – 232, Powell B – 233, Powell C – 326, Powell D – 236, Powell E – 327, Powell F – 253, Powell G – 234, Powell H – 167, Powell I – 130, and Powell J – 241.

- Each signer must state the date of signing of the petition. R.C. § 3501.38(C).
- Each signer's address must match the address appearing in the registration records at the board of elections. R.C. § 3501.38(C).
- If a petition contains the signature of an elector two or more times, only the first signature shall be counted. R.C. § 3501.38(D).
- A circulator must not sign his or her part-petition. If done, the circulator's signature is invalid. *Mercer Dev. LP v. Mercer Cnty. Bd. of Elections*, 3d Dist. Mercer No. 10-10-08, 2010-Ohio-4071, ¶ 4.
- A circulator must accurately state the number of valid signatures contained on the part-petition. Charter § 6.05; R.C. § 3501.38(E)(1). If the circulator states the part-petition contains a fewer number of signatures than the actual number of signatures on the part-petition, the entire part-petition is invalid. *Rust v. Lucas Cty. Bd. of Elec.* (2005), 108 Ohio St.3d 139, 141.
- If a circulator knowingly permits an unqualified person to sign a petition paper or permits a person to write a name other than the person's own on a petition paper, that petition paper is invalid. R.C. § 3501.38(F).

Applying the foregoing requirements (and the City Charter's express requirements), a review of the Petitions demonstrates that each falls well short of the requisite 238 signatures. Ex. 3, Petition Review (setting forth reason for disqualifying each signature). When the invalid signatures are removed from the Petitions, the Referendum Petition contains, at most, 143 potentially valid signatures; the Repeal Initiative Petition contains, at most, 143 potentially valid signatures; and the Charter Initiative Petition contains, at most, 146 potentially valid signatures. *Id.* Thus, Petitioners failed to obtain the sufficient number of valid signatures.

Because the "number of valid signatures is found to be less than the total number required" for each of the Petitions, Council must invalidate all three. Ex. 2, Charter § 6.05.

C. The Charter Initiative Is Unconstitutional and Therefore Invalid.

Additionally, the proposed Charter amendments that are facially defective should not be placed on the ballot because such measures waste time and local resources. Indeed, all Charter and statutory requirements must be fairly met before such petitions can be advanced to the ballot.

"City council is not required to submit a proposed charter amendment to the electorate unless it is satisfied with the sufficiency of the initiative petition and that all statutory requirements are fairly met." *State ex rel. Baker v. City of Brook Park*, 8th Dist. Cuyahoga No. 98991, 2012-Ohio-5043, ¶ 8 (citing *State ex rel. Becker v. Eastlake*, 93 Ohio St.3d 502, 506 (2001)). Such scrutiny includes inquiry into questions apparent on the fact of the petitions themselves. *Id.* (citing *Morris v. City Council of Macedonia*, 71 Ohio St.3d 52, 56, 641 N.E.2d 1075 (1994)). Because the Charter Initiative contains numerous patent violations of law, the Initiative should be invalidated.

1. The Charter Initiative Is Illegal "Spot Zoning."

As evidenced from its face, the Charter Initiative seeks to illegally "spot zone" Powell Crossing's Property. *See Pilla v. City of Willowick*, 11th Dist. Lake No. 8-243, 1982 Ohio App. LEXIS 13454 (December 23, 1982). "Spot zoning" occurs when a property or its owner(s) are singled out through discriminatory zoning practices. *See id.* at *11. Inquiring into whether discriminatory zoning is at work in election initiatives, including referendums, has been held to be specifically appropriate. *See id.* ("[W]hether the result achieved by [an] ordinance [is] discriminatory ... may be made even in the case of a referendum is specifically provided for in *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668 (1976).").

Here, the Charter Initiative singles out and discriminates against Powell Crossing and its Property. Article 4, Section 21 and "uncodified" provisions target Powell Crossing and its Property specifically to limit its current zoning. These provisions do not affect other similarly situated properties that share the same zoning classification. As a result, unlike its identically zoned Downtown Business District neighbors, Powell Crossing will no longer be able to make full use of its vested property right in the Final Development Plan and the full reach of uses

permitted by the Property's current zoning. Such discriminate deprivation violates Powell Crossing's right to equal protection under the law.

2. The Charter Initiative Is Unconstitutionally Vague.

As evident from the face of the Charter Initiative, the Initiative fails to provide any standard or regulation that articulates what zoning would apply to the Property if the current permitted uses under the Property's Downtown Business District zoning is curtailed. *See*, Article 4, Section 21 and "uncodified" provisions.

"A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Wedgewood Ltd. P'ship I v. Twp. of Liberty*, 456 F. Supp. 2d 904, 937 (S.D. Ohio 2006) (citation omitted); *Columbus v. Thompson*, 25 Ohio St.2d 26, 30 (1971). Stated differently, a regulation that gives unfettered discretion to governmental officials is unconstitutionally vague because it allows arbitrary and discriminatory enforcement. *See Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972) ("A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.")

By failing to specify which uses remain permissible, the Initiative leaves enforcement of the Property to arbitrary and discriminatory enforcement of a standard-less regulation. Such vague delegation violates the Due Process clause of the United States and Ohio Constitutions.

3. The Charter Initiative Is An Unconstitutional Retroactive Law.

Because Powell Crossing's right to the Property's current zoning has already vested, the Initiative cannot now retroactively deprive Powell Crossing of its vested property right. Powell Crossing's right vested in its current zoning the instant it submitted the Final Development Plan

to City Officials for their consideration. *See Gibson v. City of Oberlin*, 167 N.E.2d 651 (1993). Once an application is submitted, the applicant is protected from future attempts to impose legislative changes on the Property's zoning because such changes would constitute retroactive zoning. *See id.* Yet, that retroactive zoning is precisely the Charter Initiative's aim.

The "uncodified" provision purports to now prohibit any activity or reliance on uses consistent with Powell Crossing's right to use the Property under its current zoning – a fundamental property right that has already vested. It is an elementary principal of law that a municipality cannot give retroactive effect to its laws. *See, e.g., Save the Lake v. Schregardus*, 141 Ohio App. 3d 530, 539 (2001) ("[T]he Supreme Court of Ohio reaffirmed the notion that a municipality may not give retroactive effect to an ordinance in order to deprive a property owner of a substantial right."). Thus, the Initiative simply cannot retroactively deprive Powell Crossing of its right to develop the Property. Accordingly, the Initiative suffers from yet another obvious Constitutional infirmity. Petitioners had the opportunity to dispute Council's approval of the Final Development Plan through an administrative appeal. Foregoing that opportunity, Petitioners cannot retroactively undo that decision here.

4. The Charter Initiative Impermissibly Delegates City Council's Legislative Power to a Commission.

Finally, the Charter Initiative's requirement that "all ordinances of Powell must comply with the final comprehensive plan adopted pursuant to Section 18 of this article IV," constitutes an unconstitutional and impermissible delegation of legislative power to an administrative commission. City Council's legislative authority cannot be diminished by an administrative commission:

> 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**.

State ex rel. Selected Properties, Inc. v. Gottfried, 163 Ohio St. 469, 473 (1955) (quotations omitted) (emphasis added). Thus, the Charter Initiative's attempt to circumscribe all future Powell ordinances, that particularly concern citizens' property rights, cannot be delegated to some administrative commission. Such attempts are facially unconstitutional and void. *Id.*

For this and the reasons previously stated, the Charter Initiative is invalid on its face and should be rejected by City Council.

IV. CONCLUSION

For the foregoing reasons, the Petitioners' three separate attempts to subject City Council's final administrative decision set forth in Ordinance 2014-10 to a referendum must fail. The Referendum Initiative, Repeal Initiative and Charter Initiative are invalid and must be rejected by City Council.

Respectfully submitted,

s/ Christopher L. Ingram
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Counsel for the Protesting Party

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was served via electronic mail to the City of Powell's Clerk of City Council, Sue D. Ross, sross@cityofpowell.us, this 1st day of August, 2014.

s/ Christopher L. Ingram
Christopher L. Ingram

EXHIBIT 1

City of Powell, Ohio

City Council

MEETING MINUTES
JUNE 17, 2014

A regular meeting of the Powell City Council was called to order by Mayor Jim Hrivnak on Tuesday, June 17, 2014 at 7:30 p.m. City Council members present included Jon Bennehoof, Frank Bertone, Richard Cline, Tom Counts, Mike Crites and Brian Lorenz. Also present were Steve Lutz, City Manager; David Betz, Development Director; Rocky Kambo, GIS/Planner; Rob Rice, City Engineer; Gene Hollins, Law Director; Susie Ross, City Clerk; and interested parties.

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION
Mayor Hrivnak opened the meeting to Citizen Participation for items not on the agenda.

Bernard Palchick, 52 Murphy's Oval, asked if the City has control over the signage related to the water tower. He said DelCo took off the name of the water company and painted it a light blue. It is the same color as the sky and does not have the obnoxious lettering and it would be wonderful if it could stay that way. Mr. Lutz said the City does not have an ordinance pertaining to the signage but as a result of his comments, Staff will contact DelCo to find out if they plan to letter the water tower. He said they will pass on his comments and tell them it blends in better without the lettering. Mr. Palchick said the way it is now is definitely an aesthetic upgrade.

Hearing no further comments, Mayor Hrivnak closed the Citizen Participation session.

APPROVAL OF MINUTES
Corrections on pages 8 & 9 of the minutes were noted.
MOTION: Councilman Cline moved to adopt the minutes of June 3, 2014 as amended. Councilman Crites seconded the motion. By unanimous consent, the minutes were approved as amended.

CONSENT AGENDA

Item	Action Requested
Departmental Reports – May 2014	*Receipt of Electronic Report*

MOTION: Councilman Cline moved to adopt the Consent Agenda. Councilman Crites seconded the motion. By unanimous consent, the Consent Agenda was approved.

TABLED FROM JUNE 3, 2014:
SECOND READING: ORDINANCE 2014:10: AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR THE CENTER AT POWELL CROSSING LLC, A DEVELOPMENT OF 14,000 SQ. FT. OF RETAIL IN TWO BUILDINGS, PRESERVING THE OLD HOUSE FOR COMMERCIAL USE, AND DEVELOPMENT OF 64 APARTMENT RESIDENTIAL UNITS ON 8.3 ACRES, LOCATED AT 147 W. OLENTANGY STREET.
Steve Lutz, City Manager, said this is the second and final reading of the ordinance for this proposed mixed-use development. At the first reading they discussed the issue of traffic safety along Olentangy Street. The City will be installing a queue cutter at the railroad crossing next year and at the first reading the developer was asked to utilize a traffic engineer to conduct a traffic study and roadway planning. That has been completed and will be presented tonight. Mr. Betz will review this proposal and other proposed developments which are in the pipeline for the downtown area.

David Betz, Development Director, reviewed the exhibits before Council (Exhibit 1). It has information about the three projects being considered at this time before the Planning & Zoning Commission and to go on to City Council sometime in the future (Powell Crossing, Harper's Pointe, and Santer Communities/Liberty Green). Councilman Counts said they have heard a lot of comments from residents about 300 apartments proposed for development in Powell; he asked if there any other proposed apartment complexes within the City. Mr. Betz said there was an inquiry from another developer regarding the Powell Center site and adjacent land but they

decided not to pursue that; there are no other apartments being considered for Powell. Mr. Betz said he also provided a Summary of Traffic Study and Roadway Planning (Exhibit 2) from the traffic engineer. Mr. Doyle will come forward as they review the proposal this evening. An overview of the Olentangy Street improvements plan was also presented (Exhibit 3).

Mr. Betz provided the Powell Crossing development plan (Exhibit A):

- Powell Crossing is a mixed-use downtown infill proposal within Downtown Business District.
- Downtown Business District was created after the Downtown Revitalization Plan (DRP) was conducted in 1994. Council asked Planning & Zoning to study the downtown districts and come up with amendments to the zoning ordinance to implement the DRP. That was done and Council approved an ordinance revising the zoning code to include the Downtown Business and Downtown Residence Districts that are currently in place.
- Development includes two 7k sq. ft. commercial buildings that have a mix of retail and services, 2,400 sq. ft. historic home that will be preserved (Dr. Campbell House) and used for office or retail, and 64 units of apartments in four buildings (16 one-bedroom and 48 two-bedroom).
- Public amenities include streetscape improvements along the frontage, developed green "square" in front with benches and landscaping that can be utilized by the public, continuation of bikepath from the south through the site to a brick sidewalk along West Olentangy Street to provide safe access to the downtown for this site and the neighborhoods west of the railroad.

Mr. Betz said the requirements in the zoning code allow up to 7 units/acre as a base and then up to 9 units/acre if public amenities such as these are provided. This development is under the 9 units/acre allowed by the code. Another amenity provided is roadway improvement planning & safety. The developer prepared an extra study to show the enhancement of W. Olentangy Street with the coordination of needed improvements. More information will follow.

This development relates directly to many components within the Comprehensive Plan:

- Redevelopment of the town center
  - Restoring historic buildings for new use – took architectural cues from Dr. Campbell house
  - Seeking new office and business development in scale with historic buildings
  - Seeking new town center housing development in old village densities
  - Implementing a bikeway/walkway plan to connect neighborhoods with the town center
  - Encouraging development which mixes various land uses
  - Implementing streetscape development
  - Limiting commercial development to village scale – i.e. smaller buildings done in a "Folk-Victorian" style and adapted with individual spaces based on the tenant/user
  - Increase diversity of land use types
  - Inviting residents from various life styles within the city
  - Higher density housing development should be encouraged in locations where land, trees and natural scenic features exist which may be prematurely zoned for non-residential uses – this property is mostly treed and the plan compacts the development within the northern three-quarters of the parcel and tries to preserve tree stands in the rear and side
  - Town center housing strongly encouraged by unit-to-unit or multi-family housing
- Town center envisioned as center of economic diversity linked to residential neighbors and accomplishing a mix of residential types
- Require developers to provide traffic studies and traffic flow improvements to accommodate the traffic flow generated by their development

In the Downtown Revitalization Plan they took a stronger look at the downtown area and looked at each quadrant as to how things could layout. This development is in the west quadrant of that plan. The revisions to the zoning code after the DRP was studied made the code more compatible with the plan and this plan meets the Downtown Business District in every way. There are a few minor variances requested in regard to side setbacks and the largest variances include a request that the second building be set back to create the front green and a larger monument sign be permitted to include the names of the businesses in the development. The Planning & Zoning Commission thoroughly reviewed this plan over a number of meetings and unanimously recommended to Council the approval of the plan with the conditions as listed within the ordinance.

Councilman Cline said there were three setback variances requested and one may be generating some confusion. He asked for clarification about the variance for the 1' setback along the railroad property; some people have understood it to mean that the edge of this building is within 1' of the rail of the track. Mr. Betz said the first commercial building is pushed as far east as possible. The railroad right-of-way is 100' in width and

the rails are split in the center so the rail is actually about 45' away from the east edge of the building with the 1' setback variance. The building could be moved over to meet the 5' setback requirement and everything would shift over but they would lose a few parking spaces.

Councilman Crites asked if it is the opinion of Staff and the Planning & Zoning Commission that this plan is consistent with the zoning code and the Comprehensive Plan and Downtown Revitalization Plan. Mr. Betz said that is correct.

Mayor Hrivnak asked that Mr. Betz discuss the west quadrant within the Downtown Revitalization Plan. Mr. Betz reviewed a page within the DRP (Exhibit 4) that shows how an area can be redone in a mixed-use fashion. The graphic shown is actually a look at the property in question. The plan did not take into account a very large buffer zone so if all of this parcel developed, even with single family homes, could be developed with buildings up to within a 25' setback of the Murphy Parkway homes. Staff feels that the current plan is consistent with the plan within the DRP. Mayor Hrivnak said the only differences are the improvements in this plan that allow green space up by the road and a very large buffer in the back. He asked the Chairman of the Planning & Zoning Commission to come forward to provide insight from that review.

Don Emerick, 306 Weatherburn Court, Chairman of Planning & Zoning Commission, said Mr. Betz provided a good review of what the Commission looked at in comparison to the Comprehensive Plan, Downtown Revitalization Plan and the zoning code. The density is within the zoning code especially when they consider the amenities this plan provides to the City. The setbacks other than those requesting variance from the code are well within the zoning code and even exceed those normally required, especially the 120' of buffer on the south side where they preserved many trees. They looked at the traffic situation and with the proposed queue cutter at the railroad crossing their safety concerns were eliminated. The Commission has looked at a number of different plans for this piece of property and this is by far the best proposal they have seen. They felt this was the best proposal they would see and would be the best for the residents and that is why they unanimously recommended approval to City Council.

Councilman Cline said there are some variances that were discussed at Planning & Zoning; what was their thought process in regard to setbacks, sign variance and parking spaces. Mr. Emerick said generally speaking they try to minimize the parking spaces required for any development within the City because they do not want to see large areas of blacktop that are not being utilized. It also creates stormwater runoff that they may not necessary want to see as a problem down the road. They try to make the parking requirements reasonable for the particular development and this was a reduction by six spaces. Councilman Cline said the setback near the railroad was discussed; he asked for clarification about the other setback variances requested. Mr. Betz said they have a maximum setback requirement along the street and the developer is requesting a variance to move the building back to preserve the open green area in the front and to keep the view shed for the existing home that is being preserved. This layout provides the best value to the community in preserving that historic house. Councilman Cline said the variance for the signage allows for tenant identification within a sign that is 32 sq. ft. on each side rather than the code requirement of 16 sq. ft. per side. Mr. Betz said the thought process at Planning & Zoning Commission was to allow the ability to have visibility along the road for all of the tenants. He said that is a similar concept to current multi-tenant signage in the City. Part of the issue was with the height of the sign but the developer is designing the entry with the fencing and columns so it makes a nice presentation. He indicated the location of the entry feature/signage and historical house on the site plan.

Councilman Crites asked about the flavor of the discussion with respect to the volume of traffic and the safety issue at the railroad tracks. Mr. Emerick said the traffic generated by this development and how it would impact existing traffic was probably their number one concern. They looked at the traffic study they had at that time and discussed the possibility of a queue cutter at the railroad tracks and looked at that in detail. It was their number one concern. Councilman Crites asked if the Commission was satisfied with that portion of the plan. Mr. Emerick said they were and they felt that the addition of the queue cutter would eliminate the safety concern and they discussed the timing of the Murphy Parkway extension and how that would also alleviate some of the traffic along Powell Road, helping the situation. Councilman Crites said concerned citizens have said that the existence of apartments is not consistent with the family-centric values they hold so dear in Powell. He asked if they discussed that at the Commission meeting. Mr. Emerick said that was discussed and several of the members of the Commission independently searched all of the available reports and data from around the country. They came to the same conclusion that apartments are not the cause of decreasing property values and do not bring so-called "undesirable" residents into the city. The things that affect property values are things like how neighbors are keeping up their property and similar situations. The data indicates that apartments do not have a negative impact on property values. Councilman Crites asked if they discussed the

impact apartments could have on the Olentangy School District. Mr. Emerick they did and they found these apartments are not well-suited to having many kids so the impact on the school district will be minimal.

Councilman Bennehoof asked if there is any possible access to the Murphy Park neighborhood. Mr. Betz said there is a pathway proposed. Mayor Hrivnak thanked Mr. Emerick for providing insight of the thought-process of the Commission.

Councilman Lorenz asked Staff if, other than the trees, there a fence or physical barrier that keeps folks from cutting across the tracks during events like the Powell Festival. Mr. Betz said there is very little barrier there now and no fence or barrier has been considered. The developer has provided pathway access from the southern subdivision to Powell Road and all the way down the railroad there is no other way to get across. That will be corrected with the Murphy Parkway extension through a pathway, crosswalk and traffic signal at the south end. No barrier is proposed for this site but there will buildings, a dumpster area and landscaping along that area.

Councilman Bennehoof asked Mr. Betz to characterize the variances in greater detail. Mr. Betz provided a review of the variances requested for the development:

1. Side yard setback requirement in the Downtown District is 5'; one building is proposed at a 1' setback. That area is where the dumpster and trash compactor for the full site are located.
2. The maximum building setback is 25' and Staff usually prefers to see the buildings located 20-25' in the setback. The variance requested is for the building that is back beyond that area; the reasoning for the location is to create the north green open area off of the pathway where people can take respite and to keep the view shed open that allows visibility of the Dr. Campbell House.
3. Signage (details discussed previously)
4. The parking variance asks to reduce the parking by six spaces. There is tree preservation in areas where more parking spaces can be added. They are trying to preserve a couple of the bigger trees and they tend not to want to overbuild parking spaces. The Planning & Zoning Commission looks very closely at minor variances such as this. The development plan provides a total of 249 parking spaces including surface spaces and garage spaces. Councilman Bennehoof said at a ratio of 1.5 vehicles for each apartment unit that would put them in the neighborhood of 100 spaces for just the apartments, with a potential for high volatility with respect to the business infrastructure. Mr. Betz said the ratio of parking they have for the amount of retail proposed is a good ratio. The variance is for six spaces less than the code requires.

Councilman Bennehoof said they received the information from the traffic engineer at 9 a.m. that morning and they asked for it prior to the June 3 meeting so they could consider it before the vote. He said the document provided only contains one paragraph that relates to the traffic study. Mr. Betz said the original traffic study was presented several months ago at the first reading. Mr. Lutz said the traffic engineer is present to address the new details regarding the traffic study. He said the developer is also here to make a presentation and answer questions.

Mayor Hrivnak said there are 64 apartment units and they planned the parking at three vehicles per unit, allowing 192 spaces for the apartments. Councilman Counts asked for the zoning classification for this parcel and details about what could be built on this parcel without going through a plan revision. Mr. Betz said this is in the Downtown District and is a planned district that must go through the development process. The house could be reused without going through the plan revision process but the development of the site requires it.

Charlie Vince, Co-Developer of the property, introduced Todd Faris, Land Planner, who is here to answer any questions about parking and variances and Doyle Clear, Traffic Engineer, who is here to answer questions about traffic, the traffic study or new design they propose. Mr. Betz provided a lot of the details he wanted to review and he did a good job. They are within the Downtown District and they meet those requirements as well as those in the code and Comprehensive Plan. This development was not an afterthought; the development plan approval for this project has taken several months of review with Staff and the Planning & Zoning Commission. The documents for the development are public records and are available for anyone who wishes to review them. When they first came in with this project, City Staff told them they want to preserve the Campbell House so they worked the entire development, including the variances for setbacks and the architecture design, to match that house and downtown Powell. The scale and exteriors of the residential and retail buildings are done to the scale of the historic house. The variances requested are fairly minimal and the one for the six parking spaces is simply to save trees. They completed a tree study and there are some very large trees on the site that they did not want to remove so they eliminated the parking spaces so they could keep the trees. They have an interest in making this development work; this is not a property his optioned with the idea that he might develop it. They bought this property, are stakeholders in downtown Powell and if this is

completed it will be an $8-10 million development. He has an interest in seeing the City develop properly. They proposed one green area on the site for the use of the residents and the one up front as a public green space. They extended the multi-use path because they want people to walk or bike through their project and hopefully shop at their retail area. In addition, they proposed improvements for Olentangy Street; he has an interest in traffic moving through Powell as well because they cannot have a successful development without the ability to get in and out. He worked with Doyle Clear, not with the intent of getting the cheapest method to do this, but instead to get a real study that went from the Traditions condos to the west to Liberty Street on the east to find how they can move traffic through Powell. To his knowledge that has not been done in the past few years. Mr. Doyle will speak to that study.

Mr. Vince said he contacted the Olentangy School District and they said that apartments such as this average about .15 students/unit and that averages out to 9.6 students in the entire development. Their commercial and residential values will be over a million dollar per student and that is a great financial benefit to the Olentangy Schools. It is assumed that the sixteen one-bedroom units will not have any school-age children so if that number is backed out they would only have 7.2 students. The school system will not be hurt by this development. In regard to the traffic issue, they provided at their expense, a traffic study so they can see for themselves how this will work in the future. He said they will hopefully bring this development online at the same time that Murphy Parkway, the queue cutter and the street improvements are completed. He met with Matt Detrick of the Railway Commission and he assured him that the queue cutter will be installed.

Councilman Cline said he has characterized the three variance requests as minor and at some point someone said that the developer can do this project without any of those variances but it will not be as good of a project. Mr. Vince said they worked with a land planner, Staff and the Commission and told them about the things they needed to do to make this a viable project. The parking is self-explanatory; they can add the six parking spaces but it involves taking out some really mature trees that will add value to their site. The setback is from the railroad right-of-way and not from the rails. They angled the first commercial building closer to the tracks and asked for a setback so that when someone crosses the tracks they are not looking at the service portion of the building. They were asked to preserve the Campbell House and he is willing to do that but they have to move the building back on the site so the house is visible. Since the businesses will be farther away from the road they will need signage out at the road, requiring a variance for the signage. As a developer he has seen major mistakes made by cities that limit signage so much that no one knows the tenants in a center; when that happens it presents a safety hazard as drivers look for businesses. The 1' setback variance is for the dumpster so it is moved back off of the parking lot. The variances are minor and he can live without any of them but he doesn't want to because it will make a better project. The variances do not save them money and all of the details of the development were reviewed closely at Planning & Zoning.

Councilman Crites said if Council was to approve this plan, when would they start the improvements to the street and how would that work in context to when they would expect occupancy of the retail and residential. Mr. Vince said they would commence with street first because they need the street improvements so they can get in and out of the project. He will immediately hire an engineer and as soon at the engineering is done and approved by the City Engineer they would begin construction. That could be early next year, depending on the timeline of the engineering. Councilman Crites asked if he would anticipate those improvements would be completed before occupancy. Mr. Vince said they would likely be done because they will begin building on the site either concurrently with the improvements or right after it. He does not have a problem stating that they will have the street completed at the same time as the occupancy.

Councilman Counts said at the first reading Mr. Vince indicated that the rents for the two-bedroom apartments will likely be somewhere from $900 to $1000 per month. Mr. Vince said that is a guess; they know the apartments will probably rent for $1.25 per sq. ft. which is a fairly high rent. He said he does not want to overestimate the rent. With the architectural requirements of the project, these are expensive buildings so they will not be cheap apartments. Councilman Counts said they have heard resident feedback that suggests the rent will be $700 per month. He asked if that is likely for a two-bedroom apartment. Mr. Vince said he has to consider the cost of the land, street improvements, landscaping, frontage improvements and street into the development when he determines rent costs. There is no way he can rent a two-bedroom apartment for $700. He understands people's fear of apartments and he has been through this before. They just finished a project in Worthington and they heard the same reactions. They ended up with young professionals and empty-nesters. He is not ashamed to be building apartments in the City and is not putting something here that is undesirable. There is an up-and-coming market for those types of renters. This is an alternative form of housing that has not been in this area before. Other communities have been through this process and then realized they needed this type of housing.

Todd Faris, Faris Planning & Design, was present to answer questions.

Doyle Clear, Traffic Engineer, said there seems to still be a little misunderstanding about the term "traffic study." They were asked to do an evaluation of the ability to widen Olentangy Street and to facilitate the installation of the queue cutter so that the roadway plan for whatever is built on this site is all done as one continuous project. He remembers a lot of the residents making light of the possibility of a new traffic study with SR 315 closed at the intersection of Powell Road. He said they cannot do a new traffic study under those circumstances so a new study was not performed; they did take the results of the prior traffic study completed for Olentangy Street and looked at the potential effect of the completion of Murphy Parkway and how it might change the traffic volume on Olentangy Street in front of this site. Their primary emphasis was on what kind of roadway system can be built here. Mr. Vince commissioned a preliminary engineering study and it was not cheap; a lot of money went into the evaluation of how one might widen Olentangy Street in order to get the necessary turn lane in front of this site, how they can carry the three lane cross-section in front of the site further to the west and tie into the existing cross-section near Traditions Way. At the time they commissioned the study the Railway Commission also required a left turn lane to be created at eastbound Hall Street, and asked that a median be placed on Olentangy Street to deny left turns at the intersection with Depot Street. Mr. Vince paid for an evaluation of this area and they designed the road to accommodate any potential plans of the City to put left turn lanes in at the Four Corners. Subsequent to doing that work and evaluating that condition, the City received a message from the Rail Commission that said the left turn lane at Hall Street was no longer a requirement and that they would accept the construction of a right-in/right-out driveway on the north side at Depot Street to preclude left turns.

Mr. Doyle said the plan before them (Exhibit 3) shows a widening of Olentangy Street with a three lane cross-section from Traditions Way to the rail tracks; allows an eastbound left turn to the properties on the north side and once they pass the tracks it tapers back to the existing two lane section. A right-in/right-out can be built at Depot Street and they believe this meets the requirements of the Rail Commission, allows the City to install the queue cutter, and allows a queue lane to handle the volume of traffic going into Powell Crossing (55 cars during pm peak hour includes 30 to residential and 25 to retail). The ODOT design manual standards state that for this number of vehicles and the speed and volume of traffic on Olentangy Street, the left turn lane needs to be 50' long. The plan in front of them allows that left turn lane to be at least 150' long because they heard from the Commission and Council that they would rather see the left turn lane longer just in case their estimate of the left turn volume is wrong and so they move traffic out of the through lane. The left tune lane allows 150' left tune lane going into Powell Crossing, at least 100' of left turn lane to go north on Lincoln Street and 100' going into the industrial complex to the south. Under this plan they are suggesting they put curb in on both sides of the road, re-do the sidewalks and add street trees.

Mr. Clear said the drainage system in this area will be tricky; there is a drainage break (rural open ditch) just west of Lincoln Street. Any time they go from an open ditch section and try to connect it to a drainage system, they have to lower the road bed. They can no longer drain from the road into the ditches but the properties on the outside that drain to the ditches must now drain into the gutter pans. As they lower the road bed there is a tricky section to see how far they have to go to the west to make the transition from the current drainage system into an urban section. They have looked at it so they can carry the urban drainage over to the area near Traditions Way and make the break but it still needs to be evaluated in more detail in terms of drainage and for what the drainage shed is for the properties around this zone. They tried to create an edge to the road, sidewalks for pedestrians, enough space for the street trees, add the turn lanes and allow for construction of the queue cutter so it can be dropped into this plan. They have made this system as safe as it can be. Their objective was to design a road in a safe and efficient way that meets the standards, takes care of drainage, brings the downtown further to the west and carries the street architecture to the west. They think this roadway can be done by 2015 and the first occupancy of the development may be toward the end of 2015, commensurate with what the City is planning for the Murphy Parkway extension at the end of 2015. It is possible to have one complete package of improvements that can be instituted. The studies done a few years ago by EMH&T looked at the Four Corners and the traffic volumes turning left on Olentangy Street from Liberty Street and the volumes going east on Olentangy Street and turning south on Liberty Street. That study showed there were 98 vehicles in the peak hour making northbound left or eastbound right turns. He looked at the completion of Murphy Parkway and did a theoretical driving time study and evaluation of how long it would take for someone travelling north and turning left on Olentangy Street or using Murphy Parkway if they want to go west on Olentangy Street and they estimated that about half of the traffic would use Murphy Parkway. That is about 50 cars in each direction so that would be about 100 cars of the existing traffic that would possibly be removed from Olentangy Street in front of that site. That is more cars than this site generates during the peak hours. There was no data in terms of origin/destination and they cannot do traffic counts because of the present unstable

condition. They used the information to determine the roadway plan they would propose to make this a safe and efficient roadway system and bring it to the standards desired by the City of Powell.

Councilman Lorenz asked if it is correct that the numbers thrown out are per hour. Mr. Clear said that is the peak volume of traffic that would enter during the peak hour of the roadway system. He said peak hours are typically from 7-9 a.m. and 4-6 p.m. and out of that they look at the one hour that shows the peak hour of volume that occurs during each of the two hour periods. He said that peak hour does not vary much from day-to-day.

Councilman Bennehoof said Mr. Clear reiterated that a traffic study is not necessarily counting cars and is looking at infrastructure, developments and existing conditions and estimating what the load will be from this development. Mr. Clear said that is correct; the term "traffic study" is broad and includes estimates of traffic that may be generated by a development, an evaluation of the site access and circulation system, the impact on the external roadway system, can translate into what roadway needs to be improved to accommodate the traffic and it can also include a preliminary engineering plan of the roadway improvements to accommodate that proposed development. Councilman Bennehoof said although SR 315 and SR 750 have been closed they did not need it to be open to conduct their analysis of this situation. Mr. Clear said that is correct. Councilman Bennehoof said at the Finance Committee Mr. Clear's associate had a drawing of the widening west of Olentangy as well as widening west of the railroad tracks and clear through to Liberty Street. A concern has been expressed that if they widen Olentangy Street through to Liberty Street they would eliminate the south side of on-street parking. He asked Mr. Clear if the road curb right against the sidewalk is any more or less safe for the pedestrians than cars parked along the street. He said he believes it is a safety concern for people exiting on the left side of the vehicle. It is also his belief that the queue cutter east and west of the tracks ought to be considered, for the benefit of the businesses, as a single project instead of shutting down the Downtown three different times. Mr. Clear said the drawing was done with the understanding that the City may want to provide east- and westbound left turn lanes on Olentangy Street at Liberty Street. Because of the constraints on the north side where the buildings are they cannot widen Olentangy on the north side. The only way to take the three lane cross-section is to the south. It is not widening Olentangy Street down through the downtown area because there is parking today and they would need to stabilize the pavement for trucks and heavier vehicles, it is no longer a parking lane. They have to rip all of that area up and put in full depth pavement and reconstruct the area. If the City wants to put in east- and westbound left turn lanes on Olentangy Street and if the Rail Commission requires an eastbound left turn lane at Hall it does remove the parking on the south side. Most urban planners will tell you that having parking as a buffer between moving traffic and the sidewalk is a better situation for the pedestrian. He does not disagree that people get out of their cars and open their doors into traffic but they have to weigh what they are after. In most downtowns they try to err more for the pedestrian environment and make sure the pedestrian feels safe in the downtown. They like to put in street trees and will need to keep big trucks away from the street trees. The prior drawing just showed what would happen if they put eastbound and westbound left turns on Olentangy Street at Liberty Road.

Councilman Bennehoof said when Mr. Clear was at the first meeting he said that the street is at capacity and regardless of what gets done, the street will remain at capacity. He asked if he stands by that analysis. Mr. Clear said any improvement that they make out here will not necessarily reduce the volume of traffic on the roadway system. Putting in the turn lanes does not improve the capacity of the roadway system. The EMH&T study did not do separate phasing and they say in order to maximize the intersection they will only get the green and be able to turn left when there is a gap in traffic coming toward them. They do not increase the capacity of the intersection but they do move the turning vehicles out of the pathway of the through or right turn traffic. This is a safer situation and the same situation they are trying to do in front of this development. It helps eliminate or lessen the rear end collisions.

Councilman Bennehoof asked how long it will take to construct the road from Traditions Way to the railroad tracks and how that could be accomplished. This will help him understand how this will affect the businesses in the downtown. Councilman Cline said they talked about that at the Finance Committee presentation and there are some ways to try to mitigate that issue. They can do nighttime construction or maintain one lane of traffic through the construction period. The developer's position was that they will do whatever gets this done in an appropriate time period. Mr. Vince said they want to get the street improvements done before they have occupancy in the site. Mr. Clear said he suspects this project will take a couple of months to construct. Mr. Bertone said he is concerned about maintaining the flow of traffic for the downtown businesses.

Councilman Counts asked if putting in curb and striping creates a much safer condition than they currently have. Mr. Clear that is his opinion; as soon as they put in the curb system and street trees it brings it into an

urban setting and makes it a safer condition for drivers and pedestrians. Councilman Counts asked if reducing the road to create the curb and gutter in any way affects the railroad crossing and visibility. Mr. Clear said that had to be built into the evaluation of how they get to the rail crossing, the grade they are allowed to have as they approach the roadway, and the rail bed. This solution looks simple but by the time they work with the railroad and make the drainage connection, it is a difficult engineering design project. Councilman Counts said it is important they understand the magnitude because Powell is a community of 12k people and if only those 12k people were driving on Olentangy Street they would not have a traffic problem. He asked for Mr. Clear's estimation of the ratio of the traffic of 12k community members versus what they are experiencing today; what percentage of the cars coming through this area are not residents of this community. Mr. Clear if there are 4,300 single family homes each unit generates about one vehicle trip in an hour's time frame so they would generate about 4,300 cars. This section of roadway is handling today about a fourth of that amount because people in the community use other roads. Staff is considering a potential future origin/destination study to see what traffic is passing through Powell. If the City goes into its thoroughfare plan process in the next few months they can also model that using the MORPC model to estimate how much local traffic is passing through on different roadway systems. He said he cannot guess but the pure through traffic using that roadway system does have a significant impact.

Mayor Hrivnak opened this item to public comment.

Elizabeth Grzelak, 115 Watson Way, said she does not see a lot of people here tonight even though she has received several emails about this meeting and there is a petition that has circulated over the last 24 hours that has received over 100 additional signatures. People are discussing this and are very annoyed about this development. Her concern in general is about the schools. Three years ago Liberty High School was over capacity and they were told that children would have to share lockers. Since that time that number has continued to grow. They describe themselves as a "family values" community but they have heard that there will be very little impact on the schools from these apartment and condominium developments. Ms. Grzelak said the schools are the draw in Powell and she questions that the impact of this development would only be 10 students. If they only have ten children in this development they will still have the future developments to consider. She has not heard any discussion about the public amenities dealing with the schooling and she does not see the developers offering up money for additional schools to be built. Her children go to Wyandot Run and it is also out of classroom space. She said that is something that is being "fluffed over" and it deserves a little more consideration. Ms. Grzelak said she would like to call their attention to the rent estimates of $700 to $1000 per 2 bedroom apartment; this allows people to buy into the Olentangy School system for less than the cost of going to a private school in this area. Her children did attend Village Academy and the upper schools are about $15k per year. One is better off renting an apartment in Powell and having their children attend the Olentangy Schools with its rating. This subject deserves more consideration than the current discussion.

Dave Hartline, 150 Glen Abbey Court, said his home is not directly impacted by this development but by other future developments. He said he speaks for the majority of people when he says they do not have anything against apartments or apartment dwellers; he comes from Marion and a working-class background so he knows what it takes to get to a place like Powell. This is generally a conservative, family oriented community and they do not have anything against diversity of housing units but they do know what they moved here for and that was a family community. When they have mixed developments they do not really know what that will mean. It amazes him that they somehow think they have to be like everyone else when a community living magazine has already ranked Powell high as a place to live in the US. They somehow think they have to rethink things and get more tax base and Powell is doing fine. They need to keep to what they have. Mr. Hartline said he is a conservative person and an entrepreneur and has no problem with developers but he does have a problem when they try to change the course of the community. Recently business took him to California and he visited Malibu because it is very unique. It is very different from Powell and the one thing the people in Malibu were adamant about is that they did not want to change their community. There is no development there and no developers are coming in to tell them they need to change their community. They know what they have, like what they have, want to keep what they have. The people in Powell like what they have and if all of these development projects were put to a vote they would all be voted down. He said he does not understand how they can have one unanimous vote after another when people have voiced their opinions and thoughts; that says to him that Council is reading textbooks but not really listening to the citizens.

