

BOARD OF MAYOR AND ALDERMEN

February 23, 2015

The regular meeting of the Board of Mayor and Aldermen was held on Monday, February 23, 2015 at 6:00 p.m. in the Council Chambers of the Municipal Center.

Mayor Mike Palazzolo was present and presiding.

The following aldermen were present: John Barzizza, Mary Anne Gibson, Dave Klevan, Forrest Owens and Rocky Janda. Staff present: Patrick Lawton, Debra Wiles, Chief Richard Hall, Chief John Selberg, Daniel Page, Bo Mills, Reynold Douglas, Cameron Ross, Pam Beasley, Butch Eder, Ralph Gabb, Paul Chandler, Tony Fischer, Phil Rogers, Tim Gwaltney, Lisa Piefer and Dotty Johnson.

Call to Order

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

Invocation

General Services Director Reynold Douglas gave the invocation.

Pledge of Allegiance

Alderman Forrest Owens led the Pledge of Allegiance.

Approval of Agenda

The Board agreed to set the Agenda as published.

Motion by Mr. Barzizza, seconded by Mrs. Gibson, to approve the agenda as published.

ROLL CALL: Barzizza-yes, Gibson-yes, Klevan-yes, Owens-yes, Janda-yes. Motion approved.

Approval of Minutes

The minutes were approved as printed.

Motion by Mr. Janda, seconded by Mr. Klevan, to approve the minutes of the Board of Mayor and Aldermen meeting held February 9, 2015.

Arbor Day Proclamation

Mayor Palazzolo declared Friday, March 6, 2015 as Arbor Day. There will be a “free tree give-away” to be held from 9 a.m. until 11 a.m. Friday, March 6th at the Germantown Crossing Shopping Center and the “fruit tree sale” at the Bobby Lanier Farm Park on the same day from 11 a.m. until 2 p.m.

Citizens to be Heard

Sarah Wilkerson Freeman, 7684 Apahon Lane, came forward and stated she had requested the City address errors made by the Assistant City Attorney David Harris and Chief Planner Wade Morgan. Her complaint was about the Smart Code and she felt there was a cover-up regarding the Whole Foods and the closing of Pete Mitchell Rd.

John and Sherry Perry, Shelby County, came forward to give the City and Chief Hall a very heartfelt thank you. Their niece was Heather Palumbo-Jones that was murdered. They wanted to thank all the police for their professionalism and compassion in handling the case. Germantown had embraced the children and they were faring well.

Mr. Perry stated they wanted to give back to the community and had decided to have a bench made in honor of the Germantown Police Department, from the family of Heather Colombo Jones.

Chief Hall recognized the following Police Officers:

Inspector Frank Hester, Captain Bill Stemler, Det. Tony Kemp, Captain Mike Gray, Det. Jeff Gammill, Det. John Durfee, Lt. Bryan Wallace and Detective Amanda Holland

Mayor Palazzolo thanked all for their service to the community.

Award of Construction Contract – Germantown Greenway Trail

City Engineer Tim Gwaltney explained that several years ago the cities of Memphis, Germantown and Collierville partnered and collaborated to create a Master Plan for a linear park connecting downtown Memphis eastward along the scenic Wolf River corridor. Many of the segments of the Greenway have been constructed.

Germantown's Greenway Master Plan includes the two mile segment running parallel with the recently completed segment of Wolf River Blvd. from Kimbrough Road to Farmington Blvd. This segment of the trail was designed with the recently completed roadway. The City's design consultant, W.H. Porter, teamed with Dalhoff Thomas Studios and Audubon International to ensure social, economic and environmental sustainability. The result was the first roadway project in the world earning Silver Signature Sanctuary designation in Audubon International's certification program. Trailhead driveways, a pedestrian tunnel linking the Riverwoods Natural Area and trail approaches at each vehicular bridge, were constructed with the roadway project.

Alderman Gibson stated the Greenway process had been a long time coming and is something we can all be proud of.

