

BOARD OF MAYOR AND ALDERMEN

November 9, 2009

A regular meeting of the Board of Mayor and Aldermen was held on November 9, 2009 at 6:00 p.m. in the Council Chambers of the Municipal Center.

Mayor Sharon Goldsworthy was present and presiding.

The following Aldermen were present: Mark Billingsley, Ernest Chism, John Drinnon, Carole Hinely, and Mike Palazzolo. Staff present: Patrick Lawton, Andy Pouncey, Kristen Geiger, George Brogdon, Tom Cates, Jerry Cook, Chief Richard Hall, Bo Mills, Chief Dennis Wolf, Melody Pittman, Josh Whitehead, Michael Saddler, Michael Stoll, Ralph Gabb, Pam Beasley, Assistant City Attorney Debra Wiles and Dotty Johnson.

Invocation

Assistant City Administrator George Brogdon gave the invocation.

Pledge of Allegiance

Alderman John Drinnon led the Pledge of Allegiance.

Approval of Agenda

Administration asked to add a presentation by Robyn Rudisill on the Education Commission event "Battle of the Brains".

Alderman Palazzolo asked to add to the agenda a discussion on Metro consolidation and to formally discuss establishing a position on that subject.

Alderman Drinnon stated other municipalities had already responded to this issue and citizens had been asking questions.

Motion by Mr. Palazzolo, seconded by Mr. Drinnon, to place on the agenda a discussion to be placed on a future agenda for a resolution regarding the City's position on consolidation.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Motion by Mr. Drinnon, seconded by Mr. Palazzolo, to approve the agenda as amended.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Approval of Minutes

There were no corrections or additions to the minutes.

Motion by Mr. Palazzolo, seconded by Mr. Chism, to approve the minutes of the Board of Mayor and Aldermen meeting held October 26, 2009.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Youth Excellence Awards for August, September and October

Mayor Goldsworthy, Alderman Hinely and members of the Education Commission presented the following students with their respective Youth Excellence Awards:

August – Ms. Caitlin Camuti a senior at Hutchison School.

September – Ms. Lindy Bennett a senior at St. Agnes Academy.

October – Mr. Vincent DiBella a senior at Houston High School

The students were presented a plaque donated by Traditions.

Teacher of the Month Awards for September and October

Ms. Betty Cowan a social studies teacher at Our Lady of Perpetual Help Catholic School with thirty-plus years of teaching experience was presented the September Teacher of the Month award. The award was sponsored by State Farm Agent Joe Ford.

Ms. Kay Odom, the music teacher at Germantown Elementary School was presented with the October Teacher of the Month award. The award was sponsored by the Memphis Chapter of Alpha Delta Kappa.

ADD-ON – Education Commission “Battle of the Brains” event

Ms. Robyn Rudisill chairman of the Education Commission gave a description of the program that two of the members had suggested and the commissioners have given their full support. The competition is called “Battle of the Brains”. It is a math and science competition between Germantown High School and Houston High School. The competition will be held on December 4 in the Municipal Center. There will be 63 students from Houston School with 19 group projects and 7 individual projects. There will be three groups from Germantown High and one individual group. There will be six judges from the University of Memphis in math and science, physics, engineering and other areas of biology and science and math areas.

The Palazzolo’s and the VanArsdale’s have contributed money for awards and Service Master has donated \$1000 and donations from neighborhood associations and individual donations.

Citizens to be Heard

Ms. Jewel Witt of 2928 Cross Village Cove was concerned about water management and stated she had a real problem with drainage across her property.

Ms. Robyn Rudisill of 2249 Elderslie Drive was part of the Race for Education that was held on Sunday. She was concerned about the traffic and the negativity by the Police Department. She suggested that next year more should be done.

Mayor Goldsworthy stated staff had already met because of the concerns that developed during and after the race and identified that the event should go through the Special Events process and for some reason that did not happen this year. Going through this process will allow all the parties involved the insurance of the security and planning that will not impact the neighborhood negatively and also assure the safety of all the participants.