Leslie Lopes, 207 Woodedge Circle West, said when they had the meeting in April there were a few more bodies here and they should remember that. She has been watching this issue and it has been tabled several times. She said she is in "summer mode" and realized earlier in the day that the meeting is tonight and many other people have had that reaction and are not here. They have been here for other meetings and have sent petitions and emails. She asked that Council consider that those people are present this evening. This meeting

was pushed to this night in the middle of the summer when it is not the easiest time. She appreciates that all of Council is here but the residents are not. The developer has talked about his time and investment and she appreciates what he has invested but if they combine all of the residents around here they have invested way over that amount. Dublin was scared of apartments and put apartments in and said they feel fine about it but she is sure they don't. She is pretty sure if they asked them if they prefer to have the apartments there or not, they would say they prefer not to have them. Ms. Lopes asked Council to not marginalize their concerns because they are just residents and not traffic or development experts. They have valid concerns because they love it here and care and they know that City Council cares too. They should look at the school capacity studies because Wyandot Run was at 87% capacity and are higher now. Seven students and 50 cars in this number of apartments does not make sense to her. She would love to stay and hear their thoughts but she has family responsibilities and must leave. She asked that City Council please listen to residents because they are concerned about these apartments. This is a relatively small one compared to some of the ones that have shown up. They are paying all of the taxes to put the Murphy Parkway extension in to address the current traffic, not so these apartments can come in. It is not meant to be the band aid for this situation.

Tom Happensack, 127 Kelly's Court, said he is one of the residents that put together the petition. It was written back in the March/April timeline and they admit that things have changed. He read the wording within the petition that was placed online and presented it to City Council (Exhibit 5). Mr. Happensack said Powell grew from a few hundred to 12k residents because of the single, affluent housing, not apartments. He said he has signatures from his development; in about ten days they went to as many houses as would open the doors and collected signatures from 75% of the homes which equals 118 signatures. The other 25% were not talked to; no one he spoke to refused to sign. They had an online petition where they collected 164 signatures, a lot of those in the last few days. Ten of those signatures were duplicates so the total was 154 signatures. In addition, another group had a petition that garnered 221 signatures so together they have 493 signatures. This is a lot of representation of the residents. They are not opposed to development but are asking City government to step back and consider why Powell is what it is and so special, and why do they need to change it. He has heard that they need the tax base but there are other ways to get tax base. He knows the developer has put a lot of time in this and he feels sorry for him because this City has grown double its size since the Comprehensive Plan was done and a most of the people he talked to have no idea it is out there. The City has done a good job of hiding that plan from the citizens and then it gets used against them. The people who moved here did not move here for a Short North in downtown Powell. The residents are not interested in that or high density housing, especially apartments that rent for $700/month. They received a note from the City asking them to remove that estimate because it was not true but the Council minutes (Exhibit 6) quoted the developer stating that rent. They tried to make their site look to the City site to get information but the City did not do a good job of informing the residents about this plan. If one goes to the City website right now they will not find the Harper's Point development or it is hidden very well. That plan is no longer there and if it is still being contemplated he wonders why it is not on the City's site. His said that is poor communication. Mr. Happensack said this is about what they want Powell to be and it speaks very loud and very clear that this City has developed over the last 20 years to be what it is without this stuff. Adding this and trying to change the character of Powell is not the appropriate step for the City. That is what they are hearing tonight and 490 of them do not agree with this type of development.

Ronald Beech, 217 Paddock Circle East, said he heard that a Comprehensive Plan was done 20 years ago and has not really been updated. He also heard there was a subsequent plan done 6-7 years later and that is the plan that has been the process for this. He agreed with the last speaker that he understands the time and finances this developer has spent on this plan but the question is, if they asked the 12k residents to vote on this would they approve it? He said he thinks the residents should vote on this. He is a very successful unelected City Councilman because of his concern that government, including local government, works in a way that the citizens are not involved. The voters elected them and Council needs to do what the citizens want them to do. If the citizens of Powell do not want this project they should not do it. He lives in Olentangy Ridge and has had a lot of conversations with a lot of people; no one has yet said they are very positive that there are all of these projects and they all involve multi-family housing. Harper's Point is a fairly nice project but doesn't fit very nicely in that space. He thinks the real issue is whether all of the citizens of Powell think this is a good idea; if they do, then it should be done and if they don't, it should not be done. He does not want to underestimate the amount of time and money the developer has invested and he understands that is how projects work. Maybe before they get started there should be more consensus that this is a development that everyone wants to have done.

Paul Mohler, 188 Wagon Trail North, said it was earlier said that to the south of this there is a 125' buffer and he is not so sure that is accurate. They were told that the apartments are 250' from the back of their houses, not from the back of their back yards. If they look in the far left corner, the garages are only 125' from the houses.

There are trees there and half of them will be taken out because they are dead or diseased but those trees are not enough buffer between the apartments and the houses. He said Mr. Lorenz asked earlier if there is any access from the apartments to the neighborhood and there is: they can walk right through trees and be in their back yards. There is also bikepath. He initially asked when this site was annexed into the Downtown Business District and he wonders if it was always a part of it or did it come up with this project. Mr. Betz said it has been in the Old Powell Commercial or Downtown Business District since the early 1990's. Mr. Mohler said Council is now aware of the petitions going around. The closeness to the houses with no buffer and major traffic concerns are an issue. They should wait until the queue cutter is installed to see if it helps before they dive into this project that is going to be right next to the railroad. It may be a disaster and they may be putting the cart before the horse. At most of these meetings there seems to be a lack of business representation from the downtown area and he wonders if that is because this is going to put money in their pockets for the downtown revitalization. He can't understand why they would approve of something that will bring traffic to a standstill through town. It is bad enough now. There is also the issue of the transient renter population and that is not something that Powell really wants. Mr. Mohler said he hopes Council looks at this a little better. He thinks they have made up their minds but he hopes they haven't because there are 12k residents in this community and a lot do not agree with this.

Rod Flannery, 52 Barthlomew Boulevard, said tonight he has heard from the developer and the Development Director who did a great job of presenting the developer's position. Their concerns are still the density and the "transient" issue with the apartments. He asked about the minimum square footage required if they were developing condominium housing. Mr. Betz said it would be 1,500 sq. ft. per condo unit. Mr. Flannery said these one-bedroom apartments are less than 700 sq. ft. and the two-bedroom apartments are less than 1,000 sq. ft. and he has a difficult time understanding how that is in keeping with their community and its' standards and values for housing. The developer has invested quite a bit in this project but the 12k residents in the city have also invested a lot in their community. He hopes that Council does consider, as a representative-style of government, that they have heard loud and clear what their constituents desire or do not desire and he hopes tonight they vote their constituents' and not their own personal feelings.

Bernard Palchick, 52 Murphy's Oval, said this site is one that is hindered. As a residential site right next to the railroad tracks, it is not going to be an attractive environment. The plans and drawings look quite exquisite but the reality is that there will be trains going though and anyone thinking about renting will have second thoughts because of that. He at one point had a career with the railroad as a brakeman and he knows that trains are dangerous tools. Without a fence in that area he is afraid that the playground at the City complex is an attractive nuisance to any of the children who might take residency in the apartments. He is concerned about their wellbeing and there is some need for a protective barrier there to keep them from crossing. The site with trains going through will have an impact on rent and they will not be able to attract what other communities have attracted into their apartment complexes. Young professionals or empty nesters will not want to live on this site. The site is not one that will support this particular plan.

Don DePalma, 365 Shelby Avenue West, said there is not a large representation of the citizens tonight and he does not understand why. He is President of the Grandshire HOA but is not here in that capacity to represent them. He has talked to people in his neighborhood about things of issue and important to the City and this issue has come up. A lot of the feedback he has received is that Council has already made up their minds so there is not a lot of sense in coming forward to express their likes or dislikes on this or other issues. Mr. DePalma said he hopes that is not the case. He commented on the respective roles of the Council members in making a decision that a lot of people believe is important to the future of Powell. He commended the members of Council on the time and effort they spend doing their job; he sat on the Planning & Zoning Commission some years back and he knows it is not an easy thing to do and Council's job is far more involved. He said they need to listen to what they have heard this evening. Mr. Cline and Counts have both served the Village/City for a long period of time and in many different roles, providing a tremendous service to the community; he hopes neither of them have been involved with the City so long that they have lost sight of the passion or compassion that drove them to initially get involved in service to represent their constituents. Mr. Bennehoof is new to Council but seems to be someone who looks at things very objectively and he has a great background of planning & management. In his campaign he said the reason he wanted to get involved was to give back to the community and the community happens to be the citizens of Powell. Mr. DePalma said he does not know how Mr. Hrivnak does everything he does and still has a job and a personal life but he knows he is a professional engineer and likes to deal in facts rather than conjecture or projections. He said he hopes Mr. Hrivnak feels he has enough facts on this development that he has a good idea and handle on what it will do to the city. He should also consider what he has heard from living, breathing citizens because those concerns themselves are hard facts. Mr. Bertone is also another new member of Council and he was pleased to hear him say during his campaign that he is proud to call Powell his home and he chose to raise his family here because of the "small

town atmosphere." He said he hopes Mr. Bertone continues to feel that way when it is time to consider how to vote on this issue. Mr. Crites was quoted during his campaign saying that "seeking office is an opportunity to give back to the community he has enjoyed for 20 years." He said he also said that they must have responsible commercial development that maintains the "character of Powell" and he hopes Mr. Crites maintains that outlook when he votes on this issue. Mr. DePalma said he purposely kept Mr. Lorenz for last because he was particularly struck with his campaign comment "I just hope to invest my time in the next four years in continuing to keep up with the pulse of the community and serving the wishes of the community." The community of Powell is not bricks and mortar; it is the citizens sitting at this meeting. He hopes what Council heard them say tonight will affect their decisions.

Erwin Grabisna, 278 Glen Village Court, said he has lived in Powell for about 11 years and when he first moved here and told people where he lived they said that Powell was pretty far out there but was a really nice city. He said nowadays he tells people he lives in Powell and they ask how he deals with all of the traffic but it is still a really nice city. He said sometimes he hears people say they would never want to live here because of the traffic. Mr. Grabisna said they are at a point that if they create a lot more congestion downtown they might get into that situation. If they look around the downtown area in the subdivisions they are probably talking about $200 million of real estate so if the traffic situation gets to the point where people do not want to live in Powell they can destroy a lot of real estate value very quickly. Even a 5% reduction in value will equate to what this project is investing within Powell. He is also concerned about the school system. A gentleman said that there are things that make this property not as desirable because of the railroad. If empty nesters, young professionals and the up-and-coming people don't want to live here then the biggest draw to this property is the school system that is one of the best in the state. Mr. Grabisna said his fear is that the estimation of 10 students in this development is way off of the mark. This is a low cost way to get your kids into one of the best school systems and it will pose a much larger impact to the schools than what they are forecasting. Mr. Betz said in a previous meeting that the average number of students per residential housing is .17. Mr. Betz said that is true for apartments. Mr. Grabisna asked about the average for regular houses. Mr. Betz said it depends upon the subdivision and size of the homes but they would be looking at .8 to over 1.2 students per home. He said that is from Olentangy School system data that they provide to the City regarding all of the developments within the school district. Mr. Grabisna said the estimation of only 10 school-age students in this development is low.

Mr. Vince said he heard the comments on the schools and the numbers he provided came from the Olentangy School District. He said he called them and although they no longer provide letters to developers they did give him numbers on apartments across the board in southern Delaware County. He determined the number of school-age students at 9.6 based on those numbers. He said it was not conjecture on his part. He has been developing in this area for over 30 years and he understands the concerns about new developments coming into the community and the schools and traffic are always major issues. He said they have other empty ground in Powell and they will face this same issue every time; rarely will the City Council have a group of people come forward to say they love a development. Mr. Vince said he does not think 64 apartments will change the character of the City. The City does have a set of standards that he worked with and Staff provided them when he first came forward with this project. He said he has complied with those standards. He said he is not sure people understand that the City has standards they have to work within. He thanked the Council for their time on this project.

Sharon Valvona, 225 Squires Court, said they heard from the developer and they all feel badly for him because he is working within the standards he received from the City but that does not make the development appropriate or right for their City. The Comprehensive Plan and Revitalization Plan were quoted multiple times during this presentation but those plans were developed a number of years ago. The situation they find themselves in is different. Ms. Valvona said she is one of the folks that went around and gathered signatures, talking to everyone in her neighborhood. She has talked to people in other neighborhoods and Council has heard many people come forward to tell them how they feel about this development. No one, no citizen, no resident of Powell supports this development and in many cases people said they did not know about the development or realize it was going to happen. All of the people they see here tonight represent hundreds of other people. All of the people they are not hearing from who don't oppose it now will oppose it once it is started and developed. They will be very unhappy about what this project represents and brings. People do not support this need for density. The situation and traffic has changed and whatever this plan is, it does not support where they are right now. Fundamentally she does not understand how, in spite of all that has been said, they can possibly vote to support this development.

Hearing no further comment, Mayor Hrivnak closed the public comment session.

Councilman Counts said he has been involved in City government for a long time, been a community servant and has lived here 20 years. He has seen lots of changes. He said they need to keep this project in perspective and one thing that concerns him is sort of a lack of perspective. Powell has about 4,400 housing units and of that 4,400, 82% are single family detached dwellings. This project will be about 1.5% of the housing stock in this community. He has read a lot about changing demographics and has found that young professionals are not as interested in buying single family houses as they were before the recession. He has heard how they can't afford it because of the debt they have. In term of rent perspectives, they have heard the developer say that two-bedroom units will be from $900 - $1000 per month. The Business First Book of Lists identifies the monthly rental rate for two-bedroom units from the highest down to number fifty. These rents will be within number 40 & 50 so the rents are not in the bottom half of all apartments. Councilman Counts said these are high-end units and they should use those numbers as a comparison. He noted that units outside of the City in the Township such as Emerald Lakes and Greenview have monthly rental rates for a two-bedroom unit of $700 per month so the difference between that amount and $900 per month is a significant difference of almost one third. They have heard that the average student per dwelling unit is about .65 in the Olentangy School District. In perspective, the apartments at Emerald Lakes and Greenview have .415 and near Scioto Ridge they are .46. In comparison, Olentangy Ridge where he lives is .58 students per home, Ashmoore is 1.09, Bartholomew Run is .68, and Murphy's Park is .95. If they are really concerned about their schools they should not be building single family detached dwellings.

Councilman Counts said when they build single family detached dwellings they are building roads that need to be plowed, maintained and swept. All of the roads in this complex are private and the City does not provide those services as they do in single family subdivisions. He said they have heard about the variances and they are minor in comparison. Traffic is the biggest issue they have ti deal with here and there is no denying that there are traffic problems in their city at peak times but they must also keep this in perspective. In 2002 the Columbus Zoo had 1.3 million visitors, in 2012 that number was 2 million and it keeps increasing and there is not a thing the City can do about that. The Memorial Tournament is no different. Liberty Township has 14,000 residents that are coming through this community on a regular basis and there is not a thing the City can do about that either. Within the Township additional residences and apartment complexes are being built and there was one considered for the City of Powell and the Council decided not to move forward on that so then it was being contemplated by the Township. Councilman Counts said the City can do all they want to stop things within the City yet in the Township they can continue and they will still have the traffic problems they have now. He has failed to hear anything about the downtown. When he moved into downtown Powell there was Saturday's Sports Bar and that was it. In the last ten years they have seen a striking change in their downtown that he thinks is for the betterment of the community. Councilman Counts said they have seen places like Rita's and Jeni's and restaurants like Kraft House and Local Roots. The community is coming into the downtown area and intermixing and that is something they do not see in Liberty Township or Lewis Center; it is something unique about Powell. The downtown area is not finished by any means so their downtown plan that is still very valid provides the opportunity to build on that community and make it a much more vibrant place than what it is today.

Councilman Counts said there is a cost to doing nothing. City Council has heard the residents and they may decide to go along with what they have said but that means is there are no west of the tracks improvements. It will be less safe, traffic is going to continue, there will be no additional funds to deal with the traffic woes within the city and there will probably be no further development in the downtown area and that hurts the sense of community. Most importantly, their community looks a lot like Upper Arlington and in recent news articles they have heard about the huge outcry to not do the development at Tremont but there was also an article in the paper about a group of citizens that said that the income tax for Upper Arlington needed to be increased by ½% because there is no money for capital improvements. Councilman Counts said they can do nothing tonight and stop any kind of increased vibrancy of the downtown area but is comes at a cost and that cost is to the residents. They know what happened two years ago when they considered putting an income tax on for capital improvements; it was voted down resoundedly and Powell's income tax rate is only .75%. He said they need to keep this project in perspective. But for the traffic they all experience, when they look at this project from a pure development standpoint, everything makes sense. They currently have single family homes that sit along the railroad tracks already and those homes have sold and people live there. If they look at this development it makes sense but it is incumbent on the members of Council to try to deal with the traffic woes. If they simply say that nothing can be done, he feels they have not done their job. Whatever happens tonight, tomorrow the Council will need to continue their plans to address the traffic concerns. Over all of the surveys ever done in the City, it is the traffic that has been the issue; Council understands it has gotten to a tipping point and with everything going on around them, it is the problem that they as City Council need to deal with.

Councilman Lorenz thanked the residents for the numerous emails and attendance at meetings; the City Council has heard them and appreciates the time they have put into this. He also thanked the Planning & Zoning Commission. Many of the members of Council have served on that board and it requires many difficult decisions in a thankless position. He said their efforts do not go unnoticed. He thanked Staff for their hard work and diligence in providing information so Council can make sound decisions. He also thanked the applicant for the time and effort he has put into this development. This type of project is not cheap and he has a lot riding on this. Councilman Lorenz said they know that the Comprehensive Plan is dated and the Downtown Revitalization Plan is a little bit younger. As a professional planner in Ohio he knows they have to zone in accordance with the Comprehensive Plan and they must consider the development plan against a set of standards. There are variances and some are done in the spirit of the betterment of the development but they are still variances so the development does not meet the full requirements. That gives him heartburn, specifically in the lack of parking. He is a very big environmentalist and the last thing he wants to see is a couple of trees cut down for parking spaces. The downtown area has a significant parking deficiency and with the proposed tenant mix and size of the retail establishments they are set up to be quick turnaround type businesses with high traffic turnover and that exacerbates the situation.

Councilman Lorenz said he sits on the Olentangy Schools Development Committee Board that discusses land use within the district and the actual number they use for calculation is .17 students per unit. He said with the rents and whatnot, he really wonders who will want to live that close to the tracks. He does not dispute that some form of housing would be needed here but the layout and timing may not be right with all of the traffic improvements contemplated to go forward. Council adopted the Murphy Parkway extension after fifteen years of hard work of previous officials and he would like to see them continue to work on the outside bypass system. There are a lot of unknowns and it gives him pause on this project. They are re-evaluating the Comprehensive Plan but if they are going to consider it as the driving force, they must realize that things change but community values stay the same. It is also important them to consider the Community Attitude Surveys they do every other year. They hear comments that the residents like Powell because it is single family oriented. He does not mean to be disrespectful but every time he hears that something has worked in another community he is reminded that this is Powell and people are here because of what they have here. Councilman Lorenz said he is concerned about the inherent economic benefit to the tax base of the City. Someone commented that there are studies done that show there is no benefit or detriment to the community for apartments. They are having a more transient in and out lifestyle and are not going to attract those higher income salaries. Five people report to him at work that are under the age of thirty and they would not consider living in Powell based on these values and driving to a different area.

Councilman Cline thanked those who provided input and commented at this and the prior Council meetings. He said they have not forgotten that there were a lot of people here at the first reading. He said he is a lawyer and in some respects that colors the way he looks at things. He looks at the issue before them tonight a little differently than his colleagues. In his perspective this is an administrative rather than a legislative action and their job tonight is to enforce the zoning code. He respectfully disagrees with the resident who said it is nice that the developer complied with the code but that shouldn't count; it does count and it counts for everything. They have set in place in the planning district and zoning code the requirements that the developer must meet in order to be able to develop the land that he owns. This developer has met all of those requirements except for three variances that were done to better the project and make it more palatable to the residents. They heard the developer say he can do this development without the variances but the development will not be as good for the community. It is important to remember this because almost all of the residents in Powell have a very strong view of individual and property rights. This man has property rights for his property.

Councilman Cline said there has been a list-serve going around and during that discussion a resident responded to those who were in criticism by saying "If you don't like what is proposed, buy the land and you can do what you want with it." He said that is a very extreme example but the truth of the matter is that this man owns land and has a constitutionally protected right to develop that land in accordance with the rules that they as a community have set out in the zoning code, Comprehensive Plan and Downtown Revitalization Plan. Councilman Cline said when he looks at the variances he does not think there are significant problems that would convince him to turn down the development. This plan is consistent with the 1995 Comprehensive Plan and the Downtown Revitalization Plan. He agrees that the traffic and safety concerns are very real and need to be addressed. The plan before them, along with the queue cutter, normalization of the cross-section of the roadway from Depot Street to Traditions Way, and the installation of a "pork-chop" at the southern terminus of Depot Street work to address the safety issue. The opening of Murphy Parkway will help the traffic issue. When he looks at all of those issues he concludes that this plan, although not perfect by any stretch, is the right plan for this location. They have heard a lot of people speak about how this particular plot of land is burdened because it is along the railroad tracks but immediately south of the site there are homes along the

tracks. He hears from residents who live in that area and want the City to stop the train from blowing its whistle but they still live there. It is true that he has been on Council for a long time. When Grandshire was proposed he was told that allowing it to develop would destroy the character of Powell. When Lakes of Powell was proposed he was told that allowing it to develop would destroy the character of Powell. This development has under 2% of the housing stock being apartments and he is being told it will destroy the character of Powell. He said experience has shown him that is not true. He does not say that to denigrate the feelings of the people who made those statements because he knows those feelings are heartfelt and real but his experience tells him otherwise.

Councilman Crites thanked the citizens who have contacted him and signed the petitions. He has lived in this community over 25 years and ran for Council because he cares deeply about this community; he raised his children here with the community's family values and he would never intentionally take any action that would jeopardize this community and its values. Having said that, he is also an attorney and as an attorney for at least 15 years he has also served as City Law Director and Village Solicitor in a number of different communities. This is not a legislative action or a case of zoning whether they are debating whether or not apartments should be included as part of the zoning. The zoning is in place and Council is acting in an administrative, quasi-judicial capacity. Councilman Cline is completely correct that the developer has rights in this type of proceeding and the Council's objective, goal and responsibility is to take a look at the zoning code that has been in place for at least ten years to see whether or not the development plan is consistent with that.

Councilman Crites said he may not like that zoning and not be in favor of apartments or the density but the fact is that the DB zoning district has certain requirement, permitted uses, standards and guidelines and as a matter of law, so long as those are complied with, they find themselves in a position where they have to determine whether or not to accept that. In this case he was very interested because he was immediately concerned about 64 apartments. He talked to people on the Planning Commission, Mr. Betz and some of his colleagues outside of Powell and read as much about it as he could. He firmly believes that this plan, whether they like it or not, as a matter of law, is consistent with 1995 Comprehensive Plan, the Powell zoning code and the Downtown Revitalization Plan. He is chair of a committee that is reviewing the Comprehensive Plan for the first time in almost twenty years; it would have been great to complete that review and gotten it approved before this or any other development happened. The Comprehensive Plan is 20 years old and he does not know what has taken so long. The vision statement of the Comprehensive Plan says the Village of Powell is a small rural greenbelt town that is off the beaten path. Councilman Crites said that is certainly not the case now and they must do something as quickly as they can to correct the situation because the Comprehensive Plan drives the zoning ordinances in municipalities in the state of Ohio. They need to get input from the public on the Steering Committee and make sure the plan encompasses the true values of the City of Powell and he is sure that has not changed. They find themselves in a dilemma because in his legal opinion they have a plan that is consistent with all three and if there is any doubt they should look at page 68 of the Downtown Revitalization Plan because it shows the parcel in question tonight and it is designed precisely for what this plan lays out for their consideration.

Councilman Crites said traffic is a concern and Police Chief Gary Vest said early in the year that he was very concerned because given the situation at that time, the railroad crossing is an accident waiting to happen and someone's life was going to be taken if they did not make changes. One of his concerns was the volume of traffic and the safety issue. It is not uncommon to have volume of traffic issues but if they could have issued 300 citations for people parking on tracks and had video of people running off the railroad track right before the train came across the crossing, there is a significant safety problem. He has known Doyle Clear for years and has used him as an expert in a case when he was with the Village of Granville; he has talked with him at great lengths and heard his previous presentations. There is not a silver bullet that will eliminate the traffic problem in Powell, Ohio. This is a problem that has existed since the late 1980's and when there were four stop signs at the Four Corners people were very critical of the traffic problems here. That has not stopped and he does not envision that it will; this is the only east-west artery between Polaris and the Zoo and they have a significant amount of pass-through traffic. The citizens may know the back ways to get around but others do not. The Murphy Parkway Extension is not the answer in and of itself but it will help. The improvements proposed by this developer will be very helpful but the City may have to continue to work to come up with a solution to this problem and part of the solution may be the extension of Home Road and connection to I-71 that is 10 to 15 years away. That is great but will not help them now. He is convinced that these improvements will be helpful when in conjunction with the queue cutter and "pork-chop" at Depot Street. City Council needs to keep working on this issue because it has been around for a long time

Councilman Crites said the issues with the schools are very special to him because he had the privilege of serving on the Olentangy Local School District Board of Education at one time and was president for two years.

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He has spoken to the superintendent about development in general and the numbers presented by the developer are not far off. The major reason many moved to Powell is because of the school district and it always needs to be a factor to be considered. Councilman Crites said he finds himself asking if it is important that Powell remain family-friendly and family-centric, is the existence of this development inconsistent with being family-friendly and family-centric. He cannot say that it is. He has concerns still about this development, the Comprehensive Plan and zoning that will have to be addressed in the future.

Councilman Bennehoof asked if Deputy Chief Hrytzik is present to comment on this issue. Mr. Lutz said the Chief is out of town and D.C. Hrytzik is here in case there are any questions about the safety aspects of this railroad and this project.

Councilman Bertone said he has listened to a lot of details about this project over the last several months and it is important to expresses to City Staff, the Planning & Zoning Commission and the applicant for their willingness to supply answers to questions received. There is a well-organized group in opposition to this effort and he understands that the developer has rights. There is a fundamental consequence to staying stagnant in the town as well and that concerns him a little but more critically he is concerned about their fundamental traffic safety issues and zoning & planning concerns that are colliding at the same time. They have to work in conjunction with one another to figure this out. The schools are a fundamental concern of his and he has spoken to at least 20 people who concur with what is being proposed in term of figures. Infrastructure costs were concerning and this development being self-contained and maintaining those structures has further eliminated some of his concerns. He stated earlier that he is concerned about the business impacts if they tear up the roads for a significant amount of time; they have to keep the process moving and keep revenue generation going for the local businesses. They should keep that ever-present in this conversation. This is a changing community and the housing demand/supply is at an all-time low. Lots of people are also going through relationship changes such as divorce and job down-sizing and apartments allow them transition and afford an opportunity for those folks to stay within the community. The residents love this town and many are very passionate about it. Given the location of this property he cannot speak to what the density will be. Fundamentally the appetite for this type of project does concern him compared to their traffic and safety concerns. Councilman Bertone said he appreciates all of the feedback and concerns from the public. They will continue to work as a body on a long-term strategic plan and the development efforts within the City. He asked that they continue to send their feedback through Council so they can continue to plan.

Mayor Hrivnak said Mr. DePalma said that he is fact-driven and that is very true. Council has received a lot input from the citizenry and the overwhelming considerations are traffic, safety, schools and the vast number of apartments. This ordinance has been tabled several times so the developer and Staff could work to answer the concerns voiced by the citizens. They talked about a safety concern and from where they started several months ago that has changed greatly. A temporary "pork-chop" was installed recently and the plans this evening show proposed left turn lanes that will be a vast improvement over what they have today. They have heard the comments about safety and changes are being made. Mayor Hrivnak said he too thinks that traffic is a problem that is going to be here a long time. They have to take steps, whether small or incremental, to work on the traffic situation. No one improvement will make the traffic disappear. He considers it a good thing if he is driving through Powell and the through lanes are open and left turn vehicles are not in front of him holding him up and backing traffic up throughout the City. The right-in/right-out is a very good way not to disturb traffic. When going westbound the lanes for left turns are three times the recommended space. There will be more cars with this development but the overall changes associated with this development will help the traffic in downtown Powell.

Mayor Hrivnak said they talked about the schools and have heard from various sources about the school numbers and the best they can do is to take the numbers the school gave them. The numbers are consistent and this development has a small impact on the schools. The property value based on the number of school-aged children will be a much better deal for the schools than a single family development of 300 houses. He was disturbed to received emails that said there are 300 apartments coming and they learned tonight that there are three pending developments and of all of those three there are 64 apartments coming. The condominiums proposed are single family and are pretty much like a house in size and price. The addition of 64 apartments is not a big change from where they are today.

Mayor Hrivnak said the City has a Comprehensive Plan and zoning code on the books and he agrees that property owners have the right to develop their property according the zoning that is in place. It is incumbent on Council to answer the question of whether this project is in agreement with those two sets of requirements and they can see that it is. This project nearly looks like the picture in the Downtown Revitalization Plan. Powell is a family community and they know that families change. The City is now going to have the pleasure of an

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assisted living facility so as families begin to age they do not have to move from their community. As children move out they could continue to live in Powell. The idea is that if the community is going to continue to thrive and move ahead they need to have a cross-section of housing and living options so families may remain here. Council has heard the comments from the residents and if they think about what they have seen over the past weeks and months, they can see that things have changed based on those comments.

Councilman Bennehoof thanked the residents present and those who preceded them. He also thanked Mr. Vince. Despite what some people may think he is not anti-development, but is pro-development at the right time and place. He is not sure they are at that nexus at this moment. He has reviewed the Comprehensive Plan and he does not condemn anyone for it but does condemn the Council as a body that it is 20 years old. Mr. Crites is working on the Comprehensive Plan and he did a fine job on the Charter Amendments so he will do a fine job on the plan as well. He also condemned the City Planning & Zoning because Planned Commercial District is a double-edged sword and everyone gets cut with it. He understands the district is negotiable but it needs to be looked at; he cannot go back and change the past. He takes this charge seriously and it is an honor and responsibility to serve on Council and he feels all of his colleagues do as well.

Councilman Bennehoof said he has continuing concerns about this development. He could care less about traffic because it is what it is and it will always be a problem, yet he agrees with Mr. Clear that they can't solve the traffic issue unless they have light rail. The traffic is not going to go away but they have to be concerned about the safety issues. Murphy Parkway is planned and right turn lanes are conceptualized, the queue cutter is inching along at bureaucratic speed and the temporary "pork chop" is in place. Hopefully they will get some definitive answers with the temporary "pork chop" at Depot Street. It is stellar that the road study is done and they have to be very careful about how that work is executed because it is also a double-edged sword. If it happens in stages they will kill half of the business in the downtown. They have other developments that will come online and they are condos instead of apartments and if they count units they are looking at 135 units. Harper's Point has a huge green space exploitation and water feature and the density is significantly lower than this one. He is talking about the safety aspect of this project's density and for him it is unanswered. Good things have been conceptualized and those things are good conjecture but they do not have a definitive safety solution here. He is certain the queue cutter will make an impact, Murphy Parkway will make an impact and adding Harper's Point and Santer Communities will have different impacts. This development will have a different impact. They have to be very careful and this may not be the right time.

Councilman Bennehoof said the powers of Council recognize that a property owner has a right to develop his property as long as it is within code and without variances it should go through without any hitches. Section 4.07 of the Municipal Code Library states that among others, the power of Council has the adopting and modification of the Master Plan for the City as the official map of the City. Council also has the power of regulation of use of private real estate in the City by establishing zones limiting the use of each zone, limiting the height of buildings and the intensity of land use. Planned Commercial development is negotiable. Lastly, Council can approve, modify or disapprove the recommendations of the Planning & Zoning Commission made to Council. He said he could go on and on about why he thinks the safety issue is so paramount. He knows people who have been caught on the tracks and shame on them; he has almost been caught on the tracks himself. They have to treat the public safety of the community as the paramount thing and adding this development in close proximity to that danger at the railroad tracks is an issue. There is no protective barrier and there is the attractive nuisance of the Splash Pad and park at the Village Green that invites people to cut across the tracks. A couple of people have died on these tracks and he does not want to see that repeated. They do not know what kind of impact Murphy Parkway and these other changes will make. There are open issues in respect to the ordinance as well because it talks about different queues than the current proposal. It can be amended to read properly but due to his concern for the safety and potential of interrupting street traffic over multiple years to make street improvements and the lack of other answers, they should move table this ordinance until those answers are definitively addressed.

MOTION: Councilman Bennehoof moved to table Ordinance 2014-10 until they have a very definitive plan that states which improvements will be completed and the timeline for those improvements, and answers all of the safety questions. Councilman Lorenz seconded the motion.

Councilman Bennehoof said he mentioned there are open issues on the ordinance and at the Finance Committee the developer mentioned he would like the City to entertain a TIF to do the improvements. He said they are not asking the developer to do the queue cutter and the street is to the benefit of the development. The TIF is not mentioned in the ordinance and that is one of the open issues that needs to be addressed as well. Councilman Cline said the TIF question did come up at Finance Committee and to be clear, the developer has said he will pay for 100% of the modifications to Olentangy Street that are required to benefit his property

and he is also willing as part of that to do a single project to complete the construction in the drawing presented. He stated he is willing to be repaid through the TIF for the portion for the portion of that cost that is not directly related to his project but is instead a general community improvement. Mr. Vince said that is correct. Councilman Cline said that need not be a part of this ordinance and that decision is up to Council. Councilman Bennehoof said he appreciates that clarification because on Tuesday evening he understood the developer was asking to TIF the full amount. He said it should be a part of this ordinance because if it will be passed on to the taxpayers they should be clear about what they are doing. That is an open issue for him.

Mayor Hrivnak asked what safety concerns Councilman Bennehoof feels have not been addressed. He said the concern about people crossing the tracks has come up this evening and they can ask the developer if he would be willing to put something there to limit that. Councilman Bennehoof said he read from the Powers of Council and he is still concerned about the density as are constituents in the community. Mr. Betz has schooled him on this many times and he understands that density is determined on gross acreage but this is Planned Commercial so it is negotiable. He thinks they should talk about that. He does not know about the economics of lowering the density or perhaps changing it to apartments above commercial and lowering the density. He respects the work of Mr. Vince and his consultants but that is a concern. They say they are doing a queue cutter and are extending Murphy Parkway but they don't know when those will happen. If they told him the queue cutter will be done and Murphy Parkway will be done and the road widening to Liberty and what part of the improvements will be in the TIF then maybe the safety issues are done if this development follows those improvements. He said they could do the widening and the development and say they are done and will get to the other improvements later. He has done project plans all of his life and when he was new to Council he said they need to have benefit profit/loss statements to the City with every development and he has still not seen a Business Value Statement for any projects that have come forward. The assisted living development said they are investing in the sewer improvements to make that project happen and that is commendable and they know what is happening there. Here they know the road west of the railroad is going to be completed and then they have no other answers.

Councilman Counts said they have been here three hours and the question before Council is whether to table the Ordinance. They have enough information to decide whether it is appropriate to move forward and take a vote. He called the question.

Mayor Hrivnak asked that the clerk read the motion back to Council.
"MOTION: Councilman Bennehoof moved to table Ordinance 2014-10 until they have a very definitive plan that states which improvements will be completed and the timeline for those improvements, and answers all of the safety questions."

Mayor Hrivnak asked Mr. Hollins if they can table without a date certain. Mr. Hollins said they can postpone indefinitely but they will need a motion in the future to bring the ordinance back off of the table and back to Council. Councilman Cline agreed and under Roberts Rules of Order, a vote to approve a motion to table indefinitely kills the pending motion and the opportunity to bring it back from the table requires a vote of someone who was on the prevailing side of the motion. Mr. Hollins agreed. Councilman Bennehoof said it is not his intention to say this goes away forever; he needs answers before a vote. He said he would be willing to, after they negotiate density, get clarity on the ordinance and have some very strong indications of all projects that impact the safety of Powell citizens, commit to bring this ordinance back on the table for consideration.

Councilman Cline made a friendly amendment to the motion to table this matter for 90 days. He said that would allow them time to do the things Councilman Bennehoof requests. Councilman Bennehoof said he is more than willing to accept that amendment. Councilman Cline asked for a roll call vote on the amended motion.

VOTE: Y 3 N 4 (Crites, Hrivnak, Cline, Counts)
The motion was defeated.

MOTION: Councilman Cline moved to amend Ordinance 2014-10 in Section 1, paragraph 1, second line to strike the words "store two cars, 50 feet of storage" and in its place insert the words "provide 150 feet of storage." Councilman Counts seconded the motion.

Councilman Cline said his purpose is to make the ordinance comply with the proposal that Mr. Clear described because it does require the applicant to construct a left turn that is three times the stacking capacity that the traffic manual would otherwise require, thereby giving them greater safety.
VOTE: Y 5 N 2 (Lorenz, Bennehoof)

MOTION: Councilman Cline moved to amend Ordinance 2014-10 to add to Section 1, Subsection 9, the requirement that the applicant shall work with City Staff to construct an appropriate barrier along the eastern edge of the property to discourage pedestrian traffic across the railroad tracks at non-designated locations. Councilman Crites seconded the motion.

Councilman Counts asked if they are considering a barrier along the entire track. Councilman Cline said his intention with the amendment is for the developer to coordinate that barrier with Staff, as appropriate, to achieve the safety concern, meaning it does not necessarily have to be the entire length.

VOTE: Y 5 N 1 (Counts) Abstain 1 (Bennehoof)

MOTION: Councilman Cline moved to adopt Ordinance 2014-10 as amended. Councilman Counts seconded the motion.
VOTE: Y 4 N 3 (Lorenz, Bennehoof, Bertone)

PROPOSED 2014 STREET MAINTENANCE PROGRAM
Mr. Lutz said typically the City is able to fund from $500k to $550k a year for the Street Maintenance Program (Exhibit 7). This year they are supplementing with the capital funds so they have a budget of $740k. Mr. Rice has identified the streets to be included in the base bid and they also included alternates that will not be determined until the bids come in. The bids will be brought forward to Council for adoption. Each year they have about $1 million worth of projects they could do but they do not have that funding.

Rob Rice, City Engineer, said they are generally working in Olentangy Ridge, Powell Place and Grandshire. They tried to identify a better preventative treatment than slurry seal but none was found so they are going back to it. It has been a helpful solution in the past and these streets are good candidates for this treatment. A couple of years ago they presented a model that $1.7 million could be used each for the next 10 years. With the re-introduction of slurry seal he suspects that number could be less because it has good preventative maintenance value. A lot of Powell was developed quickly in a short time frame so the roads in those areas are aging simultaneously. They will use slurry to increase the longevity of roads that are in good condition.

RESOLUTION 2014-14: A RESOLUTION TO ESTABLISH THE ESTIMATED REVENUES FOR THE CITY OF POWELL FOR THE FISCAL YEAR ENDING DECEMBER 31, 2015.
Mr. Lutz said this is an item that they bring forward to Council each year as part of the County Auditor's process for establishing millage rates. The City has to send them proposed budget revenues from the 2015 budget. This does not lock them in; it just an administrative process so they can establish millage.

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

MOTION: Councilman Cline moved to adopt Resolution 2014-14. Councilman Crites seconded the motion. By unanimous consent, Resolution 2014-14 was adopted.

