

**City of Columbus**  
**Public Hearing –**  
**David Povolny 16731 Potomac ST. NE IUP (PC-126)**  
**December 5<sup>th</sup>, 2018**

The December 5<sup>th</sup>, 2018 Public Hearing to consider a request by the applicant, David Povolny, for a Residential Zone Business Interim Use Permit (IUP), located at 16731 Potomac ST. NE., to allow the operation of an electrical contracting, networking, software, machine automation and online sales business, was called to order at 7:01 p.m. by Chair Garth Sternberg at the City Hall. Present were Commission members Pam Wolowski, Jesse Preiner, and Jody Krebs; City Administrator Elizabeth Mursko; City Planner Dean Johnson; and Recording Secretary Rochelle Busch.

Also, in attendance were City Council members Bill Krebs, Denny Peterson and Mark Daly; Cory and Tom Richter, Mike Kempf, Jon and Patty Williams, Kathy Sian, Tom Olson, Dan Mike, Janet Heglund, Myron and Cindy Angel, Shelly and Arlen Logren, Barb and Bill Bobick, Nathan Sebenaler, Brian Westbrook, John and Kim Taylor, Dan Waldoch, Leo Tehault, Greg Daninger, Ron Hanegraaf, Elroy and Joann Berg, Dennis Nelson and Nathan Siebenaler.

**Sternberg:** Now we are going to have another public hearing and discussion IUP Residential Zoned Business, David Povolny 16731 Potomac ST. NE Request, Pages 1-6 and enclosure. And at this time, I'd like the secretary to read the notice as published.

Notice was read at this time by the recording secretary.

**Sternberg:** Thank you, and at this time if the applicant could come forward please. Welcome. Good evening. If you can give us the low down on what you're doing?

**Povolny:** Yeah, just like it says in here. It's just a small business very intrusive, hidden in the woods. I would like to make one change though. Talking with Elizabeth about the application, I guess there can only be one name on an application or an entity. I would like to change the entity from my wife and I to the business name, which is Minnesota corporation of Davco Technologies Incorporated.

**Mursko:** Just to clarify on the record. The code says it has to be in a person's name or an entities name. The applicant is still Dave and Deanna Povolny.

**Sternberg:** But the permit is Davco?

**Povolny:** Correct.

**Sternberg:** Any questions for the applicant?

**Krebs:** Yeah, Mr. Chair, I was able to go out to the property, thank you for allowing me to come out. It does have 58.4 acres and I was not able to see, from the area of the accessory building,

any homes where it would be visible at all, because of the trees being so dense in the property. I just want to know if you've read the finding of facts and the recommendations that were in the letter from our planner Mr. Johnson.

**Povolny:** I have, yes.

**Krebs:** Okay

**Wolowski:** Mr. Chair, I have a question. This is more for Elizabeth. I was looking at, on page 7, number 5 under the finding of facts and its requesting a 10-year IUP, can we do 10-years? I thought we were 5 or under?

**Mursko:** The permit term for an Interim Use Permit for a Residential Zone Business is up to 5 years.

**Wolowski:** Okay, so isn't that a planning contention there?

**Sternberg:** Actually, Dean brought this up before the meeting started. Do you want to talk?

**Johnson:** I'll make a clarification now or later.

**Wolowski:** Okay

**Johnson:** What's your preference?

**Sternberg:** Get it now and get it out of the way.

**Johnson:** So last week when I put this together, I mentioned to Elizabeth the request was for 10-year and I think like many of you, we've written all 5-year permits. I could not find in the ordinance where the restriction existed for 5-year, in part because all I routinely look at is the Interim Use Permit section of the ordinance which just for reference is 7A-530 and then I looked at the specific standards related to the Residential Zoned Business which is 7A-806. After I wrote my report, Elizabeth had Jessica do a word search in the ordinance. And again, I apologize since I've semi-retired I only have a hard copy, so I wasn't able to do that. But in the section 7A-734 which is Rural Residential District Interim Uses, which describes ones could be and that's where the reference to dog kennels, residential zoned business, antennas, things of that nature contains that. So a change in the finding at the end of the meeting when you get to that point would be to insert in number 5 a new sentence that would say something to the effect that section 7A-734 of the city code limits IUP's in the rural residential district to 5-years except for communication towers. And then condition would be changed from 10 to 5. We don't have an option under the current language to issue more than 5-years. That's my mistake.