Alderman Owens stated he was excited about the Greenway and it is something the citizens of Germantown will appreciate.

Motion by Mrs. Gibson, seconded by Mr. Barzizza, to approve a construction contract with Rose Construction, Inc. in the amount of \$1,819,614.16 for construction of a segment of the Germantown Greenway on the north side and parallel to the new segment of Wolf River Boulevard from Western Trailhead near Kimbrough to Cameron Brown Park and approve Budget Adjustment No. 15-52.

ROLL CALL: Barzizza-yes, Gibson-yes, Klevan-yes, Owens-yes, Janda-yes. Motion approved.

CONSENT

Mayor Palazzolo asked if anyone would like anything pulled or commented on from the Consent Agenda.

Alderman Gibson pointed out that staff had worked very hard to secure sponsorships for the movies for the Outdoor Theatre and the announcement will be made very soon.

George Brogdon, 8653 Pepper Bush Lane, stated some things were added to the agenda after it was posted on the web site. He asked for items j and k be pulled for explanation.

City Administrator Patrick Lawton explained that these were appointments of liaisons to the Beautification Commission and the Design Review Commission. After Alderman Klevan became a board member, in an attempt to try and place a liaison with each commission, there was a conflict with the times of Beautification and the PSEC both being held the same day at the same time. Alderman Owens agreed to switch commissions and Alderman Owens took the Beautification Commission and Alderman Klevan took the DRC.

Alderman Klevan commented that he was not trying to get rid of either commission it was just the conflict of time and he could not be two places at the same time.

Mr. Lawton stated there was a vacancy on the Library Board and Alderman Klevan had expressed an interest in serving on the Library Board.

Mr. Brogdon stated he did not request for these two items to be vote on separately, just wanted an explanation of what they were since they were not on the published agenda.

Outdoor Movie Theatre and Screen

In 2014, funding was granted to the Parks and Recreation Department to purchase an inclusive theatre system package. The special event activities line-up will be enhanced greatly, which will allow the City to be responsive to leisure and recreational trends, which will maximize the use of outdoor space.

MOTION: To request authorization to purchase an outdoor movie theatre system, console and screen, on-site training and HDMI adapter cable in the amount of \$16,060.00 from Open Air Cinema.

Resolution 15R01 – City Credit Card

The City has requested a Commercial Credit Card Account be issued in the name of the Mayor, City Administrator and Finance Director. The Mayor and City Administrator will have limits of \$6,000.00. The Finance Director will have a limit of \$12,000.00 due to travel from departments for airline and hotel cost to hold rooms.

MOTION: To adopt Resolution 15R01 for the issuance of SunTrust Commercial Credit Cards in the amounts for the Mayor at \$6,000.00; for the City Administrator at \$6,000.00; and the Finance Director at \$12,000.

Grant – Germantown Community Library

The State of Tennessee has awarded a grant in the amount of \$2,300.00 to the Germantown Regional History and Genealogy Center. The grant will be used to purchase a scanner for the preservation, arrangement and description of historic records for the City of Germantown.

MOTION: To recognize a grant awarded to the Germantown Regional History and Genealogy Center in the amount of \$2,300.00 and to approve Budget Adjustment No. 15-47.

Recognition of Donation – Youth Basketball Sponsor

The Germantown Parks and Recreation Department operates a youth basketball league for 1st through 10th grade youth. Local businesses have donated a total of \$3,200.00. The funds will be used to enhance the Youth Basketball program. The following businesses have made a contribution to the Parks and Recreation Youth Basketball League: OrthoOne (Jeff Dlabach) - \$500.00; Helena Chemical (Taylor Beasley) - \$300.00; Edge Marketing (EJ Gilley) - \$300.00, POP Solutions (Rocky Janda) - \$300.00; Flight Restaurant (Cari Perkins) - \$300.00; Hudson Ziskind Attorneys (Kevin Hudson) - \$300.00; Frase Protection (Jonathan Frase) - \$300.00; Metropolitan Bank (Chris Miller) - \$300.00; Evolve Bank & Trust (Marty Ferguson) - \$300.00 and Cantor Property Services (Kevin Hudson) - \$300.00.