Ordinance 2009-16 – Amendment to Chapters 23 Zoning, and 6, Building and Building Regulations, on Setback Requirements for Accessory Structures, Principal Structures and Arbors – Third and Final Reading

Planning Director Josh Whitehead stated this was the third and final reading of this amendment to the Code of Ordinances. It will allow 1) ease of placement of accessory structures; 2) a 10-foot rear yard encroachment for back porches and a uniform 25-foot rear yard setback in Residential Districts and 3) arbors in required rear and side yards.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to approve Ordinance 2009-16 on third reading.

ROLL CALL: Billingsley–yes, Chism–yes, Drinnon–yes, Hinely–yes, Palazzolo–yes. Motion approved.

Ordinance 2009-18 – Amendment to Chapter 23 – Article VI – Stormwater Management - First Reading/Set Public Hearing Date.

Mayor Goldsworthy stated this item would be moved to the end of the agenda because it had been advertised to be heard at 7:00 p.m.

Civic Support Grant – Leadership Germantown

Alderman Billingsley left the podium.

George Brogdon stated at the last Board of Mayor and Aldermen meeting it was suggested that this item be brought forward for discussion at this meeting. The item is to award a grant in the amount of \$4,000.00 to Leadership Germantown and approve a budget adjustment. This was not part of the budget and would have to be taken from the General Fund.

In response to a question from Alderman Palazzolo, Assistant City Administrator Kristen Geiger responded that the funds would be taken from the Operating Contingency Fund. It had been used twice this year, one for the notification that guns would not be allowed in certain areas of the city and the extra training for Court that was necessary because of the conversion of software.

Mr. Lawton stated the Contingency Fund is primarily used for cost overruns and operating department cleanup at the end of the year and for unforeseen conditions, things that are not capital in nature, but as a result of budget issues in the operating budgets.

Alderman Palazzolo stated that Leadership Germantown had made a formal request at the end of the last budget season for \$10,000.00 but was denied, as well as \$75,000.00 from Iris and \$25,000.00 from Memphis Oral School for the Deaf. This was done because \$3 million had to be cut from the budget just to balance the budget. He stated that he too was a graduate of Leadership Germantown and found it to be a very viable program.

Alderman Palazzolo proposed granting \$2,000.00 now. Then in March Leadership Germantown could come back with a statement of revenues and an update on the program and then perhaps look at the additional \$2,000.00 for a total grant of \$4,000.00.

Alderman Hinely disagreed and did not see the difference between \$2,000.00 and \$4,000.00. She did not understand what would change between now and March of next year and was in favor of giving the entire \$4,000.00 now.

Motion by Mr. Palazzolo, seconded by Mr. Drinnon, to award a grant to Leadership Germantown in the amount of \$2,000.00, and subject to Leadership Germantown returning in March with a statement of revenues and expenses for presentation and request for an additional \$2,000.00 and to approve Budget Adjustment No. 10-51.

ROLL CALL: Chism-yes, Drinnon-yes, Hinely-no, Palazzolo-yes. Motion approved.

Mayor Goldsworthy noted Alderman Billingsley recused himself from discussion and vote on this item.

Mr. Brogdon noted a point of clarification that Leadership Germantown runs September through August budgets. In March, they would present their most recent month-end budget.

Park Naming

Mr. Brogdon stated this was for consideration of naming the large public tract of land located near and around C.O. Franklin Park and the Charity Horse Show grounds.

At the request of the Board of Mayor and Aldermen, the Parks and Recreation Commission discussed the naming of the large tract of public land located near and around C.O. Franklin Park and the Charity Horse Show grounds. The Commission completed the recommendation process by using Policy Letter 50 to guide their discussion and to consider all the possible appropriate names for the properties based on the intent of the City's public parks naming policies. The Commission was unanimous in submitting a name for the land tract that accomplishes the objectives set forth in Policy Letter 50. Based on these actions, it was the recommendation of the Parks and Recreation Commission that the 100+ acre tract of land be named "The Parks at Poplar Pike."