**Sternberg:** Couldn't we just change to 5-years.

**Johnson:** Pardon?

**Sternberg:** Can't we just change it to 5-year IUP?

**Johnson:** Yeah in the recommendation I would change 10 to 5. And I would also make a clarification, just so that where we make a statement that the applicant is requesting 10-year, that is a fact, that was on the application. I think that in order for the flow to work, if we added the provision that "Section X" limits it to 5-years then when you end up with conditions that say 5 instead of 10, it makes sense. That's just my suggestion.

**Sternberg:** That's why you want the code reference in there?

**Johnson:** Yes.

**Sternberg:** We can do it either way, I don't... Any other questions for the applicant? Any other questions?

**Krebs:** Mr. Chair I do have one other question, on number 9 in the finding of facts. Normal hours of operation will occur on weekdays? Will you have any Saturdays?

**Povolny:** Yeah, I was hoping that they would make that what the code allows. Dean, I think we talked about that, having it be the full extent of the allowable time, which is Saturdays.

**Johnson:** Yeah, the ordinance is 7:00am to 7:00pm Monday through Saturday. I think the application may have said Friday, but it doesn't matter to me.

**Povolny:** It did, but we talked, and I had amended that.

**Johnson:** So that's another potential change you can make at a point in time after the comments are made.

**Watson:** Sir, and the 5 years is okay?

**Povolny:** I guess it will have to be. I interpreted it a little differently. I know the attorney has been talking about it, but the 5 years will be fine.

**Watson:** Okay sir. Thank you

**Povolny:** The question was whether it was called out in the residential zoning it at 5 but in the interim use it wasn't. My contention is that the code is ambiguous, so that there's some contention in the code, I think you could go either way. At this point, the recommendation is 5 from the planner. Probably needs to be looked at.

**Sternberg:** Anything else?

**Watson:** Sir, this question is for Dean. With the question that he's brought up on the fact that we don't have counsel here today, can we make it 10 slash 5 under the advice of consul next week.

**Johnson:** You can do anything you want, other than do something know is in conflict. I'm not certain what the ambiguity is and I'm not challenging that one exists. But that's a legal question and I never answer legal questions. I don't want to get in trouble more than anybody else. So, if you want to pass along to the council if allowable in the city code if it could be 10, then you recommend 10, that's up to you.

**Watson:** Thank you sir.

**Johnson:** I can't counsel you in that.

**Sternberg:** Any other questions? Okay, at this time I'm going to open the hearing to the public. Any one from the public want to speak? Any one from the public?

**Olson:** Garth you'll have to forgive me, I got a little bit of sinus infection here and my hearing is kind of shot tonight. My name is Tom Olson, live in Lino lakes, or Columbus, 13332 Lyons ST. Alright, that picture from after the snow storm here in November? Can I ask the applicant that?

**Sternberg:** Actually, if you could directions to the Planning Commission.

**Olson:** Can you ask him? Is that the picture from after? I was out deer hunting when the storm came through. I'm wondering if that's where that pictures from.

**Sternberg:** Do you know when the picture was taken?

**Mursko:** I do not know when the picture was taken. My assumption this is off the GIS system.

**Sternberg:** So that could be any, Dave do you know when that picture was taken?

**Povolny:** I have no idea.

**Olson:** No idea and this is your IUP.

**Povolny:** (unintelligible)

**Olson:** No idea of the exact time? Where's it from?

(unintelligible audience)

**Olson:** The picture, right there. The picture we're looking at where...

**Sternberg:** I'm not a technological wizard. But I do know this, that satellites from outer space that take pictures of the earth are snapping shots at all different times. Some pictures that you see like this can be years old. We didn't hire a helicopter to go over there and take a picture of Dave's property yesterday. I don't know that he can answer it, I know I can't answer it. Clearly, sometime in the winter, there's snow on the ground.

**Olson:** Was it recent?

**Sternberg:** That I don't know either, I don't know how those satellites work?

**Olson:** And Dave doesn't know either and it's his IUP?

**Sternberg:** Well I think that that's just, this is probably something off of something such as google earth. And we'd probably have to contact google.

**Olson:** But you should be able to put a date on it? Irrelevant okay. This was off of google earth. This is his, I don't know if you can put them side by side. They look pretty damn similar to me, that is from 2002, excuse me 2005. That's where that picture is from. Do you know how old that is? 2005 to 2018, that's a pretty big spread.

**Sternberg:** I can figure that out.

**Olson:** So why do you use and out of date photo for an IUP? That's over 13-years old.

(unintelligible from audience)

**Olson:** Get you something a little more current.

**Mursko:** This is Potomac?

**Olson:** Yeah, try to blow it up a little bit (unintelligible) I'll get a different one for that. So that's the same thing from that to this 13-years later. I blew up 2 pieces of it. Dave has an awful nice spread out there (unintelligible). That's the residence, and then you take this one out, on the edge of the property, down in this area here that's where this is. It's a junk yard. Or (unintelligible). Dean did you have this information when you were doing your recommendations?

