

## **BOARD OF MAYOR AND ALDERMEN**

July 22, 2013

A regular meeting of the Board of Mayor and Aldermen was held on Monday, July 22, 2013 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: Greg Marcom, John Drinnon, Mike Palazzolo, Forrest Owens and Rocky Janda. Staff present: Patrick Lawton, Tom Cates, George Brogdon, Andy Pouncey, Wade Morgan, Tim Gwaltney, Chief John Selberg, Chief Richard Hall, Pam Beasley, Reynold Douglas, Bo Mills, Paul Chandler, Michael Stoll, Lisa Piefer, Susan Hopson, Debra Wiles and Dotty Johnson.

### **Call to Order**

Mayor Goldsworthy called the meeting to order at 6:00 p.m.

### **Invocation**

Economic and Development Director Andy Pouncey gave the invocation.

### **Pledge of Allegiance**

Alderman Mike Palazzolo led the Pledge of Allegiance.

### **Approval of Agenda**

During the Executive Session the Board discussed moving the following to the consent agenda: #8 (Appointments to Education Commission), #12 (Project Development Contract 1183 - Baptist Rehabilitation Hospital), #14 (Award of Construction – Poplar Culvert Replacements), #15 – Professional Services Agreement – Poplar Culvert Replacements), #17 (GPAC Rental Fees for Tennessee Shakespeare), and #18 (Ordinance 2013-11 – Amendment to Chapter 19 and Chapter 22).

The Board also agreed to defer #9 (Germantown Community Library Contract Extension).

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

ROLL CALL: Marcom–yes, Drinnon–yes, Palazzolo-yes, Owens -yes, Janda–yes. Motion approved.

### **Approval of Minutes**

There were no corrections or additions to the minutes.

Motion by Mr. Drinnon, seconded by Mr. Owens, to approve the minutes of the July 8, 2013 meeting.

ROLL CALL: Marcom–yes, Drinnon–yes, Palazzolo-yes, Owens –yes, Janda–yes. Motion approved.

### **Citizens to be Heard**

Mr. Howard Lowrance, of 2092 Spring Hollow Lane, came forward to thank the Board for continuing the discussions on Lateral G.

### **Mr. Cates Retirement**

City Administrator Patrick Lawton came forward to the podium and stated: (verbatim minutes)

For the past 32 years Tom Cates has served as a legal advisor to the Board of Mayor and Aldermen and City Administration on all things legal that have confronted the City. Since 1991 he has served as City Attorney for Germantown providing advice and legal council on a broad range of legal issues that have arisen from various litigation matters, contracts, land use, personnel and the list goes on.

## **Board of Mayor and Aldermen**

July 22, 2013

Page 2

In this age of specialization, municipal law is one practice area that requires the City Attorney to acquire knowledge in just about every arena. Tom Cates has always provided the Board of Mayor and Aldermen and the Administration with sound legal advice and has answered our questions over the years on the broad range legal challenges and issues in a honest, no nonsense and as practical a manner as possible.

Over the years we have all come to understand that municipal law is very complicated and there may not always be that clear cut answer to the question. As City Attorney, Tom has had to examine City ordinances, the City Charter, state statutes covering the form of local government for our city and state and federal case law. Tracking down, sorting out, evaluating and then providing the City with the best legal advice is something Tom has done for us time and time again.

During my tenure with the City, I have had the privilege and honor to work with Tom as our City Attorney. During that period of time I have observed and taken note of several positive attributes about Tom that I have personally tried to emulate and things that set him apart from the rest.