Motion by Mr. Billingsley, seconded by Mr. Palazzolo, to approve the naming of the large tract of public land (100+ acres) located near and around C.O. Franklin Park and the Charity Horse Show grounds as "The Parks at Poplar Pike".

Alderman Chism stated he did not have a problem with the name but requested more time to think about it and discuss it with the other aldermen.

Alderman Billingsley stated he was liaison to the commission and felt the commission was disappointed the Board had not taken action before now. He felt it was confusing to have an umbrella name for existing parks that had already been named.

Alderman Hinely stated she just did not like the proposed name.

Alderman Chism stated he had a problem with another name. He stated he appreciated what the Parks and Recreation Commission had done and was aware of the fact that had it not been for Alderman Billingsley to do some research, that they would not have had the input they should have had over the past several years. He stated he would like to think about it.

In response to a question from Alderman Palazzolo, Parks and Recreation Director Pam Beasley stated the Commission met in a special called meeting. The Commission had been requested by City Administration to undergo Policy Letter 50 process as there was some urgency to deliver a name to the Board.

Ms. Beasley gave the guidelines of Policy Letter 50. She stated the policy had not been used in recent years because there had not been any new parks to name.

Alderman Palazzolo stated he did not have a problem with naming the area.

In response to a question from Alderman Palazzolo regarding the naming of the Ocean View property, Ms. Beasley stated that the Commission had explained to the Board of Mayor and Aldermen that if they wanted the policy implemented for that name that they would be glad to, however, it was the decision the Board of Mayor and Aldermen made. The Board has the final authority in the naming of a park.

Alderman Palazzolo stated that he was disappointed that the Policy Letter 50 was not considered when the Ocean View property was named and the Commission was bypassed.

In response to a question from Alderman Billingsley, Mr. Cates stated the vote to name Ocean View Bobby Lanier Park was a unanimous vote.

ROLL CALL: Billingsley–no, Chism-no, Drinnon-no, Hinely-no, Palazzolo–yes. Motion failed.

CONSENT AGENDA

Germantown Youth Cheerleading – Budget Adjustment

The Germantown Parks and Recreation Department is providing administration for the Germantown Youth Cheerleading program this year and is handling the finances. Staff has collected an additional \$7,748.00 from each squad who is required to pay \$3 per child per practice/game. Staff is requesting this money be distributed in the budget cost center for cheerleading to be spent for official fees. This program is self-sustaining.

MOTION: To accept monies in the amount of \$7,748.00 as revenue and to approve Budget Adjustment No. 10-50.

Motion by Mr. Drinnon, seconded by Ms. Hinely, to accept the consent agenda as read.

ROLL CALL: Billingsley–yes, Chism-yes, Drinnon-yes, Hinely-yes, Palazzolo–yes. Motion approved.

ADD-ON – Discussion on development of resolution regarding Metro consolidation

Alderman Palazzolo brought this item forward for discussion. He stated that for many years the community had been unified in its opposition against consolidation in past attempts to bring forward one Shelby Metro government. He felt that the surrounding municipalities had already gone on record taking a stance against metro consolidation. He stated he had received about 350 e-mails that were against consolidation and about 21 that supported consolidation. He felt the citizens would like for the Board to take a stance on the subject.

Alderman Palazzolo asked the Board to consider passing a resolution in a subsequent Board of Mayor and Aldermen meeting to give full backing to the Mayor and administration against consolidation.

Motion by Mr. Palazzolo, seconded by Mr. Drinnon, for the Board at the next meeting to consider a resolution of opposition to metro government or consolidation.

Alderman Billingsley suggested the Board receive the referenced resolutions from the surrounding municipalities that have taken a position. He stated he had not received any emails regarding consolidation and felt it would be welcomed to have an open forum to welcome the citizens of Germantown to share their views and clear up any misbeliefs. He stated he had received a letter from Mike Ritz regarding single-source funding. He stated he would like to hear from all parties before a position is taken.

Alderman Drinnon stated that we had met with the chairman of the county school board at which time he explained what was being proposed for single-source funding and he felt there was no purpose in another invitation extended. He stated he could vote now on consolidation, but in respect to all the aldermen he would be happy to have someone come out and clarify their position.