**Johnson:** I had the photo that was originally put up there on the board.

**Olson:** Let me give you another one.

**Wolowski:** Can you zoom in on that one Elizabeth?

**Olson:** This photo here.

**Wolowski:** One second.

**Olson:** This is a storage area, so junk.

**Wolowski:** Is that cars? What is that?

**Olson:** I don't know, you ask him, stuff. Dave should know.

**Wolowski:** Well, we're talking to you.

**Olson:** Its Dave's property

**Wolowski:** Well right. But your addressing the Planning Commission, and so I'm asking you is that, I can't see what that is. Do you have a close-up picture for us? I haven't seen any of these, so I would like to see what we're looking at.

**Olson:** I have another one here this is from 2010, that pile has been there for a while. Maybe that shows it a little bit better. A lot of that stuff that was there in 2010 is still there now. I don't know think it's being used in business dealing. Maybe they are, maybe they aren't. But they're still outdoor junk. And you Section 7A of 806 the ordinance says no outdoor display or storage of materials products, debris, junk or vehicles associated with Residential Zone Business is permitted. In the application note on the IUP says no outdoor display of storage materials, products, junk or otherwise be out there either. This is from your... You can read that from there. I think the Commission, and Dean over there, apparently was misled, you need to ask yourselves why the applicant did not submit timely photos, 13-years old? The newer photo clearly shows the outside junk and storage not shown in the 2005 photo, there was nothing in there. Some junk has been there since 2010. And I know, the mayor likes the facts, Dean Johnson our Planner, did not have factual information. He based his recommendation based on the 2005 image. If you look at the 2005 image, its pristine, there's nothing there. Absolutely nothing. This came later, about 2010, so forth and so on. From Dean's finding of fact, in the paper work, says there's no visible outdoor storage associated with the RZB based on that first photo he was given. He wasn't given good information, and neither were you. My recommendation this time is the Planning Commission should defer recommendation until the application is resubmitted with factual information. Because what you got here isn't. And the Mayor's a stickler on facts and I think he'd back me up on this one. Thank you.

**Sternberg:** Thank you, Sir. Anyone else from the public want to speak?

**Heglund:** I'm Janet Heglund, 14025 Juliard ST. NE. in Columbus. So, the ordinance also states, that an IUP is not meant for a growing or larger business customarily located in a commercial zoned area, and its meant to be temporary. So, if you go on Google and you look up Davco, on the Forest Lake Chamber of Commerce its listed as having a sales volume of \$100 million dollars. This is not a small business. It's on Cortera, which is a business directory, as having annual sales of \$1 to \$5 million dollars with 20 employees. It's on Buzzfile its generating \$2.3 million in annual revenue with approximately 12 people at this single location. And an older version of the Davco website list 12 fulltime employees with \$1.1 million in annual revenue. And I have copies of these I can submit. This is not a temporary business either. It's a large

business that has two different locations, one listed in Forest Lake, one listed in Columbus. And that's not what an IUP is meant to cover. The other thing I would like to bring up that's highlighted by the pictures that Tom put up there is section of the ordinance that says proposed additions and renovations to principal and accessory buildings to be used for Residential Zone Businesses shall not be permitted when such additions and renovations may be determined to jeopardize or limit the future property value. If you look at the recent picture up by the storage facility, it might be in one of the other pictures. Tom did you have the one that shows the ground being prepared for an addition? Looks like there's going to be an addition. Which isn't permitted if you do an IUP. So, you should look into that as well. And then lastly, I would say I was at the Planning Commission and subsequent in April where Mr. Tom Swenson, had come before you. He had had a prior IUP for 5-years and was asking for renewal. He was asked a number of questions, that I hope you also ask of Mayor Povolny, I haven't heard them yet. He was asked to disclose what the commercial taxes he paid was. He was asked how long he planned to operate his business there, presumably because an IUP is supposed to be temporary. He was asked what the square footage of his barn where he conducted was, what his sales volume was, etc. I haven't heard any of these questions being asked yet. And ultimately, he was granted a 2-year renewal rather than the 5-year that he had requested. And if I recall the conversation correctly, he was also asked to start looking for another place because Columbus, according to Mr. Daly, there was concerns about the large automotive businesses operating in Columbus. So, I just think that there's a precedence that was set there that you should think about this is a guy that had a business, had no complaints, ran it underneath the terms of his IUP and was denied a 5-year renewal and was only given 2. Thank you.

