

BOARD OF MAYOR AND ALDERMEN

March 23, 2015

The regular meeting of the Board of Mayor and Aldermen was held on Monday, March 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, Wade Morgan, Lisa Piefer and Dotty Johnson.

Call to Order

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

Invocation

Public Works Director Bo Mills gave the invocation.

Pledge of Allegiance

Alderman John Barzizza led the Pledge of Allegiance.

Approval of Agenda

The agenda was approved as submitted.

Motion by Mr. Barzizza, seconded by Mr. Owens, to approve the agenda as submitted.

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

Approval of Minutes

There were no corrections to the minutes.

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

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

Youth Excellence Award

Alderman Gibson and members of the Education Commission stepped forward and presented Heath Rooks, a senior at Briarcrest Christian School, with the award for the month of March. Alderman Gibson read some of his academic honors and achievements.

Teacher of Month Award

Ms. Audrey Grossman, chairman of the Germantown Education Commission, representatives of the Commission and Mr. Michael Egerman, representing the sponsor Dazzle, presented Ms. Mary Lirette, a kindergarten teacher at Dogwood Elementary School, with the award for March.

Citizens to be Heard

George Brogdon, 8653 Pepper Bush Lane, stated he had worked with the original members of the Germantown Education Foundation and helped to develop the by-laws and parameters for the Foundation. He stated the main reason the Foundation was formed was to ensure the separation of the political body and the Foundation. He questioned why a political figure was now being appointed to the Foundation.

He applauded the Board for deciding to give \$100,000 to the Foundation. He encouraged everyone to give a donation to the Foundation through the water bills each month.

William B. Watt, 2218 Wilderness Cove, was concerned that the City would not have public input into the planning of Germantown Road and McVay area. He utilizes the roads in this area nearly every day and felt it was important to publicize when planning changes to the area so the public would have some input. He also was concerned about the bridge on Germantown Road and it would be a very lengthy process to widen the bridge.

CONSENT

Payroll Budget Transfer

The Finance Department has taken on the responsibility of processing payroll hours and checks for all employees. The employee who processed these items has moved from the Human Resource Department to the Finance Department. When budgeted items are transferred from one cost center to another within a fund, the item is brought before the BMA for approval.

MOTION: To approve a transfer of budget payroll and benefits from the Human Resource Department to the Finance Department for payroll.

Fire Pump Controller

The existing fire pump motor controller was installed in 1989. This motor controller provides 480-volt 3-phase primary power circuitry from the MLGW transformer and 480-volt 3-phase emergency power circuitry from the emergency generator to the fire pump that serves the entire building. Due to the age of the motor controller, replacement parts have become obsolete that would keep the motor controller fully operational. American Electrical Contractors, Inc. submitted the low bid of \$39,992.00.

MOTION: To approve this agenda item to enter into a construction contract with American Electrical Contractors, Inc. in the amount of \$39,992.00 for the installation of new replacement fire pump motor controller at the Germantown Center Complex and approve Budget Adjustment Number 15-64.

Score Boards

A phased replacement plan for the outdated, failing equipment was developed during the FY13 budget process. Phase I was completed in March 2013 which consisted of replacing eight boards at Cameron Brown Park and Houston Levee Park. In FY15, an IRP budget request was approved to complete Phase II of the project which includes replacement of all boards at Bob Hailey Athletic Complex. In January 2015, staff worked with the Procurement Department to finalize the scoreboard specifications to purchase all seven scoreboards at Bob Hailey Baseball and Football fields. The total price below reflects removal and disposal, installation, restoration of existing steel frames, extended warranty and surge/lightening protection. Staff also requests that unit prices be approved for a period of one (1) year from the BMA approval date. By establishing and approving unit prices with a contract, the City can purchase additional equipment specified as needed throughout the year with BMA approval. The cost of the seven athletic field scoreboards is \$63,236.80 from Pyramid Sign and Awning, Co., Inc.