1. When called upon, Tom has always tried to provide the City with the best legal advice possible despite all the complications I noted earlier. In that role he has always maintained his objectivity and has left the policy decisions to the policy makers.
2. Tom is a smart man; he knows this community and the surrounding area and is well respected and regarded for history that has surrounded certain decisions. As a result of that, Tom is politically aware but has always acted apolitical.
3. I have never heard Tom say the word “no”. He will always try to offer alternatives and explanations that are well thought out and understandable.
4. Tom has during this time as City Attorney offered unsolicited advice, not to second guess the Board or Administration, but to make sure we have all the information and have asked the right questions before we make a decision. The ability to do this comes with time and trust.
5. With Tom’s office downtown he has always performed his job on the move, meaning that he is physically visible and available at all times. He calls it “running my traps”. I call it being responsive and responsible.
6. The question of why we have a City Attorney in the first place is based on one thing – the law. The cornerstone for the law is ethics. In all of my dealings, and I speak for everyone in this room, with Tom Cates is he is one thing – scrupulously ethical. He is, in my opinion, beyond reproach and I have never questioned his ethics or integrity in dealing with matters that come before the City.
7. Finally, Tom has always been respectful, patient with us less lawyerly types, forthright and honest, and has always treated his colleagues in city hall, public officials and community members the way he would expect to be treated.

When I was younger, I would hear my father talk of people he held in high esteem by saying “Patrick when they made him, they broke the mold”. We can all say the same thing about Tom Cates.

We owe Tom tremendous gratitude for his service over the years to this city and I am proud to call him my friend.

As a way of recognizing his outstanding contributions to the City, Mayor Goldsworthy and I would like to designate the section of the library where our reference and business material is housed as "Tom Cates Reference and Business Collection" or something similar.

## **Board of Mayor and Aldermen**

July 22, 2013

Page 3

And, on behalf of the Board of Mayor and Aldermen, to provide Tom with this plaque commemorating his years of service. The plaque reads: Presented to Tom Cates in recognition of 32 years of outstanding dedication and service to the City of Germantown, July 22, 2013.

### **Proclamation**

Mayor Goldsworthy read a proclamation in tribute to Mr. Cates.

WHEREAS, C. Thomas Cates, more familiarly known as "Tom", a native of Milan, Tennessee, and long-time resident of Germantown, Tennessee, and

WHEREAS, he earned a bachelor of arts degree from the University of Memphis in 1963 and law degree from Vanderbilt Law School in 1965, shortly thereafter joining the firm of Burch, Porter & Johnson, distinguishing himself particularly in the practice of commercial and business litigation, environmental law, real estate and commercial transactions, zoning and land use planning, and government relations and municipal law, for more than 45 years, and for six years he served his country in the Army Reserves, and

WHEREAS, his expertise especially pertinent to municipal governance and operations became available and of value to the City of Germantown with his initial appointment as an assistant city attorney/advisor to the Parks & Recreation function in 1981, followed by similar service to the Design Review Commission in 1986 and the Planning Commission in 1989, and his becoming interim city attorney and advisor to the Board of Zoning Appeals, Design Review Commission and Planning Commission in 1991, and

WHEREAS, he was appointed city attorney in February 1992, and since has provided exemplary counsel and guidance to the Board of Mayor and Aldermen, the City administration, and all personnel as appropriate, and

WHEREAS, in the course of his service, among his many significant contributions to the advancement of the City of Germantown, four are especially notable: the negotiation and execution of an evergreen contract for treatment of sanitary waste by the City of Memphis, the negotiation and sequential execution of complex land transfers and management contracts enabling the City's securing of property and right of way for the two-mile Wolf River Boulevard connector, the legalities of rapidly establishing the Germantown Community Library and exceptional citizen volunteerism as its chairman from inception in 2005, and leadership for six Shelby County communities in their pursuit of municipal school districts, and

WHEREAS, Tom Cates has brought to city hall not only his professional acumen and ethics for more than 32 years, he has often shared his wit and favor for good stories emanating from the courtrooms and law offices he has frequented, the tomatoes and squash and watermelon from his garden and farm, and the steadfastness of high moral values that command the respect, admiration and appreciation of all privileged to associate with him,

NOW THEREFORE, I, Sharon Goldsworthy, mayor of the City of Germantown, on behalf of the Board of Mayor and Aldermen, declare that Wednesday, July 31, 2013, be observed and celebrated as *C. THOMAS CATES DAY* throughout the City of Germantown, thereby encouraging all citizens, public officials and municipal employees to recognize and applaud his considerable presence and contribution to the life and good of this community.