Mayor Goldsworthy stated having this item on the agenda in two weeks the Board could hear from the public during the citizens to be heard process. There would be ample opportunity for all parties to weigh in.

Alderman Chism asked for a draft of the resolution intended.

Mayor Goldsworthy stated that prior to the meeting on the 23rd there would be a resolution of intent for the Board to consider and it would be in their packets sent out before the meeting.

ROLL CALL: Billingsley–yes, Chism-yes, Drinnon-yes, Hinely-yes, Palazzolo–yes. Motion approved.

Mr. Cates addressed the Board to clear up when an item can be placed on the agenda. Any alderman that wants something on the agenda of this Board, all that has to be done is to approach Mr. Lawton in ample time for him to get it into the agenda and in the packet. If there is something the Board really wants considered, it can be placed on the agenda before the packets go out and can be acted upon with formality at the next board meeting.

Mr. Lawton stated the agenda is set the Monday before the meeting. That way staff can do their due diligence and get it properly posted.

It being 7:00 p.m. the rest of the regular agenda was heard.

Ordinance 2009-18 – Amendment to Chapter 23 – Article VI – Stormwater Management - First Reading/Set Public Hearing Date.

City Administrator Patrick Lawton stated that Ordinance No. 2009-18 establishes a user fee for our stormwater management program. Over the past several months the Board of Mayor and Aldermen and the Financial Advisory Commission have had several work sessions to consider the establishment of a stormwater management program and a user fee structure to address the federal unfunded mandate regarding the treatment of the quantity and quality of our stormwater that enters the Wolf River and Nonconnah Creek. Cities across the country are granted permits known as National Pollution Discharge Elimination System permits which allow them to discharge stormwater into the Nation's rivers and streams. To stay in compliance with these rules and regulations from the federal government and the EPA, the City of Germantown must identify and demonstrate its compliance with a variety of stormwater management control issues that address the severity of the stormwater through our various conveyance systems as well as the pollutants that are transferred along with the stormwater. Our cost for compliance with this regulation has doubled over the past 6 years.

As a means to address these current and ever increasing costs, the City, through the consideration and adoption of the attached ordinance, is proposing the establishment of a stormwater user fee that will be based upon the impervious surface areas of all properties located within the city of Germantown. The user fee as identified is in direct proportion to the amount of impervious surface and what a particular property contributes to our maintenance of the stormwater system. There are two user fees being considered and each takes into consideration the comparable differences between residential and other developed property. The rate per square foot of impervious surface area for residential property is .00056 and the residential tiers are divided into three groups. The other developed property as defined in the ordinance is .0025 per square foot of impervious surface area. It is anticipated that the fee structure based upon the number of properties in our community will generate 1.3 million dollars in revenue to support our current stormwater management program.

The ordinance itself is in compliance with this federal mandate and with Tennessee State Law. The ordinance provides definitions for the various terms that had just been mentioned including impervious surface area, residential property and other developed property, and sets forth how the fees collecting under this fund will be utilized. The ordinance also addresses the classification regarding the stormwater user fee and the rate structure that was just addressed. In addition, the ordinance identifies a process by which adjustments may be made to the stormwater user fee based upon the inclusion of an educational program for ages K-12 or programs that detain or retain the amount of stormwater runoff on an individual

property. The credit and offset manual will be made available to the Board prior to the second reading and public hearing on this ordinance scheduled for November 23, 2009.

At the last meeting on this issue with the Financial Advisory Commission at which the Board was in attendance, the FAC made a motion to support the adoption and establishment of this user fee for stormwater management.

In response to a question from Alderman Drinnon, Mr. Lawton stated the Federal Law was passed in 1987. Since the Clean Water Act was amended in 1987, it provided cities based upon their population, time to come into compliance with the NPB permit and all the regulations that came with it. We were the second tiered city and had until 2003 to come into compliance. There was a dramatic increase in our costs post 2003 and going forward with the compliance. The amount has increased yearly since 2003 because of our compliance efforts and what we now have to do in terms of maintaining our ditches, improving development contracts and monitoring development activities throughout the City. It will probably increase each year.