MOTION: To request authorization to enter into a contract to purchase seven athletic field scoreboards in the amount of \$63,236.80 from Pyramid Sign and Awning, Co., Inc., establish unit pricing for a period of one (1) year from the approval date and approve Budget Adjustment Number 15-63.

Annual Maintenance Contract – Learning Center

The City first entered into an agreement in 1999 with SunGard Public Sector, formally H.T.E., when the Utility module we used was not Y2K compliant. The City added the Finance/Accounting, Payroll,

Budgeting and Purchasing/Inventory modules the following year. The system was further upgraded to a hosted platform in 2009 adding several additional modules.

Advancement in technology requires the City to continue to upgrade and train employees in order to communicate effectively. The addition of this learning center has allowed the City to empower employees to a higher level while tracking the education process.

MOTION: To renew the annual maintenance contract with SunGard Public Sector for the Germantown Learning Center in the amount of \$15,300.00.

Appointment to Germantown Education Foundation

The appointment of the City Mayor or designee to the Germantown Education Foundation (GEF) will ensure that, as the largest contributor to the Foundation, the City has Board representation. The Mayor or designee will act as liaison between the GEF and the BMA.

MOTION: To approve the appointment of the City of Germantown Mayor, or his or her designee, as a permanent member of the Germantown Education Foundation.

Motion by Mr. Janda, seconded by Ms. Gibson, to accept the consent agenda as printed.

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

Contract Development Agreement No. 1197 – Additional Building for Shops of Saddle Creek

Economic and Community Development Director Cameron Ross stated that approval of this agreement would allow the construction of a 5,418 sq. ft. single story retail building on the corner of Poplar and West Farmington Blvd. and the reconfiguration of the parking area in the vicinity. This area is currently occupied by parking spaces and the Saddle Creek fountain. The building will accommodate three shops.

Alderman Barzizza was concerned with the line of sight and the change of the aesthetics with the buildings being so close to the street.

Mr. Ross explained the DRC had also approved the landscape plan and the developer had worked with the federal and state guidelines and had been thoroughly discussed with the Planning Commission and the DRC.

Motion by Mr. Janda, seconded by Mr. Klevan, to approve Contract Development Agreement No. 1197 for the Shops of Saddle Creek Planned Unit Development.

Alderman Owens stated this was a development contract and had nothing to do with the variances that were approved by the Planning Commission and the BMA. He stated he voted against those variances while on the Planning Commission because he felt this was not the thing to do for this property.

Alderman Klevan echoed Alderman Owens comments. He stated he was chairman of the Planning Commission at the time and he voted against the variances because he was not comfortable with the variances. He stated he had voted against the variances but this is a development contract and he would be voting yes.

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

Annual Milling and Paving Contract

Public Works Director Bo Mills stated the Public Works Department has a proactive preventive street maintenance program that was established 20 years ago to annually grade, evaluate and schedule the candidate streets throughout the City for milling and/or pavement resurfacing. The

department's objective is to prepare and resurface approximately ten miles annually. The annual contract includes the repair of traffic loops that are damaged during the milling process, replacement of water valve boxes, sewer manhole risers and underground electrical utility boxes. The contract includes a price for base asphalt mix in the event some structural or foundation failures exist. The thermoplastic striping application is included in the annual contract and funded by the Street Striping line item in the State Street Aid Budget. A majority of the program this year will be centered around Fox Hill, North Allenby and the eastern Poplar Pike areas.

Motion by Mr. Barzizza, seconded by Ms. Gibson, to authorize the Mayor to enter into a contract with Standard Construction Co., Inc. in an amount not to exceed \$1,300,000.00 for the FY15 Annual Milling and Paving Contract.