### **City Attorney Appointment**

Mr. Lawton stated, with the retirement of Tom Cates as City Attorney, the Board of Mayor and Aldermen, per the City Charter, must appoint a city attorney to address and advise the Board and the City administration on all matters of the law that come before the City.

**Board of Mayor and Aldermen**

July 22, 2013

Page 4

After considerable discussions between the mayor, the city attorney, and the city administrator, the Administration recommended the Board appoint Ms. Debra Wiles to serve as city attorney. Ms. Wiles met all of the statutory requirements to serve as city attorney for the City of Germantown.

Mr. Lawton stated the City administration had worked closely with Ms. Wiles over the past years on a number of legal matters and had developed a deep sense of confidence in her abilities as an attorney and legal advisor.

Motion by Mr. Owens, seconded by Mr. Drinnon, to appoint Mrs. Debra Wiles to serve as City Attorney for the City of Germantown.

ROLL CALL: Marcom–yes, Drinnon–yes, Palazzolo–yes, Owens –yes, Janda–yes. Motion approved.

**Appointments to Education Commission – Moved to Consent**

**Germantown Community Library Contract Extension - DEFERRED**

**Smart Growth Public/Private Partnership Program Revision**

Mr. Lawton explained that the public policy under consideration is an amendment to the Smart Growth Partnership Program adopted by the Board in May 2008. He included a Power Point Presentation.

The primary changes to the existing policy include having this policy apply to all economic development districts adopted by the Board such as the existing Smart Growth District and the soon to be considered Western Gateway Small Area Plan.

The other significant change is the fiscal impact the project will have on the economic sustainability of our city when considering possible economic development incentives. Under this proposed policy amendment the Board recognizes that there are three primary players involved in the Smart Growth development process: the City of Germantown, various stakeholders and the developer.

Mr. Lawton then explained the ways in which these primary players would be involved. The City would provide the vision, the administrative and planning expertise, the coordination of the project and any possible financial incentives to be made available. The City will also provide the legal framework necessary for achieving Smart Growth development patterns.

The stakeholders, the residents in close proximity to a Smart Growth project, must feel that they can influence the course of a project. They need to be made aware of plans for a project early on in the process and be given a chance for input throughout the process through private meetings with the developer and public meetings scheduled by the City.

The private sectors will be involved in actually putting the entire development project together. They are responsible for arranging the financing for the project, the design of the project to our Smart Growth plan and specifications, code and regulations, marketing their project successfully and ultimately the construction and operation.

Motion by Mr. Marcom, seconded by Mr. Janda, to adopt the Revised Smart Growth Partnership Program.

ROLL CALL: Marcom–yes, Drinnon–yes, Palazzolo–yes, Owens –yes, Janda–yes. Motion approved.

**Board of Mayor and Aldermen**

July 22, 2013

Page 5

**Resolution 13R06 – Project Development Process**

Mr. Pouncey read the resolution which stated that the Board authorizes the Mayor, or in the absence of the Mayor, the Vice-Mayor, to execute and deliver on behalf of the City agreements relative to development within the City, provided that such agreements show on their face that same have been approved by the Director of Development, the City Engineer and the City Attorney.

The approval of this resolution will expedite the process of development, requiring less expense and time for the developer which in turn should be further incentive to develop in the City.