**Sternberg:** Thank you. Anyone else from the public want to speak? Anyone else? Welcome.

**Nelson:** Dennis Nelson, 8201 20<sup>th</sup> Avenue North, Lino. I just have one question to ask. Why after all these years you've been in business are you asking for an IUP at this time? I'd like to know, why that came up so suddenly and why he didn't have it prior to that.

**Sternberg:** Thank you, Sir.

**Nelson:** Yep, thank you.

**Sternberg:** Anyone else? Welcome.

**E. Berg:** I'm Elroy Berg. (unintelligible) Our home sits right here. (unintelligible) From the road here it's a quarter mile to the back. So out property (unintelligible). And it goes all the way to the back. (unintelligible). My philosophy has always been (unintelligible)

**Sternberg:** Mr. Berg, Could you address the Planning Commission? Could you speak to us, the Planning Commission? Thank you.

**E. Berg:** My philosophy has always been, if neighbors can't help each other what good are they? Over the 48-years I've had some wonderful neighbors, the last ones here we had a change in neighbors (unintelligible). We've been there 48-years and we had (unintelligible). (unintelligible)

what some people call junk you know, is his treasures. But anyway, over the years Dave has always invited my wife and I to their yearly party. We've always had good relationships. Dave's got a nice family. In fact, I have a grandson that goes to school with his children. If Dave and his wife Deanna, every fall he has this party and I go over there. Dave has all of, a lot of neighbors and his industrial people (unintelligible). We have a good time over there and everything. One day Dave called me up and we we're getting ready to go to a wedding. Dave says, 'Let's check out your tractor' and so I said to my wife 'I don't have a lot of time, we have to get going, but I'm going to scoot over there.' So, I fired up my tractor and went over there and I says, 'what's the problem?' He said, 'My semi-tractor that went off and it's down along the roadway in the woods.' So, I went over there and pulled that semi out with my tractor. That semi was pulling a flatbed (unintelligible). And that semi-flatbed was loaded with steel structural garters that were the length of the semi or so, and it was piled full of the garters. I don't know if (unintelligible). For quite some time they were stacked right along the pine trees. I have photographs (unintelligible). So anyway, we got that semi out of there and he put his garters (unintelligible). (unintelligible) and when my children and family and relatives come over to my home, and you look out our back window, your looking directly at (unintelligible). Now it's about a quarter mile from (unintelligible). When my children come over to the house, and friends and neighbors what have you, they say 'what's all that stuff back there?'

**J. Berg:** Excuse me, they don't say 'what's that stuff'.

**E. Berg:** So, I explain to them when they say, 'what's all that junk?' And I say's 'look my neighbor doesn't buy junk'. (unintelligible) Dave doesn't bring home junk. Its stainless steel. And rolls and rolls at times of copper cable and wire and what have you, I mean call it what you want. It's quite valuable stuff in my opinion. My wife, I really get into it with her, (unintelligible) tolerate his mess. I'm more of a lover than I am a fighter. So, I never really got on Dave.

**J. Berg:** It has gotten worse the last 5-6 years and our back, looking out my dining room window into his junk yard, is nothing but, excuse me, sh\*\*. It's gold to him but sh\*\* to me. Anyone that comes into my home, looks out dining room, kitchen window, living room window and say's 'what the hell do you got back there'. It's just terrible.

**E. Berg:** You see (unintelligible) on the second floor. So, there's a beautiful view out to the north. So, we've tolerated it all through the years. We've talked with Dave and all that. However, like my wife say's, (unintelligible). Right back in here, almost every fall we've tolerated this. What happens here is Dave takes some lumber and dead wood and so forth, and he takes hid skid steer loader, he's got a lot of big equipment. And he piles it up in a pile, right here. He's out here burning this stuff almost every fall, about 11 o'clock 12 o'clock at night maybe even till 1 o'clock. It shines in our bedroom window (unintelligible). I've never really mentioned anything to him about that. That occurs every fall. And a bonfire that goes up 50 feet in the air, we were scared as hell one year because of our corn field. (unintelligible) so we've tolerated that through the years. And then there was a time that Dave says to me, 'Hey, you got a yard light in your yard, that keeps me awake at night.' And I say's 'No, Elroy and Joann do not have a yard light in my yard. It's my neighbor Tom's'. He used to be on the town board. He's next door to us. But

that's where the light was coming from. But besides the light, the fire and so forth, his skid steer loader and all his commercial equipment has a backup horn on it. That goes 'beep beep beep' from 11 o'clock to 1 o'clock. We were just kept awake by that 'beep beep beep' on a nice fall evening. (unintelligible). So, I think you folks can see all the stuff we've put up with over the years.