FIRST READING: ORDINANCE 2014-32: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2014.
Mr. Lutz said Staff recommends they utilize $4,200.00 out of the Council Contingency account to apply it to the Development Department for their legal ad and architectural advisor accounts because of the number of the applications received. They are exceeding their budget on those line items. Councilman Lorenz asked if the advertisement is the burden of the City or are they collecting monies to put into that account to pay for the advertisements. Mr. Lutz said it is part of the application fee. Councilman Lorenz said they may want to consider raising those fees. Mayor Hrivnak said as the projects increase, the application fees increase so the cost of the ads is offset.

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

MOTION: Councilman Bennehoof moved to suspend the rules in regard to Ordinance 2014-32. Councilman Cline seconded the motion.
VOTE: Y 7 N 0

MOTION: Councilman Cline moved to adopt Ordinance 2014-32. Councilman Bennehoof seconded the motion.
VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2014-33: AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A REAL ESTATE PURCHASE AND SALE AGREEMENT WITH CSX TRANSPORTATION INC. TO ACQUIRE A 0.21 +/- ACRE PARCEL ON DEPOT STREET, AND DECLARING AN EMERGENCY.
Mr. Lutz said as they discussed at the Finance Committee, Staff has had discussions with CSX and they have thrown out the price of $5k to purchase the right-of-way at the railroad crossing. The Finance Committee members were all in agreement that they should jump on that as soon as possible.

Councilman Bennehoof asked that they make sure there are no toxic issues with this land. They could be making a bargain purchase but knowing that railroads carry some nasty stuff and that they have been known to have incidents, they may need certification that there is not a toxic waste issue. Councilman Cline said the ordinance permits the Law Director to approve the purchase and sale agreement and the standard terms of those agreements include a covenant that there is no toxic waste or things of that manner. They should be okay in this case. Mr. Lutz said he will make note of that issue. Mayor Hrivnak asked if they will also need an appropriation for this. Mr. Lutz said it will follow later.

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

MOTION: Councilman Cline moved to suspend the rules in regard to Ordinance 2014-33. Councilman Bennehoof seconded the motion.
VOTE: Y 7 N 0

MOTION: Councilman Cline moved to adopt Ordinance 2014-33. Councilman Crites seconded the motion.
VOTE: Y 7 N 0

COMMITTEE REPORTS
Development Committee: No report. *Next Meeting: Tuesday, July 1, 6:30 p.m.*
Finance Committee: No report. *Next Meeting: Tuesday, July 8th, 7:00 p.m.*
Operations Committee: No report. *Next Meeting: Tuesday, July 15th, 6:30 p.m.*
ONE Community: No meeting due to lack of quorum. *Next Meeting: Monday, July 14th, 7:00 p.m.*
Planning & Zoning Commission: *Next Meeting: Wednesday, July 9th, 7:00 p.m.*

CITY MANAGER'S REPORT
Mr. Lutz said next Tuesday they will have the kickoff meeting of the Comprehensive Plan Steering Committee from 6:30 – 7:30 p.m. They will also have their first open house for the Seldom Seen Park on that same evening from 7:30 – 8:30 p.m. They will unveil the first concepts of the park and it will not include everything that the public wants in the park. At the previous Development Committee they discussed that there is no room for a dog park so it will not be a part of the plan for this site. Future meetings on the park will be more formal where Council will go through the master planning and adopt the plan.

OTHER COUNCIL MATTERS
Councilman Bennehoof attended the Delaware County Commissioner meeting and was disappointed they did not have a better outreach program for stakeholders. They tabled the decision on the Sawmill Parkway extension because he said sufficient stakeholder representation was not there. They asked him if he was speaking for Council and he said he was not but he was speaking as a public official. His sense was that any proposed solution to the issue should be a drafted in a manner that treats both cities equally but he does not think that is enough. He asked the Commissioners if once the road is completed, because it is owned differently, does it become subject to the city that participated in the funding of the road and can they petition the County Commissioners to take over control of that road? Their Legal Counsel said that is correct and that changed the complexion of the Commissioners. He still does not think this is enough and he thinks it is time for them to approach the Township to disband the CEDA. He is quite sure they would rather not have their constituents consumed by Delaware City but rather by Powell. Councilman Bennehoof said once they own that road down to Hyatts, the adjacent landowners will be compelled to annex to the City of Delaware. He asked for permission of Council to float that balloon with Tom Mitchell.

Mayor Hrivnak suggested they discuss this matter in executive session tonight or at another date. He asked if this is issue is pressing. Councilman Bennehoof said they have not broken ground but the time is right to approach the Township Board to disband the CEDA. He said this question will be before the Commissioners on June 23rd. Councilman Cline asked about the legal basis for the City of Delaware to be in a preferred position rather than the City of Powell. Councilman Bennehoof said the City has not contributed to that portion of the road that is underneath it and owned by the County. Councilman Cline asked if there some law that says that contribution gives them a superior right or is it a matter of equity where the County is more likely to say that

since they helped pay for it they will let them have it. Councilman Bennehoof said he does not believe that the City not contributing to the road from Hyatts to Rt. 42 allows us to have any right to request ownership. Councilman Cline said when he says "petition" it suggests there is some statute and process or pre-existing methodology as opposed to the City of Delaware saying to the County that they should deed it over to them so they can maintain it. Otherwise it will be a County road. He said he is reinforcing the idea that the City ought not to allow that avenue of annexation to the north to be cut off. Then the question becomes if a financial contribution to the development of the road is a condition precedent to having a voice at the table, then they need to discuss if they can contribute to that. Someone needs to figure out if that is a condition precedent.

Councilman Crites asked if Councilman Bennehoof has a draft agreement that the Commission is going to vote on. Councilman Cline said there was something they were going to vote on until Councilman Bennehoof stepped in. He said if they can figure out what that is and get it to Councilman Crites he can read it and figure out if there is something the City should do. Councilman Crites said he supports Councilman Bennehoof in that regard and it should be done soon. Councilman Crites asked that the Law Director see if he can get a copy of the agreement. Mr. Lutz said he will ask him to look into that.

Councilman Cline said as an individual Councilman Bennehoof has the right to talk to Mr. Mitchell about those things and Council would be interested in hearing his feedback. The members of Council agreed.

ADJOURNMENT

MOTION: Councilman Cline moved at 11:58 p.m. to adjourn the meeting. Councilman Crites seconded the motion. By unanimous consent, the meeting was adjourned.

MINUTES APPROVED:

7-15-14 7-16-2014

Jim Hrivnak — Date — Sue D. Ross — Date

Mayor — City Clerk

ARTICLE VI

RECALL, INITIATIVE, REFERENDUM

6.01 REMOVAL BY RECALL

No petition for removal of an elected officer of the Municipality shall be filed until such officer has served for at least six (6) months of the term during which such officer is sought to be recalled. Any elected officer of the City may be removed from office by the electors of the City. The procedure to effect such removal shall be:

(A) A petition signed by electors equal in number to at least fifteen (15) percent of the total votes cast at the last preceding regular municipal election, as defined by the Ohio Revised Code, and demanding the election of a successor to the person sought to be removed, shall be filed with the Delaware County Board of Elections. Such petition shall contain a general statement in not more than two hundred (200) words of the grounds upon which the removal of the person is sought. The form sufficiency, and regularity of any such petition shall be determined as provided by the laws of the State of Ohio.

(B) If the petition is sufficient, and if the person whose removal is sought does not resign within five (5) days after the sufficiency of the petition has been determined, Council shall thereupon order and fix a day for holding an election to determine the question of his or her removal, and for the selection of a successor to each officer named in said petition. Such an election shall be held not less than thirty (30) days nor more than forty (40) days from the time of the finding of the sufficiency of such a petition. The Delaware County Board of Elections shall publish notice and make all arrangements for holding such an election.

(C) The nomination of candidates to succeed each officer sought to be removed shall be made without the intervention of a primary election, by filing with the Delaware County Board of Elections, at least twenty (20) days prior to such a special election, a petition proposing a person for each office, signed by electors equal in number to ten (10) percent of the total votes cast at the last preceding regular municipal election.

(D) The ballots at such a recall election shall be in such form as the Board of Elections for Delaware County, Ohio shall proscribe and shall, with respect to each person whose removal is sought, submit the questions: "Shall (name of person) be removed from the office of (name of office) by recall?"

Immediately following each such question, there will be printed on the ballots, the two propositions in the order set forth:

"For the recall of (name of person)."

"Against the recall of (name of person)."

Under each of such questions shall be placed the names of the candidates to fill the vacancy. The names of the officers whose removal is sought shall not appear on the ballot to succeed such officer. The Board of Elections may modify said ballot for its administrative purposes.

In any such election, if a majority of the votes cast on the question of removal are affirmative, the person whose removal is sought shall be removed from office upon the announcement of the official canvass of that election, and the candidate receiving the plurality of the votes cast for the candidates for that office shall be declared elected. The successor of any person so removed shall hold office during the unexpired term of his predecessor.

EXHIBIT 2

In any such election where a majority of votes cast on the question of removal are negative, no further recall petition shall be filed against such incumbent for a period of one year.
(E) If no one is elected, the removal of any elected officer of the City by recall shall constitute a vacancy of the office previously held by that elected officer and such vacancy shall be filled as provided for in this Charter. (Amended 5-7-13)

6.02 INITIATIVE.
Ordinances and other measures providing for the exercise of any powers of government granted by the Ohio Constitution or the laws of the State of Ohio, may be proposed by initiative petition. Such initiative petition must be signed by electors of the City equal to ten (10) percent of the total number of votes cast at the last preceding regular municipal election. The Clerk of Council shall receive the petitions for all initiatives.
When a petition is filed with the Clerk of Council signed by the required number of electors proposing an ordinance or other measure, such Clerk shall, after ten (10) days, transmit a certified copy of the text of the proposed ordinance or measure to the Delaware County Board of Elections. The Clerk of Council shall transmit the petition to the Board of Elections together with the certified copy of the proposed ordinance or other measure. The Board shall examine all signatures on the petition to determine the number of electors of the City of Powell who signed the petition. The Board of Elections shall return the petition to the Clerk of Council within ten (10) days after receiving it, together with a statement attesting to the number of such electors who signed the petition.
Upon receipt of the statement from the Board of Elections, the Clerk of Council shall submit the petition, the proposed ordinance, and the statement to the Council on the date of its next regular meeting. If the petition and proposed ordinance are determined by the Council to be sufficient and valid, the Council shall, at such regular meeting, read and act upon the same. Council may adopt the ordinance in its original form. Should the Council fail to take action or reject the proposed ordinance, in whole or in part, the Clerk of Council shall provide for the submission of the proposed ordinance in its original form to a vote of the electors of the City at the next succeeding general election.
Upon receipt of the proposed ordinance, the Board of Elections shall submit such proposed ordinance or measure for approval or rejection of the electors of the City at the next succeeding general election occurring subsequent to seventy-five (75) days after receipt of the proposed ordinance. (Amended 5-7-13)

6.03 REPEALING ORDINANCES; PUBLICATION
Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the Council as herein provided in the preceding sections for initiating ordinances. Initiated ordinances adopted by the electors shall be published as in the case of other ordinances.

6.04 REFERENDUM
Any ordinance passed by the Council shall be subject to referendum, except emergency ordinances passed pursuant to Section 5.06 of this Charter and as otherwise provided by any applicable section of the Revised Code, including without limitation Section 731.30. The effective date of ordinances is governed by Section 5.09 of this Charter. If a petition signed by electors of the City, not less in number than ten (10) percent of the total votes cast at the

last preceding general municipal election, is filed with the Clerk of Council within thirty (30) days after passage of an ordinance subject to referendum, requesting that any such ordinance be repealed or submitted to a vote of the electors of the City, the ordinance shall not take effect until the steps indicated herein have been taken.

The Clerk shall, within ten (10) days after the filing of a referendum petition, transmit a certified copy of the petition to the Delaware County Board of Elections. The Board shall examine all signatures on the petition to determine the number of electors of the City who signed the petition. The Board shall return the petition to the Clerk of Council within ten (10) days after receiving it, together with a statement attesting to the number of such electors who signed the petition. Upon receipt of the statement from the Board, the Clerk of Council shall submit the petition and the statement to the Council on the date of its next regular meeting. Council shall determine the sufficiency and validity of the petition. If the petition is determined by Council to be sufficient and valid, the Council shall, at such regular meeting, read and act upon the same. Council may repeal the ordinance subject to referendum. Should Council fail to take action or fail to repeal the ordinance subject to referendum, the Clerk of Council shall provide for the submission of such ordinance to a vote of the electors of the City. The Board of Elections shall submit the ordinance to the electors of the City, for their approval or rejection, at the next general election occurring subsequent to seventy-five (75) days after receipt of such ordinance from the Clerk of Council. (Amended 5-7-13)

6.05 INITIATIVE AND REFERENDUM PETITION PROCEDURES

Any initiative or referendum petition may be presented in separate parts, but each of any initiative petition shall contain a full and correct copy of the title and text of the proposed ordinance or other measure. Each part of any referendum petition shall contain the number, a full and correct copy of the title and date of passage of the ordinance or other measure sought to be referred.

Each signer of any such petition must be an elector of the City in which the election, upon the ordinance or other measure proposed by such initiative petition or the ordinance or measure referred to by such referendum petition, is to be held, and shall place on such a petition, after his name, the date of signing, his place of residence, including street and number, and the ward and precinct.

Each part of such petition shall contain the affidavit of the person soliciting the signatures thereto, which shall state the number of signers of each such part and that, to the best of his knowledge and belief, each of the signatures contained on such part is the genuine signature of the person whose name it purports to be, that he believes such persons are electors of the City, and that they signed such petition with knowledge of the contents thereof.

Upon receipt of a statement from the Delaware County Board of Elections, pursuant to Chapter 731 of the Revised Code, attesting to the number of electors who signed such petition, Council by resolution shall determine the sufficiency and validity of the petition. In determining the validity of any such petition, all signatures that are found to be irregular shall be rejected, but no petition shall be declared invalid in its entirety when one or more signatures are found to be invalid except when the number of valid signatures is found to be less than the total number required.

The petition and signatures upon such petition shall be prima facie presumed to be in all respects sufficient. No ordinance or other measure submitted to the electors of the City and

receiving an affirmative majority of votes cast thereon, shall be held ineffective or void on account of the insufficiency of the petitions by which such submission of the ordinance or measure was procured, nor shall rejection, by a majority of the votes cast thereon, of any ordinance or other measure submitted to the electors of such City be held invalid for such insufficiency.

Ordinances proposed by initiative petition and referendums receiving an affirmative majority of the votes cast thereon, shall become effective as provided by the laws of the State of Ohio. Where the Charter is silent concerning initiative and referendum petition procedures, the laws of the State of Ohio shall be followed, except the statutory functions and duties of the City Auditor shall be performed by the Clerk of Council. (Amended 5-7-13)

6.06 APPROVAL OR REJECTION

(A) Ordinances submitted to the Council by petition and passed by the Council as herein provided, shall be subject to the referendum in the same manner as other ordinances.

(B) Ordinances rejected or repealed by an electoral vote shall not be re-enacted, in whole or in part, except by an electoral vote.

(C) Ordinances approved by an electoral vote shall not be repealed, amended or supplemented, except by an electoral vote.

(D) The adoption or rejection of ordinances submitted to an electoral vote shall take effect as provided by the laws of the State of Ohio.

(Enacted 5-7-13)

Summary of Powell Petitions' Shortfall			
Valid Signatures Required for Ballot:	238		
Petition	**Potentially Valid**	**Invalid**	**Shortfall**
Referendum Petition [to repeal Ord. 2014-10]	143	270	**95**
Initiative Petition [to repeal Ord. 2014-10]	143	268	**95**
Initiative Petition [to amend Powell's Charter to repeal Ord. 2014-10]	146	263	**92**

EXHIBIT 3

Referendum Part-Petition: A			
Circulator:	Cory L. Hixson	**Valid:**	**15**
		Invalid:	**5**

Line No.	Reason Signature is Invalid
1	Circulator also signed petition as petitioner
2	Signature not genuine
6	Not registered
14	Not registered
16	Signature not genuine

Referendum Part-Petition: B			
Circulator:	Joseph Valvona, Jr.	**Valid:**	**0**
		Invalid:	**30**

Line No.	Reason Signature is Invalid
1-30	Fails to include the ward and precinct

Referendum Part-Petition: C			
Circulator:	Brendan James Newcomb	**Valid:**	**0**
		Invalid:	**9**

Line No.	Reason Signature is Invalid
1-9	Fails to include the ward and precinct

Referendum Part-Petition: D			
Circulator:	Edward A. Meixner	**Valid:**	**8**
		Invalid:	**1**

Line No.	Reason Signature is Invalid
1	Circulator also signed petition as petitioner

Referendum Part-Petition: E			
Circulator:	Sharon N. Valvona	**Valid:**	**0**
		Invalid:	**5**

Line No.	Reason Signature is Invalid
1-5	Fails to include the ward and precinct

Referendum Part-Petition: F			
Circulator:	Thomas J. Happensack	**Valid:**	**0**
		Invalid:	**40**

Line No.	Reason Signature is Invalid
1-40	Fails to include the ward and precinct

Referendum Part-Petition: G			
Circulator:	Elizabeth S. Grzelak	**Valid:**	**0**
		Invalid:	**62**

Line No.	Reason Signature is Invalid
1-62	Fails to include the ward and precinct

Referendum Part-Petition: H			
Circulator:	Denise A. Wible	**Valid:**	**83**
		Invalid:	**15**

Line No.	Reason Signature is Invalid
2	Circulator also signed petition as petitioner
9	Signature not genuine
15	Signature not genuine
28	Signature not genuine
31	Not registered
39	Signature not genuine
40	Signature not genuine
49	Invalid Address
50	Illegible
60	Signature not genuine
66	Signature not genuine
76	Signature not genuine
88	Signature not genuine
95	Signature not genuine
97	Fails to include the ward and precinct

Referendum Part-Petition: I			
Circulator:	Stacey Haney	**Valid:**	**0**
		Invalid:	**24**

Line No.	Reason Signature is Invalid
1-24	Fails to include the ward and precinct

Referendum Part-Petition: J			
Circulator:	Joseph F. Conte	**Valid:**	**1**
		Invalid:	**16**

Line No.	Reason Signature is Invalid
1-16	Fails to include the ward and precinct

Referendum Part-Petition: K			
Circulator:	Brian Swalwell	**Valid:**	**0**
		Invalid:	**58**

Line No.	Reason Signature is Invalid
1-58	Fails to include the ward and precinct

Referendum Part-Petition: L			
Circulator:	Emilie Duncan	**Valid:**	**36**
		Invalid:	**5**

Line No.	Reason Signature is Invalid
1	Circulator also signed petition as petitioner
4	Fails to include the ward and precinct
7	Signature not genuine
16	Not registered
20	Signature not genuine

Repeal Initiative Part-Petition: A			
Circulator:	Cory L. Hixson	**Valid:**	**15**
		Invalid:	**5**

Line No.	Reason Signature is Invalid
1	Circulator also signed petition as petitioner
2	Signature not genuine
6	Not registered
14	Not registered
16	Signature not genuine

Repeal Initiative Part-Petition: B			
Circulator:	Joseph Valvona, Jr.	**Valid:**	**0**
		Invalid:	**30**

Line No.	Reason Signature is Invalid
1-30	Fails to include the ward and precinct

Repeal Initiative Part-Petition: C			
Circulator:	Brendan James Newcomb	**Valid:**	**0**
		Invalid:	**9**

Line No.	Reason Signature is Invalid
1-9	Fails to include the ward and precinct

Repeal Initiative Part-Petition: D			
Circulator:	Edward A. Meixner	**Valid:**	**8**
		Invalid:	**1**

Line No.	Reason Signature is Invalid
1	Circulator also signed petition as petitioner

Repeal Initiative Part-Petition: E			
Circulator:	Sharon N. Valvona	**Valid:**	**0**
		Invalid:	**5**

Line No.	Reason Signature is Invalid
1-5	Fails to include the ward and precinct

Repeal Initiative Part-Petition: F			
Circulator:	Stacey Haney	**Valid:**	**0**
		Invalid:	**24**

Line No.	Reason Signature is Invalid
1-24	Fails to include the ward and precinct

Repeal Initiative Part-Petition: G			
Circulator:	Denise A. Wible	**Valid:**	**83**
		Invalid:	**14**

Line No.	Reason Signature is Invalid
3	Circulator also signed petition as petitioner
9	Signature not genuine
15	Signature not genuine
23	Signature not genuine
24	Signature not genuine
28	Signature not genuine
31	Not registered
39	Signature not genuine
40	Signature not genuine
49	Illegible
60	Signature not genuine
65	Signature not genuine
74	Signature not genuine
92	Signature not genuine

Repeal Initiative Part-Petition: H			
Circulator:	Elizabeth S. Grzelak	**Valid:**	**0**
		Invalid:	**62**

Line No.	Reason Signature is Invalid
1-62	Fails to include the ward and precinct

Repeal Initiative Part-Petition: I			
Circulator:	Thomas J. Happensack	**Valid:**	**0**
		Invalid:	**39**

Line No.	Reason Signature is Invalid
1-39	Fails to include the ward and precinct

Repeal Initiative Part-Petition: J			
Circulator:	Emilie Duncan	**Valid:**	**37**
		Invalid:	**4**

Line No.	Reason Signature is Invalid
1	Circulator also signed petition as petitioner
7	Signature not genuine
16	Not registered
21	Signature not genuine

Repeal Initiative Part-Petition: K			
Circulator:	Brian Swalwell	**Valid:**	**0**
		Invalid:	**58**

Line No.	Reason Signature is Invalid
1-58	Fails to include the ward and precinct

Repeal Initiative Part-Petition: L			
Circulator:	Joseph F. Conte	**Valid:**	**0**
		Invalid:	**17**

ENTIRE PART PETITION IS INVALID B/C THERE ARE 17 SIGNATURES BUT ONLY 16 WERE VERIFIED BY CIRCULATOR.

Line No.	Reason Signature is Invalid
1-16 and *	Fails to include the ward and precinct

Charter Initiative Part-Petition: A			
Circulator:	Cory L. Hixson	**Valid:**	**15**
		Invalid:	**5**

Line No.	Reason Signature is Invalid
1	Circulator also signed petition as petitioner
2	Signature not genuine
6	Not registered
14	Not registered
16	Signature not genuine

Charter Initiative Part-Petition: B			
Circulator:	Joseph Valvona, Jr.	**Valid:**	**0**
		Invalid:	**30**

Line No.	Reason Signature is Invalid
1-30	Fails to include the ward and precinct

Charter Initiative Part-Petition: C			
Circulator:	Brendan James Newcomb	**Valid:**	**0**
		Invalid:	**9**

Line No.	Reason Signature is Invalid
1-9	Fails to include the ward and precinct

Charter Initiative Part-Petition: D			
Circulator:	Edward A. Meixner	**Valid:**	**8**
		Invalid:	**1**

Line No.	Reason Signature is Invalid
1	Circulator also signed petition as petitioner

Charter Initiative Part-Petition: E			
Circulator:	Sharon N. Valvona	**Valid:**	**0**
		Invalid:	**5**

Line No.	Reason Signature is Invalid
1-5	Fails to include the ward and precinct

Charter Initiative Part-Petition: F			
Circulator:	Thomas J. Happensack	**Valid:**	**0**
		Invalid:	**40**

Line No.	Reason Signature is Invalid
1-40	Fails to include the ward and precinct

Charter Initiative Part-Petition: G			
Circulator:	Elizabeth S. Grzelak	**Valid:**	**0**
		Invalid:	**62**

Line No.	Reason Signature is Invalid
1-62	Fails to include the ward and precinct

Charter Initiative Part-Petition: H			
Circulator:	Denise A. Wible	**Valid:**	**85**
		Invalid:	**11**

Line No.	Reason Signature is Invalid
2	Circulator also signed petition as petitioner
4	No signature
9	Signature not genuine
15	Signature not genuine
28	Signature not genuine
31	Not registered
39	Signature not genuine
48	Illegible
50	Signature not genuine
60	Signature not genuine
65	Signature not genuine

Charter Initiative Part-Petition: I			
Circulator:	Stacey Haney	**Valid:**	**0**
		Invalid:	**23**

Line No.	Reason Signature is Invalid
1-23	Fails to include the ward and precinct

Charter Initiative Part-Petition: J			
Circulator:	Joseph F. Conte	**Valid:**	**0**
		Invalid:	**17**

ENTIRE PART PETITION IS INVALID B/C THERE ARE 17 SIGNATURES BUT ONLY 16 WERE VERIFIED BY CIRCULATOR.

Line No.	Reason Signature is Invalid
1-16 and *	Fails to include the ward and precinct

Charter Initiative Part-Petition: K			
Circulator:	Brian Swalwell	**Valid:**	**1**
		Invalid:	**56**

Line No.	Reason Signature is Invalid
1-16	Fails to include the ward and precinct
18-57	Fails to include the ward and precinct

Charter Initiative Part-Petition: L			
Circulator:	Emilie Duncan	**Valid:**	**37**
		Invalid:	**4**

Line No.	Reason Signature is Invalid
1	Circulator also signed petition as petitioner
7	Signature not genuine
16	Not registered
21	Signature not genuine

REFERENDUM PETITION

NOTICE. Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter, is liable to prosecution.

NOTICE: WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE

To the Clerk of Council of the City of Powell, Ohio:

We, the undersigned, electors of the City of Powell, Ohio respectfully order that Ordinance No. 2014-10 passed by the City Council of Powell, Ohio on the 17th day June, 2014, be submitted to the electors of Powell, Ohio for their approval or rejection at the general election to be held on the 4th day of November, 2014.

A full and correct copy of the title and text of Ordinance No. 2014-10 is attached hereto as Exhibit 1, and incorporated herein.

RECEIVED
JUL 17 2014
BY: AV 8:18 am

EXHIBIT 4

We hereby designate the following petitioners as a committee to be regarded as filing this petition:

COMMITTEE OF NOT LESS THAN THREE PETITIONERS	ADDRESS
Sharon Valvona	225 Squires Ct. Powell, Ohio 43065
Thomas Happensack	127 Kellys Ct. Powell, Ohio 43065
Brian Ebersole	215 Squires Ct. Powell, Ohio 43065

Signatures on this petition must be written in ink.

	PRINT NAME	SIGNATURE	DATE OF SIGNING	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, STATE, ZIP CODE	COUNTY	PRECINCT
1	Cheryl Susi	[illegible]	7/11/14	863 Middlebury Court	Powell OH 43065	Delaware	G
2	Robert Susi	[illegible]	7/11/14	863 Middlebury Court	Powell OH 43065	Delaware	G
3	Lauren Roberts	[illegible]	7/11/14	874 Middlebury Ct.	Powell 43065	Delaware	G
4	Brandon Winston	[illegible]	7/11/14	874 Middlebury Ct	Powell 43065	Delaware	G
5	Kimberly Moeller	[illegible]	7/11/14	116 Watson Way	Powell OH 43065	Delaware	G
6	Michelle Morris	[illegible]	7/11/14	75 Watson Way	Powell OH 43065	Delaware	G

J. E. Resp.000774

7	Tom Morris	Tom Morris	7/11/14	75 Watson Way	43065	Delaware	G.
8	Pete Marcovic	PA	7-11-14	95 Watson Way	43065	Delaware	G
9	Sharon Jurasovic	[illegible]	7-11-14	125 Watson Way	43065	Delaware	G
10	Kara Sinillo	Kara Sinillo	7-12-14	136 Watson Way	43065	Delaware	G
11	Angie Stearns	Angie Stearns	7-12-14	126 Watson Way	43065	Delaware	G
12	Mia Moesien	[illegible]	7-12-14	116 Watson Way	43065	Delaware	G
13	David Lusk	David Lusk	7-12-14	106 Watson Way	43065	Delaware	G
14	Lucinda Cole	Lucinda Cole	7-12-14	106 Watson Way	43065	Delaware	G
15	Amy Dardaman	Amy Dardaman	7-12-14	56 Watson Way	43065	Delaware	G
16	Tom Warka	[illegible]	7-12-14	16 Watson Way	43065	Delaware	G
17	Perry Carey	[illegible]	7-12-14	31 Sanderling Ave	43065	Delaware	G
18	MARGARET VanDenHuevel	[illegible]	7-12-14	51 Sanderling Ave	43065	Delaware	G
19	JAMES NOBILE	[illegible]	7-12-14	50 SANDERLING AVE	43065	Delaware	G
20	Sharon Miller	Sharon Miller	7-12-14	60 Sanderling Ave	43065	Delaware	G
21	Dale Miller	Dale Miller	7-12-14	60 Sanderling Ave	43065	Delaware	G
22	Ann Karrick	Ann Karrick	7-13-14	70 Sanderling	43065	Delaware	G

23	Melissa Miller	Melissa Miller	7-13-14	80 Sanderling Ave.	43065	Delaware	G
24	Michael Schroe	Michael Schroe	7-13-14	864 Middlebury Ct	43065	Delaware	G
25	[illegible]	[illegible]	7-13-2014	853 Middlebury Ct	43065	Delaware	G
26	Bill Helmling	[illegible]	7/13/2014	843 Middlebury Ct	43065	Delaware	G
27	Tabitha Helmling	T. Helmling	7/13/14	843 Middlebury ct	43065	Delaware	G
28	Tiffany Hunter	Tiffany Hunter	7/13/14	71 Sanderling Ave	43065	Delaware	G
29	Dave Rice	[illegible]	7/13/14	61 Sanderling Ave	43065	Delaware	G
30	Danielle Rice	Danielle Rice	7-13-14	61 Sanderling Ave	43065	Delaware	G
31	Ryan Meeks	[illegible]	7-13-14	41 Sanderling Ave	43065	Delaware	G
32	Kimberly Wilfred	Kimberly Wilfred	7/13/14	41 Sanderling Ave	43065	Delaware	G
33	Scott Joseph	[illegible]	7-13-14	105 Watson Way	43065	Delaware	G
34	Hans Jurgensen	[illegible]	7-13-14	125 Watson Way	43065	Delaware	G
35	Rachel Abbott	[illegible]	7-13-14	146 Watson Way	43065	Delaware	G
36	Justin Smith	[illegible]	7-13-14	136 Watson Way	43065	Delaware	G
37	Raenee Gross	Raenee Gross	7-14-14	236 Woodland Dr	43065	Delaware	A
38	R. Joseph Barrett	[illegible]	7/14/14	238 Ridge Side Dr	43065	Delaware	A

J. E. Resp.000776

39	Renee L. Moberg	Renee L Moberg	7/14/14	308 Ridge Side Dr	Powell 43065	Delaware	A
40	John M. Moffitt	John M Moffitt	7/14/14	309 Ridge Side Dr	Powell 43065	Delaware	A
41	(MALE) TRACY JORDAN		7/14/14	343 WHETSTONE DR	POWELL 43065	Delaware	A
42	Bryan Russell	Bryan Russell	7-14-14	308 Ridge Side Dr	Powell 43065	Delaware	A
43	Dana Tomic	Dana Tomic	7-14-14	316 Dickens Pl E	Powell 43065	Delaware	A
44	CATHARINE GRAY	Catharine Gray	7/14/14	385 Hopewell Dr	Powell, OH	Delaware	A
45	Jennifer Wardin		7/14/14	144 Meadow Ridge Ct.	Powell OH 43065	Delaware	A
46	Paul Wardin		7/14/14	144 Meadow Ridge Ct.	Powell, OH 43065	Delaware	A
47	G.T. Lennon		7/14/14	126 TRAIL EDGE CIR	Powell OH 43065	Delaware	A
48	TRICIA MOFFITT	Tricia Moffitt	7/14/14	309 Ridge Side Dr.	Powell, OH 43065	Delaware	A
49	Sarah Libby	Sarah Libby	7/14/14	332 Whetstone Dr. E	Powell, OH	Delaware	A
50	Carolyn Kelly	Carolyn Kelly	7/14/14	319 Cherrington Trace	Powell, OH	Delaware	A

51	James Coleman	James Coleman	7/14/14	334 Wheatstone Rd	Powell, OH 43065	Delaware	A
52	manay Oberyszyn	manay	7/14/14	312 Riverside Dr.	Powell, OH 43065	Delaware	A
53	Alison Shackley	Alison Shackley	7/14/14	236 Woodedge Cir E	Powell, OH 43065	Delaware	A
54	Anthony Shackley	[illegible]	7/14/14	236 Woodedge Cir E	Powell, OH 43065	Delaware	A
55	Lillian Terry	[illegible]	7/14/14	261 Muladar Dr	Powell, OH 43065	Delaware	D
56	Rachael E. Teliak	Rachael E. Teliak	7/14/14	1160 Amaranthus Dr.	Powell, OH	Delaware	G
57	Matthew A. Teliak	Matt A. Teliak	7/14/14	1160 Amaranthus D.	Powell, OH 43065	Delaware	G
58	Candi Joseph	Candi Joseph	7/14/14	105 Watson Way	Powell OH 43065	Delaware	G
59	Caren Kruest	Caren Kruest	7/14/14	86 Watson Way	Powell, OH 43065	Delaware	G
60	STEVEN KRUEST	[illegible]	7/14/14	86 WATSON WAY	POWELL, OH	DELAWARE	G
61	Sarah Blake	Sarah L Blake	7/16/14	234 Smokewood Rd	Powell, OH	Delaware	G
62	Elizabeth Grzeda	Elizabeth S Grzeda	7/16/14	115 Watson Way	Powell, OH	Delaware	G
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CIRCULATOR STATEMENT

STATE OF OHIO

COUNTY OF Delaware

I, Elizabeth S. Orzelak (printed name of circulator), being first duly sworn, declare under penalty of election falsification that I reside at the address appearing below my signature; that I am the circulator of the foregoing part petition containing 62 (number) signatures; that I witnessed the affixing of every signature to the foregoing part petition; that to the best of my knowledge and belief each person who signed the foregoing part petition is an elector of the City of Powell and qualified to sign; that to the best of my knowledge and belief each person who signed the foregoing part petition signed with knowledge of the contents thereof; and that every signature contained in the foregoing part petition is to the best of my knowledge and belief the genuine signature of the person whose name it purports to be.

Elizabeth S. Orzelak
(Signature of Circulator)

115 Watson Way
(Permanent residence street address)

Powell OH 43065
(Permanent residence City, State, Zip Code)

Subscribed and sworn to before me this 16th day of July, 2014.

My Commission Expires:

Notary Public

NOTARIAL SEAL STATE OF OHIO

Christopher B. Burch, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

INITIATIVE PETITION

NOTICE. Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter, is liable to prosecution.

NOTICE: WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE

To the Clerk of Council of the City of Powell, Ohio:

We, the undersigned, electors of the City of Powell, Ohio respectfully order that the attached proposed Ordinance, attached hereto as Exhibit 1 and incorporated herein, be submitted to the electors of Powell, Ohio for their approval or rejection at the general election to be held on the 4th day of November, 2014.

Attached hereto as Exhibit 2 is a full and correct copy of the title and text of City of Powell, Ohio Ordinance 2014-10, which is referenced in the proposed Ordinance attached hereto as Exhibit 1.

RECEIVED
JUL 17 2014
BY: AV 8:18 am

EXHIBIT 5

We hereby designate the following petitioners as a committee to be regarded as filing this petition:

COMMITTEE OF NOT LESS THAN THREE PETITIONERS	ADDRESS
Sharon Valvona	225 Squires Ct. Powell, Ohio 43065
Thomas Happensack	127 Kellys Ct. Powell, Ohio 43065
Brian Ebersole	215 Squires Ct. Powell, Ohio 43065

Signatures on this petition must be written in ink.

	PRINT NAME	SIGNATURE	DATE OF SIGNING	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, STATE, ZIP CODE	COUNTY	PRECINCT
1	Cheryl Susi	[illegible]	7/11/14	863 Middlebury Court	Powell OH 43065	Delaware	G
2	Robert Susi	[illegible]	7/11/14	863 Middlebury Court	Powell OH 43065	Delaware	G
3	Lauren Rhodes	[illegible]	7/11/14	874 Middlebury Ct.	Powell 43065	Delaware	G
4	Brandon Rhodes	[illegible]	7/11/14	874 Middlebury Ct	Powell 43065	Delaware	G
5	Kimberly Moesta	[illegible]	7/11/14	116 Watson Way	Powell OH 43065	Delaware	G.