Resolution 13R06 reads:

**A RESOLUTION TO APPROVE AN AMENDMENT TO THE PROJECT AND SUBDIVISION DEVELOPMENT PROCESSES FOR THE CITY OF GERMANTOWN**

**WHEREAS**, the Ordinances of the City of Germantown (the “City”) require that the Board of Mayor and Aldermen of the City (the “BMA”) authorize the execution by an officer of the City of certain agreements with regard to the development of property within the City; and

**WHEREAS**, the City has instituted procedures and requirements for the development of property within the City and such have been embodied in the form of Development Agreements regularly used by the City; and

**WHEREAS**, the form and content of each such Development Agreements are reviewed by the Planning Division of the City, the City Engineer, the Director of Development, and the City Attorney; and

**WHEREAS**, the BMA desires to adopt a resolution authorizing the Mayor, or in the absence of the Mayor, the Vice-Mayor, to execute and deliver on behalf of the City Development Agreements under certain conditions;

**NOW, THEREFORE**, the foregoing considered, be it resolved as follows:

**BE IT RESOLVED** that the Board of Mayor and Aldermen of the City of Germantown does hereby authorize the Mayor, or in the absence of the Mayor, the Vice-Mayor, to execute and deliver on behalf of the City agreements relative to development within the City, provided that such agreements show on their face that same have been approved by the Director of Development, the City Engineer, and the City Attorney.

Motion by Mr. Drinnon, seconded by Mr. Marcom, to approve Resolution 13R06 that resolves that the Board of Mayor and Aldermen authorize the Mayor, or in the absence of the Mayor, the Vice-Mayor, to execute and deliver on behalf of the City agreements relative to development within the City, provided that such agreements show on their face that same have been approved by the Director of Development, the City Engineer, and the City Attorney.

ROLL CALL: Marcom–yes, Drinnon–yes, Palazzolo–yes, Owens –yes, Janda–yes. Motion approved.

**Project Development Contract 1183 – Baptist Rehab – Moved to Consent**

**Public Hearing – Ordinance 2013-10 – Rezoning of Southeast Corner of Wolf River Blvd. and Kimbrough Rd.**

Alderman Marcom recused himself and left the podium.

## **Board of Mayor and Aldermen**

July 22, 2013

Page 6

Mr. Pouncey explained that this was a rezoning of 2.7 acres at the southeast corner of Wolf River Blvd. and Kimbrough Rd. The intent is to rezone from the "R-T" Multi-family district to the "O" Office district. The stated intent of the developer is to construct two medical office buildings. There are offices to the north of this property and the property's long and relatively narrow shape, with considerable major road frontage, does not lend itself well to townhouse or multi-family development. The concept plan envisions two office buildings: one with 15,000 to 17,360 sq. ft. of floor area and a second building with 9,000 sq. ft.

The Planning Commission had approved the rezoning and the neighbors were very much interested that the property remain residential in character.

Alderman Drinnon asked a question regarding the height of the buildings and Mr. Pouncey stated the concept plans were one story buildings but it can go up to 35 feet in height which is what the houses across the street are able to do. Staff is trying to keep everything to scale as far as materials, color, etc.

Mayor Goldsworthy opened the public hearing.

Linda Scott, of 1419 North Park Road, came forward and asked if this was built, she urged that it be one story buildings so that neighbors across the street weren't looking at a high rise. She also asked to consider landscaping and push the buildings back so the neighbors aren't looking directly at the office building.

Having no one else come forward, the public hearing was closed.

Motion by Mr. Owens, seconded by Mr. Palazzolo, to approve on second reading the rezoning from the "R-T" Multi-family District to the "O" Office District of 2.7 acres, located on the southeast corner of Wolf River Blvd. and Kimbrough Rd.

Alderman Palazzolo asked to put in the record that the Board was considering in the CIP a study to see what the need is for the intersection of Wolf River Blvd. and Germantown Road.

Mr. Pouncey stated the study would be for the area from Kimbrough to Briarbrook.

Mr. Pouncey stated they were doing everything they could to screen the development with landscaping and considering bringing the building closer to the street to mirror the residential across the street and hide the cars.

Alderman Drinnon stated until it is determined that the building is one or two stories he would vote against the rezoning. He was not against the rezoning but was concerned about a two story building across the street from the residential area.

ROLL CALL: Marcom--recused, Drinnon--no, Palazzolo--yes, Owens --yes, Janda--yes. Motion approved.