MOTION: To recognize the stated donations from local business to the Parks and Recreation Department for the Youth Basketball program totaling \$3,200.00 and to approve Budget Adjustment No. 15-50.

Asphalt Compactor Purchase

This is a replacement for a 1994 Ingersoll-Rand DD32 Asphalt Compactor. The current compactor has exceeded its dependable life cycle and parts availability has become a problem because Ingersoll-Rand no longer manufactures asphalt rollers. The City utilizes asphalt rollers for street repairs and preventive maintenance as required.

MOTION: To approve the purchase of a 2015 Caterpillar Asphalt Compactor Model CB34B from Thompson Machinery Company in the amount of \$54,979.00 and declare unit 936 a 1994 Ingersoll-Rand DD32 Asphalt Compactor as surplus property.

Commercial Mower Purchase

This is a request to replace two 2005 John Deere Z-Trak mowers with two 2015 Exmark mowers in the amount of \$21,404.46 and to declare the 2005 John Deere mowers as surplus property. The new commercial mowers are used for athletic field maintenance and will be equipped with seventy-two inch mower decks which will increase mowing efficiency.

MOTION: To approve the purchase of two 2015 Exmark mowers with seventy-two inch mower decks Models LZX921GKA72600 from 4 Seasons Equipment Company in the amount of \$21,404.46 and declare units 5019 and 5021 John Deere Z-Trak Mowers as surplus property.

Compact Track Loader Purchase

This is a replacement for a 1998 Bobcat 753 Skid Loader that has exceeded its dependable life cycle and is not equipped with the proper hydraulic system required to run various types of attachments that can be purchased or rented for this machine. The new compact track loader is very versatile with approximately 60 different attachments available for this machine. All departments can utilize this machine.

MOTION: To approve the purchase of a 2015 Bobcat Track Loader Model T590 T4 and attachments from Clark Equipment Company dba Bobcat Company in the amount of \$50,362.65, approve budget adjustment No. 15-49 and declare unit 942, a 1998 Bobcat 753 Skid Loader as surplus property.

Top Dresser Purchase

The top dressers are used as part of the City's filed maintenance program to spread bulk materials on athletic fields while maintaining wide and consistent spread patterns. The current top dresser has an excessive amount of wear and due to its size is very inefficient.

MOTION: To approve the purchase of a 2015 Toro Model MH-400 with twin spinner attachment from Jerry Pate Turf & Irrigation in the amount of \$23,926.99 and declare asset number 8002, a 2001 Turfco SP1530 top dresser, as surplus property.

Bobby Lanier Farm Park – Professional Services Supplement

This supplement is for the design of a fire protection sprinkler system for the new activity center building at the Farm Park in the amount of \$3,250.00.

MOTION: To approve a supplement to the current Professional Services Agreement with Dalhoff Thomas Design Studio for the design of a fire protection sprinkler system for the new activity center building at the Bobby Lanier Farm Park in the amount of \$3,250.00.

Alderman Liaison Appointments

With the appointment of Alderman Klevan, there was an overlap in the times met for the Beautification and Design Review Commission. Alderman Owens agreed to serve as liaison to the Beautification Commission and Alderman Klevan will serve as liaison to the Design Review Commission.

MOTION: To approve the appointment of Alderman Forrest Owens as liaison to the Beautification Commission and Alderman Dave Klevan as liaison to the Design Review Commission.

Appointment to Library Commission

Alderman Dave Klevan will be appointed to serve on the Library Commission.

MOTION: To approve the appointment of Alderman Dave Klevan to the Germantown Community Library Board.

Motion by Mr. Barzizza, seconded by Mr. Klevan, to accept the Consent Agenda as read.

ROLL CALL: Barzizza-yes, Gibson-yes, Klevan-yes, Owens-yes, Janda-yes. Motion approved.