J. E. Resp.000781

6	Michelle Morris	Michelle Morris	7/11/14	75 Watson Way	43065	Delaware	G
7	Tom Morris	Tom Morris	7/11/14	75 watson	43065	Delaware	G
8	Pete Moscinski	[illegible]	7-11-14	85 Watson Way	43065	Delaware	G
9	Sharon Jovanovic	[illegible]	7-11-14	125 Watson Way	43065	Delaware	G
10	Kara Stullo	Kara Stullo	7-12-14	136 Watson Way	43065	Delaware	G
11	Angie Stearns	Angie Stearns	7-12-14	126 Watson Way	43065	Delaware	G
12	[illegible]	Mira Morstein	7-12-14	116 Watson Way	43065	Delaware	G
13	Dave Lusk	David Lusk	7-12-14	106 Watson Way	43065	Delaware	G
14	Lucinda Cole	Lucinda Cole	7-12-14	106 Watson Way	43065	Delaware	G
15	Amy Dunlavey	Amy Dunlavey	7-12-14	56 Watson Way	43065	Delaware	G
16	Tom Wanko	Thomas Wanko	7-12-14	16 WATSON WAY	43065	Delaware	G
17	Barry Gorey	[illegible]	7-12-14	51 SANDERLING AVE	43065	Delaware	G
18	Margaret Goldsberry	[illegible]	7-12-14	51 Sanderling Ave	43065	Delaware	G
19	James Nobile	[illegible]	7-12-14	50 SANDERLING AVE	43065	Delaware	G
20	Dale Miller	[illegible]	7-12-14	60 Sanderling Ave	43065	Delaware	G
21	Sharon Miller	Sharon Miller	7-12-14	60 Sanderling Ave	43065	Delaware	G
22	Ann Warrick	[illegible]	7-13-14	70 Sanderling	43065	Delaware	G

23	Melissa Miller	Melissa Miller	7-13-14	80 Sandering Ave	43065	Delaware	G
24	Michael Schnee	[illegible]	7-13-14	864 Middlebury Ct	43065	Delaware	G
25	Dave Meeks	[illegible]	7-13-14	853 Middlebury Ct	43065	Delaware	G
26	Bill Helmling	[illegible]	7/13/14	843 Middlebury Ct	43065	Delaware	G
27	Tabitha Helmling	T. Helmling	7/13/14	843 middlebury ct	43065	Delaware	G
28	Tiffany Hunter	Tiffany Hunter	7/13/14	71 Sanderling Ave	43065	Delaware	G
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31	Ryan Meeks	[illegible]	7-13-14	41 Sanderling Ave	43065	Delaware	G
32	Kimberly Wilfred	Kimberly [illegible]	7-13-14	41 Sanderling Ave	43065	Delaware	G
33	Scott [illegible]	[illegible]	7-13-14	105 Watson Way	43065	Delaware	G
34	Hans Jaramillo	[illegible]	7-13-14	125 Watson Way	43065	Delaware	G
35	Rishad Bazzi	[illegible]	7-13-14	146 Watson Way	43065	Delaware	G
36	Justin Sivillo	[illegible]	7-13-14	136 Watson Way	43065	Delaware	G
37	Raenee' Gross	Raenee' Gross	7-14-14	236 Woodland Dr	43065	Delaware	A
38	Ralph Barrett	[illegible]	7/14/14	228 Ridge Side Dr	43065	Delaware	A

J. E. Resp.000783

39	Renee Matney	Renee Matney	7/14/14	308 Ridge Side Dr	Powell 43065	Delaware	A
40	John McFfitt	Jim McFfitt	7/14/14	309 Ridge Side Dr	Powell 43065	Delaware	A
41	Bryan Russell	Bryan Russell	7-14-14	318 Ridge Side Dr.	Powell 43065	Delaware	A
42	(HALE) TRACI JORDAN	[illegible]	7/14/14	343 Whitestone Dr	Powell 43065	Delaware	A
43	Dave Funk	Dave Funk	7/14/14	318 Whitestone Dr E	Powell 43065	Delaware	A
44	CATHARINE GRAY	Catherine Gray	7/14/14	385 Hopewell Dr	Powell, OH	DELAWARE	A
45	Jennifer Werling	[illegible]	7/14/14	144 Meadowridge Ct	Powell, OH 43065	Delaware	A
46	Paul Werling	[illegible]	7/14/14	144 Meadowridge Ct	Powell, OH 43065	Delaware	A
47	G.T. Lewson	[illegible]	7/14/14	126 TRAIL SIDE Cir	Powell OH 43065	Delaware	A
48	TRICIA MOFFITT	Tricia Moffitt	7/14/14	309 Ridge Side Dr.	Powell, OH	Delaware	A
49	Sarah Kelley	Sarah Kelley	7/14/14	332 Whitestone Dr E	Powell, OH	Delaware	A
50	Carolyn Kelley	Carolyn Kelley	7/14/14	319 Glenview Circle	Powell, OH	Delaware	A

J. E. Resp.000784

51	James Pickens	James Pickens	7/14/14	237 Watson Way	Powell OH 43065	Delaware	A
52	mandy oberyszyn	Mandy O	7/14/14	312 Ridgeside Dr.	Powell, OH 43065	Delaware	A
53	Alison Shockley	Alison Shockley	7/14/14	236 Woodedge Cir E	Powell, OH.	Delaware	A
54	Anthony Shockley	[illegible]	7/14/14	236 Woodedge Cir E	Powell OH	Delaware	A
55	William Terry	[illegible]	7/14/14	261 Muirfield Dr.	Powell OH	Delaware	O
56	Matthew A. Teliak	Matt A Teliak	7/14/14	1160 Amaranthus Dr.	Powell, OH	Delaware	G
57	Rachael E. Teliak	Rachael E. Teliak	7/14/14	1160 Amaranthus Dr.	Powell, OH	Delaware	G
58	Candi Joseph	Candi Joseph	7/14/14	105 Watson Way	Powell, OH	Delaware	G
59	Caren Kruest	Caren Kruest	7/14/14	86 Watson Way	Powell, OH	Delaware	G
60	STEVE KRUEST	[illegible]	7/14/14	86 WATSON WAY	POWELL, OH	DELAWARE	G
61	Sarah Blake	Sarah Blake	7/16/14	234 Smokenbad Rd	Powell, OH	Delaware	G
62	Elizabeth Grzelak	Elizabeth Grzelak	7/16/14	115 Watson Way	Powell, OH	Delaware	G
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CIRCULATOR STATEMENT

STATE OF OHIO

COUNTY OF Delaware

I, Elizabeth S. Grzelak (printed name of circulator), being first duly sworn, declare under penalty of election falsification that I reside at the address appearing below my signature; that I am the circulator of the foregoing part petition containing 62 (number) signatures; that I witnessed the affixing of every signature to the foregoing part petition; that to the best of my knowledge and belief each person who signed the foregoing part petition is an elector of the City of Powell and qualified to sign; that to the best of my knowledge and belief each person who signed the foregoing part petition signed with knowledge of the contents thereof; and that every signature contained in the foregoing part petition is to the best of my knowledge and belief the genuine signature of the person whose name it purports to be.

Elizabeth S Grzelak
(Signature of Circulator)

115 Watson Way
(Permanent residence street address)

Powell OH 43065
(Permanent residence City, State, Zip Code)

Subscribed and sworn to before me this 16th day of July, 2014.

My Commission Expires:

Notary Public

NOTARIAL SEAL STATE OF OHIO

Christopher B. Burch, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

EXHIBIT 1

City of Powell, Ohio
ORDINANCE

AN ORDINANCE REPEALING CITY OF POWELL ORDINANCE 2014-10 AND REJECTING THE FINAL DEVELOPMENT PLAN FOR THE CENTER AT POWELL CROSSING LLC, A DEVELOPMENT OF 14,000 SQ. FT. OF RETAIL IN TWO BUILDINGS, PRESERVING THE OLD HOUSE FOR COMMERCIAL USE, AND DEVELOPMENT OF 64 APARTMENT RESIDENTIAL UNITS ON 8.3 ACRES, LOCATED AT 147 W. OLENTANGY STREET.

WHEREAS, on June 17, 2014, City Council of the City of Powell, Ohio passed Ordinance 2014-10 approving a Final Development Plan for the Center at Powell Crossing LLC, a development of 14,000 Sq. Ft. of retail in two buildings, preserving the Old House for commercial use, and development of 64 apartment residential units on 8.3 acres, located at 147 W. Olentangy Street;

WHEREAS, the people of the City of Powell, Ohio have determined that the approval of the Final Development Plan pursuant to City of Powell, Ohio Ordinance 2014-10 is not in the best interests of the people of the City of Powell, Ohio.

NOW THEREFORE BE IT ORDAINED BY THE PEOPLE OF THE CITY OF POWELL, DELAWARE COUNTY, OHIO, AS FOLLOWS:

Section 1: That City of Powell, Ohio Ordinance No. 2014-10 is hereby repealed.

Section 2: That the Final Development Plan for the Center at Powell Crossing LLC, a development of 14,000 sq. ft. of retail in two buildings, preserving the old house for commercial use, and development of 64 apartment residential units on 8.3 acres, located at 147 W. Olentangy Street, is rejected by the people of the City of Powell, Ohio.

Section 3: That this Ordinance shall take effect on the earliest period allowed by law.

INITIATIVE PETITION

NOTICE. Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter, is liable to prosecution.

NOTICE: WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE

To the Clerk of Council of the City of Powell, Ohio:

We, the undersigned, electors of the City of Powell, Ohio respectfully propose to the electors of Powell, Ohio for their approval or rejection at the general election to be held on the 4th day of November, 2014, the following amendment to the City Charter of Powell, Ohio, which is incorporated herein and attached hereto as Exhibit 1.

Attached hereto as Exhibit 2 is the "City of Powell Zoning Districts Map 2014," which is incorporated herein and identifies the area of Powell, Ohio referenced as the "Downtown Business District" in the proposed charter amendment attached hereto as Exhibit 1.

Attached hereto as Exhibit 3 is City of Powell, Ohio Ordinance 2014-10, which is referenced in the proposed charter amendment attached hereto as Exhibit 1.

RECEIVED
JUL 17 2014
BY: AV 8:18am

J. E EXHIBIT 6

We hereby designate the following petitioners as a committee to be regarded as filing this petition:

COMMITTEE OF NOT LESS THAN THREE PETITIONERS	ADDRESS
Sharon Valvona	225 Squires Ct. Powell, Ohio 43065
Thomas Happensack	127 Kellys Ct. Powell, Ohio 43065
Brian Ebersole	215 Squires Ct. Powell, Ohio 43065

Signatures on this petition must be written in ink.

	PRINT NAME	SIGNATURE	DATE OF SIGNING	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, STATE, ZIP CODE	COUNTY	PRECINCT
1	Cheryl Sorg	Cheryl Sorg	7/11/14	863 Middlebury Ct	Powell OH 43065	Delaware	G
2	Robert Sorg	Robert N. Sorg II	7/11/14	863 Middlebury Court	Powell OH 43065	Delaware	G
3	Lauren Rotten	Lauren Rotten	7/11/14	874 Middlebury Ct.	Powell, OH 43065	Delaware	G
4	Brandon Rotten	[illegible]	7/11/14	874 Middlebury Ct.	Powell, OH 43065	Delaware	G
5	Kimberly Mastion	Kimberly C. Mastion	7/11/14	116 Watson Way	Powell OH 43065	Delaware	G
6	Michelle Morris	Michelle Morris	7/11/14	75 Watson Way	43065	Delaware	G

J. E. Resp.000789

7	Tom Morris		7-11-2014	75 Watson Way	Powell Ohio 43065	Delaware	G
8	Pat Morris		7-11-14	95 Watson Way	Powell 43065	Delaware	G
9	Sharon Durante		7-11-14	125 Watson Way	Powell 43065	Delaware	G
10	Kara Sinillo		7-12-14	136 watson way	Powell 43065	Delaware	G
11	Angie Ferraro		7-12-14	126 Watson Way	Powell 43065	Delaware	G
12	Ingrid Moessien		7-12-14	116 Watson Way	Powell 43065	Delaware	G
13	David Lust		7-12-14	106 Watson Way	Powell 43065	Delaware	G
14	Lucinda Cole		7-12-14	106 Watson Way	Powell 43065	Delaware	G
15	Amy Dengler		7-12-14	56 Watson Way	Powell 43065	Delaware	G
16	Tony Nanko		7-12-14	16 Watson Way	43065	Delaware	G
17	Perry Cooper		7-12-14	31 Sanderling Ave	43065	Delaware	G
18	MARGARET VANDERHURST		7-12-14	51 Sanderling Ave	43065	Delaware	G
19	James Noble		7-12-14	50 Sanderling	43065	Delaware	G
20	Sharon Miller		7-12-14	60 Sanderling	43065	Delaware	G
21	Dale Miller		7-12-14	60 Sanderling	43065	Delaware	G
22	Ann Karrick		7-12-14	70 Sanderling	43065	Delaware	G

23	Melissa Miller	Melissa Miller	7-13-14	80 Sandarling Ave	Powell, OH 43065	Delaware	G
24	Michael Schner	[illegible]	7-13-14	864 Middlebury Ct	43065	Delaware	G
25	Dave [illegible]	[illegible]	7-13-14	853 Middlebury Ct	43065	Delaware	G
26	Bill Helmling	Bill Helm	7/13/14	843 Middlebury Ct	43065	Delaware	G
27	Pat Helmling	P. Helmling	7/13/14	843 Middlebury Ct	43065	Delaware	G
28	Tiffany Hunter	T. Hunter	7/13/14	71 Sandarling Ave	43065	Delaware	G
29	Dave Rice	[illegible]	7/13/14	61 Sandarling Ave	43065	Delaware	G
30	Danielle Rice	Danielle Rice	7-13-14	61 Sandarling Ave	43065	Delaware	G
31	Ryan Meeks	[illegible]	7-13-14	41 Sandarling Ave	43065	Delaware	G
32	Kimberlyn Winfield	Kimberlyn Winfield	7-13-14	41 Sandarling Ave	43065	Delaware	G
33	Scott Joseph	[illegible]	7-13-14	105 Watson Way	43065	Delaware	G
34	Hans Jorgensen	[illegible]	7-13-14	125 Watson Way	43065	Delaware	G
35	Rusch Beard	[illegible]	7-13-14	146 Watson Way	43065	Delaware	G
36	Justin Smith	[illegible]	7-13-14	136 Watson Way	43065	Delaware	G
37	Raenee Gross	Raenee Gross	7.14.14	236 Woodland Dr	43065	Delaware	A
38	R. Joseph Parrett	[illegible]	7/14/14	228 Ridge Side	43065	Delaware	A

J. E. Resp.000791

39	Renee Motley	Renee Motley	7/14/14	308 Ridge Side Dr	Powell Ohio 43065	Delaware	A
40	John Moffitt	John Moffitt	7/14/14	309 Ridge Side Dr	Powell OH 43065	Delaware	A
41	Bryan Rissell	Bryan Rissell	7-14-14	308 Ridge Side Dr	Powell OH 43065	Delaware	A
42	(HALE) TRACI JORDAN	[illegible]	7-14-14	343 Whitstone Dr	Powell	Delaware	A
43	CATHARINE GRAY	Cathy Gray	7/14/14	385 Hopewell Dr	Powell	Delaware	A
44	Dana Tomik	Dana Tomik	7/14/14	316 Whitstone Dr E	Powell Oh	Delaware	A
45	PAUL VERLINE	[illegible]	7/14/14	144 Meadow Ridge Ct.	Powell, OH 43065	Delaware	A
46	Jennifer Verline	[illegible]	7/14/14	144 Meadow Ridge Ct	Powell OH	Delaware	A
47	C.T. Lennon	[illegible]	7/14/14	124 Trail Edge Cir	Powell OH 43065	Delaware	A
48	TRICIA MOFFITT	Tricia Moffitt	7/14/14	309 Ridge Side Dr.	Powell, OH 43065	Delaware	A
49	Sarah Litzy	Sarah Litzy	7/14/14	332 Whitstone Dr East	Powell, OH	Delaware	A
50	Carey Kelley	Carey Kelley	7/14/14	319 Glenview Circle	Powell, OH	Delaware	A

J. E. Resp.000792

51	Jim Coleman	[illegible]	7/14/14	334 Lake Shore Drive	Powell OH 43065	Delaware	A
52	Mandy Oberysznn	[illegible]	7/14/14	312 Ridgeside Dr	Powell, OH 43065	Delaware	A
53	Alison Shockley	[illegible]	7/14/14	236 Woodedge Cir E	Powell, OH 43065	Delaware	A
54	Anthony Shockley	[illegible]	7/14/14	236 Woodedge Cir E	Powell, OH 43065	Delaware	A
55	William Terry	[illegible]	7/14/14	241 Muirfield Dr	Powell, OH 43065	Delaware	D
56	Matthew A. Teliek	[illegible]	7/14/14	1160 Amaranthus Dr	Powell, OH 43065	Delaware	G
57	Rachael E. Teliek	[illegible]	7/14/14	1160 Amaranthus Dr.	Powell, OH 43065	Delaware	G
58	Candi Joseph	[illegible]	7/14/14	105 Watson Way	Powell OH 43065	Delaware	G
59	Caren Kruest	[illegible]	7/14/14	86 Watson Way	Powell, OH 43065	Delaware	G
60	STEVE KRUEST	[illegible]	7/14/14	86 WATSON WAY	POWELL, OH	DELAWARE	G
61	Sarah Blake	[illegible]	7/16/14	234 Smokewood Rd	Powell OH	Delaware	G
62	Elizabeth Grzeskowiak	[illegible]	7/16/14	115 Watson Way	Powell OH	Delaware	G
63							
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CIRCULATOR STATEMENT

STATE OF OHIO

COUNTY OF Delaware

I, Elizabeth S. Grzelak (printed name of circulator), being first duly sworn, declare under penalty of election falsification that I reside at the address appearing below my signature; that I am the circulator of the foregoing part petition containing 62 (number) signatures; that I witnessed the affixing of every signature to the foregoing part petition; that to the best of my knowledge and belief each person who signed the foregoing part petition is an elector of the City of Powell and qualified to sign; that to the best of my knowledge and belief each person who signed the foregoing part petition signed with knowledge of the contents thereof; and that every signature contained in the foregoing part petition is to the best of my knowledge and belief the genuine signature of the person whose name it purports to be.

Elizabeth S. Grzelak
(Signature of Circulator)

115 Watson Way
(Permanent residence street address)

Powell, OH, 43065
(Permanent residence City, State, Zip Code)

Subscribed and sworn to before me this 16th day of July, 2014.

My Commission Expires:

Notary Public

NOTARIAL SEAL STATE OF OHIO

Christopher B. Burch, Attorney At Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Sec. 147.03 R.C.

EXHIBIT 1

City of Powell, Ohio
AMENDMENT TO CITY CHARTER OF POWELL, OHIO

AN AMENDMENT TO THE CITY CHARTER OF POWELL, OHIO ESTABLISHING A DUTY FOR THE CITY COUNCIL OF POWELL, OHIO TO SUBSTITUTE THE COMPREHENSIVE PLAN OF THE VILLAGE OF POWELL OF DECEMBER 1995 WITH A NEW COMPREHENSIVE PLAN FOR ZONING AND DEVELOPMENT IN THE CITY OF POWELL, OHIO.

WHEREAS, the people of the City of Powell, Ohio have determined that the Comprehensive Plan for the Village of Powell, Ohio of December 1995 is in need of wholesale revision because it is outdated as applied to the economic growth, technological advancement, and social conditions that shape the City of Powell, Ohio in the year 2014;

WHEREAS, on June 17, 2014, City Council of the City of Powell, Ohio passed Ordinance 2014-10 approving a Final Development Plan for the Center at Powell Crossing LLC, a development of 14,000 Sq. Ft. of retail in two buildings, preserving the Old House for commercial use, and development of 64 apartment residential units on 8.3 acres, located at 147 W. Olentangy Street;

WHEREAS, the people of the City of Powell, Ohio have determined that the approval of the Final Development Plan pursuant to City of Powell, Ohio Ordinance 2014-10 is not in the best interests of the people of the City of Powell, Ohio.

NOW THEREFORE BE IT ORDAINED BY THE PEOPLE OF THE CITY OF POWELL, DELAWARE COUNTY, OHIO TO ADOPT THE FOLLOWING AMENDMENTS TO THE CITY CHARTER OF POWELL, OHIO:

Article 4, Section 14: No later than February 1, 2015, the City Council of Powell, Ohio shall organize a Comprehensive Plan Commission to draft a Preliminary Comprehensive Plan for zoning and development in the City of Powell, Ohio. The Comprehensive Plan Commission shall consist of the following five members: (1) the President of the Bartholomew Run Homeowners Association or such person's designee; (2) the President of the Olentangy Ridge Civic Association or such person's designee; (3) the President of the Grandshire Homeowners Association or such person's designee; (4) the President of the Liberty Lakes Homeowners Association or such person's designee; and (5) the President of the Murphy Park Homeowners Association or such person's designee.

Article 4, Section 15: In drafting the Preliminary Comprehensive Plan, the Comprehensive Plan Commission shall take the following three procedural steps: Phase I, to make findings regarding the current state of the Powell community's character and identity in light of current socioeconomic conditions; Phase II, to draft a composite plan identifying specific zones and/or districts that reflect the natural, cultural, and visual elements of the City of Powell; and Phase III, to make recommendations to City Council through the creation of a Preliminary Comprehensive Plan.

Article 4, Section 16: The Comprehensive Plan Commission shall hold at least two public workshops between January 1, 2015 and June 30, 2015 to receive public input and encourage public deliberation regarding the creation of the Preliminary Comprehensive Plan.

Article 4, Section 17: The Comprehensive Plan Commission shall submit the Preliminary Comprehensive Plan to the City Council of Powell, Ohio no later than September 30, 2015.

Article 4, Section 18: The City Council of Powell, Ohio shall consider the Preliminary Comprehensive Plan, make adjustments as necessary consistent with the Phase I findings of Comprehensive Plan Commission, and pass an ordinance no later than March 31, 2016 legislatively adopting a Final Comprehensive Plan.

Article 4, Section 19: The Final Comprehensive Plan shall be in compliance with the following objective criteria: (1) the needs and desires of the residents of Powell are the paramount consideration; (2) preserve the natural, cultural, and visual elements of the City of Powell; (3) limit traffic congestion on Powell roads; (4) balance residential and non-residential land use in Powell based upon the scope and cost of existing City services and level of tax revenues; (5) land in Powell should be available for parking in retail areas; and (6) real property in the Powell "Downtown Business District" shall not be developed with "high-density housing."

For purposes of the Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV, "high-density housing" includes but is not limited to the following real property: (a) residential real property improved with building(s) greater than two-stories in height; (b) real property improved with dwellings containing more than one family; (c) leased real property improved with dwellings containing more than one family; and (d) vacant land that will be used for dwellings containing more than one family.

For purposes of the Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV, "family" means an individual living alone or a group of related or unrelated individuals living together in a household.

For purposes of the Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV, "Downtown Business District" shall refer to the real property identified as the "Downtown Business District" on the "City of Powell Zoning Districts Map 2014" as of June 17, 2014.

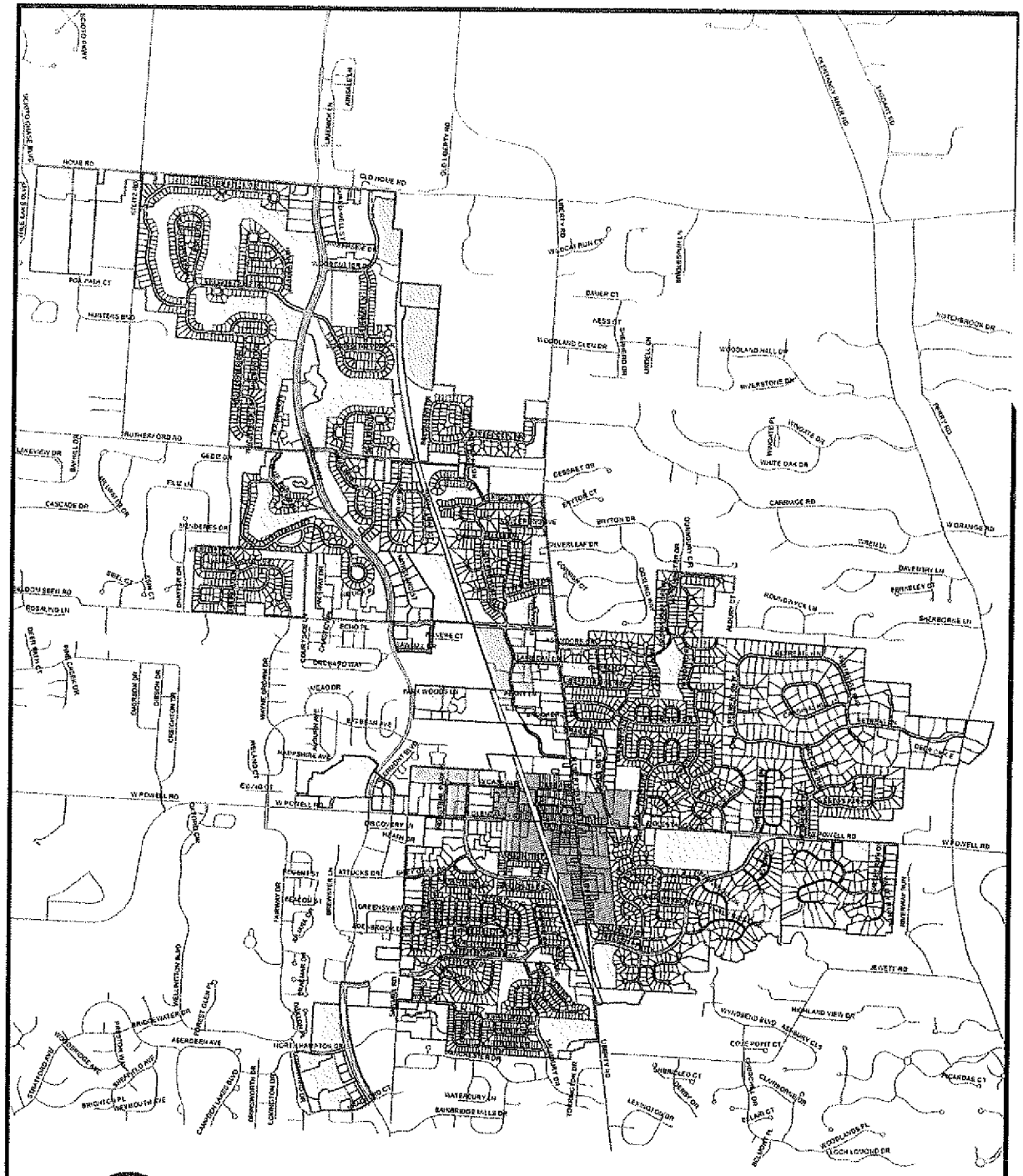
Article 4, Section 20: All Ordinances of the City of Powell must comply with the Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV.

Article 4, Section 21: The Final Comprehensive Plan legislatively adopted pursuant to Section 18 of this Article IV shall not be compatible with Ordinance 2014-10 and/or the Final Development Plan for the Center at Powell Crossing LLC, a development of 14,000 sq. ft. of retail in two buildings, preserving the old house for commercial use, and development of 64 apartment residential units on 8.3 acres, located at 147 W. Olentangy Street.

Uncodified: No party, public or private, shall take any actions, including but not limited to construction activity, in reliance upon Ordinance 2014-10 and the Final Development Plan for the Center at Powell Crossing LLC, a development of 14,000 sq. ft. of retail in two buildings, preserving the old house for commercial use, and development of 64 apartment residential units on 8.3 acres, located at 147 W. Olentangy Street. The subject property for the Ordinance 2014-10 Final Development Plan shall remain economically viable for other uses, including residential and non-residential uses, notwithstanding this amendment to the City Charter of Powell, Ohio.

Uncodified: This Charter Amendment shall take effect on the earliest period allowed by law.

Exhibit 2



0 2,500 5,000 10,000 Feet

ZONING

- DOWNTOWN BUSINESS DISTRICT
- DOWNTOWN RESIDENCE DISTRICT
- LIBERTY TOWNSHIP FARM RESIDENCE DISTRICT
- LIBERTY TOWNSHIP PLANNED COMMERCIAL DISTRICT
- PLANNED COMMERCIAL DISTRICT
- PLANNED INDUSTRIAL DISTRICT
- PLANNED OFFICE DISTRICT
- PLANNED RESIDENCE DISTRICT
- RESIDENCE DISTRICT

- Streets
- Parcels
- Powell Boundary

City of Powell Zoning Districts Map 2014

Development Department
47 Hall Street
Powell, Ohio 43065

(614) 885-5380
(614) 885-5339 fax
www.cityofpowell.us

Cadastral Data Source: Delaware County Auditor's Office GALIS Project

Susie Ross

From: Susie Ross
Sent: Thursday, July 10, 2014 1:10 PM
To: 'Brian Ebersole'
Subject: Initiative and Referendum Petitions

Dear Ms. Valvona, Mr. Happensack and Mr. Ebersole,

The City Law Director has advised me to not respond to your request to review your Initiative and Referendum petitions for infirmities or defects. I would suggest you refer to the requirements set forth in the City Charter. You may wish to seek the advice of others if you so choose.

Your petitions are being held at the front desk of the municipal offices. Please feel free to pick them up at your convenience.

Thank you.

Susie

Sue D. Ross, CMC
City Clerk
City of Powell
47 Hall Street
Powell, OH 43065-8357
614.885.5380, ext. 1002
sross@cityofpowell.us

J. EXHIBIT 7

Exhibit 2-G

BEFORE THE CITY COUNCIL OF
POWELL, OHIO

IN RE: REFERENDUM AND	:
INITIATIVE PETITIONS	:
CONCERNING CITY OF	:
POWELL ORDINANCE 2014-10	:
ADOPTED JUNE 17, 2014	:

REPLY OF THE CENTER AT POWELL CROSSING, LLC AND DONALD R. KENNEY, JR. IN SUPPORT OF PROTEST

I. INTRODUCTION

The Supreme Court of Ohio has soundly rejected Petitioners' contention that this Council is somehow unable to invalidate all three Petitions because the Petitions seek to undo an administrative act through ballot measures. Rather, the Ohio Constitution prohibits the City of Powell from allowing initiatives or referenda on the City's administrative zoning decisions to proceed to the ballot – only legislative acts can be the subject of an initiative or referenda. Petitioners utterly fail to refute that Ordinance 2014-10 was anything other than an administrative decision. Therefore, it is an abuse of Council's discretion and a clear disregard of Ohio law for Council to refrain from invalidating all three Petitions on this basis alone.

Petitioners attempt to lead Council down a path it cannot take, claiming that Council must ignore the commands of the City's current Charter (and the voters who approved it last year) and apply the old Charter. Without support under Ohio law, Petitioners contend that Council can only rubberstamp the Board of Election's residency review. However, Petitioners' position is contradicted by the current Charter's requirement that City Council determine both the sufficiency and validity of the Petitions.

Worse, Petitioners know this. Petitioners concede that Council must sit in the shoes of the Board of Elections in order to scrutinize the Petitions' sufficiency and validity. Yet,

RECEIVED
AUG 15 2014
BY: J. E. Resp.000799

Petitioners cite only to cases where other city councils were not tasked with determining the validity of ballot measures. Here, Powell's Charter was amended specifically to require City Council to scrutinize ballot measures for just the type of obvious defects that require the Petitions' invalidation.

Additionally, and compounding Petitioners' error, all three Petitions fail to meet other threshold requirements such as accurately stating the title and text and title and date on the Petitions. Any doubt concerning Petitioners' omission is resolved by Petitioners' intentional departures from the Ohio Secretary of State's prescribed municipal initiative and referendum petitions requiring this information to appear on the face of each part-petition.

Moreover, the Petitions are not supported by sufficient valid signatures either. Contrary to Petitioners' assertions, the Board of Elections has not reviewed the Petitions for their sufficiency and validity. The Board's staff noted that entire part-petitions are invalid, yet the signatures on those invalid part-petitions were not removed from the quantity of signatures reported to City Council. As set forth in the Notice of Protest, once the invalid signatures are disqualified, the Petitions fall well short of the Charter's requirements. Accordingly, the Petitions are insufficient and must be rejected.

City Council must decline Petitioners' invitation to ignore the commands of the City's Charter and clear Supreme Court precedent. The Petitions are invalid on their face and not supported by a sufficient number of valid signatures. Therefore, Council must reject each one.

II. ARGUMENT

A. THE PETITIONS ARE INVALID.

1. The City Lacks Authority to Permit an Election on an Administrative Zoning Decision.

The City lacks authority to subject administrative decisions to referendum or initiative.

Ohio Constitution, Article II, Section 1f. The subject of Petitioners' attempted three-pronged referendum effort, an approval of the Final Development Plan memorialized in Ordinance No. 2014-10, was unquestionably administrative. Petitioners' claim that Council is somehow prohibited from reaching this fatal defect ignores the Ohio Constitution and disregards the plain language of Powell's Charter. Worse, it misstates the law.[1] Council is obligated as a matter of law to invalidate the Petitions.

a. *As a Matter of Established Law, Initiatives and Referenda on City Council's Administrative Actions Cannot Qualify for the Ballot.*

The Ohio Constitution could not be more clear; only municipalities' legislative actions are permissible subjects of municipal initiatives and referenda:

> The **initiative and referendum powers** are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law **to control by legislative action**; such powers shall be exercised in the manner now or hereafter provided by law.

Ohio Constitution, Article II, Section 1f.

Article II, Section 1f, "**is the sole constitutional source** of initiative and referendum powers, reserved by the people of the state to the people of each municipality." *Buckeye Community Hope Foundation v. City of Cuyahoga Falls*, 82 Ohio St.3d 539, 542 (1998) (holding that cities cannot expand initiative and referendum powers through their charters beyond the powers granted by Art. II, Sec. 1f) (emphasis added). "Section 1f, Article II **clearly limits** referendum and initiative powers to questions that are **legislative in nature**." *Id.* at 543 (emphasis added). Thus, the Supreme Court of Ohio expressly held that "actions taken by a municipal legislative body, whether by ordinance, resolution, or other means, that constitute

[1] Petitioners' substance and form argument lacks substance. As explained time and again by the Supreme Court of Ohio, initiating a ballot measure on administrative decisions is an issue of authority – not of the unconstitutionality of the Petitions' substance.

administrative action, are not subject to referendum proceedings." *Id.* at 545 (terminating an attempted referendum prior to the election).

Five years after *Buckeye Community Hope*, the Court affirmed a City Council's decision to invalidate a referendum petition of an administrative zoning decision. *State ex rel. Comm. for the Referendum of Ordinance No. 3844-02 v. Norris, Clerk*, 99 Ohio St.3d 336, 2003-Ohio-3887. In *Norris*, the proposed referendum petition contained a sufficient number of signatures to qualify for the ballot and sought to referend prior council ordinances approving a final development plan and final plat. *Id* at ¶¶ 3, 5. Nonetheless, the city's law director informed city council that the subject of the proposed referendum was an administrative zoning decision, rendering the petition invalid. *Id.* at ¶ 6. City council then refused to submit the petition to the board of elections. *Id.* at ¶ 7. The Supreme Court of Ohio agreed with the law director and city council's decision, holding that pursuant to *Buckeye Community Hope* and its prior zoning law precedents, the city's administrative decision approving a final development plan and final plat was "nonreferendable." *Id.* at ¶ 42 (terminating the ballot measure prior to the election).

Following *Norris*, the Supreme Court of Ohio considered a multi-pronged referendum and initiative effort to referend or repeal city council's ordinance approving a development agreement for a proposed Walmart. *State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico*, 106 Ohio St.3d 481, 2005-Ohio-5061. The face of the petitions contained a sufficient number of signatures to qualify for placement on the ballot. *Id.* at ¶ 6. But, the Supreme Court held that because the approval of the development agreement "merely executed and administered existing laws, its enactment constitutes **an administrative action, which is <u>not</u> properly the subject of <u>either referendum or initiative</u>**. . . ." *Id.* at ¶ 31 (terminating the attempted initiative and referendum measures prior to the election) (emphasis added).

The following year, the Supreme Court of Ohio again agreed with a city council's decision not to forward a referendum petition to the board of elections, because city council determined the subject of the referendum was administrative and not legislative. *State ex rel. Marsalek v. Council of S. Euclid*, 111 Ohio St.3d 163, 2006-Ohio-4973. In *Marsalek*, the city council previously approved a planned-unit residential development as a conditional use under the property's zoning. *Id.* at ¶ 2. Shortly thereafter, a referendum petition with sufficient signatures was filed, but City Council refused to submit the petition to the board of elections for placement on the ballot. *Id.* at ¶ 4. The Supreme Court agreed that the underlying approval of the conditional use was an administrative action because it did not change the property's zoning and "merely execute[d] and administer[ed] the [zoning code]." *Id.* at ¶¶ 14-15. Accordingly, the Court held that **city council had <u>no legal duty</u> to forward the petition** to the board of elections. *Id.* at ¶ 20 (terminating the attempted ballot measure before the election) (emphasis added).

Were there any doubt, the Supreme Court of Ohio recently clarified that failure to invalidate a ballot measure on an administrative action is an abuse of discretion. *State ex rel. City of Upper Arlington v. Franklin County Bd. of Elections*, 119 Ohio St.3d 478, 2008-Ohio-5093 ¶ 27 (holding that a board of elections charged with examining the sufficiency and validity of a petition "**abused its discretion and clearly disregarded applicable law** by denying [a] protest" against an initiative on an administrative action) (emphasis added).[2] In *Upper Arlington*, an initiative sought to undo a city council's administrative decision, but the board of elections declined to decide the protest against the initiative. *Id.* at ¶ 11. The Court explained that administrative decisions simply cannot be the subject of municipalities' initiatives or

[2] As even Petitioners concede, City Council sits in the same capacity as the board of elections in *Upper Arlington*. (*See* Pets' Stmt. at 9.)

referenda due to the express limits of Article II, Section 1f of the Ohio Constitution. *Id.* at ¶ 19 (terminating the attempted initiative before the election).

Accordingly, it is undeniable that referenda and initiatives that seek to undo an administrative action are invalid. Failure to invalidate the Petitions on this basis alone is an abuse of discretion. *Upper Arlington,* 2008-Ohio-5093 at ¶ 27.

b. Powell's Charter Obligates City Council to Invalidate the Petitions.

Powell's Charter expressly charges City Council with the responsibility to invalidate invalid initiative and referenda petitions. Charter §§ 6.02 and 6.04. Yet, Petitioners' maintain that their three-pronged attempt to repeal Council's administrative action cannot be invalidated by Council. According to Petitioners, this Council is somehow unqualified to determine whether its approval of the Final Development plan was an administrative action. Petitioners wrongfully assert that some drawn-out, "fact-intensive" inquiry would somehow be necessary to resolve this made-up dilemma. (Pets' Stmt. at 16-17.) Such claims lack merit.

The Petitions' invalidation cannot wait until after the election. Powell is not authorized under the Ohio Constitution to place the Petitions on the ballot because the Petitions seek to undo an administrative action. *Buckeye Community Hope*, 82 Ohio St.3d at 542. City Council has no legal duty to forward the Petitions to the board of elections. *Marsalek*, 2006-Ohio-4973, ¶ 20. Moreover, it is an abuse of discretion and clear disregard of the law to refrain from invalidating them.[3] *Upper Arlington*, 2008-Ohio-5093, ¶ 27.

City Council is not only qualified to invalidate the Petitions, Powell's voters required Council to make this determination. Just last year, in the May 2013 special election, Powell's

[3] Petitioners' contention that this issue is "premature and not ripe for review before any public body, let alone City Council," is squarely contradicted by *Arlington*, *Marsalek*, and *Norris*, as well as the mandate of Charter §§ 6.02 and 6.04 for Council to invalidate invalid petitions. (Pets' Stmt. at 14.) The Petitions simply are not authorized by the Ohio Constitution and the Charter requires City Council to make that determination now.

voters overwhelmingly approved an amendment to the City's initiative and referendum procedures to specifically authorize City Council to screen insufficient and invalid petitions from the ballot.[4]

As approved by the voters, the current Charter requires:

> **REFERENDUM**
>
> ***
>
> Council **shall determine** the sufficiency and validity of the petition. **If the petition is determined by Council to be sufficient and valid**, the Council shall, at such regular meeting, read and act upon same. . . . Charter § 6.04 (emphasis added).
>
> **INITIATIVE**
>
> ***
>
> **If the petition and proposed ordinance are determined by Council to be sufficient and valid**, the Council shall, at such regular meeting, read and act upon same. . . . Charter § 6.02 (emphasis added).

Petitioners concede, as they must, that these procedures govern all three Petitions. (Pets' Stmt. at 7 (conceding that the Referendum is governed by § 6.04, the Initiative to Repeal by § 6.02, and the Charter Initiative by § 6.02).)

Powell's current procedure departs from state law. Under state law, only the board of elections determines the sufficiency and validity of petitions, R.C. § 3501.11(K), and the city auditor merely *certifies* the board of elections' sufficiency and validity determination. R.C. §§ 731.28 (Initiatives), 731.30 (Referenda). A city council is not given any direct role under the state law procedures.[5]

Thus, Petitioners admit that under the current Charter, City Council sits as a board of elections in determining the sufficiency and validity of the Petitions. (Pets' Stmt. at 9 ("[T]he Board of Elections does not determine the 'sufficiency and validity' of the petitions under the

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[4] A true and accurate copy of Article VI from Powell's former Charter is attached as Exhibit 1.

[5] Consequently, as discussed below, the decisions relied upon by the Petitioners' are inapposite to City Council's responsibilities under this City Charter. *Supra*, II.A.1.d.

Powell City Charter. Instead, City Council serves that function. . . .").) Yet, later in their Statement, Petitioners somehow claim that Council is prohibited from making this determination. (Pets' Stmt. at 14 – 18.) The Supreme Court of Ohio has already instructed that it is an abuse of discretion and clear disregard of the law for a board to refrain from making this determination. *Upper Arlington*, 2008-Ohio-5093, ¶ 27. Petitioners cannot have it both ways, if City Council is "functioning" as a board of elections to determine the "sufficiency and validity" of the Petitions, City Council must determine whether the subject of the Petitions, Ordinance No. 2014-10, was an administrative action. Failure to do so is an abuse of discretion and disregards the law. *Id.*

Accordingly, City Council must determine the sufficiency and validity of the Petitions before they can proceed further. As set forth below, no hearing is necessary on whether Ordinance 2014-10 was an administrative action.

c. *Ordinance 2014-10 Was Unquestionably an Administrative Action and Cannot Be the Subject of a Referendum or Initiative.*

The record is undeniable. The case law is legion. City Council's approval of the Final Development Plan did not rezone or otherwise change the Zoning Code, Council merely administered existing zoning law when it approved Ordinance 2014-10 – Council's approval was an administrative action. Petitioners' assertion that Council's approval of the Final Development Plan was not administrative simply because there was "over three hours of deliberation," "testimony from residents," and "great public interest in [an] issue" that required Council's "discretion" only shows that Council made an informed decision in affirming the Planning Commission's unanimous approval of the Final Development Plan. (Pets' Stmt. at 20.) Glaringly absent from Petitioners' Statement is *any* actual law to refute that Ordinance 2014-10 was anything other than an administrative action.