### **Award of Construction – Poplar Culvert Replacements – Moved to Consent**

### **Professional Services Agreement – Poplar Culvert Replacements – Moved to Consent**

### **Professional Services Agreement – Wolf River Lateral G Evaluation and Alternatives**

City Engineer Tim Gwaltney explained that Wolf River Lateral G was in the Stormwater Master Plan. Lateral G flows from south to north along the City and the Town of Collierville's common border. In 2004, the City entered into a PSA with ETI to finalize design and construction documents for an alternative for the construction of a high flow channel on the west side of Lateral G.

**Board of Mayor and Aldermen**

July 22, 2013

Page 7

After about 60% of the design milestone, it was discovered that significant utility adjustments would be required. MLG&W estimated that these adjustments would cost upwards of \$200,000.00. The unexpected high costs of these adjustments and other concerns voiced from area residents and Houston High School representatives stalled the project.

On Feb. 6, 2013, FEMA identified and placed many of the existing homes and property along Lateral G south of Wolf River Blvd. in a Special Flood Hazard Area. Included in the FY14 CIP is a project to re-evaluate Lateral G with the goal of identifying alternatives that would eliminate or lessen the need to relocate major utilities while providing the maximum flood protection.

Motion by Mr. Marcom, seconded by Mr. Palazzolo, to authorize the Mayor to enter into a Professional Services Agreement with ETI Corporation in the amount of \$135,247.00 for evaluating additional design alternatives to alleviate flooding along Wolf River Lateral G.

ROLL CALL: Marcom–yes, Drinnon–yes, Palazzolo–yes, Owens –yes, Janda–yes. Motion approved.

**GPAC Rental Fees for Tennessee Shakespeare – Moved to Consent**

**Ordinance 2013-11 – Amendment to Chapter 9 - Environment Ordinance and Chapter 22 – Vegetation Ordinance – Moved to Consent**

**CONSENT**

**Recognition of Donation – Germantown Community Library**

Contributions made by Friends of Germantown Community Library (\$300.00) will be used to fund a Germantown Community Library “Employee of the Month” program. The Kiwanis Club of Germantown donation (\$200.00) is earmarked to be used to support the Library’s special needs “Flippin the Pages” program.

MOTION: To recognize donations to the Germantown Community Library totaling \$500.00 and to approve Budget Adjustment No. 14-02.

**Purchase of Automated CPR Devices**

These automated CPR devices mechanically take the place of manual CPR on cardiac arrest victims. The prices for these devices (\$24,761.60) are based upon the bid price received in FY13 which are still valid.

MOTION: To request authorization to purchase two (2) LUCAS 2 Automated CPR devices from Physio Control, Inc. in the total amount of \$24,761.60.

**Purchase of Defibrillators**

The purchase of the five monitor/defibrillators from Zoll is a sole source item due to the need to remain consistent with the defibrillators used by the Fire Department. The total cost is \$135,418.86. Three of the new defibrillators will complete the replacement of the Fire Department’s old defibrillators and include trade-in of the old defibrillators. The additional two defibrillators will be assigned to the new Ambulance Service.

MOTION: To request authorization to purchase five (5) monitor/defibrillators from Zoll Medical in the total amount of \$135,418.86.

**Appointments to Education Commission – Moved from Reg. Agenda**

Alderman Rocky Janda, alderman liaison, and Stacey Ewell, staff liaison, to the Education Commission, recommended the following twelve citizens be appointed to the Education Commission: Mindy Fischer,

**Board of Mayor and Aldermen**

July 22, 2013

Page 8

Julie Ganey, Greg Garrison, Audrey Grossman, Rebecca Guynes, Howard Lowrance, Leigh Packard, Dino Palazzolo, Sue Sharp, Stephanie VanArsdale, Dan Wanat and Natalie Williams.

MOTION: To approve the following appointments to the Education Commission: Mindy Fischer, Julie Ganey, Greg Garrison, Audrey Grossman, Rebecca Guynes, Howard Lowrance, Leigh Packard, Dino Palazzolo, Sue Sharp, Stephanie VanArsdale, Dan Wanat and Natalie Williams.