Mayor Palazzolo recessed the Board of Mayor and Aldermen and convened the Beer Board.

BEER BOARD

Public Hearing – Beer Permit – Germantown Shell – Off Premise

Mr. Lawton stated that Rooziman Shah applied for a permit to sell beer off premise at the Germantown Shell station on the corner of Germantown Road and Poplar. Mr. Shah completed the necessary paperwork and the Police Department had done a record check and found no outstanding warrants.

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

Motion by Mr. Klevan, seconded by Mr. Barzizza, to approve the request from Rooziman Shah, for a permit to sell beer for off-premise consumption at Germantown Shell at 7617 Poplar Ave.

ROLL CALL: Barzizza-yes, Gibson-yes, Klevan-yes, Owens-yes, Janda-yes. Motion approved.

The Mayor adjourned the Beer Board and reconvened the Board of Mayor and Aldermen meeting.

BOARD OF MAYOR AND ALDERMEN

Warrant – Thornwood – Phase 4

Economic and Community Development Director Cameron Ross explained that Phase 4 of the project consists of a single, multi-family building containing 258 dwelling units and 395 parking spaces, the majority of which are in a below grade parking structure. The Code requires all buildings with more than four sidewalk-level residential units along a single street have individual entrances to such units directly accessible from the required sidewalk or adjoining open space. The plan proposed access to individual dwelling units from the interior of the development. Common access is provided at a lobby entrance at the building's southwest corner (near the Thornwood roundabout). There will be a card access to the other entrances of the building for the residents. The garages are isolated to each level with an elevator going to that level only. Each level will have its own elevator. The developer thought this would be a good selling point for the units and the units will be leased at about \$2,000.00 per month. Security, safety and amenities are what they are trying to sell for this unit.

Motion by Mr. Klevan, seconded by Mr. Owens, to approve a warrant that will allow access to individual dwelling units from the interior of the development instead of individual entrances to such units directly accessible from the required sidewalk.

Alderman Klevan stated his vote would be a yes because he felt there was justification with the intent and is consistent with the small area plan and would be good for the overall development.

Alderman Gibson stated she would vote yes because of good principles of urban planning.

Alderman Janda stated he would vote yes for the same reasons.

Alderman Barzizza stated he would vote yes because of the security.

Alderman Owens stated he would be voting yes because of the security issues and because of the grading on the site, it would justify one entrance and it was effective use of Urban Design Principles.

ROLL CALL: Barzizza-yes, Gibson-yes, Klevan-yes, Owens-yes, Janda-yes. Motion approved.

Warrant – Thornwood – Phase 5

Mr. Ross stated this is a mixed-use building containing 32,182 square feet of retail space, 6,156 square feet of office space, and 20 apartment units. Parking will be provided within the building in a structured parking garage. Warrant 1 relates to the plan designation of a 0.344 acre civic space for seating and for outdoor performances. Smart Code requires civic space be approved by warrant. Warrant 2 sets the maximum number of permitted parking spaces for office and retail functions at 5 spaces per 1,000 sq. ft. A maximum of 203 spaces are permitted for the office and retail component of this development. The plan proposes a total of 266 parking spaces, of which 248 will be located in a parking structure and 18 spaces will be in an uncovered parking field.

Warrant Motion 1:

Motion by Mr. Owens, seconded by Mrs. Gibson, to approve a 0.344 acre square at the intersection of the internal streets, in the northeast corner of Phase 5. The Civic Space is to be used for entertainment and passive activities and will be owned/maintained by the Thornwood developers.

Alderman Janda stated he would be voting yes because he was in favor of having additional civic space, especially when someone else would be taking care of it.

Alderman Barzizza stated he would be voting yes for the same reasons and he felt it would be a wonderful addition to the project.

Alderman Gibson stated she would be voting yes because it was good urban planning.

Alderman Klevan stated it was a deviation in accord with the intent of the Smart Growth Plan and he would be voting yes.