Councilman Crites explained to Petitioners during the June 17 meeting that the Plan's approval was administrative – alerting Petitioners to the need to administratively appeal the decision if they disagreed with the outcome. As Councilman Crites stated that evening, neither the Property's zoning within the planned Downtown Business District, nor the City's Zoning Code were altered by the Final Development Plan's approval. (Notice of Protest, Ex. 1 at p. 14.) No witnesses are necessary to reach this determination. No trial need be held. *See e.g.*, *Arlington*, 2008-Ohio-5093 at ¶ 27 (holding that board of elections reviewing sufficiency and validity should have invalidated petition because the board should have determined the subject of the petition was an administrative decision); *see also Norris*, 2003-Ohio-3887 at ¶ 7, *Marsalek* 2006-Ohio-4973 at ¶ 4 (city councils properly refused to forward petitions based upon administrative acts to boards of election). Rather, the administrative nature of the approval is obvious from the face of the Zoning Map, Zoning Code and Ordinance No. 2014-10.[6]

As set forth in the Notice of Protest, it is well established that approval of a development plan pursuant to a property's existing zoning is an administrative act. Notice of Protest at 8-11; *see e.g.*, *King v. Village of Granville*, 5th Dist. No. 97CA29, 1997 Ohio App. LEXIS 4941 at *8 (approval of site's development plans in previously zoned commercial district held administrative); *Speedway Super America, LLC v. Granville Village Council*, 2003-Ohio-6951, ¶ 17 (5th Dist.) (approval of development plan that did not involve rezoning underlying property held administrative).

It simply cannot be argued that Council's approval of the Final Development Plan pursuant to the Property's existing zoning in the Downtown Business District was anything other

[6] To the extent Petitioners attempt to dispute the existence of the planned Downtown Business District or dispute the property's zoning, such arguments were waived when Petitioners declined to appeal Council's June 17 approval of the Final Development Plan to the Court of Common Pleas. (*See*, Pets' Stmt. at 20.)

than an administrative action. Therefore, Council's approval of the Final Development Plan cannot be the basis of any initiative or referendum. The Petitions are invalid on this basis alone.

d. Petitioners' Case Law Fails to Account for Powell's Charter Requirement that City Council Determine the Sufficiency and Validity of the Petitions.

Despite Petitioners' admission that Council sits as a board of elections in determining the sufficiency and validity of the Petitions because of the Charter, (Pets' Stmt. at 9), Petitioners principally rely on quotes taken from decisions where a city council was not required by charter to determine the sufficiency and validity of proposed ballot petitions.

Curiously, Petitioners highlight *State ex rel. Debrosse v. Cool* for the contention that Council cannot act upon fatal defects such as the Petitions' unauthorized effort to undo Ordinance 2014-10, because such "substantive" claims are premature. (Pets' Stmt. at 14.) Yet, Petitioners deceptively omit the pertinent caveat clarifying that all preliminary qualifications must first be met:

> Any claims alleging the unconstitutionality or illegality of the substance of the proposed ordinance, or actions to be taken pursuant to the ordinance when enacted, are premature before its approval by the electorate. In other words, '**where the mandatory provisions of the Constitution or statute prescribing the necessary <u>preliminary steps to authorize</u> the submission to the electors of an initiative statute or ordinance <u>have been complied with</u>**, the submission will not be enjoined.'

State ex rel. Debrosse v. Cool, 87 Ohio St.3d 1, 6 (1999) (citations omitted) (emphasis added).

Contrary to Petitioners' statements otherwise, Council must ensure that the Petitions satisfy the requirements to qualify for the ballot – including whether the City is authorized to conduct an election on the measure in the first place. To be sure, the *Cool* Court considered whether the proposed ordinance satisfied Article II, Section 1f of the Ohio Constitution and reached the merits of the decision, the Court did <u>not</u> dismiss the issue as being substantively

premature. *Id.* at 6-7 (determining that a proposal to retain counsel that was not tied to any prior city council decision was authorized by Article II, Section 1f of the Ohio Constitution).

Petitioners' reliance on *State ex rel. N. Main St. Coalition v. Webb* is also misplaced. Petitioners conceal that in *Webb*, the Village of Wellington's initiative and referendum procedures differ from Powell's. Importantly, the Village of Wellington followed state law and merely concerned a village clerk's limited role in certifying petitions. *State ex rel. N. Main St. Coalition v. Webb*, 106 Ohio St.3d 437, 2005-Ohio-5009, ¶ 26 (applying R.C. § 731.28 wherein a village clerk certifies an initiative petition to the board of elections). Whereas here, Charter §§ 6.02 and 6.04 expressly require Council to affirmatively determine the sufficiency and validity of the Petitions. Thus, the limitations on the clerk's role in *Webb* simply have no bearing on City Council's vastly different role under Powell's Charter. *See infra.*, II.A.1.b.

Likewise, *Morris v. City Council of Macedonia* fails to account for City Council's responsibility to determine the sufficiency and validity of the petitions. In *Morris*, the Macedonia City Council was only reviewing whether a petition contained sufficient signatures to qualify for the ballot. *Morris v. City Council of Macedonia*, 71 Ohio St.3d 52, 55 (1996). Unlike here, Macedonia's charter did not authorize its city council to review the petition for its validity. *Id.* (noting that the procedures set forth in the Ohio Revised Code and Ohio Constitution governed).[7] Because council was only concerned with the number of signatures, it was not acting as a board of elections determining the petition's validity. Therefore, it is not surprising that a council in that context was limited to construing facial defects with voters' signatures. But even reviewing petitions' sufficiency, the Court acknowledged that Council should be satisfied that "all statutory requirements are fairly met." *Id.*

[7] For this same reason, *State ex rel. Citizens for Better Portsmouth v. Sydnor*, is also distinguishable. 61 Ohio St.3d 49 (1991). In *Sydnor*, that city council was limited to examining the petitions for their sufficiency and not validity. *Id.* at 52.

In short, Petitioners' attempt to confine Council's review to a rubberstamp approval was rejected by the voters when they directed Council to determine both the sufficiency and validity of ballot petitions and lacks support under Ohio law. Petitioners do not cite *any* authority that limits the scope of Council's review under Powell's adopted initiative and referendum process.

2. The Charter Initiative Is Invalid On Its Face.

Petitioners' Position Statement on the Charter Initiative is as misleading as their Petitions. Neither the Petitioners nor the Charter Initiative's title fairly portray the entire Charter Initiative. The Charter Initiative's title fails to disclose that it repeals Ordinance 2014-10, fails to reveal that it impermissibly restricts Council's zoning authority, and its incomplete title and its text are not included, as required, on the face of each part-petition. Nor does the Charter Initiative's title reveal that it impermissibly delegates City Council's exclusive legislative zoning authority to the whims and fancies of five unelected and unaccountable individuals. Additionally, the Charter Initiative is unconstitutional on its face and will expose the City to liability under 42 U.S.C. § 1983.

City Council has no duty to forward the Charter Initiative petition to the Board of Elections when such petitions are misleading. *See e.g.*, *State ex rel. Hackworth v. Hughes*, 97 Ohio St.3d 110, 2002-Ohio-5334, ¶ 35 (upholding city council's decision that the formatting of text within a proposed Charter Initiative could mislead the electorate, requiring the initiative's invalidation). A petition must "fairly and substantially present the proposed charter amendment to the electorate." *Id.* (denying writ to overturn city council's decision to refrain from adopting ordinance to place a proposed charter initiative on the ballot).

Here, Petitioners intentionally downplay the Charter Initiative's reach, framing it as a mere proposal regarding some new comprehensive plan. (Pets' Stmt. at 18-20.) Yet, there can be no dispute that the Charter Initiative, through Article IV, Sections 20 and 21 and the

uncodified section, attempts to repeal Ordinance 2014-10. The Charter Initiative singles out Council's prior approval of the Final Development Plan in Ordinance 2014-10 and expressly prohibits anyone – including the property owner and the City – from taking any action upon that approval. This means that the property owner cannot begin construction pursuant to the approved Final Development Plan because the Initiative bars the City from issuing any building permit, certificate of occupancy or other action flowing from Ordinance 2014-10. *See e.g.*, Powell Building Code § 1335.02 (prohibiting any Certificate of Occupancy from being issued on construction that is not completed per approved plans and specifications). Thus, the Charter Initiative unquestionably seeks an unauthorized initiative to repeal Ordinance 2014-10. However, the Charter Initiative fails to fairly portray the proposal by deceptively omitting this repeal effort from its title – requiring its invalidation. *See*, *Hackworth*, 2002-Ohio-5334, ¶ 35.

Additionally, the Charter Initiative (like the Repeal Initiative and Referendum), fails to state the title and text of their proposals in the part-petitions. The Ohio Secretary of State prescribes municipal and initiative petitions to avoid this error. A true and accurate copy of the prescribed municipal initiative form is attached as Exhibit 2. For example, the prescribed municipal initiative part-petition inconspicuously states: "**The following is a full and correct copy of the title and text of the proposed Ordinance:**." Ex. 2 (emphasis added). Petitioners deceptively deleted this text from their part-petitions and intentionally excluded the title and text from the part-petitions.[8] While, Petitioners claim to have "incorporated" by reference the title and text into their Petition, Petitioners fail to cite any law that permits a petition to simply "incorporate" by reference the requisite title and text. Mere "incorporation" undermines the obvious intent of this requirement – to "immediately alert[] signers to the nature of [the measure]." *See State ex rel. Esch v. Lake Cnty. Bd. of Elections*, 61 Ohio St.3d 595, 597 (1991).

[8] Petitioners deleted similar language from the Referendum part-petitions as well.

Tellingly, the Circulators did not even attest to circulating the separate, "incorporated" documents with the part-petitions; the circulators' statements only address the "foregoing part-petition[s]" – omitting any reference to the separate documents following each statement. (*See e.g.*, Notice of Protest, Ex. 6.)

Moreover, the Charter Initiative also deceptively omits from its title that control of the City's future development will be wrested from City Council's direction and transferred to a commission limited to only five (5) specific homeowners associations out of the twenty-nine (29) that currently exist in Powell. This effort impermissibly delegates City Council's express, exclusive authority to control the City's zoning. Charter § 4.07 (b) and (c) ("**All** legislative powers of the City **shall be vested in the Council** . . ." to among other things, adopt and modify the master plan, and regulate land use. (emphasis added)). Yet, the Charter Initiative restricts this exclusive zoning authority by arbitrarily limiting Council's control to the whims of five unaccountable individuals' "Phase 1 findings." See proposed Art. IV, Section 18 (limiting Council's actions to only those "consistent with the Phase 1 findings of the Comprehensive Plan Commission").

Further, this panel of unelected association members is seemingly given a blank check to create the entire City's comprehensive plan. No limitations are placed on the panel's budget for retaining the requisite professional planners, legal consultants, zoning consultants, transportation consultants and economic development consultants required for such an endeavor.

Finally, as set forth in the Notice of Protest, it is self-evident from the face of the Initiative that it is an illegal effort to retroactively spot-zone the Property, is unconstitutionally vague and impermissibly delegates City Council's future legislative authority to unelected individuals. The Initiative singles out Powell Crossing's property located at 147 W. Olentangy

Street to prohibit any action – now or in the future – to use the property for uses expressly permitted by its zoning, including, retail, office and multi-family residential uses. *Compare* Initiative, Uncodified Section, *with* Zoning Code § 1143.16.2. Such a brazen effort to retroactively deprive the property owner of these expressly permitted uses is void on its face. Were the Charter Initiative to be adopted and retroactively strip the Property of its current zoning and approved Final Development Plan, any litigation that follows will subject the City to significant exposure for damages and attorney fees under 42 U.S.C. § 1983.

B. THE PETITIONS ARE INSUFFICIENT.

It is undisputed that Petitioners were required to strictly comply with the relevant election procedures. *See, State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, ¶ 49 (citations omitted). Petitioners failed to do so here.

Contrary to Petitioners' misrepresentations, the Board of Elections has not reviewed the Petitions for their validity or sufficiency. Rather, citing the Powell Charter, the Board merely counted the number Powell electors who purportedly signed the Petitions. Tr. at 24 ("When you read the Charter, **our job is merely to look at signatures and verify that they are electors of the City of Powell.**" (emphasis added)).[9] The Board of Elections determined that under the Charter, "City Council [takes] the first pass at the sufficiency and validity of [the] Petitions." Tr. at 7. Thus, signatures on part-petitions that are void in their entirety were not removed from the sum of signatures reported to Council. *See e.g.*, Tr. at 26 (noting that 57 signatures are invalid, but nonetheless included in the total reported to Council). Accordingly, Council must scrutinize in the first instance whether the Petitions contain sufficient valid signatures.

[9] A true and accurate copy of a transcript of the Delaware County Board of Elections' August 1, 2014 Proceeding is attached as Exhibit 3.

As set forth in the Notice of Protest, the Petitions fail to contain the requisite sum of valid signatures for several reasons, including that a majority fail to strictly comply with the Charter's ward and precinct requirement. Notice of Protest, Ex. 3. The plain language of the Charter requiring that all petitions include voters' ward and precinct cannot be construed to render the requirement a nullity. Charter § 6.05; *see*, *State ex rel. Finkbeiner v. Lucas County Bd. of Elections*, 122 Ohio St.3d 462, 2009-Ohio-3657, ¶ 31 ("[W]e have consistently held that '[m]unicipal charters must be construed to give effect **to <u>all</u> separate provisions** and to harmonize them with statutory provisions whenever possible.'" (citations omitted) (emphasis added)). At bottom, there is simply not a precinct within Delaware County named "A" or "G" – much less a ward and precinct so denominated. *See* Notice of Protest, Ex. 4. Accordingly, all signatures that fail to strictly comply with the ward and precinct requirement are invalid. *See*, *State ex rel. Poor v. Addison*, 132 Ohio St. 477, 481-82 (1937); Notice of Protest, Ex. 3.

Pursuant to Powell's Charter and as construed by the Delaware County Board of Elections, City Council must determine whether the Petitions contain sufficient valid signatures. Because the Petitions fail to strictly comply with the relevant requirements, the Petitions fail to contain sufficient valid signatures and are therefore invalid.

III. CONCLUSION

Petitioners never challenged the Property's zoning for multifamily use when they had the legal right to do so. When a development plan was proposed in compliance with that zoning, Petitioners opposed the plan. Petitioners lost. They had an ability to challenge their defeat in Court. But they declined that opportunity as well. Instead, Petitioners have pursued a petition plan that is fundamentally flawed, contrary to law, and invalid on its face. Nor are the Petitions

supported by a sufficient number of valid signatures to qualify for the ballot. Accordingly, City Council must follow its Charter, grant this Protest, and invalidate the Petitions.

Respectfully submitted,

s/ *Bruce L. Ingram*
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Counsel for the Protesting Party

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was served via electronic mail to the City of Powell's Clerk of City Council, Sue D. Ross, sross@cityofpowell.us, the City of Powell's Law Director, Eugene L. Hollins, ghollins@fbtlaw.com, and Counsel for Petitioners, Christopher B. Burch, chris@callenderlawgroup.com, this 15th day of August, 2014.

s/ *Christopher L. Ingram*
Christopher L. Ingram

5.10 ADOPTION OF ORDINANCE BY REFERENCE

The Council may adopt standard ordinances and codes prepared by public and private agencies on such matters as fire prevention, building construction, electrical wiring, plumbing, heating, ventilating and air conditioning, and other similar topics by reference to the date and source of the code without reproducing the same at length in the ordinance. In all cases in which such an ordinance or code shall be adopted by reference, publication of the code at length, by the Municipality, shall not be required. However, such codes shall be kept on file in the office of the Clerk of Council for consultation by interested persons.

ARTICLE VI

RECALL, INITIATIVE, REFERENDUM

6.01 REMOVAL BY RECALL

Any elective officer of the Municipality may be removed from office by the electors of the Municipality. The procedure to effect such removal shall be:

(A) A petition signed by electors equal in number to at least fifteen percent of the total votes cast at the last preceding regular municipal election, as defined by the Ohio Revised Code, and demanding the election of a successor to the person sought to be removed, shall be filed with the election authorities. Such petition shall contain a general statement in not more than two hundred words of the grounds upon which the removal of the person is sought. The form sufficiency, and regularity of any such petition shall be determined as provided by the laws of the State of Ohio.

(B) If the petition is sufficient, and if the person whose removal is sought does not resign within five (5) days after the sufficiency of the petition has been determined, Council shall thereupon order and fix a day for holding an election to determine the question of his removal, and for the selection of a successor to each officer named in said petition. Such an election shall be held not less than thirty (30) days nor more than forty (40) days from the time of the finding of the sufficiency of such a petition. The election authorities shall publish notice and make all arrangements for holding such an election, which shall be conducted and the result thereof returned and declared in respects as are the results of regular municipal elections.

(C) The nomination of candidates to succeed each officer sought to be removed shall be made without the intervention of a primary election, by filing with the election authorities, at least twenty (20) days prior to such a special election, a petition proposing a person for each office, signed by electors equal in number to ten (10) percent of the total votes cast at the last preceding regular municipal election for the head of the ticket.

Reply Ex. 1

J. E. Resp.000816

(D) The ballots at such a recall election shall be in such form as the Board of Elections for Delaware County, Ohio shall proscribe and shall, with respect to each person whose removal is sought, submit the questions: "Shall (name of person) be removed from the office of (name of office) by recall?"
Immediately following each such question, there will be printed on the ballots, the two propositions in the order set forth:

"For the recall of (name of person)."

"Against the recall of (name of person)."

Immediately to the left of the proposition will be placed a square in which the electors, by making a cross (X) mark or by other appropriate means, may vote for either of such propositions. The Board of Elections for Delaware County, Ohio shall create ballots in such a form as to comply with Ohio law and which substantially comply with the specifications in 6.01.

Under each of such questions shall be placed the names of the candidates to fill the vacancy. The names of the officers whose removal is sought shall not appear on the ballot to succeed such officer. The Board of Elections may modify such ballot for its administrative purposes.

In any such election, if a majority of the votes cast on the question of removal are affirmative, the person whose removal is sought shall be removed from office upon the announcement of the official canvass of that election, and the candidate receiving the plurality of the votes cast for the candidates for that office shall be declared elected. The successor of any person so removed shall hold office during the unexpired term of his predecessor. The question of the removal of any officer shall not be submitted to the electors until such officer has served for at least six (6) months of the term during which he is sought to be recalled. The method of removal provided in this section, is in addition to such other methods as are provided by the laws of the State of Ohio. No further recall petition shall be filed against the incumbent whose removal was sought but not recalled for a period of one year.

(E) If no one is elected, the removal of any elective officer of the Municipality by recall shall constitute a vacancy of the office previously held by that elective officer and such vacancy shall be filled as provided for in this Charter. (Amended 11-2-04)

6.02 <u>INITIATIVE.</u>

Ordinances and other measures providing for the exercise of any powers of government granted by the Ohio Constitution or the laws of the State of Ohio, may be proposed by initiative petition. Such initiative petition must be signed by electors of the Municipality equal to ten (10) percent of the total number of votes cast at the last preceding regular municipal election.
(Amended 11-2-04)

6.03 DUTIES OF CLERK OF COUNCIL.

When a petition is filed with the Clerk of Council signed by the required number of electors proposing an ordinance or other measure, such Clerk shall, after ten (10) days certify the text of the proposed ordinance or measure and shall submit the proposed ordinance to the election authorities for validation of signatures and submission at election and to Council on the date of its next regular meeting.

6.04 COUNCIL ACTION.

If the petition contains the required number of signatures of electors, the Council shall on the date of filing such proposed ordinance by the Clerk of Council, read and act upon the same on the date of its next regular meeting. Should the Council fail to take action on the date of such committee report, or shall reject the proposed ordinance, in whole or in part, the Council shall forthwith order and provide for the submission of the proposed ordinance in its original form to a vote of the electors of the Municipality at the next succeeding general election.

The election authorities upon determining the sufficiency and validity of the signatures as provided by the laws of the State of Ohio shall submit such proposed ordinance or measure for approval or rejection of the electors of the Municipality at the next succeeding general election, occurring subsequent to seventy-five (75) days after the certifying of such initiative petition to the election authorities. (Amended 11-2-04)

6.05 APPROVAL OR REJECTION.

(A) Ordinances submitted to the Council by petition and passed by the Council as herein provided, shall be subject to the referendum in the same manner as other ordinances.

(B) Ordinances rejected or repealed by an electoral vote shall not be re-enacted, in whole or in part, except by an electoral vote.

(C) Ordinances approved by an electoral vote shall not be repealed, amended or supplemented, except by an electoral vote.

(D) The adoption or rejection of ordinances submitted to an electoral vote shall take effect as provided by the laws of the State of Ohio. (Amended 8-8-95)

6.06 SUBMISSION TO COUNCIL; PUBLICATION

Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the Council as herein provided in the preceding sections for initiating ordinances. Initiated ordinances adopted by the electors shall be published as in the case of other ordinances.

6.061

Where the Charter is silent on the initiative procedure, the provisions of the laws of the State of Ohio shall be followed.

6.07 REFERENDUM

No ordinance passed by the Council, except as otherwise provided by this Charter, shall go into effect until thirty (30) days after its final passage by the Council. If at any time within said thirty (30) days, a petition signed by electors of the

Municipality, not less in number than ten (10) percent of the total votes cast at the last preceding general municipal election, is filed with the Clerk of Council requesting that any such ordinance be repealed or submitted to a vote of the electors of the Municipality, the ordinance shall not take effect until the steps indicated herein have been taken.

6.08 ACTION BY CLERK OF COUNCIL

All papers comprising any such petition shall be assembled and filed with the Clerk of Council as one instrument. The Clerk shall, within ten (10) days after the filing thereof, certify thereon the number of signatures thereto appended, and shall submit the petition to the election authorities and to the Council on the date of its next regular meeting. If the petition contains the required number of signatures, the Council shall within thirty (30) days of the date of filing such referendum petition by the Clerk, repeal the ordinance therein sought to be repealed, or shall order and provide for the submission of such ordinance to a vote of the electors of the Municipality at its next election.

6.09 REFERENDUM ON EMERGENCY MEASURES

Ordinances passed as emergency measures shall be subject to referendum in like manner as other ordinances, except that they shall go into effect at the time indicated on such ordinance. If, when submitted to a vote of the electors, an emergency measure be not approved by the majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure so repealed shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon.

6.10 INITIATIVE AND REFERENDUM PETITION PROCEDURE

Any initiative or referendum petition may be presented in separate parts, but each of any initiative petition shall contain a full and correct copy of the title and text of the proposed ordinance or other measure. Each part of any referendum petition shall contain the number, a full and correct copy of the title and date of passage of the ordinance or other measure sought to be referred.

Each signer of any such petition must be an elector of the Municipality in which the election, upon the ordinance or other measure proposed by such initiative petition or the ordinance or measure referred to by such referendum petition, is to be held, and shall place on such a petition, after his name, the date of signing, his place of residence, including street and number, and the ward and precinct.

Each part of such petition shall contain the affidavit of the person soliciting the signatures thereto, which affidavits shall state the number of signers of each such part and to the best of his knowledge and belief each of the signatures contained on such part is the genuine signature of the person whose name it purports to be, that he believes such persons are electors of the Municipality, and that they signed such petition with knowledge of the contents thereof.

In determining the validity of any such petition, all signatures which are found to be irregular shall be rejected, but no petition shall be declared invalid in its entirety when one or more signatures are found to be invalid except when the number of valid signatures is found to be less than the total number required.

The petition and signatures upon such petition shall be prima facie presumed to be in all respects sufficient. No ordinance or other measure submitted to the electors of the Municipality and receiving an affirmative majority of votes cast thereon, shall be held ineffective or void on account of the insufficiency of the petitions by which such submission of the ordinance or measure was procured, nor shall rejection, by a majority of the votes cast thereon, of any ordinance or other measure submit to the electors of such Municipality be held invalid for such insufficiency.

Ordinances proposed by initiative petition and referendums receiving an affirmative majority of the votes cast thereon, shall become effective as provided by the laws of the State of Ohio.

Where the Charter is silent concerning initiative and referendum petition procedures the laws of the State of Ohio shall be followed. (Amended 11-2-04)

ARTICLE VII

NOMINATIONS AND ELECTIONS

7.01 NOMINATIONS

Nominations for all elected offices of the Municipality shall be on a non-partisan basis and be made by petition only. Nominating petitions shall be in the form determined by the election authorities as provided by the laws of the State of Ohio and signed by the electors of the Municipality.

7.02 ELECTIONS

Municipal elections for all elected offices shall be held on the first Tuesday after the first Monday in November in the odd numbered years. The Council may, at any time, by resolution, order a special election the purpose of which shall be set forth in the resolution.

United States of America

State of Ohio

Office of the Secretary of State

*I, **JON HUSTED**, Secretary of State, do hereby certify that I am the duly elected, qualified and acting Secretary of State of the State of Ohio, and I further certify that the attached is a true and correct copy of Form No. 6-I, Initiative Petition (Municipality or Home Rule Township), prescribed by the office of the Ohio Secretary of State.*

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the official Seal of the Secretary of State of Ohio, at Columbus, Ohio, this 31st day of July, 2014.

Jon Husted
Secretary of State

SEC4000 (Rev. 1/11)

C 038232

Reply Ex. 2

Form No. 6-I Prescribed by Secretary of State (03-09)

INITIATIVE PETITION
(Municipality or Home Rule Township)

Revised Code 504.14, 731.28-.41, 3501.38, 3503.06

NOTE: Prior to circulation of an initiative petition proposing an ordinance or measure, a certified copy of such ordinance or measure must be filed with the City Auditor, Village clerk or Township Fiscal Officer (home rule township). This petition must be signed by ten percent of the number of electors in the city, village or unincorporated area of the township who voted for governor at the preceding gubernatorial election and must be filed with the City Auditor, Village Clerk or Township Fiscal Officer.

(NOTE –The below notice must be printed in red.)

NOTICE – Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter, is liable to prosecution.

To the _____ **of the** _____ **of**
(City Auditor, Village Clerk or Township Fiscal Officer) (City, Village or Township)

_____**, Ohio:**
(Name of City, Village or Township)

We, the undersigned, electors of the _____ of _____, Ohio
(City, Village or Township) (Name of City, Village or Township)

respectfully propose to the electors of such city, village or township for their approval or rejection at the general election to be held on the _____ day of November, _____ the following Ordinance:

The following is a full and correct copy of the title and text of the proposed Ordinance:

We hereby designate the following petitioners as a committee to be regarded as filing this petition or its circulation:

NAME	RESIDENCE

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
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	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
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CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, _____, declare under penalty of election falsification that I
(Printed Name of Circulator)
reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing _____ signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
the best of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

_____
(Signature of Circulator)

_____
(Permanent residence address)

_____
(City or Village, State and Zip Code)

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE

The _____ **of**
(City, Village or Township)

Form 6-I – Initiative Petition

ORDINANCE

Filed _____, _____

Keep open for inspection for ten days

City Auditor, Village Clerk or Township Fiscal Officer

PETITIONS FOR REFERENDUM, CHARTER AMENDMENT,

AND INITIATIVE TO REPEAL POWELL ORDINANCE 2014-10

PROCEEDINGS

August 01, 2014

---

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Reply Ex. 3

1 DELAWARE COUNTY BOARD OF ELECTIONS

2

3

4

5 MEETING RE: PETITIONS FOR REFERENDUM, CHARTER
AMENDMENT, AND INITIATIVE TO REPEAL POWELL
6 ORDINANCE 2014-10

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13 PROCEEDINGS

14 TAKEN BEFORE ME, ANGELA R. STARBUCK, RPR, CRR,

15 CCP, A NOTARY PUBLIC IN AND FOR THE STATE OF

16 OHIO, AT DELAWARE COUNTY BOARD OF ELECTIONS,

17 2079 U.S. HIGHWAY 23N, DELAWARE, OHIO 43015, ON

18 AUGUST 1, 2014, AT 9:01 A.M.

19

20

21

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24

1 BOARD MEMBERS IN ATTENDANCE:
2 SHAWN STEVENS
3 ED HELVEY
4 BRUCE BURNWORTH
5 JOSH PEDALINE, DIRECTOR
6 KARLA HERRON, DEPUTY DIRECTOR
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1 MR. STEVENS: I WOULD LIKE TO CALL THE
2 DELAWARE COUNTY BOARD OF ELECTIONS MEETING TO
3 ORDER. TODAY'S FRIDAY, AUGUST 1ST -- WOW --
4 9:00, A.M., AND IT'S A MEETING OF THE SPECIAL --
5 IT'S A SPECIAL MEETING OF THE BOARD OF
6 ELECTIONS. I GUESS SINCE WE HAVE AN AUDIENCE
7 TODAY, I'D LIKE TO DO SOME INTRODUCTIONS.
8 MY NAME IS SHAWN STEVENS. I'M THE
9 VICE-CHAIRMAN OF THE BOARD. OUR CHAIRMAN,
10 MR. CUCKLER, IS SERVING HIS COUNTRY IN THE
11 UNITED STATES ARMY TODAY, SO I WILL BE ACTING
12 CHAIRMAN.
13 TO MY LEFT IS ED HELVEY, BOARD MEMBER;
14 BRUCE BURNWORTH --
15 MR. BURNWORTH: ANY OLD NAME WILL WORK.
16 MR. STEVENS: -- BOARD MEMBERS; CHRIS
17 BETTS FROM THE COUNTY PROSECUTOR'S OFFICE, AND,
18 I'M SORRY --
19 MR. KING: ANDREW.
20 MR. STEVENS: ANDREW FROM THE
21 PROSECUTOR'S OFFICE. TRACI SHALOSKY FROM OUR
22 OFFICE, DON'T ASK ME TO SPELL IT; KARLA HERRON,
23 WHO'S THE DEPUTY DIRECTOR; AND JOSH PEDALINE,
24 WHO IS OUR DIRECTOR OF THE BOARD OF ELECTIONS.

1 SO WELCOME. SO THE FIRST ITEM ON THE
2 AGENDA IS TO DETERMINE THE NUMBER OF ELECTORS,
3 CITY OF POWELL, WHO SIGNED THE REFERENDUM AND
4 INITIATIVE PETITIONS.
5 BEFORE WE GET INTO THAT, MR. BETTS, IS
6 THERE ANY ADVICE FOR THIS BOARD?
7 MR. BETTS: YES, THANK YOU,
8 MR. CHAIRMAN. AS WE SAID, MY NAME'S CHRIS
9 BETTS. I'M WITH THE DELAWARE COUNTY
10 PROSECUTOR'S OFFICE. I'M AN ASSISTANT
11 PROSECUTING ATTORNEY. AND THIS IS ANDREW KING,
12 WHO'S ALSO AN ASSISTANT PROSECUTING ATTORNEY.
13 YOU HAVE ESSENTIALLY TWO THINGS IN FRONT
14 OF YOU TODAY THAT FIT IN TWO BROAD CATEGORIES.
15 ONE ARE THE PETITIONS THAT WERE RECEIVED
16 CONSISTING OF A REFERENDUM PETITION AND TWO
17 PETITIONS THAT WERE FILED WITH THE CITY OF
18 POWELL.
19 SECONDLY, YOU HAVE BEFORE YOU A PROTEST
20 THAT WAS FILED. THAT WAS FILED ON BEHALF OF THE
21 CENTER AT POWELL CROSSING, LLC, AND DONALD R.
22 KENNEY, JUNIOR.
23 I WANTED TO KIND OF LAY OUT KIND OF
24 PROCEDURALLY WHERE THIS -- WHERE THIS WOULD GO,

1 BUT BEFORE I GET TO THAT, THERE ARE TWO THINGS
2 AT PLAY HERE IN TERMS OF THE LAW AND IN TERMS OF
3 WHAT THE BOARD'S CONSIDERING AND THE PROCEDURE.
4 FIRST OF ALL WOULD BE THE CITY OF
5 POWELL'S CHARTER. THAT ACTS AS THE PRIMARY
6 GUIDE FOR US TODAY, AND WHERE THAT IS SILENT OR
7 THAT DOES NOT SPEAK TO AN ISSUE, THEN OHIO LAW,
8 THROUGH THE OHIO REVISED CODE, PICKS UP THAT
9 GAP.
10 IN FOLLOWING THE GUIDELINES THAT ARE SET
11 OUT BY THOSE TWO PARTICULAR SOURCES OF LAW, THIS
12 IS THE -- THIS IS THE WAY THAT THE PROCEDURE
13 SHOULD GO: INITIALLY THE PETITIONS WERE
14 PROVIDED TO OR FILED WITH THE CITY OF POWELL.
15 THE CLERK OF CITY COUNCIL THEN TRANSMITTED THOSE
16 TO THE BOARD OF ELECTIONS.
17 BOARD OF ELECTIONS IS THEN CHARGED WITH
18 DETERMINING THE VALIDITY OF THE SIGNATURES THAT
19 ARE ON THOSE PETITIONS. LET ME READ
20 SPECIFICALLY WHAT THAT SAYS BECAUSE THAT'S THE
21 STAGE THAT WE'RE AT TODAY. THAT'S WHY WE'RE
22 HERE TODAY FOR THIS MEETING.
23 THE CHARTER SPECIFICALLY SAYS, THE BOARD
24 SHALL EXAMINE ALL SIGNATURES ON THE PETITION TO

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1 DETERMINE THE NUMBER OF ELECTORS OF THE CITY OF
2 POWELL WHO SIGNED THE PETITION. THAT'S THE
3 STATEMENT. ASSUMING THAT, YOU KNOW, THE BOARD
4 MAKES THAT DETERMINATION, THEN THE CHARTER SAYS
5 THAT THE BOARD OF ELECTIONS SHALL RETURN THE
6 PETITION TO THE CLERK OF COUNCIL WITHIN TEN DAYS
7 AFTER RECEIVING IT TOGETHER WITH A STATEMENT
8 ATTESTING TO THE NUMBER OF SUCH ELECTORS WHO
9 SIGNED THE PETITION. AND THEN IT GOES ON FROM
10 THERE.
11 BUT THAT'S GENERALLY THE PROCEDURE AND
12 THE PLACE THAT WE ARE AT TODAY. THE BOARD IS
13 HERE FOR A VERY LIMITED PURPOSE. THAT IS TO
14 DETERMINE THE VALIDITY OF SIGNATURES THAT ARE ON
15 THESE PETITIONS THAT HAVE BEEN FILED, THE THREE
16 THAT I MENTIONED PREVIOUSLY. THE VALIDITY WOULD
17 BE DETERMINED IN ACCORDANCE WITH STATE LAW.
18 AND I BELIEVE AT THIS POINT THAT THE
19 STAFF HAS HAD A CHANCE TO REVIEW THE PETITIONS
20 AND MAKE THAT DETERMINATION, SO THEY'LL BE
21 PROVIDING THAT TO YOU HERE IN A LITTLE BIT.
22 WE ARE ALSO WITHIN THAT TEN-DAY TIME
23 FRAME. THAT'S WHY WE ARE HERE SO QUICKLY, IS
24 THE REFERENDUM WAS FILED A WEEK AGO, WHICH I

1 BELIEVE WAS THE 25TH OF JULY, AND THE TWO
2 INITIATIVES WERE FILED ON THIS MONDAY, WHICH
3 WOULD HAVE BEEN THE 28TH, IF MY DATES ARE
4 CORRECT. SO WE ARE WITHIN THAT TEN-DAY TIME
5 FRAME THAT WOULD HAVE EXPIRED ON THE 4TH, WHICH
6 IS THIS COMING MONDAY.
7 SO ONCE THE BOARD MAKES THE
8 DETERMINATION ABOUT THE SIGNATURES, AGAIN, THEY
9 PROVIDE A STATEMENT TO THE CLERK OF CITY COUNCIL
10 FOR THE CITY OF POWELL, AND AT THAT POINT, IT
11 GOES TO CITY COUNCIL OR IS PUT ON THE AGENDA FOR
12 THE NEXT MEETING FOR CITY COUNCIL TO TAKE THE
13 FIRST PASS AT THE SUFFICIENCY AND VALIDITY OF
14 THOSE PETITIONS.
15 THE CHARTER PROVIDES THE CITY COUNCIL
16 WITH A COUPLE DIFFERENT CHOICES. THEY CAN
17 EITHER ACT ON THOSE PETITIONS, WHICH WOULD BE TO
18 SAY THAT THEY COULD SAY EITHER -- IF IT'S A
19 REFERENDUM, TO REFEREND THAT LAW, OR IF IT'S IN
20 THE CASE OF AN INITIATIVE, ENACT A LAW. THEY
21 CAN ALSO LOOK AT THE VALIDITY AND SUFFICIENCY OF
22 THE PETITIONS AND RETURN THOSE TO THE BOARD OF
23 ELECTIONS. AND I SUPPOSE THE FINAL OPTION COULD
24 BE TO DO NOTHING AND RETURN THEM.

