

BOARD OF MAYOR AND ALDERMEN

January 27, 2014

A regular meeting of the Board of Mayor and Aldermen was held on Monday, January 27, 2014 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 and Rocky Janda. Alderman Owens was absent. Staff present: Patrick Lawton, Debra Wiles, George Brogdon, Tim Gwaltney, Bo Mills, Susan Hopson, Chief John Selberg, Chief Richard Hall, Wade Morgan, Pam Beasley, Reynold Douglas, Butch Eder, Ralph Gabb, Lisa Piefer and Dotty Johnson.

Call to Order

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

Invocation

Parks & Recreation Director Pam Beasley gave the invocation.

Pledge of Allegiance

Alderman Rocky Janda led the Pledge of Allegiance.

Approval of Agenda

The Board agreed to move the following agenda items to the Consent Agenda: #13 – Resolution 14R02 – Amendment to City of Germantown Defined Benefit Plan and #15 – Germantown Community Library Contract Extension.

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

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

Approval of Minutes

The Minutes were approved after corrections made during Executive Session.

Motion by Mr. Drinnon, seconded by Mr. Marcom, to approve the minutes of the Board of Mayor and Aldermen meeting held January 13, 2014.

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

Proclamation

The Mayor asked Mary Anne Gibson, Austin Simons, John Coons, Jimmy Chancellor, George McGaha, and Bobby Lanier with the Germantown Horse Show and Parks and Recreation Director Pam Beasley to come forward. The Mayor read a proclamation recognizing work done by members of the Germantown Charity Horse Show. These men and women had worked tirelessly along with several local contractors to complete all major upgrades to the stable at the Farm Park, including installation of new metal roofing for the entire structure, exterior and interior painting, restoration of twelve stall doors, fabrication of new exterior carriage doors, restroom renovations, new lighting, upgrades to the electrical system, construction of a public hand washing station, office restoration, creation of a space for historical exhibits and interpretation and refurbishment of the outdoor grain tank. The in-kind gift to the City is valued at over \$250,000.

Citizens to be Heard

Alex Jekels, 2219 S. Germantown Road, spoke against Ordinance 2013-15. He stated that Bartlett and Collierville each allow only three liquor stores and we should do the same.

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Lacy Dougher, 3725 Classic Dr., came forward to speak against Ordinance 2013-15. Ms. Dougher quoted some percentages regarding the number of liquor stores and the relation of violent acts and teenage drinking. She asked the Board to slow down on this issue and really consider the issue.

Jason Gaia, 8394 Creek Bridge Dr., asked the Board to approve the ordinance. He gave examples where liquor stores could be opened. He felt that opening up T-5 and T-6 there would be very few places one would consider opening a liquor store.

Joan Terry, 7830 Dogwood Rd, stated she had come to accept the Whole Foods would be in their backyards. She stated they had asked for a real good boundary(screenscape). The Neighborhood Association had asked for a setback of 75 feet. The setback is on the other side of the wall that is on the line. She asked for some time to work out some of these issues.

Richard Glassman, 7787 Dogwood Rd., stated he had not received a letter, e-mail or anything from the developers and he serves as the chairman of the Dogwood Homeowners Association. He also stated that the developers had refused to meet with him. He felt things could be worked out as they had with the City when they put in the maintenance facility on Southern Ave. if the developers would just talk with him and the president of the Association.

Jimmy Luke, 2350 Carters Grove Lane, stated that he and his wife were the property owners of the proposed Whole Food Market site. They had received many proposals for that property. He felt Whole Foods was the first proposal that he felt would be first class and would complement the City.

Ralph Berry, 9276 Ingleside Farm South, stated he had been running a social media campaign for Whole Foods. He stated he was speaking for the 1,500 active supporters of bringing Whole Foods to Germantown. He stated the ways this project would benefit Germantown.

Charlie Oates, 4986 Minden, Memphis, is a Whole Foods Broker and had represented Whole Foods for 10 years. He had previously spoken before the Planning Commission to address the site decision, logic and strategy for choosing the site.

Ron Poe, 1581 Lawton Trail, stated he was representing Ms. Dolly Willis who is the current property owner of the property facing Pete Mitchell. He stated Ms. Willis' property was separate and apart, it has a T-4 rating and she would have the right, by zoning, to develop that property but she faces Pete Mitchell. In order to develop her property, Pete Mitchell Road would have to be incorporated into that and would most likely have to remain open. He felt it was an opportunity for the City and for the Luke and Willis property to be developed at the same time. He stated he felt the developers had worked very well with the citizens.