**J. Berg:** it is a junk yard back there. And when I have asked many many times, Dave knows, and he's even been up in my living room looking out that window and he looks right at me and say's 'I'll get at it, I'll get at it.

**E. Berg:** Dave was over to our house just before the election and he says, 'Elroy do you suppose I can put a campaign sign (unintelligible)'. And I say's 'no, because I don't think I want my neighbors to know the political (unintelligible)'. Then he went as far as to say to me 'Do you suppose that right back in here when you bring the corn in, that you could leave 3-4 rows or so?' and I said, 'well why would you want me to that?' and he said (unintelligible). And with that you can see the situation my wife and I are tolerating.

**Sternberg:** Anyone else? Anyone else want to speak? Okay I'm going to close the hearing with the right to reopen as necessary.

At this time Chair Sternberg closed the Public Hearing. Hearing closed at 7:36 p.m.

**Chair Sternberg reopened the Public Hearing at 8:05 p.m.**

**Williams:** Jon Williams, 16851 Potomac ST. I've only met Dave a couple times. He seems like a pretty decent guy, he seems reasonable to me. Basically, what we are trying to do here is decide if we are going to let him run his business out of his home, bottom line basically. I live two doors down, Brian my buddy here, lives right next door to Dave. And we were talking the other day, he's quiet as a mouse. If there was trucks running in and out of there, you know, business stuff, we wouldn't know it. Because the only time we see him is at night when we see headlights. You wouldn't be able to tell that he's running a business back there. And besides the stuff, Dave that you have back there, yeah okay you have been dragging your feet there buddy. I do agree, if this nice young lady here wants to look out back door she should be able to. But besides that, though, I don't see you shouldn't give him a permit to run his business. There's absolutely no reason not to. He's not doing anything to harm anybody in the area. I haven't heard any of these people say, 'Oh, yeah he's making all kinds of noise, he's bothering everybody'. Well he's not. There's no reason not to. I just wanted to say that.

**Sternberg:** Thank you, sir. Okay I'm going to close the hearing, again.

At this time Chair Sternberg closed the Public Hearing. Hearing closed at 8:07 p.m.

**Chair Sternberg reopened the Public Hearing at 8:07 p.m.**

**Olson:** The problem you have here is your damn ordinance, the way it's written up. And you have it in there that having permit he's trying to get is a privilege not a right, which limits it to how far it can go. So why don't you issue a short one, let's say 1-2 years, 3 if he needs it. Then have him move over to the commercial zone where his business can flourish. It gives him time to find something over there on Lake Drive or in the freeway district. And he can have all the stuff he wants there to pile high as he wants. Problem solved, for you and for him. Simple as that, it's right in the ordinance.

**Sternberg:** Thank you, Sir.

**Olson:** And then he can move his stuff away that's on that fence line, either to his new location or back in the woods closer to his own residence out of view. My god, he's got a beautiful place back there.

**Sternberg:** It is, it's a beautiful place.

**Olson:** I don't know if he'd be agreeable to that or think that's a solution? There's plenty of places out there on freeway drive, both sides, that are up for grabs.

**Sternberg:** I can't force people to go buy commercial property.

**Olson:** No, you can't. But he's got a nice business. My dad was an electrical contractor, commercial electrical contractor, much like himself. He ran a big business. I worked for him, I know how hard it was to keep the wheels greased. But you have to live within the ordinance that's what rules are for. It's your call.

**Sternberg:** Thank you, Sir. Closing the hearing again.

At this time Chair Sternberg closed the Public Hearing. Hearing closed at 8:09 p.m.

**Chair Sternberg reopened the Public Hearing at 8:10 p.m.**

**Povolny:** Dave Povolny. I'd like to just say one thing, the reason that I need to run my business out of my house right now, is my wife has a brain disease. She doesn't have a lot longer to walk. And she is the half of my business. And if these people want to get to the level, to get into my life to see why I have to do what I have to do, I'll just put it out there. My wife needs to work near where I am, so she can take care of our 5 children and can run my business or help me run my business. So, if you people or you people want to understand where I'm at in my life, that's where I'm at. I need this Interim Use Permit, so my wife can walk 400 feet, typically she drives 400 feet to the barn because she can't walk that far. So, that's why I need this. If you guys want to keep going on this, we'll do it.

**Sternberg:** We're closing 'er. So, let's get to business here.

At this time Chair Sternberg closed the Public Hearing. Hearing closed at 8:10 p.m.

Respectfully submitted:

Rochelle Busch, Recording Secretary