Alderman Owens stated he found it hard to believe the Board would have to approve a warrant for additional civic and open space which is so imperative to the vitality of the community and he would be voting yes.

ROLL CALL: Barzizza-yes, Gibson-yes, Klevan-yes, Owens-yes, Janda-yes. Motion approved.

Warrant Motion 2:

Motion by Mr. Barzizza, seconded by Mr. Klevan, to approve a warrant allowing a total of 266 parking spaces, of which 248 will be located in a parking structure and 18 spaces will be in an uncovered parking field.

ROLL CALL: Barzizza-yes, because this would give some additional spaces, Gibson-yes, because this is a deviation according to our code, Klevan-yes, and he applauded the developers for their creating this and adding the additional hidden spaces, Owens-yes, because we have an effective use of parking, Janda-yes, because he felt this would be a very busy place and would need the extra parking. Motion approved.

Resolution 15R02 – Planning Commission Vote

Mr. Ross stated this was a resolution that was recommended by the City Attorney to ratify the plans and other items previously approved by the full Planning Commission as also being approvals of its Smart Code Subcommittee as provided by the November 2013 version of the Smart Code, section 23-744(A)(2)(c). It will consider the acts and approvals by the Planning Commission as being ratified, confirmed, adopted, and approved by the Board in all respects, effective as of the date of the application/plan approval by the Planning Commission, as being acts and approvals of both the Planning Commission and its Smart Code Subcommittee.

When rewriting the Code in 2013 it was inadvertently changed from the Planning Commission voting on the site plan or subdivision plat approval from PC to PCC. Seeing that the members of the PCC are six sitting members of the PC they voted on as they thought the process was going. An agenda item that will be voted on after this item will go to correct that error in the process. The votes were done properly, they was just done in a progression that they felt this would take care of as far as making everything right.

Alderman Gibson stated in light of the “Citizens to be Heard”, Ms. Sarah Freeman had come forward with some very important information that had helped us move through the process. She stated she had met with Cameron Ross and Mr. Lawton regarding this issue and was assured these were procedural mistakes not related to the design of the projects. Since the word “malpractice” had been used, she asked the City Attorney Debra Wiles to address the Board on this issue.

Ms. Wiles stated this was a change of an acronym, an inadvertent substitution that the subcommittee of the Planning Commission would approve instead of the Planning Commission. It is important to remember that the only members of that subcommittee are the six members of the Planning Commission which means that the Planning Commission would have also voted for it.

Mr. Ross stated they had followed to the letter all the design guidelines and the real spirit and intent of the Smart Code. This was a small procedural misstep. He stated they had allowed for more citizen input at the Planning Commission level. The 2013 version does not allow for public comment at the Smart Code Committee level because it is set up as a subcommittee so it inadvertently takes the public out in that they do not get to voice their opinions. The subcommittee inadvertently sidestepped this and gave the public time to comment at the Planning Commission level and at the subcommittee level. The change in the next item puts back in the transparency that they had tried to follow by letting the public be heard.

Motion by Mr. Owens, seconded by Mr. Klevan, to approve Resolution 15R02.

ROLL CALL: Barzizza-no, Gibson-yes, Klevan-yes, Owens-yes, Janda-yes. Motion approved.

Resolution 15R03 – Development Approval Process

Mr. Ross stated that this again goes back to trying to create that transparency, communication and accountability. In a review of the City’s Development Agreement Process, done in 2014, it was determined that the process for approval of those agreements could be processed and signed just as efficiently through the BMA process as was previously done prior to July 2013. Because of oversight and lack of communication with the Board, issues are created with these developments and agreements and by the Board going through the approval process there will be more transparency, communication and accountability. This resolution will bring project development agreements for subdivisions and commercial developments back to the Board.