Pat Pitts, 2840 Quail Creek Cove, stated she was a member of Kingsway Christian Church. She was concerned for the members of the church getting in and out of the area especially making a left turn out of the church. She also asked if Whole Foods was going to put a brick wall up between Whole Foods and the church.

Wade Morgan stated that was not part of the plan but it could be addressed.

Mayor Goldsworthy recessed the Board of Mayor and Aldermen meeting and opened the Beer Board.

BEER BOARD

Public Hearing – Permit to Sell Beer for On-premise Consumption – AKASAKA Japanese Grill & Bar – 7685 Farmington Blvd.

City Administrator Patrick Lawton stated that this was for the new owner of AKASAKA. The request is for on-premise consumption. Ms. Lan Xa Le has complied with all requests and nothing has been found to discredit the new owner.

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Mayor Goldsworthy opened the public hearing. Having no one come forward, the public hearing was closed.

Motion by Mr. Marcom, seconded by Mr. Palazzolo, to approve the request from Lan Xa Le for a permit to sell beer for on-premise consumption at AKASAKA located at 7685 Farmington Blvd.

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

Mayor Goldsworthy closed the Beer Board and reconvened the Board of Mayor and Aldermen.

BOARD OF MAYOR AND ALDERMEN

Public Hearing - Ordinance 2013-15– Amendment to Section 3 – 116 (Alcoholic Beverages – Location of Establishments) regarding zoning districts - Second Reading

Chief Planner Wade Morgan stated this was an amendment to the City’s regulations on zoning for places that sell alcoholic beverages and it is the third and final reading. This is not a part of the Zoning Regulations, but it does relate to the required zoning of places that sell alcoholic beverages and to the provisions of the Smart Code. Currently, Section 3-116 limits places that sell alcoholic beverages to the C-2 (General Commercial) zoning district. When Smart Code and associated districts were adopted, Section 23-804 permitted Liquor Selling Establishments to be located in T-5 districts, subject to the approval of a warrant. Staff recommends that Section 3-116 be amended to include the SC-1 district as a permitted district, and the T-5 district as a permitted district, subject to the approval of a warrant.

In response to discussions at the last Board of Mayor and Aldermen meeting, the ordinance does include a T-6 zoning district.

Alderman Janda asked if this increased the number of liquor stores with this ordinance.

Mr. Morgan stated that the number of stores is set by another part of the ordinance. The number allowed in the ordinance is 10.

Alderman Palazzolo asked Council if the owners of the three existing stores could meet and set a distance requirement for wine and spirit stores. Also, would a new store be grandfathered in if the ordinance is passed tonight?

Ms. Wiles stated the City can establish the distance requirements in general but this is not current in the ordinance and the Board would have to pass an ordinance on three readings. If someone already has made application under this ordinance, it is likely that it would be grandfathered in so that any later distance requirements might not be applicable.

Alderman Janda asked if this ordinance could be tabled after the second reading.

Ms. Wiles stated the Board would have to address an amendment to the ordinance that would have a distance requirement. It would not be in the scope of the present deliberations.

Mayor Goldsworthy asked if the Board chose not to act to neither approve or deny but to defer, is that an appropriate action if it wanted to delay consideration of this amendment? Is that permissible procedure?

Ms. Wiles stated yes one could choose to defer.

Alderman Drinnon asked what was the purpose of the request.

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Mr. Morgan stated that with the T-5 and T-6 districts it was to clear up any inconsistency between the zoning regulations which allows liquor sales in the T-5 and the T-6 areas and the alcohol and beverage ordinance which only allows them in a C-2 district.

Alderman Palazzolo asked the Board to consider deferring this action under the auspices to allow the current providers to come up with a distance between liquor stores.

A discussion followed on the number of liquor stores our ordinances allow.

Motion by Mr. Palazzolo, seconded by Mr. Janda, to defer Ordinance 2013-15 on third reading and to bring it back at a later time.

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

Public Hearing - Ordinance 2013-16 – Amendment to Chapter 23 – (Zoning Regulations) regarding accessory buildings structures - Second Reading

Mr. Morgan stated that various conflicts, unclear language and similar issues have been identified by staff as they implement the regulations on subdivisions business and dwellings. In some cases, the current regulations cause unnecessary delays and expenses to property owners, and can be confusing to staff, residents and business owners. This amendment addresses accessory building placement on double frontage lots. There had been no changes to the ordinance since the first reading.