There will be additional requirements placed on the City with the new permit we expect to receive in March of next year specifically taking samples of the storm water as it enters the river and submitting that to the state for analysis and depending on what they find, tracing the source of pollutants back to the source.

Alderman Drinnon stated he wanted the citizens to know that this was a federal unfunded mandate.

Mr. Lawton stated this was true and we have to include in the statements that go out, (assuming passing of this ordinance on the next three readings) the language, "this tax that has been mandated by Congress." It has to appear, by state law, on every statement that goes out of from the City office.

Alderman Palazzolo noted that Administration had been dealing with this for the past few years and had specifically been looking for solutions to the burden that the operating budget has had to withstand because of this unfunded federal mandate. The FAC had also met on this and a joint meeting with the Board. He felt that staff had looked at this with a fair and equitable standpoint keeping in mind the burden that could be placed on the residential property owners.

In response to his question, Mr. Lawton stated a developer when applying for a residential development, either PUD or traditional development, has to provide some conveyance of water and must demonstrate whether there are new regulations in terms of development on the site, and they contain the sedimentation and all the debris that could enter the storm system. Most importantly, they must demonstrate their detention, retention, conveyance, underground storage so that the development is not going to impact the downstream property no more or no less than what is currently in place.

Alderman Hinely asked if the fee would be attached to the regular utility bill and if most of the residents would be paying about \$2.50 extra.

Mr. Lawton stated the most a resident would pay would be around \$3.20.

Ms. Hinely stated the churches, schools, larger complexes and the commercial properties would be paying most of this fee.

Mr. Lawton stated this was true mostly because of the size of the impervious areas that they have and the velocity of the pollutants that come off those parking areas.

Mr. Lawton addressed raising the tax rate and how it would impact the citizens as compared to having a stormwater fee for all. The whole reason for looking at the fee is because it is a federal mandate and state law calls for the adoption of a user fee to cover this specifically.

Motion by Mr. Chism, seconded by Mr. Palazzolo, to approve Ordinance 2009-18 - Stormwater User Fees and to set November 23 as the public hearing date for this ordinance.

Alderman Billingsley stated he had heard this was a federal unfunded mandate, however, the citizens of Germantown and the Board well knows there is not a mandate that Congress passed this law to our citizens. He stated that Congress stipulates that we have to put on the water bill, that this is a mandated fee. He was concerned that the shop owners across the city were hurting financially, as are the non-profits and churches. He felt the fees for these commercial areas would be tremendous. St. George's Independent School is estimated to have to pay \$7,915.00, for Forest Hill Church of Christ, the fee would be \$10,190.00, for Germantown Baptist Church the fee would be \$45,625.00 and Shelby County Schools will pay \$62,131.00. He stated he understood the City Administrator's concerns regarding the budget year but felt the City was putting an enormous amount of pressure on our local non-profits, churches and local businesses. He stated he would be voting no on the first reading.

Alderman Drinnon stated he felt they all felt they should vote no but when it is federally mandated and state law is drafted to follow federal law, then we don't have much choice.

Mr. Lawton stated federal government did not state that you must put in place a fee; it provides us the ability to put a fee in to cover these stormwater costs. What has happened since 2003, because of the mandate, our costs of compliance have escalated. We have gone from \$2.5 million to almost \$5.5 million in meeting this requirement and the general fund can no longer afford to cover the costs of this continued requirement.

Assistant City Attorney Debra Wiles stated the Tennessee statute requires that each user pay a proportionate share based on the stormwater drain-off that is created by that property. The Attorney General's opinion that came down specifically noted that you could not omit churches and other non-profits. It would be in violation of the statute to eliminate those institutions.

ROLL CALL: Billingsley-no, Chism-yes, Drinnon-yes, Hinely-yes, Palazzolo-yes. Motion approved.

ADJOURNMENT

There being no further business to be brought before the Board, the meeting was adjourned.

Sharon Goldsworthy, Mayor

Dotty Johnson, City Clerk/Recorder