Motion by Mr. Owens, seconded by Mr. Barzizza, to approve Resolution 15R03 – that the Board of Mayor and Aldermen does hereby amend the project and subdivision development agreement process by rescinding the process adopted by Resolution 13R06 and by providing that City agreements relative to the development of real property within the City shall be presented to the BMA for its review and approval at a meeting of the BMA prior to execution on behalf of the City.

ROLL CALL: Barzizza-yes, Gibson-yes, Klevan-yes, Owens-yes, Janda-yes. Motion approved.

Public Hearing - Ordinance 2015-04 – Amendment to Regulations on Swimming Pool Locations – Second Reading

Mr. Ross explained that swimming pools in any of the residential districts are required to be located behind the front line of the building, a minimum of five feet from all property lines and recorded easements. The BZA’s practice has been to approve variances to that setback requirement, provided the

homeowner enters into a “hold harmless agreement” that releases the City and any easement user from responsibility if the swimming pool is damaged as a result of work being performed within the easement. The approval of the amendment will reduce the number of variance applications that Planning staff have to process and review.

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

Motion by Mr. Barzizza, seconded by Mr. Janda, to approve on second reading Ordinance 2015-04, Amendments to the regulations on residential swimming pool locations.

Alderman Klevan stated he would like to disqualify his vote, as being a member of both the bodies at the time, he applauded the staff because this was good business practice and business friendly. He felt this was the right thing to do and was citizen friendly.

ROLL CALL: Barzizza-yes, Gibson-yes, Klevan-abstain, Owens-yes, Janda-yes. Motion approved.

Ordinance 2015-05 – Amendment to Smart Code – First Reading

Mr. Ross explained that in the fall 2014, Germantown staff became aware of errors in the 2013 version of the Smart Code, and began a review of the Smart Code’s procedures, references to other section, omissions from the 2007 Smart Code and similar errors. The currently proposed amendments will completely replace the 2013 version of the Smart Code with a corrected version.

Motion by Mr. Owens, seconded by Mr. Janda, to approve on first reading Ordinance 2015-05, the “Germantown Smart Code” and set March 23, 2015 as the public hearing date.

Alderman Klevan stated that since he was called out by name during the Citizens to be Heard he wanted to comment on why he would not recuse himself. He had been involved with this process since the very beginning with the exception of the omissions of the Smart Code in 2007. He had seen the intent of what they had tried to accomplish. In his opinion, this had gotten completely blown out of proportion. The reality of the Smart Code in 2007-2013 was to add the addition of T6 and to clean up the verbiage at that time. In cleaning up the verbiage, there was a typo that said the PCC (subcommittee) would vote on the warrants and not the PC (Planning Commission). The intent was always to have the process to go from the subcommittee with the input from the DRC and the Economic Development Commission, to have enough information to make a recommendation to the full Planning Commission. That was always the intent. When this was brought to the attention of staff, immediate steps were taken to correct not only this issue but all issues. EDC staff, legal staff, all worked very diligently to clean this up. During this process, Mrs. Freeman was always treated very cordially, with respect and given many opportunities to express her feelings both positive and negative in her own way. She was allowed her public input at a subcommittee level. Because of the nature of Smart Code and trying to move forward in a positive way, they allowed on several opportunities for Mrs. Freeman to express her views. He wanted to set the record straight that everyone involved in the process is not the bad guy or girl and the intent is to make this better, make our city grow in a way we can all be proud.

Alderman Barzizza stated he would be voting yes. He voted no on the other resolution and having this resolution come forward cleared up some questions he had.

ROLL CALL: Barzizza-yes, Gibson-yes, Klevan-yes, Owens-yes, Janda-yes. Motion approved.

Alderman Owens stated he was pleased with the attendance at the Economic Development Summit and then thanked Planner Marie Lasco and Director Cameron Ross for organizing the meeting.

Mayor Palazzolo praised the Public Works staff for their help during the wintry weather we had been having and in keeping our streets safe. He also thanked the Police and Fire Departments for their vigilance during this time.

ADJOURNMENT

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

Mike Palazzolo, Mayor

Dotty Johnson, City Clerk/Recorder