1 BUT IN ANY EVENT, THE CITY COUNCIL HAS
2 THE FIRST PASS AT LOOKING AT THE VALIDITY AND
3 SUFFICIENCY, WHICH WOULD BE THE FORM OF THE
4 PETITION, IN TERMS OF THE REQUIREMENTS THAT THEY
5 HAVE TO MEET IN TERMS OF THE CITY CHARTER AND
6 STATE LAW, BUT IN PARTICULAR, THE CITY CHARTER.
7 CITY CHARTER DOES HAVE SOME SPECIFIC ITEMS IN IT
8 THAT ARE REQUIRED OF PETITIONS BUT, AGAIN, THOSE
9 ARE NOT THE THINGS THAT YOU'RE LOOKING AT TODAY.
10 THEY MAY BE RAISED TODAY, BUT THEY'RE NOT WHAT
11 THE BOARD IS HERE FOR.
12 AGAIN, TODAY, ONLY DECIDING ON THE
13 SIGNATURES. THE BOARD IS NOT GOING TO BE
14 DECIDING WHETHER OR NOT TO ACCEPT THESE
15 PETITIONS OR NOT ACCEPT THESE PETITIONS, CERTIFY
16 THESE PETITIONS OR NOT CERTIFY THESE PETITIONS.
17 IT'S NOT A QUESTION OF WHETHER IT'S GOING ON THE
18 BALLOT OR NOT GOING ON THE BALLOT, IT'S SIMPLY A
19 QUESTION OF DETERMINING THE VALIDITY OF
20 SIGNATURES AND PASSING THAT TO CITY COUNCIL SO
21 THEY CAN DETERMINE THE VALIDITY AND SUFFICIENCY
22 OF THE PETITIONS.
23 IF AND WHEN THEY ARE RETURNED TO THE
24 BOARD OF ELECTIONS, DEPENDING ON WHAT THE CITY

1 COUNCIL DOES, AT THAT POINT, THIS BOARD WOULD
2 THEN ACCEPT THOSE PETITIONS. AT THAT POINT,
3 THEN THE PROTESTS THAT HAVE BEEN FILED WOULD BE
4 RIPE FOR CONSIDERATION BY THE BOARD. I DON'T
5 THINK THE PROTEST IS RIPE TODAY IN ACCORDANCE
6 WITH THE SCHEME THAT'S SET OUT OR THE PROCEDURE
7 THAT'S SET OUT THROUGH THE CHARTER.
8 SO IF IT COMES BACK, THEN IT WOULD BE A
9 POINT OF ACCEPTANCE, THEN WE WOULD ENTERTAIN THE
10 PROTESTS AND THERE WOULD BE THE OPPORTUNITY TO
11 PRESENT TESTIMONY AND EVIDENCE AT THAT POINT AS
12 TO WHETHER THOSE PETITIONS SHOULD BE ACCEPTED
13 FOR THE BALLOT. THE BOARD WOULD HAVE TO EXAMINE
14 EVERYTHING THAT'S PRESENTED TO IT AND MAKE THE
15 DETERMINATION AT THAT POINT.
16 MR. HELVEY: I DON'T AGREE WITH THAT.
17 MR. BETTS: OKAY.
18 MR. HELVEY: I DON'T AGREE THAT WE HAVE
19 THAT AUTHORITY TO DETERMINE WHETHER THE
20 PETITIONS ARE VALID OR NOT, BUT THAT IT RESTS
21 WITH THE CITY CHARTER WITH THE CITY OF POWELL.
22 MR. BETTS: I THINK THE CITY OF POWELL
23 HAS THE FIRST BLUSH AT IT. LET ME EXPLAIN WHY I
24 THINK THAT THIS BOARD THEN HAS TO COME BACK AND

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1 TAKE A LOOK AT IT IN TERMS OF ACCEPTANCE. I
2 THINK THAT GOES ALONG WITH STATE LAW.
3 IF YOU RECALL, WHEN I FIRST STARTED
4 TALKING ABOUT THAT, THERE'S AN INTERPLAY HERE
5 BETWEEN STATE LAW AND THE CITY OF POWELL'S
6 CHARTER. UNDER THE CITY OF POWELL'S CHARTER, IT
7 DOES NOT SAY ANYTHING ABOUT WHAT THE BOARD OF
8 ELECTIONS REALLY DOES WHEN IT COMES BACK TO THE
9 BOARD. IT SAYS THAT IT COMES BACK TO THE BOARD
10 AND THE CLERK IS TO MAKE SURE THAT IT IS
11 PRESENTED TO THE BOARD OF ELECTIONS FOR
12 PLACEMENT ON THE BALLOT.
13 HOWEVER, STATE LAW, WHEN YOU INTERMESH
14 THAT AND TRY AND BLEND THOSE TWO THINGS TOGETHER
15 SO THAT IT MAKES SENSE OF BOTH, IT SAYS UNDER
16 THERE -- AND I BELIEVE IT'S UNDER -- LET ME
17 CHECK THE NUMBER OF THE STATUTE HERE. GIVE ME
18 ONE SECOND.
19 IT'S UNDER --
20 MR. HELVEY: REGARDLESS, WE'RE NOT GOING
21 TO DEAL WITH THAT TODAY.
22 MR. BETTS: NO.
23 MR. HELVEY: BUT I DON'T AGREE WITH YOUR
24 SUMMATIVE STATEMENT THAT IT DOES REFLECT THE

1 WHOLE BOARD'S POSITION.
2 MR. BURNWORTH: WHAT PART?
3 MR. HELVEY: THE PART THAT WE THEN COME
4 BACK AND HAVE A SECOND PASS AT RULING AT THE
5 SUFFICIENCY OF THE PETITION. I THINK THAT THE
6 CITY CHARTER RESERVES TO THE CITY THE RIGHT TO
7 DEEM WHETHER A PETITION IS SUFFICIENT.
8 MR. BURNWORTH: SO IF IT COMES BACK TO
9 US, THEN WE'RE JUST GOING TO ACCEPT IT?
10 MR. HELVEY: WE ACCEPT IT FOR THE BALLOT
11 LIKE WE DO A LOT OF THE OTHER --
12 MR. BURNWORTH: I SEE.
13 MR. BETTS: I APPRECIATE YOUR POSITION.
14 LET ME JUST FINISH ON WHAT I WAS GOING TO SAY,
15 WHICH IS THAT REVISED CODE 3501.39 SPECIFICALLY
16 SAYS THAT WHERE A PROTEST IS FILED, THAT THIS
17 BOARD HAS TO CONVENE A HEARING ON THAT PROTEST.
18 THAT'S WHERE I'M COMING AT IN DETERMINING
19 VALIDITY AND SUFFICIENCY.
20 IF IT WERE JUST PRESENTED BACK TO YOU
21 AND YOU DIDN'T HAVE A PROTEST, I WOULD AGREE
22 WITH YOUR STATEMENT.
23 MR. BURNWORTH: WHICH BRINGS TO MIND
24 ANOTHER QUESTION I HAVE. REMEMBER HOW IT WAS

1 ALWAYS TIMELINES FOR THE PROTESTS? NOT ONLY TO
2 BE FILED, BUT TO BE HEARD. SINCE THEY'VE
3 ALREADY FILED A PROTEST, AND ASSUMING POWELL
4 TAKES A WHILE TO MEET AND DO WHATEVER THEY HAVE
5 TO DO, WILL THE PROTESTORS, WILL THEY NEED TO
6 REFILE, OR CAN WE NULL AND VOID THIS -- I THINK
7 WE'LL BE BEYOND THE TIMELINE OF THIS PARTICULAR
8 PROTEST BY THE TIME POWELL GETS DONE.
9 MR. BETTS: I THINK -- I THINK THAT THE
10 PROTEST IN THIS PARTICULAR CASE IS -- I THINK IT
11 WAS FILED PREMATURELY, BUT I THINK IT CAN BE PUT
12 ON HOLD BECAUSE YOU DO HAVE TO CONDUCT A HEARING
13 WITH IT AT SOME POINT.
14 MR. BURNWORTH: I WOULDN'T WANT TO
15 CONDUCT A HEARING FOR THAT IF POWELL HASN'T
16 EVEN --
17 MR. BETTS: CORRECT. I THINK AT THIS
18 POINT ALL YOU'RE DOING IS REVIEWING THE
19 SUFFICIENCY -- I SHOULDN'T SAY -- DETERMINING
20 THE VALIDITY OF THE SIGNATURES.
21 MR. BURNWORTH: OKAY.
22 MR. BETTS: AND I THINK THAT THE PROTEST
23 ACTUALLY COMES LATER AFTER THE CITY OF POWELL
24 HAS HAD THAT FIRST BLUSH. I AGREE WITH

1 MR. HELVEY'S STATEMENT TO SAY THAT ABSENT A
2 PROTEST BEING FILED THAT IT WOULD JUST BE SIMPLY
3 ACCEPTED. BUT WITH THE PROTEST, I THINK STATE
4 LAW REQUIRES THAT THERE BE A HEARING.
5 MR. BURNWORTH: OKAY.
6 MR. BETTS: AND I THINK THAT THAT
7 HEARING IS MORE APPROPRIATELY HELD AFTER THE
8 CITY OF POWELL HAS HAD THEIR OPPORTUNITY TO
9 REVIEW THE VALIDITY AND SUFFICIENCY. SO I'M
10 SAYING THAT RESPECTFULLY, JUST TO EXPOUND UPON
11 WHAT YOU SAID, MR. HELVEY.
12 BUT I THINK THAT THAT IS KIND OF THE
13 PERSPECTIVE AT THIS POINT IN TERMS OF PROCEDURE
14 AND WHERE THIS SHOULD GO.
15 SO IN SUM, TODAY'S HEARING WOULD BE VERY
16 LIMITED JUST TO LOOK AT THE SUFFICIENCY AND
17 VALIDITY OF THE SIGNATURES, MAKE THAT
18 DETERMINATION IN ACCORDANCE WITH THE STATE LAW,
19 AND PROVIDE A STATEMENT TO THE CLERK OF CITY
20 COUNCIL THAT INDICATES THE NUMBER OF THOSE
21 SIGNATURES THAT THIS BOARD DETERMINES TO BE
22 VALID AND LET THE CITY PROCEED TO DETERMINE
23 VALIDITY AND SUFFICIENCY.
24 MR. STEVENS: THANK YOU, MR. BETTS.

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1 I WOULD LIKE OUR STAFF MAYBE TO GIVE US
2 THEIR RECOMMENDATIONS BASED ON THE PETITIONS
3 THAT YOU REVIEWED.
4 MR. PEDALINE: WHY DON'T WE START OUT
5 WITH THE REFERENDUM.
6 MR. STEVENS: BEFORE YOU DO THAT, JUST
7 SO YOU FOLKS KNOW, WHAT I WOULD LIKE TO DO IS
8 HEAR STAFF RECOMMENDATIONS ABOUT THE PETITIONS,
9 AND THEN SINCE YOU GUYS -- I ASSUME YOU DIDN'T
10 COME UP HERE TO HAVE A SWEET BUN AT THE
11 HAMBURGER INN THIS MORNING, SO I'M GOING TO
12 ALLOW A FEW BRIEF COMMENTS WITH THE
13 UNDERSTANDING THAT WE ARE GOING TO VOTE ON THE
14 VALIDITY OF SIGNATURES THIS MORNING AND THAT'S
15 ALL WE'RE GOING TO BE VOTING ON.
16 AND THEN I'LL TAKE A -- I'LL TAKE A
17 MOTION AND WE'LL VOTE ON IT. GOOD? SORRY.
18 MR. PEDALINE: NO, NO. LOOK AT YOUR
19 HANDOUT THAT WE HAVE GIVEN YOU HERE. I GUESS
20 JUST TO GIVE YOU SOME OF THE HIGHLIGHTS, THE
21 TOTAL NUMBER OF REQUIRED SIGNATURES IS 238. AS
22 FAR AS THE REFERENDUM, THE TOTAL NUMBER WAS 376.
23 DO YOU WANT TO ADD TO THAT, KARLA?
24 MR. HELVEY: JOSH, MAYBE IT WOULD BE

1 HELPFUL IF YOU COULD REVIEW MECHANICALLY WHAT
2 HAPPENS IN -- WHEN THE PAPER HITS THE FRONT DESK
3 AND HOW THE SIGNATURES ARE VALIDATED AND WHO
4 REVIEWS AND ALL THAT KIND OF STUFF.
5 MR. PEDALINE: ABSOLUTELY. IT'S A VERY
6 EXHAUSTIVE PROCESS FOR OUR BOARD, AND WE REALLY
7 TAKE A LOT OF PRIDE IN WHAT WE DO. IT COMES
8 ACROSS THE COUNTER AND TRACI, OUR OFFICE
9 MANAGER, ENTERS THIS INTO OUR SYSTEM, AND THEN
10 WE HAVE THE BIPARTISAN TEAM THAT REVIEWS EACH
11 SIGNATURE. AND WE ACTUALLY HAVE ALL --
12 EVERYONE'S SIGNATURES ON FILE IN OUR VOTER
13 REGISTRATION DATABASE. AND IT'S REVIEWED NO
14 LESS THAN TWO TIMES, AND IF THERE'S EVER ANY
15 QUESTION, IT'S ALWAYS REVIEWED BY KARLA AND
16 MYSELF, AND WE GO THROUGH GREAT PAINS TO MAKE
17 SURE WE'RE VERY THOROUGH.
18 DO YOU HAVE ANYTHING YOU WANT TO ADD TO
19 THAT?
20 MS. HERRON: THE ONLY THING I WOULD ADD
21 IS OUR SYSTEM, WE DO PUT IN THE PARAMETERS
22 THAT'S BEEN LAID OUT. IN THIS CASE, THEY HAVE
23 TO LIVE WITHIN THE CITY OF POWELL, AND IF
24 SOMEONE WOULD SIGN IT THAT LIVES OUTSIDE THE

1 CITY, OUR SYSTEM WOULD AUTOMATICALLY TRIGGER AN
2 INVALID LINE.
3 MR. STEVENS: SO THE NUMBER OF VALID
4 SIGNATURES THAT YOU'VE INDICATED FOR THIS FIRST
5 REFERENDUM PETITION ARE CITY OF POWELL
6 RESIDENTS' SIGNATURES MATCH THE SIGNATURES ON
7 FILE?
8 MR. PEDALINE: CORRECT.
9 MR. STEVENS: AND THEN THAT TOTAL NUMBER
10 IS --
11 MR. PEDALINE: 376.
12 MS. HERRON: AND CHAIRMAN, JUST TO NOTE,
13 THERE WERE ZERO INVALID PETITIONS. ALL 12 WERE
14 VALID.
15 MR. BURNWORTH: POINT OF QUERY, I GUESS,
16 ON A COUPLE OF THEM. WHERE THE SIGNATURE
17 DOESN'T MATCH, IF -- AND MAYBE FOR THE
18 AUDIENCE'S BENEFIT, THAT IF IT WERE A CLOSE
19 COUNT, AND WE'VE HAD CASES WHERE PETITIONERS
20 HAVE COME IN AND RECTIFIED THEIR SIGNATURE;
21 THEY'RE ALLOWED A HEARING TO CLARIFY THEIR
22 SIGNATURES. THIS ISN'T ONE OF THOSE CASES; IT'S
23 NOT VERY CLOSE. BUT THERE ARE TIMES WHEN WE
24 HAVE UPDATED OUR SIGNATURES PAGES.

1 THE LAST ONE WHERE THE ADDRESS DOESN'T
2 AGREE, THERE'S ONLY THREE IN THIS CASE, BUT
3 THAT'S CONSIDERING THE RECENT MERGE WITH THE
4 MOTOR VEHICLE DATABASE AND THE STATEWIDES.
5 MR. STEVENS: IF ANYBODY'S INTERESTED IN
6 THE NUMBERS THAT WE'RE LOOKING AT, I'M GOING TO
7 HAVE JOSH GIVE YOU A COPY SO --
8 MR. BURNWORTH: OH, GOOD POINT.
9 MR. STEVENS: IT SPELLS OUT ON THE
10 BOTTOM -- IT SPELLS OUT ON THE BOTTOM THE
11 RESULTS OF THE SIGNATURES, THE ONES THAT WERE
12 INVALID.
13 MR. BURNWORTH: OKAY. TO CONTINUE, JUST
14 TO QUESTION -- MAKE SURE THAT I THINK IT'S CLEAR
15 IN EVERYBODY'S MIND HERE, IS THAT AN ELECTOR CAN
16 COME IN AND VOTE WITH A STATE-ISSUED ID CARD OR
17 SOMETHING THAT DOES NOT MATCH OUR RECORDS, BUT
18 THEY HAVE OTHER DOCUMENTATION TO SHOW THAT THEY
19 CURRENTLY LIVE WITHIN THE GOVERNMENTAL UNIT OR
20 THE PRECINCT. IN OTHER WORDS, YOU DON'T HAVE TO
21 CHANGE YOUR DRIVER'S LICENSE EVERY TIME YOU
22 MOVE; YOU CAN STILL VOTE.
23 SO THESE THREE ADDRESSES DO NOT AGREE,
24 WE GET THAT FROM MERGING OUR OLD INFORMATION

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Page 18

1 THAT THE VOTER GAVE US WITH THE BUREAU OF MOTOR
2 VEHICLE'S INFORMATION, STATEWIDE DATABASES, AND
3 IT STILL DIDN'T MATCH, SO THAT'S WHY WE TARGET
4 THOSE.
5 MR. STEVENS: IF YOU GUYS WANT TO FOLLOW
6 ALONG, WE'RE GOING TO MOVE TO PAGE 2. JOSH, CAN
7 YOU GIVE US A SYNOPSIS OF THIS INITIATIVE?
8 MR. PEDALINE: AND JUST SO YOU'LL NOTE,
9 AT THE TOP LEFT, WE HAVE OUR OWN INTERNAL
10 CLASSIFICATION, BUT THIS ONE IS FOR THE
11 INITIATIVE FOR THE NEW COMMENTS OF PLANNED
12 ZONING DEVELOPMENT, PAGE 2. AGAIN, SAME
13 REQUIREMENT, 238 VALID SIGNATURES WERE REQUIRED
14 AND THE NUMBER WAS 350.
15 YOU'LL NOTE, MR. CHAIRMAN ON THIS ONE,
16 THERE WAS ONE INVALID PART PETITION WITH 16
17 SIGNATURES THAT WERE NOT COUNTED. AND ONE VALID
18 PART PETITION, YES.
19 MR. STEVENS: SO THAT'S ASSUMING THAT WE
20 USED THE SAME GUIDELINES WE WOULD USE ON A
21 SECRETARY OF STATE FORM?
22 MR. PEDALINE: CORRECT, YES.
23 MR. HELVEY: LET ME ASK --
24 MR. STEVENS: I'M SORRY, GO AHEAD.

Page 19

1 MR. HELVEY: WHY WAS THAT -- WHY WAS THE
2 PART PETITION FOUND INVALID?
3 MR. PEDALINE: TRACI, CAN YOU FILL IN ON
4 THAT?
5 MS. SHALOSKY: ON THESE PETITIONS,
6 SOMETIME, SINCE SOMEBODY MADE THEM UP, THEY HAD
7 **A LINE THAT DIDN'T HAVE A NUMBER ON IT, AND SO**
8 **SOMEBODY SIGNS IN THAT LINE, WHICH THREW THE**
9 **NUMBERS OFF. SO THE CIRCULATOR WOULD WRITE DOWN**
10 **THE BOTTOM NUMBER THAT THEY SAW, BUT ACTUALLY**
11 **THERE WAS AN EXTRA SIGNATURE IN PLACE, SO WE HAD**
12 **TO DISQUALIFY THE WHOLE THING BECAUSE YOU SAID**
13 **YOU ONLY VALID -- OR SAW 16 SIGNATURES AND THERE**
14 **WERE 17, SO WE HAVE TO INVALIDATE THE WHOLE PART**
15 **BECAUSE THERE'S SOME SIGNATURE ON THERE THAT YOU**
16 **SAID, YOU KNOW, YOU DIDN'T SEE.**
17 MR. HELVEY: BUT THAT GOES TO THE ISSUE
18 OF WHETHER WE HAVE -- WHETHER WE HAVE THE
19 AUTHORITY TO VALIDATE A PETITION WHEN OUR TASK
20 TODAY IS JUST TO REPORT TO THE CITY OF POWELL
21 THE NUMBER OF VALID SIGNATURES.
22 DO WE KNOW HOW MANY VALID SIGNATURES
23 WERE ON THAT PART PETITION?
24 MS. HERRON: NO, THAT'S EXACTLY RIGHT.

Page 20

1 IT IS THE 350. IT'S JUST THE REASON ALL OF THE
2 SIGNERS -- THE REASON TO NOTE THERE WAS ONE THAT
3 WOULD INVALIDATE IT IS BECAUSE NONE OF THE
4 SIGNATURES ARE ACTUALLY CONSIDERED VALID WHEN
5 THAT HAPPENS. A NUMBER DOESN'T REALLY MATTER ON
6 **A PETITION. IT CAN BE NUMBERED, IT DOESN'T HAVE**
7 **TO BE NUMBERED. IN STATUTE, IT'S JUST HOW MANY**
8 **SIGNATURES ARE PUT ON THOSE PIECES OF PAPER. WE**
9 **COUNT THEM IN.**
10 MR. HELVEY: IF WE'RE IN THE VALIDATING
11 PROCESS FOR A PETITION AS FAR AS FORM AND
12 SUBSTANCE --
13 MS. HERRON: CORRECT.
14 MR. HELVEY: -- AND NOT MERELY COUNTING
15 SIGNATURES.
16 MS. HERRON: CORRECT. IN THIS CASE,
17 THOUGH, IT INVALIDATES ALL SIGNATURES ON THAT
18 PART PETITION.
19 MR. HELVEY: IF WE'RE IN THAT PARADIGM,
20 IF WE'RE NOT IN THAT PARADIGM, HOW MANY
21 SIGNATURES OF THAT PART PETITION WERE THERE?
22 MS. HERRON: I'M NOT SURE HOW TO ANSWER
23 THAT BECAUSE ALL OF OUR GUIDANCE IS IF THERE'S
24 MORE THAN WHAT THEY ATTESTED TO FOR IT TO BE

Page 21

1 VALID, THE CIRCULATOR HAS TO ATTEST TO THE FACT
2 THAT THEY SAW THAT AND WITNESSED IT FOR THAT
3 LINE TO BE VALID OR THAT SIGNATURE TO BE VALID.
4 I DO HEAR WHAT YOU'RE SAYING, AND WE CAN
5 TELL YOU HOW MANY WAS ON THERE. IF THAT
6 WOULD -- IF THAT'S WHAT YOU WOULD LIKE FOR US TO
7 NOTE.
8 MR. STEVENS: JUST SO I UNDERSTAND, THE
9 350 VALID SIGNATURES ARE -- ARE NET OF THAT PART
10 PETITION THAT YOU SAY IS INVALID?
11 MS. HERRON: UH-HUH.
12 MR. STEVENS: THEY WERE NOT COUNTED?
13 MS. HERRON: THEY WERE NOT COUNTED.
14 MR. STEVENS: I BELIEVE THAT NUMBER'S
15 WRONG THEN.
16 MS. SHALOSKY: IT IS. IT DOES NOT
17 INCLUDE THE ONES ON THE INVALID PART.
18 MR. STEVENS: I AGREE WITH MR. HELVEY
19 THAT IF WE WERE ONLY TO LOOK AT THE VALIDITY OF
20 SIGNATURES TODAY, THEN WHETHER OR NOT THE --
21 MS. SHALOSKY: THIS ONE --
22 MR. STEVENS: YOU CAN CHIME IN,
23 MR. BETTS, IF YOU HAVE DIFFERENT --
24 MS. SHALOSKY: THIS IS NOT THE INVALID

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Page 22

1 ONE. WE ARE LOOKING AT THE ONE THAT'S YELLOW,
2 RIGHT?
3 MR. PEDALINE: YES.
4 MR. STEVENS: THANK YOU.
5 MR. HELVEY: IT'S 705.
6 MS. SHALOSKY: WELL, THAT 705 HAS 12
7 PARTS TO IT.
8 MR. STEVENS: WHILE SHE'S DOING THAT, DO
9 YOU WANT TO MOVE MAYBE TO THE THIRD ONE. SO IF
10 YOU'RE FOLLOWING ALONG, PAGE 3 --
11 MS. HERRON: I DON'T THINK -- IT'S THE
12 SAME --
13 MR. STEVENS: OH, YOU HAVE ANOTHER --
14 MS. HERRON: THERE WAS TWO AND THEY HAVE
15 ONE SIGNATURE THAT WAS ATTESTED TO.
16 MS. SHALOSKY: HERE'S THE INVALID PART,
17 AND IT ACTUALLY HAD 16 VALID SIGNATURES ON IT.
18 MR. STEVENS: SO LET'S BACK UP, THEN. I
19 APOLOGIZE, FOLKS. WE'LL STAY ON THE FIRST
20 INITIATIVE, WHICH IS ON PAGE 2 IN YOUR HANDOUT.
21 SO I JUST WANT TO MAKE SURE BEFORE WE --
22 TRACI?
23 MS. SHALOSKY: YES.
24 MR. STEVENS: CAN YOU COME HERE. SO

Page 23

1 THERE'S 16 ON THIS THAT YOU INITIALLY COUNTED AS
2 INVALID?
3 MS. SHALOSKY: AS VALID. OH, THEY'RE
4 INVALID RIGHT NOW, YES.
5 MR. STEVENS: OKAY.
6 MS. SHALOSKY: BECAUSE THEY HAVE THIS
7 LINE RIGHT HERE.
8 MR. BURNWORTH: OR IS THERE 17?
9 MS. SHALOSKY: THERE'S 17 SIGNATURES,
10 RIGHT, BUT THE CIRCULATOR SAID THERE WAS 16
11 BECAUSE SOMEBODY WROTE OFF THE LINE.
12 MR. STEVENS: OKAY.
13 MS. HERRON: IN ORDER FOR US -- JUST TO
14 NOTE, BY OHIO LAW, IN ORDER FOR US TO BEGIN
15 CHECKING SIGNATURES, THAT IS ONE OF THE
16 REQUIREMENTS IS WE LOOK AT THAT TIME -- I
17 KNOW --
18 MR. HELVEY: I UNDERSTAND.
19 MS. HERRON: I KNOW YOU DO.
20 MR. BETTS: MR. VICE-CHAIRMAN, IF I
21 MIGHT, FOR JUST A MOMENT, I KNOW THAT AS THE
22 DIRECTOR AND DEPUTY DIRECTOR INDICATED, THEY
23 CHECKED THE SIGNATURES IN ACCORDANCE WITH THE
24 NORMAL WAY THAT THEY WOULD IN ACCORDANCE WITH

Page 24

1 STATE LAW.
2 I THINK, YOU KNOW, WHERE THE NUMBER
3 IS -- OF SIGNATURES ON THE PETITION IS LESS THAN
4 THE NUMBER THAT'S WRITTEN IN THE CIRCULATOR'S
5 STATEMENT, IT DOES INVALIDATE ALL OF THE
6 SIGNATURES ON THAT PETITION BECAUSE
7 THEORETICALLY THERE WAS ONE THAT WAS NOT
8 WITNESSED.
9 SO IN TERMS OF DETERMINING NOT THE
10 PETITION BUT THE VALIDITY OF THOSE SIGNATURES, I
11 THINK THAT THE DIRECTOR AND THE DEPUTY DIRECTOR
12 AND THE STAFF MADE THE DETERMINATION IN
13 ACCORDANCE WITH STATE LAW IN DETERMINING THE
14 VALIDITY OF THOSE SIGNATURES BASED ON HOW THEY
15 WERE PLACED ON THE PETITION BUT NOT -- NOT ON
16 THE PETITION ITSELF.
17 MR. HELVEY: I THINK THAT'S THE PURVIEW
18 OF THE POWELL CITY COUNCIL TO STEP UP AND SAY
19 THIS PART OF THE PETITION IS INVALID BECAUSE THE
20 CIRCULATOR STATED IT WAS INVALID. WHEN YOU READ
21 THE CHARTER, OUR JOB IS MERELY TO LOOK AT
22 SIGNATURES AND VERIFY THAT THEY ARE ELECTORS OF
23 THE CITY OF POWELL.
24 MR. BETTS: THE CHARTER IS VERY LIMITED.

Page 25

1 I WILL AGREE WITH YOU ON THAT.
2 MR. STEVENS: I TEND TO AGREE WITH
3 MR. HELVEY.
4 MS. HERRON: THERE'S NO PROBLEM TO JUST
5 VALIDATING IT AND RERUNNING THE REPORTS. IT'S
6 AS EASY AS THAT. I WILL NOTE, EITHER WAY, THEY
7 HAD ENOUGH, COUNTING THE --
8 MR. STEVENS: RIGHT. CORRECT.
9 MS. HERRON: BUT WE CAN REDO THAT.
10 MR. BURNWORTH: SO WHY DON'T YOU ADD 17
11 TO 350 AND RUN A NEW --
12 MR. PEDALINE: 16.
13 MR. BURNWORTH: THERE'S 17.
14 MR. HELVEY: THE CIRCULATOR SAID THERE
15 WAS 16, BUT THERE'S ACTUALLY 17.
16 MR. STEVENS: WE'LL BE ADDRESSING THAT
17 AGAIN, I BELIEVE, IN THE FUTURE.
18 MS. HERRON: YOU WILL.
19 MR. STEVENS: OKAY. LET'S MOVE TO THE
20 THIRD PAGE.
21 MR. PEDALINE: YES. IN THIS NEXT ONE,
22 THE NEXT ONE IS THE INITIATIVE TO THE PROJECTED
23 DEVELOPMENT PLAN FOR THE CENTER AT POWELL
24 CROSSING. AGAIN, SAME REQUIREMENT, 238 REQUIRED

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1 SIGNATURES. AGAIN, USING OUR PREVIOUS STANDARD,
2 THAT WAS AT 326 SIGNATURES. AGAIN, EXCEEDING
3 THE REQUIRED NUMBER. HOWEVER, THERE WERE TWO
4 PART PETITIONS THAT WERE INVALIDATED FOR SIMILAR
5 REASONS, AND THAT COUNTS -- IT'S 55 ADDITIONAL
6 SIGNATURES.
7 MR. HELVEY: OR IS IT 57?
8 MR. PEDALINE: IT WOULD BE 57, BASED ON
9 THAT STANDARD.
10 MR. BURNWORTH: FOR THE SAME REASON,
11 YEAH. WHY ARE WE -- WHY IS THERE A BLANK LINE
12 WITHOUT A NUMBER? IS THAT A STATE ISSUE OR
13 FORM?
14 MR. HELVEY: NO.
15 MR. HELVEY: SEE, THEY WROTE UP HERE --
16 MR. BURNWORTH: OKAY. GOT IT.
17 MR. HELVEY: THEY STARTED BEFORE THE
18 ACTUAL NUMBER.
19 MR. BURNWORTH: OKAY. GOT IT.
20 MS. HERRON: AND WE'LL RERUN THE NUMBERS
21 AND GIVE THEM TO YOU.
22 MR. STEVENS: DO YOU NEED THE NUMBERS TO
23 MAKE A MOTION?
24 MR. HELVEY: I DON'T THINK SO.

1 MS. HERRON: WE'LL JUST GET THEM FOR THE
2 REPORT.
3 MR. HELVEY: RIGHT. WE KNOW HOW MANY
4 THERE ARE.
5 MS. HERRON: WE DO.
6 MR. HELVEY: IT'S JUST NOT ON THIS PIECE
7 OF PAPER RIGHT NOW.
8 MS. HERRON: CORRECT. THEN IT WILL
9 READJUST THE REASON WHY SOME ARE INVALIDATED,
10 WHETHER THEY'RE NOT REGISTERED --
11 MR. HELVEY: RIGHT.
12 MR. STEVENS: OKAY. SO NOW I UNDERSTAND
13 THE THREE PETITIONS. I GUESS I WOULD LIKE TO
14 OPEN IT UP FOR VERY BRIEF DISCUSSION FROM FOLKS
15 WHO WOULD LIKE TO.
16 MR. MILLER: THANK YOU, MR. CHAIRMAN.
17 I'M JOE MILLER, VORYS SATER SEYMOUR & PEASE, ON
18 BEHALF OF THE PROTESTING PARTY. I AGREE WITH
19 YOUR COUNSEL THAT THIS BOARD IS STILL REQUIRED
20 TO REVIEW, EXAMINE, AND CERTIFY THE SUFFICIENCY,
21 VALIDITY OF THE PETITIONS. THE CITY CHARTER
22 DOES NOT TAKE AWAY THE DUTY UNDER 3501.11(K) TO
23 DO THAT.
24 AND I'D JUST AMPLIFY OR REITERATE WHAT I

1 BELIEVE MR. BETTS SAID EARLIER, THAT UNDER
2 3501.39(A), THIS BOARD IS PROHIBITED FROM
3 ACCEPTING ANY PETITIONS ONCE A WRITTEN PROTEST
4 IS FILED. WE HAVE DONE THAT. MY UNDERSTANDING
5 IS THIS BOARD IS NOT ACTING TO ACCEPT OR CERTIFY
6 ANY OF THESE PETITIONS TODAY.
7 AM I UNDERSTANDING THAT CORRECTLY,
8 MR. CHAIR?
9 MR. HELVEY: THAT'S CORRECT.
10 MR. STEVENS: THAT'S OUR INTENTION.
11 MR. MILLER: BECAUSE WHEN THESE PART
12 PETITIONS ARE PRESENTED AGAIN, WE WOULD ASK AND
13 STATE OBVIOUSLY THAT BY STATE LAW, WE'RE
14 ENTITLED TO A HEARING ON ALL THE GROUNDS WITHIN
15 THE PROTEST BY A STRICT COMPLIANCE STANDARD. I
16 WOULD STATE THIS MORNING THAT ARGUMENTS WE'VE
17 MADE IN THAT PROTEST RELATED TO THE INCORRECT
18 PRECINCTS PLACED ON PETITIONS, THE FORM OF THE
19 PETITION, AND THE LACK OF TITLE AND TEXT COULD
20 BE CONSIDERED BY YOU TODAY. I'M UNDERSTANDING,
21 HOWEVER, THAT YOU ARE MERELY LOOKING AT
22 SIGNATURES; IS THAT CORRECT?
23 MR. HELVEY: THAT'S CORRECT.
24 MR. BURNWORTH: CORRECT.

1 MR. MILLER: AND THAT WE WILL BE ABLE TO
2 RENEW AND MAKE ALL THOSE ARGUMENTS AT A TIME
3 WHEN THE PART PETITIONS, IF THEY ARE, ARE
4 PRESENTED TO YOU?
5 MR. STEVENS: YEP.
6 MR. HELVEY: AND I WOULD SUGGEST THAT
7 THE FIRST OPPORTUNITY YOU HAVE TO ATTACK THAT
8 WOULD BE AT THE POWELL CITY COUNCIL. THEY GET
9 FIRST BLUSH AT THIS.
10 MR. MILLER: OKAY. WITH THOSE
11 ASSURANCES, THEN, THAT OUR PROTEST WILL BE
12 INDEED HEARD ON ALL THOSE GROUNDS, IF NECESSARY,
13 WE LOOK FORWARD TO APPEARING BEFORE YOU AGAIN.
14 MR. STEVENS: THANK YOU. IS THERE
15 ANYBODY ELSE?
16 MR. BURCH: I'M CHRISTOPHER BURCH. I'M
17 COUNSEL FOR THE PETITIONERS. IT'S ALWAYS
18 HELPFUL WHEN THE COUNTY PROSECUTOR IS MAKING
19 WHAT YOU THINK IS A HELPFUL ARGUMENT ON YOUR
20 BEHALF AND YOU DON'T HAVE A CHANCE TO SPEAK MUCH
21 OR PREPARE MUCH FOR A HEARING. PETITIONERS
22 OBVIOUSLY FOUND OUT YESTERDAY --
23 MR. STEVENS: THIS ISN'T A HEARING.
24 MR. BURCH: MEETING. PETITIONERS ARE

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Page 30

1 COMFORTABLE SAVING THEIR ARGUMENTS FOR THE
2 APPROPRIATE FORUM. PETITIONERS DON'T THINK THIS
3 IS THE APPROPRIATE FORUM AT THIS TIME AND WILL
4 RESERVE THOSE FOR THE CITY COUNCIL.
5 HOWEVER, HAVING REVIEWED THE
6 DEVELOPER/PROTESTOR'S BRIEF, WE WOULD ASK ONLY
7 FOR THE BOARD TO MAKE SOME SORT OF STATEMENT ON
8 THE RECORD WITH RESPECT TO WHETHER OR NOT THERE
9 ARE WARDS IN THE CITY OF POWELL.
10 THIS IS AN ISSUE THAT WE BELIEVE CAN BE
11 CLARIFIED BY THE BOARD PRIOR TO THE HEARING BY
12 THE CITY IN ORDER TO -- TO REVIEW BRIEF, TO
13 REVIEW LEGAL ARGUMENTS, AND SO I KNOW THAT THAT
14 IS NOT DIRECTLY BEFORE THE BOARD AT THIS TIME;
15 HOWEVER, IT'S NOT -- IT'S NOT TOO FAR OF A
16 STRETCH TO SEE WHERE IT'S GOING, AND WE WOULD
17 LIKE TO JUST SEE THAT ON THE RECORD.
18 MR. HELVEY: IT'S MY UNDERSTANDING,
19 COUNSEL, THAT WE DON'T SET WARD LINES. FOR
20 INSTANCE, THE CITY OF DELAWARE DETERMINES WHAT
21 THE WARD LINES IS BY CONGLOMERATING PRECINCTS
22 TOGETHER, SO THAT'S NOT OUR DETERMINATION
23 EITHER. WE ARE NOTIFIED WHEN A WARD IS
24 ESTABLISHED.

Page 31

1 MR. MILLER: AND JUST FOR CLARITY'S SAKE
2 FOR THE BOARD, I UNDERSTAND YOU'RE NOT TAKING --
3 OUR POSITION IS OBVIOUSLY THAT ON THOSE
4 PETITIONS, THE PRECINCTS ARE INCORRECT AND THAT
5 CAN INVALIDATE THE SIGNATURES. THE PRECINCTS
6 WERE INCORRECTLY IDENTIFIED.
7 MR. HELVEY: WE'LL LEAVE THAT FOR
8 ANOTHER DAY.
9 MR. MILLER: UNDERSTOOD.
10 MR. STEVENS: ARE THERE ANY OTHER --
11 MR. HOLLINS: MR. VICE-CHAIRMAN, MEMBERS
12 OF THE BOARD, THANK YOU FOR YOUR TIME THIS
13 MORNING. GENE HOLLINS, THE LAW DIRECTOR OF
14 POWELL, AND JENNIFER CROGHAN FROM MY OFFICE
15 HERE. A, HERE TO ANSWER ANY QUESTIONS. B, LET
16 ME STATE THE ASSISTANCE WE'VE RECEIVED FROM YOUR
17 STAFF HAS BEEN EXCELLENT, AND IT ALWAYS IS. SO
18 THANK YOU FOR THE HELP.
19 THANK YOU, MR. BETTS, FOR HELPING US
20 THROUGH THIS PROCESS, AND THANK YOU FOR THE
21 CLARIFICATION AS TO THE FUTURE HEARING MORE OR
22 LESS ON THE MERITS OF SOME OF THESE ARGUMENTS.
23 WE WILL TAKE THIS UP ON TUESDAY TO LET
24 THE BOARD KNOW, BY OUR CHARTER, WE HAVE TWO OF

Page 32

1 THESE THAT HAVE TO BE HANDLED BY RESOLUTION, ONE
2 THAT HAS TO BE HANDLED BY ORDINANCE. ORDINANCES
3 GO FOR TWO READINGS UNLESS SUSPENSION OF THE
4 RULES OCCURS. THAT PROBABLY WON'T OCCUR BECAUSE
5 WE ONLY HAVE SIX MEMBERS ON TUESDAY.
6 I DON'T KNOW IF WE'LL HAVE -- I HAVEN'T
7 HAD A CHANCE TO MEET WITH MY CLIENT YET ABOUT
8 THIS, THIS HAPPENED SO FAST. MY CLIENT BEING
9 COUNCIL. I DON'T KNOW IF WE'LL HAVE A CLEAR
10 MAJORITY ON ANY OF THESE PETITIONS NEXT TUESDAY
11 TO SEND THEM BACK TO YOU AT THAT POINT. SO
12 WE'LL HAVE THEM ON THE AGENDA.
13 WITH THAT IN MIND, IF THE ATTESTATIONS
14 OF THE SIGNATURES COULD BE DONE EITHER TODAY OR
15 MONDAY, IT WOULD BE VERY HELPFUL. IF WE RECEIVE
16 THEM TUESDAY, I THINK IT'S NOT CLEAR WHETHER
17 THEY GO ON THAT AGENDA OR AN AGENDA TWO WEEKS
18 FROM NOW, ET CETERA, ET CETERA.
19 SO IF THERE'S A POSSIBILITY OF GETTING
20 THEM TODAY OR MONDAY, THAT WOULD BE HELPFUL AND
21 WE KEEP THE TIMELINE...
22 MR. BURNWORTH: QUESTION FOR YOU, IF YOU
23 DON'T MIND, HOW OFTEN DOES THE COUNCIL MEET?
24 MAYBE THEY DO SPECIALS, BUT --

Page 33

1 MR. HOLLINS: IT MEETS EVERY TWO WEEKS,
2 BUT IT HAS TO BE -- PER OUR CHARTER, IT HAS TO
3 BE PRESENTED TO THEM AT A REGULAR MEETING.
4 MR. BURNWORTH: OKAY. WHICH TIES TO THE
5 QUESTION FOR JOSH AND KARLA, IS THAT WE'RE FACED
6 WITH A DEADLINE TO AFFIRM THE BALLOT IF
7 SOMETHING WERE TO GO ON THE BALLOT. WHAT'S OUR
8 TARGET DATE THERE FOR THE AUDIENCE TO KNOW?
9 MS. HERRON: PER OHIO REVISED CODE, IT'S
10 90 DAYS BEFORE AN ELECTION, WHICH IS NEXT
11 WEDNESDAY, WHICH IS AUGUST THE 6TH. AND WE HAVE
12 ASKED FOR GUIDANCE FROM THE PROSECUTOR'S OFFICE
13 AS FAR -- AS I BELIEVE THE CHARTER SAYS 75 DAYS.
14 MR. BETTS: I WOULD JUST CLARIFY THAT
15 THE AUGUST 6TH DATE IS THE DATE THAT IT HAS TO
16 BE FILED WITH THE BOARD OF ELECTIONS. THERE'S A
17 LATER DATE, I THINK MAYBE YOU TOLD ME IT WAS THE
18 18TH OF AUGUST, IS ACTUALLY WHEN EVERYTHING
19 WOULD HAVE TO BE -- THE CERTIFICATION WOULD HAVE
20 TO BE COMPLETE AS FAR AS WHAT'S GOING ON.
21 MS. HERRON: OUR BOARD DOES, YEAH.
22 MR. BURNWORTH: THE REASON THAT'S
23 IMPORTANT, YOU'RE FAMILIAR WITH UOCAVA, THE
24 UNIFORMED AND OVERSEAS MILITARY VOTING ACT, WE

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Page 34

1 HAVE TO SEND THOSE OUT, I THINK IT'S 45 DAYS
2 PRIOR. THEY GET AN EXTRA 15 DAYS OR SO TO VOTE
3 THAN THE GENERAL PUBLIC HAS.
4 MR. HOLLINS: I UNDERSTAND.
5 MR. BURNWORTH: SO IF YOU'VE GOT POWELL
6 RESIDENTS THAT ARE OUT, YET REQUEST A BALLOT AND
7 WE HAVEN'T RESOLVED THIS, IF SOMETHING GOES TO
8 THE BALLOT, THEY'RE NOT GOING TO GET THAT
9 OPPORTUNITY.
10 MR. HOLLINS: PRACTICALLY SPEAKING, OUR
11 PRIOR EXPERIENCE WITH THE BOARD OF ELECTIONS,
12 THERE'S A DATE YOU HAVE TO SEND STUFF TO THE
13 PRINTER. NOT ONLY US, BUT THE COURTS ARE ALWAYS
14 WORKING AROUND TRYING TO GET THESE THINGS
15 RESOLVED BEFORE YOU HAVE TO SEND STUFF OUT TO
16 THE PRINTERS.
17 WE WILL CONTINUE TO WORK WITH YOU ON
18 WHAT DAY THAT IS, BUT IT WILL PROBABLY BE --
19 WELL, WHO KNOWS WHAT WILL HAPPEN IN TERMS OF
20 GETTING OUT OF OUR COURT, BACK TO YOUR COURT,
21 POTENTIALLY BACK TO THE COURTS, AND THEN TRY AND
22 MEET YOUR DEADLINE FOR GETTING BALLOTS PRINTED.
23 MR. BURNWORTH: JUST THOUGHT I'D MENTION
24 ALL THAT.