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

Public Hearing – Ordinance 2015-5 – Amendment to Smart Code – Second Reading

Mr. Ross stated that staff had become aware of errors in the 2013 version of the Smart Code and began a review of the Code for incorrect procedures, incorrect references to other sections, omissions from the 2007 Smart Code and similar errors. The proposed amendments will completely replace the 2013 version of the Smart Code with a corrected version.

Alderman Owens asked the Board to approve an amendment to the ordinance to add to Section 23-744.A 1 to read Sketch Plan Review: *A minimum of 30 days* prior to submitting a site plan or subdivision plat to the Planning Commission.

Mr. Ross stated this was the general practice but adding this to the ordinance will address some citizen concerns that had been brought up in the Planning Commission process.

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

Motion by Mr. Owens, seconded by Mr. Klevan, to approve Ordinance 2015-5 – the “Germantown Smart Code” on second reading as amended.

Alderman Owens stated he had previously noted some of the changes that needed to be made and complimented staff on the work they had done to correct some of the changes.

Alderman Janda stated he would be voting yes because he was happy with the amendment to the ordinance.

Alderman Gibson stated she would be voting yes because it streamlines the process.

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

Police –In-video Car Cameras

Police Chief Richard Hall explained that in-car video systems allow the Police Department to use video technology in daily field operations. These three (3) in-car video units are additional units to be installed into three (3) new replacement vehicles. The current in-car camera systems are over five (5) years old and have been out of warranty for over two years. The current systems will be utilized as spares when other cameras are sent for repairs. This will ensure that no police vehicle will be taken out of service because the camera system is not functioning.

Motion by Mr. Janda, seconded by Ms. Gibson, to approve the purchase of three (3) Mobile Vision Flashback 3 digital in-car video surveillance systems from L3 Communication, Mobile Vision IN., in the amount of \$13,785.00.

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

Change Order No.1 – Purchase of Additional Outdoor Security Cameras

City Administrator Patrick Lawton stated the City first purchased this system in 2013 and it can be expanded. Staff recommends the purchase and installation of an additional five (5) security cameras that will monitor the main City Hall entrance for court security and the north parking area of City Hall where Police and Fire vehicles are parked in a non-secure lot. This will help increase security on court night and protect the city owned vehicles from theft and damage. The cameras will be monitored through the existing system with additional space for expansion if needed. The initial costs for equipment and installation will be paid out of the Federal Drug fund account saving taxpayers those costs. The remaining costs for maintenance will be paid from the IT budget line.

Motion by Mr. Barzizza, seconded by Mr. Klevan, to request approval of a change order for the purchase of five (5) additional outdoor security cameras with the annual monitoring charge in the amount of \$10,501.22 from Tyco Integrated Security under the NJPA Contract 031913-TIS.

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

Alderman Owens congratulated the Parks and Recreation Department, the Germantown Athletic Club and staff for the successful Germantown Half Marathon and 5K that was held this past weekend.

Alderman Gibson complimented staff on the webinar that was held.

Alderman Klevan reported the Library Board had met and had discussed LSSI and things were going well.

Mayor Palazzolo announced and congratulated Bo Mills who was awarded the W. Larry Edmonds award from the state for his work.

ADJOURNMENT OF BOARD OF MAYOR AND ALDERMEN

Mayor Palazzolo adjourned the Board of Mayor and Aldermen and opened Beer Board.

BEER BOARD

Assistant Prosecutor Mark McDaniel called all associated with the beer sting to come forward and be sworn in. The City Clerk administered the oath.

Suspension/Revocation – Beer Permit – Shell Service Center – 7627 Poplar

Mr. J.D. Ballinger, of 1408 Pecan Trees Drive, owner of the Shell Service Center, came forward.

The business was cited for unlawful sell to a minor on November 20, 2014.

Mr. Ballinger, the owner of the business, pleaded not guilty.

Mr. McDaniel called Officer Stone Cipher who gave testimony as to his participation in the events at that site.