Mayor Goldsworthy opened the public hearing. Having no one come forward, the public hearing was closed.

Motion by Mr. Janda, seconded by Mr. Marcom, to approve on second reading Ordinance 2013-16, which will amend Sections 23-187 (R-E District), 23-212 (RE-1 District), 23-236 (R District), 23-261 (R-1 District), 23-286 (R-2 District) and 23-311 (R-3 District) of the Zoning Regulations.

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

Public Hearing - Ordinance 2013-17 – Amendment to Chapter 17 – (Subdivision Regulations) regarding Minor Subdivision Revisions - Second Reading

Mr. Morgan stated this is an amendment to the City's regulations on land uses and land use approval processes. The proposed amendment can be best described as "clean-up" amendments to address oversights, clarifications, and less-than-clear language. The amendment would add the word "revision" to the description, to make clear the intent relates to modifications to existing subdivisions, and not to the creation of new lots. There had been no changes to the amendment since the first reading.

Mayor Goldsworthy opened the public hearing. Having no one come forward, the public hearing was closed.

Motion by Mr. Janda, seconded by Mr. Palazzolo, to approve on second reading Ordinance 2013-17, which will amend Section 17-1 (Policies) of the Subdivision regulations.

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

Professional Services Agreement – Germantown Athletic Club Renovation

Alderman Marcom recused himself from this agenda item and left the dais.

Athletic Club Director Phil Rogers stated this was a Professional Services Agreement with Fleming Architects and Fabian Designs to provide design services for the Germantown Athletic Club Renovation project.

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The plan's recommended entry level improvements include customer service area enhancement, new administrative offices, new pro shop, new lounge and sales office. Also, the plan recommended relocating the running track and infilling the floor over a portion of the Gymnasium to allow for new cardio, Pilates, group exercise and spinning rooms. Lower level recommended improvements include the expansion of the men's and women's locker rooms, new yoga, group exercise, spa/massage and party rooms.

During the interviews by the evaluation team, it was clearly indicated that Fleming Architects and Fabiano Designs were the most responsive to our Request for Qualifications. Staff asked if they would be amenable to making a proposal as a joint venture on the project to the City. They agreed and submitted a proposal that staff reviewed and deemed acceptable. Funding for this project is from the Germantown Athletic Club fund and is included in the approved FY14 CIP Budget.

A discussion followed on the funding and the joint venture.

Motion by Mr. Dinnon, seconded by Mr. Palazzolo, to authorize the Mayor to enter into a Professional Services Agreement with Fleming Architects and Fabiano Designs in the amount of \$256,500.00 to provide design services for the Germantown Athletic Club Renovation project.

ROLL CALL: Marcom-recused, Drinnon=yes, Palazzolo=yes, Janda -yes. Motion approved.

Mr. Marcom returned to the dais.

Resolution 14R02 – Amendment to City of Germantown Defined Benefit Plan – MOVED TO CONSENT

Professional Services Agreement – Animal Shelter Expansion

Public Services Director Bo Mills explained the Animal Shelter is in need of some maintenance. The building has had several roof leaks and there is a visual exterior wood damage. Many of the internal doors and walls have corroded due to daily cleaning and sanitizing of the kennel areas. The isolation room is very small and located in an area no longer functional for housing strays and sick animals. A renovation is critical for operational effectiveness and long-term sustainability.

Barge, Waggoner, Sumner and Cannon, Inc. were the low bid for the engineering and design services. The scope of the process will include a field survey. The process includes design and site modifications required for the expansion and minor modifications to meet ADA access requirements. The development of specifications and engineering designated for the construction phase will include new floor finishes, wall repairs, internal and external door replacements, ADA modification to the two restrooms and roof decking and shingles. The expanded isolation/intake area will be approximately 63 square feet with a separate HVAC system isolated from the existing animal populations and office administration area.

Motion by Mr. Janda, seconded by Mr. Palazzolo, to authorize the Mayor to enter into a professional services agreement with Barge, Waggoner, Sumner and Cannon, inc. in the amount of \$33,900.00 for engineering and design services for the Germantown Animal Shelter Expansion.