Page 35

1 MR. HOLLINS: YEAH, IT'S A PRACTICAL
2 DIFFICULTY, BUT MY GUESS IS THIS ONE'S GOING TO
3 BE RESOLVED WITH THE COURTS EVENTUALLY.
4 MR. BETTS: THE VERY FIRST THING THAT
5 YOU SAID -- MAY NOT HAVE BEEN THE VERY FIRST,
6 BUT CLOSE -- WAS IN TERMS OF GETTING A STATEMENT
7 BACK FROM THIS BOARD IN TERMS OF THE NUMBER OF
8 VALID SIGNATURES, AND I KNOW THAT KARLA AND JOSH
9 WERE DOWN THERE SHAKING THEIR HEAD, BUT THERE
10 WASN'T A VERBAL ANSWER TO THAT.
11 FOR THE SAKE OF THE RECORD, I KNOW IN
12 SPEAKING WITH THE DIRECTOR AND DEPUTY DIRECTOR
13 PREVIOUSLY -- AND THEY'RE SHAKING THEIR HEADS
14 OVER THERE -- PREVIOUSLY THAT I THINK THEIR
15 INTENT IS GETTING THAT STATEMENT OUT LATER
16 TODAY.
17 MR. PEDALINE: YES.
18 MR. BETTS: AM I RIGHT IN SAYING THAT?
19 I DON'T WANT TO SPEAK FOR YOU, BUT I THINK WE
20 HAD THAT DISCUSSION.
21 MR. PEDALINE: YES.
22 MS. HERRON: THAT'S CORRECT.
23 MR. HOLLINS: WILL IT BE HAND-DELIVERED
24 OR SHOULD I SEND SOMEBODY TO PICK IT UP?

Page 36

1 MS. HERRON: WE WOULD LOVE TO WORK THAT
2 OUT WITH YOU TO SEE WHAT WOULD WORK BEST FOR
3 YOU.
4 MR. HOLLINS: I KNOW MRS. CROGHAN IS ON
5 VACATION AND PROBABLY HAS NOTHING ELSE PLANNED
6 FOR THE REST OF THE --
7 MS. HERRON: WE WOULD APPRECIATE THAT
8 VERY MUCH.
9 MR. HOLLINS: THANK YOU FOR YOUR TIME
10 THIS MORNING.
11 MR. STEVENS: IS THERE ANY OTHER
12 COMMENTS? I'D LIKE TO ENTER --
13 MR. HELVEY: YEAH, I'D LIKE TO MAKE
14 THREE DIFFERENT MOTIONS. WE'LL SEPARATE ALL
15 THREE ISSUES. WE WILL START WITH THE REFERENDUM
16 ON THE REPEAL OF 2014-10 IDENTIFIED BY OUR
17 RECORDS AS PETITION ID 140704, AND THE MOTION
18 WILL BE THAT THE BOARD HAS VALIDATED THAT 376 OF
19 THE SIGNATURES PRESENTED ARE OF ELECTORS WITHIN
20 THE CITY OF POWELL, AND THAT THE STAFF BE
21 DIRECTED TO NOTIFY THE CITY OF POWELL THAT 376
22 SIGNATURES ARE VALID ELECTORS.
23 MR. BURNWORTH: DO YOU WANT TO INCLUDE
24 THE NUMBER REQUIRED?

Page 37

1 MR. HELVEY: NO.
2 MR. STEVENS: MOTION'S BEEN MADE BY
3 MR. HELVEY.
4 IS THERE A SECOND?
5 MR. BURNWORTH: SECOND.
6 MR. STEVENS: IS THERE ANY DISCUSSION?
7 (NO RESPONSE.)
8 MR. STEVENS: ALL IN FAVOR, SAY AYE.
9 (ALL SAID AYE.)
10 MR. STEVENS: OPPOSED?
11 (NO RESPONSE.)
12 MR. STEVENS: THANK YOU.
13 MR. HELVEY: MR. CHAIRMAN, IN REGARDS TO
14 PETITION ID 140705, WHICH IS THE INITIATIVE OF
15 THE NEW COMPREHENSIVE PLAN FOR ZONING AND
16 DEVELOPMENT AND REPEAL OF 2014-10, THAT THE
17 BOARD HAS VALIDATED 367 SIGNATURES AS BEING
18 ELECTORS OF THE CITY OF POWELL AND THAT THE
19 STAFF BE DIRECTED TO NOTIFY THE CITY OF POWELL
20 THAT 367 SIGNATURES ARE VALID.
21 MR. BURNWORTH: SECOND.
22 MR. STEVENS: MOTION'S BEEN SECONDED BY
23 MR. BURNWORTH. IS THERE ANY DISCUSSION?
24 MR. BURNWORTH: UNLESS YOU WANT TO

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1 SECOND SOME OF THIS STUFF.
2 MR. STEVENS: ALL IN FAVOR, SAY AYE.
3 (ALL SAID AYE.)
4 MR. HELVEY: WE'LL STEP DOWN FOR A
5 SECOND.
6 MS. SHALOSKY: KARLA, IN ORDER TO PUT
7 THOSE NUMBERS BACK IN, THOSE PETITIONS ARE GOING
8 TO HAVE TO BE RE-ENTERED BECAUSE THEY -- WHEN
9 YOU -- WHEN I INVALIDATE THEM, IT TOOK ALL THE
10 WORK WE HAD DONE OUT OF THE COMPUTER.
11 MS. HERRON: OKAY. SO COULD YOU RUN THE
12 NEW NUMBERS THEN?
13 MS. SHALOSKY: WE CAN'T JUST RUN THEM
14 QUICKLY, THE NUMBERS HAVE TO BE RE-ENTERED --
15 OH, I CAN ADD THEM UP, YES. GOTCHA.
16 MS. HERRON: THANK YOU.
17 MR. BURNWORTH: I DON'T KNOW ABOUT THIS
18 ONE. THE LAST ONE THEY SAID THEY WERE, BUT
19 NOBODY SPOKE TO THIS ONE.
20 (PAUSE IN PROCEEDINGS.)
21 MR. HELVEY: MR. CHAIRMAN, I HAVE A
22 MOTION IN REGARDS TO PETITION ID 140706, WHICH
23 IS TO AMEND THE POWELL CHARTER, AND IT'S AN
24 INITIATIVE TO AMEND THE POWELL CHARTER. I MOVE

1 THAT WE HAVE VALIDATED 378 SIGNATURES AS
2 ELECTORS OF THE CITY OF POWELL AND THAT STAFF
3 NOTIFY THE CITY OF POWELL THAT WE HAVE VALIDATED
4 378 SIGNATURES.
5 MR. STEVENS: IS THERE A SECOND?
6 MR. MILLER: CHRIS, I'M WITH YOU.
7 MR. BETTS: IT'S NOT ON THE REPEAL.
8 MR. HELVEY: I'M ON PAGE 3, THE
9 INITIATIVE.
10 MR. BETTS: ONE OF THEM IS THE CHARTER,
11 WHICH IS THE ONE YOU DID, YOUR SECOND MOTION.
12 THE OTHER ONE'S THE REPEAL.
13 MR. HELVEY: FIRST ONE'S REPEAL.
14 MR. BETTS: CORRECT.
15 MR. HELVEY: SECOND ONE IS THE
16 INITIATIVE ON THE ZONING PLAN, AND THE THIRD ONE
17 IS AN INITIATIVE, AS WELL; IS THAT CORRECT?
18 MR. BETTS: YES, BUT IT'S AN INITIATIVE
19 WITH A REPEAL IN IT. THAT'S -- I'M READING UP
20 HERE.
21 MR. PEDALINE: TO CLARIFY, MR. HELVEY
22 AND MR. CHAIRMAN, IT'S TO REJECT THE DEVELOPMENT
23 PLAN FOR THE CENTER AT POWELL CROSSING, LLC.
24 MR. HELVEY: I WAS USING THE NOTATION

1 THAT MR. MILLER USED, THAT IT'S AN INITIATIVE --
2 I WAS USING THE SHORTHAND THAT MR. MILLER USED,
3 THAT IT'S AN INITIATIVE PETITION, AND IN PARENS,
4 TO AMEND POWELL'S CHARTER TO EFFECTIVELY REPEAL
5 ORDINANCE 2014-10.
6 IS THAT CORRECT, MR. MILLER?
7 MR. MILLER: YES. WHAT I HAVE BEFORE ME
8 FOR THE POWELL CHARTER, THOUGH, INDICATES 367
9 SIGNATURES. I THINK THAT WAS THE POINT
10 MR. BETTS WAS TRYING TO MAKE.
11 MR. BURNWORTH: OH, THAT'S THE SECOND
12 ONE.
13 MR. HELVEY: ON PAGE 3 --
14 MR. BURNWORTH: 14706.
15 MR. HELVEY: ON PAGE 3 THERE WERE TWO
16 PART PETITIONS THAT WERE NOT COUNTED. WE ARE
17 NOW ADDING IN THOSE VALID SIGNATURES BECAUSE
18 WE'RE NOT INVALIDATING THE PART PETITIONS, AND
19 THAT THE TOTAL NUMBER IS 378.
20 MR. MILLER: AGREED. UNDERSTOOD.
21 MR. HELVEY: OKAY. IS EVERYBODY CLEAR
22 ON THE MOTION?
23 MR. STEVENS: IS THERE A SECOND?
24 MR. BURNWORTH: I'LL SECOND.

1 MR. STEVENS: ANY DISCUSSION?
2 (NO RESPONSE.)
3 MR. STEVENS: ALL IN FAVOR, SAY AYE.
4 (ALL SAID AYE.)
5 MR. STEVENS: OPPOSED?
6 (NO RESPONSE.)
7 MR. STEVENS: OH, I'M SORRY, AYE. I
8 VOTED AYE. IS THERE ANY OTHER --
9 MR. HELVEY: I MOVE WE ADJOURN,
10 MR. CHAIRMAN.
11 MR. BURNWORTH: SECOND.
12 MR. STEVENS: ALL IN FAVOR, SAY AYE.
13 (ALL SAID AYE.)
14 MR. STEVENS: MEETING IS ADJOURNED.
15 THANK YOU SO MUCH, EVERYBODY, FOR COMING.
16 -=O=-
17 THEREUPON, THE PROCEEDINGS OF AUGUST
18 1, 2014, WERE CONCLUDED AT 9:52 A.M.
19 -=O=-
20
21
22
23
24

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1 CERTIFICATE
2 I, ANGELA R. STARBUCK, RPR, CRR, CCP,
3 A NOTARY PUBLIC IN AND FOR THE STATE OF OHIO, DO
4 HEREBY CERTIFY THAT I REPORTED THE FOREGOING
5 PROCEEDINGS AND THAT THE FOREGOING TRANSCRIPT OF
6 SUCH PROCEEDINGS IS A FULL, TRUE AND CORRECT
7 TRANSCRIPT OF MY STENOTYPY NOTES AS SO TAKEN.
8 I DO FURTHER CERTIFY THAT I WAS CALLED
9 THERE IN THE CAPACITY OF A COURT REPORTER AND AM
10 NOT OTHERWISE INTERESTED IN THIS PROCEEDING.
11 IN WITNESS WHEREOF, I HAVE HEREUNTO
12 SET MY HAND AND AFFIXED MY SEAL OF OFFICE AT
13 COLUMBUS, OHIO, ON THIS 7TH DAY OF AUGUST, 2014.
14
15
16
17
18
19
20 *Angela R. Starbuck*
21 ANGELA R. STARBUCK, RPR, CRR, CCP
NOTARY PUBLIC, STATE OF OHIO.
22
23 MY COMMISSION EXPIRES: DECEMBER 10, 2014
24

Exhibit 2-H

City of Powell
47 Hall Street
Powell, Ohio
43065-8357

www.cityofpowell.us
614.885.5380 tel
614.885.5339 fax

CERTIFICATION

I, Sue D. Ross, being the duly appointed City Clerk of the City of Powell, Delaware County, Ohio, do hereby certify that the attached is a true and correct copy of the minutes of Powell City Council on Tuesday, August 19, 2014, which were adopted on Tuesday, September 2, 2014.

Sue D. Ross
City Clerk

9/4/2014
Date

City of Powell, Ohio
City Council

MEETING MINUTES
AUGUST 19, 2014

A regular meeting of the Powell City Council was called to order by Mayor Jim Hrivnak on Tuesday, August 19, 2014 at 6:30 p.m. City Council members present included Jon Bennehoof, Frank Bertone, Richard Cline, Tom Counts, Mike Crites and Brian Lorenz. Also present were Steve Lutz, City Manager; David Betz, Development Director; Megan Canavan, Communications Director; Gene Hollins, Law Director; Susie Ross, City Clerk; interested parties and members of the Press.

EXECUTIVE SESSION IN ACCORDANCE WITH O.R.C. SECTION 121.22 (G) (3), PENDING LITIGATION.
MOTION: Councilman Cline moved at 6:30 p.m. to adjourn into Executive Session in accordance with O.R.C. Section 121.22 (G) (3), Potential Litigation. Councilman Crites seconded the motion.
VOTE: Y 7 N 0

MOTION: Councilman Cline moved at 7:20 p.m. to adjourn from Executive Session. Councilman Crites seconded the motion.
VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved at 7:30 p.m. to reconvene in Regular Open Session. Councilman Crites seconded the motion.
VOTE: Y 7 N 0

PLEDGE OF ALLEGIANCE

CITIZEN PARTICIPATION
Mayor Hrivnak opened the meeting to Citizen Participation for items not on the agenda. Hearing none he closed the Citizen Participation session.

APPROVAL OF MINUTES
MOTION: Councilman Cline moved to adopt the minutes of July 26, 2014 for the Council Committee of the Whole. Councilman Bennehoof seconded the motion. Mayor Hrivnak abstained from the vote. By unanimous consent, the minutes were approved by the remaining Council members.

MOTION: Councilman Cline moved to adopt the City Council minutes of August 5, 2014. Councilman Bennehoof seconded the motion. Councilmen Lorenz abstained from the vote. By unanimous consent, the minutes were approved by the remaining Council members.

CONSENT AGENDA

Item	Action Requested
• *Departmental Reports - July*	*Accept Electronic Reports*

MOTION: Councilman Lorenz moved to adopt the Consent Agenda. Councilman Bennehoof seconded the motion. By unanimous consent, the Consent agenda was adopted & the monthly reports were received.

Mayor Hrivnak asked that they receive the public comment for the next three items at one time. There was no objection. Councilman Lorenz asked if these items need to be removed from the table by a vote of Council. Gene Hollins, Law Director, said they were tabled to this date so they are on the agenda.

Mayor Hrivnak opened this item to public comment. He asked that the speakers keep their comments to the 3-5 minute limit, wait their turn to come forward to speak and be respectful of those who are speaking.

Christopher Burch, 1803 Quarry View, Columbus, Counsel for the petitioners, asked about the procedure for comments from Counsel.

Mayor Hrivnak invited both Counsels to speak during the public comment session. Mr. Hollins thanked all of those who participated at the last meeting. He said it may not have been the desire of everyone to deal with all of these items this evening but all seven Council members are now present. He said comments from the audience at the last meeting were captured in detail, made a part of the record and duly noted by Counsel. They do no not need to repeat their comments unless they want to.

Mr. Burch said he was hired by the petitioners to see this process through to Election Day on November 4th. He said he realizes he has three minutes to speak so he will be brief and plain. Council's role tonight is very limited; the Ohio Supreme Court has on multiple occasions made it clear that when a City Council is reviewing the validity and sufficiency of petitions before it, it is not a preliminary or comprehensive review. It is a review that is to be based on the form of the petitions and not based upon their substance. Mr. Burch said he is aware this has been a contentious issue on the merits and for good reason. This is an issue that affects many of the people in Powell and all of the things they have been made aware of by the residents. At the last meeting many members of the public made themselves quite plain with respect to their position on the merits. He is not here to dive into the merits because they are outside of the scope of Council's duties this evening. Mr. Burch said he will spare them the case law but if summarized in one sentence it is that the Ohio Supreme Court has said that they should "stay in their lane" and this is supposed to be about form and not about substance. They have said that this is not the appropriate forum for hearings about the substance and merits of the material inside the petitions.

Mr. Burch said the developers have raised a small number of arguments that are appropriate at this juncture. There is some sort of defect in regard to ward or precinct requirements. There are no wards in Powell so it is an argument about precincts. The rules to get something on the ballot are quite delicate and the petitioners have been exceedingly careful to meet every requirement created by the State Constitution and Powell Charter. They followed the instructions to the "t" and they invite Council to review every signature. They are aware that there may be a defect with a handful of signatures and precincts but the overwhelming number of signatures on the petitions are correct. Mr. Burch said the Powell Charter explicitly says that signatures on petitions are to be presumed valid and sufficient and should be given to the Board of Elections to be placed on the ballot forthwith. They feel Powell City Council was under that duty at the last meeting to put these on the ballot forthwith as in "immediately" but they were promised at that meeting that they would be dealt with tonight. Any of the arguments that the protestors are raising with respect to the distinction between administrative and legislative ordinances are improper for this body because they are substantive arguments based on what is contained in the subject matter of the petitions. That is not what Council is here tonight to decide. Mr. Burch said he appreciates Council's diligence on this matter and he thanked them for their time.

Councilman Cline asked Mr. Burch is it is his position that the appropriate forum for the landowner to raise those concerns is the Board of Elections in the first instance. Mr. Burch said they think there is some lack of clarity with that; the appropriate forum to raise substantive issues and the merits of this would be the exact same procedure if Council were taking a resolution or ordinance under consideration. If Council were to pass an unconstitutional ordinance it would be challenged in the Courts and that would be the appropriate forum to decide if there was a defect or constitutional infirmity with that legislation. The Courts would provide the appropriate procedure to dive into the merits. Mr. Burch said this City Council does have attorneys on it but most City Councils are not privy to that. The Courts are specifically designed for that purpose.

Joseph R. Miller, 52 E. Gay St., Columbus, on behalf of The Center at Powell Crossing LLC, said he has Exhibits 1-13 to submit to City Council and the Petitioners' Counsel in support of their protest (Exhibit 1). He asked that they consider the issues raised. Council has been attentive to the briefings they provided and they are appreciative of that. He said Council is absolutely required by Powell Charter and Ohio law to review and examine sufficiency and validity of these petitions and they are not here merely as a rubber stamp. Their "lane" is to decide whether these petitions are authorized under Ohio law to be put to the electorate. He said they are very clearly not valid. Mr. Miller noted specific case law that upheld City Council's decisions to withhold petitions from the Board of Elections that are not validly able to be put to initiative or referendum. All three of these cannot be because they deal with an administrative matter. The law is very clear in their protest and it has not been refuted by the petitioners. Ordinance 2014-10 was an administrative matter so there is no authority under the Ohio Constitution which only allows legislative acts to go to referendum or initiative and there is no authority for this to go to the ballot; City Council is the "gatekeeper" under their own Charter which was revised last year to give them this power.

Mr. Miller said the cases cited by the Petitioners do not involve a City Council under its own Charter, determining no just the sufficiency of signatures, but the validity of the measures themselves. That falls to City Council. Case law was noted where the Supreme Court found the Board of Elections disregarded the law and abused its

discretion in refusing to make that administrative/legislative distinction. Council is well familiar with the process that took place here and they approved the Development Plan based on the unanimous recommendation of Planning & Zoning and that is an administrative act; if there was any doubt, Exh.1 (affidavit of David Betz) lays out the process that took place here and he concludes in pp 9 that "because the project conformed to the property zoning in that Planned District, the application did not require any change to the property zoning and the application could be approved under the property's existing zoning as part of the zoning process. Review and approval of the application administers the zoning already in place." Nowhere in the Petitioners' brief do they refute that fact. Council member Crites observed that as shown on page 14 of the meeting minutes. As such, Council cannot allow this to go forward to the Board of Elections; it is their job to only uphold their Charter and the Ohio Constitution because these petitions are invalid for that reason.

Mr. Miller said the Charter Initiative suffers the same fate; it is a referendum on Ordinance 2014-10 disguised as an initiative. They cannot pick and choose among that Charter initiative what to submit to the Board of Elections. If there is any doubt, Article 4, Section 21 of the Charter Initiative says the Final Comprehensive Plan, legislatively adopted pursuant to Section 18 of Article 4, *shall* not be compatible with Ordinance 2014-10 and/or the final development plan for The Center for Powell Crossing LLC. It says that no party shall rely upon that ordinance so it retroactively restricts and repeals that ordinance; it is an initiative to repeal. Case law was noted where the Supreme Court affirmed a City Council's refusal to submit exactly what they have here: a final development plan approved and conforming to the district standards already in place. That Council would not submit it to the Board of Elections because it was administrative and the Supreme Court upheld that. Mr. Miller said again in 2006 the Supreme Court found that another City Council was not obligated to forward petitions to the Board of Elections where it was a referendum on an earlier decision by Council to grant a conditional use permit that was already provided for in the existing zoning. Mr. Miller said the Upper Arlington case is the most clear of them all; they would literally be disregarding applicable law and abusing the discretion the voters entrusted with them in the Charter by sending this on to the Board of Elections. In regard to the part petitions, strict compliance is the standard. The ward and precinct requirement is in the City Charter and it cannot be read out of the Charter. There are no precincts in Delaware County entitled "A" "B" or "C" as shown on part petitions. The precincts are named "Powell A" through "Powell J."

Mr. Miller presented Exhibits 6 through 9 in their protest that officially identify the precincts in this way. If they examine Exhibits 3 and 4 side-by-side, the circulators knew how to do this correctly; some did and some did not. All of those must be disqualified because strict compliance is the standard. That puts for each of these petitions, all of the signatures well below the 238 required. Mr. Miller said they chose not to use the Secretary of State's model petitions and in there they would have known that it is required both under the Charter and State Law, that for an initiative they must provide a full and correct copy of the title and text of the proposed ordinance as shown on Exhibit 11. In the referendum petition shown in Exhibit 10, they are to provide a copy of the title and text of the proposed ordinance. They did not do either of these things and all of the petitions are invalid on that basis. Beyond that, on the repeal initiative in addition to being impermissible, an initiative to repeal an administrative act is spot zoning, discriminatory, void for vagueness, impermissibly delegating their legislative authority to five Homeowner Associations and is a wholesale abdication of their legislative authority to only five of the 29 Homeowner Associations in Powell. Mr. Miller said City Council is charged with representing the entire City of Powell and that Charter Initiative cannot be passed on because it is unauthorized by Ohio law and that is the standard guiding them tonight.

Brian Ebersole, 215 Squires Court, said they are voting on the form of the petition and that is why they wanted to move forward with a decision on this two weeks ago. They are not basing this on any substance that is inside of the petition and that is important to understand since the developer's key argument is that it was an administrative decision. He said he wants to make it very clear that whether it is an administrative decision or not is a substance of the petition. If they are making a decision that way they are going the wrong way and obviously that is what not what they (the petitioners) are expecting. The ordinance itself says it is legislation right on it and they took a vote on it. It is legislation but if they are voting on substance of the petition, not the form, they are going beyond their duties. That is something that would be decided by judicial decision in a Court of Law. Mr. Ebersole said he would like to point out a timeline and establish the credibility of this developer: when they started with this and the Board of Elections to vote on the number of petitions, the developer attempted to illegally influence the Board of Elections with an entire protest stating false information as their Counsel just did, claiming there are wards in Powell. They even went as far to say that a third of the petitioners put a ward on the petitions and he does not know how that is possible because there are not wards in Powell and they did not put them on any of them. He said that is very confusing. Mr. Ebersole said the developer again filed another protest before their meeting and at the last meeting the petitioners were blamed for delaying the meeting based on the brief that they filed. They received the protest of the developers after 5 p.m. on Monday night, had their brief to counter it in Gene Hollins' in-box at 9:30 a.m. with a hard copy here by 11:30 a.m. He said

many of the members of Council pointed out that they did not see it until later in the day but it is very unfair to say that it was the petitioners who delayed the last meeting when they went above and beyond to put something in front of Council to counter the last protest. Mr. Ebersole said it seems there was a further game being played when another protest came out last Friday. The petitioners chose not to file an official brief because they thought they would be a chance here with their Counsel to make those objections. They did not want to cause further delay. They do not feel that with the few minutes their Counsel has gotten that they got that fair shake either. In regard to the administrative issue, he wants to point out that if indeed they do want to vote against their duties as an administrative issue, the Charter Amendment is very different than the initiative and referendum. That certainly has much broader scope and has nothing to do with any administrative duties. He said he would appreciate that if they are going to go beyond their duties that they consider that when they consider the three, as they are not all the same. Mr. Ebersole said that when the members of Council do speak he would appreciate it if they would explain their thinking no matter how they are going to vote. They would like to hear if they have a problem with the form and what that is or if they are going to go beyond their duties and vote based on substance. The petitioners have been through enough; they know their petition form is good. They know that if Council is going to vote on substance, they have a great case. This came back from the Board of Elections on the first, Council held a meeting and this is the second meeting so it has been 18 days. It says in the Charter that (1) they are supposed to make the decision at the first meeting; and (2) that they are supposed to decide "forthwith" which is immediately, instantly, right then. Eighteen days does not seem to be following what is going on with the petitions and what technically should have been acted upon. Mr. Ebersole asked that Council please consider these points as they are talking and he wants to hear their point of view.

Councilman Bennehoof said if anybody took his comment that he had just received the document as he walked in that evening as blaming anybody other than perhaps himself, he wants to set the record straight that there was no blame laid. He said he apologizes if anybody thought he or anyone on Council was saying that there was blame. That evening they did not have all seven members of Council present and this is a very serious matter. They felt they should have all of the members present for the decision. He said everyone is present tonight.

Mr. Ebersole said the Charter does say to act "forthwith" at the next meeting. It is unfortunate if one member would not make it but there is still the obligation to move forward "immediately/instantly."

Dave Hartline, 150 Glen Abbey Court, said he wants to bring a couple of things to attention that he heard mentioned. The main factor they have to deal with is they have never heard anyone on their side say anything bad about development as a whole. They are very open-minded about certain kinds of development. Much like when one purchases a product, they want to get what they paid for. Whether someone lives in Powell and desires a family style environment, or if a single person in the Arena District wants a more upscale lifestyle, if someone came in to change things up, they would have a right to be upset. They are simply asking to continue the community as it was when they moved in whether one, ten or twenty years ago. Mr. Hartline said they have heard arguments from a legal perspective and he knows a little bit about US History. When people feel like they are not listened to they get upset. That is the reason they have a nation and are not part of the British Empire anymore; they felt they did not have a say. The petitioners have "grassroots" appeal and do not have the highest priced law firm representing them. They are simply speaking their minds and want to do that and that is what a petition is. Mr. Hartline said if they do not have the votes, they do not have the votes. It is up to the people and that is Democracy 101; you don't have to be a political science geek or history geek to get it. If the people feel they are not being heard and they hear legal protests, people get a little suspicious. Voters seem to take it out on the only people they see fit and that is the people they elected. He asked that they use some common sense. He said they have heard about Council's "charge to the voters" and that this is "discriminatory" but discriminatory would be not letting the people have their say, whatever way that goes. Mr. Hartline said they should let the law apply, let the people vote and have their say and that is the simplest form of democracy. He said they have spent a lot of time on this and they are not here for the money. He said Council is not either and he knows the time they all spend and that is also the basic form of democracy: people who volunteer, do things, and put up with all kinds of things. He asked them to realize their charge that the voters gave them, listen to the voters and let them decide because that is the most obvious choice.

Sharon Valvona, 225 Squires Court, distributed a petition timeline (Exhibit 2). In realizing that she has a three minute time limit, a couple of folks in the back were asked to yield their three minutes to her and she expects to go over in time. She thanked those audience members who spoke at the last meeting to represent the point of view that the decision before Council is pretty straightforward. There is a lot of "stuff" in the developer's notice of protest and his lawyers said a lot more tonight. From her perspective as a non-lawyer, this is intended to scare, overwhelm, or mislead. The Powell Charter is pretty clear: the petitions are presumed valid and sufficient and the Supreme Court says for them to "stay in their lane." Ms. Valvona said from her perspective

she is really angry about the developer's false statements. As an example, they have heard about the timeline the petitioners had to prepare and they found out on Monday at the Board of Elections that there were no wards associated with the signatures but there were no wards anywhere on the petitions. They found out that the claim of the developer was that instead the precincts are wrong. Instead of preparing as she might have, she stayed up very late to look at the developer's exemplar and the precincts. Of course they were fine, correct and right. There was one out of 62 that was not. Ms. Valvona said since then she has looked at all of the other signatures and out of over 1,200 signatures there are maybe 15. This is smoke and mirrors and the idea that when people recorded their precinct they had to write "Powell" when they list their precinct is more of the same. She knows how hard the circulators tried to be accurate and what a good job they tried to do; this makes her mad.

Ms. Valvona provided details about the timeline she distributed:

- On July 9th they notified the City that they were planning to circulate the petition as they are required to do. They wanted to have the correct format and they asked the City to please review their petition for defects.
- Two days later they were told that they refused to review them. Council would want the citizens to be treated fairly and the rights of all residents to be respected. The petitioners really did due diligence to try to ask the question and they were told they would not be getting help from the City. She asked how Council feels about that; is this what they would have expected the citizens to receive.
- Only July 11th they started to circulate petitions and in less than a week over 400 people signed the petitions.

Ms. Valvona said she is outraged by the claims of the developer in terms of the circulation process. The developer started by claiming the petitions did not contain the text and title of the proposed measures. Now recently he is claiming that the circulators did not have the exhibits with them. She said she feels like this is watching a Jon Lovitz routine on Saturday Night Live. She said she is sorry if that sounds derisive but that is how it feels. She personally spoke with every circulator and made it clear how important it was that the exhibits be a part of the petitions and that they had to have them attached. The City has notarized statements from every circulator about their collection of signatures and on the front of the petition they passed it says "Any type of election falsification is a felony." On one hand they have the diligent hard work of their neighbors and their notarized documentation and on the other hand they have the developer accusing them of felony. This was documented by nothing.

Mayor Hrivnak asked Ms. Valvona to please bring her discussion to a close.

Ms. Valvona asked where she was on time. Mayor Hrivnak said she is twice as long as they allow. (Members of the audience spoke out to give their time.) Ms. Valvona said three people in the back agreed that she can use their time. Mayor Hrivnak said they will let her finish but they have set a time limit and they ask that she please try to draw her comments. Ms. Valvona said they gave the petitions to the City on August 17th and from that time until when they presented it to the Board of Elections and Council was the developer's prep time, as shown by the red line. Thanks to the Board of Elections they received some notification but they received no notification from the developer himself. On the timeline the blue dotted section arguably represents the petitioners' prep time but their time to prepare was actually on the small section shown as a solid blue line. She said she appreciates Mr. Bennehoof's comments but it was hard to hear that the reason that this important decision was being delayed was because they had not received the documentation; they know how little time they had to prepare. Related to that, it was mentioned that they heard nothing from the developer until late Friday afternoon, allowing the petitioners very little time to respond. Ms. Valvona said there is a lot more she could say but they asked her to bring it to a close. Her experience with this is that she feels outraged by this. She would want to feel that the City where she resides is on her side and that has not been the experience so far. She said she would have expected to at least receive fair treatment. She is concerned about some of the experiences the petitioners have had and she can tell them more about them. The issue here is more importantly that what the Council has before them is the rights of 400+ citizens who have taken the time to express their thoughts or feelings. Ultimately Council made a decision and the Charter says when they make a decision if enough of the citizens disagree with them there is a process to kick the decision up to the next level so it is decided by the voters. Ms. Valvona said they followed that process. The developer has generated a bunch of paper filled with misleading statements and the fact that they keep changing the form of their arguments with each new filing should let Council know how false those arguments are. She said they tried to do an end run around the Board of Elections process and frankly they treated Powell's citizens with contempt. They have wasted huge amounts of money at the taxpayer expense and are likely to waste a whole lot more. Ms. Valvona said enough is enough; they should move the petitions to the ballot.

Leslie Lopes, 207 Woodedge Circle West, said after their vote went through 4 to 3 she thought maybe it was just a small pool of them who object to this and out in the community they are hearing that people want this kind of housing. She asked herself how they can know if this is what citizens want. The notion is out there that they don't know and Council does not know until they put it to a vote. It was a close vote and there are a lot of unknowns. It is important they get this clarified because Powell is not going anywhere, the residents are not going anywhere and she hopes the Council is not going anywhere. They need to get a clear answer from the citizens. As for the developer, she can empathize that a lot is on the line for him. She said it is for them and they have smaller pools to deal with. Ms. Lopes said they are not saying not to develop in Powell, they are saying maybe develop something different. She understands his investment and that is a factor but there are lots of other things Powell can use, just not this. She said she hopes he reconsiders and the hostility she is hearing about can die down and there are other solutions out there for his sake. Ms. Lopes said she wants to know what her neighbors think and she hopes the members of Council wants to know that too.

Justin Flowers, 229 Briarbend Boulevard, said he is a ten year resident. He said he was not planning on speaking but he would like to express what a lot of people have said but in a slightly different way. He said he does not know a lot about politics and a lot of exhibits and folders have been mentioned. He said he is sure it is a lot more than Council cares to read. Mr. Flowers said as an American citizen in a representative government, he knows that when someone wants to throw a lot of bureaucratic tape out, they are probably afraid of what the citizens want. It is a lot easier to go through lawyers and talk to seven people than convince a whole community. Mr. Flowers said the lawyer said the petition only referred to a couple of neighborhoods and all of Powell needs to be aware and the only way for Powell to have their voice heard is through the vote.

Tom Happensack, 127 Kelly's Court, said he has a prepared statement to read (Exhibit 3). He said there are 170+ proposed units in the downtown right now and although they are talking about 64 tonight, the total is what they want Council to consider. It is not just about this one, it is just the one they have to deal with today. He said they are not against Council but have heard the voices of the people and they want them to be heard.

Sarah Ebersole, 215 Squires Court, said they know that the form of the petitions is good. If Council votes against them they are going to either be voting on incorrect information on the form or they are going beyond their duty and they will be voting on substance. If this is voted down the petitioners will be forced to sue and this will end up costing the City a lot of money. They will have to pay the City Law Director's fees and will end up paying their attorney fees because they have a good case for it. Ms. Ebersole said she believes the cost is around $10k to hold a Special Election. If this delay goes too long that is when it would end up going to a Special Election. No one in this room wants to use their tax monies to do any of that and City Council needs to protect the citizens' fundamental right to ballot access.

Jennifer Sweet, 235 O'Quinn Court, said it is unfortunate they are here at this time. The members of Council are their elected officials and she voted for some of them; they are here to represent them as a City and a community and they are not. Every meeting she has been to there has been large opposition and it is growing and growing as more time goes on and word is spread. They had 30 days to do the petitions but really only had two weeks to collect 400 signatures. They got people to sign it because so many people are against this. Ms. Sweet said the only people she has ever heard in favor of it are the developer and the four Council members that voted for it. She said she does not understand why, when the residents are here every meeting telling them they do not want this. She asked that they please think about that. She said they should think about all of the concerns they have raised about the schools, traffic and not wanting this kind of building here. Ms. Sweet said they will want something else and are not shutting out all builders; they just don't want this. She said they do not want the 200 extra units on the small plot of land they are planning on. It is too much and the traffic is already bad. The Council represents them and the people are telling them they don't want this. Ms. Sweet asked that they please represent them and support what they want.