Mr. Ballinger stated he had already leased his business and would no longer be running the Service Center. He made his statement and changed to a guilty plea. After a lengthy discussion, the Mayor asked for a vote of guilty or not guilty by the Board.

Mr. Ballinger then discussed how the City should help the retailers. He felt the retailer had been taken advantage of because the City did not furnish information needed.

In response to Mr. Ballinger, Mr. McDaniel stated the State of Tennessee has a Responsible Vendor Act that allows all vendors to seek certification and if there is a violation, they cannot be suspended on the first violation. Also, information is available to the vendor if they ask for it.

Mr. McDaniel recommended revocation of the permit or a \$2,500 civil penalty in lieu thereof.

A discussion followed by the Board on the violation and the penalty.

Motion by Mr. Owens, seconded by Ms. Gibson, to find Shell Service Center guilty of violation of the Germantown Code of Ordinances and Tennessee Code Annotated pertaining to the sale of beer to persons designated by the State to be a minor.

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

Mr. Ballinger surrendered his permit.

A discussion followed on whether the license should be revoked or suspended.

Motion by Mr. Janda, seconded by Mr. Barzizza, to revoke the beer permit for Shell Service Center.

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

Suspension/Revocation – Beer Permit – Kwick Shop – 9434 Poplar

Attorney Benet Haskell, a member of the Nashville Bar representing Kwick Shop, came forward and pled guilty to the charges.

Mr. McDaniel read the charges. On two separate occasions, November 20, 2014 and on February 4, 2015, employees at Kwick Shop sold beer to a minor.

Motion by Mr. Barzizza, seconded by Ms. Gibson, to find the defendant guilty of violation of each of the two violations of the Germantown Code of Ordinances and Tennessee Code Annotated pertaining to the sale of beer to persons designated by the State to be a minor.

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

Mr. Haskell pled his case to the Board. He stated the company had terminated the employment of the employees responsible for the sales.

The Vice President of Operations Teresa Smith was sworn in. She had flown in from the office in Florida and explained how important they consider this matter. She went into detail the many mechanisms they have in place to avoid this from happening.

Mr. Francis, the Regional Manager, was also present. He stated he had reviewed the video of both occasions and was astonished that the employees had checked the ID's, checked it again, and then when it

failed twice, they put in another birth date and it passed. He apologized on behalf of the store and they will keep training.

Mr. McDaniel stated they had no prior violations and he recommended 14 days, or pay a civil penalty thereof, since there were two violations, he recommended on the second violation 30 days or a civil penalty of \$1000.00 in lieu thereof. Or concurrent penalty of 30 days or \$1500.00 civil penalty thereof, payable within 7 days.

Motion by Ms. Gibson, seconded by Mr. Klevan, to suspend the permit for 14 days or pay the civil penalty of \$500 within 7 days, in lieu thereof on the first offense and on the second offense, suspension of 30 days or pay the civil penalty of \$1000 within 7 days. Concurrent offense to give 30 days' suspension or pay a civil penalty of \$1500 payable within 7 days.

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

Suspension/Revocation – Beer Permit – Petra Café – 9155 Poplar Ave., Suite 17

Mr. McDaniel stated this was the first violation since opening in 2013.

The owner was not present to plead their case.

Mr. McDaniel called officer Tibbles to be sworn in and gave testimony as to what happened during the beer sting. She observed the sale to the minor.

Motion by Mr. Owens, seconded by Ms. Gibson to find the defendant guilty of the offense.

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

Mr. McDaniel recommended that since no one was here from Petra Café to offer any explanation as to what took place or explanation to what steps had been taken to detour this from happening again he recommended a 30 day suspension or a \$2500.00 civil penalty in lieu thereof to be paid within 7 days.

A discussion followed on the recommendation of the penalty.

Motion by Mr. Janda, seconded by Ms. Gibson, to suspend the permit for 30 days or pay the civil penalty of \$2500 within 7 days in lieu thereof.

The discussion on the penalty continued.