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

Germantown Community Library Contract Extension - MOVED TO CONSENT

Ordinance 2014-4 – Western Gateway Small Area Plan: Rezoning – First Reading

Alderman Marcom recused himself and left the dais.

Planner Marie Burgess presented this item to the Board. She explained that the Western Gateway area constitutes 58 acres and is strategically positioned to play a significant role in the future of Germantown's

economic growth and vitality. This study was funded by a public/private partnership between the City and a consortium of private property owners, and is based on Smart Growth principles that encourage urban mixed-use walkable districts, similar to those in the City's Central Business District.

Mr. Morgan explained that the Western Gateway area encompasses five properties, all zoned differently: Old Germantown (OG-1), Multi-family Residential (R-T), Shopping Center (SC-1), General Commercial (C-2) and Office (O) Districts. The proposed zoning will designate the properties as General Urban (T-5), General Urban Restricted (T-5R) and Urban Core (T-6) per the Smart Code.

A discussion followed on the zoning of the property and if sufficient notices were sent out.

Motion by Mr. Palazzolo, seconded by Mr. Janda, to approve on first reading Ordinance 2014-4, the rezoning of the properties within the Western Gateway Small Area Plan encompassing the properties located between Poplar and Poplar Pike between the eastern boundary of 6755 Poplar (Ray Gill property) and the western boundary of the City of Germantown, and set February 24, 2014, as the date of the public hearing.

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

Resolution 14R03 – Approval of Saddle Creek South PUD

Mr. Morgan explained that approval of the PUD will allow the demolition of the dental office building at the southwest corner of Poplar and West St., the demolition of a portion of the existing Saddle Creek South building, and the construction of 42, 811 sq. ft. of new retail space. Saddle Creek South and West will total 88,845 sq. ft. of floor area when completed.

RESOLUTION 14R03

WHEREAS, Trademark Property Co. proposes the redevelopment of Saddle Creek South and Saddle Creek West shopping centers into a Planned Unit Development (PUD) to be known as Saddle Creek South PUD; and

WHEREAS, the developer requests approval of the PUD Site Plan as submitted to the City so as to modify the standard development and building requirements to meet current development objectives; and

WHEREAS, the proposed PUD Site Plan contemplates the closure of a portion of McVay Road, for which the developer will need to submit an application to be reviewed by the Planning Commission and Board of Mayor and Aldermen for their consideration and approval in accordance with the City's procedures for such closure.

NOW, THEREFORE, BE IT RESOLVED by the City of Germantown that,

1. The Saddle Creek South Planned Unit Development Site Plan is hereby approved, subject to the approval by the Board of Mayor and Aldermen of the closure of the portion of McVay Road as indicated on said Site Plan.

A discussion followed regarding the notification of the citizens living in The Timbers Subdivision and the reduction of parking spaces.

Motion by Mr. Marcom, seconded by Mr. Dinnon, to approve Resolution 14R03 for the Saddle Creek South Planned Unit Development outline plan.

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

Whole Foods Market, Southeast Corner of Poplar Ave. and Pete Mitchell Rd. – Request Approval of Warrants

Alderman Marcom recused himself from hearing this agenda item and left the dais.

Mr. Morgan explained that there were five warrants associated with the approval of the site plan and building elevation plans for the Whole Foods Market proposed for the southeast corner of Poplar Ave. and Pete Mitchell Rd. Warrants are deviations from the strict requirements of the Smart Growth districts and must be approved by both the Planning Commission and the Board of Mayor and Aldermen.

Mr. Morgan gave a description of the warrants as follows:

1. The southern 250+/- feet of the site is within the T-4 District. Parking for a T-5 use within that area requires approval of a warrant.
2. The T-5 district requires the principal building entrance to be on Poplar Ave. (the Frontage Line)(section 23-767(10). The proposed building's entrance is on the southwest corner of the building, facing the main parking area.
3. The T-5 district requires all parking to be within the 3rd lot layer. Parking is proposed within the 1st and 3rd lot layers. Buildings on a non-pedestrian-oriented street (Poplar Ave.) may have parking on the frontage by warrant.
4. Parking within 50 feet of low density zoning is required to be parallel to the property line of the low density zoned property. The proposed parking is perpendicular to the property line.
5. The T-5 district sets a maximum of 205 parking spaces for a building of this size. The plan proposed 235 spaces so that a warrant in the additional 30 spaces is needed.