Denise Wible, 226 Beech Trail Court, said she was one of the circulators of the petitions, not because she buys into every word of the petitions but she does buy into the idea that people should have the right to speak out. She said most of the people who live in the Powell community don't know what is going on in this room because they are all busy running their kids, trying to keep their businesses afloat, and trying to take care of their children, their parents and their lives. The members of Council give a lot of time here and there is absolutely no reason why their elected officials should be shutting them down when people have spoken and said they don't like this. They have come to meetings and said they don't want this. They have told them in letters and she has seen communications that have come through her neighborhood and honestly she feels ignored. She said she got roughly 100 signatures on each of the three petitions and in the process of doing that in four days she only had two people out of 102 tell her they did not want to sign her petition. Ms. Wible said that is two percent and

if that two percent of the people were standing here saying do what they want and not what the people want, and they represented more than two percent she would be shocked. She believes the people of the City of Powell would tell them what they think if they had the opportunity. She has not had a chance to talk to every single one of them but it is a rare occasion when she actually finds someone who says they would love to see apartments there, it would add to the downtown traffic situation and make this a lovely community. Ms. Wible said maybe twenty years ago that development would have been perfect but it is not perfect now and they have all communicated their concerns about the railroad crossing. With this it will be a problem with people turning into this site after work to get home or to go to any stores that end up there. Ms. Wible said a lot of problems are going to come out of this and the fact that they are concerned about one property owner's right and one developer's effort and investment in this proposal shows they are forgetting that there are thousands of people that live in the City and have invested in their homes, volunteered in the community and schools and have invested in the other things that make their city the beautiful place Council keeps raving about. Ms. Wible said this will not be a beautiful, wonderful place if they turn their eyes away from all of the negatives that will come from something stupid in the wrong place. She said they are giving the City Council the opportunity to let the voters tell them what they think because they are not all given the opportunity to get up here and talk and they are not all free to come here night after night to sit and listen to the same communication which is "Please listen to us." She said they are concerned, not because they don't want to see development but because they want to see smart development. They want to see Council give all of the property owners the chance to vote. Ms. Wible said she does not see why they would say "no" to that. It doesn't seem logical to her.

Lannie Gilliam III, 300 Ridge Side Drive, said he does not want apartments built in Powell. He said he is a hypocrite for saying that because he owns rental property. He has lived in Section 8 housing and rental property can be tough. It takes one drug dealer or one "gang banger" to flip that place upside down. He loves Powell and wants to stay in Ohio; he is originally from Tennessee. Mr. Gilliam said he has a fear that Powell could turn into Ferguson, Missouri. He asked that they please think about that.

Emilie Duncan, 301 Weatherburn Court, said she is a new face that they have not seen before. They just moved here in October. They moved from Worthington, in an area that has a lot of apartments and they specifically moved to Powell because they wanted to get away from the influence it was having on their neighborhood. She said in talking with the new owners of their old house, they have had problems with those apartments, much more than they had when they lived there less than a year ago. Ms. Duncan said it is wonderful that the developer wants to develop apartments and that is fine and they are going to be nice apartments. Ms. Duncan said that may be for now but she can tell them that the apartments they moved away from in Worthington were nice at one time too. They are not nice now. The developers have a habit of coming in, developing great places, and then they walk away from them or sell them. She said then they go downhill. Ms. Duncan said Worthington is a great area but where she came from it is not. She said she strongly opposes the apartments in this area simply because they have too much traffic. She has two little girls and over 18k students are already in the Olentangy Schools. She said they are saying it will be cars or kids but they can't have both; she disagrees because they are going to have both. Ms. Duncan asked City Council that if they truly believe in their hearts these apartments are in the best interest and they are representing the people of Powell, let the people vote on it. She said that is all they are asking; give the citizens a voice they have not gotten so far.

Hearing no further public comment, Mayor Hrivnak closed the public comment session.

TABLED FROM AUGUST 5, 2014: RESOLUTION 2014-16: A RESOLUTION DETERMINING SUFFICIENCY AND VALIDITY OF A REFERENDUM PETITION TO SUBJECT ORDINANCE 2014-10 TO REFERENDUM.

Steve Lutz, City Manager, deferred this matter to the Law Director. Mr. Hollins said this first resolution relates to the referendum petition. He thanked the citizens who participated this evening. This is an open democracy. He said they will be hearing a great deal about this evening: the legislative authority of the City really begins with the citizens and the citizens can choose sometimes to take that legislative authority back. That is why they have referendum and initiative type of petition procedures. The Courts have set forth for Council the right forms, procedures and those types of things and the Courts have determined that some types of things are not referendable. Mr. Hollins said that may be more for the Courts to decide than this Council but the Council operates within a set of rules that were set forth for them by the Courts when it comes to ceding that legislative authority back to the people. The precise issue before Council tonight on the referenda petition is the sufficiency and validity of the petition first and foremost; the Council will vote on that by resolution. At that point the City Charter says there could be a second vote. With respect to a referendum petition the opportunity is presented by the Charter for Council to just repeal the ordinance which is the relief sought by the referendum. Council may or not take that opportunity if it finds the petitions to be valid and sufficient. If it does anything other than repeal it, it is going forward to the Board of Elections. Mr. Hollins said that is what the petitioners and

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signers of the petitions are seeking that through their process this evening. The Board of Elections has taken a vote on the number of signatures and they said the City may have Charter provisions that also impact the number of signatures and they would not apply their normal rules on some of those issues because they do not know if that is how the City would interpret their Charter. They didn't invalidate part petitions when the circulator said the number of signers was less than the actual number of signers; they turned that issue over to the City.

Mr. Hollins said it is important to know that Staff has reviewed these signatures and petitions and have used the guidance promulgated by the Ohio Secretary of State's Directive 2010-01 which is how they have sent instructions down to the County Board of Elections about State referendum petitions. He said they reviewed the signatures using both that directive and any further requirements set forth in the City Charter that were not set forth in that directive, specifically the precinct/ward issue. They did invalidate on one basis and the Board of Elections did not. There were several petitions where the number of signatures that were certified by the circulator was crossed out and another number was put in; it was in different ink and Staff did not feel comfortable that the circulator had been given an opportunity to attest to that number of signatures before the notary. The notary signature was in the same blue ink as the circulator's signature so that was one basis. Mr. Hollins said this was put on record so the Board of Elections knows what process the City used under its Charter. With respect to the referendum petition, Staff has determined there were 321 valid signatures and the number required is 238. Beyond just the validity of the signatures he appreciates the extreme high quality of the Legal Counsel on both sides of this; the briefs submitted have kept him on his toes. Staff thinks the weight of authority on petitions related to ordinances is pretty clear and sets forth that this Council has limited discretionary authority and is not the appropriate forum for anything other than what would appears on the face of the petitions. Further, the Courts, when applying that type of standard, has said the legislative/administrative termination is not apparent on its face and that will take some further factual development and perhaps even fact-finding by a quasi-judicial body. Mr. Hollins said case law indicates this is not the appropriate forum for that determination of the legislative/administrative distinction. Counsel for both parties are very well versed in the future proceedings where those arguments can be made to that forum and they can get a determination and vindicate their rights.

Councilman Cline said he echoes what Mr. Hollins said about the briefings received from both the petitioners' and applicant's lawyers. He said he knows many of them were frustrated two weeks ago when he said he would like some time to digest the filing but found it was very well written and very helpful. He said it has now, in some respects, been confirmed by the Law Director as to his opinion about the role of City Council tonight. He said they may have been dismayed at a two-week delay but that delay was not a waste; it was helpful in the information it provided. In light of role that has been described for Council and the findings by Staff that there were more than 238 valid signatures and the limited nature of review that Council has regarding the validity of the petitions, he is prepared to vote in favor of Resolution 2014-16 to pass this on to the voters at the general election.

Councilman Crites agreed that after reading the briefs of both the petitioners and the applicant, and more importantly listening to the comments from the citizens over the last couple of months, Council is charged to look at the face of the document and determine the validity and sufficiency of the petition. He has done that and based on that review the petitions are valid and sufficient and he intends to vote in support of the resolution to pass this along to the ballot.

Councilman Lorenz said he agrees with Councilmen Cline and Crites. Regardless of how they feel about the proposed development that is not the decision at hand; what is at hand is the validity of the signatures. This has been a far different process than Council is used to. He said he goes to public hearings for a living and represents clients and he understands how tough it is to sit there and how difficult it is to arrange for babysitters, etc. He said he is appreciative of them coming and participating, whether they agree with what Council has to say or not. Councilman Lorenz said this type of participation invigorates the community and this is how the process should be. He asked that they be patient and they hope that no one here is talking "down" because they hear the residents and understand. He said he intends to vote in favor of Resolution 2014-16.

Councilman Bennehoof said he has been on Council 2½ years and this is the single most time investment he has spent on an issue. He said he appreciates everyone's patience with that deliberation and their delay to get to this point. He also will vote to pass this on to the ballot. Councilman Bennehoof said this is a complex matter and he won't go into a lesson on the rights of voters, citizens, landowners or developers. A lot of education needs to go on in those areas but this has been a good lesson in civics.

Councilman Bertone said he agrees that there were well thought out, articulated points of view from the Counsel for the petitioners as well as the landowner. He said he also has spent a lot of time trying to get an

understanding of the materials and this is a complicated matter. He applauds everyone for staying engaged and seeing this through. He said he is going to vote in favor of this resolution.

Councilman Counts said if this country was a pure democracy it would be easy; they would not be here because the residents would be making every one of the decisions. He said this is not a pure democracy and they have learned through the American government that they have rules and laws that guide them in how they do things. More importantly they have a Constitution that says in many instances that sometimes those individual rights, whatever they may be, trump what the people may want. He said they have learned in this whole process that sometimes it is good to listen to what the law and Constitution says because if he was to vote what his heart says, he might vote one way. Through all of the briefings and discussion he has learned and buys into the fact that they have certain rules by which this Council needs to make a decision. Councilman Counts said he is glad they have those rules and he wants to see them apply. He said based on what is before them, he must vote in favor of this resolution.

Mayor Hrivnak thanked those who came forward to speak this evening. He said he has read all of the briefs and he appreciates that his fellow Councilmembers thought enough to weigh all of that information. The petitioner this evening described how he seemed to be rushed and had very little time to prepare but yet the work prepared was read and understood by Council. Mayor Hrivnak said that is what the petitioner wanted. He said the members of Council also understand the feelings of the people present. Mr. Hollins has described well the task before Council with regard to Resolution 2014-16 and that is to determine if the petitions are sufficient and valid. Mayor Hrivnak said he finds they are and it is time to pass it on to the people through the election process and see where the majority is pointing for Council to go. He will vote for this resolution.

MOTION: Councilman Cline moved to adopt Resolution 2014-16. Councilman Counts seconded the motion.

Councilman Bennehoof requested a roll call vote on this resolution.
VOTE: Y__7__ N__0__

Mr. Hollins said this will be forwarded to the Board of Elections tomorrow morning.

TABLED FROM AUGUST 5, 2014: RESOLUTION 2014-17: A RESOLUTION DETERMINING SUFFICIENCY AND VALIDITY OF AN INITIATIVE PETITION TO PROPOSE AN ORDINANCE TO REPEAL ORDINANCE 2014-10.
Mr. Hollins said Staff used the same criteria they used with respect to other petition and determined there were 322 valid signatures on the initiative petition to repeal Ordinance 2014-10. The number of valid signatures required is 238. The appropriate motion to determine sufficiency and validity would be a motion to adopt the resolution. If adopted, the resolution will be forwarded to Board of Elections to be placed on the ballot.

Councilman Crites said asked if they have discretion limited to the face of the petition. Mr. Hollins said that is correct; they are limited from looking at anything beyond that, including the legislative versus administrative issue.

Councilman Bennehoof asked about the form of the ballot language and how that is derived. He finds confusion between these two initiatives and he is afraid the general public will possibly find them confusing, especially if the wording is not succinct and clear. Mr. Hollins said they received the indication from the Board of Elections that they will have some limited input on the actual ballot language, which is typical when they send any type of issue forward for the ballot. To some degree it will be governed by what the petitions say as they were drafted and submitted to the City. Staff will try to take his concern into account and try to make them as clear as possible so the voters will understand exactly what they are voting on. Mr. Hollins said ultimately the Board of Elections is the director of that language.

Councilman Crites said for the same reasons that he set forth in the record with respect to Resolution 2014-16, he finds this resolution to be sufficient and valid and he intends to vote to send it to the Board of Elections.

Councilman Cline said he shares Councilman Bennehoof's concern that the voters might be confused by parallel proposals but that is not a decision Council gets to make. That is a decision the voters get to make assuming this resolution is adopted. He said under the guidance they have been given about their task tonight, Resolution 2014-17 should be passed on to the voters.

Mayor Hrivnak stated for the record that the Clerk has passed out a revised copy of this resolution that corrects a typographical error.

Councilman Counts said his decision is the same on this resolution.

MOTION: Councilman Counts moved to adopt Resolution 2014-17. Councilman Crites seconded the motion.

Mayor Hrivnak asked for a roll call vote on the motion.
VOTE: Y 7 N 0

Mr. Hollins said this will be delivered to the Board of Election tomorrow morning.

SECOND READING: ORDINANCE 2014-41: AN ORDINANCE TO SUBMIT A PROPOSED CHARTER AMENDMENT, ENTITLED "AN AMENDMENT TO THE CITY CHARTER OF POWELL, OHIO TO SUBSTITUTE THE COMPREHENSIVE PLAN OF THE VILLAGE OF POWELL OF DECEMBER 1995 WITH A NEW COMPREHENSIVE PLAN FOR ZONING AND DEVELOPMENT IN THE CITY OF POWELL, OHIO" TO THE ELECTORS OF THE CITY OF POWELL.
Mr. Hollins said with respect to this ordinance for a Charter Amendment, going back to the same guidance from the Secretary of State office and any further requirements set forth in the Powell Charter, Staff reviewed the signatures on these petitions and their form as well. They determined that the petitions contain 254 valid signatures and the number required to send it to the ballot is 238. Even though this is a Charter Amendment petition and therefore involves a section of the Ohio Constitution, not just the Charter, Council's role is still limited. Mr. Hollins said they are vested with some level of discretion with respect to this and again it comes back to things that are evident on the face of the petition. He said this is a very detailed Charter Amendment and Staff looked at all aspects of the proposed amendment to see if there was anything on its face was unlawful or unconstitutional. Most aspects of the initiative Charter Amendment were things they have seen before on other amendments and those do pass Constitutional muster. Mr. Hollins said there is one aspect of this petition that he would like to explain to Council. If he goes back to a statement made earlier, the original legislative authority in a City and in the Federal system is vested originally with the people through the form of government and elections are vested in City Council. In a referendum the entire voting public takes that legislative authority back and chooses to exercise that authority through the ballot box.

Mr. Hollins said that is a core principal of our democracy and there is nothing wrong with that but the US Supreme Court has made it clear that if it is not a taking back of legislative authority to the whole of the people but an attempted delegation of that legislative authority from Council down to a very small private component of the community, whether private or individuals, it would not be the same as a referendum. They have reviewed the petition in detail and the legal arguments and the legal advice they would give to Council is that delegating the legislative authority to draft a Comprehensive Plan to five individuals in the community would not withstand a due process challenge and is therefore not lawful. Mr. Hollins said this was determined while only looking at the face of the petition, staying within the same bounds given to them by the Courts. He said if anyone in attendance is interested, the specific case they are looking at is the City of Eastlake US Supreme Court case dealing with a Charter Amendment that takes a zoning power and gives it to a small group of individuals. He said it was decided in 1976 but it is strikingly similar to this petition. There is a Court procedure to challenge any interpretation at this level so if the petitioners do not agree with the Law Director's office's opinion there is a Court procedure to sort that out.

Mayor Hrivnak said the former two petitions came in the form of resolutions. He asked why this one came to Council drafted as an ordinance. Mr. Hollins said they are required by the Ohio Constitution that when they receive a Charter Amendment petition, to put it in the form of an ordinance to vote to find it sufficient and valid and pass it on to the ballot.

Councilman Counts asked if it is correct that any unconstitutional provision within this proposed ordinance would be grounds for Council to look at. Mr. Hollins said they believe the Supreme Court indicated that is part of what Council is charged with this evening in their role of reviewing a Charter Amendment petition.

Councilman Bennehoof asked if Council is "staying in their lane." Mr. Hollins said that is correct. Councilman Bennehoof said at the last Council Goal Setting session they agreed to have a Comprehensive Plan review and it is well on its way. The review is being led by Councilman Crites with a large representation of the community. Councilman Bennehoof said last year Council recognized that it needs to be updated and they are doing the appropriate thing as they did with the Charter Amendments in the prior year.

Councilman Cline said he views this ordinance differently than he viewed the two resolutions for the reasons stated by the Law Director. It is apparent to him that on the face of this ordinance that it is an attempt to delegate the zoning authority of the City of Powell to 5 residents who apparently would represent 5 homeowner's associations out of 29 homeowner's associations and the areas where residents live that are not

part of a homeowner's association in the City of Powell. Councilman Cline said he may move to have a vote on this ordinance so they can make a decision and the residents are entitled to that vote, but he does not plan to support the passage of Ordinance 2014-41.

Councilman Crites asked if he is understanding correctly that the Law Director is saying that in his legal opinion, upon review of the face of the Charter provision, he finds it to constitute an unlawful delegation of legislative authority to a private group of 5 people and because he has been able to ascertain that from the face of the document, that can be a basis for rejection of this ordinance. Mr. Hollins said that is correct and the only thing he would add is that is based on existing US Supreme Court cases. Councilman Crites asked if Council will "remain in their lane" even though the standards are a little different for review of a Charter Amendment than that of initiative or referendum of an ordinance. Mr. Hollins said that is correct. Councilman Crites said based on that information he is inclined to oppose sending this ordinance to the ballot.

Councilman Counts said he wants to be on record that this is absolutely bad law. It puts in the hands of a certain segment of the community the plan for this community over at least the next ten years. It cuts out three-quarters of their community and to him that is absolutely the wrong thing to be doing, especially by a group of people who talk about inclusion and being involved. The City has a process to update the Comprehensive Plan and that process started at the City Council Goal Setting Session in February. Councilman Counts said they have started the process, and they have a broad group of people involved. He suggested to Council that after this vote, depending on how the vote goes, they should formally express what has been done already in the process. Councilman Counts said bad law is not what they are talking about here because that is not within the scope of their decision-making. This is unconstitutional, not only for the reasons expressed by the Law Director; it is also spot zoning which is unconstitutional and that is not something they can allow to happen. He stated he is not in favor of this ordinance.

Councilman Lorenz said he is a representative of all of the residents but he will not be supporting this ordinance tonight based on the face of the ordinance. He said it is not representative of their community and it sets apart a segment of the community. He lives in Golf Village and he represents the people in Falcon Ridge the same as he would his neighbors in Golf Village. Councilman Lorenz said the update of the plan is already in process. He said he gets why this has come forward to draw attention and get more people involved but he cannot support that it does not allow him to represent the community as a whole and that is how Council is put into place. Councilman Lorenz said he will not be voting in favor of this ordinance.

Councilman Bertone said he agrees with the comments already expressed by many of the members of Council this evening. He said this ordinance allows for a small representation by a small group of the community and is not a broad-based approach. He said there is an effort to amend the Comprehensive Plan by a group that has been working together since earlier in the year. That group is making significant progress and due to the content on the face of this he cannot support it.

Councilman Bennehoof said he is sure Councilman Crites would welcome additional attendants at the Comprehensive Plan meetings and they are public meetings. Councilman Crites said he would and the next meeting is Tuesday, August 26th at 6:30 in the Council Chambers.

Mayor Hrivnak said he agrees that they should not delegate their authority to a small group of individuals. In doing that it would be unlawful and unconstitutional, therefore he cannot support passage of this ordinance and that is how he will be voting this evening.

Councilman Cline said it is his understanding of the rules of Parliamentary Procedure that all motions are to be in the affirmative. With that understanding and having already expressed his dissatisfaction with the ordinance, he posed the following motion:

MOTION: Councilman Cline moved to adopt Ordinance 2014-41. Councilman Counts seconded the motion.
VOTE: Y 0 N 7

TABLED FROM AUGUST 5, 2014: SECOND READING: ORDINANCE 2014-35: AN ORDINANCE TO VACATE A PORTION OF A STORM SEWER DRAINAGE EASEMENT, LOCATED ON REAL PROPERTY OF RECORD IN PLAT BOOK 2, PAGE 648, IN THE RECORDER'S OFFICE, DELAWARE COUNTY, BEING LOT 2571 MURPHY'S PARK SECTION 3, AND DECLARING AN EMERGENCY.

Steve Lutz, City Manager, said this item was brought to their attention due to the potential sale of property and apparently that sale is no longer being pursued. He said the appropriate motion from Council would be a motion to withdraw this ordinance from the agenda.

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

Councilman Bennehoof said he assumes that if someone were to revisit that sale, this item would come back to Council. Mr. Lutz said that is correct. Mr. Hollins said Staff was informed by the County Engineer that he wants Council to attach a "meets and bounds" legal description and a surveyor has to accomplish that. He said if there is another sale pending the owner knows now to get that description ahead of time and then request that the storm sewer drainage easement be vacated.

MOTION: Councilman Cline moved to withdraw 2014-35 from the agenda. Councilman Counts seconded the motion.
VOTE: Y 7 N 0

Ordinance 2014-35 was withdrawn from the agenda.

FIRST READING: ORDINANCE 2014-44: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2014.
Mr. Lutz said they have a $200k proposed expenditure for the updating of the Comprehensive Plan and this ordinance would appropriate a portion of that total in the amount of $164,300.00 from the unappropriated fund balance. There is a group that meets on the fourth Tuesday of each month in public session to work on the update. As part of that Comprehensive Plan they will be utilizing various experts and consultants, a land use planner, a traffic engineer and an individual to help with financial analysis. Mr. Lutz said this ordinance, along with the next ordinance will appropriate the total funds necessary to contract with those consultants as they update the Comprehensive Plan.

Councilman Crites said they did a series of interviews and discussions and this is as close to an accurate number as they can determine at this point in time. The Comprehensive Plan Executive Committee endorses this expenditure and recommends that Council pass this funding. Councilman Cline said the Finance Committee looked at this ordinance and the one that follows and they reflect the recommendations of the Finance Director with the approval of the Finance Committee on how to allocate the funds to get to the total amount. Councilman Cline said the Committee recommends approval of both of the ordinances.

Councilman Bennehoof asked if there is a sense of urgency to suspend the rules on this ordinance. Councilman Crites said time is of the essence. Initially they estimated an 18 month time frame and they are trying to stay on track and stick with their timeline. He asked that they waive the second reading.

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

MOTION: Councilman Bennehoof moved to suspend the rules in regard to Ordinance 2014-44. Councilman Crites seconded the motion.
VOTE: Y 7 N 0

MOTION: Councilman Lorenz moved to adopt Ordinance 2014-44. Councilman Bennehoof seconded the motion.
VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2014-45: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2014.
Mr. Lutz said this was reviewed with the last ordinance and as Councilman Cline commented, the Finance Committee reviewed this matter and recommended splitting up the $200k with the remainder of $35,700.00 coming from the City Council Contingency account.

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

MOTION: Councilman Bennehoof moved to suspend the rules in regard to Ordinance 2014-45. Councilman Crites seconded the motion.
VOTE: Y 7 N 0

MOTION: Councilman Bennehoof moved to adopt Ordinance 2014-45. Councilman Crites seconded the motion.
VOTE: Y 7 N 0

FIRST READING: ORDINANCE 2014-46: AN ORDINANCE APPROVING A FINAL DEVELOPMENT PLAN FOR GANZHORN REAL ESTATE OF POWELL, LLC FOR A 64 SUITE ALZHEIMER'S/DEMENTIA CARE FACILITY ON PROPERTY BEING ANNEXED INTO THE CITY OF POWELL, BEING ON 5.147 ACRES ON THE WEST SIDE OF SAWMILL PARKWAY AT PRESIDENTIAL PARKWAY, AND TO CHANGE THE ZONING MAP TO REFLECT THIS PROPERTY TO BE PC, PLANNED COMMERCIAL DISTRICT.

Mr. Lutz said Staff recommends that Council take this ordinance to a second reading. The advertised public hearing for this ordinance is scheduled for September 2nd. This proposed memory care unit is on property which is proposed to be annexed into the City.

David Betz, Development Director, reviewed the proposal within the ordinance (Exhibit B). He said the property is on the west side of Sawmill Parkway across from Presidential Parkway. This property was once approved for an office condo development that is similar to the one to the one north of this. The property ownership has changed over time due to financial issues with the previous developers and now they have a proposal from Ganzhorn Real Estate to build a memory care facility. The property is currently zoned Planned Commercial District in Liberty Township and as it comes into Powell it will remain in a Planned Commercial district within Powell. Mr. Betz said the site plan shows a building that has four home suites with parking along the front and back with access off of a common access driveway for the adjacent office condominiums. The applicant is working with that condominium association for access and stormwater going into a stormwater system already sized for this property. The elevation drawings show a one-story structure in brick and stone with copper trim above windows. The building has 64 units within it. Mr. Betz said the building is very well designed and in keeping with the residential single-family and two-family condos to the west of the site. He said the Planning & Zoning Commission reviewed this and found that this is a very important use to have in a community to help with aging in place as well as those in the community who have loved ones who need this type of facility that provides eldercare, and care for people with Alzheimer's and other cognitive problems.

Tom Hart, attorney for the applicant, introduced himself and Mr. Akbar and said they will save their full presentation until the public hearing at the second reading. He said they are available tonight to answer questions.

Barmi Akbar, CFO, Ganzhorn, reviewed the presentation provided to the Planning & Zoning Commission (Exhibit C). This is classified as assisted living and they are dedicating this product to memory care; they specialize in mid- to late-stage Alzheimer's and other forms of dementia. The national statistics about the disease show that the demand for Alzheimer's care is not being met and more people are being afflicted than they have areas to care for them properly. Their main offices are in Liberty Township and their owner and CEO, Eleanor Alvarez, is a central Ohio resident and has been in the health care industry for forty years. Mr. Akbar said this brings state-of-the-art health care to this area that includes best practices along with their own experience as operators. He said he has been in the industry 15 years and they are bringing some of the best components of memory care together for the Ganzhorn Suites. They are working with physicians and care-givers in the community to put together the "best of class" product. Mr. Akbar said their product is differentiated because of its private suites in a household model. Each of the four areas of the facility is a household that has its own living room and kitchen. Each individual resident will have their own suite with a full bath and amenities. They will use state of the art technology to provide the best care and security, which is very important. High staffing levels will allow them to be able to care for people through the end of their lives because as people progress through the disease, their need for care increases. Mr. Akbar said one of the values for Powell and the northern Columbus area is that it means they do not go somewhere else once they are afflicted with this disease.

Councilman Cline asked how many full time equivalent employees they anticipate would be working at this facility and their salary range. Mr. Akbar said they typically have three shifts with 16 employees on the first and second shifts and eight employees on the third shift. There are about ten administrative individuals who typically work an 8-5 shift. They will employee approximately 50-60 individuals and the average wage is around $16/hour. That average is based on the wages of the individuals in the administrative area, the nursing staff and a large number of their caregivers are State-certified nursing aides.

Mr. Akbar said this is a private pay only facility and they will not be taking government subsidized dollars. Their facility and care are focused on the households. The courtyards are a major amenity because they are an outdoor space and in Ohio it is important to maximize the outdoor space. It is about mobility and freedom and the courtyards with wonderful tranquility gardens are a signature item. They met with the Wedgewood residents that align this property and surrounding business owners to hear their concerns. Having worked with many municipalities around the country, he wants City Council to know that the Architectural Advisor and the Planning & Zoning Commission are very detail-oriented and their comments were incorporated into the Final Development Plan. Mr. Akbar said they felt like they had a very good product but now that also incorporates

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the community's input as well. Market studies show there are not a lot of available beds in Columbus that provide memory care to assisted living residents; they feel they will be a successful part of the community and the market is very supportive. He provided further background information about Ms. Alvarez and her company, LeaderStat, a national health care company that specializes in interim management for senior care services across the country. He said Ganzhorn is a business but they are also very dependent upon the community because they are providing care for people's loved ones. They are developers and operators.

Mayor Hrivnak thanked Mr. Akbar for his presentation and for taking such a pro-active approach with the neighbors.

Councilman Cline said on page 15 of the materials there is a summary of the four divergences requested:

- Two percent building area divergence
- Zero setback on the side (a five foot difference)
- Zero setback for parking
- Eight foot high fence to be allowed for privacy and security purposes as opposed to a standard six foot fence

Mr. Betz said those are the only variances. Councilman Cline said he is asking because he doubts he will be present in September; he is impressed with this presentation and the divergences/variances are minor and they enhance the overall proposal. Councilman Cline said if he were able to be here he would be inclined to vote for this.

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

Councilman Bennehoof asked if this proposal is for 64 units with each housing one person. Mr. Akbar said there are 64 suites and four households. Their license will say that one unit can hold two individuals. Councilman Bennehoof asked if a wife would be able to accompany her husband who would be a resident. Mr. Akbar said unfortunately the reality is that they typically do not use dual occupancy because if a wife is not afflicted with the disease in the mid- to late stage as her husband is, they would not need the specialized care Ganzhorn provides. When one has to make the difficult choice to put their spouse in a setting like this it is a point where it has become difficult and caused some complexities in the relationship. They do have dual occupancy for sisters and brothers who have the disease or in those situations where both the husband and wife have it or one is admitted and the spouse eventually needs the services. Some assisted living communities have the opportunity where spouses of different ailments/acuity can live together but this is not one of those settings.

There were no further questions or comments from Council. Ordinance 2014-46 was taken to a second reading.

FIRST READING: ORDINANCE 2014-47: AN ORDINANCE ACCEPTING THE ANNEXATION OF A 5.147-ACRE TRACT, MORE OR LESS, TO THE CITY OF POWELL.

Mr. Lutz said this is a companion legislation to the proposed Ganzhorn development in the prior ordinance. This ordinance accepts the property into the City of Powell; a few months ago Council passed the Resolution of Services stating that if they annexed the property, the City would provide services.

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

Councilman Bennehoof said he supports this development and thinks it is a good use of the space and a needed service in the community. He wants to make sure they are sensitive to the density question. He said he has no problem but would like Staff to prepare information on density for the next meeting.

Ordinance 2014-47 was taken to a second reading.

FIRST READING: ORDINANCE 2014-48: AN ORDINANCE MODIFYING APPROPRIATIONS FOR THE CALENDAR YEAR 2014.

Mr. Lutz said this appropriation of $5,000 would be utilized for the City to develop the community garden in Arbor Ridge Park. They have received donations from Ohio Mulch for dirt and $5,000.00 from the Powell Kiwanis Club from a grant they received to help the City fund this project. Staff will need this appropriation to supplement those donations and funding and they recommend it is taken from the Parks and Rec Development Fund. The plan is to have the community garden constructed this fall so they are ready for the spring planting season next year.

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

MOTION: Councilman Cline moved to suspend the rules in regard to Ordinance 2014-48. Councilman Counts seconded the motion.
VOTE: Y 6 N 0 Abstain: Bennehoof

MOTION: Councilman Cline moved to adopt Ordinance 2014-48. Councilman Counts seconded the motion.
VOTE: Y 7 N 0

COMMITTEE REPORTS
Development Committee: Councilman Lorenz said at their next meeting they will discuss parking agreements and a potential moratorium on multi-family development. He sees that discussion take place in phases to determine if a moratorium is appropriate for Council to enact and if so, what would be the timing and stage when it could be enacted. *Next Meeting: Tuesday, September 2nd, 6:30 p.m.*
Finance Committee: Councilman Cline said they met and the fruits of their labor were seen in several ordinances presented this evening. *Next Meeting: Tuesday, September 9th, 7:00 p.m.*
Operations Committee: No report. *Next Meeting: Thursday, August 28th, 7:00 p.m.*
ONE Community: Councilman Bennehoof said he will meet with John Bernans before the next meeting. *Next Meeting: Monday, September 8th, 7:00 p.m.*
Planning & Zoning Commission: Mr. Betz said they will meet next week if the pending plan is submitted tomorrow. *Next Meeting: Wednesday, August 27th, 7:00 p.m.*
Comprehensive Plan Committee: Councilman Crites said they will meet the fourth Tuesday of each month. Councilman Counts said it is appropriate that Council do something by ordinance to recognize what the Committee is doing. He asked Staff to work on this for the next Council meeting. *Next Meeting: Tuesday, August 26th, 6:30 p.m.*
Powell Community Improvement Corporation: Mayor Hrivnak said the group met this evening and have a draft retention and cooperation agreement with a corporation in town. It will be discussed further and signed at the next meeting. Councilman Cline asked about the status of the tenant in the 44 Center. Mayor Hrivnak said it is a real estate company that is still looking for property but is content to stay there for the moment. At the next meeting they will restructure their agreements for the 44 and try to move temporarily away from the Incubator and have more of a commercial rent established. He said they will renegotiate their agreement with the HDPI regarding their role as manager. Councilman Bennehoof said he has become familiar with a local businessman who is using TechColumbus but they are in this area and the PCIC may want to encourage local business people to relocate to Powell. Mr. Betz said he will speak with them. *Next Meeting: September 18th, 6:00 p.m.*

CITY MANAGER'S REPORT
Mr. Lutz said there was none.

OTHER COUNCIL MATTERS
Councilman Crites thanked Council for allowing him to serve as their representative to the Olentangy Heroin/Opiate Task Force. He said their next meeting will be September 15th.

ADJOURNMENT
MOTION: Councilman Bennehoof moved at 9:56 p.m. to adjourn the meeting. Councilman Cline seconded the motion.
VOTE: Y 7 N 0

MINUTES APPROVED:

Jim Hrivnak Date
Mayor

Sue D. Ross
City Clerk

CITY OF POWELL
DELAWARE COUNTY, OHIO

EXHIBIT THREE OF RESPONDENT AND INTERVENING RESPONDENT
AFFIDAVIT OF JACKIE OLEXA WHITE

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.	:	
BRIAN EBERSOLE, et al.	:	**CASE NO: 2014-1520**
	:	
Realtors,	:	
	:	**ORIGINAL ACTION**
vs.	:	**IN MANDAMUS**
	:	
DELAWARE COUNTY BOARD	:	
OF ELECTIONS,	:	**EXPEDITED ELECTIONS**
	:	**MATTER PURSUANT TO**
Respondent.	:	**S. CT. R. PRAC. 12.08**

AFFIDAVIT OF JACKIE OLEXA WHITE

Delaware County :

: ss

State of Ohio :

First having been duly cautioned and sworn in accordance with the law, affiant Jackie Olexa White deposes and states as follows:

1. I am Jackie Olexa White, and I have personal knowledge of the facts contained in this affidavit. I am competent to testify to these facts.

2. I am a court reporter. My responsibilities in this position include, but are not limited to, preparing transcripts of hearings.

3. On August 26, 2014, I attended a hearing at the Delaware County Board of Elections regarding two ballot issues and the City of Powell and transcribed the proceedings.

4. On Friday, September 5, 2014 I was contacted by Sharon Valvona, who ordered a copy of the transcript. That is the only order I received from any of the Relators in the above styled case.

FURTHER AFFIANT SAYETH NAUGHT.

Jackie Olexa White
Premium Court Reporting Services
438 Kingston Ave
Powell, Ohio 43065

STATE OF OHIO,

COUNTY OF DELAWARE, ss:

On this 9th day of September, 20 14, before me, a Notary Public in and for said County, personally came Jackie Olexa White, who acknowledges that the signing of the foregoing document to be her voluntary act and deed.

Witness my official signature and seal on the day last aforesaid.

KARL PURVIS - NOTARY PUBLIC
COMM. EXP. APR 29, 2019
STATE OF OHIO

Notary Public

My commission expires: 4-29-19

EXHIBIT FOUR OF RESPONDENT AND INTERVENING RESPONDENT
AFFIDAVIT OF KARLA HERRON

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.	:	
BRIAN EBERSOLE, et al.	:	**CASE NO: 2014-1520**
	:	
Realtors,	:	
	:	**ORIGINAL ACTION**
vs.	:	**IN MANDAMUS**
	:	
DELAWARE COUNTY BOARD	:	
OF ELECTIONS,	:	**EXPEDITED ELECTIONS**
	:	**MATTER PURSUANT TO**
Respondent.	:	**S. CT. R. PRAC. 12.08**

AFFIDAVIT OF KARLA HERRON

Delaware County :

: ss

State of Ohio :

First having been duly cautioned and sworn in accordance with the law, affiant Karla Herron deposes and states as follows:

1. I am Karla Herron, and I have personal knowledge of the facts contained in this affidavit. I am competent to testify to these facts.

2. I am the Deputy Director of the Delaware County Board of Elections and the past President of the Ohio Association of Elections Officials. My responsibilities in this position include, but are not limited to, preparing the ballot for each election.

3. On September 20, 2014 the Delaware County Board of Elections must mail out ballots to U.S. military and overseas personnel, as provided for by the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") and the enabling state legislation.

4. In order to timely mail these ballots, they must be printed by the end of business on Friday, September 19th.

5. Before the ballots can be printed, they must be programmed into our voting software, checked, and tested. This process takes at least a day to properly complete, after a change is made to an already prepared and test ballot.

6. Ballot issues require three additional steps before they can be uploaded into the computer system and added to the ballot. First, the Prosecuting Attorney's office must draft the initial ballot language for initiatives and referenda. Then the ballot language is sent to the Secretary of State for two levels of review.

7. In exceptional circumstances, it is possible that the process of drafting and reviewing the proposed language could be completed in as few as two days. But ordinarily the process occurs over a couple weeks.

8. Further, the Powell referendum and initiative have not been certified for the ballot; so, the Board would have to hold a special meeting to accept and read into record these issues to the ballot. Because the Board is subject to Ohio's opening meetings laws, such a meeting would require advance public notice.

9. If the Board were ordered to add new ballot issues to the ballot after Tuesday, September 16th, then there is a substantial risk of not being able to complete the ballot and timely mail out absentee ballots to overseas military personnel.

10. On September 30th, the Delaware County Board of Elections is legally required to mail out absentee ballots to those non-UOCAVA voters who have already requested them. And depending on the outcome of ongoing federal litigation, in-person absentee voting may also begin on that day.

11. Once the ballot is finalized in the computer system, changing the ballot can result in electors having their individual ballots canceled. This is because any later change to the ballot will invalidate all previous ballots. For example, if a member of the military receives a ballot mailed on September 20th, completes it, and returns it, but then, during the interim a new ballot is uploaded into the system, the September 20th ballot cannot be read by the computer system and cannot be counted without first being manually entered onto a new ballot by two Board staff members.

12. Further, any ballots prepared and mailed after September 20th risk not being timely returned.

FURTHER AFFIANT SAYETH NAUGHT.

Karla Herron
Deputy Director
Delaware County Board of Elections
2079 U.S. Highway 23 N
P.O. Box 8006
Delaware, OH 43015-8006

STATE OF OHIO,

COUNTY OF DELAWARE, ss:

Sworn to and subscribed in my presence this 9th day of September, 2014.

Witness my official signature and seal.

NOTARIAL SEAL STATE OF OHIO

RICHARD N. HELWIG
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Delaware County
My Comm. Exp. 2/24/15

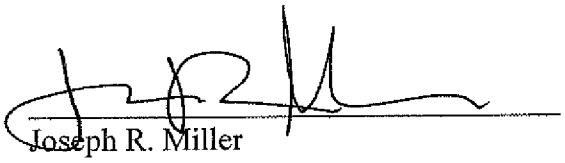
Notary Public

My commission expires: 2/24/15

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing was served via electronic mail to the following this 11th day of September, 2014:

Christopher B. Burch
Callendar Law Group
20 S. Third Street, Suite 261
Columbus, OH 43215
T: (614) 300-5300
F: (614) 324-3201
chris@callendarlawgroup.com
Counsel for Relators



Joseph R. Miller

Counsel for Intervening Respondent,
The Center at Powell Crossing, LLC