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

Mr. McDaniel gave an alternative penalty of 14 day suspension or \$1000 civil penalty payable within 7 days.

Motion by Mr. Owens, seconded by Mr. Barzizza, to suspend the permit for 14 days or pay the civil penalty of \$1000 within 7 days in lieu thereof.

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

Suspension/Revocation – Beer Permit – Royal Panda – 3120 Village Shops Dr. #23

Mr. McDaniel stated attorney Ms. Sherry Hoffman was present representing Royal Panda.

Mr. McDaniel stated it was his understanding with Ms. Hoffman that they would enter a plea of guilty for the unlawful sale of beer to a minor.

Motion by Mr. Barzizza, seconded by Mr. Owens, to find the defendant guilty of violation of the Germantown Code of Ordinances and Tennessee Code Annotated pertaining to the sale of beer to persons designated by the State to be a minor.

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

Ms. Hoffman stated there were special circumstances regarding Mr. Wu, the owner of Royal Panda. He was not offering any excuses and that it did occur. She described exactly what happened at that time. She stated Mr. Wu, had not had any violations at his restaurant in 22 years. She stated he had suffered through this ordeal because he felt the shame and it had caused a black mark on his impeccable record. Because of Mr. Wu's culture, this is about honor, not the fine or the suspension.

Mr. McDaniel recommended a 7 days suspension or a \$500 civil penalty in lieu of that suspension. He reiterated that Mr. Wu had not had any previous violations and because his nationality, honor and character are very important to him.

Motion by Mr. Klevan to suspend his permit for 7 days or pay the civil penalty of \$500.
There was no second and motion failed.

Mr. McDaniel recommended something less than the 7 day suspension or something less than the \$500 civil penalty thereof.

A discussion followed by the Board on being consistent but his 22 years not having any violations should come into consideration.

Motion by Mr. Janda, seconded by Mr. Barzizza, since the owner had no violations in 22 years to give neither fine nor penalty.

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

Mr. Wu expressed his regret that this happened.

Alderman Barzizza recommended Mr. Wu rehire his niece since she had just come to the United States and was learning about the restaurant business and the laws she must now live by.

Suspension/Revocation – Beer Permit – Russo's New York Pizzeria – 9087 Poplar

Mr. Steiner, the owner of the business, was present and pleaded guilty to the charges.

The City Clerk administered the oath.

Alderman Barzizza recused himself because he knew the owner.

Motion by Mr. Klevan, seconded by Ms. Gibson to find the defendant guilty of violation of the Germantown Code of Ordinances and Tennessee Code Annotated pertaining to the sale of beer to persons designated by the State to be a minor.

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

Mr. Janda asked if it was necessary to recuse oneself if you know the person. Ms. Wiles responded that you must recuse yourself only if there would be a conflict in one's ability to make a decision. A financial conflict would certainly be a reason.

Mr. Steiner made his statement. He had been in the business for 30 years and in this community for 8 years. He had only two offenses in the 30 years he had been in business. He had a state offense for selling wine to a minor and now for selling beer to a minor. Both clerks had been fired at the time. He explained his process to inform his employees and how important the process is. He expressed his frustration on his part to get the message across to his employees and there is still a violation.

Recommendation from Mr. McDaniel was to suspend the permit for 7 days or pay a \$500 civil penalty within 7 days in lieu of.

Motion by Mr. Janda, seconded by Ms. Gibson, to suspend the permit for 7 days or pay the civil penalty of \$500 within 7 days.

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

Mayor Palazzolo thanked Chief Hall and all the police officers who took place in this beer sting. He applauded the Board for taking this issue seriously. The Mayor also expressed his gratitude to the establishments that sell alcoholic beverages and for taking it seriously and taking steps and internal processes to see that the law is upheld.

ADJOURNMENT OF BEER BOARD

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

Mike Palazzolo, Mayor

Dotty Johnson, City Clerk/Recorder