Warrant 1.

Motion by Mr. Palazzolo, seconded by Mr. Drinnon, to approve a warrant parking for aT-5 use within the T-4 District.

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

Warrant 2:

Motion by Mr. Palazzolo, seconded by Mr. Janda, to approve a warrant allowing Principal Pedestrian Entrance to be at a location other than on a Frontage Line.

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

Warrant 3:

Motion by Mr. Palazzolo, seconded by Mr. Janda, to approve a warrant allowing parking to be located within the 1st and 2nd lot layers.

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

Warrant 4:

Motion by Mr. Palazzolo, seconded by Mr. Janda, to approve a warrant allowing parking to be perpendicular to the property line of low density residentially zoned property.

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

Warrant 5:

Motion by Mr. Palazzolo, seconded by Mr. Janda, to approve a warrant allowing 235 parking spaces where a maximum of 205 spaces are allowed for a 41,050 sq. ft. retail function. (Sec. 23-805, table 11).

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

A discussion followed regarding brick walls, the height of the walls and where they would be placed.

Ordinance 2014-5 – Closure of a Portion of Pete Mitchell Rd.

Alderman Marcom recused himself from hearing this item.

Mr. Morgan stated this is for the closure of the portion of Pete Mitchell Road between Poplar Ave. and the crash gate to be installed as a component of the Whole Foods Market.

The closure of Pete Mitchell Rd. is a component of the Whole Foods Market site plan, and the street's closure was approved by the Planning Commission.

Cypress Realty has filed an application to close a section of Pete Mitchell Rd. so the road can be incorporated into the Whole Food development plan and become an access drive to that store. The Whole Foods development plan proposes the closure of the street segment as a public thoroughfare and the construction of a crash gate south of the store's entrance drive. There will be no change to the section of Pete Mitchell Rd. south of the crash gate.

Motion by Mr. Drinnon, seconded by Mr. Palazzolo, to approve on first reading ordinance 2014-5, which will close Pete Mitchell Road, between Poplar Ave. and the crash gate to be constructed with the Whole Foods Market, to public traffic and set February 24 as public hearing date.

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

Alderman Marcom returned to the dais.

CONSENT

Recognition of Donations – Germantown Library

The Library wishes to recognize the following organizations and individuals who have contributed to the Germantown Community Library: Mayor Sharon Goldsworthy \$1,200.00, Audrey Breeding \$50.00, Heritage Woman's Club \$600.00 and Friends of the Germantown Community Library \$1,559.50.

MOTION: To recognize donations to the Germantown Community Library totaling \$3,409.50 and approve Budget Adjustment No. 14-46.

Office Furniture Purchase – Fleet Services Shop

City staff worked with Business Interiors by STAPLES to provide layout and design services for the Fleet Services office and employee area. These furnishings are designed for a high level of workspace. The expenditures for the furniture are not to exceed \$26,479.20.

MOTION: To approve the purchase of Office Furniture from Business Interiors by STAPLES in the amount of \$26,479.20 and declare the replaced furniture as surplus.

Resolution 14R02 – Amendment to City of Germantown Defined Benefit Plan - Moved from Reg. Agenda

The amendments to the Defined Benefit Plan deal with Group Annuity Tables and qualified transportation expense. Amendment number 2 adopts applicable mortality tables for the Group Annuity Table under IRC 415(b)(2)(E). Amendment number 4 amends the plan under the Community Renewal Tax Relief Act of 2000 to include the definition of "Compensation" for the purposes of the plan. It deals with qualified transportation expense. The Internal Revenue Service requires that reimbursement be included in compensation for purposes of the plan.

MOTION: To adopt Resolution 14R02 – Amendment number 2 and 4e to the City of Germantown Defined Benefit Plan.

Germantown Community Library Contract Extension - Moved from Reg. Agenda

This is an agreement to extend the present contract with LSSI for 12 months. This action will serve as notice to LSSI that the City of Germantown will execute the option to use the third 12-month extension commencing in July 1, 2014 and ending June 30, 2015.

MOTION: To authorize the Mayor to enter into an agreement to extend the present contract for library services with LSSI for 12 months, effective until June 30, 2015.

Motion by Mr.Janda, seconded by Mr. Drinnon, to accept the Consent Agenda as amended.

ROLL CALL: Marcom-yes, Drinnon-yes, Palazzolo-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