**Project Development Contract 1183 – Baptist Rehab – Moved from Reg. Agenda**

Baptist Memorial Healthcare is partnering with Centerre Healthcare Corp to operate a 49 bed inpatient rehabilitation hospital on this 6.15 acre parcel within the Wolf River Center subdivision. The property is the former site of the Walmart store. Duke Realty Corp. will be responsible for developing the project and will ultimately own both the building and parcel.

MOTION: To approve Project Development Contract 1183 for the Baptist Rehabilitation Hospital.

**Award of Construction – Poplar Culvert Replacements – Moved from Reg. Agenda**

There are forty-eight (48) storm drain culverts of various sizes and shapes crossing under Poplar Ave. within the city limits. A significant portion of the culverts have reached the end of their design life and are showing signs of failure. An engineering report was generated detailing the existing condition of each culvert along with recommendations and cost estimates. The report was submitted to TDOT and we have received their notification to proceed to the design phase of the project. The project is funded through the Surface Transportation Program at 80% federal and 20% state responsibility.

Two qualified bids were received and Ferrell Paving provided the lowest acceptable bid in the amount of \$676,067.55.

MOTION: To authorize the Mayor to enter into a construction contract with Ferrell Paving, Inc. in the amount of \$676,067.55 for the replacement of six (6) deteriorated culverts beneath Poplar Ave.

**Professional Services Agreement – Poplar Culvert Replacements – Moved from Reg. Agenda**

The City requested Askew Hargraves and Harcourt (A2H) to provide a fee proposal for Construction Engineering and Inspection (CEI) services related to the replacement of six deteriorated culverts beneath Poplar Ave. in the amount of \$92,000.00. This Professional Services Agreement is 100% reimbursable.

MOTION: To authorize the Mayor to enter into a Professional Services Agreement with Askew Hargraves and Harcourt (A2H) in the amount of \$92,000.00 for Construction Engineering and Inspection services for the replacement of six (6) deteriorated culverts beneath Poplar Ave.

**GPAC Rental Fees for Tennessee Shakespeare – Moved from Reg. Agenda**

Tennessee Shakespeare has never presented a theater performance at GPAC. They have only held their annual fundraising gala at GPAC. The total value of rental fees for three events they are interested in presenting will be \$12,911.00.

MOTION: To approve waiving GPAC rental fees totaling \$12,911.00 for three events to be produced by Tennessee Shakespeare Company during FY14.

**Ordinance 2013-11 – Amendment to Chapter 9 - Environment Ordinance and Chapter 22 – Vegetation Ordinance Moved from Reg. Agenda**

The time frame for property owners to remove rubbish or refuse from the property and to cut grass/vegetation after notification by the City needs to be reduced. This ordinance will reduce the time from ten to five days after the effective date of the notice to correct the violation. This reduction in time allows for a quicker response by the City to address nuisance lots.



**Board of Mayor and Aldermen**

July 22, 2013

Page 9

With this change, notice may be given by personal service or first-class mail with proof of mailing. The proposed ordinance also requires the recording of lien on the property for the cost of cleaning or cutting by the City plus a \$100.00 administrative fee and cost of filing the lien.

MOTION: To adopt Ordinance 2013-11 on first reading and set August 26, 2013 for second reading and public hearing.

Alderman Marcom reiterated that he was recusing himself from voting on the Project Development Contract 1183 and Alderman Palazzolo recused himself from voting on Appointments to Education Commission.

Motion by Mr. Drinnon, seconded by Mr. Owens, to accept the consent agenda as amended.

ROLL CALL: Marcom–yes, Drinnon–yes, Palazzolo–yes, Owens –yes, Janda–yes. Motion approved.

**ADJOURNMENT**

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

---

Sharon Goldsworthy, Mayor

---

Dotty Johnson, City Clerk/Recorder